and taking into Consideration the whole Scope of the Affair, I cannot see that there can be any material Objection against Mr. Turberville for saying that my Licence by Calot in the Company of Count Gramont.

My Lords, I have done now with the Witneces, and I told you as I went along, (because I would not trouble you with a double Repetition) what Evidence we have given in Consideration to those Witneces which my Lord hath brought in order to defame our Witneces.

But, my Lords, I am to acquaint you, That besides those particular Answers, your Lordships have had Men of very great Credit brought to testify the Reputation of Mr. Dugdale and Mr. Turberville. As to Mr. Dugdale, we have brought Men that have known him a great while; one hath sworn what Opinion even my Lord After himself had of him: For it seems he lived with so much Credit there, that he would not be accused any Ill of him. You have heard from other Witneces how he did behave himself. It was objected sometimes, Trademen were not paid; but what then? can a Man pay without Money? I believe there are some Lords here, whose Stewards are very honest Men, and yet the Trademen such Lords deal with are not always readily paid.

He was, as you observe, believed to be in the Plot, and my Lord's Servants say he seemed much troubled about it; he went away upon that account, and was so much concerned, that he burnt his Papers, which I make use of for two Purposes. The one to shew that he did apprehend he was in great Danger; the other to shew what was the Reason why the Letters and Papers he speaks of are not now produc'd; because he lost 'em upon himself, and them who were then his Friends, to be in such Danger by them, that he burnt them.

My Lords, I know your Lordships will take notice, that there hath been a very good Account given you, how it was that Dugdale came to be prevailed upon to make a Discovery of the Plot; it was with great Difficulty; there were indeed Perquisitions used by some of his Friends to bring him to it. The Justices, as they themselves have sworn, endeavoured the same thing, but all without Success. Then the Coroner, Mr. Stowell, (who 'tho' he was no great, yet seems to be a very understanding Man) takes him in Hand, and he had the good Fortune to succeed. I call it Good, not only for Mr. Dugdale, but for the Nation. I shall not trouble your Lordships with the Particulars of the Arguments Mr. Stowell used to him, but 'tis plain (as he himself, whose Credit is now supported by an honourable Lord, and by a Member of the House of Commons) that Dugdale did at the first Time that he did make a Discovery, depose as much in Substance against this Lord, as now he does. And from thence I desire to make one Observation, and that is this:

'Twos impossible it could be a Contrivance among the Witneces themselves to depose the same Crimes against this Lord; for Dr. Oates never knew Mr. Dugdale, till Dugdale was brought up, which was long after Dr. Oates's Accusation of this Lord; nor could Dugdale know what Evidence Oates had given here, for Dugdale was a close Prisoner in Stafford Goal before Oates accused this Lord, and long after. And yet the first Evidence Dugdale gives against this Lord, doth in Substance concur with that given by Dr. Oates. So that since there could be no Intercourse nor Conference between them, but as much Distance as from the Pifon Down in Stafford to London, there could be no Contrivance between them, for both of them to accuse this Lord of the same Matters. And this I desire may be looked upon by your Lordships a Matter of great Weight to support the Credit of the whole Evidence. And Dugdale does seem to be a Person of an unquestionable Credit, and every one that hears him must observe, he does give his Evidence with great Modesty, and all Probability of Truth.

There is another thing, my Lords, that I would pray your Lordships to observe: These Witneces, Mr. Dugdale and Dr. Oates, do give such an Evidence as is impossible to be given, unless it were true; for other Witneces when they are put out of the Rook, and after Questions they did not expect, are commonly to feel, and must pump for an Answer, and then anow with great Difficulty and Wariness. But these two Witneces do not only answer with Readiness when you ask them any Questions, but what is contained in every new Anow doth add a further Probability and Confirmation to what they said before. And I must needs say of them, I think it was impossible for any Men in the World to contrive a Story so many Particulars, and so confidet in every Part of it, and yet the fame should it fall; and which is more, after so many Trials, not one material Circumstance of what they say contradicted by any solid Proof.

My Lords, There may be other Particulars which I may have forgotten; I know not whether I observed that my Lord objected that we do not prove him a Papist: I hinted something before about his coming to Mais to my Lord After's at Tixall, which is one force of Proof of his being of the Roman Religion. Besides his perpetual Conversation with that Party, and his Endeavour to advance their Religion and Doctrines, all which have been fully proved: I think also my Lord defected the Houfe of Peers, for that he would not take the Test appointed by the late Act; your Lordships know whether he did fo or no. But, my Lords, let him, if he will, be a Protestant for this time; let that be fapp'd of: If he were a Protestant, and should be guilty of the Offences proved upon him, he would not deferve more Favour from your Lordships.

My Lord hath been likewise plead'd in further Proof of his Innocency to allledge, that after the Plot was discovered, he had seven Poits time to have ecape'd, and yet never fled. My Lords, 'Tis true he might have ecape'd, to might Catheren too; that Catheren that left fo fatal an Evidence against himself and all his Party under his own Hand, and for that he has civilly, and himself very guilty: And so might the Jefuits have ecape'd too, but that they had hoped the Oath of Secrecy, and the Mens they had usef to conceal their damnable Delights, would have been a sufficient Security against revealing it. They had that of Opinion of their Priests, and of the Fidelity and Constancy of those that had been fiduc'd by them, and recommended by them, that they apprehended nothing less than a Discovery. And those other Persons that were executed, did all flay about the Town after the Plot was discovered, as well as this Lord flay'd in the Country. My Lord did very much complain, that our Witneces were not politic in time of that: I think Dugdale was politic enough as to the time of the Offer of 500l. but other Matters, he would not confine himself to a Month: He talk'd of the latter
latter End of one Month, and the Beginning of another. I think he is the more to be believed; for I conceive unless a Witness hath some notorious Circumstance in his Memory to satisfy him about the Certainty of the Time, (such as was that of the Foot-Race, as to the Time of the Offer of 500 l.) it is rather a Mark of Prelumption than of Sincerity for a Witness to be too positive as to the Time. And is there so great a Distance between the latter End of one Month, and the Beginning of another, that a Witness need be so positive as to the very Day? But says my Lord, You talk of this Beginning, it was the 12th of September ever I came thither. Does not every Man count, that till the Middle of a Month 'tis the Beginning of a Month? Sure in common Speech it is so. Therefore I look upon that as a Matter scarce worth the mentioning; I am sure, not worth the serious answering.

But, my Lords, I must observe thus much, That what my Lord complains of as a Fault in our Witnesses, his own Witnesses are guilty of. For I appeal to your Lordships, when they came to speak of Times, whether they did not talk at a Distance of a Month or Months, and sometimes of Years, and were left certain in Point of Time than ours.

But, says my Lord, (for I am still answering his Objections, and you must take them as I find them) here is mention made by Dr. Oates of Letters, of many Letters; threw me some of those Letters: Show me the Letter you carried to the Pole-House. My Lords, were those Letters written to Dr. Oates? Did they belong to him? Or is it possible that my Lord's Letter delivered by the Doctor to the Pole-House, should now be known by the Doctor, that the Letters were to the Supreme of the Society of the Jesuits, should be produced by one that was a Novice of that Society? Does Dr. Oates talk of one Letter written to himself? You will then. I suppose, fee no Reason to expect those Letters should be produced by him that were not written to him, and the Custody whereof belonged to others.

My Lords, I must observe to you, that there have been great Endurances used to invalidate our Testimony; we have had Witnesses called against Witnesses, and my Lord hath had that Advantage to do it which perhaps was never known in any Case before, and which I hope will never be again.

The Evidence hath been printed and published to the World, before it hath been given. I say not that it was not necessary in this Case, which was a National Cause, and the Cause of our Religion; but I do say, it would not be fit to be done in other Cases; for the notifying of the Evidence is the Way to have it falsified and corrupted.

But notwithstanding all these Advantages, my Lords, I appeal to your Lordships Memories, what considerable Contradiction hath been given. It is true, some Witnesses to that end have been brought before your Lordships, but those Witnesses have been rendered incredible by more credible Persons; and I would defray your Lordships to observe, that tho' my Lord hath failed of proving any Subordination in our Witnesses, yet we have proved much Subordination endeavored by his Agents.

Your Lordships have the Record against Reading before you; and what Reference that hath to the Lords in the Tower, every one does remember, and my Lord is mentioned in that Record. And I might likewise mention the Insults of Olier, and what therein related to the Lords in the Tower, and I'll name but two Witnesses more, that have been attempted upon in this Nature; there was Wright the Barber; all the Applications were made to him that could be; Money given, Letters writ, Injunctions that he was not to swear, he was but to write, and that was easily done; or if he would be so kind to swear it, he should never come into open Court, only go before a Justice of Peace: So that your Lordships will observe by what Steps and Degrees Men were endeavored to be suborned. And then Lander tells you what was offered to him to corrupt himself, how he was brought to Taint, and what Endeavours were used to make him swear against our Witnesses.

These Things are plain, both by Records and particular Proofs upon Oath. But, my Lords, left we should want Proof of all, this very Lord (I pity him for it) hath been so unfortunate as to bring that Paper out of his Pocket, which Wright says he had Money to frame, and was to swear to. It seems my Lord had the Command of it, it seems to have been prepared for such a Good Time as this; this the producing of this Paper is as full a Confirmation of this Point, as can in Reason be expected.

My Lords, I have been, I fear, too long already, and yet, I fear, I have omitted as many Particulars as I have mentioned.

My Lords, the Evidence is so strong, that I think it admits of no Doubt; and the Offences proved against my Lord and the rest of his Party are so foul, that they need no Aggravation. The Offences are against the King, against his sacred Life, against the Protestant Religion, my against all Protestants; for it was for the Extermination of Protestants out of the Nation. Which I mean not of every one that is now, but of every one that would have continued so, every one amongst us (if these Designs had been accomplished) must either have turned his Religion, or turned out of his Country, or have been burned in it.

'Tis a Design that appears with so dreadful a Consequence to your Lordships, to this great Affirmation, and to the whole Nation, that it needs not any Words I can use to make you apprehend it. If the Matter be fully proved, (as I see no Reason to doubt but that it is) I am sure your Lordships will do this Justice to your King and Country, as to give Judgement against these Offenders, which will not only be a Security to us against them, but a Terror to all others against committing the like Offences.

L. Staff. I beg your Lordships to know whether you will give me leave to speak a Word: And my Lords, I shall not speak any Thing but as to a Mistletoe Sir William Jones hath made in two or three Things. Pray, my Lords, may I put you in Mind of them?

Sir Will. Jones. If there be any Mistletoe, pray tell us what it is. L. Staff. First, my Lords, he did omit telling you that Mr. Tucker's Brother did say he came in '71 to my Lord Poet's. Secondly, he says, I have proved myself a Papist, because I have not taken the Tilt: My Lords, the Tilt was since I was in the Tower, and whether I will take it or not, I do not yet know, till it be offered me. The third is this, that this Letter was in my Pocket, which I produced to you: My Lords, I knew nothing what was in it, it was given into my Hand as I stood here at the Bar. Fourthly, he said Hobbin did go out of Enginland with the Almoner; he did not so.

Another
Another Thing he says, that I said Oates was an infamous Perfon because he went to a Church that I said was idolatrous; I only said, it was so adjudged by Act of Parliament, I find, my Lords, the Things he is misrepresented in; and that, my Lords, made me very willing to put you in mind of them.

L. H. 8. Gentlemen, I would ask you whether you take any Notice of the Points in Law?
Sir Fr. Win. After the Fact is fixed, my Lords, we shall.

Then Mr. Powle, also one of the Casuistick oppo-
ted to manage the Evidence, proceeded fur-
ther in finning up the fame.

Mr. Powle. My Lords, The learned Perfon that speaks last left very little for me to say in the finning up of this Evidence: But because this noble Lord hath been pleased to allege several Reafons, from whence he would inifter at leaft a great Improbability that he should be guilty of the Treafons whereof he stands accused, I shall crave your Lordships Patience, that I may give three or four Words in anfwer to thofe Particulars.

My Lords, In the firft Place this noble Lord was pleaded to begin, and afterwards to continue his Defence with making Proteétions of his own Innocency: We very well know your Lordships fit now in the Seat of Justice, and whatsoever Credit or Regard your Lordhips pleafe to give to the Proteétions of a Peer in another Cafe, your Lordships will proceed here only according to your Proof and your Evidence, (secondum Allegata & Præbata) and therefore all we fhall fay to this, is, that we hope our Proofs are fo clear and evident, as will leave no Room to your Lordships to believe this noble Lord’s Proteétions.

In the next Place, my Lord is pleaded to allledge, and withal to lay fame Weight upon it, the voluntary surrendering of himself to Justice; and he laid it down as a Rule, that as Flight is an Argument of Guilt, fo the surrendering of a Man’s life to the Trial of the Law, is an Argument of Innocency.

My Lords, We admit the Rule generally to be true, but in fome particular Cafes it may be otherwise; fo for a Man that is not very confident of his own Innocency, may yet be very confident of the Strength of his Party; and whether the Confer-
deration of the Circumstances of Affairs, as they then stood, and the Power and Prevalency of the Popifh Party at that Time, might not reasonably create fuch a Confidence in this noble Lord, we must leave to your Lordships Judgment.

My Lords, We do conceive that thofe Perfons who contrived Sir Edmundsbury Godfrey’s Murder, had fo great Confidence in the Favour and Protec-
tion of fome of their Party, that they thought theirfelves able to outface Justice.

And we verily believe they intended it as an Example, to deter all Men from meddling fo much as with the taking an Examination concerning this horrid Plot.

My Lords, I defire to be underflood aight in this: I lay nothing of the Death of Sir Edmund-
burty Godfrey to the Charge of this noble Lord; I only use it as an Argument of the Prefumption of the Popifh Party at that Time.

My Lords, In the next Place, my Lord Stafford did obferve from my Lord Coke, that in the Tri-
als of Treafons we ought very much to guide our

Judgments by the Nature and Circumstances of the Fact (the Concomitants and Subsequents, as he termed them) with reference to the Perfon accused, whether they were likely to induce or deter him from fuch an Attempt; and here he was pleaded to prove fome Arguments from the whole Course of his Life, and did defire your Lordships to con-

ider fome Circumstances therein, that might make it improbable or impossible that he should commit a Treafon of this Nature.

He defired also your Lordships to remember, that he was defended from an honourable Family, and that his Anceftors were very worthy and ve-

dy deferving Perfons, and fuch as had often ven-
tured their Lives in Defence of their Country: And here he did likewise mention his own Service to the left King, and our present Sovereign in the late Wars.

It is not my Part, nor will I derogate any Thing from the Merits of this noble Lord, much left from the Honour of his Family: But in anfwer to this, we fhall defire your Lordships to confider, that this noble Lord (however he is pleaded to difown it at prefent) is notoriously known to be a Roman Catholick, (as they call themselves) and fuch we con-

ceive we have sufficiently proved him to be, in the Course of our Evidence: And as there is no-
thing in the World, fo much as a Miniftry of Con-
fidence, that can engage the bell of Men into the worft of Actions; fo we think the Principles of that Religion are fuch, as are more likely to per-

vert Men from their Duty and Allegiance, than any other Religion or Pefufion whatsoever.

And if the Zeal of this noble Lord did engage him to endeavour the Etablfishment of that Reli-

gion in this Kingdom, we may easily believe that his Reafon did fuggest to him the Means by which it must be effected, which could be no other but Blood and Confufion.

My Lords, The left Thing I shall take Notice of, is, what my Lord Stafford was pleaded to fay in general, as to the Doctrine of killing and depofing Princes, which his Lordship was pleaded to call a private Opinion, and not the Doctrine of the Church of Rome.

But in this Way, my Lords, give me leave to obferve, that this noble Lord did obferved upon this Occa-


sion fully own (and I much commend his Ingenuity in it) the Reality of the Gun-Powder-Treafon, fince we know how much that Party have endeav-

oured to render it incredible: And as length of Time hath fo fully manifefled the Particulars of that execrable Design, that it hath brought fuch as are of that Perufion to confess the Truth of it; fo, we hope, this Day’s Trial will convince both the Age we live in, and all Poffeignty, of the Truth and Reality of this profound Conspiracy. But to go on with that Point from which I did digrefs: I am not, I confefs, much vérified in the Canons and Councils of the Church of Rome; but, my Lords, this I know, the most famous and celebrated Writ-

ers of that Church, with the Society of the Jesuits, have publickly avowd and maintained this Doctrine. And we know in all Times, when there hath been occasion to put it in Practice, it hath never failed to have been attempted; and we likewife know, that the Church of Rome and the Pope have always avowed the Aes when they have been done. From all which we might very rea-

nably conclude, that it is the Doctrine of that Church fo to do.
But my Lord is pleased to say, and I admit it for Truth. That a great many private Writers do hold the contrary; I believe it to be so, but I do also believe, that it is the Policy and Artifice of the Church of Rome, to have this Point of Doctrine in some measure understated, that so they may make use of it as the occasion serves; for if it succeeds, then it is owned and justified; if it miscarries, then the Doctrine is butt a private Opinion, and the Plot but the Practice of particular Persons that are either derelict or discontented. And I am fully of opinion, that this horrid Conspiracy which is brought this Day in Judgment before your Lordships, wants nothing but Success to can- nonize it.

My Lords, As to what concerns the Evidence, it hath been fo fully stated to you, and the Objec- tions that were raised to invalidate it, so well an- swered, that I will not trouble your Lordships with any Repetition of what has been said already: All we have further to desire, is, That your Lord- ships will please to take our Evidence into your Confidence, and so to therupon what shall be ag- gressive to Justice.

Mr. Sav. Mag. My Lords, As to the Matter of Fact I shall say nothing but only this, (and I wish it may be spoken with Gratitude to Almighty God) that the Discovery of this Plot is rather the Work of God than Man. It was first his Act, in prevail- ing upon Oates to make the Discovery; and when his flood fingle almost, what came to support his Credit but the Letters of Calenour? which were like a Tally to what Oates had said, for what Oates in- forms is in a great part made good by his Letters. Then when Godfrey was murdered, how came that Discovery out but by the voluntary Confession of one engaged in the whole Plot; I mean Bedell? So that tho’ these Men had engaged themselves by wicked Oaths, yet their own Confessions win- ning against them in themselves, they could not for- bear coming in to testify against themselves. I shall say no more, than that we ought to acknow- ledge the Hand of God in the Discovery with great Thankfulness; for it is he, and he alone, that out of his own Grace and Goodness hath done it, and thereby preserved the Life of our Prince to us, and in Him too us.

But as to the Matter in Law:

My Lord has been pleased to mention this fact, that there is no Overt-Act. I wonder that my Lord should be so much mistaken. When it is charged in the Articles, and proved to his Face he received a Commision, is not that an Overt-Act? He is charged in the Articles of Impeachment with contriving the Death of the King, and being at several Meetings and Consults about the King’s Death, and hiring Perions to kill the King; and these are no Overt-Acts? Therefore, as to that, my Lord is mistaken.

My Lords, Another Exception that is taken, is, That there is no Indictment. I conceive that an Impeachment of the House of Commons is more than an Indictment. And there cannot be any doubt of that, the Impeachments of the House of Commons having always been received and proceeded on by your Lordships.

But that which is most insisted upon, is, That this Charge that is made against this Lord, was pre- sented in another Parliament. It is true; but un- der favour, what is once upon Record in Parliament, may at any time afterwards be proceeded upon. It is a sudden Objection, but I conceive it hath been done: However, in a Cafe of this nature, when the Life of the King, when our own Lives, and our Nation, and our Religion lies at stake, if there were not a Precedent, I hope you would make a Precedent. But under favour, Resom is for it, the Charge is before you, the Proof is made, and we pray you will judge according as the Evidence hath been.

Sir W. Jeeves. My Lords, as to these Matters of Law, I think they are of no little difficulty, that my Lord will not desire to have Counsel assigned him; I am sure his Counsel will not desire to speck to them.

For this last Matter which Mr. Serjeant spoke of, and which was first named by the Prisoner, I desire your Lordships to consider what it is. Says my Lord the Prisoner, there was an Impeachment begun in the Long-Parliament, and this is now the third Parliament in which I am brought to my Trial. It is very true, there was a general Im- peachment against the Long-Parliament, the particular one was in the last, and this Lord was pleased to plead in the last. It may be he was not so well advised then as he is now.

But, my Lords, how can this be a doubt, when your Lordships have resolved, and have sent it down to the Commons, and it is there entered in their Book, as the Law and Constitution of Parliaments, that not only Impeachments, but all judicial Pro- ceedings continue from Parliament to Parliament, in the same flute that were in it at the rising of the last Parliament.

This is now become the Law of your House, and it is under favour, being fo, the Law of the Kingdoms; and you have admired it, and sent it to the Commons, I hope the Commons had very good reason to proceed upon this Improach- ment at this time.

The next Matter is concerning the Overt-Acts; I think there are sufficient Overt-Acts in Proof, and sufficient in the Impeachment. Will any Man deny that the receiving a Commision to be Pay- master of an Army is an Overt-Act? Will any de- ny, that the funding for the Witneef, and offering him Money in order to hire him to kill the King, is an Overt-Act? And (which answers to all) will any Man deny that the meeting and conferring of several Men together, about killing the King, and changing the Government, is an Overt-Act?

My Lords, these are all Overt-Acts; and I cannot but think it was without advice of my Lord’s Counsel that he made these Objections; for indeed these several Overt-Acts are laid in the Impeach- ment as fully as they are made out in Proof.

My Lords, There is another Objection that my Lord is pleased to make, and that is, that there is but one Witneef to a particular Act.

L. H. 8. Ay, what say you to that?

Sir W. Jones. That, my Lord, is of little weight, with submission; for our Impeachments, and our Proofs run to this, That your Lord had a Design and Intention to destroy the King: This was to be done by Force, and this was to be done by force Af- filiation. Now if several Witneefes come and prove each a different Act, under this Head of kill- ing the King, it is so many Proofs or Witneefes to the Treson.

For, my Lords, if a Man shall intend to kill the King, and shall buy a Knife in one County at one time, and send for a Man out of another County at another time, with whom he shall hire to kill the...
King, and these distinct Acts are proved by several Witneses; if they concur to the same general Treat, they are all but Parts of that, and so are so many Witneses to the whole. And so I am sure it was resolvd in the Cafe of others of the Conspirators in the Old-Balies, and before that in the Cafe of Sir Henry Vane. But, My Lords, in this Cafe here is first a Proof that he accepted a Commission, which I do not use as an Act for the Leving of War only, but as a Design to change the Government, and destroy the King. Here is meeting and conferring how to do this wicked Work. I mean to kill the King; that is another Overt-Act. Here is offering Mo- ney to one of the Witneses for that end; that is a third Overt-Act. And there is attempting ano- ther of them, tho' not with Money, yet with Prom- ises of Reward in general; that is another O- vert-Act: All which are to this End, the killing of the King. And I am sure of it, your Lordships cannot but receive Satisfaction from my Lords the Judges, that it hath always been so held, that tho' there need two Witneses to prove Treason, yet there needs no more than one to an Act, and ano- ther to another, if the several Acts fall under the same Head of Treason.

Sir F. Win. My Lords, I crave your Patience but for a Word or two, and this Noble Lord will have little reason to say his Objections in point of Law were of any weight. I confes he had said a great thing, if it were true, that the Articles of Impeachment did not allledge an Overt-Act; for then indeed they had been apparently defective: But, under his pardon, that is not a Point of Law, but a Point of Fact. Let us therefore refer to the Articles themselves: In the second Article it is allledged, that he, with the ref, did most wick- edly and traitorously agree, confire and resolve to imprison, depose and murder hisSacred Majesty, and to deprive him of his Real State and Government. And then the same Article allidges farther, that they did contrive and confile to effect the Mur- der of the King, by Shooting, by Poisoning, and by Stabbing. All these Particulars are expressed; so that when my Lord laid the Articles were therein defective, all we can say, is, that he was mis- informed.

My Lords, there was another Objection taken, That this is the Impeachment of another Parlia- ment. I must not now repeat how this Point was agreed by both Houses at a Conference; but it was then declared, upon search of Precedents in all Ages, That it was the Law of Parliaments, which is the Law of the Land, that if once an Im- peachment by the House of Commons were lodged in the House of Lords, tho' that Parliament were dissolved, the Impeachment remained in the same state. It was the Caufe of the Commons of Eng- land, who only change their Representatives in a new Parliament.

It has been also objected, that this Prosecution ought to have been upon an Indictment: As if an Accusation of the House of Commons, who are the Grand Inquest of the Nation, were not as ef- feftual to bring Offenders to Justice, as the finding of a particular Jury. My Lords, I shoul'd wonder to hear this Objec- tion made, were not my Lord to be easily excused for his knowing the Law no better. None who know any thing in the Law, would have urged such a thing; his Council, I dare say, did not suggest this Matter to him. It is true, my Lords, when a Peer comes to be tried by way of Comminion, or in Parliament when it is not at the Prsentation of the Commons, there an Indictment is first found in the proper County, and brought up before the Peers by Carie- rari, and upon that they proceed; but whether the Party be a Peer or Commoner, if he be im- peached for many Crimes, sorely no one can deny, but that the Tryal must be deferred, and after all, the Lords have proceeded to Trial, and have given Judgment thereupon without an Indictment found: So that this Exception will be of no force at all.

As for the remaining Objection, That there are not two Witneses to prove any one Overt-Act, the King's Perfon would be in no manner of Safety, if that Doctrine should be once allowed. Con- firming to kill the King is the Treason laid in the Impeachment, and the several Overt-Acts are so many several Evidences of that Treason. Words themselves, if they signify an Intention to do an Act, and express something to be done in future, are a sufficient Overt-Act, and a Legal Evidenee of Treason. Then we prove by another Witneses, not Words of Encouragement only, but Offers of Money, and they are both to the fame kind of Treason, though not to the same Act, and at the same time. And if there must be two Witneses to prove every single Act, the King of England is not only in a far worse Condition than any other Prince, but than any one of his own Subjects. Treasons may be committed every day with Impu- nity, and unless the Traitors be as great Fools as Villains, he shall never be safe from them, nor ca- pable of punishing them.

I must say it, and I say it with Commiferation to the Condition of this noble Lord, that his Ex- ceptions in Law are as weak as the Answers he has given to our Evidence. We hope no Doubt in Law remains with you, and that we have given your Lordships full Satisfaction of the Reality of the Plot, and a convincing Evidence of the great Flare which my Lord Stafford said in it; and we humbly pray your Lordships Justice.

L. H. S. You do not take notice of one thing that my Lord Flit said this Morning; that is, That the Witneses are not competent Witneses, because they swore for Money, and that is fit to be spoken unto; not for the Weight of the Objection, so much as for the Satisfaction of the Auditor.

Sir F. Win. My Lords, I had taken a Note of that, but forget to mention it. If my Lord at the Bar will say they have taken Money to swear, that is purely a Matter of Fact, which he ought to prove; and that is said and proved, ought to go for nothing: Let him prove his Cafe to be fo, and then we will give him an Answer.

L. H. S. My Lord Stafford, if your Lordship can prove that they have had Money to swear, your Lordship urges that which will be material; but if it were only Money to maintain them, that fine will amount to no Objection.

L. Staff. My Lords, I submit it to your Lord- ships, whether Dr. Osney and the rest have not had great Sums of Money, besides their Charges to 1. a-week a-piece. But I desire your Lordship to consider, and I appeal to many of your Lordships, whether it has not been said that there was a Defect in Colonere's and Langbord's Trials, that they did not plead that; and if they had pleaded it, they must have been acquitted: I will name no body, but I appeal
appeal to your Lordships whether some of you have not said so. But I desire your Lordships to admit me to plead for my Counsel; if not, I submit it to you. I confess here is a Piece of Law that I never heard of before, that the House of Commons, and your Lordships at a Conference, have adjudged it to be the Law of Parliaments. That Impeachments shall continue from Parliament to Parliament. If you will please to hear my Counsel for me, so; if not, I submit.

L. H. S. What would you, or can you prove? L. Staff. My Lords, those things that I have given in to your Lordships, I define my Counsel may be heard to.

L. H. S. Gentlemen, what can you object why he should not have Counsel to argue his Objections in Law?

Sir W. Jones. My Lords, I do think under favour, if a Prisoner in a Capital Cause do desire Counsel, he must not only allege Matter of Law to introduce that Defere; but that which he doth allege must be also a Matter of some Doubt to the Court: For if he do allege Matter which in itself is not disputable, he shall have no Counsel allowed him. If your Lordships are not satisfied that it is the Law of your House, that Proceedings upon Impeachments do continue from Parliament to Parliament, we cannot answer that, it lies in your Lordships breasts, it is not what we are to argue, because it is a Matter that concerns the Law and Rules of Parliament. Is there, my Lords, any doubt of any other Point that is urged? Is there any doubt of this thing, whether if one Witness speak to one Point of Fact, and another to another, upon the fame fort of Treason, that both may be two such Witnesses as the Law requires? I pray then, my Lords, consider the Consequence of that Doubt: A Man shall talk with twenty Perfons about a Design to kill the King, in one and the fame Room, one after another, by taking them into a Corner singly; and if ten, or all twenty come to prove it, here is but one Witness to each Discourse. This would be a Matter of dangerous Consequence, but I hope will remain no manner of Doubt with you, nor is it fit to be argued.

As to the hiring of Witnesses to swear, I think that can be no Point of Law till it be so proved in Fact. Both his Lordship think, that when his Majesty, or his Grace and Honesty, allow out of his Grace and Bounty, allowance to his Witnesses, that that is an Objection to their Testimony: Both not every Man allow his Witnesses a Maintenance, and yet it never was thought a thing to take away their Evidence? It may be every one doth not give so large an Allowance as the King, because his Dignity is not so great. But can it be an Objection to the House of Commons? Have we that are the Protectors maintain'd them? If his Majesty has been bountiful to his Witnesses, what is that to this Cause of the Commons? If my Lord can prove any thing of Briteny in us, as he has proved for us against himself, it may be an Objection. But till that Fact be proved, I hope there is no ground for a Quittance in Law; and if there be no Doubt in Law, I hope there will be no need of Counsel.

L. H. S. My Lord Stafforl, what are the Points you would have Counsel to?

L. Staff. To all of them, my Lords.

L. H. S. Would you have Counsel to the first Point, to argue what the Law of Parliaments is concerning the Continuance of Impeachments from Parliament to Parliament?

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L. Staff. My Lords, if you will declare the Law to be as the Gentleman lays, I must acquiesce.

L. H. S. Pardon me, my Lord, I do not declare the Law, but ask you whether you would have Counsel to argue that Point?

L. Staff. My Lords, I do say there is no Example of it: I know there have been Impeachments, but no Examples of Impeachments continued from Parliament to Parliament.

L. H. S. Then in the next place, for I shall propose your Objections to their Lordships by and by, and desire their Judgment in them, do you desire to argue by your Counsel, that every Overt-Act ought to be proved by two Witnesses?

L. Staff. I do, my Lords; I desire my Counsel may be heard to all the Points I mentioned to your Lordships.

L. H. S. Have you Counsel ready to speak to these Points now?

L. Staff. Yes, my Lords.

L. H. S. Are they prepared to speak to them now?

L. Staff. They are, my Lords.

L. H. S. If they be so, what hurt will there be in hearing them?

Sir W. Jones. My Lords, Whether you will hear an Argument from Counsel about the Law of Parliaments, I hope you will please well to consider.

Sir F. Win. My Lords, We in the House of Commons do never suffer any Counsel to tell us what is the Course of our House, and the Law of Parliament: If your Lordships think fit to allow it, 'tis in your own Power; but we who are intrusted with the Management of this Cause by the House of Commons, have no direction to consent to such a thing.

L. H. S. We will hear Counsel, to fave time, upon that Point, whether in Proof of a Treason for killing the King, every Overt-Act ought to be proved by two Witnesses.

Sir W. Jones. If your Lordships make a Doubt of it.

Sir F. Win. And if the Prisoner define it.

Mr. S. Moyn. My Lords, We shall not oppose it; but I shall wonder if any Counsel do maintain it.

L. H. S. Are your Counsel ready to speak to that Point?

L. Staff. Here they are, my Lords.

[Mr. Wallop of the Middle-Temple, Mr. Saunders of the same Society, and Mr. Hunt of Gray's-Inn appeared by the Prisoner at the Bar as his Counsel.]

Mr. Wallop. May it please your Lordships, we are here commanded by your Lordships to attend, that if any Matter of Law do arise upon a Cause proved, agreed, and judged by your Lordships debatable, then in due time we are to confer ourselves to your Lordships Command, and argue those Points for my Lord the Prisoner at the Bar. But if your Lordships do think that the Points urged by my Lord are not debatable in Law, I have so high an Opinion of your Lordships Judgment, and such a mean Opinion of my own Talent, that I shall not undertake to argue extempore in this great Assembly, in a Cause so high a nature.

