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B. Lloyd
OBSERVATIONS
UPON THE
STATUTE
OF
22 CAR. II. *Cap. 1.*

Entituled,
An ACT to Prevent
and Suppress Seditious
Conventicles.

By Sir *Edmund Saunders*, Kt.
late Lord Chief Justice of
England.

L O N D O N,

Printed for *Tho. Dring*, at the Corner
of *Chancery-Lane* in *Fleetstreet*. 1685.

TO THE
Reader.

TO Recommend this
small Treatise to thy
perusal, there needs no more
then the Title with the
Authour's Name, whose
Loyalty, Integrity, and
profound Learning in all

A 3 the

To the Reader.

the Laws of this Realm, were so eminent and conspicuous both while he was at the Bar, and after his deserved advancement to the Bench, that 'twould be impertinent to tell thee what a Reverence was always paid to his Opinions; His Memory is so fresh, that I cannot suppose thee ignorant of the same, or void of a profound

To the Reader.

found respect to his very name, for the continuance of which, this Manual is published, as also for the publick good of the Realm, which was his end in its Composition; the immediate occasion of writing these Observations was to gratify the Requests of divers of his Majesty's Justices of the Peace for the County of Middle-

A 4 fex,

To the Reader.

sex, who desired his
Opinion in sundry points
upon this Statute for the
better Government of
themselves in the Exe-
cution hereof with safe-
ty from the malicious
Suits of the Dissen-
ting Party, who were,
and always are ready
to take advantage of the
least slip or mistake of
any of the King's Offi-
cers of the Peace. The
Lord

To the Reader.

Lord Saunders being
sensible thereof, as like-
wise of the great use of
this Law, and the ne-
cessity of its Prosecuti-
on in order to preserve
the publick Peace and
Quiet of the Kingdom,
did write this Explana-
tion of it even while
he was Lord Chief
Justice of England, it
being all of his own
Hand-writing, so far
as

To the Reader.

as page 79. where you will see the Additionals printed with this mark before them: The great multiplicity of business in his Place, and the unhappy indisposition of his Body did prevent the completion thereof, he often wishing for but a few hours time to perfect it; For the residue, as it had not the same Authour, so

To the Reader.

so neither doth it expect the same Authority, it being added as an Essay to supply what was left undone, and yet the supplement may be not without its use, being made as near as possible to the Lord Saunders's sense in other Paragraphs, and according to his Method and Rule are the Constructions made even in such

To the Reader.

Such manner as may most advance the Remedy, and suppress the Mischief intended by this Law, and are mostly grounded upon approved Opinions and Resolutions of the Judges on this Law, and other Laws of this Nature. For the Subject, 'tis well known that this Act never received any publick Animadversions,

To the Reader.

sions, and yet doth perhaps need an Explanation as much as those against Recusancy, on which there have been Observations made and Printed, and not without Approbation. For the seasonableness of this Publication, there needs no other Apology than what the Age we live, and the Book it self do bespeak, and if it may
 prove

2 Anno Vicesimo secundo
 Kings most Excellent Majesty,
 by and with the Advice and Con-
 sent of the Lords Spiritual
 and Temporal, and Commons
 in this present Parliament As-
 sembled, and by Authority of
 the same, That if any Person
 of the age of Sixteen years or
 upwards, being a Subject of
 this Realm, at any time after
 the tenth day of May next, shall
 be present at any Assembly, Con-
 venticle or Meeting under Co-
 lour or Pretence of any Exer-
 cise of Religion, in other man-
 ner than according to the Church
 of England, in any place with-
 in the Kingdom of England,
 Dominion of Wales, or Town
 of Berwick upon Tweed, at
 which Conventicle, Meeting, or
 Assembly, there shall be Five
 Persons or more assembled to-
 gether, over and besides those
 of the same Household, if it be
 in a House where there is a Fa-
 mily

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 mily Inhabiting, or if it be in
 a House, Field, or Place where
 there is no Family Inhabiting:
 Then where any five Persons
 or more, are so Assembled as
 aforesaid, It shall and may be
 lawfull to and for any one or
 more Justices of the Peace of
 the County, Limit, Division,
 Corporation or Liberty, where-
 in the Offence aforesaid shall be
 committed, or for the chief Ma-
 gistrate of the Place where such
 Offence aforesaid shall be com-
 mitted; And he and they are
 hereby Required and Enjoyned,
 upon Proof to him or them re-
 spectively made of such Offence,
 either by Confession of the Par-
 ty, or Oath of Two Witnesses
 (which Oath the said Justice
 and Justices of the Peace, and
 Chief Magistrate respectively,
 are hereby Impowered and Re-
 quired to Administer) or by no-
 torious Evidence and Circum-
 stance

4 Anno Vicesimo secundo
 Narce of the Fact, to make a
 Record of every such Offence
 under his or their Hands and
 Seals respectively: which Re-
 cord so made as aforesaid, shall
 to all intents and purposes be in
 Law taken and adjudged to be a
 full and perfect Conviction of
 every such Offender for such Of-
 fence; and thereupon the said
 Justice, Justices and chief Ma-
 gistrate respectively, shall im-
 pose on every such Offender so
 convicted as aforesaid, a Fine of
 Five shillings for such first of-
 fence, which Record and Con-
 viction shall be certified by the
 said Justice, Justices or chief
 Magistrate at the next Quarter
 Sessions of the Peace, for the
 County or place where the Of-
 fence was committed.

And be it farther Enacted by
 the Authority aforesaid, That if
 such Offender so Convicted as
 aforesaid, shall at any time a-
 gain

CAROLI II. REGIS. 5

gain commit the like Offence or
 Offences, contrary to this Act,
 and be thereof in manner afoze-
 said Convicted; Then such Of-
 fender so convicted of such like of-
 fence or offences, shall for every
 such offence incur the Penalty of
 Ten Shillings, which Fine
 and Fines, for the first and eve-
 ry other offence, shall be levied
 by Distress and sale of the Of-
 fenders Goods and Chattels;
 or in case of the Poverty of such
 Offender, upon the Goods and
 Chattels of any other person or
 persons, who shall be then con-
 victed in manner aforesaid of
 the like Offence at the same
 Conviction, at the discretion
 of the said Justice, Justices or
 chief Magistrate respectively, so
 as the Sum to be levied on any
 one person in case of the poverty
 of other Offenders, amount
 not in the whole to above the
 Sum of Ten pounds, upon oc-

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 cation of any one Meeting as
 aforesaid. And every Constable,
 Headborough, Tythingman,
 Churchwardens, and Overseers
 of the Poor respectively, are
 hereby Authorized and required
 to levy the same accordingly,
 having first received a Warrant
 under the hands of the said
 Justice, Justices or chief
 Magistrate respectively so to
 do; the said moneys so to be
 levied, to be forthwith delivered
 to the same Justice, Justices
 or chief Magistrate, and by him
 or them to be distributed; The
 one third part thereof to the
 use of the Kings Majesty, his
 Heirs and Successors, to be
 paid to the High Sheriff of the
 County for the time being, in
 manner following; That is to
 say, The Justice or Justices of
 Peace shall pay the same into
 the Court of the respective
 Quarter Sessions, which said
 Court shall

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shall deliver the same to the
 Sheriff, and make a Memorial
 on Record, of the payment and
 delivery thereof, which said
 Memorial shall be a sufficient
 and final Discharge to the
 said Justice and Justices, and
 a Charge to the Sheriff, which
 said Discharge and Charge,
 shall be certified into the
 Exchequer together, and not
 one without the other: And
 no Justice shall or may be
 questioned, or accountable
 for the same in the Exchequer,
 or elsewhere, than in Quarter
 Sessions; Another third part
 thereof to and for the use of
 the Poor of the Parish where
 such Offence shall be committed;
 And the other third part
 thereof to the Informer and
 Informers, and to such person
 and persons as the said Justice,
 Justices, or chief Magistrate
 respectively shall appoint, ha-
 ving

8 Anno Vicesimo secundo
 ving regard to their diligence
 and industry in the discovery,
 dispersing and punishing of the
 said Conventicles.

And be it farther Enacted by
 the Authority aforesaid, That
 every person who shall take up-
 on him to Preach or Teach in
 any such Meeting, Assembly, or
 Conventicle, and shall thereof
 be Convicted as aforesaid, shall
 forfeit for every such first Of-
 fence, the Sum of Twenty
 pounds, to be levied in manner
 aforesaid, upon his Goods and
 Chattels; and if the said Prea-
 cher or Teacher so Convicted,
 be a Stranger, and his Name
 and Habitation not known, or
 is fled, and cannot be found, or
 in the Judgment of the Justice,
 Justices or chief Magistrate be-
 fore whom he shall be Convicted,
 shall be thought unable to pay
 the same, the said Justice, Justi-
 ces or chief Magistrate re-
 spectively

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spectively, are hereby Impowe-
 red and Required to levy the
 same by Warrant as aforesaid,
 upon the Goods and Chattels
 of any such Persons who shall
 be present at the same Conven-
 ticle; Any thing in this or any
 other Act, Law or Statute to
 the contrary notwithstanding.
 And the money so levied, to be
 disposed of in manner aforesaid:
 And if such Offender so Con-
 victed as aforesaid, shall at any
 time again commit the like Of-
 fence or Offences contrary to
 this Act, and be thereof Con-
 victed in manner aforesaid, then
 such Offender so Convicted of
 such like Offence or Offences,
 shall for every such Offence,
 incur the Penalty of Forty
 pounds, to be levied and dispo-
 sed as aforesaid.

And be it farther Enacted by
 the Authority aforesaid, That
 every person who shall witting-
 ly

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 ly and willingly suffer any such
 Conventicle, Meeting, or un-
 lawfull Assembly aforesaid, to
 be held in his or her house, Out-
 house, Barn, Yard, or Back-
 side, and be Condicted thereof in
 manner aforesaid, shall forfeit
 the Sum of Twenty pounds,
 to be levied in manner aforesaid,
 upon his or her Goods and
 Chattels; or in case of his or
 her poverty or inability as a-
 foresaid, upon the Goods and
 Chattels of such persons who
 shall be Condicted in manner a-
 foresaid of being present at the
 same Conventicle; and the
 Money so levied, to be disposed
 of in manner aforesaid.

Prohibited alwaies, and be it
 Enacted by the Authority afoze-
 said, That no person shall by
 any Clause of this Act, be lia-
 ble to pay above Ten pounds for
 any one Meeting, in regard of
 the poverty of any other person
 or persons. Pro-

CAROLI II. REGIS. II

Prohibited also, and be it far-
 ther Enacted, That in all cases
 of this Act, where the Penalty
 or Sum charged upon any Of-
 fender, exceeds the Sum of
 Ten shillings, and such Offen-
 der shall find himself agrieved,
 it shall and may be lawfull for
 him within one week after the
 said Penalty or Money charged,
 shall be paid or levied, to Ap-
 peal in writing from the person
 or persons Condicting, to the
 Judgment of the Justices of
 the Peace in their next Quar-
 ter Sessions; to whom the
 Justice or Justices of Peace,
 Chief Magistrate, or Alderman,
 that first condicted such Offen-
 der, shall return the Money le-
 vied upon the Appellant, and
 shall certifie under his and their
 hands and Seals, the Evi-
 dence upon which the Condicti-
 on past with the whole Record
 thereof, and the said Appeal;
 Where

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Whereupon such Offender may Plead and make Defence, and have his Tryal by a Jury thereupon: And in case such Appellant shall not Prosecute with effect, or if upon such Tryal he shall not be acquitted, or Judgment pass not for him upon his said Appeal, the said Justices at the Sessions, shall give treble costs against such Offender for his unjust Appeal: And no other Court whatsoever shall intermeddle with any Cause or Causes of Appeal upon this Act, but they shall be finally determined in the Quarter Sessions onely.

Provided alwaies, and be it farther Enacted, That upon the delibery of such Appeal, as aforesaid, the person or persons Appellant shall enter before the person or persons convicting, into a Recognizance, to prosecute the said Appeal with effect:
Which

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Which said Recognizance, the person or persons Convicting, is hereby Impowered to take, and required to certifie the same to the next Quarter Sessions: And in case no such Recognizance be entred into, the said Appeal to be null and void.

Provided alwaies, That every such Appeal shall be left with the person or persons so convicting, as aforesaid, at the time of the making thereof.

And be it farther Enacted by the Authority aforesaid, That the Justice, Justices of the Peace, and chief Magistrate respectibely, or the respective Constables, Headboroughs, and Tything-men, by Warrant from the said Justice, Justices, or chief Magistrate respectibely, shall and may with what aid, force and assistance they shall think fit, for the better Execution of this Act, after refusal or denial
to

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 to enter, bzeak open, and enter
 into any house or other place,
 where they shall be informed
 any such Conventicle as afore-
 said is or shall be held, as well
 within Liberties as without;
 and take into their Custody the
 persons there unlawfully assem-
 bled, to the intent they may be
 proceeded against according to
 this Act: And that the Lieute-
 nants, or Deputy-Lieutenants,
 or any Commissionated Officer
 of the Militia, or other of his
 Majesties Forces, with such
 Troops or Companies of Horse
 and Foot: And also the Sher-
 riffs and other Magistrates
 and Ministers of Justice, or any
 of them jointly, or severally,
 within any the Counties or pla-
 ces within this Kingdom of
 England, Dominion of Wales,
 or Town of Berwick upon Tweed,
 with such other assistance as
 they shall think meet, or can
 get

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 get in readines with the soon-
 est, on Certificate made to
 them respectibely under the
 hand and Seal of any one
 Justice of the Peace, or chief
 Magistrate, of his particular
 Information or Knowledge of
 such unlawfull Meeting or Con-
 venticle held, or to be held in
 their respective Counties or
 Places; And that he with such
 Assistance as he can get toge-
 ther, is not able to suppress
 and dissolbe the same, shall and
 may, and are hereby required
 and enjoyned to repair unto the
 place where they are so held, or
 to be held, and by the best means
 they can, to dissolbe, dissipate, or
 prevent all such unlawfull mee-
 tings, and take into their Custody
 such and so many of the said
 persons so unlawfully Assem-
 bled, as they shall think fit, to
 the intent they may be proceed-
 ed against according to this Act.
 Pro.

Prohibited always, That no Dwelling-house of any Peer of this Realm, where he or his Wife shall be then resident, shall be searched by virtue of this Act, but by immediate Warrant from His Majesty, under His Sign Manual; or in the presence of the Lieutenant, or one Deputy-Lieutenant, or two Justices of the Peace, whereof one to be of the Quorum of the same County or Riding.

