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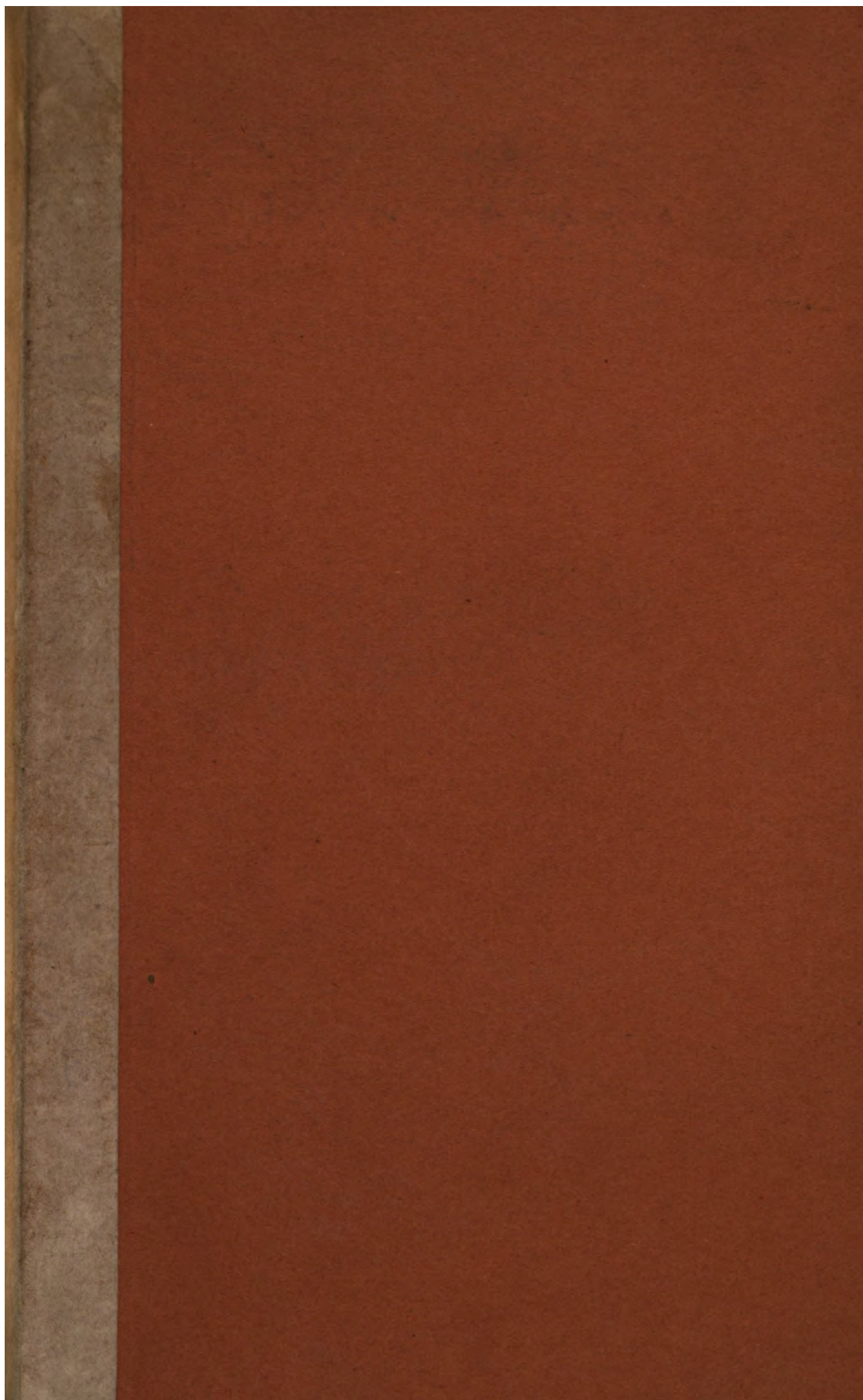
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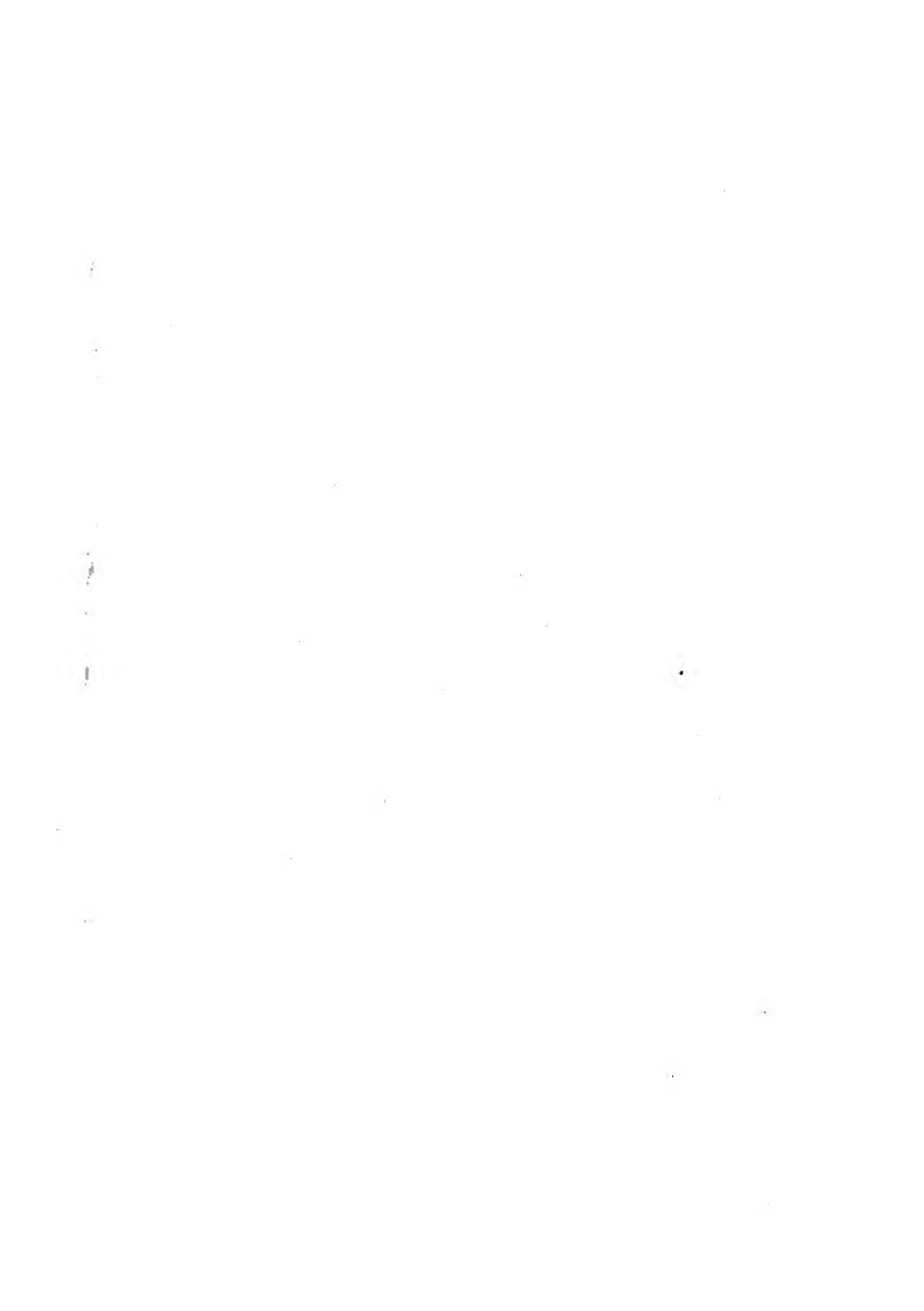


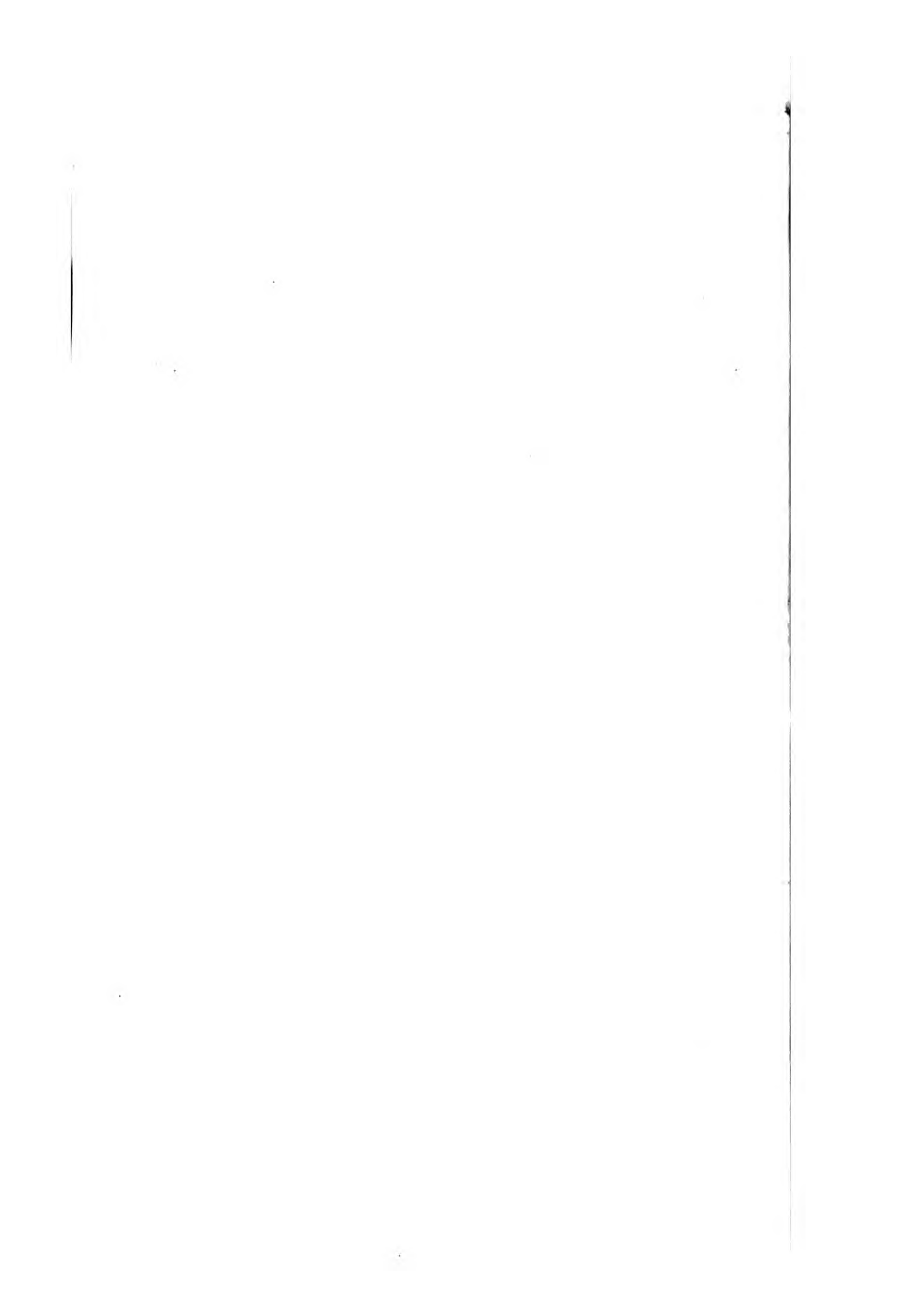
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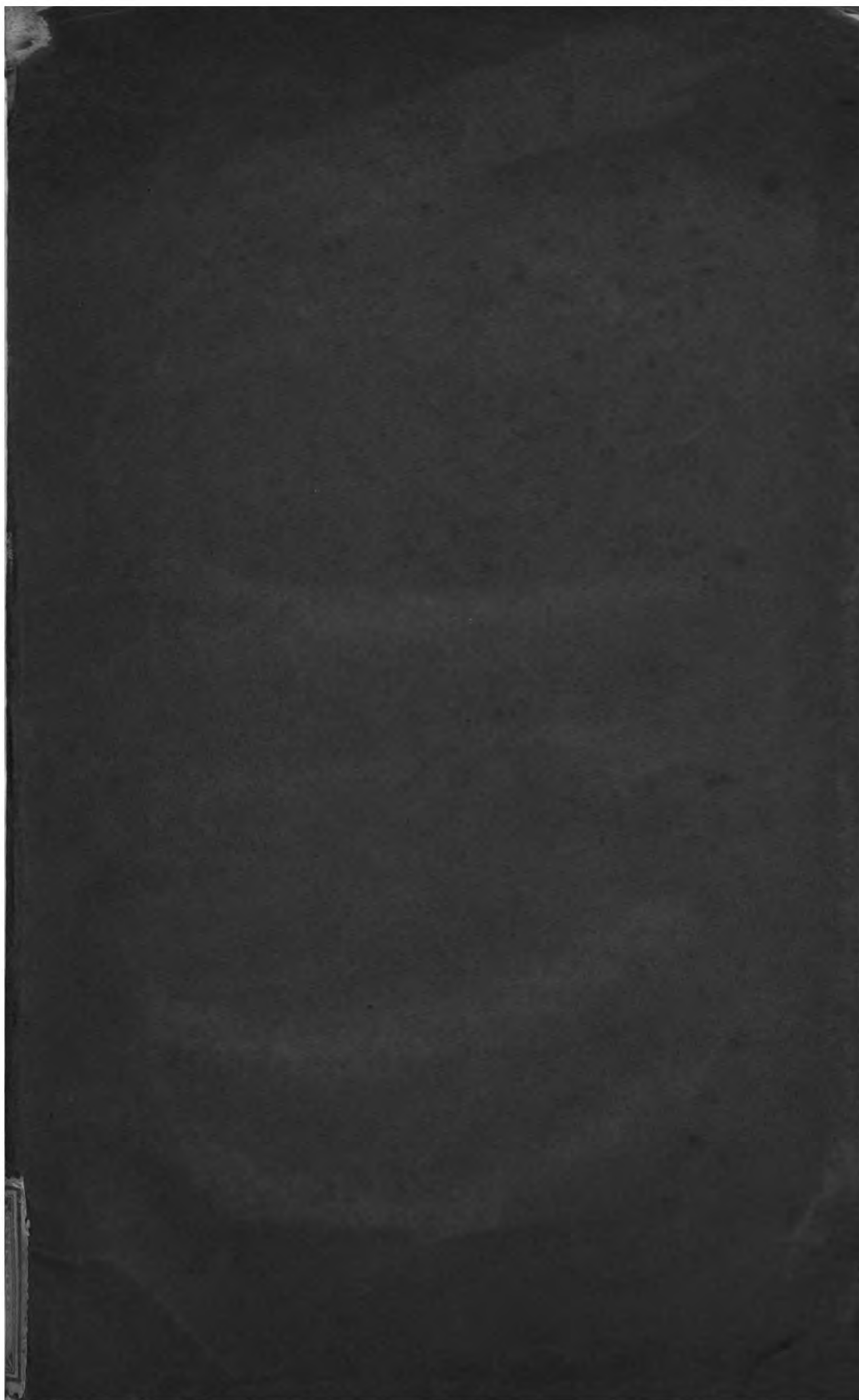


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REPORT
OF THE
PROCEEDINGS

AT THE
General Quarter Sessions of the Peace

FOR THE
COUNTY OF BERKS,
HELD AT READING, JANUARY 16, 1811,

ON THE APPEAL OF
WILLIAM KENT,

AGAINST A CONVICTION OF
WILLIAM HENRY PRICE, ESQ.

In the Penalty of 20l.

