VI. *Observations upon certain Proceedings in the Star-chamber against Lord Vaux, Sir Thomas Tresham, Sir William Catesby, and others, for refusing to swear that they had not harboured Campion the Jesuit : in a Letter from JOHN BRUCE, Esq. F.S.A. to Sir Henry Ellis, K.H., F.R.S., Secretary ; followed by a narrative of the Proceedings.*

Read 23rd February, 1843.

Chelsea, 8th February, 1843.

MY DEAR SIR HENRY,

I SEND you a transcript of a paper which I am surprised not to find published in any of the printed collections of State Trials. It possesses sufficient importance, both historical and legal, to have entitled it to a place in those collections ; but, as it has not been noticed by their editors, nor, as far as I know, been printed elsewhere, it may be thought worthy of a place in the *Archæologia*. It has reference to some very important transactions in the reign of queen Elizabeth, and relates to persons and families who were themselves of considerable name, and the immediate descendants of some of whom were connected with subsequent events of still greater interest ; it is, moreover, one of the most minute accounts we possess of a proceeding *ore tenus* in the star-chamber, and records the opinions of the highest legal officers of that day upon some important questions in constitutional law. In the expectation that these circumstances will be thought sufficient to entitle this paper to a place in the transactions of the Society of Antiquaries, I shall preface it with some observations upon the persons and events with which it is connected.

The proceeding *ore tenus* in the court of star-chamber was of the following nature. The presumed delinquent was apprehended upon an order of the council, which was issued either upon private information, or, as is remarked by Hudson in his treatise upon that court, “ by the curious

eye of the state and king's council prying into the inconveniences and mischiefs which abound in the commonwealth."^a Upon his arrest, the prisoner was taken before some one or more of the lords of the council, or some person appointed by them, and privately examined. If he denied the facts alleged against him, it was the rule of the court that evidence should be gone into, and that the cause should proceed by written bill, answer, and the examination of witnesses, after the manner of the court of chancery. If the defendant confessed the facts, his confession was reduced into writing and signed by him, and he might then be taken before the court, his confession be produced, and judgment be passed against him at once, *ex ore suo*.

To keep this very dangerous form of proceeding within some bounds, three rules were laid down by the court in reference to it: i. That the private examination should not be upon oath: ii. That a confession should not be extorted by any compulsory means: and, iii. That when brought into court, the defendant should openly acknowledge his confession. If he then denied it, "although," says Hudson, "it be subscribed with his hand, and in the presence of the king's council, which are present to testify the same, yet is the rule so strictly held,^b that he must be remanded, and be proceeded against in a formal manner by witnesses."

These rules were perhaps adhered to in cases between private persons; but when the feelings of the sovereign, or the presumed interests of the state were concerned, it is well established that the proceedings were rather such as agreed with the wishes of the government, than such as were conformable with the rules of law, or with the prescribed practice of the court. This is manifest from the case before us.

The offences with which the defendants were charged were of three different kinds, but all in the nature of contempts of the royal prerogative, and all resolving themselves into a refusal by the persons charged to submit to examination upon oath. But, if the rules I have stated were in force at that time, and there is no reason to doubt that they were, the examination of these persons ought not to have been upon oath. In bringing them, therefore, before the star-chamber for condemnation, that court was called

^a Coll. Jurid. ii. 126.

^b Ibid. 127.

upon to punish them for not submitting to that which was an infraction of one of their own rules.

But, farther, the examination to which these persons refused to submit related to circumstances which, if admitted, would criminate themselves. The arguments of sir Thomas Tresham (one of the defendants) upon this point, seem to be quite untenable.^c If good for any thing, they would go the length of putting it in the power of a witness to refuse to give testimony upon oath at pleasure ; but still the voice of the common law is clear, "*nemo tenetur se ipsum prodere*," and according to Lambard,^d the earliest departure from a strict adherence to this rule in legal practice is to be found in the 1st & 2nd Philip and Mary, cap. 13, by which justices of the peace were first authorised to examine a prisoner brought before them upon a criminal charge. I am not quite sure that Lambard is right ; but, even if it be allowed that before that time some minute departures from this rule had been authorised in special cases by particular statutes, it may still be confidently stated, that the rule of law has at all times been, to prefer any evidence of guilt to that which is afforded by a man's own confession out of court, and to view with the utmost jealousy words said to have fallen from a prisoner which tended to his own conviction. But in this, as in the kindred case respecting torture, there was often, at the period to which the case now before us belongs, a wide difference between the rules of law and the proceedings of the executive. Practices which the law not merely disavowed but abhorred, were resorted to without scruple or concealment, by the officers of the crown, and were defended upon the plea of a presumed royal prerogative, unknown to the constitution, but employed in state prosecutions, and in all other cases in which the interests of the crown were thought to be concerned. What might be done by prerogative, was considered to be something altogether distinct from what might be done by law ; and hence it is, that whilst all our legal writers unanimously disclaim

^c Bracton disallows the argument of sir Thomas Tresham, in the following brief sentences : " Sacramentum habet in se tres comites, veritatem, justitiam, et judicium : veritas habenda est in jurato ; justitia et judicium in judice." Bracton, lib. iv. fo. 186, cited in Coke's Third Inst. 166.

^d Eirenarchia, lib. 2, c. 7, p. 213, edit. 1588.

the use of torture and other tyrannical practices—and truly disclaim them as sanctioned by law—we have evidence the most incontestible, that they existed and were practised, under the shelter of alleged royal prerogative.

I should not have thought it necessary to remark upon the obvious illegality of asking accused persons to swear to facts which would criminate themselves, were it not that, in the report of the case under consideration, it is stated by the lord chief justices Wray and Dyer, and the lord chief baron Manwood, that the rule of law "*nemo tenetur*," &c. referred only to cases in which the accused person might subject himself, by his answer, to loss of life or limb. This restriction of the general maxim is unsupported by any precedent or authority applicable to proceedings in the courts of law, and should, I imagine, be understood as referring to prerogative cases, and not to legal cases; to cases similar to that in which the words were spoken, and not to cases before the ordinary tribunals; that, in point of fact, the words were spoken, not in a general sense, as they are reported, but in reference to the practice of the court of star-chamber, which did not hold itself bound by the ordinary rules of law. I am unwilling to believe that these eminent judges could have been so far misled by a desire to please the court, as to declare that the law sanctioned a doctrine so inimical to the liberty of the subject, and so palpably at variance with the practice of their own courts. It was to the credit of the lord chancellor, sir Thomas Bromley, that he did not follow the common-law judges in this line of argument, but treated the conduct of the prisoners as undutiful towards her majesty, a contempt of her prerogative, and a breach of their oaths of allegiance.

Another observable point in this case is, that lord Vaux, being a peer, was required to answer only upon his honour, but that the lord chancellor speaks of that circumstance as being a favour shown to his lordship. He does not admit that, as a peer, he had a right to be so examined in the star-chamber; and in the countess of Shrewsbury's case, in 1612, it was expressly ruled that, "if one that is noble, and a peer of the realm, be sued in the star-chamber, or in chancery, they ought to answer upon their oaths, and may be examined in the star-chamber, upon interrogatories, upon their oaths: and if one who is noble be produced as a witness between party and

party, he ought to be sworn, or otherwise his testimony is of no value ; and so is the common experience in the said courts.”^e

There are several other points worthy of notice in this case, but as they are rather of a professional than an historical character, I shall not dwell upon them. Its bearing upon the history of the period can only be understood by a consideration of the position of the government towards the English Roman catholics at the time when it occurred, and, to explain that fully, would lead me into a long detail of circumstances, which, at any event in outline, are pretty well known. Still it is necessary, in order that the conduct of Elizabeth’s government in instituting this prosecution should be understood, that I should state some of the particulars, which I will therefore do as shortly as I can, and, in doing so, shall adduce some evidence which has not been used by our general historians.

The papal bull by which Elizabeth was excommunicated and deposed, and her subjects were absolved from their allegiance, was issued on the 25th February, 1570.^f Following immediately upon the great Roman catholic rebellion of 1569, this bold exercise of papal authority could only be regarded by the protestant government as a most dangerous incitement to such of the queen’s subjects as were disaffected towards the reformed faith, to renew their revolt with better hopes of success, and with a more certain assurance that, in having recourse to arms, they were playing the part of good subjects to the pope, if not to the queen. The government met this daring attack upon the safety of the sovereign and the peace of the state by various penal enactments, which produced their desired effect ; for, although the public quiet was for a time disturbed by the effrontery of Felton, and the conspiracy of Ridolfi, the papal agent, in which the duke of Norfolk was implicated, these troubles soon passed over, and, after a few years, the bull began to be “slighted,” says one of the translators of Camden, “as a vain crack of words that made a noise only.”^g The lay Roman catholics of England, (to whose credit it should always be borne in mind, that their conduct, under these trying circumstances, was too much like that of good subjects to the queen to be agreeable to their spiritual rulers,) even the most part of the moderate

^e State Trials, ii. 772.

^f Camden, 212, edit. Hearne.

^g Lond. fol. 1675, p. 148.

amongst them, secretly disliked the bull. They were pleased to discover, or to fancy, that it was defective in certain formal requisites; and they foresaw, which was, no doubt, the chief cause of their dislike, that it would be the source of great evils to themselves. It may easily be understood how the pope, receiving most of his information respecting England from zealous exiles, some of whom had fled their country to enjoy the open exercise of their faith, and others to save themselves from the penalties of rebellion, might be misled into the promulgation of such a most impolitic instrument; but the Roman catholics who remained in England knew, that the government of Elizabeth was too firmly seated to be overturned by any means which the pope had at his command, and they, consequently, viewed the whole proceeding with dislike and fear. Before the issuing of the bull, they had enjoyed the private exercise of their religion within their own houses quietly enough, and many of them had, without scruple of conscience, occasionally been present at the parish churches;^h but afterwards, they were more closely watched, the penalties of recusancy were more strictly levied, and every endeavour was made by the government to discover, and to punish, all direct intercourse with Rome or Roman agents. It resulted from these measures, and also from the death of most of the old priests of queen Mary's time (who, being dispossessed of their livings, passed the remainder of their days as stewards and schoolmasters in Roman catholic families), that the number of the professors of Romanism rapidly decreased in England within a few years after the publication of the bull of deposition. To stay the progress of this growing defection was the great object of the priests sent into England by the foreign seminaries.ⁱ They strenuously opposed the occasional conformity of the "protesters," (so called because they thought that they might go to church provided they secretly, and in their own minds, protested against the doctrines they heard there,) and themselves supplied the places of the old "queen Mary's priests." Their labours produced a very great effect; and in 1579 they received the assistance of a new band of coadjutors, the English college at Rome being, in that year, taken from the secular clergy and delivered over to the Jesuits,^k then a recently instituted order, full of

^h *Camd. Annales*, ii. 215, edit. Hearne.

ⁱ *Allen's Defence*, c. iii.

^k *Dodd*, iii. 37, edit. Tierney.

activity, and endued with a fiery zeal which, even in the annals of missionary enterprise, has perhaps never been surpassed. The spirit with which they entered upon this new field of exertion may be judged from a few sentences in the letter which is known as Campion's challenge. "I confesse," he says, "that I am (though unworthie) a priest of the catholick church, and through the greate mearcy of God vowed, now these eight yeares, to the socyete of Jesus; and, thereby, have taken upon me a speciall kynde of warrfare under the banner of obedience, and eke resigned all myne intereste and possibilitie of worldly wealth, honour, pleasure, and other worldly felycities. At the voice of our general provost, which is to me a warrant from heaven, and an oracle of Christe, I took my voyadge from Prague to Rome, where our said father-generall is alwaies resyante, and from Rome to England; as I mighte, and wold have done joyously, into any part of christendome or heathenesse, hadd I bene thereto assigned * * * * *."

