

The tryal of Mr. Richard Weston, at the Guild-Hall of the City of London, for the murder of Sir Thomas Overbury, Knt. October the 19th, 1615. 13 Jac. I.

Contributors

Weston, Richard, -1615.
Holles, John, Earl of Clare, approximately 1565-1637.
Clanricarde, Frances Burke, Countess of, 1567-1632.
Essex, Robert Devereux, Earl of, 1565-1601.
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183 Euston Road
London NW1 2BE UK
T +44 (0)20 7611 8722
E library@wellcomecollection.org
<https://wellcomecollection.org>

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T H E

T R Y A L

O F

Mr. Richard Weston,

A T T H E

Guild-Hall of the City of LONDON,

For the MURDER of

Sir Thomas Overbury, Knt.

October the 19th, 1615. 13 Jac. I.



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Printed in the Year M D C C X X X V I I .

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The COMMISSIONERS were,

The Lord Mayor,
The Lord Chief Justice of England,
Justice Crook,
Justice Doderidge,

Justice Haughton,
Serjeant Crew; and
Sir Henry Mountague, Recorder.

THE Court being set, and the King's special Commission read, the Lord Chief Justice gave the Charge; the Effect whereof was,

First, To express the King's pious Inclinations and Command unto just Proceedings against all such as should be any way proved to be guilty of the
B Murdering

Murdering and Poisoning of Sir Thomas Overbury, his Majesty's Prisoner in the Tower.

Secondly, To aggravate the Manner and Quality of the murdering, in shewing the baseness of Poisoning above all other Kinds of Murder, declaring the Vengeance of God, and his Justness in punishing Offenders: He alledged 9 Gen. vi. He also took the Example of Uriah by David; he therein observed how Adultery is most often the begetter of that Sin.

Then he declared, that of all Felonies, Murders, Poisoning was most detestable; and of all poisoning, the lingering poison.

He shewed how that by an Act of Parliament, 22 H. VIII. cap. 9. it was made Treason, and that wilful Poisoners should be boiled to Death; rehearsing the Example of one Richard Rowse, that had poisoned a Man and Woman, and was therefore scalded to Death.

Then he laid open to the Jury the Baseness and Cowardliness of Poisoners, who attempt that secretly, against which there is no Means of Preservation or Defence for a Man's Life, and how rare it was to hear of poisoning in England, so detestable it was to our Nation: But that since the Devil had taught divers to be cunning in it, so that they can poison in what Distance of Space they please, by consuming the *Nativum Calidum* or *Humidum Radicale* in one Month, two, or three, more, as they list; which they four manner of Ways do execute, 1. *Gustu*, 2. *Hanctu*, 3. *Odore*, 4. *Contactu*.

He finished his Charge with serious

Exhortations to the Jury to do Justice in presenting the Truth, notwithstanding the Greatness of any that upon their Evidence should appear to be guilty of the same Offence; comforting both Judges and Jury with the Scripture, *Psal. 5. ver. ultimo*, For thou, Lord, wilt bless the Righteous; with Favour wilt thou compass them as with a Shield.

The Charge being ended, the Jury, consisting of fourteen Persons, did for the Space of an Hour depart the Court into a private Room, where they received their Evidence from Mr. Fenshaw, his Majesty's Coroner, and his Highness's Council prepared and instructed for that purpose, with the Examinations and Confessions, as well of the Prisoner himself, as of divers other Witnesses, before that Time, taken by the Lord Chief Justice of England, and others the Lords of his Majesty's Council.

In the mean time, Mr. William Goare, Sheriff of London, was commanded to fetch his Prisoner, remaining at his House, to be ready in Court for his Arraignment.

So a certain Space after, the Grand Jury returned to the Bar, and delivered in their Bill of Indictment, signed *Billa Vera*. Whereupon the Prisoner was set up to the Bar, and the Indictment read by Mr. Fenshaw, which contained in effect as followeth.

The Indictment.

THAT Richard Weston, being about the Age of sixty Years, not having the Fear of God before his Eyes, but instigated and seduced by the Devil, devised and contrived not only

only to bring upon the Body of Sir Thomas Overbury, Kt. great Sickness and Diseases, but also to deprive him of his Life: And to bring the same to pass, 9 Maii, 1613, 11 Jacobi, &c. at the Tower of London, in the Parish of Alhallows Barking, did obtain and get into his Hands certain Poison of green and yellow colour, called Rosalgar, (knowing the same to be deadly Poison) and the same did maliciously and feloniously mingle and compound in a kind of Broth, poured out into a certain Dish; and the same Broth so infected and poisoned, did give and deliver to the said Sir Thomas Overbury as wholesome and good Broth, to the Intent therewith to kill and poison the said Sir Thomas, which Broth he took and did eat.

Also the said Weston upon the 1st of July, 11 Jacobi, did in like manner get another Poison or Poisons compounded, called White Arsenick, and (knowing the same to be deadly Poison) did give unto the said Sir Thomas Overbury, as good and wholesome to eat; who took and did eat.

Also that Weston, upon the said 19th of July following, did get another Poison called Mercury Sublimate, (knowing the same to be mortal Poison) and put and mingled the same in Tarts and Jellies, and gave the same unto Sir Thomas Overbury, as good and wholesome to eat, which he in like manner took and did eat.

Also the said Weston, and another Man being an Apothecary, afterwards, upon the 14th of September, feloniously did get a Poison, called Mercury Sublimate, (knowing the same to be deadly Poison) and put the same into a Clyster mingled with the said Poison;

and the said Clyster the said Apothecary, for the Reward of 20 l. promised unto him, did put and minister (as good and wholesome) into the Guts of the said Sir Thomas, and that Weston was present and aiding to the said Apothecary in ministring and infusing the said Clyster; and that immediately after, as well the taking of the said poisoned Meats, and ministring the said Clyster, he died: And so the Jury gave their Verdict, That Weston in this manner had killed, poisoned and murdered the said Sir Thomas, against the King's Peace and Dignity.

Which Indictment being read, he was demanded if he were guilty of the Felony, Murdering and Poisoning, as aforesaid, yea, or no.

To which he answered, doubling his Speech, Lord have mercy upon me! Lord have mercy upon me! But being again demanded, he answered, Not guilty.

And being then demanded how he would be tried, he answered, He referred himself to God, and would be tried by God; refusing to put himself and his Cause upon the Jury or Country, according to the Law or Custom.

Hereupon the Lord Chief Justice, and all other in their Order, spent the space of an Hour in persuading him to put himself upon the Trial of the Law; declaring unto him the Danger and Mischief he ran into by resisting his ordinary Course of Trial, being the means ordained by God for his Deliverance, if he were innocent; and how by this Means he would make himself the Author of his own Death, even as if he should with a Knife or Daggen

Dagger kill or stab himself: Exhorting him very earnestly either with Repentance to confess his Fault, or else with Humility and Duty to submit himself to his ordinary Trial. Whereupon he stubbornly answered, Welcome, by the Grace of God; and he referred himself to God.

And so when no Persuasions could prevail, the Lord Chief Justice plainly delivered his Opinion, That he was persuaded that Weston had been dealt withal by some great ones, guilty of the same Fact, as accessory, to stand mute, whereby they might escape their Punishment; and therefore he commanded (for Satisfaction of the World) that the Queen's Attorney there present should declare, and set forth the whole Evidence, without any Fear or Partiality: And yet notwithstanding, he once more used much Persuasion with the Prisoner, to consider what Destruction he brought himself by his contempt; and declaring unto him how his Offence of Contempt was, in refusing his Trial, and how the Laws of the Land had provided a sharper and more severe Punishment to such Offenders, than unto those that were guilty of High-Treason: And so he repeated the Form of Judgment given against such, the Extremity and Rigour whereof was expressed in these Words, *O-nere, Frigore & Fame.*

For the first, he was to receive his Punishment by the Law, to be extended, and then to have Weights laid upon him, no more than he was able to bear, which were by little and little to be increased.

For the second, That he was to be exposed in an open Place, near to the Prison, being naked.

And lastly, That he was to be preserved with the coarsest Bread that could be got, and Water out of the next Sink or Puddle, to the Place of Execution, and that Day he had Water, he should have no Bread, and that Day he had Bread he should have no Water; and in this Torment he was to linger as long as Nature could linger out, so that oftentimes Men lived in that Extremity eight or nine Days; adding further, that as Life left him, so Judgment should find him.

And therefore he required him, upon consideration of these Reasons, advise himself to plead to the Country; who notwithstanding absolutely refused.

Hereupon the Lord Chief Justice willed Sir Lawrence Hyde, the Queen's Attorney, and there of Counsel for the King to manifest unto the Audience the Guiltiness of the said Weston by his own Confession, signed with his own Hand; and if in the Declaration thereof they may meet with any great Persons whatsoever, as certainly there were great Ones confederates in that Fact, he should boldly and faithfully open whatsoever was necessary, and he could prove against them.

Whereupon Mr. Attorney began his Accusation:

First, He charged the Countess of Somerset and the Earl to be principal Movers unto this unhappy Conclusion, Mrs. Turner to be of the Confederacy, and the Pay-Mistress of the Prisoner's Reward; in which the Attorney's boldness was very observable in terming the Countess a dead and rotten Branch, which being lopt off, the noble Tree,

Tree, (meaning that Noble Family) would prosper the better.

Secondly, He proceeded to the Cause, which he affirmed to be the Malice of the Countess: And the Ground of this Malice he alledged, and by many Inducements he evidently affirmed, That Sir Thomas Overbury had dissuaded the Viscount Rochester from that adulterate Marriage with the Countess of Somerset, then Countess of Essex. And for this he alledged as followeth:

Sir Thomas Overbury having divers Times dissuaded the Earl, then Viscount Rochester, from seeking by any Means to procure Marriage with the Countess of Essex, to which he saw the Earl too much inclined; and having very earnest Conference with the Earl one Night in private in the Gallery at Whitehall concerning his Intendment, perceiving the Earl too much at that Time to desire that unlawful Communication; in the Ardency of his fervent Affection unto the Earl, and Prescience of the future Misery it would inevitably bring unto him, (his well-beloved Lord and Friend) used Speeches to this Effect.

“ Well, my Lord, if you do marry
“ that filthy base Woman, you will
“ utterly ruin your Honour and your
“ self; you shall never do it by my Ad-
“ vice or Consent; and if you do,
“ you had best look to stand fast.

My Lord replied, bewitched with the Love of the said Countess, moved with Sir Thomas Overbury for so slighting her, answered, My own Legs are streight and strong enough to bear me up; but, in Faith, I will be even with you for this: And so parted from him in a great Rage.

This Conference was over-heard by some in an adjoining Room, and their Depositions for the Truth thereof were read in Court.

Although this Conference moved the Earl to such a sudden Choler, yet it seemed Sir Thomas Overbury conceited it no otherwise than a sudden extreme Distemperature or Passion, and not a final Conclusion of their Bosom-Friend as before, in which the Earl seemed reciprocal; howsoever, in his Double-Dealing it seemed to be clearly otherwise.

For upon this the Earl moved the King to appoint Sir Thomas Overbury Ambassador for Russia. The King, willing to prefer Sir Thomas Overbury, as one whose Worth and Valour was not unknown to his Majesty, accordingly adjoined him that Service; the which Sir Thomas was most willing to accept of, as a gracious Aspect of the King towards him; which Willingness of his was proved by the Deposition of two or three several Witnesses read in Court, and by the Oath of Sir Dudley Diggs, who voluntarily, at the Arraignment in open Court, upon his Oath, witnessed how Sir Thomas had imparted to him his Readiness to be employed on an Ambassage.

The Earl as well abusing the King's Favours, in moving to shew Favour where he meant the Party should take no Benefit, as bearing dishonest Friendship, in Conference with Sir Thomas concerning that Employment, persuaded him to refuse to serve Ambassador, where (quoth he) I shall not be able to perform such Kindness to your Advantage, as having you with me; and (quoth he) if you be blamed or committed for it, care not, I will
C
quickly.

quickly free you from all harm. Sir Thomas, thus betrayed by a Friend, refused to serve in that Nature; whereupon he was committed to the Tower.

Being thus committed, he was presently committed close Prisoner, and a Keeper he must have; and who must that be but this Weston, who was commended by the Countess of Essex to Sir Thomas Monson, to be by him recommended over unto the Lieutenant of the Tower, to be Keeper to Sir Thomas Overbury.

Sir Thomas Monson, according to the Countess's Request, commended the said Weston to Sir Jervis Elvis; whereupon the said Lieutenant entertained the said Weston, and appointed him to keep Sir Thomas Overbury.

The said Weston, upon his own Confession read in Court, signed with his Mark, had during the Time that she was Countess of Essex, been a Procurer and Pander to the said Earl, then Viscount Rochester, and the Countess of Essex, for the conveying and effecting of their adulterate Desires, which they did divers Times consummate, meeting in Mrs. Turner's House once between the Hours of Eleven and Twelve, and at Hammersmith, and at divers Times elsewhere, for that Purpose; that now, by the Procurement of the Countess, (who hated Sir Thomas Overbury, for being a good Means to keep them from contaminating themselves with such lustful Embracements, and from the purposed Marriage they mutually laboured to compass) her Pander was become his Keeper, a fit Agent for Lust and Murder.

Weston now being become Sir Thomas Overbury's Keeper, kept him so close, that he scarce had the Comfort

of the Day's brightness; neither suffered he any one to visit him, Father, Brother, his best Friends, his nearest Kindred were Strangers to him, from the beginning of his Imprisonment unto the end.

Mrs. Turner, upon the first Day's keeping, promised to give him a contenting Reward, if he should administer such Things to Sir Thomas Overbury, as should be sent unto him, thinking him a fit Instrument to compass black Murder, that was so well acquainted with foul Lust; and so indeed they found him, for he agreed and did promise to administer whatsoever he would send him.

Mrs. Turner, upon this murderous Promise, the very same Day that Weston became Sir Thomas Overbury's Keeper, being the 6th Day of May, 1613, sent unto him the said Weston certain yellow Poison, called Rosalgar, in a Vial.

Weston having received that Poison, the aforesaid 6th of May at Night, bringing Sir Thomas Overbury's Supper in one hand, and the Vial of Poison in the other, meets with the Lieutenant, and asks him in these Terms, Sir, shall I give it him now?

Upon this Word Now, the Lord Chief Justice demurs, to aggravate the Maliciousness; affirming that this Particle Now, shewed a Resolution to poison him. What shall you give him? replies the Lieutenant. Weston replies, As if you did not know, Sir. The Lieutenant blaming him, he carries the Poison into an inner Room, which Weston, the 9th of May, did administer to Sir Thomas Overbury in Broth. This was proved both by Weston and the Lieutenant's Confession.

Weston

Weston having given this Poison, which wrought very vehemently with him by Vomits and extreme Purgings, he presently demands his Reward of Mrs. Turner, who replies, That the Man is not yet dead, perfect your Work, and you shall have your Hire. This was also confessed by Weston under his Marks.

Sir Thomas Overbury, by his close Imprisonment, growing sick, and daily languishing, after three or four Weeks Space (considering he had not got his Freedom and Release, having no Friends suffered to come unto him, but only such as the Earl sent to comfort him, of his own Followers) writ to the Earl to remember his Imprisonment; who received Answer, The Time would not suffer, but so soon as possible might be, he would hasten his Delivery: So indeed it seems he intended to do, but not so as Sir Thomas Overbury conceived, whose true Affection would not admit his Judgment to debate the strangeness of his Imprisonment, which he might well think the Earl might easily have relieved.

The 5th of June, Viscount Rochester sent a Letter to Sir Thomas Overbury; in the Letter he sent him a white Powder, willing him to take him: It will (quoth he) make you more sick; but fear not, I will make this a Means for your Delivery, and for the Recovery of your Health.

Sir Thomas Overbury never dreaming of base Treachery, but conceiving as a friendly Policy, received the said Powder, which wrought upon him more vehemently; whereupon his Sickness grew more vehement or violent, and his Languishment increased; which

white Powder, upon Weston's Confession, was Poison.

Sir Thomas Overbury's Sickness increasing, and with it his wondering that he could not in two Months Space be released, after his Physick taking, he thus writes to the Earl, lamenting his own Estate; for his Faith being thus with the Earl's Unkindness, gave way for his Judgment to scan those Actions, rather like an understanding Man, than like a loving Friend, as appeareth by the Letter sent to Viscount Rochester, the Effect whereof was thus, as it is averred by the Depositions of Sir Thomas Overbury's Servants, who saw the Letter.

Sir Thomas Overbury's Letter to the Viscount Rochester.

S I R,

I Wonder you have not yet found Means to effect my Delivery, but I remember you said, you would be even with me, (not suspecting as it seemeth, any Poisoning, but an unkind Forgetfulness of my Lord of Rochester) and so indeed you are; but assure yourself, my Lord, if you do not release me, but suffer me thus to die, my Blood will be required at your Hands.

My Lord comforts him, and excuses, that it cannot be compassed: Sir Thomas, after the Powder taken, languisheth deadly; and to comfort him, some Followers of my Lord of Rochester's are sent to him daily, in the Name of my Lord, by the Appointment and Procurement too of the Lady of Essex (as Weston confessed) to visit and comfort him, and to intreat him if he desired

desired any Meat, that he should speak, and it might be better perhaps provided for him, than he should have in the Tower; this was about three Months after his Imprisonment.

Sir Thomas continuing languishing with Extremity of Sicknes, until the 6th of September, when the aforesaid Mrs. Turner did procure an Apothecary's Boy for twenty Pounds to poison a Clyster, which was by the Boy and Weston afterwards administered as good Physick, upon the 7th of October, after the Receipt of the Clyster, he fell into a great Extremity of vomiting, and other purging, which left him not, till it caused his Soul to leave his poisoned Body: This Weston confessed and signed.

Being thus dead, he was presently and very unreverently buried in a Pit, digged in a very mean Place; on his Body thus venomously infected, appeared divers Blains and Blisters: Whereupon they, to take away as well his good Name, as his Life, did slanderously report, that he died of the French Pox; but this Report was cleared in Court, by the Depositions of his Servants, and other Men of Worth there read.

That before his Imprisonment, he had a clean and sound Body, only he had an Issue in his Left Arm, purposely made for the Benefit of his Nature, for the avoiding of Rheum and ill Humours, which, with continual sitting at his Study, he had subjected himself unto.

He further observed the Confession of the Lieutenant to be, that if any Prisoner died there, his Body was to be viewed, and Inquisition to be taken by the Coroner.

But Sir Thomas Overbury's Friends and others, by no means might be suffered to see his Body; and although it was reported, that there was an Inquisition taken, yet it could by no means be found.

After Mr. Attorney had ended his Speech, Mr. Warr also of Counsel for the King, declared to the Court what Familiarity he had with Sir Thomas, being both of the Temple together, much commending his singular, honest and virtuous Conversation; affirming, that he was addicted to no dishonest Actions: And from this he proceeded to urge his said Usage in the Tower, where he might have no Company, but the Apothecary and the Walloon; and repeating the sending of the Tarts and Jellies in my Lord of Somerset's Name, he ended his Speech with this Saying, *Pereat unus, ne pareant omnes; pereat peccans, ne pareat Respub.* Then, by the Commandment of the Court, were read by Mr. Fenshaw the Examinations of divers Witnesses taken before my Lord Chief Justice and others, which in Effect were as follows.

Laurence Davies, Servant to Sir Thomas Overbury, examined the 15th of October, before the Lord Chief Justice.

He saith, that he had served Sir Thomas Overbury eight or nine Years; in all which time he was very healthful, and never kept his Bed for any Sicknes, only he was sometimes troubled with the Spleen, for Ease whereof, he had by the Advice of his Physician an Issue made in his Left Arm; but before his Imprisonment, he had no Sores,

Sores, saving the said Issue in his Arm.

That Sir Thomas wrote Letters to Somerset, signifying, that he needed not lie in Prison if Somerset would, and if he died, his Blood should be required at his Hands.

That Sir Thomas, at one of the Clock at Night, meeting Somerset in the Gallery at Whitehall, had Speeches with him touching the Countess, whom he called base Woman, and told Somerset, he would overthrow all the King's Favours and Honours; and upon Displeasure between them at this Conference, Sir Thomas Overbury desired Somerset that he might have his Portion due, and he would shift for himself. Whereunto Somerset answered, And my Legs are strait enough to carry me; and so flung away in Anger. All which this Examinant heard, being in a Chamber next to the Gallery.

Sir Dudley Diggs being present in Court, and sworn, declared viva voce, that he was sent by a Privy Counsellor (a great Man) to Sir Thomas Overbury, to bring him to this great Man, which he did; and coming back together over the Water in a Boat, Sir Thomas was much discontented; the Reason whereof he said was, That he was persuaded by the great Man to withdraw himself from the Court for some Reasons which he disclosed not: And Sir Dudley Diggs being afterwards sent by the Lords, to know the Resolution of Sir Thomas touching the Ambassage, he found him to rely upon the Lord Somerset, saying, My precious Chief knows the King's Mind better than any, and I the Mind of my precious Chief.

Richard Weston the Prisoner examined, the 6th of October, 1615. coram Coke & Crew.

He affirmeth, That before Sir Thomas Overbury was in the Tower, he, this Examinant, carried three Letters to Somerset, from the Lady Essex, to Royston, Newmarket and Hampton-Court, and he delivered Answers to Mrs. Turner; and that upon the Letter to Hampton-Court, he had Answer only by word of Mouth, That his Lordship would come: And that coming back, he met with the Countess and Mrs. Turner half way, in the Coach, whom he told, that the Lord only answered so; whereupon the Countess struck out of the way into a Farmer's House hard by, whither within a little Space Somerset came, and that afterwards they met in the Night at Mrs. Turner's House in Paternoster-Row. And he confesseth, that of a Year before Sir Thomas's Imprisonment, no Man carried Letters between them but he.

Sir Thomas Monson examined the 5th of October, coram Coke & Crew.

He saith, That he never knew Weston until Sir Thomas Overbury was Prisoner in the Tower; and that he preferred him to the Lieutenant, to be Keeper of Sir Thomas Overbury, at the Request of the Countess.

Anne Turner, Widow, examined the 11th of October, 1615. coram Coke & Crew.

She saith, That Weston was an an-
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tient Servant, and her Husband's Bailiff in the Country: She denieth to have any Thing to do in placing him in the Tower; but saith, that the Countess of Essex did effect it, and used the help of Sir Thomas Monson therein.

Sir Jervis Elvis examined the 3d of October, 1615. coram Coke & Crew.

He saith, He had a Letter from Sir Thomas Monson, requesting him, that Weston might be Keeper of Sir Thomas Overbury, and that he did perform it; and afterwards having Conference with Sir Thomas Monson, he told him, That his Keeper was not to suffer any Letters or Tokens, or any Things to be delivered unto him.

Richard Weston the Prisoner examined again.

He confesseth, He shewed him the Glas that was delivered him by his Son from the Countess to the Lieutenant, and told him, that it came from the Countess of Essex, and that he persuaded him not to give it to Sir Thomas.

He saith, That he had divers Tarts from the Countess, to give to Sir Thomas, with Caveats that he himself should not taste of them; and confesseth, that he thought they were poisoned.

He saith, Mrs. Turner appointed him to come to Whitehall, and that she dealt with him to give Sir Thomas Overbury the Water, and told him, he should not drink thereof; and was promised a Reward, and he suspected

it was Poison. His Son afterwards delivered him the Glas, which he shewed to the Lieutenant, who rebuked him, and so he set the Glas in a Study near to Sir Thomas's Chamber, but gave it him not; although he told Mrs. Turner, the next Day, he had given the Water, which made Sir Thomas to vomit often, and to be exceeding Sick.

He saith, Mr. James and Mrs. Rawlins, Servants to the Countess, came often to know of the Examinant, how Sir Thomas Overbury did, and what he would eat; and they delivered him Jellies and Tarts, which he gave Sir Thomas, who did eat thereof.

He saith, He demanded of Mrs. Turner his Reward, who answered, He was to have no Reward until Sir Thomas was dead, and he was promised a Pursuivant's Place; but confesseth, that afterwards, at two several times, he received secretly after the Death of Sir Thomas, for a Reward of Mrs. Turner from the Countess, 180 l.

William Weston, Son to the Prisoner, examined.

He confesseth, He received a Glas from the Countess (by her Servant) two Inches long, being wrapped in Paper, which he delivered to his Father in the Tower.

Then was read the Confession of the Lieutenant to the King.

He saith, that Weston met him, carrying Sir Thomas's Supper in the one Hand, and the Glas in the other, and demanded of the Lieutenant this, Sir, shall I give it him now? whereat the Lieutenant stepped to him, and asked him,

him, what? To which Weston said, why, Sir, know you not what is to be done? And so the Lieutenant having made him to confess the Matter, dissuaded him, and he seemed to be resolved not to do it: And afterwards this Weston confessed, that an Apothecary had twenty Pounds for administering a Clyster to Sir Thomas Overbury.

Weston, the Prisoner, examined before the Lord Zouch and others.

Confesseth, that Sir Thomas had a Clyster which gave him sixty Stools and a Vomit; also being confronted, with the Writings of Sir Jervis Elvis, and charged therewith, he confesseth the same to be true.

Simon Marson, Musician, examined;

Saith, He served Sir Thomas Monson six Years, and is preferred by him to the King's Service, but waiteth sometimes upon Sir Thomas Monson; he saith, that he received divers Tarts and Jellies from the Countess of Essex, to be carried to the Lieutenant of the Tower for Sir Thomas Overbury.

Paul de la Bell, examined;

Saith, that on the 3d of July, he made Sir Thomas Overbury a Bath by Dr. Micham's Advice, to cool his Body, and that he saw his Body very exceeding fair and clear; and again, he saw his Body (being dead) full of Blisters, and so consumed away as he never saw the like Body.

George Rawlins, a Kinsman to Sir Thomas Overbury, examined;

Saith, that upon the Bruit of the Murder of Sir Thomas, he was taxed by some, why he made no Prosecution; he thereupon made a Petition, and delivered it to the King, that the Examination of the Cause might be referred to Law, and denieth that he was persuaded by any to the contrary: He saith, that he coming often to the Tower to see Sir Thomas, could not be suffered to see him so much as out at the Windows; and Weston told him, it was the Commandment of the Council, and of the Lieutenant.

The Lieutenant of the Tower examined, coram Coke & Crew.

He saith, that after the Death of Sir Thomas, Weston came to him, and told him he was neglected and slighted by the Countess, and could receive no Reward; but afterwards he confessed he had received 100 l. and should receive more: And the Lieutenant also saith, that Sir Thomas Overbury was very angry with his Apothecary at certain Vomits which he had, and also at the Tarts and Jellies he had, which would be found within a Day or two standing, ill-coloured, and that Nobody did eat thereof but Sir Thomas; and Weston confessed unto him, that the Apothecary had twenty Pounds for administering the Clyster.

These Examinations being read and applied to the Purpose, the Lord Chief Justice said, he would discharge his Duty, first to God, in giving all Glory,

ry, for the bringing to Light of so horrible and wicked a Fact; and next to the King, his great Master, who as in Case of the like Nature, as in the Case of Zanquer and Turner, so especially in this, hath given strait Charge of just and due Examination to be had, without any manner of Partiality or Fear in the World; to the Intent, that as well the Innocent might be freed, as the Nocent and Guilty severally punished.

And for this Purpose, his Majesty hath with his own Hand written two Sheets of Paper on both Sides, concerning Justice to be administred to all Parties which were to be examined; which Writing the Lord Chief Justice shewed to the Lord Mayor, and the rest of the Commissioners; and then he declared the King's Justice, who, albeit the many Favours and Honours which his Majesty had bestowed on the Lord Somersset, and his nearness to his Person, by reason of his Office, yet he had committed him Prisoner to the Dean of Westminster's House, under the Custody of Sir Oliver St. John, and also had committed his Lady. So having last of all (again) demanded of the Prisoner, if he would put himself to be try'd by the Country? which he refused;

The Court was adjourned until Monday following, at two of the Clock in the Afternoon.

On Monday the 23d of October, 1615, to which Day the Court was adjourned by the said Commissioners, after Proclamation made, the Jury of Life and Death call'd, the Prisoner Weston was set to the Bar, and Mr. Fenshaw, Clerk of the Crown declared unto him, that he had been formerly

arraigned, and had pleaded Not Guilty; so he demanded of him, how he would be tried: Whereupon the Prisoner answered, By God and his Country. And thereupon the Jury being sworn, and the Indictment being read as before, Sir Laurence Hyde Queen's Attorney being of Counsel with the King, having briefly rehearsed the Effect of the Indictment, shewed how that he must necessarily mention others that were guilty of the same Fact, wherein if any other Man or Woman were touched, the Cause it was, and not he that touched them.

And therefore Weston being but a Stranger to Sir Thomas Overbury, and one, who by himself could reap no Benefit by his Death, it was against all Reason that he would do it of himself, therefore (said he) I must needs open the whole Plot; and he first declared the Worth and Honesty of Sir Thomas Overbury, shewed his Familiarity with Rochester, and how often he willed him to forbear the Company of the Lady Essex, terming her a vile and base Woman, which stirred up the Anger and Malice of the Countess against him.

And that afterwards, the King intended, for the Honour and Preferment of Sir Thomas Overbury, to send him upon an Ambassage; whereunto he was willing, but was dealt with and persuaded by the Lord Rochester, to disobey the King's Direction and Counsel, with Promises that he would bear him out; by which Contempt Sir Thomas was committed to the Tower the 22d of April, 1613. Sir William Wade being Lieutenant of the Tower; the 6th of May following he was removed, and Sir Jervis Ellis put in his Place.

And

And the next Day after, Weston, by the Procurement of the Countess, was preferred to the Service of the Lieutenant, and to be Keeper of Sir Thomas; which Weston had been Servant to Mrs. Turner, and the only Agent in conveying Letters and Messages between Rochester and the Countess: And he, whose Office should have been to save and keep, was now appointed to kill and murder him.

He shewed, how the very same Day of his Entertainment at the Tower, he was sent for to the Countess, who persuaded him, that if he would give Sir Thomas a Water that should be delivered him, he should be well rewarded, and she bid him not taste of it himself.

And that the 9th of the same Month of May, the said Water was secretly sent from the Countess to Weston by his Son; and the same Night Weston meeting with the Lieutenant, and having Sir Thomas's Supper in one Hand, and the said Glass in the other, he demanded of the Lieutenant, Sir, shall I give it him now? Whereupon the Lieutenant took him aside, and dissuaded him so far forth, that he confessed, he thanked God upon his Knees, that he had met with him.

But Mr. Attorney observed this notwithstanding, that the Lieutenant did let him go away with the Poison; and albeit he now denieth he ever gave the Poison, yet said he delivered it: He confessed to Mrs. Turner he had done it, saying, It made him very sick, and to vomit often, demanding of her his Reward; to which she answered, He was not to have his Reward until Sir Thomas were dead. Then he shewed how the last of June following, a cer-

tain Powder was sent in a Letter to Sir Thomas Overbury from Rochester, persuading him not to fear, though it made him sick, for that should be his Reason to move the King for his Enlargement.

And that the 14th of September, Weston and the Apothecary ministred the Clyster to Sir Thomas, which gave him sixty Stools and Vomits, and that he died the next Day; he remembered the strangeness of the Botches and Blisters on his Body, being dead: He shewed how Weston came to Mrs. Turner for his Reward, which was deferred till his Death; and that he had received in secret from the Countess by Mrs. Turner at several Times for his Reward 180 l. and that the Apothecary had for his Reward 20 l. All which Weston had confessed to be true.

Then remembring how ignominiously they buried him, not suffering any to see him, for fear he should be digged up again, and without any Coroner's Inquest that should be found; and thus he ended his Speech.

And to all this opened and set forth by Mr. Attorney, Mr. Warr only added thus much, which he desired the Jury to consider, That Weston was Servant to Mrs. Turner, when Sir Thomas was committed, and then was entertained and made Keeper to Sir Thomas Overbury; and having dispatched his Business (Sir Thomas being dead and poisoned) he stayed no longer at the Tower, but returns again to Mrs. Turner.

Then the Lord Chief Justice exhorted the Jury to take God before their Eyes, and with equal Balance to weigh as well the Answer of the Prisoner, as the Proofs and Examinations against him;

him; declaring unto them how quietly and freely he had examined him from Time to Time, without menacing or rough Usage, which the Prisoner confessed; and my Lord, for matter of Law, satisfied the Jury, That albeit the poisoning in the Indictment be said to be with Rosalgar, White Arsenick and Mercury Sublimate, yet the Jury were not to expect precise Proof in that Point, shewing how impossible it were to convict a Poisoner, who useth not to take any Witnesses to the composing of his sibber Sauces; wherefore he declared the Law in the like Case, as if a Man be indicted for murdering a Man with a Dagger, and it fall out upon Evidence to have been done with a Sword or with a Rapier, or with neither, but with a Staff; in this Case therefore the Instrument skilleth not, so that the Jury find the Murder. And so in this Prisoner's Case, if they would be satisfied of the Poisoning, it skilleth not with what; therefore he requireth them to attend the Proof.

Then were read, first the Examinations of Laurence Davies, as at the first Arraignment; then of Henry Paynton both Servants to Sir Thomas Overbury; then of Weston himself formerly read.

Then the Examination of Sir David Wood, taken the 21st of October, 1615, since the first Arraignment.

He saith, He had obtained the King's Consent to a Suit, for which he was a Petitioner, and that he was crossed by the Lord Rochester and Sir Thomas Overbury: That for certain Words he had received from Sir Thomas Overbury, he intended to bastinado

him; that his Suit would have been worth 2200 l. and that Rochester would not let it pass, unless he might have 1200 l.

That the Lady Essex sent for this Examinant upon the Day that the King and Queen went to Rochester with the Lady Elizabeth, and told him, she understood that he had received much Wrong from Sir Thomas Overbury, and that he was a Gentleman that could revenge himself; and that Sir Thomas had much wronged her; and Sir David answered, that Sir Thomas had refused him the Field; she persuaded him to kill him, and promised him 1000 l. for his Reward, and Protection from his Enemies; which he refused, saying, He would be loth to hazard going to Tyburn upon a Woman's Word; but she still persuaded him he might easily do it, as he returned late home from Sir Charles Wilmot's in his Coach.

Then were read the Examinations of Sir Thomas Monson and Mrs. Turner, as at the first Arraignment.

Next, the Examination of Weston before the Lord Zouch, and Sir Ralph Winwood, Sir Thomas Parry, and Sir Foulke Grevill, at the Dutchy House, the 29th of September, 1615, where Weston did confess, that he was preferred to the keeping of Sir Thomas Overbury, by Mrs. Turner, upon the Means and Request of Sir Thomas Monson, to the Lieutenant; and that she told him, If he would give Sir Thomas Overbury a Water which the Countess would send him, he should be well rewarded; and being confronted with a Relation in Writing, which

which Sir Jervis Elvis had made to the King, as touching Sir Thomas Overbury, he confessed the same to be all true.

The Examinant of the Lieutenant, taken the 5th of October, 1615.

He saith, That having conferred with his Servants about the Time of Weston's coming to the Tower, he found it to be the very next Day after himself was made Lieutenant, and had the Possession of the Tower; and that he had Letters from Sir Thomas Monson, that Weston might be Keeper to Sir Thomas Overbury; which Letters he had lost. Sir Thomas Monson told him the chief Purpose of Weston's keeping of Sir Thomas Overbury, was, to suffer no Letters or other Messengers to or from him, and to that purpose he advised the Lieutenant.

Weston's Examination the 5th of Oct. 1615.

He confesseth, That the next Day he was preferred to the Tower, he had the keeping of Sir Thomas Overbury, and soon after he received the Glass by his Son secretly from the Countess; and that the Lieutenant told him, all the Tarts came likewise from her; and he confesseth, the Countess willed him to give them to Sir Thomas, but not to taste of them himself.

Weston's Examination the 1st of Oct. 1651.

Confesseth, That Mrs. Turner appointed him to come to Whitehall to the Countess, the next Day that he was at

the Tower; and that he went him, and the Countess did request him to give to Sir Thomas Overbury a Water, which she would deliver him, but not to drink of it himself; she promised to give him a good Reward, and he suspected it was Poison: He received the Glass by his Son, and told the Lieutenant of it, who did rebuke him, and he set the Glass into a Study. He confesseth, he told Mrs. Turner he had given it him, and demanded his Reward; that Mr. James and Mr. Rawlins, my Lord of Somerset's Men, came often to know of him what Tarts, Jellies, or Wine, Sir Thomas would have, and that they brought divers times Tarts and Jellies, whereof he did eat.

He confesseth to have received of the Countess in Rewards, after Sir Thomas Overbury's Death, by Mrs. Turner secretly, in all 180 l.

The Confession of the Lieutenant to his Majesty.

After Weston was placed in the Tower, he met me with Sir Thomas's Supper, and the Glass, and asked me, Sir, shall I give it him now? Wherein I protest unto your Majesty my Ignorance, as I would also be glad to protest the same to the World; so I privately conferred with Weston, and by this Means made him assured unto me, and knew all, but dissuaded him; and Weston has, since the Death of Sir Thomas Overbury, confessed to me, that the Clyster was his Overthrow, and the Apothecary had 20 l. for administering it.

Your Majesty's Servant,
Sir Jervis Elvis.

Here the Lord Chief Justice observed by this Question of Weston to the Lieutenant, Shall I give it him now? that it was certainly agreed and plotted before what should be done, and that nothing more was doubted on but the Time when it should be done.

The Testimony of Lawrence Davies, taken upon Oath before Coke and Crew.

He affirmeth, that Weston delivered him a Letter from Sir Thomas Overbury to Rochester, the Effect whereof was, that he would do his Endeavour in being a Means of Friendship between Rochester and some others; but as touching the Marriage with the Countess of Essex, he would never give his Consent: And also bringing a Letter from Rochester to Sir Thomas Overbury, he delivered it to Weston, and a Paper of white Powder fell out, which Rochester persuaded Sir Thomas to eat, and not to fear, though it made him sick, for that they should be a Means for his Enlargement; so they put the Powder into the Letter again. He saith, that he saw some Part of the Powder in Weston's Hands after the Death of Sir Thomas Overbury.

Then were read the Examinations of William Weston and Paul de la Bell, as at the first Arraignment.

The Examination of George Rawlins.

George Rawlins, Esq; the 15th of October, 1615, saith, That upon the Bruit of poisoning of Sir Thomas Overbury, being taxed of divers, for

that he stirred not in the Matter, Sir Thomas being his Kinsman and Means of his Preferment; he did of himself prefer a Petition to the King, that the Cause might be referred to the Judges of the Law, for ordinary Course of Justice, rather than to the Lords of the Council, by them to be examined; of which he had a gracious Answer; and saith, that of fourteen Days before the Death of Sir Thomas Overbury, he could never be suffered to see him, either in his Chamber, or at the Window; which, Weston said, was the Commandment of the Lords and the Lieutenant.

And here the Lord Chief Justice declared what a Scandal they put upon his Majesty and the State, that a Gentleman and a Freeman, being only committed upon Contempt, should be more straitly and closely kept than a Traitor or a Bond-Slave, so that neither his Father, Brother, nor Friend might possibly see him. And to that Point, Mr. Overbury, Father to Sir Thomas, swore, being present in Court; who said, that his Son being Prisoner in the Tower, and himself not being suffered to have Access unto him, found at last, that Rochester was the Man that withstood it.

The Lieutenant examined the 5th of October.

Saith, That after the Death of Sir Thomas Overbury, Weston told him, That he was neglected by the Countess, and demanded his Reward: Mrs. Turner told him, the Countess had not Money; but afterwards he confessed, he had received some, and should have
more;

more; and that Mr. James told him, My Lord of Somerset would reward him for the Pains he took with Sir Thomas Overbury. He saith, That the Tarts were sent from the Countess to Sir Thomas, which looked ill-favouredly, and that the Jellies, with a little standing, would be furred, and thinketh they were poisoned: Also Weston told him, that the Apothecary had 20l. for giving the Clyster, and that he was poisoned with that Clyster.

Here was well observed by the Court, as by the Queen's Attorney, That Weston was not single in his Confession, but whensoever he had confessed any thing in any of his Examinations, it was likewise confirmed by the Examinations of others, as the Lieutenant, his Son, &c.

The Examination of William Goare, one of the Sheriffs of London;

Saith, Weston being in his Custody, he often persuaded him to put himself to be tried by his Country, telling him, he would first kill himself, and ask God forgiveness afterwards: And Weston answered, He hoped he would not make a Net to catch little Birds, and let the great ones go.

Then Mr. Warr craving Leave of the Court to speak, protested, in his Experience he never found a Business so prosecuted with Degrees of Malice, which was the Ground of Sir Thomas's Overthrow: He urged the Evidence in the Examination of Sir David Wood, and shewed the Reasons of the Malice against him to be, for that he was so great an Impediment to Affections. Then he made the Dependency Mrs.

Turner had to the Lady, and Weston to Mrs. Turner, and how they all concluded to kill Sir Thomas Overbury, the like whereof he said our Fathers never saw before us; and he lamented the Place from whence the Poison came, should be from the Court, the Place (said he) from whence all Men expect their Safeties and Protection.

Lastly, He observed the Finger of God, even in this, that the Poison had been scarcely suspected at all, or enquired after, had it not been for the extraordinary strange Things appearing after his Death, which was the first only Cause of Suspicion and Muttering.

The Evidence being given, Weston was demanded what he could say for himself? Who, although he had before confessed all his Examinations to be true, yet he seemed to excuse himself in a kind of Ignorance or Unawares: He said, he received the said Glas, and thought it was not good, but denied the giving of it to Sir Thomas. Being demanded, Why he had formerly accused one Franklin, for delivering him the said Glas from the Countess? (from whom indeed it was sent;) He confessed it was to save his Child: And finally could say nothing that had any colour of material or substantial Point to excuse or argue Innocency in him. So the Court referred him to the Jury; who went together and within a short Space returned, being agreed upon their Verdict, and there at the Bar gave in, that Weston was guilty of the felonious Murdering and Poisoning of Sir Thomas Overbury. And then the Clerk of the Crown demanded of Weston, What he could say for himself, why Judgment

ment should not be pronounced against him according to Law? To which he answered, He referred himself to my Lord, and to the Country. And then the Lord Chief Justice, before he pronounced Sentence of Death, spake to this Effect, That for the Duty of the Place, he must say somewhat; and that to two several Persons:

First, To the Auditory: And,
Secondly, To the Prisoner.

And that which he spake to the Auditory, he divided into four Parts.

1st, The Manifestation of the Glory of God, and Honour of the King.

2d, The preventing of other damned crimes of Poisoning.

3dly, An Answer to certain Objections.

4thly, That there is no Practice of Conspiracy in prosecuting of the Business.

For the 1st, He observed the Finger of God in the Manifestation and bringing to Light of this Matter, having slept two Years, being shadowed with Greatness which cannot overcome the Cry of the People.

He observed also the Providence and Goodness of God, who put into the Hearts of himself and the rest of the Judges, the Day of the Prisoner's last Arraignment, when he stood mute, not to give Judgment against him for that time, but defer it till now; and how in the mean time it pleas'd his Majesty, out of his gracious care and pity, to send to the Prisoner, first the Bishop of London, next the Bishop of Ely, to admonish and persuade him

for the saving of his Soul; who, after each of them had spent two Hours with him, it pleased God (when they had left him) to move his Heart, so that now he did put himself to be tried by the Country; by which means (using Weston's own Words) he said, the great Flies shall not escape, but receive their Punishment. For conclusion of his first Point he lastly observed, *Divinum quiddam in vulgi opinione*, that notwithstanding so many uncertain Rumours touching this case, at last it proved to be true.

2dly, He declared, how for Prevention of this damned crime of Poisoning, Justice was the golden Mean, and declared his Majesty's Resolution straightly to execute Justice for that Treason; and he used this Saying, *Nemo prudens, &c.* and desired God that this Precedent of Overbury might be an Example and Terror against this horrible crime, and therefore it might be called, the great Oyer of Poisoning.

3d, He said, That at the Arraignment there were certain criticks, who had given out, the Prisoner should deny his Examinations; and found much Fault, for that the Examinations were read, the Prisoner standing mute. But for the first, how untrue it was, all the World saw, the Prisoner here confessing them all, being read and shewed unto him: And for the second, besides that it was exceeding discreet and convenient the World should receive some Satisfaction in a cause of that Nature, he cited and shewed, that by the Laws of the Land they ought and were bound to do so, notwithstanding the Greatness of any, who might thereby be impeached;

of whom he said, although this was unum crimen, yet it was not unicum crimen.

4thly, As touching the supposing practice or conspiracy, he solemnly protested to God, he knew of none, nor of any Semblance for colour thereof; and therefore he much inveighed against the Baseness and Unworthiness of such as went about so untruly and wickedly to slander the course of Justice. And so he came, last of all, to that which he had to speak of Weston the Prisoner.

First, Touching the Wickedness of his Fact, he very seriously exhorted him to an unfeigned confession and contrition for the same, declaring unto him, how that his confession would be a Satisfaction to God and the World, and that by his Faith and true Repentance, he would lay hold upon the Merits of his Saviour.

He persuaded him, that no vain Hope (which is a Witch) should keep him back from giving Satisfaction to the World, by discovering the Guiltiness of the Great ones; assuring him, that after this Life, as Death left him, so Judgment should find him.

And, lastly, taking occasion there to remember this Poisoning to have been a Popish Trick, which he instanced by Examples of one Gurnandus de Birlanus, mentioned 22 Edw. I. Squier, that attempted to poison Queen Elizabeth's

Saddle; Lopez and Mrs. Turner: He then proceeded to give Judgment, which was,

That the Prisoner should be carried from thence to the Place from whence he came, and from thence to Tyburn, and there to be hanged by the Neck till he was dead.

Judgment being given, the Lord Chief Justice commanded, that the Prisoner might have convenient Respite, and the company of some godly learned Men to instruct him for his Soul's Health.

He was afterwards executed at Tyburn, pursuant to the Sentence. At the time of his Execution, Sir John Hollis (afterwards Earl of Clare) and Sir John Wentworth, out of Friendship to the Earl of Somerset, rode to Tyburn, and urged Weston to deny all that he had before confessed: But Weston being prepared for Death, resisted their Temptations, sealing penitently the truth of his confessions with his last Gasp; and Sir John Hollis, Sir John Wentworth, together with Mr. Lumfden, who had published a Relation of the Proceedings against Weston at his Arraignment, were afterwards prosecuted in the Star-chamber, for traducing the King's Justice in those Proceedings.

Saddle, Lopez and Mr. Turner: He then proceeded to give judgment which was

That the Prisoner should be carried from thence to the Place from whence he came, and from thence to Tyburn, and there to be hang'd by the Neck till he was dead.

Judgment being given, the Lord Chief Justice commanded, that the Prisoner might have convenient Religion, and the company of some godly learned Men to instruct him for his Soul's Health.

He was afterwards executed at Tyburn, pursuant to the Sentence. At the time of his Execution, Sir John Hollis (afterwards Earl of Clare) and Sir John Wentworth, one of his Friends, to the Earl of Somerset, rode to Tyburn, and urged Weston to deny all that he had before confessed: But Weston being prepared for Death, refused their Temptations, testifying penitently the truth of his confessions with his last Grip; and Sir John Hollis, Sir John Wentworth, together with Mr. Lunden, who had published a Relation of the Proceedings against Weston at his Arraignment, were afterwards prosecuted in the Star-Chamber, for publishing the King's Justice in those Proceedings.

of whom he had thought this was unum cunctis, yet it was not unum cunctis.

As touching the speaking in private or contrary, he solemnly protested to God, he knew of none, nor of any Sabbath for colour there of; and therefore he might lawfully against the Statute and Unlawfulness of such as were about to testify, and wickedly to hinder the course of Justice. And to be sure, but of all to that which he had to speak of Weston the Prisoner.

First, Touching the Wickedness of his Fact, he very solemnly extorted him to an acknowledgment of his own condition in the same, declaring unto him how that his condition would be a Satisfaction to God and the World, and that by his Faith and true Repentance he would lay hold upon the Mercy of his Saviour.

He perturbed him, that no more Hope (which is a Witch) should keep him back from giving Satisfaction to the World, or discovering the Guilt of the Great ones; advising him, that after this Life, as Death for him, Judgment should find him.

And lastly, taking occasion there to remember this Polling to have been a Polish Trick, which he illustrated by examples of the Guenardis de Bille, as mentioned in the 1. 2. point, that referred to Queen Elizabeth's

THE
PROCEEDINGS

AGAINST

Sir JOHN HOLLIS,

Sir JOHN WENTWORTH,

AND

Mr. LUMSDEN,

In the Star-Chamber,

For traducing the Publick Justice, Nov. 10,
13 Jac. 1.



Printed in the Year MDCCXXXVII.

PROCEEDINGS

A. C. A. I. N. S. T.

SIR JOHN HOLLIS

SIR JOHN WENTWORTH

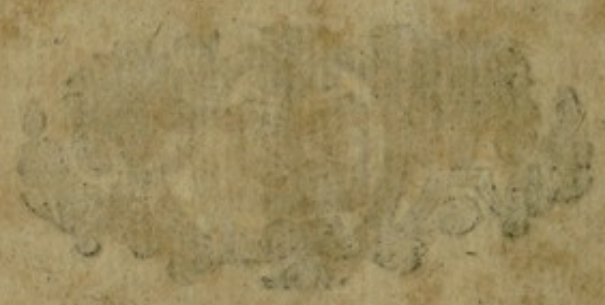
AND

MR. J. M. S. D. E. N.

In the Star-Chamber.

For extracting the Publick Justice, Nov. 10.

13 Jac. 1.



Printed in the Year MDCCKXXVII



The Proceedings against Sir John Hollis,
 Sir John Wentworth, and Mr. Lumfden,
 in the Star-Chamber, for traducing the
 Publick Justice, November 10, 1615.
 13 Jac. I.

In Camera Stellata decimo Novembris,
 13^o Jacobi regis, 1615.

Present,

THE Lord Chamberlain, Arch-
 bishop of Canterbury, Lord
 Crew, Lord Steward, Earl
 of Pembroke, Bishop of London, Bi-
 shop of Winton, Lord Zouch, Lord
 Knowles, Secretary Winwood, Chan-
 cellor of the Dutchy, Sir Thomas Lake,
 the three Chief Justices.

Being sat,

There were brought to the Bar, Sir
 John Hollis (now Lord Houghton) Sir
 John Wentworth, and Mr. Lumfden,
 a Scottish Gentleman, as Offenders and
 Prisoners, committed by the Lords of
 the Council. Mr. Attorney-General
 did inform against them Ore tenus in
 this Manner :

The Offence wherewith I shall
 charge the three Offenders at the Bar,
 is a Misdemeanor of a high Nature,
 tending to the Defacing and Scandal of
 Justice in a great Cause capital. The
 particular Charge is this :

The King, amongst many his prince-
 ly Virtues, is known to excel in that
 proper Virtue of the Imperial Throne,
 which is Justice. It is a royal Virtue,
 which doth employ the other three
 cardinal Virtues in her Service. Wis-
 dom to discover, and discern Nocent
 or Innocent: Fortitude to prosecute
 and execute: Temperance, so to carry
 Justice as it be not passionate in the
 Pursuit, nor confused in involving
 Persons upon light Suspicion, nor pre-
 cipitate in Time.