FOR TEACHING AND PRAYING IN A MEETING, OR CONVENTICLE,
HELD IN AN UNINHABITED HOUSE, IN OTHER MANNER THAN
ACCORDING TO THE LITURGY OF THE CHURCH OF ENGLAND,
WHERE FIVE PERSONS OR MORE WERE PRESENT.

TAKEN IN SHORT HAND
BY MR. W. B. GURNEY.

READING:

PRINTED BY M. COWSLADE AND CO.

AND SOLD BY ALL BOOKSELLERS IN LONDON AND THE COUNTRY.

1811.



PREFACE.

IN the Month of September, 1810, a few Persons of the late Rev. Mr. Wesley's Society (commonly called Methodists,) living in the Parish of Childrey, in the County of Berks, procured a House to be licensed, agreeably to the provisions of the Toleration Act,—for the exercise of their Religion;—as appears from the following copy of the Certificate and Register:—

“ We whose names are hereunder written,
“ being householders of the Parish of Childrey,
“ do hereby certify to the Right Rev. the Lord
“ Bishop of Salisbury, to his Vicar General in
“ Spiritual, or any other person whom it doth
“ or may concern; That a certain Building now
“ in the possession of William Kent, of the
“ Parish of Childrey aforesaid and Diocese of
“ Sarum, is by and with his consent set apart
“ for the religious worship of Almighty God,
“ by Protestant Dissenters nominated Metho-
“ dists, pursuant to an Act of Parliament in
“ that case made and provided.

“ WILLIAM KENT, “ WILLIAM FRANKLIN,
“ STEPHEN PETTIFER, “ WILLIAM HEARNS.”

“ These are to certify whom it may concern,
“ that the above written Certificate hath been

“ duly entered in the Registry of the Lord
 “ Bishop of Sarum, according to the directions
 “ of the Act of Parliament in that behalf made.

“ Witness our hands the 17th day of Septem-
 “ ber, in the Year of our Lord 1810.”

“ EDWARD DAVIES, } Deputy Regis.
 “ JOSEPH WARDEN, }

In this House, thus certified, Mr. Wesley's preachers attended, and preached every Sunday, once in the Day; and in the Morning and Evening, the majority of the Congregation held a Prayer Meeting.

On Sunday the 14th Day of October, 1810, the Rev. James Beaver, who is Rector of the Parish of Childrey, sent John Bush, the Constable of the Parish, to the Prayer Meeting, to demand of William Kent the Licence of the House. Mr. Kent informed the Constable, that if the Rev. Mr. Beaver would call on him the next day, that it should be produced to him. Mr. Beaver called accordingly, and examined it.

On the following Sunday, the 21st of October, William Kent, William Franklin, and others, assembled at the above House, for the exercise of singing Hymns and Social Prayer. This act of Devotion commenced by the singing of a Hymn, the persons assembled then kneeled and engaged in extempore Prayer, and which concluded with the Lord's Prayer.

After the usual Benediction, and the singing of a Hymn, they separated.

At this Meeting, Margaret Partridge, a servant of the Rev. Mr. Beaver, Lawrence Belcher, and John Bush, *the Constable*, and others of their party attended, but did not join in Prayer by kneeling down with the rest. In the ensuing week, the Rev. Mr. Beaver laid an information before Wm. H. Price, esq. one of the Justices of the Peace for the County of Berks, under the Conventicle Act, the 21st Charles II. c. 1. against William Kent and William Franklin, who were both convicted of teaching and praying, and fined in the penalty of 20*l.* each. Mr. Kent having refused to pay the money, a distress warrant was issued on the 18th day of December in the same year, of which the following is a Copy:—

“ BERKS.

“ *To the Constable of Childrey, in the*
“ *said County.*

“ Whereas William Kent, of Childrey, in the
“ said County, Baker, is duly convicted before
“ me, Wm. Henry Price, Esq. one of his Majesty’s
“ Justices of the Peace in and for the said
“ County, upon the Oaths of Lawrence Belcher,
“ yeoman, and Margaret Partridge, spinster,
“ both of Childrey aforesaid, for that he the
“ said William Kent on Sunday the 21st day
“ of October, in the 50th year of the reign of
“ his Majesty King George the Third, did TEACH

“ and PRAY in a Meeting or Conventicle; held
“ in a certain uninhabited house belonging to
“ him the said William Kent, situate in the
“ Parish of Childrey aforesaid, were five per-
“ sons and more were assembled together *for*
“ *the exercise of religious worship*, in other man-
“ ner than according to the Liturgy and prac-
“ tice of the Church of England, contrary to the
“ form of the Statute in that case made and
“ provided, by reason whereof the said William
“ Kent hath forfeited the Sum of 20*l.* to be
“ distributed as the Statute doth direct, which
“ he hath refused to pay. These are therefore
“ in his Majesty’s name to command you to
“ levy the same Sum by Distress of the Goods
“ and Chattels of him the said William Kent,
“ and if within the space of *four days* next after
“ such Distress by you taken, the said Sum to-
“ gether with the reasonable charges of taking
“ and keeping the same shall not be paid, that
“ then you do sell the said Goods and Chattels
“ so by you distrained, and out of the money
“ arising by such sale that you do deliver to
“ me the said Justice the said Sum of 20*l.* to be
“ distributed by me as the Statute doth direct,
“ returning the overplus upon demand to him
“ the said William Kent, the reasonable charges
“ of taking, keeping, and selling the said Dis-
“ tress being first deducted. And if sufficient
“ Distress cannot be found of the Goods and
“ Chattels of the said William Kent whereon

“ to levy the said Sum of 20*l.* that then you
 “ certify the same to me, together with this
 “ Warrant. Given under my Hand and Seal
 “ the 18th Day of December, 1810.

“ WM. HENRY PRICE, (L. S.)”

By virtue of this Warrant, JOHN BUSH, *the Constable*, distrained a Horse belonging to Wm. Kent, which was sold by Auction on Monday the 24th of December, and at the sale Wm. Kent bought his Horse for 25*l.* which money he paid to the Constable, and the Constable after deducting the penalty and charges of taking, keeping, and selling the Distress, returned to William Kent the overplus.

On the 27th of December, Messrs. Barfield and Hedges, the Solicitors for the Defendant, Wm. Kent, entered an Appeal with the Clerk of the Peace, and gave notice thereof to the Magistrate; when the Defendant, agreeably to the Act of Parliament, became bound himself in 40*l.* and a Surety in 20*l.* for his appearance at the Sessions to Prosecute the Appeal.

On Tuesday the 15th day of January the above Appeal came on to be heard before the Right Honourable the Earl of Radnor and a numerous Bench of Justices;—and a faithful Report of the Proceedings will be found in the following pages.

—The impartial Reader is left to decide, for himself, on the motives that produced both the Information and the Appeal.

COPY

OF RECORD OF CONVICTION.

“ Berkshire to wit.

“ Be it Remembered, That on the twenty-third day of October, in the fiftieth year of the reign of our Sovereign Lord George the Third by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and in the Year of our Lord one thousand eight hundred and ten, at Wantage, in the County of Berks, James Beaver, of Childrey, in the same County, Clerk, came before me William Henry Price, esquire, one of the Justices of our said Lord the King, assigned to keep the Peace in the said County of Berks, and also to hear and determine divers felonies, trespasses and misdemeanors done and committed in the said County of Berks, and gave me the said Justice to understand, and be informed, that one William Kent, Baker, did, on Sunday the twenty-first day of October, in the Year of our Lord one thousand eight hundred and ten, *Preach or Teach* in a certain Meeting or Conventicle, held in a certain uninhabited House belonging to the said William Kent, situate in the parish of Childrey aforesaid, in other manner than according to the Liturgy and practice of the Church of England, con-

“ trary to the form of the Statute in such case
“ made and provided. Whereby and by force
“ of the Statute in such case made and provided,
“ the said William Kent forfeited for his said
“ offence, being the first offence, the sum of
“ Twenty Pounds. And now, (that is to say,)
“ on the twenty-seventh day of October, in the
“ fifty-first year of the reign of our said Lord
“ the King, to wit, at Wantage aforesaid, in
“ the County aforesaid, came the said William
“ Kent before me the said Justice in pursuance
“ of my summons issued in this behalf, and
“ having heard the said Information, is asked
“ by me the said Justice, if he can say any thing
“ for himself why he should not be convicted of
“ the premises above charged upon him in form
“ aforesaid. And thereupon the said William
“ Kent says he is not guilty of the *said* offence,
“ whereupon I the said Justice do proceed to
“ the examination of the matter and matters of
“ fact contained in the said information in the
“ presence and hearing as well of the said James
“ Beaver as of the said William Kent. And
“ thereupon on the same day and year last
“ mentioned at Wantage aforesaid, Laurence
“ Belcher and Margaret Partridge, both of the
“ parish of Childrey aforesaid, two credible Wit-
“ nesses, upon their respective corporal oaths,
“ taken before me the said Justice, (I the said
“ Justice having sufficient power and authority
“ to administer on oath in this behalf) depose,

“ and say in the presence and hearing of the said
 “ William Kent, that on Sunday the twenty-
 “ first day of October, in the year of our Lord
 “ one thousand eight hundred and ten, they the
 “ said Laurence Belcher and Margaret Partridge
 “ heard the said William Kent *Teach and Pray*
 “ *in a certain Meeting or Conventicle held in a*
 “ *certain uninhabited House belonging to the said*
 “ *William Kent, situate in the parish of Childrey*
 “ *aforesaid, in other manner than according to the*
 “ *Liturgy and practice of the Church of England,*
 “ *where above five persons were present.* And
 “ whereupon the said William Kent is now by
 “ me asked what he has to say for himself why
 “ he should not be convicted of and for the *said*
 “ offence. But the said William Kent doth not
 “ shew or produce to or before me any evidence
 “ that he is not Guilty of the offence *aforesaid,*
 “ nor doth he shew or allege any reason why he
 “ should not be thereof convicted. Therefore
 “ the said William Kent on the twenty-seventh
 “ day of October in the fifty-first year aforesaid,
 “ at Wantage aforesaid, in the County afore-
 “ said, before me the Justice aforesaid, accord-
 “ ing to the form of the Statute aforesaid is
 “ convicted of the offence *aforesaid.* And I do
 “ adjudge that for such offence the said William
 “ Kent hath forfeited the sum of Twenty Pounds,
 “ to be disposed of as the Statute aforesaid doth
 “ direct. In witness whereof, I the said Justice
 “ aforesaid to this present Record of Conviction

“ have set my Hand and Seal at Wantage afore-
 “ said, in the County aforesaid, the twenty-
 “ seventh day of October, in the year of our
 “ Lord one thousand eight hundred and ten.

WM. HY. PRICE, [L. S.]

Counsel for the Appellant,
 MR. GLEED. | MR. COOPER.

Solicitors,
 Messrs. BARFIELD & HEDGES,
 Thatcham, Berks.

Counsel for Respondent,
 MR. WAKEFIELD.

Solicitor,
 MR. BECKET,
 Wantage, Berks.

PROCEEDINGS

AT THE

QUARTER SESSIONS.

MR. WAKEFIELD,

MY Lord,—This Appeal comes before the Court on a question of fact for the Jury, they therefore must be sworn. It is on the 22d of Charles II. chap. 1. sec. 6. which directs “ That in all cases where the penalty or sum charged upon any offender exceeds the sum of 10*l.* and such offender shall find himself aggrieved, it shall and may be lawful for him, within one week after the said penalty, or money charged, shall be paid, to appeal in writing from the person or persons convicting to the judgment of the Justices of

the Peace, in their next Quarter Sessions,—to whom the Justice or Justices of the Peace, Chief Magistrate, or Alderman, that first convicted such Offender, shall return the money levied upon the Appellant, and *shall certify* under his and their hands and seals, *the evidence* upon which the Conviction passed, with the whole Record thereof, and the said Appeal; whereupon, such offender may plead, and make defence and have his trial by Jury thereupon.”

Earl of Radnor.—Have you ever known this Statute acted on.

Mr. Glead.—My Lord, my object in being here is not to throw any impediment or difficulty in the way of the proceedings, but to afford to it every facility,—and, therefore, I shall not entangle my Learned Friend in any point of form. Before I came down, I made every enquiry in the Court in which I am in the habit of practising, and which is the first Court of Criminal Judicature in the Kingdom, whether it ever came within their cognizance, to entertain an appeal from a Conviction on this Statute, for the offence as stated in this Record, but I could not find any Record of this kind. It appears to me the mode of proceeding is this :—The Conviction is returned by the Magistrate to this Court; from that Conviction the party has appealed, according to the directions pointed out by the Act. The question therefore must be re-heard, and the judgment formed by the Magistrate out of Sessions cor-

rected or confirmed. But as this is an Appeal not in an ordinary course of proceeding from judgment pronounced by a Justice out of Sessions to the Magistrates in Sessions, but to a Jury, who are on their oaths to say, whether the conclusion drawn from the evidence is warranted or not ; a Jury must be impannelled to try the issue, and if the party is found guilty, your Lordship and the Court must affirm the judgment.

Earl of Radnor.—In point of fact, you have no case on the subject.

Mr. Gleed.—No my Lord, I have not, certainly,—it is novel in itself.

Mr. Wakefield.—At the same time, this Act is perfectly an existing Act.

Mr. Gleed.—No doubt of it,—it is certainly an existing Act.

Earl of Radnor.—We directed all the Jury to attend, that you might have the Jury who tried yesterday, or have them drawn afresh.

Mr. Wakefield.—We think they had better be drawn afresh.

Thomas Nelson was called and appeared.

Mr. Wakefield.—I challenge Thomas Nelson.

Mr. Gleed.—Whether I have a right or not to object to this challenge, I shall say nothing on this subject, for what I wish is, to have the matter fairly and openly discussed ; if there is even an intimation of an objection to any man I wish not to oppose his being challenged.

Earl of Radnor.—It is not an indefinite challenge, I take it.

Mr. Wakefield.—I take it to be so. I take it to be sufficient to state, that I think more justice might be done if he was not on the Jury.

Earl of Radnor.—My question is. By what rule is the challenge? I do not wish to know your reasons; you do not mean that you have a right to challenge an indefinite number.

Mr. Wakefield.—No my Lord.

Earl of Radnor.—That was all I wished to know—go on.

Thomas Gibbons was called and appeared.

Mr. Cooper.—We object to that Gentleman.

Mr. Gleed.—As my Learned Friend has set me the example, I will follow it in this instance.

The following Jurymen were called and appeared.

Thomas Poulter

Joseph Darwell

Joseph Dean

William Hibbert

Thomas Cheyney

Thomas Sadler

Thomas Charwood

James Webb.

Mr. Gleed.—We will not trouble Mr. Webb.

Samuel Goswell

Richard Beckley

Thomas Nash

Robert Ford

John King.

Mr. Budd (Clerk of the Peace.) Thomas Poulter may withdraw, he is not wanted.

William Crockford.

Mr. Gleed.—It will be necessary that William Kent should appear in Court.

William Kent appeared in Court.

Mr. Budd.—William Kent,—here is a Conviction under the hand of William Henry Price, esquire, one of his Majesty's Justices of the Peace for this County, whereby you are charged with *Preaching* or *Teaching*, in a certain Meeting or Conventicle, held in a certain uninhabited House belonging to you, situate in the parish of Childrey in this County, whereof you are convicted;—Are you guilty, or not guilty.

William Kent.—Not guilty.

THE JURY SWORN.

<i>Thomas Charkwood</i>	<i>Robert Ford</i>
<i>Thomas Cheney</i>	<i>Joseph Dean</i>
<i>William Hibbert</i>	<i>Thomas Sadler</i>
<i>Samuel Goswell</i>	<i>John King</i>
<i>Richard Beckley</i>	<i>Joseph Darwell</i>
<i>Thomas Nash</i>	<i>William Crockford.</i>

Mr. Wakefield.—May it please your Lordship?

