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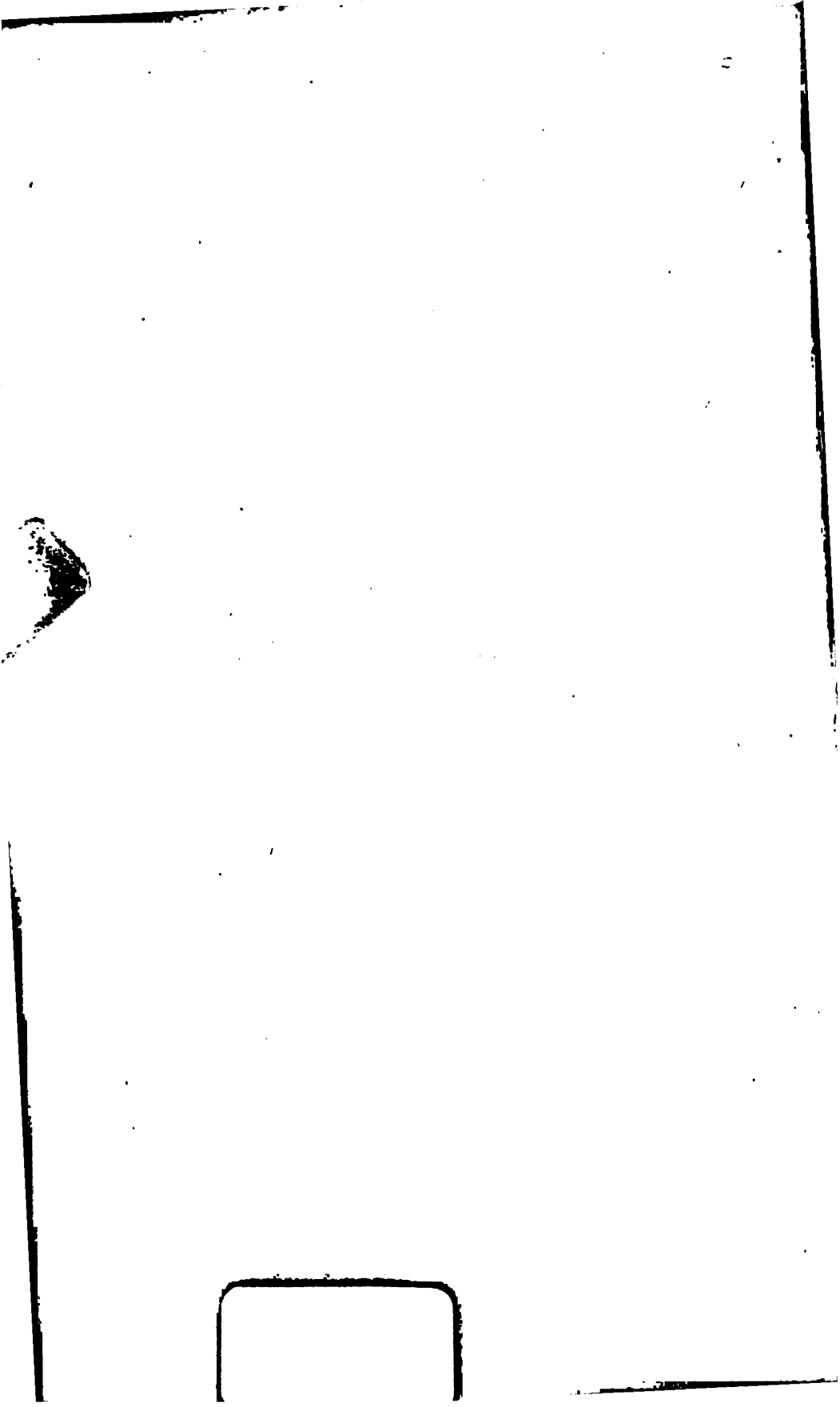
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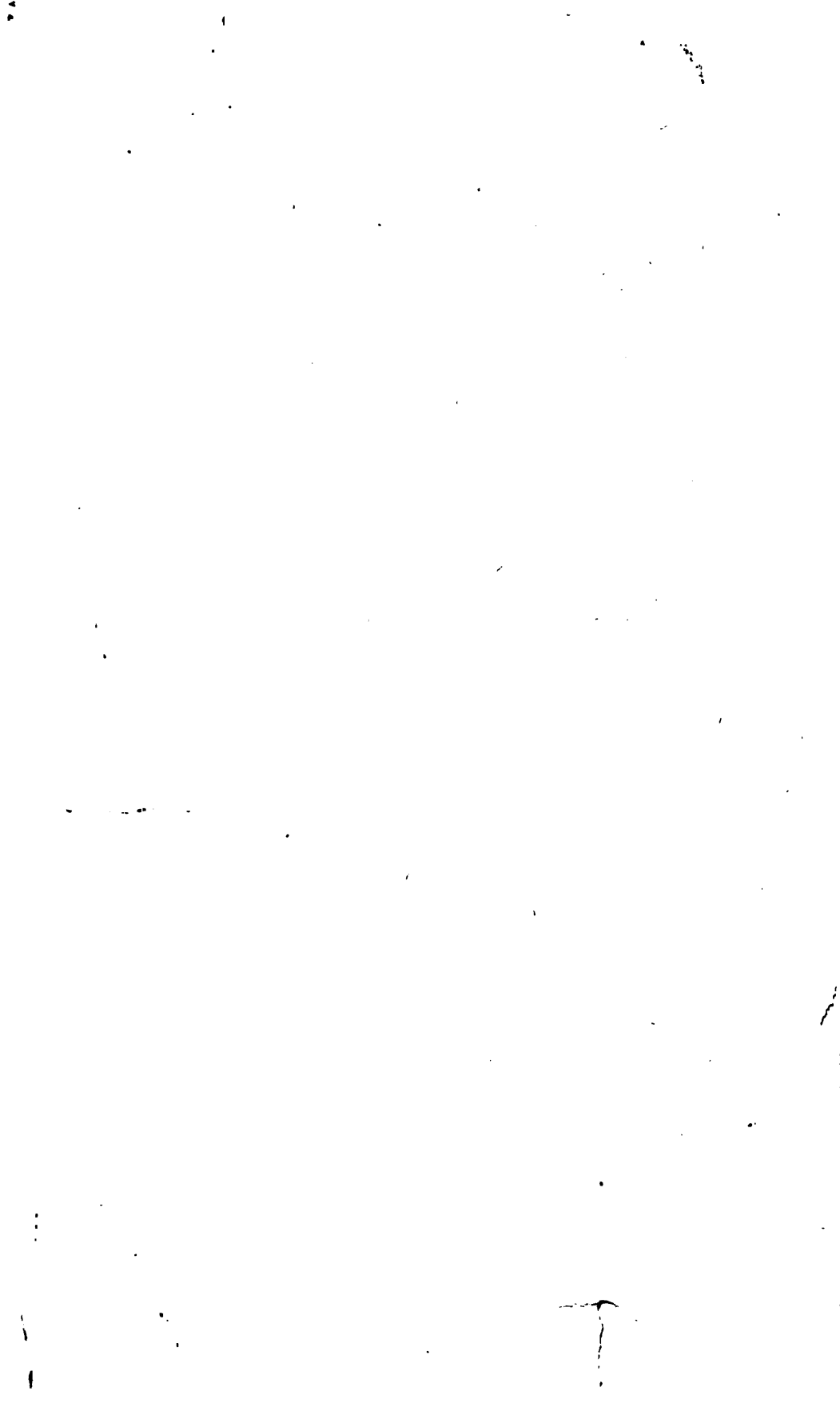
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Complete





A
COMPLETE COLLECTION
OF
State Trials

AND
PROCEEDINGS FOR HIGH TREASON AND OTHER
CRIMES AND MISDEMEANORS

FROM THE
EARLIEST PERIOD TO THE YEAR 1783,
WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY
T. B. HOWELL, Esq. F.R.S. F.S.A.

INCLUDING,
IN ADDITION TO THE WHOLE OF THE MATTER CONTAINED IN THE
FOLIO EDITION OF HARGRAVE,
UPWARDS OF TWO HUNDRED CASES NEVER BEFORE COLLECTED;
TO WHICH IS SUBJOINED
A TABLE OF PARALLEL REFERENCE,
RENDERING THIS EDITION APPLICABLE TO THOSE BOOKS OF AUTHORITY IN
WHICH REFERENCES ARE MADE TO THE FOLIO EDITION.

IN TWENTY-ONE VOLUMES.

VOL. VI.

13—30 CHARLES II.....1661—1678.

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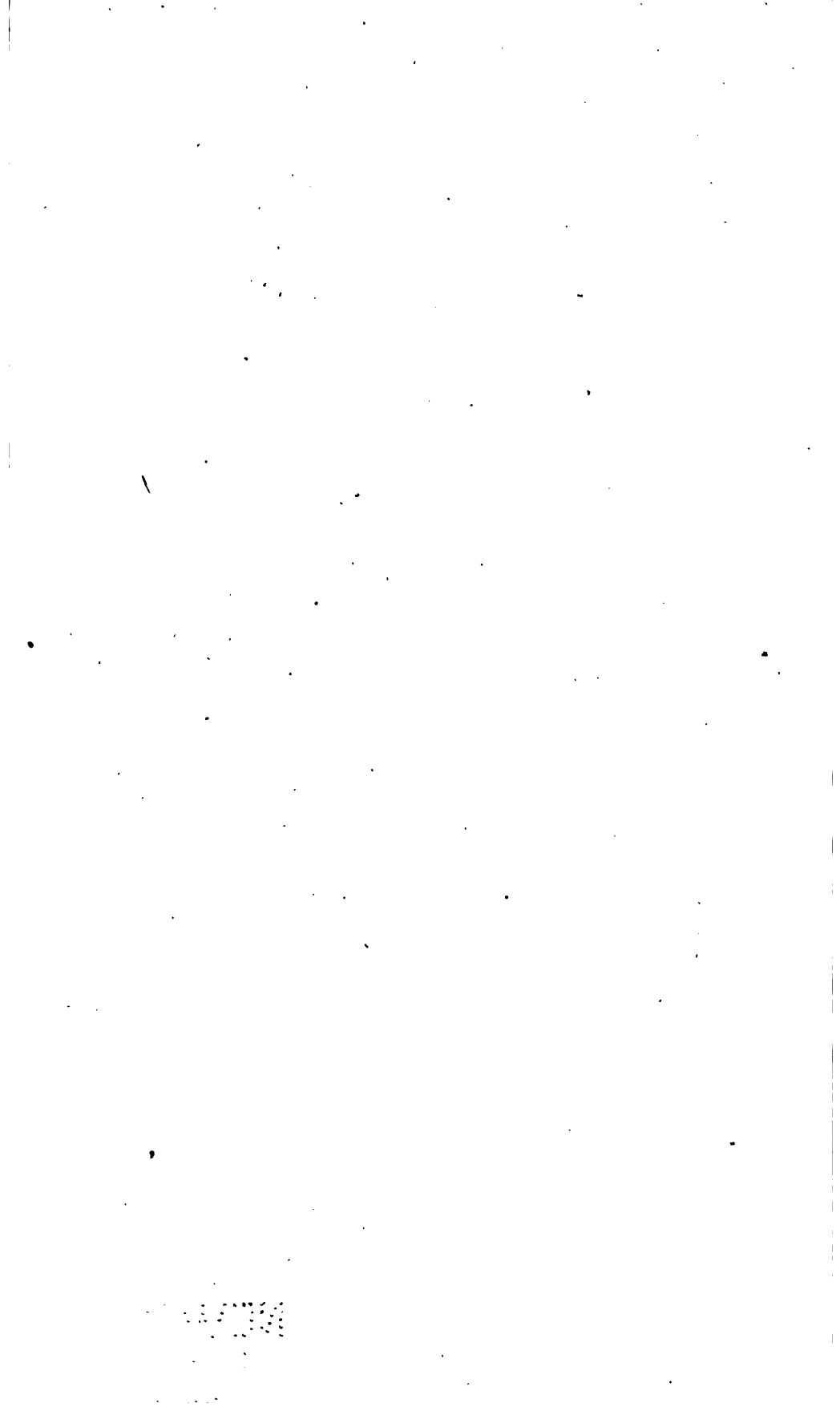


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COBBETT'S COMPLETE COLLECTION

OF

State Trials.

208. Proceedings at the CONFERENCE in the SAVOY, respecting a Review of the Liturgy : 13 CHARLES II. A. D. 1661. [2 Collier's Eccles. Hist. 871. 4 Neal's Puritans, 233. 3 Kennett, 225.]

AT the Restoration, the Church recovered with the Crown ; though this ground was not gained without some contest with the dissenting party. Neither is this struggle much surprising, if we consider, that for 14 or 15 years last past the hierarchy had been broken, the liturgy laid aside, and a new form both as to worship and government, publicly prevailed. The Presbyterians had several circumstances of advantage to support their hopes. Possession of the chair, the inclination of no small numbers of the people, the countenance of great men, and the king's declaration at Breda, gave this party no uncomfortable prospect. To keep them somewhat sanguine in their expectations, Dr. Reynolds, Dr. Spurstow, Dr. Wallis, Dr. Bates, Dr. Manton, Mr. Calamy, Mr. Ask, Mr. Baxter, Mr. Case, and two or three more, were made the king's chaplains in ordinary ; though none of them ever preached before his majesty excepting Calamy, Reynolds, Baxter, Spurstow, and Woodbridge ; and none of these but once. However, this appearing in the chapel, made their access to his majesty the more easy. To pursue their interest therefore they waited on his majesty soon after the restoration, being introduced by the earl of Manchester. In their address, they recommended the uniting the kingdom in matters of religion : that if his majesty would please to contribute his assistance nothing could be more promising than the present juncture : they intreated that the terms of Union might include nothing but necessary things : that the true exercise of church discipline might be allowed : that those ministers who were most serviceable for this branch of the function might not be laid aside, nor unworthy unqualified men, put upon the people.

The king declared himself much pleased with their reconciling temper, and resolved to do his part for promoting what was suggested : but told them withal, " That this agreement could not be expected without something of cession and abatement on both sides : that if the issue did not answer, it should not be his fault but their own : that he was resolved to leave no proper methods unattempted, for procuring a harmony, and drawing the distant persuasions to a good understanding. To this end he desired them to lay some proposals before him touching church government. That this main difference being once settled, other matters would be easily accommodated." And here his majesty ordered them to set down the full length of their concessions. They told the king they were but a small number, and had no commission from their brethren to declare themselves upon this head. They desired therefore they might have leave to acquaint their brethren in the country with his majesty's commands, and receive their sentiments upon this argument. The king replied, that method would be dilatory, and make too much noise : that therefore he had rather the proposals should come from themselves, and that for fuller information, they might communicate this affair with their friends in the city. To this their answer was : " They were in no condition either to speak for, or oblige other people : and therefore what they offered his majesty could only be taken for their own sense." The king let them know they should be construed no otherwise, and that he did not design to convene a Synod or Assembly of the other party, but only make use of a few for adjusting this matter." Upon this, these divines begged the king that when they laid their concessions before him, his majesty would order their

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brethren of the Church of England, might deliver in a paper of the utmost they could yield: that when the relaxations of both sides were compared, the success might the better be conjectured. The king, thinking this reasonable, promised their request.

Upon this they summoned the city ministers to meet and consult at Sion college, not excluding such of their country brethren as would attend, that it might not be said afterwards they took upon themselves the concluding so weighty an affair. After two or three weeks consultation they agreed upon a paper to the following purpose, drawn up chiefly by Dr. Reynolds, Dr. Worth, and Mr. Calamy, which, together with archbishop Usher's reclusion of Episcopacy, they offered to the king; with the following Address:*

"May it please your most excellent majesty; We your majesty's most loyal subjects cannot but acknowledge it as a very great

* This Primate's scheme was necessary to avoid the corruptions, partiality, and tyranny incident to the administration of a single person. The things which they chiefly blamed in the English hierarchy were; the great extent of the bishop's diocese; their deputing commissaries; chancellors, and officials to act in their stead; their assuming the sole power of ordination and jurisdiction; and acting so arbitrarily in visitation articles. Besides this, they objected their bringing in new ceremonies, and suspending ministers at pleasure: for reforming these evils, as they called them, they proposed that bishop Usher's notion of episcopal government might be received as the groundwork of an accommodation. This Primate's scheme is couched under the four following propositions.

I. "Usher would have it, that in every parish the rector, or the incumbent pastor, together with the church-warden and sideman, may every week take notice of such as live scandalously in the congregation; who are to receive such several admonitions and reproofs as the quality of their offence shall deserve; and if by this means they cannot be reclaimed they may be presented unto the next monthly Synod, and in the mean time, be debarred by the Pastor from access unto the Lord's table.

II. "Whereas by a statute in the 26 of Hen. 8 (revived in the 1st of Q. Eliz.) Suffragans are appointed to be erected in 26 several places of this kingdom, the number of them might be very well conformed unto the several rural deaneries, into which every diocese is subdivided; which being done, the Suffragan (supplying the place of these who in the ancient church were called Chorepiscopi) might every month assemble a Synod of all the rectors or incumbent pastors, within the precinct, and according to the major part of their voices, conclude all matters that should be brought into debate before them. To this Synod the rector and churchwardens might present such impatient persons, as by admonition and sus-

mercy of God, that immediately after so wonderful and peaceable restoration to your throne and government (for which we bless his name) he has stired up your royal heart, as to a zealous testimony against prophaneness, so to endeavour an happy composing of the differences and healing the said breaches which are in the church. And we shall according to our bounden duty, become humble suitors to the throne of grace, that the God of peace, who has put such a thing as this into your majesty's heart, will, by his heavenly wisdom and holy spirit assist you herein, that you may bring your Resolutions to a perfect effect and issue—

"In humble conformity to your majesty's christian designs, we taking it for granted, that there is a firm agreement between our brethren

pension from the sacrament, would not be reformed, who, if they would still remain contumacious and incorrigible, the sentence of excommunication might be decreed against them by the Synod, and accordingly be executed in the parish where they lived. Hitherto also all things that concerned the parochial ministers might be referred, whether they did touch their doctrine or their conversation: as also the censure of all new opinions, heresies, and schisms, which did arise within that circuit, with liberty of appeal if need so require, unto the Diocesan Synod.

III. "The Diocesan Synod might be held once or twice in the year, as it should be thought most convenient; therein all the Suffragans, and the rest of the rectors or incumbent pastors, or a certain select number out of every deanery within that diocese might meet; with whose consent or the major part of them, all things might be concluded by the bishop or superintendent (call him which you will) or in his absence by one of the Suffragans, whom he should depute in his stead, to be moderator of that assembly. Here all matters of great moment might be taken into consideration, and the orders of the monthly Synods revised, and, if need be, reformed. And if here also any matter of difficulty could not receive a full determination it might be referred to the next provincial, or nation Synod.

IV. "The provincial Synod might consist of all the Bishops and Suffragans and such of the clergy as should be elected out of every diocese within the province. The primate of either province, might be the moderator of this meeting (or in his room some one of the bishops appointed by him) and all matters be ordered therein by common consent, as in the former assemblies. This Synod might be held every third year, and if the parliament do then sit, both the primates and provincial Synods of the land might join together and make up a national council; wherein all appeals from inferior Synods might be received, all their acts examined, and all ecclesiastical constitutions which concern the state of the church of the whole nation established."

and us, in the doctrinal truths of the reformed religion, and in the substantial parts of divine worship, humbly desire,

“First that we may be secured of those things in practice of which we seem to be agreed in principle; as,

“1. That those of our flocks that are serious in matters of their salvation may not be reproachfully handled by words of scorn or any abusive language, but may be encouraged in their duties of exhorting and provoking one another in their most holy faith, and of furthering one another in the ways of eternal life.

“2. That each congregation may have a learned, orthodox, and godly pastor; that the people may be publicly instructed by preaching every Lord's day, by catechising, by frequent administering the Lord's Supper and Baptism; and that effectual provision by law may be made, that such as are insufficient, negligent, or scandalous, may not officiate.

“3. That none may be admitted to the Lord's Supper till they personally own their baptismal covenant by a credible profession of faith and holiness, not contradicted by a scandalous life. That to such only Confirmation may be administered; and that the approbation of the pastor to whom the instructing those under his charge doth appertain, may be produced before any person receives confirmation.

“4. That an effectual course be taken for the sanctification of the Lord's day, appropriating the same to holy exercises both in public and private, without any unnecessary diversements.”

“Then for matters in difference (viz.) Church government, Liturgy, and Ceremonies, we humbly represent,

“That we do not renounce the true antient primitive episcopacy or presidency as it was balanced with a due commixtion of Presbyters. If therefore your majesty, in your grave wisdom and moderation, shall constitute such an episcopacy we shall humbly submit thereunto. And in order to an accommodation in this weighty affair, we desire humbly to offer some particulars which we conceive were amiss in the episcopal government as it was practised before the year 1640.

“1. The great extent of the bishops dioecese, which we apprehend too large for his personal inspection.

“2. That by reason of this disability the bishops did depute the administration in matters of spiritual cognizance, to commissaries, chancellors, officials, whereof some are secular persons and could not administer that power that originally belongs to the officers of the church.

“3. That the bishops did assume the sole power of ordination and jurisdiction to themselves.

“4. That some of the bishops exercised an arbitrary power, by sending forth articles of visitation, enquiring unwarrantably into several things; and swearing church wardens to pro-

sent accordingly. Also many innovations and ceremonies were imposed upon ministers and people not required by law.

“For remedy of these evils we crave leave to offer,

“1. The late most reverend Primate of Ireland, his Reduction of Episcopacy into the form of Synodical Government.

“2. We humbly desire, that the Suffragans or Chorepiscopi, may be chosen by the respective synods.

“3. That no oaths or promises of obedience to the bishops, nor any unnecessary subscriptions or engagements be made necessary to ordination, institution, or induction, ministrations, communion or immunities of ministers, they being responsible for any transgression of the law. And that no bishops or ecclesiastical governors may exercise their government, by their private will, or pleasure, but only by such rules, canons, and constitutions, as shall be established by parliament.”

“Secondly, concerning Liturgy.

“1. We are satisfied in our judgments concerning the lawfulness of a liturgy, or form of worship, provided it be for matter agreeable to the word of God, and suited to the nature of the several ordinances and necessities of the church, neither too tedious, nor composed of too short prayers or responsals, nor dissonant from the liturgies of other reformed churches, nor too rigorously imposed, nor the minister confined thereunto, but that he may also make use of his gifts for prayer and exhortation.

“2. Forasmuch as the book of common-prayer is in some things justly offensive, and needs amendment, we most humbly pray, that some learned, godly, and moderate divines of both persuasions, may be employed to compile such a form as is before described as much as may be in scripture words; or at least to revise, and reform the old; together with an addition of other various forms in Scripture phrase, to be used at the minister's choice.”

“Thirdly, concerning Ceremonies.

“We hold ourselves obliged in every part of divine worship, to do all things decently and in order, and to edification; and are willing to be determined by authority in such things, as being merely circumstantial, are common to human actions and societies and are to be ordered by the light of nature, and human prudence.

“As to divers ceremonies formerly retained in the church of England, we do, in all humility, offer to your majesty the following considerations.

“That the worship of God is in itself pure and perfect, and decent without any such ceremonies. That it is then most pure and acceptable when it has least of human mixtures. That these ceremonies have been imposed and advanced by some, so as to draw near to the significancy and moral efficacy of sacraments. That they have been rejected by many of the reformed churches abroad, and have been ever the subject of contention and endless disputes

in this church; and therefore being in their own nature indifferent and mutable, they ought to be changed, lest in time they should be apprehended as necessary as the substantial of worship themselves.

“May it therefore please your majesty graciously to grant, that kneeling at the Lord’s Supper, and such holy days as are but of human institution, may not be imposed on such as scruple them. That the use of the surplice and cross in baptism, and bowing at the name of Jesus, may be abolished. And forasmuch as erecting altars and bowing towards them, and such like (having no foundation in the law of the land) have been introduced and imposed, we humbly beseech your majesty, that such innovations may not be used or imposed for the future.”

When the Presbyterian divines came to court with these proposals the king received them favourably, and promised to bring both parties together. His majesty told them, he was glad to hear that they were for a liturgy, and forms of prayer, and that they were willing to yield to the essence of episcopacy, and therefore he doubted not of procuring an accommodation. The ministers expected to have met the bishops with their papers of proposals, but none of them appeared, having been better instructed in a private conference with the lord chancellor Hyde, who told them, it was not their business to bring proposals, because they were in possession of the laws of the land; that the hierarchy and service book being the only legal establishment ought to be the standard of agreement; and therefore they had nothing to do but to answer the exceptions of the ministers against it. Accordingly instead of a Conference, or Paper of Proposals which the ministers expected, the bishops having obtained a copy of the Paper of the Presbyterians, drew up an Answer in writing which was communicated to their ministers, July 8.

In this Answer the bishops take notice of the ministers’ concessions in their preamble, “as that they agree with them in the substantial of doctrine and worship;” and infer from thence, that their particular exceptions are of less importance and ought not to be stood upon to the disturbance of the peace of the church.

As to their preliminary requests, they conceive the laws of the realm have made a sufficient provision, and that no farther security can be given. As for liberty of conscience they are willing to comply, provided a passage may not be opened for private conventicles: for should such an indulgence be granted, the consequences might prove very unserviceable to the state. That they approve the fixing a godly minister in each parish, but do not understand what is meant by residing on his cure, nor how far those words may be stretched; nor what farther provision can be made upon that head. As for Confirmation, and the barring scandalous persons from the Communion, they thought the church had taken sufficient care of that matter. And touching the obser-

vation of the Lord’s day: They reply, the laws of the kingdom were stricter than those of any foreign reformed Communion whatsoever.

To the particulars they answer,

1. Concerning church-government; “That they never heard any just reasons for a dissent from the Ecclesiastical hierarchy of this kingdom, which they believe in the main to be the true primitive episcopacy, which was more than a mere presidency of order. Nor do they find that it was balanced by any authoritative commixtion of Presbyters, though it has been in all times exercised with the assistance and counsel of Presbyters, in subordination to Bishops. They wonder that they should except against the government by one single person, which, if applied to the civil magistrate, is a most dangerous insinuation.”

As to the four particular instances of things amiss.

1. “We cannot grant the extent of any diocese is so great, but that a bishop may well perform his duty, which is not a personal inspection of every man’s soul, but the pastoral charge, or taking care that the ministers, and other ecclesiastical officers within their diocese, do their duties: and if some diocesses should be too large, the law allows suffragans.

2. “Concerning Lay-Chancellors, &c. we confess the Bishops did depute part of their ecclesiastical jurisdiction to Chancellors, Commissaries, Officials, &c. as men better skilled in the civil and canon laws; but as for matters of mere spiritual concernment, as excommunication, absolution, and other censures of the church, we conceive they belong properly to the Bishop himself, or his surrogate, wherein if any thing has been done amiss, we are willing it should be reformed.

3. “Whether Bishops are a distinct order from Presbyters, or not? or, whether they have the sole power of ordination; is not now the question; but, we affirm, that the Bishops of this realm have constantly ordained with the assistance of Presbyters, and the imposition of their hands together with the Bishops, and for this purpose the colleges of Deans and Chapters are instituted.

4. “As to Archbishop Usher’s model of church government, we decline it, as not consistent with his other learned discourses on the original of Episcopacy, and of Metropolitans; nor with the king’s supremacy in causes ecclesiastical.”

II. Concerning Liturgy.

“We esteem the Liturgy of the church of England, contained in the book of common-prayer, and by law established, to be such an one as is by them desired, according to the qualifications which they mention; the disuse of which has been the cause of the sad divisions of the church, and the restoring it may be, by God’s blessing, a special means of making up the breach. Nor can the imposition of it be called rigorous, as long as clergymen have the liberty of using their gifts before and after sermons. Nevertheless we are not against revising

the Liturgy by such discreet persons as his majesty shall think fit to employ therein."

III. Of Ceremonies.

"Lawful authority has already determined the ceremonies in question to be decent and orderly, and for edification, and consequently to be agreeable to the general rules of the word. We allow the worship of God is in itself perfect in essentials, but still the church is at liberty to improve it with circumstantials for decency and order. Ceremonies were never esteemed to be sacraments, nor imposed as such; they are retained by most Protestant churches; and that they have been the subject of contention is owing to mens weakness, and their unwillingness to submit their private opinions to the public judgment of the church. We acknowledge, that these things are in their nature mutable, but we can by no means think it expedient to remove them. However, as we are no way against such a tender and religious compassion in things of this nature, as his majesty's piety and wisdom shall think fit to extend: so we cannot think that the satisfaction of some private persons is to be laid in the balance against the public peace and uniformity of the church.

"As for kneeling at the Lord's Supper, it is a gesture of the greatest reverence and devotion, and so most agreeable to that holy service.

"Holy days of human institution having been observed by the people of God in the Old Testament, and by our blessed Saviour himself in the gospel, and by all the churches of Christ in the primitive and following times, as apt means to preserve the memorials of the chief mysteries of the Christian religion: and such holy days also being fit times for the honest recreation of the meaner sort of people; for these reasons we humbly desire they may be continued in the church.

"As for the three other Ceremonies, the Surplice, the Cross after Baptism, and bowing at the Name of Jesus, though we see not any sufficient reason why they should be utterly abolished, nevertheless, how far forth, in regard of tender consciences, a liberty may be thought fit to be indulged to any, his majesty is best able to judge.

They conclude thus, "We are so far from believing that his majesty's descending to the ministers demands will take away not only our differences, but the roots and causes of them, that we are confident it will prove the seminary of new differences, both by giving dissatisfaction to those that are well pleased with what is already established, who are much the greatest part of his majesty's subjects: and by encouraging unquiet spirits, when these things shall be granted, to make further demands; there being no assurance by them given, what will content all dissenters, than which nothing is more necessary for settling a firm peace in the church."

About a week after, the Presbyterian divines sent the Bishops a warm Remonstrance,

and Defence of their Proposals, drawn up chiefly by Mr. Baxter, to the following purpose.

Concerning the Preamble.

"We are not insensible of the great danger of the church, through the doctrinal errors of those with whom we differ also about points of government and worship; but we choose to say nothing of the party that we are agreed with in doctrinals, because we both subscribe the same holy scriptures, articles of religion, and books of homilies; and the contradictions to their own confessions which too many are guilty of, we did not think just to charge upon the whole."

Concerning Church-government.

"Had you read Gerson, Bucer, Parker, Baynes, Salmasius, Blondel, &c. you would have seen just reason given for our dissent from the Ecclesiastical Hierarchy as stated in England."

Instances of Things amiss.

"You would easily grant that dioceses are too great, if you had ever conscientiously tried the task which Dr. Hammond describeth as the Bishop's work; or had ever believed Ignatius, and other antient descriptions of a Bishop's church. You cannot be ignorant, that our Bishops have the sole government of pastors and people; that the whole power of the keys is in their hands, and that their Presbyters are but Cyphers."

Concerning Ceremonies.

"These divines argue for leaving them indifferent for the peace of the church, as being not essential to the perfection of Christian worship, especially when so many looked upon them as sinful."

They conclude thus, "We perceive your counsels against peace are not likely to be frustrated. Your desires concerning us are likely to be accomplished. You are like to be gratified with our silence and ejection; and yet we will believe, that blessed are the peacemakers; and though we are prevented by you in our pursuits of peace, and are never like thus publicly to seek it more, yet are we resolved, as much as possible, to live peaceably with all men."

The laws were now put in execution against such as did not make use of the old liturgy. Many were suspended and turned out of their livings, on this account; upon which the leading Presbyterians applied to the king, and humbly requested,

1. "That they might with all convenient speed see his majesty's conclusions upon the proposals of mutual condescensions, before they pass into resolves.

2. "That his majesty would publicly declare his pleasure for the suspension of all proceedings upon the Act of Uniformity, against non-conformists to the liturgy and ceremonies, till they saw the issue of their hoped-for agreement.

3. "That until the said settlement there may be no oath of canonical obedience, not

subscription to the liturgy and ceremonies required, nor renunciation of their ordination by mere Presbyters, imposed as necessary to institution, induction, or confirmation.

4. "That his majesty would cause the broad seal to be revoked, where persons had been put into the possession of the livings of others not void by sequestration, but by the death of the former incumbents.

5. "That a remedy may be provided against the return of scandalous ministers into the places from whence they had been ejected."

His majesty gave them a civil audience, and told them, he would put what he thought fit to grant them into the form of a Declaration, which they should have the liberty of perusing before it was made public. A copy of this was accordingly delivered by the chancellor to Mr. Baxter, and other Presbyterian divines, Sept. 4, with liberty to make exceptions, and give notice of what they disliked. These divines petitioned for some further amendments and alterations; upon which the king appointed a day to hear what could be said on both sides, and came to the chancellor's house, October 22, attended by the dukes of Albemarle and Ormond, the earls of Manchester, Anglesea, and lord Hollis.

On the part of the Bishops were, Dr. Sheldon, bishop of London; Dr. Morley, bishop of Worcester; Dr. Henchman, bishop of Salisbury; Dr. Cosins, bishop of Durham; Dr. Gauden, bishop of Exeter; Dr. Hackett, bishop of Litchfield and Coventry; Dr. Barwick, dean of St. Paul's; Dr. Gunning; &c.

On the side of the Presbyterians were, Dr. Reynolds, Mr. Calamy, Dr. Spurstow, Mr. Ashe, Dr. Manton, Mr. Baxter, Dr. Wallis.

As the chancellor read over the Declaration each party were to make their exceptions, and the king to determine. The chief debates were on the high power of the Bishops, and the necessity of re-ordination. Bishop Morley and Doctor Gunning spoke most on one side; and Mr. Calamy and Baxter on the other. Upon hearing the whole his majesty told them what he thought proper should stand in the declaration; and appointed bishop Morley and Henchman, doctor Reynolds and Mr. Calamy to determine upon proper words; and if they disagreed the earl of Anglesea and lord Hollis to decide.

At length the Declaration, with such amendments as the king would admit, was published under the following title:

"His Majesty's DECLARATION to all his loving subjects of his kingdom of England and dominion of Wales, concerning Ecclesiastical Affairs. Given at our Court at Whitehall, October 25, 1660, in the twelfth year of our reign.

"C. R.

"How much the peace of the state is concerned in the peace of the church, and how difficult a thing it is to preserve order and government in civil, whilst there is no order or

government in Ecclesiastical affairs, is evident to the world: and this little part of the world, our own dominions, hath had so late experience of it, that we may very well acquiesce in the conclusion, without enlarging ourself in discourse upon it, it being a subject we have had frequent occasion to contemplate upon, and to lament abroad as well as at home.

"In our Letter to the Speaker of the House of Commons from Breda, we declared how much we desired the advancement and propagation of the Protestant religion; that neither the unkindness of those of the same faith towards us, nor the civilities and obligations from those of a contrary profession (of both which we have had abundant evidence) could in the least degree startle us or make us swerve from it: and that nothing can be proposed to manifest our zeal and affection for it, to which we will not readily consent. And we said then, that we did hope in due time, ourself to propose somewhat for the propagation of it, that will satisfy the world that we have always made it both our care and our study, and have enough observed what is most like to bring disadvantage to it. And the truth is, we do think ourself more competent to propose, and with God's assistance to determine many things now in difference, from the time we have spent, and the experience we have had, in most of the reformed churches abroad, in France, in the Low Countries, and in Germany, where we have had frequent conferences with the most learned men, who have unanimously lamented the great reproach the Protestant religion undergoes from the distempers and too notorious schisms in matters of religion in England. And as the most learned amongst them have always with great submission and reverence acknowledged and magnified the established government of the Church of England, and the great countenance and shelter the Protestant religion received from it before these unhappy times: so many of them have with great ingenuity and sorrow confessed, that they were too easily misled by misinformation and prejudice into some disesteem of it; as if it had too much complied with the church of Rome; whereas they now acknowledge it to be the best fence God hath yet raised against popery in the world; and we are persuaded they do with great zeal wish it restored to its old dignity and veneration.

"When we were in Holland, we were attended by many grave and learned ministers from hence, who were looked upon as the most able and principal assertors of the Presbyterian opinions; with whom we had as much conference as the multitude of affairs which were then upon us would permit us to have; and, to our great satisfaction and comfort, found them persons full of affection to us, of zeal for the peace of the church and state, and neither enemies (as they have been given out to be) to episcopacy or liturgy, but modestly to desire such alterations in either, as, without shaking foundations, might best allay the present distempers which the indisposition of the time and

the tenderness of some mens consciences had contracted. For the better doing whereof, we did intend, upon our first arrival in this kingdom, to call a Synod of divines, as the most proper expedient to provide a proper remedy for all those differences and dissatisfactions which had or should arise in matters of religion. And in the mean time, we published in our Declaration from Breda, a liberty to tender consciences and that no man should be disquieted, or called in question for differences of opinion in matters of religion, which do not disturb the peace of the kingdom, and that we shall be ready to consent to such an act of parliament as upon mature deliberation shall be offered to us, for the full granting that indulgence.

“Whilst we continued in this temper of mind, and resolution, and have so far complied with the persuasions of particular persons, and the distemper of the time, as to be contented with the exercise of our religion in our own chapel, according to the constant practice and laws established, without enjoining that practice, and the observation of those laws in the churches of the kingdom; in which we have undergone the censure of many, as if we were without that zeal for the church which we ought to have, and which, by God’s grace, we shall always retain: we have found ourself not so candidly dealt with as we have deserved, and that there are unquiet and restless spirits, who, without abating any of their own distemper in recompence of the moderation they find in us, continue their bitterness against the church, and endeavour to raise jealousies of us, and to lessen our reputation by their reproaches, as if we were not true to the professions we have made: and in order thereunto, they have very unreasonably caused to be printed, published, and dispersed, throughout the kingdom, a Declaration heretofore printed in our name in Scotland, of which we shall say no more, than that the circumstances by which we were enforced to sign that Declaration, are enough known to the world; and that the worthiest and greatest part of that nation did even then detest and abhor the ill usage of us in that particular, when the same tyranny was exercised there by the power of a few ill men, which at that time had spread itself over this kingdom, and therefore we had no reason to expect that we should at this season, when we are doing all we can to wipe out the memory of all that hath been done amiss by other men, and we thank God have wiped it out of our own remembrance, have been ourself assaulted with those reproaches, which we will likewise forget.

“Since the printing this Declaration, several seditious pamphlets and queries have been published and scattered abroad to infuse dislike and jealousies into the hearts of the people, and of the army: and some, who ought rather to have repented the former mischief they have wrought, than to have endeavoured to improve it, have had the hardness to publish, That the

doctrine of the church, against which no man with whom we have conferred hath excepted, ought to be reformed as well as the discipline.

“This over-passionate and turbulent way of proceeding, and the impatience we find in many for some speedy determination in these matters, whereby the minds of men may be composed, and the peace of the church established, hath prevailed with us to invert the method we had proposed to ourself, and even in order to the better calling and composing a Synod (which the present jealousies will hardly agree upon) by the assistance of God’s blessed spirit, which we daily invoke and supplicate, to give some determination ourself to the matters in difference, until such a synod may be called, as may without passion or prejudice give us such farther assistance towards a perfect Union of affections as well as submission to authority, as is necessary. And we are the rather induced to take this upon us, by finding upon the full conference we have had with the learned men of several persuasions, that the mischiefs under which the church and state do at present suffer, do not result from any formed doctrine or conclusion which either party maintains or avows; but from the passion and appetite, and interest of particular persons, who contract greater prejudice to each other from those affections, than would naturally rise from their opinions; and those distempers must be in some degree allayed, before the meeting in a synod can be attended with better success than their meeting in other places, and their discourses in pulpits, have hitherto been: and till all thoughts of victory are laid aside, the humble and necessary thoughts for the vindication of truth cannot be enough entertained.

“We must, for the honour of all those of either persuasion with whom we have conferred, declare, That the professions and desires of all; for the advancement of piety and true godliness, are the same; their professions of zeal for the peace of the church, the same; of affection and duty to us the same: they all approve episcopacy; they all approve a set form of liturgy; and they all disprove and dislike the sin of sacrilege, and the alienation of the revenue of the church. And if, upon these excellent foundations, in submission to which there is such a harmony of affections, any superstructures should be raised, to the shaking those foundations, and to the contracting and lessening the blessed gift of charity, which is a vital part of Christian religion, we shall think ourself very unfortunate, and even suspect that we are defective in that administration of government with which God hath intrusted us.

“We need not profess the high affection and esteem we have for the Church of England, as it is established by law; the reverence to which hath supported us, by God’s blessing, against many temptations: nor do we think that reverence in the least degree diminished by our condescensions, nor preumptory to insist on some particulars of ceremony, which

however introduced by the piety and devotion, and order of former times, may not be so agreeable to the present, but may even lessen that piety and devotion for the improvement whereof they might happily be first introduced, and consequently may well be dispensed with. And we hope this charitable compliance of ours will dispose the minds of all men to a cheerful submission to that authority, the preservation whereof is so necessary for the unity and peace of the church; and that they will acknowledge the support of the episcopal authority to be the best support of religion, by being the best means to contain the minds of men within the rules of government. And they who would restrain the exercise of that holy function within the rules which were observed in the primitive times, must remember and consider, that the ecclesiastical power being in those blessed times always subordinate and subject to the civil; it was likewise proportioned to such an extent of jurisdiction, as was most agreeable to that. And as the sanctity, and simplicity, and resignation of that age did then refer many things to the bishops, which the policy of succeeding ages would not admit, at least did otherwise provide for; so it can be no reproach to primitive episcopacy, if where there have been great alterations in the civil government from what was then, there have been likewise some difference and alteration in the ecclesiastical, the essence and foundation being still preserved.

“And upon this ground, without taking upon us to censure the government of the church in other countries, where the government of the state is different from what it is here; or enlarging ourself upon the reasons why, whilst there was an imagination of erecting a democratical government here in the state, they should be willing to continue an aristocratical government in the church: it shall suffice to say, that since by the wonderful blessing of God, the hearts of this whole nation are returned to an obedience to monarchic government in the state, it must be very reasonable to support that government in the church which is established by law, and with which the monarchy hath flourished through so many ages, and which is, in truth, as ancient in this island as the Christian monarchy thereof; and which hath always, in some respects or degrees, been enlarged or restrained, as hath been thought most conducing to the peace and happiness of the kingdom. And therefore we have not the least doubt, but that the present bishops will think the present concessions now made by us to allay the present distempers, very just and reasonable, and will very cheerfully conform themselves thereunto.

1. “We do in the first place declare our purpose and resolution is, and shall be, to promote the power of godliness, to encourage the exercises of religion both public and private, and to take care that the Lord's day be applied to holy exercises, without unnecessary diversions; and that insufficient, negligent, and scan-

dalous ministers be not permitted in the church. And that as the present bishops are known to be men of great and exemplary piety in their lives, which they have manifested in their notorious and unexampled sufferings during these late distempers, and of great and known sufficiency of learning: So we shall take especial care to prefer no men to that office and charge, but men of learning, virtue and piety, who may be themselves the best examples to those who are to be governed by them. And we shall expect and provide the best we can, that the bishops be frequent preachers, and that they do very often preach themselves in some church of their diocese, except they be hindered by sickness or other bodily infirmities, or some other justifiable occasion, which shall not be thought justifiable if it be frequent.

2. “Because the dioceses, especially some of them, are thought to be of too large extent, we will appoint such a number of suffragan bishops in every diocese, as shall be sufficient for the due performance of their work.

3. “No bishop shall ordain or exercise any part of jurisdiction which appertains to the censures of the church, without the advice and assistance of the Presbyters: And no chancellor, commissaries or officials, as such, shall execute any act of spiritual jurisdiction in these cases, viz. Excommunication, Absolution, or wherein any of the ministry are concerned, with reference to their pastoral charge. However our intent and meaning is to uphold and maintain the profession of the civil law, so far and in such matters, as it hath been of use and practice within our kingdoms and dominions: albeit, as to Excommunication, our will and pleasure is, that no chancellor, commissary or official shall decree any sentence of excommunication or absolution, or be judges in those things wherein any of the ministry are concerned as is aforesaid: Nor shall the archdeacon exercise any jurisdiction without the advice and assistance of six ministers of his archdeaconry, whereof three to be nominated by the bishop, and three by the election of the major part of the presbyters within the archdeaconry.

4. “To the end that the Deans and Chapters may be the better fitted to afford counsel and assistance to the bishops, both in ordination and the other offices mentioned before, we will take care that those preferments be given to the most learned and pious presbyters of the diocese. And moreover, that an equal number to those of the chapter, of the most learned, pious and discreet presbyters of the same diocese, annually chosen by the major vote of all the presbyters of that diocese present at such elections, shall be always advising and assisting together with those of the chapter in all ordinations, and in every part of jurisdiction, which appertains to the censures of the church, and at all other solemn and important actions in the exercise of the ecclesiastical jurisdiction, wherein any of the ministry are concerned; provided that at all such meetings

the number of the ministers so elected, and those present of the chapter, shall be equal, and not exceed one the other, and that to make the numbers equal, the juniors of the exceeding number be withdrawn, that the most ancient may take place. Nor shall any suffragan bishop ordain or exercise the forementioned offices and acts of spiritual jurisdiction, but with the advice and assistance of a sufficient number of the most judicious and pious presbyters annually chosen as aforesaid within his precincts. And our will is, that the great work of Ordination be constantly and solemnly performed by the bishop and his aforesaid presbytery, at the four set times and seasons appointed by the church for that purpose.

5. "We will take care that Confirmation be rightly and solemnly performed, by the information and with the consent of the minister of the place, who shall admit none to the Lord's Supper, till they have made a credible profession of their faith, and promised obedience to the will of God, according as is expressed in the considerations of the Rubric before the Catechism: And that all possible diligence be used for the instruction and reformation of scandalous offenders, whom the minister shall not suffer to partake of the Lord's table, until they have openly declared themselves to have truly repented and amended their former naughty lives, as is partly expressed in the Rubric and more fully in the canons; provided there be place for due appeals to superior power. But besides the suffragans and their presbytery, every rural dean (those deans as heretofore, to be nominated by the bishop of the diocese) together with three or four ministers of that deanery, chosen by the major part of all the ministers within the same, shall meet once in every month, to receive such complaints as shall be presented to them by the ministers or church-wardens of the respective parishes; and also to compose all such differences between party and party, as shall be offered to them by way of arbitration, and to convince offenders, and reform all such things as they shall find amiss by their pastoral reproofs and admonitions, if they may be so reformed: And such matters as they cannot by this pastoral and persuasive way compose and reform, are by them to be prepared for, and presented to the bishop; at which meeting any other minister of that deanery may, if they please, be present. Moreover, the rural dean and his assistants are in their respective divisions to see that the children and the younger sort be carefully instructed by the respective ministers of every parish in the grounds of Christian Religion, and be able to give a good account of their faith and knowledge, and also of their Christian conversation conformable therunto, before they be confirmed by the bishop, or admitted to the sacrament of the Lord's Supper.

6. "No bishop shall exercise any arbitrary power, or do or impose any thing upon the

clergy or the people, but what is according to the known law of the land.

7. "We are very glad to find, that all with whom we have conferred, do in their judgments approve a Liturgy; or set form of public worship to be lawful; which in our judgment, for the preservation of unity and uniformity, we conceive to be very necessary. And though we do conceive the liturgy of the church of England, contained in the book of Common-Prayer, and by law established, to be the best we have seen; and we believe, that we have seen all that are extant, and used in this part of the world, and well know what reverence most of the reformed churches, or at least the most learned men in those churches have for it; yet since we find some exceptions made against several things therein, we will appoint an equal number of learned divines of both persuasions to review the same, and to make such alterations as shall be thought most necessary; and some additional forms (in the scripture phrase as near as may be) suited unto the several parts of worship, and that it be left to the ministers, choice to use one or other at his discretion. In the mean time, and until this be done, although we do heartily wish and desire, that the ministers in their several churches, because they dislike some clauses and expressions, would not totally lay aside the use of the book of Common-Prayer, but read those parts against which there can be no exception, which would be the best instance of declining those marks of distinction which we so much labour and desire to remove: yet in compassion to divers of our good subjects, who scruple the use of it as now it is, our will and pleasure is, that none be punished or troubled for not using it, until it be reviewed and effectually reformed as aforesaid.

8. "Lastly, concerning Ceremonies, which have administered so much matter of difference and contention, and which have been introduced by the wisdom and authority of the church for edification and the improvement of piety: We shall say no more, than that we have the more esteem of all, and reverence for many of them, by having been present in many of those churches, where they are most abolished or discountenanced, and it cannot be doubted, but that, as the universal church cannot introduce one ceremony in the worship of God, that is contrary to God's word expressed in the scripture; so every national church with the approbation and consent of the sovereign power, may, and hath always introduced such particular ceremonies, as in that conjuncture of time are thought most proper for edification and the necessary improvement of piety and devotion in the people, though the necessary practice thereof cannot be deduced from scripture; and that which before was, and is in itself indifferent, ceases to be indifferent, after it is established by law. And therefore our present consideration and work is, to gratify the private consciences of those who are grieved with the use of some ceremonies, by indulging

to and dispensing with their omitting those ceremonies; not utterly to abolish any which are established by law (if any are practised contrary to law the same shall cease) which should be unjust and of ill example, and to impose upon the conscience of some, for the satisfaction of the conscience of others, which is otherwise provided for. As it could not be reasonable that such men should expect, that we should ourself decline, or enjoin others to do so, to receive the blessed sacrament on our knees, which in our conscience is the most humble, most devout and most agreeable posture for that holy duty, because some other men upon reasons best, if not only known to themselves, choose rather to do it sitting or standing: We shall leave all decisions and determinations of that kind, if they shall be thought necessary for a perfect and entire unity and uniformity throughout the nation, to the advice of a national synod, which shall be duly called, after a little time, and a mutual conversation between persons of different persuasions, hath mollified those distempers, abated those sharpnesses, and extinguished those jealousies which make us unfit for those consultations. And upon such advice, we shall use our utmost endeavour, that such laws may be established, as may best provide for the peace of the church and state; provided that none shall be denied the Sacrament of the Lord's Supper, though they do not use the gesture of kneeling in the act of receiving.

"In the mean time, out of compassion and compliance towards those who would forbear the cross in baptism. We are content that no man shall be compelled to use the same, or suffer for not doing it. But if any parent desire to have his child christened according to the form used, and the minister will not use the sign, it shall be lawful for that parent to procure another minister to do it: And if the proper minister shall refuse to omit that ceremony of the cross, it shall be lawful for the parent, who would not have his child so baptised, to procure another minister to do it who will do it according to his desire.

"No man shall be compelled to bow at the name of Jesus, or suffer in any degree for not doing it, without reproaching those who out of their devotion continue that ancient ceremony of the church.

"For the use of the surplice, we are contented that all men be left to their liberty to do as they shall think fit, without suffering in the least degree for wearing or not wearing it. Provided that this liberty do not extend to our own chapel, cathedral or collegiate churches, or to any college in either of our universities, but that the several statutes and customs for the use thereof in the said places, be there observed as formerly.

"And because some men, otherwise pious and learned, say, they cannot conform unto the subscription required by the canon, nor take the oath of canonical obedience, we are content, and it is our will and pleasure (so they take

the oath of allegiance and supremacy) that they shall receive ordination, institution and induction, and shall be permitted to exercise their function, and to enjoy the profits of their livings, without the said subscription or oath of canonical obedience: And, moreover, that no persons in the universities shall, for the want of such subscription, be hindered in the taking their degrees. Lastly, That none be judged to forfeit his presentation or benefice or be deprived of it upon the statute of the thirteenth of queen Elizabeth, chapter the twelfth, so he read and declare his assent to all the articles of religion, which only concern the confession of the true christian faith, and the doctrine of the sacraments comprised in the book of Articles in the said statute mentioned. In a word, we do again renew what we have formerly said in our Declaration from Breda, for the liberty of tender consciences, that no man shall be disquieted, or called in question for differences of opinion in matters of religion, which do not disturb the peace of the kingdom: And if any have been disturbed in that kind since our arrival here, it hath not proceeded from any direction of ours.

"To conclude, and in this place to explain what we mentioned before, and said in our Letter to the House of Commons from Breda, that we hoped in due time ourself to propose somewhat for the propagation of the Protestant religion that will satisfy the world, that we have always made it both our care and our study, and have enough observed what is most like to bring disadvantage to it: We do conjure all our loving subjects to acquiesce in and submit to this our Declaration concerning those differences which have so much disquieted the nation at home, and given such offence to the Protestant churches abroad, and brought such reproach upon the Protestant religion in general from the enemies thereof; as if upon obscure notions of faith and fancy, it did admit the practice of christian duties and obedience to be discountenanced and suspended, and introduce a licence in opinions and manners, to the prejudice of the christian faith. And let us all endeavour and emulate each other in those endeavours, to countenance and advance the Protestant religion abroad, which will be best done by supporting the dignity and reverence due to the best Reformed Protestant Church at home: and which being once freed from the calamities and reproaches it hath undergone from these late ill times, will be the best shelter from those abroad, which will by that countenance both be the better protected against their enemies, and be the more easily induced to compose the differences amongst themselves, which give their enemies more advantage against them: And we hope and expect, that all men will henceforward forbear to vent any such doctrine in the pulpit, or to endeavour to work in such manner upon the affections of the people, as may dispose them to an ill opinion of us and the government, and to disturb the peace of the kingdom; which if all men will

in their several vocations endeavour to preserve the same affection and zeal we ourself will do; all our good subjects will by God's blessing upon us enjoy as great a measure of felicity, as this nation hath ever done, and which we shall constantly labour to procure for them, as the greatest blessing God can bestow upon us in this world. Given at our court at Whitehall this twenty fifth day of October 1660.*

Though this Declaration did not please all the ministers, yet the greatest numbers in London and country were content; but because it went upon the plan of Diocesan Episcopacy, which they had covenanted against, others were not satisfied; some ventured upon a second Address to the king, in which they renew their requests for Archbishop Usher's scheme of Primitive Episcopacy, as most agreeable to Scripture, most conducive to good discipline; and as that which would save the nation from the violation of the Solemn League and Covenant, which whether it were lawfully imposed or no, they conceive now to be binding upon them.

* "A little time before this Declaration was published, Chancellor Hyde (whose head and hand were most in it) had given notice of it in a speech to the parliament, wherein he tells them, 'He was commanded to mention to your majesty two things recommended to them by his majesty in his Declaration from Breda, the one for composing those unhappy differences and distempers in religion, which had too much disturbed the peace of the kingdom. This saith he, is a sad argument indeed, it is a consideration that must make every religious heart to bleed, to see religion, which should be the strongest obligation and cement of affection, and brotherly kindness and compassion, made now by the perverse wranglings of passionate and froward men, the ground of all animosity, hatred, malice and revenge; and this unruly and unmanly passion, I fear, too frequently transports those who are in the right, as well as those who are in the wrong, and leaves the latter more excusable than the former. When men who find their manners and dispositions very conformable in all the necessary obligations of human nature, avoid one another's conversation, and grow first unsociable and then uncharitable to each other, because one cannot think as the other doth.

'My Lords and Gentlemen; This disquisition hath cost the king many a sigh, many a sad hour, when he hath considered the almost irreparable reproach the Protestant Religion hath undergone from the divisions and distractions which have been so notorious in this kingdom. What pains he hath taken to compose them, after several discourses with pious and learned men of different persuasions, you will shortly see by a declaration he will shortly publish upon that occasion; by which you will see his great indulgence to those who can have any pretension from conscience to differ from their brethren.'" Kennet.

Concerning the preamble of his majesty's Declaration they tender these Requests:

1. "That as they are persuaded it is not in his majesty's thoughts, to intimate that they are guilty of the offences therein mentioned, they hope it will be a motive to hasten the Union.

2. "Though they detest sacrilege, yet they will not determine, whether in some cases of superfluities of revenues, and the necessity of the Church, there may not be an alienation, which is no sacrilege.

3. "His majesty having acknowledged their moderation, they still hope they may be received into the settlement, and continue their stations in the Church.

4. "Since his majesty has declared, that the essence of Episcopacy may be preserved, though the extent of the jurisdiction be altered, they hope his majesty will consent to such an alteration as may satisfy their consciences."

They then renew their requests for promoting of piety; of a religious and diligent ministry; of the requisites of Church Communion, and for the observation of the Sabbath. They complain that parish discipline is not sufficiently granted in his majesty's Declaration, that inferior synods are passed by, and that the bishop is not 'Episcopus præses, but episcopus princeps,' endued with sole power of ordination and jurisdiction. They therefore pray again; that archbishop, Usher's form of Church-Government may be established at least in these three points:

1. "That the pastors of parishes may be allowed to preach, catechise, and deny the Communion of the Church to the impenitent, scandalous, or such as do not make a credible profession of faith and obedience to the commands of Christ.

2. "That the pastors of each rural deanry may meet once a month to receive presentments and appeals, to admonish offenders, and after due patience to proceed to excommunication.

3. "That a diocesan synod of the delegates of rural synods may be called as often as need requires; that the bishop may not ordain or exercise spiritual censures without the consent of the majority; and that neither chancellors, archdeacons, commissaries nor officials, may pass censures purely spiritual; but for the exercise of civil government, coercively by mulcts, or corporal penalties, by power derived from your majesty, as supreme over all persons and things ecclesiastical, we presume not at all to interpose."

As to the Liturgy.

"They rejoice that his majesty has declared, that none should suffer for not using the Common-Prayer and Ceremonies; but then it grieves us, say they, to hear that it is given in charge to the judges at the assizes, to indict men upon the Act of Uniformity for not using the Common-Prayer. That it is not only some obsolete words and phrases that are offensive, but that other things need amendment; therefore we pray, that none may be punished for not using

the Book, till it be reformed by the consent of divines of both parties."

Concerning Ceremonies.

"They thank his majesty for his gracious concessions, but pray him to leave out of his Declaration these words, 'That we do not believe the practice of the particular ceremonies excepted against unlawful, because we are not all of that opinion; but we desire, that there may be no law nor canon for, nor against them, (being allowed by our opponents as indifferent) as there is no canon against any particular gesture in singing Psalms, and yet there is an uninterrupted unity.'"

For particular Ceremonies.

1. "We humbly crave, that there may be liberty to receive the Lord's Supper either kneeling, standing, or sitting. 2. That the observation of holy days of human institution may be left indifferent. 3. We thank your majesty for liberty as to the cross in Baptism, the surplice, and bowing at the name of Jesus; but we pray, that this liberty may extend to colleges and cathedrals for the benefit of youth as well as elder persons, and that the canons which impose these ceremonies may be repealed.

"We thank your majesty for your gracious concession of the forbearance of subscription; though we do not dissent from the doctrinal articles of the Church of England; nor do we scruple the oaths of allegiance and supremacy, nor would we have the door left open for papists and heretics to come in.

"But we take the liberty to represent to your majesty, that notwithstanding your gracious concessions, our ministers cannot procure institution without renouncing their ordination by Presbyters, or being re-ordained, nor without subscription and the oaths of canonical obedience. And we are apprehensive that your majesty's indulgence does not extend to the abatement of re-ordination, or subscription, or the oath of canonical obedience. We therefore earnestly crave, that your majesty will declare your pleasure. 1. That ordination and institution, and induction, may be conferred without the said subscription and oath. 2. That none may be urged to be re-ordained, or denied institution for want of ordination by prelates, that have been ordained by Presbyters. That none may forfeit their presentation or benefice for not reading those Articles of the thirty nine that relate to government and ceremonies."

However if the king's Declaration without any amendments, had passed into a law, it would have prevented in a great measure the separation that followed; but neither the Court, nor ministry intended it, if they could stand their ground upon the foot of the old establishment. A reverend prelate of the Church of England confesses, "that this Declaration has in it a spirit of true wisdom and charity above any one public confession that was ever made in matters of religion. It shews the admirable temper and prudence of the king and his coun-

cil in that tender juncture of affairs; it proves the charity and moderation of the suffering bishops, in thinking such concessions just and reasonable for peace and unity; and it shews a disposition in the other party to have accepted the terms of union consistent with our episcopacy and liturgy. It condemns the unhappy ferment that soon after followed for want of this temper; and it may stand for a pattern to posterity, whenever they are disposed, to receive the discipline, and heal the breaches of the Church." Another conformist writer adds, "If ever a divine sentence was in the mouth of any king, and his mouth erred not in judgment; I verily believe it was thus with our present majesty when he composed that admirable Declaration, which next to holy scripture I adore, and think that the united judgment of the whole nation cannot frame a better or a more unexceptionable expedient, for a firm and lasting concord of these distracted churches."

The Presbyterians about London were so pleased, that they drew up the following Address of thanks in the name of the city ministers, and presented it to the king, Nov. 16, by the hands of the rev. Mr. Samuel Clarke.

"Most dread Sovereign! We your majesty's most dutiful and loyal subjects, ministers of the gospel in your city of London, having perused your majesty's late Declaration, and find it so full of indulgence and gracious condescension, we cannot but judge ourselves highly obliged first to render our unfeigned thanks to God, and next our most humble and hearty acknowledgments to your majesty, that we may testify to your royal self, and all the world, our just sentiments of your majesty's great goodness and clemency therein expressed." The Address then recites the several condescensions of his majesty in the Declaration, and concludes thus, "We crave leave to profess, that though all things in this frame of government be not exactly suited to our judgments, yet your majesty's moderation has so great an influence on us, that we shall to our utmost endeavour the healing of the breaches, and promoting the peace and union of the church.—We would beg of your majesty with all humility upon our knees, that re-ordination, and the surplice in colleges might not be imposed; and we hope God will incline your majesty's heart to gratify us in these our desires also." Signed by Samuel Clark; William Couper; Tho. Case; Jo. Rawlinson; Jo. Sheffield; Thomas Gouge; Gab. Sanger; El. Pledger; Matth. Poole; Jo. Gibbon; William Whitaker; Tho. Jacomb; Thomas Lye; John Jackson; John Meriton; William Bates; with many others.

The king having received the Address, returned this answer, "Gentlemen, I will endeavour to give you all satisfaction, and to make you as happy as myself."

Agreeably to the promise made in this Declaration, concerning a Review of the Liturgy, the following Commission was issued:

The COMMISSION for the CONFERENCE of the SAVOY.

“ Charles the second by the grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To our trusty and well-beloved the most reverend father in God Accepted, archbishop of York, the right reverend fathers in God, Gilbert bishop of London, John bishop of Durham, John bishop of Rochester, Humphrey bishop of Sarum, George bishop of Worcester, Robert bishop of Lincoln, Benjamin bishop of Peterborough, Brian bishop of Chester, Richard bishop of Carlisle, John bishop of Exeter, Edward bishop of Norwich: and to our trusty and well beloved, the reverend Anthony Tuckney, D. D. John Conant, D. D. William Spurston, D. D. John Wallis, D. D. Tho. Manton, D. D. Edmund Calamy, D. D. Richard Baxter Clerk, Arthur Jackson, Tho. Case, Samuel Clerk, Matthew Newcomen Clerks; and to our trusty and well beloved Dr. Earles, dean of Westminster, Peter Heylin, D. D. John Hacket, D. D. John Berwick, D. D. Peter Gunning, D. D. John Pearson, D. D. Tho. Pierce, D. D. Anthony Sparrow, Herbert Thoradike, D. D. Thomas Hortar, D. D. Thomas Jacobb, D. D. William Bate, John Rawlinson, Clerks, William Couper, Clerk, Dr. John Lightfoot, Dr. John Collings, Dr. Benjamin Woodbridge, and William Drake clerk, greeting. Whereas by our Declaration of the 25th of October last, concerning Ecclesiastical Affairs, we did (amongst other things) express our esteem of the liturgy of the church of England, contained in the book of Common-Prayer; and yet since we find exceptions made against several things therein, we did by our said Declaration declare we would appoint an equal number of learned divines, of both persuasions, to review the same: We therefore in accomplishment of our said will and intent, and of our continued and constant care and study for the peace and unity of the churches within our dominions; and for the removal of all exceptions and differences, and the occasion of such differences and exceptions from among our good subjects; for or concerning the said book of Common-Prayer, or any thing therein contained, do by these our Letters Patents require, authorize, constitute and appoint you the said, &c. to advise upon, and review the said book of Common-Prayer; comparing the same with the most ancient liturgies which have been used in the church in the primitive and purest times. And to that end, to assemble and meet together, from time to time, and at such time within the space of four calendar months now next ensuing, in the Masters lodging in the Savoy in the Strand, in the county of Middlesex, or in such other place or places as to you shall be thought fit and convenient; to take into your serious and grave consideration the several directions and rules, forms of prayer, and things in the said book of Common-Prayer contained, and to advise, consult upon and about the same, and several objections and exceptions which shall now be

raised against the same; and, (if occasion be) to make such reasonable and necessary alterations, corrections and amendments therein, as by and between you the said archbishops, bishops, doctors, and persons hereby required and authorized to meet and advise aforesaid, shall be agreed upon to be needful and expedient; for the giving satisfaction to tender consciences, and the restoring and continuance of peace and unity in the churches under our protection and government; but avoiding (as much as may be) all unnecessary abbreviations of the forms and liturgy, wherewith the people are altogether acquainted, and have so long received in the church of England. And our will and pleasure is, that when you the said archbishop, bishops, doctors and persons authorized and appointed by these our Letters Patents to meet, advise and consult upon, and about the premises as aforesaid, shall have drawn your consultations to any resolution, and determination which you shall agree upon as needful or expedient to be done for the altering, diminishing, or enlarging the said book of Common-Prayer, or any part thereof. That then forthwith you certify and present to us in writing under your several hands, the matters and things whereupon you shall so determine for our approbation; and to the end the same, or so much thereof, as shall be approved by us, may be established; and forasmuch as the said archbishop and bishops have several great charges to attend, which we would not dispense with, or that the same should be neglected upon any great occasion whatsoever: and some of them being of great age and infirmities, may not be able constantly to attend the execution of the service and authority hereby given and required by us, in the meeting and consultation aforesaid; We will therefore, and hereby require you the said Dr. Earles, &c. to supply the place and places of such of the archbishops and bishops (other than the said Edward bishop of Norwich) as shall by age, sickness, infirmity, or other occasions be hindered from attending the said meeting or consultation: (that is to say) that one of you the said Dr. Earles, &c. shall from time to time supply the place of each one of them the said archbishop and bishops (other than the said Edward bishop of Norwich) which shall happen to be hindered or to be absent from the said meetings or consultations; and shall and may advise consult and determine; and also certify and execute all and singular the powers and authorities before mentioned, in and about the premises, as fully and absolutely as such archbishops and bishops which shall so happen to be absent, should or might do by virtue of these our Letters Patents, or any thing herein contained, in case he or they were personally present. And whereas in regard of the distance of some, the infirmity of others, the multitude of constant employment and other incidental impediments; some of you the said Edward bishop of Norwich, &c. may be hindered from the constant attendance in the execution of the service

aforesaid; We therefore will, and do hereby require and authorize you the said Thomas Horton, &c. to supply the place or places of such the commissioners last above mentioned, as shall by the means aforesaid, or any other occasion be hindered from the said meeting and consultations, that one of you the said Thomas Horton, doctor, shall from time to time supply the places of each one of the said commissioners last mentioned, which shall happen to be hindered or absent from the said meeting and consultations; and shall and may advise, consult and determine, and also certify and execute all and singular the powers and authorities before mentioned, in and about the premises, as fully and absolutely as such of the said last mentioned commissioners, which shall so happen to be absent, should or might do by virtue of these our Letters Patents, or any thing therein contained, in case he or they were personally present: in witness whereof we have caused these our Letters to be made Patents: Witness Ourself at Westminster, the 25th of March, in the thirteenth year of our reign. (Per ipsum Regem.) BARKER."

The bishop of London's lodgings in the Savoy was appointed for the place of meeting; when the parties appeared, the bishop of London acquainted the Presbyterian ministers, that themselves and not the bishops, had requested the Conference for making alterations in the Liturgy: That therefore nothing was to be done till they had delivered their Exceptions in writing, together with the additional forms and alterations which they desired.*

The Exceptions were accordingly drawn up

* "When the commissioners were assembled the first time, April 15, the Archbishop of York stood up and said; he knew but little of the business they were met about, and therefore referred it to Dr. Sheldon, Bishop of London, who gave it as his opinion, that the Presbyterians having desired this conference, they, the Bishops, should neither say nor do any thing till the others had brought in all their exceptions and complaints against the Liturgy in writing with their additional forms and amendments. The Presbyterians humbly moved for a Conference according to the words of the commission, but the Bishop of London insisting peremptorily upon his own method, the others consented to bring in their Exceptions at one time and their Additions at another. For this purpose Bishop Reynolds, Dr. Wallis, and the rest of the Presbyterian party, met from day to day to collect their Exceptions; but the Additions or drawing up a new Form, was intrusted with Mr. Baxter alone. 'Bishop Sheldon saw well enough,' says Burnet, 'what the effect would be of obliging them to make all their demands at once, that the number would raise a mighty outcry against them as a people that could never be satisfied.' On the other hand the Presbyterians were divided in their sentiments; some were for insisting only on a few important

things, reckoning that if they were gained, and by Dr. Reynolds, Dr. Wallis, Dr. Bates, Dr. Jacomb, Mr. Calamy, Mr. Newcomen, Mr. Clerk, and others.

In this Paper laid before the bishops, "they move, that the prayers and other materials of the liturgy, might not be clogged with any thing that was doubtful or questioned among pious, learned and orthodox persons.

"1. That the imposing things of doubtful disputation as terms of communion, had in all ages been the ground of schism and separation: and for this they cite the authority of Mr. Hales.

"2. That as the English reformers at first out of their great wisdom, formed the liturgy in such a manner as was most likely to gain upon the Papists, by varying as little as might be from the offices anciently received; so according to the same rule of prudence, and charity, they desired the liturgy might be so composed as might best reconcile it to those Protestants who are agreed in the substantial points of religion.

"3. To proceed, they would have the repetitions and responsals of the parish-clerk and people, and the alternate reading of the psalms and hymns, omitted. They pretend this custom raised a confused noise in the congregation, and made what was read, less intelligible. They argue farther, that the minister ought to be the people's mouth in all public services: and that by the Holy Scriptures, the people's part is only to attend with reverential silence, and declare their consent in the close, by saying Amen.

"4. For this reason they would have the

an Union followed, it might be easier to obtain other things afterwards. But the majority, by the influence of Mr. Baxter, were for extending their desires to the utmost, and thought themselves bound by the words of the commission to offer every thing they thought might conduce to the peace of the church, without considering what an aspect this would have with the world, or what influence their numerous demands might have upon the minds of those who were now their superiors in numbers and strength; but when they were put in mind that the king's commission gave them no power to alter the government of the church, nor to insist upon Archbishop Usher's model, nor so much as to claim the concessions of his majesty's late Declaration, they were quite heartless; for they now saw that all they were to expect was a few amendments in the Liturgy and Common-Prayer Book. This was concluded before-hand at court, and nothing more intended than to drop the Presbyterians with some plausible decency." 4 Neal, 271.

"N. B. All the Papers relating to the Conference at the Savoy are collected in a Book intitled, 'The History of Non-Conformity, as it was argued and stated by commissioners on both sides appointed by his majesty king Charles 2, in 1661.' 8vo. edit. 2d. 1703.

divided petitions in the litany thrown into one solemn prayer, to be pronounced by the ministers.

“ 5. That nothing might remain in the liturgy, which seems to countenance the observation of Lent, as a religious fast: That the example of our Saviour’s fasting forty days and forty nights, was above human strength, and never designed for imitation. To corroborate this reasoning, they take notice, that by an act of parliament made the 5th of Elizabeth, abstinence from flesh is prohibited, upon the score of religion, and only recommended for politic considerations.

“ 6. That the religious observation of Saints-days, together with their Vigils, may be laid aside. And that if any of them are continued, they may be called Festivals, and not Holy-days, that they may not be made equal with the Lord’s-day, nor have any peculiar service appointed, nor the people obliged wholly to forbear working: and that such names in the Calender which are not inserted in the first and second books of king Edward the 6th, may be left out.

“ 7. That the gift of prayer being one special qualification for the ministry, they desire the liturgy may not be so strictly imposed, as totally to exclude the exercise of that faculty in any part of public worship: and that in consequence of this, it may be left to the discretion of the minister to omit part of the stated service, as occasion shall require. And this liberty, they pretend, was allowed by the first Common-Prayer-Book of Edward the sixth.

“ 8. That in regard of the many defects observed in the Version of the Scriptures, used in the liturgy, they move these mis-performances may be struck out, and the new translation allowed by authority, substituted instead of the former. That the Version in the liturgy is either obsolete in language, or mistaken in sense, they endeavour to prove from the following instances. In the epistle for the first Sunday after Epiphany, Rom. 12. 1, it is read, Be ye changed in your shape: and the epistle for the Sunday next before Easter, Phil. 2. 5. Our Saviour is said to be found in his apparel as a man: and in the epistle for the fourth Sunday in Lent, Galat. 4. the old Version runs, Mount Sinai is Agar in Arabia, and borders upon the city, which is now called Jerusalem: the epistle for St. Matthew’s day, 2 Cor. 4. they translate, We go not out of kind. The gospel for the second Sunday after Epiphany, John 2. it is translated, When men be drunk. The gospel for the first Sunday in Lent, taken out of the 11th of St. Luke, it is turned, One house does fall upon another. And lastly, the gospel for the Annunciation, taken out of the 1st of St. Luke. This is the first month which is called barren.

“ 9. That the canonical scriptures containing all things necessary to salvation, they desire the Apocryphal books may not be read: these writings having no unquestionable authority for recommending matters either of belief, or practice.

“ 10. That the minister may not be enjoined to read any part of the liturgy at the communion table, excepting such portions which properly belong to the Lord’s Supper: And at such times only, when the Holy Sacrament is administered.

“ 11. That whereas the word minister, and not priest or curate, stands in the rubric for the absolution, and divers other places: It is requested this usage may be continued through the whole book: And that the Lord’s Day may be inserted instead of Sunday.

“ 12. And in regard singing of psalms is a considerable part of public worship; they desire the version set forth and allowed to be sung in churches, may be mended; or that they may have leave to make use of a more correct translation.

“ 13. That all obsolete terms and expressions in language worn out, may be altered to words of common use. This is repeating part of their Eighth Objection. Their instances are ‘Aread’ used in the gospel for Monday and Wednesday before Easter. ‘And then opened he their wits,’ in the gospel for Easter Tuesday.

“ 14. That no portions of the Old Testament, or of the Acts of the Apostles, be called epistles, and read as such.

“ 15. That the phrase in several offices which presumes all persons within the communion of the church, regenerated, converted, and in an actual state of grace, may be reformed: For considering the want of ecclesiastical discipline, confessed in the Communion, such a supposition is more than the utmost charity can admit.

“ 16. That the petitions in the prayers might have a more orderly connection, and the forms carried on to a more competent length: That this method would be more to edification, and gain farther upon the people’s esteem.

“ Under this head, they are somewhat more particular:

“ And first, They charge the collects with being generally too short, many of them consisting but of one, or at most, but of two sentences of petition. That they are generally prefaced with a repeated mention of the name and attributes of God, and presently concluded with the name and merits of Christ. That by this disposition of the service, many unnecessary breaks are occasioned: And that when many petitions are to be offered at the same time, these interruptions are neither agreeable to scriptural examples, nor suited to the gravity of that holy duty.

“ Secondly, They object the prefaces of many collects have no clear and direct reference to the following petitions. That the petitions are put together without due order or natural connection, and falling short, instead of being suitable to the occasions for which they are used, seem to have been the effect of chance and inadvertency. It is therefore desired, that instead of those discontinued collects there may be one methodical and entire form of prayer composed out of many of them.

"17. They observe the public liturgy of a church ought to comprehend the sum of all such sins as are ordinarily to be confessed in prayer: And take in such petitions and thanksgivings as are commonly to be put up by the church: And that the Catechisms, or public systems of doctrine, should contain a brief abstract of all such doctrines as are necessary to be believed; And the points should be set down in a clear, explicit manner. And here they pretend the liturgy is defective as to all these matters.

"1. Say they, there is no preparatory prayer, in the beginning of the service, for God's assistance and acceptance; and yet many collects in the middle of the worship, have little or nothing else.

"2. The Confession, as these ministers continue, is very defective: Original sin is not clearly expressed, nor the number of actual sins with their aggravations sufficiently enlarged on. That the form goes too much upon generals: Whereas confession being an exercise of repentance, ought to be more particular.

"3. They complain of a great defect in the forms of public thanksgiving. And,

"4. They object the whole body of the Common Prayer is too much wrapt up in generals: As, 'To be kept from all evil, from all enemies, from all adversity, that we may do God's will,' &c. without dilating upon the particulars included.

"5. They pretend the Catechism is defective in many necessary doctrines, and that some of the essentials of Christianity are not mentioned, unless in the creed.

"18. They alledge the Liturgy enjoins the use of several ceremonies, which from the time of the first reformation have been judged unwarrantable by divers learned and pious men.

"The impositions complained of are, First, The enjoining the use of the surplice. Secondly, That none may baptise or be baptised, without the transient image of the cross, which has at least, they say, the appearance of a sacrament of human institution. Thirdly, The enjoining the posture of kneeling at receiving the Lord's Supper. And here they cite the authority of our Saviour and his Apostles for a difficult gesture: And that the Church of England contradicts the practice of the Catholic Church for several ages, and runs counter to the canons of the most venerable synods. And lastly, that the weight of these impositions are still made more hurtful by the canons requiring the clergy to subscribe their lawfulness."

To these Exceptions the Commissioners who represented the Church of England returned an Answer; part of which shall be laid before the reader.

"1. The Presbyterian ministers objected the Liturgy had all along given dissatisfaction to several persons of piety and learning; to this the episcopal divines returned, That the passages complained of in the Liturgy ought to be

evidently proved unlawful, before any alterations can be demanded. That it is no argument to say a great many pious persons scruple the use of it, unless it can clearly be made out the Liturgy has given just ground for such scruples. For otherwise, if the bare pretence of scruples is a sufficient plea to discharge us from obedience, all law and order can signify nothing. To this they add, that if the Liturgy should be altered as the Ministers' Paper requires, the generality of the soberest and best members of the Church of England, would have just cause of disgust. For that such an alteration would imply a concession, that this Liturgy was an intolerable burthen upon tender consciences, and a usage plainly superstitious: For these are the pretences suggested for an alteration. Now the granting all this, must infer the justifying those who have separated from it, and the condemning all those who have adhered to it, with the hazard and loss of lives and fortunes. After this introduction, they proceed to give an answer to the first general proposal, and affirm, that the English reformers had been careful to put nothing into the Liturgy, but what is either evidently the word of God, or has been generally received by the Catholic Church. To the next proposal they answer, that great care must be taken to suppress private conception of prayer, both before and after sermon: That otherwise private opinions will be brought into pulpit-prayers. For what else can be expected, if private persons may have the liberty of making public devotions?

"To that part of the proposal that prayers may consist of nothing doubtful or questioned by pious, learned, and orthodox persons: The episcopal divines reply, That since it is not defined and ascertained who those orthodox persons are, they must either take all those for orthodox persons who have the assurance to affirm themselves such: And if so, the demand is unreasonable. For some who deny the divinity of the Son of God, will stile themselves orthodox, and yet there is no reason we should part with an article of our creed for their satisfaction. Besides, the proposal requires an impossibility. For there never was, nor ever will be, any prayers couched in such a manner, as not to be questioned by some people who call themselves pious, learned and orthodox. But if by orthodox is meant only those who adhere to scripture, and the Catholic consent of antiquity, they are not of opinion that any part of the English Liturgy has been questioned by such.

"To the general objection of the English service being loaded with church-pomp, imagery, many superfluities, and reviving obsolete customs: To this they answer, That if these generals are intended to be applied to the Liturgy, they are gross calumnies, and a contradiction to the confession of these very Ministers in the latter part of their Exceptions. But if no application is intended, they are foreign to the purpose, and therefore it had been more

prudence and candour not to have mentioned them."

To go on with the Church Commissioners, who need not be mentioned at every Article.

"It was the wisdom of our Reformers, say they, to draw up such a Liturgy as neither Romanists nor Protestants could justly except against: And therefore, as the first never charged it with any positive errors, but only with the want of something they conceived necessary, so was it never found fault with by those properly distinguished by the name of Protestants; that is, those of the Augustan Confession. And as for others who have brought the church service into dislike with some people; this practice of their's has been their fault and their sin: So that to urge the present state of affairs as an argument why the book should be altered, is by no means reasonable. To do this would be to gratify these men in an error, and make their own unwarrantable conduct an advantage to them.

"The third and fourth Proposals may go together; the demand in both being against responsals and alternate readings in hymns, psalms, &c. And that upon such a motive as really rather proves the necessity of continuing them in their present condition. They would take these usages away, because they do not edify: Now for this very reason, they ought to be kept on. For that they do edify, is plain, if not by informing our understandings, (the prayers and hymns being never made for a Catechism) yet by quickening, keeping up, and uniting our devotion, which is apt to sleep or grow languid, in a long continued prayer. Our edification therefore is best consulted by being called on and awakened by frequent Amens: by being excited by mutual exultations, petitions and holy emulations, which of us shall go farthest in shewing his own zeal for the glory of God, or contribute most to that of others. For this purpose alternate reading, repetitions and responses, are far more serviceable than a long tedious prayer. Nor is this our opinion only, but the judgment of former ages, as appears by the practice of the Jewish and ancient Christian churches.

"But these Demandants object, this custom clashes with the Scripture: That these inspired writings declare the minister's being appointed for the congregation in public prayers: That the people's part is only to attend with silence, and signify their assent by saying Amen. Now if these gentlemen mean, that the people in public services must only say the word Amen, they have no text to prove their assertion. Besides, they themselves practise the direct contrary in one of their principal parts of worship: We mean their singing of psalms, where the people have as great a part as the minister. Now if this may be done in Hopkins's, why not in David's Psalms? If in metre, why not in prose? If in a Psalm, why not in a Litany?

"Farther, it is desired that nothing should be in the Liturgy which so much as seems to countenance the observation of Lent, as a religious

fast: This is requested as an expedient for peace, and is in effect to desire our church may shew herself contentious for the sake of peace, and divide from the Catholic Church, that we may correspond the closer at home, and live at unity among ourselves. But, St. Paul reckons those contentious, who oppose the custom of the churches of God. Now that the religious observation of Lent was a custom of the churches of God, appears by the testimonies of the Fathers. This demand therefore has no tendency to peace, but dissension. And here the fasting forty days may be practised in imitation of our Saviour, notwithstanding what is objected to the contrary. For though we cannot reach up to his divinity, follow him *passibus æquis*, and abstain wholly from meat for so long a time, yet we may fast forty days together, either as Cornelius did, till three o'clock in the afternoon, or till noon, as St. Peter did, or at least we may come up to Daniel's fast, and forbear entertaining our palate: And thus far, without question, it is possible for us to imitate our Lord. Nor does the act of parliament, 5 Eliz. forbid fasting in this manner, or upon the view abovementioned: We dare not suppose the parliament had any intention to prohibit a custom commanded by the Church of Christ. Neither does the act determine any thing about a Lenten fast, but only provides for the increase of the navy, and encouraging the fishery upon that score. Besides, we must not interpret one statute so as to make it clash with another. Now the 1st of Eliz. cap. 2, still in force, confirms the whole Liturgy, and by consequence the religious keeping of Lent: and this with a severe penalty upon all those who speak in derogation of any part of the Common-Prayer. And therefore that other act of 5 Eliz. cap. 5, must not be interpreted to a counter sense, and as if it prohibited the religious keeping of Lent.

"The observing Saints-Days is not enjoined as of divine, but of ecclesiastical institution: that therefore it is not necessary they should have any particular appointment in Scripture: their being useful for the promoting piety, and serviceable to the general end recommended in holy writ, is sufficient for this purpose. That the observation of these solemnities was a primitive custom, appears by the Rituals and Liturgies, by the consentient testimony of antiquity, and by the ancient Translations of the Bible: for instance, by the Syriac and Ethiopic versions, where the lessons appointed for holy days, are particularly marked. Now the former of these Translations comes near the apostolic age. Farther, our Saviour himself kept the feast of the Dedication, which was a solemnity of the church's institution. And the chief business of these days, being not for feasting, not for entertainment and diversion, but the exercise of holy duties, they are more properly called holy days than festivals: and though they are all of a resembling nature, it cannot be inferred they all require an equal regard. As for the people, they may be in-

dulged working after evening service, if authority shall think fit. The other names excepted against, stand in the Kalendar, not that they should be kept as holy days, but upon the score of their being useful for preserving the memories of some eminent persons : they are likewise serviceable for leases, law-days, &c.

" Their proposal touching the gift of prayer, makes the Liturgy, in effect, wholly insignificant : for what else can be the consequence, if every minister may put in, and leave out at discretion? As for the gift, or rather the spirit of prayer, it consists in the inward graces of the Holy Spirit, and not in extemporary expressions : such unpremeditated effusions are only the effects of natural parts, of a voluble tongue and uncommon assurance. But if there is any such gift as is really pretended, this extraordinary qualification must be subject to the prophets and the order of the church.

" Considering the mischiefs coming by impertinent, ridiculous, and sometimes seditious, wicked and blasphemous expressions, under pretence of giving liberty for exercising the gift of prayer ; considering the honour of God is so highly injured, and religion suffers so much this way, it is reasonable those who desire such an indulgence in public devotions, should first give the church security, that no private opinions should be put into their prayers : and that nothing contrary to the faith, should be uttered before God, or offered up to him in the church. To prevent which mischiefs, the former ages knew no better way than forbidding the use of any prayers in public, excepting such as were prescribed by public authority.

" The Presbyterians objections against the obsolete language, and mistaken sense in the Translation used in the Liturgy, are all true, and all amended.

" The Church Commissioners proceed to consider their Exceptions against reading Apocryphal lessons in the church. And here they observe, the Presbyterians demand an alteration upon such grounds as would exclude all Sermons as well as the Apocrypha. Their argument is, the holy Scriptures contain all things necessary with reference both to belief and practice. This plea is returned upon them with a dilemma : if the inspired writings, say the Church-Commissioners, are so comprehensive, to what purpose are there so many unnecessary Sermons? Why have we any thing more than the reading of Holy Scriptures? But if notwithstanding the sufficiency of the Old and New Testament, Sermons are necessary, there is no reason why these Apocryphal chapters should not be reckoned equally useful : for most of them deliver excellent discourses and precepts of morality : and it is much to be wished the sermons of these ministers were no worse : if they are afraid these books may by this regard come up to an equal authority with the Canon ; the church has secured them against this apprehension, by calling them Apocryphal : now it is the church's

testimony which teaches us to make this distinction. And lastly, to leave out these Apocryphal lessons, were to cross upon the practice of former ages.

" That the minister should not read the communion service at the communion-table, is not reasonable to demand, since it was the practice of all the Primitive Church : and if we do not govern ourselves by that golden rule of the Council of Nice, " Let ancient customs be continued," unless reason plainly requires the contrary, we shall give offence to sober Christians by a causeless departure from Catholic usage, and put a greater advantage in the hands of our adversaries, than it is to be hoped our brethren the Dissenters would willingly allow. As for the priest's standing at the Communion-table, it seems an invitation to the holy Sacrament, and reminds us that it is the duty of some of us at least, to receive every Sunday : and though we happen to neglect our duty, it is fit the church should suggest recollection, and keep her standing.

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" Singing of Psalms in metre, continue the Church-Commissioners, is no part of the Liturgy, and by consequence no part of our commission.

" In answer to the 15th objection, they allege, that the church's phrase in her prayers, is no more offensive than St. Paul's : this apostle in his epistles to the Corinthians, Galatians, and others, calls them in general the Churches of God sanctified in Christ Jesus, and Saints by their vocation. And yet amongst these, there were many, who upon the score of their open irregularities, could not properly be stiled such : however, St. Paul denominates the whole from the greater part, and puts the rest in mind of their profession, what they have undertaken in their baptism, and the privileges and honourable distinctions to which that Sacrament has given them a title.

" As to the connexion of the parts of the Liturgy, it is conformable to the example of the Churches of God, and has as much coherence as usually occurs in many petitions of the same Psalm. And the method of these offices they must believe to be admirable and beyond exception, till the Presbyterians can suggest a better, which is not yet done.

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From hence they advance to the 17th exception: "And whereas it was objected there was no preparatory prayer in our Liturgy for God's assistance or acceptance, they answer, this is plain misreporting the Communion-Prayer. For besides a preparatory exhortation, there are several prayers upon the heads in which it is pretended they are deficient. The instances are these; 'Despise not, O Lord, humble and contrite hearts.' 'That those things may please him that we do at this present.' 'O Lord open our lips,' &c.

"As to the Presbyterians objection against the Church's Confession being couched in general terms, the episcopal divines answer, that this is rather a perfection, than a disadvantage: that the offices are intended for common use: that general services would cease to be such, by descending to particulars. To come closer to the case: when confession of sins is general, all persons may and must join in it, considering in many things we offend all. But if the enumeration of sin was particular, it would not be so well suited to the use of the congregation: for it may well be supposed to happen, that some persons may by God's grace, have been preserved from several of those sins recited: and therefore by confessing themselves guilty, they would lie to God Almighty, and thus stand in need of a new confession. As for original sin, they conceive it sufficiently acknowledged in the church's confessing, that 'without God's help, our frailty cannot but fall; and that our mortal nature can do no good thing without him.'

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"1. They observe, that God has not only given a power, but likewise commanded the imposing whatever shall be truly decent and becoming his public service. That after St. Paul had laid down some particular rules for praying, thanksgiving, prophesying, &c. he concludes with this general precept, let all things be done *hoc ordine*, in a decent manner: and that there may be uniformity in these circumstances of decency, the apostle adds, let there be a *regula*, a rule, or canon for that purpose.

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5. "Though charity moves for compassion, and may dispose superiors to relieve those that are really over scrupulous and perplexed; yet we must not break God's command out of good nature: and therefore we must not suffer the public service to be indecently or disorderly performed, for the ease of tender consciences.

"Having premised this general answer, the church commissioners proceed to argue that those things which they call indifferent, because neither expressly commanded, nor forbidden by God Almighty, have something of natural proportion, goodness and decency in them; and for this reason they are imposed: Thus by St. Paul's rule, and many others in scripture, authority is given to governors, to impose signs, which certainly are never the worse, because they carry a signification of decency and regard. On the other side, if the church should enjoin the use of ceremonies which were wholly insignificant; such an exercise of power might rather be questioned.

2. "To make such laws upon the score of decency is no violation of Christ's royalty: it is only exercising a branch of that authority granted to his church: and therefore disobeying such commands of superiors, is a plain opposition to his sovereignty. Farther, making laws for the sake of decency, does by no means imply a charge of insufficiency upon our Saviour's institutions. For it is evident by the precepts themselves, that our Saviour never intended to determine every minute circumstance of time, place, and manner: he only commanded the substance of religious duties in general, and directed to the right ends of the performance. As to other matters, our Lord left every man to the suggestions of reason for private services; and appointed governors of the church to determine such particularities for the public. Thus for instance, our Saviour commanded prayers, fasting, &c. But time and place for these duties are undetermined. Thus by parity of reasoning, to make laws for regulating the points of decency, is no imputation upon his economy; for it is plain it was not his design to state these matters. He has left us governors for this purpose: their commission is express to all imaginable advantage: 'As my Father sent me, so send I you. Obey those that have the rule over you.' He has likewise told us, that if we will not hear his church, we must be reckoned no better than heathens and publicans.

"And whereas the non-conformists plead they cannot obey the commands of the church for fear of violating the precept, which forbids adding to the word of God. To this the church commissioners answer, These ministers do not well consider, that it is no addition to the word of God to command things for order and decency, provided they are not enjoined as God's immediate instructions, but only as regulations of human authority. But on the other hand, to affirm that superiors are not allowed to command things unforbidden by God Almighty, is an undeniable addition to the word of God. And likewise to deny ecclesiastical or civil go-

vernors that power which the scriptures have given them, is diminishing God's word, which is no less forbidden in the text last mentioned.

"And supposing some people continue perplexed, and under scruples; the church may notwithstanding, without sin, insist upon her commands for complying with decent ceremonies. And all this without being guilty of offending our weak brother; for here the scandal is taken, and not given. It is the prejudice and mistake of the scrupulous person that disturbs himself; and therefore he may be justly said to lay the stumbling block in his own way.

"Neither will the case of St. Paul's not eating flesh if it offended his brother, do any service to the complainants. For here it must be observed, the apostle speaks of things not commanded by God or his church; of matters which had nothing of decency or significance for religious purposes. And therefore in a case thus foreign and unrelated to divine worship, St. Paul was willing to resign his liberty, rather than offend his brother. But if any man should venture to break a just law or custom of the church, the apostle marks him for a contentious person.

"That these ceremonies have occasioned many divisions, as it is pretended, is no more their fault, than the misunderstandings between the nearest relations, accidentally consequent upon the preaching of the Gospel, can be fairly charged on the Christian religion.

"After this they proceed to justify the use of the surplice by alledging, that both reason and experience may inform us, that decency in ornament and habit strike the senses, and excite reverence and regard: upon this view they are made use of in the equipage of princes, and in courts of justice. And why then should the service of God be refused this common advantage? and to come to the particular case, no habit is more suitable at holy ministrations than white linen: It is an emblem of purity and beauty: angels have appeared in this dress, and therefore what colour can be more proper for those whom the scripture dignifies with that name? and that this habit was anciently used in the church, we may learn from St. Chrysostom.

"The cross, continue these episcopal divines, was always used in the church in *immortali lavacro*. To testify therefore our communion with the saints of former ages, as our creed teaches us; and to signify we are not ashamed of the cross of Christ: for these reasons they conceive it proper this ceremony should be continued, and cannot imagine it should trouble the conscience of any person that desires to be satisfied.

"As to the posture of kneeling, they argue it best becomes the solemnity of the holy Eucharist: That the most valuable blessings ought to be received with the greatest marks of reverence and submission. That postures of familiarity are not acceptable to God Almighty upon so solemn an occasion, may be collected from Malachi i. 6) 8. That when the church used standing at her prayers, the manner of re-

and us, in the doctrinal truths of the reformed religion, and in the substantial parts of divine worship, humbly desire,

“First that we may be secured of those things in practice of which we seem to be agreed in principle; as,

“1. That those of our flocks that are serious in matters of their salvation may not be reproachfully handled by words of scorn or any abusive language, but may be encouraged in their duties of exhorting and provoking one another in their most holy faith, and of furthering one another in the ways of eternal life.

“2. That each congregation may have a learned, orthodox, and godly pastor; that the people may be publicly instructed by preaching every Lord's day, by catechising, by frequent administering the Lord's Supper and Baptism; and that effectual provision by law may be made, that such as are insufficient, negligent, or scandalous, may not officiate.

“3. That none may be admitted to the Lord's Supper till they personally own their baptismal covenant by a credible profession of faith and holiness, not contradicted by a scandalous life. That to such only Confirmation may be administered; and that the approbation of the pastor to whom the instructing those under his charge doth appertain, may be produced before any person receives confirmation.

“4. That an effectual course be taken for the sanctification of the Lord's day, appropriating the same to holy exercises both in public and private, without any unnecessary diversements.”

“Then for matters in difference (*viz.*) Church government, Liturgy, and Ceremonies, we humbly represent,

“That we do not renounce the true antient primitive episcopacy or presidency as it was balanced with a due commixtion of Presbyters. If therefore your majesty, in your grave wisdom and moderation, shall constitute such an episcopacy we shall humbly submit thereunto. And in order to an accomodation in this weighty affair, we desire humbly to offer some particulars which we conceive were amiss in the episcopal government as it was practised before the year 1640.

“1. The great extent of the bishops diocese, which we apprehend too large for his personal inspection.

“2. That by reason of this disability the bishops did depute the administration in matters of spiritual cognizance, to commissaries, chancellors, officials, whereof some are secular persons and could not administer that power that originally belongs to the officers of the church.

“3. That the bishops did assume the sole power of ordination and-jurisdiction to themselves.

“4. That some of the bishops exercised an arbitrary power, by sending forth articles of visitation, enquiring unwarrantably into several things; and swearing church wardens to pro-

sent accordingly. Also many innovations and ceremonies were imposed upon ministers and people not required by law.

“For remedy of these evils we crave leave to offer,

“1. The late most reverend Primate of Ireland, his Reduction of Episcopacy into the form of Synodical Government.

“2. We humbly desire, that the Suffragans or Chorepiscopi, may be chosen by the respective synods.

“3. That no oaths or promises of obedience to the bishops, nor any unnecessary subscriptions or engagements be made necessary to ordination, institution, or induction, ministration, communion or immunities of ministers, they being responsible for any transgression of the law. And that no bishops or ecclesiastical governors may exercise their government, by their private will, or pleasure, but only by such rules, canons, and constitutions, as shall be established by parliament.”

“Secondly, concerning Liturgy.

“1. We are satisfied in our judgments concerning the lawfulness of a liturgy, or form of worship, provided it be for matter agreeable to the word of God, and suited to the nature of the several ordinances and necessities of the church, neither too tedious, nor composed of too short prayers or responsals, nor dissonant from the liturgies of other reformed churches, nor too rigorously imposed, nor the minister confined thereunto, but that he may also make use of his gifts for prayer and exhortation.

“2. Forasmuch as the book of common-prayer is in some things justly offensive, and needs amendment, we most humbly pray, that some learned, godly, and moderate divines of both persuasions, may be employed to compile such a form as is before described as much as may be in scripture words; or at least to revise, and reform the old; together with an addition of other various forms in Scripture phrase, to be used at the minister's choice.”

“Thirdly, concerning Ceremonies.

“We hold ourselves obliged in every part of divine worship, to do all things decently and in order, and to edification; and are willing to be determined by authority in such things, as being merely circumstantial, are common to human actions and societies and are to be ordered by the light of nature, and human prudence.

“As to divers ceremonies formerly retained in the church of England, we do, in all humility, offer to your majesty the following considerations.

“That the worship of God is in itself pure and perfect, and decent without any such ceremonies. That it is then most pure and acceptable when it has least of human mixtures. That these ceremonies have been imposed and advanced by some, so as to draw near to the significancy and moral efficacy of sacraments. That they have been rejected by many of the reformed churches abroad, and have been ever the subject of contention and endless disputes

been deprived so lately of a legal establishment, it is not surprising that in the true spirit of sectaries, they declined a comprehension which must have soon extinguished their religion and their name.

“A partial indulgence proposed at the same time by Tweeddale, would have proved a more efficacious remedy, had it been extensively adopted, or even steadily pursued. A part of the ejected clergy was permitted to officiate in vacant churches, and a small salary was promised to others who remained unprovided. The wages of silence were rejected, or rather were never paid; but the indulgence was at first so acceptable, that at different times above forty ministers were restored to their churches; and their labours were at first so successful, that the people endeavoured, in other parishes, to purchase the resignation of the episcopal incumbents. But the exiled and ejected clergy inveighed at an indulgence from which they were excluded themselves. In a few years, their publications and sermons against an Erastian dependance on the civil magistrate, estranged and separated the people from the indulged. When the latter ceased to preach to the times, the salt of their doctrine lost its relish, and it was visible to the people that the divine grace with which they were endued in conventicles, had departed on their submission to the injunctions of the civil power. The king curates, as they were contumeliously denominated, were compared to dumb dogs, unable or afraid to bark. The controversy continued burning for many years. The people returned to their conventicles with an increase of appetite, the temporising clergy relapsed into those popular doctrines which they had been forbidden to preach. But the severity of government was soon awakened by the rapid growth and increase of conventicles, for which the indulgence was supposed to leave no pretext.” 4 Hist. of Scotland, 53.

For the Proceedings at the Hampton Court Conference in 1604, see vol. 2, p. 69, of this Collection. Shortly after the Revolution king William was very desirous of an accommodation between the Church and the Protestant Dissenters, and some steps were taken, but unsuccessfully, to effect that purpose. The following is bishop Kennett's Account:

“On April 4, 1689, the House of Lords entered into a consideration of the Report of the Amendments in the Bill ‘For Uniting their Majesty's Protestant Subjects:’ And, upon debate, the question was put, “Whether to agree with the Committee in leaving out the clause, about the indifferency of the posture at receiving the Sacrament.” The Votes were equal, and therefore according to the ancient rule in the like cases it was carried in the Negative. The next day the Lords resumed the debate of the Report of the said Amendments, particularly of the clause concerning a Commission to be given out by the king, to some bishops

and others of the clergy; and it being proposed Whether some of the laity should be added The Votes were again equal on both sides, and so it was again carried in the Negative; but some peers entered their dissents for the reasons.

“First; Because the act itself being, as the preamble sets forth, designed for the Peace of the State; the putting the clergy into commission, with a total exclusion of the laity, lay this humiliation on the laity, as if the clergy of the Church of England were alone friends to the Peace of the State, and the laity less able or less concerned to provide for it.

“2. Because the matter to be considered being barely of human constitution, viz. the Liturgy and Ceremonies of the Church of England, which had their establishment from King Lords spiritual and temporal, and Commons assembled in parliament, there can be no reason why the Commissioners, for altering any thing in that civil-constitution, should consist only of men of one sort of them, unless it be supposed that human reason is to be quitted in this affair, and the inspiration of spiritual men to be alone depended on.

“3. Because though upon Romish principle the clergy may have the title to meddle alone in matters of religion, yet with us they cannot where the Church is acknowledged and defined to consist of clergy and laity; and so those matters of religion which fall under human determination, being properly the business of the Church, belong equally to both; for if what is of divine institution, neither clergy nor laity can make any alteration at all.

“4. Because the pretending, That differences and delays may arise, by mixing lay-men with ecclesiastics, to the frustrating the design of the Commission, is vain and out-of-doors unless those that make use of this pretence suppose that the clergy-part of the Church have distinct interests or designs from the lay part of the same Church; and will be a reason if good, why one or other of them should quit this house, for fear of obstructing the business of it.

5. “Because the Commission being intended for the satisfaction of Dissenters, it would be convenient, that lay-men of different ranks may, perhaps of different opinions too, should be mixed in it, the better to find expedients to that end; rather than clergy-men alone of our Church, who are generally observed to have all very much the same way of reasoning and thinking.

6. “Because it is the most ready way to facilitate the passing the alterations into a law. That lay-lords and commoners should be joined in the Commission, who may be able to satisfy both Houses of the reasons upon which they were made, and thereby remove all fears and jealousies ill men may raise up against the clergy, of their endeavouring to keep up, without grounds, a distinct interest from that of the laity, whom they so carefully exclude from being joined with them, in consultations of common

he was against all abatements. He frequently interrupted Mr. Baxter; and when Dr. Bates said, Pray my lord, give me leave to speak, he could not obtain it.

Bishop Cosins was there constantly, and though he was inclined to moderate measures, said some very severe things. When the ministers prayed the bishops to have some compassion on their brethren, and not cast such great numbers unnecessarily out of the ministry, he replied, "What, do you threaten us with numbers? For my part I think the king would do well to make you name them all." Again, when the ministers complained, that after so many years calamity the bishops would not yield to that which their predecessors offered before the war, bishop Cosins replied, "Do you threaten us then with a new war? 'Tis time for the king to look to you."

Bishop Gauden often took part with the presbyterian divines, and was the only moderator among the bishops, except bishop Reynolds, who spoke much the first day for abatements and moderation; but afterwards sitting among the bishops he only spoke now and then a qualifying word, but was heartily grieved for the fruitless issue of the Conference.

Of the disputants, 'tis said, Dr. Pearson, afterwards bishop of Chester, disputed accurately, soberly, and calmly, the presbyterian ministers had a great regard for him, and believed, that if he had been an umpire in the controversy his concessions would have gone a great way.

Dr. Gunning was the most forward speaker, and stuck at nothing. Bishop Burnet says, that all the arts of sophistry were used by him in as confident a manner as if they had been sound reasoning; that he was unweariedly active to very little purpose, and being very fond of the popish ritual and ceremonies, he was much set upon reconciling the church of England to Rome.

On the side of the presbyterians, Dr. Bates and Manton behaved with great modesty: the most active disputant was Mr. Baxter, who had a very metaphysical head and fertile invention, and was one of the most ready men of his time for an argument, but too tenacious of his own opinions. Next to him was Mr. Calamy, who had a great interest among the presbyterian ministers in the city and country, and for his age and gravity was respected as their father.

Among the auditors Mr. Baxter observes there was with the bishops a crowd of young divines who behaved indecently; but mentions only two or three scholars and laymen, who, as auditors, came in with the Presbyterians, as Mr. Miles, Mr. Tiltotson, and others.

After the removal of lord Clarendon, an attempt for a Comprehension of the Protestant Dissenters was set on foot in the year 1668, by Lord-Keeper Bridgman, Hale, Wilkins and others; an account of its failure is given by Burnet in the History of his own Times, Vol. 1.

p. 249. See also 4 Cobb. Parl. Hist. 413, et seq. and 4 Neal's History of the Puritans 340. An attempt of the same nature in favour of the sectaries was made about the same time in Scotland. Laing thus speaks of it:

"The humane design to relieve the Presbyterians, was retarded, not discouraged by the attempt on Sharp. The scandalous lives, and the ignorance of the western clergy were notorious, and the people were agitated and inflamed by a hot, itinerant race of youthful preachers, whose fiery polemics required a present remedy, more efficacious than persecution could afford. An accommodation with the presbyterians was attempted by Leighton, while the situation of the church might admit of an easy comprehension of sects. The prelates, intent on the acquisition of power, had introduced no material innovation in its worship or its rites. Its worship was still extemporary, or in some congregations was exchanged for a portion of the Liturgy; the sacramental rites were administered without kneeling, or the sign of the cross; and as the surplice, the altar, and the offensive ceremonies of the preceding reign were not generally revived, a uniform mode of worship was not difficult to be restored. The chief obstacle, and almost the only source of defection, was the government of the church, which, according to Leighton's scheme of comprehension, was to be restored to its former situation in the reign of James. The bishops were to relinquish their negative, and not to ordain without the concurrence of the presbytery, and their authority was to be reduced to little more than a right to preside in ecclesiastical courts. The presbyterian clergy were to be replaced and relieved from canonical oaths, and permitted, on their ordination or return to their Presbyteries, to exonerate their conscience by a Protestation against the precedence of the bishops, to which they submitted only for the sake of peace. Leighton, whose proposals were moderate, yet artful to an extreme, expected that the protestations would soon be forgotten, and represented to his own order, that their authority would easily be recovered, without the danger of a schism, when the present generation had sunk into the grave. But the prelates were not more unwilling to unlock the gates, than the Presbyterians to enter within the pale of the established church. The latter were apprehensive of the same consequences which Leighton anticipated, that if the people were once accustomed to the name of prelates, Presbytery would expire with the present generation, and therefore they preferred a separate, precarious existence, as a persecuted sect, to a secure and honourable, but obscure asylum, during the remainder of their lives. The people were industriously impressed with their fears; Touch not, taste not, handle not, was their favourable text against religious communion with an hostile sect. The accommodation was protracted by fruitless conferences, in which their scrupulous obstinacy was generally blamed; but when their church had

or arch-deacon's Court, or recorded at the said general or quarter-sessions."

Though the body of Dissenters were contented with this liberty, yet the more moderate and wiser part of them would be glad to be taken into the national establishment; and there was indeed a bill of Union still depending in parliament, which passed the House of Lords, and when it came down to the House of Commons, they desired his majesty to summon a Convocation, and lay the matter before them. Accordingly a Convocation was summoned by the king's writ, to meet on Dec. 4. In the mean time his majesty thought fit to fill up the vacant sees: And therefore on Oct. 13, Dr. Edward Stillingfleet, late dean of St. Paul's, bishop elect of Worcester; Dr. Simon Patrick, late dean of Peterborough, bishop elect of Chichester; and Dr. Gilbert Ironside, late warden of Wadham-college in Oxford, bishop elect of Bristol, were consecrated in the chapel of Fulham-Palace by the bishops of London, St. Asaph and Rochester, by virtue of a Commission granted to them in that behalf. And because the time allowed by act of parliament for the clergy to take the oaths was expired, those who refused to qualify themselves were suspended *ab officio*; particularly the archbishop of Canterbury, and the bishops of Gloucester, Ely, Norwich, Bath and Wells, and Peterborough.

In order to prepare matters to be considered by the Convocation, his majesty issued out this legal and reasonable Commission, to the most eminent bishops and divines.

"Whereas the particular Forms of divine worship, and the Rites and Ceremonies appointed to be used therein, are things in their own nature indifferent and alterable, and so acknowledged; It is but reasonable, that upon weighty and important considerations, according to the various exigencies of times and occasions, such changes and alterations should be made therein, as to those that are in place and authority, should from time to time seem either necessary or expedient.

"And whereas the book of Canons is fit to be reviewed, and made more suitable to the state of the church; And whereas there are defects and abuses in the ecclesiastical courts and jurisdiction; and particularly, there is not sufficient provision made for the removing of scandalous ministers; and for the reforming of manners either in ministers or people: And whereas it is most fit, that there should be a strict method prescribed for the examination of such persons as desire to be admitted into holy orders, both as to their learning and manners.

"We therefore, out of our pious and princely care, for the good order, and edification, and unity of the church of England, committed to our charge and care; and for the reconciling, as much as is possible, of all differences among our good subjects, and to take away all occasions of the like for the future, have thought fit to authorize and empower you, &c. and any nine of you, whereof three to be bishops, to meet from time to time as often as shall be

needful, and to prepare such alterations of the Liturgy and Canons, and such proposals for the reformation of ecclesiastical courts, and to consider of such other matters, as in your judgments may most conduce to the ends above-mentioned."

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Henry Aldridge, D. D. dean of Christ-Church, Oxford.
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concernment, that they will not have those have any part in the deliberation, who must have the greatest in determining.

7. "Because such a restrained Commission lies liable to this great objection, That it might be made use of to elude repeated promises, and the present general expectation of compliance with tender-consciences, when the providing for it, is taken out of the ordinary course of parliament, to be put into the hands of those alone, who were latest in admitting any need of it, and who may be thought to be the more unfit to be the sole composers of our differences, when they are looked upon, by some, as parties.

Lastly, "Because, after all, this carries a dangerous supposition along with it, as if the laity were not a part of the Church, nor had any power to meddle in matters of religion; a supposition directly opposite to the constitution both of Church and State: which will make all alterations utterly impossible, unless the clergy alone be allowed to have power to make laws in matters of religion; since what is established by law, cannot be taken away, but by consent of lay-men in parliament; the clergy themselves having no authority to meddle in this very case, in which the laity are excluded by this Vote, but what they derive from lay-hands. (Subscribed) "WINCHESTER,
"MORDANT,
"LOVELACE."

"I dissent, for this and other reasons; because it is contrary to three statutes, made in the reign of king Henry 8, and one in king Edward 6, which empower 32 Commissioners, to alter the canon and ecclesiastical-law, &c. whereof sixteen to be of the laity, and sixteen of the clergy. STAMFORD."

On May 24th, the Act of Toleration, or Liberty of Conscience, received the royal assent, intitled, 'An Act for exempting their majesty's Protestant-Subjects, dissenting from the Church of England, from the penalties of certain laws.' The reason of it was thus given, in the preamble: Forasmuch as some ease to scrupulous consciences, in the exercise of religion, may be an effectual means to unite their majesty's protestant-subjects in interest and affection; it was therefore enacted, "That none of the penal-laws shall be construed to extend to any person or persons dissenting from the Church of England, that shall take the oaths to the present government, and subscribe the declaration mentioned in Stat. 30 Car. 2. cap. 1. Provided, That no assembly of persons so dissenting, should be had in any place for religious worship with the doors locked, barred or bolted, during the time of such meeting together; and provided, That nothing should be construed to exempt any of the persons aforesaid from paying of tythes, or other parochial duties: If any Dissenter should be chosen or appointed to bear the office of constable, church-warden, overseer, &c. and should scruple the oaths required by law to be taken, in respect of such

office, he shall or may execute such office or employment by a sufficient deputy: That all preachers or teachers of any congregation of Dissenting Protestants, who shall take the oaths, and subscribe the declaration aforesaid, and also subscribe the articles of religion, mentioned in Stat. 13 Eliz. cap. 12. except the 34th, 35th, and 36th, and these words in the 20th Article, viz. [The Church hath power to decree rites or ceremonies, and authority in controversies of faith; and yet] shall not be liable to any of the pains and penalties mentioned in Stat. 17 Car. 2. 2. 22 Car. 2. 13, & 14 Car. 2. cap. 4. Every such teacher shall be exempted from serving upon any jury, or from being chosen and appointed to bear the office of church-warden, overseer of the poor, &c. but any justice of peace may require any person that goes to any meeting, for exercise of religion, to subscribe the declaration, and to take the oaths; and in case of refusal, is required to commit such person to prison, without bail or mainprize, &c." The like liberty was given to Anabaptists: and the Quakers were admitted to it, on condition of making this declaration of fidelity: 'I A. B. do sincerely promise, and solemnly declare, before God and the world, That I will be true and faithful to king William and queen Mary; and I do solemnly profess and declare, that I do, from my heart, abhor, detest and renounce, as impious and heretical, that damnable doctrine and position,' [That Princes excommunicated or deprived by the pope, or any authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever.] 'And I do declare, That no foreign prince, person, prelate, state or potentate, hath, or ought to have, any power, jurisdiction, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm.' And subscribing a profession of their Christian Belief, in these words: 'I A. B. profess faith in God the Father, and in Jesus Christ his Eternal Son the true God, and in the Holy Spirit, one God blessed for evermore; and do acknowledge the Holy Scriptures of the Old and New Testament, to be given by divine inspiration.' "Provided, That all the laws made for the frequenting Divine Service on the Lord's Day, shall be still in force and executed against all persons that offend against the said laws, except such persons come to some congregation permitted by this act. Provided, That if any person shall maliciously or contemptuously come into any cathedral or parish-church, or other congregation, and disturb or disturb the same, or misuse any preacher, or teacher, he shall, upon conviction, suffer the penalty of twenty pounds. And finally, Provided, That no congregation or assembly for religious worship, shall be permitted or allowed by this act, until the place of such meeting shall be certified to the bishop of the diocese, or to the arch-deacon of that arch-deaconry, or to the justices of the peace at the general or quarter-sessions, and registered in the said bishop's

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admitting of dissenting-ministers to officiate in the church, when duly reconciled to it. Some of the Commissioners were inclined not to insist on the re-ordination of them, alledging, That they ought not to shew less regard to the vocation of Presbyterian ministers, than to that of Roman Catholic priests, whose ordination was never questioned upon their joining in communion with the church of England. But the majority thought it more proper to keep a middle course, which was, first with respect to Romish priests, to leave it undecided whether their ordination was good or no: But because they were not obliged to give credit to their certificates, That therefore such of them as for the future should turn Protestants, should live in lay-communion only, unless they were re-ordained to a legal title of any church or cure: And secondly, That though they did not determine the ordination of Presbyterians to be altogether invalid; yet they thought it necessary for their ministers to receive orders from a bishop, who, in conferring the same might add a clause to the common-form, as the church had already ordained in the case of uncertain baptism, to this effect, If thou art not already ordained, I ordain thee, &c. and this was the greatest concession that was made by the Commissioners. One of the chief Dissenters has given this opinion of their proceedings: "These Commissioners often met and debated matters, but were deserted by Dr. Jane* and several others. They drew up sundry alterations, a copy of which I have by me; but they having never thought fit to communicate them to the body of the convocation, or to expose them to the view of the world from the press, I know not how proper it would be for me to print them. But this much I shall venture to say that such amendments as those were, with such an allowance in the point of orders for ordination by presbyters, as is made 13 Eliz. cap. 12. would in all probability have brought in two thirds of the Dissenters in England, which being done, and at the same time a liberty continued to such as could not be comprehended, would have been greater service than can easily be imagined."

One of the commissioners has more lately given this better account of it; "In the reign of king James, those of the church who saw the

* Dr. Jane was very averse to any concession on the part of the Church. There is a story, that when a friend expressed to him a hope that he had not given up much, the Doctor replied, "I have not given up Bel and the Dragon." See also as to Bel and the Dragon, 1 Burnet's Own Time, 184. This Dr. Jane had been the penner of the famous Oxford Decree; as to which and his conduct respecting it upon the Revolution, which gave occasion to this Epigram:

Cum fronti sit nulla fides ut carmina dicunt,
Cur tibi bifronti, Jane, sit ulla fides,

see 3 Kennett's Compl. Hist. (1st ed.) 419, et seq.

papists drawing in the Dissenters to concur with them in their designs against the church, applied to the then prince of Orange, desiring him to make use of his interest in them for diverting them from that: And in those letters which are yet extant, assurances were given, That the church was then in such a temper, so well convinced of former errors, that if ever she got out of that distress, all those differences would be certainly made up: And to make this assurance more public, the archbishop and bishops, in that Petition, for which they were imprisoned and tried, declared, That they were ready to come to a temper in those matters, both in parliament and convocation. Upon this it was, that the prince of Orange promised in his declaration, to use his endeavours, to heal all those divisions: In order to the performing this, he, by a special commission appointed all those bishops who owned his authority, he being then set on the throne, together with a great many of the clergy, to draw out the grounds upon which the Dissenters had separated from us, and to offer expedients in order to the healing our breaches. We had before us all the books and papers that they had at any time offered, setting forth their demands; together with many advices and propositions which had been made at several times, by most of the best and most learned of our divines; of which the late most learned bishop of Worcester had a great collection: So we prepared a scheme to be laid before the convocation; but did not think that we ourselves, much less that any other person, was any way limited, or bound to comply with what we resolved to propose. On the contrary, we said, if we saw better reason, we should change our minds: yet this, which was only a council, created by the king to prepare matters, was complained of as an imposing on the convocation, and as a limiting of it; and though a royal license was sent them, yet a previous resolution was taken, to admit of no alterations. When we saw that, we resolved to be quiet, and leave that matter to better times: But then the enemies of the civil government began to work on the jealousies and fears of many well minded men; and the preserving the church, was given out as the word, by those who meant France or St. Germans by it; and under this fatal delusion many are apt to be misled to this day."

The convocation met on Thursday, Nov. 21, and began in an unhappy difference about the choice of a Prolocutor. The person designed by the bishop of London and most of his brethren and the sober part of the clergy, was Dr. Tillotson, dean of Canterbury, whom the king had lately made clerk of his closet, and used to call him the honestest man and the best friend that ever he had in his life; but it was carried by a majority of votes for Dr. Jane of Oxford, who being presented on the 25th to the bishop of London as president, for his approbation, made a customary speech in Latin, wherein he extolled the excellency of the church of England as established by law, above all christian com-

dulged working after evening service, if authority shall think fit. The other names excepted against, stand in the Kalendar, not that they should be kept as holy days, but upon the score of their being useful for preserving the memories of some eminent persons : they are likewise serviceable for leases, law-days, &c.

“ Their proposal touching the gift of prayer, makes the Liturgy, in effect, wholly insignificant : for what else can be the consequence, if every minister may put in, and leave out at discretion? As for the gift, or rather the spirit of prayer, it consists in the inward graces of the Holy Spirit, and not in extemporary expressions : such unpremeditated effusions are only the effects of natural parts, of a voluble tongue and uncommon assurance. But if there is any such gift as is really pretended, this extraordinary qualification must be subject to the prophets and the order of the church.

“ Considering the mischiefs coming by impertinent, ridiculous, and sometimes seditious, wicked and blasphemous expressions, and under pretence of giving liberty for exercising the gift of prayer ; considering the honour of God is so highly injured, and religion suffers so much this way, it is reasonable those who desire such an indulgence in public devotions, should first give the church security, that no private opinions should be put into their prayers : and that nothing contrary to the faith, should be uttered before God, or offered up to him in the church. To prevent which mischiefs, the former ages knew no better way than forbidding the use of any prayers in public, excepting such as were prescribed by public authority.

“ The Presbyterians objections against the obsolete language, and mistaken sense in the Translation used in the Liturgy, are all true, and all amended.

“ The Church Commissioners proceed to consider their Exceptions against reading Apocryphal lessons in the church. And here they observe, the Presbyterians demand an alteration upon such grounds as would exclude all Sermons as well as the Apocrypha. Their argument is, the holy Scriptures contain all things necessary with reference both to belief and practice. This plea is returned upon them with a dilemma : if the inspired writings, say the Church-Commissioners, are so comprehensive, to what purpose are there so many unnecessary Sermons? Why have we any thing more than the reading of Holy Scriptures? But if notwithstanding the sufficiency of the Old and New Testament, Sermons are necessary, there is no reason why these Apocryphal chapters should not be reckoned equally useful : for most of them deliver excellent discourses and precepts of morality : and it is much to be wished the sermons of these ministers were no worse : if they are afraid these books may by this regard come up to an equal authority with the Canon ; the church has secured them against this apprehension, by calling them Apocryphal : now it is the church's

testimony which teaches us to make this distinction. And lastly, to leave out these Apocryphal lessons, were to cross upon the practice of former ages.

“ That the minister should not read the communion service at the communion-table, is not reasonable to demand, since it was the practice of all the Primitive Church : and if we do not govern ourselves by that golden rule of the Council of Nice, “ Let ancient customs be continued,” unless reason plainly requires the contrary, we shall give offence to sober Christians by a causeless departure from Catholic usage, and put a greater advantage in the hands of our adversaries, than it is to be hoped our brethren the Dissenters would willingly allow. As for the priest's standing at the Communion-table, it seems an invitation to the holy Sacrament, and reminds us that it is the duty of some of us at least, to receive every Sunday : and though we happen to neglect our duty, it is fit the church should suggest recollection, and keep her standing.

“ It is not reasonable the word Minister should only be used in the Common-Prayer : for since some parts of the Liturgy may be performed by a deacon and others, such as Absolution and Consecration, by none under the order of a Priest, it is fit some such word as Priest should be used for those offices which are appropriated to his character : the term Minister being of too low and lax a signification for this purpose. The word Curate likewise signifies those who are entrusted by the bishop with the cure of souls, and therefore very fit to be used. Sunday being a very ancient distinction of the day upon which our Saviour rose from the dead, there is no reason that name should be disused.

“ Singing of Psalms in metre, continue the Church-Commissioners, is no part of the Liturgy, and by consequence no part of our communion.

“ In answer to the 15th objection, they alledge, that the church's phrase in her prayers, is no more offensive than St. Paul's : this apostle in his epistles to the Corinthians, Galatians, and others, calls them in general the Churches of God sanctified in Christ Jesus, and Saints by their vocation. And yet amongst these, there were many, who upon the score of their open irregularities, could not properly be stiled such : however, St. Paul denominates the whole from the greater part, and puts the rest in mind of their profession, what they have undertaken in their baptism, and the privileges and honourable distinctions to which that Sacrament has given them a title.

“ As to the connexion of the parts of the Liturgy, it is conformable to the example of the Churches of God, and has as much coherence as usually occurs in many petitions of the same Psalm. And the method of these offices they must believe to be admirable and beyond exception, till the Presbyterians can suggest a better, which is not yet done.

“ The Collects, by their brevity, are best

smited to devotion, and resemble those short, but prevalent prayers in Scripture, 'Lord be merciful to me a sinner.' 'Son of David have mercy on us.' 'Lord increase our faith.'

After this, proceeding to the remainder of the objection, they subjoin, "We cannot imagine why the repeated name and mention of the attributes of God, should not be most acceptable to any person religiously disposed; or how this repetition should seem any burthen, since David magnified one attribute of God's mercy six and twenty times together. Nor can we conceive why the name and merits of Jesus should be less comfortable to us than to former saints and martyrs: and since the hopes of obtaining our petitions are founded upon the attributes of God, such prefaces of prayers as are taken from the divine perfections, are not to be censured as unsuitable and casual, though they should have no special reference to the following petitions."

From hence they advance to the 17th exception: "And whereas it was objected there was no preparatory prayer in our Liturgy for God's assistance or acceptance, they answer, this is plain misreporting the Communion-Prayer. For besides a preparatory exhortation, there are several prayers upon the heads in which it is pretended they are deficient. The instances are these: 'Despise not, O Lord, humble and contrite hearts.' 'That those things may please him that we do at this present.' 'O Lord open our lips,' &c.

"As to the Presbyterians objection against the Church's Confession being couched in general terms, the episcopal divines answer, that this is rather a perfection, than a disadvantage: that the offices are intended for common use: that general services would cease to be such, by descending to particulars. To come closer to the case: when confession of sins is general, all persons may and must join in it, considering in many things we offend all. But if the enumeration of sin was particular, it would not be so well suited to the use of the congregation: for it may well be supposed to happen, that some persons may by God's grace, have been preserved from several of those sins recited: and therefore by confessing themselves guilty, they would lie to God Almighty, and thus stand in need of a new confession. As for original sin, they conceive it sufficiently acknowledged in the church's confessing, that 'without God's help, our frailty cannot but fall; and that our mortal nature can do no good thing without him.'

"And whereas the Presbyterians complained of the want of stated forms for several public occasions; the Church-Commissioners answer, they are not conscious of any such defect: however, if any such thing can be made good, the Church will provide accordingly.

"The Dissenters complain, the Liturgy goes too much upon generals, in their applications for God's grace and protection, and instance in these expressions; 'That we may do God's will; that we may be kept from all evil.'

Now these, reply the Church-Commissioners, are almost the very terms in the Lord's Prayer. So that they must reform that, before they can pretend to mend our Liturgy in these petitions."

The principal demand of the Presbyterians, was, "That those which impose any ceremonies, especially the surplice, the sign of the cross, and kneeling, might be abrogated. Their reasons for this demand, are these.

"1. It is doubtful, as the Presbyterians argue, whether God has empowered men to impose such significant signs. For though they call them significant, they have no real goodness in the judgment of the imposers themselves: for they call them things indifferent, and therefore they cannot fall under St. Paul's rule of *Omnia decenter*, neither are they suitable to the simplicity of gospel worship.

"2. Because it is a violation of the royalty of Christ, and an impeachment of his laws as insufficient. Their other two reasons, drawn from their being scrupled by several learned and orthodox men; and giving occasion to divisions and persecution, have been mentioned already."

The Church-Commissioners, before they answer particularly to these reasons, premise some general rules for supporting their following discourse.

"1. They observe, that God has not only given a power, but likewise commanded the imposing whatever shall be truly decent and becoming his public service. That after St. Paul had laid down some particular rules for praying, thanksgiving, prophesying, &c. he concludes with this general precept, let all things be done *honestè*, in a decent manner: and that there may be uniformity in these circumstances of decency, the apostle adds, let there be a *regula*, a rule, or canon for that purpose.

"2. Superiors, not inferiors, must be judges of what is decent and convenient: those who have authority to order that every thing be done decently, must of necessity first judge of the quality of things.

"3. These rules for decency made and enjoined by superiors, ought to be obeyed by inferiors, till it is made as clear that they are not bound to obey in the particular case, as it is evident in general, that it is their duty to obey their superiors: for if the exemption from obedience is less clear than the command to obey, it must be sin not to obey.

"4. Pretence of conscience is no discharge from obedience, for the law, as long as it continues, binds to obedience: it is the apostle's doctrine, 'Ye must needs be subject.' As to the pretence of a tender or reluctant conscience, this plea can never disable the law: for it neither takes away the authority of the legislator, nor makes the matter of the law unlawful. Besides, if pretence of conscience was a sufficient excuse for non-obedience, laws would signify nothing: for every body might pretend this plea; which if allowed, anarchy and confusion must inevitably follow.

5. "Though charity moves for compassion, and may dispose superiors to relieve those that are really over scrupulous and perplexed; yet we must not break God's command out of good nature: and therefore we must not suffer the public service to be indecently or disorderly performed, for the ease of tender consciences.

"Having premised this general answer, the church commissioners proceed to argue that those things which they call indifferent, because neither expressly commanded, nor forbidden by God Almighty, have something of natural proportion, goodness and decency in them; and for this reason they are imposed: Thus by St. Paul's rule, and many others in scripture, authority is given to governors, to impose signs, which certainly are never the worse, because they carry a signification of decency and regard. On the other side, if the church should enjoin the use of ceremonies which were wholly insignificant; such an exercise of power might rather be questioned.

2. "To make such laws upon the score of decency is no violation of Christ's royalty: it is only exercising a branch of that authority granted to his church: and therefore disobeying such commands of superiors, is a plain opposition to his sovereignty. Farther, making laws for the sake of decency, does by no means imply a charge of insufficiency upon our Saviour's institutions. For it is evident by the precepts themselves, that our Saviour never intended to determine every minute circumstance of time, place, and manner: he only commanded the substance of religious duties in general, and directed to the right ends of the performance. As to other matters, our Lord left every man to the suggestions of reason for private services; and appointed governors of the church to determine such particularities for the public. Thus for instance, our Saviour commanded prayers, fasting, &c. But time and place for these duties are undetermined. Thus by parity of reasoning, to make laws for regulating the points of decency, is no imputation upon his economy; for it is plain it was not his design to state these matters. He has left us governors for this purpose; their commission is express to all imaginable advantage: 'As my Father sent me, so send I you. Obey those that have the rule over you.' He has likewise told us, that if we will not bear his church, we must be reckoned no better than heathens and publicans.

"And whereas the non-conformists plead they cannot obey the commands of the church for fear of violating the precept, which forbids adding to the word of God. To this the church commissioners answer, These ministers do not well consider, that it is no addition to the word of God to command things for order and decency, provided they are not enjoined as God's immediate instructions, but only as regulations of human authority. But on the other hand, to affirm that superiors are not allowed to command things unforbidden by God Almighty, is an undeniable addition to the word of God. And likewise to deny ecclesiastical or civil go-

vernors that power which the scriptures have given them, is diminishing God's word, which is no less forbidden in the text last mentioned.

"And supposing some people continue perplexed, and under scruples; the church may notwithstanding, without sin, insist upon her commands for complying with decent ceremonies. And all this without being guilty of offending our weak brother; for here the scandal is taken, and not given. It is the prejudice and mistake of the scrupulous person that disturbs himself; and therefore he may be justly said to lay the stumbling block in his own way.

"Neither will the case of St. Paul's not eating flesh if it offended his brother, do any service to the complainants. For here it must be observed, the apostle speaks of things not commanded by God or his church; of matters which had nothing of decency or significance for religious purposes. And therefore in a case thus foreign and unrelated to divine worship, St. Paul was willing to resign his liberty, rather than offend his brother. But if any man should venture to break a just law or custom of the church, the apostle marks him for a contentious person.

"That these ceremonies have occasioned many divisions, as it is pretended, is no more their fault, than the misunderstandings between the nearest relations, accidentally consequent upon the preaching of the Gospel, can be fairly charged on the Christian religion.

"After this they proceed to justify the use of the surplice by alledging, that both reason and experience may inform us, that decency in ornament and habit strike the senses, and excite reverence and regard: upon this view they are made use of in the equipage of princes, and in courts of justice. And why then should the service of God be refused this common advantage? and to come to the particular case, no habit is more suitable at holy ministrations than white linen: It is an emblem of purity and beauty: angels have appeared in this dress, and therefore what colour can be more proper for those whom the scripture dignifies with that name? and that this habit was anciently used in the church, we may learn from St. Chrysostom.

"The cross, continue these episcopal divines, was always used in the church in *immortalis membra*. To testify therefore our communion with the saints of former ages, as our creed teaches us; and to signify we are not ashamed of the cross of Christ: for these reasons they conceive it proper this ceremony should be continued, and cannot imagine it should trouble the conscience of any person that desires to be satisfied.

"As to the posture of kneeling, they argue it best becomes the solemnity of the holy Eucharist: That the most valuable blessings ought to be received with the greatest marks of reverence and submission. That postures of familiarity are not acceptable to God Almighty upon so solemn an occasion, may be collected from Malachi i. 6, 8. That when the church used standing at her prayers, the manner of re-

ceiving was *more adorationem*: That since this posture of standing has been disused, and kneeling practised instead of it; since this circumstance is thus altered by the church's appointment, to stand at the Communion now, when we kneel at prayers, would be by no means decent; neither was it ever the custom of the best times.

"The Church Commissioners conclude their General Answer with taking notice, that there were ancient liturgies in the church, as appears plainly from St. Chrysostom's, St. Basil's, and others: And the Greeks, say they, mention St. James's, much older than the rest. And though we cannot trace entire liturgies through all the centuries of Christianity; yet that there were such in the earliest ages, may certainly be concluded from the fragments remaining: such as, *Sanctum Corda, &c. Gloria Patri, Benedicite, Hymnus, Cherubinus, &c. Vere Dignum et Justum, &c. Dominus vobiscum et cum Spiritu tuo*, with several others: and notwithstanding the liturgies now extant may be interpolated; yet where the forms and expressions are agreeable to Catholic doctrine, they may well be presumed uncorrupted remainders, and primitive usage; especially since general councils are silent as to the original of these liturgies."

To this Answer the Non-conformists put in a long Reply.

As to their more particular exceptions against the Rubric and the offices in the Common Prayer; "In the Litany they would have 'from all other deadly sin,' altered to 'from all other heinous sins.' 'From sudden death,' they moved might be changed to 'unprepared dying suddenly.' They take check at the church's praying for 'all that travel,' and insist the expression may be qualified, to 'those that travel.' In the office for the Visitation of the Sick, they except to the form of absolution, press for declarative and conditional expressions; as 'I pronounce thee absolved if thou dost truly repent and believe.' To this the Church Commissioners answer, "That the form of absolving in the Liturgy is more agreeable to the scriptures than that which these ministers desired. For where the apostles, and their successors the bishops and priests, are commissioned for this purpose, it is declared, 'Whose sins ye remit, they are remitted;' not 'whose sins you pronounce remitted;' neither needs the condition be expressed, being always necessarily understood.

"In the office for Churching of Women, they would have this prayer with the responsal omitted; O Lord save this woman thy servant; Answ. Which putteth her trust in thee. The reason of their exception is, That it may happen a woman may come to give thanks for a child born in adultery or fornication. But to this the episcopal divines reply, That in such cases she is to do penance before she is churched. And which is the last case that I shall mention, they except against the Rubrics enjoining the woman to offer the accustomed offerings: this they pretend looks too like a Jew-

ish purification. To this the Church Commissioners return, That offerings are required as well under the Gospel, as under the Law; and that when we give thanks for special blessings and deliverance from danger, it is a proper occasion for such religious acknowledgments."

Besides the Exceptions already mentioned by the Non-conformists, there were larger Additions or new Forms referred to Baxter's management. This divine went a great way in his commission, and drew up an entire service which he intitled the Reformed Liturgy. This was read by the ministers, and generally approved. The Common Prayer is very much altered in this composition: the additions and omissions are considerable; and both matter and form remarkably different. It was laid before the bishops and other divines in the commission. In the recommendatory address before it, the non-conformists had the modesty to declare, that if any of those rules or directions upon debate shall be judged by the Commissioners unnecessary or over-long, we shall be very ready (say they) to submit either to the alteration, or omission of them. At last, in the close of their application, they desire the several particulars thereof may be inserted into the respective places of the Liturgy to which they belong; and be left to the minister's choice to use the one or the other, according to his majesty's gracious Declaration concerning Ecclesiastical Affairs.

About ten days before the commission expired, the non-conformists desired a personal conference with the bishops upon the subject of the papers exchanged. This request being agreed, three of each party were pitched on to manage the dispute: the bishops chose Dr. Pearson, Dr. Gunning, and Dr. Sparrow: the ministers' managers were Dr. Bates, Dr. Jacobson, and Mr. Baxter: When they met, the conference, through want of order, frequent interruptions, and personal reflections, turned to no account.

Time being thus spent to little purpose, bishop Cosens at last produced a Paper, containing an expedient to end the controversy. The principal thing in this paper was a proposal to put the complainants upon distinguishing between things they charged as sinful, and others, which they opposed upon the score of inexpediency. The three disputants on the ministers' side, were desired to draw up their sense upon this subject against the next morning. This was accordingly done and delivered, but in their own names only: for here they would not pretend to represent their party. In this discourse they charge the Rubric and Injunctions, of the Church with eight things, flatly sinful and contrary to the word of God: they are these: 1. That no minister be admitted to baptize without the transient image of the cross. 2. That no minister be permitted to read or pray, or exercise the other parts of his office that dares not wear a surplice. 3. That none be admitted to Communion in the Lord's-Supper, that dare not receive it kneeling; and that all ministers

be enjoined to deny it to such. 4. That ministers are obliged to pronounce all baptized infants regenerate by the Holy Ghost, whether they are children of Christians or not. 5. That ministers be forced to deliver the sacrament of the body and blood of Christ unto the unfit, both in health, and sickness, and that with personal application, putting it into their hands: And that such are forced to receive it, though against their own wills, in the conscience of their impenitency. 6. That ministers are forced to absolve the unfit, and that in absolute expressions. 7. That ministers are forced to give thanks for all whom they bury, as brethren whom God has delivered and taken to himself. And, 8. That none may be a preacher that dares not subscribe there is nothing in the Common-Prayer-Book, book of Ordination, and the 39 Articles, that is contrary to the word of God.

The most remarkable things in this debate were these two.

“First, They had a long argument about settling the sense and application of Rom. xiv. 1, 2, 3. ‘Him that is weak in the faith, receive you, but not to doubtful disputations, &c.’ Here the Presbyterian ministers were the opponents.

“In the other part of the dispute, the question was, Whether it was sinful to enjoin ministers to deny the Communion to those that would not receive it kneeling? And here the episcopal divines who opposed, urged several arguments, that things in their own nature indifferent, might become necessary as to their use, when commanded by lawful authority. In this debate, the episcopal divines arguing thus; That a command which commands only an act in itself lawful is not sinful. This was denied by Baxter, upon the score that some unlawful circumstance might hang upon the command, or because the penalty might be over-charged. The opponents reinforced their proposition thus: That command which commandeth an act in itself lawful, and no other act whereby any unjust penalty is enjoined, nor any circumstance whence directly, or *per accidens*, any sin is consequent, which the commander ought to provide against, is not sinful. This Baxter denied, ‘because the first act commanded, may be accidentally unlawful, and be commanded by an unjust penalty, though no other act or circumstance be such.’ The opponents endeavoured to set the argument in a stronger light, if possible. To this purpose they improve their proposition thus: That command which commandeth an act, in itself lawful, and no other act whereby any unjust penalty is enjoined, nor any circumstance whence directly or *per accidens*, any sin is consequent, which the commander ought to provide against, hath in it all things requisite to the lawfulness of a command, and particularly cannot be guilty of commanding an act *per accidens* unlawful, nor of commanding an act under an unjust penalty. This proposition was denied by Baxter for his reasons last mentioned.”

And thus the Conference at the Savoy ended without an accommodation.*

Before we leave this famous Conference at the Savoy it will not be amiss to remark the behaviour of the Commissioners on both sides; some of whom seldom or never appeared, as Dr. King, bishop of Chichester, Dr. Heylin, Barwick and Earl; Sheldon bishop of London came but seldom, though he, with Hinchman and Morley, had the chief management of affairs; others were present, but did not much concern themselves in the debate, as Dr. Frewen archbishop of York; Lucy of St. David's; Warner of Rochester; Saunderson of Lincoln: Lancy of Peterborough; Walton of Chester; Sterne of Carlisle; Dr. Hocket and Dr. Sparrow—On the side of the Presbyterians Dr. Horton never appeared, nor Dr. Drake, because of a misnomer in the commission; Dr. Lightfoot, Tuckney, and Mr. Woodbridge were present but once or twice.

Among the bishops; Dr. Morley was the chief speaker; his manner was vehement, and

* Whether the encouragement the Non-Formists received from the king, and the ministry, the assurances they might have from some leading members in parliament, or their interest they reckoned on with the people; whether all, or any of these motives made them stand off, and less compliant, is farther than I shall pronounce.

“Before I take leave of this subject, I shall just mention those Church Commissioners who had the greatest share in the debate. Hinchman, then bishop of Salisbury, and afterwards of London, is reported well acquainted with the Fathers and Councils: He discoursed with great temper, but was strongly against large abatements, and schemes of comprehension. This prelate, together with Sheldon and Morley, are said to have had the chief management of this affair. Dr. Pearson, afterwards bishop of Chester, disputed with great exactness. The ministers on the other side had a particular regard for him, and believed that if this divine had been an umpire in the controversy, his concessions would have gone a great way: And to mention only one more, Dr. Gunning, afterwards bishop of Ely, had a principal part in the debate: He had a ready pronounciation, and argued with great learning and vigour. His regard for the practice of antiquity made him adhere strictly to the ceremonies and constitution of the church: and he thought it by no means reasonable to give up usages and regulations, so primitively settled, and supported.

“At the close of the last day it was mutually agreed, that the Report of the Conference should be delivered to the king in writing: And that each party should give in this general account, ‘That the church's welfare, that unity and peace, and his majesty's satisfaction, were ends upon which they were all agreed: But as to the means, they could not come to any harmony.’” Collier.

he was against all abatements. He frequently interrupted Mr. Baxter; and when Dr. Bates said, Pray my lord, give me leave to speak, he could not obtain it.

Bishop Cosins was there constantly, and though he was inclined to moderate measures, said some very severe things. When the ministers prayed the bishops to have some compassion on their brethren, and not cast such great numbers unnecessarily out of the ministry, he replied, "What, do you threaten us with numbers? For my part I think the king would do well to make you name them all." Again, when the ministers complained, that after so many years calamity the bishops would not yield to that which their predecessors offered before the war, bishop Cosins replied, "Do you threaten us then with a new war? 'Tis time for the king to look to you."

Bishop Gauden often took part with the presbyterian divines, and was the only moderator among the bishops, except bishop Reynolds, who spoke much the first day for abatements and moderation; but afterwards sitting among the bishops he only spoke now and then a qualifying word, but was heartily grieved for the fruitless issue of the Conference.

Of the disputants, 'tis said, Dr. Pearson, afterwards bishop of Chester, disputed accurately, soberly, and calmly, the presbyterian ministers had a great regard for him, and believed, that if he had been an umpire in the controversy his concessions would have gone a great way.

Dr. Gunning was the most forward speaker, and stuck at nothing. Bishop Burnet says, that all the arts of sophistry were used by him in as confident a manner as if they had been sound reasoning; that he was unweariedly active to very little purpose, and being very fond of the popish ritual and ceremonies, he was much set upon reconciling the church of England to Rome.

On the side of the presbyterians, Dr. Bates and Manton behaved with great modesty: the most active disputant was Mr. Baxter, who had a very metaphysical head and fertile invention, and was one of the most ready men of his time for an argument, but too tenacious of his own opinions. Next to him was Mr. Calamy, who had a great interest among the presbyterian ministers in the city and country, and for his age and gravity was respected as their father.

Among the auditors Mr. Baxter observes there was with the bishops a crowd of young divines who behaved indecently; but mentions only two or three scholars and laymen, who, as auditors, came in with the Presbyterians, as Mr. Miles, Mr. Tillotson, and others.

After the removal of lord Clarendon, an attempt for a Comprehension of the Protestant Dissenters was set on foot in the year 1668, by Lord-Keeper Bridgman, Hale, Wilkins and others; an account of its failure is given by Burnet in the History of his own Times, Vol. 1.

p. 249. See also 4 Cobb. Parl. Hist. 413, et seq. and 4 Neal's History of the Puritans 340. An attempt of the same nature in favour of the sectaries was made about the same time in Scotland. Laing thus speaks of it:

"The humane design to relieve the Presbyterians, was retarded, not discouraged by the attempt on Sharp. The scandalous lives, and the ignorance of the western clergy were notorious, and the people were agitated and inflamed by a hot, itinerant race of youthful preachers, whose fiery polemics required a present remedy, more efficacious than persecution could afford. An accommodation with the presbyterians was attempted by Leighton, while the situation of the church might admit of an easy comprehension of sects. The prelates, intent on the acquisition of power, had introduced no material innovation in its worship or its rites: Its worship was still extemporary, or in some congregations was exchanged for a portion of the Liturgy; the sacramental rites were administered without kneeling, or the sign of the cross; and as the surplice, the altar, and the offensive ceremonies of the preceding reign were not generally revived, an uniform mode of worship was not difficult to be restored. The chief obstacle, and almost the only source of defection, was the government of the church, which, according to Leighton's scheme of comprehension, was to be restored to its former situation in the reign of James. The bishops were to relinquish their negative, and not to ordain without the concurrence of the presbytery, and their authority was to be reduced to little more than a right to preside in ecclesiastical courts. The presbyterian clergy were to be replaced and relieved from canonical oaths, and permitted, on their ordination or return to their Presbyteries, to exonerate their conscience by a Protestation against the precedence of the bishops, to which they submitted only for the sake of peace. Leighton, whose proposals were moderate, yet artful to an extreme, expected that the protestations would soon be forgotten, and represented to his own order, that their authority would easily be recovered, without the danger of a schism, when the present generation had sunk into the grave. But the prelates were not more unwilling to unlock the gates, than the Presbyterians to enter within the pale of the established church. The latter were apprehensive of the same consequences which Leighton anticipated, that if the people were once accustomed to the name of prelates, Presbytery would expire with the present generation, and therefore they preferred a separate, precarious existence, as a persecuted sect, to a secure and honourable, but obscure asylum, during the remainder of their lives. The people were industriously impressed with their fears; Touch not, taste not, handle not, was their favourable text against religious communion with an hostile sect. The accommodation was protracted by fruitless conferences, in which their scrupulous obstinacy was generally blamed; but when their church had

been deprived so lately of a legal establishment, it is not surprising that in the true spirit of sectaries, they declined a comprehension which must have soon extinguished their religion and their name.

“ A partial indulgence proposed at the same time by Tweedale, would have proved a more efficacious remedy, had it been extensively adopted, or even steadily pursued. A part of the ejected clergy was permitted to officiate in vacant churches, and a small salary was promised to others who remained unprovided. The wages of silence were rejected, or rather were never paid; but the indulgence was at first so acceptable, that at different times above forty ministers were restored to their churches; and their labours were at first so successful, that the people endeavoured, in other parishes, to purchase the resignation of the episcopal incumbents. But the exiled and ejected clergy inveighed at an indulgence from which they were excluded themselves. In a few years, their publications and sermons against an Erastian dependance on the civil magistrate, estranged and separated the people from the indulged. When the latter ceased to preach to the times, the salt of their doctrine lost its relish, and it was visible to the people that the divine grace with which they were endued in conventicles, had departed on their submission to the injunctions of the civil power. The kings curates, as they were contumeliously denominated, were compared to dumb dogs, unable or afraid to bark. The controversy continued burning for many years. The people returned to their conventicles with an increase of appetite, the temporising clergy relapsed into those popular doctrines which they had been forbidden to preach. But the severity of government was soon awakened by the rapid growth and increase of conventicles, for which the indulgence was supposed to leave no pretext.” 4 Hist. of Scotland, 53.

For the Proceedings at the Hampton Court Conference in 1604, see vol. 2, p. 69, of this Collection. Shortly after the Revolution king William was very desirous of an accommodation between the Church and the Protestant Dissenters, and some steps were taken, but unsuccessfully, to effect that purpose. The following is bishop Kennett's Account:

“ On April 4, 1689, the House of Lords entered into a consideration of the Report of the Amendments in the Bill ‘ For Uniting their Majesty's Protestant Subjects.’ And, upon debate, the question was put, “ Whether to agree with the Committee in leaving out the clause, about the indifferency of the posture at receiving the Sacrament.” The Votes were equal, and therefore according to the ancient rule in the like cases it was carried in the Negative. The next day the Lords resumed the debate of the Report of the said Amendments, particularly of the clause concerning a Commission to be given out by the king, to some bishops

and others of the clergy; and it being proposed, Whether some of the laity should be added? The Votes were again equal on both sides, and so it was again carried in the Negative; but some peers entered their dissents for these reasons.

“ First; Because the act itself being, as the preamble sets forth, designed for the Peace of the State; the putting the clergy into commission, with a total exclusion of the laity, lays this humiliation on the laity, as if the clergy of the Church of England were alone friends to the Peace of the State, and the laity less able, or less concerned to provide for it.

“ 2. Because the matter to be considered being barely of human constitution, viz. the Liturgy and Ceremonies of the Church of England, which had their establishment from King, Lords spiritual and temporal, and Commons assembled in parliament, there can be no reason why the Commissioners, for altering any thing in that civil-constitution, should consist only of men of one sort of them, unless it be supposed that human reason is to be quitted in this affair, and the inspiration of spiritual men to be alone depended on.

“ 3. Because though upon Romish principles the clergy may have the title to meddle alone in matters of religion, yet with us they cannot, where the Church is acknowledged and defined to consist of clergy and laity; and so those matters of religion which fall under human determination, being properly the business of the Church, belong equally to both; for in what is of divine institution, neither clergy nor laity can make any alteration at all.

“ 4. Because the pretending, That differences and delays may arise, by mixing lay-men with ecclesiastics, to the frustrating the design of the Commission, is vain and out-of-doors; unless those that make use of this pretence, suppose that the clergy-part of the Church have distinct interests or designs from the lay-part of the same Church; and will be a reason, if good, why one or other of them should quit this house, for fear of obstructing the business of it.

5. “ Because the Commission being intended for the satisfaction of Dissenters, it would be convenient, that lay-men of different ranks, nay, perhaps of different opinions too, should be mixed in it, the better to find expedients for that end; rather than clergy-men alone of our Church, who are generally observed to have all very much the same way of reasoning and thinking.

6. “ Because it is the most ready way to facilitate the passing the alterations into a law, That lay-lords and commoners should be joined in the Commission, who may be able to satisfy both Houses of the reasons upon which they were made, and thereby remove all fears and jealousies ill men may raise up against the clergy, of their endeavouring to keep up, without grounds, a distinct interest from that of the laity, whom they so carefully exclude from being joined with them, in consultations of common

concernment, that they will not have those have any part in the deliberation, who must have the greatest in determining.

7. "Because such a restrained Commission lies liable to this great objection, That it might be made use of to elude repeated promises, and the present general expectation of compliance with tender-consciences, when the providing for it, is taken out of the ordinary course of parliament, to be put into the hands of those alone, who were latest in admitting any need of it, and who may be thought to be the more unfit to be the sole composers of our differences, when they are looked upon, by some, as parties.

Lastly, "Because, after all, this carries a dangerous supposition along with it, as if the laity were not a part of the Church, nor had any power to meddle in matters of religion; a supposition directly opposite to the constitution both of Church and State: which will make all alterations utterly impossible, unless the clergy alone be allowed to have power to make laws in matters of religion; since what is established by law, cannot be taken away, but by consent of lay-men in parliament; the clergy themselves having no authority to meddle in this very case, in which the laity are excluded by this Vote, but what they derive from lay-hands. (Subscribed) "WINCHESTER,
"MORDANT,
"LOVELACE."

"I dissent, for this and other reasons; because it is contrary to three statutes, made in the reign of king Henry 8, and one in king Edward 6, which empower 32 Commissioners, to alter the canon and ecclesiastical-law, &c. whereof sixteen to be of the laity, and sixteen of the clergy. STAMFORD."

On May 24th, the Act of Toleration, or Liberty of Conscience, received the royal assent, intitled, 'An Act for exempting their majesty's Protestant-Subjects, dissenting from the Church of England, from the penalties of certain laws.' The reason of it was thus given, in the preamble: Forasmuch as some ease to scrupulous consciences, in the exercise of religion, may be an effectual means to unite their majesty's protestant-subjects in interest and affection; it was therefore enacted, "That none of the penal-laws shall be construed to extend to any person or persons dissenting from the Church of England, that shall take the oaths to the present government, and subscribe the declaration mentioned in Stat. 30 Car. 2. cap. 1. Provided, That no assembly of persons so dissenting, should be had in any place for religious worship with the doors locked, barred or bolted, during the time of such meeting together; and provided, That nothing should be construed to exempt any of the persons aforesaid from paying of tythes, or other parochial duties: If any Dissenter should be chosen or appointed to bear the office of constable, church-warden, overseer, &c. and should scruple the oaths required by law to be taken, in respect of such

office, he shall or may execute such office or employment by a sufficient deputy: That all preachers or teachers of any congregation of Dissenting Protestants, who shall take the oaths, and subscribe the declaration aforesaid, and also subscribe the articles of religion, mentioned in Stat. 13 Eliz. cap. 12. except the 34th, 35th, and 36th, and these words in the 20th Article, viz. [The Church hath power to decree rites or ceremonies, and authority in controversies of faith; and yet] shall not be liable to any of the pains and penalties mentioned in Stat. 17 Car. 2, 2. 29 Car. 2, 13, & 14 Car. 2. cap. 4. Every such teacher shall be exempted from serving upon any jury, or from being chosen and appointed to bear the office of church-warden, overseer of the poor, &c. but any justice of peace may require any person that goes to any meeting, for exercise of religion, to subscribe the declaration, and to take the oaths; and in case of refusal, is required to commit such person to prison, without bail or mainprize, &c." The like liberty was given to Anabaptists: and the Quakers were admitted to it, on condition of making this declaration of fidelity: 'I A. B. do sincerely promise, and solemnly declare, before God and the world, That I will be true and faithful to king William and queen Mary; and I do solemnly profess and declare, that I do, from my heart, abhor, detest and renounce, as impious and heretical, that damnable doctrine and position,' [That Princes excommunicated or deprived by the pope, or any authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever.] 'And I do declare, That no foreign prince, person, prelate, state or potentate, hath, or ought to have, any power, jurisdiction, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm.' And subscribing a profession of their Christian Belief, in these words: 'I A. B. profess faith in God the Father, and in Jesus Christ his Eternal Son the true God, and in the Holy Spirit, one God blessed for evermore; and do acknowledge the Holy Scriptures of the Old and New Testament, to be given by divine inspiration.' "Provided, That all the laws made for the frequenting Divine Service on the Lord's Day, shall be still in force and executed against all persons that offend against the said laws, except such persons come to some congregation permitted by this act. Provided, That if any person shall maliciously or contemptuously come into any cathedral or parish-church, or other congregation, and disquiet or disturb the same, or misuse any preacher, or teacher, he shall, upon conviction, suffer the penalty of twenty pounds. And finally, Provided, That no congregation or assembly for religious worship, shall be permitted or allowed by this act, until the place of such meeting shall be certified to the bishop of the diocese, or to the arch-deacon of that arch-deaconry, or to the justices of the peace at the general or quarter-sessions, and registered in the said bishop's

or arch-deacon's Court, or recorded at the said general or quarter-sessions."

Though the body of Dissenters were contented with this liberty, yet the more moderate and wiser part of them would be glad to be taken into the national establishment; and there was indeed a bill of Union still depending in parliament, which passed the House of Lords, and when it came down to the House of Commons, they desired his majesty to summon a Convocation, and lay the matter before them. Accordingly a Convocation was summoned by the king's writ, to meet on Dec. 4. In the mean time his majesty thought fit to fill up the vacant sees: And therefore on Oct. 13, Dr. Edward Stillingfleet, late dean of St. Paul's, bishop elect of Worcester; Dr. Simon Patrick, late dean of Peterborough, bishop elect of Chichester; and Dr. Gilbert Ironside, late warden of Wadham-college in Oxford, bishop elect of Bristol, were consecrated in the chapel of Fulham-Palace by the bishops of London, St. Asaph and Rochester, by virtue of a Commission granted to them in that behalf. And because the time allowed by act of parliament for the clergy to take the oaths was expired, those who refused to qualify themselves were suspended *ab officio*; particularly the archbishop of Canterbury, and the bishops of Gloucester, Ely, Norwich, Bath and Wells, and Peterborough.

In order to prepare matters to be considered by the Convocation, his majesty issued out this legal and reasonable Commission, to the most eminent bishops and divines.

"Whereas the particular Forms of divine worship, and the Rites and Ceremonies appointed to be used therein, are things in their own nature indifferent and alterable, and so acknowledged; It is but reasonable, that upon weighty and important considerations, according to the various exigencies of times and occasions, such changes and alterations should be made therein, as to those that are in place and authority, should from time to time seem either necessary or expedient.

"And whereas the book of Canons is fit to be reviewed, and made more suitable to the state of the church; And whereas there are defects and abuses in the ecclesiastical courts and jurisdiction; and particularly, there is not sufficient provision made for the removing of scandalous ministers; and for the reforming of manners either in ministers or people: And whereas it is most fit, that there should be a strict method prescribed for the examination of such persons as desire to be admitted into holy orders, both as to their learning and manners.

"We therefore, out of our pious and princely care, for the good order, and edification, and unity of the church of England, committed to our charge and care; and for the reconciling, as much as is possible, of all differences among our good subjects, and to take away all occasions of the like for the future, have thought fit to authorize and empower you, &c. and any nine of you, whereof three to be bishops, to meet from time to time as often as shall be

needful, and to prepare such alterations of the Liturgy and Canons, and such proposals for the reformation of ecclesiastical courts, and to consider of such other matters, as in your judgments may most conduce to the ends above-mentioned."

The NAMES of the Commissioners, A. D. 1689.

Tho. Lamplugh, lord archbishop of York.
Henry Compton, lord bishop of London.
Peter Mew, lord bishop of Winchester.
William Lloyd, lord bishop of St. Asaph.
Thomas Sprat, lord bishop of Rochester.
Thomas Smith, lord bishop of Carlisle.
Jonathan Trelawny, lord bishop of Exeter.
Gilbert Burnet, lord bishop of Salisbury.
Humphrey Humfreys, lord bishop of Bangor.
Nicholas Stratford, lord bishop of Chester.
Edward Stillingfleet, late dean of St. Paul's London, now bishop of Worcester.
Simon Patrick, late dean of Peterborough, now bishop of Chichester.
John Tillotson, D. D. late dean of Canterbury, now dean of St. Paul's, London.
Richard Meggot, D. D. dean of Winchester.
John Sharp, D. D. late dean of Norwich, now dean of Canterbury.
Richard Kidder, D. D. dean of Peterborough.
Henry Aldridge, D. D. dean of Christ-Church, Oxford.
William Jane, D. D. Regius-Professor of Divinity in the university of Oxford.
John Hall, D. D. Margaret-Professor of Divinity in the university of Oxford.
Joseph Beaumont, D. D. Regius-Professor of Divinity in the university of Cambridge.
John Mountague, D. D. and master of Trinity-College in the university of Cambridge.
John Goodman, D. D. arch-deacon of Middlesex.
William Beveridge, D. D. arch-deacon of Colchester.
John Battely, D. D. arch-deacon of Canterbury.
Charles Alston, D. D. arch-deacon of Essex.
Tho. Tenison, D. D. arch-deacon of London.
John Scot, D. D. prebendary of St. Paul's London.
Edw. Fowler, D. D. prebendary of Gloucester.
Robert Grove, D. D. prebendary of St. Paul's, London.
John Williams, D. D. prebendary of St. Paul's, London.
These Commissioners often met, and drew up several alterations to make conformity the more easy and acceptable to all manner of conscientious persons; but some that were named in the Commission, did either not appear, or did soon desert their other brethren upon a high notion, That either no alterations ought to be made or at least that this was not a reasonable time for the making of them; of which number were Dr. Jane, Regius Professor of Divinity in Oxford, and some others. But the better and much greater majority applied themselves to the business of accommodation, with great industry and prudence: That point which created the greatest difficulty, was about the

admitting of dissenting-ministers to officiate in the church, when duly reconciled to it. Some of the Commissioners were inclined not to insist on the re-ordination of them, alledging, That they ought not to shew less regard to the vocation of Presbyterian ministers, than to that of Roman Catholic priests, whose ordination was never questioned upon their joining in communion with the church of England. But the majority thought it more proper to keep a middle course, which was, first with respect to Romish priests, to leave it undecided whether their ordination was good or no: But because they were not obliged to give credit to their certificates, That therefore such of them as for the future should turn Protestants, should live in lay-communion only, unless they were re-ordained to a legal title of any church or cure: And secondly, That though they did not determine the ordination of Presbyterians to be altogether invalid; yet they thought it necessary for their ministers to receive orders from a bishop, who, in conferring the same might add a clause to the common-form, as the church had already ordained in the case of uncertain baptism, to this effect, If thou art not already ordained, I ordain thee, &c. and this was the greatest concession that was made by the Commissioners. One of the chief Dissenters has given this opinion of their proceedings: "These Commissioners often met and debated matters, but were deserted by Dr. Jane* and several others. They drew up sundry alterations, a copy of which I have by me; but they having never thought fit to communicate them to the body of the convocation, or to expose them to the view of the world from the press, I know not how proper it would be for me to print them. But this much I shall venture to say that such amendments as those were, with such an allowance in the point of orders for ordination by presbyters, as is made 13 Eliz. cap. 12. would in all probability have brought in two thirds of the Dissenters in England, which being done, and at the same time a liberty continued to such as could not be comprehended, would have been greater service than can easily be imagined."

One of the commissioners has more lately given this better account of it; "In the reign of king James, those of the church who saw the

* Dr. Jane was very averse to any concession on the part of the Church. There is a story, that when a friend expressed to him a hope that he had not given up much, the Doctor replied, "I have not given up Bel and the Dragon." See also as to Bel and the Dragon, 1 Burnet's Own Time, 184. This Dr. Jane had been the penner of the famous Oxford Decree; as to which and his conduct respecting it upon the Revolution, which gave occasion to this Epigram:

Cum fronti sit nulla fides ut carmina dicunt,
Cur tibi bifronti, Jane, sit ulla fides,
see 3 Kennett's Compl. Hist. (1st ed.) 419,
et seq.

papists drawing in the Dissenters to concur with them in their designs against the church, applied to the then prince of Orange, desiring him to make use of his interest in them for diverting them from that: And in those letters which are yet extant, assurances were given, That the church was then in such a temper, so well convinced of former errors, that if ever she got out of that distress, all those differences would be certainly made up: And to make this assurance more public, the archbishop and bishops, in that Petition, for which they were imprisoned and tried, declared, That they were ready to come to a temper in those matters, both in parliament and convocation. Upon this it was, that the prince of Orange promised in his declaration, to use his endeavours, to heal all those divisions: In order to the performing this, he, by a special commission appointed all those bishops who owned his authority, he being then set on the throne, together with a great many of the clergy, to draw out the grounds upon which the Dissenters had separated from us, and to offer expedients in order to the healing our breaches. We had before us all the books and papers that they had at any time offered, setting forth their demands; together with many advices and propositions which had been made at several times, by most of the best and most learned of our divines; of which the late most learned bishop of Worcester had a great collection: So we prepared a scheme to be laid before the convocation; but did not think that we ourselves, much less that any other person, was any way limited, or bound to comply with what we resolved to propose. On the contrary, we said, if we saw better reason, we should change our minds: yet this, which was only a council, created by the king to prepare matters, was complained of as an imposing on the convocation, and as a limiting of it; and though a royal license was sent them, yet a previous resolution was taken, to admit of no alterations. When we saw that, we resolved to be quiet, and leave that matter to better times: But then the enemies of the civil government began to work on the jealousies and fears of many well minded men; and the preserving the church, was given out as the ward, by those who meant France or St. Germans by it; and under this fatal delusion many are apt to be misled to this day."

The convocation met on Thursday, Nov. 21, and began in an unhappy difference about the choice of a Prolocutor. The person designed by the bishop of London and most of his brethren and the sober part of the clergy, was Dr. Tillotson, dean of Canterbury, whom the king had lately made clerk of his closet, and used to call him the honestest man and the best friend that ever he had in his life; but it was carried by a majority of votes for Dr. Jane of Oxford, who being presented on the 25th to the bishop of London as president, for his approbation, made a customary speech in Latin, wherein he extolled the excellency of the church of England as established by law, above all christian coun-

munities, and implied that it wanted some amendments; and then ended with the application of this sentence by way of triumph 'Nolumus legis Angliæ mutari.' The bishop of London, to whom the Prolocutor had been chaplain, made a speech in the same language with more charity and candour: He told the clergy, they ought to endeavour a temper in those things that are not essential in religion, thereby to open the door of salvation to a multitude of straying christians: That it must needs be their duty, to shew the same indulgence and charity to the Dissenters under king William which some of the bishops and clergy had promised to them in their addresses to king James, and concluded with a pathetic exhortation to unanimity and concord.

At the next meeting, the bishop of London, being sensible that the majority of the Lower House were resolved to oppose the intended Union with the Dissenters, acquainted the Convocation, "That having communicated the Royal Commission by which they were empowered to act, to an eminent civilian, he had found it defective in not having the Great Seal, and therefore he should prorogue them till that was procured." During this interval many arguments were used to bring the most stiff of the inferior clergy to a charitable condescension, and the much desired Union, but to very little purpose; there was a jealousy and a distrust not to be conquered: though there could be but two arguments of any force to justify their averseness to enter upon the terms of accommodation; one was, That it seemed to derogate from the dignity of the Church of England, to make any step toward the altering of her constitution, till it did appear that the Dissenters themselves did desire a reconciliation, and were ready to offer some Proposals or to accept of others. A second argument might be, That the archbishop of Canterbury and some of his suffragans, and some other divines, would not own the present government, and were therefore ready to fall into a new separation from their brethren; so that at this juncture it might be dangerous to make any change that might give a pretence of being for the Old Church, as well as for the Old King.

On December 4th, while both Houses were together in Henry 7th's chapel, the earl of Nottingham brought in the king's Commission, and a Message from his majesty in writing, both which were read, there being present twelve bishops and a good number of the inferior clergy.

The Commission was as follows:

"William and Mary, by the grace of God, king and queen of England, Scotland, France, and Ireland, Defender of the Faith, &c. To all to whom these presents shall come, greeting: Whereas, in and by one act of parliament, made at Westminster in the 25th year of Henry the 8th, reciting, That whereas the king's humble and obedient subjects, the clergy of this realm of England, had not only acknowledged according to the truth, that the Convo-

cation of the same clergy, were always, had been, and ought to be assembled only by the king's writ; but also submitting themselves to the king's majesty, had promised in *verbo sacerdotis*. That they would never from thenceforth presume to attempt, alledge, claim or put in ure, or enact, promulge or execute any new canons, constitutions, ordinances, provincial, or others, or by whatsoever other name they should be called in the Convocation, unless the said king's most royal assent and license might to them be had, to make, promulge and execute the same; and that the said king did give his royal assent and authority in that behalf.

"It was therefore enacted by the authority of the said parliament, according to the said submission and petition of the said clergy, among other things, that they, nor any of them from thenceforth should enact, promulge or execute any such canons, constitutions, or ordinances provincial, by whatsoever name they might be called in their convocations in time coming, which always should be assembled by authority of the king's writ, unless the same clergy might have the king's royal assent and license, to make, promulge and execute such canons, constitutions and ordinances, provincial or synodal, upon pain of every one of the said clergy doing contrary to the said act, and being thereof convict, to suffer imprisonment, and make fines at the king's will.

"And further, by the said act it is provided, That no canons, constitutions or ordinances should be made, or put in execution within this realm, by authority of the convocations of the clergy, which should be contrariant or repugnant to the king's prerogative-royal, or the customs, laws or statutes of this realm, any thing contained in the said act to the contrary thereof notwithstanding.

"And lastly, it is also provided by the said act, that such canons, constitutions, ordinances and synodals provincial, which then were already made, and which then were not contrariant or repugnant to the laws, statutes and customs of this realm, nor to the damage or hurt of the king's prerogative-royal, should then still be used and executed as they were before the making of the said act, until such time as they should be viewed or searched, or otherwise ordered and determined by the persons mentioned in the said act, to the most part of them, according to the tenor, form and effect of the said act; as by the said act, among divers other things, more fully and at large, it doth and may appear.

"And whereas the particular Forms of divine worship, and Rites and Ceremonies appointed to be used therein, being things of their own nature indifferent and alterable, and so acknowledged, it is but reasonable, that upon weighty and important considerations, according to the various exigency of times and occasions, such changes and alterations should be made therein, as to those that are in place and authority, should from time to time, seem either necessary or expedient.