"And touchinge our societie, be it knowen unto you, that we have made a league, all the jesuits in the world, whose succession and multytude must overreache all the practizes of England, cherefully to carrye the crosse that you shall laye upon us, and never to dispaire your recovery while we have a man lefte to enjoy your Tyborne, or to be racked with your tormentes, or to be consumed with your prysones. The expence is reckoned, the enterprize is begonne; it is of God, it cannot be withstood. So the faithe was planted, so it must be restored."¹

The zeal of these new missionaries, ardent as it was, did not disdain to avail itself of the assistance of a little worldly policy. They knew what an obstacle was opposed to them, by the disinclination of the lay Roman catholics to take any steps towards the execution of the bull of deposition. Campion and Parsons, the leaders of the jesuit missionaries, procured, therefore, from Gregory XIII., a fresh document, by which it was declared, that the bull of deposition, although of perpetual obligation upon Elizabeth and the heretics, should not bind the English Roman catholics under the then existing circumstances, but only when a public execution of it could be effected.^m With this "grace," as it was termed, in their possession, the

¹ Harl. MS. 422, fol. 134, compared with another copy at fo. 132.

^m Camden, *Annals*, ii. 348. Holinshed, iv. 522.

missionaries landed in England. It was not published, as the bull had been ; but was exhibited to the faithful, for the quieting of their scruples, and to enable them to answer the interrogatories as to the papal power of deposition, which were administered to suspected persons by order of the government. Under this new document it was held, that even the most rigid maintainers of the papal authority might allow, that, notwithstanding the papal deposition, Elizabeth continued to be their queen—their queen *quousque*, as it was sometimes termed—their queen until the time arrived when the Roman catholic party attained sufficient strength to put the bull into execution. To hasten that time was the object of the jesuit missionaries ; and every protestant brought within the pale of Rome, every “cold catholic” reclaimed from the parish church, constituted a step in advance.

Of the general course of the proceedings of the missionaries we have information from members of their own body. They were dressed in strange antic dresses,ⁿ sometimes as soldiers, sometimes as gallant gentlemen, sometimes as roaring-boys or roysters, sometimes as clergymen of the national church,^o sometimes as apparitors, or summoning officers of the ecclesiastical courts, and these various costumes they changed continually, as they also did the names by which they passed. In the morning they generally preached, and afterwards wrote, heard confessions, and determined controversies or cases of conscience. After dinner they removed to some fresh place, studying, whilst on horseback, the sermon of the following day, and escorted by some trust-worthy persons who served as guides and guards. It is worthy of observation, and is not without its parallel in other periods of our history, that their escort was generally composed of young men of noble

ⁿ Campion described his dress thus : *Habitu dementissimo sum, quem sæpe commuto itemque nomina*. Bridgewater’s Concertatio. p. 24.

^o Thomas Heath, brother of Nicholas, archbishop of York, and lord chancellor to queen Mary, under a license from the pope and the superior of the jesuits, went the length, not merely of dressing as a clergyman of the established church, but of preaching puritanical sermons in churches. A paper, which fell out of his pocket whilst he was preaching in Rochester cathedral, led to the discovery of his real character. Strype’s Annals, i. part ii. p. 272. Collier’s Eccles. Hist. vi. 463. edit. Barham.

families.^p Besides the advantages of their countenance and wealth, the priests must have felt themselves more secure under their guidance than under that of persons exposed to the temptations of poverty; whilst it was amongst young men of family that they found their easiest converts, and their most faithful disciples. It followed, from their having such guides, that their course generally lay from house to house, either of their new converts, or of the members of those noble families amongst whom the unreformed faith continued to be affectionately cherished.

When thus escorted, a priest arrived at a house where he was about to remain, the general course was ^q for the people of the house to receive him as if he were an entire stranger. After a time, he was conducted to an inner chamber, which was fitted up as an oratory, and there all present did homage to his office, by falling on their knees and entreating his blessing. Their first inquiry was, how long he would stay with them, which they entreated might be as long as possible. If he told them that he should depart on the morrow, which was the usual course, lest a longer stay should breed danger, all the inmates of the house prepared themselves for immediate confession. Early on the following morning, the mass was said, the sacrament of the eucharist was administered, and then the priest delivered an address, which in such circumstances of concealment and danger, spoken by a man who had defied difficulties of every kind in order to extend the blessing of religious sacraments to the persons whom he was addressing, and those persons themselves liable to prosecution for the very act in which they were engaged, and excited by a recent participation in the most sacred mysteries of their faith, could not fail to be in the very highest degree impressive and animating.

The uncertainties and anxieties of this way of life are strikingly delineated in one of the letters of the jesuits. Sometimes, upon a sudden alarm, or during a hot pursuit, they were driven to the concealment of woods or thickets, ^r ditches or pits, and sometimes they passed many days and nights

^p Sanders, 379, 395, edit. 1610.

^q Ibid. 399.

^r A tangled dell, in the neighbourhood of Stonor park in Oxfordshire, is traditionally said to be the place in which Campion lay concealed whilst he wrote his "Ten Reasons." Butler's *Memoirs of Eng. Cath.* iii. 193.

in the secret places which the Roman catholics were accustomed to construct in the chimneys, walls, cellars, or other almost inaccessible parts of their houses. "Sometimes," says this writer, "when we are sitting at table, conversing cheerfully and familiarly of the things which concern our faith and devotion, for our conversation is most commonly of such things, if by chance any one knocks loudly at the door, so that it may be mistaken for a constable, we all start up like deer who have heard the voice of the hunter. Immediately every one is upon his feet, with open ears and beating heart. The refreshments are laid aside, we commend ourselves in a short prayer to God, and then no voice nor sound of any kind is heard, until the cause of the disturbance is reported to us. . . . Truly, of such persons it may be said, that they carry their lives in their hands." ^s Such is the remark of the writer from whom I have just been quoting; but Campion, after making a similar reflection, proceeds with all the fervour which distinguished him—"The consolations which are inseparable from this occupation compensate by their infinite sweetness, not merely for the fear of suffering, but for all sufferings whatsoever; a pure conscience! a strength invincible! an ardour incredible! a work of renown! a number of converts innumerable, of all classes, and of every age and sex!" ^t This little rhetorical flourish no doubt greatly exaggerates the numbers of the new converts, but that it was considerable is very certain. Within a few years several hundred missionaries landed in England, and these devoted men, all partakers in a degree of the zeal, if not of the talent, of Campion and Parsons, scattered all over the country, living in an atmosphere of enthusiasm, and passing quickly from place to place, with all the attendant circumstances of mystery and concealment, could not fail to revive in the hearts of many persons the dying embers of the ancient faith. And they not merely brought their converts within the pale of their church, but inspired them with some portion of their own zeal. "No one here," writes a jesuit in 1582, ^u "is found to complain of the too great length of the holy offices; if a mass does not last almost an hour, it is, by many people, scarcely liked. If six, eight, or even more masses are said on the same day, and at the same place, which

^s Sanders, 400. ^t Bridgewater's Concertatio, p. 24. Fuller's Ch. Hist. lib. ix, sec. 41.

^u Sanders de Schism. 400.

not unfrequently happens when several priests meet together, the self-same auditors never miss one of them. If a priest is at hand, they expiate their sins by a salutary confession every eighth day. Lawsuits between catholics, for any cause whatever, are scarcely ever heard of. If a controversy arises, it is left wholly to the arbitration of the priests. With the heretics they will neither contract matrimony, nor join in prayers, nor have any business transactions whatever. When it was lately proposed to a lady of rank, that she should be released from prison if she would merely walk through a church, she instantly rejected the proposal, declaring that she had entered prison with a clear conscience, and would so quit it, or would die. Mark, I beseech you, what the Holy Spirit has effected by this persecution. In the time of king Henry, who was the father of this Elizabeth, almost the whole kingdom, in which were bishops, prelates, and very many learned men, at the command of one tyrant, abjured the faith and authority of the Roman pontiff; now, truly, by the great mercy of God, during the persecution of Henry's daughter, there are women and children, who openly and before the tribunals, not merely confess the faith with courage, but, even when death is set before them, refuse to comply with things which to some people may seem mere trifles. This is, truly, a change from the right hand of the Most High, and is to be numbered amongst his greatest blessings towards this nation. It cannot be explained how much the glory of God has been promoted by the foreign seminaries. The heretics are more afraid of them, than of the arms of the catholic princes."

The zeal of the missionaries was exhibited in a most characteristic contempt of their opponents. Campion speaks thus of the church, which had recently lost Parker and Grindal, but which still retained Whitgift, Bancroft, Whitaker, Fulke, Jewel, and many other venerable men whose names will instantly occur to recollection. "The heresy," he says, "is every where vilely spoken against, nor is there any class of men worse esteemed, or more odious to the common people, than their ministers. Truly, we feel ashamed, that in such a wretched cause, men so unlearned, so wicked, so divided amongst themselves, so contemptible, should have rule over such lofty spirits." v

v Sanders de Schism. 380.

But it is principally to the books which they wrote and circulated, and which were designed to keep alive the faith of their flocks during their absence, that we must turn for an insight into their opinions. These books were circulated by the new missionaries with no less diligence than danger, and one of their own writers explains how this was managed. The preparation and printing of the books were kept secret. The whole impression, which was printed either abroad or at some concealed press in England, was brought to London, and was there parcelled out by hundreds and fifties to the priests,^x and the existence of a book was in this way first made known by its contemporaneous circulation in all parts of the kingdom. Afterwards, adds the same writer, when the houses of the catholics began to be searched for these books, there were many young men of noble families who went about by night, and left copies of them in the houses and shops of the heretics, introduced them even into the palace, scattered them about the court, and in the principal streets, that the catholics alone might not be accused of possessing them. The history of these books forms a very curious chapter in English bibliography ; but this paper has already extended to too great a length to allow me to enter upon it. Of their contents, it is sufficiently well known, that they were in the very highest degree malignant and libellous. Amongst much that was purely theological, there was much also that, if not treasonable, was separated from treason by an almost undistinguishable line. History was falsified in order to depreciate the queen in general estimation, doctrines were inculcated which were totally subversive of the allegiance of her Roman catholic subjects, and men who had suffered for open rebellion against her authority were held up to admiration and example as martyrs. It is in connection with the papal bull of deposition, and the circulation and contents of these books, that we must look for proofs of that criminality in the seminary priests and jesuits which justified the government in adopting severe measures against them and the persons who harboured them. Whilst we regard the missionaries only as men exercising spiritual functions, we must admire their heroism and pity their sufferings ; but such feelings are very much diminished when we discover that one of

^x Sanders de Schism. 398.

the objects of their mission, and of their publications, was to overcome the honourable disinclination of the lay catholics to join in rebellion at the command of the pope, and to convert those, who, in the language of sir Francis Walsingham, were "papists in conscience" into "papists in faction." Such proceedings could not continue long without producing civil convulsions, and a government which had disregarded them, or rather which had not done every thing in its power to put a stop to them, would have been most blameably inattentive to its duty as well as its interest. To the government of Elizabeth, I believe, with the writer of one of the letters I have quoted, that they were more alarming than the arms of foreign enemies. Whether the measures actually adopted were the best that could have been devised, and whether they did not exceed the severity necessary for the occasion, are questions into which I need not enter. No one will dispute that, like many other practices of that period, they were very much at variance with our modern notions.

Parsons and Campion landed in England about the middle of the year 1580, and in the following January a proclamation was issued,^y in which it was stated, that divers of the queen's subjects, trained up in colleges and seminaries beyond the seas, and whereof some carried the name of jesuits, were lately repaired into the realm by special direction from the pope and his delegates, with intent not only to corrupt the queen's subjects in matter of religion, but also to draw them from their loyalty and duty of obedience, and to provoke them to attempt somewhat to the disturbance of the present quiet, the queen, foreseeing the great mischief that might ensue by such like instruments, whereof experience had been of late seen in Ireland, (where in the year before a rebellious attempt had been made to put the bull of deposition into execution,^z under the immediate authority of the pope, and with the usual accompaniments of papal warfare, a consecrated banner and the presence of a legate,) did therefore notify to her subjects, that if any of them did receive, maintain, succour, or relieve any jesuit, seminary-man, or massing priest, they should be reputed as maintainers and abettors of such rebellious and seditious persons, and receive for the same

^y Strype's Annals, iii. part i. 58.