And be it farther Enacted by the Authority aforesaid, That if any Constable, Head-borough, Tything-man, Church-warden, or Overseer of the Poor, who shall know, or be credibly informed of any such Meetings or Conventicles held within his Precincts, Parish or Limits, and shall not give Information thereof to some Justice of the Peace, or the chief Magistrate, and endeavour the Conviction
of

of the Parties, according to his Duty; but such Constable, Head-borough, Tything-man, Church-warden, Overseers of the Poor, or any person lawfully called in and of the Constable, Head-borough or Tything-man, shall wilfully and wittingly omit the performance of his Duty, in the Execution of this Act, and be thereof Convicted in manner aforesaid, he shall forfeit for every such Offence, the sum of five pounds, to be levied upon his Goods and Chattels, and disposed in manner aforesaid: And that if any Justice of the Peace, or chief Magistrate, shall wilfully and wittingly omit the performance of his Duty in the Execution of this Act, he shall forfeit the sum of One hundred pounds, the one moiety to the use of his Majesty, the other moiety to the use of the Informer, to be
b reco-

18 Anno Vicesimo secundo

recovered by Action, Suit, Bill
or Plaint, in any of his Ma-
jesties Courts at Westminster,
wherein no Essoin, Protection,
or Wager of Law shall lie.

And be it farther Enacted by
the Authority aforesaid, That
if any person be at any time
Sued for putting in Exe-
cution any of the Powers
contained in this Act, other-
wise than upon Appeal al-
lowed by this Act, such person
shall and may plead the General
Issue, and give the special mat-
ter in Evidence; and if the
Plaintiff be Non-suit, or a Ver-
dict pass for the Defendant, or
if the Plaintiff discontinue his
Action, or if upon Demurrer,
Judgment be given for the De-
fendant, every such Defendant
shall have his full treble Costs.

And be it farther Enacted by
the Authority aforesaid, That
this Act, and all Clauses there-
in

in contained, shall be construed most largely and beneficially for the suppressing of Conventicles, and for the Justification and Encouragement of all persons to be employed in the Execution thereof; And that no Record, Warrant, or Mittimus to be made by virtue of this Act, or any Proceedings thereupon, shall be Reversed, Avoided, or any way Impeached by reason of any Default in form. And in case any person offending against this Act, shall be an Inhabitant in any other County or Corporation, or flee into any other County or Corporation, after the Offence committed, the Justice of the Peace, or chief Magistrate, before whom he shall be convicted as aforesaid, shall certify the same under his hand and seal, to any Justice of Peace, or chief Magistrate of
b 2 such

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such other County or Corporation wherein the said person or persons are Inhabitants, or are fled into; which said Justice or chief Magistrate respectively, is hereby Authorized and Required to levy the Penalty or Penalties in this Act mentioned, upon the Goods and Chattels of such person or persons, as fully as the said other Justice of Peace might have done, in case he or they had been Inhabitants in the place where the Offence was committed.

Provided also, That no person shall be punished for any Offence against this Act, unless such Offender be prosecuted for the same within Three months after the offence committed. And that no person who shall be punished for any offence by virtue of this Act, shall be punished for the same offence by virtue of any other Act or Law whatsoever.

Pro-

CAROLI II. REGIS. 21

Provided, and be it farther Enacted by the Authority aforesaid, That every Alderman of London for the time being, within the City of London, and the Liberties thereof, shall have (and they and every of them are hereby Impowered and Required to Execute) the same Power and Authority within London, and the Liberties thereof, for the Examining, Convicting, and Punishing of all offences within this Act committed within London, and the Liberties thereof, which any Justice of Peace hath by this Act in any County of England, and shall be subject to the same Penalties and Punishments, for not doing that which by this Act is directed to be done by any Justice of Peace in any County of England.

Provided, and be it Enacted by the Authority aforesaid, That
if

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if the perfon offending and
 Condicted as aforefaid, be a
 Feme-Cobert, cohabiting with
 her Husband, the Penalties of
 Five Shillings, and Ten Shil-
 lings, fo as aforefaid incurred,
 fhall be levied by Warrant, as
 aforefaid, upon the Goods and
 Chattels of the Husband of
 fuch Feme-Cobert.

Provided alfo, That no Peer
 of this Realm fhall be Atta-
 ched or Imprifoned by virtue or
 force of this Act; Any thing,
 Matter or Clause therein to the
 contrary notwithstanding.

Provided alfo, That neither
 this Act, nor any thing therein
 contained, fhall extend to inda-
 lidate or avoid His Majefties
 Supremacy in Ecclefiaftical
 affairs; but that His Majefty,
 and His Heirs and Successors
 may from time to time, and at
 all times hereafter, Exercise
 and enjoy all Powers and Au-
 thorities

CAROLI II. REGIS. 23

thorities in Ecclesiastical Affairs, as fully and as amply as himself or any of his Predecessors have or might have done the same: Any thing in this Act notwithstanding.

Some

(95)

ly appear upon Evidence, any Informer or other Person going in Assistance of any Officer for the executing any power given by this Law, hath the same privilege and benefit.

Every such Defendant shall have his full treble costs, &c. (i.e.) the Costs given by the Jury in case of Trial, and the Costs likewise given by the Court, *de incremento* are to be trebled both, such Costs as the Defendant would have in case this Law were not, he is now to have treble, and in case the Plaintiff be non-suit, if without Evidence, or after Evidence he ought to have thrice so much Costs as he otherwise should have in such Case.

S E C T. 13.

AND be it farther Enacted by Authority aforesaid, that this Act, and all Clauses therein contained, shall be construed most largely and beneficially for the suppressing of Conventicles,

H and

(96)

and for the Justification and Encouragement of all Persons to be employed in the execution thereof: This Clause shews the deep sense our Law-makers had of the pernicious effects of such unlawfull Meetings, which is emphatically expressed in the preamble of this Act, where the reason of this Clause, and of the whole Act is declared, (*viz.*) For providing farther and more speedy remedies against the growing and dangerous practices of Seditious Sectaries, and other Disloyal Persons, who under the pretence of tender Consciences, have or may at their Meetings contrive Insurrections (as experience hath shewn) and that experience hath been much more abundant of late days, and therefore the Act continues as necessary as ever, it being too well known that the Persons so pretending to a greater tenderness of Conscience than the rest of the Christian world, are no less disaffected to the English Government,

(97)

ment, than they avow themselves to be to the Church of *England*; and it seems to be a base reflexion on the Wisdom and prudence of our Law-makers, that the prosecution of this Law should be thought unnecessary in the same age wherein 'twas made, and the reason continuing for which it was at first provided, *viz.* the danger of Mutiny and Sedition, for the prevention and suppressing whereof there is no better means than the Execution of this Act, which (as this Clause is) ought to have the largest and most beneficial Construction imaginable (*i. e.*) such an equitable Construction, (although it be a Penal Law) as may best conduce to the suppression of such Conventicles, though perhaps the thing be not expressly within the letter of the Law, yet it ought to be construed within the intent; as for instance, suppose a certain number of men should meet

H 2 'and

(98)

and Assemble themselves together under the colour and pretence of exercising Religion, and there should be no formal Preaching and Teaching, but only an extempore Enthusiastical Prayer, yet the Prolocutor, or Speaker in such Assembly ought to be construed with the intent of the third Section of this Act, and incur the Penalty of 20 *l.* being certainly within the intent, though not within the precise Letter of that Clause; the like of the Quakers Meetings, though they cannot properly be within the third Section, when 'tis as they call it a silent Meeting, yet even such Assembly of them seems to be within the first Section, and is a Conventicle within the meaning of this Act, for 'tis a Meeting under colour of the exercise of Religion, though none be exercised, they
pre-

(99)

' pretending that they meet out
' of Conscience, and for such pur-
' pose, and 'tis plainly within the mis-
' chief, *viz.* The danger of con-
' tributing Mutinies and Insur-
' rections at such Assemblies,
' and there's as much danger of
' that in such Congregations as
' any other; and by the design of
' this Clause such Construction
' ought to be made, as may most
' suppress the Mischief intended
' to be remedied by this Act; the
' like equitable Construction ought
' to be made for the encourage-
' ment and justification of the
' Officers of Justice, and others
' employed in the Execution of this
' Act, the meaning of which is,
' that by no strained interpreta-
' tion ought such Persons to be
' brought to damage for any thing
' done by colour of this Statute;
' and so this Clause requires all in-
' couragement to be given to such
' Persons by the King's Courts of
Re-

(100)

' Record of *Westminster*, upon all
 ' occasions, and particularly by
 ' the next Clause, which is, that
 ' No Record, Warrant, or Mit-
 ' timus to be made by virtue of
 ' this Act or any Proceedings there-
 ' upon shall be reversed, avoided,
 ' or any way impeached for any
 ' default in Form, (*i. e.*) ' No Re-
 ' cord of Conviction, Warrant,
 ' for to disperse a Conventicle, or
 ' to levy the Penalty by distress,
 ' or *Mittimus* to Prison, shall, &c.
 ' This extends to all Courts, as to
 ' the Sessions, so to the *Kings-*
 ' *Bench*, or any other Court where
 ' such Record, &c. may be re-
 ' moved, or otherwise come in
 ' question upon any Action that
 ' may be brought against any Per-
 ' son for any thing done in pur-
 ' suance of this Act; although
 ' the Court of *Kings-Bench* may
 ' by *Certiorari* command such
 ' Records to be removed thither,
 ' &c. yet it is a good Act of their
 ' legal

(101)

' legal discretion to deny such *Cer-*
 ' *tiorari's* as of late years is done;
 ' it being a Writ discretionary,
 ' and not *ex debito Justitiæ* sent
 ' only to certify his Majesty in
 ' his said Court of the Procee-
 ' dings against such a Man, and
 ' the Justices below are the pro-
 ' per Judges of the Fact, and
 ' this Act seems to order the
 ' final determination of such Of-
 ' fences to the Justices particu-
 ' larly, for that this very Law
 ' gives an Appeal to the Sessi-
 ' ons where the Party hath his
 ' advantage for matter of Law
 ' as well as Fact; but it may
 ' be questioned what shall be
 ' deemed a default in Form? I
 ' confess that may be of some
 ' difficulty, but however by the
 ' virtue of this Clause, though
 ' it be by a Penal Law it ought
 ' to be helped by Intendments
 ' and Presumptions as much as
 ' any

(102)

any Plea in Bar , or any other
 pleading in a Civil Action, but
 to make the best Judgment
 in this Case, will be to com-
 pare this Clause with the
 Statute of Demurrs, viz. the
 27 Elizabeth, cap. 5. where
 the words are, any imper-
 fection, defect, or want of
 Form, and the words here are,
 by reason of any default in
 Form, which are plainly all
 one ; upon the former the
 rule is, whatsoever it is with-
 out which the right doth suf-
 ficiently appear to the Court,
 it is form within that Law,
 and so *è converso*, whatsoever
 is wanting, or imperfect, where-
 by the right appears not, is
 not remedied as Form within
 that Statute ; so here whatsoe-
 ver it is without which the Of-
 fence doth sufficiently appear to
 the Court that's Form within our
 Law,

(1)

*Some Observations upon
the Statute of 22 Car.
Secundi, Cap. 1. En-
titled, An Act to pre-
vent and suppress Se-
ditious Conventicles.*

SECT. I.

Obs. 1. **F**OR providing far-
ther and more spee-
dy Remedies, &c.
Besides the Statute of 16 Car. 2.
cap. 4. which is, and at the time
of making this Act was expired,
there were several other Acts yet
in force, for the preventing and
suppressing of Seditious Conven-
ticles, as the Statute of 35 Eliz.
cap. 1. Entitled, An Act to Retain
the Queens Majesty's Subjects
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in their due Obedience; which Act being but Temporary at first by the Statute of 39 *Eliz. cap. 18.* was continued to the end of the next Parliament, and by the Statute of 43 *Eliz. cap. 9.* was continued to the end of the first Session of the next Parliament. And by the Statute of 1 *Jacobi, cap. 25.* was continued until the end of the first Session of the next Parliament. The same Parliament of 1 *Jacobi*, continued by several Prorogations in 3, 4, and 7 *Jacobi*, so that the next Parliament after the continuance of 1 *Jacobi*, was holden in 18 *Jac.* where only two Bills of Subsidies past, and nothing more was done in that Parliament; whereupon in 20 *Jac.* it came to be a Question whether this Act of 35 were in force, or not, as appears in *Huttons Rep. fol. 61.* The Judges being in doubt as it seems, by reason of a Proviso in the Bills of Subsidies, that the Royal Assent to these

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these Bills should not determine that Session of Parliament, which doubtless it did not; yet when the Parliament was afterwards Dissolved, and nothing more done; The passing of these two Bills being Co. 4. Inst. 27, 28. matter of Record, made it such a Session of the next Parliament that discontinued this Act of 35 *Eliz.* But to prevent the doubt afterwards by the Statute of 21 *Jacobi, cap. 27.* It was Enacted that so much of the said Act of 35 *Eliz.* as hath not been since Repealed by any other Statute, shall be adjudged ever since the Session of Parliament in 7 *Jacobi*, to have been of such force and effect, as the same was the last day of that Session. And from thenceforth until the end of the first Session of the next Parliament, which next Parliament was in 1 *Car. Primi.* And at the end of that Parliament, this Statute of 35 *Eliz.* was again discontinued,

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but by the Statute of 3 *Car. 1. cap. 4.* the Statute of 35 *Eliz. viz.* so much of it as hath not been Repealed by any other Statute, is continued to the end of the first Session of the next Parliament in such force and effect, as it was on the first day of the Session of Parliament holden in *An. 1 Car. 1.* And lastly by the Statute of 16 *Car. 1. cap. 4.* in the close of a Temporary Act, Entituled, **An Act for the farther Relief of his Majesty's Army, and the Northern parts of the Kingdom.** All Statutes and Acts of Parliament (whereof the Act of 35 *Eliz.* is one) which have their continuance, or were by the Act of 3 *Car. 1. cap. 4.* made, are Enacted to have continuance untill some other Act of Parliament be made touching the continuance or discontinuance of the same, by which last Act the Statute of 35 *Eliz.* is made perpetual; there having been no Act
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since made either for the continuance, or discontinuance of the same. But yet there remains one Question upon it still, *viz.* why the Acts of 21 *Jac.* and 3 *Car. 1.* do not continue this Act of 35 *Eliz.* totally, but only so much of it as was unrepealed by any former Act. To this it is answered; That in the Act of 35 *Eliz.* there are two Clauses, being the 8th and 9th Paragraphs on Mr. *Keeble's* Statute Book, the first, For imposing a Penalty upon such Persons as should harbour or entertain in their Houses any Person, which should obstinately refuse to repair to Divine Service by a Month. And the next Clause being a Proviso, That the Law should not extend to the harbouring of a Wife and other Relations there named, are both Repealed by the Statute of 3 *Jac. cap. 4.* which was the reason that the Statute of 35 *Eliz.* was not wholly continued, but only so
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much as was Unrepealed, which is the whole Statute, save only these two Clauses.

I have been the longer about this Act of 35 *Eliz.* to prove it in Force at this day; for that notwithstanding the Judgment of the whole Parliament that it is in Force declared in the expired Act of 16 *Car. 2. cap. 4.* by which every Man ought to be concluded in point of Law; it hath often been affirmed to me, that the Act of 35 *Eliz.* was discontinued, and not now in Force: but such Affirmation rather proceeded from affection to have it so, than from any other Ground.

The Statute of 23 *Eliz. cap. 1.* against saying, and hearing of Mass.

The Statute of 13 and 14 *Car. 2. cap.* against Quakers.

The Statute of 13 and 14 *Car. 2. cap. 4.* for Uniformity of Public Prayers.

