

A  
Complete Collection  
OF  
STATE-TRIALS,  
AND  
PROCEEDINGS  
UPON  
HIGH-TREASON,  
AND OTHER  
CRIMES and MISDEMEANOURS;  
FROM THE  
REIGN of KING RICHARD II.  
TO THE  
REIGN of KING GEORGE II.

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The SECOND VOLUME.

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*With two Alphabetical TABLES to the Whole.*

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*The THIRD EDITION, with ADDITIONS.*

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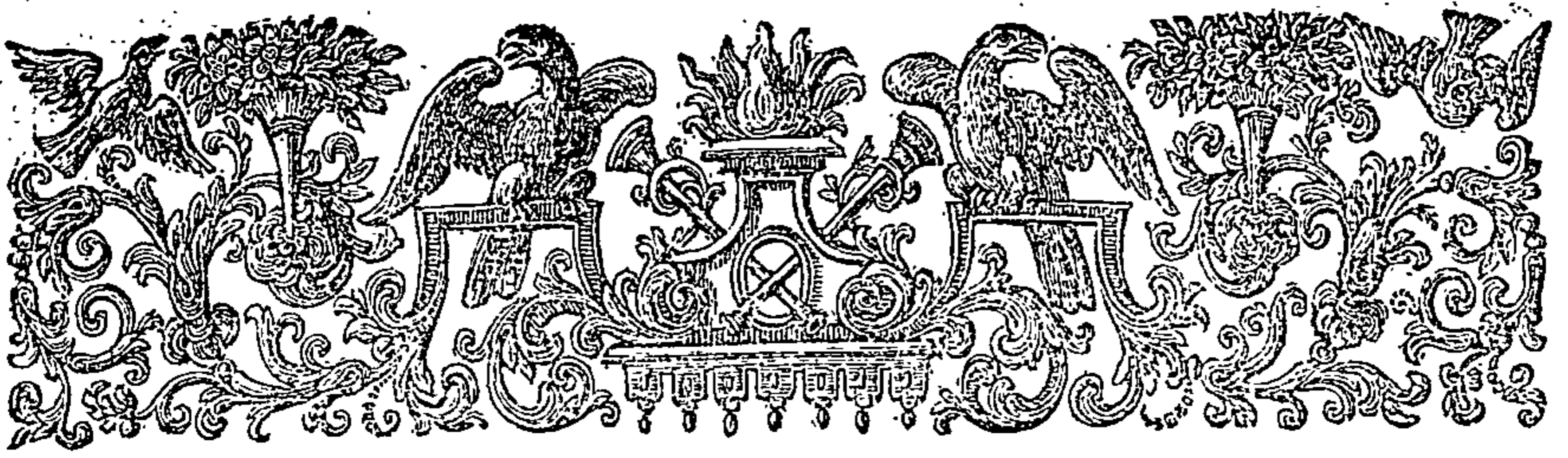


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A Complete  
COLLECTION  
OF  
TRIALS, &c.

XLV.

*The Trial of JAMES Duke of HAMILTON\*, and Earl of CAMBRIDGE, before the High Court of Justice, for High-Treason, Feb. 9. 1648. 1 Car. II.*



R. STEEL and Mr. Cook, the Counsel for the People of *England*, did exhibit on the Ninth of *February*, being Friday, the following Charge:

*That the Earl of Cambridge, about the 19th of July last, traitorously invaded this Nation in a hostile manner, and levied War to assist the King against the Kingdom and People of England, and had committed sundry Murders, Outrages, Rapines, Wastes, and Spoils, upon the said People; and particularly about the 20th of August, near Preston, did make War, join Battle, and fight against the Forces of the Parliament, and therein did murder and kill Colonel Thornley and others.*

To this the Duke put in the Declinatour and special Plea following, intending at last to answer the Charge, if the Plea was not sufficient: having first told the Court, he was better known by another Name than the Earl of *Cambridge*. His Plea consisted of three Heads: First, He pleaded this his undertaking that Employment was by Command of the Parliament, and Supreme Authority of the Kingdom of *Scotland*, for such Ends as he conceived were good and justifiable,

and in no way derogatory to the Peace and Happiness of these Dominions: That he did earnestly endeavour to decline it, but that not being accepted of, he could not disobey their Commands without incurring the severest Censures. Secondly, That he was born in *Scotland* before the Naturalization of his Father in *England*, therefore he conceived himself an Alien, and not triable in *England*. Thirdly, That he had rendered himself Prisoner upon Capitulation and Articles with those who had Major-General *Lambert's* Commission; and that by these he was first a Prisoner of War; next, his Life and the Safety of his Person was secured to him by the Articles, which were signed by the Commissioners of both sides, before he was their Prisoner, and that they could fasten neither a Breach nor Non-performance on him. Upon this the Counsel of the People caused the Act of his Father's Naturalization to be read, and spake a little to aggravate and set out his Fact: but he desired a convenient time to procure Papers, Witnesses, and other Evidences material to his Plea, which he said was seldom denied to any in that condition; and it was well known to many there, how that since the beginning of this Parliament many Weeks were granted to an Eminent Man upon his Trial, (by whom he meant the Earl of *Stratford*, who had time allowed him to send to *Ire-*

\* *Dr. Burnet's Memoirs of the Dukes of Hamilton*, p. 385 &c. *Clar. Hist.* Vol. 3. p. 204—209.

land.) The Court adjourned to the next day, without giving him any satisfactory Answer. But the Duke's Carriage and Discourse that day gained much on all the Spectators, being so serene and calm, that his very Enemies did applaud it.

Saturday the 10th, in the Evening, his Grace was again brought to the Bar, and he desired Counsel, which was granted; and it was referred to him, whether the Court or himself should name them: which he then passed over, and without much speaking on either side, the Court adjourned; notice being given him, that he must appear again on Tuesday the 13th. But no Order being issued forth for Counsel, some Counsel who were dealt with did decline the Employment.

Tuesday the 13th, his Grace being brought again to the Bar, desired a longer time, since notwithstanding serious means had been used, no Lawyer would be his Counsel without the

Court's Orders. This was granted by the \* *Serjeant* *Bradshaw* \* President after some Exposition, and upon his Grace's Nomination, Mr. *Chute*, Mr. *Hales*, Mr. *Parsons*, and Dr. *Walker*, were assigned him for Counsel, to have free Access to him, in the presence and hearing of some of his Keepers, and to be ready against Thursday following to maintain his Plea: upon which the Court adjourned till the 15th.

Thursday the 15th, his Grace being again brought before the Court, declared that their Order being offered to his Counsel, they all found themselves unable to plead for him, or to do what was otherwise fitting, and so had refused to come and speak with him at St. *James's*. The Court objected the time they had already granted, and alledged this was a mere Delay: but his Grace protested it was true, and offered one of his Servants to attest it. Dr. *Walker* in Court declared, he would not be of his Counsel, by reason of his Employment under the Parliament. His Grace desired a convenient time, as was usual in the like Cases, not only in respect of his Lawyers, but that he might send to *Scotland*, and other remote Places, for Witnesses and Evidences necessary for his Defence; since no Prejudice could come by that Delay, and this was denied to none in Trial for Life, and had been granted to *MacGuire* and *Mac-Hun*, two *Irishmen*. But for his Counsel, the Court ordained, that any of the six he should name might be authorized to advise with him in private, and to speak in Court in the Matter of Law arising out of the Fact of the Plea, after the Matter of Fact was handled, which his Grace was to maintain next Saturday. And for the Time he craved, they said, he looked on the unreasonable Time was granted to *Strafford* and *Canterbury*, those grand Offenders, with whom he had been too familiar, as Precedents; but those were Precedents without a Precedent, and none were to expect the like at this time, especially since there were now so many Prisoners to be try'd.

Saturday the 17th, his Grace was brought to the Court with some Witnesses, his Counsel being near, but not present; and in order to the Parts

of his Plea, he first produced Duplicates of the Commission, and Orders from the Parliament of *Scotland* and Committee of Estates there. The Court demanded Evidence for both. His Grace answered, Were Time granted, he would not only sufficiently prove these, but many other Points belonging to his Justification. But the Court answered, That unless they were presently attested *viva voce*, they would not suffer them to be read. Whereupon his Grace desired that his Servant Mr. *Lewis* might be examined, whose Testimony was accepted, and the Papers he produced were received for Evidences, and read. Next, the Declaration containing the Ends of the Engagement was read, and being proved by the same Witness, was left in Court with the former Papers. Then the Court upon his Grace's desire produced the original Articles of Capitulation, which were read; and Mr. *Cole* proved he saw them delivered to his Grace about Nine in the Morning, before the Lord *Gray* came in.

The Lord *Gray* deposed, That two several Summons, which were sent by him to his Grace to yield upon Mercy, were both answered negatively in respect of the Cessation and Treaty; That by a Letter from *Cromwell*, dated *Warrington*, August 20. he was enjoined to pursue the *Scottish* Forces with all vigour; That he had received Letters from the *Staffordshire* Gentlemen with whom the Cessation begun, intimating that they had condescended to it, on purpose to gain a few days time to strengthen themselves, in regard the *Scots* were so numerous: and that he dispatched away *Wayte* and *Peters* that Morning in which the Treaty ended, to protest against it.

*Peters* was next examined, and answered, That going that Morning to protest, by Order from the Lord *Gray*, he came accidentally to the Duke where he found the Hostages in his Chamber, and asked if he was willing to be the Lord *Gray's* Prisoner, who answered, he could not, in regard of the Treaty; but if he were afterwards to be disposed of, he had rather be his Lordship's Prisoner than any other's, being of his Acquaintance: That he had seen the Summons, and the negative Answer to them; That this was about five in the Morning; and that *Wayte* and he went a part of the way towards the Place of Treaty, where he heard the Articles were concluded.

*Lilburn* was next examined, who deposed, That the Articles were signed by himself, and the other Treaties, about Five in the Morning, and were to be ratified by the Duke and *Lambert*; and that his own Meaning of preserving the Duke's Life (he knew not how the rest meant) was only to preserve him from the Violence of the Soldiers, and not from the Justice of the Parliament. At this *Peters* rose up, expressing great dislike of *Lilburn's* Gloss, saying, That much Tenderness was to be used where the Life of so eminent a Person was concerned: That he had seen many Articles of War, but never had heard of such Ambiguity; and that it was clear by those Articles the Duke held his Life secured, as well from the Parliament as the Soldiers; and wished to God, that if their Commissioners had meant otherwise, it had been so expressed in the Articles, it being most necessary that Articles in a Concernment of Life should be plain and

and certain. The President answered, You say well for the future, but it is now too late.

His Grace resumed what had been said, and spoke much on the Articles for weakning *Lilburn's* Glofs.

Next the Governour and Marshal of *Windsor* were examined about his Escape from *Windsor-Castle*. The Governour deposed, That the Duke said to him he needed not fear his Escape, he would be a true Prisoner, and not go away though the Gates were opened. The Marshal said, he only heard this from the Governour.

The Duke expressed a deep Resentment of this Injury done him by the Governour, who wounded his Honour so much, which he valued above all earthly things; and did shew how unlike it was, that any such thing was either demanded or granted, since that is only done for a little more Liberty, whereas he was all the while kept under strict Guards; nor had he the liberty of walking in the Park, but was always guarded by two Keepers, the one lying all night in the Room next him, and the other every night locking the Door, and carrying the Key with him: That the Governour's Testimony in this matter was not to be received, he being a Party, and now in hazard for his Negligence, for he was told that if he escaped, he should die for it; adding, that if he were not a Prisoner, he would desire Right of the Governour for that Scandal cast on him, and chuse no other Place for it but *Westminster-Hall*. But to all this the Governour made no Reply; only the President said, that though he could not blame the Earl of *Cambridge* for what he said, yet for all that the Governour was not to be discredited.

After this, the Duke spake a little to all the three Branches of his Plea, reserving the fuller enlarging upon them to his Counsel. He insisted most on the Articles, which he doubted not were sufficient to protect him: he desired them to consider, how sacred Articles of War were reputed in all Places, and among all Nations, and how inviolably they were kept, all Princes and States being most careful to observe them, not only to Strangers, but to Subjects; having great regard to Articles, though only for Quarter, much more when there was a Capitulation for Life: adding the following Instances. *Elisba* the Prophet would not suffer the King of *Israel* to kill the *Syrian* Captains, saying, *Wouldst thou smite those whom thou hast taken captive with thy Sword and thy Bow?* The Blood of *Abner* lay on *Joab's* head, who killed one that had the King's Safe-Conduct. The *Gibeonites* also, though they used *Joshua* deceitfully, yet were preserved according to the Articles given them; and not only *Saul's* House, but the whole Land suffered for the Violation of them. That Prince *Robert* and the Lord *Cottington*, tho excepted from Life or Pardon by Act of Parliament, were notwithstanding that, upon the Articles of the Rendition of *Oxford*, permitted to go beyond Sea, and never questioned for Life: and the like Justice was done the Earl of *Bristol* and the Lord *Paulet*, upon the Articles of the Surrender of *Exeter*, tho both were excepted from Pardon: And that the Lord *Fairfax* and the Officers of the Army were most careful to see Articles always kept, in which they judged their Honour deeply concerned, and had often written to the Parliament to that end; therefore he did not doubt the like Justice would

be done him. By this time it was late, and the President appointed Monday next for the Duke to finish his Plea in Matter of Fact, ordering his Counsel to be in the Court, for their better Information; and so they adjourned.

Monday the 19th, the Duke and his Counsel were brought to the Bar. Colonel *Wayte* was examined, who deposed, That the Duke rendred himself to be the Lord *Gray's* Prisoner, and desire *Wayte* to protect him from the Multitude, who thereupon left a Guard at his going away. But during his Deposition, *Peters* said, *He lyes, he lyes!* And *Peters*, *Spencer*, and other Officers who were with *Wayte* at *Uloxeter*, being examined, did totally falsify his Deposition. Divers were also that day examined about the Place of the Duke's Birth, who all swore, they heard it always said that he was born at *Hamilton*, and that it was not a thing to be doubted of. Others were examined about the signing of the Articles, who all witnessed, that they were signed long before the Lord *Gray* came: and Major *Blackmore* deponed, That the Duke's being the Lord *Gray's* Prisoner, was by an Agreement betwixt him and *Lambert*, whose Occasions pressed him to go suddenly Northward.

After this the Duke spake a little, to shew how little weight was to be laid on *Wayte's* Testimony, which was so evidently disproved. Next, his Counsel asked the Court's Directions how they should proceed; and the Court answered, That after the Matter of Fact was handled, they might plead in Law upon all the Parts of the Plea: and they told the Duke, by the next Wednesday to finish his Evidence.

He desired a Warrant for bringing some Gentlemen, then Prisoners in *Whitehall*, who were his material Witnesses: but the Court adjourned, and promised to consider of that Motion in the Painted Chamber; yet they granted it not.

Wednesday the 21st, the Court sat, and the Duke was brought to the Bar. Some were interrogated about the Time of his Birth, to prove him *Post-natus*: but it was not proved, one Person only swearing, that he heard him say he was some Years younger than the King. Evidence was also brought of his Conjunction with *Langdale*, which they accounted Treason; yet even that was not clearly proved, tho it was much laboured. Some Letters of his to *Langdale* had been taken, and were brought into Court: but as the Letters proved no Conjunction, so it did not appear that they were his Letters; only *Peters* asserted they were like his Hand. Then a Vote of the two Houses was read, repealing a former Vote of setting an hundred thousand Pounds *Sterling* upon him for Ransom; and Proof was brought, that notwithstanding Articles were given, yet some had been forced to take the Negative Oath; and thereby they studied to evince, that the Parliament did not hold themselves bound to stand to Articles.

After this, his Grace resumed the Substance of all those Evidences, and shewed that it was not proved he was a *Post-natus*, nor that he joined with Sir *Marmaduke Langdale*, who neither received Orders nor the Word from him, but marched and quartered apart; and that tho he had done otherwise, it could not be criminal in him, since he had no Orders to the contrary

from the Parliament of *Scotland*, but was commanded by them to join with all who would concur with him for prosecuting the Ends of the Engagement, of which Sir *Marmaduke* approving, he had no reason to refuse Concurrence with him; neither could this be made Treason by the Law of *England*: of all which it seem'd the Parliament was once well-satisfied, since by a Vote they had fined him in an hundred thousand Pound *Sterling*, as the Price of his Liberty; by which it appeared they look'd not on him as a Traytor, but as an Enemy who had Life granted him by Articles.

Upon this, the Court adjourned till Thursday the 22d, and his Counsel were appointed to plead, and he was to close his Evidence. The Duke was brought to the Bar, and by divers Witnesses it was proved, that there was no Rendition made to the Lord *Gray*, but a plain Refusal; and that the Treaty was ended, the Articles signed, and *Lambert* come up, before the Lord *Gray* came thither. There was also produced an Order of Parliament, made four Years before, That no Quarter should be given to any of the *Irish* in Arms, which inferred that others might have them; and another Order was read of the 14th of *July* last, declaring all the *Scots* who entred *England* Enemies, and all the *English* and *Irish* who assisted them Traytors; and with this he closed his Evidence. And since he was not to be suffered to speak any more, he enlarged on all the Parts of his Plea, and spake at length as follows.

