

was put out, and one comes down and opens the Door. I went in, and up Stairs, where I found about two hundred of the *Prelatick Preachers*, and certain Notes of *Nathan Brooks*, wherein he mentions the Delivery of several of these *Speeches*, and other seditious Pamphlets. There is one Particular wherein he records, That *Thomas Brewster* did in the Presence of Captain *Hanson* undertake to bear his Charges of Imprisonment; this *Nathan Brooks* having been formerly imprisoned for a Crime, wherein *Brewster* was to bear him out.

Ld Ch. Just. *Hyde*. What was it that burnt above?

Mr. *L'Estrange*. My Lord, they had burnt, I suppose, some of the *Prelatick Preachers*, (a desperate Book :) I found one Bundle untied, and I suppose (as the Man told me after) that it was a part of that which was burnt.

Ld Ch. Just. *Hyde*. You say this was in the next House to *Brooks*: what had *Brooks* to do there? Had he conveyed those Books thither?

Mr. *L'Estrange*. The Owner of the House said he knew nothing of them: But a Man and his Wife, lodging in the Chamber where the Fire was, said, That *Nathan Brooks* had delivered with his own Hands to them those Parcel of Books that were there found.

Ld Ch. Just. *Hyde*. You hear what he says, That one of your Guests came down, said *he would not be hanged for ne'er a Rogue of you all*; throws down the Book—

*Brooks*. What's that to me, if a Man have a Book in his House, and throw it down, and say so, doth that concern me? He did not bring it out of my Chamber.

*One Mercer sworn.*

*Mercer*. My Lord, [*having the Book in his Hand*] this is the Book that I did find in a Room, brought up by *Nathan Brooks*; and I brought it down: I had it in a Room where two Boys and my Sister lay. He came first and knocked at our Chamber-Door: Said I, Who is there? Says he, *A Friend*. Who are you? *Brooks*, your Landlord, says he: *Pray open the Door, and lay up this Book for me*. No, said I, if you were my Father or Brother, I will not receive it; I will not meddle or make with you. After I had denied the Book, he flings it into the next Room.

Ld Ch. Just. *Hyde*. How came you by the Book?

*Mercer*. After Mr. *L'Estrange* had enquired there for Books, I knew nothing; but my Wife called to my Sister, and asked her if she heard Mr. *Brooks* in the Room? She said, *Yes, and he had left a Book with her*. Having notice, I went up Stairs, took the Book, and brought it down presently.

*Brooks*. Is that the Book, the very individual Book, that I brought up there?

Ld Ch. Just. *Hyde*. He swears this, That you knocked, and prayed him to take in a Book; he refused it: You went up to the next Chamber, and there you left it. And his Wife asking afterwards if you had been there, his Sister said, *Yes, you had left a Book*. He brought it down; and this appears to be the very individual Book, nothing can be more clear.

*Mercer's Wife sworn.*

That Morning they knocked at *Brooks's* Door, we were a-bed; I heard a Noise of Thieves. Upon that, I being awake, and my Husband asleep, I awaked him, and desired him to go to the Window. He asked who was there? One said to him, Rise, and open the Door. Said my Husband, I am but a Lodger; let my Landlord open it, if he will. Who is your Landlord? Mr. *Brooks*. That's the Man I look for, says the other. So with that, after some time, Mr. *Brooks* went down, and opened the Door. Mr. *L'Estrange* coming up to my Husband, says he, *Are you sure there is nothing in your Rooms?* There is nothing, said he. When my Husband went down, I called to my Sister: Said I, Did you hear Mr. *Brooks* there? *Yes*, said she, *he has left a Book here*. Said I, Do you know what's in it? It may bring us all into Trouble. And my Husband having confidently denied any such thing, fearing he might be troubled, I called him up, and told him of it. Said my Husband, *I'll call up the Gentleman, and give it him*. No, said I, go take the Book, and carry it him.

*Mercer's Sister sworn.*

*Thomazin Mercer*. It is very true that that is the very Book I received from Mr. *Brooks*.

Ld Ch. Just. *Hyde*. Now the individual Book is brought to light.

*Brooks*. What was the Title of it?

*T. Mercer*. I know not; but there was the *Speeches of the ten Men that were executed*.

*Brooks*. Did you see that Book, that very Book?

*T. Mercer*. Yes.

*One Mr. Merridale sworn.*

Mr. *Merridale*. My Lord, this very Book did *Mercer* bring down, told us, *He would be hanged for never a Rogue of them all*: Did he think to lay his Books at my Door? I know this is the very Book: I took notice of the Picture of Sir *Henry Vane* in it; and he there owned it.

*Mercer*. I can tell that he owned it, and said it was brought to him to be bound.

Ld Ch. Just. *Hyde*. Here are two hundred of these Books delivered to you to sell: fifty you deliver to another. When Mr. *L'Estrange* comes to search, you open not your Doors: When you see you could not stay longer, you run up to deliver it to *Mercer*, your Guest: He would not receive it; you deliver it to his Sister: She keeps it in her Hands. When her Husband had denied Books to be there, and his Wife understanding afterwards you had left it, she was afraid of her Husband for denying it, calls him, and gives him the Book; and then he said, *He would be hanged for never a Rogue of you all*: throws down the Book: And that was the very Book she received from you: and your self did own it, and confess it.

*Brooks*. As for Mr. *L'Estrange*, it is not so; he says, when first he knocked at the door, I did not hear him: afterwards I called out, Who's there? said one, Which is Mr. *Brooks*? said I, Here. I told them, if they would be civil, I would open the door, give me but leave to put  
on



on my Breeches. I went and opened it. He doth not swear positively they are my Books. My Lord, this *Mercer* was a Lodger in my House; I have often desired him to pay his Rent, and since I have been taken, I have sent several Messengers: I told him I would seize his Goods, and thereupon he speaks against me maliciously. I desire you to consider, I being only a Workman, how can I be guilty of Sedition and Scandalous Things? I never printed any thing, I am only a Bookbinder, that's my Trade: I hope you will consider, that I am only a bare Workman. My Lord, I desire when they go out, that somebody may stand at the door, that no body may go in to the Jury.

Ld Ch. Just. *Hyde*. We will take care of that: Have you any more to say?

*Brooks*. No, my Lord.

Ld Ch. Just. *Hyde*. You of the Jury, you have heard so much of the other Indictments of the same nature, I need not say much to this. That which he speaks touching his Trade, I must repeat the same as before; he is not questioned for using, but abusing of his Trade; for publishing and dispersing seditious and scandalous Books, printing and publishing, but the Evidence is only for publishing. If you be satisfied that he published it, that's the Crime; printing alone is not enough, for if a Man print a Book to make a fire on, that's no Offence, it is the publishing of it which is the Crime. You have heard the Evidence, how far forth it is proved, two hundred delivered to him, fifty by him delivered to another: This Book you see his own Conscience tells him what it was; when Mr. *L'Esrange* came, he would have slipt it into his Guest's Chamber; he refused it: then he carries it to another. Lay your Evidence together; if you find him guilty of the publishing, it is enough.

Jury. We desire to know upon what Statute Law this Indictment is grounded?

Ld Ch. Just. *Hyde*. Upon none; but it is an Offence at Common Law, I told you so at first.

[The Jury went forth, and after near an hour's Consultation, returned to the Court, and took their places.]

Clerk. Are you all agreed of your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. The Foreman.

Clerk. Set up the Prisoners to the Bar: How say you, is *Tho. Brewster* guilty of the Offence whercof he stands indicted, for printing the seditious Book called *The Speeches*, &c. or not guilty?

Foreman. Guilty of selling and uttering the said Books.

Clerk. What say you, is he guilty of the Offence of printing and publishing the Book called *The Phoenix*, &c. or not guilty?

Foreman. Guilty of publishing it.

Clerk. How say you, is *Simon Dover* guilty of the Offence for printing and publishing *The Speeches*, &c. or not guilty?

Foreman. Guilty.

Clerk. How say you, is *Nathan Brooks* guilty of the Offence for printing and selling the said Book?

Foreman. Guilty of selling it.

Clerk. Harken to your Verdicts as the Court hath recorded them: You say, that &c. and so you say all?

Jury. Yes.

Mr. *North*. My Lord, we humbly pray Sentence against the Prisoners.

Ld Ch. Just. *Hyde*. You three, *Thomas Brewster*, *Simon Dover* and *Nathan Brooks*; you have been severally indicted for a heinous and great Offence: *Brewster*, you have been indicted for two several Books, as full of Villany, and Slander, and Reproach to the King and Government, as possibly can be: And I will tell you all three, it is the King's great Mercy you have not been indicted capitally; for every one of those Books are filled with Treason, and you for publishing of them, by strictness of Law, have forfeited your Lives and All to the King: It is his Clemency towards you. You may see the King's Purposes; he desires to reform, not to ruin his Subjects. The Press is grown so common, and Men take the Boldness to print whatever is brought to them, let it concern whom it will; it is high time Examples be made. I must let you and all Men know, by the Course of the Common Law, before this new Act was made, for a Printer, or any other, under pretence of Printing, to publish that which is a Reproach to the King, to the State, to his Government, to the Church, nay to a particular Person, it is punishable as a Misdemeanour. He must not say, *He knew not what was in it*; that is no Answer in Law. I speak this, because I would have Men avoid this for time to come, and not think to shelter themselves under such a Pretence. I will not spend time in discoursing of the Nature of the Offence, it hath been declared already; it is so high, that truly the highest Punishment that by Law may be justly inflicted, is due to you. But, *Thomas Brewster*, your Offence is double: therefore the Judgment of the Court is,

‘ That you shall pay to the King, for these  
‘ Offences committed, an hundred  
‘ Marks: And for you, (the other two) <sup>Kelyn. 24.</sup>  
‘ *Simon Dover* and *Nathan Brooks*, you shall pay  
‘ either of you a Fine of forty Marks to the King.

‘ You shall each of you severally stand upon  
‘ the Pillory from Eleven to One of the Clock  
‘ in one Place at the *Exchange*, and another Day  
‘ (the same space of time) in *Smithfield*; and you  
‘ shall have a Paper set over your Hats, declaring  
‘ your Offence, *For printing and publishing Scandalous, Treasonable, and Factionous Books against*  
‘ *the King and State.*

‘ You shall be committed till the next Goal-  
‘ delivery without Bail; and then you shall  
‘ make an open Confession and Acknowledg-  
‘ ment of your Offences in such Words as shall  
‘ be directed you.

‘ And afterwards you shall remain Prisoners  
‘ during the King's Pleasure: And when you  
‘ are discharged, you shall put in good Security  
‘ by Recognizance, your selves 400 l. a-piece,  
‘ and two Securities each of you of 200 l. a-  
‘ piece, not to print or publish any Books, but  
‘ such as shall be allow'd of. And this is the  
‘ Judgment of the Court.



LXVI. *The Trial of Mr. BENJAMIN KEACH, at the  
Assizes at Ailsbury in Buckinghamshire, for a Libel,  
October 8 and 9. 1664. 16 Car. II.*

**B**enjamin Keach of Winslow, in the County of Bucks, having wrote a little Book, entitled, *The Child's Instructor; or, A New and Easy Primer*: In which were contained several Things contrary to the Doctrine and Ceremonies of the Church of England; as, *That Infants ought not to be baptized; That Laymen may preach the Gospel; That Christ shall reign personally upon the Earth in the latter Day, &c.* He had no sooner got it printed, and some of them sent down to him, but one Mr. Strafford, a Justice of the Peace for that County, received Information of it. Whereupon, taking a Constable with him, he went in quest of the said Books; and coming to the House of Mr. Keach, found and seized several of them, bound Mr. Keach over to answer for it at the next Assizes in a Recognizance of an hundred Pounds, and two Sureties with him in fifty Pounds each.

The next Assize holden for the said County was at Ailsbury on the 8th and 9th Days of October, 1664, Lord Chief Justice Hyde being Judge. On the first of which Days, in the Forenoon, Mr. Keach was called upon; who answering to his Name, was brought to the Bar, and examined as follows:

Judge. Did you write this Book? [*Holding out one of the Primers in his Hand.*]

Keach. I writ most of it.

Judge. What have you to do to take other Mens Trades out of their hands? I believe you can preach as well as write Books. Thus it is to let you, and such as you are, have the Scripture to wrest to your own Destruction. You have made in your Book a new Creed: I have seen three Creeds before; but I never saw a fourth till you made one.

Keach. I have not made a Creed, but a Confession of the Christian Faith.

Judge. Well, that is a Creed then.

Keach. Your Lordship said you had never seen but three Creeds; but Thousands of Christians have made a Confession of their Faith.

After this the Judge observed to the Court several Things which were written in the said Book, concerning Baptism and the Ministers of the Gospel, which were contrary to the Liturgy of the Church of England, and so a Breach of the Act of Uniformity.

Keach. My Lord, as to those Things —

Judge. You shall not preach here, nor give the Reasons of your Damnable Doctrine, to seduce and infect his Majesty's Subjects. These are not Things for such as you are to meddle

with, and to pretend to write Books of Divinity: But I will try you for it, before I sleep.

After this he gave Directions to the Clerk to draw up the Indictment; and the Witnesses were sworn, and ordered to stand by the Clerk till the Indictment was finished, and then to go with it to the Grand Inquest.

Judge. Gentlemen of the Grand Jury, I shall send you presently a Bill against one that hath taken upon him to write a new *Primmer* for the Instruction of your Children: He is a base and dangerous Fellow; and if this be suffered, Children by learning of it will become such as he is, and therefore I hope you will do your Duty.

The Indictment being long, took so much time to draw it up, that the Trial did not come on till the next Day.

The next Day, the Court being set, the Grand Jury found the Bill, and brought it in indorsed *Billa vera.*

Clerk. Benjamin Keach, come to the Bar.

Mr. Keach comes to the Bar.

Clerk. Hear your Charge. 'Thou art here indicted by the Name of Benjamin Keach, of the Parish of Winslow, in the County of Bucks: 'For that thou being a Seditious, Heretical, and 'Schismatical Person, evilly and maliciously disposed, and disaffected to his Majesty's Government, and the Government of the Church of 'England, didst maliciously and wickedly, on 'the 1st Day of May, in the 16th Year of the 'Reign of our Sovereign Lord the King, write, 'print, and publish, or cause to be written, 'printed, and published, one Seditious and Venomous Book, entitled, *The Child's Instructor; or, 'A New and Easy Primer*; wherein are contained by way of Question and Answer, these 'Damnable Positions, contrary to the Book of 'Common Prayer, and the Liturgy of the 'Church of England: That is to say, in one 'Place you have thus written; Q. *Who are the 'right Subjects of Baptism?* A. *Believers, or godly 'Men and Women only, who can make Confession 'of their Faith and Repentance.* And in another 'place you have maliciously and wickedly written these Words; Q. *How shall it then go with 'the Saints?* A. *O very well. It is the Day that 'they have longed for: then they shall hear that 'Sentence, Come ye Blessed of my Father, inherit the Kingdom prepared for you; and so shall 'they reign with Christ on the Earth a thousand 'Years, even on Mount Sion, in New Jerusalem; 'for there will Christ's Throne be, on which they 'must sit down with him.* Then follows this Question,



Question, with the Answer thereto, in these plain English Words; Q. *When shall the Wicked and the fallen Angels, which be the Devils, be judged?* A. *When the thousand Years shall be expired, then shall the rest of the Devils be raised, and then shall be the general and last Judgment, then shall all the rest of the Dead and Devils be judged by Christ and his glorified Saints; and they being arraigned and judged, the Wicked shall be condemned, and cast by the Angels into the Lake of Fire, there to be burned for ever and ever.*

In another place thou hast wickedly and maliciously written these plain English words: Q. *Why may not Infants be received into the Church now, as they were under the Law?* A. *Because the fleshy Seed is cast out: Tho' God under that Dispensation did receive Infants in a lineal way by Generation, yet he that hath the Key of David, that openeth and no Man shutteth, that shutteth and no Man openeth, hath shut up that Way into the Church; and hath opened the Door of Regeneration, receiving in none now but Believers.*

Q. *What then is the State of Infants?* A. *Infants that die are Members of the Kingdom of Glory, tho' they be not Members of the Visible Church.* Q. *Do they then that bring in Infants in a fleshy lineal way, err from the way of Truth?* A. *Yea, they do; for they make not God's Holy Word their Rule, but do presume to open a Door that Christ hath shut, and none ought to open.*

And also in another place thou hast wickedly and maliciously composed *A short Confession of the Christian Faith*; wherein thou hast affirm'd this concerning the second Person in the Blessed Trinity, in these plain English words: *I also believe that he rose again the third Day from the Dead, and ascended into Heaven above, and there now sitteth at the right hand of God the Father; and from thence he shall come again at the appointed time of the Father, to reign personally upon the Earth, and to be Judge of the Quick and Dead.* And in another place thou hast wickedly and maliciously affirmed these things concerning true Gospel-Ministers, in these plain English words following: *Christ hath not chosen the wise and prudent Men after the Flesh, not great Doctors and Rabbies; Not many Mighty and Noble, saith Paul, are called: but rather the Poor and Despised, even Tradesmen and such-like, as was Matthew, Peter, Andrew, Paul, and others. And Christ's true Ministers have not their Learning and Wisdom from Men, or from Universities, or human Schools for human Learning. Arts and Sciences are not essential to making of a true Minister, but the Gifts of God, which cannot be bought with Silver and Gold; and also as they have freely received the Gift, so they do freely administer: They do not preach for Hire, for Gain and filthy Lucre: They are not like the false Teachers, who look for Gain from their Quarter; who eat the Fat, and clothe themselves with the Wool, and kill them that are fed; those that put not into their mouths, they prepare War against: Also they are not Lords over God's Heritage, they rule them not by Force and Cruelty, neither have they power to force and compel Men to believe and obey their Doctrines, but are only to persuade and intreat; for this is the Way of the Gospel, as Christ taught them —*

And many other things hast thou seditiously, wickedly, and maliciously written in the said Book, to the great Displeasure of Almighty

God, the Scandal of the Liturgy of the Church of England, the Disaffection of the King's People to his Majesty's Government, the Danger of the Peace of this Kingdom, to the evil Example of others, and contrary to the Statute in that case made and provided.' How say you, *Benjamin Keach*, are you Guilty, or Not Guilty?

*Keach*. The Indictment is so very long, that I cannot remember half of it, nor have I been accustomed to plead to Indictments: therefore I desire a Copy of it, and liberty to confer with Counsel about it, in order to put in my Exceptions, and then I shall plead to it.

*Judge*. 'Tis your Intention, I perceive, to delay your Trial to the next Affize.

*Keach*. No, my Lord, I have no design by this to delay my Trial.

*Judge*. I will not deny you what is your Right, but you must first plead to your Indictment, and afterwards you shall have a Copy of it.

*Keach*. I desire I may have a Copy of it before I plead, in order to put in my Exceptions against it.

*Judge*. You shall not have it, before you plead Guilty or Not Guilty.

*Keach*. 'Tis what has been granted to others.

*Judge*. You shall not have it first; and if you refuse to plead Guilty or Not Guilty, I shall take it *pro confesso*, and give Judgment against you accordingly.

*Keach*. Not Guilty, my Lord.

*Judge*. Now you may have a Copy of your Indictment, and I will give you an Hour's time to consider of it.

*Keach*. If I may have no longer time I don't desire any.

*Judge*. I have something else to do than wait upon you; you are not a Person fit to go abroad till next Affize, and you will think it hard if I should commit you to Goal till then: but because you shall not say but that you were offered fair, if you will find sufficient Sureties for your Appearance at the next Affize, and for your good Behaviour till then, you shall not be try'd till then.

*Keach*. My Lord, I am content to be try'd now.

*Judge*. Go on then, a God's Name.

*Clerk*. Gentlemen of the Jury, answer to your Names, &c.

Then the Jury were sworn, well and truly to try the Traverse between the King's Majesty and the Prisoner at the Bar.

*Judge*. Clerk, read the Indictment. [*He reads it.*]

Gentlemen of the Jury, the Prisoner at the Bar has pleaded Not Guilty, and your Charge is to inquire whether he be Guilty or not.

Then the Witnesses were sworn, who were *Neal* and *Whiteball*.

*Neal* deposed, That Justice *Strafford* sent for him to his House; when he came there, the Justice sent him back again for his Staff of Authority: which being done, he went with the Justice to one *Moody's* Stall, and asked for some of the Primmers which he had: he answered, that he had none. That from thence they went to Mr. *Keach's* House, where first they saw his Wife, who told them he was in an inward Room. They asked her, if there were not some



Primmers in the House? she said, there was; and about thirty were brought forth, and delivered to them.

Then Justice *Strafford* himself was also examined: he said, That he found the Primmers now before the Court in *Benj. Keach's* House, and seized them; and that the Prisoner at the Bar had confessed before him, that he writ and composed the said Book.

Then a Copy of the Prisoner's Examination before the said Justice, signed with his own Hand, was produced and read; wherein was contained, That the Prisoner being asked whether he was the Author or Writer of the said Book? answered, Yes he was. And further declared, That he delivered a part of the Copy to one *Oviat* a Printer at *London*, since dead; and that the rest of the Copy he sent up by another Hand, but that he knew not who printed it: That about forty of them were sent down to him, of which he had dispersed about twelve, and that the Price was Five-pence each Book.

After this the Judge called for a Common-Prayer-Book, and laid it before him; and ordered one of the Primmers to be given to the Gentlemen of the Jury, and bid them look on those Parts where the Leaves were turn'd down.

*Judge.* Clerk, read those Sentences in the Indictment, which are taken out of the Book, that the Jury may turn to them, and see that the said Positions are contained in the Book.

*Clerk.* Q. *Who are the right Subjects of Baptism?* A. Believers or Godly Men and Women only, who can make Confession of their Faith and Repentance.

*Judge.* This is contrary to the Book of Common-Prayer, for that appoints Infants to be baptized, as well as Men and Women. [*Here he read several places in the Liturgy, wherein the baptizing of Infants is enjoined and directed.*]

*Clerk* reads. Q. *How shall it then go with the Saints?* A. Oh very well! it is the Day that they have long'd for: then they shall hear that Sentence, *Come ye blessed of my Father, inherit the Kingdom prepared for you: And so shall they reign with Christ on the Earth a thousand Years, &c.*

*Judge.* This is contrary to the Creed in the Book of Common-Prayer, and is an old Heresy, which was call out of the Church a thousand Years ago, and was likewise condemned by the Council of *Constance* about five hundred Years ago, and hath lain dead ever since, till now this Rascal hath revived it.

*Clerk* reads. Q. *Why may not Infants be received into the Church now, as they were under the Law?*

A. Because the fleshly Seed is cast out, &c. Q. *What then is the State of Infants?* A. Infants that die, are Members of the Kingdom of Glory, tho' they be not Members of the Visible Church.

Q. *Do they then that bring in Infants by a fleshly lineal Way, err from the Truth?* A. Yea, they do; for they make not God's Holy Word their Rule, but do presume to open a Door that Christ hath shut, and none ought to open.

*Judge.* This also is contrary to the Book of Common-Prayer, which appoints Infants to be received into the Church, and directs the Priest to say, when he hath sprinkled the Child, *We receive this Child into the Congregation of Christ's Flock.* And whereas he says that Infants that die are Members of the Kingdom of Glory, tho' not of the Visible Church, he speaks this of In-

fants in general, and so the Child of a Turk or Heathen is made equal with the Child of a Christian: But the Church hath otherwise determined; that is, if an Infant die after Baptism, and before it hath actually sinned, it is saved, because Original Sin is wash'd away in Baptism. Read on.

*Clerk.* Also in another place thou hast wickedly and maliciously composed *A short Confession of Faith*, in which thou hast affirmed thus, concerning the second Person in the Blessed Trinity, in these plain *English* words; *I also believe that he rose again the third Day from the Dead, and ascended into Heaven, and there now sitteth at the right hand of God the Father; and from thence he shall come again at the appointed time of the Father, to reign personally upon the Earth, and to be the Judge of the Quick and the Dead.*

*Judge.* This is contrary to our Creed: for whereas he saith, *From thence he shall come again at the appointed time of the Father, to reign personally upon the Earth, and to be Judge both of the Quick and the Dead;* our Creed only saith, *From thence he shall come to judge both the Quick and the Dead.*

*Clerk.* And in another place thou hast wickedly and maliciously affirmed these things concerning true Gospel-Ministers, in these plain *English* words following: *Christ hath not chosen the wise and prudent Men after the Flesh, not great Doctors and Rabbies; Not many Mighty and Noble, saith Paul, are called, &c.* as above.

*Judge.* This also is contrary to the Book of Common-Prayer: for whereas the Position in the Indictment saith, *Christ hath not chosen great Rabbies and Doctors, but rather the Poor, and Despised, and Tradesmen;* the Book of Common-Prayer doth admit of such. [*Here he read some Passages concerning the Qualification of Ministers, and their Manner of Consecration.*] Because Christ, when he was upon the Earth, made choice of Tradesmen to be his Disciples, therefore this Fellow would have Ministers to be such now; Taylors, and Pedlars, and Tinkers, and such Fellows as he is: But it is otherwise now, as appears from the Manner in which the Church has appointed them to be chosen, ordained, and consecrated.

The Judge having thus gone through the Indictment, the Prisoner began to speak in his Defence.

*Keach.* As to the Doctrines —

*Judge.* You shall not speak here, except to the Matter of Fact; that is to say, whether you writ this Book or not.

*Keach.* I desire liberty to speak to the Particulars in my Indictment, and those things that have —

*Judge.* You shall not be suffered to give the Reasons of your damnable Doctrine here, to seduce the King's Subjects.

*Keach.* Is my Religion so bad, that I may not be allow'd to speak?

*Judge.* I know your Religion, you are a Fifth-Monarchy-Man; and you can preach, as well as write Books; and you will preach here, if I would let you: but I shall take such order, as you shall do no more mischief.

*Keach.* I did not write all the Book, for there is an Epistle to it written by another Hand; neither can it be proved that I writ all that is put into the Indictment.

*Judge.*



*Judge.* It is all one whether you writ it yourself, or dictated to another to write it: but it appears by your Examination under your own Hand, that you wrote it all.

*Keach.* Because I writ the major part of it, I was contented to let it go with the word *all* in my Examination before Justice *Strafford*; but I cannot in Conscience say I wrote it all: nor is it proved that I published it.

*Judge.* Yes, you did; for *Moody* had six Books of you.

*Keach.* I did neither sell them, nor deliver them to him.

*Judge.* He had them at your House, and it is not likely he should take them without your Consent.

*Keach.* I do not say he had them without my Consent.

*Judge.* It is all one then, as if you delivered them.

Here the Judge summ'd up the Evidence, and gave his Charge to the Jury; but this the *A-manuensis* has omitted.

The Jury being withdrawn, staid for some Hours: at length one of the Officers who attended them came in.

*Officer.* My Lord, the Jury about the Primers cannot agree.

*Judge.* But they must agree.

*Officer.* They desire to know whether one of them may not come and speak with your Lordship, about something whereof they are in doubt.

*Judge.* Yes, privately: [*And then ordered one to come to him on the Bench.*]

Then the Officer called one, and he was set upon the Clerk's Table, and the Judge and he whispered together a great while; and it was observed, that the Judge having his Hands upon his Shoulders, would frequently shake him as he spake to him. Upon this Person's returning, the whole Jury quickly came in, and being according to Custom called over by their Names the Clerk proceeded.

*Clerk.* Are you agreed in your Verdict?

*Jury.* Yes, yes.

*Clerk.* Who shall speak for you?

*Jury.* Our Foreman.

*Clerk.* How say you, is *Benjamin Keach* Guilty of the Matters contained in the Indictment against him, or Not Guilty?

*Foreman.* Guilty in Part.

*Clerk.* Of what Part?

*Foreman.* There is something contained in the Indictment, which is not in the Book.

*Clerk.* What is that?

*Foreman.* In the Indictment he is charged with these words, *When the thousand Years shall be expired, then shall all the rest of the Devils be raised*; but in the Book it is, *Then shall the rest of the Dead be raised*.

*Clerk.* Is he Guilty of all the rest of the Indictment, that Sentence excepted?

*One of the Jury.* I cannot in Conscience find him Guilty, because the Words in the Indictment and the Book do not agree.

*Judge.* That is only through a Mistake of the Clerk's, and in that Sentence only; and you may

find him Guilty of all, that Sentence excepted: but why did you come in before you were agreed?

*Foreman.* We thought we had been agreed?

*Judge.* You must go out again, and agree: and as for you, that say you cannot in Conscience find him Guilty, if you say so again, without giving Reasons for it, I shall take an Order with you.

Then the Jury withdrew, and in a little time returned again.

*Clerk.* Are you agreed in your Verdict?

*Jury.* Yes.

*Clerk.* How say you, is *Benjamin Keach* Guilty of the Matters charged in the Indictment against him, or Not Guilty?

*Foreman.* Guilty of the Indictment; that Sentence, wherein *Devils* is inserted instead of *Dead*, only excepted.

Upon this, *Benjamin Keach* was called to the Bar, and the Judge proceeded to pass Sentence upon him as follows.

*Judge.* *Benjamin Keach*, you are here convicted of writing and publishing a seditious and scandalous Book, for which the Court's Judgment is this, and the Court doth award, That you shall go to Goal for a Fortnight, without Bail or Mainprise; and the next Saturday to stand upon the Pillory at *Ailsbury* for the space of two Hours, from Eleven of the clock to One, with a Paper upon your Head with this Inscription, *For writing, printing, and publishing a schismatical Book, intituled, The Child's Instructor, or a New and Easy Primmer.* And the next Thursday to stand in the same manner, and for the same time, in the Market of *Winslow*; and there your Book shall be openly burnt before your Face by the common Hangman, in disgrace of you and your Doctrine. And you shall forfeit to the King's Majesty the Sum of 20*l.* and shall remain in Goal until you find Sureties for your good Behaviour and Appearance at the next Assizes, there to renounce your Doctrine, and make such publick Submission as shall be enjoined you. Take him away, Keeper.

*Keach.* I hope I shall never renounce those Truths which I have written in that Book.

*Clerk.* My Lord, he says he hopes he shall never repent.

But the Judge taking no notice, the Goaler took him away.

According to the Sentence passed upon him, he was kept close Prisoner till the Saturday following, and then about Eleven o'clock was carried to the Pillory at *Ailsbury*; where he stood full two Hours to a minute, was deny'd the liberty of speaking to the Spectators, and had his Hands as well as his Head carefully kept in the Pillory the whole time.

On the Thursday following he stood in the same manner and for the same time at *Winslow*, the Town where he lived, and had his Book burnt before him.

After this, upon paying his Fine, and giving sufficient Security for his good Behaviour, he was set at liberty; but was never brought to make a Recantation.





LXVII. Proceedings in Parliament against EDWARD Earl of CLARENDON, \* Lord High Chancellor of ENGLAND, for High-Treason, and other High Crimes and Misdemeanours, July 10, 1663. 15 Car. II. and October, &c. 1667. 19 Car. II.

**T**HE Earl of Bristol having been oppos'd by the Earl of Clarendon in the Designs which he had form'd in favour of the Papists, resolv'd to take all Methods to ruin him; not contented therefore with endeavouring to deprive him of the King's Favour, he forms Articles of High-Treason and other Misdemeanours against him, which he shew'd to the King; and tho' the King would have dissuaded him from it, yet the next Day he carried the Charge to the House of Lords, which was as follows.

Articles of High-Treason, and other Heinous Misdemeanours, Exhibited against Edward Earl of Clarendon, Lord High-Chancellor of England, in the House of Lords; on the 10th of July, 1663. By the Earl of Bristol. †

**T**HAT being in Place of highest Trust and Confidence with His Majesty, and having arrogated a Supreme Direction in all His Majesty's Affairs, both at Home and Abroad, hath Wickedly and Maliciously, and with a Traiterous Intent to draw Scandal and Contempt upon His Majesty's Person, and to alienate from him the Affections of his Subjects, abused the said Trust in Manner following, viz.