The Statute of 17 *Car. 2. cap. 2.*
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commonly called the *Oxford Act*, for Restraining of Nonconformists from Inhabiting in Corporations. All which Statutes, and several others did in part provide Remedies against the Seditious Practices of Sectaries, and Disloyal Persons. And this Act provideth farther and more speedy Remedies against them.

2. **That is any Person, &c.** This word **Person** extends both to Men and Women. See the 16th Paragraph of this Act, **And to Peers as well as Commoners.** But Peers are not to be Arrested or Imprison'd, as Commoners may be. See the 17th Paragraph hereunder, **So a Justice of Peace, or Mayor, or other Head Officer, being voluntarily present at a Conventicle, for any other Cause, except for the suppressing of it, may, and ought to be Convicted as an Offender within this Law.**

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3. Of the Age of 16 years or upwards, &c. This is plain, and if Evidence be given against a Person for being present at a Conventicle, who is of the growth, or stature of a young Man, or young Woman, it is to be intended that such Person is of the Age of 16 years, unless the contrary be specially made appear. And in such Case the proof, or *Onus probandi*, rests upon the Offender in such Convictions, whereupon there lies an Appeal by this Act, and so I take it to be likewise where the Offender is Personally Convented at the time of his Conviction, and objects not his Nonage to prevent his Conviction. But if one be Convicted as an Offender when absent, from which Conviction no Appeal is given by this Act, as where the Penalty is only 5 s. or 10 s. There, it may be the Conviction will be utterly void, and the Offender may maintain an action

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tion of Trespass against the Officer that Levies the Penalty of 5 s. or 10 s. upon his Goods, for that he hath no other Remedy to help himself. And therefore if the Offender be present, when Convicted, it will be the safest way to mention it in the Record.

4. Being a Subject of this Realm, &c. The word (being) relates to the time of the Offence to be committed, and not to the time of passing the Act; for if an Alien at the time of the Act passed, were afterwards Naturalized, and afterwards be present at a Conventicle, he is within the word, Being a Subject, &c. Though he were not a Subject of this Realm at the time of the Act passed. It is next to be considered, who shall be said to be (or rather not to be) a Subject of this Realm, within the meaning of the Act, for all men within the Realm are Subjects to the King, either (1.) By Birth, as born in *England*, or any other of the

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the King's Dominions. (2.) By Naturalization, as where an Act of Parliament of *England* gives an Alien the same Privileges that a Subject born hath, by reason of his Birth. (3.) By Denization by the King's Letters Patents, whereby an Alien is made a free Denizen to purchase Lands, and to hold them to him and his Heirs, which an Alien cannot do, or, (4.) By residing, or being in *England*, under the King's Protection, as Aliens are, which makes them Subjects to the King of *England*, so long as they remain in any part of his Dominions, but no longer. But the word, **Subjects of this Realm**, in the Act intends a distinction, that some Persons Inhabiting within the Realm, should not be comprehended within the Law. And therefore by these words all Natural Subjects born in any of the King's Dominions. All Persons, that by Act of Parliament of *England*,

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gland, are Naturalized Subjects, and all Persons Endenized by the King's Letters Patents under the great Seal of *England*, are comprehended within the Law (I mean) are to undergo the Penalty of the Law, for being present at a Convicticle. But Aliens resident in *England*, and those that are Naturalized, or Endenized in *Scotland*, or *Ireland*, and not in *England*, and so continue still as Aliens in *England*, are not within this Law, nor shall they be punished by it. Now in this Case, as well as in the Case of Infancy, under the Age of 16 years, the proof rests upon the Offender, for every one in this Case shall be presumed to be a Natural Subject of this Realm, unless the contrary be made appear. And the Conviction will be of the same effect against an Alien, as it is above declared to be against an Infant; onely this I conceive fit to add, that if an Infant under 16, or
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an Alien, having been present at a Conventicle, be summoned to appear before the Justice of Peace, or chief Magistrate, to shew Cause why he should not be Convicted for such offence, and refuseth, or neglecteth to appear, and make his defence, and thereupon he is Convicted; I take such Conviction to be binding, and the Infant, or Alien shall never avoid it, and the rather, by reason of the first part of the 12th Paragraph of this Act.

5. Shall be present at any Assembly, Conventicle, or Meeting, &c. Yet every one that is present (though a Subject of the Realm, above the Age of 16) shall not be punished as an Offender within this Law. For (1.) One that is an Idiot, or a Lunatick, “(unless it be during some lucid interval, wherein he enjoys the use of his reason, so far as to be supposed knowing of what he does) though present at a Con-
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venticle, yet cannot be said to be present, under colour, or pretence of Exercise of Religion. (2.) One that is Imprison'd, and kept at a Conventicle against his Will. For *Actus non facit reum nisi mens sit rea*; the like may be said of him that is under a Terrour of Bodily harm, by reason of Threats or Menaces of others, which he could not otherwise avoid, but by being present; but if a Servant by Command of his Master, or a Wife by Command of her Husband, be present, this will not excuse them, because they might (without the Guilt of Disobedience) have refused to obey such Command; what if the Husband enforce his Wife, co-habiting with him, to be present at a Conventicle against her Will, whether is she to be Convicted or not? In this particular Case I conceive she is; for by the 16th Paragraph of this Act, the Penalties of 5 s. and 10 s. are to be
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Levied upon the Goods of the Husband. And so the Wives being present at a Conventicle, is within the Letter, and the punishment of the Husband is within the meaning of the Act. If one be present at a Conventicle, to the end to detect, and discover the Conventicle, and to give Evidence against the Offenders, in order to their Conviction, he is not an Offender within this Law; but he that is present at a Conventicle, out of Curiosity to observe what they say or doe, he is an Offender against this Law, and ought to be Convicted as well as any other.

6. Under Colour, or pretence of any Exercise of Religion, &c. The Preamble of this Statute saith, **That Seditious Sectaries, and other Disloyal Persons, under pretence of tender Consciences, at their Meetings contrive Insurrections.** And those Meetings were, and are commonly under
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Colour, or pretence of Exercise of Religion. Now if there be a Meeting of Sectaries, of the number of 5, or upwards, above the Household, or of five, or upwards, where there is no Household; but before they proceed to any pretended Exercise of Religion, they are disturbed, and suppressed, the Question is, whether these, or any of them may be Convicted for being present at a Conventicle, under Colour, or Pretence of any Exercise of Religion, seeing none was there Exercised? This is a Question that may, and I suppose doth often happen, and I take it somewhat clear, that in such Case they may, and ought to be Convicted; For the chief end and design of that Statute was to prevent Sedition and Insurrections, and as a means to obtain that end, this Law is made to suppress Conventicles, where (as the Statute takes notice) Sedition and Insurrections were contrived. Now if
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they should not be Convicted, though there was no actual Exercise of Religion, then their Plotting Sedition, and contriving Insurrections being the greater Evil, should escape Correction, whilst a pretended Exercise of Religion being the lesser Evil, as being but in order to the greater Evil of Sedition and Insurrections, should be punished, which is not, nor could be the intent of the Statute; for in my Apprehension, the Statute meant, to punish all those that should meet together under pretence of Exercise of Religion, though none were actually Exercised; for that it is the same, or a worse mischief, than if there were any Exercise of Religion.

7. In other manner than according to the Liturgy and Practice of the Church of England, &c. What the Liturgy and Practice of the Church of *England* is, appears by the Act of Uniformity
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of 13 & 14 *Car. 2. cap. 4.* which is commonly printed before the Service Book, or Book of Common-Prayer; so where there is any Exercise of Religion in Publick, that is, where five, or more be met together, besides those of the same Household, there, if the Prayers in the Service Book be not used, and directions of that Book observed, that is an Exercise of Religion in other manner than according to the Liturgy, and Practice of the Church of *England*. But it may be Objected that the Service Book hath appointed the Form of Publick Prayers and Administration of the Sacraments, &c. But hath not appointed any Order to be observed in Preaching, and therefore Preaching in a Conventicle cannot be said to be in other manner than according to the Liturgy and Practice of the Church of *England*; there being no manner appointed by the Liturgy for Preaching. To
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To this it is answered ; that by the 22^d Paragraph or Section of the Act of Uniformity, it is Enacted, That at all and every time and times, when any Sermon or Lecture is to be Preached, the Common Prayers and Service in and by the said Book (viz. the Book of Common-Prayer, appointed to be read for that time of the day) shall be openly, publickly, and solemnly read by some Priest, or Deacon in the Church, Chapel, or place of publick Worship, where the said Sermon or Lecture is to be Preached before such Sermon or Lecture be Preached, and that the Lecturer then to Preach shall be present at the reading thereof. So that Preaching in a Conventicle, where the Common Prayers appointed to be read for the time of the day are not first solemnly read, is an Exercise of Religion in other manner than according

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ding to the Liturgy and Practice of the Church of *England*, and an Offence against this Statute.

8. In any place within the Kingdom of England, &c. These words are plain, and therefore if there be an Assembly or Meeting in a Church by five Persons or more, under pretence of any Exercise of Religion in other manner than according to the Liturgy and Practice of the Church of *England*, the same is a Conventicle within this Act, where any one, or more present, who is of the Age of 16, or upwards, and a Subject of this Realm, ought to be Convicted. But this is not to be understood of Foreigners, and Aliens of the Foreign Reformed Churches, allowed, or to be allowed by His Majesty, his Heirs, or Successours in *England*; for the Act of Uniformity (which this was made to strengthen) doth not extend to them, as by the Proviso in the 15th Para-

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Paragraph of that Act appeareth, and which Prerogative of allowance to such Foreigners, or Aliens Churches is saved to His Majesty by the last Paragraph in this Act.

9. At which Conventicle, Meeting, or Assembly, there shall be five Persons or more Assembled together ober and besides those of the same Household, if it be in a House where there is a Family Inhabiting, or if it be in a House, Field, or Place where there is no Family Inhabiting, then where any five or more are so Assembled as aforesaid, then, &c. Now are we come to a complete definition of a Conventicle within this Act, which is, where five or more where there is no Household are met together under Colour or pretence of any Exercise of Religion in other manner than according to the Liturgy and Practice of the Church of *England*, wherein these things are

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are to be observed, (1.) That the Person or Persons that are to be punished by this Law, for being present at a Conventicle, must be of the Age of 16, or upwards, and a Subject of this Realm. (2.) That though the Person to be punished, must have these Qualifications, yet Aliens (or Minors) if they are of discretion, may make up the number of five, to make it a Conventicle within this Law; as for Example, suppose five are met together in a House, besides the Household, under Colour and pretence of Exercise of Religion in other manner than according to the Liturgy, &c. and four of those are Aliens, and the fifth a Subject of the Age of 16, this is nevertheless a Conventicle, though four of the five cannot be punished, as being Aliens, yet the fifth being a Subject, shall be Convicted and punished by this Law for being present at such Conventicle; for the Law describes

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describes him that is to be Convicted, to be of the Age of 16, or upwards, and a Subject of this Realm ; but the Conventicle at which he was present, and for which he is Convicted, is only to be a Meeting together, or an Assembly of five, or more Persons, whether Aliens, or Subjects, is all one. (3.) That where there is a Meeting in a House of five Persons, or above, besides those of the Household, and so a Conventicle ; there those of the same Household, if present at the Conventicle, being of the Age of 16, and Subjects of this Realm may and ought to be Convicted for being at the Conventicle, as well as any others. I think by the word Household, both Lodgers and Inmates are included ; so that there must be five over and above the Household, and the Lodgers and Inmates as part of the Household. (4.) The Preacher or Teacher in such Conventicles, though

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though an Alien, or not of the Age of 16, ought to be Convicted. See the third Paragraph of this Act. (5.) If a Subject of the Age of 16, or upwards, be present at the Church or Assembly of Foreigners or Aliens of the Foreign Reformed Churches allowed by His Majesty, he is not to be Convicted for being at a Conventicle, for seeing the Assembly it self is Lawfull, he that is present at it cannot be said to have committed an Offence within this Act.

10. Then where any five Persons or more are so Assembled, as aforesaid, it shall and may be Lawfull to, and for any one or more Justices of the Peace of the County, Limit, Division, Corporation or Liberty wherein the Offence aforesaid shall be committed, or for the chief Magistrate of the Place, where the Offence aforesaid shall be committed, and he and they are hereby

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by required, &c. By this Clause are the Magistrates described that have Authority, and ought to Convict Offenders for being at Conventicles, which are one or more Justices of the Peace of the County (that is, where there are Justices of the Peace of the whole County, as there are in most Counties in *England*) Limit, as in *Lincolnshire*, where there are two Commissions of the Peace, one for the parts of *Holland*, and another for the parts of *Kesteven*-Division; as in *Yorkshire*, where there are three Divisions, namely, the East-Riding, the West-Riding, and the North-Riding, and a several Commission of the Peace for each of those three Divisions; (Corporations) as *London*, *Tork*, *Bristol*, and others that are Counties of themselves, and wherein the Justices of Peace for the County at large, have nothing to doe, or else such Corporations that continue parcel
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of the County at large, yet have Justices of their own exclusive to the Justices of the Peace of the County where the Corporation is, so that the Justices of the County may not intermeddle. And lastly, Liberties which have Justices of Peace within the Liberty, and yet the Justices of the County or Riding where such Liberties have a concurrent Jurisdiction. Now if where the Offence happens, be such a Liberty that the Justices of the County at large may not intermeddle; then the Justice or Justices of Peace of such Liberty are only bound to Convict the Offender; but if the Offence happens in a Corporation, or Liberty where the Justices of the County have a concurrent Jurisdiction with the Justices of the Liberty, there both the Justices of the County, as well as the Justices of the Liberty, are bound upon Notice to Convict the Offenders.
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Now what if the chief Magistrate, and one or more Justices of Peace of the place, should jointly Convict Offenders, where the Act saith, That one or more Justices of Peace, or chief Magistrate, is such Conviction good? I think it may be good enough, however I would not advise it as safe, because it seems prejudicial to the Appeals given by this Act, for it may fall out that all the Justices and chief Magistrate might Record the first Conviction, and the Party grieved would have no Appeal but only to the same Persons who Convicted him, which would be inconvenient. " It seems any Justice or Justices of Peace of the Corporation or Liberty, as well as the chief Magistrate of the place may make such Conviction, or all together, for though the Appeal should happen to be given to the same Persons who made the Conviction, yet that takes not away
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" the benefit of such Appeal, for
" besides the supposed honour and
" impartiality of the Magistrate
" making such Conviction, upon
" the Appeal the Tryal of the Fact
" is to be by a Jury, whereas the
" Conviction is by the Opinion
" and Judgment of the Justice or
" Magistrate, and so as to the Fact
" the Party does as it were Appeal
" to a Jury from the Justice. See
" hereafter, Sect. 6. concerning Ap-
" peals.

II. Upon proof to him or them respectively made of such Defence either by confession of the Party, &c. This Confession must be Judicial before the Justice himself at the time of the Conviction, and not a Confession at another time, or before other Persons; for such Confession, though sworn before the Justices by sufficient Witnesses, is only an Evidence, or Circumstance of the Fact, but not a ground to Convict the Offender
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ipso facto, as a Confession before the Justice himself is.