“ And whereas the Book of Canons is fit to be reviewed, and made more suitable to the state of the Church : and whereas there are divers defects and abuses in the ecclesiastical courts and jurisdictions ; and particularly there is not sufficient provision made for the removing of scandalous ministers, and for the reformation of manners, either in ministers or people : and whereas it is most fit that there should be a strict method prescribed, for the examination of such persons as desire to be admitted into Holy Orders, both as to their learning and manners : Know ye, that we, for divers urgent and weighty causes and considerations, us thereunto moving, of our especial grace, certain knowledge, and mere motion, have by virtue of our prerogative-royal, and supreme authority in causes ecclesiastical, given and granted, and by these presents do give and grant, full, free and lawful liberty, licence, power and authority unto the right reverend father in God, Henry, lord-bishop of London, president of this present convocation for the province of Canterbury, (upon the suspension of the lord archbishop of Canterbury,) during this present parliament now assembled ; and in his absence, to such other bishop as shall be appointed president thereof, and to the rest of the bishops of the same province, and all deans of cathedral-churches, arch-deacons, chapters and colleges, and the whole clergy of every several diocese, within the said province : that they the said lord-bishop of London, or other president of the said convocation, and the rest of the clergy of this present convocation within the said province of Canterbury, or the greatest number of them, whereof the president of the said convocation to be always one, shall and may from time to time, during this present parliament, confer, treat, debate, consider, consult, and agree of and upon such points, matters, causes and things as we from time to time shall propose or cause to be proposed by the said lord bishop of London, or other president of the said convocation concerning Alterations and Amendments of the Liturgy and Canons, and orders, ordinances and constitutions for the reformation of ecclesiastical courts, for the removing of scandalous ministers, for the reformation of manners either in ministers or people, and for the examination of such persons as desire to be admitted into Holy Orders : and all such other points, causes and matters as we shall think necessary and expedient, for advancing the honour and service of Almighty God, the good and quiet of the church, and the better government thereof.

“ And we do also, by these presents, give and grant unto the said lord-bishop of London, or other president of the said convocation, and to the rest of the bishops of the said province of Canterbury, and unto all deans of cathedral-churches, arch-deacons, chapters and colleges, and the whole clergy of every several diocese within the said province, full, free and lawful liberty, licence, power and authority, That they

the said lord-bishop of London, or other president of the said convocation, and the rest of the said bishops, and other the clergy of the same province, or the greatest number of them that shall be present in person, or by their proxies, shall and may, from time to time, draw into forms, rules, orders, ordinances, constitutions and canons, such matters as to them shall be thought necessary and expedient for the purposes above-mentioned ; and the same set down in writing, from time to time, to exhibit and deliver, or cause to be exhibited and delivered unto us ; to the end that we, as occasion shall require, may thereupon have the advice of our parliament : and that such, and so many of the said canons, orders, ordinances, constitutions, matters, causes and things, as shall be thought requisite and convenient by our said parliament, may be presented to us in due form, for our royal assent, if, upon mature consideration thereof, we shall think fit to enact the same. In witness whereof, we have caused these our letters to be made patent. Witness ourselves at Westminster the 30th day of November, in the first year of our reign.

Per Breve de Privato Sigillo. “ BURKER.”

His Majesty's Message to the Convocation, is as follows :

WILLIAM R.

“ His majesty has summoned this convocation, not only because it is usual, upon holding of a parliament, but out of a pious zeal, to do every thing that may tend to the best establishment of the church of England, which is so eminent a part of the Reformation, and is certainly the best suited to the constitution of this government, and therefore does most signally deserve, and shall always have both his favour and protection ; and he doubts not, but that you will assist him in promoting the welfare of it, so that no prejudices, with which some men have laboured to possess you, shall disappoint his good intentions, or deprive the church of any benefit from your consultations. His majesty therefore expects, that the things that shall be proposed, shall be calmly and impartially considered by you ; and assures you, that he will offer nothing to you, but what shall be for the honour, peace and advantage, both of the Protestant religion in general, and particularly of the Church of England.”

The Bishops agreed on this Address to his majesty :

“ We your majesty's most dutiful subjects, the bishops and clergy of the province of Canterbury, in convocation assembled, having received your majesty's gracious Message, together with a Commission from your majesty, by the earl of Nottingham, hold ourselves bound in gratitude and duty, to return our most humble thanks and acknowledgements, of the grace and goodness expressed in your majesty's Message, and the zeal you shew in it for the Protestant religion in general, and the church of

England in particular, and of the trust and confidence reposed in us, by this commission. We look upon these marks of your majesty's care and favour, as the continuance of the great deliverance Almighty God wrought for us, by your means, in making you the blessed instrument of preserving us from falling under the cruelty of Popish tyranny. From which, as we have so often thanked Almighty God, so we cannot forget that high obligation and duty which we owe to your majesty; and on these new assurances of your protection and favour to our church, we beg leave to renew the assurance of our constant fidelity and obedience to your majesty; whom we pray God to continue long and happily to reign over us."

The Lower House, whose professed business was to do nothing, would not consent to this Address, but first pleaded for the privilege of presenting a separate Address of their own drawing up; and then, dropping that pretension, they fell to making Amendments, and gave a reason why they could not concur with the bishops, in their form, in these words: "We are desirous to confine our Address to his majesty's most gracious Message, and to those things only therein which concern the church of England." Hereupon a conference was desired, that was chiefly managed between the bishop of Salisbury and the Prolocutor; and these reasons were reported, why their lordships insisted on the express mention of the Protestant religion: 1. "Because it is the known denomination of the common doctrine of the western part of Christendom, in opposition to the errors and corruptions of the church of Rome. 2. Because the leaving out this, may have ill consequences, and be liable to strange constructions, both at home and abroad, among Protestants as well as Papists. 3. Because it agrees with the general reason, offered by the clergy, for their amendments, since this is expressly mentioned in the king's Message; and in this the church of England being so much concerned, the bishops think it ought to stand still in the address." The Lower House debated these reasons, and disagreed to them; and then resolved, "That instead of Protestant Religion, they would rather say, Protestant Churches." Their lordships desired a reason of this alteration; which was returned to them in these words: "We being the representative of a formed Established Church, do not think fit to mention the word Religion, any farther than it is the religion of some formed Established Church." The Lords returned the amendments, with this Alteration: "We doubt not the interest of the Protestant religion, in this and all other Protestant Churches.

The Lower House seeming to fear it was a diminution to the church of England, to join it with foreign Protestant Churches, would have the words [this and] to be omitted; and at last, with great difficulty, this Address was agreed on, and presented to his majesty in the Banqueting-house at Whitehall, on Thursday, Dec. 18th;

"We your majesty's most loyal and most dutiful subjects, the bishops and clergy of the province of Canterbury, in convocation assembled, having received a most gracious Message from your majesty, by the earl of Nottingham, hold ourselves bound in duty and gratitude, to return our most humble acknowledgments for the same, and the pious zeal and care your majesty is pleased to express therein, for the honour, peace, advantage and establishment of the church of England; whereby, we doubt not, the interest of the Protestant Religion in all other Protestant Churches, which is dear to us, will be the better secured, under the influence of your majesty's government and protection. And we crave leave to assure your majesty, That in pursuance of that trust and confidence you repose in us, we will consider, whatsoever shall be offered to us from your majesty, without prejudice, and with all calmness and impartiality: And that we will constantly pay the fidelity and allegiance which we have all sworn to your majesty and the queen; whom we pray God to continue long and happily to reign over us."

His majesty well understood why this Address omitted the thanks which the bishops had recommended his royal commission, and the zeal he had shewn for the Protestant Religion; and why there was no expression of tenderness to the Dissenters, and but a cool regard to other Protestant Churches. However, his majesty returned this gracious Answer: "My Lords, I take this Address very kindly from the Convocation. You may depend upon it, that all I have promised, and all I can do, for the service of the Church of England, I will do: And I give you this new assurance, that I will improve all occasions and opportunities for its service."

The majority of the Lower House had a reserved kindness for the Non juring bishops and clergy; and therefore, one of the members made a zealous speech, in behalf of the bishops under suspension, "That something might be done, to qualify them to sit in convocation; yet so, as that the convocation might not incur any danger thereby." But this matter was too hard for them, and therefore it was left to farther consideration; while they laboured to find out some other business to divert them from that for which they were called together: And therefore, on Dec. 11th the Prolocutor attended the President and Bishops, and, in the name of the House, represented to their lordships, "That there were several books of very dangerous consequence to the Christian Religion, and the Church of England; particularly, Notes upon Athanasius's Creed, and two Letters relating to the present Convocation, lately come abroad; and desired their lordships advice, in what way, and how far safely, without incurring the penalty of stat. 25 Hen. 8. the convocation may proceed, in the preventing the publishing the like scandalous books for the future, and inflicting the censure of the church, according to the canons provided in that be-

half, upon the authors of them." Upon which the *Prosecutor* soon after acquainted the House, "That the President had declared his sense of the ill consequence of those books that were sent up from this House to their lordships; and that, upon enquiry, he could not receive any satisfaction, how far the convocation might proceed in that affair, but he would as far as lay in him, take farther order about it." When the President and his brethren saw the disposition of the Lower House, they found it was to no purpose to communicate any proposals to them; and therefore the Convocation was prorogued to Jan. 24th, and soon after, with the parliament, prorogued and dissolved. "It must be confessed, (says a late writer) That the Presbyterians did not a little contribute to exasperate the convocation against them, having, at this very time, given orders to nearly young students; and Mr. Baxter (the head of their party) having published a book, reflecting on the Church of England. It was also reported, That the Presbyterians of Scotland were the authors of a sham plot, which they fathered upon the Episcopal party of Glasgow, that they might have a pretence to disarm them, and oppress them.

The following is Burnet's Account of this transaction, and of some of the leading Churchmen of the time: "At the Restoration, Juxon, the ancientest and most eminent of the former bishops, who had assisted the late king in his last hours, was promoted to Canterbury, more out of decency, than that he was then capable to fill that post; for as he was never a great divine, so he was now superannuated. Though others have assured me, that after some discourses with the king he was so much struck with what he observed in him, that upon that he lost both heart and hope. The king treated him with outward respect, but had no regard to him. Sheldon and Morley were the men that had the greatest credit. Sheldon was esteemed a learned man before the wars: But he was now engaged so deep in politics, that scarce any prints of what he had been remained. He was a very dexterous man in business, had a great quickness of apprehension, and a very true judgment. He was a generous and charitable man. He had a great pleasantness of conversation, perhaps too great. He had an art, that was peculiar to him, of treating all that came to him in a most obliging manner: But few depended much on his professions of friendship. He seemed not to have a deep sense of religion, if any at all: And spoke of it most commonly as of an engine of government, and a matter of policy. By this means the king came to look on him as a wise and honest clergyman. Sheldon was at first made bishop of London, and was upon Juxon's death promoted to Canterbury. Morley had been first known to the world as a friend-of the lord Falkland's: and that was enough to raise a man's character. He had continued for many years in the lord

Clarendon's family, and was his particular friend. He was a Calvinist with relation to the Arminian points, and was thought a friend to the Puritans before the wars: But he took care after his promotion to free himself from all suspicions of that kind. He was a pious and charitable man, of a very exemplary life, but extreme passionate, and very obstinate. He was first made bishop of Worcester. Dr. Hammond, for whom that see was designed, died a little before the Restoration, which was an unspeakable loss to the church: For, as he was a man of great learning, and of most eminent merit, he having been the person that during the bad times had maintained the cause of the church in a very singular manner, so he was a very moderate man in his temper, though with a high principle; and probably he would have fallen into healing counsels. He was also much set on reforming abuses, and for raising in the clergy a due sense of the obligations they lay under. But by his death Morley was advanced to Worcester: And not long after he was removed to Winchester, void by Duppa's death, who had been the king's tutor, though no way fit for that post; but he was a meek and humble man, and much loved for the sweetness of his temper; and would have been more esteemed, if he had died before the Restoration; for he made not that use of the great wealth that flowed in upon him that was expected. Morley was thought always the honestest man of the two, as Sheldon was certainly the abler man.

"The first point in debate was, whether concessions should be made, and pains taken to gain the Dissenters, or not; especially the Presbyterians. The earl of Clarendon was much for it; and got the king to publish a Declaration soon after his Restoration, concerning ecclesiastical affairs, to which if he had stood, very probably the greatest part of them might have been gained. But the bishops did not approve of this: And after the service they did that lord in the duke of York's marriage, he would not put any hardship on those who had so signally obliged him. This disgusted the lord Southampton, who was for carrying on the design that had been much talked of during the wars, of moderating matters both with relation to the government of the church, and the worship and ceremonies: Which created some coldness between him and the earl of Clarendon when the Lord Chaucellor went off from those designs. The consideration that those bishops and their party had in the matter was this: The Presbyterians were possessed of most of the great benefices in the church, chiefly in the City of London, and in the two universities. It is true, all that had come into the room of those who were turned out by the parliament, or the visitors sent by them, were removed by the course of law, as men that were illegally possessed of other mens rights: And that even where the former incumbents were dead, because a title originally wrong was still wrong in law. But there were a great many of

them in very eminent posts, who were legally possessed of them. Many of these, chiefly in the City of London, had gone into the design of the Restoration in so signal a manner, and with such success, that they had great merit, and a just title to very high preferment. Now, as there remained a great deal of the old animosity against them for what they had done during the wars, so it was said, it was better to have a schism out of the church than within it; and that the half conformity of the Puritans before the war had set up a faction in every city and town between the lecturers and the incumbents, that the former took all methods to render themselves popular, and to raise the benevolence of their people, which was their chief subsistence, by disparaging the government both in church and state. They had also many stories among them, of the credit they had in the elections of parliament men, which they infused in the king, to possess him with the necessity of having none to serve in the church, but persons that should be firmly tied to his interest, both by principle, and by subscriptions and oaths. It is true, the joy then spread through the nation had got at this time a new parliament to be elected of men so high and so hot, that, unless the Court had restrained them, they would have carried things much farther than they did, against all that had been concerned in the late wars: But they were not to expect such success at all times: Therefore they thought it was necessary to make sure work at this time: And, instead of using methods to bring in the sectaries, they resolved rather to seek the most effectual ones for casting them out, and bringing a new set of men into the church. This took with the king, at least it seemed to do so. But, though he put on an outward appearance of moderation, yet he was in another and deeper laid design, to which the heat of these men proved subservient, for bringing in of popery. A popish queen was a great step to keep it in countenance at Court, and to have a great many priests going about the Court making converts. It was thought, a toleration was the only method for setting it a going all the nation over. And nothing could make a toleration for popery pass, but the having great bodies of men put out of the church, and put under severe laws, which should force them to move for a toleration, and should make it reasonable to grant it to them. And it was resolved, that whatever should be granted of that sort should go in so large a manner, that Papists should be comprehended within it. So the Papists had this generally spread among them, that they should oppose all propositions for comprehension, and should animate the church party to maintain their ground against all the sectaries. And in that point they seemed zealous for the church. But at the same time they spoke of toleration, as necessary both for the peace and quiet of the nation, and for the encouragement of trade. And with this the duke was so possessed, that he declared himself a most violent enemy to

comprehension, and as zealous for toleration. The king being thus resolved on fixing the terms of conformity to what they had been before the war, without making the least abatement or alteration, they carried on still an appearance of moderation, till the strength of the parties should appear in the new parliament.

“So, after the declaration was set out, a commission was granted to twelve of a side, with nine assistants to each side, who were appointed to meet at the Savoy, and to consider on the ways of uniting both sides. At their first meeting, Sheldon told them, that those of the church had not desired this meeting, as being satisfied with the legal establishment; and therefore they had nothing to offer; but it belonged to the other side, who moved for alterations, to offer both their exceptions to the laws in being, and the alterations that they proposed. He told them, they were to lay all they had to offer before them at once; for they would not engage to treat about any one particular, till they saw how far their demands went: And he said, that all was to be transacted in writing, though the others insisted on an amicable conference; which was at first denied: Yet some hopes were given of allowing it at last. Papers were upon this given in. The Presbyterians moved, that bishop Usher's reduction should be laid down as a ground-work to treat on; that bishops should not govern their diocese by their single authority, nor depute it to lay officers in their courts, but should in matters of ordination and jurisdiction take along with them the counsel and concurrence of the Presbyters. They did offer several exceptions to the liturgy, against the many responses by the people; and they desired, all might be made one continued prayer. They desired that no lessons should be taken out of the Apocryphal books; that the Psalms used in the daily service should be according to the new translation. They excepted to many parts of the office of Baptism, that import the inward regeneration of all that were baptized. But as they proposed these amendments, so they did also offer a liturgy new drawn by Mr. Baxter. They insisted mainly against kneeling at the Sacrament of the Lord's Supper, chiefly against the imposing it; and moved that the posture might be left free, and that the use of the surplice, of the cross in baptism, of God-fathers being the sponsors in baptism, and of the holy days, might be abolished. Sheldon saw well what the effect would be of putting them to make all their demands at once. The number of them raised a mighty outcry against them, as people that could never be satisfied. But nothing gave so great an advantage against them, as their offering a new liturgy. In this they were divided among themselves. Some were for insisting only on a few important things, reckoning that, if they were gained, and an union followed upon that, it would be easier to gain other things afterwards. But all this was overthrown by Mr. Baxter, who was a man of great piety; and, if he had not meddled in too many things, would

have been esteemed one of the learned men of the age: He writ near two hundred books: Of these, three are large folios: He had a very moving and pathetic way of writing, and was his whole life long a man of great zeal and much simplicity; but was most unhappily subtle and metaphysical in every thing. There was a great submission paid to him by the whole party. So he persuaded them, that from the words of the commission they were bound to offer every thing that they thought might conduce to the good or peace of the church, without considering what was like to be obtained, or what effect their demanding so much might have, in irritating the minds of those who were then the superior body in strength and number. All the whole matter was at last reduced to one single point, whether it was lawful to determine the certain use of things indifferent in the worship of God? The bishops held them to that point, and pressed them to shew that any of the things imposed were of themselves unlawful. The Presbyterians declined this; but affirmed, that other circumstances might make it become unlawful to settle a peremptory law about things indifferent; which they applied chiefly to kneeling in the Sacrament, and stood upon it that a law, which excluded all that did not kneel from the Sacrament, was unlawful, as a limitation in the point of communion put on the laws of Christ, which ought to be the only condition of those who had a right to it. Upon this point there was a free conference that lasted some days. The two men, that had the chief management of the debate, were the most unfit to heal matters, and the fittest to widen them, that could have been found out. Baxter was the opponent, and Gunning was the respondent; who was afterwards advanced, first to Chichester, and then to Ely: He was a man of great reading, and noted for a special subtilty of arguing: All the arts of sophistry were made use of by him on all occasions, in as confident a manner, as if they had been sound reasoning; He was a man of an innocent life, unweariedly active to very little purpose: He was much set on the reconciling us with popery in some points: And, because the charge of idolatry seemed a bar to all thoughts of reconciliation with them, he set himself with very great zeal to clear the church of Rome of Idolatry: This made many suspect him as inclining to go over to them: But he was far from it; and was a very honest, sincere man, but of no sound judgment, and of no prudence in affairs; He was for our conforming in all things to the rules of the primitive church, particularly in praying for the dead, in the use of oil, with many other rituals: He formed many in Cambridge upon his own notions, who have carried them perhaps farther than he intended. Baxter and he spent some days in much logical arguing, to the diversion of the town, who thought here were a couple of fencers engaged in disputes, that could never be brought to an end, nor have any good effect. In conclusion, this commission, being limited to such a number of days, came

to an end, before any one thing was agreed on. The bishops insisted on the laws that were still in force, to which they would admit of no exception, unless it was proved that the matter of those laws was sinful. They charged the presbyterians with having made a schism, upon a charge against the church for things, which now they themselves could not call sinful. They said, there was no reason to gratify such a sort of men in any thing; One demand granted would draw on many more; All authority both in church and state was struck at by the position they had insisted on, that it was not lawful to impose things indifferent, since they seemed to be the only proper matter in which human authority could interpose. So this furnished an occasion to expose them as enemies to all order. Things had been carried at the Savoy with great sharpness, and many reflections. Baxter said once, such things would offend many good men in the nation. Stearn, the archbishop of York, upon that took notice that he would not say kingdom, but nation, because he would not acknowledge a king. Of this great complaints were made, as an indecent return for the zeal they had shewn in the restoration.

“The Conference broke up without doing any good. It did rather hurt, and heightened the sharpness that was then on peoples minds to such a degree, that it needed no addition to raise it higher. The presbyterians laid their complaints before the king: But little regard was had to them. And now all the concern that seemed to employ the bishops thoughts was, not only to make no alteration on their account, but to make the terms of conformity much stricter than they had been before the war. So it was resolved to maintain conformity to the height, and to put lecturers in the same condition with the incumbents, as to oaths and subscriptions; and to oblige all persons to subscribe an unfeigned assent and consent to all and every particular contained and prescribed in the Book of Common Prayer. Many who, thought it lawful to conform in submission, yet scrupled at this, as importing a particular approbation of every thing; And great distinction was made between a conformity in practice, and so full and distinct an assent: Yet men got over that, as importing no more but a consent of obedience: For though the words of the subscription, which were also to be publicly pronounced before the congregation, declaring the person's unfeigned assent and consent, seemed to import this, yet the clause of the act that enjoined this carried a clear explanation of it; for it enacted this declaration as an assent and consent to the use of all things contained in the book. Another subscription was enacted, with relation to the League and Covenant; by which they were required to declare it unlawful upon any pretence whatsoever to take arms against the king, renouncing the traitorous position of taking arms by his authority against his person, or those commissioned by him, together with a

declaration, that no obligation lay on them or any other person from the League or Covenant to endeavour any change or alteration of government in church and state, and that the Covenant was in itself an unlawful oath. This was contrived against all the old men, who had both taken the covenant themselves, and had pressed it upon others. So they were now to own themselves very guilty in that matter. And those, who thought it

might be lawful upon great and illegal provocation to resist unjust invasions on the laws and liberties of the subjects, excepted to the subscription, though it was scarce safe for any at that time to have insisted on that point. Some thought, that since the king had taken the covenant, he at least was bound to stand to it."

He then proceeds to give some account of the Act of Uniformity, and of different transactions connected therewith.

209. The Trial of JOHN JAMES, a Fifth Monarchy Man,* at the King's-Bench, for High Treason: 13 CHARLES II. A. D. 1661. [Written by his Friends.]

SOME PASSAGES at the first taking and apprehending of JOHN JAMES, and the Company with him, met together in Bulstake alley in Whitechapel, Oct. 19, 1661.

THE Congregation being assembled the day above-mentioned, (being the seventh day of the week) in Bulstake-alley (where was the place of their public meeting, the doors being open)

* Of the Insurrection of the Fifth Monarchy Men, under Venner, archdeacon Echard gives us the following account; "While the affairs of the nation seemed to be in peace and tranquillity, in the beginning of the new year 1660-1, there happened a strange and unparalleled action in London, which strengthened the belief of those secret Plots and Conspiracies mentioned by the lord chancellor. This was occasioned by a small body of Fifth-Monarchy Men, who hating all monarchy, and the appearance of it, had formerly made an attempt against Cromwell's government, but escaped beyond expectation. The head of them was one Thomas Venner, sometime a wine-cooper, who by the king's indulgence held a conventicle in Coleman-street, where he, and others, used to preach to them out of the Prophecies of Daniel and the Revelations, and from thence drew strange inferences, persuading their congregations to take up arms for King Jesus, against the powers of the earth, the king, the duke of York, general Monk, &c.' assuring them, 'That no weapons formed against them should prosper, nor a hair of their heads be touched; for one should chase a thousand, and two put ten thousand to flight.' Upon which they got a Declaration printed, entitled, 'A Door of Hope opened;' in which they said, and declared, 'That they would never sheath their swords till Babylon, as they called monarchy, became a hissing and a curse, and there be left neither Remnant, Son, nor Nephew: that when they had led captivity captive into England they would go into France, Spain, Germany, &c. and rather die than take the wicked Oaths of Supremacy and Allegiance: that they would not make any leagues with monarchists, but would rise up against the carnal, to possess

continued together the former part of the day in the worship of God without disturbance; and being again come together in the afternoon, continued without interruption till three o'clock; about which time John James was speaking from 1 Cor. vi. 20, in these words, 'For ye are bought with a price; therefore glorify God in your body, and in your spirit, which are Gods.' About which time one jus-

the Gate, or the world, to bind their kings in chains, and their nobles in fetters of iron.' And so to accomplish this heroic design, they observed so much policy as to put it in execution when the king was attending his mother and sister to embark at Portsmouth, for their return into France. Accordingly on Sunday the 6th of Jan. being fully animated by the sermon, which hinted to them, 'That they had been praying and preaching, but not acting for God,' they sallied out well armed from their Meeting-House, and marched to St. Paul's Church-Yard in the dark of the evening. Here they mustered their party, amounting to above 50, and placed their centinels for the time, one of whom killed a poor innocent man, who upon demand had answered, 'He was for God and king Charles?' This gave an alarm to the city, and the lord-mayor, sir Rd. Brown, and the trained-bands being upon the guard, some files of men were sent against them, whom these desperate men quickly routed, and so marched on to Bishopsgate, where they passed without opposition, and from thence to Cripplegate, where they came into the city again, and so to Aldersgate. Here threatening the constable, who was weakly attended, they were let out again. Then they declared themselves for King Jesus, and thus proceeded to Brech-Lane, where they killed a headborough that opposed them, and so hastened to Cane-Wood, between Ilhigate and Hampstead, where they reposed themselves for that night.—The noise of this strange Insurrection caused the General to send a party of horse and foot the next day, who drove them out of the wood, and took some of them prisoners, who were committed to the Gate-House. The rest having rallied again, on Wednesday morning returned to London, with assurance by Venner their leader,

tice Chard, with Mr. Wood the headborough, came to the meeting-place, Mr. Wood commanding him in the king's name to be silent and come down, having spoke Treason against the king: but John James, taking little notice thereof, and going on upon his subject, the headborough came nearer to him in the middle of the meeting-place, and commanded him again in the king's name to come down, or else he would pull him down; whereupon the disturbance grew so great he could not proceed, but told the headborough he would not come down except he was pulled down; whereupon he pulled him down, and hauled him away. The cause of his being apprehended proceeding from one Tipler, a pipemaker, journeymen to a neighbour near adjoining, who from their yard bearing the said John James speak a little before, from Psal. viii. 2, in these words; 'Out of the mouths of babes and sucklings hast thou ordained strength because of thine ene-

mies, that thou mightest still the enemy and the avenger.' (Which words were occasionally spoken to, by way of addition to what another brother had spoken before) whereat the said Tipler taking offence, went to justice Chard to acquaint him therewith; but being an idle fellow, the justice, as it is said, took not much notice of what he spake, till bringing a neighbour with him, he was provoked by him to regard his testimony.

Whereupon the Justice came forth and went with Mr. Wood the headborough to the meeting-place, and seized upon him as aforesaid, the said Justice standing at the door: Hereupon an uproar grew, some crying out in the streets, Treason! Treason! the Hamlets were hereupon summoned upon pain of death, many of whom appeared accordingly; and by this time four Justices of the Peace were come together, to wit, the Lieutenant of the Tower, Justice Bide, Justice Swallow, and Justice

'That no weapon formed against them should prosper: therefore they might look upon the example of Gideon: it was the same thing to God, whether he saved by a few or a multitude.' Their first appearance was in Threadneedle-street, behind the Exchange, where they beat back a party sent by the guard there. But, upon the advance of more forces, they retreated to Bishopsgate-street; where after a sharp encounter, two of each side being slain, they gradually slipt away, and disappeared. A while after, like the gathering of clouds, they were seen again at College-Hill and Maiden-Lane, where they designed to sacrifice the lord-mayor. But missing of him, they crossed Cheapside, and passed into Wood-street. Here began a cruel fight, wherein they shewed skill as well as great valour; and having ruffled some trained-bands, and repelled the horse-guards that came to assist them, they did not give way till Venner was knocked down and severely wounded, and Tuffney and Cragg, two of their fiercest preachers and combatants, were slain. Whereupon the greatest part of them retreated to Cripple-gate, firing in good order in their rear upon the trained-bands, who were in close pursuit of them. Col. Cox, who commanded, lodged ten of them in an ale-house near the postern, which house they obstinately maintained. The house being surrounded, some of the soldiers untied the next house, and shot in upon them, being in the upper room, who still refused quarter: at the same time another party of musketeers got up the stairs, broke down the door, and entered their garrison. Six of them were killed before, another refusing quarter was first knocked down, and then shot with a musket. The rest being demanded why they did not ask quarter before, answered 'They durst not for fear their own fellows should have shot them.' In this Insurrection 90 of the king's men were slain, and as many of the rebels. Those taken were Venner himself, Hodgkins, Gowler, Allen, Pym, Ashton, Pritch-

ard, Fall, Hopkins, Wells, and about as many more, not much worth the naming; who blasphemously alledged, 'That if they were deceived or misled, it was God that deceived them.'—These, to the number of 20, were soon after arraigned at the Old Bailey for treason and murder; which being fully proved, with all the forementioned particulars, they were all found guilty, except Hopkins and Wells, against whom the evidence was not full, and against one Patshul only a single witness: wherefore they were acquitted by the jury. When sentence was pronounced against them, and the lord chief justice Foster seriously charged Venner with the blood of his unhappy accomplices, he impudently replied, 'It was not he, but Jesus that led them.' Three of them confessed their crime, and craved mercy, but the rest continued obstinate. Being sentenced to be hanged, drawn, and quartered, Venner and Hodgkins were on the 19th of Jan. executed over-against their Meeting-House in Coleman-street. The former spoke little but in vindication of himself and his fact, and something of his opinion, with an assurance 'That the time was at hand when other judgment would be;' highly reflecting upon the present government. Hodgkins raved and cursed in the manner of praying, 'calling down vengeance from Heaven upon the king, the judges, and the city of London;' nor would he desist, till the executioner put an end to all his extravagancies. Two days after nine more were executed in five several places of the city, without being quartered, as the two first were. All persisted, like the Regicides, in justifying their crimes, except one young man, who shewed great signs of repentance.—Thus ended a Rebellion of a very strange nature, which was begun and carried on with such infernal rage, that if their numbers had been equal to their spirits, they would have overturned the city and the nation, and the world, which in their imagination they had divided among themselves." P. 784.

Chard; John James in the mean time was committed to the custody of the headborough, who carried him to a tavern near thereunto, where several soldiers and other loose people came about him, scoffing and blaspheming, some taking wine and saying, 'I drink to you in the spirit;' and others being rude, and reproved by the officer, said, 'I would only speak to him a few words in the spirit;' in this time the rest of the meeting by sevens were brought before the justices (being at an house near the meeting-place) who tendering the Oath of Allegiance unto them, committed those that refused, some to Newgate, both men and women, being guarded thither by the Hamlets; afterwards the same justices entering the meeting-place sate down about the table with their clerk and (one major Manly standing by) did send for John James, and in the mean time the Lieutenant of the Tower read a Paper which he pulled out of his pocket, saying, he would read to them what doctrine was preached there that day, being of the nature of a charge, which they drew up from Tipler's mouth against John James, demanding of certain women (relating to the meeting, yet detained, and whose names they were then taking) how they could hear such things as those? To which they unaniously replied in the fear of the Lord, That they never heard such words, as they should answer it before the Lord, and they durst not lie: who replied, That they had but their words, but they had others oaths for it: who made answer in the prophet's words, Psal. cii. 8. 'They which were mad against them, had sworn against them.' By this time John James was brought into the meeting-place, and the Lieutenant (looking upon him) said to the women, What have you no better a holder-forth than he? John James said, That the way of the Lord was and is many times, to use the poorest of his people to do his work, alledging also the Apostle's words, 1 Cor. i. 27, that 'He chooseth the weak and foolish things of the world to confound the mighty.' Then said the Lieutenant of the Tower, What you are a Jew. John James said, that in one sense he was a Jew, and in another sense not, repeating those words of the Apostle in Rom. ii. last. 'For he is not a Jew that is one outwardly, neither is that circumcision which is outward in the flesh; but he is a Jew which is one inwardly, and circumcision is that of the heart in the spirit, whose praise is not of men, but of God.' The Lieutenant asked him, whether he had not been before him before this? who answered, he had: and whether he had not been civilly used? he replied, Yea, and for his civility he thanked him: Then the Lieutenant asked him, if he was not counselled for to take heed for the future? he answered, Yea, and he had taken it so far as he could with a good conscience: upon which the Lieutenant told him he should stretch for it, 'and if he were not hanged he would be hanged for him.' John James told him, he was not careful in that matter, and that they could do no more than they

should be suffered by the Lord to do: The Lieutenant told him, he thought he was not careful, for he had a mind to be hanged as some of his holy brethren that went before him. John James desired he would not speak so lightly. The Lieutenant spake something also about the Fifth Kingdom, and asked him, whether it was not his principle? who told him he did own the Fifth Kingdom which must come: whereupon they laughed one upon another and said, 'Now they had it from his own mouth.' Something also was charged upon him about his learning to sound a trumpet, in order to a rising with Venner's Party; to which he said, there was a friend of his who lay in his house, minding to go to sea, being to learn to sound, desired he might have liberty to be taught in his house, but he never learned himself, neither was he one of those in that rising, judging it to be a rash act. Then the Lieutenant of the Tower called in capt. Hodgkin, who commanded the party of soldiers that stood at the door, and said, Take this man, be careful of him, and commit him close prisoner to Newgate. So they carried him away with his Mittimus hereafter expressed.

To the Keeper of the Gaol of Newgate, or his Deputy.

'Middles. These are in the king's majesty's name to require you to receive into your custody the body of John James, whom we send you herewith, being taken this present day at a conventicle, or private meeting, in the parish of White-Chapel, and there speaking in the audience of the people present, treasonable words against his majesty's royal person; you shall therefore keep him close prisoner until further order, and this shall be your warrant. Given under our hands this 19th day of October, 1661.

'JOHN ROBINSON, Lieut. of the Tower.'

'Thomas Bide, Edward Chard.

'Thomas Swallow.'

After that John James was sent away according to the Mittimus afore-mentioned, the witnesses were called in and further examined, and forthwith a Paper was presented to one of them, being as was supposed the substance of what Tipler had before sworn to, which being read with a low voice, the relator could not hear, but this he saw, that one of the witnesses refused to take his oath, saying, That there were many words in the paper which he did not hear: but the justices said, That this which was written, and that which was heard, was all to one purpose, therefore take it; but he refused it again: yet it being tendered once more, with much persuasions, entreaties, and threatnings to send him to prison if he refused it, he took it; after which the lieutenant said, he knew nothing to the contrary but that this business might be worth to them 100*l.* a piece: after this Osburn, who was a seaman, said, I cannot stay, but must go to sea for a livelihood, for I am poor; Then justice Chard said to the lieut. of the Tower, Let him be entered

in the Tower, or upon some ship, to receive the king's pay till the business be over; bidding him come to the Tower accordingly the next morning. As they were going away, a woman and friend of the seaman's being present and heard what passed, said, that his oath was not to be taken? Then the lieutenant asked what she was, saying that she would fain seduce the witnesses, and that she deserved to be sent to Newgate; to which she replied saying, You may do what you please, but I speak the truth, and know that his word is not to be taken; after this they said to the seaman as they were going away, Be not seduced by her; and further said, that if he did not stand to his oath, he should be committed, with other threatening words, and so they departed. And it is further asserted by several persons that were then upon the place when Osburn was sworn, who immediately demanded of him what it was he had sworn unto, desiring him to tell them the words, who seemed at that time to be very sad, telling them that he could not remember the words except he heard them named over again; upon which also some of the guard themselves hearing him speak thus, said to him, that they would not be in his condition for all the world. Some time after this, several spake unto the said Bernard Osburn, questioning him about the oath he had taken; he declared that he had sworn to he knew not what, being forced thereto through fear and hopes of release; That the said Bernard Osburn intending not to stand to his oath, went to his ship towards the Hope in order to the sea-voyage he was engaged in, but not long after came a warrant from the lieutenant of the Tower, to require his appearance in the court as one of the witnesses, which was directed to his brother's house in Wapping where he used to lodge, but his sister acquainted them that he was gone to sea sometime before; and they demanding where? she said, I suppose he may be in the Downs by this time; at which the messenger was much offended, threatening him greatly, which occasioned her speedy coming to the lieutenant of the Tower, who in great wrath demanded, how long he had been gone, and what ship he was upon? which she signified unto him, and accordingly he forthwith sent his marshal to demand him from his ship, which was performed accordingly; and when he was come, they threatened to have him hanged, if he did not stand to his evidence, but if he did he should have all his charges borne, and a reward for his pains; and from this time he was kept in the marshal's hands at the king's charge, till the trial was over; After this the said Osburn, with the other witnesses, were divers times under private examination by the king's counsel and attorney and solicitor general, &c.

The evidence being prepared, and all things in readiness for a Trial, John James having been in Newgate from the 19th of the 8th month, was appointed the 14th of the 9th month to appear at the King's-bench bar in order to his Trial.

HIS ARRAIGNMENT AND TRIAL.

What passed the 1st day, Nov. 14.

Being carried in a coach to Westminster by the under-sheriff, and brought to the King's bench bar; chief justice Forster, justice Mallet, justice Twisden, and justice Windham, being judges upon the bench; he was commanded, according to custom, to hold up his hand; and he did so, and told them he did hold up, his hand to signify he was there to answer to what should be laid to his charge. But he held up his hand with his glove on, which some were offended at; and told him he must pull it off. John James answered, it was all one to him, to hold up his hand with it off or on; and then he did pull off his glove, and held up his hand, and then his Charge was read.

The Substance of the Indictment.

' He stood indicted by the name of John James: 1. For compassing and imagining the death of the king. 2. For endeavouring to levy war against the king. 3. For endeavouring a change of the government. And in this his compassing, imagining, and contriving the king's death, he had maliciously, traitorously, and by instigation of the devil, not having the fear of God before his eyes, declared these words: 1. That the king was a bloody tyrant, a blood-sucker, and blood-thirsty man, and his nobles the same. 2. That the king and his nobles had shed the blood of the saints at Charing-Cross, and the blood of the covenanters in Scotland. 3. That the king was brought in to this end, to fill up the measure of his iniquity; and that the king's cup of iniquity had filled more within this last year, than in many years before. 4. That he did bemoan that they had not improved their opportunity when they had the power in their hands; and that he did say it would not be long before they had power again, and then they would improve it better; and that he did bewail the apostacy of the people of God, and say, they had not fought the Lord's battles thoroughly; but when the Lord should give power to them again, and give his work unto their hands, they would do it better. 5. That the death and destruction of the king drew very near.'

The Indictment being read, the clerk called upon John James to answer to his Charge, and plead Guilty, or Not Guilty.

John James desired, before they did proceed, that he might have a copy of his Charge, and time to consider of it.

The Lord Chief Justice answered, That a copy of the Charge was not allowed in cases of High Treason; and he told him he must plead Guilty, or Not Guilty, or else a worse thing would follow.

John James answered, he humbly conceived it was his privilege as an Englishman; and till he had that he was not free to plead one way or other. He alledged that Chief Justice Coke had declared it good law; and that Judge

Heath had declared it also good law; and that he did at Oxford give John Lilburne a copy of his Charge, being arraigned there for High Treason.

Then one of the King's Counsel told him, That the law would not grant him a copy of his Charge in case of Felony, much less in case of High Treason; and told him, If he would not plead, they would proceed against him as a person contemning the court, and look upon him a mute.

John James made answer, Seeing he was over-ruled, he pleaded Not Guilty, neither in form nor matter.

The clerk asked him how he would be tried? He answered, By the law of God. At which the lawyers gave a great hiss.

And it was answered thus, or to this effect; 'It was not a place or time to talk of the laws of God.' But John James was willing to urge it again, That seeing the Judge did sit there as judge of the law, and of God's law, as they thought, it was meet they should give him liberty to appeal to God's law.

Whereupon the Judge told him he must proceed according to their law, or else a worse thing would follow; and say, 'By God and the country.'

John James answered, He was ignorant of their law, and knew not what snare there might be in it, never having been at any bar before: and therefore desired him he would open the terms, what they meant by God, and what they meant by the Country.

The Judge answered, God forbid but he should open the terms: 'By God,' says he, 'is meant your first demand, to wit, the law of God.'

John James asked him, Why then his first demand was not granted?

The Judge said, God forbid but that you should be so tried; but you must use the form of the court.

John James said, If it were so, he was satisfied.

'And by the Country,' saith the Judge, '12 Middlesex men, men of truth, that would judge impartially between the king and him.'

John James said, If that be the meaning, he put himself upon the trial of God and the Country.

When this was done, John James was sent by a Habeas Corpus to the King's-bench prison in Southwark, and there continued till the 19th day of November, and then was brought again to the King's-bench bar at Westminster, to his further trial.

In this interval betwixt the commitment and trial, upon the first day of the week, being the 18th of November, John James received a letter from a person of note, to advertise him that there was such a jury of life and death impanelled to proceed upon him, as had not been for many years before, being all picked men, and most of them knights and gentlemen; and that if he did not except against them,

or most of the chief of them, he was a dead man.

The Second Day.

Upon the 19th of November he appeared the second time at the King's-bench bar, according to the order of the court, where were present.

The Judges. Sir Robert Forster, chief justice, sir Thomas Mallet, justice, sir Thomas Twisden, justice, sir Wadham Windham, justice, sir Jeffery Palmer, attorney-general, sir Heneage Finch, solicitor-general.

The King's Counsel; serjeant Maynard, serjeant Glynn, serjeant Wilde, serjeant Keeling.

The Witnesses Names appearing in the Court; Alderman Chard, John Tipler, Bernard Osburn. The fourth witness's name not yet known.

The Names of the Jury, Charles Pitfield, Ralph Halsaye, Thomas Eglefield, Daniel Carlwood, Ambrose Hanborough, Anthony Hall, Humphrey Higgins, Thomas Snow, William Cole, Thomas Unpel, Gilbert Messe, William Blunt.

The witnesses and jury being called into the court, John James having excepted against divers knights and gentlemen picked for his jury, and the aforementioned standing for his jury, the Clerk bid John James hold up his hand as before. He did so; and again told them it was to signify he was there: (and then they laughed) and the Judge said, O ho, are you come?

Afterwards, the Indictment being read again, the Clerk proceeded to tell the court for what he was indicted and arraigned; and that he pleaded Not Guilty, and had put himself upon God and the country for trial; and therefore told the jury they were to judge between the king and him in that matter.

Serjeant Keeling's Speech.

Hereupon Serjeant Keeling, one of the king's counsel, stepped up, and said, My lord, and you gentlemen of the jury, John James prisoner at the bar stands indicted for high Treason; for that he, with other disaffected persons, enemies unto the government of the king, being assembled at Bulstake Alley in White-Chapel, not having God before his eyes, but being moved by the instigation of the devil, spake and published these words, viz. That king Charles was a blood-thirsty tyrannical king; and that the nobles of England were blood-thirsty and tyrannical men; and that the cup of their iniquity was begun to be filled by the shedding of the blood of the Covenanters in Scotland; and that it was almost filled by the shedding of the blood of the Saints this time twelve-month; and that the time of their destruction was near at hand: And did condole the neglect of the opportunity and price they had put into their hands; and that if ever the like occasion were administered unto them again they would fight the Lord's battle more effectually than they had done before.' And (said he) if we prove that these words were spoken, by John James, you are to find him guilty of

high treason: (and so he sat down.) Then stood up Sir Jeffery Palmer, attorney-general.

The Substance of Sir Jeffery Palmer's Speech.

First he spake of the antiquity of monarchy, and did fully assert the present government. Then, by way of reflection, he reviewed the 20 years troubles that had passed over our heads in these nations; and that the vessel of this commonwealth had been beaten and blown upon the waves and billows of a tempestuous raging sea being almost broken to pieces, and like utterly to be lost, unless God by a miraculous providence had restored his majesty Charles the second to his crown and dignity; for which (he said) ever blessed be his name. Then he observed that the beginning of our sorrows was by the seditious preaching of some discontented ministers in this nation, and about this city. Then he told them how much care the law had taken for the preservation of his majesty's person and government; and that it was as much treason in the heart, as in the act, 'Mens rea facit reum.' Then he did descant upon the words of the indictment, and opened them, and told the jury, that according to the law of England [15 Car. 2. c. 1.] * they were treason, for which he ought to die: and then sat down.

Then the Court called *John Tipler*, the first witness, the Judge bidding him look upon the prisoner. Serjeant Glyne asked him, what he could say concerning the words spoken by John James? Who said, at the time of the Indictment alledged, (which was on Saturday,) he was at a house near adjoining unto the place where they usually did meet; and that about two of the clock in the afternoon, he stood at a window in a yard, next adjoining to the meeting-place, and saw John James, the person at the bar, preaching, (as they call it, said he) and repeated the words that were opened by Serjeant Keeling exactly; only farther, That he did wonderfully adore Oliver Cromwell, saying; That every finger of his was a cham-

* This was an Act for safety and preservation of his majesty's Person and Government, against treasonable and seditious practices, and attempts: by this statute it was made capital treason, during the king's life to devise his death, or imprisonment, or bodily harm, or to deprive and depose him from the kingly name, &c. It enacted likewise, that whoever affirmed the king to be an Heretic, or a Papist, or should by writing, printing, preaching, or other speaking, stir up the people to hatred or dislike of his majesty, or the established government, should be rendered incapable of holding any employment in Church or State. It also declared the Long Parliament to be dissolved, the Solemn League and Covenant to be illegal; and that there was no legislative power in either, or both houses of parliament, without the king; and whoever asserted the contrary, were made liable to the penalty of a Premunif. See 4 Cobbett's Parl. Hist. 217.

panion; and that when they had power again, they should do the work more thoroughly. And said, That thereupon he told it presently to a justice, and afterwards to a neighbour of his, who was in an extreme fright and horror, and so they both went together to alderman Chard, justice, who then came immediately, and surprised and seized upon them; the women only they let go, but the men the Justice did commit to prison that would not take the oath of Allegiance: that they seized John James in the pulpit, where he was preaching when they came in. The Court asked him, what time of the day it was? And he said it was about two of the clock in the afternoon. And they asked him, where he stood? And he said he stood directly opposite in a window, in a yard next adjoining to the meeting-place; and that he could easily discern him. Demanding of him some other questions, that might induce the jury to believe the evidence given was neither with thought of malice to the prisoner, nor hope of reward: then the Court gave the prisoner leave to ask Tipler what questions he pleased.

The exception that John James took unto the witness, was, That it was a hard thing for him to swear that he was the person that was then preaching, he being without the window, which might intercept his sight. To which he answered, That he knew him very well; and that he was not deceived.

Another witness was Alderman *Chard*, the Justice; who said, He could say nothing as to the words that were spoken; but so soon as John Tipler came to him, and informed him of the words spoken by John James, he enquired the place where it was, and immediately he and his clerk and the constable hasted thither, where they found John James preaching, and about 30 or 40 assembled there to hear him. And said, He there seized John James, and pulled him out of the pulpit where he was preaching; and all those men that would not take the oath of Allegiance, he committed, but the women he let go. So the court asked him, if it were at the time alledged in the Indictment? And he said, yea.

Another witness was a Yorkshire man, whose name we know not; who coming into the Court was commanded to look upon the prisoner at the bar, and declared what he heard him say. Who answered, he was at Tipler's house, and heard very loud speaking, which caused him to come out, and hearken, and he heard very dangerous words. The Judge asked him, what those dangerous words were? He said, he could remember no more than this, that one said; That the Lord had a great work to do for his people; and that they were the people that must do it. The Judge asked him if he heard nothing concerning the king's cup of iniquity? To which he answered, No. And they bid him look upon the prisoner at the bar, and asked if that was the man? He answered, He could not say that he was the man.

Whereupon *John James* desired the Judge to

ask him, if he was the man? And he turned his face towards John James, as if he directed his speech to him, and said he could not say he was the man.

Another was *Bernard Osburn*, whom the Judge commanded to look upon the prisoner at the bar, and tell the Court what he heard him say concerning the king and the powers that were now in being.

Hereupon John James told Osburn, He hoped he was a man of some conscience and integrity, and that he feared wrongfully to take away the life of a man; and how great a sin it was, especially to shed the blood of them that fear the Lord.

Then the Court asked the witness, where he was when the words were spoken? He said he was in the meeting-place; and he said he heard John James say, "That king Charles was a blood-thirsty tyrannical king; and that the nobles of England were blood-thirsty: that he had drank pretty deep of the blood of the Saints already, in that he had shed their blood 12 months ago at Charing-Cross, and the blood of the Covenanters in Scotland; and that God had brought him in to that end, to fill up the measure of his iniquity, and he had filled it up more in twelve months than in many years before." They asked him if he heard nothing concerning the Lord's battles? And he told (as though he had forgot it) that he had heard him say, "That they should have power in their hands; and that they should fight the Lord's battles more thoroughly." And they asked him if he heard any thing concerning the ruin of the king? He answered, Yes, he heard him say, "That the ruin of the king was very near." Then they asked him if those were the words? He said, He could not say they were the same words, but to the same substance.

Having done this, the Judge told John James he had liberty to speak for himself.

Whereupon he desired the favour of the court to those witnesses he had attending the court, in respect of *Bernard Osburn*. Whereupon four witnesses were called into the court, that gave evidence that this *Bernard Osburn* confessed to them he had sworn against John James he knew not what. One of them declared further and more largely, (that was near marriage to *Bernard Osburn*) That he had told her "he did not only swear he knew not what, but that he was affrighted into what he swore." He did say, That what he swore to, was first sworn to by another man, and then brought to him in writing. The former witnesses declared, That moreover they desired to know of *Bernard* what he had sworn against John James: And he told them, He could not tell, except he heard the words repeated. (Though *Bernard Osburn* denied in the face of the court that ever he said any such things.) John James then told the court he had several witnesses attending the court, that were free, if they pleased, to prove that the words charged upon him were not spoken. The Judge told him he might call

in as many witnesses as he would. Whereupon John James called in four witnesses more; all which did testify in the face of the court, That the words charged upon him were not spoken. And the court did, as before, give them the hearing.

Then the Judge bid the jury take notice what had been spoken by the king's witnesses and his. And then the court told John James that now he had free leave to speak for himself, as much and as long as he pleased, if he had called all his witnesses; and told him, That when the king's counsel had concluded, he could speak no more: but now he might say as much as he pleased. Then he spake with much freedom, the court and all present giving attention to what he said, which was to this purpose:

JOHN JAMES'S Defensive Speech.

He said he had somewhat to say, first, as to the form of the Charge, viz. "That he had maliciously, wickedly, traitorously, and by the instigation of the devil, not having the fear of God before his eyes, &c." He told them, That in the fear of God he did deny it; and told them he had not a malicious thought against the person of the king, but desired the salvation of his soul, as of his own; that he had not dealt maliciously against the king, neither was instigated thereto by the devil; and that by the goodness of the Lord, what he had done, he had done it in the fear of God. Neither could he be judged, as he told them, as a malicious person against the king, in regard he never had any public employment in the nation, either against this king in being or his father, being a man of no account in the world, having not worn a sword these eleven years; and therefore desired they would in their understanding clear him from this charge, as a person malicious against the king. And further he said, He was a person that could not be supposed to have in his eye any thing of advantage in the world in so acting against the king. And as to the matter of the charge, whereas it runs, "That I John James had compassed, imagined and contrived, the death of the king;" John James told the court he did not well understand what they meant by compassing the death of the king, as compassing and imagining is ordinarily taken: he had not, neither was he capable of endeavouring the king's death; nor the change of the government; being a mean inconsiderable person, a man that had lived upon his calling. And as to those particulars lastly charged upon him, he said he was not guilty of them: He did not say "the king was a bloody tyrant, a blood-sucker, a blood-thirsty man;" That in the fear of the Lord he did utterly deny; neither did he say any thing tending thereto. He further said, He did not say "the king had shed the blood of the saints at Charing Cross this time twelve-month;" he did not say, "That when they had power, in their hands, would improve it more thoroughly for God; and that we did not

fight the Lord's battles thoroughly. And whereas he was charged for contending for Cromwell, and that power, (that God hath eminently wiped off from the stage) he said he did declare against that power, and was averse to it, and did suffer under it in his measure; and told them he did not stand there as Cromwell's advocate. Then did he endeavour to speak more particularly to the jury, letting them know, that in a secondary way his life was in their hands; and it was in the eye of reason, in their power to save or destroy him, and wished them to have a care of shedding innocent blood: and told them, because of innocent blood the land did mourn; to wit, for the blood shed in queen Mary's days, and king Henry the Eighth's; and if there were any innocent blood shed since, he desired no more to be added to it. He told them he did desire they would act conscientiously, and not to be over-awed by any man. He told them they were his judges in law of matter of fact, and desired them to be tender of his blood. He said, he should say very little more for himself, but one word for the Lord, and therefore desired he might have his fear before him, and although he was the poorest and meanest for such a work, yet he was called forth, and did declare, "That the Lord Jesus Christ was king of nations as well as king of saints; and that the government of kingdoms did of right belong to him." And he quoted Rev. xi. 15. "And the seventh angel sounded, and there were great voices in heaven, saying, The kingdoms of this world are become the kingdoms of our Lord, and of his Christ, and he shall reign for ever and ever."

And when he had so spoke, the Lord Chief Justice *Forster* interrupted him, saying, "Hold, Sirrah; Sirrah, you think you are in the conventicle in White Chapel preaching." And thereupon commanded the clerk to read an act of parliament, entitled, "An Act for the preservation of the king's person and government;" wherein was expressed to this purpose, "That whosoever shall contrive or endeavour to levy war against the king or government, &c. or endeavour to compass or contrive the death of the king, his wound or maim; or that by printing, preaching, writing, or other speaking, endeavour the same; then every such person or persons shall be looked upon as traitors to the king, and shall be proceeded against as in the case of High-Treason, &c." Which when the clerk had read,

John James desired liberty to speak, desiring the court to produce a statute that would reach his case, for that did not, but the case of such as had endeavoured to levy war against the king, or had compassed or contrived his death or maim: but he had not contrived or compassed the death of the king, or the change of the government within or without his dominions; and therefore desired a statute might be produced that might reach his case, for he conceived that was short.

The Judge told him it fully reached his case.

And one of the king's counsel made answer, That it reached him in every case.

And another of the counsel said, Treason was the first conception and the first evil thought in the heart; and treason was made visible by preaching, printing, or speaking, &c. which was a manifestation of the things that were in the heart.

This being spoken, the Judge asked him if he had any more to say for himself; and told him, if he did not speak now, the king's counsel would enter upon their plea, and then he must speak no more for himself.

He told them he had one word to the Jury, which he desired to lay before them: It was a scripture written in the 29th of Isaiah, ver. 21. "That make a man an offender for a word, and lay a snare for him that reproveth in the gate."

Whereupon the Judge told him it was not to be borne: for he did inveigh against the parliament.

Though he said, He had not the least thought of the parliament: but he spake it to let the Jury know, that if he were guilty of those words, there was no law of God to take away a man's life for words.

Hereupon the king's counsel spake severally one after another.—First serjeant *Glynn* stood up, and said, Brother *Maynard*, shall we not answer something to what the prisoner hath objected? So *Glynn* began.

The Substance of Serjeant Glynn's Speech.

He told the jury, That if they proved the words alledged in the indictment substantially, though it were not adequate thereunto in every title and iota, yet it was sufficient to satisfy their consciences, and to find the prisoner guilty of high-treason.

First, He began with the exception taken unto the first witness, that he stood without the window, and therefore could not easily discern the visage and physiognomy of the prisoner that was there a preaching. He told them he had sworn expressly it was the same person; and that as he came into the yard he was there a preaching, and as he went away to the justice of peace he saw him: and the justice did seize the same person, and find him preaching when he came; and therefore it must be him, and no other. And told them, that the witness could have no end in discovering of it; for if he had kept silence, he had consented, and so been guilty of misprision of treason.

Then said he, As to the exception taken against the fourth witness, That he said he swore he knew not what, and could not tell what he had sworn to. He said, This was no cause to reject this evidence; for peradventure he could not well call to mind the several words that were spoken; or peradventure he would not tell them, because he might suppose that they were sent to ensnare him in his evidence, that they might make it void.

Then as to the witnesses that were brought on the part of the prisoner, to testify that no

such words were spoken; As to that he must refer it unto the consciences of the Jury. But he said, he conceived that it was altogether immaterial; for the question is not, what he did not say, but what he did say. They say that he did not say these words, but they do not say what he did.

Then stept up serjeant *Moynard*, and said, That as to the evidence of those three persons, his brother *Glynn* had spoken so much, and so well, that he could add no more, or very little: and urged the same things that serjeant *Glynn* did. And further said, that the prisoner spoke much of his integrity and innocence; I believe, saith he, gentlemen of the jury, never was there any offender, or the vilest miscreant in the world, that would ever have received the reward of his doings, if his own excuse and protestation might have saved him. Then he said, as for the blood of the saints that was spilt this time twelvemonth, he said they were sad saints, such saints, said he, as would have cut all our throats.

Then *John James* desired to be heard one word, that that gentleman had untruly alledged against him; but the court refused to allow him the liberty.

Then stood up *sir Heneage Finch*, Solicitor-General.

The Substance of Sir Heneage Finch's Speech.

My Lord, and you Gentlemen of the Jury, be it known unto you, and to all that hear me this day, that the prisoner at the bar is not arraigned for his conscience or religion, but for treason and rebellion, for horrid treason and rebellion, for spurning against the meekest king in the earth. His majesty, to the great and inexpressible grief of his heart, did not think there was a person so unworthy left within his dominions, that would have lifted up the heel against him, after twenty years rejecting of his majesty and his royal father; and having also conferred his grace upon us, to reduce us to a state of innocence, he could not think there was any gall left in our hearts, or any guile to be found in our mouths.—He then pressed his Treason upon the consciences of the Jury, who, as he told them, would affright their consciences with his innocence. And told them, how that the punishment of this offender might affright the like malefactors for the future: and said, that there were a people, that under the pretence of religion had the liberty of conscience allowed by the king for a time, till they were better informed; but this man, and those of his mind, are none of those men: but they endeavour not only to destroy the monarch, but monarchy itself; not only in England, but all the world over. This is the principle that they are of, therefore I desire the Jury to take notice, what may be their duty upon that account. And that when the prisoner was preaching that pernicious sermon, he pressed it with the peril of their salvation, and now would affright you upon the account of innocent blood: but you shall find, if his blood be rightly and swiftly

pursued, it may be a means of preventing the shedding of the blood of thousands, for the time to come. And withal did desire them to consider further, That the great trouble this nation had undergone for these twenty years last past, sprung from pulpits, conventicles, and seditious preaching; and therefore if these causes were taken away, it might prevent such evil effects for the future. And said, That as to the evidence he had produced, it had been well spoke to by the two Serjeants that spoke last: and as to that evidence by the women, he said they had no reason to tell what was said by *John James*, for thereby they would make themselves guilty of misprision of treason; which is to be punished with perpetual imprisonment, confiscation of goods, and the loss of the profits of lands during life.

That is well observed, said my lord to the Solicitor.

Then Judge *Forster* endeavoured further to inform the Jury, and to incense them against his principle, telling them, that he was of the same spirit with those that did endeavour heretofore to put all the nation in a flame, and to set every one against each other; and said, No treason was comparable to that treason that was covered with a pretence of religion.

This being done, and the Jury ready to go forth, *John James* desired the Court to favour him with one word to the Jury. They told him he had had a great deal of liberty, and time to speak; but now he should speak no more. Then *John James* replied, That if they would not suffer him to speak to his Jury, they had as good have banged him at Bull-stake Alley gate, before he came there, and not brought him thither to cover over the matter with the pretence of law. This being spoken, the Judge gave him a sore rebuke, and told him he was not to be judge in the case.

Then my lord and the Judges laid their heads and conferred together, whereupon my lord said thus to the Jury, or to this effect: You have heard the evidence, you are to find the matter of fact as it is laid before you, whereof you are the proper judges, and I pray God direct you.

Then the King's Counsel and the Jury departed from the bar; and at the return of the Jury, being about a quarter of an hour, the Attorney and Solicitor General came back into the Court with them. Whereupon the Crier called them all by name, and the Clerk asked them if they were all agreed, and they answered, Yes. Then the Clerk of the Crown commanded the prisoner to hold up his hand, and asked the Jury, How say you, is *John James*, who hath been arraigned and tried, Guilty of the Treason alledged in the Indictment, or Not Guilty? And the Foreman, which was *Charles Pinfield*, said, Guilty according to the Indictment.

Then the Attorney General prayed Judgment for the king. To that the Court answered, Never the same day he is arraigned, but appoint what day the prisoner shall be brought,

and it shall be granted. Then the Attorney and Solicitor conferred together, and the Attorney said, On Friday next. Till which time he was remanded to the King's-Bench prison in South-wark.

His Wife's Application to the King after her Husband was cast.

In the interval, betwixt his casting and condemnation, upon the fourth day of the week in the evening, his wife, by advice of some friends, endeavoured to make address to the king, to acquaint him with her husband's innocency, and the condition of those loose persons who had falsely accused him; which she put in writing, lest she might either want an opportunity, or not have courage enough to speak to him. And with some difficulty at last she met with the king as he came out of the Park, going into the Gallery; where she presented him with the Paper, which on the back-side was indorsed, "The humble Request of Elizabeth James:" acquainting him also by word who she was, to whom he held up his finger, and said, "Oh! Mr. James, he is a sweet gentleman!" but following him for some further answer, the door was shut against her; which was all she could obtain at that time. The next morning she came again to the same place, where she had not long been, but the king came out of the Gallery to go into the Park, whom she followed down the stairs, imploring his answer to her request; who then replied, "That he was a rogue, and should be hanged." One of the Lords attending him, asked her of whom she spake; whereunto the king answered, "Of John James, that rogue: he shall be hanged, yea he shall be hanged." And so she came away, satisfied in her conscience, that what she had done was but her duty.

The Third Day, Nov. 22.

Being this day brought to the bar, according to former order, the Clerk proceeded according to their manner, and told the Court, That John James had been arraigned and tried, &c. and had committed himself to God and the country for trial, and by the country was found guilty of the crimes and treasons alleged against him in the indictment. And then it was demanded of John James, what he had to say for himself why Sentence of death should not be passed upon him according to the law? To which John James answered, That he had not much to say, only two or three Scriptures he would leave with them. The first Scripture was Jer. xxvi. 14, 15. "As for me, do as seemeth good unto you; but know ye for certain, that if ye put me to death, you shall surely bring innocent blood upon yourselves, and upon this city, and upon the inhabitants thereof." The second Scripture was Psal. cxvi. 15. "Precious in the sight of the Lord is the death of his Saints." He also minded that good word of the Lord, "He that toucheth the Lord's people, toucheth the apple of his eye." He told them he had

not more to say for himself, only one word for the Lord, and so he had done: "That Jesus Christ the Son of God, was king of England, Scotland, and Ireland, and of all the kingdoms of this world."

Which being spoken, they silenced him, and the Court proceeded to Sentence, and the Judge pronounced Sentence according to the law, and said thus:

' John James, thou hast been here indicted, arraigned, and tried as a false traitor to his majesty, his crown and dignity, and hast put thyself upon the trial of God and the country, and the country have found thee guilty; and therefore, John James, thou art to be carried from hence to prison, and from thence to the place of execution, and there to be hanged by the neck, and being yet alive, to be cut down, and thy bowels to be taken out, (a fire being prepared) and to be burnt before thy face; and thy head to be severed from thy body, and thy body to be quartered, and thy head and body to be disposed according to the king's pleasure.'

This being done, John James had only time to say, "Blessed be God; whom man hath condemned, God hath justified."^o

* Keble's Report of the Case of John James is as follows:

"John James was indicted (and found guilty) for compassing and imagining of the king's death, and intending his deprivation, manifested by preaching at White-Chapel, after the 24th of June 1661, viz. 18th of Oct. affirming of the king and his nobles, That the king was a blood-thirsty and tyrannical king, and so of the nobles; and that the cup of their iniquity was almost filled with the blood of the saints a year ago, but the putting of the covenanters to death in Scotland, had (to fit them for destruction) filled it fuller; and he was sorry he had neglected his opportunity of fighting the Lord's battle, but hoped that if ever he had it again, he should consider it more fully. Serjeant Keeling opened the indictment (the Court on his desire refused to allow any friend to take notes for him) Mr. Attorney General further observed, That the intent and imagination was the prime treason, the preaching an evidence of it, which was the law before any statute made in the world, as ancient as monarchy itself; but the uncertainty is bounded by the statute, 25 Edw. 3, which is only declaratory of the common law for the ease of the subject, bare words at common law being treason, this is more than that, preaching is an overt act, at least by the statute of 13 Car. 2, cap. 1, of preserving the king's person, that he endeavoured not only to overthrow the king, but monarchy (that divine rule from all antiquity) in this land. After the evidences that swore the words punctually, the prisoner objected against the testimony. The Court summed up the evidence, and verdict *pro rege*."

Some Account of the FEES and CHARGES demanded and paid by JOHN JAMES to the Officers and Jailors, during his Trial and Imprisonment.

That notwithstanding his great poverty, who (as it was well known) what through the means of his calling,* but especially the weakness of his body, had much ado for this many years to get bread for his family, these following Fees were exacted from him. First (besides the Charges and Fees paid by him in Newgate) upon his Arraignment at Westminster, and first commitment to the King's-Bench prison, the tipstaff men received of him 13s. for the Judges clerks, their own and officers fees; and 1s for his prison in the King's Mead tavern in Westminster. which they demanding with rigour, he told them he was a poor man and had it not to give them; and that they would have his life, and he thought that might suffice them: but they would abate him nothing; for their fees (they said) they must have; whereupon he was constrained to borrow the same at Westminster to pay them.

Upon his coming to the King's-Bench prison, sir John Lenthall received of him for Fees the sum of 15s. and then turned him into a yard where it rained upon him; and after, (for some shelter he got amongst them in an alehouse) he paid 3s. 6d.

After he was cast for his life, the tipstaff men belonging to the King's-Bench at Westminster demanded his cloak of him, which he refusing to give, they took by violence, saying, "It must be divided amongst several of them;" which afterwards they offered to sell him: but he told them he had but a little time to live, and those cloaths he had should now serve him. After his return to the King's-Bench prison, he was constrained to pay 5s. to keep in his former prison chamber, and they forced him also to diet a man they put with him to look after him during his stay there. And all the time of his trial they would hurry him to alehouses, and still make him pay for all; and put him to all charges of going by water, when he was brought to and from his trials. Further, his wife was constrained to pay to Hicks the keeper of the Press-yard, the sum of 16s. for his chamber rent during his continuance there, which was not above three or four days.

The hangman also the day before his execution, came to demand money, that he might be favourable to him at his death: He asking what would satisfy him? the hangman demanded twenty pounds; but John James pleading poverty, he fell to ten pounds; but in conclusion told him, if he would not give him

*"He was for some years a small-coalman, but not able to undergo that calling, by reason of weakness (though the most profitable to him of any other) was constrained to undertake ribbon weaving, his former profession, which scarcely afforded him bread." Orig. Edit.

five pounds, he would torture him exceedingly: To which John James said, he must leave that to his mercy, for he had nothing to give him.

Some occasional SPEECHES in the King's-Bench Prison upon his first Commitment there.

A friend coming to visit him at the King's-Bench, and finding him in his bed, went to his bed side and asked him how he did? he then made relation of the several ways that God and man had taken with him; told that friend, that touching his spirit he had much to do while in Newgate; that one whole day and night he was assaulted with very horrible temptations, and sometimes was much pressed to make known to his brethren what he met withal; but this Satan hindered for a long time, telling him it would but expose him to be slighted, &c. But at last the Lord overcame, and he did acquaint them with his condition, who immediately betook themselves to prayer for him, and God was near unto them, and broke in upon him with that word, 2 Sam. 23. 5. 'Although my house be not so with God, yet he hath made with me an everlasting covenant, ordered in all things and sure;' which came with wonderful efficacy, and (said he) for present set me into perfect liberty from all my fears: but in some time Satan came on again, and would endeavour to weaken the force of the Word to him, by shewing him how weak and inconsiderable he was, and short of David, to whom that word was spoken: but this cloud was quickly blown over, and the Lord by two words of Scripture fully answered all; one of which was, 2 Cor. 8. 12. If there be first a willing mind it is accepted according to that a man hath, and not according to that he hath not; and the other, that word of the apostle, 'It is God who worketh in us both to will and to do, according to his good pleasure.' And proceeding to acquaint his friend with the Lord's ways further with him, he said, I was after this brought from Newgate to this place, where, upon my first coming, I was dealt hardly with, and first put into a place where it rained upon me; complaining of this, I had leave to go into an alehouse, which liberty I purchased with my money; in which place I was attended from three till nine of the clock with cruel mockings, by one company after another; and afterwards, though I desired to be alone, yet could not obtain it, but would have put me with a very unsuitable company; yet with much ado obtained the company, whose civilities I cannot but acknowledge, though I would rather have been alone; and truly for some time I was troubled, and said, as he of old, "Why should I live any longer? Lord, take away my life." 1 Kings 19. 5. But this also the Lord in some little time rebuked, and I had much calmness in my spirit, and very suddenly by grace arrived to my rejoicings in God, and now I bless the Lord I am well; sometimes I am putting the halter about my neck, and putting the sled before my eyes, to see if it will terrify me; but through grace,

they are not at all terrible (as yet) to me; and he hoped the Lord would keep him to the end, or words to this purpose: speaking also to the same friend, with admiration that such a poor contemptible wretch as he was, should be called forth into such service for the Lord. And as to them that sought his life, there was no advantage could accrue to them thereby, they were not like to get one penny by him, having for these eight years been put to such exigencies to get a livelihood, that many a night he has not been able to take his rest, for the sore and painful labour he had taken the day before with his weak body, to get food for his poor family; but if the Lord would justify himself by such a worm he desired to be given up to his dispose.

After he was carried from the Court, being found Guilty, he was asked how it was with him? He answered, Very well, I bless the Lord: I am a great deal more at ease in my mind than I was before, for the verdict of the Jury hath not at all terrified me.

Another friend visiting him in the same place, found him exceeding cheerful, and much filled with the sense of the goodness of the Lord, declaring in these very expressions, that he could truly say, Whatever the Lord had spoken of in his blessed word, in relation to any trials he had hitherto met withal, he had been every way as good as his word.

Some other friends visiting him at the same prison, after some discourse, he desired them not to be troubled, for the Lord had compassed him about that he had neither fear nor torment, yet, he said, he had looked upon all their instruments of death, and was filled with joy and peace unutterable, but when he had any thoughts of living he had nothing but trouble and distraction; for alas, said he, what will my life signify? It will signify but little; but my blood will cry aloud, it will speak louder than all my life. I have spoke many a time at a higher rate for the kingdom of Christ than I did then, but my hour was not come.

Some Speeches uttered by him in the Dungeon in Newgate after the Sentence was pronounced against him.

One visiting him in that place, expressed much trouble on his behalf, and could not refrain weeping; who came to the party smiling and said, I beseech you let me not see any of this, for all is well, and therefore forbear I beseech you, such carriage, which will too much encourage the enemies of the Lord; therefore I pray you let me not see a sad countenance from any of you.

To several he uttered these words; O saith he, this poor weak body has been often near the gates of death in my own thoughts, and others, and now that the Lord should make choice of so poor a carcass to put it off at such a rate, O (said he, with much rejoicing) blessed be God! let him take it.

Two of his fellow prisoners coming unto him at that place, found him at prayer with

some friends, who observed that his heart was much enlarged in thanksgiving and praises for that choice help and assistance the Lord had given him in the work he had been called to, who after he had ended, saluted them, rejoicing greatly to see them; telling them of his hardships he had endured since he was taken from them, and also spake of the goodness of the Lord, which he judged to be great towards him, in that he was supported with suitable strength, and made willing to do the good pleasure of his Father, either in life or death, and also said, he had gotten the start of his brethren, and was going to a place where the 'Wicked cease from troubling, and where the prisoners be at rest,' (Job iii. 17, 18.) declaring further to them, that God had been eminently with him, in delivering him from all the fears he lay under while the trial was upon him; and although it was hard to flesh and blood to look the King of Terror in the face, yet when the Lord brought him to it, it was made easy to him; for which he thanked God, and bid his friends be encouraged, saying, That his dear Lord had helped him over two of his steps, and now he had but one more before he should be free from all that care and fear of dishonouring God, or grieving his people in the work he was called to; and while he was speaking of the goodness of the Lord to him in an admiring manner, that God should choose and own such a contemptible creature as he was, he presently reflected upon himself, fearing lest he might be too much lifted up, but withal saying, he was now going to a place where his sins should trouble him no more.

Another friend visiting of him in that place, asking him how he did? said, I bless God I am well, never better in all my life. I will tell thee brother, never a poor creature hath more dreaded this condition than I have done; I have been afraid of a prison, my heart would tremble to think of it; I would have gone out of the land to have escaped a prison; but now it is all gone, every cloud is blown over; I bless God I do no more fear this death, than to lye down upon this bed. And to another he said, The Sentence that day was no more to him than the eating of those raisins in his hand, saying, O how good is God! There is a ground of encouragement in the Lord's dealing with such a poor worm as I, for all the saints to trust in him in every condition.

Upon the seventh day in the morning, being the day after his Sentence, some friends coming to see him before he was unlocked, none being in the room but his wife and himself, he was in prayer for some good time, and that in more than ordinary enlargement, (though the said friends could only hear some sound of words;) after he had concluded, and the door being opened, being asked how he did, and how it was with him in his spirit? his answer was, Very well, I bless the Lord, never better in all my life; my wife and I have had the best morning that ever we had, we have been giving up one another to the Lord, and I bless the

Lord he hath made us as willing to part one from another, as ever we were to come together.

Some Passages and Speeches in the Press-yard, in Newgate, after his Removal from the Dungeon, three or four days before he suffered.

Upon the first day of the week, after the Sentence of condemnation was passed upon him, several friends being come to see him, he told them that with the help of the Lord he would now finish that discourse amongst them, that he was upon at White-Chapel when he was taken prisoner; for then, he said, he was pulled down before he had gone far in it, and so he read the scripture to them.

The Scripture was, 1 Cor. vi. last verse. "For you are bought with a price," &c. In the opening of which blessed portion of truth, he was made a choice blessing to them that were with him; his words came upon them like the small rain upon the tender herbs, and as the dew upon the grass.

He first treated of the great cost the Almighty was at to redeem our bodies and spirits, as to what the Son of his Love underwent upon that account. And, secondly, What it was to glorify God in our bodies and spirits, as to obedience in respect to the rule of God's Word, and that we were in great danger to fall short in our duties therein, and except we had more than ordinary zeal and watchfulness, we might lose our holy frames of spirit, &c. But that which was most considerable in the conclusion, he treated of glorifying God in the body, by giving it up in the spirit to suffer for righteousness sake, shewing how many prophets, apostles, and precious saints had glorified God that way, and had great joy in that service; and that our dear Lord Jesus was perfect through sufferings, and how he did rejoice in that he had a body given him to do the will of God, not only as to obedience to the preceptive will of the Father, but also to fulfil all the prophecies that had been spoken of him, that related to his suffering, &c.

And then said, He did not think when he began to speak from that text in White-Chapel, that he should so suddenly have been called to glorify God in his body in that way he was now likely; yet, inasmuch as it was his Father's good pleasure so to honour such a poor worm as he was, to give him, not only to believe in his name, but also to suffer for his sake, his soul did rejoice in the Lord; and as he had a baptism to be baptized withal, he was straitened till it was accomplished.

The messenger that brought the tidings from the Under-Sheriff of his execution, coming the second day of the week to him, found him in bed, and said he had brought him sad news; who raising himself in his bed, said, God forbid, what can that be? who said, that the next fourth day he was ordered to go to his Execution. He replied, Blessed be God, that is good news. Whereupon a friend coming in, he said,

Ah! now I can invite thee to my wedding, for I know now my wedding day: Upon the bringing of which news that Scripture was presented to him with much power, "The cup which my Father hath given me to drink, shall I not drink it?"

Upon the second day of the week in the afternoon, several friends being with him, he judging that the greatest cause of the Sentence and Condemnation passed upon him, was in respect to his principle of the Fifth Kingdom, therefore he desired to leave with them some of his Scripture-grounds for that his persuasion, for which he was now about to suffer, desiring the same might be committed to writing, which was as followeth.

He said, I do really judge that the Lord Jesus Christ that is now at the right hand of the Father, shall have the kingdoms of the world. I shall quote some Scriptures for it: The first is in Psal. 2, 8. "Ask of me, and I will give thee the heathen for thine inheritance, and the uttermost parts of the earth for thy possession:" and this he must have by God's decree, as in ver. 7. "I declare the decree, the Lord hath said unto me, Thou art my Son, this day have I begotten thee." That Christ must have the heathen for his inheritance, and the uttermost parts of the earth for his possession, is proved clear from hence. There is another word in Psal. 72, from the beginning of the Psalm to the end of the 15th verse, but more especially the 8, 9, 10th verses: "He shall have dominion also from sea to sea, and from the river to the ends of the earth: they that dwell in the wilderness shall bow before him, and his enemies shall lick the dust: the kings of Tarshish, and of the Isles, shall bring presents, the kings of Sheba and Seba shall offer gifts." Another Scripture is in the 9th of Isaiah (though I might urge many more Scriptures, as Psal. 145, about the beginning of that Psalm, &c.) Isa. 9, 6. "For unto us a child is born, unto us a Son is given, and the government shall be upon his shoulder; and his name shall be called, Wonderful Counsellor, The Mighty God, the Everlasting Father, the Prince of Peace; Of the increase of his government and peace there shall be no end, upon the throne of David, and upon his Kingdom, to order it, and to establish it with judgment and with justice," &c. These Scriptures are very clear to prove that Jesus Christ must have the government. Another full word is in Isa. 53, 12, (and that by purchase) "Therefore will I divide him a portion with the great, and he shall divide the portion with the strong, because he hath poured out his soul unto death," &c. That Jesus Christ must have the government is clear, as he is the son of David, Luke 1, 31, 32, 33." And behold, thou shalt conceive in the womb, and bring forth a son, and shalt call his name Jesus; He shall be great, and shall be called the Son of the Highest: And the Lord God shall give unto him the throne of his father David, and he shall reign over the house of Jacob for ever,

and of his kingdom there shall be no end." I judge this Scripture to be equivalent to that in Isa. 9, 6. "Unto us a child is born" &c. respecting Christ as he is the son of David. But these Scriptures may suffice for the Old Testament. The apostle Paul clearly asserts this truth of the Fifth Kingdom, in 1 Tim. 6, 15. "Which in his time he will shew, who is the blessed and only Potentate, the King of kings, and Lord of lords. The Apostle asserts Jesus Christ to be the only Potentate, King of kings, and Lord of lords: which is the very superscription he brings upon the thigh when he comes to make war with the horus, Rev. 19, 16. "He hath on his vesture and on his thigh a name written, King of kings, and Lord of lords." That Jesus Christ must have the government, that he must have the kingdoms of the world is very clear: but to the further proof thereof, take Rev. 11, 15. "The seventh angel sounded, and there were great voices in heaven, saying, the kingdoms of this world are become the kingdoms of our Lord, and of his Christ, and he shall reign for ever and ever."

If any now say, We grant that Jesus Christ shall have dominion and power, and shall reign for ever, but Jesus Christ says, "His kingdom is not of this world."

Ans. It is true, Christ spake truth, Christ's kingdom was not then in this world, or of this world; but what is this to that? there is a time that his kingdom must be of this world, the Scripture saith it plainly, I never heard any allegorize this text, but have been forced to take it in the plain sense of the words; the Scripture saith it plainly, if that word in Job. 5, 26, 27, be rightly understood: "For as the Father hath life in himself, so hath he given to the Son to have life in himself; and hath given him authority to execute judgment also, because he is the Son of Man." Again, this truth is plain from that of Daniel (which I thought not to have urged) ch. 7, 18, compared with the 27 verse. Ver. 18. "But the Saints of the Most High shall take the kingdom, and possess the kingdom for ever, even for ever and ever." And ver. 27. "And the kingdom and dominion, and the greatness of the kingdom under the whole Heaven, shall be given to the people of the Saints of the Most High, whose kingdom is an everlasting kingdom, and all dominions shall serve and obey him." Now observe, here is two things I take notice of, to prove that this kingdom is an outward visible kingdom. First, the kingdom that the Saints take is from the fourth beast; the beast had never to do within any kingdom but what is below in the lower region; the kingdom that the Saints take, which is said to be Christ's kingdom, (in the 27 verse) is an outward kingdom, and therefore not a spiritual kingdom. That is one reason. Secondly another reason is, it is the kingdom and dominion, and the greatness of the kingdom under the whole heaven; and therefore it must be an outward kingdom, and must be equivalent to

that, Rev. 11, 15. "The kingdoms of this world are become the kingdoms of our Lord, and of his Christ, &c."

The next thing that I have to say, will be as to the nature of this kingdom in the administration thereof, which will be very righteous and holy; which you have clearly in Isa. 32, 1, 2. "Behold, a king shall reign in righteousness, and princes shall rule in judgment, &c." Isa. 1, 26, hath respect to the same time, "I will restore thy judges as at the first, and thy counsellors as at the beginning; afterwards thou shalt be called the City of Righteousness, the Faithful City." This kingdom will be a kingdom wherein the laws of God will be the only laws extant; the laws of God will be the only laws in being; and those that shall have the executive power of those laws, will be men qualified accordingly, moulded according to that holy and just law: as to the persons that shall have the executive power of that government, you have in Isa. 60, 17. "I will also make thy officers peace, and thine exactors righteousness."

The next thing (I must but touch upon things) How Jesus Christ must come by this kingdom? and that is, "He shall use his people in his hand as his battle-ax and weapon of war for the bringing in the kingdoms of this world into subjection to him." A few Scriptures (and but a few) as to this, Isa. 41, 14 ver. but more especially the 15, and 16 verses, the Prophet, speaking of Jacob, saith, "Behold, I will make thee a new sharp-threshing instrument, having teeth; thou shalt thresh the mountains, and beat them small, and shalt make the hills as chaff; thou shalt fan them, and the wind shall carry them away," &c. The next Scripture is in Jer. 51, 20, 21. "Thou art my Battle-ax (speaking to his own people) "and weapons of war; for with thee will I break in pieces the nations, and with thee will I destroy kingdoms," &c. I might produce many Scriptures more, that God will make use of his people in doing of this great work: 17, 14. "These shall make war with the Lamb, and the Lamb shall overcome them; for he is Lord of lords and king of kings: and they that are with him, are called, and chosen, and faithful." In the great work of Jesus Christ against the horns, he hath a remnant called, and faithful, and chosen, standing by him in this work, which doth mightily correspond with those two former prophecies. Therefore, seeing that the Lord will make use of his people as his battle-ax and weapon of war; and that they are a faithful, and called, and chosen remnant, I only leave this one word by way of exhortation to the Lord's people that have faith in these prophecies, to be looking to the qualifications of this chosen remnant, and that they have in Rev. 14, 3, 4, 5. "They sung as it were a new song before the throne, and before the four beasts, and the elders, and no man could learn that song but the hundred and forty and four thousand which were redeemed from the earth, &c." They that serve the Lord in this great

work, they must be a remnant indeed, redeemed from the earth. I press the Lords people very earnestly to look to the qualifications of that remnant that must serve the Lord, and see how it is with them, whether or no they are a people so qualified, a people indeed 'redeemed from the earth,' a people indeed taken from among men; a people in whose mouth is no guile, a people 'that have not defiled themselves with women,' a people 'that are virgins,' and have kept a virgin-like spirit: and I shall say no more, but leave what hath been spoken as some Scripture-evidence of my judgment aforesaid.

In this interval between the Sentence and his Execution, several persons of quality came to visit him, both men and women, courtiers and others, whose coming were chiefly to this end and purpose, to persuade him to petition the king for his life, and further to lay forth his innocency; and especially one of eminency in the city, did labour much with him to that end: to whom he did reply, as usually to others in that case, That he had discharged his duty and conscience already in the clearing of himself, and to the king he had done no wrong; and therefore would submit himself to the Lord, and rest satisfied in his good-pleasure. The said party of note afterwards urged his wife that she would petition, if her husband had not that freedom; and withal, as an argument to provoke her thereto, told her it might be a means to prevent the cry of innocent blood, which otherwise might be brought upon them: to whom she gave a particular account what means she had already used to that purpose, and what success she had (according as has been before recited) which gave him satisfaction in that matter.

Some COLLECTIONS and OBSERVATIONS of a Friend, that was frequently with him during his Imprisonment, till the time of his Execution.

He was for the most part borne up in a sweet spiritual rejoicing frame, and his words were gracious, much rejoicing in the Lord, and admiring at his bounty towards such a poor worm as he was, inasmuch as he was accounted worthy to suffer for so glorious a cause, even for testifying to the kingdom of Christ, and the righteousness thereof; and against the kingdom of this world, and the wickedness thereof; and also in that he was a companion of them that had been so used, he being so unlike them; they being men of note, and he a man of no name: they were men educated and of considerable breeding, and he hardly knew letters; their persons had some presence and amiableness, but he a poor low deformed worm, yea a flea; and sometimes he would speak with a smiling countenance, rejoicing that he was in his trials and death made so like his precious Redeemer; first, in that he was delivered up into the hands of men to be judged through envy, &c. Secondly, and that envy procured false witnesses, to lay to his charge things that he knew not;

he himself, with many witnesses, affirming, that what was witnessed against him was false, both as to the matter and form: And thirdly, that he was tried in so high a Court, there being several Judges before him, and four of the King's Counsellors, besides the Attorney and Solicitor General, pleading against him to take away his life; and a Jury of knights and gentlemen all of the same spirit, thirsting after his blood, and in thus much, like to his precious Redeemer, according to the word of prophecy spoken of him in this case, Psal. xxii. 12, 16. Fourthly, in that they robbed him of his garments; for when they had condemned him, the King's-Bench jailors took away his cloak from him. And fifthly, in that he was to be hanged on a tree, and that his bowels were to be poured forth like water, and his body not suffered to be put into a grave, but set upon poles, as is foretold of them, Rev. 11.

To all his friends that came to visit him he gave good encouragement to perseverance and constancy in the matters of Worship and Testimony; and that they should not fear man's fear, nor be afraid, assuring them, that sufferings from man for righteousness were not so bad as they seemed to be.

He did not like to see any that came to him to weep or be sad, he would still tell them, that concerning him they had no cause to mourn, but rather to rejoice; for the joy of the Lord was his strength, and he was going to his Father, even to God his exceeding joy. But he said to his friends, they would rather see cause to weep for themselves, for the world wherein they were to abide, for a time would be full of defilements, and that even the grossness of Popery was coming up to try them.

The day before he suffered, he had many friends came to see him, so that his chamber was thronged one could hardly pass in it from one side to the other; he spake to every company, and to most of them particularly, with a sweet joyful countenance, encouraging them much in the Lord, testifying to them that the Lord was good, and that there was no bitterness in his service; and said, that even that part which seemed to be most bitter, was made most sweet, for in it the glory of Christ was most revealed.

The night before he suffered, he sat at supper with some of his friends, and said unto them, "I sup with you to night, but you would be glad to sup with me to-morrow night." And would often say, he had many a night been in more care to get bread for his family the day following, than for what he should suffer the morrow.

That night he sat up late till near the middle of the night, accompanied with several friends; his discourse was very sweet and profitable, rejoicing in his portion, telling his friends that he should be taken out of the land of his labours, and should be at peace and rest before another night.

About three o'clock in the morning he had a sharp combat with the King of Terrors for

about an hour and half's time, but spake no word, only had an inward wrestling that put him into a sweat; a friend that watched with him read a portion of scripture to him, which was the 11th of the Hebrews, and therein the Lord discovered, to the refreshing of his soul, how that the way that he was to travel that day, had been travelled through by the Lord's Worthies in the days of old, and by faith they endured both stonings and sawings asunder, and accepted not of deliverance upon man's terms, because they looked for a better resurrection; and afterwards that friend sought the Lord. And then John James declared that the Comforter was come to him again, and had refreshed his soul; and then he made himself ready, and in a joyful frame took his Bible and read, Jam. i. 12, "Blessed is the man that endureth temptation; for when he is tried, he shall receive the crown of life, which God hath prepared for them that love him." From which Scripture he spake about half an hour, and did chiefly make forth the blessed estate of those that endured torment for righteousness sake, and how the Lord had given that choice blessing only to his choicest children in all ages; and that it was no mercy to be tried, if we yielded to the temptation; for when he is tried, he shewed the Lord took great pleasure in those servants that bore their trials, and came forth like gold: he instanced Job, and the holy prophets and martyrs, and our dear Lord Jesus, who was a tried stone; declaring, That it was a way wherein men were greatly manifested to be heirs of the prepared glory, and that wherein men did as much manifest their love to God as men could be capable to do; yea, it was the way that our Lord took to hold out his love to mankind: And then shewed with great joy of heart, that he was going to follow his dear Lord through Golgotha, and to manifest his love to his Redeemer by shedding his heart's blood for him, and passing that way to the prepared glory, yea, to receive the crown of glory prepared for the Beloved Ones. And when he had ended his discourse, he kneeled down and prayed, and praised the Lord, and was much enlarged, to the comfort and edification of the friends that were with him. After that, he discoursed with much joy and sweetness, and said, That the Lord had granted him the desire of his heart; for he had desired and sought the Lord that he might be so far from being afraid of any amazement, that he might endure the shame with joy when it came, and even long for the coming of the sledge; and he said, he did bless the Lord it was so with him, for he did much long for it before it came.

A little before his going forth, seeing some of his friends come in who had particularly desired to accompany him to the place of Execution, said, "Here comes my bride-men," embracing them with much joy. But, said he, "Must not the sacrifice be bound?" one answered, "Yea, it must be bound with cords:" he rejoicing, said, so he had heard.

Soon after the Keeper came into the room,

and calling him down to deliver him to the Sheriff, he told him he was a welcome messenger, he had waited long for him; and so he came with joy after the Keeper from his chamber into the Press-Yard, where hearing the noise of the multitude without, said to a friend "There would be by and by as many Hallelujahs, as shoutings of the people without;" and there they bound him about the back with a new cord, and so had him into the street like a sheep to the slaughter; with a sweet smiling countenance he came into the street, where he was a gazing-stock unto the multitude, and so being placed upon the sled, drawn by a team of horses, attended by the Sheriff's men and a company of foot-soldiers, was drawn along to Tyburn; the way out of the town being very foul, he was drawn through very much water and dirt, besides the very much slapping of the horses that went besides him, yet for all this he was born up with much joy and cheerfulness, not at all dismayed or terrified.

Being come to the place of Execution, he asked Mr. Sterling the Sheriff, whether he might not have the liberty to speak to the people. He told him he might, if he would not speak seditiously, (or words to that purpose.) Then John James addressed himself to speak as followeth:

The last SPEECH and PRAYER of JOHN JAMES at Tyburn, immediately before his Execution, November 26, 1661.

First of all, that which I have to say before I go out of this world, is, to remove that which hath been thrown upon me by way of aspersion as if I were a Jesuit.* Here at this place at this time are some that knew me from my childhood, and can clear me in this particular and therefore I shall only say this to it, That I am an Englishman, never was out of the nation in all my life; never had any knowledge of any other tongue but the English tongue, therefore altogether incapable of such work and employment as Jesuits are usually put upon, they being commonly men of great parts and learning, which I am not. I shall only speak this in respect of my parentage and education, I came of a very mean family; I may truly say, as once Gideon did, "My family is the least in all Manasseh, and I am the least in all the family:" And in truth I may justly say, my family, the family that I came of, it was a very mean family, the meanest amongst all families of the people of the Lord at that day, as I knew of; and for my parents, they were people fearing God, those that durst not for their lives, I say, they were those that durst not for their

* "This Vindication was occasioned by the coming of a Courtier, (and, as some said one of the bed-chamber) two or three nights before he suffered, to know if he was not a Jesuit, and if he had not been beyond the seas." Orig. Edit.

lives stain their consciences in respect of idolatry and superstition that was up at that day.

I shall not need to speak any more to that, I came not here to boast of my parentage; I declare I came of a mean family, only my parents were people fearing God, and did to their utmost, endeavour what they could to bring me up in the nurture and admonition of the Lord; and I hope my father at his death had not ought to be charged with by way of blame: and my mother is yet alive and attained to a good old age, and I trust so she is. But I shall not trouble you more about this matter, for I only speak this, to take off that which was cast upon me, wherein I judged the name of God would have suffered had I not cleared myself.

2. The second thing that I shall say, is, what I am in my principles, what I am in respect of my religion and judgment, and I shall be brief as to that. I do own the title of a Baptized Believer, I do own the Ordinances and Appointments of Jesus Christ, I do own all the principles in Heb. 6. 1. 2. about the doctrine of Faith towards God, and repentance from dead works, the doctrine of Baptisms and laying on of hands, the Resurrection of the dead, and Eternal Judgment. These are the principles that I desire to own, and have in some weak measure been found walking in: I do not only own the principles and doctrines, declared in the sixth of the Hebrews, but I do own the Commandments of God, the Ten Commandments as they are expressed in the 90th of Exodus. I do here, as before the Lord, testify I durst not, I durst not willingly break the least of those Commandments to save my life; I do declare that the rather, because I would inform persons that I do own the Lord's holy Sabbath, the seventh day of the week to be the Lord's Sabbath; you know the Commandment 'Remember that thou keep holy the seventh day.' I shall forbear to speak any more to that.

Again, further, in respect of my principle (as that for which I judge I am here this day to suffer) That I do own the kingdom of our Lord Jesus Christ, (to wit) the visible kingdom of Jesus Christ here on earth, and I do desire to declare it humbly and in the fear of the Lord, That Jesus Christ the Son of God is king of all the nations in the world, according to that in Rev. 11. 15. upon the sounding of the seventh trumpet there was a great voice in Heaven, "The kingdoms of this world are become the kingdoms of our Lord, and of his Christ; and he shall reign for ever and ever." There needs no more to be said, though many more Scriptures might be brought to prove that it is so. It cannot be a spiritual kingdom, the text cannot be allegorical; for the text saith expressly, (The Kingdoms of this world, &c.) I shall endeavour not to tire you with many words: I do not come here (the Lord knows) to sow sedition, I have it not upon my heart, it hath not been my practice, though this be the pretended cause of bringing me hither; but the Lord knows, before whom I stand, and

with whom I shall shortly be, that whatever I am accused of, as to matter of fact, I am free from it; I desire you may hear it, and take notice of it, the things charged upon me are notoriously false, I speak it as my last words, the Lord that knows all hearts, and one day will call all men to an account, knows I speak true, both in respect of the manner of the thing charged upon me, and in respect of the matter, notwithstanding that several witnesses took the boldness to swear it in court. I do in the fear of the Lord also tell you, that I bless the Lord I have not the least hard thought of them that swore against me, I have not the least hard thought upon that account, nor the least rising of spirit against either Judge, Jury, or Witnesses, or any other the Lord knows it, but have sought their pardon upon my bended knees, and I hope further shall do it, if God permit. I have one word to say to the people of God, and that is this; I would entreat you not to think ever the worse of the ways of God, because you see such a poor worm as I brought hither to suffer upon that account, let not the assembling of yourselves together be any way a burden to you; know that word, "Forsake not the assembling of your selves together, as the manner of some is, but be instructing one another so much the more as you see the day approaching," Heb. 10. 25. and let not any of the ways of God, any of the ordinances of God, any of the commandments of God, be ever the worse in your eyes, because a poor worm that has professed them, and has in some poor measure tasted in them of the love of God, is brought hither, do not think the words and commandments of God are the worse for that; and I would intreat you that you would stick close to them whatever dispensation may be at the door, which no man here knows one or other: but I say, whatever the ways and dispensations of God may be, though you may expect to suffer more and more, yet know that was the way that our Lord did go, the captain of our salvation was made perfect through sufferings; and the Apostles and holy christians of old counted it great joy, they accounted it great joy to be filling up the measure of Christ's sufferings that are behind. And now my dear friends, for Jesus Christ's sake be exhorted in the fear of God, not only to stick to those ordinances and commandments of God, wherein you are enlightened, but take that good word of God, in 1 Chron. 28. 8. it was David's advice to Solomon, the words are, 'Solomon my son, keep and seek for all, &c.' do not content yourselves with what you do already know, but endeavour in the fear of the Lord to be seeking after more. I would further charge every one of the people of the Lord, to have a care of defiling themselves with any idolatry, with any superstition by treading in by-paths that may not suit the mind of God, however it may be accepted in the land.

I shall not trouble you with much more, only a word to those that have not yet an un-

target in Jesus Christ, that cannot call God father, I beseech such to consider, it may be that God hath a mind by the words of a dying man so do their souls good, and I would add a word; I beseech you consider, though you may not go the same way I go, you do not know how soon God may call for you by death, and therefore I speak to them that are young ones, in the first place, 'That they remember their Creator in the days of their youth, before the evil day is come,' and the days wherein they themselves shall say, 'they have no pleasure in them.' And to those that are ancient, that have spent the greatest part of their time here, in sporting in their own lusts, I would only say this to them, There is yet a day of Grace, 'To day if you will hear his voice.' Jesus Christ is held forth in the Gospel freely, He holds forth his blood freely; for the worst of sinners are not too old, nor too wicked, nor too great, they are not too unclean for Jesus Christ to pity; and therefore friends, consider in the fear of the Lord whereabouts you are, and how the case stands with your poor souls. I have said what I have to say, only I would desire that I might have liberty to wait upon God, to commit my soul and the concerns of each other to the Lord in prayer.

Then he addressed himself to the Lord in prayer, as followeth:

His Prayer.

"Glorious and holy majesty, in whose eyes all the nations of the world are but as the drop of a bucket, or as the small dust of the balance; and therefore O Lord, this mighty concourse of people are nothing in thy sight. Thy eyes are open to the ways of thy people, and thy ears are open to their cries, and thou wilt one day shew thyself strong in the behalf of them that fear thee, whose hearts are upright towards thee. Sweet Father! blessed be thy holy and dear name, that such a poor worm as is before thee can call thee Father, that such a poor worm before thee can come and take hold of thee through thy dear Son. O Lord, O Lord, what am I, or what was my father's house, that thou hast brought me hitherto? and, ah Lord, this has been but a small thing in thine eyes, but thou hast spoken thy servants welfare for a while to come, even to all eternity. Dear Lord, in the audience of this people, thy poor worm cannot but bless thee that ever thou didst call him, and ever became acquainted with his soul, that ever thou wert pleased to engage his soul to walk before thee in thine own paths; and, blessed be thy holy name, thy paths do not seem in the eyes of thy servants to be ever the worse because of this thing, but thine can bless thee, thine can rejoice before thee, thine can say, bless the Lord, O my soul, all that is within me bless his holy name. And blessed be thy holy name that thou hast been pleased to keep the soul of thy poor servant hitherto; and blessed be the Lord, that though thy poor servant doth suffer in the account of the greatest part of this people as an evil-doer,

yet it is not so; yea, blessed be thy name, thy poor worm can approve his heart to thee now at the very giving up of the ghost, that he is not guilty, that he is not guilty in respect of the things that have been by ungodly men witnessed against him: sweet and dear Father, thy poor worm can now lift up his face with much boldness to thee, and is assured that he whom man hath judged, God hath justified: and now for thy dear name sake give thy poor worm leave, in integrity and godly simplicity to beg one request at thy hands for the poor witness; O Lord for the very thing that they have done, O that thou wouldst pardon them, O that thou wouldst pardon them, O that thou wouldst shew them as much grace as thou hast done to thy poor worm: and that thou wouldst please, that as they have done their utmost to wash their hands in the blood of thy servant, let their souls be washed thoroughly in the blood of Jesus Christ; for thy tender mercies sake be pleased to deal graciously with every one, if it be thy blessed will, that have had a hand against thy servant, from the least to the greatest, from the first to the last. And Father, O that thou wouldst be pleased to look upon the poor executioner, which is to destroy thy servant and take him out of the world; O Lord, thou knowest the soul of thy servant has not the least rising against him; that thou wouldst be pleased, if it may stand with thy glory, and if he be within the line of the covenant of grace, that thou wouldst wash his soul in the blood of Jesus Christ. O how eminently didst thou please in times past to work upon some of those that were the executioners of thy people in the Marian days, &c. this work is not too hard for thee, thou canst work upon him, thou canst make him as chosen a vessel of thy glory as ever was in the world; O Lord, if it be thy will, that thou wouldst do it, if it be thy will, O that thou wouldst do it. And for thy dear name's sake remember all thy people in this land; Lord remember all thy people in Scotland, and in Ireland, and all thy people up and down the countries; O Lord, thou hast a remnant that fear thy name, thou hast a remnant that fear thy name in truth, good Lord keep their hearts close to thee, fit them for any trial, for any hard dispensation that may be coming upon them. Sweet and dear Father, cement thy people, let thy people's hearts be one; Lord, remove those controversies, Lord close up all those divisions, Lord grant there may be no more rending among thy people; O Lord, what differences there may be among thy people in respect of some circumstances in matters of religion, I beseech thee for Jesus Christ his sake that thou wouldst be pleased to knit their souls as one, O Lord, knit their souls as one, that there may be more love, and more peace, and more unity, and more universal agreement among thy own people. And sweet Lord, remember our dear king, our righteous Redeemer; O that thou wouldst be pleased according to thy word, to give him

the heathen for his inheritance, and the utmost parts of the earth for his possession; and let his dominions be from sea to sea, and from river to river; and let those that dwell in Zion rejoice before him, and let his enemies be brought under the soles of his feet; and set him, precious Father, upon thy holy hill of Zion, and hasten thy work in order to his exaltation; cut it short in righteousness, for a short work thou hast said thou wilt make upon the earth. And be thou pleased for thy name sake to think upon this concourse of people that are come to this place this day, and be thou pleased to set home to their souls with much power, what hath been spoken and delivered by a poor weak instrument; let no soul come hither this day in vain, but let it be a day wherein thy own people may get much strength to serve thee in any further work they may be called to; and let it be a day wherein those that have not yet the knowledge of thee, those that are enemies, those that are aliens to the commonwealth of Israel, and strangers to the covenant of promise, let it be a day wherein their souls may come acquainted with thee; let it be a day of exercising much power and much favour, and much grace to the souls of those that shall be lookers on, that shall be spectators upon thy poor worm this day. And now, sweet majesty, for thy name sake think upon thy poor worm; thou knowest, thou knowest O Lord, how it is with him, upon what account he is brought hither, the Lord knows it is not so: Father, wilt thou be pleased from some eminent token from thyself to clear up the innocency of thy servant, in respect of the things charged upon him; and keep now the soul of thy servant upright with thee this little moment that he has to live in this world. And dear Father, O give thy poor worm strength enough to encounter with the king of Terrors; blessed be God that thou hast been so kind to thy poor worm all the way from Newgate hither; and sweeten to his soul all that thy poor creature has been tasting of, and what thy poor one is entering into; let him know what it is to enjoy those mansions that our sweet Lord went to prepare; and indeed and in truth let thy poor worm know what it is to be a child, what it is to be an heir, what it is to be a co-heir with Jesus Christ: O that thou wouldst please to give some sweet taste of thy holy spirit to thy poor worm, whereby his soul, whilst in this world, whilst in this place, might be well satisfied, and more strongly assured than ever, that he is coming to thee: blessed be God, blessed be God, thy poor worm knows he is thine, thy poor worm knows he is thine. And now dear and tender Father, think upon thy poor worm, think upon the trial that at present is upon him; and as trials and tribulations abound for Christ, so let all grace and consolation abound by Christ: and dear God, in the very passage be then pleased to sweeten to my soul the very passage; let not the instruments of cruelty that are provided to destroy

thy poor worm any way scare him, but let there be such an open door into the glory thou hast provided for thy poor creature, that thy poor one may know it all the time his body is in the hands of men; and make the passage very easy and let thy poor servant see by faith an innumerable company of angels ascending and descending to convey my soul into Abraham's bosom; Father, let thy servant see that there are as many angels ready to attend and receive the soul of thy servant as people here to look upon him. And now sweet Father, for thy dear name sake hear what has been spoken here, hear what has been spoken by thy poor worm, and be thou pleased to be far more gracious than what thy poor creature is able to beg of thee; and all upon the account of thy dear Son, the Saviour and Redeemer of thy poor worm, to whom he is coming to live with to all eternity? to whom be glory and praise, power, dominion, and the kingdom, this day and for evermore."

After this he said he could not speak more, being very much tired, and his body brought very low. The hangman said 'The Lord receive your soul.' He replied, 'I thank you.' Then another said, 'This is a happy day.' He said, 'I bless the Lord it is so.' The other said, 'The Lord make your passage easy.' He said, 'I trust he will so.' One asked if he had any thing to say to the sheriff? He said 'No, but only thank him for his civility.' Then the hangman having prepared him for his death, drew away the cart, John James said aloud, lifting up his hands, 'Father into thy hands I commit my spirit,' and so finished his course.

The sheriff and hangman were so civil to him in his execution, as to suffer him to be dead before he was cut down; the hangman taking out his heart, and burning his members and intrails, returned his head and quarters back to Newgate, put in a basket in a cart, and from thence were disposed by the king, (viz.) his quarters to the gates of the city, and his head first upon the bridge, but afterwards, by appointment, taken down thence, and put upon a pole in White-Chapel, over against the passage to the meeting-place, where he and his company were apprehended.*

* The following passages of "An Historical Account of all the Trials and Attainders of High Treason from the beginning of the Reign of king Charles the First, &c." throw some light on this Case of John James: "The excess of mercy shewn by king Charles 2, at his Restoration, was a great encouragement to that immense multitude of hardened rebels the nation swarmed with, to proceed in their vile practices. The first that broke out, were a pack of wild enthusiasts, so besotted with their hellish notions, that they conceived a handful of them sufficient to overwhelm and embroil the whole nation. These were the Millenaries, or Fifth-Monarchy Men, who, notwithstanding

A Relation of the Arraignment and Trial of those who made the late Rebellious Insurrections in London. 1661.

[From the Third Collection of Somers' Tracts, Vol. 4, p. 520.]

WE shall here give you the Arraignment and Trial of those bloody fanatics, who brake forth into open rebellion on January the 6th and 9th last (we cannot forget the time, for the one was the day when the Regicides at West-

the prime heads of them, as colonel Overton, cornet Day, major Allen, Courtney, &c. had been before seized upon suspicion, still persisted in their wicked designs, which they attempted to put in execution in January 1661, as follows.

"On Sunday, January 6, 1661, these monsters assembled at their Meeting-house in Coleman-street, where they armed themselves, and sallying thence, came to St. Paul's in the dusk of the evening, and there, after ordering their small party, placed sentinels, one of whom killed a person accidentally passing by, because he said he was for God and king Charles, when challenged by him. This giving the alarm, and some parties of Trained-Bands charging them, and being repulsed, they marched to Bishopsgate; thence to Cripplegate and Aldersgate, where going out, in spite of the constables and watch, they declared for king Jesus. Proceeding to Beech-lane, they killed an headborough, who would have opposed them. It was observed, that all they shot, though never so slightly wounded, dyed. Then they hasted away to Cane Wood, where they lurked, resolved to make another effort upon the city, but were drove thence, and routed by a party of horse and foot, sent for that purpose, about 30 being taken, and brought before general Monk, who committed them to the Gate-house.

"Nevertheless, the others, who had escaped out of the wood, returned to London, not doubting of success in their enterprize; Venner, a wine-cooper by trade, and their head, affirming, 'he was assured, that no weapons employed against them, would prosper, nor a hair of their heads be touched;' which their coming off at first so well, made them willing to believe. These fellows had taken the opportunity of the king's being gone to Portsmouth, having before made a disposition for drawing to them of other desperate rebels, by publishing a Declaration, called, 'A Door of Hope opened,' full of abominable slanders against the whole royal family.

"On Wednesday morning, January 9, after the watches and guards were dismissed, they resumed their first enterprize. Their first appearance was in Threadneedle-street, where

minster passed their Ordinance for the Trial of our glorious sovereign king Charles the 1st; the other was the day when they proclaimed their High Court of Justice for that monstrous Trial,) which without troubling you with their

they alarmed the Trained-Bands upon duty that day, and drove back a party sent after them, to their main guard, which then marching in a body towards them, the Fifth Monarchists retired into Bishopgate-street, where some of them took into an ale-house, known by the sign of the Helmet, where after a sharp dispute, two were killed, and as many taken, the same number of the Trained Bands being killed and wounded. The next sight of them, (for they vanished, and appeared again on a sudden) was at College-Hill, which way they went up into Cheapside, and so into Woodstreet, Venner leading them, with a murrion on his head, and a halbert in his hand. Here was the main and hottest action, for they fought stoutly with the Trained-Bands, and received a charge from the life-guards, whom they obliged to give way, until being over-powered, and Venner knocked down, and wounded with shot, Tufney and Crag, two others of their chief teachers, being killed by him, they began to give ground, and soon after dispersed, flying out-right, and taking several ways. The greatest part of them went down Woodstreet to Cripplegate, firing in the rear at the yellow Trained-Bands, then in close pursuit of them. Ten of them took into the Blue-Anchor ale-house, near the Postern, which house they maintained until lieutenant-colonel Cox, with his company, secured all the avenues to it. In the mean time, some of the aforesaid yellow-Trained-Bands got upon the tiles of the next house, which they threw off, and fired in upon the rebels, who were in the upper rooms, and even then refused quarter. At the same time another file of musketeers got up the stairs, and having shot down the door, entered upon them. Six of them were killed before, another wounded, and one refusing quarter, was knocked down, and afterwards shot. The others being asked why they had not begged quarter before, answered, they durst not, for fear their own fellows should shoot them. Such was their resolution, or enthusiastic madness.

"The whole number in this last attempt, does not appear to have been above 50 persons, though not above 40 were ever seen together; yet so great was their confidence in the pretended revelations of their teachers, that al-

repeated impertinencies and contradictions, which longer narratives are too often full of, was briefly thus :

On Thursday, January 17, twenty of the

luding to the history of Gideon in holy writ, they questioned not, with that small remnant that could lap, to subdue and conquer all the rest, designing to allow none but such Quakers as agreed with them in their millenary notions, as nearest to their sort of enthusiasm, the honour of partaking with them in this their great and glorious design, as they termed it, in their aforesaid declaration, wherein they farther blasphemously said, 'That if they were deceived, or misled, it was God that deceived them;' laying their delusions, and charging their wicked and desperate folly on him, as the author of it.

"In this vile insurrection, were slain 22 of the king's men, and as many of the traitors, most of them in houses, and some others taken prisoners, were afterwards shot for refusing to tell their names. There were 20 taken, besides some few upon suspicion; the 20 were as follows, viz. Thomas Venner, the wine-cooper, their captain; Roger Hodgkins, a button-seller, in St. Clement's-Lane, Lombard-street; Leonard Gowler, Jonas Allen, John Pym, William Orsingham, William Ashton, Giles Pritchard, a cow-keeper, Stephen Fall, John Smith, William Conket, John Dod, John Eleston, Thomas Harris, John Gardener, Robert Bradley, Richard Marten, John Patchal, Robert Hopkins, and John Wells, five of whom had been formerly in a design against Oliver Cromwell.

"These were all brought to their trials together; the wounded men had chairs allowed them, and their indictment was for High-Treason and Murder.

"Thomas Venner was first called, who, when he had held up his hand at his arraignment, being asked, Guilty, or Not Guilty, began a wild fanatic discourse about his conversation in New-England, and concerning the Fifth-Monarchy, and the Testimony within him for above twenty years, with such like impertinent ramble. He confessed he had been in the late rising, but was not guilty of treason, intending not to levy war against the king; and then sallied out into nonsensical pleas, as at first: But the Court pressing him to plead directly to the indictment, he answered, Not Guilty, and put himself upon his country.

"In like manner Hodgkins, after some rambling from the business in hand, and the Court's threatening to record him mute, pleaded to the indictment; the rest of his fellows submitting, after some previous excursions in their frantic way. The witnesses being then sworn, two against every particular person, made it appear, that Venner, Tufney, and Crag, the two last whereof been slain in the action, did several times persuade their congregation to take up arms for king Jesus, against the powers of the earth, which were his majesty, the duke of York, and the general; that they were to kill

prisoners taken in arms were arraigned together at Justice Hall in the Old Bailey, the rest being dangerously wounded, were put off by the Court for a future trial. These twenty arraign-

all that opposed them; that they had been praying and preaching, but not acting for God; that they armed themselves at their meeting-house in Coleman-Street, with blunderbusses, muskets, &c. besides other particular evidence against each of them to matter of fact. The proof against Martin, Hopkins, and Wells, was not so full as against the others, and against Patchal there was but one witness, whereupon they were acquitted by the jury. The other 16 being found guilty, and brought to the bar, were required to shew cause why judgment should not be given against them, &c. The Lord Chief Justice Foster charging Venner with the blood of his accomplices, by seducing and leading them, he answered, He did not. To which, the witnesses being produced again, he blasphemously quibbled and said, It was not he, but Jesus, that led them. Three of them confessed their crime and error, and begged mercy. All the 16 were condemned to be drawn, hanged, and quartered.

"According to which Sentence on Saturday, January 1667-8, Venner and Hodgkins, both uncured of the wounds they had received in their rebellion, being guarded by two companies of the trained-bands, were drawn on a sledge from Newgate through Cheapside, over against their meeting-house in Swan-alley in Coleman-Street, and there executed. Venner spoke little, and that in vindication of himself and his fact, and something of his opinion, being confident 'the time was at hand, when other judgment would be;' and reflecting much upon the government. Hodgkins raved and cursed by way of praying, 'calling down vengeance from heaven upon the king, the judges, and the city of London;' nor would he give over, though forbid by the Sheriff, till the hangman was hastened from his employment of quartering Venner, to turn him off. Thus they died in the same mad religion they had lived. Their quarters were set upon the four Gates of the City, by the late executed Regicides, whose quarrel and revenge they had undertaken in this their fanatic attempt. Their heads were also set upon poles, by some of the others, on London-Bridge.

"On Monday the 21st of the same January, nine more of them were executed, all in one morning, at five several places, by the same executioner; two at the West-end of St. Pauls, two at the Bull and Mouth, two at Beech-Lane, two at the Royal-Exchange, and the last, Leopard Gowler, a notable fellow, at Bishopsgate. They all obstinately persisted in their villainy, especially the last, who began with imprecations, like Hodgkins, and was silenced the same way, by the command of the Sheriff. Only one young man, who was hanged in Red-cross-Street, did repent of his sin, and the blood he had spilt; but yet died in his opinion of

ed were Thomas Venner, Roger Hodgkin, Leonard Gowler, Jonas Allen, John Pym, William Oxman alias Oxingham, William Ashton, Giles Pritchard, Stephen Fall, John Smith, William Corbet, John Dod, John Elston, Thomas Harris, John Gardner, Robert Bryerly, Richard Marten, John Patshall, Robert Hopkins, and John Wells.* These were brought to the bar together; the wounded men had chairs allowed them; and after the Indictment read, for Murder and Treason, first, Thomas Venner was called, who when he had held up his hand, being asked whether he was Guilty or Not Guilty? began an extravagant and bottomless discourse about the Fifth Monarchy, and his having had a testimony above twenty years in New England (we will never deny his New England testimony, which has made Old England smart, having been the nursery and receptacle of sedition too long; though Hugh Peters be dead, Gough and Wha-

Chilianism. When cut down, the sentence was not executed on them to the full; but only their heads cut off, and set upon London-Bridge.

"This same year, one John James, a small-coal-man by trade, and a Fifth-Monarchy-Man, who had been concerned in Venner's business, but happened to be absent, or made his escape the last day they broke out, but had not shaken off his villainous designs, but continued his meetings and conventicles, with others of that desperate crew, among whom, he was a great Rabby, or teacher, took the liberty of launching out into many traitorous speeches, and malicious invectives against the king's person, government, and family, which relished much of the design couched in Venner's declaration. Having been overheard by some neighbours, living near the conventicle, James was seized, and carried before a justice, who committed him to Newgate, whence, in Michaelmas-Term, he was brought to the King's-Bench bar at Westminster, where the words were proved against him, and he convicted, and condemned as a traitor.

"On the 27th of October he was drawn on a sledge to Tyburn, some of his pernicious sect throwing themselves into his sledge, and embracing him, so fond were they of that silly, though bold, seducer. At the gallows he denied the words; but owned and avowed his Chilianism, and the personal reign of Christ, on which account he prayed not for the king, or any authority; but made an end with the usual confidence of his party. His quarters were disposed of by his majesty's orders, and his head set upon a pole at Whitechapel, near the place of his meeting, for an example to his fellows."

* Lord Clarendon represents the government of Cromwell as cruel and blood-thirsty, yet it may be questioned whether all the persons executed for Treason in the whole of his reign, were more in number than those who were executed for this single mad plot.

ley are there alive.) And Venner could not deny he was Guilty of the late rising, but not, first, of treason, intending not to levy war against the king (as if to murder both king and subject were no treason, and to destroy their own and all Christian monarchs by open force, were no levying war against the king.) Afterwards he confessed, he was partly Guilty, and partly not: But being pressed by the Court to give his positive answer, whether he was Guilty in manner and form of the Indictment, he answered, Not Guilty, and at last submitted to a trial by God and the country.

The next was Roger Hodgkin, who said, He had not heard the Indictment; whereupon the Court caused it to be read a second time, and being asked Guilty or Not Guilty, he answered, I am Guilty of no Treason, Not Guilty; and said, he would be tried by the laws of God, whereupon the Court told him, if he would not plead, he must be recorded as a Mute.

Leonard Gowler readily answered, Not Guilty, and that he would be tried by the laws of God and the country.

Jonas Allen said, He had confessed before, but if he must, he would say, Not Guilty, and that he would be tried by the laws of God, but after said by God and the country.

John Pym said, he was Not Guilty, and that he would be tried by God and the country.

William Oxman answered, Not Guilty, and that he would be tried by the laws of God and holy men; but being informed that that was no legal answer, he said, by God and the country.

Giles Pritchard said, he disowned the manner and form; that he was Not Guilty, and would be tried by the Lord of Hosts (and so he is sure to be) but being pressed to give his answer, he said, by God and the country.

The rest, viz. William Ashton, Stephen Fall, John Smith, William Corbet, John Dod, John Elston, Thomas Harris, John Gardner, Robert Bryerly, Richard Martin, John Patshall, and Robert Hopkins having heard what others had done, did not put the Court to much trouble, but answered severally, Not Guilty, and that they would be tried by God and the country; so did John Wells, who confessed he was Guilty of many sins before the Lord, and that he would be tried by God and the country.

Roger Hodgkin, who before, as we told you, had shewn so much obstinacy, was now again asked, Whether Guilty or Not Guilty, and how he would be tried? whereupon he followed the examples of his brethren, and answered in form accordingly.

The Jury was now called, and the prisoners informed by the Court of the right they had as Englishmen, to challenge each of them 55 Jurors without giving reason, and more if they shewed cause: But they saw so little exception in the looks of the Jurors, that they accepted against none of them.

The Jury sworn, the witnesses were produced, who made it appear, That at the Meeting-house in Swan-alley in Coleman-street, Venner, Tufnay, and Cragg (which two latter

were slain in this rebellion) did several times persuade their congregation to take up arms for king Jesus, against the powers of the earth, (which were the king, the duke of York, and the general). That they were to kill all that opposed them, that they had been praying and preaching, but not acting for God. That divers armed themselves at the Meeting-house in Coleman-street, with musquets, blunderbusses, pistols, buck, breast, and head-piece, with powder and bullet, and other warlike weapons: That in the streets they cried out against the king, and said, they would fetch out the Lord Mayor of London: That Venner and Pritchard were the chief that led them in their engagement. That on Sunday, Jan. 6, they went to St. Paul's, where they broke open a door, but not thinking it a place of safety they went thence. That they fled to St. John's Wood, where they reported they had made an uproar in London, and came thither for safety, That thence they went to Cane Wood, That on Wednesday, Jan. 9, Venner was at the head of a party in Wood-street, with an halbert in his hand, wherewith he struck and (with the rest of the company) killed three men there, That Venner went with a party to the Compter-gate, and demanded of them to turn out the prisoners or else they were dead men; That Corbet being apprehended confessed he was with them, That Elston, being taken by the constable, had in his pocket a pistol loaded with a steel slug, and confessed he had been in Wood-street; That Gardner said, he had been at the killing of three men in Wood-street; That Venner, Hodgkin, Gowler, Allen, Pym, Oxman, Ashton, Pritchard, Hall, Smith, Corbet, Dod, Elston, Harris and Gardner, were all in arms, and that Brierly went with them to Cane-Wood, and was taken with several bullets about him on Wednesday morning coming home. The evidence against Martin, Hopkins, and Wells was not so full; and against Patschal, only one witness, That he went with them in arms from Coleman-street, but was taken that night without arms.

That Evidence being heard, the Court asked the prisoners at the bar, what they had to say for themselves: Venner confessed himself in the insurrection, but said, He did not lead them, and when the witnesses positively swore it, he excused it, and said, it was not he, but Jesus led them; That he could not deny but that most of the things witnessed against him were true, yet pleaded that he could not commit Treason because the king was not yet crowned: But being told by the Court that every Englishman knows the king never dies, and that that opinion of his was first started by Watson the Jesuit, and long since condemned, he pressed it no further.

Hodgkin, Gowler, Allen, Pym, Oxman, Ashton, Pritchard, Fall, Smith, Corbet, Dod, Elston, Harris and Gardner, seeing the Evidence so clear against them, confessed that they were in arms in the insurrection. Brierly denied it, and said, That he was called up, and

went with them, but was not in arms. Martin and Hopkins denied they were in arms. Patschal said, he was taken without arms, and ought not to answer against himself.

Wells said, that Venner called him out in the morning, and bid him take arms to save his throat from cutting, that he was suddenly surprised in his spirit, and went along with them with his sword and pistol to Wood-street, but that his heart was not with them, that with the first opportunity he flung down his arms and ran away, and that he took great shame upon him. The Lord Chief Justice Foster asked him, Whether he took shame upon him for engaging with rebels, or for running away? He said, it was because he had gone so far with them.

This is the substance of all the prisoners answered for themselves: which done, the Lord Chief Justice Foster gave his directions to the jury, telling them of the natural allegiance due to our sovereign lord the king, That no war could be raised without the king's commission and consent, and that any war without such commission was against the king, That to prove treason there must be two witnesses (without the parties confession) with many other material particulars necessary for the jury's information in this case, which his lordship then delivered, wherewith the jury at going forth seemed highly satisfied. After which the Court adjourned till three o'clock that afternoon.

When the Court returned, the jury brought in their verdict, whereby they found Thomas Venner, Roger Hodgkins, Leonard Gowler, Jonas Allen, John Pym, William Oxman, William Ashton, Giles Pritchard, Stephen Fall, John Smith, William Corbet, John Dod, John Elston, Thomas Harris, John Gardner, and Robert Brierly, guilty of the matters charged against them in the indictment; and acquitted Richard Martin, John Patschal, Robert Hopkins, and John Wells.

Whereupon Pym said, he was sorry for what he had done. Smith desired the mercy of the Bench. Corbet said, he knew not what he did, and begged the mercy of the Bench. And Brierly prayed that God would put it into the king's heart to pardon him.

But no cause being shewn by the prisoners why sentence should not be given against them, the Lord Chief Justice Foster made an excellent short material speech to let them see their condition, how highly they had offended God, their king, and country; what a vast measure of pride for so few to attempt to destroy so many; and how ungratefully to so merciful a king that had granted them so much liberty; particularly telling Venner, that he was not only an actor in so wicked a design, but a seducer of those silly men whose blood would lie upon him: After which (and divers other reasonable passages) his lordship pronounced sentence upon as many as the jury had brought in Guilty, to be drawn, hanged, and quartered, &c.

Yet his majesty hath been graciously pleased

to pardon part of the sentence; for only two were ordered to be quartered (which were Venner and Hodgkin) who accordingly were executed before their meeting-house in Coleman-street this day, Jan. 9, (it is the very day, 1648, that the worthy Lord Mayor sir Richard Brown (whom these rebels would now have murdered) was sent prisoner for his loyalty to Windsor castle) the rest are to be hanged only and beheaded, whereof two (viz. Oxman and Pritchard) were so executed at Wood-street end the same day. Others must suffer, some before the Old Exchange, some in Redcross and in Whitecross-streets, and other places in the City of London. Two (viz. Pym and Briery) are for some time relieved.* Somers' Tracts.

The following is Burnet's Account of Venner's Tumult and its consequences:

"The king had not been many days at Whitehall, when one Venner, a violent fifth monarchy man, who thought it was not enough to believe that Christ was to reign on earth,

* The wild conduct of these crazy people seems to have given occasion to real or pretended apprehensions of alarming and extensive conspiracies. On Nov. 21, 1661, the Lords received a Message from the Commons by Mr. Secretary Morrice to let them know, "That the House of Commons have intelligence that divers male-contents, fanatics, cashiered and disbanded officers and soldiers, and others, have some design amongst them tending to the breach of the peace of this kingdom; therefore they desire their lordships would join with them, to move his majesty that he would please to issue out a Proclamation, that all suspicious and loose persons may be forthwith sent out of these towns of London and Westminster, and the liberties thereof, for some time." And on the 19th of December, The Lord Chancellor acquainted the Lords, "That he had a Message to deliver from the king; which was, to let them know, that besides the apprehensions and fears that are generally abroad, his majesty hath received Letters from several parts of the kingdom, and also by intercepted letters it does appear, that divers discontented persons are endeavouring to raise new troubles, to the disturbance of the peace of the kingdom, as in many particulars was instanced: which matter being of so great consequence, his majesty's desire is, That the House of Commons may be made acquainted with it, that so his majesty may receive the advice and counsel of both houses of parliament, what is fit to be done herein; and to think of some proper remedy to secure the peace of the kingdom."—Upon this, a joint Committee of both Houses was appointed to sit, notwithstanding the usual recess at Christmas, in order to make discoveries, and prepare a Report against the next meeting; the substance of which, as delivered by the Lord Chancellor Clarendon,

and to put the saints in the possession of the kingdom, (an opinion that they were all unspeakably fond of,) but added to this, that the saints were to take the kingdom themselves. He gathered some of the most furious of the party to a meeting in Coleman Street. There

was as follows:—"That there was found with Salmon a list of 160 officers of the late army: that it was further discovered that there should have been a meeting in London about the 10th of December, and that they intended about the end of January to have made sure of Shrewsbury, Coventry, and Bristol, and that they should rise in several parts at once: that where they were prevalent they should begin with assassination, which moved one of them to relate, 'That some of the late king's judges were entertained in France, Holland and Germany, and held constant correspondence with those, and were fomented by some foreign princes.' That many arms were brought in order to this design, and that they bragged, 'If they once got footing, they should not want means to carry on their work.' That they were discovered by one of their party, and his relation confirmed by such intelligence from abroad, as never failed." He further told them, "That at Huntington many there met under the name of Quakers, that were not so, and rode there in multitudes by night, to the great terror of his majesty's good subjects. That it might be wondered at that some proposals were not made to remedy this impending evil: but the king had advised with the duke of Albemarle, now present at this committee, and has put two troops into Shrewsbury, and as many into Coventry; who by the way, have broken a great knot of thieves, and taken 30. That a rumour was spread, that the appointing of this committee was only a plot to govern by an army; but the committee was very sensible of the real danger, and hoped the Houses would be so too; and that since all their adversaries were united to destroy them, so they should unite to preserve themselves." [See 4 Cobb. Parl. Hist. 224, and 226.] Mr. Hatsell (3 Precedents 34,) observes, That though the Report as entered on the Lords' Journals, is very short, there is in Toland's Life of Harrington, as cited in the Biog. Britann. another account said to be given by Lord Chancellor Clarendon at the joint Committee of Lords and Commons: It is as follows:

'That one and twenty persons were the chief managers of it; that they met in Bow-street Covent Garden, in St. Martin's-le-Grand, at the Mill-bank, and in other places; and that they were of seven different parties or interests, as, three for the Commonwealth, three for the Long Parliament, three for the City, three for the Purchasers, three for the Distanded Army, three for the Independents, and three for the Fifth Monarchy-Men. That their first consideration was how to agree on the choice of Parliament-men against the ensuing session; and that a special care ought to be

they concerted the day and the manner of their rising to set Christ on his throne, as they called it. But withal they meant to manage the government in his name; and were so formal, that they had prepared standards and colours with their devices on them, and furnished themselves with very good arms. But when the day

had about members for the city of London, as a precedent for the rest of the kingdom to follow, whereupon they nominated the four members after chosen, and then sitting in parliament, but three of these being then present stood up and cleared themselves of this aspersion. Their next care was to frame a Petition to the parliament for a preaching ministry, and liberty of conscience. Then they were to divide and subdivide themselves into several councils and committees, for the better carrying on their business by themselves or their agents and accomplices all over the kingdom. In these meetings Harrington was said to be often in the chair: that they had taken an oath of secrecy, and concerted measures for levying men and money. The Chancellor added, that though he had certain information of the times and places of their meetings, and particularly these of Harrington and Wildman, they were nevertheless so fixed in their nefarious design, that none of those they had taken would confess any thing, not so much as that they had seen or spoken to one another at these times or places: which obstinacy he thought must needs proceed from a faithfulness to their oath.

Toland tells us, that upon Harrington's imprisonment one of his sisters threw herself at the king's feet, and pressed that her brother might be examined before his majesty or be brought to a speedy trial, and that shortly afterwards, lord Lauderdale, sir George Carteret and sir Edward Walker were sent to the Tower to question him, and that he found means to transmit to his sisters a copy of his Examination; which Toland publishes as follows:

THE EXAMINATION OF JAMES HARRINGTON, taken in the Tower of London, by the Earl of Lauderdale, sir George Carteret, and sir Edward Walker.

Lord Lauderdale. Sir, I have heretofore accounted it an honour to be your kinsman, but am now sorry to see you upon this occasion; very sorry, I assure you.

Harrington. My lord, seeing this is an occasion, I am glad to see you upon this occasion — When he had said this, the Commissioners sat down, and Mr. Harrington standing before them, the Earl began in the following manner.

L. Sir, the king thinks it strange that you, who have so eminently appeared in principles contrary to his majesty's government, and the laws of this nation, should ever since he came over live so quiet and unmolested, and yet should be so ungrateful. Were you disturbed? Were you so much as affronted,

came, there was but a small appearance, not exceeding twenty. However they resolved to venture out into the streets and cry out, No king but Christ. Some of them seemed persuaded that Christ would come down and head them. They scoured the streets before them, and made a great progress. Some were afraid

that you should enter into such desperate practices?

H. My lord, when I know why this is said I shall know what to say.

L. Well then, without any longer preamble, will you answer me ingenuously, and as you are a gentleman, to what I have to propose.

H. My lord, I value the asseveration, 'as I am a gentleman,' as high as any man; but think it an asseveration too low upon this occasion; wherefore, with your leave, I shall make use of some greater asseveration.

L. For that do as you see good: Do you know Mr. Wildman?

H. My lord, I have some acquaintance with him.

L. When did you see him?

H. My lord, he and I have not been in one house together these two years.

L. Will you say so?

H. Yes, my lord.

L. Where did you see him last?

H. About a year ago I met him in a street that goes to Drury Lane.

L. Did you go into no house?

H. No, my lord.

Sir George Carteret. That's strange!

L. Come, this will do you no good: Had not you, in March last, meetings with him in Bow-street, in Covent Garden? where there were about twenty more of you, where you made a speech about half an hour long, that they should lay by distinguishing names, and betake themselves together into one work, which was to dissolve this parliament and bring in a new one, or the old one again. Was not this meeting adjourned from thence to the Mill-bank? Were not you there also?

H. My lord, you may think, if these things be true, I have no refuge, but to the mercy of God, and of the king.

L. True.

H. Well then, my lord, solemnly and deliberately, with my eyes to Heaven, I renounce the mercy of God and the king, if any of this be true, or if ever I thought or heard of this till now that you tell it me.

Sir G. Carteret. This is strange!

L. Do you know Burebones?

H. Yes, my lord.

L. When did you see him?

H. I think that I have called at his house or shop thrice in my life.

L. Had you never any meetings with him since the king came over?

H. No, my lord.

Sir G. Carteret. This is strange!

L. Do you know Mr. Neville?

H. Very well, my lord.

and all were amazed at this piece of extravagance. They killed a great many, but were at last mastered by numbers; and were all either killed or taken and executed. Upon this some troops of guards were raised. And there was a great talk of a design, as soon as the army

L. When did you see him?

H. My lord, I seldom used to visit him; but when he was in town, he used to see me at my house every evening, as duly almost as the day went over his head.

L. Were you not with him at some public meetings?

H. My lord, the publickest meeting I have been with him at, was at dinner at his own lodging, where I met sir Bernard Gascoigne, and, I think col. Legge.

Sir Edward Walker. They were good safe company.

L. What time was it?

H. In venison time, I am sure, for we had a good venison pasty.

L. Do you know one Portman?

H. No, my lord, I never heard of his name before.

Sir G. Carteret. This is strange!

L. Come, deal ingenuously; you had better confess the things?

H. My lord, you do not look upon me; (for I saw he did not firmly) I pray look upon me. Do you not know an innocent face from a guilty one? Come, you do, my lord; every one does. My Lords, you are great men; you come from the king; you are the messengers of death.

L. Is that a small matter? (at which his lordship gave a shrug.)

H. If I be a malefactor, I am no old malefactor: why am not I pale? why do not I tremble? why does not my tongue falter? why have you not taken me tripping? My lord, these are unavoidable symptoms of guilt. Do you find any such thing in me?

L. No, (which he spoke with a kind of amazement,) and then added, I have said all that I think I have to say.

H. My lord, but I have not.

L. Come, then.

H. This plainly is a practice, a wicked practice, a practice for innocent blood; and as weak a one as it is wicked. Ah, my lord, if you had taken half the pains to examine the guilty, that you have done to examine the innocent, you had found it; it could not have escaped you. Now, my lord, consider if this be a practice, what kind of persons you are that are thus far made instrumental in the hands of wicked men. Nay, whither will wickedness go? Is not the king's authority (which should be sacred) made instrumental? My lord, for your own sake, the king's sake, for the Lord's sake, let such villainies be found out and punished.—At this, lord Lauderdale appearing to be somewhat out of countenance, rose up, and fumbling with his hand upon the table, said:

was disbanded, to raise a force that should be so chosen, and modelled, that the king might depend upon it; and that it should be so considerable, that there might be no reason to apprehend new tumults any more. The earl of Southampton looked on a while: And when he

L. Why, if it be as you say, they deserve punishment enough; but otherwise, look, it will come severely upon you.

H. My lord, I accepted of that condition before.

L. Come, Mr. Vice-Chamberlain, it is late.

H. My lord, now if I might I could answer the preamble.

L. Come, say: so he sat down again.

H. My lord, in the preamble you charge me with being eminent in principles contrary to the king's government, and the laws of this nation. Some, my lord, have aggravated this, saying, that "I being a private man, have been so mad as to meddle with politics: what had a private man to do with government?" My lord, there is not any public man, nor any magistrate, that has written in the politics worth a button. All they that have been excellent in this way, have been private men, as private men, my lord, as myself. There is Plato, there is Aristotle, there is Livy, there is Machiavel. My lord, I can sum up Aristotle's Politics in a very few words: he says, There is the barbarous monarchy, (such a one where the people have no votes in making the laws;) he says, There is the heroic monarchy, (such a one where the people have their votes in making the laws;) and then he says, There is Democracy; and affirms, that a man cannot be said to have liberty, but in a Democracy only.

Lord Lauderdale, who had hitherto been very attentive, at this shewed some impatience.

H. I say, Aristotle says so, I have not said so much. And under what prince was it? Was it not under Alexander, the greatest prince then in the world? I beseech you, my lord, did Alexander hang up Aristotle? Did he molest him? Livy, for a commonwealth, is one of the fullest authors; did not he write under Augustus Cæsar? Did Cæsar hang up Livy? Did he molest him? Machiavel, what a commonwealthsman was he? but he wrote under the Medici, when there were princes in Florence; did they hang up Machiavel, or did they molest him? I have done no otherwise than as the greatest politicians: the king will do no otherwise than as the greatest princes. But, my lord, these authors had not that to say for themselves that I have, I did not write under a prince; I wrote under a Usurper, Oliver. He having started up into the throne, his officers (as pretending to be for a Commonwealth) kept a murmuring, at which he told them, that he knew not what they meant, nor themselves; but let any of them shew him what they meant by a Commonwealth, (or that there was any such thing) they should see that he sought not himself: the Lord knew he sought not himself, but to make good the

saw how this design seemed to be entertained and magnified, he entered into a very free expostulation with the earl of Clarendon about it. He said, they had felt the effects of a military government, though sober and religious, in Cromwell's army: He believed vicious and dissolute troops would be much worse: The king would grow fond of them: And they would quickly become insolent and ungovernable: And then such men as he was must be only in-

Cause. Upon this some sober men came to me, and told me, if any man in England could abew what a Commonwealth was, it was myself. Upon this persuasion I wrote; and after I had written, Oliver never answered his officers as he had done before, therefore I wrote not against the king's government. And for the law, if the law could have punished me, Oliver had done it; therefore my writing was not obnoxious to the law. After Oliver, the Parliament said they were a Commonwealth; I said they were not, and proved it: insomuch that the Parliament accounted me a Cavalier, and one that had no other design in my writing, than to bring in the king; and now the king, first of any man, makes me a Round-head.

L. These things are out of doors; if you be no plotter, the king does not redect upon your writings.

Upon this the Commissioners rose up, and went out; but when lord Lauderdale was at the head of the stairs, I said to him, My lord, there is one thing more, you tax me with ingratitude to the king, who had suffered me to live undisturbed: truly, my lord, had I been taken right by the king, it had (by this example already given) been no more than my due. But I know well enough I have been mistaken by the king; the king therefore taking me for no friend, and yet using me not as an enemy, is such a thing as I have mentioned to all I have conversed with, as a high character of ingenuity and honour in the king's nature.

L. I am glad you have had a sense of it; and so he went down.

H. My lord, it is my duty to wait on you no farther.

struments to serve their ends. He said, he would not look on, and see the ruin of his country begun, and be silent; a white staff should not bribe him. The earl of Clarendon was persuaded he was in the right, and promised he would divert the king from any other force than what might be decent to make a shew with, and what might serve to disperse unruly multitudes. The earl of Southampton said, if it went no farther he could hear it; but it would not be easy to fix such a number, as would please our princes and not give jealousy. The earl of Clarendon persuaded the king, that it was necessary for him to carry himself with great caution, till the old army should be disbanded: For, if an ill humour got among them, they knew both their courage and their principles, which the present times had for a while a little suppressed: Yet upon any just jealousy there might be great cause to fear new, and more violent disorders. By these means the king was so wrought on, that there was no great occasion given for jealousy. The army was to be disbanded, but in such a manner, with so much respect, and so exact an account of arrears and such gratuities, that it looked rather to be the dismissing them to the next opportunity, and a reserving them till there should be occasion for their service, than a breaking of them. They were certainly the bravest, the best disciplined, and the soberest army that had been known in these latter ages: Every soldier was able to do the functions of an officer. The court was at great quiet, when they got rid of such a burden, as lay on them from the fear of such a body of men. The guards, and the new troops that were raised, were made up of such of the army as Monk recommended, and answered for. And with that his great interest at court came to a stand. He was little considered afterwards.*—See, too, 1 Macpherson, 17, 18, 19.

* Ralph, vol. 1, p. 53, gives a curious extract from a work published in 1681, by captain Yarranton (with his name in the title page) to demonstrate, that the whole accusation against the Presbyterians for being engaged in this alleged Plot of 1661, was a forgery.

210. The Trial of Sir HENRY VANE, knt. at the King's-Bench, for High-Treason: 14 CHARLES II. A. D. 1662. [Written by Himself.]

[The points of law determined in this Case are thus noticed by the Reporters of the time:

“Memorandum, That in Trinity term, 14 Car. 2, sir Hen. Vane was indicted at the King's-Bench for compassing the death of king Charles the 2nd, and intending to change the kingly government of this nation; and the overt-acts which were laid, were, that he with divers other unknown persons did meet and consult of the means to destroy the king and government; and did take upon him the go-

vernment of the forces of this nation by sea and land, and appointed colonels, captains, and officers; and the sooner to effect his wicked design, did actually in the county of Middlesex raise war. And upon his trial, he justified that what he did was by the authority of parliament, and that the king was then out of possession of the kingdom; and the parliament was then the only power regnant; and therefore, no treason could be committed against the king: and he objected,

that a levying war in Surrey could not be given in evidence to a jury in Middlesex; and he desired to offer a Bill of Exception, because these things were over-ruled by the Court; and in this case these points were resolved of by the Court.

"1. That by the death of king Charles the 1st, that long parliament was actually determined; notwithstanding the acts of parliament that it should not be dissolved but by consent of both Houses. For every parliament is called to consult with the person of the king who calleth it; and therefore upon his death it is determined; for they can no longer consult with him, for which end they were called. And a case was cited to be resolved, that where, in the 13 of queen Eliz. an act of parliament was made, that a Commission of Sewers should continue for ten years, unless the same be determined or repealed by any new commission, or by *supersedes*, king James granted such a commission and died within that time; adjudged, that the commission was determined; for all commissions are determined by the death of the king who grants them, and this point of the actual determination of that parliament by the death of king Charles the 1st, was before that time, resolved by all the judges of England, as my lord Bridgeman told me. But note, there were no special words to continue the parliament upon the king's death.

"2. It was resolved, that the king Charles the 2nd, was *de facto* kept out of the exercise of the kingly office by traitors and rebels; yet he was king both *de facto et de jure*. And all the acts which were done to the keeping him out were high treason.*

* Mr. East observes, "the latter part of this Resolution furnishes the true ground of the judgment. Sir H. Vane was actively instrumental in preventing the king from assuming his authority. But it is a misapplication of terms to say that that prince was king *de facto* before the period of the Restoration." To be sure, if Charles the 2nd was king *de facto* during the different usurpations which intervened between his father's death and his own Restoration—while he was a wanderer, a beggar and an outcast—it seems idle to talk of any distinction between a king *de facto* and a king *de jure*. Still, however, the case is not absolutely clear, and the obscurity has not been diminished by a practice of not attending to the precise force of the terms of the stat. 11 H. 7. c. 1. which is as follows:

"The king our sovereign lord, calling to his remembrance the duty of allegiance of his subjects of this his realm, and that they by reason of the same are bound to serve their prince and sovereign lord for the time being, in his wars, for the defence of him, and the land, against every rebellion, power, and might, raised against him, and with him to enter and abide in service in battle, if case

"3. It was resolved that the very consultation and advising together of the means to destroy the king and his government, was an overt act to prove the compassing of the king's death.

"so require; (2) and that for the same service, what fortune ever fall by chance in the same battle against the mind and will of the prince (as in this land some time passed hath been seen,) that it is not reasonable, but against all laws, reason, and good conscience, that the said subjects going with their sovereign lord in wars, attending upon him in his person, or being in other places by his commandment, within this land, or without, any thing should lose or forfeit, for doing their true duty and service of allegiance. (3) It he therefore ordained, enacted, and established by the King our sovereign lord, by the advice and assent of the Lords spiritual and temporal, and the Commons, in this present parliament assembled, and by authority of the same, that from henceforth no manner of person or persons, whatsoever he or they be, that attend upon the king and sovereign lord of this land for the time being, in his person, and do him true and faithful service of allegiance in the same, or be in other places by his commandment in his wars, within this land, or without, that for the said deed and true duty of allegiance, he or they be in no wise convict or attaind of High Treason, ne of other offences for that cause, by act of parliament,* or otherwise by any process of law, whereby he, or any of them, shall lose or forfeit life, lands, tenements, rents, possessions, hereditaments, goods, chattels, or any other things; but to be for that deed and service utterly discharged of any vexation, trouble, or loss. (4) And if any act or acts, or other process of the law hereafter thereupon for the same happen to be made, contrary to this ordinance, that then that act or acts, or other processes of the law, whatsoever they shall be, stand, and be utterly void. (5) Provided alway, that no person or persons shall take any benefit or advantage by this act, which shall hereafter declare from his or their said allegiance."

* "Acts of parliament derogatory from the power of subsequent parliaments bind not. So the statute 11 Hen. 7. c. 1. which directs, that no person for assisting a king *de facto* shall be attaind of Treason by act of parliament or otherwise, is held to be good only as to common prosecutions for High Treason; but will not restrain or clog any parliamentary attainder. Because the legislature, being in truth the sovereign power, is always of equal, always of absolute authority: it acknowledges no superiors upon earth, which the prior legislature must have been, if its ordinances could bind a subsequent parliament. And upon the same principle Cicero, in his letters to Atticus, treats with a proper contempt these restraining clauses, which endeavour to tie up the hands of suc-

"4. It was resolved that in this case, the treason laid in the Indictment being the compassing of the king's death, which was in the

"From hence," says Hawkins, Pl. Crown, B. i. c. 17. s. 14. "it clearly follows, that one out of possession is so far from having any right to our allegiance, by virtue of any other title which he may set up against the king in being, that we are bound by the duty of our allegiance to resist him." Blackstone (4 Com. 77.) after shewing the illegitimacy and absurdity of this inference, says, "The true distinction seems to be, that the statute of Henry 7th does by no means command any opposition to a king *de jure*; but excuses the obedience paid to a king *de facto*." Now, to apply the statute to the case of Charles the 2d, none of the acts which were done in the interval between the death of his father and his own restoration, and which were alleged to be acts of treason against him, were done in attendance upon, or allegiance to any king for the time being, &c. It seems, therefore, to be very clear, that none of the

ceeding legislatures. 'When you repeal the law itself,' says he, 'you at the same time repeal the prohibitory clause, which guards against such repeal.'" Blackst. Comm. Introduction, vol. i. p. 90.

The citation of authorities to establish this doctrine might appear to be somewhat like the quotation of Seneca or Epictetus to prove the certainty of death, or the instability of fortune; for the maxim 'Leges posteriores priores contrarias abrogant' is, as Blackstone himself has observed, a general principle of universal law. Some allusions to this doctrine were made in the Parliamentary Debates, which took place in 1792, upon a bill respecting the redemption of the National Debt (stat. 32 Geo. 3. c. 55.) It may however be here noticed, that there is not in this statute any attempt to derogate from the power of future parliaments; although some of the arguments employed in those Debates, seem to have supposed that the bill contained matter of that sort. The cases which appear to give room for the most weighty arguments in support of a legal derogation from the power of future parliaments are these two: 1. That of the union of independent legislatures upon certain fundamental and essential conditions. 2. That of an oath prescribed, by act of parliament, to be taken by one or more of the branches of all future parliaments, to preserve and maintain, without alteration, any of the established laws. As to the former of these cases, see Mr. Justice Blackstone's Note, concerning the fundamental and essential conditions of the Union between England and Scotland, (Intro. to the Commentaries, p. 98.) and Bishop Warburton's Alliance between Church and State, as referred to in that Note.

* 'Cum lex abrogatur, illud ipsum abrogatur, quo non eam abrogari oportet,' l. 3. ep. 23.

county of Middlesex, and the levying war being laid only as one of the overt acts to prove the compassing of the king's death,

doers of those acts derived a title to impunity from the enacting words of the statute. It is asserted, that the enactment of this statute is declaratory of the common law, and the preamble of the statute seems to prove this: (for as to the authorities from Edward 4's time they are not in point;*) nor, indeed, would any

* Of these the chief is the Case of sir Ralph Grey, 4 Ed. 4, cited in 1 Hale's Hist. Pl. Cr. 61, 103. from the Year-Book. This Case is thus related by Stow in his Annals, p. 417, (and an Abridgement of it is given in Selden's Titles of Honour). "The 15th of May 1464, king Henry's power being at Hexham, the lord Montacute with a power came thither, and inclosed them round about. There were taken and slain many lords that were with king Henry, but he himself was fled four days before into Lancashire, where he and others lived in caves, full hardly, unknown more than a year. On Trinity Sunday, king Edward made the lord Montacute earl of Northumberland, and warden of the Marches. The earls of Warwick and Northumberland took Bambrough Castle; and sir Ralph Grey being taken in Bambrough, for that he had sworn to be true to king Henry, was condemned, and had judgment given upon him by the earl of Worcester, High Constable of England, as followeth: 'Sir Ralph Grey, for thy treason, the king had ordained that thou shouldst have had thy spurs taken off by the hard heels, by the hand of the master cook, who is here ready to do as was promised thee, at the time that he put on thy spurs, and said to thee as is accustomed: That an thou be not true to thy sovereign lord, he shall smite off thy spurs with his knife, hard by the heels, and so shewed him the master cook, ready to do his office with his apron and his knife. Moreover sir Ralph Grey, the king had ordained here thou mayest see the kings of Arms and Heralds, and thine own proper coat of arms, which they should tear off thy body, and so shouldst thou as well be disgraded of thy worship nobles and arms as of thy order of knighthood. Also here is another coat of thine arms reversed, the which thou shouldst have worn on thy body, going to thy death-wards, for that belongeth to thee after the law: notwithstanding, the disgrading of knighthood, and of thine arms and nobles, the king pardoneth that, for thy noble grandfather, who suffered trouble for the king's most noble predecessors. Now sir Ralph Grey this shall be thy penance: thou shalt go on thy feet unto the town's end, and there thou shalt be laid down and drawn to a scaffold made for thee, and thou shalt have thy head smitten off, thy body to be burnt in the fires, thy head, where the king's pleasure shall be.' This judgment was pronounced at Doncaster, against the said Ralph Grey, for rebelling and keeping

though this levying of war be laid in the Indictment to be in Middlesex, yet a war levied

decisions on the subject, arising out of the storms of long civil wars and made before the agitation produced by those storms had subsided, be of very great authority.) But still, unless (which I presume will not be contended) the words 'Prince and Sovereign Lord' have a more extensive signification than the word of the castle of Bambrough, against king Edward."

According to the Year Book it should seem that some particular circumstances of Grey's punishment, and not his conviction and punishment generally, were owing to the perjury, treachery, and duplicity which he had exercised as well to Henry the 6th as Edward the 4th, and if this be the true construction of the book lord Hale seems to have been somewhat wrong in his understanding of it. He twice notices Grey's Case, *ubi sup.*

In the former of those places he says, "Upon the same account it is, that though there be an usurper of the crown, yet it is treason for any subject, while the usurper is in full possession of the sovereignty, to practise treason against his person; and therefore, although the true prince regain the sovereignty, yet such attempts against the usurper in compassing his death have been punished as treason, unless they were attempts made in the right of the rightful prince, or in aid or assistance of him, because of the breach of ligeance, that was temporarily due to him, that was king *de facto*; and thus it was done 4 E. 4, 9 E. 4, 1; though H. 6, was declared an usurper by act of parliament 1 E. 4, and therefore king Edward 4, punished Ralph Grey with degradation, as well as death, not only for his rebellion against himself, but also 'our cause de son perjury et doubleness, 'qu'il avoit fait al roy H. 6.' 4 E. 4. 20."—In the latter, he says, "A king *de facto* but not *de jure*, such as were H. 4, H. 5, H. 6, R. 3, H. 7, being in the actual possession of the crown is a king within this act, so that compassing his death is treason within this law; and therefore the 4 E. 4. 20. a person that compassed the death of H. 6, was attained for that treason in the time of the rightful king; but had it been an act of hostility in assistance of the rightful heir of the crown, which afterwards obtained, this had not been treason."

It is very surprising, that Foster, who seems to have paid much attention to this Case of sir Ralph Grey; see his *hooks* in p. 397, and the conclusion of his Advertisement prefixed to the editions, subsequent to the first, of his book) should, referring to Hale's account of the Case, express himself, as he does, in the following words.

"It is not to be imagined, that they [princes] will consider the former as traitors for acts of hostility done or attempted in aid of themselves. I verily believe no prince in his right

by him in Surry, might be given in evidence; for being not laid as the treason, but only as

'King;' it does seem that this "clear and full parliamentary declaration," as Foster calls it, of the ancient law and constitution of England, founded on principles of reason, equity, and good conscience, confers not upon the doers of the before-mentioned acts any better title to impunity than they derived from the enacting part of the statute. Agreeably to this, Foster, when he sets himself to guess, "what did the Court mean by calling Charles the 2nd 'a king *de facto*?' says, "they could not mean, what every soul before themselves understood, a king in the actual and full exercise of the regal power. They meant, I presume, as his lordship (Hale), upon another occasion," [that of a right heir who once had possession of the crown but is ousted by an usurper, see 1 Hale's P. C. 104.] "is pleased to express himself, one quasi *in possession* of the crown; since, during the usurpation, no other person did claim to act under the regal title."

The same, or something very like it in effect, is, I suppose, the meaning of Hawkins (Book 1. c. 17. s. 18.) where, in order to justify or rather perhaps to account for the resolution that Charles the 2nd was king *de facto* as well as *de jure*, from his father's death, he says, "It is apparent, that no other person was in possession of any sovereign power known to our laws." See, too, what the Chief Baron says in the case of Cook the Regicide, *ante*, vol. 5. p. 1114. "That, that king Henry the 7th did, was to take care of the king *de facto* against the king *de jure*; it was for a king, and kingly government: it was not for an antimonarchical government."

senses ever did. His lordship [Hale] doth indeed in the passages just cited mention the case of sir Ralph Grey; and supposeth, that he was punished in the time of Edw. 4. for treasons committed against Henry 6. in aid of Edward. But, I doubt, that case will not warrant any such supposition."

It is observable moreover, that this gross surprising misrepresentation of Hale occurs in a discourse in the revision and completion of which Mr. Justice Foster in his preface gives us to understand, that he spent the leisure of a long vacation; and of which he says, 'that it may at least serve to guard young and inexperienced minds against some impressions, which a modest deference to the opinion of so great an author may have made upon them.'

* Cromwell felt or pretended to feel the importance in this respect of the title of King. See the conference between him and White-locke recorded in the Memorials of the latter, under date Nov. 7, 1652. White-locke told the Lord-General that the 11 Hen. 7, would be little regarded by their enemies if they got the upper-hand.

the overt act to prove the compassing, it is a transitory thing which may be proved in ano-

Thus, the statute 11 H. 7. c. 1. does not seem in its enacting or declaratory parts to extend impunity to any who resist a king *de jure*, unless they do so in adherence to a king *de facto*: and this was not the case of sir Henry Vane.

Foster does not give a positive opinion for or against the right to impunity of persons who act in adherence to usurpers, not being kings, against kings *de jure*; but what he does say seems to tend very strongly in favour of such right. He forcibly urges the preamble of the statute as declaratory of the Common Law. He enforces the mutuality of the obligations of protection and allegiance: and all that he says on the grounds of reason and equity is equally applicable to all forms of usurpation. The subject, says he, "entereth not into the question of title, he hath neither leisure nor is he at liberty to enter into that question, but he seeth the fountain from whence the blessings of liberty, peace and plenty flow to him, and there he payeth his allegiance."

Blackstone, in treating of kings *de facto* and *de jure*, cautiously avoids all allusion to this case of sir Henry Vane; but upon the principle of the impunity of adherence to an usurper he is at least as strong as Foster.

"When an usurper," he tells us, "is in possession, the subject is excused and justified in obeying and giving him assistance: otherwise, under an usurpation, no man could be safe, if the lawful prince had a right to hang him for obedience to the powers in being, as the usurper would certainly do for disobedience. Nay farther, as the mass of people are imperfect judges of title, of which in all cases possession is *prima facie* evidence, the law compels no man to yield obedience to that prince, whose right is by want of possession rendered uncertain and disputable; till providence shall think fit to interpose in his favour, and decide the ambiguous claim: and therefore, till he is entitled to such allegiance by possession, no treason can be committed against him."

It may be said, that as by the common law, England is a kingdom, the law can never recognise any other sovereign power than that of a king (agreeably to the expression in Hawkins, *ubi sup.*) But as this objection is obvious, so likewise is an answer to it. England is not only a kingdom, but it is a kingdom descendible according to certain rules. If, for the purpose of giving effect to the fundamental principles of reason, equity, and good conscience, the law can contemplate and provide for a violation of the constitutional descent of the sovereign power, it surely may in like manner and for the same purpose contemplate and provide for a violation of the constitutional forms of administering the sovereign power.

See, too, on this matter, Marten's Speech, *ante*, vol. 5. p. 1202.

It is to be hoped that to Englishmen this

ther county. But if an Indictment be for levying war, and that made the treason for

subject will never again possess any other source of interest than its curiosity. Perhaps therefore, this note should have been spared. It shall now (after referring the reader to Hawkins and Blackstone, *ubi sup.* 1 Hale's II. P. C. 61, 102, and the elaborate discussion in Foster's fourth Discourse, and recommending to his consideration the effect ascribed by Hawkins and Foster to the Resolution that Charles the 2nd had been king *de facto*) be concluded in Foster's words.

"Sir Henry Vane's was a very singular case, and the transactions in which he bore a part happened in a conjuncture of affairs which never did exist before, and, I hope, never will again; an usurpation founded in the dissolution of the ancient legal government, and the total subversion of the constitution.

"I will therefore say nothing to the merits of the question, more than that the rule, laid down by the court, involved in the guilt of treason every man in the kingdom who had acted in a public station under a government possessed in fact for twelve years together of sovereign power; but under various forms at different times, as the enthusiasm of the herd or the ambition of their leaders dictated.

"L. C. J. Hale, when of high rank at the bar, took the engagement, (*ante*, v. 5. p. 211) 'To be true and faithful to the Commonwealth of England without a King or House of Lords.' This, in the sense of those who imposed it, was plainly an engagement for abolishing kingly government, at least for supporting the abolition of it: and with regard to those who took it, it might, upon the principles of sir Henry Vane's case, have been easily improved into an overt-act of treason against king Charles 2."

[This Engagement was, to be true and faithful to the Commonwealth of England, as it is now established without King or house of Lords. See Whitelocke under date June 1649. It is remarkable, that of the "Act for subscribing the Engagement, 2 January, 1649-50," nothing but the title is inserted in Scobell's Acts and Ordinances. On the 23d of February following, farther time was given for subscribing the Engagement. On the 19th of Jan. 1653-4, shortly after the assumption by Cromwell of the Protectorate, the Acts and Resolves of Parliament for taking the Engagement were repealed by an act, which recites, That "many general and promissory oaths and engagements in former times imposed upon the people of this nation have proved burthens and snares to tender consciences." Whitelocke, under date Jan. 22, 1649-50, says, "The taking of the Engagement sticks most with the Presbyterians, who pretend conscience to oppose it, but the Cavaliers in policy subscribe it."

It appears that Chief Justice Vaughan was more scrupulous than Hale. The son of the former in his preface to his father's Reports tells us, that

which the party is indicted, in that case it is local, and must be laid in the county where in truth it was.*

* From the year 1641, in which he retired from the parliament, until the year 1660, in which God blessed us with the Restoration of our present king, he did in a manner quit his profession: for in that time he never received a fee from any person whatever, nor could be prevailed with to appear in any court, although exceedingly importuned to it by such as had a desire to make use of his abilities: and the reason I have heard him assign for it, was, 'That it was the duty of an honest man to decline, as far as in him lay, owning jurisdictions that derived their authority from any power, but their lawful prince.'"

* This Mr. East says must be understood to mean, 'that after proof of an overt act in the county in which the treason is laid, evidence may be given of any other overt acts, of the same species of treason in other counties.' Mr. East makes a question (upon the authority as it seems of the MS. compilation, which he cites by the title of MS. Sum. and of which he gives an account at the end of the preface to his own work), whether the distinction laid down in this 4th Resolution, between levying war when laid as the treason, and levying war when laid only as the overt act to prove the compassing, and whether the position that treason in levying war is local, can be right: and he cites the cases of Dammaree and others, (A. D. 1710, *post.*) where in an indictment for levying war in Middlesex, acts done in London were given in evidence, and the case of Deacon (A. D. 1746, *infra.* and Foster 9), where in an indictment for levying war in Cumberland, evidence of acts done in other counties was objected to, but it was held by Mr. Justice Abney and Mr. Justice Foster, 'that it was indeed necessary that some overt act laid, be proved on the prisoner in Cumberland, but that being done, acts of treason tending to prove the overt acts laid, though done in a foreign county,' (perhaps it should rather be that acts of treason though done in a foreign county tending to prove the overt acts laid,) 'may be given in evidence.' On this point it is said, that Lord Chief Justice Willes declined giving any opinion. But as to this (see the Case *infra.*) Mr. Justice Foster in his Reports adds, That no objection was made during the whole course of the trials, to the giving evidence of overt acts in a county different from that where the fact was laid; an overt act having been first proved in the proper county. And that sort of evidence was given county in almost all the trials. In A. D. 1695, sir William Parkyns was indicted (see the Case, *infra.*) for compassing, &c. the king's death, and all the overt acts were laid in Middlesex. On the trial evidence being given of a conversation in Hertfordshire the prisoner submitted, whether words spoken in Hertfordshire, could be evidence of a treason acted in Middlesex. By

" 5. It was resolved, that the stat. of W. 2. c. 31; which giveth the Bill of Exception, extends only to civil causes, and not to criminal; the words of the stat. are, 'Cum aliquis implacitatur coram aliquibus Justiciariis,' &c. And the intention never was to give such persons liberty to put in Bills of Exception, for then there would be no trials of that nature ever dispatched in any time, neither here nor in the Circuits, if every frivolous exception which a prisoner would make, should be drawn up in a Bill of Exception;

Holt, Chief Justice; " If there be a design to kill the king, and there are several overt acts to prove that design, and one is in one county and another is in another county, the party may be indicted in either of the counties, and evidence may be given of both those overt acts though in several counties. It is true you being indicted in Middlesex, makes it necessary that some evidence should be given of some things done in Middlesex, as there is, as your meeting at Mrs. Mountjoy's, and at the Nag's Head in Covent Garden, and the Sun in the Strand, where there were several consults, which are overt acts of the same treason. And if treason be committed in several counties, the party may be indicted in any one, and the evidence may be given of facts done in all."

See the Case of Whitbread and others, (A. D. 1679, *infra.*) Gavan one of the prisoners observed, ' I am accused by one witness concerning one fact, and by another concerning another; the one committed here at London, the other in Staffordshire; I desire, therefore, to know, whether the witness that swears the thing done in Staffordshire, and the other witness, that swears what was done in London, can be esteemed two witnesses, according to the law, to convict me of treason?—L. C. J. North. Yes, I'll tell you, if it were a matter of doubt, it might be found specially, and be argued, but it is a matter that hath been already resolved in the case of sir Henry Vane at the King's-bench bar, who was indicted for levying of war against the king; and there one witness proved the levying of war in one county, and the other proved the levying of war in another county; and so, though they were but single witnesses of single facts, yet being both came up to the indictment, they were adjudged sufficient to maintain it. So it is in your case, here is one witness for the proving your hand to the paper which was for the murder of the king, and there is another witness of your discourse to the same purpose; the fact is your joining and conspiring to destroy the king, and to levy war against him, and both these are proved to the full of the indictment by these witnesses; and though they are to several particular facts, yet they are all overt acts of the same treason.—Gavan. My lord, I have a contrary opinion to that in Sergeant Rolls.—L. C. J. North. But this is a known case, and the law is settled therein.'

besides, the Court is always so far of counsel with the prisoner as to see that he hath right,* and if they find any thing doubtful, they of themselves will take time to advise: but the words of the stat. are plain, as the Court agreed, as to this point.

“6. Although the treason of compassing the king's death was laid in the Indictment to be the 30th of May, 11 Car. 2, yet upon the evidence it appeared, that sir Hen. Vane, the very day the late king was murdered, did sit in council for the ordering of the forces of the nation against the king that now is, and so continued on all along until a little before the king's coming in. It was resolved, that the day laid in the Indictment is not material, and the jury are not bound to find him guilty that day, but may find the treason to be as it was in truth either before or after the time laid in the Indictment: as it is resolved in Syer's Case, Co. Pl. Coron' 230. And accordingly in this case the jury found sir H. Vane guilty of the treason in the Indictment the 30th of January, 1 Car. 2, which was from the very day the late king was murdered, and so all his forfeitures relate to that time to avoid all conveyances and settlements made by him.

“7. Memorandum, That in this case of sir H. Vane, he being to be tried at the King's-Bench bar, before he came to his trial, it was considered by myself, and others then of the king's council, that it was possible that he might challenge peremptorily, and so defeat his trial at that day, at which it was appointed, if there should be only 24 jurors returned.

“And thereupon, search was made in the crown office, and it did appear, that in trials on the crown side for criminals, the sheriff might be commanded to return any number the Court pleased; and accordingly, at his trial the sheriff returned about 60 of the jury; and at common law in civil causes, it seems the sheriff might have returned about 24 if he pleased; and therefore by the stat. W. 2, c. 38, it is recited, that whereas the sheriffs were used to summon an unreasonable multitude of jurors to the grievance of the people; it is ordained that from thenceforth, in one assize, no more shall be summoned than 24, which stat. extends not to jurors, returned for trial of criminal persons; the like may be done upon a commission of Oyer and Terminer.†” Kelyng.

* See a Note to the Case of Don Pantaleon Sa, vol. 5, p. 466, and a Note to the Case of Twyn and others, A. D. 1663, *infra*.

† By the Statute of Westm. 2. 13 E. 1, c. 31, it is enacted: “When one impleaded before any of the justices, alleges an exception, praying they will allow it, and if they will not; if he that alleges the exception writes the same and requires that the justices will put to their seals, the justices shall do so; and if one will not, another shall; and if, upon complaint made of the justice; the king cause the record

“He being excepted out of the general pardon, was indicted of High Treason committed before the king's restoration; and after that the Indictment was read, he desired it might be read again, which was done: but then he desired it might be read in Latin, which was denied, it being never done. Then he desired a copy thereof, and counsel, which was denied: but the court said, that if he took any legal exception, he should have a copy of so much thereof as concerned the exception, and counsel to argue it. And then being tried and found guilty, and being brought to the bar at a day afterwards, he tendered a bill of exceptions, which the court refused to accept; for a bill of exceptions does not lie in criminal cases, but only in actions between party and party. And he was afterwards executed on Towerhill by beheading only.” Levinz.

“V. et L. fueront indict per several indictments de haut Treason pur compassing le mort del roy et endeavouring pur subvert et alter les leys de cest realme, et, ceo fuit suppose destre fait anno xj. hujus regis et apres (quel fuit durant le temps de Long Parliament et committeee del safety, sc. quant ils de facto imprint sur eux le gouvernement de ceux roialms) le roy esteant ouster le mere, et fueront trouve culp per several juries icy all barr, et al auter jour quant fueront demand que ils poent dire pur que sentence de haut Treason ne serra passe sur eux sir H. Vane offer several matters pur stay ceo sur que le court done leur resolution come ensuist.

“1. Que coment indictments sont escry en Latin uncore ne serra lie al prisoner forsque in Anglois si le prisoner aprend Anglois ou in tiel language le quel il aprend, car est le matter de ceo et nemy le forme a que il doit doner resp.* Et in auter pays les prisoner nont que verbal charge vers eux. Nota al request des prisoners cheacun de leur indict-

to come before him, and the exception be not found in the roll, and the plaintiff shew the written exception, with the seal of the justice thereto put, the justice shall be commanded to appear at a certain day, either to confess or deny his seal, and if he cannot deny his seal, they shall proceed to judgment according to the exception, as it ought to be allowed or disallowed.” These Bills of Exceptions are to be tendered before a verdict given, 2 Inst. 427; and extend only to civil actions, not to criminal. Sid. 85, 1 Salk. 288, 1 Lev. 68. But in 1 Leon. 5, it was allowed in an indictment for trespass; and in 1 Vent. 366, in an information in nature of a Quo Warranto.

* Ralph, vol. i. p. 72, takes notice, that there is a seeming inconsistency in the contents of this first Resolution. “The Indictment,” says Blackstone, “is to be read to the prisoner distinctly in the English tongue (which was law, even while all other proceedings were in Latin) that he may fully understand his charge.” 4 Comm. 323.

ments fuit lie deux fois a eux devant que ils plead a ceo.*

"2. Que tiels prisoners naver coppies de leur indictments ne counsel si non que ils monstre matter in ley, et donque ils aver coppie de tant de leur indictments que concern tiel matter, et nemy de tous leur indictments.