That he was sent by the Kingdom of *Scotland*, which was a free Kingdom, and independent on *England*; That he having had his Birth, Honour, and Fortune there, was bound to give obedience to their Orders; That for himself he had lived much out of Business, and was seldom in publick Trust in that Kingdom, nor very desirous of any; but that being commanded to undertake the Charge of General, for Ends which he conceived lawful, and no way contrary to the Peace or Interest of *England*, he was obliged to follow their Orders: and that by some Papers emitted by the Parliament of *England* against that Expedition, they declared they look'd on it as a National Breach, whereby *Scotland* had violated their Leagues and Treaties with them, so that it was no private Act of his: That the entring of the *Scotish* Army into *England*, Anno 1640, was accounted no Invasion nor Treason, but on the contrary was acceptable to this Kingdom, which gave a brotherly Assistance for it; and that the late unfortunate Army was designed fully for as good Ends, and would have so been look'd on had it prospered. And for his joining with Sir *Marmaduke Langdale*, he answered it as was before set down. Therefore he being taken Prisoner in such a War, he conceived it without a Precedent that he should be tried for his Life, for serving his native Kingdom in an open War. As for his being an Alien, he referred that to his Counsel, but said it was undeniable he was born in *Scotland*, nor was he proved a *Post-natus*; he was also born before his Father's Naturalization, and so not included in it, and his own Naturalization had been in agitation in the beginning of this Parliament: That his sitting in Parliament did not conclude him an *English* Earl, for if questioned, he might probably have been expel-

led out of the House of Peers, as his Countryman Mr. *Walter Stuart* was out of the House of Commons; and that his being an Earl did not naturalize him, that being the King's single Act, whereas Naturalization was only by Act of Parliament. As for the Articles, it was clear, that *Lambert* being a General Officer, commissioned by Parliament, was impowered to capitulate both by the Parliament and by *Cromwell*, the Lord *Gray* having no Authority from the Parliament, but only from *Cromwell's* Letter: That he became the Lord *Gray's* Prisoner only by *Lambert's* Order, and that he made no Surrender till the Articles were signed and delivered: That tho the Lord *Gray* had protested against it, (and yet only an Intention to do it was proved) he was not concerned in it, nor bound to take notice of it, *Lambert* being the Parliament's Officer, and sent against him by them. That Articles were to be expounded by their plain Meaning, and not by any mental Reserves pretended by the Commissioners: That by the first Article, he was a Prisoner of War, and that it was seldom known that the Life of any such was taken; and that by the second Article, Life and Safety of Person were expressly secured without any exception: That if Articles were now violated, it would make the Sequel of the Wars, if any more followed, a downright Butchery, since none would be entrusted to a Capitulation; which Mischiefe he pray'd God to avert. That his Escape out of Prison was no Breach, he being only bound by the Articles to deliver himself Prisoner, which he did, but not to continue so. And he concluded, That he was confident, had he no better Plea, his Articles were sufficient, according to the Laws of all Nations, to preserve his Life.

Then the President asked him, if he had any thing to say as he was Earl of *Cambridge*? Whereupon he and his Counsel moved, That if what he had said and proved was not satisfactory for the Averment of his Plea, he might answer the Charge exhibited, which he had not yet done. But to this, neither the Court nor their Counsel would yield, tho they gave no reason for it, save only that it implied a Desire of Delay: but the reason, as was said, was, That they knew had they yielded to that, the Charge had been overthrown, since the Law of *England* does not admit that to be Treason which they charged on him, that he had assisted the King against the Kingdom and People by levying War. Then the Court told his Counsel, that Saturday was the longest time they allowed them for performing their part: but the Counsel answered, That it was impossible for them to undertake it, and discharge their Consciences to their Client, having so short a time allowed them; there being a necessity of searching divers Records for Precedents, which required a competent time, as had been allowed in former Cases. But the Court refused to promise it, only they said they would take it into their consideration. The Counsel insisted, and said plainly, they declined the Employment on those Terms, and would be forced to declare it.

Monday the 26th, the other two Officers that had signed the Capitulation for the Duke and his Troops, who had been sent for a great way off, were examined, who agreed with the former Witnesses in Matters of Fact, and also with

*Lilburn*, that by signing the Articles, they only meant the Duke should be preserved from the Violence of the Soldiers, and not from the Justice of the Parliament. Then the Counsel began to plead, and all four spoke on the several Heads of the Plea. Mr. *Heron* spoke cursorily and elegantly, but not very materially: Mr. *Parsons*, a young Man, spoke boldly, and to good purpose: Mr. *Chute* the Civilian spoke learnedly and home: and Mr. *Hales* (since the much-renowned Lord Chief Justice of the *King's-Bench*) elaborately and at length. The Heads of their Arguments follow.

The Duke being, as was granted, a born *Scotchman*, his Tye of Obligation and Subjection to that Kingdom was indispensable and indissoluble; so that his late Employment could not be refused when laid on him by the Authority of that Kingdom, no more than a Native of *England*, living in it, can disobey the Commands of this Parliament: whereas any Subjection the Duke owed the Parliament of *England* was only acquired, and dispensable. That since no Man can be a Subject of two Kingdoms, whatever Tye lay on him to the Kingdom of *England*, it was not to be put in competition with what he owed *Scotland*; it being a Maxim in Law, That *major Relatio trahit ad se minorem*, and that *Jus Originis nemo mutare potest*: That there was an Allegiance due to the King, and another to the Kingdom, and no Treason could be without a Breach of Faith and Allegiance due to them against whom it was committed, for these Kingdoms were two distinct Kingdoms; and tho the Allegiance due to the King was the same in both Kingdoms, yet that due to the Kingdoms was distinct: nor was the actual Administration of the Kingdoms in the King's Person, when the Duke got his Employment. Therefore as his Allegiance to the Kingdom of *Scotland* was antienter and stronger than any Tye that lay on him in *England*, so what he did by their Order might well make him an Enemy to this Kingdom, but could not infer Treason. Yet all this of the Allegiance due to the Kingdom was founded on no Common or Statute Law, as Mr. *Hales* himself confessed afterwards: but he urged this well against those who asserted it, it being the universally received Maxim at that time.

That whether he was a *Post-natus* or *Ante-natus*, did not appear; but tho he were, it did not vary the Case, nor his Obligation to the Place of his Nativity: and so tho he were *Post-natus*, or accounted a Denizen by his Father's Naturalization, his Offence could not be Treason, but Hostility at most; and by that supposed Hostility, he could only lose his Privilege of a Denizen, but could not be made a Traytor, there being no Precedent where ever any Man was attainted of Treason for a hostile Invasion, and it was questionable if this Offence could amount to that. Nor could any Case be alledged, where one born in another Independent Kingdom, acting by a Commission from that Kingdom, and residing there when he received his Commission, and raising the Body of his Army in that Kingdom, and coming into this in an open hostile manner, was ever judged guilty of Treason. Naturalization was intended to be a Benefit, and not a Snare; so that one might well lose it, but was not to be punished for it. And so when *France* and *England* were under one Sovereign, divers of both Nations were naturalized in the

other; yet when Hostility broke out betwixt them, many so naturalized fought on the side of their native Kingdom, for which none were put to death, tho divers were taken Prisoners. And in *Edward* the Third's time, tho he claimed *France* as his by his Right; yet when the Constable of *France* invaded *England*, and was taken Prisoner, he was not tried, nor put to death, but sent back to *France*, as being a Native of that Kingdom. And when *David Bruce* King of *Scotland* invaded this Kingdom, and was taken Prisoner, great Endeavours were used to find a legal Ground for his Trial, he being Earl of *Huntingdon* in *England*; but this Plea was waved, for it was found that it could not be done justly, that being but a less Degree of Honour, tho King *Edward* claimed a kind of Homage from the Crown of *Scotland*. That if the Duke were on that account put to death, it might prove of sad consequence, in case there was War any more betwixt the Kingdoms; since most of the present Generation were *Post-nati*, and all would be so quickly: and yet if the Lord *Fairfax*, who was both a *Post-natus* and had his Honour in *Scotland*, were commanded to lead an Army thither, and being taken were put to death, it would be thought hard measure. For the Duke's Father's Naturalization, it was true, by the Statute of the 25th of *Edw. 3.* provision was made, that Children born without the Kingdom, whose Parents were then in the King's Allegiance, should be Denizens: but the Duke was born before his Father's Naturalization, which can never reach him, none but the Issue after his Father's Naturalization being included within it; and the word *Heres* in the Act is only a word of Limitation, and not of Creation: nor did his making use of the Assistance of some *English* Forces, make him a Traytor. It is true, if an *Englishman* conduct a foreign Army, or if a Foreigner come of his own head, or in a rebellious way, to assist an *English* Rebellion, it will amount to Treason: for the Act of such an Alien is denominated from the Crime of those he assists here, where he owed a local Obedience, which was the Case of *Shirley* the *Frenchman*, and of *Lopez*. But if an Alien come with a foreign Force, tho he make use of *English* Auxiliaries, that only infers a Hostility, but no Treason; and was the Case of the Lord *Harris* a *Scotchman*, 15 *Eliz.* and of *Perkin Warbeck*, both having *English* Help: and tho *Warbeck* was put to death, it was by no Civil Judicatory, but only by the Will of *Henry* the Seventh, who erected a Court-Martial for that purpose. The present Case was yet clearer, where the Alien had Authority from his native Kingdom, and was commanded by them to make use of *English* Help: so that tho *Langdale's* assisting the Duke did make himself a Traytor, yet the Duke's accepting of it only infers an Act of Hostility. And whereas it was objected, That the Parliament had already by their Act which constituted this Court for his Trial, declared him a Traytor; it was not to be disputed what the Parliament had power to do, but no Parliament had ever done the like before: and the Meaning of the Act must be, that he should be tried whether guilty of Treason or not, since if the Parliament have already declared him a Traytor, further Trial was needless. And it was clear, the Parliament by their Act in *July* last, which declared all the *Scots* who entered *Eng-*  
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land Enemies, considered not the Distinction of *Post-nati*, nor judged that inferred Treason, since most of them all were *Post-nati*; That many of the Officers of that Army, who had been taken Prisoners, tho' clearly *Post-nati*, were ransomed, others banished, others still in Prison; why then should the Imputation of Treason be fastned on the Duke, when the rest were used only as Enemies?

And for the Articles, they made it appear, they were the Publick Faith of the Kingdom, when given by Persons publickly authorized, upon the observing of which inviolably, depended the whole Intercourse of all Nations, and their mutual Confidence, which is founded on all States being bound by the Acts of their Publick Ministers: That this was not a pure Rendition, but a Paction concluded upon Deliberation, wherein the Parliament lost nothing, but on the contrary were Gainers: That the Parliament had ratified this upon the matter, by voting a hundred thousand Pounds Sterling Fine, to be the Price of the Duke's Liberty: That the secret Sense the Treaters pretended, was not to be considered, since all Compacts are to be understood according to the clear Meaning of the Words, and the universal Sense of Mankind, who look on Articles wherein Life is granted, as a sufficient Security, not only from the Soldiers, but from the Civil Powers; and that these Treaters, when the Articles were agreed, should have made known their secret Meaning, otherwise it was not to be regarded. And it was a most dangerous Precedent to admit of collateral Averments of secret Meanings against exprest Words, much more in a Case of Life, and yet much more in Military Agreements, wherein the Concernments of Armies and Nations were included, and which concerned the Honour and Security of all Soldiers. And for this divers Precedents were cited. The Argument ended thus: That as the Court consisted of Gentlemen, and Lawyers, and of martial Men; so the Plea consisting of three Branches, was the more proper for their Cognizance, a part of it being drawn from the Law of *England*, another part from the Civil Law, and a third part from the Martial Law: And if the Plea in any of the three Branches was made good (and they doubted not but it would be found so in them all) the Court would be satisfied, there was Reason and Justice for preserving the Duke's Life.

The Court adjourned till Friday the second Day of *March*, and the Duke being again brought to the Bar, the Counsel for the People pleaded, but so poorly, that all who heard them were ashamed: But they had one Advantage, that neither the Duke nor his Counsel were allowed to speak after them, nor to discover their impertinent Allegations, which made the Duke's Counsel obviate all they could imagine they might say, though they said a great deal so far out of the way of Reason, that none could have thought of it; and yet it was so weak, that it needed neither be obviated, nor replied to.

Yet at the end of every Branch of their Pleading, I shall add the Answers against them, as they are set down in some Notes taken by the Duke's Counsel.

They begun with *Alienage*, and studied to make it appear, that though he was a *Scotchman*

born, yet he was no Alien, having enjoyed all the Privileges an *Englishman* was capable of, as being a Peer, a Privy-Counsellor, possessing Lands and Inheritances, and marrying in *England*. *But Naturalization cannot be but by Act of Parliament, and not by the King's single Deed; much less by those Privileges of which any Stranger might participate.*

Next they urged his Father's Naturalization, and since his Name was not in that Act, as was in other Acts of Naturalization, that proved him to be no Alien, otherwise his Name had been put in. *From that it rather appeared he was an Alien, since others found it necessary to insert their Childrens Names; which his Father not doing, proves the Son an Alien still.*

They also urged his being *Post-natus*, which must be held true, since he brought no Evidence to the contrary; and it being so, his Tie of Subjection was as great in *England* as in *Scotland*: That Allegiance was only due to the King, and not to the Kingdom; That there was a King when he entred into *England*, and that though he was secluded from the Government, yet all Writs were issued in his Name; so that this Expedition was a Breach of the Allegiance he owed the King. *This was the oddest Part of all their Plea, since his Charge was, That he assisted the King against the Kingdom; and now they did plead he owed no Allegiance to the Kingdom, but to the King, whom they had so lately murdered; the Duke's coming with his Army being only to relieve him from the barbarous Usage he had met with.*

They also urged at large, That an *Englishman's* Children, in what place of the World soever they were born, were Denizens of *England*, and cited many Precedents. *But the Mis-application of them was gross and palpable, those being of Persons who were Englishmen before their Children were born; whereas the Duke's Father was naturalized after he was born; so that he could not communicate that Privilege to him, which he did indeed transmit to his Children born after his Naturalization.*

Next, they pleaded, That the Parliament of *Scotland* had no power to commissionate him to enter into *England*; and that if some of them were there, they ought likewise to suffer for it; and it was fit he suffered for his Masters who had employed him: That it was pity the King had not suffered sooner. They also produced many Precedents of Strangers being condemned as guilty of Treason, for Treasons committed in *England*; as the Queen of Scots, Lopez, Perkin Warbeck, the Lord Harris, Shirley the Frenchman, and the Spanish Ambassador. *All this was obviated in the former Argument, where Distinction was made betwixt secret Practices, and an open Invasion with a foreign Force.* They added, That *Scotland* belonged to the Crown of *England*, and so was to be look'd on as some of the Counties of *England*. *But Scotland had no Subjection to the Crown, but only to the King of England, whom they had murdered, and so they had no Power to judge any Scotchman.*

As for the Articles, they pleaded it was not in the power of the Army to absolve any from the Justice of the Parliament, which being above them, was not tied to their Articles; and therefore, though they confessed the Words ought to have been less ambiguous, yet they said, the Exposition of those who signed them

was to be admitted, since every Man was to be the Expounder of his own Words; and pleaded some Precedents about the Exposition of ambiguous Words. *But the Words here were plain and not ambiguous, only a treacherous Equivocation was invented to break them.*

Cook, by a strange Subtilty, said, The Articles only secured his Life during Imprisonment; so that his breaking of Prison, and being retaken, put an end to the Obligation of the Articles. *Though he broke not Prison, but went out at Door and Gate, which was no Crime.*

Mr. Steel, *Attorney-General on behalf of the Commonwealth.*

*My Lord,*

THE Counsel for the Earl of Cambridge have framed their Arguments upon the Fact, as they conceived it proved; and also by admittance of the contrary in some Points. I shall use the same Method; first arguing from the Fact, as I conceive it stated by the Proofs produced; and then by admittance of the contrary, that though the Fact should be as they would have it, that yet the Law will fall out to be against them.

The Charge being read to the Prisoner, he hath thereunto put in his Plea, consisting of three parts; the Truth and Validity whereof hath been denied on the behalf of the Commonwealth.

First, The first part of his Plea was, That he was employed by the Parliament of the Kingdom of Scotland, not to invade this Kingdom, but for the Ends declared by them. The Improvement made of this part of the Plea, is, That the Earl was but a Servant in this Expedition, and under the Authority and Command of another, and tied under Oaths and Penalties to give Obedience; if he had disobeyed, he had been liable to Punishment; therefore it were hard for him to be punished for obeying also: That he hath not exceeded his Commission: Besides, the Parliament of England in their Declaration of the 17th of February last, lay the Blame of this Invasion upon the Parliament of Scotland: And lastly, That the Earl's Case is not unlike that of an Ambassador, who is not to be blamed for acting against a State, if he have it *in Mandatis*, as in the Case of the Bishop of Ross, in the Reign of Queen Elizabeth.

By endeavouring to give Satisfaction to all which, I shall dispatch what I have to say upon this first part of the Plea.

I shall admit it proved, That he had that Commission and Authority mentioned; and also, that the Rule is generally true, That a Man is not to be punished for an Act which he doth by the Necessity of Obedience, because he hath not *solutum Arbitrium*, which is required to denominate Actions either blame-worthy or excusable: but I shall easily prove, that this Rule is capable of Restriction, both by the Rules of Law and Reason; and if we observe the Distinctions aright, which determine this Question, we shall still find the Earl of Cambridge within that part which renders him inexcusable.

First, The first Difference is, where the Action is lawful, and where unlawful, which is commanded: If it be lawful, a superior Command may dispence with some Circumstances; but if unlawful, the Servant obeying, is not the less to be

blamed. I never held that Law of *Ina* the Saxon King to be warrantable Divinity; *Servus si quid operis patravit Die Dominico ex precepto Domini sui, liber esto*, if the Precept it self were unjust.

Now for the Action in question, wherein this Earl was engaged; it is not defended by his own Counsel, the Dispute being only *de modo*, whether he be to be punished as an Enemy, or as a Traytor; though if this Argument held, he were neither way to be punished: and therefore certainly the Necessity of his Obedience is no Mitigation for his Crime; and if it should, *Empson* and *Dudley*, with all their monopolizing Successors, had been unjustly censured, who always have had Patents and Commissions from Authority to plead: And so also all that Catalogue of former Traytors, who have hatched their Treasons and Designs against this State in foreign Parts, and have ever had the Pope or foreign Princes to put a Stamp of Authority and Command upon them, must by this Argument be in some measure justified.

It was never expected from any under Command, to write himself more a Servant than *usque ad aras*, those being the *Hercules's* Pillars whereon a *Non plus ultra* is written; and therefore whoever exceeds those Bounds, he will find it to be at his Peril.

Secondly, The second Difference is, where the Instrument is *inanimatum*, and where an active living Instrument: Of the first it is truly said, *Instrumenti nulla vis*, all being therein attributed to the principal Efficient, but otherwise of the other. From hence the Statute of 1, 2 *Phil.* and *Mary*, c. 10. did justly repeal the Statute of 33 *H.* 8. c. 20. which had punished a Man for Treason, though he became *non compos Mentis* before the Execution. And no less justly did 25 *Ed.* 3. *de Proditionibus*, by the Word [*Imagination*] alter in the like Point that Law which was in use till then, concerning such a Person's committing the Act of Treason, such an one being no better than *quasi inanimatus*. But who can affirm this Earl to be other than an active and vigorous Instrument? *non modo vivit, sed in Senatum venit*, being a chief Member of that Parliament, under whose Command he would shelter himself; and by that Means he is a Master rather than a Servant, and so met with by that Declaration of the Parliament of this Kingdom, of which he would have made an Argument for himself.