12. **Oath of two Witnesses, &c.** An Infamous Person, as one Convicted of Perjury, Forgery, or of Felony, and not having had his benefit of the Clergy, nor pardoned, is by Law disabled to give Testimony in any matter or cause whatsoever, and therefore cannot be one of the two Witnesses within this Act, upon whose Oath the Offender is to be Convicted, nor ought to be suffered to be sworn, if the Justice know him to be such; but if such Person be sworn, and the Justice not knowing of such disability of the Party sworn, do proceed, and upon such Oath, and upon the Oath of one other Witness, doth make a Record of Conviction, such Record will be good in Law, and bind, unless (wherean Appeal lyeth) it be avoided by Appeal according to the direction of this Act; a Jew hath

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hath been often admitted as a Witness by the Judge without the consent of Parties, and sworn upon the Old Testament, and so I conceive he may be in this Case. A man present at a Conventicle, though an Offender himself, is questionless a good Witness to give Evidence in order to the Conviction of any other for being present at the same Conventicle. A Man that is only Indicted of Perjury, or any other Infamous Crime, but not Convicted, is a Witness, for no Man is disabled to give Testimony upon Oath upon a bare Indictment only; note in this Case the Oath of the Witnesses, and all other Evidence given upon Oath before the Justice or Justices Convicting, should be put in Writing, and subscribed by the Party swearing, or giving such Evidence at the time of his Deposition or Examination, especially wherean Appeal is given by this Act, for that
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by the 6th Paragraph it is required, That upon an Appeal the Justice certify to the Sessions the Evidence upon which the Conviction pass. which he cannot so well nor safely doe, unless the Evidence be taken in writing and subscribed by the Party upon whose Oath the same is taken.

13. **Or by Notorious Evidence, and Circumstance of the Fact, &c.** It is very difficult, if not impossible to lay down the exact measure or bounds, what shall be said to ~~the~~ Notorious Evidence and Circumstance of the Fact, and what not, and therefore it must be left to the Judgment and Discretion of the Justice, or Justices Convicting, upon weighing well, and considering of the Case, what doth appear to be a Notorious Evidence or Circumstance of the Fact. But this is to be taken notice of particularly, that the proof of two things are prin-

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principally material. (1.) That there be a Conventicle, and, secondly, That the Party to be Convicted, was present at it. Now if a Conventicle be kept, and the same is afterwards dispersed, and the Preacher or Teacher in such Conventicle, or the Owner of the House where such Conventicle is held, or several Persons present at such Conventicle be Convicted for such Offence, afterwards another Person by two Witnesses is proved to have been there, or that he confessed he was there at the same time and place where the others Convicted were, but the Witnesses cannot prove it a Conventicle; yet here's a Notorious Evidence and Circumstance of the Fact sufficient to ground a Conviction. If the Justice of Peace be present at the suppressing of an Assembly of People, some of whom are immediately Convented before him, and Accused for holding and being at a Con-

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Conventicle in such Assembly, but no direct proof be made that it was a Conventicle, farther, than that they were Assembled together; if the Persons Convented can or will not give an account for what other Cause they were so Assembled or met together, or if they or some others at such Assembly are commonly known, and reputed to be frequenters of Conventicles, or that they commonly (though not always) do neglect coming to Church, or have declared, or any way made their dislike of, or aversion from the Liturgy or Doctrine of the Church of *England*: This is (in my Opinion) such a Notorious Evidence and Circumstance of the Fact, as is sufficient to ground a Conviction within the intent of the Law, and in such and the like Cases the Record of Conviction needs not make mention of any thing more, but that the Offender is Convicted by

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by the Notorious Evidence and Circumstance of the Fact, without particularizing the Fact, for that where no Appeal lies, the Justice is the sole Judge of the Notoriety of the Evidence and Circumstance; and where an Appeal is given, there the Fact must be tryed over again, and so the Offender cannot be injured.

14. To make a Record of every such Offence under his or their Hands and Seals respectively, &c. For the Form of such Record, see hereunder. And note, that the subscribing the Justices hand to the Record, is absolutely Essential, for though the Justice set to his Seal, and it be so mentioned in the Record (which is as much as the Law requireth in most Cases,) yet this Act requiring the Record to be as well under his Hand as Seal; if it be not under both, the Record, and all that is done in pursuance of it will be altogether
D void,

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void, though it be not of absolute necessity that the Record should mention that the Justice hath put his Hand and Seal (so that it be actually done) but the better and safer way is to mention it in the Record according to the Precedent.

15. Which Record so made as aforesaid, shall to all intents and purposes be in Law taken and Adjudged to be a full and perfect Conviction, &c. So as the Party Convicted shall be concluded to say that he is not guilty of the Offence contained in such Record he is so Convicted.

16. And thereupon the said Justice, &c. shall impose on every such Offender so Convicted as aforesaid, a Fine of five shillings for every such first Offence, &c. This imposing the Fine must be in the same Record of Conviction, and not in any other Record by it self, and it is not safe nor justifiable,

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ble to make a Warrant to Levy any Fine, but what is contained in the Record of Conviction.

17. Which Record and Conviction shall be Certified by the said Justice at the next Quarter Sessions, &c. The next Quarter Sessions is intended next after the Conviction, not next after the Offence committed; for perhaps the Quarter Sessions next after the Offence committed, may be past before the Offenders be Convicted.

“ Next Quarter Sessions, *i. e.* for
 “ the place where the Offence was
 “ committed, and the Conviction
 “ made, - if by a Justice of the
 “ Peace for the County at large,
 “ then to the next Quarter Sessions held for such County, if in
 “ a Corporation, or other Liberty,
 “ by the chief Magistrate or Justice
 “ of such place, then to the next
 “ Quarter Sessions for such place,
 “ if the Conviction be made by a
 “ Justice of the Peace of the County

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“ty for an Offence committed in
 “a Liberty or Corporation where
 “the County Justices have a con-
 “current Authority, then the
 “same must be certified to the next
 “Quarter Sessions of the County.
 Note by the Statute of 2 *H. 5. cap.*
 4. The Quarter Sessions are ap-
 pointed to be holden in all the
 Counties of *England* four times in
 the year, that is to say, the first
 week after the Feast of *St. Mi-*
chael, and the first week after the
Epiphany, and in the first week
 after the close or end of *Easter*,
 and in the first week after the
 Feast of the Translation of *St. Tho-*
mas the Martyr, which as I take
 it, always falls upon the 7th day
 of *July*. These are the four Quar-
 ter Sessions: But the same Statute
 directing that the Sessions should
 be held oftner, if need were; the
 Sessions holden at other times are
 called General Sessions, but not
 Quarter Sessions, by the Statute
 of

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of 14 of *Hen. 6. c. 4.* The Justices of
Middlesex are bound to hold Quar-
 ter Sessions but twice in the year,
 but they may (as they do) hold
 Quarter Sessions at the four times
 of the year abovesaid, and each
 of these Sessions is a Quarter Sessi-
 ons, and Sessions holden at other
 times are General Sessions. Now
 every Quarter Sessions is a Gene-
 ral Sessions, yet every General
 Sessions is not a Quarter Sessions,
 and not holden at the time appoin-
 ted by the Statute of 2 *Hen. 5.*
 abovementioned,

SECT. 2.

Obs. 1. **T**hat if such Offen-
 der so Convicted
 as aforesaid shall at any time a-
 gain commit the like Offence,
 &c. By this Clause these two
 Points are to be observed, (1.) He
 that is to be Convicted, and to
 incur the Penalty of 10 s. must
 D 3 be

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be Guilty of such Offence after the time he was Convicted of the former Offence, and not only after the time he committed the former Offence; for if one commit two or more Offences before he be Convicted, he may be afterwards Convicted for each of these Offences, but he shall only pay a Fine of five shillings for each Offence, and not 10 s. for either one of them; for that though he Offended twice, or oftner, yet he never Offended after he was once Convicted.

(2.) Where any one is Convicted for the second Offence, whereby the Penalty of 10 s. is imposed on him, the Record of such Conviction ought to mention and take notice of the Record of the former Conviction.

2. Which fine and fines for the first and every other Offence shall be levied by distress and sale of the Offenders Goods and Chattels, &c. But the Officer may

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may seize ready Moneys of the Offender if he can find it in his House, but he may not take it from the Person of the Offender, and by the word **Chattels**, must be understood Personal Chattels, which may be distrained, or levied as well as sold, and therefore a Lease for years, or other real Chattel, cannot be sold by the Officer for levying any Penalty imposed by virtue of this Act. "Goods and Chattels, this reaches to the
 " Utensils, Tools, and Instruments
 " of Trade, as well as any other
 " Goods and Chattels; for the rule
 " of the common Law (that
 " exempts such, (where there's
 " sufficient besides) from distress,
 " extends not where distress is gi-
 " ven as an Execution by any par-
 " ticular Statute, as for Poors
 " Rates, Hearth-money, and so the
 " like on this Law, and governs on-
 " ly in distresses for Rents, Amer-
 " ciaments, and the like.

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3. D?

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3. **Of** in Case of the Poverty of such Offender, &c. What shall be said in a case of Poverty, and how shall it be determined, I conceive the Justice is the Judge of it, and may determine it at the time of the Conviction, and thereupon impose the Fine upon any other Convicted of the same Offence; but if the Party Convicted be taken to be Responsible, and a Warrant is made to Levy, and afterwards the Constable, or other Officer to whom the Warrant is directed, shall afterwards certify the Justice of the Poverty of the Offender, in that Case I take it, if it be within the three months, the Justice at his Discretion may impose the Fine upon any other Offender that is then Convicted of the same Offence; but if the three months are elapsed, then I think he cannot, though it is not clear. See the 14th Paragraph of this Act.

4. Upon

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4. **Upon** the Goods and Chattels of any other Person or Persons who shall be then Convicted in manner aforesaid of the like Offence, &c. That is, of being present at one and the same Conventicle. For if *A.* and *B.* be both present at a Conventicle, now it is the like Offence in both, considering the Offence in it self. Now though *A.* hath been formerly Convict, and so he is to incur the Penalty of 10 s. and *B.* having not been formerly, is to incur the Penalty of 5 s. only. Now here the Penalty is different, yet the Offence is the like, and therefore in case of Poverty, the Fine of 10 s. for the Offence of *A.* may be imposed on *B.* or the 5 s. for the Offence of *B.* may be imposed upon *A.* or upon any other Convicted of being present at the same Conventicle; but I think the Preacher or Teacher in this Conventicle, is not within the meaning of this

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this Clause ; for that though he be present, yet he is to be Convicted of a greater Offence, for taking upon him to Preach or Teach in the Conventicle, and not of the lesser Offence of being present at it.

5. At the Discretion of the said Justice, &c. Note this Discretion is bounded in these points, (1.) There must be Poverty of an Offender in the Case (at least in the Judgment of the Justice) or else there is no Room left for Discretion. (2.) The sum to be levied on any one Offender in Case of the Poverty of others must not amount to above 10 l. upon occasion of any one Meeting or Conventicle. These two Points being observed, the Law hath left it absolutely to the Choice and Discretion of the Justice upon what other of the Offenders at the same Conventicle (except the Preacher or Teacher there) to impose the
Penalty

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Penalty he shall think fit, wherein he may doe well to have regard to the estate, and forwardness to offend of such Person or Persons, upon whom he shall impose the Penalty.

6. And every Constable, Headborough, Tythingman, Churchwardens, and Overseers of the Poor respectively are hereby Authorized and required to levy the same accordingly, having first received a Warrant, &c. The Warrant to levy the Penalties being under Hand and Seal of the Justice Convicting, is in its Nature an Execution for the King, and therefore the Officer upon demand made to have the Doors opened, and declaring of his Warrant at the same time, may break open the Doors to enter, and make Execution of the Warrant by levying of the Goods of the Offender, if upon such demand the Doors shall not be opened to him. " Though
" it

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" it hath been questioned by some,
 " yet there's no colour to the contra-
 " ry; the objection they have made,
 " is, that this is a particular mode
 " of levying a penalty by way of
 " distress prescribed by an Act of
 " Parliament, and the King hath
 " no share or interest therein, till
 " distribution of the Money levi-
 " ed in to three parts; but certain-
 " ly this is the Kings Suit, 'tis a
 " breach of his Law, a Convicti-
 " on by his Officers, and the di-
 " stress is an Execution for him,
 " the Record of Conviction is a
 " Judgment, or Award for the for-
 " feiture of so much, &c. and be-
 " fore distribution the whole is his,
 " to be returned into the Sessions,
 " at least 'tis an Execution for
 " a third part for him, and as for
 " that, the Doors may be broken
 " open, and being so open, the rest
 " may be levied. The rest of this
 Paragraph is plain.

SECT.

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SECT. 3.

1. **A**ND be it farther E-
 nacted by the Authority
 aforesaid, that every Person
 who shall take upon him to
 Preach or Teach in any such
 Meeting, &c. Here the words
 (every Person who shall take
 upon him) are general, so that an
 Alien or Person under the Age of
 16, who shall take upon him to
 Preach, &c. is to be convicted,
 and forfeit 20 l. for the first Of-
 fence, as well as a Denizen, or Sub-
 ject of the Realm, of the Age of
 16 years, or upwards, (though
 every one that is to be Convicted
 for only being present at a Conven-
 ticle, must be a Subject of the
 Realm, and of the Age of 16 or
 upwards, as is abovesaid. " And
 " here by this clause, if in such
 " Meeting several shall take upon
 " them successively to Preach or
 " Teach,

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“ Teach, though at one time of
 “ Meeting, yet every such Person
 “ comes within the penalty of this
 “ clause, and their Penalties to be
 “ levied, as in case there be but one.

2. And if the said Preacher or
 Teacher so Convicted be a stran-
 ger, and his Name and Habitation
 not known, or is fled, and
 cannot be found, &c. These
 words must be taken in the dis-
 junctive (that is) if the Preacher
 be a stranger (who is presumed to
 be not known) or if his Name be
 not known (for then he cannot be
 Convicted) or if his Habitation
 be not known, for then by pre-
 sumption the Penalty cannot be
 levied. In either of these Cases
 the Penalty may be levied upon
 other Offenders present at the same
 Conventicle, and where the Sta-
 tute saith (not known) that must
 be intended not known to the
 Justice or Officers that suppress
 the Conventicle, and prosecute the
 Offen-

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Offenders, for there is no Questi-
 on but the Preacher, and his Name
 and Habitation is or may be known
 to the Conventicles themselves;
 but if not known to the Officers,
 he is not known according to the
 intent of this Law.

3. Or is fled, and cannot be
 found, &c. That is so fled, that
 he cannot be found by the Officers
 that prosecute him for the Offence,
 though perhaps he is not so fled,
 but may easily be found by his own
 Disciples.

4. Or in the Judgment of the
 Justice, Justices or chief Justice
 or Magistrate before whom he
 shall be Convicted, shall be
 thought unable to pay the same,
 &c. This Clause supposeth the
 Teacher or Preachers Name to be
 known, otherwise he cannot be
 Convicted at all. I say the Prea-
 cher or Teacher cannot be Con-
 victed, if his Name be not known,
 but by the former Clause, if his
 Name

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Name be not known, the Penalty of 20 l. may be imposed upon others present at the same Conventicle, where the Preacher or Teachers Name is known. The Judgment of the Justice, &c. of the Preachers inability to pay, ought to appear upon Record under his Hand and Seal.