GENTLEMEN OF THE JURY,

The Question which you have to try on this occasion is the truth of the facts upon which the Conviction has taken place. You will have to try, whether on Sunday the 21st day of October last the Appellant, William Kent, did *teach* and *pray* in a certain Meeting or Conventicle held in a certain uninhabited house belonging to the said William Kent, situate in the Parish of Childrey, in other manner than according to the Liturgy and practice of the Church of England, where above five persons were pre-

sent—that is the Question which you will have to try.—You, therefore, will have to try whether he *taught* or *preached* in a way contrary to the Statute, in an uninhabited House where more than five persons were present.

Gentlemen, before I enter further into the facts of this Case, it will be right that I should state to you the law upon this subject, which however I shall do, with submission to the judgment of the Bench, because though you will have the fact to determine, they to that fact will have to apply the Law. There was a time when it was thought not very creditable to dissent from the established Church of the Country, though great numbers afterwards thought fit to separate themselves from that established Church, but the Legislature was not equally pleased with this separation as were the separatists themselves, and an Act of Parliament was passed to prevent and suppress seditious Conventicles.—A Conventicle is every Religious Meeting or Congregation not of the established Church, and this Act of Parliament so passed for the purpose of suppressing Conventicles, 22 Car. II. cap. 1. sec. 3, enacts,
 “ That every person who shall take upon him
 “ to *preach* or *teach* in any such Meeting,
 “ Assembly, or Conventicle, and shall thereof
 “ be convicted as aforesaid, shall forfeit for
 “ every such offence the Sum of 20*l.* to be
 “ levied in manner aforesaid upon his Goods

“ and Chattels.”—You see, therefore, Gentlemen, I must prove that William Kent either taught or preached—“ Preach, or Teach,”—are the words of the Statute — “ And that he preached or taught in a Conventicle.”—The description of a Conventicle is this, 22 Car. II. cap. 1. sec. 1. — “ Where there shall be any
“ Assembly, Conventicle, or Meeting, under
“ colour or pretence of any exercise of Religion,
“ in other manner than according to the Liturgy and practice of the Church of England,
“ in any place within 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 together.” There are some further descriptions applying to Meetings held in an inhabited house, which I need not go into, because in this case the Meeting was in an uninhabited house, and therefore if more than five persons were present for the purpose of exercising any religious duties, and any one preached or taught in any such Assembly, he subjected himself to the penalty of 20*l.* consequently if I prove there were in this house assembled more than five persons, and that they were exercising there some religious duties not according to the Liturgy of the Church of England, and then if I prove that in such an Assembly the Appellant *taught* or *preached*, you will find a verdict of Guilty; if I fail

in that proof, you will of course find the contrary.

Gentlemen, some years after the Conventicle Act passed, it was found that a great number of very good and excellent persons differed from the Established Church, and it was deemed equally just and necessary that some relief should be extended to them. In consequence the Legislature, by the 1st William and Mary, cap. 18, enacted, in the 4th section, “ That all and every
 “ person and persons that shall as aforesaid take
 “ the said oaths, and make and subscribe the
 “ declaration aforesaid, shall not be liable to
 “ any pains, penalties, or forfeitures mentioned
 “ in an Act made in the five and thirtieth year
 “ of the reign of the late Queen Elizabeth, nor
 “ in an Act made in the two and twentieth
 “ year of the reign of King Charles the Second,
 “ intituled, “ An Act to prevent and suppress
 “ Seditious Conventicles ;” which last is the Act I have just been reading. The Act goes on to say, such persons are to take the oaths and subscribe the declaration just mentioned, before the Clerk of the Peace, who is to give them a Certificate of their having so done, on the payment of a small sum.

Now if I prove what I am instructed to say, I shall prove it will be necessary for the Appellant either to disprove it, or to shew that he comes within the exceptions of the Toleration

Act, as this last Act is called. If he has not qualified himself by taking those oaths and subscribing that declaration, which oaths and declaration are also directed to be taken and subscribed by another Act of Parliament, the 19th of the present King; and if he does not shew he has so done, and produce a certificate of his having so done according to the forms prescribed in the Act, you will still have to find him Guilty. For it will not be necessary for me to prove that he has not taken those oaths, and made this declaration. In the case of the King *v.* Hall, a Conviction on this very Statute, which Conviction was on the second of March, in the 26th of the present King (the year 1786) the Court held, that if a subsequent Statute made any exception to a former one, it is incumbent upon the Defendant to shew, by way of defence, that he comes within such exception. This case is reported in 1 Term Reports, 320. Here then by the Statute of Charles, the penalty is inflicted; by the Statute of William, and of George III. the exception is created: it will therefore be incumbent upon the Defendant, if he means to rely upon it, to shew that he comes within the exception.

But, Gentlemen, I understand that a defence of a different nature is likely to be set up, and as after that defence is set up and attempted to be made out, I may not have an opportunity of again addressing you, I will in some measure

anticipate the ingenuity of my learned friend to whom the Appellant has entrusted his cause. If, therefore, I prove that the Appellant was a Minister to this Congregation, that he ministered to them in religious worship, do I not bring him within the Statute?

But, Gentlemen, independently of the argument I raise on the construction or meaning which the Statute itself has given to the words Preach and Teach, I will address another argument to you, which is this:—Is it possible in any way to offer up a Public Prayer, and thus lead the Devotions of a Congregation, without at the same time Preaching or Teaching?—Is it possible that you can pray for the Almighty to grant to the Congregation, or any Individual, any one Blessing, without at the same time Teaching to that Congregation that the Almighty can confer the Blessing you are thus praying him to grant?—If I pray to the Almighty in that comprehensive form of Prayer so universally and repeatedly used—the Prayer of our Saviour—and stripping it of any assertion that the Prayer contains (I will draw your attention to certain parts of the Prayer afterwards) but if I strip it of all the assertions contained in that Prayer, and simply pray to God to give to the Congregation their daily bread, is it not teaching such a Congregation in the most solemn manner in which they can be taught, that God has the power of granting

that daily bread? But I go further—Is there a Prayer which does not affirm some attribute of the Deity? “Our Father which art in Heaven.” Is not that an assertion, that God the Father of all the world is in Heaven?—“Thy Will be done on Earth as it is in Heaven.” Is not that both an assertion and a teaching; first, that in Heaven his Will is done; and secondly, that on Earth it ought to be done. Can you find then any Prayer, or any form of supplication, which it is possible for you to use, without inculcating some doctrine, affirming some fact, and in some way or other Preaching to, and Teaching the Congregation.

But Gentlemen, I shall prove to you that even if this defence is set up, the facts of the case will scarcely bear it out. I shall prove to you that though William Kent, (the Appellant,) was on his knees; yet, that the Congregation were kneeling with him; that he was thus their Minister, ministering to them a Form of Prayer and Supplication to the Deity, teaching them the form in which they should join, for it was an extemporaneous prayer, if it was a prayer at all, which he uttered. If I in the name of myself and you, were to offer up a prayer to another, is not that prayer yours as well as mine? and am I not then a Teacher to you of the form in which you should pray, therefore still it comes back to the old proposition, that the words “to teach and to preach” do include prayer. c 2

But Gentlemen, if I am rightly instructed that which this individual was uttering was not prayer. On his knees he might be or he might not be, but I believe no person yet ever witnessed an extemporaneous prayer of much duration, who did not find in it much more of a sermon than of a prayer; and I know that in the class of religionists to which the Appellant belongs, long prayers are very common, and I have heard them very much like sermons. Now Gentlemen, I understand the words the Appellant used were about as different from prayer as any can well be. I recollect an anecdote of a very celebrated Preacher who was praying to the Almighty against some persons with whom he had quarrelled, and one of whom was a rival Preacher, after some time he said “*And take them, oh! take them*” — he did not like to say to the Devil, and after a short hesitation added, “*To Thyself oh Lord.*” Now if the anecdote be correct, this was a strange species of prayer, and *implied a very different disposition* from what prayer *ought to work* on the mind. The words which I am instructed will be proved are, “Those who came out of curiosity’s sake, I call for the Lord God to strike them.” Very gentle language Gentlemen.—I do not think it unlikely it may go forth into the world that we are persecutors, for preventing the Appellant’s offering up his praises to the Almighty—that we persecute him, and yet he calls upon the Lord to strike those who

came for curiosity's sake; adding that "He, William Kent came there in the name of the Lord Jesus, and did not care for Man or Devil." Now though they should prove that those words were uttered in a supplicatory tone, and although he might be upon his knees, I think you will join me in saying it is language very unlike the language of prayer.

Gentlemen, it is not necessary I should prove these identical words. It is sufficient if I prove words *any thing like them*; or if I prove that he was at that *very time citing a passage of Scripture*, which I am told it is very likely I may be able to prove, for *that likewise will not be prayer**;—or, if I shall prove that he merely made use of the words in this supplicatory address, "that he came there in the name of the Lord Jesus, and did not care for Man or Devil." In either way it will not be a prayer. Now if I can prove by evidence, which I shall try to do, that the Appellant was addressing the audience and not supplicating the Almighty, I shall save my learned friend all his argument, that praying is not teaching. If on the contrary, my witnesses do not come up to that, but state that in point of fact, the Appellant was offering up a prayer, my argument will come round to this, that praying is teaching; and in regard to that argument, you will receive a direction from the Bench. You are the judges of

* Note, see 4th Chap. Acts, 25th and 26th verses, where the Disciples expressly cite a passage from the 2nd Psalm in their prayer.

the truth of what is sworn, but the Bench will tell you what the Law is as applying to facts in evidence, they are the judges of the Law, and are to give to this statute its construction; and they will tell you whether praying be teaching or not, according to the sound construction of this Act of Parliament. You will from them receive a direction on this subject, which will be given I have no doubt, with their accustomed wisdom; and if you give credit to what the witnesses shall have sworn, and the Court shall direct you to construe that, to pray, is to teach or to preach, you will find William Kent Guilty.— If they give a contrary direction you will of course find a contrary verdict.

Gentlemen, I have attempted to avoid any thing like personality. I do not wish to introduce any thing of the kind into this cause. On religious subjects the passions of men are sufficiently warm, and irritation is always to be avoided as much as possible. I say nothing therefore as to the respectability of character on the one side or the other. It was deemed by the Reverend Gentleman, who brought the Appellant before the Magistrate for conviction, to be his duty so to do. *It was an official duty imposed upon him as the Clergyman of the Parish,* and as a further vindication of my client, give me leave to draw your attention to the words of the Act of Charles II. sec. 11, *which imposes a penalty of 100l. upon every*

Magistrate who shall wittingly omit to convict for these offences; it also imposes a penalty on persons who knowing of them do not give information to the Magistrate. It therefore was the duty of the Rev. Gentleman who brought William Kent before the worthy Magistrate by whom he was convicted, to do what he has done; he would have failed in his duty if he had not so done, and would have subjected himself to penalties by the omission, and I should say further, so anxious was the Legislature, that this Act should be carried into effect, so zealous were they in those days in behalf of the church of their forefathers, that there is an express clause in the Act to say, that all errors in the form of the conviction, or in the pleadings or proceedings pursuant to that Act, shall not be available to the party convicted, and the statute goes on to say, that the Act shall be largely expounded, in order that those beneficial effects which were expected from it might be obtained. Couple then all these circumstances together—recollect that the Act is to be largely expounded—that errors in form are not to be regarded—that the words *preaching* or *teaching* are capable of the construction I contend for, and the introduction of the word “*Minister*” in the statute of William and Mary, and then its effect in explaining the meaning of the words *teacher* and *preacher*, should it be proved to you that here was a Congregation exercising

religious duties contrary to the Liturgy of the established Church. — That the Congregation was joining in what was going forward—that more than five persons were present, and that this appellant was ministering to or teaching them, I think you will find him *guilty*, unless he shall be able to shew he comes within some of the exceptions of the Act of William, or the Act of the present King.

EVIDENCE FOR THE RESPONDENT.

Lawrence Belcher sworn.

Examined by Mr. Wakefield.

Q. Do you know William Kent?

A. Yes.

Q. Do you know any house of his in Childrey?

A. Yes.

Q. Were you ever in his house?

A. Yes.

Q. When?

A. On the 21st. of October.

Q. How many persons were there?

A. I cannot tell, but I think there were as many as a score.

Q. Was William Kent there?

A. Yes.

Q. What time of the day was this?

A. Sunday evening.

Q. Was it light or dark?

A. Dark.

Q. Were there any candles?

A. Yes.

Q. In what position was Kent?

A. Kneeling down holding forth.

Q. Was any body else kneeling?

A. Yes, all the congregation were kneeling.

Q. What were they all doing?

A. Holding forth.

Q. What do you mean by holding forth?

A. *I do not know I am sure.*

Q. What was William Kent doing?

A. I believe he was holding forth — *teaching*

I suppose.

Q. Did you hear any particular words?

A. Yes.

Q. What did he say?

A. That he did not care for either Man or Devil.

Q. Did you hear any other words before you heard those?

A. No, I do not know that I did. — *I did not take any notice what he said.*

Q. Did you hear any thing after he said that?

A. No.

Q. Did you go away?

A. Yes I got out—I went out.

Q. You went away afterwards?

A. Yes.

Q. Before it was over?

A. Yes.

Q. Did Kent continue on his knees afterwards.

A. He was up when he said that.

Q. That was all you heard?

A. Yes.

Q. You did not hear any thing like the service of the Church of England going forward?

Lord Radnor.—Does he know what the Service of the Church of England is?

Mr. Wakefield.—You have been at Church?

A. Yes.

Q. Was any thing like the Service of the Church of England going forward?

A. No.

Laurence Belcher cross-examined by Mr Gleed.

Q. On the 21st of October with whom might you be living—were you a servant?

A. No.

Q. What then?

A. I was living with my Mother at home.

Q. On the 21st. of October you were living with your mother in this parish?

A. Yes.

Q. Who went with you to this place—did you go alone or in company?

A. I went in company.

Q. Who went with you?

A. Margaret Partridge.

Q. She is a servant of the Rev. Mr. Beaver?

A. Yes.

Q. Did you go in consequence of any direction you had received, or was it your own voluntary act?

A. My own act.

Q. Did you propose to go there yourself—or who took you there?

A. Why I walked.

Q. You do not suppose I asked whether you walked or not. I am asking you what induced you to go there?—Did any body tell you to go there?

A. None.

Q. Had Mr. Beaver and you any conversation before on this point?

A. No, not before that.

Q. You went with Mr. Beaver's servant to this place—she is a person you have been paying some attention to I understand.

A. No, it is not so.

Q. You went however with this servant of Mr. Beaver's.

A. Yes.

Q. Did the young woman propose it to you or you to her?

A. Ne'er a one of it.

Q. Did you propose to the young woman to attend at this place, or did she propose it to you.

A. There were more than she and me.

Q. Who was there besides?

A. James Jordan.

Q. I want to know from you who proposed going to the Meeting.

A. Me.

Q. You proposed to the young woman that she should go with you, and she and you went accordingly?

A. Yes.

Mr. Gleed.—I should wish the young woman to go out of Court.

Mr. Wakefield.—All the witnesses on both sides had better go out of Court.

The Witnesses on both sides were ordered to go out of Court.

Mr. Gleed.—What do you mean when you speak of the Liturgy of the Church of England? Do you know what is comprehended within the meaning of the words “ the Liturgy of the Church of England.”

A. No.

General Gower (a Magistrate.)—When Wm. Kent preached or spoke in that House, had he any book in his hand?

A. No.

Q. Had he any paper out of which he read, or did he speak as if it was from himself?

A. I did not see any paper.

Lawrence Belcher,

Re-examined by Mr. Wakefield.