L. H. S. Look you, Sir, you are of my Lord's Counsel.
Mr. Wallop. I am, my Lords, and by the Order of your Lordships do attend here.

L. H. S. If you think it an arguable Point, you will have the Judgment of my Lords afterwards. Will you argue it now?

Mr. Wallop. My Lords, I always thought, if a Point be tried in any Court, and thought disputable, it should be tried and agreed before it be argued.

L. H. S. You are to argue for my Lord, and to know the Judgment of the Court afterwards: Would you know our Opinions before-hand?

Mr. Wallop. We would know what it is we are to argue, that by Law every Overt-Act ought to be proved by two Witnesses; if you are prepared, speak to it, and my Lords will hear you.

Mr. Wallop. It is true, my Lords, there have been some publick Refolutions concerning that Point, therefore I shall be the better what I say in that: But, my Lords, it is a Matter that has been thought of and imposed one way or other; but I do profess at this time I am not able to undertake a solemn Argument upon that Point.

L. Staff. My Lords, I am so far from delaying this Cause, that I define it may be argued now.

L. H. S. Then you are not ready to speak to it?

Mr. Wallop. No, my Lords, I am not for my own part at present; for it is impossible we should foresee what would be the Point: And to apply ourselves to study an unforeseen Cause before it be agreed, stated, and judged worthy of Argument, cannot be expected from us. I have always observed it in the King's-Bench, if the Plaintiff urge any thing, and the Court think it debatable, they first agree and take the Cause, and then adjourn Counsel, where they do not urge to deliver an Opinion presently, but give them time to prepare for it.

L. H. S. Mr. Wallop. It is not believed that this Point is moved, but by your Advice that are of my Lord's Counsel, and you should be ready to maintain the Advice you give; therefore, if you are so, speak. You have the Protection of the Court for the Counsel you give in Matter of Law, and whatever Advice you give, you should maintain by the Law.

Mr. Wallop. Truly, my Lords, it is a Point that has, as I said before, received some Settlement; but whether ever in this Court, or no, I cannot tell. Therefore I did disclaim my Thoughts of providing any Argument, till your Lordships should have determined whether you will take the Point upon the Resolution in the Courts below to be finally settled and determined.

Sir W. Joyce. So then it is agreed to be settled in the ordinary Courts.

L. Staff. I define also it may be argued, whether Words are an Overt-Act.

Sir W. Wynn. It seems the Law is with us in the case of a Commoner; but whether it be so for a Lord, is the Question.

L. H. S. My Lord Stafford, how comes it to pass that your Lordship came prepared with Objections, but not with Counsel ready to argue them?

L. Staff. Mr. Wallop has given you an Answer, I must yield by that.

L. H. S. Is it your Lordships Pleasure that we adjourn?

L. H. S. This House is adjourned into the Parliament-Chamber.

Then the Lords returned to their Houses in their Order, and the Committee of Commons paid in their Places to hear their Resolutions.

In an Hour's time, the Lords returned, and my Lord High-Steward being seated upon the Woolsack, Silence was proclaimed.

L. H. S. My Lord Stafford, My Lords, since they have been withdrawn, have considered of one Point, of that Point, chiefly, which your Lordship did move, touching the Neccessity of two Witnesses to every Overt-Act as Evidence of High-Treason, that is the Point you have defined Counsel to speak to, and that is the Point your Counsel defined to know whether it was a doubtful or debatable Point before they would argue it; and heretofore my Lords did withdraw to consider it. And my Lords have directed, that all the Judges that sit here may give you in your Lordship's Presence and Hearing, shall deliver their Opinions, whether it be doubtful and disputable or no.

[Then all the Judges consulted privately together, and afterwards gave in their Opinions severally, beginning with the Lord Chief-Justice North, the Lord Chief-Justice Scroggs being absent.]

L. C. J. North. My Lords, I do here deliver my Opinion, and am clear in it. That if there be several Overt-Acts or Facts which are Evidence of the same Treason, if there be one Witness to prove one such Overt-Act at one time, and another Witness to prove another Overt-Act at another time, both the Acts being Evidence of the same Treason, there are two sufficient Witnesses of that Treason, and will maintain an Indictment or an Impiccachment of Treason. I never knew any doubt made of it in any Inferior Court of Justice, and I have known it often resolved.

L. C. B. Montagu. My Lords, where-ever Treason is to be proved, to every Overt-Act, two Witnesses, as I conceive, are not required. If to be, there are two Witnesses to several Overt-Acts, conducting to a Proof of the same Treason, I think they are Witnesses in the Judgment of the Law, such as the Statute requires.

Mr. Justice Widdowson. I am of the same Opinion with my Lord Chief-Justice North, and my Lord Chief-Justice, That if there be several Overt-Acts, done at several times, tending to the same Treason, those several Acts, being severally proved by several credible Witnesses, but by one Witness at each time to each Act, the said several Acts, being Evidence of the same Treason, there are sufficient Witnesses of that Treason so proved, and will maintain an Indictment, or as I conceive, an Impiccachment.

Mr. Jul. Joyce. My Lords, if several Witnesses speak to the same kind of Treason, altho' they speak to several Overt-Acts, and give Evidence of several times, the one of them speaking to one time, and the other to another time, yet keeping till to the same kind of Treason, they are such two Witnesses as are required by the Statute of Edward III. and this I take to be the counten Opinion of the Courts below.
Mr..jpeg
It hath been adjudged always according to the Law, that to prove Trefon there must be two Witnessey, but to an Over Act there needs but one.

Mr. Jut. Delia. My Lords, I am of the same Opinion, and I know it hath been many times so resolved: I have been present when Sentence hath passed upon Persons by whom the same thesis hath been urged, and it hath been so resolved. And it hath been moved in Woffington-Hall, and that was the confiant Opinion of the Judges there; particularly in the Case of Sir Henry Potes. It was upon solemn debate resolved, and divers times it hath been held, That the same Trefon may be proved by two Witnessey to several Over Acts, tho' one speak of Words or Actions that were spoken or done at one Time and in one Place, and another speak of Words or Actions at another Time and in another Place; these are two good Witnessey in Trefon within the Intent of the Law; and if the Law were otherwise, 'twere scarce possible to convict a Man of Trefon, and therefore I take it to be very clear.

Mr. Jut. Rymond. I am of the same Opinion, That where several Circumstances are brought to prove the same Trefon, one Witnessey to each of the several Circumstances is sufficient; and this, I conceive, hath been always the Opinion of the Judges.

Mr. Baron Atkins. My Lords, I am of the same Opinion. That there must be two Witnessey in the Case of Trefon, is a Matter without question; but there are several Over Acts that may contribute to the effecting of that Trefon. If a Man design to kill the King, and buys Powder at one Place, and a Pistol at another Place at another Time, and promises a Reward to one to affit him to do the thing at a third Place and a third Time; these are several Over Acts: But if the Law requires that each be proved by two Witnessey, I do not well see how any Man can be convicted of Trefon. In the Case of Sir Henry Potes, and others, this very Question was flattered, but was not thought worthy of Debate: If it should be otherwise, it would touch the Judgments which have been given upon this Kind of Proof; and what would the Consequence of that be, but that those Perons who were executed upon those Judgments were suffer'd illegally? and therefore I am of Opinion, that it is not requisite there should be two Witnessey to every Over Act.

Mr. Baron Gregory. My Lords, I am of the same Opinion, it is Trefon to confine the Death of the King: Now each of the Witnessey is a Witnessey to prove that Trefon; the one says, he offered him such a Reward, in such a Place; that is one Witnessey to prove that he confir'd the Death of the King; and another says, that he offered him such a Reward in another Place; that is another Witnessey that he confir'd the Death of the King. For the Party is not indicted upon one particular Over Act, but he is indicted for Trefon, in confir'd the Death of the King, and each of the Witnessey being to prove that, tho' they speak to several Acts, they are good Witnessey according to the Law.

Mr. Baron Wijlson. My Lords, I am of the same Opinion with my learned brethren who have spake before him.

Mr. Jut. Colston. My Lords, I am of the same Opinion; and I think truly it would be the safest matter for a Man to commit Trefon, and escape without questionning, if it should be otherwise. But this is the first Time that I have heard it hath been made a Question, that to the same Trefon there must be two Witnessey to every Over Act.

L. H. S. My Lord Stafford, by the uniform Opinion of all my Lords the Judges, there is no colour to doubt the Law in that Point which you desire to argue; so that as to that Point you must rest satisfied, you are not to have Council to speak to it: For the rest, I have no Commission yet from my Lords to say any thing.

L. Staff. Will your Lordships give me leave to say one thing to what I have heard? I would answer, if I might, only to one Judge; I think they call him Judge Atkins.

L. H. S. Your Lordship may say what you please.

L. Staff. My Lords, I hear a strange Position, I never heard the like before, in my Life, and 'tis what he said: If I am in the wrong, I beg your Lordships Pardon, and he too. He told your Lordships the Reason why the Law should be so, was, because there is a great many of those Perons that have already been executed, must have been acknowledged unjustly cut off and put to death; that is an Argument I hope will not weigh with your Lordships or any Body; for 'tis better that a thousand Perons that are guilty should escape than that one innocent Person should die; much more then, that it should not be declared, that such a Judgment was not well given.

L. H. S. Look you, my Lord, where many Reasons are given, 'tis easy to make a Reply to one of the least among many; that was one Reason given, but the true Reason is this: If the Law were otherwise, there would be great Safety in confining the Death of the King.

L. Staff. My Lords, I say nothing farther as to the rest, but this work with me. I am forry to hear a Judge should say any such thing; and tho' I am in such a Weak and disturbed Condition, I assure your Lordships my Blood riles at it.

L. H. S. Is it your Lordships Pleasure that we should adjourn?

L. Staff. I desire we should.

L. H. S. Then this House is adjourn'd into the Parliament-Chamber.

[The Lords withdrew in their Order, and the Committee of Commons went back to their House.] Mr. Speaker return'd the Chair.

A Message was sent from the Lords by Sir Thomas Baldwyn and Sir Samuel Clarke.

Mr. Speaker. The Lords have sent us to acquaint this House, that they have ordered William Vill Damford to be brought again to the Bar in Woffington-Hall, on Monday-Morning next at ten of the Clock.

After which, the House of Commons adjourn'd to Eight of the Clock on Monday-Morning.

The S I X T H  D A Y.

Monday, December 6th, 1680.

A bout the Hour of Eleven in the Morning, the Lords being adjourn'd into Woffington-Hall, going in ather in their former Order into the Court there erected; and Mr. Speaker having left the Chair, the Committee of Commons were seated as before.

The Court being set, Proclamation for Silence was made, and the Lieutenant commanded to bring
being his Prisoner to the Bar; which being done, the Lord High-Steward began.

L. H. S. Read my Lord Stafford’s Petition.

To the Right Honourable the Lords in Parliament assembled, the Humble Petition of
William Viscount Stafford.

Humbly flowing unto your Lordships,
THAT I be both some things to offer unto your Lordships in order to clear hims Govern, which he is apt to do.
Your Petitioner doth therefore, with all Humility, most humbly beseech your Lordships to give him leave to offer some things unto your Lordships Consideration. And your Petitioner shall ever pray, &c.

STAFFORD.

L. H. S. My Lord Stafford, My Lords have been willing, upon your Petition, to come and hear what that is your Lordship hath to offer. And they would know whether it be Matter of Fact, or Matter of Law. For your Lordships must know, that as to Witnese the Proceeds is closed. Lord Stafford. I do not pretend any more Witnese, my Lords.

L. H. S. Then, my Lord, what is it you would say?

L. Staff. My Lords, I did yesterday receive an Order from your Lordships; and upon that and some other Things that I have to trouble your Lordships with, I did petition for this Favour, which I humbly think your Lordships for granting.
If I be impertinent, I shall beg your Lordships Pardon, and I hope you will be pleased to consider my Weakness at all times, especially in this Condition I am now in; but I hope by your Lordships Favour to be in a happier one quickly. For the Matter of Proof, I shall offer not a Tittle; but, my Lords, this Order which I received does say, That the Lords assembled in Parliament have order'd, that my Council shall not be heard touching the Continuance of Impeachments from Parliament to Parliament. But I hope, my Lords, you will please, without offence, to let me offer to your Lordships some Conception about it; which I shall do as briefly as I can.

My Lords, I do not conceive by this Order, that your Lordships say it does or does not continue; you have given no Judgment, as I know of, in it; when you have, I shall acquiesce: But I hope your Lordships will resolve that it does not. And, my Lords, my Reasons for it are two: The first is, Because one of the Managers for the House of Commons, as I take it, Sir W. Jones, said these Words, and your Lordships may remember them, THAT if there were no Sub-Precedent, your Lordships would make a Precedent: Whether you will or no, that I must submit to your Lordships; but then there is none yet. The next thing is, my Lords, this, Whether an Impeachment be to be prosecuted in Parliament without an Indictment: This, my Lords, I humbly hope your Lordships are resolved it ought not. For I see not how truly, my Lords, it can be; by the little Reading which I have had in the Law, I never found any Man prosecuted in a legal Way, but by an Indictment. I may be mistaken, and I beg your Lordships Pardon for troubling you with my Mistakes; but I never read of any that were prosecuted upon an Impeachment: So then, the legal unlawful Being Indictment, I hope your Lordships will not alter the Form; for I hope you will keep that great Maxim of your noble Ancestors, Nolumus Legem Anglice maturae: And whether this be a Change of the Law or no, I submit it to your Lordships.

A third thing is this: Your Lordships do not think fit that my Counsel shall plead to that Point, whether Words do amount to an Overt-Act; for hearing my Counsel to the likewise I do not pretend: But I hope your Lordships will give me leave to fay this, I never heard that Words did amount to an Overt-Act; if your Lordships judge otherwise, I submit; but till then, I hope it shall not conclude me.

There are some other Points which I did offer to your Lordships, and I humbly beseech you to know, whether my Counsel shall be heard to them. 'Tis true, one of them, which was, whether two Witnese in several Places did amount to a legal Testimony or no, your Lordships did not declare one way or another. If you lay acquiesce in the Opinion of the Judges, I must submit; but till Judgment is given, I beseech your Lordships to give me leave to tell you my weak Thoughts about it. I did not hear what the Judges said all of them, but as I apprehend, they were of one Opinion: 'Tis true, one of them that spoke last, I think it was Judge Atkins, did say it did amount to a legal Testimony, because else those Juries that have found some guilt upon the same Sort of Evidence should be perjur'd; but if this were not so, then upon the same Grounds, under your Lordships Favour, those Juries that acquitted were upon such Testimony were perjur'd: But I must believe it to be otherwise till your Lordships have declared it as your Opinion; for that Reason will not hold; for the same Reason will be for the perjuring the one, as for the perjuring the other. And the same Juries, for the most part, tried those that were found guilty, and those that were acquitted.

L. H. S. Is this all your Lordship will please to say?

L. Staff. No, my Lords, if you would give me leave, I would trouble you a little further; if it were an offence I would not say a Word. My Lords, I conceive I am not concerned in the General Plot of the Papists; for I am not proved to be so, and whatsoever I may be in myself, I conceive, or whatsoever there is of Hearsey, I hope your Lordships will not go upon that, but upon what is proved Secondum allegata & probata, and that Common Fame will condemn no Man; if it do, then no Man is safe; but I must say, there is not one Word of Proof offer'd that I am a Papist.

I hope, my Lords, I have clear'd my self to your Lordships, and made my Innocency appear, by making appear the Perjury of the Witnese, and the Falsehood of those things they said against me. Against Dougall I have proved it by two of his own Witnese; the one was Red, the Woman that wore for him. That he took up a Glas of Cyder and with'd that it might be his Poison if he knew any thing of the Plot; the other was Whitty, who says, he had given my Lord Aker's Father warning long ago what a Knave he was. So 'tis clear. For Dr. Oates I hope from his Contradictions against himself as well as Dougall, who does contradict himself, at one time August, at another time the latter End of Augst or the beginning of Septem-ber: And I hope your Lordships will give no Credit to Oates's Testimony; for he laid before your Lordships
Lordships he had declared all he knew, (for true, I was then accused, but not having a Consi-

mission as he now swears) and afterwards he accused the Queen; so here is Oates against Oates, and Dugdale against Dugdale: And for Turboville, I have proved by his Affidavit, first he swears one thing and then another; and the Truth of it is, his Brother proved it against him in his last Oath, that it was (121) and not (72.)

My Lords, 'tis not my part to make any quire-

fus, nor do I, whether a Plot or no Plot; for I am not concerned in it: If what I shall say now be improper, I humbly beg your Lordships Pardon. My Lords, I have been by the moif of my Friends, at least every one that came to me, particularly by my Wife and Daughter that is near me, persuaded to tell all that I knew, and I do here in the Presence of God Almighty declare what I know to be true.

L. H. S. What says my Lord? Speak out. L. S. My Lords, I do believe since the Reformation from the Church of Rome to what it is now establisht in this Nation of England, those of that Conscience have had severall wicked and ill De-

signs and Plots: I do believe they have a Design in Queen Elizabeth's Time, Baldingston's Plot, (that is a long time ago) how far it was to take away the Queen's Life I can't tell, but a Plot it was: And I do believe there was another in her Time, called Earl of W. Haverland's Plot, wherein there was a Rebellion in the North, for which some fled and some were executed, that was a very ill De-

sign: As for those Poisonings of her Sudder, and the like, I take them to be but Stories.

In King James's Time, in the first Year of his Reign, there was a wicked Plot composed by Ashburn, some of one Religion, some of another; there was my Lord Grey, my Lord Cobham, my Lord Brooke, and other such, they were condemned all of them; some fled, as Markham and Bailehouse; those Lords and Sir Walter Raleigh were reprieved and kept long in the Tower. But Sir Walter Raleigh was afterwards upon that fame Judgment beheaded, and the Lords died in the Tower.

My Lords, Next to that was the execrable Treason that I spoke of at first, the Gun-power-Treston: And I protest before Almighty God, I did from my Infancy detest and abhor thofe Men that were engaged in it; and I do think, and always did think, the Wit of Man nor the Devil's Malice can't prevent an Excuse for it. For the Mon con-

cern'd they all acknowledged it, confess'd it, and begg'd pardon of the King, and God, and all good Men for it; that is all I shall say to that now.

My Lords, Since his Majesty's happy Restora-

tion, I do conceive, and I think I may safely say it, (for you all know it) he was gracious and good to all Differents, particularly to them of the Ro-

mish Church; they had Connavance and Indulgence in their private Houses; and I declare to your Lordships, I did then say to some that were too open in their Worship, that they did play foul in taking more Liberty upon them than was fitting for them to do, and that brought the Misfortune upon me which I will not name.

My Lords, It was not long ago that your Lord-

ships at your own Bar did allow all the Differents from the Church of England to have some Religions to your Lordships why those Laws that were against them should be repeal'd, as well Protestant Differents as those of the Church of Rome; and why they should have some Kind of Toleration; among whom you did permit those of the Romish Religion to appear too, I forget their Names. And I remember particularly one of the Sorts of them, an Anabaptist I think, did urge for a Re-

formation, which is a great Truth: That they held Rebellion to be the Sin of Witchcraft; I believe it is as bad as any Sin can be.

My Lords, That came to nothing at that time; but, my Lords, I believe that after that, all those Religious had Meetings among themselves to op-

pose to get that Toleration which they propo-

sed humbly to your Lordships; there I will never deny, my Lords, that my Opinion was, and is, that this Kingdom can never be happy till an Act of Parliament pass to this effect; it was my Opi-

nion then, and I did endeavour it all I could, that the Differing Protestants might have a Compre-

hension, and the other a Toleration: I acknow-

ledge it to be my Intention, and I think it was no ill one; for if that be a true Copy of the Commons Votes which is in Print, there is some such thing designing there as a Compromise; and I was in such a Station so indifferent that such was of the Church of England that Parliament serve God in their own Houses, and privately in their own way, not in publick; and that for it they should pay something to the King out of their Estates, but truly not much; that they should be feverely punished if they or any of them did endeavour to persuade any Subject to their opinion, or did come to Court, or enjoy any Office whatsoever, though it were but of a Scavenger, but that they should pay their Prop-

ortion to all chargeable Offices: That I profess, my Lords, was my Opinion, and I confess to your Lordships tis so fall. I was in some hopes that it would have been done in that Session, be-

cause it was afraid it was unlikely to be done at any time else. I confess to your Lordships, I was hearty and cordially against the T, because it hinder'd thofe just and honest things that were for the Good of the Kingdom.

My Lords, there was the first or the second Day brought into your Lordships Houfe, the Re-

cord of Mr. Coleman's Trial; and for the Letters in it, I do, my Lords, declare to your Lordships, I never read one of them before, but I have often read them since they have been in Print; and when I read them first curiously over, my Opinion was and is, That Coleman's endeavouring by Money out of Prince, and keeping off the Parliament, to get a Toleration, was that which he could not justify by Law; how far it was criminal, that I do not know; I am not so skilful in the Law I think it was not justifiable, but he hath paid for it severely since.

My Lords, I do declare that ever since I had the Honour to set among your Lordships, which is now 40 Years, (for in the Year 1640, I was by his Ma-

jesty's Favour call'd up a Peer,) I have valued my self upon the Honour of setting with you; and I do declare, when I have fat in this House, when your Lordships have defend'd the King, when it was hot Weather and unpleasable, to put off the sitting of the Parliament, I was never glad of it, but for-

try when they were prorogued but for a short time. This I profess is true, and I hope I am no Criminal in it; for I do value the Parliament's setting to be truly one of the things that are necessary to the Kingdom.

My Lords, 'Tis very true by Coleman's Letters, and what I have seen in Print since, I do believe there have been some Constructions for a Tolera-


tion; and if I had known as much then as I have since I have been in the Tower, I had perhaps prevented many things: For, my Lords, I hold England to be a great and an happy Body; but it is as other great Bodies are, it may be now, as you know before it was, over-grown or sick; it was then, and I pray God it be not now; but I hold nothing can cure it but that old English Physician, the King, your Lordships, and the Commons in Parliament assembled. But if I had known any such Design as Coleman's Letters do hint, I would not have continued in England.

My Lords, For that damnable Opinion of King-killing, if I were of any Church whatsoever, and found that to be it's Principle, I would leave it. My Lords, this is as true as I can speak any thing in the World; I beg your Lordships Pardon for troubling you with my Impertinencies, and hope you pardon it to my Weakness. My Lords, I do protest before Almighty God, and before your Lordships my Judges, I know no other Title nor Point of the Plot; and if I did, I hold my self bound to declare it. For the Present I shall say little more, unless the Managers give me occasion; if they will reply, and make any Objections, I desire I may answer them. I know the great Disadvantages I am under, when thefe Gentlemen, who are great Scholars and learned Men, reply upon me, who have those great Helps of Memory, Parts, and Understanding in the Law, all which I want. And therefore I hope your Lordships will not conclude me; upon what they or I have said; but I will be pleased to debate the Matter among your selves, and be as well my Counsel as my Judges.

My Lords, When I offer'd to your Lordships Matter of Law, I did in no wise admit the Matter of Fact.

L. H. S. My Lord, I cannot hear you.

L. Staff. My Lords, If your Lordships please, this Paper may be read.

L. H. S. Deliver your Paper in, my Lords cannot hear.

L. Staff. I cannot deny to your Lordships, that what happen'd to me on Saturday-Night, disturb'd me very much. Every Day since I came hither, there been hath such shouting and howling by a Company of barbarous Rabble, as never was heard the like, I believe; but it was at a distance most of the time, and so it did not much concern me. But Saturday-Night it was so near and so great, that really it hath disturb'd me ever since; it was great to-day, but at a distance; if it were not thus, I should not offer a Paper to be read; I fear now what I do or say, considering the Circumstances I am in.

L. H. S. Take my Lord's Paper, and read it.

Sir Tho. Lac. My Lords, I desire you will please to consider whether this may not introduce a new Cusiom by reading of this Paper. As to what my Lord is pleas'd to say, I am sorry for the Occasion that any Disturbance should arise to my Lord from the Rabble, or any one else; I hope his Lordship believes we cannot help, nor do we contribute to that Disturbance. But we desire your Lordships to consider, whether this Practice of having things written down for the Clerk to read, may not introduce a Cusiom, which may in time grow inconvenient for future Example. I see no great Danger in the particular Instance before your Lordships now; but it is dangerous in such Cases to do any thing that is new in this Court.

L. H. S. All the Matter is, whether it be read by my Lord, who cannot be heard, or read by the Clerk.

Sir Tho. Lac. We only oppose it out of fear of making a Precedent, which may be of ill Consequence.

L. H. S. Read it, my Lord, and raise your Voice, for it concerns you to speak out.

L. Staff. (Reading out of his Paper.) My Lords, When I offer'd Matter of Law to your Lordships, on Saturday last, I did in no wise admit the Matter of Fact to be true that was alleged against me, and I desire to be understood. And I hope your Lordships will not lay the least Weight upon the Testimony of my Witnèses, because they are not sworn; for the Law does not suffer them to be sworn, which is no Fruit of mine, nor ought not to turn to my Prejudice.

I must appeal to your Lordships Judgments in point of Fact, how far the King's Witnèses are to be believed against me, considering the whole Matter, and my Counter-Proof.

Next I submit to your Lordships Judgments this Point, That the Impeachment being founded upon the Common Law, and the Statute of 25th Eliz. III. and not upon the Statutes of 1st of this King, two of the Witnèses, Dogdale and Terbróille, do only swear unanswerable Words spoken by me, and not my Overt-Act; for they swear only that I promised them Money and Rewards to kill the King. Now I humbly pray your Lordships Judgment, whether bare Speaking of Words be an Overt-Act, and Tretion at the Common Law, or upon that Statute; and whether there be more than speaking of Words in a Conmut, or otherwise proved by Dogdale and Terbróille, I appeal to you. Then the other Witnèses, Oates, is but a single Witnèse, who speaks of the receiving of a Commission. This is that I offer to your Lordships now for your Judgment, and then I desire I may have your Opinion in other things.

L. H. S. Is this all your Lordship hath to say?

L. Staff. For the present, my Lords.

L. H. S. You must say all you have to say now.

L. Staff. Is it your Lordships Pleasure to hear Counsel to nothing at all? I did likewise allege to your Lordships the other day, That People that swear for Money are not competent creditible Witnèses; how far that was proved, or I may prove by my Counsel, I submit to your Lordships.

L. H. S. Look, you Lord, you have so far receiv'd already the Pleasure of the House: You have rais'd several Questions of Law. Whether every Overt-Act requires two Witnèses to prove it. You have had the Opinion of the Judges, and there is no more to be said in it. As to that, Whether Impeachment continue from Parliament to Parliament; and the other thing. Whether Proceedings may be upon an Impeachment without an Indictment; these are Matters of the Course and Constitutions of Parliament, your Lord will consider of them by themselves, and will permit no Counsel to argue them. For the other Point, That Words are no Overt-Act, that rests for their Opinion in another Case, when it shall come, for they have now no further to plead before them.

L. Staff. I humbly conceive there is.

L. H. S. There is a great Difference between bare Words being an Overt-Act, and Perjury by Promises of Money and Rewards to kill the King, which is a very great Overt-Act.

L. Staff.
L. Staff. Is it possible to do an Act by Words? If it be so, I never heard it before.

H. S. Otherwise Men may promis Rewards to twenty seven Perpons to kill the King, and then say 'in all but Words'.

L. Staff. I say it not, but I humbly conceive the Law says it.

H. S. What say you, Gentlemen of the House of Commons?

L. Staff. My Lords, I have something to say, which I defire to infe write: My Lords, I hope I have cleared to your Lordships, that all the Wit- neffes have fome fole against me, and this I have made out by Proofs: I fay not much to this-(My Lord was searching for his Pape.)- Truly, my Lords, I am confounded with the Noise and other Circumstances; but, my Lords, I fhall, if your Lordships plesse to give me leave, humbly represent my Cafe to you, how I take it to be in Matter of Fact, (as to my own Condition not any Thing,) how I am now before your Lordfips.

I was, my Lords, committed by my Lord Chief Justice's Warrant, on the 2oth or 21ft of Octobcr, (7th.) Friday, 26th of October, I was brought to your Lordfip's Bar; I was impeach'd; I do not remember the Date, my Lords, the Beginning of December; in one Parliament Articles exhibited againft me; in another Parliament I was brought upon these Articles exhibited, and being called to your Lordfips Bar, the Articles were read to me, and I gave in my Anfever; that was from Time in May (795), and in the End of May, the 17th, (if I mistake not, if I do, I defire it may be refted by your Bofles) I, with the other Lords, were brought to this Place in order to our Trial. We had fecretly then were demanded by your Order to the Senate, where I continued till November twelve Months after, without having heard any Thing concerning it. So that I was first impeach'd in one Parliament, Articles brought againft me and pleaded to in a second, and now brought to my Trial in a third; and what your Lordfips will fay upon this, I submit to you; and whether fhe be Proceedings according to Law your Lordfips will judge.

My Lords, I humbly conceive that Magna Charta says, That Justice fhall be denied nor delayed to no Man; whether it hath or hath not been delayed to me let your Lordfips judge. If you lay the Proces- sation of the Parliament is the Caufe of that Duty, I hope your Lordfips will give me leave to fay, That from the 5th of December to the 30th, when the fift Parliament was prorogued, or during the Seffion of the other Parliament, there was Time enough sure wherein I might have been brought to my Trial; and if these Proceedings be lawful and just, there is no Man living, but may be kept off from Time to Time, till some Accidents happen that their Ends may be gained. I leave it to your Judgments, whether it may be only my Cafe now, or of some of your Lordfips in future Ages, to be accuf'd of Things that you never heard of before, and not brought to juftify yourselves, but kept in Prison.

My Lords, There is a Statute, I have forgot where it is, (but tuch a one I have read) that the King by his Great Seal, or little Seal, command that Justice fhould be delayed or denied, yet however the Judges shall not obey it, but proceed. So I hope there is no Pretence of Delay on my Part, and the Benefit of that Statute shall not be de- nied me. And that Statute of the Great Charter, which cof to many of your Anceftors their Lives to maintain, I hope you will never go from it, nor your Lordfips noble Anceftors, amongst other Things, took great Care that Justice fhould be de- nied or delayed to none; and this I defire you to take into Confidence.

I am in your Lordfips Judgment either to be acquitted or condemnd. I hope your Lordfips will, and I know you will, try your Hands upon your Hearts, confult your Conferences and your Honour; and then you will do what is just and equitable I hope it will.

My Lords, Mr. Otter fay'd I came by the Name of Mr. Hazard of Efjfeathom, but that I did try Letters fign Speech; barely, my Lords, if I was acquitted to own my Perfon, I should be as much affhamed to have owned my Name. He fays, he faw me take a Conmiiffion, and whether that be an Overt-Act, your Lordfips are to determine. Upon the whole Matter, I conceive, there is nothing proved againft me but Words, nor pretended to, but only by Otter. And whether you will credit a Man that is difficult to believe with God, as I have told you, I appeal to your Lordfips, and beg you to confider of it.

That these Witneffes have sworn for Money, if you fend to the Escocher-Office, and see what Money they have received, you will find by the great Sams that 'ts fo; and then I hope you will not allow them to be heard, nor credit any that fwear for Gain. I had a Suit in Jef suits-Hill, that had like to have gone exprefly againft me, only because one of my Witneffes was to gain £. if the Suit went for me. But pray confider how much thise Men have had. And for the Point, that there are not two Witneffes, I befooke your Lordfips give me leave to put you in Mind, that not many Years ago, you paifed an Act againft Frauds and Perjuries, wherein you were fo careful to preferve Mews Eftates, that you required three Witneffes to prove a Will of Goods or Lands above 100. and will you allow but one Witnefle to take away a Man's Life for Words? Though your Lordfips will never commend Tref- forns, yet no Man can preferve himfelf from the Misfortune that happens to me, of being fally accused.

To true, my Lords, the Franangers have given an Answer to the Ballad of the Money, by fay- ing, The King may give as liberally as he pleafes; but to give for great Sams, whereby Men poor be- fore, are now become rich, I think will be an Ob- jeftion againft their Credit.

My Lords, I have faid what I do think conve- nient, though I think much more might be faid by an able Man to your Lordfips, for the clearing of himself. I hope I have done it, nay, I am confident I have; and this I have done for the Memory of that Great and Blesfed King, who first made me a Peep, that it may not be faid he did me the Honour forty Years ago to call me up to this Dignity, and I fhould fly in the Face of his Son in fo fhorrible a Manner as thefe Men would make me. I do owe it to the Honour of my Father and Mother, who, I think I may safely fay, were both honourable and worthy Perfons: My Father was a learned Man, and a wife Man, as I may ap- peal to some of your Lordfips who knew him well; I fay, I owe it to their Memory, and to the Honour of the Family from whence I sprang, which all the World knows what it is. And I should be
an infamous Man to dishonour them so much, as to bear their Name, and commit Treason. My Lords, I love it to my Wife, who hath been a very kind Wife to me as ever Man had: She is Herself at Law to the great Estate of that great and unfortunate Man Stafford, Duke of Buckingham, who was cut off in the Reign of the King Henry the VIIIth, and all his Estate, if it were not for that Attainder, would have come to her.