For this his Majesty's Virtue of Ju-
 stice, hath of late raised an Occasion,
 and erected as it were a Stage or Thea-
 tre, much to his Honour for him to
 shew it, and act it in the Pursuit of
 the

the untimely Death of Sir Thomas Overbury, and therein cleansing the Land from Blood. For, my Lords, if Blood spilt pure doth cry to Heaven in God's Ears, much more Blood defiled with Poison.

This great Work of his Majesty's Justice, the more excellent it is, your Lordships will soon conclude the greater is the Offence of any that have sought to affront it, or traduce it. And therefore, before I descend unto the Charge of these Offenders, I will set before your Lordships the Weight of that which they have sought to impeach; speaking somewhat of the general Crime of Imposition, and then of the particular Circumstances of this Fact upon Overbury; and thirdly and chiefly, of the King's great and worthy Care and Carriage in this Business.

This Offence of Imposition is most truly figured in that Device or Description, which was made of the Nature of one of the Roman Tyrants, that he was *lutum sanguine maceratum*, Mire mingled or cemented with Blood: For as it is one of the highest Offences in Guiltiness, so it is the basest of all others in the Mind of the Offenders. Treasons, *magnum aliquid spectant*: They aim at great Things; but this is vile and base. I tell your Lordships what I have noted, that in all God's Books, (both in the Old and New Testament) I find Examples of all other Offences and Offenders almost in the World, but not any one of an Imposition or an Imposer. I find mention of Fear of casual Imposition: When the wild Vine was shred into the Pot, they came complaining in a fearful Manner;

Maister, mors in olla. And I find mention of Poisons of Beasts and Serpents; the Poison of Asps is under their Lips. But I find no Example in the Book of God of Imposition. I have sometimes thought of the Words in the Psalm, Let their Table be made a Snare. Which certainly is most true of Imposition; for the Table, the daily Bread, for which we pray, is turned to a deadly Snare; but I think rather that that was meant of the Treachery of Friends, that were participant of the same Table.

But let us go on. It is an Offence, my Lords, that hath the two Spurs of offending; *spes perficiendi*, and *spes celandi*: It is easily committed, and easily concealed.

It is an Offence that is *tanquam sagitta nocte volans*; it is the Arrow that flies by Night. It discerns not whom it hits; for many Times the Poison is laid for one, and the other takes it; as in Saunder's Case, where the poisoned Apple was laid for the Mother, and was taken up by the Child, and killed the Child: And so in that notorious Case whereupon the Statute of 22 Hen. VIII. cap. 9. was made, where the Intent being to Poison but one or two, Poison was put into a little Vessel of Barm, that stood in the Kitchen of the Bishop of Rochester's House; of which Barm Pottage or Gruel was made, where-with seventeen of the Bishop's Family were poisoned: Nay, divers of the Poor, that came to the Bishop's Gate, and had the broken Pottage in Alms, were likewise poisoned. And therefore, if any Man will comfort himself, or think with himself, here is great talk of Imposition, I hope I am safe; for I have no Enemies; nor I have

have nothing that any Body should long for.

Why? that is all one; for he may sit at a Table by one for whom Poison is prepared, and have a Drench of his Cup, or of his Pottage. And so, as the Poet saith, he may die another Man's Death.

And therefore, it was most gravely, and judiciously, and properly provided by that Statute, that Impositionment should be High-Treason; because whatsoever Offence tendeth to the utter Subversion and Dissolution of human Society, is in the Nature of High-Treason.

Lastly, It is an Offence that I may truly say of it, non est nostri generis, nec sanguinis. It is (thanks be to God) rare in the Isle of Britain: It is neither of our Country, nor of our Church; you may find it in Rome or Italy. There is a Region, or perhaps a Religion for it: And if it should come amongst us, certainly it were better living in a Wilderness than in a Court.

For the particular Fact upon Overbury. First, for the Person of Sir Thomas Overbury: I knew the Gentleman. It is true, his Mind was great, but it moved not in any good Order; yet certainly it did commonly fly at good Things; and the greatest Fault that I ever heard of him was, that he made his Friend his Idol. But I leave him as Sir Thomas Overbury.

But take him as he was the King's Prisoner in the Tower; and then see how the Case stands.

In that Place the State is as it were respondent to make good the Body of a Prisoner. And if any thing happen to him here, it may (though not in this

Case, yet in some others) make an Aspersion and Reflection upon the State itself.

For the Person is utterly out of his own Defence, his own Care and Providence can serve him nothing.

He is in Custody and Preservation of the Law; and we have a Maxim in Law, (as my Lords the Judges know) that when a State is in Preservation of Law, nothing can destroy it, or hurt it.

And God forbid but the like should be for the Persons of those that are in Custody of Law; and therefore this was a Circumstance of great Aggravation.

Lastly, To have a Man chased to Death in such manner (as it appears now by matter of Record; for other Privacy of the Cause I know not) by Poison after Poison, first Roseaker, then Arsenick, then Mercury Sublimate again; it is a Thing would astonish Man's Nature to hear it.

The Poets feign, that the Furies had Whips, that they were corded with poisonous Snakes; and a Man would think that this were the very Case, to have a Man tied to a Post, and to scourge him to Death with Snakes; for so may truly be termed diversity of Poisons.

Now I will come to that which is the Principal; his Majesty princely, yea, and as I may truly term it, sacred Proceeding in this Cause. Wherein I will first speak of the Temper of his Justice, and then of the Strength thereof.

First, It pleased my Lord Chief Justice to let me know, (that which I heard with great Comfort) which was the Charge that his Majesty gave to himself

himself first, and afterwards to the Commissioners in this Case, worthy certainly to be written in Letters of Gold, wherein his Majesty did fore-rank and make it his prime Direction, that it should be carried without touch, to any that was innocent; nay more, not only without Impeachment, but without Aspersions; which was a most noble and princely Caution from his Majesty; for Men's Reputations are tender Things, and ought to be like Christ's Coat, without Seam.

And it was the more to be respected in this Case, because it met with two great Persons; a Nobleman that his Majesty had favoured and advanced, and his Lady being of a great and honourable House; though I think it be true, that the Writers say, that there is no Pomegranate so fair or so sound, but may have a perished Kernel. Nay, I see so plainly, that in those excellent Papers of his Majesty's own Hand-writing, being as so many Beams of Justice issuing from that Virtue which doth shine in him; I say, I see it was so evenly carried without Prejudice, (whether it were a true Accusation of the one part, or a Practice of a false Accusation on the other) as shewed plainly that his Majesty's Judgment was *tanquam tabula rasa*, as a clean Pair of Tables, and his Ear *tanquam janua aperta*, as a Gate not side open, but wide open to Truth, as it should be by little and little discovered. Nay, I see plainly, that at the first (till farther Light did break forth) his Majesty was little moved with the first Tale, which he vouchsafeth not so much as the Name of a Tale; but calleth it a Rumour, which is an headless Tale.

As for the Strength and Resolution of his Majesty's Justice, I must tell your Lordships plainly, I do not marvel to see Kings thunder out Justice in Cases of Treason, when they are touched themselves; and that they are vindices doloris proprii; but that a King should pro amore justitiæ only, against the Tide of his own Affection, for the Good of his People, take such Care of a Cause of Justice, that is rare and worthy to be celebrated far and near.

For, I think, I may truly affirm, that there was never in this Kingdom, the Blood of a private Gentleman vindicated, *cum tanto motu regni*, or to say better, *cum tanto plausu regni*.

If it had concerned the King or Prince, there could not have been greater nor better Commissioners to examine it.

The Term hath been almost turned into a justitium, or Vacancy; the People themselves being more willing to be Lookers on in this Business, than to follow their own.

There hath been no Care of Discovery omitted, no Moment of Time lost.

And therefore I will conclude this Part with the Saying of Solomon, *Gloria Dei celare rem, & gloria Regis scrutari rem*.

And his Majesty's Honour is so much the greater, for that he hath shewed to the World in this Business, as it hath Relation to my Lord of Somerset, (whose Case in no sort I do pre-judge, being ignorant of the Secrets of the Cause, but taking him as the Law takes him hitherto, for a Suspect) I say, the King hath to his great Honour shewed, that were any Man in
such

such a Case of Blood, as the Signet upon his right Hand, (as the Scripture says) yet would he pull him off.

Now will I come to the Charge of these Gentlemen, whose Qualities and Persons I respect and love; for they are all my good Friends: But now I can only do this Duty of a Friend to them, to make them know their Fault to the full.

And therefore, first, I will by way of Narrative, declare to your Lordships the Fact, with the Occasion of it; then you shall have their Confessions read, upon which you are to proceed, together with some collateral Testimonies by way of Aggravation: And lastly, I will note and observe to your Lordships, the material Points which I do insist upon for their Charge, and so leave them to their Answer. And this I will do very briefly, for the Case is not perplexed.

That wretched Man Weston, who was the Actor or mechanical Party in this Imposition, at the first Day being indicted by a very substantial Jury of selected Citizens, to the number of Nineteen, who found *billa vera*, yet nevertheless at the first stood mute; but after some Days Intermision, it pleased God to cast out the dumb Devil, and that he did put himself upon his Trial; and was by a Jury also of great Value, upon his Confession, and other Testimonies, found guilty: So as thirty one sufficient Jurors have passed upon him.

Whereupon Judgment and Execution was awarded against him.

After this, being in Preparation for another World, he sent for Sir Thomas Overbury's Father, and falling down upon his Knees, with great Re-

morse and Compunction, asked him Forgiveness.

Afterwards, again, of his own Motion, desired to have his like Prayer of Forgiveness recommended to his Mother, who was absent.

And at both Times, out of the abundance of his Heart, confessed that he was to die justly, and that he was worthy of Death.

And after, again at his Execution (which is a kind of Sealing-time of Confessions) even at the Point of Death, (although there were Tempters about him, as you shall hear by and by) yet he did again confirm publickly, that his Examinations were true, and that he had been justly and honourably dealt with. Here is the Narrative, which induceth the Charge. The Charge itself is this:

Mr. Lumden, whose Offence stands alone single, (the Offence of the other two being in Consort; and yet all three meeting in their End and Center, which was to deface this excellent Piece of Justice:) Mr. Lumden, I say, mean while, between Weston's standing mute and his Trial, takes upon him to make a most false, odious and libellous Relation, containing as many Untruths as Lines, and sets it down in Writing with his own Hand, and delivers it to Mr. Henry Gibb, of the Bed-Chamber; to be put into the King's Hand; in which Writing he doth falsify and pervert all that was done the first Day at the Arraignment of Weston; turning the Pike and Point of his Imputations, principally upon my Lord Chief Justice of England, whose Name I cannot pass by, and yet I cannot skill to flatter. But this I will say of him, and I would say as much to
Ages,

Ages, if I should write a Story; that never Man's Person and his Place were better met in a Business, than my Lord Coke and my Lord Chief Justice, in the Cause of Overbury.

Now, my Lords, in this Offence of Mr. Lumfden's, for the Particulars of these slanderous Articles, I will observe them unto you when the Writings and Examinations are read; for I do not love to set the Gloss before the Text.

But in general I note to your Lordships, first, the person of Mr. Lumfden; I know he is a Scots Gentleman, and thereby more ignorant of our Laws and Forms: But I cannot tell whether this doth extenuate his Fault in respect of ignorance, or aggravate it much, in respect of presumption; that he would meddle in that he understood: But I doubt it came not out of his Quiver; some other Man's Cunning wrought upon this Man's Boldness.

Secondly, I may note unto you the Greatness of the Cause, wherein he being a private mean Gentleman, did presume to deal.

Mr. Lumfden could not but know to what great and grave Commissioners the King had committed this Cause; and that his Majesty in his Wisdom would expect Return of all Things from them to whose Trust he had committed this Business. For it is the part of Commissioners, as well to report the Business, as to manage the Business; and then his Majesty might have been sure to have had all Things well weighed, and truly informed; and that it should have been far from Lumfden to have presumed to have put forth his Hand to so high and tender a Business, which was not to be touched on no

Account but by employed Hands.

Thirdly, I note to your Lordships, that this Infusion of a Slander into a King's Ear, is of all Forms of Libels and Slanders, the worst. It is true, that Kings may keep secret their Informations; and then no Man ought to enquire after them, while they are shrined in their Breast.

But where a King is pleased that a Man shall answer for his false Information; there, I say, the false Information to a King exceeds in Offence the false Information of any other kind; being a kind (since we are in matter of Poison) of Impoisonment of a King's Ear. And thus much for the Offence of Mr. Lumfden.

For the Offence of Sir John Wentworth and Sir John Hollis, which I said was in Consort, it was shortly this. At the time and place of the Execution of Weston, to supplant his Christian Resolution, and to scandalize the Justice already past, and perhaps to cut off the Thread of that which is to come; these Gentlemen, with others, came mounted on Horseback, and in a rushing and facing Manner, put themselves forward to re-examine Weston upon Questions? Directly cross to that that had been tried and judged; for what was the Point tried? That Weston had poisoned Overbury. What was Sir John Wentworth's Question; whether Weston did poison Overbury or no? A Contradictory directly: Weston answered only, that he did him wrong; and turning to the Sheriff, said, you promised me I should not be troubled at this Time. Nevertheless, he pressed him to answer; saying, he desired to know it, that he might pray with him. I know not that Sir John
Wentworth

Wentworth is an Ecclesiastick, that he should cut any Man from the Communion of Prayer.

And yet for all this vexing of the Spirit of a poor Man, now in the Gates of Death, Weston nevertheless stood constant, and said, I die not unworthily: My Lord Chief Justice hath my Mind under my Hand, and he is an honourable and just Judge. This is Sir John Wentworth's Offence.

For Sir John Hollis, he was not so much a Questionist; but wrought upon the other's Questions, and like a kind of Confessor, wished him to discharge his Conscience, and to satisfy the World.

What World? I marvel! It was sure the World at Tyburn. For the World at Guild-Hall, and the World at London, was satisfied before; teste that the Bells that rung.

But Men have got a Fashion now-a-days, that two or three Busy-bodies will take upon them the Name of the World, and broach their own Conceits, as if it were a general Opinion.

Well, what more? When they could not work upon Weston, then Sir John Hollis in an Indignation turned about his Horse (when the other was turning over the Ladder) and said, he was sorry for such a Conclusion; that was to have the State honoured or justified: But others took and reported his Words in another Degree: But that I leave, seeing it is not confessed.

Sir John Hollis's Offence had another Appendix, before this in Time; which was, that at the Day of the Verdict given up by the Jury, he also would needs give his Verdict; saying openly, that if he were of the Jury, he would doubt what to do.

Marry (he saith) he cannot tell well whether he spake this before the Jury had given up the Verdict, or after; wherein there is little gained. For whether Sir John Hollis were a Pre-juror, or a Post-juror, the one was as to prejudge the Jury, the other as to taint them.

Of the Offence of these two Gentlemen in general, your Lordships must give me Leave to say, that it is an Offence greater and more dangerous than is conceived.

I know well that as we have no Spanish Inquisitions, nor Justice in a Corner; so we have no gagging of Mens Mouths at their Death, but that they may speak freely at the last Hour; but then it must come from the free Motion of the Party, not by Temptation of Questions.

The Questions that are to be asked, ought to tend to farther revealing of their own or other Guiltiness; but to use a Question in the Nature of a false Interrogatory, to falsify that which is *res judicata*, is intolerable.

For that were to erect a Court or Commission of Review at Tyburn, against the King's Bench at Westminster.

And besides, it is a Thing vain and idle: For if they answer according to the Judgment past, it adds no Credit; or if it be contrary, it derogateth nothing: But yet it subjecteth the Majesty of Justice, to popular and vulgar Talk and Opinion.

My Lord, these are great and dangerous Offences; for if we do not maintain Justice, Justice will not maintain us.

But now your Lordships shall hear the Examinations themselves.

Hereupon the Examinations were read.

Mr. Lumsden for Answer to this Charge said, That himself was not at the Arraignment, but what he had spoken, or set down in writing, he had received of many in common Discourse; who being now demanded to justify the same, do deny it; and therefore he would confess that what was written was false.

He pleaded Ignorance of the Law, and that he did it without any Purpose of Prejudice to the publick Business, but only as he conceived out of Duty; and because he had always lived as a Gentleman, he would not so much degenerate from himself and his Birth, nor so much offend against human Society, as to become a base Accuser; but would submit himself and his Offence to the Censure of the Court, and to the favourable Interpretation of their Lordships.

Mr. Attorney reply'd, That his Answer and Submission were modest, and therefore he would not press his Offence farther; yet he would tell him, that in criminal Causes, whoever would raise a Slander, and refuse to tell his Author, he must tell him that which the Laws tell him, that he was the Author himself.

This kind of slandering Judges to Kings and Princes is common. Popham, a great Judge in his Time, was complained of by Petition to Queen Elizabeth; it was committed to four Privy Counsellors; but the same was found to be slanderous, and the Parties punished in the Court. He likewise said, I may not admit of this

new Learning; I hold it not unworthy a Gentleman to discharge his Fault upon the first Author; and by the Law, the not doing thereof, maketh him the first Author; so he becomes a false Accuser of himself.

Sir John Wentworth's Answer was, That he would not willingly be conceived to speak more here than he had done heretofore.

It was true that he was at the Execution of Weston, and did ask those Questions touching the poisoning Sir Thomas Overbury; which he did on two Reasons: The one was because he had seen others to do the same at the same Time, and especially one Parkes; and he thought he might do it as well as he: Another Reason was, because he not being at the Arraignment, and hearing that Weston had denied the Fact, he was desirous to be satisfy'd of the Truth from himself; yet he purposed not to ask any Questions when he came thither: But if to ask Questions of a Man going to Execution were offensive to the State, he did humbly submit to their Lordships Censures.

Sir John Hollis answer'd, That the Matter declared against him contained three Crimes. The first, that whereas at the first upon the Indictment he should fore-judge the Jury, by delivering his Opinion; saying, that he should doubt what to do; and this he confessed, as a Man more trickish and curious to give his Verdict or Judgment of Life or Death than others: And if a bare Word of his Opinion drawn by Discourse (he being but a Stander by in this Business) be to be censured, I
appeal

appeal to your Judgments. His second Offence was for giving of Counsel, and asking Questions of Weston at the Execution: He said, he confessed he was there, but carried with a general Desire which he had to see the Execution, as he had done in many like Cases before.

And he had formerly seen that it was a common Thing for Men Standers-by to ask Questions of those that were to be executed: And now many asking this Question of the Fact of Weston, and he answering in general Terms, I die not unworthily; he also, among many others, did ask him the Question (as hath been opened;) which was not purposed of him when he came hither, but was occasioned by reason of one that stood behind him at the Gallows, who said to Weston, that he should confess the Truth of this Fact, for if he had had his Right, he had been hanged many Years ago: Whereunto Weston answered, Fact or no Fact I die worthily.

Sir John said, that Mr. Attorney had so well apply'd his Charge against him, that though he carry'd the Seal of a good Conscience with him, he would almost make him believe that he was Guilty; but he hoped their Lordships would take the Bird by the Body and not by the Feathers: His Speech he said might be well understood, but the worst End of it was turned towards him; he did but the Part of a Christian to persuade Weston to discharge his Conscience, and intended not to controvert the Law and Justice that had passed on him.

As for the Testimony of Bearingborne, I know not what he is that hath deposed against me; but it seems

he is some Man of Trade, against whom I think I may now put myself in Opposition, that my Denial may stand against his Affirmation.

In his Youth some of your Lordships know, that he, Sir John Hollis, had spent some of his Time in the Wars and Travel, and afterwards had lived in Place at Court, both in the Time of Queen Elizabeth, and his Majesty eight Years: He had served the late most worthy Prince, the Memory of whom he said did grieve him that he should plead his Name at the Bar, whom for the Misery of this State it pleased God to take away; since whose Death he had been as a Fish out of the Water.

Thus much he said was pulled out of his Mouth, by reason of his Testimony produced against him; but he knew that not Words but his Cause must help him out of this Mire.

And therefore if their Lordships had determined any thing against him for these Offences, he did humbly submit himself to their honourable Censures.

The Lord Chancellor said, that this Deposition of Bearingborne was not read but in Explanation and Aggravation, and not for Evidence of Condemnation against Sir John Hollis.

Mr. Attorney reply'd upon Sir John to this Answer of his, That his Speech to Weston was Occasional, and not resolved on before his coming to the Execution: That it was new Matter thought upon and devised since his being questioned for his Offence; for there was never a Word thereof spoken in this Examination: And there this is the Feather you speak of, and not the Body.

Whereunto Sir John Hollis answered, that they might very well stand together.

Hereupon Sir Edward Coke, the Chief Justice of the King's Bench, pronounced the Sentence; when he said, that he would say of this Business, and his Dealing therein, as Abimelech said of himself, *Tu scis, Domine, quod feci in simplicitate cordis & munditie manuum*; and therefore would also boldly affirm, that there were none brought into Question of this great Business of Poison, but such as in his Soul and Conscience were apparently Guilty: He said he was no fit Man for a Common-Place, yet he had found some Records of Poisoning, which he would shew: As namely in the Treasury 31 Ed. III. as the King indeed had two Treasuries, the one of Records, the other of Gold and Silver; where a Woman committed Adultery, and after poisoned her Husband.

And 21 Edw. I. Solomon le Roch, a Judge, was poisoned by a Monk, who afterwards prayed to be delivered to the Censure of the Church; and he was denied, because the same was a Wrong to the State to poison a Judge. And it is to be observed in the first Case, that Poison and Adultery go together; and on the second, that Poison and Popery go together.

From Edward III. down to 22 Hen. VIII. (which was a great Lump of Time) no mention is made of poisoning any Man; and then a Statute was made, that those that did poison any Body should be boiled to Death, and were first to be put in at the Tip-toes.

In this Business he said he would

tell no News, but he was not yet at the Root; God forbid that those kinds of Offences should be unsearched and unpunished, wheresoever they are found: There are divers sorts of Poisoning, by some whereof a Man shall die a Month or a Quarter of a Year after, ut sic se sentiat mori; and shall not know in what manner he is poisoned: As one Squire, a Priest, should have poisoned Queen Elizabeth by poisoning her Saddle.

This poisoning came first from Popery.

In this Case of Weston he would never confess the Indictment, because the Indictment was, that he poisoned Sir Thomas Overbury with Arsenick, Roseaker and Mercury Sublimate; when as indeed it was not known what Poison killed him.

Here the poor Man conceived a Scruple, that if he did not know with which of the Poisons Overbury was poisoned, he was not guilty of the Offence laid in the Indictment; and therefore said he was not guilty of the Offence.

Now ut obstruatur os iniqui, that the Mouth of the wicked Man may be fully stopped; after that it was resolved unto him, that the Manner of Killing, laid in the Indictment, was not the Point of the Indictment, but the Matter of killing; as if the Indictment be, that a Man was killed with a Sword, whereas indeed he was killed with a Dagger; yet the Party is guilty, because the killing of a Man is the Point of the Indictment; then he confessed the Fact.

And for this Gentleman, Mr. Lumfden, a Scottish Gentleman, a Nation that he loved well, (and to his Majesty both

both English and Scotch were equally dear) Scoti & Angli nullo discrimine, &c.

He that infuseth into his Majesty's Ears the least Falshood concerning his Judges unjustly, is like him that infuseth never so little Copper into Coin; they both commit a kind of Treason: And for the Matter of it, which was informed, for qui non bene respondet, non respondet; and a little to divert from this Business, you, Mr. Lumsden, were a Pander to the Earl of Somerset, and were his Favourer in Deed, but his Follower in Evil.

Afflictio dat intellectum, let your Affliction now give you Sense and Feeling of your Sins; your Service of a Pander is apparently to be shewed you by a Letter under my Lord of Somerset's own Hand, and your Answer to it.

Let it then enter your Heart and Soul to assure yourself, that there is now no Safety, Protection, nor Assurance, but under a religious Faith in Jesus Christ; and that, radix justitiæ est pietas, the Foundation and Root of Justice is Piety.

I confess I had a great Suspicion out of whose Quiver the Murder came first; but because I had no certain Proofs, I would never question them.

This Resolution of Weston to be mute, was very great. When he was persuaded by the Bishop of London and Ely to plead, he would not: And after being promised that if he would speak, he should have a Popish Priest; he thereunto answered, Have I refused the godly Persuasions of the Bishop of London, and shall I answer to a Popish Priest? And for your Persuasions, Mr. Lumsden, that you will

not be an Accuser, this is a contemptuous Answer; for this is not to be an Accuser, being examined of another to discover him; but your Refusal in this kind to answer is a manifest Contempt: And for the like Offence, a great Lady of the Land lieth now in the Tower, only for refusing to answer being examined. Quod diabolus ad malum exposuit, Deus ad bonum exposuit; that which the Devil exposeth to Evil, God disposeth to Good.

This refusing to discover an Offender, is a Contempt to a Master of a Family; if he should command any of his Servants to tell him of an Offence committed, and by whom; and the Servant that is so asked shall refuse to tell him, he shall be worthy of Punishment: Much more any Subject being examined by the King's Authority and Commissioners, if he shall refuse to make Discovery of the Truth.

The Statute of the 1st and 2d of Rich. II. is, That he that doth raise false News between the King and his Nobles, shall be imprisoned for the Space of a Year, and afterwards, until he should produce his Author.

As for Sir John Hollis, his Fault of questioning and counselling, it is very great, the same being made after a Verdict; for if a Man commit Treason the 20th of May, and sell his Lands the 5th, which goes before the Sale, and after is found guilty of this Indictment; he that is to lose the Land cannot deny this Verdict: And say the Treason was committed the twentieth Day, though it concern him for all that he hath of laying; if that he that is to be undone by a Verdict shall not speak cross Matter to a Verdict (as

the Books of Edw. III. and Edw. I. are, and 11 Hen. IV. Estoppel 137.) what shall be done to him that having no Cause in a Matter capital, wherein he had nothing to do, would intermeddle? For as the Law saith, Turpis est admittio rei ad se non pertinentis. Sir John said, that it hath been a Custom to ask Questions at those Times, and that he did usually go to Executions. For his own Part he said, that ever since he was a Scholar, and had read those Verses of Ovid, Trist. III. 5.

Et lupus & vulpes instant morientibus——

Et quæcunque minor nobilitate fera est.

He did never like it; and therefore he said he did marvel much at the Use of Sir John.

Sir John answers here at the Bar, and saith, that if any Thing were determined against him, he did humbly submit himself thereto: By which Term so determining, he meant (I think) as if we did give our Censures against him by Conspiracy.

For my own Part I talked with none other, nor I think did any of us one speak with other before we came together here.

Peradventure he thinks (as some have thought) that all the Carriage of this Business is but a Conspiracy against the Earl of Somerset.

He saith he hath been since the Prince's Death but as a Fish out of the Water.

I know not what he means by a Fish out of the Water: I have heard that Clericus in oppido, tanquam piscis in arido, A Clerk in the Town is like a

Fish out of the Water: He is a Justice of Peace, a Commissioner of Oyer and Terminer; a Man of fair Lands, 1500l. per Annum at the least; this Money is enough to be a Privy-Counsellor: And yet Sir John Hollis is like a Fish out of the Water.

I know he hath travelled many Countries, speaks many Languages, hath seen many Manners and Customs, and knows much of foreign Nations; yet a little Knowledge of the Common Law of this Land would have been better for him than all these; it would have kept him from asking Questions, and Counselling in Scandal of Religion and Justice; two of the main Pillars of the Kingdom, and that in cold Blood.

Evidence is above Eloquence; the Party himself acknowledged that he died justly; and those that saw him said he died penitently: So to conclude, as it was sometime said of Rome, *Et quæ tanta fuit Romam tibi causa videnti*, he might very well now say of Sir John Hollis his going to Tyburn, with a little Alteration of the Words, *Et quæ tanta fuit Tyburn tibi causa videnti*.

For the Censure he agreed with that which had been set; and the Acknowledgment of Mr. Lumsden should be also in the Court of Common-Pleas and the Exchequer, because the Justice of all Courts may be wronged with slanderous Petitions.

He moved that Information might be made against the other Gentlemen that were asking such Questions as these were; and that they might receive their due Punishment: He meant, he said, Mr. Sackvil, Sir Thomas Vavafor and Sir Henry Vane, who would be

a Baron if Attainders did not lie in the Way : If these be not punished, these Gentlemen will think that they have wrong ; for *quæ mala cum multis patimur leviora videntur.*

He said he would wish Gentlemen to take heed how they fell into Discourses of these Busineses, when they be at their Chambers ; for in the proceeding of these great Busineses and Affairs, if a Man speak irreverently of the Justice thereof, the Bird that hath Wings will reveal it.

The Sentence was Fine, Imprisonment, and Submission, as followeth ; viz.

Lumsden fined two thousand Marks, imprisoned in the Tower for a whole Year, and after until he shall, at the King's Bench Bar, submit himself and confess his Fault, and also produce his Authors.

Sir John Hollis was fined One thousand Pounds, and imprisoned in the Tower for the Space of a Year.

Sir John Wentworth fined One thousand Marks, imprisoned in the Tower for a Year ; and both to make their Submission at the King's Bench Bar.



The sentence was fine, impud-
ent, and, submission, as follows:
I should have been two thousand
pounds in the lower for a whole
year, and after that he shall, at the
King's Bench Bar, debate himself and
conclude his fault, and also produce his
Answer.
Sir John Hollis was first Question-
ed, and answered, and impudenced in the
lower for the space of a Year.
Sir John Westwood had One
thousand Marks, impudenced in the
lower for a Year; and both to make
their Submission at the King's Bench
Bar.

But in the lower for a whole
year, and after that he shall, at the
King's Bench Bar, debate himself and
conclude his fault, and also produce his
Answer.
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PROCEEDINGS

BETWEEN THE

Lady Frances Howard,
Countess of Essex,

AND

Robert, Earl of Essex,
her Husband,

Before the King's Delegates, in a Cause of
Divorce, 1613. 11 Jac. I.



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Proceedings between the Lady Frances Howard, Countess of Essex, and Robert Earl of Essex, her Husband, before the King's Delegates, in a Cause of Divorce, 1613. II Jac. I.

UPON the Petition of Frances Countess of Essex, complaining that the Earl her Husband was incapable of consummating their Marriage, and praying a Commission to examine if her Complaint was well founded; the King granted her Request, and appointed the following Persons Commissioners,

- George Archbishop of Canterbury,
- John Bishop of London,
- Lancelot Bishop of Ely,
- Richard Bishop of Litchfield and Coventry,
- John Bishop of Rochester,
- Dr. Cæsar,
- Sir Thomas Parry,
- Sir Daniel Donne,
- Sir John Bennet,
- Dr. Francis James,
- And
- Dr. Thomas Edwards.

The Libel contained the following Allegations.

1. That she, at the Time of the Marriage, was thirteen Years old, and is at this time Twenty-two or Twenty-three.
2. That she and Robert Earl of Essex were marry'd by publick Rites and Ceremonies of the Church, in January, 1603.
3. That the aforesaid Robert, at the time of the pretended Marriage, was about Fourteen, and is about Twenty-two or Twenty-three at this time; and ever since, and at this present, is a Man (as far forth as a Man may judge) and hath been in good health, and perfect estate of Body, not any way hindered by any Ague or Sickness, but that he might have carnal Copulation with a Woman.
4. That

4. That since the pretended Marriage, at least by the Space of whole and continuat three Years after the said Robert had fully attained the Age of eighteen Years, as Time and Place did serve, after the Fashion of other married Folks, the said Frances Howard, in hope of lawful Issue, and desirous to be made a Mother, lived together with the said Robert at Bed and Board, and lay both naked and alone in the same Bed, as married Folks: And desirous to be made a Mother, from time to time, again and again yielded herself to his Power, and as much as lay in her, offered herself and her Body to be known; and earnestly desired Conjunction and Copulation.

5. And also the said Earl, in the time very often, again and again, did try to have Copulation, as with his lawful Wife, which she refus'd not, but used the best Means she could: Notwithstanding all this, the said Earl could never carnally know her, nor have that Copulation in any sort which the married Bed alloweth.

6. Yet before the said pretended Marriage, and since, the said Earl hath had, and hath Power and Ability of Body to deal with other Women, and to know them carnally, and sometimes have felt the Motion and Pricks of the Flesh carnally, and tendeth to carnal Copulation, as he saith and believeth; and peradventure, by a perpetual and natural Impediment, hath been hindred all the former time, and is at this present, that he can have no Copulation with the said Lady Frances.

7. Furthermore, the said Lady Frances remaineth, and is at this present, a

Virgin. Also at the time of the pretended Marriage, the said Lady Frances was unacquainted with the Earl's want of Ability and Impediment, formerly mentioned.

9. And furthermore the said Earl, long before this Suit commenced, hath very often, and at sundry times, confessed in good earnest, before Witnesses of good Credit, and his Friends and Kinsfolks, that although he did his best Endeavour, yet he never could, nor at this time can, have Copulation with the said Lady Frances, no not once.

10. And lastly, in regard of womanish Modesty, the Lady Frances hath concealed all the former Matters, and had a Purpose ever to conceal them, if she had not been forced, through false Rumours of Disobedience to the said Earl, to reveal them.

She requireth, since this pretended Matrimony is but a Fact, and not in Right, it may be pronounced, declared, and adjudged as none, and of none Effect; and she may be quit and free from all Knots and Bonds of the same, by your Sentence and Authority.

The Earl of Essex put in his Answer the 5th of July, 1614.

The first and second he answereth affirmatively.

To the third, he thinketh that at the Time of his Marriage, he was full fourteen Years, and is now twenty-two and upwards; neither since had, or hath any Sickness or Impediment to hinder him, but that he might have had Copulation with a Woman, saving in

in the time of his Sickness of the Small-Pox, for two or three Years after his Marriage, which continued for a Month or six Weeks, and at another time, when he had a few Fits of an Ague.

To the fifth, he affirmeth, that for one Year he divers times attempted; that the other two Years, when he was willing, she shewed herself sometimes willing, but other times refused, and he lay in Bed most commonly with her, but felt no Motions or Provocations.

To the fifth, he answereth, that he never carnally knew her, but found not any Defect in himself, yet was not able to penetrate into her Womb, nor enjoy her.

To the sixth, he believeth, that before and after the Marriage, he hath

found an Ability of Body to know any other Woman, and hath oftentimes felt Motions and Provocations of the Flesh, tending to carnal Copulation; but for perpetual and natural Impediments, he knoweth not what the Words mean; but that he hath lain by the Lady Frances two or three Years last past, and had no Motion to know her, and he believes never shall.

To the seventh, he believes not that the said Lady Frances is a Woman able and fit for carnal Copulation, because he hath not found it.

To the eighth and ninth, he believeth them both to be true, and thinketh that once before some Witnesses of Credit, he did speak to this Purpose, That he oftentimes had endeavoured carnally to know her, but that he did not, nor could not.





Doubts conceived out of the Fact and Process in the Suit between the Lady Frances Howard, and the Earl of Essex.

1. **W**Hether the Libel be defective, especially in the fourth Article, where it is said, that Dominus Comes Essex pluribus & iteratis vicibus (which may be verified and satisfied in two or three Times) dictam dominam Franciscum ejus uxorem prætersam cognoscere tentavit, &c.

2. Whether the Answer of my Lord of Essex to the said fourth Article in that behalf, being but thus, That he did divers times attempt, &c. be full, certain and sufficient.

3. Whether in this Case my Lord of Essex his Oath (cum 7 manu propinquorum) be not by Law requisite, as well as my Lady's.

4. Whether my Lord of Essex

would be inspected by Physicians, to certify (so far as they can by Art) the true Cause and Nature of the Impediment.

5. Whether by triennial Cohabitation, there having been no carnal Copulation between them (Impedimentum maleficii being accidental) præsumatur præcessisse vel potius subsequutum fuisse matrimonium contractum & solemnizatum.

6. Whether they ought post præceptum Judicis (notwithstanding their triennial Cohabitation before the Suit begun) to cohabit together, saltem per aliquod temporis spatium, arbitrio Judicis moderandum, for further Trial, &c.

His Grace's Arguments.

I Nasmuch as we firmly believe, that the Scripture doth directly, or by Consequence, contain it sufficient Matter to decide all Controversies, especially in Things appertaining to the Church, as that Marriage among Christians can be no less accounted than a sacred Thing, as being instituted by God himself in Paradise, honoured by the Presence of our Saviour himself, declared by St. Paul to be a Sign of the Spiritual Conjunctions between Christ and the Church.

I would be glad to know, and by what text of Scripture, either by the Old or New Testament, a Man may have a Warrant to make a Nullity of a Marriage solemnly celebrated, Prop-ter maleficium versus hanc.

Which I do the rather ask, because I find warrant expressly in the Scriptures to make a Nullity of a Marriage propter frigiditatem, by the Words of our Saviour, Mat. 19. 12. For there be some Chaste, or Eunuchs, which are so born of their Mother's Belly, and there be some which are made chaste of Men, and there be some which have made themselves chaste for the Kingdom of Heaven.

I would also know gladly what ancient Father amongst the Greeks or Latins, by occasion of Interpretation of Scripture, or any Disputation, hath mentioned maleficium versus hanc.

The like I demand touching ancient Councils, either General or Provincial, and concerning Stories Ecclesiastical, whether any such Matter be to be found in them.

If for ought that appeareth never mention was made this, till Hircanus Rhemisus Episcopus, who lived four hundred Years after Christ; it may well be conceived that this was a Concomitant of Darknes or Popish Superstition, which about that time grew to so great an height (God permitting them) that Punishment might fall upon the Children of Unbelief.

But since the Light of the Gospel is now in so great a Measure broken forth again, why should I hope that those, who have embraced the Gospel, should be free from this Maleficium; especially since amongst a Million of Men in our Age, there is but one found in all our country, who is clearly and evidently known to be troubled with the same? And if there should be any which should seem to be molested, we are taught to use two Remedies, the one temporal Physick, the other eternal.

For the first, our Saviour said, hoc genus Dæmoniorum non ejicitur, nisi orationem & jejunium: And St. Peter speaking of the Devil, Cui resistite firme in fide; and the Canonists themselves prescribe Alms, Fasting and Prayer

Prayer to be used in this case; but that they join their Supplication and their Exorcisms thereunto, and for corporeal Medicine to be applied therewith as against a Disease: So is the Judgment of our late Divines, whether they speak of Maleficium or not.

Now admit the Earl of Essex might be imagined to be troubled with Maleficium versus hanc; I demand what Alms hath been given, what Fasting hath been used, and what Prayers have been poured forth to appease the Wrath of God towards him or his Wife; or what Physick hath been taken, or Medicine hath been applied for three Years together? Not one of these Things: But the first hearing must be to pronounce a Nullity in the Marriage, of which Declaration we know the beginning, but no mortal Man's Wit can foresee the End, either in his Person, or in the Example.

Then the Archbishop for confirmation of his Opinion, shewed the Testimony of Melancthon, Pezelius, Hemingius, Polanus, Arcularious, Beza and Zanchius.

The JUDGMENT of Philip Melancthon, concerning Divorces because of Impotency.

PERSONS who are not fit for conjugal Mixture, are by no means Married, but when the Frigidity is found out, the Judge shall pronounce them free Persons.

Neither is this a Divorce, because there was no Marriage, according to what is said Mat. 19. but a Declaration, that others may know, there was no conjugal Society; and let the Person who has the Powers of Nature entire, yield to some other more happy and legitimate copulation.

But for the discovering Frigidity, the Laws constitute a time, that if the thing be doubtful, there should be no Separation 'till after three Years.

In the same manner it is pronounced concerning those in whom Nature is so hurt, either by Witchcraft or Poison, that they cannot be cured by the Art of Medicine, if for three whole Years Medicine is tried in vain.

But such is the Virtue of some Women, that they will conceal the Imbecillity of their Husbands, as is related of the Sister of that learned Man Simon Grineus, who, after the Death of her first Husband, was marry'd a Virgin-Widow to another, having lived eleven Years with an impotent Man; nor ever opened the Matter till after his Death.

Thus far Melancthon.

Christopher Pezelius, who comments on him, adds this Annotation; Impotence is either Natural or Accidental. Natural is when the Nature of any one is not fit for conjugal Mixture. Accidental is when the Person is castrated, or corrupted by Poison.

Again, the Impotence caused by Poison, is either such as may be cured by Medicine, or such as is perpetual.

Out of these Distinctions, is taken the Explication of the Question, whether and how, Impotence is a Cause for Divorce.

For Wedlock belongs not to impotent Persons, because the sufficient and final Cause is wanting.

First, The Person who is found being deceived, and ignorant of the Impotence of the other, there could be no Consent, which is the efficient Cause of Matrimony.

Secondly, There is a double end of Wedlock, one is the Generation of Children, as it is said, Increase and multiply. Another End is the avoiding the Confusion of Lusts, as it is said, To avoid Fornication, let every Man have his own Wife.

Thus far Pezelius, in the 2d Part of his Explications. In his Examen of Melancthon.

The Judgment of Hemingius in the same Case.

UNfitness of Body for the Use of Matrimony is a Cause of Divorce; and Men are sometimes render'd so unfit either by Witchcraft or Poison, that they can never be cured.

But there are many Things to be weighed in the Judgment, before the Sentence of Divorce be pass'd.

First, Whether the Impotency preceded the Marriage; or,

Secondly, Whether it was subsequent to it.

Thirdly, Whether it is curable.

Fourthly, Whether the Woman was conscious of the Thing before the Marriage.

If it preceded the Marriage, the sound Person, seeking a Divorce, may be freed, for it was not a true Mar-

riage, as there was no legitimate Consent, when one deceived and the other err'd, the Impotent deceiv'd and the Potent err'd.

Therefore since God approves neither of Deceit nor Error, he cannot be said to have joined those Persons together.

Therefore the Judge, if he understands, by the Proofs, that the Infirmary is incurable, he shall declare, by his own Testimony, that this was no Matrimony; but, if there is hope of a Cure, three Years shall be appointed, in which the Cure shall be patiently expected; which if it be attempted in vain, the Judge shall pronounce the Marriage to be void.

If the Infirmary is subsequent to the Marriage, and the conjugal Embrace, a Divorce is by no means to be permitted, since Affliction, where there is no Fault, is to be patiently endured in Marriage.

If the one was conscious of the other's Infirmary, it ought not to be consider'd as a Person deceived, when afterwards seeking a Divorce.

The Judgment of Polanus, lately Professor of Divinity in the Academy of Basil.

THose may enter into Wedlock who are not Eunuchs, or in whom Nature is not hurt by Poison or Witchcraft. For such Persons should by no means marry. And if they are married, the Frigidity of the Eunuch is found by the Experience of three Years, or the Infirmary of Nature has been three Years attempted in vain

to be cur'd, the Judge is to pronounce such Persons free. Polanus Syntag. lib. 10. cap. 53.

The Judgment of Arcularius, lately Professor of Divinity in the Academy of Martpurg.

Since, by the Witness of Christ, Mat. 19. there should be no Marriage between Persons who because of Frigidity, or any other Infirmity of Nature, are unfit for Marriage, here may be a Place for a Divorce. Therefore, if any such Person is joined to another, the Judge, after the Frigidity or Infirmity of Nature, is found out, shall pronounce them free.

Farthermore, in order to the discovering of Frigidity, the Laws prescribe the Time of three Years, especially if the Thing be doubtful.

The same Judgment belongs to those, in whom Nature is so inur'd, either by Witchcraft or Poison, that they are rendered unfit for the Use of Marriage, after all the Skill of Physicians has been three Years found to be insufficient.

Thus far Arcularius in *arcu foederis*, cap. 28.

The Judgment of Theodorus Beza contracted.

Espousals contracted with Persons afflicted with an incurable Palsy, which quite enervates the Body, or

with an incurable Frigidity, or who have lost the genital Parts, or have received any great Hurt, of which a perpetual Inability of Coition is the necessary Consequence, are wholly useless, since they cannot be called by God to Matrimony, who by reason of some natural Infirmity cannot fulfil the nuptial Engagement.

If after the Espousals, before the Marriage is really consummated, an Evil of this Nature should happen, I think the said Espousals should be broke off, as if by the Command of God, who by this perpetual Impediment openly demonstrates that the said Espousals are not pleasing to him.

Beza, in his Book concerning Divorces and Repudiations, p. 91. printed at Geneva, 1591.

And this his Doctrine Beza proves by many Testimonies of the holy Scripture, but only pag. 94. he adds these two Cautions.

First, If the frigid Person afterwards grows well, he ought to take his Wife again, who by Error was separated from him, although she should have been joined to another afterwards.

The other Caution is always necessary in Controversies of this Nature (lest that should be done which cannot afterwards be changed without giving great Offence) that they should wait, at least, three Years, from the Day of Marriage, before the Disease be pronounced incurable, and the Marriage broke off.

But this is only to be understood of such Inabilities as are not only apparent. For otherwise, as where by Castration, or any Defect of Nature, the Stones, or genital Member be wanting, what need any Interval.

The Judgment of Zanchius.

AS Beza, so neither does Zanchius touch upon Impotence caus'd by Poiton, but only teaches what are the Cases in which Marriages in the blessed Church are void, and then subjoins these Examples.

If it is contracted with one that is not a Man, but an Eunuch, or one who by reason of some perpetual and incurable Disease can in no wise perform the Duty of an Husband.

Thus far Zanchius, lib. 4. de op. Dei, cap. 3.

But he neither confirms his Assertions by Testimonies of Scripture, nor by Reason.

To these Arguments of the Archbishop, the King vouchsafed to give an Answer himself, which was as follows.

The KING's Answer.

TO the first Article, that the Scripture doth directly or by consequence contain sufficient Matter to decide all Controversies, especially in this appertaining to the Church: This, in my Opinion, is preposterous, and one of the Puritans Arguments, without a better Distinction or Explanation.

For the Orthodox Proposition is, That the Scripture doth directly, or, by consequence, contain in it sufficient Matter to decide all Controversies in Points of Faith and Salvation, of which Sort a Nullity of Marriage can-

not be accounted for one; and therefore your Consequence upon the former Proposition must fail.

For further Satisfaction of your following Question (I say) your second Question doth answer it: If there be warrant in Scripture for pronouncing a Nullity propter frigiditatem, then all the Means which may make him frigidus versus hanc, must be comprehended therein; for why doth our Church justly condemn the Marriage of a Man with his Sister's Daughters, or the Marriage of two Sisters, but ut paritate rationis, for none of them are in terminis prohibited by the Scripture? Only the Conclusion is gathered a paritate rationis.

For if it be not lawful to marry the Father's Wife, because thereby you discover your Father's Shame; nor his Sister, because she is his Kinswoman; nor your own Sister, because thereby you discover your Father's and your Mother's Shame: It can no more be lawful to marry your Sister's Daughter, for thereby also you discover your own Shame; as also the same Reason serves for ascending or descending in Points of Consanguinity, par est ratio.

The like is in this Case; for altho' Christ spake only of three sorts of Eunuchs, yet Ratio est quia non potest esse Copulatio inter Eunuchum & Mulierem; and therefore St. Paul, 1 Cor. 7. telleth us clearly, that it is not Conjugium sine Copulatione.

I conclude therefore, a paritate rationis, that Christ did comprehend under these three sorts all Inability which doth perpetually hinder Copulationem versus hanc, whether it be Natural or Accidental; for what difference is there between cutting off the

the Hand, and being made impotent thereof? Amputatio & Mutilatio membri, is all one in the Civil Law; and that is a like defrauding of the Woman, when either he who is to be her Husband is gelded, or when the use of that Member towards her, is by any unlawful Means taken from her.

Neither is it any way needful to crave the particular Warrant of Scripture for a Nullity, no more than of Warrant in this Place for any Nullity at all; for Christ doth not directly say, that a Marriage so made shall be nullified, neither doth he teach us what Form or Process shall be used in that, neither makes he mention of the triennial Probation, no more than he forbiddeth Marriage within the fourth Degree, without Leave obtained of the Bishop of the Diocess.

It is then sufficient to all moderate Christians to be taught out of the Word of God, that Marriage is nulla sine Copulatione; and these Words, quos Deos conjunxit, are never found in Scripture, where & erunt ei doth not proceed, viz. they two shall be one Flesh.

But whether the Impediment be universal, or versus hanc only; or whether the Fault thereof hath been born with him, or done to him by Violence, or fallen unto him by Disease, or Disproportion, or Inaptitude betwixt the Parties, or unnatural Practices, that is ever par ratio, he is Eunuchus versus hanc & omnes alias, seeing to him only was she married.

Then Paritate rationis, such Nullities are grounded upon the aforesaid Warrant of Scripture, neither had Christ any occasion to speak of the Jews Marriage concerning Maleficium versus hanc: For though it be apparent

that God made King Abimelech and his Servants unable to abuse Sarah, Abraham's Wife, and so was he made by God himself Eunuchus versus hanc, and that it be not improbable that the Devil being God's Ape, should imitate God's Works, by his filthy Witchcraft, by making such as God will permit him, unable versus hanc; howbeit, it is very probable that it was long after that time the Devil put that trick upon the Earth.

As for the third and fourth Questions, what mention the Fathers and Councils do make of Maleficium versus hanc; I answer, that it may be (if they were well searched) that either something to this Purpose in them, or at the least Aliquid analogum, with a paritate rationis, or by Consequence, may serve to decide the Question.

But leaving this to Search, my main Answer is, That we must distinguish oft-times: For in all the first Ages, as long as Persecution lay heavy upon the Church, and before the Empire became Christian, the Church did not meddle with any Thing, which drew a Consequence after it of Possessions, or Inheritance, as Marriage doth; nay, even divers hundred Years after the Conversion of the Emperors, the Judgment and Decisions of all such Questions did still remain in foro Civili, till the Popedom began to wax great, and assume, or rather usurp to herself a supreme and independant Judicatory in all Ecclesiastical Causes; and therefore the Fathers and Councils had no occasion to make mention of that which was not de præori at that Time.

And besides, that is an evil Argument to say such a Thing is not lawful, because the Fathers and Councils made no mention of it: For you know
much

much better than I, divers and many Points betwixt the Papists and us are never mentioned by the Fathers, because they could never have dreamed that such Questions would arise; and therefore are the Fathers exact only in such Questions as were agitated upon the State at that Time, as De Trinitate, de duabus in Christo Naturis, and such like; and therefore 'tis sufficient that there can be nothing found which may justly be understood to contradict this Opinion.

And it is very probable (as I said before) this Trick of Maleficium had not then been in Practice in the World, and therefore not known or mentioned by them; for why may not the Devil as well find out new Tricks of Witchcraft (when God will permit him) as he did daily new Sects of Heresies? For his Malice can never end until the end of Times.

To the fifth Argument, my former Answer doth also serve; for till the 400th Year after Christ, it may be that devilish Trick came never to be discovered.

You know the old Proverb, *Ex malis moribus bonæ leges*: And it is not unlikely that the Time of Darknes gave the Devil occasion to devise such new Tricks (look my *Dæmonology*) and yet was that Law for which you cite *Hircanus*, by Charles the Great, who in many great Points (as you know) had so great Light, as I do scarce term this Time a Time of Blindness: But howsoever the Darknes was in Points of Superstition, I will still maintain (as I have ever done) that for Matters of Order and Policy, all the World shall never be able to find out any so good and so old an Order

of Argument to be put in the Place of it: In sign whereof there is no well-governed Commonwealth in the Christian World, wherein the Common Law is not received to judge in Questions of that Nature; and it is certain, that this Question now in Hand, is only a Question of Order and Policy; for the Ground of this Question, that the essential Point of Matrimony cannot be accomplished *sine copula*, is warranted by express Scripture, and confessed by yourself.