"3. Que le Statute de West. 2. cap. 31. que done bill de exceptions ne extend al ascun case lou prisoners sont indict al suit del roy car lestatute intend de remedy le overruling de evidence en civil pleas perenter et party et party solement.

"4. Que les prisoners; ne poent offer ascun chose pur stay le judgment forsque matters que surge sur le indictment et nemy matters de hors come icy V. voil aver fait scil. que le roy fuit adonque roy de jure tantum et nemy de facto. Et pur ceo que il ne poit estre indict pur treason adonque fait vers luy (Vide Baggott's Ass. 9 E. 4.....) Et le long parlaiement fuit ne continuant, &c. Sed le court luy silence pur eux matters, et proceed al sentence, et mesme le jour L. ad judgment, auxy done vers luy.

"Et 3. jours apres sir H. Vane fuit execute sur le Tower hill pur severing son test de son corps, et ceo per le grace del roy, et lexecution de L. fuit respit." Syderfin.

"Vane was indicted, That intending to bring the king to death, he had compassed the same by endeavouring to change the government; and to fulfil such intent, 11 Car. 2, had assembled (30 May, 1659,) with others to consult of, and had usurped the government; as also by regulating the forces of the nation then raised against the king; and that (20 Dec. An. predict.) had been in the head of 1,000 persons armed. The prisoner desired to hear the indictment read in Latin, which the Court refused, 36 Ed. 3, being that the records must be entered in Latin, but discussed in English, and the indictment was read twice in English,* which was conceived more than usual. 2. He excepted, That the indictment doth not pursue 25 Ed. 3, 2, no particular acts of levying war having been charged certainly, by reason it wants place, which was mistaken.

"2. Lambert was indicted for levying war at the same time, he pleaded, that the Commons had excepted him only as to pain, not extending to life, which the Lords refused, and for expedient, the proclamation was made for persons to come in, which the Lords now have comprised him in, which was a full consent of the two Houses to save his life. And pursuant to this, the letter by the king to the Commons, to whom he left it to make provision; and thus the consent of the three estates concurred in his pardon, nothing that is essential to a law, but is in this particular. Sir Jeffery Palmer, king's attorney, conceived

this as a petition of the two Houses to the king, and his grant of their desires: But this being not under seal, cannot be pleaded, but is an inducement to the king's pardon, which the Court agreed.

"He was indicted for sitting, with others, to consult the king's destruction, and to get the government to themselves, 30 May, 1659. The attorney general, Palmer, began with evidence from the treaty of the Isle of Wight, 1618, after with the acts made against kingly government, and management of votes of the council of state for the navy, until 1653. And after in 1659, sitting in the committee of state and managing the land forces, issuing warrants for them: And in the committee of the council for government, he contrived the alteration of government, and raised the opinion that the people had made trustees, and that these were unalterable; all which, with procuring arms for his own regiment, amounting to a levying war actually. Sir Henry urged, That no person in being then claimed the kingly government, but all things were done in the name of the Commonwealth, and so matter of law might thereon arise; which the court conceived would not, being not material, notwithstanding, 3 Inst. 7, by sir Henry is meant of a king in possession; but by Maynard, the king's serjeant, which Windham agreed, there must be a king regnant, there being no interregnum in law: But by sir Henry they may be said kings that have the authority. Finch conceived this the old priest, Watson's doctrine, who thought to oppose king James, being not actually in possession, was no treason; and this was of their own doing, who only usurped the name of a parliament; And had it been so, yet that is no sanctuary for treason, but this Court may try them; which the Court agreed. 2. Sir Henry urged also, that the parliament in being 13 Aug. 1642, was not dissolved by the king's death; the act 13 Car. 2, cap. 1, § 3 of preservation of the king's person, mentioning only that it is thereby dissolved, and the equality of the three estates in sovereignty is that which makes it political, as Fortescue: And for this end Deut. 17, kings were constituted. Finch Solicitor, the king cannot give away that prerogative of culling and dissolving parliaments, 4 Car. Thursbay against and they are undoubtedly determined by his death: As commission of sewers, appointed by 13 Eliz. 9, not to end in 10 years; he doubted not, but parliaments may commit treason, if an unjust thing of them may be presumed contrary to their allegiance and customs of parliament: The contrary doctrine followeth from a venomous principle of co-ordination, which is against the oath of allegiance: for if men in parliament will speak desperate things, it is not to be privileged by parliament: And the king's being out of possession is but an aggravation of the treason. Windham; I see no colour, why by being conti-

* This Case was cited in Sidney's Case by Jefferies, Chief Justice, M. 35 Car' 2. B. R. and the book brought into court. 1 Keb. 37.

nued longer than usual, they should have more power than another parliament, which is but the king's council: And though it is not to be dissolved, but by another act, yet by the king's death it is determined in fact, as marriage enacted not to be divorced till another act, yet it is done by death; and betwixt king and parliament is a like conjunction. And had an army in the life of king Charles the 1st, forced and packed any of the parliament, it had been a suspension of a parliament till it might resort again to its freedom, as is the law of all nations. Twisden *ad idem*, it had been without question, had not the act been made that it should not be dissolved, which word is not extendable to a discontinuance; so it saith; no act done or to be done shall dissolve it, his death is no such act; Mallet and Foster *ad idem*, it was only to treat 'nobiscum,' which is meant in the king's political and personal capacity, and so determined by his death, whereby those capacities were severed, which to do, or suppose, by any other, is the greatest treason, the law making no such distinction: but 'eo instante,' that one dieth the other is king. Either House may commit treason, though the parliament, viz. king, lords, and commons cannot. Twisden rebuked the abominable distinction of the king's capacity; and 'per Curiam,' the endeavouring to keep the king out, though he be not in possession, is treason; and counsel, by Twisden, is not to be allowed in things that tend to subvert fundamentals, as Story's Case.

"Sir Henry cited Westm. 2, cap. 31, that he ought to have a bill of exception sealed by the Court, and the indictment to that end read in Latin, which the Court denied, as a thing unreasonable, the statute not extending to any indictment, by Glyn the king's serjeant, for this is no supersedeas; but that judgment and execution may be had notwithstanding, and so this would be to no purpose; and no gaol-delivery would ever be if it should be allowed. But by sir Henry Vane, the parliament have declared that execution should be remitted in case judgment passeth: which petition of the houses, and grant of the king, were read. Windham, Did the prisoner not understand English, it ought to be read in Latin; but no copy of the indictment was ever delivered in Latin or English. Twisden, as the rest, delivered his opinion, that a bill of exception is not within the statute, nor ever heard of; and at common law this bill lieth in no case. The chief justice having given judgment, declared that the petition of the houses, was not to be allowed by the king, in case the prisoner were obstinate, as he had been in broaching ill documents and fundamentals. 2. Lambert excepted to the indictment that he was named without addition, which was mistaken. And so the court gave judgment, and declared him more capable of the benefit of the houses petition than sir Henry

Vane, by his fair carriage: And sir Henry Vane soon after was belicaded on Tower-hill, and Lambert sent to Gersey." Keble.

Of this Case of sir Henry Vane some consideration was had in the controversy which was excited by lord Russell's Case, A. D. 1683. See the different articles subjoined to his Trial in this Collection. See also a Note to the Case of Anderton, A. D. 1698, *infra*.]

SIR Henry Vane being committed for High Treason, had prepared the following Argument for his Defence, before he knew how the Indictment would be laid.

His intended Argument.

The Offence objected against me, is levying War, within the Statute 25 Ed. 3. and by consequence, a most high and great failer in the duty which the subject, according to the laws of England, stands obliged to perform, in relation to the Imperial crown and Sovereign power of England.

The crime, if it prove any, must needs be very great, considering the circumstances with which it hath been accompanied: for it relates to, and takes in a series of public action, of above 90 years continuance. It took its rise and had its root in the being, authority, judgment, resolutions, votes, and orders of a parliament, and that, a parliament not only authorized and commissioned in the ordinary and customary way; by his majesty's writ of summons, and the peoples election and deputation, subject to adjournment, discontinuance, and dissolution, at the king's will; but which, by express act of parliament, was constituted in its continuance and exercise of its power, free from that subjection, and made therein wholly to depend upon their own will to be declared in an act of parliament, to be passed for that purpose, when they should see cause. To speak plainly and clearly in this matter; That which is endeavoured to be made a crime and an offence of such an high nature in my person, is no other than the necessary and unavoidable actings of the representative body of the kingdom, for the preservation of the good people thereof in their allegiance and duty to God and his law, as also from the imminent dangers and destruction threatened them, from God's and their own enemies.

This made both Houses in their Remonstrance, May 26, 1642, protest, if the malignant spirits about the king should ever force or necessitate them to defend their religion, the kingdom, the privileges of parliament, and the rights and liberties of the subjects, with their swords; the blood and destruction that should ensue thereupon, must be wholly cast upon their account, God and their own consciences telling them, that they were clear; and would not doubt, but that God and the whole world would clear them therein.*

In his majesty's Auswer to the Declaration

* See 3 Cobb. Parl. Hist. 1297.

of the two Houses, May 19, 1642, he acknowledgeth his going into the House of Commons to demand the five members, was an error.* And that was it, which gave the parliament the first cause to put themselves in a posture of defence, by their own power and authority, in commanding the Trained-Bands of the City of London to guard and secure them from violence, in the discharge of their trust and duty, as the two Houses of Parliament appointed by act, to continue, as above-mentioned.

The next cause was, his majesty's raising Forces at York, (under pretence of a guard) expressed in the humble Petition of the Lords and Commons, May 23, 1642,† wherein they beseech his majesty to disband all such forces, and desist from any further designs of that nature, otherwise they should hold themselves bound in duty towards God, and the trust reposed in them by the people, and the fundamental laws and constitutions of this kingdom, to employ their care and utmost power to secure the parliament, and preserve the peace and quiet of the kingdom.

May 20, 1642, The two Houses of parliament gave their judgment, in these votes. 1. "That it appears, that the king (seduced by wicked counsels) intends to make war against the parliament, who in all their consultations and actions have proposed no other end to themselves but the care of his kingdoms, and the performance of all duty and loyalty to his person. 2. That whosoever the king maketh war upon the parliament, it is a breach of trust reposed in him by his people, contrary to his oath, and tending to the dissolution of this government. 3. That whosoever shall serve or assist him in such wars, are traitors by the fundamental laws of this kingdom, and have been so adjudged by two acts of parliament, and ought to suffer as traitors."

Die Jovis, Octob. 8, 1642,‡ in the Instructions agreed upon by the Lords and Commons about the Militia, they declare, "That the king (seduced by wicked counsel) hath raised War against the parliament, and other his good subjects."

And by the Judgment and Resolution of both Houses, bearing date Aug. 13, 1642, upon occasion of his majesty's Proclamation for suppressing the present Rebellion, under the command of Robert earl of Essex, they do unanimously publish and declare, "That all they who have advised, declared, abetted, or countenanced, or hereafter shall abet and countenance the said Proclamation, are traitors and enemies to God, the king and kingdom, and guilty of the highest degree of treason that can be committed against the king and kingdom, as that which invites his majesty's subjects to destroy his parliament, and good people, by a civil war; and by that means, to bring ruin, confusion, and perpetual slavery upon the surviving part of a then wretched kingdom."

The Law is acknowledged by the king, to be the only Rule, by which the people can be justly governed; and that, as it is his duty, so it shall be his perpetual, vigilant care, to see to it: therefore he will not suffer either or both Houses by their votes, without or against his consent, to enjoin any thing that is forbidden by the law, or to forbid any thing that is enjoined by the law.

The king does assert in his Answer to the Houses' Petition, May 23, 1642, "That he is a part of the parliament, which they take upon them to defend and secure; and that his prerogative is a part of, and a defence to the laws of the land."

In the Remonstrance of both Houses, (May 26, 1642) they do assert; "that if they have made any precedents this parliament they have made them for posterity, upon the same or better grounds of reason and law, than those were, upon which their predecessors made any for them; and do say that as some precedent, ought not to be rules for them to follow, so none can be limits to bound their proceedings, which may and must vary, according to the different condition of times." And for the particulars with which they were charged, of setting forth Declarations to the people who have chosen and intrusted them with all that is dearest to them, if there be no example for it in former times, They say, "it is because there never were such monsters before, that attempted to disaffect the people towards a parliament."

They further say; "His majesty's towns are no more his care than his kingdom, nor his kingdom than his people, who are not so his own that he hath absolute power over them, or in them, as in his proper goods and estate; but fiduciary, for the kingdom, and in the paramount right of the kingdom. They also acknowledge the law to be the safeguard and custody of all public and private interests. They also hold it fit, to declare unto the kingdom, (whose honour and interest is so much concerned in it) what is the privilege of the great council of parliament, herein; and what is the obligation that lies upon the kings of this realm, as to the passing such bills as are offered to them by both Houses, in the name, and for the good of the whole kingdom, wheresunto they stand engaged, both in Conscience and Justice to give their royal assent."

First, In Conscience; in respect of the Oath that is, or ought to be taken by them at their coronation, as well to confirm by their royal assent all such good laws as the people shall chuse, (whereby to remedy such inconveniences as the kingdom may suffer) as to keep and protect the laws already in being. The form of the Oath is upon record, and asserted by Books of good authority. Unto it relation is had, 25 Ed. 3, entitled, "The Statute of Provisors of Benefices."

Hereupon, the said Commons prayed our said lord the king, (saith the right of the crown of England, and the law of the said realm, is such, that upon the mischiefs and damages

* See 2 Cobb. Parl. Hist. p. 1280.

† Ibid, p. 1242. ‡ Ibid. p. 1241.

which happen to this realm, he ought and is bound by his oath, with the accord of his people in parliament, to make remedy and law, for the removing thereof) That it may please him to ordain remedy.

This right thus claimed by the Lords and Commons, the king doth not deny, in his Answer thereunto.

Secondly, In Justice the kings are obliged as well as in Conscience, in respect of the trust reposed in them, to preserve the kingdom by the making of new laws, where there shall be need, as well as by observing of laws already made; a kingdom being many times as much exposed to ruin for want of a new law, as by the violation of those that are in being.

This is a most clear right, not to be denied, but to be as due from his majesty to his people, as his protection. In all laws framed by both houses, as Petitions of Right, they have taken themselves to be so far judges of the rights claimed by them, That when the king's Answer hath not been in every point fully according to their desire, they have still insisted upon their claim, and never given it over, till the Answer hath been according to their demand, as was done in the late Petition of Right 3 Caroli*.

This shews, the two houses of parliament are judge between the king and people in question of right, as in the case also of Ship Money † and other illegal taxes; and if so, why should they not also be judge in the cases of the common good and necessity of the kingdom, wherein the kingdom hath as clear a right to have the benefit and remedy of the law, as in any other matter, saving pardon and grants of favour?

The Malignant party, are they, that not only neglect and despise, but labour to undermine the law, under colour of maintaining it. They endeavour to destroy the fountain and conservators of the law, the Parliament. They make other judges of the law, than what the law hath appointed. They set up other rules for themselves to walk by, than such as are according to law; and dispense with the subjects obedience, to that which the law calls authority, and to their determinations and resolutions, to whom the judgment doth appertain by law: Yea, though but private persons, they make the law to be their rule, according to their own understanding only, contrary to the judgment of those that are the competent judges thereof.

The king asserts, That the act of sir John Hotham was levying war against the king, by the letter of the statute 25 Ed. 3, cap. 2.

The Houses state the case, and deny it to be within that statute; saying, If the letter of that statute be thought to import this; That no war can be levied against the king, but what is directed and intended against his person; Or, that every levying of forces for the defence of the king's authority, and of his kingdom, against the personal commands of the king, opposed

thereunto, (though accompanied with his presence) is treason or levying war against the king; Such interpretation is very far from the sense of that statute, and so much the statute itself speaks, besides the authority of Book-Cases. For if the clause of levying war had been meant only against the king's person, what need had there been thereof, after the other branch in the same statute, of compassing the king's death, which would necessarily have implied this? And because the former doth imply this, it seems not at all to be intended, at least, not chiefly in the latter branch, but the levying war against his laws and authority; and such a levying war, though not against his person, is a levying war against the king; whereas the levying of force against his personal commands, though accompanied with his presence, and not against his laws and authority, but in the maintenance thereof, is no levying of war against the king, but for him, especially in a time of so many successive plots and designs of force against the parliament and kingdom, of probable invasion from abroad, and of so great distance and alienation of his majesty's affections from his parliament and people, and of the particular danger of the place and magazine of Hull, of which the two Houses sitting, are the most proper judges.

In proclaiming sir John Hotham, Traitor, they say, The breach of the privilege of parliament was very clear, and the subversion of the subjects common right. For though the privileges of parliament extend not to these cases, mentioned in the Declaration of Treason, Felony, and breach of the peace, so as to exempt the members of parliament from punishment, or from all manner of process and trial, yet it doth privilege them in the way and method of their trial and punishment, and that the parliament should first have the cause brought before them, that they may judge of the fact, and of the grounds of their accusation, and how far forth the manner of their trial may or may not concern the privilege of parliament: otherwise, under this pretext, the privilege of parliament in this matter, may be so essentially broken, as thereby the very being of parliaments may be destroyed. Neither doth the sitting of a parliament, suspend all or any law, in maintaining that law, which upholds the privilege of parliament, which upholds the parliament, which upholds the kingdom.

They further assert; That in some sense, they acknowledge the king to be the only person, against whom treason can be committed, that is, as he is king, and that treason which is against the kingdom, is more against the king, than that which is against his person, because he is king: for treason is not treason, as it is against him as a man, but as a man that is a king, and as he hath, and stands in that relation to the kingdom, intrusted with the kingdom, and discharging that trust.

They also avow, That there can be no competent judge of this or any the like case, but a Parliament; and do say, that if the wicked

* See 2 Cobbett's Parl. Hist. 374.

† See No. 147, vol. 3, p. 825 of this Collection.

counsel about the king could master this parliament by force, they would hold up the same power to deprive us of all parliaments, which are the ground and pillar of the subject's liberty, and that which only maketh England a free monarchy.

The Orders of the two Houses carry in them law for their limits, and the safety of the land for their end. This makes them not doubt but all his majesty's good subjects will yield obedience to his majesty's authority, signified therein by both Houses of Parliament: for whose encouragement, and that they may know their duty in matters of that nature, and upon how sure a ground they go, that follow the judgment of parliament for their guide; They alledge the true meaning and ground of that statute, 11 Hen. 7, cap. 1, printed at large in his majesty's Message, May 4; This statute provides, that none that attend upon the king and do him true service, shall be attainted, or forfeit any thing.—What was the scope of this Statute?

Ans. To provide, that men should not suffer as traitors, for serving the king in his wars according to the duty of their allegiance. But if this had been all, it had been a very needless and ridiculous Statute. Was it then intended (as they seem to make it, that print it with his majesty's Message) that those should be free from all crime and penalty, that should follow the king and serve him in war, in any case whatsoever, whether it was for or against the kingdom, or the laws thereof? That cannot be; for that could not stand with the duty of their allegiance, which in the beginning of this Statute, is expressed to be, 'to serve the king for the time being in his wars, for the defence of him and the land.' If therefore it be against the land, (as it must be, if it be against the parliament, the representative body of the kingdom) it is a declining from the duty of allegiance, which this statute supposes may be done, though men should follow the king's person in the war. Otherwise, there had been no need of such a Proviso in the end of the Statute, that none should take benefit thereby, that should decline from their allegiance.

That therefore which is the principal verb in this, is, 'the serving of the king for the time being,' which cannot be meant of a Perkin Warbeck, or any that should call himself king, but such a one, as (whatever his title might prove, either in himself or in his ancestors) should be received and acknowledged for such, by the kingdom, the consent whereof cannot be discerned but by parliament; the act hereof is the act of the whole kingdom, by the personal suffrage of the peers, and the delegate consent of the Commons of England. Hen. 7th therefore, a wise prince, to clear this matter of contest, happening between kings *de facto* and kings *de jure*, procured this Statute to be made, 'That none shall be accounted a traitor for serving in his wars, the king for the time being;' that is, for the present allowed and received by the parliament in behalf of the kingdom. And as it is truly suggested in the

preamble of the Statute; it is not agreeable to reason or conscience that it should be otherwise, seeing men should be put upon an impossibility of knowing their duty, if the judgment of the highest court should not be a rule to guide them. And if the judgment thereof is to be followed, when the Question is, Who is king? much more, when the Question is, What is the best service of the king and kingdom? Those therefore that shall guide themselves by the judgment of parliament, ought (whatever happen) to be secure and free from all account and penalties, upon the ground and equity of this Statute.

To make the parliament countenancers of treason, they say, is enough to have dissolved all the bands of service and confidence between his majesty and his parliament, of whom the law says, a dishonourable thing ought not to be imagined.

This conclusion then is a clear result from what hath been argued; That in all cases of such difficulty and unusualness, happening by the over-ruling providence of God, as render it impossible for the subject to know his duty by any known law or certain rule extant, his relying then upon the judgment and reason of the whole realm, declared by their representative body in parliament, then sitting, and adhering thereto, and pursuing thereof, (though the same afterwards be by succeeding parliaments, judged erroneous, factious and unjust) is most agreeable to right reason and good conscience; and in so doing, all persons are to be free and secure from all account and penalties not only upon the ground and equity of that Statute, 11 Hen. 7. but according to all rules of justice, natural or moral.

Afterwards, in Easter Term, Sir Henry Vane was indicted of High-Treason, before the Middlesex Grand-Jury; and the Bill being found by them, he was upon Monday the 2nd of June in Trinity Term, arraigned to this effect;

'That you, as a false Traitor against his most excellent majesty king Charles the 2nd, your supreme and natural lord, not having the fear of God before your eyes, and withdrawing that your duty and allegiance, which a true subject ought to have and bear to our said liege and sovereign lord, the 13th of May, in the 11th year of our said sovereign lord the king, at the parish of St. Martin in the Fields, in the county of Middlesex, did compass and imagine* the death of our said sovereign lord the king, and the ancient frame of government of this realm totally to subvert, and keep out our said sovereign lord from the exercise of his regal government. And the same the better to effect, the said sir Henry Vane, the said 13th day of May, in the said 11th year, &c. at St. Martin's aforesaid, together with other false Traitors, to the jurors unknown, did traitorously and maliciously as-

* See the Note to the Case of the Regicides, ante, vol. 5, p. 972.

semble and sit together, and then and there consulted to bring the king unto destruction, and to hold him out from the exercise of his regal authority, and then and there usurped the government, and appointed officers, to wit, colonels and captains of a certain army, raised against the king; against the peace of our sovereign lord the king, his crown and dignity, and contrary to the form of the statute in that case made and provided. And the better to effect this, the 20th of December, in the said 11th year, with a multitude, to the number of a thousand persons, to the jurors unknown, in warlike manner assembled, and arrayed with guns, trumpets, drums, &c. did levy war against the peace, &c. and contrary to the form of a statute.'

Which being read, he prayed to have it read a second time, which was granted him. He then prayed to have it read in Latin, which all the court denied, and Keeling the king's Sergeant said, That though all pleas and entries are set down on record in Latin, yet the agitations of causes in court, ought to be in English.

The prisoner moved several exceptions to the Indictment, as that the 25 E. 3. is not pursued: that he had levied no such force as amounted to a levying of war; Also the place in which persons with whom, are both uncertain; and the particular acts of levying war being not set forth, he thought therefore the indictment was insufficient. Also he said, Here is a long time of action for which I am charged, and I may be concerned for what I acted as a member in that Sovereign Court of Parliament, and if any thing concerns the jurisdiction of that court, I ought not to be judged here. At which the Court and King's Counsel took great offence.

He said also, There hath been an Act of general Pardon since that time, whereby all treasons are put in utter oblivion; and though sir Henry Vane were excepted, yet none consent that he was that sir Henry Vane. But the King's Counsel said, If he would plead that plea, they would join that issue with him, if he pleased; which, if it should be found against him, it would be too late to plead not guilty.

But the Court said, In favour of life a man may plead a double plea, and give in his exception, and plead over to the felony or treason Not-guilty.

But as to the exceptions taken to the Indictment, they give little heed to them, but pressed him to plead or confess.

Whereupon he pleaded Not Guilty; and had four days, to wit till Friday next, for his trial.

¹In *Charnock's Case*, a. d. 1696, *infra*, at the prisoner's request the Indictment in Latin was read over to him twice. See the *Case infra*. After Vane's conviction the King's counsel consented that the Indictment in Latin might be read to him.

Memorandum for and towards my Defence.

Upon hearing the Indictment read, and before Pleading.

First, to lay before the court the impossibility that he humbly conceives is already in view, as to the having any such indifferent and equal trial, as the law intends him, and doth require and command on the behalf of all the free people of England. The rise for this conception he takes from what hath been already done in relation to the prisoner himself, unheard, unexamined and yet kept close prisoner for near two whole years. This he shall leave to the judgment of the court, after that he hath made known the particulars thereof unto them, as necessary to precede the thing demanded of him, in pleading Guilty, or Not Guilty.

Secondly, what is the indifferency which the law requires and appoints throughout, as well in matters that go before the trial, as in the proceedings at the trial itself.

Before the trial; and in the first step to it, which is the keeping and securing his person, Magna Charta is clear, and gives this rule, cap. 99. 'Nullus liber homo capiatur,' &c. 'No Freeman shall be taken or imprisoned, or be disseised of his freehold or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed; Nor we will not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the law of the land: We will sell to no man, we will not deny or defer to any man either justice or right.'

Out of this Chapter, as out of a root (saith Sir Edward Coke) do many fruitful branches of the law of England spring. It contains nine branches; some whereof I shall insist upon in my case.

First, That no man be taken or imprisoned but *per legem terre*, that is, by the common law or custom of England; which words *per legem terre*, though put last, refer to all the precedent branches.

Secondly, The goods of any offender cannot regularly be taken and seized to the king's use before conviction, nor be inventoried, nor the town charged therewith, before the owner be indicted of record.

Thirdly, no man shall be exiled or banished out of his country, nor be in any sort destroyed but by the verdict of his Peers.

This appears by Bracton and other ancient writers, quoted by Coke, in the third part of his *Institutes*, fol. 238.

Upon the whole matter, saith Coke, These two conclusions are manifestly proved. 1. That before Indictment, the goods or other things of any offender cannot be searched, inventoried or in any sort seized, nor after indictment, seized, removed, or taken away, before conviction or attainder. 2dly, That the begging of the goods or estate of any delinquent, accused or indicted of any treason, felony, or other offence before he be convicted and attaindered, is utterly unlawful; Stat. Ri. 1, cap. 3.

And besides, it maketh the prosecution against the delinquent, more precipitant, violent and undue, than the quiet and equal proceeding of the law and justice would permit: Or else, by some underhand agreement, stops or binders the due course of justice, and discourageth both judge, juror and witness to do their duty.

3rdly, The Judges are not to give so much as their opinion before hand, concerning the offence, whether it prove that offence in that case.

Coke in the chapter of Petty-Treason, fol. 29, expressly saith; 'And to the end the trial may be the more indifferent, seeing the safety of the prisoner consists in the indifferency of the court, the judges ought not to deliver their opinions before hand, of any criminal case that may come before them judicially.' And he there cites Humphrey Stafford's case, that arch-traitor, in which Hussey, Chief Justice, besought Hen. 7, not to demand of them their opinions before hand. And in the 4th of his Institutes in the chapter of the high court of parliament, fol. 37, he fully shews the evil of asking the judges opinions before hand.

But instead of this, The judges being assistant in the Lords' House, when all acts of parliament pass and whose advice is taken in them (as appears by what is declared in the said acts) prejudged by their opinions and the opinions of the parliament before hand, the merit of the cause that now appears to be put upon the issue in my trial. Hereby the Judges are rendered *ex parte*, and the indifferency the law requires, impossible to be afforded.

Nor is this all; but by the rules declared in the Act of Indemnity, all are disenabled to plead, or make use of the ordinances, orders and votes of both, or either Houses of parliament, that may have occasion thereof: and then by excepting the prisoner and his fellows out of the said act, and all benefit thereby, a door is left open to arraign, bring to trial and sentence the whole cause from the beginning to the ending, in the person of the prisoner, and at the same time, deprive him of all means and possibility of justification and defence.

4thly, It is observable how early hard measure appeared in the way wherein the prisoner became excepted out of the Act of Indemnity, when the Commons his proper judges, declared him in their thoughts, not 'fit to be endangered in the point of life; yet under the judgment of the Lords, (that ought not to judge commoners, unbrought before them by the Commons, much less, in opposite judgment to the Commons) the Commons were necessitated to yield, lest otherwise the Act of Indemnity to the whole nation should stop upon this dispute and essential difference between the two houses; a competition, easily over-ruled; although (as it proves by the sequel) that Act of Indemnity is like to become *felo de se*, or a destroyer of itself, if your lordships shall conceive yourselves at liberty, (notwithstanding that act) not only to bring anew into memory

upon the stage, the state of all the passed differences, from first to last, but to try and judge the merit of them in my person, and therein call in question the validity of that whole act, and make void the benefit intended by it, in case the war undertaken and managed by both of either of the houses of parliament be judged unlawful, and within the statute of 25 Edw. 3. For this adjudges all the people of England morally guilty of the evil of a sin and offence against the law of nature, which once done, whatever promised indemnity be granted for the present, the evil of the action remains upon record; not only to the infamy of the whole people of England, but their future danger, upon pretence they have forfeited the very indemnity granted.

5thly, The length of time taken to search out matter against the prisoner, and the undue practices and courses to find out witnesses, do further evidence how unlike the prisoner is to have an equal and indifferent trial: He doubts not, this will appear in his two years close imprisonment, (six months whereof was banishment) during which time, he was never so much as once examined, or had any question put to him, whereby he might conjecture wherefore he was committed to prison, any further than was expressed in the warrants of commitments.

Now these were so general, that nothing certain or particular could be gathered out of them. But upon the received opinion, that he was excepted out of the act of indemnity, and in the sense of both houses a great delinquent, his estate was attempted to be inventoried, his rentals demanded, his rents were actually seized in the tenants hands, and they forbidden to pay them, His very courts were prohibited by officers of great personages, claiming the grant of the estate, and threatening his officers from doing their duty. By these kind of undue proceedings the prisoner had not wherewithal to maintain himself in prison; and his debts to the value of above 10,000*l.* were undischarged, either principal or interest. The hopes of private lucre and profit hereby, was such in the tenants and other persons, sought out for far and near, to be witnesses, that it is no wonder at last something by way of charge comes to be exhibited.

And as this is the case of the person before his appearance at this bar, with respect to the foresaid unequal proceedings towards him, and the great disadvantages put upon him, and all these, as it were, in a continued series of design; so, the matters and things themselves with which it now appears he is charged in the indictment, make his case still very extraordinary and unusual, involving him in difficulties that are insuperable, unless God's own immediate power do shew itself in working his deliverance.

The things done, are for many years past, in a time of differences between king and parliament, and wars ensuing thereupon. Many extraordinary changes and revolutions in the state and government were necessitated in the

course of God's providence, for wise and holy ends of his above the reach of human wisdom.

The authority by which they are done, is prejudged. The Orders, Votes and Resolutions of parliament are made useless, and forbidden to be produced. Heroby, all manner of defence is taken away from the prisoner; and that which was done according to law, as the laws of those times were, is endeavoured to be made unlawful, and so the persons, acting according to such laws, are brought to punishment.

The Judges (as hath been shewed) are forestalled in their judgments, by the declared sense of parliaments, given *ex post facto*. The jurors are put upon difficulties never known before, for twelve commoners to judge the actions of all the Commons of England, in whom they are included, as to whose judgment is the right, the one or the other's; and whether their representatives be trusty.

The party indicted is under an incapacity to bring witnesses, as well from the nature of the place wherein the things were done, within the walls of the house, as from the shortness of time, having heard nothing of his charge, and being kept a close prisoner, to the last day. His solicitors and persons employed in his law-business, were also restrained from him.

It is also most evident, that the matters for which he is questioned, being the product of so many years agitations of parliamentary councils and arms, cannot be of a single concern, nor be reputed as the actions of a private man, done of his own head, nor therefore come within any of the six classes of Treason, contained in 25 Ed. 3.

It is a case most unusual, and never happening before in this kingdom; yet it is alleged in the Indictment to be a levying war within that statute, and so comes to have the name of High-Treason put upon it, thereby (if possible) to deprive him of the use and benefit of counsel, as also of competent time to prepare for his Defence, and all fitting and requisite means for the clearing of his innocency. Unto this, unless some remedy be afforded by the justice, candor and favour of this Court, it may be better for the prisoner (for ought he yet knows) to be immediately destroyed by special command (if nothing else will satisfy) within any form of law, as one to whom quarter, after at least two years cool blood, is thought fit to be denied in relation to the late wars. This may seem better, than under a colour and form of justice, to pretend to give him the benefit of the law and the king's courts, whose part it is, to set free the innocent, upon an equal and indifferent trial had before them, if their cause will bear it: but it is very visible beforehand, that all possible means of defence are taken and withheld from him, and laws are made *ex post facto*, to forejudge the merit of the cause, the party being unheard.

And when he hath said all this, that as a rational man does occur to him, and is fit for him to represent in all humility to the court, he

craves leave further to add; That he stands at this bar not only as a man, and a man clothed with the privileges of the most sovereign court, but as a Christian, that hath faith and reliance in God, through whose gracious and wise appointment he is brought into these circumstances, and unto this place at this time, whose will he desires to be found resigned up into, as well in what he now calls him to suffer, as in what he hath called him formerly to act, for the good of his country, and of the people of God in it. Upon this bottom (he blesses the name of his God) he is fearless, and knows the issue will be good, whatever it prove. God's strength may appear in the prisoner's weakness; and the more all things carry the face of certain ruin and destruction unto all that is near and dear to him in this world, the more will divine deliverance and salvation appear; to the making good of that Scripture, 'That he that is content to lose his life in God's cause and way, shall save it, and he that instead thereof goes about to save his life upon unadvised terms, shall lose it.'

Far be it therefore from me, to have knowingly, maliciously or wittingly offended the law, rightly understood and asserted; much less, to have done any thing that is *malum per se*, or that is morally evil. This is that I allow not as I am a man, and what I desire with steadfastness to resist, as I am a Christian. If I can judge any thing of my own case, The true reason of the present difficulties and straits I am in, is because I have desired to walk by a just and righteous rule in all my actions, and not to serve the lusts and passions of men, but had rather die, than wittingly and deliberately sin against God and transgress his holy laws, or prefer my own private interest before the good of the whole community I relate unto, in the kingdom where the lot of my residence is cast.

Friday, June 6, 1662.

On this day, the Sheriff returned forty-eight freeholders of the county of Middlesex. After thirty-two were challenged by the prisoner, he had a jury of twelve men sworn; to wit, sir William Roberts, jun. sir Christopher Abdy, John Stone, Henry Carter, John Leech, Daniel Cole, Daniel Browne, Thomas Chelmsam, Thomas Pitts, Thomas Upman, Andrew Bent, and William Smith.

Attorney General. (Sir Geoffry Palmer.) The Indictment is, 'For traitorously imagining and intending, &c. the death of the king.' This very imagination and compassing, &c. is treason. Yet inasmuch as the intentions of the heart are secret, the law cannot take notice of them, till they are declared by Overt-Act. Therefore we shall give in evidence, That for accomplishing of these intentions, the prisoner sat with others in several Councils, or rather confederacies, incroached the government, levied forces, appointed officers, and at last levied open and actual war, in the head of a regiment. If any of these crimes be proved, it is sufficient to make him guilty within this

indictment. And the open levying of war, and appearing in the head of a regiment, is not only a treason of itself, but an evidence of all those other treasons he stands charged with in the Indictment.

These things happening before the Act of Oblivion, you will take notice of that act; and that the prisoner being excepted by name from the benefit of that pardon, though he be chargeable for any crime of treason since the beginning of the late war, yet we shall confine the facts of which we charge him, to the reign of his now majesty.

After the House had voted the late king's Concessions in the Isle of Wight to be a good Ground for Peace, many of the members were kept out by force, others turned out; the peers laid aside, and at last the king murdered. The first thing then that we shall lay to the charge of the prisoner, is, That that very day wherein that horrid act was committed, we find his hand and seal to a Warrant to the officers of the navy to issue out stores for a Summer's Guard of the Narrow Seas. This was the first day of the reign of his now majesty. And so he enumerated all the particulars which he intended to charge him with, and proved them, as followeth,

1. The Warrant of the 30th of Jan. 1649 was proved to be the hand of sir Henry Vane by Thomas Lewis and Thomas Turner, as they believe; neither of them affirming that they saw him write it, but knowing his hand, believed it to be so.

2. Ralph Darnel, an Under-Clerk of the House of Commons, proved the Journal-Book of the House, and said, though he will not take upon him to say when sir Henry Vane was there, and when he was absent, yet he said positively, That at what time soever he is set down in the Journal, to have acted or reported any thing, he was there. In which book Febr. 7, 1649, fol. 653, was the Order to set up a Council of State.

Fol. 654, Feb. 13, where the Instructions presented to the House, upon which the Council of State was to act.

1. The first was, 'That you, or any four or more, are to suppress all and every person and persons pretending title to the kingly government of this nation, from or by the late king; Charles Stuart, his son; or any claiming from or by them or either of them, or any other single person whatsoever.'

This the Attorney said, was in the first part of that Instruction, to destroy the king's person, and in the second part, the kingly government.

2. That you, &c. are appointed to direct the forces of this commonwealth, for the preventing and suppressing of tumults and insurrections at home, or invasions from abroad; and for these ends to raise forces, &c.

3. That Feb. 14, 1649, fol. 695. Sir Henry Vane was chosen a member of the Council

of State, and acted upon these Instructions: which they proved thus; to wit, 1. That Sir Henry Vane, as fol. 893, 23rd of March 1649, reported from the Council of State, an Estimate of the Number of Ships for the Summer's Guard of the Narrow Seas. 2. March 30, 1649, Sir Henry Vane reports from the Council of State, That 10,000*l.* Parcel of the 20,000*l.* assessed upon South-Wales for their delinquency, be allowed towards the setting out of this Fleet, for the service of the parliament: which was ordered accordingly, and to be paid to sir Henry Vane, as Treasurer of the Navy. 3. That Sir Henry Vane usually sat in Council; but this deponent being never admitted to go in after the Council was set, proves that he often saw him go in at the fore-door and back-door, and often continue there all the time the Council was sitting.

William Dobbins and Matthew Lock say, That they several times saw sir Henry Vane sit in a Committee of the Council, in the years 1651 and 1652, which consisted only of members of the council; and particularly at the Committee for Scottish and Irish Affairs, where sir Henry Vane was often in the chair, and produced several orders of that Committee.

Fourthly, Feb. 12, 1649, a new Council of State was chosen, of which sir Henry Vane was one: fol. 790.

Feb. 13, 1649. All the Instructions of the former year were read and assented to.

Feb. 22, 1649, (fol. 760.) Sir Henry Vane reported the Form of an Oath of Secrecy to be administered to every of the members of the Council; which was, to keep all things which should be transacted in Council secret, and to be true and faithful to their Instructions: which the Attorney said (since their first Instructions was, to suppress all persons pretending title from the king) was in effect an oath of abjuration.

Fifthly, Anno 1651, sir Henry Vane was President of the Council of State, and several Warrants were produced, to wit, May 22, 1652, and May 22, 1652, to deliver to Major Wigan 200 Firelocks and ten Drums. The other, for the delivery of 500 Foot-Arms, for Recruit of Colonel Ingoldsby's regiment: and these were subscribed, 'By order of the Council, H. Vane President.'

April 2, 1653. A Warrant of that date was produced by the Commissioners of the Navy, of which he was one, for furnishing out the Hampshire frigate with provisions and ammunition for the use of the state.

From this time to 1659, they charge him with nothing; and then the Journal-Book was produced, and attested by Ralph Darnel, wherein, May 7, 1659, an Order was made for appointing a Committee of Safety, (whereof sir Henry Vane was one) 'That they, or any four or more of them, should take care of the Safety of this Commonwealth, and they to sit for eight days and no longer:' fol. 36.

May 13, 1659. Sir Henry Vane reported, That they had conferred with all the Foreign

* See 3 Cobb. Parl Hist, 1368.

† Ibid, 1390.

Ambassadors : that the Commonwealth is in amity with all foreign princes, but Spain.

Resolved, That Ch. Fleetwood, J. Lambert, J. Desborough, James Berry, Arthur Haslerig, Edmond Ludlow, and sir Henry Vane, be Commissioners to nominate commission-officers for the army of this Commonwealth. By virtue hereof, they proceeded, June 17, 1659, to nominate commission-officers, appointed Robert Mosse a colonel, presenting a list of his commission officers; and John Mason to be governor of Jersey.

May 31, fol. 158. Sir Henry Vane reports concerning Affairs between the two northern kings in the Sound, wherein the Affairs of this Commonwealth are concerned.

Sept. 2, 1659. At the Committee of State at Whitehall : an Order was produced for the re-delivery of the City-horses to their respective owners, signed H. Vane, President.

A Warrant was produced under the hand of sir Henry Vane, proved by Thomas Lewis and one Falconer, for so many hangers to col. Thompson, as he shall require for his regiment.

Three several Letters, to deliver 1,200 Arms for the use of my regiment; to wit, to Sam. Linn, my captain-lieutenant, 30 arms for my company; to major Thomas Shurman, major of my regiment, 4 or 5 barrels of powder.

Then one *Marsh* was produced a witness, who proves, That sir Henry Vane proposed the new Model of Government, Whitlocke being in the chair, in these particulars :

" 1. That the Supreme Power, delegated by the people to their trustees, ought to be, in some fundamentals, not dispensed with.

" 2. That it is destructive to the people's liberties (to which by God's ble-sing they are restored) to admit any earthly king or single person, to the legislative or executive power over this nation.

" 3. That the Supreme Power delegated, is not entrusted to the peoples trustees, to erect matters of faith or worship, so as to exercise compulsion therein."

Thomas Pury proves, That he was at the debating of the two last of these Propositions, and believes they were proposed to the chair-man Whitlocke by sir Henry Vane; but affirms confidently, that sir Henry Vane gave reasons to maintain them.

Tho. Wallis produced, proves sir Henry Vane and col. Rich in the head of a company in Winchester Park in Southwark; and that the captain lieut. Linn said to the soldiers, That sir Henry Vane had given them five pounds to drink; that the said Linn sent home a key to his wife to send him four pounds out of his trunk, to give the soldiers.

John Cook deposes, That he was sent to the Horseshoe-Stairs to meet sir Henry Vane and col. Rich, and that sir Henry Vane delivered five pounds to capt. Linn to reward the soldiers. This was all the Evidence given by the king's counsel: to which sir Henry Vane

was required to make his Defence, and to go through with his case all at once, and not to reply again upon the king's counsel, who resolved to have the last word to the jury.

Sir *Henry Vane*. Coke, in his Pleas of the Crown, fol. 6, saith, King is to be understood of a King regnant, and in actual possession of a crown, and not of a king when he is only *rex de jure*, and out of possession. Now an interregnum is confessed by the Indictment : all ensigns of authority, and badges of government, were visibly in another name and stile; the king's best friends suing, and being sued, in another name.

The Court told him, he should first make his case out in point of fact, and it would be then seasonable to stand upon matter of law; for (say they) it is a good rule, in *facto jus oritur*, and enjoined him to call his witnesses, if he had any.

To which sir Henry Vane desired process of court to summon them, and a further time to answer the charge. But it was told him, the Jury were to be kept without meat, drink, fire or candle, till their verdict was delivered in; and therefore that could not be granted. He then cited the fourth part of Coke's Institutes concerning the privilege of parliament, and that many of these things being transacted there—

The Court here interrupted him, and said, If the things charged were done, justify them; if not, disprove them. So he went to give answer to the fact.

And as to the first Warrant, Jan. 30, 1648-9, he said, That his hand had been oftentimes counterfeited, and amongst other occasions, for two great sums, to the value of 10,000*l.*: and that he had great reason to believe, that this warrant was forged, and produced two witnesses to prove it.

Then said Justice *Windham*: It may be your hand may have been forged for receiving of money, but it is not to be conjectured, that it should be forged to set ships to sea; and directed to the Jury to consider of the circumstances.

Sir *Henry Vane*. Neither of the witnesses ever saw me set my hand to either of these Warrants or Orders; nor doth one witness prove that he ever saw me sit in the Council of State. He further said, That he absented from the House from December 3, 1648, till February 7. That he was chosen a member of the Council of State without his consent and knowledge; and being demanded to take an oath of approbation of what had been done to the late king, he refused, and caused it to be expunged; That these actings in council, (if any were) were by authority of a parliament, of a parliament constituted in an extraordinary manner, made indissoluble but by act of parliament. He insisted much on the preamble of that act, so as that parliament being co-ordinate with the king, (for the government was in the king and the two houses) whatever he

acted by them or their authority cannot be treason within the statute of 25 Ed. 3.

He cited an Ordinance of parliament in 1642, and said, That he hoped these things had been laid asleep by the Act of Oblivion; and if they should now rise in judgment against him, he feared they would shake that security which the people promised themselves under that act. But if he should be now called in question for those things which were transacted in that parliament, of which he was a member, he shall have the comfort and peace of those actions to support him in his greatest sufferings. He added, That if he were excepted, then must he be judged for the crime of the whole nation, and that crime must be ravelled into through him: that the case is such as never yet fell out, to wit, that the government being intrusted to three estates, they should so fall out among themselves, as the people cannot tell which to obey; that where these great changes fall out, it is not possible for any man to proceed according to all formalities of law; that there was a political power by this act of 17 Caroli co-ordinate with the king; and where these powers are not in conjunction, but in enmity to each other, no Court inferior to the parliament, by whose authority these things were acted, ought to be judges of this case, which certainly never happened before.

He farther saith, He was not the first mover in these actions, and that he should be called in question for these matters by a king that was out of possession at a time when these things were acted, would be inconvenient, to say no more; that when the three estates were disjoined, he thought it the best policy to preserve the government in its root, to wit, the Commons; by whom it was preserved, and at last restored to its former course: that as to the regiment that passed under his name, he disowned it; That reports of Messages are not the fault of the reporter; for his judgment does not always go along with them, but he is bound to deliver his message; That he always loved the government as it is set forth in our ancient law-books; and that that parliament (so much decried) at last restored affairs to the posture in which they now are.

As to the Warrants signed by him, he said, they appear to be signed in the name, and by the Order of the Council; and his hand that subscribes, is not so much as active or passive to the commands of the council. If the council, who commanded the signing were unwarrantable, the parliament who appointed the council must be much more unwarrantable.

And here he offered these points to be considered and prayed earnestly to have counsel assigned him to speak to them.*

1. Whether the collective body of the parliament can be impeached of High Treason?

* See a Note to the Case of Don Pantaleon de, *ante*, vol. 5, p. 456, and a Note to the Case of Twyn, Brewster, Doon and Brooks A. D. 1663. *post*.

2. Whether any person acting by authority of parliament, can (so long as he acteth by that authority) commit treason?

3. Whether matters acted by that authority, can be called in question in an inferior court?

4. Whether a king *de jure*, and out of possession, can have treason committed against him, he not being king *de facto*, and in actual possession? and prayed it might be argued by counsel.

5. Whether matters done in Southwark, in another county, may be given in evidence to a Middlesex jury?

As to the last Exception, the Court said, That he was indicted for compassing and imagining the king's death in Middlesex; and any Overt-Act to prove this imagination, may be given in evidence, wheresoever it be acted. To which sir Henry Vane prayed the benefit of a bill of exception, upon the statute of Westminster 2. cap. 31. and prayed that the justices might seal it; which they all refused, and held, it lay not in any case of the crown.

The King's Counsel desired he might call his witnesses, (if any he had) for if they once came to reply to him, he must then be silent; and consented, that (if it would aid him) they would allow his actings to be in the name and by the authority of the council of state; and the actings of the council of state to be by authority of what he called a parliament.

Sir Henry Vane replied, Then what I acted in the Council of State, and Committee of Safety, constituted by the parliament to endure for eight days, you will allow me: then you must prove that I ever acted in the other Council of State, after the parliament was turned out.

Then the King's Counsel produced a Warrant, dated November 3, 1659, which was sent in pursuance of an Order of the Committee of Safety, by sir Henry Vane, as Treasurer of the Navy. This Warrant was for the sending of divers arms Northwards after Mr. Lambert who was gone down to oppose the now duke of Albemarle.—Sir Henry Vane produced William Angel, Brisco, Middleton, &c. officers of that regiment which went under his name; who having recourse unto him for orders about October 1659, he bad them desist, and declared his dissatisfaction in their proceedings: and this, after their several importunities to have orders from him. And thus he closed his Defence.

Solicitor Finch. As to pretence of the Power of Parliament, it is to be known, that it was not the eighth part of the House of Commons; such as were let in to do all that hath been complained, and acting under authority of such an end of a parliament, under such a violation, was no excuse, but an aggravation; but that the parliament was in law ended by the death of the late king, notwithstanding that act of 17 Caroli primi, appears thus:—The king's writ for a parliament is *ad tractandum nobiscum*; which is intended as well of

the natural capacity of the king, as of his politic. 2. It is absurd to say, that the acts of Parliament of king Charles the first, should be his acts in the time of king Charles the second. 3. A Commission of Sewers, enacted to be on foot for ten years, expires by the death of the king, and the authority of the commissioners is at an end. 4. It is not possible for one king to impose a parliament upon a successor. So much for his acting by colour of authority of parliament.—And as to the question, Whetheran House of Parliament can commit Treason, if they depart from that allegiance which they have sworn at their first meeting, they are impeachable for it. As to a co-ordination in the parliament, be denied it.—As to the question, Whether the king being out of actual possession, can have treason committed against him? be affirmed it, and said, otherwise, if rebellion should be so prosperous as to depose or oppress the king in battle, the offenders are not to be called in question, because they prevailed. He said it was the plea of Watson the Jesuit, who being indicted for compassing the death of king James in Scotland, after he was declared king of England, and before his actual entering into this realm, made this defence, that the king was never in possession of the crown.

Justice *Windham*. As to the act of 17 Caroli, and the preamble of that act, so much insisted on by the prisoner; 1. He held, that the parliament had not greater authority by it, but was only made more durable than other parliaments have been; but he held, that the parliament was absolutely dissolved by the death of the king; and put this case: if it should be enacted that such a marriage should continue till it was dissolved by act of parliament; if one dies, it is a determination of it in fact, so as no man can say but it is absolutely dissolved. 2. It must continue in the degree and dignity of a parliament. If the House be under a force, and some kept out, some let in, to serve a turn, whatever they act is a nullity in law. For freedom is the principal essence and honour of a parliament; yet though the House be under a force, the House is not dissolved by such force, but the proceedings are to be suspended, till it acquire its former liberty; and this as well by the common law, as by the civil and canon laws of all other countries. 3. The parliament is the king's great council, the peers are *conciharis nati*, if they be forced away, or laid aside, as here they were, all the rest is but *magni nominis umbra*.

Twissden held the same opinion, That it is not the sitting of a few members within those walls, that will continue it a parliament: and through another parliament, a great many years after the king's death, declared it to be at an end; yet that act was but declaration, it was at an end before. Whether a parliament may commit treason, is not the question; but whether a few of the House shutting out their fellows, and usurping the government, were not traitors?

Forster held the same opinion, and said, The distinction between the politic and natural capacity of the king, was the treason of the two Spencers: that privilege of the parliament is no shelter for breach of the peace, much less for treason.

Twissden added, That to compass the death of the king as a natural person, was treason; to compass his death in his political capacity, as to depose him, was treason; and both provided for by the act of 25 Edw. 3. That in the same instant the late king expired, in the very same his now majesty was king *de facto*; and affirmed the cases of Watson and Clark, 1 Jac. If an army be raised against the king, and the king is slain in the battle, this treason is questionable by the Successor, as *Storie's* case is in *Dyer*. 298. b.*

Thus ended the Questions of law proposed.

The Solicitor spake after to the jury concerning the fact, which after they withdrew to consider, and being withdrawn about half an hour, returned with their verdict; which being delivered by the foreman, in the name of his fellows, with their consent found the prisoner Guilty of High Treason from Jan. 30, 1648-9.

They not only found him Guilty according to the Indictment, which was laid for what the prisoner did, 1659; but for a long series of High Treason, as they reckon, from Jan. 30, 1648-9.

A true Copy of the Prisoner's own Papers containing the Substance of what he pleaded on the said day of his Trial, June 6.

That without any seeking of mine, I was chosen by writ under the great seal, to serve as Burgess for the town of Kingston upon Hull, in the parliament that sat down on the 3rd of November, 1640, and having in pursuance thereof taken my seat in the said parliament, I was obliged by law to give my attendance upon the said trust, as well as upon grounds of duty and conscience.

The said parliament was not only called and assembled after the usual manner, and had the power and privileges incident to that high court, but was by express statute and consent of the three estates so constituted, as to its continuance, adjournment, prorogation and dissolution, that in none of these particulars they were subject to alteration, but by their own common assent, declared by act of parliament, to be passed by themselves for that purpose, with the royal assent.

In the Preamble to the Act for Continuance of the said Parliament, these words are contained: "Whereas great sums of money must of necessity be speedily advanced and provided for the relief of his majesty's army and people in the northern parts of this realm, and for preventing the imminent danger this kingdom is in; and for supply of his majesty's

* See vol. 1. p. 1087, of this Collection.

present and urgent occasions, which cannot be so timely effected as is requisite, without credit for raising the said monies; which credit cannot be obtained until such obstacles be first removed, as are occasioned by fears, jealousies and apprehensions of divers his majesty's loyal subjects, That this present parliament may be adjourned, prorogued or dissolved, before justice shall be duly executed upon delinquents, and public grievances redressed, a firm peace between the two nations of England and Scotland concluded, and before sufficient provision be made for the repayment of the said monies to be raised, &c." By all which the very work that was between the three estates agreed to be done for the good and safety of the kingdom, was in sundry particulars declared and expressed; and not only so, but as is acknowledged by the late king himself in his Answer to the Nineteen Propositions, the power which thereby was legally placed in both Houses, was more than sufficient to prevent and restrain tyranny.

So that, by what hath been shewed, the law itself is with me, and for me, enjoining my continued attendance on the trust which by this means was committed to me, and authorised me in particular to effect the things contained in the said preamble; and to act in all matters belonging to the high court of parliament, for the good and safety of the kingdom in time of imminent danger: I had been liable to great punishment by the law, for disattendance and deserting my station therein, till lawfully or by force dismissed therefrom; and this, whatever occasions others might have, by a voluntary or forced departure from attendance upon that trust.

The actions therefore done by me in this capacity, and according to the law, privileges, customs and power of parliament, and that such a one as was thus extraordinarily constituted, neither are nor can be brought within the statute of 25 Edw. 3, c. 2, nor are to be questioned, tried, much less judged and sentenced, in any inferior court. Nay, so far is it from this, that by a declaration and resolution of parliament, August 13, 1642, it is adjudged to be committing Treason in the highest degree, to bring both or either Houses of Parliament under that or such like imputations.

Nor, till of late, have I ever heard but that those who took the judgment of parliament for their rule and guide, (however tortuous or erroneous it might afterwards be accounted in succeeding times) and they that acted by and under the countenance of their declared judgments, orders or ordinances, ever acknowledged binding during the sitting of the parliament, were safe and indemnified from all punishment. And for government-sake itself, it is requisite it should be so; because none are judges of the power and privileges of parliament but themselves. For admit once that their judgment may be called in question, and disputed by private persons, or by inferior courts, whose votes are included in theirs, the

fundamentals of government are plucked up by the roots. 'Par in pares non habet imperium, multo minus in eos qui majus imperium habent.' An equal has no command over his equal, much less over those that have a greater command or authority.

His late majesty, in his Answer to the Nineteen Propositions, does very briefly and exactly state the nature and kind of government that is exercised in this kingdom, saying, "The laws of this kingdom are made by a King, a House of Peers, and a House of Commons, chosen by the People, all having free votes, and particular privilege. These three estates making one incorporate body, are they, in whom the sovereignty and supreme power is placed, as to the making and repealing of laws: And the government, according to these laws, is trusted to the king, who in the interval of parliament is sole in the exercise of government, which, the parliament sitting, he is to exercise in conjunction with the two Houses."

And his said majesty asserting three sorts of government, Absolute Monarchy, Aristocracy and Democracy, does most rightly distinguish the Monarchy of England from all those three, and commends the constitution of this kingdom, as it is a mixture of all three, having the conveniences of them all without the inconveniences of any one, as long as the balance hangs even between the three estates, that they run jointly on in their proper channels, and that the overflowing of either on either side, raise no deluge nor inundation.

By the passing of the aforesaid act for the continuance of the fore-mentioned parliament, the intervals of parliament were no longer, as before, at the will and pleasure of the kings but the power to continue in the said parliament, without adjournment, prorogation or dissolution, resided in the two Houses with the king jointly, and in none of them severally: so that in effect the government of the kingdom, during the continuance of that parliament, was in conjunction of the three estates, and in their common consents and agreements among themselves given in parliament; the assembling and meeting whereof was appointed and fixed to a place certain, by law.

By reason hereof, it is not the attendance of any of the members in parliament (for discharge of the trust reposed in them, confirmed and enlarged by the said act) that is faulty or censurable by the law, but those that unwarrantably depart and desert that their trust and station, are to be blamed; 6 Hen. 8, 16.

The king in conjunction with the parliament, is *maxime Rex*, and is supported in the throne and exercise of his regal power by the joint concurrence of both Houses. And because, as his late majesty well observed, the happiness and good of the constitution of this government lies in keeping the balance even between the three estates, containing themselves within the bounds of their proper channels, therefore in attempts of either to overflow those bounds, they being co-ordinate, the office of a parlia-

ment is by the very fundamental constitution of the government, to keep this balance well poised. And to that end, as was before mentioned, his majesty's own words are, in his said Answer to the Nineteen Propositions; 'That there was legally placed in both Houses, a power more than sufficient to prevent and restrain the power of tyranny.' If so, then are they the legal judges, when there is danger of tyranny; and have legal power to require their judgment and resolves to be obeyed, not only when arms are actually raised against them, but when they discern and accordingly declare a preparation towards it; else they may find it too late to prevent the power of tyranny. There is no greater attempt of tyranny, than to arm against the parliament; and there is no visible way for the restraining such tyranny, but by raising arms in their own and the kingdom's defence. Less than this is not sufficient, and therefore far from more than sufficient for the punishment of delinquents, and restraint of tyranny.

Unto the king, in conjunction with his two houses, according as is provided by the law in this capacity of his, as *maxime Rex*, was the duty of allegiance to be yielded by his subjects during the indissolved state of that parliament: for they were the king's great council, and supreme court, exercising the known power and privileges, that time out of mind have appertained to them, and been put forth by them, as the exigents of the kingdom have required, when differences have happened about the very title of the crown, in declaring the duty of the subject, by yielding their allegiance to kings *de facto*, when kings *de jure* have been kept out of possession. This our chronicles, and the histories of former times, do plentifully inform.

The causes that did happen to move his late majesty to depart from his parliament, and continue for many years, not only at a distance, and in disjunction from them, but at last, in a declared posture of enmity and war against them, are so well known, and fully stated in print (not to say, *written in characters of blood*) on both parts, that I shall only mention it, and refer to it.

This matter was not done in a corner: the appeals were solemn, and the decision by the sword was given by that God, who being the judge of the whole world, does right and cannot do otherwise.

By occasion of these unhappy differences thus happening, most great and unusual changes and revolutions, like an irresistible torrent, did break in upon us, not only to the disjointing that parliamentary assembly among themselves (the head from the members, the co-ordinates from each other, and the houses within themselves) but to the creating such formed divisions among the people, and to the producing such a general state of confusion and disorder, that hardly any were able to know their duty, and with certainty to discern who were to command, and who to obey. All things seemed to be reduced, and, in a manner,

resolved into their first elements and principles.

Nevertheless, as dark as such a state might be, the law of England leaves not the subject thereof (as I humbly conceive) without some glimpses of direction what to do: in the cleaving to, and pursuing of which, I hope I shall not be accounted nor adjudged an offender; or if I am, I shall have the comfort and peace of my actions to support me in and under my greatest sufferings.

The resolutions of all the judges in Calvin's Case, entitled Post-nati,* in the 7th book of Coke's Reports, and the learned arguments thereupon, afford me instruction even in this matter. It may be it is truly thence affirmed, That allegiance is due only to the king, and how due, is also shewed.

The king is acknowledged to have two capacities in him; one a natural, as he is descended of the blood royal of the realm; and the body natural he hath in this capacity, is of the creation of Almighty God, and mortal. The other is a politic capacity, in respect of which he is a body politic or mystical, framed by the policy of man, which is immortal and invisible. To the king, in both these capacities conjoined, allegiance is due; that is to say, to the natural person of the king, accompanied with his politic capacity, or the politic appropriated to the natural.

The politic capacity of the king hath properly no body nor soul; for it is framed by the policy of man.

In all indictments of treason, when any one does intend the death and destruction of the king, it must needs be understood of his natural body, the other being immortal. The indictment therefore concludes *contra ligentiam sue debitum*, against the duty of his allegiance; so that allegiance is due to the natural body.

Admitting then, that thus by law, allegiance is due to the king, (as before recited) yet it is always to be presumed, that it is to the king in conjunction with the parliament, the law and the kingdom, and not in disjunction from, or opposition to them; and that while a parliament is in being, and cannot be dissolved, but by the consent of the three estates.

This is therefore that which makes the matter in question, a new case, that never before happened in the kingdom, nor was possible to happen, unless there had been a parliament constituted, as this was, unsubjected to adjournment, prorogation, or dissolution, by the king's will. Where such a power is granted, and the co-ordinates thereupon disagree and fall out, such effects and consequents as these that have happened will but too probably follow. And if either the law of nature or England inform not in such case, it will be impossible for the subjects to know their duty, when that power and command which ought to flow from

* See vol. iv. p. 559, of this Collection.

three in conjunction, comes to be exercised by all or either of them, singly and apart, or by two of them against one.

When new and never heard of changes do fall out in the kingdom, it is not likely that the known and written laws of the land should be the exact rule; but the grounds and rules of justice, contained and declared in the law of nature, are and ought to be a sanctuary in such cases, even by the very common law of England: for thence originally spring the unerring rules that are set by the divine and eternal law, for rule and subjection in all states and kingdoms.

In contemplation hereof, as the Resolve of all the Judges, it was agreed;

1. That allegiance is due to sovereignty by the law of nature; to wit, that law which God, at the creation of man, infused into his heart for his preservation and direction, the law eternal. Yet it is not this law, as it is in the heart of every individual man, that is binding over many; or legislative, but as it is the act of a community, or an associated people, by the right dictates and persuasions of the work of this law in their hearts. This appears in the case of the Israelites, Judges, chap. 20 & 21, cited in the 4th part of Coke's Institutes, where mention is made of a parliament, without a king, that made war, and that with their brethren: they met as one man to do it, in vindication of that justice unto which they were obliged even by the law of nature. This is that which chancellor Fortescue calls political power here in England; by which, as by the ordinance of man, in pursuance of the ordinance of God, the regal office is constituted, or the king's politic capacity, and becomes appropriated to his natural person.

This politic power is the immediate efflux and offspring of the law of nature, and may be called a part of it. To this, Hooker in his Ecclesiastical Polity agrees, and Selden on that subject.

The law of nature thus considered, is part of the law of England, as is evident by all the best received law books, Bracton, Fleta, Lamhard upon the Saxon laws, and Fortescue in the praise of the laws of England. This is the law that is before any judicial or municipal law, as the root and fountain whence these and all governments, under God and his law, do flow.

This politic power, as it is exercised in conjunction with, and conformity to the eternal law, partakes of its moral and immutable nature, and cannot be changed by act of parliament. Of this law it is that Magna Charta, and the Charter of Forest, with other statutes rehearsed in the Petition of Right, are for the most part declaratory: for they are not introductive of any new law, but confirmations of what was good in all laws of England before. This agrees with that maxim, 'Salus Populi suprema Lex;' that being made due and binding by this law, which in the judgment of the community, declaring their mind by their own free chosen delegates and trustees in harmony with the eternal

law, appears profitable and necessary for the preservation and good of the whole society.

This is the law, which is put forth by the common consent of the whole realm, in their representative; and (according to the fundamental constitutions of this kingdom) is that with which the kings of this land, by the joint co-operation of the three estates, do make and repeal laws.

But through the disorders and divisions of the times, these two powers, the regal and political, (which according to the law of England, make up but one and the same supreme authority) fell asunder, and found themselves in disjunction from an opposition to one another. I do not say the question is now, Which of these is most rightly (according to the principles of the law of nature, and the law of England) to be adhered unto and obeyed? but unto whether power adherence is a crime in such an exigent of state? which, since it is such a new and extraordinary case, evidently above the track of the ordinary rules, contained in the positive and municipal laws of England, there can be no colour to bring it within the statute of 25 Ed. 3, cap. 2, forasmuch as all statutes presuppose these two powers, regal and political, in conjunction, perfect unity, and subserviency, which this case does not, cannot admit. So exceeding new and extraordinary a case is it, that it may be doubted whether, and questioned how far any other parliament, but that parliament itself that was privy to all its own actings and intentions, can be an indifferent and competent judge. But however, the point is of so abstruse and high consideration, as no inferior court can or ought to judge of it, as by law books is most undeniable, to wit, Bracton, and others.

This, then, being the true state of the case, and the spring of that contest that ensued, and received its decision by the late war, the next consideration is, how far I have had my share and part therein, that by the laws is not warrantable, or by what appears in way of proof to the jury.

For the first, I shall crave leave to give you this account of myself, who have best known my own mind and intentions throughout, and would not now, to save my life, renounce the principles of that righteous cause, which my conscience tells me was my duty to be faithful unto.

I do therefore humbly affirm, that in the afore-mentioned great changes and revolutions, from first to last, I was never a first mover, but always a follower, chusing rather to adhere to things than persons, and (where authority was dark or dubious) to do things justifiable by the light and law of nature, as that law was acknowledged part of the law of the land; things that are *in se bona*, and such as, according to the grounds and principles of the common law, as well as the statutes of this land, would warrant and indemnify me in doing them. For I have observed by precedents of former times, when there have arisen disputes about titles to the crown, between kings *de facto*, and kings

de jure, the people of this realm wanted not directions for their safety, and how to behave themselves within the duty and limits of allegiance to the king and kingdom, in such difficult and dangerous seasons.

My lord Coke is very clear in this point, in his chapter of Treasons, fol. 7. And if it were otherwise, it were the hardest case that could be for the people of England: for then they would be certainly exposed to punishment from those that are in possession of the supreme power, as traitors, if they do any thing against them, or do not obey them; and they would be punishable as traitors by him that hath right, and is king *de jure*, in case they do obey the kings *de facto*: and so all the people of England are necessarily involved in treasons, either against the powers *de facto*, or *de jure*, and may by the same reason be questioned for it, as well as the prisoner, if the Act of Indemnity and the king's pardon did not free them from it. The security then and safety of all the people of England is by this means made to depend upon a pardon, (which might have been granted or denied) and not upon the sure foundations of common law: an opinion, sure, which (duly weighed and considered) is very strange, to say no more.

For I would gladly know that person in England of estate and fortune, and of age, that hath not counselled, aided, or abetted, either by his person or estate, and submitted to the laws and government of the powers that then were: and if so, then by your judgments upon me, you condemn (in effigies, and by necessary consequence) the whole kingdom.

And if that be the law, and be now known to be so, it is worth consideration, whether if it had been generally known and understood before, it might not have hindered his majesty's Restoration.

Besides, although, until this Judgment be passed upon me, the people have apprehended themselves as free from the question, and out of danger, by reason of the act of Indemnity and general pardon; yet when it shall appear to them that such their safety is not grounded on the common law, nor upon the law of nature, but that against both these and their actions they are found faulty, and tainted with a moral guilt, and that as principals also, (since in treason there are no accessaries) what terrifying reflections must this needs stir up in the mind of every man, that will be apt to believe his turn will come next, at least once in two years; as hath befallen me in my person, who (however I have been unjust and misunderstood) can truly affirm, that in the whole series of my actions, that which I have had in my eye hath been to preserve the ancient well-constituted government of England on its own basis and primitive righteous foundations, most learnedly stated by Fortescue in his book made in praise of the English laws. And I did account it the most likely means for the effecting of this, to preserve it, at least in its root; whatever changes and alterations it might be exposed unto in its

branches, through the blustering and stormy times that have passed over us.

This is no new doctrine in a kingdom acquainted with political power, as Fortescue shews ours is, describing it to be in effect the common assent of the realm, the will of the people or whole body of the kingdom, represented in parliament. Nay, though this representation (as hath fallen out) be restrained for a season to the Commons house, in their single acting, into which (as we have seen) when by the inordinate fire of the times, two of the three estates have for a season been melted down, they did but retire into their root, and were not hereby in their right destroyed, but rather preserved, though as to their exercise laid for a while asleep, till the season came of their revival and restoration.

And whatever were the intents and designs of others who are to give an account of their own actions, it is sufficient for me that at a time critical and decisive, though to my own hazard and ill usage, I did declare my refusal of the Oath of Abjuration, which was intended to be taken by all the members of parliament, in reference to kingly government, and the line of his now majesty in particular. This I not only positively refused to take, but was an occasion of the second thoughts which the parliament reassumed thereof, till in a manner they came wholly at last to decline it: A proof undeniable of the remoteness of any intentions or designs of mine, as to the endeavouring any alteration or change in the government; and was that which gave such jealousy to many in the house, that they were willing to take the first occasion to shew their dislike of me, and to discharge me from sitting among them.

But to return to what I have before affirmed; as to my being no leading or first actor, in any Change; it is very apparent by my deportment at the time when that great Violation of Privileges happened to the parliament, so as by force of arms several members thereof were debarred coming into the House, and keeping their seats there. This made me forbear to come to the parliament for the space of ten weeks, to wit, from the 3rd of December 1648, till towards the middle of February following, or to meddle in any public transactions; and during that time the matter most obvious to exception, in way of alteration of the government, did happen. I can therefore truly say, that as I had neither consent nor vote at first in the Resolutions of the Houses, concerning the Non-Addresses to his late majesty, so neither had I in the least any consent in, or approbation to his death: But on the contrary, when required by the parliament to take an oath, to give my approbation *ex post facto* to what was done, I utterly refused, and would not accept of sitting in the Council of State upon those terms, but occasioned a new oath to be drawn, wherein that was omitted. Hereupon many of the Council of State sat, that would take the other.

In like manner the Resolutions and Votes

for changing the government into a Commonwealth or Free State were passed, some weeks before my return to parliament: Yet afterwards, so far as I judged the same consonant to the principles and grounds, declared in the laws of England, for upholding that political power which hath given the rise and introduction in this nation to monarchy itself, by the account of ancient writers, I conceived it my duty, as the state of things did then appear to me, notwithstanding the said alteration made, to keep my station in the parliament, and to perform my allegiance therein to king and kingdom, under the powers then regnant, (upon my principles before declared) yielding obedience to their authority and commands. And having received trust in reference to the safety and preservation of the kingdom, in those times of imminent danger, both within and without, I did conscientiously hold myself obliged to be true and faithful therein. This I did upon a public account, not daring to quit my station in parliament by virtue of my first writ: Nor was it for any private or gainful ends to profit myself, or enrich my relations. This may appear as well by the great debt I have contracted, as by the destitute condition my many children are in, as to any provision made for them. And I do publicly challenge all persons whatsoever, that can give any information of any bribes or covert ways used by me, during the whole time of my public acting. Therefore I hope it will be evident to the consciences of the jury, that what I have done hath been upon principles of integrity, honour, justice, reason, and conscience, and not, as is suggested in the Indictment, by 'Instigation of the devil, or want of the fear of God.'

A second great Change that happened upon the constitutions of the parliament, and in them of the very kingdom itself, and the laws thereof, (to the plucking up the liberties of it by the very roots, and the introducing of an arbitrary regal power, under the name of Protector, by force and the law of the Sword) was the usurpation of Cromwell; which I opposed from the beginning to the end, to that degree of suffering and with that constancy, that well near had cost me not only the loss of my estate, but of my very life, if he might have had his will, which a higher than he hindered: yet I did remain a prisoner, under great hardships, four months in an Island, by his orders.

Hereby, that which I have asserted is most undeniably evident, as to the true grounds and ends of my actions all along, that were against usurpation on the one hand, or such extraordinary actions on the other, as I doubted the laws might not warrant or indemnify, unless I were enforced thereunto by an over-ruling and inevitable necessity.

The third considerable Change was the total disappointing and removing of the said Usurpation, and the returning again of the members of parliament to the exercise of their primitive and original trust, for the good and safety of the kingdom, so far as the state of the times

would then permit them; being so much, as they were, under the power of an army, that for so long a time had influenced the government. Towards the recovery therefore of things again into their own channel, and upon the legal root of the peoples liberties, to wit, their common consent in parliament, given by their own deputies and trustees, I held it my duty to be again acting in public affairs in the capacity of a member of the said parliament, then re-entered upon the actual exercise of their former power, or at least struggling for it. In this season I had the opportunity of declaring my true intentions as to the government, upon occasion of refusing the Oath of Abjuration before mentioned.

And whereas I am charged with keeping out his majesty that now is, from exercising his regal power and royal authority in this his kingdom; through the ill-will borne me by that part of the parliament then sitting, I was discharged from being a member thereof about Jan. 9, 1660, and by many of them was charged, or at least strongly suspected, to be a royalist. Yes, I was not only discharged from my attendance in parliament, but confined as a prisoner at my own house, some time before there was any visible power in the nation that thought it seasonable to own the king's interest. And I hope my sitting still will not be imputed as a failure of duty, in the condition of a prisoner, and those circumstances I was then in. This I can say, That from the time I saw his majesty's Declarations from Breda, declaring his intentions and resolutions as to his return, to take upon him the actual exercise of his regal office in England, and to indemnify all those who had been actors in the late differences and wars, (as in the said Declaration doth appear) I resolved not to avoid any public question, (if called thereto) as relying on mine own innocency, and his majesty's declared favour, as before said. And for the future, I determined to demean myself with that inoffensiveness and agreeableness to my duty, as to give no just matter of new provocation to his majesty in his government. All this, for my part, hath been punctually observed, whatever my sufferings have been. Nor am I willing in the least to harbour any discouraging thoughts in my mind as to his majesty's generosity and favour towards me, who have been faithful to the trust I was engaged in, without any malicious intentions against his majesty, his crown, or dignity, as before hath been shewed; and I am desirous for the future to walk peaceably and blamelessly.

Whatever therefore my personal sufferings have been since his majesty's Restoration, I rather impute them to the false reports and calumnies of mine enemies, and misjudgers of my actions, than reckon them as any thing that hath proceeded from his majesty's proper inclination, whose favour and clemency I have had just reason, with all humility, to acknowledge.

First, with regard to his majesty's Speech,

made the 27th of July, 1660, in the House of Peers, wherein his majesty expressly declared it to be no intention of his that a person under any circumstances should be excepted out of the Act of Indemnity, either for life or estate.

And Secondly, However it was the parliament's pleasure (myself unheard, though then in the Tower, and ready to have been brought before them) to except me out of the common Indemnity, and subject me to question for my actions, yet they themselves of their own accord (admitting the possibility that in such questioning of me I might be attainted) made it their humble desire to his majesty, that in such case execution, as to my life, might be remitted. Upon this his majesty readily gave his grant and assent. And I do firmly believe, if the Houses had pleased to give me the opportunity and leave of being heard, they would never have denied me the Indemnity granted to the rest of the nation.

That which remains of further Charge yet to me is the business of a Regiment, an employment which I can in truth affirm, mine own inclinations, nature, and breeding, little fitted me for, and which was intended only as honorary and titular, with relation to volunteers, who, by their application to the Council of State, in a time of great commotions, did propound their own officers, and, (without any seeking of mine, or not considering any farther of it, than as the use of my name) did, among others, nominate me for a colonel, which the Council of State approved, granting Commissions to myself, and all other officers relating thereto; and the parliament confirmed my said commission, upon report thereof made to them.

This will appear by several witnesses I have to produce in this matter, that will be able to affirm how little I took upon me, or at all, to give any orders, or make use of such my Commission, any otherwise than in name only.

It is true, indeed, that at a certain time, when I was summoned to appear at the Committee of the Militia, in Southwark, whereof I was a member, that which was called my own company of foot, from the respect which they and their officers pretended to me, were desirous to be in a posture fit for me to see them; and as I passed by, I took the opportunity, at their desire, to shew myself to them, and only, as taking notice of their respect, in some few words, expressing the reason. I had to receive it in good part, I told them I would no longer detain them from their other occasions. After I was gone from them, I appointed my captain-lieut. to give them from me something to drink, as might be fitting on such an occasion, which, to my best remembrance, was 5*l*.; and he laid it out of his own money.

More than this, as I remember, was not done by me; so much as to the seeing any more the companies of that regiment gathered together, or giving orders to them: Which I publicly and avowedly declined, persuading the officers to lay down their Charges in mine own example, so soon as I discerned the inten-

tions of the sitting down of the Committee of Safety, and the exorbitant power committed to them to exercise, and the way of proceedings by the army, in interesting themselves in the civil government of the nation, which I utterly disliked.

And although I forbore not to keep my station, in reference to the Council of State, while they sat, or as a Commissioner of the Admiralty, during the time by them appointed to act by parliamentary authority, and so had occasion to be daily conversant with the members of the Committee of Safety (whereof myself, with others that would not accept, were named;) yet I perfectly kept myself disinterested from all those actings of the army, as to any consent or approbation of mine, (however, in many things, by way of discourse, I did not decline converse with them) holding it my duty to penetrate as far as I could into their true intentions and actions; but resolving within myself to hold true to my parliamentary trust in all things wherein the parliament appeared to me to act for the safety and good of the kingdom. However, I was misinterpreted, and judged by them as one that rather favoured some of the army, and their power.

Upon the whole matter, there is not any precedent that ever both or either of the houses of parliament did commit treason: For though privilege of parliament does not so hold in treason, but that particular members may be punished for it, yet it is unprecedented, that both or either houses of parliament, as a collective body, ever did or could commit treason.

All the acts done in parliaments have been reversed, indeed, and repealed, as what was done 11 Rd. 2. was repealed 21 Rd. 2. and what was done 21 Rd. 2. was repealed 1 Hen. 4. 3. as appears by the printed Statutes: Yet I do not find that both or either house of parliament were declared traitors for what they did in those parliaments; or that any which acted under them suffered for the same in any inferior Courts. And surely the reason is obvious: For they had a co-ordinancy in the supreme or legislative power for the making altering, and repealing laws. And if so, 'par in parem non habet imperium.' And by authorities out of Bracton, Fleta, and others, it may appear what superiors the king himself hath, (who yet hath no peer in his kingdom, 'nisi curiam baronum,' God, law, and parliament.

And if either or both Houses cannot commit treason, then those that act by their authority cannot: For, 'Plus peccat autor quam actor,' the author offends more than the actor. If those that command do not, nor can commit treason, how can those that act by their authority be guilty of it?

Further, I must crave leave to assert, by reason of what I see opened upon the Evidence, that what is done in parliament, or by their authority, ought not to be questioned in any other Court: For every offence committed in any Court, must be punished in the same, or in some higher, and not any inferior Court. Now

the Court of parliament hath no superior Court, as is said in "Coke's Jurisdiction of Courts." And the reason there given that Judges ought not to give any opinion in a matter of parliament, is, Because it is not to be decided by the common laws, but 'secundum legem et consuetudinem parliamenti.' This the Judges in divers parliaments have confessed. And that reason is not to be waved, which the lord Coke gives, That a man can make no defence; for what is said and acted there, is done in council, and none ought to reveal the secrets of the House: Every member hath a judicial voice, and can be no witness.

June the 11th.

After the customary formalities of the Court, The Clerk demanded of sir Henry Vane what he had to say why Sentence of death should not be passed upon him?

Sir Henry Vane first alledged, That he had not yet heard the Indictment read in Latin. The debate upon this took up some time: At length some of the king's counsel desired that the prisoner might be satisfied in that point. Sir Henry desired that counsel then might also be assigned him, to make Exceptions thereto, if they found cause; otherwise he valued not the hearing of it read in Latin. This was overruled by the Court: He soon therefore desisted from any further urging it.

The next thing sir Henry offered in his own Defence was the Bill of Exceptions, which he brought with him ready drawn, and offered it to the Judges, desiring them, according to the Statute of Westm. 2. 31. made 13 Edw. 1, to sign it. This he urged so home, that the Statute was consulted and read in open Court, running in favour of the prisoner to this effect: "That if any man find himself aggrieved by the proceedings against him before any justices, let him write his Exception, and desire the justices to set their seals to it." "This act was made (says Coke) that the party wronged might have a foundation for a legal process against the justices by a Writ of Error, having his Exception entered upon record in the Court where the injury is done, which through the justices overruling it, they could not before procure, so the party grieved was without remedy; for whose relief this statute was made. The justices refusing to set their seals, the party grieved may have a writ grounded on this statute, commanding them to set their seals to his Exception. This Exception extends not only to all pleas dilatory and peremptory, &c. but to all challenges of any jurors, and any material evidence, given to any jury, by which the Court is overruled." As in this prisoner's Case the Testimony about falsifying of his hand to writing, &c. was, by what was offered to the jury by justice Windham.

Further, says Coke on this statute, "If the justice (or justices) die, their executors or administrators may be proceeded against for the injury done. And if the judge (or judges) deny to seal the Exception, the party wronged may

in the Writ of Error take issue thereupon, if he can prove by witnesses the judge or judges denied to seal it."

Notwithstanding all this, the judges overruled this plea also, by such interpretation as themselves put upon that statute, to wit, That it was not allowable in criminal cases for life. This makes the law less careful for the preservation of a man's life, than any particulars of his estate, in controversies about which this statute is affirmed by them to hold. Whereas life is the greater, and innocent blood, when spilt, is irreversible, as to the matter, it cannot be gathered up again: The estate is the lesser; and if an erroneous judgment pass about it, it is reversible upon traverse, Writ of Error, or otherwise.

The reason they alledged for their pretended Opinion was this, That if it be held in criminal cases for life, every felon in Newgate might plead the same, and so there would be no Gaol-Delivery.

Sir Henry answered, His case was not the case of common felons, alledging the grant of his majesty to the Petition of both Houses for his life, in case he should be attainted. There is no need therefore sure (said he) of fearing the consequence of spinning out the time a little with a person in his circumstances. Besides, (he said) he had been a prisoner two years, and never called on to give any account of himself and his actions, (so is it not with felons;) which, with other considerations, may sufficiently evince that there is no need of such hastening his death. He told them withal, that he desired not this for his own sake only, but for theirs, and for posterity; that they might, on a more leisurely and unprejudiced hearing of what may be said on all hands, prevent the bringing of innocent blood upon themselves and the land.

But being in this also overruled by the Court, (say what he would) he only desired he might understand whether they would all give it as their common judgment they would stand to, That what he desired was not his due by the law? By this means they were all put upon it, one by one, to declare themselves in that point, unanimously denying him the benefit of that Act. To the by-standers their chief reason seemed to be, That it had not been practised this hundred or two of years.

The third thing sir Henry desired was, That the Petition of both Houses, with his majesty's Answer thereunto, might be read in the Court; which, after some dispute, was concluded to be a thing they were not bound to take notice of, not being an act of parliament. Yet what is any act of parliament, but a bill presented with the Petition of both Houses to his majesty, with his royal assent thereto, upon public record? At length they condescended to read it; and that was all.

The fourth and last thing sir Henry Vane offered to the consideration of the bench was this, That in regard there were Questions touching matter of law in his case, which must

receive their determination in parliament, he desired he might have counsel assigned him, to argue them before their lordships. Some of these points he instanced in, to wit;

1. Whether a parliament were accountable to any inferior Court?

2. Whether the king, being out of possession, and the power regent in others—

Here they stopped him, not suffering him to proceed, nor admitting that the king was ever out of possession. To which sir Henry replied, The words of his Indictment ran thus, 'That he endeavoured to keep out his majesty;' and how could he keep him out of the realm, if he were not out?

But when he saw they would over-rule him in all, and were bent upon his condemnation, he put up his Papers, appealing to the righteous judgment of God, who (he told them) must judge them as well as him, often expressing his satisfaction to die upon this Testimony; which Keeling, one of the king's counsel, insultingly answered, 'So you may, Sir, in good time, by the grace of God.' The same person had often before shewed a very snappish property towards the prisoner; and sir Henry sometimes answered him according to his folly: For when he would have had the book out of the prisoner's hand, wherein was the statute of Westminster, 2d. c. 31; Sir Henry told him, 'He had a very officious memory, and when he was of counsel for him, he would find him books.' (Whereby was verified what was said to be spoken by him, at first, in answer to one of his brethren, on the Arraignment-day, "Though we know not what to say to him, we know what to do with him.")

The BILL of EXCEPTIONS, translated out of the best Latin form the prisoner could procure; no council learned in the law daring to assist him in those circumstances, without assignment from the Court, which was denied.

First, Concerning my Imprisonment.

(1.) I shall here mention my entrance into this new scene of sufferings under the present power (after my having been handled at will and pleasure, under the six years usurpation of Cromwell) which I conceive not to have been at all according to the law of the land, as may appear by the 29th chap. of Magna Charta, and Coke upon it, with many other Statutes and law-books: in all which it appears that the law of England is so tender, not to say curious, in providing for the subject's liberty, that he is not to suffer the least restraint, confinement or imprisonment, but by the lawful judgment of his peers, or by the law of the land. Contrary to all which, I was committed at mere will and pleasure, and have been detained close prisoner these two years, without any cause specified, or any particular crime laid to my charge.

Secondly, Concerning Transactions at the Grand Jury.

(2.) The Grand Jury of Middlesex, without

my privity, knowledge or presence (after I had been kept a close prisoner two full years) did meet, take the Depositions of witnesses, and find the Bill against me, which inevitably exposed me to a trial at the King's-Bench bar, for I knew not what: whereas major Rolf and others have had the right of Englishmen granted them, to be present at the Grand Jury's proceedings; yea, and to have counsel also present to plead any thing in a way of reason or law, for invalidating the testimony, or disabling the witnesses, whereby the Indictment hath been immediately quashed; and so the party accused delivered from any shadow of infamy, by so much as appearing in the circumstances of a malefactor at any public bar of justice. That this Prisoner had great need of that privilege of being present himself, or having counsel and other friends present at the Grand Jury, will appear hereafter, by the subdolous and injurious handling of matters there.

Thirdly, Concerning the Jurisdiction of the Court.

(3.) The offences supposed to be committed by me, are things done not of my own head, but as a member of the Long Parliament, or in pursuance of their authority. The matters done by me, in the one respect or other, if they be deemed offences, are punishable only in parliament; and I ought not to be questioned for them in any inferior court, as Coke shews in the 4th part of his Institutes, chap. 1, concerning the High Court of Parliament. For the parliament is not confined in their actings by the law, which inferior courts are tied up to; but in divers cases are privileged to act extraordinarily and unaccountably to any but themselves, or succeeding parliaments. Moreover, that parliament was extraordinarily commissioned, qualified and authorized by express act of parliament, beyond all preceding parliaments, for the causes and ends declared in the preamble of the Act for their establishment, accorded and passed by the joint consent of King, Lords and Commons, whereby they became unsubjected to adjournment, prorogation or dissolution, but by their own respective voluntary consents, to be by them expressed and passed for that purpose, with the royal assent; which occasioned his late majesty, in his Answer to the Nineteen Propositions, to say, "That the power hereby legally placed in both houses, was more than sufficient to prevent and restrain the power of tyranny."

And further, the bringing of this case under the jurisdiction of this court, or of any other but a parliament, may prove of very dangerous consequence, in point of precedent, and most disagreeing to all rules of justice. For, First, By the same reason that I am questioned in this court, not only every member of parliament, but the very houses themselves, with all their debates, votes and orders, may not only be questioned, but referred to a petty-jury, and so come to be judged and sentenced by a court inferior to themselves; which judges in

all times have disclaimed and acknowledged to be out of their power, according to the known rule, "Par in pares non habet imperium, multo minus in eos qui majus imperium habent."—Secondly, In such case the parties accused will be debarred of evidence or witness for their justification and defence. For no members, &c. present at debates in parliament, (who are the only eye and ear-witnesses of what is said and done there) ought to discover the counsels of the House.

Fourthly, Concerning the Indictment.

1. I have not been permitted to have a copy or sight of the Indictment, nor so much as to hear it read in Latin, which is the original record of the court, and ought to be the foundation of their whole proceeding with me. I often desired these things of the court; yea, or at least to have but the transcripts of some particular clauses in the Indictment, to enable me to shew the deficiencies thereof in law, (all which, others in such cases have often obtained) but nothing would be granted herein.

This then was my hard lot and usage; I was put (after two years close imprisonment) to answer for my life to a long Indictment read in English, which whether it were rightly translated how should I know, that might not hear the original record in Latin? Counsel also learned in the law were denied me, though pressed for by me again and again, before I pleaded. And had they been granted, what could they have said as to defects of law in the Indictment, unless they might have a copy of it? What can any counsel say to any petty business concerning any part of a man's estate that is in controversy, unless they may have a leisurely view and perusal of the writings thereabouts? Much more sure will it appear requisite to the reason of all mankind, when a man's whole estate, life and all, are at stake. It is true, before I pleaded, the Court promised I should have Counsel assigned me after pleading ["God forefend else," said the Lord Chief Justice] but it is as true, I never could yet see that promise made good. All things tending to a fair trial were promised me in general before pleading, but every material particular for the just defence of my life, hath been denied me ever since. And my trial for life was huddled up the next day of my appearing before you: the Jury (as was told me) must not eat nor drink till they had done their work: (so the more than forty *Jerry-men* that resolved to kill Paul, Acts xiii. 21.) But why such haste and precipitancy for a man's life, that is more than meat or estate, when you can let civil causes about men's estates depend many years? And if an erroneous judgment be passed in such matters, it is reversible; but if innocent blood be spilt, it cannot be gathered up again, as the wise woman of Tekoah said, 2 Sam. xiv.

2. But secondly, then, as to Defects in the Indictment, which I was in some measure enabled to observe from that broken hearing

thereof, that was afforded me here in the court; I say there are many, and those very considerable: and by the law of England I ought not to have been urged to plead or make answer to any such an illegal and defective indictment.

1. There is no sufficient Overt-Act therein alledged of the prisoner's imagining the king's death, or that he had any the least intention that way.

2. The Levying of a War is alledged in Southwark, and cannot therefore be tried by a jury of Middlesex, Dyer, fol. 234. and the 3d part of Coke's Institutes, fol. 34.

3. There is uncertainty and obscurity in the main thing alledged against me in the indictment; to wit, "That I, together with a multitude of persons, to the number of a thousand, unknown to the jury, &c." whereas no criminal act can be tried that is not certain; 'Certa res debet esse quæ deducitur in iudicium.'

4. The treason laid to my charge, is alledged to have been committed with a multitude of other false traitors, which were pardoned by the Act of Indemnity; Such supposed crimes therefore of theirs cannot be remembered or alledged, without a manifest breach of the Act of Indemnity and Oblivion.

The Indictment is, or ought to be founded on some clause or branch of 25 Edw. 3, c. 9, but no such overt-act is alledged in the indictment, or proved by witnesses, as doth discover that I had any intention to kill, depose, or hold out the king from the possession and exercise of his regal power. Whereas I am accused of 'compassing or imagining the death of the king,' this must be understood of his natural or personal^{*}, not politic capacity, for in this latter sense the law says, 'The king cannot die.'

First then, to compass only the deposition of the king, is not within the words of that statute (several kings have been deposed by parliament since the Conquest); and as to my compassing or designing the natural death of the king's person, with what colour can I be accused of such intentions, in the circumstances the king at that time was in beyond the seas?

Secondly, The assembling of men together without any hostility or injury offered to any person, but for a man's own security and defence in a time of confusion and distraction, is not levying war, or treason at the common law, or by that statute. Yea, in this case, and at the season wherein such an act as this is alledged, it might be supposed to be done for the king's restoration, as well as in opposition thereunto: and the most favourable and advantageous construction ought to be made and put upon the prisoner's actings or words, where there is ambiguity, so that they may be taken or interpreted divers ways. For the law always presumeth actions to be innocent, till the contrary be manifestly proved. However, in a time of

* See Luders's Considerations on the Law of High Treason in the Case of Levying War, p. 71, 72.

vacancy or an interregnum, when the foundations of government are out of course, by the law of reason, nature, and common prudence, every man may stand upon his own guard, endeavouring his own security and protection from injury and violence.

Thirdly, To be adherent to the king's enemies within this realm, &c. cannot, ought not to be understood of any adhesion to a parliament, wherein the king by law is supposed always present, as a part thereof. Nor can the Long Parliament be called the king's enemies, without overthrowing the Act of Indemnity, which the king hath declared to be the foundation of the nations' present peace and security.

Lastly, The Treasons alledged in the Indictment are said to have been committed when the king was out of possession: So the Indictment runs, "To keep out the king," &c. Now my lord Coke in the third part of his Institutes, fol. 7. saith, 'A king *de jure*, and not *de facto*, is not within the statute; against such a one no treason can be committed. For if there be a king regnant in possession, though he be *rex de facto*, and not *de jure*, yet he is Seigneur le Roy, within the purview of this statute; and the other that hath right, and is out of possession, is not within this act. Nay, if treason be committed against a king *de facto et non de jure*, and after the king *de jure* cometh to the crown, he shall punish the treason done to the King *de facto*.'

And after, in the same place he saith, 'That by law there is always a king, in whose name the laws are to be maintained and executed, otherwise justice would fail.' The act also of 11 Hen. 7, was made for security of the subject on this behalf. The word 'King' also may and ought to be taken largely for any sovereign power in a king or queen, as Coke in the place fore-quoted shews; and why not, by the same reason, in a Protector, though an usurper, or any other persons, one or more, in whom sovereignty is lodged, or that have all the badges of sovereignty; as the calling of parliaments, enacting of laws, coining of money, receiving foreign ambassadors, &c. His majesty that now is, is granted by the very Indictment to have been then out of possession: if so, then was there either some other king, or what was equivalent, some sovereign power in actual possession and exercise, or none. If the former, then was there a king *de facto*, so no treason, could be committed against him that was king *de jure*, only; If the latter, then the government was dissolved, no allegiance was due to any persons, and so no offence could be properly treason within the statute.

But had the late Protector had the name and style of a king, no treason could have been committed against the king *de jure* only. Now God forbid that you should give away my life, upon such niceties, because an usurping Protector was not clothed with the title as well as power of a king. The Protector or any usurper's taking or not taking the title of a king, in case he have the power, cannot alter the state

of my supposed crime. You ought not to be biassed by popular reports concerning me. It is easier to be innocent, than so reported: The one is in our power, not the other.

Fifthly, Concerning the Evidence.

1. No allegation was directly proved by two positive lawful witnesses, as in this case it ought.

2. One of the witnesses for the king confessed in open Court, That to his knowledge my hand had been counterfeited, to my prejudice and damage in great sums of money; yet Orders pretended to be signed by me (wherein my hand may as well be counterfeited), are taken as evidence against me.

3. The issue of the whole cause depended on the solution of some difficult Questions of so high a nature, and great importance, as could not safely be determined but in the high court of parliament: As,

1. Whether the Long Parliament called in November 1640, were dissolved by the late king's death?

2. Whether the successive remaining powers that exercised the royal supreme authority from 1648, to the Restoration of his now majesty, were not within the true sense and meaning of 25 Edw. 3, and 11 Hen. 7.

REASONS FOR AN ARREST OF JUDGMENT, writ by the Prisoner, but refused to be heard by the Court.

I. I have been denied so much as to hear the Indictment read in Latin, as it is the original record of the Court: yet, so much as a copy of it in English hath been denied me during the whole time of my trial; by the sight whereof I might be able to assign the defects of law that may be in it.

Counsel also hath been denied, not only before I pleaded, but after; and all points by me offered in law to the Judges of the Court have been over-ruled, without admitting me counsel to argue the same, and better inform the judgment of the court. I have demanded that I might put in a Bill of Exceptions upon the Statute of Westminster. 2. cap. 31. This likewise is denied me, over-ruled, and judged as out of that Statute. Neither will counsel be allowed me in this, to shew cause why it ought to be admitted as of right. And as no counsel was allowed, so neither were the judges counsel to me, as they said themselves they would and ought to be, but rather suffered me to wrong and prejudice myself; some of them saying, 'Let him go on, the worst will be his own at last.' And they neither checked nor restrained the king's counsel in their high and irritating expressions to the jury, to find me guilty: one of whom was seen to speak privately with the foreman of the jury, immediately before the jurors went from the Bar, after he had spoken openly, 'That the prisoner was to be made a public sacrifice, in reference to the actions done against his majesty that now is.'

All this is very far from that indifferency in trial, and from that equality which the law requires, and they are bound by their oaths to

afford me; besides the undue proceedings in the business of the Petty Jury. A list of forty-eight persons was presented to me, who being to me unknown, and no time allowed me to gain any knowledge of them, though I was permitted to challenge, and refuse three juries, without shewing cause, yet could not that refusal be upon such rational grounds as the law supposes, which doubtless intends substantial relief to the prisoner, in allowing him the liberty of such refusal; whereas, through my ignorance of the persons, I might refuse the best, and chuse the worst, as to my safety. And then whereas the law further allows me the refusal of any other beyond the thirty-five, on just and exceptionable cause shewn, what just exception was I capable to alledge in a sudden hurry against persons to me altogether unknown, unless it would be taken for a just one, that they were unknown to me?

All these things being so contrary to the right which the Judges stand obliged to do every one, as they are for that purpose intrusted by God and the king, is just cause for an Arrest of Judgment, and a good reason why they should yet at length allow me a copy of the Indictment, and assign counsel to argue for the prisoner against the defects in law that may be found therein. Without this, law is denied me, which is my birthright and inheritance; the best birthright a subject hath, says Coke on Magna Charta: for thereby (says he) his goods, lands, wife, children, his body, life, honour, and estimation, are protected from injury. The life, birthright, or inheritance, we have from our parents, may soon be gone, if this fence thereof be broken down. How great a wrong then, it is for the court to withhold it from me, is manifest. Are they not therefore in effect chargeable with my blood, by such unequal proceedings as I have had in my trial?

II. My Second Reason for an Arrest of Judgment is drawn from the issue that is joined in my case, which seems to depend chiefly upon matter of law; and that in such tender and high points, as are only determinable in the high court of parliament.

For it is become the question, Whether I am guilty or not guilty, according as these Propositions following are truly or erroneously resolved.

1. Whether the parliament that began November 3, 1640, were dissolved by the king's death? and whether this court may judge things done in parliament?

2. Whether the powers regnant, and *de facto* that successively were in being, from Jan. 30, 1649, to Decemb. 20, 1659, were such powers, *de facto*, as are the king, or Seigneur le Roy, within the purview of the Statute of 25 Edw. 3. having the exercise of regal power in all the particulars of it, though not the name?

3. Whether during that time fore-mentioned his majesty that now is were properly king *de facto*? or whether he were not out of possession and without all exercise of his regal authority within the realm?

4: Whether the case now in question be a Treason literally within the words of the Statute 25 Edw. 3, or at most, any other than an interpretative and new treason, not declared before the very time of my trial; and that only by the judgment of the court, or opinion of my judges, eleven years after some of the things charged on me, are alledged to have been committed?

As for the first of these, the Act for continuance of the Long Parliament is express: 'That all and every thing or things whatsoever, done or to be done, for the adjournment, proroguing or dissolving of that parliament, contrary to that act, shall be utterly void and of none effect.' I then thus argue:

The Judges do upon occasion of this trial resolve, That the king's death dissolved that parliament. No act of parliament hath yet declared it to be so; and the Judges ought to have some law for their guide, as Coke well says. To be sure, if in process of time the parliament shall expressly declare, That not the king's death, but the Act for the dissolution of that parliament, did dissolve it; in such case, these Judges resolution by virtue of such act is absolutely void. But innocent blood in the mean time may be shed, and an estate wrongfully taken away. And in case what the Judges assert herein were law, it is law not known or declared till many years after the fact committed. At this rate, who is secure of estate or life?

As to the second and third Queries or Propositions, it does appear out of the third part of Coke's Institutes, fol. 7. and the statute 11 Hen. 7. cap. 1. that actings for the king in fact, are not to be questioned by the king in right. If it be said, That there was no king in this case; it may be replied; That they who had the power and exercise of the royal jurisdiction, as to peace and war, coinage of money, power of life and death, &c. which are the highest ensigns of regal authority, must needs be the powers regnant, though not under the name of king, as are within the statute of 25 Edw. 3, c. 2. as a queen also is adjudged, and any sovereign prince, though under the title only of lord, as was the case of Ireland before it was a kingdom. And if so, why not in more such persons as well as one, that *de facto* exercise the royal power and sovereign authority, under what name or title soever? If upon this nicety, judgment be given against me, because the powers regnant wanted the name and formality of a king, I shall doubtless have very hard measure. For the reason and equity is the same, if the powers regnant had the thing, though not the title. And where there is the same reason, there is the same law, as is a known rule. Now there is the same reason the subject should be equally indemnified, that acteth under any sovereign authority that hath not the name of a king, as if it had. If there had been many kings, as a Heptarchy hath been in England heretofore, those would have been understood to be within the statute;

and the reason and equity of the statute is the same in all cases. For the law is made for the benefit and security of the subject, whom the law requires not to examine the right of sovereignty. Nor is the danger less under one government than another.

The statute is, for securing the subjects from all dormant titles, that they may safely pay their allegiance when they receive protection, and that they may not be in danger of being destroyed by two powers at the same time. For that power which is supreme and *de facto*, will be obeyed, and make it treason to do otherwise, be it right or wrong. And if the subject be at the same time in danger of committing treason against the power *de jure*, then is he in a miserable condition, and state of unavoidable necessity, which is provided against by the laws of the land. Otherwise, if he be loyal to the king *de jure*, he shall be hanged by the king *de facto*; and if he be faithful to the king *de facto*, he shall die by the king *de jure*, when he recovers possession.

Against this it was, that the statute of 11 Hen. 7. was provided, in the difference betwixt the two Houses of York and Lancaster. My case is either the same with that, and then I desire the benefit of that statute; or else it is new, and then I desire as is provided, 25 Edw. 3, that it be referred to the parliament. So that it is either within the equity of the statute 11 Hen. 7. or else it is a new case, and not to be judged by this court.

If the Judges in the Resolves by them delivered, upon any of the particulars before alledged, have not declared that law that ought to guide them, but their particular Judgments or Opinions, as undertaking to guide the law, and that in points of so grand concern as to touch the subjects life, in case their judgments after should prove erroneous, the verdict given upon such errors must needs be illegal and void. Judgment therefore ought to be suspended, till such time as the truth and certainty of the law may be fully argued and cleared, and that in the proper court for the hearing and judging of this case. If this be not done, but I be forthwith proceeded against (notwithstanding any thing however rationally or legally alledged to the contrary) by such undue precipitation and given sentence, I am (contrary to Magna Charta, or law of the land) run upon and destroyed, without due form and course of law. And I am like to be deprived of estate and life upon no law or certain rule, which was declared before the fact; no, nor before the trial.

Upon these considerations, I desire an Arrest of Judgment, and that counsel may be assigned me, and competent time allowed to make good my averments.

As an argument to press this, I desire leave of the Court, That the Petition of the two Houses, and the king's assent to it, may be read in open court, attested by one that is present, who examined and compared it with the book of Record in the Lords' house; by which

it evidently appears, that as well the king as both houses of parliament were agreed, that admitting I were attainted, yet execution, as to my life, should be remitted. And if so, there is no cause to precipitate the passing sentence; especially when also such weighty points in the law are yet to be argued and cleared, unless the Judges will evidently charge themselves with my innocent blood.

III. My third Reason for an Arrest of Judgment, is the manifest newness of this case, being such as never happened before in the kingdom; which withal is of so vast a consequence to people of all sorts and conditions within this realm, as nothing more. And being so, (as I doubt not with your lordships patience I shall make it appear) it is the known law, witnessed by Bracton, and ancient approved law-books, That in such cases the Judges in the inferior courts ought not to proceed, but bring it before the high court of parliament.

To prove therefore the newness of this case, besides what I have already alledged in my Defence, before the verdict, give me leave to add that, which yet further shows the newness and extraordinariness thereof. And I beseech your lordships to let me go on without interruption, in my endeavouring to make it out as clearly as God shall enable me, and as briefly also, not to spend too much of your time.

In general, I do affirm of this case, That it is so comprehensive, as to take in the very interests of heaven and earth: First, Of God the Universal Sovereign and King of Kings: Secondly, That of earthly sovereigns, who are God's vicegerents: As also the interests of all mankind, that stand in the relation of subjects to the one or both those sorts of sovereigns.

This in general. More particularly: Within the bowels of this case is that cause of God, that hath stated itself in the late differences and wars that have happened and arisen within these three nations, and have been of more than 20 years continuance: which, for the greater certainty and solemnity, hath been recorded in the form of a National Covenant, in which the generality of the three nations have been either implicitly involved, or expressly concerned, by the signing of their names.

The principal things contained in that Covenant, were the known and commonly-received duties, which either as men or as Christians we owed and stood obliged to perform either to God, the highest and universal King in church or state, or to our natural lord and sovereign, the kings of this realm, in subordination to God and his laws.

Again, It contains as well the duties which we owe to every particular and individual person, in their several stations and callings, as to the king in general, and our representative body in parliament assembled. These duties we are thereby obliged to yield and perform, in consistency with, and in a just subordination and manifest agreeableness to the laws of God, as is therein expressed: And this also, in no

disagreement to the laws of the land as they then were.

By this solemn Covenant and Agreement * of the three nations, giving up themselves in subjection to God and to his laws, in the first place, as the allegiance they owe to their highest Sovereign, (as the Creator, Redeemer, Owner, and Ruler of all Mankind) they have so far interested the Son of God in the supreme rule and government of these nations, that nothing therein ought to be brought into practice, contrary to his revealed will in the Holy Scriptures, and his known and most righteous laws.

This duty which we owe to God, the universal King, nature and Christianity do so clearly teach and assert, that it needs no more than to be named. For this subjection and allegiance to God and his laws, by a right so indisputable, all are accountable before the judgment seat of Christ.

It is true, indeed, men may *de facto* become open rebels to God and to his laws, and prove such as forfeit his protection, and engage him to proceed against them as his professed enemies. But, with your lordship's favour, give me leave to say, that that which you have made a rule for your proceedings in my case, will indeed hold, and that very strongly, in this; that is to say, in the sense wherein Christ the Son of God, is king *de jure*, not only in general, over the whole world, but in particular, in relation to these three kingdoms. He ought not to be kept out of his throne, nor his visible government, that consists in the authority of his word and laws, suppressed and trampled under foot, under any pretence whatsoever.

And in the asserting and adhering unto the right of this highest sovereign, as stated in the Covenant before-mentioned, the Lords and Commons jointly, before the year 1648, and the Commons alone afterwards, to the very times charged in the Indictment, did manage the war and late differences within these kingdoms. And whatever defections did happen by apostates, hypocrites, and time-serving worldlings, there was a party amongst them that continued firm, sincere and chaste unto the last, and loved it better than their very lives; of which number I am not ashamed to profess myself to be: not so much admiring the form and words of the Covenant, as the righteous and holy ends therein expressed, and the true sense and meaning thereof, which I have reason to know.

Nor will I deny, but that, as to the manner of the prosecution of the Covenant to other ends than itself warrants, and with a rigid oppressive spirit, to bring all dissenting minds and tender consciences under one uniformity of church-discipline and government, it was utterly against my judgment. For I always esteemed it more agreeable to the Word of God, that the ends and work declared in the Covenant should be promoted in a spirit of love and for-

bearance to differing judgments and consciences, that thereby we might be approving ourselves 'in doing that to others which we desire 'they would to us;' and so, though upon different principles, be found joint and faithful advancers of the reformation contained in the Covenant, both public and personal.

This happy union and conjunction of all interests in the respective duties of all relations, agreed and consented to by the common suffrage of the three nations, as well in their public parliamentary capacity, as private stations, appeared to me a rule and measure approved of, and commanded by parliament, for my action and deportment, though it met with great opposition, in a tedious, sad, and long war; and this under the name and pretext of royal authority. Yet, as this case appeared to me in my conscience, under all its circumstances of times, of persons, and of revolutions inevitably happening by the hand of God and the course of his wise providences; I held it safest and best to keep my station in parliament to the last, under the guidance and protection of their authority, and in pursuance of the ends before declared in my just Defence.

This general and public case of the kingdoms is so well known by the declarations and actions that have passed on both sides, that I need but name it; since this matter was not done in a corner, but frequently contended for in the high places of the field, and written even with characters of blood. And out of the bowels of these public differences and disputes doth my particular case arise, for which I am called into question. But admitting it come to my lot to stand single, in the witness I am to give to this glorious cause, and to be left alone, (as in a sort I am) yet being upheld with the authority before asserted, and keeping myself in union and conjunction therewith, I am not afraid to bear my witness to it in this great presence, nor to seal it with my blood, if called thereunto. And I am so far satisfied in my conscience and understanding, that it neither is nor can be treason, either against the law of nature, or the law of the land, either *malum per se*, or *malum prohibitum*; that on the contrary, it is the duty I owed to God the universal King, and to his majesty that now is, and to the Church and People of God in these nations, and to the innocent blood of all that have been slain in this quarrel. Nothing it seems will now serve, unless by the condemnation passed upon my person, they be rendered to posterity murderers and rebels, and that upon record in a court of justice in Westminster-hall. And this would inevitably have followed, if I had voluntarily given up this cause, without asserting their and my innocence; by which I should have pulled that blood upon my own head, which now I am sure lie at the door of others, and in particular, of those that knowingly and precipitately shall embue their hands in my innocent blood, under whatsoever form or pretext of justice.

My case is evidently new and unusual, that

* See 3 Cobb. Parl. Hist. 169.

which never happened before; wherein there is not only much of God and of his glory, but all that is dear and of true value to all the good people in these three nations. And, as I have said, it cannot be treason against the law of nature, since the duties of the subjects in relation to their sovereigns and superiors, from highest to lowest, are owned and conscientiously practised and yielded by those that are the assertors of this cause.

Nor can it be treason within the statute of 2. of Edw. 3. since besides what hath been said of no king in possession, and of being under powers regnant, and kings *de facto*, as also of the fact in its own nature, and the evidence as to overt-acts pretended; it is very plain it cannot possibly fall within the purview of that statute. For this case, thus circumstantiated, as before declared, is no act of any private person, of his own head, as that statute intends; nor in relation to the king there meant, that is presumed to be in the exercise of his royal authority, in conjunction with the law and the two houses of parliament, if they be sitting, as the fundamental constitutions of the government do require.

My lords, if I have been free and plain with you in this matter, I beg your pardon: For it concerns me to be so, and something more than ordinarily urgent, where both my estate and life are in such eminent peril; nay, more than my life, the concerns of thousands of lives are in it, not only of those that are in their graves already, but of all posterity in time to come. Had nothing been in it, but the care to preserve my own life, I needed not have staid in England, but might have taken my opportunity to withdraw myself into foreign parts, to provide for my own safety. Nor needed I to have been put upon pleading, as now I am, for an arrest of judgment; but might have watched upon advantages that were visible enough to me, in the managing of my trial, if I had consulted only the preservation of my life or estate.

No, my lords, I have otherwise learned Christ, than to fear them that can but kill the body, and have no more that they can do. I have also taken notice, in the little reading that I have had of history, how glorious the very Heathens have rendered their names to posterity, in the contempt they have shewed of death, (when the laying down of their life has appeared to be their duty) from the love which they have owed to their country.

Two remarkable examples of this, give me leave to mention to you upon this occasion. The one is, of Socrates the divine philosopher, who was brought into question before a judgment-seat, as now I am, for maintaining that there was but one only true God, against the multiplicity of the superstitious heathen Gods; and he was so little in love with his own life upon this account, (wherein he knew the right was on his side) that he could not be persuaded by his friends to make any defence, but would choose rather to put it upon the conscience and

determination of his judges, to decide that wherein he knew not how to make any choice of his own, as to what would be best for him, whether to live or to die; he ingenuously professing that for ought he knew, it might be much to his prejudice and loss, to endeavour longer continuance in this bodily life.

The other example is that of a chief governor, (Codrus,) that, to my best remembrance, had the command of a city in Greece, which was besieged by a potent enemy, and brought into unimaginable straits. Hereupon the said governor makes his address to the Oracle, to know the event of that danger. The answer was, 'That the city should be safely preserved, if the chief governor were slain by the enemy.' He understanding this, immediately disguised himself, and went into the enemy's camp, amongst whom he did so comport himself, that they unwittingly put him to death; by which means, immediately safety and deliverance arose to the city, as the Oracle had declared. So little was his life in esteem with him, when the good and safety of his country required the laying of it down.]

As to other pertinent Queries, thou mayest see them, Reader, in other parts of this Trial.

That which remains as an Appendix to the Bill of Exceptions, is to lay before thee the grounds which plainly shew that there was a downright conspiracy in sir Henry Vane's tenants and others, to prosecute him for life and estate, under colour and pretence of justice.

1. Presently after I was committed to the Tower for High-Treason, and made a close prisoner, Mr. O'Neale, sir William Darcy, and Dr. Cradock, obtained an order from the king to seize and take into their possession all the estates of such persons that were already, or should be forfeited to his majesty.

Hereupon the said Mr. O'Neale and sir Wm. Darcy appointed some under them, in the bishoprick of Durham, (by name Thomas Bowes, esq. now deceased, and capt. William Darcy) to join with the said Dr. Cradock, to put in execution the said Warrant, as their deputies; who thereupon went to Raby-Castle, and demanded the Rent-Books of Thomas Mowbray my steward, offering him his place under them, which he refused.

Contrary to this proceeding, sir Edward Coke expressly declares, 'That before indictment, the goods or other things of any offender cannot be searched, inventoried, or in any sort seized; nor after indictment, seized, moved or taken away before conviction or attainder, Instit. Part. 3. c. 133, concerning the Seizure of Goods, &c. for offences, &c. before conviction.'

2. At the instance and prosecution of my tenants and others, an Order was made by the House of Commons (not of the Lords) requiring the tenants of such persons as were excepted out of the General Pardon, to detain their rents in their own hands. By pretence of this Order, (though that parliament that

made it were dissolved) the tenants refused to pay their respective rents as they grew due, contrary to all law and equity; and joined together in open defiance and conspiracy against their landlord.

3. The said Tenants (when legally prosecuted in his majesty's courts at Westminster, for the recovery of the said rents out of their hands) did petition the said House of Commons to put a stop to such legal prosecution and suits, which motion of theirs put the House into a great heat and violence against me, insomuch as that they had almost passed a Vote to sequester all my estate, though unheard or unconvicted.

4. William Watson, of Cockfield, and other of the said tenants, have continued in London to carry on this conspiracy against me; by whose means, with others, the king hath been importuned to send for men from the isle of Scilly, in order to this trial.

5. By common fame (which at least affords a strong presumption) my goods and estate have been long begged by several persons, and granted: whereas the begging of the goods and estate of any delinquent, accused or indicted of treason, before he be convicted and attain'd, is utterly unlawful; because till then nothing is forfeited to the king, and so not his to dispose of; as sir Edward Coke shews in the fore-mentioned chapter about the Seizure of Goods, &c.

6. I am credibly informed, that about December last a certain captain came from the duke of Albemarle to captain Linn, with threatening language, that if he would not confess things against sir Henry Vane, he should be fetched up before the Council, and made to do it. Linn answered, He knew nothing against sir Henry Vane, nor had any orders from him, but from the parliament and council.

The same captain came again, about a fortnight after, from the duke of Albemarle, with a parcel of fine words, That if he the said Linn would testify, That sir Henry Vane was in the head of his regiment, and that he received orders from him, the duke of Albemarle would gratify him with any civility he should desire. Linn replied, he knew no regiment sir Henry Vane had; but that it was the parliament's and council of state's regiment. The same captain came again to him from the duke of Albemarle, and told him, the duke desired him to testify sir Henry Vane's being in the head of his regiment, and that he received orders from him to fight sir George Booth. Linn replied, He knew no such things. The captain told him as from the duke, he should have any place or office in the court: Be not afraid to speak, said he, I warrant you we shall hang sir Henry Vane, for he is a rogue.

7. I am credibly informed, That one of the grand jury declared, That after the bill of indictment against me was brought in, some from the king's council came to desire them, they would please to come into the inward Court of Wards: Upon which, one of the jury

said, They were there to judge of matters brought before them, and ought not to go in thither; but if the counsel had any thing to say, they ought to come to them. This was seconded by some; others said, They were the king's Counsel, and it was but matter of civility to grant them their request. Whereupon they went into the inward court of wards, where the king's Counsel were, to wit, attorney-general Palmer, solicitor-general Finch, serjeant Glynne and serjeant Keeling. After a while they caused all to withdraw but the jury. Then the clerk read the Indictment in the usual form for levying war from 1659. After it was read, one of the counsel told them, It was a bill of high treason against his majesty, and they were to consider of it according to their evidence. Then they proceeded to examine their witnesses.

Jefford said sir H. Vane offered him a commission to go against sir George Booth; which, said serjeant Keeling, was to go against the king.

Wright being examined, whether he saw sir Henry Vane in the council, said yes. The attorney-general replied, That if he was amongst them, they might find the bill upon that.

Upon this the jury withdrew, and were by themselves. Then sir John Cropley, the Foreman, said, We must pass this bill: At which all the jury were silent. At last, one stood up and said; 'This bill contains matter of fact, and matter of law. Some of this jury, to my knowledge, were never of any jury before, as well as I, therefore ignorant of the law, (in so difficult and unusual a point as this is) and consequently could not give in their verdict, as to law, but only fact.' Several others of the jury seconded him in this; and protested against giving in their verdict, as to matter of law: Notwithstanding all which, the bill was carried up to the King's bench.

8. On the day of my arraignment, an eminent person was heard to say, I had forfeited my head, by what I said that day, before ever I came to my defence: What that should be, I know not, except my saying in open court, 'Sovereign Power of Parliament,' which the attorney general writ down, after he had promised, at my request, no exceptions should be taken at words. And whole volumes of lawyers books pass up and down the nation with that title, Sovereign Power of Parliament.

9. Six moderate men that were like to consider of what they did, before they would throw away my life were summoned to be of my petty jury; which the king's counsel, hearing, writ a letter to one of the sheriffs not to summon them: And a new list was made the night immediately before the day of verdict, on purpose that the prisoner might not have any knowledge of them, 'till presented to his view and choice in Westminster-hall. Yet one of the forty-eight of this list (who said, He would have starved himself before he would have found sir Henry Vane guilty of treason) was never called, though he walked in the hall all the while. And in that hurry of those that compassed him about, he being alone stripp'd of

all assistance, sir William Roberts, foreman, and sir Christopher Abdy, were sworn by the court, before I was aware; so my challenging them might seem a personal disobliging and exasperation of them against me, after they were sworn and fixed.

The Solicitor also had a long whisper with the Foreman of the Jury in the court, before they went to verdict, telling him, 'The prisoner must be sacrificed for the nation,' &c.

Suddenly after which, I am here called to receive my Sentence.

10. After the day of my trial, the Judges went to Hampton court.

11. None were more forward to absolve the king from his grant about my life, than they that had appeared most forward in promoting the bill by way of Petition to the king for it. This grant being upon record, may seem to have the same validity that other acts of parliament have: which are still but the two Houses Petition to the king for his assent to the bills by them drawn up and passed. They used this as a means to induce the king to exempt me from all benefit of the act of indemnity and oblivion; and then at last persuade and absolve him from making good this grant also, thereby depriving me of all visible relief for my life. I conceived my life as secure by that grant, as others lives or estates are by the Act of Indemnity itself; for what is that, but the bill of both Houses, with the king's assent to it, upon their Petition.

The PETITION of both Houses of Parliament to the King's most excellent Majesty, on the behalf of Sir HENRY VANE, and Colonel JOHN LAMBERT, after they left them incapable of having any benefit of the Act of Indemnity.

'To the King's most excellent majesty;

The humble Petition of the Lords and Commons assembled in parliament, sheweth; That your majesty having declared your gracious pleasure to proceed only against the immediate murderers of your royal father; we your majesty's most humble subjects, the Lords and Commons assembled, not finding sir Henry Vane nor col. Lambert to be of that number, are humble suitors to your majesty, that if they shall be attainted, That execution, as to their lives, may be remitted. And as in duty bound, &c.'

The said Petition being read, it was agreed to, and ordered to be presented to his majesty by the Lord Chancellor.

The Lord Chancellor reported, That he had presented the Petition of both Houses to the king's majesty, concerning sir Henry Vane and col. Lambert, and his majesty grants the desires in the said Petition*.

JOHN BROWN, *Cler. Parliamentorum.*

* Harris, in his *Life of Charles 2*, vol. 2. p. 34, gives the following copy of an Original Letter, written from Hampton Court, Saturday two in the afternoon.

'The relation that hath been made to me of

Whereupon the usual Sentence was pronounced against him.

After Sentence, chief justice Forster endeavoured to persuade the king, that he lay under no obligation by granting the Petition of both Houses, saying, 'That God, though full of mercy, yet intended his mercy only for the penitent.'—By which means the king was wrought on (notwithstanding his engagement to the contrary) to sign a Warrant for his Execution, that he should be beheaded on Tower-Hill, the 14th of June.

The day before his Execution his friends had liberty to visit him, he received them with very great cheerfulness; and when they would have

'sir H. Vane's carriage yesterday, in the Hall, is the occasion of this letter; which if I am rightly informed, was so insolent as to justify all he had done, acknowledging no supreme power in England, but a parliament; and many things to that purpose. You have had a true account of all; and if he has given new occasion to be hanged, certainly he is too dangerous a man to let live, if we can honestly put him out of the way. Think of this and give me some account of it to-morrow: till when I have no more to say to you. To the Chancellor.' In the possession of James West, esq. of Covent garden.

Burnet, upon hearsay, imputes to Vane the want of natural bravery. This imputation it is scarcely fair to admit in opposition to the testimony of Ludlow, and of Vane's public conduct recorded in history. The Bishop represents him to be "a very fearful man, who, when he saw his death was designed, composed himself to it with a resolution that surprised all, who knew how little of that was natural to him." And this composure it seems prompted him to "some very extraordinary acts of resolution; though they cannot be mentioned with decency."

["It is said, the Lady Vane began her reckoning for her son, the Lord^d Barnard, from the night before Sir Henry lost his head on Tower Hill." Oldmixon.]

From adopting the ludicrous parts of Burnet's story, Hume's taste prevented him. But when he was to paint the character of Vane, a contrast between constitutional cowardice and enthusiastic courage, imparted by the fanaticism of glory and religion, at the approach of death, presented an occasion, which he has not neglected, at once to heighten the effect of his colouring, and to exhibit an eloquent though concise display of philosophical reflection.

Certainly through the whole of these proceedings Vane betrayed no want of courage. Nor was his conduct towards Cromwell that of a timid man; see the proceedings against him A. D. 1654. *supra*, vol. 5. p. 791. See also the accounts given by the historians of his conduct when Cromwell by force ejected the parliament on the 19th of April 1653. Hume, in his abstract, somewhat overstates parts of Vane's speeches on his trial.

Ludlow, who must have known Vane as well

persuaded him to make some submission to the king, and to endeavour the obtaining of his life; he said, 'If the king did not think himself more concerned for his honour and word, than he did for his life, he was very willing they should take it. Nay, I declare, said he, that I value my life less in a good cause, than the king can do his promise.' And when some others were speaking to him, of giving some thousands of pounds for his life; he said,

as any man did, writes thus: "In the month of July 1662, I received letters from England with an account of the trial, sentence, and death of sir Henry Vane: of which I shall only say, that he behaved himself on all those occasions in such a manner, that he left it doubtful, whether his eloquence, soundness of judgment, and presence of mind, his gravity and magnanimity, his constant adherence to the cause of his country, and heroic carriage during the time of his confinement, and at the hour of death; or the malice of his enemies, and their frivolous suggestions at his trial, the breach of the public faith in the usage he found, the incivility of the bench, and the savage rudeness of the sheriff, who commanded the trumpets several times to sound that he might not be heard by the people, were most remarkable.

"The following account of this (and another transaction, which I care not to insist upon) being sent to me at Geneva, I may not omit to insert in this place; because it seems to give the true reasons of the court of England for hurrying sir Henry Vane out of the world.

"On Friday last, being the 16th of this instant June 1662, sir Henry Vane pleaded for his life, and maj.-gen. Lambert for his: or rather, the first pleaded for the life and liberties of his country, and the other for his own. The issue in all appearance will be, that sir Henry will be put to death, and Lambert pardoned, though both are under sentence of condemnation. The reason of this distinction is no other than the manner of their defence; the one alledging the authority of the great parliament for his justification, and that he was indemnified by the act of amnesty; the other meanly extenuating and excusing what he did against sir George Booth and Monk, (which was the principal part of the accusation against him), by pleading ignorance of their intentions, neither of them having declared that they designed to restore the king; and Monk, on the contrary, having openly declared for the restitution of the parliament. Sir Henry Vane was long in his defence, but not tedious. He much perplexed both court and counsel; and has acquired eternal reputation, by nobly pleading for the dying liberties of his country; it being clear, that all the party which seemed to be indemnified by the act of amnesty, shall be punished in his person; and that for this cause only. That, in his pleading, he undertook, by the authority of the said parliament, to justify what he had done; maintaining, that the House of Com-

'If a thousand farthings would gain it, he would not give it: and if any should attempt to make such a bargain he would spoil their market: For I think the king himself so sufficiently obliged to spare my life, that it is fitter for him to do it, than myself to seek it.'

On Saturday the day of his Execution, he said to a friend, God bid Moses go to the top of Mount Pisgah and die; so he bid him go up to the top of Tower-hill and die.

mons, representing the whole body of the people, in case of difference between the authority royal and politic, possesses a just power to defend the rights of the people, and to authorise the people of England, and every one of them, to defend them.

"Sir Henry Vane was a gentleman of an ancient family in the county of Durham; eldest son to sir Henry Vane, who had been secretary of state, and comptroller of the household, to the late king. Being scandalized with the innovations brought into the public worship, he went to New England, and remained there for the space of five or six years; the two last of which he was consecutively chosen governor of that country, though not exceeding the age of 24 years. In the beginning of the great parliament, he was elected to serve his country among them, without the least application made on his part to that end. And in this station he soon made appear how capable he was of managing great affairs; possessing, in the highest perfection, a quick and ready apprehension, a strong and tenacious memory, a profound and penetrating judgment, a just and noble eloquence, with an easy and graceful manner of speaking. To these were added, a singular zeal and affection for the good of the commonwealth, and a resolution and courage not to be shaken or diverted from the public service. He had been removed by the late king from being treasurer of the navy, for performing his duty in the House of Commons; and being restored to that employment by the parliament, he freely contributed one half of the profits, amounting to the sum of 2,000*l.* yearly, towards carrying on the war for the liberties of England. When that war was ended, he put the receipt for the navy in such a way, that, by order of the parliament, the whole expence of that office exceeded not 1,000*l.* by year; men being brought by this means to understand, that they were not placed in employments to serve themselves, but to serve the public. And that this conduct was not mistaken, the successes of our arms by sea against Portugal, France, Holland, and other enemies, did abundantly manifest. When Cromwell had treacherously advanced himself upon the ruins of the commonwealth, he would not be induced by any means to favour or countenance his usurpation; chusing rather to suffer imprisonment and other hardships, than to comply with tyranny under any form. Upon the return of king Charles, being conscious to himself of having done nothing in relation to public

Several friends being with him in his chamber this morning, he oft encouraged them to cheerfulness, as well by his example as expression. In all his deportment, he shewed himself marvellously fitted to meet the King of Terrors, without the least affrightment. But to shew where his strength lay, he said, He was a poor unworthy wretch, and had nothing but the grace and goodness of God to depend upon. He said moreover, Death shrunk from him, rather than he from it. Upon the occasion of parting with his relations, he said, There is some flesh remaining yet, but I must cast it behind me and press forward to my Father.

Then one of the Sheriff's men came in and told him, There was no sledge to come, but he was to walk on foot. A circumstance very singular, and never used to those who were executed at that place.

He told his friends, the Sheriff's chaplain came to him at twelve of the clock that night, with an order for his Execution, telling him, he was come to bring him that fatal message of death. I think, friends, that in this message was no diabolical at all. After the receipt of which, I slept four hours so soundly, that the Lord hath made it sufficient for me, and now I am going to sleep my last, after which I shall need sleep no more.

Then Mr. Sheriff coming into the room, was friendly saluted by him, and after a little pause communicated a prohibition that he said he had received, which was, That he must not speak any thing against his majesty or the government. His answer to this he himself relates on the Scaffold. He further told Mr. Sheriff, he was ready; but the Sheriff said he was not, nor could be this half hour yet: Then, sir, it rests on you, not on me (said sir Henry,) for I have been ready this half hour. Then the Sheriff, at his request, promised him his servants should attend him on the Scaffold, and be civilly dealt with; neither of which were performed: (notwithstanding this promise) they were beaten and kept off the Scaffold, till he said, What, have I never a servant here?

After this, one of the Sheriff's men came

affairs, for which he could not willingly and cheerfully suffer, he continued at his house in Hampstead near London; where, under false and unworthy pretences, that he had engaged in counsels with some of the army to drive him out of England again, he was seized and imprisoned in the Tower: from whence he was carried from one place to another for the space of about two years; after the expiration of which, they who feared his abilities, and knew his integrity, thought convenient to violate the public faith, and, under a form of law, to put him to death."

A Life of Vane was published in the year of his execution, 1662. And he has an article in the *Biographia Britannica*. Some curious particulars of him are also to be found in 1 *Hutchinson's Hist. of Massachusetts Bay* 41—67.

and told him, there must be a Sledge, to which Sir Henry replied, Any way, how they please, for I long to be at home, to be dissolved and to be with Christ, which is best of all. He went very cheerfully and readily down the stairs from his chamber, and seating himself on the sledge (friends and servants standing about him) then he was forthwith drawn away towards the Scaffold. As he went, some in the Tower (Prisoners as well as others) spake to him, praying the Lord to go with him. And after he was out of the Tower, from the tops of houses, and out of windows, the people used such means and gestures as might best discover, at a distance, their respects and love to him, crying aloud, 'The Lord go with you, the great God of Heaven and Earth appear in you, and for you;' whereof he took what notice he was capable in those circumstances, in a cheerful manner accepting their respects, putting off his hat and bowing to them. Being asked several times, how he did, by some about him, he answered, Never better in all my life. Another replied, How should he do ill that suffers for so glorious a cause? To which a tall black man said, Many suffered for a better cause; and may for a worse, said sir Henry; wishing, that when they come to seal their better cause (as he called it) with their blood (as he was now going to seal his) they might not find themselves deceived; and as to this cause, said he, it hath given life in death to all the owners of it, and suffers for it.

Being passed within the rails on Tower-Hill, there were loud acclamations of the people, crying out, The Lord Jesus go with your dear soul, &c. One told him, That was the most glorious seat he ever sat on; he answered, It is so indeed, and rejoiced exceedingly.

Being come to the Scaffold, he cheerfully ascends, and being up, after the crowd on the Scaffold was broken in two pieces, to make way for him, he shewed himself to the people on the front of the Scaffold, with that noble and christian-like deportment, that he rather seemed a looker on, than the person concerned in the Execution, insomuch that it was difficult to persuade many of the people that he was the prisoner. But when they knew that the gentleman in the black suit and cloke (with a scarlet silk waistcoat, the victorious colour shewing itself at the breast) was the prisoner, they generally admired that noble and great presence he appeared with. How cheerful he is! said some: He does not look like a dying man! said others; with many like-speeches, as astonished with that strange appearance he shined forth in.

Then (silence being commanded by the Sheriff) lifting up his hands and eyes towards Heaven, and resting his hands on the rails; and taking a very serious, composed, and majestic view of the great multitude about him, he spake as follows:

"Gentlemen, Fellow Countrymen, and Christians:

"When Mr. Sheriff came to me this morning, and told me he had received a command from the king, that I should say nothing reflecting upon his majesty or the government; I answered, I should confine and order my Speech, as near as I could, so as to be least offensive, saving my faithfulness to the trust reposed in me, which I must ever discharge with a good conscience unto death; for I ever valued a man according to his faithfulness to the trust reposed in him, even on his majesty's behalf, in the late controversy. And if you dare trust my discretion, Mr. Sheriff, I shall do nothing but what becomes a good Christian and an Englishman; and so I hope I shall be civilly dealt with.

"When Mr. Sheriff's chaplain came to me last night about twelve of the clock, to bring me, as he called it, the fatal message of death, it pleased the Lord to bring that scripture to my mind in the 3d of Zechariah, to intimate to me, that he was now taking away my filthy garments, causing my iniquities to pass from me, with intention to give me change of rayment, and that my mortal should put on immortality.

"I suppose you may wonder when I shall tell you that I am not brought hither according to any known Law of the Land. It is true, I have been before a court of justice (and am now going to appear before a greater Tribunal, where I am to give an account of all my actions;) under their Sentence I stand here at this time. When I was before them, I could not have the liberty and privilege of an Englishman, the grounds, reasons, and causes of the actions I was charged with duly considered; I therefore desired the Judges that they would set their seals to my Bill of Exceptions; I pressed hard for it again and again, as the right of myself and every free-born Englishman by the Law of the Land, but was finally denied it—

Here sir John Robinson (lieutenant of the Tower) interrupted him, saying; Sir, you must not go on thus, and (in a furious manner, generally observed even to the dissatisfaction of some of their own attendants) said that he railed against the Judges, and that it was a lye, and I am here, says he, to testify that it is false.

Sir Henry Vane replied, "God will judge between me and you in this matter. I speak but matter of fact, and cannot you bear that? 'Tis evident the Judges have refused to sign my Bill of Exceptions"—Then the trumpets were ordered to sound or murre in his face, with a contemptible noise, to hinder his being heard: At which sir Henry (lifting up his hand, and then laying it on his breast) said, "What mean you, Gentlemen? Is this your usage of me? Did you use all the rest so? I had even done, as to that, could you have been patient, but seeing you cannot bear it, I shall only say this, That

whereas the Judges have refused to seal that with their hands that they have done, I am come to seal that with my blood that I have done. Therefore leaving this matter, which I perceive will not be borne, I judge it meet to give you some account of my life.

"I might tell you I was born a gentleman, had the education, temper, and spirit of a gentleman, as well as others, being (in my youthful days) inclined to the vanities of this world, and to that which they call Goodfellowship; judging it to be the only means of accomplishing a gentleman. But about the 14th or 15th year of my age (which is about 34 or 35 years since) God was pleased to lay the foundation or ground work of Repentance in me, for the bringing me home to himself, by his wonderful, rich, and free grace, revealing his Son in me, that by the knowledge of 'The only true God, and Jesus Christ whom he hath sent,' I might (even whilst here in the body) be made partaker of eternal life in the first fruits of it.

"When my conscience was thus awakened, I found my former course to be disloyalty to God, profaneness, and a way of sin and death, which I did with tears and bitterness bewail, as I had cause to do. Since that foundation of repentance laid in me, through grace I have been kept stedfast, desiring to walk in all good conscience towards God and towards men, according to the best light and understanding God gave me. For this I was willing to turn my back upon my estate, expose myself to hazards in foreign parts; yea, nothing seemed difficult to me, so I might preserve faith and a good conscience, which I prefer before all things; and do earnestly persuade all people rather to suffer the highest contradictions from men, than disobey God, by contradicting the light of their own conscience. In this it is I stand with so much comfort and boldness before you all this day, and upon this occasion, being assured that I shall at last sit down in glory with Christ, at his right hand. I stand here this day to resign up my spirit into the hands of that God that gave it me. Death is but a little word, but it is a great work to die; it is to be but once done, and after this cometh the judgment, even the judgment of the great God, which it concerns us all to prepare for. And by this act I do receive a discharge once for all out of prison, even the prison of the mortal body also, which, to a true Christian, is a burdensome weight.

"In all respects, where I have concerned and engaged, as to the public, my design hath been to accomplish good things for these nations. Then (lifting up his eyes, and spreading his hands) he said, I do here appeal to the great God of Heaven, and all this assembly, or any other persons, to shew wherein I have defiled my hands with any man's blood or estate, or that I have sought myself in any public capacity or place I have been in. The Cause was three times stated. First, In the Remonstrance of the House of Commons. Secondly, In the Covenant, the Solemn League and Covenant."

Upon this the trumpets sounded; the Sheriff caught at the Paper in his hand; and sir John Robinson, who at first had acknowledged that he had nothing to do there, wishing the Sheriff to see to it, yet found himself something to do now, furiously calling for the writers books, and saying, He treats of Rebellion, and you write it. Hereupon six Note-Books were delivered up. The Prisoner was very patient and composed under all these injuries, and soundings of the trumpets several times in his face, only saying, It was hard he might not be suffered to speak; but, says he, my usage from man is no harder than was my Lord and Master's; and all that will live his life this day, must expect hard dealing from the worldly spirit.

The trumpets sounded again, to hinder his being heard, then again Robinson, and two or three others, endeavoured to snatch the Paper out of sir Henry's hand; but he kept it for a while, now and then reading part of it; afterwards, tearing it in pieces, he delivered it to a friend behind him, who was presently forced to deliver it to the Sheriff. Then they put their hands into his pockets for papers (as was pretended), which bred great confusion and dissatisfaction to the spectators, seeing a prisoner so strangely handled in his dying words.

The Prisoner suspecting beforehand the disorder aforementioned, writ the main substance of what he intended to speak on the scaffold in that Paper they caught at, and which he tore in pieces, delivering it to a friend, from whom the Sheriff had it, as abovesaid; the true copy whereof was, by the Prisoner, carefully committed to a safe hand before he came to the scaffold, which take as follows:

"The work which I am at this time called unto, in this place (as upon a public theatre) is to die, and receive a discharge once for all, out of prison, to do that which is to be done; the doing or not doing of which well, and as becomes a Christian, does much depend upon the life we have been taught of God to lead, before we come to this: They that live in the faith do also die in it; Faith is so far from leaving Christians in this hour, that the work of it breaks forth then into its greatest power, as if till then it were not enough at freedom to do its office, that is, to look into the things that are unseen with most steadfastness, certainty, and delight, which is the great sweetener of death and remover of its sting.

"Give me leave therefore, in a very few words, to give you an account of my life, and of the wonderful great grace and mercy of God, in bringing me home to himself, and revealing his son in me; that by the knowledge of the only true God, and Jesus Christ whom he hath sent, I might (even whilst here in the body) be made partaker of eternal life, in the first fruits of it, and at last sit down with Christ in glory at his right hand.

"Here I shall mention some remarkable passages and changes of my life; in particular, how unsought for by myself I was called to be a Member of the Long Parliament, what little

advantage I had by it, and by what steps I became satisfied with the cause I was engaged in, and did pursue the same.

"What the cause was, did first shew itself in the first Remonstrance of the House of Commons. Secondly, In the Solemn League and Covenant. Thirdly, In the more refined pursuit of it by the Commons House, in their Actings single; with what result they were growing up into, which was in the breast of the House, and unknown; or what the three proposals, mentioned in my Charge, would have come to at last, I shall not need now to say; but only, from all put together, to assert, That this cause which was owned by the parliament, was the cause of God, and for the promoting of the kingdom of his dear Son Jesus Christ, wherein are comprehended our liberties and duties, both as men and as Christians.

"And since it hath pleased God, who separated me from the womb to the knowledge and service of the Gospel of his Son, to separate me also to this hard and difficult service at this time, and to single me out to the defence and justification of this his cause, I could not consent, by any words or actions of mine, that the innocent blood that hath been shed in the defence of it, throughout the whole war (the guilt and moral evil of which must and does certainly lie somewhere), did lie at my door, or at theirs that have been the faithful adherers to this cause. This is with such evidence upon my heart that I am most freely and cheerfully willing to put the greatest seal to it I am capable, which is, the pouring out of my very blood in witness to it; which is all I shall need to say in this place and at this time, having spoken at large to it in my defence at my trial, intending to have said more the last day, as what I thought was reasonable for arrest of the Judgment, but I was not permitted then to speak it; both which may, with time and God's providence, come to the public view.

"And I must still assert, that I remain wholly unsatisfied that the course of proceedings against me at my Trial were according to law, but that I was run upon and destroyed, contrary to right, and the liberties of Magna Charta, under the form only of justice; which I leave to God to decide, who is the Judge of the whole world, and to clear my innocency; whilst in the mean time I beseech him to forgive them; and all that have had a hand in my death; and that the Lord, in his great mercy, will not lay it to their charge.

"And I do account the lot of mine no other than what is to be expected by those that are not of the world, but whom Christ hath chosen out of it; for the servant is not greater than his lord: And if they have done this to the green tree, they will do it much more to the dry.

"However, I shall not altogether excuse myself. I know, that by many weaknesses and failures, I have given occasion enough of the ill usage I have met with from men, though

in the main, the Lord knows the sincerity and integrity of my heart, whatever aspersions and reproaches I have or do lie under. I know also that God is just in bringing this sentence and condemnation upon me for my sins; there is a body of sin and death in me deserves this sentence; and there is a similitude and likeness also, that, as a christian, God thinks me worthy to bear with my Lord and head, in many circumstances, in reference to these dealings I have met with; in the good I have been endeavouring for many years to be doing in these nations, and especially now at last, in being numbered among transgressors, and made a public sacrifice, through the wrath and contradictions of men, and in having finished my course, and fought the good fight of faith, and resisted in a way of suffering, as you see, even unto blood.

"This is but the needful preparation the Lord hath been working in me, to the receiving of the crown of immortality, which he hath prepared for them that love him. The prospect whereof is so cheering, that through the joy (in it) that is set before the eyes of my faith, I can, through mercy, 'endure the cross, despise this shame,' and am become 'more than conquerer;' through Christ that hath loved me.

"For my Life, Estate and all, is not so dear to me as my service to God, to his cause, to the kingdom of Christ, and the future welfare of my country; and I am taught, according to the example, as well as that most christian saying of a noble person,* that lately died after this public manner in Scotland; 'How much better it is to choose affliction and the cross, than to sin or draw back from the service of the living God, into the ways of apostacy and perdition?'

"That noble person, whose memory I honour, was with myself at the beginning and making of the Solemn League and Covenant; the matter of which, and the holy ends therein contained, I fully assent unto, and have been as desirous to observe; but the rigid way of prosecuting it, and the oppressing uniformity that hath been endeavoured by it, I never approved. This were sufficient to vindicate me from the false aspersions and calumnies which have been laid upon me, of Jesuitism and Popery, and almost what not, to make my name of ill savour with good men; which dark mists do now dispel of themselves, or at least ought, and need no pains of mine in making an apology. For if any man seek a proof of Christ in me, let him read it in this action of my death, which will not cease to speak when I am gone: And henceforth let no man trouble me, for I bear in my body the marks of the Lord Jesus.

"I shall not desire in this place to take up much time, but only, as my last words, leave this with you: That as the present storm we now

* He seems to intend the marquis of Argyll, who spake to that effect.

he under, and the dark clouds that yet hang over the reformed churches of Christ, (which are coming thicker and thicker for a season) were not unforeseen by me for many years past (as some writings of mine declare:) So the coming of Christ in these clouds, in order to a speedy and sudden revival of his cause, and spreading his kingdom over the face of the whole earth, is most clear to the eye of my faith, even that faith in which I die, whereby the kingdoms of this world shall become the kingdom of our Lord, and of his Christ. Amen. Even so, come, Lord Jesus."

Before the stroke, he spake to this effect: 'I bless the Lord, who hath accounted me worthy to suffer for his name.—Blessed be the Lord that I have kept a conscience void of offence to this day. I bless the Lord I have not deserted the righteous cause for which I suffer.' When he laid his neck on the block he concluded his life with these words: 'Father, glorify thy servant in the sight of men, that he may glorify thee in the discharge of his duty to thee and to his country.' Upon which the executioner did his office.*

Hume, speaking of Vane, says, "This man, so celebrated for his parliamentary talents, and for his capacity in business, has left some writings behind him: They treat, all of them, of religious subjects, and are absolutely unintelligible, no traces of eloquence, or even common sense appears in them: a strange paradox! did we not know, that men of the greatest genius, where they relinquish by principle the use of their reason, are only enabled, by their vigour of mind, to work themselves the deeper into error and absurdity." Burnet, after noticing the mercy shewn to Martin, Goodwin and Milton, says, "But as the sparing these persons was much censured, so on the other hand the putting sir Henry Vane to death was as much blamed: For the Declaration from Breda being full for an indemnity to all, except the Regicides, he was comprehended in that; since, though he was for changing the government, and deposing the king, yet he did not approve the putting of him to death, nor of the force put on the parliament, but did for some time, while these things were acted, withdraw from the scene. This was so represented by his friends, that an address was made by both

* "He died in the very same place on Tower-hill (says that great dealer in judgments, Mr. Echard) with the famous earl of Strafford. And it is farther observed, that as he was the first man that opened the fountain of blood that over-run the English nation, so he was the last that closed it up in his own execution." Ralph. The latter observation Mr. Hume has thought worth insertion in his History, without notice of its antiquity. It has been said with sufficient probability, that Vane owed his doom to his share in the proceedings against Strafford. See vol. 3. p. 1462.

houses on his behalf, to which the king gave a favourable answer, though in general words. So he reckoned that he was safe, that being equivalent to an act of parliament, though it wanted the necessary forms. Yet the great share he had in the attainder of the earl of Strafford, and in the whole turn of affairs to the total change of government, but above all the great opinion that was had of his parts and capacity to embroil matters again, made the Court think it was necessary to put him out of the way. He was naturally a very fearful man: This one who knew him well told me, and gave me eminent instances of it. He had a head as darkened in his notions of religion, as his mind was clouded with fear: For though he set up a form of religion in a way of his own, yet it consisted rather in a withdrawing from all other forms, than in any new or particular opinions or forms; from which he and his party were called Seekers, and seemed to wait for some new and clearer manifestations. In these meetings he preached and prayed often himself, but with so peculiar a darkness, that though I have sometimes taken pains to see if I could find out his meaning in his works, yet I could never reach it. And since many others have said the same, it may be reasonable to believe he hid somewhat that was a necessary key to the rest. His friends told me, he leaned to Origen's notion of a universal salvation of all, both of devils and damned, and to the doctrine of pre-existence. When he saw his death was designed, he composed himself to it, with a resolution that surprised all who knew how little of that was natural to him. Some instances of this were very extraordinary, though they cannot be mentioned with decency. He was beheaded on Tower-hill, where a new and very indecent practice was begun. It was observed, that the dying speeches of the Regicides had left impressions on the hearers, that were not at all to the advantage of the government. So strains of a peculiar nature being expected from him, to prevent that, drummers were placed under the scaffold, who as soon as he began to speak to the public, upon a sign given, struck up with their drums. This put him in no disorder. He desired they might be stopped, for he understood what was meant by it. Then he went through his devotions. And, as he was taking leave of those about him, he happening to say somewhat with relation to the times, the drums struck up a second time: So he gave over, and died with so much composure, that it was generally thought, the government had lost more than it had gained by his death."

Among those that censured the mercy shewn to Milton, we may suppose the author of "*Regii Clamor Sanguinis, &c.*" to be one. After citing a very obnoxious passage of Cromwell's, he says, "*Ejusmodi sesamo et papavere conspersæ sunt infames Miltoni paginæ, à carnificè Parisiensi, supremi senatus auctoritate, nuperrime crematæ, utinam et scriptor.*" The admirers of *Paradise Lost* have

no obligations, for the pleasure which they have enjoyed from that work, to Peter du Moulin the younger.

Oldmixon thinks that Burnet, in saying, "Some extraordinary instances of Vane's resolution cannot be mentioned with decency," is too delicate.*

"Among the foremost rank of those heroic characters who sat at the helm during the short period of the much execrated Long Parliament," says Mrs. Maseulay, "stands sir Henry Vane, whose honesty was too pure to be corrupted by the rigour of persecution, or the emoluments of office and the enjoyment of power, whose judgment was too sound to be depraved by that high enthusiasm in religion into which a fine imagination is so apt to deviate, when in contemplating divine subjects it ranges beyond the bounds of human knowledge and experience, whose resolution was so philosophical as in the sufferance of his martyrdom to conquer the almost irresistible influence of natural timidity, and whose abilities were so eminent as when reduced to the state of a prisoner to give terror to a powerful government. With the highest degree of enthusiasm in religion he preserved the liberality of sentiment, and candour of a philosopher in the important point of a philosopher, and he is perhaps a singular instance in the being equal to the most important transactions of this world whilst his thoughts were constantly bent on the sublimest concerns of another state."

Clarendon, after mentioning that Vane was the principal contriver of the Covenant, and that the Commissioners in Scotland were, entirely and stupidly governed by him, adds,

"He was indeed a man of extraordinary parts, a pleasant wit, a great understanding, which pierced into, and discerned the purposes of other men with wonderful sagacity, whilst he had himself *vultum clausum*, that no man could make a guess of what he intended. He was of a temper not to be moved, and of rare dissimulation, and could comply when it was not reasonable to contradict, without losing ground by the condescension; and if he were not superior to Mr. Hampden, he was inferior to no other man, in all mysterious artifices. There need no more be said of his ability, than that he was chosen to cozen, and deceive a whole nation that was thought to excel in craft and cunning: which he did with notable pregnancy and dexterity, and prevailed with a people, that could not otherwise be prevailed upon than by advancing their idol presbytery, to sacrifice their peace, their interest, and their faith, to the erecting a power and authority that resolved to persecute presbytery to an extirpation; and, in process of time, very near brought their purpose to pass." And in another place he says, "Vane was a man not to be described by any character or religion; in which he had swallowed some of the fancies, and

* See p. 188. note *.

extravagancies of every sect, or faction; and was become (which cannot be expressed by any other language than was peculiar to that time) a man above ordinances, unlimited, or unrestrained by any rules, or bounds prescribed to other men, by reason of his perfection. He was a perfect enthusiast; and, without doubt, did believe himself inspired; which so far corrupted his reason and understanding (which in all matters without the verge of religion was superior to that of most men) that he did at some time believe, he was the person deputed to reign over the saints upon earth for 1,000 years."

Of the execution of Argyle, Vane, and the Regicides, Mr. Fox writes thus:

"The first years of this reign, under the administration of Southampton and Clarendon, form by far the least exceptionable part of it; and even in this period, the executions of Argyle and Vane, and the whole conduct of the government with respect to church matters, both in England and Scotland, were gross instances of tyranny. With respect to the execution of those who were accused of having been more immediately concerned in the king's death, that of Scrope, who had come in upon

the proclamation, and of the military officers who had attended the trial, was a violation of every principle of law and justice. But the fate of the others, though highly dishonourable to Monk, whose whole power had arisen from his zeal in their service, and the favour and confidence with which they had rewarded him, and not perhaps very creditable to the nation, of which many had applauded, more had supported, and almost all had acquiesced in the act, is not certainly to be imputed as a crime to the king, or to those of his advisers who were of the cavalier party. The passion of revenge, though properly condemned both by philosophy and religion, yet when it is excited by injurious treatment of persons justly dear to us, is among the most excusable of human frailties; and if Charles, in his general conduct, had shown stronger feelings of gratitude for services performed to his father, his character, in the eyes of many, would be rather raised than lowered by this example of severity against the Regicides." Respecting the alleged injunctions of king Charles the 1st, that vengeance should not be taken for his death, See the note to vol. 4, p. 1140, of this Collection.

211. The Trial of JOHN CROOK, ISAAC GREY, and JOHN BOLTON, Quakers, at the Old Bailey, for refusing to take the Oaths of Allegiance and Supremacy: * 14 CHARLES II. A. D. 1662. [Related by John Crook.]

I BEING in John's Street, London, about the 13th day of the 3d month called May, with some others of the people of God to wait upon him, as we were set together, there came in a

rude man called Miller with a long cane in his hand, who laid violent hands upon me, with some others; who having no warrant were not willing to meddle, but as his threatenings pre-

* Mr. East in his Treatise of the Pleas of the Crown, ch. 1, s. 19, gives the following summary of the Statutes now in force respecting the not taking the Oaths of Allegiance and Supremacy, and making the Declaration against Popery. "By the act of the 1 Eliz. c. 1, all ancient ecclesiastical jurisdictions were restored and united to the crown, and its supremacy in such matters was finally asserted and established; and an oath to that effect appointed to be taken by all officers and ministers ecclesiastical and civil, on pain, in case of refusal, of the party forfeiting for life every promotion, benefice and office, spiritual and temporal, which he had at the time of such refusal, and being disabled from taking any such preferment to which he was then promoted. This oath was abrogated by the stat. 1 W. and M. c. 8, and another appointed to be taken in lieu of it under the same penalties. By s. 37, of the said stat. of Eliz. the offence must be proved by two witnesses at least.

"All persons required by the stat. 1 Eliz. c. 1, to take the said oath, and all schoolmasters and public and private teachers, barristers, benchers, readers, ancients in any house of

court, &c. attorneys, sheriffs, and officers belonging to the common or any other law, or to the crown, or to any court whatever, shall, by stat. 5 Eliz. c. 1, s. 5, take the said oath in open court before they shall be admitted to any such vocation or office, &c.; and if they belong not to any court, then they shall take the same before such person as shall admit them to such vocation, &c. or before commissioners appointed under the great seal, &c.

"By s. 6, any bishop may tender the said oath to any spiritual person within his diocese, as well in places exempt as others; and by s. 7, commissioners may be appointed by the lord chancellor to tender the same to such persons as by their commission they shall be authorised to do. And by s. 8, if any person compellable by either of the said acts, or appointed by such commissioners to take the said oath, shall refuse to take it on a tender thereof, he shall incur a præmunire. And by s. 9, such refusal shall be certified within 40 days if in term, or otherwise at the first day of the full term next following the 40 days, into B. R. by the persons having authority to tender such oath, under the penalty of 100*l.*; and the sheriff of the

vailed, they being afraid of him, joined with him to carry us before justice Powel, who the next day sent us to the sessions at Hicks's-hall,

county where the court sit may impanel a jury to inquire of such refusal, in such manner as if it had happened in the same county; which jury may, upon such certificate and other evidence, indict the offender in such sort as if the offence had been done in the same county. But though such a jury may find the indictment, still it is said, that the trial must be by a jury of that county wherein the oaths were refused.

“By stat. 30 Car. 2, stat. 2, c. 1, and 1 Geo. 1, stat. 2, c. 1, s. 16, 17, and 22. “No peer or member of the House of Peers shall vote, or make his proxy, or sit there during any debate; and no member of the House of Commons shall vote or sit there during any debate, after the Speaker is chosen; until such peer or member shall take the oaths of allegiance and supremacy, and make a declaration (therein specified) of his belief that there is no transubstantiation in the sacrament of the Lord's supper, and that the invocation or adoration of the virgin Mary, or any other saint, and the sacrifice of the mass as they are now used in the church of Rome, are superstitious and idolatrous, &c. on pain that every such offender shall be adjudged a popish recusant convict, and disabled to hold or execute any office, &c. or from thenceforth to sit or vote in either house of parliament, or to sue in law or equity, or to be guardian, executor, or administrator, or capable of any legacy or deed of gift, and shall forfeit for every such wilful offence 500*l*.”

“The 9th, 18th, and 13th clauses of the same statute, which require that “every sworn servant to the king shall take the said oaths, and make and subscribe the said declaration,” are repealed by the stat. 2 Geo. 2, c. 31, s. 9.

“By stat. 1 W. and M. c. 9. “Every justice of peace in London and Westminster, and within ten miles thereof, shall cause to be arrested and brought before him all reputed papists, (except foreigners, being merchants or menial servants to some ambassador or public agent, &c.) and shall tender the above mentioned declaration to every such person; and every such person refusing the same, and afterwards remaining within the above limits, or being certified by justices out of those limits to B. R. or the quarter sessions for such refusal, and neglecting to make the said declaration in such court, shall suffer as a popish recusant convict.” Supposed papists, required by two justices of peace to make the said declaration, and neglecting so to do, are, by stat. 1 W. and M. c. 15, restricted in the privilege of keeping arms, ammunition, and horses at their pleasure; and by stat. 1 W. and M. c. 26, from presenting to any benefice. And by the land-tax acts papists in general are liable to pay double land-tax if they do not conform. But now, by 31 Geo. 3, c. 32, s. 18, no papist making and subscribing the oath and declaration therein contained shall be prosecuted on the former statutes.

where after some discourse several times with them manifesting to them the illegality both of our commitment and their proceedings there-

“Also by stat. 7 and 8 W. 3. c. 24, any serjeant or counsellor at law, barrister, advocate, attorney, solicitor, proctor, clerk, or notary, practising as such in any court whatsoever, not having before taken, in the court of chancery, or king's bench, or quarter sessions of the county wherein he lives, the oath required by the stat. 1 W. and M. c. 8, and made and subscribed the declaration appointed by the stat. 25 Car. 2, c. 2, (to prevent danger from popish recusants) shall incur a præmunire. This, so far as respects Roman Catholics, is repealed by stat. 31 Geo. 3, c. 32, s. 22, as to such as bring themselves within the same.

“By stat. 7 and 8 W. 3. c. 27, any person refusing to take the said oaths of allegiance and supremacy when tendered, or refusing or neglecting to appear, when lawfully summoned, in order to have the said oaths tendered to him, shall, until he shall have taken the same, incur all the pains and penalties of popish recusants convict; and the person so tendering the said oaths shall, on every such refusal or default, record and enter in parchment the christian and surname and place of abode of the party together with the time of tender and refusal or default, and shall certify the said record or entry to the justices of assise, oyer und terminer or gaol delivery at their next session, who shall exeat and certify the same into the court of exchequer, who may award such process against the lands and goods of the party as in the case of a popish recusant convict. By s. 19, quakers, who scruple to take an oath, may make a declaration of fidelity to the same effect.

“The stat. 1 Geo. 1, st. 2, c. 13, gives the form of the oaths of allegiance and abjuration required to be taken by all officers civil and military, and all ecclesiastical persons, and members of colleges (being of the age of 18 years), and by all teachers or readers in any university or elsewhere, and by all school-masters and ushers, and all teachers and preachers of separate congregations, all constables, serjeants at law, counsellors, barristers, advocates, attorneys, solicitors, proctors, clerks, or notaries, practising in any court; which oaths are to be taken within three (by 9 Geo. 2, c. 26, s. 4,) six months after they have been admitted into or entered upon any such preferment, benefice, office, or place, or come into such capacity, or taken upon themselves such employment, practice, or business in one of the courts at Westminster, or at the quarter sessions of the county where they reside, under pain of disability to hold or exercise the said offices, &c. upon neglect or refusal to take the said oaths. And persons convicted in any of the courts at Westminster, or at the assizes, of exercising such offices or employments without taking the oaths within the time specified, shall be disabled to sue, or to be guardian, or executor, or administrator, or capable of any legacy

upon, yet notwithstanding they committed me, together with Isaac Grey and John Bolton, to New-Prison, where we continued for some days, and were then removed to Newgate, where we remained until the sessions at the Old Bailey; when I was brought to the bar.

Chief Judge, (Sir Robert Forster.) John Crook, when did you take the oath of Allegiance?

J. Crook. I desire to be heard.

C. Judge. And to the question, and you shall be heard.

Crook. I have been about six weeks in prison, and am I now called to accuse myself? For the answering to this question in the negative is to accuse myself, which you ought not to put me upon; for, 'Nemo debet seipsum prodere.' I am an Englishman, and by the law of England I ought not to be taken nor imprisoned, nor disseized of my freehold, nor called in question, nor put to answer, but according to the law of the land; which I challenge as my birth-right, on my own behalf, and all that bear me this day (or words to this purpose). I stand here at this bar as a delinquent, and do desire that my accuser may be brought forth to accuse me for my delinquency, and then I shall answer to my charge (if any I be guilty of).

C. Judge. You are here demanded to take the Oath of Allegiance, and when you have done that, then you shall be heard about the other; for we have power to tender it to any man.

Crook. Not to me upon this occasion, in this place; for I am brought hither as an offender already and not to be made an offender here, or to accuse myself; for I am an Englishman, as I have said to you, and challenge the benefit of the laws of England, for by them, is a better inheritance derived to me as an Englishman, than that which I receive from my parents; for by the former the latter is preserved: and this the 29th chapter of Magna Charta, and the Petition of Right, mentioned

or deed of gift, or to be in any office within Great Britain, or to vote for members of parliament; and shall forfeit 500*l.*, to be recovered by any informer. And by s. 10. two justices or other persons specially commissioned, may tender the said oaths to any person whom they suspect to be dangerous or disaffected to his majesty or his government, and on their neglect or refusal to take the said oaths, may certify the same to the next quarter sessions; which being there recorded, shall be from thence certified by the clerk of the peace into the courts of Chancery or King's Bench; and every person so neglecting or refusing to take the said oaths shall, from the time of his neglect or refusal, be adjudged a popish recusant convict, and as such to forfeit and be proceeded against. The same punishment is denounced by s. 11, against such as, being lawfully summoned to appear and take the oaths, neglect or refuse to do so." See also ch. 1, s. 5, of the same work.

in the 3d of Car. 1. and in good laws of England; and therefore I desire the benefit and observance of them: And you that are Judges upon the bench ought to be my counsel, and not my accusers, but to inform me of the benefit of those laws, and wherein I am ignorant you ought to inform me, that I may not suffer through my own ignorance of those advantages which the laws of England afford me as an Englishman.

C. Judge. We sit here to do justice, and are upon our oaths, and we are to tell you what is law, and not you us: Therefore, Sirrah, you are too bold.

Crook. Sirrah is not a word becoming a Judge; for I am no felon; neither ought you to menace the prisoner at the bar: for I stand here arraigned as for my life and liberty, and the preservation of my wife and children, and outward estate (they being now at the stake); Therefore you ought to hear me to the full what I can say in my own defence, according to law, and that in its season, as it is given me to speak: Therefore I hope the Court will bear with me, if I am bold to assert my liberty as an Englishman and as a Christian: and if I speak loud, it is my zeal for the truth, and for the name of the Lord; and mine innocency makes me bold.

Judge. It is an evil zeal. [interrupting John Crook.]

Crook. No, I am bold in the name of the Lord God Almighty, the everlasting Jehovah, to assert the truth, and stand as a witness for it: let my accuser be brought forth, and I am ready to answer any Court of Justice.

Then the Judge interrupted me, saying, 'Sirrah,' with some other words I do not remember: But I answered, You are not to threaten me, neither are those menaces fit for the mouth of a Judge: for the safety of a prisoner stands in the indifference of the Court; And you ought not to behave yourselves as parties; seeking all advantages against the prisoner, but not heeding any thing that may make for his clearing or advantage.—The Judge again interrupted me, saying,

Judge. Sirrah, you are to take the oath, and here we tender it you [bidding me to read it].

Crook. Let me see mine accuser, that I may know for what cause I have been six weeks imprisoned, and do not put me to accuse myself by asking me questions; but either let my accuser come forth, or otherwise let me be discharged by proclamation, as you ought to do.—Here I was interrupted again.

Judge Twisden. We take no notice of your being here otherwise than of a straggler, or as any other persons, or of the people that are here this day; for we may tender the oath to any man.—And another Judge spake to the like purpose.

Crook. I am here at your bar as a prisoner restrained of my liberty, and do question whether you ought in justice to tender me the oath on the account I am now brought before you,

because I am supposed to be an offender, or else why have I been six weeks in prison already? Let me be cleared of my imprisonment, and then I shall answer to what is charged against me, and to the question now propounded; for I am a lover of justice with all my soul, and am well known by my neighbours where I have lived, to keep a conscience void of offence both towards God, and towards man.

Judge. Sirrah, leave your canting.

Crook. Is this canting, to speak the words of the Scripture?

Judge. It is canting in your mouth, though they are St. Paul's words.

Crook. I speak but the words of the Scripture, and it is not canting though I speak them; but they are words of truth and soberness in my mouth, they being witnessed by me, and fulfilled in me.

Judge. We do ask you again, whether you will take the Oath of Allegiance? It is but a short question, you may answer it if you will.

Crook. By what law have you power to tender it? [Then, after some consultation together by whispering, they called for the Statute-Book, and turning over the leaves, they answered,]

Judge. By the 3d of king James.*

* By st. 3 Jac. 1, c. 4, for the better trial how his majesty's subjects stand affected in point of their loyalty and due obedience: it was enacted, "That from, and after the end of this present session of parliament, it shall be lawful to and for any bishop in his diocese, or any two justices of the peace, whereof one of them to be of the *Quorum* within the limits of their jurisdiction, out of the sessions, to require any person of the age of 18 years or above, being, or which shall be convict or indicted of or for any recusancy, other than noblemen or noblemen, for not repairing to divine service according to the laws of this realm, or which shall not have received the said sacrament twice within the year next passed, noblemen and noblemen excepted, or any person passing in or through the county, shire, or liberty and unknown, except as is last before excepted, that being examined by them upon oath, shall confess or deny himself or herself to be a recusant, or shall confess or not deny that he or she had not received the sacrament twice within the year then last past, to take the oath hereafter following, upon the Holy Evangelist: which the said bishop or two justices of the peace shall certify in writing, subscribed with his or their hands at the next general or quarter-sessions for that shire, limit, division or liberty within which the said oath shall be so taken, the Christian name, surname and place of abode of every person which shall so take the said oath, which certificate shall be there recorded by the clerk of peace or town clerk, and kept amongst the records of the said session."

And further, "That if any such person

Crook. I desire that statute may be read; for I have consulted it, and do not understand that you have power by that statute to tender me the oath, being here before you in this

or persons other than noblemen or noblewomen, shall refuse to answer upon oath to such bishop or justices of peace examining him or her as aforesaid, or to take the said oath so duly tendered unto him or her by such bishop, or two such justices of peace out of sessions, that then the said justices of peace shall and may commit the same person to the Common Gaol, there to remain without bail or mainprise until the next assizes, or general or quarter-sessions to be holden for the said shire, division, limit or liberty, where the said oath shall be again in the said open assizes or sessions, required of such person by the said justices of assize, or justices of peace then and there present, or the greater number of them. And if the said person or persons, or any other person whatsoever, other than noblemen or noblewomen, of the age of 18 years or above, shall refuse to take the said oath, being tendered unto him or her by the justices of assize and gaol delivery, in their open assizes, or the justices of peace or the greater part of them, in their said general or quarter-sessions, every person so refusing shall incur the danger and penalty of *Præmunire*, mentioned in the statute of *Præmunire*, made in the 16th year of the reign of Richard the 2nd, except women covert, who upon refusal of the said oath shall be by the said justices of assize in their open assize, or justices of peace in their general or quarter-sessions, for the said offence committed only to the Common Gaol, there to remain without bail or mainprise, till they will take the said oath. The tenor of which said oath hereafter followeth:

"I A. B. do truly and sincerely acknowledge, profess, testify and declare in my conscience before God and the world, That our sovereign lord king James is lawful and rightful king of this realm, and of all other his majesty's dominions and countries; and that the Pope neither of himself, nor by any authority of the church or see of Rome, or by any other means, with any other, hath any power or authority to depose the king, or to dispose any of his majesty's kingdoms or dominions, or to authorise any foreign prince to invade or annoy him, or his countries, or to discharge any of his subjects of their allegiance and obedience to his majesty, or to give licence or leave to any of them to bear arms, raise tumult, or to offer any violence or hurt to his majesty's royal person, state or government, or to any of his majesty's subjects within his majesty's dominions. Also I do swear from my heart, that notwithstanding any declaration or sentence of excommunication or deprivation made or granted, or to be made or granted by the Pope or his successors, or by any authority derived, or pretended to be derived from him or his see, against the said

place upon this occasion, as a delinquent already; and therefore I desire the Judgment of the Court in this case, and that the statute may be read:

Then they took the Statute-Book and consulted together upon it, and one said: We are the Judges of this land, and do better understand our power than you do, and we do judge we may lawfully do it.