That he hath Traiterously and Maliciously endeavoured to Alienate the Hearts of his Majesty's Subjects from him, by Words of his own, and by artificial Insinuations of his Creatures and Dependences, that His Majesty was inclined to Popery, and had a Design to alter the Religion Established in this Kingdom.

That in pursuance of that Traiterous Intent, he hath to several Persons of His Majesty's Privy-Council held Discourses to this Effect, viz.

That His Majesty was dangerously corrupted in his Religion, and inclined to Popery.

That Persons of that Religion had such Access, and such Credit with him, that unless there were a careful Eye had unto it, the Protestant Religion would be overthrown in this Kingdom; and in pursuance of the said Wicked and Traiterous Intent, upon His Majesty's admitting Sir Henry Bennet to be Principal Secretary of State, in the Place of Mr. Secretary Nicolas, he hath said these words, or words to this effect;

That His Majesty had given 10000*l.* to remove a zealous Protestant, that he might bring into that Place of High Trust a concealed Papist; notwithstanding that the said Sir Henry Bennet is known to have ever been, both in his Profession and Practice, constant to the Protestant Religion.

That in pursuance of the same Traiterous Design, several near Friends and known Dependences of his have said aloud, that were it not for my Lord Chancellor's standing in the Gap, Popery would be introduced in this Kingdom, or words to that effect.

That in pursuance of the aforesaid Traiterous Design, he hath not only advised and persuaded the King to do such things contrary to his own Reasons and Resolutions as might confirm and increase the Scandal, which he had endeavoured to raise upon His Majesty as aforesaid, of his favour to Popery, but more particularly to allow his Name to be used to the Pope and several Cardinals in the solicitation of a Cardinal's Cap for the Lord Aubigny, one of his own Subjects, and great Almoner at present to his Royal Consort the Queen.

That in pursuance of the same Wicked and Traiterous Design, he had recommended to be employed to the Pope one of his own Domesticks, Mr. Rich. Bealing, a Person (tho' an avow'd Papist) known to be trusted and employed by him in Dispatches and Negotiations concerning Affairs of greatest Concernment to the Nation.

That in pursuance of the said Traiterous Design, he being chief Minister of State, did himself write by the said Mr. Rich. Bealing, Letters to several Cardinals, pressing them in the King's Name to induce the Pope to Confer a Cardinal's Cap on the said Lord Aubigny, promising, in Case it should be attained, exemption to the Roman Catholics of England from the Penal Laws in force against them; by which Address unto the Pope for that Ecclesiastical Dignity for one of His Majesty's Subjects and Domesticks, he hath, as far as from one Action can be inferred, traiterously acknowledged the Pope's Ecclesiastical Sovereignty, contrary to the known Laws of this Kingdom.

That in pursuance of the same traiterous Design, he has called unto him several Priests and Jesuits, whom he knew to be Superiors of Orders here in England, and desired them to write to their Generals at Rome, to give their help for the obtaining from the Pope the Cardinal's Cap for the Lord Aubigny, as aforesaid, promising great Favour to Papists here, in case it should be effected for him.

\* Bishop Burnet's Hist. of his Own Times, Vol. I. p. 254, &c.

† Burnet's Hist. of his Own Times, Vol. I. p. 196.



That he hath promised to several Papists he would do his endeavour, and said he hoped, to compass the taking away all Penal Laws against them, which he did in pursuance of the traitorous Design aforesaid; to the end they might presume and grow vain upon his Patronage, and by their publishing their hopes of a Toleration, increase the Scandal endeavoured by him, and by his Emissaries, to be raised upon His Majesty throughout the Kingdom.

That in pursuance of the same traitorous Design, being intrusted with the Treaty betwixt His Majesty, and His Royal Consort the Queen, he concluded it upon Articles scandalous and dangerous to the Protestant Religion.

That in pursuance of the same traitorous Design, he concluded the same Marriage, and brought the King and Queen together, without any settled Agreement in what manner the Rites of Marriage should be performed, whereby the Queen refusing to be married by a Protestant Priest, in case of her being with Child, either the Succession should be made uncertain for want of the due Rights of Matrimony, or else His Majesty to be exposed to a suspicion of having been married in his own Dominions by a Romish Priest, whereby all the former Scandals endeavoured to be raised upon His Majesty by the said Earl, as to point of Popery, might be confirmed and heightened.

That having thus traiterously endeavoured to Alienate the Affections of His Majesty's Subjects from him upon the score of Religion, he hath endeavoured to make use of all the malicious Scandals and Jealousies, which he and his Emissaries had raised in His Majesty's Subjects, to raise from them unto himself the popular Applause of being the zealous Upholder of the Protestant Religion, and a Promoter of new Severities against Papists.

That he hath traiterously endeavoured to Alienate the Affections of His Majesty's Subjects from him, by venting in his own Discourse, and by the Speeches of his nearest Relations and Emissaries, opprobrious Scandals against His Majesty's Person and course of Life, such as are not fit to be mentioned, unless necessity in the way of Proof shall require it.

That he hath traiterously endeavoured to Alienate the Affections of his Highness the Duke of York from His Majesty, by suggesting unto him Jealousies as far as in him lay, and publishing abroad by his Emissaries, that His Majesty intended to Legitimate the Duke of Monmouth.

That he hath Wickedly and Maliciously, contrary to the Duty of a Privy-Counsellor of England, and contrary to the perpetual and most important Interest of this Nation, persuaded His Majesty, against the Advice of the Lord General, to withdraw the English Garrisons out of Scotland, and to demolish all the Forts built there, at so vast a Charge to this Kingdom.

That His Majesty having been graciously pleased to communicate the Desires of the Parliament of Scotland for the remove of the said Garrisons to the Parliament of England, and to ask their Advice therein, the said Earl of Clarendon, not only persuaded His Majesty actually to remove those Garrisons, without expecting the Advice of his Parliament of England concerning it, but did, by Menaces of his Majesty's displeasure, deter several Members of Parliament from moving the House, as they intended, to enter upon consideration of that Matter.

That he had Traiterously and Maliciously endeavoured to Alienate His Majesty's Affections and Esteem from this his Parliament, by telling His Ma-

jesty that there was never so weak and inconsiderable a House of Lords, nor never so weak and so heady a House of Commons, or words to that effect, and particularly, that it was better to sell Dunkirk, than to be at their Mercy for want of Money, or words to that effect.

That he hath wickedly and maliciously, contrary to his Duty of Counsellor, and to a known Law made last Sessions, by which Money was given, and particularly applied for the maintaining of Dunkirk, advised and effected the Sale of the same to the French King.

That he hath, contrary to Law, enriched himself and his Treasures by the Sale of Offices.

That contrary to his Duty he hath wickedly and corruptly converted to his own use, great and vast Sums of publick Money raised in Ireland by way of Subsidy, private and publick Benevolences, and otherwise, given and intended to defray the Charge of Government in that Kingdom. By which means a supernumerary and disaffected Army hath been kept up there, for want of Money to pay them off, occasion'd it seems to be because of the late and present Distempers of that Kingdom.

That having arrogated to himself a supreme Direction of all His Majesty's Affairs, he hath, with a malicious and corrupt Intention, prevailed to have His Majesty's Customs Farmed at a far lower Rate than others do offer, and that by Persons, with some of whom he goes a share, in that and other Parts of Money resulting from His Majesty's Revenue.

July 10th,  
1663.

BRISTOL.

The Earl of Bristol having Exhibited against the Lord Chancellor, Articles of High-Treason, and other Misdemeanours, This Order was made by the House of Peers.

Die Vencris, 10 July, 1663.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, That a Copy of the Articles or Charge of High-Treason Exhibited this Day by the Earl of Bristol, against the Lord Chancellor, be delivered to the Lord Chief Justice; who, with all the rest of the Judges are to consider whether the said Charge hath been brought in regularly and legally, and whether it may be proceeded in, and how, and whether there be any Treason in it or no, and make Report thereof to this House on Monday next if they can, or else as soon after as possibly they may.

Whereupon all the Judges met at Serjeants-Inn in Fleet-street, and my Lord of Bristol repaired to us thither, desiring to see the Order; which being read, he told us he came out of Respect to know of us whether we were informed how it came into the House of Peers, whether as a Charge or not; but one of the Judges, who had been present when it was delivered in, saying, We were tied up by our Order, his Lordship took some Exception at the manner of his Expression, as if his Lordship's Address was unnecessary at that time, and taking it as a Rebuke unto him, went away; but according to our Order, which supposed it to be a Charge of



*High-Treason*, and not mentioning *Misdemeanor*, we did upon Consideration unanimously agree upon this ensuing *Answer*, which on *Monday* the 13th of *July*, the Lord Chief Justice *Forster* did deliver in, *viz.*

*We conceive that a Charge of High-Treason cannot by the Laws and Statutes of this Realm be originally Exhibited by one Peer against another unto the House of Peers, and that therefore a Charge of High-Treason by the Earl of Bristol against the Lord Chancellor, mentioned in the Order of Reference to us of the 10th of this Instant July, hath not been regularly and legally brought in, and if the Matters alledged in the said Charge were admitted to be true, altho' alledged to be traiterously done, yet there is no Treason in it.*

Which *Answer* being given in, the Earl of *Bristol* took some Exceptions at it, and some of the Lords inferred thence, that if it were Irregularly and Illegally brought in, it was a Libel; but we satisfied them that it was not under Consideration of us, whether it came in as an Information or Charge; our Order required us to give *Answer* to it as a Charge.

Secondly, We did not meddle with any thing concerning accusing him of *Misdemeanor*, for our Order reached only to *Treason*.

Thirdly, It did not follow that if this Charge were Irregular, or Illegal, that therefore he was Criminal: There might be Precedents to give Colour to such kind of Proceedings, for which, till it be declared or known that they are Illegal, they are Titular, and ought not to be punished.

But it was much insisted on, That we should deliver the Reason of our Opinions, the Lord of *Bristol* and his Friends seeming unsatisfied.

We *Replied*, That it was never known, that when the Justices to whom *Questions* were referred from Parliament had unanimously agreed in their Opinions, that Reasons were required from them. Yet notwithstanding, it being the desire of the Lords, after some things premised, and a desire that this should not be drawn into an Example, (which the Lords assented unto, as I took it, for no Order was entred concerning it, there being no Order as I think for delivering our Reasons entred, and it was agreed amongst us, that no Note should be reduced, lest we might be required to deliver our Reasons in Writing; nor had I time to digest it in Writing, having only *Monday* Night after Conference with my Brethren to think upon it,) I did on the next *Tuesday*, being the 14th of *July*, deliver the Reasons of all the Judges, of their Opinions, by their Consents. To the first Point, *That a Charge of High-Treason cannot originally be Exhibited by one Peer against another unto the House of Peers*, the Emphasis of the Word *Originally* was shewed.

For *First*, an Indictment of *Treason* against a Peer may be removed up to the Lords House to be tried, as it was in the 31 *H. 6.* in the Earl of *Devonshire's* Case, but a Steward was then to be made.

Secondly, If an Impeachment came from the *House of Commons* unto the *Lords House*, we did

not take upon us the Consideration, whether this could be proceeded in or not, for it was not the Case to which we were required to give *Answer*.

We *Replied*, Upon the Statute 1 *H. 4. cap. 14.* which recites the many great Inconveniencies and Mischiefs by Appeals, and provides that all Appeals of Things within the Realm, shall be Tried and Determined by the good Laws of the Realm made and used in the time of the King's noble Progenitors, and Appeals of Things out of the Realm before the Constable and Marshal: But we relied upon the Clause ensuing, and thereupon it is accorded and assented, That no Appeals be from thenceforth made, or in any wise pursued in Parliament, in time to come. I shewed Appeals in this Statute, and Accusations by single Persons, were one and the same Thing, and that this Statute reached to all Appeals, Charges, Accusations or Impeachments delivered in, in Parliament, whereupon the Person accused was to be put to his *Answer*, and that they were but several Names of the same Thing, I shewed first Historically, that the Appeals the 11 *R. 2.* \* and 21 *R. 2.* were but Accusations by those Lords of Felony against the other, and differed from the Case of the Duke of *Hereford* and *Norfolk*, which was to be tried as 21 *R. 2. Pl. Cor. in Parl. No. 19.* is by the Course of the Civil Law, and thereupon Battle was waged. That tho' it concerned *H. 4.* in Interest to confirm the 11 *R. 2.* and repeal the 21 *R. 2.* he being Appellant in the former, yet he saw the Mischief so great, that he himself made Provision against them for the time to come; and indeed, the Mischief was so great, that it ceased not after the Destruction of many Lords and Families (there being *Lex talionis* in that 21 *R. 2.* used towards most of those Appellants in the 11 *R. 2.*) till it tumbled King *R. 2.* first out of his Throne, and then into his Grave.

That there were but two sorts of Proceedings in *Capitalibus*, the Suit of the Party, which was called an Appeal, or the Suit of the King, who ought to proceed by Indictment, and so to Trial by virtue of *Magna Charta. Nec super eum ibimus*, &c. and that, in an Appeal, being the Suit of the Party, there was no Prerogative of Appearance, if it were an Appeal at the Common-Law, 10 *Ed. 4.* Lord *Gray's* Case. That an Appeal was taken in our Law-Books frequently for an Accusation by the Party, I cited *Westm. the 1st, Cap. 14.* where the word Appeal reaches to Indictment; and 9 *Coke*, 119. Lord *Zanchar's* Case, that an Appeal hath two Significations, one general and frequent in our Books for an Accusation, and *Stamford*, 142. in Case of an Approver, the Felon after Confession may Appeal, that is (*saieth he*) accuse others, Coadjutors with him to do the Felony. *C. P. C.* 129. Appellant cometh from the *French* Word *Appeller*, which signifies to accuse, or appeach, and 1 *Co. Inst.* §. 189. Appel signifieth an Accusation; and therefore to Appeal a Man is as much as to accuse, and in ancient Books he that doth Appeal a Man is called *accusator*, vide 9 *Ed. 2. Articuli Cleri, cap. 16.* That I knew no Reason why in those tumbling Times of *R. 2.* (which caused this Statute, for the Statute-Roll is *coment ad auterment este cus en temps la darrein Roy, R. 2.*) they

\* See the Trial of Sir Robert Tresilian, &c. Trial 1.



should proceed by way of Appeal, but because they were then allowed at the Suit of the Party, to accuse any other of *Treason*, but at the King's Suit there ought to be an Indictment, and an Indictment could not be found but by Jury.

That in all other Cases, an Appeal was to be brought by the Party concerned, the Wife or Heir, or Party robbed, &c. But in Case of *Treason*, any Man may Appeal another, and therefore in all Reason it must be understood of an Accusation, and any Man might accuse another of *Treason*; and if it can be proved by Witnesses, it must not be Tried by Battle, as other Appeals may. I concluded that the 8 *H. 6. No. 38.* this Statute, the 1 *H. 4. cap. 14.* is recited, and desired it should be duly kept and put in Execution; that *Stamford 78 & Coke Pl. Cor. 31. 132.* agree that Appeals of *High-Treasons* were commonly used to be sued in Parliament, till the 1 *H. 4. cap. 14.* Since which time this manner of Appeal hath gone out of use; and I said, I had searched many Precedents, and tho' of late there may be a Precedent (as it was of the Earl of *Bristol's* Father against the Duke of *Buckingham*, of some kind of Impeachment) yet I did confidently believe there was not since that Statute 1 *H. 4. cap. 14.* any one Precedent of such an Impeachment at the Party-Suit whereupon there was any Indictment: In truth, in the Earl of *Bristol's* Case, the *Commons House* did Impeach the Duke of *Treason*, and so the Earl of *Bristol's* Impeachment proceeded not.

For the *Second Point*, *That there was no Treason in the Charge, tho' the Matters in it are alledged to be Traiterously done.* I said we had perused each Article *seriatim*, and we had found no *Treason* in them; the great Charge, which is endeavoured to be proved by many Particulars, was, *That he did Traiterously, and Maliciously, to bring the King into Contempt, and with an Intent to Alien the Peoples Affections from him, say, &c. such and such Words, &c.*

And so it runs on, *That in pursuance of the Traiterous Intent, &c. he did, &c. and that in farther pursuance of the said Traiterous Design, &c.* And in like manner was most of the Articles upon which the Characters of *Treason* seemed to be fixed. I said that it is a transcendent Misprision or Offence to endeavour to bring the King into Contempt, or to endeavour to alienate the Peoples Affections from him, but yet it was not *Treason*. This Statute, 13 *Car. 2. cap. 1.* makes *Treason* during the King's Life: But if a Man calls the King *Heretick*, or *Papist*, or that he endeavours to introduce *Popery*, (which is more in express Terms than the Article of that kind insinuates) or by Words, Preaching, Prayer, to stir up the People to Hatred or Dislike of the Person of his Majesty, or the Established Government; the Penalty is only Disability to enjoy any Place Ecclesiastical, Civil, or Military, and subject to such Penalties as by the Common-Law or Statute of this Realm may be inflicted in such Case, (which is Fine and Ransom, with Imprisonment) and it limits a time and manner of Prosecution.

There was an *Objection* made yesterday upon the 25 *E. 3.* That this being in Parliament, the King and Parliament had power to declare *Treason*, and then we ought to have delivered our Opinions with a Qualification, unless it be declared *Trea-*

*son* by Parliament where this Charge is depending; to this I *Answer'd.*

*First*, 'Tis not *Treason* in *presenti*, and if such a Declaration should be, *non constat*, whether it would relate to the time past.

*Secondly*, That I conceived that the Statute as touching that *Declaratory Power*, extended but to such Cases as were clearly *Felony*, as single Acts, if not *Treason*, (the Words being) *Whether it be Treason or other Felony*; but in respect of the Doubts of *Escheats*, which, if *Treason*, belonged to the King; if *Felony*, to the Lords of the *Fee*, it was left to the Parliament. I did not say we *Resolved* the Point.

*Thirdly*, That admitting the *Declaratory Power* did extend to other Cases than such as were before the Judges, and was not taken away by 1 *Mar. Cap. 1.* or any other Statute, yet I read my Lord *Coke's* Opinion at large, *Pl. Cor. Fol. 22.* That this Declaration must be by the King, Lords and Commons, not by any two of them alone; and we were now in a judicial Way before the *House of Peers* only; and I did affirm as clear Law, that by this judicial Way no *Treason* could be declared nor adjudged, but as were expressly within the Letter of the 25 *E. 3.* and said, That Statute 25 *E. 3.* was a second *Magna Charta*, and that their Ancestors thought it their greatest Security to narrow, and not to enlarge *Treason*, and cited 1 *H. 4. cap. 10.* to which in the Parliament-Roll *Rot. No. 17.* is added (it coming of the King's Free Grace) That the Lords did much rejoice and humbly thank the King: And I read the Statute 1 *M. cap. 1.*

That the now Earl of *Bristol* in my Lord of *Strafford's* Case, was the great Assertor of the Law against Constructive and Accumulative *Treason*, which, if admitted, their Lordships could better suggest unto themselves, than I express, how great a Door they would let open to other Inconveniencies and Mischiefs to the Peerage. I concluded with reading the Act, 14 *Car. 2.* for Reversing the Attainder of the Earl of *Strafford*; the first Part whereof I read to them, wherein is expressed, That they, who Condemned him, did purposely make an Act of Parliament to Condemn him upon an Accumulative *Treason*, none of the pretended Crimes being *Treason* apart, and so could not be in the whole, if they had been proved.

After I had spoken to this Effect, the Earl of *Bristol* seemed to acquiesce, insomuch as concerned our Opinions as the Case was delivered to us; but it being to be put to the *Question*, whether the Lords did concur with the Judges Opinions, and himself being concerned in the Illative, that therefore the Charge was Illegal and Irregular; yet not being intended by him, as he said, as a Charge, but an Information, he desired (tho' as the Case was put to us, it was a good inference) that the Voting of that might be spared till it was *Resolved* by the Lords whether he delivered it in as a Charge, or only as an Information for the Matter of the Charge, if it should be thought fit for their Lordships to proceed in it: After some Debate upon the *Question*, the Lords *Resolved* the same Day, according to our Opinions,

*First,*



First, That a Charge of *High-Treason* cannot by the Laws and Statutes of this Realm be originally Exhibited by one Peer against another, unto the *House of Peers*.

Secondly, That in these Articles, if the Matters alledged in them were admitted to be true, there is no *Treason* in them. And because the Lords unanimously Concurred in them, (my Lord of *Bristol* freely as any other) it was by Order entred, that these Votes were *Nemine Contradicente*.

Note, That in Judge *Hutton's* Reports \*, the Resolution of the Judges is expressed to be, That a Peer cannot be Impeached but by Indictment, and Mr. *Rushworth* in his Collections, Fol. 272, expresses such an Opinion to be deliver'd by the Judges, in 1 or 2 Car. but upon Search it was found to be entred in the Journal of Parliament of that Time, but it was cautious referring to the Common-Law only. But that for Proceedings in Parliament it did not belong to them to determine, or to that Effect; but no mention of 1 H. 4. cap. 14. It hath been credibly reported that some of the Judges in my Lord of *Strafford's* Case, being asked some Questions, did with the like Caution deliver their Opinions, and did speak with Reservations, (as the Case is put) tho' they upon Hearing did know the Case mis-put; which, after, troubled the Conscience of one of them, (*ut audiri*) being a grave Learned Man; for *Suppression of the Truth is the Oppression of the Innocent*. Vide *Peacock's* Case, Co. 9. Rep. Fol 71. But we having the Case referred to us in Parliament upon Articles exhibited in Parliament, did Resolve to deliver our Opinions without any such Reservation; the Act of 1 H. 4. being express against Appeals in Parliament, (and of Acts of Parliaments after they are once made, none under the King, and without him are Interpreters but the Judges. See *King's Answer* printed in the Old Print of 3 Car. 1. at the end of the Petition.) And therefore did deliver these Opinions which I conceive of great Benefit to the Lords themselves, and a just Ground for farther Enquiry to be made, whether such Impeachments may be in the *House of Peers* for other *Misdemeanours*, without the King's Leave, or being exhibited by his Attorney.

And secondly, to take into Consideration the Validity of Impeachments of *Treason* by the *House of Commons*, notwithstanding the late Precedents which yet ended in a Bill, and so in the Legislative, not Judiciary Way.

Thus ended this Attempt against the Earl of *Clarendon*; but thus far it had its Effect, in diminishing the King's Favour towards him, and lessening his Interest with the Lords, and with the People, whereby he became expos'd to a Second Attempt, four Years after.

Aug. 30, 1667, the King removed him from his Place of Lord Chancellor; and the House of Commons Impeach'd him of *High-Treason*, and of *High Crimes and Misdemeanours*.

PROCEEDINGS AGAINST THE EARL OF CLARENDON, UPON AN IMPEACHMENT OF HIGH-TREASON AND HIGH MISDEMEANOURS.

Proceedings against the Earl of Clarendon, upon an Impeachment of High-Treason and High Misdemeanours.

October 26, 1667.

MR. *Edward Seymour* Charged him *viva Voce* with many great Crimes, whereupon a Debate arose what Proceeding ought to be had upon it, some moving to Impeach him in the Name of the *Commons* till Articles should be prepared; others urg'd, that Witnesses should be first examined to see how the Charge could be made good, lest failing, it should reflect on the Honour of the *House*. After long Debate, a Committee was appointed to search Records for Parliamentary Proceedings in the like Cases, and to make Report.

30th, The Report being made by Sir *Thomas Littleton*, that various Proceedings were found in several Parliaments, it occasioned a long Debate, several Members speaking to the Effect following.

Sir *Tho. Little*. In Cases Criminal, we find Proceedings to have been, sometimes by Articles, sometimes by Word of Mouth; but in Capital Crimes no Proceedings appear till the Earl of *Strafford's* \* Case, against whom the House carried up a general Im- \*Trial XXXIX. peachment, the Reason whereof seems to be this: Some Votes were made in the *House*, at which the King takes Offence, as if they would proceed upon common Fame; whereupon they vindicate their Proceedings as done in a Parliamentary way, and appoint a Committee to withdraw for about half an Hour to consider the Matter for a Conference with the Lords about the Charge, and upon their Report a general Charge is carried up to the Lords Bar; the principal Charge then was for advising to bring over the *Irish* Army, and the single Proof was Sir *Henry Vane*, so the Impeachment went up for *High-Treason*, tho' no Member would positively say he would make the Charge good.

So for the Bishop of *Canterbury* there was no Impeachment, but a Charge in general.

And if you take not the same Course now, but insist upon examining Witnesses first, the Difficulties will be unanswerable; for is it like that Men before they shall see you in earnest will have their Names produced against the Earl of *Clarendon*? If this be your Proceeding, we must never expect to Impeach a Great Man more. If you think there is nothing in the Charge, leave it; but if you think 'tis worth your while, take heed of making such a dangerous Precedent as by neglecting it to wound your Liberties; but proceed in the usual way with a General Impeachment.

Serj. *Maynard*. I stand not up to give Advice, but to speak to matter of Fact in the Business of *Strafford* and *Canterbury*; I attended that Business from the beginning. Sir *John Clotworthy* informed something against *Strafford* to be direct *Treason*, that he had assumed an Arbitrary Power in

\* Lord *Digby's* Case, *Hutton's* Reports, 131.



Ireland, and dispossessed one *Savage* by Force of Arms, and undertook to prove it. Sir *Henry Vane* also told them, that he had a Note taken out of his Father's Cabinet, containing the Advice which *Strafford* gave the King in that Case; namely, the King wanting Money, and the Question being how he should supply it, he replied, *That if the Parliament was refractory and would not, you stand loosed and absolved from Rules of Government; you have an Army in Ireland which you may employ to reduce them.*

Then there was a Debate whether they should accuse him of Treason. And Sir *Edward Herbert* (the Attorney) said, If you are persuaded the Truth is, as is pretended, you may. And so it was; but when the Close Committee had examined the Business, they moved the House, that some Lawyers might be added to them; and had they gone, when they said they were ready, they had not touched one Hair of *Strafford's* Head. Then it was considered what was fit to be done: To accuse him of Treason would be a dangerous Precedent, as if out of many other Crimes a Treason could be drawn; thereupon it was resolved, not to demand Judgment from the Lords, because some Articles were not Treason. Then it was propounded not to state what his Offences were, lest it should give Advantage to inferior Courts so to proceed; but said, he deserved to be accused of Treason; and in conclusion a Proviso was added, not to make that Case a Precedent.

For the Bishop of *Canterbury*, the four Articles were general, and he was long in Prison without any Proceeding against him; but after long time he demurr'd, then new Articles were framed on which he died.

Mr. *John Vaughan*. You have had a Charge opened of a strange Nature, and I know not what Part of it can be proved, but the Reputation of this House is at stake, and of the King too: For, where a Charge is brought in by some of your Members, whereof one Article is, That he should say such Words of the King, as by a Statute made by you is a *Premunire*, and to give Counsel to levy War upon the Kingdom; is it agreeable to our Duty to the King and Kingdom to let it die?

For the Person concerned, I know not which way his Honour can be whole without his giving an Answer to this Charge; for mark the Consequence, if the King should take him to Favour again before clear'd, will not the World say a Person is received to Favour again, who gave the King Counsel against the Kingdom, and traduc'd the King, and how can he be whole in his Honour this way?

*Obj.* But it will be said, we must have Ground to put him to Answer.

*Ans.* Whether you have Ground enough to prove I know not, but you have Ground enough to make him Answer to clear himself. Suppose those two Articles had been Charged on a Member of this House, what would it have become that Member to do? Should he sit still and say, I will make no Answer, but see whether the House will make more Proof? If he should do so, the not making an Answer is Reason enough to Charge him.

I can give you Instances of Persons Charged in Parliament, who, tho' not nominated, yet be-

ing (as it were) pointed at, Petitioned that they might Answer, and so would any Man; but when this is bruited up and down, will not the World say, You never ask the Party whether he is Guilty?

The Duke of *Suffolk* was Charged upon Common Fame, and if that were a Ground for a Charge then (which I do not say it was) so it is in this Case; but he moved that he might be heard: and tho' it was desired he might be Committed, yet it was justly rejected till he had Answered. Then for the Nature of the Charge, if it be true, it is very High, but whether it be Treason is another Matter; it is brought to you under no Name, when you make the Charge, it becomes you to say what it is; therefore choose a Committee to reduce the Accusation into Heads, and bring them to you, without which you cannot right your selves, nor him, if Innocent.

For the way of it, it cannot be thought fit to publish your Witnesses and the Matter before hand; if in private Causes the Defendant and Plaintiff should have a Publication before-hand, no Cause would be rightly Judged, much less when you have Publication of all which concerns the One, but nothing of the Other. Again, if a Witness be examined concerning Matters in his own Knowledge, if he gives Evidence, where he is not brought judicially to give it, if he hath testified any thing which brings him within the Statute of False News, how can he avoid the Penalty? For it's not enough for him to say he knows it, but he must have others to justify it.

As for the Persons who bring the Charge, they are your own Members, which the Writs return for honest and discreet Men, and if you are satisfied of that, how can you reject their Complaint, tho' grounded upon *Common Fame*, as all Accusations are, seeing they tell you, they can bring Proof of what they say?

Then for *Common Fame*, if a Man spends largely, and hath no visible way to get an Estate, no Man accuseth him to have gotten it unlawfully; yet he may be put to clear himself from what *Common Fame* charged him with. Upon Suspicion of Felony, I may bring a Man before a Magistrate to clear himself; so in the Course of Indictments and Presentments, a Charge is given of what Things are to be Presented; then a Proclamation is made, That if any one can give Evidence, he may be sworn, but if no Evidence appear, yet they may Indict.

Then it will be said, the Oath is a Material Thing, but we are proceeding without an Oath.

To this I answer, What this House shall Charge is of more Authority than the Oaths of ordinary Witnesses; Peers, tho' not upon Oath, are supposed to do Right; so are we upon the Reputation of our Honesty and Discretion.

Mr. *L. H.* I am sensible the House may think me Partial, but I shall endeavour to shew my self not so much a *Son* of the Earl of *Clarendon* as a *Member* of this House; and I assure you, that if he shall be found Guilty, no Man shall appear more against him than I; if not, I hope every one will be for him as much as I; let every Man upon his *Conscience* think what of this Charge is true, for I believe that

if



if one Article be proved, he will own himself Guilty of all.

Sir Hen. Finch. An Impeachment there must be, if there be Cause; such Accusations are not to be passed over in Silence.

I believe not one Truth in the Law more than this Proposition, That there is no such thing as Treason by Common Law, or by Equity, and we hold our Lives by that Law; Before the 25th of Ed. 3. a Man could scarce speak any thing but it was Treason, in Parliament or out; but no Man ought to die as a Traitor, who hath not literally offended that Law, or some other made since: There is indeed in that Law a Proviso about the Parliament's declaring what is Treason; but note the Danger of taking Declaratory Powers, which I fear hath brought us into a Reckoning of Blood, which we have not yet paid for.

The Power of Parliaments is double, *Legislative*, which hath no Bounds; *Declaratory*, by pronouncing Judgments.

And tho' I know not what the *Legislative* Power of a Parliament cannot do, yet it is not in the Power of the Parliament, King, Lords nor Commons, to declare any thing to be Treason, which is not in the Common-Law Felony before. The Proviso in *Strafford's* Case was (it's true) made for Inferiour Courts; but I hope we shall not so proceed as must needs draw after it a *Ne trahatur in Exemplum*, and your own Act this Parliament shews, That all done by *Strafford*, *apart*, or *together*, was not *Treason*: And it behoves us to take heed we thwart not our own Argument.

For the Manner then, Consider how you should proceed if it were out of Parliament, and how the bringing of it into this *House* alters it.

If it were out of Parliament, without doubt the Accusation should be proved before-hand, and those who discover it are guilty of Felony. This provides for the Subject, that the Witnesses must be Two, and for the King, that none shall discover the Evidence.

