Calvin J. Stroyer
to Hugh Nicholson
1890

SIXTEENE QVERES PROPOUNDED

By the Parliament of *Ireland* to the Judges of the said Kingdome.

As Also,

Another *SPEECH*, made by Captaine *Audley Mervin*, to the House of Commons, concerning their Priviledges, and their exorbitant grievances in that Kingdome.

Printed in the Yeare, 1641.

SIXTEENE

QVÆRES,

Propounded by the Parliament of *Ireland*, to the Judges of the said Kingdome.

I.

THat the Judges may set forth and declare, whether the Inhabitants of this kingdome be a free people, or whether they be to bee governed onely by the antient common lawes of England.

II.

Whether the Judges of the Land doe take the Oath of Judges, and if so, whether under pretext of any Acts of State, Proclamation, Writ, Letter, or direction under the great or privie Seale, or privie Signet, or Letter, or other commandement from the Lord Lieutenant, Lord Deputie, Justice, Justices, or other chiefe Governor, or Governors of this King-

dome they may hinder, ſtay or delay the ſuite of any Subject, or his judgment, or execution thereupon, if ſo, in what caſes, and whether, if they doe hinder, ſtay or delay ſuch ſuite, judgement or execution, what puniſhment doe they incurre by the Law for their deviation, and tranſgreſſion therein.

III.

Whether the Kings Majeſties privie Counſell, either together, or with the chiefe Governor or Governors of this Kingdome, without him or them be a place of Judicature, by the common Lawes, where in caſe betweene party and party for Debts, Treſpaſſes, Accounts, Covenants, poſſeſſions, and title of Land, or any of them, and with them may be heard, and determined, and of what civill Cauſes they have juriſdiction, and by what Law, and of what force is their order or Decree, in ſuch caſes or any of them.

IV.

The like of the chiefe Governors alone.

V.

Whether Grant of Monopolies be warrantable by the Law, and of what, and in what Caſes, and how, and where, and by whom, are the Tranſgreſſors againſt ſuch Grantees puniſhable

able,and whether by Fine and mutilation of Members,imprisonment, losse, and forfeiture of goods,or otherwise, and which of them.

VI.

Jn what Cases the Lord Deputie, or other chiefe Governors of this Kingdome & Counsell,may punish by Fine, imprisonment, Mutilation of Members, Pillory , or otherwise, they may sentence any to such the same,or the like punishment, for infringening the commands of any Proclamation, or Monopolie, and what punishment doe they incurre,that do vote for the same.

VII.

Of what force is an Act of state or Proclamation in this Kingdome to bind the liberty, goods,possessions,or inheritance of the natives thereof, whether they or any of them can alter the common Law, or the infringers of them lose their Goods,Chattels, or Leases,or forfeit the same by infringing any such Act of State or Proclamation,or both, and what punishment doe the sworne *Judges* of the Law, that are privie Counsellors, incurre that vote for such Act and execution of it.

VIII.

Whether the ſubjects of this Kingdome be ſubject to the Marſhall Law, and whether any man in time of peace, no enemy being in the fields, with displayed can be sentēced to Death, if ſo, by whom, and in what caſes, if not, what puniſhment do they incurre that in time of peace, execute Marſhall Law.

IX.

Whether voluntary Oathes taken freely before *Arbitrators*, or others for affirmance, or diſaffirmance of any thing, or for the true performance of any thing, be puniſhable in the *Caſtle-Chamber*, or in any other *Court*, and why and wherefore.

X.

Why, and by what Law, and upon what Rule of policie is it, that none is admitted to reducement in the Caſtle-chamber, untill hee confeſſe the offence for which hee is cenſured, when as *Re vera* he might be innocent therof, though ſubordined *proofes or circumſtances*, might induce him to be cenſured.

XI.

Whether the Judges of the Kings Bench, and by what law, doe or can deny, the copies of Indictments, of Fellony, or Treaſon to the parties

ties accuſed of Treaſon, contrary to the ſtatute of 42. *Edw.* 3.

XII.

Whether the ſtatute of *Baltinglaſe* take from the Subjects, out-lawed for Treaſon, *though erroniouſly*, the benefit of his *Writ of Error*, and how, and by what meanes, that blind clauſe not *warranted*, by the body of that Act came to be inſerted, and by what Law is it countenanced to the diminution of the liberty of the ſubject.

XIII.