To your sixth Argument (or rather Hope) I fear that Hope shall prove contrary to Faith; for as sure as God is, there be Devils, and some Devils must have some Power, and their Power is in this World, neither are the Elect exempted from this Power; Job was not, Paul was not: Christ said to all his Disciples, *Cibaverit vos Sathanas*; and if the Devil hath any Power, it is over the Flesh, rather over the filthiest and most sinful part thereof, whereunto original Sin is soldred; as God, before and under the Law, to shew officialem of purging Man's original Sin, ordained the *Præputium* of the Fore-Skin: And to exempt this of our Profession from the Power of Witchcraft, is a Paradox never yet maintained by any learned or wise Man.

That the Devil's Power is not so universal against us, that I freely confess; but that it is utterly restrained quoad nos, how was then a Minister of Geneva bewitched to Death, and were the Witches daily punished by our Law? If they can harm none but the Papists, we are too charitable for avenging of them only.

Satan is permitted to punish Men, as well for his Breach of the second as

of the first Table, and thereof are we no less guilty than the Papists are; and if the Power of Witchcraft may reach to our Life, much more to a Member, not so governed by the Fancy, wherein the Devil hath his principal Operation; and he may so estrange the Husband's Affection towards the Wife, as he cannot be able to perform that Duty to her; for that is a common Thing in many Men's Natures, that they cannot do that Thing but where they Love, nor Fight but where they are Angry. God keep us therefore from putting the Trial of our Profession upon Miracles; let the Miracle-mongers live by their own Trade.

To the seventh Argument touching Remedies, what do you know, whether both Parties, or either of them hath used these means of Remedy or not? And that special Remedy should be used publickly, for there I can see no Necessity; for Non interest Reipub. nec Eccles. and private Persons are commanded to do their Fastings and Alms, secretly and in private: No such Cure also is likely to succeed well, except the Parties own Hearts and Desires be set thereupon.

And as for your Conclusion upon your Incommodum, whether upon his Person or the Example, I can see none in either, so as to the Couple, between them Marriage was never accomplished truly; they will peradventure both of them by the Declaration of the Nullity, be capable to accomplish Marriage with others, which they could never do between themselves; wherein they may have the Satisfaction of their Hearts, and enjoy the Blessing of Procreation.

And as for the Example, the Law shall be fulfilled with due Administration of Justice, which cannot prove for an Example or Precedent of a counterfeit Nullity hereafter, *Authortas facti*, or rather *non facti*, sed *lucclarior* in this Case, because the many Probations and Confessions of the Parties which have been taken in this Process: Whereas by the contrary, they shall be forcibly kept together, but never their Persons or Affections, and they still be forced to live in perpetual Scandal, or Misery, or both; and what such a kind of forced Continency may avail, the Monks Continency may teach us: And for a Precedent in Time to come, that reacheth no further, than to open a Way of lawful Relief, to any Person who shall chance to be distressed in that sort.

And for legal Doubts, they concern none of your Calling; if your Conscience be resolved in Points of Divinity, that is your part to give your Consent to the Nullity, and let the Lawyers take the Burden of making that firm; and as for the Triennial Probation, I hope no Man can be so blind as to make a Doubt, whether that be taken before or after the Suit begun: And in conclusion of Divine Solution of this Question proved clearly, that this Resolution of this Doubt, howsoever it was in Blindness as you think, that is now proved in the greatest Time of Light and Purity of the Profession of the Gospel.

And for your Extract upon the late Divines Opinions upon this Question, I cannot guess what your Intent was in sending them to me, for they all agree in Terms with my Opinion: But there
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is such a Thing as Maleficium, & Maleficiale versus hanc; and your very interlude Passages prove that clearest: And for that Advice concerning the Remedies, that is but Consilium non Decretum, not imposing a Necessity; but is to be used by Discretion, as occasion shall prove and require it.

To conclude then, if this may satisfy your Doubts, I will end with our Saviour's Words to St. Peter, Cum conversus fueris, confirma fratres tuos; for on my Conscience, all the Doubts I have yet seen, are nothing but nodos in scirpo quærere.

Notwithstanding the Confessions in the Earl's Answer, the Court thought it necessary to satisfy themselves of the Truth by the Inspection of Midwives and Matrons.

Whereupon it was decreed by the Court, that six Midwives of the best Note, and ten other Noble Matrons, out of which they themselves would chuse two Midwives, and four Matrons, should inspect the Countess, the Entry whereof is as follows: Tunc Domini, viz. Arch. Cant. Lond. Eliens. Covent. & Lichf. Cæsar, Parry, Donne, Bennet, Edwards, habita inter eos privata deliberatio, ex numero matronarum prædict. elegerunt,

The Lady Mary Terwhit, Wife of Sir Philip Terwhit, Bart.

Lady Alice Carew, Wife of Sir Matthew Carew.

Lady Dalifan, Wife of Sir Roger Dalifan.

Lady Anne Waller, Widow.

& ex obstetricum numero, &c. Margaritam Mercer & Christianam Chest.

Et assignarunt Procuratorem dictæ dominæ Franciscæ ad sistendum hujusmodi inspectrices coram Reverendo Patre Episc. London, Cæsar, Donne, &c. inter cæteros nominat. isto die inter horas quintam & sextam post meridiem, juramentam in hac parte subituras, atque inspectione facta fideliter relaturas earum judicium juxta earum scientiam & experientiam, &c. coram dictis Dominis Delegatus, sicut præferatur, assignatis, quam cito fieri possit ante horam quartam & sextam post meridiem diei Jovis proximæ, alioquin ad comparend' hoc in loco, coram Commissariis dicto die Jovis inter horas quartam & sextam post meridiem ejusdem diei, earum judicium hac in parte tunc relaturas, & ad interessendum hora & loco respective prædictis, ad videndum inspectrices prædictas juramento in hac parte onerari; nec non quibuscumque aliis diebus hora & loco prædictos Commissarios nominat. dictis inspectricibus, ad referendum earum judicium assignat.

Accordingly between the Hours of that Day aforesaid, were presented before the Delegates the said Ladies, and sworn ad inquirend. & inspicierend.

1. Whether the Lady Frances were a Woman fit and apt for carnal Copulation without any Defect, which might disable her for that Purpose.

2. Whether she were a Virgin carnally unknown by any Man.

Whereupon they went from the Presence of the Commissioners into the next Room where the Countess was, who

who was left alone with the said Ladies.

After come convenient Time they returned, and delivered in their Report under their Hands; all Persons being removed except the Register, that so the Ladies and Midwives might more freely deliver their secret Reasons, &c. which were not fit to be inserted into the Record; and this in Sum their Report:

1. That they believe the Lady Frances fitted with Abilities to have carnal Copulation, and apt to have Children.

2. That she is a Virgin uncorrupted.

And to corroborate all this, the Countess in open Court produced seven Women of her Consanguinity, That inasmuch as the Truth was best known to herself, she might by Virtue of her Oath discover the same, and her Oath should be no farther regarded than as it was confirmed by the Oath of her Kinswomen.

In order hereto the Countess took an Oath, That since the Earl was eighteen Years old, for three Years he and she had lain in Bed, &c. as in the Libel. And then the seven Noble Women, viz.

Katharine Countess of Suffolk,
 Frances Countess of Kildare,
 Elizabeth Lady Walden,
 Elizabeth Lady Knevet,
 Lady Katharine Thynne,
 Mrs. Katharine Fiennes,
 Mrs. Dorothy Neale,
 being sworn, deposed, that they be-

lieved the same was true, and in particular because,

1. That after they were both grown to Years of Puberty, they both endeavour'd Copulation.

2. That notwithstanding on her Part, as appeared by the Inspectors, she remained a Virgin uncorrupted.

3. That the Earl had judicially sworn that he never had, nor could, nor should ever know her carnally.

Whereupon the Delegates declared the Law to be, That impotentia coeundi in viro, whatsoever, whether by natural Defect, or accidental Means, whether absolute towards all, or respective to his Wife only, if it precede Matrimony, and be perpetual (as by Law is presumed, when after three Years Trial, after the Man is of the Age of eighteen Years, there has been nil ad copulam, and the Marriage not consummated) is a just Cause of Divorce a vinculo matrimonii; and that the Proofs produced in this Case were abundantly sufficient to convince them of the Earl's Impotency; and therefore pronounced Sentence that they should be divorced from each other, and be at Liberty to marry again; which Sentence was as follows.

That Robert Earl of Essex, and the Lady Frances Howard, contracted by shew of Marriage, did cohabit in one House, and lie together in one Bed; Nudus cum nuda, & solus cum sola; and that the said Lady Frances did shew herself prompt and ready to be known of him, and that the said

said Lady Frances did shew herself prompt and ready to be known of him, and that the said Earl neither did nor could have Knowledge of her, although he did think himself able to have Knowledge of other Women; and that the said Lady Frances by Inspection of her Body by * Midwives, expert in Matter of Marriage, was proved to be apt for carnal Copulation with Man, and yet a Virgin: Therefore we the said Judges deputed in the Cause, first invoking the Name of Christ, and setting God before our Eyes, do pronounce, decree and declare, That the Earl of Essex for some secret, incurable, binding Impediment, did never carnally know, or was, or is able carnally to know the Lady Frances Howard: And therefore we do pronounce, have decreed, and do declare, the pretended Marriage so contracted and solemnized de facto between them, to have been, and to be utterly void and to no Effect, and that it did want, and ought to want the Strength of the Law: And that the Lady Frances was, and is, and so ought to be free, and at Liberty from any Bond of such pretended Marriage de facto, contracted and solemnized. And we do pronounce, that she ought

to be divorced, and so we do free and divorce her, leaving them as touching other Marriages to their Consciences in the Lord.

Which our definitive Sentence and Decree we ratify and ratify.

Thomas Wint.	}	Bishops.
Lancel. Ely.		
Rich. Coven. and Litchf.		
John Roffen.		

Julius Cæsar,	}	Doctors.
Thomas Parry,		
Daniel Donne,		

The following Commissioners could not agree to this Sentence, and therefore absented themselves.

George Cant.	}	Bishops.
John London,		

John Bennet,	}	Doctors.
Francis James,		
Thomas Edwards,		

Dec. 5. Soon after this Sentence the Countess was married to the Viscount Rochester, lately made Earl of Somerset.

* Some Authors say, that the Countess under a pretence of Modesty, having obtained Leave to put on a Veil, when she was inspected, caus'd a young Woman of her Age and Stature dress'd in her Cloaths to stand the Search in her Place.

to be divorced, and so we do see and
divorce but leaving them as touch-
for other Marriages to their Con-
science in the Lord.
Which your definite Sentence and
Decree we truly and fairly

Thomas White
Lancelot Eli
Richard Cotton and Litchfield
John Rolton

James Cotter
Thomas Parry
Doctors
Daniel Daines

The following Commissioners could
not agree in this Sentence, and there-
fore refused themselves.

George Conant
John London
Bishops

John Bennett
Francis James
Doctors
Thomas Richards

Dec. 7. Soon after this Sentence the
Council was married to the Wilton
Rooster, lately made Earl of So-
mer-

And we do pronounce that the right
of Bond of such pretended Marriage
ought to be free, and as Liberty from
Lady Frances was, and is, and to
Strength of the Law: And that the
it did want, and ought to want the
strictly void and so no Effect, and the
between them to have been, and so
tracted and solemnized - de facto be-
cause the pretended Marriage is con-
pronance, have decreed, and so de-
ce towards: And therefore we do
able carnally to know the Lady Fran-
did never carnally know, or was, or is
factor, incurable, binding impediment,
clear, That the Earl of Essex for some
times, do pronounce decree and de-
Christ, and being God before our
Guilt, but saving the Names of
fore we the said Judges departed in the
with Man, and yet a Virgin: There-
proved to be not for carnal Copulation
expert in Matters of Marriage, was
jection of her Body by a Man, was
and that the said Lady Frances by In-
have Knowledge of other Women;
although he did think himself able to
not could have Knowledge of her
him, and that the said Earl neither did
proud and ready to be known for
said Lady Frances did show herself

* Some Authors say, that the Countess under a pretence of being a young Woman of her Age and beauty, kept a
to put on a Veil, when she was inspected, could a young Woman of her Age and beauty keep
in her Cloaths to find the Search in her Face.

THE
T R Y A L
O F

JOHN LILBURNE,
Lieutenant - Colonel,

At the Guild-Hall of LONDON,

F O R
H I G H T R E A S O N,

B E F O R E A

Special Commission of Oyer and Terminer,
the 24th, 25th and 26th of October,
1649. 1 Car. II.

With the Original NOTES subjoined to the first Edition.

L O N D O N :

Printed and Sold by the Bookfellers in Town and Country.

M D C C X X X V I I .

T H E

T R Y A L L

J O H N L E B U R N E

Member of Parliament

At the Guildhall of LONDON

F O R

M I C H A E L T H O M A S O N

A B R O A D

Special Commission of Oyer and Tenour
the 24th, 25th and 26th of Edward
1st. 1 Car. II.

With the Original and Copy of the

L O W D O W N

Printed and sold by the Booksellers in Town

M D C C C X X I



The Trial of Lieutenant-Colonel John Lilburne, at the Guild-Hall of London, for High-Treason, the 24th, 25th and 26th of October, 1649. I Car. II.

THE Commissioners Names of the extraordinary Commission of Oyer and Terminer, for the Trial of Lieutenant-Colonel John Lilburne, follow.

Thomas Andrews, Lord-Mayor.
Richard Keble, Lord Commissioner.
Philip Jermin, Justice of the Upper Bench.

Tho. Gates, Baron.
John Puleston, Justice of the Common Pleas.

Francis Thorpe, Baron and Member.
Robert Nicolas, Member, Justice of the Upper Bench.

Richard Aske, Justice of the Upper Bench.

Peter Warburton, Justice of the Common Pleas.

Alexander Rigby, Baron; but absent.

Sir Thomas Fowler.

Sir Henry Holcroft.

Sir William Row.

Sir Richard Saltonstall.

Sir Richard Sprignall.

Sir John Woolifston.

Sir William Roberts.

John Green,

John Clarke,

John Parker,

} Serjeants at Law.

William Steel, Recorder.

John Fowke, Alderman.

Thomas Foote, Alderman.

John Kendrick, Alderman.

Thomas Cullum, Alderman.

Simon Edmonds, Alderman.

Samuel Avery, Alderman.

John Dethicke, Alderman.

Robert Titchbourn, Alderman.

John Hayes, Alderman.

Henry Proby, Common Serjeant.

Thomas Brigandine.

Nathaniel Snape.

Edward Rich.

Owen Roe.

Tobias Lisle.

Austin Wingfield.

Richard Downton.

Daniel Taylor.

William Wibend.

Silvanus Taylor.

The Tryal of Lieutenant-Colonel John Lilburne.

At the Guild-Hall of London, the 24th of October, 1649, being Thursday, at the Trial of Lieut. Col. John Lilburne.

O Yes made; all Persons that were adjourned to the Court, required to make their Appearance.

The Lieutenant of the Tower of London, Col. Francis West, called to bring forth his Prisoner, according to the Precept.

Whereupon col. West, Lieutenant of the Tower, brought up the Prisoner out of the Irish chamber, where he had been some time before the sitting of the court, and was guarded by the said Lieutenant, and a special guard of Soldiers besides. And being brought to the bar, the Sheriffs of London were directed to take the Prisoner into their custody.

Silence commanded.

Cryer. John Lilburne, hold up thy Hand.

Lieutenant-colonel Lilburne directed himself to Mr. Keble, one of the Great Seal, as the President of the court, and said to this purpose: Sir, will it please you to hear me; and if so, by your Favour thus. All the Privileges for my part that I shall crave this Day at your Hands, is no more but that which is properly and singly the Liberty of every free-born Englishman, viz. the benefit of the Laws and Liberties thereof, which by my birth-right and inheritance is due unto me; the which I have fought for as well as others have done, with a single and upright Heart; and if I cannot have and enjoy this, I shall leave this Testi-

mony behind me, that I died for the Laws and Liberties of this Nation; and upon this Score I stand, and if I perish I perish. And if the Fact that I have done, cannot be justified by the Law of England, let me perish. I mention none of this for the gaining of Mercy, or by way of Merit; no, I scorn it: For Mercy I crave from none, but from the Hands of my God alone, with whom I hope, and am assured one Day to rest; whom I have set before my eyes, and so walked, as believing I am always in his Presence, in whose Power my confidence is fixed, and whom I always take, and own to be my Stay, my Staff, my Strength and Support, and in whom I rest as the Life of my Life, and whom I hope to meet with Joy, when this fading and uncertain life shall have an'end, and live with him in glory and blessedness for evermore. And therefore, because I would not willingly trouble you with many words, to cause you to spend your time impertinently; therefore, Sir, in reference to the court, I shall crave but so much liberty from you as was given to Paul, when he pleaded for his life before the heathen Roman Judges, which was free liberty of Speech to speak for himself; the which I now humbly crave as my Right, not only by the law of God and Man, but also by the law and light of Nature. And I shall do it with that Respect, Reason and Judgment, that doth become a Man that knows what it is to plead for his life. I hope God hath given me Ability to be Master of my own Passion, and endowed me with that Reason, that will dictate unto me what is for my good and benefit.

will dictate unto me what is for my own Good and Benefit.

I have several Times been arraigned for my Life already. I was once arraigned before the House of Peers for (sticking close to the Liberties and Privileges of this Nation, and those that stood for them) being one of those two or three Men, that first drew their Swords in Westminster-Hall, against Col. Lunsford, and some Scores of his Associates. At that Time, it was supposed, they intended to cut the Throats of the chiefest Men then sitting in the House of Commons: I say, for this, and other Things of the like Nature, I was arraigned by the King's special Command and Order, the First of May, 1641. I mention it to this End, that when I came before the House of Peers, where there was about three or fourscore Lords then sitting at the beginning of the Parliament, who then were supposed the most Arbitrary of any Power in England, yet I had from them free Liberty of Speech, to speak for my Life at their Bar, without check or controul, in the best Manner all those Abilities God had given me would enable me.

And when I was at Oxford, I was again arraigned as a Traitor, before the Lord Chief Justice Heath, for levying War at the command of the then Parliament against the Person of the King: And when I came before him in the Guild-Hall of Oxford, he told me (there being present with him, as his Fellow-Judge, Mr. Gardiner, sometime Recorder of the City of London, now Sir Thomas Gardiner, and others that sat by a special Commission of Oyer and Terminer from the King; the which Commission I did not so well

then understand, as I hope I do now:) And my Lord Chief Justice Heath stood up, and in the Face of all the Court, and in the Face of all the Country present there, told me; Capt. Lilburne, you are brought here before us for High-Treason, for levying War in Oxfordshire against your Sovereign Lord and King; and though you be in a Garrison, and were taken in Arms in open Hostility against the King, (yea Sir, and I must now tell you in such Hostility, that we were but about 700 Men at Brentford, that withstood the King's whole Army in the Field above five Hours together, and fought it out to the very Sword's Point, and to the Butt-end of the Musket; and thereby hindered the King from his then possessing the Parliament's Train of Artillery, and by consequence the City of London, in which very Act I was taken a Prisoner, without Articles or Capitulation, and was by the King and his Party then looked upon as one of the activest Men against them in the whole Company) yet said Judge Heath, we will not take Advantage of that, to try you by the Rules of arbitrary Martial Laws, or any other arbitrary Ways; but we will try you by the Rules of the good old Laws of England: And whatsoever Privilege in your Trial the Laws of England will afford you, claim it as your Birth-right and Inheritance, and you shall enjoy it with as much Freedom and Willingness, as if you were in Westminster-Hall, to be tryed amongst your own Party. And this we will do for that End, that so at London your Friends shall not have any just cause to say, we murdered you with cruelty, or denied you the Benefit of the Law, in taking away

your Life by the Rules of our own Wills.

Nay, further, said he, Capt. Lilburne, it is true I am a Judge, made by my Sovereign Lord the King, according to his Right by Law, and so in a special Manner am his Servant and Counsellor, and am to act for his Good, Benefit and Advantage: And yet notwithstanding, it is by the known Lands of this Land my Duty to be indifferent and free from Partiality betwixt my Master and you the Prisoner, and I am specially bound it also by my Oath. And therefore you shall have the utmost Privileges of the Law of England, which is a Law of Mercy, and not of Rigour, and hath the Life of a Man in tenderest and highest Estimation: And therefore it is the Duty of a Judge by Law, to be of Counsel with the Prisoner, in things wherein by his Ignorance he falls short of making use of the Benefit of the Law, especially when he is upon the Trial of his Life. Yea, and to exhort him to answer without fear, if he perceive him daunted or amazed at the Presence of the Court. Yea, it is my Duty to carry myself with all Fairness and Evenness of Hand towards you; and wherein that there shall seem any Mistakes to appear, in Circumstances or Formalities, to rectify you: For it's my Duty to help you, and not to use any boisterous or rough Language to you in the least, to put you in fear, or any ways prevent the Freedom of your Defence; and according to the Laws of England this is my Duty, and this is the Law. And accordingly he gave me Liberty to the Errors of my Indictment, before ever I pleaded not guilty; yea, and also became willing to assign me

what Counsel I pleased to nominate, freely to come to Prison to me, and to consult and advise with me, and help me in point of Law.

This last he did immediately upon my pleading to the Indictment before any Fact was proved; all which is consonant to the declared Judgment of Sir Edward Cooke, that great Oracle of England, whose Books are published by special Orders and Authority of Parliament for good Law, which Orders are dated May 12, 1641, and June 3, 1642. who in his third Part of his Institutes, Chap. of High Treason, fol. 29, 34, compared with fol. 137, 230, asserts the same.

Truly, Sir, I being now come before you to answer for my Life, and being no professed Lawyer, may thro' my own Ignorance of the practick part of the Law, especially in the Formalities, Niceties and Punctilio's thereof, run myself with over-much hastiness in Snares and Dangers, that I shall not easily get out of.

And therefore being all of a sudden bid to hold up my Hand at the Bar, I cannot chuse but a little demur upon it; and yet with all respect to you, to declare my Desirableness to keep within the Bounds of Reason, Moderation and Discretion, and so to carry myself as it doth become a Man, that knows what it is to answer for his Life.

And therefore in the first Place, I have something to say to the Court about the first Fundamental Liberty of an Englishman in order to his Trial; which is, that by the Laws of this land all Courts of Justice always ought to be free and open for all sorts of peaceable People to see, behold and hear, and have free Access unto; and

no Man whatsoever ought to be tried in Holes or Corners, or in any Place, where the Gates are shut and barr'd, and guarded with armed Men: And yet, Sir, as I came in, I found the Gates shut and guarded, which is contrary both to Law and Justice.

Sir, the Laws of England, and the Privileges thereof, are my Inheritance and Birth-right: And, Sir, I must acquaint you, that I was sometimes summoned before a Committee of Parliament, where Mr. Corbet and several others have had the Chair; and there I stood upon my Right by the laws of England, and refused to proceed with the said Committee, till by special Order they caused their Doors to be wide thrown open, that the People might have free and uninterrupted Access to hear; see and consider of what they said to me; although I think the Pretence that I am now brought before you for, be the very same in Substance, that I was convened before Mr. Corbet for, which was about Books; and I am sure there I did argue the case with him and the rest of the committee, foundly out in law; proving that they were bound in Law and Justice freely to open their Doors, for the free Access of all sorts and kinds of Auditors: And I did refuse (as of Right) to proceed with them, till by special Order they did open their Doors. For no Trial in such cases ought to be in any Place, unless it be publick, open and free; and therefore if you please that I may enjoy that legal Right and Privilege, which was granted unto me by Mr. Miles Corbet, and the rest of that committee, (when I was brought before them in the like case that now I am brought before you) which Privilege I know to be my Right by the

Law of England; I shall, as it becomes an understanding Englishman (who in his Actions hates Deeds of Darknes, Holes or Corners) go on to a Trial. But if I be denied this undoubted Privilege, I shall rather die here than proceed any further. And therefore foreseeing this beforehand, and being willing to provide against all Jealousies of my Escape, the Fear of which I suppose might be objected against me as a Ground to deny this my legal Right; and therefore before-hand I have given my Engagement to the Lieutenant of the Tower, that I will be a faithful and true Prisoner to him.

And I hope the Gentleman hath so much experience of my Faithfulness to my Word, that he doth not in the least question or scruple it; I am sure he hath often so declared to me that he doth not.

Nay, I have not only engaged to be a true Prisoner in the Tower to him, but I have also solemnly engaged to him, that I will come civilly and peaceably with him, and that I will go civilly and peaceably back with him again: And that if any Tumult or Up-roar shall arise in the croud, of which I lose him, and he me; or in case I should be any ways by Force and Power rescued from him, I have also faithfully engaged to him, that I will come again to him (by the Assistance of God) as soon as ever I can get away from that Force or Rescue. And all this I entreated him to acquaint you with, that all Jealousies and Disputes might be avoided.

Judge Keble. Mr. Lilburne, look behind you, and see whether the Door stands open or no.

L. Col. Lil. Well then, Sir, I am satisfied as to that. But then in the next place, I have read the Petition of Right, I have read Magna charta, and abundance of laws made in confirmation of it; and I have also read the Act that abolisheth the Star-chamber, which was made in the Year 1641, which last recited Act expressly confirms those Statutes that were made in Edward the Third's Time, which declares all Acts, Laws, and Statutes that were made against Magna Charta, to be null and void in law, and holden for error.

In the reading of which laws I do not find a special commission of Oyer and Terminer to be legal and warrantable. I beseech you, Sir, do not mistake me; for I put a vast difference betwixt an ordinary and common commission of Oyer and Terminer for holding ordinary and common Assizes and Sessions, and betwixt an extraordinary and special commission of Oyer and Terminer to try an individual Person or Persons, for a pretended extraordinary crime. The laws I last recited, and the fundamental or essential Basis of Freedom therein contained, knows no such names or commissions of special Oyer and Terminer.

And those Statutes in Edward the First, and Edward the Third's Time, that doth erect those special and extraordinary commissions, and warrant the Usage of them, and merely irrational Innovations upon our indubitable Rights contrived in Magna charta, and mere court and prerogative Devices to destroy the best of Men, by extraordinary courts appointed to prejudge Proceedings that should manfully stand in the way of the Prince, or any of his great Favourites; for sure I am

from the Petition of Right, no ground or foundation for any extraordinary or special commission of Oyer and Terminer, upon any pretended, special or great occasion, cannot be founded; but rather the absolute quite contrary, as to me clearly appears by the very plain letter of that most excellent law. And therefore such a special commission upon any pretended special Occasion, being expressly against our indubitable Rights contained in Magna charta, and the Petition of Right, viz. That no Englishman shall be subjected to any other Trial, but the ordinary, universal and common Trials at ordinary Assizes, Sessions or Goal Deliveries, and not in the least to be tried by extraordinary and special prejudged, packed, over-awing commissions of Oyer and Terminer; and therefore all such extraordinary and dangerous Trials are absolutely abolished, by the late excellent Acts that confirm the Petition of Right, and all and every the clauses therein contained, and abolisheth the Star-chamber, both made Anno 1641.

And, Sir, with your Favour, the then Parliaments that made the last cited laws, were so far from countenancing any special commissions of Oyer and Terminer, upon any special or pretended great Occasions whatsoever that I can read of, that I rather find and read the Parliaments Proceedings in the Year 1641, an extreme Outcry of the House of Commons against special commissions of Oyer and Terminer, with a great deal of bitterness and vehemency, as may fully and clearly be read in that excellent Argument of Mr. Hyde, April 1641, printed and published in a Book called, Speeches and Passages of Parliament,

p. 409, to 417, which I have here at the Bar to produce; which Mr. Hyde was then the special and appointed Mouth of the House of Commons before the Lords, who unto them in conformity to his Commission from the then House of Commons, complains to the then House of Lords extremely of a special Commission of Oyer and Terminer that was exercised in the five Northern Counties of England; and earnestly, in the name of the House of Commons, craves the special Assistance of the House of Lords to pluck up that Court by the very Roots, founded upon a special Commission of Oyer and Terminer, being so illegal and unjust in the very Foundation of it, as it is inconsistent with the People's Liberties, and as that which destroyed and disinherited all the People that were tried, both of their Birth-right and Inheritance, viz. their Liberties and Freedoms contained in Magna Charta. And this, Sir, was the declared and avowed Judgment and Opinion of the House of Commons in April 1641, in their primitive Purity and Non-defilement, when they acted bravely and gallantly for the universal Liberties and Freedom of this Nation (and not Self-interest) when they were in the Virginitie of their Glory and Splendor, as he there fully and most excellently declares; and yet he there gives an extraordinary Reason for the original Erection of that Court founded upon a special Commission of Oyer and Terminer, as can be rendred.

The original Reason or Occasion of which, he there declares to be thus: That by reason of the Suppression of the Abbies in the 27th of Henry the Eighth's Time, in the North of Eng-

land (through Discontent thereat) there did arise from the said 27th Year to the 30th no fewer than six grand Insurrections, most of them under the command of some eminent Man of those countries; which Insurrections and Rebellions occasioned the levying of great Armies, which had like to have set the whole Kingdom in an universal Flame; for the suppressing and preventing of which, in future times, King Henry VIII. caused a special Court to be erected, by a special Commission of Oyer and Terminer; which court also continued in Edward the Sixth's Time, Queen Mary's, and first and second of King James: The Basis of which commission was founded upon those fore-mentioned innovating Statutes made in Edward the Second's and Edward the Third's Time, which were Westminster, the second being the 13 of Ed. 1. and 2 Ed. 3. c. 2. and 34 Ed. 3. c. 1. which special commission of Oyer and Terminer was several times renewed by the late King Charles, as in the fifth, eighth, and thirteenth Year of his Reign. And the said Mr. Hyde there in his Argument or Speech, which I have here in print, names several of the Presidents of that illegal Court of special commission of Oyer and Terminer: And he there also declares in what an extraordinary Manner, and upon what an extraordinary Occasion it was granted; which was so great, as that a greater could not be imagined; and yet notwithstanding he declares, that this extraordinary Commission, which being granted to suppress and quiet those many extraordinary Insurrections and Rebellions, which do not admit of so long Delay as times of ordinary Trial; in times of Peace,

when the ordinary, legal and common courts of Justice are open and free, will do, when Peace and Quiet is in the Nation, as now it is; and yet for all that, he condemns it for illegal.

And therefore, Sir, admit my Actions in their Tendency, to be as dangerous and heinous as any of my Adversaries can imagine or declare them to be; yet they are but in the Ashes, but in the Hearth, they are not broke out into visible and violent hostile Actions. And therefore I say, if special commissions of Oyer and Terminer, granted in such special and transcendent cases as those in Henry the Eighth's Time, were illegal; much more must a special commission of Oyer and Terminer granted to try me barely for Words, or at most for pretended Writings or Books, at such a Time when there is no burning Flame of Insurrections or Rebellions in the Kingdom, but all in visible Peace, and all the ordinary courts of Justice open, and I and my Friends have often sought to enjoy the Benefit of the Law in a legal Trial, from first to last, but could never enjoy it in the least measure, although many Assizes and Sessions have past over my Head since my first commitment, now seven Months ago; at the first of which, in the county where my pretended crime was committed, I ought by Law and Justice either to be tried or acquitted.

So that, Sir, by what I have already said, you may see the Judgment and Opinion of the House of Commons upon special Commissions of Oyer and Terminer, in their first Purity, when as a full House, there being constantly 400 or 500 of them sitting in the House, as the deputed and chosen Trustees of the People of England,

whose Opinion was to damm them, and pluck them up by the Roots, as unjust and illegal in their original Institution, which they have accordingly done, and declared to the whole Nation in the Act that abolished the Star-chamber; where that court spoken against by Mr. Hyde, is totally dammed and pulled up by the Roots.

So that now in Law I cannot see how special commissions of Oyer and Terminer can be legal at this present, admit the Power never so just from whom it comes; but abundantly much more, seeing there is no actual Wars, nor popular Insurrections; which if lately there had been any, and yet were overcome, there is no Pretext or Ground, by the good old Laws of England, for any extraordinary Proceedings against any Man, although he had been in Arms against you, but he ought to have the Benefit of the ordinary, accustomed and common Trials at the common Law, as clearly appears by the express Words of the Petition of Right, of which Judgment Sir Edward Coke is positively, in Tho. Earl of Lancaster's Case, which is singular well worth the reading.

But I was never in any hostile Manner against those that are the present Governors of the Nation, but have been under their command in several Battles in the Nation, and have hazarded my Life for them, and never yet in the least changed my Original or first Principles; nor never was engaged in the least in any Hostility against them, but have always, since I, five Years ago, gave over my command, lived in Peace and Quietness in mine own House and Abode: And was the same Day at the House of Commons's Door that their Votes passed against me,

me, declaring me in general (which in Law signifies nothing) to be a Traytor; and spake with a Gentleman that is now a Judge amongst yourselves (Mr. Rigby) at the House-Door, who, in some great Ones Names, proffered me large Matters, if I would do as I should be directed by them.

After this, I went home to mine own House in Southwark, where I stayed in Peace and Quietness, well enough knowing the Votes that that Day passed against me, without either particular Accusation or Accuser, or any such Thing; when as I might easily have escaped the Hands of mine Enemies, and been gone: But having the sweet Peace of a good Conscience within me, which did assure me that I had done nothing that was against the Welfare of the Nation of England, but really wished it well, and all its Well-wishers:

I say that, notwithstanding my certain Knowledge of all that at the House had passed against me; and although I also knew that the further Design against me, which was, that the Council of State (as they are called) would take me away thereupon with armed Force the next Day; yet for all this, I stirred not out of my House, but remained there till about Five o'clock the next Morning; at which time 200 or 300 armed Horse and Foot (without so much as one civil or magisterial Officer with them) came by force of Arms, and haled me out of Bed from my Wife and Children, not according to the Law of England, as is expressly provided in two several Statutes, viz. the 1st of Edw. VI. chap. 12. and the 5th and 6th of Edw. VI. chap. 11.

By which Rules of the Law, and

no other, they ought to have proceeded against me from first to last; and I am sure they both expressly provide, that if any Man be accused of Treason, that he shall be accused first to one of the King's Council, or to one of the King's Justices of Assizes, or else to one of the King's Justices of the Peace being of the Quorum, or to two Justices of the Peace within the Shire where the said Offence or Offences shall happen to be committed. See also to this Purpose, part 3. of Coke's Instit. ch. High-Treason, t. 26, 27, 28. and part 1 Parl. Declar. in the case of the Lord Kimbolton and the five Members, p. 38, 39, 76, 77.

But contrary to these and other wholesome and good Laws (although there hath been an eight Years War in England, pretendedly, for the Preservation of the Laws and Liberties of England, yet, I say, contrary to the express Tenor of these Laws, as also of The Petition of Right, yea, and also of the express Letter of that excellent Law that abolished the Star-chamber this Parliament) was I by force of Arms (that never fortified my House against the present Power, nor never disputed any of their Summons, though sent by the meanest Man who appertained to them; and who, if they had sent their Warrant for me by a child, I would have gone to them) I was forced out of my Bed in Terror and Affrightment, and to the Subversion of the Laws and Liberties of England, and led thro' London Streets with Hundreds of armed Men like an Algier captive) to their Main-Guard at Paul's, with a mighty Guard for the further conducting me by force of Arms to Whitehall.

Now,

Now, Sir, if I had committed Treason, I ought not to have been apprehended and proceeded against by armed and mercenary Soldiers, but by civil and magisterial Officers, and no other; according to those excellent Privileges that the Parliament themselves in the Year 1661, in their own Book of Declarations, p. 36, 37, 76, 77, did claim for those six Members, viz. the Lord Kimbolton, Mr. Pym, Mr. Hollis, Mr. Stroud, Sir Arthur Haslerig, and Mr. Hampden; I say, and aver, I ought to have had the Process of the Law of England, due Process of Law according to the fore-mentioned Statutes and Precedents; for I never forcibly resisted or contended with the Parliament; and therefore ought to have had my Warrant served upon me by a Constable, or the like Civil Officer; and upon no Pretence whatsoever, ought I to have been forced out of my Bed and House by mercenary armed Officers and Soldiers.

But, Sir, coming to Whitehall, I was there also kept by armed Men, contrary to all Law and Justice; and by armed Men against Law, I was by Force carried before a Company of Gentlemen sitting at Derby-House, that looked upon themselves as authorized by the Parliament to be a Committee or Council of State, (who by the Law I am sure in any Kind had nothing at all to do with me in Cases of pretended Treasons) where I was brought before Mr. John Bradshaw, sometimes a Counsellor for myself before the House of Lords, against my unjust Star-Chamber Judges; who there in my behalf, Feb. 1645, did urge against the Lords of the Star-Chamber, as the highest Crimes against the Liberties of the People that could be, as being il-

legal, arbitrary and tyrannical, that the Lords in the Star-Chamber should censure me to be whipp'd, pillory'd, &c. for no other cause but for refusing to answer their Interrogatories against myself.

And when I was brought before the said Council of State, I saw no Accuser, no Prosecutor, no Accusation, no Charge or Indictment; but all the Crime that there was laid unto my Charge, was Mr. Bradshaw's very seriously examining me to Questions against myself: Altho' I am confident he could not forget, that himself and Mr. John Cook were my Counsellors in February 1645, at the Bar of the House of Lords, where he did most vehemently aggravate, and with Detestations condemn the Lords of the Star-chamber's unjust and wicked dealing with English Freemen, in censuring them for their refusing to answer to Questions concerning themselves; and yet notwithstanding walked with his dealing with me in the very Steps that formerly he had bitterly condemned in the Star-Chamber Lords; yea, and there for refusing to answer his Questions, (or any Thing he declared to me to the contrary) committed me to Prison for Treason in general. And you know very well, better than I do, that by your own Law, Generals in Law, signify nothing.

Judge Jermin. Mr. Lilburne, you very much abuse and wrong yourself, for you very well know Mr. Bradshaw is now denominated by another Name, namely, Lord President to the Council of State of England; and it would well become you, in your Condition so to have stiled him.

Lieut. Col. Lilburne. And although no crime in law (which ought to be particularly expressed) was laid unto my charge, yet when I was first imprisoned, there were thousands of my Friends (Well-wishers to the Freedoms of England, and to the common cause in which they had been engaged in for these eight Years together) both Old and Young, both Masters of Families, young Men and Apprentices, and abundance of others of the Feminine Sex too, with abundance of cordial honest Men in several countries, joined in several rational and fair Petitions, and delivered them to the House in the Behalf of myself, and my three Fellow-Prisoners; in which they most earnestly intreated them, that they would not prejudice us before we were heard, and knew our Accusers and Accusations, but rather that they would release us, and take off their prejudging Votes against us, which they had caused to be proclaimed in all the publick Places of the Nation against us, and let us have a fair and legal Trial, according to the Laws of England, and according to the undeniable Privileges of the due process of the law from first to last; and they would put in any Security that they would require of them, that we should be forthcoming at all Times, to Answer, whatsoever in law could be laid to our charge.

Unto all which Petitions, which were very many, they could get no manner of satisfying Answer, but slights, abuses and scorns.

But besides this, Gentlemen, that you may see that I am rational, and that you may see that I have an innocent and quiet conscience within me, that does not accuse me, nor terrify

me; therefore I must acquaint you, that I again and again proffered my chiefest Adversaries, and sent often to them, being desirous to chuse two Members of the House of Commons, and let them chuse two more, whom they please; and I would with all my Heart freely refer all manner of Difference betwixt them and me, to the final Determination and Judgment of four of their Fellow-Members.

But all this would do no good, and yet they would not in the least let me understand what was the Thing they desired of me; but, by their Power and Will, I had my Pockets and Chamber searched to find out Advantages against me; and also locked up close prisoner, with Centinels Night and Day set at my Door, and denied the access and sight of my Wife and Children for some certain Time; and for about twenty Weeks together in the heat of Summer, kept close prisoner, and denied the liberty of the prison, and my Estate with a strong Hand taken away from me, without any pretence (or due process) of Law, to the value of almost Three thousand Pounds, that was legally and justly invested in me, and in my possession.

But I will avoid (at this time especially) provocations as much as I can, I will name no Person by whose power and will it hath been done, although he be notoriously known; but the Gentleman that took it away by his pleasure, without all Rules of Law or Justice, told my Father to this purpose, That I was a Traitor, and under the Parliament's displeasure; and therefore he would secure it from me, although I were not in the least convicted of any crime, neither in Law then, or for many Months after, had I the

least pretence of crime laid unto my charge.

And although my own Estate by force, against Law, was taken from me, yet was I also denied in my close Imprisonment that legal Allowance that should have kept me alive; for in all this miserable condition I never yet received a penny of my legal allowance, but was positively denied that Testimony and legal Right, that the late King constantly allowed to all the Members of the Parliament that were committed in the Third of his Reign, and several other Times; unto whom for their Diet he allowed three, four and five Pounds a Week, according to their Quality, although they had great and large Estates peaceably in their possession.

And one of them that is now beyond the Seas, a Colonel, I have forgot his Name, (but it was Colonel Long) confessed in the Lieutenant of the Tower's own chamber, the last Year, that the King was so bountiful to him and the rest of his Fellow-prisoners, that he let them enjoy the Allowance of about four or five Pounds a Week for Diet; and that while he was Prisoner in the Tower, he spent the King about 1500 l. for his own particular self in provision.

But notwithstanding I was denied all this, and to fill up the height of the insufferable provocations put upon me, abundance of my own and antient Acquaintance were set upon me to calumniate, bespatter and reproach me; yea, and to endeavour to become Instruments to take away my Life, some of them confessing they were underhand set on by some Parliament-Men: All whose base and wicked petitions, papers and books preferred and pub-

lished against me, were hugged and embraced; although, for my own part, I do not know of Man in this World that can justly tax me with any Action, or maintaining any Principles or Tenets, but what doth become a Man that doth believe all that is contained in the Law and the Gospel, and does believe the Resurrection of the Dead, and Life eternal; nay, that does believe that I myself shall arise and go to the Lord of Glory.

Yet notwithstanding all these unparalleled Provocations put upon me, especially by divers of my old Acquaintance, whom I had upon all Occasions faithfully served, but never wronged, injured nor provoked, being instigated (as themselves confess in some of their own Congregations) by Parliament Men so to do.

Truly, Sirs, I appeal to your own Judgments, and to your Consciences, and to all the People that hear me this Day, whether all these Provocations laid upon a poor Man, which is but Dust and Ashes, as well as other Men, be not too insupportable a Burden, and too much for the causers of them to take Advantage of the Fruits produced by them, to destroy me, and take away my Life.

And therefore, Sir, in the first place, I shall humbly crave that Favour and Right, seeing I am brought before you by a piece of Parchment that truly I could not read, neither could he do it that shewed it me, (I mean the Lieutenant of the Tower;) for admit that if I did well understand Latin, as indeed I do not, only some ordinary Words, yet was it wrote in such an unusual strange Hand, that I could not read it. And therefore being I am brought before you implicitly, and not as I conceive

conceive an Englishman ought to be, who ought to see and read the Authority, by virtue of which he is convened before any Power.

It's true, I know some of you, Gentlemen, that I see fit before me, yet not many of you; and truly I have nothing but a piece of unlegible Parchment, which cannot satisfy my Understanding of the legalness of my Convention before you; but being I am not able to dispute that Power that compulsively brought me, but here I am; and therefore in order to the declaring of myself to be a true Englishman, I most humbly crave (and that I think is consonant to Reason, and I hope to Law too) that I may see, and hear read the Commission, by virtue of which you sit here this Day, and convene my Person before you, that so I may compare it to the Law; and consider whether or no, that by my pleading before you, by virtue of it, I do not betray my Liberties.

And therefore I humbly crave that you would let me hear this Commission read; for this Court is no ordinary and common Assizes, Sessions, or Jail-Delivery, the only proper Courts for trying me for all criminal Faults; yea, and those also ought to sit where the Crimes are committed: And I was imprisoned for a pretended Crime, pretended to be committed in the County of Surrey, where by the common Law of England, and express Statutes, I ought to be tried therefore, and no where else.

And therefore being brought in an extraordinary Manner, to such an extraordinary Place as this, which is no ordinary Assizes or Sessions, no, nor yet in mine own County; therefore I

again humbly desire that you will be pleased to let me see and hear your extraordinary Commission, that so I may consider whether the Extent or Latitude of the Commission be consonant, or no, to the Petition of Right, and other the good old Laws of England.

For those that now sit at Westminster, exercising the supreme Power, by two special Declarations, the one dated the 9th of February last, and the other the 17th of March last, have positively declared, and called God to witness, that they will maintain, preserve and defend that excellentest of Laws, The Petition of Right, as in the seventh Page of the last Declaration they call it; and that the People of England shall enjoy all the Benefit therein contained, whether to Life, Liberty or Estate, with all Things incident thereunto.

And therefore I humbly beg and crave that Favour from you, that seeing to me you appear to be sent in an extraordinary Manner, not according to the ordinary Customs of the Laws of England, that you will be pleased to let me hear your Commission read, that so I may consider the consonancy thereof to the Petition of Right, and other the good old Laws of England: And after the reading of it, I hope I shall return you an Answer as doth become a rational and ingenious Man: Who though he hath Right to all the Privileges of the Laws of England, and hath read all the declared and plain Laws of England, that are to me the Fundamentals of all, yet the practick Part of the Law, which are in other Tongues besides the English, I cannot read, know, nor understand.

And in the Petition of Right, and other the good old fundamental laws of England, I can find no Foundation

or Bottom for such an extraordinary Court, as this before my Eyes seems to be: And therefore I again make it my most humble Suit to hear your commission read.

Judge Keble. Mr. Lilburne, you are fully heard.

Mr. Prideaux, Attorney-General. My Lord, the Prisoner at the Bar, nor none else, have cause to complain that he hath wanted your Patience in being fully heard.

My Lord, that which at the beginning of his Arraignment you expected from him, which was to hold up his Hand, he denied; and upon his denial desired Liberty of Speech to speak, and he hath enjoyed it. But, my Lord, how pertinent his Discourse is to what was proposed to him, the Court, and all that hear him, will judge.

My Lord, I am not here to justify the Actings of those that here he hath complained against; but they are a Court, they are a Council, and my Thoughts are (and so ought his to be) honourable of them; and what they have done (my Lord) towards him, is but Justice.

My Lord, there is no special Commission of Oyer and Terminer, but a general Commission; and upon that general Commission here is a special Presentment of Mr. Lilburne here at the Bar: The general Commission is according to the law of the Land; and upon that special Presentment, it is expected he may be proceeded against according to Law.

And for your Commission, my Lord, that hath been read and published to the Court before Mr. Lilburne came to the Court, and the Court is satisfied with it, that it is in the ordinary Way; and I hope the Judgment you will give,

will declare it to be according to the law, in the ordinary Way. And as for the Commission itself, in the Form of it, it is not a Tittle varied from the ordinary accustomed Form.

But, my Lord, the Petition of Right, Magna Charta, the Statutes, and all Declarations that have been spoken of, they are all confirmed in this, and all do confirm it; for in that ordinary Tract, that hath been practised in this Nation for five hundred Years, is Mr. Lilburne now to be tried, and that by the good old laws of England, Mr. Lilburne's Birth-right, and every Man's else, he has his Trial; the beginning of which hath been Mr. Lilburne's Presentment, which is already found by the Grand Inquest, who are Men of Integrity, Men of Ability, Men of Knowledge.

My lord, he is now come to his Trial, not in an extraordinary Way, but by a Jury of good and legal Men of the Neighbourhood; by Men that do know, my lord, and understand what is Fact, what is * Law, and to do Justice indifferently between both.

* Mark that well; for Judge Jermin called it a Damnable Doctrine, when Mr. Lilburne declared the Jury was Judges of Law as well as of Fact.

And, my Lord, I do know, and publish to all that now hear me, that the Commission for Trial of Mr. Lilburne this Day, for these Differences that are between the State and Mr. Lilburne, is free in law from all those Exceptions that he is pleased to put upon it, and is unquestionably legal, and used for these many hundred Years together.

And as for Mr. Lilburne's declaring the Fact, for which he was originally imprisoned, for to be committed in

Surrey,

Surrey, and therefore there in Law he ought to be tried, and not here in London, being another County; as for Mr. Lilburne's Crimes committed in Surrey, his own Conscience best knows what they are: But Mr. Lilburne, at most, can but guess at what we intend to try him here for, or lay unto his Charge.

But, my Lord, if Mr. Lilburne will please to put himself upon his Trial, according to Law, my Lord, I hope the Court, and all that hears and sees their Proceedings, will receive full Satisfaction in the legality and fairness of their Proceedings against him, and himself the Benefit of Justice and Law.

Lieut. Col. Lilburne. Sir, by your favour, in two words, I shall not be tedious, I now perceive who is my Accuser and Prosecutor, the Gentleman that is a very unequal one; for he is one of the Creators (being a Member of the House) of you that sit here this Day to be my Judges; and therefore an over-awing and unfit Accuser or Prosecutor.

Ld. Keble. Mr. Lilburne, I pray you hear me a word; for now you speak not rationally nor discreetly: You have had a fair Respect and Hearing. What you speak of Liberties and Laws, we come here to maintain them for all, and for you too: And we also come for to vindicate our Actions. And as for that you speak of in reference to the Commission, I must let you know the Commission is warrantable by the Laws of England for this five hundred Years, nay, and before five hundred Years in substance. The second thing that you speak to, is, that you were apprehended in such an hostile Manner, understanding by Law

you should have been taken in an ordinary way, by an ordinary Officer.

But, Mr. Lilburne, in all Apprehensions of Traitors, Felons and Murderers, is not the Power of the County to be raised, and the Sheriff is to call and take what Power he pleaseth.

Lieut. Col. Lilburne. By your favour, Sir, not unless I resist; which I did not. And besides, there was no Sheriff, nor no other Civil Officer, at my Apprehension.

Ld. Keble. Mr. Lilburne, spare yourself: It is as they are informed of the Danger of the Man; they may do it before ever they see him. The next thing you are upon, is the Wrong and Injustice that you received by the Proceedings in the Star-Chamber against you.

You see the Proceedings there have been questioned, and you justified: If there be any thing else that hath been by others in the North, or elsewhere acted, there is no Man here that will justify them in their Evil. But for a private Man, as you are, to tell us of them here, and to come and tell us to our Faces that we are created and constituted by the Attorney-General, we will not suffer it, nor further hear of it.

And therefore, Mr. Lilburne, although you have spoken fair words, (and happily more than your Friends expected from you) I must tell you that words are but words; and it were well that you would do as well and as rationally as becomes a rational Man, as you have declared you will.

Lieut. Col. Lilburne. With your favour, but one word more.

Judge Jermin. Mr. Lilburne, pray spare a word, and hear the Court: This Court sits here by lawful Authority, and that is from the Parliament, that are the supreme Authority of England; so that our Power is not derived from those that have no rightful Authority to constitute us, but our Power is from the publick Authority of England, which is now, by an admirable Act of God's Providence, lately, but truly revived and settled by God upon them.

By that Authority this Court doth now sit; and you are brought here before them that are most of us Judges of the Law, and we are sworn to do you and every Man Justice and Right, according as his Cause requires, according to Law, Judgment, Equity and Reason.

