

Citation: 74 Eng. Rep. 1378-1865

Content downloaded/printed from HeinOnline (<http://heinonline.org>)  
Sat Dec 13 17:20:47 2008

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's  
Terms and Conditions of the license agreement available at:  
<http://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

## [127] MAUNSELL AGAINST ORIAN.

An habeas corpus was awarded to remove them, being imprisoned for not taking the oath ex officio, before the High Commissioners for Conventicles by the statute 1 Eliz. 5. By Justice Poph. That it hath been adjudg'd, that a fine imposed by the High Commissioners was estreated into the Exchequer. And that was levied by process out of the Exchequer, and well. And if they may impose a fine, they may imprison; and that it hath been so used these 50 years, without any repugnancy, if the offence be ecclesiastical, and belong to them.

## FULLERS CASE.

F. was of counsel in an habeas corpus with one Ladd, who was committed to prison by the High Commissioners for refusing the oath ex officio, &c. And F. in his argument, said and objected many things contrary to the proceedings of the High Commissioners; for which he was convented before them, and committed. F. brought a prohibition, and in that shewed the antiquity of the Innes of Courts, and that he was a barrester of Grays Inne, and of counsel for his fee, with Ladd. And afterwards F. brought an habeas corpus, and in that Lees case was voucht, that L. being an attorney of the Court, was committed by the High Commissioners, and afterwards was bayl'd, because of his necessary attendance in Court. And that so it was also ruled in one Mittons case in the time of the Lord Dyer. And in that case it was agreed, that the High Commissioners may commit to prison. And Fuller now was remanded.

## BUCK AGAINST AMCOTTS.

H. 5 Jac. B. R.

In a prohibition. The defendant said, that in Hornechurch in Essex are chappels of ease (viz.) Rumford and Haveringe Chappels, and that they of Haveringe have used time out of mind, &c. to contribute to the reparation of Rumford: and that in the time of H. 4. virtute literar. patent. & concurrentibus iis, &c. And Rumford was pulled down, and erected in a more convenient place within this precinct and circuit, (viz.) twenty eight foot longer, and fourteen foot broader. Noy, That it does not lie.

1. Virtute literar. patent. in general is not good. But the patent ought to have been shewn in hæc verba or produced in Court; by which the Court might judge: for a new chureh cannot be erected without letters patents, because it is a sanctuary, ve. 5 E. 3. 26. 1 H. 7. 25. and 22 E. 4. The Lord Lislees case.

2. The prescription is gone, by the erecting in another place, and longer, &c. as aforesaid, ve. 4 Rep. P. 6. And that shall be taken strict, Perkins 761. 7 E. 4. 27. 10 E. 3. 23. But the Court was on the contrary. Because it is pro bono publico, and in such a case a pleader, by concurrentibus iis, is good. As of an union, 11 H. 7. 8. And that the conusans for reparation of the church, appertains to the Spiritual Court. And is not like the case of a tenure, 4 Rep. 86. Because the tenant by that is put to a greater charge; and no profit or benefit accrues to the tenant, as it does to the parishioner. And Easter term ensuing, a consultation was granted by the Court.

## [128] SIR ROBERT MILLERS CASE.

Adjudged by the Court, that a man cannot be punisht by the statute of 5 Eliz. cap. 9. for perjury in his own cause, as wager of law, &c. But by that he shall be indicted at common law, and it was commanded to be observed from henceforth; and that it hath been so adjudged.