Crook. Is this the Judgment of the Court? Judge. Yes.

king his heirs or successors, or any absolution of the said subjects from their obedience, I will bear faith and true allegiance to his majesty his heirs and successors, and him or them will defend to the uttermost of my power, against all conspiracies and attempts whatsoever which shall be made against his or their persons, their crown and dignity, by reason or colour of any such sentence or declaration, or otherwise, and will do my best endeavour to disclose and make known unto his majesty, his heirs and successors, all treasons and traitorous conspiracies, which I shall know or hear of, to be against him or any of them. And I do further swear, that I do from my heart abhor, detest and abjure as impious and heretical, this damnable doctrine and position, That princes which be excommunicated or deprived by the Pope, may be deposed or murdered by their subjects, or any other whatsoever. And I do believe and in my conscience am resolved, that neither the Pope nor any person whatsoever, hath power to absolve me of this oath, or any part thereof, which I acknowledge by good and full authority to be lawfully ministered unto me, and do renounce all pardons and dispensations to the contrary. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation or mental evasion, or secret reservation whatsoever. And I do make this recognition and acknowledgement heartily, willingly and truly, upon the true faith of a Christian. So help me God."

The following Report of a Case upon this statute is in Kelyng, p. 38. "At the same time and sessions (Dec. 7, 1664, Old Bailey), one Isaac Marriot and others were committed, and the mittimus was for refusing to take the Oath of Allegiance, and so the justice of the peace thought to bring them into a *Præmunire*, but the Court discharged him and the rest, because the Oath intended was the Oath enjoined by the statute of 3 Jac. 1, c. 4; and it is not an Oath of Allegiance, though it be commonly so called; but in truth it is an Oath of Obedience, and so the Court discharged them because there was no such Oath of Allegiance; &c."

How the law stands at present, is stated in the preceding note.

Crook. I desire the statute to be read that empowers you to tender the oath to me upon this occasion in this place; for, 'Vox audita perit, sed litera scripta manet,' therefore let me hear it read.

Judge. Hear me. Crook. I am as willing to hear as to speak.

Judge. Then hear me: You are here required to take the oath by the court; and I will inform you what the penalty will be in case you refuse: for, your first denial shall be recorded, and then it shall be tendered to you again at the end of the sessions, and upon the second refusal you run a *Præmunire*,* which is the forfeiture of all your estate, if you have any, and imprisonment during life.

Crook. It is justice I stand for; let me have justice, in bringing my accuser face to face, as by law you ought to do, I standing at your bar as a delinquent; and when that is done, I will answer to what can be charged against me, as also to the question; until then I shall give no other answer than I have already done, at least at present.

Then there was a cry in the court, 'Take him away,' which occasioned great interruption, and J. Crook spake to this purpose, saying, Mind the fear of the Lord God, that you may come to the knowledge of his will,

* *Præmunire* is a law corruption of *Præmonere*. The words '*Præmunire facias*' being in the writ of citation or warning (*garnisement*, it is called, in 27 E. 3. st. 1, c. 1. which is the first stat. of *Præmunire*. See Barrington's Observations on the Statute of Provisors, 27 E. 3. st. 6. though the stat. of 16 R. 2. c. 5. is usually called the stat. of *Præmunire*, 4 Blackst. Commen. 412.) for the execution of certain statutes against the Papal power, have caused to be given, not only to the writ, but to the offence itself of maintaining the Papal power, the name of *Præmunire*. The punishment is thus shortly summed up by lord Coke: From the conviction the defendant shall be out of the king's protection, and his lands and tenements, goods and chattels forfeited to the king, and his body shall remain in prison at the king's pleasure, (or as other authorities, says Blackstone, quoting Bulstrode's Reports, have it, during life). Imprisonment for life, Blackstone notices, amounts to no more than imprisonment during the king's pleasure, since the king has the prerogative of remitting the whole or any part of the punishment, except indeed, in the case of a *Præmunire* incurred by offending against the Habeas Corpus Act, st. 31. C. 2. s. 2. Prosecutions on a *Præmunire* are, as Mr. Christian mentions, unheard-of in our courts. And accordingly in Mr. East's copious '*Treatise of the Pleas of the Crown*,' there is no such title as '*Præmunire*,' nor is the word to be found in the Index to that work. See more learning respecting *Præmunire* in Blackst. Commen. Book 4. ch. 8.; Barrington's Observations on the Statute of Provisors; and Co. Litt. 391, a, and the notes to the last edition.

and do justice; and take heed of oppressing the innocent, for the Lord God of heaven and earth will assuredly plead their cause: and for my part, I desire not the hurt of one of the hairs of your heads, but let God's wisdom guide you.—These words he spake at the bar, and as he was carrying away.

On the Sixth Day of the Week, in the forenoon, the Court being sate, John Crook was called to the Bar.

Chief Judge. Friend Crook, We have given you time to consider of what was said yesterday to you by the court, hoping you may have better considered of it by this time: therefore, without any more words, will you take the Oath? [and called to the clerk, and bid him read it.]

Crook. I did not, neither do I deny allegiance, but do desire to know the cause of my so long imprisonment; for, as I said, I stand at your bar as a delinquent, and am brought hither by force, contrary to the law; therefore let me see my accuser, or else free me by proclamation, as I ought to be, if none can accuse me: For the law is grounded upon right reason, and whatsoever is contrary to right reason, is contrary to law; and therefore if no accuser appear, you ought to acquit me first, and then I shall answer, as I have said, if any new matter appear; otherwise it is of force, and that our law abhors, and you ought not to take notice of my so being before you; for what is not legally so, is not so; and therefore I am in the condition, as if I were not before you: and therefore it cannot be supposed in right reason, that you have now power at this time, and in this place, legally to tender me the oath.

Judge. Read the oath to him. [And so the clerk began to read.]

Crook. I desire justice according to the laws of England: for you ought first to convict me concerning the cause of my so long imprisonment: for you are to proceed according to laws already made, and not to make laws; for you ought to be the ministers of the law.

Judge. You are a saucy and an impudent fellow; will you tell us what is law in our duties? Then said he to the clerk, Read on; and when the clerk had done reading,

Crook said, Read the preface to the Act: I say again, read the title and preamble to the act; for titles to laws are *Claves Legum*, as keys to open the law: For by their titles laws are understood and known, as men by their faces.—Then the judges would have interrupted me, but I said as followeth, If you will not hear me, nor do me justice, I must appeal to the Lord God of heaven and earth, who is judge of quick and dead, before whom we shall all appear to give an account for the deeds done in the body; for he will judge between you and me this day, whether you have done me justice or not.

These words following, or the like, I spake as going from the bar, being pulled away, viz.

Mind the fear of the Lord God, that you may do justice, lest you perish in his wrath: For some time the Court cried, 'Pull him away,' and then said, 'Bring him again;' and thus they did several times, like men in confusion and disorder.

The same day in the afternoon, silence being made, John Crook was called to the bar before the Judges and Justices aforesaid: the Indictment* being read,

* The Indictment was as follows:

London vs. Jur' pro Domino Rege super sacrament' suum præsentant, Quod ad general' quarterial' session' pacis Domini Regis, tent' pro civitat' London apud Guildhald' ejusdem civitat', die Mercurii scil' vicesimo quinto die Junii, anno regni Domini nostri Caroli secundi, Dei gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ Regis, fidei defensoris, &c. quarto decimo, coram Johanne Frederick Milite, Majore civitat' London, Thoma Adams Mil' et Baronet', Ricardo Browne Mil' et Baronet' et Thoma Aleyn Milite et Baronet', Aldermannis dictæ civitat', ac al' sociis suis Justic' dicti Dom' Regis, ad pacem in civitat' præd' conservand', necnon ad divers' felon', transgr', et al' malefacta infra eandem civitat' perpetrat', audiend' et terminand' assign'. Sessio ista pacis adjornant' fuit per præfat' Justic' dicti Dom' Regis ibidem usque diem Jovis, scilicet vicesimum sextum diem ejusdem mensis Junii, anno supradicto, ad horam septimam ante merid' ejusdem diei, apud Justice-Hall in le Old Bailey, in paroch' sanct' Sepulchri, in warda de Far-ringdon extra London præd', tenend' coram præfat' Justic' et al' sociis suis, ad faciend' ulterius prout cur' con' &c. Ac ad eundem diem Jovis, vicesimum sextum diem Junii, anno quarto decimo supradicto, general' quarterial' sessio ista pacis tent' suit pro civitat' London præd' per adjornament' præd', apud Justice-Hall præd', paroch' et ward', præd' coram præfat' Joh' Frederick Milite, Majore civitat' London, Thoma Adams Mil' et Baronet', Ricardo Browne Mil' et Baronet', et Thoma Aleyn Mil' et Baronet', Aldermannis dictæ civitat', ac Williemo Wilde Mil' et Baronet', uno Servien' dicti Dom' Regis ad legem, ac Recordator' civitat' præd', ac al' sociis suis Justic' dicti Dom' Regis ad pacem in civitat' præd' conservand', necnon ad divers' felon', transgr', et al' malefacta infra eandem civitat' perpetrat', audiend' et terminand' assign'. Ac ad tunc et ibidem præd' general' quarterial' sessio pacis præd' ulterius adjornant' fuit per præfat' Justic' usque diem Veneris, scilicet vicesimum septimum diem mensis Junii, anno quarto decimo supradicto, ad horam septimam ante merid' ejusd' diei, apud Justice-Hall præd', in parochia et warda præd' tenend', coram præfat' Justic' et al' sociis suis, ad faciend' ulterius prout cur' con'. Ac superinde ad istam eandem general' quarterial' session' pacis, tent' pro civitat' London per adjornament' præd' apud Justice-Hall præd', in paroch' et warda præd', dicto die Veneris vicesimo sep-

The Judge said, Mr. Crook, You have heard your Indictment, what say you, are you Guilty, or Not Guilty?

J. Crook. I desire to speak a few words in humility and soberness, in regard my estate and liberty lies at stake, and am like to be a precedent for many more; therefore I hope the court will not deny me the right and benefit of the law, as being an Englishman; I have

tuo die Junii, anno quarto decimo supradicto, coram præfat' Johanne Frederick Milite, Major civitat' London, Thoma Adams Mil' et Baronet', Ricardo Chiverton Armigero, et Thoma Aleya Mil' et Baronet', Aldermanis dictæ civitat', ac Willielmo Wilde Milite et Baronet', uno Servien' dicti Domini Regis ad legem, ac Recordator' ejusdem civitat', ac al' sociis suis Justic' dicti Domini Regis ad pacem in civitat' præd' conservand', necnon ad divers' felon', transgr' et al' malefacta infra eand' civitat' perpetrat', audiend' et terminand' assign', in aperta general' quarterial' session' præd', præfat' Justiciar' pacis ult' nominant' existentes major pars Justic' pacis ipsius Domini Regis infra dictam civitatem Loudon ad tunc, scilicet dicto vicesimo septimo die Junii, anno quarto decimo supradicto, apud dictam paroch' sancti Sepulchri, in warda de Farringdon extra London præd' præsen' existent', obtulerunt (Anglice did tender) Johanni Crooke nuper de London Generoso, Johanni Bolton nuper de London Aurifabro, et Isaac Gray nuper de London Generoso, et eor' cuilibet separatim per se (ad tunc existen' et cuilibet eor' existen' ultra sætat' octodecim annorum) jurament' content' in quodam actu in parliament' Domini Jacobi nuper Regis Angliæ, tent' per prorogationem apud Westm' in com' Middlesex, quinto die Novembris, anno regni sui Angliæ, Franc', et Hiberniæ tertio, et Scotiæ tricesimo nono, nuper edit' et provis' in his Anglicanis verbis sequen', viz. I do truly and sincerely acknowledge, profess, testify, and declare, in my conscience before God and the world, that our sovereign lord king Charles the Second is lawful and rightful king of this realm, and of all other his majesty's dominions and countries; and that the Pope neither of himself, nor by any authority of the church or see of Rome, or by any other means with any other, hath any power or authority to depose the king, or to dispose of any of his majesty's kingdoms or dominions, or to authorize any foreign prince to invade or annoy him, or his countries, or to discharge any of his subjects of their allegiance and obedience to his majesty, or to give licence or leave to any of them to bear arms, raise tumults, or to offer any violence or hurt to his majesty's royal person, state, or government, or to any of his majesty's dominions. Also I do swear from my heart, that notwithstanding any declaration, or sentence of excommunication, or deprivation made or granted, or to be made or granted by the Pope or his successors, or by any authority derived, or pretended to be derived from him or

some reason, before I speak any thing to the Indictment, to demand and tell you, that I desire to know mine accusers; I have been kept this six weeks in prison, and know not, nor have seen the faces of them.

Judge. We shall afford you the right of the law as an Englishman, God forbid you should be denied it; but you must answer first, Guilty, or Not Guilty, that so in your trial you may

his see, against the said king, his heirs or successors, or any abolition of the said subjects from their obedience, I will bear faith and true allegiance to his majesty, his heirs and successors, and him and them will defend to the uttermost of my power, against all conspiracies and attempts whatsoever, which shall be made against his or their persons, their crown and dignity, by reason or colour of any such sentence or declaration, or otherwise; and will do my best endeavour to disclose and make known unto his majesty, his heirs, and successors, all treasons and traitorous conspiracies which I shall know and hear of to be against him, or any of them. And I do further swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, this damnable doctrine and position, That Princes which be excommunicated or deprived by the Pope, may be deposed or murdered by their subjects, or any other whatsoever. And I do believe, and in my conscience am resolved, that neither the Pope nor any person whatsoever, hath power to absolve me of this oath, or any part thereof, which I acknowledge by good and full authority to be lawfully ministered unto me, and do renounce all pardons and dispensations to the contrary. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, or mental evasion, or secret reservation whatsoever. And I do make this recognition and acknowledgement heartily, willingly and truly, upon the true faith of a Christian. So help me God. Ac quod præfat' Justic' pacis ult' nominat' ad tunc, scil' dicto vicesimo septimo die Junii, anno quarto decimo supradicto apud paroch' et ward' præd', in dicta quarterial' session' pacis præd', eosdem Joh'em Crooke, Joh'em Bolton, et Isaacum Gray, et eor' quemlibet separatim per se requisiver' ad jurament' illud super sacrosancta Dei Evangel' capiend'. Quodq; iidem Joh'es Crooke, Joh'es Bolton, et Isaacus Gray, jurament' præd', sic per præd' nominant' Justic' pacis ejusdem Joh'i Crooke, Joh'i Bolton, et Isaac Gray, ut præfatur, oblat' et requisit', ad tunc et ibidem obstinate et pertinaciter capere recusaver', et cuilibet eor' recusavit, in malum exemplum omnium alior' dicti Domini Regis nunc fidel' subdit' et in contempt' dicti Domini Regis nunc, legumq; suar', contra formam statut' præd', ac contra pacem dicti Domini Regis nunc, coron' et dignitat' suas, &c. WILD.

have a fair hearing and pleading: but if you go on as you do (and will not answer Guilty, or Not Guilty) you will run yourself into a *Premunire*, and then you lose the benefit of the law, and expose yourself, body and estate, to great hazards; and whatever violence is offered to your person or estate, you are out of the king's protection, and lose the benefit of the law, and all this by your not answering Guilty, or Not Guilty: if you plead Not Guilty, you may be heard.

J. Crook. It is recorded in the Statutes of the 28 Edw. 3 and 3, and 42 Edw. 3 and 3, in these words, 'No man is to be taken, or imprisoned, or be put to answer without presentment before justices, or matter of record, or by due process, or writ original, according to the old law of the land; and if any thing from henceforth be done to the contrary, it shall be void in law, and holden for error:' and also in the 25 of Edw. 1, 2, and the 3 Car. 1, and the 29 cap. Mag. Chart. 'No freeman shall be taken and imprisoned but by the law of the land:' these words, [the law of the land] are explained by the statute of 37 Edw. 3, 8, to be 'without due process of law:' and if any judgments be given contrary to Mag. Chart. they are void, 25 Edw. 1, 2.

Judge. Mr. Crook, you are out of the way, and do not understand the law; though you adore the Statute Law so much, yet you do not understand it.

Cr. I would have you tell me the right way.

Judge. Mr. Crook, hear me. You must say, Guilty, or Not Guilty; if you plead Not Guilty, you shall be heard, and know how far the law favours you. And the next thing is, there is no circumstance whatsoever that is the cause of your imprisonment that you question, but you have, as a subject, your remedies, if you will go this way, and waive other things, and answer Guilty, or Not Guilty; and what the law affords you, you shall have, if you do what the law requires you, or else you will lose the benefit of the law, and be out of the king's protection.

Crook. Observe how the judge would draw me into a snare, viz. by first pleading Guilty, or Not Guilty; and when I have done so, he and his brethren intend suddenly to put me (as an out-lawed person) out of the king's protection; and how then can I have remedy for my false imprisonment? Therefore first clear me, or condemn me for my false imprisonment, while I am in a capacity to have the benefit of the law, and not to out-law me for an offence created by yourselves; and then to stop my mouth, you tell me, that if I have been wronged or false imprisoned, I may have my remedy afterwards; this is to trepan me, and contrary to both law and justice, &c.

Judge. You must plead Guilty, or Not Guilty.

Crook. I do desire in humility and meekness

to say, I shall not, I dare not betray the honesty of my cause, and the honest ones of this nation, whose liberty I stand for as well as my own, as I have cause to think I shall, if I plead to the present Indictment before I see the faces of my accusers; for truly, I am not satisfied in my judgment and conscience that I ought to plead to a created offence by you, before I be first acquitted of the cause of my being brought prisoner to your bar, and therefore it sticks with me to urge this further, viz. That I may see my accusers. (Interruption)

Judge. The arrantest thief may say he is not satisfied in his conscience.

Crook. My case is not theirs, yet they have their accusers; and may not I call for mine? And therefore call for them, for you ought to do so, as Christ said to the woman, ('Woman, where are thine accusers?') so you ought to say to me, ('Man, where are thine accusers?')

Judge. Your Indictment is your accuser, and the Grand Jury hath found you Guilty, because you did not swear; what say you, Mr. Crook, are you Guilty or Not Guilty? If you will not answer, or what you have said be taken for your answer, as I told you before, you lose the benefit of the law; and what I tell you is for your good.

Crook. What is for good I hope I shall take it so.

Judge. If you will not answer, you run yourself into a *Premunire*, and you will lose the benefit of the law, and of the king's protection, unless you plead Guilty, or Not Guilty.

Crook. I stand as brought forcibly and violently hither, neither had I been here but by a violent action, and that you should take no notice of it, seems strange to me; and not only so, but that you should hasten me so fast into a course that I should not be able any ways to help myself, by reason of your so hasty and fast proceedings against me to put me out of the king's protection, and the benefit of all law; was ever the like known in a court of justice!

Judge. Friend, this is not here in question, whether you are unjustly brought here, or not: do you question that by law, but not disable yourself to take advantage by the law; if brought by a wrong hand, you have a plea against them, but you must first answer Guilty, or Not Guilty.

Crook. How can I help myself when you have out-lawed me? Therefore let proclamation be made in the court, that I was brought by force hither, and let me stand cleared by proclamation, as you ought to do; for you are 'discernere per legem, quid sit justum,' and not to do what seems good in your own eyes. [Here I was interrupted again, but might have spoken justice Crook's words in Hanipden's Case,* who said, 'That we who are judges speak upon our oaths, and therefore must deliver our judgments according to our consciences; and the fault will lie upon us if it be

* See something like this in the Case of Rex v. Horne, A. D. 1776, post.

* See Croke's Arguments, ante, vol. 3, p. 1127, 1140.

illegal, and we deliver it for law: and further said, 'We that are judges must not give our judgments according to policy, or rules of state, nor conveniencies, but only according to law.' These were his words, which I might have spoken, but was interrupted.]

Judge. What though no man tendered the oath to you when you were committed (as you say), it being now tendered to you? From the time you refused it, being tendered to you by a lawful authority, you refusing, are indicted; we look not upon what you are here for, but here finding you, we tender you the oath, and you refusing it, your imprisonment is now just and according to law.

Crook. How came I here, if you know not? I have told you it is by force and violence, which our law altogether condemns; and therefore I not being legally before you, am not before you; for what is not legally so, is not so; and I not being legally brought to your bar, you ought not to take notice of my being here.

Judge. No, no, you are mistaken: so you may say of all the people gazing here, they not being legally here, are not here. I tell you, a man being brought by force hither, we may tender him the oath, and if he take it not, he may be committed to prison; authority hath given us the power, and the statute-law hath given us authority to tender the oath to any person, and so have we tendered it you, and for your not taking of it, you are indicted by the Grand Jury: answer the accusation, or confute the indictment, you must do the one or the other; answer Guilty, or Not Guilty.

[*J. Crook.* Here I was interrupted, but might have said, that the people that were spectators, beholding and hearing the trials, are not to be called gazers, as the judge terms them, because it is their liberty and privilege as they are Englishmen, and the law of England allows the same; so that they are not to be termed gazers upon this account, but are legally in that place, to hear trials and see justice done, and might have spoken (if occasion had been) any thing in the prisoner's defence, tending to clear up matter in difference, and the court must have heard them or him, and this as a stander-by or *Amicus Curie*, so saith Coke.]

Crook. The law is built upon right reason, or right reason is the law: and whatever is contrary to right reason, is contrary to law, the reason of the law being the law itself. I am no lawyer, and my knowledge of it is but little, yet I have had a love to it, for that reason I have found in it, and have spent some leisureable hours in the reading thereof; and the law is that which I honour, and is good in its place; many laws being just and good (not all) but I say a great part of it, or much of it, and that is not my intention in the least to disparage or derogate from.

Judge. Mr. Crook, You have been told you must plead Guilty, or Not Guilty, or else you will run yourself into a *Premunire*; he not your own enemy, nor be not so obstinate.

Crook. I would not stand obstinately before you, neither am I so; if you understand it otherwise, it is a mistake indeed.

Judge. Will you speak to the Indictment? and then you may plead: if you will not answer Guilty, or Not Guilty, we will record it, and judgment shall go against you.—Clerk, enter him.

Recorder. Mr. Crook, If you will answer you may plead for yourself, or will you take the oath? The court takes no notice how you came hither? What say you, will you answer? For a man may be brought out of Smithfield by head and shoulders, and the oath tendered to him, and may be committed, without taking notice how he came here.

Crook. That kind of proceeding is not only unjust but unreasonable also—(here was some interruption) and against the laws aforesaid, which say, 'No man shall be taken, or imprisoned, but by warrant or due process of law;' so that this speech of the recorder's favours more of passion than justice, and cruelty than due observance of law: for every forcible restraint of a man's liberty is an imprisonment in law. Besides, this kind of practice, to take men by force and imprison them, and then ask them questions, the answering of which makes them guilty, is not only unrighteous in itself, but against law, and makes one evil act the ground of another, and one inquiry offered to one the foundation of another; and this is my case this day—(Interruption.)

Judge. Mr. Crook, you must not be your own judge, we are your judges; but for our parts we will not wrong you: will you answer Guilty or not Guilty? If not, you will run yourself into a *premunire* unavoidable, and then you know what I told you would follow; for we take no notice how you came hither, but finding you here we tender you the oath.

Crook. Then it seems you make the law a trepan to ensnare me, or as a nose of wax, or what you please: Well! I shall leave my cause with the Lord God, who will plead for me in righteousness. But suppose I do take the oath now at this time, you may call me again to morrow and make a new tender; or others may call me before them.

Judge. Yes, if there be new matter; or if there fall out any emergent occasion, whereby you minister on your part new occasion: Mr. Crook, will you swear?

Crook. If I do take it to day, it may be tendered me again to morrow, and so next day, *ad infinitum*; whereby a great part of my time may be spent and taken up in taking the oath and swearing.

Chief Judge. When you have once sworn, you may not be put upon it again, except you minister occasion on your part.

Crook. Is this the judgment of the court, that the oath once taken by me is sufficient, and ought not to be tendered a second time, without new matter ministered on my part?

Judge. Yes, you making it appear you have once taken it,

Crook. Is this the judgment of the whole Court? for I would not do any thing rashly.

Judges. Yes, it is the judgment of the Court, —To which they all standing up said, Yes.

Crook. Then it seems there must be some new occasion ministered by me after I have once taken it, or it ought not to be tendered to me the second time?

Judges. Yes.

Crook. Then by the judgment of this Court, if I make it appear that I have taken the oath once and I have ministered no new matter on my part, whereby I can be justly charged with the breach of it, then it ought not to be tendered me the second time; but I am the man that have taken it once being a freeman of the City of London, when I was made free, witness the Records in Guildhall, which I may produce, and no new matter appearing to you on my part, if there do, let me know it; if not, you ought not by your own judgment to tender me it the second time; for, 'De non apparentibus et non existentibus, eadem Ratio est'—Interrupted by the shout of the Court, when these last words might have been spoken.

Judge. Mr. Crook, you are mistaken, you must not think to surprize the court with criticisms, nor draw false conclusions from our judgments.

Crook. If this be not a natural conclusion from the Judgment of the Court, let right reason judge; and if you recede from your own judgments in the same breath (as it were) given even now, what justice can I expect from you? for, if you will not be just to yourselves and your own judgments, how can I expect you should be just to me?

Judge. Mr. Crook, If you have taken it, if there be a new emergency, you are to take it again; as for instance, the king hath been out of England, and now is come in again; there be many have taken it 20, 30, or 40 years since, yet this new emergency requires it again; and although you have taken it, yet you must not make it appear before you answer Guilty, or Not Guilty; therefore do not wrong yourself, and prejudice yourself and family: do you think that every fellow that comes hither shall argue as you do? We have no more to do but to know of you whether you will answer Guilty or Not Guilty or take the Oath, and then you shall be freed from the indictment; if you will not plead, Clerk record it; what say you? are you Guilty or not Guilty?

Crook. Will you not stand to your own judgments? Did you not say even now, that if I had once taken the oath, it ought not to be tendered to me the second time, except I administered new matter on my part that I have not kept, &c. but no such matter appearing, you ought not to tender it to me the second time by your own confession, much less to indict me for refusal.

Judge. If you will not plead; we will record it, and judgment shall be given against you; therefore say, Guilty or Not Guilty, or else

we will record it. [The Clerk beginning to record it.]

Crook. Before I answer, I demand a copy of my Indictment; for I have heard it affirmed by counsel learned in the law, that if I plead before I have a copy, or have made my exceptions, my exceptions afterwards against the Indictment will be made void: Therefore I desire a copy of the Indictment.

Judge. He that said so, deserves not the name of a Counsel: for the law is, You must first answer, and then you shall have a copy. Will you plead Guilty or not Guilty?

Crook. If my pleading Guilty, or Not Guilty, will not deprive me of the benefit of quashing the Indictment for insufficiency, or other exceptions that I may make against it, I shall speak to it.

Judge. No, it will not. Will you answer Guilty or not Guilty? If you plead not, the indictment will be found against you: Will you answer? We will stay no longer.

Crook. I am upon the point: Will not my pleading deprive me of the benefit of the law? for I am tender in that respect, because it is not my own case only, but may be the case of thousands more; therefore I would do nothing that might prejudice others or myself, as a Christian, or as an Englishman.

Judge. Understand yourself, but we will not make a bargain with you, said another Judge, you shall have the right done you as an Englishman, the way is to answer, Guilty, or Not Guilty: If you plead, and find the indictment not good, you may have your remedy; answer, Guilty, or Not Guilty.

Crook. As to the indictment it is very large, and seems to be confused, and made up of some things true, and some things false: my answer therefore is, what is true in the indictment I will not deny, because I make conscience of what I say, and therefore, of what is true, I confess myself Guilty; but what is false I am Not Guilty of that.

Judge. That is not sufficient: either answer Guilty, or Not Guilty, or judgment will be given against you.

Crook. I will speak the truth as before the Lord, as all along I have endeavoured to do, I am Not Guilty of that which is false contained in the indictment, which is the substance thereof.

Judge. No more ado, the form is nothing, Guilty, or Not?

Crook. I must not wrong my conscience, I am Not Guilty of what is false, as I said before, what is true I am Guilty of; what is not true, I am Not Guilty of that, which is the substance thereof, as I said before.

Recorder. It is enough, and shall serve turn. Enter that, Clerk.

Isaac Grey being called to the Bar.

Judge. Will you take the Oath of Allegiance?

Grey. I have been near five weeks in prison, I desire to know for what.

Judge. We take no notice of your imprisonment, nor how you came here; will you take the oath?

Grey. I desire to know for what I am imprisoned, and then I am ready to answer: for so man (in this particular) hath received so much wrong as myself, having received a wound whereby I was in jeopardy of my life.

Judge. If any have wronged you, take your course in law. Will you swear?

Grey. I am a man of a tender conscience, and do desire time to consider.

Judge. Take him away. Which was accordingly done.

The next day *Isaac Grey* was called to the Bar, and asked by the Judge, if he would yet take the oath? *Recorder* speaking unto him on this wise; *Mr. Grey*, you are a wise understanding man, and a scholar; be advised what you do, and do not ruin yourself, but take the oath.

Grey. I desire time to consider, and to do nothing rashly.

Then in the afternoon were all three again called to the bar, and the indictment read.

Judge. *Mr. Grey*, will you take the oath? *Crier*, hold him the book.

Grey. I desire to know the cause of my first imprisonment, and to discharge me of the same before I give my answer to the oath; for I do not know myself guilty of any crime.

Judge. The law supposeth you to be disaffected to the present government, and therefore the oath is tendered to you.

Grey. I understand that the fundamental law of England alloweth no man to be accused or condemned upon supposition: I do further affirm, and that in the light of God, that I am not an enemy to the king, nor to any man living upon the face of the earth.

Judge. Will you answer, Guilty, or Not Guilty?

Grey. I desire time to consider of the truth of this matter; the indictment being large, and having much contained in it which indeed I do not well understand.

Judge. Will you yet swear, or plead to the indictment?

Grey. I have told you, and that for conscience sake, I dare do nothing rashly.

Judge. What do you talk to us of conscience? Every fellow may plead conscience.

Grey. Do you use to swear such as make no conscience?

Judge. Guilty, or Not Guilty? When you have answered to this, you may plead what you can in your own defence; but first answer Guilty, or Not Guilty: The rule of the law is, you must first answer.

Grey. Would you have men swear whether they will or nay, especially when against their consciences?

Judge. We have consciences as well as you: if there be any thing as to matter of conscience, it is nothing! you must plead Guilty or Not Guilty, that we may not spend time any longer.

Grey. Truly, I desire not that the time should be taken up in any thing that may not advantage the good of the people; therefore before I plead, give me a copy of the Indictment and then I shall plead.

Judge. Sirrah, Guilty, or Not Guilty?

Grey. I desire first to be heard as a Christian, and then as an Englishman.

Judge. Do not I tell you sirrah, if you will plead Not Guilty, you shall be heard; but if you will not, you will run yourself into a Pre-munire?

Grey. I appeal then to God Almighty, for I shall not wrong my conscience.

Judge. It is no matter of conscience: Guilty, or Not Guilty?

Grey. Not Guilty.

John Bolton having made the same objections, was at last obliged to plead Not Guilty.

The Seventh Day of the Week called Saturday.

Silence being made, *Isaac Grey*, *John Bolton*, and myself were brought to the Bar.

The *Clerk* of the Sessions read something concerning the Jury, which was empanelled on purpose (as was said) the Jury being discharged who were eye-witnesses of what passed between us and the court: And this jury being divers of them soldiers, some of whom did by violence and force pull and hale friends out of their meetings, and some of us out of our houses; and these were of the Jury by whom we were to be tried. The *Clerk* reading the indictment (as I remember.)

J. Crook. I desire to be heard a few words, which are these, That we may have liberty till the next quarter-sessions to traverse the indictment, it being long, and in Latin, and like to be a precedent; and I hope I need not press it, because I understood that you promised, (and especially the recorder, who answered (when it was desired) 'you shall') that we should have counsel also, the which we cannot be expected to have had the benefit of, as yet, the time being so short, and we kept prisoners that we could not go forth to advise with counsel, neither could we tell how to get them to us: we having no copy of the indictment before this morning, and because so suddenly hurried down to the sessions, we cannot reasonably be supposed to be provided (as to matter of law) to make our defence.

C. Judge. We have given you time enough, and you shall have no more; for we will try you at this time; therefore swear the jury.

J. Crook. I desire we may have justice, and that we may not be surprised in our trial, but that we may have time till the next quarter sessions, our indictment being in Latin, and so large as it is; and this is but that which is reasonable, and is the practice of other courts; for, if it be but an action above 40s. it is not ordinarily ended under two or three terms. And in the quarter-sessions, if one be indicted for a trespass, if it be but to the value of 5s, he shall have liberty to enter his traverse, and, upon security given to prosecute, he shall have

liberty until the next sessions, which is the ordinary practice; which liberty we desire, and we hope is so reasonable it will not be denied; especially upon this occasion, we being like to be made a precedent; and courts of justice have used to be especially careful in making of precedents, for we are not provided according to law to make our defence at this time, and therefore if we be put upon it, it will be a surprizal.

Judge. There is no great matter of law in the case, it is only matter of fact, whether you have refused to take the oath or not; that is the point in issue: and what law can arise here?

Recorder. Mr. Crook, the keeper of the prison was spoken to, to tell you that we intended to try you this day, and therefore ordered him that counsel might come to you if you would, and also that the clerk should give you a copy of your indictment: this is fair, therefore we will go on to swear the jury; for the matter is whether you refuse the oath or not? And that is the single point, and there needs neither law nor counsel in the case; and therefore we considered of it last night, when we sent you word and did determine to try you, and therefore it is in vain to say any thing, for the courts resolved to try you now, therefore swear the jury, crier.

J. Crook. I hope you will not surprize us. Then the other prisoners (who also were indicted) cried out (having spoke something before), Let us have justice, and let not the jury be sworn till we be first heard; so there was a great noise, the court being in a confusion, some crying, Take them away; others, Stay, let them alone; others saying, Go on to swear the jury, which the Crier in this uproar and confusion, did do something; as if he had done it; then we all cried out for justice, and liberty till the next sessions; the court being in a confusion, some crying one thing, and some another, which now cannot be called to mind, by reason of the great distraction that was in the court, neither what we said to them, nor they to us, the noise was so great; and the commands of the court so various to the officers, some commanding them to take us away, others, to let us alone; others to bring us nearer, others cried, put them into the Bail-dock, others, to put them within the furthest bar where the felons used to stand; where we were forced into accordingly; and in this hurly-burly and confusion that was among them, some men were sworn to testify that we refused to take the oath, which we never positively did; other officers of the court whom they would have sworn, refused to swear; though pressed to it by the Chief Justice, they desired to be excused. Then spake one of the prisoners again pretty much, but could hardly be understood by reason of the noise in the court, but the people, to whom he spake with a loud voice by way of exhortation, might hear the substance of what he said, which cannot now particularly be called to mind; but it was to

express the presence and love of God to himself, and to exhort others to mind his fear, that they also might be acquainted with God, &c.

Judge. Stop his mouth, Executioner; which was accordingly done.

Prisoners. Then we cried out, Will you not give us leave to speak for ourselves? We except against some of the jury, as being our enemies, and some of them who by force commanded us to be pulled out of our meetings, contrary to law, and carried us to prison without warrant, or other due process of law; and shall these be our judges? We except against them.

Judge. It is too late now, you should have done it before they had been sworn jury-men. Jury, go together; that which you have to find, is, whether they have refused to take the oath or no, which hath been sworn before you that they did refuse. You need not go from the bar; and like words said the recorder, and others, there being a confusion and noise in the Court, many speaking together.

Prisoners. Then we cried for justice, and that we might be heard, to make our defence before the jury gave their verdict: but the Judge and Recorder said, we should not be heard, (making good by their practice what the Chief Judge had said the day before, viz. That if we had liberty to speak, we would make ourselves famous and them odious) crying again, Stop their mouths, executioner; which was done accordingly with a dirty cloth, and also endeavoured to have gagged me (J. Crook,) striving to get hold of my tongue, having a gag ready in his hand for that purpose, and so we were served several times; then I called out with a loud voice, Will you condemn us without hearing? This is to deal worse with us than Pilate did with Christ, who though he condemned him without a cause, yet not without hearing him speak for himself; but you deny us both.

Gry. I desire to know whether according to law and the practice of this Court, myself, and my fellow prisoners, may have liberty to put in bail to prosecute our traverse at the next sessions?

Court. No, we will try you presently.

Judge. Stop their mouths, Executioner: And this was the cry of many upon the bench, they being still in a continued confusion, some crying to the jury, Give in your Verdict, for we will not hear them; with other words which could not be heard for the noise, the Court being in confusion.

Crook. You might as well have caused us to have been murdered before we came hither, as to bring us hither under pretence to try us, and not give us leave to make our defence; you had as good take away our lives at the bar, as to command us thus to be abused; and to have our mouths stopt: Was ever the like known? Let the righteous God judge between us: Will you hear me? You have often promised that you would.

Judge. Hear me, and we will hear you;

then he began to speak, and some others of the bench interrupted him, sometimes they speaking two or three at a time, and a noise amongst the officers of the Court; but the Judge said, we may give you liberty till the next sessions, but we may clause; and therefore we will try you now.

Crook. I bade the people take notice of their promise, that I should have liberty to speak, saying, See now you be as good as your words.

Judge. The law of England is not only just but merciful, and therefore you shall not be surprized, but shall have what justice the law allows—(Interruption.)

Crook. I remember what the judge said even now, that the law of England was a merciful law, that the Court had said before, they might, if they would, give us liberty till the next sessions, but they would not; and the maxim of the law also is, 'Summum Jus est summa Injuria;' therefore I hope your practice will make it good; that it is a merciful law, and not to execute 'Summum Jus, &c.' upon me, and thereby condemn yourselves out of your own mouths.

Judge. Jury, give in your Verdict.

Crook. Let me have liberty first to speak, it is but few words, and I hope I shall do it with what brevity and pertinency my understanding will give me leave, and the occasion requires; it is to the point in these two heads, viz. matter of law and matter of conscience: to matter of law I have this to say, first, as to the statute itself, it was made against papists, occasioned by the Gunpowder-Plot; and is entitled, 'For the better discovery and sup-

'pressing of popish recusants:' but they have liberty, and we are destroyed, what in you lies—(Interrupted by the Judges and disturbance of the Court.)—As to conscience, I have something to say, and that is, it is a tender thing, and we have known what a thing it is to offend it, and therefore we dare not break Christ's commands, who hath said, 'Swear not at all;' and the apostle James said, 'Above all things, my brethren, swear not—(interrupted) the Court calling again to the executioner to stop my mouth, which he did accordingly with his dirty cloth as aforesaid, and his gag in his hand.

Judge. Hear the Jury: who said something to him, which was supposed to give in the Verdict according to his order, for they were fit for his purpose, as it seems, they beginning to lay their heads together before he had spoke any thing to them, only upon his words.

Judge. Crier, make silence in the Court; then the Recorder taking a paper into his hand read to this purpose, viz. 'The Jury for the king do find that John Crook, John Bolton, and Isaac Grey are Guilty of refusing to take the Oath of Allegiance, for which you do incur a Premunire, which is the forfeiture of all your real estates during life, and your personal estates for ever, and you to be out of the king's protection, and to be imprisoned during his pleasure; and this is your Sentence.'

Crook. But we are still under God's protection.

Recorder. Adjourn the Court; which was done accordingly, and we remanded to Newgate, where we remain prisoners.

212. The Trial of THOMAS TONGE, GEORGE PHILLIPS, FRANCIS STUBBS, JAMES HIND, JOHN SELLERS, and NATH. GIBBS,* at the Old Bailey, for High Treason: 14 CHARLES II. A. D. 1662.

THE Commission of Oyer and Terminer being read, and proclamation made, the grand jury were sworn: whose names are, Arthur

Jourdan, John Freestone, Thomas Fawson, Thomas Coney, George Compere, Isaac Rutter, Chris. Rigby, Rowland Steed, William

* Kelyng's Report of this Case is as follows: "Memorandum, That at the sessions at Newgate, Dec. 11, 14 Car. 2, Tho. Tong, Geo. Philips, Francis Stubbs and several others, were indicted for High Treason, for compassing the king's death, and the overt acts laid in the Indictment, were assembling themselves together, and consulting and agreeing to destroy the king, 'Ac ad eadem proditiones perim-plendas,' the consulting to seize Whitehall, where the king was resident.

"1. And in this case, it was resolved by all the judges, that the meeting together of persons, and consulting to destroy the king, was of itself an overt act to prove the compassing the king's death.

"2. It was resolved that where a person

knowing of the design does meet with them, and hear their discourse of their traitorous designs, and say or act nothing; this is High Treason in that party, for it is more than a bare concealment, which is Misprision, because it sheweth his liking and approving of their design; but if a person not knowing of their design before, come into their company and hear their discourses, and say nothing, and never meet with them again at their consultations, that concealment is only Misprision of High Treason. But if he after meet with them again, and hear their consultations, and then conceal it, this is High Treason. For it sheweth a liking, and an approving of their design; and so was sir Everard Digby's Case, who in the Powder Treason

Standen, John Worth, John Rigby, Leonard Staples.

met with the Traitors, and heard their design, but upon the evidence it was not proved that he said any thing, or acted any thing, and he had Judgment of High Treason.

"3. It was resolved that some of those persons who are equally culpable with the rest, may be made use of as witnesses against their fellows, and they are lawful accusers, or lawful witnesses within the stat. 1 Ed. 6, 12, 5 and 6 Ed. 6, c. 11, and 1 Mar. 1, and accordingly, at the Trial of these men, some of their partners in the treason were made use of against the rest; for lawful witnesses withip those statutes are such as the law alloweth; and the law alloweth every one to be a witness who is not convicted, or made infamous by some crime. And if it were not so, all Treasons would be safe; and it would be impossible for one who conspires with never so many others to make a discovery to any purpose.

"But the L. C. Baron Hale said, that if one of these culpable persons be promised his pardon, on condition to give evidence against the rest, that disableth him to be a witness against the others, because he is bribed by giving his life to be a witness, so that he takes a difference where the promise of pardon is to him for disclosing the Treason, and where it is for giving of evidence. But some of the other Judges did not think the promise of pardon, if he gave evidence, did disable him, but they all advised that no such promise should be made, or any threatenings used to them in case they did not give full evidence.

"4. Although the Lord Chief Justice Bridgman, and some others of the Judges were of opinion that those words of two witnesses in case of High Treason, were repealed by the stat. 1 and 2 Ph. and M. c. 10, which enacts that all trials for Treason be according to the course of the common law: And at common law, one witness is sufficient to a Jury, though Co. Pl. Cor. is against this opinion, yet they all agreed that if that law for two witnesses be in force, yet the same two witnesses who are to the Indictment, may be also the witnesses at the trial: And the law doth not require two to the finding the Indictment, and two others at the trial.

"5. They all agreed that if a conspirator be examined before a privy counsellor or a justice of peace, and upon his examination without torture confess the Treason; If after at his trial he deny it, and two witnesses to prove that confession, are good evidence against him that made that confession, at his examination aforesaid; and in that case there needs no witnesses to prove him guilty of the Treason; for that confession puts it out of the statute which requires two witnesses to prove the Treason, unless the party shall without torture confess the same; and the confession there spoken of, is not meant a confession before the Judges at his trial, but a confession upon his examina-

And several Witnesses being called, there appeared William Hill, Edward Riggs, Tyler,

tion: But such confession to proved is only evidence against the party himself who made the confession, but cannot be made use of as evidence against any others whom on his examination he confessed to be in the Treason.

"6. They all agree that such a confession upon examination before a privy counsellor, though he be not a justice of peace, is a confession within the meaning of the statute; and the rather, as lord Bridgeman said, because justices of the peace were not enabled to take examination before stat. 1 and 2 P. and M. c. 13."

Lord Hale in the First Part of his Pleas of the Crown ch. 24, reports the matter thus:

"Dec. 10, 1662. Tonge, Philips, and others were indicted for treason for compassing the king's death, the question was, whether those, that were parties in the compassing, which were not yet pardoned, nor indicted, might be produced as witnesses, namely Riggs and others; and upon conference with all the judges these points were resolved.

"1. That the party to the Treason, that confessed it, may be one of the two accusers or witnesses in case of treason, for the statute intended two such witnesses, that were allowable witnesses at common law, and so may a *particeps criminis* be admitted as a witness, and was admitted to give evidence to the jury; but the jury may, as in other cases, consider of the evidence and credit of the witnesses, but he is sufficient to satisfy the statute.

"2. That the confession before one of the privy council or a justice of the peace, being voluntarily made without torture, is sufficient as to the indictment or trial to satisfy the statute; and it is not necessary, that it be a confession in court; but the confession is sufficient, if made before him that hath power to take an examination.

"3. The king having promised a pardon to Riggs, if he would discover the plot, he performed that part by his discovery; and thus was held by all no impediment to his testimony, for the promise was not applied to witnessing against any other; but two justices [these were our author and J. Brown.] held, that if the king promised a pardon upon condition that he would witness against any others, and that being acknowledged by Riggs when he took upon him to give evidence, &c. that will make him incapable to give evidence, because he swears for himself; but in that point the greater number were of a contrary opinion, *ex libro Bridgman verbatim*, and I remember the consultation and resolution accordingly."

Again, in the same work, Part 2, ch. 37, he says, "For my own part I have always thought, that if a person have a promise of a pardon, if he gives evidence against one of his own confederates, this disables his testimony if it be proved upon him." But see *Layr's Case*, A. D. 1722, *infra*.

Godolphin, Bonfoy, and several others; who being all sworn, were directed up to the grand jury. After some hours examination of the witnesses, and consultation, the Grand Jury returned the indictment *Billa Vera*.

Clerk of the Peace. You good men of the city of London, summoned to appear here this day, to inquire between our sovereign lord the king, and the prisoners that are and shall be at the bar, answer to your names, as you shall be called, every one at their first call, upon pain and peril that shall fall thereon. Good men of the ward of, &c.

Serjeant Glyanne, Serjeant Maynard, his majesty's serjeant at law; sir Jeffery Palmer, attorney-general; sir Heneage Finch, his majesty's solicitor; serjeant Keeling, his majesty's serjeant; sir Edward Turner; taking their places in court.

The Prisoners were commanded to be set to the bar.

Clerk of the Peace. Thomas Tonge, hold up thy hand; George Phillips, hold up thy hand; Francis Stubbs, hold up thy hand; James Hind, hold up thy hand; John Sellers, hold up thy hand; and Nathaniel Gibbs, hold up thy hand.

Which they severally doing, their indictment was read, the Substance whereof is as followeth, viz.

You the prisoners that were last called to the bar, stand indicted in London by the names of Thomas Tonge late of London distiller, George Phillips late of London yeoman, Francis Stubbs late of London cheesemonger, James Hind late of London gunner, John Sellers late of London compass-maker, and Nathaniel Gibbs late of London felt-maker; for that you six, together with divers others particularly in the indictment mentioned, and others not yet taken, as false traitors to the illustrious, serene, and most excellent prince, Charles the 2nd; by the grace of God, of England, Scotland, France, and Ireland, king, defender of the faith, &c. minding and with all their force intending the peace and tranquillity of this kingdom of England to disturb, and our said sovereign lord the king to death and final destruction to bring, and put, the 31st day of October in the 14th year of the reign of our said sovereign lord king Charles the 2nd, traitorously did compass, imagine and intend the killing of our said sovereign lord the king, and the ancient government of this kingdom of England to change; [as in the indictment more particularly was mentioned.]

What sayest thou, Thomas Tonge, art thou guilty of this High-Treason in manner and form as thou standest indicted, or not guilty?

Tonge. Not Guilty.

Clerk. How wilt thou be tried?

Tonge. By God and my country.

Clerk. What sayest thou, George Phillips, art thou guilty, &c.

Phillips. I am Guilty in hearing and not discovering of it.

Clerk. Art thou guilty of this High-Treason whereof thou standest indicted?

Phillips. I am Guilty, but not in manner and form as I stand indicted; I have heard the words as I have formerly confessed to sir Richard Brown: Not Guilty, as to the manner and form.

Clerk. How wilt thou be tried?

Phillips. By God and my country.

Clerk. How sayest thou, Francis Stubbs, art thou guilty, &c.

Stubbs. Not Guilty.

Clerk. How wilt thou be tried?

Stubbs. By God and my country.

Clerk. What sayest thou, James Hind, art thou guilty, &c.

Hind kneeling down, and discovering much penitency, answered, I am Guilty, and humbly beg mercy of his majesty,

Court. Record his confession.

Clerk. How sayest thou, John Sellers; art thou guilty, &c.

Sellers. Not Guilty.

Clerk. How wilt thou be tried?

Sellers. By God and the country.

Clerk. How sayest thou, Nathaniel Gibbs; art thou guilty, &c.

Gibbs. Not Guilty.

Clerk. How wilt thou be tried?

Gibbs. By God and the country.

Court. Carry up Hind to the goal, and the rest standing at the bar, silence was commanded.

Clerk. Thomas Tonge, George Phillips, Francis Stubbs, John Sellers, and Nathaniel Gibbs; you the prisoners that were last called to the bar, those men that you shall hear called are to pass upon trial for your several lives and deaths: if you or any of you will challenge them or any of them, you must challenge them when they come to the book to be sworn, before they be sworn.

Edmond Butler.

Tonge. I challenge him. [But afterwards admitted him.]

Clerk. Edmond Butler, Clement Punge, George Dixon, Samuel Paine, John Bagnal, John Gourtey, William Garler, Ralph Silverton, William Dudley, Joseph Drake, John Peake, and Robert Morrice, were severally sworn in this manner: Lay your hand on the book, look upon the prisoner; You shall well and truly try, and true deliverance make between our sovereign lord the king and the prisoners at the bar, whom you shall have in charge, according to your evidence. So help you God.

Clerk. Count these, crier, Edmond Butler; *Crier.* One. Clement Punge, two, &c. Twelve good men and true; stand together and hear your evidence.

Clerk. Crier, make proclamation.

Crier. O Yes! If any one can inform my lords the king's justices, the king's serjeants, or the king's attorney, before this inquest be taken, let them come forth, and they shall be heard; for now the prisoners stand at

the bar upon their deliverance: and all others that are bound by recognizance to give evidence against any of the prisoners at the bar, come forth and give evidence, or else you forfeit your recognizance. And all manner of persons that were summoned upon the jury, and have not yet been sworn; they are discharged, and may depart the court.

Clerk. Tho. Tonge, hold up thy hand; [and so to the rest of them at the bar.] You of the jury, look upon the prisoners, and hearken to their cause; you shall understand that they stand indicted in London by the names of Tho. Tonge, late of, &c. [and so in the Indictment aforementioned] who together with James Hind, who stands convicted by his own confession, and the rest also aforementioned: [and so reads the indictment again.] Upon which Indictment they have been arraigned, and thereunto have severally pleaded, Not Guilty; and for their trial have put themselves upon God and the country, which country you are: Your charge is to enquire whether they be guilty of the High Treason in manner and form, as they stand indicted, or Not Guilty; if you find that they, or any of them are guilty, you shall inquire what goods and chattels, lands and tenements, they or any of them had at the time of committing the said treasons, or at any time aithence; if you find that they are not guilty, you shall inquire whether they or any of them did flee for it; if you find that they fled for it, you shall inquire of their goods, chattels, &c. as if you had found them guilty; if you find that they were not guilty, nor that they did flee, say so, and no more, and hear your evidence.

Sir Edward Turner. May it please your lordships, and you gentlemen that are sworn of this jury, the five prisoners at the bar, by the name of T. Tonge, G. Phillips, F. Stubbs, J. Sellers, and N. Gibbs, do stand indicted, for that they as false traitors, together with several other persons mentioned in the Indictment, the 31st of October last, did, in the parish of St. Michael's in the ward of Cornhill, London, assemble and meet together, consult, contrive, and design to levy war against the king, to subvert and change the government as it is now established, to depose and kill the king: and in order to effect this, they did likewise then and there agree and design to seize and take in their hands the king's royal palace called Whitehall, where the king resides. For this they have been indicted, arraigned, and all these five have severally pleaded not guilty: if we prove them guilty, you must find them so.

Serjeant Maynard. Gentlemen of the jury, you have heard the Indictment read, you have heard the substance of it opened, it is short in words, but of as high consequence as any thing can be. I shall open the particulars of that Evidence, that we conceive will be made good by the oaths of Witnesses to be produced to you. You see here what the Indictment is: I shall insist upon these particulars, which I shall open and make good to you: first, what

was their design: next, what was their means of accomplishment, what encouragements they used one to another, and what colours they put upon this wicked action. For the first, gentlemen, I shall begin at the highest, higher no man can go in this world, that is, to design and compass, to contrive to put the king himself to death, to seize his person; some of them called it securing, you know the English of that, a king secured. We will go further, for we shall prove to you the person that with his own wicked hand undertook the slaughter and murder of the king: he did contrive how he might do it, sometimes when the king was performing an office of piety to visit his mother, other times when he should recreate himself by hunting: higher than this they could not go, and this they coloured over with religion. This merciful king that had pardoned his people beyond their own desires, and contented to do it; this king they would murder. Had there been no more, it had been exceeding heinous; but they went further, their malice rested not upon his person, but the family, the noble and excellent duke of York it designed to be secured likewise, and used like his brother: not they only, they went further, the whole nobility was in design; not gentlemen, that every one of these before you used these expressions, but they and their accomplices, some one and some another expression: but all joined in this, to destroy the king and his family, root and branch, that was their expression. King, his family, nobility, nay, go down to the gentry, and it ceased not there, they go to the clergy, as one of the prisoners at the bar (as you will hear) did express himself, I think it was Stubbs, That there should be never a lawn sleeve, never a sursingler should have a hole to hide his head in.

Stubbs. I never opened my mouth to that purpose.

Serj. Maynard. That will be left to proof: I undertake not of myself to prove this, but to open it, let the witnesses speak. In discourse some went further than that, whosoever would not join with them in their design (it was one Strange) was an enemy; and thereupon one Cole, who is gone, deserted them, though he was contented to have the king murdered, the nation ruined, yet would not agree in that principle. To accomplish this, we shall prove to you they did treat of levying a war, that among themselves it was given out that arms were provided, some delivered; and their designs to raise money, seizing all the Treasury at Whitehall, Worcester-house, and the Chamber of London; to seize the person of the noble duke of Albemarle, and all about him, and quarter to be given to none; that was their expression. They did give out among themselves (for a while there was some difference among these foxes, whose tails were tied together, and had fire in them), and Tonge told them, as we shall prove, that all parties were now agreed and would join; they had framed declarations to justify their proceedings, framed

papers to raise a mutiny among the mariners, and encouraged them to join with them, this will be proved. For their means, Phillips at the bar undertakes to procure the Word that the guard in the city had, so to betray them. There was a design made for seizing the Tower, several men appointed for that purpose, they and their complices were to come there with papers in their hands, as if they were mariners and had accounts to make up, these were to go up to those that sat there to finish accounts. To encourage themselves, they gave out that they had dealt with the soldiers at Windsor, and secured that castle; if this be proved to you, there can nothing be higher. There was this one pretence, it was given out, and perchance the rumours of the city are come to your ears, that they had designed a day for the execution of this mischief; several days were appointed, one on the Lord-Mayor's day, another on Allhallows eve. They gave out by a feigned letter, that there would be a massacre by the French and Papists, of the Protestants; this was to raise a tear and discontent among the nation to induce them to join when this design should be attempted. Gentlemen of the jury, had they gone on in this wicked purpose, having possessed the people with these fears, who could have told how to behave himself? And it seems strange and wonderful, especially looking upon the persons, men of little consideration, despicable men, and who live under the mercies of so good a sovereign, that they should take such a design in their hearts, and undertake the performance. Though the spear hath not entered into the sides of our sovereign, yet it must needs crown his head with abundance of thorns, that such people should be so desperately wicked. But we shall call our witnesses, and when you have heard this proved, we cannot be so uncharitable to think you shall need any further aggravation, or doubt of your giving a verdict against such miscreants as these are.

Attorney-General, (sir Jeffrey Palmer). These few prisoners at the bar were not all who were in this contrivance, though we have not all their names; but in the Evidence you will bear, there was a council of forty, and then of six, but none discovered. These six acted and infused into these, and divers others what they intended, and then broke up, and gave out all was ready, and would be done on such a day. We shall not trouble the Jury with giving evidence particularly against these men, they are joined and knit together in one cause. But bear the evidence.

William Hill, Edward Riggs, and one Bradley were sworn.

Counsel. Mr. Hill, speak your knowledge in this business, to my Lords and the Jury.

Hill. May it please your lordships, about the middle of October last, I met John Baker, one that is now indicted, he was a captain formerly called; I met him in Cheapside: he meeting me (after a salutation) invites me to

drink with him; I went into a house with him. When I was with him, he began to ask me what news there was in the country; I told him I had a little to inform him. He told me, if I would stay a while he would tell me some. I asked him of what nature? Says he, Not long ago the king went a hunting, sent some stags to sir John Robinson, now the lord mayor, and went but with a small guard, and I could have been one of the twenty that would have slain that outlandish dog. Then said I, Mr. Baker, that's nothing to me; but what other news have you? Says he, I know thou art right, and I know your father; there is something on foot in the city, and if you will meet to-morrow, I will bring some persons to you that will give you information. Sir, said I, (understanding it of dangerous consequence, and willing to get it out,) I will meet you: and we agreed to meet the next morning. That morning three persons came early to my quarters, Hill the cloth-drawer, Mr. Bradley, and this Mr. Riggs; he appointed them to meet him there, but failing himself, they being strangers said nothing to me then, and so I departed, and left them a drinking. The morrow after, he himself came to my lodgings, fetches me out of my bed, and tells me he had appointed some persons on the Exchange to give me an account. I went with him thither, and there we met with some persons that were his acquaintance; and from thence we went to the Ship in Leadenhall street; and among us was Hind, that confessed himself guilty: and there the business was fully discoursed of, what their intention was, that all interests were agreed, Fifth Monarchy Men, Anabaptists, Independents, and Fighting Quakers; and, the congregational churches were consenting, and were resolved to endeavour their deliverance from adversaries at Whitehall: many passages more. On the morrow after, we met again, and there met with us Hind, and Brown, and Baker. There we were acquainted of their magazines and arms provided, and about their correspondence in the several counties, that they were sure of Windsor Castle, that the head gunner and sergeant there were privy. We had information concerning this Tonge, as an active person in this design; I studied to know this Tonge, and I was brought to him at his house; and there I met one Ward, Stubbs, and Hind, and some others, and there we had discourse concerning the business. Tonge told us something of the business of Windsor Castle, and proposed something in reference to the taking the Tower, what arms and men they had for this design. We met many times at the Ship, that Gibbs we met at Bridewell-dock, and there was Stubbs and one Beazley with me; there we waited for a brother of this Gibbs, to give us intelligence when the day of the insurrection would be: we waited not long, but in came his brother, and two persons more, one Thomas, a bridler or bit-maker in Shoe-lane, and another person in a handsome garb came

along with him. His brother was somewhat shy (because I was a stranger) to speak any thing, but calls for this Gibbs and Stubbs, and had some private discourse with them, and away departed: After they were gone, we desired to know the intelligence; they told us that the Council of Six was broken up, all business was settled, Ludlow was commander in chief, and Allhallows-eve was the time, that horse and arms were provided. For Phillips; that day that the meetings were intercepted; that the Trained bands did surprize them, that day this gentleman and I (pointing to Riggs) came to the main-guard at the Exchange; where serjeant Phillips was with a buff coat and a halbert; and this gentleman (meaning Riggs) saluted him, and thanked him for his service in sending down notice to the meeting to be gone, for he was coming with the Trained bands to surprize them. He asked him, what was the occasion of the bustle: says he, they say—

Chief Justice. (Sir Robert Forster.) Who is that he?

Hill. That Phillips said, 'They say they were up in the West; and if they were not, I would they were, and here too, for a few would do the work.' Upon the Monday after, we met him near the Exchange; and so likewise Riggs thanked him for his service, and then he (Phillips) promised his further service when the time of the insurrection would be.—For Sellers, I was by agreement to have thirty arms delivered me, and I was very pressing to have the arms out of the magazine. Sellers met with this gentleman (Riggs), and he urging Sellers about the arms Sellers told him that they were all delivered out the night before, about 5 or 600; and that forty of their friends went away without arms, but that within two or three days there would be more laid in.

Solicitor-General. (Sir Heneage Finch,) Mr. Hill, I will ask you one question (with my Lords favour); as you have given a general account, I will keep you to one particular person, Tonge: Did Tonge, in any discourse with you, tell you of one Strange that was gone into the country.

Hill. One night he told us he had spoke with Strange: that he was gone into the country, and would come back to-morrow, and then we should have more intelligence.

Sol. Gen. What concerning the Tower and Windsor Castle?

Hill. He talked of the good service that he had done in being at Windsor Castle, with the serjeant and gunnar, for the securing of that Castle; that near five hundred of their friends were in and about Windsor, ready to assist for surprizing that Castle.

Court. Who told you this?

Hill. Tonge told me himself, that he was instrumental in it.

Sol. Gen. Did he tell you any thing of the Tower?

Hill. Only he said, it was fit some care should be taken to surprize the Tower at the time.

Sol. Gen. Any thing of Allhallows-Eve?

Hill. He did not fix the very instant time, but said, he look'd for intelligence from Strange.

Att. Gen. What day of the month was that?

Hill. I cannot remember the very day.

Serj. Maynard. What did he say concerning declarations?

Hill. The declaration was read, Stubbs acquainted us, against Popery, and Monopolies, for liberty of conscience, and a free Commonwealth.

Sol. Gen. Any thing of the Popish massacre?

Hill. Yes, I had this paper of them, a copy of a letter.

C. Justice. How many copies of that letter were to be dispersed in the city?

Hill. About five thousand.

Att. Gen. These things were to be dispersed, to possess the people that the papists about that time would massacre the protestants, that so they might draw all against that party to join with them: a brave colour, when in truth there was no such thing, but only to carry on their design of killing the king, and altering the government.

The Letter was read by the Clerk, and follows, *in his verbis.*

'Sir; Out of the respect which I bear to you in particular, and to the Protestant party in general, I give you notice of this passage; About a fortnight since, a woman, which you must be ignorant where, who had it from a correspondent of the papists, that they intend to make use of their army (which all the world sees they have provided), against Allhallows-Eve next; it was thought good therefore, in as prudent way as may be, to give notice to our friends in remote parts, that they may do what piety to God, loyalty to their prince, love to their country, and self preservation should direct them. Sir, I call the eternal God to witness, that this is not to trepan, to put a trick upon you, but a sober truth; and also communicated to a justice of the peace, and by him to the privy-council: And what the issue of it is, I have not heard; I hope you will inquire and tell us.'

'From Yexford in Suffolk Octob. 31. 1662.'

Serj. Keeling. Do you (Mr. Hill) remember any discourse of the way of taking Whitehall? Name who were there, and who spoke.

Hill. There was Hiud and one captain Browne, a shoe maker in the Strand, and some other persons.

Counsel. Was Stubbs there.

Hill. Not at this discourse: but we talked of taking Whitehall at Stubbs's house, [when] a sea captain was there, that was to go to Surinam, and Stubbs invited him to stay at home to assist them; who was to come down with a party by Charing-Cross, and another party to come up by the Cook-Pit, and to kill my lord Duke of Albermarle, and to slay sir Rd. Browne in the city, and the party in the city to keep a

drum beating, &c. And Tonge said, That their main care must be to keep down sir Richard Browne and the train bands, or else they should never be able to stand.

Counsel. What concerning the Privy-garden way?

Hill. They discoursed concerning the getting down the door and the wall, and so get the sooner to Whitehall.

Counsel. What was Stubbs's opinion at that communication?

Hill. His was at Blackfriars, the last Tuesday night before they were taken, this Stubbs, Thomas and Gibbs.

Court. Which Gibbs?

Hill. This black Gibbs at the Bar: They discoursed that they would be sure to make an end of Kings, Princes and Dukes, that they might have a Free State, and be troubled no more with any such kind of persons, neither the Lawn-Sleeves nor Surginglers.

Counsel. Do you remember that Stubbs proposed any other way to Whitehall?

Hill. No, Sir.

Serj. Maynard. Did they say what number was provided, 10, or 20,000?

Hill. Stubbs assured us, that there was a great party in East-Smithfield right for the work, and had their arms.

Counsel. What employment had Sellers about delivering the Arms?

Hill. He said, the Arms were delivered at Crutchedfriars, about 600; and that 40] of their friends went away last night for lack of Arms; that within two or three days there would be more.

Counsel. Did he name a Magazine?

Hill. Yes, the Magazine in Crutchedfriars.

Counsel. Did you know any thing touching the discovery of the Word, and by whom?

Hill. No Sir: but I understood that Tonge was assured by Phillips, that Phillips would get him the Word that very night that they intended the Insurrection.

Counsel. What was propounded, if they had taken the king, what would they do?

Hill. He should have the same quarter as Ludlow was to have.

Court. Who said that?

Hill. Stubbs, and Gibbs, and Tonge.

Counsel. That's three of the Prisoners at the Bar: Lord have mercy upon us!

Court. Were you not acquainted of a Council of Six?

Hill. Yes, they named several at a venture, but they believed some of them were of the six: That they met not twice in a place, sometimes here, and some times in another place.

Counsel. Who did they name?

Hill. Colonel Danvers, Phillips, Nya the Minister, Lockyer, and one Cole of Southampton, that these five were part of the six.

Counsel. What discourse touching the distance of place where they engaged any?

Hill. Forty miles about the town.

Counsel. Did Tonge tell you that Strange had led'd any horse?

Hill. He said, he had taken out the horse that were provided for a time: but Gibbs and Stubbs at Blackfriars assured us of the horse coming into the town the night before.

Counsel. Did Tonge tell you of any Back, Breasts, Blunderbusses?

Hill. Not he, Sir. It was talked of that night at the Blackfriars.

Counsel. What did you hear concerning sending into Dorsetshire, to spread rumours there?

Hill. That they had four hundred of their friends there, that they were sure of, and several cases of pistols were sent down by the carrier.

Court. Who said that?

Hill. I know not what particular person, but at that meeting, and in that company.

Counsel. Who was present?

Hill. Gibbs and Stubbs.

Counsel. None of the rest? Was Tonge or Phillips there?

Hill. No, Sir.

Counsel. Did you hear of any other country, either in Kent, or Worcestershire, or Derby, or Leicestershire?

Hill. Tonge informed us of the faithfulness of Col. Kendrick in Kent, to bring him some Arms.

Court. If the prisoners will ask him any questions, they may.

Sellers. Friends all that are here present, I did ever abhor such an action. Ask him whether he did hear me speak those words, that I should say, 'That there was arms delivered out, and that forty went away lacking, and in one or two days there would be more:' which words I never did speak in my life, or any such thing, only what I heard from Wapshot, as Wapshot declared to my Lord Mayor he told me, to whom I appeal. It is true, meeting with that Wapshot, says he, 'We hear there will be a rising, and there are some Arms delivered out.' Said I, 'I would advise you to have a care of such a business.'

Sir Orlando Bridgman. I would not interrupt you, you will be admitted to make your defence afterwards; but if you will, ask him any question.

Sellers. My lord, I shall come to that: Wapshot told me there were arms delivered, but further told me, he knew not of the certainty of these things; that at night he should go to a house where he should know. I bid him have a care. At night, as I was passing along, I met Riggs at Stubbs's door; he asked me, 'What news at London?' I said, I was told there would be a rising, and that arms were delivered. Is there, says he? Said I, I do not believe it, but I shall know certainly to-morrow. I did call the next morning, and asked, 'Is the story true?' No, says he, 'I was there, and there was no arms: that was all that I know of the business. Friend, did I tell you any such thing?'

Counsel. Tell him, and upon what occasion.

Hill. Upon occasion of Riggs's asking him for 30 arms for me, (this upon the Exchange) Sellers took him a little aside, and told him, they were all delivered out, that 40 went away lacking, that more would be there within 2 or 3 days.

Sellers. That which I said to Riggs, was the message I received from Wapshot; but that I enquired, and there was no arms there; so that it was but a fallacy: for I advised him not to meddle with any such thing. Mr. Hill never saw my face, till I was apprehended upon the Exchange and brought before sir Richard Browne.

Hill. I saw him upon the Exchange with this man, (Riggs.)

Counsel. Did he say that any arms were delivered before, and what number.

Hill. About 5 or 600.

Sellers. He never heard me speak a word.

Counsel. How long before he was apprehended?

Hill. Never but that time with Riggs upon the Exchange, about 9 days before his apprehension; and he confessed upon his examination, that he did see me with Riggs.

Court. Have you, or any other the prisoners, any questions more?

Sellers. I have more: Whether he will positively affirm that he spake with me upon the Exchange?

Hill. No. Sir, you answered the question to Riggs.

Counsel. You heard the answer?

Hill. Yes, sir.

Sellers. May be at the second hand.

Counsel. Did you hear the prisoner answer it, or had you it at the second hand?

Hill. I heard it from Sellers himself, answering Riggs.

Sellers. Did you hear me?

Hill. Yes, to Mr. Riggs.

Sol. Gen. He swears it, and you wonder at it, and so we do all.

Sellers. Who was there then?

Hill. It was upon the Exchange, when almost full.

Sellers. What day of the month?

Hill. I cannot remember the day.

Sellers. I do declare before this honourable bench, gentlemen of the Jury, and this great auditory, That I never saw this man's face till I was apprehended. That which I told Mr. Riggs, was what I heard Wapshot say. I never till then saw this man's face, nor exchanged one word with him; whereas he says, he heard me. I do not believe Mr. Riggs saw him near me, when I gave him the answer.

Hill. Seeing he doth invalidate my testimony, Mr. Adjutant Carent took him upon the Exchange, I shewed him the person; and therefore certainly I must see him before.

Sellers. It was not he, but the other in the white cloaths, that came and took me, that knew me.

Court. Will any of the rest ask him any question?

Sellers. Here is that that I am accused of, That I delivered arms, which is altogether false: my Lord Mayor can bear witness, Wapshot confessed he told me such a thing. I did ever abhor any such thing; I was always serviceable to his majesty upon all occasions, and all times: my neighbours can witness my civil conversation.

Court. Have you any thing more to ask him?

Sellers. I would fain know whether the bench and Jury are satisfied with this evidence.

Court. That you will hear anon: What else will you ask him?

Stubbs. That he accuses me, you have all heard: I do in the presence of God, and this honourable bench, and the Jury, deny it; for it is very false, and believe none will verify the same upon oath.

Court. Have you any question?

Gibbs. We all stand in the presence of God; and I am very conscientious of what I say and do: I must give account of all things before the Lord. This gentleman, Mr. Hill, has asserted concerning me, That I should deliver divers cases of pistols, as knowing the delivery of them: if Mr. Hill, who stands likewise in the presence of God, can produce any man to prove, that I delivered to any man any pistols, or that any were so delivered by my order, or that I conveyed or sent them away into the country; do this in the sight of the the Lord and his own conscience, I expect not mercy. But I would have him speak no more of me, but what he knows of me, or by me; whether he knows I ever received any pistols, or delivered any at any time, for such an end as he is pleased to speak: which my soul abhors, and God can witness.

Stubbs. This Mr. Hill was the man that mentioned this, and that he had 4 horses and arms himself, and had 200*l.* in order to it. I was never any plotter, nor contrived any thing, but am as innocent as the child unborn; but being by an accident at Tonge's house, strong-water-man: Ask the other witnesses, whether he speaks truth.

Sir O. Bridgman. I would have put you in a right way: You shall be all heard at large, when you make your Defence. But will you ask him any questions?

Gibbs. I propounded one; I desire an answer: Whether I received or delivered any pistols to such a use?

Hill. I did not say he did; but at that meeting at Black-Friars it was discovered among them, That several arms were sent to Dorsetshire, to several friends there; and he was there then: I believe he cannot deny it.

Stubbs. There was arms spoken of; but that man (Mr. Hill) spoke of them, and upon this consideration, That there were arms delivered to every hall, ammunition and powder. Riggs knows he spoke it at that time.

Hill. Sir, that was spoken after the question was put, What was the occasion of send-

ing the powder and ammunition to the halls? These arms were spoken of in reference to the design. I do acknowledge I told them I had some arms myself; and said, I had 200l. for carrying it on. And I know the grounds of my speaking; and so do some of this honourable bench.

Stubbs. Hill advised, That they fall upon sir Richard Browne as an enemy to all honest men.

Gibbs. This Hill says that I should say these things; there were more there, and had ears as well as he, let them speak.

Hill. There was Riggs, Stubbs, myself, and I know not the other names.

Gibbs. This Hill and Mr. Riggs, whose face I never saw, came to my neighbour's house, where I was alone, found me plotting with no man.

Hill. We were brought into his company by one Beazley: He had been at Tower-Hill, about 2 or 3 o'clock, to give some intelligence to some persons there about the design. Riggs and I took a coach, and went after him; and Stubbs told us we might meet him at a baker's house near the Tower. We found Beazley, and he said he could not signify any thing to us, but would carry us to Black-Friars, to one Gibbs: And there he brought us to this very man. First enquiring at a house for him, Beazley was told he was at a tavern at Bridewell-Stairs: We went there, and found him. He told us he could tell us little himself, till his brother came; and accordingly he presently after came. That was the occasion that I came into his company.

Gibbs. He says that I spoke of pistols delivered, and a number; but how many he knows not: And that I should talk of the death of the king, which is as false as God is true. Again, I knew not of his coming, never appointed him, never was privy to any such plot; I abhor it in my soul. I never engaged in any such design with any man at any time.

Court. You do yourself much wrong, and take away that time which you may happily spend better.

Stubbs. I desire to know of Mr. Hill, who was present at that meeting, that I should say, The king should have such quarter as Ludlow.

Hill. It was spoken at that meeting at Black-Friars: After his brother and the other persons were gone, it was there spoken, That the council was broke up, and all ready; All-hallows-Eve the time, and then the same quarter to be given as Ludlow should have, if taken.

Stubbs. You do not answer the question: Who was there besides yourself?

Hill. There was Riggs, and that Gibbs there.

Stubbs. You have only his evidence.

Tonge. Who was in company when I talked of 300 men at Windsor?

Hill. It was at your own house; and there was Ward, Stubbs, Riggs, Hind and myself.

Phillips. Whether did he ever see my face at any meeting?

Hill. I never saw you before that time in Cornhill.

Phillips. Upon what account did I speak to Riggs then?

Hill. When you came off the Exchange, you told him you could not stay, your captain was coming. Riggs thanked you for your favour, in sending word to the meeting to be gone to a certain quaker.

Phillips. I never sent to any quaker to that purpose. I did not see this man upon the Sabbath-day: But Riggs came down to me, and thought I had sent notice to Anchor-allej; but I did not.

Sellers. He affirmed that there was several meetings of forty, and then of six: ask Mr. Hill whether I was in either of those numbers at any time.

Counsel. He did not charge you with any such thing, of being in that number: He asks a question about things not laid to his charge. Let Mr. Riggs speak.

Riggs. About 23 weeks since I became acquainted with Mr. Tonge, upon this occasion: Captain Baker did say that he was a man of intelligence, but Mr. Tonge did not care for him; and told me that I might be acquainted with him. A while after I came acquainted with him accidentally, when I came to his house.

Court. Whose house?

Riggs. Tonge's house. Mr. Stubbs was there. He said, That he had been at Windsor, spoken with the gunner and serjeant: and that they promised it should be ready upon some certain notice given. That night he had received a letter of some business concerning a suit of law, he said; in which there was a mystical meaning, which he did not tell me of. But this he said, That he had made sure of Windsor, by the gunner and serjeant's promises. This is that I know of him.

Counsel. Is this all of Tonge?

Riggs. This likewise he has told me, That he had sometimes met with a certain company; he did not say thirty or forty, but a pretty many there was. He named Mr. Cole, capt. Elton, capt. Leigh, that they had often met, but could not well agree. But at last Mr. Strange did meet with them, give them one meeting; they could not agree neither. They went away and said these words, to the best of my remembrance; Mr. Strange did refuse to join with them; but when God did bid him go, he would go, whether this day, or next week, or next year, matters not; but when God bids him go, he would go. Mr. Cole was somewhat troubled to hear it: But says Mr. Cole, If you will go, give me but notice, if I cannot go so fast as you ride, I will hold by your horse-tail. A little while after he told me, They had not met again; that Mr. Cole, because they could not agree about this business, was gone beyond sea; but before he was gone, he did tell me of some considerations that were

drawn, as he judged, about a government by Mr. Cole; and gave me in a Paper some certain Propositions, three or four concerning seamen: The substance was this, What great benefits they had by a Commonwealth.

Court. Who gave you them?

Riggs. Tonge: but it came from Mr. Cole, as he said. In general, they were to declare against the misgovernment of Church and State: In particular, to seamen; what great advantages there would be to them. And three or four things propounded in order to them: 1. That no seaman should pay custom for any commodity that he did bring under the value of 10*l.*; upwards they must. And likewise there should be care taken upon our own coasts, and beyond sea, that where any of our English ships should be cast away, there should be care taken out of the customs that might keep them, in their travelling homewards, either from begging or starving. But Mr. Cole, when they met, as Tonge said, would not agree; and therefore went beyond sea. After he was gone, within a week or a fortnight they had another meeting.

Court. They: Which they? Name them.

Riggs. I did not hear him name many, unless Leigh and captain Elton: I remember no more. And there, he said, they had under consideration the government of a Commonwealth; and so to declare against the misgovernment of the Church and State: and that there was to be a meeting at London-wall in a little time after; and he was there. He afterwards told me he missed that meeting; but had intelligence brought him, That that time that he missed, thirty or forty, I know not the certain number, had referred it to six men: They called it, 'The Council of Six;' but the names of them I never heard from him; and indeed, he said he knew them not, by reason of his absence from that meeting. But what I gathered from him was this, That he judged captain Elton was one of them.

Counsel. He told you there was a Council of Six?

Riggs. Yes; that he heard there was, but knew them not.

Sol. Gen. To make things short: Were you ever at any meeting where there was a discourse touching surprizing the king, altering the government? And who was there, upon your oath?

Riggs. That Friday immediately before we were taken, I think October 24, there was some discourse in general concerning Whitehall; what might be done as to the procuring of that, and likewise concerning the Tower.

Counsel. Who was present that Friday?

Riggs. Myself, Hill, Tonge, Stubbs, Ward, Hind, and John Baker: and then to the best of my knowledge, there was this discourse in general. Concerning the taking of the Tower there was some propositions on all hands concerning the taking of that. Mr. Hind, he only mentioned, but did not say he would undertake it, the righting of gunners accounts.

Mr. Tonge, he said that the way that he thought convenient might be this; When sir John Robinson, now lord mayor, did, late in the evening go into the Tower, there should be a party following his coach in, and so might do it. And John Baker at that present instant of time did say, That it was necessary the king should be surprized. And likewise said then, that there should be no quarter; he would give nor take none.

Counsel. Who was present?

Riggs. Mr. Hill, myself, Bradley, Hind, Captain Brown, and Baker, and another Hill, the drawer, I think.

Counsel. Was not Tonge and Stubbs there then at that time?

Riggs. Yes; they were there.

Sol. Gen. I ask you this; I do not desire large stories, but firm and close answers: were you present at any meeting when the securing the king, Tower or Whitehall was discoursed of, or no?

Riggs. Sir, that Friday, October 24, immediately before we were taken, there was this discourse: Tonge did propound such a way for surprizing the Tower, by following sir John Robinson's coach in at night; and Baker did say, That it was necessary to undertake the securing of the king's person, and assaulting Whitehall; and that if there were 500 horse and foot, they would undertake it, by going into the privy-garden, and back-stairs.

Counsel. Were you present when Stubbs did advise the assaulting of Whitehall by the privy-garden?

Riggs. No: but Baker did say he would undertake it.

Counsel. Who was present?

Riggs. Mr. Hill, Bradley, Stubbs, and Hind, was there: but that Stubbs undertook it, I cannot say; but he was there.

Sol. Gen. Did Tonge ever tell you any thing of Phillips, or that he had hopes of the word?

Riggs. I came acquainted with Phillips presently after I was acquainted with Mr. Tonge. Phillips once met me, and I carried him to Tonge's; and then Phillips freely said, that there was 300 arms at the artillery-garden; he being one of the artillery, knew where they lay, and could tell them how they might come by those arms. And that for the word, it was necessary to be got. And if in case that it so fell out that the white regiment was then out or he then in office, he would endeavour to procure it. But afterward, meeting him several times, he declared he would not meddle any more with it.

Sol. Gen. Were you upon the exchange with Sellers when there was a discourse about delivering out of arms? and what did Sellers say?

Riggs. Mr. Hill saying that he had 200*l.* to buy horses, and that he had four already, and wanted swords, and had friends in town wanted arms, asked me if I knew if any were given out. I told him, that one Mr. Sellers told me

that he had heard some arms were given, and to be given out that day. Upon the exchange, Mr. Hill and Bradley and I being together, Mr. Hill said, ay, there is the person that told me of the arms: I will go and ask him if there be any such thing. Whether Mr. Hill heard the discourse, I cannot tell; but he said, says he, I have enquired; and some arms are delivered, and forty went without; but within two or three days there would be more.

Sol. Gen. Did Hill see Sellers upon the Exchange at that time?

Riggs. Yes; but whether he heard him, I cannot tell.

C. Justice. What induces you to believe he did see him?

Riggs. We were close together.

C. Justice. What about Nathaniel Gibbs?

Riggs. For Gibbs, I brought Mr. Hill acquainted with Mr. Stubbs; and he said he knew one at Fleet-Bridge, that sells plumbs and such things, and if we would go along with him, he would tell us news. Hill, Stubbs and I, that day I was taken, went to Beazley; Stubbs asked him, what news? Says he, I heard the business goes on; but if you will go to one Gibbs, meaning him that is fled, he has intelligence. So we went to an alehouse near him, but he was not at home; and we were told if we would go to Bridewell, they said they would send for his brother, meaning him at the bar; and so should have an account. Gibbs, at the bar, being with us, he told us he knew little himself; but when his brother came we should hear. Three quarters of an hour after came Gibbs that is gone, Thomas, and another man; I knew him not; and Gibbs called his brother. Beazley, Stubbs, and Hill, and I, sat still. When this Gibbs came, he said his brother knew little, hoped we were honest men. The news was this, that he heard that Ludlow was in town; and that now the Council was broken up.

Court. What Council?

Riggs. The Council of Six was broken up; and that they had sent messengers into the country to give notice and to make their interests good abroad. This is that he said there or as much as I remember.

Sol. Gen. Now I will ask you in general, did you ever hear of any discourse at any time of these meetings touching a rising by the papists and a massacre of the protestants?

Riggs. Being upon the Exchange, Hill, Bradley, and I, there was a lieutenant came to me, and asked me whether I heard of the massacre to be? I said, No. Says he, I can let you see a copy of a letter to that purpose; and gave it me. Hill going to the ship, I told him of this, and he was desirous of having a copy. And this was the copy that was this day read in court.

Att. Gen. What did you hear concerning the surprising of the king at Camberwell, when he came from his mother? And what did Phillips say?

Riggs. Phillips, Tonge, Stubbs, and my-

self, being together, they were discoursing concerning the king's going abroad: and at that Phillips said the king was to come from Hampton-Court; to see the queen mother at Greenwich, and hinted that he might be surprised. Tonge said it need not; there might be such an opportunity twice every week.

Court. Prisoners, will you ask the witnesses any question?

Phillips. Did you not meet me on a Sabbath-day? You may remember I met you in Cheapside; we walked to Birchin-lane end. You asked me of a rising that should be: I said, what rising? Says you, to surprise the king coming from Hampton-Court to Greenwich. And I came and spoke it openly in my family, as news that I heard. This gentleman had me to Tonge's house; and there grew the discourse. Riggs told me Tonge could tell further: and Riggs told me, That the reason why the time for it was not appointed, was because the Fifth-Monarchy-Men and Anabaptists were not agreed. Riggs, did not I disclaim this business, and declared I would have nothing to do with it?

Riggs. This is certain, That afterwards he did say he would not have any thing to do with it; and I did not see him a great while after that. Concerning Baker's surprising the king, it is true, he did say before Hill, and I, and Bradley, that the king was a hunting, and came through the city; and said, He would have been one of the fifty would have surprised him, and pulled him out of the coach.

Court. Who said that?

Riggs. Baker.

Court. Who present?

Riggs. Bradley, Mr. Hill, and the other Hill, Brown, and others.

Sol. Gen. Do you remember no discourse concerning the coming in at the Privy-Garden?

Riggs. I have under my hand the Grand Jury declared, That Baker said he knew the way to the back-stairs through the privy-garden better than any. And Bradley did once, and but once, say, That he knew it as well as any, and would undertake to do this same, in the presence of Stubbs, Tonge, Hill, and the rest of them that were there that Friday night.

Court. Who were the rest?

Riggs. Hill, myself, Ward, Stubbs, Hind, and John Baker at Tonge's house.

Sir John Maynard. We do conceive that these two witnesses have given evidence against all of them; if any thing stick with the Jury, let them speak.

Counsel. Here, Bradley. This witness, that we call, he was no conspirator; but when there was notice of the design, he was employed to find it out, and to give us an account of it.

Sol. Gen. Mr. Bradley, were you present at any debate?

Gibbs. Whether did Riggs hear me say, That Ludlow was in town; or that the council was broke up, and the business went forward?

Riggs. This I said, that Hill, Stubbs, and Beazley, were present; and he said he knew nothing himself but from his brother: This was the news, that he heard that Ludlow was in town, council broke up, and that there was sent out messengers to give notice to prepare for the business; that it would be on Allhallowe-eve, or the latter end of the week, being Saturday the next day.

Gibbs. I never spake these words; and do desire that the honourable bench will enquire of the persons then present, whether they will vouch the same; whether I said it from my brother; These words I did not speak; and others being present had ears as well as he.

Tonge. Mr. Riggs told me Ludlow was in town; and told me he would enquire after him.

Riggs. I confess I did so.

Tonge. And that he was like to be taken in Cheapside. He was continually at my shop, and would not let me alone, prompting and inducing me to these things.

Counsel. Mr. Bradley, were you at any meeting touching discourse of surprizing Whitehall?

Bradley. I was one Friday night, at Tonge's house, a strong-water man on Tower-ditch, where there was these two gentlemen with me (pointing to Mr. Hill, and Mr. Riggs) and there was Mr. Stubbs, and John Baker and another gentleman, one Ward; and we had some discourse about surprizing of Whitehall, which way it might be done. Some said that a party might go through the guard, and so surprize general Monk's guard; others said they might come down by Charing-Cross; but Tonge said, there was no coming down by Charing-Cross, because there was two great guns planted at the bottom, and commanded all that way: but said, the only way he conceived, was to bring a party through King's-street, and if it were possible, to get into the Privy-garden, and so into the lodgings that way. This is all that I remember.

Serj. Keeling. Do you know any thing about the ship at the East-India house?

Bradley. I went to this ship sometimes; and with Riggs, Hill, Brown, Hind, and one Hill a cloth-drawer; we had divers discourses concerning the design, and the news on foot.

Court. What design? Express it.

Bradley. To alter the government; the surprizing the king, the duke, and the general, and as many more of the council as they could lay hands on.

Counsel. What about the Guards, surprizing Whitehall?

Bradley. At another meeting they discoursed about the bringing down forces to Whitehall.

Counsel. Who were present then? Which of the prisoners at the bar?

Bradley. None, unless Hind be there.

Counsel. At what other meetings were you?

Bradley. I was never at any other, but

twice at Tonge's house. The Friday night we had a discourse about taking Whitehall. And the day before we were taken, I met this Mr. Riggs upon the Exchange. He asked me to go home, and dine with him; and we intended to go and see a ship. His dinner not being ready, we went over to Tonge's shop, and had a quartern of strong waters; and I took a pipe of tobacco. Riggs went away, and said he would not stay: Hind staid with me the whilst. After we had taken a pipe of tobacco, he came again, and said he heard the business was near at hand, and that there would be speedy action. Hill was at the shop. And after dinner, Riggs and I, Mr. Hill and Hind, went all out together to Stubbs's house. Riggs and Hill went in; Hind and I staid. Standing there a little, said I to Hind, What mean these gentlemen to stay so long? Riggs said he staid for a friend; but I will go and meet him. Said I, Will you not go on board a ship with master Hind and I? Says Riggs, No, I will go to meet my friend: Do you go on board the ship, and come to my house; if I am not there, pray stay a little. We asked Mr. Hill if he would go with us; but he went with Riggs: And they told me coming back, That Gibbs had informed them the design was ready, council broke up, and messengers sent to give notice; and Ludlow in town, and to be general.

Court. Who told you this?

Bradley. Riggs did, when he returned from Bridswell.

Tyler sworn.

Sol. Gen. Mr. Tyler, do you know Tonge?

Tyler. I know him very well.

Sol. Gen. Have you ever been in his company, and spake of any design about securing the king?

Tyler. Often.

Counsel. Tell what you have heard.

Tyler. I have met Mr. Tonge and others in three or four several places; at the Wheat-Sheaf at Lion's once, if not twice; at the Half-Moon, widow Jordan's, within Bishops-gate, twice at the least. Near Duke's Place, at the Shears, I have heard several things, and have noted it down, to be sure to deliver the truth. I have heard them speak about Whitehall, and securing of it, and of the two guns there. Elton and he said, That they might come with a party backwards, breaking through a barber's shop in King's Street, and dismount the two guns. But as touching the king, the duke, and the noble duke of Albemarle, they proposed what excellent service it would be to secure these persons: He said it was not a thing that would admit of much debate, inasmuch as he had a friend a courtier, (I know not his title) that would give him notice of any time when the king was gone a hunting, or his progress; and that it was easy to take it. Tonge said he served the Tower suttlers, and was acquainted there; and said, There was no way to surprize that but this, either about 10 or 11 o'clock, I will undertake we may do it with 40 persons thus, says he; Some to go in drop-

ping, one by one, or two together, and others to be at several ale-houses near, to be ready; and they within seizing on the guard by a private sign, we should secure those without; and the soldiers being of the old army, will readily comply. And said, There was a person that lived nigh him, wears ropes about him, is a porter when off the guard, and believes he can command the whole company, and would undertake it. For Windsor-Castle, there was an old gunner that he kept correspondence withal; and he served the suttlers of that castle also with tobacco, I think he named strong-water; and that the soldiers were many of them his acquaintance; and that he had received letters from this gunner under some strange title. And said it was easy; and knew that at any time, when the word was given, let him go, or send by such a token, and that place were our own.

Court. Who said this?

Tyler. Mr. Tonge. As to the other person, Phillips, I can only say this of him: There is one lieutenant Chapman, so formerly, now a prisoner in the Tower. This lieutenant was a carrier of Norwich. I went to his inn, the George in Lombard street, and asked for him? I was told he was at capt. Foster's house, in Leadenhall street, and there I might find him. I went to capt. Foster's; and captain Foster told me he was at supper there with his master. I went up: There was this lieutenant Chapman and Phillips, which was the first time I laid my eyes on Phillips. My business was to speak with Mr. Chapman the carrier; but I perceived by some discourse of Mr. Phillips, there was something driving on: But I must say that capt. Foster walked about the room as if he minded not the discourse. There was Chapman, Phillips, Elton, and a man looking a-squint; I heard Phillips call him muster-master, but I know not the man. I heard them discourse very promiscuously about ships, and something wildly. I tarried while I spent two-pence, and came away with Mr. Chapman, and asked him, what that young blade was that talked so promiscuously? Chapman told me he was a serjeant, belonging to the trained-bands. Tell me his name? His name is Phillips. Do you know his trade or dwelling? He is a gilder, I think. Then this is the same person I have heard of at a coffee house; which was thus: A perfumer in Southwark, he heard of great rumours about a new Commonwealth; and pressing this perfumer how he came to be thus informed, says he, There is one Phillips that lives in Abchurch-lane; this man knows of it: For, says he, he hath said himself, that he has gone from Committee to Committee, where officers met about these things; and he named captain Foster for one that was engaged in the business. Said I, This is strange! I hastened back again in the morning to captain Foster's: Sir, said I, do you know that Phillips that was here last night? Yes, says he. What is he, said I? He answered, A serjeant. The thing is this, this man does talk abroad, That there is a

meeting of the old officers, and that you are engaged. At which captain Foster seemed to be troubled that he should be aspersed, answered, I know nothing, no not one word of this: I do declare an abhorrence thereto, or of any action against his majesty; and thereupon presently went to Phillips, and charged him with this report: and soon after this perfumer comes to my house and desired me to go over to the Cross Keys, where Phillips was. When I came there, says Phillips, Sir, I saw you the last night, when we were talking of ships, I hope you do not mind the report about capt. Foster, for I am troubled such a thing is mentioned: for my part, I know not that I said so; I am sure I knew no such thing. This was all as to Phillips; but for Tonge, I must needs say, in all the meetings where I was, the several places that I formerly named, and the Whalebone behind the Exchange, he still discoursed of this business.

Counsel. What was done there concerning chusing the Council of Six?

Tyler. He was spoke to, to be at the Shears, but he sent a note sealed and directed, in which was inclosed either 9 or 11 of the Rump-Parliament names of persons: And says he, for my part, I cannot come this day, because the Hamlets are to go out into the field; (it was when air John Robinson marched with his regiment) that I may avoid suspicion, I must go with him.

Counsel. What were those names?

Tyler. I cannot tell; but they were 9 or 11 of those in the Tower: And he promised he would get a note of those mens names in the Tower; for he was confident of it, that they would sit as members, and do good service upon the account of a Commonwealth: and said, there were some that had a correspondence with them in the Tower.

Counsel. What correspondence had they in the country?

Tyler. Tonge told me at the Wheat-sheaf, That, if a rising should be, it were necessary that the old commanders up and down the country should head them: And therefore, says he, what forces can be raised, should go under that conduct, or to that effect. He and Elkin did propose several colonels, I think most that are now living, both in England and beyond the seas.

Counsel. Can you tell any thing of the rumours abroad, expecting this design?

Tyler. Tonge told me this, That there was one that they called the lord Lockhart; he said he was governor of Dunkirk; That he had 30 or 40 servants about him; That these persons expected a rising; and that they and himself would engage. We heard that col. Russiter, not particularly from Tonge, but there in company, was expected to be at Sturbridge-Fair, to head 1,500 horse, to be at London. Also he asked me this question at his house, Whether I was acquainted with captain Leigh, a man with one arm, a stout honest fellow, and an active fellow, of his acquaintance?

Counsel. Speak your knowledge both of persons and things.

Tyler. There was one Mr. Cole of Southampton, Sweetnam, Gibbs a hat-maker, not he at the bar, Tonge, Thomas Elton, Elkin, Pryor, and one Cox a gardener, and Ward now a prisoner in the Tower, and one Ward a Southwark man, and Dyer a young scholar; there was one Rose of Chesterfield, and the perfumer I spoke of, I know not his name, he lives in Southwark; and there was a Quaker, I know not his name; the great business was to unite all interests. Elkin said, There were several meetings in St. Martins, and other places.

Tonge. If there be any one of the six in London, I believe this Mr. Tyler is one.

Tyler. To clear that I am none of them, I will name those whom I said were the six; Thomas of Shoe-Lane the coppersmith, one Elton in Whitechapel, one Raddon, captain Spurway of Tiverton; a West-country gentleman, Dr. Ward in Southwark, and Jones a minister.

Sol. Gen. Did Tonge tell you that the time was appointed when the rising should be?

Tyler. I know nothing of that.

Serj. Maynard. What about Leicester?

Riggs. Hill said, he dwelt there, and came from some that dwelt there, and others in Gloucestershire; but there was another person with Stubbs and Tonge, and said, There was a report in the country, That there would be some rising; and he came to town to bring his child to put him apprentice with his brother, and would go down again, and carry the certainty of the news: He was one of Lambert's soldiers.

Phillips. Mr. Tyler, did not you come in with the carrier of Norwich to capt. Foster's?

Tyler. No, I did not.

Phillips. I am sure I came accidentally to captain Foster's, and going I saw you there.

Gibbs. Did I tell you, Mr. Riggs, that my brother said Ludlow was in town, and there would be a rising shortly?

Riggs. Mr. Hill, Beazley, Stubbs, and I and you were together; Mr. Thomas and your brother came in: your brother, Beazley, Stubbs and Thomas were private in discourse. When you came again to us, we asked you what news? You said, Before we came you knew not much, but your brother could tell; but then you said, Ludlow was in town, the Council was broke up, and that messengers were sent to give notice to the country.

Gibbs. I deny that I or my brother said so.

Serj. Maynard. Know you any thing of surprising the king's Council, or Whitehall, or any thing of that, or altering the government?

Tyler. As for altering the Government, that must needs be designed; for Tonge said, It was debated, and thought convenient, as being the desire of several in the country, that the old parliament should be chosen again: That was to say, 1. That so many of them that had approved themselves faithful from first to last, to a Commonwealth's interest, especially in the

times of declension. 2. That none should have power to elect, or be elected, but such also as have approved themselves faithful, as aforesaid. 3. This House was to be filled up within a month. 4. That it should continue one year, and no more. 5. That they should not have power in things of an ecclesiastical nature, to impose any thing upon the consciences of the people. 6. That it should be high-treason amongst them to assert the interest of a king, House of Lords, or single person. 7. That they should not appoint any salary-officers. 8. That while they keep to this, it should be high-treason to disturb them. As touching arms, and things of that nature, the truth is, the business which was very much urged is this: That there should be an uniting of all interests together, Quaker, Fifth-Monarchy-Men, Anabaptist, Independent, Presbyterian, and Leveller; to which purpose every one was obliged at the meeting to see what interest they could make among the presbyters, because they looked upon them as persons that had most money and strength. I think there was no presbyterian spoken of, except one, who is lately secured in the Tower: He said, that if so be that colonel Beanes was at liberty, he could engage him. There was one man that was there, which was one Prior, I suppose Tonge knew him; he said, He had very much acquaintance with the presbyters, knew many in the country; and that there they did not meet with any difficulties, as here; for all interests, Quakers and Presbyterians, and the rest, are all agreed.

Sol. Gen. Very well, you see Tonge was at all these meetings at the Wheat-Sheaf and Shears; and there were the colonels proposed. Did you hear of any orders given out, in any of these consultations, to make the rising in the country at the same time as in London?

Tyler. Mr. Gibbs's brother told us, That he kept a correspondence in the country; that in Essex he knew there were divers horse ready there: and I myself spoke with one who is lately secured, who said, There were divers horse ready thereabouts. I remember there were several at the Half-Moon at Bishopsgate, one Smith a Northamptonshire man, and one Elose of Chesterfield, and Tonge; and we heard, that at Mansfield and Nottingham there was a rising intended; and it was assured, that the country was very ripe and forward for action. We were informed that there were 200 horse at Bristol; one person not yet secured, did affirm to us, That one colonel Templar in Essex had two or three thousand men ready, his name was Thomas: That Templar was now in town, if we would, we might go and speak with him. Said I, surely he doth but tell you this. Saith he, his lieutenant colonel gave me this information, and assures me, that his colonel had converted his estate into money to pay his soldiers. Upon this, having occasion to go down into Essex, I promised Tonge I would enquire further there; and understanding that one Thornback a glover was one of this Templar's men formerly, I went to this house, and net

being at home, I rode to Holsted fair; and riding there, the man pulled me by the coat, for he knew me; saith he, Mr. Tyler, my servant said you were at my house to speak with me. Yes, said I, I understand your name is Thornback: That you can give me some account concerning colonel Templar; we hear in London that he hath 2 or 3,000 men in readiness, I pray inform me. Saith he, I do not believe any such matter; I have served him long, and, if occasion were he would be for you. I asked him the news: saith he, We all dread a massacre: we understand by a letter from Ipswich, That the Papists intend a massacre of all Protestants about All-hallontide, and that that country was in great fear about it. This Thomas the copper-smith told us another story about some Roman Catholics in South-wark, that had a purpose to rise and take off all inatics.

After this the Court directed, that Phillips's Examination should be shewed him at the bar, and he acknowledged his hand thereto; and was read as followeth:

THE EXAMINATION OF GEORGE PHILLIPS, Sergeant and Bringer-up to col. sir William Wales's Company of Trained-Bands in the city of London, taken this 29th of October, 1662, before me Richard Brown.

Who saith, "That he knoweth one person Riggs, late chaplain to Blake, who is now clerk to one Friend a brewer in Cat's-Hole, near the Irongate in St. Catharine's; which said Riggs told him this examinant, That there would be a rising of divers godly people in arms, for preservation of religion, about the time the queen came to town; and that they intended to seize the king's person about Camberwell, in his passage to see the queen mother at Greenwich: but after the queen was come to town, this examinant asked the said Riggs, why it was not done according to their intendment? Who replied, They were not then ready, because the congregational churches and they were not fully agreed; but now they were come all to an agreement, and the work would be done in a short time: that all things were now near ready both in country and city; and that a frigate or more would revolt from the king to them. Not long after, the said Riggs carried him the said Phillips to the house of one Tonge, an old army captain, but now a seller of tobacco and strong-water in Tower-Ditch; where he heard Tonge say unto Riggs, That he had been at Windsor-Castle, and had made a captain, two serjeants and a gunner to be of their party; and that they had undertaken to deliver up the said castle to that party which were now to rise. To which Riggs replied, You have done well: and further said, I am going now to surprize two castles in Kent; one of them, as this Deponent remembereth, was to be Deal-Castle; and this he would and could do, for that he had some correspondence therein, and much acquaintance near, where he formerly used to

preach. And further saith, That Tonge asked Riggs who should lead the men that were to rise, and who commanded in chief? To which Riggs replied, That Ludlow was appointed for that work.

"He further saith, That he asked Riggs and Tonge, how this business might be carried on with safety and secrecy? Riggs told him, That there was a council of six which managed the design, who sat but one day in a place, and would not be spoken with but by the agitators of each county; who were employed by them to and fro in this work, to prepare and make ready all parties in the several counties; and that these six were of several congregations and opinions, to the end that all parties might unite. And further saith, That one Wade, or some such name, whom he heard Riggs and Tonge say was a ship-chandler in East-Smithfield, did furnish powder to carry on this design, in whose company he once was, and heard himself say as much; which said person he believes he knows when he seeth him again. He also saith, That Riggs told him all the congregational churches were now agreed to join in this design; and that Riggs and Tonge desired this examinant to furnish what men and arms he could: which, he saith, he never intended to do it, though they earnestly requested it of him. Only he saith, In some things he was too faulty, which he prayeth pardon for; which was, in sending word to the several meetings on Sunday last, That the trained-bands were coming to seize them: upon which the chiefest of them made their escape before the soldiers arrival; and that he being deluded by their fair speeches, did promise to give them the word when the general rising was to be; in which rising all the churches aforesaid promised to join, and the Fifth-monarchy-men to lead the Van. And further saith, That Riggs told him, They had a Declaration ready to fling among the people, against Bishops and Common-Prayer; and that Liberty of Conscience was held forth therein. But first, before this Declaration, they would seize on the king's person, and that then their Declaration would take with the people. And also saith, That one capt. Baker, one Bradley and Tonge, were privy to all these transactions which were debated by them in his presence; and that the said Baker came afterwards to this examinant, and discoursed all the aforesaid particulars, and incited him to help on with the work; and told him, their arms and powder were distributed, and that a porter, which was formerly a soldier, carried the powder to several places in a sack. And further saith, That Riggs told him they had divers friends both in London and the country, who had, and would help them to money; and that all their friends were now ready in all countries, waiting only for the day when they were to act; and that the treasure in the Guild-hall was likewise to be seized.

"And that the said Riggs also told him, That they intended to surprize the Tower, which they could easily do, having some therein that

would assist: And this was to be put in execution in some evening when sir John Robinson came home late, by following close after his coach with a party of men, which should be ready for that purpose. G. PHILLIPS."

Sir *William Morice*, and Sir *Henry Bennet*,
Principal Secretaries of State, sworn.

Sir *William Morice*. I have had intelligence, and several advertisements from several parts of the kingdom, that there was a design of rising, and an insurrection, that it was the general expectation and common discourse of the discontented and disaffected party; nay, it was likewise preached about, that the Papists had a design to rise and cut the throats of the Protestants. I had four or five letters to that effect sent and brought me; and these rumours were spread to excite others to join with these.

Sir *Henry Bennet*. Divers letters of mine were to the same effect, That there was an insurrection intended at that time, and calling upon one another to be ready at that time.

Sir *John Talbot* sworn.

Sir *John Talbot*. I suppose that the evidence that I can give in relation to the prisoners, is only the consequences of this report, which they had rumoured about the papists massacring the protestants: the consequence was this, That it made a very great disturbance in Worcestershire and Warwickshire, insomuch that many gentlemen that lived in the country in very good repute, came under a very great suspicion of all their neighbours; and the lieutenants wrote to one another to secure many: There were guards set to satisfy the fears of the country, Friday night, which the rising should have been on, they would not intrust the catholics to be in arms, but other volunteers.

Mr. *Hodges* sworn.

Mr. *Hodges*. In Dorsetshire, the 23d, Oct. last, there was a discovery made by some of the towns, of an intention of a general rising; and some of the town were engaged in it; one Mr. Harvey a justice of the peace examined divers persons; four that were privy to it were sent to the gaol, and an express sent to Mr. Secretary Morice. Sir John Weld the younger gave such an account of Shrewsbury.

Stubbs. My lord, the occasion of my going that Friday-night, was by Mr. Hill, and Mr. Riggs suggesting the papists rising; I was never known to be a plottier; I had not gone forth that night, but only by their persuasions; I never heard of any arms, but only the rumours of the people.

Sellers. I would fain know of Mr. Riggs what number of arms I told him was delivered?

Riggs. I know not the number.

Major *Tho. Bonfoy* (at his desire) was sworn.

Major *Bonfoy*. I do not remember that I ever saw Phillips's face; but I did understand it was his custom to come to the Exchange to insinuate himself into my officers, making merry

with them, and endeavouring to get the word; and I believe it was his common practice.

Phillips. He may remember I came on the Exchange and spoke to him, and was looking for one of his serjeants; I asked no man the word, but presently went to the Black-Lion in the new alley, and from thence I went home; I did not ask the word of any one. I have confessed before the council, that at the beginning of August I met Mr. Riggs in Cheapside; he then came and closed with me, and walking along, said he, Do not you hear of a rising which should have been on Friday? No, said I; and then I asked him where? He said, at Camberwell: and I thinking nothing of it, came home and spoke of it in my family, as news from Mr. Riggs. On Tuesday I met Mr. Riggs on Tower-Hill, and he brought me to the house of Mr. Tonge; Tonge told Riggs he had been at Windsor, and made some party to secure the Castle. Riggs said he could go down to Kent, and secure Deal and another castle: for he had been a preacher there. As for Mr. Tyler, one night coming near captain Foster's door, and having not seen him in three years before, he asked me, if I would not drink? I said, Yes: Then came in the carrier of Norwich, I never saw this carrier until then; Then came Mr. Tyler, and there was talking of a frigate, and the time of the launching of it, and how it was to be manned; but a little after captain Foster came and charged me with a report, that I should say he was engaged. I told him I knew it not, nor said it not: I have often declared I would have nothing to do in it. It is true, Mr. Riggs came and thanked me that I sent notice to the meeting to be gone; and I told him I would do the people any good I could; but Mr. Riggs knows I told him it was a dangerous business, and I would not meddle with it: I am sure in the time of the Fifth-monarchy insurrection I was faithful to the king, ventured my life as far as any man; Sir William Wales put trust in me, and I did that service there that the colonel himself did not venture to do. But that I was engaged in this business, it is a trouble to me, and I hope the king will be merciful to me, I did not think that such a thing would be disclosed in so short a time. For my part, I did not mind it, I knew nothing the night I was taken, I was in bed, and did not offer to escape; I hope the king will look upon me as one drawn in.

Stubbs. I never had any meeting with any of the council; most of the things I heard at Mr. Tonge's house, meeting with Mr. Riggs by chance. For those gentlemen Mr. Tyler speaks of, the council of forty and of six, I never knew them: I am sorry I should be concerned in such discourse, and I hope his majesty will have mercy on me.

Gibbs. My lord, I was at a neighbour's house at that time, and went to drink a cup of beer alone in their kitchen, not knowing of Hill, Riggs or Stubbs coming there: I never appointed them any meeting, they came in, and when they came in, they asked if there was

not one Gibbs there; so the people of the house told them there was. They came and told me, there were some gentlemen would speak with me; whereupon, they being strange faces, I stood up, and said, Gentlemen, what is your business with me? Said they, we would drink a cup of beer with you. Then said I, sit down; they had a desire to be private, and to go up. Whereupon, not knowing their business, I went up, supposing they meant some matters of my trade; but we sitting down, Mr. Riggs said to me, Mr. Gibbs, what is the best news? And Mr. Hill also did urge and ask for news. Said I, Gentlemen, I know no news, nor none can I tell you. So they made enquiry then for my brother: said I, I cannot tell where my brother is, may be your business is most with him: I will send for him: and I sent the maid for him, and directed her, that if he was not at home, she should leave word for him to come. Again they urged for news, and I told them I knew none but only this, that the meeting was seized upon the last Sunday, by armed soldiers: but to tell them there would be any rising, or of any arms delivered, or pistols, as Mr. Hill has related it, was a thing I was wholly ignorant of. I speak as in the presence of God, and I know I must one day give an account before the great assizes of the world; and I fear that which they have said, is out of some fear lying upon them, being guilty of some fact, and so to shroud themselves under false lies. They, nor no other can prove that ever I received or delivered any arms, or that any were delivered by my order; these men speak falsely.

Sir Ork. Bridgman. You mistake yourself, they do not charge you with receiving or delivering arms, but you related it: your brother speaks such things had been done, and if you know of this, and do consent and conceal it, you are equally guilty.

Gibbs. After they had asked the news, in a short time my brother came into the room, and I rose from the table, and went towards my brother; and then my brother asked me what those gentlemen were? I said they were strangers to me, and knew not what they came for. Says he, they are strangers to me also. Immediately we arose, paid our reckoning, and went away. But that ever I said my brother told me, 'The council of six was broke up, all 's ready, Ludlow to be general, and Allhallow- 'Eve the time, or that things went on well;' I deny it: my brother said no such thing to me, nor I to any man. When there was an insurrection by the Fifth-Monarchy men, I was then presently ready at beat of drum, went out in my own person to serve his majesty at twelve o'clock at night, though I had servants of my own. My affections were such, that I have always, ever since his majesty's restoration, been an obedient subject to all his lawful commands. I belonged then to major Kilby's company, and did continue marching in the company until the whole business was over, and ventured my life, and never did contrive

any plot, or knew of any plot, received or delivered any arms. As to the inhabitants among whom I have lived many years, they have known my conversation; I have been a peaceable neighbour, subjecting myself under the government that now is, whom God continue. I desire this certificate may be read concerning my neighbours testimony of my conversation.

Sir Ork. Bridgman. If you have any of them here, they may speak; but, the certificate cannot be read.

The Porter's man of Bridewell said, he knew nothing but that he lived very quietly among his neighbours.

C. Justice. Nor I neither.

Court. Mr. Tonge, what have you to say?

Tonge. I have nothing to say, but that the first man that brought me into this business was Tylor.

Sellers. All that I am charged with is a report of the delivery of some arms; seeing that a number of arms are mentioned, I would ask what was the number?

Riggs. I cannot well tell the number, but you said there were some arms given, and some to be given, and that several had come to that place, and went away without arms, and that within two or three days there would be more given; but as to the number, I cannot remember.

Sellers. Now take notice of Mr. Hill's evidence, he hath asserted that there were five or 600; how do these agree? I can have sufficient testimony of my life and conversation.

Court. If you have any thing more to say in this business, speak in the name of God, no body hinders you, but keep to the business.

Sellers. I intreat the Bench to take notice what I am charged withal; it is only a report I received from one man, and told to another, and the very original was a lye, there was no such matter; and yet here is audacious evidence: he says I named five or 600, and yet Riggs, to whom I spoke, heard me name no number.

Counsel. One speaks to the arms, but does not remember the number; they both speak to the thing.

Sellers. How can Mr. Hill be a competent witness against me, when he never saw my face before, but says Mr. Riggs told him?

Hill. I said not so, but that I heard it from your own mouth.

Mr. Solicitor. Mr. Riggs, why did you go to Mr. Sellers to help Mr. Hill to arms?

Riggs. Because Mr. Sellers told me the day before, that he heard there was some delivered, and more would be: and the next day we went to the Exchange, and there he told me this story.

Sellers. I cannot bear him.

Sir Ork. Bridgman. He says you told him the day before there was arms delivered, and more would be delivered; and then the next day he and Mr. Hill came on the Exchange, and then you spoke those words which they both witness against you.

Sellers. I never spoke such a word. It is true, what Wapshot told me, I told Riggs, which was, that there were arms delivered; but it seems there was none: and I told him I would tell him the truth the next day on the Exchange. And so in the mean time speaking with Wapshot, he told me there was no such thing, and I told Mr. Riggs, Wapshot said there was none.

Court. Pray what made you so busily inquire after arms, if you were not concerned?

Sellers. I did not inquire after it, but accidentally meeting him in Mark-Lane, he told me.

Tonge. My lord, as you are my judge, so I hope you will be my counsellor; and I pray your advice, whether Mr. Tyler and Mr. Riggs be competent witnesses against me, they being in the same case.

Sir Orl. Bridgman. Where is the cause of your exception?

Tonge. Because they are in the same case.

Sir Orl. Bridgman. There are four witnesses all against you, your own confession and examination against you; through the whole business you are a principal person.

Tonge. I confess I did confess it in the Tower, being threatened with the rack.

Sir Orl. Bridgman. There is Mr. Hill, Mr. Riggs, Mr. Bradley, and Mr. Tyler: there is Hill and Bradley without exception; Bradley, he was not at all concerned, he went along with you to know what you said; and Mr. Hill was not a person in the design, but made use of only to find out the plot: they did nothing unjustifiable, so they are witnesses without exception.

Serj. Glynn. We desire your lordship to declare whether Riggs and Tyler be lawful witnesses.

Sir Orl. Bridgman. I would have you know this: Where you make exception against those persons that are guilty of the same crime, that is a mistake to say they are not witnesses: in cases of treason, where there are works of darkness, these are things men will not do by day-light, but in darkness; and who can discover these works of darkness better than they that have to do with them, if God turn their hearts? It is true, such persons as these are, if they had been convicted, they are not witnesses; but though they are in the same fault, it is frequent practice, they are allowed in case of felony. Besides, they are not witnesses alone, and there are divers circumstances concurring. 1 Edw. 6, 5 Edw. 6, both statutes say, There shall be lawful witnesses in cases of High-Treason; but that is, such witnesses as the law would allow before those statutes: The meaning of the statutes was, that men might not be taken upon bare surmises; therefore the law says, there shall be two witnesses. When one is accused of treason, another in the same offence unconvicted, his evidence is made use of; and though he is not so upright a wit-

ness as others, yet he is such a witness as the jury is to take notice of. Such testimony was allowable before those statutes; and the trial is still by jury, not witnesses, and the jury are to consider of the credit of the witnesses. In king James's time a great person* was condemned upon the evidence of one in the same treason. It is plain by several circumstances, you have been a principal person, a leader-out of the business: Though a man be but present when treason is spoken, or designed and acted; if this man be present, and shew any thing of approbation, his concealing of it is as much treason as he that did it, they are all principals in treason.

Sol. Gen. May it please your lordships, and you gentlemen of the jury, you have heard the evidence of the prisoners at the bar; Five of them have stood out their trial, a sixth hath confessed the fact. Against those persons that now stand at the bar, under good favour, there is a clear and unquestionable proof of the crime charged against them, and they have not said any thing that hath either taken away the credit of the evidence, or excused the matter. If you consider first Tonge, there are against him four witnesses, and those unquestionable; as you heard the direction of the court, that he knew of the design, approved of it, contrived how to surprize Windsor-castle, had corrupted the head gunner and serjeant there: That he did contrive to seize Whitehall, and if you believe Bradley, advised, as the fittest way, to break into the privy-garden: All this against Tonge, with a world of other evidence how active he has been, his house was the place of consultation, he imparts the design to Phillips, and Phillips undertakes to get the word of the trained-bands; I think none can prove more than is proved against him. When you come to hear the proof against Phillips, it is proved that he offered to betray 300 arms in the artillery, where he had some kind of trust, and that he was ready to endeavour the word when the insurrection was to be; and but a very little before, he is the man that discovers to the congregational meetings, that the trained-bands were coming to surprize them, that is in his own confession, as well as the willingness in him to discover the word. It is proved, that Tonge and Stubbs were present at those discourses touching surprizing the Tower, securing the king, this is proved expressly against them: Stubbs, he thinks he has said fairly for himself, when he doth ask Mr. Hill whether he did not say he had horses and 200*l.* to carry on the work; Mr. Hill says he did say so: Then it seems Stubbs was inquisitive what helps there were to carry it on. Mr. Hill goes further; that in the presence of Stubbs it was said there should be no quarter given, but such as Ludlow should have if he were taken. When you come to Gibbs, he does deny all the whole matter, and indeed so they would all;

* See a Note to the Case of Don Pantaleon Sa, vol. 4, p. 466.

* Sir Walter Raleigh, See No. 74, vol. 2, p. 1, of this Collection.

and they have nothing to say, but to cry, the witnesses have sworn falsely, and God is a righteous God, and he will require their blood one day: But remember what a horrid protestation was in that letter that was sent abroad, to alarm the whole kingdom, as if a massacre was intended by the papists, and the watch-word they should all rise by; that letter says, 'I call the eternal God to witness, this is no trepan, but a sober truth.' Do you think that men who are not ashamed to call the eternal God to witness to a lye, when it is to raise a sedition, will make any scruple of such protestations at the bar, when it is to save their lives? And if a man may escape by his own protestation, who shall ever be found guilty? But Gibbs thinks he says a great deal for himself, when he says his neighbours can give great testimony of his good conversation. Alas! who will deny to give a good report of any man till he hear evil proved against him? But do you think a little demure and sober carriage amongst a man's neighbours will serve to balance an evidence of high-treason? Is not the proof clear, that he did both know the design and approve it? Mark what Gibbs tells the company.—My brother, saith he, for his part he will not speak before you; but if you be honest men, this is the news that was spoke, like one that was not consenting to it. Well then, what is the news? He tells them why the council of six are broke up, Friday is the day of action, Ludlow is to be general. Can any man be privy to these things and relate them so cheerfully, and yet not be consenting? Believe it, it is a hard matter to find greater evidence of a knowledge and consent against any conspirator, until he break out into open action. Sellers, he says that the witnesses do not agree; for Mr. Hill speaks that he said there was five hundred arms delivered, and forty men went without arms, but within two or three days there would be more. And when Riggs comes to speak he says he did say arms were delivered, and more would be, but he did not remember what number; and because they agree in the thing, but not in the number, therefore he thinks they disagree in the matter. Observe what reason was there that Riggs comes to enquire of Sellers for arms, because Sellers told him the day before arms were delivered, and more would be, he thought therefore he came to a very proper person to tell him. If you mark, Sellers does deny openly in the court that ever he saw the face of Hill till he was apprehended, although Hill was with Riggs when the arms were spoken of upon the Exchange: and then he says again, that Hill speaks by hearsay, he is out in that too; for Mr. Hill swears expressly, he heard the words themselves from Sellers. Then here are these before you, four witnesses against Tonge, two against Phillips, and his own confession; here are two against Gibbs, with these circumstances, 'If you be honest men, this is the news,' &c. Here are two witnesses likewise against Stubbs, who was likewise present at

all their debates, even when the king himself was to have had the same quarter with Ludlow. Now, gentlemen, that there was a conspiracy, I think you have a clear evidence: we may thank God, and the care of the king and his ministers, that it went no further; but it is no thanks to these men, they would have carried it to the extremity, had they had power. And without question this was formed by other kind of wits than these poor contemptible agitators, who are now tried for it: you see there was a council of forty, and an under-council of six, a declaration framed to scatter at the time of action, and that action directed to be both in the city and country, just in effect at the same pitch of time; and that it might be so, a wicked and an impudent letter is contrived, and many thousand copies dispersed, and it wrought so far, that the countries, much about the time appointed, were in great disorder, as you have heard it proved. Is it not plain, that an evil spirit went throughout the whole nation and animated the whole party of malecontents? most evidently it was a terrible conspiracy. Gentlemen, it is true, it is a question of blood, but it is royal blood, it is the blood of princes and nobles, and it concerns the peace and security of the kingdom, and every man's propriety, and of religion, for they had left no man of conscience or reputation behind if they had prevailed. Consider the massacre these men would have committed, had they prospered, and oppose that to the pretended massacre which they gave out by their letter the Papists would have committed. Consider that you have the life of the king in your hands, and I doubt not but he and the whole kingdom shall always be safe in the verdicts of honest men.

C. Justice. My masters of the Jury, I cannot speak loud to you, you understand the nature of this business, such as I think you have not had the like precedent in your time. My speech will not give me leave to discourse of it; for the witnesses, they are none but such as may satisfy all honest men: It is clear they all agreed to subvert the government, to destroy his majesty; what can you have more? two of the witnesses are without exception, but I do not see any way but their testimony is good. For the parties, they in themselves are very inconsiderable; these are but the out-boughs, and if such fellows are not met withal, these kind of people are the fittest instruments to set up a Jack Straw and a Wat Tyler: therefore you must lop off these, or else they will encourage others. You see one of their own company hath confessed the fact, out of remorse of his own conscience. But I leave the evidence to you: go together.

Officer was sworn to keep the Jury.

The Jury withdrew; and after an hour's consultation, they returned.

Silence was commanded, and James Hind fetched from the gaol to the bar.

Clerk of the Peace. Gentlemen, answer to

your names; Edmond Butler, Clement Pung, [and the rest of the Jury before-mentioned] are you all agreed of your verdict?

Jury. Yes.

Clerk of the Peace. Who shall say for you?

Jury. The Foreman.

Clerk of the Peace. Set up Thomas Tonge to the bar: Thomas Tonge, hold up thy hand; look upon him, masters: how say you, is he guilty of the high-treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Clerk of Newgate. Look to him, keeper.

Clerk of the Peace. What goods and chattels?

Jury. None.

Clerk of the Peace. George Phillips to the bar: how say you, is he guilty of the high-treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Clerk of Newgate. Look to him, keeper.

Clerk of the Peace. What goods and chattels?

Jury. None.

Clerk of the Peace. Francis Stubbs to the bar: how say you, is he guilty of the high-treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Clerk of Newgate. Look to him, keeper.

Clerk of the Peace. What goods and chattels?

Jury. None.

Clerk of the Peace. John Sellers to the bar: how say you, is he guilty of the high-treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Clerk of Newgate. Look to him, keeper.

Clerk of the Peace. What goods and chattels?

Jury. None.

Clerk of the Peace. Nathaniel Gibbs to the bar: How say you, is he guilty of the high-treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Clerk of Newgate. Look to him, keeper.

Clerk of the Peace. What goods and chattels?

Jury. None.

Clerk of the Peace. Harken to your verdict, as the court hath recorded it. You say that Thomas Tonge is guilty of the treason whereof he stands indicted, and so all the rest. And you say, that they, nor any of them, had any goods or chattels, land or tenements at the time of committing the said treason, or at any time since, to your knowledge; and thus you say all?

Jury. Yes.

Cl. of the Peace. Thomas Tonge, hold up thy hand, thou hast been indicted of High-Treason, thou hast thereunto pleaded Not Guilty, and for thy trial hast put thyself upon God and the country, and the country hath found thee Guilty; what hast thou to say for thyself, why the Court should not proceed to judgment, and thereupon award execution of thee according to the law?

Tonge. I pray mercy from the king, I cry for mercy from the king.

Clerk of Newgate. Tye him up, Executioner.

Cl. of the Peace. George Phillips, hold up thy hand; thou art in the same case that Thomas Tonge is, what canst thou say, &c.

Phillips kneeled down, and said, I pray the mercy of the King and the honourable bench.

Clerk of Newgate. Tye him up, Executioner.

Cl. of the Peace. Francis Stubbs, hold up thy hand; thou art in the same case the two last prisoners before thee are; what canst thou say, &c.

Stubbs. I beg mercy, I was merely drawn in.

Clerk of Newgate. Tye him up, Executioner.

Clerk of the Peace. John Sellers, hold up thy hand; thou art, &c. What canst thou say, &c.

Sellers. I would intreat this honourable bench to consider my condition, and what my charge is; I delivered no arms, if I had known where they had been, I would have discovered them: I beg mercy from the king and this honourable bench.

Clerk of Newgate. Tye him up, Executioner.

Cl. of the Peace. Nathaniel Gibbs, hold up thy hand; thou art, &c. What canst thou say, &c.

Gibbs. And please this honourable bench, I have something to say, I am innocent as to my conscience of acting any thing treasonable against his majesty; the Lord forgive the witnesses: I beg the mercy of the king.

Clerk of Newgate. Tye him up, Executioner.

Cl. of the Peace. James Hind, hold up thy hand; thou art guilty of the treason whereof thou standest indicted by thy own confession, what canst thou say, &c.

Hind. I have nothing to say, but humbly beg the mercy of the king.

Clerk of Newgate. Tye him up, Executioner.

Crier. O Yes! my lords the king's justices command all manner of persons to keep silence while judgment is in giving, upon pain of imprisonment.

Chief Justice. Thomas Tonge, George Phillips, Francis Stubbs, James Hind, John Sellers, and Nathaniel Gibbs, you six prisoners at the bar, you have been here indicted for one of the greatest crimes that can be committed upon earth as to this world, against God, our King, and your country, and against every good body that is in this land, for that capital sin of High-Treason, which is a sin inexpiable, and indeed hath no equal sin as to this world. Upon this you have severally been arraigned, and have severally (except one) pleaded not guilty, and put yourselves upon God and the country for your trials; and your country have found you guilty: For the five that are found guilty, I must say that in you I find little remorse, little sense of your sin. For the little man there, Hind, he hath much shewed his penitency. As to the manner and circumstances of this, most men here believe this did not originally arise from

your particular selves, it must be put into you by some others: You speak as if you desired mercy; where was your mercy, that would have destroyed king and country, and massacred many millions of souls, no respect of any person, but your own fellows? I speak this, that you may be the more sensible of your own crime, that you may truly, out of the remorse of conscience, be sorry for your sin: You know very well the old counsel, and it is a good one, 'Fear God, and honour the king, and meddle not with them that are given to change.' Meddling with them that are given to change, has brought too much mischief already to this nation; and if you will commit the same sin, you must receive the same punishment: for happy is he, that by other men's harms take heed. I shall not spend long time with you, but if you will as much as you can discover the actors herein, you will do God, the king and your country good service. It remains that the court proceed to judgment: and therefore, you six, the one by his own confession, and the other five by conviction of law, the Judgment of this court is, 'That you be conveyed back to the place from whence you came, and from thence to be drawn upon an hurdle to the place of execution; and there you shall be banged by the neck, and being alive shall be cut down, and your privy members to be cut off, your entrails to be taken out of your body, and (you living) the same to be burnt before your eyes, and your head to be cut off, your body to be divided into four quarters, and your head and quarters to be disposed of at the pleasure of the king's majesty: And God have mercy upon your souls.

Phillips, Tonge, Gibbs, and Stubbs were ordered for execution on Monday, Dec. 22, when they were drawn on two hurdles, viz. Phillips and Tonge on one, Gibbs and Stubbs on the other, to the common place of execution at Tyburn: Where being come, they were received into a cart under the gallows; and the executioner desiring them severally to forgive him, they all declared they did freely forgive him and all their enemies, and did severally salute each other with this phrase, 'Welcome, Brother; and to one another said, 'We are now launching into the deep.' They being all tied up, Phillips gave the executioner a small sum of money, and the rest directed the executioner to take out of their pockets a small parcel of money, as their gift to him; and Phillips afterwards bent a sixpence, and presented it to a friend of his, Mr. Stroud; and a shilling likewise bent to one Mr. Clark. Then the under-sheriff of Middlesex acquainted them they had all free liberty to speak, provided they did not reflect upon his majesty, or the present government; which they all promised not to do, and thanked him for his civility.

And then Phillips began as follows:

"Friends and Countrymen;

"I am come this day to pay that great debt that I owe to nature; it is a work that had

need be well done, for it is but once to be done. My hope is now above; and for what I now come to suffer, for my own part, I bless God, in whose presence I now speak, as a dying man, I had not any murderous thought against the king; but I have prayed for him, and wished that he might live and reign, and long reign in righteousness; and that God would make his crown a crown of righteousness upon his head, and bless him in his government, so that he may not know any of these occasions more: For my part, I have ventured my life for his majesty, it was far from my heart to do any thing of that nature. The Lord receive my soul. I freely forgive all men, as I hope to be forgiven of God: I never did act any thing, but only this, which was my ignorance of the laws, that I did not discover it; and I was justly found guilty, for not discovering. I have done, Mr. Sheriff; but hope, after my brethren have spoken, we may have liberty to call upon the Lord."

Und. Sheriff. It will not be denied you.

Then Mr. Tonge began in this manner:

"Friends and Countrymen;

"You see me here a dying man: I have sometimes been in some men's company, where I have heard them contriving the business for which I am to die; and that which led me to join with them was this: I was and had been sometimes in the army; and I have looked upon this cause to be good. As for his majesty, the Lord bless him, and prosper him, and put it into his heart, that he may be a nursing father indeed to his country."

Und. Sher. Have you any more to say? You may speak.

Tonge. I have nothing more.

And then Gibbs proceeded and said, "Countrymen and Friends, and I hope Christians, and the last consideration is that that makes me the more free to speak to you; we all profess to own God and Jesus Christ to be our Saviour, our Redeemer, our Sanctifier, and giver of, and bestower upon us eternal life; this should excite our souls to love one another; and upon the account of God's love, that God has so loved us as to give Jesus Christ, to reconcile us sinners to God, we ought to love one another, it is his great command. Truly, as to the cause for which I am brought here, God the great judge of heaven and earth, before whom I stand, knows that in the place where I have lived, I behaved myself as an obedient subject; and when there was an insurrection by the Fifth Monarchy men, I went out in my own person, though I had servants as well as others, purely out of affection to his majesty, knowing that in the peace of his government I should have peace, and so I went out, hazarded my life, and continued out till all was quiet. I was at a neighbour's house drinking of a cup of beer on Tuesday night in the kitchen alone, save only the man of the house and the maid; these men came in, one Hill and Riggs, that are the witnesses against me;

there were Riggs and Hill, and this Stubbs, and one Beasley: and I being alone in the kitchen, they asked for one Gibbs; the people of the house told me there were some gentlemen would speak with me: I wished them to direct them to me, and they came to me; and through the ignorance of the law, which, it seems, runs thus: If any words treasonable against his majesty are spoken, it is treasonable to conceal them: So thus I have given you, in part, the cause of my being here.

“Hereupon information was given to the king’s majesty, that I should say there would be a rising, and that All-hallows eve was the time; that there were arms sent into the country, and that Ludlow was to be general; and this was charged upon me by the king’s majesty, when I came before him to be examined: And upon Hill’s and Riggs’s oath, I was sent to the Tower, and kept a long time a prisoner, examined three or four times over by the lords of his majesty’s council. I have one word more; as touching my judgment, I am reputed in the world to be one of those that is called by the name of Anabaptist, a name of derision and scorn; one is an Anabaptist, one an Independent, one a Presbyterian, one this, and one that, and one the other; who gave these nick-names to Christians? There is but one God, one Lord Jesus, one baptism, one hope of glory: How comes the body of Christ, or the members of Christ to be called by these nick-names? But now, as I am one that do profess faith in God through the Lord Jesus Christ, and do stand before you all, and before the Lord, I know no other God, but the eternal and living God, that hath made the world, and that rules and reigns, and disposes all his creatures; I do believe in this God, he has been gracious to me a poor sinner, and to all poor sinners, that when we by reason of sin had forfeited all our mercies, and were under wrath and everlasting destruction, and must perish for ever; that God did out of his rich grace and tender mercies give his only begotten Son, according to his promise, to be the blessing of God to the poor Gentiles, according as the Scripture did declare; the Scripture foreseeing that God would justify the heathens through faith preached before the Gospel to Abraham, saying, In thee shall all the nations of the earth be blessed: He speaks not of the natural seed of Abraham, but of Christ; so that all the blessings that God did convey to the sinful world, are by the means of Jesus Christ, whom God in the fulness of time did send, his Son, born of a woman, to redeem poor sinners under the law; and herein was the great grace and mercy of God towards all sinners, that he was so gracious to send his beloved Son out of his own bosom to take our natures upon him, who were defiled, and cursed, and condemned, and separated from God. I say, Jesus Christ took our natures upon him, and for this very end, to do the will of his heavenly Father: ‘Lo, it is written in the volume of the book, I came to do thy Will, O

‘God;’ and it was his meat and drink to do his Will; and what was that, but that we might be sanctified through the offering up of the body of Jesus Christ for our sins, to tread the wine-press of his Father’s wrath, and to endure the cross, and bear all our sins in his own body, that made his soul heavy unto death? He was a surety for us and our sins, and for our sakes the Lord laid on him the iniquity of us all, and he hath borne our grief and endured our punishment; it made his soul cry out, My God, my God, why hast thou forsaken me? or else we must for ever be banished out of the presence of God, and never have any hopes of glory, of faith, or of salvation, had not the Son of God become our mediator and surety; so there is one God, and one Mediator, the man Christ Jesus. He gave himself a ransom for all our sins, to free us from the wrath to come, everlasting destruction, and from the worm that never dies. O that we could ever be thankful to God, live to him that hath so loved us, as to send his Son to die for us, and is by the almighty power of God raised from the dead, and now sits at the right hand of God, and ever lives to make intercession.

“Truly, friends, this is not the love of man, but the love of God, and therefore eternal love. God so loved the world; it is God’s love, he loved sinners, ungodly ones; he did so love them as to give his only begotten Son to save them, to reconcile them, to uphold them, to redeem them from wrath to come; it was to seek and save them that were lost. This is a faithful saying, and worthy of all acceptation, that Jesus Christ came into the world to save sinners. We all, like sheep, had gone astray, and must perish in our sins, had not the Lord Jesus been sent of his Father, out of his bosom to declare the good will of God, and did it, by which we are sanctified through the offering up of the body of Jesus Christ, and this Lord Jesus Christ the eternal Son of God, he is the mediator between God and poor sinners. Come unto me, all ye that are weary and heavy laden, says Christ, and I will give you rest; now this grace is from God, we are saved by grace, and that not of ourselves, it is the gift of God; through faith in Christ we are saved; and all things that do pertain to life and godliness it is the gift of God; now all things are of God, who hath reconciled us to himself by Jesus Christ, to wit, that God was in Christ reconciling the world to himself, not imputing their trespasses unto them. Would you know the forgiveness of your sins, your peace with God, and that God is well pleased with you? God is reconciled by Jesus Christ unto you, and does not impute your sins unto you, but looks on the righteousness of Christ as satisfaction, that thereby you might have the remission of your sins through the blood of Christ. Be it known unto all men, that through this man’s preaching the forgiveness of sins, Acts xiii. 38, 39, and by him all that do believe are justified from all things, from which they could not be by the law of Moses.

Now justification from sin, and redemption from iniquity, is through the knowledge of Christ's death for our sins, and his resurrection; and now there is no other name given under Heaven whereby we can be saved, but by the name of Jesus, and whosoever believeth in his name shall not perish, but have everlasting life, John v. 24. It is the doctrine of Jesus Christ; it is his word, and I hope you will search the scriptures, and look into those things for your souls good, when Christ says, Verily, verily, I say unto you, he that heareth my words and believeth them, he hath everlasting life, and shall not come into condemnation, but is passed from death to life. The reason why God does assure poor sinners they shall not pass into everlasting condemnation and perish, is through his rich grace, and through his promise; for he hath promised, he will be merciful to our iniquities, and our sins will remember no more; and these his promises of grace, which are all yea and amen in Christ, are ratified by the blood of Christ; the blood of Christ is the blood of the new covenant, and it is that by which we have the forgiveness, remission, and cleansing of all our sins."

Under Sheriff. Mr. Gibbs, let me interrupt you; this is very good and pertinent, but you have said these things over and over; there is another of your friends to speak, and the time grows short, pray go on to the matter, or conclude.

Gibbs. "I shall speak a word or two as to the knowledge of forgiveness of sins, by and through Jesus Christ; and so the knowledge of the resurrection of the dead, it is the fruit of Jesus Christ; for by the first man came death, and by the second man, Christ, came life; and God, that has by his exceeding great and mighty power raised up Jesus Christ from the grave and power of sin, he also shall raise us up by the same power, and when he comes the second time, at his appearing and coming we shall see him, and be made like to him, and he will receive us to himself; he is gone to prepare a place for us, and in his Father's house are many mansions, and if it were not so, he would have told us: And now God that hath given eternal life, and forgiveness of sins unto his poor servants, he will also, when Jesus Christ shall come to judge the world, receive him into his everlasting glory, which is my faith, expectation, and hope, in God, through Jesus Christ. A man may bear his infirmities, but a wounded conscience who can bear? When God smites who can bear? And therefore I desire, as I believe, the forgiveness of all my sins, through the rich grace of God, through the bloodshed of Jesus Christ his Son; every one must give an account to God, and as their works are, so will their reward be, either accepted by God, as workers of Christ, or condemned as workers of iniquity. Last of all, as to the separated congregations to whom I belong, I have observed in those few days that I have lived, there is a great deal of animosity, evil will, hard censuring, and

abusing the precious saints of Jesus Christ. If they are in an error, you that are in the truth instruct them, and you may recover them out of the claws of the Devil: Are you Christians, and have the light of God in your souls? O then strengthen your brethren, do not give them nick-names, and abuse them; that's not the way; Christ teaches another lesson, 'That if thine enemy hunger, you shall feed him; and if he be a-thirsty, give him drink.' We should pray to the Lord that he would turn those that be out of his way, into the right way."

Under Sher. You know we must be all subject to government, every congregation must not have a ruler, their meetings are prohibited by good authority, and because they will not be obedient to good government.

Gibbs. "I do not say, that every congregation must have a ruler, and I hope I speak the words of sobriety; I hope you will put a charitable construction upon what I say. As to the magistrates, I have a word or two."

Under Sher. Speak well of them.

Gibbs. "Be not afraid, I will not speak any evil of them; magistracy is an ordinance of God, and the end of magistracy is for the punishment of evil doers, and the praise of them that do well; and for this purpose, I do desire that the Lord would give to the supreme magistrate here on earth, wisdom and understanding, a wise council, a council fearing God, and hating covetousness, that they may study to exalt the throne of the king in righteousness and truth; O that we may all praise the Lord for deliverance out of condemnation; and I say it is the duty of all the subjects of the king's majesty, in all his kingdoms and dominions, to live peaceably, and to pray for the king's majesty: Prayers and intercessions ought to be made for all men, especially for kings and governors, for this very end and purpose, that thereby we may live in all quietness, godliness, honesty and justice; and to this very end the Lord bless our magistracy, give them counsel and wisdom, that they may love them that love the Lord, and hate them that hate the Lord."

After Gibbs had done speaking, then *Stubb* began, who went over all the particulars of his trial at large, to which for brevity's sake we refer you. After which he said as follows:

"Friends and Countrymen,

"It is true, and I must confess my sin in the presence of God (and did ask mercy of the king) that I was in the company when I did hear wicked and treasonable words spoken; and I being ignorant, and not knowing the law, did not discover what I did hear.—As to my judgment, truly I desire to own that the scriptures own; I shall speak of that place in the Hebrews, which is the command of Christ, I desire the churches and the people every one to live the life of faith, and love one another; I am confident it would be a means of abundance of comfort here in the nation; there is a kind of heart burning and rising one against another, you are so and so, throw dirt one

against the other; it is our and your duty, still to be studying to live in love, and bear one with another, not to be angry, destroy, and fight one with another: O that we might live that life of love that God has commanded, then we may expect the presence of God to be with us; surely God hath a great judgment against his own people, for not loving one another."

Phillips. "Mr. Sheriff, I have only one word to speak before I go to my prayers; that is, Here I see some gentlemen present that are in the capacity that I was in as a soldier; I say, be faithful to your trust, and beg of God that you may stand fast, and not dishonour God, nor be disobedient to the king; when the Fifth Monarchy men were up, I was free and willing to lay down my life for the interest of the nation, and did venture it as much as any young man in London; therefore good friends, have a care: I am now brought to suffer; it is true, I was guilty of concealing it; I desire your prayers, that now as we are going to the state of eternity from whence there is no redemption, I humbly beseech you, as christians and friends, that you would seek earnestly to God, that now he may receive our souls into everlasting rest and happiness, which he has been pleased to bestow on them that love him and fear him; and the Lord knows my heart, I speak it in his presence, that had the king been pleased to shew mercy to me, I should have been a faithful and true subject to him all my days; but seeing it is the righteous hand of God, that now I am come to this untimely death, I desire you to lift up your hearts and souls to God with me, that when my soul shall leave this body, that the Lord Jesus Christ may with his everlasting arms receive me to glory: There is no redemption after death, we shall either go to eternal woe, or eternal happiness: therefore good friends, I desire you to look up to God, that when my soul departs, it may be received to glory."

Then they went to their prayers: which being ended, their caps were severally pulled over their faces; and afterwards private ejaculations, the executioner caused the cart to be drawn away; and after they had hanged awhile they were severally beheaded and quartered according to their sentence, and their heads and quarters conveyed in a basket to Newgate, to be disposed of at the king's pleasure. Their several quarters were buried on Saturday night, December 27. Their heads were set up on several poles, two on the one Tower-hill, and two on the other, as near the Tower as might be.

Ludlow's account of this affair, is as follows: "In the mean time, the English court knowing themselves to be fallen under the hatred and contempt of the people for their cruelty, immorality and corruption, aggravated by the late sale of Dunkirk, resolved by the contrivance of a plot to disarm their enemies, and provide for their present safety. To this end,

by the means of major-general Brown and others, money was advanced and arms put into the hands of some persons, among whom one Bradley, who had formerly belonged to Cromwell, was the principal, that by giving small sums to indigent officers of the late army, and by shewing the arms they had ready, they might engage them and others in this pretended design. An account of this plot was printed and published, affirming, That divers thousands of ill-affected persons were ready, under my command, to seize the Tower and the city of London; then to march directly to Whitehall, in order to kill the king and Monk, with a resolution to give no quarter to any that adhered to them; and after that to declare for a commonwealth. By this means one Baker, who had been of the guard to Cromwell, and since the disbanding of the army, had been reduced to grind knives for a poor living, having received half a crown from Bradley, and promised his assistance when there should be occasion, was executed with some others for this conspiracy. However, this served the court for a pretence to seize five or six hundred persons; to disarm all those they suspected; to require those they had taken to give bonds of 200*l.* each, not to take up arms against the king, and to increase the standing guards. They were not ashamed also to give out, that their messengers had been so near to seize my person, that they had taken my cloak and slippers, and committed two gentlemen to the Tower for accompanying me, as they said, to the sea-side, in order to my escape; though at the same time they knew so well where I was, that they had employed instruments to procure me to be assassinated, which was discovered to a merchant of Lausanna by a person of quality living in these parts," [Ludlow was in Switzerland,] "who had refused 16,000 crowns offered to him on the part of the duchess of Anjou, (Orleans is intended) sister to his gracious majesty, if he would undertake that province."

The General farther adds, "The earl of Antrim, an Irish Papist, and one who had been concerned among the first in the rebellion of that country, having been seized at London, as I mentioned before, and afterwards sent prisoner to Ireland, was ordered, by a letter under the king's hand and seal, to be cleared and set at liberty, charging the guilt of that rebellion upon his father, and affirming in the said letter, 'That the earl of Antrim had not done any thing, without warrant and authority from the king his father;' though it was well known, that he had his head and hands deeply and early engaged in that bloody work. Thus the mask was openly taken off, in confidence, that a people deprived of their leaders, dispirited by the late executions, and awed by the authority of a complying House of Commons, would not be able to shew their resentment."

There is reason enough to believe, that the Court very much exaggerated the transactions out of which arose the proceedings against

these people, as well as those against James, Venner and others: See John James's Case, sup. p. 67, and the note to p. 104. But the historians who are most vehement in their animosity against Charles the Second and his ministers at this time, are scarcely satisfied with imputing to the Court the charge of exaggeration. Mrs. Macaulay's short account of this sham conspiracy, as she calls it, and of the proceedings against Tonge and the rest, is a master-piece of unfairness. For years after the Restoration there must have been among many classes much disaffection towards the government, and at court the deepest dread of the consequences of such disaffection, and a most anxious wish to suppress every indication of commotion which might have furnished a rallying point to all the disaffected. Burnet and Hume both mention the tumult of Venner and the Millenarians. Of the plot of November and December, 1661, Buruet says, "When

the Act of Uniformity was brought into the House, many did apprehend that so severe an act might have ill effects, and began to abate of their first heat: Upon which reports were spread, and much aggravated as they were reported to the House of Commons, of the plots of the Presbyterians in several counties. Many were taken up on those reports: But none were ever tried for them. So, the thing being let fall, it has been given out since, that these were forged by the direction of some hot spirits, who might think such arts were necessary to give an alarm, and by rendering the party odious to carry so severe an act against them. The lord Clarendon himself was charged as having directed this piece of artifice: but I could never see any ground for fastening it on him: though there were great appearances of foul dealing among some of the fiercer sort." But he is silent as to this of 1662: and Hume is silent as to both.

213. The Trial of MARY MODERS alias STEDMAN, styled the German Princess, at the Old Bailey, for Bigamy: 15 CHARLES II. A. D. 1663.

THE Court being sat, a Bill of Indictment was drawn up against Mary Moders, alias Stedman, for having two husbands now alive, viz. Tho. Stedman and John Carleton. The Grand Jury found the Bill, and was to the effect following, viz.

"That she the said Mary Moders late of London Spinster, otherwise Mary Stedman, the wife of Tho. Stedman, late of the City of Canterbury in the county of Kent, Shoemaker, May 12, in the reign of his now majesty the sixth, at the Parish of St. Mildred's in the City of Canterbury, in the county aforesaid, did take to husband the aforesaid Thomas Stedman, and him the said Thomas Stedman then and there had to husband. And that she the said Mary Moders, alias Stedman, April 21, in the 15th year of his said majesty's reign, at London, in the Parish of Great St. Bartholomew's, in the ward of Farringdon without, feloniously did take to husband one John Carleton, and to him was married, the said Tho. Stedman her former husband being then alive, and in full life: against the form of the statute in that case provided, and against the peace of our said sovereign lord the king, his crown and dignity, &c."

Afterwards the said Mary Moders, alias Stedman, was called to the Bar; and appearing, was commanded to hold up her hand: which she accordingly did, and her Indictment was read to her as followeth.

Clerk of the Peace. Mary Moders, alias Stedman, thou standest indicted in London by the name of Mary Moders late of London, spinster, otherwise Mary Stedman, the wife of, &c. [And here the Indictment was read as above.] How

sayest thou, art thou Guilty of Felony whereof thou standest indicted, or Not Guilty?

Mary Moders. Not Guilty, my Lord.

Cl. of the Peace. How wilt thou be try'd?

Prisoner. By God and the Country.

Cl. of the Peace. God send thee a good deliverance.

And afterwards she being set to the bar in order to her trial, she prayed time till the morrow for her trial: which was granted, and all persons concerned were ordered to attend them at nine of the clock in the forenoon. The Reader is desired to take notice of the following passage:

After she was arraigned, and going back to gaol, her husband the young Lord told her, he must now bid her adieu for ever. To which she replied,

"Nay, my Lord, 'tis not amiss,
"Before we part, to have a Kiss."

And so saluted him, and said, "What a quarrel and noise here's of a cheat! You cheated me, and I you: you told me you were a Lord and I told you I was a Princess; and I think 'I fitted you.' And so saluting each other they parted.

June 4, 1663.

The Court was sat; Proclamation was made.

Cl. of the Peace. O Yes! all manner of persons that have any thing more to do, &c. See Mary Moders to the Bar: where she accordingly stood.

Cl. of the Peace. Mary Moders, alias Stedman, hold up thy hand: [which she did.] Those men that you shall hear called, and personally appear, are to pass between our sovereign lord the king and you for your life: if you will chal-

lunge them, or any of them, you must do it; when they come to the book to be sworn, before they are sworn. And then were called, William Rutland, Arthur Vigers, Arthur Capel, Tho. Smith, Fran. Chaplain, Robert Harvey, Simon Driver, Robert Kirkham, Hugh Massou, Tho. Westley, Richard Clutterbuck, Rondolph Tooke. And she challenged none; but they were severally sworn.

Cl. of the Peace. Crier, make proclamation: O Yes! if any one can inform my lords the king's justices, the king's serjeant, or the king's attorney, before this inquest be taken between our sovereign lord the king, and the Prisoner at the Bar, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon her deliverance: and all others that are bound by recognizance to give evidence against the Prisoner at the Bar, come forth and give evidence, or else you will forfeit your recognizance.

The Witnesses being called several times, and not appearing, young Carleton came into the court in a rich garb trimmed with scarlet ribbands, and prayed that in respect his father and the rest of the witnesses were not all ready, the trial might be deferred for half an hour; and he going back, and passing the Prisoner his Princess, who stood there in a black velvet wastcoat, dressed in her hair, trimmed also with scarlet ribbands, she; (veiling her face with her fan) laughed at him, to the great observation of the court: and so the young Lord left the court (by advice of his friends) and betook himself to an adjoining house, where he stood the whole trial.

After some stay the witnesses came into the Court, and the Prisoner was set to the Bar, and silence being commanded, the Indictment was again read.

Cl. of the Peace. Upon this Indictment she hath pleaded Not Guilty, and for her trial hath put herself upon God and the country; which country you are. Your charge is to inquire whether she is Guilty of the said Felony, or Not Guilty: if you find her Guilty, you shall enquire what goods and chattels she had at the time of the felony committed, or at any time sithence: if you find her Not Guilty, you shall enquire whether she did flee for it; if you find that she fled for it, you shall enquire of her goods, &c. as if she had been Guilty: if you find she be Not Guilty, nor that she did flee for it, say so, and no more, and hear your evidence.

Several Witnesses were then sworn:

James Knot. My lord, and gentlemen of the jury, I gave this woman in marriage to one Thomas Stedman, which is now alive in Dover, and I saw him last week.

Court. Where was she married?

Knot. In Canterbury.

Court. Where there?

Knot. In St. Mildred's, by one parson Man, who is now dead.

Court. How long since were they married?

Knot. About nine years ago.

Court. Did they live together afterwards?

Knot. Yes, about four years, and had two children.

Court. You gave her in marriage, but did the minister give her to her husband then?

Knot. Yes, and they lived together.

Jury. Friend, did you give this very woman?

Knot. Yes.

Court. What company was there?

Knot. There was the married couple, her sister, myself, the parson, and the sexton.

Court. Where is that sexton?

Knot. I know not, my lord.

Court. You are sure they were married in the church; and this the woman?

Knot. Yes, I am sure of it.

Court. How long ago?

Knot. About nine years ago.

Court. Did you know this woman before the marriage, and how long?

Knot. Yes, I knew her a long time, I was an apprentice seven years near her mother's house in Canterbury.

Court. Then she is no foreign princess? Of what parentage was she?

Knot. I did not know her own father, [and in that he might be believed] but her father-in-law was a musician there.

Court. You saw her married: What words were used at her marriage, and in what manner?

Knot. They were married according to the order of the land, a little before the act came forth touching marriages by justices of the peace.

Court. Was it by the form of Common Prayer, any thing read of that form?

Knot. I did not take notice of that, I was but a young man, and was desired to go along with them.

William Clerk being sworn, said, My lord, I was last week in Dover, in company with this James Knot and Thomas Stedman; and he the said Stedman did own that he did marry one Mary Moders, a daughter of one in Canterbury, and that Knot gave her, and that he had two children by her, and declared his willingness to come up to give evidence against her, but wanted money for his journey: And I have understood that a person here in Court was of a jury at Canterbury, at a trial between Day and Mary Stedman at the bar, for having two husbands.

Court. Was she cleared?

Clerk. I cannot tell.

Young Carleton's father sworn. My lord, I was at Dover the last week, on Wednesday; I saw the husband of this woman, and the man acknowledge himself to be so, and did say that James Knot was the man that gave her in marriage to him.

Court. Where is this man her husband? Hearsays must condemn no man: What do you know of your own knowledge?

Carleton the Elder. I know the man is alive.

Court. Do you know he was married to her?

Carleton. Not I, my lord.

Sarah Williams. My lord, this woman was bound for Barbadoes, to go along with my husband, and she desired to lodge at our house for some time, and did so; and when the ship was ready to go, she went into Kent to receive her means, and said she would meet the ship in the Downs; and missing the ship, took boat and went to the ship. After several days remaining there, there came her husband with an order, and fetched her ashore, and carried her to Dover-Castle.

Court. What was his name that had an order to bring her on shore again?

Sarah Williams. His name was Thomas Stedman.

Court. Have you any more to prove the first marriage?

Carleton the Elder. No, none but Knot; there was none but three, the minister dead, the sexton not to be found, and this Knot who hath given evidence.

Court. What became of the two children, Knot?

Knot. They both died.

Carleton the Elder. Stedman said in my hearing, that they had lived four years together, had two children by her, and both dead; five years ago last Easter since she left him.

Court. Mr. Carleton, what have you heard this woman say?

Carleton. My lord, she will confess nothing.

Court. Mr. Carleton, did you look in the Church-Register for the first marriage?

Carleton. I did look in the book, and he that is now clerk, was then sexton, [just now not to be found;] he told me, that marriages being then very numerous, preceding the act before-mentioned, the then clerk had neglected the registry of this marriage. If she intended this trade, she likewise knew how to make the clerk mistake registering the marriage.

Young *Carleton's* brother sworn; who said, My Lord, and Gentlemen of the Jury, I was present at the marriage of my brother with this gentlewoman, which was on or about April 21, 1663. They were married at Great St. Bartholomew's, by one Mr. Smith, a minister here in Court, by license.

Mr. Smith is the Parson sworn. My lord, all that I can say, is this; That Mr. Carleton the younger told me of such a business, and desired me to marry them: They came to church, and I did marry them by the book of Common Prayer.

Court. Mr. Smith, are you sure that is the woman?

Parson. Yes, my lord, it is; I believe she will not deny it.

Prisoner. Yes, my lord, I confess I am the woman.

Court. Have you any more witnesses?

Carleton. We can get no more but Knot to prove the first marriage, the last is clear.

Recorder Howel. Where is Knot? Remember yourself what you said before. You say,

you know that woman at the bar, that you had known her a great while, that she was born near you in Canterbury, that you were present at her marriage, that parson Man married them, that none were present but yourself, the married couple, parson, sexton, and her sister.

Knot. Some others came into the church, but none that I knew; I am sure none went with her, but those I named.

Court. Who gave her in marriage?

Knot. I did.

Court. How came you to do it?

Knot. I was Stedman's shopmate, and he desired me to go along with him.

Court. Were her parents then living, or no?

Knot. Her mother was.

Jury. How old are you?

Knot. Two or three and thirty years.

Jury. How long ago was this marriage?

Knot. About nine years since.

Court. Then he was 23, and might do it: What is your trade of life?

Knot. I am a cordwainer, otherwise a shoemaker; Stedman was so too; we wrought both together.

Jury. We desire to know whether she had a father and mother then living?

Knot. She had a father-in-law.

Court. Did you know her mother?

Knot. Yes.

Court. How long before that marriage did her own father die?

Knot. I did not know him. [He said so before indeed.]

Court. What age was she when married?

Knot. I suppose about 19 or 20.

Prisoner. May it please your honours, and Gentlemen of the Jury, you have heard the several witnesses, and I think this whole country cannot but plainly see the malice of my husband's father against me; how he causelessly hunts after my life. When his son my husband, came and addressed himself to me, pretending himself a person of honour, and upon first sight pressed me to marriage; I told him, Sir, (said I) I am a stranger, have no acquaintance here, and desire you to desist your suit. I could not speak my mind, but he (having borrowed some threadbare compliments) replied, Madam, your seeming virtues, your amiable person, and noble deportment, render you so excellent, that were I in the least interested in you, I cannot doubt of happiness: and so with many words to the like purpose, courted me. I told him, and indeed could not much wonder, that at so small a glance he could be so presumptuous with a stranger, to hint this to me: but all I could say, would not beat him off. And presently afterwards he having intercepted my letter, by which he understood how my affairs stood, and how considerable my means were, he still urged me to marry him: And immediately by the contrivance of his friends, gaping at my fortune, I was hurried to church to be married, which the parson at first did without license, to secure me to my husband, and some time after had a license.—And my husband's

father afterwards considering I had a considerable fortune, pressed me, that in respect I had no relations here, and because, says he, we are mortal, you would do well to make over your estate to my son your husband; it will be much for your honour, satisfaction of the world, and for which you will be chronicled for a rare woman. And perceiving he had not baited his hook sufficient (with some fair pretences,) to catch me then, he and his son, who were both willing to make up some of their former losses in circumventing me of what I had, they robbed me of my jewels, and clothes of great value; and afterwards pretended they were counterfeit jewels, and declared that I had formerly been married to one at Canterbury, which place I know not; and this grounded on a letter (of their own framing) sent from Dover, with a description of me; that I was a young fat woman, full-breasted; that I spoke several languages, and therefore they imagined me the person: and so violently carried me from my lodging before a Justice of Peace, only to affright me, that I might make my estate over to them. The Justice having heard their several allegations, could not commit me, unless they would be bound to prosecute me; which my husband being unwilling to, the Justice demanded of his father whether he would prosecute me, saying, they must not make a fool of him; and so after some whisperings, the father and his son were both bound to prosecute, and thereupon I was committed to prison. And since that, these people have been up and down the country, and finding none there that could justify any thing of this matter, they get here an unknown fellow, unless in a prison, and from thence borrowed, you cannot but all judge, to swear against me. My lord, were there any such marriage as this fellow pretends, methinks there might be a certificate from the minister or place; certainly if married, it must be registered: but there is no registry of it, and so can be no certificate, no minister nor clerk to be found. And if I should own a marriage, then you see that great witness cannot tell you whether I was lawfully married, or how; but it is enough for him (if such a paltry fellow may be believed) to say, I was married. I was never yet married to any but John Carleton, the late pretended lord: but these persons have sought all ways to take away my life, bring persons to swear against me, one hired with 5*l.* and another old fellow persuaded to own me for his wife; who came to the prison, and seeing another woman, owned her, and afterwards myself, and indeed anybody. If such an old inconsiderable fellow had heretofore wooed me, it must have been for want of discretion, as Carleton did for want of money; but I know of no such thing. Several scandals have been laid upon me, but no mortal flesh can truly touch the least hair of my head for any such like offence; they have framed this of themselves. My lord, I am a stranger and a foreigner; and being informed there is matter of law in this trial for my life, my innocence shall be my counsellor, and your

lordships my judges, to whom I wholly refer my cause. Since I have been in prison, several from Canterbury have been to see me, pretending themselves (if I were the person as was related) to be my school-mates; and when they came to me, the keeper can justify, they all declared they did not know me.

Court. Knot, you said she lived near you at Canterbury; what woman or man there, have you to prove she lived there? Have you none in that whole city, neither for love of justice nor right, will come to say she lived there?

Knot. I believe I could fetch one.

Court. Well said! are they to fetch still?

Prisoner. My lord, I desire some witnesses may be heard in my behalf.

Elizabeth Collier examined. My lord, my husband being a prisoner in the Gate-House, I came there to see my husband, and did work there on days; and there came in an old man, his name was Billing, he said he had a wife there: says Mr. Baley, Go in and find her out: and he said I was his wife, turned my hood, and put on his spectacles, looks upon me, and said I was the same woman his wife; and afterwards said I was not, and so to others: I can say no more.

Jane Finch examined. My Lord, there came a man and woman one night, and knocked at my door; I come down, they asked to speak with one Jane Finch. I am the person, said I. We understand, said they, you know Mrs. Carleton now in prison. Not I, said I, I only went to see her there. Said they, be not scrupulous; if you will go and justify any thing against her, we will give you 5*l.*

Court. Who are those two?

Finch. I do not know them, my Lord.

Mr. Baley examined. My Lord, there has been at least 500 people have viewed her, several from Canterbury, 40 at least that said they lived there; and when they went up to her, she hid not her face at all, but not one of them knew her.

Court. What country-woman are you?

Prisoner. I was born in Cologne in Germany.

Court. Mr. Carleton, how came you to understand she was married formerly?

Carleton Elder. I received a letter from the Recorder of Canterbury to that purpose.

Prisoner. They that can offer 5*l.* to swear against me, can also frame a letter against me: they say I was 19 years of age about nine years ago, and am now but 21.

Court. Mr. Carleton, you heard what Knot said; he said she lived near him four years a wife, why did you not get somebody else to testify this?

Carleton. Here was one Davis that was at her father's house and spoke with him—

Court. Where is he?

Carleton. I know not; he was here.

Court. You were telling the Court of a former Indictment against her, what was that for?

Carleton. She was indicted for having two husbands, Stedman of Canterbury her first husband, and Day of Dover, Chirurgeon, her second husband. The indictment was traversed the year before his majesty came to England, she was found Not Guilty.

Court. Who was at that trial?

Carleton. One here in Court was of the Jury. But that party said there was such a trial, but knows not that this is the woman.

Judge Howell. Gentlemen of the Jury, you see this Indictment is against Mary Moders, otherwise Stedman, and it is for having two husbands, both at one time alive; the first Stedman, afterwards married to Carleton, her former husband being alive. You have heard the proof of the first marriage, and the proof doth depend upon one witness, that is Knot; and he indeed doth say, he was at the marriage, gave her away; and he names one man, the parson that married her, that he is dead; none present there but the married couple that must needs be there, the parson, this witness, her sister, and the sexton; that he knows not what is become of the sexton. All the evidence given on that side, to prove her guilty of this Indictment, depends upon his single testimony. It is true he says she was married at Canterbury, but the particulars, or manner of the marriage, he doth not so well remember, whether by the book of Common Prayer, or otherwise; but they lived together four years, had two children. If she were born there, married there, had two children there, and lived there so long, it were easy to have brought somebody to prove this: that is all that is material for the first marriage.—For the second, there is little proof necessary; she confesses herself married to Carleton, and owns him; the question is, whether she was married to Stedman or not?—You have heard what defence she hath made for herself, some witnesses on her behalf: if you believe that Knot, the single witness, speaks the truth so far forth to satisfy your conscience that that was a marriage, she is Guilty. You see what the circumstances are, it is penal; if Guilty, she must die; a woman hath no clergy,* she is to die by the law, if Guilty.

* By the temporary stat. 3 & 4 William and Mary, c. 9. (An Act to take away Clergy from some offenders, and to bring others to punishment,) it was enacted, "That in cases where a man, being convicted of felony, might demand the benefit of his Clergy, a woman convicted for such like offence, and praying the benefit of that statute, should not have judgment of death given against her upon such conviction, or execution awarded upon any outlawry for such offence, but should suffer the same punishment as a man who hath the benefit of his Clergy in the like case should suffer." This statute was in the next session of parliament, continued by statute 4 and 5 William and Mary

You heard she was indicted at Dover for having two husbands, Stedman the first, and Day the second. There, it seems by that which they have said, she was acquitted; none can say this was the woman: That there was a trial, may be believed; but whether this the woman tried or acquitted, doth not appear. One here, that was of that Jury says there was a trial, but knows not that this is the woman. So that upon the whole, it is left to you to consider of the evidence you have heard, and so to give your verdict.

The Jury went forth, and after some short consultation returned to their places. Their names were called, and all answered.

Cl. of the Peace. Are you all agreed of your verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. The foreman.

c. 24, by which, after reciting that some doubt had arisen upon the former statute, whether a woman should have the benefit thereof more than once, it is also declared and enacted, "That if any woman hath been, or at any time hereafter shall be convicted of any felony, for which a man might have the benefit of clergy, and upon her prayer hath once had, or hereafter shall once have, the benefit of the said statute, and shall be again convicted of any other felony, for which a man might have the benefit of his clergy, such woman shall be, and is hereby totally excluded from having any benefit or advantage of the said statute, but shall suffer pains of death in such and the same manner as if the said Statute had not been made." And by 6 and 7 W. 3. c. 14. these enactments are rendered perpetual.

As to how a peeress convicted of a clergyable felony, shall be dealt with, See the Case of the duchess of Kingston, 16 Geo. 3d, A. D. 1776, *infra*, and the Speech of the Lord Chief Barons on delivering the opinion of the Judges therein. Mr. Barrington (in a Note to his Observations, 1st Edition, on Statutum Gloucestræ 6 Ed. 1.) accuses the Common Law of a want of humanity in excluding women from the benefit of clergy. The benefit of clergy seems to have very little relation, either to humanity or to the Common Law. It was a scandalous privilege extorted by the power of the Popish Clergy in favour of criminals of their own order, to which order women could never be admitted. It may be conjectured, that some intimation to this effect was made to Mr. Barrington; for in subsequent editions of his book, he has added somewhat to his note: however, what he says amounts in fact only to an assertion of the well known truth, that the privilege should never have been granted. It appears by 2 Hale's Hist. P. C. cap. 51, that anciently nuns professed, were admitted to the privilege of clergy. But see 11 Co. Rep. 29 b. For more concerning benefit of clergy, see the cases of Cavenagh and others, and of Lord Warwick, *infra*.

Clerk. Mary Moders alias Stedman, hold up thy hand: look upon her, Gentlemen; what say you, is she Guilty of the felony whereof she stands indicted, or Not Guilty?

Foreman. Not Guilty.

[And thereupon a great number of people being in and about the court, hissed and clapped their hands.]

Clerk. Did she fly for it?

Foreman. Not that we know.

Afterwards she desired, that her jewels and clothes taken from her, might be restored to her. The Court acquainted her, that they were her husband's, and that if any detained them, from her, he might have his remedy at law: she charging old Mr. Carleton with them he declared they were already in the custody of his son her husband.

214. Proceedings, in the House of Commons, respecting a Message, alleged to have been carried by the Earl of Bristol to the King from Sir RICHARD TEMPLE, undertaking that the King's Revenue should be settled: 15 CHARLES II. A. D. 1663. [Commons' Journals. 4 Cobbett's Parl. Hist. 269.]

June 13, 1663.

UPON information given to the Commons, by Mr. Coventry, That his majesty had commanded him to impart to the House that a Message was delivered to his majesty by a person of quality, from sir Richard Temple, to the effect following: viz. "That sir Richard was sorry his majesty was offended with him that he could not go along with them that had undertaken his business in the House of Commons: but, if his majesty would take his advice, and intrust him and his friends, he would undertake his business should be effected, and Revenue settled, better than he could desire; if the courtiers did not hinder it:" It was ordered, That a Committee be appointed to examine the said matter, and report it to the House.

June 20. It was resolved, "That the king be humbly desired, that he would be graciously pleased to name the person that did deliver the Message to his majesty from sir Richard Temple: and that his majesty's two principal secretaries of state, Mr. Treasurer, and sir William Compton, do attend his majesty, and acquaint him with the desires of this House."

June 26. Mr. Secretary Morrice acquainted the House, That he had received command from his Majesty to declare to the House, That the earl of Bristol was the person that did deliver the Message from sir Richard Temple to his majesty. Upon which it was resolved, That a copy of the first Message sent by his majesty, against sir Richard Temple, be sent to the earl of Bristol: and he be made acquainted,

* Although these Proceedings are short and not very satisfactory, they are interesting; not only from the nature of the alleged offence, but also from the earl of Bristol's share in them; who, in less than a fortnight after they were concluded, brought forward the Articles of High Treason against the earl of Clarendon, which form the basis of the next Case: with that Case the present, it will be seen, is connected.