5. The said Justice, Justices, or chief Magistrate respectively are hereby Impowered, and required to levy the same by Warrant as aforesaid, upon the Goods and Chattels of any such Person who shall be present at the same Conventicle, any thing in this or any other Act, &c. By this Clause it seems to me that the Penalty in this Case may be imposed upon any Person present at the same Conventicle, though such Person upon whom it is imposed, be not Convicted for being present at the Conventicle, nor can be Convicted for being

(49)

ing present as an Alien or Subject under 16 years of Age: And the different penning of this and the precedent Paragraph, seems to make it clear; for in the precedent Paragraph the words are, that the Penalty there mentioned, in case of Poverty of such Offender, (12) He is Convicted for being present at a Conventicle,) shall be levied on the Goods and Chattels of any other Person or Persons who shall be then Convicted in manner aforesaid of the like Offence at the same Conventicle; so the Penalty there can be laid upon none but such as by this Law are, and ought to be Convicted for being present at the same Conventicle; but an Alien or Subject under 16 years, cannot be Convicted for that Offence. But here the words of this Paragraph say, that the Penalty of 20 l. here mentioned, may be levied upon any such Persons who shall be present

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at the same Conventicle, whether Convicted or not, and an Alien may be present at a Conventicle, though he cannot be Convicted, whereby to Forfeit 5 s. as a Subject may; but the Penalty imposed on the Preacher, so far as 10 l. may be levied upon him, and the *non obstante* in this Paragraph doth seem to confirm this Construction.

5. And the money so levied to be disposed of in manner aforesaid, &c. That is as above directed by the next precedent Paragraph, (*viz.*) One third to the King, one other third to the Poor of the Parish where the Offence was committed, and the other third to the Informer, and such Person as the Justice shall appoint.

6. And if such Offender so Convicted as aforesaid shall at any time again commit the like Offence, &c. The commitment of the said Offence must be after the Conviction for the first. See above, § 2. Obs. 1.

7. Shall

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7. Shall for every such Offence incur the Penalty of Forty pounds to be levied and disposed as aforesaid. This Penalty of 40 l. may be levied upon the Preacher as the 20 l. penalty above; and in case of Inability of the Preacher, upon the Goods of others present at the same Conventicle, in like manner as the Penalty of 20 l. might.

SECT. 4.

Obs. 1. **A**ND be it farther Enacted by the Authority aforesaid, that every Person who shall wittingly and willingly suffer any such Conventicle, &c. These words conclude Aliens as well as Denizens, and Peers as well as Commoners.

2. To be held in his or her house, &c. That is, in the House or out-house in his or her Possession whereby he or she might have

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hindered the Conventicle from being held there, for in this Case the bare possession of the House (though without any Title) makes it to be his or her House within the intent of this Law; as for Instance, if a man enter upon me, and put me out of Possession of my House by wrong, and keeps me out of Possession, and in that time suffers a Conventicle to be holden in the same House; now he that hath ~~the~~ the Possession of my House, is to be punished for suffering a Conventicle in his House, though in truth the Title of the House be mine.

3. *Of in Case of the Poverty, &c.* This is in the Judgment of the Justice of Peace Convicting as above, in case of the Preacher, but the Penalty in this Case of Poverty is only to be levied upon such as shall be Convicted for being present at the same Conventicle, and not upon Aliens, who are not

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to be Convicted for being present at the Conventicle. The penning of this Clause, and the like Clause in the second Paragraph, do exactly agree, but are both different from the Clause in the third Paragraph, where the Penalty of the Preacher, in case of his Poverty or inability, is to be levied on any Person present at the same Conventicle, though not Convicted.

SECT. 5.

1. **T**his is clear, yet it may be doubted whether more than ten pounds may not be imposed upon one Person for the Penalty of the Preacher, where his Name or Habitation is not known, for that Penalty is not imposed in regard of the Poverty, or inability of the Preacher; but because he is not known, so as the Justice might judge whether he were able to pay the Penalty or not. The

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Husband and Wife co-habiting, are both present at a Conventicle, and Convicted, whereby the penalty of 5 s. imposed upon the Wife, is to be levied on the Husband's Goods; yet the Husband may be charged with 10 l. besides, for, and in regard of the Poverty of another, for the Wifes Penalty of 5 s. is not laid upon the Husband in regard of her Poverty, but in regard of the Relation between them. Where there is a Penalty of twenty Pounds or more to be imposed in respect ^{of poverty} the Justice may assess what sum he thinks fit upon each party lyable, so that no one be charged with more than 10 l. in regard of Poverty, &c.

ACT.

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A C T.

SECT. 6.

1. **P**ROBided also, and be it farther Enacted, That in all Cases of this Act, where the Penalty, or Summ charged upon any Offender, exceeds the Summ of 10 s. This Paragraph gives an Appeal to the Offender in certain Cases, whereupon these things are to be taken-notice of, (1.) The Person that may Appeal must be an Offender charged with above the summ or Penalty of 10 s. for if he be charged with the summ or Penalty of 10 s. only, or under, he is concluded by the Conviction, and cannot appear. A Constable Convicted upon the 11th Paragraph of this Act may Appeal. (2.) The time when he may Appeal, and that must be within one week after the

E 4 Penalty

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Penalty above 10 s. be levied upon his Goods, &c. or else after the voluntary payment of such Penalty either to the Officer or Justice Convicting, so that before the whole Penalty charged upon the Offender, be either levied or paid, the Offender cannot Appeal, neither can he Appeal at all, if a week be elapsed after the Penalty levied or paid, and no Appeal within that time; but in such Case the Offender is for ever concluded by the Conviction before the Justice, &c. (3.) The manner of Appealing must be in writing from the Person or Persons Convicting (*i.e.*) the Justice or Justices of the Peace. But such writing need not be subscribed by the Party Appealing. (4.) The Judges to whose Judgment the Appeal lyeth, are the Justices of Peace in their next Quarter Sessions (that is) next after the Appeal, and not next after the levying or payment of the money,

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money, and it must be the Quarter Sessions for the same County, Liberty, or Place where the Offence was committed, and the Offender Convicted, and not any other. " If it were in a Corporation by the chief Magistrate, " and Justices of the Corporation, " the Certificate and return of " monies levied, and the Appeal " must be to the Sessions for such " place, and not to the Quarter " Sessions for the County at large, " and so was it ruled in the case of " the Town of *Southmolton* in *De-* " *von*, to the Mayor of which " place the Court of *Kings-Bench*, " *Mic. 35. Car. 2.* granted a *man-* " *damus* for the receiving an Ap- " peal from a Conviction of a Con- " venticle held in that Town, " made by the chief Magistrate of " that Corporation.

2. To whom the Justice or Justices, &c. that first Convicted such Offender, shall return the

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the money levied upon the Appealant, &c. Though the words are only the Money levied upon the Appealant; yet the Money paid by the Appealant is to be returned by the intent of the Law; and here is a necessary Caution to be observed by the Justice Convicting, that where any Penalty of above 10 s. is levied upon, or paid by one Offender, he do not proceed to make distribution of the Penalty so levied or paid, till one full week be past after the levying, or payment of it, for the Offender hath that time to Appeal in, and if he doth Appeal within that time, the Justice is to return the whole Monies to the Sessions; and if the Offender upon his Appeal be acquitted by the Sessions, he is to be restored to all his Money. The Justice upon his Appeal is to certify the Record of the Conviction, and the Evidence upon which the Conviction past under

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der his Hand and Seal, and also the Appeal made before him in writing, that the Sessions may the better be enabled to proceed, as the merits of the Cause shall appear before them.

3. Whereupon such Offender may plead, and make defence, and have his Tryal by a Jury thereupon, &c. The Offender may plead that he is not Guilty of the Offence contained in the first Conviction, which in this Case stands instead of an Indictment, and thereupon Issue being joined for the King, the Appellant may give in Evidence, that it was not a Conventicle where he was present, but a lawfull Assembly, or that he was elsewhere, and not present at such Conventicle as the Conviction supposeth, or any other matter that is legal Evidence for his Acquittal; and on the other side the Prosecutor for the King may produce, and give in Evidence
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any new matter for the proving of the Appellant guilty of the Offence contained in the Conviction from which he hath so Appealed. And I take it, that though the Statute hath indulged the Offender to plead to the Fact, and to have a Tryal by a Jury, yet if the Appellant thinks fit, he may by a Demurrer insist upon matter in Law at the Sessions, for that the Conviction is insufficient in substance (for want of Form is no exception by the 13th Clause of this Act) as that it doth not appear that any Conventicle was holden, or that it appeareth by the Record of the Conviction, that it was a lawfull Assembly, and not a Conventicle, or that it doth not appear that the Appellant was present at any such Conventicle. In those or the like Cases, if the Appellant doth demurr to the Conviction, and the Prosecutor for the King joins in demurrer, the Court

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Court of Sessions ought to give Judgment either for, or against the Appealant, as the matter in Law doth appear before them: But now let us see what other matters of Fact, besides not Guilty, the Appellant may plead at the Sessions; and first I conceive he may plead the Kings Pardon after the Offence committed, and before the Conviction; for after the Conviction, the Pardon comes too late, (save only for the King's third part) and if such pardon under the great Seal be shewed in Court, as it must be, if it be pleaded, the Court (if the Pardon appears to be sufficient in Law) ought to discharge the Appealant of the Conviction, and the Penalties imposed by such Conviction; the Appealant may likewise plead Auterfoits Convict, (*viz.*) that he was formerly Convicted of the same Offence, and hath paid the Penalties, or that the same have been
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levied upon his Goods, and so ought not to be twice charged for the same Offence; and this is a good Plea to discharge him, but if the Penalties upon the other Conviction be not paid, or levied, then such Plea of Auterfoits Convict ought not to be allowed; for perhaps the former Conviction might be past by some contrivance of the Offender or his Agents, that the Penalties should not be levied, and so by a mean the Offender might escape unpunished, if the Plea of Auterfoits Convict should be allowed without the Penalties being levied or paid. On the other hand, it can be no mischief to the Appellant, for though he stands twice Convicted for the same Offence, yet the first payment of the Penalties dischargeth him of both Convictions; for if the Penalties should be again levied upon him, he hath liberty in a week after to Appeal, and upon shewing his
Case

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Case by Plea at the Sessions ought to be relieved, and restored to his Money so levied the second time.

And in Case such Appellant shall not prosecute with effect, &c. If at the next Quarter Sessions, the Appellant shall not appear, and plead matter of Fact or Demurr in Law to the Record of the first Conviction, this will be a Non-prosecution whereby treble Costs are to be given against him, so that if he do not appear at the day given him, from time to time, till the Appeal be determined; but if he appears, and upon motion, the Court of Session, for some Cause seeming reasonable to them, do grant farther time to the Appellant for drawing of his Plea, or if after Plea Pleaded, they grant him farther time than ordinary for Tryal, in such case this is no default in the Appellant, and therefore no Costs to be awarded against him; so if the Court do take
time

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time to consider of the matter in Law, this is not a Failure of Prosecution of the Appealant whereby to subject him to the payment of any Costs, and in all cases of Non-prosecution, there must be a Record of it made by the Sessions.

Q: if upon such Tryal he shall not be Acquitted, &c. It is not said, if upon Tryal the first Conviction shall be affirmed, or found true; but, if the Appealant shall not be acquitted; suppose the Appealant be Convicted of being present at a Conventicle, and 5 s. Penalty imposed upon him, and in regard of the Poverty of the Teacher, 10 l. more is imposed upon him, which being levied, he Appeals, and pleads that the Teacher was able to pay himself, and therefore the Appealant ought not to have been charged with the 10 l. In this Case I conceive such Plea is insufficient, and though it were found so by verdict at the
Sessi-

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Sessions, yet the Appealant is not acquitted of the Offence (which is) of being present at the Conventicle, nor is the Teacher found Innocent, and therefore the Appealant cannot be relieved, but ought to pay treble Costs for his unjust Appeal; but what if upon the Appeal the Appealant doth ~~not~~ make it appear, and it is so found by Verdict, that though the Appealant was present at the Conventicle, and thereby forfeited 5 s. yet the Person, in regard of whose Poverty the sum of 10 l. or any lesser sum was imposed upon the Appealant, was not at all present at the same Conventicle. Now the Appealant is not totally acquitted, for the Conviction of his being present at the Conventicle stands in force; yet in this Case I conceive he is to be discharged of the other Penalty imposed upon him, and to be excused from payment of any Costs, and the difference

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rence between this Case and the next precedent is this. In the former Case the Person in regard of whose Poverty, &c. was either a Teacher, or present at the Conventicle, whereby the Justice Convicting had a Jurisdiction to impose the Penalty either upon the Party himself, or upon some other; but in this case the Justice hath no Authority at all to impose a Penalty either upon one that was not present at the Conventicle, or in regard of the Poverty of one that was not present at the Conventicle, which diversity is apparent; what if the Penalty in regard of the Poverty of another imposed upon the Appealant, hath been imposed upon the Party himself, or upon any other, and hath been actually levied or paid? In this Case I think the Appealant is to be relieved against that Penalty, and though he be not totally acquitted, yet he ought not to be charged with Costs. D?

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D? Judgment pass not for him upon his said Appeal, &c. This Clause seems to confirm the Opinion above, that the Appealant may demurr in Law to the Conviction, and pray the Judgment of the Court of Sessions upon it, without Pleading to Issue, or having a Tryal by a Jury, as the Act saith. Note, that where the words are (Judgment pass not for him upon his said Appeal) it is to be understood that Judgment pass not for him upon the determination of the Appeal at the end of the Suit; for whilst the Appeal depends undetermined, it cannot be known whether Judgment shall pass for him or not.

The said Justices at the Session shall give treble Costs against such Offender for his unjust Appeal, &c. That is, the Justices at the Session shall give Judgment that the Offender pay treble Costs, for that is the meaning

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ning of the words, (**give treble Costs**) but who shall have this treble Costs? I conceive the Prosecutor of the Conviction that Prosecutes at the Sessions, whose Name ought to appear in the Record of the Sessions. But what if the Offender Appeals to the Sessions, and the Justice Convicting Certifies the Record of Conviction, the Evidence and the Appeal; but the Appealant doth not appear at the Sessions at all, nor doth any thing in Prosecution of his Appeal; how shall the Prosecutors Name appear in such Case? To this I answer; that in this Case no Costs are to be given, but only the Appealant's Non-prosecution to be Recorded, whereby he Forfeits his Recognizance given to prosecute his Appeal with effect; but if the Appealant on^e appears and pleads, or demurrs, as he must, then the Prosecutor's Name will appear. And if afterwards the
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Appeal is not Prosecuted but discontinued. Then treble Costs are to be awarded to the Prosecutor, as well as where the Offender upon Tryal is not acquitted, or Judgment pass not for him upon the determination of the Appeal.