^z Camden, 342, edit. Hearne.

their contempt such severe punishment as by law and the queen's authority might be inflicted upon them. In the parliament which met in the same year it was enacted, that any person who should absolve the queen's subjects from their allegiance and induce them to promise obedience to the pope, with a view to putting in execution the bulls against her majesty, and any person who was willingly so absolved, should be guilty of high treason. By the same act the penalty for saying mass was raised to 200 marks, and that for hearing it to 100.^a

After many narrow escapes, Campion was taken in the house of a person named Pearce, at Lyford, a hamlet of the parish of Hanney in Berkshire, in July 1581, and conveyed with some needless indignities to the Tower. Within a few days he was subjected to examination, and "dealt with by the rack," under the authority of a warrant from the council, dated the 30th July 1581.^b Upon that occasion he refused to state whether he had said any masses or no, whom he had confessed, and where Parsons and the other priests were. He was again examined upon these points, with threats of further torture, under a warrant dated the 14th August 1581;^c and, finally, was a second time put to the rack, under another warrant, dated the 29th October 1581.^d Upon his first examination^e he named various persons who had received him into their houses, and amongst them the several defendants in the following case. This extorted confession was afterwards, very naturally, a subject of the greatest regret to him; and in a letter which was intercepted, he expressed himself in reference to it in the following words: "It grieveth me much to have offended the catholic cause so highly as to confess the names of some gentlemen and friends in whose houses I had been entertained; yet in this I greatly cherish

^a Stat. Realm, iv. 657.

^b Jardine on the use of Torture, 87.

^c Ibid. 88.

^d Ibid. 89.

^e Lingard says, that he gave this information the second time he was examined, to which he gives the date of Oct. 31; but his note proves that this is incorrect. The information was known to the government on the 10th August; and lord Vaux and sir Thomas Tresham were brought to London before the 18th August. Digges, 373, 390. It is stated in the following narrative that Campion's examination was dated "the of August." See post, p. 80.

and comfort myself, that I never discovered any secrets there declared, and that I will not, come rack, come rope.”^f This is the letter to Mr. Pound, alluded to in the following case.

Immediately this confession had been obtained, the several persons named by Campion were brought up to London in custody, and examined before members of the privy council. Ultimately, six of them who added to the alleged offence of receiving Campion a refusal to submit to examination upon oath, were selected for punishment; and the transcript I now send you is a narrative of their trial and condemnation. They were, 1. William the third lord Vaux of Harrowden, son of Thomas lord Vaux the poet. This nobleman was father, by his first wife, of Anne Vaux, whose singular connection with Garnet imparts to the gunpowder plot so much of the character and interest of a romance. His second wife was Mary, daughter of John Tresham, of Rush-ton, and sister of sir Thomas Tresham, who was the second person selected for punishment. 2. Sir Thomas Tresham was a grandson of the sir Thomas Tresham, who was master of the knights of St. John of Jerusalem, upon the restoration of that order under queen Mary. He is said to have been a protestant, or perhaps more accurately a conforming Roman catholic, until the arrival of Campion and Parsons, by whom he was fixed in the church of Rome.^g He was a great lover of architecture, of which the market-place of Rothwell, in his native county of Northampton, designed and begun to be erected by him, remains an honourable proof. Francis Tresham, so well known for his connection with the gunpowder plot, was his eldest son. 3. The third of these defendants is sir William Catesby of Ashby St. Legers, the father of Robert Catesby, the contriver of the gunpowder plot. It has been said that this gentleman was also considered to be a protestant until the arrival

^f State Trials, i. 1060.

^g I state this, and the same fact in reference to sir William Catesby, upon the authority of More's Hist. Soc. Jesu, p. 74, to which I was referred by Mr. Jardine's Criminal Trials, p. 10, but it seems to be contradicted by the statements of both sir Thomas Tresham and sir William Catesby in the following narrative. They both deny that, to their knowledge, they had seen Campion since his return to England, and sir Thomas speaks of himself as being liable to be suspected as a well-known Roman catholic. Both Tresham and Powdrell were acquaintances of Campion's when he was a student at Oxford.

of the jesuits. Sir Thomas Tresham and sir William Catesby both married daughters of sir Robert Throckmorton of Coughton; so that all these three defendants were related by affinity, they were all residents in one county, and were all fathers of persons deeply implicated in the gunpowder plot.

Of the remaining defendants I know little, and shall be much obliged to any gentleman who will be kind enough to communicate to me any information respecting them. Mr. Powdrell was probably one of the Powdrells, or Powtrells, of Thrumpton in Nottinghamshire, and since of West Hallam in Derbyshire. Of Mr. and Mrs. Griffith, I know no more than appears in the case.

The seventh defendant, Ambrose Griffith, a student of Lincoln's Inn, was not charged upon Campion's information, but upon circumstances which transpired during the examination of one of the other defendants.

It is said in the Harleian catalogue, that the following account of their trial appears to have been drawn up by sir Thomas Tresham, and the remark has been repeated by Baker, in a brief allusion to this MS. in his History of Northamptonshire;^h but I am inclined to think that must have been compiled by some other Roman catholic present at the trial. That it was written by some one person, is clear from passages in which the writer speaks of himself in the first person; that he had a friendly feeling towards the defendants is evident from the sharp and triumphant way in which sir Thomas Tresham is occasionally made to reply upon his judges; but that it did not proceed from sir Thomas Tresham himself, appears probable, I think, from a paper appended to the narrative of the trial, and intended by the writer to be taken as part of it, in which some free comments are made upon points which, in the judgment of the writer, sir Thomas Tresham ought to have urged in his defence. This paper is entitled, "Notes observed by us that were present," and is printed at the end of the narrative of the trial. It was evidently written by a lawyer; and the same inference with respect to the narrative itself may be drawn from several passages which occur in it, and especially from one in p. 103, in which, speaking of the maxim *nemo tenetur*, &c. the writer adds, "which I take to be Bracton's principall."

^h Baker's Northamptonshire, i. 243.

With these observations, which have grown to what I fear will be deemed a very unreasonable length, I beg to leave the narrative of the trial to tell its own interesting tale,

and I am, my dear Sir Henry,

Yours very truly,

JOHN BRUCE.

SIR HENRY ELLIS, K.H., F.R.S.
Sec. S. A., &c.

Narrative of Proceedings in the Star-chamber against lord Vaux, sir Thomas Tresham, sir William Catesby, and others, for a contempt in refusing to swear that they had not harboured Campion the jesuit.

MS. Harl. 859, fol. 44—51.

At the court of starrechamber, Wednesday the xvth of November, 1581.

WHERE were sett in order, viz. the lord chauncelour,ⁱ the lord chamberlayne,^k the lord of Leicester, the lord Cromewell, the lord of Buckhurst, the lord of Hunsdon, the lord Norrys, sir Frauncis Knolles treasurer, sir Walter Mildmay chauncelour of the exchequerr, the lord cheif justice of England, the lord cheif justice of the common plees, and the lord cheif baron.

The prisoners at the barre then were, the lord Vaux, sir Thomas Tresame knight, Mr. Powdrell, Mistres Gryffyth of Buckynghamshire¹ and her husband, and brother Mr. Ambrose Griffyth; all thes came from the Flete together, and were brought to the barre betwene 9 and 10 of the clock in the morning.

Sir William Catesby knight was brought from the Kinges Bench, whos warning of comming thyther was verie late: the lord Vaux and sir Thomas Tresame had byn heard before his comming to the starrechamber.

The quenes counsell was Popham the attorney-generall, Egerton the sollicitor, and Mr. serjant Anderson who (as I remember) spake nothinge.

Sir Thomas Bromley.

^k Thomas Ratcliffe, earl of Sussex.

¹ So in the MS., but there can be little doubt, from other passages in the narrative, that it ought to be Northamptonshire.

When the prisoners were brought in, the comon lawyers were moving of orders, which were on that syde where usually the common lawiers stande, [and which] was fully fraught with them : yt semed that the court staid in proceeding with the prisoners because of the absence of the lord chamberlayne, who was sondrie tymes demaunded for, and sent for, who came not into the court tyll the lord Vauxe had fully ended, and almost also sir Thomas Tresham.

The attorney dyd geue evidence against the prisoners, with a longe exordium of the happie raigne of the quenes majestie, shewynge then what a malicious enemie to her highenes the pope was, who had stirred the rebellion in the northe ; who sent in the excommunication which Shelton^m &c. ; who sent in Maynie ;ⁿ who stirred the late rebellion in Ireland ; and who nowe had sent in rennagate jesuytes and semynarie preistes, the verie seedes of sedition, &c. Amonge whom, namely, one Campion, &c., who had byn receyved, synce his commyng over, sundrie tymes in the howses of the lord Vauxe, sir Thomas Tresame, and sir William Catesbye, and also in the howses of Mr. Powdrell and of Mistres Gryffyth aforesaid.

Then against the lord Vaux, sir Thomas Tresame, and sir William Catesbye, he furder dyd geue in evidence, that they being examyned thereof, dyd denie yt ; who being required by the councell to confirme yt by an othe, refused yt ; who then charged them, upon their allegiance, to sweare, but they refused yt : whereupon he urged the contempt, but he neither produced for yt warrant of lawe nor president.

Against Mr. Powdrell he urged, that he also being by the councell required to sweare to certayne articles, lykewyse refused to sweare to the interrogatories unlesse he might fyrst see them.

Against Mistres Gryffyth, and her brother Mr. Ambrose Gryffyth, in that they, being examyned before hym the sayd attorney, refused to sweare.

The evidence readd in that behalfe was a confession of Mr. Campions at the racke, the of August last, &c. before the lyvetenaunt of the tower,

^m So in the MS. ; it seems to refer to Felton who affixed the bull of deposition on the gate of the residence of the bishop of London. State Trials, i. 1086.

ⁿ Cutlibert Maine, executed in Cornwall in 1577. See Camden's Annals, 317, edit. Hearne.

Norton and Hammon. The content whereof was, that he had byn at the howse of the lord Vaux sundrie tymes, at sir Thomas Tresames howse, at Mr. Gryffyns of Northamptonshire, where also the lady Tresame then was, and at the howse of sir William Catesbye, where sir Thomas Tresame and his ladye then was. Also at one tyme when he was at the lord Vauxes, he sayd, that the lord Compton was there, but not mencioning conference with them or the lyke. Also to enforce this, there was a letter produced, said to be intercepted, which Mr. Campion should seme to wright to a fellowe-prysoner of his, namelie Mr. Pound, wherein he dyd take notice, that by frayltie he had confessed of some howses where he had byn, which now he repented hym, and desiered Mr. Pound to begge hym pardon of the catholiques therein, saying in this he onlie reioyced, that he had discovered no thinges of secrett.

Then the court demaunded of the lord Vauxe, what he could answeere herein, and whether he confessed or denied this to be trewe, which for the quene had byn geven in evidence against hym.

The lord Vauxe, making an humble and lolye obedience, offered to speake; but the lord of Leicester (as yt semed) dislyking of some want of dutie or reverence therein, some thinge said (as we gessed) touching the same to the lord chauncelour.

Lord chauncelour.—My lord, doth yt become you so unreverentlie to presume to make answeere, with onlie bowinge of your legge, in so highe an offence as this ys that you have committed against her majestie? No, yt lyttle besemeth you, and greatlie ys to be dislyked.

L. Vaux.—My lords all, yf I have failed in any part of my dutie I humblye praye pardon, for I had intencion not to offende therein (God is my iudge), and the rather I hope you will pardon yt in me, who throughe ignorance hath committed this errour, being erst neuer acquaynted with the answering of any lyke cause in this courte, or any other courte. All this he spake upon his knee, and so contynewed kneelinge all the tyme of his answeere, and so lykewyse the residewe.

L. chauncelour.—Answere to the matter that her majesties attorney hath charged you withall; do you confesse yt, or denye yt?

L. Vaux.—My lords, I acknowledge all to be trewe that I am charged

withall, concerning my refusing to sweare, and withall do affirme my examynacion taken before sir Walter Mildmaye to be trewe, offeringe now, as alwaies heretofore I have done, to depose to any interrogatories that concerneth my loialtie to her majestie, or dutie to the estate, requiring onlie to be exempted to depose in matters of conscience, which, without offending of my conscience greuouuslie, I maye not consent to doe; with further offer, that yf I be not a most trewe and faithfull subiect to her majestie, shewe me no favour, but cutt me of forthwith, at whos commaundment my goodes, my landes, and my lyfe ever hath byn, and ever shalbe, most redie in all dutie to be implied. And as to the receiving of Mr. Campion (albeyt I confesse he was scholemaster to some of my boyes) yet I denie that he was at my howse. I saye that he was not there to my knowledge, whereof reprove me, and lett me be punished with that punishment I deserve.