Thirdly, Where there is *Necessitas culpabilis*, the Law will not excuse, as it will where there is no Crime in contracting the Necessity. Those who in former times gave Victuals and Provision to Sir *John Oldcastle*, were not punished as Traytors, because they did it (say our Records) *pro timore Mortis, & recesserunt quam citò potuerunt*, 3 *Inst.* 10. And upon this Reason seems that Opinion of *Tremayle* to be grounded in 21 *H.* 7. 39. That a Servant may justify the killing of another, to save his Master's Life, if he cannot otherwise escape.

But if one being drunk commits a Crime, though he hath not properly and immediately the free Exercise of his Will, yet the Law reputes him *voluntarius Dæmon*; and he is not at all the less excusable by our Law, 1 *Inst.* 247. 4 *li.* *Beverley's* Case: and by the Philosopher's Rule, such a one doth *ignorans*, not *per ignorantiam*

*tiam agere*; and is therein so far from being excused, that he is therefore to be doubly punished.

Now to assume, that whereby the Earl's Counsel would excuse him, *viz.* his Oath and Commission, renders him the less excusable; because both are strong Arguments of a free and full Consent: for who can imagine them of *Scotland* to be such mean Statists, as to think that Oath equally obliging, which was compulsive to the same, if freely taken; or that that General should be trusted with a Commission over all their Forces both by Sea and Land, as his Commission runs, whose Heart as well as Hand had not imbraced it? And truly, they that have heard his Letters read to Sir *Marmaduke Langdale*, wherein he prays for the Increase of the Distractions at *London*, and for his Friends at *Colchester*, would not judge him an unwilling Instrument, but one exceeding, rather than falling short in executing his Commission.

Lastly, Necessity of Obedience may excuse *in privatis*, but never *in publicis*. If a Feme-covert, together with her Husband, commit an Act which in another would amount to Felony, yet in her it shall not, because *sub potestate viri*, 27 *Aff.* p. 40. but otherwise the Law is in point of Treason; and so is the Judgment of my Lord *Verulam*; *Nec valet Privilegium* (saith he) *contra Rempublicam*. And as to the Case of an Ambassador urged on the other side, and in particular of the Bishop of *Ross* in the Days of Queen *Elizabeth*; I answer, First, The Privileges of those who are entertained as Ambassadors, are very great, and not to be made Precedents, or assumed by any other; whence *Proregis Dedecus redundat in Regem*: and therefore before 25 *Ed.* 3. it was Treason to kill an Ambassador, 22 *Aff.* p. 49. And from hence might arise that Privilege shewed to the Bishop of *Ross*. Secondly, It appears rather to be an Act of Grace than of Justice, that the Bishop was freed, because he was set at liberty after a long Imprisonment; which if not liable to the Censure of the Law, he should not at all in Justice have endured. Also by the Judgment of my Lord *Bacon*, cited by the learned Doctor on the other side, in point of Conspiracy against the State, even an Ambassador is not privileged; yet of this Bishop learned *Camden* saith in his *Eliz.* *Fuit liberatus, qui Rebellioni clam faces subjecerat*. All which were Arguments of Grace, and therefore that Case will be no Precedent for this, wherein also Conspiracies and Correspondencies with many of this Nation have been proved, and are otherwise notorious.

And for that inevitable Labyrinth, out of which the Earl of *Cambridge* cannot extricate himself, but that whether obey or not obey, he is under a Mischief, he may for that thank himself; *volenti non fit injuria*: this is like the Plague of an erroneous Conscience, which whether obeyed or not, proves a Tormentor to its Subject.

Secondly, The second Part of the Earl's Plea is, That he is no *Englishman*, notwithstanding the Naturalization of his Father; which, in effect, is as much as to say, and so it hath been insisted on, he is by Birth a *Scotsman*, and by consequence an Alien to, and not triable as a Traytor by the Laws of *England*. Concerning the handling of which Question, it being that whereupon the Validity of the other two doth, in

my Judgment, principally depend; I shall first answer the material Objections which I conceive made by the Counsel on the other side, before I offer any thing positively to assert the Invalidity of this part of the Plea.

Obj. *It hath been said, The Proof is not clear for the Earl of Cambridge's being a Post-natus; viz. one born after King James's Access to the Crown of England; and that being but a non liquet in favorem vitæ, the most favourable Construction is to be taken for the Prisoner.*

*Ans.* First, I deny that the Proof amounts to no more in this Particular than a *non liquet*; for there is one positive Witness that speaks directly to the Earl's Birth after King *James's* coming to the Crown of *England*: another speaks to the Earl's own Confession, being about two or three and forty years of Age, which speaks him born since that time; and a third speaks to the common Report of his being born since: and if the Proof were but *semiplena probatio*, yet as *Bracton* saith, that amounts to a Presumption; and, saith he, *Presumptioni stabitur donec probetur in contrarium*, especially when the Earl himself, who should have proved the contrary for the making good his Plea, hath offered nothing against it; and being asked, never absolutely denied it.

Secondly, I do agree, that what the Jewish Expositors observe in the Exposition of their Laws, which sounded in favour, is to be observed in our Law, in those things which we usually say the Law favours; *viz. Favores sunt ampliandi*; and that strict Expositions are only for penal Rules, according to that of the Civilians, *Constitutio penalis non excedit Casum*: yet we shall find, that where the Penalty of a penal Law is against one or few Persons, and the Benefit redounds to the Generality, in that case even a penal Statute shall be taken largely against the Offender; so the Rule is put, *Plow. Com.* 36. *Plat's Case*, where it is resolved, though the Statute of 1 *R.* 2. c. 12. give an Action of Escape against the Guardian of the *Fleet*, yet for the Reason above-said, it is, though a penal Law, by a benign Interpretation, to extend to the Sheriff of *London*: and in like manner, if there were any Latitude in Cases of Treason and Murder (as there is not) yet to extend it on the behalf of the Prisoners, might prove to many thousands *cruelis Misericordia*.

Thirdly, Add to this, that the Law of *England* is so tender of the publick Weal, that though in other Cases it may seem to insist too much upon Formalities, yet herein it will dispense sometimes with its most certain Rules. Hence it is, that if one pass over another's Land without his Consent, to fetch a Falcon, or the like, he may be punished as a Trespasser; but not so, if to hunt or kill a Fox or an Otter (which Instances I suppose not unsuitable to the Prisoner) because these are Creatures *contra bonum Publicum*; which Reason the Book gives of the Law in that Case, 12 *H.* 8. 10. For the same reason no Man shall be punished as a Trespasser for erecting Bulwarks on another's Land, *Dyer* 36. *Maleverer's Case*. And hence certainly was the reason of that ancient Law, That capital Offenders, who had transgressed against the Law, had *Lupina Capita*, and might therefore by the Justice of *Lex talionis, arte perire sua*; wherein the Law followed *Nature Ordinem*: The Rules of Nature are most constant,

constant, yet for the Preservation of the whole, it will sometimes contradict itself; as to prevent a *Vacuum*, and the like, what an Inversion do we see of Nature's most constant and ordinary Rules? Do not they then in this pove somewhat unnatural, imbrace a Cloud instead of Substance, that fear not to omit the weightiest things of the Law, rather than in Cases of invincible Necessity, dispense with some Formalities?

Obj. *But though the Earl of Cambridge were a Post-natus, yet he is quasi Ligeus acquisitus unto England; and if so, as his Allegiance began with an Act of the Nation, so it might determine by an Act of the same Power, to wit, by Command from the Parliament of Scotland.*

Ans. First, The Strength of this Objection, if admitted, would, as I conceive, by a new invented Distinction, overthrow the learned and solemn Resolution of all the Judges and Chancellor of England, 6 Jac. in Calvin's Case, wherein all Allegiances that the Wits of Men could imagine, are enumerated, and they are but four, viz. *Ligeantia naturalis, acquisita, localis, and legalis*: and by the Judgment of that Case, Robert Calvin, Son and Heir to James Lord Calvin of Colcross in Scotland, born three Years after King James's Access to the Crown (as also all other so born) were adjudged Subjects of this Kingdom of England, *Ligeantia naturali*, by the best and highest Allegiance, without any *quasi* at all, in the same kind, and to all Intents and Purposes that any natural-born Englishman was.

Secondly, The Objection seems to me not only to be against the Judgment of this Case, but against Reason also: For what Acquisition is there by the Party, or what contributes he to it, whether he be born in this or that Time or Place? The Conceit that there is any Act of the Party's in this (as there must be to make a *Quasi Ligeus acquisitus*) seems to favour of the *Pythagorean Metempsychosis*, or that Opinion of Plato, who held a Pre-existence of Souls, which after came into the Bodies, *tanquam in ergastula*.

Obj. *It is inconsistent to have two natural Allegiances to two severall Kingdoms, as it is impossible to have two Fathers; in which Case major relatio trahet ad se minorem: And in that Case the Earl is rather to be reputed a Subject of Scotland, where he was born, than of England.*

Ans. First, It is indeed inconsistent that the same Person should in two severall Kingdoms have two original Allegiances, in a physical Acceptation, to wit, to be so born: Yet by construction of Law, he that is born in Scotland may have an Allegiance to England, equivalent with the other. Thus Calvin by the Resolution of that Case was *Scotus patria*, and *Anglus privilegio*.

And thus, without any contradiction, it was ever held for Law, That the Natives of *Gascoign* and *Aquitain*, and those other countries which were geographically out of England, were yet in construction of Law equally Denizens and Subjects of England with those born here; in regard of one Allegiance and Protection wherein they were equally involved, 27 Aff. Pla. 48.

Secondly, No Allegiance which gains the Name of *Alta & Naturalis Ligeantia*, can by the common Law of England be divested, though otherwise it may be by the civil Laws, there being no *Magis & Minus* that it is capable of, which the Objection would suppose. And the truth is, the

Resolution of Calvin's case answers all the Suppositions of any future contingencies, and positively resolves, That this Allegiance cannot possibly be lost by any Matter *ex post facto*, no, not by Difference of Descents and Governments, 7 Li. 27. And what is agreed to be inherent to a natural born Englishman, belongs also to a *Postnatus*, *Non potest patriam in qua natus est exuere, nec Ligeantiae Debitum ejurare*, 1 Inst. 129.

Thirdly, And for the Inconsistencies of Allegiances that the Objection seems to insinuate, in the Case of competition between the Kingdoms, *Bracton* hath met with that Supposal long since, *Li. de Accep. 427*. speaking of one that is *ad fidem utriusque Regis, si contingant guerram accidere inter Regna*; putting the case of one born in France, and indenized in England, *Remaneat personaliter cum eo cui Ligeantiam fecerit, & faciat servitium debitum ei cum quo non steterit in persona*.

Obj. *Though the Earl of Cambridge were a Post-natus, yet, as this Case is, it makes him not to differ from an Alien, because the Kingdoms of England and Scotland were at the Time of this Invasion divided, and there were then severall Administrations of their Powers; from whence a double Allegiance is to be considered, Regis & Regni.*

Ans. First, If we look upon the judicial powers of the Kingdoms in a legal consideration, even at the Time mentioned in the Objection, besides the Union of the Kingdoms made by force of 1 Jac. cap. 1. we shall find as strong stipulations and engagements by Treaties, confirmed by Parliament and otherwise, betwixt the Nations, as were possibly to be made; none of which were repealed at the time of this Expedition: And so far from that, that the Earl himself hath often at the Bar professed, That neither his Coming or Commission were against the Parliament or Kingdom of England. How then were the Powers of these Nations so legally and judicially different?

Secondly, The Union of the Laws and Governments of these Nations was a Thing desired and endeavoured by some, as may appear by the latter part of the Statute of 4 Jac. cap. 1. but it was not effected. Therefore the Distinction of the Kingdoms was taken into consideration in Calvin's case, where [*Regna*] was one of the *Nomina operativa*, and granted, That though the Kingdoms, Laws, and Nobilities of the Nations of England and Scotland were severall and distinct, yet the Allegiance of all born in either Nation after the Union was one and the same. And the Pleading of that Case (which best denotes the Law) demonstrates this, That such Distinction of the Kingdoms was under consideration: For the Pleading was, That Calvin was born *extra Ligeantiam Regni Regis Angliae, and infra Ligeantiam Regni Regis Scotiae*. And the learned Chancellor of that Time saith, in his *Postnati*, that the Judgment was, That neither Calvin, nor any other *Post-nati*, were Aliens to the King or Kingdom of England.

Thirdly, It is agreed on the other side, That there was always one *Ligeantia Regis*: And therefore, even thence, I do infer that there was also one *Ligeantia Regni*; because that Allegiance which was due to the King, was certainly due to him in his politick Capacity, though not to that only, or divided in the Subject from his natural Capacity. However, it may be said nevertheless, as it is in Calvin's case, (by a Community

of Properties) that it was due to the natural capacity also, *viz.* as it ought ever to be accompanied with the politick; thence it was but just in the Parliament, notwithstanding the King's personal command and opposition against them, yet to permit the taking of the Oath of Allegiance, and not to abolish it till after his Death, it being *ad Legem Legatio*; yet the person was so necessary, that without it, it had been ridiculous to administer it in the Form it was, in which case *majus dignum trahit ad se minus*. And hence it was that capital crimes committed in one King's time, might be proceeded against after the Death of that King, 3 *Ed. 3 Fitz. Reattach.* 18. & *Bro. Cor.* 178. If the King had purchased Land to him and his Heirs, tho' the Word [*Successors,*] the Word of his politick capacity, had not been mentioned, yet he was seized thereof *in Jure Coronæ*, 43 *Ed. 3.* 20. And if Land had been given to the King and another, and their Heirs, they had for the same reason been Tenants in Common, and not Joint-Tenants, *Com.* 239. for the same reason. And though many of those Persons who have been Kings have often oppressed, instead of preserving their Subjects, yet still that which *Bracton* hath said upon the same Ground remains true of the Regal power, *Non aliud Rex potest, quam quod de jure potest*, his Office still being *ex Officio*, as 2 *Littl. Co. Wiseman's Case*, saith; and *Fitz. Nat Brev.* 113. out of the Register, to provide for the preservation of his people. And if any other construction should be made, then it must have followed in the King's personal Absence, Minority, or Disability, the Kingdom must either have been but weakly, or not at all governed. From all which it may be inferred, That the Obligation and Allegiance which was owing to the King, did include that which *sano sensu* was the Kingdom's also.

It remains now that somewhat be spoken for the further invalidating of this part of the Plea; wherein I shall,

First prove, That one born in *Scotland*, after the Union of the Crowns, cannot be to any purpose considered as an Alien to *England*.

Secondly, That though the Earl of *Cambridge* had been born before the Union, yet he had not been an Alien to *England*, partly from a national Consideration, but more principally from personal Considerations; *viz.* 1. By reason of his local Allegiance both in *Scotland* and *England*. 2. *Ligantia acquisita*; and that by the Naturalization of his Father, or his own Denization.

Thirdly, That though he had been an Alien, yet as this Case is upon the proofs, he will prove triable for Treason by the Laws of this Kingdom.

Before I speak of any of these, I might touch upon that part which layeth Murder to the Charge of this Earl; it having been fully proved that several Persons by name, amongst many others, were slain and murdered by the *Scottish* Army. And to make him punishable for this Crime there is no need of Denization; it being an Offence in itself against the Law of God and Nations, and no Trust requisite to be an Ingredient to it, as is required in Treason.

Hence we find Rape punishable in *England*, committed by a *Scot*, 13 *Eliz. Dyer* 304. and Murder done by the Lord *Zanchar*, of the same

Nation, 9 *Co.* 116. where we find him indicted by the Name of *Robert Creighton*, Esq; Which together with the express Authority of 11 *Ed. 3. Fitz. Brev.* 473. are, by the way, sufficient Warrants for our charging the Prisoner by the Name of *James Earl of Cambridge*, without mentioning his Dukedom, as he hath often intimated we should have done.

And if the Earl should say he killed not these persons himself, his Counsel can soon tell him that's not material, the Law being, That if divers Persons come to do an unlawful Act, and one commit a Murder or Treason, it is so in all. 1 *Mar. Dyer* 38. 13 *H. 4.* 13. 9. *Ed. 2. Fitz. Cor.* 433. But the truth is, I shall not rely upon this, being not willing so high an Offence should pass under any other Name than that of Treason: Therefore I pass to those afore-mentioned Considerations, which will evince his Crime to be no less than Treason.

1. As to the first of these, there being so much said in the Argument of *Calvin's Case*, I shall omit the citing of any thing particularly from thence, and select something from the Statutes made shortly after the Union. It is agreed by all Historians that these two Kingdoms were antiently but one, *Divisos orbe Britannos, & subducta Britannia mundo*. Thence it is observable, that in the Preface of 1 *Jac. cap. 1.* by the Access of the King of *Scotland* to this Kingdom, the Parliament speaking of the Union, correct themselves in these Words, *Or rather a Re-uniting of these two Nations, (though antiently but one.)* If so, this Re-union amounted to no less than (as it were) a national Remitter of the antient Union.

For the Settlement of this Union, Commissioners were chosen to compose some Differences betwixt the Nations, and to consider what was fit and necessary to be done for the Commonwealth of both Kingdoms, 1 *Jac. cap. 2.* These Commissioners consult long about it; and because they could not perfect it within the Time prefixed, an Act passeth for longer Time, 3 *Jac. cap. 3.*

At length the Work is finished by the Statute of 4 *Jac. cap. 1.* By which all Statutes that express or imply any strangeness of the one Nation to the other are repealed. And moreover, it doth enact and say, *That if there had appeared any other Statutes of this Realm of England, wherein any thing is ordained, enacted, and established, expressly and by name against the Scottish as Enemies, or Scotland as an Enemy-Country to the King of this Realm, or the State of the same; we should, for so much of them as concerneth Scottish Men or Scotland, have utterly abrogated and annulled the same, seeing all Enmity and Hostility of former Times between the two Kingdoms and People is now happily taken away.* So the Statute. After which it seems as strange, that any born in *Scotland* after and during the Continuance of that Union, should make themselves strangers to *England*; as if natural-born *Englishmen* should have made the same Allegation.