And no other Court whatsoever, &c. By this Clause the Justice of Peace Convicting where no Appeal lieth, and the Justices of the Session, where an Appeal is given, are made the final Judges of the Offences of being present at a Conventicle. And of any Person's taking upon him to Preach or Teach in a Conventicle, or wilfull suffering a Conventicle to be held in his or her dwelling House, &c. And of a Constable's Omission of the performance of his Duty in Execution of this Act, and this exclusive to the great Courts at *Westminster-Hall*, and all other Courts whatsoever; yet if a *Certiorari*, or Writ of Error issue

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out of any of the great Courts at *Westminster Hall*, and be delivered either to the Justices Convicting, or to the Sessions, they ought not to proceed till the Court, out of which such a Writ issued, be informed of the matter, and shall think fit to supersede their own; for though the Justices of Peace, and the Sessions, be made the final Judges of the Offences aforesaid, yet they are not Judges of the Process of the superiour Courts, but only the superiour Court it self, out of which the Process issued.

S E C T.

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S E C T. 7.

1. **U**PON the delivery of such Appeal as aforesaid, &c. The time for delivery of the Appeal must be within one week next after the Penalty levied or paid, and at the time of the delivery of the Appeal in writing the Appeal is made. Now the Act appoints that a Recognizance be entred into for the prosecuting of the Appeal at the same time, that is, at the same instant of time the Appeal is delivered. And the Recognizance must have these Circumstances, it must be entred into by the Party himself Appealing, and (in strictness) not by any other, (though sufficient) security for him, it must be acknowledged before, and taken by the same Justice that made the Record of the Conviction; but if the Conviction be by two or more Justices the Appeal

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delivered to, and the Recognizance acknowledged before any one of them is sufficient. But if both, or all of the Justices Convicting are together, the Recognizance must be acknowledged before them all, though the Statute hath not appointed any sum to be contained in the Recognizance; yet it ought to be in a reasonable sum, which is commonly, and usually double the sum in Question, which in this Case is double the Penalty imposed on the Offender that Appeals. There may be some doubt how the Appeal is to be made, or the Recognizance entred, when the single Justice Convicting shall happen to die, or be out of Conviction before the time of Appeal; but that being a matter rarely happening, I shall not spend time about it at present.

S E C T.

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S E C T. 8.

That is at the time of making the Appeal, and the Appeal cannot be said to be made till it be delivered, and the Recognizance entred.

S E C T. 9.

After refusal or denial, to enter, break open, and enter into any house, or other place where they shall be informed, any such Conventicle as aforesaid is or shall be held, as well within Liberties as without, and take into their Custodies the Persons there unlawfully Assembled, to the intent, &c. In all Cases where the outward door of a House may be broken, the Law (as this Act) doth require, That first, A Demand be made to have the Door opened, for Force is not
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to be used where the Law may be Executed in a peaceable and quiet manner. Now a refusal or denial to enter, is not only intended of an Actual or exprefs denial, or refusal to open the doors, but also of a refusal or denial in Law, as where the Officers require the Doors to be opened, and the Conventiclors make no answer whether they will or will not open the Doors; or if they answer that they will open the Doors, but notwithstanding they do not open the doors, this is a refusal and denial in Law, as strong as if they had expressly refused or denied to open the doors; and thereupon the Officers may break open the doors, and seize the Offenders (of mean Conventiclors) and secure them in Custody untill the Officers can conveniently bring them before a Justice of Peace to be Convicted, and then the Offenders are to be discharged out of Custody. But what

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what if any Offender in such Case, being brought before a Justice of Peace to be Convicted, shall refuse to discover his Name and Place of Habitation, whereby the Justice cannot proceed to a Conviction of him. In such Case the Justice may commit him to the common Gaol for his Contempt, and by the *Mittimus* shewing the Cause of such Commitment, the Offender will be held untill he doth discover his Name and Habitation (for it is impossible he can be Bailed) for though an Offender may be committed without a Name, yet his Name must be known before he can be Bailed, and then the Justice may proceed to Convict him of the Offence, for being or Preaching at the Conventicle, as the Case falls out, though it be after the end of three months, for that the first was prosecuted within the three months. Now it is to be considered what is to be done, supposing there

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there be a Conventicle held, and the doors are open, or upon demand made by the Officers, the doors are immediately opened, and they are permitted to enter freely ; whether then the Officers may take any of the Offenders into Custody or not ? And I take it, that if the Conventiclors do make known their Names and places of Habitation, and do depart peaceably when commanded by the Officer, they may not be taken into Custody , because in such Case they may be Convicted without being taken into Custody : But if the Offenders do refuse to make known their Names, then such of them as do so refuse, may be taken into Custody, and if at Command of the Officers, the Conventiclors refuse to depart, or do not depart and disperse themselves peaceably, they may be taken into Custody likewise, and this seems clear by the latter part of this Paragraph. **And**

(77)

And that the Lieutenant or Deputy-Lieutenants, &c. Here the Military Power as well as the Civil Power, is to be assisting for the dissolving, dissipating, and preventing of Conventicles ; but the Lieutenants or Deputy-Lieutenants, &c. are not to intermeddle, before they have first received a Certificate under the Hand and Seal of a Justice of Peace or chief Magistrate of his particular information or knowledge of any unlawfull Meeting or Conventicle held or to be held, and that he with such Assistance is not able to suppress and dissolve the same. This Certificate may be made sometime before the Conventicle held as well as at the time ; and though it cannot be so well known before hand, whether the Justice or chief Magistrate with such Assistance, &c. be able to suppress the Conventicle or not ; yet if the Justice hath reason, or any probable

(78)

ble ground to believe that he shall not be able to suppress the Conventicle, whereof he hath notice, he may make his Certificate, that the Military Power may be ready; for if a Certificate should not be made till the very time of the Conventicle held, it would perhaps be too late for the suppressing of them, and the words of the Act are, To prevent such unlawfull Meetings as well as to dissolve and disperse them. And note, that if there be such a Conventicle as cannot be suppressed by the Justice himself with such Assistance as he can get, but there is need of Military Power, or some other greater power to be raised by the Sheriff or other Officer, in such case the Conventiclers, or so many of them as the Officers suppressing of them shall think fit, Peers of the Realm only excepted, may be taken in-
to

(79)

to Custody, and kept in Custody for such convenient time, till they shall be Condicted by the Justice or chief Magistrate. But suppose the Justice that would suppress the Conventicle, be himself a Deputy-Lieutenant, and he as a Justice is not able to suppress the Conventicle, I conceive in such Case he may make use of his Military Power, and get such Troops or Companies of Horse and Foot, as he shall think meet, and can get in readiness with the soonest; By this Law any Justice of the Peace, Constable, or other Officer going in Execution of this Act to suppress and disperse such unlawfull Assembly, they may call or command any Person whatsoever in to their Aid or Assistance, and in Case of refusal they are punishable, as by the 11th Section, see hereafter; And did not this Law expressly enable them to do it, they might do it by the general Authority of their Offices in this Case, as they may for the suppressing of Affrays, Riots, Routs, and other unlawfull Assemblies. And

(80)

And take into their custody such persons so assembled as they shall think fit. Some are of opinion, and it hath been so resolved, that by force of these words they may imprison any of them for any convenient time in order to examination, not only of their own names and places of Abode, but of the Teacher or the like; and that the Military Power they may use in taking and detaining of such persons till examined of such things as may be needfull for the making a Conviction of such Meeting or Assembly, and this they ground upon the words as they shall think fit: *Sed quære*, for the Lord *Saunders* his opinion afore: *Pag. 76.* seems more consonant to the letter of this Clause, *viz.* that their Commitment is to be only till make known their own names and places of Abode, that they may be proceeded against, &c.

Provided alwaies that no dwelling house of any Peer
of

(81)

of this Realm, &c. This seems not to extend to the dwelling House of any Dutches, Countess, Baroness, or other Noblewoman, but they may be searched by virtue of this Act, notwithstanding this Clause, as by the reading of it appears plain, it being said to be such House where he or his Wife shall be Resident; this must be meant actually Resident, and therefore extends not to any House which a Peer hath leased to another, nor to any Mansion House uninhabited, or wherein he hath only Servants, and doth not Personally reside in; for suppose a Peer have several Houses, to which he repairs at several Seasons of the year, and hath Servants in all, and a Meeting prohibited by this Law doth happen to be held in such of his said Houses, where at that time he nor his Wife is resident, such
G House

(82)

House may be searched by virtue of this Act, and broken open too for the dispersing such Meetings, for the words are, **shall be resident** at such time: If a Conventicle be held in any Barn, Stable, or other like of a Peer's, not being parcel of his dwelling House, such place may be searched, though the same be in the possession of a Peer: And notwithstanding this Clause, a Conviction may be made of such a Meeting that has been held in the dwelling House of a Peer, though he be resident in it, and such Peer incurs the Penalty of this Act as Owner of the House, permitting the same. See above on the 4th Section.

Except in the presence of, &c. Such dwelling House seems not searchable by any Corporation Justice, he not being named in this exception, but a Lieutenant, or Deputy Lieutenant

(83)

nant of such County, may search such a House upon the Information of a Justice of the Peace, though he be no Justice himself, nor of the same Riding.

S E C T. II.

BE it farther Enacted, that if any Constable, &c. This Clause extends to his not executing any Warrant for levying the Penalties of this Act by distress, as well as to his not informing some Justice of a Conventicle whereof he knows; so if he inform not some Justice thereof (when he conveniently may) till the Meeting be over, and so they could not be suppressed, nor the Persons so well known, in order to the making of a Conviction. If a Constable, &c. keep or suffer a Conventicle in his House, he forfeits the Penalty of 20 *l.* for so doing, and 5 *l.*

(84)

' for not informing a Justice there-
 ' of, the like if he be present at
 ' any Meeting, and not in order
 ' to detect it; he may be puni-
 ' shed for being so present, and
 ' sued for the 5 *l.* also, for they are
 ' several Offences: **Credibly in-**
 ' **formed,** &c. such Information
 ' as another gives him of his sight
 ' of sundry Persons going to an
 ' House suspected, or generally
 ' used for such purposes at such
 ' times as usual, &c. is sufficient
 ' information to oblige the Consta-
 ' ble to acquaint the Justice, for a
 ' less information here will serve
 ' him than a Justice of the Peace
 ' for to make a Conviction, the
 ' Justice is to have it upon Oath,
 ' &c. the Constable, &c. is not
 ' Judge of the truth of the Fact,
 ' he is only a Ministerial Officer
 ' or Servant in this Case. A Con-
 ' stable, or Tything Man or the
 ' like, that gives notice of his
 ' Warrant, or of a Justices co-
 ' ming

(85)

' ming to suppress such Meeting
 ' is undoubtedly Guilty of this
 ' Offence, and besides liable to be
 ' Indicted at common Law for any
 ' such misfeasance or neglect, it
 ' being contrary to his Oath and
 ' Office, by the Authority of this
 ' Act 'tis become the Duty of his
 ' Office to which he is sworn, any
 ' breach whereof is Indictable at
 ' common Law, and punishable
 ' by Fine and Imprisonment, and
 ' this may be too often necessary,
 ' in the last Case, I mean especially,
 ' the 5 *l.* penalty seeming too small
 ' for an Offence of such a Nature;
 ' but note, then he cannot or
 ' ought not to be punished both
 ' ways, for 'tis but one Offence,
 ' though when prosecuted as on
 ' this Law the Fine is certain, as at
 ' common Law 'tis undetermined.
 ' If a Constable uses not all Law-
 ' full means to prevent, suppress,
 ' and get Convicted such Meetings,
 ' as if he breaks not open a door

G 3

' af.

(86)

‘ after request to have it opened in
 ‘ execution of a Warrant to levy
 ‘ the penalty by virtue of this Act,
 ‘ he is an Offender by this Clause.

‘ Every Person whatsoever refu-
 ‘ sing or neglecting to give his Aid
 ‘ (being called thereto in execution
 ‘ of this Act) forfeits 5 l. especi-
 ‘ ally, if such whom the Justice
 ‘ or Constable shall call in, do
 ‘ by private notices or otherwise,
 ‘ forewarn those Assembled to
 ‘ withdraw, for to prevent their
 ‘ being known, and by consequence
 ‘ their being Convicted.

‘ If any Justice of the Peace,
 ‘ or chief Magistrate, shall wit-
 ‘ tingly or wilfully omit the per-
 ‘ formance of his Duty in the exe-
 ‘ cution of this Act, he shall forfeit
 ‘ 100 l. &c. This Clause is general,
 ‘ omit the performance of his Duty
 ‘ which is by all lawfull ways to
 ‘ ^{take} get Information and notice of all
 ‘ such Meetings open or clan-
 ‘ destine, that are held within his
 ‘ Limit,

(87)

‘ Limit, Precinct, or Jurisdiction,
 ‘ every thing which is prohibited
 ‘ by the Law, a Justice is bound
 ‘ as a good Officer, not only to
 ‘ punish it when discovered, but
 ‘ by all convenient means to inform
 ‘ himself, ^{or send to receive notice & Informations,} if such Offences are
 ‘ committed, and such Offences
 ‘ the more secret, the more dan-
 ‘ gerous; and therefore every Of-
 ‘ ficers Duty is to detect them, to
 ‘ be ready to receive Informations,
 ‘ to grant Warrants to Constables,
 ‘ to go in Person and endeavour to
 ‘ disperse them when met, or pre-
 ‘ vent their Meeting, to imprison
 ‘ those that oppose or resist them, to
 ‘ break open Doors, if shut against
 ‘ them, to secure such Offenders
 ‘ till know their Names and Pla-
 ‘ ces of abode in order to make
 ‘ Convictions, and of such Con-
 ‘ victions to make Records to
 ‘ grant Warrants on them for di-
 ‘ stresses, such Records to certify
 ‘ to the next Sessions, and in short,

G 4

‘ to

(88)

' to do every thing which this Act
 ' Authorizes and requires them to
 ' do, and in the best and most con-
 ' venient way that may be for the
 ' Attainment of the end of this
 ' Law, which was the suppressi-
 ' on and prevention of Seditious
 ' Conventicles, a wilfull neglect of
 ' any thing this Act impowers
 ' such Justice of the Peace to do in
 ' order to that end, is an Offence
 ' within this Clause, and incurs
 ' the Penalty of 100 l.

' Justice of Peace or chief
 ' Magistrate, &c. It must be in-
 ' tended for, or in Relation to Of-
 ' fences committed within their
 ' Respective Jurisdictions, for this
 ' Clause punishes nothing but the
 ' omission of what they were im-
 ' powered, or inabled to do by
 ' the foregoing part of this Law,
 ' viz. to a Corporation Justice, for
 ' what happens within the Cor-
 ' poration, &c. & sic respective,
 ' although it be here said any
 ' Justice

(89)

' Justice or chief Magistrate, yet
 ' any Justice of the Peace in any
 ' Liberty, City, or Corporation, is
 ' within this Clause as well as the
 ' chief Magistrate of such Liberty,
 ' City, or Corporation, for such
 ' Justices are bound by the former
 ' Clauses to disperse such Meetings,
 ' and make Conviction of them,
 ' and by consequence they are here
 ' intended.