L. chauncelour.—You have denied yt unsworne; why do you refuse to sweare it? Naye, you were but required to saye yt upon your honour, and withall but to your knowledge, and the favour you had also shewed you, that Campions examynacion in that point was readd unto you, wherein he confessed to have byn at your howse.

L. Vaux.—My lords, I had good reason for my denial^o * * * * * like an honest and faithfull subiect would and * * my symple and playne answere to you * * byn accepted without othe, or affirmance upon my honour (which to us noble men [is the] same that an oth ys to others) which I refused in trouth, because I would not have the same to be impeached by untrewre accusation.

L. chauncelour.—You see he hath sayd herein what he can; you maye proceede with sir Thomas Tresame.

L. Vaux.—Thus much I humblie praye of your honours, that yf I have committed any offence herein, that you would not impute yt to contemptuous obstinacie, but rather to feare of offending my conscience.

L. chauncelour.—Sir Thomas Tresame, what saye you to that which Mr. attorney-generall hath charged you withall? ys yt trewe, or false?

^o The MS. is here defaced by a fold in the paper.

Sir Tho. Tresame.—Sir Thomas Tresame making humble and lowe reuerence to the courte, kneeled downe upon his knee, and made his defence as followeth.

Mr. attorney, you have charged me generallie with sondrie tymes receyv-
ing of Mr. Campion; I praye you lymitt the tymes and places, that my
answere maye be particuler and dyrect.

The attorney caused Mr. Campions confession to be readd in that behalfe,
which being fynished, sir Thomas Tresame answered.

Being hitherto brought unto this barre by order of this honorable court,
necessitie nowe forceth me to plead my owne defence, synce none other
wyll, ne maye, who whollie being unfraught of skyll or arte, and whollie
unexperienced to speake before so honorable and great an assemblie, and
neuer practised heretofore to make answer in the lyke cause, and withall
meanellie, ye to-to meanely indebted to nature for her gyftes, even which I
fynde mervelouslie impayred with my nowe many monethes imprisonment,
which being mere contrary to my ever heretofore libertie at large, hath
wrought no smalle alteration in me. Wherefore I am, in all humilitie and
dutie, most humblie to beseche your honours, that yf any thinge escape
me which besemeth me not, that in respect of my more then many aforesaid
defectes, your good lordships of your great benignitie will pardon the same
in me, or elles geue me leave to expound myselfe, who hath intencion to
satisfie, and in no wyse further to move offence unto your lordships, right
lowlie beseching your honours to carie in memorie what the reverend father
St. Augustine sayth, that *linguam ream non facit nisi mens rea*, which I
protest ys not in me.

He praieth
pardon of the
court.

Mr. attorney, you have, with great skyll, inforced my offence, wherein if
I were faultie in the same nature and forme as you have charged me, worthilie
I ought to be punished; but I doubt not but to make yt otherwyse to ap-
peare. A great part of your speche concerneth me not; wherefore I will
answer to thos pointes which cheiffie do concerne myselfe, wherein I have
to make answeere onlie to towe pointes, the one for the receyvvyng of Mr.
Campion in such sorte as you have charged me, the other in contemptuouslie
refusinge to sweare.

Repetition of
the attorney's
evidence.

Whether an-
swere to one or
both.

Thes being the seuerall partes whereto I should answeere, whether ys yt
your lordships pleasure that I shall answeere to one or bothe, being redye

to yelde you sufficient answere to them bothe ; for he which hath innocencie for his advocate can neuer be taken unprovided.

L. chauncelour.—Upon this demaund the lord of Leycester moved towardes the lord chauncelour, and so lykewyse the attorney, whereupon presentlie the lord chauncelour commaunded sir Thomas Tresham to speake to the contempt onlie.

Sir Tho. Tresame.—Then, I trust, my lord, I am acquitted of the receyving of Mr. Campion, wherewith I was charged by Mr. attorney, in that I have denied yt, and am redie to yelde profe thereof, and that your lordships will not have me to answere thereto, but to the contempt onlie : wherein, I being delyvered of the principall and originall supposed offence, I make no question but my offence then in not swearing will greatlie be extenuated, yf not wholly avoyded, for hardlie, naye impossiblie, maye that which ys framed upon the foundation stande, when the foundation ytselve ys removed and taken awaye from yt. Wherefore (under correction of the court) I take the offence to be either nothinge, or elles verie lyttle, yf I refuse to sweare to discouer the thinge that ys of yt selfe no offence at all.

But, before I enter to answere to the contempt, maye yt please your honours to graunt me, whom in all reverence do beseche yt, that whatsoever I shalbe necessarilie occacioned to plead in my defence, that your honours will not deme yt in me presumption, or arrogancye, that I entende thereby to perswade the court to be of my mynd and opinion, but to make manifest onlie that I have not perseuered of any obstinate undutifulnes, but induced thereto by great reason and authoritie, semyng in my weake opynion unanswerable, wherein yf I have fayled, I humblie praye to be reduced forth of my error, by your honours singuler knowledg and depe iudgments, and then shall I be most redie to accept of that oth, which nowe in no respect I maye. And for my warrant herein (under your honours correction I saye yt) I have the expresse word of God, not to be controlled, the exposition of the receyued doctors of the church, not to be denied, the practise of the primityve church, when she was in most purytie, by examples of gloriouse martyrs to us faithfully testified, and by probable reason, not to be againsaid ; the one inhibiting me upon paine of present worldlie shame, thother upon peryll of future eternall damnation : which be towe principall inhibitions to everye honest christian.

And, inasmuch as all lawes ought to be guyded by Gods lawe, and that all our actions ought to take their dyrections thence, I will (your lordships so permitting me) begynne with my warrant forth of Gods worde, which yf I sufficientlie prove, I shall trouble your honours the lesse, and shall not nede to travill for further profe in any of the other authorities ; the same of ytselfe being most sufficient to free me from all suspect of contempt. My contempt consysteth in refusinge to sweare whether Mr. Campion, a jesuytt, was in my howse, dyd saye masse, or preache there, who were present thereat, and such lyke. All which tendeth to the discoverie of the practise of a contrary religion, other then ys warrantable in this state, and which, by the lawes now in force, ys penall. In this case I saie (but under the correction of this honorable court I saye yt) yf I were faultie (as I protest I am most faultlesse) yet I maye not accuse unsworne, *a fortiori* not to sweare therein, *nam qui iurat illicitum facere cum animo faciendo bis peccat.*

Wherefore I making no question but that yt ys unlawfull in this case to accuse, and most unlawfull to sweare, and because an othe herein ys demaunded of me, I fyrst will seeke what ys an othe, and what ys incident and proper to an othe, everie of which being indifferentlie considered yt shall manifestlie appeare that to refuse to sweare herein ys no contempt at all.

That holie and famouse doctor of the catholick church St. Augustine, treating and most learnedlie at large discoursing *de verbis apostoli*, "*Vide ante omnia nolite iurare,*" proponeth this question nowe in hande, and also answereth hymselfe. Saith he, "*Quid est iuramentum, nisi ius reddere Deo, quando per Deum iuras.*" Yf then I am bound by my othe *ius reddere Deo*, I must heedfully forsee, that with circumspection I do not the thinge not lawfull, or inconvenient to be done, for such thinges be not dewe to God. And forth of the 4th of Jeremie we plainlie ar taught what ys incident to an othe, without which no othe ought to be taken. The words be, "*Et iurabis, dicit Dominus, in veritate, iusticia, et iudicio.*"^p The exposition whereof, verie breiflie, but withall most pythilie, the scholemen do signifie, *iudicio, caret iuramentum incautum ; veritate, mendax ; iusticia, iniquum et illicitum.*

Yf then we be taught forth of Godes worde, that of necessitie thos three,

^p The words in the vulgate are, " Et iurabis : Vivit Dominus in veritate, et in iudicio, et in iustitia."

videlicet, trouth, justice, and iudgment, must all concur in an othe, which reason also teacheth us that they ought, and yf this exposition of the lerned scholemen and depe devynes be not denied, which ys, that an undiscryte othe wanteth iudgment, a false othe wanteth truthe, and an unlawfull and unrighteous othe wanteth iustice, even which the verie wordes themselves notoriouslie do expresse, and that, without thes, no othe ys to be accepted, then, in this my present case, suffer me, my good lords, of your great pacience, to laye most open to this courte, that not one but sundrie of thes thre principalles and maximes incident to an othe be wantinge, that ys, bothe *iudicium* and *iusticia* ; any one of which bothe, yf I should but onlie prove, ys sufficient to free me from my accused contempt ; wherefore, as they be placed in the wordes of the prophet, so do I begynne my defence with them. Therefore, fyrst, to *iudicium*, which I will but breiflie touche, relyeng espetially to prove it *illicitum et contra iusticiam* ; which, when I descende unto, I doubt not but to make most evident.

Judicium ys requisite in an othe ; the prophete teacheth and the scholemen do expounde, that an unadvised or improvident othe doth want iudgment, which of necessitie must be wantinge yf I depose herein. For, yf I sweare falselie, I am periured ; yf by my othe I accuse myselfe, I am condemned to the penaltie of the lawe and displeasure of my prince, which ys contrarie to the lawe of nature *seipsum prodere*. Yf I sweare trulie, then I laye myselfe wyde open to periurie, because Mr. Campion hath oppositely accused me in the affirmatyve. Lastlie, yf I sweare as he hath confessed, I thereby should recorde myselfe, before no meaner wytnesses then your honours, to be an egregious lyer ; to affirme one thinge before your honours unsworne, and by othe before your honours to sweare the contrarie. Secondlie, I should greatlie synne uncharitably to belye hym, to make hym and myselfe both, guyltie by my othe, who to my knowledge ar most innocent, which I am by Gods worde expreslie forbidden. Lastlie, I should committ a grevous synne to sweare against the knowledge of my owne conscience, wherein *perhiberem meæ conscientiæ falsum testimonium*, the burden whereof expresslie ys declared in the xvijth of *Sap.*, “ An heavie thinge yt ys, when a mans owne conscience beareth record of his wyckednesse, and condemneth hym.” Whereupon St. Gregorie, in his 27th boke of *Moralles*, sayth, *Ipsa conscientia testimonium perhibet sibi esse damnabile quod agit.*

Thus being plunged in thes perilles, which by no meane I may escape yf I should take my othe herein, I then humblie praye iudgment of the court, whether that herein I should not want iudgment, undiscritlie to depose herein, which yf yt be wanting, as doubtlesse yt ys, then am not I, by the authoritie of this holie prophete, to be condemned, but to be commended in not swearing, for to swere when *iudicium* ys wanting ys forbydden. *Non tentabis Dominum Deum tuum. Deut. vi.*

Mr. attorney.—My lords, yt appeareth that sir Thomas Tresham, upon the excommunication of the pope, doth not holde you lawfull judges, and therefore you want *iudicium* in mynistring of an othe. Also, my lords, I knowe yt to be trewe, that by a boke that I have sene (which ys common amongst the papistes) the pope hathe forbidden to sweare *quousque*; and this ys his reason of refusall to sweare, and the dailie practise of this courte ys, yf one refuse to sweare he ys punished by the courte for the contempt.

L. chauncelour.—Sir Thomas, herein wanteth not *iudicium*, which ys requisite in an othe, when we, authorised magistrates, do offer you an othe which in dutie you ar to sweare unto.

Sir T. T.—*Mr. attorney*, you do me wronge; you reason *ex falso hypothesisi*. I deryve no argument from any excommunication, neither do I saie, or geue you occasion to saie, that I holde not your honors lawfull magistrates to admynister an othe, but yt pleaseth you to suppose so, and then do make answer to your owne supposition, but to my argument you have answered nothinge. For, yf you understand me, I reason onlie that *iudicium* ys wanting in me, and not whollye in them, yf I should sweare herein, which still I affirme. And as for your boke, and *quousque*, I protest I never heard of any such; or yf I had, what had yt byn to the purpose, when I take my originall and ground simplie forth of the scripture, as appeareth by the place by me before alleaged. And as to your president, yt maketh with me, and not against me, for in that case—here was sir Thomas Tresham interrupted to speake.