And it was said truly, that which my Brother Heath (who now is dead) did say, It's the Duty of the Judges to be of Counsel with the Prisoner at the Bar before him, and to do that which they are sworn to do: And that you shall have. And accordingly you have received more Favour than ever I heard of a Prisoner that was accused of Treason in my Life ever had.

And as for the Commission, I must tell you it is usual to have Commissions of Oyer and Terminer, and that even in Term time, for high Offences, and such as tend to the Destruction of the Nation, as Overbury's did, and those that tend to capital Treason, whereof you are now accused, by a Grand Jury of London, that are Freemen of London, Citizens, able Men, Men of Religion, Men of Estate, Men of Conscience, Men of Quality: These are your Accusers; who have found you,

upon their Oaths, guilty of Treason, and cry out to us the Judges for Justice against you: And it is they, not we, that proceed against you.

And as for our Commission, it is according to the good old Laws of the Land, founded upon the Statute made in Edward the First's Time, called Westminster the Second. That Statute authorizeth Commissions: According to that Commission we sit by here this Day.

And Edward the First was a wise and a good Prince, and consented to the People, to let them have such Commissions as ours we sit by is, which the People had fought stoutly for in the Barons Wars in his Father's time, and also in his; for he himself was taken Prisoner at Lewes, in the County of Suffex. And being a wise Prince, he knew that the love of the People was not more to be got than by wholesome and safe Laws, that every Man's Life, and every Man's Estate, and every Man's Liberty, might be preserved by, and not be subject to any arbitrary Will or Power; but that the sober, and discreet, and wise Laws of the Kingdom, which our Ancestors won by their Swords, might be their Protectors.

A special one of which was this Statute of Westminster the Second, made in Edward the First's Time: By virtue of which Statute is this Commission directed to the Justices of the one Bench and the other; and they be all here this Day, but only those that of necessity must attend at Westminster, only to preserve the Term.

Now you are come to answer to that Charge, which hath been the greatest Opposition to the Settlement of Government that can be; I mean the Settlement

ment of the supreme Authority of the Nation in the Commons now assembled in Parliament, not newly erected, but revived into the right Place and Hands; for it is the Law of England revived, that the supreme Authority is in the Commons assembled in the Parliament of England: For so it was in the Saxons Time, and in the Romans Time, and in all Times it hath been as it is now; which will sufficiently justify our present Proceedings against you.

And therefore, I say, for the Commission itself, it is general for the Trial of all Treasons whatsoever.

But the Grand Inquest have found out no other Traitor, that they may accuse, but Master John Lilburne, who is now here at the Bar.

But it is not a bare Accusation, but it is the solemn Verdict of almost a double Jury, that hath appeared upon the Roll; and upon their Oaths do conceive those Crimes of Treason that are laid against you, to be of so dangerous Consequence against the State and Commonwealth, that they do call for Justice against you as a Traitor already found guilty.

And therefore I do require you, as you are an Englishman, and a rational Man, that you do conform yourself, and tell us plainly what you will do, as in reference to the putting yourself upon your Trial by the Law, and hear with Patience those Offences of Treason that are laid to your Charge.

Lieut. Col. Lilburne. May it please you, Sir, by your Favour, I shall not now trouble you with many Words.

Ld. Keble. You go improperly to work.

Lieut. Col. Lilburne. That Gentleman, I do not know his Name, (point-

ing to Judge Jermin) you were pleased to say, That I have had more Favour than ever you have heard of any before ever had, in the like Case.

But, Sir, by your Favour, I shall tell you of some that in the like Case have had as much, if not more; and that was Throgmorton, in Queen Mary's Time, who was impeached of higher Treason than now I am; and that in the Days of the commonly accounted bloodiest and cruellest Prince that this many hundred of Years hath reigned in England: And yet, Sir, I am sure in this very Place, and that by special Commission of Oyer and Terminer; who was accused for being one of the chiefest Confederates with Wyat, in his Kentish Rebellion; which Wyat marched with an Army against the Queen to London: For which actual War or Rebellion, Throgmorton was in this Place arraigned as a Traitor, and enjoyed as much, if not more Favour than I have now enjoyed, altho' his then Judges and Prosecutor were bent to take away his Life, right or wrong.

And therefore, Sir, by your Favour, it is no extraordinary Favour that you have afforded me; it is but only my Right by Law and Justice, and common Equity.

But, Sir, I shall be short, and put my Business to a plain Issue, which is this:

I have here at the Bar given in many strong Arguments against the Validity and Legality of a special Commission of Oyer and Terminer, and supposing that to be such an one by virtue of which you sit, and intend to try me for my Life; and therefore I have humbly desired (as in Reason, and I think in Law, I may justly do) to hear your

your Commission read; but you have positively denied me that.

And therefore I desire all my Friends, and all the People that hear me this Day, to bear witness, and take Notice, that you, contrary to Reason and common Equity, denied me to let me hear your Commission read, by virtue of which you go about to take away my Life; which I cannot chuse but desire them to take Notice, I declare to be very hard Measure.

But, Sir, to save myself from your fore-layed Snares and desired Advantage against me, I will come a little closer to the Business.

You demand I should hold up my Hand at the Bar; and I know not what it means, neither what in Law it signifies. It's true, I have read the most part of the Laws that are in English, which I take to be the Foundation of all our legal English Privileges; and in them I cannot find any thing that doth clearly declare unto me the full Signification or Meaning of a Man's holding up his Hand at the Bar.

Therefore if you please but to explain what the Meaning and Signification of holding up the Hand at the Bar, is, I shall seriously consider of it, and, I hope, return you a rational and discreet Answer: For truly in those Laws which are in the English Tongue that I have read, although I find mention made of holding up the Hand, yet I cannot find much of the full Signification of it, only I find it to be of a large Extent.

And as for those Laws, or rather the practick Part of the Law, that are in French and Latin, I cannot read them, and therefore much less understand them.

In which regard, for me to hold up my Hand at the Bar before I understand the true Signification of it in Law, (which tells me it is in itself a ticklish Thing) were for me to throw away my Life upon a Puntilio or Nicety that I am ignorant of; and therefore, truly, I think I should be a very Fool, in my own Ignorance to run that Danger. And therefore, Sir, I humbly desire the clear Explanation of the Meaning of it in Law, and after that I shall give you a fair and rational Answer.

Ld. Keble. Mr. Lilburne, you shall see we will deal very rationally with you, (and not insnare you in the least manner) if that be all. The holding up of your Hand, we will tell you what it means and signifies in Law: The calling to the Party to hold up his Hand to the Bar, is no more but for the special Notice that the Party is the Man inquired for, or called on; and therefore if you be Mr. John Lilburne, and be the Man that we charge, do but say that you are the Man, and it shall suffice.

Lieut. Col. Lilburne. I am John Lilburne, Son of Mr. Richard Lilburne——

Ld. Keble. Mr. Lilburne, what you have to say we will hear presently; only take Notice that we will take your acknowledging of your Name to be sufficient, if you will say that you are the Man: You are called by your Name, you have come and answered to your Name, in order to your answering the Charge to be read against you; do but this, and it shall suffice, without holding up your Hand. Therefore let us have no more Discourse as to that.

Judge Jermin. Mr. Lilburne, pray spare me a Word; for you have been heard with patience.

You have desired to have the Right of the law of England; and yet you do question a fundamental Thing, that hath been always used in case of criminal Offences.

By the law of England, that you desire to have the Meaning of it, is but just; but you must know that the law of England is the law of God; and if there be any thing in the law of England but what was by admirable Constitution and Reason, we would not meddle with it.

But I pray know this, that the law of England is no written law: It is the law that hath been maintained by our Ancestors, by the tried Rules of Reason, and the prime laws of Nature; for it does not depend upon Statutes, or written and declared words or lines.

And this is our laws, that have been maintained by our Ancestors, and is subordinate to the law and will of God: Therefore I say again, the law of England is pure primitive Reason, uncorrupted and unpolluted by human Humours, or human corruptions, wits or wills: That's the law of England.

There be two Reasons why holding up the Hand hath been used always: First, for notice that those that are called for capital and criminal Offences, that they hold up their Hands, is to declare that they are the Men.

My Lord hath given you this one Reason already; which I say is, that he be notified by holding up the Hand to all the Beholders, and those that be present, and hear him that he is the

Man. But besides this, there is more in it; that's thus: A pure innocent Hand does set forth a clear unspotted Heart; that so the Heart and Hand together might betoken Innocency. And therefore hold up your Hand, that thereby you may declare you have a pure innocent Heart.

If you refuse to do this, you do wilfully deprive yourself of the Benefit of one of the main Proceedings and Customs of the Laws of England. Now for this, do what you think fit.

Lieut. Col. Lilburne. Well then, Sir, (applying himself to Mr. Keble, as the President of the Court) I take your Explanation of it, and lay hold of that.

Ld. Keble. You must answer positively, Sir, for you have had Advice if you embrace it, it is good Advice to you; but the Court doth not expect an Answer from you to what hath been already said to you, but they expect that without any more Dispute you apply yourself to answer according to that which you are advised unto.

Do it if you will, and if you will but answer to it so as hath been declared to you, it shall suffice: but so far you must go to this, as to declare whether you be the Man or no before you go away. And therefore dispute it no more, lest you deprive yourself of the Benefit of the law.

Lieut. Col. Lilburne. Well then, Sir, according to your own Explanation, I say my Name is John Lilburne, Son to Mr. Richard Lilburne of the County of Durham, a Freeman of the City of London, and sometimes Lieutenant-Colonel in the Parliament's Army: And if you will not believe that

that I am the Man, my Guardian the Lieutenant of the Tower there (pointing to him) will aver that I am.

Ld. Keble. So then you are the Man.

Judge Jermin. Ask him again: Hearken Mr. Lilburne, hearken what he says, and use that Moderation and Temper, and Discretion that you have promised.

Lieut. Col. Lilburne. One word more, and I shall have done; and that is by the Law of England——[But being interrupted, he cry'd out] with your Favour, Sir, I will come to the main thing; I hope you do not go about to circumvent me, therefore hear me I beseech you.

Ld. Keble. Hear the Court, Mr. Lilburne, there shall be nothing of Circumvention or Interruption; but as you have professed to be a rational and understanding Man in words, let your deeds so declare you.

Lieut. Col. Lilburne. Sir, I beseech you not surprize me with Punctilio's or Niceties, which are hard things for me to lose my life upon. I tell you again, my Name is John Lilburne, Son to Mr. Richard Lilburne.

Ld. Keble. Talk not of Punctilio's with us, nor talk not of Judges made by the laws, you shall not want law; but if you talk of Punctilio's here in this Room, we will stop that Language.

Lieut. Col. Lilburne. Truly, Sir, I am upon my life, and shall my Ignorance of the Formalities of the law in the practick part thereof destroy me? God forbid! Therefore give me but leave to speak for my life, or else knock me on the Head, and murder me where I stand, which is more righ-

teous and just than to do it by pretence of Justice.

Sir, I know that Mr. Bradshaw himself, President to the High Court of Justice, as it was called, gave Duke Hamilton (a hostile Enemy) leave to speak to the Punctilio's of the law; yea, and to my Knowledge again and again made an Engagement unto him and the rest try'd with him, that the Court nor he would not, by virtue of their Ignorance of the Niceties or Formalities of the law, take advantage against them to destroy them; but did declare again and again, that all advantages of Formalities should be totally laid aside, and not in the least made use of against them to their Prejudice.

And I hope you will grant me, that have often been in Arms for you, but never against you, as much Favour and Privilege as was granted to Duke Hamilton, never of your Party, but a General of a numerous Army against you.

Ld. Keble. Take it as you will, we have had Patience with you, and you must and shall have Patience with us: We will pass over all that is by-past, but take heed by your surly Crossness you give not Advantage in the Face of the Court, to pass Sentence against you, without any further Proceedings, or Proof of your Actions, but what our own Eyes see.

The Ceremony is for your Advantage more than you are aware of: But if you confess yourself to be Mr. John Lilburne, we have done as to that.

Judge Jermin. Mr. Lilburne, at the beginning you talked of Moderation, and that you would carry yourself with Rationality, which methinks in your
Actions

Actions you fall short of; for you have said, that Mr. Attorney-General was a very unequal Prosecutor of you, because you say he was the Creator of your Commission.

Pray hear me, I heard you; and do not think to put Affronts upon us undeserved.

And as for that Man you call Mr. Mr. Bradshaw, I tell you again, he is Lord President of the Council of State of the Commonwealth of England; and why you should so much neglect him, doth not so much favour of Rationality and Moderation, as you pretend yourself to be possessed with.

Ld. Keble. Come, will you read the Indictment?

Mr. Broughton reads. Hold up your Hand, John Lilburne, and hearken to your Charge.

Thou standest indicted of High-Treason by the Name of John Lilburne, late of London, Gent. for that thou, as a false Traitor, not having the Fear of God before thy Eyes, but being stirred up and moved by the Devil, &c. as it followeth verbatim, in the second Day's Proceedings, to which the Reader is referred.

Mr. Broughton. What say'st thou, John Lilburne, art thou guilty of this Treason whereof thou standest indicted, or not guilty?

Lieut. Col. Lilburne. Gentlemen, I require the Favour that I may be heard, and I shall desire nothing but that which may stand with Reason and Justice.

Ld. Keble. Mr. Lilburne, we shall deal with you according to Reason and Justice, and after such a Manner as you yourself shall judge rational and right.

Lieut. Col. Lilburne. Gentlemen, I shall speak but a few words; and I beseech you hear me, for it is upon my life.

Ld. Keble. You say you will deal rationally in those Ways; that is to be expected from you the first in Reason, is to Answer and Plead; and before you do so you cannot be heard.

Lieut. Col. Lilburne. Give me leave to speak, and I shall not speak six lines: (which with much struggling being granted, Mr. Lilburne went on and said to this effect) Then, Sir, thus, by the Laws of England I am not to answer to Questions against or concerning myself.

Ld. Keble. You shall not be compelled.

Another Judge. Mr. Lilburne, is this to answer yourself, to say you are not guilty? By the laws of the land you are to plead to your charge, and it is no accusing of yourself to say, Guilty, or Not Guilty.

Lieut. Col. Lilburne. Sir, by your Favour——

Judge Keble. To answer that you are Not Guilty, is no great matter, nor definite in law.

Lieut. Col. Lilburne. By the law of England, I am to be tried by a Rule, but I do not know, by the Rules of law, what Benefit, in reference to my Exception against the Illegality of my Indictment, I may deprive myself of, in case I should answer before I except.

Ld. Keble. The law is plain, that you are positively to answer Guilty or Not Guilty, which you please.

Lieut. Col. Lilburne. Sir, by the Petition of Right, I am not to answer to any Question concerning myself; there-

therefore I humbly intreat you to afford me the Privileges of the laws of England, and I will return a positive Answer to it; if you will but please to allow me Counsel, that I may consult with them, for I am ignorant of the Formalities of law in the practick Part of it, although I here declare I own the good old laws of England, and a legal Jury of twelve Men, yea, and a Trial by a Jury of legal Men.

And I do humbly crave, Sir, a copy of the Indictment, or so much of it as I may ground my Plea upon it; and reasonable Time to consult with my Counsel, although it be but eight or nine Days.

Ld. Keble. You speak well, but you must do well, 'tis that we come for: The Reasonableness of it is this, that you should shortly answer, Sir, to that Question, and in a rational and legal Way.

When you have answered it, you shall have liberty to make your Defence, to maintain that you say; but this that we now speak of, is a Thing in your own Breast, in your own Knowledge, whether you be guilty of this that is laid to your charge, or no: And if you be clear, you cannot wrong yourself, nor your conscience; for in saying Not Guilty, you know better what you say than any other doth.

Lieut. Col. Lilburne. Sir, I am ignorant of the Formalities of the law, having no Books in English wherein I can read them; and as for other Tongues, I understand none: And therefore for you to take away my life for my Ignorance, when the practick Part of the law, or the Formalities thereof, is locked up in strange language, that it is impossible for me

to read or understand, is extreme hard.

It is true, in those English plain laws which I have read, I find something spoken of it; but must aver, that I find there is a great deal of Nicety and Danger in locking a Man up to single Formalities, in answering Guilty or Not Guilty; and therefore I beseech you to assign me Counsel, to inform my Ignorance, and give me but leave to consult with my Counsel, and I will return you an Answer according to your desire, without any Demur, as soon as it is possible for me to know what Grounds I go upon.

Mr. Broughton. John Lilburne, what say'st thou, art thou Guilty of the Treason laid unto thy charge, or art thou Not Guilty?

Lieut. Col. Lilburne. But under favour thus, for you come to ensnare and entrap me with unknown Niceties and Formalities, that are locked up in the French and latin Tongues, and cannot be read in English Books, they being not expressed in any law of the Kingdom, published in our own English Tongue, it is not fair Play according to the law of England, plainly in English expressed in the Petition of Right, and other the good old Statute laws of the land. Therefore, I again humbly desire to have Counsel assigned to me, to consult with, what these Formalities in law signify; so that I may not throw away my life ignorantly upon Forms.

Ld. Keble. Mr. Lilburne, we cannot grant you that Favour, it is not consistent to the law, whatsoever you say to the contrary.

Lieut. Col. Lilburne. I hope you will not go about to ensnare me, and take away my life for Punctilio's.

Another

Another Judge. Well then, you will not plead?

Lieut. Col. Lilburne. Yes, if I may be allowed that which I conceive to be my Birth-right and Privilege, to consult with Counsel; or that you please to make the same Engagement to me that Mr. Bradshaw, as the President of the High Court of Justice, made to Duke Hamilton; which was, that the Court would take no Advantage at all of his Ignorance in the Niceties and Formalities of the Law in his Pleading: Let me but enjoy this Engagement, and I will plead.

Ld. Keble. You shall have that which is according to law; therefore, Mr. Lilburne, I advise you for to plead, and you shall have fair play, and no Advantage taken against you by your Ignorance of the Formality of the law.

Lieut. Col. Lilburne. Well then, Sir, upon that Engagement, and because I see you are so positive in the Thing——this is my Answer: That I am Not Guilty of any of the Treasons in Manner and Form, as they are laid down in that Indictment, (pointing to it.) And therefore now, Sir, having pleaded, I crave the liberty of England, that you would assign me Counsel.

Mr. Broughton. By whom wilt thou be tried?

Lieut. Col. Lilburne. By the known laws of England, and a legal Jury of my Equals, constituted according to law.

Mr. Broughton. By whom wilt thou be tried?

Lieut. Col. Lilburne. By the known laws of England; I mean, by the liberties and privileges of the laws of England, and a Jury of my Equals

legally chosen. And now, Sir, I again desire Counsel to be assigned me, to consult with in point of law, that so I may not destroy myself thro' my Ignorance. This is but the same privilege that was granted at Oxford unto me, and the rest of my Fellow-Prisoners arraigned with me.

One of the Clerks. You must say, by God and your Country; that's the Form of the law.

Lieut. Col. Lilburne. Why must I say so?

Another Judge. This is the Form and law of the land: Will you plead Mr. Lilburne, according to the laws of England?

Lieut. Col. Lilburne. Truly I never read it, Sir, in the laws of England, what it is to plead in this Nature.

Ld. Keble. You say you will be tried by the laws of the land, then it is by the country, and so you may plead, and do yourself no harm; for by the Country is meant a Jury of your Equals.

Lieut. Col. Lilburne. Sir, I am doubtful of my Ignorance in the laws, yet I will return you an Answer, you making good your already engaged Promises, that you will take no Advantage against me, if thro' my Ignorance, and your Importunity, I plead in any Form, that in strictness of Acceptation may deprive me of any real Benefit the law will afford me.

Judge Thorp. Mr. Lilburne, you will be tried by the law, and by the rules thereof: When you say so, you do really declare it to be by your country. So that the true Signification of being tried by the law, is the same Thing in substance with being tried by the Rules of the law.

Lieut. Col. Lilburne. Then I hope my Answer is clear and fair, Sir.

Judge Jermin. The Formality is shortly this, to be tried by God and your Court; no more is meant by it than thus, by God, as God is every where present, yea, in all courts of Justice, and sits and knows all things that are acted, said and done: The other part of it, by your country, that is, by your country or neighbourhood; the country is called Patria, because your Neighbour and your Equals, which you are willing to put yourself upon the Trial of. By force of that word, the country, a Jury of the Neighbourhood for Trial of you are summoned. Now do what you will.

Lieut. Col. Lilburne. Sir, under your favour thus; then in the negative I say, God is not locally or corporally here present to try me, or pass upon me; but affirmative, I return this Answer, that I desire to be tried in the Presence of that God, that by his omnipotent Power is present every where, and beholds all the Actions that are done upon the Earth, and sees and knows whether any of your Hearts be possessed with a premeditated Malice against me, or whether any of you come with so much Fore-thought of Malice against me, as that in your Hearts you intend to do the utmost you can, right or wrong, to destroy me: And before this all-seeing God I desire to be tried, and by my country, that is to say, by a Jury of my Equals, according to the good old laws of the land.

Judge Thorp. You have spoken very well.

Ld. Keble. You have done like an Englishman so far as you have gone; and I do assure, that in any Formali-

ty (as you express or call them) there shall be no Advantage against you, if you mistake in them. Now what you have the next to think upon, is your Jury of your Countrymen, or Neighbours of your Equals; and I promise you we will take care of that, they shall be good and lawful Men of England.

Lieut. Col. Lilburne. I thank you Sir, but under your Favour, thus Your Indictment is extremely long and of abundance of Particulars, it is impossible that my Memory, or of any one Man's in England, can contain it, or carry it in our Heads; and therefore that I may make my Defence so as becomes a rational Englishman, I earnestly intreat you, that now you will be pleased to give me a copy of my Indictment, or so much of it, as you expect a Plea from me upon, and an Answer unto, and Counsel assigned me, and Time to debate with my Counsel, and Subpoenas for Witnesses.

Ld. Keble. For Counsel, you need none, Mr. Lilburne; for that Not Guilty which you have pleaded, is that which lies in your own Breast, which rest in your own Counsel, and you know how it is, and can best plead that yourself: Counsel lies in Matter of law, not of fact.

Lieut. Col. Lilburne. Under Favour I desire Counsel for Matter of law, and not for Matter of fact. My Indictment I believe in law, is all matter of law, and I have something to say to it in law.

Ld. Keble. If matter of law do arise upon the Proof of the Fact, you shall know it, and then shall have Counsel assigned to you.

Lieut. Col. Lilburne. I myself have before this been upon some Trials, and never before this was denied Counsel, no nor so much as ever disputed whether I should have it or no. I also was at a great part of the Earl of Strafford's Trial, who was supposed a notorious Traitor; and yet if my Observation and Memory do not exceedingly fail me, he had Counsel assigned him at his first desire, and they were continually with him, not only at the Bar when he was there, but also had continual and free Access to him in Prison.

Besides, Sir, I being accused of Treason in such an extraordinary manner, and being but an ordinary Man myself; no eminent experienced lawyer dare well meddle with my Business, no nor so much as bestow a Visit upon me, but he runs a hazard of being undone.

And truly my Estate is in an extraordinary Manner taken from me, so that I have not Money to send Messengers up and down privately to their Chambers; and therefore that I may be freely and allowedly able, without danger of Ruin to any Man that shall advise me, I shall humbly crave as my Right by law, and I am sure by common Equity and Justice, that I may have Counsel and Solicitors also assigned me.

Ld. Keble. Mr. Lilburne, speak rationally for yourself; when there comes a Matter of law, that you are able to say, this is for matter of law, arising from matter of Fact, that hath been proved or endeavoured to be proved, when you come beyond that, you shall have it as willingly as you can desire: And withal, this that you say concerning your Memory, which

you say is not able to carry away, or contain the particulars of this Indictment; the Indictment, so much as will charge your memory, will be very short; for it is the publishing of those Books, charged upon you in the Indictment, that will be the Matter which will stick, and that Matter will be very short, which we must prove against you, which is only Matter of Fact, and not of law. And therefore for Fact of Treason you cannot be allowed no Counsel, but must plead it yourself.

Lieut. Col. Lilburne. Sir, under favour, you expect from me Impossibilities; for seeing I have been seven Months in Prison for nothing, and could not in the least know perfectly what would be laid to my Charge, nor after what Manner I should be proceeded against, (considering all Proceedings against me hithertoward have been so absolutely arbitrary, that it was impossible for me in law exactly to come provided) and therefore seeing I am now here, and you pretend to proceed with me according to the due Course of law, and seeing the Form of the Proceedings in this Manner with me, is not expressly and exactly declared in print in English, which Tongue only I can read and understand; and seeing by the law, which is in English, which I have read, and clearly understand, that there are a great many Snares, and a great many Niceties in the Practick, that are formal Proceedings of the law: and seeing I know not certainly, whether if I proceed to Matter of Proof, before in law I make my Exceptions against your Indictment, as to Matter, Time and Place, I be not in law deprived of that Benefit, which I principally

principally aim at for the preservation of my life; therefore I beseech and most earnestly intreat you, to assign me Counsel to consult with, before I am too far insnared: And if you will not do it, and give me some reasonable Time to prepare my Plea and Defence, then order me to be knocked on the Head immediately in the Place where I stand, without any further Trial; for I must needs be destroyed, if you deny me all the Means of my Preservation.

Judge Jermin. Mr. Lilburne, it were reasonable to give you Satisfaction, if you would receive it. You say you were present at my Lord Stafford's Trial, and you say he had Counsel assigned him, not only to stand by him at the Bar, but to repair to Prison to instruct and advise; but that was not a Trial in such a Way as this is; it was a Trial by way of Impeachment before the Peers assembled in Parliament, and his Attainder was made up into an Act of Parliament; but that is not a Trial at the Common Law per Pares, which is that which yourself have desired, a Trial by lawful Men, according to the liberties of the laws of England.

After your Answer to your first Question, that is to say, whether you be Guilty or Not Guilty of the Thing whereof you are accused, no Counsel in the World can follow, till the Fact be proved, and Matter of law do arise thereupon.

So that the first Thing that must be done, the Matter of Fact must be proved against you; and then if it shall appear thereupon to the Court, that Matter of law doth arise, and you do expect Counsel, we must and will perform it; the Court are of your Coun-

sel so far as to fact. And then in that case, that law arise thereupon, you may and ought to have other Counsel assigned; and do not you doubt but the Court will be as careful of you, as you can be of yourself, and allow you more Favour, it may be, than your Friends do expect.

Lieut. Col. Lilburne. Under your Favour, and by your good-liking; I was once arraigned at Oxford for my life, upon the Matter of Treason, for levying War in Oxfordshire against the King, as their Indictment then said; and my Arraignment was by Virtue of a Commission of Oyer and Terminer, that was (and in law I am sure of it) as legal and as just as yours is: And my Lord Chief Justice Heath, the chief Commissioner or President, who was in the Eye of the law as legal a Judge as any of you, and yet he——

Ld. Keble. Mr. Lilburne, we do remember it.

Lieut. Col. Lilburne. I beseech you give me leave to speak for myself, and to go on, for my life lies upon it.

Ld. Keble. Hear me one word, and you shall have two. This that you did speak but even now, do not you think that we have such bad Memories, as that we have already forgot it; your life is by law as dear as our lives, and our Souls are at stake if we do you any wrong.

Lieut. Col. Lilburne. I wish you may be sensible of that, Sir.

Judge Jermin. Mr. Lilburne, you need to say so, our Souls are upon it, and we are to stand or fall by Justice and Righteousness as well as yourself is.

Lieut. Col. Lilburne. I say, my Lord Heath, and the Court at Oxford, proffered me Counsel before any one Witness was produced to my Face, or any Matter of Fact came to the Proof; yea, and gave me liberty to make my Exceptions to the Insufficiency of the Indictment, which was very short in comparison of yours.

I crave the same Privilege from you (the Nation's pretended Friends) that I found at Oxford amongst its pretended Enemies, against whom in several Battles I had fought. And I hope you that pretend to be the Preservers of the liberties of England, will not be more cruel and unrighteous than the declared Destroyers of them. If you will not allow me Counsel as I had there, I have no more to say to you; you may murder me if you please.

Judge Jermin. You were pleased to mention some Precedents of those that have been accused of High Treason, that have had Counsel assigned to them; and for one you mention, that of my Lord Strafford, whose Trial I told you was Parliamentary before the House of Peers, upon the Impeachment of the Commons of England in Parliament assembled, and so it went on a Parliamentary way: This Proceeding is in an ordinary Course of the ordinary quondam Court of Justice, according to the common law.

Now, for my Lord Strafford, give me leave to observe this; he had no Counsel assigned him until such time as Questions of the law did arise, which required Counsel, and then he had Counsel assigned him, but not before; for that my Lord doth not say, that you shall have no Counsel, but that you shall have that which the law

allows. And as for that which you speak of Counsel at Oxford, it could not be.

But when upon the Proof of Matter of Fact, it appears to the Court that there is any Question or Matter of Law arising upon the Fact; and when it doth so appear unto us, then you shall have Counsel for that.

But (I beseech you) hear me on: You are now come before us, according to the common law, to be tried by your country; there is now nothing in question, but whether that Matter, that Thing, those Words contained in the Indictment read to you, be true, yea or no; that is, whether they be done or no; for we will not give Counsel to plead to the Matter of Fact contained in your own Books, which you remember very well.

Lieut. Col. Lilburne. Those Books supposed mine; pray let me have fair play, and not be wound and skrewed up into Hazards and Snares.

Ld. Keble. If they be not your's upon good Grounds proved before you, you are in no danger; and if upon the Proofs of the Words and Deeds done, there do appear Matter of law, you must and shall have counsel; stay till be done. In the mean time the court will take care that a Jury shall be returned, of honest and sufficient legal Men to judge of the Proofs.

Lieut. Col. Lilburne. There was arraigned with me at Oxford colonel Vivers of Banbury now alive, and captain Catesby who is dead: I will bring colonel Vivers to depose here upon his Oath, That my Lord Heatly, and the rest of the commissioners of Oyer and Terminer, proffered me counsel, and allowed me and him

counsel before ever so much as any Witnesses were produced, to prove the least Matter of Fact. And if you will not be just towards me as the cavaliers were, and allow me counsel as they did, I have no more to say, but resolve upon this score to stand, and here to die upon the Principles of an Englishman

If you will not be so just as the Cavaliers were, with whom you and the Parliament set us together by the Ears to fight with, pretendedly for their Injustice, let God and all righteous Men judge betwixt you and me.

Sir, Pray do you know by what better Rules of the Law can I be led by, than those that I have before my Eyes? I am sure at Oxford, as my right by law, I was, before any Fact was proved, proffered Counsel by my Judges, which were my Lord Heath, and Mr. Gardiner, now Sir Thomas Gardiner, who is now in London; if you please, I will produce him to this Bar, to justify it upon his Oath, that the Lord Chief Justice Heath in his presence proffered me counsel upon my Arraignment for Treason there, as my Right by the Privileges of the Laws of England, before the Fact came to be proved; yea, and also gave me liberty to assign the Errors of my Indictment.

He is now in London, and I will produce him here at this Bar (if you please) to justify what I say, if you will give me time, and enable me with Ability to summon him in.

Judge Nichols. Mr. Lilburne, whether Mr. Gardiner will justify it or no, it is nothing to us; for we are not to walk by Oxford Precedents, but by the Rules of the law; and the

law will afford you no Counsel, but in points of law arising upon proof of the Fact.

Lieut. Col. Lilburne. Under favour thus: I conceive the precedents at Oxford, so far as they are righteous, are fit for your Imitation; and whether it be a righteous Thing for you, when I am tried for Treason before you, to be more cruel towards me, who have fought for you, than the Cavaliers at Oxford in the like case were, against whom I fought: And I must tell you, I further conceived it the most unequal and unjust thing in the World for me to have to do, upon the Trial of my life, with all the Judges of the Land (who are all engaged Men) that have had above six Months time to beat their Brains together, with the Assistance of divers of my Adversaries, who are Parliament-Men, that were the creators of their power, and for one of them to be my prosecutor; and in this so extraordinary case, for me to be denied to consult with counsel; I tell you, Sir, it is most unjust, and the most unrighteous Thing, in my Apprehension, that I ever heard of, or saw in all my life.

O Lord! Was there ever such a pack of unjust and unrighteous Judges in the World?

Sir, in plain English let me tell you, if I had thought you would have bound me up to a single plea, and not have given me in my plea the just latitude of law, equity and reason, but hold me thus close to your single formalities, contrary to your promises, I would rather have died in this very court, before I would have pleaded one Word unto you; for now you go about, by my own Ignorance and Folly, to make myself guilty of taking
away

away my own life; and therefore, unless you will permit me counsel, upon this lock I am resolved to die.

Ld. Keble. This is not the rational way you said you would go in.

Lieut. Col. Lilburne. Sir, my life is before you, you may murder me, and take away my Blood, if you do please.

Ld. Keble. I will not be out-voiced by you, our Lives and our Souls are upon it, therefore you shall have Equity and Justice; yea, such as you desire yourself; but you are now going to fly into Extravagances and Heats, which will manifest the Rancour of the Distemper'dness and Invenom'dness of Spirit which is within you. And besides, if we should enter into it, we might aggravate your crimes by your own Words at the Bar. Take heed of it, that you give not advantage against yourself to your own Ruin.

Lieut. Col. Lilburne. Sir, I am in no Heats, I am but with earnestness pleading for my life, when you deny me all the just Means of my preservation, which is my right and due by your own law.

Judge Thorpe. Mr. Lilburne, I desire to correct a Mistake of yours in the Law: You were pleased to condemn it as unjust, for the Attorney-General's speaking with me when your Indictment was a reading; you are to know, he is the prosecutor for the State here against you, and he must confer with us upon several Occasions, and we with him, and this is law.

Lieut. Col. Lilburne. Not upon the Bench, Sir, by your favour, unless it be openly, audibly and avowedly, and not in any clandestine and whispering way: And by your favour, for all you

are a Judge, this is law, or else Sir Edward Coke in his 3d Part Inst. cap. High-Treason or Petty-Treason, hath published Falshoods, and the Parliament hath licensed them; for their Stamp in a special manner is to that Book.

Judge Thorpe. Sir Edward Coke is law, and he says, the Attorney-General, or any other prosecutor, may speak with us in open court, to inform us about the Business before us in open court.

Lieut. Col. Lilburne. Not in hugger-mugger, privately or whisperingly.

Judge Thorpe. I tell you, Sir, the Attorney-General may talk with any in the court, by law, as he did with me.

Lieut. Col. Lilburne. I tell you, Sir, it is unjust, and not warrantable by law, for him to talk with the court, or any of the Judges thereof in my absence, or in hugger-mugger, or by private whisperings.

Ld. Keble. No, Sir, it is no hugger-mugger for him to do as he did; spare your words, and burst not out into passion; for thereby you will declare yourself to be within the compass of your Indictment, without any further proof: Look to it, that you behave yourself according to the Bounds of Reason and Law, and hear me; for we must cause the Jury to be returned.

Lieut. Col. Lilburne. Sir, under favour, I crave but one word more, hear me out: I know very well, and I read in your own Law-Books, such a Prerogative as that in cases of Treason no counsel shall plead against the King, hath been sometime challenged to be the King's Right by law; but let me
tell

tell you, it was an usurped Prerogative of the late King, with all other arbitrary Prerogatives and unjust Usurpations upon the People's Rights and Freedoms, which has been pretended to be taken away with him.

And, Sir, can it be just to allow me counsel to help me to plead for my Estate, the lesser; and to deny me the help of Counsel to enable me to plead for my life, the greater?

Nay, Sir, can it be just in you Judges, to take up seven Years time in ending some suits of law for a little Money or Land, and deny me a few Days to consider what to plead for my life?

Sir, all these pretences of yours, were but all the Prerogatives of the King's Will, to destroy the poor ignorant and harmless people by, which undoubtedly died with him; or else only the Name or Title is gone with him, but not the power or hurtful Tyranny or Prerogative in the least.

Therefore seeing all such pretended and hurtful Prerogatives are pretended to be taken away with the King, by those that took away his life, I earnestly desire I may be assigned counsel to consult with, knowing now especially no pretence why I should be denied that benefit and privilege of the law, of the just and equitable law of England, having put myself upon a Trial according to the privileges thereof.

And it was declared to me at Oxford, upon the Trial of my life there, after I was taken prisoner fighting against the King and his Party, even almost to Handy-gripes, and to the Sword point, and to the But-end of our Muskets, being in person one of

that little Number that for many Hours together at Brentford fought with the King's whole Army, where in the manner, without any Articles or Composition, I was taken a prisoner and immediately thereupon arraigned at Oxford; where notwithstanding all this, it was declared to me by Judge Heath to be my right, by the law of England, to have counsel assigned me to help in point of law, and I had it granted.

I confess he is my best Authority that I have, and I am sure he was a Judge of the Law, or else I had never pleaded to him; and he was upon his Oath to do Justice and Right; and he was an able and understanding Lawyer, and yet did allow me (an hostile enemy) counsel to help me, as my right by law, before ever any proof to Matter of Fact was produced: And I beg but the same legal privilege from you, from whom I have more cause to expect it.

Ld. Keble. Were you there indicted for Treason?

Lieut. Col. Lilburne. Yes, that I was, and for the highest of Treasons, by the letter of the law, for actual levying War against the King.

Judge Thorpe. And yet, for all that, you know it was no Treason, and so did he too; for you know that you had committed no Treason at all in obeying the Parliament's command; for what you have done, was done by the Parliament's special Authority and Command; and you had your Commission to justify you in your hostile Actions; and he knew it well enough your Act was no Treason, though he did offer you Counsel, or else he durst not allow you Counsel.

Lieut. Col. Lilburne. I had nothing to justify me in that Act, but the equitable sense of the law, the letter of it being point-blank against me, and on the Cavaliers side, by which if they had prevailed, they might have hanged both you and me for levying War against the King, notwithstanding our Parliament Commissions; and this I know, Sir, you know to be Law in the Letter or Punctilio's of it.

Judge Thorpe. It was no Treason in you, and he that assigned you Counsel, knew it was no Treason; and this Arraignment of you was as illegal as his assigning you counsel.

Lieut. Col. Lilburne. Sir, by your Favour, he was a Judge of the law by legal Authority, being made by the King, in whom, by Law, that Power invested; and he looked upon himself as a legal Judge, and so did I too; and as a legal Judge he arraigned me for doing that Act, that by the express Letter of the Law was Treason; and as a legal and honest Judge, according to his Duty in law, he allowed me counsel.

Judge Jermin. For that matter that you talk of, they knew it was no Treason, and therefore gave you more Privileges than was their Right by Law, very well knowing, that whatsoever was done to any of you that did fight for the Laws, Religion and Liberties of their Country, there might be the like done to others that were Prisoners in the Parliament's Power; and this was the truth of it, and you know it very well; and therefore it is nothing to us, nor in Law his willingness.

Lieut. Col. Lilburne. Upon my letters, after the first Day of my Trial, that Declaration of Lex Talionis was

made, as clearly appears by the Words and Date of it now in print, which the Reader may peruse in the first Part of the Parliament's Declarations, p. 802, 803.

Judge Thorpe. I wonder they did not proceed in the Prosecution of the Indictment, and find you guilty of Treason, and so to Execution.

Lieut. Col. Lilburne. Under your favour, thus; I appeared at the Bar, I pleaded to my Indictment not guilty, I made exceptions against my Indictment; and myself, and the other two Gentlemen arraigned with me, had counsel assigned us as our Right by law; and the Judges most fairly and rationally further told us, because we will not surprize you, we will give you a Week's time to consider (with what counsel you please in Oxford to chuse to come to you) what to plead for your lives; and whatsoever other Privileges you can claim by the liberties of the law of England, you shall enjoy them to the utmost.

Upon which Promise I spoke in open Court to the Judge, shewing him the Irons upon my Hands, in which I was arraigned, and told him; My Lord, by the Laws of England, no Prisoner for any Crime whatsoever, that behaves himself civilly and peaceably in his Imprisonment, ought to be put in Irons, or to any other Pain or Torment before he be legally convicted; and therefore I desire, as my Right by law, that my Irons may be taken off.

And I said further, my lord, I am shut up a close Prisoner in my Chamber, denied the use of Pen, Ink and Paper, which is contrary unto law, especially in the time of my trial.

Why, says he, you shall be released from your Irons, from your close Imprisonment, and have the use of Pen, Ink and Paper: And Capt. Lilburne, I tell you, you shall enjoy whatsoever other Privilege you can challenge as your Right by law; for the law of England is a law of mercy, and I hope we shall appear just Judges of it: And therefore you shall have either lawyer, or whom you will in Oxford, to come unto you to help you and advise you.

And, says he, because you shall see that Law and Justice is of the King's side against the Parliament, and because they have no Cause to calumniate us at Westminster, and to say we are unrighteous and unjust Judges, that surprize you, and thereby go about to murder you, the Court is freely willing to give you a Week's time, to consider with your Counsel in the mean time while this Day seven-night to plead for your life.

In which time, being freed of my Irons, and of my close Imprisonment, and enjoying Pen, Ink and Paper, at my pleasure, by special Order from the other two Gentlemen, I writ a letter to my Wife, and in it inclosed another to your Speaker, and another to young Sir Henry Vane, then my familiar Acquaintance; all which I sent in post-haste away to my Wife by the Hands of Capt. Primrose's wife, which Capt. Primrose was prisoner there; and his wife, who brought up the letter to my wife, is now in London; which letter my wife delivered to the Speaker, &c. and by her importunate Sollicitation procured the Declaration of Lex Talionis; the substance of which, in a letter from Mr. Speaker, my wife brought down to Oxford, and delivered to

the Lord Heath's own Hands upon the Sunday after the first Day of our Arraignment.

And the third Day before we were to appear again, my wife arrived at Oxford with the Speaker's letter, which she delivered to Judge Heath himself; which letter taking notice of our trial, threatened them with Lex Talionis, to do the like to their Prisoners that they did to us, or any of us.

And they having many of their great eminent Men Prisoners in the Tower, and in Warwick-Castle, and other Places, did induce them to stop all further Prosecution of Colonel Vivers, Captain Catesby, and myself.

And if it had not been for this threatening letter, in all likelihood we had all three been condemned by a Commission of Oyer and Terminer, and executed: For my wife did hear Judge Heath say to his Associates, at the reading of the Letter, that as for all the threatening part of it, as to his particular self, I value it not; but, said he, we must be tender of the lives of the Lords and Gentlemen that serve the King, and are in the custody of those at Westminster.

And that clause of Lex Talionis put a stop to our proceedings, and further trials at law.

Ld. Keble. It was well for you, by your Story that you do tell, that you had so fair play: You shall have with us, who are upon our Lives and Oaths, as much as the law will afford you, and so much as our Judgments and Consciences can lead us to, without doing injustice in granting more than the laws of England will afford.

What was done there, is nothing to us here; for we are not to walk by their Precedent, but by our own Judgments,

ments, according to the Rules of the law.

And here 'tis thus far just, that upon the proof of Matter of Fact, if Law do arise, you are to have counsel; if not, you are to have none.

By your Allegation, you say you had Counsel assigned you before any Matter of Fact came to be proved, when as a Judge of the Law he could not but do it; but if he did, it is nothing to us, we cannot admit of it.

Yet we have in this Place proceeded legally hitherto with you; and when that Matter of law doth arise from the Fact, as you had counsel there assigned you; so shall you have here, and you shall have fair dealing, and fair play, according to law, which is absolutely as I tell you.

Lieut. Col. Lilburne. Sir, by your favour, I crave but one word more; and that is this: Here is a Gentleman that is a By-stander, a Friend of mine, and my Sollicitor, who by law, as well as any By-stander, may speak for the Prisoner at the Bar, in case he perceive Things urged against him contrary to law; and therefore I desire he may speak two or three words.

[Mr. Sprat beginning to speak.]

Ld. Keble. Spare yourself; when your time comes, you shall speak.

Mr. Sprat. He asked leave for me first. And, Sir, it is easy to prove the whole Indictment to be Matter of law.

Judge Jermin. What impudent Fellow is that, that dare be so bold as to speak in the Court without being called?

Mr. Lilburne, by your own words you say you were told at Oxford, that by law you were to have Counsel; that is as true, that the Court is of counsel for the Prisoner arraigned at the Bar; and so we ought, and shall permit you other counsel, if Matter of law, upon the proof of the Fact, do arise: But for any other counsel to be assigned you before that appear, is not by law warranted; we shall tread the Rules of Justice.

And we shall do wrong to the whole Commonwealth, if we should allow you counsel before Matter of law doth arise from the proof of the fact; and to allow counsel in any other case, the Court commits injustice.

Ld. Keble. And this, Mr. Lilburne, I will promise you, that when there comes Matter in Law, let it be a Lawyer, or yourself, he shall speak in your behalf; but before he cannot.

Lieut. Col. Lilburne. Sir, the whole Indictment, under favour, is Matter of Law; and the great Question that will arise (admit the Fact should be true, and admit it should be granted) is, whether the words be Treason in law, yea or no? And also it is Matter of law in the Indictment, whether the Matter in the Indictment be rightly alledged as to Matter, Time and Place.

And it is Matter of Law in the Indictment, where there are divers several pretended Treasons committed in divers and several counties, put into one and the same Indictment, be legal, yea or no?

Ld. Keble. Upon Proof of the Matter of Fact, you shall hear and know whether Matter of Law will arise; and till the words be proved, we cannot say whether that be law that you suppose.

Lieut.

Lieut. Col. Lilburne. Truly, Sir, you promised me a fair Trial, and that you would not take Advantages of my Ignorance in the Law's formalities; but the Lord deliver me, and all true-hearted Englishmen, from such unjust and unrighteous Proceedings as I find at your Hands, who go about, I now clearly see, by my Ignorance, in holding me to a single and naked Plea, which is purely as bad, if not worse, than all the Prerogatives; and for the worst and grossest of his Prerogatives, in a more rigorous Manner than they were in his Life-time, to be thus pressed upon me at this Day, after he hath lost his Life for pretended Tyranny and Injustice, Liberty and Freedom in publick Declarations declared to the Kingdom: I say, if there be Justice and Equity in this, I have lost my Understanding, and the good Lord God of Heaven deliver me from all such Justiciaries.

Ld. Keble. Mr. Lilburne, you have been arraigned before us for High Treason, and we bid you forbear those Terms of your's long ago; speak that you do rationally, and you shall have fair and christian Answers and Replies, as ever any Man had at a Bar; and go on, you shall have it still, if you will be fair and rational, and not break out into Extravagances and Bitterness of Spirit.

Lieut. Col. Lilburne. For my part, Sir, I must look upon myself as a lost and dead Man if I have not counsel to help my Ignorance, to pitch upon those Things that tend to my Preservation.

And therefore if you will not assign me counsel to advise and consult with, I am resolved to go no further, tho

I die for it; and my innocent Blood be upon your Heads.

Judge Jermin. You have alledge part of the Law of England for your own Advantage; but every one that says so, does not prove it to be so.

You have said you will be tried by the Laws of England; and yet again by the Laws of England you have utterly refused, in that you would not hold up your Hand, which I do not know any Englishman that ever refused so to do, but yourself.

You have been told by the Court what the Law of England is; and yet you will not be satisfied.

We are upon our Oaths, and therefore will discharge our Consciences; and that in a more eminent Manner than my Brother Heath did, although we do not deny you liberty to speak for yourself.

But now you would have Counsel assigned before any Matter of Law do appear upon the Proof of the Facts which we cannot do; for it were to do Injustice, and to do against the Law which the Court cannot justify.

Lieut. Col. Lilburne. Sir, under favour, whether or no I have transgressed the law, I will not judge: But I assure the Law, in the Equity and Intention of it, would have all Trials to be Equal, and not Prejudicial.

My Prosecutors have had time enough to consult with Counsel of all sorts and kinds to destroy me, yea, and with yourselves; and I have not had any Time at all, not knowing in the least what you would charge upon me, and therefore could provide no Defence for that which I knew not what it would be.

And if by the Law of England, I cannot have Counsel, then upon your own

Grant, which is, That the laws of God are the laws of England, I desire to have the Privilege of the law of God, which you yourself said is the law of England; and I am sure the law of God is, that you should do as you would be done to.

Now it cannot be according to the law of God, for my Adversaries to have the helps of all manner of Counsels, by Snares, Tricks and Provocations, to take my Life, and for me to be denied the Benefit to consult with any to preserve my innocent Life against potent Malice.

Ld. Keble. You say well: The law of God is the law of England; and you have heard no law else but what is consonant to the law of Reason, which is the best law of God; and here is none else urged against you.

Another Judge. The laws of God, the laws of Reason, and the laws of the land, are all joined in the laws that you shall be tried by.

Judge Jermin. The Question is but this, Whether the law of God, and the law of Reason, and law of Man, may be consonant to each other? And whether the Court, or John Lilburne, shall be Judges thereof? That is the Question.

Ld. Keble. And that which you said, Mr. Attorney hath had so much Time against you, and Opportunity to consult with all manner of counsel to destroy you, your secret Actions, tho' they are now come to publick View, are so heinous, as that they do require me to put them into the most sure way of Trial; we have proved the clandestineness of them: You did this in secret; now it is come to the Face of the World.

Now this being Matter of Fact, no

Matter of law can appear till Proof pass upon it.

You have had Time to complot your treasonable venomous Books, which shall be proved upon you; and till this be done, there is no Matter of law to be looked at. This is the law of God: When a Man hath done such treasonable things, he shall answer directly and positively whether he be guilty of them or no; and if he answer Not Guilty, and they be not fully proved against him, there needs no more to be laid.

Judge Thorp. Mr. Lilburne, there fell some Words from you even now, wherein you think you have this hardship put upon you, when you say the Judges and your Prosecutors have had six Months time to meet together, and consult together how to destroy you.

First, I would not have you to believe, nor the rest that hear it, that that is true that you say; for I speak it for my own particular, that I never saw your Indictment till this Time that I came here; and yet you say we have had six Months together to frame it.

These are your Words: This was not rightly done of you; for it is not true. I speak in my own particular.

Lieut. Col. Lilburne. I am sure the Substance of it you might see many Months ago; and though all you Judges have not at one Time met about it, yet the greatest Part of you have, that commonly carry the Denomination of the whole; and at Serjeants-Inn, with Mr. Attorney-General, the most of the Judges of England have had several Meetings, six, five and four Months ago: For I have had

Friends there that have seen it, and who have enquired into the Cause of such solemn Meetings, and your own Servants have told them it hath been about me and my Trial.

Judge Thorp. I speak as for my own particular, that I never was there, and that I never saw your Indictment till this time.

Judge Jermin. Why, Mr. Lilburne, might we not have such Meetings as those, your Business being a Matter of this Importance, as this is, through the Heinousness of your Offence? And that it might be so grounded as the Warrant of the law is, the Judges did meet: And they ought to meet to consider of it, that nothing should be done against you, or any Man else, contrary to the law.

But yet, for my part, my Dwelling is out of London, I heard not of it so soon as you speak of; but after I came to Town, I confess I heard of it, and have been present at some Debates about it.

Lieut. Col. Lilburne. Only this I say, If by your Prerogative you will destroy me, as Nebuchadnezzar did endeavour to destroy Daniel by his Prerogative, I am as willing to die, as he was to be thrown into the Lion's Den: And if you will not allow me Counsel, to consult with what Plea to make for my Life, I have then no more to say.