Q. My learned friend has been asking you about the Liturgy of the Church of England.—Have you not been used to go to Church?

A. Yes.

Mr. Gleed.—I asked him to the fact; whether he knew what the Liturgy was, and he said he did not.

Mr. Hallett (a Magistrate.)—What did he

say when he got up? I understood you to say, that when upon his legs, he said he did not care for Man or Devil?

A. Yes.

Q. Did he say any thing more?

A. No.

Q. Did he look angry and hard at you, as if you came to offend him?

A. No, he did not look at me any more than any body else.

Q. Were there other people who came to interrupt him besides you? It should seem as if he was angry with some persons there coming to interrupt him. Did he look at you.

A. No.

Q. Which way did he look?

A. He looked to the people.

Q. Were they all up from their knees, or were they all kneeling? You say they were all kneeling when you went in.

A. Yes.

Q. Then he got up and said—"I do not care for Man or Devil?"

A. Yes.

Q. What induced him to say that at that moment? Were there people coming there to give him offence as well as your being there yourself?

A. No.

Q. Did you kneel yourself, or not?

A. No.

Q. Were there other people standing while the rest of the congregation were kneeling? How many were standing at the time you were standing, and how many kneeling?

A. I do not know I am sure.

Mr. Henry Marsh (a Magistrate.)—Did he appear to have finished his prayer, when he said he did not care for Man or Devil.

A. Yes.

Q. Did it appear as if he was talking with them?

A. Yes.

Q. Was he in prayer when he said he did not care for either Man or Devil, or had he finished his prayer, and did he then say “ I do not care for either Man or Devil.”—Did he appear to be praying at the time?

A. Yes.

Q. You said he had got up from his knees.

A. Yes.

Q. Did you consider it a part of his prayer?

A. Yes, it appeared to me so.

Earl of Radnor.—You said expressly before that he was not on his knees when he used these words?

A. No, he was not.

Mr. Henry Marsh.—Then you did not consider it a part of his Prayer.—Did you consider it a part of his Prayer, or that he had finished his Prayer?

A. It appeared to me part of his Prayer.

Mr. Henry Marsh.—It appears to me a very

important point, to ascertain whether it was in his Prayer or not:—had the man quite finished his Prayer when he got up and said that?

A. No.

Q. Then you mean to say he uttered one part of his Prayer on his knees, and the other part on his legs?

A. Yes,

Mr. Hallett.—Did you hear the word Amen?

A. Yes.

Q. When was the Amen said—while he was on his knees?

A. There was William Franklin said Amen a great many times in the Prayer.

Q. Was he the Clerk, or one of the Congregation?

A. One of the Congregation.

Q. When did Mr. Kent say Amen.—Did you hear him say Amen at all?

A. No.

Earl of Radnor.—Did the Congregation themselves say Amen?

A. Yes they did.

Q. Did they in general?

A. Some of them did.

Mr. Hallctt.—Did they break up the moment he said—“ I do not care for Man or Devil ?”

A. No.

Q. They prayed again?

A. Yes.

Q. Did he then go upon his knees again—what did he do after he said that—did he sing, or what happened after that?

A. I do not know I am sure, we all went out.

Q. Was that all he said while he was upon his legs?

A. I went out just then:

Mr. Henry Marsh.—How long do you think you were in the Congregation?

A. About half an hour.

Mr. Goodlake (a Magistrate).—Do not you think Mr. Kent had reason to believe that Mr. Beaver had sent some of you there to hear him?

Mr. Glead.—I do not like to object to the question of a Magistrate, but it appears to me that question is open to objection.

Mr. Goodlake.—It struck me that might have induced him to make use of those words which have been repeated.—I do not wish to ask it either on one side or the other, but only to satisfy my own mind.

Mr. Hallett.—What he thought another man thought cannot be evidence.

Earl of Radnor.—You say those words about Man or Devil, were not addressed to any particular person.—Did he look at or appear to address any particular person?

A. No.

Q. Did he appear to use the words for any particular reason; was there any noise or interruption, or any thing of that kind.

A. No.

James Jordan called.

Mr. Gleed.—My Lord, I feel it my duty to interfere for the sake of form, though not from any wish I can have on behalf of those I represent, to exclude any testimony that can be brought;—but as my learned friend has stated, that the Court are Judges of the Law, and the Jury of the Fact,—I think it my duty to object to the testimony of this Witness, and upon this ground:—This is an appeal to the Court on the Judgment formed by a Magistrate, on certain facts deposed to before him;—I refer to the Conviction in order to see the names of those persons deposing to those facts, and I see upon the Conviction, only the names of two persons on whose testimony the judgment of the Justice was formed. Now, I take it to be agreeable to practice, that only those witnesses can be offered on a review of a question of this nature, on whose testimony the Magistrate drew his conclusion. When I throw out this for my learned friend, if the Court shall intimate an opinion contrary to what I have stated, and think that they are at liberty to call as many witnesses as they please, who were not present before the Magistrate; I shall not press the objection further than I ought. If my learned friend can give an answer to this objection, or the Court shall express an opinion against me, I shall be quite satisfied.

Mr. Wakefield.—I think I should not be right were I to attempt to offer to the Court any facts which were not before the Magistrate, but I think I may call other witnesses in confirmation. I do not purpose to prove the speaking of any words not proved before the Magistrate to have been spoken, but the speaking of the same words on the same occasion by another witness.

Mr. Gleed.—I am sorry my learned friend has not given me something like an answer; that which he has said, is not an answer, because you know, Sir, that by this Act of Parliament it is necessary for the Magistrate to return to the Court the evidence upon which he acted, and this Court is to review the testimony given before the Magistrate, and confirm or correct the conclusion he has drawn from the evidence. My learned friend wishes to make a distinction between Evidence and Witnesses—in my own mind I can form no such distinction.—What are Witnesses?—Witnesses are persons deposing to particular facts, and if you return the Evidence, you can only return the Evidence given by those particular Witnesses—you return the names of the parties deposing, and the facts to which they deposed. By this Act it is necessary the Magistrate shall certify, under his seal, the Evidence upon which the Conviction passed, with the whole record thereof, in order that the Court, (and in this instance the Jury), may judge if his conclusion is properly drawn. And

shall it be allowed for a party accusing to produce new Evidence, or to tell the Court that the Magistrate did not act on the Evidence which he returned to the Court; but on other Evidence produced before him, and not returned? Such a mode of proceeding would be most illegal and unjust. In point of form and practice, he cannot call more witnesses than the Magistrate has returned. If my learned friend says he proposes to call them for the purpose of corroborating those facts, which the other Witnesses have sworn to, I have no objection to take it that this Witness and the others would repeat what the last Man has sworn.

Earl of Radnor.—I conceive if this was an attack upon the Magistrate, for having formed a wrong conclusion upon the Evidence before him, he ought to be confined, in his defence, to the production of the same witnesses;—but, as it is an appeal on the subject, I do not think he ought to be confined;—I will take the sense of the Bench upon it if you desire it.

Mr. Gleed.—By no means—that intimation is quite sufficient.

Mr. Hallett.—It appears to me that if they might call different Witnesses, a Man might be sadly persecuted; they might bring some Evidence before the Magistrate upon which he might convict, and then, they might call other Witnesses here, and put him to more expence; I do not pretend to know the practice of the

Courts of Justice,—but, it appears to me, if that could be done, it might be very oppressive.

Mr. Gleed.—It would not be Evidence upon which this Judgment was pronounced, and from which I appeal.

Mr. Wakefield.—If you take the common book of Burn, or any other Digest, you will find two heads for Evidence, and for Witnesses;—they are so distinct, that Burn has separate heads for Witnesses and for Evidence.

Mr. Hallett.—One begins with W. and the other with E.—They must be distinct heads, to be sure.

Earl of Radnor.—I believe you need not say any more about it,—you may call your witness, Mr. Wakefield.

Mr. Hallett.—There is another Magistrate next to me, who agrees with me,—therefore I wish the sense of the bench to be taken. I would not desire that simply on my own opinion.

Mr. Gleed.—I will thank your Lordship, if you will take a note of my objection.

Earl of Radnor.—I have.—I have stated it thus,—“ James Jordan objected to, as not being
“ one of those witnesses who was examined be-
“ fore the Magistrate.”—Gentlemen; you have heard the objection; I am only to state whether the objection is good or not.

[*The Earl of Radnor consulted the Magistrates seriatim.*]

Earl of Radnor.—The objection is considered to be good.

Mr. Wakefield.—Your Lordship will take a note of it, if any thing turns upon it in case of its going to another Court, there will be the same objection to Sam. Street; your Lordship will just take his name, and the objection to him in the same way.

Margaret Partridge sworn.

Examined by Mr. Wakefield.

Q. Do you know William Kent?

A. Yes.

Q. Where does he live?

A. At Childrey.

Q. Has he an empty house there?

A. Yes.

Q. Have you ever been in that house.

A. Yes.

Q. When was that?

A. On the 21st of October last,—a Sunday evening.

Q. How many people were there?

A. Between thirty and forty.

Q. Was William Kent there?

A. Yes.

Q. What were all the people doing,—were they standing or sitting?

A. They were all kneeling.

Q. Was Kent saying any thing?

A. Not when I first went in.

Q. What did you hear before you heard Kent say any thing?

A. I heard two or three before I heard Kent.

Q. Can you recollect what those two or three said?

A. No.

Mr. Gleed.—I should object to it if she could.

Mr. Wakefield.—What did you hear Kent say.

A. I did not pay particular attention to what he said, but I heard him utter the word “*Damn.*”

Q. Did you hear him say any thing else?

A. I heard him say “*Curiosity.*”

Q. Were those words uttered as exclamations or were they part of a series of words.—Were the words, “*Damn*” and “*Curiosity*” single words, or were there words before or after them?

A. *I do not remember what he said before or after.*

Q. Did he say words before and after?

A. Yes.

Q. Did those words form part of a sentence?

A. Yes.

Q. When you heard this, was Kent on his knees or standing.

A. *I do not know.*

Earl of Radnor.—Do you mean to say they were part of several sentences or of the same sentence?

Mr. Wakefield.—Did you hear those words repeated by him?

A. Yes.

Q. Were they words near together?

A. *I do not recollect.*

Q. Was he kneeling or standing.

A. *I do not know indeed. I could not see him.*

Q. Do you know his voice?

A. Yes.

Q. There was a pillar between you and Kent.

A. Yes.

Earl of Radnor.—You did not see him at all?

A. I saw him when I first went into the house but not afterwards.

Mr. Wakefield.—How did you lose sight of him.—Did he go up to this pillar.

A. I went up further after I went in, and lost sight of him.

Q. When you first went in he was not praying.

A. No.

Q. What was the tone of his voice—was this the voice of prayer or conversation.

A. He began very low, and spoke very loud indeed.

Q. Did it appear to you he was praying, or preaching?

A. It did not appear to me like a prayer.

Q. Was it addressed to every body?

A. Yes.

Mr. Glead.—She has mentioned the two particular words she heard;—this is nothing but inference.

Mr. Wakefield.—She could tell by the tone of voice whether he was addressing the audience

or the Almighty.—What is the reason it did not appear to you to be a prayer?

A. From the very loud way in which he spoke.

Q. Were the other persons kneeling or standing at the time?

A. All kneeling, except two or three.

Q. Those two or three were your own party?

A. Yes.

Q. You went with the last witness and two or three other persons?

A. Yes.

Q. Were you desired to go there?

A. No.

Q. I believe you are a servant of Mr. Beaver?

A. Yes.

Q. Did your Master know of your going?

A. No—I did not wish him to know.

Q. You told him of it afterwards?

A. No—he heard of it accidentally.

Q. Were the two or three persons whom you heard speak before Kent spoke, preaching or praying?

Mr. Gleed.—My Lord, this is an Appeal from a Conviction, and the Conviction states that the person convicted, is convicted of teaching or preaching: My learned friend is now enquiring into the conduct of other parties; whoever was guilty of teaching or preaching, within the words of the Act, would be liable to a distinct and separate penalty; and, therefore, I submit that my

learned friend is not at liberty to give evidence of the criminal acts of others,—to prejudice or affect the interests of this Appellant, every man is to answer for his own acts, and the offences of one man cannot be given in evidence to affect another.

Mr. Wakefield.—I think I can give a satisfactory answer not only to the Court, but to my learned friend himself;—I am not going to put the question to obtain an answer that may criminate others, or subject them to penalty, but should the answer prove that those other persons taught and prayed—that there was a succession of prayers offered up by different individuals in this Congregation—that as one ceased another began, and that that was the service and order of the day,—I think I have then laid sufficient foundation from the words which were heard for you to draw this inference;—if A. was preaching,—then, B;—then C; and after C. ceased to preach to this Congregation, the voice of Kent was heard;—though this young woman could not hear the words, I think that is evidence to go to the Jury, from whence they must draw the conclusion—That Kent was doing the same.—This cannot be testimony against any body else.

Mr. Gleed.—I am sorry my learned friend should have had recourse to such an argument, because I am sure his better judgment would not have permitted him to have done so on reflec-

tion.—Each party in a case of crime must be answerable for what is done by himself, and under this Act every person offending, is liable to a distinct and separate penalty; it is not like the case of a conspiracy,——

Mr. Wakefield.—If you enter into new arguments, I must have a reply upon you again.

Mr. Glead.—I should have been glad of an opportunity of giving an answer to my learned friend, if he had stated any argument; but, he has not.—This is not like the case of a conspiracy, where the act of one man may be considered as the act of another; as, where parties conspire to do a particular act, though A. conspired in London, and B. in York, and never saw each other, yet if the object of their conspiracy was the same, the act of each may be given in evidence against the other:—Supposing several persons go out to commit a felony, and one stands at the end of a lane, while the other goes forward and commits it; in that case the evidence against one man is evidence against the other, because they are uniting to the same common purpose, but that is not so here—this is a distinct and separate act, and each man is answerable for his own conduct; you cannot convict by inference;—we are here on a distinct charge. If A. B. and C. who were in company with the Appellant, did certain Acts, therefore, is it to be argued that D. did the same; if they have been guilty of teaching or preaching, they

are not only liable to the penalties of the Act, but there are informations filed against one, if not more of them. This is an attempt, by a kind of side-wind, to preserve testimony against these several persons, and at the same time to convict a third person, who must be answerable for his own acts alone.

Mr. Henry Marsh.—I understood you to admit that they were praying, — but that your argument is, that that is not preaching or teaching.

Mr. Gleed.—I have not stated what my defence is.—It is always best to conform to practice ; it does not signify whether it will make one way or another, but we should keep to established Rules.

Mr. Wakefield.—All the observations my learned friend has been making are new arguments.—He has been arguing as if he was the Counsel for these persons, to protect them from the possibility of being subjected to this penalty. The question is not, how the testimony may affect them, but whether it is admissible to affect Kent;—I apprehend, according to my argument, which has not received the attempt of an answer, it is admissible to affect Kent; but my learned friend's answer is,—Oh! but it will affect others.

Mr. Gleed.—You misunderstood me,—I argued that as it would only affect others, not

now before the Court, and not Kent,—therefore, it could not be received.

Mr. Wakefield.—I understand my learned friend's answer to be—That this is a separate and distinct offence;—and, therefore, it would not be fair for you to permit me to come at that fact, and to prove who has done that act, but I apprehend, that has nothing to do with the question here;—those persons are not parties here, and are not intitled to the protection of the Court;—If I were to call those three persons and ask them the question, they would be intitled to protection; but that is not a reason why another person should not give the testimony which would disclose what they have done, therefore, I apprehend, it will come back to my original argument, how far I have a right to prove collateral facts to strengthen that, which I have given in evidence.

Earl of Radnor.—Mr. Gleed, will you just state your objection, that I may take a note of it?