Mr. sollicitor.—Sir Thomas Tresham, I will prove to you directlie that in this othe ys *iudicium, veritas, et iusticia*, and thus I prove yt; the magistrates have lawfull authoritie to mynister an othe to you, and they tender yt you *in iudicio*, and therefore also *in veritate et iusticia*.

Sir T. T.—Sir, I graunt that thes magistrates be lawfull magistrates, and therefore maye tender an othe; but in this I saie I ought not to depose, because *iudicium* should be wanting in me, in whom yt specially ought to be in, for thoughe yt ought to be in bothe, yet principally yt ought to be in the partie deposed, for that the magistrate cannot be periured in mynistring of the othe, but he onlie who deposeth. Therefore, cheiffie yt behoveth hym, to see that *iudicium iurantis* be not wantinge, which the expresse wordes of scripture doth teach, saing, *et jurabis*, &c. which ys onlie spoken to hym that ys to take an othe, and not to hym that mynistreth an othe, wherefore I still affirme, that in *iudicium*, within this place, ys discretion; I cannot take this othe in respect of that which I alredie have alleaged, and therefore I ought not.

Sir Walter Mildmay.—Sir Thomas Tresham, I then perceyve that you thinke yt as nedefull to have *iudicium iurantis* in [the person taking] an othe, as to have *iudicium* in the magistrate.

Sir T. T.—Yea, sir, and, yf yt maye please your honour, I thinke yt much more nedefull in the partie then in the magistrate, for yt concerneth hym most, who maye take most detryment by yt, which ys the partie to be deposed.

Sir Walter Mildmaye.—By this argument, then, everie deponent maye refuse, yf he see *iudicium* to be wantinge in the thinge that he should depose unto.

Sir T. T.—In everye such case, I make no question, but the partie to be deposed dothe better to refuse to sweare, then in swearing: yea, thoughe, in respect thereof, he refuse to sweare when in trewe iudgment he ought to sweare, for in refusing to sweare in such a case as ys a mere temporall demaund, ys but a temporall contempt, but to sweare to such a lawfull acte against the iudgment of his conscience, ys unlawfull, and a great synne, and hereof devynes make no doubt.

L. chauncelour.—Yf your lordships thinke good, I would mynister an othe to hym by what meanes he commeth to thes instructions forth of the doctors, and I holde yt requisite to tender hym an othe herein.

Sir T. T.—With good will, yf yt please your honour, but that shall not nede, for the same parties that instructed me be still in my studie, which ys, the Byble, St. Augustyne, *Soto de iure et iusticia*, and Naner in his cases of

conscience, and the *summa* of St. Thomas ; which lett them be perused, and my notes upon thos places with my owne hande will manifest whence I had them.

L. Hunsden.—You have greatlie deceaved me ; I had thought you had not byn so well studied in dyvinitie as yt nowe semeth you ar.

Sir T. T.—My lords, my studie ys lytle ; yet the most tyme I imploye in studie ys in divinitie, and verie lytle had I profyted yf in so cleare a case as this ys, I could not have avouched expresse authoritie to prove this no contempt in refusing to sweare.

L. chauncelour.—Why then you will sweare to nothing, or but to what you lyst ; this smellethe somewhat of the anabaptisticall opynion.

Sir T. T.—There ys none in this great assemblie more free from that detestable opynion then I am, for I knowe the scripture, bothe in the olde and newe testament. *Psal.* 100.^a *Juravit Dominus, et non pœnitebit eum, &c.* *Genes.* 22. *Per me ipsum juro dicit Dominus.* *1 Cor.* 15. *Per gloriam vestram, fratres, quotidie morior.* *2 Cor.* 1. *Testem Deum invoco super animam meam, &c.* Also the place of Jeremie by me avouched doth testifie no lesse, *et jurabis, &c.* saythe the prophet, that ys, not thou shalt *not* sweare, but yt ys, thou shalt sweare, with this limitation, so yt be in veritie, discretion, and iustice. And to free me from all such suspect, I appeale to your lordship, my lord of Leycester, to whose lordship, and to your lordship my lord chamberlayne, and to my lord treasurer nowe absent, who were the three that committed me, I dyd sende sondrie articles whereto I offered to depose, which I besече your lordship to produce to the court, for that I dyd wright them but to you three, and here I have nowe many more judges who yt semeth dyd never see them, and do condemne me depelie in that I will not sweare at all (which is verie untrew), whom yt behoveth me also to satisfie herein nowe, as your honours then.

L. of Leicester.—Sir Thomas Tresham, you were not best to have them shewed, for I promise your lordships they will make most against hym.

Sir T. T.—My good lord, I besече you, that notwithstandinge, to shewe them to the courte, for I am the man that dyd wright them, that dyd sende

^a This should be Psalm 109 of the vulgate, which is Psalm 110 of the authorised version. These references to the holy scriptures were evidently made from memory.

them, that dyd premeditatly deliberate upon them, that still do iustifie them, and I am he who, yf therein have erred, must beare the blame of them, wherefore I humblie praye this iustice of both your honours to whom I dyd wright them.

L. chamberlayne.—I was somewhat farre of from my lord chamberlayne, but I take yt he sayd, that indede he heard of sundrie articles but dyd never see them.

L. Leycester.—I confesse you dyd sett downe sondrie articles whereto you offered to depose, but that was, in effect, to nothinge. And as for thos articles, I assure your lordships I have them not here, otherwyse I willinglie would produce them in courte.

Sir T. T.—By your lordships favour, I praye to put you in remembraunce of them, which I take to be, and knowe to be, farre otherwyse ; wherein I offer, not in effect to sweare to nothing, but almost to everye thinge. In which I offer to depose to any thinge concerninge my loialtie to her majestie, and to any matter of estate whatsoever, and not only what my actions and speaches therein hath byn, but also with what intencion I have done them, and, furdernore, what my euer thoughtes have byn of any acte past, present, or in future tyme to be done by me, as more at large in thos articles most manifestlie appeareth. Wherein I am so farre from swearing nothing in effect, that I dare to saye that, hitherto, never subject, during her maiesties raigne, dyd at any tyme depose to the lyke or so largelie. And, because my lord sayth he hathe them not present, and that yt beho-ueth me to satisfie the court herein, I humblie praie lycence of the courte, that this, a trewe copie thereof, may publiklye be readd in the court, which be thes that I here offer to your honours in all humblenesse of dutie.

L. Leicester.—Yt ys verie trewe that his articles be to that effect ; but, in his conclusion of them, he doth affirmatyvelie putt downe his resolution that he will accuse no catholique in cases of conscience.

L. Hunsdon.—Then nowe you ar contented to sweare I perceave, why would you not before ?

Sir Fra. Knolles.—Your swearing nowe, I can tell you, will not avoyd the contempt, albeyt yt ys better for you to yelde then persever.

Sir T. T.—I am redie nowe to depose as much as I then offered, and then

as nowe, which ys, breiflie, as my lord of Leicester lastlie signified, to all thinges of alleageance and state, but not to accuse any catholique in cases of conscience onlie, which I still affyrme, and which more particularlie and fullie appeare in these articles, which I praie maye be readd in the courte.

L. chauncelour.—You that ar so full of scripture, do not you knowe that the scripture commaundeth you to be obedient to your superiors, whych yt semeth you lytle do understande?

Sir T. T.—My good lord, I knowe yt right well, and holde yt a strickt commaundement for me dutifully to obeye and religiouslye to observe, yet your lordship knoweth that some thinges be proper to God, others to Cesar, which we maye not confounde; but in this, yt being no mere temporall demaunde but a matter in conscience, and thereby concerneth my soule, I am to have such speciall regarde hereto in this my othe before your honors, as I maye be abled to make my accompt before the majestie of almightie God at the dredfull daie of iudgment.

L. Hunsdon.—Yf yt please your honours to call to remembrance, sir Thomas Tresham yelded a reason even nowe, why he might not sweare, for he said, yf he dyd sweare falselie he should be periured, and therein, indede, he said verie trulie, and so yt semeth to me, that he fully hath satisfied the court why he will not sweare.

Sir T. T.—Yt ys verie trewe that I said, yf I dyd sweare falselie I should be periured; but that I said, as your lordship affirmeth, that was my reason why I would not sweare, I utterlie denie. For had your lordship remembered the wordes and reason immediatlie following, I had lefte your honour small scope to playe upon me; wherefore, may yt please your honour, and your honors all, at that tyme when I yelded sondrie instances to prove that I could not *in iudicio* take this othe, I propounded, yf I dyd sweare falselie I were periured, and yf I dyd sweare trulie, I should laye myselfe wyde open to periurie, because Mr. Campion had affirmatyvly accused me. And, yf I dyd accuse myselfe by my owne othe, I should condemne myselfe, against the lawe of nature and Gods lawe. Lastlie, yf I should sweare as Mr. Campion had sayd wrongfully, I should accuse hym and myselfe bothe, also recorde myselfe before your honours to be an egregious lyar. And, above

all, in so swearing, *perhiberem meæ conscientiæ falsum testimonium*, which is a great synne, which then, I trust without offence of your honour, I maye boldlie affyrme that my reason why I refuse to sweare ys not for feare of periurie in false forswearinge, but that I cannot, in this laberynth, sweare, but fall into one of the perilles and inconveniences aforesaid. Which yf yt maye not be eschewed, then can there not be *iudicium iurantis* in me, and therefore, by the authoritie of the prophete, I ought not to sweare in this point.

L. chauncelour.—You argue ignorantlie, and yt semeth you ar taught a lesson, but you have not well caried yt awaie. Howe can you laye yourselfe open to periurie when Campion ys not deposed? Will not your othe be alwaies of more validitie then Campions accusation? Your speche ys herein to lytle purpose.

Sir T. T.—My lords, I measuring my owne insufficiencies, amongst which my want of learning and practise necessarie for the defense of this cause, fyrst made humble peticion to this honorable courte, that yf any thinge escaped me which beseemed me not, that you would pardon the same in me, or otherwyse lycense me to expound myselfe, which I nowe againe right humblie beseche your honours to graunt me, who do acknowledge myselfe in good soothe more then ignorant. Yet, under the correction of the court, I suppose I have reason to saye, that yf I should sweare contrary to Mr. Campions testimony, that I should offer myselfe to the perill of perjurie, were my othe most trewe; and that ys most evident, which leasson I have trulie learned of reason onlie. That Mr. Campion hath not made his accusation by othe ys more then I earst heard, for I heare nothing of hym (myselfe being close prisoner) but that I heare reported of your honours, notwithstanding yt ys not unlyklie but that you would have had hym testifie by othe, as well as your honours will not be satisfied with my confession, and my betters also, but by othe. Wherefore I have reason to thinke he was deposed, and accordinglye to misdoubt the inconvenience that thereby might growe to me. But, admitt that he be not yet deposed, yt ys to be thought that he will testifie this his accusation, when tyme shall serve, by othe, as well as in this sorte to confesse yt, and to accuse me. Well, take yt in the weakest sorte that may be, and shall yt be alwaies a

most stronge evidence against me to haste me to the pillorie, there infamouslye to loose my eares; for yf I sweare to the contrarie, my deposition ys of recorde, so lykewyse ys his accusation, myne ys but a bare negatyve, and, in thes cases, a man cannot purge hymselfe by his owne othe—everie offender will saye, “No”—and, therefore, that ys no profe, nor yet worthie of much credytt; but on the contrary parte lyeth the profe dyrectlie, who sweareth affirmatyvly that he was in my howse, that he laye in my howse, and in what chamber of my howse, had talke with me, and what talke, and such lyke. In this case, I saye, suppose that he neither sweareth, nor ys present to testifie yt, nor hath none elles that will concurre in testimonie with hym, yet, inasmuch as the same ys for the quene, and against me, a disgraced person, with many enforcements which by men of skylle maye be urged—as not lykely a man of so great expectacion and learninge would come so many hundreth of myles to my howse, and would not discover hymselfe to me, being a catholique, with such lyke—in this case, I saye, what iurie, naye, what most indifferent iurie, would not condemne me to be falselie perjured, which evidence semeth so potent with your lordships, that you deme his testimonie trewe and myne false. Wherefore (under your lordships correction) I thinke I have great reason, and not to be gainesayd, to saye as I alredye have alleaged, and to eschewe by all meanes possible so apparant and prepared a ruyne of my credytt, and losse of my eares. Which reason of myne not onlye soundeth probable (I hope) in the eares of all your honours, but also of this great assemblie here present, wherein I should greatly want *iudicium* to sweare yf I had no other poynt to stand upon, but onlie this, there having byn sondrie other also by me probablie alleaged, and, namelie, that this ys not a mere temporall demaunde but a case of conscience, therefore yt ys against *iudicium* to sweare herein.