Sir, It is but a vain thing to spend any more Words.

Ld. Keble. These are but Words and Flourishes, Sir, that you are so willing and ready to die, as you declare you are; but if you be, it is better for you.

And also it is well you have not to do with Judges that would be austere

upon you; for you to term us to be Men that come hither to destroy you as Nebuchadnezzar went about to do Daniel: You may judge of what is within you; but of us, what is within us, you cannot judge.

You shall have Justice here in the Face of the Country, and of all that hear us; these shall be Judges of our Proceedings towards you.

Take heed, Mr. Lilburne, this language is but the Sparks of that venomous Heat that is within you, and they may burst out to prove you guilty before us, and in our Presence, of that you are charged with, without any further Proof or Proceedings; for you may do it, you may do it where you stand: And therefore be advised, and take heed what you say.

Lieut. Col. Lilburne. Sir, I have cast up my Account, and I know what it can cost me: I bless God I have learned to die, having always carried my life in my hand, ready to lay it down for above this twelve Years together, having lived in the Favour and Bosom of God; and I bless his Name, I can as freely die as live.

Ld. Keble. You shall not now lay it down, if you do not destroy nor cast away the Commonwealth; but if you go about to destroy the Commonwealth, the Commonwealth will spue you up, and destroy you.

Lieut. Col. Lilburne. I desire nothing but Counsel, and a little time to consult with them, and to produce my Witnesses, and a Copy of my Indictment: If not, I am willing to die as the Object of your Indignation and Malice, do your Will and Pleasure.

Ld. Keble. We are willing to die too.

Mr. Attorney.

Mr. Attorney. What is agreeable to the law of England, the constant settled Practice of trying Prisoners, will not be denied Mr. Lilburne: But as for that Privilege that was granted him at Oxford, is no tie in Law to us; neither was it ever heard of in England that any, that did understand the Law, did ever, as Mr. Lilburne now desires, allow Counsel to a Prisoner for such an Act as this is, or had a Copy of the Indictment.

It shall not be denied Mr. Lilburne, which is his Right by Law, in its due place; but to make new Precedents and new Laws, which, my Lord, when done by such a Bench as this is, most of the Judges in England being present, runs to all criminal Cases whatsoever, whether in Treason, Murder, or other Felonies: It's true, Mr. Lilburne is now only concerned in it; but if granted to him, it would be a Precedent to all future Times; by means of which there would never be an end of Trials in criminal Cases.

And it is a wonderful strange thing to me, that when the Prisoner hath pleaded in the usual Way, you proceed not immediately to Trial.

It's true, Mr. Lilburne pleaded his own Ignorance, and therefore desires longer Time: But, my Lord, to make a Precedent of this Nature, that never was known by the laws of England, is very dangerous, very perilous.

My lord, the Thing that I press is not in relation to time, but in relation to the publick Justice; for the same Reason it's granted him, it ought not to be denied to any Man that asketh it, neither for Treason or Felony. And of what evil Consequences it

would be, I leave your Lordship and the Court to judge.

My lords, I do humbly desire that Mr. Lilburne may be dealt with all legal, just and fair Proceedings from the Court.

My lord, I do desire accordingly that Proceedings may for the Commonwealth be so too; and that Mr. Lilburne may be without Delay, according to law, proceeded against for his notorious Treasons.

Lieut. Col. Lilburne. Sir, with your favour, I shall crave but one Word: This Gentleman declares what an evil Precedent it would be to give me a little time to consult with counsel, to frame a Plea for my life; and yet that Judge was pleased to say the law of England is founded upon the law of God, and the law of Reason, unspotted, or undefiled.

I am sure the law of God, and the law of uncorrupted Reason, is to do as you would be done to, and not to lay Snares for your Neighbour's life: I am sure the law of God would have all Trials indifferent, and no Man's life surprized or taken away by Niceties or Formalities, though never so notoriously accused.

And, Sir, for Mr. Prideaux, and others of you, so often to call me notorious Traitor, as you do; I tell you, Sir, you reproach me: For though I am never so notoriously accused, yet in the Eye of the law of England, I am an innocent Man, yea, as innocent as any of those who call me Traitor, till such time as I be legally convicted of the Fact or Crime laid unto my charge; and therefore, Sir, I beseech you cease your calumniating of me, for you thereby deal not fairly nor legally with me.

And,

And, Sir, I confidently hope I shall appear in the eye of the law, in the eyes of you, and in the eyes of all Men that hear me this Day, an innocent, a just, and a true Englishman, that really loves the Welfare of his native Country, if I may have fair play, and the scope of the law.

And therefore, Sir, blemish me not in the Ears of the Auditors, till the law, and a conviction by it, do blemish me; for I tell you I am in the eye of the law, as innocent as any of yourselves, till I be justly convicted.

And therefore I pray cease the calling of me Traitor in this manner.

Ld. Keble. What need we any more, when we are of your Opinion? We wish you may come as clearly off as you say you hope to do.

Mr. Attorney. My Lord, and that it may be so declared, and that the World may know whether Mr. Lilburne be an innocent Man, or no, I pray put it to the final Issue, and let the law judge.

Lieut. Col. Lilburne. Under favour, for me to be denied law, which I conceive is done unto me when I am denied counsel, and to put the Niceties and Formalities of the law upon me, the Signification of which are writ in such Languages and Tongues, as I cannot read, much less understand; and would you destroy me for the not knowing of that which it is impossible for me to know? Sir, I beseech you be not so extreme towards me.

That Gentleman saith the law of God is the law of England; and it would have no Snares laid to take away a Man's life: I pray let me have the Benefit of that.

Mr. Attorney. Once you had; and

it is but just should; and I am sure it will be granted unto you.

Ld. Keble. Mr. Lilburne, you say well; the Prisoner doth not know the law; you do not, and many others do not: But I tell you again, you know so much of the law as is suitable to this plea; you yourself know whether your Conscience accuse you guilty of the Fact laid unto your charge, or not.

For our parts, we say no more than one and twenty Men upon their Oaths have informed us, upon sufficient Testimony of Witnesses, that what they had said we should further inform ourselves of, before your life be taken away; yea, such is the law of England, the tenderest law in the World of a Man's life.

I say again, that no such Trial for life is to be found in the World, as in England.

In any Place but in England, a Man's life may be taken away upon two or three Witnesses; but in England two or three Witnesses do not do it: For there are two Juries besides, and you have four and twenty Men returned; you have one and twenty Men upon their Oaths and Consciences that have found you guilty: And yet when you have done that, it is not enough by the law of England, but you are also to have twelve rational understanding Men of your Neighbours to hear all over again, and to pass upon your life.

This is not used in any law in the World but in England, which hath the righteourest and mercifullest law in the World: And this we sit here to maintain, and let all the World know it, that according to the Rules thereof we have proceeded against you.

Judge Michel. Mr. Lilburne, you were speaking of the Laws being in other Tongues; those that we try you by are in English, and we proceed in English against you; and therefore you have no cause at all to complain of that.

Lieut. Col. Lilburne. By your Speeches you seem to bind me to a single Plea: Truly I conceive that is not equitable by the law of God, and the laws of Reason.

No Man's life is to be destroyed by Niceties and Formalities; yet contrary to your solemn Promises, you take all Advantage against me by them, and make my Ignorance in the ticklish Formalities of the law, to be the Means of my own Destruction; although before I pleaded, you engaged unto me, you would take no Advantage by my Ignorance in your Formalities, and my Mistakes in them, should be no Disadvantage unto me; and yet now I have pleaded, you seem to hold me close to a single Plea.

Truly, Sir, I think that is not just nor fair so to break your Promises, and by fair Words to smooth me on into Nets and Snares, and to make use of my Willingness to be tried by the law of England to drill me on to my own Destruction.

Truly, Sir, had I ever thought or believed I should have been denied Counsel, I would have died before ever I would in any manner have pleaded to your Charge, or have yielded to your smooth Insinuations.

Judge Jermin. Those Men that know the laws of England, know well that it taketh away no Man's life but upon clean Proof, and upon manifest Contempts of the law. The law is,

whosoever shall go such a way in a Court as evidently gives Affront to the law, that such one takes away his own life.

The Facts that you are charged with, if they had taken effect, would have taken away the innocent Lives of many: Therefore you are now before us charged with the Fact; and every Man's Conscience knows whether he committed the Thing charged upon him, or no; and yourself does know whether you be guilty of that you are accused of, or no.

But the Court must not spend any further Time; for Mr. Attorney-General hath returned the Writ of Venire facias, for the calling or summoning of a Jury of Life and Death.

Ld. Keble. Mr. Lilburne, you say you well understand yourself: You knew of your coming, and you knew of the Fact that you have committed.

Lieut. Col. Lilburne. Truly, Sir, six Months ago I heard much of my Trial; and I longed for it, but could not have it, but was still kept in Prison, and abundance of Provocations put upon me, to make me cry out of my Oppressions; and then to hang me therefore, by a law made after my pretended Crime was committed, is not just. And truly, Sir, I heard but by uncertain common Fame of my Trial now.

Some Parliament Men told my Wife and Friends, that my chiefest Crime was corresponding with the Prince; and to defend myself against that, I fitted myself, never dreaming that only Books should be laid to my charge, and therefore I could not as to that come prepared: And therefore do humbly desire Counsel, a Copy of my

Indictment, and Time to bring in my Witnesſes.

Ld. Keble. Hear what is ſaid to you: For your Witneſſes, you ſhould have brought them with you; we'll give you leave to ſend for them: We will give you time to do, to conſider with yourſelf what to ſay for yourſelf, you ſhall, till to-morrow ſeven o'Clock.

Lieut. Col. Lilburne. Sir, ſome of my Witneſſes live an hundred or eighty Miles off; and yet I muſt bring them to-morrow Morning: How's that poſſible? And therefore I deſire Time to bring them in, and alſo Subpœna's: for ſome of them are Parliament Men, and they will not come in without compulſion.

Ld. Keble. That's the time we will give you longer; you knew of your coming long ago, and therefore ought to have come provided.

Lieut. Col. Lilburne. Sir, I beſeech you give me a convenient Time, eight or ten Days, that ſo I may get them together; for how could I be provided before-hand for any thing, but for that which I was at the firſt imprifoned for, nothing of which is now laid to my charge? Could I deviſe upon what you would proceed againſt me? But, Sir, I have that within me, I bleſs God, that will be a Portion of Comfort with me, to carry me through all your Malice and Injuſtice.

Ld. Keble. Never talk of that which is within you; God is in us, as well as in you; never make a Flourish of what is in you; for the Fear of God is before our Eyes as well as yours, and what we do we ſhall have comfort in, in that it is according to the laws of England, the Rules of which we are ſworn to obſerve, and

every Man will do righteous Things as well as you.

Lieut. Col. Lilburne. Pray will you give but eight Days time then?

Ld. Keble. We will give you no more; you ought to have brought them with you, you knew of it long ago; and the court cannot, nor will not wait upon you.

Lieut. Col. Lilburne. By your favour, Sir, thus; then let me have a little time to conſult with counſel.

Ld. Keble. I tell you that if the Matter be proved, there needs no counſel.

Lieut. Col. Lilburne. Sir, I ſhall not much inſiſt upon that, but the Queſtion is, whether the Matter be Treason in law or no, and whether in law it be rightly expreſſed in the Indictment, as to Time and Place, with other Circumſtances thereunto belonging? And I queſtion the legality of the Indictment, and that ought in law to be diſputed, before the Matter of Fact come to be ſpoken to.

Ld. Keble. Sir, you ſaid at firſt, you would ſpeak as a rational and moderate Man, and yet you will not be answered. If Matter of Law do ariſe out of your Fact, that we have told again and again, you have Counſel and Time.

Lieut. Col. Lilburne. Sir, by your favour, it may be too late to deſire Counſel after the Fact is proved. And beſides, having legal Exceptions againſt the Indictment, why ſhould you run me upon the hazard of my life, by tickliſh Niceties and Formalities; and as my Proſecutor Mr. Prideaux ſaith — [But being interrupted, cry'd out] Sir, I beſeech you, do but hear me.

Ld. Keble. Your Distemper will break out; your Heart is so full of boiling Malice and Venom, you cannot contain yourself.

Lieut. Col. Lilburne. Mr. Prideaux is pleased to urge, that the granting of me my Desire in reference to having of Counsel, will be so inconvenient a precedent, as will destroy the Commonwealth; therefore to avoid the Danger of destroying such a precedent, as he is pleased to call it, I desire to have some time assigned me to get my Witnesses together, and then I shall, I doubt not, but convincingly shew you the hazard and destroying Mischief of that desperate precedent in denying Men liberty to consult with Counsel, when they are upon Trials for their lives.

For my own Judgment, my own Conscience tells me, that it is my undoubted Right, by the law of England, by the law of God, and the law of Reason; and if it be totally denied me, I can but die; and upon that score, by the Assistance of God, I am resolved to die.

Ld. Keble. You speak great Words of your own Judgment, your own Conscience, your own Zeal, and the like; and I tell you, our Consciences, and our Religion, and our Zeal, and our Righteousness, I hope shall appear as much as your's.

You would make yourself Judge in your own Cause, which you are not, and so make Cyphers of us; but all your high Words of Conscience and Righteousness is but a Flourish, to make the People believe or be apprehensive as though we had none, you had all; but you shall know, here we sit with as much Tenderness and Integrity as you stand there, and to

do that uprightly which is according to Law and Justice.

Lieut. Col. Lilburne. I shall not in the least make any Comparisons, neither do I in that particular; I only speak of my own particular, in reference unto that God in whom I have believed, and in whom I enjoy Content, Peace, and Quietness of Mind; and yet for my part I shall rather die than willingly go any further, except I have counsel first.

Ld. Keble. Well, Mr. Lilburne, the Court is very tender not to take up any of your time; you have heard what was declared to you there, that Mr. Attorney hath made process against you returnable To-morrow at Seven o'Clock, and therefore to spend more Time will be but your Loss and Damage.

The Sheriffs of London are to take care to return the Jury to-morrow Morning, and therefore the court doth adjourn till Seven o'clock to-morrow in the Morning; and in the mean time they do commit the Prisoner at the Bar to the Lieutenant of the Tower again.

Lieut. Col. Lilburne. Sir, I did not hear you the first Words.

Ld. Keble. You shall not be denied to hear it again, the Court desires to be good Husbands of Time for you; we could have sat long enough to have trifled away your Time that you may spend in your Meditations, and take your Friends Advice; do not stand upon and destroy yourself by your Words.

Judge Jermin. Mr. Lilburne, all that are here are to take Notice of it, that the Prisoner at the Bar hath had more Favour already, than ever any Prisoner in England in the like case

case ever had; for by the laws of England, in the Matter of Treason, whereof you are indicted, you ought to have been try'd presently, immediately: But because all the World shall know with what Candour and Justice the court do proceed against you, you have till to-morrow Morning; which is the Court's extraordinary Favour, and the Doors are wide open, that all the World may know it.

Lieut. Col. Lilburne. Sir, I can shew one hundred Precedents to the

contrary in your own Books, to disprove what you say.

Ld. Keble. Adjourn the Court.

Lieut. Col. Lilburne. I humbly thank you for what Favour I have already received.

The Court adjourned till the next Morning, and the Prisoner remanded to the Tower.



Guild.



Guild-Hall, October 26, being Friday. At the Trial of Lieutenant-Colonel John Lilburne, the second Day.

THE Prisoner being brought to the Bar, spake as followeth: Sir, I pray hear me a Word or two.

Ld. Keble. Mr. Lilburne, I am afraid something troubles you, I will have no Body stand there*; let all come out but one Man.

[* That was in the Bar, where his Brother Col. Robert Lilburne, his Sollicitor Mr. Sprat, and other of his Friends stood.]

Lieut. Col. Lilburne. Here's none but my Brother and my Sollicitor.

Ld. Keble. Sir, your Brother shall not stand by you there; I will only have one to hold your Papers, and the rest not to trouble you; wherefore the rest are to come out.

Lieut. Col. Lilburne. I beg of you but one Word, though I do not know any Reason why of myself I should not have the Privilege of the Law, as well as any Man in England; yet besides what yesterday I alledged for myself, for to have Counsel assigned, yet To-day give me leave to mention an unquestionable Precedent for my purpose, and that is Major Rolfe, who

being an Officer in the Army, and being lately indicted for High Treason (before the Lord Chief Baron Wilde, that now is at Hampshire Assizes) for conspiring to poison and pistol the late King, which by Law was the highest of Treasons, did conceive himself, in regard of his Ignorance, unable to defend himself singly against his Enemies Design, which was to take away his Life; whereupon he becomes an humble Suitor to the Lord Chief Baron Wilde, that he might have Counsel assigned him; and the Court, before ever the Grand Jury received any Testimony against him to find the Bill, assigned him Counsel, who, as I understand were one Mr. Nichols, now a Judge of this Bench, and sitting there; and Mr. Maynard of the Temple; they were both assigned his Counsel, and from Mr. Maynard himself I have it, yea, from his own Mouth; who being assigned his Counsel, they came both into the Court, where the Grand Jury was called before the Judge.

Mr. Maynard, and Mr. Nichols, now a Judge here, had liberty there

to be in the open Court, where the Witnesses, before the Indictment was found, was called, and in open Court was sworn, and in open Court gave in their Evidence before the Grand Jury; Major Rolfe's Counsel being by in open Court, to hear all the Evidence that was given against Major Rolfe, who in his Indictment was indicted for two Matters of Fact; the first was, That he had declared that in such a Month, and at such a Place, he had an Intent to pistol the late King, which by the Letter of the Law of 25 Edw. 3. chap. 2. was Treason. Then there was another Charge, That such a Day he had so said or declared to poison him, in the presence of such a one; and they were both put into one Indictment.

Whereupon Mr. Maynard being assigned by the Lord Chief Baron Wilde, that now is, to be of Counsel for Rolfe in the same Case (but with abundance of more Advantage to him, than I am now in) Mr. Maynard was then of Counsel to the Prisoner, and had liberty to hear what the Witnesses swore against him, and to make his best Advantage of it, and that in open Court, before the Indictment was found by the Grand Inquest; and although there were two express Witnesses against him, yet but one of them swore to one thing, and another to another.

Mr. Maynard being one that knew the Law better than Major Rolfe did himself, he apply'd the two Statutes of Edw. VI. viz. the 1 Edw. 6. chap. 12. and 5 & 6 Edw. 6. chap. 11. to Rolfe's Case; which Statutes do expressly declare, That no Man ought to be convicted of Treason, but by two sufficient Witnesses upon plain and

clear Evidence to each Fact of Treason; which Evidence, as Sir Edward Coke says in the third Part of his Institutes, ought to be as clear as the Sun at Noon-day, and not upon one single Witness, and upon conjecture, Presumptions, or Inferences, or Strain of Wit.

Now, Sir, I am an Englishman as well as Major Rolfe, and I have been an Officer in the Parliament-Army as well as he, and fought for them as heartily as ever he did in his Life, and he was accused for the highest of English Treasons.

And therefore I humbly crave, that in regard there are many particular Errors in the Indictment, as to Matter, Time, and Place, that therefore in Reference to the Illegality of the Indictment, according to this Precedent by one of your own Fellow-Judges, that you would, according to my Birth-right declared in Major Rolfe's Case, assign me Counsel as he had, to help my Ignorance, that so I may not be destroyed by Surprizal, and illegal and unjust Prerogatives.

Ld. Keble. You see with what a great deal of Favour, instead of few Words, we have heard you many times this is a Privilege; but this that you say upon it, it may be it was done but that we do, shall be according to that you and we shall find to be according to the Laws of the Land, and our Conscience, and the Privilege of the Subject; that they did before the Grand Jury, and the Witnesses, the Witnesses are here sworn in Court in Presence of the Grand Jury, so far we go with them; that of Mr. Maynard and Mr. Justice Nichols being assigned Counsel, for what cause it was then they

they best know, it is nothing that doth now concern us, tho' the Treason was against those Laws that were then in being; we must come to Proof, it may be that he confessed his Fact; if you will do so too, it alters the Case.

Lieut. Col. Lilburne. No, Sir, he never confessed it, for if he had, he had been found guilty; but he was saved merely by the Skill and Honesty of his Counsel Mr. Maynard, and his Indictment nulled and evaded before ever the Grand Jury found it, and that upon this Point of Law, because by the two Statues of Edward VI. there ought to be two plain and clear Witnesses to every part of Treason; and though Rolfe was accused by two Witnesses, yet there were two Facts, and but one Witness to the Proof of each of them.

Ld. Keble. When you come to Trial, if we see there be need of Counsel, the Court will be instead of Counsel to you; nay the Court, if they see any Matter of Law for Counsel, though you do not ask it, they will give you it. And therefore set your Heart at rest, for if there be any thing rational in Law that we can spy out, as well as your Counsel, we will help you in it.

Lieut. Col. Lilburne. Sweet Sir, I crave but one Word more, I am upon my Life, and if you deny me what the Law affords me, and that which hath been granted to be Law by Cavalier Judges, yea, and by your Fellow-Judges, who are now in Power at this Day; the Lord deliver me from standing in need of you to be my Counsellors.

Ld. Keble. We are upon our lives too, as well as you.

Lieut. Col. Lilburne. No, by your Favour, not in so imminent a manner as I am.

Ld. Keble. We are upon our Lives and our Souls to all Eternity.

Lieut. Col. Lilburne. Sir, I beseech you hear me one word.

Ld. Keble. I will hear no more.

Mr. Prideaux. My Lord, I desire that the Court would proceed, and not prolong Time, seeing that he has pleaded Not guilty, and confessed something.

Lieut. Col. Lilburne. No, Sir, you do me wrong, and abuse me: I never confessed any thing, neither did I plead Not guilty; for my Plea was conditional, grounded upon your Promises, not to take any Advantage of my Ignorance in all your Formalities.

Ld. Keble. Go on; be silent, Mr. Lilburne.

Lieut. Col. Lilburne. If you take away my Life without affording me the Benefit of the law, my Blood be upon your Heads.

Lieut. Col. Lilburne. Pray hear me then.

Ld. Keble. Do you say that we do offer to take away your Life, Sir? If we do take it away contrary to Law, we are liable to answer for it; but we shall judge what you have done. [The Lieutenant-Colonel pressing to speak, was not suffered, but bid be silent.] Sir, I advise you, Sir, spare yourself with patience, and hear the Court.

Justice Jermin. Be quiet, Sir.

Lieut. Col. Lilburne. I beseech you, Sir, let me hear but the Grand Jury speak; for I understand from some of themselves, they never found me guilty of Treason, but do conceive themselves

selves wronged by some Words yesterday, that passed from some of the Judges: I pray let me hear them speak.

Cryer. The Jury called—[And Mr. Lilburne earnestly pressed to be heard, but could not.] Cryer. Miles Petty, William Wormwell.

Lieut. Col. Lilburne. Sir, I beseech you let me but see these Gentlemen's Faces.

Ld. Keble. You Master Sprat, you must not talk to the prisoner; you may stand and hold the Books; you did offend yesterday, but you shall not do to-day, for you shall not stand so near to talk to him.

Lieut. Col. Lilburne. My Lord, the law says a Stander-by may speak in the prisoner's behalf at the Bar, much more whisper to him; but especially if he be his Solicitor.

Cryer. John Sherman, Thomas Dainty, Ralph Ely, Edmund Keyver, Edward Perkins, Ralph Packman, Francis Woodall, William Commins, Henry Hanson, Roger Jenkinson, Josias Hammond, Richard Allen, Richard Nevill, John Mayo, Henry Jooley, Arthur Due, Roger Sears.

Clerk. You good Men of the City of London, appear. Stephen Ives, John Sherman, Ralph Ely, Roger Jenkinson, Josias Hamond, Richard Allen, Richard Nevill, Roger Sears, John Mayo, Nicholas Murren.

Clerk. You prisoner at these Bar, these good Men that are here presented before the Court, are to be of your Jury of Life and Death; if therefore you will challenge them, or any of them, you must challenge them before they go to be sworn, and then you shall be heard.

Cryer. Every Man that can inform

my Lords the Justices, and the Attorney-General of this Commonwealth, against Master John Lilburne, Prisoner at the Bar, of any Treason or Felony committed by him, let them come forth, and they shall be heard, for the Prisoner stands upon his Deliverance; and all others bound to give their Attendance here upon pain of Forfeiture of your recognizance, are to come in.

Lieut. Col. Lilburne. Sir, I beseech you that you will give me leave to speak.

Ld. Keble. You cannot be heard.

Lieut. Col. Lilburne. Truly, Sir, I must then make my protest against your unjust and bloody proceedings with me, before all this people; and desire them to take Notice, that yesterday I pleaded to my Bill conditionally, that no Advantage should be taken against me for my Ignorance in your Formalities, and you promised me you would not.

Ld. Keble. We give you too much time; you will speak Words that will undo you: Is this your reason? You shall talk in your legal time, and take your legal Exceptions; we will hear you till Midnight.

Lieut. Col. Lilburne. Then it will be too late, Sir.]

Judge Jermin. You have given a great Slander, and that doth not become a Man of your profession; you speak very black Words.

Lieut. Col. Lilburne. I beseech you, do but hear me one word; I do not know the Faces of two of the Men that were read unto me, I hope you will give me Time to consider of them.

Ld. Keble. No, Sir, you ought not to have it.

Lieut.

Lieut. Col. Lilburne. Will you let me have some Friends by me that are Citizens of London, that know them, to give me Information of their Qualities and Conditions? For without this, truly you may as well hang me without a trial, as to bring me here to a trial, and deny me all my legal Privileges to save myself by.

Ld. Keble. If you be your own Judge, you will judge so; go on.

[Mr. Sprat, or Col. Robert Lilburne, whispers to the Prisoner to challenge one of the Jury, which the Judge excepted against.]

Lieut. Col. Lilburne. Sir, by your Favour, any Man that is a By-stander may help the Prisoner, by the law of England.

Ld. Keble. It cannot be granted: And that Fellow come out there, with the Cap, pull him out.

Lieut. Col. Lilburne. You go not according to your own law in dealing thus with me.

Judge Jermin. Your words were never a Slander, nor never will be; hold your Peace.

Cryer, Go on.

Cryer. Stephen Blyth, look upon the Prisoner.

Abraham Seal, John King, Nicholas Murren, (Thomas Daniel) [the Prisoner excepted against him] Edward Perkins, Francis Peale.

Judge Jermin. Was he recorded and swore before that he spake, or no?

Cryer. No, my Lord.

Judge Jermin. Then let him continue, if he be right recorded.

Cryer. The Oath was not given quite out.

Judge Jermin. Then he hath challenged in time; let him have all the lawful Favour that may be afforded him by law.

William Comins sworn, Simon Weedon sworn.

Lieut. Col. Lilburne. He's an honest Man, and looks with an honest Face; let him go.

Henry Tooley sworn, Arthur Due excepted against.

Ld. Keble. Take away Mr. Due, let him stand a little by.

Henry Hanson put by, being sick; one that could not hear, excepted against; John Sherman, Ralph Head, Roger Jenkinson, Josias Hamond, Richard Allen, John Mayo, Roger Sears, Henry Hanson excepted against, Edmon Keyzer sworn.

The Jury called.

Clerk. Twelve good Men and true, stand together, and hear your Evidence.

Judge Jermin. Cryer of the Court, let the Jury stand six of one side, and six of the other.

- Clerk.
1. Miles Petty.
 2. Stephen Ives,
 3. John King,
 4. Nicholas Murren,
 5. Thomas Dainty,
 6. Edmund Keyzer,
 7. Edward Perkins,
 8. Ralph Packman,
 9. William Comins,
 10. Simon Weedon,
 11. Henry Tooley,
 12. Abraham Smith.

Of the Jury, six live about Smithfield, one in Gosling-street, two in

Cheapside,

Cheapside, two in Bread-street, and one in Friday-street.

Judge Jermin. It's well done.

Cryer. The Lords the Justices do straitly charge and command all manner of Persons to keep Silence, while the Prisoner is in trial.

Mr. Broughton. John Lilburne, hold up thy hand.

Lieut. Col. Lilburne. As I did yesterday, I acknowledge myself to be John Lilburne, Freeman of London, Son to Mr. Richard Lilburne, of the County of Durham, and some time Lieutenant-Colonel in the Parliament Army.

Judge Jermin. You refuse to hold up your hand; and though you break the Law of England, the Court will not break it.

Lieut. Col. Lilburne. I do what the Court declares is my Right and Duty to do; I do no more than declare my Name to be so as it is.

Ld. Keble. Read the Indictment.

Mr. Broughton reads. Hold up thy hand, John Lilburne; Thou standest here indicted of High Treason by the Name of John Lilburne, late of London, Gentleman, for that thou, as a false Traitor, not having the Fear of God before thine Eyes, but being stirred and moved up by the Instigation of the Devil, didst endeavour not only to disturb the Peace and Tranquillity of this Nation, but also the Government thereof to subvert, now established without King or House of Lords, in the way of a Commonwealth, and a Free-state, and happily established; and the Commons in Parliament assembled, being the Supreme Authority of this Nation of England, to disgrace, and into hatred, base esteem, infamy, and scandal, with all

the good, true and honest Persons of England. That is to say, that the said John Lilburne, on the first Day of October, in the Year of our Lord 1649, and in divers other Days and Times, both before and after, the Parish of Mary the Arches, in the Ward of Cheap, London, aforesaid, with thy wicked and devilish Mind and Imagination, falsely, maliciously, advisedly and traitorously, as a false Traitor, by writing and imprinting, and openly declaring, that is to say, by certain scandalous, poisonous and traitorous Writing in Paper, entitled, An Impeachment of High Treason against Oliver Cromwell, and his Son-in-law Henry Ireton, late Members of the late forcibly dissolved House of Commons; presented to publick View by Lieutenant-Colonel John Lilburne, close Prisoner in the Tower of London, for his real, true and zealous Affection to the Liberties of this Nation: And by another scandalous, poisonous and traitorous Book, imprinted and intitled, An Outcry of the Young Men and Apprentices of London, on an Inquisition after the lost fundamental Laws and Liberties of England directed Aug. 29, 1649, in an Epistle to the private Soldiers of the Army especially all those that signed the solemn Engagement at Newmarket Heath, the fifth of June, 1647; but more especially the private Soldiers of the General's Regiment of Horse, that helped to plunder and destroy the honest and true-hearted Englishmen traitorously defeated at Burford, the 15th of May, 1649.

And also by another scandalous poisonous, and traitorous Book, entitled, The legal fundamental Liberties of the People of England, revived and asserted.

asserted and vindicated; didst publish that the Government aforesaid is tyrannical, usurped and unlawful; and that the Commons assembled in Parliament are not the Supreme Authority of this Nation.

And further, that thou the said John Lilburne, as a false Traitor, God before thine Eyes not having, but being moved and led by the Instigation of the Devil, endeavouring and maliciously intending to subvert the Government aforesaid, as is aforesaid, well and happily established; thou the said John Lilburne, afterwards (that is to say) the aforesaid first Day of October, in the Year of our Lord 1649, aforesaid, and divers other Days and Times, as well before as after, at London aforesaid, that is to say, in the Parish and Ward aforesaid, at London aforesaid, maliciously, advisedly and traitorously didst plot, contrive and endeavour to stir up, and to raise Force against the aforesaid Government, and for the Subverting and Alteration of the said Government, and those wicked, malicious and traitorous Adviselements to put in execution, &c.

And thou the said Lilburne afterwards, that is to say, the aforesaid first Day of October, in the Year 1649, and divers other Days and Times at London, that is to say, in the Parish and Ward aforesaid, of thy depraved Mind, and most wicked Imagination, in and by the said scandalous, poisonous Book, intituled, An Impeachment of High-Treason against Oliver Cromwell, and his Son-in-law Henry Ireton, Esqs; late Members of the late forcibly dissolved House of Commons; presented to publick view by lieutenant-colonel John Lilburne, close Pri-

soner in the Tower of London, for his real, true, and zealous Affection to the liberties of his native Country; among other Things in the said Book, are these scandalous and malicious Words: But my true Friends (meaning the Friends of the said Lilburne) I (meaning the said Lilburne) shall here take upon the boldness, considering the Distractions of the Times, to give a little Advice to our Friends, from whose Company and Society, hath been begun and issued the most just Things, for the People's liberties and freedom, that the said Lilburne hath seen in this Nation.

To this Indictment the Prisoner hath pleaded not guilty, and hath put himself upon his Country; and if we can prove this against his Plea, it is at an Issue.

Lieut. Col. Lilburne. I deny that, Sir, I never pleaded any such single Plea as not guilty; and you, Gentlemen of the Jury, I beseech you take notice he extremely wrongs me in saying so; for my Plea was a conditional Plea, and has a Plea at large.

Mr. Attorney. My Lord, and you Gentlemen of the Jury, you have heard the Indictment read unto you, and you have heard it opened unto you; and you have heard what Mr. Lilburne says, That he did not plead not guilty; and I hope he is ashamed of his Plea now he hears the Indictment opened unto him.

My Lord, in this Indictment there are contained these several Grand Treasons.

The first is, That he hath advisedly, traitorously and maliciously published, That the Government that is now established, by way of a free State or
Common-

Commonwealth, without either King or House of Lords, is tyrannical, usurped and unlawful. And also, That the present Parliament now assembled, are not the Supreme Authority of the Nation.

The second is, That he hath plotted, contrived and endeavoured to stir up, and raise Forces against the present Government, and for subversion of the same.

The third is this that relates to the Army; you have heard, that he, not being an Officer, or Soldier, or Member of the present Army, hath offered to stir up Mutiny in the Army, and to withdraw the Soldiers from their Obedience and Subjection to their superior Officers, and thereby to stir them to stir up to Mutiny and Discontent.

These are the main Parts and Substance of what I intend to charge him with in the Evidence, to prove that which was contained in the Indictment.

My Lord, you have heard, in what hath been read out of the Indictment, what Expressions they are; those that are traitorous to the Publick, and have been so declared, so judged, so executed: The Parliament, the Government, the Authority of both Parliament and Army, they are Tyrants, Usurpers, Mercenaries, Janisaries, Murderers, Traitors, standing by their own Power and Swords, and overruling all by their Wills: These are the Expressions that he hath mostly used.

My Lords, I shall not trouble you with any thing of Aggravation; for, my Lord, I do conceive, that the reading of the Books themselves aggravates every thing against him; and

I think there is no Englishman (as Mr. Lilburne so often styles himself to be) will own such Words as these are.

And, my Lord, if I had read the Books, and not known the Person I should not have thought he had been either a Christian, a Gentleman, or a civil Man, to have given such base and bitter Language; but, my Lords and you of the Jury, I shall hold you no longer, the Evidence being so plain and the Matter so foul, that it will not admit over-much, or stand in need of any Dispute; and to make it plain to your Judgments and Consciences, we have Witnesses in the Court that will prove every thing that will stand in need to be proved for the Indictment.

My Lords, the Words are maliciously, advisedly and traitorously: I shall not catch at Words, but, as himself says, what he prints is of mature and deliberate Consideration; and such are his Books in print, that himself hath either printed, or caused to be published.

The first that he is charged withal, is that which is called An Outcry: It hath a dangerous Title, and in the Direction, especially to the Soldiers of the Army; but especially to the private Soldiers of the General's Regiment of Horse.

My Lords, It hath not only a dangerous Title, but was published at a dangerous Time, yea, and for a dangerous End, which was to stir up the great Mutiny that was in the City of Oxford.

My Lord, for the Proof of this we shall offer this, That Mr. Lilburne himself was Captain Jones's Associate in the publishing that Book:

For

For Mr. Lilburne and this Captain Jones brought this Book to the Prefs to be printed.

We shall offer unto you where he hath published it to Soldiers of the Army, to engage them in a Mutiny and Discontent against their superior Officers. Therefore in the first place call Thomas Newcombe.

Thomas Newcombe sworn.

Judge Jermin. Before you speak look upon the Prisoner first, whether you know him, or not.

Mr. Attorney. My Lord, if you please, he may take the Book in his Hand, and see whether he printed it, and when he printed it, and who brought it to the Prefs.

Mr. Newcombe. I printed of this Book only the last Sheet, not knowing where the former part of it was done; which Book was brought to me by Lieutenant-Colonel Lilburne and Capt. Jones, which Capt. Jones did agree with me in the Price: I was stopped in the Proceedings in it. I say, that Capt. Jones, together with Lieutenant-Colonel Lilburne, did bring it to me, and that Capt. Jones did agree with me in the Price; but I was taken before I did perfect it: But Capt. Jones did indent with me for the Price. But this I must say, Lieutenant-Colonel Lilburne came along with the Copy; and afterwards at Night he came again, and had a Proof of it; and that he was present when it was corrected.

Mr. Attorney. And when the first Sheet was printed, then they came at Night again, and examined the Proof with Captain Jones and his Corrector.

Ld. Keble. And he brought the copy of the whole Draught of the Book unto you?

Lieut. Col. Lilburne. Sir, by your Favour, if Mr. Prideaux have done with the Witness, I crave my Right by Law to ask him some Questions. In the first place, I desire he may be asked, Whether I was either Reader of the original Copy, or the Overlooker of the printed Proof?

Mr. Newcombe. You had a printed Sheet of it, and that was all.

Lieut. Col. Lilburne. I desire to know whether I was the Reader of that he printed, or the Looker upon the written Copy?

Mr. Newcombe. You looked upon the Sheet that was printed, Capt. Jones read the Manuscript.

Lieut. Col. Lilburne. Ask him the Question thus, whether was I the Corrector of the Thing printed, or the Looker-on upon the printed Copy? And whether or no, he can swear, that that printed Sheet, that he says I had, was corrected and revised, and was a true and perfect Sheet, according to the Original?

Mr. Newcombe. It was a Copy of the Sheet before it was corrected or revised.

Mr. Attorney. And Mr. Jones did read the Original, and Lieutenant-Colonel Lilburne corrected the copy.

Lieut. Col. Lilburne. Under favour, you are mistaken: He says, that I cast my Eye upon the Copy, but doth in the least say that I corrected it. And therefore, Sir, you do abuse me, in going about to make him say more than his own Conscience tells him is Truth.

Ld. Keble. While the Examination was, he saith you read the Proof.

Lieut. Col. Lilburne. Sir, he says no such Thing, by your Favour.

Ld. Keble. Mr. Newcombe, was not Mr. Lilburne there the second time at Night, and did he look upon the Copy?

Mr. Newcombe. That he did, my Lord: But, my Lord, I shall tell you the Manner of our Trade in this particular: The manner is, that after we have set a Form of the letter, we make a Proof of it, which Proof we have a Corrector does read: My Corrector he had one, being he corrected it, and Capt. Jones looked upon the Manuscript; and Lieutenant-Colonel Lilburne had a Copy of the same Sheet uncorrected; but he did not correct it, nor read to the Corrector. There was two pulled off; the Corrector had one, and Mr. Lilburne had the other; and Capt. Jones looked upon the Manuscript, and read it to the Corrector.

Lieut. Col. Lilburne. He has declared unto you, that he was taken printing the Thing before it was perfected: I desire to know whether I was at his House to give any further Directions at all after it was taken?

Mr. Attorney. That's no Thanks neither to you nor him.

Lieut. Col. Lilburne. I pray let him answer the Thing: Let me have fair Play above board. Sir, I beseech you let me hold him close to the Question. He says he was taken before the Sheet was perfected: Truly I think they are his very words.

Mr. Newcombe. I said in my Examination that it was a Proof of that printed which you had.

Lieut. Col. Lilburne. I desire again to know this of him, whether before he had printed or perfected that Sheet

he had doing, he was not taken, and both the Forms?

Ld. Keble. Mr. Lilburne, you must desire us to ask him the Question and not you to demand it of yourself.

Lieut. Col. Lilburne. I shall, Sir.

Mr. Newcombe. It was before the Forms were taken.

Lieut. Col. Lilburne. I ask you whether before the Things were completed and perfect, your Forms were not both taken, and your Person seized upon.

Mr. Newcombe. There were only some few Copies printed, and then I was seized upon, and the Forms taken away before I had perfected the Sheet. But this I say, he did not indent with me about the Price; neither had I the copy from Mr. Lilburne's Hands, but from Capt. Jones's hands.

Judge Jermin. You say, that he had one Proof, and Jones another: When was this you speak of: Give us the Time as near as you can.

Newcombe. I cannot justly say the Time; but, as I remember, it was about seven or eight Weeks since.

Mr. Attorney. Stand you aside and call John Tooke, John Skinner, Thomas Lewis, John Hawkins, and John Merriman, Witnesses sworn.

Mr. Attorney. John Tooke, do you declare now your Knowledge. That which I call him for, is to this purpose that Mr. Tooke being a Soldier of the Army, one of them mentioned in the Indictment, Mr. Lilburne delivered him one of the Outcries, on purpose to draw him from his Obedience to his Officers.

Ld. Keble. Shew him the Book.

Tooke. I have seen the Book ; but I had not the Book in my Hand before.

Mr. Attorney. Tell what you know, that's all we ask you.

Tooke. About seven Weeks ago, being at Dinner with Thomas Lewis and John Smith, all Soldiers, after Dinner we met with lieut. col. Lilburne in Ivy-lane ; and Thomas Lewis knowing of him, took Acquaintance of him.

Judge Jermin. All Soldiers under my lord General Fairfax ?

Tooke. Yes, Sir.

Judge Jermin. Go on.

Tooke. Mr. Lilburne asked me to go and drink a Cup of Beer : We did so. And so when we went in, he asked whether we had seen such a Book as the Apprentices Outcry ? And Mr. Lewis answered, that he had seen it in a Man's hand. Then lieut. col. Lilburne said, he had one in his pocket, that was given him ; and if he pleased to accept of it, he would give it him. So told him he had thought to buy one of them, for he heard they were sold in the City ; but he would accept of his. So Mr. Lilburne delivered it to Lewis.

Mr. Attorney. What did Master Lilburne say else unto you.

Tooke. He said, that you Soldiers keep us all in Slavery.

Lieut. Col. Lilburne. I beseech you let me ask him one Question.

Tooke. There was some to be sold ; but I forgot the Place.

Mr. Att. Did he name a Place and Person to you, where you might have some of them ?

Tooke. He did name a Place, but I have forgot it.

Lieut. Col. Lilburne. Sir, I beseech

you let me ask you one Question —

Ld. Keble. Mr. Lilburne, for your Direction, you must make your Question to us, and require us to ask him the Question ; and then if your Question be fair, it shall not be denied you —

Lieut. Col. Lilburne. Then thus : Whatsoever this Gentleman says of meeting him in Ivy-lane, and desiring him to drink with me, yet I desire you to ask him whether I did take Notice or cognizance of any of them first ? Or whether they did speak to me before, before ever I said any thing to them ?

Ld. Keble. To what end do you ask this ?

Lieut. col. Lilburne. Because in your Indictment I am charged that I went among the Soldiers to seduce them from their Obedience to their Officers ; when I have made it my Endeavour to shun them as much as I can, and not to come nigh the Place where I know they are, if I can avoid it ; no, although I meet with them, unless they begin first.

Ld. Keble. I tell you this, which may direct you afterwards : Whosoever began to discourse first, if you did give them the Book afterwards, it is all one.

Lieut. col. Lilburne. But, shall please you, I am upon my life ; and by law I ought not to be denied to ask the witnesses that swear against me any Question that I please, that I myself judge pertinent for my Advantage.

Mr. Attorney. Call Thomas Lewis.

Thomas Lewis. And it shall please you, I am upon my Oath to speak the Truth ; and I shall desire by the help of God so to do, and no more. One Day, which I conceive, to my Remem-

Remembrance, was the 6th Day of September last, we being upon a Guard at Paul's, went to an Houſe to refresh ourſelves; and when I came forth I met with lieutenant-colonel John Lilburne, whom I had formerly known, and ſometimes viſited in his Imprifonment, and whom I was very glad to ſee, having a little before heard, as though ſome ſudden Accident or Miſchance had befallen him; and I did ask of him how he did.

He ſaid unto me he was well: And ſo with that, ſays he, what are you upon the Guard? To my beſt Remembrance this was his Expreſſion; yet ſee whether it was he, or another that ſaid it.

As I take it, theſe were his Words: Says he, I have almoſt forgotten you.

Sir, I was known to you formerly, having ſometimes been with you in the Tower.

Says he, Will you go drink? If you pleaſe, we will: And ſo upon that went to a Place called the Red-Croſs in Newgate-Market. And there we ſitting down to drink, having not much Diſcourſe for the preſent, we ſitting ſtill, he asked me at length, Have you heard of a Book called the Outcry of the Apprentices?

Sir, ſaid I, I have heard of it, and have a longing Deſire and Mind for to buy one of them to read it; and my Reaſon why I ſo ſaid was, becauſe I did underſtand it was to be ſold at the Exchange; there I intended to go to get one of them.

Says he, I had one given to me; and if you will, I will give it unto you.

So I received the Book with Thankfulneſs; and further expreſſing, which

was ſomething mean, it would ſave me a Penny in buying of it.

And I further entreated him, if he could direct me where I might buy ſome more of them.

I have a Friend, ſays he, in ſuch Place; if you would go to him, and tell him that I am here, I ſhould thin myſelf beholden to you.

Now the Place's Name was Martin's lane, but the Man's Name, whither went, I have forgot, and the Man too I never heard of the Man before no ſince; ſo I told Mr. Lilburne.

Now he ſaid to me, Peradventure where you find that Man, you may have ſome more of the Books.

Now theſe were the Words, to my beſt Remembrance and Knowledge as I deſire to ſpeak with a pure Conſcience.

Mr. Attorney. Mr. Lilburne gave you one of thoſe Books?

Lewis. Yes, Sir; and I put it into my Pocket, and when I had done Mr. — he will deliver him —

Whether there was any Books or Paſſages betwixt them? And upon which he told him, Yes; there is a Book that Mr. Lewis has, that has ſuch a Title.

Mr. Attorney. What did you with the Book?

Lewis. I delivered it to the lieutenant.

Mr. Attorney. The ſame Book that you received from Mr. Lilburne, you delivered to the lieutenant.

Mr. Attorney. What did lieutenant-colonel Lilburne ſay to you concerning your Pay? Did he not ask you, &c.

Lieut.

Lieut. Col. Lilburne. I pray, Sir, do not direct him what to say, but leave him to his own Conscience and Memory, and make him not for fear to wear more than his own Conscience truly tells him is true.

Lewis. The Discourse was thus: says he, you Soldiers (to my best Remembrance) are the Men that keep us all in Slavery. Now what to conceive of that Expression, I must leave that unto you. And as concerning our Pay, he asked us, How is your Pay? These were the Words, or to that Effect. But there was Money come for us, and ready to be delivered out unto us.

Mr. Attorney. Call John Skinner: He was one of those that was in company, and can speak to it.

Skinner. To my best Remembrance, and it shall please you, 'twas the Beginning of September, I cannot say what Day, that I met with Mr. Lilburne in Ivy-lane, near unto Paul's; and meeting with him, I was going towards the Guard, and so was Mr. Lewis with me, being walking forth of the lane, having been refreshing ourselves.

And near the End of the lane we met lieutenant-Colonel Lilburne, which lieutenant-colonel Mr. Lewis very well knew; and knowing of him, asked him how he did, and how it went with him, in regard he had heard before he was in Prison; and so I did not take any heed what he had said further.

Neither do I know whether Mr. Lewis asked Mr. Lilburne to go with him to drink, or Mr. Lilburne asked him; but to the Red-Cross in Newgate-Market we went to drink.

And Mr. Lilburne did ask Mr. Lewis, whether or no he had seen the

Book which was called the Apprentices Outcry.

Mr. Lewis answered him, That he had not seen the Book, (as I remember) but he had heard of that Book that it was forth, and he did intend to buy one of them, in regard they were publickly sold abroad.

Says Mr. Lilburne, I have such a Book in my Pocket, which was given me even now; and I will give it you, if you will.

Lieut. Col. Lilburne. I pray let me hear two or three lines before.

Skinner. Whereupon you answered and said, I have the Book in my Pocket, and it was given me, and I will give it you. And Mr. Lewis received it; and that was all. And presently I went away.

Mr. Prideaux. You hear, Gentlemen of the Jury, that it is the same Book that he received from the Hands of lieutenant-colonel John Lilburne.

Lieut. Col. Lilburne. My lord, I beseech you hear me before the Witnesses go: And he that was sworn before, I desire to ask him this Question, Whether or no that this is the very Book that is mentioned in the Indictment? And whether or no they have examined the Words of it with the Indictment?

Mr. Prideaux. You need not; that shall be proved presently. Mr. Skinner, That Book which Mr. Lilburne gave you, what did you with it?

Skinner. It was delivered unto my lieutenant, who stands there.

Lieut. It was delivered unto my Captain upon the Guard.

Capt. Merryman took the Book into his Hand, and said, This individual Book, signed in several Places by me, I delivered to Mr. Frost, Secretary to

the Council of State; and Mr. Frost caused me to sign it in several Places, whereby it could not be mistaken; and that is the very individual Book.

Mr. Prideaux. My lords, and you Gentlemen of the Jury, we have thus far gone in the Evidence, That Mr. Lilburne brought the last Sheet of it to the Press; the first Time he came with Capt. Jones; and he came the second Time with him to examine it, that is, he had a printed copy, that was then printing, to be printed, and was the corrector for the Press, reading to the Original Copy: So far is he privy to the printing of the Book.

In the next Place, three Witnesses (Soldiers of the Army) swear he gave them one of those Books, and one of them gave it to his lieutenant, and the lieutenant to the captain; and the captain swears this individual Book is that which master Lilburne gave into the hands of mr. Lewis.

What can be more plain than this? I pray you judge.

For here is plain Testimony of Mr. Lilburne's delivering this Outcry to the three Soldiers, and one of them to his lieutenant, and his lieutenant to his captain, and his captain to mr. Frost, with marks upon this: So this is by consequence proved unto you, this is the individual Book that Mr. Lilburne, Prisoner at the Bar, gave to the three Soldiers; and which is to be made use of when you have occasion upon the Evidence, to read it as now it is in the Court with you.

Lieut. Col. Lilburne. By your Favour, I have had no Answer to the Question, that I humbly craved an Answer to; which is, Whether the Soldiers are positively able to swear that this is the individual Book, which

they say they had from my Hands And whether they are able to swear that this individual Book is a true and exact Copy, without Addition or Subscription, of that original manuscript that the Printer saith Captain Jones delivered to his Hands, which, he saith I had an uncorrected Sheet of.

Mr. Prideaux. We shall clear that to you when we come to make use of it.

Lieut. Col. Lilburne. I beseech you, Gentlemen of the Jury, to take notice of my Question and what I answered.

Mr. Prideaux. The next Thing that is charged upon him, is a Paper written and entitled, *A salva & libertate*.

My lord, I shall open the Thing to you, being directed (my lord) for the Prosecution of mr. Lilburne. And having Things of very high concernment that are charged against him, he did by word of mouth send to have him come to me; which I understood he did decline, because the lieutenant had no Warrant.

The lieutenant of the Tower was pleased to acquaint me with it; and I thereupon directed my Warrant to the lieutenant to bring him before me. And mr. Lilburne, &c.

Lieut. Col. Lilburne. My * lord, and please your Honours, thus; if we be upon matter of fact, let us come to it: let us have no introduction to teach the Witnesses what to say, beyond what their own Consciences dictate unto them.