But suppose the Charge be for Misdemeanours, the Trial then is not to be by the Lords, but by the Commons; for the Lords are his Peers only in Cases Capital.

How then doth the bringing it into Parliament alter the Case? If the Parliament set aside Laws in this Case, we should be happy to see Law declaring what is the Power of Parliaments.

There is no Precedent produced which is singly of Weight to guide you, therefore if you proceed, let it be as near as possible by the good Old Laws; Namely, That there be an Accusation founded upon an Oath, and the Evidence kept secret. I propose that way for the very reason that others oppose it, (*viz.*) The Accusation goes over the Kingdom, and it will bring Dishonour to the *House*, the *King* and the *Earl*; For the Honour of the *House* it will be hard to say, the Charge was brought in upon Misinformation. A Person accused for advising to bring in Arbitrary Government, &c. And for saying the King is not fit to Govern; If this be true, tho' it be not Treason in the Formality of the Law, it deserves no less Punishment than if it were;

but if not found Guilty, Consider the Case. If one say, *A* killed a Man, and it is not so, must not he give Reparation? We have an Accusation upon Hear-say, but if it be not made good, the blackest Scandal which Hell can invent, lies at our Door.

Then Sir *Tho. Meers* moving to refer it to the Committee of Grievances:

Mr. *Vaugh.* You should have put the first Question before another had been moved, the Earl of *Middlesex's* \* (*Cranfield's*) Case, will not hold parallel; He was accused of Bribery, which might be proved by their own Books, but this is for Scandalizing the King, &c. And where shall the Committee of Grievances enquire about it? you say let them hear the Persons.

But suppose they be of the Lords *House*, Can you send for them? Or if you do, will they come and say it? The Matter of this Accusation is such, that if it lies in the Knowledge of a single Person, if he delivers it extrajudicially (which he doth, if not upon Oath) he may be undone by it, and hazard his Person too: At the Committee of Grievances the Persons must be known, and what they can say, and then we may conclude what will follow: Besides their Quality may be such as they cannot be brought, or their Discretion such as they will not answer.

Sir *Rich. Temp.* Tell but the Lords that a Man in Publick Place hath misbehaved himself, and they will sentence him, if he purge not himself; Never yet were Witnesses examined before the Trial in case of Treason or Felony, for then if there be two Witnesses, a way may be found by *Poison*, or *some other Way*, to take away one.

Serj. *Mayn.* No Man can do what is Just, but he must have what is true before him; where Life is concern'd, you ought to have a moral Certainty of the thing, and every one be able to say, *Upon this Proof in my Conscience, this Man is Guilty.* Common Fame is no Ground to accuse a Man, where Matter of Fact is not clear; To say an Evil is done, therefore this Man hath done it, is strange in *Morality*, more in *Logick*.

Upon the whole Debate it was Voted,

That the Committee do reduce the Accusation to Heads, and present them to this *House*.

November 6th, 1667.

Sir *Tho. Lit.* Reports that the Accusation was reduced to Heads, which he read in his Place, and afterwards delivered the same in at the Clerk's Table, which are as followeth, *viz.*

I. **T**HAT the Earl of Clarendon hath designed a Standing Army to be raised, and to govern the Kingdom thereby, and advised the King to Dissolve this present Parliament, to lay aside all

\* 22 Jac. I. 1624. *Clar. Vol. I. p. 20.* *Ken. Comp. Hist. Vol. II. p. 727, 787.* 3 *Co. Inst.* 148.



Thoughts of Parliaments for the future, to govern by a Military Power, and to maintain the same by Free Quarter and Contribution.

II. That he hath, in the hearing of the King's Subjects, falsely and seditiously said, That the King was in his Heart a Papist, or Popishly affected, or Words to that Effect.

III. That he hath received great Sums of Money for the procuring of the Canary Patent, and other illegal Patents; and granted illegal Injunctions to stop Proceedings at Law against them, and other illegal Patents formerly granted.

IV. That he hath Advised and Procured diverse of his Majesty's Subjects to be Imprisoned against Law, in remote Islands, Garrisons, and other Places, thereby to prevent them from the Benefit of the Law, and to produce Precedents for the Imprisoning any other of his Majesty's Subjects in like manner.

V. That he procured his Majesty's Customs to be Farmed at under Rates, knowing the same, and great pretended Debts to be paid by his Majesty; to the Payment of which, his Majesty was not in Strictness bound: And afterwards received great Sums of Money for procuring the same.

VI. That he received great Sums of Money from the Company of Vintners, or some of them, or their Agents, for Enhauncing the Prices of Wines, and for freeing them from the Payment of legal Penalties which they had incurred.

VII. That he hath in a short time gained to himself a greater Estate than can be imagined to be gained lawfully in so short a time; and contrary to his Oath, he hath procured several Grants under the Seal from his Majesty to himself and Relations, of several of his Majesty's Lands, Hereditaments, and Leases, to the Disprofit of his Majesty.

VIII. That he hath Introduced an Arbitrary Government in his Majesty's Foreign Plantations, and hath caused such as complained thereof before his Majesty and Council, to be long Imprisoned for so doing.

IX. That he did reject and frustrate a Proposal and Undertaking, approved by His Majesty, for the Preservation of Nevis and St. Christophers, and reducing the French Plantations to His Majesty's Obedience, after the Commissions were drawn for that Purpose, which was the Occasion of our great Losses and Damage in those Parts.

X. That he held Correspondence with Cromwell and his Complices, when he was in Parts beyond the Seas attending his Majesty, and thereby adhered to the King's Enemies.

XI. That he advised and effected the Sale of Dunkirk to the French King, being Part of his Majesty's Dominions; together with the Ammunitions, Artillery, and all sorts of Stores there, and for no greater Value, than the said Ammunitions, Artillery, and Stores were worth.

XII. That the said Earl did unduly Cause his Majesty's Letters Patent under the Great Seal of England, to one Dr. Crowther, to be alter'd, and the Enrolment thereof to be unduly rased.

XIII. That he hath in an Arbitrary way examined and drawn into Question divers of his Majesty's Subjects, concerning their Lands, Tenements, Goods, Chattels, and Properties, determined thereof at the Council Table, and stopped Proceedings at Law by Order of the Council-Table, and threatened some that pleaded the Statute of 17 Car. I.

XIV. That he hath caused Quo Warranto's to be issued out against most of the Corporations of England, immediately after their Charters were con-

firmed by Act of Parliament: To the Intent he might require great Sums of Money of them for Renewing their Charters, which when they complied withal, he caused the said Quo Warranto's to be Discharged, and Prosecution therein to cease.

XV. That he procured the Bills of Settlement for Ireland, and received great Sums of Money for the same, in most corrupt and unlawful manner.

XVI. That he hath Deluded and Betrayed his Majesty and the Nation in all Foreign Treaties and Negotiations relating to the late War, and Betrayed and Discovered his Majesty's Secret Counsels to his Enemies.

XVII. That he was a Principal Author of that fatal Counsel of dividing the Fleet, about June, 1666.

The Clerk having read them a second time, it was moved, That in regard the Articles were many, they might be referr'd to the Committee to see how far they were true; because Fame is too slender a Ground to bring a Man upon the Stage.

Sir Fran. Goodr. Seconds it, because new Matter was now added to what was formerly charged *Viva Voce* in the House.

Sir Rob. Howard. Suppose the Earl of Clarendon Innocent, and yet Charged and Imprisoned (which is the worst of the Case) he afterwards appears Innocent, and is discharged, receiving no more Hurt than other Subjects have done; Namely, \* one Great Man lately. \* D. Buck.

Object. But why should we Commit him?

Answer. For Proof, whether the Articles be true or not. Suppose Men for Self-preservation will not venture to come, not knowing how they may trust themselves, and so you have no Proof, He very guilty, and You not able to proceed; Is the Inconveniency greater for an Innocent Person (if he prove so) to suffer a few Days, than for you to lose your Reputation for ever? If this Man be not brought to his Trial, it may force him to fly to that which he Counsell'd, that is, that we may never have Parliament more.

Sir Fr. Goodr. I am not against proceeding, but unsatisfied to do it without Witnesses, it being like Swearing in *Verba Magistrum*.

Sir John Holl. That the Committee undertake to make good the Charge, otherwise Examine Witnesses.

Mr. Vaughan. You admit the Accusation to be Matter for a Charge, if the Committee find Proof; if you intend to make this a distinct Case I leave it to you; but if this be to settle the Course of the Proceedings of the House, I am against it; for this is ordering a way of Proceeding in the Earl of Clarendon's Case, which shall not be a General Rule. Tho' I cannot say one of the Articles to be true, yet I know them to be a full Charge if made good, and you are prescribing a Course neither proper, nor ever practised. A Witness who speaks without Oath, is subject to Damage; not so upon Oath, because the Law compels him: And whereas it hath been said, If Witnesses attest before the House of Commons, what Judges dare meddle in it? I answer, Such Judges as meddled in the Case of Sir John Elliot, &c. and the Ship-Money.

Sir R. Temple. A Grand-Jury is capable to present upon their own Knowledge, and are sworn



to keep the King's Counsel and their own, and I believe there is not one Article of the Accusation but will be made good.

Sir Rob. Howard. As I am sensible of the Danger of publishing Witnesses beforehand, so I would have every one satisfied; therefore take the Articles one by one, and according as you shall find what your Members may say for the Truth, you may be induced to proceed or not.

Sir Tho. Osb. The House ought to have something to induce their Belief, which they have had from several Members, and I know how some will be made good.

Sir Tho. Littl. What Article Members of the House do not offer you Matter to induce you to believe, you may lay it aside; therefore hear what shall be said, and proceed accordingly.

Mr. John Tr. You cannot expect Witnesses will appear before you, Lords will not, nor can you expect Commoners should; for when you are up and gone, nothing can protect a Commoner, if this Information be not Judicial.

At last the Question was put whether to refer it to a Committee.

Yeas, 128.

Noes, 194.

322.

Then the first Article was read, to see what would be said to induce the House to impeach.

*The First Article read.*

Sir Rob. How. } Heard from Persons of Quality,  
Lord Vaugh. } That it would be proved.

*The Second Article was read.*

Lord St. Job. Persons of great Quality have assured him to make it good, and if they perform not, he will acquaint the House who they are.

*The Third Article read.*

Mr. Ed. Seym. Sufficient Persons will make it good, with this Addition, When he received the Money, he said, *So long as the King is King, and I Lord Chancellor, the Patent will stand.*

*The Fourth and Fifth Articles read.*

Sir R. Temp. Divers have undertaken to make them good, if they do not I will name them.

*About his receiving Money of Vintners.*

Sir Rob. Carr. That he knows who will prove it.

*About his getting a great Estate so suddenly.*

Mr. Ed. Seym. I suppose you need no Proof the Sun shines at Noon-day.

Sir Tho. Littl. The matter of Fact in the Article is easily made out, for his Place as Chancellor could not be worth above 4 or 5000 l. per An.

*About introducing an Arbitrary Government in the Plantations.*

Sir Tho. Littl. } One Farmer and others came  
Sir Tho. Osb. } from the Barbadoes to complain of it, and lodg'd their Petition in this House, but were imprison'd that they might not be heard.

*About frustrating Proposals for preserving Nevis, &c.*

Sir Charles Wheel. My Lord Chancellor only opposed it.

*About holding Correspondence with Cromwell.*

Mr. Swinsf. That is pardon'd by the Act of Indemnity.

Mr. Vaugh. The Committee were aware of that, but the Defendant may plead it, and prove that he is not Out-law'd.

Sir Charles Wheel. I want not clearly to prove it.

Sir Rob. How. For such secret things as these he ought to plead, notwithstanding the Act of Oblivion, that the World may know who are undiscern'd Enemies.

Mr. Hampd. It is not only an Act of Parliament, but Oblivion; and no Man ought to be so much as Accused for what was done before.

Mr. Vaugh. If the Pardon be general, the Judges, and you are to Note it; but if it hath Qualifications (as that Act hath) they are not to Note it; for you must say there is no Indictment or Outlawry against him (for such the Act excepts) or the Article is to stand.

*Then the Act was read.*

Mr. Swinsf. The Clause for Pardon is Absolute, and any Man accused, pleading it shall not be sued, nor his Fault mentioned, and this is to all Offences and Offenders: and for those who betrayed the King beyond Sea (who are excepted) they must be prosecuted within two Years.

Obj. You will say, he may plead that Act.

Answ. By the same Rule, any Man who committed a Fault, during the Troubles, may be put to plead it for Pardon.

Serj. Mayn. We profess that there shall be Candour in our Proceedings, Do we therefore believe this Great Man is Outlaw'd? If not, how shall we accuse him of what we believe not true?

Mr. Vaugh. When I am satisfied of a thing I am not ashamed to own it; I find now, having perused the Act, that he is within the Clause. The Indemnity is general, and he is within it if not excepted, the Exception reaches those who have held Intelligence with the King's Enemies, so as they be prosecuted within two Years, this he is not, therefore is clear.

So upon the Debate, the Article was expunged the Paper without a Vote.

*About the Sale of Dunkirk.*

Sir Tho. Osb. A great Lord told me that the Earl of Clarendon had made a Bargain for Dunkirk three quarters of a Year before it was known.

*About Sealing Dr. Crowther's Patent.*

Mr.



Mr. *Street*. The King gives the Living to *Crowth*, in the Grant is a mistake of a County, *Crowth* finds the mistake, and petitions the King to amend it; the King calls for the Chancellor and Seal, and in the King's Presence it was amended and Sealed.

Sir *Tho. Litt*. The Crime seems as great as a Chancellor could commit; the King was to Present by such a Day, or not at all; the Error was found after the Day, so that the King (by Act of Parliament) had lost his Right. The Chancellor did alter the Patent, and the Record was fetch'd away by one of the Chancellor's Servants, and brought back, rased and altered, which might be done (and in other Cases is done) where a Word only hath been mistaken; but that is in Case of something perfectly in the King's Power, and to save new Sealing; but here could be no new Sealing, the time being elapsed: It was to throw another Man out of his Freehold, and is a great Crime.

*About drawing Mens Lands into Question.*

Mr. *Thom*. I shall be able to make it out.

*About Quo Warranto's to Corporations.*

Sir *Tho. Litt*. This is so Publick a Thing, that it need not be proved.

*About the Settlement of Ireland.*

Sir *R. How*. I doubt not but it will be made out.

*About Foreign Treaties.*

Sir *Tho. Litt*. This will appear by the Treaties themselves, putting us in hopes of Peace, and so hindring the Fleet's setting out.

*About Miscarriage of the War.*

Mr. *Thom*. I want not Persons to bring to make it good.

Sir *Tho. Litt*. Sir *Edward Sprag* desires Money to give an Intelligencer, and has it; *Sprag* brings the Intelligencer to the King, the King Commands him to meet him at the Chancellor's, there he met the King, and then Order was given to divide the Fleet.

Mr. *Marvel* Chargeth Mr. *Seymour* with saying in his Accusation, That the King was insufficient for Government, which is now omitted in the Charge, and desires he may declare where he had it.

Mr. *Scym*. The Party that told me at first differ'd something afterwards, therefore I rather withdraw it than to trouble you with Uncertainties; but a Gentleman in the *House* can give you further Satisfaction in it.

Sir *John Den*. A Peer of the Land heard the Earl of *Clarendon* say in a Coach, That the King was an unactive Person and indisposed for Government: This will be made good.

Upon debate it appearing probable that these words were spoken before the Act of Oblivion, it passed over.

*About the Customs.*  
VOL. II.

Sir *Rich. Temp*. I have been Informed that he had a share for under-letting the Customs, and 40000*l*. Bribe for getting pretended Debts from the King.

Sir *Tho. Osb*. The Earl of *Clarendon* said, Bid who would for the Customs, none should have them but the Old Farmers.

Mr. *Prym*. Having gone over the Articles, we should know where and when the words were spoken.

Mr. *Seym*. That will be a way to Suppress the Evidence. I hope you will Impeach him at the Lords Bar, and in due time produce your Witnesses.

Mr. *Prym*. You must resolve to Impeach him of Treason, or Misdemeanour, and name it accordingly.

Sir *Ed. Walp*. You ought first to give a Title to your Impeachment; for if it be for Treason, you will move for Commitment; if it be for Impeachment in general, not.

Mr. *Coleman*. What is laid before you is only by Hear-say, but no Assurance that it will be made good; only that if they who reported it do not make it good, you shall know who they are. In the Earl of *Strafford's* Case (the worst of Precedents) the *House* proceeded not, till one spake in the *House* upon his own Knowledge, and another engag'd his Reputation to make it good.

Sir *Rob. Atk*. Those who have given you Inducements to proceed, do it at third hand, and tho' they may know the Credit and Impartiality of those that told them, yet you do not.

Sir *Tho. Litt*. A Question should be put, Whether this *House* hath sufficient Inducement to Impeach? Afterwards Consider what the Title shall be, then appoint a Committee to frame Articles.

Which Question being put, was carried in the Affirmative.

Then Adjourned.

November 9.

The first Article read.

Sir *John Goodrick*. Treason ought to terminate in an overt Act, which Designing is not, therefore pray read the Statutes.

Thereupon sundry Statutes were read.

25 *Ed. 3.*

1 *Hen. 4. Cap. 10.*

1 *Ed. 6. Cap. 12.*

1 *Q. Ma.*

13 *Car. 2d.*

14 *Car. 2d. Cap. 29.*

Mr. *Steward* Declared it to be transcendent Misdemeanour, but no Treason.

Mr. *Vaugh*. Two Questions will be considered, One, Whether what's Charg'd in the Article was Treason in Common-Law before—  
25 *Ed. 3.* That so we may understand the Nature of Treason; The other, Whether by any subsequent Act it is made otherwise.

Mr. *Wall*. The Advice given to the King I look upon to be this; To establish a New Government,



vernment, To be Govern'd by *Janizaries* instead of a Parliament; To have a *Divan* and a great Minister of State, instead of *Vizier-Bassau*, A worse Plot than that of the 5<sup>th</sup> of November; There, if the Lords and Commons had been destroyed, there would have been Succession, but here both had been destroyed for ever. Then in order to the Debate consider how the Law looks on it; for tho' we may Accuse on less Evidence than she may Judge, yet we must be Cautious in naming the Crime: What therefore doth the Law call this before 25 *Ed.* 3? Then look whether the Power of Constructive Treason be taken away since.

Sir *Fran. Goodr.* The matter concerns Life, therefore we should be wary in the Exercise of Legislative Power; you are not tied to Rules, but you are now a step towards Judicature: The Common-Law is *Jus non Scriptum*, and tho' every Treason includes Felony, yet not every Felony Treason, 25 *Ed.* 3. There is a Declaratory Power, whether a thing be Treason, or other Felony, not whether it be Treason, and could not be declared Treason if not Felony before. In Cases Capital at Common-Law they might declare it Treason, but in Cases not Capital at Common-Law, they never exercised their Declaratory Power.

Among other things that Statute declares false Coin'd Money to be Treason, which is but Felony at Common-Law; afterward Money being imported, which was not according to the Stamp, there was no Punishment for it, but as a Misdemeanour: Therefore 4 *Hen.* 7. Provision is made against that Practice, and it is made Treason; but if the Parliament's Declaratory-power could have made it Treason, what need'd a Statute on purpose? So that I cannot think the Article before you is Treason, it not coming within the Words of the Statute.

Mr. *Vaugh.* I shall speak to the first Question, whether this Article was Treason at Common-Law; and first remove what some have asserted, Namely, That nothing is Treason, but what was Felony before 25 *Ed.* 3. where petty Treason is spoken of, the Wife killing the Husband, &c. These words follow, If hereafter it come into Question whether there be another Treason? It shall not be resolved by the Judges, till the Parliament determine it; For in petty Treason, if it be Treason, it must be Felony, because there is killing.

Then comes more, whether raising, &c. and it follows whether it be Felony or Trespas; And the thing it self is more strange. None ever doubted, but that all Treasons of 25 *Ed.* 3. was Treason before, and was so resolved 12 *Q. Eliz.* That by that Act the King declares what should be Treason; Namely, If any Man Vitiates the King's Eldest Daughter, &c. But by this Doctrine if it were not Treason, what was it? Only Adultery or Fornication, when it is the Eldest Daughter, not the Youngest?

It hath been in all Ages a Reputation to Persons who have been Counsellors to Princes according to Emergencies to give Counsel to extricate them out of danger, and therefore hard to tax a Minister of State in a Case which he acquaints his Master with; for there can be no Treason but against the King himself.

I will shew you what I mean, It is true this is a Treason which cannot arise from Misprision,

because it was spoke to the King himself; but as a Minister of State he has liberty to give Counsel for the King's Safety. If a Person be able to Inform his Master what Alliances are good for him, it is his Duty; so what Trades are Profitable, what not, &c. So where Men or Money are wanting, to advise how to extricate is commendable; but when it comes to this, that he breaks in upon the Laws, invading the Contract between the King and his Subjects, it will be as if a Man adviseth, That if the King wants Money, he may set up High-way Men to take it, and bring it to him, and so the skillfullest for breaking the Law shall be esteemed the best Counsellor; therefore whoever thinks to serve his Prince by breaking the Laws, he is so far from a wise Man, that he is the highest Criminal, &c. Then for the Nature of the thing, The Treasons declared 25 *Ed.* 3. were declared by the King's Commission, and the Treasons were of that Nature which concern'd Counsel, &c. they were not like to be declared. And there is a passage in *Glanvil*, called *Seductio Domini Regis*, that is, deceiving the King to what is pernicious to Him, and his People.

Now see the Nature of this Crime; If a Man Counsel his Prince, and Practice it such a way as shall render him Prince of Conscience, who hath broken his Oath, and all this to his Injury, so that he hath no Assent to it. Compare this with any Treason of 25 *Ed.* 3. Consider it: Here is a Person who gives the King Advice, which at once must make his People see he hath broken all his Faith to his Kingdom (and is not the Counsel of Governing by an Army such) all the Laws broken, to keep which the King has Sworn, and this the King put upon, tho' not Inclined to: I assert not this upon the Earl of *Clarendon*, but upon the Article. Who doth this, Counsels the highest Treason against the Common-Law, because others are so; but if a Man will pretend to give Counsel, wherein many shall have no benefit by the Law, he breaks all parts, and therefore I think this Counsel was Treason at Common-Law.

Mr. *Colem.* The Question is, Whether it be in your Power to declare this Article Treason by 25 *Ed.* 3. If he advis'd an Army against the King's Consent, it is against the Statute; but I suppose that the Expression in the Article was Advice to the King in Aid of his Government. Your Enacting Power is a kind of Omnipotency, but in a Declaratory Power you can declare no more than is committed to you, and with Safety to the Subject you cannot declare this Treason: Then what must be our Rule in Declaring I dare not say: For scarce any Man can tell what was Treason before 25 *Ed.* 3. was made to bring things to a Certainty, and what was uncertain to them who made that Law can be certain to us now. As the Judges can declare no other Treason, so in your Declaratory-power, Neither can you declare Treason unless there be Resemblance to some other like Case: The Advice said in the Article to be given the King, cannot be within that Statute, unless the Counsellor must run the hazard of his Advice.

Mr. *Vaugh.* The greatest Declarations of Treasons which ever were, equal not those 22 *Rich.* 2. in *Nottingham* Castle: the Judges are called to deliver their Opinions upon their Faith, and they



they declare the Acts to be Treason, because Felony before, and tho' some of them were Hang'd for it, yet the Parliament declared the same thing.

Serj. *Mayn.* Was, what is mentioned, Treason by the Common-Law, tho' so said by the Lords? and what was so declared was repealed, *H. 4.*

Sir *Tho. Littl.* Pray resolve whether it was Treason by Common-Law; and if so, when made so. Some think not, because they find not the Parliament declaring them Treasons, as being so at Common-Law, and that that Statute was made to bound them, but that was only to bound Inferior Courts, not themselves; for the Parliament makes not a new Crime, and then Condemns it, but the Crime was before, and the Parliament declares it.

Sir *Ed. Thur.* Hath the Parliament declaratory Power now? Yes, but it must be by King and Parliament, so it was in the Case of the *Genova* Ambassador \*. The Judges would not conclude the Articles Treason, nor would the Lords alone; and if you come to an equal declarative Power with them you must examine Witnesses, or go by a Bill.

Serj. *Charl.* The Question is, Whether it be Treason by the Practice of *England*; the Common-Law is the Custom of *England*, and the Usage is grounded on Precedents. I know not one Precedent where Words or Intentions were Treason at Common-Law, for they are not Treason where no Act follows.

Sir *Rich. Temp.* The Article is Treason by Common-Law, and Judges have recourse to *Glanvil*, &c. who say, that giving Advice to overthrow the Realm is Treason by Common-Law.

Serj. *Mayn.* The Question is, Whether he shall be Impeached of Treason upon this Article? If you go to Treason at Common-Law before *25 Ed. 3.* you fly out of sight, for the Word *Seditio* was soon after called *Seditio*, Seducing, but not said to what; nor were those Authors ever reputed of Authority: It's true they are sometimes quoted for Ornament, but not Argument, and not one Case in one hundred of *Glanvil* is Law; but when a Case comes that is the Sheet-Anchor of Life, and Estate, you should be wary; for by Wit and Oratory That may be made Treason which is not; and this which is a great Crime, ought not, because great, to be made Treason.

*Object.* But it will be said, levying War against the Law, is against the King, and here was an intent to alter the Law.

*Ans.* True; yet a Design to levy War is not Treason within the Statute, here is nothing of Act, but Words to that end; If a Counsellor gives bad Advice, it makes it not Treason, but by a Bill it may be made what you please. By that Statute of *25 Ed. 3.* are more Treasons than are mentioned; for it saith if any Case happen, the Judges shall stay till the King and Parliament hath declared, so that there is a Power, but the *Modus* is the Question, whether by Impeachment or Bill; you may the latter, not the

former. It was done †, but you have repealed it, and have said † *Strafford's Case, Trial, 39.* None of which pretended Crimes are Treason; and what was pretended against him? That he had Traiterously Endeavoured (which is worse than Design'd) to alter the Government; &c. Now where is the Difference? Here is Advice to raise an Army, there to Use an Army Raised, and these you have called pretended Crimes, and no Treason, which is not Comprehended by a Law; but to Impeach as a Traitor; and yet the thing No Treason, is strange. In this *House*, other than by Bill, you have no Power; you carry your Impeachment to the Lords, and they may give Judgment without coming back to you; declaring by Bill is by way of Judgment, but, as an Impeachment, is only an Accusation: so that whatsoever the Consequence is, the Lords judge it, and it never comes back to you, and if you go by Bill you make it Treason *ex post facto*.

Mr. *Vaug.* Concerning what you have declared about *Strafford's*, that this Case is, if not less, equal to it, and you have declared that not one Charge against him is Treason, is true thus far; when that Act was made I repaired to it, because there were some Things which should not have passed so, if there had not been something to secure such Charges as these; for there is no expression of any Particular Charge, but that the Charge against the Earl of *Strafford* was not, in the particular, Treason; and in the Close of the Bill, it is said, that the whole Proceeding shall be taken away; and if so, no Man should speak against the Particulars, but look on it as Repealed.

Then this is said to be levying War, and it's true, it must be Actual, and so not within the Charge. And the Charge against *Spencer* was for Counselling the King, &c. and is called levying War against the Kingdom, and the Judgment against him was but Banishment; because the Sentence was mitigated at the instance of the King.

And for Counsel, tho' Counsel is given but in Words, yet Words are more than Counsel, and are an Action, otherwise a Counsellor is Sworn to nothing.

But it may be thought I have not dealt ingenuously with the *House*, than which I abhor nothing more; when the Case of *Strafford* was before the Lords, I was of Opinion the Parliament had no Declarative Power left, because *1 Hen. 4.* there was an abolishing of all declared Treason, and that no Treason, for the future, should be so, and then the Treason about the *Genova* Ambassador was gone, and all declared Treasons were gone, *1 Hen. 4.* and no Statute hath recovered them; and if all Actual Treasons were taken away *1 Hen. 4.* or if not then, *1 Ed. 6.* then what doth the first of *Q. M.* do, unless it take away all declaratory Treason?

Upon the whole, the Question was, whether to accuse of Treason upon the first Article.

*Yeas, 103.*

*Noes, 172.*

275.

\* See this Case 3 Co. Inst. p. 8. Rot. Parl. 3. Ric. 2. N<sup>o</sup>. 18. Placit. coram Rege Hil. 3 Ric. 2. rot. 8. 12. Co. Rep. 16. Holin. Chron. Vol. 3. p. 422. Killing the King's Ambassador had formerly at the Common-Law been adjudged Treason, 22 E. 3. Ailif. pl. 49. and may still be so by Parliament, for the Statute of 25 E. 3. is a restraint only upon the Judges, but not upon the Parliament.



# 566 67. Proceedings against Edw<sup>d</sup> E. of Clarendon, 19 Car. II.

November 11.

## *The Second Article was Read.*

Mr. *Prjn.* Let the Act made by you, about defending the King, be Read, because it limits Prosecution to a Time, to see if this be within Time.

Mr. *Vaugh.* In things wherein there is a publick Defaming the King, it becomes no Man here to defend the Person accused; if the Charge be not proved, let the Party himself plead it; you had that which induced you to Impeach him, and have declared not to Impeach of Treason upon the First Article: And if any Man will add to the rest of the Articles he may, but you ought to accuse.

Mr. *Sollicitor* \*. None accuseth but for Justice sake, and should be glad if the Party accused prove himself Innocent. There is a Duty to the King, and to Truth, and it is not fit that an Article of this Kind, brought into the *House*, should be laid by, upon pretence that the time is elapsed; for the Crime is more than what is mentioned in the Act made by you; it is an Offence at Common-Law, and if it be prosecuted by Fine and Imprisonment, no Time is limited.

## *The Third and Fourth Articles Read, and Voted.*

Mr. *Vaugh.* Your reading every Article is needless, unless it be to see whether any one may be Charged as Treason, for if One may be Objected against, so may all, as to Misdemeanours.

## *Fifth Article Read.*

Sir *John Shaw.* The Old Farmers had not the Customs till others said they would give no more, and they had no reason to thank the *Chancellor*, because they gave more than others: And I declare upon my Life I know no Reward given him.

Sir *Tho. Litt.* It appears by the Farmers Confession, that they had it 50000*l.* under, besides time of Payment which was 30000*l.* more.

Mr. *Seym.* You are at liberty to receive Objections to the Articles, but tho' others bade more, they were told they should not have it, and had about 1000*l.* each given them to bid no more.

## *Sixth, Seventh, Eighth and Ninth Articles Read and Voted.*

## *The Tenth.*

Mr. *Vaugh.* This is an Article of an high Nature, *Dunkirk* was then as much a Part of his Majesty's Dominions as *Ireland*, and if the Sale of it be nothing, I know not what you would think of it: *England* should be Sold; you lately debated whetaer on the first Article he should be accused of Treason, and found by the Statute of 25 *Ed.* 3. he could not, tho' it was absolute Treason at Common-Law; and it's reported abroad that I said that the Right of the Parlia-

ment in declaring Treason is taken away, which I did not, for there are Treasons not mentioned in that Statute. Therefore it provided that the Judges should not upon any one Treason proceed to Judge, until declared before the King, and Parliament, and what is signified by it? If we think before the King, Lords, and Commons, that is impossible; for how can the Commons possibly declare before the King and Lords? nor was that the Case, but this, that there is the ultimate Power of determining what the Law is in a doubtful Case. In Writs of Error let them pass from Court to Court, at last they come to the Lords, 24 *Ed.* 3. If the Judges cannot resolve what the Law is, it is to be brought thither, that is, where it is questionable, but that is not in the *House of Commons*, any more than in a Writ of Error: How then is the Case here? If a Question be whether a Thing is Treason or not, it shall be Resolved where the Law useth to Resolve, that is, before the King in Parliament, that is in the *Lords House*. Had the Words of the Act been these, there shall be no Proceeding until Resolved by the King in the *Lords House*, and Suppose that Clause taken away, That Treason shall not be Resolved, but suppose it shall not be declared otherwise, doth it follow it is taken away? No. If you charge Treason which is not within the Statute, it is another Thing, but I said not, there is no Treason at Common-Law.