That the king hath sent word to this House, That he brought the Message to him, from sir Richard; and his Answer desired, Whether sir Richard did desire him so to do: and that Mr. Vaughan and Mr. Garraway do attend the earl with this Message.

June 27. Mr. Vaughan reported, "That he and Mr. Garraway had attended the earl of Bristol; and had acquainted him with the Order of this House; and with the transcript of so much of his majesty's Message as did relate to the Message which he did receive from sir Richard Temple: and that his lordship did render his most humble and hearty thanks to this House, That, in such an important matter, and so much concerning his honour, they did signify their desires to him in so obliging a manner: but, in regard the thing was of so great consequence, partly relating to his majesty, and also concerning his own honour, and the reputation of a Member of this House, he could not intrust any other person to deliver his Answer, for fear of mistakes which might thereby happen; and because he might probably if present clear any matter which might further accrue: and, therefore, that he might give full satisfaction to so illustrious a representative of his country, he desired a day might be prefixed, when he might be admitted to give an account to the House, in person, concerning this matter: and that he would make his address to the Lords, that he might be permitted so to do." Upon this, it was resolved, That Wednesday next be appointed for the earl of Bristol personally to give in his Answer to the House.

July 1. The House having received information, that the earl of Bristol was at the door, and did pray admittance into the House, to give an account in person, of the matter concerning sir Richard Temple, his lordship was, by direction of the House, placed in a chair, set for him on purpose, on the left side of the House, within the bar: and Mr. Speaker did open unto him his majesty's Message, and the Votes and Proceedings of the House thereupon, concerning sir Richard Temple. This being done,

The Earl of *Bristol* rose and addressed the House as follows :

“ Mr. Speaker ; were I to be wrought upon by the arts and menaces of my enemies, or by the alarms of my friends in my behalf, contrary to the firmness and assurance which a clear heart and a good conscience does always uphold in a man of honour, I should have appeared in this place with such fear and trembling, as could not chuse but disorder any man's reason and elocution: the niceness of the subject upon which I am brought hither, were enough to discompose one ; but over and above that, I am not ignorant what personal prejudices I am under, and how industriously they have been improved among you. But when I look round this illustrious assembly, and see three parts of it composed of men who wear, as I do, a sword by their sides, and who have drawn it so often for the king's service, gentlemen of birth, integrity, fortune, all apprehensions vanish from a man, who hath served and suffered for the king as I have done.

“ Mr. Speaker, I know the time of this House, upon whose prudent deliberations the happiness of the king and kingdom depends, is too precious to have any part of it spent in vindication of me : but, since not only the reputation and innocence of one of your members depends upon what I shall say, but even his majesty's honour may in some sort be concerned in the right apprehension of it, I hope it will be thought no presumption in me to beg of you, as I do, in all humility, one quarter of an hour's patience and attention.

“ Mr. Speaker, I am here exposed as the Bearer of a Message to his majesty from sir Richard Temple, which he hath thought worthy to be complained of to this House, and which sir Richard Temple affirms he never sent. Lay your hands upon your hearts, gentlemen, and say truly, does not your innate candour pity my condition, brought into a straight, in all appearance so inextricable? For, on the one side, if I avow to have carried from sir Richard Temple the Message, which his majesty has been pleased to make so high and so unusual an expression of his being offended at, and which sir Richard Temple denies to have sent, how can men of honour forgive me so ungentlemanly a proceeding towards a person who hath trusted me, as a friend, to do him (as he thought) a good office with his majesty?

“ On the other side, Mr. Speaker, should I disavow the having delivered the Message from sir Richard Temple, which his majesty hath thought fit to affirm, that he received from him and by me, what subject can be strong enough not to sink for ever under the weight of such a contradiction to his sovereign? I ask you again, gentlemen, does not the condition you see me brought into, by the arts of my enemies, move you at the same time to pity and indignation?

“ Mr. Speaker, when David was put to his choice of one of the three calamities, he made

election of the plague. And why? that he might fall into the hands of God, and not of men. In like manner, Mr. Speaker, if one of the two extremes, with which I am threatened, be, as it appears, unavoidable, let me fall into the hands of God's vice-gerent the king; the world will never pardon me an unworthy action; his goodness, I am sure, would in time pardon a generous fault. But when you have heard me out, gentlemen, I am confident you will find, that I shall need neither the world's pardon nor the king's, but only yours. In the first place, Mr. Speaker, I am bound to clear sir Richard Temple, which I here do upon my honour, that he never sent by me a Message to the king, that had in it the least tincture of an undertaking of his; which I conceive could be the only part that could give offence to his majesty, or be a ground for the complaint made against him.

“ In the next place, if the king, who, the law says, can do no wrong, hath thought fit to affirm, that I brought him that undertaking Message from sir Richard Temple, it must needs be true, and I do with all submission avow whatever his majesty is pleased to affirm of me; but, having discharged that duty towards my sovereign, I hope I may be allowed to lay the fault home upon myself, and to tell you, that my tongue, I know not by what distemper, delivered that which, I protest to God, was never in my thoughts; I was so far from thinking to deliver such a Message from sir Richard Temple, that I did not think myself charged with any thing by way of Message. It is true, Mr. Speaker, that, being full of indignation at ill offices done him, I made a warm address to his majesty in sir Richard Temple's behalf, wherein I expressed his grief, that his majesty should be offended with him, and having joined thereunto some reasonings of his to justify his conduct, in relation to his majesty's service, very agreeable to my own sentiments, I pursued his expressions with such of my own, as (all circumstances considered) the most unattentive person, and the most biassed with passion against sir Richard Temple, might have easily understood it to be no undertaking of his, but only a warm discourse and confident undertaking of my own.

“ Sir Richard Temple being thus cleared, without the least contradiction to his majesty, if to undertake for you, gentlemen, be a guilt, it is only I that stand guilty before you. But you are too noble, I am sure, and too just, to condemn me in your judgments, before you have heard the nature and circumstances of my undertaking; which, with your leave, I shall declare to the full, taking the matter (as I must needs, to be rightly understood) from an higher original. Mr. Speaker, having had the honour heretofore of discharging, with approbation, a place of so high trust, as that of Secretary of State to his majesty's father of blessed memory, and to himself: and since my quitting that place, being admitted so frequently to the happiness of his princely conversation, you

cannot imagine, but that sometimes he vouchsafed to speak to me of business, especially of parliaments, where I have the honour at present to be a peer, and have heretofore been as much versed, as some of my contemporaries, in the proceedings of the honourable House of Commons. I confess, that, before this last assembling, he did it more than once, and the opinion I most constantly delivered concerning this House was, that never king was so happy in a House of Commons, as he was in you: a House composed of so many gentlemen of birth and fortune, eminent in their faithfulness to him, and such as could never be suspected of any sinister designs, or of any other dependence, but upon the crown, and upon the care of those that chose them, and such as in the last sessions had manifested their affections to him by such large aids and supplies; adding, that nothing could be more important to his service, than to make and preserve you still popular with those that sent you. To which end I took the liberty to tell him, that if the necessity of his affairs, (of which I, having no part in his council, was no good judge) could admit of it, he ought not in prudence to let you give him any money this sitting, but rather to oblige you wholly to apply yourselves to the making of such laws as might endear both him and you to the people; by which means, at another meeting, he would be master of the hearts and purses of his subjects. But in case his necessities should urge him to press you, before the rising, for a new Supply, that he ought by all means, to let it be accompanied, if not preceded, by some eminent acts for the Reformation of former abuses, and for the securing his subjects from the like for the future.

"I persisted, Mr. Speaker, in pressing, upon all occasions, this advice to his majesty, till within some few weeks after their meeting; when finding myself (I know not by what misfortune) fallen under some prejudice, I thought that a total forbearance from speaking to him of any business, would be the best way of my serving him. And I protest unto you, gentlemen, with all sincerity, that from that time, until that of his majesty's expressing to me some displeasure against sir Rd. Temple, I never once opened my lips to him of any public affair whatsoever: it is true, Mr. Speaker, that a ground being given me to enter again with his majesty, upon a subject which my heart was still full of, I laid hold on the occasion, and in pursuance of what I had said in behalf of sir Rd. Temple, told his majesty, perhaps with more freedom and fervour than did become me, that I found his courtiers gave him wrong measures, both of the temper of the House of Commons, and of the means to attain from them any new Supplies, whether by way of present, gift, or of such establishments in his revenues, as might indeed put him out of necessity; since there could be no reasonable hopes of obtaining from them any such assistance, but by a continuance, if not a

precedence of such Acts, as might be grateful and beneficial to his subjects, and secure them, that what shall be given hereafter should be better managed for his majesty's service, than those vast sums that had been formerly granted: that if his majesty, in his princely wisdom, should think fit to drive on his business upon solid grounds, and not upon the false and self-interested measures of some courtiers, he had a House of Commons composed of members so full of affection to his person, and zeal for his prosperity and glory, that not only sir Rd. Temple, but the most unprejudiced and wisest men of the kingdom, as well as myself, durst undertake for them. See here, gentlemen, the bold undertaking that such a House of Commons would never let him want such present Supplies, as the true necessity of his affairs should require, nor such an established Revenue, as is fit to support the greatness and honour of his crown. If this was a criminal undertaking, you have, before you, gentlemen, *confitemur reum*; but whilst I am endeavouring to clear sir Richard Temple, and to vindicate or arraign myself, according as you shall be pleased to understand it; by telling you what passed from me to his majesty, I must not omit to give him the honour due to him for the kingly Reply he made to me upon this occasion, which was, 'That he had a true sense of the merit of the House of Commons towards him, even far beyond what I had expressed, and this was the reason why, relying so entirely as he did, upon the affections of that whole body, he was, and ever should be offended at any proposition to carry on his business there by officious undertakings and cabals, either of his courtiers or others.' An expression fit to be written with the rays of the sun, that all the world may read it; an expression which cannot chuse but inflame the affections of all this noble assembly that hear me, and carry you to make good these happy impressions of you, which are so deeply stamped in his royal breast; such as I should think it a crime to doubt, but that all suspicions being now vanished of his majesty's owning the Supply desired, to any acts or contrivances of others, your own zeal for his service will, even in the proportion and timeliness of that, exceed the vain proposals of all pick-thank undertakers.

"Mr. Speaker, I should have here put a period to your trouble of hearing me, did I not think I might incur the imputation of much weakness and supineness in my own highest concerns, if, valuing, as I do, above all earthly concerns, the favour and the esteem of my country, of which you are the illustrious representatives; and knowing what industry has been used to blast me with you, I should not lay hold on this just occasion to remove from me some unjust prejudices under which I have laboured. And this, Mr. Speaker, I humbly beg leave to do in very few words. I appeal, gentlemen, to numbers of you, that bear me, whe-

ther I have not been represented unto you for the giver of advice of a far different tenor from what you have heard upon this occasion ; whether I have not been painted out unto you for an inflamer of his majesty against his parliament ; for an enemy of the Church of England, and for a dangerous driver on of the Papistical interest. It is true, Mr. Speaker, I am a Catholic of the Church of Rome, but not of the Court of Rome ;* no Negociator there of Cardinal's Caps for his majesty's subjects and domestics, a true Roman Catholic as to the other world, but a true Englishman as to this : such a one, as had we a king inclined to that profession (as on the contrary, we have one the most firm and constant to the Protestant Religion, that ever sat upon the throne) I would tell him as freely as the Duke of Sully, being a Protestant, told his grandfather Henry 4. That if he meant to be a king he must be a constant professor and maintainer of the Religion established in his dominions. Believe me, gentlemen, Roman Catholic as I am, there is no man amongst you all, more thoroughly persuaded than I am, that the true pillars, that can uphold this monarchy, must ever be the maintenance of the subjects just rights and liberties, and the careful preservation of that State Ecclesiastical, whereof his majesty is the supreme governor ; and I do clearly profess, that should the Pope himself invade that Ecclesiastical right of his, I should as readily draw my sword against him as against the late usurper.

" Mr. Speaker, one prejudice more I am under, which ought to have great weight indeed with this honourable House, if there were a real ground for it ; and that is, that the earl of Bristol is one of those, who by the vast Grants that he hath got of the king, hath, in part, contributed to the groans of the people, to find their king still in such necessity, after such unexampled charges laid upon the subjects for his Supplies. It is true, Mr. Speaker, that though I have neither offices to keep, nor offices to sell, his majesty's gifts

* " The earl of Bristol was a man of courage and learning, of a bold temper and a lively wit, but of no judgment nor steadiness. He was in the queen's interest during the war at Oxford. And he studied to drive things past the possibility of a treaty, or any reconciliation ; fancying that nothing would make the military men so sure to the king, as his being sure to them, and giving them hopes of sharing the confiscated estates among them ; whereas, he thought, all discourses of treaty made them feeble and fearful. When he went beyond sea he turned Papist. But it was after a way of his own : For he loved to magnify the difference between the church and the court of Rome. He was esteemed a very good speaker : But he was too copious, and too florid. He was set at the head of the popish party, and was a violent enemy of the earl of Clarendon." Burnet. See more concerning him in the next Case.

to me have been great, in proportion to my merit, which is none : for in serving and suffering for him with faithfulness, I did but my duty, which carries a reward with itself, enough to raise a comfort to me, from the very ruin of my fortune. It is also true, I have had the satisfaction from his majesty, that he never refused me any thing I asked him for myself. But I hope I shall make it appear also, that I have not only been a very modest asker, but also a most careful one, to ask nothing considerable, but what carried advantage with it, as well to his majesty's interest as my own. I know well, Mr. Speaker, that, with so kind and so generous a nature as our king is, an ill proportion of bounty to merit, and consequently the largeness and kindness of his royal heart that way, may have contributed much to the present straits he is in. Happy is the nation that hath nothing to fear for the public, but from the virtues of their prince. It is your proper work, gentlemen, to reduce the effects of them to a right temperament, by your prudent inspection ; and may you begin it with all my concerns, which I most readily lay at your feet, humbly begging of you to appoint a time, when I may display them all faithfully before you : in hopes that no man, who hath been a partaker of his majesty's bounty, will prove himself so unworthy of it, as not to follow the example.

" Mr. Speaker, If having thus poured out my soul before you, I have been so happy as to have begot in this honourable House a right persuasion of the sincerity of my heart, I expect and implore two gracious effects of it. The first that you will be pleased to grant me your pardon, if the same zeal for his majesty's service, and the good of my country, which made me presume (being no counsellor) to press upon his majesty my opinion in matters of such importance, has transported me also, at this time, in some sort, so as to become your adviser. You have heard, gentlemen, of the dumb man, whose tongue was set free by the imminent danger of his father's life ; wonder not then, gentlemen, that such a lover of his king and country as I am, having seen them, within these three years in a prospect of such glory and happiness, both at home and abroad, and finding to what a sad condition things are now reduced, (by what means it is more proper for you to enquire, and may Heaven bless your inspection ;) wonder not, I say, gentlemen, that a man so affected as I am, should, by some eruptions of heart, let you see, that *periculum patrie* ought to have a more powerful effect upon a man of public soul, than *periculum patris*, and is capable, if I were a mute, to make me become a counsellor.

" The next is, Mr. Speaker, that if (as I said before,) I have been so happy in what I expressed, as to have raised in you some more favourable thoughts concerning me, you would vouchsafe me some demonstration of it, whereby I may no more be made, by my enemies,

such a bugbear as I am : as if a gracious look of his majesty upon me, were enough to ruin all his affairs with you. I shall then continue the way I am in with comfort ; but if I be so unfortunate, as that there still remains in this incomparable representative of my country, any umbrage of danger to it by my access to his majesty ; as dear as the conversation of the amiablest prince that ever breathed is to me, I shall banish myself for ever from his sight into the obscurest part of his dominions, rather than continue upon me the jealousy of a person on whom his prosperity depends ; or if that be not enough, I shall once more try my fortune abroad, where, I trust, this sword, this head, and this heart shall make me live as heretofore, in spite of my enemies, with lustre to myself and some honour to my nation."

After the Earl had finished his Speech he withdrew ; the House then proceeded in the debate of the matter, and came to the following Resolutions :

"That this House is satisfied, that sir Richard Temple hath not broke any privilege of this House, in the matter in question concerning him. That this return be made from the House, to the Answer of the earl of Bristol : viz. That the earl of Bristol, in the account which he hath given this House, in the matter concerning sir Richard Temple, hath carried himself with all dutifulness towards his majesty ; hath cleared the member of this House ; and that the House is well satisfied with his respect to them."

His Lordship was again called in : and Mr. Speaker acquainted him with the return of the House.

Ordered, That such members of the House, as are of his majesty's privy-council, do acquaint his majesty with the said Vote : That sir Richard Temple have the leave of this House, to petition his majesty for his favour ; and to give him satisfaction, as to the other informations mentioned in his Majesty's Message.

215. Proceedings in Parliament against EDWARD Earl of CLARENDON,* Lord High Chancellor of England, for High Treason, and other High Crimes and Misdemeanors: 15 and 19 CHARLES II. A. D. 1663—1667.

[The following passages relating to lord Bristol, and to the conduct of lord Clarendon, and the Proceedings against him, are taken from an article published under the title of "The Life of King James the Second, written by himself," in the first volume of Macpher-

* "The lord Bristol resolved to offer Articles of Impeachment against the earl of Clarendon to the House of Lords, though it was plainly provided against by the statute against appeals in the reign of Henry 4. Yet both the duke of Buckingham, and the lord Bristol, the fathers of these two lords, had broken through that in the former reign. So the lord Bristol drew his impeachment, and carried it to the king, who took much pains on him in a soft and gentle manner to dissuade him from it. But he would not be wrought on. And he told the king plainly, that, if he forsook him, he would raise such disorders that all England should feel them, and the king himself should not be without a large share in them. The king, as the earl of Lauderdale told me, who said he had it from himself, said, he was so provoked at this, that he durst not trust himself in answering it, but went out of the room, and sent the lord Aubigny to soften him : But all was in vain. It is very probable, that the lord Bristol knew the secret of the king's religion, which both made him so bold, and the king so fearful. The next day he carried the charge to the House of Lords. It was of a very mixed nature : In one part he charged the lord Clarendon with raising jealousies, and spreading reports of the king's

son's Original Papers, &c. and there represented to have been extracted from the Memoirs of king James the Second, written in that prince's own hand :

"1660. The earl of Bristol had declared himself a Roman Catholic some months before the Restoration ; so not of the privy council ; but he was trusted with all the secrets as before. He did not continue long united with Clarendon and Ormond ; endeavouring to get more power, and engross more into his hands, than the Chancellor cared he should ; and that by by-ways. Besides, the earl of Southampton struck up with the Lord Chancellor, who never had a good opinion of Bristol.

"The Chancellor was faulty in not getting all the destructive laws in the long rebel parliament of Charles 1, repealed ; which, most

being a papist : And yet in the other articles he charged him with correspondence with the court of Rome, in order to the making the lord Aubigny a cardinal, and several other things of a very strange nature. As soon as he put it in, he, it seems, either repented of it, or at least was prevailed with to abscond. He was ever after that looked on, as a man capable of the highest extravagancies possible. He made the matter worse by a letter that he wrote to the Lords, in which he expressed his fear of the danger the king was in by the Duke's having of guards. Proclamations went out for discovering him. But he kept out of the way till the storm was over." Burnet.

were of opinion, might have been done, and such a revenue settled on the crown, as would have supported the monarchy, and not exposed it to the dangers it has since run. Whether out of oversight or fear, the monarchy would not need a parliament uncertain; or from fear of the king's bringing in the Roman Catholic religion. The duke apprehends the last. In all other things he supported the crown's authority to the height.

" 1661. The Chancellor and Southampton were careless of the king's safety. Hawley was a wiser statesman. They and the bishops, in the House of Lords, were great opposers of the king's design, according to the promise at Breda, of a toleration of dissenters, so limited as not to disturb the peace of the realm. So the king's word was broke. The earl of Bristol, though no privy counsellor, was as much in the secret of affairs as formerly. Bristol was of a haughty temper, yet contributed to the Chancellor's ruin. The Chancellor was very loyal and true to the interest of the crown; but did not repeal acts of Charles 1, detrimental to the crown and revenue.

" The king's friends quarrelled. Bristol set up for himself, and made his court to the duchess of Cleveland; then angry with the Chancellor's forbidding his wife to visit her. The king shewed Bristol much countenance; and he got the regiment of horse for the earl of Oxford, then a pretender to his daughter; since married to the earl of Sunderland; and had he not drove on too fast, he might have got more; and might, by the help of his she-friend, have ruined the Chancellor, as he designed. But the king knew him too well to put him at the head of his affairs. Being vexed, he accused the Chancellor in the House of Lords; and flew in the king's face, by making an indecent speech in the House; and then justified it to the king, in lord Aubigny's presence. He flew out into extravagant expressions, threatening his enemies, and the king should feel it. So that he should have been thrown out at the window, had not the king been too good. This, however, did his business with the king.

" 1662. The Chancellor brought a queen to England of his own chusing: yet this was the occasion of his ruin.

" 1663. The Chancellor brought sir H. Bennet, afterwards earl of Arlington, into the king's favour, who soon after turned against him. He meant to oppose by him, Falmouth. The Chancellor grew jealous of sir William Coventry, the duke's secretary and a man of great abilities, though once his favourite. So Coventry helped on the Chancellor's ruin. Buckingham joined him.

" The Chancellor continued chief minister; the earl of Falmouth in the highest favour, minding his master's, not his own concerns. He was killed at sea, and died not worth a farthing, though not expensive. He had

served the old cavaliers. Arlington came back from Spain, and tried to get into favour, supported at first by the Chancellor and Bristol, against Falmouth; but after Falmouth's death, the Chancellor repented it. Sir William Coventry, the duke of York's secretary, and a very able man, was not well with the Chancellor; and he helped the Chancellor's fall. The duke of Buckingham was not of the king's privy council, but insinuated himself into his favour, by his agreeable converse. He was afterwards made privy counsellor and master of the horse. By his railleries, he set the king against the Chancellor. The patent for the Canary company was recalled; though they obliged the Canarians to take great quantities of English manufactures, in part-payment for wines; and to take reasonable rates, who would take nothing but ready money, when the company broke off and raised the price very much, to the damage of the nation.

" 1664. The Lord Chancellor alone against the Dutch war.

" 1665. The faction at court against the Chancellor, began to increase. The duchess of Cleveland, then promoting Buckingham and Arlington, railed against him. Sir William Coventry and all laboured to set the House of Commons against the Chancellor. They advised the king to break the Canary company, who took off every year 200,000*l.* of our woollen manufactures; and had the wines very cheap, being masters of the trade. When the company was broke, the Canarians made them pay twice as much for wines, and would take nothing but ready money. The reason was plain, the first ship which arrived there, not caring what she paid for loading, being sure of selling it as she pleased, at her return to England; the Canarians made the rest pay the same rate, which could not happen to a company. Bristol's attacks on the Chancellor in the House of Lords, miscarried. The king supporting the Chancellor, Bristol harangued the Commons without leave from the Lords.

" 1667. The disaffected party, now encouraged, grew more turbulent. The earl of Northumberland's factious discourse to the duke. The king consents to the Chancellor's removal. The earl of Bristol's insolent discourse to the king in 1664, about Clarendon. He was inexcusable for opposing the king's declaration, for liberty of conscience, in 1664, which had been solicited by Roberts, Ashley and others in parliament, to declare as at Breda; and it had been resolved in the Chancellor's own lodgings. The duchess of Cleveland was against the Chancellor; and the Canary company broke merely out of spite to him.

" The king at length ordered the duke of York to acquaint the Chancellor, that he was obliged, for the good of his affairs, to lay him aside. The Earl immediately sent him

- the seals. The parliament thanked the king for it, and for turning all Roman Catholics out of his service. Clarendon impeached. Sir William Coventry was active in it. His prudence and honesty in rejecting a proposal made by the Presbyterian party; who designed, thereby, a division between the king and the duke of York. He retires to France.
- ¹⁰ The earl of Northumberland and Leicester, lord Hollis and another, met at Guildford. They made it no secret. Northumberland at St. James's, talked freely to the duke of York against the Chancellor, who was hated, and of the resolution to impeach him; but said, this was not all, the nation would not be satisfied unless the guards were disbanded, and other grievances redressed. He talked very seditiously, though the duke checked him. The earl told him, that he had said nothing but what he would repeat to the king the next day; as he did with insolence enough. The duke urged, in vain, the necessity of the guards, for the king's safety and national quiet; that the want of them had been fatal to the late king and his government. The seditious stuck to their point, and joined with the Chancellor's enemies; hoping that his impeachment would breed a quarrel between the king and the duke of York.
- ¹¹ The king took the seals from the Chancellor. He told the duke of York of the resolution; that it was not out of any dissatisfaction with the Chancellor, but the necessity of his affairs; and that it was better to do it of himself than let it be torn from him by the parliament. He ordered the duke to tell him, that he must send the seals; and to shew his regard for him, he would confirm the little private pension he usually received. The Chancellor sent the seals; and told the duke of York, that his enemies would not stop there, but proceed to the last degree to expose the king and crown, to accomplish his ruin. So it proved.
- ¹² The parliament met on the tenth of October. Sir T. Littleton moved thanks to the king, for his speech and for taking the great seal from Clarendon; and to consider the heads of the king's and the Lord Keeper's speeches. The clause about Clarendon would hardly have passed, had not the king ordered his servants to let it be known he desired it; and Clarendon charged his friends not to oppose it, being resolved to let none of his private concerns disturb the king's affairs. The same means were used in the House of Lords, when they were moved to join in the Address, else it had not passed there. When it came to a vote, the duke of York and several others withdrew, not to oppose the king, as they looked on it as an ill precedent for the crown.
- ¹³ On the 26th of October, the Chancellor was accused, on public fame; and a committee was appointed to consider of proceedings and precedents. That very day, the duke

of York, in discourse with the king, about the talk of Clarendon's advising him to govern by an army and lay aside parliaments; the king assured him, that he had never given him such advice. His enemies considered not public good, but private malice; and getting to the head of affairs, give the king and crown a fatal blow. The king soon found the effects. The duke of York was seized with the small-pox in the beginning of November; and before his recovery the heat of the prosecution was over, else he would have been charged with influencing the Lords not to imprison Clarendon. Buckingham and lord Berkeley were so malicious, as, in their common discourse, to insinuate that the king was in danger, by letting his brother have his own guards to wait on himself at Whitehall; none knowing what the duke might be prevailed on to do by the Chancellor and his duchess. Some Presbyterians sent to Clarendon, offering to stand by him, if he would stand by himself. He saw their malice; and the king apprehending heats in the House of Commons, sent to him to withdraw out of the realm privately. Clarendon, as the duke was recovering, sent him word of the message and his resolution to obey it. The Presbyterians were very angry at his dis-appointing them.

- ¹⁴ Thus fell the earl of Clarendon; from whose fall one may date the beginning of all the misfortunes which happened since, and the decay of the authority of the crown; he generally supporting that prerogative, which his successors never minded. He was a private gentleman of a good family, bred in the law, had good sense, and very eloquent; always esteemed for his good parts. He was chosen by the late king a private manager for him in the House of Commons, which he performed with great dexterity and fidelity. He was entrusted at court with the most secret affairs; for his services, made Chancellor of the Exchequer; one of the council to the prince of Wales; relied on and went with him to France. He was sent ambassador with Cottington, then Lord Treasurer, to Spain. He returned to the king at Paris, and was made his first minister. He had the management of the Restoration, with Monk and Sandwich. At the Restoration, he was in such favour with the king, that nobody durst oppose him. He carried all before him. He made his friend Southampton, Treasurer; and by the aid of the duke of Ormond and the bishops, was caressed by most. As to the crown, he let the court of wards and purveyance be parted with. But he did not get a good substantial revenue settled on the crown, though it might have been easily done in the first parliament which the king called. This was out of fear, that the crown should grow too great and the Roman Catholic religion be brought in, if the king was at his ease; the duke of Ormond and Daniel O'Neils

having, in the king's journey to Spain, observed him inclined to it.

"Clarendon being removed, his enemies divided; each pretending to succeed in the ministry. Sir William Coventry, without whose help Buckingham and Arlington could not have carried on the plot, expected it, and was the only man fit for it. But the other two joining against him, though of the best capacity of any in the kingdom, got him out of all his employments; and then strove who should have most credit with the king, whose affairs suffered by their disagreement and insufficiency.

"After the Chancellor's removal, the ministers disagreed among themselves. Sir William Coventry was turned out of all his employments by Bucks and lord Arlington. They all joined to lessen the duke of York's interest with the king, lest he should get Clarendon recalled. When the duke recovered of the small-pox, he gave in the House of Lords, his reasons for voting against Clarendon's impeachment; because no proof was made of any of the crimes laid to his charge. The king was, on this account, colder to the duke. The malicious insinuations of his enemies were fruitless. The Chancellor's friends were removed."

I have said that the Life of King James the Second, in Macpherson's Original Papers, &c. is there represented to have been extracted from the Memoirs of King James the Second, written in that prince's own hand: for it may possibly admit of question, whether Macpherson does or not assert this of it; though there cannot be a doubt that he intends his readers should believe it. He expresses himself with a generality which well illustrates the ancient maxim of the lawyers, 'dolus versatur in generali-bus.*' In his 'Advertisement' he says,

* Mr. Macpherson appears to have had great skill in the use of ambiguous terms. He concludes his Advertisement prefixed to his Original Papers, &c. thus "The Originals are now in the hands of the bookseller." It is absolutely impossible to determine with certainty what originals he means. Mr. Laing, in his admirable Dissertation on the Gaelic Impecture of Macpherson (it is scarcely possible too highly to commend the sagacity, the candour, the diligence, the learning and the genuine eloquence exhibited in that Dissertation) with shrewdness and with truth observes, (4 Hist. of Scotland, &c. 493.) of the bard of Badenoch and his coadjutor, "When his impure hands are imposed on history, the misquotations and fictions detected in his Introduction to the History of Britain, and his cold malignity towards the most illustrious characters, should teach us to receive his Original Papers with extreme distrust, and we must regret that the State Papers of the Stuarts and of William, by some strange fatality, were reserved for the wandlator of Ossian and sir John Dalrymple."

"The extracts from the Life of King James the Second, were partly taken by the late Mr. Thomas Carte and partly by the editor, in a journey he made for that purpose to France." In his Introduction he tells us that Mr. Carte having obtained an order for inspecting such papers as *lay open** in the Scotch College at Paris, spent several months in that place, making extracts and collecting notes. In particular he made very large and accurate extracts from the Life of King James the Second, written in that prince's own hand. He then gives us to understand, that Carte's papers were placed in his hands, and adds, that "when he examined them with precision, he found that the extracts from the Life of King James the Second, threw a new and striking light on almost all the transactions of his brother's reign. This circumstance induced him to begin his history with the restoration of monarchy, and to satisfy himself, as well as to authenticate his materials to the public, he went to Paris to make still farther discoveries, and in particular to make fresh extracts from King James's Memoirs.

"During his stay in France, he not only had an opportunity to be satisfied concerning the faithfulness of Carte's extracts, but even to make many valuable additions of his own. The Memoirs left by king James in his own hand, consist rather of memorandums made for his own use, when the transactions happened, than a regular narration of events. He frequently lays down with precision, the reasons which weighed with himself in directing his conduct; and upon the whole, his papers form very important materials for the history of Britain, during his own times. In Carte's extracts, as well as in those of the editor, the language of king James is, in a great measure, preserved. That prince was not an elegant writer; and an abridgment must, in its nature, be still more stiff and dry than an original. Instead, therefore, of expecting entertaining reflections, and a well connected detail of transactions, the reader must content himself with an unadorned narrative of such facts as were the secret, and hitherto unknown, springs of the great events of the times.

"But if the Memoirs of king James cannot raise their author to the rank of a fine writer, they certainly do him credit as a man. There is an air of veracity in all the accounts given by that prince, that is much more valuable to an intelligent reader, than the choicest flowers of rhetoric and best turned periods. Indeed, the manner in which the papers, called his Memoirs, were written, precludes every suspicion of unfaithfulness on his side. His notes were generally made upon the

* These words "lay open," Macpherson prints in capitals. They may not be unimportant. See the extract inserted below, from Mr. Fox's Letter to Mr. Laing.

spot; and always before there was any necessity to palliate the circumstances of the transactions related. Besides, he was not of a complexion to misrepresent. He affected to guide himself by principle in all his actions; and to deem the slightest deviation from truth a crime. In his opinions he is frequently wrong, but very seldom in any fact that fell within his own immediate knowledge."

Here we may observe that sometimes the appellation *Life*, and sometimes the appellation *Memoirs*, is employed to denote papers in king James's own writing, and as the two appellations are not uncommonly used in the same sense, it is natural to conclude that Macpherson used them both as synonymous terms, to denote one and the same collection of papers: yet it is not improbable, that he designedly used the two words on account of their applicability to two different collections. We learn from bishop Burnet (1 Hist. of his own Times, 168 fol. ed. of 1724) that James kept a constant journal of all that passed, of which he shewed the bishop a great deal. The papers from which Macpherson extracted, might, according to his account of them, be reasonably inferred to be this journal: "They consist rather of memorandums made for his own use, when the transactions happened, than a regular narration of events." "His notes were generally made upon the spot, and always before there was any necessity to palliate the circumstances of the transactions related." But the internal evidence very little agrees with this character. Let us select a few instances. King James writing a journal at the time, would not in 1661 speak of a woman under a title which she did not obtain till nine years afterwards, (see 1 Macph. Orig. Pap. 20): nor would he in 1662 mention that persons then taken up were confined till 1667, (see 1 Macph. Orig. Pap. 21): nor insert Bristol's attack on Clarendon (the supposed journalist's father-in-law) among the occurrences of 1665, when it is notorious, and proved by the Journals of the House of Lords, that it took place in 1663, (see 1 Macph. Orig. Pap. 35). For one of these anticipations, and of another which occurs in p. 24, Macpherson accounts, very unsatisfactorily, by gratuitously supposing those particular paragraphs to have been written out of the order in which he publishes them. This is sufficient presumptive evidence to prove that Macpherson's extracts were not made from an original journal, and that he must at the time have known this to be the fact. But the matter seems to be put out of all doubt, by the following interesting passage from lord Holland's Address to the Reader, prefixed to Mr. Fox's History of the early part of the Reign of James the Second:

"With respect to Carte's extract, I have no doubt but it is faithfully copied; but on

' this extract it is necessary to make an observation, which applies to all the rest, both of Carte's and Macpherson's, and which leads to the detection of an imposture of the latter, as impudent as Ossian itself. The extracts are evidently made, not from a journal, but from a narrative; and I have now ascertained beyond all doubt, that there were in the Scotch College two distinct manuscripts, one in James's own hand, consisting of papers of different sizes bound up together, the other a sort of historical narrative, compiled from the former. The narrative was said to have been revised and corrected, as to style, by Dryden* the poet, (meaning probably Charles Dryden, the great poet's son,) and it was not known in the college whether it was drawn up in James's life, or by the direction of his son, the Pretender. I doubt whether Carte ever saw the original journal; but I learn, from undoubted authority, that Macpherson never did, and yet to read his Preface, page 6 and 7, (which pray advert to,) one would have supposed, not only that he had inspected it accurately, but that all his extracts at least, if not Carte's also, were taken from it. Macpherson's impudence in attempting such an imposition, at a time when almost any man could have detected him, would have been in another man, incredible, if the internal evidence of the extracts themselves against him were not corroborated by the testimony of the principal persons of the College. And this leads me to a point of more importance to me. Principal Gordon thought, when I saw him at Paris, in October 1802, that all the papers were lost. I now hear from a well-informed person, that the most material, viz. those written in James's own hand-writing, were indeed lost, and in the way mentioned by Gordon, but that the Narrative, from which only Macpherson made his extracts, is still existing, and that Mr. Alexander Cameron, Blackfriars Wynd, Edinburgh, either has it himself, or knows where it is to be found.'

"The above information was correct. There is strong presumptive evidence, that the manuscripts of king James the Second were destroyed; but the Narrative, as described, was then, and is now, in the hands of Dr. Cameron, Roman Catholic bishop in Edinburgh. It could not be in the possession of a person who is better qualified to judge of its merits, and on whose fidelity, should be induced to print it, the public might more implicitly rely. I am indebted to his accu-

* "It is the opinion of the present possessor of the narrative, that it was compiled from the original documents by Thomas Innes, one of the Superiors of the College, and author of a work entitled, 'A Critical Essay on the ancient Inhabitants of Scotland.'"

racy and friendship, for some additional information respecting the manner in which the manuscripts of the Scotch College were lost. As the facts are in themselves curious, I lay before the reader his succinct and interesting relation of them, contained in a letter to me, dated Edinburgh, March 2, 1808.

“ Before lord Gower, the British ambassador, left Paris, in the beginning of the French Revolution, he wrote to principal Gordon, and offered to take charge of those valuable papers, (king James’s Manuscripts, &c.) and deposit them in some place of safety in Britain. I know not what answer was returned, but nothing was done. Not long thereafter, the Principal came to England, and the care of every thing devolved on Mr. A. Innes, the only British subject who remained in it. About the same time, Mr. Stapleton, then President of the English College of St. Omer, afterwards Bishop in England, went to Paris, previously to his retiring from France, and Mr. Innes, who had resolved not to abandon his post, consulted with him about the means of preserving the Manuscripts. Mr. Stapleton thought, if he had them at St. Omer, he could, with small risk, convey them to England. It was therefore resolved, that they should be carefully packed up, addressed to a Frenchman, a confidential friend of Mr. Stapleton, and remitted by some public carriage. Some other things were put up with the Manuscripts. The whole arrived without any accident, and was laid in a cellar. But the patriotism of the Frenchman becoming suspicious, perhaps on account of his connection with the English College, he was put in prison: and his wife apprehensive of the consequences of being found to have English Manuscripts, richly bound and ornamented with royal arms, in her house, cut off the boards, and destroyed them. The Manuscripts thus disfigured, and more easily huddled up in any sort of bundle, were secretly carried, with papers belonging to the Frenchman himself, to his country-house, and buried in the garden. They were not, however, permitted to remain long there; the lady’s fears increased, and the Manuscripts were taken up and reduced to ashes.

“ This is the substance of the account given to Mr. Innes, and reported by him to me in June, 1802, in Paris. I desired it might be authenticated by a *procès verbal*. A letter was therefore written to St. Omer, either by Mr. Innes, or by Mr. Cleghorn, a lay gentleman, who had resided in the English College of St. Omer, and was personally acquainted with the Frenchman, and happened to be at Paris at this time. The answer given to this letter was, that the good man, under the pressure of old age and other infirmities, was alarmed by

‘ the proposal of a discussion and investigation, which revived in his memory past sufferings, and might, perhaps, lead to a renewal of them. Any further correspondence upon the subject seemed useless, especially as I instructed Mr. Innes to go to St. Omer, and clear up every doubt, in a formal and legal manner, that some authentic document might be handed down to posterity concerning those valuable Manuscripts. I did not foresee that war was to be kindled up anew, or that my friend Mr. Innes was to die so soon.’

“ Mr. Cleghorn, whom I mentioned above, is at present at the Catholic seminary of Old-Hall Green, Puckeridge, Hertfordshire. He can probably name another gentleman who saw the Manuscripts at St. Omer, and saved some small things, (but unconnected with the Manuscripts,) which he carried away in his pocket, and has still in his possession.

“ I need not trouble your lordship with my reflections upon this relation; but I ought not to omit that I was told, sometimes, that all the Manuscripts, as well as their boards, were consumed by fire in the cellar in which they had been deposited upon their arrival at St. Omer.’

“ The gentleman alluded to in the latter part of the above letter, is Mr. Mostyn, from whom Mr. Butler of Lincoln’s Inn very kindly procured a statement of the particulars relating to this subject, in the year 1804, and transmitted it to Mr. Fox. It contains in substance, though with some additional circumstances, and slight variations, the same account as Mr. Cameron’s, up to the period of the writer’s leaving St. Omer, which was previous to the imprisonment of the Frenchman.*

“ Mr. Fox, in a letter to Mr. Laing, remarks, that, ‘ to know that a paper is lost, is next best to getting a sight of it, and in some instances nearly as good.’ So many rumours have been circulated, and so many misapprehensions have prevailed, respecting the contents and the fate of the Manuscripts formerly deposited in the Scotch College at Paris, that it is hoped the above account, the result of the historian’s researches, will not be deemed out of its place in a preface to a history of the times to which those Manuscripts related.”

Macpherson does not distinguish with sufficient precision which are his extracts and which Carte’s. He tells us that in Carte’s extracts, as well as his own, the language of king James is in a great measure preserved.

* “ Mr. Mostyn’s letter to Mr. Butler was published in one of the Magazines, it would therefore be superfluous to reprint it. The name of the Frenchman was Mr. Charpentier, and his country-house was at St. Momelin, near St. Omer.”

This is not enough. If it were designed that they should be received with the authority of original documents, not a word should have been altered; what Macpherson says seems to imply that both Carte and himself abridged, which puts an end to originality, and very much weakens authority. In the Life of king James the Second written by himself, parts of many adjoining 'extracts' as they are called, have an appearance of being two abridgements of the same matter.

Louis XIV, after mentioning the Intrigues which followed the peace of Breda, thus introduces the fall of Clarendon; his reflections on which are very characteristical.

"Ainsi je crus qu'il seroit bon de lui envoyer Ruvigny, pour faire, ou qu'il se déclarât en ma faveur, ou que du moins il demeurât neutre, comme il sembloit naturellement devoir faire, vu les fâcheuses nouveautés qui renaissent à toute heure dans son Etat. Car il venoit encore tout nouvellement d'être forcé à bannir son chancelier de ses conseils; et bien qu'il fût vrai que ce ministre, pour avoir voulu prendre trop d'élévation, se fût de lui-même attiré beaucoup d'envie, il y a pourtant lieu de penser que la mauvaise volonté des Anglais ne se bornoit pas tout-à-fait à sa personne, puisque ni son entière dépossession, ni son exil volontaire, ne furent pas suffisans pour les contenter, mais qu'ils voulurent lui faire son procès sur des crimes qui sembloient lui être communs avec son maître.

"D'un si notable événement, les ministres des rois peuvent apprendre à modérer leur ambition, parce que, plus ils s'élèvent au-dessus de leur sphère, plus ils sont en péril de tomber. Mais les rois peuvent apprendre aussi à ne pas laisser trop agrandir leurs créatures, parce qu'il arrive presque toujours qu'après les avoir élevées avec emportement, ils sont obligés de les abandonner avec foiblesse, ou de les soutenir avec peine; car pour l'ordinaire ce ne sont pas des princes fort autorisés ou fort habiles, qui souffrent ces monstrueuses élévations." Œuvres de Louis XIV, vol. 2, p. 315.

Hume, in his account of Clarendon's fall, follows Burnet. On his character he bestows profuse and unqualified praise. The History of the Rebellion, he says, "except Whitlock's Memorials, is the most candid account of those times, composed by any contemporary author." No very definite commendation. Walpole's criticism is more precise. After ascribing to Clarendon "almost every virtue of a minister," he says, "As an historian he seems more exceptionable. His majesty and eloquence, his power of painting characters, his knowledge of his subject, rank him in the first class of writers—yet he has both great and little faults. Of the latter, his stories of ghosts and omens are not to be defended, by supposing he did not believe them himself; there can be no other

reason for inserting them; nor is there any medium between believing and laughing at them. Perhaps even his favourite character of lord Falkland takes too considerable a share in the history. One loves indeed the heart that believed, till he made his friend the hero of his epic. His capital fault is, his whole work being a laboured justification of king Charles. No man ever delivered so much truth with so little sincerity. If he relates faults, some palliating epithet always slides in: and he has the art of breaking his darkest shades with gleams of light that take off all impression of horror. One may pronounce on my lord Clarendon, in his double capacity of statesman and historian, that he acted for liberty, but wrote for prerogative."]

THE earl of Bristol having been opposed by the earl of Clarendon in the designs which he had formed in favour of the papists, resolved to take all methods to ruin him; not contented therefore with endeavouring to deprive him of the king's favour, he forms Articles of High-Treason and other Misdemeanors against him, which he shewed to the king; and though the king would have dissuaded him from it, yet the next day he carried the Charge to the House of Lords, which was as follows:

Articles of High-Treason, and other Heinous Misdemeanors, exhibited against EDWARD EARL OF CLARENDON, Lord High-Chancellor of England, in the House of Lords; on the 10th of July, 1663. By the Earl of Bristol.*

"That being in a place of highest trust and confidence with his majesty, and having arro-

* See the preceding Case and the notes. See, too, his Speech in favour of lord Strafford, 2 Cobb. Parl. Hist. 750, and his Case upon the Impeachment shortly after preferred against himself, vol. 4, p. 133, of this Collection, where is inserted a character given of him by Lord Clarendon; who, when in banishment, composed another very copious and able account of him, which is printed in the Appendix to the 3rd volume of Clarendon's State Papers. He thus concludes it:

"I did not intend to have reflected upon so many particulars, much less to have taken any survey of the active life of this very considerable person; but it was hardly possible to give any lively description of his nature and humour, or any character even of his person and composition, without representing some instances of particular actions; which, being so contradictory to themselves and so different from the same effects which the same causes naturally produce in other men, can only qualify a man to make a conjecture what his true constitution and nature was, and at best it will be but a conjecture, since it is not possible to make a positive conclusion or deduction from the whole or any part of it, but that another

gated a supreme direction in all his majesty's affairs, both at home and abroad, hath wickedly and maliciously, and with a traitorous intent to draw scandal and contempt upon his majesty's person, and to alienate from him the affections of his subjects, abused the said trust in a manner following, viz.

conclusion may be as reasonably made from some other action and discovery. It is pity that his whole life should not be exactly and carefully written, and it would be as much pity that any body else should do it but himself, who could only do it to the life, and make the truest description of all his faculties, and passions and appetites, and the full operation of them; and he would do it with as much ingenuity and integrity as any man could do, and expose himself as much to the censure and reproach of other men, as the malice of his greatest enemy could do; for in truth he does believe many of those particular actions, which severe and rigid men do look upon as disfiguring of the other beautiful part of his life, to be great lustre and ornament to it; and would rather expose it nakedly to have the indiscretion and unwarrantable part of it censured, than that the fancy and high projection should be concealed, it being an infirmity that he would not part with, to believe that a very ill thing subtly and warily designed, and well and bravely executed, is much worthier of a great spirit, than a faint acquiescence under any infelicity merely to contain himself within the bounds of innocence, and yet if any man concludes from hence that he is of a fierce and impetuous disposition, and prepared to undertake the worst enterprize, he will find cause enough to believe himself mistaken, and that he hath softness and tenderness enough about him to restrain him, not only from ill, but even from unkind and ill-natured actions. No man loves more passionately and violently, at least makes more lively expressions of it; and that his hatred and malice, which sometimes break out from him with great impetuosity, as if he would destroy all he dislikes, is not compounded proportionable out of the same fiery materials, appears in this, that he would not only, upon very short warning and very easy address, trust a man who had done him injury to a very notable degree, but even such a man, as he himself had provoked beyond the common bounds of reconciliation; he doth not believe that any body he loves so well, can be unloved by any body else, and that whatever prejudice is contracted against him, he could remove it if he were but admitted to conference with them which own it. No man can judge, hardly guess, by what he hath done formerly, what he will do in the time to come, whether his virtues will have the better and triumph over his vanities, or whether the strength and vigour of his ambition, and other exorbitancies, will be able to suppress and even extinguish his better disposed inclinations and resolutions, the success of which will always depend upon circumstances and con-

vol. vi.

"That he hath traitorously and maliciously endeavoured to alienate the hearts of his majesty's subjects from him, by words of his own, and by artificial insinuations of his creatures and dependences, that his majesty was inclined to popery* and had a design to alter the religion established in this kingdom.

tingencies, and from somewhat without, and not within himself. I should not imagine that ever his activity will be attended with success or security, but without doubt, if ever his reflections upon the vanity of the world dispose him to condemn it, and to betake himself to a contemplation of God, and nature, or to a strict and severe devotion, to which he hath sometimes some temptation, if not inclination; or if a satiety in wrestling and struggling in the world, or a despair of prospering by those strugglings, shall prevail with him to abandon those contests, and retire at a good distance from the court to his books and a contemplative life, he may live to a great and a long age, and will be able to leave such information and advertisements of all kinds to posterity, that he will be looked upon as a great mirror, by which well-disposed men may learn to dress themselves in the best ornaments, and to spend their lives to the best advantage of their country." 3rd vol. Clarendon's State Papers Appendix, p. lxxiii.

* * By the stat. 13 Car. 2, c. 1. "An Act for the safety and preservation of his majesty's person and government against treasonable and seditious practices and attempts," § 2. It was enacted, "That if any person or persons at any time after the 24th day of June, in the year of our Lord 1661, during his majesty's life, shall maliciously and advisedly publish or affirm the king to be an heretic or papist, or that he endeavours to introduce popery; (2) Or shall maliciously and advisedly, by writing, printing, preaching, or other speaking, express, publish, utter or declare any words, sentences, or other thing or things, to incite or stir up the people to hatred or dislike of the person of his majesty, or the established government; (3) Then every such person and persons, being thereof legally convicted, shall be disabled to have or enjoy, and is hereby disabled and made incapable of having, holding, enjoying, or exercising any place, office, or promotion ecclesiastical, civil or military, or any other employment in Church or State, other than that of his peerage, and shall likewise be liable to such further and other punishments as by the common laws or statutes of this realm may be inflicted in such cases."

No measures of Charles 2 exhibit his despicable and detestable meanness, duplicity and want of principle, more strongly than does the whole tenor of his conduct respecting religion from the beginning to the end of his reign. Mr. Fox well says,

"If any thing can add to our disgust at the meanness with which he solicited a dependence upon Lewis the 14th, it is the hypocritical pro-

X

"That in pursuance of that traitorous intent, he hath to several persons of his majesty's Privy-Council held discourses to this effect, viz.

"That his majesty was dangerously corrupted in his religion, and inclined to popery.

"That persons of that religion had such access, and such credit with him, that unless there were a careful eye had unto it, the protestant religion would be overthrown in this kingdom; and in pursuance of the said wicked and traitorous intent, upon his majesty's admitting sir Henry Bennet to be principal Secretary of State, in the place of Mr. Secretary Nicolas, he hath said these words, or words to this effect:

"That his majesty had given 10,000*l.* to remove a zealous protestant, that he might bring into that place of high trust a concealed papist; notwithstanding that the said sir Henry Bennet* is known to have ever been, both in

tenance upon which he was continually pressing that monarch. After having passed a law, making it penal to affirm, (what was true,) that he was a papist, he pretended, (which was certainly not true,) to be a zealous and bigoted papist; and the uneasiness of his conscience at so long delaying a public avowal of his conversion, was more than once urged by him, as an argument to increase the pension, and to accelerate the assistance he was to receive from France. In a later period of his reign, when his interest, as he thought, lay the other way, that he might at once continue to earn his wages, and yet put off a public conversion, he stated some scruples contracted, no doubt, by his affection to the protestant churches, in relation to the popish mode of giving the sacrament; and pretended a wish, that the pope might be induced by Lewis, to consider of some alterations in that respect, to enable him to reconcile himself to the Roman church with a clear and pure conscience."

Some most curious particulars, relative to this part of Charles the second's History, are to be found in the "*Pièces Historiques*" at the end of the *Cœuvres de Louis XIV.*" Paris Edition 1806.

* Burnet says; "He was a proud man. His parts were solid, but not quick. He had the art of observing the king's temper, and managing it beyond all the men of that time. He was believed a papist. He had once professed it: and when he died, he again reconciled himself to that church. Yet in the whole course of his ministry, he seemed to have made it a maxim, that the king ought to shew no favour to popery, but that all his affairs would be spoiled if ever he turned that way; which made the papists become his mortal enemies and accuse him as an apostate and the betrayer of their interests. His chief friend was Charles Berkeley, made earl of Falmouth, who without any visible merit, unless it was the managing the king's amours, was the most absolute of all the king's favourites, and, which

his profession and practice, constant to the Protestant Religion.

"That in pursuance of the same traitorous design, several near friends and known depen-

was peculiar to himself, he was as much in the duke of York's favour as in the king's. Berkeley was generous in his expences: and it was thought, if he had outlived the lewdness of that time, and come to a more sedate course of life, he would have put the king on great and noble designs. This I should have thought more likely, if I had not had it from the duke, who had so wrong a taste, that there was reason to suspect his judgment both of men, and things. Bennet and Berkeley had the management of the mistress. And all the earl of Clarendon's enemies came about them: the chief of whom were the duke of Buckingham and the earl of Bristol."

"It is certain," says Kennet speaking of the Treaty of the Pyrenees, "That the earl of Bristol, who was the king's companion and guide to the place of this Treaty, and sir Harry Bennet who was the prime agent for the king, did both of them turn papists about this time; as if they did it upon a compact then made. And there is a story to confirm all, which I have reason to think true. Sir Harry Bennet was soon after seen to wait upon the king from Mass; at which sight the lord Culpeper had so much indignation, that he went up to Bennet, and spoke to this effect: 'I see what you are at: Is this the way to bring our master home to his three kingdoms? Well, sir, if ever you and I live to see England together, I will have your head, or you shall have mine.' Which words struck such a terror upon sir Harry Bennet that he never dared to set foot in England till after the death of the lord Culpeper, who met with a very abrupt death within few months after the king's return. When he was taken out of the way, sir Harry Bennet came to court, and soon arose into honours and preferments, and was in disguise a mere creature of the papists, and had the dying courage to take off that disguise."

Of the present matter he says: "The lord Chancellor Clarendon was sensible of this change in his majesty's counsels and affections; and afterward took occasion, thus to express himself in a Petition and Address to the lords at the time of his departing the kingdom, 'For more than two years I never knew any difference in the councils.—But from the time Mr. Secretary Nicholas was removed from his place there were great alterations; and whosoever knew any thing of the court and counsels, knew well how much my credit hath since that time been diminished.—Nor hath there been from that time to this above one or two persons brought to the council, or preferred to any considerable office in the court, who have been of my intimate acquaintance, or suspected to have any kindness for me, and most of them most notoriously known to have been

ces of his have said, aloud, that were it not for my lord Chancellor's standing in the gap, popery would be introduced in this kingdom, or words to that effect.

"That in pursuance of the aforesaid traitorous design, he hath not only advised and persuaded the king to do such things contrary to his own reasons and resolutions as might confirm and increase the scandal, which he had endeavoured to raise upon his majesty as aforesaid of his favour to popery, but more particularly to allow his name to be used to the pope and several cardinals in the solicitation of a cardinal's cap for the lord Aubigny, one of his own subjects, and great Almouer at present to his royal consort the queen.

'very long my enemies and of different judgment and principles from me both in church and state.—And it was indeed from this juncture of a popish prevailing interest, that the lord chancellor Clarendon began now to decline in his royal master's favour and to stand ready to be given up to his enemies, and to bear the odium of every public miscarriage or misfortune. And therefore in this session of parliament, on July 10, 1663, the earl of Bristol exhibited Articles of High Treason and other heinous misdemeanours against Edward earl of Clarendon, Lord High Chancellor of England, in the House of Lords."

After giving the Articles, he proceeds; "This Accusation seems rather to have been a personal quarrel than any serious concern for public truth and justice. The words that are charged as spoken by him, were generally thought to have been the real expressions or suggestions of that great man, and was there not a cause? They may be taxed for an indecent freedom, but they can be never imagined to have proceeded from any want of integrity or honour. But indeed there seems a perverse turn in the articles, first to represent the lord Chancellor as jealous of popery, and complaining of the king's inclination to it, by taking new ministers popishly affected; and yet after all, to make the chancellor himself the instrument of those very designs that were laid for popery and the profest promoter of them; which the world did not then believe, and posterity does less believe." He concludes thus:

"And so the Plot of running down this great man fell at present; and yet this early step in it had gained very much of the designed effect, which was to make him less gracious with his royal master, and less respected in the parliament; and less beloved by the people; and so by degrees a more easy prey when his enemies should again meet to hunt him down."

In the next year, 1664, Bennett was made baron and in 1672 earl of Arlington. He, was one of the *Cabal*, and died in 1685. See the Impeachment against him in the year 1674, *infra*. Bristol appears to have lost by this attack on Clarendon whatever weight he previously had. He died in 1676.

"That in pursuance of the same wicked and traitorous design, he had recommended to be employed to the pope one of his own domestics, Mr. Rich. Bealing, a person (though an avowed papist) known to be trusted and employed by him in dispatches and negotiations concerning affairs of greatest concernment to the nation.

"That in pursuance of the said traitorous design he being chief minister of state, did himself write by the said Mr. Rich. Bealing letters to several cardinals, pressing them in the king's name to induce the pope to confer a Cardinal's cap on the said lord Aubigny, promising, in case it should be attained, exemption to the Roman Catholics of England from the penal laws in force against them; by which address unto the pope for that ecclesiastical dignity for one of his majesty's subjects and domestics, he hath, as far as from one action can be inferred, traitorously acknowledged the Pope's ecclesiastical sovereignty, contrary to the known laws of this kingdom.

"That in pursuance of the same traitorous design, he has called unto him several priests and Jesuits, whom he knew to be superiors of orders here in England, and desired them to write to their generals at Rome, to give their help for the obtaining from the pope the Cardinal's cap for the lord Aubigny, as aforesaid, promising great favour to papists here, in case it should be effected for him.

"That he hath promised to several Papists he would do his endeavour, and said, he hoped to compass the taking away all penal laws against them, which he did in pursuance of the traitorous design aforesaid; to the end they might presume and grow vain upon his patronage, and by their publishing their hopes of a toleration, increase the scandal endeavoured by him, and by his emissaries, to be raised upon his majesty throughout the kingdom.

"That in pursuance of the same traitorous design, being entrusted with the treaty betwixt his majesty and his royal consort the queen, he concluded it upon articles scandalous and dangerous to the Protestant religion.

"That in pursuance of the same traitorous design, he concluded the same marriage, and brought the king and queen together, without any settled agreement in what manner the rites of marriage should be performed, whereby the queen refusing to be married by a Protestant priest, in case of her being with child, either the succession should be made uncertain for want of the due rights of matrimony, or else his majesty to be exposed to a suspicion of having been married in his own dominions by a Romish priest, whereby all the former scandals endeavoured to be raised upon his majesty by the said Earl, as to point of Popery, might be confirmed and heightened.

"That having thus traitorously endeavoured to alienate the affections of his majesty's subjects from him upon the score of religion, he hath endeavoured to make use of all the malicious scandals and jealousies, which he and his

emissaries had raised in his majesty's subjects, to raise from them unto himself the popular applause of being the zealous upholder of the Protestant religion, and a promoter of new severities against Papists.

"That he hath traitorously endeavoured to alienate the affections of his majesty's subjects from him, by venting in his own discourse, and by the speeches of his nearest relations and emissaries, opprobrious scandals against his majesty's person and course of life, such as are not fit to be mentioned, unless necessity in the way of proof shall require it.

"That he hath traitorously endeavoured to alienate the affections of his highness the duke of York from his majesty, by suggesting unto him jealousies as far as in him lay, and publishing abroad by his emissaries, that his majesty intended to legitimate the duke of Monmouth.

"That he hath wickedly and maliciously, and contrary to the duty of a privy counsellor, and contrary to the perpetual and most important interest of this nation, persuaded his majesty, against the advice of the lord general, to withdraw the English garrisons out of Scotland, and to demolish all the forts built there, at so vast a charge to this kingdom.

"That his majesty having been graciously pleased to communicate the desires of the parliament of Scotland for the remove of the said garrisons to the parliament of England, and to ask their advice therein, the said earl of Clarendon, not only persuaded his majesty actually to remove those garrisons, without expecting the advice of his parliament of England concerning it, but did, by menaces of his majesty's displeasure, deter several members of parliament from moving the House, as they intended, to enter upon consideration of that matter.

"That he had traitorously and maliciously endeavoured to alienate his majesty's affections and esteem from this his parliament, by telling his majesty that there was never so weak and inconsiderable a House of Lords, nor never so weak and so heady a House of Commons, or words to that effect, and particularly, that it was better to sell Dunkirk, than to be at their mercy for want of money, or words to that effect.

"That he hath wickedly and maliciously, contrary to his duty of counsellor, and to a known law made last sessions, by which money was given; and particularly applied for the maintaining of Dunkirk, advised and effected the sale of the same to the French king.

"That he hath, contrary to law, enriched himself and his treasures by the sale of offices.

"That contrary to his duty he hath wickedly and corruptly converted to his own use, great and vast sums of public money raised in Ireland by way of subsidy, private and public benevolences, and otherwise, given and intended to defray the charge of government in that kingdom. By which means a supernumerary and disaffected army hath been kept up there, for want of money to pay them off, occasioned

it seems to be because of the late and present distempers of that kingdom.

"That having arrogated to himself a supreme direction of all his majesty's affairs, he hath, with a malicious and corrupt intention, prevailed to have his majesty's customs farmed at a far lower rate than others do offer, and that by persons, with some of whom he goes a share, in that and other parts of money resulting from his majesty's revenue.

July 10, 1663.

BRISTOL."

The Earl of Bristol having exhibited against the Lord Chancellor, Articles of High Treason, and other Misdemeanors, this Order was made by the House of Peers:

Die Veneris, July 10, 1663. "Ordered, by the Lords spiritual and temporal in parliament assembled, That a copy of the Articles or Charge of High Treason exhibited this day by the earl of Bristol, against the Lord Chancellor, be delivered to the Lord Chief Justice; who with all the rest of the Judges are to consider whether the said Charge hath been brought in regularly and legally, and whether it may be proceeded in, and how, whether there be any Treason in it or no, and make report thereof to this House on Monday next if they can, or else as soon after as possibly they may."

Whereupon, all the Judges met at Serjeants-Inn in Fleet-street, and my lord of Bristol repaired to us thither, desiring to see the Order; which being read, he told us he came out of respect to know of us whether we were informed how it came into the House of Peers, whether as a Charge or not; but one of the Judges who had been present when it was delivered in, saying, 'We were tied up by our Order,' his lordship took some exception at the manner of his expression, as if his lordship's address was unnecessary at that time, and taking it as a rebuke unto him, went away; but according to our Order, which supposed it to be a Charge of High Treason, and not mentioning Misdemeanor, we did upon consideration unanimously agree upon this ensuing Answer, which on Monday the 13th of July, the Lord Chief Justice Forster did deliver in, viz.

"We conceive that a Charge of High Treason cannot by the laws and statutes of this realm be originally exhibited by one peer against another unto the House of Peers, and that therefore a Charge of High Treason by the earl of Bristol against the Lord Chancellor, mentioned in the Order of Reference to us of the 10th of this instant July, hath not been regularly and legally brought in, and if the matters alledged in the said Charge were admitted to be true, although alledged to be traitorously done, yet there is no Treason in it."

* See lord Hale's Treatise on the Jurisdiction of the Lords' House of Parliament (published by Mr. Hargrave, 1796), pp. 94, 95, and Mr. Hargrave's Preface to that Treatise.

Which Answer being given in, the earl of Bristol took some exceptions at it, and some of the Lords inferred thence, that if it were irregularly and illegally brought in, it was a libel; but we satisfied them that it was not under consideration of us, whether it came in as an Information or Charge; our Order required us to give Answer to it as a Charge. 2dly. We did not meddle with any thing concerning accusing him of Misdemeanor, for our Order reached only to Treason. 3dly. It did not follow that if this Charge were irregular or illegal, that therefore it was criminal: There might be precedents to give colour to such kind of proceedings, for which, till it be declared or known, that they are illegal, they are titular, and ought not to be punished.

But it was much insisted on, That we should deliver the Reasons of our opinions, lord Bristol and his friends seeming dissatisfied.

We replied, That it was never known, that when the Justices to whom questions were referred from parliament had unanimously agreed in their Opinions, that reasons were required from them. Yet notwithstanding, it being the desire of the Lords, after some things premised, and a desire that this should not be drawn into an example, (which the Lords assented unto, as I took it, for no order was entered concerning it, there being no Order, as I think, for delivering our Reasons entered, and it was agreed amongst us, that no note should be reduced, lest we might be required to deliver our Reasons in writing; nor had I time to digest it in writing, having only Monday night after conference with my brethren to think upon it.) I did on the next Tuesday, being the 14th of July, deliver the Reasons of all the Judges, of their opinions, by their consents. To the first point, "That a Charge of High-Treason cannot originally be exhibited by one Peer against another unto the House of Peers," the emphasis of the word originally was shewed.*

For first, an Indictment of Treason against a Peer may be removed up to the Lords House to be tried, as it was in the 31 Hen. 6, in the

* Sir M. Hale, mentioning this case, says, "By the statute 1 Hen. 4, ch. 14, all these kinds of appeals in parliament are wholly taken away: And therefore, when the now earl of Bristol, prepared Articles of High-Treason against the earl of Clarendon, upon a reference to all the judges, and upon great consideration, the judges *uné voce* returned their opinions 'That those Articles were contrary to that statute of the 1 Hen. 4, and could not be preferred in the Lords' House by the said earl, or by any other private person.' But impeachments by the House of Commons of High-Treason or other misdemeanors, in the Lords House, have been frequently in practice, notwithstanding the statute of 1 Hen. 4, and are neither within the words nor intent of that statute; for it is a presentment by the most solemn grand inquest of the whole kingdom." Pl. of the Cr. vol. 2, ch. 20, p. 150.

earl of Devonshire's Case, but a steward was then to be made.

Secondly, If an Impeachment came from the House of Commons unto the Lords House, we did not take upon us the consideration, whether this could be proceeded in or not, for it was not the case to which we were required to give Answer.

We replied, Upon the Statute 1 Hen. 4, c. 14, which recites the many great inconveniences and mischiefs by appeals, and provides that all appeals of things within the realm, shall be tried and determined by the good laws of the realm made and used in the time of the king's noble progenitors, and appeals of things out of the realm before the constable and marshal. But we relied upon the clause ensuing, And thereupon it is accorded and assented, That no appeals be from thenceforth made, or in any wise pursued in parliament, in time to come. I shewed appeals in this statute, and accusations by single persons, were one and the same thing, and that this statute reached to all appeals, charges, accusations or impeachments delivered in, in parliament, whereupon the person accused was to be put to his answer; and that they were but several names of the same thing, I shewed first historically that the appeals the 11 R. 2, * and 21 R. 2, were but accusations by those Lords of felony against the other, and differed from the case of the dukes of Hereford and Norfolk, which was to be tried as 21 R. 2, Pl. Cor. in Parl. No. 19; is by the course of the civil law, and thereupon battle was waged. That though it concerned Hen. 4, in interest to confirm the 11 R. 2, and repeal the 21 R. 2, he being appellant in the former, yet he saw the mischief so great, that he himself made provision against them for all time to come, and indeed, the mischief was so great that it ceased not after the destruction of many lords and families (there being *les tallions* in that 21 R. 2, used towards most of those appellants in the 11 R. 2,) till it tumbled king R. 2, first out of his throne, and then into his grave.

That there were but two sorts of proceedings in *capitalibus*, the suit of the party, which was called an appeal, or the suit of the king, who ought to proceed by indictment, and so to trial by virtue of Magna Charta. 'Nec super eum ibimus,' &c. and that, in an appeal, being the suit of the party, there was no prerogative of appearance, if it were an appeal at the common-law, 10 Edw. 4. Lord Gray's Case. That an appeal was taken in the law-books frequently for an accusation by the party, I cited Westm. the 1st, c. 14, where the word appeal reaches to indictment; and 9 Coke, 119,† lord Zanchar's case, that an appeal hath two significations, one general and frequent in our books for accusation, and Stamford, 124, in case of an approver, the

* See the Trial of Tresilian, *ante*, vol. 1: p. 80.

† See vol. 2, p. 766. of this Collection.

felon after confession may appeal, that is (saith he) accuse others, coadjutors with him to do the felony. C. P. C. 129, appellat cometh from the French word appeller, which signifies to accuse, or appeale, and 1 Co. Inst. sect. 189. Appel signifieth an accusation; and therefore to appeal a man is as much as to accuse, and in ancient books he that doth appeal a man is called *accusator*, vide 9 Edw. 2, *Articulis Cleri*, c. 16. That I knew no reason why in those tumbling times of R. 2, (which caused this statute, for the statute-roll is 'Coment ad auterment este eus en temps la darrein roy,' R. 2.) they should proceed by way of appeal, but because they were then allowed at the suit of the party, to accuse any other of treason, but at the king's suit there ought to be an indictment, and an indictment could not be found but by jury.

That in all other cases, an appeal was to be brought by the party concerned, the wife or heir, or party robbed, &c. But in case of Treason, any man may appeal another, and therefore in all reason it must be understood of an accusation, and any man might accuse another of Treason; and if it can be proved by witnesses, it must not be tried by battle, as other appeals may. I concluded that the 8 Hen. 6, No. 38, this statute, the 1 Hen. 4, c. 14, is recited, and desired it should be duly kept and put in execution; that Stamford 78 and Coke Pl. Cor. 31, 132, agree that appeals of High-Treason, were commonly used to be sued in parliaments till the 1 Hen. 4, c. 14. 'Since which time this manner of appeal hath gone out of use; and I said, I had searched many precedents, and though of late there may be a precedent (as it was of the earl of Bristol's father against the duke of Buckingham, of some kind of impeachment) yet I did confidently believe there was not since that statute 1 Hen. 4, c. 14, any one precedent of such an impeachment at the party-suit whereupon there was any indictment: In truth, in the earl of Bristol's case, the Commons House did impeach the duke of Treason, and so the earl of Bristol's impeachment proceeded not.

For the second point, "That there was no Treason in the charge, though the matters in it are alledged to be traitorously done." I said we had perused each article *seriatim*, and we had found no Treason in them; the great charge, which is endeavoured to be proved by many particulars, was, That he did traitorously and maliciously, to bring the king into contempt, and with an intent to alien the peoples affections from him, say, &c. such and such words, &c.

And so it runs on, That in pursuance of the traitorous intent, &c. he did, &c. and that in farther pursuance of the said traitorous design, &c. And in like manner was most of the articles upon which the characters of treason seemed to be fixed. I said that it is a transparent misprision or offence to endeavour to bring the king into contempt, or to endeavour to alienate the people's affections from him,

but yet it was not treason. This statute, 13 Car. 2 C. 1. makes treason during the king's life: but if a man calls the king Heretic, or Papist, or that he endeavours to introduce Popery, (which is more in express terms than the article of that kind insinuates) or by words, preaching, prayer, to stir up the people to hatred or dislike of the person of his majesty, or the established government; the penalty is only disability to enjoy any place ecclesiastical, civil, or military, and subject to such penalties as by the common law or statute of this realm may be inflicted in such case, (which is fine and ransom, with imprisonment) and it limits a time and manner of prosecution.

There was an objection made yesterday upon the 25 E. 3. That this being in parliament, the king and parliament had power to declare treason, and then we ought to have delivered our opinions with a qualification, unless it be declared treason by parliament where this charge is depending; to this I answered.

1. It is not treason in *presenti*, and if such a declaration should be, *non constat*, whether it would relate to the time past.

2. That I conceived that the statute as touching that declaratory power, extended but to such cases as were clearly felony, as single acts, if not treason, (the words being) whether it be treason or other felony; but in respect of the doubts of escheats, which, if treason, belonged to the king; if felony, to the lords of the fee, it was left to the parliament. I did not say we resolved the point.

3. That admitting the declaratory power did extend to other cases than such as were before the judges, and was not taken away by 1. Mar. cap. 1. or any other statute, yet I read my lord Coke's opinion at large, Pl. Cor. Fol. 92. That this declaration must be by the king, lords and commons, not by any two of them alone; and we were now in a judicial way before the House of Peers only; and I did affirm as clear law, that by this judicial way no treasons could be declared nor adjudged, but as were expressly within the letter of the 25 E. 3. and said, That statute 25 E. 3. was a second Magna Charta, and that their ancestors thought it their greatest security to narrow, and not to enlarge treason, and cited 1 H. 4. cap. 10. to which in the parliament-roll Rot. No. 17. is added (it coming of the king's free grace) that the lords did much rejoice and humbly thank the king; and I read the statute 1. M. cap. 1^o.

That the now earl of Bristol in my lord of Strafford's Case, was the great asserter of the law against constructive and accumulative treason, which, if admitted, their lordships could better suggest unto themselves, than I express, how great a door they would set open to other inconveniencies and mischiefs to the peerage.

* As to Treason at Common Law declarable by Parliament, though not within 25 Edw. 3, See the note to Lord Capel's case, *ante*, vol. 4, p. 12, 13, and the case of the Earl of Danby A. D. 1678; *infra*.

I concluded with reading the Act, 14 Car. 2. for reversing the attainder of the earl of Strafford; the first part whereof I read to them, wherein is expressed, That they, who condemned him, did purposely make an act of parliament to condemn him upon an accumulative treason, none of the pretended crimes being treason apart, and so could not be in the whole, if they had been proved.

After I had spoken to this effect, the earl of Bristol seemed to acquiesce, insomuch as concerned our opinions as the case was delivered to us: but it being to be put to the question, Whether the Lords did concur with the Judges opinions, and himself being concerned in the illative, that therefore the charge was illegal and irregular; yet not being intended by him, as he said, as a charge, but an information, he desired (though as the case was put to us, it it was a good inference) that the voting of that might be spared till it was resolved by the Lords whether he delivered it in as a charge, or only as an information for the matter of the charge, if it should be thought fit for their lordships to proceed in it: after some debate upon the question, the Lords resolved the same day, according to our opinions.

1. "That a charge of high-treason cannot by the laws and statutes of this realm be originally exhibited by one peer against another, unto the House of Peers.

2. "That in these Articles, if the matters alleged in them were admitted to be true, there is no treason in them. And because the Lords unanimously concurred in them (Lord Bristol freely as any other) it was by order entered, That these Votes were *nem. con.*"

Note, That in Judge Hutton's Reports, the Resolution of the Judges is expressed to be, That a peer cannot be impeached but by indictment, and Mr. Rushworth in his Collections, Fol. 272, expresses such an opinion to be delivered by the judges, in 1 or 2 Car. but upon search it was found to be entered in the Journal of Parliament of that time, but it was casual, referring to the common-law only. But

that for proceedings in parliament it did not belong to them to determine, or to that effect; but no mention of 1 H. 4. cap. 14. It hath been credibly reported that some of the Judges in my lord of Strafford's case, being asked some questions, did with the like caution deliver their opinions, and did speak with reservations, (as the case is put) though they upon hearing did know the case mis-put? which, after troubled the consciences of one of them, (*ut audiui*) being a grave learned man; for "Suppression of the truth is the oppression of the innocent." *Vide* Peacock's Case, Co. 9. Rep. Fol. 71. But we having the case referred to us in parliament upon Articles exhibited in parliament, did resolve to deliver our Opinions without any such reservation; the act of 1 H. 4. being express against appeals in parliament (and of acts of parliaments after they are once made, none under the king, and without him, are interpreters but the judges. See King's Answer printed in the old print of 3 Car. 1. at the end of the Petition.) And therefore did deliver these Opinions which I conceive of great benefit to the Lords themselves, and a just ground for farther enquiry to be made, whether such impeachments may be in the House of Peers for other misdemeanours, without the king's leave, or being exhibited by his attorney.

And secondly, to take into consideration the validity of impeachments of treason by the House of Commons, notwithstanding the late precedents, which yet ended in a bill, and so in the legislative, not judiciary way.

Thus ended this attempt against the earl of Clarendon; but thus far it had its effect, in diminishing the king's favour towards him, and lessening his interest with the Lords, and with the people, whereby he became exposed to a second attempt, four years after.

Aug. 30, 1667, the king removed him from his place of lord chancellor; and the House of Commons impeached him of high treason, and of high crimes and misdemeanors, in the manner following:

Proceedings against the Earl of CLARENDON, A. D. 1667, upon an Impeachment of High-Treason and High Misdemeanors.

[The following passages relating to these Proceedings are extracted from Burnet:

"The Dutch war had turned so fatally on the king, that it made it necessary for him to try how to recover the affections and esteem of his people. He found a slackening the execution of the law went a great way in the city of London, and with the trading part of the nation. The House of Commons continued still in their fierceness, and aversion to all moderate propositions: but in the intervals of parliament the execution was softened. The earl of Clarendon found his credit was declining, that all the secrets of state were trusted to Bennet,

and that he had no other share in them than his post required. The lady Castlemain set herself most violently against him. And the duke of Buckingham, as often as he was admitted to any familiarities with the king, studied with all his wit and humour to make lord Clarendon and all his counsels appear ridiculous. Lively jests were at all times apt to take with the king. The earl of Clarendon fell under two other misfortunes before the war broke out. The king had granted him a large piece of ground near St. James's to build a house on; he intended a good ordinary house: but, not understanding those matters

himself he put the managing of that into the hands of others; who run him into a vast charge of about 30,000*l.* three times as much as he had designed to lay out upon it. During the war, and in the plague year, he had about 300 men at work, which he thought would have been an acceptable thing, when so many men were kept at work, and so much money, as was duly paid, circulated about. But it had a contrary effect. It raised a great outcry against him. Some called it Dunkirk house, intimating that it was built by his share of the price of Dunkirk. Others called it Holland house, because he was believed to be no friend to the war: so it was given out, that he had the money from the Dutch. It was visible, that in a time of public calamity he was building a very noble palace. Another accident was, that before the war there were some designs on foot for the repairing of St. Paul's: and many stones were brought thither. That project was laid aside during the war. He upon that bought the stones, and made use of them in building his own house. This, how slight soever it may seem to be, yet had a great effect by the management of his enemies. Another misfortune was, that he lost his chief friend, to whom he trusted most, and who was his greatest support, the earl of Southampton.

“As soon as the peace was made, the king saw with what disadvantage he was like to meet his parliament. So he thought the disgracing a public minister, who by his being long in so high a post had drawn upon himself much envy, and many enemies, would cover himself and the rest of his court. Other things concurred to set this forward. The king was grown weary of the queen: and it was believed he had a great mind to be rid of her. The load of that marriage was cast on the lord Clarendon, as made on design to raise his own grandchildren. Many members of the House of Commons, such as Clifford, Osborn, Ker, Eittrleton, and Seimour, were brought to the king; who all assured him, that upon his restoration they intended both to have raised his authority, and to have encreased his revenue; but that the earl of Clarendon had discouraged it, and that all his creatures had possessed the house with such jealousies of the king, that they thought it was not fit to trust him too much, nor too far. This made a deep impression on the king, who was weary of lord Clarendon's imposing way, and had a mind to be freed from the authority, to which he had been so long accustomed that it was not easy to keep him within bounds.

“Yet the king was so afraid to engage himself too deep in his own affairs, that it was a doubt whether he would dismiss him or not, if a concern of one of his amours had not sharpened his resentment; so that what other considerations could not do, was brought about by an ill grounded jealousy. Mistress Steward had gained so much on the king, and yet had kept her ground with so much firmness, that the king seemed to design if possible to legiti-

mate his addresses to her, when he saw no hope of succeeding any other way. The duke of Richmond, being a widower, courted her. The king seemed to give way to it; and pretended to take such care of her, that he would have good settlements made for her. He hoped by that means to have broke the matter decently; for he knew the duke of Richmond's affairs were in disorder. So the king ordered lord Clarendon to examine the estate he pretended to settle. But he was told, whether true or false I cannot tell, that lord Clarendon told her, that the duke of Richmond's affairs, it was true, were not very clear; but that a family so near related to the king could never be left in distress, and that such a match would not come in her way every day; so she had best consider well, before she rejected it. This was carried to the king, as a design he had that the crown might descend to his own grandchildren; and that he was afraid, lest strange methods should be taken to get rid of the queen, and to make way for her. When the king saw that she had a mind to marry the duke of Richmond, he offered to make her a duchess, and to settle an estate on her. Upon this she said, she saw she must either marry him, or suffer much in the opinion of the world. And she was prevailed on by the duke of Richmond, who was passionately in love with her, to go privately from Whitehall, and marry him without giving the king notice. The earl of Clarendon's son, the lord Cornbury, was going to her lodgings, upon some assignment that she had given him about her affairs, knowing nothing of her intentions. He met the king in the door coming out full of fury. And he, suspecting that lord Cornbury was in the design, spoke to him as one in a rage that forgot all decency, and for some time would not hear lord Cornbury speak in his own defence. In the afternoon he heard him with more temper, as he himself told me. Yet this made so deep an impression, that he resolved to take the seals from his father.

“The parliament were upon their first opening set on to destroy lord Clarendon. Some of his friends went to him a few days before the parliament met; and told him, many were at work to find out matter of accusation against him. He best knew, what could be brought against him with any truth; for falsehood was infinite, and could not be guessed at. They desired, he would trust some of them with what might break out, since probably nothing could lie concealed against so strict a search. And the method in which his friends must manage for him, if there was any mixture or alloy in him, was to be very different from that they could use, if he was sure that nothing could be brought out against him. The lord Burlington and bishop Morley both told me, they talked to this purpose to him. Lord Clarendon upon that told them, that, if either in matters of justice, or in any negotiations abroad, he had ever received a farthing, he gave them leave to disown all friendship to

him. The French king, hearing he had sent for all the books of the Louvre impression, had sent these to him, which he took, as thinking it a trifle, as indeed it was: and this was the only present he ever had from any foreign prince: he had never taken any thing by virtue of his office, but that which his predecessors had claimed as a right. But now hue and cry were sent out against him: and all persons, who had heard him say any thing that could bear an ill construction, were examined. Some thought, they had matters of great weight against him: and, when they were told these would not amount to high treason, they desired to know what would amount to it.

“When twenty three articles were brought into the House against him, the next day he desired his second son, the now earl of Rochester, to acquaint the House, that he, hearing what Articles were brought against him, did in order to the dispatch of the business, desire that those, who knew best what their evidence was, would single out any one of the Articles, that they thought could be best proved; and, if they could prove that, he would submit to the censure due upon them all. But those, who had the secret of this in their hands, and knew they could make nothing of it, resolved to put the matter upon a preliminary, in which they hoped to find cause to hang up the whole affair, and fix upon the Lords the denial of justice. So, according to some few and late precedents, they sent up a general impeachment to the Lords bar of high treason, without any special matter; and demanded, that upon that he might be committed to prison. They had reason to believe the Lords would not grant this: and therefore they resolved to insist on it; and reckoned, that, when so much money was to be given, the king would prevail with the lords. Upon this occasion it appeared, that the private animosities of a court could carry them to establish the most destructive precedent that could have been thought on. For if this had passed, then every minister upon a general impeachment was to be rained, though no special matter was laid against him. Yet the king himself pressed this vehemently. It was said, the very suspicious of a House of Commons, especially such a one as this was, was enough to blast a man, and to secure him: for there was reason to think, that every person so charged would run away, if at liberty. Lord Clarendon's enemies had now gone far: they thought they were not safe till his head was off: and they apprehended, that, if he were once in prison, it would be easy either to find, or at least to bring witnesses against him. This matter is all in print: so I will go no farther in the particulars. The Duke was at this time taken with the small-pox: so he was out of the whole debate. The peers thought, that a general accusation was only a clamour, and that their dignities signified little, if a clamour was enough to send them to prison. All the earl of Clarendon's friends pressed the king much on his behalf, that he might be suffered to go off gently, and without

censure, since he had served both his father and himself so long, so faithfully, and with such success. But the king was now so sharpened against him, that though he named no particulars, he expressed a violent and irreconcilable aversion to him; which did the king much hurt in the opinion of all that were not engaged in the party. The affair of the king's marriage was the most talked of, as that which indeed was the only thing that could in any sort justify such a severity. Lord Clarendon did protest, as some that had it from himself told me, that he had no other hand in that matter, than as a counsellor: and in that he appealed to the king himself. After many debates, and conferences and protestations, in which the whole court went in visibly to that which was plainly destructive both to the king and to the ministry, the majority of the House stood firm and adhered to their first resolution against commitment. The Commons were upon that like to carry the matter far against the Peers, as denying justice. The king seeing this spoke to the duke, to persuade Lord Clarendon to go beyond sea, as the only expedient that was left to make up the breach between the two houses; And he let fall some words of kindness in case he should comply with this. The earl of Clarendon was all obedience and submission; and was charmed with those tender words, that the king had said of him. So, partly to serve the king, and save himself and family, but chiefly that he might not be the occasion of any difference between the king and the duke, who had heartily espoused his interest, he went privately beyond sea, and writ a letter from Calais to the House of Lords, protesting his innocence in all the points objected to him, and that he had not gone out of the kingdom for fear, or out of any consciousness of guilt, but only that he might not be the unhappy occasion of any difference between the two Houses, or of obstructing public business. This put an end to the dispute. But his enemies called it a confession of guilt, and a flying from justice; Such colours will people give to the most innocent actions.

“A bill was brought in, banishing him the king's dominions under pain of treason if he should return: And it was made treason to correspond with him, without leave from the king. This act did not pass without much opposition. It was said, there was a known course of law when any man fled from justice: And it seemed against the common course of justice, to make all corresponding with him treason, when he himself was not attainted of treason; Nor could it be just to banish him, unless a day were given him to come in: And then, if he did not come in, he might incur the punishment upon contempt. The duke, whom the king had employed to prevail with him to withdraw himself, thought he was bound in honour to press the matter home on the king; which he did so warmly, that for some time a coldness between them was very visible. The part the king had acted on this matter came

to be known; and was much censured, as there was just cause for it. The vehemence that he shewed in this whole matter was imputed by many to very different causes. Those who knew him best but esteemed him least, said to me on this occasion, that all the indignation, that appeared in him on this head, was founded on no reason at all; but was an effect of that easiness, or rather laziness of nature, that made him comply with every person that had the greatest credit with him. The mistress, and the whole bedchamber, were perpetually railing at him. This by a sort of infection possessed the king, who without giving himself the trouble of much thinking, did commonly go into any thing that was at the present time the easiest, without considering what might at any other time follow on it. Thus the lord Clarendon fell under the common fate of great ministers; whose employment exposes them to envy, and draws upon them the indignation of all who are disappointed in their pretensions. Their friends do generally shew, that they are only the friends of their fortunes: and upon the change of favour they not only forsake them in their extremity, but, that they may secure to themselves the protection of a new favourite, they will labour to redeem all that is passed by turning as violently against them, as they formerly favoured abjectly upon them: And princes are so little sensible of merit or great services, that they sacrifice their best servants, not only when their affairs seem to require it, but to gratify the humour of a mistress, or the passion of a rising favourite.”]

October 26, 1667.

Mr. Edward Seymour * charged him *visa voce* with many great crimes, whereupon a debate

* According to lord Clarendon's own account (Continuation of his Life, 445); “After many days spent in close contrivances and combinations, Mr. Seymour, a young man of great confidence and boldness, stood up in the House of Commons, and spake long and with great bitterness against the Chancellor, and of his great corruption in many particulars, by which, he said, ‘he had gotten a vast estate. That he had received great sums of money from Ireland, for making a settlement that every body complained of, and that left that kingdom in as great distraction as ever it had been. That he had gotten great sums of money indirectly and corruptly from the plantations, the governments whereof he had disposed; by preferments in the law and in the church; and for the passing of charters. And that he had received 4,000*l.* from the Canada company for establishing that company, which was so great and general a grievance to the kingdom. And, which was above all this, that he had traitorously persuaded, or endeavoured to persuade, the king to dissolve the parliament, and to govern by a standing army; and that he had said ‘that 400 country gentlemen were only fit to give money, and did not understand how an in-

arose what proceeding ought to be had upon in it, some moving to impeach him in the name of the Commons till articles should be prepared; others urged that witnesses should be first examined to see how the charge could be made good, lest failing, it should reflect on the honour of the House. After long debate a committee was appointed to search records for parliamentary proceedings in the like cases, and to make report.

Oct. 30th. The report being made by sir Thomas Littleton, that various proceedings were found in several parliaments, it occasioned a long debate, several members speaking to the effect following.

Sir Tho. Littleton. In cases criminal, we find proceedings to have been, sometimes by articles, sometimes by word of mouth; but in capital crimes no proceedings appear till the earl of Strafford's Case [A. D. 1644, *ante*, vol. iii. p. 1381.] against whom the House carried up a general impeachment, the reason whereof seems to be this: Some votes were made in the House, at which the king takes offence, as if they would proceed upon common fame; whereupon they vindicate their proceedings as done in a parliamentary

‘vasion was to be resisted.’ He mentioned many other odious particulars ‘which’ he said ‘he would prove,’ and therefore proposed, ‘That they would presently send up to the Lords to accuse him of High Treason, and require that his person might be secured.’”

It may seem as if lord Clarendon did not think the four hundred country gentlemen competent even to direct the application of money which they had granted, for as Mr. Hatsell (3 Prec. 81), notices, his lordship mentioning an appropriation clause proposed by sir George Downing, expresses himself thus: ‘The Solicitor General brought in the Bill for Supply, according to course, in that form as those bills for money ought and used to be; and after it had been read a second time, when it was committed, Downing offered his proviso; the end of which was, ‘to make all the money that was to be raised by this bill to be applied only to those ends to which it was given, which was the carrying on the war, and to no other purpose whatsoever, by what authority soever,’ with many other clauses in it so monstrous, that the Solicitor, and many others who were most watchful for the king's service, declared against it as introductory to ‘a commonwealth, and not fit for monarchy.’ Lord Clarendon's Contin. p. 315. See further, in p. 316, 317, et seq. the arguments that were used for and against this proviso, at the Committee of Council, which met in lord Clarendon's bedchamber, he being ill in bed; ‘the King present.’

In the same volume, Mr. Hatsell having occasion to mention some very ancient instances of parliamentary appropriation of grants, and of examination into the particulars of expenditure, says, “The antiquity of this practice of appropriating the grants of Parliament, shews

way, and appoint a committee to withdraw for about half an hour to consider the matter for a conference with the Lords about the charge, and upon their report a general charge is carried to the Lords' bar; the principal charge then was for advising to bring over the Irish army, and the single proof was sir Henry Vane, so the impeachment went up for High-Treason though no member would positively say he would make the charge good. So for the bishop of Canterbury there was no impeachment, but a charge in general. And if you take not the

the little foundation there was for the lord Clarendon's observation, "That sir G. Downing's proviso, 'to make all the money that was to be raised applicable only to those ends for which it was given, and to no other purpose whatever,' was introductive of a commonwealth, and not fit for a monarchy." Fortunately this idea of sir G. Downing's was fully adopted at the Revolution, and has from that time been strictly adhered to. It is, however, but doing justice to the character of lord Clarendon (at the same time that he is stated as being wrore from the appropriation of the public revenue to the services voted by the House of Commons) to repeat the following anecdote, which is to be found in Welwood's Memoirs, p. 121: "It looks as if Heaven took a more than ordinary care of England, that we did not throw up all our liberties at once, upon the Restoration of king Charles 2.: for though some were for bringing him back upon terms, yet, after he was once come he possessed so entirely the hearts of his people, that they thought nothing was too much for them to grant, or for him to receive. Among other designs to please him, there was one formed at court, to settle such a revenue upon him by parliament, during life, as should place him beyond the necessity of asking more, except in the case of a war, or some such extraordinary occasion. The earl of Southampton, Lord High Treasurer, came heartily into it, out of a mere principle of honour and affection to the king; but Lord Chancellor Clarendon secretly opposed it. It happened that they two had a private conference about the matter; and the Chancellor being earnest to bring the Treasurer to his opinion, took the freedom to tell him, 'That he was better acquainted with the king's temper and inclination than Southampton could reasonably expect to be, having had long and intimate acquaintance with his majesty abroad; and that he knew him so well, that if such a revenue was once settled upon him for life, neither of them two would be of any further use; and they were not in probability to see many more sessions of parliament during that reign.' Southampton was brought over; but this passage could not be kept so secret, but that it came to king Charles's ears; which, together with other things wherein Clarendon was misrepresented to him, proved the true reason why he abandoned him to his enemies." This is confirmed by bp. Burnet; See p. 519.

same course now, but insist upon examining witnesses first, the difficulties will be unanswerable; for is it like that men before they shall see you in earnest will have their names produced against the Earl of Clarendon? If this be your proceeding, we must never expect to impeach a great man more. If you think there is nothing in the charge, leave it; but if you think 'tis worth your while, take heed of making such a dangerous precedent as by neglecting it to wound your liberties; but proceed in the usual way with a general impeachment.

Serj. *Maynard*. I stand not up to give advice, but to speak to matter of fact in the business of Strafford and Canterbury; I attended that business from the beginning. Sir John Clotworthy informed something against Strafford to be direct treason, that he had assumed an arbitrary power in Ireland, and dispossessed one Savage by force of arms, and undertook to prove it. Sir Henry Vane also told them, that he had a note taken out of his father's cabinet, containing the advice which Strafford gave the king in that case; namely, the king wanting money, and the question being how he should supply it, he replied, 'That if the parliament was refractory and would not, you stand loosed and absolved from rules of government; you have an army in Ireland which you may employ to reduce them.' Then there was a debate whether they should accuse him of treason. And Sir Edward Herbert (the Attorney) said, If you are persuaded the truth is, as is, pretended, you may. And so it was; but when the close committee had examined the business, they moved the House, that some lawyers might be added to them; and had they gone, when they said they were ready, they had not touched one hair of Strafford's head. Then it was considered what was fit to be done: To accuse him of treason would be a dangerous precedent, and if out of many other crimes a treason could be drawn; thereupon it was resolved, not to demand judgment from the Lords, because some articles were not treason. Then it was propounded not to state what his offences were, lest it should give advantage to inferior courts to proceed; but said, he deserved to be accused of treason; and in conclusion a proviso was added, not to make that case a precedent. For the bishop of Canterbury, the four articles were general and he was long in prison without any proceeding against him; but after long time he demurred, then new articles were framed, on which he died.

Mr. *John Vaughan*. You have heard a charge opened of a strange nature, and I know not what part of it can be proved, but the reputation of this House is at stake, and of the king too: For, where a charge is brought in by some of your members, whereof one article is, That he should say such words of the king, as by a statute made by you is a premunire, and to give counsel to levy war upon the kingdom; is it agreeable to your duty to the king and kingdom to let it die? For the person concern-

ed, I know not which way his honour can be whole without his giving an answer to this charge; for mark the consequence, if the king should take him to favour again before cleared, will not the world say a person is received to favour again, who gave the king counsel against the kingdom, and traduced the king, and how can he be whole in his honour this way? Objection. But it will be said, we must have ground to put him to answer. Answer. Whether you have ground enough to prove I know not, but you have ground enough to make him answer to clear himself. Suppose those two articles had been charged on a member of this house, what would it have become that member to do? Should he sit still and say, I will make no answer, but see whether the house will make more proof? If he should do so, the not making an answer is reason enough to charge him.—I can give you instances of persons charged in parliament, who, though not nominated, yet being (as it were) pointed at, petitioned that they might answer, and so would any man; but when this is bruited up and down, will not the world say, You never ask the party whether he is guilty? The duke of Suffolk was charged upon Common Fame, and if that were a ground for a charge then (which I do not say it was), so it is in this case; but he moved that he might be heard; and though it was desired he might be committed, yet it was justly rejected till he had answered. Then for the nature of the charge, if it be true, it is very high, but whether it be treason is another matter; it is brought to you under no name, when you make the charge, it becomes you to say what it is; therefore choose a committee to reduce the accusation into heads, and bring them to you, without which you cannot right yourselves, nor him, if innocent.—For the way of it, it cannot be thought fit to publish your witnesses and the matter before-hand; if in private causes the defendant and plaintiff should have a publication before hand, no cause would be rightly judged, much less when you have publication of all which concerns the one, but nothing of the other. Again, if a witness be examined concerning matters in his own knowledge, if he gives evidence, where he is not brought judicially to give it, if he hath testified any thing which brings him within the statute of false news, how can he avoid the penalty? For it is not enough for him to say he knows it, but he must have others to justify it.—As for the persons who bring the charge, they are your own members, which the writs return for honest and discreet men; and if you are satisfied of that, how can you reject their complaint, though grounded upon Common Fame, as all accusations are, seeing they tell you, they can bring proof of what they say?—Then for Common Fame, if a man spends largely, and hath no visible way to get an estate, no man accuseth him to have gotten it unlawfully; yet he may be put to clear himself from what Common Fame charged him with. Upon suspicion of felony, I may bring a man before a magistrate

to clear himself; so in the course of indictments and presentments, a charge is given of what things are to be presented; then a proclamation is made, That if any one can give evidence, he may be sworn, but if no evidence appear, yet they may indict. Then it will be said, the oath is a material thing, but we are proceeding without an oath. To this I answer, What this house shall charge is of more authority than the oaths of ordinary witnesses; peers, though not upon oath, are supposed to do right; so are we upon the reputation of our honesty and discretion.

Mr. *Laurence Hyde*.* I am sensible the house may think me partial, but I shall endeavour to shew myself not so much a son of the earl of Clarendon as a member of this house; and I assure you, that if he shall be found guilty, no man shall appear more against him than I; if not, I hope every one will be for him as much as I; let every man upon his conscience think what of this charge is true, for I believe that if one article be proved, he will own himself guilty of all.

Sir *Heneage Finch*. An Impeachment there must be, if there be cause; such accusations are not to be passed over in silence. I believe not one truth in the law more than this proposition, That there is no such thing as Treason by common law, or by equity, and we hold our lives by that law: Before the 25th of Edw. 3, a man could scarce speak any thing but it was Treason, in parliament or out; but no man ought to die as a traitor, who hath not literally offended that law, or some other made since: There is indeed in that law a proviso about the parliament's declaring what is Treason; but note the danger of taking declaratory powers, which I fear hath brought us into a reckoning of blood, which we have not yet paid for. The power of parliaments is double, Legislative, which hath no bounds; Declaratory, by pronouncing judgments. And though I know not what the Legislative power of a parliament cannot do, yet it is not in the power of the parliament, king, lords nor commons, to declare any thing to be Treason, which is not in the common law felony before. The proviso in Strafford's case was, it is true, made for inferior courts; but I hope we shall not so proceed as must needs draw after it a *Ne trahatur in exemplum*; and your own act this parliament shews, that all done by Strafford, apart, or together, was not Treason: And it behoves us to take heed we thwart not our own argument.—For the manner, then, consider how you should proceed if it were out of parliament, and how the bringing of it into this House alters it. If it were

* The earl of Clarendon's second son. "He is a man of far greater parts than the eldest. He has a very good pen, but speaks not gracefully. He was thought the smoothest man in the court: and during all the disputes concerning his father, he made his court so dexterously, that no resentment ever appeared on that head." Burnet,

out of parliament, without doubt the accusation should be proved before-hand, and those who discover it are guilty of felony. This provides for the subject, that the witnesses must be two, and for the king, that none shall discover the evidence. But suppose the charge be for misdemeanours, the trial then is not to be by the Lords, but by the Commons; for the Lords are his peers only in cases capital. How then doth the bringing it into parliament alter the case? If the parliament set aside laws in this case, we should be happy to see law declaring what is the power of parliaments. There is no precedent produced which is singly of weight to guide you, therefore if you proceed, let it be as near as possible by the good old laws; namely, that there be an accusation founded upon an oath, and the evidence kept secret. I propose that way for the very reason that others oppose it, viz. the accusation goes over the kingdom, and it will bring dishonour to the house, the king, and the earl: For the honour of the House it will be hard to say, the charge was brought in upon misinformation. A person accused for advising to bring in arbitrary government, &c. and for saying the king is not fit to govern; if this be true, though it be not Treason in the formality of the law, it deserves no less punishment than if it were; but if not found guilty, consider the case. If one say, A killed a man, and it is not so, must not he give reparation? We have an accusation upon hearsay, but if it be not made good, the blackest scandal which hell can invent, lies at our door.

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

Mr. Vaughan. You should have put the first question before another had been moved, the earl of Middlesex's* (Cranfield's) case, will not hold parallel; he was accused of bribery, which might be proved by their own books, but this is for scandalizing the king, &c. And where shall the Committee of Grievances enquire about it? You say let them hear the persons. But suppose they be of the Lords' house, Can you send for them? Or if you do, will they come and say it? The matter of this accusation is such, that if it lies in the knowledge of a single person, if he delivers it extrajudicially (which he doth, if not upon oath) he may be undone by it, and hazard his person too: At the Committee of Grievances the persons must be known, and what they can say, and then we may conclude what will follow: Besides, their quality may be such as they cannot be brought, or their discretion such as they will not answer.

Sir Richard Temple. Tell but the Lords that a man in public place hath misbehaved himself, and they will sentence him, if he purge not himself; never yet were witnesses examined before the trial in case of treason or felony, for then if there be two witnesses, a way may be found by poison, or some other way, to take away one.

Serj. Maynard. No man can do what is just, but he must have what is true before him; where life is concerned, you ought to have a moral certainty of the thing, and every one be able to say, Upon this proof, in my conscience, this man is Guilty. Common fame is no ground to accuse a man, where matter of fact is not clear: To say an evil is done, therefore this man hath done it, is strange in morality, more in logic.

Upon the whole Debate* it was voted; "That the Committee do reduce the Accusation to Heads, and present them to this House."

November 6, 1667.

Sir Thomas Littleton reports that the Accusation was reduced to Heads, which he read in his place, and afterwards delivered the same in at the clerk's table, which are as followeth, viz.

I. "That the earl of Clarendon hath designed a standing army to be raised, and to govern the kingdom thereby, and advised the king to dissolve this present parliament, to lay aside all thoughts of parliaments for the future, to govern by a military power, and to maintain the same by Free Quarter and Contribution.

II. "That he hath, in the hearing of the king's subjects, falsely and seditiously said, That the king was in his heart a Papist, Popishly affected, or words to that effect.

III. "That he hath received great sums of Money for the procuring of the Canary Patent, and other illegal Patents, and granted illegal Injunctions to stop proceedings at law against them, and other illegal Patents formerly granted.

IV. "That he hath advised and procured divers of his majesty's subjects to be imprisoned against law, in remote islands, garrisons, and other places, thereby to prevent them from the benefit of the law, and to produce precedents for the imprisoning any other of his majesty's subjects in like manner.

V. "That he hath corruptly sold several offices, contrary to law.

VI. "That he procured his majesty's Customs to be farmed at under rates, knowing the same; and great pretended Debts to be paid by his majesty, to the payment of which his majesty was not in strictness bound; and hath received great sums of money for procuring the same.

VII. "That he received great sums of money from the Company of Vintners, or some of them, or their agents, for enhancing the prices of Wines; and for freeing of them from the payments of legal Penalties, which they had incurred.

VIII. "That he hath, in short time, gained to himself a greater estate than can be imagined.

* See vol. ii. p. 1183.

* For a fuller Report of this Debate, see 4 Cobb. Parl. Hist. 370.

to be lawfully gained in so short a time*; and, contrary to his oath, hath procured several Grants, under the great seal, from his majesty, to himself, and his relations, of several of his

* There is not any proof of corruption in Clarendon. He is said, indeed, to have been privy to Charles the Second's receipt of money from Lewis the Fourteenth. But of this charge (a heavy charge we may with Mr. Fox admit it to be) no proofs have been advanced. Of his averreances to corruption, Burnet relates an anecdote which should be here mentioned in honour of Clarendon.

"At this time Monsieur Fouquet was gaining an ascendant in the counsels of France, Cardinal Mazarin falling then into a languishing, of which he died a year after. He sent one over to the king with a project of an alliance between France and England. He was addressed first to the earl of Clarendon, to whom he enlarged on all the heads of the scheme he had brought, of which the match with Portugal was a main article. And, to make all go down the better, Fouquet desired to enter into a particular friendship with the earl of Clarendon; and sent him the offer of 10,000*l.*, and assured him of the renewing the same present every year. The lord Clarendon told him, he would lay all that related to the king faithfully before him, and give him his answer in a little time: But for what related to himself, he said, he served a great and bountiful master, who knew well how to support and reward his servants: He would ever serve him faithfully; and, because he knew he must serve those from whom he accepted the hire, therefore he rejected the offer with great indignation. He laid before the king the heads of the proposed alliance, which required much consultation. But in the next place he told both the king and his brother what had been offered to himself. They both advised him to accept of it. Why, said he, have you a mind that I should betray you? The king answered, he knew nothing could corrupt him. Then, said he, you know me better than I do myself: For if I take the money I shall find the sweet of it, and study to have it continued to me by deserving it. He told them, how he had rejected the offer; and very seriously warned the king of the danger he saw he might fall into, if he suffered any of those, who served him, to be once pensioners to other princes: Those presents were made only to bias them in their counsels, and to discover secrets by their means: And if the king gave way to it, the taking money would soon grow to a habit, and spread like an infection through the whole court."

The story of the attempt to bribe him is told with more circumstantiality, and in particular, with a lively representation of the peremptory and indignant warmth with which he rejected the pecuniary offer, by lord Clarendon himself, in the 'Continuation,' &c. The conclusion of his narrative is worth insertion.

majesty's lands, hereditaments, and leases; to the disprofit of his majesty.

IX. "That he introduced an arbitrary go-

"That afternoon the king and duke (who was likewise informed of the correspondence) came to the Chancellor, and found him out of humour. He told him, 'that Fouquet could not be an honest man, and that he had no mind to hold that correspondence with him;' and thereupon repeated what had passed in the morning, with much choler: Which made them both laugh at him, saying, 'the French did all their business that way;' and the king told him 'He was a fool,' implying 'that he should lose his money.' Whereupon the Chancellor besought him 'not to appear to his servants so unconcerned in matters of that nature, which might produce ill effects;' and desired him to consider, 'what the consequence of his receiving that money, with what secrecy soever, must be. That the French king must either believe that he had received it without his majesty's privy, and so look upon him as a knave fit to be depended upon in any treachery against his master; or that it was with his majesty's approbation, which must needs lessen his esteem of him, that he should permit his servants of the nearest trust to grow rich at the charge of another prince, who might the next day become his enemy.' To which the king smiling made no other reply, 'than that few men were so scrupulous;' and commanded him 'to return a civil answer to M. Fouquet's letter, and to cherish that correspondence, which' he said 'might be useful to him, and could produce no inconveniency.' And so, when La Basteede (who could not forbear to use new importunity with him to receive the money, till he found he was much offended) brought him the cipher, he delivered him his letter for M. Fouquet. And the next week after his return, the king of France writ to him in his own hand, 'that the correspondence M. Fouquet had invited him to, was with his majesty's privy; and that he was well pleased with it.' And so the correspondence continued till that great man's fall: And then the king sent all the letters which had passed, and cipher, to the Chancellor, and writ to him, 'from that time to communicate with all freedom with his ambassador,' which he was before restrained from."

In the *Cœuvres de Louis XIV*, *Memoires Historiques*, *Premiere Partie*, p. 66, that king, after stating his motive for wishing the marriage of Charles the 2nd, with the Princess of Portugal, gives the following account of his unsuccessful attempt to bribe Clarendon:

"Je n'oubliai donc rien pour le porter à ce mariage, et parce que c'est une cour où l'on fait d'ordinaire beaucoup par l'argent, et que les ministres en cette nation ont été fort souvent suspects d'être pensionnaires d'Espagne, et que le chancelier Hyde, très-habile homme pour le dedans du royaume, paroissoit alors avoir un fort grand pouvoir sur l'esprit du Roi, je liai avec lui en particulier une négociation très-se-

vement in his majesty's Plantations; and hath caused such as complained thereof before his majesty and council, to be long imprisoned for so doing.

X. "That he did reject and frustrate a Proposal and undertaking, approved by his majesty, for the preservation of Nevis and St. Christopher's, and reducing the French Plantations to his majesty's obedience, after the commissions were drawn up for that purpose; which was the occasion of our great losses and damages in those parts.

XI. "That he advised and effected the Sale of Dunkirk to the French king, being part of his majesty's dominions; together with the ammunition, artillery, and all sorts of stores there; and for no greater value, than the said ammunition, artillery and stores, were worth.

XII. "That the said earl did unduly cause his majesty's letters patents, under the great seal to one Dr. Croucher, to be altered, and the enrolment thereof to be unduly razed.

XIII. "That he hath, in an arbitrary way, examined, and drawn into question, divers of his majesty's subjects, concerning their lands, tenements, goods and chattels, and properties; determined thereof at the council-table; and stopped proceedings at law, by order of the council-table; and threatened some that pleaded the statutes of 17 Car. 1.

XIV. "That he hath caused Quo Warrantos to be issued out against most of the corporations of England, immediately after their charters were confirmed by act of parliament; to the intent he might receive great sums of money from them, for renewing their charters; which when they complied withal, he caused the said Quo Warrantos to be discharged, or prosecution thereupon to cease.

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

crète, inconnue même à mon Ambassadeur en Angleterre, et lui envoyai un homme d'esprit,* et qui, sous prétexte d'acheter du plomb pour mes bâtimens, avoit des lettres de crédit jusqu'à 500,000 liv., qu'il offrit de ma part à ce ministre, sans lui demander que son amitié. Il refusa mes offres avec d'autant plus de mérite, qu'en même temps il avoua à cet envoyé, qu'il étoit lui-même d'avis du mariage de Portugal pour l'intérêt du Roi son maître, à qui il le fit après cela parler en secret."

* "La Bastide de la Croix, gentilhomme du Rouergue, employé autrefois dans les négociations avec Cromwell. Le surintendant Fouquet, qui avoit été chargé des premières ouvertures dans celle-ci, ayant été arrêté peu après, l'affaire fut confiée au comte d'Estrades, alors ambassadeur en Angleterre." *Œuvres de Louis XIV, vol. 1, p. 66.*

XVI. "That he hath deluded and betrayed his majesty and the nation in foreign treaties and negotiations, relating to the late war; and discovered and betrayed his secret counsels to his enemies.

XVII. "That he was a principal author of the fatal counsel of dividing the fleet about June 1666."

Mr. *Edw. Seymour*, after having charged the lord chancellor, in general, thus expressed himself: He makes the earth groan by his building* (the monument of his greatness) as we have done under his oppression: And speaking of the king's being a papist, said, As if the ill he had done must be supported by greater.

Sir *Tho. Littleton*. [On presenting the Articles.] If he did not the crimes allledged, he is able to clear it upon others; he whined after a peace. At the beginning of the war he had no preparations. The wind was wonderfully in a corner, that the Dutch could not come out. He gave perpetual assurance that the French would not come out, he made plots, and a committee of Lords and Commons were appointed to enquire; but all came to no effect; nothing discovered. He made those plots as a ground to raise an army. The Commons do of course send to the Lords. The course is that the Lords do desire him to be secured.

Lord *Carbury* †. If any one Article in this Charge be proved lord Clarendon will submit to the rest.

Another particular touching the dividing the fleet, being delivered in, was added to the rest; and the Heads again read at the table; on which a debate arose, whether the Heads of the Accusations brought in against the earl of Clarendon should be referred to a committee to take the proofs.

Mr. *Dowdswell* moves to have the Heads

* "The king had granted lord Clarendon a large piece of ground near St. James's, to build a house on. He intended a good ordinary house; but not understanding these matters, he was run into a vast charge of 50,000*l.* Some called it Dunkirk-house, intimating that it was built by his share of the price of Dunkirk. Others called it Holland-House, because he was thought to be no friend to the war." *Burnet*.—Lord Clarendon says himself, that he was not so much ashamed of any one thing he had done, as he was of the vast expence he had made in the building of his house, which had more contributed to that just of envy that had so violently shaken him, than any misdemeanor that he was thought to have been guilty of. He adds, that it cost a third part more than he intended. *Life, p. 518.*

† The earl of Clarendon's eldest son. "He was so provoked at the ill usage his father met with, that he struck in violently with the party that opposed the court." *Burnet*.—On king James's accession he was made Lord Privy Seal, and died in 1700.

committed to enquire the truth, and argues that common fame is not sufficient to bring him upon the stage.

Sir F. Goodrick seconds it, because new matter was now added to what was formerly charged *visa voce* in the house.

Sir R. Howard. Suppose the earl innocent, and yet charged and imprisoned (which is the worst of the case) he afterwards appears innocent and is discharged, receiving no more hurt than other subjects have done; namely, one great man lately, (the duke of Buckingham^o.) *Object.* But why should you commit him? *Answer.* For proof, whether the articles be true or not; suppose men for self-preservation will not venture to come, not knowing how they may trust themselves, and so you have no proof, he very guilty, and you not able to proceed; is the inconveniency greater for an innocent person if he prove so, to suffer a few days, than for you to lose your reputation for ever. If this man be not brought to his trial, it may force him to fly to that which he counselled, that is, that we may never have parliament more.

Sir John Goodrick would have the gentleman make his own case. Moves that the impeachment may not go out of the house, till recommended to a grand committee.

Col. Birch† said that sir W. Pennyman, an evidence against lord Strafford, was checked for not offering to give his evidence.

Mr. Vaughan. You admit the Accusation to be matter for a charge, if the committee find proof; if you intend to make this a distinct case I leave it to you; but if this be to settle the course of the proceedings of the house, I am against it; for this is ordering a way of proceeding in the earl's case, which shall not be a general rule. Though I cannot say one of the articles to be true, yet I know them to be a full charge if made good, and you are prescribing a course neither proper nor ever practised. A witness who speaks without oath is subject to damage; not so upon oath, because the law compels him: and whereas it hath been said, if witnesses attest before the House of Commons, what judges dare meddle in it; I answer such judges are meddled in the Case of sir John Elliot, &c. and the Ship Money.

* See an account of this business, 4 Cobb. Parl. Hist. 341.

† "Col. Birch was a man of a peculiar character. He had been a carrier at first, and retained still, even to an affectation, the clownishness of his education. He got up in the progress of the war to be a colonel, and to be concerned in the excise. And at the restoration he was found to be so useful in managing the excise, that he was put in a good post. He was the roughest and boldest speaker in the house, and talked in the language and phrases of a carrier; but with a beauty and eloquence that was always acceptable. He spoke always with much life and heat; but judgment was not his talent." Burnet.

Sir John Holland. No man impeached in the House of Commons but blasted for ever after; therefore we should be wary how we proceed. If any person will undertake to make it good, as sir Henry Vane did lord Strafford's impeachment, he is for an impeachment.

Mr. Seymour, speaking of precedents, said, that precedents in the church by the fathers are rather to facilitate assent, than impose belief—fitter for lower courts than a parliament. As soon as their own matter is accorded, treason is done away, as in the late precedents. One argument of the earl's guilt is, that he has not put himself upon his trial all this while. We are now disputing whether we shall ever impeach any person. Of his own knowledge many persons have been menaced in case they give evidence. 'Serpenti qui serpentem devorat fit draco.' Lord Clarendon has reserved to himself the monopoly of bribes. He says he has a moral assurance of the proof of all his charge.

Sir R. Howard. If we proceed only by the common law, we may be censured at some of the bars below; we must do it to satisfy and then not satisfy by doing it. Though common law has its proper sphere, 'tis not in this place, we are in a higher sphere. If impeachments of this nature be not allowed, we have no way left of impeaching a great person. M. de la Pole so charged, and lord chancellor, who then governed all, and probably in the fault then.

Sir Henry North says, the amends he can make for any impertinency is not to hold them long. Understands the charge upon common fame only. Being without evidence, moves to have the articles argued head by head, what they amount unto.

Sir Rob. Atkins. We have things at the third hand; persons without doors say they know it by information. Urges the shame of accusing an innocent person; and credulous persons will retain some of the accusations, though false.

Sir W. Lowther. In parliament 1 Car. common fame was a good ground of proceeding in any accusation from the House of Commons. Resolved then upon the question in Dr. Turner's case against the duke of Buckingham.

Sir Tho. Strickland. Lord Strafford complained of nothing done before his trial, but at his trial, and put it home to the Lords as their own case in accumulative treason. The hardship he rejects, but the easy one in proceeding he would have. Never knew a child named before born, and so would not have the impeachment.

Mr. Waller.* The door was locked in the

* "Waller was the delight of the house: and even at 80 he said the liveliest things of any among them. He was only concerned to say that which should make him be applauded. He deserves the character of being one of the great refiners of our language and poetry: He was for near 60 years one of the best of our writers that way." Burnet. See also Johnson's Life of him.

debate of lord Strafford's and the abp. of Canterbury's case. The reason, because of the greatness of the men. The king might dissolve the parliament before the impeachment.

Sir R. Temple. In several impeachments no witness but from impeachments without doors. Grand juries present upon their own knowledge, and if the fact known by any, bound to present. M. de la Pole was impeached, for common fame. When voted impeached, then time to inform a committee for accusations.

Sir John Holland. In lord Strafford's case information was to the committee of grievances by sir John Clotworthy—He moves for particular charge before impeached—Torches as far off make a greater show than near at hand. From lord Bacon.

Sir Ch. Wheeler. Charges him with countenancing the Non-conformists. He charges the clergy with drunkenness in the proclamation, forgetting gluttony, himself so guilty of, he made many a poor gentleman believe at Paris, that he came from his Embassy in Spain, full of money—he sent prince Rupert into Germany—engrosses all money and counsels—corresponds with Cromwell, and had money from him—oppressed the duke of York, till his alliance with his daughter.

The question being then put, that the Heads of the Accusation be referred to a Committee to take the Proofs, and Report; it passed in the negative 194, to 128. The House then proceeded on the Heads of Accusation.

November 7.

The House resumed the farther consideration of the Heads of the Accusation delivered in against the earl of Clarendon.

Sir Tho. Osborne.* The king ready to change his religion!—no money remaining—no person in employment, but who can buy it—we are upon our last legs—no one man ever had more employments—threatens any man that gave advice—no vessel to swim without his hand at the rudder—no money issued out of the treasury without his approbation.—Sir Wm. Coventry brought orders out of the chancellor's closet, when the king was with him—if any other men had the thoughts, they had not the power—he has no pique against him, but

* Sir Tho. Osborne was a very plausible speaker, but too copious, and could not easily make an end of his discourse. He had been always among the high cavaliers, and missing preferment, he had opposed the court much, and was one of lord Clarendon's bitterest enemies." Burnet.—He was afterwards made Lord Treasurer and earl of Danby, and at last duke of Leeds.

† This expression (said by lord Clarendon himself to have been laid to his charge by Mr. Seymour) was, "That 400 country gentlemen were only fit to give money, and did not know how an invasion was to be resisted." Life, p. 445.

as he is one of the 400† (of the House of Commons) thought by the Chancellor useless and inconsiderable.

The First Article read.

Sir Rob. Howard heard from persons of quality, That it would be proved.

The Second Article was read.

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

The Third Article read.

Mr. Ed. Seymour. Sufficient persons will make it good, with this addition, when he received the money, he said, 'so long as the king is king, and I lord chancellor, the patent will stand.'

The Fourth and Fifth Articles read.

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

About the receiving Money of Vintners.

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

About his getting a great Estate so suddenly.

Mr. Ed. Seymour. I suppose you need no proof, the sun shines at noon day.

Sir T. Littleton. The matter of fact in the Article is easy made out, for his place as chancellor could not be worth above 4 or 5,000*l.* per ann.

About introducing an Arbitrary Government in the Plantations.

Sir T. Littleton and sir T. Osborne alledged, that one Farmer and others came from the Barbadoes to complain of it, and lodged their petition in this house, but were imprisoned that they might not be heard.

About frustrating Proposals for preserving Nevis, &c.

Sir Ch. Wheeler. The war, fire, and plague, not so great a loss as Nevis and St. Christopher's. Nevis worth 20,000*l.* per ann. to the king, and he receives not a shilling of it.

About the Sale of Dunkirk.

Sir T. Osborne said, a great lord told him that the earl had made a bargain for Dunkirk three quarters of a year before it was known.

Mr. Waller. Paying for Dunkirk would entitle it to the crown, and us to the keeping it. The king might as well sell the Isle of Wight.

Mr. H. Coventry. It is as much treason to part with Dunkirk, as disband the guards; both being mentioned in the preamble of the act for supplying the king.

Sir R. Howard, thinks it was treason to sell the guards, if any enemy was in being. It is the way to confirm somebody else in the sale of Tangier too. A great man has said, if it could not be kept, it might be sold. He has heard the king of France should say, he hoped his next purchase should be London.

Mr. Prynne never heard that the selling a place with the king's consent, and the king had the money, was treason; but delivering a fort before reduced to extremity, is treason.

Mr. *Vaughan*. Dunkirk was an acquisition by arms, and therefore not alienable: Tangier, a portion with his wife, and therefore he might dispose of it. Dunkirk as much the king's dominion as Scotland or Ireland, and to sell it is treason by the law.

Sir *Edw. Harley**. The king, apprehending that the Spanish ambassador might importune him for it, bid him prepare an act for annexing it to the crown of England. The Act of 1,500,000*l.* does, he conceives, declare it to be part of the king's dominions. He left there, in ready money, as appears, 9,640*l.* according to the settlement of 600*l.* a week. A place of extraordinary relief to us.

Mr. *Swynfin*, in the charge of corresponding with Cromwell, alleges the act of indemnity.

Mr. *Vaughan*. The chancellor might, in his defence, plead that or any other pardon, from the king.

Sir *R. Howard* would have him plead to it, that they may know the king's enemies from his friends.

Mr. *Dodswell* let slip a word, viz. 'violent stream against the chancellor;' called to the bar by many; at last put to explain himself: he professed no reflective intention, and humbly craved the pardon of the house.

Mr. *Hampden*† spoke to that part of the act of indemnity, wherein the person grieved should have his treble damages in any court.

Sir *John Denham*‡. The lord chancellor could not be out-lawed; but he is not clear in equity.—This Article was accordingly left out.

Mr. *Thomas* will make good, when it is convenient, the article of council-table-orders, against law.

Sir *Edw. Masters* asserts the article of Quo Warrantos for the corporation of Canterbury.

The 16th Article was then read.

Sir *R. Howard*. No man can deny that corresponding with the king's enemies is treason. If it be not, treason has neither name nor definition.

Sir *T. Littleton*. Deluding his majesty in all foreign treaties relating to the late war. Setting out no navy, in expectation of peace, and has undertaking that the French would not engage against us, this last summer, when we expected a peace in April, and had it not till August.

Mr. *Waller*. He might hold correspondence

* He was governor of Dunkirk when that town was sold, he strenuously opposed the sale of Dunkirk, and by his interest in the house of commons procured a bill to be brought in, at the Restoration, for annexing it inseparably to the crown. But it was laid aside after being once read.

† Eldest son of the famous patriot. He had before been chosen one of the five Knights of the shire for Bucks, by the Protector in his parliament 1656, who also about the same time created him a lord, or a member of his upper house. Ath. Oxon. vol. 2.

‡ The celebrated author of Cooper's Hill.

with the king's enemies, and not betray him to his enemies.*

Lord *Vaughan* desires that betraying his secret counsels may be put into the Article; it will be made out by a person of honour, that he would have discovered his secret counsels to his enemies. He spoke thrice to this.

Sir *John Holland* moves that it may be declared by the members who gave the inducement for this head, whether they received information from a foreigner or not.

Mr. *Henry Coventry*. Possibly a foreign ambassador, and no oath can be given him.

Mr. *Vaughan*. Achilles was said to be shot-free, and some would have the king to be treason-free. Positively says, it must be from a foreigner, or no way.

Lord *Vaughan*. Tied upon his honour not to discover the persons. At last, after some time, brings this answer in writing to the table, 'That lord Clarendon hath deluded his majesty and the nation in foreign treaties and negotiations relating to the late war, and discovered his majesty's secret counsels to his enemies.'

The question being propounded, That it may be declared, by the members that gave the inducement for this Head, whether they received information from a Foreigner, or not; and the question being put, that the question be put, it passed in the negative. It was then resolved That these words; 'and discovered and betrayed his secret counsels to his enemies,' be added to that Head.

The 16th Article being then read, as amended, and the question being put, That the earl of Clarendon, upon this Head, be impeached of Treason, it passed in the affirmative 161 to 89.

About Sealing Dr. Crowther's Patent.

Mr. *Street*. The king gives the living to Crowther, in the grant is a mistake of a county. Crowther finds the mistake, and petitions the king to amend it; the king calls for the chancellor and seal, and in the king's presence it was amended and sealed.

Sir *Thomas Littleton*. The crime seems as great as a Chancellor could commit; the king was to present by such a day, or not at all; the Error was found after the day, so that the king (by act of parliament) had lost his right. The Chancellor did alter the patent, and the record was fetched away by one of the Chancellor's servants, and brought back, rased and altered, which might be done (and in other cases is done) where a word only hath been mistaken; but that is in case of something perfectly in the king's power, and to save new seal-

* "This was no sooner said than a young confident man, the lord Vaughan, son to the earl of Carbery, a person of as ill a face as fame, his looks and his manner both extreme bad, asked for the paper that had been presented from the committee, and with his own hand entered these words, 'That being a privy counsellor, he had betrayed the king's secrets to the enemy.'" Lord Clarendon's Life.

ing; but here could be no new sealing, the time being elapsed; it was to throw another man out of his freehold, and is a great crime.

About drawing Mens Lands into Question.

Mr. Thomas. I shall be able to make it out.

About Quo Warrantos to Corporations.

Sir Thomas Littleton. This is so public a thing, that it need not be proved.

About the Settlement of Ireland.

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

About Foreign Treaties.

Sir Thomas Littleton. This will appear by the Treaties themselves, putting us in hopes of peace, and so hindering the Fleet's setting out.

About Miscarriage of the War.

Mr. Thomas. I want not persons to bring to make it good.

Sir Thomas Littleton. Sir Edward Sprag desires money to give an intelligencer, and has it; Sprag brings the intelligencer to the king, the king commands him to meet him at the Chancellor's, there he met the king, and then order was given to divide the Fleet.

Mr. Marvell chargeth Mr. Seymour with saying in his Accusation, That the king was insufficient for government, which is now omitted in the Charge, and desires he may declare where he had it.

Mr. Seymour. The party that told me at first differed something afterwards, therefore I rather withdraw it than to trouble you with uncertainties; but a gentleman in the House can give you further satisfaction in it.

Sir John Denham. A peer of the land heard the earl of Clarendon say in a coach, That the king was an unactive person and indisposed for government: This will be made good.

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

About the Customs.

Sir R. Temple. I have been informed that he had a share for underletting the customs, and 40,000*l.* bribe for getting pretended debts from the king.

Sir Tho. Osborne. The earl of Clarendon said, bid who would for the customs, none should have them but the old farmers.

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

Mr. Seymour. That will be a way to suppress the evidence. I hope you will impeach him at the Lords bar, and in due time produce your witnesses.

Mr. Prynne. You must resolve to impeach him of treason, or misdemeanor, and name it accordingly.

Sir Ed. Walpole. You ought first to give a Title to your Impeachment; for if it be for treason, you will move for commitment; if it be for impeachment in general, not.

Mr. Coleman. What is laid before you is only by hear-say, but no assurance that it will be made good; only that if they who reported it do not make it good, you shall know who

they are. In the earl of Strafford's case (the worst of precedents) the House proceeded not, till one spake in the House upon his own knowledge, and another engaged his reputation to make it good.

Sir Rob. Atkins. Those who have given you inducements to proceed, do it at third hand, and though they may know the credit and impartiality of those that told them, yet you do not.

Sir Tho. Littleton. A question should be put, Whether this House hath sufficient inducement to impeach? Afterwards consider what the title shall be, then appoint a committee to frame articles.

Which question being put, was carried in the affirmative. Then adjourned.

November 9.

The first Article read.

Sir John Goodrick. Treason ought to terminate in an overt act, which designing is not, therefore pray read the statutes. Thereupon sundry statutes were read: viz. 25 Ed. 3, 1 Hen. 4, c. 10, 1 Ed. 6, c. 12, 1 Q. Ma. 13 Car. 2, 14 Car. 2, c. 29.

Mr. Steward declared it to be transcendent misdemeanor, but no treason.

Mr. Vaughan. Two questions will be considered, one, Whether what is charged in the Article was treason in common-law before 25 Ed. 3. That so we may understand the nature of treason: the other, Whether by any subsequent act it is made otherwise.

Mr. Waller. The advice given to the king I look upon to be this: to establish a new government; to be governed by Janizaries instead of a parliament: to have a Divan and a great minister of state, instead of Vizier-Bassan, a worse plot than that of the 5th of November: there, if the Lords and Commons had been destroyed, there would have been succession, but here both had been destroyed for ever. Then, in order to the debate, consider how the law looks on it; for though we may accuse on less evidence than she may judge, yet we must be cautious in naming the crime: what therefore doth the law call this before 25 Ed. 3.? Then look whether the power of constructive treason be taken away since.

Sir F. Goodrick. The matter concerns life, therefore we should be wary in the exercise of legislative power; you are not tied to rules, but you are now a step towards judicature: the common-law is *Jus non Scriptum*, and though every treason includes felony, yet not every felony treason, 25 Ed. 3. There is a declaratory power, whether a thing be treason, or other felony, not whether it be treason, and could not be declared treason if not felony before. In cases capital at common-law, they might declare it treason, but in cases not capital at common-law they never exercised their declaratory power.—Among other things that statute declares false coined money to be treason, which is but felony at common-law; afterward money being

imported, which was not according to the stamp, there was no punishment for it, but as a misdemeanor; therefore 4 Hen. 7. Provision is made against that practice, and it is made treason; but if the parliament's declaratory-power could have made it treason, what needed a statute on purpose? So that I cannot think the article before you is treason, it not coming within the words of the statute.

Mr. *Vaughan*. I shall speak to the first question, whether this article was treason at common-law; and first remove what some have asserted, namely, that nothing is treason, but what was felony before 25 Ed. 3, where petty treason is spoken of, the wife killing the husband, &c. These words follow, if hereafter it come into question whether there be another treason? It shall not be resolved by the judges, till the parliament determine it; for in petty treason, if it be treason, it must be felony, because there is killing.—Then comes more, whether raising, &c. and it follows whether it be felony or trespass: and the thing itself is more strange. None ever doubted, but that all treasons of 25 Ed. 3, was treason before, and was so resolved 12 queen Eliz. That by that act the king declares what should be treason: namely, if any man vitiates the king's eldest daughter, &c. But by this doctrine if it were not treason, what was it? Only adultery or fornication, when it is the eldest daughter, not the youngest.—It hath been in all ages a reputation to persons who have been counsellors to princes according to emergencies to give counsel to extricate them out of danger, and therefore hard to tax a minister of state in a case which he acquaints his master with; for there can be no treason but against the king himself.—I will shew you what I mean, it is true this is a treason which cannot arise from misprision, because it was spoke to the king himself; but as a minister of state he has liberty to give counsel for the king's safety. If a person be able to inform his master what alliances are good for him, it is his duty; so what trades are profitable, what not, &c. So where men or money are wanting, to advise how to extricate is commendable; but when it comes to this, that he breaks in upon the laws, invading the contract between the king and his subjects, it will be as if a man adviseth, that if the king wants money, he may set up high-way men to take it, and bring it to him, and so the skilfullest for breaking the law shall be esteemed the best counsellor; therefore whoever thinks to serve his prince by breaking the laws, he is so far from a wise man, that he is the highest criminal, &c. Then for the nature of the thing, the treasons declared 25 Ed. 3, were declared by the king's commission, and the treasons were of that nature which concerned counsel, &c. they were not like to be declared. And there is a passage in Glanvil, called 'Seductio Domini Regis,' that is, deceiving the king to what is pernicious to him, and his people.—

Now see the nature of this crime: if a man counsel his prince, and practise it such a way as shall render him prince of conscience, who hath broken his oath, and all this to his injury, so that he hath no assent to it. Compare this with any treason of 25 Ed. 3. Consider it: Here is a person who gives the king advice, which at once must make his people see he hath broken all his faith to his kingdom (and is not the counsel of governing, by an army such?) all the laws broken, to keep which the king has sworn, and this the king put upon, though not inclined to: I assert not this upon the earl of Clarendon, but upon the article. Who doth this counsels the highest treason against the common-law, because others are so; but if a man will pretend to give counsel, wherein many shall have no benefit by the law, he breaks all parts, and therefore I think this counsel was treason at common-law.

Mr. *Coleman*. The question is, Whether it be in your power to declare this article treason by 25 Ed. 3. If he advised an army against the king's consent, it is against the statute; but I suppose that the expression in the article was advice to the king in aid of his government. Your enacting power is a kind of omnipotency, but in a declaratory power you can declare no more than is committed to you, and with safety to the subject you cannot declare this treason: Then what must be our rule in declaring I dare not say: for scarce any man can tell what was treason before 25 Ed. 3, was made to bring things to a certainty, and what was uncertain to them who made that law cannot be certain to us now. As the judges can declare no other treason, so in your declaratory power, neither can you declare treason unless there be resemblance to some other like case: The advice said in the article to be given the king, cannot be within that statute, unless the counsellor must run the hazard of his advice.

Mr. *Vaughan*. The greatest declarations of treasons which ever were, equal not those 22 Rich. 2, in Nottingham castle: the Judges are called to deliver their Opinions upon their faith, and they declare the acts to be treason, because felony before, and though some of them were hanged for it, yet the parliament declared the same thing.

Serj. *Maynard*. Was what is mentioned, treason by the common law, though so said by the Lords? and what was so declared was repealed, H. 4.

Sir *Tho. Littleton*. Pray resolve whether it was treason by common law; and if so, when made so. Some think not, because they find not the parliament declaring them treasons, as being so at common law, and that that statute was made to bound them, but that was only to bound inferior courts, not themselves; for the parliament makes not a new crime, and then condemns it, but the crime was before, and the parliament declares it.

Sir *Ed. Thurloe*. Hath the parliament declaratory power now? Yes, but it must be by

king and parliament, so it was in the case of the Genoa Ambassador.* The Judges would not conclude the articles treason, nor would the Lords alone; and if you come to an equal declarative power with them, you must examine witnesses, or go by a bill.

Serj. *Cartleton*. The question is, Whether it be treason by the practice of England; the common law is the custom of England, and the usage is grounded on precedents. I know not one precedent where words or intentions were treason at common law, for they are not treason where no act follows.

Sir *R. Temple*. The article is treason by common law, and judges have recourse to Glanvil, &c. who say, that giving advice to overthrow the realm is treason by common law.

Serj. *Moynard*. The question is, Whether he shall be impeached of treason upon this article? If you go to treason at common law before 25 Ed. 3, you fly out of sight, for the word *Seductio* was soon after called *Seditio*, seducing, but not said to what; nor were those authors ever reputed of authority: It is true they are sometimes quoted for ornament, but not argument, and not one case in one hundred of Glanvil is law; but when a case comes that is the sheet-anchor of life, and estate, you should be wary; for by wit and oratory that may be made treason which is not; and this which is a great crime ought not, because great, to be made treason.—*Object*. But it will be said, levying war against the law, is against the king, and here was an intent to alter the law.—*Ans.* True; yet a design to levy war is not treason within the statute, here is nothing of act, but words to that end: If a counsellor gives bad advice, it makes it not treason, but by a bill it may be made what you please. By that statute of 25 Ed. 3, are more treasons than are mentioned; for it saith if any case happen, the judges shall stay till the king and parliament hath declared, so that there is a power, but the *modus* is the question, whether by impeachment or bill; you may the latter, not the former. It was done in Strafford's Case;† but you have repealed it, and have said 'None of which pretended crimes are treason;' and what was pretended against him? That he had traitorously endeavoured (which is worse than designed) to alter the government, &c. Now where is the difference? Here is advice to raise an army, there to use an army raised, and these you have called pretended crimes, and no treason, which is not comprehended by a law; but to impeach as a traitor, and yet the thing no treason, is strange.

In this house, other than by bill, you have no power; you carry your impeachment to the Lords, and they may give judgment without coming back to you; declaring by bill is by way of judgment, but as an impeachment, is only an accusation: so that whatsoever the consequence is, the Lords judge it, and it never comes back to you; and if you go by bill you make it treason *ex post facto*.

Mr. *Vaughan*. Concerning what you have declared about Strafford's, that this case is, if not less, equal to it, and you have declared that not one charge against him is treason, is true thus far; when that act was made I repaired to it, because there were some things which should not have passed so, if there had not been something to secure such charges as these; for there is no expression of any particular charge, but that the charge against the earl of Strafford was not, in the particular, treason; and in the close of the Bill, it is said, that the whole proceeding shall be taken away: and if so, no man should speak against the particulars, but look on it as repealed.—Then, this is said to be levying war, and it is true, it must be actual, and so not within the charge. And the charge against Spencer was for counselling the king, &c. and is called levying war against the kingdom, and the judgment against him was but banishment; because the sentence was mitigated at the instance of the king.—And for counsel, though counsel is given but in words, yet words are more than counsel, and are an action, otherwise a counsellor is sworn to nothing.—But it may be thought I have not dealt ingenuously with the house, than which I abhor nothing more; when the case of Strafford was before the Lords, I was of opinion the Parliament had no declarative power left, because 1 Hen. 4, there was an abolishing of all declared treason, and that no treason for the future should be so, and then the treason about the Genoa ambassador was gone, and all declared treasons were gone, 1 Hen. 4, and no statute hath recovered them; and if all actual treasons were taken away, 1 Hen. 4, or if not then, 1 Ed. 6, then what doth the first of queen Mary do, unless it take away all declaratory treason?

Upon the whole, the question was, Whether to accuse of treason upon the first Article?

Yeas, 103. Noes, 172.

November 11.

The Second Article was read.

Mr. *Prynn*. Let the Act made by you, about defending the king, be read, because it limits prosecution to a time, to see if this be within time.

Mr. *Vaughan*. In things wherein there is a public defaming the king, it becomes no man here to defend the person accused; if the charge be not proved, let the party himself plead it; you had that which induced you to impeach him, and have declared not to impeach of treason upon the first Article: and

* See this Case 3 Co. Inst. p. 8. Rot. Parl. 3 Ric. 2, No. 18. Placit. coram Rege Hil. 3 Ric. 2, Rot. 8. 12. Co. Rep. 16. Holin. Chron. vol. 3, p. 422. Killing the King's Ambassador had formerly at the common law been adjudged Treason, 22 E. 3. Assis. pl. 49. and may still be so by Parliament, for the statute of 25 E. 3, is a restraint only upon the Judges, but not upon the Parliament.

† See vol. 3, p. 1381.

if any man will add to the rest of the Articles he may, but you ought to accuse.

Mr. *Solicitor Finch*. None accuseth but for justice sake, and should be glad if the party accused prove himself innocent. There is a duty to the king, and to truth, and it is not fit that an article of this kind, brought into the House, should be laid by, upon pretence that the time is elapsed; for the crime is more than what is mentioned in the act made by you; it is an offence at common law, and if it be prosecuted by fine and imprisonment, no time is limited.

The Third and Fourth Articles read and voted.

Mr. *Vaughan*. Your reading every Article is needless, unless it be to see whether any one may be charged as treason, for if one may be objected against, so may all, as to misdemeanors.

Fifth Article read.

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

Sir *Thomas Littleton*. It appears by the Farmers confession that they had it 50,000*l.* upder, besides time of payment, which was 30,000*l.* more.

Mr. *Scymour*. You are at liberty to receive objections to the Articles, but though others bade more, they were told they should not have it, and had about 1,000*l.* each given them to bid no more.

Sixth, Seventh, Eighth and Ninth Articles read and voted.

The Tenth.

Mr. *Vaughan*. This is an Article of an high nature, Dunkirk was then as much a part of his majesty's dominions as Ireland, and if the sale of it be nothing, I know not what you would think of it if England should be sold; you lately debated whether on the first Article he should be accused of treason, and found by the statute of 25 Edw. 3 he could not, though it was absolute treason at common law; and it is reported abroad that I said that the right of the parliament in declaring treason is taken away, which I did not, for there are treasons not mentioned in that statute. Therefore it provided that the judges should not upon any one treason proceed to judge, until declared before the king, and parliament, and what is signified by it? If we think before the King Lords and Commons, that is impossible; for how can the Commons possibly declare before the King and Lords? nor was that the case, but this, that there is the ultimate power of determining what the law is in a doubtful case. In writs of error let them pass from court to court, at last they come to the Lords, 24 Edw. 3. If the judges cannot resolve what the law is, it is to be brought thither, that is, where it is question-

able, but that is not in the House of Commons, any more than in a writ of error: how then is the case here? If a question be whether a thing is treason or not, it shall be resolved, where the law useth to resolve, that is, before the king in parliament, that is in the Lords' House. Had the words of the act been these, There shall be no proceeding until resolved by the king in the Lords House, and suppose that clause taken away, that treason shall not be resolved; but suppose it shall be declared otherwise, doth it follow it is taken away? No. If you charge treason which is not within the statute, it is another thing; but I said not, there is no treason at common law.

Mr. *Solicitor Finch*. There was a great mischief in the declaring treason by parliaments; for Mortimer^e was made a traitor for incroaching upon royal power, which every man, who incroacheth upon any power, doth. Hence the Commons petitioned the king to explain what incroaching upon royal power was, and when no Answer could be gotten to it, 25 Edw. 3 they petitioned it might be declared certainly, and so treasons were enumerated; and if the Judges be in doubt, it is provided that the King and parliament shall first declare it.—Declaration in parliament, is a declaration before the King, Lords and Commons. Would our ancestors leave what is to be resolved treason to the Lords, and themselves have no share in it? And Talbot's being declared treason by the Lords, it is said to be no treason by judge Coke (3 Inst. 22.) because the Commons had no hand in it; there is no treason in common law, because there can be no treason where there is no way to judge it, which is not at common law.

Mr. *Vaughan*. When the law is made uncertain the Lords must declare it; it appears there were treasons at common law not mentioned, 25 Edw. 3. It is one thing for a matter to be treason, before, and the parliament declare it; another, for the parliament to make a thing treason which was not.

Sir *W. Lewis*. I desire to be resolved, whether Dunkirk was annexed to England, because a bill to that end was carried, but not passed.

Mr. *Waller*. To shew that Dunkirk was annexed to England, consider we were passing a bill for 1,200,000*l.* But when we were making a preamble to the bill, we were to seek for reasons for giving the money, seeing we had no war, some said to keep Dunkirk, but we were told we should take heed of looking upon it as annexed unto the crown; but it was replied, Dunkirk was looked upon as a frontier town, and accordingly noted in the bill. Therefore the sale of it treason.

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

Mr. *Prynne*. It cannot be treason, because sold by the king's consent.

* See No. 8, vol. 1. p. 51.

Mr. Vaughan. If the king agreed to it, doth it follow that he, who adviseth the king to a thing destructive to his kingdom and king, is not a traitor? If any part of the king's dominions may be alienated, especially when a parliament is sitting, for they concurring, it may be alienated; by the same reason the king may alienate Ireland or England too without the parliament. For by what act of parliament doth the king hold Ireland or England? It is by acquisition; I say not Tangier, for that was part of his portion, and is his own: but Dunkirk would have been the kingdom's if not thus disposed of; and though it might have been alienated with the parliament, it could no more without, than England or Ireland.

Mr. Ed. Haril. The act of parliament for annexing was not this parliament's, but of the convention, and came in thus: the king was pleased to tell me, that the Spanish ambassador might press him to part with it, which he had no mind to do: therefore he would have a bill to annex it to the crown, which shews it was the king's will to have it annexed; accordingly this parliament passed it, and Dunkirk might have been as useful as Calais.

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

Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth Articles read and voted.

The Sixteenth Article read.

Lord Vaughan. I brought in this Article; his betraying the king's counsels was to the French king during the war, and that in the secrecy of state, which was the occasion of the late mischiefs.

Sir Tho. Osborne. That is direct, adhering to the king's enemies, and if so it is Treason.

Mr. Solicitor Finch. This must be Treason if you have any inducement to believe it.

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

Serjeant Maynard. Betraying the king's counsel to his enemies is doubtless Treason. Corresponding is another thing. Betraying must be without the king's knowledge, otherwise it is but delivering the king's words to his enemies.

Sir John Brampton. Did this information come from a subject, or from one of the king's enemies?

Sir Rob. Howard. I would not have brought you information from one of the king's enemies, nor did I ever converse with them during the war.

Col. Birch. We cannot accuse of Treason except it be said, betraying the king's counsel, or corresponding with his enemies.

Mr. Vaughan. You have declared that you have had inducement to impeach, and ought to put the question, whether on this article he shall be impeached of Treason.

Mr. Solicitor Finch. To betray the king's counsel, taken generally, is not treason, for it

maybe to the king's friends; but to his enemies, it is if the article be so.

Lord Vaughan. Let it be put, betraying his majesty's secret counsels to his enemies during the war.

Then the question was put, whether these new words delivered by the said Lord Vaughan should be added. And carried in the affirmative.

Sir John Hull. Was this information given by an enemy or by a subject?

Mr. Vaughan. It must come from a foreigner or you could not know it; may not the king have from a foreigner, a discovery of Treason against him? The end of questioning it must be to know the man, for it might as well be asked whether his beard be red or black.

Sir Thomas Meres. The words are 'discovered,' not 'betrayed,' and discovering may be with the king's consent.

Lord Vaughan. Add the word, 'Betraying,' for so I meant it.

Serjeant Maynard. They who give the information say not they had it from more than one witness, which stat. Ed. 6. requires, and only one of them names the earl of Clarendon.

Mr. Seymour. This exception is proper to be made before the judges.

Then the question was put, Whether to impeach of Treason on this article, Yeas, 161. Noes, 89.

Sir Tho. Littleton. That an impeachment of Treason and other crimes and misdemeanours be carried up to the Lords against him by Mr. Seymour.

Serjeant Maynard. For misdemeanour he may have counsel, not for Treason: Therefore so distinguish the charge that he may have counsel.

Resolved, "That a Charge be carried up."

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

November 12.

It being considered that if the Speaker go up with the charge, some dispute might arise about carrying the mace and otherwise; it was Resolved, 'That Mr. Seymour carry it.' Accordingly, he went, where at the bar of the House of Lords, the lord keeper Bridgman being come to the bar to meet him, he delivered himself to this purpose:*

"My Lords;

"The Commons assembled in parliament, having been informed of several traitorous practices, and other high crimes and misde-

* "By a mistake, instead of the earl of Clarendon's impeachment, the earl of Strafford's, which lay on the table, was put into Mr. Seymour's hands, and he was obliged to trust to his memory when he came to the Lords' bar; but he afterwards delivered a paper of the impeachment to the clerk." Grey's Debates.

meanours, committed by Edward earl of Clarendon, a member of this honourable House, have commanded me to impeach him, and I do accordingly impeach him of high-treason and other crimes and misdemeanours in the name of the said Commons, and of all the Commons of England, and they have further commanded me to desire your lordships to sequester him from parliament, and to commit him to safe custody, and in convenient time they will exhibit articles against him."

November 15.

The Lords sent down to desire a Conference in the Painted Chamber. At which the earl of Oxford delivered a paper in writing (without any debate) the contents whereof were to this effect: "The Lords have not committed the earl of Clarendon, because the Accusation is only of Treason in general, without charging any thing in particular."

Mr. Garraway. I had rather the House should lose the punishment of this man, (though a great offender) than that this House should lose its privilege: for if this House may at no time impeach a lord without giving in particular articles, it may fall out to be at a time (as in the duke of Buckingham's case) where a great man by his interest with the king procured the dissolution of the parliament, and then the accusation falls.*

Mr. Vaughan. Either you can justify your proceedings, so as to satisfy the Lords what you have done, or you cannot; you must name a committee as well to consider what you are to do, if your reasons satisfy not, as to draw those reasons.

Mr. Solicitor Finch. Without doubt this House was not mistaken in demanding that the party accused for Treason should be committed; that is, that treason is worthy of commitment, and you may find precedents that persons have been accused of Treason, and thereupon have been committed: but the case is this, treason is an offence for which bail cannot be taken; the Lords tell you not they will, or will not commit: but it is true, persons have been committed for treason, and persons accused of

* But see the note to this Case of the duke of Buckingham, *ante*, vol. 2. p. 1446, and Mr. Selden's speech on that occasion, (2 Cobb. Parl. Hist. 405) from which should have been inserted in that Case, (p. 448) as follows; "All this time we have cast a mantle on what was done last parliament; but now, being driven again to look on that man, let us proceed with that which was then well begun; and let the charge be renewed that was made last parliament against him, to which he made an answer; but the particulars thereof were so insufficient, that we might demand judgment on that very answer only." See too Lord Danby's Case, A. D. 1678, *post*. and lord Stafford's Case, A. D. 1680.

Treason, judges may commit or not.—Consider this law. Let the crime be what it will, and imprisoning till the charge is given is but an imprisoning to security, not to punishment; otherwise the law is not just: and if the judges of the King's-Bench have a judgment of discretion, whether to commit or not; can we wonder that the lords have not imprisoned, till they know the article, when they have judgments of discretion though they knew it? You may find precedents, but it is not an argument it must always be so: but as the judges have a latitude much more than the Lords; the impeachment from the Commons of England is properly the king's suit, for there is no treason but against him, and if the judges may hail in that case, may not the Lords? But you are not told he shall be bailed, but they desire to know what his crime is, and then you shall know their answer; the resolution seems reasonable, having gone no further, I cannot except against it.

Sir Thomas Littleton. The Long Parliament had some good precedents which we are not to cast away, lest we smart for it.

Resolved, "To resume the debate to-morrow."

November 16.

Mr. Vaughan. The Lords do not say commitments should follow because treason isailable by the King's-Bench: it is true, the King's-Bench bails for treasons, but how? If persons be brought thither for treason directly, there is no bail; but when a commitment is by the council-table for suspicion of treason, then if the matter fall not out to be what was expected, they give notice to take bail; else the great article of the Great Charter, namely, that justice should not be delayed, nor denied, would be to no purpose; and in such a case a man may be in prison for ever. On the other side, what is the case of committing for treason? When a person is committed by the council table, they say they do no more but by special command of the king, and that is the ground of his committing; and were not this so, what would follow! Intelligence would be given of a treason discovered, wherein many might be concerned, and if they who commit should commit with the treason, all the complices would escape; and therefore sometime they make it treason general. Then for the case, before you have gone up with a charge of treason generally, which is to the Lords a warrant sufficient for commitment, say they, we will know the particulars; then will not the same inconveniences follow, if other persons be concerned, and so the danger of all exposed upon the nicety.—If a business comes before this house, which concerns others, and may prove treason, if we go to the Lords, (for we have not jurisdiction except in case of our privileges) but are not yet ready to bring up particulars, and desire the Lords to apprehend such persons, would it be reasonable for them to refuse it, there being no inconvenience like

to follow the doing it, much the not doing it? I say not to commit them, and we not prosecute, for that is delay of justice.—Q. But why do the Lords refuse?—Ans. Though I have great respect to the Lords, yet to clear something in point of privilege, the Lords have the same privilege with us in point of speech, their members, &c. as they are essential to pass laws; but that great privilege which they often assume as peers, is as the king is there present in the highest court: how then will it fall out in respect of this privilege? If the king be there, there be many things which the Lords as peers cannot pretend to, for the king hath often sat there not only in passing bills, but in judgment. Had this Charge then come before the king there, it had been reason if the king should have said, 'I desire to know what this treason is;' we must then have told it, because he, whom it concerned, required it; or if we desired commitment, he, who could release or pardon him, might say, 'Let him be bailed.' The Lords indeed retain this privilege, but it is in the king's right, not as peers.—Now we have carried a Charge, if the Lords bail him, I know not what would follow, for no example can be given of it, and I think they will not do it, if the king do not direct it.—On the other side, I would be glad we might be no more troubled, than is necessary, because others are listening what we do, and think there is nothing in the case: therefore I am not for delay, but for satisfying others, that what we have done is not barely for imprisoning the earl of Clarendon, but for justice; and if you go this way, give the Lords the reasons why we sent the Charge as we did, and yet keep up their Privileges, and declare so to them.—But then we must go up with more than that head, on which we resolved to impeach of Treason, for your Article must be so formed as to make it a charge fit to be answered for time and place, and that Article hath something of that, which must be penned so as to make it more certain; for the Article goes but thus: That there was discovery and betraying of the king's counsels to his enemies, and if you leave it there, those, who scruple doing any thing, because particular treason is not mentioned, will say; You say he hath discovered and betrayed counsels to enemies, but as we trust you not what is treason, but we will know it; so we know not whom you mean by enemies; for we may think them not so: Therefore appoint a committee to form articles.

Mr. Sol. Finch. It is a great mistake to say, That the power of the King's-Bench to take bail for Treason, is no other but what is asserted, as if the Judges there had only power from Magna Charta; when a man is committed upon suspicion of Treason, and no prosecution follows, and the party bringing his Habeas Corpus, the Bench bails him, because he should not lie there eternally. It is not to be said the Judges bail for Treason; seeing no crime is produced; for when a man hath been accused of Treason for coining false money, and brought

to the bar, the Judges have bailed him, not because they ought, but from that discretionary power wherewith the law trusts them; they may bail if they will, for no other judicature, but they can bail in that case; for seeing imprisonment before trial is only that the prisoner may be forthcoming, if they see there is no danger of escaping they may take bail, for he is a prisoner when bailed, and the bail is his keeper; but there are few cases of this kind, wherein they will bail, they have a fundamental power to do it, placed in them to preserve the rights of the crown; and the Lords will not think themselves less trusted with the rights of the crown than the King's-Bench. Yet though the Lords may bail, they will not exercise their discretion, when there is a probable truth in the Impeachment; shall we then refuse this intimation from the Lords, who saying, Because they have not a particular article of Treason do not secure, seem to imply, that if they had, they would, though they might refuse. The right of bailing comes not from an imaginary apprehension of the king's sitting there, though some kings have sat there in judicature, but from their inherent authority of being trusted with the right of the crown: Let us do then what becomes us, and not let the Impeachment miscarry upon a misunderstanding, but draw up the article. But how is it possible to draw it as an article which you expect he should be imprisoned upon? For your impeachment is in the nature of an Indictment, and must contain so much of certainty as to put him to plead, that so he may not demur.—How may it then be circumstantiated, so as that he may be put to plead; if you do it according to 25 Ed. 3. (for discovering the king's secrets to his enemies is within that statute.) The first part of the article is not pleadable, for we must shew how he adhered to the king's enemies and we must add what the council was that he betrayed, else he will deny to plead and say, I can avoid it: Therefore consider what kind of certainty this article must have to make him plead; for the other articles, it is enough to say them without proving time or place, if the facts were after the Act of Oblivion; but in Treason, the matter must appear in the Indictment, for he hath liberty not only to plead Not Guilty, but to avoid it: Therefore prepare the Article accordingly.

Mr. Vaughan. What is moved is to put you upon an impossible business, for an article presented from the parliament needs not that certainty, as if it were to be tried at the King's-Bench.

Sir Tho. Littleton. It is not for the honour of this house to recede so easily from such a privilege, for besides the earl of Strafford's Case, we have express precedents for, but none against us. We have heard that we must have no more impeachments, because they are dangerous and tend to rebellion. Consider the archbishop of Canterbury's Case, Finch, Ratcliff, and others in the Long Parliament, and we should not so easily part with them. Wil-

liam Delapool being commonly reported to be no true man, (which is a less charge than Treason) desired he might acquit himself, and the Lords required no special matter before they imprisoned him, and afterward he was accused more specially,

Sir Rob. Atkins. In the Case of Anselm archbishop of Canterbury the Commons accused him, but the Lords did not commit him, and gave no other reason for it, but that he was a great man; and yet afterwards he was condemned as a traitor, though the king reduced his punishment only to be banishment. Though a privilege is much spoken of, yet I shall never be fond of any privilege which shall intr trench upon my liberty as a subject.

Mr. Vaughan. I hear it objected, That as you charge a lord generally, so may the Lords a commoner, but that cannot be; for the Lords cannot cause a commoner to be committed though for Treason, without your consent: Therefore put a question, whether a Committee shall be named to draw up Reasons to justify what you have done.

Resolved, "That the Question shall be put."

Resolved, "That a Committee shall draw Reasons."

November 18.

The Committee brought in their Reasons, viz. "1. What can or ought to be done by either house of parliament is best known by the customs and proceedings of parliament in former times; and it doth appear by example that by the course of parliament the Lords have committed such persons as have been generally charged by the House of Commons for High-Treason, to safe custody, though the particular Treason hath not been specified at the time of such charge.

2. "That a commitment for High-Treason in general, is a legal commitment, and if the party so committed bring his Habeas Corpus, and the cause of his commitment thereupon be returned for High-Treason generally; he may lawfully be remanded to prison by the judges upon that return.

3. "If before securing the person, the special matter of the treason should be alledged, it would be a ready course that all complices in the Treason might make their escape, or quicken the execution of the Treason intended, to secure themselves the better there.

4. "If the House of Peers should require the particular Treason to be assigned before the party charged be secured, they leave the Commons uncertain and doubtful (and that from time to time) how particular they must make their charge to their lordships satisfaction; before the offenders be put under any restraint.

5. "The Commons conceive, that if they should desire the Lords to secure a stranger, or native commoner, upon the suspicion of treason, which the Commons had of him, and which was by them under examination to be evidenced to their lordships in due time; their lordships in justice for the safety of the king and people, would secure such person or persons,

upon the desire of the Commons, and in such case there would be no difference between a Lord and a Commoner so desired to be secured.

"6. The proceedings of inferior courts, between the king and the subject or subject and subject, and the discretion of judges in such courts, is bounded and limited by the discretion of the parliament which trust them; and 'tis not left to the discretion of the judges in ordinary jurisdiction to give the king, or take from him inconvenient power for the subject, nor to dispense the law partially between subject and subject for malice or affection; but the discretion of the parliament, which is the whole public, comprehending the King, Lords and Commons (for the king's presence is supposed to be in the Lords House) is, and ought to be unconfined for the safety and preservation of the whole, which is itself. It cannot be malicious to a part of itself, nor affect more power than already it hath, which is absolute over itself and part, and may therefore do for preservation of itself whatsoever is not repugnant to natural justice."

Mr. Pryan. I like not the first Reason, because it cannot be called a custom, where only one parliament hath done it.

Mr. Swinfen. The great strength lies upon this first Reason, and is like to be a precedent; for exact precedents I find none, except that of Michael Delapool, and in the Long Parliament: But consider the reasons why there was no express precedent before, and what was the custom of parliaments before. The parliament was wont to proceed formerly by bill, and thus far that proceeding makes against the Lords now and for committing the party accused; for then the proceedings upon treason were by common-law, and because the judges could not proceed, therefore the parliament went by bill, and it cannot be supposed that the parties were at liberty all that while.

Second, Third, Fourth and Fifth Reasons voted, Sixth read.

Mr. Solicitor Finch. I am against this Reason, not as a Reason, but unnecessary; for if the former Reasons satisfy not, this will not, because it supposeth things not in question. Our debate must at last end in this question, betwixt privilege of parliament and former proceedings; And there being no privilege in case of treason, why should not former proceedings away? Except we call that treason which is not, for otherwise no privilege will help. Therefore add this to your Reason, That there is no Privilege for treason, and the Lords ought not to think that the Commons will call that treason which is not, or if they do, the Lords may by a speedy trial determine it.

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

November 21.

The Lords sent down to desire a Conference about the subject matter of the last Conference. But the Commons doubting that if they should

consent to it, the Lords might afterwards refuse a Free Conference, because the business in dispute concerns Judicature, which belongs to the Lords, and so the impeachment generally fails:

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

November 23.

The Debate about the freedom of speech in parliament was resumed, and the report read of the proceeding about sir John Elliot, Mr. Hollis, &c. 5 Car. 1.*

Mr. Solicitor Finch. If you are satisfied that the Judgment passed upon them was illegal, two ways you have to be safe: By taking notice of that judgment, giving your opinion upon it, and carrying it up to the Lords, that judgment will be utterly damned; else you may proceed by act, but consider then the consequence. For if you go by act, you bound the liberty of speech, unless in penning it you prevent it, but an unknown limitation is better than bounding, for an act itself is subject to exposition, but your vote, and the Lords concurrence, is not.

Mr. Vaughan. It is not safe for you to circumscribe privileges, therefore that must be done which may take away what destroys them. The laws and rights of this kingdom are rights by common law, or act of parliament; what is an act of parliament, may be repealed by parliament; what is common law may be altered by parliament, and whatever is both, may be altered by a new law; and how is it possible to do one or the other without liberty to speak about it? And how can there be any inconvenience about freedom of speech, about any thing which cannot be a law, without passing King, Lords, and Commons?

Then it being moved to put the question for confirming that Report. And it being reply'd that some Passages in that business, viz. about keeping the Speaker in the chair, were not warrantable, and so not to be joined in the question with the rest;

Mr. Vaughan. That business which is so much talked of, and condemned, I shall state to you. The House is to adjourn itself, though sometimes the king adviseth them to adjourn themselves (as then he did) but the adjournment is always made by a question, and without it the Speaker cannot leave the chair. The Speaker acquainting the House then with the king's message, sir John Elliot stood up to speak, but the Speaker would not hear him, but was going to leave the chair; whereupon some said, if you go out without a question, the parliament is dissolved, upon which he was leaving the chair; some kept him, and told him, If this be a House, you, as Speaker, have no place in it but the chair; and this was all

the irregularity in that business so much talked of.

Resolved, "That the Judgment given against sir John Elliot &c. 5 Car. was an illegal judgment, and against the freedom and privilege of parliament."

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

November 25.

After debate whereof it was resolved to grant them that the Commons agreed to the Conference formerly desired. At which the Lords declared that they had considered of the Precedents and Reasons formerly sent them by the Commons, but were not satisfied to secure the earl of Clarendon, or to sequester him from parliament, until some special treason be assigned.

November 28.

The Commons sent to the Lords to desire a Free Conference upon the matter of the last Conference. To which the Lords concurring, Mr. Vaughan, sir Rob. Howard, sir Tho. Littleton and others, were appointed to manage it, who went up immediately to that end.

November 29.

Mr. Vaughan made Report of the Conference with the Lords yesterday to the purpose following.

The Lords told us, That no precedent can be against the law.

We answered,

If that can be made good, we shall press precedents no more: But what they most stood upon was the Petition of Right, where it is provided that none shall be committed without special cause, whereby the party may answer according to the law; thence they infer that our proceedings are against law, because a general charge is against the Petition of Right.

Commons. The case of the Petition of Right, stated will clear this, which was this: Some persons were committed by no other warrant, but the king's special command, they bring their Habeas Corpus to the King's-Bench to know the cause: This cause was returned by the Judges, that they could not bail a man, when so committed, because they knew not the cause, nor had any way to bring him to his trial.—Then the Petition of Right provides, That the cause should be returned, whereby the crime might appear, and that before and after the Petition of Right to this day, if upon bringing a Habeas Corpus, it be returned that the party is imprisoned for treason, the Judges ought to remand, unless there be some special cause to make them take bail. So that the Petition of Right, was against them, for they say a man ought not to be imprisoned upon a general charge, because it is the Petition of

* See their Cases, ante. vol. 3. p. 293.

Right. We say it is not against the Petition of Right, because the Judge may remand the party, if there be not special cause.

Then the Lords said, That the reason why the Judges remanded in that case was, because the party committed knew it was for treason: Therefore they re-committed.

We owned it because it was the rule for the Judges to proceed by, but that was no rule for proceeding of parliament; for as a magistrate commits for treason, and is supposed to be acquainted with it; so also is he with the probability upon the proof: But the Lords insist not now upon that, but specify treason, and if the course of parliaments so much varied in such cases, that was no concluding proof, why they should have special treason. And for the other part,

That upon the Return, there should be a cause returned, that so the party might answer: for when a return is made, if the course be such as that the party ought not to be imprisoned, the Judges free him; otherwise they leave him to come to his trial.

Then to the Precedent about the earl of Strafford, they replied, that it was made in bad times. And we answered, That as good laws were made before in and after that time as any other; and if the Lords then might make such laws, we could not see why it should be a good time to make laws, and no good time to administer to persons the laws already made.

Farther, to their Objection, that in the time whence those precedents were brought, there was a face of war: We answered, That could not alter the case, for the law calls no time a time of war, whilst the courts of justice have freedom, as they had when Strafford, Finch, Canterbury and Ratcliff were impeached: And it was strange that in the parliament-house there should be such a consternation as to make their proceedings invalid, when in other courts there were none: besides, in Holland for many years there was a constant scene of war, and can we imagine that there was not justice done at that time.

Then they pressed Precedents against ours, one 14 Ed. 2, against the Spencers, where a great man moved the king to commit one of them, and the king answered, 'if could not be unless cause was shewed.' We replied, This was a Precedent like that, a man was committed, because he was committed; for there was no allegation of treason.

Second Precedent was 38 Hen. 8, against lord Stanhope, the Commons moved the king to imprison him, and the king answered 'he would consider of it.' We answered, That was no denial, but a thing usual with the king, and that motion was to the king himself, which differs from this case, for that was not alledged to be treason: Besides, had it been treason, it was against the king himself, and being an offence against himself, he might (if he would) not imprison, because he may discharge a man, or pardon him, though for treason: but this Case is not so, because the Lords' justice is but ministered to the king.

21 R. 2, Arundel, archbishop of Canterbury who, as they said, was impeached of treason, but not committed.

Answer. The Case was this: There was a commission issued out by Rich. 2. That that bishop and others should regulate what was amiss by evil government, and the king was offended at the granting of it, and at Nottingham sent for the Judges, and charged them upon their allegiance to give true answer to what questions he should ask them; and the first question was, Whether that commission so granted, was not invading his prerogative? They answered, Yes. Then he asked, How they ought to be punished, who procured it? They answered, 'as Traitors.' In the 21 the bishop is charged by the Commons, and the treason alledged is, That he had procured himself to be put into the commission.

This being the case, we said, that if a fact be called treason, which afterwards appears to be none, there could be no commitment. For if a man call another man's coming into his ground treason, it falls of itself; therefore the bishop was not committed.

The Lords said farther, That all those Articles were declared to be Treason, which before could not possibly be Treason to commit a man, because the nature of them must be Treason at common-law, and 'till these treasons were declared, which was not 'till 21 Ed. 3, they were not treason so as to imprison, or try any man for them.

We replied, All that parliament was repealed, yet the precedent was the more authentic. But I think that lord (it was the earl of Bridgewater) understood not what he said, at least I did not.

Then about the earl of Strafford's precedent, the Lords said, that the very Impeachment was taken away by the act of this parliament, because the Impeachment is recited in it. Namely, 'Whereas the earl of Strafford was impeached, &c.' But every clause in that Act of Attainder is taken away now, therefore the impeachment; and you cannot make use of any part of it.

We replied, It is true, the Act of Attainder is taken away, but the very act of repeal doth recite that very clause (whereas Thomas earl of Strafford was impeached, &c.) and the act cannot take away any thing which strengthens its own supposition.

Then the Lords said, that they should be willing to comply with the Commons, but that they must be tender of their own judicial proceedings.

Commons. It is true they ought, and we supposed that the Lords might be jealous that we should intrench on their power; but the Commons were so far from that, that they thought the judicial power better lodged with them than in the Commons themselves could be; but we would open the Objection. Their lordships being the Judges in this case might think, that for the Commons to take upon them to know what was Treason, would be as

assuming to themselves what was only proper to the Lords, and that it was so now in charging the earl of Clarendon generally.

Lords. The Objection is right.

Commons. For our knowing Treason, we have many among us who are justices of peace, trusted by law to know and commit, and (if the parliament be not sitting) even to commit a peer himself for Treason; and the knowing what is Treason is so far from being improper to the House of Commons, that every man in the nation is bound to know it; for was it ever known, that ignorance of the law could ever excuse a man from breaking the law? Laws are made to be known by subjects, especially those which concern the king; and unless they could find a reason, why the parliament embodied should be more ignorant than particular persons, the present case must be clear. That the jealousy of the Lords arose from a fallacy thus, The Lords have judicial power concerning Treason, and must of necessity know it; the Commons have no judicial power over it, therefore cannot know it; that is, because the Commons know what law is, therefore they have judicial power over law. To this was not any thing replied.

Farther, We said that because they insisted upon us to specify Treason, because by committing upon a general they might wrong the party by committing him without cause, and because they themselves were not informed in their consciences what they did: They would do well to consider the many inconveniencies which might follow, if the charge of Treason was not general, but particular; and suppose it was special, their lordships would know no more by it. For suppose a man impeached for counterfeiting the Great Seal, which is express Treason, and he may be impeached for, yet neither their lordships nor the party could have any advantages by that specification, because there might be as many questions what is counterfeiting the Great Seal, as what is Treason.