I may be importunate in telling your Lordships, what it was, but I do not over say it, when I reckon it would have cost this 20,000 I. a Year, for it was 17,000 I. a Year in those Days Penny-Rent, besides other Emoluments. This is an extravagant Thing to say, but 'tis true: something thereof does remain to her, which I now enjoy. I owe it to all my Children, especially to my eldest Son, who is a young Man, and I may say, of far better Parts and Hopes than his Father, and whom, I hope, will serve his Country. I owe it to all my Friends and Relations, for I would not have it paid after my Death, my Wife was the Widow of a Traitor. I owe it to all the rest; but above all, I owe it to God Almighty; that when I come to be judged by Him, I may give a good Account of what he hath entailed me with, that I may not appear as an infamous Man who knows he hath a Bosom, but not his own, and yet should them who have trusted them with their Trusts. And if I should have committed this execrable Treason, I should have been guilty of my own Murder: First, in the committing a Crime worthy of Death; and then in not confessing, to save my Life. I hold Murder an extraordinary Crime, the worst next to Treason: And I know, if I should not prevent my Death by confessing all I knew, I should have been guilty of Self-Murder, the worst of Murders. I know your Lordships will lay to Heart, what an execrable Thing Murder is, and the Blood of Innocents; and I hope there is none of the House of Commons, but after this Evidence will clear me.

I am sure none of them would have me punished for that I am not guilty of. I do not blame those Gentlemen of the House of Commons for prosecuting, nor the first for impeaching; for they had without all doubt, Reasons great enough for it upon what Evidence they had before them, before they knew what the Witnese were. I know your Lordships will not in the least Point vary from Justice, or the Law of the Land, and I desire you to lay the whole Matter to your Hearts; I have not the least Suffocation of the Partiality of any Man in the House; nay, I profess, if I had an Enemy, and he were not here, I would beg of you that he might come. I have cleared myself before your Lordships, and I hope I shall not be run down by the wicked mob; which, where it will end, God knows. It began in the late Times against my Lord of Stafford, and so continue till it ended in that most execrable Fact, one of them, that ever was done. A wicked Beginning it was, and it had a wicked End. For since our Saviour's Death and Murder by the Jews, never was so execrable a Murder in the World; and whoever had an Hand in it, without an extraordinary Repugnance, can have no Thoughts of Salvation. I never could serve the King, 'tis true, but in my Defence; and I never deserted him in Thought, Word, or Deed to my Knowledge, in my Life; much less did I ever contrive or consent to his Death. I do in the Presence of God, Angels, your Lordships, and all Men, declare, I do know no more of the Plot, or any such Thing, than any one here does. That those of the Religious Religion had Meetings, I believe, to obtain those Ends that I spoke of before: Calvin went too far; how far he was criminal in it, I can't tell. Meetings, I say, there were, but I was never at one of them, nor do I know what was done there. I do leave it to your Lordships to do Justice, as I know you will, and with all Submission I resign myself up to your.

L. H. S. Have you done, my Lord?

The Staff. If your Lordships will not allow me Counsel to argue those Points, I have done.

L. H. S. What say you, Gentlemen of the House of Commons?

Mr. Serjeant. My Lords, Something that my Lord hath spoken hath been resolved against him, that is, about two Witnesses to each Over-Acc; some Things are not to be disputed about the Law and Course of Parliament; some Things were not to be said now, because he had said them before. My Lords, we have concluded our Evidence, and he is pleased to take up the Time with repeating what was said before.

For the other Matters that my Lord is pleased to discourse of, all he says is but his Obligations, and how unreasonable it was for him to do it; the Question is, Whether he hath done it or not? If he hath, his Obligations are an Aggravation of his Crime, not an Excuse. His Relations, his Family, and other Things are nothing before your Lordships now in Point of Judgment, nor is there any Thing new said to Day, that was not said before.

Sir Will. Jones. My Lords, I should not add one Word farther, were it not that this noble Lord is pleased upon his Memory, or rather without, to say something of me; and that was, That speaking of the Continuance of Proceedings, I should say, If your Lordship had no Precedent, I hope you would make one. My Lords, I do appeal to your Lordships Memory, whether I said any Thing like it; I utterly deny it, nor was there then any Occasion for it.

For the Sake of urging Precedents, when your Lordships, upon a Difference with the Commons, did declare it to be the Law of Proceedings in Parliament, and did then fortify it with many Arguments, I know my Lord's Memory is not very good; I am sure in this he is very much mis-taken.

My Lord hath been pleased to complain he hath received much Disturbing, and that the Noise and Shouts have been so great, that they have occasioned some Distraction in him. My Lords, I am sure his Lordship cannot mean us; for I appeal to your Lordships, and all that have heard this Trial, whether he hath received the least Disturbance or Interruption from us, or whether we have not treated him with that Respect that becomes his Dignity, and the Discretion that ought to be in the Managers of the House of Commons. But I must needs say, that his Lordship hath received Distraction from those Friends or Counsel of his that put these many Papers into his Hand; for he hath read one after another that do contain the same Matter over and over again. These, I confess, were sufficient to disturb him, or any other that should make use of them. His Lordship hath been pleased to go off from the Matter of Law, to the Matter of Fact; and backward and forward, so that it is impossible to follow him: And as to the Matter of Fact, we shall decline to follow him;
for tho' we have not given his Lordship any Di-
DISTURBANCE, yet we submit to your Judgment, whe-
ter it be regular, or according to the course of
Proceedings, when his Lordship hath sum'd up
his Evidence, and we that are the Prosecutors
have concluded ours, he shoul'd begin that Work
again; which, if it should be admitted, we were to
reply, and he might rejoin upon us, and so there
would be no end of Proceedings.
And, my Lords, I hope, the this Lord hath had the
Pavour to do it, yet it shall not for the future
be brought into Example, for it will make Trials
endless.

My Lords, For the Matter of Law, there is no-
thing that deferves an Anwer; for tho' the Law
does admit the Prisoner Counsel in Matters of
Law, yet it must be in things doubtful; and if
there be any thing of that in our Case, I submit
it to your Lordships. I am sure, I have heard no-
thing new but what hath been over-rulyed already,
unless it be a Matter of Law which rifes upon the
Matter of Fact, and that not proved, to wit, the
Computation of Witnesses. The last Day, all
was said by his Lordship he could say, and all said by
us that we thought fit to say; and now to begin the
same Matter again, I think ought not to be
admitted. We shall not follow his Lordship in
that way of Proceedings, and hope it shall never
fall into Example.

Sir F. Win. My Lords, I have only one Word
to say to your Lordships, and that is in relation
to the Proceedings of the Commons in this Case;
for if the Case had not been of an extraordinary
Nature, we should not have stood upon it, that the
Prosecutor ought not, after the Prosecutors had
concluded, not having taken a liberty of reading or
repeating what he had said over and over again.
We know, my Lords, there are a sort of Men in
the World, who are willing to lay hold of any
Pretext to cavil at our Proceedings; and there-
fore we have let my Lord take all this liberty, that
so his Party might have no colour of Complaint.
His Lordship was pleased to say the last Day, that
he had not a Witness more to produce, nor a
Reason to give, as I understand him; and there-
fore he must own that we have been very tender
to him in all our Proceedings. One thing my
Lord infinuates to Day, which I cannot forbear
taking notice of, and if he had delayed him, which
is without cause; we had used all Diligence in re-
paring ourselves, and were soon ready when the
King was pleased to let the Parliament sit, and
therefore it can be no Imputation on us: and truly,
if my Lord considers the Weight of the Evidence,
I fear he will think his Trial comes soon enough
now.

L. Staff. My Lords, I desire to be rightly un-
derstood in one thing, and 'tis only this; I did not
say the House of Commons shouted at me, but the
Rabble.

L. H. S. Is it your Lordships Pleasure to ad-
join?
Lords. Ay, Ay.
L. H. S. Then this House is adjourned to the
Parliament-Chamber.

[Then the Lords withdrew in their former Order,
and the Committee of Commons went back to
their House.]

Mr. Speaker, in the Chair, and a Melleage
was sent from the Lords by Sir Timothy Baldoyn
and Sir Samuel Clarke.

Mr. Speaker, the Lords have commanded us to acquaint this
House, that they have appointed William Viscount
Stefford to be brought to the Bar in Westminster-
Hall to-morrow Morning at Ten of the Clock, to
receive Judgment.

The Commons adjourned to eight of the Clock the next Morning.

The Seventh Day.

Tuesday, December the 7th, 1680.

About the Hour of Eleven, the Lords adjourned
into Westminster-Hall, going thither in their
former Order into the Court there erected; and
Mr. Speaker having left the Chair, the Com-
mittee of Commons were seated as before.

The Lords being fat, Proclamation was made
for Silence; and the Lord High-Steward being
seated on the Woolpack, with Garter Principal
King of Arms, the Usher of the Black-Rod, nine
Maces attending him, with all the rest of the So-
lemnity, as was at first expressed, took the Votes
of the Peers upon the Evidence, beginning at the
Puine Baron, and so upwards, in this order; the
Lord Stefford being, as (the Law requires) absent.

L. H. S. My Lords, I am an humble Sitter to
your Lordships, That you will give me leave to
collect your Votes as I sit, for I am not able to
stand. (Which being granted, the Lord High-Stew-
ford proceeded).

L. H. S. My Lord Butler of Wiston, to William
Viscount Stefford Gayl of the Treason
whereof he stands impeached, or Not Guilty?
Lord Butler. Not Guilty upon my Honour.

[The same Question was put to the rest, whose
Names and Votes follow.]

Lord Arundell of Trerise. Not Guilty upon my
Honour.
Lord Crew. Guilty upon my Honour.
Lord Cowesalis. Guilty upon my Honour.
Lord Hallis. Not Guilty upon my Honour.
Lord Woman. Not Guilty upon my Honour.
Lord Egmont. Guilty upon my Honour.
Lord Lucas. Not Guilty upon my Honour.
Lord Abley. Guilty upon my Honour.
Lord Ward. Not Guilty upon my Honour.
Lord Byron. Not Guilty upon my Honour.
Lord Hatton. Not Guilty upon my Honour.
Lord Leigb. Guilty upon my Honour.
Lord Herriot of Chesterbury. Guilty upon my Ho-
nor.
Lord Howard of Ejeerick. Guilty upon my Ho-
nor.
Lord Maynard. Guilty upon my Honour.
Lord Lovaine. Guilty upon my Honour.
Lord Deincourt. Not Guilty upon my Honour.
Lord Grey of Werke. Guilty upon my Honour.
Lord Brook. Guilty upon my Honour.
Lord Norris. Not Guilty upon my Honour.
Lord Chandos. Guilty upon my Honour.
Lord North and Grey. Guilty upon my Honour.
Lord Pagett. Guilty upon my Honour.
Lord Wharton. Guilty upon my Honour.
Lord Eure. Guilty upon my Honour.
Lord Cranwell. Guilty upon my Honour.
Lord Winchfl. Not Guilty upon my Honour.

Ee 2 Lord
an infamous Man to dissemble to him so much, as to bear his Name, and commit Treson. My Lords, I owe it to my Wife, who hath been a very kind Wife to me as ever Man had: She is Heiris of Law to the great Eftate of that great and unfortunat Man Stafford, Duke of Buckingham, who was cut off in the Reign of King Henry the VIIIth, and all his Eftate, if it were not for that Attain'd, would have come to her.

I may be important in telling your Lordships what it was; but I do not over say it, when I reckon it would have been at this Day 20,000 l. a Year, for it was 17,000 l. a Year in those Days Peney-Rent, besides other Emolument. This is an extravagant Thing to say, but 'tis true: something thereof does remain to her, which I now enjoy. I owe it to all my Children, especially to my eldest Son, who is a young Man, and I may say, of far better Parts and Hopes than his Father, and whom, I hope, will serve his Country. I owe it to all my Friends and Rehations, for I would not have it fail after my Death, my Wife was the Widow of a Traitor. I owe it to all their, but above all, I owe it to God Almighty, that when I come in the other World by Him, I may go on good Account of what he hath entrusted me with, that I may not appear as an infamous Man who knows he hath a Body, but not his own, and yet should throw it and his Soul away together. And if I should have committed this execrable Treson, I should have been guilty of my own Murder; first, In the committing a Crime worthy of Death; and then in not confessing, to save my Life. I hold Murder an extraordinary Crime, the worst next to Treson: And I know, if I should not prevent my Death by confessing all I know, I should have been guilty of Self-Murder, the word of Murder. I know your Lordships will lay to Heart, what an execrable Thing Murder is, and the Blood of Innocents; and I hope there is none of the Evidence of Commons, but after this Evidence will clear me. I am sure none of them would have me punished for that I am not guilty of. I do not blame their Gentlemen of the House of Commons for profecting, nor the drift for impeaching; for they had without all doubt, Reasons good enough for it upon what Evidence they had before them, before they knew what the Witneses were. I know your Lordships will not in the least Point vary from Juries, or the Law of the Land, and I desire you to lay the whole Matter to your Hearts, I have not the least Suspicion of the Partiality of any Man in the House; nay, I profess, if I had an Enemy, and they were not here, I would beg of you that he might come. I have cleared myself before your Lordships: and I hope I shall not be run down by the wicked Rabble; which, when it will end, God knows. It began in the late Times against my Lord of Stafford, and so continued till it ended in that most execrable Fact, one of them, that ever was done. A wicked Beginning it was, and it had a wicked End. For since our Saviour's Death and Murder by the Jews, never was so execrable a Murder in the World; and whoever had an Hand in it, without an extraordinary Repenance, can have no Thoughts of Salvation. I never could forgive the Kings, 'tis true, but in my Defiles; and I never despised him in Thought, Word, or Deed, to my Knowledge, in my Life; much less did I ever contrive or consent to his Death. I do in the Presence of God, Angels, your Lordships, and all Men, declare, I do know no more of the Plot, or any such Thing, than any one here does. That those of the Remains Religion had Meetings, I believe, to obtain those Ends that I spake of before: Calvar was too far; how far he was criminal in it, I can't tell. Meetings, I say, there were, but I was never at one of them, nor do I know what was done there. I do leave it to your Lordships to do Justice, as I know you will, and with all Submission I resign myself up to you.

L. H. S. Have you done, my Lord?

L. Scott. If your Lordships will not allow me Counsel to argue those Points, I have done.

L. H. S. What say you, Gentlemen of the House of Commons?

Mr. Serj. Maud. My Lords, Something that my Lord hath spoken hath been resolved against him, that is, about two Witneses to each overt Act; some Things are not to be disputed about the Law and Course of Parliaments; some Things were not to be found now, because he had paid them before. My Lords, we had concluded our Evidence, and he is pleased to take up the Time with repeating what was said before.

For my Lord, whether my Lord is pleased to discourse of, all he says is but his Obligations, and how unreasonable it were for him to do it; the Question is, Whether he hath done it or no? If he hath, his Obligations are an Aggravation of his Crime, not an Excuse. His Relations, his Family, and other Things are nothing before your Lordships now in Point of Judgment, nor is there any Thing new said to Day, that was not said before.

Sir W. Jones. My Lords, I should not add one Word farther, were it not that this noble Lord is pleased upon his Memory, or rather without, to say something of me; and that was, That speaking of the Commanence of Proceedings, I should say, If your Lordships had no President, There would make one. My Lords, I do appeal to your Lordships Memory, whether I said any Thing like it; I utterly deny it, nor was there any Occasion for it. For there was no need of urgent Arguments, when your Lordships, upon a Conference with the Commons, did declare it to be the Law of Proceedings in Parliament, and did then fortify it with many Arguments. I know, my Lord's Memory is not very good; I am sure in this he is very much mistaken.

My Lord hath been pleased to complain he hath received much Disturbance, and that the Noise and Shouts have been so great, that they have occasioned some Distraction in him. My Lords, I am sure his Lordship cannot mean us; for I appeal to your Lordships, and all that have heard this Trial, whether he hath received the least Disturbance; or Interruption from us, or whether we have not treated him with that Respect that becomes his Dignity, and the Distinction that ought to be in the Mauers of the House of Commons. But I must needs say, that his Lordship hath received Distraction from those Friends or Counsel of his that put those many Papers into his Hands; for he hath read one after another that do contain the same Matter over and over again. These, I confess, were sufficient to distract him, or any other that should make use of them. His Lordship hath been pleased to go off from the Matter of Law, to the Matter of Fact; and backward and forward, so that it is impossible to follow him: And as to the Matter of Fact, we shall decline to follow him;
Mr. Speaker.
The Lords have commanded us to acquaint this House, that they have appointed William Vincton Stafford to be brought to the Bar in Wyghinster-Hall to-morrow Morning at Ten of the Clock, to receive Judgment.

[The Commons adjourned to eight of the Clock the next Morning.]

The SEVENTH DAY.

Tuesday, December the 7th, 1680.

About the Hour of Eleven, the Lords adjourned into Wyghinster-Hall, going thither in their former Order into the Court there erected; and Mr. Speaker having left the Chair, the Committee of Commons were seated as before.

The Lords being fat, Proclamation was made for Silence, and the Lord High-Steward being seated on the Woolpack, with greater Principal King of Arms, the Usher of the Black-Rod, nine Maces attending him, with all the rest of the Solomon, as at first exprest, took the Votes of the Peers upon the Evidence, beginning at the Pufine Baron, and so upwards, in this order; the Lord Stafford being, (as the Law requires) absent.

L. H. S. My Lords, I am an humble Subject to your Lordships, That you will give me leave to collect your Votes as I fit, for I am not able to stand. (Which being granted, the Lord High-Steward proceed.)

L. H. S. My Lord Butler of Wiston, is William Vincton Stafford Guilty of the Treason whereof he stands impeached, or Not Guilty? Lord Butler. Not Guilty upon my Honour.

[The same Question was put to the rest, whose Names and Votes follow.]

Lord Arnside of Trevisa. Not Guilty upon my Honour.

Lord Crew. Guilty upon my Honour.

Lord Cawdswells. Guilty upon my Honour.

Lord Hales. Not Guilty upon my Honour.

Lord Woman. Not Guilty upon my Honour.

Lord Rackettens. Guilty upon my Honour.

Lord North. Not Guilty upon my Honour.

Lord Allen. Guilty upon my Honour.

Lord Ward. Not Guilty upon my Honour.

Lord Browne. Not Guilty upon my Honour.

Lord Hatton. Not Guilty upon my Honour.

Lord Leigh. Guilty upon my Honour.

Lord Hervert of Chelbou. Guilty upon my Honour.

Lord Howard of Ejerich. Guilty upon my Honour.

Lord Maynard. Guilty upon my Honour.

Lord Lovelace. Guilty upon my Honour.

Lord Deincray. Not Guilty upon my Honour.

Lord Gvry of Wark. Guilty upon my Honour.

Lord Brook. Guilty upon my Honour.

Lord Nevitt. Not Guilty upon my Honour.

Lord Chandelis. Guilty upon my Honour.

Lord North and Grey. Guilty upon my Honour.

Lord Pate. Guilty upon my Honour.

Lord Wharton. Guilty upon my Honour.

Lord Earle. Guilty upon my Honour.

Lord Crowzell. Guilty upon my Honour.

Lord Windfor. Not Guilty upon my Honour.
Lord Crewar. Guilty upon my Honour.
Lord Ferrers. Not Guilty upon my Honour.
Lord Halifax. Not Guilty upon my Honour.
Lord Maccabe. Not Guilty upon my Honour.
Lord Viscount Monmouth. Guilty upon my Honour.
Lord Viscount Falmouth. Guilty upon my Honour.
Earl of Carlow. Guilty upon my Honour.
Earl of Berkeley. Not Guilty upon my Honour.
Earl of Maccabfield. Guilty upon my Honour.
Earl of Hales. Not Guilty upon my Honour.
Earl of Stafford. Not Guilty upon my Honour.
Earl of Selby. Guilty upon my Honour.
Earl of Shaftesbury. Guilty upon my Honour.
Earl of Burlington. Guilty upon my Honour.
Earl of Albemarle. Not Guilty upon my Honour.
Earl of Croome. Not Guilty upon my Honour.
Earl of Buckingham. Guilty upon my Honour.
Earl of Egremont. Guilty upon my Honour.
Earl of Berkeley. Not Guilty upon my Honour.
Earl of St. Albans. Not Guilty upon my Honour.
Earl of St. Andrews. Guilty upon my Honour.
Earl of Sunderland. Guilty upon my Honour.
Earl of Thomond. Not Guilty upon my Honour.
Earl of Clifton. Not Guilty upon my Honour.
Earl of Cornwallis. Not Guilty upon my Honour.
Earl of Falmouth. Guilty upon my Honour.
Earl of Stanstead. Guilty upon my Honour.
Earl of Peterborough. Not Guilty upon my Honour.
Earl of Rivers. Guilty upon my Honour.
Earl of Maccabe. Guilty upon my Honour.
Earl of Bridgewater. Guilty upon my Honour.
Earl of Nottingham. Guilty upon my Honour.
Earl of Elerleigh. Guilty upon my Honour.
Earl of Bridgewater. Guilty upon my Honour.
Earl of Salisbury. Guilty upon my Honour.
Earl of Bedford. Guilty upon my Honour.
Earl of Huntingdon. Guilty upon my Honour.
Earl of Rutland. Not Guilty upon my Honour.
Earl of Kent. Guilty upon my Honour.
Earl of Chamberlain. Not Guilty upon my Honour.
Marquis of Wavell. Not Guilty upon my Honour.
Duke of Newcastle. Not Guilty upon my Honour.
Duke of Montague. Guilty upon my Honour.
Duke of Albemarle. Guilty upon my Honour.
Duke of Buckingham. Guilty upon my Honour.
Lord Privy Seal. Guilty upon my Honour.
Lord President. Guilty upon my Honour.
Lord High Steward. Guilty upon my Honour.
Prince Rupert, Duke of Cumberland. Guilty upon my Honour.

L. H. S. My Lords, I am not heavy

With what was due, and his Lordship came to the Bar.

L. H. S. My Lord Stafford, I have but heavy

Tidings for you; your Lordship hath been im

peached of High-Treason, you have pleased Not

Guilty, and your Lords have heard your Defence, and

have considered of the Evidence, and your Lordships

do find you Guilty of the Treson whereof you are

impeached.

L. Stafford, God's Holy Name be praised, my

Lords, for it.

L. H. S. What can your Lordship say for your-

self, why Judgment of Death should not be given

upon you according to the Law?

L. Stafford. My Lords, I have but very little

to say; I confess, I am surprized at it, for I did

not expect it; but God's Will be done, and your

Lordships, I will not murmur at it: God forgive

those that have sworn against me. My Lord,

I conceive I have something to say for myself:

Judgment; I have been at many Trials in my Life,

but I never saw any Trial where the Party tried

did not hold up his Hand, which I was never able
to do; I thought it had been a very material

Point in the Law, that by the holding up of the

Hand he might be known to be the Person. I have

read lately, since I had the Misfortune to be

thus accused, Sir Edward Coke upon the Planes

of the Crown; and he says, That Mifnomer, the

not giving a Man his right Name, or Addition, is

like a just Cause to arrest the Judgment. There

is likewise another Question, how far it may be

valued I know not; I submit it, as I do all, to

your Lordships. Tho' I am tried upon the Act of

the 24th of Geo. III. yet there is nothing more in

that Act, than what is included in the Act of the

15th of this King; and I humbly conceive, my

Lords, by that Act, and the last Provost in it, a

Per that is accused and found guilty of the Crimes

therein mentioned, is to lose his Seat in Parliament;

those are the Words; and since he's put down in

the Act, it is to be understood, and that is all the

Punishment. And I humbly demand your

Lordships Judgment upon these Points, whether it

be for or no.

L. H. S. Has your Lordship any more to say?

L. Staff. No, my Lords, I submit to your Lord-

ships, and define your Judgment in these Points.

Then the Lords adjourned into the Parliament-

Chamber, and the Committee of Commons returned

to their own House; and their Speaker having

enjoined the Chair, the whole Body of the House

went with their Speaker to the Bar of the House

of Lords, to demand Judgment of High-Treason

against William Viscount Stafford, upon the Im-

peachment of the Commons in the House of Parlia-

ment, in the Name of the Commons in Parliament,

and of all the Commons of England.

The Commons, with their Speaker went back to

their House.

Then the Lords took into Consideration what

Judgment was to be given upon William Viscount

Stafford, and it was moved that he might be be-

headed. After some Debate, the Judges were

allied, whether if any other Judgment than the

usual Judgment for High-Treason were given upon

him, it would attain his Blood? The Judges were

of Opinion, that the Judgment for High-Treason

appointed by Law, is to be drawn, hanged, and

quartered; and in the Courts and Proceedings be-

low, there take no notice of any Judgment for

High-Treason but that.

Then Sir Cootkall Leveson, the King's Attorney-

General, desired to be heard on his Majesty's be-

half,
half, which the House gave leave for him to be; who said, he knew no other Judgment by Law for High-Treason, but Drawing, Hanging, and Quartering; if any other Judgment were given, it would be prejudicial to his Majesty, and be a Question in the inferior Courts as to his Attendant of High-Treason.

Whereupon their Lordships ordered, that the Lord High-Steward do pronounce the ordinary Judgment of Death upon the Lord Viscount Staffor, as the Law hath appointed in Cases of High-Treason.

And a MESSAGE was sent to the House of Commons from their Lordships, by Sir Timothy Baldwin and Sir Samuel Clark.

Mr. Speaker,

We are commanded by the Lords to acquaint this House, That their Lordships are going presently into Westminster-Hall to give Judgment against William Viscount Stafford.

[Mr. Speaker left the Chair.]

The Committee of Commons appointed for the Management of the Evidence against the Prisoner, with the rest of the Commons, went into Westminster-Hall, to the Court there erected; to be present when the Lords gave Judgment of High-Treason against him upon the Impeachment of the Commons of England.

After a short Time their Lordships were adjourned into Westminster-Hall, coming in their former Order into the Court there erected; where being seated, and the Lord High-Steward being on the Woolsack, attended by Carter Principal King of Arms, the Usher of the Black-Rod, eight of the Serjeants at Arms kneeling with their Maces, the ninth making Proclamation for Silence; which being done, the Lord High-Steward gave Judgment upon the Prisoner as followeth:

L. H. S. 'My Lord Stafford,

THAT which your Lordship hath laid in

An Arrest of Judgment hath been found by

my Lords, upon the Consideration had of it, to

be of no moment at all. It is no essential Part of

any Trial, That the Prisoner should hold up his

Hand at the Bar, there is no Record ever made

of it when it is done; the only Use of it is to

show the Court who the Prisoner is, and when

that is apparent, the Court does often proceed

against him; though he refuse to hold up his

Hand at the Bar; therefore the Omission of that

Ceremony, in this Case, is no legal Exception,

as all the Judges have declared.

And as to the Proviso in the Statute of the

47th Year of this King, their Lordships do find

that they are in no Sort applicable to this Case,

from much as the Proceedings against your Lord-

ship are not grounded upon that Statute, but up-

on the Statute of 25 Edw. III. And yet if the

Proceedings had been upon the latter Statute,

the Proviso therein could have done your

Lordship no Service at all.

My Part then, which remains, is a very

bad one: For I never yet gave Sentence of Death

upon any Man, and am extremely sorry that I

must begin with your Lordship.

Who would have thought that a Perfon of your

Quality, of so noble an Extraction, of so confi-

derable Estate and Fortune, so eminent a Suffer-

er in the late 11 Times, so interested in the pre-

servation of the Government, so much obliged to

the Moderation of it, and so perso~'hly ob-

liged to the King and his Royal Father for

their particular Favours to you, should ever have

entered into so infernal a Conspiracy as to con-

trive the Murder of the King, the Ruin of the

State, the Subversion of Religion, and, as much

as in you lay, the Distriuction of all the Souls

and Bodies in three Christian Nations?

And yet the Impeachment of the House of

Commons amounts to no less a Charge, and of

this Charge their Lordships have found you

Guilty.

Tell them there hath been a general and deje

Confession of the Papists, and that the Death

of the King hath been all along one Chief Part

of the Conspirators Design, is now apparent be-

yond all Possibility of doubting.

What was the meaning of all those Treaties

which were published about two Years since a-

gainst the Oath of Allegiance, in a Time when no

Man dreamt of such a Controversy? What was the

meaning of Father Caerper's Sermon upon the

same Subject, but only because there was a De-

monstration of Zeal, as they call it, intended a-

gainst the Person of the King? Which the Scru-

pulous arising from that Oath did Somewhat hinder;

To what Purpose were all the Correspondencies

with foreign Nations? The Collections of Money,

among the Fathers Abroad and at Home? What

was the meaning of their governing themselves

here by such Advices as came frequently from

Paris and St. Oueres? And how shall we ex-

pound that Letter which came from Ireland, to

aflure the Fathers here, that all Things were in a

run turret there too, as soon as the Blow should

give?

Does any Man now begin to doubt how London

came to be burn? Or by what Ways and Means

poor Justice Godfrey fell? And is it not apparent

by their Inflations, that such is the frantic Zeal

of some bugbitted Papists, that they resolve, no

Means to advance the Catholick Cause shall be

left unattempted, though it be by Fire and

Sword?

My Lord, As the Plot in general is most ma-

nifiest, so your Lordship's Part in it hath been too

too plain. What you did at Paris, and con-

tinued to do at Trenil in Staffordshire, shews a

fattened Purposo of Mind against the King; and

what you said at London touching honest Will,

shews you were acquainted with that Conspiracy

against the King's Life which was carrying on

here too: And in all this there was a great Dec-

gree of Malice; for your Lordship at one Time

called the King Heretic and Traitor to God; and

at another Time you reviled him for mis-

placing his Bounty, and rewarding none but

Traitors and Rebels.

And thus you see that which the Wife-Man

forewarned you of, is come upon you: Garfe

not the King, no, not in thy Heart: For the Birds

of the Air shall reveal, and that which both Kings

could deprive the Man of.

Three Things I shall presume to recommend to

your Lordship's Consideration. In the first Place,
your Lordship now sees how it hath pleased God

to leave you so far to yourself, that you are fall-

en into the Snare, and into the Pit, into that

very Pit which you were digging for others. Con-

sider therefore, that God Almighty never yet left

any Man, who did not first leave him.
In the next Place, Think a little better of it than hitherto you have done, what kind of Religion that is, in which the blindGuides have been able to lead you into so much Ruin and Destruction as is now like to befal you. In the last Place, I pray your Lordship to consider, That true Repentance is never too late. A devout penitential Sorrow, joined with an humble and hearty Confession, is of mighty Power and Efficacy both with God and Man. There have been few defects of late who have refused to give God the glory of his Justice by acknowledging the Crimes for which they were condemned; nay, who have been taught to believe, that this mortal Sin to confess that Crime in public, for which they have been abovled in private; and so have not dared to give God that Glory which otherwise they would have done. God forbid your Lordship should reflect on Forms; God forbid your Lordship should be found among the Number of those pitiful monks, Souls, whom the first Thing that undecrees is Death itself. Perhaps your Lordship may not much esteem the Punishments of those whom you have long been taught to mislead Heretics; but whether you do or no, I am to assure your Lordship, That all my Lords here, even they that have condemned you, will never cease to pray for you, That the End of your Life may be Christian and Pious, how tragical soever the Means are that must bring you thicker. And now, my Lord, this is the last Time that I can call you my Lord; for the next Words I am to speak will attain you. The Judgment of the Law is, and this Court shall doth award, That you go to the Place from whence you came; from thence you must be brought upon a Hand to the Place of Execution: When you come there, you must be hung up by the Neck, but not till you are dead; for you must be cut down alive, your Priog-Members must be cut off, and your Body burnt up before your Face, and thrown into the Fire. Then your Head must be severed from your Body, and your Body divided into four Quarters, and those must be at the Dvspole of the King. And God Almighty be merciful to your Soul.

Prisoner. My Lords, I humble beseech you give me leave to speak a few Words: I do give your Lordships hearty Thanks for all your Favours to me. I do here, in the Presence of God Almighty declare, I have no Malice in my Heart to them that have condemned me; I know not who they are, nor desire to know; I forgive them all, and beseech your Lordships all to pray for me. My Lords, I have one humble Request to make to your Lordships, and that is, my Lords, That the little short Time I have to live a Prisoner, I may not be a base Prisoner as I have been of late, but that Mr. Lieutenant may have an Order that my Wife and Children and Friends may come at me. I do humbly beg this Favour of your Lordships, which I hope you will be pleased to give me.