What power have the *Barons* and the Court of *Exchequer*, to raiſe the reſpite of homage *Arbitrarily* to what value they pleaſe, and to what value they may raiſe it, and by what Law they may diſtinguiſh betweene reſpite of homage, upon the diverſities of the true value of the Fees, when as all Eſcuage is the ſame for great and ſmall Fees, and the apportionable by *Parliament*.

XIIII.

Whether it's cenſurable in the ſubjects of this Kingdome, to repaire into *England* to appeale to his Majeſty for *Redreſſe* of *Injuries*, or for others their *accuſers*, if ſo, why, and in what condition of *perſons*, and by what Law.

Whe-

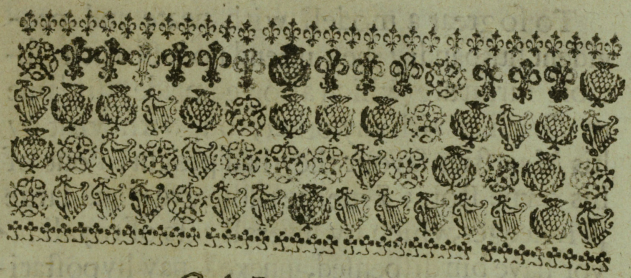
XV.

Whether *Deanes* and other *Dignitaries* of *Cathedrall Churches*, be properly *de mero jure donative*, by this King, or not *elective or collative*, if so, why, and by what Law, and whether the confirmation of a Deane *de facto* of the Bishops Grantee be good, and valid in the Law, or no, if not, by what Law.

XVI.

Whether the issuing of *Quo Warranto's* against *Burroughes*, that antiently, and recently sent Burgesses to the Parliament, to shew cause why they sent Burgesses to the Parliament be legall.

CAPTAIN



CAPTAINE

AVDLEY

MERVINS SPEECH to the House of Commons in *Ireland*.

Mr *Speaker*,

IT was equall care and policy in our Predecessours. First to lay a foundation, and then by a continued industry to build and perfect so glorious a fabrique as the house of Cōmons lawfull summoned by the Kings writ represents it selfe unto us at this day. In which so elaborate and exquisite a structure being finished and crowned with those fruitfull and peace-speaking events, may challenge by right the title of a *Jubile*.

To ſo great a modell with neate and provident husbandry they intend no leſſe then ſutable furniture (which allowed pride) diſdaine to cloath it with any other, but with what by his Majeſties favour they had procured out of his owne ſtore; *I* meane thoſe great and large priviledges, which by ſeverall acts of royall favor have bin diſpenſed, annexed, nay hypoſtatically united, to the ſame Priviledges are the ſoule, by which we move the Sinues and Nerues, by which we are compacted, they are thē, by which we breath. Priviledges for their birth allyed to the Kings Prerogative, for their antiquity ſacred, for their ſtrength ſo re-intrenched by cōmon law, fortified by ſtatutes, inſconſed by precedents of all times, that no man ever attempted their violation with impunity, ſo that now and then it may be truly ſaid, The Kings houſe is all glorious within. *If we which are Heires to their lawes, as unto their lands, will ſtrive to make no addition to the richinventurie of thoſe priviledges they have bequeathed unto us, yet with united ſpirits, let us all leaſt prevent the dilapidation, nay the diminution of the leaſt of them.*

This preſent occaſion of debating Mr. *Fitz-Gerralds* petition exhibited to this honorable houſe, ſets before us bleſſings and curſings, and is the firſt leafe (as we may terme it) of the houſe of commons Almanack, not made to

ſerve

ſerve for one, but for many yeares, and calculated to ſerve indifferently for all latitudes, in which, our carriage makes this and all ſucceeding dayes but ſevill and working dayes, or otherwiſe imprints this day and our priviledges in a conſpicuous, plauſive rubrique to poſterity; whileſt the Palladium was in *Troy*, neither the power nor the long ſiege of the *Grecians*, could prevaile againſt it, whileſt *Minoes* purple lockes curled from their native roots, *Creete* was unvanquiſhed. The Morall of theſe (*affictions*) emphatically preach and teach us this *Doctrine*, that the ſafety, pregnancy, glory, and ſtrength of this houſe, is but only ſent us upon this condition, whileſt we keepe, preſerve, and defend our liberties, our rights, our priviledges unbetrayed, unſuppreſſed, and uncontrolled: if any more allyed to the corruptiõs of our own diſtempers, then challenging an intereſt in us by a legitimate birth, could involve this grave and great aſſembly, in ſuch epidemicall liturgie, as directly to ſnore, *or at leſt to wink whileſt our priviledges cloathed in a purple robe of glory (like a word never to be recalled) eſcape from among us, I ſay if ungratefull, I ſhould cut off the inheritance of theſe immunities entailed upon us, and confirmed as a monumentall portion upon this younger brother of ſtate, this Houſe of Cõmons what can we expect, but that our Fathers Ghoſts apparelled with indignation*, ſhould appear unto