In the aforesaid Statute of 4 *Jac. 1.* there is a Clause, That no *Scottishman* coming into *England* to prosecute the Law against any *Englishman* offending in *Scotland*, is to be arrested here, except for Treason and Murder. And in the latter end of the Act, amongst other Things, it is enacted, *That if any Englishman should commit Treason*

son or other Crimes in Scotland, and come into England, he shall not upon his Apprehension here be sent into Scotland, to have his Trial there, but be tried where he is taken. But the Statute of 7 Jac. cap. 1. which was the Year after the Resolution in Calvin's Case, repealed that Clause of 4 Jac. 1. last mentioned, as to all Offences but Treason, leaving the Offenders in that kind to be tried in the Kingdom where they were apprehended. And though the Statute speak only of English, yet the like Act was to pass in Scotland, in case any of that Nation committed Treason here; else neither was to be binding to the Nations.

2. In the next place, somewhat may be said from a national Consideration, to prove the Earl no Alien here, though born before the Union: Not that my purpose is to endeavour the Revival of that antient Homage done formerly by that Kingdom to this; it is not worth the mentioning, in comparison of that Love and those Engagements which have been betwixt us: *Gens una summa* was heretofore said of us, and, if it may be, I wish *sic simus in ævum*. But because somewhat hath been on the other side cited from the Stories of Bruce and Baliol, in the Days of Edward I. and for that I find both Law and History afford some Matter for this Argument, I hold it my Duty not to be altogether silent in what passed in those Times, and since. I will not insist upon those several Appeals made by Magdolphus, and others of the Scottish Nation, to Edward I. *contra custodes Scotiæ*, and against the Kings of Scotland themselves: All Arguments of Allegiance then acknowledged from that Kingdom to this.

But to instance in some Precedents nearer to this in question, Symon Frysel, in 34 Ed. 1. Anno 1306, a Native of Scotland, came in an hostile manner from that Kingdom to invade this; and being apprehended here, he was condemned as a Traitor. The Words of Mat. West. 456, concerning him are, That he was a *turri Londinensi per plateas distractus, ut proditor*.

In the same Year of Edward I. William Wallis, the Commander in chief of the Scottish Forces, and a Native of that Nation also, as the Prisoner was, came into this Kingdom; and being apprehended, was, saith Walsingham, fol. 61. *Londonias usque ductus & judicialiter condemnatus, trahitur, suspenditur, & ultimo decollatur*; though he pleaded, as our Historians tell us, what this Earl doth, That he was a Subject of Scotland, and not of this Kingdom, and therefore ought not to be tried here for Treason. In 42 Ed. 3. cap. 3. in the Lord Beaumont's Case, when it was replied that the Party, objected against to be an Alien, was a Scotsman, the Plea is no longer insisted upon. A Protection *quia profecturus* lies not into a Country that is within the Allegiance and Protection of England, 7 H. 4. cap. 14. Yet we shall find the only Reason given wherefore it was granted into Scotland, was because of the Wars that were then betwixt the Nations; 7 Ed. 4. c. 27. After the ceasing of which Wars, it may be collected by the Book, a Protection would have lien no more thither, than it would have lien into Wales or Ireland.

In 13 & 14 Eliz. Dyer 304. one was arraigned for a Rape. At the Return of the *Venire Facias* to try him, he pleaded that he was a Scots-

man, and desired a *Medietate Linguae*, which Manner of Trial is granted to Aliens by the Statutes of 27 & 28 Ed. 3. But by the Judgment of the Judges of both Benches it was denied him, for this reason, amongst others, Because, saith the Book, a Scotsman was never here reputed for an Alien, but rather a Subject.

Obj. Whereas it hath been said, This was because the Statutes of 27 & 28 Ed. 3. were made when Scotsmen were generally reputed Subjects to this Kingdom:

Ans. I answer, 1st, That the Book gives no such Reason. 2dly, To affirm this, is to suppose the Judges, by such a foreign Conceit, to go against the express Provision of two Acts of Parliament, and the constant practice in pursuance thereof.

In the same Year of 13 Eliz. in the Case of the Duke of Norfolk, the Evidence of the Bishop of Ross, a Scotsman, was offered against the Duke by the Counsel for the Commonwealth; which the Duke opposed from the Judgment of Braeton, That a Foreigner's Testimony was not in that Case to be received. But Cataline, Chief Justice, though he says nothing to Braeton's Opinion touching *Exterorum Testimonium*, yet he gives the Rule of the Court, That the Testimony was to be received. Camden's Eliz. 214.

After this Time also the Queen of Scots was tried in this Kingdom, though not upon the Statute of 25 Ed. 3. yet upon the Statute of 27 Eliz. cap. 2. then in force. And though in the Proceedings of that Business Commissioners of both Nations met, and that the Scots Commissioners did protest, that though they did join with our Commissioners, yet they did thereby make no Acknowledgment that they were other than a Foreign Nation to this; yet the Englishmen protested against that Protestation, as we find in the History of that Queen.

3dly, But to pass from this national to a more personal Consideration, and from thence (though he were an *Ante-natus*) to prove the Earl liable to Punishment for Treason against this State, and that by a local Allegiance both in Scotland and England: Wherein it must be granted as a Principle, and cannot be denied, but that if an Alien come into this Nation, and there abide and commit that Act which would always be Treason in an English Subject, it is by the Law Treason in him during that Abode, because he oweth *Localem Ligeantiam*, and the Indictment against him shall say *contra Ligeantiam suæ debitum*, 7 li. Calvin's Case. Thus in 36 Eliz. the Portugals here in England join in an Act of Treason with Doctor Lopez; and it was adjudged Treason in all. Thus this Earl, tho he had been born before the Union, yet he lived in Scotland after the Union, and at the very Time of this Invasion, whereby he became a Subject, at least *Locali Ligeantia*.

So in England also, not only by his former Residence here, which he will say perhaps was avoided by his Removal hence, but by his late coming in, he became *Ligeus* here *Locali Ligeantia*, because he came from a Kingdom then, by his own Confession, in Amity with this. This was the Case of Shirley, a Frenchman, 4 Mar. who came from France, then in Amity with England; and being taken levying War in an hostile manner, was indicted and executed as a Traitor,

tor, *Dyer* 144. And as the Book puts it, 7 *Li. Calvin's Case*, if he had had Issue here, that Issue should have inherited.

4thly, In the next place, I shall prove the Earl of Cambridge (though he had been an *Ante-natus*) to be a Subject of *England Ligeantia acquisita*, and that by the Naturalization of his Father, or by his own Denization. But, First, as to the Naturalization of his Father :

1. The Act of Parliament hath been read and proved, whereby the Father of this Earl, by the Name of James Marquis of Hamilton, Earl of Cambridge, in 21 *Jac.* was naturalized to be to all intents and purposes a Subject of this Nation, as if he had been here born ; with a further Clause, That his Heirs might inherit and purchase any Lands, Tenements, &c. By which Act it clearly appears that this Earl is naturalized also : For, 1st, though in the Case of a Denization there may need the Word *Heirs* to extend it to them, because it goes as it is limited, it may be for Life, in Tail, or upon Condition, 9 *Ed.* 4. *cap.* 7. yet it is repugnant to suppose that in point of a Naturalization, because he that is born in *England*, as by Relation this makes him, without any other Expressions, conveys the Right to his Heirs. Hence Naturalization is never *temporanea*, though *data*, 1 *Inst.* 129. 2dly, Here are not wanting Words neither, that reach to the Heirs, if necessary ; for the Act is, That his Heirs may inherit and purchase, &c. And in pursuance hereof it is notorious that this Earl hath done both. But we shall find that oftentimes no more goes to express a Naturalization than this ; no other Expression is used to import the Privilege of being *English*, to them that are born of *English* Parents beyond-Sea, but only that they may have, and freely bear the Inheritance within the same Allegiance as other Inheritors, 25 *Ed.* 3. *De natis ultra Mare*. And in 3 *H.* 6. *cap.* 55. *Hall* and his Wife brought a Writ of *Trover* : The Tenant pleaded that the Feme was an Alien. The Demandants reply, That the Feme, in the Time of *Henry IV.* was enabled by Act of Parliament to purchase Lands and Tenements, &c. With which Reply the Defendant's Counsel rested satisfied, as if the Replication expressed it sufficiently that she was naturalized ; and thereupon demanded View.

*Obj.* But it hath been objected, *That this Act can have no other Effect than if the now Earl's Father had been born in England : And though he were a native Englishman, yet having Issue, this Earl, by a native Scotswoman in Scotland, the Issue thereby remains an Alien, though his Father were naturalized or born in England.*

*Ans.* 1. I shall easily grant both that this Earl was so born in *Scotland*, and that the Naturalization amounts to no more than if the old Earl had been born in *England* ; but do deny the Inference drawn from thence, That therefore the now Earl must be an Alien : For though in former Times some Controversy hath been touching this Question, *viz.* Whether the Issue of an *Englishman*, going out of the Kingdom, born of an Alien Woman, shall be a Subject of *England* ; or no ; yet I take the Law to be clear at this day, that such Issue is a Subject of *England*.

By the Common Law, if Father and Mother, both *English*, have Issue beyond-Sea, that Issue is *English*, 1 *R.* 3. 4. the Statute of 25 *Ed.* 3. *De natis ultra mare*, being declarative of the Com-

mon Law, 42 *Ed.* 3. *cap.* 10. And if the Reason and Practice of the Law be examined, we shall find it to be the same, where the Father only is *English*, for these Reasons :

First, Because at this day any Person may go from this Kingdom to another without Licence, tho he be neither Nobleman, Merchant, or Soldier, except some Restraint by a *Ne exeat Regnum*, Proclamation, or other Act of State be against him. So is it resolved, 12 & 13 *Eliz.* *Dyer* 296. And though all, except Persons so qualified, were restrained by 5 *R.* 2. *cap.* 2, yet that Statute is repealed by the Statute of 4 *Jac.* *cap.* 1. made principally in reference to *Scotland*. Therefore however the Law may be as to such as go when prohibited, or who stay beyond-Sea when commanded to return ; yet as to all others, at this day, and always as to Noblemen, as the Father of this Earl was, upon whom no Restraint was ever put by Common or Statute Law, certainly the Law is otherwise, especially when the Removal is to a Country in Amity, as *Scotland* was.

Secondly, *Partus sequitur semem*, by the Common Law : Therefore, in 4 *Ed.* 4. 25. *Statham Villen.* 9. if a Freeman marry a Nief, and have Issue, that Issue is free ; but otherwise, if the Man had been Villain, and the Woman free.

Thirdly, The Woman Alien by the Marriage is indenized, and the Issue then must needs partake of the privilege. And it appears by 26 *Ed.* 1. *Rot. Parl.* 1. that when *Edmond*, the Brother of *Edward I.* who married the Queen of *Navarre*, died, all the Judges resolved she should be indowed. And what though she should not, as in other Cases it hath been doubted, yet that hinders not, but during Coverture she was indenized, and that's enough to indenize the Issue. If a Nief marry a Freeman, it is and hath been a Doubt, whether this be a perpetual Infranchisement to the Woman after the Death of her Baron : But it never was doubted but that both herself, during Coverture, and her Issue ever after, were enfranchised. *Lit. Sect.* 187. 1 *Instit.* 136.

And for express Authority in the Point in hand, besides the antient Authority of *Abridg.* *Aff.* 39. *tit. Bastard.* 7. and *Bro. Denizen* 21. it was the Judgment of all the Judges of *England* ; 2 *Ca.* in the Dutchy-Chamber, betwixt the King and *Eaton*, usually called *Stephenson's Case*, the Record whereof is ready to be produced ; where Judge *Yelverton* and *Harvey*, then Judges Assistant to that Court, declared it to be their Judgments, as also of all the other Judges, That the two Sons of *Stephenson*, born beyond-Sea upon the Body of an Alien, were Denizens.

*Object.* I observed but one Book cited for maintenance of the contrary Opinion, and that was 26 *Hen.* 6, where indeed it is 22 *H.* 6. 38.

*Ans.* Which Authority is against, not for that Opinion for which it is cited : for in an Action there brought, the Defendant pleads that the Plaintiff's Ancestor, in the time of *Hen.* 4. went beyond-Sea without Licence, and there had Issue the Plaintiff. Upon this Plea, *Arderne* the Plaintiff's Counsel demurs ; but saith the Book, *Prisot* the Defendant's Counsel durst not demur.

Secondly, If the Book were as it is supposed, yet it makes nothing against the Law at this day ; because by the Book it appears, that the Plain-

Plaintiff's Ancestor went beyond Sea in the time of *H. 4.* without Licence; which being after *R. 2.* there was a Restraint upon him, except by Licence, or qualified as that Statute of *R. 2.* requires: which Restraint is now abrogated, as is before said; and the Inhabitants of *England*, as is suitable to all Islanders, may travel at pleasure, except especially forbidden: and so whatever the Law was then, it's otherwise now; *Mutata ratione Legis, mutatur Lex.*

*Object.* What if the present Earl did himself endeavour, or, as he saith was advised, notwithstanding the Naturalization of his Father, to procure himself to be naturalized, or indenized.

*Answer.* Yet that could be but *in majorem cautelam*; as some Savings have been inserted into Acts of Parliament themselves, not for Necessity, but for Satisfaction of the Lay-Gents, as our Books express it, *1 li. Co. 24. Plow. Com. 379.* upon the Statute of *5 Ed. 6.* And even in that Case of *Stephenson*, tho the Judges Assistants delivered what was their own Opinions and of the rest of the Judges; yet if making the party a Denizen would end the Controversy, they did advise it.

5thly, Besides this Purchase of his Father's, the Earl hath himself contributed to his own Denization, not so much by inheriting his Father's Dignity, and purchasing and enjoying himself Lands in *England*, that being rather an Evidence of what he formerly was, than making him what he was not before; but by the Writ of Summons sent to this Earl himself, *15 Car.* The Record whereof hath been read, commanding him *ex fide & ligeantia sua* to appear in Parliament as a Peer of this Realm, who accordingly did appear, and acted in this Parliament, being chosen of several Committees in the Lords House, to consider of many things of great Concernment, some whereof were for the Strength of the Nation, as hath been fully proved by the Records of the Lords House. All which Actions are so inconsistent with his being an Alien, and would be such a Solecism in State to admit an Alien to be invested amongst others with a judicial power, that rather than it should be admitted, all this laid together will (I conceive) amount to, at least a Denization.

I will not say, that the granting of every Office, or the being employed in any Transaction which concerns the Law or Government of the Kingdom, will make an Alien a Denizen; the Books of *Ed. 4. 1.* and *14 H. 4. 19.* forbid me to say so: but it's another thing to have a judicial power in Parliament, and to sit by vertue of such Summons in the Parliament of *England.* The Lord *Delaware* was disabled to sit in the House of Peers during his Life; but he dying, and a Writ of Summons coming to his Son, he was by vertue thereof enabled not only to sit, but to enjoy that place which his Ancestors formerly had done, *11 li. Co. 1.* And in *39 Ed. 3. 29.* *Umfrévil* Earl of *Angus* ought to be named Earl in the Writ against him, because by that Name he was summoned to the Parliament; and for not naming him so, the Writ abated. A Denization is a kind of a National Manumission: now as there is in Law an express Infranchisement of a Villain, and an Infranchisement in Law, *Lit. sect. 205.* so it may be said of Denizations. And amongst other Manumissions by Act in Law, I find in *Britton, fol. 79, & 82.* if a Villain were

made a Knight, this did make him free *ratione dignitatis*, and did not make the conferring of that Dignity to be a void Act, parallel whereunto is the Case in hand.

Sixthly, The last thing I shall insist upon, touching this second part of the plea, is to make it appear, that tho the Earl had been born before the Union, and an Alien, that yet there are other Circumstances in this Case yet remaining, which will clearly make this Act of his to amount to no less than Treason, *viz.* his coming from a Kingdom in Amity with this, and his marching in hither with *English* Traitors. That he marched in and held Correspondency with Sir *Marmaduke Langdale* and his Son, and with Sir *Thomas Glenham*, and divers others, hath been fully proved; and that that Kingdom was then in Amity with this, besides the National Treaties and Engagements unrepealed, it appears as well by the Earl's own Confessions at the Bar, as by the Words of the *Scottish* Declaration made upon this Expedition, read at the Earl's own Request; which, whatever it be, doth yet conclude this Earl and all his party from alledging the contrary for their advantage, it having been often reiterated by him; and also therein said, That this Expedition was neither against the Parliament nor People of *England*: besides, that it is no slight matter to make Nations in Amity to become open Enemies in a legal Construction, which we are now upon, as appears by the Book of *19 Ed. 4. 6.*

Now that these Circumstances will make this Act reach to Treason, appears by these Authorities of Law. In the Days of Queen *Mary*, *France* and *England* were in Amity; *Shirley*, a *French* Native, during that Amity, joins himself with some *English* Traitors: *Shirley* is apprehended, and indicted as a Traitor, *contra ligeantiae suae debitum*, *4 Mar. Dyer 144.* which is confirmed for good Law likewise, *7 li. in Calvin's Case*; by all the Judges: with which agrees *Brook. Treason 32.* and *Crompton's Jurisdiction of Courts 72.* and Mr. Justice *Dallison's Reports, 3, 4 Mar.* All which Authorities agree in this difference, That if Alien Enemies join with *English* Rebels, and be apprehended, the Aliens shall be tried by Martial Law, or ransom'd; but if Alien Amies so join, it's Treason in all. And 'tis observable that the Case is put cautelously in *H. 4.* and so abridged by *Brook. Treason 1.* That where Alien Enemies join with *English*, the Aliens shall be tried by Martial Law, and the *English* as Traitors.

*Object.* The Objection hath been made, and so far it seems the Law is agreed, That if Aliens fight under the Banner of *English*, that this may be Treason in all; but not if the *English* fight under the Command of Aliens, which is alledged to be the Case in hand.

*Answer.* 1. I cannot safely admit that which the Objection takes for granted, that the *English* were the Auxiliaries, and the *Scots* the principals in this Act, when I find it in the proof offered by the Earl himself, that he came in by the Invitation of their Friends in *England*, and when I remember what was designed and produced in the South of *England* before and at the same time with this Expedition.

2. But admit it to be otherwise, yet if this Difference were material, then it should follow likewise, That if Alien Enemies did fight under  
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an *English* Command, it should be Treason in all, but it is not so.

3. The Law makes no such Difference, nay, the very Objection seems to be made and answered, 4 *Mar. Dyer* 144. for the Book saith, that tho *Shirley* were an Alien, yet *hoc non refert tempore pacis inter Anglos & Gallos*; the weight is laid upon *tempus pacis* only.