L. H. S. My Lord Stafford, I believe I may, with my Lords leave, tell you one Thing further. That my Lords, as they proceed with Rigor of Justice, so they proceed with all the Mercy and Compassion that may be; and therefore my Lords will be humble Suits to the King, that he will remit all the Punishment but the taking off your Head.

Prisoner. (Weeping.) My Lords, your Justice does not make me cry, but your Goodness.

Then the Lord High-Steward broke his Staff, and the Lords adjourned into the Parliament-Chamber, and the Commons returned to their House, and the Prisoner with the Ax born before him with the Edge towards him (it being carried contrary during his Trial) was sent back to the Tower.

His Majesty afterward ordered the Lord High-Chancellor to issue out under the Great Seal of England the following Writs for executing the said late Viscount Stafford; the first being to the Lieutenant of the Tower, to deliver him on the 29th of December 1680, between nine and eleven o'Clock in the Forenoon, at the usual Place without the Tower-Gate, to the Sheriffs of London and Middlesex; and the other for them that were there to receive him into their Coldby, and to lead him to the usual Place upon Tower-Hill, and there to cause his Head to be cut off, and fevered from his Body: Which Writs were in Form following.

C. A R O L U S Secondus Dei gratia Angliae, Scotiae, Franciae, & Hiberniae Regis, sedis defensor, &c. Locacens patriae Terris suis^ Londini jactans: Cuan Wil: Viscount Stafford, per Commons Regni Angliae in Parliamento aijj|gunde|a, de alta probatione pecuniarum diuinitatis & officiis per ipsas peractis & cunctis, impuniti facti, a superiore per Dominum Viscountam Londini & Middle- se, virum gravissimum & regiam, de eis pertinente, finem pepercit; quod mercemius est in eis cum eis eum gratias agat, & mortem eum occusat: enim eum quousque judicis externus ad eum fictum. Compt. pre- dius Viscountam Stafford in Terris suis Londini, fab eadem non deritis: Praecipui tibi & per praetextas inimicos ingens munda, quia in ipsa virtute est etsi voluntatis sua, Decembris, inter hebras quam & undecimus, ante Meridi- dium juravit diei, ipsam Viscountam Stafford, eum, locacens judicem extra paratum Terris predectionis duces; ac ipsam, Viscountam Catharinae Angliae, Londini & Middle- se, antnicum & iudicem delineaverunt: Quibus quidem Vis- countiam sui per alios hos eum impetrandum, praecipuerunt prudens & constantia Viscountam Stafford, innumeris rebus peractis, & fuit ex eo iste judicii prudenter, unde & formam quasi deit Memoriam etc, Viscountam Londini & Middlese, per alios hoc sermum prudenter praecipuerunt: Et nos eiusdem sermone, fab periculo inimicos, aliqua Judicia, Legis, Ordinantium, qui non adducere praecognatur: habet, sed, ordinat, sed dabit in controversiam suam ob- iectis: Et si necesse sit oppugnare Wulfina, decet eum esse Decembris, Anno vigiui Angliae mense februario.

B A R K E R.

C. A R O L U S Septuagesimus Dignitatis Angliae, Scotiae, Franciae & Hiberniae Regis, sedis defensor, &c. Locacens patriae Terris suis Londini & Middlesex jactans: Cuan Wil: Viscountam Stafford, per Commons Regni Angliae in Parliamento aijj|gunde|a, de alta praelectione, pecuniarum diuinitatis & officiis per ipsas peractis & cunctis, impuniti facti, a superiore per Dominum Viscountam Terrae, inipetis eis pertinente, finem pepercit; quod mercemius est in eis cum eis eum gratias agat, & mortem eum occusat: enim eum quousque judicis externus ad eum fictum. Compt. pre- dius Viscountam Stafford in Terris suis Londini, fab eadem non deritis: Praecipui tibi & per praetextas inimicos ingens munda, quia in ipsa virtute est etsi voluntatis sua, Decembris, inter hebras quam & undecimus, ante Meridi- dium juravit diei, ipsam Viscountam Stafford, eum, locacens judicem extra paratum Terris predectionis duces; ac ipsam, Viscountam Catharinae Angliae, Londini & Middle- se, antnicum & iudicem delineaverunt: Quibus quidem Vis- countiam sui per alios hos eum impetrandum, praecipuerunt prudens & constantia Viscountam Stafford, innumeris rebus peractis, & fuit ex eo iste judicii prudenter, unde & formam quasi deit Memoriam etc, Viscountam Londini & Middlese, per alios hoc sermum prudenter praecipuerunt: Et nos eiusdem sermone, fab periculo inimicos, aliqua Judicia, Legis, Ordinantium, qui non adducere praecognatur: habet, sed, ordinat, sed dabit in controversiam suam ob- iectis: Et si necesse sit oppugnare Wulfina, decet eum esse Decembris, Anno vigiui Angliae mense februario.
1680. H. L. for High-Treason.

Hawks to be unnecessary, this House do declare, That the King's Writ ought to be obeyed.

The said Sheriffs likewise made Application to the House of Commons upon the aforesaid Matter, who made the following Resolves:

Die Jovis 23 Decembris, 1680.

Resolved, &c. That this House is content that the Sheriffs of London and Middlesex do execute William late Vicount Stafford, by searing his Head from his Body only.

Accordingly, on the Wednesday following, being the 29th of December, between Nine and Ten in the Forenoon, the two Sheriffs, with a considerable number of Gentlemen on Horseback, went to the Tower-Gate, and there demanded William Howard, late Vicount Stafford; when a Gentleman belonging to the Lieutenant of the Tower, told the Sheriffs, That the Lieutenant would wait on them presently, and bring the Prisoner to the Bars: To which the Sheriffs answered, That they must preserve the Privileges and Bounds of the City: An Officer replied, Sir, We were ordered to draw up two Companies from the Gate to the Bar, and there you are to receive the Prisoner. Sheriffs. Gentlemen, we will preserve the Liberties of the City: And we are come at the Gate to demand the Prisoner; whether the Lieutenant will destroy him or no, we demand him. And accordingly, he was delivered to the Sheriffs, between the Gates and the Bars.

Before the Prisoner came, several People were upon the Scaffold, among which were two appointed to write. The Headman came up with two Blocks, one old, one new, in a Bag, so to the Ax, covered with a Cloth. The new Block being taken out, was covered over with Black, and laid upon a piece of black Yards, about two Yards and a half long, upon which the Prisoner was to stretch himself. Then the Coffin was brought up, being coloured with two Letters. W. S. 1680. Then the Prisoner came upon the Scaffold, and asked for the Executioner; upon his appearing, he asked him, If he had received Money for the Clouts being answered No, his Man took out a Purse of Five Pounds, which the Headman objected against, and the Prisoner gave him two Guineas more. After a short Pause, he stepped to one side of the Scaffold, and taking a Paper out of his Pocket, read it as his Speech, (Which came out the very same Day, before two of the Clock, in Print, as his Speech) and was as follows:

By the Permission of Almighty God, I am this Day brought hither to suffer Death, as if I were guilty of High-Treason. I do most truly, in the Presence of the Eternal, Omnipo tent, and All-knowing God, protest, upon my Salvation, That I am as innocent as it is possible for any Man to be, so much as in a Thought, of the Crimes laid to my Charge. I acknowledge it to be a particular Grace and Favour of the Holy Trinity, to have given me this long time to prepare myself for Eternity. I have not made so good use of that Grace as I ought to have done, partly by my not having so well recollected myself as I might have done, and partly, because not only my Friends, but my Wife.
Wife and Children have for several Days been forbidden to fee me, but in the Presence of one of my Warders. This hath been a great Trouble and Diffraction unto me, but I hope God of his infinite Mercy will pardon my Defects, and accept of my good Intentions.

Since my Long Imprisonment, I have consider'd often, what could be the original Cause of my being thus accused, since I knew myself not culpable, to much as in a Thought; and I cannot believe it to be upon any other Account than my being of the Church of Rome. I have no reason to be affrighted of my Religion, for it teaches nothing but the Faith and Worship of God, Obedience to the King, and due Subordination to the temporal Laws of the Kingdom. And I do submit to all Articles of Faith believed and taught in the Catholic Church, believing them to be most conform to the Word of God.

And whereas it hath so much and often been objected, that the Church holds that Sovereign Princes, excommunicated by the Pope, may, by their Subjects, be deposed or murdered: As to the Murder of Princes, I have been taught as a Matter of Faith in the Catholic Church, that such Doctrine is diabolical, horrid, detestable, and contrary to the Law of God, Nature, and Necessity: and, if I had not, from my Heart, renounced and abominated it. As for the Doctrine of deposing Princes, I know some Divine of the Catholic Church hold it; but as able and learned as they have writ against it: But it was not pretended to be the Doctrine of the Church, that is, any Point of Catholic faith: Wherefore I do here in my Conscience declare, that it is my true and real Judgment, that the same Doctrine of deposing Kings, is contrary to the fundamental Laws of this Kingdom, injurious to Sovereign Power, and consequently would be in me or any other of his Majestys Subjects, impious and damnable. I believe and profess, that there is one God, one Son, one Holy Catholic Church, of which, through the Mercy, Grace, and Goodness of God, I die a Member.

To my great and unexpressable Grief, I have offended God in many things, by many great Offences; but I give him most humble Thanks, not in any of those Crimes of which I was accused.

All the Members of either House having Liberty to propose in the House what they think fit for the Good of the Kingdom; accordingly, I proposed what I thought fit; the House is Judge of the Fines or Unfinnes of it; and I think I never said any thing that was unfitting there, or contrary to the Law and Ufe of Parliament; neither certainly if I had, the Lords would (as they might) have punished me: So am not culpable before God or Man.

It is much reported of Indulgences, Dispensations, and Paradons, to murder, rebel, lie, forswear, and commit such other Crimes held and given in the Church; I do here profess, in the Presence of God, I never learnt, believed, or practised any such Things, but the contrary; and I speak this without my Any Equivocation or Refutation whatsoever: And certainly, were I guilty, either myself, or of any one that were guilty, whatsoever that were, of any of those Crimes which I am accused, I were not only the greatest Fool imagine, but a perfect Mad-man, and as wicked as any of those that so fully have accuses me, if I should not discover any ill Design I knew in any kind, and so upon Discovery save my Life, I have so often had so fair Occasions proposed unto me, and so am guilty of Self-Murder, which is a most grievous and heinous Sin; and though I was last impeached at the Lords Bar, yet I have great Grounds to believe, that I was first brought to Trial, on the Belief, that to save my Life, I would make some great Discovery; and truly so I would, had I known any such thing of any ill Design, or illegal dangerous Plot, either of myself, or any other Person whatsoever, without any Exception. But I have in thousand Lives, I would lose them all, rather than failly myself, or any other whatsoever. And if I had known of any Treason, and should thus deny it, as I do now upon my Salvation at this time, I should have one day of Salvation, which now I have, through the merits of Christ Jesus.

I do believe God to be the Majestick, who is my lawful King and Sovereign, whom I was always, by all Laws human and divine, bound to obey; and I am sure that no Power on Earth, either singly or all together, can legally allow me, or any body else, to lift up a Hand against him, or his legal Authority. I do hold that the Constitution of the Government of this Kingdom is the only way to continue Peace and Quietness, which God long continue.

Next to Treason, I hold Murder in Abhorrence, and have ever done and do, and I do sincerely profess, that if I could at this time free myself immediately, and eshablish what Religion I would, and what Government I would, and make myself as great as I could wish, and all by the Death of one of these Fellows, that by their Perjuries have brought me to the Place where I am, I so much abhor to be the Cause of my Mans Death, that I would not any way be the Cause of their Murder; how much his would I endeavour the Affirmation of his Majesty, whom I hold to be so gracious a King as ever was on any other Nation had, and under whom the People may enjoy their Liberties, as much as ever any did? And if it please God to grant him Life and Happiness, according to his Wishes, I have always wished and prayed for: I am most assured, that he, and all his Dominions, will be as happy and prosperous as ever People were, which I believe God grant.

I do most humbly ask Pardon of the Almighty and All-merciful God, for all the great Offences I have committed against his Divine Majesty; and I know he would not have the Death and Conflagration of a Sinner, but that he may repent and live; in that Assurance I hope, knowing he never desipeth a contrite Heart; and though I have not feeling a Contrition as I would, yet I have it as well as can; and I doubt not but that God will accept of the Good-will.

I do desire that all People will forgive me any Injury that I have done them in any thing, either wilfully or by Chance; and I do heartily forgive all People in this World that have injudi me; I forgive even those perjured Men, that so fully have brought me hither by their Perjuries.

I do now upon my Death and Salvation ave.

That I never spoke one Word either to Oates or Fairbairne, or to my Knowledge, ever saw them until my Trial; and for Dogholes, I never spoke into him of any thing, but about a Foot-boy, or
Foot-man, or Foot-Race; and never was then
alone with him: All the Punishment that I with
them, is, that they may repent and acknowledge
the Wrong that they have done me; then it will
appear how innocent I am: God forgive them!
I have a great Confidence that it will please Al-
mighty God, and that he will, in a short time,
bring Truth to Light; then you, and all the
World, will see and know what Injury they
have done me.
I hope that I have made it appear that I have
some Confidence; for if I had none, certainly I
would have faved my Life, by acknowledging
myself guilty; which I could have done, though
I know I am not in the least guilty. And I ha-
vie some Confidence, make very ill use of it,
for I throw myself into eternal Pain, by thus
plainly and constantly denying at my Death, the
Knowledge of what I am accused of in the
leaf.
I have said thus much in discharge of my Con-
science, and do aver, upon my Salvation, what
I have said to be truly real.
I shall say little of my Trial, and whether it
was all according to the known Law, I am too
much a Party to say much of it: if it was not
so, God forgive him or them that were the Cause
of it.
My Judges were all Perfons of Honour, who
were all as much bound to judge rightly, as if
they had been upon Oath upon what was legally
proved; and not to vote but according as in their
Confidences they were satisfied; and if any of
them did otherwise, upon any Account whatso-
ever, I beseech God forgive them, I do heart-
ily.
I shall end with my hearty Prayers for the Happ-
iness of his Majesty, that he may enjoy all Happi-
iness in this World and the World to come,
and govern his People according to the Laws of
God; and that the People may be sensible what
a Bleffing God hath so miraculously given them,
and obey him as they ought. I ask Pardon with
a profante Heart of Almighty God, for all the
great Offences that I have committed against his
Divine Majesty, and hope, through the Merits
and Pardon of Christ Jesus, to obtain everlasting
Happiness, into whole Hands I commit my
Spirit, asking Pardon of every Person that I have
done any Wrong unto; I do freely forgive all that
have any ways wronged me; I do, with all the
Devotion and Repentance that I can, humbly
invoke the Mercy of our Bleffed Saviour.
I beseech God not to revenge my innocent
Blood upon the Nation, or on those that were
the Cause of it, with my last Breath. I do with
my last Breath truly affer my Innocency, and
hope the omnipotent, all-seeing, just God will
deal with me accordingly.

His Speech being ended, he deliver'd several Co-
pies sign'd with his own Hand, to Mr. Sheriff
Carvill, and other Gentlemen about him; one
whereof, wrote with his own Hand, he sent to
the King. He then declare'd he might have Liber-
ity to pray in his own Way; which being granted;
his knees down by the Block, and taking out of
his Pocket another Paper, he read a Latin Prayer;
which done, he gave the Paper to Mr. Sheriff
Bo-the, and then spake to the People about the Scaff-
fold to this Effect: God bless you all, Gentlemen;
God preserve his Majesty; he is as good a Prince as
ever govern'd you; Obey him as faithfully as I have
done, and God bless you all, Gentlemen. Then a
Minifter applied himself, and said, Sir, Do you
disown the Indulgences of the Romish Church? To
which he answer'd with great Paffion, Sir, What
have you to do with my Religion? However, I do say,
that the Church of Rome always no Indulgences for
Murder, Lying, &c. and whatever I have said is
true.

Min. Have you received your Indulgence?
Answ. I have receiv'd none at all.
Min. The said that you never fav'st these Writings.
Answ. I never fav'd any of them but Dugdale, and
that was at a time when I spake to him about a Foot-
Boy.
Then turning about to his Friends, he distribu-
ted among them his Watch, two Rings off his
Fingers, his Staff, and his Crucifix off his Neck;
and his Gentleman fribbing him of his Coat and
Purse, put on his Head a Silic Cap; and having accommodated his Hair, Shirt and
Waffcoat for the Execution, he laid down his Neck on the Block and stretched himself.
The Executioner being demanded by the She-
riffs, Whether he had any Sign, he answer'd; No,
Whereupon the Prisoner rofe up, and ask't, What
they wanted; To which it was answer'd, What
Sign will you give?
Answ. No Sign at all: Take your own Time; God's Will be done.
Whereupon the Executioner said, I hope you for-
give me: He made answer, I do. Then lying down
again, the Executioner at one Blow fevered his
Head from his Body, leave only a small Part of the
Skin and Wind-pipe, which was immediately cut
off with a Knife. After which, the Headman
brought up the Head in his Hand, carried it about
the Scaffold, flewing it to the People, and say-
ing, Here is the Head of a Traitor. The Corpse
with the Head were put into a Coffin, and con-
voy'd to the Tower, where they were inter'd.
The Report of the COMMITTEE of the House of Commons appointed to examine the Proceedings of the Judges, made December 23. 1680. 32 Car. II.

This Committee being informed, That in Trinity-Term last, the Court of King's Bench discharged the Grand Jury that served for the Hundred of Offliation in the County of Middlesex, in a very unusual Manner; proceeded to enquire into the fame, and found by the Information of Charles Unfr Evel, Esq, Foreman of the said Jury; Edward Prety, Henry Girdard, and John Smith, Gentlemen, also of the said Jury, that on the 21st of June last, the Constables attending the said Jury were found defective in not presenting the Papils as they ought, and thereupon were ordered by the said Jury to make further Presentments of them on the 26th following, on which Day the Jury met for that Purpose; when several Pears of this Realm, and other Persons of Honour and Quality, brought them a Bill against James Duke of York for not coming to Church: But some Exceptions being taken to that Bill, in that it did not set forth the Duke to be a Papist, some of the Jury attended the said Persons of Quality to receive Satisfaction therein. In the mean time, and about an Hour after they had received the said Bill, some of the Jury attended the Court of King's Bench with a Petition, which they desired the Court to prefix in their Name unto his Majesty for the setting of this Parliament. Upon which the Lord Chief Justice Sprigg called many Scruples, and on Pretence that they were not all in Court, (tho' twenty of the Jury had rubb'd off the Petition) sent them for them, saying, he would dispist them presently. The Jury being come, and their Names called over, they renewed their Desire that the Court should prefix their Petition; But the Chief Justice ask'd, if they had any Bills? They answer'd they had, but the Clerks were drawing them into Form. Upon which the Chief Justice said, they would not make two Works of one Bill; and the Petition being read, he said, This was no Article of their Charge, nor was there any Act of Parliament that required the Court to deliver the Grand Jury's Petitions: That there was a Proclamation about them; and that it was not reasonable the Court-should be obliged to run on their Errands; and he thought it much, that they should come with a Petition to alter the King's Mind declared in the News Book. The Jury said, They did it not to impede on the Court, but (as other Juries had done) with all Submission they desired it. But the Court refused; bidding the Crier return them their Petition: And Mr. Justice Jones told them, they had meddled with Matters of State, not given them in Charge, but presented no Bills of the Matter, given in Charge. They answered as before; They had many before them that would be ready in due time. Notwithstanding which, the said Justice Jones told them, They were discharged from further Service. But Philip Ward (the Clerk that attended the said Jury) cried out, No, no; they have many Bills before them; for which the Court understanding (as it seems to this Committee) a secret Reslut, which the Clerk did not, reproved him, asking, If he or they were to go the Rule there? The Crier then told the Court, they would not receive their Petition; the Chief Justice bid him let it alone: So it was left there, and the Jury returned to the Court-House, and there found several Constables with Presentments of Papists and other Offenders, as the Jury had directed them on the 21st before; but could not now receive the said Presentments, being discharged. Whereby much Business was obstructed, tho' none of the said Informers ever knew the said Jury discharged before the last Day of the Term, which was not till four Days after. And it further appeared to the Committee, by the Evidences of Samuel Ayres, Jasper Waterhouse, and Philip Ward, Clerks, that have long served in the said Court, That they were much surpriz'd at the said discharge of the Jury, in that it was never done in their Memory before; and the rather, because the said Waterhouse, as Secondarv, confinantly enquir'd of the Grand Jury's Paper, that the last Day of the Term is given them to return their Verdict on, as the last Day but one is given to the other two Grand Juries of that County; which Entry is so followeth: 

Trinit. 32 Car. II. 
Juratores bebat diana ad Veredaldnum finum reddendas. tails diana Mercurei prconcis ppol teci Spinationis, pandere 
Triunatis.

Being the last Day of the Term, and so in all the other Terms the last Day is given; which makes it appear to this Committee, That they were not in truth discharged for not having their Presentments ready, since the Court had given them a longer Day, but only to obstruct their farther Proceedings: And it appeareth by the Evidence aforesaid to this Committee, That the four Judges of that Court were present at the discharging of the said Jury, and it did not appear that any of them did differ therein; upon Consideration whereof, the Committee came to this Resolution:

Resolved, That it is the Opinion of this Committee, That the discharging of the Grand Jury of the Hundred of Offliation in the County of Middlesex, by the Court of King's Bench in Trinit-Term last, before the last Day of the Term, and before they had fulfilled their Presentments, was illegal, arbitrary, and an high Misdemeanor.
This Committee proceeded also to enquire into a Rule of the Court of King's Bench, lately made against the publishing a Book, called, The Weekly Packet of Advice from Rome; or, the History of Popery: And Samuel Estrey, Gent. examined there-upon, informed this Committee, That the Author of the said Book, Henry Corr, had been informed against for the same, and had pleaded to the Information; but before it was tried, a Rule was made on a Motion, as he supposeth, against the said Book: All the Judges of that Court (as he remembers) being present, and none differing. The Copy of which Rule he gave in to this Committee, and is as followeth:


And this Committee advising that Protestant Judges should take Office against a Book, whose chief Design was to expose the Church of Rome and Popery of Popery, enquired further into it; and found, by the Minute Book of the Court, that the said Book had been licensed for several Months; that her Husband paid for the Copy, and entered it in the Hall Book of the Company: But for all this, the could not prevail by these Reasons with the Lord Chief Justice Serjeants to permit it any longer; who said, 'Twas a scandalous Libel, and against the King's Proclamation, and he would ruin her if ever the printed it any more: And soon after she was served with the said Rule, as the Author and other Printers were; and by the Author's Evidence it appears, That he was taken and brought before the said Chief Justice by his Warrant above a Year since, and upon his own writing Part of that Book, the Chief Justice called him Rogue, and other ill Names; saying, he would fill all the Goats in England with such Rogues, and pile them up as Men do Faggots; and so committed him to Pirson, refusing sufficient Bail, and saying, He would Goal him to put him to Charges; and his Lordship observed his Word punctually therein, forcing him to his Habsus Corpus; and then taking the same Bail he refused before: Upon which, this Committee came to this Resolution:

Refused, That it is the Opinion of the Committee, That the Rule made by the Court of King's Bench in that Affair, against printing a Book, called, The Weekly Packet of Advice from Rome, is illegal and arbitrary.

And the Committee proceeded farther; and upon Information that a very great Latitude had been taken of late by the Judges, in imposing Fines on the Perous found guilty before them, caused a Transcript of all the Fines imposed by the King's Bench since Easter Term, in the 28th of his Majesty's Reign, to be brought before them from the said Court by Samuel Price Gent. By Perusal of which it appeared to this Committee, That the Quality of the Office, and the Ability of the Person found guilty, have not been the Measures that have determined the Quantity of many of these Fines; which being so very numerous, the Committee refer themselves to these Records as to the general, infaining in some Particulars, as followeth.

Upon Joseph Brown of London, Gent. for an Information for publishing a printed Book, called, The London Parliament; diffused; in which are set forth these Words: Nor let any Man think it strange, that we account it Treason for you to sit and all concurrence to our Laws: For if in the first Parliament of Richard the Second, Gomeyes and Welton for lack of Courage only, were accused guilty of High Treason for forbearing the Princes committed to their Trust, how much more you, if you turn Renegades to the People that entrusted you, and as much as in you lies, to promote not the pitiful College or Wars, but all the legal Defence the People of England stand for their Lives, Liberties and Properties, at once! Neither let a vain Perjury delude you, That so Precedent can be found, that one English Parliament hath hanged up another; the public virtue even that may be proved a Mijstake: For an unprecedented Crime calls for an unpreceded Punishment; and if you shall be so wicked to do the one, or rather endeavour to do (far now you are no longer a Parliament) what ground of Confidence you can have that now will be found so contrary to do the other, we cannot understand; and do faithfully promise, if your Unworthi- ness proves us to it, that we will rise our laugh and attention against you: For a Parliament shall be closed to such as may convince you of your Mistake: The old and infallible Observation, That Parltaments are the Pulse of the People, shall lose its Eton, or you will find, that this your Pre- sumption was ever found; however, it argues but a bad Mind to fun, because it is believed it shall not be punished. The Judgment was, That he be fined 1000 Marks, be bound to the good Behaviour for seven Years, and his Name struck out of the Roll of the Attorneys, without any Office alleged in his said Vocation. And the publishing this Libel consisted only in superscribing a Packet, with this inclosed, to the Eoff-Indees. Which Fine he not being able to pay (living only upon his Pre- tice) he lay in Pirson for three Years, till his Majesty graciously pardon him, and recommended him to be restored to his Place again of Attorney, by his Warrant dated the 15th of December 1679. Notwithstanding which, he has not yet obtained the said Restoration from the Court of King's Bench.

Upon John Harrington of London, Gent. for speaking these Words said in Latin thus: Quod infra Gubernibus de tribus planitibus conscriptis, &c Rebellio exercitum in regum, & nunc occidentem omnem annos tres stationes, non est Rebellio. A Fine of 1000 l. Sureties for the Good Behaviour for four Years, and to recant the Words in open Court; which Fine he was in no Capacity of ever paying.

Upon Benjamin Harris of London, Stationer, on an Information for printing a Book, called, An Appeal from the Country to the City, setting forth these Words: We in the Country have done our Part, in avowing for the Generality good Members in favour in Parliament; but if (as our two left Parliament were) they must be divested or provoked whatever they come to retrieve the Gracions of the Subjects, you may be pitied, we blame, if the Plot takes Effect; and in the two last Parliaments, it will be followed, and then to be considered, for that their not being suffered to sit occasioned it. Judgment to pay 500 l. Fine, stand on the Pillory an Hour, and give Sureties for the good Behaviour for three Years.

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the said Benjamin Harris informed this Committee, that the Lord Chief Justice Suggs prefixed the Court then to add to this Judgment his being publicly whipped; but Mr. Justice Pemberton holding up his Hands in Admonition at their Severity therein, Mr. Justice Jones pronounced the Judgment aforesaid; and he remains yet in Prison, unable to pay the said Fine.

Notwithstanding which Severity in the Cases forsed, this Committee has observed the said Court has not wanted in other Cases an extraordinary Commendation and Mercy, though there appeared no publick Restor judiciously in the Trial, as in particular:

Hill of 31 & 32 Car. II. an Indictment of Subornation and Conspiracy against the Testimony and Life of Dr. Oates for Sodomy; and also against the Testimony of William Bedlow; a Fine of 200 Marks, a Year's Imprisonment, and to find Sureties for the good Behaviour for three Years.

Upon John Law, for the same Offence, a Fine of 100 Marks, to stand in the Pillory for an Hour, and to be imprisoned for one Year.

Par. 32 Car. II. an Indictment for Subornation of Stephen Dredge, tending to overthrow the whole Discovery of the Plot; the said Dredge being affirmed to be a Peron of good Quality, a Fine of 100 l.

Upon Anne Price for the same Offence, 200 l.

Upon Nathaniel Thompson and William Bedlow, on an Information for printing and publishing a weekly Libel, called The true Doughtick Intelligence, or Newes both from City and Country, and known to be popishly affected, a Fine of 3 l. 6s. 8d. on each of them.

Upon Matthew Turner, Stationer, on an Information for vending and publishing a Book, called The Compotium, wherein in the Justice of the Nation in the late Trials of the Popish Conspirators, even by some of these Judges themselves, is highly arraigned; and all the Witnesses for the King heretofore afforded; and this being the common notorious Popish Book-seller of the Town, Judgment to pay a Fine of 100 Marks, and is said to be out of Prison already.

Upon Loveland, on an Indictment for a notorious Conspiracy and Subornation against the Life and Honour of the Duke of Buckingham for Sodomy, a Fine of 5 l. and to stand an Hour in the Pillory.

Upon Edward Christian, Esq., for the same Offence, a Fine of 100 Marks, and to stand an Hour in the Pillory. And upon Arthur O'Brien, for the same Offence, a Fine of 20 Marks, and to stand an Hour in the Pillory.

Upon Consideration whereof, this Committee came to this Resolution:

Resolved, That it is the Opinion of this Committee, that the Court of King's Bench (in the Implication of Pines on Offenders of late Tenor) hath acted arbitrarily, illegally and partially, favouring Papists, and Perils popishly affected, and excusing oppressing his Majesty's Protestant Subjects.

And this Committee being informed, that several of his Majesty's Subjects had been committed for Crimes bailable by Law, although they then tendered sufficient Sureties, which were refused, only to put them to Vexation and Charge, proceeded to inquire into the same, and found that not only the forsed Henry Carr had been so referred the common Right of a Subject, as is aforesaid but that George Brown, being a Contemplative last Year in London, and committing some of the Lord Chief Justice Suggs's Servants for great Disorders, according to his Duty, he was in a few Days arrested by a Tipstaff, without any London Constable, and carried before the said Chief Justice by his Warrant, to answer for the committing of those Persons aforesaid; and being there, was accused of having spoken irreverently of the said Chief Justice; and an Affidavit read to him to that Purpose, which was fully (as the said George Brown affirms) sworn against him by two Persons that use to be common Bail in that Court, and of very ill Reputation. Upon which the said Justice committed the said Brown, though he then tendered two able Citizens and Common-Council-Men of London to be his Bail; and he was forced to bring his Habeas Corpus to his great Charge before he came out: When the Marshal, Mr. Costing, exacted 5 l. of him; of which he complained to the Chief Justice, but had no other Answer, But he might take his Remedy at Law. But the said Marshal fearing he should be questioned, restored him two Guineas of it.

And further this Committee was informed by Francis Smith Book-seller, That about Michaelmas was twelve Month he was apprehended before the said Chief Justice by his Warrant, and charged by the Meffengers, Robert Stephens, That he had seen some Precums of a Pamphlet, called Observations on Sir George Walkermans Trial, in his Shop: Upon which the Chief Justice told him, he would make him an Example: use him like a Boor in France, and pile him and all the Book-sellers and Printers up in Prison like Faggots; and so committed him to the King's Bench, swearing and cursing at him in great Fury. And when he tendered three sufficient Citizens of London for his Bail, alleging Imprisonment in his Correspondences would be his utter Ruin; the Chief Justice replied, The Citizens looked like sufficient Persons, but he would take no Bail; and so he was forced to come out by Habeas Corpus, and was afterwards informed against for the same Matter, to his great Charge and Vexation. And a while after Francis (the Son of the said Francis Smith) was committed by the said Chief Justice, and Bail refused, for selling a Pamphlet called, A New-Tom's Gift for the said Chief Justice, to a Coffee-house; and he declared to them he would take no Bail, for he would ruin them all.

And farther it appeared to this Committee, That the said Chief Justice (about October was twelve Month) committed in like manner Jane Curtis, the having a Husband and Children, for selling a Book called, A Satyr against Injustice, which his Lordship called a Libel against him; and her Friends tendering sufficient Bail, and despairing to have Mercy on her Poverty and Condition, he swore by the Name of God she should go to Prison, and he would shew no more Mercy than they could expect from a Wolf that came to devour them; and she might bring her Habeas Corpus,
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for examining the Proceedings of the Judges.

Corpus, and come out so: Which he was forc'd to do, and after inform'd against and prosecuted to her utter Ruin, four or five Terms after.

In like manner it appeared to this Committee, That about that time Edward Berry (Stationer of Grey's-Lin) was committed by the said Chief Justice, being accused of falsifying the Observations on Sir George Wakhament's Trial; and tho' he tender'd 1000l. Bail, yet the Chief Justice said, he would take no Bail, he should go to Prison, and come out according to Law. And after he had much Trouble and Charge got out by Hake's Corpus, he was forc'd by himself, or his Attorney, to attend five Terms before he could be discharge'd, though no Information was exhibited against him in all that time. In Consideration whereof, and of others of the like Nature, (too tedious here to relate) this Committee came to this Resolution:

Resolved, That it is the Opinion of this Committee, That the refusing sufficient Bail in those Cases, wherein the Perffons committed were bailable by Law, was illegal, and a high Breach of the Liberty of the Subject.