For instance: One Leak*, a clerk in Chancery, intending to forge a patent, puts together two pieces of parchment, and had fitted them, and put them together with mouth-glew, that they appeared as one: Then a grant was written upon the outmost, and a seal affixed, so that the Great Seal is put to a true thing; then he cuts off the edges of the parchment, so as to sever them, takes off the written one, and leaves the seal on the blank, then forgeth the grant and makes use of it. This was questioned before the judges, whether it was Treason or not, that is, whether counterfeiting the great seal or not? If it were, it was Treason, otherwise not. They resolved, it was not counterfeiting the great seal, and so not Treason, but Misprision. And if it had been Treason, they Resolved, that an Indictment had been

enough to impeach him. Then suppose you have such an impeachment before you for counterfeiting the great seal, you have special Treason, and imprison him; but when it is brought to question, it appears not to be Treason, therefore he is wrong imprisoned: And if your lordships will examine what knowledge you have of this fact, you have no more than if it had been a general Treason.

Lords. There is a case put there, as we are content to take a special Treason, but expect not the proof as there it was.

Commons. If it were a case put, so is your lordships reply, for it was put *ex concessa*, because you agreed that if the Treason was special, the party was to be committed, and this case was to shew their lordships, they were in no better case then, than if the Treason were general.

But the Lords still pressing that the Impeachment itself of the earl of Strafford was repealed in the act about him.

Commons. We replied, One part of the act ought to be severed from the other, and that which is without exception shall stand, though the other be taken away: For, suppose a man prosecutes in a court of justice, for what he apprehends to be his right, and yet the cause goes against him, and he hath no effect of his suit, afterward the party (being an evil-minded man, and thinking to reach his ends) forgeth a deed, or suborns witnesses, and then begins a suit in some other court, and by those ways attains his ends. Then a bill comes before this parliament to reverse the judgment, reciting that such a person hath been a suborner of witnesses, &c. so, and so, and therefore the judgment is made void; certainly though this person is named to be an evil-minded person, yet this lays no blemish on his first proceedings. So that it appears by the act, that the proceedings against the earl of Strafford were legal at first; if those afterwards, when the times became tumultuous, were not, it is not to be applied to what was well done and legal: Them we told them that we had pressed them with four precedents, and to three of them nothing was replied.

Lords. They answered, the reason why lord Finch was committed, was because of his flight.

Commons. He was fled before the impeachment; but it was ordered, That he should be committed when found.

Then we told them, That we must report to them, that be the treason what it would, we could not go to the Lords to have it punished without the disadvantage, which the publishing the treason before-hand would expose us to by making of witnesses, escaping of parties, and the like, then bade them consider, whether if we should lay before them a treason in every thing circumstanced as Gun-Powder-Treason, they would not imprison the party till the whole matter was opened.

Lords. They answered to hear that case put, for in matter of state, other courses are to

* Co. 12. Rep. 15. Kelyng, 80. See this Case cited in Biggs's Case, 3 Peere Williams, 431,

be taken, and they could see no inconueniency in publishing that to the Lords, which must be published before 400 in the House of Commons.

Commons. The Commons may proceed with what secrecy or openness they please, and the Lords are not to take notice of their proceedings, whether open or secret.—Farther, That by a matter of state must be understood, when a parliament is not sitting, and we know not whither to resort; but when a parliament is particularly called to prevent the mischiefs threatening the kingdom, if that be not capable of remedying, no other council could, or we are not bound to resort to that, we are excluded from that to which we ought to resort.

Lords. That the Lords bade us take heed of the liberty of the subjects, to which they are now fain to have regard, bidding us consider the bishop of Canterbury's long imprisonment, without knowing the cause, and they must satisfy their consciences, lest they should commit for treason, and it not proved so.

Commons. It appears not that the bishop of Canterbury should have lain less time, had the impeachment been special; and for the liberty of the subject, we know not how a subject should have more liberty by special matter, than general; Special being but adding a formal title, and the subject goes to prison, as well for the one as the other.

For their consciences. Suppose a person accused generally, they are then to know whether it be treason, and is not it as much that they commit an innocent person? So as if the matter was special.

REPORT of the FREE CONFERENCE about committing the Earl of CLARENDON on a general Charge.

Nov. 29. The Lord Chamberlain and the other Lords appointed to manage the Free Conference with the Commons yesterday, reported the substance and effect of the said Free Conference, as followeth:

"This Conference was managed, on the House of Commons part, by sir Robert Howard, Mr. Vaughan, Mr. Swinfin, and Mr. Waller. The introduction was made by my Lord Chamberlain; who told the Commons, That this Free Conference was desired by them; and though that house had lately declined giving the Lords a Conference when desired, yet the House of Peers upon this occasion had dispersed with some forms, to keep a good correspondency with the House of Commons, and were willing to confer freely with them and ready to hear what they had to say.

"Sir R. Howard was the first that opened the business. He said, this Conference was not upon particular account of any person, but in relation to public justice.

"The Lords closed in the same, and were very glad it was so understood; for they had no particular regard to the earl of Clarendon in what they had resolved, but to the justice

of the kingdom; in the administration whereof in this particular, nothing was ordered in the case of the Peer now impeached which they should not have insisted upon in the case of any commoner.

"Then Sir R. Howard and the rest of the Commons proceeded; and made the subject-matter of this Free Conference to be some of the Reasons formerly given by the Commons, which they enforced what they could; and the proceedings of the earl of Strafford's Case, the abp. of Canterbury, lord keeper Finch, and sir G. Ratcliff's. But the precedent chiefly pressed, was the earl of Strafford's; on which by large discourse (which intimated their insisting mainly on that) they urged that precedents did shew best the course of parliaments, which was the law of parliaments; and that the precedents they had vouched, especially that of the earl of Strafford's, were clear in the point: that the end of the act of repeal was to repeal the act of attainder, and the proceedings relating thereunto; that the manner of impeachment and commitment, and other proceedings thereupon, were still in force; and that the latest and newest precedents were the best. They descanted long upon the words of the act of repeal, to evince what they had said; and distinguished the first year of the Long Parliament for gravity and wisdom, from the rest, which was disorderly and unquiet; and said, That their precedents were made in the first year; and that proceedings in times of peace, when the courts of Westminster were open, were always allowed for good; and concluded that the Lords ought to commit upon every general impeachment of the Commons for treason: and this grew to be the question stated at this Conference: which the Commons affirmed, and the Lords denied. Some things were also said by the Commons, of the credit that was to be given to all the Commons of England, which they represented; and that they could not be supposed to intend any thing herein but public justice and safety, &c.

"The Lords answered, and argued from the very same act for reversing the earl of Strafford's attainder, as followeth: That this precedent was not allowable, being in an ill time, and branded by an act of repeal, by which it was clear, this very parliament intended it should never be made use of; for besides that the act of attainder recites the very impeachment particularly, and other proceedings thereupon, and stands absolutely and totally repealed, which is enough to condemn the whole, yet they were so careful that this precedent which led on the other three should never rise in judgment again, that they further enacted in express words, That all records and proceedings of parliament relating to the said attainder be wholly concealed and taken off the file, or otherwise defaced and obliterated, to the intent the same may not be visible in after-ages, or brought into example to the prejudice of any person whatsoever; in which general words, every circumstance and passage of that preced-

urged their former third Reason before, That, if, before securing the person, the special matter of treason should be alledged, it would be a ready course that all complices in the treason might make their escape, or quicken the execution of the treason intended, to secure themselves the better thereby. To which the Lords made Answer, "That it would be very hard with the subject, if that should be committed when neither the judge nor the accuser did know the crime; and if, in this case, the House of Commons, who were the accuser, did know it, they might safely impart it to the Lords, for though in 500 counsellors, there may be allowed to be wisdom, yet there is not to be expected secrecy."

The Lords took this Report into consideration; and after a long debate, the question being put, "Whether, upon the Report of the last Free Conference given the House of Commons, and upon the whole matter, their lordships are satisfied to commit the earl of Clarendon, and sequester him from parliament, before particular treason specified or assigned?" It was resolved in the negative.

December 2.

The Lords confirmed their proceedings, and sent down a Message to the Commons to this effect: "That upon the Report made to them of the last Free Conference, they are not satisfied to commit or sequester from parliament the earl of Clarendon, without the particular treason be mentioned or assigned." This threw the Commons into a great ferment, and occasioned several warm speeches.

Lord Torrington* (General Monk's son) moved not to part with any privileges of the Commons of England, but adhere to the general impeachment.

Sir Rob. Howard. The matter before us, is of as great concernment as ever came before us; if there should be malice supposed in a nation against itself, it might be exercised by giving a particular charge, as well as a general; many of the Lords are convinced by the reasons we gave and concur, thinking our precedents good, and have entered their protestation in the Lords House, asserting the rights of the Commons of England to impeach generally: so that (excepting the Spiritual Lords) I think I may say the major part of the Lords are for us; and should we give up this, we may be wrested out of all right, and the Commons have no way to proceed to an impeachment, but some men to be so great, as not to be fairly reached. Therefore adhere.

Mr. Waller. The Lords are a noble estate, but whatever the matter is, they have of late

* Macpherson, in a note to his Life of James the Second, written by himself, p. 37, asserts, that the Impeachment was moved in the House of Commons by the Duke of Albemarle's son, a youth of fifteen years of age, and calls this an artifice of the party to engage the Duke thoroughly on their side.

some advice given them, which makes them proceed as they never did yet; for scarce any thing happens betwixt us, but they inroach upon us. The Militia is now as burdensome to the fifty pound man in the country, almost as all other taxes, and the Lords have gotten this advantage of us, that they touch not the burden of it with their finger: so in time of the plague, the Commons must be shut up, but not they, insomuch that a good act provided to that purpose passed not; we impeached the lord Mordaunt, and could not bring him to the bar (though formerly I have known an earl and a lord brought thither). You desired a tree Conference about it, but could not obtain one to this day. Rome was at first modest, and only meddled with spirituals, but afterwards concerned themselves so much with other matters, that every thing almost was made to be in Ordine ad Spiritualia, and many kingdoms thereupon break from them. The Lords now insist upon one thing, because they say it is in order to their judicature, perhaps hereafter they will tell us we must come to them on our knees, because it is in order to their judgment. Consider therefore whether there be any hope of giving them satisfaction; then, whether you will adhere, and what you will do afterwards; for the present my motion is to adhere.

Mr. Vaughan. It is truly said, the business before you seems to be as great as hath been in parliament; many of the consequences being invisible, therefore before you resolve what to do, take the whole matter before you. The difference between the Lords and us, is upon a general impeachment of treason; the Lords, after a Free Conference, say, they will not commit unless special treason be mentioned or assigned; those whom you employ to manage the Conference were very unwilling to differ with them, but it seems it hath produced nothing, and I have nothing to make me believe, but that the reason is, that the Lords were resolved (say what we would) not to be satisfied; for I know nothing which they offered, but it was fully answered, nor any thing left undone to satisfy them if they would have been satisfied; what I have to say now is to clear something which the Lords may make such sound of.—When we urged precedents, and made them our principal reason, we told them, the way to decide what was in difference betwixt the Houses, is, the usage of parliaments; but to our precedents we received no full answer.—Then the Lords used this reason, namely, that they cared not for precedents, because it was against the express law of the land. I answered them, we would join with them, if they could shew law against it, and expected what they would answer, but heard nothing; much discourse there was, without application, of the Great Charter and of a statute of 28 Ed. 3, but not applied; so that I thought law in a Lord's mouth, was like a sword in a lady's hand, the sword might be there, but when it comes to cut, it would be awkward and useless.—But I hear since, that their meaning was this

(which must be cleared by mentioning some laws) that by Magna Charta it is provided, "That no man shall be taken or imprisoned, or condemned, but by the law;" and thence they infer, That no man may be imprisoned, but it must be by his peers, or by the law of the land.—Again, 5 Ed. 3. No woman shall be attached upon accusation, or be adjudged of life or limb, but according to the law.—25 Ed. 3. No man shall be taken by a Petition to the king or his council, unless by indictment, of lawful people, or by process of writ, at common-law, and (say they) this case is to none of these.—28 Ed. 3. No man shall be imprisoned without due process according to the old law of the land: But this case being neither by presentment nor indictment, the Lords would not stand upon our precedents, but relied on this, as if it were enough in bar of all our precedents.

Therefore to open this, and the danger of the consequence, there are in the land many different laws, and proceedings in these laws, and imprisonment upon them; and yet not one of them by presentment, indictment, or trial by peers, though the Lords thought this was the law, and there was no other: 1. It is known that the crown-law, or prerogative, is distinct law from that between party and party. 2. There is the law and custom of parliament, called a law, 'ab omnibus querenda, à multis ignorata, et à paucis cognita.' 3. Then the Canon-law, (and it is much the Bishops forgot that) and there is nothing in that law, more than standing in a white sheet, which proceeds not by indictment or presentment, yet there is imprisonment even in that law. 4. There is the Law of Admiralty, and the Articles of Oleron, where there is proceedings of another nature, and by imprisonment. 5. The Law of Merchants, or of the Staple. 6. The Law of Arms, where is imprisonment and death, and yet different proceedings from the common-law in the Great Charter: now no man thinks that all those courses of proceedings are taken away by the common-law, and it is gross ignorance to think it. 7. The Law of the Forest, which is most different: so that to urge Magna Charta to this purpose, as if all proceedings in those cases must be according to the common-law, is absurd.

Then there are divers Writs in the Register. One, When a man hath received the king's money to serve him, and went not, then there is a writ to arrest him upon a certificate from the captain under whom he was to serve. Then the ordinary Writ, which belongs to the law ecclesiastic, *de Excommunicato Capiendo*. Another, *de Apostata Capiendo*, to recover a regular run away from his convent. Another, called *ne erreat Regno*, to imprison a man, who will not give security not to go out of the kingdom, and this is not traversable any where, because it suggests that he will machinate somewhat hurtful to the kingdom, and upon that suggestion he is imprisoned. Another, when a man hath a Leprosy. Another, to burn

Heretics, which concerned the bishops also, if they had pleased to think of it. These Proceedings are no way agreeable to those mentioned in the common-law.

Then consider how this Resolution of the Lords strikes at the law of parliaments. 1. It is certain that all imprisonment by parliament is not by presentment, indictment, &c. So that by this means that power is taken away: 2. Contempt against parliamentary authority, who-soever he is to appear before them, and disobeys them, they may imprison him in the Tower, and yet it is not against Magna Charta.

Whither therefore tends this? The conclusion must be, that no Impeachment by the Commons must go on, unless it be by presentment, and so there is an end of all that, for which the parliament is principally called; unless we are part of those 500 contemptible ones, who are only fit to give money; That may be reserved for us, but nothing else; though 25 Ed. 3, saith, 'For Redress of Grievances in the kingdom a parliament shall be called every year.' I would know which way we should redress abuses, if we are so far from remedying in parliament, that we must be shut out to the common course in other courts?

Obj. The Lords may say, if you find the statutes broken, and short, you shall have new.

Assw. And when these new ones are broken, then we shall have a remedy; so rise up remedy, and go to the remedy, *ad infinitum*, for there is no more reason to think that a second law shall be maintained more than the first, and what way a mischief shall be redressed, other than by parliament, I know not.

So that by this Resolution of the Lords, and denying to commit upon this ground (for they shewed no other) every thing for which a parliament is useful is denied us.

After all this come to the very case. If a Treason be committed, and the fame is that A. B. is Guilty of it, it is lawful to apprehend him for it. If a Hue and Cry pursue a man, though he be not of evil fame, yet he may lawfully be imprisoned. If it proves false, he hath his remedy; but that obstructs not the law to bring him to trial. Any watchman may arrest a night walker, and hath a warrant in law for it, and this is as good process in law, as any original writ.

And after all this, consider with what kind of colour, when there are weighty reasons why we should not mention special Treason, and that mentioning it generally, answers the Petition of Right, the whole Commons of England (who are in no degree represented by the Lords, they only represent their own persons) should be denied the securing a person impeached unless a particular charge be given, how prejudicial soever to the kingdom.

Another thing, there is no right which a man hath in this land, or any part of the world, but his right is such, that if it be kept from him, he hath a means to come to it, otherways it is

'*Damnum sine injuria*;' for where the law gives no remedy, there is but a supposition of right: By the same measure it will follow, that there is no civil wrong can be done to any man, but the law provides a remedy, if that wrong be done; and if by the law there is no remedy, it is no wrong: consider then this case.

There are in this kingdom, in the civil state of it, three estates which the king hath then in making laws: There are three estates, whereof the king is principal; sometimes they are mentioned as the king's three estates, and he none of them: The estates in general are the Commons of the kingdom, (who are perfectly represented in this House) the Lords another, and the King another; and these are such, that there is no petitory action, nor the laws directed to any one of them, but the laws you make, are to distribute justice in other courts, For instance, If all the Commons of England, who are one of the estates, should accuse one of themselves, the party can have no wrong, because the parliament can have no action brought against them, nor can they be supposed to do anything for malice. It is the same between the body of the Lords and Commons; and there is no law either to vindicate the one or the other; but they stand as if there were no communicable law betwixt them; but the measure between them is that which is good for the whole; for they are the makers of laws for others, but no laws can be fancied to reach the whole of the Commons, or of the Lords.—So that it is easily to be seen, how it hath been put upon us; so that now we are in such a Case, we know not to what ends we shall proceed upon this or any other Impeachment; for by this judicial power, you shall be excluded from any proceedings by laws of parliaments, and so you take away the whole right of the kingdom.

Quest. But now what shall you do?

Ans. I see many inconveniencies which may happen both ways, but I see so many this way, that if any man gave such counsel as is charged upon the earl of Clarendon, it is not so dangerous as the Case before you; for the inconveniencies attending that counsel would quickly shew itself by the misery following; but this is a small thing begun with, which, like a canker, may eat till it be incurable, and that is as absolutely justifiable as this.

And now I have said this, I am perplexed what to say more, for all can bear me witness, what respect I have endeavoured to preserve to the House of Peers, but I am so sensible of this, that though I cannot forget my respect to them, yet I must lament the condition into which they have brought themselves first, and us next, for they cannot think to avoid it. The House of Peers is but a new style, called so, as Jurors are called Peers, from the word *Par*; for every commoner hath his Peers as lords have; and the whole style formerly was Archbishops, Bishops, Dukes, &c. But *Parces Regni* is a new style. It is called the Upper House, and is to be looked upon with reverence. The

Lords have a jurisdiction; but in this Case, I must be plain, their granted jurisdiction ariseth from the House of Commons, if you impeach not there, your judicial power will be very little. If a lord be to be tried for treason, the Lords are but his Jurors; and though they try him upon honour, not upon oath, yet they are no more his triers, than as out of parliament; The judge of Treason in the Lords House, is constituted by the king, as a Lord High Steward, and is no other judge, therefore I know not the judicature they speak so much of.—There is another for Writs of Error, which are three determined, but the jurisdiction of that is very little, for the inconveniency of the Lords determining what could not be determined in other courts, is so found out 25 Eliz. They are to be brought first into the Exchequer Chamber.—There is another way when persons carry Complaints to the Lords, which is a question, for commoners ought not to carry complaints there except in some cases from Chancery; therefore this matter of jurisdiction, which they talk of, is not such a wonderful thing as they would make it.—Therefore whatever we shall do after it, your rights be so much concerned, that you know not where the stay will be, it is necessary that you make a Committee to draw up a Protestation to be made by this House concerning this matter. The invasion of your right in it, and the danger to the kingdom by it.

Mr. Coleman. The Lords say, That committing upon a general impeachment is against law, and I think it will appear so; I deny not, but a *Mittimus* without special cause is legal, and grounded upon the Petition of Right, the reason of which is to secure men against commitment by a special Warrant, and a Judge ought not to discharge where treason is alledged, but in this case it is different; The Judges cannot discharge a man committed after examination, but the Lords ought not to commit a man, except there be particular treason.—If I come before a Justice of Peace, and say, I accuse this man of treason, will any wise man commit him? he makes his Warrant indeed, but he that accuseth must go farther and make it more particular, and the special matter must appear before he commits, and this is the present case. The common law is, That no man ought to be committed without particular cause; because no man can commit in capital matters, without taking examination before-hand, otherwise no man can justify a commitment: Therefore I am not satisfied that the Lords had not reason to deny. The Commons are in the nature of a Grand Jury to present, but the Lords are the Judges; Commitment is not the judgment, but in order to it, and the Lords have a discretionary power in the case: The Lords say not that they will not commit, but that they are not satisfied to do it without special matter, therefore we ought to send it up.

Sir Rob. Howard. I have attended the Reasons given against making a protestation, and whatever is said, is but levelling a House of

Commons with every private accuser; a Justice of Peace (it is said) must have evidence before he commit, and this House has had inducements to impeach; and may not a House of Commons judge what is treason as well as a Justice of Peace? The inconveniencies and dangers laid before you, if you proceed, are nothing in comparison of those on the other side. Had the Lords imprisoned, they had before this had the particular charge, and the protestation is not to stop it, but to make way for it some other way; for it will resolve into a remonstrance, by which you may give the nation an account of your proceedings to come to a trial of this business.

Mr. Vaughan. By the protestation spoken of, is meant to preserve the rights of this House upon the whole matter, and to give the reasons of your proceedings.

Sir Tho. Meres. What is said, not being explained, I know not what is meant by the Protestation; if it be but to enter it into our books, I am not against it; if it be an appeal to the nation, pray consider what you do.

Mr. Vaughan. This way of Protestation differs from entering in our books, but the best way is to draw it up, and bring it to you, and then any man may take exceptions against it; for the meaning is, that this House claims its rights.

Mr. Garraway. First make your Protestation, and then appeal to the king.

Mr. Vaughan. None can surmise that you mean an appeal to the people by what is moved, for what is done, must be done to some part of the parliament; the king, lords, or yourselves; and they who speak of it (if it were done with evil intent) deserve to be called to the bar; when it is brought before you for your approbation, you may either retain, or reject it.

Sir Wall. Young. I desire that the House may know before-hand to whom they are to remonstrate, and on what ground, and therefore to adjourn their debate now.

Mr. Trevor. What appeal you make ought to be to the king, but bring it in hither and give it what name you please.

Sir Rob. Atkins. As I would be tender of your privileges, so of giving offence to the Lords, therefore we shall endeavour to be unanimous in this House; a Protestation is named, I am a stranger to it, and would understand clearly what it is, before we do it; That it is a course warranted by precedents and proceedings of parliaments, considering what effect it hath had in late times, therefore we may do well to adjourn the debate and consider of it.

Sir Tho. Littleton. This Protestation will be like that in the lord Maynard's case, but somewhat longer, and ought to go no farther than to one of the estates, and be kept within the walls.

Mr. Swinfen. You sent up a Charge to the Lords in general, desiring that the earl of Clarendon should be secured, and in convenient time you would send up articles; from that time it hath not been done, and the Lords have

passed several votes about it since, but you have not passed one.—First they voted, that they had not complied with your desires for want of particular treason; Then you give them reasons, they are not satisfied with them; then a Free Conference, they are still unsatisfied; and all this while you have not come to any resolution: so that till you come to a vote, no man knows but that you are satisfied with their answer: for when the matter of the Protestation is brought in, we shall not be ready for it till we have resolved, that what the Lords insist on, is an obstruction of justice, and you cannot agree with them without great inconvenience to the nation; Therefore put a question, "That the Lords, not having agreed to secure the earl of Clarendon upon the general Impeachment, have obstructed the public justice of the kingdom in proceedings of Parliament, and is of dangerous consequence." This is necessary, because the Lords have heard nothing from you, but endeavour to satisfy them.

Sir John Goodrick. This question will be a greater accusation of the whole House of Lords, than the other is of the earl of Clarendon. If you will go by way of Protestation, and keep it within your own walls, I like it better than this question.

Sir Rob. Howard. The putting this question is no charge upon the House of Lords: and therefore if that gentleman thinks it so great an one, sure he thinks the Charge against the earl of Clarendon to be a very small one. Is there any obstruction to justice? If not, why do we not comply? If there be, we cannot it seems complain without charging the Lords. Keeping it within your own walls, is but like a man, when he is alone, muttering arguments to himself, and commending himself for it. If you meet with any obstructions, pray first put the question, whether you are obstructed.

Sir Rob. Atkins. It is no light matter to charge the Lords with obstructing justice; therefore the thing being new, pray adjourn it till to-morrow, that we may be more of one mind.

Then the Question was stated, namely,

"That the Lords not having complied with the desire of the Commons in committing the earl of Clarendon, and sequestering him from parliament upon the Impeachment from this House, is an obstruction to the public justice of the kingdom, and is a precedent of evil and dangerous consequence."

Resolved, That the Question be put, And being put, Resolved in the affirmative.

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

December 3.

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

Sir Tho. Tompkins moved to take care to get the sea-ports stopt,

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

Sir *Rob. Howard*. The Lords seem now mistaken in their opinion at the conference, they said there was no fear of his running away; and in our House it hath been jested that he was not like to ride post. Besides, the expression in the message is ('withdrawn') which may be an inward chamber, therefore it is fit to desire to see the Petition, and command some members to prepare something to vindicate yourselves in discharge of your duty.

Mr. *Seymour*. You cannot take notice to the Lords of the Petition, unless they think good to communicate it to you, but make the declaration.

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

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

Upon all which motions, Ordered, "That sir *Tho. Clifford* (comptroller of the king's household) be sent to the king, to desire the ports may be stopped."

December 4.

The lord Fitzharding makes Report from the king, that the Message for stopping the Ports being delivered him, he had taken care accordingly.

A Message from the Lords to desire a speedy Conference:

From which Mr. Solicitor reports; We attended the Lords at the Conference, which was delivered by the duke of Buckingham, who said to this purpose, That the Lords had commanded him to deliver to us that scandalous and seditious Paper sent from the earl of Clarendon, desiring us to present it to you; and to desire you in convenient time to send it to them again, for it had a stile which they were in love with, and desired to keep it.

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

"To the right honourable the Lords Spiritual and Temporal, in parliament assembled,

the humble PETITION and ADDRESS of EDWARD earl of CLARENDON*.

"May it please your Lordships,

"I cannot express the unsupportable trouble and grief of mind I sustain, under the apprehension of being misrepresented to your lordships, and when I hear how much of your lordships time hath been spent upon the mention of me, as it is attended with more public consequences, and of the differences of opinion which have already, or may probably arise between your lordships and the honourable House of Commons; whereby the great and weighty affairs of the kingdom may be obstructed in the time of so general a dissatisfaction.

"I am very unfortunate to find myself to suffer so much under two very disadvantageous reflections, which are in no degree applicable to me. The first, from the greatness of my estate and fortune, collected and made in so few years, which if it be proportionable to what is reported, may very reasonably cause my integrity to be suspected. The second, That I have been the sole manager and chief minister in all the transactions of state since the king's return into England, to August last, and therefore that all miscarriages and misfortunes ought to be imputed to me and my counsels.

"Concerning my Estate, Your lordships will not believe, that after malice and envy hath been so inquisitive and so sharp-sighted, I will offer any thing to your lordships, but what is exactly true; and I do assure your lordships in the first place, That (excepting from the king's bounty) I have never received nor taken one penny but what was generally understood to be the just lawful perquisites of my office, by the constant practice of the best times, which I did in my own judgment conceive to be that of my lord Coventry, and my lord Elsmore; the practice of which I constantly observed, although the office in both their times was lawfully worth double to what it was to me, and I believe now is.

"That all the courtesies and favours which I have been able to obtain from the king for other persons in church or state, or in Westminster-hall, have never been worth to me *5l.* :

* "When the Chancellor found it necessary to withdraw himself, he thought it as necessary to leave some address to the House of Peers, and to make as good an excuse as he could for his absence without asking their leave; which should be delivered to them by some member of their body (there being many of them ready to perform that civil office for him) when his absence should be known, or some evidence that he was safely arrived on the other side of the sea; and that time being come (for the packet-boat was ready to depart when the Chancellor landed at Calais,) the earl of Denbigh said, He had an Address to the house from the earl of Clarendon, which he desired might be read." Lord Clarendon's Life, p. 458.

So that your lordships may be confident I am as innocent from corruption as from any disloyal thought, which after near thirty years service of the crown, in some difficulties and distresses, I did never expect would be objected to me in my age.

“And I do assure your lordships, and shall make it very manifest, That the several sums of money, and some parcels of land, which his majesty hath bountifully bestowed upon me since his return into England, are worth more than all I have amounts unto; so far I am from advancing my estate by indirect means. And though this bounty of his hath very far exceeded my merit, or my expectation, yet some others have been as fortunate at least in the same bounty who had as small pretences to it, and have no great reason to envy my condition.

“Concerning the other imputation of the credit and power of being chiefest minister, and so causing all to be done that I had a mind to; I have no more to say, than that I had the good fortune to serve a master of a very great judgment and understanding, and be always joined with persons of great ability and experience, without whose advice and concurrence, never any thing hath been done.

“Before his majesty's coming into England, he was constantly attended by the then marquis of Ormond, the late lord Culpeper, and Mr. Secretary Nicholas, who were equally trusted with myself, and without whose joint advice and concurrence, when they were all present (as some of them always were) I never gave any counsel. As soon as it pleased God to bring his majesty into England, he established his Privy-Council, and shortly out of them he chose a number of honourable persons of great reputation, (who for the most part are still alive) as a committee for foreign affairs, and consideration of such things as in the nature of them required much secrecy, and with these persons he vouchsafed to join me: And I am confident this Committee never transacted any thing of moment (his majesty being always present) without presenting the same first to the council-board; and I must appeal to them concerning my carriage, and whether we were not all of one mind, in matters of importance.

“For more than two years I never knew any differences in the councils, or that there were any complaints in the kingdom, which I wholly impute to his majesty's great wisdom, and the intire concurrence of his counsellors, without the vanity of assuming any thing to myself; and therefore I hope I shall not be singly charged with any thing that hath since fallen out amiss. But from the time Mr. Secretary Nicholas was removed from his place, there were great alterations; and whosoever knew any thing of the court and councils, know well how much my credit hath since that time been diminished, though his majesty graciously vouchsafed still to hear my advice in most of his affairs: Nor hath there been, from that time to this, above one or two persons brought to the council, or preferred to any considerable

office in the court who have been of my intimate acquaintance, or suspected to have any kindness for me; and most of them most notoriously known to have been very long my enemies, and of different judgment and principles from me, both in Church and State, and have taken all opportunities to lessen my credit with the king, and with all other persons, by mis-representing and mis-reporting all that I said or did, and persuading men I have done them some prejudice with his majesty, or crossed them in some of their pretensions; Though his majesty's goodness and justice was such that it made little impression upon him.

“In my humble opinion, the great misfortunes of the kingdom have proceeded from the war, to which it is notoriously known that I was always most averse, and may without vanity say, I did not only foresee, but declare the mischiefs we should run into, by entering into a war, before any alliances made with the neighbouring princes. And that it may not be imputed to his majesty's want of care, or the negligence of his counsellors, that no such alliances were entered into, I must take the boldness to say, his majesty left nothing unattempted in order thereunto; and knowing very well, that France resolved to begin a war upon Spain, as soon as his catholic majesty should depart this world, which being much sooner expected by them, they had in the two winters before been at great charges in providing plentiful magazines of all provisions upon the frontiers, that they might be ready for the war, his majesty used all possible means to prepare and dispose the Spaniard with that apprehension, offering his friendship to that degree, as might be for the benefit and security of both Crowns.

“But Spain flattering itself, That France would not break with them, at least, that they would not give them any cause by administering matter of jealousy to them, never made any real approach towards a friendship with his majesty, but, both by their ambassadors here, and to his majesty's ambassador at Madrid, always persisted, as preliminaries, upon the giving up of Dunkirk, Tangier, and Jamaica.

“Though France had an ambassador here, to whom a project of a treaty was offered, and the lord Hollis, his majesty's ambassador at Paris, used all endeavours to pursue and prosecute the said treaty, yet it was quickly discerned, That the principal design of France was to draw his majesty into such a nearer alliance as might advance their design; without which, they had no mind to enter into the treaty proposed.

“And this was the state of affairs when the war was entered into with the Dutch, from which time, neither Crowns much considered the making any alliance with England.

“As I did from my soul abhor the entering into this war, so I presumed never to give any advice or counsel for the way of managing it, but by opposing many propositions, which seemed to the late Lord Treasurer and myself to be unreasonable, as the payment of the sea-

men by tickets, and many other particulars which added to the expence.

"My enemies took all occasions to inveigh against me, and making their friendship with others out of the council, of more licentious principles, and who knew well enough how much I disliked and complained of the liberty they took to themselves of reviling all councils and counsellors, and turning all things serious and sacred into ridicule. They took all ways imaginable to render me ungrateful to all sorts of men, (whom I shall be compelled to name in my defence) persuading those that miscarried in any of their designs, that it was the Chancellor's doing; whereof I never knew any thing. However they could not withdraw the king's favour from me, who was still pleased to use my service with others, nor was there ever any thing done but with the joint advice of at least the major part of those who were consulted with. And as his majesty commanded my service in the late treaties, so I never gave the least advice in private, nor wrote one letter to any one person in either of those negotiations but upon the advice of the council, and also after it was read in council, or at least by the king himself, and some others; and if I prepared any instructions or memorials, it was by the king's command, and the request of the secretaries who desired my assistance; nor was it any wish of my own, that any ambassador should give me any account of the transactions, but to the secretaries, to whom I was always ready to advise; nor am I conscious to myself of ever having given advice that hath proved mischievous or inconvenient to his majesty; and I have been so far from being the sole manager of affairs, that I have not in the whole last year been above twice with his majesty in any room alone, and very seldom in the two or three years preceding.

"And since the parliament at Oxford, it hath been very visible, that my credit hath been very little, and that very few things have been hearkened to, which have been proposed by me, but contradicted, *eo nomine*, because proposed by me.

"I most humbly beseech your lordships to remember the office and trust I had for seven years, in which, in discharge of my duty, I was obliged to stop and obstruct many mens pretences, and refused to set the seal to many pardons and other grants, which would have been profitable to those who procured them, and many whereof, upon my representation to his majesty, were for ever stopt, which naturally have raised many enemies to me: And my frequent concurring, upon the desires of the late lord treasurer, (with whom I had the honour to have a long and vast friendship to his death) in representing several excesses and exorbitances, the yearly issue so far exceeding the revenues, provoked many persons concerned, of great power and credit, to do me all the ill offices they could, and yet I may faithfully say, That I never meddled with any part of the revenue or the administration of it, but when I was desired

by the late lord treasurer to give him my assistance and advice, having had the honour formerly to serve the crown as Chancellor of the Exchequer, which was for the most part in his majesty's presence. Nor have I ever been in the least degree concerned, in point of profit, in letting any part of his majesty's revenue; nor have ever treated or debated it, but in his majesty's presence, in which my opinion concurred always with the major part of the counsellors who were present.

"All which upon examination, will be made manifest to your lordships, how much soever my integrity is blasted by the malice of those who I am confident do not believe themselves. Nor have I in my life, upon all the treaties, or otherwise, received the value of one shilling from all the kings or princes in the world (excepting the books of the Louvre print sent me by the Chancellor of France, by that king's direction) but from my own master, to whose entire service, and the good and welfare of my country, no man's heart was ever more devoted.

"This being my present condition; I do most humbly beseech your lordships to entertain a favourable opinion of me, and to believe me to be innocent from those foul aspersions, until the contrary shall be proved; which I am sure can never be by any man worthy to be believed: And since the distempers of the times, and the difference between the two Houses in the present debate, with the power and malice of my enemies, who gave out that I should prevail with his majesty to prorogue or dissolve this parliament in displeasure, and threaten to expose me to the rage and fury of the people, may make me to be looked upon as the cause which obstructs the King's service, and unity and peace of the kingdom.

"I most humbly beseech your lordships, that I may not forfeit your lordships favour and protection, by withdrawing my self from so powerful a persecution, in hope that I may be able, by such withdrawing, hereafter to appear and make my defence, when his majesty's justice (to which I shall always submit) may not be obstructed, or controlled, by the power and malice of those who have sworn my destruction.

"CLARENDON."

Mr. Vaughan. I think it not convenient to lose more time about this paper. Since the time of the earl of Clarendon's name being mentioned here, I had nothing to charge him with till now, but most of the heads of this charge are so weighty, that I am confident they will be easily and thoroughly proved, though I know not how; so that I admire at his confidence, to charge this House, and so the nation, as his persecutors, and that in such a condition, as he hopes to vindicate himself. It is the first time that ever I heard an innocent man run away under the greatest charge, with hopes to return again and vindicate himself.—Then mark one expression, he saith, 'he is as far from corruption, as from disloyalty.' If he said he was guilty of neither, he had said something; but by

that expression he may be guilty of both : So insolent a paper I never met with in this kingdom, nor have I ever read the like in any other : so inconsiderable a part of the nation, as he is, to lay it upon the nation, who if innocent, might defend himself ; if guilty, why doth he charge the nation with persecuting ? Therefore without troubling yourselves with it, do as the Lords have done ; who deliver it to you as a scandalous and seditious paper ; it hath malice in it, and is the greatest reproach upon the king, and the whole nation, that ever was given by man. Therefore put the question whether his Paper shall not have the character, that it is a scandalous and malicious Paper, and a reproach to the justice of the nation.

Resolved, upon the question, " That the paper sent to the Lords by the earl of Clarendon, and by them sent down to the House of Commons, and now read, is scandalous and seditious ; and doth reproach the king and the public justice of the nation."

Sir *Robert Howard*. You have voted this Paper scandalous, and therefore it should not live ; therefore I move it should be burnt by the Hangman.

Mr. *Garraway*. The Paper to the Lords, and you must send it to them, but enter it into your books, and your vote upon it.

Resolved, " To have it burnt." *

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

Sir *Rob. Howard*. The meaning of my motion is, because the duke of Bucks desired the Paper again for the admirableness of the stile ; it is entered into their Books already, and they need it not to that end ; therefore desire the Lords concurrence to burn it.

Resolved, " To send it to the Lords to that end."

December 5.

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

Mr. *Vaughan*. I am against sending up the

* " This Address was no sooner read, in the House of Lords, but they who had contributed most to the absenting himself, and were privy to all the promises which had invited him to it, seemed much troubled that he had escaped their justice, and moved, ' That orders might be forthwith sent to stop the ports, that so he might be apprehended ;' when they well knew that he was landed at Calais. Others took exceptions to some expressions, ' which,' they said, ' reflected upon the king's honour and justice.' Others moved, ' That it might be entered in their Journal Book, to the end that they might farther consider of it when they should think fit ;' and this was ordered. The Address was no sooner read in the other House, but they who had industriously promoted the former resolution were inflamed, as if this very instrument would contribute enough to any thing that was wanting ; and they severally arraigned it, and inveighed against the person

Lords to that purpose, because you have ordered to enter the Paper into your Books, and when a Paper is burnt, it is not to stand upon record, but should be ras'd out ; which two things are a perfect contradiction, therefore let it rest as it is ; we have voted it Scandalous, &c. The Lords tell us not that they have done any such thing, though they ought to have done it first.—As for the earl of Clarendon, he being now gone, if such a like occasion should fall out, we are in a worse condition than we were : for there is this precedent against us, in a case now manifest : and it becomes us to do something in order to the Lords concurring, that so a good understanding may be got ; therefore I shall propound this to you, to be sent up to them to that end.—Namely, when any subjects shall be impeached by the Commons before the Lords in parliament with desire to secure him such person by the law of the land ought to be secured accordingly. This you have in effect voted already, in saying the ' Justice of the kingdom is obstructed by their not doing it.' Secondly, when such impeached persons shall be secured, the Lords may limit a certain time for bringing in the charge, to prevent delay of justice. This may save all, and prevent such ways as may be displeasing to the Lords, and perhaps us also, in some cases hereafter.

Mr. *Swinfen*. I am persuaded that according to the rules of parliament, when you charge by impeachment generally, and promise in due time to send up your charge, they ought to secure ; but they not having done it, I question whether you could do what you have ; but the earl of Clarendon flying, it is manifest justice was obstructed ; for he might have been brought to his trial, if the Lords had secured him ; but now your Vote is made good, which seems to lay the advantage on your side.

Sir *Rob. Howard*. I think this message to the Lords will destroy the way of vindicating ourselves by declaration ; therefore finish the declaration, and then resolve, before you publish it, whether to send up this message.

who had sent it, with all imaginable bitterness and insolence. Whilst others, who could not, in the hearing it read, observe that malignity that it was accused of, sat still and silent as if they suspected that somewhat had escaped their observations and discovery, that so much transported other men ; or, because they were well pleased that a person against whom there was so much fury and malice professed, was got out of their reach. In conclusion, after long debate it was concluded, ' That the Paper, containing much untruth and scandal and sedition in it, should be publicly burned by the hand of the hangman.' Which vote they presently sent to the Lords for their concurrence, who, though they had not observed any such guilt in it before, would maintain no farther contests with them, and so concurred in the sentence. And the poor Paper was accordingly with solemnity executed by the appointed officer." Lord Clarendon's Life, p. 464.

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

Sir Rich. Temple. I expected that when the earl of Clarendon had been fled, the Lords would have desired the king to issue out a proclamation to apprehend him, seeing they have been the occasion of his escape; therefore now desire their concurrence to go to the king to that end, and if they concur, they have upon the matter granted commitment upon a general impeachment.

Mr. Vaughan. I thought it my duty to offer you what I have done; if you like it not, I desire to be excused in serving you in the declaration, and that they who think it necessary would be pleased to take the pains to do it.

Sir Tho. Lee. If you declare, it will beget an answer, and where will that end? if you send up your Votes, and the Lords agree, your end is answered; for it is a yielding that which they have yet denied; your declaring, and entering it upon the journal, will be to no purpose. It is but like a man, who having been beaten publicly, in the chamber calls him who did it rogue.

Mr. Hampden. I desire that the words, 'Law of the land' may be left out, and the words 'Law of parliament' or, 'Usage of parliament' put instead of them; for it hath been shewed us, that there are several ways of impeachment besides common-law.

Mr. Vaughan. Those words were purposely put in, because at the free conference, when we pressed the law of parliaments, the Lords pressed the law of the land, by way of negative as if the law of the land were otherwise; but rather than that shall be any obstruction put it by law.

Mr. Steward. Leave out the words, 'by law' for if a man be secured, it is implied by them who do commit that it is according to law.

Then it being moved to draw both Votes in one;

Sir Tho. Littleton. Though you should put both Votes into one, it will not answer your end, for the Lords will not concur with the first part, and yet may make use of what part you grant of it, that in the last, and so have advantage against you: but there is another reason, why you should forbear these Votes, namely, prudence.—The earl of Clarendon being gone, there is an expectation that a Bill should be prepared to do something farther, wherein I hope both Houses will join; if you send up this, you will give disturbance to that Bill; and if you should enter this in your Books, in order to send it up hereafter, they will hear of it, as done to make them swallow their former Resolves. Therefore defer it for the present.

Mr. Trevor. Consider whether the matter betwixt you and the Lords is not well as it is: you have voted, that when a man is generally impeached, he ought to be secured, and that the Lords not having done it, is an obstruction to justice, and what will it signify to carry it to the Lords? what hath since fallen out, justifies you, and lays the disadvantage upon the Lords. The world expects now what you will do further, and that must be by concurring with the Lords.

Sir Tho. Clifford. We all agree to these votes, in order to justify your rights; but what is the use of it? you have already done it in your books, and you cannot expect the Lords should go so much against their own votes; this therefore will but widen the gap, it being telling them they must eat their words.

Sir Tho. Littleton. Those, who have had a hand in the Charge against the earl of Clarendon, have been thought sometimes too violent, sometimes too remiss as not able to make out the charge: but what I speak now, is for your honour, which will be wronged in this proceeding; I am for bringing the impeachment to something; and therefore against these votes: now you make a declaration of your own rights, and entering it upon your books, that not only the vote may appear, but the ground of it, but not to declare to the Lords, which will beget an answer, and exasperate. It is now unseasonable to make the Lords retract, therefore lay it aside; for though I am confident that gentleman did it to no such end, yet if I would design any thing to the earl of Clarendon's advantage, I could not take a better way than this.

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

Sir Will. Coventry. This question is not now seasonable; though it is a better expedient than the declaration, as things now stand, and considering what hath past, I am apt to think the Lords may do it of their own accord, and you would not willingly give a negative to your votes. Therefore, seeing your votes may be of use hereafter, put no question at all, but adjourn the debate to a proper season.

Mr. Vaughan. I am against the adjourning of it, and have given testimony, that I have done nothing to be thought to do that which is so much for the advantage of the earl of Clarendon, and shall take heed of doing any thing hereafter to be so reflected on.

Sir Tho. Littleton. I hope I avoided any such reflection, nor did I speak any thing to such purpose. I do not believe, nor ever did think any such thing, and hope that gentleman himself believes, that no man in this House hath more honour for him than I.

Sir J. Charleton. Let the world see that you do not intend to restrain your proceedings to the earl of Clarendon, but make it a general care; and therefore are concerned in honour to put the question.

Resolved upon the question, that the question be put.

Resolved, "That both the questions propounded by Mr. Vaughan, and put singly in the affirmative, be carried up to the Lords."

December 13.

A Bill was brought from the Lords, to banish the earl of Clarendon, and read.—After reading, several objections being made, and it being alledged that it was an abuse put upon the Commons by the Lords, and that a bill of attainder being propounded, after some debate, the House passed this vote :

Resolved, "That this House taking notice of the flight of the earl of Clarendon, being under an impeachment of High-Treason by this House ; the king's majesty be humbly desired to issue out his Proclamation for summoning the said earl to appear by a day, and to apprehend him in order to his trial."

Resolved, "To send to the Lords for their concurrence to this Vote."

December 14.

A Message from the Lords for a Conference, at which they delivered two reasons, why they could not concur.

1. "First, for that they conceive a Proclamation in the way proposed would be ineffectual, since it is not *sub pana convictionis*, which cannot be until particulars in order to trial be declared.

2. "That what the House of Commons hath proposed, and do propose at present, is intended in order to a judicial way of proceeding ; but since the earl of Clarendon's flight, their lordships, upon consideration of the whole state of affairs, and of the kingdom, have upon grounds of prudence and justice thought fit, for securing of king and kingdom, to proceed in a legislative way against the said earl, and have to that end past and sent down to them a bill of banishment and incapacity against him with which this vote is inconsistent."

December 16.

The said Reasons from the Lords being reported and considered, and it being moved that the House would declare themselves unsatisfied with them :

Sir *Tho. Clifford*. I am against passing a vote present upon the Lords' Reasons, but read the bill sent down from thence, and summons him by it to appear by a day.

Mr. *Trevor*. Some are against the bill, because it goes too far, condemning before hearing, others would have it to go farther. Summons is in order to hearing, trial, and judgment ; of those he hath made himself incapable by flight, and hath in his paper told you, 'That he will neither be heard, nor tried by you.' Though you expected to have him secured by a general accusation, yet you never expected judgment upon it. Then it is said, This banishment falls short of Treason ; but we are not to pass sentence for crimes, but as a council propound to the king what is neces-

sary in this case : then consider whether this bill will answer our ends, and if it doth, delay will make it worse. I think we should make it reach them. What if he hath life in other parts, his family untainted, and his children alive, and enjoy his estate ?

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

Mr. *Hen. Coventry*. The Motion to read the bill is not against your order, because part of the Reasons given by the Lords is, 'That you have a bill and until you have read the bill you cannot lay by the Reasons.' The earl of Clarendon is fled, you have a tye upon him in having his innocent relations, and by proceeding farther you make him desperate, you are now in an even way with the Lords ; therefore read the bill.

Mr. *Swinfen*. You may go upon the Reasons, and yet not reject the bill ; for when you sent to the Lords about a Proclamation, and went not upon the bill, it was because what the bill drives at, is the highest punishment next to death. Therefore consider what weight is in the reasons. One of them seeming to put you upon the bill, they put you thereupon on a legislative way ; they will neither secure nor summon him, but will condemn him unheard. They cannot secure him upon a charge of treason, nor yet summon him, but they can condemn him ; and this they put you upon, which is against honour and justice, especially to do it upon reason of state. The legislative power of parliament is great, it hath no bound, but the integrity and justice of parliaments. If reason of state be a motive of parliament to banish one man, so it may be for many. If you go in this legislative way, you bring upon yourselves all the dishonour of the business, but the Lords will have some excuse, which you cannot, for they looked upon the charge so slight, as not to imprison him ; the party is gone, because he was not secured, apprehending (he saith) fear of the multitude, not of his trial ; so that the Lords not giving credit to your charge against him, he says, 'he flies not from justice.' Now if upon this bill you shall banish him, it would be said you could not make good the charge, and therefore laid this sentence upon him.—The precedent is also dangerous : if having gone so far in a judicial way you should now go in a legislative : if upon reason of state, Lords may be banished, it may be by dozens : as you proceed justly, so you will be justified.—Nor is the danger greater if the Lords go by Proclamation, and he be put into custody when he comes ; if he can practise any thing, will not he be less capable when under the Proclamation, than when this bill is passed, which condemns him without hearing ? and I am not for any punishment till heard. In Cromwell's case, who moved in Hen. 8's time, to attain a Lord unheard, the judges declared they might, and it would stand ; afterward the said Cromwell was attainted and condemned unheard, and such counsel usually falls upon those that counselled it.

Sir *Rob. Howard*. The earl of Clarendon saith, 'That he doth not withdraw from your justice, but for fear of tumults; but that reason any man may give for his flying, if it will be an excuse; but he might have secured himself from tumults by rendering himself, and his innocency upon his trial would have cleared him. This at last may come to a Free Conference, then you may be left to go along with the king; the House riseth and doth nothing, and then the world will see that this business will assure the king of France, that he hath a man with him so great, as to binder us from doing any thing against him: therefore as you ought to do something against him, see whether it may not be done by the bill, by resuming his lands, &c. if he come not in by a day.—An exception may be against this way, namely, That there is no attainder; but if there had been such a bill, the thing which should sway me should be the duke of York's marriage: so that if you commit this bill, you may add all severities, except that of attainder, and if he come by a day, then all to be void. If you go by Proclamation, the Lords may not concur, and you lose your ends. By this bill all favour that he can expect is shewed, and this way will be the best confutation of the Lords' Reasons; therefore commit the bill.

Mr. Secretary *Morrice*. I am for committing the bill, though it be condemning unheard; because he could not but conclude it would be so. 'Et volenti non fit injuria.'

Sir *R. Temple*. You have proceeded against this Earl in all ordinary ways, and have been baffled by the Lords. In Edw. 3rd's reign, Adam de Berry fled, and a Proclamation went against him, and the Commons neither did, nor ever were bound to deliver their articles till the party appeared, and in that case they delivered not their articles till the last day, when he not appearing was convicted. When you would go by attainder, they tell you, deliver special matter, and we will summon him; when you ask a Proclamation, they tell you, deliver special matter: if you declare the matter to the court, it is upon record, and all may know it. You have tried all ways legal and regular, and they will do you justice in neither. Now what can you do? Except you and the Lords combine in justice together, he must escape, and if you can be made to differ, he goes away in a smoke. If you go to the king for a Proclamation, you must return to the Lords for justice. I am sorry the Ivy hath been so near the Oak, that you cannot touch it, without touching that. There remains a bill before you, and in that you are upon equal terms with the Lords; therefore give him a day to be heard, and if he come, let him; but then his penalties are too low for his crimes; therefore read the bill, go higher, degrade him of honours, forfeit his lands, and whether you will go so far, I leave with you.

Mr. *Sol. Gen.* It is not impossible to agree with the Lords in their Reasons, but the reason must be because the bill is good. But if any

man thinks it is good upon the Lords' Reasons, he is mistaken; and therefore my advice is to proceed upon the bill, though not upon the Reasons from the Lords. Some think the punishment in the bill too little for the crime, others too much, because not summoned; so that it must fall out, that a person impeached by the House of Commons must see the House rise without any marks of displeasure upon him: can any man be heard, who will not be heard? Why should not you proceed in such a way against him, as whose very flight amounts to a confession? And have you not burnt his paper for reflecting upon the House? and can you think he will appear who is departed in despair of the court? And now you are contending to give him time.—Then consider the thing in itself. Suppose the king had a mind to attain him, the king can do it without your help, for he may be out-lawed for high-treason; for though that be reversible at common-law, if he be beyond sea, yet by two express acts of parliament it is otherwise, but the king cannot banish him without your concurrence: suppose him fled and attainted, so that the question is not upon his life, but his estate, suppose your justice satisfied in that, is it not past all manner of consideration that the king cannot upon application restore it, so that all you looked for by attainder, is done by this bill of banishment, for his life is saved by flight, as would his estate by compassion; but there is something in this bill, which, without it, you can never get, that is, you put him under your displeasure, which the king cannot pardon; and will you have it thought abroad, that the earl of Clarendon, fled as he is, hath been something too hard for the two Houses?

Sir *Tho. Littleton*. If there be a necessity of differing with the Lords, and I thought the difference would produce such effects, I should not speak, but they only tell you it is unnecessary and ineffectual. You have impeached, and are now told if you proceed, it will make difference; but I fear another greater danger than this difference. The world will say you were willing he should fly, because you could not prove; by flying he hath forfeited his estate; if the king give it him again, it is his mercy; but do you justice: therefore press for a Proclamation, for the bill is inconsistent with your honour.

Mr. *Vaughan*. I have listened with much attention to this discourse, and understand it as little now as at the beginning, the discourse being nothing adequate to that end. You have Reasons from the Lords why they agree not with you, and if you agree with the Reasons, the sum is to read the bill; but if you agree not, you must desire a conference, and if they concur, you may have a Proclamation, if not (as I think they will not) you are where you were: we suppose him not to be in England, and if so, what is the Proclamation more than the king's writ? It reacheth no man out of the kingdom: It is true, in some cases, if the persons are gone out of the land they are sum-

moned, and if they come not, their lands are seized, but it is not by Proclamation, which signifies nothing if the party be gone.—Then go on; suppose the Lords join in desiring a Proclamation, the end of which is appearing and apprehending; possibly you gain one part, that if he be apprehended, they do imprison him upon a general impeachment; but if they agree not, what benefit have you by it? None: but if he appears, to what is it? There is no charge, if apprehended, to answer the general charge.—Then the third way is, If the Lords agree not, that you shall go to the king; and there is a more dangerous rock in that, than in any thing; for we never heard of a commitment ‘per ipsum dominum regem,’ but ‘per mandatum domini regis,’ because against the king lies no damages: what then must you do? Many think it injustice to proceed, if he be not called by Proclamation. But it is plain, if you proceed upon this bill, you go not upon your impeachment, but because he is fled from the justice of the land, wherewith you have charged him in burning his paper; and it imports little, that he saith he is innocent; for why then doth he fly? Shall we abate him of what he ought to suffer for his saying so? He is fled from the justice of the parliament, and therefore is proceeded with; and for what others say, you ought not to regard popular reasons, but to pursue your own; it is enough for you to hear some proofs made: when was it known in any court, that proofs should be taken only on one side? So that you cannot acquit your own justice, nor bring him any ways to answer, he being gone; nor can you have any effect of the Proclamation, though the Lords join in it: therefore unless you will have nothing done after all this, (for he may not be guilty of all charged, who yet hath made himself guilty of what is charged by flying) read the bill.

At last the question was put, whether the bill should be read and committed: 109 for it, 65 against it.

December 18.

The Bill for banishing the earl of Clarendon was reported from the Committee, and read.

Sir *Robert Howard*. I desire that to the Preface of the Bill this addition may be made; “That whereas the earl of Clarendon was impeached of Treason by the Commons, who desired he might be secured, but was not, and thereupon is fled.” And this to the end the protesting Lords may be gratified, who took so much care of the Commons.

Sir *Robert Carr* seconds the motion.

Sir *John Talbot*. I cannot concur with that motion, because we cannot take notice of what the Lords do.

Sir *R. Temple*. We may take notice of things in the Lords’ books which are records, and there the Protest is entered; and though not to gratify them who owned our right, yet we ought to take care of our own right: And that the world may see we have some cause to pass this bill, neither deal so modestly with a

man who flies from justice, as to use his own word (withdraw) but call it flying.

Sir *Thomas Gower*. Let the words be, ‘that having been impeached, and moved to be secured, hath withdrawn himself.’

Mr. *Solicitor*. The word ‘moved,’ destroys the bill itself: the word of the bill is to unite the two houses, and this Amendment tends to destroy that end, for the addition to the Preface being insisted on, the Lords will add the reasons for not committing, and so revive the whole matter again. Let the Lords add in their books what they will, your books will as much justify you, as theirs them.

Sir *Hum. Winch*. Let the words be added, whether the Lords agree, or not, that it may appear upon our books.

Mr. *Hugh Boscawen*. The preface is but history, yet add these words, and let the Lords insert what they please. I should rather concur with them, than leave out those words.

Mr. *Vaughan*. Put no question upon these words, but whether the Preface shall go as it is: The bill in probability is a safe bill, because it came from them: But if you begin an alteration, you yourselves render it unsafe; for if you put in these words, then the Lords will add, ‘for want of special matter,’ and so it will come to nothing.

Then the Bill was read the third time.

Mr. *Vaughan*. I am against the word ‘withdrawn,’ and for the word ‘flight’ instead of it, and in regard the justice of this bill depends upon the word ‘flight,’ put it expressly.

Sir *R. Carr*. I am against this bill, though I was earnest in the matter as any one while I thought there was proof; but now none appearing, I am against the bill, because you are confirming what the Lords have done.

Mr. *Vaughan*. Many men wonder what no reason is given for passing this bill, but the question is mistaken, the bill is grounded upon his flight after his impeachment, and his flying implies some guilt; if none, it is the safest argument for any man to run away, and then there is nothing to catch him. A proclamation to a man out of the kingdom signifies nothing. But in the whole it is plain, that he saith, that finding the king’s Justice obstructed in parliament, he is fled. *Obj*. But it will be said, Upon bare flight never was any man punished. *Ans*. If one man kills another and flies, though upon his trial he shall be acquitted, yet he shall never recover his goods because of his flight. There have been several Acts of Banishment, Spencer, &c. And though in this there is something more severe than in them, namely that none shall correspond with him; yet there is also some advantage, namely, that if he come in by the 1st of February all shall be void; for when the crime is laid, and his flight makes him guilty, he ought not to have a day.

Then the question was put for passing the bill; 65 for it, 42 against it. So the bill passed the Commons, and afterwards obtained the

royal assent. It is as follows, stat. 19 Car. 2, c. 10.

An Act for Banishing and Disabling the Earl of Clarendon.

“Whereas Edward earl of Clarendon having been impeached by the Commons assembled in parliament, of treason and other misdemeanors, hath knowingly withdrawn himself, and is fled, whereby justice cannot be done upon him according to his deservit. Be it enacted by the king's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in parliament assembled, and by authority of the same, That the said Edward earl of Clarendon shall and do suffer perpetual Exile, and be for ever banished this realm, and all other his majesty's dominions, and shall be for ever disabled from having, holding or enjoying any office or place of public trust, or any other employment whatsoever.

“And be it further enacted by the authority aforesaid, That it shall be, and be taken to be treason, for the said Earl at any time to return into, or be found in England, or any other his majesty's dominions, after the 1st day of February, according to the account of England, 1667; and that in case the said Earl shall at any time return into, or be found in England, or any other his majesty's dominions, after the said 1st day of February, That the said Earl shall suffer the pains and penalties of treason, and be made incapable of any pardon from the king's majesty, his heirs and successors, but by act of parliament; and that all correspondency with the said Earl, except it be of his children, or such persons as shall be licensed by the king in council, concerning his estate and domestic affairs only, after the said 1st day of February, shall be, and be taken to be of the same nature as correspondency with a traitor; and the offender therein shall suffer such pains and penalties, as by the laws of this realm are to be inflicted upon such persons as keep correspondence with traitors; and that all letters sent to the said Earl, be shewed to one of the principal Secretaries of State before they be sent; and that all letters which shall be received from the said Earl, be likewise shewed to one of the principal Secretaries within ten days after each receipt, under the penalties aforesaid.

“Provided always, That if the said earl of Clarendon shall on or before the said 1st day of February next, render himself unto one of his majesty's principal Secretaries of State, or to the Lieutenant of the Tower of London for the time being, in order to his trial, which shall be in parliament, That then and in such case, all and every the penalties and disabilities by this act imposed upon the said Earl of Clarendon, shall be utterly void and of no effect, any thing herein before mentioned to the contrary notwithstanding.”

Against this Act, the following PROTESTS were entered in the Lords' Journals.

December 12. An Act for banishing and disabling the earl of Clarendon, was read a third time. The question being put, whether this Bill shall pass; It was resolved in the affirmative.

“I whose name is underwritten do, according to the ancient right and usage of all the peers of the realm assembled in parliament, after due leave demanded from the House in the usual manner and form, as the Journal Book doth shew, enter and record my Protestation and dissent as follows. 1. That without having ever been in prison, or imprisonment appointed, or any legal charge brought, it seems unjust to punish the earl of Clarendon for only withdrawing himself; it not being at all certain to the house, that he is gone out of the kingdom; and if it were known to the Lords that he were fled beyond the seas, though the fault would be very great in a person who hath lately been in such trust, yet perpetual exile, and being for ever disabled from bearing any office, and the penalties in the bill, seem too severe a censure. 2. That it may, perhaps, give some occasion for the scandal to have it believed, that the House of Commons, and others, by standing so long upon pretence of a privilege to require commitment before special matter of Treason assigned, were in doubt, that no proof of Treason could be made out against the party accused; and that they had therefore designed, through terror, to make him fly; and fear, lest he should yet return to be tried, in case they should bring in special matter of Treason, as they ought to do, whensoever they accuse. 3. That by this bill, power being taken from the king to pardon, it appeareth to be a great entrenchment upon his majesty's royal prerogative. 4. That there can be no such case, as have been pretended, ever to cause a necessity in the House of Commons not to acquaint the Lords with the particulars openly made known to them, by which they were first satisfied to find ground to accuse. 5. That the Commons, so far judging any article to be Treason, as to insist upon commitment, without imparting the particulars to the Lords, do seem therein to usurp that first part of judicature from the Lords, who are the highest court of justice in the kingdom. 6. That to require such commitment seems to be contrary to the Petition of Right and Magna Charta, and the rights not only of the peers, and great persons of this kingdom, but the birth-right even of the meanest subjects; and therefore those proceedings not having been according to law and the ancient rules of parliament, hath given opportunity to the earl of Clarendon to absent himself. 7. The commitment upon a general impeachment hath been heretofore, and may be again, of most dangerous consequence; and as is conceived, the Lords have yet no way for them so well to justify their fair and upright

proceedings in the earl of Clarendon's business, and the true regard they have had herein to the king and kingdom, as to decline this Bill of Banishment, and to expect a particular accusation of the said earl; and thereupon according to law and justice to appoint him a day for appearance, which if he observe not, without farther process, sentence might lawfully be pronounced against him. Strafford."

"We having this day given our negatives to the passing of a Bill for banishing and disabling the earl of Clarendon; and having asked leave of the house to enter our dissents, to the end that it may appear to posterity that we did not give our consents to that bill, we do now take liberty to enter our dissents, by subscribing our names. Berkeley of Berkeley, Holles, Ro. Lexington, T. Culpeper."

The Earl of CLARENDON's Vindication of Himself against the Articles of Treason exhibited against him in Parliament.*

Mr. Seymour's SPEECH to the House of Lords.

"My Lords:

"The Commons assembled in parliament, having received information of divers treason-

* "As nothing could be more surprising to me, nor I think to any man else, than to find myself, after near thirty years service of the crown in the highest trust; after having passed all the time of his majesty's exile with him beyond the seas, and in his service, and in which the indefatigable pains I took was notorious to many nations; and after I had the honour and happiness to return again with his majesty into England, and to receive from him so many eminent marks of his favour, and to serve him near eight years after his return, in the place of the greatest trust, without ever having discovered that his majesty was offended with me, or, in truth, that he had ever the least ill success from any counsel I had ever given him; or that any person of honour and reputation, or interest in the nation, had ever made the least complaint against me, or had any thought that the miscarriages (for miscarriages were enough spoken of) had proceeded from me, or any advice of mine: I say, as after all this I could not but be exceedingly surprised, to find myself on a sudden, when I had not the least imagination of it, bereft of the king's favour; and fallen so far from his kindness, even within three or four days after his majesty had vouchsafed to condole with me in my house for the death of my wife, that he resolved to take the Great Seal from me: So it was no small comfort to me, to see and know, that very few men of honour or reputation approved or liked what was done; but that the same was contrived, pursued and brought to pass by men and women of no credit in the nation; by men, who had never served his majesty or his blessed father eminently or usefully, but most of them in trust and credit under Cromwell, or never of credit to do him the least service; and who were only angry with me for not being pleased with their vicious and debauched lives, or for opposing or dissuading their loose and unreasonable counsels, which they were every day audaciously administering in matters of the highest moment, with great licence and presumption.

able practices and designs of a great peer of this House, (Edward earl of Clarendon) command me to accuse the said Edward earl of Clarendon of Treason, and other crimes and misdemeanors; and I do here in their names,

But, above all, it was of the highest consolation to me, when it was publicly and industriously declared, that the king was firmly resolved to destroy me, and would take it very well from all men who would contribute thereto, by bringing in any charge or accusations against me; when the most notorious enemies I had, were the only persons trusted in employment; men who had most eminently deserved and maliciously traduced the king, and been to that time looked upon as such by his majesty; and all who were believed to have kindness for me, were discountenanced; when men of all conditions and degrees were daily solicited and importuned, by promises and threats, to declare themselves against me, at least if they would not be wrought over to do any thing against their consciences, that they absent themselves from those debates; that all this malice and conspifacy, with so long deliberation and consultation, should not be able at best to produce and exhibit any other charge and accusation against me, but such a one, as most men who knew me, or had any trust and employment in the public affairs, were well able to vindicate me from the guilt of, and even my enemies themselves did not believe: The particulars whereof (as far as I can take notice of them, they having not to this day been reduced to any form, so much as in the House of Commons itself) I shall now examine; and if I shall appear too tedious in the examination and disquisition of them, and to say more than is necessary for my own Defence, and to mention many particular persons in another manner than is usual upon occasions of this kind; I desire it may be remembered and considered, that this is not written as a formal Answer to an Impeachment, nor like to be published in my life-time; a judgment of Banishment being passed against me (without the least proof made, or offered, for the making good any one Article of Treason or Misdemeanor) by act of parliament; but is a debt due to my children and posterity, that they may know (how much sooner they are or may

and in the names of the Commons of England, accuse Edward earl of Clarendon of Treason, and other high crimes and misdemeanors. I am further commanded by the House of Commons, to desire your lordships, that the earl of Clarendon may forthwith be sequestered from parliament, and be committed to safe custody. They further command me to acquaint your lordships, that they will in convenient time exhibit the articles of the charge against him."

November 14, 1667.

The Vote of the House of Lords.

Resolved, &c. ; "That the Lords have not complied with the desire of the House of Commons, concerning the commitment of the earl of Clarendon, and sequestering him from parliament; because the House of Commons have only accused him of Treason in general, and have not assigned or specified any particular Treason."

ARTICLES of Treason exhibited in Parliament against Edward earl of Clarendon.

I. "That the earl of Clarendon hath designed a standing army to be raised, and to govern the kingdom thereby; advising the king to dissolve the present parliament; to lay aside all thoughts of parliaments for the future; to govern by military power, and to maintain the same by free quarter and contribution.

II. "That he hath, in hearing of many of his majesty's subjects, falsely and seditiously said, the king was in his heart a Papist, Popishly affected, or words to that effect.

III. "That he hath received great sums of money for passing the Canary Patent, and other illegal patents; and granting several injunctions to stop proceedings at law against them and other illegal Patents formerly granted.

be involved in the effects of the sharp malice against me) how far I am from any guilt of those odious crimes which have been so odiously laid to my charge. And this being my end, I may be excused if I so far enlarge upon all particulars, that it may be manifest unto them how far I have been from treading in those paths, or having been accessory to those counsels, which have been the source from which any of those bitter waters have flowed, which have corrupted the taste, even almost of the whole nation. And in order to this so necessary discourse and vindication of my integrity and honour, I can only take notice of the printed paper of my Charge, all other correspondence and communication being so strictly inhibited to all kind of men to hold any commerce with me, except my children and menial servants, who only have liberty to write to me of my own domestic affairs, and the letters they write and receive being to be first communicated to one of the secretaries of state." Earl of Clarendon's Letter, dated Montpelier, July 24, 1668,

IV. "That he hath advised and procured divers of his majesty's subjects to be imprisoned against law, in remote islands, garrisons, and other places thereby to prevent them from the benefit of the law; and to introduce precedents for imprisoning of other of his majesty's subjects in like manner.

V. "That he hath corruptly sold several offices, contrary to law.

VI. "That he hath procured his majesty's customs to be farmed at under rates, knowing the same; and great pretended debts to be paid by his majesty, to the payment whereof his majesty was not in strictness bound: And hath received great sums of money for procuring the same.

VII. "That he hath received great sums of money from the company of Vintners, or some of them, or their agents, for enhancing the prices of wine, and for freeing them from the payment of legal penalties which they had incurred.

VIII. "That he hath in a short time gained to himself a far greater estate than can be imagined to be lawfully gained in so short a time: And contrary to his oath, hath procured several grants under the great seal from his majesty, to himself and relations, of several of his majesty's lands, hereditaments, and leases, to the dis-profit of his majesty.

IX. "That he introduced an arbitrary government in his majesty's foreign plantations; and hath caused such as complained thereof, before his majesty and council, to be long imprisoned for so doing.

X. "That he did reject and frustrate a proposal and undertaking, approved by his majesty, for the preservation of Nevis and St. Christopher's, and reducing the French plantations to his majesty's obedience, after the commissions were drawn for that purpose; which was the occasion of such great losses and damages in those parts.

XI. "That he advised and effected the sale of Dunkirk to the French king, being part of his majesty's dominions, together with the ammunition, artillery, and all sorts of stores there, and for no greater value than the said ammunition, artillery, and stores were worth.

XII. "That the said earl did unduly cause his majesty's letters patents under the Great Seal of England (to one Dr. Crowther) to be altered, and the inrollment thereof to be unduly razed.

XIII. "That he hath, in an arbitrary way, examined and drawn into question divers of his majesty's subjects concerning their lands, tenements, goods and chattels, and properties; determined thereof at the council-table, and stopped proceedings at law; and threatened some that pleaded the Statute of 17 Car. 1.

XIV. "That he had caused Quo Warrantos to be issued out against most of the corporations of England by act of parliament, to the intent he might receive great sums of money from them for renewing their charters; which when they complied withal, he caused the said

Quo Warrantos to be discharged, and prosecution thereon to cease.

XV. "That he procured the bills of settlement for Ireland, and received great sums of money for the same in a most corrupt and unlawful manner.

XVI. "That he hath deluded his majesty and the nation, in all foreign treaties and negotiations relating to the late war.

XVII. "That he was a principal author of that fatal counsel of dividing the fleet, about June 1666."

The first Charge, then, that is printed against me, is, "That the earl of Clarendon hath designed a standing Army to be raised, and to govern the kingdom thereby; advised the king to dissolve the present parliament; to lay aside all thoughts of parliaments for the future; to govern by military power, and to maintain the same by free quarter and contribution."

It is no great vanity to believe, that there is not one person in England, of any quality, to whom I am in any degree known, who believes me guilty of this charge; and I want not a cloud of witnesses, (besides the testimony that I hope his majesty himself will vouchsafe to give me in this particular) who from all they have heard me say in council, and in conversation, can vindicate me from this odious opinion. Having had the honour, by the special command of his late majesty of blessed memory, to attend the prince, his now majesty, into the parts beyond the seas, and to be always with him and in his service these many years of his exile, and till his happy return; I always endeavoured to imprint in his majesty's mind an affection, esteem and reverence for the laws of the land; without the trampling of which under foot himself could not have been oppressed; and by the vindication and support of them, he could only hope and expect honour and security to the crown. Upon this foundation and declared judgment, I came into the service of his father, by opposing all illegal and irregular proceedings in parliament; and I never swerved from that rule in my advice and counsel to him or his son. From the time of his majesty's happy return from beyond the seas, I took nothing so much at heart as the establishment of the due administration of justice throughout the kingdom, according to the known laws of the land, as the best expedient I could think of for the composing the general distempers of the nation, and uniting the hearts of the people in a true obedience to, and reverence, for his majesty's person and government. And with what success I served his majesty in this province, (which he was pleased principally to commit to my care and trust) I must appeal to the whole nation; and whether the oldest man can remember, that in the best times justice was ever more equally administered, and with less complaint and murmur; which hath been frequently acknowledged from all parts of the kingdom, and been often taken

notice of by the king himself with great approbation, and confessed by most of the nobility upon several occasions. I have often declared in parliament the king's affection and reverence for the laws, and his resolution neither to swerve from them himself nor to suffer any one else to do so: And upon the public occasions of swearing the judges in any courts, I always enjoined them to be very strict and precise in the administration of justice according to law, with all equality and without respect of persons, which the king expected from them; and that as he resolved never to interpose by message or letter for the advancement or favour of any man's right or title, so he would take it very ill if any subject (how great soever) should be able to pervert them: And I do believe, there have never passed so many years together in any age, in which the crown hath not in the least degree interposed in any cause of title depending in Westminster-hall, to incline the Court to this or that side; or in which the crown itself hath had so many causes judged against it in several courts; at least in which former practice and usage on the behalf of the crown hath been less followed: And nothing is more known, than that from the time of the king's blessed return into England, even to the preparation of this charge against me, I was reproached with nothing so much as too much adhering to the law, and subjecting all persons to it; and this reproach hath not been cast upon me by any so bitterly and maliciously, and in places where they thought it might produce most prejudice to me, as by those who now contrived this charge, and who have always been great enemies to the law.

All this, and much more of this kind, is manifest to all the world; and therefore I need not labour more in this Vindication. Yet I cannot but observe, that there is not in all the king's forces, nor was not when his forces were then much greater, one officer recommended by me; and most of them such who professed publicly a great animosity against me; having been, by the malice of some men, very unreasonably persuaded that I was their enemy; that I desired that they might be disbanded; at least so obliged to the rules of law, that they should be every day cast into prison; and they had indeed found that in some insolencies they had committed against the law, and some pretences they had made to privileges against arrests, and the like, that I had always opposed their desires. So that it is not probable that I should contribute my advice for the raising a standing army, and that the kingdom should be governed thereby, when there were very few men so like to be destroyed by that army as myself.

There is another part of this article, how improbable and impossible soever, which in many respects will require a more ample discourse and defence: That I advised the king to dissolve the present parliament; to lay aside all thoughts of parliaments for the future; to govern by military power, and to maintain the same by free quarter and contribution. Which particu-

lars, so compounded and put together, and solemnly undertaken to be proved, even by two privy-counsellors, who pretended to be present at the debate, was in truth the foundation of the great prejudice that was raised against me; and which, though known to be false to the persons who dispersed it, and appeared very impossible to all men who had but an indifferent good opinion of my integrity or discretion; yet the manner of the insinuation, and the circumstances with which it was related, and the private intimation from some privy-counsellors that they would prove it, got so much credit in the House of Commons, that they thought fit to make it a part of my charge; and therefore it will be necessary to set out a clear narrative of that whole debate, upon some particulars whereof those informers, against their oath, and against all kind of ingenuity, have grounded their insinuation, and direct (though hitherto secret) information: All the particulars whereof are so well known to several persons of honour who were present, that I could never have doubted, if the matter had ever been brought to a public examination, I should have received an ample vindication; and, in truth, that the informers themselves, how confidently soever they had undertaken it, would never have justified their accusation.

At the last recess of the parliament it had been prorogued to the tenth of October following, I being at that time indisposed with the gout, and so not able to be present. About the beginning of June (the treaty being then begun at Breda,) the Dutch fleet, under the command of De Rutter, came upon our coast, and seemed to be bound for the river of Thames, which caused a general terror in Kent; upon which, lieutenant general Middleton was suddenly sent down thither to draw the train-bands together, in order to which he convened them to Rochester: The fortifications at Sheerness (which the king believed to have been made defensible, having himself made a journey thither in the winter, and charged the commissioners for the ordinance for the prosecution of it, who no doubt failed much in the execution of his commands) were found so weak, and so utterly unsteable, that, upon the approach of the Dutch fleet, the soldiers who were in it (who were very good experienced men, and under excellent officers) were by their cannon forced to quit it, and the Dutch presently landed upon it, and seemed to have a resolution of fortifying it: Upon the news whereof, and of the general distraction in that country, the duke of Albemarle was sent down to Chatham with such troops of horse and foot as could speedily be drawn together of the regiments of guards, and such of the train-bands of the neighbour countries as could be persuaded to march. Upon the General's arrival at Chatham, he writ very cheerful and confident letters, that he had no fear of the Dutch, if they should make any attempt, which he was confident they durst not do; and that he had put a chain over the river, which would stop their ships

from coming up: However, the next day, being the twelfth of June, the Dutch fleet advanced, having without the least difficulty broken the chain, and shortly after taken and burned two or three of the greatest ships of the royal navy (which had been very negligently left there, and might well have been brought into security,) and six or seven merchant-ships, whereof some were outward-bound with merchandise; all things being in so great distraction at Chatham, and thereabouts, that nothing was done that was naturally to be expected from an experienced commander, who had excellent officers with him, ready to obey his orders.

The noise of this quickly filled the city of London; and yet the confusion there was not so great as in the court itself, where they who had most advanced the war, and reproached those who were against it, as men who were not solicitous for the honour of the nation, and who never spoke of the Dutch but with contempt, and that they should be cudgelled, were the most dejected men that can be imagined, speaking very bitterly against those who had advanced the war: And truly, the distraction was so great in court and city, as if an army of 100,000 men had encompassed it; and though the Dutch fleet returned out of the Thames, and advanced no farther than Chatham, yet it remained still upon the coast, and landed about Harwich, and attempted the castle of Langborne-Point, and kept the counties of Essex, Norfolk, and Suffolk, in perpetual alarm for many days: The train-bands which had been drawn together, pretended that the time was expired that they were obliged to maintain themselves; and therefore required pay, or liberty to depart, though the enemy was in view, and themselves like to be made the first prey. The regiments which had been raised without charge to the king, upon the interest of several persons of honour and great reputation, had upon the first musters received one month's pay; but that time was expired; and they must either receive another pay, or take free quarter upon the country, which the time would not bear. In this perplexity, some persons had advised the king to summon the parliament to convene upon a short day, notwithstanding it stood prorogued till October. And when his majesty asked my opinion of it, I told him I thought it could not be done; I was sure it never had been done. To which his majesty replied, That he was assured by many that he might do it, and named Mr. Prynne to be of that opinion. Shortly after his majesty appointed the whole council to meet upon the debate, of which I knew nothing till I came into the room: The king himself told us what we were to debate upon; that we all saw the straits we were in, the general distemper of the nation, the insolence of the enemy; that there was a necessity of having an army; that he had no money, nor knew where to get any, nor could imagine any other way to provide against the inconveniencies which were in view, than by calling the parliament; of which and

any other expedient he would receive our advice; expressing so much of his own sense, that it was plain enough that he inclined to that remedy: Upon which three or four of those who sat at the lower end of the table, and who were known to have contrived the counsel, expressed themselves at large; seemed very confident that it might lawfully be done; that no other way could be found to raise money; that men could not be kept together without money; and desired that they who were of another opinion would propose some other counsel. I do not deny, their reasons did in no degree satisfy me; and though I knew very well that the resolution was upon the matter already taken, that there was a great desire in some men (whose malice to me was enough known) to lead me into some expressions of which they might take advantage; yet the obligation of my oath to deliver myself freely, the conceived security of that place, and the opinion that the thing proposed was not reasonable, and would produce many inconveniences to the king's service, prevailed with me to discharge my own conscience, God knows, according to the best of my understanding: I said, I knew well the disadvantage upon which I spoke in so tender a point, and too unpopular a thing it was to be against the convening of the parliament in a time of so great straits, when no other remedy could be found; yet that appearing to me not practicable, I thought, it ought not to be embraced; that it was confessed by all hands, that in the point of law, the convening them before the time to which they were adjourned, was at least very doubtful; and to me, upon all the disquisition I could make, it was very clear that it could not be done; that the temper of both Houses was well known; and it could not but be presumed, that when they came together the first debate they would fall upon would be of the manner of their coming, and whether they were in a capacity to act; and I doubted very much, that there would be very few who would be willing to pass an Act of parliament in so doubtful a season; and then if their meeting was only to confer, when they might say anything, and, conclude nothing, I thought it well worth the considering, whether in so general a distemper, such an assembly might not interrupt all other consultations and expedients, and yet propose none, and so increase the confusion: I said, if the necessities were so urgent, that it was necessary to have a parliament convened, and that they could not lawfully re-assemble that which was prorogued till the day to which it was prorogued, as I was confident it could not be, there could be no doubt but that it was in the king's power to dissolve that parliament, and forthwith issue out writs for the calling another parliament, which might regularly be assembled more than a month before the prorogued parliament could meet. And there were many more of the council of the same mind, that it would be best to dissolve the parliament, and to call another. Many declared themselves against this expedient; pro-

testing, that though there had at some times appeared many ill humours and misapprehensions in the House of Commons, yet that they were very right in the main, for the king's service; and that there is no hope ever to see another House so well constituted for church and state; and the king himself seemed to have the same opinion, and no inclination to dissolve it; and so resumed the former debate, what was to be done for the present to raise money, or to maintain his army, if he should not call the parliament to meet before the day? The old argument, that there could be no other way to be found out, was urged; and calling with more than usual earnestness in that place, that they who were of another opinion would propose their expedient, the king himself, with some quickness, asked me what I would advise? To which I replied, that if in truth that which was proposed was in the nature of it not practicable, and being practised could not attain the effect, it ought to be laid aside, though another could not for the present be proposed; that I thought it clear, that the parliament could not be assembled in less than twenty days, and that if they were met, and believed themselves lawfully qualified to grant a supply of money, we all know the formality of that transaction would require so much time, that money could not be raised soon enough thereby to raise an army, or maintain that part of it which was raised to prevent the landing of an enemy which was already upon the coast, and (as many thought) ready every day to make their descent; and yet the sending out a proclamation for re-assembling the parliament, would inevitably put an end to all our councils: that, for my part, I believed the Dutch had satisfied themselves with the affront they had given us, and had no thought of proceeding farther; that they could not have men enough on board to make any descent, without our having notice of it; and that the king had all possible security from the king of France, that he had no such intention, and then it would not be in the power of the Dutch, with their own strength to give us any trouble; however, for the present support of those troops which were to guard the coasts, since money could not be found for their present constant pay, without which free quarter could not be avoided, the only way that appeared to be practicable, and to avoid the last evil, would be to write letters to the lieutenants and deputy-lieutenants of those counties where the troops were obliged to remain, that they would cause provisions of all kinds to be brought into their quarters, that so the soldiers might not be compelled to straggle to provide for their own victuals, which would end in the worst kind of free quarter; and that the like letters might be written to the neighbour counties, wherein no soldiers were quartered, to raise money by way of contribution as had heretofore been done, that so the troops might be enabled to stay, and continue in the posture they were in, for defence of the kingdom, in which those other counties had their

share of the benefit, and without which they must themselves be exposed to the disorder of our own soldiers, or to the invasion of the enemy upon their retreat, or to both: and it is possible, that in the earnestness of this debate, and the frequent interruptions which were given, I might use that expression of raising contribution, as had been done in the late civil war; but how, from such a debate, in such a place, and with such circumstances, every particular whereof will be justified by many Lords of the Council, who were then present, can naturally be formed any conclusion, or in truth any reasonable imagination, that I have designed a standing army to govern the kingdom by, advised the king to dissolve the present parliament, to lay aside all thoughts of parliaments for the future, to govern by military power, and to maintain the same by free quarter and contribution, I must and am very willing to refer and submit to the impartial judgment of the parliament, and of all discerning men.

The second Article is, "That I have, in the hearing of many of his majesty's subjects, falsly and seditiously said, The king was in his heart a Papist, Popishly affected; or words to that effect."

I have occasion too often, throughout this whole charge, to acknowledge and magnify the great goodness of God Almighty, that since he thought not fit (for my greater humiliation, and it may be to correct the pride of a good conscience) to preserve me entirely from these aspersions of infamy, and those *Flagella Linguae*, those strokes of the tongue, which always leave some mark or scar in the reputation they desire to wound, that he hath yet infused into the hearts of my enemies, who suggested and contrived this prosecution against me, to lay such crimes to my charge, as my nature is known most to abhor, and which cannot only not be believed, but must be contradicted, and a vindication of me from that guilt must be made, by all men who know me to any degree, or have been much in my company; and as justice would have required it, so the usual form in cases of this kind doth exact, that in so general a charge they should have named one single person of those many in whose hearing I have laid that odious imputation upon the king; and every man will presume, that one such person would have been named, if he could have been found. There is no man now alive, who hath had the honour to be so many years about or near the person of the king, as I have been; no man who knows more the temptations he hath undergone, and the assaults he hath sustained in the matter of his religion, during the whole time of his exile, when almost a total despair possessed the spirits of most men of his own religion, that he would ever recover his regality; and the hopes, and promises, and assurances, were so pregnant, of very many of all conditions, that he should suddenly recover if he would change it: no man knows so well, with what Christian courage he

repelled those assaults, or with what pious contempt and indignation he resisted and rejected those temptations; nor hath any man (I think) held more discourses with his majesty concerning religion, and sooner and more clearly discerned the reproaches he would undergo, from that innate candour in his princely nature, which disposed him to receive any addresses, or hear any discourses, which those of several factions in religion, with great presumption, have used to present to him; whilst his majesty hath, with equal temper, and singular benignity, heard all; and pitying their errors, dismissed them with evidence, that their arguments were too weak to make impression in his judgment; which though they knew well, yet either party, out of the vanity of their hearts, used all the endeavours they could to get it believed that the king was propitious to them and their party; and the Papists, being most presumptuous in particular, and in their dark walks in their several counties making it a special arguement to their proselytes, and those they endeavoured to make so, that the king favoured them, and was of their religion in his heart; of which and the great prejudices it brought to his majesty, I frequently received advertisements from many persons of honour, and of warm affections to the government; of which I always informed the king, who was exceedingly offended at their folly and presumption, and wished that some of them might be apprehended, and prosecuted with the utmost rigour, and that some such prosecution might be made against all Roman Catholics, that they might all be convicted; which I always gave in charge to the judges accordingly; and upon that and the like occasions had a just and necessary opportunity to enlarge in the presence of many persons of honour and interest in the kingdom upon the sincerity of the king's religion, and his constant exercise of it when he suffered by it; giving such instances of many particulars as were pertinent to the discourse. Of which endeavours of mine, and of some fruit thereof, I doubt not but that many of as considerable persons as are in England will be ready to give me their testimony: and I may without vanity say, that I had more than a common part in the framing and promoting that act of parliament, that hath made those seditious discourses, of the King's being a Papist in his heart, or popishly affected, so very penal as it is; and therefore there is need of an undoubted and uncontrollable evidence, that I did as soon run into that crime myself; which is all I shall for the present say upon the second article.

The third Article is, "That I have received great sums of money for passing the Canary Patent, and other illegal patents; and granted several injunctions to stop proceedings at law, against them, and other illegal patents formerly granted."

I did presume in my humble address to the House of Peers to assure their lordships, that I

never received one penny over and above the just perquisites of my office, according to the precedent and practice of the best times, which I conceived to be those of my lord Coventry and my lord Ellesmore, and which I had made my rule in all that I had received, except only what I had from the immediate bounty of the king. And as I did always all that was in my power to prevent and stop all illegal patents; so I believe there are more found in the office stopped by me than by any of my predecessors in so long time: but since the Canary patent hath made so much discourse to my reproach, I shall enlarge upon it, and set down very punctually all the proceedings I know in that affair: by which both the reasonableness and justice of that grant will appear, and my innocence and unconcernment in it.

About the first Christmas after the king's return into England, the Lord Treasurer, the Lord Privy-seal, myself, and the two chief-justices, (being the persons appointed by the statute for that service) met together to set the several prices upon the several wines; and were attended, according to custom, by the company of Vintners, and the chief merchants in the city who traded in that merchandize; and being first to limit the merchants to a reasonable rate, before we could set any price to the Vintner, upon the retale, we found, by the best enquiry we could make, that the first prices beyond the seas which the merchants paid for their wine were so excessive, that the retale could not be brought within any compass; and that since the beginning of the troubles the price of wine in general was exceedingly increased, and particularly that of the Canaries was almost double to what it had been in the year 1640. I knew very well, by the correspondance I had held in the Canaries, (during the time I had served his majesty as his ambassador in Spain) that the whole trade of Canary wines was driven solely by the English, and the commodity entirely vented in the king's dominions, all Christendom beside not spending five pipes of Canary wine; and therefore I asked the merchants, what would be the way to remedy that mischief, and whether what I had reported was not true? They confessed it to be very true, and that it was a reproach to our nation to be so much imposed upon in a trade that we might govern ourselves; and that the unreasonable prices of the wine was not the greatest prejudice that was befallen that trade: that before the troubles they had been so far from employing any stock of money, that they sent their ships fully laden with all commodities thither, which yielded very good markets, being sent from thence to the West-Indies in their plate fleets; that the very pipe-staves they carried did very near discharge the value of the wine, so that they brought home the proceed of their other commodities, either in pieces of eight; or such other merchandize as had been brought thither from the Indies, and upon which they received great profit: that, on the contrary, the trade is now wholly driven

by ready money; that the commodities they send thither will not be taken off, except at their own prices; so that they have for the late years sent their vessels empty thither, except only with some few pipe-staves, which, by the destruction in Ireland, they cannot send in any great proportion from hence; and their ships return from thence with no other lading but those wines, which they pay for in ready money, either with pieces of eight sent in their ships from thence, or by bills of exchange charged upon some known merchants in Spain; that over and above this, they had of late set new duties upon the wine, and laid other impositions upon the merchants, than the English nation hath been ever accustomed to; they said, that all this proceeded from the immoderate appetite we have for that sort of wine and therefore we take from them as much as they can make; and from our own disorder and irregularity in buying them, in contending who shall get the most; and so raising the prices one upon another, and making the Spaniards themselves judges what we shall pay. My Lords, upon consultation amongst themselves, found the matter too hard for them, and that the reformation of so much evil must be done by degrees; and upon a representation of all the difficulties to his majesty and his privy-council, whose wisdom could only provide a remedy proportionable to the mischiefs; for the present, as they were resolved not to raise the present prices at which the wine was bought and sold (which they believed, how reasonable soever, would be very unpopular), so they thought it very unjust to draw down or abate those prices, since it appeared to them that the wines cost more in proportion upon the places of their growth: they declared, therefore, to the merchants and the vintners, that though for the present they would permit the same prices to continue for the next year, which they had been sold for the present year, and which indeed were confirmed by the act of parliament, they should hereafter take care what markets they made; for that they were resolved the next year to make the prices much lower, both to the merchant and the vintner: and upon the report made of the whole matter to the king in council, a Proclamation was published accordingly.

The next year both the merchants and vintners were very earnest suitors, that greater prices might be allowed; or, at least, that the same might be continued; making it very evident that their wines cost them more than they had done the year before. Upon the debate the Canary merchants were much divided; some of them insisting very importunately to have the prices raised, because it was notorious that they had paid much more, by reason, as they said, that the vintage had not yielded near the proportion that it used to do; others, though confessing the encrease of price, yet pretending a more public spirit, and the necessity of a reformation, pressed earnestly that the price might not be raised, but that they might be per-

mitted to take what they had done already for this year. It was quickly perceived whence this moderation proceeded, and that the last proposers had a quantity of wine upon their hands, which had been provided the year before, and so might well be sold at those prices; but that the former had no old left upon their hands, but were supplied with a full provision of new, which had cost them so much dearer. Both the one and the other desired us, that whatever resolution we took for the present, a clause might be inserted in the proclamation, that the next year after Canary wine should not be sold for above twenty-four pounds the pipe, and that every year after it should be drawn lower, as it might well be, it having been sold in the year 1640 for twenty pounds; though his majesty found it at his return permitted to be sold at six-and-thirty: such a clause, they said, would give notice to the Islanders, and oblige them to sell their wine at more reasonable rates, and render the merchants unexcusable, if they should give greater. My lords, notwithstanding all the allegations, thought fit to bring the prices of all wines lower, which they did, as the most effectual warning for the future; but by his majesty's approbation, that clause was inserted in the proclamation as they desired.

The year following, when the Lords met again according to custom (which is, as hath been said, about Christmas,) they found not the least reformation; on the contrary, that the Canary merchants had paid dearer than ever, which made them all more solicitous to have the price raised, and the vintners as importunate for their retail. And indeed the vintners were in much worse condition than the merchants, they making it appear that they paid the merchants much dearer, without which they could get no wine, and so must give over their house-keeping; that the penalty upon the merchant was very small, being not above forty shillings a pipe, and the crime not easy to be discovered, as was manifest by there being not one merchant questioned in many years for that transgression; whereas, on the contrary, the penalty upon the vintners was very severe, and so easily discovered by any man who went to a tavern, and would be an informer, that most of the vintners in London were then sued in the Exchequer upon those penalties, which, if exacted, must produce their present ruin. The merchants excuse themselves for their present pretence, and for their having given more than was lawful for them to have done, by their own desire, that they had done their best, and that the greatest traders amongst them had consented not to suffer the prices to be raised upon them, but that they found it ineffectual: and that though they should give over their trades, it would produce no reformation; that the trade was open to all adventurers, and that there had been many ships sent from England that very year by Jews and other tradesmen, who had never before traded to the Canaries; inasmuch as when they who had been long bred up to the trade, and had been long factors in those

Islands, sent their ships thither, they found other English ships there, and the wines bought at a greater price than they had allowed their factors to give; so that they must either have their ships return empty and unladen, or take the wines at the prices other men gave; that they had chosen the latter, as well to continue the trade, as to draw home some part of the stock they had in that country; that they could imagine but two ways to reform that excess; the one, by putting the trade in such a method, and under such laws, as might restrain that licence, and not leave it in the power of persons who never had been in the trade to give law to it: and by this means the Islanders would find it necessary to set reasonable prices upon their commodities, and to yield such other advantages and privileges to the merchants as they had heretofore enjoyed; the other, that the king would, by his proclamation, prohibit the importation of any Canary wines into his dominions; and hereby he would quickly receive such propositions from Spain, as would put it into his own power to make the reformation; otherwise the Islanders were persuaded that England could not live without their wines. The Lords were resolved, notwithstanding all that had been said, that they would execute the former proclamation, and reduce the prices of wines to what had been then determined; and after they had given a full account of the whole business unto the king in council, the Resolution was approved, and a proclamation issued out accordingly. The merchant and vintners applied themselves to his majesty, and to many of my Lords of the council, and thought they had encouragement enough from thence to hope for relief, in an appeal by petition to the king and council; and that they had thereupon a day given them to be heard: many of my Lords thought it very hard, if not unjust, to compel men to sell cheaper than they bought, which was the truth of the case, and which must oblige both merchants and vintners to sophisticate and corrupt their wines to preserve their estates, which might probably turn to the great damage of the whole kingdom, in producing sickness and diseases; and this generous and charitable consideration prevailed with the major part of the Lords to be well contented; and to wish that some indulgence might be exercised towards them. On the contrary, when the king had well weighed the whole proceedings, and with trouble and indignation considered the obstinate vice of the nation, which would make us ridiculous to all the world, he expressed a positive resolution to vindicate himself and his government from this reproach. He thought the adhering firmly to the prices which had been resolved upon would be the best preface to this reformation, though it might bring particular damage to particular persons; who had yet less cause to complain, because their own advice had been followed; and there declared, that he would make no alteration. But withal told them, that if they could make any proposition to him for the better regulation

of the trade, (for they had themselves mentioned a charter) he would graciously receive any propositions they would make, and gratify them in what was just; and so, notwithstanding all attempts which were often repeated, the price set by the Lords was ratified for the year following.

Shortly after many of the merchants, who had always traded to the Canaries, petitioned the king that they might be incorporated, and that none might be permitted to trade thither but such as would be of that corporation, and observe the constitutions which should be made by them: Which petition was presented to the king at the council-board; and being read, his majesty, according to his custom in matters of difficulty and public concernment, directed it to be laid aside, and read again on that day month; in which time his majesty presumed that all who would oppose it, would present their reasons and objections against it, which he was very desirous to hear. At the day appointed, though there were no petitions against it, yet it was observed that there were many of the most eminent merchants of that trade whose names were not to the petition, nor appeared desirous to have a charter granted; which his majesty considering, put off the debate for another week; and directed, that the other merchants by name should be desired to be present, and to give their advice freely upon the point: And there was at that day a very full appearance; when his majesty directed, that a relation should be made to them of the whole progress that had been made in the business, and the damage and dishonour the nation underwent in carrying on of that trade; that many merchants had presented a petition to him, containing an expedient to bring it into better order, but finding them not to appear in it, and being informed that they were most engaged in that trade, he had sent for them to know their opinion, whether they thought what was proposed to be reasonable, and fit to be granted? And if so, why they did not concern themselves in it? They answered, That the reason why they had not appeared in it was, because they should be losers by it, and therefore were not solicitous to obtain a grant from his majesty to their own damage; and so enlarged upon the nature of the trade, their long experience in it, and the greatness of their stock, which they should not be allowed to continue under any regulation: But as they did not think themselves obliged to be solicitous for a change, so they could not deny, being required by his majesty to speak the truth, but that the proposition that was made was for the public good and benefit of the kingdom, and that they could conceive no other way to redeem that trade, and the nation, from the insolence which the Spaniard exercised upon us; implying, that if his majesty would command them, they would likewise concur, and join in carrying on the service. To which his majesty giving them gracious encouragement, they all departed of one mind, his majesty remaining confirmed in the former opinion he

had of it. But there remained yet an objection which was principally insisted upon by the ministers of the revenue, who alledged very reasonably, that this new modelling of the trade must produce some alteration, and would meet some opposition from the Spaniard, which for the time would lessen the customs, and entitle the farmers to a defalcation. The petition was therefore referred to the farmers of the customs, who were to attend the next council day: And being then called in, they acknowledged, that the design proposed would prove very profitable to the kingdom in many respects, upon which they enlarged; and that in the end it would not be attended with any diminution of the customs; but for the present, they said, they could not but expect that the obstinacy and contradiction of the Spaniard would give such a stop to trade, at least for one year, that if his majesty did not reimburse them for what should fall short in the customs, they must look to be very great losers; the merchants, on the other hand, offering to be bound, that if they did not the first year bring in as much as had been usually entered, they would make good what should be wanting to the farmers upon a medium; and his majesty himself declared, that he would not, for a small damage to himself, hinder the kingdom from enjoying so great a benefit; and thereupon he commanded the Solicitor-General, who then attended the board, to prepare such a charter, as might provide for all those good ends which were desired in the petition, and which had been so largely debated. And, I believe, there was never a greater concurrence of the board in any direction.

Many months passed before the charter was drawn; in which time I never heard of the least new objection made against it, or that any man was unsatisfied with it. After it was engrossed, and passed the king's hand, it was brought to the great seal; and then the Lord Mayor of London and the court of aldermen had entered a caveat, and I appointed a day to hear parties. The city alledged an order made a year or two before by the king in council, upon a complaint then exhibited by the court of aldermen against the Turkey company, and other corporations, in which they said there were very many merchants of the best trades and greatest estates in the city, who would never take out their freedom of the city, and so refused to bear any charge or office in it, to the very great prejudice and dishonour of the city, and of the government thereof; they being by this means compelled to call inferior citizens to be aldermen, before they had estates to bear the charge of it, whilst the gravest and richest could not be compelled to take it, because they were not freemen: Besides the rules which the king gave upon the difference then in question, he was pleased to declare, and appointed it to be entered as an order in the Council-Book, that provision should be made, that in all charters which he should hereafter renew or grant to any companies or cor-

porations within the city of London, that they should first make themselves freemen of the city, if they were not so before; and therefore that this charter should not pass the seals, before several members, who were named in it, had made themselves freemen of the city, by which they might be made liable to the charges of it. The merchants could not deny, that many of them were not yet freemen, nor resolved to be: They said, they had never heard of this order: And I declared to them, that I could not seal the charter before they had given satisfaction in it; and they seemed as positive that they would rather be without their charter, than submit to the other inconvenience, and so they departed then; but shortly after they agreed to the obligation, and a clause to that purpose was entered in the charter in the king's presence, and so returned to me to have the seal fixed to it.

There were, by this time, several other new Caveats entered against it; all which I heard, and settled every one of them to their joint satisfaction. I heard then that there would be some motions for the stopping it in the House of Commons; and some parliament-men who served for the Western Boroughs came to me, and desired me that I would not fix the seal to it till they should be heard, since it would undo their Western Trade; and told me they resolved to move the House of Commons to put a stop to it. I informed them of the whole progress it had had, and told them I believed that they would hardly be able to offer any good reasons against it: However, since it was known that the parliament would be prorogued within 10 or 12 days, I would suspend the sealing the charter whilst the Houses sat, to the end that they might make any objections against it if they thought fit: But the parliament rose shortly after, without further taking notice of it; nor did those parliament-men, or any others, further solicit me against the passing of it; and so I affixed the Great Seal to it according to my duty. Thereupon the company chose a governor and other officers, according to their charter, and made such orders and by-laws as they thought fit, for the carrying on the advancement of their trade; which they might alter when they found it convenient; and for the present they resolved upon a joint-stock, assigning so many shares to particular men. In this composition and distribution there happened some difference between themselves, which could not be taken notice of abroad; and even some of them, who first petitioned, and were most solicitous to procure the charter, did what they could to hinder the effect of it; sent privately to their factors at the Canaries to oppose any orders which should be sent from the governor and the company; and that they should do all they could to incense the Spaniards against the charter, promising that their wine should be taken off in spite of the corporation: Whereupon, great disorders did arise in the Canaries between the

English themselves; and by the conjunction of the Spaniards with those few English who opposed the charter, they proceeded so far as to send the principal factors for the company out of the island to Spain, and to make a public act by the governor and council there, that no ship belonging to the company should be suffered to come into the harbour, or to take in any lading from the island: All which were transacted there many months before it was known in England, and probably would have been prevented, or easily reformed, if the breaking out of the plague at London, and the war, had not restrained all English shipping from going to the Canaries for the space almost of a full year: which intermission likewise gave some advantage here to the merchants who opposed the charter, by the not return of their several stocks within the time promised by the company.

When the king was at Oxford, and heard what had passed at the Canaries, some merchants appeared there to petition against the charter, whereof there were some who were the first petitioners for it: His majesty appointed a day for the solemn hearing of it, in the presence of his privy-council, the governor being likewise summoned to be there. Upon opening all their grievances, the petitioners themselves confessed, that they could not complain of the charter; that it was a just and necessary charter, and for the great benefit of the kingdom, though some private men might for the present be losers by it; that their complaint was only against their constitutions and by-laws, and their severe prosecution of them contrary to the intention of the charter itself; instancing, among other things, the very short day limited by the charter, after which they could not continue their trade without being members of the corporation; and that day was so soon after the sealing of the charter, that it was not possible for them to draw their stock from thence in so short a time. When they had finished all their objections, the king observed to them, that they complained only of what themselves had done, and not at all of the charter, which gave them only authority to chuse a governor, and make constitutions and by-laws; but directed not what those constitutions and by-laws should be, which were the result of their own consultations, in which the major part must concur; and of that kind their joint-stock was one, which, with the rest, they might alter again at their next court, if the major part were grieved with it: But because they had complained of some particulars, in which they seemed to have reason on their side, his majesty expressed a willingness to mediate and make an agreement between them, and thereupon bid the governor answer such and such particulars, which seemed to have most of justice; which he did very much at large, making it clearly appear that they had, in truth, little cause of complaint; as to the short day which was assigned to them for drawing away their stocks; which

had the greatest semblance of reason, he said they had no reason to complain of want of warning, for that the day was well enough known to them long before the sealing of the charter, and might very well have been complied with; but that they knew likewise, that afterwards the time was enlarged to a day desired by themselves, that there might be no cause of discontent; and thereupon read the order of the court to that purpose, which they could not deny in conclusion; since it appeared that their stock still remained there, which in justice belonged to them, whether by their fault or misfortune it had not been drawn over. The king persuaded the governor, and his assistants, to give them such satisfaction in that particular and others, that before they retired from his majesty's presence, they were unanimously agreed upon all their pretences; and though some of the Lords, upon some insinuations and discourses they had heard, had believed the company to be in the wrong, they were now fully convinced of the contrary, and believed the charter to be founded upon great reason of state, and that the execution of it had been very justifiable, with great moderation; and it is to be observed, that the parliament being then assembled at Oxford, there was not the least complaint against that charter, or corporation.

This was the whole progress of that affair, and all that I know of the proceeding in it; in which I must confess, though I had no hand in the contrivance, I was fully satisfied in the justice and integrity of it, and even in the necessity in reason of state; and therefore, upon all the addresses made to the king or council in the whole transaction, I did, it may be, appear more solicitous and warm for the dispatch than other men; and yet I never remember a fuller concurrence in the whole board than in this advice; nor did my inclination towards it proceed from any other motive than that of the public good, without the least temptation to, or imagination of any profit or advantage to myself, to which I have never been thought to be ever inclined; and the delays I used in the passing this charter, after it came to be sealed, and my giving time for the weighing all objections, and so much opposing the company, with reference to their being made freemen of the city, that they departed from me with a resolution to prosecute the charter no farther, are no signs that I had such a mind to please them as a man would have who was corrupted by them, or who was to have a share in the profit of the patent. For the granting any injunctions in Chancery to stop proceedings at the law, against that or any other charter, I cannot comprehend the meaning of that charge; and do presume that I have never granted any injunctions in that court, but what was agreeable to the course and justice of it, and I am sure was always done in public and upon debate in the court.

The Fourth Article is, "That I have advised and procured divers of his majesty's subjects

"to be imprisoned against law, in remote islands, garrisons, and other places, thereby to prevent them from the benefit of the law; and to introduce precedents for imprisoning of other of his majesty's subjects in like manner."

I know not what to answer to this article, it being so general, and no particular person being named; but it is generally known, that I have never taken upon me to commit any man to prison, but such who, by the course of the Chaucery for matters of contempt, are justly committed. It is probable that I have been present at the council-board when many persons have been ordered to be committed, and whose commitment hath, by the wisdom of that board, been thought just and necessary; and therefore I am not to answer apart for any thing done by them; only I may say, that I was frequently of opinion that the commitments were very just, and very necessary; and it is notoriously known, that by such commitments a rebellion hath been sometimes prevented, and that other persons who have been afterwards attainted and executed for High-Treason, have, upon their examination, and at their death, confessed that their purpose had been to rise in arms at such and such times, if their friends, upon whom they had principally relied, had not been then committed to prison; and I well remember, that it was thought fit that most of the persons who stand attainted for the murder of the late king, his majesty's royal father, should be removed out of the Tower, and dispersed into several Islands and garrisons; and if any other persons have been likewise sent thither, I presume it was upon such reason, as, upon a due examination thereof, will make it be thought very just.

The Fifth Article is, "That I have corruptly sold several offices contrary to law."

This charge I utterly deny.

The Sixth Article is, "That I have procured his majesty's customs to be farmed at under rates, knowing the same; and great pretended debts to be paid by his majesty, to the payment whereof his majesty was not in strictness bound; and have received great sums of money for procuring the same."

I have never had any thing to do in disposing of his majesty's customs, or any other part of his revenue; only for some short time after his majesty's first arrival in England, I, amongst others of my Lords of the council, was a commissioner of the Treasury; during which time, if I am not very much mistaken, there was no farm lett of any of the revenue, and the customs were put into the hands of commissioners, to the end that a computation might be made as near as was possible of the true value of them, before that it should be put into a farm, which every man conceived would be fit to be done as soon as might be. The White Staff was shortly after given to the

earl of Southampton, and the chancellorship of the exchequer to the lord Ashley, I having then resigned it, and having been before possessed of it at the time when the king returned into England; and from the time that these two officers of the revenue were made, which determined the former commission, I never inter-meddled in the customs, or any other branch of the revenue; except when the king commanded me to be present in some consultations which he had with my Lord Treasurer, when there were other of my Lords likewise present; that excellent person always resorting to the king, for his direction in all matters of the least difficulty which occurred to him in the administration of his office; and except the Lord Treasurer himself (with whom I had the honour to have held a long and a fast friendship) did desire to confer with me, as he very often did upon many particulars of his office, believing that I was not altogether ignorant in that administration, with which I had been formerly so well acquainted; and that I presume might be the reason why he did oftentimes procure me to be joined with him in references from the king, upon matters wholly relating to his own office. But I never suffered particular applications to be made to me in those cases, nor had ever any secret conference with any persons who were concerned in such pretensions. What is meant by my having procured his majesty's customs to be farmed at under rates, knowing the same, and great pretended debts to be paid by his majesty, to the payment whereof his majesty was not in strictness bound, I cannot imagine, except it relates to the payment of a debt due from his late majesty to some of the farmers; in which, though I had no more to do than in giving information, and my particular advice to his majesty, in the presence of my Lord-Treasurer, the Chaucellor of the Exchequer and other of my Lords, and so am not myself responsible for what his majesty did thereupon, and he did nothing but with the approbation and consent of all the rest; yet I think myself obliged upon this particular, which so much concerns the honour and justice of the late king, and of his present majesty, to enlarge and relate all I know of what their majesties did, and what induced his present majesty to do his part of it. It is notoriously known, that before the late troubles, and in the very first entrance into them, his majesty was necessitated to borrow very great sums of money from his then farmers of his customs, and to oblige them to stand personally bound for many other great sums of money which other men lent to his majesty upon their security. That thereupon, and for the repayment of those sums of money which the farmers had advanced, and for securing them from any damage for those monies which others had lent upon their obligations, his majesty, with the advice of the then Lord Treasurer and Chancellor of the Exchequer, had granted a farther lease of his customs to those farmers for three or four

years to come, after the expiration of their former lease; with a covenant on his majesty's part, to pay the just interest of eight per cent. for all such monies as were advanced by them, or for which they stood bound; and likewise that they should, out of their growing rent, deduct all such sums of money by the year, as they had lent, or were bound for. It is as well known, that after the beginning of the parliament in 1640, and before the commencement of the second lease, the House of Commons not only forced the said farmers to pay a very great sum of money for their presumption in receiving customs and impositions upon merchandize in the former years, when as they pretended such payments were not due; but took also from them their new lease granted to them by the king, and so left them without any capacities of reimbursing themselves of the money they had lent, and likewise in the mercy of their creditors to whom they stood bound; many of whom quickly began to exercise that severity towards them, that many of the poor gentlemen had their estates quickly extended upon judgments and recognizances, and their persons taken in execution and committed to prison; where some of them who had been known to have great estates, as sir Paul Pinder, and others, were forced to end their days. There were very few circumstances in the late king's misfortune, which gave him so much trouble, or so much afflicted him, as the sense he had of the hard and unjust sufferings those poor gentlemen underwent for him, and their affection to his service; which he often mentioned, and as often declared, that he held himself obliged to make them full reparation, as soon as God should enable him. And after he had vouchsafed to make me his chancellor of the Exchequer, he frequently spoke to me of it; of the very good opinion he had of the men, of the great services they had done for him; and commanded me expressly, that whenever it should fall within my power, I would do them all the right I could. And of this I did often inform his majesty during the time he was abroad, and after his return, without any other motive than his father's command, and his own honour, having myself never had any degree of friendship with any of the persons concerned, and a very ordinary acquaintance with some of them. Upon his majesty's happy return, those gentlemen who were alive of the old farmers (which, as I remember, were sir John Jacob, sir Job Harby, sir Nicholas Crispe, and sir John Herrison) applied themselves to the king, having lain several years, and then remaining in execution in some prison, and having had their estates sold, upon the prosecution of those creditors to whom they were bound for monies lent to his majesty. As soon as care was taken for collecting the revenue, those four gentlemen named before, and two others who had served his majesty very well, were appointed his commissioners for the collecting the customs and duties upon trade; in which collection they

continued for above a year, or thereabouts; during which time many of their creditors, who had generously forbore to prosecute them whilst they were in prison and undone, began now to commence their actions against them, presuming they were then, or would shortly be able to satisfy them: Whereupon his majesty commanded my lord treasurer, and me, with some other lords, as I remember, to send for those creditors, and to declare to them, that his majesty would, in a short time, enable his farmers to pay their just debts, which he well knew were contracted for his service; and that he would take it very well from them, if they would for the present give no obstruction to his service, by the prosecution of those persons at law, whose time was solely taken up in the necessary service of his majesty: Whereupon they willingly desisted from that prosecution; and many of them finding now, that by his majesty's favour they were like to receive their debts, which before they thought desperate, they frankly remitted the whole, or part of the interest, that in strictness of law was still due to them. His majesty, shortly after, judging it best for his profit to determine the collection by commission, and to let the whole to farm, gave direction to the lord treasurer to confer and treat with any fit persons who desired the same. Many overtures were made by several persons, and some applied themselves directly to his majesty: upon which and after a competent time in considering all that was proposed, the king appointed a day when he would be attended by my lord treasurer, and other of my lords, and when all the pretenders should likewise be present, and he would then and there declare his own judgment: having first declared to the commissioners, whereof four were old farmers to whom so much money was due, that whosoever should take the farm, they should be obliged to pay them their just debt at such times, and by such proportions as his service could bear; but as to the letting the farm itself, he should neither consider the debt he owed them, nor the sufferings they had undergone, but only the rent they should offer; which, if as much as any body else would give, he would prefer their persons before others; but if any other fit men would offer more than they thought fit to give, they should be his farmers: and therefore wished them well to consider what they would propose to him. After two days spent by his majesty in conference with several pretenders apart, and finding that the propositions made to him by the old farmers, with whom the other two were to be joined who had served with them as commissioners, were at least as much, if not more for his profit than any which had been made by the rest, he declared that the farm should be lett to those who had been his commissioners: Which was at that time understood to be so far from a good bargain, that the two commissioners who were not concerned in the great debt, utterly refused to meddle with the farm at so great a rent; the other four publicly

declaring at the same time, that they would not give the rent but in contemplation of their debt, which they thought they should sooner and better receive, when it should be assigned upon their own collections than when it should be charged upon new farmers; but weresuitors to his majesty, that he would oblige the other two (sir John Wolstenholme and sir John Shaw) to be joint farmers with them; which his majesty did, by making them a gracious promise, that if they should be losers he would repair them; and thereupon directions were given to Mr. Attorney-General to prepare a grant accordingly; and I do not know there was one dissenting voice from what his majesty inclined to do upon the whole debate of that matter, the same appearing to every man to be most just and reasonable.

The farm being thus settled, the old farmers were directed to bring their account to my lord treasurer; by which it should manifestly appear how much the late king was justly and truly indebted to them, and how those debts were incurred; that so, upon a just computation such a satisfaction might be made to them, as was consistent with the present state of his majesty's occasions. Many months, if not a whole year, were spent in the examination of those accounts before the auditors; who, besides the exceptions they took for want of some formalities, in the proof of some monies paid, which after twenty years of licence, in which all their books and papers had been taken, their houses plundered, their persons imprisoned, and in which so many persons employed by the king to receive, and by them to pay money, were dead, could hardly be made with the usual exactness, made likewise several certificates of particular cases, which required further direction; and the Lord-Treasurer would never take upon himself to give those directions, only declaring to them, which he had frequently done, that, in regard his majesty was not strictly bound in justice to pay that debt due from his father, but that his present majesty's generous, and royal disposition had prevailed with him to pay that just debt, whereby they might be preserved from ruin, in which he said he fully concurred with his majesty; but that he would never advise him, on the contrary, he would always dissuade his majesty from paying or allowing any interest, though paid by them, which would swell the debt to such a proportion, that his majesty could never undertake the payment of it: which determination, how great soever their loss appeared to be, seemed to be so just, at least so necessary for the king, that they wholly referred it to his majesty; and hoping that it might prevail with many of their creditors, not to exact it from them, though the sale of their whole estates had made satisfaction to others for the whole interest as well as for the principal. When the auditors certificate was ready, and all the doubts and questions, which did arise thereupon, were clearly stated, his majesty vouchsafed again to be present, with the other Lords, who had from the beginning as-

sisted in the examination of that business; and then the Lord-Treasurer declared to his majesty, what he had before said to the persons concerned, that though he willingly approved his majesty's goodness in taking upon himself that great debt, yet that he would by no means give his advice or consent that he should pay or allow any interest for it. Upon the whole matter, and upon all the doubts stated to his majesty, and after the rejection of several considerable sums of money demanded by them, and for the payment whereof such direct proof was not made, as is required by the course of the Exchequer; though I think most persons who were present were, in their private consciences, well satisfied that those sums had been, in truth, paid, as was alledged; there appeared to his majesty to be justly due to them the sum of 200,000*l.* principal money for almost 20 years, and for which they had paid so much interest; and his majesty thought it very just and, with many gracious expressions to them of his purpose and resolution further to repair them as he should be able, gave order to the Lord-Treasurer that the said debt of 200,000*l.* should be paid to them in five years; that is, by 40,000*l.* for every year out of the rent of the farm; and that all instruments necessary for their satisfaction and security should be presently given to them, whereby they might be able to comply with their creditors, and avoid their importunity. I do confess myself to have been present at these agitations, and to have contributed my humble advice and opinion to his majesty that he should pay this debt; which I thought myself obliged to do, as well as a faithful counsellor to his present majesty, as in discharge of my duty and obligation to his father; and I have very good reason to believe that if that 200,000*l.* be paid according to his majesty's direction, of which I know nothing, and of which the heirs and executors of those farmers who are dead, as well as the four present farmers have their equal proportions, that the said persons have not at this day half the estates which they had in the year 1640, when they entered into those engagements for his majesty: nor was there any one person present at the agitation of this affair, who seemed in the least degree to differ in opinion, or to dissuade his majesty to give that satisfaction for that debt which he vouchsafed to do.

I do likewise very willingly confess, that I have in the manner aforesaid, and being called to advise, given my opinion for the payment of many other considerable debts incurred by his late majesty; and for which many persons of honour, who adhered to him during the war, were personally bound for him, and whose estates had been extended, and their persons imprisoned for the same; many of whom were then in execution, and in prison when his majesty returned, and others then sued in Westminster-Hall, in his majesty's own court. His late majesty having granted under his great seal of England, to several persons intrusted

for the rest, many of his Forests, Parks, and other lands, for their security and indemnity, who were or should stand bound for him, for monies which were then borrowed for, and applied to the necessary support of himself and his army, and to no other purpose: and in that grant I was particularly entrusted, as well by the desire of the persons concerned, as by his majesty's command, to be solicitous for their satisfaction: and I cannot deny that I have never been more delighted, than when I have been able to procure any satisfaction for those persons who were so bound and so secured; nor ever more troubled, than that I could do no more, and that there remained so many still unsatisfied, and almost undone for those debts so contracted, of which number I believe there are still too many. But having made these clear confessions of what is truth, and what I did do in these transactions, I must as positively deny, that ever I procured or advised the letting his majesty's customs, or any other part of his revenue; on the contrary, that I used all the ways I could to advance the rents without respect of persons; and I presume I was never present at the letting of any farm that any man would have given more for, than they did to whom it was lett, what offers soever were made afterwards, when his majesty had contracted himself, and a grant was issued accordingly, under the great seal of England: and I do as positively deny, that ever I received or expected the least sum of money, or money-worth, for any lease made by his majesty of his customs, or any other part of his revenue; or for the payment of any one debt made by his majesty, to which he was or was not bound; I having never had any other motive for the performance of those offices, but the pure and entire consideration of his majesty's honour, justice and profit, and my own inclination to gratify worthy persons, who in justice ought to be, or might with justice be, gratified and obliged, and who have commonly been such persons to whom I have had no kind of obligation.

The Seventh Article is, "That I have received great sums of money from the company of Vintners, or some of them, or their agents, for enhancing the prices of wines, and for freeing them from the payment of legal penalties which they had incurred."

If I had been in the least degree guilty of this charge, it would very easily have been proved, and the Vintners would very gladly have helped them in it, being persons who never thought themselves beholden to me, and so not obliged to conceal any of my corruptions. They well knew that I could never be prevailed with to consent to the enhancing the prices of their wine, and that I never had the least sum of money from them in my life. I remember, at a time when his majesty had refused to grant all their other petitions, the company of Vintners did complain that there were so many informations against them pro-

secuted by informers in the Exchequer, that they must give over their trades, and be likewise undone, if they were severely prosecuted for what was past; and therefore besought his majesty in council, that he would pardon what was past, and that for the future they would trespass no more. Whereupon his majesty thought it worthy of his mercy to shelter them for the present from that prosecution; and thereupon commanded his Attorney-General to call the informers before him, and to appoint the Vintners to pay them such reasonable rewards for their pains as he thought fit, and thereupon he should enter a *Noli Prosequi*; but his majesty charged them for the future not to run into the same danger: And as this grace from his majesty was not upon my promotion, but purely from his own bounty and goodness, from which no person there dissuaded him, as I remember, so I never received the least profit from the same.

The Eighth Article is, "That I have in a short time gained to myself a far greater estate than can be imagined to be lawfully gained in so short a time; and, contrary to my oath, have procured several grants under the Great Seal from his majesty, to myself and relations, of several of his majesty's lands, hereditaments, and leases, to the disprofit of his majesty."

I wish with all my heart that the truth of this article (which I presume hath drawn on all the rest) were clearly known to all the world; that they who in truth believe that I have so great an estate, were very well informed what it is, and they would then clearly discern that I need not be ashamed of having gotten such an estate, nor needed to have any recourse to any ill arts or means for the obtaining thereof; they would know that I have been so far from procuring several grants under the Great Seal of England from his majesty, to myself and relations, of several of his majesty's lands, hereditaments, and leases, to the disprofit of his majesty, that I never moved his majesty in my life, for any one grant to myself, or any of my relations. If his majesty's royal bounty did dispose him to confer somewhat of benefit and advantage upon an old servant, who had waited upon his father and himself near 30 years in some trust and employment; I hope it shall not be imputed as a crime in me to receive his favours. I am far from believing or imagining that the poor services I ever did, or can do, were in any degree proportionable to his majesty's bounty; yet since his goodness thought me fit for it, I hope many others will think so too; at least as fit as some men, who have received greater marks and proportions of it than I have done, and who, though they might serve much better, had not served so long. I forbear to enlarge upon this particular charge; because I conceive that it is now evident to many who were wrought upon by those who did not believe it themselves, to think my estate to be very great, that the infor-

mation they received was without ground: And whoever considers, that the first year after the king's coming in yielded justly more profit to the Great Seal than I ever received in all the years following, and some particular acts of bounty in his majesty conferred on me, without the least suit of my own, and unthought of by me, will believe that my fault is greater, in having no better an estate, than that what I have hath been gotten by corruption. I have none of his majesty's lands but what I bought, for as much as any body would pay for it, or those who had the same granted to them out of his majesty's bounty, and that grant confirmed by act of parliament: and, I presume, it cannot have fallen from his majesty's memory, and I am sure is well known to some persons of honour yet alive, that when his majesty was graciously pleased, at his first coming over, to offer me some land which had never yielded the crown any thing, I absolutely refused to receive it, because it was generally thought to be of great value, as I believe it is; and therefore I would not expose myself to the envy which naturally attends such donations, having in truth never had an immoderate appetite to make haste to be rich; and as much apprehended the being accused of Witchcraft or Burglary, as of Bribery and Corruption. In a word, I do declare, that my debts being discharged for which I pay interest, all my estate is not worth, being sold, the money I have received from his majesty's own royal bounty, and far from being suitable to the quality I yet hold; and which was never obtained by my own ambition, as many persons of honour yet alive can testify.

The Ninth Article is, "That I introduced an arbitrary government in his majesty's foreign plantations, and have caused such as complained thereof before his majesty and council, to be long imprisoned for so doing."

Though I cannot possibly comprehend the full meaning of this article, yet because I have heard of many discourses made of the authority I assumed over the plantations, and the great advantage and profit I have drawn to myself from thence, I am very willing to take this occasion to relate all that I know, and all that I have done with reference to any of his majesty's plantations; declaring in the first place, that at his majesty's return, and before, I did use all the endeavours I could to prepare and dispose the king to a great esteem of his plantations, and to encourage the improvement of them by all the ways which could reasonably be proposed to him; and I was confirmed in this opinion and desire, as soon as I had a view of the entries in the Custom-House, by which I found what a great revenue accrued to the king from those plantations, inasmuch as the receipts from thence had upon the matter

* Some particulars respecting the matter of this Article are to be found in Edwards's Hist. of the West Indies.

repaired the decrease and diminution of the customs which the late troubles had brought upon other parts of trade, from what it had formerly yielded. The first consideration that offered itself before the king, that related to the plantations, was concerning the Barbadoes, which having been most discoursed of since, and, as I hear, with some reflections upon me of partiality and injustice, I shall, in the first place, set down all I know in that affair, and how I came to speak in it.

Before the beginning of the late troubles, the king had granted the island of the Barbadoes to the earl of Carlisle and his heirs for ever, upon a supposition that it had been first discovered, possessed, and planted at his charge; and the said earl sent a governor and people thither, and enjoyed it to his death, and by his will settled it for the payment of his debts, which were very great: the troubles falling out in a short time after, little or no profit had been drawn from thence towards the satisfaction of those debts, and the executors and trustees totally neglected the taking care of it, or prosecuting the plantation; but in and after the war, many citizens, merchants, and gentlemen, who were willing or forced to withdraw themselves from England, transported themselves thither, and there planted, without asking any body's leave, or without being opposed or contradicted by any body. About the year 1647, or thereabouts, the late earl of Carlisle, son and heir of the former earl, to whom the inheritance of that Island belonged, treated with the late lord Willoughby of Parham, how that island might be so ordered, that the plantation might be advanced, and profit made by it, which would at last redound to himself when the debt should be paid. The late king was then in the hands of the army; and with his approbation and consent, it was agreed between the said Earl and the said Lord, that a lease should be made by the earl of Carlisle to the lord Willoughby, of all the profits which should arise out of that plantation for the term of twenty-one years, as I remember; a moiety of the whole profits to be received by the lord Willoughby himself, for his own use, and recompence of his charge and pains; and he was likewise to receive a commission from the said earl, to be governor of that and the rest of the Caribbee islands (all which were comprehended in the Charter granted by the king to the earl of Carlisle), and that a commission should likewise be procured from the king, or the prince of Wales, by which the said lord Willoughby was to be constituted governor of the said islands. About that time the fleet, then in the Downs, returned to their obedience to the king, withdrawing themselves to the coast of Holland, to offer their service to the prince of Wales, his majesty that now is; the lord Willoughby coming likewise over then to him, to serve him in any condition he pleased to employ him. I need not speak of the disappointments of that summer, and the ill success of that fleet; but all those hopes being

vanished, and there being no present employment for the lord Willoughby, he then informed the prince of what had passed between the earl of Carlisle and him, with his father's consent; which his highness had likewise received from the king himself, with much recommendation of the lord Willoughby. I was then attending upon the prince in Holland, as one of the king's counsel assigned by him for that service. Upon the understanding of this whole case, the prince, upon the unanimous advice of the council, thought fit to grant such a commission of governor of the Barbadoes and other islands, as he desired; and he had the more reason to desire it, (notwithstanding the earl of Carlisle's grant and commission), because the principal planters upon the Barbadoes had been officers in the king's army, or of manifest affection to him, or always looked upon as of his party. With this commission the lord Willoughby had, at his great charge and expence, transported himself to the Barbadoes, and was there received as governor; and made a contract with the planters, that so much should be paid upon the hundred to the earl of Carlisle, to whom the propriety of the whole belonged. But before this agreement could be well executed, or any profit drawn from thence, the island was reduced to the service of the parliament, and of Cromwell, and a governor appointed by them; the lord Willoughby being sent into England, where he remained till the king's return, and had given unquestionable evidence of his affection to the king's service, for which he had often been committed to prison before and after Cromwell's death.

As soon as the king returned, the lord Willoughby (who had then eight or nine years to come of his lease formerly granted to him by the earl of Carlisle, who was then likewise living, and ready to do any other act to the lord Willoughby's advantage) resolved to return himself to the Barbadoes, and desired the king to renew his commission to him for the government; which his majesty was very willing to do, as to a person he esteemed very much, and who had spent very much of his own fortune, as is notoriously known, in that service; but the Barbadoes and all those other islands were now become of another consideration and value than they had been of before the troubles; the Barbadoes itself was (by that confluence and resort thither as was mentioned before), so fully planted, that there was no room for new comers, and they had sent very many of their people to the other islands to plant; many citizens of London had raised very great estates there, and every year had a great revenue thence; and the king's customs from that one island came to a very great sum of money yearly. All these men, who had entered upon that plantation as a waste place, and with very great charge brought it to that perfection, and with great trouble, began now to apprehend that they must depend upon the good will of the earl of Carlisle and lord Willoughby for the enjoyment of their estates there, which they

looked upon as their own; all these men joined together in an appeal to the king, and humbly prayed his protection: and that they might not be oppressed by those two Lords, they said, they were the king's subjects; that they had repaired thither as to a desolate place, and had by their industry obtained a livelihood there, when they could not with a good conscience stay in England; that if they were now left to those Lords to ransom themselves, and compound their estates, they must leave the country, and the plantation would be destroyed, which yielded his majesty so great a revenue; that they could defend themselves by law against the earl of Carlisle's title, if his majesty did not countenance it by a new grant of the government to the lord Willoughby; and therefore were suitors to his majesty not to destroy them by that countenance. At the same time, the creditors of the late earl of Carlisle (whose debts were to be satisfied by the profits of that plantation, by the will and settlement of the said earl) petitioned the king that they might be first provided for; their principal money due to them at the death of the earl amounted to no less than 50,000*l.* of which they had never yet received one penny; and therefore that the profits which should arise ought in the first place to be applied to them, there having been many families utterly ruined for want of their money so due to them. The king appointed to bear all the several pretences at the council-board, where they all attended with their counsel; and after his majesty had spent three or four days himself in hearing the several allegations, and finding new pretences and difficulties every day to arise (which shall be mentioned anon), his majesty appointed several of my lords of the council to consider of the whole matter, and to confer with the several parties, and if it were possible to make an end between them by their own consent; otherwise to report the several titles to his majesty, with such expedients as in their judgments they thought most likely to produce a general satisfaction, without endangering the plantation, the preservation whereof his majesty took to heart. I had the honour to be one of that committee, and took very much pains in reading the charters, grants, and leases, and many other papers and dispatches which concerned that affair, and conferred with several of the persons interested, to the end that I might the better discern what could be done, having never understood or heard any thing of the matter, or that concerned that plantation, otherwise than what I have before set down upon the dispatch of the lord Willoughby in Holland; nor had I the least inclination or bias to any party. Upon the hearing all the allegations before my lords, the several pretences and titles appeared to us to be these; which we afterwards reported to the king.

The lord Willoughby demanded nothing from the king but his commission to be governor for the remainder of the years which had been granted to him by the earl of Carlisle,

to the end that he might receive one moiety of those profits which should arise to the earl, and which had been assigned to him with the consent and approbation of the late king, and his majesty that now is, upon which he had undertaken that voyage, and spent so much of his estate.

The earl of Carlisle, while this contention was depending, died, and by his will devised his interest in the Barbadoes to the earl of Kinnoul, who likewise petitioned the king for the preserving his right; but neither he, nor the person under whom he claimed, had any pretence till all the debts were satisfied, nor did the earl of Kinnoul demand any thing till then; but believed the profit would arise yearly to so much, that the debts would quickly be satisfied, and then the whole would come to him.

There was another title that preceded the earl of Carlisle's, which was that of the earl of Marlborough, who alleged and proved it to be true, that the Barbadoes and those adjacent islands were first granted by the king to his grandfather the earl of Marlborough, then lord High-Treasurer of England, before the earl of Carlisle had any pretence thereunto; and that the Lord Treasurer had afterwards consented that the same should be granted to the earl of Carlisle, upon a full contract, that he should first receive for ever the sum of 300*l.* by the year out of the first profits of the plantations; which sum of 300*l.* had never yet been paid; and therefore the earl of Marlborough desired, as heir to his grandfather, to have satisfaction for the arrears, and that the growing rent might be secured to him.

The Creditors were of two kinds: The first, and who had first petitioned the king, as was said before, had an assignment made to them by the executors and trustees of the earl of Carlisle upon his will, and who, at his death, owed them the full sum of 50,000*l.*, or thereabouts: The other creditors consisted of several tradesmen and artificers, to whom the said Earl was indebted for wares and goods which had been delivered for his use, and of several servants for their arrears of wages; and all these had, during the late troubles, exhibited their bill in Chancery against the executors and overseers of the late Earl, and had obtained a decree in that court for their satisfaction, out of the profits of those plantations; which decree stood confirmed by the acts of judicial proceedings; and as I remember their debts amounted to 30,000*l.*, or thereabouts: None of the creditors in general, of one or the other sort, had ever received one shilling from the time that the Earl had first assigned it.

The Planters insisted positively, that the charter granted to the earl of Carlisle from the king was void in point of law; for which their counsel alleged many reasons: And having spent much time upon that argumentation, they concluded with two humble propositions to the king; first, That his majesty would give them leave to prosecute in his name in the Exchequer, and at their own charge, to repeal that

grant to the earl of Carlisle; by which they should be freed from the arbitrary power and oppression which would be exercised upon them under the colour of that charter, and his majesty might receive a great benefit to himself, by taking the sovereignty to himself, to whom it justly belonged: And in that case they offered in their own names, and for the rest of the planters who were in the island, to consent to an imposition of so much upon the hundred, which they confidently avowed would amount to at least 10,000*l.* a year; out of which his majesty's governor might be well supported, and his majesty dispose of the overplus as he thought fit. Secondly, If his majesty would not suffer the charter to be repealed, that he would leave those who claimed under the earl of Carlisle's patent to their remedy at law, and leave the planters to their own defence; which they hoped in justice could not be denied to them, since they alone had been at the charge to settle the plantation, which brought so great a revenue every year to his majesty, when the Earl had not been at the least expence thereupon; and if his majesty should not assist their pretences with his royal authority, they must all quit the plantation, which would be to his majesty's great damage.

These being the several pretences of the several persons, and nothing being to be done by any agreement between themselves, their interests being so distinct and inconsistent with each others, his majesty thought fit, in the first place, to refer the consideration of the legality and validity of the patent to his counsel at law; who, upon full deliberation, after the hearing of all parties, returned their opinion, That their patent was void, and that his majesty might take the same into his own power. This report was no sooner made to his majesty, but that he very graciously declared, he would not from hence receive any benefit and advantage to himself, until all their pretences had received satisfaction; and that he would make no other use of avoiding the said Charter, than to dispose the profits of the plantation to those who in justice had any pretence in law or equity to receive the same; and therefore, that the lord Willoughby should proceed in his voyage to the Barbadoes, and should receive according to his bargain a moiety of the profits, and that the other should be disposed of for the satisfaction of the debts and other incumbrances; in order to which, his majesty appointed the same Committee of the Lords to meet again, and to adjust the several proportions.

When they met, they had all the persons concerned present with them, or ready to be called in upon any occasion; and they all appeared very glad that the king had taken the case and protection of the plantation upon himself, which was all the security the Planters had or could desire; and the Lords' first care was to make some computation of what might be depended upon as the yearly revenue that would arise upon the imposition within the island: But the Planters could not be drawn

to any particular agreement in that point, not so much as to consent to what should be imposed upon every hundred; but, on the contrary, declared, that too much had been undertaken in that kind by one of their own number (Mr. Kendale) in his discourse before the king in the council, and declared that the plantation could not bear the imposition he had mentioned; that whatsoever was to be done of this nature was to be transacted by an assembly in the island, and that all that they could promise for themselves was, that they would use their utmost endeavours with their friends in the island, that when the lord Willoughby should arrive there, and call an assembly, they should consent to as great an imposition as the plantation would bear; by which a good revenue would arise to the king for the purposes aforesaid.

The Creditors had great reason to be glad of the resolution his majesty had taken; for though it would be a long time before they could be fully satisfied out of a moiety of the profits, though it should arise to the highest computation; yet in time they should receive all, and should every year receive some: Which would lessen their debt, and relieve those who were in the highest necessities, of which there was a great number; whereas they had hitherto, in so many years, received not one penny; and it was evident, that without his majesty's authority they never should, since the planters were resolved never to consent to any imposition, or submit to any authority that should be exercised under the earl of Carlisle's patent without a due course of law, the way to obtain which would be very difficult to find out; and they understood well enough, that without his majesty's grace and bounty to them, the repeal, or avoiding the earl of Carlisle's patent, would put a quick end to all their pretences.

The greatest difficulty that did arise was from the earl of Kinnoul, to whom the last earl of Carlisle had devised these islands by his will; and he had a great mind to go thither himself, and take possession of his right; and his counsel had persuaded him, that the king's charter granted to the first earl of Carlisle was good and valid in law, and that they believed they could maintain and defend it in any court of justice. Then his own estate in Scotland was so totally lost by the iniquity of the times, and by his father's having so frankly declared himself for the king, when very few of that nation lost any thing by their loyalty, that he had very little left to support himself; and therefore was willing to retire into any place abroad, where he might find but a bare subsistence: But when he considered again, that he could have no pretence to any thing in the Barbadoes, till after all the creditors were fully satisfied, and how long it was like to be before they could be satisfied, there remaining still due to the creditors of both kinds no less than fourscore thousand pounds sterling principal money, he did not believe that his insisting upon the patent would be worth the charge and hazard he met

inevitably be put to; and therefore, upon further deliberation with his friends, he willingly referred himself and all his interest to the king's gracious determination, as all the rest of the pretenders and interested persons had done.

The case being thus fully stated to the Lords, and every man's interest or pretence clearly appearing to them, they considered seriously amongst themselves what they might reasonably propose to the several persons, in order to their agreement amongst themselves; and that proving ineffectual, what advice they might reasonably give his majesty. They were unanimously of opinion, not to advise his majesty to cause the patent to be called in question: for though they doubted not, upon the opinion of his learned counsel, that the same would be adjudged void and illegal, yet they did not think it a seasonable time, when the nation is so active and industrious in foreign plantations, that they should see a Charter or patent questioned, and avoided, after it had been so many years allowed and countenanced, and under which it had so long flourished, and was almost grown to perfection; and that since his majesty had declared, that notwithstanding any right of his own, all possible care should be taken for the satisfaction of the creditors, as well as for the preservation and support of the plantation, it would be equally equitable and honourable in his majesty, not to leave the earl of Kinnoul the only person unconsidered, and bereaved of all his pretence; but that they would humbly move his majesty, that he would graciously vouchsafe to assign some present maintenance to the said earl, which his unhappy condition required, out of the revenue which should be there settled, and until the debts should be paid: and that after that time such an augmentation might be made to him as his majesty in his royal bounty should think fit; in consideration whereof the earl should procure the patent to be brought in and surrendered: which he promised should be done accordingly, as soon as the settlement should be made of that proportion which should be assigned to him.

That the lord Willoughby should enjoy the benefit of his former contract with the earl of Carlisle, and approved by his majesty, during the remainder of those years which are not yet expired; that he should make what haste he could thither, and call an Assembly, to the end that such an imposition might be agreed upon to be paid to his majesty as should be reasonable, in consideration of the great benefit they had already and should still enjoy, in being continued and secured in their several plantations, of which as yet they were, as it were, but tenants at will, having no other pretence of right but the possession; and therefore, that those merchants and planters who had petitioned the king, should, according to their obligation and promise made by them to his majesty, use all their credit with those in the Island, that the imposition might arise to such a proportion that the revenue might answer the

ends proposed, and that one moiety of that revenue should be enjoyed by the lord Willoughby for his term.

That the annuity of 300*l.* a year should be paid to the earl of Marlborough, according to the original contract mentioned before; and that the assignment that his majesty would likewise be pleased to make to the earl of Kinnoul, should be likewise first paid; and then that the remainder of that moiety should be received to the use of the creditors; and that when the lord Willoughby's term should be expired, his majesty should be desired, after the reservation of so much as he should think fit for the support of his governor, that all the remainder might be continued towards the creditors, whilst their just debts should be paid.

These particulars appearing reasonable to the Lords, all persons concerned were called, and the same communicated to them, who appeared all well contented; and thereupon the Lords resolved to present the same to his majesty, which they did accordingly at the board, and his majesty, with a full approbation and advice of the whole council, ratified the same; whereupon that Order was made by his majesty in council, which comprehends all the particulars mentioned before, which was delivered to the lord Willoughby, with his majesty's express command, that he should see it punctually and precisely executed: and the like Order was delivered by the clerk of the council to every other person mentioned who desired the same: To which Order I do for the more certainty refer myself, being in no degree confident (having at this time no other help than my memory) that it is set down with that exactness as it ought to be. As I have throughout this affair taken very great pains to reduce it to this particular agreement, which at that time seemed to be satisfactory to all the persons concerned, so I had not the least temptation of particular benefit to myself; and I do still believe it to be very just and reasonable, and agreeable to his majesty's justice and goodness, all circumstances being considered; and though it may be, in strictness of law, and by the avoiding the grant made to the earl of Carlisle, his majesty might have possessed himself of the whole island, without any tender consideration of the planters or of the creditors, I am not ashamed that I never gave his majesty that or the like counsel, in this or any other matter of the like nature; and if I had, I am confident his majesty would have abhorred it, and not have thought the better of me for giving it.

The other part of this Article, That I have caused such as complained of the arbitrary government in the plantations before the king and council, to be long imprisoned for so doing, doth refer, I suppose, to the commitment of one Farmer; who being sent over a prisoner by the lord Willoughby, in a ship that came from thence, made his appearance at Oxford, his majesty being then there in the sickness-time, which was the first time I ever heard of.

the man, or of the matter; and at the same time one of the Secretaries of State received a letter from the lord Willoughby, which was sent by the same ship, in which his lordship had sent a direct, full charge of Mutiny, Sedition, and Treason against him; and by his letter informed the Secretary of all the behaviour and carriage of the said Farmer, with all the circumstances thereof; and that he had, by his seditious practices, prevailed so far upon a disaffected party in that island, that the lord Willoughby was obliged in the instant to send him aboard the ship, without which he did apprehend a general revolt in the island from his majesty's obedience: and the lord Willoughby likewise desired that Farmer might not be suffered to return thither before the island should be reduced to a better temper. The man was called in before the king and council, and the charge which the lord Willoughby had sent read to him: the greatest part whereof he could not deny; and in his discourse upon it behaved himself so pre-emptorily and insolently before the king, that his majesty thought it very necessary to commit him, nor did any one counsellor then present appear to think otherwise: and I do confess, that the discharging him from his imprisonment was some time afterwards moved, and that I was always against his discharge; being of opinion that it was impossible for the lord Willoughby, or any other governor in any of the plantations, to preserve his majesty's right, and support the government, if he should be so far discountenanced, that a man sent over by him as a prisoner, under such a particular and so heinous a charge, should be upon his appearance here set at liberty; but my opinion was, that he should be sent back a prisoner thither, that he might be tried by the law and justice of the island, and receive condign punishment for his offence. And I cannot deny, but that I am still of the same opinion; and if it be an error, it proceeds from the weakness of my understanding, which is not in my power to reform.

What I have here set down, is all that occurs to my memory with reference to the island of the Barbadoes; which being not particularly mentioned in the Article, but comprehended under the general expression of his majesty's foreign plantations, I take myself obliged to give some answer even to that general: and I hope it will not be imputed as a crime to me, if I have taken more pains than other men in that important service of his majesty concerning his foreign plantations, which I did not think was enough taken to heart; and if my desire or readiness to take any pains, or give any assistance to the advancement of that service, did induce many persons to apply themselves to me on those occasions, I hope it shall not be charged upon me as over activity, or ambition to ingross more business into my hands than I was intuled to; for which I have this excuse to make for myself, that I found the pains I took to be acceptable to his majesty: and I was so far from having any particular de-

sign or advantage to myself, that I do profess and declare, that from all or any of his majesty's foreign plantations I never had the least reward, or the least present made to me, except that the now lord Willoughby once told me, that his brother had sent over some pieces of the speckled wood which grows in Surinam, with direction, that if I liked it, I might have what I would of it; whereupon I had some pieces, which I thought might have been applied to the making of cabinets, or the adorning of wainscot; but as they were very small, so the middle of every piece was wind-shaken and rotten, that they could not be applied to any considerable use; and except some blocks of walnut tree which the governor of Virginia sent to me, and of which I made some table boards and frames for chairs, the workmanship whereof cost me much more than the wood was worth: and these two particulars contain all the rewards and presents, or profit, that ever I received from all his majesty's foreign plantations, or any body to my use.

The Tenth Article is, "That I did reject and frustrate a proposal and undertaking approved by his majesty, for the preservation of Nevis and St. Christophers, and reducing the French plantations to his majesty's obedience, after the commissions were drawn for that purpose; which was the occasion of so great loss and damage in those parts."

I never did reject or frustrate any such proposal or undertaking, never taking upon me in the least degree to make a judgment of things of that nature, nor was ever any such proposal made to me; but I do very well remember, that his majesty himself did once deliver to the council a paper, which he said one of his servants, Mr. Marsh, had delivered to him, containing some propositions for ships and men to be sent by his majesty for the recovery of St. Christophers, which had been newly taken by the French*. Upon the

* The following purports to be the French king's account of the conquest of St. Christophers, See the *Euvres de Louis xiv.* vol. 2, p. 180, Paris ed. of 1806.

"Peu de temps après que la guerre eut été déclarée aux Anglais, ne doutant point que dans les îles, où mes sujets étoient mêlés avec eux, on n'en vint aux derniers actes d'hostilité, j'avois fait promptement embarquer huit cents hommes, lesquels même j'avois tirés des places les plus voisines de la mer, afin qu'ils arrivassent plutôt au secours de leurs compatriotes; mais j'appris peu de temps après que, quelque diligence qu'ils eussent pu faire, mes vœux et ma fortune étoient arrivés plutôt qu'eux à la défense de ces colonies. Il s'étoit rencontré, par je ne sais quelle aventure, que dans l'île de Saint Christophe, les Français et les Anglais en même temps avoient appris la déclaration de guerre; mais comme l'état de leurs affaires étoit fort différent ils avoient pris aussi des résolutions très-différentes. Les Français qui

reading of which paper and propositions, the same were referred to the consideration of the lord-general, one of the secretaries of state, and to the vice-chamberlain, as I remember, who were to confer with Mr. Marsh, and such others as joined with him; and they were at the same time appointed to consider of another proposition delivered in writing by the now lord Willoughby and some merchants of London, who were planters in the Barbadoes, for the supplying and better securing that island, and the rest of those Caribbee islands; and for the reducing and recovering any of them which were or should be taken by the enemy; upon the latter of which somewhat was afterwards done: And if the other concerning Nevis and St. Christophers was rejected, of which I know nothing, I presume it was, because it either appeared unpracticable, or not consistent with his majesty's other affairs.

The Eleventh Article is, "That I advised and effected the sale of Dunkirk to the French king, being part of his majesty's dominions, together with the ammunition, artillery, and all sorts of stores there, and for no greater value than the said ammunition, artillery, and stores were worth."

ne se pouvoient compter plus de seize cents dans toute l'île, avoient jugé qu'il leur seroit plus avantageux d'entretenir la paix que d'en venir aux mains et en avoient même fait faire quelque ouverture qui fut méprisée par les Anglais; car ceux-ci qui étoient pour le moins six mille, ne doutant pas qu'ils ne dussent être les plus forts, s'étoient incontinent résolus à passer au fil de l'épée tous les Français qu'ils rencontroient dans le pays, et cela même leur avoit été commandé par leur vice-roi, comme on le reconnut après la mêlée (l'ordre s'en étant trouvé en original dans la poche de l'un des morts). Mais cette résolution si facile à prendre, ne se trouva pas si facile à exécuter; car les Français, encouragés par la grandeur du péril, se comportèrent en cette occasion avec tant de valeur et de diligence, qu'ayant en un même jour rendu quatre combats différens contre diverses troupes des ennemis, ils les défirent en toutes rencontres, et après en avoir tué mille des plus vaillans, se trouvant enfin sans force et sans poudre, ils témoignèrent néanmoins tant de résolution qu'ils contraignirent ce qui restoit d'ennemis à des condition honteuses pour des gens qui étoient encore trois fois plus forts que nous. Les principales furent, qu'ils rendroient à l'instant tous les forts qu'ils tenoient, et qu'ils sortiroient de l'île entière, ou me prêteroient serment de fidélité. Mais dans ce choix qui leur étoit laissé, la plupart aima mieux sortir, et vendant aux Français leurs biens à vil prix, se retira paisiblement dans les autres îles voisines. Après lequel succès, les huit cents hommes dont je vous a déjà parlé, arrivant encore pour renfort aux colonies Françaises, je ne devois plus douter que cette île ne demeurât incommutablement en leur possession."

It is very well known to his majesty, and to several persons yet alive, that the parting with Dunkirk was resolved upon before ever I heard of it; and that the purpose was therefore concealed from me, because it was believed that I was not of that opinion, and that I would not concur in the advice. When it was afterwards proposed and debated when I was present, there likewise attending upon his majesty and his royal highness the late lord treasurer, two secretaries of state, and some other of the lords of the council; the reasons that were given for the parting with it, were, 1st, That the profit which did or could accrue to the kingdom by keeping it, was very inconsiderable, whether in war or peace; that by sea it was very little useful, it being no harbour, nor having place for our ships to ride safe in; and that if it were in the hand of the enemy, it could do us little prejudice, because three or four ships might block it up, and keep it from infesting their neighbours; and that though heretofore it had been a place of licence at sea, and had much obstructed trade by their men of war, yet that proceeded only from the unskillfulness of that time, in applying proper remedies to it; which was manifest by Cromwell's blocking them up, and restraining them when he made war upon them, insomuch as all men of war left that place, and betook themselves to other harbours; that it was so weak to the land (notwithstanding the great charge his majesty had been at in the fortifications, which were not yet finished,) by the situation and the soil, that it required as many men within yet to defend it, as the army should consist of that besieged it; otherwise, that it could never hold out and endure a siege of two months, as appeared clearly by its having been taken and retaken so many times within the late years; in all which times it never held out so long, though there was always an army at no great distance to relieve it. Secondly, That the charge of keeping and maintaining it, without any accidents from the attempt of an enemy, did amount unto above 120,000*l.* a year; which was a sum the revenue of the crown could not support, without leaving many other particulars of much more importance unprovided for; and this was not lightly urged, but the state of the revenue, and the constant and indispensable issues were at the same time presented. Thirdly, It could not reasonably be believed, but that if Dunkirk were kept, his majesty would be shortly involved in a war with one of the two crowns: The Spanish ambassador had already demanded the restitution of it in point of justice, it having been taken from his master by the late usurper, in a time when there was not only a peace between his majesty and the king of Spain, but when his majesty resided and was entertained by the catholic king in Flanders; and at the same time, both France and Spain inhibited their subjects from paying those small contributions to the garrison at Dunkirk, and endeavoured to restrain the governor himself from enjoying

some privileges which had been always enjoyed by him, from the time that it was put into Cromwell's hands; and it was then conceived, that as it would be very hard for the king to preserve a neutrality towards both crowns, even during the time of the war between them (which temper was thought very necessary for his majesty's affairs), so it would be much more difficult long to avoid a war with one of them upon the keeping of Dunkirk, if the peace that was newly made should remain firm and unshaken. Upon these reasons, (the major part whereof were out of my sphere, and I could only govern myself by the opinion of those who understood matters of that nature, nor could I answer any of the arguments which have been offered) his majesty resolved to ease himself of the burthen of maintaining Dunkirk, and to part with it in such a manner as might be most for his advantage and benefit. There remained then no other question, than into what hand to put it? And the measure of that was only who would give most money for it, there being then no inclination to prefer one before another. It was enough understood, that both crowns would be very glad to have it, and would probably both make large offers for it; but it was then as evident, that whatsoever France should contract for, the king might be sure to receive, and the business would be soon dispatched; whereas, on the other hand, it was as notorious, and as evident to his majesty, and to all who had any knowledge of the court of Spain, and of the scarcity of money there and in Flanders, that how large offers soever the Spaniard might make, they could not be able in any time to pay any considerable sum of money; and that there would be so much time spent in consults between Madrid and Brussels before it could be dispatched, that the keeping it so long in his majesty's hands would be an intolerable burthen to him; besides that, it seemed then probable that the Spaniard would shortly declare himself an enemy, for besides that he demanded Dunkirk as of right, so he likewise required the restitution of Tangier and Jamaica upon the same reason, and declared, that without it there could be no lasting peace between England and Spain, and refused so much as to enter upon a Treaty of Alliance with the king, before he would promise to make such a restitution. There wanted not in this conference and debate the consideration of the States of the United Provinces, as persons like enough to desire the possession of Dunkirk, from whence they had formerly received so much damage, and were like enough to receive more whenever they should be engaged in any war; and if in truth they had any such desire, more money might reasonably be required of them, and probably be obtained, than could be expected from either of the kings. But upon the discussion of that point, it did appear to every man's reason very manifest, that though they had rather that Dunkirk should be put into the hand of the Spaniard than delivered to France,

or than it should be detained by the English, yet they durst not receive it into their own possession; which neither of the kings would have approved of; and so it would have exposed them to the displeasure, if not to the hostility of both crowns. Upon this full deliberation, his majesty inclined rather to give it up to France than to Spain; but deferred any positive resolution till he had imparted the matter to the council-board, where the debate was again resumed, principally concerning the keeping or the parting with it; in which debate the memory and mention of what had been done in the House of Commons heretofore upon that subject was not omitted, nor the bill that they had sent up to the House of Peers for annexing it inseparably to the crown; but after a long debate of the whole matter, there was not, as I remember, above one Lord of the Council who offered his advice to his majesty against parting with it; and the ground of that Lord's dissenting was enough understood to have nothing of public in it. In conclusion, his majesty resolved, for the reasons aforesaid, to put it into the hands of France, if that king would satisfy his majesty's expectation in the money he would require for it.

M. D'Estrades came privately over to treat upon it without any character; but pretending to make it his way for Holland, whither he was designed for ambassador. After he had waited upon the king, his majesty appointed four or five of the Lords of his Privy-Council (whereof I was required to be one) to treat with Monsieur D'Estrades upon the sale of Dunkirk; and at that our first conference together, after we had in vain endeavoured to persuade him to make some offer, we did demand the sum of 700,000*l.* sterling to be paid by the king of France for the delivery of Dunkirk and Mardyke (which is always understood to be included when Dunkirk is mentioned) into his possession. Which sum appeared to him so stupendous, that he seemed to think the treaty at an end, and resolved not to make any offer at all on the part of the king of France; and so the conference broke up. At the next meeting he offered three millions of livres, which, according to the common account, amounted to 300,000 pistoles; which we as much undervalued: So that any further conference was discontinued till he had sent an express or two into France, and till their return: and afterwards, upon our insisting upon what he thought too much, and his offer of what we esteemed too little, the treaty seemed to be at an end, and he preparing for his return. In conclusion his majesty being fully as desirous to part with it as the king of France could be to have it, it was agreed and concluded, that upon the payment of 500,000 pistoles in specie at Calais to such persons as the king should appoint to receive it, his majesty's garrison of Dunkirk should be withdrawn, and that place put into the hands of the king of France: All which was executed accordingly; and I believe was a

greater sum of money than was ever paid at one payment by any prince in Christendom, upon what occasion soever. And that all this should not amount to a greater value than the ammunition, artillery, and stores were worth, which were delivered with it, is very strange, and cannot be supposed by any reasonable computation. I do very well remember, that in the treaty we did with much earnestness and resolution insist upon the detaining and transporting into England the cannon and other artillery and ammunition: but Monsieur D'Estrades would not consent to it, it being, as he said, necessary for the defence of the place, which probably might be attacked by the Spaniard within few days after it should be delivered into the hands of the French; and upon our inserting that exception of the cannon and ammunition in our demand, he was at last induced to consent to the payment of 500,000 pistoles, which he had never before yielded unto; and when his majesty plainly discerned that the king of France would in truth give no more, and had caused some estimate to be made of the cannon and ammunition, the value whereof, as I remember, was not thought to arise to more than 20,000*l.* sterling, or thereabouts, his majesty resolved to accept what was offered, for which I have not heard that he hath ever since been sorry; and his majesty did at the same time resolve, and positively declare, that all the money which should be received for Dunkirk, should be brought to, and deposited in the Tower of London, and so part of it applied to any ordinary occasions, but to be preserved for some pressing accident, as an insurrection, or the like, which was reasonably enough apprehended; and I presume it was all issued out in such a manner, and at such seasons, as his majesty found necessary for his most important affairs; of the particulars whereof I can say nothing. This is all I can say concerning the sale of Dunkirk, and of my part in that transaction: To which I shall only add, that I acted that part in it which I was obliged by my duty to do, in obedience to the king's commands; and that before, or in, or after the transaction, I never received the value of one shilling for reward, or present, or any other consideration relating to that affair; and I believe the treatment I have received since my coming into France is an unquestionable evidence that that king did never take himself to be beholden to me for that, or any other service, as in truth he never was.*

* The following is given in the *Oeuvres de Louis XIV.* (*Memoires Historiques, Premiere Partie, p. 167, Paris ed. 1806.*) as that King's account of the transactions respecting Dunkirk.

Dunkerke vendu à la France.

"L'acquisition de Dunkerke n'étoit pas de si grande étendue, [He had just before given the history of the acquisition of Lorraine.] mais

The Twelfth Article is, "That I did unduly cause his majesty's letters patents under the great seal of England (to one Dr. Crowther) to be altered, and the inrollment thereof to be unduly razed."

When I first heard of this charge, I could not comprehend what the meaning of it was,

elle étoit d'une importance non moindre et d'une utilité plus certaine. Peu de personnes ont eu par quelle suite d'affaires cette place si considérable étoit passée entre les mains des Anglais, durant le ministère du cardinal Mazarin. Il faut pour cela remonter jusqu'à ma minorité et aux factions qui obligèrent deux fois ce ministre à sortir du royaume.

"Cromwel, à qui le génie, les occasions et le malheur de son pays avoient inspiré des pensées fort au-dessus de sa naissance, au commencement simple officier dans les troupes rebelles du parlement, puis général, puis protecteur de la république, et desirant en secret la qualité de roi, qu'il refusoit en public, enfié par le bon succès de la plupart de ses entreprises, ne voyoit rien de si grand, ni au-dedans, ni au-dehors de son lie, à quoi il ne pensât pouvoir prétendre; et bien qu'il ne manquât pas d'affaires chez lui, il regarda les troubles de mon état comme un moyen de mettre le pié en France par quelque grand établissement; ce qui lui étoit également avantageux, soit que la puissance royale se confirmât en sa personne et en sa famille, soit que le caprice des peuples et la même fortune qui l'avoient élevé si haut, entreprissent de le renverser. Il savoit de quelle sorte, presque tous les gouverneurs des places et des provinces traitoient alors avec le Cardinal Mazarin, et qu'à peine y avoit-il de fidélité parmi mes sujets, qu'achetée à prix d'argent ou par des récompenses d'honneur, telles que chacun s'avoit de les souhaiter. Il dépêche le colonel de ses gardes au comte d'Estrades, gouverneur de Dunkerke, il l'exhorte à considérer l'état des choses pour en tirer ses avantages particuliers, lui offre jusqu'à deux millions payables à Amsterdam ou à Venise, s'il veut lui livrer la place, et de ne faire jamais de paix avec la France, sans obtenir pour lui les dignités et les établissemens où il peut aspirer. Il ajoute, que les affaires du cardinal son bienfaiteur, et qui l'avoit mis dans ce poste, sont désespérées, n'y ayant pas d'apparence que ce ministre, dont on avoit mis la tête à prix, puisse par ses propres forces revenir ni dans le ministère, ni dans l'état; qu'il ne le soutiendra pas seul avec Dunkerke, mais périra avec lui. Si toute fois il veut porter son affection et la reconnaissance pour lui jusqu'au bout, qu'il prenne cette occasion de le servir utilement par la seule voie peut-être que sa bonne fortune lui ait laissée de reste; qu'il peut offrir au cardinal, avec la même condition de remettre Dunkerke aux Anglais, nonseulement les deux millions, mais aussi tels secours de troupes qui lui seront nécessaires pour rentrer en France; qu'il se fera par-là, auprès de lui,

being most assured that I had never caused any alteration to be made in any of his majesty's letters patents under the great seal, or the inrollment thereof to be razed; but upon

un mérite, après lequel, si ce ministre est rétabli, il n'y a rien qu'il n'en doive espérer.

“ D'Estrades, par une conduite très-louable, après avoir obligé cet envoyé à lui faire ces propositions dans un conseil de guerre, et ensuite à les signer, le renvoie à Cromwel avec sa réponse: il se plaint qu'on l'ait cru capable d'une infidélité, ni de rendre cette place par d'autres ordres que les miens; que tout ce qu'il peut, est de me proposer à moi-même la condition des deux millions, et en même temps celle d'une étroite alliance avec moi, par laquelle le Protecteur s'engagea à rompre sur mer et sur terre avec les Espagnols; à me fournir dix mille hommes de pié et deux mille chevaux, pour leur faire la guerre en Flandre; à entretenir cinquante navires de guerre sur les côtes, durant les six mois de l'été, et une escadre de quinze durant l'hiver pour croiser la mer, agissant de concert suivant les desseins qu'on pourroit former ensemble.

“ Cromwel accepta ces propositions qui me furent au-si-tôt envoyées par d'Estrades à Poitiers, où j'étois, et n'arrivèrent que deux jours après le retour du Cardinal Mazarin. Ce Ministre les trouva très-avantageuses, ayant pour maxime de pourvoir, à quelque prix que ce fût, aux affaires présentes, et persuadé que les maux à venir trouvoient leur remède dans l'avenir même.

“ Mais le garde des sceaux Châteauneuf, qu'on avoit été obligé de rappeler durant ces troubles, l'emporta contre lui dans le conseil et auprès de la reine ma mère, et les fit absolument rejeter. Cromwel ayant reçu cette réponse, signa le même jour un traité avec les Espagnols, leur fournit dix mille hommes et vingt-cinq vaisseaux pour le siège de Gravelines et de Dunkerke, qui par ce moyen furent prises sur moi en la même année, l'une à la fin de Mai, l'autre au 22 Septembre* mais au profit des Espagnols seulement.

“ Cependant mon autorité s'étant affermie dans le royaume, et les factions qu'ils y fomentoient étant absolument dissipées, ils furent réduits quelque temps après à ne pouvoir soutenir que difficilement l'effort de mes armes en Flandre. Cromwel, qui ne s'étoit lié avec eux que pour cette entreprise particulière, et qui avoit toujours augmenté depuis en pouvoir et en considération dans toute l'Europe, se voyoit également recherché de leur côté et du mien; ils le regardèrent comme l'unique ressource à leurs affaires de Flandre, et moi comme l'unique obstacle à leurs progrès en un temps où je voyois la conquête entière de ces provinces presque certaine, si on ne m'accordoit tout ce que je pouvois souhaiter pour la paix. Lui, qui n'avoit pas oublié son premier dessein de s'acquérir un

* (1652.) Henault dit le 16. C'est la date adoptée par d'Avrigni, et la véritable,

enquiry I was informed, that Dr. Crowther, who was chaplain to his royal highness the duke of York, and had attended upon his person during the whole time that his highness

poste considérable au-deçà de la mer, ne vouloit se déterminer qu'à cette condition, proposoit en même temps aux Espagnols de se joindre à eux dans cette guerre, d'assiéger Calais qui lui demeurerait, ce qu'ils étoient prêts d'accepter avec joie, et à moi d'assiéger Dunkerke et de le lui remettre.

“ Le Cardinal Mazarin, à qui cette ouverture n'étoit pas nouvelle, et qui l'avoit approuvée autrefois, lors même que Dunkerke étoit au pouvoir des Français, s'en trouva sans doute moins éloigné. Et bien que j'y eusse beaucoup de répugnance, je m'y rendis enfin, non-seulement par le cas que je faisois de ses conseils, mais aussi par les avantages essentiels que j'y trouvois pour la guerre de Flandre, et par la nécessité de choisir de deux maux le moindre; ne voyant pas de comparaison, puisqu'il falloit nécessairement voir les Anglais en France, entre les y voir mes ennemis ou mes amis, ni entre à m'exposer à perdre Calais que j'avois, ou leur promettre Dunkerke que je n'avois pas encore.

“ Ce fut donc par cet accommodement, qu'après avoir repris Dunkerke, je le leur remis entre les mains, et il ne faut point douter que leur union avec moi, ne fût comme le dernier coup qui mit l'Espagne hors d'état de se défendre, et qui produisit une paix si glorieuse et si avantageuse pour moi.

“ J'avoue pourtant que cette place au pouvoir des Anglais, m'inquiétoit beaucoup. Il me sembloit que la religion catholique y étoit intéressée. Je me souvenois qu'ils étoient les anciens et irréconciliables ennemis de la France, dont elle ne s'étoit sauvée autrefois que par un miracle; que leur premier établissement en Normandie nous avoit coûté cent ans de guerre, et le second en Guienne trois cents ans, durant lesquels la guerre se faisoit toujours au milieu du royaume à nos dépens; de sorte qu'on s'estimoit heureux, quand on pouvoit faire la paix, et renvoyer les Anglais chez eux avec de grosses sommes d'argent pour les frais qu'ils avoient faits; ce qu'ils regardoient comme un revenu ou un tribut ordinaire. Je n'ignorois pas que les temps étoient fort changés, mais parce qu'ils pouvoient encore changer d'une autre sorte, j'étois blessé de cette seule pensée, que mes successeurs les plus éloignés me pussent reprocher quelque jour, d'avoir donné lieu à de si grands maux, s'ils pouvoient jamais y retomber; et sans passer même à ces extrémités sans aller si loin dans le passé ou dans l'avenir, je savois combien la seule ville de Calais qui leur étoit demeurée la dernière, avoit coûté de sommes immenses aux Français, par les ravages ordinaires de la garnison, ou par les descentes qu'elle avoit facilitées; ce poste ni pas un autre dans mon royaume, ne pouvant d'ailleurs être à eux sans être en même temps un ayle ouvert aux mutins, et sans fournir à cette nation des intelligences, dans tout le royaume,

was beyond the seas, upon his majesty's return into England, had obtained from the king his royal presentation to the parsonage of Tredington in the county of Worcester; which

sur-tout parmi ceux qu'un intérêt commun de religion lioit naturellement avec elle.

"Peut-être qu'en donnant Dunkerke, j'en avois point trop acheté la paix des Pyrénées et les avantages qu'elle m'apportoit, mais après cela il est certain que je ne pouvois trop donner pour racheter Dunkerke; ce que j'avois bien résolu dès-lors, mais qui à la vérité étoit difficile à espérer.

"Cependant, comme pour venir à bout des choses le premier pas est de les croire possibles; dès l'année 1661, renvoyant d'Estrades en Angleterre, je le chargeai très-expressément d'étudier avec soin tout ce qui pourroit servir à ce dessein, et d'en faire son application principale.

"Le roi d'Angleterre, nouvellement rétabli, avoit un extrême besoin d'argent pour se maintenir. Je savois que par l'état de son revenu et de sa dépense, il demeurait toujours en arrière de deux ou trois millions par an, et c'est le défaut essentiel de cette monarchie, que le prince n'y sauroit faire de levées extraordinaires sans le parlement, ni tenir le parlement assemblé, sans diminuer d'autant de son autorité qui en demeure quelquefois accablée, comme l'exemple du roi précédent l'avoit assez fait voir.

"Le Chancelier Hyde avoit toujours été assez favorable à la France; il sentoit alors diminuer son crédit dans l'esprit du roi, quoiqu'on ne s'en aperçût point encore, et voyoit dans l'état une puissante cabale qui lui étoit opposée; ce qui l'obligeoit d'autant plus à se faire des amis et protecteurs au dehors: toutes ces raisons ensemble le dispoisoient à me faire plaisir, quand mes intérêts pourroient s'accorder avec ceux du Roi son maître.