Mr. *Sollicitor.* There was a great Mischief in the declaring Treason by Parliaments; for *Mortimer* † was made a Traitor for incroaching upon Royal Power, which every Man, who incroacheth upon any Power, doth. Hence the *Commons* Petition'd the King to explain what incroaching upon Royal Power was, and when no Answer could be gotten to it, 25 *Ed.* 3. they Petition'd it might be declared certainly, and so Treasons were enumerated, and if the Judges be in doubt, it is provided that the King and Parliament shall first declare it.

Declaration in Parliament, is a Declaration before the King, Lords and Commons. Would our Ancestors leave what is to be Resolved Treason to the Lords, and themselves have no share in it? And *Talbot's* being declared Treason by the Lords, it is said to be <sup>3 Inst. 22.</sup> no Treason by Judge *Coke*, because the *Commons* had no hand in it; there is no Treason in Common-Law, because there can be no Treason, where there is no way to judge it, which is not at Common-Law.

Mr. *Vaugh.* When the Law is made uncertain the Lords must declare it; it appears there were Treasons at Common-Law not mention'd, 25 *Ed.* 3. It is one Thing for a Matter to be Treason before, and the Parliament declare it; another, for the Parliament to make a Thing Treason which was not.

Sir *William Lewis.* I desire to be Resolved whether *Dunkirk* was annexed to *England*, because a Bill to that end was carry'd, but not Passed.

Mr. *Waller.* To shew that *Dunkirk* was annexed to *England*, consider we were Passing a Bill for 1200000*l.* But when we were making a Preamble to the Bill, we were to seek for Reasons for giving the Money, seeing we had no War, some said to keep *Dunkirk*, but we were

† Holin. Chron. Vol. 3. p. 349.



told we should take heed of looking upon it as annexed unto the Crown; but it was replied, *Dunkirk* was look'd upon as a Frontier Town, and accordingly noted in the Bill. Therefore the Sale of it Treason.

Mr. *Coventry*. Had it been part of the Crown of *England*, what needed a Bill to make it so?

Mr. *Prynn*. It cannot be Treason, because Sold by the King's Consent.

Mr. *Vaugh*. If the King agreed to it, doth it follow that he, who adviseth the King to a Thing destructive to his Kingdom and King, is not a Traitor? If any part of the King's Dominions may be alienated, especially when a Parliament is Sitting, for they concurring, it may be alienated; by the same Reason the King may alienate *Ireland* or *England* too without the Parliament. For by what Act of Parliament doth the King hold *Ireland* or *England*? It is by Acquisition; I say not *Tangier*, for that was part of his *Portion*, and is his own: But *Dunkirk* would have been the Kingdom's if not thus disposed of, and tho' it might have been alienated with the Parliament, it could no more without, than *England* or *Ireland*.

Mr. *Ed. Hartl*. The Act of Parliament for annexing was not This Parliament's, but of the Convention, and came in thus; the King was pleased to tell me, that the *Spanish* Ambassador might press him to part with it, which he had no mind to do; therefore he would have a Bill to annex it to the Crown, which shews it was the King's Will to have it annexed, accordingly this Parliament passed it, and *Dunkirk* might have been as useful as *Calais*.

At length this Article was passed by, without determining whether Treason or not.

*Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth Articles Read and Voted.*

*The Sixteenth Article Read.*

Lord *Vaugh*. I brought in this Article; his betraying the King's Counsels was to the *French* King during the War, and that in the Secrecy of State, which was the occasion of the late Mischiefs.

Sir *Tho. Osb*. That is direct adhering to the King's Enemies, and if so, it is Treason.

Mr. *Sollicitor*. This must be Treason if you have any inducement to believe it.

Sir *Rob. How*. I have heard it from an Eye-Witness who told it me, and added that we are neither to be trusted nor dealt with, who were so betrayed.

Serjeant *Mayn*. Betraying the King's Counsel to his Enemies is, doubtless, Treason. Corresponding is another Thing. Betraying must be without the King's Knowledge, otherwise it is but delivering the King's Words to his Enemies.

Sir *John Bramp*. Did this Information come from a Subject, or from one of the King's Enemies?

Sir *Rob. How*. I would not have brought you Information from one of the King's Enemies, nor did I ever converse with them during the War.

Col. *Birch*. We cannot accuse of Treason, except it be said, Betraying the King's Counsel, or Corresponding with his Enemies.

Mr. *Vaugh*. You have declared that you have

had inducement to Impeach, and ought to put the Question, whether on this Article he shall be Impeached of Treason.

Mr. *Sollicitor*. To betray the King's Counsel, taken generally, is not Treason, for it may be to the King's Friends; but to his Enemies it is, if the Article be so.

Lord *Vaugh*. Let it be put, Betraying his Majesty's Secret Counsels to his Enemies during the War.

Then the Question was put whether these New Words delivered by the said Lord *Vaugh* should be added.

*Carried in the Affirmative.*

Sir *John Hall*. Was this Information given by an Enemy or by a Subject?

Mr. *Vaugh*. It must come from a Foreigner, or you could not know it; may not the King have from a Foreigner a discovery of Treason against him? The end of questioning it must be to know the Man, for it might as well be asked whether his Beard be Red or Black.

Sir *Thomas Meers*. The Words are discovered not betrayed, and discovering may be with the King's Consent.

Lord *Vaugh*. Add the Word Betraying, for so I meant it.

Serjeant *Mayn*. They who give the Information say not they had it from more than one Witness, which *Stat. Ed. 6.* requires, and only one of them names the Earl of *Clarendon*.

Mr. *Seym*. This Exception is proper to be made before the Judges.

*Then the Question was put,*

Whether to Impeach of Treason on this Article.

Yeas, 161.

Noes, 89.

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250.

Sir *Tho. Litt*. That an Impeachment of Treason and other Crimes and Misdemeanours be carried up to the Lords against him by Mr. *Seym*.

Serjeant *Mayn*. For Misdemeanour he may have Counsel, not for Treason: Therefore so distinguish the Charge, that he may have Counsel.

Resolved, *That a Charge be carried up.*

Resolved, *That the Speaker and the whole House carry it.*

Nov. 12. It being considered that if the Speaker go up with the Charge, some dispute might arise about carrying the Mace and otherwise;

It was Resolved, That Mr. *Seym* carry it.

Accordingly he went, where at the Bar of the Lords House, the Lord-Keeper *Bridgman* being come to the Bar to meet him, he delivered himself to this purpose.

My Lords,

THE Commons Assembled in Parliament, having been informed of several Traiterous Practices, and other High Crimes and Misdemeanours, committed



ted by Edward Earl of Clarendon, a Member of this Honourable House, have Commanded me to Impeach him, and I do accordingly Impeach him of High-Treason and other Crimes and Misdemeanours in the Name of the said Commons, and of all the Commons of England: And they have farther Commanded me to desire your Lordships to Sequester him from Parliament, and to Commit him to safe Custody, and in convenient time they will exhibit Articles against him.

Nov. 15. The Lords sent down to desire a Conference in the Painted Chamber.

At which the Earl of Oxford delivered a Paper in writing (without any Debate) the Contents whereof were to this effect.

The Lords have not Committed the Earl of Clarendon, because the Accusation is only of Treason in general, without charging any thing in particular.

Mr. Garraway. I had rather the House should lose the Punishment of this Man, (tho' a great Offender) than that this House should lose its Privilege: For if this House may at no time Impeach a Lord without giving in particular Articles, it may fall out to be at a time (as in the Duke of B——'s Case) where a great Man by his Interest with the King procured the Dissolution of the Parliament, and then the Accusation falls.

Mr. Vaugh. Either you can justify your Proceedings, so as to satisfy the Lords what you have done, or you cannot; you must name a Committee as well to consider what you are to do, if your Reasons satisfy not, as to draw those Reasons.

Mr. Solicitor. Without doubt this House was not mistaken in demanding that the Party accused for Treason should be committed, That is, That Treason is worthy of Commitment, and you may find Precedents that Persons have been accused of Treason, and thereupon have been committed: But the Case is this, Treason is an Offence, for which Bail cannot be taken; the Lords tell you not they will, or will not Commit: But it is true, Persons have been Committed for Treason, and Persons accused of Treason, Judges may Commit, or not.

Consider this Law. Let the Crime be what it will, an Imprisoning till the Charge is given is but an Imprisoning to Security, not to Punishment; otherwise the Law is not Just: and if the Judges of the *King's-Bench* have a Judgment of Discretion, whether to Commit or not; can we wonder that the Lords have not Imprisoned, till they know the Article, when they have Judgments of Discretion tho' they knew it? You may find Precedents, but it is not an Argument it must always be so: But as the Judges have a Latitude, much more than the Lords; the Impeachment from the Commons of *England* is properly the King's Suit, for there is no Treason but against him, and if the Judges may Bail in that Case, may not the Lords? But you are not told he shall be Bailed, but they desire to know what his Crime is, and then you shall know their Answer; the Resolution seems reasonable, having gone no farther, I cannot except against it.

Sir Thomas Litt. The *Long-Parliament* had some good Precedents which we are not to cast away lest we smart for it.

Resolved, To Resume the Debate to Morrow.

Nov. 16. Mr. Vaugh. The Lords do not say Commitments should follow because Treason isailable by the *King's-Bench*: it's true, the *King's-Bench* Bails for Treasons, but how? If Persons be brought thither for Treason directly, there is no Bail; but when a Commitment is by the Council-Table for Suspicion of Treason, then if the Matter fall not out to be what was expected, they give notice to take Bail; else the great Article of the Great Charter, namely, that Justice should not be delay'd, nor denied, would be to no purpose; and in such a Case a Man may be in Prison for ever. On the other side, what is the Case of Committing for Treason? When a Person is Committed by the Council-Table, they say, they do no more but by special Command of the King, and that is the ground of his Committing, and were not this so, what would follow? Intelligence would be given of a Treason discovered, wherein many might be concerned, and if they who Commit should Commit with the Treason, all the Complices would escape; and therefore sometime they make it Treason General. Then for the Case, before you have gone up with a Charge of Treason generally, which is to the Lords a Warrant sufficient for Commitment, say they, we will know the Particulars; then will not the same Inconveniences follow, if other Persons be concerned, and so the danger of all exposed upon the Nicety.

If a Business comes before this House, which concerns others, and may prove Treason, if we go to the Lords (for we have not Jurisdiction except in Case of our Privileges) but are not yet ready to bring up Particulars, and desire the Lords to apprehend such Persons, would it be reasonable for them to refuse it, there being no Inconvenience like to follow the doing it, much the not doing it? I say not to commit them, and we not prosecute, for that is delay of Justice.

Qu. But why do the Lords refuse?

Ans. Tho' I have great respect to the Lords, yet to clear something in point of Privilege, the Lords have the same Privilege, with us in point of Speech, their Members, &c. as they are essential to pass Laws; but that great Privilege which they often assume as Peers, is as the King is there present in the highest Court: How then will it fall out in respect of this Privilege? If the King be there, there be many things which the Lords as Peers cannot pretend to, for the King hath often sat there not only in passing Bills, but in Judgment. Had this Charge then come before the King there, it had been reason if the King should have said, *I desire to know what this Treason is*, we must then have told it, because he, whom it concerned, required it; or if we desired Commitment, he, who could Release or Pardon him, might say, *let him be Bailed*. The Lords indeed retain this Privilege, but it is in the King's Right, not as Peers.

Now we have carried a Charge, if the Lords Bail him, I know not what would follow, for no Example can be given of it, and I think they will not do it, if the King do not direct it.

On the other side, I would be glad we might be no more troubled, than is necessary, because others are listeing what we do, and think there



is nothing in the Case: Therefore I am not for delay, but for satisfying others, that what we have done is not barely for Imprisoning the Earl of *Clarendon*, but for Justice; and if you go this way, give the Lords the Reasons why we sent the Charge as we did, and yet keep up their Privileges, and declare so to them.

But then we must go up with more than that Head, on which we Resolved to Impeach of Treason, for your Article must be so formed as to make it a Charge fit to be Answer'd for Time and Place, and that Article hath something of that, which must be penned so as to make it more certain; for the Article goes but thus. That there was Discovery and Betraying of the King's Counsels to his Enemies, and if you leave it there, those, who scruple doing any Thing, because particular Treason is not mentioned, will say; you say he hath discovered and betrayed Counsels to Enemies, but as we trust you not what is Treason, but we will know it; so we know not whom you mean by Enemies; for we may think them not so: Therefore appoint a Committee to form Articles.

Mr. *Solicit.* It is a great mistake to say, That the Power of the *King's-Bench* to take Bail for Treason, is no other but what is asserted, as if the Judges there had only Power from *Magna Charta*; when a Man is Committed upon Suspicion of Treason, and no Prosecution follows, and the Party bringing his *Habeas Corpus*, the *Bench* Bails him, because he should not lie there eternally. It is not to be said the Judges Bail for Treason; seeing no Crime is produc'd: For when a Man hath been accused of Treason for Coining false Money, and brought to the Bar, the Judges have Bailed him, not because they ought, but from that discretionary Power wherewith the Law trusts them, they may Bail if they will, for no other Judicature, but they, can Bail in that Case; for seeing Imprisonment before Trial is only that the Prisoner may be forthcoming, if they see there is no danger of escaping they may take Bail, for he is a Prisoner when Bailed, and the Bail is his Keeper; but there are few Cases of this kind, wherein they will Bail, they have a fundamental Power to do it, placed in them to preserve the Rights of the Crown; and the Lords will not think themselves less trusted with the Rights of the Crown than the *King's-Bench*. Yet tho' the Lords may Bail, they will not exercise their Discretion, when there is a probable Truth in the Impeachment; shall we then refuse this Intimation from the Lords, who saying, Because they have not a particular Article of Treason do not secure, seem to imply, that if they had, they would, tho' they might refuse. The Right of Bailing comes not from an imaginary apprehension of the King's sitting there, tho' some Kings have sat there in Judicature, but from their Inherent Authority of being trusted with the Right of the Crown: Let us do then what becomes us, and not let the Impeachment miscarry upon a Misunderstanding, but draw up the Article. But how is it possible to draw it as an Article which you expect he should be imprison'd upon? For your Impeachment is in the Nature of an Indictment, and must contain so much of Certainty as to put him to plead, that so he may not Demur.

How may it then be Circumstantiated, so as that he may be put to plead; if you do it ac-

ording to 25 *Ed. 3.* (for discovering the King's Secrets to his Enemies is within that Statute.) The first part of the Article is not pleadable, for we must shew how he adhered to the King's Enemies, and we must add what the Counsel was that he betrayed, else he will deny to plead, and say, I can avoid it: Therefore consider what kind of Certainty this Article must have to make him plead; for the other Articles, it's enough to say them without proving Time or Place, if the Facts were after the Act of *Oblivion*; but in Treason, the Matter must appear in the Indictment, for he hath Liberty not only to plead not Guilty, but to avoid it: Therefore prepare the Article accordingly.

Mr. *Vaugh.* What is Moved is to put you upon an impossible Business, for an Article presented from the Parliament needs not that Certainty, as if it were to be tried at the *King's Bench*.

Sir *Thomas Litt.* It is not for the Honour of this *House* to recede so easily from such a Privilege, for besides the Earl of *Strafford's* Case, we have express Precedents for, but none against us. We have heard that we must have no more Impeachments, because they are dangerous and tend to Rebellion. Consider the Archbishop of *Canterbury's* Case, *Finch*, *Ratcliff*, and others in the *Long Parliament*, and we should not so easily part with them. *William Delapool* being commonly reported to be no true Man, (which is a less Charge than Treason) desired he might acquit himself, and the Lords required no special Matter before they imprison'd him, and afterward he was accused more Specially.

Sir *Rob. Atk.* In the Case of *Anselm* Archbishop of *Cant.* the Commons accused him, but the Lords did not commit him, and gave no other Reason for it, but that he was a great Man; and yet afterwards he was Condemned as a Traitor, tho' the King reduced his Punishment only to be Banishment. Tho' a Privilege is much spoken of, yet I shall never be fond of any Privilege which shall Intrench upon my Liberty as a Subject.

Mr. *Vaugh.* I hear it objected, That as you Charge a Lord generally, so may the Lords a Commoner, but that cannot be; for the Lords cannot cause a Commoner to be committed tho' for Treason, without your Consent: Therefore put a Question, whether a Committee shall be named to draw up Reasons to justify what you have done.

Resolved, That the Question shall be put.

Resolved, That a Committee shall draw Reasons.

November 18.

The Committee brought in their Reasons.

*First.* What can or ought to be done by either *House* of Parliament is best known by the Customs and Proceedings of Parliament in former times; and it doth appear by Example, that by the Course of Parliaments the Lords have Committed such Persons as have been generally Charged by the *House of Commons* for High-Treason, to safe Custody, tho' the particular Treason hath not been specified at the time of such Charge.



*Second,* That a Committee for High-Treason in general, is a Legal Commitment, and if the Party so Committed bring his *Habeas Corpus*, and the Cause of his Commitment thereupon be returned for High-Treason generally; he may lawfully be remanded to Prison by the Judges upon that Return.

*Third,* If before securing the Person, the special matter of the Treason should be Alledged, it would be a ready course that all Complices in the Treason might make their Escape, or quicken the Execution of the Treason intended, to secure themselves the better there.

*Fourth,* If the *House of Peers* should require the particular Treason to be Assigned before the Party Charged be secured, they leave the Commons uncertain and doubtful (and that from time to time) how particular they must make their Charge to their Lordships Satisfaction; before the Offenders be put under any Restraint.

*Fifth,* The Commons conceive, that if they should desire the Lords to secure a Stranger, or Native Commoner, upon the Suspicion of Treason, which the Commons had of him, and which was by them under Examination to be Evidenced to their Lordships in due time; their Lordships in Justice for the Safety of the King and People, would secure such Person or Persons, upon the desire of the Commons, and in such Case there would be no difference between a Lord and a Commoner so desired to be secured.

*Sixth,* The Proceedings of Inferior Courts, between the King and the Subject, or Subject and Subject, and the Discretion of Judges in such Courts, is bounded and limited by the Discretion of the Parliament which trust them; and 'tis not left to the Discretion of the Judges in ordinary Jurisdiction to give the King, or take from him inconvenient Power for the Subject, nor to dispense the Law Partially between Subject and Subject for Malice or Affection; but the Discretion of the Parliament, which is the whole Publick, comprehending the King, Lords and Commons (for the King's Presence is supposed to be in the Lords *House*) is, and ought to be unconfined for the Safety and Preservation of the whole, which is itself.

It cannot be malicious to a part of itself, nor affect more Power than already it hath, which is absolute over itself and part, and may therefore do for Preservation of itself whatsoever is not repugnant to natural Justice.

Mr. *Prym*. I like not the first Reason, because it cannot be called a Custom, where only one Parliament hath done it.

Mr. *Swinf*. The great strength lies upon this first Reason, and is like to be a Precedent; for exact Precedents I find none, except that of *Michael Delapool*, and in the Long Parliament: But consider the Reasons why there was no express Precedent before, and what was the Custom of Parliaments before. The Parliament was wont to proceed formerly by Bill, and thus far that Proceeding makes against the Lords now, and for committing the Party accused; for then the Proceedings upon Treason were by Common-Law, and because the Judges could not proceed, therefore the Parliament went by Bill, and it cannot be supposed that the Parties were at liberty all that while.

*Second, Third, Fourth and Fifth Reasons Voted, Sixth Read.*

Mr. *Solicit*. I am against this Reason, not as a Reason, but unnecessary; for if the former Reasons satisfy not, this will not, because it supposeth things not in question.

Our Debate must at last end in this Question, betwixt Privilege of Parliament and former Proceedings; And there being no Privilege in Case of Treason, Why should not former Proceedings Sway? Except we call that Treason which is not, for otherwise no Privilege will help.

Therefore add this to your Reason, That there is no Privilege for Treason, and the Lords ought not to think that the Commons will call that Treason which is not, or if they do, the Lords may by a speedy Trial determine it.

Resolved, *That a Conference be desired with the Lords, and the Reasons carried up.*

November 21.

The Lords sent down to desire a Conference about the Subject Matter of the last Conference. But the Commons doubting that if they should consent to it, the Lords might afterwards refuse a Free Conference, because the Business in dispute concerns Judicature, which belongs to the Lords, and so the Impeachment generally falls.

Resolved, *To send an Answer by Messengers of their own: And accordingly did, with Order to acquaint the Lords how far they had proceeded, and they expected they should rather have desired a Free Conference.*

November 23.

The Debate about the Freedom of Speech in Parliament was resumed.

And the Report read of the Proceeding about Sir *John Elliot*, Mr. *Hollis*, &c. 5. Car. 1. Cr. Car. 181.

Mr. *Solicit*. If you are satisfied that the Judgment passed upon them was Illegal, two ways you have to be safe; By taking notice of that Judgment, giving your Opinion upon it, and carrying it up to the Lords, that Judgment will be utterly Damned; else you may proceed by Act, but consider then the Consequence: For if you go by Act, you bound the Liberty of Speech, unless in penning it you prevent it, but an unknown Limitation is better than bounding, for an Act it self is subject to Exposition, but your Vote, and the Lords Concurrence, is not.

Mr. *Vaugh*. It is not safe for you to circumscribe Privileges, therefore that must be done which may take away what destroys them.

The Laws and Rights of this Kingdom are Rights by Common Law, or Act of Parliament; what is an Act of Parliament, may be Repealed by Parliament; what is Common Law may be altered by Parliament, and whatever is both, may be altered by a *New Law*; and how is it possible to do one or the other without Liberty to speak about it? And how can there be any Inconvenience about Freedom of Speech, about any thing which cannot be a Law, without passing King, Lords, and Commons.

Then it being moved to put the Question for confirming that Report.

And it being reply'd that some Passages in that Business, *viz.* about keeping the *Speaker* in the Chair, were not warrantable, and so not to be joined in the Question with the rest;

Mr.



Mr. *Vaugh.* That Business which is so much talked of, and condemned, I shall state to you.

The House is to adjourn it self, tho' sometimes the King adviseth them to adjourn themselves (as then he did) but the Adjournment is always made by a Question, and without it the *Speaker* cannot leave the Chair.

The *Speaker* acquainting the House then with the King's Message, Sir *John Elliot* stood up to speak, but the *Speaker* would not hear him, but was going to leave the Chair; whereupon some said, if you go out without a Question, the Parliament is dissolved, upon which he was leaving the Chair; some kept him, and told him, if this be a House, you, as *Speaker*, have no Place in it but the Chair; and this was all the Irregularity in that Business so much talk'd of.

Resolved, That the Judgment given Cr. Car. 604. against Sir John Elliot, &c. 5 Car. was an illegal Judgment, and against the Freedom and Privilege of Parliament.

The Lords sent for a present Conference, after which Report was made that the Lords had Voted the Commons denying them a Conference lately, was contrary to the Course of Parliamentary Proceedings, and gave Reasons why it was not yet time for a Free Conference.

November 25.

After Debate whereof, it was Resolved to grant them that the Commons agreed to the Conference formerly desired.

At which the Lords declared that they had consider'd of the Precedents and Reasons formerly sent them by the Commons, but were not satisfied to secure the Earl of *Clarendon*, or to Sequester him from Parliament, until some special Treason be assigned.

November 28.

The Commons sent to the Lords to desire a Free Conference upon the Matter of the last Conference.

To which the Lords concurring, Mr. *Vaugh.* Sir *Rob. How.* Sir *Tbo. Littl.* and others were appointed to manage it, who went up immediately to that End.

Mr. *Vaugh.* Made Report of the Conference with the Lords yesterday to the Purpose following.

The Lords told us, That no Precedent can be against the Law.

We Answered,

If that can be made good, we shall press Precedents no more: But what they most stood upon was the *Petition of Right*, where 'tis provided that none shall be Committed without special Cause, whereby the Party may Answer according to the Law; thence they infer that our Proceedings are against Law, because a general Charge is against the *Petition of Right*.

Commons. The Case of the *Petition of Right*, rightly stated, will clear this, which was This: Some Persons were committed by no other War-

rant, but the King's special Command, they bring their *Habeas Corpus* to the *King's-Bench* to know the Cause: This Cause was returned by the Judges, that they could not Bail a Man, when so committed, because they knew not the Cause, nor had any way to bring him to his Trial.

Then the *Petition of Right* provides, That the Cause should be returned, whereby the Crime might appear, and that before and after the *Petition of Right* to this Day, if upon bringing a *Habeas Corpus*, it be returned that the Party is imprisoned for Treason, the Judges ought to Remand, unless there be some special Cause to make them take Bail. So that the *Petition of Right* was against them, for they say, a Man ought not to be Imprisoned upon a general Charge, because 'tis against the *Petition of Right*: We say it is not against the *Petition of Right*, because the Judge may Remand the Party, if there be not special Cause.

Then the Lords said, That the Reason why the Judges Remanded in that Case was, because the Party Committed knew it was for Treason: Therefore they Re-committed.

We owned it, because it was the Rule for the Judges to proceed by, but that was no Rule for Proceeding of Parliament; for as a Magistrate commits for Treason, and is supposed to be acquainted with it; so also is he with the Probability upon the Proof: But the Lords insist not now upon that, but specify Treason, and in the Course of Parliaments so much varied in such Cases, that was no concluding Proof, why they should have special Treason. And for the other Part.

That upon the Return, there should be a Cause Returned, that so the Party might Answer; for when a Return is made, if the Cause be such as that the Party ought not to be Imprisoned, the Judges free him; otherwise they leave him to come to his Trial.

Then to the Precedent about the Earl of *Strafford*, they Replied, That it was made in bad times. And we Answered, That as good Laws were made before, in, and after that Time as any other; and if the Lords then might make such Laws, we could not see why it should be a good time to make Laws, and no good time to Administer to Persons the Laws already made.

Farther, to their *Objection*, that in the time whence those Precedents were brought, there was a Face of War; We Answered, That could not alter the Case, for the Law calls no Time a Time of War, whilst the Courts of Justice have Freedom, as they had when *Strafford*, *Finch*, *Canterbury* and *Ratcliff* were Impeached: And it was strange that in the Parliament-House there should be such a Consternation as to make their Proceedings invalid, when in other Courts there were none: Besides, in *Holland* for many Years there was a constant Scene of War, and can we imagine that there was not Justice done at that time.

Then they pressed Precedents against ours; One 14 Ed. 2. against the *Spencers*, where a great Man moved the King to Commit one of them, and the King answered, it could not be unless Cause was shewed. We Replied, This was a Precedent like that, a Man was Committed, because he



was Committed; for there was no Allegation of Treason.

Second Precedent was 38 Hen. 8. against Lord Stanhope, the Commons moved the King to Imprison him, and the King Answered, *he would consider of it.* We Answered, That was no Denial, but a thing usual with the King, and that Motion was to the King himself, which differs from this Case, for that was not alledged to be Treason: Besides, had it been Treason, it was against the King himself, and being an Offence against himself, he might (if he would) not Imprison, because he may discharge a Man, or pardon him, tho' for Treason; but this Case is not so, because the Lords Justice is but ministred to the King.

21. R. 2. Arundell Archbishop of Canterbury, who, as they said, was Impeached of Treason, but not Committed.

Answer. The Case was this. There was a Commission issued out by Ric. 2. That that Bishop and others should regulate what was amiss by evil Government, and the King was offended at the granting of it, and at Nottingham sent for the Judges, and charged them upon their Allegiance to give true Answer to what Questions he should ask them; and the first Question was, *Whether that Commission so granted, was not invading his Prerogative?* They Answered, *Yes.* Then he asked *how they ought to be punished, who procured it?* They Answered, *as Traitors.* In the 21 the Bishop is charged by the Commons, and the Treason alledged is, That he had procured himself to be put into the Commission.

This being the Case, we said, that if a Fact be called Treason, which afterwards appears to be none, there could be no Commitment. For if a Man call another Man's coming into his Ground Treason, it falls of itself; therefore the Bishop was not Committed.

The Lords said farther, That all those Articles were declared to be Treason, which before could not possibly be Treason to Commit a Man, because the Nature of them must be Treason at Common-Law, and 'till these Treasons were declared, which was not 'till 21 Ed. 3. they were not Treason so as to Imprison, or Try any Man for them.

We Replied, All that Parliament was repealed, yet the Precedent was the more authentick. But I think that Lord (it was the Earl of Briagwater) understood not what he said, at least I did not.

Then about the Earl of Strafford's Precedent, the Lords said, that the very Impeachment was taken away by the Act of this Parliament, because the Impeachment is recited in it. Namely, Whereas the Earl of Strafford was Impeached, &c. But every Clause in that Act of Attainder is taken away now, therefore the Impeachment; and you cannot make use of any Part of it.

We Replied, It's true, the Act of Attainder is taken away, but the very Act of Repeal doth recite that very Clause (whereas Thomas Earl of Strafford was Impeached, &c.) and the Act cannot take away any thing which strengthens its own Supposition.

Then the Lords said, that they should be willing to comply with the Commons, but that they

must be tender of their own Judicial Proceedings.

Commons. It's true they ought, and we supposed that the Lords might be jealous that we should Intrench on their Power; but the Commons were so far from that, that they thought the Judicial Power better lodg'd with them than in the Commons themselves could be; but we would open the Objection.

Their Lordships being the Judges in this Case might think, that for the Commons to take upon them to know what was Treason, would be an assuming to themselves what was only proper to the Lords, and that it was so now in Charging the Earl of Clarendon generally.

Lords. The Objection is right.

Commons. For our knowing Treason, we have many among us who are Justices of Peace, trusted by Law to know and Commit, and (if the Parliament be not Sitting) even to Commit a Peer himself for Treason; and the knowing what is Treason is so far from being improper to the House of Commons, that every Man in the Nation is bound to know it; for was it ever known, that Ignorance of the Law could ever excuse a Man from breaking the Law? Laws are made to be known by Subjects, especially those which concern the King; and unless they could find a Reason, why the Parliament Embodied should be more ignorant than particular Persons, the present Case must be clear. That the Jealousy of the Lords arose from a Fallacy thus, The Lords have Judicial Power concerning Treason, and must of necessity know it; the Commons have no Judicial Power over it, therefore cannot know it; that is, because the Commons know what Law is, therefore they have Judicial Power over Law. To this was not any thing Replied.

Farther, We said that because they insisted upon us to specify Treason, because by Committing upon a General they might wrong the Party by Committing him without Cause; and because they themselves were not inform'd in their Consciences what they did: They would do well to consider the many Inconveniencies which might follow, if the Charge of Treason was not General, but Particular; and suppose it was Special, their Lordships would know no more by it. For suppose a Man Impeached for Counterfeiting the Great Seal, which is express Treason, and he may be Impeached for, yet neither their Lordships nor the Party could have any Advantages by that Specification, because there might be as many Questions what is Counterfeiting the Great Seal, as what is Treason.

For Instance. One Leak \*, a Clerk in Chancery, intending to Forge a Patent, puts together two Pieces of Parchment, and had fitted them, and put them together with Mouth-Glew, that they appeared as one: Then a Grant was written upon the outmost, and a Seal affix'd, so that the Great Seal is put to a true Thing; then he cuts off the Edges of the Parchment, so as to sever them, takes off the written One, and leaves the Seal on the Blank, then Forgeth the Grant and makes use of it. This was questioned before the Judges, whether 'twas Treason or not, that is, whether Counterfeiting the Great Seal or not? If it were, it was Treason, otherwise not. They



*Resolved*, it was not Counterfeiting the Great Seal, and so not Treason, but Misprision. And if it had been Treason, they *Resolved*, that an Indictment had been enough to Impeach him. Then suppose you have such an Impeachment before you for Counterfeiting the Great Seal, you have special Treason, and Imprison him; but when it is brought to Question, it appears not to be Treason, therefore he is wrong Imprisoned: And if your Lordships will examine what Knowledge you have of this Fact, you have no more than if it had been a General Treason.