And this Committee being informed of an extraordinary Kind of a Charge given at the last Assizes at King'ston (in the County of Surrey) by Mr. Baron Wiffen, and proceeding to examine several Perffons then and there present; it was made appear to this Committee, by the Testimony of John Cole, Richard Mayes, and John Perres, Gentlemen, and others (some of whom put down the said Baron's Words in writing immediately) that Part of the said Charge was to this Effect: He inveighed very much against Foul, Lutker, Colvin, and Zuinglians, condemning them as Authors of the Reformation, which was against their Princes Minds; and then adding to this Purposed, Zuinglio's fit up his Fanaticism, and Calvin built on that Self'd Foundation: And to teach Truth, all his Disciples are stagant with such Sharpness of Spirit, that it is much concern'd Magistrates to keep a firm Hand over them; and now they are rebels, mingling us with Fears, and nothing will serve them but a Parliament. For my Part, I know no Representative of the Nation but the King; all Power centers in him: 'Tis true, he does enjoy it with his Minifters, but he is the sole Representative; and Puffra he has Wiffen enough to understand it no worse than they who have given us such late Examples of their Wiffen and Faithfulness. And this Committee taking the said Matter into their Consideration, came to this Resolution.

Resolved, That it is the Opinion of this Committee, that the said Expressions in the Charge given by the said Baron Wiffen were a Scandal to the Reformation, in Derogation of the Rights and Privileges of Parliament, and tending to raise Discourse between his Majesty and his Subjects.

And this Committee being informed by several Printers and Book-sellers, of great Trouble and Exacrament given them unjustly by one Robert Stephens, (called a Messenger of the Press) the said Stephens being examined by this Committee, by what Authority he had proceeded in that manner, produced two Warrants under the Hand and Seal of the Chief Justice Scroggs, which were in his own:

Aug. 8.

WHEREAS there are divers ill-disposed Perffons, who do daily print and publish false, libellous and treasonable Books and Pamphlets, endeavoring thereby to deface the Minds of his Majesty's Subjects to Sedition and Rebellion; and also infamous Libels reflecting upon particular Perffons, to the great Scandal of his Majesty's Government: for suppressing whereof, his Majesty hath lately issued out his Royal Proclamation. And for the more speedy suppressing the said falsifications Books, Libels and Pamphlets, and to the end that the Authors and Printers thereof may be brought to their Punishment:

There are to call and require you, and in his Majesty's Name to charge and command you, and every of you, upon Sight hereof, to be aiding and assisting unto Robert Stephens, Messenger of the Press, in seizing all such Books and Pamphlets as aforesaid, as he shall be informed of, in any Booksellers or Printers Shops or Warehouse, or elsewhere whatsoever, to the end they may be suppressed as to Law shall appear necessary. Also if you shall be informed of the Authors, Printers or Publishers of such Books or Pamphlets as are aforesaid, you are to apprehend them, and have them before one of his Majesty's Justices of the Peace, to be proceeded against according to Law. Dated this 25th Day of November, 1679.

To Robert Stephens, Meflenger of the Press, and to all Mayors, Sheriffs, Bailiffs, Conftables, and all other Officers and Minifters whom these may concern.

WILLIAM SCROGGS.

Aug. 8.

WHEREAS the King's Majesty hath lately issued out his Proclamation for suppressing the printing and publishing false, libellous and treasonable Books, and Pamphlets of News: notwithstanding which, there are divers Perffons who do daily print and publish false, libellous and treasonable Books and Pamphlets. Wherefore are therefore to call and require you, and in his Majesty's Name to charge and command you, and every of you, from time to time, and at all times, so often as you shall be thereto required, to be aiding and assisting to Robert Stephens, Messenger of the Press, in seizing all such Books and Pamphlets as aforesaid, as he shall be informed of, in any Booksellers Shop, or Printers Shop, Warehouse, or elsewhere whatsoever, to the end they may be suppressed as to Law shall appear appropriate. Likewise, if you shall be informed of the Authors, Printers or Publishers of such Books and Pamphlets, you are to apprehend them, and have them before one of his Majesty's Justices of the Peace, to be proceeded against as to Law shall appear appropriate. Dated this 25th Day of May, Anno Dom. 1680.

To all Mayors, Sheriffs, Bailiffs, Conftables, and all other Officers and Minifters whom these may concern.

WILLIAM SCROGGS.

On the 9th of April following.
Upon View whereof this Committee came to this Resolution:

Resolved, That it is the Opinion of this Committee, that the said Warrants are arbitrary and illegal.

And this Committee being informed of certain scandalous Discontents, sick to be uttered in publick Places by the Lord Chief Justice Staues, proceeded to examine Sir Robert Atkins, late one of the Justices of the Common-Places, concerning the fame; by whom it appears, That at a Seafons Dinner at the Old Bailey, (in the Mayality of Sir Robert Clayton) who was then present, the said Chief Justice took occasion to speak very much against petitioning, condemning it as remonstrating, as passions and tending to Rebellion, or to that Effect; to which the said Sir Robert Atkins made no Reply, supposing he waited for some Advantage over him: But the Chief Justice continuing and pressing him with the said Discontent, he began to justify petitioning as the Right of the People, especially for the fitting of a Parliament, which the Law requires, if it be done with Modesty and Respect. Upon which the Chief Justice fell into a great Passion; and there is some Reason to believe, that soon after he made an Ill Remonstrance, of what the said Sir Robert had then spake unto his Majesty. And this Committee was farther informed, That the said Sir Robert Atkins being in Circuit with the said Chief Justice at Summer Assizes was Twelve-month at Mawnants, (Mr. Arnold, Mr. Price, and Mr. Bellas being then in Company) the Chief Justice fell severely in publick upon Mr. Bellas, taking off the Credit of his Evidence, and alleging he had overfact himself in it, or to that Effect, very much to the Disparagement of his Character. And the said Sir Robert defending Mr. Bellas’s Evidence and Credit, he grew extreme angry and loud, saying to this Effect, That he verily believed Langhorn died innocently. To which the said Sir Robert replied, He wondered how he could think so, who had condemned him himself, and had not moved the King for a Reprive for him. All which Matters of Discontent this Committee humbly submit to the Wisdom and Consideration of this House, without taking upon them to give any Opinion thereon.

And this Committee proceeded farther to enquire into some Passages that happened at Last Assizes last for the County of Somerset, at the Trial of Thomas Dove, Gent. there, upon an Indictment for lying falsely and factiously, That the Subject had but two Males to reddress their Grievances, the one by Petitioning, the other by Rebellion: And found, that though by his other Discontent when he said so, it appeared plainly he had no rebellious Intent, in that he said, Their God forbid there should be a Rebellion, he would be the first Man to draw his Sword against a Rebel; yet he was prosecuted with great Violence: And having pleaded Not Guilty, he moved Mr. Justice Jones (who then sat Judge there) that he might try it at the next Assizes, for that Mr. Searle (who was by at the speaking of the Words, and a material Witnes for his Defence) was not then to be had, and an Affidavit to that Purpose was made and received: But the said Justice Jones, and the next Judge, were of Opinion that it was a Favour of the Court only, and he had not delivered any Favour, and so forced him to try it presently. But the Jury, appearing to be an extraordinary one, provided on purpose, being all of Persons that had highly opposed petitioning for the fitting of this Parliament, he was advised to withdraw his Plea; and the said Justice Jones enquiring from him if he was satisfied with the Words, denying any evil Intentions, and gave the said Justice an Account in writing of the Truth of the whole Matter, and made a Submission in Court, as he was directed by the said Justice; who promised to recommend him to his Majesty, but imposed a Fine of 500 l. on him, and to be bound to the good Behaviour for three Years; declaring, also, That he was turned out from being a Common-Councilor of the Corporation of Taunton in the said County, on Presence of a Chartre in their Charter, giving such a Power to a Judge of Aaught. And the said Thomas Dove remains yet in Prison for the said Fine; in which Matter of the Trial aforesaid, this Committee defers it to refer itself to the Judgment of this House.

Upon this Occasion Sir Francis Winton made the following Speech.

Mr. Speaker,

IN the Front of Magna Charta it is said, Nulla reginae, nulli speciales, nulli sacrosancti Judicati, we will defend our Country and our Man: To this the King is sworn, and with this the Judges are trusted by their Oaths. I observe what they can say for themselves; if they have not read this Law, they are not fit to sit upon the Bench; and if they have, I had almost said, they deserve to lose their Heads.

Mr. Speaker, The State of this poor Nation is to be declared, that in almost all Ages, the Judges, who ought to be Preferrers of the Laws, have endeavoured to destroy them; and to place a Court-Faction. They have by Treachery attempted to break the Bonds of Magna Charta, the great Treasure of our Peace: It was no sooner past, but a Chief Justice in that Day perdues the “Hebore de Regno” he was not bound by it, because he was under Age when it was past. But this Sort of INfluence the next Parliament referred, to the Ruin of the pernicious Chief Justice. In the time of Richard the Second, the Judges, by the Treason of the two Judges that did infirmate into the King, that the Parliament were only his Creatures, and depended on his Will, and not on the fundamental Constitutions of the Land; which treacherous Advice proved the Ruin of the King, and for which all those evil Infrumens were brought to Justice. In his late Majesty’s Time, his Misfortunes were occasioned chiefly by the Corruptions of the Long Robe; his Judges by an extravagant Opinion gave the King Power to raise Money upon an unconstitutional Act, without Parliament, and made the King Judge of such Occasions. Charity prompts me to think they thought this a Service to the King; but the said Consequences of it may convince all Mankind, that every illegal Act weakens the Royal Interest; and to endeavour to introduce absolute Dominion in these Realms is the work of Treasons, because, whilst it bears the Face of Friendhip to the King, and directs to be subservient to no other, for his Service, it never fails of the contrary Effect.

The two great Pillars of the Government are Parliament and Judicature: it is this gives us the Title,
of Free-born Englishmen: For my Notion of Free Englishness is this, That they are ruled by Laws of their own making, and tried by Man of the same Condition with themselves. The two great and undoubted Privileges of the People have been lately invaded by the Judges that now sit in Westminster-Hall; they have expounded Proclamation against Law; they have discomposed and opposed several legal Acts, that tended to the fitting of this honourable House; they have grabbed the legislative Power into their own Hands, as in that Infidence of Printing; the Parliament was considering that Matter, but they in the Interim made their private Opinion to be Law, to supersede the Judgement of this House; they have discharged Grand Juries on Purpose to quell their Pretentions, and fluster great Criminals from Justice; and when Judges have presented their Opinion for the fitting of this Parliament, they have in Diddain thrown them at their Feet, and told them, they would be no Meffengers to carry such Petitions; and yet in a few Days after, have encouraged all that would spill their Venom against the Government; they have served an ignominious and arbitrary Fission, and been the Meffengers of Abhorrence to the King.

Mr. Speaker. What we have now to do, is to load them with Shame, who did Difance to the Law; they are guilty of Crimes against Nature, against the King, against their Knowledge, and against Policy. The whole Frame of Nature doth loudly and daily petition to God their Creator; and Kings, like God, may be addressed to in like Manner by Petition, not Command. They likewise knew it was lawful to petition; Ignorance can be no Plea, and their Knowledge aggravates their Crimes. The Children unborn are bound to curse such Proceedings; for 'twas not petitioning but Parliaments they abhorred. The Atheist pleads against a God, not that he disobeys a Deity, but would have it so. Jefus and Belnap were judges too; their Learning gave them Honour, but their Villanities made their Exit by a Rope. The End of my Motion therefore is, That we may address warmly to our Prince against them; let us setle a Committee to enquire into their Crimes, and not fail of doing Justice upon them that have perverted it; let us purge the Fountain, and the Streams will issue pure.

The Resolutions of the House of Commons upon the said Report.

I. THAT it is the Opinion of this House, That the discharging of the Grand Jury of the Hundred of Offenham in the County of Middlesex, by the Court of King's-Bench in Trinity-Term last, before the last Day of the Term, and before they had finished their Prentensions, was arbitrary and illegal, destructive to publick Justice, a manifed Violation of the Oaths of the Judges of that Court, and a Means to subvert the fundamental Laws of this Kingdom, and to introduce Popery.

II. That it is the Opinion of this House, That the Rule made by the Court of King's-Bench in Trinity-Term last, against printing of a Book, called The Weekly Paroch of Advice from Rome, is illegal and arbitrary, whereby utfurping to themselves legislative Power, to the great Discouragement of the Protestant, and for the countenance of Popery.

III. That it is the Opinion of this House, That the Court of King's-Bench, in the Imposition of Fines on Offenders of late Years, have acted arbitrarily, illegally, and partially, favouring Papists and Persons popishly affected, and excusively oppressing his Majesty's Protestant Subjects.

IV. That it is the Opinion of this House, That the refusing sufficient Bail in those Cases, wherein the Persons committed were bailable by Law, was illegal, and a high Breach of the Liberties of the Subject.

V. That it is the Opinion of this House, That the said Expressions in the Charge given by the said Baron Weston, were a Scandal to the Reformations, and tending to raise Discord between his Majesty and his Subjects, and to the Subversion of the ancient Constitution of Parliament, and of the Government of this Kingdom.

VI. That it is the Opinion of this House, That the said Warrants are arbitrary and illegal.

The Resolutions of the Commons for the Impeachment of the said Judges.

Resolved, That Sir William Strachey Knight, Chief Justice of the Court of King's-Bench, be impeached upon the said Report, and the Resolutions of the House thereupon.

Resolved, That Sir Thomas Jones, one of the Justices of the said Court of King's-Bench, be impeached upon the said Report, and Resolutions of the House thereupon.

Resolved, That Sir Richard Weston, one of the Barons of the Court of Exchequer, be impeached upon the said Report, and Resolutions of the House thereupon.

Ordered, That the Committee appointed to prepare an Impeachment against Sir Francis North, Chief Justice of the Court of Common-Pleas, do prepare Impeachments against the said Sir William Strachey, Sir Thomas Jones, and Sir Richard Weston, upon the said Report and Resolutions.

Ordered, That the said Report, and several Resolutions of this House thereupon, be printed; and that Mr. Speaker take Care in the printing thereof apart from this Day's other Votes.

Accordingly, Jan. 5. Articles of Impeachment were actually brought in against Sir William Strachey; and the said Articles were ingrossed, and carried up to the Lords by Lord Crewe, But the Parliament being soon after prorogued, this Affair was dropped; however, it was thought proper to remove Strachey from being Chief Justice, which was done with all the Marks of Favour and Respect, being allowed a Pension for Life. But a Parliamentary Censure did not hinder the Court from preferring others, who had been censured a little before; as may appear by these Votes of the House of Commons. *

CIII. Proceedings in Parliament against Edward Fitz-Harris, upon an Impeachment for High-Treason, March 25, &c. 1681. 33 Car. II.

O

THE Examinee, faith, That he was born in Ireland, and was bred, and is a Roman Catholic; That he had a Commission, and sailed a Company of Foot in Ireland for the French King's Service, and conducted them into France.

That in 1672, going to take his Leave of Father Gregg an English Priest at Paris, he told him, within this two Years, You shall see the Catholic Religion established in England as it is in France; The Examinee asking how that could be, the King being a Protestant, lie answered, If the King would not comply, there was Order taken, and Things so hid, that he should be taken off or killed; That the Duke of York was a Catholic, and in his Reign there would be no Difficulty of doing it; That the Father then told him, That the Declaration of Indulgence was for the introducing the Catholic Religion; and that to the same End the War was made against Holland, it being a Veil of Heresites; and that Mutiny came over to Dover upon this Design.

That the Examinee, about February 1672, had a Lieutenant's Commission in Captain Sidebotham's Company, in the Duke of Albemarle's Regiment, in the Black-Heath Army; and that he knew many of the Officers to be Roman Catholics; and that the Act palling to disable Roman Catholics, he and others of them were forced to quit their Commands; that the common Opinion amongst them was, for the setting the Roman Catholic Religion in England; but that the Measures being broken, by Means of the Peace with Holland, and the Duke of York and other Catholics: Officers quitting all Commands, and the King failing in his Expectations from them; the Roman Catholics came to a Resolution to destroy the King, as Father Percy, Confessor to the Portuguese Ambassador, told the Examinee in 1673; who put this Confidence in him, being his Con-

fellor; and that the same Father repeated the same Discourse to him with more Assurance in 1678; adding then, that the Bishops then was now men, and he should soon see it done. That about the 24th of April 1679, the Duke of Medway's Envoy having sworn him to Secrecy, told him, That if he would undertake the killing the King, he should have 10,000l. which he refused, the Envoy said, The Dutchmen of Mazarine understands poising as well as her Sifter, and a little Viol when the King comes there will do it; and that upon the King's Death, the Army in Flanders, and Parts adjacent to France, was to come into England to destroy the Protestant Party; and that after that, there should be no Parliament, and that the Duke of York was privy to all these Designs.

That about April 1680, Kelly the Priest, whom he had known above 12 Years, and had some Times confessed him, owned to him at Cabisn, that he was concerned in the Murder of Sir Edmond Grey; and that the same was done as Prince had related it.

That the Examinee had been six or seven Years acquainted with Municus & Pay, Servant to the Duke of York; and that he told him soon after the Murder of Sir Edmond Grey, That that Murder was conspired at Windsor, and about that Time paid, That the Duke was very desirous to come to the Crown, the King being uncertain, and not keeping touch with them; and that De Pay said, there was a Necessity of taking off the King, and that it would be soon done: That the Duke of York complying Part of the Examinee's Father's Estate in Ireland, the Examinee being acquainted with Father Bolingbroke, asked him, How he could give Absolution to the Duke, till he had made Reflection? To which the Father said, That every Penitent was supposed to know his own Sins, and to declare them to his Confessor: To which the Examinee replying with Warmth, But since you know it, you ought to take Notice thereof, the Father answered, Be not angry, for c'er it be long you may be in a better Condition.

That in March 1680, he met Father Patrick at Paris; and talking of a Rupture that might be between England and France, the Father said, That
That the French intended, in such Cafe, to send Marshal Bullfinde into Ireland with 10000 Foot and 3000 Horse, and Arms and Ammunition for 30000 Men to be raised there; and the Father promised the Examinant a Regiment of the Men to be so raised, and the Design was to restore that Kingdom to its former Owners in Subjection to France.

That Father Patrick desired him to send him all the Libels that came out in London; and said, that libelling the King was a thing necessary, in order to diffuse and make him jealous of his People; that the Examinant knew Mr. Exward at Paris in 1665, and hath since re-visited his Acquaintance with him; and that the Opinion of Father Patrick about libelling the King, encouraged the Examinant to concur with Everard, as to the Libel lately written by Everard.

As soon as the Examination was read, Sir John Hotham moved that it might be printed, to shew the World the devilish Conspiracies of the Papists; which Motion was seconded by Sir William Jones, who said, that People had been prevailed upon to believe the Plot not true, and that that Examination confirmed the Informations of Oates and Bedloe.

Sir Francis Wingham. The treasonable Paper of Fitz-Harris was to have been sent to many Gentlemen, and they have been feit thereupon, as Traitors in a Conspiracy against the King; All is at Stake, therefore let not our Courage fail: Let us go to the Bottom of this Business of Fitz-Harris; I move, he may be imprisoned of High-Treason; and it may be, he will relent and tell you all.

Sir Robert Clayton then said, That when Fitz-Harris his Examination was taken at Neavegate, he told him, that he thought he had not dealt ingenuously, unless he would tell what Counsel he had for drawing the Paper; and that he had him be ingenuous in the whole Matter, and he would consult and take his future determination; and that Fitz-Harris having promised this, he was removed out of their reach into the Tower.

Whereupon an Impeachment was ordered, and Sir L. Jenkins commanded to carry it to the Lords; and Colonel Bireb said, that we ought all to give God Thanks for this Discovery of Fitz-Harris, next to the first Discovery of the Plot.

Upon Saturday the 26th of March 1681, the Houle of Commons being informed, that the Houle of Lords had refused to proceed upon the Impeachment, Sir Thomas Lee said, That he knew, by the Lords refusing the Impeachment, no farther Use of Parliament; That they would be a Court, or not a Court, according to the Consent Purposed.

Sir William Jones. Indictments were brought against the Lords in the Tower, and yet that was no Impediment to their Impeachment in the Lords House; but here is no Indictment or Prosecution brought against Fitz-Harris. We have an Instance fresh in Memory; Sregg a Commoner, and not indicted at Common Law, yet the Lords without Jurisprudence accepted his Impeachment. We find the Lords have determined a great Point; the Lords Spiritual, as well as Temporal, have voted the Refusal of the Impeachment of Fitz-Harris; which we own not in this Judicature, and I hope never shall; and we are denied Justice by the Lords Spiritual, who have no Right to vote. This is a double Act of Injustice: Let us then vote, That the Commons have a Right to impeach in capital Cases; and that the Lords have denied us justice, in refusing the Impeachment in a Parliamentary Way. At a Conference, let us shew how unwarrantable the Lords Actions have been; and if the Dissolution of the Parliament follows, it is the Fault of those Men who will not hear our Reasons.

Sir Francis Wingham. This Impeachment is not an ordinary Accusation, but it relates to our Religion and Property; and how the Bishops come to file this, let God and the World judge —If the Lords will vote that the Commons shall not impeach him, they may as well vote they shall not be Protectors. This is a new Plot against the Protectors, of which Fitz-Harris is accused, and we must not impeach him. In this, the Lords say, we must not hear it—I desire you would come to some Vote: You are willing to discover the Plot, if you could.—If our time be short, (as I believe it is) pray come to some Resolution to afford your Right.—A little while ago, when the Duke was presidet for a Papist, the Grand Jury was dishonoured by the Chief Justice. This seems as if the Lords would justify the Judges Proceedings in the former; —If no Man doubts our Right, pray vote it.

Sir Robert Hearsall. This of Fitz-Harris seems to me to be a more dangerous Breath than usual, a Breath fit to be stifled; there is something in this more than ordinary. If there be so sacred a Respect to common Trials in inferior Courts, 'tis strange that the House of Commons should be below a common Jury. —It seems the Lords value Fitz-Harris to keep him from us.—If Dangerfield would speak what he knew, nothing of Mercy was too big for him; but they hurry Fitz-Harris away to the Tower, when he began to confine in Neavegate: Are you so loth that you have no Mercy left for the Protestant Religion? —We hear that the French Ambassador had a hand in this Plot, which a Jury will not enquire into. I must confess, that by the Carriage of this I have enlarged my Suspicion; for I cannot but fel dụng unfair Ways —Something depends upon this Man.—Sure we must not lay down all Prosecution of the Plot, and say that the Protestant Religion shall have no Mercy. Fitz-Harris may merit Mercy by Confinement; and if his Breath be stopped by the Lords, I am sorry that People will fly, if it were not for the Lords, Fitz-Harris might have discovered all the Conspiracy, and the Protestant Religion might have been faved.

Mr. Serjeant Mynard then added, We all know what Arts and Crafts have been used to hide the Plot from the Knowledge of the High Marquis, by Suppression of Information: This of Fitz-Harris is a further Parley, by which the Lords deny to receive our Impeachment; in effect, they make this no Parliament; if we are the Protectors, and they will not hear our Accusation. 'Tis strange, when their own Lives, as well as ours, are concerned in the Plot. —When all is at Stake, we must not profess: If this be so, Holland and Flanders must submit to the French, and they over-run all. This is a flaming Breach of Privilege, and tends to the Danger of the King's Person, and Deification of the Protestant Religion.

Sir Thomas Playter. This of Fitz-Harris is a considerable Confirmation of the former Plot: I call it the old Plot, but 'tis still new upon us.

G g
When he inclined to discover what he knew, he was fetched to White-hall, and sent to the Tower; and so we were deprived of all farther Hopes of Discovery; and now they flop his Mouth; I mean therefore, that you will declare, That if any Judge, Justice or Jury proceed upon him, and he be found guilty; that you will declare them guilty of his Murder; and Brevetaries of the Rights of the Commons of England. Hereupon the House came to these Resolves:

That it is the undoubted Right of the Commons in Parliament assembled, to impeach, before the Lords in Parliament, any Peer or Commoner for Treason, or any other Crime or Misdemeanor; and that the Refusal of the Lords to proceed in Parliament upon such Impeachment, is a Denial of Justice, and a Violation of the Constitution of Parliament.

That in the Case of Edward Fitz-Harris, who by the Commons has been impeached for High Treason before the Lords, with a Declaration, That in convenient time they would bring up the Articles against him: For the Lords to resolve, that the said Fitz-Harris should be proceeded with according to the Course of the Common Law, and not by way of Impeachment in Parliament, is a Denial of Justice, and a Violation of the Constitution of Parliament, and an Obstruction to the further Discovery of the Popish Plot, and of great Danger to his Majesty's Person, and the Protestant Religion.

That for any inferior Court to proceed against him, or any other Person lying under an Impeachment in Parliament for the same Crimes for which he or they stand impeached, is an high Breach of the Privilege of Parliament.

This Matter, thus agitated in the House of Commons, was conterminous with a Protestant of many Temporal Lords; which was to this Effect: "That in all Ages it hath been an undoubted Right of the Commons to impeach before the Lords any Subject for Treasons, or any other Crime whatsoever. "That they could not reject such impeachments, because that Suit or Complaint can be determined no where else; for an Impeachment is at the Suit of the People, but an Indictment is at the Suit of the King's as, the King may "indict at his Suit for Murder, and the Heir, or the Wife of the Party murdered may bring "an Appeal; and the King cannot relieve that Appeal, nor his Indictment prevent the Proceedings in it. "It is an absolute Denial of Justice, in regard "it cannot be tried any where else. The House "of Peers, as to Impeachments, proceed by virtue "of their Judicial Power, and not by their "Legislative; and as to that, act as a Court of "Record; and can deny Sitters (especially the "Commons of England, that bring legal Com "plaint before them) no more than the Judges of "Wellingtler can deny any Suit regularly com "menced before them. "Our Law faith, in the Person of the King, "Noli negetidrnm judicium, We will deny Ju "dice to no single Person; yet here, Justice is de "clared to the whole Body of the People. This "may be interpreted an Exercise of arbitrary "Power, and have an Influence upon the Con "stitution of the English Government; and be "an Encouragement to all inferior Courts to ex "ercise the same arbitrary Power, by denying "the Preferments of Grand Juries, &c. for which, at this time, the Chief Justice stands "impeached in the House of Peers. "These Proceedings may misrepresent the "House of Peers to the King and People, espe "cially at this time; and the more, in the par "ticular Case of Edward Fitz Harris, who is "publicly known to be concerned in vile and "horrid Treasons against his Majesty; and a great "Conspirator in the Popish Plot to murder the "King, and destroy and subvert the Protestant "Religion."

Moneymore, Maitland,
Kent, Murendo,
Huntington, Wharton,
Boxford, Poynt,
Saltford, Greer of Works,
Chere, Hertford of Clonony,
Stansford, Correaus,
Sonderland, Lovelace,
Exford, Crew.

This Protest was no sooner made upon Monday the 28th of March 1681, but the Parliament was instantly dissolved.

Proceedings against EDWARD FITZ-HARRIS in the King’s-Bench, upon his Arraignment and Plea to an Indictment for High-Treason, April 27, &c. 1681. Palche. 33 Car. II.

On Wednesday, April the 27th 1681. the Grand Juries for the County of Middlesex were sworn; and after the Charge delivered by Mr. Justice Jones, his Majesty’s Attorney-General delivered, That some of that Grand Jury which served for the Hundreds of Edmundton and Gore (then for Offlogden Hundred being immediately adjourned for a Week) might be present at the swearing of the Writs, upon an Indictment for High-Treason, to be preferred against Edward Fitz-Harris Prisoner in the Tower of London, which was granted; but the Grand Jury being under some Scruples against receiving of the Bill, deferred the Opinion of the Court therein; which Mr. Justice Jones alone thought not fit to give, but ordered them to attend next Day when the Court was full.

And
And accordingly on That day, April 28, the said Grand Jury came to the Bar, and Mr. Michael Godfrey (Brother to Sir Edmund Godfrey) who was their Foreman, addressed himself thus to the Court.

Mr. Godfrey. My Lord, I have an humble Re- quet to make to the Court on the behalf of my Brother, and on the behalf of the Grand Jury for the County of Middlesex, of which I am Foreman. This Gentleman, Mr. Woid, I did beg of when I was sworn, to chuse another Man that was fitter for the Service, as being more experienced, but he would not; and I beg your Pardon, if I should commit any Failure for want of Experience. But I desire, before we proceed upon this Indictment before us, that this same Fiz-Harris may be examined about my Brother’s Death, of which I suppose he may know much, because in the printed Narrative he does speak of one De Pay, who was a very active Man about that Murder; and how ill a Man he ever he has been, we do both know. Tell Truth and Truth, as you are to tell what he knows of that horrid Murder. Therefore I pray your Lordship, that you would grant an Indictment to put him before your Lordship to be examined upon that Point before we do proceed; that is all as to myself. My Lord, as to the Jury, we do all of us humbly present this Paper, and desire it may be read in Court.


Mr. Godfrey. But we do all own it, my Lord. L.C. 7. Who is it then? It is the Crown. We Michael Godfrey, &c., being sworn to serve in the Grand Inquest for the Hundreds of Edgware and Care in this County of Middlesex, &c., and being yesterday sent for into the Court of King’s-Bench, by a Messenger from the said Court, to be present at the swearing of several Witnesses produced on the behalf of our Sovereign Lord the King, to prove the Truth of some Indictments, then in the Hands of the Clerk of the Crown; and observing that Sir William Welder, Smith and others were sworn to give Evi- dence against Edward Fiz-Harris, now Prisoner in the said Court, who in the late Parliament at Ox- ford was impeached by the Honourable House of Commons in the Name of themselves, and of all the Commons of England, of which we the said Michael Godfrey, &c. are Part, and as Jurymen, be his Judges also.

We therefore humbly desire the Opinion of this Honourable Court, whether it be lawful and safe for us, the said Godfrey, &c. (in case an Indict- ment of the said Fiz-Harris should be brought before us) to proceed to examine any Witnesses in reference to the said Indictment, or any way to meddle with it, or proceed upon it, notwithstanding the said Impeachment, and Votes pursuant to it by the said Honourable House of Commons? And this being a great Point in Law, of so great Consequence for us to undertake in a Point of Right not fetted by Conference, and reman- ning yet undetermined in the High Court of Par- liament:

We therefore humbly desire the Opinion of this Court upon the whole Matter, Whether le- gally and safely we may proceed to find the In- dictment of Fiz-Harris, or no?

Mr. Godfrey. My Lord, we do humbly desire the Resolution of the Court in this Matter, as a thing of Weight; for we are between two Milli- ones, as we apprehend it, and shall be ground between them.

L.C. 7. Look you, Gentlemen of the Jury, we do not apprehend fo.

Mr. At. Gent. My Lord, be pleased to spare me one word: This Indict- ment was tender’d to this Grand Jury yesterday, and this Gentleman was against accept- ing the Bill till he had your Judgment, and fo were two more; but for all that, the Body of them carried it (all but thee three) to hear the Evidence: whereupon Mr. Solicitor and myself did go on upon the Evidence, and spent some time in opening it to them, and it was all given to them; and truly, the Gentlemen did seem to be abundantly satisfy’d what an horrid Villainy it was, and we did think they would have found the Bill; but it seems they have prevail’d to put these Scruples into the other Hands.

L.C. 7. Look you, Mr. Attorney, we will not now enquire into that. Gentlemen of the Jury, you seem dis satisfy’d in this Matter, and define the Opinion of the Court in it, whether you may lawfully proceed to find this Indictment or not? We did hear yesterday of some Scruples you made to my Brother Jones when you were sworn, and he far in Court to give you the Charge, which he thought not fit then to answer, but left it till to- day: truly we would have all things fairly and clearly done, that we may understand how we go all along in this matter. Your Scruple is this: Here was, you say, an Impeachment offered a- gainst Edward Fiz-Harris by the Commons to the Lords, and that Impeachment was of High Treason, which was not received, and thereupon there was a Vote of the House of Commons that he should not be try’d by any other inferior Court: You de- desire now to know whether you may enquire con- cerning this Treason, notwithstanding these things that have pass’d thus?

Mr. Godfrey. Yes, my Lord.