L. chauncelour.—To yelde accompt by your othe whether that Campion was at your howse ys a cyvill cause, and you forgett yourselfe to much to refuse to sweare thereto.

Sir T. T.—Under your lordships favour, I denie this to be a mere temporall demaund, for I was examyned whether Mr. Campion was at my howse, whether he sayd masse, and such lyke, onlie enquiryng after causes

of religion, and neuer of causes of state, or mere temporall demaundes, unto which I neuer refused to depose, nor yet doe.

L. Leycester.—We examyned you onlie whether Campion was at your howse, and, because you denied yt, we proceded no further with you ; therefore you cannot pleade for yourselfe what we, in your opynion, would have demaunded of you ; therefore this ys but a shyfte.

Sir T. T.—My lords, yf yt be a shyfte, yt ys a trewe shyfte, and that shall I dylie prove sondrie wayes ; wytnesseth fyrst sir Walter Myldmay, in my fyrst examynacion before hym, by vertewe of the counselles letters.

Sir Walter Mildmay.—I dyd not examyne you whether Campion dyd saye masse, or preach, or such lyke, because you denied he was at your howse, which fyrst I should haue knowne.

Sir T. T.—Sir, maye yt please your honour to call to remembrance, that I was examyned upon vij articles, whith you shewed me, and your warrant for them from the councell, amonge which, principallie, I should have answered unto matters of religion and conscience, and no thinge of state at all. And, amonge other, this generall article was one, what masses I had heard any preist to saye, or by report dyd heare any to have sayde ? Whereto I answered ; and I thinke you will graunt that, yf I had confessed his being in my howse, you would then particularlye have demaunded what masses and such lyke I had heard hym saye, for so were your instructions, which I dyd see. Also, synce my comming to pryson, I sending to the courte to knowe to what articles I should depose, answere was retorned me from some of her majesties councell, onlie to sweare whether Mr. Campion was at my howse, whether he preached and sayde masse, and who were present thereat. Also, synce my comming to the barre, yt was my position at the fyrst, whereupon I framed my defence, which tyll now was not denied. Lastlie, I see that one of my fellowes at the barre that confessed his beyng at his howse, was also examyned onely whether he sayd masse, preached, and such lyke, and who was thereat present. Wherefore yt cannot be denied, that this ys no mere temporall demaund, but dylie a case of conscience, which being graunted, I ought not to depose herein.

L. Leycester.—Is yt not onlie a cyvill cause to aske for Campion ? What yf yt be added also, whether he sayd masse, what relygion ys in this case ?

Sir T. T.—Your question, as your honor avoucheth yt, ys no meane cyvill cause, because the principall thinge you enquire ys, whether, accordinge to his vocation, he hath practised a relygion not warrantable by our present lawes? And, my lord, what you make of a masse I knowe not, but I never heard yt accompted of any but a misterie in religion, which being annexed to the inquirie of Mr. Campion, most plainlie maketh the difference betwene a temporall demaund and this case, which, being then a cause of conscience, I offer myselfe to be judged by any devyne olde or newe, catholique or protestant, I refuse none, whether I ought to sweare herein, and, so farre as they shall yelde that by Gods lawe I ought, so farre I will depose.

L. chauncelour.—My lords, I would willinglie, yf you so thinke good, mynister an othe to hym, here in courte, howe he commeth by thes instructions in dyvinitie, for yt were not well he should passe awaye in this sorte.

Sir T. T.—My good lords, and lords all, I am right sorowfull that necessitie forcing me to make my defence, and having yet scant touched the same, that in so lyttle sayinge I should so much offende your honors, wherefore, I perceyving that in that which I have to saye I shoulde offende more, I will forbear to proceede to prove yt *illicitum*, and therefore *contra iusticiam*, whereof I have invincible profes, and so in scilence do referre the same to the consideracion of this honorable courte, being prepared with obedient pacience contentedlie to endure what herein shalbe imposed upon me.

This ended, sir Thomas Tresame, all this tyme knelinge, dyd ryse upp, making a lowlie and humble obeysance to the courte.

L. chauncelour.—Mr. Powdrell, what do you answer thereto? Do you confesse yt in the same sorte, as you ar charged, or no?

Mr. Powdrell.—My lords, I denie that part of my lord of Shrewsberies testimonie of my confession wherein he sayth I came to the latter endinge of the masse, for I neither dyd so, neither dyd I saye so. Also the daye of the receyving of Mr. Campion into my howse ys not sett downe as in trouth yt was, for yt was the viijth of Januarie, which was iiij dayes before that daye which ys sett downe in my lord of Shrewsberies certificat, but that I receyved Mr. Campion I have confessed yt, and I hope I have not offended therein, for bestowinge a nightes lodging of hym who sometymes dyd reade to me in the universitie, and by whom I dyd never knowe evell.

L. Leicester.—Your lordships maye see howe bolde he ys, to denie that

which my lord of Shrewsberie hymselfe hath testified under his owne hande, and that he came to the latter endinge of masse, to the kyssing of the pax, which I am sure you thought worth the kyssinge.

Mr. Powdrell.—Maye it please your honours, I must denie yt, because yt ys untrew; yf I had done yt, I would have confessed yt, but this was the confession of Mr. Sacheverell by himselfe, and not of me.

Mr. attourney.—For the difference of the daies that you dyd take exception unto, yt altereth not the case.

Mr. Powdrell.—Thus much yt changeth the case, that I saye yt was done twoe daies before the proclamacion of Mr. Campion, and by that certificate yt should be twoe daies after the proclamacion when Mr. Campion came to my howse.

L. chauncelour.—What saye you to your refusinge to sweare, can you denie yt? I dyd offer the othe to you.

Mr. Powdrell.—I confesse yt that your lordships so dyd, to whom I answered, that I would not depose, unlesse I might first see the interrogatories whereto I should sweare.

L. chauncelour.—At that tyme I declared to you, that you should answere to nothinge but to such as concerned her majestie.

Mr. attourney.—Your lordships doe see that he confesseth that he refused to sweare unlesse he might fyrst see the interrogatories wherewith he ys onlie charged. Yf yt please your honours I will procede to another of the prysoners, Mistres Gryffyth. This gentlewoman hath byn a great receyvour of Campion, and Parsons, and many the lyke, as one of her husbandes brothers hath confessed, sometymes by the name of Foster, Colte, &c. And this as well before the proclamacion as after, and thyther were they brought by one Morryce, sometye a scholemaster, a common carier or conductor of such. This gentlewoman being examyned before me refused to answere herein upon her othe.

L. chauncelour.—What saye you to this? Why dyd you refuse to sweare?

Mrs. Gryffyth.—My lords, an othe ys a thinge of greate importance, and I do not knowe the danger thereof; therefore, as one scrupulous in conscience, and being afraied to sweare for offending of my conscience, indeed I refused to sweare, which I acknowledge.

Mr. attourney.—My lords, this gentlewomans howse hath byn the or-

dinarie howse to receyve them, and such lyke, and I have heard, that yt ys rare to fynde out such a howse for that purpose ; yt standeth absent from other howses, there ys a wood of a myle longe adjoyninge to the howse, and yt ys moted about, and yet sondrie secret wayes to escape out, as Mr. Blunte that standeth there by, can enforme your lordships.

By this tyme was sir William Catesbye brought in from the Kinges Benche, to whom was readd the accusation of Mr. Campion upon the racke, and his letters intercepted being sent to Mr. Pownde, and then charged hym with refusall of deposeinge, as the lord Vaux and sir Thomas Tresame before had byn, who being demaunded, whether he would confesse, or denye yt, answered,

Sir Wm. Catesby.—My lords, trewe yt ys that I have denied that Mr. Campion was at my house to my knowledge, either that he was there by that name, or that commynge by other name [I] dyd knowe hym to be Campion, which still I justifie. And where I am charged with refusing to sweare, I confesse yt, wherein of no disloyaltie or fraudulencie, as being faultie of any cryminall cause, I so refused to sweare, but for feare of more perill that might happ thereby to me, then (in my meane discretion) good would come to her majestie, or to this state, which ys, in offering myselfe wyttinglie, and yet falselie, to be convicted of periurie, because your honours signified to me that Campion had affirmatyvelie accused me: but otherwise to sweare to my alleageance, or to any thinge concerninge her majestie or estate, or any other thing whatsoever, other then to discover matters of conscience, which I maye not doe without offence of my conscience, thereof I praye onlie to be exempt from swearinge, and from none elles, which alwaies, in all dutie and obedience, I haue offered, and here nowe in court againe doe, for I desyer not to lyve longer then that I remayne an honest and faithful subiect. In which deniall of swearinge yf I have offended, I praye pardon thereof, having faythfully shewed to [your lordships] my reason thereof.

L. Hunsdon.—Your lordships maye see that this man hath byn in another pryson, yet both he and sir Thomas Tresham telle both one tale ; your lordships maye perceyve thereby that they have had bothe one scholemaster.

Sir Wm. Catesby.—I graunt as much as your lordship hath said ; for I assuredlie hope, howsoever we be disioyned, that yet we have euer one scholemaster, that ys God, who teacheth us to speake truthe.

Mr. attorney.—Your lordships doe see that he confesseth the refusing to sweare, and you have heard his allegation ; and yt please your honors now, having heard all the prysoners, I will make breif repiticion thereof to your honours.

Sir Walter Mildmaye.—You yet want one Ambrose Gryffyth, where ys he ?

Mr. attorney.—Your honour doth saye trewe ; his brother, being examyned before me the last daie, confessed that this Ambrose hath byn present at his brothers howse, sondrye tymes when Campion and Parsons, and such lyke, haue byn there, namelie, &c., whereof I, entending to examyne hym, tendered hym an oth, and he refused to sweare, which I thinck he will not denye.

Amb. Gryffith.—My lords, I am a student in Lincolnes inne, and but seldome repayred to my brothers howse, so that what was done there I lyttle knowe ; neither have I to meddle therewith, but as to the refusinge to sweare, I confesse yt, for I will not offende my conscience.

L. chauncelour.—You have heard what they can saye, we maye procede to judgment.

Sir T. T.—This onlie I would note to your honours, that at that tyme I was at Leycester howse, when I am charged to have contemptuouslie refused to sweare, I then made petition to your honors, I take wytnesse of your lordships both, that in case I might see Mr. Campion, or heare hym speake, where by his speche or face I might call hym to remembrance, I then offered to depose yf I could call hym to memorie.

L. chauncelour.—You wanted discretion to make such a demaunde, and yt was only a delaying of tyme, for you were to answeere onlie to your knowledge.

Sir T. T.—By your honours fauour, I was specially induced so to doe, for as I had desier to satisfie your lordships, so was I unwilling to mynister foule blott of periurie, which yf by seing of hym I could call to memorie that he had byn at my howse, then woulde I have deposed according to Mr. Campions examynacion, whereby I shoulde have avoyded all scruple of periurie. And yt maye please your lordships, this Mr. Campion and I were never of much familiaritie, but that in xiiij^{en} yeares space he might growe out of my knowledge, who never dyd see hym in the universitie but once, before his

departure beyonde the seas, who, as your lordship dyd saye, staid lyttle with me, came much disguysed in apparaile, and altering his name. All which made me refuse to sweare to my knowledge, lest haplie he might have byn in my howse and in my companie both, and I not knowing hym, and yet that the same should be referred to a iurie, who sometymes participate of affection or ignorance, to iudge whether I be periured or no. Wherefore (as I have said) my desier was, that by meanes of seeing hym or hearing hym, that I the better might remember hym, which haplie would have procured the full satisfyenge of you.