4. The true Reason of the Law in one Case is the same in both; which I conceive to be from the Detestation of conspiring with an inward secret Enemy, and from the Trust the Law repositeth in such as are of a Country in Amity. There is no Treason, but where there is a Trust; hence antiently Treason, in its genuine and original Acceptation, was only and properly amongst Allies and Friends, who mutually did repose Confidence in each other, as may be seen in the *Mirror*, fol. 30, & 201. And that a greater Trust was placed in Aliens Amies, than in others, appears in that our Law allows not only Traffick and Commerce with them, but also allows them to be to some purposes Denizens; namely, as to the bringing personal Actions; which if they bring, it shall not be allowed to plead that the Plaintiffs are Aliens: 19 *Ed.* 4. 6. & 6 *H.* 8. *Dyer* 2.

*Object.* But the Earl hath objected, That upon the *Scotish* Forces coming in under his Command, they of that Nation were by the House of Commons voted Enemies, and those of this Kingdom who adhered to them, Traitors.

*Answer.* 1. The Words of that Vote seem to be exclusive of the Prisoner, mentioning only those under his Command.

2. Tho every Enemy, in the legal Signification of the Word, be not a Traitor, yet every Traitor is an Enemy; and therefore if now he be proved a Traitor, he may be well enough an Enemy within that Vote. The present Charge against him is a Charge of High Treason, yet the Conclusion doth not improperly pray Judgment against him both as a Traitor and publick Enemy.

3. Take the Words in the strictest sense, and the Vote only names those of the *Scotish* Nation Enemies, but those of this Kingdom Traitors. Now the labour hath been, and I suppose it clear that the Earl himself is of this Nation, and so a Traitor by that Vote, from which he would derive an Argument for himself.

4. If yet any other Construction should be made, *Leges posteriores priores abrogant*; he is, by the Act whereby this Court now sits, ordered to be tried for Treason in the same kind as the rest, who are now under question: and if his Fact be Treason, it will easily follow by an Argument of *à denominatis*, that he is a Traitor.

The third Part of the Earl of *Cambridge's* Plea is, That he is a Prisoner of War, and rendered upon Articles, and that those Capitulations were made before his Rendition with Major-General *Lambert's* Commissioners.

That there were Articles, and he a Prisoner of War, I shall agree to be proved; as also that one of those Articles was, That he should have Quarter, and have his Life assured: and it must be agreed on the other hand, That the Lord *Gray*, who had equal Authority, protested from the first against that Treaty, and after took him Prisoner before any Assent thereunto. But whether, by the proof, the Earl were not a Prisoner before

signing the Articles; and whether before the Articles were to have any effect, the same were not to be ratified by the Commanders in chief, is submitted to Judgment upon the Evidence. That therefore I may do the Prisoner right in this point, which he seems to make his strongest Asylum, I shall admit that there were such Articles, and wave the relying upon the other Circumstances, which may not seem so clear in proof.

Nevertheless I shall briefly shew my Reasons, wherefore I apprehend no Security from the Stroke of Civil Justice belongs to the Prisoner by this Refuge; for as to the Military, is not the Contention.

First, if these Articles be of avail against the Civil Power of the State, they must in effect amount to a Pardon or Discharge of Treason; (for this point doth take the last point by admittance, viz. that the Fact is Treason.) Now tho the Military Power may exempt a Prisoner of War from the Execution of the Sword, and of their own power; yet it is not in their power, nor do they assume or ever challenged such a power, as to exempt Delinquents and Traitors from the Execution of the Magistrate; for the bringing of whom to condign punishment, the Soldier was at first armed, and the War principally begun: and if it should be in the power of one Soldier, it would *pari ratione* be in the power of all, as well to spare all as one; and if to grant a pardon of Life, then likewise for their Livelihoods. And so the End of the War, and the Satisfaction promised, would be in the power of the Servants of the State to frustrate; not that the Articles have no effect, for he was by them freed from the immediate Execution of the Sword.

Secondly, The pardoning of Treason is a power so inseparable to the Supreme Power, that by the Authorities of Law it is not communicable to any other: in 5 *Ed.* 4. 123. it's made a great doubt, and so said to be 1 *Bro. Treason* 22. Mercy and Justice being not transferable. 7 *li. Co.* in the Case of penal Statutes, 9 *Ed.* 4. 2. & 20 *H.* 7. 6. It's true indeed, there was a time when some had gotten this power into their hands, but by the Statute of 27 *H.* 8. *cap.* 24. this power was resumed into the Supreme Power, and there it hath since lodged. And however we dispute not what the Parliament may do by express Words, as they have done in many Acts and Tenders of Indemnity; yet without such Expressions, not by any implicit power, nor *ex officio* can any justly assume it.

Thirdly, By the Rules of Law no Officer or Minister of State can give away or dispense with the Interest of the Commonwealth. If a Customer, who is an Officer of State, take a Bond in his own name for the Importation of Bullion, he cannot discharge this Bond; 4 *Ed.* 4. 4. & 12. The King was the supreme Officer of the Commonwealth, yet if an Indictment of Nufance had been preferred against one in his name, it had not been in his power to have discharged this Offence; 3 *Ed.* 3. *Fitz. Ass.* 445. Nor could he for the same reason by any *Non-obstante* dispense with the penalty of any Statute which did concern the Interest of the Commonwealth, 12 *Jac.* Sir *Arthur Ingram's* Case, and *H.* 36 *Eliz.* betwixt *Hammond* and *Griffith*, in an Information upon a penal Statute, the Informer died, yet the King's Attorney might proceed. The Difference

ference I apprehend to be, as to the point in hand, betwixt one triable by Martial Law merely, as an Alien Enemy is; for such a one being triable by the Sword, if taken, may be discharged by that Power, tho in that case I totally exclude not the Legislative Power: But for a Traitor, originally and legally only triable by the municipal Laws of a State, to be absolutely discharged by a subordinate Power, without the concurrence or confirmation of the Magistrate, will ever be strange to me, till I find that Rule overthrown of *Nil dat quod habet*, which can never be in a just and moral Sense.

Fourthly, However the Words sound, the Intention and true Meaning of the parties was not to free those that were concerned from Justice, if the State required it; and Intentions are the best Rules for construction in these cases. That it was intended only in this Treaty to free the Prisoner from the present Execution of the Sword by Martial Law, and no otherwise, hath been sworn by two of those Gentlemen that were Commissioners under Major-General Lambert, who have sworn their own Intentions. Words, saith *Brañon*, are but *Vestimenta Rerum*, as the Body and outward Form; the true Meaning and Intention of Parties is the Life and Soul of every Contract; as for *Sensus literalis*, it hath been (I have observed) *via regia*, but it hath not proved unto that Side *via tuta*. However Words sound, the Exposition must be *secundum subjectam Materiam*. In 41 E. 3. 6. if one having divers Faculties hath an Annuity granted to him *pro concilio impenso*, the Words are general, but it shall be construed for Counsel in that Art which was intended. And as *Brudnel* saith, in 14 H. 8. 2. Contracts shall be expounded according to the Intents of those that did contract. *Cicero* saith, speaking *de Justitia*, as a Judge, not as an Advocate, *fol. 24.* to cavil with Words against the Mind of the parties, *est Calumnia quedam & malitiosa juris Interpretatio*; in which place he puts a Case upon a Treaty, as ours is, of one who had made a Truce for one hundred and thirty Days with his Enemy, and taking Advantage of the Letter, fell upon his Enemy in the Night, alledging the Truce was only for Days, which the Orator derides as mere Injustice. And no otherwise may the literal construction, contended for, be in the present Case, except the Letter must be observed or not observed, as it proves advantageous or disadvantageous to the Prisoner. Besides, it is usual in Law, that by Averments the intentions of parties take place, where the Letter would not so decide the Question; as 5 li. Co. 68. and 21 R. 2. *Fitz. Devif. 27.* Nor do I see, how in the penning those Articles any other Expressions could well have been. If provision had been made, that the Prisoner should have been exempted from the power of Civil Justice, that had been void; and if it had been expressed, that nothing was by those Articles intended to exempt him from Civil Justice, that had also implied a power in them, if they had seen cause, to have given an absolute Discharge from the Magistrate; which had been equally by construction derogatory to the Civil Power.

Fifthly, If the Earl had ever been *de facto* pardoned, yet he may seem to have lost the Benefit thereof by his Escape made after a special promise to the Governour with whom he was

Prisoner. The Civil Law, as *Fortescue* observes, *cap. 46. Libertinum ingratum in pristinam redigit Servitutem*; and our Law saith, If one hath committed a capital Crime, and, being pardoned after, do but break the Peace, he forfeits the Benefit of the Pardon: 3 H. 7. 7. as *Bartue* did the Benefit of his Licence to travel, by his Resort to the Fugitives, 2 *Eliz. Dy. 176.* And I conceive no Difference, whether the Condition be expressed or implied; which I infer not to make the Escape Treason, being not so charged; and the Statutes of 2 H. 6. and 14 *Eliz.* being expired concerning that; but only for this purpose it is enforced, that he who rendred himself up a Prisoner of War, and had for that consideration Quarter granted him, and yet after breaks that which was on his part to be performed, hath thereby deprived himself of that Privilege which otherwise he might have enjoy'd.

*Obj.* If now the Prisoner shall be questioned for his Life, who by the Rendition of himself had Quarter given him for it, how is the consideration made good which did induce him to surrender? Besides, there if he had died (as the Earl himself said) he had preserved his Estate, and avoided the consequences of Attainder.

*Answ.* It is strange that it should be thought no privilege to have so much time to die, in case there were certainty of it, above a Death by military Execution, which usually is sudden, and *sine strepitu Judicii*.

2. Is it no privilege above an immediate Death by the Sword, to have a fair judicial proceeding by a charge against him, putting in his own Plea thereunto, the Matter of Fact by Witnesses and other Evidence proved on both Sides, and Counsel assigned him of his own choice to argue his own cause in point of Law, and himself to be heard as much as he could speak in his own Defence?

3. And the Danger seems by this manner of Trial not greater than before; for he that dies a Traitor *in furore belli*, because himself is the cause why formalities of legal proceedings against him cannot be observed, by the antient Law forfeited his Estate, and remained attainted notwithstanding. *Plowd. Com. 262. Fitz. Dower. 106.* where, in a Writ of *Dower*, the Demandant was barred, for that her Husband went into *Scotland*, and joining himself with the Enemies, died in Enmity.

*Object.* As to the Examples of *Joshua* with the *Gibeonites*, and of the Prophet *Elisha* forbidding the King of *Israel* to smite those whom he had taken captive with his Sword and Bow.

*Answ.* I answer, As to the first, *viz.* that of *Joshua* with the *Gibeonites*, God forbid but that as that, so all other Leagues and Treaties should be kept so far, as to bind that Power that made them, and who can rationally expect more? Now *Joshua* was the Successor of *Moses*, and a Magistrate as well as Commander. Besides, it is said the Princes of the Congregation swore unto them; and, had these circumstances been incident to this case, the Dispute had been ended.

1. As to the other Instance, the Men of *Syria* had a personal Quarrel against *Elisha*; and therefore none being interested but the Prophet, it might well become his piety to be their Intercessor.

2. For any thing appears, the Prophet only speaks against their being smitten with the Sword  
of

of War, which, if it had been drawn in cold Blood, might have been the Blood of War in Peace; but not against the Sword of Civil Justice.

3. These Enemies were taken in the midst of *Samaria, incruente praelio*; and therefore Bread and Water might well be set before them, that they might eat, and go to their Masters: but there hath been in this case much Blood drawn, and Mischiefs done; for the avenging and satisfaction whereof, Justice cries to them that bear not the Sword in vain.

And now (my Lord) tho I might have demanded Judgment for want of the Prisoner's making good his own plea, which he ought to have done before I had said any thing to the contrary; the plea of being an Alien lying on his part to prove that pleads it: 9 *Ed. 4.* 12. & *Dy.* 300. and the plea of a Pardon being a confession of the Fact, if not made out, proves fatal and final also to the party; *Stanf. Cor.* 150. Yet nevertheless, for that the Prisoner hath not been confined herein to the strict Formalities of the Law, I have also, on the Behalf of the Commonwealth, taken the privilege of speaking thus much for asserting the Invalidity of his plea. And therefore, upon the whole Matter, having now said what hath prevailed with my Judgment to offer in this case, I humbly submit the same to the judgment and consideration of this Honourable Court.

The Court adjourned to Tuesday, being the sixth of *March*; and then the Duke was brought to the Bar, and the Judges sat in Scarlet. They rejected the Duke's plea in all its branches, and found him guilty of the charge whereof he was indicted. But before Sentence, *Bradshaw* the president resumed all, and spoke long for aggravating of every particular, justifying every thing the Counsel had pleaded, as if it had been all both good Law and good Reason. Then he caused to be read the Earl of *Essex's* Commission, to shew how little power was given him: (*But spoke nothing of Fairfax or Lambert their Commissions, which had been more pertinent, but the reason was they were ampler; and yet the Parliament had never refused to ratify any Articles Essex gave.*) He confessed the Duke's Articles were fuller than any others, therefore he would insist the more to invalidate them. He said, It was true, if there had been a War proclaimed, and prosecuted betwixt a foreign Nation and Enemy and *England*, then by the Law of Nations, to which their Law was consonant, Articles signed by the Commissioners of both parties should have been kept inviolable: but the Prisoner was no Enemy, for when the ordinary course of Justice was obstructed by the late King's prevailing party, so that neither Constables nor Sheriffs, nor other Civil Officers, could lay hold on such Delinquents as he was, or bring them to punishment, the Parliament was forced to raise an Army, commissioning their Generals to bring such to condign punishment. This being the end and substance of their Commission, it was not in their power, who were but the Sword of Justice in the Parliament's Hand, to give Articles for securing any from the Justice of the Parliament, since it was never intended their Acts should limit that power that gave Bounds to them. He added also, That the Court was fully satisfied, that the Duke was

naturalized. At last Sentence was given against him, *That his Head should be sever'd from his Body on Friday next, being the ninth Instant*: yet it was remitted to the Parliament's consideration, what Mercy should be shew'd to him; and so the Duke was carried back.

The rest of that Day, and the next Day, the Duke was earnestly solicited to preserve himself by making Discoveries. And Mr. *Peters*, who appeared concerned for him during his Trial, did now insinuate himself on him to draw somewhat from him: but all was in vain, there being no choice to be made betwixt a glorious Death and an infamous Life.

On the eighth of that Month, it being put to the Vote of the House, whether he should be reprieved or not, it was carried in the Negative.

And he was executed the ninth of *March* 1648.

THE Night before his Execution, the Duke, the Earl of *Norwich*, the Lord *Capel*, and Sir *John Owen* (who had all received Sentence of Death) were brought into one Room: Having spent great part of that Night in taking leave of their Friends, and in their Devotions. The next day the Duke made the following Speech to his Friends, that attended him, which his Brother published from the Original he sent him.

I know you that are here to be true and faithful to me, I will therefore, in your hearing, say somewhat in order to myself and to my present condition, and give you also this Copy of it; which, after I am gone, may, perhaps, be thought necessary to be published as the last Testimony of my Loyalty to my King, for whom I now die, and of my Affection to my Country, for the pursuance of whose pious and loyal Commands I am now to suffer.

That my Religion hath always been, and still is Orthodox, I am confident no Man doubts: I shall not therefore need to say much to that particular, only that *I am of the true Reformed Protestant Religion, as it is professed in the Church of Scotland.*

I take God to Witness, that I have been constantly a loyal and faithful Subject and Servant to his late Majesty, in spite of all Malice and Calumny: I have had the Honour, since my Childhood, to attend and be near him till now of late; and during all that time, I observed in him as eminent Virtues, and as little Vice as in any Man I ever knew; and I dare say, he never harboured Thought of countenancing Popery in any of his Dominions, otherwise than was allowed by the Laws of *England*, and that among all his Subjects there could not be found a better Protestant than himself, and surely also he was free from having any Intent to exercise any Tyranny, or absolute power over his Subjects, and that he hath been so unfortunate, I rather impute the cause of it to the Sins of his people, than to his own: For my own part, I do protest never to have swerved from that true Allegiance which was due to him, and that hath constantly been paid (to my comfort I speak it) to his Progenitors by my Ancestors, for many Ages, without Spot or Dishonour; and I hope shall be still, by my Successors, to his posterity.

I do heartily wish well to, and pray for his Royal Issue, and shall die a true and loyal Subject to his eldest Son *Charles II.* the unquestionable.

able King by Right of all his Father's Kingdoms. I hope, though I do not live to see it, that God's Justice and Goodness will in his own time establish him on the Throne of his Father, which I doubt not some of you will see come to pass; and I am confident till then, and so long as Men deeply plunged in Guilt and Self-Interest usurp Power and Government, these Kingdoms will fall short either of Peace, or any other permanent Happiness.

I speak from my just Affection to the Royal Race, and much Compassion to his Majesty's Subjects; but not from any Malice, Anger, or desire of Revenge against any, for what I have, or am to suffer, for I forgive all Men.

It is well known what Calumnies and Aspersions have been thrown upon me by Men of several Parties and Interests, not excepting those who would seem to carry much Affection to his late Majesty, as if I had expressed Disservice or Disloyalty to him; the which, how malicious and groundless they were, I appeal to God, who, with my own Conscience, clearly beareth Witness of my Innocency therein, and I shall beg Mercy from him to whom I am now to give an account of all my Thoughts and Actions, as I have still had a faithful and loyal Heart to my Master.

It hath been a general Complaint, that I persuaded his Majesty to pass the Act of continuing this Parliament. I dispute not whether the doing of it at that time might have been reputed good or bad, but surely it was not I that did persuade it; neither did I at all deal with his Majesty for his Consent to the Bill of Attainder for taking away the Life of the Earl of *Strafford*, whose great Parts and Affections, it is known, I highly valued: Yet some have been pleased to attribute to me the Cause of that Concession; but were his Majesty now living, I am confident he would publickly clear me in both these, as he hath been pleased many times in private formerly to do.

And truly I am not conscious to myself, (tho' I have been for many Years a Privy-Counsellor to him) of ever giving him any Advice that tended to other Ends (as I conceived) than the Good and Peace of his Majesty and his Dominions.

It hath been rumoured, since my last Imprisonment, that I should confess myself to be the greatest Instrument under his Majesty (by making use of his *Scottish* Great Seal) for authorizing the War in *Ireland*; a Report so false and simple, as, in my Opinion, judicious and honest Men will not believe it. And truly, as I am free from having Hand therein in any manner of way, so I am of nothing more confident, than that his Majesty was also absolutely free thereof, and that he was not in any case a Causer or Countenancer of those *Irish* Troubles.