L.C. 7. We are very ready and willing to testi- fy any of the King’s Subjects in any Matters in Judgment before us, that they may fee there shall be nothing but fair Proceedings in all Cases: We do tell you it is our Opinion, that notwithstanding any thing of this matter that you suggel in the Cafe before you, it is fit for you to enquire upon the Indictment; and you are bound to en- quire by virtue of your Oaths, if an Indictment be exhibited to you: you cannot, nor ought to take any notice of any such Votes of the House of Commons afterwards, if any such there were, for they will not excuse you (who are sworn to enquire of the Matters given you in Charge) in case you do not your Duty; and therefore if you have Evidence enough given you, to satisfy you that the Indictment is true, you are to find it. And likewise we ought to proceed according to Justice, in Cases that are brought before us. Nei- ther you nor we can take notice of these things in case there be any such as you forget, nor will they excuse us before God or Man for the Breach of our Oaths, if we should do the contrary. And this we declare to you, not only as our Opinions, but as the Opinion of all the Judges of England.

For when we did hear there was a Scruple made by you the Gentlemen of the Jury, because we would
would make the way fair and clear, all the Judges did affur to debate the Matter for your Sub- faction; not that we were disfatted at all in it our selves, but that it might appear to you and the Kingdom, that there is nothing but Fairness used in this Cafe, as in all others; and all the Judges, Nemine contradicte, were all of Opinion, that you are not to take notice of any of the things; but if the Indictment be exhibited, and you have Evidence enough, you ought to find it. This we have endeavoured for your Satisfaction, to make your way clear.

Sel. We humbly thank your Lordship.
[Then the Jury went away, and afterwards found the Bill.]

On Friday, April 29. 1681. Sir Tho. Stringer, the King's Serjeant at Law, moved for an Habatus Corpus, to bring up the Body of Edward Fitz-Harris, to be examined by the Court about the Death of Sir Edmondbury Gedfrey. The Court granted the Writ, and said, he should be arraign'd upon the Indictment against him, and then they would examine him.

Saturday, April 30. Edward Fitz-Harris was brought with a strong Guard to the King's Bench Court.

Mr. Serj. Stringer. Your Lordship hath been pleased to grant an Habatus Corpus for Fitz-Harris, and he is brought up and attends here.

L. C. J. We will send for Mr. Attorney, Brother.

Mr. Serj. Jafferis. I beg this of your Lordship, that you will be pleased to play at a little; I know not how he comes to be brought up here; Mr. Attorney, I mean, he knows nothing of it.

L. C. J. Well, well; send for Mr. Attorney, Brother, and hear what he says.

[Which being done, and Mr. Attorney came in, the Prisoner was brought to the Bar.]

Mr. Serj. Stringer. My Lord, I would humbly move he may be brought into Court to be examined before he be arraign'd.

L. C. J. Why for?

Mr. Serj. Stringer. My Lord, we would have him examined concerning Sir Edmondbury Gedfrey's Death.

L. C. J. What matters it? That may be done after, as well as before.

Cl. of Crown. Edward Fitz-Harris, hold up thy Hand.

Mr. Fitz-Harris. My Lord, I have been a close Prisoner these ten Weeks, and have not had the Liberty to see any one in the World; I desire I may have Liberty to see my Friends, and speak with them, before I do answer to any thing.

Mr. Fitz-Harris. My Lord, plea nothing of Ju- rigidation of the Court; here's a Plea drawn by Counsel for you.

L. C. J. You had but consider well what you have to do.

Mr. Fiza-Harris. My Lord, I desire this Paper may be read by the Clerks.

Mr. Just. Jones. No, no; that cannot be till you have answered to your Indictment.

Cl. of Crown. Pull off your Glove, and hold up your Hand.

Mr. Fitz-Harris. My Lord, I desire Leave to plead to the Judigitation of the Court.

L. C. J. You shall have it.

Mr. Fitz-Harris. I desire this Plea may be al- lowed.

Mr. Just. Dalben. Hear your Indictment first, and plead afterwards.

L. C. J. Look you, Mr. Fitz-Harris, let us thus far direct you: Your holding up of your Hand, and hearing the Indictment read, will not hinder you from any manner of Plea, which you may have to make afterwards; but you can plead nothing before. Cl. of Crown. Pull off your Glove, and hold up your Hand; (what he did.) And then the Clerk of the Crown read the Substance of his Indictment to him in English. And then speaking to him, said, How layest thou, Edu. Fitz-Harris? Art thou gui- lty of this High-Treason whereof thou standest in- dicted, and hast been now arraigned, or Not Guilty? Mr. Fitz-Harris. Not Guilty. My Lord, I offer this Plea to be read first, before I answer.

L. C. J. That Plea? Take his Plea. Let us see what it is. We take it to read it now.

Mr. Just. Jones. Not to allow it.

L. C. J. Only to see what it is.

Cl. of Crown reads,
L. C. J. Look you, Mr. Fitz-Harris, as for this Pleading here, we ute not to receive such Pleading as this without a Counsel's Hand to it.

Mr. Fitz-Harris. I define your Lordship to affign me Counsel.

L. C. J. Who would you have affigned Counsel?

Mr. Fitz-Harris. Sir William Jones, Sir Francis Winsimog, Sir George Treby, Mr. Williams, Mr. Pelletan, Mr. Wall, and Mr. Smith.

L. C. J. Here are a great many names you: we will not enjoin any Counsel to serve you farther than they are willing themselves. As for Sir Willum Jones, one of them you desire, he does not practise now in Wellington-Hall, and therefore we cannot affign you him unless he please.

Mr. Fitz-Harris. Then I desire Sir Francis Winsimog, Mr. Williams, Mr. Pelletan, Mr. Wall, and Mr. Law.

L. C. J. Let them be affigned of Counsel for him. We do affign you them for Counsel. And now, look you, Sir, you had best consider how you stand your Matter. You will do well to think of it, left be more fatal to you than you expect; therefore we will give you time to plead the Matter you rest upon, let be what it will: We'll give you time to have Advice upon it, and you shall be brought hither again on Wednesday Morning by Rule. And in the mean time things shall stand as they do. Mr. Attorney will consider upon the putting in of your Plea, what is to be done upon it.

Mr. Fitz-Harris. My Lord, I humbly deplore the Liberty to see my Wife and Friends in the mean time.

L. C. J. Mr. Attorney, why may not he see his Wife, so it be done in the Presence of some Person entrusted by the Lieutenant, to see that nothing be done that is prejudicial to the King?

Mr. At. Gen. I cannot oppose it, my Lord.

Mr. Fitz-Harris. I define my Counsel may come to me.

L. C. J. Mr. Fitz-Harris, we will admit Counsel to come to you, or else it will do you no good to affign them; all we can do shall be done.

Mr. At. Gen. My Lord, with Submission, I conceive you will not allow any body to come to him, to be alone with him; that would be the Way to prevent the Discovery of the Practises he is accused of: I hope, if your Lordship shew him Favour, you will do the King Justice.

Mr. Fitz-Harris. My Lord, I beg that any of those that have been named may come to me.

L. C. J. Yes, these four. And Mr. Attorney, they are Gentlemen of fair Credit and Reputation in the World; we have no Suspicion that they will do any thing unfairly: what we can reasonably do for any Man in his Condition, we must do.

Mr. At. Gen. My Lord, I am not against that; but I would have all done safely and securely for the King.

Mr. Fitz-Harris. My Lord, I have one thing more to beg; the Time your Lordships have fet is so soon, that they cannot come to me perhaps.

L. C. J. 'Tis long enough, Mr. Fitz-Harris.

Mr. Fitz-Harris. If I cannot get them to come to me in that time, what shall I do?

L. C. J. You must do what you can; we can't enjoin them to come to you.

Mr. At. Gen. This Motion of his, I fear, is designed to get off his Matter.

L. C. J. It shall not, Mr. Attorney. It is true, 'tis a busy time, the middle of the term; but they will fare find time to dispatch this Business within the time we have allowed. On the other side, some time they must have to consider of it; I do therefore tell him, it may be fatal and peremptory to him for ought I know. Indeed if we would influe upon him, we must compel him to be ready presently, but that we will not in this Case.

Mr. Fitz-Harris. Pray, my Lord, give me till Thursday, if you please.

L. C. J. I know it is time enough for Counsel to draw up a Plea between this and Thursday.

Mr. Fitz-Harris. To-morrow is Sunday, my Lord, and they can't come to me then; so I shall have but one Day.

L. C. J. Mr. Fitz-Harris, 'tis time enough; we must not waste the Term; for as we should fiew you all the Favour we can in Equity and Juslice, so we must not deny the King Juslice neither.

And you hear Mr. Attorney say, that these things (if they should delay the Business too long) would be prejudicial to mutual of the King's Business. It may be, that this dilatory Plea may spend so much time of the Term, that we cannot try it; and therefore if we do give a just Favour, you must not grow upon us.

Mr. At. Gen. Mr. Fitz-Harris knows this Plea hath been well advis'd on: There went a whole Club to the making of it.

Mr. Fitz-Harris. How should I know? I never saw nor heard of it till now. I have had the ferrealt Measure in the World: I have had no body suffered to come to me.

L. C. J. Do not complain of Severity, Mr. Fitz-Harris. I do not believe any fitch things hath been usd towards you.

Mr. Fitz-Harris. Pray, my Lord, give me a little longer time.

L. C. J. Mr. Attorney, what if we do this? He giving you the Plea upon Thursday, he may come upon Wednesday Morning to put it in.

Mr. At. Gen. I cannot oppose it, if your Lordship think fit so to order it.

Mr. Jult. Dobin. 'Tis fit you should have it to see it, Mr. Attorney, before-hand.

Mr. Jult. Jones. And have some reasonable time for Consideration what to do upon it.

L. C. J. Well, delivering of the Plea on Tuesday Morning to Mr. Attorney, we do give you till Wednesday to bring it hither; and then you shall come by Rule again.

Mr. Fitz-Harris. My Lord, I hope I shall have the Liberty to see my Wife this Day.

L. C. J. Yes, at decent Hours, when there may be nobody by, to see that nothing be done against the King's Juslice. And your Wife must do this; the must forbear to be searched, that the carry nothing with her that may be prejudicial.

And with these Cautions we will admit her to come to you.

Lient. of Tower. Will your Lordship please to give us a Rule, to let his Wife and Counsel come to him?

L. C. J. We do make such a Rule.

Cl. of Gown. My Lord, we will make it Part of the Rule.

Lient. of Tower. We desire such a Rule for our Discharge.

L. C. J. Sir, this is our Rule, and we have declated it to this purpose. Then is to your Matter, Brother Stinger, this we will do; Let the Lieutenant of the Tower keep Mr. Fitz-Harris safely till we return out of the Exchequer, and then we will examine him.
Mr. Serj. Stringer. My Lord, we think it well to be a short Buffet and soon over, if you please to do it first.

Mr. Fiz-Harris. My Lord, I may see my Wife in the mean time, I hope.

L.C.J. Do you intitl Brother, that we should examine him presently?

Mr. Serj. Stringer. My Lord, Mr. Galfrey divides it.

L.C.J. Then we will presently.

Lient. of Tower. Must his Lady speak with him?

L.C.J. Yes, after he's examined. Lieutenant of the Tower, bring Mr. Fiz-Harris into our little Room, where we will take a Clerk and examine him.

Mrs. Fiz-Harris, to her Husband. (in Court being Juft right.) My Dear, do not confide any thing about the Death of Sir Edwadbury Galfrey, nor the Plot, for you will be betray'd; speak only to little things.

[Then the Prisoner was carried away to be examin'd, and after that to the Tower.]

On Monday, the 2d of May, Sir Francis Win- nington, and the other three Gentlemen affigned of Council for Mr. Fiz-Harris; came to the Bar, and moved the Court for an Explanation of the Rules concerning themselves, and the Buffet they were affigned for.

Mr. Williams. My Lord, I am to move your Lordship in a Cafe, wherein I am, with three others of the Gentlemen that attend this Bar, affigned of Council for Mr. Fiz-Harris, and that which I would beg for myself and them, is this: There is one thing we desire may be explained a little in the Rule. I humbly apprehend your Lordship gave Leave to the Counsel, whom you affigned'd, to come to Mr. Fiz-Harris, and entrapped him with the Liberty of speaking with him alone; but by the penning of the Rule, we apprehend that the same Redistint is put upon them, that is upon other Persons, to have somebody by their being with them.

L.C.J. The Lieutenant sent to me on Satur- day about it; and I told him it did not extend to you.

Sir Fran. Wiminating. We think it may have a Contra'cation either way; but we desire it may be made plain, as you meant it.

L.C.J. We tell you, it is plain, and it was so intended.

Sir Fran. Wiminating. Therefore we taking it that your Lordship pronounc'd and meant it so, do de- desire it may be exprest. We are satisfy'd that it was your Lordship's Intention: we desire the Clerk may make it in plain and intelligible Words. And there is this farther in, my Lord—

L.C.J. We declare it now to you, it was so meant and intended.

Sir Fran. Wiminating. My Lord, there is this farther in—We have four upon us, and we desire as much as may be to expedite this Matter, as far as we can, for our own Reputation, and doing our Du- ty to the Person we are affigned of Council for. But truly, so soon as is appointed by your Lord- ship, it is impossible for us to prepare things so, as to be ready by Wednesday Morning. The Plea I never saw, nor did I ever hear of it, till it was brought and read here; but since that, I have not seen it till this time. The Rules were brought but last Night to our Chambers; there is no Solicitor in the Cafe that may attend us. The Indictment I have not seen that we are to plead to, and truly I think the Courile is to have a Copy of the Indictment.

L.C.J. We deny that, Sir Fran. Wiminating.

Mr. Williams. It is impossible for us then to get ready in this time. I humbly move you will adjourn some convenient time. I know your Lordship will not put Hardship upon us that are of Council, to plead such a Matter so quickly. It's a Matter of Difficulty, and there are not many Precedents in it; and therefore it will require more Care than ordinary.

Sir Fran. Wiminating. My Lord, We ought to present things to the Court as they are in Fact, that we may not lie under any Reflection from the Court, nor any body else. You made a Rule on Saturday, that I should be of Council for him, (which I submit to) but I know not of this till afterwards. I never heard of the Plea, nor any Paper in this Cafe as yet: The Rule was left at my Chamber this last Night; and when I saw it, Mr. Williams and we got together in the Hall this Morning: We could not do it till just now, and we come now to wait upon the Court, to acquaint them how the Matter stands. I was not in Court, when you gave your Directions about this Matter; but when I find what the Nature of the Cafe is, I shall be ready to do my Duty to the Court, and to him who is upon his Life. It is a Caucus that we may be, it is not the Cafe with us, we may have Reflection upon our Pofferty, if we do not do it as we can. We therefore we desire some rea- sonable time, that we may have Copies of the Pa- pers and things concerned in this Cafe, as the Court shall direct. And we are assured your Lordship is so well acquainted with the usual Method in such Cafes, that you will give us all the Favour in it you can.

Mr. Wabby. For my part, my Lord, the Notice I had was but very lately: I was by indeed when this Person was to be examined before Council, and your Lordship was not against the Referral of the Incident brought to me till this Morning: so that I know nothing of the matter less or more, than what I heard upon the reading of the Paper here on Saturday. I do not desire time for time-like, or for Delay; but we think the Nature of the thing is such, as will require great Conferation, and we desire convenient time to prepare it for the Court.

L.C.J. Look you, Sir Francis Wiminating, you must consider herethe Nature of your Cafe. This is an Incident of High-Treason, and there teaching I fee is for so great a Crime in the Cafe, but the Height of the Crime. 'Tis an extraordinary Crime, if he be guilty of it, (for I speak not to prejudice your Client, but of the thing itself).

'Tis a Treason of a very high Nature: and then what have we to consider in this Cafe? We might have taken your Client at advantage here, and it had been no Injustice if we had made him plead immediately as he would have done by it: And we are not to consider your Favour, but your Client's Cafe: he hath pitch'd it over us, for he did not acquit himself, in Three Days time to plead as he will stand by it, Saturday, Monday and Tuesday; and he is to come with his Plea upon Wednesday. We have appointed for Conve- niency-like, that you should give a Copy of the Plea to-morrow Morning to Mr. Attcrining; but we do not tie you so preeminiarily to that Copy, that you may not vary in Words from that Form. Give him but the Substance of the Plea, and we will not tie you to the particular Formal Words. Peradventure, Mr. Fiz-Harris could not have wasted Three Days time, in Courile of Law, upon such a Crime, to put in such a Plea, when he tells us, he will plead specially to the Jurisdiction of the Court. But we have done it in this Cafe, to shew, that
that all the Fairmen that can possibly be used shall be used. On the other side, we must not spend all our time fo, as to let the Term flip for his Neglect of waiting upon you. Therefore if he will delay to send to advise with you, he must suffer for it. Suppose he did not come to you till to-morrow, what can we help it?

Mrs. Fitz-Harris. There is no Solicitor, my Lord, so go to the Council.

L. C. J. F. Well, we must not spin out the Term to please him: he must take more care; I believe he would by Dilatorities be glad to put it off all the Term. If Mr. Attorney gives Content for more time, well and good.

Mrs. Fitz-Harris. I hope your Lordship will give Leave for a Solicitor without your Lordship’s Leave none will dare to venture. And I had the Rule very late—

C. of Crown. They had it at 3 of the Clock in the Afternoon, as soon as it could be drawn up.

Mrs. Fitz-Harris. That Copy was brought to the Lieutenant of the Tower, and he sent it away immediately.

C. of Crown. Another Copy they had from me that evening.

Mrs. Fitz-Harris. I never saw my Husband in the Tower till yesterday in the Afternoon, and I am an ignorant Person, and know not what to do it in without a Solicitor. As soon as I could get Copies of the Rule writ out, I carry’d them to these Gentlemen.

Mr. Pollifax. My Lord, I think it will be very hard upon us that are of Council, to be so restrained in point of Time; for my part, the Rule was left under my Door the last Night, and I had it till this Morning. It will be a mighty hard matter for us to get the Plea ready, without a Sight of the Indictment. Things must be a’er’d to be the same; which we cannot, unless we fix what is there alluded. This Man hath been kept close Prisoner, and no body suffer’d to come at him to inform him; and we have not so much as Copies of any thing that we must make use of. We have no Concemment, my Lord, in this matter, but what is affix’d us by the Court; and we do not know by any Papers, if there be any, how we should put it into Form; and that is it, my Lord, which may lie heavy upon us; if this Man’s buffoons should mislead for want of putting it into due Form, the Court might be burden’d with the Indictment, and compare the Plea with it, to put it into the Form fit for the Judgment of the Court. And if these things cannot be granted, I defie to be excus’d.

L. C. J. F. Why, Gentlemen, see what you ask: Where do you find any Precedent of a Man indicted for High-Treason, that would plead to the Jurisdiction of the Court, that had more time given than is in this Case?

Sir Fran. Win. We do not know what his Plea will be, my Lord, till we have seen it and considered it.

L. C. J. F. Your Client told us all, and we know all of us very well, that it is to the Jurisdiction of the Court, and can be no otherwise.

Mr. Jufn. Jones. Any thing else you may give in Evidence upon Not guilty; and it would be considered on your Trial.

Sir Fran. Win. My Lord, it may happen to be not so properly pleaded to the Jurisdiction of the Court; we know not what it will be till we have seen the things necessary to draw it into Form. It may be it may be something that we can plead to, for our Client; but the Ground of our Motion at this time is for our Selves. I did apprehend by the Rule, his special Plea was to be admitted, if he tender’d one, let it be what it will: We must consider many things in a Cafe of this Nature; and at last, whether it will be to the Jurisdiction, or what ‘tis, we can’t tell as yet. And till we have seen the Nature of the thing, and what is necessary to prepare it for the Court, I cannot venture to give it it’s proper Term. But our time is so short, if your Lordship will afford us no longer, that we know not how to be ready for it. Your Lordship does speak of Mr. Attorney being attended with the Substancem of the Pleas, not tying us to the Form in the Copy delivered to him. Mr. Attorney was here upon Saturday, when this matter was first startled, and he knew the Substance then: We know not what it is more than by Report. It is a Plea that so rarely happens, that we must be cautious in what Form we put it. ’Tis, as your Lordship hath been pleased to say, an horrible Treason that in the Indictment is specified. We must not speak, nor do not mitigate the Heincouness of the Crime; nor do we speak it because it is Term-time, and may hinder our other Business: We shall all of us, I am sure, not at all consider our own Time; nor Lost in the matter; but it being of so great Weights, we desire reasonable time to do our Duties: we name no time, nor dare do it; we submit that to the Court. But, my Lord, under favour, for the Copy of the Indictment, we do conceive ’tis necessary that we should see a Copy of it; and when the Court is pleased to admit the Party to give in a special Plea to the matter he is accused of, and assign him Counsel to plead it, I take it to be very rational and consonant to Law, that we have a Copy of the Charge.

L. C. J. F. Sir Fran. Winnington, for you to come and pay these things here, methinks is very strange. I think you can swear no Precedent, that ever so much was done on a Man by the Court, when indicted for High-Treason, not that a Copy of the Indictment was granted in High-Treason; and for you, because of the Greatness of the Treason, therefore to go about to make us believe, that it is more reasonable that a Copy of the Indictment should be granted in this Cafe than in another; that the Greatness of the Crime should be meritorious, and deferve a Favour of the Court, not granted in other Cafes, is a thing extraordinary.

Sir F. Win. I do not prof it that way; I pray I may be understood aright. Upon what appeared the other Day, upon the Nature of the Plea, I pretend to your Condemnation, Whether or no, when you have confessed it to be in the Court, shall you not let us fee that which we are to plead to?

L. C. J. F. No, it was never thought of, in the first.

Mr. Jufn. Dolben. No, it hath been confantly denied in Cafes of Felony and Treason; and fo you will find the Practice to have always been. But I’ll tell you what hath been done sometimes; they have granted some Heads out of the Indictment, that should enable the Party to fit his Plea to the Charge; and that was done in Wittyvale’s Cafe, upon a Plea of Aner fees acquit. They gave him the Times, and other some Circumstances, to fit his
his Plea to his Cafe; but never was there a Copy of the Indictment granted. Mr. Walsop. My Lord Cole, in his Preface to the third Report, declares, That it was the ancient Law of England, and so declared by Act of Parliament in Edward III's Time. Then say Subject, for his necessary Ufe, have access to Records and Copies of them, be they for the King or against the King; and that the Practice to the contrary is an Abuse. L. J. F. So then, Mr. Walsop, you take it, that we are bound when any Man is indicted of Felony or Treason, or any capital Crime, if he say he must have a Copy of the Record, we must grant him a Copy of the Indictment: if you think so, the Court and you are not of the same Opinion. Mr. Walsop. I inform the Court what I have read and feel, and where 'tis to be found. Mr. William. My Lord, it may be necessary, for ought we know, for him to plead over to the Fact laid in the Indictment, Not Guilty, as sometimes it is requisite for the Party to do. Now if we should mistake for want of having what is necessary, and thereby preclude him of the Advantages he might have had if the Plea had been rightly drawn, for ought I know, it will lie upon me for ever. My Lord. I do it merely out of Caution, and for the Advantages of the Nation. For the Ash and the Vaunce should be left by my Unwitting, it will be a perpetual Reflection upon me; and therefore I am solicitous in this Cafe. And, my Lord, I can tell you what was done in a Cafe wherein I was of Counsel; it was not a Cafe of Treason indeed, but it was Murder, the next Crime to it; it was the Cafe of King and Thomas. Thomas was indicted of Murder in one County, and found guilty of Manslaughter; and afterwards was indicted for the same Murder in another County, and being to plead this matter, I informed upon it, that we ought to have a Copy of the Indictment. There was some Debate about it; but at last we had a Copy, and we alleged'd there, as here, it was impossible to plead without it; and the Cause was removed higher into this Court for Judgment. Mr. Juff. Dole. The first Indictment you might have a Copy of, for you were to plead the whole Record. Mr. William. Nay, we had a Copy of that to which we pleaded. L. J. F. Mr. Williams, you tell us, you may perhaps have occasion to plead over when you know it's High-Treason that you are indicted of, in framing and publishing a treasonable Paper. Can't you direct your Client to plead over without a Copy? Certainly what you allege in that, for a Copy of the Indictment, is Non Contra pro Contra. Mr. Juff. It's true. What Prejudice will it be to your Client to plead over? Sir Fran. Win. My Lord, we only offer these things for our selfs and we hope shall not be prejudiced to do such a thing, as this, without having reasonable time to consider and deliberate of it, and without having what is necessary in order to it. [Then Mr. Attorney being sent for, came into the Court.] L. J. F. Look you, Mr. Attorney, these Gentlemen that were alledged of Council for Fitz-Harris, do move the Court here, and say, they would have longer time to draw up his Plea, for they must make use of several Copies of Papers, and they cannot so soon obtain them, nor find out those Records they must use, or other things as Ingredients to this Plea, in so short a time; and they say likewise, that they define a Copy of the Indictment. Now, in truth, they ought to have given you notice of this, that you might have been here likewise to hear what they say: If you do content to give them longer time, we shall be ready to do it: but without it, we shall not be willing to delay it. Mr. A. Gen. This from Lordens and the Court gave them a very just and reasonable Time, when you allowed them four Days; and these Gentlemen are mistaken, if they think they are assisted as Counsel to all Events. They are only to draw up a Plea upon that Matter that is alleged'd by the Prisoner, and to the Jurisdiction of the Court. Sir Fran. Win. No, my Lord, I beg your Lordship's Pardon: The Rule is to plead the special Matter without more saying. Mr. Gen. My Gentleman, under favour, it is as I say, and fo is the Course of Law: for the Prisoner ought to acquaint you with the Points he defines his Counsel to be heard to: And in this Cafe, Fitz-Harris did acquaint the Court before he would plead, that he had something to object to the Jurisdiction of the Court; and fo his Wife directed him when he gave him the Paper. I suppose he had other Advice upon it; for the could not draw it up in that Form it was herefo're; and he did acquaint the Court, he had Matter to plead to the Jurisdiction of the Court. And thereupon, according to his Prayer, he had Counsel alledged'd him, these Gentlemen. I confesse'd to it, as it was just I should; but that they should think, that they are to advise him in other Matters than that Particular upon which they are alledged'd, I know they know their Duty better than to offer at any such thing. Now since there is but one Single Point, the Jurisdiction of the Court and nothing else, for they are not to advise in other Matters; I think it was more than frist Justice, to say, it was a very great Prejudice, for all Men ought to be ready to plead such Pleas immediately. L. J. F. Yes, in strieffnie, we might have required him to plead, as he would have done it, profetely. Mr. A. Gen. The Law is, that he must have all ready, in Pouir, to make it appear that what he avers in his Plea is fo; therefore you needed not to have given him any longer time: but because all the World might see the Court and King's Counsel dealt fairly in this Matter, and did not mean to take advantage of any thing that look'd like a Surprise, he was contented to have a Day more, and the Plea was pleased to: And as for the Copy of the Indictment, I know not any Reason they have to defer it; for they are not to advise in that, what Defence he shall make, but only upon this Matter he hath alleged'd. L. J. F. Look you, Gentlemen, what Mr. Attorney tells you is fo, and we do expect that you should conform yourselves to it: We have given you three Days time, which is sufficient for such a thing as this. And Mr. Attorney, we told them then when we did direct them, that they would deliver you a Copy of the Plea to-morrow Morning. We are not so critical with them, as that we will not receive their Plea, if it be variant in Form from that which they deliver to you. That that we intend by it is this, That they should deliver you a Plea, the same in Substance as that which they do plead here: If they would alter it in the Form, we can give them leave to do that without any Prejudice. Mr. A. Gen. We will never pinch them in Form; I think I have Matter enough. L. J. F. I tell you truly, I do believe some Friends of his had Counsel to draw up this Plea for him. Mr. A. Gen. A great Cabal, no doubt of it, my Lord! Mr. Wal.
Mr. Wallop. My Lord, I desire that Counsel may be affixed in my Place.

L. C. J. We affixed him there; that he required, except Sir William Jones; and we did not deny to put in Sir William Jones’s Name because we would not affix him, but because he hath declined the Bar, and does not practice here.

Mr. Williams. We do not draw in the Name of Sir William Jones, or decline him: We submit to your Order about ourselves; but we desire that Person that did draw this Plea may be added to us.

L. C. J. If his Wife defile it, and will name him, it shall be so.

Mr. Williams, I desire to be put out, and he put in.

L. C. J. Sir, he understands what he would have, sure! and we can’t discharge you upon any such Account.

Mr. Wallop. Here are many Particulars and many Avocations, which cannot to suddenly be set right as the Time allotted.

Mrs. Fitz-Harris. My Lord, there is not half those Gentlemen affixed that I write to my Husband to ask for: I directed him eight.

L. C. J. Who else would you have?

Mrs. Fitz-Harris. There was in the Paper Sir William Jones, his Majesties late Attorney-General, Sir Francis Wynnunng, Mr. Williams late Speaker of the House of Commons, Sir George Treby Receptor of London——

Mr. Pelleston. Your Lordship may easily perceive by this Gentlewoman’s Cartilage, how we are like to be inflicted in this Cause, when no body follows but the.

L. C. J. Do you desire Sir George Treby should be added?

Mrs. Fitz-Harris. Yes, I do.

L. C. J. Let it be so then.

Mrs. Fitz-Harris. And Sir William Jones; I will do what I can to get him to come.

L. C. J. We will not censure him; but if he pleases, we leave him to his Liberty.

Mr. Jult. Dobbs. Why, Miftrels, you are got into the Hands of Gentlemen that are as learned and able in their Profession, as you can have; you need no more.

L. C. J. Do you desire Mr. Smith?

Mrs. Fitz-Harris. Yes, my Lord.

L. C. J. Then add him.

Mr. Pelleston. We desire that there may be Leave for a Solicitor, one that may carry Papers in the Presence of the Lieutenant.

L. C. J. We have Confidence in you, but not in other Persons; therefore we must consider of that: But what think you of it, Brothers? We may permit, I think, one to come from the Counsel to him with that Caution.

Judges. Yes, my Lord.

L. C. J. Let the Papers then be inspected before by the Lieutenant of the Tower, and be from one of the Counsel; and so they have Liberty to do it.

Mr. Att. Gen. There is no need of any Papers, my Lord——

L. C. J. Mr. Attorney, do not oppose that: Let them have Liberty to carry any Papers that any of their Counsel, the Gentlemen we have affixed, shall fend to him, or any from him to them; so as the Lieutenant may have sight the Sight and Perusal of them.

Mr. Att. Gen. There is no great Harm in that, though I fee not that they will need any Papers.

L. C. J. Yes, their Plea to the Jurisdiction must arise upon Fact, which may be out of some Papers.

Mr. Att. Gen. You are affixed, Gentlemen, but to one Point, the Jurisdiction of the Court; remember that.

Mr. Pelleston. Your Lordship is pleased to say, That we may vary in Form from what we deliver to the Attorney-General, and Mr. Attorney is pleased to say, he will not pine as is to Form: How shall we be secure no Advantage shall be taken of the Form? L. C. J. 'Tis only as to that Particular. You shall not be tied up to the Form you deliver to him. What Advantages there may be concerning the Form of the Plea you bring, either, we will see shall not be taken.

Sir Fras. Winn. Will your Lordship please to afford no longer Time?

L. C. J. When you are to plead to the Jurisdiction of the Court in a Case of High-Treason, and such a Treason as this is, what Roman is there that so much time as is granted already should be given you?

Sir Fras. Winn. Shall we not have a Copy of the Indictment either?

L. C. J. You will offer Things that are not to be granted to you, ad copernum populam, that you may say you are hardly used, and mightly straiten in this Case.

Sir Fras. Winn. No, my Lord; we do not offer it for any such End.

Mr. Att. Gen. Gentlemen, remember you have not Liberty to plead any Thing but to the Jurisdiction of the Court.

Sir Frs. Winn. We must submit to what your Lordship orders in it.

[Upon Wednesday the 4th of May, 1681. Edward Fitz-Harris was brought from the Tower to the King's Bench-Bar.]

Cl. of Queen. Edward Fitz-Harris, hold up thy Hand: (which he did) Thou hast been indicted and arraigned for High-Treason: How sayst thou? Art thou guilty of the High-Treason whereof thou standest indicted, and hast been arraigned, or not guilty?

Mr. Fitz-Harris. I have made a Plea, my Lord, which I desire may be received and allowed.

Mr. Wallop. May it please your Lordship, I desire to be heard a few Words.

L. C. J. Would you not have the Plea read?

Mr. Wallop. I have but a few Words to say before it be read, if your Lordship pleased, for ourselves, or at least for myself. According to the best Instructions we have had, we have drawn up this Plea, and I pray your Lordship may be satisfied. But, my Lord, I humbly conceive we have not had, or for my own Part I have not had those Instructions that were fit to direct me in this Case. It is a special Plea, and of a Matter that rarely happens; and the Nature of this special Plea is, that the Matter contained in the Indictment and in the Impeachment, is one and the same Matter. Now I have not yet seen, nor could I come at a Sight, though I defined it, of the Impeachment, nor of the Indictment: But I humbly conceive, that by the Law, as this Case is upon a special Plea, the Prisoner ought to have a Copy of the Indictment. And I do not say that every one may demand a Copy of his Indictment to find Faults; but upon a special Plea, and particularly upon this, I humbly conceive he ought to have a Sight and a Copy of his Indictment.