"D'Estrades exécutant mes ordres, et se servant adroitement de l'accès libre et familier qu'il avoit depuis long-temps auprès de ce prince, n'eut pas de peine dans les conversations ordinaires à le faire tomber sur Dunkerke. Le Roi qui disoit alors qu'il en vouloit faire sa place d'armes, l'entretenoit volontiers de ce dessein, comme un homme qui pourroit lui donner des lumières utiles, en ayant été long-temps gouverneur. Pour lui, approuvant tout, il faisoit seulement remarquer quelques inconvénients dans la situation des lieux, et sur-tout la grande dépense dont cette place avoit besoin nécessairement pour l'entretenir et la garder, jusque-là que le cardinal Mazarin qui la connoissoit par l'expérience du passé, avoit douté plusieurs fois, s'il eût été avantageux à la France de la conserver quand elle l'auroit pu. Le Roi répondoit, qu'il lui seroit fort aisé quand il voudroit se délivrer de cette dépense, les Espagnols lui offrant alors même de grandes sommes, s'il vouloit leur vendre Dunkerke. D'Estrades lui conseilloit toujours d'accepter leurs offres, jusqu'à ce que le Roi, plus pressé que nous ne pouvions, vint de lui-même à dire que s'il avoit

presentation, according to course, passed under the great seal of England; that when he brought his action upon the presentation against the intruder, who refused to give him

à en traiter, il aimeroit mieux que ce fût avec moi qu'avec eux.

"Ainsi commença cette négociation dont j'eus une extrême joie, et bien que sa demande fût de cinq millions, somme sans doute très-considérable, qu'il falloit même payer fort promptement, je ne trouvai pas à propos de la laisser refroidir là-dessus; le bon état où commençoient d'être mes finances, me permettant pour une chose aussi importante que celle-là, non seulement ces efforts, mais de plus grands. La conclusion du traité se fit toutefois à quatre millions payables en trois ans, tant pour la place que pour toutes les munitions de guerre, canons, pierres, briques et bois. Je gagnai même sur ce marché cinq cent mille livres, sans que les Anglais s'en aperçussent. Car ne pouvant s'imaginer, qu'en l'état où on avoit vu mes affaires peu de temps auparavant, j'eusse moyen de leur fournir promptement cette grande somme comme ils le desiroient, ils acceptèrent avec joie l'offre que leur fit un banquier, de la payer en argent comptant, moyennant cette remise de cinq cent mille livres; mais le banquier étoit un homme interposé par moi, qui faisant le paiement de mes propres deniers, ne profitoit point de la remise.

"La conséquence de cette acquisition me donna une inquiétude continuelle, jusqu'à ce que tout fût achevé, et ce n'étoit pas sans raison; car l'affaire au commencement très secrète, ayant été éventée peu à peu, la ville de Londres qui en fut informée, députa ses principaux magistrats, le maire et les aldermans, pour offrir au Roi toutes les sommes qu'il voudroit, à condition de ne point aliéner Dunkerke. De deux courriers que d'Estrade m'avoit dépêchés par deux divers chemins, avec deux copies du traité pour le ratifier, l'un fut arrêté sur le chemin de Calais par les ordres du roi d'Angleterre, l'autre étant déjà passé en France par Dieppe; et ce Roi à qui d'Estrades représentoit en même temps, qu'il ne s'agissoit plus de Dunkerke, mais de rompre pour jamais avec moi, si on ne me tenoit parole, quelque complaisance qu'il fût obligé d'avoir pour eux, leur fit approuver enfin comme une chose déjà faite et sans remède, ce qu'ils avoient résolu d'empêcher."—Oeuvres de Louis XIV, vol. 1, p. 167.

Then follow some reflections which the king makes for the benefit of his son the Dauphin upon the acquisition of Lorraine and the recovery of Dunkirk.

Respecting the Sale of Dunkirk, lord Clarendon thus expresses himself in the Continuation of his Life, p. 201.

"At or about this time there was a transaction of great importance, which at the time was not popular nor indeed understood, and afterwards was objected against the Chancellor in his misfortunes, as a principal argument of his infidelity and corruption; which was the sale

possession, and the record was carried down to the assizes in the country, when the doctor's counsel was to open his title, and thereupon was to produce the king's presentation, they found, upon perusal thereof, that either

of Dunkirk: The whole proceeding whereof shall be plainly and exactly related from the beginning to the end thereof.

"The charge and expence the crown was at; the pay of the land forces and garrisons; the great fleets set out to sea for the reduction of the Turkish pirates of Algiers and Tunis, and for guarding the narrow seas, and security of the merchants; the constant yearly charge of the garrison of Dunkirk, of that at Tangier, and the vast expence of building a mole there, for which there was an establishment, together with the garrisons at Bombay and in Jamaica, (none of which had been known to the crown in former times); and the Lord Treasurer's frequent representation of all this to the king, as so prodigious an expence as could never be supported; had put his majesty to frequent consultations how he might lessen and save any part of it. But no expedient could be resolved upon. The lord treasurer, who was most troubled when money was wanted, had many secret conferences with the general and with the best seamen, of the benefit that accrued to the crown by keeping of Dunkirk; the constant charge and expence whereof amounted to above 120,000*l.* yearly: and he found by them that it was a place of little importance. It is true that he had conferred of it with the chancellor, with whom he held a fast friendship; but found him so averse from it, that he resolved to speak with him no more, till the king had taken some resolution. And to that purpose he persuaded the general to go with him to the king and to the duke of York, telling them both, 'that the chancellor must know nothing of it:' and after several debates the king thought it so counsellable a thing, that he resolved to have it debated before that committee which he trusted in his most secret affairs; and the chancellor being then lame of the gout, he commanded that all those lords should attend him at his house. Beside his majesty himself and the duke of York, there appeared the lord treasurer, the general, the earl of Sandwich, the vice-chamberlain sir George Carteret, who had been a great commander at sea, and the two secretaries of state. When the king entered the room with the lord treasurer, he desired his majesty, smiling, 'That he would take the chancellor's staff from him, otherwise he would break his head.' When they were all sat, the king told him, 'They were all come to debate an affair that he knew he was against, which was the parting with Dunkirk; but he did believe, when he had heard all that was said for it and against it, he would change his mind, as he himself had done.' And so the debate was entered into in this method, after enough was said of the straits the crown was in, and what the yearly expence was.

by misinformation, or negligence of the clerk, instead of the county of Worcester, where the rectory was, the county of Warwick was inserted; upon which mistake, the doctor was necessitated to be nonsuited: and thereupon

"(1.) 'That the profit which did or could accrue to the kingdom by the keeping of Dunkirk was very inconsiderable, whether in war or peace. That by sea it was very little useful, it being no harbour, nor having place for the king's ships to ride in with safety; and that if it were in the hand of an enemy, it could do us little prejudice, because three or four ships might block it up, and keep it from infesting its neighbours: And that though heretofore it had been a place of license at sea, and had much obstructed trade by their men of war, yet that proceeded only from the unskilfulness of that time in applying proper remedies to it; which was manifest by Cromwell's blocking them up, and restraining them when he made war upon them, insomuch as all the men of war left that place, and betook themselves to other harbours. That it was so weak to the land (notwithstanding the great charge his majesty had been at in the fortifications, which were not yet finished) by the situation and the soil, that it required as many men within to defend it, as the army should consist of that besieged it; otherwise that it could never hold out and endure a siege of two months: as it appeared clearly by its having been taken and retaken so many times within the late years, in all which times it never held out so long, though there was always an army at no great distance to relieve it.'

"(2.) 'That the charge of keeping and maintaining it, without any accidents from the attempt of an enemy, did amount unto above 120,000*l.* by the year, which was a sum the revenue of the crown could not supply, without leaving many other particulars of much more importance unprovided for.' And this was not lightly or cursorily urged; but the state of the revenue, and the constant and indispensable issues, were at the same time presented and carefully examined.

"(3.) 'It could not reasonably be believed, but that if Dunkirk was kept, his majesty would be shortly involved in a war with one of the two crowns. The Spanish ambassador had already demanded restitution of it in point of justice, it having been taken from his master by the late usurper, in a time when there was not only a peace between his majesty and the king of Spain, but when his majesty resided, and was entertained by the Catholic king, in Flanders: And at this time both France and Spain inhibited their subjects from paying those small contributions to the garrison at Dunkirk, and endeavoured to restrain the governor himself from enjoying some privileges, which had been always enjoyed by him from the time that it had been put into Cromwell's hands.' And it was upon this and many other reasons then conceived, 'that

he forthwith made a journey to London, to advise with his counsel, and the most experienced clerks, how to recover the misfortune that had befallen him, and that his majesty's right might

as it would be very hard for the king to preserve a neutrality towards both crowns, even during the time of the war between them (which temper was thought very necessary for his majesty's affairs); so it would be much more difficult long to avoid a war with one of them upon the keeping Dunkirk, if the peace that was newly made should remain firm and unshaken.

Upon these reasons, urged and agreed upon by those who could not but be thought very competent judges, in respect of their several professions and great experience, the king resolved to ease himself of the insupportable burden of maintaining Dunkirk, and to part with it in such a manner as might be most for his advantage and benefit. There remained then no other question, than into what hand to put it: and the measure of that was only who would give most money for it, there being no inclination to prefer one before another. It was enough understood, that both crowns would be very glad to have it, and would probably both make large offers for it. But it was then as evident, that whatsoever France should contract for, the king would be sure to receive, and the business would be soon dispatched: whereas on the other hand it was as notorious and evident to his majesty, and to all who had any knowledge of the court of Spain, and of the scarcity of money there and in Flanders; that how large offers soever the Spaniard might make, they could not be able in any time to pay any considerable sum of money; and that there would be so much time spent in consult between Madrid and Brussels before it could be dispatched, that the keeping it so long in his majesty's hands would in the expense disappoint him of a good part of the end in parting with it. Besides that it seemed at that time probable, that the Spaniard would shortly declare himself an enemy; for besides that he demanded Dunkirk as of right, so he likewise required the restitution of Tangier and Jamaica upon the same reason, and declared "that without it there could be no lasting peace between England and Spain," and refused so much as to enter upon a Treaty of Alliance with the king, before he should promise to make such a restitution.

There wanted not in this conference and debate the consideration of the States of the United Provinces, as persons like enough to desire the possession of Dunkirk, from whence they had formerly received so much damage, and were like enough to receive more wherever they should be engaged in any war: and if in truth they should have any such desire, more money might be reasonably required and probably be obtained from them, than could be expected from either of the kings. But upon the discussion of that point, it did appear to

not be destroyed by such an oversight in the clerk; and it seems he was by them advised, as the usual way in cases of that nature, to petition the king, that in his majesty's pre-

every man's reason very manifest, that though they had rather that Dunkirk should be put into the hands of the Spaniard than delivered to France, or than it should be detained by the English; yet they durst not receive it into their own possession, which neither of the two crowns would have approved of, and so it would have exposed them to the displeasure if not to the hostility of both the kings.

Upon this full deliberation, his majesty inclined rather to give it up to France than to Spain; but deferred any positive resolution till he had imparted the whole matter to the council-board, where the debate was again resumed, principally, 'whether it were more counsellable to keep it at so vast a charge, or to part with it for a good sum of money.' And in that debate the mention of what had been heretofore done in the House of Commons upon that subject was not omitted, nor the bill that they had sent up to the House of Peers for annexing it inseparably to the crown; but that was not thought of moment; for as it had been suddenly entertained in the House of Commons, upon the Spanish Ambassador's first proposition for the restitution, so it was looked upon in the House of Peers as unfit in itself, and so laid aside after once being read (which had been in the first convention soon after the king's return), and so expired as soon as it was born. After a long debate of the whole matter at the council-board, where all was averred concerning the uselessness and weakness of the place, by those who had said it at the committee; there was but one Lord of the council who offered his advice to the king against parting with it: and the ground of that Lord's dissenting, who was the earl of St. Albans, was enough understood to having nothing of public in it, but to draw the negotiation for it into his own hands. In conclusion, his majesty resolved to put it into the hands of France, if that king would comply with his majesty's expectation in the payment of so much money as he would require for it: and a way was found out, that that king might privately be advertised of that his majesty's resolution, if he should have any desire to deal for it.

The advertisement was very welcome to the French king, who was then resolved to visit Flanders as soon as he should know of the death of the king of Spain, which was expected every day. Nor had he deferred it till then, upon the late affront his Ambassador had received at London from the Spanish Ambassador (who by a contrived and laboured stratagem had got the precedence for his coach before the other; which the king of France received with that indignation, that he sent presently to demand justice at Madrid, commanded his Ambassador to retire from thence, and would not suffer the Spanish Ambassador to

sence, the presentation might be mended, and Worcester inserted instead of Warwick, and that thereupon the great seal might be again affixed to it; all which was done accordingly, as in such cases is usual. And this is all I know of that affair.

The Thirteenth Article is, "That I have, in an arbitrary way, examined and drawn into question divers of his majesty's subjects concerning their lands, tenements, goods and chattels, and properties; determined thereof at the council table, and stopped proceedings at law, and threatened some that pleaded the statute of 17 Car. 1."

I must here again lament my own misfortune, that I am exposed to public reproach

remain in Paris till he should have satisfaction, and was resolved to have begun a war upon it), if the king of Spain had not acknowledged the fault of his Ambassador, and under his hand declared the precedence to belong to France; which declaration was sent to the courts of all princes: and so for the present that spark of fire was extinguished or rather raked up.

"The king sent M. D' Estrades privately to London to treat about Dunkirk, without any character, but pretending to make it his way to Holland, whither he was designed ambassador. After he waited upon the king, his majesty appointed four or five of the Lords of his council, whereof the chancellor and treasurer and general were three, to treat with M. D' Estrades for the sale of Dunkirk; when the first conference was spent in endeavouring to persuade him to make the first offer for the price, which he could not be drawn to: so that the king's commissioners were obliged to make their demand. And they asked the sum of 700,000*l.* sterling, to be paid upon the delivery of Dunkirk and Mardike into the possession of the king of France; which sum appeared to him to be so stupendous, that he seemed to think the Treaty at an end, and resolved to make no offer at all on the part of his master. And so the conference brake up.

"At the next meeting he offered three millions of livres, which according to the common account amounted to 300,000 pistoles, which the king's commissioners as much undervalued; so that any farther conference was discontinued till he had sent an express or two into France, and till their return: for as the expectation of a great sum of ready money was the king's motive to part with it, besides the saving the monthly charge; so they concluded that his necessities would oblige him to part with it at a moderate price. And after the return of the expresses, the king's commissioners insisting still upon what D' Estrades thought too much, and he offering what they thought too little, the Treaty seemed to be at an end, and he prepared for his return. In conclusion, his majesty being fully as desirous to part with it as the king of France could be to have it, it was agreed and concluded, 'that upon the payment of

under a general odious charge, without asserting any one particular, to which I might make my defence: I have therefore no more to say, but that I am very innocent as to any crime laid to my charge in this article; and I have been so far from examining and drawing into question any of his majesty's subjects concerning their lands, tenements, goods and chattels, and properties, and determining the same at the council table, and stopping proceedings at law, that I do not know or believe that any one case of that nature hath been ever determined there, at least when I have been present; I having always discountenanced all such addresses, and procured all petitions of that kind to be rejected as often as they have been tendered; and I take myself ob-

'500,000 pistoles in specie at Calais to such persons as the king should appoint to receive it; his majesty's garrison of Dunkirk and Mardike should be withdrawn, and those places put into the hands of the king of France: all which was executed accordingly. And without doubt it was a greater sum of money than was ever paid at one payment by any prince in Christendom, upon what occasion soever; and every body seemed very glad to see so vast a sum of money delivered into the Tower of London, as it was all together; the king at the same time declaring, 'that no part of it should be applied to any ordinary occasion, but be preserved for some pressing accident, as an insurrection or the like,' which was reasonably enough apprehended.

"Nor was there the least murmur at this bargain in all the sessions of the parliament which sat after until it fell out to some mens purposes to reproach the chancellor: And then they charged him "with advising the sale of Dunkirk, and that the very artillery, ammunition and stores amounted to a greater value than the king received for the whole;" when upon an estimate that had been taken of all those, they were not esteemed to be more worth than 20,000*l.* sterling; and the consideration of those, when the king's commissioners insisted upon their being all shipped for England, and the necessity of keeping them upon the place where they were, had prevailed with M. D' Estrades to consent to that sum of 500,000 pistoles. But whether the bargain was ill or well made, there could be no fault imputed to the chancellor, who had no more to do in the transaction than is before set down, the whole matter having been so long deliberated and so fully debated. Nor did he ever before, or in, or after the transaction receive the value of half a crown for reward or present, or any other consideration relating to that affair: And the treatment he received after his coming into France was evidence enough that that king never thought himself beholden to him."

Yet so lately as May 19, 1668, he had told the parliament: "Whosoever unskillfully murmurs at the expence of Dunkirk, and the other new acquisitions, which ought to be looked upon

liged to say, for the vindication of his majesty's honour and justice, that there have not been so many years passed since the erection of the council table, with so little disturbance or disquiet to the subjects concerning their lands, tenements, goods and chattels, and properties, as hath been since his majesty's happy

as jewels of an immense magnitude in the royal diadem, do not enough remember what we have lost by Dunkirk, and should always do if it were in an enemy's hands; nor duly consider the vast advantages those other dominions are like by God's blessing in a short time to bring to the trade, navigation, wealth, and honour of the king and kingdom. His majesty hath enough expressed his desire to live in a perfect peace and amity with all his neighbours; nor is it an ill ingredient towards the firmness and stability of that peace and amity, which his royal ancestors have held and maintained with them, that he hath some advantages in case of a war, which they were without." In his own account of this speech (Contin. of Life 165) he does not exhibit Dunkirk as an object of such paramount value as to be alone worthy of being named, but still he gives it precedence of the others. The following is the passage: He told them, "that the new acquisitions of Dunkirk, Mardike, Tangier, Jamaica, and Bombayne, ought to be looked upon as jewels of an immense magnitude in the royal diadem; and though they were of present expense, they were like in a short time, with God's blessing, to bring vast advantages to the trade, navigation, wealth and honour of the king and kingdom. His majesty had enough expressed his desire to live in a perfect peace and amity with all his neighbours; nor was it an ill ingredient towards the firmness and stability of that peace and amity which his royal ancestors had held with them, that he hath some advantages in case of a war, which they were without."

In the 7th volume of Thorloe's State Papers are several documents relating to Dunkirk. Among others there is at p. 714, a circumstantial account of the public revenues, and of other particulars of the place. It is in the form of a Report, which it seems probable was made to the Council of State, shortly after the deposition of Richard Cromwell, somewhat more than 13 months after it had been delivered up to his father, in June 1658.

The gross amount of the Public Revenue is stated thus:

	Guilthers.	£.
The State's Revenue - - - -	168,991	12,999
Governor's Do. - - - -	31,462	2,419
Town Do. - - - -	86,894	6,222
Town Major's Do. } besides perquisites. }	1,006	77

Burnet writes thus about Dunkirk: "But what he [Count Schomberg] pressed most on the king, as the business then in agitation, was concerning the sale of Dunkirk. The Spa-

return, nor hath the ordinary course of proceeding at law been less obstructed.

The Fourteenth Article is, "That I did cause Quo Warranto's to be issued out against most of the corporations of England by act of parliament, to the intent I might receive great sums of money from them for renewing their charters; which when they complied withal, I caused the said Quo Warranto's to be discharged, and prosecution thereon to cease."

I never caused any Quo Warranto to issue out against any one corporation in England, but by his majesty's express command, or by order of the board; which was always upon some miscarriage or misbehaviour in the corporation: and I do not remember that I ever

niards pretended it ought to be restored to them, since it was taken from them by Cromwell, when they had the king and his brothers in their armies: But that was not much regarded. The French pretended, that, by their agreement with Cromwell, he was only to hold it, till they had repayed the charge of the war: Therefore they, offering to lay that down, ought to have the place delivered to them. The king was in no sort bound by this. So the matter under debate was, whether it ought to be kept or sold? The military men, who were believed to be corrupted by France, said, the place was not tenable; that in time of peace it would put the king to a great charge, and in time of war it would not quit the cost of keeping it. The earl of Clarendon said, he understood not those matters; but appealed to Monk's judgment, who did positively advise the letting it go for the sum that France offered. To make the business go the easier, the king promised, that he would lay up all the money in the Tower; and that it should not be touched, but upon extraordinary occasions. Schomberg advised, in opposition to all this, that the king should keep it; for, considering the naval power of England, it could not be taken. He knew, that, though France spoke big, as if they would break with England unless that was delivered up, yet they were far from the thoughts of it. He had considered the place well; and he was sure it could never be taken, as long as England was master of the sea. The holding it would keep both France and Spain in a dependence upon the king. But he was singular in that opinion. So it was sold: And all the money, that was paid for it, was immediately squandered away among the mistresses creatures.

"By this the king lost his reputation abroad. The court was believed venal. And because the earl of Clarendon was in greatest credit, the blame was cast chiefly on him; though his son assured me, he kept himself out of that affair entirely. The cost bestowed on that place since that time, and the great prejudice we have suffered by it, has made that sale to be often reflected on very severely."

moved the king against any particular corporation, but that of Woodstock; and which my duty to his majesty obliged me to do, being intrusted by his majesty with the command of his house and parks there, and being his majesty's steward of his honour and manor of Woodstock, upon which the borough had always depended. His majesty having conferred that charge upon me, I was no sooner possessed of it by the death of the late earl of Lindsey, who enjoyed that place before, than I received a petition from several inhabitants and burgesses of the borough of Woodstock, who complained that the mayor and justices had lately procured their charter to be renewed; without the privity or consent of the borough; and that under pretence of renewing it, they had procured many new clauses to be inserted, and thereby reduced much of the government, which before depended upon the whole corporation, into their own hands; and had thereby likewise procured a piece of ground, the benefit whereof did formerly belong to all the burgesses, and was usually applied to the relief of such of them who were decayed in their estates, to be now granted to the mayor, and a select number of the justices, and the profits thereof to be at their disposal, to the great prejudice of the borough and the inhabitants thereof. I referred this petition to Mr. Justice Morton, who lived within four or five miles of Woodstock, and desired him to examine the truth of these allegations, and to certify me whether the complaints were just and reasonable; whereupon he took the pains to go over to the town, and confer with the mayor and justices, and heard the allegations of the petitioners; and upon the whole matter certified me, that he found several important alterations in the new charter from what had been in the old, and some new concessions; and at the same time, sir William Fleetwood, who is ranger of the parks, certified me, that since the renewing of their charter, the mayor and justices were not so good neighbours to his majesty's game, as they had formerly been, and had withdrawn many of those services which they had used to perform; and that when any trespasses were committed by those of the borough upon his majesty's woods or game, which happened very frequently, and complaint was thereof made to the mayor and justices, who had the sole jurisdiction within the borough, there was so slight and perfunctory examination thereof, that the prosecutors were wearied out, and no justice could be obtained. It was my duty to inform his majesty of these proceedings, who was much offended thereat, and thereupon gave directions to his attorney general to bring a Quo Warranto, and to repeal that charter which had been so unduly procured, and in which his majesty had been so grossly deceived and abused; and I believe there was the less vigour used in the prosecution of that Quo Warranto, because the mayor and justices, for some time, pretended that they would surrender the said

charter, and receive a new one in such manner as his majesty thought fit, though they afterwards changed their mind. And this is the only charter which I gave direction for the prosecution of, to the best of my memory; nor did I ever give direction, upon the receipt of any money, to discharge any Quo Warranto's, or cause the prosecution thereupon to cease; nor did I ever receive the least sum of money for the granting or renewing any charter, other than the usual fees received for the same by the clerk of the hanaper, and accounted to the great seal; which fee, as I remember, amounts to 13s. 4d. or thereabouts.

The Fifteenth Article is, "That I procured the Bills of Settlement for Ireland, and received great sums of money for the same, in a most corrupt and unlawful manner."

I do confess, if I have received the least sum of money for or upon the passing any bills for the settlement of Ireland, I have done the same in a most corrupt and unlawful manner; nor indeed have I been more solicitous in procuring any of the said bills to pass, or been more concerned in or for the passing them (except for his majesty's service, and the public peace), than any other counsellor present at those debates hath been; but because this aspersion upon my honour and my honesty hath been by so much industry contrived by some men, who very well know my innocence in that particular, and may yet have gained credit with many upon the confidence of bold reporters; I do not know a better way for my own entire vindication, than to set down an entire relation of all that hath passed by my hand, or with my privity, with reference to Ireland, since the time of his majesty's happy return into England. When his majesty found at his coming to Whitehall several persons of honour and quality deputed from Ireland, to tender the humble duty, obedience, and submission of that kingdom to his majesty's government and subjection; the present government of Ireland, at that time, being executed in a military way by those who had the command of that part of the army, which, upon the revolution in England, had declared their purpose and resolution to return to his majesty's obedience; and there could not be too much expedition used in settling it under those laws, and that form of government it had been formerly accustomed to. Every body remembers the multiplicity of business the king was incumbent to at that time, being to reduce his three kingdoms to that old order and form of government which they might in justice require and which for so many years had, by the confusion of the late civil war, been discontinued, and therefore it will not be much wondered at, that the settlement of Ireland did not proceed with that expedition as the distracted interests of that kingdom did require.

Within few days after the king's arrival at Whitehall, the commissioners or deputies from Ireland (for I know not under what other name

or title to mention them) taking notice of the trust the king then reposed in me, (a greater trust, God and the king well know, than I was in any degree ambitious of) addressed themselves to me, desiring that I would receive from them an information of the present state and condition of that kingdom; which his majesty had likewise commanded them to impart to me; and that I would assist them in procuring his majesty's favour, that as little time might be lost as was possible, in endeavouring to settle and compose the distracted condition of that kingdom: and upon conference with them, I quickly found that it was in a distracted condition indeed; so hopelessly distracted, that I could not comprehend any practicable way to compose it. There had been an act of parliament made in the beginning of the rebellion for the encouragement of adventurers; that was, to encourage all persons to bring in money for the carrying on the war, upon the assurance of having a recompense for their money out of the forfeited lands of those who were or should be in rebellion, according to an estimate of the values by the said act of parliament; in which, for their better security, there was likewise a clause, that his majesty should not grant a pardon to any of those rebels; and upon this invitation many honourable persons, and others had brought in great sums of money for the carrying on that war, upon the security aforesaid: But the rebellion shortly breaking out in England, the persons in power in both Houses quickly violated that whole act, by taking the monies raised, and lent for the service of Ireland, without, and contrary to the consent of who lent it, and applying it for the support of the rebellion in England; and employed those regiments of horse and foot, who were levied for Ireland, to serve against the king, under the command of my lord of Essex, and who did serve under his command, at the battle of Edge-hill; where some of them, out of the detestation of being so betrayed into rebellion, quitted my lord Essex his army, and went over to the king. The service of Ireland being thus neglected, and to such a degree that the rebels there increased in number and in strength, many persons of honour in that nation, who had contained themselves within their obedience, and were in no degree privy to the first insurrection and breaking out into rebellion, found it now necessary for their own preservation, to secure themselves in those towns and places which were possessed by the rebels, and so joined with them in their counsels; yet making all the professions of duty to the king, and of an impatient desire to return to their subjection; which many of them made good afterwards upon the first opportunity. By this means the rebels in Ireland advanced every day in power, and had several armies in the several provinces of the kingdom, much superior in power to the English forces, whilst they were every day diminished by their want of victuals, want of cloaths and want of pay, which

the parliament neglected to supply them with; and the king could not. His late majesty, after above a year's time that the rebellion in England had been prosecuted against him, notwithstanding all overtures of accommodation, found it necessary to make a cessation in Ireland; which was after some years transacted into a peace, which though it was quickly afterwards most wickedly and perfidiously broken by the Irish to their own destruction, yet many principal persons of honour and good fortune adhered afterwards constantly to the king, without ever swerving from their allegiance; and such men believed the full benefit of that peace, in being restored to their states which did in justice belong to them, and expected the same accordingly.

After the murder of his late majesty, the king that now is receiving an address from his Roman Catholic subjects in Ireland, with great acknowledgements of their past crimes and errors, and of ample professions of their duty and obedience for the time to come, during the time of his being in France, I sent the lord marquis of Ormond into Ireland as his lieutenant of that kingdom, and with authority to make such concessions to his Roman Catholic subjects as might win them to his obedience: and that thereby such an Union might likewise be made between his English and Irish subjects (the Lord Inchiquin having reduced the whole province of Munster, and the army, and garrisons thereof to make profession of fidelity to their king), that Dublin might quickly be recovered, which was the only considerable place that then continued in rebellion, and in which there were very many of known affections to the king, who would quickly have rendered that city to the lord lieutenant, if a great supply from the parliament, immediately after the murder of the late king, had not unhappily arrived the very day or two before the marquis of Ormond marched with his army to recover Dublin; and within very few weeks after, Cromwell himself landed there with a great army of horse and foot, and all provisions necessary for the support and maintenance of it.

It is not necessary in this place, and upon this occasion, to mention what befel that unhappy kingdom after Cromwell's arrival there: the quick and speedy reduction of towns and garrisons, the dissolving and dismissing of the troops and army under the command of the lord lieutenant, and he being forced to withdraw himself out of the kingdom, and to return into France; which, although it proceeded from the miserable and foolish jealousies of the Irish and then from their treachery and perfidiousness, yet those crimes did not cover the whole nation; yet there remained still very many persons of honour and quality, who never after were faulty to his majesty, and therefore expected the benefit of the last peace, likewise confirmed by his majesty that now is, as of justice belonging to them; and many of this condition (some whereof had never been in arms against the crown, but had faithfully served

in his majesty's army in England during the whole rebellion) transported themselves to his majesty beyond the seas, and many others were taken and put to death in Ireland.

After all opposition to the parliament was totally suppressed in Ireland, and the kingdom entirely at their devotion, they began then to think of executing the act of parliament of the seventeenth year of the late king, for satisfaction of the adventurers: But as they had from the beginning violated that act, by the misapplying the men and the money, as aforesaid; so they now preferred the gratifying and rewarding, and paying the arrears due to the officers and soldiers, by assigning them liberal proportions of the lands which they called forfeited, before they did any thing for satisfaction of the adventurers, except such only who for some other merit or interest had a title to their favour; and amongst the forfeited lands they reckoned all that which belonged to the church, to the marquis of Ormond, the lord Inchiquin, and all those who had adhered to the king, and constantly opposed the rebels there, as part, and distributed the same accordingly. So that at this time, when the commissioners for that kingdom attended his majesty, the officers and soldiers of the army, and some adventurers, were and had been in quiet possession for many years of all the church-lands, of all the marquis of Ormond's lands, and the lands of all other his majesty's faithful friends and servants; and yet there remained a general complaint amongst the adventurers, that they were in no degree satisfied what was due to them upon their adventures by the act of parliament, and desired the king that they might receive what was their due.

Cromwell had not exercised such a severity as to eradicate the whole Irish nation; but had transplanted them with so great rigour out of the other provinces into the province of Connaught, that there was scarce left one Irish family out of Connaught, where the usurper had assigned them severally such proportions as he thought recompence enough for the small possessions he had formerly allowed them out of their own estates, in those places where their fortunes had lain: And to this transplantation they had been forced to give their consent, having had nothing in their election but either to accept these assignments, or to have nothing to live upon in any other place. But now, upon his majesty's return, as well those men who had been transplanted thither out of other provinces, as those upon whose lands the other were transplanted as forfeited to the state, were now suitors to the king, that every one might be restored to his own; and that their past crimes might be expiated by the extreme sufferings they had sustained for many years; and that those men who had been as deep in rebellion as themselves, and continued much longer, and prospered better in it, might not be gratified and rewarded with their estates and fortunes.

Many persons of honour and reputation, as is said before, had repaired to the king whilst he

was beyond seas, and followed and attended him there; many regiments had been raised and transported with the consent and approbation of Cromwell, for the service of the two crowns of France and Spain; and many of those officers had served his majesty from the beginning, and had never been in rebellion, and upon his majesty's command, when he was in Flanders, brought their regiments over thither to serve as he should direct: and as the king had kept intelligence always with many of his well-affected subjects in England and in Scotland, so he had likewise done with some in Ireland, to the end that they might be ready to make use of the first opportunity that should be offered by any divisions in the army, or other conjunctures, to join with those who were most forward to advance the king's restitution; which many considerable men there had promised to do and in such seasons could have rendered themselves very useful; and all these men had some pretence to the king's favour, and an expectation to be restored, at least, to some part of their estates.

This was the perplexed estate of that kingdom when the king returned into England, and when these commissioners attended upon his majesty, and conferred with me; when I protested to them that there were so many intricacies in the business, and the whole kingdom involved in so many contradictory titles and interests, that I knew not what counsel to give, or what to propose; but that I would in public council give the best advice and assistance I could for the settling that kingdom, when they should make any such propositions to his majesty as were practicable. That which was first to be done, and which could only make all other expedients to be practicable, was the settling the government in such a form, and by such rules, as the kingdom had been accustomed to before the troubles; and that the course and courts of justice might be opened. Then the commissioners themselves proposed, as the first work incumbent upon his majesty, in piety honour and justice, that all such to whom the lands of the church, the lands of the marquis of Ormond, and of all his majesty's friends who had been faithful to him, should be forthwith removed, that the right owners might immediately be put in possession of what in right belonged to them; which was the more easily to be done because much of those lands remained undisposed of, and reserved for Cromwell himself, and much of the rest had been assigned to those officers who had been the king's murderers; and so those lands were free from all other title or pretence, but what the king himself could make to them. But then there was some caution and order to be observed; first to assign other recompence to such who were possessed (how erroneously soever) of any lands, either as adventurers upon the statute, or as soldiers, for the just arrears of their pay; and his majesty had declared before his coming into England there should be satisfaction given to all such persons; and the truth is, the whole kingdom

of Ireland was at that time so much possessed by the adventurers and soldiers, that it was thought very necessary in point of prudence, to remove none out of possession of what had been formerly assigned to them, and according to the rules of that time, until some other lands were assigned to them, which was not difficult to be done. Then the commissioners, discerning how much his majesty was concerned for many of those who had served him beyond the seas, and for others who claimed the benefit of the first and second treaty, undertook that his majesty should not be pressed in any of those particulars, but that all such persons should be preserved, and their estates secured; and thereupon a preamble was prepared, containing those provisions which were approved by the commissioners, who undertook to have such a bill transmitted as might be the foundation for a good settlement, and in which his majesty might make such alterations as he did think fit.

There were more difficulties appeared in settling the government than were at first apprehended; and nothing was so necessary as sending over the king's commission, which might determine all other authorities of committees and officers, in which men had been invested by a common consent, or rather by the prevalence of a party, which already grew into factions and contestations. The general, who had contributed so much to the king's Restoration, and appeared very zealous for the advancement of his service, had been by the parliament and council of state, as they called them, declared and created general of all the forces in the three kingdoms; and so his orders had been obeyed, as well in Scotland and Ireland, as in England, before his majesty's return; and the king did not think fit in any degree to lessen his trust and authority, nor had the general any inclination to part with his power in Ireland, where he had procured a great estate, and could best secure it under his own authority; and yet he resolved not to go thither, and indeed his presence then, about the king, was thought very necessary. Hereupon the king declared, that he would make the lord Roberts deputy of Ireland; who was willing to receive that charge, knowing, at the same time, that the duke of Albemarle was to continue lieutenant of that kingdom. But there quickly arose such differences between the general and the lord Roberts, about the drawing their commissions, the latter being so scrupulous and nice in having the least dependence upon the general, though Lord Lieutenant; and his pride and morosity was such towards the commissioners of Ireland, that they withdrew themselves from giving him further attendance and information; so that his majesty quickly discerned, that though he was a man of great parts and knowledge, yet his nature and temper was not fit for that employment, and therefore resolved for the present to put the government into the hands of three lords justices, the Lord Chancellor of that kingdom, the earl of Munroth, and the earl of

Orrery, who might begin to reduce the government into some order, until his majesty could take a further resolution for the establishment of it.

As soon as a bill was transmitted, according to the usual course, to his majesty, for the settlement of Ireland, with such a preamble as is before mentioned, though the body of the bill did not in truth correspond with it; his majesty gave direction, that it should be shewed and exposed to those of the several interests, even to the Irish themselves, who were the most like to receive prejudice from it: And after a sufficient time allowed for every man's consideration, his majesty appointed a time to have it read at the board, and to hear what objections could be made against it. The great debate then was upon the pretences of the Irish, who appeared with marvellous confidence, and complained, that by that act then prepared, and under consideration, the whole Irish nation would be extirpated, all their estates being thereby taken from them. As the present government in Ireland, which had declared for the king, had sent over commissioners or deputies to attend his majesty, and know his pleasure, as is mentioned before; so the body of adventurers had likewise chosen some persons to present their grievances and desires: and the Irish, under the names of the Roman Catholics of Ireland, had likewise chosen others to appear on their behalf, whereof some were lawyers and men of good parts, who well knew all the transactions in Ireland, from the beginning of the Rebellion, throughout all the changes of government. The chiefest arguments they urged for themselves were, 1st, Their long and great sufferings; the loss of their estates for five or six, and twenty years; the wasting and spending of the whole nation in battles, and in transportation of men into the parts beyond the seas; whither, as I remember, they reckoned above 20,000 men to be transported out of that kingdom in 4 or 5 years; the great numbers which had been executed and massacred after his majesty's government had been forced from thence; the great numbers which had perished by famine and the plague; those two great judgments having raged over the kingdom for two or three years; and at last the transplanting the small remainder of the nation into one corner of the province of Conaught, where yet much of the land was taken from them, which had been assigned to them with all those formalities of law which were practised under that government. 2. They demanded the benefit of the two treaties of peace; the one in the late king's time, and the other confirmed by his majesty that now is; by both which they stand indemnified for all acts done by them in the Rebellion; and insisted upon their innocence since that time, and that they had pursued all ways that lay in their power to manifest their affection to his majesty, and so entire an obedience to his commands whilst he was beyond the seas, that they betook themselves to, and with-

drew themselves from, the service of France or Spain, in such manner as his majesty signified was his pleasure they should do. 3. They urged, and forced, with a little more liberty and indiscretion than became them in that conjuncture, the unworthiness and incapacity of those who for so many years had possessed themselves of their estates, and sought now a confirmation of their rebellious title from his majesty: That their Rebellion had been more infamous, and of a greater magnitude than that of the Irish; who had risen in arms to free themselves from the rigour and severity that was exercised upon them by some of the king's ministers, and for the liberty of their conscience and practice of their religion, without having the least intention or thought of withdrawing themselves from his majesty's obedience, or declining his majesty's government: Whereas, the others had carried on an odious rebellion against his majesty's sacred person, whom they had horridly murdered in the sight of the Sun, with all imaginable circumstances of contempt and defiance, and as much as in them lay, had rooted out monarchy itself and overturned and destroyed the whole government of Church and State; and therefore that whatever punishment the poor Irish had deserved for their former transgressions, which they have so long since repented of, and departed from the Rebellion when they had armies and strong towns in their hands, and put themselves again under his majesty's protection; this part of the English, who were possessed of their estates, had broken all their obligations to God and the king, and so could not merit to be gratified with their ruin and total destruction: That it was too evident and notorious to the world, that his majesty's three kingdoms had been very faulty to him, and withdrawn themselves from his government, by which he had been compelled to live in exile so many years; and yet, that upon their return to their duty and obedience, his majesty had been graciously pleased to grant a free and general pardon, and act of indemnity, in which many were comprehended who had in truth been the contrivers and fomenters of all the misery and desolation which had involved the three nations for so many years; and therefore they hoped, that when all his majesty's other subjects (as criminal at least as the others) were, by his majesty's clemency, restored to their own estates which they had forfeited, were in full peace, and mirth and joy, the poor Irish alone should not be totally exempt from all his majesty's grace, and left in tears and mourning, and lamentation, and be sacrificed without redemption to the avarice and cruelty of those, who had not only spoiled and oppressed them, but had done all that was in their power, and with all the insolency imaginable, to destroy his majesty himself, and his posterity, and who now return to their obedience, and submitted to his government, when they were no longer able to oppose it; nor did they yet return to it with that joy and alacrity, and resignation as the Irish did, and

desired to do: And so concluded with those pathetic applications and appeals to his majesty, as men well versed in discourses of that nature are accustomed to do.

This discourse carried on, and urged with more passion; vehemence and indiscretion, than was suitable to the condition they were in; and in which, and the excesses of their rhetoric, they had let fall many expressions very indecent and unwarrantable, and in some of them confidently excused, if not justified their first entrance into rebellion, (the most barbarous, certainly, and unexcusable, that any Christians have been engaged in, in any age,) they irreconciled themselves to many who had compassion enough for them, and gave their immediate adversaries, who stood upon the advantage ground, both provocation and opportunity to say many things to their reproach, which probably would else have been forborne. They enlarged upon all the odious circumstances of the first year's rebellion, the murdering of above a hundred thousand persons in cold blood, and with all the barbarity imaginable; which murderers and barbarities had been always excepted from pardon: and they told them, that if there were not some amongst themselves that then appeared, they were sure there would be many found amongst those for whom they appeared, who would be found guilty of those odious crimes, which were excluded from any benefit by those treaties. And so that first agitation before his majesty vented itself in so much bitterness and animosity on both sides, that his majesty thought it best to conclude it with such reprehensions and animadversions, as might dispose them to a better temper when they should be next admitted to his majesty's presence.

At their next attendance upon his majesty, which was within few days after, the commissioners for the Protestants, taking notice of what the other party had alledged for their defence, the pretence they had to the two acts of pacification, and their extolling their own innocence from that time, and their great affection for his majesty's service, declared, that whatever legal title the adventurers had to the lands they were in possession of, many of whom had always faithfully served the king; yet they would be content, that all those who had in truth preserved their integrity towards his majesty from the time of either or both the pacifications, and not swerved afterwards from their allegiance, should partake of his majesty's grace and royal bounty, in such a manner, and to such a degree, as his majesty thought fit to exercise towards them: but they were confident they should make it appear, that their pretences to that grace and favour were not founded upon any reasonable title; that they had never consented to any one act of pacification, to which the indemnity had been annexed, which they had not violated and broken within ten days after, and then returned to all their acts of disloyalty and rebellion; that after the first act of pacification, ratified by the last king,

in very few days after they treated the herald, his majesty's officer, who came to proclaim that peace, with all manner of indignity, tearing his coat of arms, the king's arms, from off his back, and beat and wounded him so, that he was hardly rescued from the loss of his life; that about the same time they endeavoured to surprise and murder the lord lieutenant, and pursued him to Dublin, which they forthwith besieged with their army, under the command of that general who had signed the peace; they imprisoned their commissioners who were authorized by them, for consenting to those articles which themselves had confirmed, and so prosecuted the war with as much asperity as ever; and refused to give that aid and assistance they were obliged to, for the recovery and restoration of his late majesty, who was then in prison at the Isle of Wight; the promise and expectation of which supply and assistance was the sole ground and consideration of that treaty, and of the concessions therein made to them; that they thereupon renounced their obedience to his majesty, and put themselves under the protection and disposal of Rinucceni, the pope's nuncio, whom they made their generalissimo of all their armies, their admiral at sea, and to preside in all their councils. After their divisions amongst themselves, and the burthen of the tyranny they suffered under had disposed them to petition this king, who was then in France, to receive them into his protection, and to send the marquis of Ormond over again into Ireland to command them; and his majesty was so far prevailed with, as to send the marquis of Ormond into Munster, with such a supply of arms and ammunitions as he could procure; where the lord Inchiquin, lord president of that province, with the Protestant army, received and joined with him; and shortly after, the confederate Irish made that second treaty of pacification, of which they now likewise demanded the benefit: but that it is notoriously known, that they no sooner made that treaty than they broke it, in not bringing in those supplies of men and money which they were obliged to do, and the want whereof exposed the lord lieutenant to many difficulties: and he had no sooner undergone the first misfortune before Dublin, than they withdrew from taking any further care of the kingdom, raised scandals upon, and jealousies of the whole body of the English; who being so provoked, would no longer venture themselves in any action or conjunction with the Irish. They caused an assembly or convention of the clergy to meet without the lord lieutenant's authority, and put the government of all things into their hands; who, in a short time, improved the jealousy in the minds of the people towards the few Protestants who yet remained in the army, and who had served the king with a remarkable courage and fidelity, from the very first hour of the rebellion in the three kingdoms, to that degree, that the marquis was even compelled to discharge his own troop of guards of horse, consisting of such

officers and gentlemen as are mentioned before; and to trust himself, and all the remaining towns and garrisons, to the fidelity of the Irish; protesting, that upon such a confidence the whole nation would be united, as one man, to his majesty's service, under the command of the said marquis: but they had no sooner received satisfaction in that particular, (which was not in the marquis's power to refuse to give them) but that they raised several calumnies against the marquis himself, and declaimed against his religion, and inhibited the people upon pain of excommunication, not to submit to this or that order enjoined by the marquis; and, upon the matter, inhibited any obedience they paid to him: instead of raising new forces, those that were raised run from their colours and dispersed themselves; they who were trusted with the keeping of towns and forts, either gave them up by treachery to Cromwell, or lost them through cowardice to him upon very feeble attacks: their great general Owen O'Neile had made a formal contract and stipulation with the parliament; and in the end, when they had divested the marquis of all power to oppose the enemy, and gave him great cause to believe his person to be in great danger to be betrayed, and delivered up to the enemy, they vouchsafed to petition him to depart out of the kingdom, which they could easily compel him to do; and that he would leave his majesty's authority in the hands of one of his majesty's Roman Catholic subjects, to whom they promised to submit with the most punctual obedience. Whereupon the marquis, finding that he could not unite them in any one action worthy of the duty of good subjects, or of prudent men towards their own preservation; and, so, that his residence amongst them longer could in no degree contribute to his majesty's service or honour; and that they would make it be believed that if he would have committed the command into the hands of a Roman Catholic, they would have been able to have preserved those towns which still remained in their possession, which were Limerick and Galloway, and some other places of less importance; and likewise by degrees recover from the enemy what had been lost; which was very possible for them to have done, having great bodies of men to perform any enterprize, and some good officers to lead them, if they would have been obedient to any command: whereupon the marquis had resolved to gratify them, in placing the command in such a person's hand, whose zeal for the Catholic religion was unquestionable, and whose fidelity to the king, and entire affection, was unblemished; and so made choice of the marquis of Clanrickard, a name, though of an English extraction, had for so many hundred years resided in that kingdom, and had the greatest fortune amongst them, that he had the reputation of being of the best family of the Irish, and whose family had, in all former rebellions, as well as in this, preserved their loyalty unspotted to the crown.

The Roman Catholics of all kinds pretended at least a wonderful joy at this election, acknowledged it a great obligation to the lord lieutenant for making it, and applied themselves to the other with all protestations of duty and submission, to induce him to accept the charge, who indeed knew them too well to be willing to trust them; yet upon the marquis of Ormond's earnest and solemn intreaty, and out of his great zeal for his majesty's service, and to support his government there, until his majesty could procure other supplies, or give better orders for the doing it, he was contented to receive such commissions from the lord lieutenant, as were necessary for the execution of that command, and preservation of the government. Upon which the marquis of Ormond embarked himself, with some few friends and servants, upon a little pink that was bound for France, where he arrived safely about the time that his majesty transported himself thither, after his miraculous escape from Worcester.

The lord lieutenant was no sooner gone, but that the marquis of Clanrickard, the new lord deputy, found himself no better treated than the lord of Ormond had been: that part of the clergy which had continually opposed the lord lieutenant for being a Protestant, were now as little satisfied with the deputy's religion, and as violently opposed all his desires, and violated their own promises, and quickly made it evident, that his affection and loyalty to the king was that which they disliked, and a crime that could not be weighed down by the undoubted sincerity of his religion. They entered into secret correspondence with the enemy, and conspiracies between themselves; and though there were some persons of honour and quality with the deputy, who were very faithful to him and to the king, yet there were so many about him of another alloy, that all his counsils, resolutions, and designs, were soon enough discovered to the enemy to be prevented; and though some of the letters were intercepted, and the persons discovered who gave the intelligence, he had not power enough to bring them to justice; but being commonly friars and clergymen, the privileges of the Church was presently insisted upon, and so they were rescued from the secular prosecution till their escape was contrived. That perfidious and treacherous party had so great an interest in all the towns, forts, and garrisons, which yet pretended to be subject to the deputy, that all his orders were still contradicted or neglected; and the enemy no sooner appeared before any place, but some faction in the town caused it to be delivered up and rendered. Nor could this fatal sottishness be reformed even by the severity and rigour which the English exercised upon them; who, by the wonderful judgment of God Almighty, always executed those men who put themselves and the towns into their hands, finding them to have had some barbarous part in the foul murders which had been committed in the beginning of the rebellion, and who had been, by all the acts of grace

granted by the several powers, still reserved for justice: and of this kind there were so many instances in and about Limerick and Galloway, that they deserved to be collected and mentioned in a discourse by itself, to observe and magnify the wonderful Providence of God Almighty, in bringing heinous crimes to light and punishment in this world, by means unapprehended by the guilty; insomuch, as there was scarce a person of the clergy or laity, who had had a single hand in the contriving and fomenting the first rebellion, and in the perpetration of those horrible murders, who had obstructed all overtures towards peace, and caused peace to be broken as soon as made; who had adhered to the Nuncio, and endeavoured most maliciously to exclude the king and his royal posterity from the dominions of Ireland; I say, there was scarce a man very notorious, and eminent in transgressions of this kind, who did not by some act of treachery first endeavour to merit from the English, and by that, or by some other means, fell into their hands, and were by them publicly and reproachfully executed and put to death.

This being the sad condition the lord Deputy was in, and the Irish party having, without his leave, and against his express command, taken upon them to send messengers into Flanders to desire the duke of Lorraine to take them into his protection, offering to deliver several important places and sea-towns into his possession, and to become his subjects; upon which invitation the duke sent over an ambassador and a good sum of money for their present relief; the Deputy was in a short time reduced to those straits, that he durst not remain in any town, nor even in his own house for three days together, but was forced for his security to shift from place to place, and sometimes to lodge in the woods and fields in cold and wet nights, by which he contracted those infirmities and diseases which shortly after brought him to his grave; and, in the end, he was compelled to accept a pass from the English, who had a reverence to his person and unspotted reputation, to transport himself into England, where his wife and family were, and where he died before he could procure means to carry himself to the king, which he always intended to do.

When the English commissioners had enlarged themselves with some commotion in this narration and discourse, they again provoked the Irish commissioners to nominate one person amongst themselves, or those for whom they appeared, who they believed could in justice demand his majesty's favour; and if they could not make it evidently appear, that he had forfeited all his title to pardon after the treaty, and that he had again been as faulty to the king as before, they would be every willing he should be made the object of the king's grace and bounty, and be restored to his estate. And then applying themselves to his majesty, with great duty and submission, they con-

cluded, that if any persons had, by their subsequent or secret services, or by their attendance upon his majesty, rendered themselves grateful to him, and worthy of his royal favour, they were very willing that his majesty should restore all, or any of them to their honours and estates, in such manner as his majesty in his wisdom should think fit, and against all impediments whatsoever. And heretupon several acts of parliament were passed, for the indemnity and the restoring several persons of honour and interest to their estates; who either in justice could require the same, as having been always faithful to the crown, and suffered with it, and for it; or who had so manifested their affection and duty for his majesty, that he thought fit in that consideration to wipe out the memory of whatsoever had been formerly done amiss: and by this means many were in a short time put into a full possession of their estates, to which they could make a good pretence at the time when the rebellion began.

The consideration and debate about the settlement of Ireland, upon the bill proposed, took up very many days, his majesty being always present, and in which there arose every day new difficulties. It appeared plainly enough, that the guilt was so general, that if the letter of the act of parliament of the seventeenth year of the late king were strictly pursued, almost an extirpation of the whole nation would follow, and which at best would be very miserable. Then the transplantation, into Conaught, had been acted, and finished so many years before (which was very prudently done in point of government, in respect of the unsteady humour of that people, and their natural inclination to rebel, if the same had been executed by any rules of justice), and the soldiers and adventurers had been likewise so many years in the possession of their lots, and had laid out so much money in building and planting, that if his majesty had reviewed all that had been done, and taken those advantages upon former miscarriages and misapplications as in law he might have done, the whole foundations upon which all the hopes rested of preserving that kingdom within their obedience to the Crown of England must have been shaken, and even dissolved. And then the memory of the beginning of the rebellion in Ireland (how many other rebellions soever had followed it, as bad or worse in respect of the consequences that attended them) was as fresh and as odious to the whole people of England, as it had been the first year; and the whole nation upon the matter (though there were many persons of it of great honour and virtue) was fallen into that contempt, that they seemed indeed in the eyes of Clarendon worthy of the miserable fate they were reduced to: and no doubt it was a consideration that reasonably made them thought less worthy of extraordinary favour and compassion, that when both the other nations had made many noble attempts for redeeming their liberty, and for the restoration of his majesty (for Scotland itself had done much

towards it), and his present restoration was, by God's blessing, and only with his blessing, the sole effect of the courage and affection of his own subjects; so that England and Scotland had in a great degree redeemed, and even undone what had before been done amiss: and his majesty had approved and secured those affections to them, by those promises and concessions which he was in justice obliged to perform: but the miserable Irish alone had no part in the benefit his majesty had received, nor had God suffered them to be the least instruments in bringing his good pleasure to pass, or to give any testimony of their repentance for the wickedness they had wrought, or of their resolutions to be better subjects for the future; so that they seemed as a people left out and exempted from any benefit from that blessed conjuncture in his majesty's restitution: and this disadvantage was improved towards them by their frequent manifestation of an inveterate animosity against the English nation and English government; which again was recompensed to them by an irreconcilable jealousy of all the English towards them; declaring plainly, that they could be no longer secure of any thing they had, or should have in Ireland, than it should evidently appear that it was not in the power of the Irish to take it from them; and to this conclusion their present confidence and impudence contributed very much: and it appeared plainly enough, that they expected the same concessions (which the necessity of that time had made fit to be granted to them) in respect of their religion, and liberty of conscience, as they called it, should be now likewise confirmed, without which all other graces would not be sufficient to contain them within the limits of subjection. This state and condition of affairs, and the temper of the people, made it very necessary to the king to be very wary in dispensing his ordinary favours (which his natural, merciful inclination prompted him to) to the Irish, and in the alterations which justice obliged him to make in that kingdom, that the manner of it should make it appear, that it was the particular justice in a particular case, which could not be attended with a consequence prejudicial to any general interest.

There appeared in this debate an intention in the soldiers and adventurers, which was to have great countenance and approbation in the bill now under examination, to destroy all entails and settlements at law upon consideration of marriage, or any other contracts which had been made before the rebellion; nor had there been in the whole former proceedings, in the time of the usurpation, any consideration taken of mortgages or debts due by statute or recognizance, or upon any other security; so that all such debts must be either lost to the proprietors, or remain still with the interest upon the land, whosoever had enjoyed the benefit or the profit thereof: All which seemed very unreasonable and unjust; and that such estates should remain forfeited by the treason of the

father, who had been only tenant for life, against all descents and legal titles of innocent children, and of which in all legal attainders the crown never had or could receive any benefit. Yet, how unreasonable soever these pretences appeared to be, the rules and directions for the remedy thereof were not very easy; the English declaring, that if such titles were preserved and allowed to be good, there would not in that universal guilt which upon the matter comprehended and covered the whole Irish nation, there would not be one estate forfeited for Treason, but entails and other useful conveyances would be forged to defend and secure the same; nor would there be witnesses wanting to justify and prove whatsoever their evidence could be applied to: And if those trials were to be by the known rules and customs of the law in cases of the like nature, there was too much reason to suspect and fear that there would be little justice done, since a jury of Irish would be sure to find against the English; and there was as much reason to apprehend that the English would bring in their verdict against the Irish, let the evidence on either side be what it would. However, the king was in no degree inclined, upon any suggestions, to countenance such a barefaced violation of the law by any declaration in the act; and after many alterations and amendments, and there remaining still so many difficulties and intricacies, he foresaw that all matters were not yet so clearly stated, that the settlement could be made by this bill; but that such preparations might be made towards it, and such examinations taken, and some particulars settled and adjusted, and what remained stated with more clearness for his majesty's determination, he passed the first act of parliament, and committed the execution thereof to too many commissioners, nominated to his majesty by those who were most conversant in the affairs of Ireland; none, or very few of which were known to his majesty, or to any of those who had been so many years from their country, in their constant attendance upon his majesty's person beyond the seas. And upon this conclusion, and this dispatch, the commissioners from Ireland of all kinds returned thither, the earl of Orrery being one of the three justices who were entrusted with the government.

After a year spent in the execution of this commission, there was very little done towards the settling the kingdom; but, on the contrary, the breaches were made wider, and so much passion and injustice shewed, that complaints were brought to his majesty from all parts of the kingdom, and from all persons in authority. The number of the commissioners were so great, and their interest so different, that they made no dispatch; very many of them were in possession of those lands which others sued for, and bought the broken titles and pretences of others for inconsiderable sums of money, which they supported and made good by their own authority; and those men, who had their own particular concernment chiefly to maintain, at-

tended the service very diligently: The few who were more indifferent, by having no interest of their own at stake, were weary of their attendance and expence (there being no allowance for their pains,) and offended at the partiality and injustice they saw practised, withdrew themselves, and would be no longer present at those transactions, which they could not regulate or reform: All interests were equally offended and incensed; and the soldiers and adventurers complained no less of the corruption and injustice than the Irish did; so that the lords justices and council found it necessary to transmit another bill to his majesty, which, as I remember, they called an explanatory bill of the former; by which they had provided, That no person who lived in Ireland, or had any pretence to an estate there, should be employed as a commissioner: but that his majesty should be desired to send over a competent number of well-qualified persons out of England to attend that service; upon whom a fit salary should be settled by the bill, and such rules set down as might direct and govern the manner of their proceedings; an oath being likewise included in the bill which the commissioners were to take for the impartial administration of justice. And for the prosecution of this new transmitted act, several persons were sent over to attend, and inform his majesty and the council upon any difficulties or scruples that might arise upon the several claims and pretences which were made.

The second act took as much time as the former; all that had been said in the former debates being again repeated, and almost with the same passion and impertinence; the Irish making large observations upon the proceedings of the late commissioners, to justify those fears and apprehensions they had formerly urged. And there is too much reason to believe, that their greatest design now was rather to keep off any settlement, than that they hoped to procure such a one as they desired; relying more to find their account from a general dissatisfaction, and the distraction and confusion which was like to attend it, than from any determination that was like to be given in their favour: Which yet they did not despair of, as well by some promises their friends at court had made to them, upon great promises made first by them, as well as for the prejudice they found was generally conceived against some of the soldiers, and many of the adventurers, who were like to gain most upon the division. And though the Irish were in general dread and detestation for the reasons aforesaid; yet there were many particular men, both of the soldiers and adventurers, who, in respect of many notorious and opprobrious actions against the crown throughout their whole employment, were as little satisfied with this revolution as any men could be, and were so universally odious both in England and Ireland, that if the king's justice could have been observed, and their particular cases severed from the rest, without violation of the rule which secured the rest, any

thing that could have been done to their detriment would have been grateful enough. However, after a very tedious debate his majesty being assured by those who were thought to understand Ireland very exactly, and, upon the surveys which had been taken of Ireland with great punctuality, undertook that there was land enough to satisfy all the soldiers and adventurers, and that there would be enough left for the accommodation of the Irish in a liberal proportion; and having given some rules likewise and limitations to the immoderate pretences and demands of the soldiers and adventurers upon the Dublin ordinance, and imperfect admeasurements and some other irregularities which in the execution of the former commission they had indulged to themselves, his majesty likewise dispatched the second bill.

Whilst this second bill was under deliberation, there fell out some accidents which produced great altercations with reference to the affairs of that kingdom: the earl of Montroth who was one of the justices, was lately dead; and it had been very apparent that whilst he was alive, the difference between the three justices, and their different humours and affections, had little advanced the settling the government; so that they who took the most impartial survey of all that was done, did conclude that nothing could be so reasonably done towards a settlement, as the deputing one single person to exercise that government; and the duke of Albemarle himself, who had a very considerable estate in that kingdom, which made him long for a settlement, and who had both before the king's return, and ever since passionately insisted that the duke of Ormond should not be employed there; who likewise had as great an aversion from the thought of it; I say, the general now had so totally changed his mind, that he told the king, that there was no way to explicate the kingdom out of those intricacies in which it was involved but by sending over a lord lieutenant thither, that he thought it not fit for his majesty's service that himself, who had the commission of lord lieutenant, should be absent from his majesty's person; and therefore that he was very ready and desirous to give up his commission; and that in his judgment nobody would be able to settle and compose the several factions in that kingdom but the duke of Ormond, which he thought would be very grateful to all sorts of people; and therefore his positive advice was, that his majesty would as soon as was possible grant his commission of lieutenantcy to him, and send him over into Ireland; and both the king and the general had spoken with the duke of Ormond, and prevailed with him to accept the charge, before ever I heard of it; all of them believing that the uncertainty of his being able to do the king service, in so general a disunion and jealousy of persons, and contradiction of interests, and the great affection and friendship I had for the duke of Ormond, would make me

dissuade him from exposing himself to so hazardous an undertaking; which was very true: but his majesty believing that it was very necessary for his service, and the duke having always resigned himself to his majesty's disposal, he cheerfully undertook the employment; and his majesty named and appointed sir Richard Rainsford, serjeant at law, (since made one of the barons of his majesty's exchequer at Westminster) sir Edward Smith, one of the benchers of the Middle-Temple, (afterwards made Chief Justice of his majesty's court of Common Pleas in Ireland) Henry Coventry, one of his majesty's bed-chamber, sir Winstan Churchill, colonel Edward Cooke, sir Edward Deering, and sir Tho. Beverly, all persons of very good parts and very clear reputations, to be his commissioners for the execution of the bill of settlement of Ireland: and with these, and all other persons who attended that interest, the duke of Ormond entered upon his journey for that kingdom about July or August in the year 1664, full four years after the king's happy return into England. And when Mr. Coventry shortly after procured his majesty's leave to return to his attendance upon his person, sir Allen Broderic was appointed to serve in his place as a commissioner.

It was some months before the commissioners, after their arrival in Ireland, could settle those orders and rules for their proceeding which were necessary before they appointed the people to attend: and it was as necessary that they should, in the order of their proceedings, first proceed upon the Irish; both because there should be no settlement of soldiers or adventurers in possession of any lands, before the title of the Irish was determined; and because there was a clause in the last act of parliament, that all the Irish should put in their claims by such a day, and be determined before such a time, which time might be prolonged for once by the lord lieutenant and council. So that the delay for so many months before the commissioners sat, gave great argument of complaint to the Irish, though it could not possibly be avoided, in regard that the commissioners themselves had not been nominated by the king above twenty days before they began their journey for Ireland: so that they could never so much as read over the acts of parliament together before they came to Dublin, and then they found so many difficult clauses in both acts of parliament and so contrary to each other, that it was no easy matter to determine how to govern themselves in point of right, and to reduce themselves to any method in their proceedings: but after they had adjusted all things as well as they could, they published their orders in what method they meant to proceed, and appointed the Irish to put in their claims by such a time and to attend the prosecution of them accordingly. And they had no sooner entered upon their work but the English thought they had begun it soon enough: for they heard every day many of the Irish, who had been known to be the most

forward in the first beginning of the rebellion, and the most inalicious in carrying it on, declared innocent; and deeds of settlement and entails, which had been never heard of before and which would have been produced (as they reasonably believed) before, the former commissioners, if they had had them to produce, now declared good and valid; by which the Irish were immediately put into possession of a very great quantity of land taken from the English: So that in a short time the commissioners had rendered themselves as generally odious as the Irish, and were looked upon as persons corrupted for that interest, which had every day success almost in whatsoever they pretended; and their determinations happened to have the more of prejudice upon them, because the commissioners were always divided in their judgments; and it is no wonder that they who seemed most to adhere to the English interest were most esteemed by them.

The parliament in Ireland was then sitting, and the House of Commons (consisting of very many members who were either soldiers or adventurers, or had the like interest) was very much offended at the proceedings of the commissioners, made many votes against them, and threatened them with their authority and jurisdiction: but the commissioners, who well knew their own power, and that there was no appeal against their judgments, proceeded still in their own method, and continued to receive the claims of the Irish beyond the time that the act of parliament or the act of state limited to them as was generally understood; and during their last eight or ten-days sittings upon those claims, they passed more judgments and determinations than in near a year before, indeed with wonderful expedition; when the English, who were dispossessed by those judgments, had not their witnesses ready, presuming that in point of time those causes could not have been heard. By these sentences and decrees, many hundred thousand of acres were adjudged to the Irish, which had been looked upon as unquestionably forfeited. This raised so great a clamour that the English refused to yield possession upon the decrees of the commissioners, who, by an omission in the act of parliament, were not qualified with power enough to provide for the execution of their own sentences: The courts of law established in that kingdom would not, nor indeed could, give any assistance to the commissioners; and the lord-lieutenant and council, who had, in the beginning, by their authority, put many of those into possession of those lands which the commissioners had decreed to them, were now more tender and reserved in that multitude of decrees which had lately passed: so that the Irish were using their utmost endeavours by force to recover the possession of those lands which the commissioners had decreed to them, whilst the English were likewise resolved by force to defend what they had been so long possessed of, notwithstanding the commissioners determination; and the commissioners themselves were so far troubled and

dissatisfied with these proceedings, and with some intricate clauses in the act of parliament concerning the future prosecution of that affair, that though they had not yet made any entrance upon the decision of the claims of the English, or of the Irish Protestants, they declared that they would proceed no farther upon the execution of their commission, until they could receive his majesty's pleasure; and for the better doing thereof, they desired his majesty's leave that they might attend his royal person; and there being at the same time several complaints made against them to his majesty, and appeals made to him from their decrees, his majesty gave the commissioners leave to return; and at the same time all the other interests sent their deputies to solicit their right: in the prosecution whereof, after much time spent, the king likewise thought fit to receive the advice and assistance of his lieutenant; and so the Duke of Ormond likewise attended his majesty, and the settlement of Ireland was the third time brought before his majesty and his council; there being then likewise transmitted a third bill, as additional and supplemental to the other two, and to reverse many of the decrees made by the commissioners, they bearing the reproach of all that had been done, or had succeeded amiss, and of all persons who were grieved of any kind soever.

The king was very tender of the reputation of his commissioners, who had been always esteemed men of great probity, and unquestionable reputation; and though he could not refuse to receive complaints, yet he gave those who complained no farther countenance, than to give the others opportunity to vindicate themselves; nor did there appear the least evidence to question the sincerity of their proceedings, or to make them liable to any reasonable suspicion of corruption; and the complaints were still prosecuted by those who had that taken from them which they desired to have kept for themselves. The truth is, there is reason enough to believe, that upon the first arrival of the commissioners in Ireland, and some conversation they had, and the observation they made of the great bitterness and animosity from the English, both soldiers and adventurers, towards the whole Irish nation, of what kind soever; the scandalous proceeding of the late commissioners upon the first act, where they had not been guided by any rules of justice, but rejecting all evidence which might operate to the taking any thing from them which they resolved to keep, the judges themselves being both parties and witnesses in all the causes brought before them; together with the very ill reputation very many of the soldiers and adventurers had for extraordinary malice to the crown, and to the royal family; and the notable barbarity they had exercised towards the Irish, who, without doubt, for many years had undergone the most cruel oppressions of all kinds that can be imagined, many thousands of them having been forced, without being covered under any house to perish in the open fields for hunger;

the infamous purchases which had been made by many persons, who had compelled the Irish to sell their remainders and lawful pretences, for very inconsiderable sums of money: I say these, and many other particulars of this kind, together with some attempts that had been made upon their first arrival, to corrupt them, against all pretences which should be made by the Irish, might probably dispose the commissioners themselves to such a prejudice against many of the English, and to such a compassion towards the Irish, that they might be too much inclined to favour their pretences and claims; and to believe that the peace of the kingdom and his majesty's government might be better provided for, by their being settled in the lands of which they had been formerly possessed, than by supporting the ill gotten titles of those who had manifested all imaginable infidelity and malice against his majesty, whilst they had any power to oppose him; and had not given any testimony of their conversion, or of their resolution to yield him for the future a perfect and entire obedience when they could oppose him no longer; as if they desired only to retain those lands they had gotten by rebellion, together with the principles upon which they had received them, until they should have an opportunity to justify both by some new power or concurrence amongst themselves. Whence-soever it proceeded, it was plain enough the Irish had received more favour than was expected or imagined; and in the very entrance into the work, to avoid the partiality which was too apparent in the English towards each other, and their animosity against the Irish, as evident, very strict rules had been set down by the Commissioners, what kind of evidence they would admit to be good, and receive accordingly; and it was provided, that the evidence of no soldier or adventurer should be received in any case, to which himself was never so much a stranger; as, if his own lot had fallen in Munster, and that he had no pretence to any thing out of that province, his evidence should not be received as to any thing that he had seen done in Lempster, or Connaught, or Ulster, wherein he was not at all concerned; which was thought to be a very unjust rule, after so many years expired, and so many persons dead, who had likewise been present at those actions: and by this means many persons were declared not to have been in rebellion, when there was full evidence that they had been present in such and such a battle, and in such and such a siege, if the witnesses might have been received, who were then present at those actions, and ready to give testimony of it, and of such circumstances as could not be feigned, if their evidence might have been received. That which raised the greatest umbrage against the Commissioners was, that a great number of the most infamous persons of the Irish nation, who were looked upon by those of their own country with the greatest detestation, as men who had been the most vio-

lent fomenters and prosecutors of the rebellion, and the greatest opposers of all moderate counsels, and of all expedients which might have contributed towards a peace in the late king's time, whereby the nation might have been redeemed, and who had not had the confidence so much as to offer any claim before the late Commissioners, were now adjudged and declared innocents, and so restored to their estates; and that many others, who had in truth never been in rebellion, but notoriously served the king against the rebels, both in England and in Ireland, and had never been put out of the possession of their estates, were now upon some slight evidence, by the interception of letters, or confession of messengers that they had some correspondence with the rebels, though it was evident, that even that correspondence was perfunctory, and only to secure them that they might pursue his majesty's service, were condemned, and had their estates taken away from them. Many who had formerly made their claims, without insisting upon any deeds of settlements or other conveyances in law, now produced formal settlements, in consideration of marriage, or other like good considerations in law, made before the beginning of the Rebellion; which being now proved by witnesses enough, decrees were every day obtained for the restitution of great quantities of land upon those deeds and conveyances: though the forgeries of those deeds, and perjuries of the witnesses, were very notorious, and some instances were given of the manifestation and direct proof made of the forgery of deeds, upon which decrees had been made, to the satisfaction of the commissioners themselves, within a very short time after the pronouncing such decrees, and yet no reparation was given, but the said decrees proceeded and were executed, with all rigour. The Commissioners answered, That they had made no decrees but according to their consciences, and such as they were obliged to make by the course and rules of justice; that they did not doubt, but in truth did believe, that there had been evil practices used, both in forging of deeds and corrupting of witnesses, and that the same was equally practised by the English as well as the Irish; and therefore that they had been obliged to make that order which had been so much excepted against, not to admit the testimony of any English adventurer or soldier in the case of another adventurer or soldier: for that it was very notorious they looked upon the whole as one joint interest, and so gratified each other in their testimonies: and of this they gave many sad instances, by which it was too evident, that the perjuries were mutual, and too much entertained by the one and the other side: that they had used the best providence and vigilance they could, by the careful examination of the witnesses, which were produced apart, and never in the presence of each other, and by asking them all such material questions as occurred to their understandings, and which they could not expect to be

asked, to discover the truth, and to prevent and manifest all perjury : That they had likewise used their utmost diligence and care to prevent their being imposed upon with false and forged deeds and conveyances by taking a precise and strict view themselves of all deeds produced ; and interrogated the witnesses with all the cunning they could, upon the matter and consideration upon which such deeds had been entered into, and upon the manner and circumstances in the execution thereof ; which was all the providence they could use ; and though they met with many reasons oftentimes to doubt the integrity of the proceedings, and in their own private consciences to apprehend there might be great corruption, yet that they were obliged judicially to determine according to the testimony of those witnesses, and the evidence of those deeds in law, against which no proofs were made : That they had constantly heard all that the adverse party thought fit to object, both against the credit of any witnesses, and the truth of any conveyances which were produced : upon which they had rejected many witnesses, and disallowed some conveyances : but when the objections were only founded upon presumptions and probabilities, as most usually they were, they could not weigh down the full and categorical evidence that was given : That if they had yielded to the importunities of the persons concerned, who oftentimes pressed to have further time given them to prove such a perjury, or to disprove such a conveyance, it must have made their work endless, and stopped all manner of proceedings, for which it appeared that they were straitened too much in time, and that in truth would have but opened the doors wider for perjury and other corruptions ; since it was very plain to them, that either side could bring as many witnesses as they pleased, to prove what they pleased, and that they would bring as many as they believed necessary for the work in hand : And therefore that the commissioners having before prescribed a method and rules to themselves for their proceeding, and that no man could have a cause in which he was concerned brought to hearing without his knowing when it was to be so heard, and so it was to be presumed that he was well provided to support his own title ; and therefore that they had thought fit, upon mature deliberation amongst themselves, to adhere to the order they had prescribed to themselves and others, and to conclude that they could not be able to prove that at another day, which they were not to prove then : For the discovery of any forgery after the decrees had been passed, and upon which they had given no reparation, they confessed some few such discoveries had been made to them, by which the forgery appeared very clearly ; but as they had not power by the act of parliament to punish either forgery or perjury, but must leave the examination and punishment thereof to the law, and to the judges of the law ; so that they had only authority to make decrees upon such grounds as

satisfied them in their consciences, but had not any authority to reverse those decrees after they were once made and published, upon any evidence whatsoever. They concluded with their humble desire to the king, that the strictest examination might be made of their corruptions, in which they were sure to be found very innocent, against all the malice that was discovered against them : That they had proceeded in all things according to the integrity of their own hearts, and the best of their understandings ; and if they had, through the defect of that, erred in any part of their determinations, they hoped their want of wisdom should not be imputed to them as a crime.

Many who had a very good opinion of the persons and abilities of the commissioners, were not yet satisfied with their defence ; nor did they believe that they were so strictly bound to judge upon the deposition of suspected witnesses : But that they were therefore trusted with an arbitrary power, because it was foreseen that juries would not have been intire ; so that they were, upon weighing all circumstances, to declare what in their consciences they believed to be true and just : That if they had bound themselves up by too strict and unreasonable rules, that they should rather have in time reformed those rules, than thought to support what was done amiss, by the observation of what they had prescribed to themselves ; and it was believed that the entire exclusion of the English from the proving of what could not in nature be otherwise proved, was not just or reasonable : That their want of power to reverse or alter their own decrees, upon any emergent reasons which could afterwards occur, was a just ground for their serious deliberation in and before they passed any such decrees ; and their excuse for not granting longer time, when it was pressed for, upon reasons which were very visible, was not to be justified, it not being possible for any man to defend himself against the claims of the Irish, without knowing what deeds or witnesses they would produce for making good their suggestions ; and therefore it was as impossible for them to have all their evidence upon the place : besides that, it was very evident, that in their last ten days of their sitting (which were likewise thought to be when their power as to those particulars was determined, and in which they had made more decrees than in all the time before) they had made so many in a day (contrary to their former rule and method), that men were plainly surprized, and could not produce those proofs which in a very short time they might have been supplied with ; and the refusing to allow them that time, was upon the matter to determine their interest, and take away their estates, without being once heard, and upon the bare allegations of their adversaries ; and in those latter decrees many instances were given of that nature, wherein the evidence appeared to be very full, if time had been given to produce it.

There was one very notable case decreed by

the Commissioners extremely complained of, and cried out upon by all parties, as well Irish as English; and for which the Commissioners themselves made no other excuse or defence but the receipt of a letter from the king; which was not thought a good excuse for sworn judges, as the Commissioners were: It was the case of the marquis of Antrim; which case having been so much upon the stage, and so much enlarged upon, to the reproach of the king, and even to the traducing of the memory of his blessed father; and some men, who most contributed to what was unwarily done in that affair, having done all they could to wound my reputation, and to get it to be believed, that I misled his majesty, by my advice, to oblige that marquis; I think it a debt due to truth, and to the honour of both their majesties, as well as for my own vindication, to set down a very particular narration of that whole affair; by which it will appear how far the king was from so much as wishing that any thing should be done for the benefit of the marquis, which should be contrary to the rules of justice. Whilst his majesty was in foreign parts, he received frequent advertisements from England and from Ireland, that the marquis of Antrim behaved himself very undutifully to him; that he had made himself very grateful to the rebels, by calumniating the late king; and that he had given it under his hand to Ireton, or some other principal person employed under Cromwell, that his late majesty had sent him into Ireland to join with the rebels, and that he was not offended with the Irish for entering into that rebellion. Which was a calumny so false and so odious, and reflected so much upon the honour of his majesty, that the king was long resolved, as soon as God should put it into his power, to cause the strictest examination to be taken concerning it: the report having gained much credit with his majesty, by the notoriety that the marquis had procured great recommendations from those who governed in Ireland to those who governed in England; and that upon the presumption of that he had come into England, and as far as St. Albans towards London; from whence he was forced suddenly to return into Ireland by the activity of his many creditors, who, upon the news of his coming, had provided for his reception, and would unavoidably have cast him into prison; and no recommendation could have inclined those who were in authority to do any thing extraordinary for the protection of a person, who from the beginning of the Irish rebellion lay under so ill a character with them, and had so ill a name throughout the kingdom.

The king had been very few days in London, after his arrival from the parts beyond the seas, when he was informed that the marquis of Antrim was upon his way from Ireland towards the court; and the Commissioners from Ireland, who have been mentioned before, were the first (if I remember well) who gave his majesty that information; and at the same time told him all that his majesty had heard before concerning the marquis, and of the bold calumnies with

which he had traduced his royal father, with many other particulars; all which they affirmed would be proved by unquestionable evidence, and by letters and certificates under his own hand. Upon this full information (of the truth whereof his majesty entertained no doubt), as soon as the marquis came to town, he was, by the king's special order, committed to the Tower; nor could any petition from him, or intreaty of his friends (of which he had some very powerful) prevail with his majesty to admit him into his presence; but by the first opportunity he was sent prisoner to Dublin, where he was committed to the castle, his majesty having given direction that he should be proceeded against with all strictness according to law; and to that purpose the lords justices were required to give all orders and directions necessary. The marquis still professed his innocence, and used all the means he could to procure that he might be speedily brought to his trial, which the king likewise expected; but after a year's detention in prison, and nothing brought against him, he was set at liberty, and had a pass given him by the council there to come into England. He then applied himself to his majesty, demanding nothing of favour; but expected justice, and that after so many years being deprived of his estate, he might at last be restored to it, if nothing could be objected against him wherein he had deserved his majesty. He was a gentleman that from his youth had been bred up in the court of England; and having married the duchess of Buckingham, he had been very well received by both their majesties, and was frequently in their presence; he had spent a very vast estate in the court, without ever having received the least benefit or advantage from it; he had retired into Ireland, and lived upon his own estate in that country some years before the rebellion broke out; in the beginning whereof he underwent some suspicion, having had some correspondence with them, and possibly made some undertakings to them; but he went speedily to Dublin, and from thence transported himself to Oxford to his majesty, to whom he gave so good an account of all that had passed, that the king had no doubt of his affection to his service, though he had little confidence in his judgment and understanding, which were never very remarkable: Besides that, it was well known that he had a very unreasonable envy towards the marquis of Ormond, and would fain have it believed that his interest in Ireland was so great, that he could easily reclaim that whole nation to his majesty's obedience; but that vanity and presumption never gained the least credit with his majesty.

Upon the Scots entering into England with their army upon the obligation of their covenant, and all his majesty's endeavours to prevent it being disappointed, the marquis of Montross had proposed to his majesty to make a journey privately into Scotland, and to get into the Highlands; where, with his majesty's authority, he hoped he should be able to draw

together such a body of men as might give his countrymen cause to call for their own army out of England to secure themselves; and with this overture, or upon the debate thereof, that earl of Antrim (for he wasthen no more) might be likewise sent into Ulster, where his interest lay, from whence he would be able to transport a body of men into the Highlands, where he had likewise the clan of the Macdonalds, who acknowledged him to be their chief, and would be consequently at his devotion; by which means the marquis of Montross would be enabled the more powerfully to proceed in his undertaking. The earl of Antrim entered upon his undertaking with great alacrity, and undertook to the king to perform great matters in Scotland, to which his own interest and animosity enough disposed him, having an old and sharp controversy and contestation with the earl of Argyll, who had dispossessed him of a large territory there. All things being adjusted for this undertaking, and his majesty being well pleased with the cheerfulness of the Earl's undertaking, he created him at that time a marquis, gave him letters to the marquis of Ormond, his lieutenant there, as well to satisfy him of the good opinion he had of the marquis of Antrim, and of the trust he had reposed in him, as to wish him to give him all the assistance he could with convenience for the carrying on that expedition for Scotland; and for the better preventing any inconvenience that might fall out by the rashness and inadvertency of the marquis towards the marquis of Ormond, his majesty sent Daniel O'Neil, one of his bed-chamber, into Ireland with him, who had great power over him, and very much credit with the marquis of Ormond, and was a man of that address and dexterity, that no man could so well prevent the inconveniences and prejudice which his natural indiscretion and levity might tempt the marquis to, or more dispose and incline the lord lieutenant to take little notice of those vanities and indiscretions; and the king did likewise, having no desire that the marquis should stay long in Dublin, and he promising at his going from Oxford, that he would in person go into Scotland with his forces, give him leave to hold that correspondence with the Irish rebels (who had the command of the most Northern parts, and without whose connivance at least he would very hardly be able to make his levies, and transport his men) as was necessary to that end: Within the limits of which it is probable enough that he did not contain himself, and might say many things which he had not the least authority to warrant him in.

Upon his coming to Dublin, the lord-lieutenant gave him all the countenance he could wish, and assisted him in all the ways he could to prosecute his design; but the men were to be raised in or near the rebels quarters: And it cannot be denied but that the levies he made, and sent over into Scotland, under the command of Kalketo, was the foundation of all those wonderful acts which were afterwards performed by the marquis of Montross; they

were 1,500 very good men, with very good officers, all so hardy, that neither the ill fare, nor the ill lodging in the Highlands gave them any discouragement, and gave the first reputation to the marquis of Montross of being at the head of an army, under which he drew together such of the highlanders, and others of his friends who were willing to repair to him; but upon any military action and defeat given by them to the enemy, which happened as often as they encountered the Scots, they went always home with their bounty to their houses, and the Irish only staid together with their general. And from this beginning the marquis of Montross grew to that power, that after many battles won by him with notable slaughters of the enemy, in one of which he defeated the marquis of Argyll, with his army of above treble the number of what Montross had, and in which the marquis of Argyll was forced to make his escape, by putting himself almost single into a boat, and so putting himself off into the sea, having left, besides others, many of his own name and family dead upon the ground; after which the marquis of Montross marched victoriously with his army, till he made himself master of Edinburgh, and re-deemed out of the prison there the earl of Crawford, lord Ogilby, and many others of his friends, who had been taken and sent thither, with the resolution that they should all lose their heads; and the marquis of Montross himself did always acknowledge, that the rise of his good success was due and to be imputed to that body of Irish, which had in the beginning been sent over by the marquis of Antrim; to whom the king had acknowledged the service by several letters all in his own hand, in which were very gracious expressions of the sense his majesty had of his great services, and his resolution to reward him. It is true, the marquis of Antrim himself had not gone over with his men, as he promised to do, but stayed behind in Ireland, under pretence of raising a greater body of men, with which he would venture his own person; but either out of jealousy or displeasure against the marquis of Montross, or having, in truth, no mind to that service, he never pursued the one nor the other, but remained not only in the enemies quarters, but in their councils, taking all occasions to cross whatsoever the lord-lieutenant most desired; by which he gave so great advantages against himself, and might, in strictness of law, have been as severely punished by the king as the worst of the rebels. At last, after he had been taken prisoner by the English or Scotch, and made his escape out of their hands, he transported himself into Flanders, and from thence came into the West into the harbour of Falmouth, when the prince (his majesty that now is) was in Cornwall; to whom he immediately made tender of his service with two good frigates which he had, and in which were likewise a quantity of arms, and some ammunition, which he had procured in Flanders, for the supply of Ireland. Most of the arms and

ammunition were employed, with his consent, for supplying of the troops and garrisons in Cornwall; and his majesty made use of one of the frigates to transport his person to Scilly, and from thence to Jersey; without which conveyance, the prince had been exposed to very great difficulties. And after all which, Dublin being given up to the parliament, and the king's authority withdrawn from that kingdom, he again transported himself into Ireland, and joined with the Irish, and was by them sent into France, to desire the queen-mother and the prince to send the marquis of Ormond to exercise his majesty's government in that kingdom; which was done accordingly, in the manner as is mentioned before.

The marquis of Antrim alleged all these particulars, and produced many original letters from the late king, the queen-mother and the prince, in all which his services had been acknowledged, and many promises made to him; and concluded with a full protestation, that he desired no pardon for any thing he had ever done against the king; but if that there was the least proof that he had failed in his fidelity to him, or had not, according to the best of his understanding, advanced his service, he looked for no favour: But if his being in the Irish quarters, and consulting with them, without which he could not have made his levies for Scotland, and his joining with them afterwards, when his majesty's authority was withdrawn from thence, do, by the strict letter of the law, expose him to ruin without his majesty's grace and favour, he did hope his majesty would redeem him from that misery, and that the forfeiture of his estate should not be taken, as if he were a traitor and a rebel to the king: And it appeared, that if he were restored to all he could pretend, his debts were so great, and his creditors had that legal incumbrance upon his fortune, that his condition, at best, would not be liable to much envy. Though the king had never been taken notice of to have any great inclination to the marquis, who was very little known to him; yet this representation, and clear view of what he had done, and what he had suffered, raised great compassion towards him in his majesty's royal breast; and he thought it would, in some degree, reflect upon his own honour and justice, and upon the memory of his blessed father, if, in a time when he passed by so many heinous transgressions, he should leave the marquis to the fury of his enemies, for no other crime upon the matter, than for not having that prudence and justice in his endeavours to serve the king, as he ought to have had; and the rigour he had exercised towards him upon his first arrival, in sending him to be tried in Ireland by those who enough wished his destruction, and that they had not been able to make the least proof against him, improved his majesty's good disposition towards him: Yet he refused positively to write a letter to the commissioners on his behalf, which the marquis most importunately desired, as the only thing that could do him

good; but his majesty directed a letter to be prepared to the lord lieutenant, in which all his allegations and suggestions should be set down, and the truth thereof examined by the lord-lieutenant; and that if he should be found to have committed no greater faults against his majesty than those which he confessed, that then the letter should be sent to the Commissioners, that they might see both their majesties testimonies in such particulars as were known to themselves. And this letter was very warily drawn, and being approved by his majesty, was sent accordingly to the lord-lieutenant; and shortly after was, contrary to his majesty's resolution, and contrary to my advice, and without my knowledge and privity, likewise sent to the commissioners; who had thereupon made such a decree as is before mentioned, and declared that they had made it only upon that ground: Which gave his majesty some trouble, and obliged him to insert a clause in the next bill concerning that affair. And this was the whole proceeding that related to the marquis of Antrim, in which I had no temptation of any kind to incline me; and I do yet want understanding to comprehend how there was more favour shewed towards him by his majesty, than he might in truth very reasonably pretend to, what noise soever hath been raised, and what glosses soever have been made upon that whole transaction.

When his majesty entered upon the debate of this third bill, which was transmitted to him for a supplement and addition to the former two, he quickly found the settlement proposed, and which was the end of the three bills, was now grown more difficult than ever: All the measures which had formerly been taken, from the great proportion of land which would remain to be disposed of, were no more to be relied upon, but appeared to have been a wrong foundation from the beginning; which was now made more desperate, by the vast proportions which had been assigned to the Irish by the commissioners decrees; and somewhat had intervened by some acts of bounty from his majesty, which had not been carefully enough watched and represented to him. The king had, upon passing the former bills, and upon discerning how much the Irish were like to suffer, resolved to retain all that should by forfeiture, or otherwise, come to his majesty, in his own power, to the end, that when the settlement should be made, he might be able to gratify those of the Irish nation, who had had any thing of merit towards him, or been least faulty; but he had unawares swerved from that rule, and had made several grants, out of his royal bounty, to many of his servants, who had been encouraged by their friends in Ireland to make those suits, and had procured certificates from thence; which being produced to his majesty, had disposed him to those concessions, which otherwise he would not so easily have passed: There was besides, in all such grants, a new clause introduced, of a very new nature; for they being grounded always upon letters out

of England, and passed under the Great Seal of Ireland, the letters were formed there, and transmitted hither only for his majesty's sign manual; so that neither his majesty's learned counsel at law, nor any other his ministers (the secretaries only excepted) had any notice of such grants. The clause was, That if any of those lands so granted by his majesty should be otherwise decreed, his majesty's grantee should be reprimed with our lands; so that many cases the greatest inducement to his majesty's bounty being the uncertainty of his own right, which the person to whom it was granted was obliged to vindicate at his own charge, his majesty was now bound to make it good if his grant was not valid; and so that which was but a contingent bounty, was turned into a real and substantial benefit, as a debt from his majesty: Which created another difficulty in the settlement; which was yet more hard, because there were many claims of the Irish themselves yet unheard, all the false admeasurements to be examined, and many other uncertainties to be determined by the commissioners, which left those who were in possession, as well as those who were not, in the highest insecurity and apprehension.

This intricacy, and even despair, which possessed all kind of people, of any settlement, made all of them willing to contribute to any that could be proposed. They found his majesty very unwilling to consent to the repeal of the decrees made by the Commissioners; which must have taken away the confidence and assurance of whatsoever should be done hereafter, by making men see that what was settled by one act of parliament might be unsettled by another; so that there was no hope by such an expedient to increase the number of acres, which being left might in any degree comply with the several pretences: The Irish found that they might only be able to obstruct any settlement, but should never be able to get such a one as would turn to their own satisfaction: The soldiers and adventurers agreed less among themselves; and the clamour was as great against those, who, by false admeasurements had got more than they should have, as from those, who had received less than their due; and they who least feared any new examination could not yet have any secure title, before all the rest were settled. In a word, all men found that any settlement would be better than none; and that more profit would arise from a smaller proportion of land, quietly possessed, and husbanded accordingly, than of a much greater proportion under a doubtful title, and an uncertainty which must dishearten any industry and improvement. Upon these considerations and motives they met amongst themselves, and debated together by what expedient they might draw light out of this darkness: There appeared only one way which administered any reasonable hope, which was, by increasing the stock for reprisals to such a degree, that all men's pretences might, in some measure, be provided for; and there was no

other way to arrive to this, but by every man's parting with somewhat which he thought his own: And to this they had one encouragement, which was of the highest importance to them, which was, that this way an end would be put to the unlimited jurisdiction of the Commissioners, (which was very terrible to them) who from henceforth would have little other power than to execute what should be here agreed upon. In conclusion, they brought a proposition to the king, raised and digested between themselves, that all persons who were to receive any benefit by this act, should abate and give a fourth part of what he had towards the stock for reprisals; all which the Commissioners should distribute amongst those Irish who should appear most fit for his majesty's bounty; and this agreement was so unanimous, that though it met with some obstinate opposition after it was brought before his majesty, yet the number of the opposers was so small in respect of the others who agreed to it, that they grew weary and ashamed of farther contention; and thereupon that third Act of Settlement, as supplemental to the other two, was consented to by the king: who, to publish to the world that nothing stuck with him which seemed to reflect upon the Commissioners to their prejudice, resolved to make no change; and so, though Mr. Baron Rainsford, and sir Thomas Beverly, made their humble suit to his majesty, that they might not return again into Ireland, his majesty did not grant their request, and continued sir Edward Smith, who was now Chief Justice of the Common Pleas in that kingdom, sir Edward Deering, sir Allen Broderick, (who had succeeded Mr. Coventry in that office, when he returned to court) sir Winstan Churchill and col. Cooke his Commissioners, to execute what was done by this new act, and so to perfect the settlement: These were all the transactions with reference to Ireland, which I was privy to, and in which I assisted, as all the rest of my lords of the council who were present did; and did very little more in it than any of the rest did, except when any difficulties occurred in their private meetings and debates, they sometimes resorted to me for advice; which I was very ready to give them to the best of my understanding, being very ready and willing to take any pains which might make that very difficult work more easy to be compassed; but as I never deserved any reward for so doing, so I never received the benefit of one shilling in money, or monies-worth, for any thing that was done in that affair; and was so far from entertaining any overture made to that purpose, that it is notoriously known to some persons of honour, who, I presume, will be ready to testify the same, that when, upon his majesty's first return into England, some propositions were made to me, of receiving the grant of some forfeited lands, and for the buying of other lands there, upon the desire of the owners thereof, and at so low a price, that the very profit of the land would in a short time have paid for the purchase;

and other overtures of immediate benefit in money, which others did, and lawfully might accept; I rejected all propositions of that kind, or relating to it, and declared publicly and privately, that I would neither have lands in Ireland, or the least benefit from thence, till all differences and pretences there were so fully agreed and settled, that there could be no more appeal to the king, or repairing to his majesty and council for justice; in which I told them, I should never be thought so competent an adviser, after I had any title of my own in that kingdom, to bias my inclinations; and I never took a firmer resolution in any particular in my life, than to adhere to that conclusion: Yet, because it is notorious enough, that I did receive afterwards some money out of Ireland, and have a very lawful title to receive more, it is necessary, for my own entire vindication, to set down particularly how that came to pass, and to mention all the circumstances which preceded, accompanied or attended that affair.

Amongst the bills which were first transmitted from Ireland after his majesty's happy return, there was an imposition of a certain sum of money upon some specified lands, in the several provinces, (the nature whereof I cannot charge my memory with) which were to be paid to his majesty within a limited time, and to be disposed of by his majesty to such persons who had served him faithfully; and suffered in so doing, or words to that effect; for I may with a very good conscience say, that I never to this minute read the act of parliament, and am almost confident that I never heard of it at the time when it passed, being often absent from the council, by reason of the gout, or other accidents, when such matters were transacted. But very near two years after his majesty's return, I received a letter from the earl of Orrery, that there would be in his hands, and the earl of Anglesey's and lord Mazarin's, (who it seems were appointed treasurers to receive the money raised by that act of parliament) a good sum of money for me; which he gave me notice of, to the end that I might give direction for the disposal thereof, whether I would have it returned into England to me in money, or laid out in land in Ireland; and he wished that I would speedily send my direction, because he was confident that the money would be paid in at least by the time that my letter could arrive there. No man can be more surpris'd with any thing, than I was at the receipt of this letter; believing that there was some mistake in it, and that my name might have been used in trust by somebody who had given no notice of it; and without returning any answer to the earl of Orrery, I writ by that post to the lord lieutenant, (for it was after his first going into Ireland) to inform him what my lord of Orrery had writ to me, and to desire him to inform me, by his own inquiry, what the meaning of it might be. Before I had an answer from the lord lieutenant, or indeed before my letter could come to his hands, I received a second

letter from the earl of Orrery; in which he informed me, that there was now paid in, to my use, the sum of 12,600*l.* or thereabouts, and that there would be the like sum again received at the end of six months; sending me likewise a particular direction to what person, and in what form I was to send my order for the payment of the money. I forbore likewise to answer this letter, till I had received an answer from the lord lieutenant; who then informed me at large, what title I had to this money, and how I came to have it: That shortly after the passing of that act of parliament which had given his majesty the disposal of the money before-mentioned, the earl of Orrery had come to him, and putting him in mind how the Chancellor had rejected all overtures which had been made to him of benefit out of that kingdom, (which refusal and many others, which shew how unsollicitous I have always been in the way of getting, is not more known to any man living than to the lord lieutenant) wished that he would move his majesty to confer some part of that money upon him; which the lord lieutenant very willingly did, and his majesty as cheerfully granted: That a letter was accordingly prepared, and his majesty's royal signature procured by Mr. Secretary Nicholas, who was at the same time commanded by the king not to let me know of it; and to which purpose there was likewise a clause in the letter, whereby it was provided that I should have no notice of it, which the lord lieutenant said was by his majesty's direction, or with his approbation; because it was said, that if I had notice of it, I would be so foolish as to obstruct it myself: And that there was a clause likewise in the said letter, which directed the payment of the said money to my heirs, executors or assigns, if I should die before the receipt thereof. Of all which being thus fully advertised by the Lord Lieutenant, and of which, till that time I had not the least notice or imagination, I desired Mr. Secretary Nicholas to give me a copy of that letter, (which had been since passed as a grant unto me under the great seal of Ireland, according to the form of that kingdom) which he gave me, with a larger account of many gracious circumstances in the king's granting it, and the obligation laid upon him of secrecy, and the great caution that was used that I might have no notice of it. After I was informed of all this, I did not think there was any thing left for me to do, but to make my humble acknowledgement to his majesty for his royal bounty, and to take care for the receiving and transmitting the money to me, and that I might receive the same very honestly: I did thereupon wait upon his majesty with that duty which became me; and his majesty was graciously pleased to enlarge his bounty with those expressions of favour, and the satisfaction he had vouchsafed to take himself in the conferring his donative, that my joy was much greater from that grace, than in the greatness of the gift.

At the very same time, and the very day that I received the letter from the lord-lieutenant, the late earl of Portland had come to me, and informed me of a difference that was fallen out between the lord Lovelace, and sir Bulstrode Whitlocke, upon a defect in the title to certain lands purchased heretofore by the said sir Bulstrode Whitlocke from the lord Lovelace, and possessed by the other for many years: That the lord Lovelace had been compelled, in the late ill times, for the raising of money to pay his composition, and other necessary uses, to make sale of his manor of Blunsden in the county of Wilts, and that sir Bulstrode Whitlocke had purchased the same from him at a less price than in truth it was worth: That though the conveyances had been made and executed with all the formality the doctrine of that time required; and that the lord Lovelace had covenanted, that his son, who was then under age, should join in the same assurance when he should accomplish the age of one-and-twenty, which he had now newly done about the time we are mentioning; and that the lord Lovelace was resolved, though he was in his person liable to the covenant, to take advantage of the alteration of the times, and to compel sir Bulstrode Whitlocke to pay him more money; or that his son, who was tenant in remainder, should enter upon the land. The earl said, that he desired to make an end between them; and that the lord Lovelace (whose great friend he was) should receive some more money, which his condition required, without so great a damage to sir Bulstrode Whitlocke, as by the law he would be liable to, however the other might suffer in his person; that upon conference between them, he found that the manor of Blunsden was joined to some land I had in Wiltshire, and would be very convenient to me, and therefore wished that I would purchase it at a just value, which would produce a satisfaction to both the others. This proposition being made upon the very day, as is said before, that I received the letter from the lord-lieutenant of Ireland, by which it appeared that there was near as much money already received for me as would pay that purchase, besides what would be more received within 6 months after, I wished the earl of Portland to bring both the persons concerned to me within two days, in which time I would resolve what to do; nor did I need much time to consider of it; the person who then rented the whole, and the land itself, being very well known to me: So that when they all came to me at the time appointed, after a very short conference together, we agreed upon the purchase, and appointed the writings to be prepared and executed as soon as might be; when I promised to pay more money than is usual in such purchases, presuming I could not at all be disappointed in the return of that sum of money from Ireland, which was the sole ground and encouragement I had to undertake that bargain: But the very next letters I received

from thence informed me, that the necessities of that kingdom had been such, that they could only return me 6,000*l.* and that they had been forced to make use of the rest for the public, which would without doubt take care to repay me again in a few months; and so I found myself engaged in a purchase which I could not retract, upon a presumption of money which in that manner I was disappointed of: And I have not only never since received a penny of what was due upon the second payment, (and which I presumed would have been so certain, that I assigned it upon the marriage of my second son to him, as part of his portion), but the remainder of the first sum was so borrowed or taken from me, that no part of it hath been since paid to me, or to my use: By which, and the inconveniencies and damage which hath since ensued to me from thence, I may reasonably say, that I am yet a loser, and involved in a great debt by that signal bounty of his majesty, which I hope will, in due time, be made good to me under so good a security as an act of parliament; and I have great reason to complain of those my very good friends who first disposed his majesty to that act of grace, and were not afterwards solicitous enough in their several places to make it effectual to me. And this is a very true account of all that business, and of all the money which I ever received from Ireland, with all the circumstances thereof; which, I hope, in the judgment of all impartial men, will not reflect to the prejudice of my integrity and honour.

The Sixteenth Article is, "That I have deluded and betrayed his majesty and the nation, in all foreign Treaties and Negotiations relating to the late war."

I do heartily wish that those particular treaties, and the particulars in those treaties, had been mentioned, wherein it was conceived that I had deluded and betrayed his majesty, that I might have at large set down whatsoever I have known and done in those treaties, and then it would easily have been made to appear how far I have been from betraying and deluding him. It was never any ambition of my own that brought me to have a part in any treaty; God knows, I heartily wished to have meddled in nothing but the administration of that great office the king thought fit to entrust me with; but his majesty had so good an opinion of me then, that he required and commanded my service in many of those treaties; and therefore it will be necessary for me according to the method I have hitherto used, to mention every particular treaty that hath been entered into, since the time of his majesty's return into England, and the part that I have had in it: Being as willing to be called to the strictest account for any other treaty he had made when he was abroad, or for any other counsel I have ever given in my life, public or private; wherein, I doubt not, I shall be found to have behaved myself (according to the weak abilities God Almighty hath given me) with fidelity to

my master; and with all imaginable affection to my country, how unhappily soever I am represented.

The first treaty was with the crown of Portugal, in which I was none of the commissioners who treated; and was only present when any report was made by the commissioners to the council-board, where all the articles were debated; and I do not remember that there was any difference of opinion upon any of them; and that treaty hath been generally held the best that hath been made with any crown, the merchants having thereby greater advantages in trade than they have in any other place, besides many other great benefits, with a great enlargement of his majesty's empire.

The second treaty was with the States of the United Provinces, in which likewise I was none of the commissioners who treated; but all that was by them transacted was still brought to the council-board, and debated there in his majesty's presence; in which the rule by which his majesty guided himself was, as I remember, that he would not remit any of those concessions which had been formerly made by them in their last treaty with Cromwell; and their unwillingness to consent to that was the reason that their ambassadors proceeded so slowly: And his majesty had the less reason to be solicitous for expedition, because the king of France had given him his royal word, and proposed to himself, that the two crowns might proceed in their several treaties with the Dutch together, that so they might be brought to such good conditions, that they might live like good neighbours with both the crowns, which, he observed, they were not naturally inclined to do; and promised positively, that for his part, he would not conclude any thing with the Dutch, before he had entirely communicated the same to his majesty. Notwithstanding which engagement, France entered into and finished their treaty, and in it made that secret article, which they declared afterwards to be the ground and their obligation to assist the Dutch in the ensuing war. However, his majesty proceeded not, till the Holland ambassadors consented to all which had been granted before to Cromwell; which being done, the peace was made and ratified on both sides, and, without doubt, with more advantage and honour to the English, than ever had been provided by any former treaty between the crown of England and those States.

From the two crowns of Sweden and Denmark, ambassadors extraordinary arrived here shortly after his majesty's return, and the several treaties were made with both those crowns before the departure of the ambassadors; in neither of which treaties I was a commissioner, nor knew any thing that passed in either, but as it was represented at the council-board, and debated in his majesty's presence; nor did I ever hear that either of them was reckoned a disadvantageous treaty, both of them containing as much benefit to the English as any treaties which had been made before with those

crowns. It is very true, there were some unusual expressions of kindness and friendship in the treaty with Denmark; which in respect of that king's being at that time in a very low condition, under the disadvantageous conditions of the treaty of Copenhagen newly submitted to, and under almost as ill a treaty extorted from him by the Dutch, and yet being in terrible apprehension of some new oppression from the one and from the other, the ambassador did very earnestly solicit to have inserted, and were, upon great deliberation, allowed and inserted by his majesty's own particular direction; in consideration of the near alliance in blood between his majesty and that king; and the civilities and obligations his majesty had received from Denmark, during his majesty's being in Holland, after the murder of his father; and during his being in Scotland, when the king of Denmark sent him horses, arms and ammunition; of which his majesty had so great a sense, that he was often heard to say, that if it had pleased God to have brought him home before that disadvantageous peace at Copenhagen had been made, which was done by the countenance of the English ships, and the threats of those who were then ambassadors from the governing power in England, that he would have done the best he could to have defended and protected him; and therefore he did very readily yield to that article drawn by the ambassador; his majesty declaring at the same time, that he was very willing that those princes who were neighbours to Denmark, and from whom that kingdom apprehended new oppressions, should know his majesty's resolution to support that king, and defend him from new injuries, to which the policy of his government, as well as his inclination, invited and obliged him; though it is very true, the king of Denmark did shortly after make very ill returns to his majesty for that his so signal affection.

These were all the treaties made by the king before the war with the Dutch, for there was very little progress made either with France or Spain for the reasons mentioned before, except only a short treaty with the elector of Brandenburg: which treaty, for the most part, was particular with reference only to the prince of Orange, his majesty's nephew, and for the better ordering of his affairs; in which treaty his majesty likewise employed five or six of his privy-counsellors; and the few articles between his majesty and that elector in point of state, were likewise transacted by them, and debated and considered at the council-board, and in which all things were inserted for his majesty's benefit and service: and if they had not been afterwards violated by the elector, his majesty had reaped much fruit and advantage even by that treaty.

After the war was entered into with Holland, his majesty sent Mr. Coventry to Sweden, and sir Gilbert Talbot to Denmark, to dispose those two crowns to a confidence in each other, and then to dispose them both to adhere to his

majesty, or at least not to favour or assist the Dutch. The treaty with Sweden succeeded to his majesty's wish and was concluded in a league defensive, very much to the king's satisfaction, and with the full approbation of the whole board; that crown having manifested so much affection to his majesty, and such an inclination to an intire conjunction with him, that upon very reasonable conditions they would have been induced to have entered into a league offensive, and even in the present war against the Dutch: In order to which, they sent their ambassadors hither, at the same time when Mr. Coventry returned, and they became the mediators for the peace; having first declared to his majesty, that if the treaty should prove ineffectual, the crown of Sweden would immediately join with his majesty in the war against the Dutch. What became of the other treaty with Denmark is publicly known, his majesty having declared to all the world how perfidiously he was treated by the Dane.

There remains only one other treaty to be mentioned, which is the last with the Dutch, upon which the peace was made; and therefore it will be necessary to set down the inducements to that treaty, the whole progress and conclusion of it: by all which it will easily appear that his majesty was neither betrayed or deluded in it; or if he were, that it was not done by me. After so many encounters and various successes in the war, which had been carried on with a much greater expence than his majesty, at his first entrance into it, was persuaded it would cost him, when he saw the strength and power of the Dutch so much increased by the conjunction of France and Denmark, which supplied them with money, ships, and (what they had more wanted) with men as many as they desired; and that all the propositions he could make to Spain could not induce them to enter into such alliance with him as might embark them against France; notwithstanding it was evident to all but themselves, that the French resolved to break the peace with them, having at that time published those declarations, which they afterwards made the ground of the war: his majesty clearly discerned, that the Dutch grew less weary of the war than they had before seemed to have been; and that they would be able, with that assistance and conjunction, to continue the war with less inconvenience than his majesty was like to do. He had found it necessary for the streightening the trade of the enemy (the depriving them of which could only induce the Dutch to desire a peace, and which he could not do by the strength of his own ships, which were still kept together to encounter their fleet) to grant as many commissions upon letters of mart to private men of war as desired the same, and with such strict orders and limitations as are necessary in those cases; and he found indeed the advantage very great, in the damage those men of war did to the enemy, which was considerable, and gave them great trouble: on the other side, the

common seamen chose much rather to go on board those men of war; where their profit out of their shares of the booty was greater, and their hazards much less than in the king's ships, where they got only blows without booty, though their pay and provisions were much greater than they had been in any former times; so that when the royal fleet was to be sent out, there was greater difficulty in procuring seamen and mariners to man it. And then, whereas the advancement of trade was made the great end of the war, it was now found necessary to suppress all trade, that there might be mariners enough to furnish the ships for the carrying on the war; and this inconvenience produced another mischief; for, by the great diminution and and even suppression of trade, there was likewise so great a fall in the customs, excise, and all other branches of the king's revenue, that it was evident enough, that his majesty would have very little to carry on the war, but what should arise by imposition in parliament upon the people; who already complained loudly of the decay of their rents, of the small and low price which their commodities yielded by the cessation of trade, and especially by the carrying out of all the money in specie from the several counties, to London, for the carrying on of the war; and the parliament itself appeared to be so weary of it that instead of granting a new supply, proportionable to the charge, they fell upon expedients to raise money by sale of part of the king's revenue, which was already too small to support the ordinary and necessary expence of the crown: but above all, his majesty was most discouraged by the extreme licence of the seamen in general; but especially those who were called privateers, set out in the particular ships of war upon adventure, who made no distinction between friends and foes; but, as if the sea had been their own quarters, they seized upon all ships which came within their view, and either pillaged them entirely, and so dismissed them, (which they usually did to those which they foresaw would be delivered by the course of justice) or else brought them into the harbours after they had taken from them what they best liked. And then the formal proceedings in the court of admiralty, were so dilatory and involved in so many appeals, that the prosecution of justice for injuries received grew as grievous as the injury itself; which drew a universal clamour from all nations, that, without being parties to the war, they were all treated as enemies. France had made the damage they had this way received, and the interruption of their trade, a great part of their quarrel, and one ground of their conjunction with the Dutch. From Spain, which really wished better to us than to our enemies, the complaints were as great that their whole trade was destroyed; their ships of Flanders, which supplied Spain with what they wanted for themselves, and with what was necessary for their trade and intercourse with the Indies, were all taken

as Dutch, because it was very hard to distinguish them by their language; which was likewise the case of all the Hans-Towns, which made grievous complaints, and had, without doubt, received great damage. Those provinces of Italy, whose dominions reached to the sea, as the two republics of Venice and Genoa, and the duke of Florence, expostulated very grievously for their several ships taken by those freebooters of Scotland and of Ireland, both which nations enriched themselves very much upon such depredations; and how much sorer the royal navy was every day weakened, the number of the men of war wonderfully increased: so that those kind of ships, of England, Scotland, and Ireland, covered the whole ocean; and of those ships which were taken and carried into Scotland or Ireland, (in England there were many re-deliveries) it was observed, that there were *'Vestigia nulla retrorsum.'* Even Sweden itself, with whom a new stricter alliance was then entered into, with as severe restrictions to that licence of the men of war as could be contrived for the liberty and security of the trade of that crown, complained exceedingly of the violation of all these concessions and provisions, and that their ships were every day taken and plundered. And this universal complaint began to awaken all princes to a jealousy, that the English endeavoured to restrain all trade, till they could make themselves the entire masters of it. And it is very true, in the first entrance of the war there had been many unskilful expressions, even in the parliament, as well as in the frequent discourses of parliament-men, that by this war, and by suppressing the Dutch, (of which they made not the least doubt) the king would be able to give law to all the trade of the world, and that no ships should pass the sea without paying some tribute to England; which liberty and rashness in discourse, made a great impression upon those who wished any mischief to the Dutch, till they saw what danger might ensue to themselves by the success of the English; and thereupon wished that they might break themselves upon each other, without advantage to either party: and this general temper and complaint made the deeper impression in his majesty, by his discerning an extreme difficulty, if not an impossibility, to give a just remedy to it; and, consequently, that he should be shortly looked upon as a common enemy. He had taken very great pains, upon deliberate consultations, to suppress that odious irregularity and destructive licence that was practised amongst the seamen, and had, in many particular cases, himself examined the excess, and caused exemplary justice to be done upon the offenders, and restitution to be made of what had been taken, at least of what was left; for no justice could preserve the injured persons from being losers: he granted such rules, and privileges, and protection to the ports of Flanders, and to others of his allies, as themselves desired, and looked upon as their full security; but then he quickly

found, that from those very ports, and in those very ships which enjoyed those privileges, the trade of the Dutch was driven on: so that it was evident enough, that by that liberty which other nations thought themselves in justice intitled to, if not restrained, the Hollanders themselves would be easily able to carry on their whole trade in the ships of Flanders, Hamburg, and the other free towns, or in their own ships owned by the other; and that the restraint would be likewise impossible, without a total suppression of the men of war, and a revocation of all commissions granted to any of them; which must likewise be attended with the freedom and security of trade to all his majesty's enemies. In the last encounter at sea, the Prince Royal, and three others of his majesty's navy, had been lost; and another (the London) had been burnt in the river by the negligence of the seamen; for there was never any discovery made, that there was any purpose or malice in it: The French had obliged themselves, that the duke de Beaufort, admiral of France, should, with the whole fleet under his command, amounting to eighteen good ships, join with the Dutch; and the king of Denmark was likewise engaged to send all his greatest ships, which were ten or a dozen, in order to the like conjunction. So that his majesty clearly discerned that the enemy would be much superior to him in strength and power, though he should have been able to have manned and set out all his royal navy; which he very well foresaw he should not be able to do, both for want of money, and want of seamen, who were already in great disorder and mutiny for want of their pay, of which there was indeed a great arrear due to them; and which was worse, there was grown such an animosity amongst the principal officers of the fleet between themselves, that the whole discipline was corrupted; so that it was hard to resolve into what hands to put the chief government thereof, if it could have been made ready. Upon which, and the whole state of affairs, upon deliberation and frequent consultation with the principal officers of the sea, and such others whose experience in such matters rendered them most capable to give advice, his majesty found it most counsellable to resolve to make a defensive war the next year, and to lay up all his great ships; and to have some squadrons of the lighter vessels continue in several quarters assigned to them, which should be ready to take any advantage which should be offered; and that there should be likewise ready in the river another good squadron of ships against the end of the summer, which being ready to join with those which lay out, when the enemy was weary, and their ships foul, should be able to make many notable advantages upon them; of which they who advised it were so confident, that they did believe this defensive way, thus ordered and prosecuted, would prove a greater damage to the enemy in their trade, and all other respects, than they had ever yet undergone. And

in all this counsel and resolution I had so other part than being present; and not understanding the subject matter of the debate, I thought myself not to be able to answer any of the reasons which had been alledged.

These considerations, upon a full survey of his ill condition at home and abroad, induced his majesty to wish that there were a good end of the war; which inclination his majesty vouchsafed to inform me of, well knowing that I would be very glad to contribute all I could to it, as the thing I desired most in this world, and which I thought would prove the greatest benefit to the king and kingdom; and his majesty likewise told me, that he found all those who had been most forward and impatient to enter into this war, were now weary of it, and would be glad of a peace; so that there remained now nothing more to do, than for his majesty to advise with whom he thought fit (for there seemed many reasons to conceal both the inclination to peace, and the resolution not to set out a summer fleet, from being publicly known) what method to observe, and what expedients to make use of, for the better securing this wished-for peace, without appearing to be too solicitous or importunate for it, or so weary of the war as in truth he was; and to this consultation his majesty was pleased to call, together with his royal brother, prince Rupert, the general, the Lord Treasurer, myself, and those other honourable persons with whom he used to advise in his most secret and most important affairs.

That which occurred first was, to consider whether there were any hope of dividing the French from the Dutch; upon which supposition the prospect was not unpleasant, the war with one of them being hopefully enough to be pursued; the conjunction was only formidable: And to this purpose several attempts were made both in France and Holland; both sides being equally resolved not to separate from each other, till a joint peace should be made with England, though they both owned a jealousy of each other, those of Holland having a terrible apprehension and foresight of the king of France's designs upon Flanders, which would make his greatness too near a neighbour to their territories; besides, that the logic of his demands upon the devolution and nullity of the former treaty upon the marriage, was equally applicable to their whole interest, as it was to their demands from the king of Spain: And France, upon all the attacks they had made both in France with the ambassador there, and in Holland by their own ambassador, found clearly, that they were to expect no assistance from the Dutch in their designs, and that at least they wished them ill success, and would probably contribute to it upon the first occasion; and this made them willing to determine their so strict alliance, which was already very chargeable to them, and not like to be attended with any notable advantage, except in weakening an ally from

whom they probably promised themselves more good. However, neither the one or the other could be induced to enter into any treaty apart, though they both seemed willing and desirous of a peace: in order to which, the Dutch, through the Swedes ambassador's hands, had writ to the king, to offer a treaty in any such neutral place as his majesty should make choice of; professing that they should make no scruple of sending their ambassadors directly to his majesty, but that their conjunction with the other two crowns, which required a neutral place, would not admit that condescension; and at the same time they intimated to the Swedes ambassadors, that the king of France would not send his ambassadors into Flanders, or any place of the king of Spain's dominions; and therefore wished that his majesty would make choice of Disseldorp, Cullen, or Frankfurt, or Hamborough, or any other place which his majesty should think more convenient than the other, under that exception: All which places, and in truth any other out of the king of Spain's dominions, were at such a distance (the winter being now near over), that there could be no reasonable expectation of the fruit of the treaty in time to prevent more acts of hostility.

About this time the earl of St. Albans having been sent into England by the queen-mother upon her own particular affairs, M. De Ruigny did write to him, that that court did earnestly desire a peace; and that, if he were in France, he did believe some expedient might be found that would produce the same; and he continued for many weeks together to write very earnestly to the earl of St. Albans to come into France with authority to treat and conclude a peace, and that it might be made before suspected. All which letters the earl shewed to his majesty. M. De Ruigny was a person very well known to the king, and many others in the court, to be too wise a man to write upon such a subject, and in such a manner, without very good authority; and that he was likewise a man of honour, and would not suffer himself to be made use of upon any unworthy design; and therefore his majesty concluded, that it would be fit that the earl of St. Albans should transport himself into France: who having dispatched all the business for which he was sent by the queen, his return could administer no cause of jealousy to any; nor had he so much as a letter of credit from the king, and only had direction to understand from M. De Ruigny, upon what ground he had so earnestly invited him over, and to receive any proposition he or any body else should offer in order to peace, which he should transmit to his majesty, and expect an answer; with a positive, negative instruction, that if any proposition should be made to him to oblige his majesty to assist the French against Flanders, he should utterly reject it.

At the same time the baron De Isola, who was envoy from the emperor, and a much more dexterous man than the Spanish ambassador,

and so more relied upon in Madrid as well as Vienna, in those affairs which concerned their joint interest, pretended to have received letters from Holland, by the consent and with the privacy of De Witt, that they had there a great mind to peace; and that if De Witt, who was looked upon as the only man that opposed it, might receive any assurance of the good-will and protection of the king, he would be willing to negotiate the peace, whether France should be willing to it or no; and the baron (who had nothing more to solicit on the emperor's behalf) offered immediately to take his leave and return to Brussels, and from thence he would go *incognito* to the Hague, and confer with De Witt, and would thereupon give his majesty advertisement what he might depend upon. The king would have thought the better of any peace that had been procured without the interposition of France, and therefore willingly consented to his journey; and gave him leave to assure De Witt, that he should find all possible good-will and friendship from his majesty, and that his majesty desired nothing more than a just and an honourable peace, and upon such conditions as might make it lasting.

Whilst these matters were in agitation in France and in Holland, the Swedes ambassadors earnestly solicited for an answer to the letter they presented to his majesty from the States, concerning a neutral place; which put his majesty to another deliberation. Not to return any answer, would be interpreted a refusal of the Treaty, and so make his majesty appear to all christian princes to be better pleased with the war. To accept of any of those places insinuated from the Dutch, would be against his dignity, in so far condescending to the unreasonable imposition of the king of France; and yet to nominate any place in Flanders for the Treaty, after France had so positively declared itself, would be interpreted both by France and Holland as a rejection of the Treaty, at least would make France less solicitous for a good end of it. When his majesty called that committee of the board to consult upon some expedient in this affair, he proposed himself one expedient, which I am sure I had not heard of before; which was, to make choice of the Hague for the place to treat in. The condescension to Holland, in sending his ambassadors to treat in their own province, was, not, upon a disquisition of it, thought to be of that importance, as to neglect the benefits and conveniences which might reasonably be expected from the having it in that place. The people were not only generally very weary of the war, and desirous of a peace, but the States themselves were very much divided, and De Witt had been exposed to many difficulties and reproaches, under the character of being the sole person who desired the prosecution of the war; and he had prevailed most, by taking upon him to assure the States, that the king had no thoughts of peace, but only laboured to separate France from them,

and divide them amongst themselves. There could not be a greater manifestation of his majesty's ardent desire of peace, than by offering to send his ambassadors to the place where the body of the States themselves resided, and who would be the only judges of the reasonableness of what his majesty should propose, and by being upon the place might give all expedition to the work: besides, that all other princes concerned had their ministers likewise there; and therefore if his majesty's overture in this particular should be rejected, all the world would conclude that the Dutch would not endure so much as to hear of peace. And upon these reasons the resolution was taken to name the Hague for the place of the Treaty, and his majesty's letters were dispatched accordingly.

The first news we heard from Paris and the Hague, after the earl of St. Albans being arrived there, and the baron De Issola at Brussels, was a great complaint, that the king had sent the baron De Issola privately to the Hague with overtures of peace; but especially with design to divide Holland from France, and to persuade them to break their alliance with them; in which there were some particular expressions which his majesty had in truth used to the baron De Issola, and many other which he had never used. The king had reason to conclude from hence, that De Witt was never to be treated withal privately; and that the baron De Issola was not to be trusted, he having persuaded and prevailed with his majesty to give him leave to speak with De Witt upon some letters he had shewed the king from M. Friguett, the emperor's envoy at the Hague, a gentleman not unknown to his majesty, and of a very clear reputation; wherein there was mention of a discourse made by De Witt to him, which might very well encourage the king to give that in charge to the baron, which his majesty had in truth commended to him: nor in truth had it been material, if he had said no more than his majesty gave him leave to do; which yet he promised not to mention, except he clearly discerned the other to be very willing to deal as freely with his majesty; but it plainly appeared that the baron had far exceeded his commission, and said many things for which he had not any power, and which in truth had never passed in discourse between the king and him. And as the king of France had always expressed the greatest prejudice, and the most bitter jealousy, from the time that the Baron was designed for England, as a person who delighted in nothing so much as in puzzling and perplexing, and creating intricacies in all treaties in which he had ever been engaged, which had been many in several courts of Christendom; so indeed his parts were most proportioned for embroiling and for preventing any conclusion, in which he gave himself leave to say and do any thing which he thought would contribute to his end, without the least consideration of ingenuity or sincerity in the matter; though otherwise it cannot be denied that he

was a man of great parts, and of a universal understanding in the affairs of Christendom.

At the same time the king of France complained of the authority given by his majesty to the baron De Isola, we found in the Dutch printed Gazette the copy of a letter written then by the king of France himself to the States; in which he informed them of the earl of St. Albans being newly come to him with propositions from the king of England in order to peace; and that he had a plenipotentiary commission to treat and conclude, mentioning some of the conditions he had offered; and therefore desired that they would arm their ambassadors in France to join in the Treaty. This gave his majesty great offence, and just cause to suspect that whatever pretences France had made, it did not at all desire the peace; and he had the more reason to complain of this injury, because there was not the least colour or ground of truth in the relation, the earl of St. Albans having not any thing like of commission; nor, as he protested upon this occasion, (whereof he had likewise taken notice at Paris, and complained before he could have any advertisement from England) had he ever pretended to have the least power from his majesty; nor had he ever mentioned any of those particulars to any person which were so formally inserted in that king's letter to the States: and his majesty was the more confirmed in his belief that France would not contribute to the peace, because they did at this very time, with equal passion to De Witt himself, oppose the Treaty at the Hague; against which they could have no reason to except, if they had a mind to the peace, unless they hoped, by the trick that is mentioned before, to have got the Treaty to Paris by a commission to the Earl of St. Albans; which they had tried all the ways they could to obtain, and his majesty had as positively refused to grant, and then resolved to insist on the Hague, or upon some place in Flanders, let the success be what it would.

During this agitation, an express was sent over from the earl of St. Albans, with two papers which he had received from M. de Lyonne, and both in his own hand, which originals were sent to the king; the one contained a proposition for the peace, that there should be no mention of the charges of the war, or the damages received by it on either side; but that it should be in his majesty's choice whether all things should remain in the state they were at present, either side to keep what it had taken, and were possessed of by reason of the war; or that both sides should come to an account, and either be repaired by the other for the damages it had sustained; and that after his majesty had made his election of those two particulars, from thence the peace should be observed between the king and the Dutch, according to the last treaty which had been made at London after his majesty's return. The other paper was a proposition made to his majesty, that he would promise under his hand that he would not, during the

space of a year to come, enter into any treaty to the prejudice of France, nor give any assistance against France during that year, this overture being made about the beginning of March; and in consideration hereof, the king of France would restore the island of St. Christopher's, which he had newly taken from the English, and would undertake that the Dutch should consent to the peace upon the conditions formerly mentioned; and that the treaty should be, if his majesty desired it, at Dover or Canterbury, since it would not be possible to persuade De Witt ever to consent that it should be at the Hague; which he looked upon as a design only to countenance the party of his enemies; and at the same time the States writ again to the king, and offered to treat at Dover or Canterbury.

Though his majesty had, in all his answers to the Dutch, demanded satisfaction for the damages he had sustained, and for the charge of the war; and made little doubt, if France had not entered into that conjunction, that they would have been induced to have made some compensation towards it; yet the case was now altered, and they thought themselves by the new alliances to stand upon the advantage ground, so that his majesty found any demand of that kind would not be submitted to; nor, in truth, had the like been insisted upon in any treaties of this age, after the longest or sharpest war that had been made. Hereupon, after full deliberation, his majesty was well contented to accept of the propositions made by the king of France for the peace, and made choice of the first alternative, that both parties should be contented to enjoy what they had got without any account, the Dutch having lost very much more than the English; and we having taken from them in Guinea, and upon that coast, more important places than they had taken from us: and the restitution of St. Christopher's by the king of France, put his majesty into the same condition in his plantations in the West Indies, as he had been before the war.

When his majesty thought that all things upon the matter had been adjusted, and cared the less where the treaty should be; and having sent such an answer into France as was punctually agreeable to what had been thence desired; he received another dispatch from thence, with infinite excuses, and protestations of sincerity, that the Dutch had expressly refused to consent to a peace, except the king would remit and part with the island of Polaroone in the East Indies; an island which had been formerly taken by the Dutch from the English with very foul circumstances, and the re-delivery whereof was promised by them in their treaty with Cromwell, and again renewed in their last treaty with the king, and his majesty had sent ships thither to receive it; which not being delivered upon pretence of want of some formality in the demanding, it was one of the grounds of the present war, as an indignity and breach of faith towards his

majesty: though they protested that it was only the fault of their governor in those parts, who for want of an order from the East India Company, though he did receive the order of the States General, had not refused, but delayed its delivery; and that that, and all other orders that could be required, were again renewed, and already sent thither, and they were confident the place was by that time given up. It was alledged by the king of France, that the Dutch had always declared to him, in all the discourses which had been between them of a treaty, that they would never restore Polarroone: and M. de Lyonne protested, that he had never known that the restitution thereof was comprehended in the last treaty, but conceived that it would fall within the alternative, if the king should make choice of that; which he had done, or otherwise would fall into the account: and concluded with a very earnest desire, that the king would rather yield in that particular, than break the treaty for an island which was nothing worth for the present, nor could be made valuable in less than seven years; with a protestation still, that he would do all that was in his power to persuade the Dutch to part with Polarroone; but if they should deny to do it, he could not separate himself from them upon that point, since they had still mentioned it as a condition: but if his majesty would yield in that particular, all difficulties should be removed, and the Treaty concluded without any new obstruction. This unreasonable litigation, and the receding from what had been so fully undertaken before, removed all confidence from his majesty of the sincere intentions of France; nor could he foresee what other new scruples would arise from the one hand, and be admitted by the other. However, after a full deliberation with his council upon the whole state of his affairs, and after having communicated to them all that had passed, he did resolve not to reject the Treaty, but was contented that Breda should be the place; not thinking it fit, for many reasons, to bring the Treaty to Dover or Canterbury, to give the enemy that advantage if it should prove ineffectual, that it should be broken in his own dominions: or to make other advantages by infusions to the people, who were generally more dissatisfied than they had reason to be: and thereupon his majesty named the lord Hollis, and Mr. Henry Coventry of his majesty's bed-chamber, for his ambassadors in that Treaty, men very well qualified for the service, who were dispatched to Breda as soon as was possible, which was about the beginning of May; France having promised, that the fleet under the command of the duke de Beaufort should remain in the port, and that he would use his utmost power to dispose the Dutch, in the entrance into the Treaty, to consent to a cessation, that so there might be no more acts of hostility on either side, until it might appear what success the Treaty was like to have towards a Peace: and

concerning the business of Polarroone, he gave them charge to insist upon the delivery, and sent to the East-India Company, who had the sole interest in that island, to send their deputies to the Treaty, who should be privy to all that should be treated upon that affair, and who might propose or accept whatsoever they thought best for themselves; towards the obtaining whereof, France was so fully engaged to use their utmost interposition.

What passed during the Treaty is known to so many, that I need not mention it here, every dispatch from the ambassadors being read and debated at the Council-Board; and when such difficulties did arise that the ambassadors would not take upon them to make any conclusion without a particular communication of the temper, and disposition, and resolution of all the persons concerned, they thought fit that one of themselves (the lord ambassador Coventry) should attend his majesty, being obliged to return with his majesty's answer within so many days; and as soon as he arrived, he gave his majesty a full account, before the whole Council-board, of all that had passed in the Treaty; that the Dutch behaved themselves very insolently, and that the authority of De Witt was so great at the Hague with the States, that nobody durst oppose any thing he advised; that the Dane, by his instigation, had made demands of a very insolent nature; that they believed that the French ambassadors had behaved themselves very well, and done all that was in their power to do, and had restrained the Dutch from their insolence by threats and menaces, which they likewise used towards the Dane: In fine, he read all the articles which were concluded between them; with all those which remained undetermined and unconsented to, on either side; with what the French ambassadors resolved to persuade and reduce the Dutch to consent to yield to, or to declare against them in their master's name. Upon which report, every particular article was at large debated at the board, which took up many days. The ambassador said, there was not the least hope of having Polarroone restored to the English; that they said it was contained in that alternative which the king had made choice of; and when it was replied to them, that the words of that alternative clearly determined the contrary; for that either side was to remain possessed of what they had got by reason of the war, which could not be applied to this island, which they had unjustly taken and usurped so many years before; and that they were obliged, by the last treaty, to restore it, so that the war had no operation upon that; to this they answered, that they had, according to the treaty, sent orders for the re-delivery of it, and that they believed it had been delivered accordingly; and that, upon the news of the war, their subjects had retaken it again, which would bring it within the very letter of the alternative: and this our East-India Company was so far from contradicting, that they believed it to be true, and

had shewed me, before the Treaty began, a letter they had received from one of their factors in the Indies, that there was a report there, that the Dutch had delivered up Polarroone to those who were sent to receive it, and that shortly after that they had taken it from them again; and therefore they desired that a special article might be inserted in the Treaty, whereby the Dutch might be obliged to give it up again, if they had in truth so indirectly delivered it, that they might again repossess themselves of it; which could not but be understood to be a plain violation of their public faith, or a vile artifice to elude it. The ambassadors replied, That if it had been in truth delivered by them, though so indirectly taken, they could not insist upon it, but allow it to be in the alternative; they desired only that it might be inserted in the article, that if in truth it had never been delivered, they should be obliged to do what so long since they should have done. The Dutch answered, That the end of this Treaty was to establish a firm Peace, and therefore they would admit of no doubtful expressions which might create future disputes. The ambassadors said, It was very evident, and the French ambassadors had acknowledged the same to them, that they were resolved never to part with the island; so that there remained no more to be considered upon that particular, but whether, upon the refusal of Polarroone, the war should be continued. The East India Company were sent for to deliver their opinion; and they very frankly declared, that they believed a Peace to be very necessary for the kingdom, and therefore would not that the war should be continued upon any particular interest of theirs; and it was evident enough, that if the war continued, their whole East-India trade must be destroyed, the Dutch being so much superior in shipping, and all kind of strength, in those parts. Hereupon the king resolved to consent to their keeping of Polarroone; and I do not know that there was one man at the board of another opinion. To conclude, after a long debate for so many days upon every particular, the king resolved, with the concurrence of the whole board (one or two persons only excepted) to consent to the Peace upon such concessions and provisions as the French ambassadors had obliged themselves to bring the Dutch to consent to; and thereupon the ambassador returned with full power, and in a short time after that Peace was concluded and published. And therefore I cannot understand how his majesty could be deluded or betrayed in that Treaty, which passed with such a full examination and disquisition; and in all which debates his majesty himself had taken the pains to discourse more, and to enlarge himself in the answer of all those objections which were foreseen, than I had ever known him to do upon any other article.

It is very true, that I had been commanded by the king to write most of the letters and directions which had been sent to the earl of

St. Albans. from the time of his going over, concerning the Treaty, his lordship having (I presume by the same direction) directed most of his letters to me; and most of the dispatches to the ambassadors were likewise prepared by me, they being by their instructions (without my desire or privy), to transmit their account to one of the secretaries, or to myself: but it is as true, that I never received a letter from either of them, but it was read entirely in his majesty's presence to those lords of the council, who attended, where directions were given what answer should be returned; and I never did return any answer to either of them, without having first read it to the council, or having first sent it to one of the secretaries to be read to his majesty; and I can with a very good conscience protest to all the world, that I never did the least thing, or gave the least advice relating to this war, or relating to the Peace, which I would not have done if I had been expiring, and to have given an account thereof to God Almighty that minute: and as his majesty prudently, and piously, and passionately desired to put an end to that war; so no man appeared more delighted with the Peace when it was concluded than his majesty himself did; though, as far as I could make any judgment of the public affections, the publication of that Peace was attended with the most universal joy and acclamation of the whole nation, that can be imagined: nor is it easy to forget the general consternation that the city and the people of all conditions were in, when the Dutch came into the river as high as Chatham; and when the distemper in the court itself was so great, that many persons of quality and title in the galleries and privy-lodgings very indecently every day vented their passions in bitter execrations against those who had first counselled and brought on the war, wishing that an end were put to it by any Peace; some of which persons, within very few days after, as bitterly inveighed against the Peace, and against the promoters of it. But I am so far yet from repenting or being ashamed of the part I had in it, that I look upon it as a great honour, that the last service performed for his majesty was the sealing the proclamations, and other instruments for the conclusion and perfection of that Peace, the great seal of England being that very day sent for, and taken from me.

The Seventeenth and last Article is, "That I was a principal author of that fatal counsel of dividing the fleet about June, 1666."

How far I have always been from giving advice in the prosecution of the war either by land or sea (except by being present at some of the debates) I have at large set down before; I never in my life having, pretended, either in the time when I served his late majesty during the war, or in this king's time, to understand any thing of that affair: but when I have been present in councils of that nature, I have always governed myself by their opinions who had the greatest reputation of skill in that

profession; and I never presumed less in my life to give an advice, than I did in this particular concerning the division of the fleet; and I should make a full answer to this charge, if I should say no more, than that I am not guilty of it. But since it hath made so much noise, to the disadvantage of the king, and of the conduct of his affairs, and that no care hath been taken to inform men of the whole carriage in that particular; I will, as I have done at large to the other articles, for his majesty's honour, and for the vindication of those of his council who were present in those debates, (how unjust soever many of them have been to me) set down very particularly all that I know of that matter, and how the fleet came to be divided; upon the view of which, I am of opinion, what misfortune soever attended it, no man will have cause to be ashamed of any fault be committed in it. From the time that his majesty resolved to send prince Rupert and the General with a joint power and authority to command the fleet, there was cause enough to apprehend that there would not have been so good an accord between them as the conducting so great a service required; and I was then thought to have so great an interest in both of them, that his majesty commanded me to use the utmost endeavours to dispose them to a good understanding towards each other; and I believe they will both confess, that I performed all the offices I could, and with some success, to that good end: And I was the more solicitous in it, because I found that the prince was much unsatisfied with the resolution his majesty had taken, that they should both go in one and the same ship; and that his highness was very desirous to be in a ship by himself, and even to command a part of the fleet upon any enterprise that should offer itself, separated from the other: And there was too general an opinion, from what ground I know not, even at the time when our fleet was ready, and when the two generals went to it, that the Dutch were not in any degree ready to come out; that the greatest ships had not taken in their provisions, and that they had not men enough to man the fleet; and that they had no design to come out of their port till the duke de Beaufort should be ready upon the coast to join with them; which fleet was then at Brest, and in great readiness. I had no part in managing the intelligence, nor in truth so much as a correspondence by letter at that time, with any man in France or Holland. The two generals were not many days at sea, when my lord Arlington informed his majesty and my Lords, that he had received intelligence from a good hand, that the Dutch were in no degree ready to come out with their fleet; and that the duke de Beaufort on such a day of the month had all his fleet ready, and his men on board, to take the first opportunity of the wind to set sail from Brest; that the wind had been fair these two last days, and therefore that it might be presumed that he was by that time at

sea, and making his course for Holland. Whereupon it was consulted, whether any order should be sent to the fleet, that prince Rupert with part of it might bend his course towards Brest, whilst the general, with the other part, waited the Hollanders motion. There had been a long prospect and frequent debates upon this contingency, and how advantageous a thing it would prove, if we could have timely advertisement of the duke de Beaufort's motion, that a part of the fleet might be sent to encounter him before his conjunction with the Dutch; and for that purpose the lord Arlington had taken all the pains he could to get particular intelligence of the motion of that fleet. When this intelligence was communicated, some were of opinion that his majesty should send present orders to the generals, that prince Rupert should with such a number of ships as they should think fit, bend his course as is before mentioned. The late lord-treasurer and I were present at this debate; and though we seldom offered advice in such cases, yet being now both of one opinion, we did desire the king, that he would not take upon himself to send positive orders in an affair of such moment, upon an intelligence that might not be true; though we believed it to be very probable, that the generals were like every day to know more of the motion of the enemy than we could do: And therefore we humbly offered it to his majesty, whether it might not be fit in this case to send some of the council then present, and who had seen the intelligence, and heard the whole debate, presently to the fleet to inform the generals of what his majesty had heard, and of the considerations which had been thereupon; and if they had received no advertisement to the contrary, and upon conference together, thought fit to divide the fleet, and that prince Rupert should set sail in order to engage the duke de Beaufort, his majesty would be very well content that they should put that design in execution, without staying for farther orders. His majesty was pleased (with the concurrent opinion of every person present) to approve of this proposition; and immediately made choice of Mr. Vice-Chamberlain, and sir William Coventry, to use all possible expedition to find out the fleet, and inform the generals of all that had passed. I must not forget to say, that at this conference, and before the messengers were dispatched, Mr. Secretary Morrice informed the king, that he had received intelligence very different from what my lord Arlington's was; which was, that the Dutch fleet was even ready to come out, all their men being aboard, which was likewise commended to those two honourable persons to make part of their information. The winds were so favourable, that the two messengers went to, and returned from the fleet with more speed than could reasonably have been expected; they reported to the king, that they had imparted all his commands to the generals, and that they had had full conferences together upon it; that

by all the intelligence they had received, they did conclude that the Dutch were not ready to come out; and therefore they thought it very counsellable, that the prince should endeavour to meet with the duke de Beaufort; and in order to that, they had agreed before their coming away, and had agreed what ships should attend prince Rupert and what should stay behind with the general, which they resolved should be executed by such a time, if they did not receive his majesty's orders to the contrary; which his majesty did not think fit to send, since they were of the same mind, and so they separated each from other, as was agreed. I have heard (but I was not then present) that upon a more certain intelligence that the Dutch fleet was come out, orders were sent to hinder the prince from going out; which, if they had been transmitted with care enough, would have come to him in time: but there being some negligence in that they came not to him time enough to return till the second day of the engagement; which is so well known, that I need not enlarge upon it. And this is all that I know of the dividing the fleet; in which I do not know that any man can be justly blamed with more reason than all men may be, whose counsels have not that success which is desired; and if there were any fault committed, I am sure there is no colour to impute it to me, nor am I in the least degree responsible for any consequence upon it.

I have now, according as my memory hath been able to supply (for I have not any paper or note by me for my assistance), answered every particular charge against me; I hope so fully, that, how powerful soever my enemies shall be yet able to appear, as they do continue very powerful, all indifferent men will absolve me from any guilt: and though I neither do or can expect any thing of justice or ingenuity from those persons who have by all the evil arts imaginable contrived my destruction, by infusing into his majesty's ears stories of words spoken, and things done by me, of which I am as innocent as I was when I was born, and other jealousies of a nature so odious, that themselves have not the confidence publicly to own; yet, I say, notwithstanding all this disadvantage for the present, I do not doubt but that posterity, if not the present age, will clearly discern my integrity and innocence in all the particulars which are objected against me, and lament my present suffering, that after so many years of very faithful and painful service, I should be banished my country, and forced to seek my bread in foreign parts at this age. However, it concerns me very much to wipe off one reproach which I may seem to have brought upon myself, by my withdrawing and secretly flying out of the kingdom, to avoid as it may be thought, the justice of parliament; which, as it is made the ground and foundation of the act of banishment, so I may reasonably presume that it hath made deep impression in the minds of many worthy persons, who were not over-inclined to entertain a prejudice

against me, and who, by my withdrawing, may reasonably believe, that if I were in truth so innocent as I have professed myself to be, I would not have declined the most severe and strictest examination of all my actions, of which I ought to be very ambitious; and that an exact inquisition might be made into my whole life, from which, and from which only, if I am so innocent as I pretend to be, I might reasonably promise to myself such a full vindication, as might amply repair me in point of integrity and honour, not only to the shame of my enemies, but to my full reparation for the damages I have sustained, if I could prove such a gross combination and conspiracy against me as I have seemed to accuse them of: and therefore it concerns me very much to make such a defence for myself in a clear relation of all the motives and circumstances which prevailed with me at that time to withdraw myself, after I had so often rejected all overtures and advice to that purpose, and so publicly declared that I would rather undergo all the danger and ruin which might attend my being brought to a trial than to contribute to my own infamy by endeavouring to decline the trial: and I hope that when I have made a faithful narration of all those reasons and motives which obliged, and even forced me to do what I did, I shall be thought by all dispassionate men not only not to have detested and betrayed my own innocence, but to have complied with that obligation and duty which I have always paid to his majesty, and to his service; and against which I hope, and am most confident, that God Almighty will always preserve me from committing the least fault or omission.

When his majesty was pleased first to send me an intimation of his purpose to take the seal from me, which was by the duke of York, he vouchsafed to use all the gracious expressions that can be imagined; the great satisfaction and benefit he had received by my service, the assurance he had of my fidelity, and that he was confident nothing could be objected against me, which I would not be well able to answer: but that the parliament had contracted so great a prejudice against me, that if they had sat but one day longer before their last adjournment, they would have accused me of high-treason, and that he was most assured that they continued in that resolution, and would execute it the first day of their next meeting; that I well knew the condition of his affairs, and how much he depended upon the house of commons for a supply of money, without which he should not be able to support his government: his advice therefore was, that I should deliver up the seal to him out of my own choice, by which he should be able to protect me from further inconvenience; and it would be so grateful to the parliament, that he should, in consideration thereof, receive all that he could desire from them. It will easily be believed that I was enough surprised at this message, it being a time when my mind was broken with the loss of my wife; for which he

majesty had vouchsafed in his royal person to condole with me very few days before, and when my condition in all respects was in no degree pleasant to me: I desired the duke that he would procure an audience for me with his majesty; which his royal highness had not the least doubt of obtaining, and made as little doubt but that his majesty, in respect of my lameness and indisposition, would be graciously pleased to come to my house; which his majesty the next day promised to do; but upon conference with others, afterwards changed that his gracious purpose, and appointed me to attend him in a morning in my own chamber at Whitehall, which, being a ground room, would not put me to the trouble of going up stairs; and thither his majesty did vouchsafe to come to me, there being nobody then present but his majesty and the duke. The king received me very graciously, with all those expressions which he had used to the duke; and when I asked him whether he had taken any offence at my carriage, and whether I had misbehaved myself in his service? he said, no, but the contrary, that I had served him very well, and that he believed no prince had a better servant; and that the resolution he had now taken was for my good and preservation; and so enlarged himself upon the resolution the House of Commons had taken to accuse me of high-treason, and the prejudice they had against me. I told him, that he might possibly be deceived in that information; and that if he examined it better, he would find that I was not a man so universally odious to any persons of power and interest to serve him; at least, that my lord Arlington and sir William Coventry, who were my known enemies, would not be found to be more popular than myself; that the manifestation of his displeasure in this manner would be so far from preserving me, that it would infallibly expose me to the malice of my enemies, and was upon the matter to call for accusations against me to gratify his majesty; and I told him then, as I had done before, that sir William Coventry had taken upon him, upon the day of the last prorogation, to offer some leading men of the House of Commons, that the chancellor should be sacrificed to them, if that would content them. His majesty told me, that he knew much more of the combination that was against me than I did; and that he was most assured, that if I were not removed before the parliament met, it would not be in his power to preserve me; but if I voluntarily gave up the place, and withdrew into the country, he would undertake I should not receive the least further trouble. I told him, the seal was in his own disposal, he might take it when he pleased; but that I would not bring the reproach upon myself, by voluntarily giving it up, that I deserted his service at a time when some men would believe that I might be of some use to him. His majesty seemed to be resolved upon the matter, but dismissed me with many gracious expressions of his good opinion; which he continued

long after to do to those persons, who of themselves taking notice of this discourse in the court, presumed to speak to his majesty: and to dissuade him from proceeding in that manner towards me; as the archbishop of Canterbury, the lord general, the earl of Bridgewater, and others; to all whom his majesty mentioned me as a person of whose affection and integrity to his service he had an unquestionable assurance: and I do in truth believe, that his majesty at that time had been persuaded to believe that my removal was necessary for his service: and had in himself no displeasure towards me, in order to any further prosecution.

As soon as the seal was taken from me and delivered to the king, I heard that Mr. May had kissed the king's hand, and told him he was then king of England, and never before; and then every day my enemies declared their animosities against me; and sir William Coventry declared publicly in all places, that he had advised the king to remove me, as a thing upon which his welfare depended: My lord Arlington had persuaded the duke of Buckingham, that I had been the sole person who had contrived the prosecution that had been lately against him; whereas in truth, I had never heard any thing of it till the king told it me, and the lord Arlington brought me the examinations which had been taken, and assured me there would be much more proved against him; upon which I gave such advice as my duty obliged me to do: but so far was I from malice towards the duke, that I did him all the offices I could with the king, and contributed at least as much as any man, as soon as I found by the lord Arlington that some of the witnesses were dead, and that the proofs would not make all that good which he had pretended; but the duke of Buckingham was informed that I was the only cause of his suffering, and thereupon inveighed against me with his usual bitterness.

As soon as the parliament came together, it quickly appeared that my enemies had so far prevailed with his majesty as to declare his own displeasure against me, and against all those who appeared to have no ill opinion of me; and then nothing was spoken so much of as the resolution to take my life; and the lady Castlemain declared that the duke of Buckingham was to sit lord high steward of England upon my trial, many wagers being laid in the court that I should lose my head; and sir Thomas Osborn, a person of great intimacy with the duke of Buckingham, had declared in the country, before his coming up to the parliament, that if the chancellor were not hanged, he would be hanged himself. All which unusual proceedings did not in the least degree terrify me; only the manifestation of the king's so great displeasure against me (for what cause God of heaven knows I cannot to this day imagine) did afflict me as it ought to do: Upon which I writ to the king, beseeching him not to give ear to the reports raised by my enemies; but to let me know in what I had offended him

and to beseech him to be satisfied with the disgrace and damage I had already received.

From the beginning of the prosecution in parliament against me, some persons who wished me very well, and were well informed of the severe intentions against me, earnestly advised me to withdraw myself, and thereby to provide for my security; which I utterly refused to do. And it is well known, that the day when the House of Commons sent up their general impeachment of High-Treason against me, that my coach was ready, and waited three or four hours to carry me to the House, I expecting to be sent for till the rising of the House. When the debate grew so hot in the House of Peers, and that after many expostulations from the House of Commons, the House of Lords still refused to commit me to prison, I received new importunities from my friends to make my escape; and they were persuaded by some who had had the greatest hand in contriving my ruin, to believe that it would be grateful to the king, and that there should be no means used to obstruct my going away: And when nothing of this could work upon me, the bishop of Hereford (who had not carried himself so well towards me as some men thought I deserved from him) first sent to the bishop of Winchester, to persuade him to get me out of the kingdom; and confessed to him, that it was the king's desire, though he would not own it to any body else: and then came to me himself, praising the same thing to me; and undertook, upon his salvation (which was his own expression), that I should neither be stopped in my passage, nor suffer in the least degree in my honour or my fortune by my absence; which he said I could not believe he would undertake without very good authority: and thereupon enlarged upon the calamities the kingdom must suffer by this difference between the two Houses, of which I should be looked upon to be the sole cause, and therefore had reason to apprehend what sense the people were like to have of it; and Mr. Seymour had the confidence to tell a noble lord of the House, who had vigorously opposed my commitment, that if the House of Peers did not comply with the House of Commons, the people would not only pull down my house, but the houses of all those Lords who adhered to me. I told the bishop, I was very innocent in all things laid to my charge, and therefore I was not to be terrified by any threats: however if it were thought fit for his majesty's service that I absented myself I would, without any consideration how far I might suffer in point of reputation, submit to his majesty's direction; only I desired that I might have such a pass as might secure me from being stopped, and exposed as a spectacle to the people, and as a man running away from justice; which the bishop thought I might

reasonably require, and made no doubt of sending it me accordingly: but the next morning he told the bishop of Winchester, that if the king should grant such a pass, it might give great offence to the parliament, which hazard his majesty would not run, but renewed all the assurances he had before given for the security of my passage: and I as positively refused to accept thereof: and so continued in my house, and spoke every day publicly with many persons a full week after the time that the bishop had been with me, notwithstanding the daily advice and importunity I received from my friends and nearest relations to withdraw.

It pleased God that the duke of York had been for some weeks sick of the small-pox, so that nobody had spoken with him of any business for the space of near a month: but the malignity of the disease being spent, his majesty himself had, upon the last Friday in November, visited his royal highness; and saying little more then, than in congratulating his recovery, and expressing his own great joy in it, he came again to him the next morning early, and had some private conference with him. And the king no sooner departed from him, but the duke bid his wife send presently to me, and conjure me presently to be gone; that she should let me know that it was absolutely necessary for the king's service; and that I might be very confident and secure, that I should meet with no obstruction in the way, nor undergo the least damage in my honour or fortune by being gone. And upon this authority and command I did the same night, on Saturday the last of November, 1667, leave my own house, and went by coach to Erif, where I embarked; and it pleased God, after four days struggling with ill wind and weather, I arrived at Calais the Wednesday following. And I did no more in this adventure, whatever prejudice I have undergone by it, than I shall always do, in sacrificing my honour, and my life itself, upon the least intimation of his majesty's pleasure, and whenever he thinks his service may be advanced by it. And if any man shall yet think, notwithstanding all that I have said, that I ought not to have withdrawn myself, but to have remained there in prison, or any other condition they would have put me in, until I had been fully cleared upon a fair trial; he will, I hope, have so much compassion of me, as to think I had great difficulties to contend with, and will lament, on my behalf, that I am forced to undergo so hard a fate, after the age of threescore years, whereof thirty have been spent in the service of the crown; and for the prosperity whereof, and the happiness of his majesty's royal person, my daily prayers shall be poured out, in what condition soever I am in, and in what corner of the world soever I shall be confined or condemned to.

216. The Trials of JOHN TWYN,* Printer, for High Treason; also of THOMAS BREWSTER, Bookseller, SIMON DOVER, Printer, and NATHAN BROOKS, Bookbinder, for Misdemeanors, at the Old Bailey: 15 CHARLES II. A. D. 1663.

FIVE several Indictments being drawn up, viz. one of High-Treason, against John Twyn printer; and the other four for Sedition, viz. two against Thomas Brewster bookseller, one against Simon Dover printer, and one against Nathan Brooks bookbinder; were presented to the Grand Inquest in London, at the sessions of gaol-delivery of Newgate, holden at Justice-Hall in the Old-Bailey, the 19th day of February 1663. Except that against Brooks, which was found the day following, by the same inquest. And after divers witnesses were sworn and examined before the said grand inquest, the said bills of indictment were severally returned *Bills Vera*.

* "At the Sessions in the Old Bailey, 30th Feb. 15 Car. 2. John Twyn was indicted on the Stat. 25 Ed. 3, of High Treason, for compassing and imagining the king's death, and the overt act laid in the indictment was, the printing of a seditious, poisonous and scandalous book, entituled; 'A Treatise of the execution of justice, wherein is clearly proved that the execution of judgment and justice is as well the people's as the magistrate's duty, and if the magistrate's pervert judgment, the people are bound by the law of God to execute judgment without them, and upon them.' And besides that title of the book, several passages in the book were set forth in the indictment which in substance were, first, that the supreme magistrate is accountable to the people. 2. The people are incited to take the management of the government into their own hands. 3. The people are encouraged to take up arms against the king and his family. 4. They are stirred up to revolt, as an action honourable and conscientious, and encouragements given to any town, city or county in the three kingdoms to begin the work. 5. The people are exhorted, not only to cast off their allegiance, but to put the king to death. And upon the evidence it was proved, that Twyn being a printer, by himself and servants printed this book; That he corrected some of the sheets, and that he scattered many of them to be sold; and he was found guilty, and had judgment for high treason, and was accordingly executed."

"At this trial were present of the judges the chief justice Hyde, and myself, and also my brother Wyldes recorder of London, and resolved by all clearly, that printing and publishing such wicked positions, was an overt act declaring the treason of compassing and imagining the king's death, which was also agreed by the rest of the judges upon our discourse with them." Kelyng.

The Names of the said Grand Inquest being as followeth, viz. Arthur Jourdan, Arthur Browne, Simon Rogers, James Whetham, Ralph Blore, Isaac Barton, Roger Locke, Thomas Cooper, Samuel Taylor, Roger Hart, John Watson, Christopher Pits, Thomas Gerrard, John Cropper, Thomas Partington, Ralph Coppinger, Matthew Pelazer.

At Justice-Hall in the Old Bailey, Feb. 20, in the morning.

The Court being set, Proclamation was made: "O Yes! All manner of persons that have any thing more to do at this sessions of the peace, and sessions of Oyer and Terminer, held for the city of London and sessions of gaol-delivery holden for the city of London and county of Middlesex; draw near and give your attendance, for now the Court will proceed to the Pleas of the Crown of the said city and county. God save the king."

Silence commanded.

Clerk of the Peace. Set John Twyn to the bar: [who was set there accordingly.] John Twyn, hold up thy hand.

Twyn. I desire to understand the meaning of it. [But being told he must hold up his hand in order to his trial, he held it up.]

Clerk, &c. 'Thou standest indicted in London by the name of John Twyn, late of London, stationer, for that thou as a false traitor against the most illustrious Charles the 2nd, by the grace of God, of England, Scotland, France, and Ireland, king, defender of the faith, &c. thy supreme and natural lord and sovereign—not having the fear of God in thine heart, nor weighing the duty of thy allegiance, but being moved and seduced by the instigation of the devil; and the cordial love, true duty, and natural obedience, which true and faithful subjects towards our sovereign lord the king bear, and of right ought to bear, altogether withdrawing; minding and with all thy force intending the peace and common tranquillity of this kingdom to disturb; and sedition and rebellion within these his majesty's kingdoms to move, stir up, and procure; and discord between our said sovereign and his subjects to make and move; the 27th day of October, in the year of the reign of our said sovereign lord Charles the 2nd, by the grace of God, &c. the 15th, at the parish of St. Bartholomew's, in the ward of Farringdon without, London, aforesaid, traitorously didst compass, imagine, and intend the death and final destruction of our said sovereign lord the king, and the ancient and regal government of England to change and subvert; and our said sovereign lord the king of his crown and re-

gal government to depose and deprive. And these thy most wicked treasons and traitorous imaginations to fulfil, thou the said John Twyn, the said 27th day of October, in the year aforesaid, in the parish and ward aforesaid, advisedly, devilishly, and maliciously didst declare, by imprinting a certain seditious, poisonous, and scandalous book, entitled, "A Treatise of the Execution of Justice," &c. In which said book, amongst other things, thou the said John Twyn, the 27th day of October, in the year aforesaid, in the parish and ward aforesaid, falsely, maliciously, and traitorously didst imprint, &c.—against the duty of thy allegiance, and the statute in that case made and provided; and against the peace of our said sovereign lord the king, his crown and dignity.

What sayst thou, John Twyn; art thou guilty of this high-treason whereof thou standest indicted, or Not Guilty?

Twyn. I desire leave to speak a few words: My lord, I am a very poor man; I have been in prison several months—

Clerk. Are you Guilty, or Not Guilty?

Twyn. With all due submission to your honours, I desire to speak a few words.

L. C. J. Hyde. You must first plead to your Indictment, and then you may say what you will; that is the rule of the law. We receive no expostulations till you have pleaded to the Indictment, Guilty or Not Guilty.

Twyn. I do not intend to answer to the Indictment, by what I shall now say; I am a poor man, have a family and three small children, I am ignorant of the law, and have been kept prisoner divers months—

L. G. J. Hyde. Pray plead to the Indictment, you shall be heard, say what you will afterwards.

Twyn. I humbly thank you, my lord.

Clerk. Are you Guilty, or Not Guilty?

Twyn. I beseech you to allow me counsel, and some consideration; I desire it with all submission.

L. C. J. Hyde. You must plead first; then ask what you will.

Clerk. Are you Guilty, or Not Guilty?

Twyn. Not Guilty of those crimes.

L. C. J. Hyde. God forbid you should.

Clerk. How wilt thou be tried?

Twyn. I desire to be tried in the presence of that God that is the Searcher of all hearts, and the disposer of all things.

L. C. J. Hyde. God Almighty is present here; there is no other trial by the law of England, but by God and the peers, that is the country, honest men. You shall have all your challenges, and all that is due to you, by the help of God; we are bound to be your counsel, to see you have no wrong: therefore put yourself upon your trial; say how you will be tried.

Twyn. I desire to be tried in the presence of God.

L. C. J. Hyde. So you shall: God Almighty is present here, looks down, and be-

holds what we do here; and we shall answer severely, if we do you any wrong. We are as careful of our souls, as you can be of yours. You must answer in the words of the law.

Twyn. By God and the Country.

Clerk. God send thee a good deliverance.

L. C. J. Hyde. Now say what you will.

Twyn. I am a very poor man.

L. C. J. Hyde. Nay, let me interrupt you thus far: whatever you speak in your defence, to acquit yourself of this crime, that you may reserve till by and by. This is but an arraignment; afterwards the evidence for the king is to be heard, then make your defence. If you have any witnesses on your part, let's know their names, we will take care they shall come in. If I did not mistake, you desired to have Counsel; was that your request?

Twyn. Yes.

L. C. J. Hyde. Then I will tell you, we are bound to be of counsel with you, in point of law; that is, the court, my brethren and myself, are to see that you suffer nothing for your want of knowledge in matter of law; *

* This is a very good explanation of the maxim, that the Judge shall be counsel for the prisoner. See the Note to the case of Don Pantaleon Sa, *ante*, vol. 4, p. 466. In the 5th Resolution in *air Henry Vane's Case*, *ante*, p. 131. It is said, "The court is always so far of counsel with the prisoner as to see that he hath right, and if they find any thing doubtful they of themselves will take time to advise." In addition to the particulars collected in that note, may be mentioned the sturdy and pertinacious claim of John Lilburne to counsel upon his trial for treason, *A. D.* 1649, (*ante*, vol. 4, p. 1269), and the curious altercations which occurred thereon. His claim was not allowed, though during the Usurpation it does appear that counsel were allowed perhaps more liberally than might have been expected. In *Coleman's Case*, *A. D.* 1678, Chief Justice Scroggs tells the prisoner, "You need not have counsel, because the proof must be plain upon you," agreeably to Lord Nottingham's reason in the case of Lord Cornwallis, *A. D.* 1678, and to 3 *Inst.* 137. It is observed in that Note, vol. 4, p. 470, that "Emlyn does not in his Preface include the privation of counsel in his enumeration of the hardships of the law." But, indeed, Emlyn does say in that Preface, (See vol. 1, p. xxxi, of this Collection) that "hitherto the law allows not a copy of the indictment nor of the names of the jurors, nor the assistance of counsel, as to matter of fact, in any indictments for felony," and he adds, "yet it is the opinion of many it would be never the worse if it did, for it seems very strange to allow a man these assistances in defence of his property and deny them to him when his life lies at stake." And he proceeds to enter somewhat farther into the subjects, particularly as to the list of the jurors' names, and copy of indictment.

I say, we are to be of counsel with you. But for this horrid crime, (I will hope in charity you are not guilty of it, but if you are) it is the most abominable and barbarous treason that ever I heard of, or any man else: the very title of the book (if there were no more) is as perfectly treason as possibly can be. The whole book through, all that is read in the indictment, not one sentence, but is as absolute high treason as ever I yet heard of. A company of mad brains, under pretence of the worship and service of God, to bring in all villainies and atheism (as is seen in that book.) What a horrid thing is this! but you shall have free liberty of defending yourself. To the matter of fact, whether it be so or no; In this case the law does not allow you counsel to plead for you; but in matter of law, we are of counsel for you, and it shall be our care to see that you have no wrong done you.

Clerk. Set Simon Dover to the bar: [who being set, his Indictment was read to the purpose following.]

‘Thou standest indicted in London, by the name of Simon Dover, late of London, Stationer, for that thou, &c. the 15th day of Feb. in the 13th year of the reign, &c. at the parish of St. Leonard’s Foster lane, in the ward of Aldersgate, London, falsely, maliciously and wickedly, didst imprint a certain false, malicious, scandalous and seditious book, intitled, “The Speeches and Prayers of some of the late King’s Judges,” &c. and the same didst sell and utter, against the duty of thy allegiance, &c. How sayest thou, Simon Dover, art thou Guilty of this Sedition and Offence, whereof thou standest indicted, or Not Guilty?’

Dover. My lord, and the honourable bench, I desire I may be heard a few words—

L. C. J. Hyde. When you have pleaded, you shall.

Dover. I shall be willing to plead—

L. C. J. Hyde. You must either confess it, or plead Not Guilty. I hope you are Not Guilty of this foul crime.

Dover. I am not, by the laws of England, Guilty.

L. C. J. Hyde. You shall be tried by the laws of England, whether you are Guilty or no.

Dover. I am willing to be so, and I am glad I am come before you to that purpose, having been long a prisoner: I am Not Guilty of any thing in this Indictment, neither as to matter, time nor place.

L. C. J. Hyde. What do you mean by time and place?

Dover. I am not guilty in manner or form. And now, my lord, I being altogether ignorant of the law, I humbly beg counsel, and a copy of my Indictment: I hope I shall not be destroyed, because I am ignorant of the law: I have been 18 weeks close prisoner.

L. C. J. Hyde. What would you have?

Dover. I desire time, and counsel assigned me, and a copy of my Indictment.

L. C. J. Hyde. For a copy of your Indictment, though it be for a foul offence, yet (in favour to you, it being not made so capital as the other) we cannot deny it you: For counsel you may have what you will, we need not assign it. [Make him a copy,] but I will tell you, we shall try it now.

Dover. I do protest I knew not what I came for; I never imagined what my Indictment was; I know not what there is in it—

L. C. J. Hyde. You shall have a copy made presently. If you have counsel or witnesses, send for them; we must try you to-day; but you will have some time, for we will begin with the other.

Dover. I beg I may have a copy of the Indictment in English, I cannot understand Latin.

L. C. J. Hyde. That that is against you, is in English; the Latin signifies no more, but that you did seditiously and maliciously print all that which is in English.

Dover. I hope I have done nothing, but I shall acquit myself of.

L. C. J. Hyde. I hope you may; but we can give you nothing but a copy of the record: send for your own clerk to understand it.

Clerk. Set Thomas Brewster to the bar: [who was set; and then his Indictment was read, which was:]

‘That he the said Thomas Brewster, late of London, Stationer, not having, &c. (in the form aforesaid) the 15th day of February, &c. at the parish of Little St. Bartholomew’s, in the ward of Farringdon without, London, maliciously, &c. did cause to be imprinted the aforesaid book of “Speeches and Prayers,” &c. and the same did sell and utter, against the duty, &c.’

Who being demanded, Whether he was guilty of that sedition and offence? answered, Not Guilty.

Clerk. How will you be tried?

Brewster. By God and the Country.

Clerk. God send thee a good deliverance.

L. C. J. Hyde. Say what you will now.

Brewster. May it please your lordship, I am wholly ignorant of the proceedings of the law; I have been a close prisoner these 18 weeks, no body to advise with me, scarce my wife suffered to come to me; I desire some time to take advice.

L. C. J. Hyde. I doubt we shall not be able, if you mean till next sessions—

Brewster. No, my lord, I have had too long imprisonment already, would I had been here the first sessions after I was a prisoner.

L. C. J. Hyde. If you desire a copy of the Indictment and counsel, you shall have it.

Brewster. I humbly thank you; but I must have time to consult them, or they will do me little good.

L. C. J. Hyde. If you have any friends or witnesses, you may send for them.

Brewster. I thank you, my lord.

Clerk. ‘Thomas Brewster, thou standest again indicted in London by the name of, &c.’

‘ for that thou not having, &c. the 10th day of
 ‘ July, in the 13th year, &c. at the parish of
 ‘ Little St. Bartholomew’s, in the ward of Far-
 ‘ rington without, London, &c. falsely, malici-
 ‘ ously, scandalously, and seditiously, didst
 ‘ cause to be imprinted a book, intituled, “The
 ‘ “Phoenix, or the Solemn League and Cove-
 ‘ “nant,” &c.—and the said book didst sell
 ‘ and utter, against the duty, &c. How sayest
 ‘ thou? Art thou Guilty of this sedition and
 ‘ offence whereof thou standest indicted, or
 ‘ Not Guilty?’

Brewster. Not Guilty, my lord.

Clerk. How will you be tried?

Brewster. By God and the country.

Clerk. Set Nathan Brooks to the bar.

‘ Thou standest indicted in London, by the
 ‘ name of Nathan Brooks, late of London,
 ‘ stationer; not having, &c. [The same as to
 ‘ make, time, and place, with that of Dover’s]
 ‘ and knowing the said book to be scandalous and
 ‘ seditious, didst sell, utter, and publish the same
 ‘ against the duty, &c. How sayest thou,
 ‘ Nathan Brooks; art thou Guilty of this sedi-
 ‘ tion and offence whereof thou standest in-
 ‘ dicted, or Not Guilty?’

Brooks. Not Guilty.

Clerk. How will you be tried?

Brooks. By God and the country.

Clerk. God send thee a good deliverance.

L. C. J. Hyde. If you desire to have a copy
 of your indictment and counsel, you may have
 it.

Brooks. I am a poor man, I have not mo-
 ney to get counsel; I hope I shall not want that
 that belongs to me by law, for want of money.

L. C. J. Hyde. You shall not, by the grace
 of God.

Clerk. Set John Twyn, Simon Dover, Tho-
 mas Brewster, and Nathan Brooks, to the bar.

Clerk. John Twyn, those men that you
 shall hear called, and personally appear, must
 pass between our sovereign lord the king and
 you, upon trial of your life and death; if you
 will challenge them or any of them, you must
 do it when they come to the book to be sworn,
 before they be sworn. And you that are for
 seditions and offences, look to your challenges.

Doctr. We desire we may have a jury of
 booksellers and printers, they being the men
 that only understand our business.

L. C. J. Hyde. There are those already
 that understand it as well as booksellers or
 printers; besides, half the jury are such, and
 they are able to make the rest understand it:
 but you may challenge whom you will.