*Lords*. There is a Case put there, as we are content to take a Special Treason, but expect not the Proof as there it was.

*Commons*. If it were a Case put, so is your Lordships Reply, for it was put *ex Concesso*, because you agreed that if the Treason was Special, the Party was to be Committed, and this Case was to shew their Lordships, they were in no better Case then, than if the Treason were General.

But the Lords still pressing that the Impeachment it self of the Earl of *Strafford* was Repealed in the Act about him;

*Commons*. We *Replied*, one Part of the Act ought to be severed from the other, and that which is without Exception shall stand, tho' the other be taken away: For, suppose a Man prosecutes in a Court of Justice, for what he apprehends to be his Right, and yet the Cause goes against him, and he hath no Effect of his Suit, afterward the Party (being an evil-minded Man, and thinking to reach his Ends) Forgeth a Deed, or Suborns Witnesses, and then begins a Suit in some other Court, and by those ways attains his Ends. Then a Bill comes before this Parliament to Reverse the Judgment, reciting that such a Person hath been a Suborner of Witnesses, &c. so, and so, and therefore the Judgment is made void; certainly tho' this Person is Named to be an evil-minded Person, yet this lays no Blemish on his first Proceedings. So that it appears by the Act, that the Proceedings against the Earl of *Strafford* were legal at first; if those afterwards, when the Times became tumultuous, were not, it is not to be applied to what was well done and legal: Then we told them that we had pressed them with four Precedents, and to three of them nothing was Replied.

*Lords*. They Answered, the Reason why my Lord *Finch* was Committed, was because of his Flight.

*Commons*. He was fled before the Impeachment; but it was *Ordered*, That he should be Committed when found.

Then we told them, That we must Report to them, that be the Treason what it would, we could not go to the Lords to have it punished without that Disadvantage, which the publishing the Treason before-hand would expose us to by making of Witnesses, escaping of Parties, and the like; than bade them consider, whether if we should lay before them a Treason in every Thing circumstanced as *Gun-Powder-Treason*, they would not Imprison the Party till the whole Matter was opened.

*Lords*. They Answered to hear that Case put, for in Matter of State, other Courses are to be taken, and they could see no Inconvenience in publishing that to the Lords, which must be published before 400 in the *House of Commons*.

*Commons*. The Commons may proceed with what Secrecy or Openness they please, and the Lords are not to take notice of their Proceedings, whether Open or Secret.

Farther, That by a Matter of State must be understood, when a Parliament is not Sitting, and we know not whither to resort; but when a Parliament is particularly called to prevent the Mischiefs threatening the Kingdom, if that be not capable of Remedying, no other Council could, or we are not bound to resort to that, we are excluded from that to which we ought to resort.

*Lords*. That the Lords bade us take heed of the Liberty of the Subjects, to which they are now fain to have Regard, bidding us consider the Bishop of *Canterbury's* long Imprisonment, without knowing the Cause, and they must satisfy their Consciences, lest they should Commit for Treason, and it not prov'd so.

*Commons*. It appears not that the Bishop of *Canterbury* should have lain less Time, had the Impeachment been Special; and for the Liberty of the Subject, we know not how a Subject should have more Liberty by Special Matter, than General; Special being but adding a formal Titre, and the Subject goes to Prison, as well for the one as the other.

For their Consciences. Suppose a Person accus'd generally, they are then to know whether it be Treason, and is not it as much that they Commit an innocent Person? So as if the Matter was Special.

December 2.

The Lords sent down a Message to the Commons by two Judges, to this Effect, *That upon the Report made to them of the last Free Conference, they are not satisfied to Commit or Sequester from Parliament the Earl of Clarendon, without the particular Treason be mentioned or assigned. Who being withdrawn;*

Lord *Torrington*. (General *M—ck's* Son) Moved not to part with any Privileges of the *Commons of England*, but adhere to the General Impeachment.

Sir *Rob. How*. The Matter before us, is of as great Concernment as ever came before us; if there should be Malice supposed in a Nation against it self, it might be exercised by giving a particular Charge, as well as a general; many of the Lords are convinced by the Reasons we gave, and concur, thinking our Precedents good, and have enter'd their Protestation in the Lords House, asserting the Rights of the *Commons of England* to Impeach generally: So that (excepting the Spiritual Lords) I think I may say the Major Part of the Lords are for us; and should we give up this, we may be wrested out of all Right, and the Commons have no way to proceed



ceed to an Impeachment, but some Men to be so great, as not to be fairly reach'd. Therefore adhere.

Mr. *Wall*. The Lords are a Noble Estate, but whatever the Matter is, they have of late some Advice given them, which makes them proceed as they never did yet; for scarce any Thing happens betwixt us, but they inroach upon us. The *Militia* is now as burdensom to the Fifty Pound Man in the Country, almost as all other Taxes, and the Lords have gotten this Advantage of us, that they touch not the Burden of it with their Finger: So in time of the Plague, the Commons must be shut up, but not They, insomuch that a good Act provided to that Purpose passed not; we Impeach'd the Lord *Mordant*, and could not bring him to the Bar (tho' formerly I have known an Earl and a Lord brought thither). You desired a free Conference about it, but could not obtain one to this Day. *Rome* was at first modest, and only meddled with Spiritualls, but afterwards concerned themselves so much with other Matters, that every Thing almost was made to be in *Ordine ad Spiritualla*, and many Kingdoms thereupon break from them. The Lords now insit upon one Thing, because they say 'tis in order to their Judicature, perhaps hereafter they will tell us we must come to them on our Knees, because it is in order to their Judgment. Consider therefore whether there be any Hope of giving them Satisfaction; then, whether you will adhere, and what you will do afterwards; for the present my Motion is to adhere.

Mr. *Vaugh*. It is truly said, the Business before you seems to be as great as hath been in Parliament; many of the Consequences being invisible, therefore before you *Resolve* what to do, take the whole Matter before you.

The Difference between the Lords and us, is upon a general Impeachment of Treason; the Lords, after a Free Conference, say, they will not Commit unless Special Treason be mentioned or assign'd; those whom you employed to Manage the Conference were very unwilling to differ with them, but it seems it hath produced nothing, and I have nothing to make me believe, but that the Reason is, that the Lords were *Resolved* (say what we would) not to be satisfied; for I know nothing which they Offer'd, but it was fully Answer'd, nor any thing left undone to satisfy them if they would have been satisfied; what I have to say now is to clear something which the Lords may make much Sound of.

When we urged Precedents, and made them our principal Reason, we told them, the way to decide what was in Difference betwixt the *Houses*, is, the Usage of Parliaments; but to our Precedents we received no full Answer.

Then the Lords used this Reason, namely, That they cared not for Precedents, because it was against the express Law of the Land.

I Answer'd them, we would join with them, if they could shew Law against it, and expected what they would Answer, but heard nothing: Much Discourse there was, without Application, of the Great *Charter*, and of a Statute of 28 *Ed. 3.* but not applied; so that I thought Law in a Lord's Mouth, was like a Sword in a Lady's Hand, the Sword might be there, but when

it comes to cut, it would be aukward and useless.

But I hear since, that their Meaning was this (which must be cleared by mentioning some Laws) that by *Magna Charta* it is provided, *That no Man shall be Taken or Imprisoned, or Condemned, but by the Law*; and thence they infer, 'That no Man may be Imprisoned, but it must be by his Peers, or by the Law of the Land.

Again, 5 *Ed. 3.* No Woman shall be attached upon Accusation, or be adjudged of Life or Limb, but according to the Law.

25 *Ed. 3.* No Man shall be taken by a Petition to the King or his Council, unless by Indictment of lawful People, or by Process of Writ at Common Law, and (say they) this Case is to none of these.

28 *Ed. 3.* No Man shall be Imprisoned without due Process according to the Old Law of the Land: But this Case being neither by Presentment nor Indictment, the Lords would not stand upon our Precedents, but relied on this, as if it were enough in Bar of all our Precedents.

Therefore to open this, and the Danger of the Consequence, there are in the Land many different Laws, and Proceedings in these Laws, and Imprisonment upon them; and yet not one of them by Presentment, Indictment, or Trial by Peers, tho' the Lords thought this was the Law, and there was no other.

1. It is known that the Crown-Law, or Prerogative, is distinct Law from that between Party and Party.

2. There is the Law and Custom of Parliament, called a Law, *ab omnibus querenda, à multis ignorata, & à paucis cognita.*

3. Then the Canon-Law, (and it is much the Bishops forgot that) and there is nothing in that Law, more than standing in a White Sheet, which proceeds not by Indictment or Presentment, yet there is Imprisonment even in that Law.

4. There is the Law of Admiralty, and the Articles of *Oleron*, where there is Proceedings of another Nature, and by Imprisonment.

5. The Law of Merchants, or of the Staple.

6. The Law of Arms, where is Imprisonment and Death, and yet different Proceedings from the Common-Law in the Great *Charter*: Now no Man thinks that all those Courses of Proceedings are taken away by the Common-Law, and it is gross Ignorance to think it.

7. The Law of the Forest, which is most different: So that to urge *Magna Charta* to this Purpose, as if all Proceedings in those Cases must be according to the Common-Law, is absurd.

Then there are divers Writs in the Register.

One, When a Man hath received the King's Money to serve him, and went not, then there is a Writ to Arrest him upon a Certificate from the Captain under whom he was to serve.

Then the ordinary Writ, which belongs to the Law Ecclesiastick, *de Excommunicato Capiendo.*



Another, *de Apostata Capiendo*, to recover a Regular run away from his Convent.

Another, called *ne exeat Regno*, to Imprison a Man, who will not give Security not to go out of the Kingdom, and this is not Traversable any where, because it suggests that he will *Machinat* somewhat hurtful to the Kingdom, and upon that Suggestion he is Imprisoned.

Another, when a Man hath a *Leprosy*.

Another, to burn *Hereticks*, which concern'd the Bishops also, if they had pleas'd to think of it.

These Proceedings are no way agreeable to those mentioned in the Common-Law.

Then consider how this *Resolution* of the Lords strikes at the Law of Parliaments.

1. It is certain that all Imprisonment by Parliament is not by Presentment, Indictment, &c. So that by this means that Power is taken away.

2. Contempt against Parliamentary Authority, whosoever he is to appear before them, and disobeys them, they may Imprison him in the *Tower*, and yet it is not against *Magna Charta*.

Whither therefore tends this?

The Conclusion must be, that no Impeachment by the Commons must go on, unless it be by Presentment, and so there is an end of all that, for which the Parliament is principally call'd; unless we are part of those 5000 contemptible Ones, who are only fit to give Money: That may be reserved for us, but nothing else; tho' 23 E. 3. saith, *For Redress of Grievances in the Kingdom a Parliament shall be called every Year*. I would know which Way we should redress Abuses, if we are so far from remedying in Parliament, that we must be shut out to the Common Courses in other Courts?

*Obj.* The Lords may say, if you find the Statutes broken, and short, you shall have New.

*Ans.* And when these New Ones are broken, then we shall have a Remedy; so rise up Remedy, and go to the Remedy, *ad infinitum*, for there is no more Reason to think that a Second Law shall be maintained more than the First, and what Way a Mischief shall be redressed, other than by Parliament, I know not.

So that by this *Resolution* of the Lords, and denying to Commit upon this Ground (for they shew'd no other) every Thing for which a Parliament is useful is denied us.

After all this come to the very Case.

If a Treason be Committed, and the Fame is that *A. B.* is guilty of it, it is lawful to Apprehend him for it. If a *Hue and Cry* pursue a Man, tho' he be not of evil Fame, yet he may lawfully be Imprisoned: If it proves false, he hath his Remedy; but that obstructs not the Law to bring him to Trial. Any Watchman may Arrest a Night walker, and hath a Warrant in Law for it, and this is as good Process in Law, as any original Writ.

And after all this, Consider with what kind of Colour, when there are weighty Reasons why

we should not mention special Treason, and that mentioning it generally, answers the Petition of Right, the whole Commons of *England* (who are in no Degree represented by the Lords, they only represent their own Persons) should be denied the Securing a Person Impeached unless a particular Charge be given, how prejudicial soever to the Kingdom.

Another Thing, there is no Right which a Man hath in this Land, or any part of the World, but his Right is such, that if it be kept from him, he hath a Means to come to it, otherways it is *Dammum sine injuriâ*; for where the Law gives no Remedy, there is but a Supposition of Right: By the same Measure it will follow, that there is no civil Wrong can be done to any Man, but the Law provides a Remedy, if that Wrong be done; and if by the Law there is no Remedy, it is no Wrong: consider then this Case.

There are in this Kingdom, in the Civil State of it, three Estates, which the King hath then in making Laws: There are three Estates, whereof the King is Principal; sometimes they are mention'd as the King's three Estates, and he none of them: The Estates in general are, the Commons of the Kingdom, (who are perfectly represented in this *House*) the Lords another, and the King another; and these are such, that there is no Petitory Action, nor the Laws directed to any one of them, but the Laws you make, are to distribute Justice in other Courts.

For Instance, If all the Commons of *England* (who are one of the Estates) should Accuse one of themselves, the Party can have no Wrong, because the Parliament can have no Action brought against them, nor can they be supposed to do any thing for Malice.

It is the same between the Body of the *Lords* and *Commons*; and there is no Law either to Vindicate the one or the other; but they stand as if there were no communicable Law betwixt them; but the Measure between them is that which is good for the whole; for they are the Makers of Laws for others, but no Laws can be fancied to reach the whole of the *Commons*, or of the *Lords*.

So that 'tis easily to be seen, how it hath been put upon us; so that now we are in such a Case, we know not to what end we shall proceed upon this or any other Impeachment; for by this Judicial Power, you shall be excluded from any Proceedings by Laws of Parliaments, and so you take away the whole Right of the Kingdom.

*Quest.* But now what shall you do?

*Ans.* I see many Inconveniencies which may happen both ways, but I see so many this way, that if any Man gave such Counsel as is charged upon the Earl of *Clarendon*, it is not so dangerous as the Case before you; for the Inconveniencies attending that Counsel would quickly shew it self by the Misery following: But this is a small thing begun with, which, like a Canker, may eat till it be incurable, and that is as absolutely justifiable as this.

And now I have said this, I am perplexed what to say more, for all can bear me witness, what Respect I have endeavoured to preserve to the *House of Peers*, but I am so sensible of this, that



that tho' I cannot forget my Respect to them, yet I must lament the Condition into which they have brought themselves first, and us next, for they cannot think to avoid it.

The *House of Peers* is but a new Style, called so, as *Jurors* are called *Peers*, from the Word *Par*; for every Commoner hath his *Peers* as Lords have; and the whole Style formerly was *Arch-Bishops, Bishops, Dukes, &c.* But *Peers Regni* is a new Style. It is called the *Upper House*, and is to be look'd upon with Reverence. The Lords have a Jurisdiction; but in this Case, I must be plain, their granted Jurisdiction ariseth from the *House of Commons*, if you Impeach not there your Judicial Power will be very little. If a Lord be to be Tried for Treason, the Lords are but his Jurors; and tho' they Try him upon Honour, not upon Oath, yet they are no more his Triers, than as out of Parliament: The Judge of Treason in the Lords *House*, is Constituted by the King, as a Lord *High Steward*, and is no other Judge, therefore I know not the Judicature they speak so much of.

There is another for Writs of Error, which are there determined, but the Jurisdiction of that is very little, for the Inconveniency of the Lords determining what could not be determined in other Courts, is so found out 25 *Eliz.* They are to be brought first into the Exchequer-Chamber.

There is another Way when Persons carry Complaints to the Lords, which is a Question, for Commoners ought not to carry Complaints there, except in some Cases from *Chancery*; therefore this matter of Jurisdiction, which they talk of, is not such a wonderful thing as they would make it.

Therefore whatever we shall do after it, your Rights being so much concerned, that you know not where the stay will be, it is necessary that you make a Committee to draw up a Protestation to be made by this *House* concerning this Matter. The Invasion of your Right in it, and the Danger to the Kingdom by it.

Mr. *Colem.* The Lords say, That committing upon a general Impeachment is against Law, and I think it will appear so; I deny not, but a *Mittimus* without special Cause is legal, and grounded upon the Petition of Right, the Reason of which is to secure Men against Commitment by a special Warrant, and a Judge ought not to discharge where Treason is alledged, but in this Case it is different; The Judges cannot discharge a Man Committed after Examination, but the Lords ought not to Commit a Man, except there be particular Treason.

If I come before a Justice of Peace, and say, I accuse this Man of Treason, will any wise Man Commit him? he makes his Warrant indeed, but he that accuseth must go farther and make it more particular, and the special Matter must appear before he Commits, and this is the present Case.

The Common-Law is, That no Man ought to be Committed without particular Cause; because no Man can Commit in Capital Matters, without taking Examination before-hand, otherwise no Man can justify a Commitment: Therefore I am not satisfied that the Lords had not reason to deny. The Commons are in the Nature of a *Grand Jury* to present, but the Lords

are the *Judges*; Commitment is not the Judgment, but in order to it, and the Lords have a discretionary Power in the Case: The Lords say not that they will not Commit, but that they are not satisfied to do it without special Matter, therefore we ought to send it up.

Sir *Rob. How.* I have attended the Reasons given against making a Protestation, and whatever is said, is but levelling a *House of Commons* with every private Accuser; a Justice of Peace (it is said) must have Evidence before he Commit, and this *House* has had Inducements to Impeach; and may not a *House of Commons* Judge what is Treason as well as a Justice of Peace?

The Inconveniencies and Dangers laid before you, if you proceed, are nothing in comparison of those on the other side.

Had the Lords Imprisoned, they had before this had the particular Charge, and the Protestation is not to stop it, but to make way for it some other way; for it will resolve into a Remonstrance, by which you may give the Nation an Account of your Proceedings to come to a Trial of this Business.

Mr. *Vaugh.* By the Protestation spoken of, is meant to preserve the Rights of this *House* upon the whole Matter, and to give the Reasons of your Proceedings.

Sir *Tho. Meers.* What is said, not being explained, I know not what is meant by the Protestation; if it be but to enter it into our Books, I am not against it; if it be an Appeal to the Nation, pray consider what you do.

Mr. *Vaugh.* This way of Protestation differs from entering in our Books, but the best way is to draw it up, and to bring it to you, and then any Man may take Exceptions against it; for the meaning is, that this *House* claims its Rights.

Mr. *Garraw.* First make your Protestation, and then Appeal to the King.

Mr. *Vaugh.* None can surmise that you mean an Appeal to the People by what is moved, for what is done, must be done to some part of the Parliament; the King, Lords, or your selves: And they who speak of it (if it were done with evil intent) deserve to be called to the Bar; when it is brought before you for your Approbation, you may either retain, or reject it.

Sir *Walt. Young.* I desire that the *House* may know before-hand to whom they are to Remonstrate, and on what ground, and therefore to Adjourn their Debate now.

Mr. *Trev.* What Appeal you make ought to be to the King, but bring it in hither and give it what Name you please.

Sir *Rob. Atk.* As I would be tender of your Privileges, so of giving Offence to the Lords, therefore we shall endeavour to be Unanimous in this *House*; a Protestation is Named, I am a stranger to it, and would understand clearly what it is, before we do it; That it is a Course warranted by Precedents and Proceedings of Parliaments, considering what effect it hath had in late times, therefore we may do well to adjourn the Debate and consider of it.

Sir *Tho. Lit.* This Protestation will be like that in the Lord *Maynard's* Case, but somewhat longer, and ought to go no farther than to one of the Estates, and be kept within the Walls.

Mr. *Swinf.* You sent up a Charge to the Lords in general, desiring that the Earl of *Clarendon* should be secured, and in convenient time you



you would send up Articles; from that time it hath not been done, and the Lords have passed several Votes about it since, but you have not passed one.

First they Voted, that they had not complied with your Desires for want of particular Treason; Then you give them Reasons, they are not satisfied with them; then a Free Conference, they are still unsatisfied; and all this while you have not come to any Resolution: So that till you come to a Vote, no Man knows but that you are satisfied with their Answer; for when the Matter of the Protestation is brought in, we shall not be ready for it till we have resolved, that what the Lords Insist on, is an Obstruction of Justice, and you cannot agree with them without great Inconvenience to the Nation; Therefore put a Question, *That the Lords, not having agreed to Secure the Earl of Clarendon upon the general Impeachment, have obstructed the Publick Justice of the Kingdom in Proceedings of Parliament, and is of dangerous Consequence*: This is necessary, because the Lords have heard nothing from you, but endeavour to satisfy them.

Sir John Good. This Question will be a greater Accusation of the whole House of Lords, than the other is of the Earl of Clarendon. If you will go by way of Protestation, and keep it within your own Walls, I like it better than this Question.

Sir Rob. How. The putting this Question is no Charge upon the House of Lords; and therefore if that Gentleman thinks it so great an one, sure he thinks the Charge against the Earl of Clarendon to be a very small one. Is there any Obstruction to Justice? If not, Why do we not Comply? If there be, we cannot it seems complain without Charging the Lords. Keeping it within your own Walls, is but like a Man, when he is alone, muttering Arguments to himself, and Commending himself for it. If you meet with any Obstructions, pray first put the Question, whether you are obstructed.

Sir Rob. Atk. It is no light matter to Charge the Lords with Obstructing Justice; therefore the thing being new, pray adjourn it till tomorrow, that we may be more of one Mind.

*Then the Question was stated, Namely,*

That the Lords not having complied with the desire of the Commons in Committing the Earl of Clarendon, and Sequestering him from Parliament upon the Impeachment from this House, is an Obstruction to the publick Justice of the Kingdom, and is a Precedent of evil and dangerous Consequence.

Resolved, *That the Question be put,*

And being put, *Resolved in the Affirmative.*

Resolved, *That a Committee be appointed to draw up a Declaration to Vindicate the Proceedings of this House.*

December 3.

A Message from the Lords by two Judges, That they have received a large Petition from the Earl of Clarendon, which intimates that he is withdrawn.

VOL. II.

Sir Tho. Tompk. Moved to take care to get the Sea-ports stoppt.

Sir Tho. Lit. I believe he is now past stopping, but we should do it, tho' it have no effect; lest it look as tho' we would have him escape.

Sir Rob. How. The Lords seem now mistaken in their Opinion at the Conference, they said there was no fear of his Running away; and in our House it hath been Jested that he was not like to Ride Post. Besides the Expression in the Message is (*withdrawn*) which may be an inward Chamber, therefore 'tis fit to desire to see the Petition, and Command some Members to prepare something to Vindicate your selves in discharge of your Duty.

Mr. Seym. You cannot take notice to the Lords of the Petition, unless they think good to Communicate it to you, but make the Declaration.

Mr. Vaugh. I look upon what the Lords say as doubtful, therefore beware lest you do something misbecoming you. They only say, that he is withdrawn, but not what is his Petition; for the saying that he is withdrawn, is not the Matter of a Petition. Perhaps he is gone into the Country, the Message seems light, and you are to take no notice of it. If it be of Moment, and they think us Concern'd, they should let us know it; and I cannot think so of the Lords, that they would use that word, if he were fled: therefore send a Message, to know whether fled or withdrawn.

Mr. Sol. Gen. When a Delinquent signifies to his Judges, that he is withdrawn, it cannot signify any thing, but that he is withdrawn from their Judgment. None but a mad Man will tell them that he is fled, fearing what may follow; it would be well if their Care would prevent his flying, but you cannot Answer it, if you hear they do nothing, and so seem to say, fare him well.

Upon all which Motions, *Ordered,*

That Sir Tho. Clifford (Comptroller of the King's Household) be sent to the King, to desire the Ports may be stopped.

December 4.

The Lord Fitzbarding makes Report from the King, that the Message for stopping the Ports being delivered him, he had taken care accordingly.

A Message from the Lords to desire a speedy Conference:

From which Mr. Solicitor Reports;

We attended the Lords at the Conference, which was deliver'd by the Duke of Buck. who said to this Purpose,

That the Lords had Commanded him to deliver to us that Scandalous and Seditious Paper sent from the Earl of Clarendon, desiring us to present it to you; and to desire you in convenient time to send it to them again, for it had a Stile which they were in love with, and desired to keep it.

Which said Paper was read, and is as follows, viz.

E e e e

To



To the Right Honourable the LORDS  
Spiritual and Temporal, in Parliament  
Assembled, the humble Petition and Ad-  
drefs of Edward Earl of Clarendon.

May it please your Lordships,

I Cannot express the unsupportable Trouble and  
Grief of Mind I sustain, under the Apprehension  
of being Misrepresented to Your Lordships, and  
when I hear how much of Your Lordships time hath  
been spent upon the mention of me, as it is attended  
with more Publick Consequences, and of the Dif-  
ferences of Opinion which have already, or may  
probably arise between Your Lordships and the Ho-  
nourable House of Commons; whereby the great  
and weighty Affairs of the Kingdom may be ob-  
structed in the time of so general a Dissatisfaction.

I am very unfortunate to find my self to suffer so  
much under two very disadvantageous Reflections,  
which are in no degree applicable to me.

The First from the Greatness of my Estate and  
Fortune, collected and made in so few Years, which  
if it be proportionable to what is Reported, may very  
reasonably cause my Integrity to be suspected.

The Second, That I have been the sole Manager  
and chief Minister in all the Transactions of State  
since the King's Return into England, to August  
last, and therefore that all Miscarriages and Mis-  
fortunes ought to be imputed to me and my Counsels.

Concerning my Estate, Your Lordships will not  
believe, that after Malice and Envy hath been so in-  
quisitive and so sharp-sighted, I will offer any thing  
to Your Lordships, but what is exactly true; and I  
do assure Your Lordships in the first place, That  
(excepting from the King's Bounty) I have never re-  
ceived nor taken one Penny but what was generally  
understood to be the just lawful Perquisites of my  
Office, by the constant Practice of the best Times,  
which I did in my own Judgment conceive to be that  
of my Lord Coventry, and my Lord Ellmore; the  
Practice of which I constantly observed, altho' the  
Office in both their Times was lawfully worth double  
to what it was to me, and I believe now is.

That all the Courtesies and Favours which I have  
been able to obtain from the King for other Persons  
in Church or State, or in Westminster-Hall, have  
never been worth me Five Pounds: So that Your  
Lordships may be confident I am as innocent from  
Corruption as from any disloyal Thought, which after  
near Thirty Years Service of the Crown, in some  
Difficulties and Distresses, I did never expect would  
be objected to me in my Age.

And I do assure Your Lordships, and shall make  
it very manifest, That the several Sums of Money,  
and some Parcels of Land, which His Majesty hath  
Bountifully bestowed upon me since his Return into  
England, are worth more than all I have amounts  
unto; so far I am from advancing my Estate by in-  
direct Means. And tho' this Bounty of his hath very  
far exceeded my Merit, or my Expectation, yet some  
others have been as fortunate at least in the same  
Bounty who had as small Pretences to it, and have  
no great Reason to envy my Condition.

Concerning the other Imputation of the Credit and  
Power of being Chiefest Minister, and so causing all  
to be done that I had a mind to; I have no more to  
say, than that I had the good Fortune to serve a  
Master of a very great Judgment and Understanding,  
and be always join'd with Persons of great Ability

and Experience, without whose Advice and Concur-  
rence, never any thing hath been done.

Before his Majesty's coming into England, he was  
constantly attended by the then Marquis of Ormond,  
the late Lord Culpeper, and Mr. Secretary Nicho-  
las, who were equally trusted with my self, and  
without whose Joint Advice and Concurrence, when  
they were all present (as some of them always were)  
I never gave any Counsel. As soon as it pleased  
God to bring his Majesty into England, he Estab-  
lished his Privy Council, and shortly, out of them  
he chose a Number of Honourable Persons of great  
Reputation, (who for the most part are still alive)  
as a Committee for Foreign Affairs, and Considera-  
tion of such things as in the Nature of them required  
much Secrecy, and with these Persons he vouchsafed  
to join me: And I am confident this Committee never  
transacted any thing of Moment (his Majesty being  
always present) without presenting the same first to  
the Council-Board; and I must appeal to them con-  
cerning my Carriage, and whether we were not all of  
one Mind, in Matters of Importance.

For more than two Years I never knew any Dif-  
ferences in the Councils, or that there were any Com-  
plaints in the Kingdom, which I wholly impute to his  
Majesty's great Wisdom, and the intire Concur-  
rence of his Counsellors, without the Vanity of af-  
suming any thing to my self; and therefore I hope I  
shall not be singly Charged with any thing that hath  
since fallen out amiss. But from the time Mr. Se-  
cretary Nicholas was removed from his Place, there  
were great Alterations; and whosoever knew any  
thing of the Court and Councils, know well how  
much my Credit hath since that time been diminished,  
tho' his Majesty graciously vouchsafed still to bear my  
Advice in most of his Affairs: Nor hath there been,  
from that time to this, above one or two Persons  
brought to the Council, or preferr'd to any consider-  
able Office in the Court who have been of my inti-  
mate Acquaintance, or suspected to have any Kind-  
ness for me; and most of them most Notoriously  
known to have been very long my Enemies, and of  
different Judgment and Principles from me, both in  
Church and State, and have taken all Opportu-  
nities to lessen my Credit with the King, and with  
all other Persons, by Mis-representing and Mis-re-  
porting all that I said or did, and persuading Men  
I have done them some Prejudice with his Majesty,  
or crossed them in some of their Pretensions. Tho'  
his Majesty's Goodness and Justice was such that it  
made little Impression upon him.

In my humble Opinion, the great Misfortunes of  
the Kingdom have proceeded from the War, to which  
it is notoriously known that I was always most averse,  
and may without Vanity say, I did not only foresee,  
but declare the Mischiefs we should run into, by en-  
tring into a War, before any Alliances made with  
the Neighbouring Princes. And that it may not be  
imputed to his Majesty's want of Care, or the Neg-  
ligence of his Counsellors, that no such Alliances were  
entred into, I must take the boldness to say, his Ma-  
jesty left nothing unattempted in order thereunto;  
and knowing very well, that France resolv'd to be-  
gin a War upon Spain, as soon as his Catholick  
Majesty should depart this World, which being much  
sooner expected by them, they had in the two Winters  
before been at great Charges in providing plentiful Ma-  
gazines of all Provisions upon the Frontiers, that they  
might be ready for the War, his Majesty used all pos-  
sible-Means to prepare and dispose the Spaniard with  
that Apprehension, offering his Friendship to that De-  
gree, as might be for the Benefit and Security of both  
Crowns.

But



But Spain flattering it self, That France would not break with them, at least, that they would not give them any Cause by administering Matter of Jealousy to them, never made any real Approach towards a Friendship with his Majesty, but, both by their Ambassadors here, and to his Majesty's Ambassador at Madrid, always persisted, as Preliminaries, upon the giving up of Dunkirk, Tangier, and Jamaica.

Tho' France had an Ambassador here, to whom a Project of a Treaty was offered, and the Lord Hollis, his Majesty's Ambassador at Paris, used all Endeavours to pursue and prosecute the said Treaty, yet it was quickly discerned, That the principal Design of France was to draw his Majesty into such a nearer Alliance as might advance their Design; without which, they had no mind to enter into the Treaty proposed.

And this was the State of Affairs when the War was entred into with the Dutch, from which time, neither Crown much considered the making any Alliance with England.

As I did from my Soul abhor the entering into this War, so I presumed never to give any Advice or Counsel for the way of managing it, but by opposing many Propositions, which seemed to the late Lord Treasurer and my self to be unreasonable, as the Payment of the Seamen by Tickets, and many other Particulars which added to the Expence.