L. C. J. What, would you not have your Plea received?

Mr. Wallop. Thus, my Lord: If we can have no farther Instructions, nor can by any other Means come to a Sight of thee Matters, then it is the best Plea we can make in such a Case, and I avow the Plea: But if any Thing should fall out amiss to the Prisoner for want of such a Sight, I pray it may not lie upon me.
L. C. J. Read the Plea.
Mr. Williams. My Lord, we humbly pray, being attaining of Counsel for this Gentleman Mr. Fitz-Harris, that this Plea may be received.
L. C. J. Mr. Attorney, have you been attended, according to the Rule of Court, with this Plea?
Mr. Att. Gen. No, my Lord.
L. C. J. What is the Reason of that?
Mr. Attorney. It has more come in effect, than what was offered four Days ago, when Counsel was allowed.
Mr. Attorney. I sent last Night late to them for a Copy of the Plea: Indeed Yesterday at Noon they sent me this Note, That Fitz-Harris intends to plead upon his Plea, that he has received an Indictment in this Court.
Mr. Attorney. I sent to know them whether they would plead this to the Jurisdiction, or in Abstemion, or in Bar: They declared, they would not plead to the Jurisdiction, but now I see 'tis to the Jurisdiction.
L. C. J. It is so, and that he proposed to plead at the Table.
Mr. Att. Gen. It is true, my Lord: But thus they sent me Word.
L. C. J. And as a Plea to the Jurisdiction, so it concludes.
Mr. Williams. My Lord, we have done all that is possible for us to do in this Cafe. The Court directed us to attend Mr. Attorney with the Sub- stance, and so we have done: but the Form, we had Liberty to do as we pleased in.
L. C. J. You need not go about to excite it, that you have not done to charge you with nothing. Mr. Williams. I don't go about to excite you: we don't take it as a Charge upon us.
L. C. J. All we say is this: If Mr. Attorney had had it, peradventure he might have considered of a Replication by this Time, or what he would do concerning it; but if he hath not had Time, we cannot expect it from him.
Sir Fr. Winn. My Lord, I only beg one Word as to Matter of Fact, and 'tis material as to ourselves to urge it. We did lend several Meffengers to get it, if it were possible to be obtained, a Copy of the Impeachment in Parliament. We went to the House of Lords Clerk to get it; but they that went down, tell us the Clerk is not in Town, or else we had sent Mr. Attorney the whole Plea at that Time.
L. C. J. I only ask the Question, to see whether Mr. Attorney hath had Time to think of it.
Mr. Att. Gen. My Lord, I think I need not any Time in this Cafe.
L. C. J. Pray go on, Sir.
Mr. Att. Gen. My Lord, I do pray your Judgment upon it: for 'tis a Plea that is insufficient: nay, 'tis no Plea to bar you of your Jurisdiction. First, I observe that whatever will plead a Plea to the Juris- diction, if he have any Record to plead, must have it in Paper, must produce it in the Court, at least nowadays. A Copy of the Plea in Parliament, may there be nothing dilatory in the Cafe. And for this Matter, it will appear upon Examination to be a plain frivolous Plea; for there is no such Matter depending as this Plea alleges. But I speak of it as a Plea to the Jurisdiction of the Court; and such an one as will plead such a Plea, he must have the Record ready, to shew it to the Court, and by the Course of Law ought to have it ready to shew to the Court, that they have not Jurisdiction: So then 'tis certainly bought. That is the First Thing. Another Thing is this, with Submission, I say, they have pleaded no Record at all, nor any Impeachment at all, as this Cafe is Folio 246, and upon which, my Lord, are, they say he was impeached by the Commons de aliqua Prodictio; but that is bought. He ought in his Plea to have set forth his Impeachment, and for what Crime particularly; for either an Indictment or an Impeachment de aliqua Prodictio, or Felony, or any other Crime, is naught, the Law allows it not. He ought to set forth, and must not aver upon a Record, but set it forth in her_crubea, or in the Substance of it; and so ought to plead the Record entirely as it is.
Mr. Att. Gen. And for those necessary Averments that cannot otherwise be made, the Law allows of them. But in this Cafe, it is not necessary to aver upon this Record; for he hath set forth the Impeachment not at all, but only briefly de aliqua Prodictio in general, which the Record must be, so as the Court may judge of it, and it must not be intended. But as they have set it forth, in this Cafe there is nothing of a Reason specified in the Record averred, that can intend this to be the same; and, my Lord, so are all the Precedents. Whosoever pleads a private Act of Parliament, must plead it as it is, not in general that it is for the same Matter; for I take it then it is naught: And we are in your Judgment, that this is no Plea to the Jurisdiction upon that Point.
L. C. J. Mr. Attorney, Do you think it prudent to argue it this Time, or will you take a Day? Pray consider of that a little.
Mr. Att. Gen. My Lord, I think Delay is very dangerous and inchevous in this Cafe.
L. C. J. We can give you as short a Day as you please.
Mr. Att. Gen. But to satisfy the Court, the Clerk will be ready with the Journals, to shew that the Fact is not as they plead it.
L. C. J. Look you, Mr. Attorney, we must go on in a legal and formal Way, when we have a Plea put in; therefore whether you will not take Time for a Day or two to consider of this Plea:
Mr. Att. Gen. You had the Substance of it, but nothing concerning the Manner of the pleading; they would not tell you whether they would plead it in Abatement, or in Bar, or how: Therefore whether you will not take Time to consider of this pleading for a Day or two, pray consider with yourself. [Then the King's Counsel conferred one with another.]
Mr. Att. Gen. My Lord, not only for what I have already offered, but for many other Reasons, we can see this can be no Way a Plea to the Jurisdiction
dition of this Court; for upon any Impeachment or Indictment, the King hath Election to proceed upon which he will: And if there were ten Indictments for one and the same Thing, if none of them came to a Judgment, the King may proceed upon which he pleases, as in that Cafe of Ireland Yesterday; though the Party were arraigned and ready to be tried in Ireland, yet the King might, if he pleased, try him here; and the King hath ordered it to be so. But, my Lord, I take it, that this is not only apparently a false Plea, but a frivolous Plea in itself, being to the Jurisdiction of this Court: For there was never any thing of a Crime so great, but this Court of King's-Bench, which hath a sovereign Jurisdiction, for Commoners especially, could take Cognizance of it; and I put it upon that, my Lord. Never was such a Plea pleaded to your Jurisdiction; and therefore we pray your Judgment upon it.

Mr. Sol. Gen. My Lord, before we come to that which is the Question, if there were such a Plea pleaded to the Jurisdiction as they would have this to be, we humbly pray the Judgment of the Court, whether this be any such Plea at all as can bear any Debate: For it will not be a Question now, how far an Impeachment depending is a Bar to your Jurisdiction? But the Question is, first, whether this be such a Plea? For, my Lord, I do take it, no Man can plead any Record in another Court, any Indictment or Acquittal upon it, by pleading it in this Form as this is pleaded, by saying generally, that such a Time in such a Court, he was indicted for the same Offence, and was acquitted; you think this Plea, and nothing more. But to that shall plead etur faies aquis, must plead that such a Time he was indicted in such a Court, and set forth the Indictment and all the Proceedings of that Court upon that Record, and then 'tis proper for Judgment; such a Plea is formal, and requires an Answer, and it will be proper for us to give it an Answer: And when such a Plea is put in, we shall either demur to it, or give it the Answer that it requires of untill ret Record. But this does not require any particular Answer, because it feit forth no Record at all that we can answer to: for it is not sufficient to say in general, that he was indicted and acquitted, or impeached, and then aver that it was for the same Offence; but he ought to shew forth the Impeachment, and set forth in the Plea the Record, that we may have a proper Answer to it, and a sound Judgment. Therefore we hope you will fix this aside, as not being at all formal, or requiring any Answer to it.

Mr. Serj. Maxwell. My Lord, if you please to consider in this Cafe what is the Question, and what not. At present 'tis not the Question, whether a Man be impeached of High-Treason by the Common Court before the Lords, and this Impeachment stands unrecorded in the Court of Parliament; I say, 'tis not the Question, whether this Court have Jurisdiction over this Man for that Offence; but the Question is, Whether he hath put in such a Plea before you, as will put that in question? Under favour, 'tis not sufficient for him that will plead a particular Record, in bar or other way, and make title of it, that he plead it in general Terms, but he must set forth that Record as it is; he must not give you the Title only, or say, he was indicted for such a thing generally; but he must set forth the whole to the Court, that if it be taken, the Court may, by comparing the Record with the Plea, judge whether it be the same Matter or no. Now when he pleaded he was impeach'd for the same Treason, he must set forth what that was, that it may appear it was for the same Treason; and if that he particularly set forth as it ought, upon untill unt R cond, the Question will be, Is there such a Rec. Vol. III.
they pleaded Pleas *Ore tens*, and took their *Exceptions* *Ore tens* too, they would demand *Judgment* of a *Plea* *pretern*; and so it was to the *Bishop of Winchester's* *Cafe*, *Edin. III.* *Whereas* *there was an Indictment* against the Bishop here in this *Court* for *omitting* from the *Parliament* *Brevetings*, without the *Leave of the Lords*; *there Stand* *comes in, and pleads* *Ore tens* *this Matter*, and *says*, *This is a Thing that concerns the Lords in Parliament, of which they have *Cognizance* only, and so prays the *Judgment* of the *Court* pretern.* *Whether they have *Juristicion* of the *Cafe* or not? And he pleads it in *Abatement*. *There they over-ruled him pretern* without any more to do, because their *Pleadings* were not as now they are; *now they are grown into a formal Way*, all *entered upon Record*, or at least *written* in *Paper*; And what *should* be the *Reason* why you should not *do* according to the common *Courte*s of the *Court*, *I leave it to you to consider of it.*

*Mr. Ser Je Myngard*. *It is very true, my Lord;* *anciently the Courte*s was *my Lord*, and the *Law* was *too*, to *plead Ore tens*; but *pleading in Paper* is *the same Thing*; and the *Courte*s of the *Courte* hath been, when they *saw* it in *Paper* to be a *fivoule Plea*, to *give Judgment* pretern. *And you have the same Privilege upon this Account* as they *had when Pleas were by Word of Mouth*. *If there be a Demurrer, it may hang longer than is convenient; this Cafe should do.*

*L. C. J.* *Do not speak of that, Brother *Myngard*;* as to *Delay*, you shall *take* as *short a Day* as you *will.*

*Mr. Att. Gen.* *I have looked upon all the Precedents,* and *could never meet* with *one Demurrer* where the *Plea* was to the *Juristicion*; *But I pray your *Judgment* upon the first Matter, whether* whatever pleads to the *Juristicion* ought not to have the *Record in page* to *justify* his *Plea*? *In a Plea in Bar indeed it may come in by *Mistituation*, but in a *Plea* in *Abatement*, the *Party* ought always to *be ready with those Matters*, that are to *beat out the Court* of their *Juristicion*; and besides, the *Court* *is to maintain the Juristicion*, the *King's Court* *has nothing to do to affect that*, but they *ought to avoid all Things* that may be to the *King's* *Prejudice*, and therefore it *ought* to be by the *Judgment* of the *Court* in this Cafe *et adsile*. *But I do think you will never find a *Demurrer* that was to a *Plea* to the *Juristicion*.

*L. C. J.* *Pray consider of that.*

*Mr. Att. Gen.* *But if it appear to be a frivolous Plea in the Form or in the Matter, you will not put its fire to *demurr*.*

*L. C. J.* *If you do insist upon it, that you won't *demurr*, nor do nothing, we will give *Judgment*; but we will take *Trial* and *confid it*, if you won't *do* it now, the *Iffy*, or *Reply*.

*Sir Frais. Wiltaye.* *Will your Lordship please to *frame* me one *Word*? *As it has been observed* to your Lordship, *this is a Plea* to the *Juristicion* of the *Court*; and if they do plead a *Plea* of that *nature*, the *Court* always *expects* the *Plea* should be *substantially good*, otherwise *'tis not to be received*. *Now it is not substantially good here*; *for it says*, *that Fitz-Harris was impeached of High-Treason*; *Now such an Impeachment is naught, for no body can be impeached of High-Treason generally*. *And it ought to come and be *fitted* for the particular *Advis* that make up the *Trial*; *for the calling of a Thing so, does not make it so*; *Therefore they that would plead this *Plea*, must come and *saw* that there is an *Impeachment* that had such *Matter* in it *as do amount* to *Treason*; *so that then it being a naughty Plea in the Substantive of it, and the end of it to put this Court out of a *Juristicion*, we hope for that *Reason* you will not receive it.*

*Mr. Sanders.* *One Word farther, if your Lordship please, on the same Side for the *King*. *As for this Plea that he hath pleaded here, if it had *had substantial Matter in Law*, *whereupon to ground a Debate*, we *should not press your Lordship not to receive it, but we must get off of it as well as we could*; *but when it is manifestly pleaded merely for Delay, and if it appears to your Lordship upon the reading of it, and that there is nothing of *Substance* in it, then we hope you will not receive it, nor put Mr. Att. *Trial* to *do* it upon you.* *It is for the Plea the Cafe is thus: Here is an Indictment for *Treason* against Mr. Fitz-Harris, for *conspiring* the *Death* of the *King*, *compacting of it*, and *declaring such his Intention* by a *venomous* *Libel*. *Now he comes and pleads to put out this Court of their *Jurisdiction*; and what does he plead?* *He says he was formerly impeached of High-Treason in the *Parliament*, that is all he says concerning the *Impeachment*; *then he does come and make an *Avenment*, without *shewing more, that this High-Treason, and that for which he was impeached, is the same thing, and takes upon himself to judge, whether the Court will or not, and so make it to the Court, which only is not the right Way of pleasing. If Mr. Fitz-Harris should come and plead *auto fide acquisitum*. *That he had been tried at another *Time* for the same *Offence* and acquitted, he should not have said generally he had been formerly indicted and acquitted, and this for the same *Things*; but he must have *flew the Record*, and then *averred upon the Record* *that it was for one and the same *Crime*. *For *fippolo* in this Cafe, which would have *appeared perhaps to be so*, if he had done as he should have done, *shown* that there was such an *Impeachment*, whereby he was impeached of High-Treason, and which Impeachment did charge him with *Treason for levying War against the King*, and *then made Cautelously he do pronsus, now, was an *Avenment*, that the *Impeachment* and the *Indict* ment was for one and the same *Offence*: *Under favour, notwithstanding his Avenment, the Court would have adjudged them not to be the same*; *for if* to *be the *Treason* do not appear upon the Record to be the *same*, his Avenment will signify nothing; why then his *pleading now* thus insufficiently for want of the Record, will be better for him than if he had pleaded it sufficiently. Why then if he had now pleaded, *that there is a Record of the former *Impeachment*, and set forth the Record, and then averred this was for the same, Mr. *Attorney* might take *Iffy* now. *But this was false*; *false it was not another *Treason*, and traversed it that it was not for the same; and so there would either have been one *Trial* by the Record, or the other upon the *Fac*, by the *Court*. *But now as he hath made it, this *Trial* both upon the Record, and upon the *Fac*, is only *triable by the Country*, not by the *Record*. For if Mr. *Attorney* take *Iffy* that there is not such a Record, then all the Record is, that he was impeached for High-Treason, and then a *Record* of *Impeachment* for any High-Treason *would serve the turn*, which if it be not for the same, it ought not: *So then the *Iffy* of null *the Record* could not be taken. Then why then if Mr. *Attorney* take the *Iffy*? *If Mr. *Attorney* *take Iffy*, that it was not the same *Treason*, then the *Record* must be *treated*; *that is, whether there was such a Record that does contain an *Impeachment* for the same *Treason* for which he stands indicted; this I say, must be tried by the *Country*. And if he have pleaded it fo, that *Matter of Record*
cord upon this must be tried by the Country, for
that reason his Plea is nugatory; and if that be so,
then the Court may be satisfied, and 'tis apparently
pleaded only for show, because he would not come
to the principal Matter, and plead Guilty or not
Guilty, which is the Matter of Fact most proper
for the Country. I rather hope he is not Guilty
than that he is: but if he be Guilty, 'tis the most
horrid venemous Treason ever was spread abroad
in any Age. And for that reason your Lordship
will not give Countenance to any Delay. And there-fore
we pray the Plea may be rejected, and he may
answer over.
Mr. Att. Gen. He hath not pleaded post partum
per Record.
L.C. Yea, 'tis post partum in Rotulorum Parliamenti.
He does not, that he was impeached of High-Treason
by the Commons before the Lords, as appears by the
Record thereof among the Records of Parliament.
Mr. Att. Gen. I did not truly remember that; but
I beg your Pardon if it be so, for I had not a
View of the Plea till now; but I am ready thus
far to satisfy the Court, 'tis a pure false and frivo-
rous Plea. But then with Submission I offer it to
your Consideration, whether you will give any
time, or professedly reject it.
L.C. We will give them no time, that is sure. But
the Question is, Whether time should not be
taken, not in Favour of the Prisoner, but of the
King and of the Court?
Mr. Att. Gen. I am ready to make out, if it were
necessary, that there is nothing of all this true; 'tis
all Fiction that is pleaded, and nothing in the Re-
cord to warrant it: I have a Copy of the whole
Journal, and of the Transactions in the House of
Lords, the Book is close by and ready to be thrown;
but when 'tis a frivolous Plea, I hope there will be
no need of that trouble.
L.C. But, Mr. Attorney, whether we can take
notice of the Journal Book now, you have had
counsel, as this Cafe finds.
Mr. Att. Gen. They ought to have it here ready,
you ought to have it here in pause.
Mr. Jef. Jones. There have been very many good
Arguments urged by you, upon which perhaps
the Plea will be judged insufficient; but the
Question is, Whether you are now in any such
Form as we can pass Judgment upon this Plea, or no?
Therefore it being offered to you to consider of
it, what you will do in it; sure it is reasonable
you should consider of it, and when you are re-
garded, then you may call our Judgment.
L.C. We cannot put you to it to give a final
Answer to bind the King; therefore let it stand as
it is; we will consider of it.
Mr. Att. Gen. Then, my Lord, I'll demur im-
mediately.
Mr. Scl. Gen. And we pray they may join in
Demurrer immediately.
Mr. Serj. Jeff. If they do not mean it for Delay,
now Mr. Attorney hath demurred, I suppose they
will join Demurrer immediately.
[Then the Clerk of the Crown draws up a general
Demurrer, which Mr. Attorney signs, and it was
read in the Court, by the Clerk of the Crown.
Mr. Att. Gen. We pray they may join in Demurrer.
Mr. Williams. My Lord, we are that assigned of
Council for this Gentleman, the Prisoner at the
Bar, (that your Lordship may be satisfied, and all
that hear us, that we do design or defray to de-
lay one Minute in this Cafe) do declare, that we
will join in Demurrer with them immediately.
[Then the Clerk draws up the Feandler in Demurrer,
which being signed by the four Gentlemen of Council

With Mr. Fitz-Harris, and [a read in Court.]
Mr. Att. Gen. My Lord, I pray your Judgment;
here is an Indictment for framing a treasonable Li-
blel.
Mr. Williams. My Lord, we hope we shall not
be put—
Mr. Att. Gen. Pray, Sir, hear what I pray. My
Lord, I defer your Judgment, that the Plea may
stand over-ruled for a plain fatal Error in it. This
is a particular Indictment for framing a most
pernicious scandalous Libel against the King
and the Government, for Treason in particular;
and I think there is no Person does doubt, but that
this is a Matter within the Jurisdiction of this
Court to try: There is no Difficulty in that. What
then, is the Jurisdiction? They come and plead, that
Fitz-Harris was impeached de Malo
Prodiciis; that's all they plead of High-Treason
in general, to out the Court of a Jurisdiction of a
particular Treason, for framing a malicious traito-
rous Libel; and this is a particular Treason upon
the Statute of the 15th of this King. Now they
have pleaded no particular Treason upon that Sta-
tute they were impeach'd for, nor upon the Statute
of the 7th of Edward III. which hath a general
Clause of a declaratory Power, and it may be he was
impeach'd upon that, and we shall not intend to
prosecute him for that being the General Law, the other
but a particular Treason for the King's Life. Nor have
they pleas'd to the Jurisdiction, they ought to be the
defend'd and most certain of any Pleas whatsoever.
And as I offered before to you, do I now again, ought
to be ready with the Record to justify their Plea: but
this in short I intitulate, that to out a Court of it's
Jurisdiction for a particular Treason, 'tis not a good
Plea, by saying he was impeach'd or indicted gen-
erally of High-Treason, and no Averment can
possibly help it. For it appears by the Impeach-
ment 'tis not for the fame, and 'tis rather to be in-
ten'd that it was not; but the Impeachment be-
ing general, that they went upon a declaratory
Power, in the Statute of the 25th of Edward III.
which refers to them the Power of declaring
Treason at large, and not upon that which may be
tried here in an inferior Court upon a particular
Statute: I say, my Lord, they ought to have plead-
ed it certainly, which they having done, 'tis fatal;
and I pray your Judgment upon it; and I hope they
are ready to make good their Plea.
Mr. Scl. Gen. My Lord, that which we do say to
it, is, That this Plea is neither good in Matter nor
Form; and if it had been pleaded never so formally,
we should have demurred to it; but as now it is
pleaded, it is not formal, and therefore we pray
it may be over-ruled. The Exception we take it
in point of Form, we think is fatal; for there is
no Man that pleads an Indictment or an Im-
peachment in another Court, but must set forth
the Indictment in the Pleas, which is not done in
this Cafe, and we take that to be fatal to it.
For a Man that will plead enter falsa aequat, must set
forth the Indictment, and all the Proceedings of
the Court upon that Indictment; this is the con-
stant pleading in all Cases, and particularly in
Pars Cafe, the fourth Report. Where will he plead
enter falsa aequat, must set forth, before
it will require an Averment to be given to it.
L.C. Y. What do you say to it, Gentleman, for
the maintaining of your Plea?
Mr. Williams. This is that we say, my Lord:
We hope your Lordship, and the Court, in this
Cafe, will not tie us up presently to come and ar-
gue this Matter. One thing I would mention, be-
cause it hath been said there was never such a Pre-
cident,
cedent; I think, to this purpose, the Precedent of Ellis's Case is very full in it. Mr. Attorney is pleased to say, he never found that any Plea to the Jurisdiction did ever require a Damnsr, but was over-ruled or allowed by the Court preterent; but that Case is plain to the contrary upon that very Matter. It was an Indictment brought against Ellis, for some Indemnity committed by him in the House of Commons; this being pleaded to the Jurisdiction of the Court, the Attorney-General at that time said it was not to be received; that was the Matter he insisted on then, that it should be rejected: but the Court did then, as you do now, over-rule the Attorney in it, and put him to demurrer.

L. C. J. We have done the fame for you.

Mr. Williams. Then, my Lord, here is a Precedent that Mr. Attorney hath not seen: Now for Time, the Court in that Case did not tie Council up to argue the Plea preterent, but gave them time till the next Term. We shall not so hard a thing of the Court, as to go a long time in this Case, only here is a Man's Life in question: 'tis indeed for Trafalgar, and so it is of consequence to the King; and there is also the Privilege of Parliament consequently concern'd in it. What time your Lordship and the Court shall think reasonable for us to be ready in, we leave it to your Lordship; we design not to delay at all, only we define a reasonable time. Your Lordship did in the Case of Pinkett give him time for his Trial till next Term, which is as high a Trafalgar as this I am fare.

L. C. J. You have People think you have floated Measurers in this Case, that you have not the same time given to you that was given to Pinkett: Pray consider, you object these things as tho' the Court were hard upon you, to tie you up in point of time. Is your Case like Pinkett's? Pray give us leave to clear our Accounts as we go along: He is brought from Ireland hither, is indicted for what he did in another Kingdom, and it is by Law he is so indeed indeed; but he being kept close Prisoner, and not knowing what time he should be brought to a Trial, he defines time to fend for his Witneesses, who are to be brought over to clear him of his Guilt. And could we in Justice deny it him, or could there be a shorter time than next Term given him, when his Witneesses are in another Kingdom, and it would be a Fortnight or three Weeks before possibly he could have his Witneesses here? This I mention, because you will needs make use of such a Case, that is no more like yours, than any thing that is the farthest different from it; yet you will have the Case to measure with your Case.

Mr. Williams. My Lord, I know it is in the Direction of the Court; and as your Lordship did what was just for Pinkett, so you will to this Perso: I know you will do what is right to every body. We are Counsel assign'd by your Lordship, and we doubt not but your Lordship will be just to us, and give us a reasonable time to argue it.

L. C. J. Look you by the way, Mr. Williams, I must tell you, when we assign'd Counsel to Mr. Fitz-Harris, we expected that Counsel should consider the Plea, so as to be able to maintain it, when they come to plead it here; for that reason we gave him time to plead it, so as he would stand by it: What needed would to have affected him so much Counsel in such a Case as this is, that he should be ready? And why should you now hope that we will give you a longer time for Argument in such a Cause, I see not. Consider, whether in Direction you think longer time ought to be expected upon such a Plea as this is.

Sir F. Win. My Lord, we will not take upon us to preferre, nor to mention any time in particular, we leave that to the Direction and Judgment of the Court; but this, I think, we may pray, according to the Duty we owe to our Client, upon your Lordship's signifying us of Counsel. We could not foresee till to day, what the King's Counsel would do; whether Mr. Attorney would take the Affidavit of null id legem, or upon any of our Avowments. We could not foresee whether he would demur to us, or not. I know your Lordship will be as favourable to us as you can; not having those Papers, or Sight of those Records that were necessary, and would have expedited this Matter, our time was all spent in forming of the Plea, and we could not prepare particular Matter in Law to defend it. We are as ready as can be expected, and have been as industrious to prevent any Delay as any Person could be in our Condition; therefore, it may be, we have had a general Consideration of the Plea: But now we see where the Doubts do lie upon it: 'tis a Matter of Law pledged to the Jurisdiction of the Court. I do not indeed love to cite Precedents upon what is plain; but wished, I do not love to say things upon a hidden 400 plain without Consideration: but this I will say, as 'tis now upon this Demurrer joined, it is a Case well worth our taking care of, and yours too; I must fly it with your Lordship's leave. Therefore, if in the Case of my Lord Holland, which was but upon an Information, and that but for a Millenmum, and tho' it was a Plea directly to the Jurisdiction of the Court, and certainly they came prepared; for they wore all at liberty, and had refer'd to Papus and Books before the Plea pleaded, which we could not have; yet the Court was pleased to assign them time, and give them a large time, I hope we shall have some reasonable time. I do not speak it, that we should have so long time; but I humbly beseech your Lordship, that we may do our Duty to the Court, and to our Client, that we may have a little time. It is true, it is a great and a horrid Trafalgar; but it is as true, here is the Life of a Man concerned in it: we affect not delay at all, but how to fill up what time is reasonable.

L. C. J. You say, the Counsel of the Court, you mean, you have promised the Counsel of the Court, you mean, you have promised that you had pleased, had entitled yourselves better to have had time to speak to the Plea, if you had pleaded over to the Trafalgon; then we could have given you time to have spoken to it, and not delayed the King at all: but you have thought fit not to plead over. I must confess, I did expect you would have pleaded over, as you might have done, and I thought you would; therefore having not done it, it is in our Consideration, whether we will give you time, and what time you will give you. Mr. Wilt. It is under your Lordship's Favour, according to the usual Course of modern Practice. I have been an Unprofitable Attendant here near forty Years, and, for my part, I did never yet see fit to shift a Proceeding as this is now; it is as swift as Lightning. It is a very extraordinary thing: we might well conceive, that nothing more should be expected from us than what is usual, and that we should not be put out of the ordinary Proceedings. Anciently indeed, as your Lordship did observe the other Day, they pleaded Ove tems, and then the Proceeding was very quick: now indeed it is otherwise; in some Cases we may call it a very modern Practice too, hath made an Alteration from that Method: and we humbly pray we may not proceed, but according to the rate of modern Practice.

My Lord, whereas they are pleaded to call it a triumphant Plea, I believe it is a Plea of the greatest
Import that ever these Gentlemen came here about, whichever they are pleased to say. But your Lordship knows, the Life of a Man is the greatest Fav-ourite in Law; and that to be a most ancient and wise Rule, De morte nonis nulla de esstatia longa. And since we could not reasonably expect to be thought to come provided in this Cafe, we humbly pray, that your Lordship will allow us such a rea-sonable time as your Lordship shall think fit.

L. C. J. Come, let me propose this to you, Will you please over?

Mr. Pelley, My Lord, I will give you an An-swer to that, We cannot do it. When we were together, we did consider, whether if we should please over, it would not destroy the Plea, and we were of Opinion that it would destroy the Plea: We cannot please over, but we give up the Juris-diction. It is as indifferent and light to me, as any body, to be forced to argue it now; but as to the Matter of it, I believe no body can say they ever saw many Influences of the like nature: Therefore, pray my Lord, let us not go on so hastily with it, for we could not foresee, what since we know, how it would be with us. I did not think they would have demurred; but now 'tis come to that, we must make the best of it. We have pleaded this Plea; if you will not please to give us leave to make any further arguments upon it, you must take it as we are able, since we can't have time to make ourselves able.

L. C. J. Certainly, Mr. Pelley, in favour vinse, it would not hurt the Plea to please over.

Mr. Ati. Gen. My Lord, if your Lordship please to favour me a Word in this Cafe; I hear several things urged, particularly influencing in modern Prac-tice. If that Gentleman will shew that in any Cafe the King and the Court were so indulgent to give four Days to plead to the Jurisdiction of the Court, then he will shew me something of modern Practice, which I know not; but if that Gentleman will re-member modern Practice in a great Nobleman's Cafe, for whom he was of Counsel, it was told him, if he would debate the Point of Law, he must do it presently; They never would give him time to pre-pare for his Argument, there was no such modern Practice then. I would define him to give me our Influence, that when Gentlemen are affioined of Coun-sel to plead a Matter to the Jurisdiction, and deal so with the King's Counsel as they have dealt with us, not to let us see the Plea till now; the modern Practice hath been to give them any time. For them to say, that they could not foresee what we would be at; could they not foresee the Points of Law? Could they not foresee a plain Cafe? But they do not take off the great Matter, that he that doth plead to the Plea, he has the Plea ready in his Hand; but, my Lord, we lay our Thumb upon that which is our Exception; they have plead-ed no Impeachment of any Crime, that can appear to be the fame with that for which they are indicted, that is the Point. Is there such Difficulty? Did they not learn Gentlemen think? Could they not foresee that we should look into their Plea, that it should be legal? Therefore I did, and do pray your Judgment. If they had pleaded, and set forth the Record truly, as it is, and as it ought to be set forth, in cafe they would have any Benefit by it; we would have given them another Answer; but if they think it proper to cite it for this, I am bold to say, for these Gentlemen know how to plead a Record as it ought to be, and how this ought to be pleaded to, to our the Court of a Ju-risdiction of a particular Crime. They say the Life of a Man is concerned, and so is the Peace of the Kingdom concerned too, in the Life of as great a Traitor as ever was tried in Welfinger-Hall. For if his Treason had taken effect, certainly the King-dom had been very near embroiled in Civil Wars by this time; therefore the whole Peace of the Kingdom depends upon his Life, and it depends upon the clearing of the whole Matter. And I challenge them again, if they can throw me any In-fluence of the like nature. That of Elin's Cafe that was mentioned, it was an Information; and to Plea Extrajudicial Communications there have been Demur- rers, but to Judgments found by twelve Men, we do not meet with any Demurrer anywhere where a Plea to the Jurisdiction. But I pray your Judg-ment, that he may plead in chief; for 'tis but a Repousses order, and if these Gentlemen desire to take time, I hope you will not delay the King by giving countenance to such a plain imperfect Plea; and for thole high Matters they talk of, that will be the Consequence, they can never come in ques-tion upon this Plea.