Lord chauncelour.—I can see no reason why yt should be graunted you.

Sir T. T.—I nowe fynd myne owne wantes apparantlie, in that all semeth unreasonable to your honours that I heald for assured and grounded reason, and that the same doth aggrevate my offence, which I had thought would have freed me of this my fault; whereat I must nedes sorowe and learne to holde silence.

Then begynneth the attorney to make a breif repeticion of the evidence, and so the court proceded to judgment.

Sir W. Mildmay.—His spech was fyrst in extolling her majestie for her happie goverment, &c., namelie amonge other her dewe commendacions for planting of the trewe relygion, &c. Then what a malicious enemye the pope hath byn to her majestie, recytinge that the rebellion in the northe was procured by hym; the rebellion in Ireland of Fytzmorrrys and the residewe; the procuryng thyther of Spanierdes to invade the realme; and, lastlie, that he hath sent in a rable of semynarie men and runagate freers, who call themselves jesuytes, amongst which one Campion, to sowe sedicion, and subverte the trewe doctryne, and therby to withdrawe the obedience and hartes of her majesties subjectes from her, under coulour of preachinge the catholique doctryne; who then making defynition of catholique, proved by the propertie of the worde, that yt could not be Rome onlie, and therefore they had not the trewe catholique religion amonge them. Then he generally made shewe of the shyres onlie where Campion made his peregrination, nomynating Northamptonshire, where he came to the howses of thes prysoners at the barre, and, lastlie, unto Barksheere, where he was apprehended; declaring that, lyke a trustie officer, he faythfully and dyligentlie,

and withall discrytlie and shrewdlie, performed that which he had in charge, not tarieng long in a place, and shroudinge hymselfe most commonlie in howses of best worshippe, in whom thoughe great boastes of learning was supposed to be, yet could he see no learning in hym, but onlie bragge of learninge, and vanitie. Then he shewed his comminge to the howses of the prysoners (viz. the lord Vaux, sir Thomas Tresham, and sir William Catesbye) all faultie in one predicament, that [they] had receyved hym, and, being examyned thereof, dyd denye yt, who being demaunded upon othe and allegiance, and requyred by the councell to sweare yt, have refused yt. And, albeyt that sir Thomas Tresham hath pleaded his defence by warrant of Gods worde, and authoritye of the doctours, why he refused to sweare, "but I knowe" (sayth he) "the gentleman to be so honest, setting his religion aparte, that I certaynlie perswade myselfe that this ys no pece of his conscience, which being indeed a deepe poynt of devynitie, wherein I wyll not geve my censure, but referre the same to the learned scholemen in devynitie, yet I am of opynion, that we maye as well proceede against hym as the rest, &c. Fyrst, I thinke them worthie that they should retourne to their prysons from whence they nowe came, and there to abyde tyll they have conformed themselves to sweare herein. Also, that they should be punished with pecuniarie payne, wherein I thinke yt requisite that the lord Vaux shall paie £1000, sir Thomas Tresham and sir William Catesbye eche of them 1000 marckes a pece, and Mistres Gryffyth and Ambrose Gryffythe 500 marckes a pece; and for Mr. Powdrell, inasmuch as he confessed the receyvinge of Campion, and that his refusall to sweare was onlie because he might not fyrst peruse the interrogatories, I could wyshe his fyne to be the lesse, wherefore I thinke 500 marckes sufficient for hym."^r

^r The Harleian MS. 6265 contains a full copy of sir Walter Mildmay's speech upon this occasion, which is worthy of insertion in a note, as in some degree explanatory of the general character of the narrative above printed. "15 November, 1582. In the starchamber. How the queen, our most gracious soveraigne ladie, finding this realme overwhelmed with poperie, hath restored unto us the sacred pure relligion of the gospell; and, againe, how her majestie, finding the realme in warre with two mightie nacions, her neighbours, hath made and maintained peace now 23 years full, the like wherof cannot be read so longe together in 300 years before, is knowne to all the world, and ought to be remembred by all good subjects of this land. On the other side, how the pope, the most capitall enemye of

Sir Roger Manwhode, the lord cheif baron.—He sought to urge yt to proceede from malice, and not ignorance or zeale, alleaging that all the prysoners at the barre at the altering of religion were not of yeares to judge of, or knowe the old religion. He alleaged, that thoughe the lawe dyd

the queen and this state, envying our felicitie, hath continewally sought, not only to deface the true relligion of God now planted in this kingdome, but allso with force to trouble her majestie and her dominions, therby to overturne the peaceable and happie goverment that now we doe enjoye, is likewise evident to all men, and greivous to all good subjectes of this realme. What he hath done by force and open hostilitie, let it suffice to remember the rebellion in the north, and the two invasions into Ireland, one by James Fitzmorrice, and the other by Italians and Spaniardes, all procured and supported by him. These not prevailing, the pope, neverthesse, nether hath nor can rest from anie practize that maie turne to the anoyance and distruccion of her majestie and this noble realme, the rather for that he feeleth daylie, that this kingdome of all the monarchies in christendome doth most shake the dignitie of his triple crowne, and therefore he hath presumed by a most impudent and blasphemous bull to publishe, even within this cittie, a deprivation of our most gracious queen, acquitinge all the subjectes of this realme from anie obedience to her, dreaming that, as the supream monarch of the world, he hath power to put downe and sett up kinges and queenes at his pleasure. This also fayling, and not taking that effect which the pope looked for, he hath attempted by more secrett practises to diverte the subjectes of this realme from ther dutifull obedience to her majestie, nourishing closely the sparkes of disobedience, that they might burst forth into the flames of open sedicion when opportunitie should serve. For prooffe wherof, it is not unknowen what secret devises he hath put in force by lewde preistes, with absolucions, dispensacions, and reconciliacions, to drawe her majesties subjectes from their obedience which they owe to her, to the obedience of the usurped authoritie of Rome. To which end, also, he hath lately sent hither a number of false hypocrites calling themselves jesuites, abusing the most holy name of Jesus to the inscripcion of the superstitious secte, and being, indeed, but a rabble of runnagate freers, lately copen into the world and roving about in all contries to trouble the church of God and the quiet policie of the contries where they comme. Theise hypocrites, authorised by the pope, have presumed to enter into this lande, the scope of their dealing here being, by harbouring themselves in *the houses of men of reputacion devoted unto Rome, both to confirme them in false doctrine* and to prepare their minds readie for anie evill that might be enterprised here, therby to bring to her majestie any perill or trouble they could be able within this realme, as their lewd companions had lately attempted to doe in Ireland, arriving here, as it seemeth, of purpose at that tyme, to answeare the doinges of those rebells there. Amongst theis runnagates, one, notorious above the rest for impudencie, named Campian, hath adventured to put his foote within this realme to set abroache the practises devised at Rome: what diligence he hath used in executing his commission, maye appear, first, by arrogant and

forbydd a man to accuse hymselfe where he was to loose lyfe or lymme, yet in this case yt was not so: but avouched no authoritie for yt. Then, lastlie, he urged that this was a great matter of state, wherefore, for the

insolent challenges,* both at his entrie and after scattered abroad in pamphlettes, to the defacing of the holie relligion of the gospell professed by her majestie and the whole realme, wherein neverthelesse he hath shewed more vanitie then learning, as by the consultacions † of them hath sufficiently appeared; next, by the progresse which he hath made into manie shires of this realme, as Yorkshier, Lancashier, the byshopricke, Derbyshier, Leicestershier, Cheshier, Staffordshier, Nottinghamshier, Bedfordshier, Northamptonshier, Buckinghamshier, Oxfordshier, and Barkshier, where he was taken. In all which counties he hath haunted the houses of men of the best sorte for living, such as he knew affected that waye, shifting himself from one corner to another, and changing often his name, as lewde men use to doe. Amongst those places and houses that he hath resorted unto, he confesseth to have been at the howses of the lord Vaux, sir Thomas Tresham, sir William Catesby, here now present in courte. Notwithstanding which confession of Campion, my lord Vaux and theise other two, being examined by her majesties commandement whether Campion was at their houses to their knowledge or privetie, have plainly denied his being there. Theise men afterwarde being, by her majesties further commandement, willed by the lords of her privie counsell to testifie the same their deniall of Campions being at their houses to be true, first by oathe, and [afterwards,] my lord Vaux upon his honour and the other two upon their allegiance to her majestie, have and yet doe utterly refuse both. Wherin I note two thinges; one, that it doth manifestly argue their deniall of Campions being at their houses to be untrue, seing they refuse to affirme the same, as was required; the other, and that the greater, by this refusall they shewe a manifest contempt of her majesties authoritie, and an utter fayling in their duties towards her, that in a matter concerning her majestie whome they ought to preferre before themselves, and in a civill matter that lyeth within their owne knowledge, and which they maye lawfully, without danger of life or member, either affirme or denie, they do refuse to take an oathe ministred unto them on her majesties behalfe by her expresse commaundement, and that not before ordinarie commissioners or officers, but before the lordes of her privie counsell, beinge the principall and cheif counseil of estate of the realme, an example most dangerous to be suffered, and not hitherto attempted by anie good subject; for so her majesties person, her estate and her realmes might be brought into great perill, if it were lawfull for men to refuse to declare by oathe, or upon their allegiance, thinges that should concerne her so neerly as the practises of those jesuites and

* This refers to the letter from which I have quoted at p. 62. Two copies of it in English are in the Harl. MS. 422, fol. 132 and 134, and it is printed, with some inaccuracies, in Strype's Annals, iii. part ii. p. 183. It is also to be found in Latin in Bridgewater's Concertatio, p. 17.

† The conferences or disputations held in the Tower, between Campion and several protestant divines, are here alluded to. Accounts of them were published 4to. Lond. 1583.

punishment he lyked well of it, so the fynes had byn greater, he supposing that this was not passing one yeares revenewe, which at least would have byn double, yet he concluded that, because sir Walter Mildmay had begunne before hym, he would not alter yt.

Sir James Dier, lord cheif iustice of the common plees.—He beganne with the reason that the lord cheif baron first alleaged, saing, that in case where a man might leese lyfe or lymme, that the lawe compelled not the partie to sweare, and avouched this place, "*nemo tenetur seipsum prodere*," which I take to be Bractons principall. Afterwards he produced towre presidentes in lawe, the one the statute of huntinge, where by that statut yt ys made felonie yf upon his othe he answeare not the wholl trouth. Also he alleaged a president of a riott in burninge of a frame, which was brought into the starrechamber in the lord Audleys tyme, where the partie was punished, but what yt was he mencioned not, neither could the courte then produce the recorde. Lastlie, he urged yt to be a great matter of state, and so concluded with the punishment that sir Walter Mildmaye fyrst had sett downe.

Sir Christopher Wraye, lord cheif iustice of England.—He also beganne with the lord cheif barons originall, that no man by lawe ought to sweare

seminarie preistes doe, for, seing we live and drawe even our breath by her, in respect of her safetie we ought to forgett parentes, frendes, yea and ourselves, which the very ethnick did also, and then much more ought we christians and we Englishmen, specially for such a queen as is the only staie of us and ours, and is knowen by longe experience, not only to us but to all the world, to be religious, vertuous, just, and upright, in goverment not pressing her subjects to anie thing other then such as by lawe and justice they are bounde unto. Therefore, seing the running about of theise lewde jesuites and preistes is so dangerous to her majestie and the realme, and seing that my lord Vaux and th'other have refused to confirme by oathe, or otherwise, their former sayinges, as they were lawfully required by persons of the greatest authoritie under her majestie, this doing of theirs cannot be but taken for a great offence and contempte to her majestie and her goverment, and such as deserveth punishment answeareable to so great a falte, that others therby maye be warned not to fall into the like hereafter. Which punishment, for myne owne opinion, ought to be in this sorte; first, that they be returned againe to prison, and there to remaine untill they conforme themselves to doe that which hath been lawfullye required of them; and, secondly, that they paie to her majestie a fyne, viz^t. the lord Vaux, 1000^l; sir Thomas Tresham, 1000 markes; and sir William Catesby, 1000 markes. And this is all I have to saye to the cause presentlie in question." Harl. MS. 6265, fol. 371.

to accuse hymselfe when he might loose lyfe or lymme, shewyng that he was of opynion that they ought in this case to sweare, and avouched the practise of his courte, that usually they dyd sweare men to geue evidence betwene partie and partie, and therefore *a fortiori* where the quene is a partie. And as for the fynes, he would not alter them, because so many had passed before hym all agreeing in one, saing that he thought them verie small in so great a case of state and importance as this was, when he usually doth, upon a iuror, for his not appearinge before hym, taxe them usuallie at one yeares fyne. And for the taxing and levyeng of thes fynes, yt ys lawfull, for the lawe ys, where a bishopp doth refuse to admytt a clarke upon the quenes wrytt, &c., in that case, his temporalties shalbe seased into the quenes handes tyll she hath levied such fyne as shalbe taxed upon hym.