* This was the first or second Time that mr. Lilburne's Tongue slipped the calling him lord.

Mr. Prideaux. I shall go no further in it; let the lieutenant of the Tower speak himself.

The lieutenant of the Tower sworn.

Mr. Prideaux. Lieutenant of the Tower, you are questioned about the *Salva libertate* that Mr. Lilburne delivered unto you: Have you the Original?

Lieut. Tower. Yes, Sir, I have.

Mr. Prideaux. How came you by it?

Lieut. Tower. I shall be short in what I say, because I will not trouble the Court.

Lieut. Col. Lilburne. Let me hear you then.

Lieut. Tower. Being abroad, there was a message left with my Servants, that I should bring up lieutenant-colonel Lilburne to Mr. Attorney's Chamber in the Temple; and when I came in, I had notice of it.

I did then send to lieutenant-colonel Lilburne, to let him know what command I had received from the Attorney-General, the next Day to carry up lieutenant-colonel Lilburne to the Attorney-General's Chambers.

But lieutenant-colonel Lilburne not well understanding whether I had a written Warrant, or no; but before he came at home, he recalled himself, and came back, and desired the sight of my Warrant.

I told you before I had no Warrant, but by word of mouth.

Why, says he, do you think I will go upon a verbal Warrant? Saith he, will not go unless that you force me.

But the next Day Mr. Attorney-General was acquainted that he refused

to come without a Warrant.

When the Warrant was made, I met with lieutenant-colonel Lilburne about Ten o'Clock in the Tower, who intreated me to let him see it.

I shewed it to him, he read it, he desired a Copy of it, takes it, which when he had, he went from me, and about two Hours after he came to me, about One o'Clock, and said, I pray receive this from me, for (says he) I do intend not to own the Authority and Power of that Gentleman that sent me the Warrant.

Whereupon I told him I would shew this same to the Attorney-General.

Why, says he, I give you it to that Purpose.

When the time came, lieutenant-colonel Lilburne did go along with me in an orderly civil way; I had no body but my man, for I told him, I will take no body but my man, if you will engage yourself to me that you will return peaceably; which he did, and so we went very orderly to Mr. Attorney's Chamber; which is all that I can say.

Mr. Attorney. If you please that the lieutenant may upon his Oath declare, whether that be the true Original he had from Mr. Lilburne's own Hands or no?

Lieut. Tower. It was never out of my Custody since he gave it me.

Ld. Keble. Mr. Lilburne, you do acknowledge it to be your own Hand-writing; shew it him.

Lieut. Col. Lilburne. I am too old with such simple Gins to be caught; I will cast mine Eyes upon none of your Papers, neither shall I shall answer to any Questions that concern myself: I have learned more law out of

of the Petition of Right, and Christ pleading before Pilate, than so.

Mr. Attorney. Would you had learnt more Gospel.

Judge Jermin. You may answer a Question whether it be true or false, and confess and glorify God.

Lieut. Col. Lilburne. I have said, Sir, prove it: I am not to be caught with such fooleries.

Ld. Keble. You see the man, and the quality of the man; this is the Paper that he delivered into his own Hand, and that is sufficient, as well as if it had been of his own Hand-writing.

Lieut. Col. Lilburne. Good Sir, your Verbal Bench law is far short of your written Text in your own law Books.

Judge Jermin. Put it into the Court.

Ld. Keble. Your writing or not writing is nothing; you delivered the Book.

Lieut. Col. Lilburne. Sir, I desire to know in what Place, whereabouts in the Tower of london the lieutenant of the Tower saith that he did receive this Paper.

Ld. Keble. He must name the Place where it was delivered.

Lieut. Tower. The Place was at the Steps, at the Bottom of the narrow Passage at my Garden-end, in the Cart-way where the Carriages come up.

Lieut. Col. Lilburne. Whether is that Place in the liberties of london, or is it part of the County of middlesex?

Lieut. Tower. The Tower is in * london, some part of it, and some part in middlesex; but unto which Place that part of the Tower belongs I am not able certainly to say, but it hath commonly been reputed in middlesex.

* But it is sure that Place is in middlesex, as was resolved in Sir Thomas Overbury's Case. See Coke's 3d part Inst. fol. 130.

Mr. Attorney. my lord, you may see the Valiantness of this Champion for the People's liberties, that will not own his Hand; although I must desire you Gentlemen of the Jury to observe, that he implicitly doth confess it.

Lieut. Col. Lilburne. Sir, I deny nothing; and what now can be proved to be mine, I have a life to lay down for the justification of it, but prove it first.

Mr. Attorney. my lord, the next thing to prove the Charge against him is a very high one; it is stiled master Lilburne's, and his Name is to it; it is intitled, An Impeachment of High Treason against Oliver Cromwell, and his Son-in-law Henry Ireton, Esq; late members of the forcibly dissolved House of Commons, presented to public View by lieutenant-colonel John Lilburne, close Prisoner in the Tower of london.

My lord, I doubt he will not own it; but yet, my lord, he may be asked the Question.

Lieut. Col. Lilburne. I shall deny nothing I do: And yet I have read the Petition of Right, Sir, that teacheth me to answer to no Questions against or concerning myself, and I have read

of the same to be practised by Christ and his Apostles.

Mr. Attorney. You will not own it, the Book you have read?

Lieut. Col. Lilburne. You may make your Advantage of it.

Mr. Attorney. We shall prove it. Call your Witnesses.

Thomas Daffern, Richard Lander Marshal, Major Hawksworth, Governor of Warwick Castle; all sworn.

Mr. Attorney. Mr. Daffern, if you please he may be asked where he met Mr. Lilburne, the Time when, what Book was given him, and to what Purpose it was given him.

Mr. Daffern. Why, it was upon the 24th of August last. Having been in Southwark, I met with Lieut. Col. Lilburne upon the Bridge, I went back with him to his House at Winchester-house in Southwark: He had Leave to visit his Family at that time, being very sick, and I told him I was going into Warwickshire the next Day; and he having heard that Col. Ayres was then removed from Oxford to Warwick Castle, he gave me a Book to carry to him, and I delivered it to him at Warwick Castle.

Mr. Attorney. The Book that he gave you, you gave to the Governor; did you see any more of them?

Mr. Daffern. I never saw any of them but that, which was both the first and the last I have seen of them.

Mr. Attorney. Major Hawksworth, what did you do with the Book?

Major Hawksworth. I sent it to Colonel Purefoy, in a Paper sealed with three or four Seals.

Mr. Attorney. Call Col. Purefoy.

Col. Purefoy sworn.

Lieut. Col. Lilburne. I hear not one Word: Under Favour but one Word, I crave but one Word, I have an Exception.

First, Col. Purefoy is one of those that call themselves the Keepers of the Liberties of England; and for committing Crimes against them I am indicted, and he is one of them, and therefore a Party, and in that respect in law he can be no Witness against me. It would have been very hard for the King to have been a Witness against that Man that was indicted for committing Crimes against him; such a thing in all his Reign was never known.

Col. Purefoy. I received this Book, sealed in a Letter, from the Governor of Warwick Castle, Major Hawksworth; I know his Hand, and I know the Day he sent me this very individual Book, and my Hand is at it, and the Governor who sent it up to me, which I declare to be the very individual Book that I received from him.

Mr. Attorney. Mr. Lilburne, you are mistaken; Col. Purefoy is a Member of Parliament, he is none of the Keepers of the Liberties of England. But why will you put us to all this trouble to prove your Books, seeing your Hand is to them? My lord, I had thought the great Champion of England would not be ashamed to own his own Hand.

Lieut. Col. Lilburne. I have answered once for all; I am upon Christ's Terms, when Pilate asked him whether he was the Son of God, and adjured him to tell him whether he was or no; he reply'd, Thou say'st it; so

Author of it, save only the Errata's of the Printer.

Lieut. Col. Lilburne. The last Clause, I beseech you, Sir; the Jury desires to hear the last Clause.

Nutleigh. My Lord, he said he was the Author of that Book, the Errata's of the Printer excepted.

Lieut. Col. Lilburne. Let him be asked this Question, Whether in that Expression, saving the Errata's of the Printer, there did not follow these Words, which are many? I desire to know whether there were not such Words or no?

Mr. Radney. I was present, my Lord, when the Prisoner at the Bar presented this Book to Mr. Attorney, and owned it, saving the Errata's of the Printer.

Lieut. Col. Lilburne. Were there no more Words?

Radney. Not to my Remembrance. [And so said they both.]

Lieut. Tower. My Lord, I was present at the same time, when Lieut. Col. Lilburne did present a Book to Master Attorney-General, with such a Title as this: And truly if I be not much mistaken, there was used by him these Words, which are many. Thus it was in the whole; says he, Here is a Book which is mine, which I will own, the Errata's or Errors of the Printer excepted, which are many; and if I mistake not very much, those are the very Words master Lilburne said.

Mr. Attorney. My Lords, and you Gentlemen of the Jury, you see that here are three Witnesses, and they do all agree in this, that master Lilburne, the Prisoner at the Bar, did deliver this Book to me, owning it as his own, the Errors or Errata's of the Printer

only excepted. And as for that Clause, which are many, only the Lieutenant of the Tower swears to that singly; and therefore I desire it may remain in Court, as that individual Book that they saw master Lilburne give me.

But, my Lord, there is another Book in the Indictment, intitled, *The legal fundamental Liberty of the People of England revived and asserted*; or, *An Epistle written the 8th of June 1649*, by Lieutenant-Colonel John Lilburne, to Mr. William Lenthall, Speaker to the Remainder of those few Knights, Citizens and Burgessees, that Colonel Thomas Pride at his late Purge thought convenient to leave sitting at Westminster.

My Lords, for this Book it owns master Lilburne, if he will own it, it hath its Name to it: But I have my lesson from him; my Lord, he will own nothing, he will publish enough, but, my lord, he will not own it when he comes to be questioned for it; that is not the true Principle of a true Christian, nor an Englishman, nor a Gentleman.

Lieut. Col. Lilburne. I deny nothing, by your Favour.

My Attorney. And confess as little. My Lord, for this you have two Books in proof before you; *The Preparative to the Hue and Cry*, and *the Salva Libertate* owns these very individual Books; for the *Preparative to the Hue and Cry*, in the marginal Note at the second Page, owns and avows this Book, called, *The legal fundamental, &c.* to be master Lilburne's. And master Lilburne himself did own the *Preparative to the Hue and Cry* before three Witnesses to be his; and therefore the *Salva Libertate*, Mr. Lieutenant of the Tower hath sworn that he received it from

from his own Hands. My lords, as for this Book the *Salva*, which he does not acknowledge, we shall read the Words in the Indictment, although it had been as ingenious for master Lilburne to have confessed it, as for us to have proved it; and for the Proof of it, read the Title.

Clerk. The Title read: A Preparative to an Hue and Cry after Sir Arthur Haslerig, a late Member of the forcibly dissolved House of Commons; and now the present wicked, bloody and tyrannical Governor of Newcastle upon Tyne.

Mr. Prideaux. Read the marginal Note in Page 2.

Clerk. Page 2. in the margin. That those men that now sit at Westminster are no Parliament, either upon the Principles of Law or Reason; see my Argument and Reasons therefore, in my second Edition of my Book of the 8th of June, 1649, entitled, *The legal fundamental Liberties of the People of England revived and asserted*, p. 48, 49 to 63.

Mr. Attorney. This Book hath Mr. Lilburne's Name to it, and here in this his Hue and Cry he owns it, and the third Page in the margin hath it again.

Clerk. Page 3. Peruse carefully, I intreat you, the Quotations in the 6th and 8th Pages of my fore-mentioned Impeachment of High Treason against Cromwell; as also of the 12th and 15th and 18th Pages of the second Edition of my fore-mentioned Book, dated the 8th of June, 1649, intitled, *The legal fundamental Liberties, &c.*

Mr. Attorney. Read the fourth in the Body of the Book.

Clerk. Page 4. At which Trial, by Strength of Arguments, I forced the

Judges openly to confess, that General were nothing in Law; see also the second Edition of my Book of the 8th of June, 1649, intitled, *The legal fundamental Liberties of the People of England revived, asserted and vindicated*, pag. 49.

Lieut. Col. Lilburne. Let him speak whether it be 29 or 49.

Clerk. Forty nine, (but there is not so many Pages in the Book.)

Mr. Attorney. my Lord, here is a *Salva Libertate*, which is his own Book, though he will not own it.

My Lord, I had thought the great Champion of England for the People's Liberties, would never have been so unworthy, as not to have owned his own Hand; but read in the 24th Page of the *Salva* in his own written Hand.

Clerk. Page 24. I have by almost eight Years dear-bought Experience found the Interest of some of my fore-mentioned Judges to be too strong for me to grapple with, and the only cause to my Apprehension, that all this while keeps me from my own. And in the margin he saith; See all the second Edition of my fore-mentioned Book, intitled, *The legal fundamental Liberties of the People of England revived, &c.*

Mr. Attorney. Now, my Lord, there is the *Salva Libertate* that was given from his own Hand that owns it; I mean this Book, call'd, *The legal fundamental Liberties, &c.*

Mr. Attorney. Read the Title of it.

Clerk. A *Salva Libertate* sent to col. Francis West, Lieutenant of the Tower of London, on Friday the 14th of September, 1649, by Lieut. col. John Lilburne.

Mr.

Mr. Prideaux. Read where it is marked.

Clerk. But if you would produce unto me a written Warrant which hath more Face of legal Magistracy in it than verbal Commands, and according to my Right and Privilege let me read it; I would go with you either by Land or Water as you please, because I was in no Capacity to resist you; although I then told you, I judged a Paper-Warrant (although in Words never so formal) coming from any pretended Power, or Authority in England now visible, to be altogether illegal; because the intruding General Fairfax, and his Forces, had broke and annihilated all the formal and legal Magistracy of England, yea the very Parliament itself; and by his Will and Sword (absolute Conqueror like) had most tyrannically erected, set up, and imposed upon the free People of this Nation, a Juncto, or Mock-Power sitting at Westminster, whom he and his Associates call a Parliament; who like so many armed Thieves and Robbers upon the Highway, assume a Power by their own Will, most traitorously to do what they like.

Mr. Attorney. That's not the place, look towards the End.

Clerk. Then here it is: Sure I cannot chuse but acquaint you, that I have long since drawn and published my Plea against the present Power, in my second Edition of my Book of the 8th of June, 1649, intituled, The legal fundamental Liberties of the People of England revived, asserted and vindicated; which you may in especial manner read in the 43d, 44th, 45th to the 49th Page; which by the Strength of the Lord God omnipo-

tent, my large experienced help in time of need, I will seal with the last Drop of my Blood.

Mr. Attorney. My Lord, for the Book called, The legal fundamental Liberties of England, his Name is to the Book; but I shall not put much Weight upon that: But in others of his Books, as in his Preparative to an Hue and Cry, which he owns, and which is proved he owns by three Witnesses, in several Places of that Book he owns this as his Book, viz. The legal fundamental Liberties of England revived, &c. he calls it mine, and his fore-mentioned Book; and in his Salva Libertate he owns it again, gives it the very Date and Title that is in this Book.

My Lords, we have now done with this.

My Lords, now I shall go on to make use of it, and to shew my Lord out of these Books his Words and Language, to make good the Charge that hath been read in the Indictment against Mr. Lilburne.

My Lords, if you please, for that shall begin first in reading to the Jury the very Act itself, which makes the Fact to be Treason.

My Lord, for that, here is the Act that doth declare the Commonwealth for the future to become hereafter a Free State; and the other declaring that Fact to be Treason, that shall say it is Tyrannical or Unlawful.

These are general Acts which need not be proved; but if the Prisoner does desire it, we shall prove it.

Clerk. Die Lunæ, 14 May, 1649, Ordered by the Commons assembled in Parliament.

Lieut. Col. Lilburne. Hold, Sir I prove your Act first, whether it be an Act of Parliament.

Mr. Attorney. My Lords, I shall not struggle with Mr. Lilburne in plain Terms; but I thought when Acts were published, the Courts of Justice were bound in Duty to take Notice of them: But if it be so he will have it proved, we will, although it be but a slender Cavil, for this is one of the published Copies.

Lieut. Col. Lilburne. But under Favour, Mr. Prideaux, as there may be counterfeit Money, (which we see there is every Day) so there may be counterfeit Statutes too; and this may be one for any thing I know, therefore I desire it may be proved to be a true Statute or Act of Parliament.

Mr. Nutleigh. This is a true Copy of the Act of Parliament, which I examined with the Record.

Lieut. Col. Lilburne. The Record! Where is that to be found?

Mr. Nutleigh. At Westminster, with the Clerk of the Parliament.

Lieut. Col. Lilburne. Is this Gentleman able to depose it to be a true Law in all the Parts of it? For by the Laws of England, the People are not to take any Notice of Acts made, but by a Parliament; neither are they to take Notice of those Acts that are not proclaimed.

Sir, I beseech you let me know where the Record and Rolls are, and where he examined this, and whether he is able to swear whether they have been proclaimed in every Hundred and Market-Town, according to the old, and not yet repealed Law of England.

Ld. Keble. At Westminster, he tells you.

Lieut. Col. Liburne. I beseech you where at Westminster?

Ld. Keble. The Clerks of the Parliament are known to the City of London, here; you know it well enough.

Lieut. Col. Lilburne. That is no Answer to my Questions: I pray let me have fair play; for it is a Question to me, whether the Books of the Clerk of the House of Commons be a Record in Law or no.

Ld. Keble. Read, Clerk.

Then the Act of the 14th of May, 1649, was read, declaring what Offences shall be adjudged Treason.

Mr. Prideaux. Read the other Statute.

Then the Act of the 14th of July, 1649, was read, declaring what Offences shall be adjudged Treason.

Judge Jermin. Mr. Lilburne, doth your Paper of the 17th of May agree with that which was read, or no?

Lieut. Col. Lilburne. No, Sir; conceive, Sir, you asked me whether this Act I have in my Hand, do agree with that which was read?

Judge Jermin. Yes, Sir, I do.

Lieut. Col. Lilburne. It does not.

Judge Jermin. Then you will make use of it by and by.

Lieut. Col. Lilburne. I, Sir, intend so, if you will let me.

Mr. Attorney. My Lord, the first is, That Mr. Lilburne hath declared the present Government to be tyrannical, usurped and unlawful; and the

at in ipfissimis verbis, that he hath declared, in a very high way, in the very Words: So his Book, intitled, An Impeachment of High Treason against Oliver Cromwell, and his Son-in-law Henry Ireton, &c. Read fol. 8.

Clerk, Fol. 8. Yea, and the absolute keeping up of a perpetual and everlasting Army, under which the people are absolute and perfect Slaves and Vassals, as by woful and lamentable Experience they now see they perfectly are; which Slavery and absolute Bondage is like daily to encrease under the present tyrannical and arbitrary, new-erected, robbing Government.

Mr. Attorney. And so, my Lord, is here expressed to be a tyrannical and arbitrary Government, which are expressly within the Words of the Law; for they are a tyrannical Government.

My Lords, we shall not stick here with him, but you shall see the whole course of all his Pen's Writing hath been to this Purpose; that goes very far, my Lord; see the Title-page of the last Book.

Clerk. Title-Page. Before a legal Magistracy, when there shall be one in England, which now in the least there is not.

Mr. Attorney. See fol. 1.

Clerk, Page 1. I have fully, both by Law and Reason, undeniably and satisfactorily proved, That the present Council sitting at Westminster, are no Parliament at all in any Sense, either upon the Principles of Law or Reason, but are a Company of usurping Tyrants and Destroyers of your Laws, Liberties, Freedoms and Properties,

sitting by Virtue of the Power and Conquest of the Sword.

Mr. Attorney. Read the Title-page of the same Book.

Clerk. An Impeachment of High Treason against Oliver Cromwell, and his Son-in-law Henry Ireton, Esqrs. Members of the late forcibly dissolved House of Commons; presented to publick View, by Lieutenant-Colonel John Lilburne, close Prisoner in the Tower of London, for his real, true and zealous Affections to the Liberties of his native Country.

In which following Discourse or Impeachment he engageth, upon his life, either upon the Principles of Law (by way of Indictment, the only and alone legal way of all Trials in England) or upon the Principles of Reason, (by Pretence of which alone they lately took away the King's life) before a legal Magistracy, when there shall be one again in England, which now in the least there is not.

Mr. Attorney. Indeed, my Lord, and you of the Jury, Mr. Lilburne is a very great Rooter, not a Leveller, but a Rooter to root out the laws of England by the Roots.

J——. There is not——

Lieut. Col. Lilburne. By your Favour, Mr. Prideaux, I knew the Time when others said it as well of you; and it is not long since you were penned down in a black Bill, to my Knowledge, as unfavoury Salt, with many others, to be thrown out of the House of Commons. I pray, Sir, whether were those Rooters that went about to root up that House by Force of Arms, or Mr. Prideaux and others to give them cause, or least in their Apprehensions.

Mr.

Mr. Attorney. My lord, a legal Magistracy in England as now, he saith, in the least there is not; if there be no Magistracy, I will conclude, there is no Propriety left in this Nation; but Mr. Lilburne saith, there is no Magistracy; and if so, then no Propriety.

Lieut. Col. Lilburne. It would be a very strange Argument that you would infer; I wish you and I were to dispute that in Point of law for our lives, that to deny a Magistracy legally constituted, according to the Formalies of the law, does not destroy Propriety.

For indeed, Sir, Propriety is an antecedent to Magistracy, and is first in being before it.

But, Sir, to end the Dispute, he that owns the law of England (as I do) that distinguisheth *meum* and *tuum*, can never be a Destroyer of Propriety: I wish your Practice were as consonant to Propriety as my Principles.

Mr. Attorney. Read the second Page at the Mark.

Clerk. Now, I say, considering that which is before declared, I cannot upon any Terms in the World, either with Safety, Justice or Conscience, as Things stand with me at present, give my Consent, but hinder (as much as I am able) all Addresses from me, or any other that shall own the usurping Tyrants as a Parliament, especially by Petition, which was a Course saith the pretended Parliament Solicitor against the King, in his Case stated, pag. 24. which God's People did not take with Rehoboam; for they never petitioned him (although he was their lawful Supreme Magistrate) but advised him; he refusing their Counsel, and hearken-

ing to young and wicked Counsellors they cry out, To thy Tents, O Israel! and made quick and short Work of it.

Mr. Prideaux. My lord, here are Words again to make good as aforefaid that the Parliament are usurping Tyrants. Read also page 28.

Clerk. Read on pag. 28. in the Margin of the said Book.

And if those very Things should be judged Treason, as they are, and were in the Earl of Strafford, I wonder what should become of all our present Junctures at Westminster, and their new Thing called a Council of State? Undoubtedly by the most, if not all of them, must go to Tyburn or Tower-hill, there by a Halter or Ax, to receive their just Deserts. Amen.

Mr. Attorney. There is an Answer pronounced to us, let him have it that deserves it: But to go on. Read the 11th Page of his Book called, The Apprentices Outcry.

Clerk reads pag. 11. We say, considering what is before premised, we are necessitated and compelled to do the utmost we can for our own Preservation, and the Preservation of the Land of our Nativity, and never by popular Petitions, &c. address ourselves to the Men sitting at Westminster any more, or to take any more notice of them, than as of so many Tyrants and Usurpers; and for time to come to hinder (as much and as far as our poor despised Interest will extend to) all others whatsoever from subscribing, or presenting any more popular Petitions to them; and only now as our last Paper-Refuge, mightily cry out to each other, of our intolerable Oppressions in Letters and Remonstrances signed in the Behalf, and by the Appointment

f all the rest, by some of the stoutest and stiffest among us, that we hope will never apostatize, but be able, through the Strength of God, to lay down their very Lives for the maintaining of that which they set their Hands to.

Mr. Attorney. Read pag. 2.

Clerk reads on pag. 2. But even our Parliament (the very Marrow and Soul of all the People's native Rights) put down, and the Name and Power hereof transmitted to a picked Party of your forcible selecting, and such as your Officers (our Lords and Riders) have often and frequently stiled no better than a Mock Parliament, a Shadow of a Parliament, a seeming Authority, or the like, pretending the Continuance thereof, but till a new and equal Representative by mutual Agreement of the free People of England, could be elected; although now for Subserviency to their Exaltation and Kingship, they prorogue and perpetuate the same, in the Name, and under Colour thereof, introducing a Privy Council, or, as they call it, a Council of State, of Superintendency and Suppression to all future Parliaments for ever, erecting a martial Government, by Blood and Violence impulsed upon us.

Mr. Attorney. Read page 3. at the Mark.

Clerk. Page 3. Trade is decayed and fled, Misery, Poverty, Calamity, Confusion, yea and Beggary grown so sore and so extreme upon the People, as the like never was in England, under the most tyrannical of all our Kings that were before these in present Power, since the Days of the Conqueror himself; no Captivity, no Bondage, no Oppression like unto this;

no Sorrow and Misery like unto ours, of being enslaved, undone and destroyed by our large pretended Friends.

Mr. Attorney. Read pag. 4.

Clerk. Pag. 4. And yet nothing but the groundless Wills and Humours of those afore-mentioned Men of Blood rageth and ruleth over us; and is this all the Return and Fruit that People are to expect from your Hands?

Mr. Attorney. Take this Preparative to an Hue and Cry after Sir Arthur Haslerig, and read pag. 2.

Clerk reads on. The Preparative to an Hue and Cry after Sir Arthur Haslerig, at page 2. in the Margin: That those Men that now sit at Westminster, are no Parliament, either upon the Principles of Law or Reason.

Mr. Attorney. Read page 3.

Clerk. Page 3. They promise to amend, and to proceed according to the Form of the Law, as fully appears in their last forementioned Declaration of this present Juncto against Kingship dated the 17th of March, 1648.

Mr. Attorney. Read page 4.

Clerk. Page 4. But the said Arthur Haslerig, &c. more arbitrarily, and more treacherously than Strafford, having no Pretence of Regal, Legal or Parliamentary Commissions or Authority, no not so much as from the present Nothing, or illegal Juncto, or the present illegal Thing called the Council of State, Mr. John Jordan now Member.

Mr. Attorney. My Lord, he doth declare who he means by Juncto; Mr. Jordan, a Member of the present Juncto, the pretended House of Commons. In the third Place, for the

Proof of this first Particular, I shall produce his Book, intituled, *The Legal and Fundamental Liberties of England revived, &c.* Read page 41.

Clerk reads. Page 41. But, Sir, I say, no wonder, all the Things foregoing rightly considered, they do own you now (as Thomas Pride hath made you) for the Supreme Authority of the Nation; although before they would neither submit to King nor Parliament, (when it was a thousand times more unquestionable both in Law and Reason, than now you are) but fought against both King and Parliament, their Setters up, conquered them, repelled them, subdued them, and so broke them both; and so pulled up by the Roots all the legal and visible Magistracy and Authority in the Nation, and thereby left none but themselves, who stand in parallel to none (as they have managed their Business) but to a Company of Murderers, Thieves and Robbers, who may justly be dispossessed by the first Force that are able to do it, no pretended Authority that they of themselves, and by their Swords can set up, having in the Sight of either God or Man, either in Law or Reason, any more just Authority in them, than so many Algier Pirates and Robbers upon the Sea have.

Lieut. Colonel Lilburne. You read, as I take it, a second Edition; whether is that a second Edition or no?

Mr. Attorney. No, no, it is not so in the Indictment; it is no second Edition, but the first. Read pag. 56.

Clerk. Page 56. To which I answer; First, That that Company of Men at Westminster, that gave Com-

mission to the High Court of Justice to try and behead the King, were no more a Parliament by Law, or Representative of the People, by the Rules of Justice and Reason, than that such a Company of Men as a Parliament, or Representative of the People, that a company of armed Thieves chuse and set apart to try judge, condemn, hang or behead any Man that they please, or can prevail over by the Power of the Sword, to bring before them by force of Arms to have their Lives taken away upon pretence of Justice, grounded upon Rules merely flowing from their Will and Swords.

Mr. Attorney. Read the Title Page.

Clerk. The Legal Fundamenta Liberties of the People of England revived, asserted and vindicated; or an Epistle written the 8th of June 1649, by Lieutenant-Colonel John Lilburne, (Arbitrary and Aristocratical Prisoner in the Tower of London) to Mr. William Lenthall, Speaker to the Remainder of those few Knights Citizens and Burgeses, that Col. Thomas Pride at his late Purge thought convenient to leave sitting at Westminster, (as most fit for him and his Masters Designs, to serve their ambitious and tyrannical Ends, to destroy the good old Laws, Liberties and Customs of England, the Badges of our Freedom, as the Declaration against the King of the 17th of March 1648, Pag. 23. calls them, and by force of Arms to rob the People of their Lives, Estates and Properties, and subject them to perfect Vassalage and Slavery, as he clearly evinceth in his

s present Case, &c. they have done) and who (in Truth no otherwise than pretendedly) stile themselves the Parliament of England.

Mr. Attorney. Read p. 2.

Clerk. Sir, for Distinction sake, I will yet stile you Mr. Speaker, although it be but to Col. Pride's Junctō, Parliament sitting at Westminster, not the Nation's, for they never gave me Authority to issue out Writs to elect or constitute a Parliament for them;) and a little below, in the same second Page, I accused Oliver Cromwell for a wilful Murderer, and desire you there to acquaint your House therewith, (who then had some little Hand of a Parliament Stamp upon it.)

Mr. Attorney. Read p. 28.

Clerk. Page 28. The like of which Tyranny the King never did in his reign; and yet by St. Oliver's means lost his Head for a Tyrant.

But the Thing that I principally give at here, is to declare that Oliver and his Parliament, now at Westminster, (for the Nation's it is not) having plucked up the House of Lords by the Roots.

Page 44. So that if be Treason to kill this a Mock-Parliament, yea, and to say

And if this be true, for true it is, then there is neither legal Justice, nor Justice of Peace in England.

Mr. Attorney. Read pag. 37.

Clerk. Page 37. For if they ever had intended an Agreement, why do they let their own lie dormant in the pretended Parliament ever since they presented it? seeing it is obvious to

every knowing Eye, that from the Day they presented it, to this Hour, they have had as much Power over their own Parliament, now sitting, as any School-master in England had over his Boys.

Clerk. Pag. 45. For your Interest and the King's, both being Interests of Trust, as your Declarations do plentifully and plainly declare; but especially your present Junctō's Declaration against the late beheaded King, and kingly Government.

Mr. Attorney. Read pag. 58.

Clerk. pag. 58. And let the present Generation of swaying Men, that under pretence of Good, Kindness and Friendship, have destroyed and trod under Foot all the Liberties of the Nation, and will not have a new Parliament; but set up by the Sword their own insufferable, insupportable, tyrannical Tyranny.

Lieut. Col. Lilburne. I pray, Sir, are all these Quotations in the Indictment verbatim? I do not remember that I heard them there.

Mr. Attorney. No, we do not offer any Book but what is charged in the Indictment: For we do say, That he published those Things among other Clauses and Things in those Books. So that we bring in no Book that is not contained in the Indictment itself.

Read p. 64.

Clerk. Page 64. That so they might rule, direct and counsel their Mock Parliament.

Mr. Attorney. Read p. 68.

Clerk. Pag. 68. That that High Court of Justice was altogether unlawful, in case those that had set it up had

had been an unquestionable Representative of the People, or a legal Parliament: Neither of which they are, not in the least; but, as they have managed their Business in opposing all their primitive declared Ends, are a Pack of traiterous, self-seeking, tyrannical Men, Usurpers of the Name and Power of a Parliament.

Mr. Attorney. Read page 72.

Clerk. Page 72. Then with much more Confidence, say I, This that now sits is no Parliament; and so by consequence the high Court of Justice no Court of Justice at all.

Mr. Attorney. My Lord, that which we shall offer you next, is the *Salva Libertate*, which the Lieutenant of the Tower had from Mr. Lilburne himself.

Read at the Mark.

Clerk. A *Salva Libertate*: Altho' I then told you I judged a Paper Warrant, (although in Words never so formal) coming from any pretended Power or Authority in England, now visible, to be altogether illegal; because the intruding General Fairfax and his Forces had broke and annihilated all the formal and legal Magistracy of England, yea the very Parliament itself; and by his Will and Sword (absolute Conqueror like) had most tyrannically erected, and set up, and imposed upon the free People of this Nation or Mock-Power, sitting at Westminster, whom he and his Associates call a Parliament; who, like so many armed Thieves and Robbers upon the Highway, assume a Power, by their own Wills, most traiterously to do what they like, yea, and to fill the Land with their mock and pretended Magistrates, amongst the Number of which is the pretended Attorney-Ge-

neral: In perfect Opposition of whom to the utmost of my Might, Power and Strength, I am resolved, by Gods gracious Assistance, to spend my Blood and all that in this World is dear to me, supposing him not really and substantially worthy the Name of an English Freeman, that in some measure, in this Particular, is not of my Mind.

Mr. Attorney. My Lord, in the Case of this Charge, what Mr. Lilburne is pleased to say concerning me I shall say no more but only this: I shall not do so by him; I shall not spend my Blood against him.

You see what he saith, That the present Government is tyrannical, usurped and unlawful; that the Commons of England in Parliament assembled are not the supreme Authority, but Juncto, a Mock-power, a Mock-parliament, a Company of Traitors, that rule merely by the Dictates of their own Will.

I could alledge more of his Books unto you, which have Words in them very notorious and very publick.

He doth in express Words say, That the Government is arbitrary, tyrannical, and a new-erected, ruining, enslaving, robbing Government: To stile them Tyrants, Usurpers, Traitors, parallel to none but Murders, Robbers, Thieves: No parliament at all, but Thomas Pride's Juncto, and School Boys, Destroyers of the Laws and Liberties of the Nation, (the present Juncto, (Chimeras, Fooleries, and the like.)

All these Expressions, and many more, which I am sorry I have occasion to repeat to you; that so much Dirt should be thrown into the Face of any Magistrates of England: My

Lord

Lords, these are now the best which
to rule.

My Lords, I hope you, and the
Gentlemen of the Jury, will take No-
tice of it, as to be very clear, preg-
nant, evident Proof, that Mr. Lilburne
hath thus published, and thus said.

And besides this, you see what he
does go to: He denies all Magistracy.

So that now we are all alike, a
Chaos, a Confusion: And this he hath
brought us to, or would have endea-
voured it.

My Lords, I shall not aggravate;
and if I did say no more, it were
enough.

But I come to the second general
Head of the Charge; which is, That
he hath plotted and contrived to levy
or raise Forces to subvert and over-
throw the present established Govern-
ment, in the Way of a free State or
Commonwealth.

My Lords, if I should say nothing
more to the Jury, this that hath been
already read is evident Proof of that:
For certainly those that shall say that
the Governors be Tyrants, that the
Parliament is tyrannical, that they are
Men of Blood, Destroyers of Laws
and Liberties; this cannot be of any
other use but to raise Force against
them, for subverting and destroying
of them, as he himself saith, as so
many Weasels or Polecats; especially
if you consider to whom these Words
were declared, to the General's Regi-
ment of Horse, to plunder and destroy
Mr. Lilburne's true Friends, defeated
at Burford; and some of which were
most justly, as Traitors, executed.

My Lords, if I would say nothing
more to the Jury but this, there is full
and pregnant Proof already: But yet,
my Lord, further to shew the Malice

of Mr. Lilburne's Heart, and that he
did intend to raise Force, to incite and
invite them to help him to subvert and
destroy the Parliament: And for the
Proof of this, read the fifth Page of
his Impeachment of High-Treason a-
gainst Oliver Cromwell.

Clerk reads. Pag. 5. But, my true
Friends, I shall here take upon me the
Boldness (in regard of the great Di-
stractions of the present Times) to
give a little further Advice to you,
from whose Company or Society (or
from some of them) hath begun and
issued out the most transcendent, clear,
rational, and just Things for the Peo-
ple's Liberties and Freedoms, that I
have seen or read in this Nation, as
your notable Petition of May 20,
1647, burnt by the Hands of the com-
mon Hangman, recorded in my Book,
called Rash Oaths unwarrantable, Page
29, 30, 31, 32, 33, 34, 35, with divers
other Petitions of that Nature; and
the Petition of the 19th of Jan. 1647,
recorded in the following Discourte,
Page 45, 46, 47, 48, &c. and the mas-
culine Petition of the 11th of Sept.
1648, so much owned by Petitions out
of several Counties, yea, and by the
Officers of the Army's large Remon-
strance, from St. Alban's, of the 16th
of Nov. 1648, pag. 67, 68, 69. The
Substance of all which, I conceive,
is contained in the printed Sheet of
Paper signed by my Fellow-Prisoners,
Mr. William Walwyn, Mr. Thomas
Prince, and Mr. Richard Overton,
and myself, dated the 1st of May,
1649, and intitled, An Agreement of
the Free People of England, &c.

The Principles of which I hope and
desire you will make the final Centre
and unwavering Standard of all your
Desires, Hazards, and Endeavours, as

to the future Settlement of the Peace and Government of this distracted, wadded and divided Nation; the firm establishing of the Principles therein contained, being that only which will really and in good earnest marry and knit that Interest, whatever it be, that dwells upon them, unto the distressed and oppressed Commons or People of this Nation.

Yea, the settling of which Principles is, that they will thereby make it evident and apparent unto all understanding People in the World, that the real and hearty Good and Welfare of this Nation hath cordially, and in good earnest, been that their Souls have hunted for, and thirsted after, in all the late bloody Civil Wars and Contests; all the Contests of the King's Party, for his Will and Prerogative, being merely selfish, and so none of the People's Interest; and the Contest of the Presbyterians, for their Makebate, dividing, hypocritical Covenant, no better in the least; and the present Contest of the present dissembling Interest of Independents, for the People's Liberties in general, (read the following Discourse, Page 27, 28, 29.) merely no more but Self in the highest, and to set up the false Saint and most desperate Apostate, Murderer and Traitor, Oliver Cromwell, by a pretended Election of his mercenary Soldiers, under the false Name of the Godly Interest, to be King of England, &c. (that being now too apparently all the intended Liberties of the People that ever he fought for in his Life;) that so he might rule and govern them by his Will and Pleasure, and so destroy and envasalize their Lives and Properties to his Lusts; which is the highest Treason that ever

was committed or acted in this Nation in any Sense or Kind; either, 1. In the Eye of the Law; or, 2. In the Eye of the antient (but yet too much arbitrary) Proceedings of Parliament; or, 3. In the Eye of their own late declared Principles of Reason (by pretence of which, and by no Rule of Law in the least, they took away the late King's Head:) Which, if there were any Law or Justice in England to be had, or any Magistrate left to execute it (as in the least there is not) &c.

Mr. Attorney. Read pag. 7.

Clerk. Pag. 7. But the Principle of the foresaid Agreement being so detestable and abominable to the present ruling Men, as that which they know will put a full end to their Tyranny and Usurpation, and really ease and free the People from Oppression and Bondage, that it is something dangerous to those that go about the Promotion of it; yet I shall advise and exhort you vigorously to lay all Fear aside, and to set on foot the Promotion of it, in the same Method we took for the Promotion of the foresaid Petition of January 19, 1649, laid down in the following Discourse, page 23, 24, 25. and write to your Friends in every County of England, to chuse out from among themselves, and send up some Agents to you (two at least from each County, with Money in their Pockets to bear their Charges) to consider with your culled and choser Agents of some effectual Course, speedily to be taken, for the settling the Principles thereof (as that only which in an earthly Government can make you happy, or at least, to know one another's Minds in owning and approving the Principles thereof:) that

o it may become to you and your friends your Center, Standard and Banner, to flock together to, in the time of these Foreign Invasions, and Domestick Insurrections, that are like speedily to bring Misery enough upon this poor and distressed Nation; and unanimously resolve and engage one to another, neither to side with, or fight for the Chimeras, Fooleries and Pride of the present Men in Power, or for the Prince's Will, or any other safe Interest whatsoever (the which if you should fight for, it would be but an absolute murdering of your Brethren and Countrymen, you know not wherefore) unless he or they will come to those just, righteous and equitable Principles therein contained, and give rational and good Security for the constant adhering thereunto.

And upon such Terms, I do not see but you may justifiably, before God or Man, join with the Prince himself; yea, I am sure a thousand Times more justly than the present ruling Men (upon a large and serious Debate) joined with Owen Roe O Neal, the grand bloody Rebel in Ireland: Who, if we must have a King, I, for my part, had rather have a King, I, for my part, had rather have the Prince than any Man in the World, because of his large Pretence of Right; which, if he come not in by Conquest, by the Hand of Foreigners, (the bare attempting of which may apparently hazard him the Loss of all at once, by gluing together the now-divided People, to join as one Man against him) but by the Hands of Englishmen, by Contract upon the Principles aforesaid (which is easy to be done) the People will easily see that presently

thereupon they will enjoy this transcendent Benefit (he being at Peace with all Foreign Nations, and having no Regal pretended Competitor) viz. The immediate Disbanding all Armies and Garrisons, saving the old Cinque Ports; and so those three grand Plagues of the People will cease, viz. Free-Quarter, Taxations and Excise: By means of which the People may once again really say they enjoy something they can in good earnest call their own.

Whereas, for the present Army to set up the pretended Saint Oliver (or any other) as their elected King, there will be nothing thereby, from the Beginning of the Chapter to the End thereof, but Wars, and the cutting of Throats Year after Year, yea, and the absolute keeping up of a perpetual and everlasting Army, under which the People are absolute and perfect Slaves and Vassals, as by woful Experience they now see they perfectly are: Which Slavery and absolute Bondage is daily like to increase, under the present tyrannical and arbitrary new-erected robbing Government.

Mr. Attorney. He hath blown the Trumpet, for all that will to come in: He hath set up his Center; he would have it to be a Standard for all his Friends to flock to him.

And to make them the more quick in betaking them to their Arms, he hath falsely and maliciously there said, That the Parliament hath joined with Owen Roe O Neal; which, I can assure all that hear me this Day, the Parliament always detested, abominated, disavowed, and declared against, and never had any Thoughts that way.

My Lord, the false Imputations of his laid upon the Parliament, are almost numberless.

But, in the second Place, I come to that pretty Bauble, that's of his own making, The Agreement of the People, dated at the Tower the 1st of May, 1649, and shall desire your Lordships to judge whether this Agreement of the People, which he made, and his Friends then in the Tower, and intitled, The Agreement of the People, as signed by them, for they called it An Agreement of the Free People of England, strikes not at the very Root of all Government.

Lieut. Col. Lilburne. Pray, Sir, look whether it be licensed, or no, according to the Law of the Nation; and if it be licensed by publick Authority, how comes it to be Treason? That's very strange!

Mr. Attorney. It is so.

Lieut. Col. Lilburne. Pray, Sir, go and question the Licenser then.

Mr. Attorney. We must question the Author; the Licenser will not excuse it.

Read page 2.

Clerk reads. Pag. 2. This Agreement being the ultimate End and full Scope of our Desires and Intentions concerning the Government of this Nation.

And a little below: After the long and tedious Prosecution of a most unnatural, cruel, home-bred War, occasioned by Divisions and Distempers amongst ourselves; and those Distempers arising from the Uncertainty of our Government, and the Exercise of an unlimited, or arbitrary Power, by such as have been trusted with Supreme and Subordinate Authority, whereby Multitudes of Grievances,

and intolerable Oppressions have been brought upon us; and finding, after eight Years Experience and Expectation, all Endeavours hitherto used, and Remedies hitherto applied, to have increased, rather than diminished our Distractions; and that if not speedily prevented, our falling into Faction and Divisions, will not only deprive us of the Benefit of all those wonderful Victories God hath vouchsafed against such as sought our Bondage, but expose us first to Poverty and Misery and then to be destroyed by foreign Enemies.

Mr. Attorney. Read page 3.

Clerk. Page 3. Agree to ascertain our Government, to abolish all arbitrary Power, and set Bounds and Limits both to our Supreme and all Subordinate Authority, and remove all known Grievances; and accordingly do declare and publish to all the World that we are agreed as followeth.

Page *ibid.* That the Supreme Authority of England, and the Territories therewith incorporate, shall be and reside henceforward in a Representative of the People, consisting of Four hundred Persons, but no more.

Mr. Attorney. The Manner of the Choice of whom, &c. they leave to this Parliament.

Read a little below.

Clerk. All Things concerning the Distribution of the said Four hundred Members, proportionable to the respective Parts of the Nation, the several Places for Election, the Manner of giving and taking of Voices, with all Circumstances of like Nature tending to the compleating and equal Proceedings, as also their Salary, is referred to be settled by this present Parliament, in such sort as the next Repre-

Representative may be in a certain Capacity to meet with Safety at the Time herein expressed; and such Circumstances to be made more perfect by future Representatives.

We agree that this present Parliament shall End the first Wednesday in August next, 1649, thenceforward to be of no Power or Authority; and in the mean time shall order and direct the Election of a new and equal Representative, according to the Intent of this our Agreement; and so as the next Representative may meet and sit in Power and Authority, as an effectual Representative, upon the Day following, namely, the first Thursday of the same August, 1649.

Page *ibid.* We agree, if the present Parliament shall omit to order such Election or Meeting of a new Representative, or shall by any means be hindered from Performance of that Trust, that in such case we shall for the next Representative proceed in electing thereof in those Places, and according to that Manner and Number formerly accustomed in the Choice of Knights and Burgeses; observing onely the Exceptions of such Persons from being Electors or Elected, as are mentioned before in the first, third and fourth Heads of this Agreement; it being most unreasonable, that we should either be kept from new frequent and successive Representatives, or that the Supreme Authority should fall into the Hands of such as have manifested Disaffection to our Common Freedom, and endeavoured the Bondage of the Nation.

And for preserving the Supreme Authority from falling into the Hands of any whom the People have not or shall not chuse, we are resolved and

agreed (God willing) that a new Representative shall be upon the first Thursday in August next aforesaid; the ordering and disposing of themselves, as the Choice of a Speaker, and the like Circumstances, is hereby left to their Discretion; but are in the Extent and Exercise of Power, to follow the Direction and Rules of this Agreement; and are hereby authorized and required, according to their best Judgments, to set Rules for future equal Distribution and Election of Members, as is herein intended and enjoined to be done, by the present Parliament.

Mr. Attorney. Read p. 8.

Clerk. Page 8. And all Laws made, or that shall be made, contrary to any Part of this Agreement, are hereby made null and void.

Mr. Attorney. My Lord, here by this Agreement of the People, that Mr. Lilburne hath published to the World, in which, my Lord, he hath designed how many the Supreme Authority shall consist of, the Time when the Parliament shall dissolve, as also the Time when his own Parliament shall meet; this Parliament to be dissolved the first Wednesday in August, 1649, all Laws contrary to this to be null and void; and in it you shall find some Expressions of Treason in the height, that whosoever shall do contrary to it, shall be most severely punished.

In the next Book before this, it is desired by him, that this Agreement of the People may be the Center, the Banber, and Standard of all his Friends, and that they go on vigorously with it; which is, my Lord, to dissolve this Parliament, and to pur-

on this new one of Mr. Lilburne's appointing.

This we conceive, which is of Mr. Lilburne's appointing, would (if effected) be an absolute Subversion of this in being; and this is High Treason.]

My Lord, we shall go on with more yet, and that is with his Outcry.

My Lord, if you please to see the Title, and see to whom it is directed, what was intended to be done with it: It is intituled, An Outcry of the Young Men and Apprentices of London, directed August 29, 1649, in an Epistle to the private Soldiery of the Army, especially all those that signed the Solemn Engagement at Newmarket Heath, the 5th of June, 1647, but more especially to the private Soldiers of the General's Regiment of Horse, that helped to plunder and destroy the honest and true-hearted Englishmen, traitorously defeated at Burford, the 15th of May, 1649.

A good Encouragement! they were traitorously defeated at Burford; but we are Rebels and Traitors, and our Army Murderers and Butchers, for giving some of those declared Traitors their due Deserts.

But that you may see his Tendency by this Book, read page 11.

Clerk. Page 11. We say, considering what is before said, we are necessitated and compelled to do the utmost we can for our own Preservation, and for the Preservation of the Land of our Nativity, and never (by popular Petitions) address ourselves to the Men sitting at Westminster any more, or to take any more Notice of them than of so many Tyrants and Usurpers, and for time to come to hinder (as much and as far as our

poor despised Interest will extend to all others whatsoever from subscribing or presenting any more popular Petitions to them.

And only now, as our last Paper Refuge, mightily cry out to each other of our intolerable Oppressions, in Letters and Remonstrances, signed in their Behalf, and by the Appointment of all the rest, by some of the stoutest and stiffest amongst us, that we hope will never apostatize, but be able through the Strength of God to lay down their Lives for the maintaining of that which they set their Hands to.

You our Fellow-Countrymen (the private Soldiers of the Army) alone being the instrumental Authors of your own Slavery and ours; therefore as there is any Bowels of Men in you, any Love to your native Country Kindred, Friends or Relations, any Spark of Conscience in you, any hope of Glory or Immortality in you, or any Pity, Mercy or Compassion, to a enslaved, undone, perishing and dying People; O help, help, save and redeem us from total Vassalage and Slavery and be no more like brute Beasts, that fight against us or your Friends, your loving and dear Brethren after the Flesh, to your own Vassalage as we are as ours.

And as an assured Pledge of your future Cordialness to us, (and the true and real Liberties of the Land of your Nativity) we beseech and beg of you (but especially those amongst you that subscribed the solemn Engagement at Newmarket-Heath, the 5th of June, 1647) speedily to chuse out amongst yourselves, two of the ablest and constantest faithful Men amongst you, in each Troop and Company, now at large (by corresponding each with the other

and with your honest Friends in the Nation) to consider of some effectual course (beyond all Pretences and heats) to accomplish the real End of all your Engagements and Fightings, viz. the settling of the Liberties and Freedom of the People; which can never permanently be done, but upon the sure Foundation of a popular Agreement; who (viz. the People) in Justice, Gratitude and common Equity, cannot chuse but voluntarily and largely make better Provision for your future Subsistence (by the Payment of your Arrears) than ever your Officers or this pretended Parliament intends, or you can rationally expect from them; witness their cutting off three parts of your Arrears in four, for free Quarter; and then necessitating abundance of your Fellow Soldiers now cashiered, &c.) to sell their Debentures at two Shillings Sixpence, three Shillings, and at most four Shillings per lb.

Mr. Attorney. See, my Lord, here we are stiled Tyrants, Usurpers, introducing Government Oppression of the People; and Mr. Lilburne is resolved with his Friends to join together, and to lay down their very Lives for his.

This, I think, is a Trumpet blown abroad for all the discontented People in the Nation to flock together, to root up and destroy this Parliament, and so the present Government. But read also the same Book, pag. 9.