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us with this or the liking branding phrase. Most vngratefull and vnfortunate posterity. *O ætas parentum pejor Avis*; better had it bin for you not to live then to out-live your owne infamie. If there had beene a necessity, you should involve your selves in a general-guilt, the election ought to have beene of such a one as might have dyed with your selves; but this like originall sinne, binds your posterity to sigh for a redemption. Did we bequeath unto you those faire ornaments to be stolne or snatched from you? Oh, where, where was your vigilancy and boldnesse to present so disasterous and fatall a consequence. Did wee with no better successe of imitation by your labour, and even unto hoarsenesse contend in the Parliament held 39. *Hen.* 6. as Prophecying your weakenesse, leave you a record to build upon? Where we admitted and priviledged one *Walter Clarke* a Burgesse of *Chepengham*, though at that time in execution *ad sect. Reg.* Did we for this purpose recommend unto you *Ferrars* case and our proceedings against the disturbers of his right? Did wee for this purpose recommend unto you *Belgraves* case 43. of the Queene. *Who notwithstanding he procured his election in Winchester by collusion*, yet *Mangre* the great opposition raised by the Earle of *Huntington* upon the sight of the Sheriffes returne (a suffi-

ſufficient amerment to ſatisfie vs) we admitted and confirmed him in the protection of our houſe, did we for this purpoſe exemplifie unto you the caſe of *Richard Chidder*, 5. *Henry* 4. who being arreſted in his journey towards the Parliaments (where note that the date of the election is the date of the priviledge.) They are twins of one birth, wee ingraft him as a twig to be writh'd by our common roote, and quickly lopt off that ſo perilous authority wch would prunne our branches. Nay Mr. *Speaker*, our fellowes labouring Parliament in *England*, with their hearty cõmendation have tranſmitted unto us a precedent from each houſe. The houſe of the Lords opening the gates of the Tower to prepare an entry to the cenſured Biſhop of *Lincolne*, and the houſe of Commons with like imitation & like ſucceſſe having performed the ſame in Sir *Iohn Elliot* and innumerable others. But now I will endeavour to allay the diſtempered ſpirits of our Fathers, whileſt with more patience and duty we attend the modeſt corrections of our indulgent King. And ſo *exeunt Patres*, and *Intr. H.* 8. in his owne perſon commending the reſolution and zeale of the houſe of Commons in preſerving the luſtre of their owne Priviledges from being Eclipſed, alledging himſelfe to be intereſſed in them, ſince that hee and they, knit together, com-

pleated one body, who in this our deſerved calamities, would not rather imitate us by ſcofs, then qualifie our untimely repentance by abſence of our owne murdering wrongs. What may not *E*.4.exprobrate unto us,who in the 3. yeare of his raigne, records his regall pleaſure to poſterity? That all Acts, Suites,judgments, cenſures & *qui dicit omne excludit nullum*,awarded againſt any Member of Parliament, ſhould be utterly void and fruſtrate, crowning the Act with anEmphaticall epiphonema,and this act to endure for ever. And ſurely common reaſon is pregnant in the juſtification thereof. That where the publique ſervice and good is primarily intended,a ſuperſedeas muſt iſſue to private reſpects,ſince they cannot ſtād in competition,&inhabit our ſpheare.If their judgments are not yet calmed and ſetled , behold his Majeſty,that now is,cloathed in his royallRobes,and thus ſpeaking unto you from underneath his ſtate. Gentlemen, why ſtagger you thus, that are your ſelves the pillars of the commonweale,you are not upon breaking the Ice, nor bound upon the diſcovery of the unknowne world,each leafe reports your precedents that are like Maps that ſecure and expedite your fortunate Navigation. From mee you can expect no more ſatisfactiō,then what J have declared in the 3. yeare of my Raigne, in anſwer to the Petition of Right in Parliament