' **Wittingly** or wilfully omit,
 ' for the satisfiing of those words,
 ' either his own knowledge or in-
 ' formation is sufficient, I do not
 ' mean of the Law in the Case, for
 ' he is bound to take notice of this
 ' and all other Acts relating to his
 ' Office, and a pretence that he
 ' knew not he had power, or that
 ' 'twas his Duty, will be no ex-
 ' cuse, but his own knowledge or
 ' information of the Fact; for if a
 ' Justice do not suppress a Conven-
 ' ticle, nor make a Conviction
 ' thereof, he is no Offender, pro-
 ' vi

(90)

' vided he have no notice of it,
 ' but yet if a Justice know a Con-
 ' venticle to be held in the next
 ' House, and he do not his Duty,
 ' he is punishable by this Clause,
 ' though no Informer came and
 ' gave him notice of it; If any
 ' one come to inform him of a
 ' Conventicle that hath been held,
 ' he is bound to give the Informer
 ' his Oath, and 'tis no excuse for
 ' him that the Informer did not re-
 ' quire him to tender an Oath,
 ' for his coming is impliedly a Re-
 ' quest, it being in order to make
 ' a Conviction, and if he refuses
 ' or omits to give him his Oath,
 ' in order to the making a Con-
 ' viction, he is punishable, whe-
 ' ther a Conventicle were held yea
 ' or no, for being informed there
 ' was one, he is an Offender in not
 ' taking the Information upon
 ' Oath, and so was it resolved by
 ' the Court of *Kings-Bench*, *Mic.*
 ' 34 *Car. 2. Banco Regis*, on a mo-
 ' tion

(91)

' tion in Arrest of Judgment, in
 ' an Action between *Smith qui*
 ' *tam, &c. vers. Langham of Nor-*
 ' *thamptonshire.*

' The one moiety to the use
 ' of the Informer, &c. Al-
 ' though it be not expressly decla-
 ' red unto whom the other moie-
 ' ty shall be given, yet the King
 ' shall have it, for wheresoever a
 ' forfeiture or penalty is given
 ' by any Act of Parliament upon
 ' any Offence, it is intended to be
 ' to the King, his Heirs and Suc-
 ' cessours, though not particular-
 ' ly named, unless it be otherwise
 ' specially Ordered; Informer
 ' here is meant, not he that in-
 ' forms the Justice, but he that
 ' sues for the 100 *l.* and so informs
 ' the King's Court of such an Of-
 ' fence committed by such a
 ' Justice, for otherwise the Justice
 ' may go unpunished by agreeing
 ' with him that is Informer in the
 ' first sense, besides, if none but
 ' such

(92)

such Informer might bring the
 Action, there would in all pro-
 bability be a failure of proof in
 this Case, for none but those
 who informed the Justice, are
 for the most part capable of pro-
 ving the Justice's refusal, or neg-
 lect to do his Duty ; Although a
 Moiety be here given to the In-
 former, yet if none will sue for
 the same, the whole may be sued
 for at the King's Suit, for there
 being a Forfeiture created by the
 Act, and by the Law given to
 the King, the not suing by any
 Informer for his part, shall not
 prejudice the King, the Moiety
 going only to the Informer (*i.e.*)
 to him that will and doth sue for
 the same, if none will sue for it,
 the whole is the King's, and before
 any Information, Action or popular
 Suit brought, he may pardon or
 release the whole Penalty, and it
 shall be a good Bar against all
 men ; but what if an offending
 Justice

(93)

Justice within this Law should
 get a Friend to file an Informati-
 on against him by consent, to
 prevent and anticipate a real In-
 former, and such Prior Suit the
 Offender should plead to the
 real Informer's Action to trice
 him thereof? I answer, that such
 Plaintiff may by virtue of 4 *H. 7.*
cap. 20. aver the former Suit to
 be by Covin and Collusion, and
 such Covin he may in his repli-
 cation plead generally, and if the
 former Suit be found to be by
 Covin to evade the Act, and
 trice the present Plaintiff, the
 Defendant shall suffer two years
 Imprisonment, and such aver-
 ment the Plaintiff may make,
 though on the first Suit there
 were a Verdict for the Defen-
 dant for want of Evidence or the
 like, nay, though there were a
 recovery against him.

S E C T.

SECT. 12.

If any Person be at any time
 sued for putting any of the
 Powers of this Act in Execu-
 tion, &c. Whether it be for In-
 forming, disturbing, searching,
 imprisoning, or distraining, &c.
 By the 7th and 21 Jac. all Justi-
 ces of the Peace, Constables, and
 several other Officers have this
 privilege if sued for any thing
 done by Colour of their Office,
 they may plead the general Issue,
 and give special matter for their
 excuse or justification in Evi-
 dence; but this Act gives the
 same advantage to all manner of
 Persons doing any Act in the
 Execution of this Statute, whe-
 ther they are Officers, or no,
 and the end is to prevent their
 being prejudiced by a nicety of
 pleading, and that the truth of
 their excuse may fairly and clear-
 ly

ly appear upon Evidence, any In-
 former or other Person going in
 Assistance of any Officer for the
 executing any power given by
 this Law, hath the same privi-
 lege and benefit.

Every such Defendant shall
 have his full treble costs, &c. (i.e.)
 the Costs given by the Jury in
 case of Trial, and the Costs like-
 wise given by the Court, *de incre-*
mento are to be trebled both, such
 Costs as the Defendant would have
 in case this Law were not, he is now
 to have treble, and in case the Plain-
 tiff be non-suit, if without Evi-
 dence, or after Evidence he ought
 to have thrice so much Costs as
 he otherwise should have in such
 Case, but suppose the Plaintiff
 be non-suit for not declaring,
 shall such Defendant have treble
 Costs, because it seems *prima*
facie to be meant a non-suit on a
 Trial (it being said if non-suit,
 or a Verdict pass against him)
 I con-

(96)

' I conceive he shall, for that the
 ' intent of this Law was, that he
 ' should have treble Costs in all
 ' such Cases where another De-
 ' fendant should have single Costs;
 ' And if in such Suit a Judgment
 ' should be for the Plaintiff on a
 ' Demurrer, and such Defendant
 ' bring a Writ of Error and
 ' Judgment be reversed, I con-
 ' ceive he shall have treble Costs
 ' within this Law; for now 'tis
 ' become a Judgment for the De-
 ' fendant.

SECT.

(97)

SECT. 13.

AND be it farther Enacted
 by Authority aforesaid,
 that this Act, and all Clauses
 therein contained, shall be con-
 strued most largely and benefi-
 cially for the suppressing of
 Conventicles, and for the Justi-
 fication and Encouragement of
 all Persons to be employed in
 the execution thereof: This
 Clause shews the deep sense our
 Law-makers had of the pernicious
 effects of such unlawfull
 Meetings, which is emphatically
 expressed in the preamble of this
 Act; where the reason of this
 Clause, and of the whole Act is
 declared, (*viz.*) For providing
 farther and more speedy reme-
 dies against the growing and
 dangerous practices of Seditious
 Sectaries, and other Dis-
 loyal Persons, who under the
 H pre

(98)

pretence of tender Consciences,
 have or may at their Meetings
 contrive Insurrections (as ex-
 perience hath shewn) and that
 experience hath been much more
 abundant of late days, and there-
 fore the Act continues as necessa-
 ry as ever, it being too well
 known that the Persons so pre-
 tending to a greater tenderness of
 Conscience than the rest of the
 Christian world, are no less disaf-
 fected to the English Govern-
 ment, than they avow themselves
 to be to the Church of *England*;
 the Teachers that scare and
 fright them from Communion
 with the latter, wheedling them
 into a dislike of the former, and
 were the common People debar-
 red of such intercourses with
 those Seditious Preachers, and
 prime Sectaries which they meet
 withall at such Assemblies, we
 should quickly find them as con-
 temptible in the Eyes of the
 vul-

(99)

vulgar, as they are in the
 thoughts of sober thinking men,
 were but this way of Commu-
 nication of their Insinuations and
 Encouragements each to other
 stopt, the generality of them
 would with ease be reduced to
 their Duty both to King and
 Church, to which end no better
 and more probable means than
 the prosecution of this Law,
 which (as this Clause is) ought
 to have the largest and most be-
 neficial Construction imagina-
 ble (*i. e.*) such an equitable
 Construction, (although it be a
 Penal Law) as may best con-
 duce to the suppression of such
 Conventicles, though perhaps the
 thing be not expressly within the
 letter of the Law, yet it ought to
 be construed within the intent;
 as for instance, suppose a cer-
 tain number of men should meet
 and Assemble themselves toge-
 ther under the colour and pre-
 tence

(100)

' tence of exercising Religion, and
 ' there should be no formal Prea-
 ' ching and Teaching, but only
 ' an extempore Enthusiastical
 ' Prayer, yet the Prolocutor, or
 ' Speaker in such Assembly ought
 ' to be construed with the intent
 ' of the third Section of this Act,
 ' and incurr the Penalty of 20 l.
 ' being certainly within the in-
 ' tent, though not within the pre-
 ' cise Letter of that Clause; the
 ' like of the Quakers Meetings,
 ' though they cannot properly be
 ' within the third Section, when
 ' 'tis as they call it a silent Mee-
 ' ting, yet even such Assembly of
 ' them seems to be within the first
 ' Section, and is a Conventicle
 ' within the meaning of this Act,
 ' for 'tis a Meeting under colour
 ' of the exercise of Religion,
 ' though none be exercised, they
 ' pretending that they meet out
 ' of Conscience, and for such pur-
 ' pose, and 'tis plainly within the mis-
 ' chief,

(101)

' chief, viz. The danger of con-
 ' tributing Dutinies and Insur-
 ' rections at such Assemblies,
 ' and there's as much danger of
 ' that in such Congregations as
 ' any other; and by the design of
 ' this Clause such Construction
 ' ought to be made, as may most
 ' suppress the Mischief intended
 ' to be remedied by this Act; the
 ' like equitable Construction ought
 ' to be made for the encourage-
 ' ment and justification of the
 ' Officers of Justice, and others
 ' employed in the Execution of this
 ' Act, the meaning of which is,
 ' that by no strained interpretati-
 ' on ought such Persons to be
 ' brought to damage for any thing
 ' done by colour of this Statute;
 ' and so this Clause requires all in-
 ' couragement to be given to such
 ' Persons by the King's Courts of
 ' Record of *Westminster*, upon all
 ' occasions, and particularly by
 ' the next Clause, which is, that

H 3

No

(102)

No Record, Warrant, or
 Mittimus to be made by vir-
 tue of this Act or any Pro-
 ceedings thereupon shall be re-
 versed, avoided, or any way
 impeached for any default in
 Form, (i. e.) No Record
 of Conviction, Warrant, for
 to disperse a Conventicle, or
 to levy the Penalty by distress,
 or mittimus to Prison, shall, &c.
 This extends to all Courts, as to
 the Sessions, so to the Kings-
 Bench, or any other Court where
 such Record, &c. may be re-
 moved, or otherwise come in
 question upon any Action that
 may be brought against any Per-
 son for any thing done in pur-
 suance of this Act; although
 the Court of Kings-Bench may
 by Certiorari command such
 Records to be removed thither,
 &c. yet it is a good Act of their
 legal discretion to deny such Cer-
 tiorari's as of late years is done;
 it

(103)

it being a Writ discretionary,
 and not *ex debito Justitiæ* sent
 only to certify his Majesty in his
 said Court of the Proceedings
 against such a Man, and the
 Justices below are the proper
 Judges of the Fact, and this
 Court can doe nothing thereon,
 when 'tis removed hither, but re-
 turn it back by *Procedendo*, or
 quash the same for Errour
 (which by this Clause is not to
 be by reason of any default in
 form) for the Court of Kings-
 Bench, cannot award execution
 on such Record, that being on-
 ly to be done by Warrant from
 the Justices; besides the very Law
 gives an Appeal to the Sessions
 where the Party hath his advan-
 tage for matter of Law as well as
 Fact; but it may be questioned
 what shall be deemed a default in
 Form? I confess that may be of
 some difficulty, but however by
 the virtue of this Clause, though
 H 4 it

(104)

' it be by a Penal Law it ought to
 ' be helped by Intendments and
 ' Presumptions as much as any
 ' Plea in Bar, or any other plea-
 ' ding in a Civil Action, but to
 ' make the best Judgment in this
 ' Case, will be to compare this
 ' Clause with the Statute of De-
 ' murr's, viz. the 27 Eliz. cap. 5.
 ' where the words are, any im-
 ' perfection, defect, or want of
 ' Form, and the words here are,
 ' by reason of any default in Form,
 ' which are plainly all one; upon
 ' the former the rule is, whatsoe-
 ' ver it is without which the right
 ' doth sufficiently appear to the
 ' Court, it is form within that Law,
 ' and so *è converso*, whatsoever
 ' is wanting, or imperfect,
 ' whereby the right appears not, is
 ' not remedied as Form within
 ' that Statute; so here whatsoe-
 ' ver it is without which the Of-
 ' fence doth sufficiently appear to
 ' the Court that's Form within our
 ' Law,

(105)

' Law, so if it appear a Conven-
 ' ticle were held against this Law,
 ' and the Parties meant to be Con-
 ' victed were present at it, if there
 ' be but sufficient exprest that it
 ' may appear upon the whole Re-
 ' cord the Party Convicted is an
 ' Offender against this Law, 'twill
 ' be well enough, and there needs
 ' no more, for which see above un-
 ' der the first Section, the descrip-
 ' tion of a Conventicle, which will
 ' direct you how such a Convicti-
 ' on ought to be made, as the Pre-
 ' sident hereafter given you is; **And**
 ' in Case any Person offending
 ' against this Law shall flee into
 ' any other County or Corpora-
 ' tion, &c. ' This Clause makes
 ' provision for the punishment of
 ' such Persons Convicted on this
 ' Act as are Strangers inhabiting,
 ' or Fugitives flying into any o-
 ' ther County or Corporation, that
 ' must be meant such Corporation
 ' where the Justice Convicting
 ' hath

(106)

' hath no Jurisdiction, so as the
 ' Penalty cannot be levied by his
 ' Warrant, and therefore this Para-
 ' graph provides that there may be
 ' a Certificate made of such Con-
 ' viction under the Hand and Seal
 ' of such Justice as made it, that
 ' must be meant a Certificate that
 ' there is such Conviction made,
 ' or a transcript thereof under the
 ' Justices Hand and Seal, not the
 ' very Record of Conviction it
 ' self, for that perhaps may be re-
 ' turned into the Sessions and di-
 ' vers other Persons inhabiting
 ' where the Offence was commit-
 ' ted may be perhaps Convicted
 ' by the same Record, and then
 ' 'twould be inconvenient to tran-
 ' smit that same; it may be to
 ' any Justice of the Peace of such
 ' other County or Corporation,
 ' and if such Offender be inhabi-
 ' ting or fled into a Corporation
 ' where the County Justices have
 ' nothing to doe, there the Certifi-
 ' cate

(107)