Clerk. Pag. 9. For the effectual Promotion of which said Agreement, we are necessitously compelled to resolve in close Union to join ourselves, our Commissioners (chosen for that end) in Council, with our foresaid Burford Friends, or their Commissioners; and

to resolve to run all Hazards to methodize all our honest Fellow-Prentices, in all the Wards of London, and the Out-Parishes, to chuse out their Agents to join with us or ours, to write exhortative Epistles to all the honest-hearted Freemen of England, in all the particular Counties thereof, to erect several Councils amongst themselves; out of which we shall desire (and exhort them) to chuse Agents or Commissioners (impowered and intrusted by them) speedily to meet us, and the Agents of all our (and the Agreement of the People) Adherents at London, resolvedly to consider of a speedy and effectual Method and Way how to promote the Election of a new and equal Representative, or Parliament, by the Agreement of the free People: Seeing those Men that now sit at Westminster, and pretendedly style themselves the Parliament of England, and who are as they say (although most falsely) in the Declaration for a Free State, dated March 17, 1648. pag. 27. intrusted and authorized by the Consent of all the People of England, whose Representatives they are; make it their chiefest and principallest Work, continually to part and share amongst themselves all the great, rich, and profitablest Places of the Nation; as also the Nation's publick Treasure and Lands; and will not ease our intolerable Oppressions, no not so much as of late receive our popular Petitions, having upon Thursday last, August 23, 1649, rejected that most excellent of Petitions ready at their Door to be presented to them by divers honest Men (our true-hearted Neighbours of Surrey) the true Copy of which, for the worth of it, altho' it be at large already printed in Friday Occur-

Occurrences, and the Tuelday Moderate, we desire here to insert.

Mr. Attorney. My Lord, this is a loud one! Whom does he join us withal, but only with those very Men that justly suffered Death, many of them, for it? My Lord, now it's resolved that these Men shall be closely joined with them; and what to do? Still to promote The Agreement of the People, that which Mr. Lilburne hath hatched, and that must be the Baby that those declared open Traitors and Rebels, that Mr. Lilburne will join with, must nourish up.

My Lord, we shall go on further to shew, what Mr. Lilburne drives at; which is not much differing from us, for he would have a Free State; but, my Lord, this that is now in being, it doth not go in Mr. Lilburne's Way, and therefore it must be overthrown by Force and Arms, that so Way may be made for his new Commonwealth.

We shall go further on, my Lord, and in the next place, quote his Book, entitled, *The Legal Fundamental Liberties of the People of England, revived, asserted and vindicated, &c.* Read page 57.

Clerk read. Pag. 57. And the present Setters up of this tyrannical new Commonwealth, considering their many Oaths, Covenants, Promises, Declarations, and Remonstrances to the contrary, (with the highest Promises and Pretences of Good for the People and their declared Liberties, that ever was made by Men) are the most perjured, perfidious, false, Faith and Trust-breakers, and Tyrants, that ever lived in the World; and ought by all rational and honest Men to be the most detested and abhorred of all Men

that ever breathed, by how much the more under pretence of Friendship and Brotherly Kindness they have done all the Mischiefs they have done, in destroying our Laws and Liberties.

Mr. Attorney. My Lord, and you Gentlemen of the Jury, you see Mr. Lilburne hath been pleased very often to give the Name of Tyrants to the Parliament: I would give no other Instance, nor shew no other Example but Mr. Lilburne himself, to disprove himself; and with much Confidence affirm it, that never State had before (neither King nor State) since the Foundations of it, so much Enmity nor have endured with so much Patience any Man whatsoever, as they have done Mr. Lilburne; who notwithstanding all his traitorous Provocations, and traitorous Designs, undertaken against them, is yet alive, at this Day, and now hath fair play to plead for his Life.

I would take him for his own Confuter, and see by all that has been done by him, and see if he could make good his Actings, and make good the Parliament's dealing with him; therefore, can be demonstrated by him to prove them Tyrants.

My Lord, I can hardly forbear, to see and hear his dangerous and desperate Expressions, to invite all People for to take up Arms against the Parliament, to cut their Throats like Polecats and Weasels.

My Lords, here to stile them the most perfidious, perjured, false, Faith and Trust-breakers and Tyrants, that ever lived in the World; and to be the most abhorred and detested of all the People, above all Men that ever breathed: O insufferable, and the highest of Treasons.

Lieut. Col. Lilburne. Sir, all the Wit of all the Lawyers in England could never bring it within the compass of High Treason, by the old and best Laws of this Nation, that abhors to oppress Men contrary to Law; and when if they seem but to cry out of their Oppressions, to make them Traitors for Words.

Mr. Attorney. I am confident the best Lawyer in England would have brought this within the Statute of the 25 Ed. 3. chap. 2.

My Lords, you shall see there is one escaped; the Parliament with them are Tyrants, Traitors and Usurers; and therefore he stirs up the People to destroy them.

But in the third Place, you shall see what Titles he gives to my Lord General Fairfax, and his chief Officers; that, my Lord, he that reads the Books, and doth not know the Persons, he would think that they were Monsters, and not Men; altho' they be so famous and glorious, that all the World hath rung of them to their praise.

But, saith he, never was there more glorious Declarations made by Men than by them, and yet never performed any of them.

Nay, he doth not only call them so Covenant and Engagement-breakers, but he calls the Lord General Tyrant, Murderer, and what not; and the Officers, perfidious Officers.

My Lords, what I observed in the last Clause of the Act, is, That whoever goes about to draw the Soldiers from their Obedience to their superior Officers, or from their Obedience to the present Government, that is High Treason: And this likewise we shall find him guilty of, in his Legal Fun-

damental Liberties of England asserted and vindicated; it is the first Side of the Epistle that in the first Place I pitch upon, read it.

Clerk. Page 1. of the Epistle. I positively accuse Mr. Cromwell for a wilful Murderer, (and desire you to acquaint your House therewith) for murdering Mr. Richard Arnold near Ware.

Mr. Attorney. Which Man, my Lord, was condemned for a Mutineer by a Council of War, where the Lord Lieutenant of Ireland was but one Member; and the Parliament gave him, and the rest of that Council Thanks, for shooting that mutinous Soldier to Death; And yet Mr. Lilburne calls him Murderer therefore, and this is laid to my Lord Lieutenant's Charge for his Part.

Lieut. Col. Lilburne. Doth not the Petition of Right absolutely condemn all such Acts in Time of Peace, when the Courts of Justice are open? And the Judgment of the Earl of Strafford doth abundantly condemn it, who lost his Life for a Traitor, for doing the very same Act in kind and likeness, at that Time, when he in the Eye of the Law was as legal a General, as the General was that condemned that Man.

Mr. Attorney. My Lords——

Lieut. Col. Lilburne. I pray, Sir, hear me out: And sure I am, the Declarations of all the Powers extant in England ever since, have been to maintain the Petition of Right inviolably; yea, even those that are now in present Power; and if the Petition of Right be true, to shoot Soldiers, as Arnold was, is absolute Murder. Nay further, if the Judgment of the Parliament upon the Earl of Strafford

for such an Act be legal, then all those that had a Hand in shooting that Soldier, are Traitors, and ought to die for it, as well as Strafford.

Clerk reads on the second Side of the Epistles. Of all which Crimes and Charges, and all your others against the King, contained in your foresaid Declaration, I know not three of them, but Cromwell and his Confederates, in your pretended House and Army, are as guilty of the like in Kind, though under a new Name and Notion, as the King was of the fore-mentioned, if not more guilty.

Mr. Attorney. Read page 35.

Clerk. Pag. 35. But alas, poor Fools! we were merely cheated and cozened, it being the principal Unhappiness to some of us, as to the Flesh, to have our Eyes wide open, to see Things long before most honest Men come to have their Eyes open. And this is that which turns to our Smart and Reproach, and that which we Commissioners feared at the first, viz. That no Tye, Promises, nor Engagements were strong enough to the grand Jugglers and Leaders of the Army, was now made clearly manifest; for when it came to the Council, there came the General, Cromwell, and the whole Gang of Creature-Colonels, and other Officers, and spent many Days in taking it all in Pieces, and there Ireton shewed himself an absolute King, if not an Emperor; against whose Will no Man must dispute.

And then Shuttlecock, Roe their Scout, Okey, and Major Barton (where Sir Hardress Waller sat President) began in their open Council to quarrel with us, by giving some of us base and unworthy Language; which pro-

cured them from me a sharp Retortment of their own Baseness and Unworthiness into their Teeth, and a Challenge from myself into the Field. Besides, seeing they were like to fight with us in the Room in their own Garrison, which when Sir Hardress Waller reproved me for it, I justified it, and gave it him again, for suffering us to be so affronted. And within a little Time after, I took my Leave of them for a Pack of dissembling juggling Knaves; amongst whom in Consultation ever thereafter I should scorn to come, (as I told some of them;) for there was neither Faith, Truth, nor common Honesty amongst them.

And so away I went to those that chose and entrusted me, and gave publicly and effectually (at a set Meeting appointed on purpose) to divers of them, an exact Account how they had dealt with us, and cozened and deceived us; and so absolutely discharged myself from meddling or making any more with so perfidious a Generation of Men, as the great ones of the Army were; but especially the cunningest of Macchiavelians, Commissary Henry Ireton.

Mr. Attorney. Read page 37, at the Mark.

Clerk. Page 37. Which the General and his Council knew well enough: And I dare safely say it upon my Conscience, that an Agreement of the People, upon Foundations of just Freedom, gone through with, is a Thing the General, and the chiefest of his Council, as much hate, as they do Honesty, Justice and Righteousness (which they long since abandoned;) against which, in their own Spirits they are absolutely resolved (I do ve-

ily believe) to spend their Heart-blood, and not to leave a Man breathing in English Air (if possibly they can) that throughly and resolutely prosecutes it; a new and just Parliament being more dreadful to them, than the great Day of Judgment, so much spoken of in Scripture.

And although they have beheaded the King, yet I am confidently persuaded, their Enmity is such at the people's Liberties, that they would sooner run the hazard of setting the Prince in, to reign in his Father's stead, than further really a just Agreement, or endeavour a new Parliament rightly constituted.

Mr. Attorney. Read pag. 38.

Clerk. Page 38. When as, alas! it is as visible as the Sun when it shineth in its Glory and Splendor, that Korah, Dathan, and Abiram, of old, were never such Rebels against Authority, as the General and his Council are; nor the Anabaptists at Munster, with John of Leyden, and Buperdullion, were never more Contemners of Authority; nor Jack Straw, nor Wat Tyler; nor all those famous Men, mentioned with a black Pen in our Histories, and called Rebels and Traitors, can never be put in any Scale of equal Ballance, for all manner of Rebellions and Treasons against all sorts and kinds of Magistracy, with the General and his Council.

Mr. Attorney. See, my Lord, and you Gentlemen of the Jury, you see Mr. Lilburne gives the General and his Officers as bad Titles, as he can give the worst of Rebels and Traitors, or the worst of Men.

But we go on to his Outcry; read the Title of it.

Clerk. An Outcry of the young

Men and Apprentices of London, p. 8. where it is thus: Sure all Sense and Compunction of Conscience is not totally departed from you.

Mr. Attorney. If it please you, my Lord, because the Jury may observe it, the Book is directed to the Soldiers of the Army, and that is an Outcry, &c.

Now read page 8.

Clerk. Page 8. Sure all Sense and Compunction of Conscience is not totally departed from you: Hear us therefore, in the yearning Bowels of Love and Kindness we intreat and beseech you, with Patience, and do not abuse us for complaining and crying out; for the Knife hath been very long at the Throats of our Liberties and Freedoms, and our Burdens are too great and too many for us, we are not able to bear them, and contain ourselves; our Oppressions are even ready to make us Despair, or forthwith to fly to the prime Laws of Nature, viz. The next violent Remedy at hand, light where it will, for upon whom it will.

They are become as devouring Fire to our Bones ready to burn us up, rendering us desperate and careless of our Lives, prising those that are already dead above those that are yet living, who are rid of that Pain and Torment that we do and must endure, by sensibly seeing and beholding not only the dying, but the daily Burial of our native Liberties and Freedoms; that we care not what becomes of us, seeing that we are put into that original State, or Chaos of Confusion, wherein Lust is become a Law, Envy and Malice are become Laws, and the strongest Sword rules and governs all by Will and Pleasure; all our antient Boun-

Boundaries and Land-Marks are pull'd up by the Roots, and all the Ties and Bonds of human Society in our English Horizon totally destroyed and extirpated.

Alas, for pity! we had rather die, than live this Life of languishing Death, in which our Masters possess nothing (to buy themselves or us Bread, to keep us alive) that they can call their own.

Therefore it's no boot for us to serve out our Times, and continue at our drudging Trades, while these Oppressions, Cruelties, and Inhumanities are upon us, and the rest of the People; exposing thereby not only the Nation to Domestick Broils, Wars and Bloodsheds, (wherein we are sure our Bodies must be the principal Butts) but Foreign Invasions, by France, Spain, Denmark, Sweedland, &c. as was well observed by our endeared and faithful Friends, of the forementioned late treacherously defeated Party at Burford, in their book of the 20th of August, 1649, intituled, *The Levellers vindicated, or the Case of their twelve Troops truly stated*, pag. 11, 12. which we cannot but seriously recommend (with them) to your serious Perusal and Judgment; and desire to know of you (but especially the private Soldiers of the General's Regiment of Horse, which we understand had a Hand in seizing upon and plundering our true Friends at Burford) whether you do own the abominable and treacherous Dealings of your General Lieutenant-General Cromwell, and their perfidious Officers with them, or no, that so we may not condemn the Innocent with the Guilty, &c.

Mr. Attorney. Read page 11.

Clerk. Page 11. You our Fellow-

Countrymen (the private Soldiers of the Army) alone, being the instrumental Authors of your own Slavery and ours; therefore as there is any bowels of Men in you, any love to your native Country, Kindred, Friends or Relations, any sparks of Conscience in you, any hopes of Glory or Immortality in you, or any pity, mercy or compassion to an enslaved, undone, dying perishing People: O help, help, save and redeem us from total Vassalage and Slavery, and be no more like brute Beasts to fight against us or our Friends, &c.

And as an assured Pledge of your future Cordialness to us, (and the true and real Liberties of the Land of your Nativity) we beseech and beg of you (but especially those amongst you, that subscribed the solemn Engagement at Newmarket, the 5th of June, 1647,) speedily to chuse out from amongst yourselves two of the ablest and constantest faithful Men amongst you, in each Troop and Company, now at last (by corresponding each with the other, and with your honest Friends in the Nation) to consider of some effectual Course (beyond all Pretences and Cheats) to accomplish the real End of all your Engagements and Fightings, viz. The settling the Liberties and Freedoms of the People; which can never be permanently done, but upon the sure Foundation of a popular Agreement; who (viz. the People) in Justice, Gratitude and common Equity, cannot chuse but voluntarily and largely make better Provision for your future Subsistence than ever your Officers, or this pretended Parliament intends, &c.

Mr. Attorney. Read the Title of his Impeachment.

Clerk.

Clerk. An Impeachment of High Treason against Oliver Cromwell, &c.

Mr. Attorney. Read page 2.

Clerk. Page 2. But I shall rather desire and advise you, by Letter, like yourselves, to address yourselves to the Lord Fairfax, by the Sword of whom and his Soldiers, I am now in Prison for my Honesty and Innocency, and nothing else, and demand my Liberty of him.

If he refuse, print it, and do as God and Reason shall direct you; for it was his and his Soldiers Force, that fetched me out of my Bed the 28th of March, 1649, without all Shadow of Law or Justice, and against the Tenour of all their own Declarations, the particular Pages of which you may read in the following Letter to Mr. Holland, p. . and by Force of Arms carried me to Whitehall, and then to Derby-house, before a Company of Men that in Law had no more Power to commit my Body to Prison, than so many Thieves and Robbers upon Shooters-Hill have; who by the Rules of their own Wills (as in the second Edition of the Picture of them, I have fully declared) sent me by Force of Arms to the Tower, for all my short Eternity in this World.

But I intreat you seriously to consider, that I cannot advise you to make Address to him as the General of the Nation's Forces; for he is no such thing, but is merely a great Tyrant, standing by the Power of his own Will, and a strong Sword, borne by his Vassals, slaves and Creatures; having no Commission at all to be General, either from Law, the Parliament, or from any of the prime Laws of Nature and Reason.

Mr. Attorney. Read an Outcry of the Young Men and Apprentices, p. 3.

Clerk. Page 3. Your Heart seems to us as obdurate as the flinty Rock; as savage and inhuman, as if that the Flesh and Blood, the Bones and Marrow of the People were become your Meat.

Mr. Attorney. Stay, Mr. Broughton. The Jury will take Notice, that this is directed to the Soldiers of the General's Regiment; this speaks only to them.

Clerk reads on. Directed August 29, 1649, in an Epistle to the private Soldiers of the Army, especially all those that signed the solemn Engagement at Newmarket-Heath, the 5th of June, 1649, but more especially to the private Soldiers of the General's Regiment of Horse.

Mr. Attorney. Now read p. 3.

Clerk. Page 3. Your Hearts seem to us as obdurate as the flinty Rock; as savage and inhuman, as if the Flesh and Blood, the Bones and Marrow of the People were become your Meat, as already it is in effect; and instead of Encouragement and Support to our true Friends and real Relievers, (at least in faithful Desire and Endeavour) as shall stand in the Gap betwixt our Destroyers and us, all Ways and Means are used to impoverish, destroy and suppress them; and in them to break and vassalage the Spirits of all the English, which in all Ages have had the Preheminences of other Nations, that there may not be so much of Gallantry or Courage left amongst the People, that one amongst them shall dare to assert or maintain their Freedoms.

And a little below, If any do but murmur and complain, presently their

Houses, as with Furies, are beset with armed Janizaries, Guards, and Centinels set upon their Doors and Passages.

Mr. Attorney. My Lord, and you Gentlemen of the Jury, you hear what Stuff this of Mr. Lilburne's is; yea, such Stuff as that it would make any Man loath to hear it.

The last Clause of the Act is, If any Person not being an Officer, Soldier, or Member of the Army, shall plot, contrive, or endeavour to stir up any Mutinies in the Army, or to withdraw any Officers or Soldiers from their Obedience to their superior Officers, or to the present Government, it is High Treason.

You have heard the several Books read to you, and the Calumination laid upon the chiefest of them, to stir the rest up to Mutinies against them; but they are very well known, and therefore nothing that Mr. Lilburne can say, will stick upon them, to their Prejudice.

But, my Lord, you see here, and you of the Jury, how he appeals from the Officers to the Soldiers, interrogates to know what they could do, and whether they will acknowledge they will own them, and not fight against them, and what Aid and Assistance they will give to him and his Friends against even their own General, and the rest of their superior Officers.

You see also what he calls that noble General, that all the World doth Honour, and his Fame rings through the World; and yet he calls him a grand Tyrant, standing by the Power of his own Will, and a strong Sword, a Destroyer of the Parliament, of the Laws and Liberties of England.

You see what he calls the common Soldiers; Furies and mercenary Janizaries, which none else but Turks have.

You have heard the several Charges proved unto you, for my part I think as clear as Noon-day.

We have not raised any Advantage upon any slipping Words that have slipped from him, which we might have done, and I could have urged some more Witnesses, to have proved his Book published by him to publick View, tho' when he comes in the Face of the publick Court of Justice, he will not own them, which shews his Design to be the more dangerous.

He will write, print, publish, bespatter and reproach; yea, and raise Tumults and Rebellion in a clandestine Way; but if we chance to question him therefore, he will not own it; you see we have been fain to fetch it out of the Fire, and yet this is one of England's and its Liberties valiant Champions.

Lieut. Col. Lilburne. You have done no more to me, than the Scribes and Pharisees did to Jesus Christ; and in my dealing with you, I have but walked in the Steps of my Lord and Master Jesus Christ and his Apostles.

For I am sure of it, Jesus Christ, in his Pilgrimage on Earth, freely, openly and publickly taught and declared himself to be the Son of God the Messiah or Saviour of the World that was prophesy'd of; and yet when he came amongst the Scribes and Pharisees, and Pilate the Roman Governor, who by Questions went about to ensnare him he confesseth nothing, but saith, spake openly to the World, I ever taught in the Synagogues and in the Temple, whither the Jews always re-
fore

port, and in secret I have said nothing; why askest thou me? Ask them which heard me what I have said unto them: Behold, they know only what I have said.

And when Pilate abjured him to answer him whether he was such a one or no; Well, saith he, thou sayest it: So say I, Thou, Mr. Prideaux sayest it, they are my Books, but prove it.

Mr. Attorney. But I think here are enough, and too many: And therefore, Gentlemen of the Jury, if you respect the Government of the Parliament, the Honour of the Council of State, the Honour of the Nation, or of the Army, or the Preservation of the Law of the Nation, you cannot say but that the Prisoner is guilty of such Crimes and Treasons as he is now accused of, and accordingly find him so: For it cannot be supposed that you will lay him in a single Ballance against the Honour of all the Powers in the Nation, and also the Peace thereof.

Foreman. We desire the Act of Treasons to make use of.

Lieut. Col. Lilburne. I beseech you hear me a few Words: They desire to have it along with them.

Sir, with your Favour, I shall humbly crave Liberty to speak a few words: I shall keep me close to that which is my Right and my Duty, and that is to the Matter of Law in my Indictment.

There are many Things put into the Indictment by the Testimonies of Witnesses now sworn, that are pretended to be acted in several Counties.

Whether that be according to Law, or no, I do not know whether you will judge it so, or no; but sure I am, if either those express Statutes that I have already cited to the Jury, or the third

Part of Coke's Institutes, be Law, I ought not to be tried for Treason but by a Jury of the next Neighbourhood, in the self-same County the Fact is pretended to be committed in.

And therefore it is very questionable to me whether my Indictment be legal, for that it chargeth me with Facts of Treason committed in three several Counties; and that being Matter of Law, I desire Counsel to argue that Point in the first Place.

There are also a great many other Exceptions I have to make against the Illegality of the Indictment; and having particularized one, I humbly crave that which is my Right by Law, that I may have Counsel assigned unto me.

You have said you will do what shall become ingenious and understanding Men and just Judges in it; and therefore I crave Leave, according to my undoubted Right, to have Counsel assigned to plead in Matter of Law to the Insufficiency of the Indictment, and particularly to that Point I have nominated.

There are also a great many Things arise out of the Matter of Fact that will be Points of Law, and some of them appear to be so.

There were never two clear and positive Witnesses to one Fact sworn against me; but to most of the particular Treasons there is but one a-piece; and I cannot yield that to be legal, but questionable in Law, which I desire Counsel to dispute.

I know not any of all the Books fixed upon me but the Outcry, that hath two plain Witnesses to it; and yet it is not sworn that I am the Author of it.

The State of the first is this: That I was at the Printer's before the Copy was taken away; and that I gave one of those Books to a Soldier.

To sum up the Notes of the Matter of Fact that thereon hath been endeavoured to be proved, is too hard a Task to be done by me immediately; and therefore I conceive it but just for you to assign me Counsel, to agree with the Counsel against me what are the Points of Fact upon the Proof, from which the Points of Law are to be deducted.

And whatever you, that call yourselves my Judges, may think of this, yet I hope and verily believe that these my honest Fellow Citizens, that are the Gentlemen of my Jury, who have (thereby) as Men, the Issues of my Life and Death in their Hands, will think it but a just and rational Motion and Request; and therefore, before them again, I desire to have Counsel assigned, to plead in Law to the Errors of the Indictment, and also to the Law arising upon the Fact.

This, with a larger Privilege, was granted by one of your Brother Judges to Major Rolfe last Year, as his Right by Law; and I do appeal again to Mr. Justice Nichols, then one of Major Rolfe's Counsel; for the Truth of this.

I pray speak, Sir: Is it not true? [But the Judge sitting as if he had neither Life nor Soul, Mr. Lilburne further said:] I hope, Sir, it doth not enter into your Thoughts presently to put me to an undigested extemporary Answer to so large an Indictment as that is that hath been read against me, that it is impossible for any Man's Brain, if it were as big as the biggest Magazine in London, to carry it in

Head: And, Sir, I hope you do not conceive that my Memory is of greater largeness than the greatest Magazine into this City.

You engaged unto me, when I pleaded first to my Indictment, that you would not take Exceptions or Advantage against me for my Ignorance in the Formalities of the Law: I desire you to make good your Promise now unto me, and assign me Counsel to help my Ignorance, that so the Counsel against me and my Counsel may agree as I have seen it done heretofore in the Case of Duke Hamilton, upon the Points of Fact, from which Law is to be deducted.

And if you please to grant me this legal and equitable Favour, I shall think myself very much obliged unto you; without which Justice, I cannot conceive upon what Ground it can be apprehended I can go on; for my Time and Strength now it is so far spent, that I conceive you cannot think my Body is made of Steel, to stand here four or five Hours together, spending my Spirits, to answer so many as I have to deal with, and be able, after all this, to stand to return an Answer to above five Hours Charge, and that upon Life, when it seems you will suffer me to mend no Blots.

I hope you do not lie upon the Catch, to weary and tire me out, by putting more upon me than a Horse is able to endure, and then go about to hang me, because I, through Tiredness, want bodily Strength and Abilities to make and pronounce my Defence.

Sir, to my Apprehension, there does arise upon the Matter of Fact divers Disputes in Law: I beseech you therefore allow me my Right in Law, by assigning me Counsel to help me where I

ignorant, and you shall see I shall
o that which shall become an ingenious
nd rational Man, and I will put my
lf clearly upon the Trial of the
Country, or my Jury, according to the
aw.

Ld. Keble. Lilburne, this that you
ave heard, and that we have patiently
t to hear, and prepared a Stool for
ou to have sat upon, to have given
ou that Liberty that no Body should
interrupt you more than us; you have
heard the fair Course that hath been
aken in it.

The Books, the Charges upon the
Matter, they are but three, they are
ot hard for your Memory.

The Particulars of those we do not
xpect that the Jury should remember
hem.

The Books are here; they have of
hem: But amongst them there are
many more.

But free yourself from the Matter
f Fact, if you can, and then make it
ppear that from the Matter of Fact,
aw arises; and then, if you can,
when the Matter of Fact is clear, and
aw doth arise, you shall have Coun-
el, and you shall have no Defect in us
o interrupt you, but to help you in
what we may properly know as our
Right to do.

But if you do not first clear and
make out this, which is the Issue up-
n the Point, to answer the Matter
f Fact, we cannot allow you any
Counsel.

The Thing that is to be disputed
cannot possibly be much on your Side;
t will be but very short: For it is not
ossible, I say, to be much in Time, or
Confusion of your Memory, to give
n Answer to this particular Matter of
Fact: The first is the publishing of

those Books, and the owing of them;
and the next is the Books of them-
selves.

But this must be first cleared, be-
fore you can have any Counsel assigned
you at all.

Lieut. Col. Lilburne. I must confess
it is a very hard Task for me to contest
with the present Power, whose Agents
have free Liberty to say against me
what they please; and I am denied,
and that upon my Life, all the Privi-
leges of an Englishman, and with your
Insinuations and great Words drawn
on by my Ignorance to ensnare my
self: And notwithstanding all your
Promises to take no Advantage against
me for my Ignorance in the Formalities
of the Law, yet are the Punctilio's and
Niceties thereof more urged against
me, than they have been against ho-
stile Enemies.

And yet, for my part, no Man can
tax me for being in Hostility at any
Time against them in present Power;
and yet upon my Life I am denied
that which I had from those, as my
Right by Law, against whom I have
been in Arms, and fought against in
the Field: Yea, and that which, in a
higher Nature than I desire, hath been
acknowledged just and legal by some
of your own Brother Judges but the
last Year, which they have granted to
some of my own Countrymen, Free-
men of England, but this last Year, in
a higher Nature by many Degrees than
I plead for.

There is Judge Nichols, that I un-
derstand was one of Major Rolfe's
Counsel: And I understand from Mr.
Maynard's own Mouth, that both he
and Mr. Maynard were by Baron
Wyld assigned of Rolfe's Counsel in

case of the highest Treason that the Law of England ever knew, and that before the Grand Inquest found the Indictment; and that Mr. Maynard, &c. had Liberty, as Major Rolfe's Counsel, by Baron Wylde's Order, to stand in the Court, not only to hear the Witnesses sworn, but also to hear the Words of their Testimony, then caused by the Judge to be given in open Court.

And there being but two Witnesses to two Facts contained in the Indictment, Mr. Maynard, upon the Allegation of the two Statutes of Edward the Sixth, that requires two Witnesses to the Proof of every Fact of Treason, and that to be plain and clear, overthrew Rolfe's Indictment in Law, that it was never found; and so saved the poor Man's Life, who, in likelihood, had perished, had it not been for the Ability and Integrity of his Counsel.

And all this Mr. Justice Nichols knows is very true, and that I have told you nothing about it but what is just.

It's true, I have read Part of the plain Law of England, that is in English; but I am ignorant of that Part of your Law, which is three times so much as that which is in English; and that Law, or the practick Part of the Law is in French and Latin, which I have truly told you I can neither read nor understand: Therefore I humbly crave my Privilege and undoubted Right by the Law of England, (which in a higher Nature was granted to Major Rolfe, as his unquestionable Right) to have Counsel assigned me, to help me in those Things I am ignorant of, I mean the Formalities and Bottom of the Law.

I beseech you, Sirs, do not put me upon Extremities, and upon extraordinary Things, but consider among yourselves that righteous Rule of Jesus Christ, and of the Scripture, To do as you would be done to; and do not put Impossibilities upon me, by overruling, by your Power all my just Claims and Pleas in Law, and require more of me than I am capable to perform.

And therefore I beseech you, as you would approve yourselves to be a righteous Judges before the Eye of that God that sees your Heart, and know whether malicious and forethoughts of Malice harbours therein against me his faithful Servant; do not cunningly and designedly destroy me for my Ignorance in the essential or circumstantial Matter or Form of that huge Indictment, that has so much Matter of Law in it as it hath, and to take away my life by denying me that which is the unquestionable legal Right of the Free-men of England; the which if you will but allow me, I do not doubt but to come off both clearly and freely.

Ld. Keble. Mr. Lilburne, you are now at a full Point, and this you have said now, you have said often, and that we ourselves have heard it; and that which you say now, we have answered before.

Lieut. Col. Lilburne. Sir, it's your own law; Sir Edw. Coke declares I ought to—

Ld. Keble. Mr. Lilburne, I shall add this more to it, that you at this Time have here such a Court, which never any of your Condition ever had in England, so many grave Judges of the Law.

Lieut.

Lieut. Col. Lilburne. Truly I had rather have had an ordinary one; Sir, I mean a legal and ordinary Assize or Sessions.

Ld. Keble. But this you have, and this is to take off, or prevent that which you would do now, if there had been one Judge and no more; and if you had not had this great Presence of the Court, you would have been malevolent, and have out-talked them, but you cannot do so here.

Lieut. Col. Lilburne. Truly, Sir, I am not daunted at the Multitude of my Judges, neither at the glittering of your Scarlet Robes, nor the Majesty of your Presence, and harsh austere Deportment towards me, I bless my good God for it, who gives me Courage and Boldness.

Ld. Keble. That your Trial is so publick, as your Offence is, for this end, that all Men may take Notice, that you have fair Play; and therefore according to Law, you ought to make your Case, in Matter of Fact, clear; or that I must tell you again, and once as good as if I had told you a thousand Times over, unless you can clearly show that, you say nothing to it.

If you will take that for clear Proof that hath been alledged against you, you may shorten yourself; but otherwise make that Defence that you judge most sufficient to disprove the Fact; or till that Time, you are clear gone by Law, and no Counsel must or can be assigned you.

Lieut. Col. Lilburne. I have been a great while Yesterday pleading my Right by Law for Counsel, and now I have stood many Hours to hear your Reasons to the Indictment. I hope you will not be so cruel to put me to a pre-

sent Answer, when bodily Strength is spent.

Ld. Keble. We know it as well as yourself you were here, and stood divers Hours Yesterday, and To-day you have done the like; but we came before you, and stand after you.

Lieut. Col. Lilburne. Sir, will you put a Man to more than a Horse is put to, or is able to go through with? The righteous Man is merciful, even to a very Beast.

Ld. Keble. We have been as long as you have.

Lieut. Col. Lilburne. But, under Favour, you have sat.

Ld. Keble. You had that Liberty too; dispute no more, we must go on.

Lieut. Col. Lilburne. I desire but a Week's Time to return you an Answer to your large Indictment; and if not so long, then give me Leave but till To-morrow Morning, to consider of my Answer. I am upon my Life.

Ld. Keble. No, you must dispatch it now.

Lieut. Col. Lilburne. Then give me leave but to withdraw into any private Room for an Hour to recollect my Spirits.

[And hereabouts Judge Jermin did whisper the Lord Keble in the Ear; and presently said Judge Jermin, It's against the Law to allow you any more Time, the Jury stand here charged, the Evidence is given, you must immediately go on, or yield that for Truth which hath been proved against you.]

Lieut. Col. Lilburne. Well then, if it must be so, that you will have my Blood,

Blood, right or wrong, and if I shall not have one Hour's Time to refresh me, after my Strength is spent, and to consider of that which hath been alledged against me, than I appeal [which he uttered with a mighty Voice] to the righteous God of Heaven and Earth against you, where I am sure I shall be heard, and find Access; and the Lord God Omnipotent, and a mighty Judge betwixt you and me, require and requite my Blood upon the Heads of you and your Posterity, to the third and fourth Generation.

[Immediately after the uttering of which the Scaffold fell down which was on the left Hand, which occasioned a great Noise and Confusion by reason of the People's tumbling; but Silence being made, the Prisoner was busy at his Papers and Books, being invited by Sheriff Pack to come out of the Bar, for fear he should have fallen with the rest, and so he might have lost his Prisoner.]

Ld. Keble. How came the Prisoner there?

Lieut. Col. Lilburne. I went not thither of my own Accord, but by Mr. Sheriff's Invitation; and if I am in a Place where I ought not to be, lay the blame on Mr. Sheriff, and not me.

Ld. Keble. Dispatch, Sir.

Lieut. Col. Lilburne. Sir, if you will be so cruel as not to give me leave to withdraw to ease and refresh my body, I pray you let me do it in the Court.

Officer, I entreat you to help me to a Chamber-Pot.

(Whilst it was fetching, Mr. Lilburne followeth his Papers and Books

close; and when the Pot came, he made Water, and gave it to the Foreman.)

Ld. Keble. Proceed, Mr. Lilburne [But he pressed for a little Respite which was granted him with much ago, as also a Chair to sit down upon but within a very little Space the Lord Keble said,]

Ld. Keble. The Court cannot stay for you, proceed on to answer.

Lieut. Col. Lilburne. Good Sir would you have me to answer to Impossibilities, will you not give me breath? If you thirst after my blood and nothing else will satisfy you take it presently, without any more to do.

[But the Prisoner struggled out a little Respite.]

Ld. Keble. The Court can stay no longer, take away his Chair, for I cannot see the bar, and plead what you have to say, for it grows very late.

Lieut. Col. Lilburne. Well, seeing I must to it, the Will of God be done. (But his brother being next to him, was heard to press him to pause a little more :) No, brother, saith me, my Work is done; I will warrant you, by the help of God, I will knock the Nail upon the Head.

And so he went into the bar, and set the Chair before him, and laid his law-books open upon them, in order, as he intended, to use them; and being ready, said, Sir, I humbly crave the favour, since it is my hard lot and fortune, at least in my own apprehension, to have so much hard Measure and Injustice as I have, to know whether or no you will permit me, after that I have pleaded to a Matter of Fact, according to the law of England, that

that has been allowed to the highest Traitors, in all the Books that I have read of, that I may speak in my own behalf unto the Jury, my countrymen, upon whose consciences, integrity and honesty, my life, and the lives and liberties of the honest Men of this Nation, now lies; now are in law Judges of law as well as fact, and you only the pronouncers of their sentence, will and mind: I say, I desire to know, when I have pleaded to Matter of Fact, whether you will be pleased to give me leave to speak to them a few Words besides.

Ld. Keble. Master Lilburne, quietly express yourself, and you do well; the Jury are judges of matter of fact altogether, and Judge Coke says so: But I tell you the Opinion of the court, they are not judges of matter of law.

Lieut. Col. Lilburne. The Jury by law are not only judges of fact, but of law also; and you that call yourselves judges of the law, are no more but Norman intruders; and in deed and in truth, if the Jury please, are no more but cyphers, to pronounce their Verdict.

Justice Jermin. Was there ever such a damnable blasphemous Heresy as this is, to call the judges of the law, cyphers?

Lieut. Col. Lilburne. Sir, I intreat you give me leave to read the words of the law then; for to the Jury I apply, as my judges, both in the law and fact.

Ld. Keble. We will not deny a tittle of the law.

Judge Jermin. Let all the hearers know, the Jury ought to take notice of it, that the Judges that are sworn, that are twelve in number, they have ever

been the Judges of the law, from the first time that ever we can read or hear that the law was truly expressed in England; and the Jury are only judges, whether such a thing were done or no, they are only judges of matter of fact.

Lieut. Col. Lilburne. I deny it, here's your own law to disprove you; and therefore let me but read it.

It is a hard case when a Man is upon the trial of his life, that you will not suffer him to read the law to the jury, for his own defence; I am sure you have caused to be read at large those laws that make against me.

Ld. Keble. But I shall pronounce to clear the righteousness of that law, whatsoever others will pretend against it that know it not.

Lieut. Col. Lilburne. Sir, under favour, I sha' not trouble myself with any thing, but what is pertinent to my present Purpose: Here is the first part of Coke's Institutes, it is owned by all the lawyers that I know, or ever heard of in England, for good law.

Ld. Keble. If you convince us, that matter of law does concern the jury, you say something.

Lieut. Col. Lilburne. I have been shuffled too much out of my liberties already, give me leave to read but the law to the Jury; I will make use of nothing now to them, but your own Words; and when I have done, I will leave myself to them, and the guidance of God upon their conscience. And having the Book open in his hand, he said, In the first Part of Coke's Institutes, Sect. 366. fol. 226, 227, 228, in his Exposition of Plowden, hath these words.

Ld. Keble. Have we dealt so fairly with you all this while? Pray be con-

fident, those that are Quotations there, are not for your Purpose; but I thought how good a lawyer you were, for to set Coke's commentaries upon Plowden, when there is no such book or commentary.

Go to your matter of fact, which is clear; but for this, let it fall down, and spare yourself, and trouble yourself no more with Coke; he has no commentary upon Plowden.

[But Master Lilburne pressed to speak.]

Judge Jermin. Hold, Sir.

Lieut. Col. Lilburne. What, will you not allow me liberty to read your law? O unrighteous and bloody Judges!

Judge Jermin. By the fancy of your own mind you would puzzle the Jury; we know the book a little better than you do; there is no such book as Coke's commentary upon Plowden.

Ld. Keble. Sir, you shall not read it.

Judge Jermin. You cannot be suffered to read the law; you have broached an erroneous Opinion, that the Jury are the Judges of the law, which is enough to destroy all the law in the land; there was never such damnable Heresy broached in this Nation before.

The Cryer cries out, Hear the court.

Lieut. Col. Lilburne. Do your Pleasure, then here I'll die.

Jury, take Notice of their Injustice; but seeing they will not hear me, will appeal to you, and say, It is an easy matter for an abler Man than I am, in so many Interruptions as I meet with, to mistake Plowden for Littleton; I am sure here are Coke's com-

mentaries upon Littleton, and these be his words: "In this Case the Recogitors of the Assize may stay and render to the Justices their Verdict at large upon the whole matter." Which I am sure is good law, forasmuch as we see it continually done in all Actions of Trespass or Assault, where the Jury doth not only judge of the Validity of the Proof of the Fact, but also of the law, by assigning what Damages they think is just.

Ld. Keble. I am sure you are in an Error, in a gross one, as possibly a Man can be in; this is so gross, that I thought it could not have come from Master Lilburne, that professeth himself to be a rational and knowing Man.

Lieut. Col. Lilburne. And in another Place he saith, "For as well as the Jurors may have cognizance of the lease, they also may have cognizance of the condition."

And further there Coke, "Here it is to be observed, that a special Verdict, or at large, may be given in an Action, and upon any Issue, be the Issue general or special."

And in Section 368, Littleton hath these words, "Also in such case, where the Inquest may give their Verdict at large, if they will take upon them the knowledge of the law, upon the Matter they may give their Verdict generally."

Coke's words upon it are fully to the same purpose, who saith, "Although the Jury, if they will take upon them (as Littleton here saith) the Knowledge of the law, may give a general Verdict." I am sure this is pertinent to my purpose, and now I have done, Sir.

Ld.

l. Keble. You have spent a little
but you have done yourself no
; I thought you had understood
law better than I see you do.

Lieut. Col. Lilburne. Now, Sir, as
matter of fact, according to your
desire seeing you have broke your
wife and will allow me no counsel,
I will come with me, I shall come
without any Preamble.

The Statute of 1 Edward VI. chap.
(I desire the Jury may take no-
of the Statutes) and the 5th and
of Edward the Sixth, chap. 11.
e's the Statute-Book, which doth
rely declare, That no Man shall
condemned for Treason, Petty-
reason, or any such like crime, but
the evidence and clear proof of two
al and sufficient witnesses.

Sir Edward Coke in his third part
Institutes, of High-Treason, is ab-
solutely of the same Opinion.

"In this Branch, says he, four
Things are to be observed, First,
this word (provablement) provably;
that is, upon direct and manifest
Proof, not upon Presumptions, or
Inferences, or Strains of Wit, but
upon good and sufficient Proof of
two Witnesses." And herein the
verb (provablement) provable, hath
great force, and signifieth a direct
and plain Proof.

"And, secondly, this Word (at-
taint) necessarily implieth, That he
be proceeded with, and attainted,
according to the due course and pro-
ceeding of law, and not by absolute
power, or by other means, as in for-
mer times it hath been used.

And he saith, "It hath been holden,
That upon the Trial of Misprision
of Treason, there must be two law-
ful Witnesses, as well upon the Tri-

"al as the Indictment;" as it was
resolved by the Justices in the lord
Lumley's Case, Hill. 14 Eliz. reported
by the lord Dyer under his own
hand; and in the Margin he hath
this Note upon it, "That this is the
"last Resolution of the Judges upon
"it."

And a little below, he saith, "There-
fore upon the Indictment, which is
"in manner of an Accusation, by the
"Statutes of 1 Edward VI. cap. 12.
"and 5 and 6 Edward VI. cap. 11.
"two lawful Witnesses are requi-
"site."

And in fol. 240. he hath the same,
his Words are these; "Attainders of
"Treason, &c. ought to be upon plain
"and direct Evidence, (as before is
"said) for if the Party be executed,
"Restittuion may be had of his lands,
"but never can be had of his life."
Now I have done, Sir.

Ld. Keble. I hope the Jury hath
seen the Evidence so plain, and so
fully, that it doth confirm them to do
their Duty, and to find the Prisoner
guilty of what is charged upon him.

Judge Jermin. This that you have
said, makes much for the Jury.

Lieut. Col. Lilburne. We shall see
that by and by; but I shall proceed
on to answer your proof to the Indict-
ment, and that in the method that your
Witnesses swore.

And therefore, Sir, in the first place,
to the first, which is Thomas New-
combe the Printer, he swears in these
Words, That I was present with cap-
tain Jones, from whose Hands he
says he received the last Sheet of the
Book, called, The Outcry of the
Young Men and Apprentices of Lon-
don: But he says, Captain Jones a-
greed with him for the Printing of
it,

it, and not I; for in that particular he doth not in the least accuse me, neither doth he in the least accuse me in any manner in the World of being the Author of it; and that I did any more at his House, but take away a single Sheet of it before it was corrected; which, says he, I brought away with me.

In answer to whose Testimony I return this; and I earnestly entreat you, Gentlemen of the Jury, to observe it well; and therefore, in the first place, he is but a single Testimony to this.

But, secondly, I answer, That he confesses moreover, that before he had completed that Sheet that he received from captain Jones, he was taken; and not only he, but his Forms also were taken from him.

So that by his own confession, that copy that was brought by captain Jones when I was present with him, proved abortive, it was never wrought: For, he says, it was taken before he had perfected it; and to my Knowledge they had it in their possession.

So that it clearly appears, it was never perfectly wrought off, and therefore the Books were never perfected; therefore I hope that it will not be Treason in me, being a Freeman of England, to walk the Streets with my Friend, and to go into a House with him where he hath Business to do; admit it be a Printing-House, where he intends to have a Sheet of Paper printed, his Affairs, Business or Actions are nothing to me, neither are they now in the least laid to my charge, and if they were, as they are not, yet that Sheet miscarried, and was taken before it was perfected.

So that truly, Sir, you may give the Printer of it; for you see that carried that captain Jones delivered the Printer in my company; and Sheet which he saith I had away an uncorrected one, which could me for no other Use, but waste and cannot be adjudged to be a copy of that which was contained in the Indictment; neither doth he any other swear, that at the Place they see, or know where was the Title of that Outcry contained in the Indictment.

So that for any Thing that he knows, the first Part of that Sheet hath no dependance upon the Sheet that was spoiled, and not brought to maturity in Master Newcomen's Hands, as he himself upon his Oath declares.

So that truly, Sir, in law Mr. Newcombe proves nothing at all against me, as to that Book mentioned in the Indictment; and therefore you Gentlemen of the Jury, Life is in your Hands, I beseech you take Notice, that in all this Testimony, there was not one Word that was declared, to accuse me to be the Author of that Book, or that my Name was to it; for you shall find the Names of Ten that own it, so that I think his Testimony is gone, and is not worth a Straw.

In the next place, there were three Soldiers, viz. John Tooke, Thomas Lewis, and John Skinner, that swore against me: The Substance of all their Testimonies centers in one; and John Tooke in the first Place saith, about seven Weeks ago he met with Lieutenant-Col. Lilburne in Ivy-lane, where Thomas Lewis knowing of him, gave him a Salute; and they being glad to see hi

him, that he was well in health, and he like, out of Friendship went to drink a Cup of Beer together at the Red-Cross in Newgate-Market, where he saw a Book, called, *The Apprentices Outcry*, given unto Master Lewis, and he heard these Words uttered by Lieut. Col. Lilburne, You Soldiers are those that keep us in Slavery.

The second Witness, being Thomas Lewis, saith, That the sixth of December or September, for so was his words, he met me in Ivy-Lane, and took Acquaintance of me, asked me how I did, and I thanked him: And he further declares, That he was very much refreshed to see me, that I was well, and in health, and was glad to see that those Things that were given out of me by common Fame (that I was killed or dead) that they were not true.

Therefore he being my old Acquaintance, as he saith, we went to drink a Cup of Beer together; and says he (as he remembers) Lieutenant Col. Lilburne asked him if he had seen a Book called *The Apprentices Outcry*, and he said, No, he had not seen it, but he had heard of it, and was thinking to go and buy one of them, for that he longed to read it, and heard it was publickly sold: And, says he, Lieut. Col. Lilburne said, he had one which was given him, and if he pleased he would give it me, which he thankfully received; and afterwards we staid a little Time to drink a Cup of Beer, and had some Discourse.

But he doth fix no Evil upon me, that fell from me in that Discourse, neither doth he say, that I did stir him up to mutiny, or to make division in the Army; only he saith, I told him

that if he went to such a Man, whose Name he had forgot, it is possible he might buy some more of them, for they were publickly sold all over the City.

So that you Gentlemen of the Jury may take Notice, that he declares the Things by common Fame were publickly sold, and one of them he says was given to me, and I gave it to him.

Truly I hope the Jury hath more Conscience in them, than to go about to take away my life for giving away a single Sheet and a half of Paper, that no Man swears I was the Author of, or the Causer of it to be printed and published: But the most that can be fixed upon me, is, That I had one of them given me, and I gave it to a Soldier, my familiar Friend, who had a great desire to see it, and was going to buy one of them, being publick up and down London at that Time, which is all he doth charge upon me; only he says further, that there was a little Discourse: But his Testimony doth not reach to accuse me of any evil or malicious counsel given them, or any aggravations of Spirit, as though I did incense him or them against their Officers or Fellow-Soldiers, thereby to stir them up to Mutiny and Rebellion.

For truly I have made it my Work, for to be as sparing in my Discourse as could be, in the company of any belonging to the Army; yea, and to shun coming nigh the place, if I can avoid it, where they are.

And he saith, I had no aggravating Spirit within me, nor uttered any provocations to make them rise in Mutiny against their Officers; and there is none of them all that does in the

least fix that Book upon me, to be mine, as the Author of it.

Only he saith further, That upon his declaring he longed to see the Book, that Lieut. Col. Lilburne told him that such a Man, whose Name he hath forgot, might possibly sell them some of them, if they had a Mind to them, or to get some of them: And truly I do not believe that Treason.

Further he says, all the worst Discourse I had with them, was, that I asked them a Question, which was, When they had any Pay? And they told me, They had not had any Pay in five Weeks; and that was the worst of all.

There proceeded from me no aggravating Expressions upon it, or mutinous Provocations.

But truly that this Discourse should come within the Compass of Treason, to ask my old Acquaintance a Question, that had oftentimes visited me when I was the Lords Prisoner in the Tower, or to drink a Cup of Beer with him, or to give a Sheet and a Half of Paper that was publickly sold; truly I hope there will be no righteous Jury in the World that will give a Judgment against me for Treason therefore; no, I hope for more righteous Justice from a Jury of Citizens of London, whom I hope to find Men of Consciences and Judgment, yea, of such righteous Judgment, as that they will abhor to go about to take away my Life, and my Blood, and lay the blemish and stain of Treason upon me and my Posterity for ever, upon such a Thing as this is.

And this is all, and the utmost of all, that the Evidence doth witness against me.

Then in the third Place there was John Skinner, who was the third and he says the same in Effect, and more.

And therefore I need not go upon that any further, but shall leave it to the hope to the enlivened Conscience of my Jury, my Fellow-Citizens London.

In the next Place, the second Thing laid to my Charge, is the *Salva Libertate*, delivered to the Lieutenant of the Tower, as he says.

Now truly the Lieutenant of the Tower is but a single Witness to this, and the Law saith positively there shall be two legal Witnesses, to prove every Fact of Treason, whose Testimony and Evidence ought to be as clear and evident as the Sun at Noon-Day without any conjectural Presumption or Inferences, or Strains of Wit: And truly the Lieutenant is but a single witness at most.

I should be loth to reproach or bespatter the Man, yet I must say this, being upon my life, that he is not only a single Witness, but a Gentleman in whose Custody I was Prisoner contrary to law; who kept me Prisoner in times by-past, above twelve Months together at the House of Lords illegal command, contrary unto Law and Justice; for which, above a Year since, I did commence the common Law an Action of four five thousand Pounds against him, I did also against Colonel Tichburn that I have seen upon this Bench, sitting as one of my Judges; which I think is not equal, nor just, nor legal that he with whom I have a Suit for four or five thousand Pounds depending, when thereby my professed Adversary, should be one of my Judge.

and therefore I desire he may be commanded off the Bench, and withdraw, as being my profess'd Adversary, and therefore in Law incapable to be my Judge.

And truly having the same Action depending still against the present Lieutenant of the Tower, before the Judges of the King's Bench, for his detaining me in Prison above a Year together, contrary to Law; he is thereby in the Eye of the Law my professed Adversary, and in Law cannot be admitted as a Witness against me, upon my Life.

Yet the Lieutenant of the Tower doth not in the least swear that the Hand is mine, or that he did see me write it; but only he saith, that I did deliver such a Paper to him: But he is but a single Witness, and so I say by the Law of the Land not valid or good, but his Testimony is clearly gone and wiped off, as also all Things that do depend thereupon.

There are besides five or six Witnesses produced to several Charges; but the Law expressly saith, that there must be two plain and clear Witnesses to every particular Charge, or Fact of Treason, that must take away my life, and this is your own law: And he is but a single one, and therefore invalid, and altogether not satisfactory or binding.