liament, that J am interested in the maintaining of the Priviledges of this House, being a maine pillar of the liberty of my Subject, the goods of one being seised in my name, and for my use, for denying Tonnage and pondage, they re-assumed, hee being at the time of that seisure a Member of the House, and whether J distasted, sure J am, J had no redresse. As for the tender care of my interest in the Fine of 10000 l. and that you admitted my Attorny generall to a favourable hearing in my behalfe, though against your selves (a Parliamentary custome not to be written in small Print) I thanke you Gentlemen, yet I thinke you know, as well as I, that these great sounding Fines to me, have in their effects, but short and little accounts, if there be 3. bags, the little one is mine: The 5000 l. dammages to the party (a summe equall, or more to the defendants estate) is as much as *Magna Charta*, by those words of *salvo contenemento*, would warrant: Therefore my Judges, by dividing it, might have considered me somewhat, whereas now the old proverbe binds me, where there is nothing left, the King loses his right.

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Now Mr. *Speaker*, in a Parliamentary way, wee must withdraw and enter into our owne Spheare. Enter into a discusse of those objections, that impugne Mr. *Fitz-Gerralds* election, admittance and priviledge of this House.

The first that ushers in the traine, is a sentence cloathed in sable, standing on tip-toe, and with a rustie dagger thrusting at a starre, I meane a sentence speaking error, a sentence visiting the third and fourth generation, a sentence striving to leap over the bounds of *magna charta*, thirty times confirmed, a sentence awarded against a *Judge* of a higher Court, then from which it issued. The cause in question is to nullifie this sentence, which if hee appeare a person capable of his priviledge, *mote sua vivit*, and then neither it, nor any thing derivatory, or collater all to it, may bee admitted against him by the rules of common, civill, or cannon Law, it being a maxime consonant to them all. *Non potes edduci ejusdam rei excepio cujus petitur dissolutio*. Now to prove this sentence void (Mr. *Speaker*) I being no professour of the Law, yet a Disciple of reason, and the body of the audient Subject to the like guilt,

guilt: I will couch my selfe in argumẽts, *quæ probat & non probantur*, leaving precedents and Booke-cases to the learned long Robe: Then thus I argue. By the Stat. 3. *E*. 4. All judgemẽts, ceusures, sentences, &c. awarded against a member of Parliament are void, so was this government: some may say, the King is not here included, I say (*qui dicit omne, excludit nullum*) And experience, the mother of knowledge, teacheth the same in precedents afore rehearsed, and one J will adde for all, which is *Trewman*, 38. *Hen*. 8. who was in execution upon a writ of exigent after *a Capias ad satisfaciend*. at the Kings suite, and yet priviledged, besides, this is not at the Kings suite, for the King is interessed here but secondarily both in name and profit. Now I must make good my minor, that he is a member of this house: hee that was duly elected and truely returned, is a member of this house, so was he. *Ergo, &c*. My minor will be questioned, J confirme it thus, where the Kings writ for election is duely pursued, according to the most vsed and received forme, there such an election is good, so was this. *Ergo*. Here (Mr. *Speaker*) falls the weight of their objection, which we will master, and answer with equall speede, and first *vellicat mihi aureum nescio quis*, and

 sayeth

ſayes the writ is *Burgenſis de Burgo*, but he is not *Burgenſis de Burgo*. Firſt I ſay *quomodo conſtat*, here is none to offer in proofe he is not ſo, beſide I offer it in Quære, whether the election doth not *ipſo facto* make him a Burgeſſe, *& in omni inſtanti*, againe I ſay the writ is *directive* not *poſitive. v.g. in a venire facias*, the Sheriffe commanded to returne 12. yet if hee returne not 24. he ſhall be fined, in reſpect experience and practice proves, ſome of the 12. may be queſtioned and challenged: beſides the writ explains it ſelfe, the Knights muſt be *Comitatus tui*, but the Burgeſſes and Citizens *de qualibit Civitate & Burgo*, which can admit of no other cõſtruction, but theſe two Burgeſſes out of every Burrough (& not as *Comitattus tui*, is, which were then of every Burrough, and certainly the Law provided this with great reaſon as not doubting every Sheere could afford 2. Knights, *reſident*, *yet jealous*, whether every burrough could provide 2. reſident Burgeſſes qualified with theſe neceſſary adjũcts, as could befit a member of ſo noble a place; Againe the writ commands *duos milites*, and yet exception was never takẽ upon retorning of Eſquires, ſo that the writ expounds it ſelfe, it is not literally to be taken. Next there is Thunder and Lightning ſhot out of the Statute, 33. *H*.8. being a Stat. to regulate election, and abſolutely commanding every Knight and Burgeſſe to be