My Enemies took all Occasions to inveigh against me, and making their Friendship with others out of the Council, of more licentious Principles, and who knew well enough how much I disliked and complained of the Liberty they took to themselves of Reviling all Councils and Counsellors, and turning all things Serious and Sacred into Ridicule. They took all ways imaginable to render me ungrateful to all sorts of Men, (whom I shall be compelled to name in my Defence) persuading those that miscarried in any of their Designs, that it was the Chancellor's doing; whereof I never knew any thing. However, they could not withdraw the King's Favour from me, who was still pleased to use my Service with others, nor was there ever any thing done but with the joint Advice of at least the Major part of those who were consulted with. And as his Majesty commanded my Service in the late Treaties, so I never gave the least Advice in private, nor wrote one Letter to any one Person in either of those Negotiations but upon the Advice of the Council, and also after it was read in Council, or at least by the King himself, and some others; and if I prepared any Instructions or Memorials, it was by the King's Command, and the Request of the Secretaries who desired my Assistance; nor was it any Wish of my own, that any Ambassador should give me any Account of the Transactions, but to the Secretaries, to whom I was always ready to advise; nor am I conscious to my self of ever having given Advice that hath proved mischievous or inconvenient to his Majesty; and I have been so far from being the sole Manager of Affairs, that I have not in the whole last Year been above twice with his Majesty in any Room alone, and very seldom in the two or three Years preceding.

And since the Parliament at Oxford, it hath been very visible, that my Credit hath been very little, and that very few things have been bearkened to, which have been proposed by me, but contradicted, eo nomine, because proposed by me.

I most humbly beseech Your Lordships to remember the Office and Trust I had for seven Years, in

which, in Discharge of my Duty, I was obliged to stop and obstruct many Mens Pretences, and refused to set the Seal to many Pardons and other Grants, which would have been profitable to those who procured them, and many whereof, upon my Representation to his Majesty, were for ever stopt, which naturally have raised many Enemies to me: And my frequent concurring, upon the Desires of the late Lord Treasurer, (with whom I had the Honour to have a long and vast Friendship to his Death) in representing several Excesses and Exorbitances, the yearly Issue so far exceeding the Revenues, provoked many Persons concerned, of great Power and Credit, to do me all the ill Offices they could. And yet I may faithfully say, That I never meddled with any part of the Revenue or the Administration of it, but when I was desired by the late Lord Treasurer to give him my Assistance and Advice, having had the Honour formerly to serve the Crown as Chancellor of the Exchequer, which was for the most part in his Majesty's Presence. Nor have I ever been in the least Degree concerned, in point of Profit, in letting any Part of his Majesty's Revenue; nor have ever Treated or Debated it, but in his Majesty's Presence, in which my Opinion concurr'd alway with the Major part of the Counsellors who were present.

All which, upon Examination, will be made manifest to Your Lordships, how much soever my Integrity is blasted by the Malice of those who I am confident do not believe themselves. Nor have I in my Life, upon all the Treaties, or otherwise, received the value of One Shilling from all the Kings or Princes in the World, (excepting the Books of the Louvre Print sent me by the Chancellor of France, by that King's Direction) but from my own Master, to whose intire Service, and the Good and Welfare of my Country, no Man's Heart was ever more devoted.

This being my present Condition; I do most humbly beseech Your Lordships to entertain a favourable Opinion of me, and to believe me to be Innocent from those foul Aspersions, until the contrary shall be proved; which I am sure can never be by any Man worthy to be believed: And since the Distempers of the Times, and the Difference between the Two Houses in the present Debate, with the Power and Malice of my Enemies, who gave out that I should prevail with his Majesty to Prorogue or Dissolve this Parliament in Displeasure, and threaten to expose me to the Rage and Fury of the People, may make me to be look'd upon as the Cause which obstructs the King's Service, and Unity and Peace of the Kingdom.

I most humbly beseech Your Lordships, that I may not forfeit Your Lordships Favour and Protection, by Withdrawing my self from so powerful a Persecution, in hope that I may be able, by such Withdrawing, hereafter to appear and make my Defence, when his Majesty's Justice (to which I shall always submit) may not be Obstructed, or Controlled, by the Power and Malice of those who have sworn my Destruction.

CLARENDON.

Mr. Vaugh. I think it not convenient to lose more time about this Paper. Since the time of the Earl of Clarendon's Name being mention'd here, I had nothing to Charge him with till now, but most of the Heads of this Charge are so weighty, that I am confident they will be easily and thoroughly proved, tho' I know not



how; so that I admire at his Confidence, to Charge this House, and so the Nation, as his Persecutors, and that in such a Condition, as he hopes to vindicate himself. It's the first time that ever I heard an Innocent Man run away under the greatest Charge, with hopes to return again and vindicate himself.

Then mark one Expression, he saith, *he is as far from Corruption, as from Disloyalty*. If he said he was guilty of neither, he had said something; but by that Expression he may be guilty of both: So insolent a Paper I never met with in this Kingdom, nor have I ever read the like in any other; so inconsiderable a part of the Nation as he is, to lay it upon the Nation, who, if innocent, might defend himself; if Guilty, why doth he Charge the Nation with persecuting? Therefore without troubling your selves with it, do as the Lords have done; who deliver it to you as a Scandalous and Seditious Paper; it hath Malice in it, and is the greatest Reproach upon the King, and the whole Nation, that ever was given by Man. Therefore put the Question whether his Paper shall not have the Character, that it is a *Scandalous and Malicious Paper, and a Reproach to the Justice of the Nation*.

*Resolved, upon the Question,*

That the Paper sent to the Lords by the Earl of Clarendon, and by them sent down to the House of Commons, and now read, is *Scandalous and Seditious, and doth Reproach the King and the Publick Justice of the Nation*.

Sir Rob. How. You have voted this Paper Scandalous, and therefore it should not live, wherefore I move it should be burnt by the Hangman.

Mr. Garraw. The Paper is the Lords, and you must send it to them, but enter it into your Books, and your Vote upon it.

*Resolved, To have it burnt.*

Sir Rob. Car. The Paper is the Lords, therefore move them to concur that it may be burnt.

Sir Rob. How. The meaning of my Motion is, because the Duke of B ——— desired the Paper again for the admirableness of the Stile; it is entered into their Books already, and they need it not to that End; therefore desire the Lords Concurrence to burn it.

*Resolved, To send it to the Lords to that End.*

*December 5.*

A Motion being made to send to the Lords in pursuance of the Vote about burning the Paper:

Mr. Vaugh. I am against sending up to the Lords to that purpose, because you have Ordered to enter the Paper into your Books, and when a Paper is burnt, it is not to stand upon Record, but should be rased out; which two Things are a perfect Contradiction, therefore let it rest as it is; We have Voted it *Scandalous, &c.* The Lords tell us not that they have done any such thing, tho' they ought to have done it first.

As for the Earl of Clarendon, he being now gone, if such a like Occasion should fall out, we are in a worse Condition than we were: for there is this Precedent against us, in a Case now manifest: And it becomes us to do something in order to the Lords concurring, that so a good Understanding may be got; therefore I shall propound this to you, to be sent up to them to that End.

Namely, when any Subject shall be impeached by the Commons before the Lords in Parliament with desire to secure him, such Person by the Law of the Land ought to be secured accordingly. This you have in effect Voted already, in saying the *Justice of the Kingdom is obstructed by their not doing it*.

Secondly, when such Impeached Persons shall be secured, the Lords may limit a certain Time for bringing in the Charge, to prevent delay of Justice.

This may salve all, and prevent such Ways as may be displeasing to the Lords, and perhaps us also, in some Cases hereafter.

Mr. Swin. I am persuaded that according to Rules of Parliament, when you Charge by Impeachment generally, and promise in due time to send up your Charge, they ought to secure; but they not having done it, I question whether you could do what you have; but the Earl of Clarendon flying, it is manifest Justice was obstructed; for he might have been brought to his Trial, if the Lords had secured him; but now your Vote is made good, which seems to lay the Advantage on your side.

Sir Rob. How. I think this Message to the Lords, will destroy the way of vindicating our selves by Declaration; therefore finish the Declaration, and then Resolve, before you publish it, whether to send up this Message.

Mr. Vaugh. If the Lords agree with us, we may spare the Declaration, but if they agree not now, they will much less hereafter: Your Declaration can amount to no more but this, make a Narrative of the Invalidity of the Lords Precedents; but then you must of necessity do something more, else your Labour is in vain; therefore this Message with these Votes are necessary.

Sir Rich. Temp. I expected that when the Earl of Clarendon had been fled, the Lords would have desired the King to issue out a Proclamation to Apprehend him, seeing they have been the Occasion of his Escape; therefore now desire their Concurrence to go to the King to that End, and if they Concur, they have upon the Matter granted Commitment upon a general Impeachment.

Mr. Vaugh. I thought it my Duty to offer you what I have done, if you like it not, I desire to be excused in serving you in the Declaration, and that they who think it necessary would be pleased to take the Pains to do it.

Sir Tho. Lee. If you declare, it will beget an Answer, and where will that end? If you send up your Votes, and the Lords agree, your End is Answered; for it is a yielding that which they have yet denied; your declaring, and entering it upon the Journal, will be to no purpose. It is but like a Man, who having been beaten publickly, in the Chamber calls him who did it Rogue.



Mr. Hampd. I desire that the Words (*Law of the Land*) may be left out, and the Words (*Law of Parliament, or, Usage of Parliament*) put instead of them; for it hath been shewed us, that there are several ways of Impeachment besides Common-Law.

Mr. Vaugh. Those words were purposely put in, because at the free Conference, when we pressed the *Law of Parliaments*, the Lords pressed the *Law of the Land*, by way of Negative, as if the *Law of the Land* were otherwise; but rather than that shall be any obstruction, put it by *Law*.

Mr. Stew. Leave out the Words (*by Law*) for if a Man be secured, it is implied by them who do Commit that it is according to Law.

Then it being Moved to draw both Votes in one;

Sir Tho. Litt. Tho' you should put both Votes into one, it will not answer your end, for the Lords will not Concur with the first Part, and yet may make use of what Part you grant of it, that is the last, and so have advantage against you; but there is another Reason, why you should forbear these Votes, Namely, *Prudence*.

The Earl of Clarendon being gone, there is an expectation that a Bill should be prepared to do something farther, wherein I hope both Houses will join; if you send up this, you will give disturbance to that Bill; and if you should enter this in your Books, in order to send it up hereafter, they will hear of it, as done to make them swallow their former *Resolves*. Therefore defer it for the present.

Mr. Trev. Consider whether the Matter betwixt you and the Lords is not well as it is: You have Voted, That when a Man is generally Impeached, he ought to be secured, and that the Lords not having done it, is an obstruction to Justice; and what will it signify to carry it to the Lords; what hath since fallen out, justifies you, and lays the disadvantage upon the Lords. The World expects now what you will do farther, and that must be by Concurring with the Lords.

Sir Tho. Cliff. We all agree to these Votes, in order to justify your Rights; but what is the use of it? You have already done it in your Books, and you cannot expect the Lords should go so much against their own Votes, this therefore will but widen the Gap, it being telling them they must eat their Words.

Sir Tho. Litt. Those, who have had a hand in the Charge against the Earl of Clarendon, have been thought sometimes too Violent, sometimes too Remiss, as not able to make out the Charge: But what I speak now, is for your Honour, which will be wrong'd in this Proceeding; I am for bringing the Impeachment to something; and therefore against these Votes: Now you make a Declaration of your own Rights, and entering it upon your Books, that not only the Vote may appear, but the Ground of it, but not to declare to the Lords, which will beget an Answer, and exasperate. It is now unseasonable to make the Lords retract, therefore lay it aside; for tho' I am confident that Gentlemen did it to no such end, yet if I would design any thing to the Earl of Clarendon's Advantage, I could not take a better way than this.

Mr. Vaugh. This is but the affirming all which hath been done already, and I am for none of those, who are contriving for any thing out of the House.

Sir Will. Covent. This Question is not now seasonable; tho' it is a better expedient than the Declaration, as things now stand, and considering what hath past, I am apt to think the Lords may do it of their own accord, and you would not willingly have a Negative to your Votes. Therefore seeing your Votes may be of use hereafter, put no question at all, but adjourn the Debate to a proper Season.

Mr. Vaugh. I am against the Adjourning of it, and have given Testimony, that I have done nothing to be thought to do that which is so much for the Advantage of the Earl of Clarendon, and shall take heed of doing any Thing hereafter to be so reflected on.

Sir Tho. Litt. I hope I avoided any such Reflection, nor did I speak any Thing to such purpose. I do not believe, nor ever did think any such Thing, and hope that Gentleman himself believes, that no Man in this House hath more Honour for him than I.

Sir John Charle. Let the World see that you do not intend to restrain your Proceedings to the Earl of Clarendon, but make it a general Care; and therefore are concerned in Honour to put the Question.

*Resolved upon the Question,*

*That the Question be put.*

*Resolved, That both the Questions propounded by Mr. Vaugh. and put singly in the Affirmative, be carried up to the Lords.*

December 13.

A Bill was brought from the Lords, to Banish the Earl of Clarendon, and read.

After reading, several Objections being made, and it being alledged, that it was an Abuse put upon the *Commons* by the *Lords*, and that a Bill of Attainder being propounded, after some Debate, the *House* pass'd this Vote:

*Resolved, That this House taking notice of the Flight of the Earl of Clarendon, being under an Impeachment of High-Treason by this House; the King's Majesty be humbly desired to Issue out his Proclamation for Summoning the said Earl to appear by a Day, and to apprehend him in Order to his Trial.*

*Resolved, To send to the Lords for their Concurrence to this Vote.*

December 14.

A Message from the Lords for a Conference, at which they deliver'd two Reasons, why they could not Concur.

1. *First, for that they conceive a Proclamation in the way proposed would be ineffectual, since it is not sub pœna Convictionis, which cannot be 'till Particulars in order to Trial be declared.*

2. *That what the House of Commons hath proposed, and do propose at present, is intended in Order*



to a judicial way of Proceeding; but since the Earl of Clarendon's Flight, their Lordships upon Consideration of the whole State of Affairs, and of the Kingdom, have upon Grounds of Prudence and Justice, thought fit, for securing of King and Kingdom, to proceed in a Legislative way against the said Earl, and have to that end past and sent down to them a Bill of Banishment and Incapacity against him, with which this Vote is inconsistent.

December 16.

The said Reasons from the Lords being Reported and Considered, and it being Moved that the House would declare themselves unsatisfied with them :

Sir Tho. Cliff. I am against passing a Vote at present upon the Lords Reasons, but read the Bill sent down from thence, and Summons him by it to appear by a Day.

Mr. Trev. Some are against the Bill, because it goes too far, Condemning before Hearing, others would have it to go farther. Summons is in Order to Hearing, Trial, and Judgment; of those he hath made himself incapable by Flight, and hath in his Paper told you, *That he will neither be heard, nor Tried by you*: Tho' you expected to have him secured by a general Accusation, yet you never expected Judgment upon it. Then it is said, *This Banishment falls short of Treason*; but we are not to pass Sentence for Crime, but as a Council propound to the King what is necessary in this Case: Then consider whether this Bill will answer our Ends, and if it doth, Delay will make it worse. I think we should make it reach them. What if he hath Life in other Parts, his Family untainted, and his Children alive, and enjoy his Estate?

Sir Rob. Carr. You have Ordered to consider the Reasons from the Lords, therefore do it.

Mr. Hen. Corvet. The Motion to read the Bill is not against your Order, because part of the Reasons given by the Lords is, *That you have a Bill, and 'till you have read the Bill, you cannot lay by the Reasons*. The Earl of Clarendon is fled, you have a tye upon him in having his Innocent Relations, and by Proceeding farther you make him desperate, you are now in an even way with the Lords; therefore read the Bill.

Mr. Swinf. You may go upon the Reasons, and yet not reject the Bill; for when you sent to the Lords about a Proclamation, and went not upon the Bill, it was, because what the Bill drives at, is the highest Punishment next to Death. Therefore consider what weight is in the Reasons. One of them seeming to put you upon the Bill, they put you thereupon on a Legislative Way; they will neither Secure nor Summon him, but will condemn him Unheard. They cannot Secure him upon a Charge of Treason, nor yet Summon him, but they can Condemn him; and this they put you upon, which is against Honour and Justice, especially to do it upon Reason of State. The Legislative Power of Parliament is great, it hath no Bound, but the Integrity and Justice of Parliaments. If Reason of State be a Motive of Parliament to Banish one Man, so it may be for many. If you go in this Legislative Way, you bring upon your selves all the Dishonour of the business, but the Lords will have some Excuse,

which you cannot, for they look'd upon the Charge so slight, as not to Imprison him; the Party is gone, because he was not Secured, apprehending (he saith) fear of the Multitude, not of his Trial; so that the Lords not giving Credit to your Charge against him, he says, *he flies not from Justice*. Now if upon this Bill you shall Banish him, it would be said you could not make good the Charge, and therefore laid this Sentence upon him.

The Precedent is also dangerous: If having gone so far in a Judicial way, you should now go in a Legislative. If upon Reason of State, Lords may be Banished, it may be by dozens: As you proceed Justly, so you will be Justified.

Nor is the Danger greater if the Lords go by Proclamation, and he be put into Custody when he comes; if he can practise any Thing, will not he be less capable when under the Proclamation, than when this Bill is Passed, which Condemns him without Hearing, and I am not for any Punishment till Heard. In *Cromwell's* Case, who Moved in *Hen. VIII's* time, to Attaint a Lord Unheard, the Judges declared they might, and it would stand; afterward the said *Cromwell* was Attainted and Condemned Unheard, and such Counsel usually falls upon those that Counsell'd it.

Sir Rob. How. The Earl of Clarendon saith, *That he doth not withdraw from your Justice, but for fear of Tumults*; but that Reason any Man may give for his flying, if it will be an Excuse; but he might have secured himself from Tumults by rendering himself, and his Innocency upon his Trial would have cleared him. This at last may come to a free Conference, then you may be left to go along with the King; the House riseth and doth nothing, and then the World will see that this Business will assure the King of *France*, That he hath a Man with him so Great, as to hinder us from doing any Thing against him: Therefore as you ought to do something against him, see whether it may not be done by the Bill, by resuming his Lands, &c. if he come not in by a Day.

An Exception may be against this way, Namely, That there is no Attainder, but if there had been such a Bill, the Thing which should sway me should be the Duke of *Tork's* Marriage: So that if you Commit this Bill, you may add all Severities, except that of Attainder, and if he come by a Day, then all to be void. If you go by Proclamation, the Lords may not Concur, and you lose your Ends. By this Bill a'l Favour that he can expect is shewed, and this way will be the best Confutation of the Lords Reasons; therefore Commit the Bill.

Mr. Secretary Morr. I am for Committing the Bill, tho' it be condemning Unheard; because he could not but conclude it would be so. *Et volenti non fit Injuria*.

Sir Rich. Temp. You have proceeded against this Earl in all ordinary Ways, and have been baffled by the Lords. In *Edward the Third's* Reign, *Adam de Berry* fled, and a Proclamation went against him, and the Commons neither did, nor ever were bound to deliver their Articles till the Party appeared, and in that Case they delivered not their Articles till the last Day; when he not appearing was Convicted. When you would go by Attainder, they tell you, Deliver special Matter, and we will Summon



mon him; when you ask a Proclamation, they tell you, Deliver special Matter: If you declare the Matter to the Court, it is upon Record, and all may know it. You have tried all ways Legal and Regular, and they will do you Justice in neither. Now what can you do? except you and the Lords combine in Justice together, he must escape, and if you can be made to differ, he goes away in a Smoke. If you go to the King for a Proclamation, you must return to the Lords for Justice. I am sorry the *Ivy* hath been so near the *Oak*, that you cannot touch it, without touching that. There remains a Bill before you, and in that you are upon equal Terms with the Lords; therefore give him a Day to be heard, and if he come, let him; but then his Penalties are too low for his Crimes; therefore read the Bill, go higher, degrade him of Honours, forfeit his Lands, and whether you will go so far, I leave with you.

*Mr. Sol. Gen.* It is not possible to agree with the Lords in their Reasons, but the Reason must be because the Bill is good. But if any Man thinks it is good upon the Lords Reasons, he is mistaken; and therefore my Advice is to proceed upon the Bill, tho' not upon the Reasons from the Lords. Some think the Punishment in the Bill too little for the Crime, others too much, because not Summon'd; so that it must fall out, That a Person Impeached by the *House of Commons* must see the *House* rise without any marks of Displeasure upon him: Can any Man be heard, who will not be heard? Why should not you proceed in such a way against him, as whose very Flight amounts to a Confession: And have you not burnt his Paper for reflecting upon the *House*? and can you think he will appear who is departed in despair of the Court? and now you are contending to give him Time.

Then consider the Thing in itself. Suppose the King had a mind to Attaint him, the King can do it without your help, for he may be *Outlawed* for High-Treason; for tho' that be Reverfable at Common Law, if he be beyond Sea, yet by two express Acts of Parliament it is otherwise, but the King cannot Banish him without your Concurrence: Suppose him Fled and Attainted, so that the Question is not upon his Life, but his Estate, suppose your Justice satisfied in that, is it not past all manner of Consideration that the King cannot upon Application restore it, so that all you look'd for by Attainder, is done by this Bill of Banishment, for his Life is saved by Flight, as would his Estate by Compassion; but there is something in this Bill, which, without it, you can never get, that is, you put him under your Displeasure, which the King cannot Pardon; and will you have it thought abroad, that the Earl of *Clarendon*, fled as he is, hath been something too hard for the *Two Houses*?

*Sir Tho. Litt.* If there be a necessity of differing with the Lords, and I thought the Difference would produce such Effects, I should not speak, but they only tell you 'tis unnecessary and ineffectual. You have Impeached, and are now told if you proceed, it will make Difference; but I fear another greater Danger than this Difference. The World will say you were willing he should fly, because you could not prove; by flying he hath Forfeited his Estate; if the King give it him again it is his Mercy; but do you

Justice: Therefore press for a Proclamation, for the Bill is inconsistent with your Honour.

*Mr. Vaugh.* I have listned with much Attention to this Discourse, and understand it as little now as at the beginning, the Discourse being nothing adequate to that End. You have Reasons from the Lords why they agree not with you, and if you agree with the Reasons, the Sum is to read the Bill; but if you agree not, you must desire a Conference, and if they concur, you may have a Proclamation, if not (as I think they will not) you are where you were: We suppose him not to be in *England*, and if so, what is the Proclamation more than the King's Writ? it reacheth no Man out of the Kingdom. It's true, in some Cases, if the Persons are gone out of the Land they are Summon'd, and if they come not, their Lands are Seized, but it is not by Proclamation, which signifies nothing if the Party be gone.

Then go on; suppose the Lords join in desiring a Proclamation. the end of which is Appearing and Apprehending; possibly you gain one part, that if he be apprehended. they do Imprison him upon a general Impeachment; but if they agree not, what Benefit have you by it? None: But if he appears, to what is it? there is no Charge, if apprehended, to Answer the general Charge.

Then the Third Way is, if the Lords agree not, that you should go to the King; and there is a more dangerous Rock in that, than in any thing; for we never heard of a Commitment *per ipsum Dominum Regem*, but *per mandatum Domini Regis*, because against the King lies no Damages: What then must you do? many think it Injustice to proceed, if he be not called by Proclamation. But it is plain, if you proceed upon this Bill, you go not upon your Impeachment, but because he is fled from the Justice of the Land, wherewith you have charged him in burning his Paper; and it imports little, that he saith he is Innocent; for why then doth he fly? Shall we abate him of what he ought to suffer for his saying so? He is fled from the Justice of the Parliament, and therefore is proceeded with; and for what others say, you ought not to regard popular Reasons, but to pursue your own; it is enough for you to hear some Proofs made: When was it known in any Court, that Proofs should be taken only on one side? So that you cannot acquit your own Justice, nor bring him any ways to Answer, he being gone; nor can you have any Effect of the Proclamation, tho' the Lords join in it: Therefore unless you will have nothing done after all this, (for he may not be Guilty of all Charged, who yet hath made himself Guilty of what is Charged by flying) read the Bill.

At last the Question was put, whether the Bill should be Read and Committed.

109 for it.

55 against it.

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December 18.

The Bill for Banishing the Earl of *Clarendon* was Reported from the Committee, and Read.

Sir



Sir Rob. How. I desire that to the *Preface* of the Bill this Addition may be made.

*That whereas the Earl of Clarendon was Impeached of Treason by the Commons, who desired he might be secured, but was not, and thereupon is fled.*

And this to the End the protesting Lords may be gratified, who took so much Care of the Commons.

Sir Rob. Carr Seconds the Motion.

Sir John Talb. I cannot Concur with that Motion, because we cannot take notice of what the Lords do.

Sir Rich. Temp. We may take notice of Things in the Lords Books which are Records, and there the Protest is entred; and tho' not to gratify them who owned our Right, yet we ought to take care of our own Right: And that the World may see we have some Cause to Pass this Bill, neither deal so modestly with a Man who flies from Justice, as to use his own Word (*withdraw*) but call it *flying*.

Sir Tho. Gow. Let the Words be, *that having been Impeached, and moved to be Secured, hath withdrawn himself.*

Mr. Solicitor. The Word *Moved*, destroys the Bill it self; the Word of the Bill is to unite the *Two Houses*, and this Amendment tends to destroy that End, for the Addition to the *Preface* being insisted on, the Lords will add the Reasons for not Committing, and so revive the whole Matter again.

Let the Lords add in their Books what they will, your Books will as much justify you, as theirs them.

Sir Hum. Win. Let the Words be added, whether the Lords agree, or not, that it may appear upon our Books.

Mr. Hugh. Boscow. The *Preface* is but History, yet add the Words, and let the Lords insert what they please. I should rather Concur with them, than leave out those Words.

Mr. Vaugh. Put no Question upon these Words, but whether the *Preface* shall go as it is; The Bill in Probability is a safe Bill, because it came from them: But if you begin an Alteration, you your selves render it unsafe; for if you put in

these Words, then the Lords will add, *for want of Special Matter*, and so it will come to nothing.

*Then the Bill was read the Third time.*

Mr. Vaugh. I am against the Word *Withdrawn*, and for the Word *Flight* instead of it, and in regard the Justice of this Bill depends upon the Word (*Flight*) put it expressly.

Sir Rob. Carr. I am against this Bill, tho' I was as earnest in the Matter as any one while I thought there was Proof, but now none appearing, I am against the Bill, because you are Confirming what the Lords have done.

Mr. Vaugh. Many Men wonder that no Reason is given for passing this Bill, but the Question is mistaken, the Bill is grounded upon his Flight after his Impeachment, and his flying implies some Guilt; if none, it is the safest Argument for any Man to run away, and then there is nothing to catch him. A Proclamation to a Man out of the Kingdom signifies nothing. But in the whole it is plain, that he saith, that finding the King's Justice obstructed in Parliament, he is fled.

*Obj.* But it will be said, upon bare Flight never was any Man punished.

*Ans.* If one Man kills another and flies, tho' upon his Trial he shall be acquitted, yet he shall never recover his Goods because of his Flight.

There have been several Acts of Banishment, *Spencer*, &c. And tho' in this there is something more severe than in them, namely, that none shall Correspond with him; yet there is also some Advantage, namely, that if he come in by the First of *February* all shall be void; for when the Crime is laid, and his Flight makes him Guilty, he ought not to have a Day.

Then the Question was put for passing the Bill.

65 For it.

42 Against it.

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So the Bill pass'd the Commons, and afterwards obtain'd the Royal Assent.

See the Earl of Clarendon's Vindication of himself against the articles of High-Treason, *State-Trials*, Vol. 8. p 381.





LXVIII. *The Trials of Peter Messenger, Richard Beasley, William Green, Thomas Appletree, John Earles, William Wilks, William Ford, Richard Farrell, Edward Cotton, Edward Bedle, Richard Latimer, John Sharples, Richard Woodward, Thomas Limerick, John Richardson, \* at the Old-Baily, for High-Treason, in tumultuously Assembling themselves in Moorfields, and other Places, under Colour of pulling down BAWDY-HOUSES, April 4, 1668. 20 Car. II.*

**U**PON *Easter-Monday* last, being the 23d Day of *March*, in the 20th Year of the Reign of our Sovereign Lord the King that now is, it being the usual time of the Apprentices Liberty for their Civil Recreations, a rude Multitude of People met together in *Moorfields*; where being so Assembled, were instigated by some Factious Persons amongst them; who, to colour their Design, insinuated into the Rabble the pulling down of *Bawdy-Houses*: Under which colour of reforming *Bawdy-Houses*, they at length raised a great Hubbub; and so increasing in their Disorders, in a tumultuous Manner committed many notorious Crimes. But by the Vigilancy of the Magistrates of the City, with the Assistance of his Majesty's Guards, were at last reduc'd: Some of the Ringleaders whereof were apprehended, and committed to the Goal for their Offences, to receive their Trials according to the known Laws of the Land.

And having been several times examined, upon Confession of some, and pregnant Proof against others, by a special Jury of several Knights, Esquires and Gentlemen, of very great Worth and Esteem, of the County of *Middlesex*;

These Persons following, to wit,

<i>Peter Messenger,</i>	<i>Edward Cotton,</i>
<i>Richard Beasley,</i>	<i>Edward Bedle,</i>
<i>William Green,</i>	<i>Richard Latimer,</i>
<i>Thomas Appletree,</i>	<i>John Sharples,</i>
<i>John Earles,</i>	<i>Richard Woodward,</i>
<i>William Wilks,</i>	<i>Thomas Limerick,</i>
<i>William Ford,</i>	<i>John Richardson,</i>
<i>Richard Farrell,</i>	

Were indicted of High-Treason, for levying of a Publick War against our Sovereign Lord the King: And at the Goal-Delivery of *Newgate*, held at the Sessions-House in the *Old-Baily*, *London*, *Apr. 1, 1668*, and continued til the fourth Day; on which said fourth Day, in the Presence of

Sir *John Kelyng*, Kn. Lord Chief Justice of his Majesty's Court of *King's-Bench*.

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<sup>c</sup> Kelyng 70. 1 Sid. 358.

Sir *Edward Atkins*,  
Sir *Christopher Turner*,  
Sir *Richard Rainsford*, } Barons of his Majesty's  
Court of *Exchequer*:

Together with Sir *William Wild*, Recorder of the City of *London*; these Prisoners following, *viz.*

<i>Peter Messenger,</i>	<i>William Green,</i>
<i>Richard Beasley,</i>	<i>Thomas Appletree,</i>

Were first called to the Bar to receive their Trials; where, after Proclamation being made, they severally pleaded to their Indictments, and put themselves for their Trial upon their Country.

The Names of the Jury sworn.

<i>Anthony Hall,</i>	<i>Thomas Jennins,</i>
<i>William Knight,</i>	<i>John Nichols,</i>
<i>Henry Francis,</i>	<i>Ralph Bradshaw,</i>
<i>John Baker,</i>	<i>John Saving,</i>
<i>Robert Shaw,</i>	<i>John Marsh,</i>
<i>Thomas Constable,</i>	<i>Henry Kent.</i>

The Jury being sworn, the Court proceeded to Trial.

Mr. *North*. You Gentlemen of the Jury, these four, *Peter Messenger, Richard Beasley, William Green*, and *Thomas Appletree*, stand indicted for High-Treason; having left their Obedience to our Sovereign Lord the King, and being instigated by the Devil, upon the 24th Day of *March* last past, did contrive a Design to levy War and Rebellion against the King, being at the Head of four or five Hundred armed and array'd. If this Matter be prov'd against them, you must find them Guilty.

Mr. *Pemberton*. You Gentlemen of the Jury, these Prisoners at the Bar did contrive and levy War, and fell upon the King's Officers, and beat them, and broke the Prison, and let out the Prisoners, some for Felony: Among the Multitude these were four of them, as we shall endeavour to prove.

F f f f

The



The Names of the Witnesses call'd and sworn,

*Richard Dowson,*      *James Martin,*  
*John Cowley,*        *Abraham Brookes.*  
*Henry Ball,*

The O A T H.

**T**HE Evidence you shall give between our Sovereign Lord the King and the Prisoners at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you God.

*Counsel.* Sir, pray tell my Lord what you saw these do on *Easter-Tuesday*.