Mr. Gleed.—My objection is—That inasmuch as the Act of Parliament makes the act of each person a distinct offence, you cannot give evidence of the criminal acts of others against the party appealing.

Mr. Hallett.—It strikes me, that would narrow it rather too much; it appears to me that it is very material to know the position of all the parties in the place—it may apply. I do

not know that it will,—but it appears material to know the situation of every one in this Conventicle.

Mr. Gleed.—Certainly,—but they wish to draw an inference,—That one party is guilty because, according to them, another was.

Mr. Hallett.—That I object to,—but I wish only that we should know what the others were about.

Earl of Radnor.—I have taken the question thus—what were those, who spoke before Kent spoke, doing?

Mr. Gleed.—That is not precisely the question,—I objected to.

Mr. Wakefield.—I want to shew the Court,—whether those persons, whom she says she heard speak in succession, whether they preached or prayed.

Mr. Gleed.—That is the matter objected to.

Mr. Wakefield.—I will give your Lordship three questions to the Woman—the answer to which will prove the whole ;—What were those persons saying, who, you tell me, were speaking previously to Kent's speaking?

Mr. Gleed.—Do you mean in what position were they?

A. They were kneeling ;—and all the Congregation the same.

Mr. Wakefield.—Did they speak in succession or together,—Did they speak one after another?

A. They kneeled down, and said a long prayer, and there was a hymn sung.

Mr. Wakefield.—Now—I propose to put the question which I expect my learned friend to object to.

Earl of Radnor.—Put your question, and let Mr. Gleed object, if he thinks proper—and, then we will consider of it.

Mr. Wakefield.—You say, they said a long prayer, and then sung a hymn.

A. Yes.

Q. Did one of them say the prayer, or all.

A. One.

Q. Then what did the second do?

A. He said a prayer.

Q. And then they sung another hymn?

A. Yes.

Q. And then Mr. Kent spoke?

A. Yes, all the Congregation joined in singing.

Q. From what you saw and heard, did it not appear to you, Kent was doing the same as the other three had done?

Mr. Gleed.—That I object to.—The witness is here deposing to certain facts, not to the inference from facts; my learned friend may ask as to any thing that Kent said, or any thing that Kent did.

Mr. Wakefield.—I give up the question; it is not worth while to consume time upon it.

Earl of Radnor.—Mr. Wakefield has got all that he wants.

Mr. Wakefield.—After that Kent *prayed?*

A. Yes.

Q. I understand you to say, these persons prayed successively, and they sung between each,—and then Kent prayed again?

Mr. Gleed.—That is not so.

Mr. Wakefield.—What did Kent do after that?

A. He prayed—he began very low, the same as the others had done, but then he raised his voice.

Q. Did the Congregation kneel as they had done before?

A. Yes.

Q. Did they then sing another hymn?

A. They then went away.

Q. Is what you saw pass there, any thing similar to what you have witnessed at Church?

A. Nothing at all like it, while I was in the house.

Q. You have been in the habit of going to Church?

A. Yes.

Q. After Kent had engaged, did you go away, or see whether they all went away or not, or whether they sung a hymn?

A. There were a great many people came out, I do not know whether they all went away, or not.

Q. Did Kent go away before any singing?

A. I cannot tell—I went away and a good many of the Congregation.

Mr. Gleed.—I shall not put a single question to this witness.

Mr. Hallett.—I think you said that Mr. Kent began the prayer very low, and then raised his voice?

A. Yes.

Q. And they all joined?

A. No.

Q. They did not all join?

A. No, he was speaking alone, nobody joined.

Q. They did not join in the prayer?

A. No.

Mr. Wakefield.—I apprehend nobody joined during any of the prayers—they all prayed alone, but sung together.

Mr. Henry Marsh.—There were three prayed before Kent?

A. Yes, there were.

Earl of Radnor.—Can you tell from the manner, whether he appeared to be praying extempore—you did not see any book?

A. I could not see Kent when he was speaking, but the others prayed extempore.

Mr. Henry Marsh.—You did not see Kent while he was praying?

A. No.

Earl of Radnor.—Was the Prayer on a Religious subject?

A. I do not recollect—I did not pay particular attention to what was said.

Mr. Henry Marsh.—You only heard the words “Damn” and “Curiosity.”

A. No.

Earl of Radnor.—Was it addressed to the Supreme Being;—to God Almighty?

A. Yes.

Q. He began, O God,—or something of that sort?

A. I do not recollect the words with which he began.

Mr. Gleed.—The only words she heard were “Damn,” and “Curiosity.”

Earl of Radnor.—I understand those were the only words she recollected.

Mr. Gleed.—May it please your Lordship;—and you Gentlemen of the Jury;—

I have the honor of attending you on behalf of the Appellant, Mr. Kent; who has entrusted the conduct of this Appeal, to my learned Friend and myself, from the confidence that he has reposed in our exertions,—not from any distrust in the abilities of the Gentlemen, that regularly attend, and adorn these Sessions. Agreeable to the liberality of the practice, that belongs to the Profession of which I am a Member, every suitor in a Court of Justice, is at liberty to select his advocate, and the selection, on the present instance though it confers great honor upon me, may be fairly exercised, without disrespect to others.

Gentlemen, the question which you are now impannelled to try, appears to me to be one of the greatest importance ; not from any difficulty in the construction of the Act of Parliament,—not from any fear that I can entertain of the result of your Verdict, (because no man having heard the testimony that has been adduced in Court to-day, can have any doubts of the verdict which you by-and-by are to pronounce,) but it arises from the unprincipled boldness of the attempt which is now made, to enforce the provisions of a Statute grown almost obsolete by the general consent of mankind, (though still disgracing the leaves of our Statute Book;) and, to apply the words of it, by construction and inference, and ingenious observation, to solemn Acts of Religious exercise not within its contemplation. The question therefore has the merit of novelty to recommend it to your consideration : The Records of this Court, furnish no precedent of such a proceeding,—and the experience of the Magistrates who surround me, no example.

When I stated to you, that the question was an important one, I should also have added, that the consequences of your verdict will be felt throughout the Empire. It will not affect any particular sect or body of Christians,—either Calvinists—or Wesleyan Methodists, or Protestant Dissenters, or Churchmen,—but every man of every persuasion, who calls himself a Christian,

and dares to act as one,—every man who in the presence of his Family, his Neighbours and his Friends, humbly offers himself to God in social prayer.

The real question which you are impannelled to try is this:—“ Whether any Subject of this “ Realm can offer up an extempore Prayer to “ the Almighty—or any Prayer not included “ in the Book of Common Prayer—in the pre- “ sence of five of his fellow subjects, without “ incurring a penalty of 20*l*.”

This question comes before you in the nature of an Appeal, which pre-supposes a Conviction and Judgment; and I wish my learned friend had taken the trouble, in some part of his Address, to have given you an explanation of the form in which this case presents itself to you. — “ A Conviction is the record of a summary proceeding, upon any penal Statute, before one or more Justices of the Peace, or other persons duly authorised, in a case in which the offender has been convicted and sentenced.”— This mode of Judicature has been introduced in derogation of the Common Law, and operates to the exclusion of the Trial by Jury. By the Common Law of the Land, no person can be found guilty, but by the ancient course of proceeding, namely, by Indictment and Trial by Jury; but there are certain offences which the Legislature has thought proper to withdraw

from this Constitutional Tribunal, and has delegated the investigation of them to Justices of the Peace; who unite in themselves the distinct characters of Judge and Jury,—and who, having heard the Evidence in support of the charge, return the verdict, and pronounce the judgment.—From such a Judgment so pronounced, I—on behalf of the Defendant—appeal to you.

A Conviction consists of several parts. The Information,—The Summons,—The appearance, or non-appearance of the Defendant,—His Plea,—The evidence,—The Judgment. I shall trouble you only upon two of these points, because they are the essential ones,—namely, the Information—which is the statement of the offence, and which the Defendant is called upon to answer, and the evidence produced before the convicting Magistrate, and before you on this appeal, for the purpose of supporting such charge.

To enable you to understand the nature of the Charge, I must call your attention, and the attention of his Lordship, to the language of the Information. The Information states, that William Kent, Baker, did on Sunday the 21st of October, in the year of our Lord 1810, *Preach or Teach*, in a certain Meeting or Conventicle, held in a certain uninhabited House (*which House was in due form of law Licensed*) in other manner than according to the Liturgy and prac-

tice of the Church of England." The person giving this information, is the Rev. James Beaver. When I state the name of the informer, it is not with any intention to speak in terms of disrespect of that Rev. Gentleman. I presume, from the station he holds in Society, that he is by education a Scholar, and in manners a Gentleman; and I am disposed to imagine, that from a sense of duty alone, he has been induced to clothe himself in the character of an Informer; I trust however that the result of your verdict will convince that Rev. Gentleman that he is engaged in an extremely impolitic, and ill-advised and dangerous experiment. But when I impute no uncharitable, or unchristian motives to his conduct; I shall not from courtesy deprive myself of making such observations, as I am imperiously called upon to make, in the discharge of this solemn duty, as an English Advocate in an English Court of Justice.

Having stated to you the Information, it will now be necessary to call your attention to the words of the Act of Parliament itself, for the purpose of understanding the offence that was in the contemplation of the Legislature. This Information is framed on the third clause of the 22d Charles II. cap. 1. which enacts "That every person who shall take upon him *to preach or teach* in any such Meeting, Assembly, or Conventicle, and shall thereof be convicted as aforesaid, shall for every such first offence forfeit the

sum of 20*l.* to be levied in manner aforesaid, upon his Goods and Chattels." What is the meaning of the words "shall Preach or Teach in any such Meeting, Assembly, or Conventicle?" It will be necessary to refer you to the first Section in the same Statute, in order to comprehend what such Meeting, such Assembly, or such Conventicle means. I will read the words of the first Section of the Statute:—"For providing further and more speedy remedies against the growing and dangerous practices of seditious Sectaries, and other disloyal persons, who under pretence of tender consciences, have or may at their Meetings, contrive insurrections (as late experience hath shewn). Be it enacted,—That if any person of the age of sixteen years, or upwards, *being a Subject of this Realm*, at any time after the 10th day of May next, shall be present at any Assembly, Conventicle, or Meeting, under colour or pretence of any exercise of Religion, in other manner than according to the Liturgy and practice of the Church of England, in any place within 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 together, over 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 persons* or more are assembled
 “ as aforesaid.”—In that case they are liable to
 a penalty of *5s.*; and if any person shall take
 upon himself to Preach or to Teach in such
 Assembly, Meeting, or Conventicle, he shall
 be liable to a penalty of *20l.*

The material question for our consideration
 therefore, is to understand what was meant by
 the words *to preach or teach*, and to what
 description of persons the words to teach and
 to preach were applicable. I do not mean any
 want of compliment or respect to you, when I
 say, that perhaps you are not deeply read in
 the History of your Country, and therefore it
 will be necessary for me to explain to you, un-
 der the direction of the Court, the situation in
 which the Country stood at the time of this
 Act of Parliament. In the year 1662, the Bill
 of Uniformity passed; which Bill required the
 unqualified assent of all the subjects of this
 realm to one form of public prayers, the admini-
 stration of the Sacraments, and other rites and
 ceremonies of the Church of England. It may
 appear to you, and so it appeared to those who
 lived afterwards, and so it must appear to every
 thinking mind, extremely strange that ever a
 Bill of this description could have passed, which
 was to restrain the consciences of men, and to
 say what they shall not, or what they shall
 profess, and believe and preach, but so it was,

and I will tell you what was the consequence of that Act so passing—It was this, that immediately on the passing of the Act,—as we receive the accounts from the Historians of that day, two thousand beneficed Clergymen, finding that they could not yield to the Bill of Uniformity, which imposed such restrictions upon their consciences, gave up their Benefices. Two thousand of the Clergy in one day relinquished their Cures, and, to the astonishment of the Court, sacrificed their prospects and preferments in life to their religious scruples. The Court was amazed and confounded at such an event, and it has continued a subject of astonishment and praise from that period to the present.

The Conventicle Act, which is the Act of Parliament upon which this Information is founded, passed in the year 1670. In the year 1670 there were at least two thousand persons, and a great many others, (you may add at least one thousand),—two thousand of whom had relinquished their preferments, and others, educating for the same profession to whom this Act of Parliament would be particularly applicable—therefore the words to *teach* and to *preach*, were a designation of a particular description of persons, who either from their superior endowments, or other qualifications, were considered as entitled to act in the great office of Minister. This conclusion is still more

evident from a further consideration of the same Section, as appears from the following words:—“ That if the said Preacher 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 Jus- “ tice or Justices, or Chief Magistrate before “ whom he shall be convicted, shall be thought “ unable to pay the same, the said Justice, Jus- “ tices, or Chief Magistrate respectively, are “ hereby empowered 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 Conventicle.” This evidently shews that at the time of this Act of Parliament passing, it meant to designate a particular man, a person invested with the sacred office of a Preacher, or a Teacher, superintending and watching over the interests of a Congregation.

Gentlemen, This explanation will appear still more conclusive, by considering the words of the 8th sec. of the 1st William and Mary, c. 18.— As it has been already stated to you, in the reign of William and Mary, the Legislature of this Country began to be ashamed of ever publishing so intolerant a law, and therefore, as the Statute of Charles was passed for the purpose of imposing penalties, the Statute of William and Mary was passed for the purpose of exempting their Majesties’ Protestant Subjects

from them. The heads of the 8th Section of the Act are as follows:—"That no person dissenting from the Church of England in Holy Orders."—That I refer to the two thousand who had relinquished their preferments from motives of true religion, many of whom were then in existence. "Or, pretended Holy Orders,"—which means persons who had not taken the oaths, according to the determination of a Convocation which had been held. "Or, pretending to Holy Orders,"—that is, persons assuming to themselves the Ministry, without any Ordination from the Bishop, or otherwise. "Nor any Preacher, or Teacher," *of any Congregation* of Dissenting Protestants, who shall make and subscribe the Declaration mentioned in the Statute of 30th Charles II. and take the oaths and declare his approbation and subscribe the Articles. According to the Statute of Elizabeth, such person shall not be liable to the penalties of the 22d Charles II. for or by reason of such persons *preaching* at any Meeting, for the exercise of religion.

The Conventicle Act, and the Toleration Act, therefore, never intended to punish, or exempt from punishment, those persons who met in social prayer, or who read and explained the Holy Scriptures; but a well known description of persons superintending the interests of a Congregation dissenting from the Church of England, in Holy Orders; or pretended Holy

Orders; or pretending to Holy Orders; or a Preacher or Teacher of a Congregation of Dissenting Protestants, and such persons by conforming to the Acts specified by one Statute, are now exempt from the penalties created by the other.

The Appellant, therefore, William Kent, not being a Preacher or a Teacher of a Congregation,—and as far as appears by the evidence, not officiating as such, cannot be subject to the penalty inflicted on him by the judgment pronounced by this record.

But Gentlemen, in what sense *does my learned Friend* use the words Teacher or Preacher?—Does he use them as synonymous terms, or as distinct terms, because the words of the Act are “Teacher *or* Preacher.”—If they are distinct terms, then there is a penalty inflicted on every person, who is a Teacher, and there is a distinct penalty inflicted on every person who is a preacher, and it is one of the rules of Law, which you as Jurymen, must have heard stated from the Bench again and again,—That where a particular offence is charged (and this is in the nature of an offence) it must be stated accurately; you are not to state that a man committed one offence *or* another offence,—for in that case, the conclusion drawn from the evidence would be uncertain, and the judgment erroneous. The Information must be supported by the evidence, and the judgment must be

supported by both. But it appears from this record, that the evidence is at variance with the Information, the conclusion therefore is uncertain, and the judgment erroneous, and must be corrected by your verdict on this Appeal.