reſident

resident and have a certaine Fee-simple in every burrough and County, out of which they are elected; Here they suppose our Priviledge will cry quarter as ready to be murtherd by the Statute, but it is *ominous ante victoriã canere.* For first, we answer, that the disuse of a Statute antiquates a Statute, as is observed upon the Statute of *Merton*, and custome applauded by fortunate experience hath in all Parliaments ever prevailed; a house of Commons would rather present *Babell* in it's confusion, if the *Tincker* would speake his *Dialect*, the Cobler his, and the Butcher conclude a greasie Epilogue, then the writ were well pursued, these were *Idonei homines* to take & give counsell *de rebus arduis*; but even to cut off the head of their owne argument by a Sword of their own, this Stat. of 33. *H.* 8. seemes by the preamble to be made in repeale of all former Statuts, by which, election not qualified with residencie, was made void, and so became a greevance to the Common-wealth, & therefore this Statute makes the election not observed *ut supra*, onely penall, so that there is nothing offered in objection, either from the writ or Statute to avoid this election. Now I have placed him & daily elected him, and then his priviledge growes by consequence, but yet we have other objections *minoris magnitudinis*, & to repeate them is to confute them; First say they eve-

ry *Libelleris*, *de jure*, excõmunicated; I answer, every *Libeller* must be *Scriptis*; *Pictis*, or *Cantilenis*, our member is guilty of none of them, no, he is not termed, so neither in the censure, nor in any present proceeding. Another flourish is, that hee pleaded not his priviledge in the *Castle-Chamber*, in which very objection, they confesse him priviledged, and make themselves guilty, that they would proceed against a knowne member of our House. But see the Roman Spirit of Mr. *Fitz-Gerald*, who would rather undergoe the hazard of being a *Starre-chamber Martyr*, then to submit our Priviledge to an extrajudiciall debate. It was in our honour hee did this, and for his eternall applause: some body sayes the castle chamber will thinke it selfe injured, there being Lords of the house of parliament at & in the censure. As for the Lords, *hamanum est errare*, but the Iudges are rather involved in these words *Prameditata malitia*, for his election was the 11. of *November* sitting the in Parliament; and his censure the 13. of *December*, so they had 22. or 23. dayes to repent of their ill-grounded resolution, a greater affront never offered to the house of Commons, being comparative, as if the Recorder of the *Tolsell* should sentence the Lord chiefe Justice of *Ireland* a member of our house is a walking Record: & needs not to melt the Kings

picture

picture in his pocket. Others alledge, it was an election purchased by collusion, but *de non existentibus & non apparentib. eadem est ratio.* And since the end of his election is in it selfe and *per-se*, for the advancing of the publicke service, as well as to prove a sentence not then *in rerum natura*, both Law and charity in a benigne cõstruction of these 2. ends will allow the more favourable. Another objection is whispered, that the entrance is not found in the Clerke of the Parliaments Role; This is no matter to the validity of his election, for his Priviledge commenced 40. dayes before the Parliament, therefore this and the like are to be judged of as *accidentia quæ possunt abesse & adesse sine subjecti interitu.* Truely (Mr. *Speaker*) my memory and lungs begin to prove Traitors to me; Another objection, if omitted, may be judged by these of what strength and maturity they, even as by the coynage of a penny, one may judge of a shilling; What hinders then, since here is water but that hee may be baptized? Here are no *non obstant's* to be admitted in his new Patent of Denization, the common law, the Statute law, the Canon, the Civill Law plead for his admittance, the writ of election, the exẽplification of the Sheriffes returne, all presidents of all ages, all reports plead for his admittance, our fore-Fathers Ghosts, the present practice of Parliaments in *England* plead for his admittance,

the Kings ſucceſſive commands, command and confirme his admittance; Away then Serjeant and with the hazarding power of our Mace touch the Marſhals gates, and (as if there were Divinity in it) they will open and bring us our Olive branch of peace wreſted from our ſtock, that with welcome Art we may ingraft him to be nouriſhed by a common roote. Thus the King ſhall receive the benefit of an able Subject, who is otherwiſe, *Civiliter mortuus*, we enjoy the participation of his labour, and poſterity both ours and this.

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