I have been often examined touching Persons of several Qualities within this Kingdom, that, as is supposed, did invite into *England* the late Army from *Scotland*, or promised Assistance after their coming; and of late much Persuasion hath been used with me to that Purpose, as that upon my Discovery thereof depended the only Means of my Preservation. I will not say that I had any thing to reveal, which would have been satisfactory; but this I desire you to attest to the World, that I have not accused, or said any thing that may reflect on any Man of what Degree soever, within the King's Dominions: And indeed it was so contrary to my Conscience, and

so derogatory to my Honour, that if I had been able, yet should I never have prejudiced any in that Nature, though it had been to save me an hundred Lives.

Touching that foul and senseless Slander, that I betrayed the Army under my Conduct, the Care and Pains I then took to prevent the loss of it, and the near Approach of my suffering for it, will, I suppose, abundantly contradict this Aspersion. I was satisfied with the Justness and Necessity of that Engagement upon the Grounds of the Declaration of the Parliament of *Scotland*, fearing then the sad Confusions which have since followed here both in Church and State, and particularly the fatal Fall of my Master, to the Preservation of whose Person I was by Obligation and natural Affections as passionately tied, as I could be by Duty and Allegiance.

And now I confess I am void of all Rancour or Displeasure against any, tho' I am within few Hours to die, adjudged by a lawless and arbitrary Court of purpose erected, as is said, to destroy my Master, and some of his Servants, and for a great Part composed of Men mechanick and unfit to be Judges; my Death being decreed right or wrong, as is reported, before ever the Trial begun. And though my Death is no less than Murder, yet I forgive all, and pray to God to do it, and, that my Blood be not laid to their Charge, or to some powerful and eminent Mens, who, as is thought, upon some sinistrous Ends, have many Months since contrived my Destruction, which now is ready to take effect. And tho' I have answer'd to that Court in regard of the Justness of my Defence, which I thought would have weighed with them: Yet I never thought, nor do I acknowledge any Jurisdiction, or lawful Authority in the same, notwithstanding I do with all christian Humility submit to the Punishment, which for my other personal Sins the Lord hath justly brought upon me. I should have spoken more, yet would not have said so much, but for fear lest either my Memory might slip it on the Scaffold, or that the Rudeness of some People, by Noise or otherwise, might have interrupted me speaking on this Subject. So I thank God I am well prepared. God bless you, remember me to all my Friends. I know I have been a great Sinner, yet thro' Faith I have an Assurance that God will forgive me, and have Mercy upon me, thro' the alone Suffering and Intercession of Jesus Christ my Saviour. *Amen.*

About nine a-clock the Officers called to the Prisoners to prepare to go, and they were carried in Sedans, strongly guarded, to Sir *Robert Cotton's* House: When they came to Sir *Robert Cotton's*, three or four Officers came from *Cromwell*, desiring the Duke to make some Discoveries, who should not only be preserved, but be made a great Man; but he refused, as he had formerly done on those Occasions, and said, if he had as many Lives, as Hairs on his Head, he would lay them all down, rather than redeem them by so base a Means. Then they all went to Prayers, and they had some excellent Preachers waiting on them, and praying with them. Some Wine was brought them, and they all drank one to another, and embrac'd and kiss'd each other with much Tenderness. The Duke was first led to the Scaffold, and on the way other Officers came from *Cromwell*, renewing the former Offers, if he would make Discoveries, but he rejected them with Scorn.

When the Duke came to the Scaffold, perceiving greater Silence than he expected, tho' he had resolved to make no publick Speech, yet being invited by the Attention he observed, he spoke to the People; but as he had not premeditated it, no Copy remains but what was printed from the Notes of the Hearers, *and therefore Dr. Burnet says he only gives us the Heads of it*; as follows,

He address'd himself to the Sheriff, and told him, he judg'd it not very necessary for him to speak much, his Voice was so weak and low, that few of the Crowd that look'd on would hear him; nor was he ever so much in love with speaking, or with any thing he had to say, that he took much Delight in it: Yet since this was his last, he being by the Divine Providence of Almighty God brought justly to that End for his Sins, he would speak a little to the Sheriff, for his Voice could not reach others. He was now to suffer as a Traitor to the Kingdom of *England*, a Country which he had ever lov'd equally with his own, not having intended any general Prejudice to it, or to any particular Person in it: His late Actings were the Commands of his own Country, which he could not disobey. It is true, it had pleas'd God so to dispose of the Army under his Command, that it was ruin'd, and he for being clothed with a Commission to be General, stood now ready to die. He would not repent what he had pleaded for his own Defence, God was just; nor would he say any thing of his Sentence, but that he did willingly submit to God's Providence, acknowledging that on many Accounts he deserved Punishment in this Life, as well as in the next, for he confess'd himself a great Sinner: yet for his Comfort he knew there was a God in Heaven, who was very merciful, and that his Redeemer did sit at his Right Hand, and he was confident that he was mediating for him at that very Instant, being hopeful, thro' his all-sufficient Merits, to be pardon'd all his Sins, and to be received into his Mercy, trusting only to the free Grace of God thro' Jesus Christ. He declared he had never been tainted in the Religion profess'd and establish'd in the Land, in which he had been bred from his Infancy: It was not this or that Mode or Fancy of Religion that was to be built on, but one that was right and sure, and came from God.

*Here observing some were taking Notes, he said he did not expect that, or he had digested what he had said into a better Method: But desired that what he had said might not be publish'd to his Disadvantage, since he had not intended to speak any thing when he came to that Place. Then he went on and said, Many dreadful Aspersions had been cast on him, as if his Intentions had not been such as he pretended; but he thank'd God he was unjustly blam'd: That for the King he had ever lov'd him, both as he was his King and Master, with whom he had been bred many Years, and had been his Domestick-Servant, and that there was nothing the Parliament of *Scotland* declared for the King, that was not really intended by himself; and as he hazard'd his Life for him one Way, so he now was to lose it another; and that his Design of Leading in the Army to *England* was really that which was publish'd in the Declaration, in so far as concern'd the King: He was not then to speak of the rest of the Declaration, which had many other Particulars in it; and for what he said of his Duty to the King, there was no Reason to*

suspect him of Flattery, or any other End in saying it (God having now dispos'd of his Majesty) but tho' he could gain nothing by it, yet he owed the freeing himself of that Calumny to Truth, by which all Men shall gain for ever. There had been many Discourses founded on a Part of the *Scottish* Declaration, which mentioned an Invitation to come to *England*, upon which he had been much labour'd for discovering the Inviters; but he had and did still remit himself to the Declaration without any other Answer. He was ever willing to serve this Nation in any thing was in his power, which was known to many worthy Persons in it; and he would still have continued in those Resolutions, had those, in whose Hands the Power was then, thought fit to have preserv'd his Life. But since he was thenceforth to be of no more use, all he could do, was to wish the Kingdom Happiness and Peace, and to pray that his Blood might be the last should be shed: And tho' perhaps he had some Reluctance within himself at the Suffering for this Fact, yet he freely forgave all Men, and carried no Rancour with him to the Grave; but did submit to the Will of him who created Heaven and Earth, and himself, a poor sinful Creature then speaking before him: He conceived it could contribute to no End for him to speak of State Business, of the Government of the Kingdom, or things of that Nature; his own Inclinations had been still for Peace. He was never an ill Instrument betwixt the King and his People, nor had he acted to the Prejudice of the Parliament. And as he had not meddled much in those Wars, so he was never wanting in his Prayers to Almighty God for his King's Happiness, and he earnestly prayed God to direct his Majesty (who then reigned) that he might do what should tend to his Glory, and the Peace and Happiness of the Kingdoms. He said he was of the established Religion, which he had profess'd in his own Country where he was born and bred, but for particular Opinions he was not rigid, he knew many godly Men had Scruples about divers things, wherein he had never concern'd himself; nor did Difference of Opinion (which was never more than at this Time) move him. His own was clear. He prayed the Lord to forgive him his Sins, as he freely forgave even those against whom he had the greatest Grounds of Animosity, remembering that Prayer, *Forgive us our Trespases as we forgive them that trespass against us.*

He discover'd a great Composure by his Looks and Manner of Expression; and when he was desired to change the Posture he stood in, since the Sun shin'd full in his Face: He answer'd presently, no, it would not burn it; and he hop'd to see a brighter Sun than that very speedily.

After the Duke had done speaking, he call'd for the Executioner, and desired to know how he should fit his Body for the Blow, and told him his Servants would give him Satisfaction. Then he called to his Servants, and commanded them to remember him kindly to divers of his Friends in *England*, particularly to his Mother-in-law, the Countess of *Denbeigh*, to whom he had ever paid a filial Respect, and to the old Countess of *Devonshire*: He bid them tell her she would no more question his Loyalty (which she had done sometimes in Raillery) since he was now to seal it with his Blood: Then he kneeled down and pray'd, after which Dr. *Sibbald* entertained him with some pious Discourses; then the Duke pray'd a short

short Prayer himself, and with a chearful Countenance embrac'd the Doctor, and said, *Truly I bless God I do not fear, I have an Assurance that is grounded here* (laying his Hand on his Heart) *that gives me more true Joy than ever I had. I pass out of a miserable World, to go to an eternal and glorious Kingdom; and tho' I have been a most sinful Creature, yet I know God's Mercy is infinite; and I bless my God I go with so clear a Conscience, that I know not the Man I have personally injur'd.* Then embracing his Servants, he said to every one of them, *You have been very faithful to me, the Lord bless you.* He turn'd next to the Executioner, and after he had observ'd how he should lay his Body, he told him he was to say a short Prayer to his God while he lay all along, and should give a Sign by stretching out his right Hand,

and then he was to do his Duty; *whom he freely forgave, as he did all the World.* And then he stretched himself on the Ground, and having plac'd his Head right, he lay a little while praying with great Appearance of Devotion, and then gave the Sign: Upon which the Executioner, at one Blow, sever'd his Head from his Body, which was receiv'd in a Crimson Taffety Scarf by two of his Servants, kneeling by him, and was together with his Body, immediately put in a Coffin, which was ready on the Scaffold, and from thence convey'd to a House in the *Meuse*, from whence it was, according to the Orders he had given, sent down by Sea to *Scotland*, and inter'd in the Burial-place of his Family.



## XLVI. The Trial of Lieutenant-Colonel JOHN LILBURNE\*, at the Guild-Hall of London, for High-Treason, the 24th, 25th, and 26th of October 1649. 1 Car. II.

**T**HE 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 Fermin*, Justice of the Upper Bench.  
*Tho. Gates*, Baron.  
*John Puleston*, Justice of the Common-Pleas.  
*Francis Thorp*, Baron and Member.  
*Rob. Nicolas*, Member, } Justices of the Upper  
*Richard Aske*, } 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 Wooliston*.  
*Sir William Roberts*.  
*John Green*,  
*John Clark*, } Serjeants at Law.  
*John Parker*, }  
*William Steel*, Recorder.  
*John Fowke*,  
*Thomas Foote*,  
*John Kendrick*,  
*Thomas Cullum*,  
*Simon Edmonds*, } Aldermen.  
*Samuel Avery*,  
*John Detbicke*,  
*Rob. Titchburn*,  
*John Hayes*,  
*Henry Proby*, Common Serjeant.

*Thomas Brigandine*.  
*Nathaniel Snape*.  
*Edward Rich*.  
*Owen Roe*.  
*Tobias Lisle*.  
*Austin Wingfield*.  
*Richard Downton*.  
*Daniel Taylor*.  
*William Wibend*.  
*Silvanus Taylor*.

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, requir'd 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-Col. *Lilburne* directed himself to Mr. *Keble*, one of the Keepers of the Great Seal, as the President of the Court, and said to this purpose: Sir, will it please you to hear me?

\* See Clar. Hist. Vol. III. p. 390. The Notes subjunct to this Trial were inserted in the first Edition of it.

and if so, by your favour thus. All the Privilege 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 Testimony 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, whom I 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, to 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 endow'd me with that Reason, that 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 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*, sometimes 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 tho you be now in a Garison, 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 look'd 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 try'd 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 our 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 See the 27 of Hen. 8. c. 24. am his Servant and Counsellor, and am to act for his Good, Benefit,

and Advantage: And yet notwithstanding, it is by the known Laws of this Land my Duty to be indifferent and free from Partiality betwixt my Master and you the Prisoner, and I am specially bound unto 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 its 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 plead to the Errors of my Indictment, before I ever 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 the Laws of *England*, whose

\* Which Orders are dated May, 12. 1641. and June 3, 1642. You may at large read at the last end of his *Instit.* part 2.

Books are published by special \* Orders and Authority of Parliament for good Law; 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 through 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 Desireableness to keep within the Bounds of Reason, Moderation and Discretion, and so to carry my self 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, soundly 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 me 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 Uproar 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 abolisbeth 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 do erect those special and extraordinary Commissions, and warrant the Usage of them, are merely irra-



irrational (a) Innovations upon our indubitable Rights contained in *Magna Charta*, and mere Court and Prerogative-Devices to destroy the best of Men, by extraordinary Courts appointed to prejudice 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 from 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 my 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 Out-cry 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 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 Virginity 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 rendered.

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 *England* (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 forementioned innovating Statutes made in *Edward the Second's* and *Edward the Third's* (b) Time: 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

(a) And excellent to this purpose is Lieutenant-Colonel Lilburne's Argument, in his second Edition of his Picture of the Counsel of State, p. 8. against the Erection of extraordinary Courts, which thus followeth: He granting that the Parliament hath Power to erect a Court of Justice to administer the Law, provided that the Judges consist of Persons that are not Members of Parliament; and provided the Power they give them be universal; that is to say, to administer the Law to all the People of England indefinitely, who are all equally born free alike, and not to two or three particular Persons solely; the last of which for them to do is unjust, and altogether out of their Power, &c. Which Argument or Reason is most notably illustrated and enlarged in the second Edition of the Legal Fundamental Liberties of England, revived of the 8th of June, 1649. p. 72.

(b) Which were Westminster, the second being the 13 of Ed. 1. c. 29. and 2 Ed. 3. c. 2. and 34 Ed. 3. c. 1.

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 passed 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 damn 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 damned and plucked 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 pretence 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* (c). 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 door that their Votes passed against me, declaring me in general (which in Law signifies nothing) to be a Traitor; and spake with a Gentleman that is now a Judge amongst yourselves (*viz.* 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; where I stayed, whereas 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* in general, nor against the Welfare of any one particular Man in *England*, but really wish'd it well, and all its Well-wishers:

I say that, notwithstanding my certain Know-

ledge 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 morning; yet notwithstanding 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 first of *Edw. 6. chap. 12.* and the 5th and 6th of *Edw. 6. c. 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 Counsel, or to one of the King's Justices of Assize, 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 same Offence or Offences shall happen to be done or committed (d).

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 ever disputed any of their Summons, though sent by the meanest Man that ever appertained to them; and who, if they had sent their Warrant for me by a Child, I would have gone to them) I was fetch'd out of my bed in Terror and Affrightment, and to the Subversion of the Laws and Liberties of *England*, and led through *London-Streets* with Hundreds of armed Men (like an *Algier-Captive*) to their Main-Guard at *Paul's*, where a mighty Guard staid for the further conducting me by Force of Arms to *White-hall*. 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 1641, 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 forementioned 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 *White-hall*, I was there also kept by armed Men, contrary

(c) Of which Judgment Sir Edward Coke is positively, in part 2. Instit. f. 48. and part 3. f. 52. in *The Earl of Lancaster's Case*, which is singular well worth the reading. See also part 1. Instit. f. 13. a.

(d) See also to this purpose, part 3. of Coke's Instit. ch. High-Treason, f. 26, 27, 28. and part 1. Parl. Declar. in the Case of the Lord *Kimbolton* and the six Members, p. 38, 39, 76, 77.

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 look'd 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 my self 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 illegal, arbitrary and tyrannical, that the Lords in *Star-Chamber* should censure me to be whipp'd, pillory'd, &c. for no other cause but for refusing to answer their Interrogatories against my self. And when I was brought before the said Council of State, I saw no Accuser, no Prosecutor, no Accusation, no Charge nor Indictment; but all the crime that there was laid unto my charge, was Mr. *Bradshaw's* very seriously examining me to Questions against my self: although 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 condemn'd in the *Star-Chamber-Lords*; yea, and there for refusing to answer his Questions, (for 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 *Jermyn*. Mr. *Lilburne*, you very much abuse and wrong your self, 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 earnestly 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 search'd to find out Advantages against me; and also lock'd 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 veiled in me, and in my possession. But being 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  
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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 published against me, were hugged and embraced; altho, for my own part, I do not know of any 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 rise and go to the Lord of Glory. Yet notwithstanding all these unparallel'd 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 they 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 Causes 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 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 it was 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 an *Englishman* ought to be, who ought to see and read the Authority, by vertue of which he is convened before any Power. It's true, I know some of you, Gentlemen, that I see sit 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 vertue 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 vertue of it, I do not betray my Liberties. And therefore I humbly crave that you would let me hear your Commission read; for this Court is no ordinary and common Assizes, Sessions, or Goal-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 seventeenth 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, in ordering this Court to try 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 it self, 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 (a) Law, and to do Justice indifferently between both.

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 those 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*, 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 yet 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.

Lieutenant-Colonel *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 ever 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

(a) Mark that well; for Judge *Jermin* called it a damnable Doctrin, when Mr. *Lilburne* declared the Jury were Judges of Law as well as of Fact.

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 vertue 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 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 (a) Commons assembled in the Parliament of *England* : For so it was in the *Saxons* Time, and the *Romans* Time, and in all Times (b) 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 in 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 your self 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.

(a) But by his Favour, never before practised nor used without both King and Lords ; a Precedent of which he is desired to shew and produce out of any of his Law-Books.

(b) But there was before the Conquest neither Inns of Court, Lawyers, nor Term-Judges in *England*, but only twelve good and legal Men, chosen in each Hundred, finally to decide all Controversies : Which lasted till *William the Conqueror* subdued that excellent Constitution, and instead thereof introduced by his Will and Sword (contrary to his solemn Oath, three several times taken) the intolerable Bondage of *Westminster-Hall*, or Term-Judges, and their Outlandish or Norman Law-Practice in the French Tongue ; as all the *English* Chronicles universally and truly declare.

(c) Whose remarkable and excellent Defence you may at large read in *Holingshed's Chronicle in the Life of Queen Mary*, which Discourse is excellently well worth the speedy Reprinting, especially seeing Men are made Traitors for Words ; which Cruelty *Queen Mary* abhorred, as may clearly be read in that excellent Statute of hers, made in the first Year of her Reign, Chap. 1.