But, perhaps it may be said, that though in point of fact Mr. Kent is neither a Preacher or a Teacher within the express words of the Act of Parliament; yet if he can be brought within the general words of the Act that will be sufficient to make him liable to the penalty inflicted by it. Let us consider the question in that point of view, at the same time, I request you to accept my apologies for occupying so large a portion of your time. I do not adopt this course of argument and observation in consequence of being pressed by the evidence given in support of this charge, for that is most ridiculous, and unworthy of observation, but because, I am of opinion, that the determination of this Case may lead to consequences, that I am afraid to anticipate. I am anxious, therefore, that the case should be fairly examined, and rightly understood, for as this is the first attempt to rob a meritorious person of 20*l*. under the sanction of Law, I should wish to prevent a repetition of it, that the records of Courts of Justice, may not hereafter be disgraced by such trash and folly.

Gentlemen, what is the meaning of the words "to preach,"—perhaps you laugh at my simplicity, in asking a question so easy of solution.

Is it not to pronounce a public Discourse on some religious subject? Then what is a Preacher? Why the Person who discourses on those Religious Subjects—that is the meaning of the word Preacher.—What is meant by the words “to teach?” the same, according to the construction of my learned friend.—If to Teach and to Preach, is the same, then a Teacher is a Person, who from the Pulpit delivers Religious Discourses—and indeed I do not find in the history of the Protestant Dissenters, that they have two distinct and separate classes of Persons, the one comprehending Teachers, and the other Preachers. At the same time, there appears to me, according to the general understanding of the words, a manifest and well known distinction between a Preacher, and a Teacher. A Teacher does not discourse on one particular selected religious subject; but having read a chapter in the Bible, or a Psalm which may contain either Prophecy or Lamentation, or Praise or Petition, he explains it.

If to Preach, is to discourse on some particular subject;—and to Teach, is to explain, or to expound Scripture; I would ask my Learned Friend, what evidence has he offered you on this occasion to satisfy your minds that the Appellant either Preached or Taught. I have endeavoured to explain to you that the Appellant is not a Preacher or a Teacher within the express or general words of the Act, and I will

hereafter further satisfy you, that the evidence does not bring him within the construction of it.

The Information then states, that the Appellant did Preach and Teach, in other manner than according to the Liturgy and Practice of the Church of England. I am at a loss in what manner to understand the averment as it is here stated.—Does the word Liturgy mean *place*?—If so, no man within his own family surrounded by his neighbours or his friends, can read the Scripture for edification ;—because, if any man in his own house, with such a congregation as would constitute a Conventicle within the provisions of the Act, was to read a Chapter in the Bible and enter into an explanation of it, much as you may be astonished and alarmed at such an assertion, he would be, according to the argument of my Learned Friend, liable to a penalty of 20*l.* But if it does not mean place, Does it mean *doctrine*?—That no man shall Preach or Teach any doctrine contrary to the Liturgy or practice of the Church of England? Does my Learned Friend say it means doctrine? he nods assent—then if it means doctrine, you destroy the provisions of the Toleration Act.—There are certain things necessary to constitute this crime—to *Teach and Preach—contrary to the Liturgy and practice of the Church of England,*—then it is not enough that a man Preaches or Teaches—but you must enter into the particular Doctrine that he Preached or

Taught.—Is that so? Then you are assembled as a Bench of Bishops in Convocation, to determine points of Controversy? Are we here for the purpose of discussing them? Is my Learned Friend and myself prepared or able to discuss questions on the Doctrine of the Church of England?—If that be so, then *you are not sitting here as Jurymen for the purpose of trying a particular fact*,—but you are sitting here, to enter upon and determine controversial points, or subjects upon which the best informed may err,—you are not sitting to determine on an alleged fact, but with a supposed knowledge of all the doctrines of Christianity, and all its bearings, to decide questions, upon which the best and the most learned Scholars of the Land have from the beginning of our history and may to the conclusion of time differ in opinion, and yet I hope in respect to these differences, that they do not effect the doctrine itself of our Salvation by Christ; and that the foundation of all our hopes remains the same.

The true construction of the Act is this:—If any five persons or more assembled together, under pretence of an exercise of religion, in other manner than according to the Liturgy and practice of the Church of England, such Assembly shall be denominated a Conventicle, then if any person being a Preacher or Teacher of a Congregation, and who has not complied with the provisions of the Toleration Act, shall

take upon himself to Preach or Teach in such Conventicle, he shall forfeit the sum of 20*l*.

We will now proceed to examine the evidence, as returned by the Justice of the Peace on this Record.—“ And thereupon on the same
 “ day and year last mentioned, Lawrence Bel-
 “ cher and Margaret Partridge, two credible
 “ witnesses, upon their oaths did depose and
 “ say, That on Sunday the 21st day of Octo-
 “ ber, 1810, they heard the said William Kent
 “ Teach and Pray in a certain Meeting or
 “ Conventicle, held in a certain uninhabited
 “ House, in other manner than according to
 “ the Liturgy and practice of the Church of
 “ England, where above five persons were
 “ present.”—Without intending offence to any
 one, I take upon myself to assert, that this
 evidence so stated and returned on the Record,
 is incredible. I have read the evidence word
 for word, as stated on the Record, and again I
 assert that it could not be the evidence sub-
 mitted to the Magistrate. No two persons
 ever related the same facts, word for word the
 same; and it is quite impossible they could
 have delivered their testimony in the language
 that is here returned. The evidence is a repe-
 tion of the Information, with this exception,
 that it substitutes the word “*pray*,” for “*to
 preach*.” The Information is, “*That he did
 preach or teach*;” the Evidence is, “*That he did
 teach and pray*.” The witnesses should have

sworn to facts, not to the law, which facts should have been specifically set forth, in order that the Court might judge whether they constituted an offence within the Act of Parliament. The evidence only amounts to this: That the Defendant is guilty. But guilty of what? of *Praying*.

Does my learned friend suppose that our Ancestors were so stupid and ignorant that with all their spirit of persecution, and all their desire to comprehend Non-Conformists, that if they had meant to have included the word prayer, they would not have done so? But the question is beyond doubt and dispute, when you read the first clause in the Act, because the first clause in the Act inflicts a penalty on any person attending "any exercise of religion." Prayer is an exercise of religion—the person praying in the manner described by the Act, is rendered liable to a penalty of five shillings, and this clause was inserted to comprehend those persons within the Act who prayed, as contra-distinguished from those who were Teachers and Preachers, the one being within the contemplation of the Legislature, comparatively an innocent act, and the Legislature meaning to repress by greater and severer penalties the conduct of superior persons who were Preachers or Teachers.

Gentlemen, I was stating to you that it was quite impossible any witnesses should have de-

livered their testimony in the words here stated; but when I say that, I do not say it with an idea or intention of casting any kind of reflection on the honourable Magistrate whose judgment was formed upon this evidence. I mean to cast no such reflection. I believe the conviction was not drawn up in form by the worthy Magistrate, but by some special Pleader, who not having the facts correctly stated to him, considered it necessary to make the evidence tally with the Information. What is Evidence? Evidence is a relation of facts, not a conclusion of facts; and the conclusion from the facts deposed to, must be left to the determination of the Justice, who is to pronounce his verdict on the guilt or innocence of the accused—but the convicting Magistrate should have returned the Evidence in the language of the Witnesses, in order for the Court to judge of the correctness of his conclusion.

I would make my Appeal on this subject, to Honorable and Learned Magistrates that now surround me,—whom I know to be men of high honor and integrity, and many of them well acquainted with the Laws of their Country,—supposing they had been applied to, to grant a warrant against a man for an alleged offence, and they had done so;—and that the man was afterwards committed to Prison for Trial,—there is a Statute which renders it necessary for the Magistrate to return the depositions of the

Witnesses to the Judges of Assize, for the purpose of making them acquainted with the grounds of the commitment. I would ask, do the Magistrates return the depositions in the language of the warrants ?

Suppose a case of confession,—As the Magistrate is bound to return the depositions of the Witnesses so is he bound to return the account given by the Prisoner. But what Magistrate ever returned the confession of a Prisoner, in the technical language of the accusation ? I may perhaps have enlarged too much on this subject ; but it was with a view of stating in the presence of this very crowded Bench of Magistrates, that nothing can be more mischievous to the ends of public Justice, than this mode of returning evidence.

Gentlemen, I am not disposed to be jocose at any time,—but I cannot help thinking that the Reverend Gentleman, who laid this Information has a great partiality to the reading of Romance, and as a relaxation from his severe studies, he has been amusing himself with the life and adventures of Gil Blas, of Santillane. Perhaps you may remember that the merry Spaniard and his associates had resolved to play a trick on one Samuel Simon, a Jew, who had become a Catholic. To carry their plan into execution, they habited themselves as Officers of the Holy Inquisition ;—This being done, it was necessary to comply, with the forms of Law, and

therefore a Servant of Samuel Simon was produced as a Witness, before this sham Tribunal and sworn, and the questions asked him in due form.—“ Does your Master ever go to Church?” I never saw him there, says the Servant. Good—cried Mr. Inquisitor;—write, Samuel Simon never goes to Church. Oh, no ! says the Witness, I never said he does not go to Church, I only said, I never saw him there :—Write !—said the Inquisitor, Samuel Simon never goes to Church. Does your Master eat Pork ? I dont remember, says the Witness, that we have eat it twice since the time I have lived with him. Very well,—Write Mr. Secretary ! That Pork is never eaten in the House of Samuel Simon. Does your Master eat Lamb ? No ! I do not recollect that he does ;—I think that he did once, Was that at Easter ?—Yes thereabouts. Write, Mr. Secretary !—That Samuel Simon keeps the Passover.

Pleased with this story, the Reverend Gentleman thought that he would play a trick on Mr. Kent the Methodist ! and having cloathed himself in the habit of an Informer, he laid his Information, produced and examined his Witnesses. In what act (says he) did you discover this great Offender against the Liturgy and practice of the Church of England ?—In the act of Prayer, says the Witness.—Write, Mr. Clerk ! cries the Reverend Informer—that the Witness heard him Preach or Teach, At what hour ? In the even-

ing—says the Witness, after the Church Service ; very good, says the Informer ; a most improper season, it was at a time when the doors of the Church were closed for the rest of the week.— Write, Mr. Clerk! that was contrary to the Liturgy and practice of the Church of England.

Now, Gentlemen, suffer me to ask you what Evidence the Reverend Informer has produced before you to-day in support of his Charge. The Charge is, that the Appellant did Preach or Teach. The Evidence is, that the Appellant was in the act of Prayer. What is Prayer? It is not Preaching, it is not Teaching: though the Prayers of some good men, are too apt to express the mind of God to the people, than the petitions of the people to God. Preaching or Teaching, is communication of knowledge or information by man to his fellow creatures. Prayer is (I mean to those who worship God in Spirit and in Truth,) a blessed communion with God himself; a fellowship with the Father, through faith in his Son. The act of Prayer is, when a Man commits himself to God, either in petition, in confession, or in praise. The nature of the charge is, that he Preached or that he Taught—What say the Witnesses? Have you any Evidence of that fact? The first Witness as Evidence of his Teaching or Preaching, and on whose testimony alone my Learned Friend must rely, says—“ He said he cared for neither Man or Devil.” That is the evidence. Is that Teaching? Is it Preaching?

I need not argue this point. Is it the delivery of a Religious Discourse? Is it Teaching by the explanation of Scripture? But this is the miserable Evidence on which you are to sanction the Judgment of a Justice out of Court and confirm a conviction which is to inflict a penalty of 20*l*.

But what says the second Witness? "When I came into the room, I saw this Man by the name of Kent, who was there in the act of kneeling. I went round and had no longer an opportunity of seeing him from something coming between us, I had no opportunity of judging of his act."—Yet you, upon this Evidence, are called upon, on your Oaths to pronounce that he, because he was kneeling, was either Teaching or Preaching. Before a Man can be convicted of an offence, the Evidence in support of it ought to be clear, and not to depend on inference. And yet this Witness being called to prove that the Appellant either Taught or Preached. What says she?—In the succession of many sentences—she heard two words, the one was "Damn"—and the other was "Curiosity."—Which words cannot be explained without the context. From the word "Damn" alone, or the word "Curiosity" alone, are you to say that he was there as a Teacher and a Preacher within the description of this Act.

Gentlemen, when this Evidence is examined, it is too ridiculous for observation; and I am sorry to say that any Man, more particularly one,

who from his sacred Office, must be in the constant habit of exhorting his family, and his Congregation to prayer, should by this Information and Evidence, be ringing the alarm bell from one extremity of the Empire to another. But I rely on your sounder judgment to correct the sentence of this Record, because I know that you cannot upon this Evidence convict the Defendant of Preaching or Teaching;—that is—of delivering a religious Discourse to a Congregation.

But, Gentlemen!—I will trouble you with one or two more observations to this point:—You see to what a ridiculous absurdity my learned friend is driven, when he is put to argue the case. Does he say (indeed he has said it) that to teach and to preach are synonymous terms;—the Evidence is, that he *prayed*:—Then, if to teach—is to preach, to pray—is to preach, which is absurd. But are they different?—Because I do not want to catch my learned friend on any admissions he may have hastily made. Supposing the words to have a distinct signification, what is the consequence? It is this:—That you destroy all the privileges conferred by the Toleration Act; and I will tell you why,—because, though the first Section in the Act speaks of Preacher or Teacher, it extends its privileges (and I will call the attention of the Court to that particular point) only to such persons as preach. Then what is this consequence? If any Preacher

of a Dissenting Congregation, should address himself to God in any Prayer, not included in the Prayers of the Church of England he would be liable to the Penalties of the Conventicle Act. Why?—Because, my Learned says, if you *pray* you *teach*. It is in vain for him to say—I have been before the Court of Quarter Sessions—I am protected by having taken the Oaths.—No!—says my Learned Friend, the Act is only to exempt Preachers and *not Teachers*; and, therefore, you are liable to all the penalties of this Act.—That is another absurdity my Learned Friend is reduced to by taking them as words of distinct sense.

But the evidence is:—That he prayed contrary to the manner prescribed by the Act of Parliament, or the Liturgy.—Does my friend mean to argue, that no man can offer himself to Heaven unless he has a prayer book in his pocket? Or address the Deity in other language than that prayer book points out to him? What! will my learned friend say, that if I was attending the bed of my dying friend, *without a prayer book* in my pocket, and was offering up my prayers and intercessions for him, by his particular request, when he was leaving this world for another,—I should subject myself to the *penalty* of 20*l.*? because my dying friend asked me to join with him in prayer to God; and yet, that is the dilemma to which he is reduced; if you cannot address

God in any language but that of the Common Prayer Book. Good God! Is it to be endured that if in the company of your family, your friends, your children, your relations, or others most dear to you, you should in health or in sickness, in prosperity or in misfortune, in company with them, offer up any praise or thanksgiving to God, praising Him for Mercies received, or for evils averted.—That you immediately subject yourself to the penalty of this Act.—That you are to close your mouth in silence and solitude—and that you are to be forced to separate yourself at once from your Saviour and your God.

Gentlemen,—I really ought to apologize to you, I ought to apologize to the Court—I ought to apologize to all my learned friends about me, for the length of time I have occupied in the discussion of this question. The importance of the question must be my apology;—I do not stand here as being the advocate of any one Man, belonging to any one Sect, but I stand here as the Advocate of the People of England.—I stand here as your Advocate, sitting there as Jurymen during the discussion of this Cause, and for your Children after you. The cold and unfeeling Socinian, who denies the Divinity of Christ, belongs to a Sect that are few in number—he approaches with slow and trembling steps—and pauses

before he becomes an Infidel: he is of a Class that appeals "to the vanity of the half learned, and to the pride of the half reasoning." The Atheist, who denies the existence of a God, is of a Class composed of few—a solitary instance here and there—under whose branches none seek refuge, none find shelter. They reason themselves to their own destruction. Not so, not so, if this attempt succeeds, this is an Act of the most dangerous tendency, because it assumes the sanction of law.