And then beside, which is considerable, truly I think the Tower of London, in the Place where he saith I gave him those Papers, is not within the Jurisdiction of the City of London; and how I should come to be arraigned by a Jury of my Fellow-Citizens here in London, against whom I must confess that for my Part I have nothing for their Honesty and Inte-

grity to object, I know not: For I know not the Faces of any two of them, and cannot say any thing against them.

I say, I know not how by a London Jury I can be tryed for a Fact fixed upon me to be committed in Middlesex?

I beseech you, Gentlemen of the Jury, mistake me not; for I have nothing to accuse you of; and I hope you will be so conscientious and tender in the Trial of me for my life, that you will put your case as my case, and do by me as you would be done unto by me, if you were in my case and condition; and the righteous God of Heaven and Earth direct you so to do.

And the Lieutenant of the Tower being but a single Witness at most, and in Law not competent one neither, being my professed Adversary, that hath most illegally kept me in Prison, for which I have commenced long since my Action at law for my legal Reparations against him; I say, in the Eye of the law his Testimony sticks not, and, I hope, in the righteous Opinion of the Jury, can do me no harm: And if so his Testimony be invalid, then the *Salva Libertate* cannot reach me, to do me any hurt; but it and all those my pretended Books called by my Name, are all washed away and gone, and my Adversaries must go seek new Authors for them, or at least procure new and better Testimony to prove them mine; for that which they have produced hitherto is worth nothing.

Then the next is Thomas Daffern; and he says, that the twelfth of August, 1649, he met with Lieut. Col. Lilburne upon the Bridge, as he was going

going home to visit his sick and distressed Family, and he went back with him to his House in Southwark, at Winchester-House, which I am sure is not in London; and therefore at Guildhall in London, by a London Jury, in Law cannot be try'd: For he positively saith, That at Winchester-House in Southwark, which is in the County of Surrey, Lieut. Col. John Lilburne gave him a Book to carry to Col. Ayres, a Prisoner at Warwick-Castle; but he does give in no Testimony at all that it is mine, or that that Book was Lieut. Col. Lilburne's, of his Making or Penning; but a Book he gave him, and that is all he says; which is no more but that he received a Book at Winchester-House in Southwark from the Hands of Lieut. Col. Lilburne, to carry to Col. Ayre's, now a Prisoner at Warwick-Castle.

Now truly he is but a single Testimony, and he swears nothing particularly as to me; and besides, what he swears is to a Fact done in another County, and his Testimony is not worth a Straw; it's gone, it signifies nothing, it is not so good as a Spider's Web.

By Virtue of which, the Marshal's Testimony and the Governor of Warwick-Castle, as also col. Purefoy's, need no other Answer from me, but to pity them for the long Journey they have made to no purpose.

The next Thing charged upon me, is the Preparative to an Hue and Cry after Sir Arthur Haslerig; to which the Lieutenant of the Tower says, that lieut. col. John Lilburne gave him one of those Books in the Tower, which truly I am confident is in Middlesex: And truly I conceive, under Favour, it will be a Point disputable in law,

that I should be try'd for my life in this Place, admit there were a thousand Witnesses to make it out that the lieutenant of the Tower had one of them from me, either in the Place he formerly named, or at his own House for that Fact was done in the Tower that is out of the county of London and so not triable by a Jury of citizens of London.

But he further saith, whether the Book that he now has, be the same that he received from the Hands of lieut. col. Lilburne, that he is not able to depose.

Then the rest of the Witnesses that do depose against me in Relation to the Hue and Cry, are James Nutleigh and Edward Radney, both of them Mr. Prideaux's Servants; and the most that they say is, that when I was before their Master, upon the 24th of September, at his chambers in the Temple, to be examined by him, they saw me deliver A Preparative to an hue and cry after Sir Arthur Haslerig, to their Master's Hands, and tell him that it was mine, and I would own it, saving the Printer's Errata's, which, says the lieutenant of the Tower upon his Oath, expressed to be many.

In answer to which, I say, I do not know whether the Temple be within the Liberties of London or no; and if it be not, I know no Ground in Law wherfore a London Jury should try me here.

But more fully I say, for any thing the Jury knows, or for any thing the Witnesses swear, the Printer's Errata's which are many, are all and every of those Clauses that Offence or Exceptions are taken against; for not one of those Clauses which you except against, are not proved to be the
Printer

Printer's Errata's: And therefore, there is no Validity or Weight in those Testimonies also, for they do not prove in the least, that any six Lines of the Book is mine, all of them say, that I owned no more of the Book than what was free from the Printer's Errata's.

And the Lieutenant of the Tower swears, that the Clause was added, Which are many.

And therefore, you the Gentlemen of the Jury, I appeal to your Consciences, and to your Judgments, and the Lord set it home to your Understandings, that you may not be guilty of the Blood of an innocent Man, by Partiliarity, Fear or Affrightment of Spirit; for in Law, Equity and Justice, and all their three Testimonies put together have no Validity, no Strength, nor Force in them: And so much for that.

The next Thing fixed upon me, is, The Legal Fundamental Liberties of the People of England revived, asserted and vindicated; and truly all that's brought to prove the Legal Fundamental Liberties of England to be mine, is but merely the Relations that are in the fore-mentioned Books; for I do not remember (nay, I am sure of it) that there is not so much as a single Testimony that does give in any Evidence against me that it is mine; and therefore I can answer to that nothing more than what I have said already.

The Testimonies all being invalid, at least in the Eye of the Law; and therefore that's gone too, and blown away as Chaff before the Wind.

Lastly, For the Agreement of the People, truly that is dated the 1st of May, 1649.

And truly, for ought I know, and I am sure of it too, it is before the Date of any of those Acts upon which I am indicted for my Life, and therefore not within the compass of it.

For Paul, that great Apostle, said; and he that spoke by the Spirit of God that dwelt within him, and to whom it was given in an extraordinary Manner, that so he might thereby be enabled to write the infallible Truths of God, said, Where there is no Law, there can be no Transgression.

But that Agreement was in being, and publickly abroad with a legal Imprimatur to it, before any of the Acts, upon which I am arraigned, had a being: And therefore, admit it should be granted to be mine, yet it can be no Transgression, or any Thing prejudicial in the Eye of the Law unto me.

But besides, there is not any Testimony at all, that so much as lays it to my Charge to be mine; and it pinches me not, nor does any of all the rest of your charges.

And besides all that I have already said in my own behalf, to shew in Law the Invalidity and Insufficiency of all the Testimony you have produced against me, I add this by way of Addition to it, that there hath not been so much as one single Witness or Testimony to prove that the Books laid to my charge are rightly and truly dated, and not post-dated; which if any of them, or all of them should be, admit the Proofs were sufficient in Law, yet unless the Days of them be firmly proved to be exactly according to the original Copies, and not post-dated, for any thing the Jury knows, they might be made and writ before the Acts had a being.

And if there were so many Testimonies in Law to prove the Books mine, (which there is not in the least) yet, I say, admit there had been a thousand Witnesses to the Proof of every one of those Books, yet notwithstanding in the Eye of the Law, I leave it to the Consciences of my Jury, whether I be not free in that particular, seeing there is none swears punctually to the Dates of them.

But to put all out of Danger, as I deny nothing, so in that Particular I do not own a Jot, a Line, a Word, a Syllable of any of them.

Now, Sir, having done so far as I have, and clearly discovered to the Jury, and all that hear me this Day, that all the Proofs alledged against me do not stick, in the least, any Guilt upon me, truly I have clearly answered and invalidated all the verbal Proofs according to the clear Letter and true Intention of the Law.

I have no more to say to all the Evidences that have been read in Books against me: I leave it to the Consciences of my Jury, believing them to be a Generation of Men that believe in God the Father, and believe they shall have a Portion in the Resurrection of the Dead, and stand before the Tribunal of the Lord Almighty, to give an Account unto him, the Lord of Life and Glory, and the Judge of all the Earth, of all their Actions done in the Flesh: I leave it to their Judgments and Consciences, to judge righteously between me and my Adversaries; and the Lord of Life and Glory, to judge right between me and you, that in all those Things in your long Scrowl you pretend me guilty of, I hope I have so clearly and fully an-

swered all and every of your Proofs, that not any one Thing sticks.

And to their Consciences I cast it; hoping that they do look upon themselves as standing in the Presence of him that sees their Hearts, and know now whether there be any Malice in them towards me, or no; which, for my part, I do not believe there is; for I profess I know no Wrong I have particularly done them as Men, or generally as Englishmen.

My Conscience is free and clear as in the Sight of God, and I hope of all unbyassed Men.

And, to my Knowledge, I never saw the Faces of any two of them before this Day; and therefore, entirely as an Englishman, that loves and honours the good old Laws of England, and earnestly desires, and endeavours, and struggles for the Preservation of Justice and just Magistracy, which I wish with all my Soul may be preserved; and therefore having suffered much for the Preservation of the common and just Liberties of England, to their Consciences and to their Judgments, I leave both this Matter, and the constant Series of all my Actions, in this my Pilgrimage and Vale of Tears here below.

Ld. Keble. Mr. Lilburne.

Lieut. Col. Lilburne. Your pleasure, Sir?

Ld. Keble. Nothing, Sir, but this: Our Consciences are before God, as well as your's; and therefore you need not speak thus.

Lieut. Col. Lilburne. Sir, I have only two or three Words more, which I have spoken to you: But these Men, that are my Jury and Judges, in whose Hands only are the Issues of my Life, have

ve not as yet heard them.

I pray you give me Liberty, according to your Promise, to go on without interruption.

You Gentlemen of the Jury, I have any material Things to produce Witnesses unto for my Justification; but no time in the least will be allowed me, you see, to produce them, which I ought by Law to have had; especially considering I have been locked up so long Prisoner, and have nothing for which I was first imprisoned, laid unto my charge, and have so high, potent and mighty Adversaries as I have; and truly every Man is shy of me, for fear he may come into Trouble for coming near me.

And therefore, I have but two or three Words more to speak to the Jury, I beseech you let me freely go on.

Ld. Keble. Make them thirty to your Defence, and you may speak them.

Lieut. Col. Lilburne. I shall, by God's Assistance; I shall keep close to my Defence.

Now, Gentlemen of the Jury, I think I have sufficiently pleaded for myself at this present; and that to clear up fully unto your Judgments, and to your Understandings, that by the Law of England there is not so much as any one Fact proved against me; for the Law is express, that to every particular Fact of Treason there must be two sufficient Witnesses, not by Constructions, or the like: Upon which Score and Plea that Gentleman, Master Nichols, that sits there as a Judge, and Master John Maynard, saved Master Rolfe's Life, being to be arraigned for the highest of English Treason, before Baron Wyld.

Now, Gentlemen, if notwithstanding what I have said, any Thing shall yet stick upon your Spirits, I shall entreat you to consider the Intention of the Law of England: It is repeated several times in Sir Edward Coke's Institutes; it is a Maxim in the Law, I have it here in the third Part of his Institutes, fol. 6. & *actus non facit reum, nisi mens fit rea.*

Sir, if you please to do me the Favour but to English it, and explain it for the Jury? For though I understand the Substance of it, yet I am not exactly able to English the Latin, but only to understand the Sense of it.

I conceive the Sense of it is this, It is not the Act, but the Intention of the Mind, that declares Guilt.

But therefore as in reference unto that, I shall say no more but only this to them, That the constant Series of all my Actions, from my Youth hitherto, have manifested that I have, with an affectionate and compassionate English Spirit within me, that hath put me forth for many Years together really to endeavour the Prosperity and Good of the Land of my Nativity, and not its Mischief and Destruction; and that hithertoward, in all my Contests, I have had the Law and the declared publick Justice of the Nation on my side, having never done any Mischief to my Country, unless it be a Mischief to oppose great Mens Wills.

I have now been seven Months in Prison, I know not wherefore, altho' originally I was committed to Prison pretendedly for Treason: And both the Acts, upon which I am indicted, have been made long since my first Commitment.

There is not any one Syllable of all those Things for which I originally in general,

general, without Accuser or Prosecutor, was voted a Traitor by the present Power; and for which I was proclaimed a Traitor throughout all the Market and great Towns in England six Months ago: There is not now, I say, any one of those Things laid to my Charge.

But truly I have been laid into Prison for nothing, as by this Day's Work clearly appears, by the Men in present Power.

Unto divers of whom I have often sent, to know what it is they require at my Hands; and have also from Time to Time declared my ready Willingness to compose and end all Differences that concern me, having proffered again and again to refer myself unto the final Determination of four of their own Members, finally to end and determine all Differences betwixt them and me; whereof I was willing that Judge Rigby should be one of them: A Gentleman (though now a Judge) I have found very honest and faithful, and to whom I have been much obliged for many hearty Favours I have from Time to Time received from him.

I say, I have sent to him and Col. Martin, and abundance of Members besides, from Time to Time; to some of whom I have written, with some of whom I have spoken.

I say, I have sent many Messages with the earnestest Desire in the World, That if I had offended any Man in the House, that if he would be pleased fairly and friendly to refer it to the final Judgment and Determination of four Members of their own House, I would stand to it.

And let all the World judge whether or no this Proposition was not suitable to a Christian, and suitable to an

honest Man; yea, to a Man that judge himself in the strictest Scrutiny of his own Conscience to be free and innocent in his own Soul, and in his own Conscience, from all Guilt, Crimes, Treasons; or else, if I had not, would not have put myself upon the Judgment of those that were engaged in Interest and Self-preservation against me: And yet for the Things that they imprisoned me for as a Traitor in general, which I hear nothing of this Day, which is wonderful strange Law and Proceedings to my Understandings.

But besides, Sir, under favour, have not only done this, but I have yet Thousands of my Friends, I will undertake I could produce ten Thousands of old and young, Males and Females, Citizens and Countrymen Men of Honesty and Integrity, that have in the common Cause always adhered to the Freedoms of the Nation that have petitioned the Parliament several Times, yea, from Time to Time, with abundance of rational and fair Petitions, and truly stated my Case to them, and acquainted them with my Condition, and with the rest of my Fellow-Prisoners, and earnestly begged and entreated of them that they would not be hasty in condemning and destroying me before they had heard me, and afforded me a legal Trial from first to last, according to the due Forms and Process of the Law of England.

And yet for all this, till I came before you, I never saw Accuser or Prosecutor, nor Indictment or Charge, nor nothing in all the Earth, legally to demonstrate me so much as a supposed Offender.

And yet for all this no Satisfaction in the World would be received; notwithstanding in one Petition they desiring that they would be pleased, seeing they were incensed against us, and that they had taken Indignation against us, they did not desire to justify us in any Thing we had done; but in regard to their own Knowledge, we had been all four faithful, zealous and serviceable Instruments in the common Cause of the Nation: In which, to the hazard of my Life an hundred Times over, I have engaged for them, with my Sword in Hand, with as much Resolution, and as much Faithfulness, as any Man on Earth ever served a Generation of Men; having never betrayed my Trust, or ever given any Suspicion in the least that I would, or ever so much as staggered in my Principles, or ever so much as disputed any Commands, though never so desperate, that were laid upon me; no, nor ever turned my back in the Field of their Enemies in any of their Services, so long as it was possible for a Man that had any Brains left him to stand; but was one of those seven hundred Men at Brentford, (myself being there a Volunteer, without any particular Command) that with dint of Sword stood out against the whole body of the King's numerous Army for many Hours together, and never stirred off the Ground till both Horse and Foot had, as it were, encompassed us round, and till we came to a Readiness to beat out one another's Brains with the But-end of our Muskets; where I was taken a Prisoner, and led Captive in a most barbarous and disgraceful Manner to Oxford, where I suffered abundance of unexpressible Hardships, and underwent the Shock, and rid the Storm, as

stoutly as any Man there, although I believe I was as much courted by Messages from the King himself, as any or all the Parliament-Men that were there my Fellow-Prisoners; for there I have had no less than four Earls and Lords in one Day sent unto me by him, to draw me over to them: But I bless God, that kept me upright, and entire unto my Integrity and Principles, and suffered me not to turn my Back upon them.

But, Sir, notwithstanding all this, (I say) our Friends desired of the Parliament that they would be pleased to take sufficient Security, according to the Law, for our forth-coming at all Times, to answer such Things as shall be laid to our Charge: But their Petitions were contemned, themselves slighted and abused, and by no Means could get any satisfactory Answers to them.

Sir, I speak here to you, and to my Fellow-Citizens the Jury, as in the Sight and Presence of God, that knows I lie not: And if you find me to be in a Lie, in the least, in what I have said, then never credit Men of my Profession again for my Sake.

Truly, Sir, I say, they desired them that we might be released from our Imprisonment, putting in Security to answer whatsoever legally could be charged upon us; only they craved we might have the same legal Privileges that they demanded at the Hands of the King, when he impeached the Lord Kimbolton and the five Members of High Treason; which Privileges are easily and plainly to be read in their own first Primitive Declarations, p. 38, 39, & 70, 77.

Now abundance of the Free People of this Nation, in my behalf, having craved the same Privileges that were demanded for the Lord Kimbolton, and in behalf of the five Members, and the like, all that they desired was no more but the same Privileges that they craved for them; which was, that I might have the due Process of the Law, from first to last; and I and my Accusers come Face to Face at the Beginning before an ordinary Magistrate; and if they had any thing to lay to my Charge, that they would legally, according to Law, proceed with me.

But, I say, none of these would be granted, although themselves in several of their Declarations have declared all these Things to be the common Right of all or any of the People of England, as well as Parliament Men.

Yet notwithstanding all this, they continued in their incensed Condition against me, and would come to no legal nor fair Issue with me; nor let me in the least know what was the End or Thing they required of me, or what was the Thing that would satisfy for the extenuation of their Indignation against me; but contrariwise dealt harder and harder with me; in laying new and fresh insupportable Burdens and Provocations upon me: For, after all this, they caused me to be locked up close Prisoner in the Heat of Summer, set Centinels Night and Day at my Door, denied me the access of my Wife and little Babes; for a certain Season neither Wife nor Child could so much as set their Feet within the Gates of the Tower to see me, or comfort me in my Distress.

Ld. Keble. Mr. Lilburne, is this your Defence?

Lieut. Col. Lilburne. I beseech you as either Law, or Fear of God, Conscience or common Honesty dwell within you, let me have a little fair Play to go on to speak for my Life without Interruption; I shall not trouble you long, for I have almost done.

Ld. Keble. When your Matter of Fact is to defend yourself, and to answer the Proof upon that; and that is it we are to hear, and not to hear you tell the Story of all your Life: And then if we should reply to these particular Things, they will be such as most of them will vanish, and do you no Service, but take up a great deal of Time.

Do not tell us a Story, but go on to finish the Matter of Fact.

Lieut. Col. Lilburne. It has been your Favour to give me Leave to tell it over to you, I pray give me Leave to declare it to my Jury, who have not heard it before; and it is very material to my Preservation, and my Life lies upon me: Therefore do not deal with me as Proctors, and engaged Men, with those that thirst for my Blood; and laying aside that evenness of Hand betwixt both Parties, that ought to be in all just and righteous Judges.

Ld. Keble. 'Tis nothing to this; if it be any thing in the Way of the Course of your Defence, you should have it.

Lieut. Col. Lilburne. Well, if you will let me go on no further to make my Defence, I cannot over-rule you, though you over-rule me; my Blood be upon your Heads, and the Lord God of

of Heaven and Earth reward you for
your Blood-thirsty cruelty towards
his innocent Servant this Day; and
I have done with it: And what I
have said, I have done with it, and
leave it to the Jury, earnestly begging
and intreating them to take Notice of
your cruel and unjust Dealing with
me, in denying me all the Privileges
of an Englishman, when I am upon
my Life.

Ld. Keble. What is material, you
shall not be debarred in it.

Lieut. Col. Lilburne. O Lord, Sir!
What strange Judges are you, that you
will neither allow me Counsel to help
me to plead, nor suffer me myself to
speak for my own Life? Is this your
Law and Justice, I have no more to
say but this, seeing you straighten me;
tho' you said you would hear me till
midnight.

I hope I have made it evident to all
rational Men, that all or any part of
the Testimony given in against me,
does not in the exact Eye of the Law,
the least touch me, although I have
been most unjustly imprisoned, and
most barbarously used, and tyrannized
over; yea, and my Estate by Will and
Power taken from me, that should have
kept me and mine alive, and the legal
and customary Allowance of the Tower
denied me to this Day.

And although I have used all chri-
stian and fair Means to compose my
differences with my Adversaries, yet
nothing would serve their Turns, but
I must have Oppression upon Oppressi-
on laid upon me, enough to break the
back of a Horse; and then if I cry
out of my Oppressions in any kind, I
must have new Treason-Snares made to
catch me, many Months after their
Oppressions were first laid upon me,

that if I so much as whimper or
speak in the least of their unjust Deal-
ing with me, I must die therefore as a
Traitor.

O miserable Servitude! and misera-
ble Bondage, in the first Year of Eng-
land's Freedom!

I have now no more to say unto you,
but only this; your own Law tells
me, Sir Edward Coke speaks it three
or four Times over in his 3d Part of
Institutes, That it is the Law of Eng-
land, that any By-stander may speak
in the Prisoner's behalf, if he see any
Thing urged against him contrary to
Law, or do apprehend he falls short
of urging any material Thing that
may serve for his Defence and Pre-
servation.

Here's your own Law for it, Sir;
Coke is full and pregnant to this pur-
pose in his 3d Part of Institutes, fol. 29,
34, 37.

But this hath several Times been de-
nied me in the Case of Mr. Sprat, my
Sollicitor; and now I demand it again,
as my Right by Law, that he may
speak a few Words for me, according
to his often Desire, both to me and the
Court.

I have almost done, Sir, only once
again I claim that as my Right which
you have promised, That I should have
Counsel to Matter of Law; and if you
give me but your own Promise, which
is my undoubted Right by your own
Law, I fear not my Life: But if you
again shall deny both these legal Pri-
vileges, I shall desire my Jury to take
Notice, That I aver you rob me of
the Benefit of the Law, and go about
to murder me, without and against
Law: And therefore as a free-born
Englishman, and as a true Christian
that now stands in the Sight and Pre-
sence

fence of God, with an upright Heart and Conscience, and with a cheerful Countenance, cast my Life, and the Lives of all the honest Freemen of England, into the Hands of God, and his gracious Protection, and into the Care and Conscience of my honest Jury and Fellow-Citizens; who I again declare by the Law of England, are the Conservators and sole Judges of my Life, having inherent in them alone the judicial Power of the Law, as well as Fact: You Judges that sit there being no more, if they please, but Cyphers to pronounce the Sentence, or their Clerks to say Amen to them; being at the best, in your original, but the Norman Conqueror's Intruders.

And therefore you, Gentlemen of the Jury, are my sole Judges, the Keepers of my Life, at whose Hands the Lord will require my Blood, in case you leave any part of my Indictment to the cruel and bloody Men. And therefore I desire you to know your Power, and consider your Duty, both to God, to me, and to your own selves, and to our Country: And the gracious assisting Spirit, and Presence of the Lord God Omnipotent, the Governour of Heaven and Earth, and all Things therein contained, go along with you, give counsel and direct you, to do that which is just, and for his Glory.

[The People with a loud Voice cried, Amen, Amen, and gave an extraordinary great Hum, which made the Judges look something unwardly about them, and caused Major-General Skippon to send for three more fresh Companies of Foot Soldiers.]

Mr. Attorney. Gentlemen of the Jury, you have heard the Evidence in behalf of the State; you have heard the Insinuations of the Prisoner upon them, as calling you his Fellow-Citizens, and the like: He hath said, and spoken; we have proved, and it is in your Consciences to belief Proof, before Saying.

The Prisoner began to cite you two Acts of Parliament; the one in the first of Edward the Sixth, and the other 5th and 6th of Edward the Sixth, and by those two Acts he would signify to you, that you should have two plain and evident Witnesses to every particular Fact; yet he did forget to cite another Statute made in the first and second Years of Philip and Mary, that overthrows and annihilates those two Statutes that would have two plain Witnesses to every Fact of Treason; and in all cases of Treason will have them freed, according to the common course of Law, the common Law for the Trial of them.

If that must be material, or if the stick with you, that you cannot determine it, my Lords the Judges will direct you in it, and in all other Points of Law.

But certainly that Exception was little vain too; for we did not insist with one particular Witness in nothing at all; for that of Newcombe, the Prisoner did not repeat fully what he said for I remember he said this, That Mr. Lilburne and captain Jones came together, and brought the copy of the last Sheet that was to be printed: If one come with him, and the other deliver it to the Printer, they are both equally guilty alike.

They came again the same Day Night, and when the first Sheet was printed

printed, to be sure it was true and right, Mr. Lilburne did take the pains to take one of the Copies into his Hand, and corrected it.

Lieut. Col. Lilburne. By your Favour, Sir, he urg'd no such Thing: by your Favour, Sir, they are the express Words of the Testimony, to the quite contrary; and I wonder, Mr. Rideaux, you are not ashamed to aver such notorious Falshoods, as you do, in the open Face of the Court, before thousands of Witnesses; for Newcombe did no such Thing, as you falsely affirm; neither is there any such Statute in Queen Mary's Time that doth abolish those two Statutes of Edward the sixth, that I insist upon for two Witnesses: Name your Statute if you can, here's the Statute Book, let the Jury hear it read, do not abuse them with your impudent Falshoods.

Mr. Attorney. Well, Sir, I leave to the Judgment of the Jury, Sir. My Lord, as for all the rest, and particularly for that of the *Salva Libertate*, it is true, there is but one Witness, which is sufficient enough by the pre-mentioned Act of Queen Mary; but, my Lord, it is under Mr. Lilburne's own Hand, he will not deny

Lieut. Col. Lilburne. By your Favour, there is no Man so swears, in the least, that it is my Hand: Jesus Christ denied none of his Accusation; yet when they went about to ensnare him by Questions, he answered Pite, &c. Thou sayest so; go to those that heard me, they know what I said; why ask you me? Sir, I beseech you produce your Act of Parliament in Queen Mary's time, to prove, in Cases of Treason, there ought to be but a single Witness.

Mr. Attorney. Do not interrupt me, Mr. Lilburne.

Lieut. Col. Lilburne. I pray you then do not urge that which is not right nor true, but notoriously false; for if you persevere in it, I will interrupt you, and tell you of it to the Purpose.

Judge Jermin. Though you do recite many Things, yet I must tell you, the Law of the Land saith, The Counsel for the Commonwealth must be heard.

Lieut. Col. Lilburne. I beseech you then let there be no more added to the Testimony, than Right and Truth; for my Life lies upon it, and I must and will declare the Baseness and the Falshoods of it.

Mr. Attorney. I would not do the tenth part of the Hair of your Head wrong; but being intrusted, I shall do my Duty, and discharge my Conscience in my Place, which is fully and plainly to open that unto them, which in my Conscience I think is right and just.

Lieut. Col. Lilburne, I do repeat it thus, as in my Conscience, that he did say, when the Copy was first brought, Capt. Jones gave him the Copy, and Capt. Jones did agree with him for the printing of it; and Capt. Jones did read the Original to his Corrector, which Corrector amended the Printer's Faults, and that I had an uncorrected Sheet away; and that his Forms were taken before he had perfected that.

Mr. Attorney. And Mr. Lilburne came the second Time.

Lieut. Col. Lilburne. Will you spend all Day in vain Repetitions? You would not give leave to breathe, nor freely to speak truth, without Inter-

ruption, although you were laying loads upon me for five Hours together: I pray, Sir, do not now go about to tire the Jury with tedious Repetitions, nor to sophisticate or adulterate their Untruths.

Judge Jermin. Mr. Lilburne, the Law of the Land is, That the Counsel for the State must speak last.

Lieut. Col. Lilburne. Sir, your Law is according to the Law of God, you said; and that Law, I am sure, will have no Man to bear false Witness: Why doth Mr. Prideaux tell the Jury such Falshoods that he doth, and takes up six times more Time to take away my Life, than you or he will allow me to defend it?

Mr. Attorney. For the Salva, that it was delivered in the Tower, which is not in London, I hear not one Witness to prove that.

Lieut. Col. Lilburne. That is a disputable Point in Law, whether it be in London or Middlesex.

Mr. Attorney. And then, my Lord, as for the Agreement of the People, Mr. Lilburne says, it was dated the 11th of May, 1649, and it was before the Act was made that is dated May, 1649, and it is before the Law was made in July, 1649. We do not question him for that; but when he comes to bring in those Books in August last, then he does new publish that Agreement of the People: He incites them to set it up as their Center, Standard and Banner.

Lieut. Col. Lilburne. Let me not thus be abused; that Book was never fixed upon me; I was never taxed to be the Author of it, or so much as the Disperfer of one of them: What Baseness is this in you, Mr. Prideaux, thus falsely to use me?

Ld. Keble. He does you no wrong but all the fair Play that can be; he doth fix that Agreement no other wise upon you, than by your Books it is.

Mr. Attorney. I do acknowledge the Agreement of the People that you are charged with, is dated the 11th of May, 1649, and that the Evidence may allow this; as also, that that Agreement of the People that was then published, and which you in your Books did own, was and is signed by Mr. Walwin, Mr. Prince and Mr. Overton your Fellow-Prisoners, as well as yourself.

Lieut. Col. Lilburne. There is no Book yet proved mine; and if that Agreement were mine, yet it is dated before both your Acts, and was in print before they had a Being; and therefore in the Eye of your own Law can be no Transgression; and you yourself doth not so much as accuse me for publishing or dispersing one of them since your Acts were publickly declared.

Mr. Attorney. That which you owned and signed, Mr. Lilburne.

Lieut. Col. Lilburne. By your favour, Sir, I never owned or signed any Book that is proved against me yet; and no Book in the Eye of the Law can be accounted mine, until it be legally proved mine, or voluntarily confessed to be mine by myself.

Mr. Attorney. My Lord, that it own'd to be so printed. When he must come and incite the People, and stir them up upon those Particulars therein contained, to insist with Particulars, as the dissolving of the Parliament, the having of a new, and such other Particulars therein contained and that this Agreement shall be the Center

enter, the Banner, and the waved standard, unto which they shall flock, and to send Agents into several Counties to put this into execution.

Now, my Lords, for this Book it is not doubted but that there are two Witnesses that the Preparative to the Hue and Cry was own'd by Mr. Lilburne to be his own, the Errata's of the Printer only excepted; and that the Lieutenant of the Tower likewise signs in it.

My Lords, I think there was not a Clause read to you out of it, but what full and home to the Purpose; and as for the Outcry, the Printer's Testimony is compleat. And the legal fundamental Liberties is owned by him in his Impeachment of High Treason against Lieutenant-General Cromwell, and his Son-in-Law Commissary Ireton; and he doth there also sufficiently own the Agreement of the First of May; and, my Lords, I do not know where was any thing that was offered there in that Book, but was first proved in the Court.

We do not offer any thing of Error that was past, to take Mr. Lilburne upon any Speeches that fell from him unawares, although he hath sufficient-ly done it: But in much speaking there wants no Offence: It falls out here in this.

Mr. Lilburne hath been very free in his writing, in his speaking, in his printing, and it now riseth in Judgment against him, and the Law must now give him his Due; which you, my Lords, are sole Judges of, and from the Jury and the Prisoner both must receive it, for all that which Mr. Lilburne hath said to the contrary. And the Jury answers to the Matter of Fact, and they are upon their Oaths

sworn to do the Things that are just and right.

My Lords, I shall leave the Evidence to them, with this Note or Observation upon it, That notwithstanding all Mr. Lilburne hath flourish'd and said, I will not say as he hath done, and seek by glossing Speeches or Insinuations to wind into the Affections of the Jury, as he cunningly and smoothly hath done, by calling of them his Fellow-citizens, and the like.

You Gentlemen of the Jury, you are to answer now according to your own consciences, betwixt God and you; your Oath is, That you are not to respect Favour or Affection, nor to meddle with him upon any respect, than in Justice, and as it is already clearly witnessed and proved before you.

My Lords, you have heard the several charges he is accused upon; you have heard a great deal of foul Matter and Dirt, that is fit for nothing but to be cast upon the Ground, and returns to Mr. Lilburne again; for truly when he cast it upon the purest Marble or Brass, it falls off again: God be thanked that it returns to Mr. Lilburne, the right Owner.

The Prisoner hath cast these Accusations and these Blemishes upon others, but now they are upon the Ground they will fall off, and do retort and return upon his own Face: He hath taken a great deal of Pains to dig deep for Mistakes, nay, for notorious and gross calumniations; had he the Ingenuity to remember the Words of the Scripture, That the Pit he hath digged for others, he is fallen into himself, he would have some Remorse of conscience in him: But all the Mischiefs and all the Evils that can be thought upon,

upon, which he imagined to heap upon himself.

It is said of those Flies whose Matter is corruption, they always light upon fore Places, upon galled Backs, upon carrion; other Birds, when they fly upon fair Meadows, will not touch these.

Certainly the Parliament of England, the Army, all the Officers of it, (whose Fame, both as Parliament and Army, all Men know in an extraordinary manner) are now in a Ballance against Mr. Lilburne: But for the Army and the Officers of it, no Man can say but they have been faithful and true to their Trust, gallant and courageous, and extreme successful to the Peace and Happiness of this Nation; and God is pleased at this Instant to own them, and bless them in a miraculous manner.

Lieut. Col. Lilburne. And yet notwithstanding, did not you help to vote them Traitors once? I am sure I was in a chamber in Whitehall last Year, when their Commissioners (now Members of your House) put your Name down in their black Bill for a Malignant: But it seems you have recanted your Errors, and engaged to be a good acquiescing creature, or else you had not been here this Day in the condition you are in.

But for all their Faithfulness, &c. have they not rebelled twice against their Creators, Lords and Masters?

Mr. Attorney. Never Army hath done greater Things, and yet they have not escaped Mr. Lilburne's Tongue and Pen; they have not escaped it, my lords, but he hath lashed them to the Purpose.

I shall be as good as my word, not to aggravate the Offences, for they are

so vile, they aggravate themselves enough; and therefore I leave it to the naked Truth, and the Worth of as the Books themselves have offered themselves.

But I shall say thus much more, to the Honour of the Parliament of England, all the Magistracy therein, the Honour of the Government, the Honour and Renown of the Army, that hath done such great and wonderful Things, now at Stake against Mr. Lilburne, and there being a Law published, that did give warning: And Mr. Lilburne had been try'd for his Life sooner, upon my Knowledge; I say, Mr. Lilburne had been sooner try'd, and sooner condemned and executed, if the Law had been sooner made and published.

But as he saith, Where there is no Law, there is no Transgression; and therefore there being a Law against which he hath offended, he must smart for it.

Lieut. Col. Lilburne. I am sure I was imprisoned most unjustly, without any the least Shadow or Colour of law, many Months before your Acts were made, and extremely oppressed; and now you go about to hang me as a Traitor, for at most but crying out of your Oppression.

O unrighteous Men! The Lord in Mercy look upon me, and deliver me, and every honest Man from you, the vilest of Men.

Mr. Attorney. And that law was published and proclaimed in this City, by means of which, Mr. Lilburne and others had timely Notice that they should not do such Things as are there forbidden; it also told them the Penalties of it, which are those that are due

he for the highest High-Treason: And yet notwithstanding you see with what boldness, with what Confidence, in despite of all Law and Authority, these Books have been made and published by Mr. Lilburne.

And whereas he is pleased to say any Times, that many Men have petitioned for him to the Parliament, he will not affirm to you that ever he petitioned himself; but in all his Discourse here, he calls them the present Men in Power, the Gentlemen at Westminster: Nay, my Lord, he hath not so much as owned the Power of the Court since he came before you, but hath often called you Cyphers, and the like.

Lieut. Col. Lilburne. That's no Treason, Sir: They intitle themselves the present Power; and would you hang me for not giving them a better title, than they themselves give to themselves? I think the Stile of present Power or present Government, is a very fit Stile for them.

Mr. Attorney. My Lord, I have told you long, it is the Jury that are upon the Fact; and to you I must appeal for Law, if you do believe the Evidence is plain and full against him, for which he stands indicted: And so God direct all your Judgments, I have done.

Lieut. Col. Lilburne. Sir, by your Favour, I shall desire to address myself in one Word to you; which is, to desire that the Jury may read the first Chapter of Queen Mary, in the Statute-Book, and the last Clause of the Chapter of the 13th of Elizabeth; where they shall see clearly see, especially in the Statute of Queen Mary, that they abhorred and detested the making of Words or Writing to be

Treason, which is such a Bondage and Snare, that no Man knows how to say or do, or behave himself, as is excellently declared by the Statute of H. IV. v. 2. I have done, Sir.

Ld. Keble. Gentlemen, you of the Jury, you are sworn, you are Men of Conscience, Gravity and Understanding: To tell you of the Duties of your Place, that have gone through it so often, is a vain Thing.

The sacredness of an Oath, which a Man must not transgress in the least, not to save the World; you have gone so often through it, and understand it, that I need say no more.

The Charge you have heard, and the Proofs; but for Proof single, or double, or treble, as some of them do amount unto a witness in this, yea, that doth double another Man's witness; if I swear this thing, and another swear the same, a third the same, that is doubled upon all their Testimonies.

Mr. Lilburne hath cited two Statutes of Edward the Sixth, to prove there must be two witnesses; but I must tell him, were there but one to each Fact, it were enough in Law: For as for which was cited of King Henry the Sixth, you have had it fully answered by a later Law of Queen Mary, which doth over-rule that, and also enacts that the Common Law of England shall be the Rule by which all Treasons shall be try'd; which reacheth to this Case too, that there need no more but one witness, and this is Law; and therefore, Gentlemen of the Jury, that must not stick with you.

That which you have heard, to concern you, of the truth of the Matters, is this, You are not bound affirmatively to have two witnesses, but in that

one Witness with the Circumstances concurs, that is sufficient: That which should prevail with you, is to consider the Strength of the Accusation, which rests in the Books, and doth consist of three Heads, which are laid down in the Books themselves; which doth in the first Place so firmly express, and so far vilify the Parliament and State, as it is now established in England; the second doth look unto Counsels and Incitations of him for the stirring up of Tumults, Commotions and Wars in this Nation; and the third, are the Things cited in his Books to that end and purpose, to divide the Army, and then the other will take the better effect. These are the three main Charges, and these the Books that come from him do so plainly testify.

Judge Jermin. You, Gentlemen of the Jury, I did expect it, it was expected by the Court, that some Matter of Law, or some Question of Law, might arise upon the Evidence; which if it had, it was the Duty of the Court to have cleared it; but there does not appear, and therefore there is an end, as to the Dispute of the Law.

Foreman. We are no Lawyers indeed, my Lord.

Judge Jermin. I pray demand Justice of the Court against him.

[The Foreman desires the Act for Treason, and one of the Jury desired to drink a Cup of Sack, for they had sat long, and how much longer the Debate of the Business might last, he knew not; and therefore desired, that they might have amongst them a Quart of Sack to refresh them.]

Judge Jermin. Gentlemen of the Jury, I know for my Part in ordinary Juries that they have been permitted to drink before they went from the Bar;

but in case of Felony or Treason never so much as heard it so, or much as ask'd for: And therefore you have it.

[But one of the Judges moved that might have it.]

Judge Jermin. I may not give leave to have my Conscience to err; I do not. And thus, If the rest of the Judges be of Opinion, you shall have a Light if you please, the Fellow that keeps you shall help you to it; but if Sack, you can have none, and therefore withdraw about your Work.

Lieut. Col. Lilburne. Sir, I understand the Officer that is to keep the Door hath declared something of Bitterness of Spirit against me; I desire therefore he may have some indifferent Man joined with him, to see I have fair Play: Which was granted and sworn.

The Jury go forth about Five o'clock the Court adjourned till Six o'clock and the Court commands the Lieutenant of the Tower and the Sheriffs to carry the Prisoner into the Irish Chamber which they did.

The Prisoner stays about three Quarters of an Hour, and the Jury being come into the Court again, the Prisoner was sent for; and after the Cryer had caused Silence, the Jurors Names were called, viz.

1. Miles Petty,
2. Stephen Iles,
3. Abraham Smith,
4. John King,
5. Nicholas Murren,
6. Thomas Dainty,
7. Edmond Keyfar,
8. Edward Perkins,
9. Ralph Packman,

10. William Commens,
11. Simon Werdon,
12. Henry Tooley.

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Our Foreman.

Cryer. John Lilburne, hold up thy Hand. What say you (look upon the Prisoner) is he guilty of the Treasons charged upon him, or any of them, or not guilty?

Foreman. Not guilty of all of them.

Clerk. Nor of all the Treasons, or any of them that are laid to his Charge?

Foreman. Not of all, nor any one of them.

Clerk. Did he fly for the same?

Foreman. No.

[Which No being pronounced with a loud Voice immediately the whole Multitude of People in the Hall, for Joy of the Prisoner's Acquittal, gave such a loud and unanimous Shout, as is believed was never heard in Guildhall, which lasted for about half an Hour without intermission; which made the Judges for fear turn pale, and hang down their Heads; but the Prisoner stood silent at the Bar, rather more sad in his Countenance than he appeared to be before. But Silence being made.]

Clerk. Then hearken to your Verdict, the Court hath heard it: You say, that John Lilburne is not guilty of all the Treasons laid unto his Charge, nor of any one of them, and so you say all, and that he did not fly for it?

Jury. Yes, we do so.

Clerk. Gentlemen of the Grand Inquest, the Court doth discharge you. And you Gentlemen of Life and Death, the Court doth discharge you also. Lieutenant of the Tower, you are to carry your Prisoner to the Tower again, and Major-General Skippon is to guard you; and all whom you shall desire, are to assist you.

The Prisoner withdraws, and the Court adjourned till the Wednesday following.

Extraordinary were the Acclamations for the Prisoner's Deliverance, as the like hath not been seen in England; which Acclamations, and loud rejoicing Expressions, went quite through the Streets with him to the very Gates of the Tower, and for Joy the People caused that Night abundance of Bonfires to be made all up and down the Streets.

And yet for all this Acquittal by the Law, his Adversaries kept him afterwards so long in Prison, that the People wondered, and began to grumble that he was not discharged; and divers of his Friends went to the Judges, the Parliament, and Council of State, by whose Importunities, by the seasonable help of the Lord Gray of Grooby, Colonel Ludlow, Mr. Robinson, and Colonel Martin, his Discharge was procured, a Copy of which thus followeth.

WHereas Lieutenant - Colonel John Lilburne hath been committed Prisoner to the Tower, upon suspicion of High-Treason, in order to his Trial at Law; which Trial he hath

hath received, and is thereby * Acquitted: These are therefore to will and require you, upon sight hereof, to Discharge and set at Liberty the said Lieutenant-Colonel John Lilburne from his Imprisonment; for which this shall be your sufficient Warrant.

* The Jury justified by their Verdict by the Council of State.

Given at the Council of State, White-hall, this 8th Day November, 1649.

Signed in the Name and by the Ord of the Council of State, appointed by Authority of Parliament.

John Bradshaw, Presider

To the Lieutenant of the Tower London, or to his Deputy.



The Examination of the Jury who try'd Lieutenant-Colonel John Lilburne, at the Sessions-House in the Old-Bailey, upon Saturday the 20th of August, 1653. Taken before the Council of State the 23d of the same Month, in pursuance of an Order of Parliament of the 21st.

Thomas Green, of Snow-hill, Tallow-Chandler, Foreman of the Jury, being ask'd what the Grounds and Reasons were that mov'd him to find the said Lieutenant-Colonel John Lilburne not guilty upon the Indictment preferred against him at the Sessions House in the Old-Bailey, with, That he did discharge his Conscience in what he then did, and that he will give no other Answer to any Questions which shall be ask'd him upon that Matter.

And being in particular demanded of him, whether he conceived it not sufficiently proved, that the Act whereupon he was indicted was an Act of Parliament; whether he was not satisfied that the Copy of the Act itself, or that the John Lilburne at the Bar was the John Lilburne mentioned in

the Act; and what other Thing it was, which mov'd the Jury to find as aforesaid: The Examinant answered, That he will give no other Answer, as abovesaid, and desired that he might be no further press'd therein.

And being further ask'd, why he would not give an Account of the Grounds and Reasons of their Verdict, he said, He would not do it, for Reasons best known to himself.

Michael Rayner, of Friday-Street, Leatherfeller: He saith, That he was one of the Jury that tried Lieutenant-Colonel John Lilburne, upon Saturday the 20th Instant; and that he was summoned to serve the Jury upon Wednesday was Sevensnight, and did constantly attend in Court, and upon the Service, until the Trial was over;

and that he was not sollicitated by John Lilburne, nor any other on his Behalf. And the Questions mentioned in the foregoing Examination being asked him, he answered, That he was satisfied in the Verdict he gave in that Case; and that he should give no other Answer thereto.

And being further press'd therein, he desired that a Day's Time might be given unto him, to consider of it, and he should give Satisfaction to the aforesaid Questions.

He was further asked who advised him to make this Answer to the Council: Whereunto he answered, That the Jury were all of that Mind; and that they agreed to give this Answer at a Meeting they had all together at the Windmill-Tavern in Coleman-street this Morning; which Meeting they had upon Occasion of the Order of Parliament for examining this Business: And that he had Notice to come to this Meeting by one or two of his Partners, whose Names (he saith) he doth not well know.

And being further demanded of him, Whether Mr. Scobell, Clerk of the Parliament, did not give Evidence that Lieut. Col. John Lilburne at the Bar was the very Lilburne against whom the Act was made? He said he did give that Evidence; and that he did believe the said true; and that the Copy of the Act of Parliament produced was a true Copy: But saith, That he and the rest of the Jury took themselves to be Judges of Matter of Law, as well as Matter of Fact; although he confessed that the Bench did say that they were only Judges of the Fact.

He further said, He was very unwilling to be of the Jury.

Thomas Tunman, of Cow-Lan Salter, another of Lieutenant Colonel John Lilburne's Jury, who saith, that the Verdict was Not guilty. And being asked the Questions in the first Examination, he saith, That he was sworn to find according to Conscience; and positively refused to give any other Answer: And did desire that the Jury, aforesaid, had agreed together to give one and the same Answer to the Council, or that they had met together this Morning, or at any other Time since Saturday Night last until they came to the Council. And being asked in particular whether the said Jury did not meet together this Morning at the Windmill-Tavern in Coleman-street, he positively answered they did not.

Emanuel Hunt, of St. Sepulchre who said, He was one of John Lilburne's Jury, upon his Trial on Saturday last; and that the Jury found him Not guilty: But his Memory being short, doth not well remember the Issue.

He being asked whether it was proved that the Prisoner was the John Lilburne mentioned in the Act, saith He was not satisfied that it was so proved; and that there are many John Lilburnes; and that John Lilburne was indicted of Felony, which he did believe he was not guilty of; and what was found was done by the Consent of all, and did satisfy their Conscience therein; and refused to give any other Answer than as aforesaid.

And it being demanded of him whether the Jury had not met together, and agreed of the Answer they were to give to the Council, he answered, They met together the Night of the Trial to drive

Pint of Wine; and that they met not
nce until this Day. And being asked
what Time of the Day, he answered,
five of them met here. But being ask-
d particularly whether they met not
t the Windmill-Tavern in Coleman-
street this Morning, he did acknow-
edge they did, and that Mr. Tunman
a particular was there: But refused to
eclare who gave him Notice of this
Meeting.

James Stephens, of the Old Baily,
Haberdasher; who saith, That he
was one of Lieut. Col. John Lilburne's
Jury; and that having considered of
the Matter whereof he was indicted,
they found him Not guilty. And being
asked the Questions in the first Exami-
nation, he acknowledged, That he was
atisfied that the Prisoner was the John
Lilburne mentioned in the Act; nor
did he yet question the Validity of the
Act: But the Jury having weighed all
which was said, and conceived them-
selves (notwithstanding what was said
by the Council and Bench to the contra-
ry) to be Judges of Law as well as of
Fact, they found him not guilty.

He acknowledged that all the Jury
met this Morning at the Windmill-
Tavern in Coleman-street, to consider
what Answer to give to the Council;
and that the Foreman of the Jury spoke
to him to be there, telling him he had
heard there was an Order of Parliament
for summing them before the Council:
And further said, That Tunman was at
that Meeting.

Richard Tomlins, of St. Sepulchres,
Book-binder, who saith, he was
one of Lieut. Col. John Lilburne's Jury;
and that the Jury found him Not guilty.
And being ask'd what was the Point in

Issue, he desired to be excused in that,
saying, What he can tell, is one Thing;
but to accuse himself, is another Thing.
It being further demanded of him,
whether he was satisfied that the Pri-
soner was the John Lilburne mentioned
in the Act, he said he was not. And
being asked what made him think so,
he answered, He was not bound to give
any Account of what he did in that Bu-
siness, but to God himself.

William Hitchcock, of Watling-
street, Woollen-Draper; who,
saith, he was of Lieut. Col. John Lil-
burne's Jury, and that the Jury found
him Not guilty. He being asked the
Questions expres'd in the Foreman's
Examination, he answered, He had dis-
charged his Conscience in what he had
done; and desireth the Council not to
ask him any Questions, for he can give
no other Answer, and is resolved to give
no other Answer.

And being asked concerning the
Meeting of the Jury, to agree of an
Answer to be given to the Council, he
first denied that they had any other
Meeting than what they had the same
Night his Trial was. But being asked
particularly if they met not at the
Windmill Tavern in Coleman-street
this Morning, he acknowledged they
did; but denied he heard of any Or-
der of Parliament for sending for the
Jury; nor did they meet upon the Bu-
siness of John Lilburne, or that they
did at the Meeting speak of it: But
only met to drink a Pint of Wine, as
they had agreed to do the same Night
they gave up their Verdict.

Thomas Evershot, of Watling-
street, Woollen-Draper; who
saith, he was one of John Lilburne's Ju-
ry,

ry, and that they found him Not guilty: But denied to give any Answer to any further Questions, saying, He was satisfied in his own Conscience in what he did: And being asked, whether the Jury did not meet this Morning, to agree of an Answer to be given to the Council, denied that they did, or that they met at all since the Night of the Trial, until they met at the Council.

The Persons following were examined on the 29th of August, 1653.

Thomas Smith, of Cornhill, Haberdasher of Small Wares: He saith, he was of John Lilburne's Jury, and found him Not Guilty. But refused to answer to any other Questions; saying, He was called to serve his Country in this Particular; and that he had done it according to the best of his Understanding: Acknowledgeth the Meeting of the Jury at the Windmill-Tavern Yesterday Morning.

Gilbert Gayne, of Dunstan's in the West, Grocer: He saith he was one of John Lilburne's Jury, and found him Not Guilty. And he being asked

what the Issue was, he acknowledgeth that he was indicted for Felony, for coming into England. But saith, That the Jury did find as they did, because they took themselves to be the Judges of the Law, as well as of the Fact: And that although the Court did declare they were Judges of the Fact only, yet the Jury were otherwise persuaded from what they heard out of the Law Books. He confesseth he himself did at first differ from the Jury, but was convinced by their Reasons. He confessed the Meeting of the Jury.

Griffith Owen, of Bishopsgate Ward, Brewer: He acknowledgeth he was of Lieut. Col. John Lilburne's Jury, and that they found him Not Guilty, because he was not satisfied that the Prisoner was the John Lilburne mentioned in the Act; and that he had never seen John Lilburne before that Day, nor was he solicited in his Behalf by any Person. He acknowledgeth the Jury met Yesterday Morning at the Windmill-Tavern, but made no Agreement what Answer to make to the Council.