Ld *Keble*. You go improperly to work.

Lieut. Col. *Lilburne*. That Gentleman, I do not know his Name, (pointing to Judge *Fermin* :) 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 \* Trial V. 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 (c) 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 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 read your Commission, by vertue 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 my self from your forelaid 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 own Life upon a Punctilio 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 the Party to hold up his Hand at 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 that you are there, 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 *Fermin*. 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 (a) 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 hu-

man 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 willfully 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 enough, yea, good 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 unto 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 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 *Fermin*. Ask him again: Harken, 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 cried 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.

(a) But saith Mr. Hyde, in his forementioned Argument, against the Northern special Commission of Oyer and Terminer, pag. 411, *Miseri servitus est, ubi jus est vagum aut incognitum*; that is to say, It is a miserable Servitude where the Law is uncertain or unknown. And the very same saith that great Oracle of the Law, Sir Edward Coke, in the Proem to the third Part of his Institutes, and in the fourth Part, fol. 332, and in several Places besides. But the People may easily see hereby, that these present Judges drive to have no other Law in being in England, but what is in their own and their Masters Breasts, (that so by pretence of Law they may give away all the Liberties and Properties of the People of the Nation, as their Brother Judges did lately to the King, in the case of Ship Money:) And then woe, and woe to the People, to be brought back again to that Faith, That Ignorance is the Mother of Devotion or Obedience.

Lieut. Col. *Lilburne*. Sir, I beseech you do 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 righteous and just than to do it by pretence of Justice. Sir, I know that Mr. *Bradshaw* himself, President of 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 tried with him, that the Court nor he would not, by vertue 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 *Fermin* Mr. *Lilburne*, at the beginning you talked of Moderation, and that you would carry yourself with Rationality, which methinks in your 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 (a) 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 that you call 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 Instigation of 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; 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 so do, 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 against 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 Questions concerning myself; 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 but 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, altho' it be but eight or nine days.

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

(a) Mr. *Lilburne* here endeavoured to speak, and saw the Judge his Mistake; for he did not say that Mr. *Prideaux* was the Creator of the Commission, but that he was one of the Creators of all the Judges, and thereby was Judge of his Judges, and in that regard he was no competent Accuser or Prosecutor: But they would not suffer him to speak, but cried out, Hear the Court; which thing also they frequently did afterwards.



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 lock'd 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 to come to ensnare and entrap me with unknown Niceties and Formalities that are locked up in the *French* and *Latin* Tongue, 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 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 from you, and I will plead.

Ld *Keble*. You shall have that which is according to the 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 there laid down in that Indictment, (pointing to it.) And therefore now, Sir, having pleaded, I crave the Liberty of *England*, that you will 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 through 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 through 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 Country; 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

knows whether any of your Hearts be possessed with a premeditated Malice against me, or whether any of you come with so much Forethought 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.

Justice *Thorpe*. 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 Formality (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, 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 extreme long, and of abundance of particulars, it is impossible that my Memory, or 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 *Subpnas* 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 rests 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 most 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 but him, not only at the Bar when he was there, 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 can 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 hitherto 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 practice, 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 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 be 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 knock'd 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 *Fermin*. Mr. *Lilburne*, it were reasonable to give you Satisfaction, if you would receive it. You say you were present at my Lord of *Strafford'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 Things 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  
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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 Counsel 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 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 *Fermin*. Mr. *Lilburne*, you need not 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 declared 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 *Fermin*. 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 in 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 of *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 screw'd up into Hazards and Snares.

Ld *Keble*. If they be not yours 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 that 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 *Heath*, 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 so 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.

Judge *Nichols*. If you will not be led by the proceedings of Law, it will be worse for you; and you are to know this is not *Oxford*.

Lieut. Col. *Lilburne*. Sir, 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 give 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

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 (a).

L. Col. *Lilb.* 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 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.

L. Col. *Lilb.* Sir, my Life is before you, you may murder me, and take away my Blood, if you 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 your self: but you are now going to fly into Extravagancies 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 your self to your own Ruin.

L. Col. *Lilb.* 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.

L. Col. *Lilb.* 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 (b) 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.

L. Col. *Lilb.* 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.

L. Col. *Lilb.* 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.

L. Col. *Lilb.* Sir, under favour, I crave but one Word more, hear me out. I know very well, and I read it 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 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 my self upon a Trial according to the privileges thereof. And it was declared to me at *Oxford*, upon the

(a) What a lying Judge is this Mr. Nichols! whenas he himself with Mr. John Maynard the Lawyer, was assigned by the President, Lord Chief Baron Wilde, to be of the Counsel with Major Rolfe upon his Desire; and that before ever the Grand Jury found his Indictment of Treason, as is fully declared in the next Day's following Plea of Mr. Lilburne.

(b) Whose Words there, fol. 29, 30. are so plain and express, to prove what Mr. Lilburne said to be good Law, as nothing in the World can be plainer. See also to the same purpose, the second Part *Instit.* fol. 49, 103, 104.

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 me 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 *Kettle*. 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 *Thorp*. 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 hang'd 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 *Thorp*. 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 was 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 *Fermin*. 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 *Thorp*. I wouder 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 two other 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 freely 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 shall 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 what this Day Sevensight 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 Solicitation 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

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, threaten'd 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 my self. 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 some of 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 and 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, 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 do 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 Solicitor, who by Law, as well as any By-stander, may (a) 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 your self; 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 *Fermin*. 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 Pri-

soner 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 your self, he shall speak in your behalf; but before he cannot.

Lieu. 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 the Law that you suppose.

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 used in his Life-time, to be thus press'd 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 yours 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 Extravagancies and Bitterness of Spirit.

Lieut. Col. *Lilburne*. For my part, Sir, I must look upon my self 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.

(a) Coke, in his Instit. 3. par. cap. Petty-Treason, fol. 29. Of Counsel learned in Pleas of the Crown, fol. 137. is express in this Particular: So he is in cap. 63. being his Cap.

Justice *Fermin*. You have alledged 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 against 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 your self. 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, altho we do not deny you Liberty to speak for your self. But now you would have Counsel assigned before any Matter of Law doth appear

upon the Proof of the Fact, which we cannot do; for it were to do Injustice, \* and to do against the Law, which the Court cannot justify.

\* *Sc. Whit. mem. 433.*

Lieut. Col. *Lilburne*. Sir, under favour, whether or no I have transgress'd the Law, I will not judge: But I am sure 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 your selves; 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 your self 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 away 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.

Justice *Fermin*. 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, though they are now come to publick View, are so heinous, as that they do require time 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 Times 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 said.

Justice *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 Domination 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 inquired into the Cause of such solemn Meetings, and your own Servants have told them it hath been about me and my Trial.

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

Justice *Fermin*. 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 (a) 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 about 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 Lions Den: And if you will not allow me Counsel, to consult with what Plea to make for my Life, I have 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;

(a) But Coke, in his Chapter of Petty Treason, in 3 Par. Inst. fol. 29, expressly saith, and to the end, That the Trial may be the more indifferent, seeing the Safety of the Prisoner consisteth in the Indifferency of the Court, the Judges ought not to deliver their Opinions before-hand of any criminal Case that may come before them judicially. And he there cites Humphrey Stratford's Case, that Arch-Traitor, in which Hulse, Chief Justice, besought Henry VII. not to demand of them their Opinions before-hand. And in 4 Par. Instit. cap. High Court of Parliament, fol. 37. he fully shews the Evil of asking Judges Opinions before hand.

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*. 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 the 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 is 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 the usual way, you proceed not immediately to Trial. It is true Mr. *Lilburne* hath 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 is 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 unto you 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 Laws of Reason unspotted, uncorrupted, 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, tho' 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, 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 Language 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 you 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



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 righteouflest 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 to complain of that.

Lieut. Col. *Lilburne*. By your Speeches you seem to bind me up 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: altho' 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.

Justice *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 your self 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 call-

ing or summoning of a Jury of Life and Death.

Ld *Keble*. Mr. *Lilburne*, you say you well understand your self: 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 my self against that, I fitted my self, 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 will give you leave to send for them: We will give you time to do, to consider with yourself what to say for your self, you shall, till to-morrow Seven a-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 is that possible? And therefore I desire Time to bring them in, and also *Subpœna's*; for some of them are Parliament Men, and some of them Officers of the Army, 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 imprisoned for, nothing of which is now laid to my Charge? Could I divine 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 you again and again, you shall 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 Counsel, will be so inconvenient a precedent, as will destroy the Commonwealth: therefore to avoid the danger of such a destroying precedent, as he is pleased to call it, I desire to have some time assigned to 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 doth tell 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 yours: 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 tho' we had none, you had all: but you shall know, here we sit with as much Tendernefs 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 of the 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 a-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 fate 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 Words.

Just. *Fermin*. 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 ever had: for by the Laws of *England*, in the Matter of Treason, whereof you are indicted, you ought to have been tried presently, immediately: But because all the World shall know with what Candor 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-Hall, Oct. 26, 1649, being Friday,  
At the Trial of Lieut. Col. 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.

Lieut. Col. *Lilburne*. Here's none but my Brother and my Solicitor.

Ld *Keble*. Sir, your Brother shall not stand by you there; I will only have one hold your Papers and Books, and the rest not to trouble you: wherefore the rest are to come out.

Lieut. Col. *Lilburne*. Sir, I beg of you but one Word, tho 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 con-

\* That was in the Bar, where his Brother Col. Rob. Lilburne, his Solicitor Mr. Sprat, and other of his Friends stood.

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 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, were called, and in open court were 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 altho there were two expresse 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 *Edward 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 conjectural presumptions, or inferences, or strains 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 there 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 a few Words, we have heard you many; 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 best know, it is nothing that doth now concern us, though the Treason was against those Laws that then were in being; we must come to Proof, it may be 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 null'd and evaded before ever the Grand Jury found it, and that upon this Point of Law, because by the two Statutes of *Edward VI.* there ought to be two plain and clear Witnesses to every part of Treason; and tho *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, tho 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 the Court would proceed, and not prolong Time, seeing 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 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 innocent Blood be upon your Heads.

Ld *Keble*. Sir, these passionate Words will do you no Good, you had better forbear them.

Lieut. Col. *Lilburne*. Pray hear me then.

Ld *Keble*.

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 Fermin. 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 wronged by some Words Yesterday, that passed from some of the Judges: I pray let me hear them speak.

Ld. Keble. Mr. Lilburne, you said you would be rational, you would be moderate; you do break out; you will do yourself more Hurt than any here can do you: you must be silent and hear the Court, we can lose no more Time to hear you. Cryer, call the Jury.

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 Gentlemens 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 so To-day, for you shall not stand near the Prisoner 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 Keyzer, Edward Perkins, Ralph Packman, Francis Woodall, William Commins, Henry Hanson, Roger Jenkenson, Josias Hamond, 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 Jenkenson, Josias Hamond, Richard Allen, Richard Nevill, Roger Sears, John Mayo, Nicholas Murren.

Clerk. You Prisoner at the 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 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.

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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.

Justice Fermin. 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. 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 white Cap, pull him out.

Lieut. Col. Lilburne. You go not according to your own Law in dealing thus with me.

Justice Fermin. 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 Dariel) [the Prisoner excepted against him] Edward Perkins, Francis Peale.

Justice Fermin. Was he recorded and Sworn before he spake, or no?

Cryer. No, my Lord.

Justice Fermin. Then let him continue, if he be right recorded.

Cryer. The Oath was not given quite out.

Justice Fermin. Then he hath challenged in time; let him have all the lawful Favour that may be afforded him by Law.

William Commins 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 Jenkenson, Josias Hamond, Richard Allen, John Mayo, Roger Sears, Henry Hanson excepted against, Edmond Keyser sworn.

The Jury called.

Clerk. Twelve good Men and true, stand together, and hear your Evidence.

Justice Fermin. Cryer of the Court, let the Jury stand six of the one side, and six of the other.

G

Clerk.

Clerk. 1. Miles Petty, 7. Ed. Perkins,  
 2. Stephen Ives, 8. Ralph Packman,  
 3. John King, 9. William Commins,  
 4. Nicholas Murren, 10. Simon Weedon,  
 5. Thomas Dainty, 11. Henry Tooley,  
 6. Edmond Keyzer, 12. Abraham Smith.

Of the Jury, six live about *Smithfield*, one in *Gosling-street*, two in *Cheapside*, two in *Bread-street*, and in one *Friday-street*.

Justice *Fermin*. 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.

Justice *Fermin*. You refuse to hold up your Hand; and tho' 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 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*, to bring. That is to say, that thou 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, in the Parish of *Mary the Arches*, in the Ward of *Cheap*, *London*, aforesaid, of 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 a certain scandalous, poisonous, and traitorous Writing in Paper, intitled, *A salva Libertate*; and by another scandalous, poisonous, and traitorous Book, intitled, *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 Prisoner in the Tower of London, for his real, true, and zealous Affections 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, or 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 fifteenth of *May* 1649. And also by another scandalous, poisonous, and traitorous Book, intitled, *The legal fundamental Liberties of the People of England, revived, 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*, (a) 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 Advise-ments to put in execution, &c. And 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 Days and Times as well before as after, at *London* aforesaid, that is to say, in the Parish and Ward aforesaid, of thy depraved Mind, and most wicked Imagination, in and by the aforesaid scandalous, poisonous, and traitorous Book, intitled, *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 Prisoner in the Tower of London, for his real, true, and zealous Affection to the Liberties of his native Country*: falsely, maliciously, advisedly, and traitorously, didst publicly declare, amongst other things in the said Book, these false, scandalous, malicious, and traitorous Words following; 'But my true Friends, (meaning the Friends of the said *John Lilburne*) 'I (meaning the aforesaid *John Lilburne*) 'shall here 'take upon \* me the Boldness, 'considering the great Distractions \* *This Passage is in p. 5.* 'of the present Times, to give a 'little further Advice to our Friends aforesaid, 'from whose Company or Society, or from 'some of them, hath been begun and issued out 'the most transcendent, clear, rational and just 'things, for the Peoples Liberties and Freedoms, that the foresaid *John Lilburne* hath 'seen or read in this Nation, as your notable 'and excellent Petition of *May* the 20th, 1647. 'burnt by the Hands of the common Hangman, 'recorded in my Book called *Rash Oaths unwarrantable*, pag. 29, 30, 31, 32, 33, 34, 35. with 'divers Petitions of that nature, and the Petition

(a) Note that Mr. Lilburne was imprisoned by the Council of State as a Traitor, the 28th of March, 1649. and they there came, and after arraign him as a Traitor, for Actions done above five Months after, waving all the pretended Crimes for which they first imprisoned him.

of the 19th of *January* 1648. recorded in the following Discourse, pag. 45, 46, 47, 48. and the Masculine Petition of the 11th of *September* 1648. so much owned by Petitions out of several Counties; yea, and by the Officers of the Army's large Remonstrance from *St. Albans*, the 16th of *November* 1648. pag. 67, 68, 69. The Substance of all which, I (thou the foresaid *John Lilburne* meaning) conceive is contained in the printed Sheet of Paper, signed by my Fellow-Prisoners, Mr. *William Walwin*, Mr. *Richard Overton*, and Mr. *Thomas Prince*, and myself, dated the 1st of *May* 1649. and intitled, *The Agreement of the Free People of England.* Which false, scandalous, and traitorous Book, called, *The Agreement of the People of England*, tends to the Alteration and Subversion of the Government aforesaid. The Principles of the aforesaid Agreement, I (meaning yourself the said *John Lilburne*) hope and desire you (the Friends of the aforesaid *John Lilburne* meaning) 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 distressed, wasted, 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 or oppressed Commons of this Nation.

But the Principles of the foresaid Agreement being so detestable and abominable to the present \* ruling Men, \* *These Lines* 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, (meaning the Friends of him the aforesaid *John Lilburne*) vigorously to lay all Fear aside, and to set on foot the Promotion of it (meaning the said Agreement) in the same Method we took for the Promotion of the foresaid Petition of the 9th of *January* 1647. laid down in the following Discourse, pag. 23, 24, 25. and to write to all your Friends in all the Counties of *England*, to chuse out from amongst themselves, and send up some Agents to you (two at least for each County, with Money in their Pockets, to bear their Charges) to consider with your chosen Agents, of some effectual Course speedily to be taken for the settling of the Principles thereof (meaning the aforesaid false Agreement, devised by yourself the aforesaid *John Lilburne*) and to set up the promoting of (the foresaid feigned Agreement meaning) as that only which in an earthly Government can make you (the aforesaid Friends of the said *John Lilburne*) happier; at least, to know one another's Minds, in owning and approving the Principles of the foresaid false Agreement, that so it may become to you (meaning the foresaid Friends of the foresaid *John Lilburne*) and all your Friends, your Centre, Standard, and Banner, to flock together to, in time of those foreign Innovations, and domestick Insurrections, that are like speedily to bring Miseries enough upon this poor distressed Nation, (the aforesaid Nation of *England* again meaning) and unanimously resolve and engage one to another, neither to side with, or fight for, the Chimera's, Fooleries, and Pride

of the present Men in Power, (the aforesaid Parliament of *England* meaning) nor for the Prince's Will, nor any other base Interest whatsoever: the which if you (the aforesaid Friends of the said *John Lilburne* meaning) should fight for, it would be but an absolute Murder of your Brethren and Countrymen you know not wherefore, unless he or they will come up 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-Neale*, the grand bloody Rebel in *Ireland*; who, if we must have a King, I (meaning he the aforesaid *John Lilburne*) for my part I had rather have the Prince (meaning *Charles Stuart*, Son to the late King) than any Man in the World, because of his large Pre- tence of Right, which if he come not in by Conquest, by the hands 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 Premises 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 immediately disbanding of all Armies and Garisons, saving the old Cinque-Ports: and so those three grand Plagues of the People will cease, viz. Free-Quarters, 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 false 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 and lamentable Experience they now see they perfectly are; which Slavery and absolute Bondage is like daily to increase, under the present tyrannical and arbitrary new-erected robbing Government. And therefore rouze up your Spirits before it be too late, to a vigorous promotion, and settling of the principles of the foresaid Agreement, as the only absolute and perfect Means to carry you off all your Maladies and Distempers.'