This wicked attempt has for its object the separation by legal penalties, of all social intercourse of Man and his Maker, all prayers of intercession between Man and his Redeemer, all blessed communion between Man and his Saviour and his God.—My learned friend by this Act would oblige man to stand alone.—It would indeed give him the privilege in silence of offering up his prayers to God in form, or as accident or opportunity might direct him. But if his adorations arose from any of those Causes, in which he was joined with his family and others, those who have instituted this proceeding, would by this dangerous of all attempts, prevent that which we are all looking up to, namely, a public confession, a free, unreserved public confession, of every man's sentiments in prayer, in the presence of those, who are to Judge of his Petition to that God, who is either to answer, or refuse it.

Gentlemen, I am ashamed to have occupied so much of your time—I will not trespass upon you any longer. I beg leave once more to offer my apologies to you, for the length of time I have taken in the discussion of it—I will only repeat to you, that the crime as specified in the Act, must be proved by evidence; the party is not comprehended in the letter of the Act of Parliament, and there is no evidence to bring him within the spirit of it.

Gentlemen, I sit down, apologizing, if I have repeated the same observations a second time; my only fear is, lest I should have created a difficulty, where no difficulty at all existed,—by my length of observation.—You cannot form but one conclusion, because you have sworn to find the truth.—You can form no other result from the evidence, but the verdict of *Not Guilty*.

Mr. Wakefield.—Instead of interrupting my learned friend at the time, I waited till he had finished his address, to correct a mistake.

Earl of Radnor.—You cannot reply.—You will confine yourself to a simple statement to the Bench.

Mr. Wakefield.—I wish merely to correct a mis-statement of the effect of the Act which my learned friend has fallen into.

Earl of Radnor.—You cannot do that now,—you had a right to stop him if he mis-stated any thing.

Mr. Wakefield.—I have been told, that I might wait till the address was finished, and that it was more regular to do so ; I should have been very sorry to have interrupted my learned friend, in a speech I heard with so much pleasure ; I wish merely to state that men are at liberty to pray in their own families.

Earl of Radnor.—I was aware of that.

Mr. Gleed.—Yes, but not with strangers.

Mr. Wakefield.—Not more than five.

Mr. Hallett.—Before your Lordship sums up, if any point of Law strikes a Magistrate, I think he should state it. It strikes me without saying one word on the prosecution into which I do not wish to enter (though I could if I were disposed) that in all penal Statutes, the Conviction ought to be according to Law.—Now it does strike me, this Conviction is not such a Conviction as ought to be returned into a Court of Justice. I will just state, in one word if you will give me the Conviction, on what objection I ground myself. Your Lordship will excuse my taking the time of the Court—It strikes me the Information itself should correspond with the Conviction : In this case the Information does not correspond. There are, as I understand, two offences created by the Act,—one offence Teaching, and the other Preaching ;—I conceive a man may *teach* a Doctrine, and another *preach* a Doctrine so taught. In this case the Infor-

mation runs, " Did on the 21st day of October in the Year of our Lord 1810, *Preach or Teach*.—I apprehend it should be *Preach and Teach*.

Earl of Radnor.—It is *Preach or Teach* in the Act.

Mr. Hallett.—Therefore the Information should shew precisely which it is that is charged.

Earl of Radnor.—It is exactly so in the Act.

Mr. Hallett.—I can bring forward a case on the Game Laws, on the Act of Lord Berkeley, which enacts, that if so many persons together shall within such hours, kill Game, or do other things specified in the Act, they shall be guilty of an offence. The Conviction of my worthy Friend Mr. Goodlake, stated that the men did so *or* so, he did not fix which, and the prisoners were immediately dismissed from this Court by a very learned Judge then sitting where your Lordship now sits. I conceive if it is fatal in the Conviction, it is in the Information. The Conviction should correspond with the Information. The Conviction after saying that he did Teach or Preach, goes on to say "*Whereby*, and by force of the Statute in such case made and provided, the said William Kent forfeited for his said offence, being his first offence, the sum of 20*l*." There are two offences, one or the other; and the Magistrate does not say, of which he convicts the party. I do not know whether I am right in these objections which have occurred to my own mind.

Mr. Gleed.—Perfectly right,—I take it.

Mr. Hallett.—“ Therefore the said William Kent, on the 27th day of October, in the 51st year aforesaid according to the form of the Statute is Convicted of the offence *afoersaid*,” There are two offences, which of them it is impossible to say, from the Information setting it out.

Mr. Gleed.—I have read over this Information with very great attention—there is no doubt of your being right—there are a vast number of other objections—but I waved them because, as they are objections arising on the face of the record, it would perhaps be premature to make them until after the verdict.—They may be made at any time.

Mr. Hallett.—You agree perfectly that this is a substantial objection ?

Mr. Gleed.—Perfectly so—there can be no doubt of it.

SUMMING UP.

Earl of Radnor,

GENTLEMEN OF THE JURY;

You are impannelled, as you have heard, on a Cause rather unusual.—You have heard that it is almost without precedent, to have an Appeal tried in the way we are now trying it, by a Jury; but, it is agreeable to the Act of Par-

liament. The Act of Parliament is the Act of 22 Charles II. which provides, That if any person of the age of sixteen years, or upwards, being a subject of this realm, at any time after the 10th day of May next, shall be present at any Assembly, Conventicle, or Meeting, under colour or pretence of any exercise of religion, in other manner than according to the Liturgy and practice of the Church of England, in any place within 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 together, over and above 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 persons or more are so assembled together, every person being there shall be subject to such a penalty;—I need not proceed with that Clause now, but then it goes on to another Clause, “That if any person shall take upon him to teach or preach in any such Meeting.”—That is the reason why I read the former Clause, because it is the offence described before; “and shall thereof be convicted, he shall forfeit for every such first offence, the sum of 20*l.* to be levied upon his goods and chattels.”

Mr. Kent has pleaded not guilty to the offence of which he has been convicted, in the

manner I am now about to state to you.—This is a proceeding before a Magistrate:—“ Be it remembered, That on such a day, at Wantage, in the County of Berks, James Beaver, of Childrey, in the said County, Clerk, came before me, William Henry Price, Esquire, one of the Justices of our Lord the King, and gave me the said Justice to understand, and be informed, that one William Kent, Baker, did on Sunday the twenty-first day of October, 1810, Preach or Teach in a certain Meeting or Conventicle, held in a certain uninhabited House, belonging to the said William Kent, situate in the Parish of Childrey, in other manner than according to the Liturgy and practice of the Church of England, contrary to the form of the Statute, in such case made and provided; whereby and by force of the Statute, he has incurred the penalty of 20^l.” The Magistrate says, “ On the same day and year aforesaid, Lawrence Belcher and Margaret Partridge, both of the Parish of Childrey, two credible witnesses, upon their respective corporal oaths, taken before me, depose and say, in the presence and hearing of William Kent, That on Sunday the 21st of October, 1810, they the said Lawrence Belcher and Margaret Partridge heard the said William Kent Teach or Pray, in a certain uninhabited House, belonging to the said William Kent, situate in the Parish of Childrey; in other manner than according to the Liturgy and practice

of the Church of England, where above five persons were present,—whereupon the said William Kent is asked by me, what he has to say for himself, why he should not be convicted of and for the offence;—but William Kent doth not shew, or produce before me, any evidence that he is not guilty of the offence, nor doth he shew any reason why he should not be thereof convicted.” And the Justice orders him to be convicted.

Gentlemen, the evidence that has been produced is this:—Lawrence Belcher says, that he knows William Kent—that he knows his House at Childrey, he the witness was in it on the 21st of October last; he says “There were nearly twenty persons present—William Kent was there—it was Sunday evening—it was dark—there were candles—he saw Kent kneeling—all the Congregation were kneeling—Kent was holding forth—he was teaching, I suppose; and he said he did not care for either *Man* or *Devil*.”—The witness says he did not take notice what else he said, and he went away before it was over—Kent was not on his knees when he said those words—he knows what is the Service of the Church of England, what was done in this House, was not at all like that.

On his cross-examination, he says that he lived with his mother, that he went to that place with Margaret Partridge, a servant of the Rev. Mr. Beaver, who it appears is the inform-

ant; that he went voluntarily, not being desired to go there by Mr. Beaver, or any body else; that James Jordan and others went with him.—That he does not know the meaning of the Liturgy of the Church of England.—That Kent did not read out of a book, or even from a paper, when he used the words which have been mentioned.—“That he did not care for “*Man or Devil.*”—That he did not look at any person in particular.—That he had finished his prayer, when he used those words.—That to the prayer, some of the Congregation said Amen.—That he was there about half an hour, and there was no apparent cause for the words.—That is, no apparent application of the words to any body there.

Margaret Partridge says:—That she knows William Kent.—That he lives at Childrey.—That he has an empty House.—That on the 21st of October, being Sunday evening, she was there.—That there were about 30 or 40 people there.—That William Kent was there.—That they were all kneeling.—That Kent was not saying any thing when she first went in.—She heard two or three before she heard Kent. She does not recollect what they said.—That she heard Kent say, “*Damn,*” but did not particularly attend to the context of what he said.—That she also heard him use the word “*Curi-*“*osity.*”—That these words formed parts of several sentences, that is, of separate sentences.

—That he did not use the word “*Damn*,” and the word “*Curiosity*,” in the same sentence.—That she heard those words repeatedly.—She did not see him after she first went in, there being a pillar between them; but that she is sure it was Kent’s voice.—That he began very low, and spoke latterly very loud.—That it did not appear like a prayer, from the loud way in which he spoke.—That the people were all kneeling that were sent, except two or three.—That she was not desired to go there.—That she was a servant of Mr. Beaver’s, but that her Master did not know even of her going.—She was asked what those did that spoke before Kent; she says they were kneeling, and prayed one after the other, and a hymn was sung between each.—That Kent began with a very low voice, and the Congregation kneeled; and she does not know that there was a hymn sung after Kent preached.—That it is not at all similar to what passes in Church.—That nobody joined in the prayer, and she saw no book in Kent’s hand; in truth, Kent was out of her sight.—That she did not pay particular attention to what passed.—She only heard the words “*Damn*,” and “*Curiosity*.”

Gentlemen, it is evident that this is a cause of some expectation; and I am very sorry that it falls to my lot, to sum it up to you; because there is a nicety of expression, and a difficulty of exposition, which are not at all suited to my

habits of life.—I think, likewise, that the subject is a matter, that neither you, nor I, are much used to investigate; but I think, there are some things, which have been mis-stated to you; and the first, I shall notice to you, is this. Mr. Gleed says: This Act relates to every man who is a Christian, and he inveighs against the Act, in stronger terms than I think the Act deserves.—He has represented to you, (and very pathetically) the situation of a man with his own family; but, in the first place, this Act does not at all apply to any man's own family; and he mentions the instance of himself, being called, perhaps, to a dying friend, who desires him to pray with him;—Now, the Act does not apply to such a case, for the Act relates to five, or more, being assembled, other than the members of the family. I will read to you the words—“At which Conventicle, Meeting, or Assembly, there shall be five persons or more assembled together, over and besides, those of the same household.” It therefore, does not apply to any case, where a man is with his own family.

Gentlemen, Mr. Gleed has stated in strong language some parts of this Act of Parliament, that certainly are not agreeable to modern feelings; but if the law is brought before you, it is the law; and you are to remember that it is the law;—you have sworn to execute the law, and you are not answerable for the law being

wrong; supposing it to be wrong.—But, Gentlemen, I think I can exempt the law itself, (at least the laws of the country taken together, if not in this individual Statute) from all objection, because there is an Act of Parliament passed in the beginning of the reign of King William, which extends to all persons dissenting from the Church of England, a right to teach and to preach the doctrines, that they hold in their consciences, to be true; provided only, that they take the oaths to the King,—and that they do declare solemnly, in the presence of Almighty God, that they are Christians and Protestants,—and, as such, that they believe that the Scriptures of the Old and New Testament, as commonly received among Protestant Churches, do contain the revealed Will of God, and that they do receive the same as the rule of their doctrine and practice.—This in my hand was signed but yesterday in this Court.—There are one or two other declarations that they are likewise required to subscribe, renouncing some of those that we hold to be errors of the Church of Rome, but which of course they must renounce too, or they could not be Protestants, and to enable them to have the benefit of this Act of Parliament;—I think it is only two sixpences that each man pays.—I think therefore no man is controlled much in the power of teaching and preaching to his neighbours; for it does not depend upon us to

refuse it—we cannot refuse the applications of any persons tendering themselves to take those oaths, and paying that sum to the proper officers.

By the words of this Section they are required to act according to the Liturgy of the Church of England.—Those who know any thing of Childrey, I believe know that there are very few persons in Childrey competent to explain what is the Liturgy of the Church of England—neither of the Witnesses distinctly answer to it, but they answer it substantially, for they say that what passed in this place was nothing like that which passes in Church; certainly therefore, what they were doing was not agreeable to the Liturgy of the Church of England.

We come now Gentlemen to the point which appears to me to be the gist of the whole business and upon which I am extremely unable to give you such advice as I should wish to offer to a Jury, that is the construction of the words “Teach” or “Preach”—*The impression upon my mind is this, that if a man reads in the midst of a Congregation an address to the Supreme Being, which they repeat fully in their minds and in their hearts, to which they say Amen. It is impossible in my mind to conceive that that man does not Teach that Congregation.*

With respect to the objection that is made by a worthy Magistrate, upon the Bench, upon the

form of the Conviction; That we have nothing to do with now.—It is, I understand, after a verdict given, convicting this man, still open to objection, on that ground; and therefore, I do not pretend to say any thing on that subject now, and it must not have any influence upon you—If I have been of any use to you in forming your verdict, I shall be glad.—What I have said I cannot state to be perfectly satisfactory to my own mind, but, it is the best explanation, it is in my power to give.

The Jury consulted together for about a quarter of an hour.

Bailiff.—The Jury say they have made up their minds as to the verdict; but, that the Foreman refuses to give it.

Earl of Radnor.—They cannot have agreed if the Foreman refuses to give it;—In that case they may withdraw if they wish it.—Have you agreed with your fellows.

Foreman of the Jury.—Yes.

Earl of Radnor.—Then why will not you give the verdict?—Ask the Jury in the regular way, whether they have agreed.

Mr. Budd (Clerk of the Peace.)—Gentlemen of the Jury—Are you agreed in your Verdict?

Foreman of the Jury.—Yes.

Mr. Budd.—Is the Defendant Guilty or not Guilty?

Foreman of the Jury.—Guilty of Teaching or Preaching.

Mr. Gleed.—You will record the Verdict.

Earl of Radnor.—Do you do any thing upon this.

Mr. Gleed.—Yes I must trouble your Lordship—My Lord the Jury having returned this Verdict, it certainly is no part of my Duty, or my inclination to controvert it; but it now in point of form, becomes my duty to address the Court, and to say, that the Court can pass no judgment upon this record—There are two modes in which I will argue it—The first is, that the Verdict, as it is recorded, by the Jury, is no Verdict at all; because, it is in the language of the information, that he did either Preach or Teach.

Earl of Radnor.—That is not the Verdict.

Mr. Gleed.—Yes, it is so recorded, as it is given.

Mr. Budd.—Guilty of Teaching or Preaching.

Earl of Radnor.—If they have not given the Verdict of Guilty or not Guilty.—I shall send them out again; I suppose Gentlemen, you mean to find the Defendant Guilty.