Sir Francis Knolles.—This matter hath byn so sufficientlie touched (sayth he) by them that haue spoken before here, that they haue prevented hym much of that which he had to saye. Notwithstanding, he signified, that yt might not passe without a worde or towe. He protested, that he bare no malyce to the parties, for that they never deserved euell of hym, yet, inas-much as yt concerned her majestie and the state, he in conscience was bounde to speake thereto; who, in fyne, made yt participating of treason, and lyttle differinge from treason. Lastlie, he breiflie spake to sir Thomas Treshams argument, saying, that he had byn bredd upp in poperie, and also had the experience of the persecution in queen Maries tyme, and he was sure (he said) that in all that tyme they knew no such evasion for an othe, or schole devynitie, and therefore he wondred howe sir Thomas Tresham had stumbled upon yt: manifesting that he never helde sir Thomas Tresham for so well learned in devynitie before that daie. And as for the fyne, he agreed with the residewe that went before hym, signifyeng that yf any had increased yt higher yt should have had his consent.

Lord Norrys.—He framed his spech verie breif, signifyeng that he had thought that this realme could not affoord any so undutyfull a subiect, that, consideringe her majesties goverment, &c., would have receyued Campion, but to see such of such callinge as were the prysoners at the barre that would not onlie receyve hym, but contemptuouslie refuse to sweare, &c.;

yt was (he said) farre beyonde his imagination to thinke that any so ingratefull and faithlesse subiectes had byn to be founde : therefore he spake to the increasing of the fynes, earnestlie requiringe that so yt might be.

Lord Hunsdon.—He agreed in opynion with them all going before hym, declaring that he verilie beleved that Campion was at their howses ; and that he helde yt to be a verie disloyall fact to refuse to sweare in a case of so great importance and state as that was : yet in this he notablie differred from them all that went before hym, that he woulde have had sir Thomas Tresham to be fyned at the least at 3000*l.*, because sir Thomas Tresham committed a greater offence in making of his publique defence in courte, then he dyd erst in refusinge to sweare : signifieng that, in his conscience, he dyd verilie thinke that sir Thomas Tresham had studied and premeditated his argument forth of the scripture and doctours more to incense the eares of so great an assemblie, and thereby (as yt were) to premonish all catholiques by his example howe to answeare, and howe to behave themselves in lyke cases, then that he dyd yt in defense of his owne cause. Wherefore he instantlie praied the court to have regard to yt, and depelie to aggravate his fyne.

Lord Buckhurst.—Yt semed that the lord Buckhurst had studied somewhat which he ment to utter, thoughe he sayde, or rather iterated, the same that sondrie tymes had byn spoken before, commending of the quene, &c., condemning the prysoners, and wishing that the fynes might be greatlie raised, declaringe yt was an odious acte, and which concerned the state greatlye ; adding this onlie of his owne, that he verilie thought, and thereof made no question, but that Campion had byn at their howses, espetially for that they refused to sweare, which (he sayd) was an undoubted token of his beinge there.

Lord Cromwell.—His speche correspondentlie answered the speche of the lord Buckhurst, saving that particularlie he would have had them, vizt. the lord Vaux, sir Thomas Tresham, and sir William Catesbye, to be doubled in their fynes ; so, to the purpose but breiflie, he concluded, for he was not longe in his speche.

L. Leicester.—My lord Vaux, sir Thomas Tresham, and sir William Catesbye (said he), you knowe howe carefull I was over you, and howe

friendlie I admonished you, but no warninge would serve you ; I cannot but sorowe you ; I would you had byn advysed by me, for then you had never come to this.

L. chamberlayne.—He argued discrytlie what belonged to regyment, &c., and then discended to the punishment of offenders. Lastlie, he manifested that he lyked of the proceedinge of sir Walter Myldmaye, and thos that had gone before hym, and so ratified the punishments.

Lord chauncelour.—He presentlie entred into the bodie of the cause withoute any longe narration, sayng that, because tyme dyd drawe awaie, he would be shorte. He helde in his opinion the prysoners guiltie of receyving Mr. Campion. He noted their obstinacie and undutifulnes in refusing to sweare. He thought they had said untrulie, and upon that place he produced, *os quod mentitur occidit animam*. He affoorded good commendation of sir Thomas Tresham, but dislyked hym in this course. He urged against the lord Vaux that he was at full yeares at her majesties comming to the crowne, who at that tyme dyd his homage, whereto he was sworne, declaring that in refusing to sweare he had violated the same, which was a grevous offence, declaringe that he, being the last, could not alter what alredye was agreed upon, otherwyse he would depelie have encreased his fyne. And for Mistres Gryffyth, he thought yt convenient to discharge her of her fyne of 500 marckes, because she was covert baron, and yt could not be levyed on her ; and because she knewe not what belonged to an othe, she should tarrye in pryson tyll she dyd knowe. For Mr. Powdrell, he urged towe thinges against hym, that he would refuse to sweare when he tolde hym that he should be examyned of no thinges but such as concerned her majestie ; also, that he denied one parte of the lord of Shrewsberies certificate concerning his hearing of masse. Lastlie, he added, the prysoners should not onlie retorne to pryson to contynewe there tyll they had sworne ; but, withall, that they should not be delyvered without her majesties speciall favour obteyned fyrst therein ; and where yt was ordered that everie prysoner should retorne from whence he came ; he thought yt mete that they all should retourne to the Flete.

And herewith the court dyd aryse, and the prysoners were carried awaye.

Notes obserued by us that were present, forth of judges speches, and the residewe, whereto yt was mervaile that sir Thomas Tresham dyd not replie, having so much advantage, but yt ys to be supposed, because he was so checked a lyttle before, that there he would not ; also yt ys to be thought, that yt ys against the order of the court to replye at [all] after judgment delyvered.

As likelie a iurie as so honourable an assemblie would condemne sir Thomas Tresham upon Campions accusation, and other circumstances.

All the court semed to be of opynion, and most of them pronounced in their speches, that the lord Vaux, sir Thomas Tresham, and sir William Catesbye have receyved Campion, and this by Campions examynacion and circumstances gathered in the courte ; albeyt sir Thomas Tresham desiered to speake at the fyrst against the receyving of Campion, which semed to us that sir Thomas Tresham had reason to misdoubt howe a iurie would have found hym faultie therein, when, upon that evidence, without any enforcynge, so honorable, so wyse, and so indifferent, were thereby satisfied that sir Thomas Tresham his former testimonie was untrewed.

Nemo tenetur seipsum prodere in losse of lyfe or lymme.

The losse of eares ys the losse of lymme.

Also, all of them helde yt a great matter of estate, and some judged yt lytle differinge from treason, and yet all the thre judges were cleare of opynion, that where a man should loose lyfe or lymme, that there he ys not bound to accuse hymselfe ; which, yf yt be a matter of state, and lytle differinge from treason, then, by the judges argumentes as aforesaid, sir Thomas Tresham, nor the residewe, ought not to accuse themselves ; one of the judges begynning with this, that *nemo tenetur seipsum prodere*, which ys an universall proposition.

Mr. attorney his case in lawe against hymselfe.

Avouched that the court of starrechamber might compell a man to sweare that either ys defendant or wytnesse, yf not to punishe hym, which case did greatlie make for the prysoners, as we did take it ; fyrst, that was done by force of statute, then yf they could not do yt without then, then, &c. Item, a man might make a contempt, and not to be forced to sweare, for yf the matter be not conteyned in the byll, we thinke that the court cannot force hym to sweare ; in which case of refusall no contempt at all. Lastlie, all punishmentes for contemptes of non-appearances, and such lyke, be punishable, but not finable. So that case then maketh much for the prysoners.

He produced the statut of hunting, whereby yt ys made felonie yf the partie therein offendinge do refuse to sweare, which case, he said, agreed with this case, which proveth that such an offender was not bound to accuse hymselfe before that statut was made. Also that statut ys for the discoverie of the wholl trouth therein; for yf an offender sweare, and do not discover the wholl trouth, but leaveth any part thereof unrevealed, being demaunded, that maketh yt felonie, which maketh another difference in this case. Also, this ys a mere temporall demaund, and the acte ys in ytselfe euell, which lykewyse maketh a most different contrarietie in that: for this nowe ys a case of conscience, and of all catholiques devynes reputed good.

Statut of hunting against hymselfe. The lord Diers towne cases.

At that tyme he lykewyse alleaged a president of that court, but yt could not be produced then, and fewe heard thereof, which was in the lord Audleys tyme, that in riotuous manner a frame of a house was burned, and the partie was punished in that court, not shewing what, or in what sorte, but not mencioning at all to refuse to sweare, which was nothinge to the purpose, for the ryott or unlesfull acte of burning the frame ought not to escape unpunished, for yt ys a wicked acte in yt selfe, and hath no affinitie to this case; neither was yt proved, but onlie alleaged.

The president of burning of the frame neither proved nor proveth nothinge.

The lord cheif justice of England avouched a dailie president in his court, also a case at the comon lawe, which case was to prove that they might fyne them as well as punish them. His case was, that yf a bishopp, upon proces directed to hym forth of the court, shall refuse to accept his clarke, in this case he ys fynable at the quenes pleasure, and shall have his temporalities seased tyll the money be levied, which case of his hath no affinitie to this supposed contempt, for the bishopp doth withstande the ordynarye course of the common lawe, and this usually ys in practise: but this of theirs ys no contempt at the common lawe, to refuse to sweare to accuse in cases of conscience. Also, we be of opinion that there was never a president in this case before, neither in the common lawe, nor cyvill lawe. Lastly, this differethe much in the punishment, for there the byshopp ys not punishable by bodie, but by a pecuniary fine onlie, and thes prysoners were both by bodie and greuouse fyne; whereby yt appereth as by that which before ys alleaged, that some contempt ys neither punishable by bodie nor fyne, some onlie by bodie, some onlie by fyne, but we have not sene both by

His case of the bishopp maketh against hymselfe.

The lord cheif justice of England, his case.

bodie and fyne, but where some statute specially doth authorise yt, as in ryottes, cosynage, counterfayting of handes, perjurie, and such lyke.

His presidentes
against hym-
selfe.

His president was of his usuall fyninge and commytting also to pryson in his court, when a man made contempt to appeare upon a jurie, whereupon he also noted, that he usually dyd sett a yeares fyne at the least of such, wherefore, he said, in this case yt ought to have byn much more, being for the quene, and in so great a matter of state, which president dyd make much for the prysoners. This ys done by statut, which then yf not without statut, no more in this tyll a statut be provyded for yt. Againe, in decydinge of right betwene partie and partie, ys a meare cyvill cause; so ys not to accuse in cases of conscience.

Lastly, for the heightening of the fyne his president ys to lytle purpose; for trewe yt ys, that he many tymes assesseth fynes upon the jurors that be pore men, which thoughe the same be fynable, yet doth yt happlie amount unto a yeares fyne, but when a knight, or knightes fellowe, or such lyke who maye dispende 500^l, or 1000^l, or but 100^l, with them, he dothe not so, not the xth parte so much, wherefore that president maketh lyttle to urge the fynes, as we who dyd stand by dyd take yt.