Here Lieutenant-Colonel *Lilburne*, in the first Day's reading the Indictment, taking notice of the Judge *Thorpe* and Mr. *Prideaux* to whisper together, cry'd out, and said to this effect:

L. Col. *Lilb.* Hold a while, hold a while, let there be no Discourse but openly; for my Adversaries or Prosecutors whispering with the Judges, is contrary to the Law of *England*, and extremely foul and dishonest play: and therefore I pray let me have no more of that Injustice.

Mr. *Attorney.* It is nothing concerning you (let me give him Satisfaction) it is nothing concerning you, Mr. *Lilburne*.

L. Col. *Lilb.* By your favour, Mr. *Prideaux*, that is more than I do know; but whether it be or not, by the express law of *England*, it ought not to be; therefore I pray let me have no more of it.

Mr. *Broughton*. And further, thou the said *John Lilburne* stand'st indicted, for that thou the aforesaid first Day of *October*, in the Year of our Lord 1649, and divers Days and Times, as well before as after, in *London* aforesaid, and in the Parish and Ward aforesaid, didst maliciously, advisedly and traitorously publish another false, poisonous, traitorous and scandalous Book, intitled, *An Outcry of the Young Men and Apprentices of London, or an Inquisition after the last Fundamental Laws and Liberties of England*: having these traitorous and scandalous Words (amongst other things) following; that is to say, *We* (meaning the Young Men and Apprentices of *London*)

considering what is before premised, *Which are necessitated and compelled to do the Words are in utmost we can for our own Preservations: and for the Preservation of the Land of our Nativity, and never, by popular Petitions, address our selves 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 the time to come to hinder (as much and as far as our poor despised Interest will extend to) all other whatsoever from subscribing or presenting any more popular Petitions to them; and only now as our last Refuge, mightily to cry out to each other, of our intolerable Oppressions, in Letters and Remonstrances signed in the behalf, and by the Appointment of all the rest, by some of the stoutest and stiffest among us, that we hope will never apostatize, but be able by the Strength of God to lay down their very Lives for the maintaining of that which they set their Hands to.* And further, That thou the aforesaid *John Lilburne* afterwards, that is to say, the aforesaid first Day of *October*, in the Year of our Lord 1649, and divers other Days and Times, as well before as after, not being an Officer or Soldier, or Member of the Army aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, as a false Traitor, did maliciously, advisedly, and traitorously endeavour to stir up a dangerous, mutinous and traitorous Distemper, Mutiny and Rebellion in the Army, now under the Command of *Thomas Lord Fairfax*, and didst endeavour to draw *Thomas Lewis*, *John Skinner*, and *John Toppe* from their Obedience to their superior Officers, &c. and further, didst deliver unto the three Soldiers before-named, the said Book, intitled, *An Out-cry of the Young Men and Apprentices of London*; having these Words following contained in them: "Surely all Sense and Com-  
punction of Conscience is not totally departed from you; hear us therefore in the earnest 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 very Throats of our Liberties and Freedoms; and our Burdens are too great and many for us, we are not able to bear them, and contain our selves; 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, or upon whom it will) they are become as devouring Fire in our Bosoms, ready to burn us up, rendring us despe-

rate and careless of our Lives, prizing those that are already dead, above those that are yet alive, who are rid of that Pain and Torment that we do and must endure, by sensible 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 of Chaos and 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 Boundaries and land-marks are pulled 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 a 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 to serve out our Times, and continue at our drudging and toiling Trades, whilst these Oppressions, Cruelties and Inhumanities are upon us, and the rest of the People, exposing thereby the Nation, not only to domestick Broils, Wars, and Bloodsheds, (wherein we are sure our Bodies must be the principal Buts) but to foreign Invasions by *France*, *Spain*, *Denmark*, *Swetbland*, &c. as was well observed by an endeared and faithful Friend of the forementioned late treacherously defeated Party at *Burford*, in their Book of the 20th of *August* 1649, intitled, *The Levellers vindicated, or the Case of the Twelve Troops truly stated*, pag. 11, and 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 Gen. Regiment of Horse, who we understand had a hand in seizing upon, and plundering our true Friends at *Burford*, whether you do own the abominable and palpable treacherous Dealings of your General and Lieutenant-General *Cromwell*, and their perfidious Officers with them or no? (that so we may not condemn the Innocent with the Guilty, and may know our Friends from our Foes :) as also to tell us, Whether you do approve of the total Defection of your Army, under which it now lieth, from their Faith and fall'n Engagement made at *Newmarket-Heath*, the 5th of *June* 1647, not one of those righteous Ends, in behalf of the Parliament and People, on which your Vow was made, being yet fulfilled or obtained; but on the contrary (as we have before-rehearsed) a whole Flood-gate of Tyrannies are let in upon us, and overwhelm us; and whether you [*the aforesaid private Soldiers meaning*] justify all those Actions done in the name of the Army, upon your Account, and under the Pretence of that Engagement, since the Engagement itself was broken, and your Council of Adjutators dissolved? And whether you will hold up your Swords to maintain the total Dissolution of the People's choicest Interest of Freedom, viz. frequent and successive Parliaments, by an Agreement of the People, or obstruct the annual Succession? Whether you do allow of the late shedding the Blood of War in time of Peace, to the Subversion of all our Laws and Liberties? And whether you do counte-

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nance the Extirpation of the Fundamental  
 Freedoms of this Commonwealth, as the Re-  
 vocation and Nullity of the great Charter of  
 England, the *Petition of Right*, &c.? And whe-  
 ther you do assent to the Erection of Arbitrary  
 Prerogative Courts, that have or shall over-  
 rule, or make void our antient Way of Trials  
 in criminal cases by a Jury of Twelve Men of  
 the Neighbourhood? And whether you will  
 assist or join in the forcible Obstruction of this  
 martial and tyrannical Rule over us? Also whe-  
 ther you will fight against and destroy those  
 our Friends that shall endeavour the compo-  
 sure of our Differences, together with the  
 procurement of our Freedoms, and Settlement  
 of our Peace (your Plenty and Prosperity) ac-  
 cording as it was offered by the four Gentlemen  
 Prisoners in the Tower of London, upon the  
 first Day of May 1649, as a Peace-offering to  
 the Nation, by the Agreement of the People.  
 [the aforesaid feigned Agreement meaning] Lastly,  
 We [the aforesaid Young Men and Apprentices of  
 London meaning] earnestly beseech you [the  
 aforesaid private Soldiers again meaning] to ac-  
 quaint us, whether from your Hands, to your  
 Power, we may expect any Help or Assistance  
 in this our miserable, distressed condition, to  
 the Removal of those Iron Bonds and Yokes  
 of Oppression [the aforesaid Government in way  
 of a Commonwealth and Council of State mean-  
 ing] that have thus enforced us to complain,  
 and address our selves thus to your considera-  
 tion; for we [the aforesaid Young Men and Ap-  
 prentices again meaning] cannot chuse but ac-  
 quaint you [the aforesaid private Soldiers again  
 meaning] that we are seriously resolved, through  
 the Strength and Assistance of God, with all  
 the Interest we have in the World, to adhere  
 to the righteous Things contained in our  
 treacherously defeated forementioned Friends  
 Vindication, [the aforesaid traitorous Book, in-  
 titled, *The Levellers Vindicated*, or the Case  
 of the Twelve Troops truly stated, again mean-  
 ing.]

And further, thou the said *John Lilburne*, as a  
 false Traitor, by most wicked traitorous Con-  
 spiracies, Designs and Endeavours of thine afore-  
 said, 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, didst in the Parish and Ward  
 of *London* aforesaid, in and by the aforesaid scan-  
 dalous, poisonous and traitorous Book, intitled,  
*An Impeachment of High-Treason against Oliver  
 Cromwell, and his Son-in-law Henry Ireton, &c.*  
 most falsely, maliciously and traitorously publish,  
 and openly declare, amongst other Things, in the  
 said Book, these following scandalous, treache-  
 rous, tumultuous and traitorous Clauses and  
 Words following; that is to say, 'But I [mean-  
 ing thy self the said *John Lilburne*] and many  
 other Persons [meaning the aforesaid Friends]  
 intreat you seriously to consider that I cannot  
 advise you to make Addresses to him [mean-  
 ing the aforesaid *Thomas Lord Fairfax, Cap-  
 tain-General*] as the General of the Nation's  
 Forces [the Forces of this Nation of England  
 meaning] for he [the aforesaid *Captain-General*  
 meaning] is no General, but is merely a great  
 Tyrant [meaning the aforesaid *Captain-General*]  
 standing by the Power of his own Will, and  
 a strong Sword borne up by his Vassals, Slaves

and Creatures [the Soldiers of the Army afore-  
 said meaning] having no Commission to be Ge-  
 neral, either from the Law or the Parliament,  
 nor from the prime Laws of Nature and Rea-  
 son. For First, when he was made General by  
 both Houses of Parliament, it was express-  
 ly against the letter of the Laws. And Se-  
 condly, when he refused to disband, &c. he  
 hath rebelled against his Parliament-commis-  
 sion, and thereby destroyed and annihilated it,  
 &c.

[The Reader is desired to take Notice, That in  
 the Indictment itself there was a great many  
 other Things than in this is expressed; as par-  
 ticularly divers Passages out of a Book, called  
*Mr. Lilburne's*, intitled, *The Legal Fundamen-  
 tal Liberties of England revived*, &c. as also  
 out of another Book, intitled, *A Preparative  
 to an Hue and Cry after Sir Arthur Haslerig*,  
 &c. as also out of *The Agreement of the Peo-  
 ple*, of the first of May 1649. with several other  
 remarkable Things in Matter and Form, that  
 were more neglected to be taken than the  
 Pleadings; because it was not supposed, but  
 the Indictment (being a Record) a true copy  
 of it might easily be had; considering that by  
 Law all Records ought freely to be used by  
 any Freeman of *England*, and copies of them  
 denied to none that desire to take them: But  
 that Privilege being in this cause already dis-  
 puted and denied; in which regard, the Reader  
 must at present accept of the best imperfect  
 Notes that the Publisher could pick up.] But  
 to go on.

And further, That thou the said *John Lilburne*,  
 as a false Traitor, all and singular the clauses and  
*English* Words aforesaid, and many other traito-  
 rous, poisonous and malicious Expressions in and  
 by the aforesaid Writings, and by the aforesaid  
 several Books, as aforesaid recorded, and by thee  
 the aforesaid *John Lilburne* published, and openly  
 declared in the several Books so as aforesaid print-  
 ed, and by the aforesaid Writings, and by thee  
 the aforesaid *John Lilburne*, in Manner and  
 Form aforesaid, published, and openly divulged  
 and declared divers other scandalous, malicious,  
 tumultuous and treacherous clauses and words  
 in the said Books contained, falsely, maliciously,  
 advisedly and traitorously, hast published and  
 openly declared, to the Intent to stir up, and  
 raise Forces against the Government aforesaid,  
 in the way of a Commonwealth, and free State  
 as aforesaid established; and for the suppressing  
 and Alteration of the said Government, and to  
 stir up Mutiny in the Army aforesaid; and  
 also to withdraw the said *John Tooke, Thomas  
 Lewis* and *John Skinner*, and many other Sol-  
 diers, from their Obedience to their superior  
 Officers and Commanders, and to set them in  
 Mutiny and Rebellion against the publick Peace,  
 and to manifest contempt of the Laws of this  
 Commonwealth and free State, and against the  
 Form of the Statutes in this case made and pro-  
 vided.

The Indictment being reading, and the Noise  
 of the People in the Hall great, the Prisoner  
 said he could not hear, and had some few lines  
 before read over to him.



Lieut. Col. *Lilburne*. Pray hold your Peace, Gentlemen; I beseech you be quiet. [*speaking to the People.*]

Ld *Keble*. Quiet yourself, we will quiet them for you.

*Broughton*. Which Country are you? so that you are to find whether he is guilty or no, he having already pleaded, Not Guilty. If you find that he is guilty of any the High Treasons laid to his charge, then you are to enquire what Goods, Lands or Chattels he stood possessed of, when he committed the said High Treasons; but if you find Not Guilty, you shall then enquire whether he did not fly for it; and if he did not fly for it, then you are to say so and no more: therefore hearken to your Evidence.

Lieut. Col. *Lilburne*. May it please Your Honour.

*Cryer*. If any Man can give any Evidence to my Lords, the Justices of Oyer and Terminer, against Mr. *John Lilburne*, let him come in, and he shall be heard.

Lieut. Col. *Lilburne*. I desire to be heard to speak two or three Words. I humbly desire the Favour to speak two or three Words. I humbly desire the Favour to be heard two Words.

Ld *Keble*. It is not a fit time; you shall be heard in your due time: but hear what the Witnesses say first.

Lieut. Col. *Lilburne*. I conceive I am much wronged, in saying that I pleaded Not Guilty, for I pleaded no such Plea; I appeal to the Court, and to all that heard me, whether I pleaded any such Plea: for before I pleaded, the Court became engaged to me, to take no Advantage of my Ignorance of the Formalities of the Law; and promised to give me as much Privilege as my Lord Duke of *Hamilton* and others enjoyed before the Court of Justice.

Ld *Keble*. We know all this.

Lieut. Col. *Lilburne*. Sir, by your Favour, I pleaded conditionally, and now I make my absolute Plea to the Indictment, which is this; That I except against the Matter and Form of it, Matter, Time and Place, and humbly crave Counsel to assign and plead to the Errors thereof.

Ld *Keble*. You must hear us, we hear you; a Word is a great deal; these Things we have taken perfect Notice of, the Court is not ignorant of them; therefore they need not so suddenly be repeated to us again; you need not repeat these Things, for I tell you again, they are all fresh in our Memories, and that we have done we must maintain, or we have done nothing.

Lieut. Col. *Lilburne*. Truly it is requisite for me to say, that I am wronged, I had no such single Plea; I plead a Plea at large to the Errors of the Indictment; and first now crave liberty of the Law of *England* to have Time and Counsel assigned me.

Ld *Keble*. You shall have the Laws of *England*, although you refuse to own them in not holding up your Hand; for the holding up of the Hand hath been used as a part of the Law of *England* these five hundred Years. Go on.

Mr. *the Counsel that was an Assistant to Mr. Prideaux.* My Lord, the Prisoner at the Bar stands indicted as a Traitor, for that he contriving, and maliciously intending not only to disturb the publick Peace, but also to bring the Government of the Nation, happily settled in a free

State or Commonwealth, without a King, or an House of Lords, and the Commons in Parliament assembled to bring in Disgrace and Contempt amongst all good Men; he did the first of this Instant *October*, and divers times before and since in this City, falsely and maliciously, advisedly and traitorously, by writing, printing and openly declaring, in and by one Paper of his, called *A Salva Libertate*, and by divers other Papers and Books, whereof one he calls, *An Impeachment of High Treason against Oliver Cromwell and his Son-in-law Henry Ireton*; and another Book of his, intitled, *An Out-cry of the Young Men and Apprentices of London*, directed to all the private Soldiers of the Army, &c. A third, *A Preparative to an Hue and Cry after Sir Arthur Haslerig*; and a fourth, *The Legal Fundamental Liberties of the People of England revived*: That he did in these Books publish, That the said Government is tyrannical, usurped and unlawful; and that the Commons in Parliament assembled are not the Supreme Authority of this Nation. He stands further indicted, That he, as a false Traitor, did maliciously, advisedly and traitorously, plot and contrive to raise Force against the present Government, and for the Subversion and Alteration of it; and for the fulfilling of his most malicious and traitorous Designs, he did, in and by the said traitorous Books, falsely, maliciously and advisedly, utter and declare several most false and scandalous, malicious and traitorous Words and Writings, that in the Indictment are particularly named and expressed. And thirdly, That as a Traitor, not being an Officer, nor a Soldier, or a Member of the Army under the Command of the now Lord General *Fairfax*, he did most maliciously and traitorously endeavour to withdraw certain Soldiers of that Army from their Obedience to their superior Officers, which are particularly named in the Indictment: And that for the full Accomplishment of his Contrivances and Endeavours, he did maliciously, advisedly and traitorously, publish and deliver the poisonous Book, called *An Impeachment*; and in particular directed by the Title of the Book, to all the People of *England*, being for that end published by him to publick View: In which Book are contained most false and scandalous, malicious, mutinous and traitorous Expressions, as in the Indictment are set forth. And further, That in the said Book, which he called *An Impeachment*, That the present Government is tyrannical and usurped; and that the Commons of *England* in Parliament assembled, are not the Supreme Authority. And he further stands indicted, and the Jury further finds and presents, that by all these and other Expressions written by him, and published by him in written Papers and printed Books, he hath falsely, maliciously and traitorously stirred up Strife on purpose, and to the intent, to stir up and raise Force against the present Government, settled in the way of a Commonwealth and free State, without King and Lords, on purpose it to subvert and destroy. And further, he hath also most traitorously endeavoured to withdraw the private Soldiers from their Obedience and Subjection to their superior Officers: And all this in manifest contempt of the Laws of this Commonwealth, in that Behalf made and provided, and to the Hazard of the Overthrow and utter Subversion of the said Government.

To this Indictment the Gentleman 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 as 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 Commonwealth, without either King or House of Lords, is tyrannical, usurped and unlawful. And further, 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 the Subversion and Alteration of the same.

The third is this that relates to the Army; you have heard what his Expressions have been, and they have been read unto you, concerning them and the rest, 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 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, these are here Mr. *Lilburne's* engaged true Friends: The Parliament, the Government, the Authority of both Parliament and Army, they are Tyrants, Usurpers, Mercenaries, Janisaries, Murtherers, Traitors, standing by their own Power and Swords, and over-ruling all by their Wills: These are the Expressions that he 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 or Acts as these are.

And truly my Lord, if I had read the Books, and not known the Person, I should not have thought he had been either a Christian, or 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 overmuch, or stand in need of any Dispute; and to make it plain and clear to your Judgments and Consciences, there

are Witnesses in the Court evidently to 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 very dangerous Title, and in the Direction especially to the Soldiers of the Army; but especially to the private Solders of the General's Regiment of Horse, that helped to plunder the true-hearted *Englishmen*, traitorously defeated at *Burford*; so that the Rebels at *Burford* were Mr. *Lilburne's* dear Friends. 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 Mr. *Lilburne* and this Captain *Jones* brought this Book to the Press 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.

Justice *Fermin*. 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 Press.

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 Lieut. Col. *Lilburne* and Capt. *Jones*, which Capt. *Jones* did agree with me in the Price: I was stop'd in the Proceedings in it. I say that Capt. *Jones*, together with Lieut. Col. *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, Lieut. Col. *Lilburne* came alone 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.