*Witn.* My Lord, I saw this *Richard Beasley* at the Head of four or five hundred; he had a Sword, and I took his Sword from him: he had Colours, a green Apron upon a Pole. I heard some of them cry, *Down with the Red-coats*; and I did see *William Green* there too, but not *Appletree*.

*Lord Chief Justice.* Did they go with the Multitude or no, or were they with them?

*Witn.* They were with them; but I cannot say they went along with them.

*Counf.* Pray tell my Lord what the Multitude said at that Time.

*Witn.* When we fell on them, they run away.

*Ld Ch. Just.* Did *Beasley* lead them on?

*Witn.* They said he was their Captain.

*John Cowley, Second Witness.*

*Counf.* Mr, *Cowley*, tell my Lord what you saw.

*Cowley.* My Lord, he cut me and wounded me on the Hand. The Constable charg'd them to be gone, and disperse themselves; with that they struck at the Constable, and knock'd him down.

*Ld Ch. Just.* Under what Pretence did they pull down any House?

*Witn.* The Constable and some more of us beat them up *Nightingale-Lane*; I know not what their Pretence was: I saw *Appletree* there, for he was the First that struck at the Constable. This was on *Easter-Tuesday*.

*Ld. Ch. Just.* Did you see *Green* there?

*Witn.* I cannot tell.

*Ld Ch. Just.* Did you see them pull down any House? What did you hear them say?

*Witn.* They said, *Down with the Bawdy-Houses*.

*Ld Ch. Just.* Did you hear them talk of the Red-coats there? Was *Green* amongst them as one that help'd and acted with them?

*Witn.* I saw him in *Moorfields* on *Monday, Tuesday, and Wednesday*, shout and throw up his Hat.

*Third Witness.*

*Ld Ch. Just.* What did you see them do?

*Witn.* All that I saw, was, that *Peter Messenger* came along with the Colours in his Hand, and I took him and carried him to Prison my self: I did not hear them cry, *Down with honest Houses*, but *Bawdy-Houses*: I did not see all those, but only these two, (pointing to two at the Bar.)

*Ld Ch. Just.* Ay, that was the Captain and the Ensign.

Fourth Witness, *Henry Bull*. My Lord, I saw this *Beasley* and *Messenger* in *Moorfields*, pulling down Houses on *Monday*, and on *Tuesday* at the Head of three Hundred; and at that time we routed them. On *Wednesday* they came with four or five Hundred, and cry'd, *Down with the Red-coats*.

*James Martin, Fifth Witness.*

*Ld Ch. Just.* What can you say?

*Witn.* All I know is, *Beasley* made a Blow at our Ensign, and struck at him with his Sword.

*Ld Ch. J.* What was their Pretence?

*Witn.* I cannot tell that.

*Another Witn.* I saw *Thomas Appletree* help to pull down *Peter Burlingham's* House, and broke another.

*Serj. Wild.* What Company had they?

*Witn.* About Three hundred.

*Ld Ch. J.* Had they any Colours? What did you hear them declare?

*Witn.* I heard them declare nothing, for I had like to have been knockt on the Head.

*Ld Ch. J.* to the Prisoner *Beasley*; Well, what do you say for your self? you hear it is sworn against you, that you were at the head of this Rabble, and they call'd you Captain, and you led them up; and when the Constable came to command Peace in the King's Name, you fell on him, and wounded him, so that he is hardly able to be here this Day: Why did you gather this Multitude together? It will behove you to make your Answer; what Reason had you for it?

*Beasley Pris.* I do not know the Reason.

*Ld Ch. J.* I speak to you, that you should give a Reason: After all this Trouble that we have had in this Nation, it is a sad thing that a great Number of giddy-headed People must gather together, under Pretence of Reformation, to disturb the Peace of the Nation again; if you can say no more for your self, there will be little trouble with you.

*Serj. Wild.* What was the meaning of your gathering together?

*Beasley Pris.* We went to pull down Bawdy-Houses.

*Ld Ch. J.* How did you know which were Bawdy-Houses? If you had known them, you might have indicted them, there is a Law against them; but this is a strange kind of Reformation, if a Rabble come, and say, This Man is a Papist, and this keeps a Bawdy-House, and would pull it down; this is a mad Reformation.

*Messenger Pris.* My Lord, that Man has sworn I was out on *Tuesday*, it was *Wednesday* before I came forth; but staid at home with my Wife, because I would not be among them.

*Ld Ch. J.* Did not you carry a green Apron on a Pole for your Colours?

*Pris.* My Lord, as I pass'd along by the Rout, they flung a Bottle at me, and had like to have knockt me down, and tore my Apron off, and charg'd me to carry it on a Pole; and I would fain have come away from them, and could not.

*Ld Ch. J.* Make this appear, that you would fain have got away, and that they did force you to do what you did, and I shall be glad of it.

*Pris.* There is none of them here now that were there then.



*Ld. Ch. J.* Then all that you say is of little Use; for it is no great thing to make a Lye to save one's Life.

*Prif.* God is my Witness—

*Ld. Ch. J.* Have a care what you say.

*A Constable (Witness) sworn.*

*Ld. Ch. J.* What say you of these four at the Bar?

*Const.* My Lord, I heard they were pulling down Houses, and I did what I could to preserve the King's Peace; and that Day I did save a great many Houses and Goods. The next Day they were near my own House, and I did endeavour to do the same, and this Fellow with his Company did surprize my Men, and knock'd me down; yet I commanded the Peace, and they beset me round about, and cut me over the Hand: I do remember that *Beasly*. We were in a Place where there were three Turnings, but they knockt me down, and beat me so, that I could not tell who it was that did hurt me.

*Ld. Ch. J.* Do you know any more of this Company?

*Const.* No, my Lord: for if the Soldiers had not come, they would not have left 'till they had kill'd me.

*Couns.* Had you your Staff?

*Const.* Yes; but they took it away from me.

*Another Witn.* I saw *Messenger* on *Tuesday*, tho' he says to the contrary.

*Ld. Ch. J.* *Messenger*, you hear what is said against you; you say you were not out on *Tuesday*: He hath sworn you were at the Head of a Company, with a green Apron on a Stick, and led them up.

*Prif.* I was not there.

*Henry Bull, Wit.* I saw him, my Lord, on *Tuesday*, he and *Beasly*, about Eleven of the Clock in *Moorfields*, and they had gather'd a great Multitude of four or five Hundred, and then they made an Attempt to come into our Parish, and they cry'd, *Down with the Red-coats*.

*Messenger, Prif.* Pray, my Lord, let my Witnesses be called in, for they swear false.

*Ld. Ch. J.* Your Witnesses shall be call'd. A little of due Consideration before-hand would have done you more Good than now.

*Mr. Glover, and Mr. Bennet, the Prisoner's Witnesses.*

*Ld. Ch. J.* What say you concerning the Prisoner?

*Glover.* I can say, my Lord, he was 'till Five of the Clock on *Wednesday* at *Mr. Bennet's* House in *Golden-Lane*.

*Ld. Ch. J.* Where was he on *Monday* and *Tuesday*?

*Glover.* I know not.

*Bennet.* On *Wednesday* he was at a Kinsman's House.

*Ld. Ch. J.* These two Witnesses give no Account at all of you, where you were on *Monday* and *Tuesday*.

*Ld. Ch. J.* *Greene*, what say you?

*Greene.* I was not among them.

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*Ld. Ch. J.* It is sworn you were amongst them, and threw up your Cap. Were you not knockt down?

*Prisoner.* Yes, my Lord.

*Ld. Ch. J.* How could you be knockt down if you were not amongst them?

*John Cowley* Witness.

*J. Ch. J.* Did you not see *Greene* in the Multitude?

*Cowley.* I saw him do nothing; but I saw him with a Staff in his Hand. I did not see him act any thing but follow the Colours.

*Greene Prif.* I was not among them but as I came home.

*Ld. Ch. J.* You mean you did not take part with them, but you were there; it is sworn you were upon *Tuesday* following your Captain and the Colours; it is sworn by *Mr. Bull* you were among the Rabble, and were knockt down: now if the Jury do not believe that you did act among them, we will leave it to them.

*Ld. Ch. J.* *Appletree*, what say you?

*Appletree.* As I was passing along (my Lord) I saw a Croud, and I went to know what was the Matter, and there came a Company down, and some running after me did me a Mischief; I did not see the Constable, nor say, *Knock him down*.

*Ld. Ch. J.* It is sworn that you were the first Man that struck the Constable, and that you were at the pulling down of *Burlingham's* House.

*Prif.* I did not offer to pull down his House, nor strike the Constable.

*Abraham Brooks, Witn.* My Lord, he was in *Peter Burlingham's* House, and broke it down so that you might have ridden a Horse thro' it; I spake to him two or three times to leave off, and if I had not stoop'd suddenly he had struck me down with a Bedstaff.

*Cowley Wit.* I did see him on *Tuesday* with their Company, and I did see him strike at the Constable.

*Ld. Ch. Justice, to the Jury.* Gentlemen of the Jury, you have heard what these say; the Prisoners are indicted for High-Treason, for levying of War against the King. By levying of War is not only meant, when a Body is gathered together, as an Army is, but if a Company of People will go about any publick Reformation, this is High-Treason, if it be to pull down Inclosures, for they take upon them the Regal Authority; the Way is worse than the Thing. These People do pretend their Design was against Bawdy-Houses; now for Men to go about to pull down Houses, under the Pretence of Bawdy-Houses, with a Captain, and an Ensign, and Weapons; if this Thing be endur'd, who is safe? It is High-Treason, because it doth betray the Peace of the Nation, for every Subject is as much wrong'd as the King; for if every Man may reform what he will, no Man is safe: therefore this thing is of desperate Consequence, we must make this for a publick Example: There is reason we should be very cautious, we are but newly delivered from Rebellion, and we know that that Rebellion first began under the Pretence of Religion and the Law, for the Devil hath always this Vizard upon it; we know that that Rebellion began thus, therefore we have great Reason to be very wary that



we fall not again into the same Error, but it should be carried on with a watchful Eye. And because Apprentices hereafter shall not go on in this Road, we will have the solemn Resolution of all the Judges, and therefore you are to find it Specially. You must find the Matter of Fact, and we will assemble all the Judges together in a sober way, to give their Judgment, whether it be High-Treason or no; not that we do doubt of it now, for we know it is High-Treason, but for general Satisfaction. It is proved that *Beasley* went as their Captain, with his Sword, and flourish'd it over his Head; *Messenger* was there with his Green Apron on a Pole in *Moorfields* on *Tuesday*, and on *Wednesday* he was in the same Posture again.

*Prisoners.* My Lord, we would have our Witnesses heard.

*Ld Ch. J.* You shall have no Wrong done to you.

As for *Green*, it is prov'd he was with them shouting, and casting up his Cap: now the Act that any one does in such a Tumult is the Act of all, if they all join together. He was on *Tuesday* following there, and on *Wednesday* he was taken. And then for *Appletree*, he was the first Man that struck the Constable, and pull'd down *Burlingham's* House.

*Edmund Bedle, Richard Latimer, to the Bar.*

*Bill of Indictment.* You that are now call'd, being mov'd thro' the Instigation of the Devil, and having not the Fear of God before your Eyes, have withdrawn your Obedience to our Sovereign Lord the King, and against him did imagine and contrive War and Rebellion the 24th Day of *March*, with four or five hundred Persons in a Warlike Manner, array'd with long Pikes and other Arms, there met and assembled against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

Witnesses sworn.

*William Badley, John Maldey,*  
*William Riggs, John Williams.*

*King's Counsel.* Gentlemen of the Jury, *Bedle* and *Latimer* stand indicted for High-Treason; wanting that Love and Obedience that every Man ought to have of his King, did, the 24th of *March*, assemble themselves together, to the Number of four or five Hundred Persons, to levy War and Rebellion: If we prove this, you must find them guilty of High-Treason.

*Goaler of Finsbury Prison, Witness, sworn.*

*Counf.* Tell my Lord what you saw.

*Witn.* I can charge no particular Person, I was from Home; and when I came home I found the Prison-Doors open, and they had let out their own Company and two others; and I lock'd up the Prison-Doors, and they gather'd together about the Prison, and there came their Captain with his Half-Pike, and commanded me to open the Door. I told them I would not open the Door. They told me, we have been Servants, but we will be Masters now; and if you will not open the Door, we will do your

Business for you by and by. They had Swords, and Belts, and Half-Pikes, and they did push at me; and I came to a Parly with them when I saw there was no Remedy. I let their Captain in, and when he could find none of his Company there he went away; but had it not been for the Company that stood without, I would have kept him fast enough.

*Another Witness sworn.*

*Ld Ch. J.* Were any of these that stand at the Bar, at *Clerkenwell*, with a Stick in his Hand?

*Witn.* Yes, my Lord, I saw *Latimer* there knocking at the Gate, and the Prison was broke open, and there came down Justice *Welsh* to them to disperic them; but they let out two of their own Rabble, and two of the Felons.

*Another Witness sworn.* Nine of the Clock on *Friday*, I went to the Gate of the *New-Prison*, and they came and clapt a Bar in between the Gates to open them, and I saw *Latimer* throwing Stones at the Windows. Justice *Welsh* being there, would have taken some of them; and they cry'd out, *One die, and all die.*

*William Riggs, Witness, sworn.* I saw *Bedle*, and took him; their Number was about four or five Hundred; and I got out two Files of Men, and took four Men more, whereof this *Bedle* was one of them.

*Judge.* What do you say to this?

*Latimer.* This Man hath a Spite against me, my Lord; for getting up behind the Coach, I let my Whip fall and gave him a Lath.

*Ld Ch. J.* But what says the other against you? What made you there? And *Bedle*, what do you say for your self?

*Bedle Pris.* My Lord, I was in *Southwark*, and came from thence to *Bishopsgate-Street*, and met with a Friend, and we drank four Flagons of Beer, so that I got a little too much Drink in my Head, and I stood and look'd a-while at the Prisoners at *Bishopsgate*; and my Uncle coming along, I went with him a little way, and then turn'd about and left him. And there was a Man came and said, *Brother, will you not go and see what they do in the Fields?* and it was my hard Fortune to be among them, but did not and Hurt, blessed be God; but I follow'd them without doing any Harm, and they went down *Old-Street* to *Clerkenwell*; but I did not break the Prison, nor do not know where the Prison is; for there was a Company made up to them, and they began to run.

*Ld Ch. J.* What did you say when they run away? Did you not say, *Face about?*

*Pris.* Your Lordship heard so, but I did not say, *Face about.*

*Ld Ch. J.* You Gentlemen of the Jury, you see what their Indictment is: They gather'd a multitude together at *Clerkenwell*, and they had a Captain with a Half-Pike, that came to the Prison and forc'd open the Door, and brought out two of their own Crew, and two of the Felons; and they said, they had been Servants before, but now would be Masters; and they cry'd out, *One die, and all die.* And you have three Witnesses that swear, that these two were there, *Latimer* especially. The Keeper says, he was forc'd to come to a Parly with them, and took in their Captain, to give him Satisfaction that there was none other there of their Gang.

*Bedle*



*Bedle* says he was there, but he was drunk, which is no sufficient Excuse.

*Richard Cotton,*  
*John Earles,*  
*William Wilde,*

*Richard Farrel,*  
*William Ford,* Call'd  
to the Bar.

*Their Indictment read.*

*Sir Philip Howard, Witness, sworn.*

*Ld Ch. J.* *Sir Philip,* speak what you know of these Men.

*Sir Ph.* I deliver'd these Men into the Constable's Hands.

*Counf.* Did not you see a Multitude of these People gather'd together in a Warlike Way? if so, tell my Lord.

*Sir Ph.* There came some sober People and told me that the Tumult was greater than it was when my Lord *Craven* was there, and they did desire my Assistance; and so I went into the Fields, and divided my Men half on the one Side, and half on the other: and the People look'd upon us so contemptibly, that they told us we should quickly be unhors'd; therefore I charg'd my Men not to let any Man come within my Arms.

*Ld Ch. J.* Had they any Colours?

*Sir Ph.* They had a Sheet for their Colours, and when they saw my Horse they got into the Field, and stood as if they did not fear us; and I order'd some of my Men to go and take him that had the Colours, and so our Men did; and I call'd for a Constable, but there was no Constable to be found: and I thought my self to govern them, and to bring them into better Order. At length this Man came with his Watch, and I deliver'd them into his Hands, and I believe these are the Men that I deliver'd to the Constable.

*Sir Edward Fish, Witness, sworn.*

*Counf.* Pray, Sir, look upon the Prisoners, and see if you know any of them.

*Witn.* I cannot say that these were any of the Persons that we did take, but there was a Multitude of them gather'd together, and we did desire them to go home; and they took up Brick-bats in their Hands, and said, *They had as much to do there as we had.* I took a Hanger from one of them my self, which is here in the Court.

*Robert Hoydon, Witness, sworn.*

*Counf.* Tell my Lord what you heard this Rabble of People say.

*Witn.* There came a Troop, and they thought it had been the Duke of York's Troop and they ran with Brickbats in their Hands to them, and said, *That if the King did not give them Liberty of Conscience, that May-day must be a bloody Day.*

*Another Witness sworn.*

*Ld Ch. J.* Speak what you know of these People.

*Witn.* My Lord, they ask'd if the Duke of York was there, and Answer was made, Yes, thinking they would have been satisfy'd and dispers'd;

but notwithstanding they came up to the Windmills, and flung Stones amongst us.

*Capt. Wilding, Witness, sworn.* My Lord, we did desire them, by fair means, to disperse themselves, and go home; they told me, *No, They would be with us ere-long at White-hall.*

*Another Captain sworn.* My Lord, I was forc'd to make some Resistance, but they flung Stones very thick at us, saying, *These Life-Guard Rogues are but a few;* and because I commanded one of my Officers to seize on one of them, they cry'd, *Knock down the Rogue.*

*Another sworn.* My Lord, I desir'd them to go home; their Answer was *That we were Rogues and Dogs, and ere-long they would come and pull White-hall down:* and their Word was, *Hey, now or never.*

*Constable sworn.* My Lord, I had these three at the Bar; but *Wilde* was none of them, pointing to the third.

*Ld Ch. J.* You say the other were.

*Constable.* Yes.

*Pike and Gillington, Witnesses, sworn.*

*Pike.* I did see this *Cotton* breaking down *Bur-lingham's* House.

*Gillington.* I can speak of the tall Man, *Cotton,* I will swear he was one of them.

*Ld Ch. J.* *Sir Philip Howard* says he deliver'd Five to the Constable, and the Constable says he does not know whether these be the Persons or no, but it is the same thing if they were among those that did it.

*Serj. Wilde.* Yea, the thing is the same.

*Ld Ch. J.* You hear the indictment is for High-Treason, you are Persons of the same Company, what do you say for your selves?

*Prisoners.* We were not there.

*Serj. Wilde.* The Constable swears it.

*Constable.* I cannot say, these were they, but two of them, *Farrel* is one.

*Pris.* I was walking to *Issington,* and I did march a little way with them, but did nothing.

*Ld Ch. J.* Where were you taken?

*Pris.* By *Hollowell-Lane,* and I was all alone, and a Horseman rode after me, and ask'd me, if I were not one of them.

*Ld Ch. J.* All the Constable can say, is this, There were Men deliver'd to him from the Guard, and this Man does not deny but that the Guard took him, but he did nothing; but many People are walking abroad in the Holyday; it is Pity to take away a Man's Life without sufficient Evidence.

*Ld Ch. J.* *Farrel,* What do you say?

*Farrel.* I was with my Father and Mother all the Holidays.

*Ld Ch. J.* *Cotton,* What say you?

*Cotton.* I came through *Moorfields* about Noon, and I was taken by one of the Life Guard.

*Serj. Wilde.* But you were pulling down a House.

*Witn.* He was pulling down a House on *Monday,* I was inform'd, and he was commonly among the Players at Pidgeon-holes; and after he had been pulling down a House, he was looking about to see what he could light of.

*Pris.* As I have a Soul to save he swears falsely.

*Ld Ch. J.* Have a care what you say.



You Gentlemen of the Jury, here are five Men more that are indicted for the same Disorder that the rest were, and we have now a little more Discovery of their Rising, and we have discover'd other Colours, for they thought the Duke of York had been in the Fields, and that enrag'd them the more, they taking Sir Philip Howard for the Duke of York; and when they did desire them to disperse themselves and go home, they said, They would not for such Rogues as the King's Life-Guard were, but they would soon be at *White-hall*: but you shall see what a Disguise is put upon it, If the King will not give us *Liberty of Conscience*, *May-day* shall be a bloody Day. This is, Gentlemen, to give us an Alarm, that we may not be too secure: And this must be punish'd as High-Treason, else we do destroy all. I think no body would have the Innocent to suffer: I had rather a guilty Person should escape, than a guiltless Person suffer. You hear the Constable cannot swear that all those were the Men, and some others, because in such a Hurry a particular Person cannot be known: Except you know any of them by sight, I cannot see how you can find them guilty; God forbid.

*John Richardson,*      *Richard Woodward,*  
*Thomas Limerick,*      to the Bar.

*Couns.* You Gentlemen of the Jury, these three that were call'd last to the Bar stand indicted as the others, for levying War and Rebellion in *Holbourn*; you shall hear the Evidence, and if we make good the Evidence, you must find them guilty.

William Rogers, *sworn Witness*. My Lord, I found this Man at the head of a Party, and I took him, and committed him to the charge of a Company.

*Ld Ch. J.* Was he leading them on? Are you sure he was there?

*Witn.* He will not deny that he was there, but he made no Resistance at all; for we had three or four Companies ready to surprize them.

*Mrs. Burlingham, Witness, sworn.* My Lord, this was the first Man that laid hands to pull down my House.

*Serj Wilde.* Mistress, was yours a Bawdy-house?

*Mrs. Burlingham.* No, but they dragg'd me out of it.

*Ld Ch. J.* Was your House pull'd down?

*Husband's Answ.* Yes: And all my Goods destroy'd, and Ten Pounds in Gold taken out of my Wife's Pocket.

*Another Witness sworn.*

*Judg.* What can you say of *Woodward*?

*Witn.* I cannot say he did take any thing out of the House that I know of.

*Ld Ch. J.* I do not ask you that; but did he go along with them, or had he a Staff in his Hand?

*Witn.* That *John Richardson*, my Lord, is a Tapster; I heard him say he had made Work for us, for he had help'd to pull down a House.

*John Hand, Witness, sworn.* My Lord, on Saturday last at six of the Clock, I heard him in the red Hair say, *I have made Work for you all*; I do not know what he is.

*Ld Ch. J.* What do you say for your self?

*Limerick, Prisoner.* My Lord, I went up to see what the Tumult was doing, for I lodg'd hard by; and when they had pull'd down the House, some run one way, and some another; and I was going to *Westminster*, and as I was walking up *Holbourn*, the rest of them were at my Heels.

*Ld Ch. J.* That was because you was their Captain, and dragg'd the Woman out of the House that says she hath lost all she had. *Woodward*, what say you?

*Woodward.* My Lord, Mr. *Brooks* gave me a black Pot to drink, and I staid no longer than the drinking of that.

*Ld Ch. J.* What, do you say that *Richardson* pull'd down the Woman's House?

*Pris.* My Lord, there was a Whore that clapp'd hands on me, and I wrung my self from her, and told her that her House should be pull'd down.

*Ld Ch. J.* Truly I see scarce an Apprentice among you all, and I am glad of it there is no more.

*Witn.* I dogg'd him home to his Master's House, but did not lay hold on him.

*Pris.* I am very innocent of any thing of hurt that I did.

*Ld Ch. J.* Prove it.

*Pris.* I was alone, How can I prove it? I was not all the Holidays abroad.

*The Apprentice's Master.* All Monday he was at home, and on Tuesday he was at home.

*Serj. Wilde.* It is impossible for him to be one of them; you mig't mistake.

*L. Ch. J.* You Gentlemen of the Jury, in this Case take notice: As for *Woodward*, they say he was there with a Stick in his Hand. I would have you take notice that there is but one Witness: for the other you have his own Brags, if you will believe him, that he pull'd down a House, you have no other; if you will believe him to be a bragging Fool, you may. And now for *Limerick's* Witness, he shall be heard.

*The Prisoner's Witness.*

*Ld Ch. J.* What do you know of the Prisoner at the Bar?

*Witn.* This Man, my Lord, did lie in my House, and he did never stay out after Nine or Ten of the Clock: He was at home every Night betimes, and did give me all his Money to lay up, and he did earn Sixteen Pence a-day.

*Another Woman, Witness, sworn.*

*Ld Ch. J.* What can you say?

*Witn.* My Lord, I can say nothing but that he is a very honest Man.

*John Sharpelisse, Prisoner at the Bar.*

His Indictment read.

*Couns.* Gentlemen, he at the Bar stands indicted for High-Treason, and stirring up Rebellion in *Poplar* at the Head of Five hundred Persons, and pulling down Houses in *Ratcliff-Highway*, which we shall endeavour to prove.

*John Harding, Owen Maxum, Witnesses call'd,* but came not in against the Prisoner.

*Ld Ch. J.* Gentlemen of the Jury, you know for Matter of Fact you are Judges: if you are  
not



not satisfied in the Evidence, then you cannot find them guilty. Consider who those Persons are, where the Evidence have not given sufficient Satisfaction.

*The Sum of the Jury's Verdict.*

THE Jury being dismiss'd to consider of their Verdict, after a short stay they return'd, and found as to *Messenger, Appletree, Beasley, and Green*, that according to the Time in the Indictment mention'd, they were met together in a riotous manner in *East-Smithfield* in *Middlesex*, and about *Moorfields*, under colour to pull down the Bawdy-Houses. That their Captain was *Beasley*, who led them on with his Sword drawn, and that they had their Ensign carry'd by *Messenger*, which was an Apron carry'd upon a Pole, and so they march'd with their Conductor. That they resisted the Constable who charg'd them in the King's Name to keep the Peace, and struck him, and took away his Staff; and that these several Persons were Abettors in that Tumult.

And as to *Bedle and Latimer*, they found that a great Number of People were met together arm'd with Swords, Clubs, and Staves, &c. at *Clerkenwell-green*, to break *New-Prison* there; and had their Commander, who had a Pike in his Hand, and came to *New-Prison*, and releas'd the Prisoners, some whereof were committed for Felony; and that when they were commanded to be gone, they cry'd out that they had been Servants, but now they would be Masters; and that these Persons were seen acting in the Tumult, and there taken

As for *Cotton*, they found, that the riotous Persons were met together upon the 24th of *March* with a great Number of People arm'd with their Swords, and such-like warlike Weapons, for pulling down Bawdy-houses: that when *Sir Philip Howard* with the King's Guards came up to them, and commanded them to depart, they refus'd; and when it was given out that *Sir Philip Howard* was the Duke of *York*, thinking thereby they would be appeas'd, they were enrag'd the more, and declar'd, that if the King would not give them Liberty of Conscience, they would make *May-day* a bloody *May-day*, threatening to pull down *Whitehall*; and very contemptuously slighted the King's Guards, because they were but a small Number: and this *Cotton* was prov'd to be one of them in the Action, and all along acting in the Riot.

And further, as to *Limerick*, he was met with the same Pretence of pulling down of *Bawdy-houses*, being arm'd as the rest were, and was own'd by the Rabble to be the Captain of their Company: That he with his Companions pull'd down the House of *Peter Burlingham*, and stole his Goods. The rest were found Not guilty.

The Jury having thus found it Specially, my *Lord Chief Justice* commanded the Prisoners again to the Bar, to whom he spoke to this Effect: That we all now see what great Cause we have to bless God, that we live under so merciful a Prince, and so good a Law as we now find we do live under; and that not only one Prince hath been so merciful, but such has been the Graciousness of other former Kings of *England*, that we shall rarely find any Severity us'd in the execution of Penal Statutes, where any fair

means (which constantly hath been us'd) could have any Effect at all. That our Justice is not privately but publickly admittred in the sight of all People, like a Beacon that gives warning to all; so that all might take notice thereof, and avoid the like Danger that others have fallen into. That the Prisoners more especially ought to bless God, and seriously to reflect within themselves this great Mercifulness of our King, and Law: for hereby they see they have not been serv'd so as they have serv'd others (for then upon the very apprehending of them they might have receiv'd their Execution) but contrariwise, they have had a fair Trial, not by Strangers, but by their own Country and Neighbours, having had the Liberty to speak what they cou'd for themselves, and Witnesses for them, so that if it were possible all might have been found innocent; and he heartily wish'd all could have been so found; and that some, blessed be God, are not found Guilty, and to them he hop'd this would be a sufficient Warning, &c.

Now as to all these Eight, against whom the Verdict was specially found, the Court took further time (because they would advise thereof) before they would give their Judgment whether High-Treason or no, it being declar'd by my *Lord Chief Justice* to be Matter of Law; and in the mean time these Persons are to remain in safe Custody in his Majesty's Goal at *Newgate*.

And for the other Six, *viz.*

<i>John Earls,</i>	<i>Richard Farrel,</i>
<i>William Wilks,</i>	<i>John Richardson,</i>
<i>Richard Woodward,</i>	<i>William Ford;</i>

The Jury found them Not guilty, and so acquitted them of the Offence whereof they stood charg'd, who after several Admonitions by the Court for their future good Behaviour, were discharg'd.