Foreman of the Jury.—Yes.

Mr. Gleed.—It was a special Verdict entered in the words of the Jury.

Earl of Radnor.—The Clerk of the Peace will scratch it out and ask them again.

Mr. Budd.—Foreman! you will attend to what I say to you.—Is the Defendant Guilty or not Guilty.

Foreman of the Jury.—Guilty I suppose.—*Guilty of Teaching or Preaching.*

Earl of Radnor.—If you are not agreed, you must go out.

A Juryman.—We are agreed—we say Guilty.

Earl of Radnor.—We must receive it from the Foreman; he does not say those words.

Foreman of the Jury.—Guilty.

Mr. Glead.—Then my Lord the Jury having found the fact; I have now to address your Lordship and the Court in point of Law, upon this conviction, and to submit that no Judgment can be given on this record, and there are three objections.—The first objection I have to state is this—That the information states two offences. To each offence is attached a distinct penalty, and then the Conviction in its judgment says, that the person against whom such Information was laid is Guilty of the said offence,—To what do the words “the said offence,” have reference?—Not to the evidence but to the Information.—What is the Information?—The information is a specific charge. What is the charge? There are two distinct and separate charges. What is the Judgment “the said offence”—referring neither to one nor the other act distinctly, and having reference to neither distinctly

though the Jury have returned their verdict, it being a verdict on the record, you cannot say to which of those offences either Preaching, or Teaching, the Verdict applies.

Earl of Radnor.—What is the offence stated?

Mr. Gled.—The words of the Act are to *Teach or to Preach* (not in the copulative) pointing out two distinct and separate Acts—he may be a Teacher, not a Preacher, or vice versa he may be a Preacher, and not a Teacher,—If there are distinct persons to whom it applies, and there is a penalty attached to either, they should have selected their charge in the Information; and said, that A. B. on such a day did Preach, or that A. B. on such a day did Teach; and then, proving either the one or the other, the penalty would attach. Suppose this case which your Lordship must have seen in Courts of Justice frequently: In an indictment you may state a variety of counts all as applicable to the same offence; but you cannot state in one and the same count that a man was guilty of Burglary or Highway Robbery, though if he is found guilty of either, the sentence of the Law is that he should be executed—but you must state in your indictment, the particular offence, and the evidence must apply to it—so here the offence is distinct, and being distinct, it should have stated in the words of the act. The Informant is supposed to be acquainted with the Proof of the allegation, and he must so state the offence,

that when the Judgment is passed, it shall have reference to the offence, stated in the information.

The second objection I have to state, is of a still more decisive nature;—for I think I may consider it as conclusive, upon the authority of a case, which I shall have the honour of submitting to you.

The words of the Act of Parliament, if your Lordship will do me the honour of referring to them, are These, “ That if any person of the age of 16 years or upward, *being a subject of this Realm,*” shall do so and so—he shall be liable to a particular penalty. In all cases where you want to bring a person within the provisions of a particular Act of Parliament, which Act of Parliament creates the offence, and specifies it, it is necessary you should state on the record, the nature of the offence, and the description of the person committing it; as, for instance,—Your Lordship knows the other day an Act was passed for the purpose of making the offences of Servants, taking money, or other effects into their possession, on their masters’ account, and fraudulently embezzling or secreting any part of it felony. It was once contended, that in order to bring an offender within the Judgment of this Statute, it was not necessary that the indictment should be specially drawn; but, that under the above Act, there must be Judgment of transportation on a general indictment for

Larceny, at Common Law. But one of the most able and learned and humane Judges, that ever adorned the English Bench was of a different opinion. I therefore, may presume to state, for the purpose of bringing a person within the penalty of this Act, that you must state the particular nature of the offence committed; therefore, when it is stated, that A. B. was servant to C. D. and that he was employed to receive money and embezzled it, you must bring the offender and the offence together; so, here, the Act of Charles 2d affects particular persons, such persons as are "*the Subjects of the Realm;*" then it was necessary, that the Information should have stated, That A. B. "*being a Subject of the Realm,*" did particular acts,—I took the liberty of stating, that on this second objection, I was fortified by authority, and therefore there can be no doubt of it, I will take the liberty of stating what that authority is, and how it came before the Court.—It came before the Court in the year 1760, and is in Burrows Reports, 1040. The King against Moreley and others, Mr. Knowler and Mr. Filmer, at that time two Gentlemen very high in their profession shewed cause against the issuing of a Certiorari to remove several orders made by Mr. Money penny, a Justice of Peace in Kent, upon the Conventicle Act, 22 car. 2 cap. 1. by which orders he had convicted a Methodist Preacher and the Master of the House, wherein he preach-

ed,—*not for praying*—and several of the audience in the respective penalties following.—The Preacher was convicted in 20*l*.—The master of the house in 20*l*.—and several of the auditors in different penalties.—Mr. Knowler and Mr. Filmer urged, that after all this had passed, a writ of error might lie but not a Certiorari which will only lie when there is no other remedy.

A question there arose between the Counsel and the Court; how far after the verdict having been given, as in this case, it was competent to the Court (since the words of the Act were very positive) to remove by a Writ of Certiorari the proceedings, supposed to be final in this Court, into the Court of King's Bench; as it struck me when first I looked at this question, that the Judgment of this Court was final; and not to be removed, but I find Lord Mansfield determined that the jurisdiction of the Court of King's Bench cannot be taken away but by express words; and after that question had undergone a considerable degree of discussion, Lord Mansfield asked, if you wish to remove this by Certiorari what is your objection to the record. On Mr. Norton being asked what was the objection he had to these Convictions, he answered, that it was not alleged that the Defendants "*were subjects of this Realm,*" and I am extremely happy in having an opportunity of stating that the Court were unanimously of opinion that a Certiorari ought

to issue, and a Certiorari issued accordingly. But your Lordship sees the objection was taken as I take it now, that the words "*a Subject of the Realm*," being descriptive of a person committing an offence, it was necessary that those words should have been stated on his information. That is the second objection, but my Lord there is a third.

Earl of Radnor.—That is a sort of interlocutory proceeding, removing by Certiorari.

Mr. Gleed.—I state this case in confirmation of my argument, that it was necessary to describe the offender according to the words of the Act, and it is every day's practice:—Supposing a man was indicted for burglary, would the indictment be good, if it did not introduce the word burglariously? No! Supposing an offence created by Statute, you must follow the precise words of the Statute, or you do not describe the offence, the Act was intended to prevent. Supposing it to relate to the person, you must take the particular situation in which the party stood, as I took the liberty of stating with respect to the embezzling act: That A. B. was the servant of C. D. because it is not every man's receiving the property of another that will bring him within the Act; so here, this is descriptive of the person.—It must be A. B. a Subject of this Realm—his being a subject of this Realm is necessary to constitute the person

an offender, and for the omission of that, I submit this record is defective.

My Lord, there is also a third objection, and it is this:—It is necessary, in order to constitute this offence, that it should be done in the presence of a certain number of persons. Your Lordship stated, that which it was not becoming me to interrupt; as to my observations, that it did not deprive a family of exercising their religious duties—certainly not!—but I meant, there, to include strangers to the number of five; certainly, there must be more than five persons present—to make a Conventicle.—Your Lordship sees it is necessary, in order to bring it within the clause of this Act of Parliament, that it should be done in the presence of five persons at the least, and in the evidence they have stated, that William Kent did teach and pray in a certain House where above five persons were present, but in the Information which is a description of the offence, the number present is omitted.

Earl of Radnor.—We have had evidence of it.

Mr. Glead.—I do not dispute the fact, there might be fifty persons present; but we are now on the Record.

Earl of Radnor.—I think we got awkwardly into it—we got into the Evidence, and we have it on the Evidence, that there were above five present.

Mr. Gleed.—I will in my present argument, put out of the question every part, but the Information; I have made my objection to the Record, and it is on the Record, I am addressing your Lordship. I grant on the Evidence it appears there were above five present, but my objection is, that it is not stated in the information, that there were above five persons present, which was necessary to constitute the offence; therefore, there are three objections: First, the Defendant is charged with two distinct offences; each of which would subject him to a separate penalty, and he is convicted of one;—If the offences are separate, the Informer should have made his Election, and have so stated it on the Record; but as he has included them both in one Information, the Defendant should have been convicted of both: A judgment for too little, is as bad as a judgment for too much. Secondly, it has omitted the description of the person “*A Subject of this Realm*;” and, Thirdly, it is not stated for the purpose of completing the offence, that there were more than five persons present.—I trust I have said enough upon these objections to satisfy your Lordship, that upon this Record no judgment can be pronounced.

Mr. Wakefield.—It is my duty, my Lords, now to answer the objections taken by my learned friend, and I apprehend that this Court is not now called upon to pronounce any judg-

ment whatever upon this person; but that the Act of Parliament has given the power to do that to the Jury, by the verdict. I apprehend my learned friend to be precluded from entering into any of those objections; or the Court from considering them as judgment is already passed; and what I rely upon is this:---after saying that persons aggrieved upon such a Conviction may appeal. The Act says, "Whereupon such offender may plead, and make defence, and have his trial by a Jury thereupon, and in case such Appellant shall not prosecute with effect, or if upon such trial he shall not be acquitted, or judgment pass not for him upon his said appeal, 'evidently meaning by judgment pass not for him,'—if he be not acquitted—if a Jury find a verdict of Guilty."---That is evidently what they mean by those words in the Act, for Judgment was passed at the time he was Convicted, and Judgment has been executed.---"And Judgment pass not for him upon his Appeal, the Justices at the Sessions"---shall do what?—pass Judgment? The framers of this Act have not been guilty of that absurdity---they have no Judgment to pass---that was done by the Magistrate, and we are trying whether it was good---we are not trying whether another Judgment ought to be passed, but---"The Justices shall give treble costs."---They shall pass no Judgment, but "give treble

costs for trying the Appeal 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 only."---The way in which I mean to put it is,---that upon the construction of this Act the Judgment is passed, and the party convicted---Why try whether the Judgment is good or not---the Jury have affirmed the verdict, that is their province. My learned friend cannot move in arrest of Judgment, when no Judgment is to be passed; are they to recal the Judgment passed two months ago? the Jury say the Judgment is good, and the Court have no Judgment to give.

But supposing that objection of mine to the argument of my learned friend, being considered at all, is over-ruled by the Court, I will then give answers to my learned friend's objections. His first objection is---That the offence is stated in the Information in the disjunctive "*Preach OR Teach,*" and he likened that part of the Conviction to an Indictment; but, I would wish to call the attention of my learned friend to the construction which the Act of Parliament of the 1st William and Mary put upon the meaning of the disjunctive manner in which the 22d of Charles II. is worded;---they say here, in Section 11, "That every *Teacher* OR

Preacher, that is to say *Minister*," that is the way the Act goes on, and in one part of my argument just now, I considered Minister, Preacher, or Teacher, the same, under the construction this Act of Parliament has put on the use of the disjunctive *or*:—They treat it as in the conjunctive case; and it will hardly be said, by my learned friend, but that there have been repeated instances in which it has been held that this word *or*, inserted in the description of an offence, was to be interpreted as, *and*; for how could sense be made of this, if it was not so, "Minister, Preacher, or Teacher," applying to the whole?—Does the word "Minister," apply to the one or the other, or to both? Because it says, that the meaning of the words Teacher, or Preacher, is Minister. Does the word Minister apply to both, or does it apply to one only?

Earl of Radnor.—We are satisfied about this point,—That the verdict of the Jury is conclusive upon the subject; but, Mr. Glead! as I always wish to do what is right, I will refer you to a Case I have here before the Court of King's Bench, of a Conviction upon this very Statute;—the people there were not mentioned to be Subjects of the Realm, there were four objections, and the Court after negating all the objections goes on to say, the exceptions need not be set out, and they take notice, as we

must do of the clause, which directs that the Act shall be construed most largely, and that no proceedings thereon shall be impeached for want of form ; you may look at the Case.

Mr. Gleed.—My Lord, I agree with this Case; that was not an objection arising in point of form.

Earl of Radnor.—The Court there, in the strongest terms, even when they had made all the objections they could against it, upheld the Conviction,—and that objection, which really struck me, appears upon that Case to be without a foundation.—What you said, Mr. Wakefield! appears to us quite conclusive, that the verdict of the Jury cannot be disturbed by us.

Mr. Gleed.—My Lord, this Case does not in the least apply, as it appears to me;—the objection was not taken there.

Earl of Radnor.—They appear to have taken every sort of objection there.

Mr. Gleed.—But this objection was not taken.

Earl of Radnor.—They have given the Conviction as it stands, and there are not those words.

Mr. Gleed.—It is quite a different thing—this is for a person, not having a licence, permitting another not having a licence, to preach in his house, but the present is against a person

for Preaching, or Teaching, which is a distinct thing—this is under a distinct Clause in the Act of Parliament.

Earl of Radnor.—I did not see that.

Mr. Gleed.—It is totally a distinct Clause in the Act, and is not applicable in the least.

Earl of Radnor.—Is it not required that those persons shall equally be Subjects of the Realm?

Mr. Wakefield.—I say, it is quite unnecessary to have those words at all.

Earl of Radnor.—I see now, it is on a different Clause.

Mr. Gleed.—I assure your Lordship, that if I was not clear in the objection, I would not take it.

Mr. Hallett.—Is it not open to the Court of King's Bench still?

Mr. Gleed.—Certainly.—I must be driven to remove this proceeding into the Court of King's Bench ; but I should be sorry to be obliged to remove it from a Court so constituted as this is.

Earl of Radnor.—I always like to have my opinion re-considered. I have no objection to it, in any case. I do not conceive there is any doubt upon the mind of any person, but it will give me satisfaction, personally, to have it removed into the King's Bench. But—how can you get it there?

Mr. Gleed.—By moving the Court of King's Bench to remove all the proceedings here by

Certiorari. The difficulty formerly was,—and it was argued in this case to which I have referred your Lordship,—that after the verdict given, by a Jury, and Judgment, it was final; but Lord Mansfield says upon that, in the case before me—“ Besides these words—that no Court whatever shall intermeddle, but that they shall be finally determined in the Quarter Sessions only—mean no more, than that the facts shall not be re-examined :—But the legality may, or a want of Jurisdiction may be taken advantage of. The case may be such, as that the Justices have no Jurisdiction.” As I say here, that it is not sufficiently stated upon record. “ The case “ may be such as that the Justices have no Jurisdiction of the matter, and where a Statute “ does not expressly and totidem verbis take “ away a Certiorari, and direct that no Certiorari shall issue, the Court will grant it.” So here—though it is said, no Court shall intermeddle with it; as the Act does not say the Certiorari is absolutely taken away, so jealous is the Court of King’s Bench of its authority being taken away, that they will not consider themselves as deprived of it.

Earl of Radnor.—I am very glad, that you may take it there; Mr. Wakefield may prevent it, if he can.

Mr. Price.—In the mean time, what am I to do with the penalty?

Mr. Glead.—It is very safe in your hands.—if the Court of King's Bench should affirm the Conviction, you will know how to distribute it, if not, it must be returned to the Appellant.—I rather believe the Act of Parliament directs it should be returned to the Clerk of the Peace;—but there shall be no difficulty on those subjects.

In Hilary Term, an Application was made by Messrs. Gurney and Glead, to the Court of King's Bench, for a Certiorari to remove the Proceedings, *in order that the same might be quashed*, and which was granted by the Court and in the Easter Term following, the Rule WAS MADE ABSOLUTE WITHOUT OPPOSITION. The Conviction and Judgment of the Court of Quarter Sessions therefore, were quashed, and the Penalty of *Twenty Pounds* has been since returned by the Convicting Magistrate, to the Defendant.

FINIS.