Mr. Sol. Gen. My Lord, I have but one short word to that which is now in question. Our Excep-tions to the Plea we offered and opened before; the Question is now, whether they shall have time to argue these Exceptions. And the Arguments they use for longer time, is, the Life of a Man, and it may not could not be prepared on a sudden, because they knew not what we would do. For the Hafty Pro-ceedings that have been in this Cafe, which they claim of, I think they have little reason to speak so, since that hath been done in this Cafe that never was done in any other. He hath had three Days time to consider, whether he will plead to the Jurisdiction of the Court, which never was done to any, and so great a Favour, that he is free to entitled to any fur-ther Favour. Does any Man believe that they are not prepared? Do not Gentlemen, when they con-sider of a Plea, consider upon what Grounds they plead? And does not that let them into the whole Matter, where the weak Parts of the Plea are, and what may be objected against it? I am sure that these Gentlemen are of that Consideration, that no Man does believe they would put in this or any Plea, without having considered beforehand what to do. And then, when they have put in a Plea upon great Consideration, no Man is to think that they are unready to maintain it. Our Exception is short, and they do but talk in general Terms that they are unprepared; and they have no reason to expect this Kindness from the Court, especially since they used Mr. Attorney at this rate: they gave him not the Plea, but only a Note to tell them they would do that which they said four Days before, and no more. They have not the Plea; they have not have brought Mr. Attorney the Plea, and left a Copy with him, and desired him to consider of it. But we do not pretend we are surpriz'd for all this Usage, we see the Plea here, and we see the Faults of it, and we have demurred to it, and tell them our Exception; sure they are better prepared than 'tis possible for the King to be, we are ready; and we hope you will grant them no longer time.

Mr. Serf. J eff. Will your Lordship he pleased to spare me one Word: I wonder at what Mr. Pelley seems now to urge concerning the Life of a Man that is concerned in this Cafe: 'tis true, the Life of a Man is a great Matter; but the Life of a Man is not so great in this Cafe as the Life of the Law; but certainly the Life of the Government is more dear to the Government, and all Courts of Justice, than the Life of any one single Person: And I am sure this one Person hath done
as much as in him lies to strike at the Life of the Government, in case this be true that is laid to his Charge. Now to make this Cafe like to Plunket's the other day, is strange: I think your Lordship hath given an account of that. For hath he pleaded to the Fact, Not Guilty, as Plunket did? We that are of the King's Council would in common Charity hope, that he is not guilty; but I am sure, if he be guilty, no Englishman can think that he deserves to live: for then should we be too fond of a Man's Life, that hath been guilty of such a Fact as this? For Example sake; surely, if that be the thing in question, we ought to have speedily Justice executed upon a Man that defers no Mercy. Your Lordship was pleased to take notice of another Circumstance in the Cafe of Plunket: He was indicted, he was arraigned, and was to have had his Trial in Ireland, and was to fetch his Witnesses from thence; all these things were in that Cafe. He defied time to consider what he should plead; but your Lordship finding an Indictment found against him, according to the Rules of Justice, overruled that Matter be diggled, and made him plead Not guilty, before ever you admitted him to debate any thing of that Fact. And then it appearing to your Lordship to be in another Kingdom, and that it was impossible, in regard of the Hazards of the Winds and Seas, to get over his Witnesses in a little time, your Lordship gave him time; but you gave him as a trait a time as could be consistent with the Rules of Justice, and as his Cafe would bear. Now, my Lord, this being offered in a Cafe of that Expection which the Cafe before you seems to have, we defere the Defence of it as much as we can. In cafe the Man be innocent, God forbid but he should be acquitted; but if he be guilty, God forbid he should live a Minute.

L. C. J. Surely you don't take the Cafe, Gentleman, to be a Cafe of so much Difficulty, as to defer long Consideration; we did expect truly, that you would have been ready to have maintaine'd your Plea.

Mr. Williams. My Lord, we do not define any long time; be pleased to give us a Day, or two, or three, as you please.

L. C. J. Yes. Still, 'tis a Cafe wherein the Life of a Man is concerned; 'tis true, here is the Life of a Man, of whom, till he be found guilty, we ought to have Consideration, as we would of any other whatsoever: For we have no reason to conclude him guilty till we hear him, and we are to be indifferent till we hear the Evidence; therefore, notwithstanding the Indictment, we ought to weigh his Life as we would another Man's, till he be found guilty. We in ourselves do not see there is any great matter of necessity for time to consider of this Cafe, for if you prit, Mr. Attorney, we are inclinable to give them a Day or two's time to consider of it, and see what they can say to maintain this Plea. But then, Gentlemen, if we do so, you must take notice we will call you to plead presently after our Judgment upon the Plea.

Mr. Williams. My Lord, we have nothing to do with the Fact of this Cafe; we are only to speak to the Plea.

Mr. Serjeant. May I pray how then is your Life in question upon the Decision of this Plea?

L. C. J. Brother, they do not speak as to this Plea, that it hazards his Life, but the facta materia. upon the Decision of it, supposing Judgment be against the Plea. Therefore, Mr. Attorney, we do think fit to give him till Friday Morning, and he shall be brought hither then again by the Lieutenant of the Tower; then we will hear the Gentleman: and if they do not show us any considerable Matter to maintain the Plea, they must expect Judgment presently.

Mr. Att. Gen. That certainly will be too long a time; pray, my Lord, they ought to have been ready now: If they will be pleased to be ready to-morrow Morning, I pray it may go off to no farther time.

Mr. Serjeant. There is a necessity, my Lord, I think that it should be so; for there is a long Trial at the Bar here on Friday.

Mr. Williams. That is a very short time indeed.

Mr. Juit. Jones. You must be ready to-morrow Morning.

Mr. Williams. Unlesse, my Lord, you will give us a little more time, you had as good give us no time.

L. C. J. It seems the Business of the Court is such. on Friday Morning you can't be heard.

Mr. Juit. Jones. Either it must be to-morrow Morning or Saturday, and that is Exchequer-Chamber Day.

Mr. Serjeant. My Lord, I believe they are not in haile.

L. C. J. Mr. Attorney, we would give them a reasonable time; but yet we would do nothing that might make unnecessary D.

Mr. Att. Gen. I pray, my Lord, let it be no longer than till to-morrow, and that is more than ever was given in such a Cafe. I know it was denly'd in my Lord Sefflower's Cafe; they would not give the Council any time, but would make them argue presently.

L. C. J. As to that, Mr. Attorney, every Cafe hands upon it's own Bottom.

Mr. Serjeant. My Lord, we have your Direction for to-morrow Morning.

Sir Fr. Win. No, no, my Lord, we hope not so.

L. C. J. Look you, Gentlemen, to accommodate you, the Court does think this to do: we will be here on Saturday by Seven o'clock in the Morning. On Friday we can do nothing, for there is a long Trial at Bar that will take up our time; but on Saturday we will be here by Eight o'clock fitting, and expect you to be here by that time: I will afford you then long time to argue in, because it is an Exchequer-Chamber Day.

Mr. Att. Gen. If Judgment be against the Plea, they must plead presently then, that we may not lose the Term for a Trial.

L. C. J. You must take notice of that, by the Rules of the Court they must do it, Mr. Attorney. If your Judgment be against them, the Course of the Court is so, we can't rule it one way or other.

Mr. Serjeant. In such a Cafe. But then they ought not to pretend they have no nostrums, their Witnesses are out of the way, and so hinder the Trial.

Mr. Juit. Jones. No, no.

Mr. Fitz-Harris. My Lord, I define I may have ther Lord's come to me; my Lord of Effes, my Lord Salisbury, my Lord Mayor, your Lordship, and Sir Robert Coggeston, to perfect my Discovery. I have something to discover to your Lordship and them.

L. C. J. Your Discovery of what, do you mean?

Mr. Fitz-Harris. Of the Plot, and of the Murder of Sir Edmundonrd Gojfuy.

L. C. J. We did examine you about the Murder of Sir Edmundonrd Gojfuy.

Mr. Fitz-Harris. Your Lordship went away in haste, before I had told all I could say.

L. C. J. We asked you ten times, whether you had any more to say, and you said, No.

Mr. Fitz-
Mr. Fitz-Harris. My Lord, I was in Confusion and Contemplation; I scarce knew what your Lordship said to me.

L. C. F. We were not in haste; we asked you often that it might be put in writing.

Mr. Fitz-Harris. It was haste to me, because I was not provided of the Quellions you asked me.

Mr. Juff. Delbon. To some of the Quellions we asked you, you answered readily and freely; but to some we could not get a positive Answer by any means.

Mr. Att. Gen. My Lord, he told me he was not in England then, and that he knew no more than what he had discovered.

Mr. Fitz-Harris. Did I say so, Mr. Attorney? Mr. Att. Gen. Yes, you are right.

Mr. Fitz-Harris. I can bring twenty Winefies, I did not tell you so; and I can bring 500 Wisefies, that I was in Town then.

L. C. F. Lieutenant of the Tower, take your Prisoner, and be here before eight o'clock on Saturday Morning.

Sir Fran. Wim. My Lord, now I defere we may have a Copy of the whole Record.

L. C. F. Not of the Indictment, but of the Plea and Demurrer you may have.

Mr. Fitz-Harris. My Lord, I hope you will let the Indictment be read upon Saturday, because Mr. Attorney had fixed his Exception upon part of the Indictment, which is the Libel that he calls the particular Treason, and I defere it may be in Court.

L. C. F. It shall be, and if you have any occasion of Reference to it, we will look upon it; we are all upon our Oaths, and must take heed that no Prejudice be done to the King, as well as to the Prisoner have no unfair thing put upon him.

[Then the Prisoner was carried back to the Tower.]

On Saturday the 7th of May 1681. Mr. Fitz-Harris was brought to the Bar of the Court of King's-Bench, about eight of the Clock in the Morning.

Mr. Williams.

May it please your Lordship, I am a solicitor of Council for this Perfon, Mr. Fitz-Harris, the Prisoner at the Bar.

Mr. Att. Gen. My Lord, if you please, I will only strictly apprize them with what our Exceptions are, that they may apply themselves to them.

L. C. F. Look you, Gentlemen, I must tell you, all our Time is scarce enough for this Matter, for we are all of us to be by and by with all the Judges in the Exchange-Chamber; therefore we pray this of you, we will abridge no Man's speaking what is material for his Client, but we defere you will keep to the Matter, and the Points in question between you, and save our Time as much as you can.

Mr. Att. Gen. That is the reason, my Lord, why I would lay my Finger upon those Points that will be the Questions between us. Now the Exceptions I take to the Plea are these: This is a Plea to the Jurisdiction of the Court, and some of our Exceptions are to the Form, and one is to the Matter.

To the Form, our Exceptions are these: First, We say that the general Allegation that he was implicated de Allo Prodieme is uncertain, and too general; it ought to have been particularly set out, that the Court might judge, whether it be the same Crime which I think it is not helped by the Averment. And the next Exception I take to it, is, here is no Impeachment alleged to be upon Record: I mentioned this the last time, and looking more strictly...
ment; and demands the Judgment of the Court to that Purpose.

Upon this Plea, Mr. Attorney hath demurred generally, and we that are of Council for the Privy Officer have joined in Demurrer with him. Now in such a Case it comes before you, for your Judgment upon this Plea and this Demurrer, I take these Things to be admitted.

First, That the Privy Officer stands impeached, by the Commons of England in Parliament assembled, of High Treason. Secondly, That the Impeachment thus made by the Commons, in the Name of themselves, and of all the Commons of England, before the Lords in Parliament, for Treason, is now in being. Thirdly, which I omitted in the opening of the Plea, that this was done found, Legem, & Confl. Parliamenti; and being so, remains in plenis juis Rebus & Effetu. And more particularly this Plea does refer to the Record, for the Parts and Circumstances of the Impeachment, prout potest per Record. in alio inter, &c. So that it does refer the Impeachment itself to the Record, and tells you this is among the other Records of that Parliament: all this is admitted by the Plea. Fourthly, And moreover, that this Treason, for which he stands impeached before the Lords, and the Treason for which he stands indicted before this Court, are one and the same Treason, and no way divers; and so they are the same numerical Thing, and there is no manner of difference: And that this Person Fizzi-Harris, now indicted, and the Fizzi-Harris impeached, are one and the same Person, and no way divers. And withal, my Lord, it appears plainly upon the Record, that this Impeachment was depending before; the Indictment found for the Parliament was the 11th of March, and it appears by the Record this is only an Indictment of this Term. And another Thing I must intreat you to observe, my Lord, it does not appear but that this Parliament is still in being, for any thing to the contrary in the Record, and as I take the Cafe, then it must be admitted so to be.

So then, I take the Plea to be in Substance thus, though Mr. Attorney was pleased to cobweb both the Substance and the Form; but in Substance the Cafe is thus: Here is a Person impeached in Parliament, by the Commons in Parliament, for High Treason, before the Lords in Parliament, and for ought appears that Parliament still in being, and this Impeachment still depending; then here is an Indictment for that very Treason: whether your Lordship now will think fit in this Court to proceed upon that Indictment, is the Substance of the Cafe. I shall speak to the Form by and by.

My Lord, By the way I think it will not be denied, but that the Commons in Parliament may impeach any Commoner of Treason, before the Lords in Parliament; I take that to be admitted. And I do not find that Mr. Attorney denies it, or makes any doubt of that; for I think that was the Cafe of Treason and Belknap, who were impeached in Parliament by the Commons before the Lords: I am sure my Lord Chief Justice Vaughan does, in his Reports in Smyth's Cafe, say so; and upon that Impeachment of the Commons, one of them was executed, and the other banished, in Parliament. My Lord, I cite it not merely, but I cite it as Authority. Indeed I do not go so far as to cite the Parliament Roll, it was in the Time of Richard II. I have not seen the Roll of late truly, but I am sure it is upon the Roll, and there it is to be found.

Since then Impeachments of Commoners will lie in Parliament, here then, my Lord, will be the Question, Whether this Court may proceed upon an Indictment for the same Offence the Parliament was for. And here I shall dilate upon Mr. Attorney: He does allow the Parliament to be a superior Court; but admitting that, he says, though it for the Offence having original Jurisdiction of the Perfon and the Caufe, it may proceed notwithstanding an Indictment in the superior Court; and, ergo, he does infer that this Court may proceed upon an Indictment, notwithstanding an Impeachment in Parliament.

My Lord, I will compare a little the Cafe of an Indictment and an Impeachment, and shew how manifestly they differ. I do take the Cafe of an Indictment not to be the Cafe of an Indictment, and fo the Principle that Mr. Attorney hath taken is wrong, and the Ground of that Argument wrong. I cannot say it is like the Cafe of an Appeal, but I may say the Cafe of an Appeal is like the Cafe of an Impeachment. For in an Appeal of Murder, though the Indictment be capital, and the same that is given upon Criminals prosecuted by the King, yet it is at the Suit of the Party, as in this Cafe it is at the Suit of the Commons; and fo it is an Intimation of, and an analogy to, and bears the Resemblance of an Impeachment in Parliament; I will not compare an Impeachment to an Appeal, but I will say an Appeal imitates an Impeachment. And it is as plain as can be, because Appeals are proper to Courts in Westminster-Hall, and it is at the Suit of the Party, the Prosecution and all the Proceeds is ad infinitum parvis; so is an Impeachment at the Suit of the Commons. An Indictment is found upon the Premises of a Grand Jury, who are sworn ad arbitrium per Domino Regem pro Corpo Cons., and it is a Miftake in the Form, when it is said pro Corpo Cons., it is not for the King and the Body of the County, but for the King for the Body of the County. But now an Impeachment in Parliament is otherwise; it is not in the Name of the King, but in the Name of the Commons in Parliament, and of all the Commons in England, wherein it fails with an Appeal which is at the Suit of the Party, for it is an Appeal, and not like an Indictment: An Indictment for the King, an Impeachment for the People. And as it is in the Nature and Constitution different, so it is in the Prosecution also, for that is by the Commons of England, they are the Prosecutors in effect; but now in all Indictments they are prosecuted always by the King's Attorney, or by some Person in the Name of the King. We are now arguing upon the Methods and Forms of Parliament, therefore I must crave leave to infit upon these Methods more particularly. The Commons bring up the Impeachment to the Lords, the Commons they prosecute the Impeachment, they manage the Evidence upon the Trial; and when the Lords have considered of it, and have found the Facts of the Commons, they demand Judgment, and Judgment is given in all the Prayers of the Commons, and no otherwise, and there are no Proceedings by the Attorneys. Indeed there have been Attempts by Attorneys to prosecute Persons in Parliament, by exhibiting Informations in the Parliament; but what Succeeds they have had, I have leave to them to consider that are concerned, and have read the Rolls of Parliament. But it is not safe to alter the Old Ways of Parliament, therefore I take it under Correction, that it is out of the Road of Comparisons, when they will compare an Indictment and an Impeachment together; for they do not agree, but differ extremely.

I would
I would then offer you some Reasons why this Court ought not to proceed upon this Indictment. I take it, it is not the J ustice of this Court to weaken the Methods of Proceedings in Parliament, as this Court will certainly do: For if you will admit this to be the Court that I have opened, your Proceedings will alter it. When there is an Impediment depending in Parliament for Treason, if your Lordships will admit there may be an Indictment here afterwards in this Court, and Proceedings in this Court upon that Indictment, it is to alter the Method of Parliament-Proceedings, and to subject the Method of their Proceedings there to the Proceedings of this Court, and what the Mischief of that will be, I must leave to your Lordship. As I opened it before, the Methods of both Courts are different, and their Proceedings very much vary, I think, I need not trouble your Lordship with that; we all know it very well in the main. Indictments in this Court are to be tried by a Jury, where a Verdict must be given presently: There is but very little Time for giving the Evidence, or for making Observations for the Crown, or for the Publick; and in order to bring the Trial, there must be an immediate Plea of Guilt, or Not Guilty. Now if the Proceedings of Parliament were to be taken, there might be a great Surprize, and great Offenders pass unpunished, because the Prosecutors had not greater Time to inspect the Records that might be of avail in the Cae: Therefore in Parliament it is quite otherwise; there is Time for Deliberation and Consideration, there are many References, and many Examinations, which are Matters of Deliberation and Consideration, which takes up a great deal of Time; but here you are tried not only in Time, but bound up to strict Rules, and so are tried in your Methods and Forms of Proceedings, as Mr. Attorney would here try us up to the Forms of little Courts: But it is not so that the Justice of the Kingdom, and High Court of Parliament, should be cramped by the Methods of an inferior Court, and a Jury. So you will then subject the Methods of Proceedings in Parliament to the Courts in Westminster-Halls, and what the Consequence of that will be, is worth the Consideration.

Another Reason why I would chiefly offer is this, my Lord; The Parliament is the supreme Court certainly, and this Court is every Way inferior to it, and it will be strange that this supreme Court should be hindered by an inferior: For the highest Court is always supposed to be the wisest; the Commons of England in Parliament are supposed to be a greater and a wiser Body than a Grand Jury of any one County. ThePeers, who are the Judges in that Court, are supposed to be the wisest Judges, as the Commons the wisest Inquest. Will the Law of England not offer an Examination, Impeachment and Prosecution for Treason, to be taken out of the Hands of the greatest and wisest Inquest in England? And will the Law of England suffer the Judicature upon this Prosecution to be taken out of the Hands of the wisest and greatest Judicature, and put it into the Power of a smaller Number of Judges, or of an inferior Jury? I do think it does not stand, my Lord, with the Will of the Government.

Another Thing is this, my Lord, the common Argument in any extraordinary Cae, there is no Precedent for this Way of proceeding; it is my Lord Coke's Argument in his Comment upon Little's Fel. p. 108, and in the 4th Inf. Fel. 17, in his Comment upon the High Court of Parliament. And he takes occasion to speak upon it, on the account of that Precedent, the Case of the Indictment against the Bishop of Winchester, and of that against Mr. Pecock; and he says, this never was practised before; therefore it ought not to be: So he inures, and puts a black Mark upon it, by saying it is a dangerous Attempt for inferior Courts to alter or meddle with the Law of Parliaments. For the Words I refer myself to the Book, I dare not venture to repeat them upon my Memory. So in this Case, in regard that this Court was done from the Beginning of the World till now, the 33rd Year of this King, I may say, it being without Precedent, there is no Law for it.

My Lord, there is another Mischief that will certainly follow upon this, and that too runs upon this Comparison of an Appeal and of an Indictment. In the Case of an Indictment it is in the Power of the Prince to pardon that Indictment, to pardon the Punishment, and to pardon the Offence; but in case of an Impeachment, I take it to be too frivolous, as it is in case of an Appeal. And, my Lord, if your Lordship will take this Case out of the Power of the Parliament, and bring it into this Court, where the Offence may be pardoned, you do by that means subject that Offence, and that Method of Proceedings, which would make it, without Consent of the Party prosecuting, not pardonable by Law, to a Pardon: And this may be of dangerous Consequence to the Publick, that Crimes that are heinous and great in themselves, mighty bulky Crimes, are for the Conferment of a Parliament, but they never so great, never so dangerous to the Government, yet should, by giving this Court a Jurisdiction, and poaching it of these Causes, expose them to the Will of the Prince, and to those Crimes, which are impassable by Methods of Proceedings in Parliament, would become pardonable by Prosecution in this Court.

Now, my Lord, for my Authority, that Impeachments are not pardonable, I would hint a little to compare it to the Case of an Appeal, as Perry and Condell's Case in 3 Coke, 468, and the Case for 1664. There was a Petition for an Appeal, from the Grand Jury of the County of Glamorgan, upon which he is found guilty of manslaughter, and not guilty of the Murder. Then there was a Pardon pleaded of the Burning in the Hand, or of the Punishment: It is not plain in the Book whether the Pardon was after the Verdict, or before (that I cannot be clear in) but however there was a Question whether the Queen could pardon the Burning in the Hand; however it was there allowed: But there was an Exception my Lord Coke, who was then Attorney-General, took, that the King could not pardon, if it had been an Appeal of Homicide; and he concurred with the Court in the same Opinion. But that Appeal being for Murder, and the Verdict of Manslaughter, they passed over the Question, for this Reason that I have mentioned. That the Appeal was not for Manslaughter, it was for Murder; and if he had been found guilty of the Murder, it was not in the Power of the King to pardon him, he being at the Suit of the Party: So the Opinion of that Book is, and of the then Attorney-General.

Thus have I stated the Things, and the Conclusi

ences
quences of it, and it is not fit for me to dwell upon it: You that count of it, I am sure.

Another Thing I would say, is this: If your Lordship should meddle with this Way of Proceeding, it will invert the Law in another Thing; for it is a Principle with us, That no Man's Life is to be put twice in Danger for one and the same Thing. I will then put the Case thus: If your Lordship should proceed upon this Indictment, and this Perfon should be acquitted upon it, I am in your Lordship's Judgment whether that Acquittal will bind the Lords in Parliament; if that will not bind them, but they may still proceed on the same Issue you have justly found; and that is a common Right which every Legitimous by the Law ought to have preferred to him, that no Perfon ought twice to be brought in question for one and the same Thing. And so, my Lord, you make a Man to run the Rilque of his Life twice, by inditing him in this Court, where, though he be acquitted, he may be called to an account again, if the Law be so. And if the Lords in Parliament should be of Opinion, for they are the Judges of that Case, that that Acquittal will not be binding to them, then a Man's Life is brought in question twice upon the same Account.

My Lord, I now come to this, the Time, how unforeseeable a Thing it is, and how dangerous to the Government: I take it to be a critical Thing now at this Time to make such Attempts as these are. There are Lords now that lie under Impediments of Treason, the highest Treason, I think, that ever was contrived; and upon this Impediment one Lord hath been convicted and executed. Suppose upon the Diffusion of that Parliament, the late Lord Stafford, had there been an Indictment against him for one and the same Treason: And by the fame Reason that this Court may proceed, his Majesty may appoint a High Steward to try by a Jury of Peers. For the Court held before the High Steward, is as much a Court as any Court in the Kingdom, except that of Parliament. I say, suppose the King had appointed an High Steward, and that Lord High Steward had proceeded against my Lord Stafford, I think my Lord Stafford had been acquitted; and had he been impeached in this Court, your Lordship knows there must be two Witnesses, and I am sure there came in fresh Testimony against my Lord Stafford, after the second Parliament, after the Impeachment. I appeal to those noble Lords that are here, if it were not so; and had it not been for that fresh Testimony that came in afterwards, possibly my Lord Stafford might have been alive at this Time. And the Lords in Parliament, as I have observed in the Beginning, when they were in the Crime before this, when they found such a general contagious Design to subvert the Government, and yet they cannot come to cut off the principal Agents in this Design, because perhaps there may not be two Witnesses in strictness of Law at the first, it is the Willorn of a Parliament to deliberate and to take Time. The good Queen who was used to say, Truth was the Daughter of Time, and Time would produce Truth, Veritas fitis tempus. If then there had been any such hearty Proceedings, as in this Case, I doubt my Lord Stafford had been now alive. Now then for these Lords that are now in the Tower, if your Lordship do go on in this Way, do you not open such a Gap, as may be a ground to deliver them by the same Justice (I speak it under Correction here, and I only offer it to your Judgment, for I have not had many Hours to consider of it, but your Lordship will think well of it before you give any Judgment; by the same Justice) the other Lords may be tried by another Court? This I offer in point of Reason, that this Proceeding will be very hard, and is an imprudent Thing, if not an illegal Proceeding. My Lord, I am sure it will have this Effect, it will stir up a Question between the Jurisdiction of this Court and the Court of Parliament; For in all Probability, if this Perfon should be acquitted, the Commons and the Lords will look upon it as a Court that has a Survey of the Proceedings of all other Courts; and they will examine this Proceeding, or at least may do. And if he be found guilty, here is the Power of the Commons in Impeaching, and the Jurisdiction of the Lords in Trial and Judgment, taken away by an inferior Court to them, and so stir a Question between this Court and that high seat of Courts, the Parliament. And what will be the Consequence of that? the Judgment of that Question will be in the superior Court, for there is no Middle Court between this Court and the Parliament to judge of it; therefore I submit it to your Lordships.

These are the Things which I offer to your Lordship in point of Reason, whereof some go to the Prudence of the Thing, some to the Reason, and some to the ill Consequences that may happen upon it, and I think many to the Inconveniency of the Act. And now this being laid in the general, I come to the particular Exceptions made by Mr. Attorney as to the Form of our Plea.

He was pleased to say, that this Plea was a plain frivolous Plea, which is his Exception in general; and he gave you three Reasons for it at first, and does now inflict upon the fame for Subtance.

One was this, and he inflected upon it at this Time, This Plea does not set forth any Record of an Impeachment, nor the particular Matter of it, so as this Court may judge of the Reason of it; for he compares it to the Case of a Plea of autre fois aegrit. If a Man hath been indicted and acquitted, he may plead it in another Court that the Cause is out of the Court, if he be again indicted for the same Matter: But, my Lord, first of all, I take this Plea to be well pleaded in Form; and, in the second Place, if there be any Informality or Defect (which I do not take that there is, but if there were any such Thing) I take it it is of another Consideration, which the Court will deliberate before they give their Judgment on.

But I say in the first Place, I take it to be a very good Plea, and that it is good according to the Pleading of autre fois aegrit. In pleading of a general Act of Parliament, we need not set forth the Act, but refer to the Record, and that will depend upon the Method of Impeachments in Parliament, which I am of Opinion, being the general Law of Parliaments, this Court ought to take Cognizance of. In the Case of autre fois aegrit, there is first an Indictment proceeding of the Court upon the Plea, a fair Trial, a fair Acquittal, and a Record of all this Matter. If now this Perfon comes to be indicted again for the same Thing, there is a Record for him to plead that will shew forth the whole Matter; and if it does not plead that Record, 'tis his own Default. But in this Case here is
no such Right to plead, and there is the Mistake upon which Mr. Attorney has gone all along. And you must in this Case be governed by the Rule and Method of Parliament, which is this: The Commons, in the Name of themselves, and of all the Commons of England, impeach such a Person, and they bring up this Impeachment to the Lords in general, and there they have Liberty to prefer Articles in due Time, after due Consideation, which ought not to be done hastily. All this is no Record, such as may be had in the Case of aner fait conviction. For first, the Impeachment of the Commons is brought up, and when 'tis brought up to the Lords, there is only an Entry into the Journal of the Lords, that such a Day such a Person came from the House of Commons, and impeach'd such a one. And you are not to expect the same strict Method, and Form of Proceeding, as in other Courts, the Courts in Westminster-Hall, or inferior Courts. Your Lordship in this Case must be govern'd by such Proceeding as is in Parliament, and must take it as it is; and we have had enough, and as much as can be in our Case. We have not indeed for the Indictment, a Plea, a Verdict omen, &c. for there is no such Proceeding in Parliament; but there is an Impeachment by the Commons, in the Name of themselves and of all the Commons of England, before the Lords, that it is in pleas robus & effectis, and that it was factum legem & confirmatum in Parlamentis, praet patre inde inter Recorda remanae. &c. and here is enough. For when we refer you to a Record, that is as much as if we had fet forth the Record itself; for we tell you there is such a Record, and we point you to the Place where you may find it. So we take it, 'tis a very full Plea; and if not, 'tis as much as any Man can plead in such a Case, though it be not pleaded in such a Court.

And, my Lord, that your Lordship is to judge in this Case, according to the Methods of Parliament, I depend upon the Authority of my Lord Coke; I will repeat you some of his Words: Speaking of the Law of Parliament, he says, and he borrows it out of Plata, That this High Court of Parliament proprio juris Legibus & confirmatisbus falsificat. Eia lex ob omnes querendos, aliis ignotam, & pravos cogit, ut. But he tells you, and certainly he says true in this, Whoever will be learned in the Law of Parliament, must repair to the Rolls of Parliament; And give me leave to cite his Opinion, which, I hope, may be of great Weight with this Court: It is in the fourth Inquisitions, fol. 15, he says. For any thing now or done in the House of Commons, it ought to be determined, adjudged and discussed by the Course of Parliament, not by the Civil Law, nor yet by the Commons Laws of this Realm, used in more inferior Courts, which was declared to be factum legem & confirmatum in Parlamentis, concerning the Peers, and the like, pari ratione, for the Commons, and that stops this Court out of our Case: For it is said in this Plea, which is the Matter you are to govern'd by, that it is factum legem & confirmatum Parlamentis. He tells you further, there is no Notice to be taken of any thing said or done in the House of Commons; but by the Report of that House, and every Member thereof has a judicial Place; he takes it out of Henry VII. and fo the Book is expressly. And he goes on; This is the Reason that Judges ought not to give any Opinion of Matters of Parliament, because it is not to be decided by the Common Laws, but factum legem & confirmatum in Parlamentis. So he tells you, you are bound by the Methods of Parliament, and I need not press the thing much after his Authority; for he was learned in Parliament Matters.

But I would crave leave to mention a Case that was lately in this Court, and that was the Case of my Lord of Shaftesbury, who was brought by Habeas Corpus to this Court, and upon that Habeas Corpus it was thus returned, That he was committed by Order of the Lords in Parliament, there to remain during the Pleasure of the King; and of the House of Lords, and this for an high Contempt committed in that House. Upon this Return we insisted that my Lord might be bailed, because it was uncertain, the Pleasure of the King, or the House of Lords; and upon reading the Order, there is no Crime express'd, but only in general for an high Contempt. I speak it not for the particular Case's sake, but to apply the Reason of it to our Case; the Reason then given by the Judges, Mr. Justice Jones will please to remember it (for it was particularly declared by him) that it was a Publick Person of that Office, who was pleased to say, We in this Court take notice of the Course of Exchequer, and other Courts in Westminster-Hall; and it would be strange if we should not take notice of the Course of Parliament, and House of Lords. And if you are bound to do in other Cases, you are bound to do it in this. And if without pleading you take notice of the Course of those Courts, you will also take notice of the Law of Parliament, and Customs of Parliament. And (that I may make use of it as our purpose in this Case) we need not particularly say, factum legem & confirmatum Parlamentis in loco, intimating in this, and that, and other Particulars; But the Court is to look into it, without my pointing to the particular Law of Parliament. So that, my Lord, here is ground enough before the Court, and I know the Court will look into it, before they give Judgment.

The second Exception is this. That it is not said in the Body of the Plea, that Fitz-Harris is impeached for this Trea son; but it comes in only in the Averment. Now, my Lord, as to that, we must purge the Impeachment as it is in the Lords Journal. 'Tis for Trea son generally there, and 'tis said to be factum legem & confirmatum Parlamentis, which goes to all, and there is a Record of it among the Records of Parliament, and Mr. Attorney hath confessed it by the Demurrer.

And that this is the same Trea son, we do aver in Fact, which also is confessed by the Demurrer; and your Lordship will see by the Records and Forms of Entries in Parliament (that I may not repeat Things over and over again) that this is the Course and Method of Parliament.

Mr. Attorney hath fancied an Exception of Grant in an Adjective for a Substantive; but I take it to be as well as any Man can plead in this Court. For what says the Prisoner? The Knights, Citizens and Burgesses in Parliament assented, did impeach me; which Impeachment is still in Force before the Lords. I take it to be as plain as can be. If they did impeach me, then was there an Impeachment; it can bear no other Sense.

My Lord, another Exception, and which was thought a Strong one the other Day, and strongly urged,