' cate may be to any Justice of
 ' that Corporation, as well as to
 ' the chief Magistrate of the same,
 ' notwithstanding the wilfull Er-
 ' rour of some who in Corporations
 ' would have none but the chief
 ' Magistrate of that Corporation
 ' as Mayor, &c. and no other
 ' Justice of such place impowered
 ' by this Law, whereas the whole
 ' tenour of the foregoing Sections
 ' shews the contrary; such Justice
 ' is to levy the said Penalties as
 ' fully as the Justice Convicting
 ' might, &c. (i.e.) by Warrant
 ' for distress and Sale of the Of-
 ' fenders Goods and Chattels, but
 ' it may be queried what shall
 ' such Foreign Justice doe with
 ' Money so levied? I think this
 ' somewhat plain that he ought to
 ' return it to the Justice that did
 ' Convict, and he to the Quarter
 ' Sessions for the place where the
 ' Offence was committed, and the
 ' Foreign Justice must not return
 ' it

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' it to the Quarter Sessions of his
 ' own County, and my Reasons
 ' are, First, Because the Convicti-
 ' ons are not to be returned thi-
 ' ther. Secondly, A third part of
 ' such Penalties is to go to the Poor
 ' of the Parish where the Offence
 ' was committed. Thirdly, The
 ' third is to go to the Informer or
 ' Informers, or such other Person,
 ' &c. which distribution the Fo-
 ' reign Sessions cannot convenient-
 ' ly make; but then it may be
 ' queried what will become of the
 ' Parties Appeal, how shall that be
 ' made? I answer, if he has the
 ' benefit of any, as I think he has
 ' notwithstanding, it must be to
 ' the Quarter Sessions of the place
 ' where the Offence was commit-
 ' ted, for the Statute expressly re-
 ' quires it should be delivered to
 ' the Justice Convicting, he is to
 ' take Recognizance for the Pro-
 ' secution thereof with effect, and
 ' this with the Conviction he is
 ' to

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' to return into the Sessions; but
 ' then it may be again queried
 ' how such Offender shall know
 ' who is the Justice Convicting,
 ' for to him he must deliver his
 ' Appeal in writing, and that
 ' within a week after the Penalty
 ' paid or levied? I answer, that
 ' will be known by the Warrant
 ' of the Foreign Justice upon
 ' which the levy is made, for his
 ' Warrant either mentions a Con-
 ' viction by himself, or by ano-
 ' ther Justice of another County
 ' or Corporation which will inform
 ' him, but he must take this Note
 ' with him always, that his Ap-
 ' peal must be delivered in Per-
 ' son, for he himself is to enter in-
 ' to a Recognizance to Prosecute
 ' it, and this is to be done at the
 ' same time before the Justice Con-
 ' victing, the rest of this Para-
 ' graph is plain enough.

S E C T.

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S E C T. 14.

PROVIDED also that no Person shall be punished for any Offence against this Act, unless, &c. Prosecuted within three months, 'tis not necessary that the Penalties be actually levied within three months, nor that a Conviction be made of Record, but to fulfill the sense of this Clause, I think it sufficient, if Information be given to some Justice of a Conventicle already held in order to the making a Conviction of it, this being within three months, is enough, for such Information being in order to a Conviction, is a Prosecution within the meaning of this Clause, it is not said Convicted, but Prosecuted, and such Information is a commencement of the Suit, this is the *primum movens* towards a Conviction after

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the Offence committed; as in civil Actions which are limited to be brought within such a time, the beginning of a Suit is the suing an Original, or other first Writ as *Latitat*, &c. If within the time limited, is well enough, though the Suit be not effectually Prosecuted, though there be no Judgment in a long while after, so in Capital Criminal Causes, which must be Prosecuted within a certain time, by the order of any particular Law, if an Indictment be found within the certain time, if the first Act of the Suit be begun, 'tis enough, though the Party be not Convicted within twice the time, so here the same rule will govern, no Person shall, this extends to an offending Justice or Constable, as well as to the Conventicles; yet if such Justice, Constable, or other Officer neglects his Duty against the Tenour of this Act, be

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be Indicted, or otherwise sued
 within three Months after such
 neglect or refusal to doe their Du-
 ty, it is a sufficient Prosecution
 within the three months, al-
 though not Convicted within that
 time, as I said before; and that
**no Person who is punished by
 this Statute, shall be punished
 for the same Offence by any o-
 ther Law;** For the same Offence,
 notwithstanding this, a Conven-
 ticler may be punished for his ab-
 sence from Church, because such
 Meeting and his absence are se-
 veral Offences; **Shall be puni-
 shed,** this doth not hinder but
 that such Offender may be Pro-
 secuted and punished, as at the
 common Law for any thing pro-
 hibited by this Statute, which is
 an Offence at the common Law,
 I say he may be Prosecuted as
 at common Law, if he hath
 been actually punished for the
 very same Offence by virtue of
 this

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this Law, but if he hath been
 once punished by this Law, if
 sued as at common Law, or on
 another Statute he may plead his
 Conviction and punishment on
 this thereto, but this he cannot
 do till the Penalty be either le-
 vied or paid, for till then he is
 not punished; however, as I
 said, any Offender within this
 Law may be sued as at common
 Law, as a Conventicler may for
 a Riot, Rout, or unlawfull Af-
 sembly, and punished for it by
 Fine or Imprisonment, but he
 shall not be punished both ways,
 and that's the sole meaning of this
 Paragraph, *viz.* **That such Per-
 son should not be double puni-
 shed for one and the same Of-
 fence;** but yet again if any Preach-
 er, Teacher, or other Person should
 at such Meeting speak Seditious
 or Treasonable words, resist the
 Magistrate coming to disperse
 them, or give opprobrious Lan-
 guage

‘ guage to the Justice or other
‘ Officer in the Execution of this
‘ Act, he may be Indicted and
‘ punished for any such Offence,
‘ and by this Act too.

SECT. 15.

Provided also that every
Alderman of London, &c.
‘ Had this Clause not been added,
‘ it would be no great Question
‘ but that they were included in
‘ the meaning of this Act, for
‘ they are the chief Magistrates
‘ and Justices of the Place, this
‘ Proviso therefore seems added
‘ for perspicuity and preven-
‘ tion of all scruple, and for to em-
‘ power such of the Aldermen un-
‘ der the Chair, as are not Justices
‘ of the Peace ; for it will not be
‘ doubted, but the Aldermen of
‘ Exeter and Bristol, and other such
‘ like Cities and Counties as are
‘ Justices of the Peace, are bound by
‘ this

‘ this Act to prevent, disperse, and
‘ suppress such Meetings, otherwise
‘ the Act would be of least force
‘ where ’tis most needtull, viz.
‘ in those Populous Cities where
‘ the most idle People likeliest to
‘ be seduced, whereas in other
‘ Counties the common People are
‘ generally employed in hard la-
‘ bour either about Husbandry or
‘ other painfull Callings, and by
‘ consequence not so liable to se-
‘ duction.

Provided that if the Person
Offending and Convicted be a
Feme-Cobert, co-habiting, &c.
‘ In this case Co-habitation as a
‘ Wife, is a sufficient Evidence her
‘ being so, and the Justice need
‘ look no farther, for the Husband’s
‘ Goods and Chattels are liable.
‘ Co-habiting (i. e.) for the most
‘ part, or generally, for though
‘ she be in Countrey House about
‘ this Town, and her Husband in
‘ I 2 ‘ Lon-

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' *London*, yet his Goods will be
 ' liable ; if it had been otherwise,
 ' 'twould have said then Co-habi-
 ' ting, or then Personally residing,
 ' so if the Husband be upon any
 ' Occasion from home, for Co-
 ' habitation here is used only in
 ' opposition to a separate living
 ' by sentence of Spiritual Court,
 ' or by agreement of themselves,
 ' not being apart now and then, or
 ' at certain Seasons of the year, or
 ' on an occasional Journey, for in
 ' all such Cases the Husband is
 ' still supposed to have the Com-
 ' mand over his Wife, so far as to
 ' restrain her from breaking this
 ' Law, and in case she offends, 'tis
 ' to be supposed by his consent or
 ' connivance, and therefore this
 ' Law lays the Punishment upon
 ' his shoulders.

SECT.

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SECT. 16.

Provided also that no Peer
 of this Realm shall be
 Attached or Imprisoned by force
 of this Act, &c. Peer here seems
 to include all such as by Law are
 Privileged from Personal Arrests
 in Civil Actions, Attached or Im-
 prisoned, is in their Bodies, for
 their Goods may be distrained
 upon a Conviction for such a
 Meeting as well as any Common-
 ers, this is merely designed to
 privilege their Persons from all
 trouble, who are *Consanguinei*
 & *Comites Regis*, and always
 intended to be busied in *ar-*
duis negotiis regni, in the Service
 of his most Sacred Majesty.

I 3

SECT.

(118)

SECT. 17.

Provided also that this Act,
 nor any thing therein con-
 tained, shall extend to inalti-
 tude or abrid his Majesties
 Supremacy in Ecclesiastical
 Affairs, but that his Ma-
 jesty, his Heirs and Succel-
 sours may from time to time,
 and at all times hereafter exer-
 cise and enjoy all Powers and
 Authority in Ecclesiastical Af-
 fairs as fully and as amply as
 any of his Predecessors have
 or might have done the same,
 any thing in this Act notwith-
 standing. This Clause is an
 ample affirmance of the King's
 Prerogative in Ecclesiastical Af-
 fairs notwithstanding this Act,
 which I shall not presume here
 to discuss, especially considering
 that it will no way be instructive
 for the better Execution of the
 Powers

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Powers and Provisions of this
 Act, which was the only end of
 our great Judge in making these
 Observations, and is the end of
 their present publication, and
 therefore I shall here conclude
 with this one Remark, viz. That
 the time of making this Act is mi-
 staken in the Print, which may be
 of use to observe in case any Action
 be brought against any Justice of
 the Peace or other Person for the
 100 l. Penalty for the neglect of
 his Duty, 'tis there said to be at
 a Parliament continued by Pro-
 rogation to the 14th of Febr.
 1670 from whence it is continued
 by Adjournment made the 11th
 of April, 1670. to the 24th day
 of October following, which
 makes a kind of discontinuance,
 for it says the Adjournment made
 the 11th of April, from the 14th
 of Feb. before, 'tis safest there-
 fore to omit the Adjournments
 and take no notice of them, but
 I 4 only

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only at a Parliament begun at
Westminster the 8th of *May*, *An.*
Dom. 1661. in the 13th year of,
 &c. and there continued by several
 Prorogations to the 14th of
Febr. 16⁶² and no more.

Midd.

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Midd' **M**emorandum, *Quod de-*
cimo die *Novembris*,
 anno *Regni Domini nostri Serenif-*
simi Caroli Secundi Dei gratia An-
glia, Scotia, Francia & Hibernia,
Regis fidei defensoris, &c. tricesimo
quinto venit J.S. de *in Com'*
 Midd' *Yeoman, coram nobis*

ad tunc & ad-
huc duobus Justiciar' dicti Domini
Regis ad pacem suam pro com' praed'
conservand' assignat' apud S. in com'
praed' Et dedit nobis intelligi &
informari de quodam Conventiculo
& illicit' assemblation' sub colore ex-
colendi Religionem in alio modo
quam secund' liturgiam & usum Ec-
clesiae Anglicanae ante tunc tempus
 tent'

(122)

‘tent’ contraformam Statut’ Et super
‘inde Examinatione debitâ adtunc
‘Et ibid’ habitâ tam per Sacrament’
‘præd’ J.S. Et A.B. de, Et C. C.D.
‘de, Et. coram nobis in eâ parte le-
‘gitimo modo præstit’ quam per noto-
‘riam Evidentiam facti nobis Justi-
‘ciariis præd’ manifeste Et plene ap-
‘paret quod M. N. de, Et. L. M.
‘de, Et. cum multis aliis, in toto
‘se attingent’ ad numerum vigint’
‘personarum præter familiam præd’
‘M. N. Et quilibet eorum die domi-
‘nicâ, viz. Primo die hujus instantis
‘Novembris, ultra ætatem sexdecim
‘annor’ Et subdit’ dict’ Domini Re-
‘gis nunc existentes prædicto primo
‘die hujus Novembris in simul af-
‘semblaverunt Et præsentés fuerunt,
‘Et quilibet eorum præsens fuit in
‘domo mansionali ipsius M.N. in Pa-
‘rochia de in Com’ præd’ ad
‘Conventiculum sub pretextu Exer-
‘citationis Religionis in alio modo
‘quam allocatur per Liturgiam aut
‘usum

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‘usum Ecclesiæ Anglicanæ, adtunc
‘Et ibid’ tent’ contra formam Sta-
‘tut’ ad præveniendâ Et suppri-
‘menda seditiosa Conventicula nu-
‘per edit’ Et provis. Ac etiam
‘quod præd’ M. N. tempore Et loco
‘ultime supradictis scienter Et vo-
‘luntarie permisit Conventiculum
‘præd’ fore tenend’ in domo mansio-
‘nali sua præd’ etiam contra for-
‘mam Statut’ præd’, quodque præd’
‘O. P. tempore Et loco ultime su-
‘pradict’ assumpsit super se docere in
‘Conventiculo præd’ Et in eodém ad-
‘tunc Et ibid. docuit contra formam
‘Statut’ præd. Record’ quarum qui-
‘dem separal’ offensar’ nos

‘Justiciarii præd’ quibus (secund’
‘formam Et effect’ Stat’ præd’) se-
‘parales offens’ præd’ sic ut prefer-
‘tur fore commiss. sufficienter appa-
‘ret per præsentés sub manibus Et
‘sigillis nostris hocce instanti deci-
‘mo die Novembris anno tricesimo
‘quinto

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'quinto supradict' apud S. præd' in
 'Com' præd' fecimus, prædictique
 'M. N. L. M. O. P. &c. de sepa-
 'ralibus offensis suis præd' superius
 'mentionat' virtute Statut' præd'
 'sunt convicti & quilibet eorum in-
 'de separaliter convictus est. Et
 'nos præfati Justiciarii superinde
 'virtute Statut' præd' die anno &
 'loco ultime supradictis in & super
 'præd' L. M. &c. Sic ut præfertur
 'ad Conventiculum præd' præsent'
 'existent' proseparalibus offensis su-
 'is finem separaliter
 'imposuimus, prædictisque O. P. pro
 'offens. sua præd' in docendo ad
 'Conventiculum præd' forisfecit sum-
 'mam vigint' librar' vigore Statut'
 'præd' prædictique M. N. pro of-
 'fens. ejus præd' in permissione Con-
 'venticuli præd' fore tenend' in do-
 'mo sua mansionali præd' forisfecit
 'summam vigint' librar' vigore ejus-
 'dem Statut'. In quorum omnium
 'præmissorum testimonium Nos præ-
 'fat'

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'fat' Justiciarii die anno & loco
 'primo superius mentionat' manus &
 'sigillum nostrum præsentibus appo-
 'suimus.

ERRATA.

P. Ag. 48. Lin. 24. r. imposed. P. 54. l. 15. r.
 in respect of poverty. P. 86. l. 24. for get, r.
 take. p. 87. l. 7. r. himself and readily to re-
 ceive notice and information.

FINIS.

0416