*The Lord Chief Justice KELYNG'S Report of the Judgment of the Judges in relation to the aforesaid Trial.*

Memorandum, That at the Sessions at the *Old Baily*, after *Kelyng. 70.* *Easter*, in the Twentieth Year of *K. Charles II.* several dissolute Persons having on *Easter Tuesday* and *Wednesday* next before assembled together, and led by Persons whom they call'd Captains, and having Colours, *viz.* Aprons, &c. on Staves, went to several Places on pretence to pull down Bawdy-Houses, and break open Prisons and set Prisoners at Liberty; and having actually pull'd down some Houses, and broke up the Prison at *Clerkenwell*, and let out four Prisoners there, were by the Direction of the King's Counsel, *viz.* *Mr. Attorney, Sir Jeffery Palmer*, having Order to proceed against them, he directed four Indictments to be preferr'd against them who were taken, *viz.* one Indictment against *Peter Messenger, Richard Beasley, William Green, and Thomas Appletree*, and another Indictment against *Edward Cotton*, and a third against *Edward Bedle and Richard Latimer*, and a fourth against *Thomas Limerick*. All the Indictments were, that they with other Persons to the Number of 500; unknown



unknown to the Jurors, being arm'd in a war-like manner with Swords, Half-pikes, Halberts, long Staves, and other Arms offensive and defensive with Force and Arms, unlawfully and traitterously assembled themselves together, and levied War against the King, &c. And first I told them they had not done well to make so many several Indictments, for by that means the King's Evidence would be broken; whereas if all had been put into one Indictment, the Evidence as to the main Design would have been intire against all: and then the assembling in several Places to the same Intent had made the Matter more foul, and would have been aptly given in Evidence against them all to the same Jury, and the several Acts which each of them did, would have come in better. But however we proceeded upon the Indictments as they were; and after the Evidence given against the four in the first Indictment, when I came to give Directions to the Jury, I told them that altho' I was well satisfy'd in my own Judgment, that such assembling together as was prov'd, and the pulling down Houses on pretence they were Bawdy-houses, was High-Treason, because they took upon them Regal Power, to reform that which belong'd to the King by his Law and Justices to correct and reform; and it would be a strange Way and mischievous to all People to have such a rude Rabble without an Indictment to proceed in that manner against all Persons Houses, which they would call Bawdy-houses, for then no Man were safe; therefore as that way tore the Government out of the King's Hands, so it destroy'd the great Privilege of the People, which is not to be proceeded against, but upon an Indictment first found by a Grand-Jury, and after upon a legal Trial by another Jury, where the Party accus'd was heard to make his Defence; yet I told them, because the Kings of this Nation had oftentimes been so merciful, as when such Outrages had been heretofore done, not to proceed capitally against the Offenders, but to proceed against the Offenders in the Star-Chamber, being willing to reduce their People by milder Ways if it were possible to their Duty and Obedience; yet that Lenity of the King in some Cases did not hinder the King when he saw there was need to proceed in a severer way, to take that Course which was warranted by Law, and to make greater Examples, that the People may know the Law is not wanting so far to the Safety of the King and his People, as to let such Outrages go without capital Punishment, which is at this time absolutely necessary, because we our selves have seen a Rebellion rais'd by gathering People together upon fairer Pretences than this was: For no such Persons use at first to declare their wickedest Design; but when they see that they may effect their Design, then they will not stick to go further, and give the Law themselves, and destroy all that oppose them. But yet because there was no body of the Long Robe there but my Brother *Wilde*, then Recorder of *London*, and my self, and that this Example might have the greater Authority, I did resolve that the Jury should find the Matter Specially, and then I would procure a Meeting of all the Judges of *England*, and what was done should be by their Opinion, that so this Question might have such a Resolution as no Person afterwards should have

reason to doubt the Law, and all Persons might be warn'd how they for the time to come mingle themselves with such Rabble on any kind of such Pretences: and thereupon the Jury as to the first four in the first Indictment gave a special Verdict to this Effect, *viz.*

They find that the 24th of *March* last, a great Number of Persons, to the Number mention'd in the Indictment, were assembled in *East-Smithfield* and *Moorfields*, in the County of *Middlesex*, with Arms mention'd in the Indictment, on pretence of pulling down Bawdy-houses; that *Beasley* led them, and was called their Captain, and had in his Hand a naked Sword which he brandish'd over his Head; and that *Messenger* had a piece of green Apron on a Staff, which he flourish'd as Colours in the Head of the Company; and that *Beasley* and he led the Company as their Leaders; that they did the like on *Wednesday* the 25th of *March*, and were breaking down Houses. That *Peeverell*, one of the Constables of *Middlesex*, having a Constable's Staff in his Hand, came to them with other Persons to aid him, and charged them to depart and keep the Peace, and thereupon *Beasley* with his Sword struck him, and wounded him; and several Persons assembled with him, struck him down, and took away his Constable's Staff. That the said *William Green* was among them, casting up his Cap, and hollowing, with a Staff in his Hand; and that whilst he was amongst them he was knock'd down by a Party of the King's Soldiers that came to suppress them, and was then taken. That *Beasley* struck at the Ensign that led those Soldiers. That the said *Appletree* was amongst them both Days, and was the first that struck at *Peeverell* the Constable, and was amongst them at *Burlingham's* House on *Saffronhill* in the County of *Middlesex*, and pull'd part of the House down, and the next House to it, and struck at one that admonish'd him to be quiet. And if upon the whole Matter, it shall seem to the Court that they are Guilty of the Offence mention'd in the Indictment, then they find them Guilty, &c.

*A Special Verdict as to Messenger, Appletree, Beasley, and Green.*

On the Second Indictment as to *Cotton* alone, the Jury did find that at the Time and Place mention'd in the Indictment, a great Number of Persons, to the Number mention'd in the Indictment, met together arm'd with Swords, Clubs, Staves, and other Weapons, under pretence of pulling down Bawdy-houses, and had a Cloth on a Staff for an Ensign carry'd before them. And that Sir *Philip Howard*, with a Troop of the King's Guards, found them arm'd in such a seditious Manner, and commanded them to disperse; that they refus'd so to do, and threw Stones at him; that some of them enquir'd who it was that led those Guards, whether it was the Duke of *York*? and being told it was, they presently threw Stones at Sir *Philip Howard* who led the Horse; and some of them said, that unless the King would give them Liberty of Conscience, *May-day* should be a bloody Day; others bid kill the Guards, and others said, that they would come and pull down *Whitehall*, and others said, they would be with them

*Special Verdict also as to Cotton.*



them at *Whitchhall*, (the King's Capital Palace) and that they car'd not for the Guards, for they were but two or three Hundred, and they could easily knock them on the Head; that they continu'd many Hours, till they were dispers'd by the Guards. That *Cotton*, who was indicted, was one of them assembled in this manner, and that *Cotton* was amongst them the next Day when they were assembled in the same Manner, and was pulling down a House in the Parish of *St. Leonard Shoreditch*, in the County of *Middlesex*; and if on the whole Matter, &c.

*Special Verdict  
on the third In-  
dictment, Bedle  
and Latimer.*

On the third Indictment against *Bedle* and *Latimer*, the Jury find that, the Day and Place mention'd in the Indictment, a great Number of Persons, to the Number mention'd in the Indictment, armed as in the Indictment, did meet together on *Glerkenwell-Green*, in the County of *Middlesex*, on pretence of breaking open Prisons, and releasing Prisoners; that one of them who had a Halt-pike in his Hand, own'd himself to be their Captain; that they came so assembled together to a Place there call'd the *New-Prison*, being a publick Prison of the County of *Middlesex*, and then and there said, that they came to search for Prisoners; and brake open the Prison-Doors, and let out four Prisoners, two whereof were committed thither for Felony, and two for other Offences; and that they being charg'd to depart, reply'd, they had been Servants long, but now they would be Masters; that some being taken, they cry'd, *One die, and all die*. That *Latimer* was amongst them, and active in breaking of the Prison, and was with the rest in the Prison after it was broken open; and that *Bedle* was there, and being pursu'd by one of the King's Soldiers, call'd out to the rest of the Company to face about, and not to leave him: And if on the whole, &c.

*Special Verdict  
as to Limerick.*

On the fourth Indictment against *Limerick* the Jury find, that the Day, Year and Place in the Indictment mention'd, a great Number of Persons, to the Number, &c. assembled together on pretence of pulling down of Bawdy-houses; and being arm'd *prout* in the Indictment, they march'd in warlike Manner, and the said *Limerick* led them as their Captain with a Club in his Hand, and was own'd by the Company to be their Captain: That the said *Limerick* had the said Persons to the House of *Peter Burlingham*, and they pull'd down the said House, and destroy'd and took away divers Goods of the said *Burlingham's*, to the Value of 30*l*. And if on the whole Matter, &c.

And in *Easter* Term following, all the Judges met at my Chamber, there being then but Eleven. My Lord *Bridgeman*, who was Chief Justice of the Common Pleas, being then Lord Keeper, the Judges were my self, Chief Justice of the *King's Bench*, Sir *M. Hale* the Chief Baron, and my Brother *Atkins*, Brother *Twisden*, Brother *Tyrell*, Brother *Turner*, Brother *Wyndham*, Brother *Archer*, Brother *Rainsford*, Brother *Morton*, and Brother *Wylde*.

And on the whole Matter the Chief Baron *Hale* deliver'd his Opinion, that there was no

Treason in the Case, because he said that the Stat. 1 *Q. Mary*, cap. 12. is, That if any Persons, to the Number of Twelve, or more, assemble to the Intent to pull down Inclosures, &c. with force, and continue together an Hour after Proclamation made for their Departure, it shall be Felony; and if those Actions had been Treason at Common-Law, it had been to no purpose to make it Felony.

But all the other Judges answer'd, That this was the Objection made by some Judges in the Case of *Bradshaw* and *Burton*, which is reported by *Popham* in his Reports, pag. 122, and there it was resolv'd, that if any Persons assembled with Force to alter the Laws, or to set a Price on Victuals, or to lay violent Hands on the Magistrate, as on the Mayor of *London*, and the like, and with Force attempt to put the same in Execution, this is Rebellion and Treason at the Common-Law; and they there resolv'd, that that Statute of 1 *Mary* was to be intended, where Persons, to the Number of Twelve, or more, pretending any or all of them to be injur'd in particular, as by reason of their Common, or other Interest in the Land inclos'd, and the like, assemble to pull it down forcibly in Cases where they have an Interest, or where in particular they are annoy'd or griev'd, that is not Treason: But in case their Act goeth generally to pull down Inclosures, in which they, or any of them, are not particularly concern'd, this Act, if it be put in Execution by Force, is Treason at Common-Law. And it was agreed by us all, that the Statute of 13 *Eliz.* which maketh the Intention in many Cases Treason, extends to nothing, but where if the Act had been done, it had been Treason at the Common-Law.

And therefore all the rest of the Judges did unanimously agree, that this Rising, with Intent to pull down Bawdy-houses in general, or to break open Prisons in general, and let out Prisoners, and putting their Intention in Execution by Force, any of these Instances was a levying War against the King, and High-Treason at Common-Law, within the Declaration of the Statute of 25 *Edw.* 3. and for that, besides the Resolution in *Popham's* Reports before cited, we consider'd the Case of the Apprentices, reported in the second Part of *Anderson's Reports*, p. 4, 5. where it was resolv'd, that by the Statute of 13 *Eliz.* if any intend to levy War for any thing, which the Queen by her Laws and Justice ought to do, and reform in Government as Queen, this shall be an Intendment to levy War against the Queen within that Statute of 13 *Eliz.* And as we said before, nothing can be Treason by the Intention within the Statute, which had not been Treason by the Common-Law, if it had been actually put in Execution. And see the same Book of *Anderson*, Part II. pag. 66. and by the Case of several Persons in *Oxfordshire* rising to pull down Inclosures in general, resolv'd accordingly; in which Case it was also resolv'd, that if any Persons rise and assemble together, with intent to levy War, the Justices of the Peace and Sheriffs may use Force to suppress such Rebels, without any special Commission or Warrant, and this by the Common-Law. And see *Popham's Reports*, p. 121. and a Resolution of all the Judges, 39 *Eliz.* that any Justice of the Peace, Sheriff, or other Magistrate, or any other Subject of the King, may, by the Common-Law,



Law, arm themselves, to suppress Riots, Rebel-  
 lions, or resist Enemies, and endeavour them-  
 selves to suppress such Disturbers of the Peace:  
 But they said the most discreet way was for eve-  
 ry one to attend and assist the Justices in such  
 Case, or other Ministers of the King in doing  
 it: *And Cook, Pl. Cor. 9.* If any levy War to ex-  
 pulse Strangers, to deliver Men out of Prison,  
 to remove Counsellors, or to any other End  
 pretending Reformation on their own Heads  
 without Warrant, this is a levying of War a-  
 gainst the King, because they took upon them  
 Royal Authority. *And Moor's Reports, pag. 620,*  
*621.* in the Case of the Earl of *Essex*, in which,  
 amongst other things, it was resolv'd, that his  
 Attempt with Force to remove the Queen's  
 Counsellors was High-Treason; and likewise that  
 the Earl of *Southampton*, who adher'd to him,  
 altho' he knew of no other Purpose of the Earl  
 of *Essex*, but a private Quarrel against some of  
 the Queen's Servants, yet this was Treason in  
 him, the Act of the Earl of *Essex* being Rebel-  
 lion and Treason; and so it was also resolv'd,  
 that all those who went with him out of *Essex-*  
*House* in aid of him, it was Treason in them,  
 whether they knew any thing of his Intent or  
 not. *And Cro. Part I. 583,* in *Benshead's* Case,  
 it was resolv'd by all the Judges, That going to  
*Lambeth-House* in warlike Manner with Drums,  
 and a Multitude, as in the Indictment, to the  
 Archbishop, who was a Privy Counsellor, was  
 Treason. *And, 2dly,* It was resolv'd that the  
 Justices of Oyer and Terminer may sit, enquire  
 and try Prisoners all in one Day. *3dly,* It was  
 resolv'd, that the breaking of a Prison, wherein  
 Traitors were in durance, and causing them to  
 escape, was Treason, altho' the Parties did not  
 know that Traitors were there. And so to  
 break a Prison whereby Felons escape, this is  
 Felony, tho' they do not know them to be in  
 Prison for such Offence. *Note,* That Resolution  
 as to breaking a Prison where Felons, &c. are,  
 must (as I think) be intended only where the  
 Intent was only to break open one Prison, and  
 no more; for if the Design was to break open  
 Prisons in general, and they put that in Execu-  
 tion as to one Prison, that is High-Treason ac-  
 cording to the Books before cited; but then on  
 the Evidence it must be prov'd that their Intent  
 was such, and by such Proof as satisfieth the Jury.

After this Resolution in general, we went to  
 consider the particular Cases as they were found  
 upon the several Special Verdicts; and thereupon  
 it was agreed by all of us, except the Chief Ba-  
 ron, who said he doubted on the main; That as  
 to *Messenger* and *Beasley* in the first Verdict, and  
 to *Cotton* in the second Special Verdict, and as to  
*Limerick* in the fourth Special Verdict, that the  
 Matter, as it was found against these four, was  
 High-Treason in them all, and accordingly they  
 had Judgment, and were Executed: But as to  
*Appletree* in the first Special Verdict, and as to  
*Latimer* in the third Special Verdict, there was  
 Difference in Opinion amongst us, whether the  
 Verdict was sufficiently found against them to  
 judge it High-Treason or not. For besides the  
 Chief Baron, who was against all, my Brother  
*Atkins*, *Tyrell*, *Windham*, and *Wylde*, held that  
 the Verdict was not sufficient against those two,  
 for to give Judgment that they were guilty of  
 Treason; because, they said, it was not expressly

found that they were aiding and assisting. But  
 my self, Brother *Turner*, *Twisden*, *Archer*, *Rayns-*  
*ford*, and *Moreton*, thought the Verdict, as it  
 was found against them, to be as full and plain  
 as any of the rest. For first, as to *Appletree*, the  
 Verdict first finds in general, that the Number  
 in the Indictment were assembled, as in the In-  
 dictment, with an Intent to pull down Bawdy-  
 Houses: That *Beasley* led them as their Captain;  
 that *Messenger* had a green Apron upon a Staff,  
 which he flourish'd as Colours; and then that  
*Appletree*, the Person now in question, was a-  
 mongst them both the Days, and was the first  
 that struck at *Peverell* the Constable, and was a-  
 mongst them at *Burlingham's* House at *Saffron-*  
*Hill*, and pull'd part of that House down, and  
 the next to it, and struck at one that admonish'd  
 him to be quiet; so that here are several Acts of  
 Force found to be actually committed by him in  
 pursuance of their Design, and then there is no  
 need to find him to be Aiding and Assisting: for  
 that Clause, we said, was only necessary to be  
 found where the Jury find a Person was there a-  
 mong them, and find no particular Act of Force  
 done by him, but only his Presence, there it is  
 necessary that they find he was present Aiding  
 and Assisting. And for the same Reasons we held  
 the Verdict to be full also against *Latimer*, be-  
 cause it was first found that the Multitude was  
 assembled, as in the Indictment, on pretence of  
 breaking Prisons and releasing Prisoners in gene-  
 ral, which is agreed by all (except the Chief Ba-  
 ron) to be Treason; and then they find that *La-*  
*timer* was amongst them, and active in breaking  
 open the Prison at *Clerkenwell* (where Prisoners,  
 some for Felony, and others were let loose) and  
 that he was with the rest in the Prison after it  
 was broken open, and so an Act fix'd upon him.  
 But altho' six of us were well satisfy'd in our Judg-  
 ments as to them, yet when I waited on the King,  
 I acquainted him there was some Difference in  
 Opinion as to those two, upon finding of the  
 Special Verdict; and altho' the greater Number  
 of us were of Opinion, that the Verdict was  
 well found as to those also, yet I intreated his  
 Majesty to make use of that Difference in Opi-  
 nion to shew his Mercy towards them, the ra-  
 ther because we had agreed, that as to four of  
 them the Verdict was clearly good as to proceed  
 to Judgment against them, and that I hop'd  
 would be Example enough to deter others from  
 the like Practices; and besides it would appear an  
 Instance of his Majesty's great Mercy, that he  
 would not proceed to the last Extremity against  
 any, where there was not a full Concurrence of  
 all his Judges: which his Majesty was pleas'd to  
 take very graciously, and order'd me to proceed  
 accordingly, and so they two were spar'd. But  
 as to *Green* in the first Special Verdict, and *Be-*  
*dle* in the third Special Verdict, we all agreed  
 that the Verdict was not full enough as to them,  
 for us to judge it Treason in them, because the  
 Verdict only finds that they were present, and  
 finds no particular Act of Force committed by  
 them, and doth not find that they were Aiding  
 and Assisting to the rest; and it is possible one  
 may be present amongst such a Rabble only out  
 of Curiosity to see: and whether they were Aid-  
 ing and Assisting is Matter of Fact which ought  
 to be expressly found by the Jury, and not be left  
 to us upon any colourable Implication; and ac-  
 cording'y these two were discharg'd.



LXIX. *The Trial of ROBERT HAWKINS, Clerk, late Minister of Chilton, at the Assizes at Ailesbury, for Felony, 11 March, 1688. 20 Car. II. Wrote by himself.*

**U**PON *Tuesday*, being the 9th of *March*, 1668, I went to *Ailesbury*, and got thither about Four of the Clock in the Afternoon, and about the same time came in the Reverend Judges, *viz.*

Sir *Matthew Hale*, Knt. (then Lord Chief Baron of his Majesty's Court of *Exchequer*, but now) Lord Chief Justice of *England*; and *Hugh Windham*, Serjeant at Law. And upon *Wednesday* the 10th of *March* the Assizes began, and in the Afternoon of the same Day, *Larimore* (by the Advice of Sir *John Croke*, who had then got Leave to come to the Assizes) carried his Bill of Indictment against me, to the Grand Jury: Their Names were as followeth,

<i>John Hill</i> , Gent.	<i>Jonathan Tomlins</i> , Gent.
<i>Samuel Grange</i> , Gent.	<i>William Barret</i> , Gent.
<i>Richard Cokeman</i> , Gent.	<i>John Butterfield</i> , Gent.
<i>Jacob Sale</i> , Gent.	<i>William Pedder</i> , Gent.
<i>Thomas Redding</i> , Gent.	<i>John Fosket</i> , Gent.
<i>Thomas Berringer</i> , Gent.	<i>John Sare</i> , Gent.
<i>Clement Summerford</i> , Gent.	<i>John Merydale</i> , Gent.
<i>John Winter</i> , Gent.	<i>Robert Worrel</i> , Gent.
<i>John Burnham</i> , Gent.	<i>George Wells</i> , Gent.
<i>Ralph Rice</i> , Gent.	In all Nineteen.

These were the Gentlemen of the Grand Inquest for the Body of the County of *Buckingham*, and unto them the foresaid *Larimore* exhibited his Bill of Felony against me; the Sum and Substance of it, was as followeth:

*The Grand Inquest for our Sovereign Lord the King upon their Sacred Oaths present, that Robert Hawkins, late of Chilton, in the County aforesaid, Clerk, did upon the 18th of September, in the 20th Year of the Reign of our Sovereign Lord Charles the Second, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. with Force, and Arms, &c. at Chilton aforesaid, in the County aforesaid, two Gold Rings, each of them at the Value of Ten Shillings; one white Holland Apron, of the Value of One Shilling Six Pence; two pieces of Gold, each of them at the Value of Ten Shillings, and Nineteen Shillings in Silver, of the Goods and Chattels of Henry Larimore, in the Parish and County aforesaid, then and there being found, then and there Feloniously he did steal, take, and carry away, contrary to the Peace, &c.*

This Bill was Signed by the Grand Jury, *Billa Vera*, and returned to my Lord Chief Baron

*Hale*, who then sat on the Crown's side, (or upon Life and Death) about Six of the Clock at Night.

Upon *Thursday* the 11th of *March*, 1668, my Lord Chief Baron came to the Hall about Eight of the Clock in the Morning, and the Court being set, I rendered my self willing to be tried according to the Laws of this Kingdom. And when the Clerk of the Assizes saw me bow to the Court, he then inform'd my Lord, and said, This is Mr. *Hawkins*, who stands indicted for Felony; and then the Clerk of the Arraignments read the Bill, which was sign'd and return'd, as aforesaid; and then I was set to the Bar, without any other Prisoners.

Clerk of the Arraignments said, *Robert Hawkins*, hold up thy Hand, which I then did, and then the Clerk read the Indictment against me as followeth.

**Y**OU stand indicted in *Ailesbury*, in the County of *Bucks*, by the Name of *Robert Hawkins*, late of *Chilton*, in the County aforesaid, Clerk, for that you the said *Robert Hawkins* (not having the Fear of God before your Eyes) upon the 18th of September, in the 20th Year of the Reign of our Sovereign Lord *Charles the Second*, by the Grace of God, of *England, Scotland, France, and Ireland, King, Defender of the Faith, &c. with Force and Arms, &c.* at *Chilton aforesaid*, in the County aforesaid, into the Dwelling-House of one *Henry Larimore* Feloniously did enter, and two Gold Rings at the Value of Ten Shillings each of them; one white Holland Apron, of the Value of One Shilling and Six Pence; two pieces of Gold, each of them at the Value of Ten Shillings, and Nineteen Shillings in Silver, of the Goods and Chattels of him, the said *Henry Larimore*, then and there being found, then and there Feloniously you did steal, take, and carry away, contrary to the Peace of our said Sovereign Lord the King, his Royal Crown and Dignity, &c.

How say'st thou, *Robert Hawkins*, art thou Guilty of the Felony whereof thou standest indicted, or Not Guilty?

*Robert Hawkins*. Not Guilty, my Lord.

Clerk. How wilt thou be tried?

*Rob. Hawk*. By God and my Country.

Clerk. God send you a good Deliverance.

Court. Call the Jury, [*viz. the Clerk did*]

Crier, Call these, *viz.*

*Richard Lambourne,*  
*James Reynolds, Jun.*

G g g g 2

*Robert*



*Robert Hoare*, I challeng'd him.

*L. C. B.* Set him by.

*Edward Butler*.

*Tho. Coles*, I challeng'd him.

*L. C. B.* Set him by.

*Richard Hearnese*.

*Thomas Sanders* of *Chilton* was challeng'd by *Larimore*, contrary to Custom.

*Edward Carter*.

*John Goodwyn*.

*William Porter*.

*John Ringham*.

*William Cannon*, Jun.

*William Welch*.

*Edward Cope*.

*Francis Rusbell*.

All these being in Number Fifteen, but three of them were challeng'd, two of them by me (I being inform'd they were no Friends to the Church of *England*) and for the third, *viz.* *Mr. Tho. Sanders*, he was challeng'd by *Larimore* contrary to Custom, without shewing any Reason, he being a Neighbour that knew us both, and the Business, better than any of the rest of the Jurors. The other Twelve were sworn as followeth,

*Clerk. Rob. Hawkins*, Hold up thy Hand; which I did.

*Marshal. Richard Lambourne*, Lay thy Hand upon the Book; look upon the Prisoner.

**Y**OU shall well and truly Try, and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge according to your Evidence, So help you God: Kiss the Book. And so were all the rest sworn.

*Clerk. Crier*, count these. *Richard Lambourne*, *James Reynolds*, two, &c. Twelve good Men, and true, stand together, and hear your Evidence.

*Clerk. Crier*, make a Proclamation.

O Yes, &c.

**I**F any Man can inform my Lords, the King's Justices, the King's Serjeant, or the King's Attorney, of any Murders, Felonies, or Treasons, done, or committed by the Prisoner at the Bar, before this Inquest be taken, between our Sovereign Lord the King, and the Prisoner at the Bar, let them come forth and they shall be heard, for now the Prisoner at the Bar stands upon his Deliverance. And all others bound by Recognizance to give in Evidence against the Prisoner at the Bar, come forth and give your Evidence, or else you will forfeit your Recognizances.

*Clerk. Crier*, call the Witnesses.

*Henry Larimore*, Sen. the Prosecutor.

*Richard Mayne*, Jun. Constable.

*Tho. Beamsly*, Tithingman (Brother in Law to the said *Larimore*.)

*Dodsworth Croke*, Esq; (Sir *John Croke*'s eldest Son.)

*John Cox*.

*Henry Larimore*, Jun. (Son to the said *Larimore*, near Twenty Years old, and not Baptized.)

*Mary Keen*.

*Joan Beamsly* (Sister to the said *Larimore*.)

*Margaret Larimore* (Wife to the said *Larimore*.)

*John Chilton*.

*William Croke*, Gent. (Son to Sir *John Croke*.)

*John Boyse*.

*Thomas Welch*.

*Samuel Salter*.

*John Stop*, (Sir *John Croke*'s Man.)

*Francis Luce*.

*William Mantill*, alias *Miles* (Nephew to the said *Larimore*.)

*Richard Mantill*, alias *Miles* (Brother-in-Law to the said *Larimore*.)

*Tho. Croxton*, of *Weston on the Green*, in the County of *Oxon*, Yeoman.

*Nicholas Sanders*.

*Christopher Bethum*.

*Edward Good*, of *Long Crendon*, Clerk, (a Person that committed a Riot and forcible Entry upon my Church at *Chilton*.)

All these (being in Number 22) were Witnesses procur'd (by Sir *John Croke* and *Larimore*) and sworn against me.

*Clerk. Rob. Hawkins*, Hold up thy Hand. [Which I did.]

Here the Indictment was again Read.

The Clerk speaks to the Jury thus. Look upon the Prisoner, you that be sworn. You shall understand that the Prisoner at the Bar hath been Arraign'd upon this Indictment, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Country, which Country you are. Your Charge is, to enquire whether the said *Robert Hawkins* be guilty of this Felony (in Manner and Form as he stands indicted) or Not Guilty; if you find him Guilty, you shall enquire what Goods and Chattels, Lands and Tenements he had at the Time of committing this Felony, or at any time since; if you do find him Not Guilty, you shall enquire if he fled for the same; if you do find that he fled for the same, you shall enquire what Goods and Chattels, as if you had found him Guilty: If you find him Not Guilty, and that he did not flee for the same, you shall say so, and no more; and hear the Evidence.

*Henry Larimore*, the Prosecutor, was sworn as followeth. *Mr. Larimore*, lay your Hand upon the Book, look upon the Prisoner.

**T**HE Evidence that you shall give unto the Court, and to the Jury, between our Sovereign Lord the King, and the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you God. Kiss the Book.

Here I took Pen, Ink and Paper, to take Notes at the Bar.

*Larimore* said, May it please your Honour, my Lord, upon *Friday* the 18th of *Sept.* in the Year of our Lord 1668, between Twelve and One o' Clock at Noon, I lock'd my Doors fast, and left no body in my House, putting the Keys in my Pocket. I went to a Hemp-plot, about two Furlongs from my House, to pluck Hemp; where I, and the rest of my Family, continued till an Hour



Hour and half of Sun-set, and then coming home, found my Doors wide open: So I went in, and run up the Stairs into my Chamber (or upper Loft, over my inward Chamber where I lie.) I then hearing a Noise in the Chamber where I lie, just under me, I peeped down through some of the Chinks of the Loft-boards, there I saw this Mr. *Hawkins* (pointing with his left Hand towards me, but having his Face all that time towards the Judge) ransacking and rifling of a Box, in which Box was then, amongst other Goods, one white Holland Apron, a Purse, and in that Purse was, at that time, two Gold Rings, each of them of the Value of 10 s. two Ten-Shilling Pieces of Gold, and Nineteen Shillings in Silver, all the which said Gold Rings, Gold and Silver (except one small Piece of Silver or two) I then saw this Mr. *Hawkins*, that is now the Prisoner at the Bar, take and turn out of this very Purse, which I do now shew unto your Honour; and he did then steal and carry away all the foresaid Rings and Money, with the said Holland Apron. All these things, my Lord, I saw him take out of my Box and Purse, for I was all that time looking through the Chinks of the Board. And when Mr. *Hawkins* heard some Noise above, I further saw the Prisoner now at the Bar go out of my said Lower Room where my Box was, and glanc'd by the Stair-foot Door, and so run out of my House, with a great Bunch of Keys in his Hand, down my Yard, and hid himself in a Close where there were some Beans and Weeds. All this, my Lord, I saw with my own Eye. Moreover, my Lord, I having a Warrant from Sir *Richard Pigott* to search for the said Rings and Money, &c. I did upon the next Day (it being *Saturday*, and the 19th of *September*) after Mr. *Hawkins* had robbed me, call *Richard Mayne*, Jun. the Constable, and Mr. *Tho. Beamfly*, Tithingman, with some others of our Town, to search Mr. *Hawkins*'s House for my said Money and Goods, which the Day before I saw him steal from me: But he refusing to open his Doors, or to let us search; when we saw that, the Constable broke open his Doors, and then we went in, and searching his House, I did then find in an inward Room below Stairs, in a Basket hanging on a Pin (put amongst Papers and Rags, and other Trumpery) this Gold Ring, and this Five-Shilling Piece of Silver. And I do swear, that this Ring and Piece of Silver is one of the same Rings and Pieces of Silver which the Day before I saw the Prisoner now at the Bar take out of this very Purse, it being *Friday* the 18th of *September*, and an Hour and half before Sun-set. This was the Sum and Substance of *Larimore*'s Evidence, whereupon my Lord Chief Baron asked *Larimore* these Questions.

*Lord Chief Baron Hale.* Are you sure, *Larimore*, that you left your Doors lock'd, when you went out to pluck Hemp?

*Larimore.* Yes, my Lord, I am sure I did.

*L. C. B.* When?

*Lar.* Between Twelve and One of the Clock at Noon, my Lord.

*L. C. B.* Upon what Day was it?

*Lar.* It was upon the 18th of *September* last past, my Lord.

*L. C. B.* Upon what Day of the Week was it?

*Lar.* It was upon *Friday*, my Lord.

*L. C. B.* In what Year was it?

*Lar.* It was in the Year of our Lord 1668, my Lord.

*L. C. B.* Are you sure that your Chamber-Door where your Box stood was lock'd at that time?

*Lar.* I cannot certainly tell, my Lord.

*L. C. B.* Was the Box lock'd at that time?

*Larimore* to this Question paus'd a while, and gave no Answer.

*Marshal.* My Lord desires to know whether your Box was lock'd at that time when you lost your Money and Goods out of it.

*Lar.* It was lock'd, my Lord.

*Clerk.* Was it at that time lock'd, by the Oath you have taken?

*Lar.* It was lock'd, if it shall please your Honour.

*L. C. B.* Were the Locks of the Doors and Box broken?

*Lar.* My Lord, I cannot certainly tell, but I do believe that they were pick'd open with some Pick-lock or false Key.

*L. C. B.* Did you see him, that is now the Prisoner at the Bar, in your House at that time, and in that Posture, by the Oath you have taken?

*Lar.* I did then see him that is now the Prisoner at the Bar in my House, my Lord, as I said before.

*L. C. B.* At what time of the Day was it that you saw him in your House?

*Lar.* It was an Hour and half before Sun-set.

*L. C. B.* said to me, Sir, will you ask *Larimore* any Questions before we call more Witnesses?

*Hawkins.* Yes, my Lord, if I may have Leave.

*L. C. B.* Sir, you may proceed to your Questions.

*Hawkins.* I humbly thank your Honour.

*Hawkins.* I pray, my Lord, ask *Larimore* if he be sure that I am the Person that robb'd him.

*L. C. B.* *Larimore*, answer to the Question.

*Lar.* Yes, my Lord, I am sure he is the Person that robb'd me, for I know him very well.

*Hawk.* Why did you say before Sir *John Croke*, when I was before him, that you could not say that I had stolen them?

*Lar.* I said no such thing, this all that were there can justify.

*Hawk.* My Lord, I desire to know of *Larimore* if he be sure that it was upon a *Friday*, and the 18th of *September* 1668, and in an Hour and half before Sun-set, when he saw me in his House robbing him.

*Lar.* replied, that it was upon that Day and Time, as near as he could guess.

*Hawk.* Why (when *Larimore* found his Doors open, which he expected to have found lock'd) did not he call some of his Neighbours to assist him in searching his House, and to secure me, or any other Person which he might find robbing him, rather than to run up Stairs by himself to alarm any Person that was in his House, and thereby giving them Opportunity to escape?

*Larimore* said, He did not then so well consider of it as now; but being willing, seeing his Doors open, ran up the Stairs to know what the Matter was, and looking through the Chinks of the Loft, saw me in his House, as aforesaid.

*Hawk.*