The jury were, William Samborne, William
 Rutland, Thomas Honylove, Robert Lucas,
 Robert Beversham, Richard Royston, William
 Hall, John Williams, James Fleisher, Simon
 Waterson, Samuel Thomson, Thomas Roycroft.
 Who were severally sworn by the oath follow-
 ing: ‘ You shall well and truly try, and true
 ‘ deliverance make, between our sovereign
 ‘ lord the king, and the prisoners at the bar,

‘ whom you shall have in charge, according to
 ‘ your evidence. So help you God.’

All Four. We are all satisfied with the
 jury.

Clerk. Crier, make proclamation. “O
 Yes! If any one can inform my lords the
 king’s justices, the king’s serjeant, or the king’s
 attorney, before this inquest be taken between
 our sovereign lord the king and the prisoners
 at the bar, let them come forth, and they shall
 be heard; for now the prisoners stand at the
 bar upon their deliverance; and all others that
 are bound by recognizance to give evidence,
 against any of the prisoners at the bar, come
 forth and give evidence, or else you will forfeit
 your recognizance.”

Clerk. John Twyn, hold up thy hand.
 You of the jury, look upon the prisoner, and
 hearken to his cause; you shall understand
 that he stands indicted in London by the name
 of John Twyn, late of London, stationer:
 [Here the Indictment is read over again.]
 Upon this indictment he hath been arraigned
 and thereunto hath pleaded Not Guilty; and
 for his trial, hath put himself upon God and
 the country, which country you are: Your
 charge is to enquire whether he be guilty of the
 high-treason, in manner and form as he stands
 indicted, or not guilty: If you find him guilty,
 you shall inquire what goods and chattels,
 lands and tenements he had at the time of
 committing the said treason, or at any time
 aithence. If you find him not guilty, you shall
 enquire whether he fled for it; if you find that
 he fled for it, you shall enquire of his goods
 and chattels, lands and tenements, as if you
 had found him guilty: If you find him not
 guilty, nor that he did fly for it, say so, and no
 more, and hear your evidence.

Mr. North, Barrister of the law. John
 Twyn stands here indicted, for that he as a
 false traitor to the most illustrious Charles the
 2nd, &c. not having the fear of God before his
 eyes, nor weighing the duty of his allegiance,
 &c. [Here was opened the form of the Indict-
 ment.] To which he hath pleaded Not Guilty;
 if there shall be sufficient evidence given you
 of the charge in the indictment, you must do
 the king and the nation that justice, as to find
 him guilty, that sentence of law may pass on
 him.

Mr. Serj. Morton. May it please your lord-
 ships, and you gentlemen that are sworn of
 this Jury, I am of counsel with the king against
 John Twyn, the prisoner here at bar, who
 stands indicted of a most horrid and damnable
 treason: It is, the compassing and imagining
 the death of the king, to deprive him of his
 crown and royal government, and to alter and
 change the ancient legal and fundamental go-
 vernment of this kingdom: which he has en-
 deavoured to do, and did intend to do, by
 printing a traitorous and seditious Book, which
 in itself contains as many and as great trea-
 sons, as it was possible either for the malice of
 the devil, or the corrupt and treasonable
 thoughts of blood-thirsty men to invent: It

contains treasons against the king in his own royal person; against his government, both ecclesiastical and civil; full of treasons, as my Lord Chief Justice was pleased to observe to you, treasons against the queen, scandals against all manner of professions both in church and kingdom, of magistracy and ministry. My lord, there are in this Indictment, thirteen Paragraphs of that treasonable book recited; and each of them contains as many treasons as there be lines in it. Nay, my lord, this treasonable book was intended to set a flame in this nation, to raise and stir up rebellion in this kingdom against the king and his government. I shall observe to your lordship the time when it was to be printed; it was in the beginning of October, your lordship knows, and I do not doubt but the Jury have heard, that there was a great and dangerous design in this nation, set on foot by men of dangerous principles, to embroil this nation in a new war, for the destruction of the king and his government. It was executed in part, as far as time and other circumstances would give way and leave to the undertakers (the 12th of October last); and, my lord, it was proved upon the execution of a Commission of Oyer and Terminer at York, that there was a council here in London, that sat to prepare matter for an universal rebellion all England over. They sent their agitators into the north, west, and all parts, to give notice to their party to be ready to rise at a certain time: Several days were appointed, but it seems they could not be ready till that 12th of October; for the seditious books that were to lead on that design, and the libels and declarations could not be printed before that day: And truly that had been printed and published too, if there had not been great diligence used by the king's agents and ministers, to take them just as they were preparing it. This book, gentlemen, doth contain a great deal of scandal upon the king's government, dispersing false and base rumours, to the prejudice of it. It is a rule in my lord Coke, 'That the dispersing of false and evil rumours against the king and government, and libels upon justices of the kingdom, they are the forerunners of rebellion.'

We shall now go to the Proof: We shall prove that this prisoner at the bar, to print this Book, had two presses in one room: That he himself did work at one of those presses, his servants at the other by his command, and in his presence: That he did compose part of it, print the sheets, correct the proofs, and revise them all in his own house, which were corrected and brought back into the work-house by himself, in so short a time, that they could not be carried abroad to correct, so that he must needs correct them himself: That this work was done in the night-time (and it was proper, as it was a deed of great darkness, and not fit indeed to see the light; and it was well it was strangled in the birth, or else for ought I know, we might by this time have been wallowing in our blood). We shall make it appear that this

man, when Mr. L'Estrange came to search his house, brake the forms, conveyed away as many of the sheets as he could from the press to other places; yet notwithstanding, God's providence was so great in the thing, that he left there three or four sheets, which Mr. L'Estrange then seized on, and many more within a little time after: And somewhat of the same matter remained upon part of a form of letter, which his haste would not give him leave to break. When he was charged with it by Mr. L'Estrange, he confessed that he had printed some sheets of this seditious Book; and being demanded by Mr. L'Estrange, What he thought of it? He told him, 'He thought it 'was mettlesome stuff:' He had great joy in it; he confessed he had received money for printing of this; and much other matter, taken upon examination before Mr. Secretary. We shall call our Witnesses: I should have observed to you, That this man would have done it with all the privacy that could be, and to be done forthwith; there was great haste of it, about the beginning of October, and the design in the north was upon the 12th; so that it was clearly intended for that design:

Several Witnesses were sworn.

Joseph Walker. My lord, whereas my master is indicted for printing this Book—

Ld. Hyde. Your master! who is your master?

Walker. He at the bar.

Ld. Hyde. What say you of it?

Walker. I desire to see the Book; [it was shewed him.] About the four first pages of this Treatise I composed.

Ld. Hyde. Who delivered it to you to compose?

Walker. My master delivered the copy to me.

Ld. Hyde. What do you mean by composing?

Walker. Setting the letters.

Ld. Hyde. Well, and you set the letters to print according to the copy; and you had it of your master, had you?

Walker. Yes, my lord; but all this copy we did not print.

[Part of the copy in Manuscript being shewed him, he said, he composed by that copy.]

Serj. Morton. How much did you print?

Walker. About three sheets.

Serj. Morton. How many of those did your master compose?

Walker. Truly, Sir, I cannot tell.

Ld. Hyde. Did he compose one?

Walker. As to a whole one, I cannot say.

Mr. Recorder (Mr. Serj. Wilde). Did he compose the Title?

Walker. Here is no Title.

Mr. Recorder. No? Read the top.

Walker. A Treatise of the Execution, &c. [He reads the Title].

Mr. Recorder. Did your master compose that?—*Walker.* No, I did.

Ld. Hyde. Did your master give you that to compose?—*Walker.* Yes.

had shewed me, before the Treaty began, a letter they had received from one of their factors in the Indies, that there was a report there, that the Dutch had delivered up Polaroon to those who were sent to receive it, and that shortly after that they had taken it from them again; and therefore they desired that a special article might be inserted in the Treaty, whereby the Dutch might be obliged to give it up again, if they had in truth so indirectly delivered it, that they might again repossess themselves of it; which could not but be understood to be a plain violation of their public faith, or a vile artifice to elude it. The ambassadors replied, That if it had been in truth delivered by them, though so indirectly taken, they could not insist upon it, but allow it to be in the alternative; they desired only that it might be inserted in the article, that if in truth it had never been delivered, they should be obliged to do what so long since they should have done. The Dutch answered, That the end of this Treaty was to establish a firm Peace, and therefore they would admit of no doubtful expressions which might create future disputes. The ambassadors said, It was very evident, and the French ambassadors had acknowledged the same to them, that they were resolved never to part with the island; so that there remained no more to be considered upon that particular, but whether, upon the refusal of Polaroon, the war should be continued. The East India Company were sent for to deliver their opinion; and they very frankly declared, that they believed a Peace to be very necessary for the kingdom, and therefore would not that the war should be continued upon any particular interest of theirs; and it was evident enough, that if the war continued, their whole East-India trade must be destroyed, the Dutch being so much superior in shipping, and all kind of strength, in those parts. Hereupon the king resolved to consent to their keeping of Polaroon; and I do not know that there was one man at the board of another opinion. To conclude, after a long debate for so many days upon every particular, the king resolved, with the concurrence of the whole board (one or two persons only excepted) to consent to the Peace upon such concessions and provisions as the French ambassadors had obliged themselves to bring the Dutch to consent to; and thereupon the ambassador returned with full power, and in a short time after that Peace was concluded and published. And therefore I cannot understand how his majesty could be deluded or betrayed in that Treaty, which passed with such a full examination and disquisition; and in all which debates his majesty himself had taken the pains to discourse more, and to enlarge himself in the answer of all those objections which were foreseen, than I had ever known him to do upon any other article.

It is very true, that I had been commanded by the king to write most of the letters and directions which had been sent to the earl of

St. Albans. from the time of his going over, concerning the Treaty, his lordship having (I presume by the same direction) directed most of his letters to me; and most of the dispatches to the ambassadors were likewise prepared by me, they being by their instructions (without my desire or privity), to transmit their account to one of the secretaries, or to myself: but it is as true, that I never received a letter from either of them, but it was read entirely in his majesty's presence to those lords of the council, who attended, where directions were given what answer should be returned; and I never did return any answer to either of them, without having first read it to the council, or having first sent it to one of the secretaries to be read to his majesty; and I can with a very good conscience protest to all the world, that I never did the least thing, or gave the least advice relating to this war, or relating to the Peace, which I would not have done if I had been expiring, and to have given an account thereof to God Almighty that minute: and as his majesty prudently, and piously, and passionately desired to put an end to that war; so no man appeared more delighted with the Peace when it was concluded than his majesty himself did; though, as far as I could make any judgment of the public affections, the publication of that Peace was attended with the most universal joy and acclamation of the whole nation, that can be imagined: nor is it easy to forget the general consternation that the city and the people of all conditions were in, when the Dutch came into the river as high as Chatham; and when the distemper in the court itself was so great, that many persons of quality and title in the galleries and privy-lodgings very indecently every day vented their passions in bitter execrations against those who had first counselled and brought on the war, wishing that an end were put to it by any Peace; some of which persons, within very few days after, as bitterly inveighed against the Peace, and against the promoters of it. But I am so far yet from repenting or being ashamed of the part I had in it, that I look upon it as a great honour, that the last service performed for his majesty was the sealing the proclamations, and other instruments for the conclusion and perfection of that Peace, the great seal of England being that very day sent for, and taken from me.

The Seventeenth and last Article is, "That I was a principal author of that fatal counsel of dividing the fleet about June, 1666."

How far I have always been from giving advice in the prosecution of the war either by land or sea (except by being present at some of the debates) I have at large set down before; I never in my life having pretended, either in the time when I served his late majesty during the war, or in this king's time, to understand any thing of that affair: but when I have been present in councils of that nature, I have always governed myself by their opinions who had the greatest reputation of skill in that

profession; and I never presumed less in my life to give an advice, than I did in this particular concerning the division of the fleet; and I should make a full answer to this charge, if I should say no more, than that I am not guilty of it. But since it hath made so much noise, to the disadvantage of the king, and of the conduct of his affairs, and that no care hath been taken to inform men of the whole carriage in that particular; I will, as I have done at large to the other articles, for his majesty's honour, and for the vindication of those of his council who were present in those debates, (how unjust soever many of them have been to me) set down very particularly all that I know of that matter, and how the fleet came to be divided; upon the view of which, I am of opinion, what misfortune soever attended it, no man will have cause to be ashamed of any fault be committed in it. From the time that his majesty resolved to send prince Rupert and the General with a joint power and authority to command the fleet, there was cause enough to apprehend that there would not have been so good an accord between them as the conducting so great a service required; and I was then thought to have so great an interest in both of them, that his majesty commanded me to use the utmost endeavours to dispose them to a good understanding towards each other; and I believe they will both confess, that I performed all the offices I could, and with some success, to that good end: And I was the more solicitous in it, because I found that the prince was much unsatisfied with the resolution his majesty had taken, that they should both go in one and the same ship; and that his highness was very desirous to be in a ship by himself, and even to command a part of the fleet upon any enterprise that should offer itself, separated from the other: And there was too general an opinion, from what ground I know not, even at the time when our fleet was ready, and when the two generals went to it, that the Dutch were not in any degree ready to come out; that the greatest ships had not taken in their provisions, and that they had not men enough to man the fleet; and that they had no design to come out of their port till the duke de Beaufort should be ready upon the coast to join with them; which fleet was then at Brest, and in great readiness. I had no part in managing the intelligence, nor in truth so much as a correspondence by letter at that time, with any man in France or Holland. The two generals were not many days at sea, when my lord Arlington informed his majesty and my Lords, that he had received intelligence from a good hand, that the Dutch were in no degree ready to come out with their fleet; and that the duke de Beaufort on such a day of the month had all his fleet ready, and his men on board, to take the first opportunity of the wind to set sail from Brest; that the wind had been fair these two last days, and therefore that it might be presumed that he was by that time at

sea, and making his course for Holland. Whereupon it was consulted, whether any order should be sent to the fleet, that prince Rupert with part of it might bend his course towards Brest, whilst the general, with the other part, waited the Hollanders motion. There had been a long prospect and frequent debates upon this contingency, and how advantageous a thing it would prove, if we could have timely advertisement of the duke de Beaufort's motion, that a part of the fleet might be sent to encounter him before his conjunction with the Dutch; and for that purpose the lord Arlington had taken all the pains he could to get particular intelligence of the motion of that fleet. When this intelligence was communicated, some were of opinion that his majesty should send present orders to the generals, that prince Rupert should with such a number of ships as they should think fit, bend his course as is before mentioned. The late lord-treasurer and I were present at this debate; and though we seldom offered advice in such cases, yet being now both of one opinion, we did desire the king, that he would not take upon himself to send positive orders in an affair of such moment, upon an intelligence that might not be true; though we believed it to be very probable, that the generals were like every day to know more of the motion of the enemy than we could do: And therefore we humbly offered it to his majesty, whether it might not be fit in this case to send some of the council then present, and who had seen the intelligence, and heard the whole debate, presently to the fleet to inform the generals of what his majesty had heard, and of the considerations which had been thereupon; and if they had received no advertisement to the contrary, and upon conference together, thought fit to divide the fleet, and that prince Rupert should set sail in order to engage the duke de Beaufort, his majesty would be very well content that they should put that design in execution, without staying for farther orders. His majesty was pleased (with the concurrent opinion of every person present) to approve of this proposition; and immediately made choice of Mr. Vice-Chamberlain, and sir William Coventry, to use all possible expedition to find out the fleet, and inform the generals of all that had passed. I must not forget to say, that at this conference, and before the messengers were dispatched, Mr. Secretary Morrice informed the king, that he had received intelligence very different from what my lord Arlington's was; which was, that the Dutch fleet was even ready to come out, all their men being aboard, which was likewise commended to those two honourable persons to make part of their information. The winds were so favourable, that the two messengers went to, and returned from the fleet with more speed than could reasonably have been expected; they reported to the king, that they had imparted all his commands to the generals, and that they had had full conferences together upon it; that

by all the intelligence they had received, they did conclude that the Dutch were not ready to come out; and therefore they thought it very counsellable, that the prince should endeavour to meet with the duke de Beaufort; and in order to that, they had agreed before their coming away, and had agreed what ships should attend prince Rupert and what should stay behind with the general, which they resolved should be executed by such a time, if they did not receive his majesty's orders to the contrary; which his majesty did not think fit to send, since they were of the same mind, and so they separated each from other, as was agreed. I have heard (but I was not then present) that upon a more certain intelligence that the Dutch fleet was come out, orders were sent to hinder the prince from going out; which, if they had been transmitted with care enough, would have come to him in time: but there being some negligence in that they came not to him time enough to return till the second day of the engagement; which is so well known, that I need not enlarge upon it. And this is all that I know of the dividing the fleet; in which I do not know that any man can be justly blamed with more reason than all men may be, whose counsels have not that success which is desired; and if there were any fault committed, I am sure there is no colour to impute it to me, nor am I in the least degree responsible for any consequence upon it.

I have now, according as my memory hath been able to supply (for I have not any paper or note by me for my assistance), answered every particular charge against me; I hope so fully, that, how powerful soever my enemies shall be yet able to appear, as they do continue very powerful, all indifferent men will absolve me from any guilt: and though I neither do or can expect any thing of justice or ingenuity from those persons who have by all the evil arts imaginable contrived my destruction, by infusing into his majesty's ears stories of words spoken, and things done by me, of which I am as innocent as I was when I was born, and other jealousies of a nature so odious, that themselves have not the confidence publicly to own; yet, I say, notwithstanding all this disadvantage for the present, I do not doubt but that posterity, if not the present age, will clearly discern my integrity and innocence in all the particulars which are objected against me, and lament my present suffering, that after so many years of very faithful and painful service, I should be banished my country, and forced to seek my bread in foreign parts at this age. However, it concerns me very much to wipe off one reproach which I may seem to have brought upon myself, by my withdrawing and secretly flying out of the kingdom, to avoid as it may be thought, the justice of parliament; which, as it is made the ground and foundation of the act of banishment, so I may reasonably presume that it hath made deep impression in the minds of many worthy persons, who were not over-inclined to entertain a prejudice

against me, and who, by my withdrawing, may reasonably believe, that if I were in truth so innocent as I have professed myself to be, I would not have declined the most severe and strictest examination of all my actions, of which I ought to be very ambitious; and that an exact inquisition might be made into my whole life, from which, and from which only, if I am so innocent as I pretend to be, I might reasonably promise to myself such a full vindication, as might amply repair me in point of integrity and honour, not only to the shame of my enemies, but to my full reparation for the damages I have sustained, if I could prove such a gross combination and conspiracy against me as I have seemed to accuse them of: and therefore it concerns me very much to make such a defence for myself in a clear relation of all the motives and circumstances which prevailed with me at that time to withdraw myself, after I had so often rejected all overtures and advice to that purpose, and so publicly declared that I would rather undergo all the danger and ruin which might attend my being brought to a trial than to contribute to my own infamy by endeavouring to decline the trial: and I hope that when I have made a faithful narration of all those reasons and motives which obliged, and even forced me to do what I did, I shall be thought by all dispassionate men not only not to have detested and betrayed my own innocence, but to have complied with that obligation and duty which I have always paid to his majesty, and to his service; and against which I hope, and am most confident, that God Almighty will always preserve me from committing the least fault or omission.

When his majesty was pleased first to send me an intimation of his purpose to take the seal from me, which was by the duke of York, he vouchsafed to use all the gracious expressions that can be imagined; the great satisfaction and benefit he had received by my service, the assurance he had of my fidelity, and that he was confident nothing could be objected against me, which I would not be well able to answer: but that the parliament had contracted so great a prejudice against me, that if they had sat but one day longer before their last adjournment, they would have accused me of high-treason, and that he was most assured that they continued in that resolution, and would execute it the first day of their next meeting; that I well knew the condition of his affairs, and how much he depended upon the house of commons for a supply of money, without which he should not be able to support his government: his advice therefore was, that I should deliver up the seal to him out of my own choice, by which he should be able to protect me from further inconvenience; and it would be so grateful to the parliament, that he should, in consideration thereof, receive all that he could desire from them. It will easily be believed that I was enough surprised at this message, it being a time when my mind was broken with the loss of my wife; for which his

majesty had vouchsafed in his royal person to condole with me very few days before, and when my condition in all respects was in no degree pleasant to me: I desired the duke that he would procure an audience for me with his majesty; which his royal highness had not the least doubt of obtaining, and made as little doubt but that his majesty, in respect of my lameness and indisposition, would be graciously pleased to come to my house; which his majesty the next day promised to do; but upon conference with others, afterwards changed that his gracious purpose, and appointed me to attend him in a morning in my own chamber at Whitehall, which, being a ground room, would not put me to the trouble of going up stairs; and thither his majesty did vouchsafe to come to me, there being nobody then present but his majesty and the duke. The king received me very graciously, with all those expressions which he had used to the duke; and when I asked him whether he had taken any offence at my carriage, and whether I had misbehaved myself in his service? he said, no, but the contrary, that I had served him very well, and that he believed no prince had a better servant; and that the resolution he had now taken was for my good and preservation; and so enlarged himself upon the resolution the House of Commons had taken to accuse me of high-treason, and the prejudice they had against me. I told him, that he might possibly be deceived in that information; and that if he examined it better, he would find that I was not a man so universally odious to any persons of power and interest to serve him; at least, that my lord Arlington and sir William Coventry, who were my known enemies, would not be found to be more popular than myself; that the manifestation of his displeasure in this manner would be so far from preserving me, that it would infallibly expose me to the malice of my enemies, and was upon the matter to call for accusations against me to gratify his majesty; and I told him then, as I had done before, that sir William Coventry had taken upon him, upon the day of the last prorogation, to offer some leading men of the House of Commons, that the chancellor should be sacrificed to them, if that would content them. His majesty told me, that he knew much more of the combination that was against me than I did; and that he was most assured, that if I were not removed before the parliament met, it would not be in his power to preserve me; but if I voluntarily gave up the place, and withdrew into the country, he would undertake I should not receive the least further trouble. I told him, the seal was in his own disposal, he might take it when he pleased; but that I would not bring the reproach upon myself, by voluntarily giving it up, that I deserted his service at a time when some men would believe that I might be of some use to him. His majesty seemed to be resolved upon the matter, but dismissed me with many gracious expressions of his good opinion; which he continued

long after to do to those persons, who of themselves taking notice of this discourse in the court, presumed to speak to his majesty: and to dissuade him from proceeding in that manner towards me; as the archbishop of Canterbury, the lord general, the earl of Bridgewater, and others; to all whom his majesty mentioned me as a person of whose affection and integrity to his service he had an unquestionable assurance: and I do in truth believe, that his majesty at that time had been persuaded to believe that my removal was necessary for his service: and had in himself no displeasure towards me, in order to any further prosecution.

As soon as the seal was taken from me and delivered to the king, I heard that Mr. May had kissed the king's hand, and told him he was then king of England, and never before; and then every day my enemies declared their animosities against me; and sir William Coventry declared publicly in all places, that he had advised the king to remove me, as a thing upon which his welfare depended: My lord Arlington had persuaded the duke of Buckingham, that I had been the sole person who had contrived the prosecution that had been lately against him; whereas in truth, I had never heard any thing of it till the king told it me, and the lord Arlington brought me the examinations which had been taken, and assured me there would be much more proved against him; upon which I gave such advice as my duty obliged me to do: but so far was I from malice towards the duke, that I did him all the offices I could with the king, and contributed at least as much as any man, as soon as I found by the lord Arlington that some of the witnesses were dead, and that the proofs would not make all that good which he had pretended; but the duke of Buckingham was informed that I was the only cause of his suffering, and thereupon inveighed against me with his usual bitterness.

As soon as the parliament came together, it quickly appeared that my enemies had so far prevailed with his majesty as to declare his own displeasure against me, and against all those who appeared to have no ill opinion of me; and then nothing was spoken so much of as the resolution to take my life; and the lady Castlemain declared that the duke of Buckingham was to sit lord high steward of England upon my trial, many wagers being laid in the court that I should lose my head; and sir Thomas Osborn, a person of great intimacy with the duke of Buckingham, had declared in the country, before his coming up to the parliament, that if the chancellor were not hanged, he would be hanged himself. All which unusual proceedings did not in the least degree terrify me; only the manifestation of the king's so great displeasure against me (for what cause God of heaven knows I cannot to this day imagine) did afflict me as it ought to do: Upon which I writ to the king, beseeching him not to give ear to the reports raised by my enemies; but to let me know in what I had offended him

prisoner may give his answer to it; and then we shall make our reply.

Ld. Hyde. What say you? you have heard the witnesses, and what is laid to your charge.

Twyn. I did never read a line of it in my life.

Ld. Hyde. That's impossible. I'll tell you: First, your own man, who set part, swears you did both set and print part of this book yourself: you gave him the title to set. You composed one part of the book, whilst he was composing another part. Is it possible you could compose, and not read a line of it? he tells you further, when the first sheet was printed, he brought it into the kitchen, and laid it down, knew not of any one in the house but yourself; about an hour, or an hour and half after, you brought it back again corrected, laid it down; and the hand that corrected it was not unlike your hand upon other corrections of books. Pray, brother Morton let the jury have books, and Mr. Lee read the Indictment, that they may see they agree.

Serj. Morton. I observed to you there were thirteen treasonable Paragraphs; you shall find them marked out in the margin.

Ld. Hyde. You shall see there are treasons with a witness: see the very Title.

Mr. Lee. [Reads the Title of the Indictment.] 'A Treatise of the Execution of Justice: wherein is clearly proved, that the Execution of Judgment and Justice is as well the peoples as the magistrates duty; and if the magistrates pervert Judgment, the people are bound by the law of God to execute Judgment without them and upon them.'

Ld. Hyde. That you gave to your man to set.

Mr. Lee reads, 'It is one of the scarlet sins of this nation, that the people suffered their Rulers, &c.'—The particular Passages are too impious to be published, and indeed too foul to be repeated, but in substance. Those mentioned in the Indictment are as follows:

1. The Supreme Magistrate is made accountable to the people.
2. The People are rebelliously incited to take the manage of the government into their own hands.
3. They are animated to take up arms, not only against the person of his sacred majesty, but likewise against the royal family.
4. They are stirred up to a Revolt (in that very term) as an action honourable and conscientious; making publication in the next clause of encouragement to any town, city, or country in the three nations to begin the work.
5. The people are laboured not only to cast off their allegiance to the king, but in direct terms to put his sacred majesty to death. And to the purposes before mentioned tends the whole scope of the Treatise.

Serj. Morton. You may judge of the rest by this: we will not put you to any more expence of time; there hath been sufficient treason in that which you have read.

Ld. Hyde. Now say what you will. But I must tell you, in those particulars that have been compared, there is as much villainy and slander, as is possible for the devil or man to invent: It is to destroy the king in his person, to rob him of the love and affections of his people; to destroy the whole family, and all government, ecclesiastical and civil. And this you read by yourself, owned, and caused to be printed.

Twyn. Except it was that sheet which Mr. L'Estrange read to me when I was taken, I never heard it before, nor read it.

Ld. Hyde. Your man swears that you did set and print part of it: It is impossible to compose and set, but you must read it. Nay, you did examine and correct the sheets; brought them up again. Mr. L'Estrange swears you confessed you read it over; it was 'mettlesome stuff.' Mr. Dickenson says, you did not say you read it over; but he saying to you it was impossible you should set it and not read it, you told him also it was 'mettlesome stuff.' You could not judge it to be 'mettlesome stuff,' but you must read it. There is Mr. Williamson says, that you confessed before Mr. secretary Bennet that you had seen three sheets, printed off two sheets; corrected those two sheets; and after printed, and delivered them; and that you had 40s. in part of payment. Besides this, when Mr. L'Estrange came first, you were up (nay, at two o'clock in the morning.) When they came and knocked at the door, they heard presses going, you would make no answer till they called a smith, with intent to force it open. When they came in, they found a form brought out of the printing room, and broken, all but one corner; that taken up by a printer, and compared with the lines of the printed sheets, and found to agree. Some of the sheets were printed on one side only, the rest perfected, you threw them down stairs, part into your neighbour's house, you said, you were undone, when you understood Mr. L'Estrange was there. What needed all this, but that you knew what you were doing, and did it purposely to do mischief?

Twyn. I did never read or hear a line of it, but when Mr. L'Estrange read it when I was taken.

Judge Keeling. Was it printed at your house, or no?

Twyn. I know not but that it might: Not that I did it with my own hand.

Judge Keeling. The papers were found wet with you: Who was in your house?

Twyn. My two servants.

Judge Keeling. Did any set them at work but yourself? Did they work of their own heads?

Twyn. I did use to set them at work; but I did not set them on that particular work.

Ld. Hyde. Have you any thing else to say? God forbid but you should be heard; but the jury will not easily believe such denials against so much evidence.

Judge Keeling. Tell us to whom you carried this copy to be corrected?

Twyn. I know not who corrected it.

Ld. Hyde. If you have any thing to say, speak it; God forbid but you should have a full hearing; Say what you will.

Twyn. I say I did not read it, nor heard it, till Mr. L'Estrange read it.

Ld. Hyde. Have you any thing else?

Twyn. It is possible I may, upon consideration.

Ld. Hyde. We cannot spend all the day. I must let the jury know they are not to take your testimony.

Serj. Morton. I am counsel for the king: I shall reply, if he will say no more.

Judge Keeling. You have heard your charge; this is your time to make your answer: If you do not speak now, you must not speak after. Therefore if you have any thing to speak in your justification, or witnesses to call, now is your time.

Ld. Hyde. Let me give you this caution: We cannot spend time in vain; we have other business before us, and it grows late. The best counsel I can give you, is this: You said at first, that you desired to be tried in the presence of God. You are here in the presence of Almighty God, and I would to God you would have so much care of yourself, and do so much right to yourself, to declare the truth, that there may be means of mercy to you. The best you can now do towards amends for this wickedness you have done, is by discovering the author of this villainous book: If not, you must not expect, and indeed God forbid that there should be any mercy towards you.

Twyn. I never knew the author of it, nor who it was, nor whence it came, but as I told you.

Ld. Hyde. Then we must not trouble ourselves. Did you never see the hand before, with which this copy is written?—*Twyn.* No.

Ld. Hyde. I am very confident you would not then have been so mad, as to have taken such a copy; A copy fraught with such abominable treason and lies; abusing, in the first place, the late king that is dead, who was, I will be bound to say it, as virtuous, religious, pious, merciful, and just a prince as ever reigned, and was as villainously and barbarously used by his rebellious subjects. Nay, you have not rested here, but have fallen upon this king, who has been gentle and merciful beyond all precedent. Since he came to the crown, he has spared those that had forfeited their lives, and all they had: and he has endeavoured to oblige all the rest of his people by mildness and clemency. And after all this, for you to publish so horrid a book, you can never make amends: God forgive you for it.

Twyn. I never knew what was in it.

Ld. Hyde. You of the jury, I will say only this: That in point of law, in the first place, there is no doubt in the world, by the law of the land, the publishing such a book as this, is as high a treason as can be committed: by

this he has endeavoured to take away the life of the king, and destroy the whole family, and so consequently to deliver us up into the hands of foreigners and strangers. It is a great blessing that we have the royal line amongst us. But, I say, there is no question (and my brothers will declare the same, if you doubt it) that this book is as fully treason by the old statute, as much the compassing and endeavouring the death of the king, as possible: And he rests not there, but incites the people to rebellion, to dethrone him, to raise war. And the publishing of this book is all one and the same, as if he had raised an army to do this. The proof is, That he set part, printed part, and corrected it; by his own confession, read it over, 'It was mettlesome stuff;' confessed how many sheets he printed; the reward and recompence, you took notice of it. And I presume no man among you can doubt but the witnesses have spoken true: and for his answer, you have nothing but his bare denial. And so we shall leave it to you.

Set *Simon Dover* to the Bar.

Dover. My lord, I pray time, till Monday morning: I have sent away the copy of my indictment.

Ld. Hyde. The sessions will be done to-night: Mr. Recorder and the rest are to go away on Monday; and therefore we must end to-night.

Dover. I beseech your lordship I may have time till night.

Ld. Hyde. Men clamour, and say they are hardly used, their trials being put off: Are you content to lie in gaol till the next sessions?

Dover. No, my lord, I have had enough of that: We are willing now to have it tried.

Ld. Hyde. You have had a kindness done to you, that it is not laid treason; and therefore go on to your trial. But because you shall not say you are surprized, if you will not go on now, you must lie in the gaol till the next sessions: We cannot bail you.

Dover. My lord, the indictment is full of law, and I understand not the formalities of it: I desire but till 4 o'clock.

Ld. Hyde. We must do it before we go to dinner, or not at all; for there is judgment to be given to the gaol, and all of us Judges are commanded by the king to attend him to-night.

Dover. I am not able to plead to it.

Ld. Hyde. Then because you shall not say you had not all the right imaginable, we will dispatch the rest of the gaol to-night, and adjourn the sessions till Monday morning, and you shall then have a fair trial, by the help of God. You and your company, Nathan Brooks and Thomas Brewster, are you all desirous to be tried on Monday morning?

All Three. Yes.

Ld. Hyde. Because you shall not want advice; or any thing else, you shall have all the liberty you will desire, to send for persons; but you must be prisoners till then.

All Three. We humbly thank you.

Then the Jury went out; and after about half an hour's consultation, they returned to the Court, and took their places.

Clerk. Are you all agreed of your verdict.

Jury. Yes.

Clerk. Who shall say for you?

Jury. The foreman.

Clerk. Set John Twyn to the bar: Look upon him, my masters, how say you, is he Guilty of the High-Treason whereof he stands indicted, or Not Guilty?—*Foreman.* Guilty.

Cl. of Newgate. Look to him, keeper.

Clerk. Harken to your verdict, as the court hath recorded it: You say that John Twyn is Guilty of the High-Treason whereof he stood indicted, and that at the time of committing the said Treason, or any time since, he had no goods, chattles, lands nor tenements, to your knowledge; and so you say all?

Jury. Yes.

Clerk. John Twyn, thou hast been arraigned for High-Treason, and thereunto hast pleaded Not Guilty; and for thy trial hast put thyself upon God and the country; and the country hath found thee Guilty; what canst thou say for thyself, why the court should not proceed to judgment, and thereupon award execution of death against thee, according to the law?

Twyn. I humbly beg mercy; I am a poor man, and have three small children, I never read a word of it.

Ld. Hyde. I'll tell you what you shall do: Ask mercy of them that can give it; that is of God and the king.

Twyn. I humbly beseech you to intercede with his majesty for mercy.

Cl. of Newgate. Tie him up, Executioner.

Crier. O Yes! My lords the king's justices command all manner of persons to keep silence while judgment is in giving, upon pain of imprisonment.

Ld. Hyde. John Twyn, and John Dunsmore, (one convicted for clipping of money) I am heartily sorry that your carriage and grievous offences should draw me to give that Judgment upon you that I must. It is the law pronounces it, God knows it is full sore against my inclination to do it; I will not trouble myself or you with repeating what you have done; but only this in the general, John Twyn, for you: Yours is the most grievous and highest treason, and the most complicated of all wickedness that ever I knew; for you have, as much as possibly lay in you, so reproached and reviled the king, the dead king, and his posterity, on purpose to endeavour to root them out from off the face of the earth. I speak it from my soul, I think we have the greatest happiness of the world, in enjoying what we do under so gracious and good a king; yet you in the rancour of your heart thus to abuse him! I will be so charitable to think you are misled. There's nothing that pretends to religion, that will avow or justify the killing of kings, but the Jesuit on the one side, and the Sectary on the other; indeed, it is a desperate

and dangerous doctrine, fomented by divers of your temper, and it's high time some be made examples for it. I shall not spend my time in discourse to you, to prepare you for death; I see a grave person whose office it is, and I leave it to him. Do not think of any time here, make your peace with God, which must be done by confession, and by the discovery of those that are guilty of the same crime with you. God have mercy upon you; and if you so do, he will have mercy upon you. But forasmuch as you John Twyn have been indicted of High-Treason, you have put yourself upon God and the country to try you, and the country have found you Guilty: therefore the Judgment of the court is, and the court doth award, "That you be led back to the place from whence you came, and from thence to be drawn upon an hurdle to the place of execution; and there you shall be hanged by the neck, and being alive, shall be cut down, and your privy-members shall be cut off, your entrails shall be taken out of your body, and you living, the same to be burnt before your eyes; your head to be cut off, your body to be divided into four quarters and your head and quarters to be disposed of at the pleasure of the king's majesty. And the Lord have mercy upon your soul."

Twyn. I most humbly beseech your lordship to remember my condition, and intercede for me.

Lord Hyde. I would not intercede for my own father in this case, if he were alive.

The Behaviour and Speech of Mr. JOHN TWYN at his Execution.

In the interval betwixt the condemnation and execution of John Twyn, divers applications were made to him, in order both to his temporal and eternal good; and in particular, Mr. Weldon, the Ordinary of Newgate, spent much time and pains upon him, to convince him of that horrid crime for which he was to suffer; particularly pressing him to a confession both of his offence, and of the author of that treasonable piece for which he was to die. His answer was, That it was not his principle to betray the author, but it belonged to others; whereupon Mr. Ordinary demanded of him, What it was that could prevail with him to undertake the printing of it? He said, He was a poor man; that he had received 40s. and the promise of a larger sum, whereupon he undertook it; but who it was that made him that promise, he would not discover.

Mr. Ordinary did likewise further urge him to a confession of the Author, upon a confidence that such a discovery might save his life: to which he replied, That he neither could do it, nor did believe himself obliged to it, if he could; for better (says he) one suffer, than many. Being pressed to receive the blessed Sacrament, he returned, That he was not free to do it; he was against receiving according to the forms of this Church, and he

hoped he might do well enough without it ; and in this temper he continued until he came to the place of execution, where going up the ladder, Mr. Sheriff told him, That if he had any thing to say, he should remember the cautions he had given him.

Twyn. I suppose this appearance of people doth expect that I should say something as to the matter I come here for. It is true, I come here condemned as a Traitor, for printing a book, taken to be, owned to be, and judged to be scandalous and seditious.

Sir R. Ford. And treasonable, put that in too.

Twyn. For my own part, I can say this, I knew it not to be so, until I came to the bar to be tried; I was surprized in the doing of it, both in the beginning, and at last, I was clear and free in my own thoughts, as not to intend any sedition.

Sir R. Ford. I would not willing interrupt a dying man; I told you before that you must not declare any thing in justification, or mitigation of so foul a crime; but if you had any thing to say that was for the disburthening of your own conscience, or to give any good admonitions to the people to beware of falling into the like crime, you should be patiently heard; but I wonder you should go about to justify yourself in this, when you did confess both to my brother here, and myself after Sentence, that that which was passed upon you was just and deserved.

Twyn. I do not say otherwise of it, but that it was just; but as to my ignorance of the matter of intending or imagining to foment and contrive any such thing tending to such ends, but barely for getting a little money for my family; I was as clear as the child unborn of any other design knowingly, of any such thing I do look upon it as a surprizal. First, I was surprized in this matter, by reason of that dangerous sickness and weakness I was in when it was brought; I received it with my own hands, but it was wrapt up in waste paper, and so I delivered it to my servant, he went on with it; and two or three days after, it was taken from me by those that came to search my house, who themselves told me, they came upon information; so that it was a matter I was surprized with when it was brought in, by reason of my sickness and weakness, being unable to overlook it: and likewise as soon as it was brought in the third day I was discovered in it, by some way of information; and whether those that were the senders of it in, might not be the discoverers, I know not. Some discovery was made by the confession of those that searched my house: they came by information, not by chance. Then when they had taken me, I did ingenuously acknowledge and confess who I had it of; and yet for all this the searching after those persons concerned, was neglected that whole day, though they were at home, and easy to be taken, I could prove it.

Sir R. Ford. Mr. Twyn, give me leave to tell you once more, that I am heartily sorry you have given me the occasion to interrupt

you a second time; all these things you pleaded at the bar, and said as much as you could; the wisdom and justice of the bench did not think this to be a sufficient excuse of that treason you are found guilty of: I would ask to what end this discourse tends? Tell me your end.

Twyn. My end is this, and it please your worship, to shew how ignorant and unacquainted I was with the nature of the thing; and how far I was in my conscience from intending that Treason.

Sir R. Ford. You say you were surprized, and that you knew not the Treason; was it not clearly and plainly (by your own servant) proved that you composed some part of it, and printed it yourself, and corrected it? You understood English, or else you could not correct it; if you understood English, or sense, you could not be ignorant that it was a horrid piece of Treason, such as no honest man ought to see and conceal one half hour; therefore do not justify yourself, it serves not to any purpose here, or in the world to come: If you are not guilty of the malice, you have the more easy access to comfort hereafter; but that will not help you here on earth: Pray spend that little time you have to some better purpose than this; if you have any thing to say that may become a modest man to say, we are willing to hear it: If you can remember any person that assisted you in correcting it, or otherwise were concerned in it, say it.

Twyn. No person assisted me, I corrected it not; it was carried out of my house to correct, and brought in corrected.

Sir R. Ford. You shall not say that you are denied that Christian liberty a dying man ought to have; we are not to suffer any reflections on this business, you had a fair trial: I say, we would not deprive you of your liberty of speaking, but do not abuse that liberty that is given you, by spending your time impertinently, and fruitlessly; but if you have any thing further to offer to God, which is more for your good, go to that.

Twyn. I shall forbear to insist any further, as to the narration of that matter; I shall be very unwilling and tender of reflecting any thing upon the king, or the government, or give offence to your worships any way.

Sir R. Ford. Nothing but that shall offend us.

Twyn. I shall go to prayer.

Sir R. Ford. Do, do, we will join with you, and pray for you.

He continued in private prayer on the ladder some time.

Sir R. Ford. Executioner, do not turn him off, 'till he has given you a sign.

Mr. Ordinary of Newgate. Mr. Twyn, give a sign to the executioner, when you have done; you must not throw yourself off, you will be your own executioner in that.

Twyn. Executioner, when I give you the sign, by pulling you by the shoe, then turn me off.

Executioner. I will, I will, the Lord bless thy poor soul.

Afterwards, the executioner coming down, Mr. Twyn told him, the sign should be by moving his foot.

Twyn. "O Lord, hear the Prayer of thy poor servant, receive me into thy mercy! Lord, in thee I believe, receive my spirit! Lord Jesus! let my prayers be acceptable in thy sight! O Lord, my strength, and my Redeemer! O Lord, I beseech thee, receive me into the arms of thy mercy; let me have an inheritance with thee, to live with thee for ever, and then come, Lord Jesus! come quickly!"

Then giving the sign, the Executioner did his office; and being cut down, his head was severed from his body, and his body divided into four quarters, which are to be disposed of as the king shall assign; since which time, his head is placed over Ludgate, and his quarters upon Aldersgate, and other gates of the city.

It will be here convenient to make two Observations upon the words of the prisoner:

First, he says, That the proofs were sent out of his house to be corrected, and brought back again corrected, and so not corrected by himself; which is not only contrary to what he formerly owned, as was made out by several proofs at his Trial, concerning his own correcting of it, but to his solemn declaration at the bar, avowing, that he knew nothing more of the business than what he there delivered: For, supposing such a confession; the next question would infallibly have been, To whom was it carried? or, Who corrected it? as the readiest way to the discovery of the author.

Secondly, he says, That the persons concerned (meaning Calvert, and her maid) were neglected that whole day, being at home, and easy to be taken, which is disproved, both by his own servants, and Mrs. Calvert's: And likewise proved, on the other side, That if he himself would have ordered his apprentice to have looked after the maid (as he promised, and was directed,) she had been secured that very morning; the fellow meeting her in St. Bartholomew's Close, within a quarter of an hour after his master was carried away, not knowing that she had any concern in the business. As to the mistress herself, she is, at present, under custody.

TRIAL OF DOVER, BREWSTER, AND BROOKS.

Monday Feb. 22, 1663.

The Court proclaimed.

Clerk. Set Simon Dover, Thomas Brewster, and Nathan Brooks to the bar.* Look to your challenges.

* "At the sessions in the Old Bailey 20 Feb. 15 Car. 2. Simon Dover, Tho. Brewster, and Nathan Brookes, printers and booksellers, were indicted at the common law, as for a great misdemeanour, for printing and publishing one book, called, The Speeches and Prayers of Harrison, Cook, Hugh Peters, and others con-

The same Jury sworn anew.

Clerk. Set Thomas Brewster to the bar, and the rest set by. You of the jury, look upon the prisoner; you shall understand that he stands indicted in London by the name of Tho. Brewster, &c. [and here he reads the Indictment] for causing to be printed, and selling a book called, The Speeches, &c. Upon this indictment he hath been arraigned, and thereunto hath pleaded Not Guilty, and for his, &c. Your charge is to inquire whether he be guilty of this sedition and offence, or Not Guilty. If you find him, &c.

Mr. North. May it please your lordship, and you gentlemen of the jury, Tho. Brewster stands here indicted of a foul misdemeanour; it is for causing to be printed, publishing and uttering a seditious, scandalous, and malicious book. The Indictment sets forth, That he not having, &c. [Here Mr. North opens the Indictment] and to this Indictment he hath pleaded Not Guilty. If there be sufficient

demned for the murder of the late king, in which were many desperate passages, justifying their villainy; and another book called the Phoenix, or Solemn League and Covenant; in which also were passages of dangerous consequence. And they being found Guilty, it was resolved, That though printing be a trade, and selling of books also, yet they must use their trade according to law, and not abuse it, by printing or selling of books scandalous to the government, or tending to sedition. So in case of a counsellor at law, he may plead his client's cause against the king; but if, under colour of that, he takes upon him to vent sedition, he is to be punished.

"Memorand. Cooke's Case, a lawyer in Grays-Inn, who managed that villainous charge against the late king at his Trial, would have excused himself because he acted only as counsel; but that would not serve his turn; he was executed with the rest. And in this principal case the persons were told, that the king had dealt mercifully with them, that he did not proceed against them capitally, and they were all fined, viz. Brewster 100 marks, and Dover and Brookes 40 marks a piece, and every of them, to stand in the pillory, one day at the Exchange, from 11 to 1, and another day in Smithfield, for the same time, with their papers on their hats, declaring their offence, for printing and publishing scandalous, treasonable, and factious books against the king and government, and to lie in gaol without bail till the next gaol-delivery, and then to make an open confession and acknowledgment of their offences in such words as should then be directed; and afterwards to remain in prison during the king's pleasure, and not to be discharged before every one of them put in good sureties by recognizance, themselves in 400*l.* a piece, and two sureties for each of them in 200*l.* a piece, not to print or publish any books but such as shall be allowed by authority." Kelyng, p. 23.

proof of the charge, you are to find him guilty of the matter contained in it.

Thomas Creek, George Thresher, Thomas Loft, and Peter Bodvel sworn.

North. Tho. Creek, tell my lord and the jury what you know concerning Brewster, and your printing of a book called *The Speeches*, &c. and his uttering and publishing of it.

Creek. I shall, Sir. There is a mistake in the time, for it was before Christmas that Mr. Brewster, Mr. Calvert, and Mr. Chapman did come to me at the Cock in Little-Britain; and there they had some copy of the beginning of the *Speeches* of the men that suffered, that were the king's judges, and they spake to me to print it: and I did print part of the book, I cannot tell you how much, without I had the book, and then I can tell you how much I did print, [The book being shewed him] if this be my printing; I suppose it was done afterwards, another impression, and I must not own it in that. [He was shewed one of another impression] My lord, thus far I own; the printers that are of the jury will judge [pointing to the page] this is my letter, and here I ended.

Hyde. What folio is that you ended at?

Creek. You shall see, it is 36.

North. By whose orders did you print that?

Creek. They all gave me order together.

Ld. Hyde. They all? Name them.

Creek. Mr. Calvert, Brewster, and Chapman.

North. Did they charge you to do it privately?

Creek. With as much privacy and expedition as I could.

North. When you had printed them, what did you do with them?

Creek. I disposed of them by their order.

North. Did you print but one impression or more?

Creek. Yes, my lord, I did print but part of a second impression.

North. That we use as evidence, that he had uttered the first, because he went upon a second: How many did you print at first?

Creek. To my best remembrance, the first impression was 3000.

Ld. Hyde. These three employed you to print this book, and you printed to the 36th folio?—*Creek.* Yes.

Ld. Hyde. And who printed the other part?

Creek. I cannot say positively.

Ld. Hyde. Did these three afterwards direct you to give out the sheets to such and such persons, bookbinders, to stitch up and dispose of?—*Creek.* Yes.

Ld. Hyde. The first was three thousand, you say: what number did they take?

Creek. They had all; they sent for them of me as fast as I did them.

J. Keeling. Who did you send the proofs to?

Creek. They were sent for to my house.

J. Keeling. Sometimes by Calvert, sometimes his man, sometimes his maid, sometimes by Brewster.

Ld. Hyde. Do not you know who began where you left off?

Creek. I am not able positively to say. I do believe, and I have heard, and spoken with them that said Mr. Dover did; but I cannot positively say it.

Ld. Hyde. You were not by, to see it done?

Creek. No.

Ld. Hyde. What grounds have you to believe that Dover printed the rest?

Creek. Grounds! Truly it is so long ago, to swear positively I cannot.

Ld. Hyde. It is but three years ago.

Creek. To the best of my remembrance, Mr. Dover in the time of printing it, did meet me, and converse with me about it; but to express time or place I cannot.

Ld. Hyde. Did you and he agree that he should print the other part?

Creek. No, my Lord; I had nothing to do to agree it with him.

Ld. Hyde. Did he declare to you that he printed the other?

Creek. To the best of my memory, he told me he printed some sheets.

North. Who changed sheets with you?

Creek. Some sheets were changed at Mr. Dover's.

J. Keeling. Who paid for printing?

Creek. Mr. Brewster paid me some, and some Mr. Calvert paid me.

Ld. Hyde. If you desire to ask him any questions, you may.

Brewster. By and by I shall, my Lord.

Dover. I desire he may tarry till I come to my trial.

Serj. Morton. Don't doubt it.

North. George Thresher, speak your knowledge to my Lord and the jury, whether Brewster did not bring you the book called *The Speeches*, &c. to be stitch'd, and what you did with them, tell the manner of it.

Thresher. May it please you my Lord, and the honourable bench, it is thus: This book it seems was printed, Mr. Brewster came to my house to know whether I could fold them, and stitch them in blue paper. That night I went to several printers, Mr. Dover was one of them, we had several sheets from thence, (I did not see them printed) I carried them home; and went about the working them that night.

J. Keeling. How many books were delivered to you?

Thresher. First and last, about 500.

J. Keeling. Who delivered them to you?

Thresher. Some were brought to my house.

J. Keeling. By whose direction?

Thresher. Mr. Brewster's.

J. Keeling. Did you deliver them to any body?

Thresher. Yes, to Nathan Brooks, ready stitch'd.

J. Keeling. Who paid you for them?

Thresher. Mr. Brewster for them he had, and Brooks for them he had.

North. Thomas Loft, tell your knowledge in this business.

Thomas Loft. May it please you, all that I can say is this: There was to the number of about or near upon a thousand, as I take it, folded and stitched in my master's house, one Mr. Perry, I was then his apprentice; they were sent in, as I judge, by Mr. Brewster's order, but I cannot positively say it: my master appointed us to do them; I saw Mr. Brewster there sometimes, but I cannot positively say that Mr. Brewster paid for the doing of them.

North. Did not your master press the dispatch?

Loft. My master did so; but I know not whether they conversed to that purpose.

North. Who fetched them away?

Loft. His then apprentice did fetch some of them from our house.

North. Peter Bodvel, tell my lord and the jury what you know.

Bodvel. I did carry some three years ago some bundles of books from Mr. Creek's house, and I think they were the bundles of The Speeches of the King's Judges.

Ld. Hyde. From whence had you them?

Bodvel. From Mr. Creek's.

North. What did you do with them? Were they sold?

Bodvel. I did see some of them sold in the shop.—*North.* Who sold them?

Bodvel. Myself, and my mistress sometimes.

Ld. Hyde. Were they brought to the shop to sell, by his privity?

Bodvel. I do believe he knew of them.

Ld. Hyde. By the oath you have taken, did he send you for them to the printers?

Bodvel. He or my mistress did.

Ld. Hyde. Has he been in the shop when they have been sold?

Bodvel. I cannot truly tell; it is three years ago.

J. Tyrrel. To whom did you pay the money that you received for them?

Bodvel. We put it in the box.

J. Keeling. Do not booksellers keep account what books they sell, and set down the money?

Bodvel. Not for Pamphlets.

Mr. North. Did he not send you to the book-binder's for them, when they were stitched?

Bodvel. It was by his or my mistress's order. *J. Keeling.* What was your book-binder's name?—*Bodvel.* Perry.

J. Keeling. Where was this book kept? Publicly, as other books, or in other rooms.

Bodvel. In the shop, my lord.

J. Keeling. Were they publicly to view, as other books?

Bodvel. Not so public as other books, but public enough, Mr. L'Estrange knows.

Ld. Hyde. I know you use to let your titles of a new book lie open upon your stalls; did you lay these open?

Bodvel. No, my lord, they did not do so.

Ld. Hyde. Who was the cause they did not? Did your master direct the privacy?

Bodvel. I think he did, we had some direction to that end.

Ld. Hyde. Not to lay them open upon the stall?—*Bodvel.* No.

Ld. Hyde. Give the jury some books, and read the Indictment; let them be compared.

Clerk reads the Indictment: first the title; 'The Speeches and Prayers of some of the late king's judges, viz. major-general Harrison, October 13. Mr. John Carew, Oct. 15. Mr. justice Cook, Mr. Hugh Peters, Oct. 16. Mr. Thomas Scot, Mr. Gregory Clement, col. Adrian Scroope, col. John Jones, Oct. 17, col. Daniel Axtell, and col. Francis Hacker. Oct. 19, 1660. The times of their deaths, together with several occasional speeches, and passages in their imprisonment, till they came to the place of execution. Faithfully and impartially collected for further satisfaction.'

Mr. Cook's Letter to a friend, fol. 40. 'And so I descend to the cause, for which I am in bonds; which is as good as ever it was: and I believe there is not a saint that hath engaged with us, but will wish at the last day that he had sealed to the truth of it with his blood, if thereupon called; for I am satisfied, that it is the most noble and glorious cause that has been agitated for God and Christ since the Apostolical times; being for truth, holiness, and righteousness, for our liberties as men, and as christians for removing all yokes and oppressions.' And fol. 41. 'It is such a cause, that the Martyrs would again come from Heaven to suffer for it, if they might: I look upon it as the most high act of justice that our story can parallel, &c.'

[Not to trouble the reader with all the particulars mentioned in the Indictment; since the rest are but more of the same kind in other words.]

Ld. Hyde. What say you to this book?

Brewster. I desire to ask Mr. Creek a few questions: Mr. Creek how much of that in the Indictment did you print?

Creek. The jury may see if you please.

Ld. Hyde. Truly if he says true, he says he printed no part of that with which you are charged, but the title-page; he left off at folio 36, your charge is the Title, and beginning at fol. 40.

Brewster. So that you see he printed nothing for me that is in the Indictment.

J. Keeling. Did you print the Title?

Creek. Yes, my Lord.

Ld. Hyde. And you printed the rest, by his, Calvert's and Chapman's direction?

Creek. They delivered me the copy together to print.

Ld. Hyde. If you have any thing to say, speak to the Court, the jury will hear you.

North. Pray, my lord, give me leave to ask Creek one question: There were two impressions printed, did not you print more in one, than in the other?

Creek. I am upon my oath; to the best of my remembrance I printed the same that I did

before, for I had some of it standing, and so I had the same sheets again.

North. Had you no more?

Creek. No, I had rather less.

Brewster. That is usual, he that prints the first, doth print the same of the second.

Ld. Hyde. He says he did so; what have you to say to the charge?

Brewster. I conceive that part that I ordered the printing of, is not included in the indictment.

Ld. Hyde. Yes, every part; he says in both impressions he printed to the 36th folio; and all the rest was printed by your direction.

Creek. No, my lord, I printed to the 36th folio by his direction, the rest was printed elsewhere.

J. Keeling. Your indictment was this, For causing to be printed this book, called The Prayers, &c. and for selling and uttering of it. For the evidence that you caused it to be printed, he swears you directed some, and it is not likely you would print half, and let the other half alone; we leave that to the jury. For your uttering, that anon.

Ld. Hyde. There are these two particular charges in the indictment, that you must answer: The first is, your causing it to be printed; and it is not essential, or of necessity, that every particular that is in the indictment be proved, to be done by you: you caused this book to be printed, with such a title; that he swears he did for you: then let the jury, or any man living, judge whether you did direct the book to be wholly perfected or by halves. The second charge is, that you uttered them: You delivered five hundred of these to be stitched up, and disposed of them, so that you are in effect both printer and publisher of the whole book.

Brewster. He speaks of one part that I ordered, there is no more proof, and that was but to the 36th page: he speaks also of somebody else that was present with me; and where they had the rest of the copy printed, he tells you he knows not.

Ld. Hyde. Have you any more to say?

Brewster. Yes, my lord, though he says I caused that part to be printed, yet he doth not say I did it maliciously, or with any design against the government.

Ld. Hyde. The thing speaks itself.

Brewster. Booksellers do not use to read what they sell.

Ld. Hyde. You have forgot what he swore; you brought the proof.

Brewster. He did not swear that; he says Mr. Calvert's man, and sometimes others.

Ld. Hyde. Ask him again.

Creek. I did declare that the proofs were sent for, and carried away and read, sometimes by Mr. Calvert's man and others, and sometimes by his servants, not by himself; they were wrapt up and sent.

Ld. Hyde. For a man to pretend he did not know, when, he being master, sends for his proofs by his servant; for any man to suppose

this is not the master's act, (nay, and directing it to be done privately) you shall never find a man guilty: they were sold in his shop.

Brewster. The grand part of the indictment lies, That it was done maliciously, and seditiously, and then it says knowingly: though it be granted I did do it, and sell it, yet it does not follow that I did it maliciously and seditiously; I did it in my trade: we do not use to read what we put to print or sell. I say, my lord, selling of books is our trade, and for the bare exercising of it, knowing nothing of evil in it; it came out in a time too, when there were no licensers, or appointed rules; so that whatever was done we are not accountable for, for we read very seldom more than the title, that some of the jury knows; so that I hope I cannot be said to do it maliciously or knowingly. I can give testimony I am no person given to sedition, but but have been ready to appear upon all occasions against it.

Ld. Hyde. Have you any more? If you have, say it.

Brewster. My lord, they are the sayings of dying men, commonly printed without opposition.

Ld. Hyde. Never.

Brewster. I can instance in many; the bookseller only minds the getting of a penny: that declares to the world, that as they lived such desperate lives, so they died; so that it might shew to the world the justice of their punishment; and so I think it a benefit, far from sedition. It was done so long ago too, it was not done in private, it went commonly up and down the streets, almost as common as a Diurnal: it's three years and a quarter ago, or thereabouts.

Justice Tyrrel. You speak of your behaviour, have you any testimony here?

Brewster. I do expect some neighbours; Major-General Brown knows me, Capt. Sheldon, Capt. Colchester, and others: I can give a very good account as to my behaviour ever since.

L. Hyde. Say what you will, and call your witnesses, and make as much speed as you can.

Justice Keeling. There is another indictment against you, and while that is trying, your neighbours may come.

Brewster. My Lord, I shall desist for the present.

Serj. Morton. May it please your lordship, and you gentlemen of the jury; I am of counsel for the king against Thomas Brewster, bookseller, that stands here indicted, for that he, contrary to the duty of his allegiance which he owes to our sovereign lord the king, did cause maliciously a seditious and scandalous book to be printed wherein there are divers scandalous clauses contained, that are in disparagement of the king's royal prerogative, and against his government, crown and dignity; and likewise that he hath sold and uttered the same books in contempt of his majesty's laws. This is the effect of the indictment: it has been proved to you by four witnesses, that for which he stands in-

dicted; First, that he did cause part of the book to be printed; that's clearly proved by Creech: likewise that he has sold and uttered those books in his shop: nay, he confesses that he did, and says they were sold openly as a Durnal; and therefore he thinks it was lawful for him to do it. He has gone about to make a defence of this his seditious behaviour; he tells you he did not print all the book; it is not said that he printed such and such a letter of the book, but that he caused such a book to be printed: and it is to be presumed, if he caused one part he would cause the other, or otherwise it would be a book of mixed sense and imperfect. Gentlemen, for the uttering and selling of them, that himself confesses: you have heard the excuses he hath made, whether you will not find him guilty of this crime, that I must leave to you, and to the direction of the court.

Ld. Hyde. You of the jury, you see the indictment is for causing a libellous and seditious book to be printed, under such a title, that is, The Speeches and Prayers, &c. it is for causing this, seditiously, factiously and wickedly to be printed; and for selling and publishing it abroad to the king's people. For the matter of evidence you have heard it: I will not repeat the particulars to you, only something to what he has said, that you may not be misled. First, he says, it does not appear, that he did it maliciously or knowingly; there are some things that you that are of the jury are not to expect evidence for, which it is impossible to know but by the act itself. Malice is conceived in the heart, no man knows it unless he declares it: as in murder, I have malice to a man, no man knows it; I meet this man and kill him; the law calls this malice. If a man speaks scandalous words against a man in his calling or trade, he lays his action, malice, though he cannot prove it but by the words themselves. If I say Printer or Stationer is an ignorant person, has no skill in his trade, I would not have any man to deal with him, he understands not how to set letters, or the like: here is nothing of malice at all appears, yet if you bring your action, you must lay it maliciously; it is the destroying your trade, and you will have damages. I instance in this particular, that you may see there is malice supposed to a particular private person in that slander, much more to the king and the State. The thing itself, in causing a book to be printed that is so full of scandals and lies, to inveigle, misguide, and deceive the people, this is, in construction of the law, malice; and though no malice appear further. The next is this; factiously, seditiously, knowingly: this carries sedition as well as malice. Such a barbarous transcendent wretch that murdered his prince, without the least colour of justice to declare that he rejoiced in his bonds; and that the martyrs would willingly come from heaven to suffer for it. Horrid blasphemy! All the saints that engaged in it, to wish that they had sealed it with their blood! What can you have more to encourage and incite the people to the killing of kings, and murdering their law-

ful prince! This they publish, and say it was spoken publicly; let it be upon his own soul that did it: for in case he did it, no man knew it but those that heard it. But to publish it all over England, 3,000 of the first impression, and a second; this is to fill all the king's subjects with the justification of that horrid murder: I will be bold to say, not so horrid a villainy has been done upon the face of the earth, since the crucifying of our Saviour. To print and publish this, is sedition. The next thing is your trade. I have a calling to use, and I may justify the using of it, so long as I use it lawfully; but that must not justify me in all manner of wickedness against the king and state. As if a lawyer, I will put it in my own court, plead a man's cause, and against the king; this is justifiable, he ought to plead for his client, but he must plead as becomes him. If a lawyer in defence of his client will speak sedition, do you think he is free from being punished? So of a printer; if a printer prints seditious and factious books, he must look to himself; that's no part of his calling to poison the king's people: so though printing of a book be lawful, he must use it as the law appoints him, and not to incite the people to faction. Writing of letters you know it is common and lawful; but if I write treasonable letters, give notice to rise, do such and such unlawful acts, I am to be punished for these letters. A printer he is a public agent, he is to do what he is able to answer, or else he must take what follows. He says, There was no act against him: it is true, you see he is not indicted upon the statute, but at the common law, for an offence in the nature of a libel. If I were a printer, and would compile a pamphlet against a man, though not in authority, and disparage him, this is the publishing of a libel, and an offence for which I ought to be indicted, and punished by the common law; and he that prints that libel against me, as a public person, or against me as sir Robert Hyde; that printer, and he that sets him at work, must answer it, much more when against the king and the state. Another thing is this; he talks to you of dying men's words: if men will be so vile to be as wicked at their deaths, as they had been in their lives; put the case of that man on Saturday convicted for printing a horrible villainous thing, if he will be so unchristian to himself, as to justify this at his death, or to speak as bad as he had caused to be printed, is that a justification to publish them, because they are the words of a dying man? God forbid. A robber declares upon the gallows, it is for a noble cause, for taking a purse upon the highway, that it is an unjust law to condemn to death for such crimes. Shall any man publish this in print, and not be liable to be punished for it? If any that were tried here upon Saturday, shall vilify the Lord Mayor, or any of the bench, traduce them for doing of justice, shall this go unpunished, if a man take it up and print it? This I speak to let you see this is without colour of law: He pretended he did it not know-

ingly; I will not repeat the evidence; He sent for them, had them stitched, caused them to be kept privately, not upon the stall. And observe, he tells you it was done long ago: it is but three years ago that they were as publicly sold as Diurnals, he says. I shall repeat no more, I know you are men of understanding, and of obedience to your king; it is high time to take notice of this dispersing of pamphlets: if therefore you do believe that he did cause it to be printed, or published it, or both, he is Guilty of the misdemeanor laid in the Indictment; (and he hath a great kindness in that it is not made capital:) If you do believe that he did either cause it to be printed or published, that's enough to find him Guilty of this Indictment.

Clerk. Hearken to the other Indictment: He stands indicted in London, &c. and this for causing to be printed a certain book called the Phoenix, &c. publishing the same [the Indictment was wholly read]. To this Indictment he hath pleaded Not Guilty; so your issue is to enquire whether he be Guilty of this offence, or Not Guilty.

Mr. North opened the Indictment in manner as before. To this he hath pleaded Not Guilty; if the Charge of the Indictment be sufficiently proved, you are to find him Guilty.

Serj. Morton. May it please your lordship, and you gentlemen of the Jury, here is another Bill of Indictment preferred against Thomas Brewster; it is, that contrary to the duty of his allegiance to his sovereign lord the king, and purposely to incite the people to sedition, and to withdraw them from their natural allegiance to the king, he hath caused to be imprinted, maliciously, falsely and scandalously, a certain scandalous book, entitled The Phoenix, &c. And this he hath done to disturb the peace of the kingdom, and to withdraw the people from their allegiance; and to the scandal of his majesty's government, he hath caused this book to be printed, uttered and sold: and this we take to be a great offence against the king, and his crown and dignity. Gentlemen, the dispersing of seditious books is of great danger to the kingdom; false rumours, they are the main incentives that stir up the people to sedition and rebellion, that raise discontentments among the people, and then presently they are up in arms. Dispersing seditious books is very near a-kin to raising of tumults; they are as like as brother and sister: raising of tumults is the more masculine; and printing and dispersing seditious books, is the feminine part of every rebellion. But we shall produce our witnesses, we shall prove that this Thomas Brewster caused this book to be printed; That when it was printed he did receive 300; That these he caused to be stitched up; That he uttered and sold them, part in his own shop, and part elsewhere. It being an offence of that great and dangerous consequence, which tends to the disturbance of the peace of the kingdom; I hope you will take it into your

serious consideration, and if the matter stand proved against him, you will give him his due demerit.

Creek, Thresher, Loft and Bodvel sworn again.

Mr. North. *Creek*, tell my lord and the jury what you know of the printing of the book called The Phoenix.

Creek. My lord, it was in May that Mr. Calvert, Brewster, and Chapman brought that book to me to print.

L. C. J. Hyde. What book? Name it.

Creek. The Phoenix, &c. it was printed for them three. All that I can say is, that Mr. Brewster's part was delivered to me by his direction.

L. C. J. Hyde. Who paid you for printing it?

Creek. Mr. Brewster paid for his part.

J. Keeling. How many was his part?

Creek. His part of 2,000, that was 600 and odd.

L. C. J. Hyde. These three men joined to bear each man his share.

Creek. Yes, every man was to have his share.

J. Keeling. Did he wish you to do it with privacy?

Creek. Yes, with expedition and privacy.

Brewster. Was the copy written or printed?

Creek. It was all printed formerly, some in quarto, some in octavo, and might have been bought single in any place almost.

L. C. J. Hyde. What do you mean by all printed formerly?

Creek. My lord, they were in several parcels printed; there was Mr. Calamy's sermon, and Mr. Douglas's sermon, and the rest.

J. Keeling. How long ago was it since they were brought to you to print?

Creek. It was in May, three years.

Brewster. Did I order you how you should print them, or Mr. Calvert? Did not you hear him say, that they had staid two hours for me at an alehouse to be his partner?

Creek. I did hear him say so.

J. Keeling. What made you so loath to be their partner? Were they two hours persuading of you?

Creek. No, they waited two hours for him to be their partner.

Serj. Morton. Thresher, did Brewster deliver any of those books to you to stitch up?

Thresher. Yes, and please you, my lord, and I had them by Mr. Brewster's order to fold.

Serj. Morton. How many?

Thresher. To the number of 2 or 300.

Mr. North. Did he not enjoin you privacy?

Thresher. Yes, I think he did.

J. Keeling. When they were bound, had you a note to deliver those books safely to any?

Thresher. Yes, from his own hand; he desired me to go and give them to such and such persons, booksellers. Said I, I shall hardly remember them: he thereupon gave me a note of their names to whom I should deliver them; I judge they were to be trusted more than others.

Serj. Morton. Did you deliver them accordingly?—*Thresher.* Yes, I did.

L. C. J. *Hyde*. How many did you deliver in that manner?

Thresher. Two dozen and more.

J. *Keeling*. If you will ask him any questions, do.

Brewster. Did I give you any order to deliver them to any particular booksellers?

Thresher. Yes, you did; I believe Mr. L'Estrange and Mr. Williams (one of the jury) can remember I shewed them the paper you wrote to that purpose.

Mr. *Williams*. I did see the note.

Brewster. I do not remember I gave you any order, they were all common things before.

J. *Keeling*. You may ask him what questions you will.

Brewster. I shall ask him no more.

Mr. *North*. Peter Bodvel, speak what you know concerning the selling or uttering the book called *The Phoenix*, &c.

Bodvel. I never knew of the printing of them, I never knew my master sell any of them, nor heard him give order for selling of them.

J. *Keeling*. Did you sell any of them for him?—*Bodvel*. I think I did sell some.

Serj. *Morton*. Were they in the shop to be sold?—*Bodvel*. Yes, they were.

L. C. J. *Hyde*. Were they in the shop publicly, with the title-page lying open upon the stall, as other books do, when they are newly out?

Bodvel. We seldom did so with bound books.

J. *Keeling*. Where were the books found when they were seized?

Bodvel. I think they were in some of the upper rooms.

J. *Keeling*. Where were they found, by the oath you have taken?

Bodvel. That Mr. L'Estrange can tell better than I, I did not see him find any of them.

L. C. J. *Hyde*. By the oath you have taken where was the place whence you were to fetch them, when you were to sell them?

Bodvel. In the Hall, the room over the shop.

L. C. J. *Hyde*. Were they put up privately?

Bodvel. They were so.

Just. *Keeling*. What private place was that?

Bodvel. It was a hole in the wall.

Just. *Tyrrel*. By whose direction were they laid there?

Bodvel. I know not whether by his, or my mistress's.

Just. *Keeling*. Were not some found under the bed?

Bodvel. I heard that Mr. L'Estrange found some of the titles under the bed.

Serj. *Morton*. I think it is enough; what say you to it, friend?

L. C. J. *Hyde*. Observe this, and answer it: It appears that you and two more (Calvert and Chapman) did agree with Creek for printing this book (several parcels drawn into one volume) and you were to bear each of you a third part, and to have a third part of the books, he swears you did both pay your part, and had your part of the books: these books were

printed before, and so they were common enough, and therefore you must needs know what was in them. The third full part was brought to you and delivered by your appointment; you gave a note how they should be disposed of, and you owned them not in public: (your own soul told you they were not to be justified) two dozen were delivered privately to particular persons by your direction. Lay these things together, and now answer them: for the indictment is, that you caused such a book to be printed and published.

Brewster. In the first place, the evidence does say, that Mr. Calvert did acknowledge when he gave him the copy to print, that he staid so long for me, in order to be their partner, he that was the collector of it together. They were all printed before, and printed by licence: for the books I never read them: we seldom read the books we sell, being they were before printed, and with licence sold single, (as the gentlemen of the jury know) I thought there was no crime to print them all together. It was done in an interval when there were no licensers, we knew not where to go: what has been printed formerly, we took it for granted it might be reprinted, until this late act for printing; and this was done before this act.

Just. *Keeling*. Have you any more to say?

Brewster. No, my lord, I shall leave it to the jury. But my lord, here are now some neighbours to testify that I am no such person as the indictment sets forth, that I did maliciously and seditiously do such and such things.

L. C. J. *Hyde*. We will hear them, though I will tell you it will not much matter; the law says it is malice.

Capt. *Sheldon* sworn. My Lord, all that I can say is, he was ready at beat of drum upon all occasions; what he has been guilty of by printing or otherwise, I am a stranger to that; I know he was of civil behaviour and deportment amongst his neighbours.

Just. *Keeling*. It is very ill that the king hath such trained-soldiers in the band.

Capt. *Hanson* and others offered to like purpose.

L. C. J. *Hyde*. If you have a thousand to this purpose only, what signifies it?

Just. *Keeling*. Are you his captain?

Capt. *Sheldon*. No, my lord, Captain Bradshaw.

L. C. J. *Hyde*. He should be cashiered the band; not but that he should be charged with arms. I will tell you, do not mistake yourself, the testimony of your civil behaviour, going to church, appearing in the trained-bands, going to Paul's, being there at common service, this is well: but you are not charged for this; a man may do all this, and yet be a naughty man in printing abusive books, to the misleading of the king's subjects. If you have any thing to say as to that, I shall be glad to find you innocent.

Brewster. I have no more to say.

Lord *Hyde*. Then, you of the jury, there are some things in this indictment (as in the

other) necessary to be stated to you; my brothers and I have consulted here about it: the indictment is for causing a factious and seditious book, called *The Phoenix*, &c. with divers other things therein, to be printed. But, pray let them see the book, and compare it with the indictment.

Clerk. [Reads the indictment, and first the Title.] *The Phoenix*, or the Solemn League and Covenant. [Edinburgh, printed in the year of Covenant-Breaking.] A king abusing his power, to the overthrow of religion, laws, and liberties, which are the very fundamentals of this contract and covenant, may be controuled and opposed. And if he set himself to overthrow all these by arms; then they who have power, as the estates of a land, may and ought to resist by arms; because he doth by that opposition break the very bonds, and overthrow the essentials of this contract and covenant. This may serve to justify the proceedings of this kingdom against the late king, who in an hostile way set himself to overthrow religion, parliament, laws, and liberties. [The rest is much at the same rate, only now and then a spice of blasphemy, for the credit of the holy league: A greater sin (is the breach of that Scotch covenant, according to our author, pag. 158.) than a sin against a commandment, or against an ordinance, &c.]

L. C. J. Hyde. You of the jury, you see the indictment agrees with the book. There is a great deal of mercy that this man hath not been indicted of Treason; for those very particulars you have heard are as high treason as can be. First, he doth declare, that the king abusing his power, the people may resist, and take up arms against him: that is express treason, without any more ado. Then he tells you what a horrid thing it is to break that Solemn League and Covenant; justifies the raising of arms and rebellion against the late king, unthroning and murdering of him. I tell you that Solemn League and Covenant was a most wicked and ungodly thing, against the law of God, and the law of the land. To have such villainous stuff to be published, it is a great mercy of the king it had not been drawn higher. You see the man is so far from acknowledging any guilt, that he justifies the fact.

Brewster. No, my lord, I do not justify myself.

L. C. J. Hyde. Yes, you do. The printer swears he was to go share and share alike: he had his part; he publishes them to some particular friends: I say he justifies this. He tells you in his defence, That it was commonly printed; that it was done by printed copy, and that done formerly by licence; and when things are printed by licence, they do not expect or need any new or second licence: They were commonly sold asunder; here they are only printed together. That he says is nothing. What is this but justifying the printing of it? Observe, weigh, and see what kind of defence here is. The Title, what is it? *The Phoenix*,

or Solemn League and Covenant? You all know it, and rue it. When was it printed? It was when the wicked rebels here could not seduce sufficient numbers of the king's subjects to support their rebellion; and then they invite their dear brethren (as they called them) the Scots, to unite with them. The Scots were cunning; they would not do it till they had entered into a covenant, in a league; and then they consent to unite with the rebels here. This league and covenant was indeed in defence of the king; but how long? So long as he defended them (the Presbytery and Scotch discipline). When they had got this good king into their hands, they put what terms upon him they pleased; and then were these seditious sermons printed. Douglas's was printed in Scotland; was it licenced here? No, it was done there, and brought hither. Then for the other sermon, by what licence was that printed? Observe the time when it was printed; was it not to set forward rebellion, to set up the Scotch Presbytery; and this in forty-five, when they were in arms against the king, after the king put himself upon his defence, and was at Oxford? Do you tell me of the licence of rebels then for your justification? Now, when the king is so happily returned, now to publish these things afresh to the people, that they might do the same again? And I tell you once again, it is mercy in the king that he was not indicted for treason. I shall leave it to you, you have had it fully proved.

Clerk. Set Simon Dover to the bar. [And here the Indictment is read.]

Mr. North opens this Indictment as the rest.

Serj. Morton. We have but two witnesses, and they will prove the matter clearly. There were two impressions of this book; we will prove he had a share in both of them.

Creek sworn again.

Creek. I delivered before what I can say.

Judge Keeling. Look you, you must deliver all that evidence over again, because it concerns another person.

Creek. I did say, and say still, That, to the best of my memory, Mr. Dover did print part of that book, and that he and I did converse about it in the time it was doing; but I cannot swear it positively, because I cannot remember the time when, or the place where.

Judge Keeling. Did you change sheets with him?

Creek. With him, I cannot say; but some sheets were changed by our men.

Serj. Morton. You say you think you had some discourse with him: Did not you speak about the danger of printing it?

Creek. We talked of making an end of it.

Serj. Morton. Can you remember to what letter you printed?

Creek. I have shewed the gentlemen of the jury.

Judge Keeling. Had you no discourse of the danger of it?

Creek. I thought it could not come to any thing: I did tell sir R. Brown, (then lord-mayor) That if they hanged twenty more, I thought I should print their speeches.

Judge Keeling. You knew the contents of the book?

Creek. Yes, I did.

Judge Keeling. Such men as you, the king and the government hath a great interest in your trade: That you shall think it lawful to print what a man says when he dies, and to scatter it abroad, though never so bad, it is a great offence: I would not have it pass for so clear a thing.

L. C. J. Hyde. If you are of such principles, to print what you list, you are not fit to live in a civil place; for a printer or bookseller to print any thing one against the other, is actionable. Do you think the press is open to print what you list?

Creek. I did so then.

L. C. J. Hyde. I will deal plainly with you: For this book, if you had had your due, you ought both to have been drawn, hanged and quartered. When did you give Mr. L'Estrange information of this matter?

Creek. Lately, when I was a prisoner in Ludgate.

Mr. Royston. [One of the jury] I desire to ask him one question: Whether Mr. Creek saw this book a printing at Mr. Dover's house, or no?

Creek. No, I did not.

Serjeant Morton. They changed sheets.

Thresher sworn.

Thresher. This is all that I have to say, That the first night that Mr. Brewster sent for me to stitch these books, it was very late before we could get them: I went that night to Mr. Dover's, and had some of the sheets, the rest at Mr. Creek's. I did not see him print any of them.

Serjeant Morton. What quantity was there of them?

Thresher. I suppose there was two or three hundred sheets.

Mr. North. Were they not of this book?

Thresher. Yes, of the Speeches.

Mr. North. Where were they delivered?

Thresher. In the lower room: I suppose some of them were hanging upon lines before I had them.

L. C. J. Hyde. What say you to it?

Dover. I desire to ask him some questions. I do say I never saw the man before: I would ask whether ever he saw me before in his life?

Thresher. Not before that: I was never in his house but that night. By this token I saw you, and you me: when I came for the sheets, you asked Mr. Brewster whether he and Mr. Calvert were agreed, or else you would not deliver the sheets.

Dover. I desire to know what time and place: I am charged in the indictment on a day and place.

L. C. J. Hyde. That is not very material.

Dover. He fixes nothing on me.

L. C. J. Hyde. That the Jury can best tell: have you any more questions?

Dover. No, my Lord.

[The Indictment and Books were compared.]

Dover. My Lord, there is no person swears that I printed it, or part of it: nothing fixed upon me.

L. C. J. Hyde. The first man swears that you set it to printing.

Creek. I do not swear it positively; I never saw him print a sheet: it was the report of the town that he did it.

L. C. J. Hyde. You printed it: for whom?

Creek. For Brewster, Calvert, and Chapman.

L. C. J. Hyde. But you say that you and he did converse about it when it was printing.

Creek. I did say, To the best of my memory we did.

L. C. J. Hyde. By the oath you have taken, who did you change sheets with?

Creek. I cannot say I did change any with him: I say that some sheets were changed by my men, and they told me they had them of his men.

Dover. Where are those men that changed the sheets? Which of my men are they?

Justice Keeling. Look you, Dover, you are indicted for causing to be printed this wicked book, and for publishing and vending of it. You are a printer by your trade, as well as this man that comes against you: He says he did not see you print it; but he took it, and believed that you printed it. I tell you how far that weighs: you are a printer by trade; and comes the other and desires the sheets; you would not deliver them unless Mr. Brewster and Mr. Calvert were agreed. How comes the sheets to your house, being a printer, and yet you not print it? Answer that.

Dover. I shall, my Lord: it is no consequence at all. Admit I had these sheets, it is no consequence at all that I printed them; for printers and booksellers usually have books they did not print themselves.

L. C. J. Hyde. Thresher, by the oath that you have taken, did you see those sheets hang upon the line in his house?

Thresher. My Lord, I judged these had lately hung up: and I saw other sheets hanging there; and I knew nothing to the contrary but those that hung upon the line were the same with these.

L. C. J. Hyde. Here are sheets upon the lines; you delivered him to fold part of those on the lines: what would you have more plain? you would not deliver them, if they were not agreed: then they were agreed, and you delivered them.

Dover. I say this; I look upon the witness to be altogether invalid: he is a person of no good repute.

L. C. J. Hyde. A better man than you, for aught appears: you are indicted for a foul offence, so is not he.

Dover. I am not the man you take me to be.

L. C. J. *Hyde*. You shall have evidence, if you will, that you are at work at this time upon as bad as this.

Dover. If it be a crime, I am sorry for it.

Mr. *L'Estrange* sworn.

Mr. *L'Estrange*. Shall I speak to the whole matter, or only to the particular you last mentioned?

L. C. J. *Hyde*. Say your knowledge.

Mr. *L'Estrange*. When I came to his house, which was about the middle of October, to search, I found at that present a little unlicensed quaking book; and in his pocket the libel that was thrown up and down the town, called, Murder will out, ready printed.

L. C. J. *Hyde*. Which was a villainous thing, and scattered at York.

Mr. *L'Estrange*. Since that, I was at his house, to compare a flower which I found in the Panther, (a dangerous pamphlet); that flower, that is, the very same border, I found in his house; the same mixture of letter, great and small, in the same case; and I took a copy off the press. I found over and above this letter, [producing the letter] dated the 7th of February, 1663, and directed, For my dear and loving wife, J. *Dover*. Is it your lordship's pleasure I shall read it all?

L. C. J. *Hyde*. If it be touching the printing of things you found, do.

Mr. *L'Estrange* reads it. "I would fain see my sister Mary; therefore sister Hobbs will not come, take her order, and instead of her name, put in sister Mary's: it will never be questioned here. However, do it as wisely and handsomely as you can, &c. [And then in a post-script] You must either get Tom Porter, or some very trusty friend, (possibly C. D. may help you) to get for you a safe and convenient room to dry books in, as soon as possibly you can. [And again:] Let me know what you intend to do with the two sheets and half. I will have it published, when I am certain I shall be tried."

L. C. J. *Hyde*. Let the jury see now, whether you are the man you would be thought.

Dover. I desire to know whether my name be to that letter?

Mr. *L'Estrange*. No, it is not.

L. C. J. *Hyde*. Where did you receive or find this letter?

Mr. *L'Estrange*. My Lord, I found it about his wife.

L. C. J. *Hyde*. Let the jury judge if this come from you or no.

Judge *Keeling*. You of the jury, you must understand this, that what is said now is only upon his reputation, not to the point in question at all: that matter rests upon its own bottom.

L. C. J. *Hyde*. I will deal plainly with you: had he not stood upon such terms, I should not have spoke of this: but when a man will be thus bold and confident, I thought it proper to let you see how he continues now in the gaol.

Dover. I do not vindicate myself in it; but I speak against the witness: I do conceive that the witness does not fix any thing upon me.

L. C. J. *Hyde*. Have you any thing else to say to the indictment?

Dover. I am indicted as a malicious and factious man: the witnesses say no such thing.

L. C. J. *Hyde*. You are not indicted so, but that you have maliciously and factiously caused to be printed such a seditious book; not your person, but the action.

Dover. There is nothing of that proved: admit I was guilty of it, it was done when there was no act or law in being touching printing. The witnesses do not swear positively that I did do it: one says he did not see me; the other, that he only believed it; that he did see some sheets upon the line, and they were the same for aught he knew; does not remember the time or place of our discourse: I do not know that ever I had half an hour's discourse with him in my life: I never had any meeting with him about any such matter, nor had any converse with him. The title of the book says, 'faithfully and impartially collected for further satisfaction'; so that it cannot be interpreted maliciously. It is a maxim in law, That 'the best interpretations are to be put upon the words of the indictment, in favour of the prisoner at the bar'; and I hope this honourable bench and the jury will mind that. I am a printer by trade; what I did was for my livelihood: the Scripture says, 'He is worse than an infidel that takes not care for his family.' I speak not this to justify any thing against his majesty or his government. Through my ignorance I may possibly transgress: if I have done any such thing, I am sorry for it: I hope I shall be more careful for the future. The other part of the indictment is for selling of them: no man swears that I sold one book of them. Mr. *Creek* says, That some of his men told him that they had some of those sheets from some of my folks; but of whom he does not say. That I did meddle with them, knowing them to be scandalous; I hope there is nothing proved of that nature: there being then no law, I humbly hope there was no transgression.

L. C. J. *Hyde*. Have you done?

Dover. I humbly desire your honours, and this jury, to take notice of what I have said.

L. C. J. *Hyde*. You of the Jury, I will not spend time (it is too late) in repeating the evidence: you have heard the evidence particularly, and his answer. He doth in part make the same answer with his fellows, which was, that it is his trade. It is true, no doubt but he ought to maintain his wife and children by his lawful calling; but if a thief should tell you that he maintained his wife by stealing, is that lawful? Printing books lawfully, no man will call him to account for it; but if he prints that which is abusive to his king and his government, that is no part of his trade, and his trade will not bear him out in it; he is charged for printing and publishing of these scandalous

books, that he did it knowingly, maliciously, falsely, factiously, and seditiously. I told you, that although all these things be not proved, yet if he did it, the law calls it malice, faction, and sedition. Consider the circumstances, you see it is done in the dark; the sheets delivered at his house, and discourse about delivery of them; he would not deliver them unless Brewster and Calvert were agreed. I leave the evidence to you in this case: pregnant, strong, undeniable circumstances are good evidence. Though a man doth not come and tell you he declared to him he knew what was contained in this book, yet if there be sufficient evidence to satisfy you in your consciences, that he knew what was in it, and was privy to the printing and publishing of it; there is enough for you to find the indictment. You are to weigh circumstances as well as pregnant full proof, in cases of this nature.

Clerk. Set Nathan Brooks to the bar. You of the jury, you shall understand that he stands indicted, &c. [Reads the Indictment.]

Mr. North afterwards opened the indictment.

Serjeant Morton. This man, we shall only prove him guilty of stitching and dispersing the said books.

Thresher sworn.

Thresher. This man I have not seen these three years.

Serj. Morton. Did he set you to work in stitching those books?

Thresher. He brought none to me, that I can remember: But by Mr. Brewster's order I delivered about two hundred, or thereabouts, and carried them to his house in St. Martin's, and he took them at the stair-foot, and paid me for stitching of them in blue paper.

Serj. Morton. Who furnished you with blue paper?

Thresher. I went by Mr. Brewster's order to a stationer in Bread street, and received some.

Brooks. I desire to know whether in those books he said he delivered me, there were those passages in the indictment?

Thresher. I know not: They were The Speeches and Prayers that I delivered you.

Brooks. How did you deliver them to me?

Thresher. They were stitched; and I tied them up with a piece of packthread and carried them to him: He received them himself, and came afterwards to an alehouse, and gave me a flagon of beer. He knew not what they were, for some being imperfect, he said Mr. Brewster must make them good: And Mr. Brewster gave order, if he came for them, they should be delivered him.

Brooks. Did you know there were those passages in them?—*Thresher.* No, not I.

Brooks. I knew only the title of it.

Ld. Ch. Just. Hyde. Let there be what there will in it, if you knew the title look you to it. Have you any thing else to ask?

Brooks. No, my Lord.

Henry Mortlock sworn.

Serj. Morton. Mr. Mortlock, how many of those books did you receive of this Nathan Brooks?—*Mortlock.* About forty or fifty.

Serj. Morton. What talk had you about receiving them?

Mortlock. I do not remember any discourse.

Serj. Morton. Where did you receive them?

Mortlock. I am not certain whether in my shop or no.

Ld. Ch. Just. Hyde. Were they open?

Mortlock. They were tied up.

Ld. Ch. Just. Hyde. Did you speak for them?

Mortlock. I cannot tell; he brought them to me.

Ld. Ch. Just. Hyde. How came he to bring them to you?

Mortlock. May be I might speak for them; I paid him for them.

Ld. Ch. Just. Hyde. You and he knew what book it was?

Mortlock. I think we did.

Ld. Ch. Just. Hyde. Did you not open them? They might have been The Devil of Edmonton, for ought you knew. Did you open them afterward? And did they appear to be this book?—*Mortlock.* Yes.

Mr. L'Estrange sworn.

Mr. L'Estrange. I came to the house of Nathan Brooks about October last, and knocking at the door, they made a difficulty to let me in: At last seeing not how to avoid it, Brooks opened the door: I asked him what he was? He told me he was the master of the house. By and by comes one that lodged in the house; and throws down this book [shewing the book] in the kitchen, with this expression, I'll not be hang'd (says he) for never a rogue of you all: Do you hide your books in my chamber? This book had The Speeches in it, with other schismatical treatises. After this I searched the next house; and there I found more difficulty to get in. But after a long stay, I saw the second floor in a blaze; and then with a smith's sledge I endeavoured to force the door. At length the fire was put out, and one comes down and opens the door. I went in, and up stairs, where I found about two hundred of the Prelatick Preachers, and certain Notes of Nathan Brooks, wherein he mentions the delivery of several of these Speeches, and other seditious pamphlets. There is one particular wherein he records, that Thomas Brewster did in the presence of captain Hanson undertake to bear his charges of imprisonment; this Nathan Brooks having been formerly imprisoned for a crime, wherein Brewster was to bear him out.

L. C. J. Hyde. What was it that burnt above?

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

L. C. J. *Hyde*. You say this was in the next house to Brooks: What had Brooks to do there? Had he conveyed these books thither?

Mr. *L'Estrange*. The owner of the house said he knew nothing of them: But a man and his wife, lodging in the chamber where the fire was, said, That Nathan Brooks had delivered with his own hands to them those parcel of books that were there found.

L. C. J. *Hyde*. You hear what he says, That one of your guests came down, said, 'He would not be hanged for ne'er a rogue of you all;' throws down the book—

Brooks. What is that to me, if a man have a book in his house, and throws it down, and say so, doth that concern me? He did not bring it out of my chamber.

One *Mercer* sworn.

Mercer. My lord [having the Book in his hand] this is the book that I did find in a room, brought up by Nathan Brooks; and I brought it down: I had it in a room where two boys and my sister lay. He came first and knocked at our chamber-door: Said I, Who is there? Says he, a friend. Who are you? Brooks, your landlord, says he: Pray open the door, and lay up this book for me. No, said I, if you were my father or brother, I will not receive it; I will not meddle or make with you. After I had denied the book, he slings it into the next room.

L. C. J. *Hyde*. How came you by the book?

Mercer. After Mr. *L'Estrange* had enquired there for books, I knew nothing; but my wife called to my sister, and asked her if she heard Mr. Brooks in the room? She said, Yes; and he had left a book with her. Having notice, I went up stairs, took the book, and brought it down presently.

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

L. C. J. *Hyde*. He swears this, That you knocked, and prayed him to take in a book; he refused it: You went up to the next chamber, and there you left it. And his wife asking afterwards if you had been there, his sister said, Yes, you had left a book. He brought it down; and this appears to be the very individual book, nothing can be more clear.

Mercer's Wife sworn.

That morning they knocked at Brooks's door, we were a-bed; I heard a noise of thieves. Upon that, I being awake, and my husband asleep, I awaked him, and desired him to go to the window. He asked who was there? One said to him, rise, and open the door. Said my husband, I am but a lodger; let my landlord open it, if he will. Who is your landlord? Mr. Brooks. That is the man I look for, says the other. So with that, after some time, Mr. Brooks went down, and opened the door. Mr. *L'Estrange* coming up to my husband, says he, are you sure there is nothing in your rooms? There is nothing, said he. When my husband went down, I called to my sister: Said I, do

you hear Mr. Brooks there? Yes, said she, he has left a book here. Said I, do you know what is in it? It may bring us all into trouble. And my husband having confidently denied any such thing, fearing he might be troubled, I called him up; and told him of it. Said my husband, I will call up the gentleman, and give it him. No, said I, go take the book, and carry it him.

Mercer's Sister sworn.

Mercer. It is very true that that is the very book I received from Mr. Brooks.

L. C. J. *Hyde*. Now the individual book is brought to light.

Brooks. What was the title of it?

Mercer. I know not; but there was The Speeches of the ten men that were executed.

Brooks. Did you see the book, that very book? *Mercer*. Yes.

One Mr. *Merridale* sworn.

Merridale. My lord, this very book did *Mercer* bring down, told us. He would be hanged for never a rogue of them all: Did he think to lay his books at my door? I know this is the very book: I took notice of the picture of sir Henry Vane in it; and he there owned it.

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

L. C. J. *Hyde*. Here are 200 of these books delivered to you to sell: Fifty you delivered to another. When Mr. *L'Estrange* comes to search, you open not your doors: When you see you could not stay longer, you run up to deliver it to *Mercer*, your guest: He would not receive it; you delivered it to his sister: She keeps it in her hands. When her husband had denied books to be there, and his wife understanding afterwards you had left it, she was afraid of her husband for denying it, calls him, and gives him the book; and then he said, He would be hanged for never a rogue of you all: throws down the book: And that was the very book she received from you: and yourself did own it, and confess it.

Brooks. As for Mr. *L'Estrange*, it is not so; he says, when first he knocked at the door, I did not hear him: Afterwards I called out, who is there? said one, Which is Mr. Brooks? said I, here. I told them, if they would be civil, I would open the door, give me but leave to put on my breeches. I went and opened it. He doth not swear positively they are my books. My lord, this *Mercer* was a lodger in my house; I have often desired him to pay his rent, and since I have been taken, I have sent several messengers: I told him I would seize his goods, and thereupon he speaks against me maliciously. I desire you to consider, I being only a workman, how can I be guilty of sedition and scandalous things? I never printed any thing, I am only a bookbinder, that is my trade; I hope you will consider, that I am only a bare workman. My lord, I desire when they go out, that somebody may stand at the door, that nobody may go in to the jury.

L. C. J. *Hyde.* We will take care of that : Have you any more to say ?

Brooks. No, my lord.

L. C. J. *Hyde.* You of the Jury, you have heard so much of the other indictments of the same nature, I need not say much to this. That which he speaks touching his trade, I must repeat the same as before ; he is not questioned for using, but abusing of his trade ; for publishing and dispersing seditious and scandalous books, printing and publishing, but the evidence is only for publishing. If you be satisfied that he published it, that's the crime ; printing alone is not enough, for if a man print a book to make a fire on, that's no offence, it is the publishing of it which is the crime. You have heard the evidence, how far forth it is proved, two hundred delivered to him, fifty by him delivered to another : This book you see his own conscience tells him what it was ; when Mr. L'Estrange came he would have slipt it into his guest's chamber ; he refused it : Then he carries it to another. Lay your evidence together ; if you find him guilty of the publishing, it is enough.

Jury. We desire to know upon what statute law this indictment is grounded ?

L. C. J. *Hyde.* Upon none ; but it is an offence at common law, I told you so at first.

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

Clerk. Are you agreed of your verdict ?

Jury. Yes.

Clerk. Who shall say for you ?

Jury. The foreman.

Clerk. Set up the prisoners at the bar : How say you, is Tho. Brewster Guilty of the offence whereof he stands indicted, for printing the seditious book called 'The Speeches, &c.' or Not Guilty ?

Foreman. Guilty of selling and uttering the said books.

Clerk. What say you, is he Guilty of the offence of printing and publishing the book called 'The Phoenix, &c.' or Not Guilty ?

Foreman. Guilty of publishing it.

Clerk. How say you, is Simon Dover Guilty of the offence for printing and publishing 'The Speeches, &c.' or Not Guilty ?

Foreman. Guilty.

Clerk. How say you, is Nathan Brooks Guilty of the offence for printing and selling the said book ?

Foreman. Guilty of selling it.

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

Jury. Yes.

Mr. North. My lord, we humbly pray sentence against the prisoners.

L. C. J. *Hyde.* You three, Thomas Brewster, Simon Dover and Nathan Brooks ; you have been severally indicted for a heinous and great offence : Brewster, you have been indicted for two several books, as full of villainy, and slander, and reproach to the king and government, as possibly can be : And I will tell you all three, it is the king's great mercy you have not been indicted capitally ; for every one of those are books filled with treason, and you for publishing of them, by strictness of law, have forfeited your lives and all to the king : It is his clemency towards you. You may see the king's purposes ; he desires to reform, not to ruin his subjects. The press is grown so common, and men take the boldness to print whatever is brought to them, let it concern whom it will ; it is high time examples be made. I must let you and all men know, by the course of the common law, before this new act was made, for a printer, or any other, under the pretence of printing, to publish that which is a reproach to the king, to the state, to his government, to the church, nay to a particular person, it is punishable as a misdemeanour. He must not say, He knew not what was in it ; that is no answer in law. I speak this, because I would have men avoid this for time to come, and not think to shelter themselves under such a pretence. I will not spend time in discoursing of the nature of the offence, it hath been declared already ; it is so high, that truly the highest punishment that by law may be justly inflicted, is due to you. But, Thomas Brewster, your offence is double : Therefore the judgment of the Court is,

'That you shall pay to the king, for these offences committed, an hundred marks : And for you (the other two), Simon Dover and Nathan Brooks, you shall pay either of you a fine of forty marks to the king.

'You shall each of you severally stand upon the pillory from eleven to one of the clock in one place at the Exchange, and another day (the same space of time) in Smithfield ; and you shall have a paper set over your hats, declaring your offence, For printing and publishing scandalous, treasonable, and factious books against the king and state.

'You shall be committed till the next gaol-delivery without bail ; and then you shall make an open confession and acknowledgement of your offences in such words as shall be directed you.

'And afterwards you shall remain prisoners during the king's pleasure : And when you are discharged, you shall put in good security by recognizance, yourselves 400*l.* a-piece, and two securities each of you of 200*l.* a-piece, not to print or publish any books, but such as shall be allowed of. And this is the judgment of the Court.'

217. The Trial of Colonel JAMES TURNER, JOHN TURNER, WILLIAM TURNER, MARY TURNER, and ELY TURNER, at the Old Bailey, for Felony and Burglary: 15 CHARLES II. A. D. 1664.

JAMES Turner the titular Colonel, William Turner, Mary Turner, and Ely Turner, were brought to the bar.

Clerk of the Peace. James Turner, hold up thy hand: which he did. John Turner hold up thy hand.

Col. Turner. He is not here, but he is hard by, and I will send for him. My Lord, it has been reported he was fled; it was a mistake, he is in Fleet-street, where he has been ever since this business.

[And thereupon he sent one for him, and then the court proceeded to some other business. About half an hour after, the said John came into the court, and was set among the other prisoners at the bar.]

Cl. of the Peace. James Turner, hold up thy hand; John Turner, hold up thy hand; William Turner, hold up thy hand; Mary Turner, hold up thy hand; Ely Turner, hold up thy hand: Which they all did, and then the said clerk read the indictment; which was as followeth:

The Indictment.

' You stand indicted in London by the names of James Turner late of London gentleman, John Turner late of London labourer, William Turner late of London labourer, Mary Turner late of London spinster, (otherwise Mary Turner the wife of the said James Turner) and Ely Turner late of London labourer; for that you the said James Turner, John Turner, and William Turner, the 7th day of January, in the 15th year of the reign of our sovereign lord Charles the 2nd, by the grace of God, of England, Scotland, France and Ireland, king, defender of the faith, about ten of the clock in the night time of the same day with force and arms, &c. at London, that is to say, in the parish of St. Dionis Back-church, in the ward of Lime-street, London, aforesaid, in the dwelling house of one Francis Tryon merchant, there feloniously and burglarly you did break and enter; and on him the said Francis Tryon, against the peace of God, and of our said sovereign lord the king, in his dwelling house aforesaid, then and there being and resting, feloniously and burglarly did make an assault, and him the said Francis Tryon in corporal fear of his life feloniously and burglarly you did put; and one pendent pearl set in gold, and a precious stone fixed thereto, of the value of 150*l.* Two pendent pearls with half moon, seven diamonds, and eight rubies fixed to every of them, of the value of 80*l.* One topaz and pendent pearl at the bottom thereof, of the value of 20*l.* One emerald

and five diamonds, of the value of 150*l.* One gold ring and diamonds set therein, of the value of 30*l.* One other gold ring and nine diamonds fixed in the same ring, called an agar ring, of the value of 5*l.* One Jewel, and thirty seven diamonds, of the value of 30*l.* One gold chain of the value of 30*l.* One gold ring and nine diamonds set therein, of the value of 6*l.* Another gold ring and a jacinth stone-fastened therein, and two diamonds set in either of them, of the value of 3*l.* One other gold ring of the value of 20*s.* One necklace of pearl, of the value of 500*l.* One knot of diamonds and pendent pearls fastened thereto, of the value of 300*l.* One sprig and three blue sapphires, nine pendent pearls, and 56 diamonds fastened thereto, of the value of 300*l.* One gold ring and thirteen diamonds set therein, of the value of 50*l.* One other gold ring and diamonds set therein, of the value of 50*l.* One knot and 75 diamonds set therein of the value of 100*l.* One necklace of pearls, containing 172 pearls, of the value of 11*l.* 10*s.* One necklace of pearl, containing 276 pearls, of the value of 18*l.* 10*s.* One jewel and 46 diamonds set therein, of the value of 300*l.* One jewel and 53 diamonds set therein, of the value of 200*l.* One gold ring, and one diamond set therein, of the value of 50*l.* One locket and 36 diamonds set therein, of the value of 70*l.* Two lockets and one ruby, and 20 diamonds set in either of them, of the value of 60*l.* One pendent pearl set in gold and four diamonds set therein, of the value of 40*l.* One other gold ring, and with one diamond, of the value of 35*l.* Six bracelets set with precious stones of the value of 20*l.* One blue sapphire, 24 diamonds, of the value of 40*l.* One locket and nine yellow diamonds set in gold, of the value of 20*l.* One locket and eight diamonds set therein, of the value of 8*l.* One jewel and twelve diamonds set therein, of the value of 15*l.* One gold ring and diamond of the value of 5*l.* One jewel and sapphire, ruby and emerald adjacent, and four ophirs set therein of the value of 12*l.* Twelve Scotch pearls, of the value of 3*l.* Sixty-two pearls, of the value of 12*l.* One oriental amethyst, six diamonds set therein, of the value of 30*l.* Two other gold rings, nine diamonds in either of them, of the value of 15*l.* One other gold ring and 13 diamonds set therein, of the value of 8*l.* One jewel and ten diamonds, and seven emeralds, of the value of 15*l.* Sixteen gold rings, and seven diamonds in every of them, of the value of 75*l.* One bracelet and 13 great rubies set therein of the value of 100*l.* Six 2*s.* pieces of gold, five other pieces of gold

called 5s. 6d. a piece; three other pieces of gold of 2s. 9d. a piece; another piece of gold of 20s. two other pieces of gold of 5s. a piece; four 11s. pieces of gold; five pieces of French gold of 16s. 6d. a piece, and 1023*l.* in money, (particularly named in the said Indictment) of the goods and chattels of the said Francis Tryon, then and there being found, then and there feloniously and burglarly you did steal, take and carry away. And that you the said Mary Turner and Ely Turner knowing the said John Turner the felony and burglary aforesaid to have committed; the said John Turner afterwards, that is to say, the 8th day of January in the 15th year aforesaid, at London aforesaid, that is to say, in the parish of St. Andrew Undershaft, in the ward of Aldgate, feloniously did receive, comfort and maintain against the peace of our said sovereign lord the king, his crown and dignity.

How sayest thou, James Turner, art thou Guilty of the felony and burglary whereof thou standest indicted, or Not Guilty?

Col. Turner. My lord, and the honorable bench, I shall no way be refractory, nor do any thing that doth not become a gentleman; but I humbly beseech your honours that you will stand my friend, that I may have justice, and your honours opinion—

Lord Hyde. (Chief Justice of the King's-Bench). You are to plead now to your indictment—

Col. Turner. I do not refuse it; my lord I beg your honour to hear me a word—

Lord Hyde. Plead to the indictment and then say what you will; until that be done, all you can say will signify little: we are to receive your answer to your plea first, afterwards say what you will; you must now say Guilty or Not Guilty.

Turner. I shall not refuse to plead, but I beg my own goods may be restored to me; my house, my lord, is locked up, and children turned out of doors, and I have nothing to support us.

Lord Hyde. Are you Guilty or Not Guilty? you shall have right done you.

Turner. I will take your honours word for it; I am Not Guilty.

Clerk. How will you be tried?

Turner. By God and the country.

Clerk. How sayest thou, John Turner, art thou Guilty of the felony and burglary whereof thou standest indicted, or Not Guilty? [And so W. Turner, and likewise Mary, and Ely Turner, as accessories, being demanded the like questions, severally pleaded Not Guilty and put themselves on God and the country to be tried.]

Lord Hyde. Now, Mr. Turner, let us know who has seized any thing of yours.

Turner. The sheriff, Sir Rd. Ford and Sir Rd. Rives, and they are in possession of my house; I have none but a child of 7 and 9 at home, and not a shirt to command. It is true the sheriff, sir Rd. Ford, was so civil yesterday as to give me some linen.

Sir Rd. Ford. I shall give your lordship account of this: I suppose, my lord, we have done nothing but what was customary; a seizure we have made now, but after we had heard this gentleman was committed for felony and burglary, and that none but children were in the house, my lord, we thought it our duty both for his good, to secure his estate, if acquitted, and so for the king, if convicted, that so the same might not be imbezzled; and thereupon caused an inventory to be taken thereof: but, my lord, we dispossessed none: it is true, we have left a servant or two, for whom we are and must be responsible; whatever they would dispose or had occasion for, they had it without contradiction. We offered him, that if he had any friend of his own that would undertake them to be forth-coming, in case he were convict, we would leave them in possession of them: we have made no seizure; what we have done is according to custom; if we have not done that which your lordships approve of, we beg your pardon.

Lord Hyde. We are to look to that which is according to law; the goods of a man that is accused of felony (he is but only so yet) he forfeits none of his goods, until convict; more than that, he is to live upon them during his trial; but on the other hand, where a man is accused of felony, and indicted for it, it is but prudence, and agreeable to law, to take care the goods be not imbezzled; because, if a conviction follow, they are forfeited to the king; therefore the sheriffs have done but what they ought to do: they are not taken from you, what you have occasion for, either for money (or goods to turn into money) for your present supply, until your trial be over, God forbid but you should have it; and you shall have it if you have any friend that will undertake the goods shall be forthcoming for the king, in case you be convicted, or for yourself if acquitted, it shall be done. In the mean time what you have occasion for yourself, wife or children, God forbid but you should have it: and this is as much as by justice you ought to claim.

Turner. I submit to your honour, and I beg of your honour, and the bench to be of counsel for me;* for though the world looks on me as a solicitor, it is a mistake, my lord, it is not in law, I am a stranger to it; it has been only in dealings for monies, by purchases and the like. But, my lord, I am informed your lordship may restore me these goods without security; if the law directs security I am ready to give it.

L. C. J. of the Common-Pleas. (*Bridgeman*) For that, that you may not mistake the law, it is very true, the words of the statute of Rd. 3. say, A man's goods shall not be seized before indicted. You must understand the difference of the law, that has made the mistake; it was

* See a Note to the Case of Don Pantaleon Sa, vol. 5. p. 446; and one to the Case of Twyn and others, 15 Car. 2, *supra*.

then good, but not now; then a man's course was to indict them and process against them before committed, but now it is altered; for when it remained indifferent, whether Guilty or Not Guilty, he was to be maintained out of his goods: so ought you and your family: for the town being answerable for the goods of such a felon, that they might not be amerced, in such cases sufficient sureties were given: the statute of Philip and Mary gives the power of commitment by justices of peace, and so now it is quite altered; and though they cannot seize the goods, yet they being responsible for them they ought to have good security.

Sir Rd. Ford. I do assure your lordships that from the very first hour we put our people into the house, none of his family there then or now have been denied any thing in the house: if I be not misinformed, that very night that he was committed, there was conveyed out of his house for his use and his occasions, some say 200*l.* they that say least, say 100*l.* they have had a free disposal of what was in the house; and then, my lord, could we do less than what we have done?

Turner. I would have made a short business of this, I tendered security of 5,000*l.* to their own content, they accepted of the persons, but one standing by, said, By no means; and so it is still undone. If you please, I have security now.

Lord Hyde. There need not much ado for security; if your trial were not to be presently, then there were cause for you to insist on this; but now there is but one night; if you want any thing for this night, the sheriffs here offer what you will, to-morrow will determine the question, whether these goods are yours, or no.

Turner. I will submit to the Court, I will not be refractory: here is security, if you please: if not, I am content.

Ld. Hyde. If you want any thing, either money or clothes, or any thing else, you may have them.

Turner. My Lord, the greatest thing will be some writings and papers which will concern me at my trial to clear me then.

Ld. Hyde. Do this; nominate one person, the Sheriff another to go with him, and what writings you will have brought, they shall take a note of them, and bring them to you.

Turner. I have divers writings of gentlemen's estates, bonds and things in my hands, and the papers are amongst them; and I do beg I may, with the keeper, go myself now.

Ld. Hyde. I cannot, nor the Court, give you leave; you stand indicted for Felony and Burglary.

Turner. Let my sons go, my Lord.

Ld. Hyde. They are indicted too, and are not bailable; if Mr. Sheriff (who is answerable for you) will send any with them, he may.

Sir R. Ford. I shall be willing to serve you, Gentlemen, so far myself, if your lordship will spare me from further service here, to go with such persons as he shall appoint.

Ld. Hyde. We leave that to Mr. Sheiff's civility: we can give no rule for it.

Turner. I may be cut off of my life, if I want my papers.

Ld. Ch. Just. Bridgman. Doth your life depend upon this evidence in matter of fact?

Turner. My Lord, I have been so strangely handled in this business, I know not where it depends.

Sir R. Ford. If he will say in what trunk or chest they are in, they shall be brought to the Court. [Thereupon Mr. Turner offered to send a pillowbeer, and the Sheriff said he should have the writings.]

Ld. Hyde. Provide yourself for to-morrow, Mr. Turner, we will then go on.

Turner. I have an humble request to your honours and honourable bench: I would beg an order to bring in some witnesses, who are Mr. Tryon's friends now, though mine lately; divers would come in, but send me word they dare not, except they are summoned by an order of your lordships.

Ld. Ch. Just. We will help what the law will do, but this cannot be done; those that will come in voluntarily, may; the law will not admit us to summon any witnesses; you see when any come against the king we cannot put them to their oaths, much less can we prevent them to come.

Turner. Pray, my Lord, let some of the Sheriff's officers wish them to come, not from the Bench.

Ld. Ch. Just. We cannot direct any thing in it.

Turner. I desire the party himself may be here.

Ld. Ch. Just. We cannot compel him.

Turner. Then I have no witness in the world; this is a sad thing, that the prosecutor, being able, will not come; I hope you will advise him to come.

Ld. Ch. Just. The law is open, the same to every man, you shall have that that is due to any man, you cannot have more, and less you shall not have; if he be bound we will call him.

Turner. What if he will forfeit his recognizance.

Ld. Ch. Just. We cannot help that, but we think you need not fear his not coming, he intends to be here.

And afterwards the prisoners were conveyed back to the Gaol.

16 January in the Morning.

The Court being sat, and proclamation made, the Jury was called, viz.—W. Bookey, Thomas Seawell, W. Allen. John Port, Francis Colea, Robert Masters, Thomas Hickson, John Andrews, John Jacob, David Bolger, Henry Hague, Lewis Tayte. Who severally answered to their names.

Clerk. Set up James Turner, John Turner, William Turner, Mary Turner and Ely Turner; [Who (with some felons) were accordingly set to the bar.] You, the prisoners that

were last called to the bar, those men that you shall hear called and personally appear, must pass between our sovereign lord the king and you for your several lives and deaths. If you or any of you will challenge them or any of them, you must challenge them when they come to the book to be sworn, before they be sworn.

Silence commanded twice.

Clerk. William Bookey, look upon the prisoner; 'You shall well and truly try, and true deliverance make between our sovereign lord the king and the prisoners at the bar, whom you shall have in charge according to your evidence. So help you God.'

And all the rest were sworn, save only Lewis Tayte, against whom he excepted, there being some little difference at present between them; but my Lord Chief Justices told him he need not give any reason for it, he was free to except any without cause. Thereupon Capt. Edward Micoe was sworn in his room. Count these, Crier.

William Bookey, &c. Twelve good men and true, stand together and hear your evidence.

Clerk. Crier, make proclamation. O Yes! If any man can inform my lords the king's justices, the king's serjeant, or the king's attorney, before this inquest be taken between our sovereign lord the king and the prisoners at the bar, let them come forth, and they shall be heard; for now the prisoners stand at the bar upon their deliverance: and all others bound by recognizance to give evidence against any the prisoners at the bar, come forth and give evidence, or else you will forfeit your recognizances.

Clerk. Crier, call Francis Tryon, William Hill, Fred. Ixam, John Garret, Jacob Watcher, Eliz. Fry, Ann Ball, John Guerne, Francis Millington, John Alsop, Peter Culley, Ralph Tasker, William Daws, John Rouse, Richard Roberts, Nath. Clarke, Robert Cole, Edward Cole.—They all came into the Court.

Clerk. James Turner, hold up thy hand. [And so the rest.] (Here the Indictment was read again.) Upon this indictment they have been arraigned, and thereunto have severally pleaded Not Guilty, and for their trials have put themselves upon God and the country, which country you are. Your charge is to enquire whether the said James, John and William Turner, or any of them, be guilty of this felony and burglary in manner and form as they stand indicted, or Not Guilty: and whether the said Mary Turner and Ely Turner are guilty of the felony, as accessories to the said John. If you find them Guilty, you shall enquire what goods and chattels, lands and tenements, they or any of them had at the time of committing this felony or burglary, or at any time since: If you find them Not Guilty, you shall enquire if they fled for it; if you find that they did fly for it, you shall enquire, &c. as if you had found them Guilty. If you find them Not Guilty, and they did not fly for it, say so, and no more, and hear your evidence.

But if you acquit James, John and William Turner of the felony and burglary, then you shall not enquire after Mary and Ely as accessories.

Sir Thomas Aleyn sworn. The Evidence that you shall give, &c.

L. C. J. *Hyde.* Pray, Sir Thomas Aleyn, tell your knowledge to the jury.

Sir T. Aleyn. May it please your lordships, and you gentlemen of the jury; Upon Friday morning last was sevennight, I heard of this robbery at Guild-Hall, and the person robbed being my acquaintance, I went to visit him in the afternoon; and coming there, not thinking but the business had been already examined, several persons with Mr. Francis Tryon put me upon the business to examine it. I went and examined the two servants, the man and the maid: upon their examination I found they had supped abroad at a danciag-school, and had been at cards, and came home afterwards; but before they came home, they heard that an ancient gentleman, one Mr. Tryon, was robbed, and then they hastened home. I examined them further, whether they used to go abroad after their master was in bed? The man confessed he had been abroad twenty or thirty times at col. Turner's house at supper, about a year since. The maid denied they had been there at all: but it is true the man's saying he supped there (though it was false) was the first occasion of suspicion of col. Turner. When I had examined these two, I went to the examination of Turner, Where he was all that day, where at night? he told me, at several places and taverns, and in bed at nine of the clock, and was called out of his bed: but having myself some suspicion of him, I wished him to withdraw. I told Mr. Tryon, that I believed if he was not the thief, he knew where the things were. The old gentleman said, He could not mistrust him, he had put a great confidence in him: but I desired him to give me leave to charge him with it; and thereupon I called him in, but he denied it; but not as a person of his spirit, which gave me some cause of further suspicion. I desired to search his house; nay, told him I would whether he would or no. He desired to go home; I told him, if he would go with them (some persons there) he should: but you shall not speak with your sons or daughters, or servants; they shall be examined by me. They searched his house, the marshal and constable, they said they could find nothing. The old gentleman was very unwilling to charge him with felony; some friends there were as well satisfied as I was, that he was guilty of it; and they brought me a paper that he would charge him: and thereupon I wished him to read that paper, told him I could do no less than send him to Newgate. Says he, you will not undo a family, will you? Will you not take bail? No, I cannot. What proof have you material against me? I will give you as good bail as any man; give me leave to speak with Mr. Tryon.

I did give him leave: he had no sooner spoke with him, but Mr. Tryon would not charge him, he promising to endeavour to find the thief. I took Mr. Turner on one side, and told him, I did as verily believe if he was not the thief, he could find him out, as I believed I should go home to my wife and children; and I said, That if an angel from Heaven should come, and tell me otherwise, I could hardly believe it. This passed on this night: I could not sleep all the night, still it was in my thoughts that this man was the man that had done the robbery. Next morning after nine, there came a gentleman to me, a person of quality, a merchant; if your lordship desires, I shall name him.

L. C. Justice. Pray name him.

Sir T. A. It was alderman Love, my lord: he told me that he thought I was a friend to justice: If I would go presently into the Minories myself, I might discover the person that robbed Mr. Tryon; if I staid, or sent others, the birds would be flown: Mr. Turner has this morning removed several hundred pounds. I went presently with a footboy. When I came to Bishopsgate, meeting with major Tasker, knowing not whether I went without the Liberties, said I to him, Are you in haste? Pray go along with me, and he went with me.— This gentleman, alderman Love, told me I should meet with a maid-servant of his that knew me, though I knew not her: she will meet you at such a corner, and go with you. When I came without Aldgate, I met with two maids that were the persons to shew me the place: the maid told me these were the maids. I bid them come behind me. At the further end of all the Minories I went into the shop, and found col. Turner with his hands in a chest: I charged him to take nothing out, and not to stir himself. There was two wallets, one of 100*l.* and the other 200*l.* I took the keys from him, laid them upon the compter: I went with him into the next room, which was the kitchen; and in another chest was two wallets more: and now the gentleman was speechless. I told him it was just as I told him the last night, that your roguery would come out; what (said I) is become of the rest of the money? Says he, Your haste will spoil all. I called in the maid, to examine her: but she was fearful, and so trembled there was no examining her before col. Turner. But in conclusion, said I, Col. Turner, if you will tell me whether this be Mr. Tryon's money, I will do you all the favour I can. Says he, I cannot say it is his money. I called for a constable, and made a *Mittimus* to send him to Newgate, thinking he would discover the truth. Said I, Will you give me your examination? He did: It is in court. I asked him whence this money came? He told me it was removed by himself, his wife, and children this morning.

Turner. My son and I, I told you.

Sir T. A. I asked him where he had received it? He told me at a goldsmith's, 14 days since: He did not remember his name. I asked why

he should remove his own money? His answer was, He did remove it for two or three days, till this foolery was over. When I saw I could get nothing further from him, I discoursed with him touching the remainder of the money and the jewels. Says he, Sir Thomas, do not trouble yourself, you will lose the jewels and the rest of the money by this course; and, says he, I am now in pursuit of them: If you will give me leave to go to the old gentleman, I know all will be well. I was not content to let him go: But presently we called a hackney-coach, and myself, and him, and major Tasker went, and carried that money to Mr. Tryon. When we came there, I told Mr. Tryon I thought we had brought 500*l.* of his money; and I did not doubt but I had brought a person that could tell of the rest of his money and jewels. Col. Turner desired to speak with Mr. Tryon himself in private. I gave him leave. He calls me, a little after: Sir, says he, Mr. Tryon and I am agreed; I must have this money delivered to me again: I have assured him he shall have all his money and jewels again by 3 this afternoon. I told him I could not agree that he should have the money back again, pressed him that he would stay there, and send for the rest of the money and jewels. But he would (if I did not) trust him: Mr. Tryon would have the rest of his money and all his jewels again.

Turner. I said, I would endeavour it.

Sir T. A. If he had said he would have endeavoured it, I would not have parted with him; but he said he should have the money and jewels, &c. I told him I would meet him at that time at Mr. Tryon's. Then I took Mr. Tryon, and said, Whatever promise you have made in private, you must excuse my assenting to any thing against the law: But do not tell him of it, lest you lose the jewels: I must commit him to Newgate, and I must bind you to prosecute him. He desired me I would not come so soon as 3, not till 4 or 5 of the clock, and all would be brought thither. I staid till about 4. In the interim, I heard some particulars, what these maids would testify; which testimony had I received before I had parted with him, I would not have parted with him for any consideration. But when I came thither in the afternoon, I heard col. Turner was arrested, and was then at the Hoop-tavern with the officers. I sent immediately the Marshal and his men to bring him to me. The officers and he came; and then col. Turner told me, I had brought all these things, but the officers prevented me; I was a very unfortunate man: Give me but leave till to-morrow morning at 9, and you shall have all. Said I, I have now heard more; and you must produce the money and jewels, if you expect any favour from me, or I know what to do. He pressed very hard an hour, or almost two, that he might be trusted to go for them; if he did not go, Mr. Tryon would lose the rest of his money and jewels. I told him I had rather they should be all lost, than I should forfeit my discretion and reputation. And thus he kept us

till 7 or 8 at night. At last he would have gone with one person. I told him, no: If there were enough to secure you, I might give leave. Saith he, the party will not see more than one; for his life would be in danger. Whither would you go? I would go, saith he, (to my best remembrance) to Tower-Hill or Whitechapel. I should have met him at 5; and now I must meet him about 9. I will call in the officers: They will tell you, your being upon a Judgment, they will not part with you without the Liberties: Nor will I give leave, because the Sheriffs will blame me: The officers said they could not go without the Liberties, for it would be an escape in law. Pray give me leave to go near those places, and I will send. Nay, then you may as well send from hence. He begged leave to go to the Hoop-tavern, and send for his wife; which I did grant. And there he did send for his wife. They brought me word he had sent his wife for the jewels and the rest of the monies. He sent to me not to think the time too long, for he had notice his wife was coming. I directed the Marshal, when his wife came, he would secure her. About 11 they brought his wife; who told me she had delivered the jewels: they thought they were in two bags. Then he came to me, and desired to speak with Mr. Tryon in private, and told me Mr. Tryon's soul was pawned to him, and his to the thief, that no discovery should be made. But when I examined his wife what money went from her house that morning, she said she knew of none. Where had you the jewels? She knew of none: But she had a couple of bags that she was sent for: Near Whitechapel or the Tower a person should meet her, and ask what she did there, and she should say she walked up and down for something that should be given her by a person; which, if he did, she was to bring it to him that sent her. He did deliver the two bags, which she delivered to her husband; but what was in them, she knew not. There was sir Thomas Chamberlane, Mr. Millington, myself, and col. Turner, with Mr. Tryon. The two bags was laid upon a dresser. He told us they were now come; and having performed his part, he hoped Mr. Tryon would perform his. Have you performed your part? Have you brought the jewels and the remainder of the money? He told us the money was not brought: For the 600*l.* I shall give Mr. Tryon my bond, to pay him at six months. We pressed to see the jewels: We run them all over. But I should have told you one thing: She brought a cat's-head-eyering upon her finger. This the gentleman was like to forget: He delivered it to me, to deliver that with the rest. When we had told out the jewels, we crossed them out upon the printed paper as they were called. She said all that was in the paper, except one carcanet of diamonds and jewels, valued at 200*l.* that is fallen behind the chest, or aside. You have 2,000*l.* worth of jewels over what is in the paper; but that carcanet shall be forthcoming. He now pressed that no prosecution might be, for two

souls were pawned, (as I said before) and desired an end of the business. I told him further, and pressed him: Said I, I have staid a great while, and would stay longer, if he might have the 600*l.* and the carcanet. But when I saw there was nothing more to be got from him, now (said I) what would you have this poor gentleman to do for you? What he hath promised you, I know not; he is a stranger to the law: If there had been but you two had it, and it had not been published to the world, and the neighbours public examination taken, somewhat might have been between yourselves. But would you have this gentleman bring himself into danger? He will lose all his goods again; for he will be indicted himself. What will he be the better for discovery, when he must lose his jewels and money, and be liable to a prosecution, as you will be, were he so ignorant? Do you think that I understand the law no better, being a justice of peace, to bring myself into danger? All the kindness I can do for you, is, (to be short) I must send you and your wife to Newgate. How say you, master Alderman? Then I had better to have kept the jewels. Those were his words; to the best of my remembrance he said so.—My lord, I asked him several questions: Why he should give a bond for 600*l.*, if he was not concerned in this business? But he knew not what to answer. Saith he, Will you not take bail! Said I, I can take no bail: I must send you to the common gaol, and then I am discharged. Pray send me to the Compter. No, I cannot. Do you think I would make an escape? I cannot tell; but I would not bring myself into danger. He prayed me I would give him leave to go home. I must make my warrant: If the marshal and constable will do any thing, I shall not direct them. He desired his wife might go and fetch some linen.

L. C. J. *Bridgman*. What day were the jewels delivered?

Sir T. A. Saturday.

L. C. J. *Bridgman*. Thursday was the robbery, Friday he was examined, Saturday the money was removed, and that night the jewels were brought, and he committed.

Sir T. A. If I have said any thing that he is not satisfied wherein I have not true spoken, let him ask me; I shall not do him the least wrong.

L. C. J. *Hyde*. Do so, Mr. Turner.

Turner. Do your honours understand of sir Thomas the time the robbery was committed? I shall ask him some questions.

Sir T. A. I have only one word more to say to you: That before he went to the Hoop-tavern, Nay, said I, col. Turner, be ingenious whether this was not Mr. Tryon's money that he removed? And he confessed it was.

L. C. J. *Hyde*. That money was removed from his own house?

Sir T. A. Yes; but his wife, children, and maid denied it.

L. C. J. *Hyde*. Mr. Turner, will you ask him any questions? What are they?

Turner. I would ask all this back again: You are upon your oath, Mr. Alderman.

L. C. J. Hyde. You need not tell him that he is sworn; the court and jury understand it so.

L. C. J. Bridgman. Go on, Mr. Turner; ask your questions.

Turner. My lord, I demand of sir Thomas Aleyn whether I did not tell him at the first there was a wicked young man had belied my house and family, saying, that he supped there that night, when he had not supped at my house these 12 months.

Sir T. A. I think I have done him that right already. He desired me to examine that young man, who said he supped at col. Turner's; but I found he had not been, nor was not there.

Turner. Upon Friday night, when the alderman pressed me, concerning the thing, I told him I had some suspicion of some persons, who formerly should have robbed Mr. Tryon a year ago, and I employed Mosely the constable and Mr. Tryon's man to go to Ratchiff, and I went another way. Pray ask sir Thomas whether I did not promise to do all I could.

Sir T. A. I pressed him hard; he said he would endeavour it.

Turner. Whether did not I tell him that that money was carried there on purpose to gain the other fellows that had the jewels? Said I, If this money be taken away, he that hath the jewels will not bring them, and the remainder of the money; but that this money must bring him to it, that they might share it.

Sir T. A. There was not one word of this; his Examination was contrary. He told me 400*l.* was received of a goldsmith, he knew not his name, and 200*l.* was in his own house; and that he removed it for two or three days, till this foolery was over. He said it was his own money. I said, an honest man need not thus remove his own money.—One thing I have omitted: when I was examining of him in the Minorities, word was brought me his son was fled away at the back-door. I bid them run after him; but they said they saw him leap over a great ditch; he was not heard of till yesterday, though I sent out my warrants for him.

L. C. J. Hyde. Yourself (as sir T. Aleyn swears) said you knew not of whom you had part of the money, but the other was your own, and yet afterwards that the money was Tryon's; why did you say so?

Turner. I will tell you the reason; I would not have my business spoiled, and did feign those answers. My lord, I do demand of him whether Mr. Tryon and I had not made a bargain in the morning, whether or no if he might have his goods the person should be free, and that he had agreed no blood should be spilt; that he had rather lose all his money and jewels, than to forfeit such an asseveration which the thief had bound me that I should swear to him, That by the blood of Jesus Christ that was shed for him and all sinners, his life should be free.

L. C. J. Hyde. You are beside the business.

Turner. My lord, I ask alderman Aleyn whether I did not tell him this?

Sir T. A. I told your lordships two souls were pawned, as he said before.

L. C. J. Hyde. Do not spend your time thus; the question's short, Whether you are guilty of robbing, or breaking the house of Mr. Tryon, or no?

Turner. I am as free as any man here.

L. C. J. Hyde. They will not believe your own words.

Sir T. A. I think I have done him no wrong by this evidence.

Turner. I hope, my lord, I shall have the benefit to call him again for a witness for me.

L. C. J. Hyde. You may ask him now.

Turner. No, when I come to my defence.

L. C. J. Hyde. Yes, yes.

Turner. Oh your honour's most humble servant; I am very sorry I have put him to this trouble.

Mr. Tryon, his Servant, and Mr. Garnet sworn.

L. C. J. Hyde. Mr. Tryon, pray, (as you are able) give an account of this business.

Tryon. My lord, about 11 of the clock, or something past, upon Thursday night last was a seven-night, two men came into my chamber when I was fast asleep, one on the one side, and another on the other side of the bed: one had a lanthorn that opened on one side, and waked me: when I saw him, I was much astonished (as I might well) knew them not, said, My masters, who are you? I was newly out of my sleep; being an ancient man, I apprehended another man for the party I spoke to, but was not the man, and named him by his name, What do you do here at this time of night? What is your business? Said nothing to me; one, took both my hands the other with a little cord bound me very hard, insomuch here yet is the dents of it; and bound my feet, gagged me, and used me barbarously, most inhumanly; I must suffer it, because I could not tell how to avoid it. When they had done, then told me this withal, You shall not lose a hair of your head. I knew not their intentions, I feared what it was, for when they had done this, they left me; I had nobody could come to me in my house, my servants I knew not upon what grounds they were forth at supper when I a-bed, which was of ill consequence. After I had been an hour in this manner I rolled myself out of my bed, and fell down; and seeing your lordships presence, a chamber-pot fell, broke, and I fell upon it, and very much hurt myself upon the pieces of the pot: and so with much ado, it pleased God, I know not how myself, I got to the chamber-window which lay to the street; I called out, Murder! and Thieves! My neighbours said, I called with so strong a voice, they wondered to hear me. Quickly after, many of my neighbours came in, and one Mr. Peter Vanden-Ancbor, a Dutchman, that selleth Rhenish-wine, he came

in and unbound me; and so after I was unbound, I went down to the warehouse as I was, without clothes about me, only my waistcoat and shirt, and saw that they had been there. I considered those that had done the thing, were very privy to my house; they knew where to fetch the key of my cash, in a drawing-box, taking the money there, which was about one thousand and odd pounds: some plate there was, they did not meddle with it.

L. C. J. *Hyde*. How came they by the jewels?

Tryon. I forgot something concerning some jewels; these jewels were in a drawer under my table in the counting-house, he was privy to that, because he did frequent my house very long, and was very familiar.

L. C. J. *Hyde*. Who was privy to all this?

Tryon. James Turner.

L. C. J. *Hyde*. Mr. Turner, would you ask Mr. Tryon any questions?

Turner. By and by, when I come upon my proof.

William Hill, Mr. Tryon's man, sworn.

Hill. All that I can say, is this: when I went out, I locked the door double, and those things were there then.

L. C. J. *Hyde*. About what time?

Hill. Seven or eight of the clock.

L. C. J. *Hyde*. Was he a-bed then?

Hill. Yes, my lord. When I came home again, I found all these things gone; going down into the counting-house, we found some jewels gone, and some left, and those were inconsiderable to those that were gone; the best were called and gone. On Saturday colonel Turner was arrested with two sergeants, and sent the boy at the Hoop-Tavern for me: I took two friends with me, Mr. Gurney and Mr. Pilkington; he prayed me to speak to my master that he would give bond for him, that the sergeants might discharge him, and he hasten about his business, or else it would be spoiled. Proceeding into some discourse, I was saying to him, it was a great providence that I and the maid was not then at home, for if we had we should have been killed. He answered, saith he, No; they would only have bound you and the maid. I asked him, how it was possible to get in? He answered, one went through the entry in the day time, and there lay till night, went up stairs, found a candle, lit it, went up to his chamber, took the key and went down and let in others.

Turner. This story I was informed, I told him.

Hill. I asked him how he came to know it? He said he examined them.

Ld. Bridgman. Did he never tamper with you about making Mr. Tryon's will?

Hill. Yes, my lord, he came to me about a year ago, I went with him to the Cock behind the Exchange, it was in a morning; he took me privately aside, told me the old gentleman your master is very sickly, cannot live long, had a good estate, or to that purpose, and it was pity he would never make a will, and such an

estate should go to the building of Paul's. Saith he, I have pressed him several times touching making his will: he said he had done it, when we both knew he had not, and I believe he will not make one. He told of one that could counterfeit a hand.

Ld. Bridgman. Was it not Grainger.

Hill. Yes, my lord; that that man could counterfeit a will, and I and Mr. Garret, and another good-fellow should be the three executors, and a third person overseer, and that would please the old-man. I answered, I would not have to do in such an unjust thing for all the world.

L. C. J. *Hyde*. Did you go to Turner's to supper that night this robbery was committed?

Hill. No, my lord, to Mr. Starkey's in Fenchurch-street; the maid went along with me.

Ld. Bridgman. One question more: you said you came in and found the doors open, did you come in before the neighbours?

Hill. No, my lord, I had not known of it, but that one gentleman at supper went home with a gentlewoman in Leadenhall-street, and hearing there was such a robbery in Lime-street, I run with a great fright, came in and found the doors open, and found the neighbours within.

Turner. The thing understood touching the will, hath another face: his uncle was an acquaintance of Mr. Grainger, his uncle that bound him apprentice, that lived in Cripple-gate, now in Cornhill. This Grainger had counterfeited a will touching my lord Gerrard, and somebody else, about an estate. Said I to this young man, You have an uncle acquainted with a notable fellow, one Grainger, and your master making no will, speaking merrily, this fellow is able to make it for him. Ask him if I did not tell him his uncle was acquainted with such a person.

Hill. You told me so indeed.

Ld. Bridgman. Hill, by the oath you have taken, did he not persuade you to endeavour that you and he and Grainger should counterfeit a will?

Hill. He did, my lord: he told me, That I, Mr. Garret, and another good-fellow, should be three executors, and another person overseer, and that this Grainger could do it undiscernibly. I answered him, I would not meddle with it for all the world.

Turner. Go, go, go, this is malice; for it was mere jesting with him.

Elizabeth Fry sworn.

Fry. Mrs. Turner came to my house on Saturday morning last, at 6 in the morning: she knocked me out of my bed. I asked, who was there? she said, a friend. Who are you, said I? come and see, says she. I said, Who, Mrs. Turner? she said, yes. I went and dressed me, and let her in. She said, There was a friend of hers, a merchant, newly broke, he had a wife, and seven or eight children; they desired to secure the money till they had taken their oaths the money was not in their

house. She said, her husband and her son Ely was coming with it. I went and lighted a candle, there was she and her son Ely with the money. She asked me, if I had a spare chest? I said, yes, there was one within. She went in, opened the chest, and she put in the wallets of money, I know not how much, my lord. I asked her if there was any more to come? she said, yes, her husband was coming with more. She went to the door and let it in, but I know not who brought that.

Ld. Bridgman. Did not Mr. Turner come in?

Fry. Yes, my lord; he opened the bags, and asked his wife touching the seals. She said, the gentlewoman that owned the money had desired me to pull them off. They offered me 20 shillings for my kindness in it, told me they had power to give it from the gentlewoman; desired me if my sister or any should ask about it, bid me conceal it, because the discovery would ruin the poor gentlewoman and her children, but rather to say that they desired me to let some linen lie there.

L. C. J. Hyde. Were the bags sealed?

Fry. I saw none sealed.

Ld. Bridgman. How many wallets were in the shop?

Fry. I saw but three, and they put one into a chest in the shop, and two in the kitchen.

L. C. J. Hyde. At that time when the money was brought, was there any discourse of 1,100*l.*

Fry. To my best remembrance it was so.

Turner. Not a word of the sum.

Fry. There was five wallets brought into my house, three in the shop, two in the kitchen.

L. C. J. Hyde. Had they bags at each end?

Fry. Yes, my lord.

Sir T. Aleyn. You hear what the wench says; she says, there was five wallets, three in the shop, two in the kitchen: I took two in the shop, and only one in the kitchen.

Fry. My lord, I have two apprentices, little girls, when all the people were in the shop, said out aloud, That they saw Mrs. Turner go out of the shop with something in her apron, covered with a red cloth, while I was above, my lord.

Turner. Who should convey it away?

L. C. J. Hyde. Your son was there.

Turner. Pray, my lord, ask her which is Ely.

Fry. That is, (pointing to Ely).

Turner. It was false; this Ely carried none; the boy knew nothing of it; both my sons are dear to me, and if either more than the other, it must be my eldest; and yet I must say, it was John my eldest son that carried the money, this boy was at home; she hath sworn herself.

Fry. Your wife told me that Ely was to bring some.

Mr. Gurnet sworn.

My lord, I met with col. Turner on Saturday morning after the robbery; he told me, says he, I have been as good as my word, I

sent my son to make some discovery of this business, and I did not doubt but to clear myself of it, and make a discovery: this was on the Exchange. Says he, I have met with them. With what? With the jewels and money. Where are they? I have brought 500*l.*; the rest, with the jewels, I shall have at 3 o'clock this afternoon: will you be there? Yes, said I, who were they? They were friends. Friends! what and use him so barbarously! O, says he, they were two strangers, they went beyond their commission.

Major. Ralph Tasker sworn.

On Saturday morning I met sir T. Aleyn; passing by, he called me; says he, there is a business in hand, pray go along with me. We went along through Aldgate and into the Minorities, and passing along the Minorities, these two maids we overtook, and asked them where the house was; they shewed us, we went in, Mr. Turner was there, his hand in the chest, sir Tho. Aleyn staid it; we seized the money; there was two bags of buckram, I conceived there was 200*l.* in either of them, and another in the kitchen, sir T. Aleyn desired me to secure them. I saw a fellow play bo-peep in a back-room, and presently was a noise, he was fled and gone; his son they said it was. Sir T. Aleyn pressed very hard to Mr. Turner, and desired to know whose money that was. Says Turner, By the Eternal God it is my own money, with many other protestations. A constable was sent for, and we carried the money and Turner in a hackney-coach to Mr. Tryon, and there left the money on a table with Mr. Tryon: they had some discourse; Turner came forth and said, The old gentleman and I are agreed, I will trust the money no longer with you, but with the old gentleman himself. Said I, let me be discharged of it, do what you will with it.

Ld. Bridgman. Did you see the bags out of the wallets?

Sir T. Aleyn. We saw one which was sealed, I think, with the bishop of Chichester's seal.

Ann Ball sworn.

On Saturday morning Mrs. Turner came to this maid's house, and desired to come in; she stept out of bed, and asked who was there? she said, a friend. She went to the door, and asked who was there? Mrs. Turner said, Open the door, and you shall see. Opening of it, she came in: who is it, Mrs. Turner? Yes, says she. What would you have? I have a little money I would leave here: This she came and told me. She lighted a candle; I saw Mr. Turner and his wife come in, I heard a great noise, I lay still, but heard not what they said. When they were gone, the maid told me what they had brought into the house. Said I, I thought it had been pewter: said I, if you keep this money, we shall be utterly undone, if you do not tell some people of it. She went to her sister to make her acquainted with it.

Ld. Bridgman. You saw Mr. Turner and his wife come in?

Ball. I did, but knew not what they did there: she did go to her sister, and so it came to sir T. Aleyn by accident.

Ld. Bridgman. Now for the seal, who were those that saw the seal?

Frederic Iram sworn.

My lord, and gentlemen of the Jury; being at the house of Mr. Tryon on Saturday in the evening, I was desired, with others there present, to see the bags taken out of the several wallets; three, I think. I saw them taken out; three had no seals on, one was very much defaced, and the other had a seal, which being questioned to be the seal of the bishop of Chichester, it was compared with the seal of a letter which Mr. Tryon brought down, and declared to be a letter received from the bishop of Chichester, and those two seals agreed: the bags being here in Court, will be a further evidence. The Letter was produced by Mr. Tryon, and owned by him to be the bishop of Chichester's, and they agreed.

Mr. Hanson the goldsmith, sworn.

[The bag sealed was shewn him.]

Ld. Bridgman. Have you seen the letter?

Hanson. Yes.

Ld. Bridgman. Doth that seal and the seal of the bag agree?

Hanson. Yes.

Ld. Bridgman. Mr. Tryon, whose letter was that?

Mr. Tryon. Dr. Henry King's, bishop of Chichester.

Ld. Bridgman. Open the letter, and see whether that be the letter you received from the bishop of Chichester.

Tryon. Shall I read it?

Ld. Bridgman. No.

Tryon. It is his hand and seal.

Ld. Bridgman. Shew the bag and letter to the Foreman of the Jury: [which was done, and most of the Jury viewed it.]

Ld. Bridgman. You observe this evidence; this was one of the bags that was taken in the Minories, that col. Turner was then removing: Mr. Tryon had 600*l.* of the bishop of Chichester's in bags sealed; it appears by the letter to be his seal, and these gentlemen swear this was one of the bags then pulled out of the wallet, and sir T. Aleyn has had it in his custody since.

L. C. J. Hyde. One thing more observe, he asked his wife when the money was brought into this woman's house, Have you taken off the seals? his wife said, The gentlewoman directed her to take them off.

Ld. Bridgman. Some were taken off, but it seems this was left on.

[Here Turner spoke somewhat to the Jury.]

L. C. J. Hyde. Pray Mr. Turner discourse not with the Jury, your whispering will do you little good: though I think they are honest men, and will not be guided by you, yet we expect the same carriage from you as from other

prisoners; you shall have all the justice that may be.

Cole the Serjeant sworn.

L. C. J. Hyde. Speak your knowledge.

Cole. On Saturday in the afternoon about 3, my brother and I arrested col. Turner in an action of 700*l.*

L. C. J. Hyde. At whose suit?

Cole. At the suit of Thomas Lyon, who with others was bail for him.

Turner. It was only hearing of this foolery that caused it.

Cole. My lord, we went to the Hoop tavern, he sent for Mr. Tryon's man, that he should engage for this account, that he might have his liberty to look after master Tryon's business. Soon after came the constable, and he charged us to assist him to go before sir T. Aleyn. By and by I was saying, Col. Turner, how could this house be robbed, and none of the doors broke? O, said he, I took a man in the Minories, who has discovered it to me: he told me, that one going into the cellar in the day time, lay there till night, then went up stairs, found a candle and lit it, went up to the old gentleman's chamber, took the key from his bed side, and went down, and let all the rest of the thieves in.—The young man being there, said, It was well the maid and I was not at home, we should have been killed. No, says he, you would not have been killed, only bound.

Turner. As the fellow told me:

L. C. J. Hyde. Did he say nothing touching Mr. Tryon's tooth?

Cole. He said, that the fellow putting his finger in his mouth to gag him, the old gentleman bit him; and he struggling to get out his finger, pulled out his tooth.

L. C. J. Hyde. You are very perfect at it, Mr. Turner, every way.

Turner. Ay, my lord, I examined him every way.

Cole the Yeoman sworn.

Cole. My lord, I can say only what my brother said before.

L. C. J. Hyde. Tell it.

Cole. I arrested him, &c. [And so related in the same manner his brother did.]

Ld. Bridgman. Mr. Hill, what do you know about breaking your own desk?

Hill. My desk was safe locked, and the key in my pocket; I lost out of that desk about 45*l.* of my own.

Ld. Bridgman. Where did it stand?

Hill. Upon a table in the warehouse; the jewels were in a drawer under the table in the counting-house.

Ld. Bridgman. How did you leave Mr. Tryon's door?

Hill. Double locked.

Ld. Bridgman. Who had the key?

Hill. I had.

Ld. Bridgman. Was there more than one key?

Hill. Always two.

Lord Bridgman. Who had the other?

Hill. The other key was in my master's chamber.

Lord Bridgman. Mr. Tryon, how was your own door opened?

Tryon. I called some of my neighbours, and Mr. Vanden-Anchor came up to me: It seems they had forced open the door with a crow of iron.

Lord Bridgman. The door of your chamber, do you mean?

Tryon. No, the street-door.

Lord Bridgman. How was your chamber-door opened?

Tryon. I never lock my chamber-door, but pull it too.

L. C. J. Hyde. Mr. Hill, the counting-house where the jewels were, was that locked?

Hill. Yes, and the drawer I think was locked; sometimes he does, and sometimes he does not lock it.

L. C. J. Hyde. Was the house doors open, or no?

Hill. Before I came, the neighbours had broke open the door.

L. C. J. Hyde. Mr. Tryon, were your counting-house and till, where the jewels lay, locked?—Tryon. Ever, my lord.

L. C. J. Hyde. That night?

Tryon. Yes, my lord.

L. C. J. Hyde. Was it opened with a key, or broken open?

Tryon. I know not how it was opened, my key was among a bunch of keys.

Peter Vanden-Anchor sworn.

Lord Bridgman. When Mr. Tryon cried out, you came in, did you not?

Vanden-Anchor. Yes, my lord.

Lord Bridgman. How did you find him?

Vanden-Anchor. I was lately come home, my daughter heard a great voice of murder and robberies: I went out, and some of the neighbours were breaking open the door, and I was the first that went into the house; and so I went presently up to Master Tryon's chamber, and found him bound with this rope; and put it into my pocket, and searched about the house, and several neighbours came in.

Chaplain sworn.

I was at the door with Master Vanden-Anchor, we went into the ware-house and counting-house, and all open, cash was taken away without any breaking. Says Master Tryon, All my money is gone, a thousand and odd pounds: Several pieces of plate were there left. We went up with Master Tryon, and sent for a chirurgeon to dress his thigh: By this time his man came in; I asked him where he had been? says he, I have been at col. Turner's at supper. Where is the maid? says he, She is fallen into a swoon. Some maids came home with her; I asked her where she had been? She said, At one Chamberlin's a goldsmith's. Said I to her, The man says one thing, and you another. A little after comes in col. Turner,

with his lanthorn, and his hair turned up under his cap, and there he made a great bustle. I went to Chamberlin's to enquire touching the maid; he said, they had been there with a dancing-master. I went to Master Tryon's again: we asked him, who he thought bound him? he named one Christmas, but I knew him not.

Lord Mayor. Did you not find any door, that you observed, to be broken?

Chaplain. No, but all opened with keys.

Mr. Christmas sworn.

My lord, I know little of the business. About two o'clock on Friday morning there comes a constable and other people, and knocked at my ware-house doors: the man's servant of the house rose up, and asked them who they would speak with? They said, they would speak with one Christmas. Hearing my name I rose up, I asked what was the matter? They said, they must have me to Master Tryon, he was robbed. If he was, said I, it doth not concern me. They told me, I must go to Master Tryon. I said, he was not a civil man to send for any at that time of night out of their beds. Then another constable came, and said he would break open the doors. Said I, I am not afraid to come to you, I am not the man you take me to be. Nothing would satisfy, but I must go; I told them I would: and then they took me into their charge, and carried me to the Exchange.

L. C. J. Hyde. Who besides the constable?

Christmas. Two young men that I know, one Bagnall's man, and Browning's man: they told a constable, I was a man of repete, and an honest man, and my word would be taken at the Exchange for many hundred pounds. After that they intended to carry me to Master Tryon; and the constable of Broad-street carried me to the Counter: There I was 'till 10 o'clock, and then the constable and Turner came to me. Turner asked me what justice I would go before: I told him it was indifferent to me; Sir John Frederick, or the next, sir Richard Brown, or before sir T. Aleyn, sir John Robinson, all one to me whom I go before; but I think it most convenient to go before sir T. Adams, because he lives in the same parish with Mr. Tryon. We went there, and no man charging me, sir Thomas discharged me, but desired I would go over to Mr. Tryon.

Ld. Bridgman. I observe this gentleman was of a pretty bulk, somewhat corpulent, and so is Mr. Turner.

Turner. My Lord, I humbly beg I may have a stool to sit down, I am troubled with the gout.

Ld. Bridgman. You may have one.

Mr. Millington sworn.

My Lord, I came to Mr. Tryon's on Saturday in the afternoon, about the evening; and being sent for to come with Mr. Turner, he told me of the arrest that was made upon him, and said, that he should not comply with his

words, in bringing the jewels and remainder of the money. He desired me I would go and intercede, that he might have his liberty to go about the jewels: but I did not think it convenient to make myself concerned in it. He alledged, that if he did it not presently, the thief would be gone. It was hinted, that they that were with him, might go along with him, the marshal and serjeants: He said, if so many came, they would fright him away; for he said he was walking about Tower-hill or White-Chapel. But it was denied, and could not be granted that they should go, it being out of their liberties. He desired to go near those places, keeping within the liberties, and to send for them. Sir Thomas Aleyn told him, he might as well send for them thither. He desired to go to the Hoop-Tavern, and then some went with him to his house: his wife was private with him behind a partition; then he came out, and spoke publicly to his wife, says he, There is a man will be walking all alone, either at White-chapel, or on Tower-Hill, do you go there; if he sees you, he will ask you whether you want any thing, and will deliver you what I told you. We went to the Hoop-Tavern again, and about two hours after, the jewels were brought by his wife. That being done, we went to Mr. Tryon's, Mr. Turner carried the jewels; being at Mr. Tryon's the jewels were there opened: we found by perusal, that there was only a carcanet jewel wanting, of the value of about two hundred pounds; and Mrs. Turner said, the man told her, that that carcanet was fallen behind a chest, but did not doubt to procure it to-morrow. Afterwards, sir Thomas Aleyn told him now he could do no less than commit him to Newgate. Mr. Turner told him, then he had better have kept the jewels. The remainder of the money being asked for, he said he would be bound for it.

Mr. Mannock sworn.

Ld. Bridgman. What discourse passed between you and Mr. Turner at Newgate?

Mannock. My Lord, he told me Mr. Tryon was to give him 500*l.* to get the jewels and money, and that he had got him 500*l.* and most of the jewels: and that if sir Thomas Aleyn had not secured him, he did believe that he should have had them all: but Newgate was not a place to find them out.

Ld. Bridgman. Did he tell you of bringing any money from his own house? That the 500*l.* he delivered Mr. Tryon, was procured from his own house?

Mannock. He did tell me so, my Lord.

Turner. My lord, I own it, I shall unfold the riddle by and by.

Sir Thomas Chamberlain sworn.

L. C. J. Hyde. What know you, sir Thomas, of this business? Pray let the Jury hear you.

Sir T. Chamberlain. My lord, on Friday morning I was at the East India House, keeping court there for that company: after-

wards I went to the Exchange, and being tired, I called in at the coffee-house, and there heard that Mr. Tryon was robbed. I went directly home, and dined: about three o'clock I went to Mr. Tryon's house, an old friend of mine, my father's servant heretofore, I went to visit him, and found a great many people about him; sir T. Aleyn, lady Garret, and the countess of Carlisle was there. I told him, Mr. Tryon, I understand you have been robbed. Yes, says he, I have a great loss. I found him very staggering what he should do. I said, you must now do like a man, or you will lose all: said I to sir T. Aleyn, if you do not help the poor man, being ancient, he will quite lose all. With that I went up above in the house, sir T. Aleyn was pleased to call me along with him, I was by at all the examinations; I did mistrust, and told Mr. Tryon in French, that no doubt but that gentleman was in the robbery: the reason was, that he being a frequent man in the house, knew every thing: he was there continually, coming for jewels and things, and no man could do it but himself; that was my judgment, I told sir T. Aleyn assuredly he had a hand in it. My lord, the while we were examining the servants, word was brought in, that he was bearkening at the door, and in the yards, which made me more and more mistrust him. We heard that the maid had been gadding abroad several times; I desired sir T. Aleyn to examine the maid how often she had supped at Turner's, she denied any time. The young man was examined, who said, they had been thirty or forty times feasted at col. Turner's. My lord, sir T. Aleyn has given you a just account, but he omitted one thing; he had a note sent him, which he had in his pocket, touching Mr. Turner's going about removal of the money into the Minories; and before Turner came in, he examined Mrs. Turner upon that note: says he, you were there too, and carried the money. Says she, she is a liar and a whore for saying so. Col. Turner came in and said, why do you torment and vex my wife; and falling a cursing, and swearing and banning, said she was with child, you will make her miscarry, let her alone. Sir T. Aleyn examined him where he had been that day, and that night; he told him of many taverns, and going to see his horse, and I know not what, but we found him faltering. When the jewels were brought, there being two notes, sir T. Aleyn had one, and I another. The old gentleman was so joyful to see them again, that lying by him, and handling them, he pulled two or three down with his sleeve. Says Mr. Turner, come, I know what belongs to them better than any of you, and read them over, and I will shew them you. There wanting one jewel, says he, that rogue that has the other money, hath this jewel, but I do not doubt but I shall find that out too. We put them all together, and sir T. Aleyn sealed them with his seal. For the bags of money,

I saw them taken out, and one being sealed with a small seal, I put on both my spectacles, I found a lion rampant at top in one of the quarters; said I, this is a seal of some great person; and then a letter was brought down, and being compared, I was satisfied in my conscience they were alike. Sir T. Aleyn told me he must make a mittimus for him and his wife: said she, do you send me of your errands? you shall send somebody else another time: I thought it would come to this. After much ranting and swearing (I thought the devil would have fetched him out of the room) he said, that he had better have kept the jewels, than to bring them forth, and to suffer for it himself, for he had pawned his soul, and would not reveal it; and said, that Mr. Tryon had likewise engaged the like to him. For the 600*l.* he offered his bond.

Lord Mayor. Pray repeat one part of your evidence again; that was, that somebody came to Mr. Tryon's house, from the house in the Minorities, charging Mrs. Turner to have been at that house.

Sir T. Chamberlain. I said, that before Turner came in with the jewels, Sir T. Aleyn had received a little note, wherein was affirmed, that Turner and his wife had been there; with which she was acquainted, and swore and took on, she was a whore, for she was not there.

Sir T. Aleyn. When I examined Mrs. Turner, she would own nothing. Why, said I, will you deny this which is so apparent? that you were there (the maid told you so now) you deny'd it when I charg'd you with it.

Mrs. Turner. I did not, it's false; what did—

Turner. Prythee be patient, dear Mal, come sit thee down.

Sir T. Aleyn. I asked Mrs. Turner whether she knew of any money carried to the Minorities that day; she said, she knew of no money at all, and said she was a whore that said it.

Mrs. Turner. They put it to me, that I knew who brought the money to my house, and that a woman acquainted them so; I said she was a lying whore that said so.

L. C. J. Bridgman. Mr. Hill, what time of night did you go out that night?

Hill. It was seven or eight o'clock.

L. C. J. Bridgman. Was the door lock'd?

Hill. Yes.

L. C. J. Bridgman. Did you carry the key with you?—*Hill.* Yes.

L. C. J. Bridgman. Was there any more keys?

Hill. There was another above in the chamber by my master's bed.

L. C. J. Bridgman. Did you find that other key when you came back?—*Hill.* Yes.

L. C. J. Bridgman. In the same place?

Hill. I know not that.

L. C. J. Bridgman. Mr. Hill, you have been acquainted with some transactions between Mr. Tryon and Turner; was he not employed about a mortgage?

Hill. Two or three.

L. C. J. Bridgman. Were not the names of some persons given to you to that purpose?

Hill. We have two or three mortgages my master lent him so much money upon: we heard of one man, but whether he gave order to Mr. Turner to take so much money upon the land, we know not.

L. C. J. Bridgman. Mr. Tryon, have you inquired after the persons?

Tryon. No, my Lord; I did believe all was true.

Garret. I have inquired after sir Theophilus Gilpin, but cannot find that he has any estate in England.

Turner. My Lord, Gilpin only assigns a judgment of Wescott's.

L. C. J. Bridgman. Then if Wescott be good it is sufficient; you should enquire after him?

Sir T. Aleyn. My Lord, John Turner, his son there, fled away from me, when I came to the house in the Minorities.

L. C. J. Bridgman. Why did you fly away?

John Turner. I did not, sir.

Sir T. Aleyn. No! You ran away as fast as you could; you got over a ditch.

John Turner. My Lord, a woman cryed out, 'Get away and save your life!' and I not knowing what the matter was, I went away.

Col. Turner. Poor boy! he thought thieves had been coming, and affrighted him.

Sir T. Aleyn. As to Ely Turner, I examined him upon the Sunday, the day after his father was committed; he would not confess the carrying of any money, and the maid swearing it, I committed him also.

Col. Turner. What's that of Ely? upon my soul, the boy carried none.

John Turner. I carried what was carried.

Col. Turner. My Lord, one son is as dear to me as the other, but if either be more, it must be my eldest; but yet I must say, it was John my eldest son that carried the money.

Sir T. Aleyn. My Lord, W. Turner was brought before me on Tuesday or Wednesday: sir R. Brown sent out his warrant for him, being a person of evil name, and likely to do such a fact; being taken, he was brought before me. My Lord, when Mr. Tryon looked upon him, he suspected him: I examined him when he saw Col. Turner; he said, not these three years, not to speak to him; and yet one at the Cock behind the Exchange said, this W. Turner staid for Col. Turner at his house two hours; that Col. Turner came in, paid for the pot of drink, and for ought he knew they both went together: thereupon I committed him. In the afternoon I ordered this person to send his servant; one came and made oath that he came in, and inquired for Col. Turner, asked for him, staid two hours for him; that they went both out of the house together: and this was on the Wednesday the day before the robbery.

William Dawes sworn.

All that I can say is this: William Turner was at my house on Wednesday was seven-night last; comes in, and called for a flagon of

beer; there comes in a customer of mine, says he to me, What do you with such a fellow in your house? Have a care of him, he is a dangerous fellow. Presently after col. Turner came in, and paid for a flagon of beer, and went away.

Col. Turner. I drank not with him, did I?
Dawes. Not that I saw.

L. C. J. Bridgman. Sir T. Aleyn, did not this Wm. Turner deny that he had seen col. Turner lately?

Sir T. Aleyn. He said positively he had not seen him these three years, so as to speak to him; said, he was grown too high for him.

John Rouse (Dawes's servant) sworn:

L. C. J. Bridgman. Do you remember when Wm. Turner was at your master's house? which is he?

Rouse. That's he (pointing to William) he was there upon Wednesday the 6th of this month.

L. C. J. Hyde. Did James (called colonel) Turner come there then?

Rouse. William came, and said he staid for the colonel; and by and by the colonel came.

L. C. J. Hyde. When he came, what did they?

Rouse. He went to the bar, and paid the reckoning.

L. C. J. Hyde. What time of the day?

Rouse. About twelve or one o'clock.

L. C. J. Bridgman. Did you ever see them both there before?

Rouse. No, I never saw them together before, but several others have enquired for col. Turner at our house.

L. C. J. Hyde. By the oath you have taken, did Wm. Turner say he staid for col. Turner, and that after col. Turner came, he paid for the drink, and they both went away together, and this on the Wednesday?

Rouse. Yes, Sir, it was so.

Col. Turner. My lord, I left him there; he followed me to the Exchange about his arrears, as twenty poor gentlemen do.

Mr. Garret, Mr. Watcher, and Mr. Peter Cully, sworn.

Mr. Cully. I was at Mr. Tryon's this day sevendnight; as I came from him, I met Sir Tho. Aleyn, Col. Turner, and Major Tasker coming up stairs; they asked who was there with Mr. Tryon? I told them nobody. Turner desired earnestly they would stay a little; for (says he) before God you will spoil all the business by and by. After he had been a little time with Mr. Tryon, he comes forth again, he takes up the bags of money, says he, These belong to me, this is not Mr. Tryon's money: He carries it to the old gentleman; he comes into the room, says he, Gentlemen, you may be all gone, the old gentleman is satisfied, his money and jewels shall be forth-coming by 5 o'clock this night; persons of quality are concerned in the business, and the old gentleman will not

prosecute. I asked col. Turner, Why was the money carried from your house to the Minorities? He said there was none, and did affirm it with an oath. When the bags were taken out of the wallets, upon comparing of a seal of one of the bags with the seal of a letter produced, I found them the same. That's all I can say.

Mr. Watcher. My lord, last Saturday between twelve and one o'clock came col. Turner on the Exchange, and said that Mr. Tryon should have all his money and jewels by three o'clock that afternoon; and if any man could say, that he lost sixpence of his money, or sixpenny-worth of his jewels, he had two fellows in custody that should suffer for it. And asking him why the money was that morning removed from his house to the Minorities, he said with a great oath, the money was never in his house.

Mr. Garret. When col. Turner brought home the money, he took up one of the wallets, and said, 'Jack, take notice, this is my money.'

L. C. J. Hyde. Where was this?

Garret. In my cousin Tryon's house; and that he only left it with my cousin Tryon. When we looked over this money in the evening, we found that seal that this gentleman (pointing to Mr. Cully) hath spoke of; it was a little defaced, but yet apparent enough.

Turner. I did say so, my lord; he speaks truth.

Mr. Pilkington sworn.

I can say no more than hath been said already: I shall repeat it. Being at the Hoop-tavern with Mr. Tryon's man, and others, with the officers, we were discoursing of his robbery; and I was saying, That I admired he being so ancient a gentleman, they would use him so barbarously as hath been related. Said col. Turner, In that they went beyond their commission, they had no order for it. And being asked how they got into the house, he said one got into the cellar in the day time: [And so related it in the same manner as several witnesses before.] Being asked how his tooth came to be beaten out? Says he, It was not with a blow; but the man's finger being in his mouth, he closed his teeth, and struggling to get out his finger, his knuckle thrust out the tooth. And then Mr. Tryon's man saying, If he and the maid had been at home, they should have been killed: No, said Turner, you would only have been bound.

L. C. J. Hyde. Now, Mr. Turner, you have heard your Charge; you will do well to make an Answer to it; you see what is laid to your charge.

Turner. Ay, my Lord: I shall clear it all, every syllable of it.

Mr. Martin's Coachman was called and sworn.

L. C. J. Bridgman. Tell the jury what you know: did you see any people about Mr. Tryon's house upon Thursday night?

Coachman. I did, my lord: I was come by

from the play-house with my coach; I saw four men, two on one side of the door, and two on the other side; every one had a handkerchief tied about his neck, and every one of them had a good cudgel in his hand.

L. C. J. Bridgman. What time a-night was that?

Coachman. About eight or nine o'clock at night.

Lord-Mayor. Was their faces turned towards Mr. Tryon's door, as if they were to go in, or to knock?

Coachman. No, Sir, two stood towards Fenchurch-Street, and two stood towards Leaden-hall-Street. I did suspect such a business; for they pulled down their hats over their faces.

L. C. J. Hyde. What kind of cudgels had they?

Coachman. Sticks somewhat bigger than walking-staves.

Mr. Tryon looking upon William Turner at the bar, said, This man, whose name is, (as I understand) William Turner, I do suppose to be one of the two that was in my chamber at the bed's side, and that indeed did strike out my tooth. I asked him, Why do you use me so inhumanly, like a beast, and not like a man? I am quiet; what would you have? Says he, Be still, you shall not lose a hair of your head.

L. C. J. Hyde. You believe that to be the man?

Tryon. I would be loth to charge him; but he is as like him as any I ever saw.

L. C. J. Hyde. Had they either vizors or masks on?

Tryon. Nothing, my Lord; bare-faced. One said to the other, It is but past 11 of the clock; else I had not known it: I was asleep, with surprise amazed, being an ancient weak man.

L. C. J. Hyde. As near as you can conjecture, is that the man?

Tryon. Yes, both of face and pitch.

Lord-Mayor. Mr. Tryon, did you observe those persons that were at your bed-side, whether they had handkerchiefs or cravats about their necks?

Tryon. My Lord, I did not take notice of that; I do not remember it.

L. C. J. Hyde. You hear your indictment: that you, and William and John, are indicted for the felony and burglary, for breaking and entering into the house of Mr. Francis Tryon, and stealing the particular goods and money, as you have heard: I would propose this to you, to make your defence touching your charge: Which is, first, that you and William met the day before; he came in first, and said he staid there until you came; you came, and paid the reckoning, and went away: you two were together the day before: what your business was, you can better tell than I. The night he was robbed, his servant being gone, the door was double locked. You knew all the private places, where the keys lay, all the rooms whereid cash, jewels, where every thing was: and it was not possible this burglary could be committed but by one that knew those things.

Turner. There are about twenty people that knew as much as I; his servants, and such as had been his servants.

L. C. J. Hyde. It falls out that the self-same night after this house was robbed, in the morning early, you, your wife and son, go to remove store of money out of your house.

Turner. It was two nights after the robbery: pardon me, my dear Lord.

L. C. J. Hyde. When you carry this, you go with a false story, That a merchant was broke, and you must needs have some of the money for his wife and eight children; and this money was to be set aside for them.

Turner. It was so, my good Lord.

L. C. J. Hyde. You would do well to hold your peace a while: your wife and you disowned you removed any money; yet afterwards when the money was brought there, and taken upon suspicion, (you taken in the very place removing the money) you owned it to be your own: that then it appeared that one of those bags was sealed with the bishop of Chichester's seal; and at the time of the burglary, there was 600*l.* in bags left with Mr. Tryon, sealed with the said seal; and one of those bags you brought back was taken with you, and owned to be your own, and had the same seals.—That is proved by four or five witnesses, compared with the seal of a letter of the bishop. Your son, on your coming thither, he takes footing and leaps over the ditch to escape, which is a good just ground of suspicion that he is guilty of somewhat that he would not abide to answer. Yourself and wife take upon you to know every thing: you knew how the usage was; that there was a purpose they should not be killed; that he was gagged; that they exceeded their commission; if the man and maid had been at home, they should have been but bound. All particulars you take upon you to know, and to confess the whole and the manner of it; nay, tell the story how they came in.

Turner. As I was informed.

L. C. J. Hyde. Lay all this together, unless you answer it, all the world must conclude that you are one that did this robbery.

Turner. I shall answer it; I hope to give all the world satisfaction. Pray call Mr. Vandespuit, Mr. Covell, Mr. Benson, Mr. Cook, my maid, and the lord marquis of Dorchester's servant.

L. C. J. Hyde. Tell us to what purpose.

Turner. To clear every particular.

L. C. J. Hyde. Open it.

Turner. I shall first prove that upon Thursday night, the time of this supposed burglary, that myself, my wife, and all my family, were in bed, fast asleep, and innocent, not knowing any thing of this business. This I shall prove; if not, let me hang and all my family.

L. C. J. Bridgman. All this may be true, and yet this not to the purpose.

Turner. Then I cannot be guilty of the burglary.

L. C. J. Bridgman. If you will lay and plot

such a robbery, though you are not there, yet you are guilty of it* ; for it is ordinary that the main setter will not be present at such times, but will be then in bed, that people may take notice thereof. But satisfy the court by what means you came by this money and jewels, and then call your witnesses.

Turner. I shall go on by degrees, and satisfy you as to the whole.

L. C. J. Hyde. My lord Bridgman hath put you upon the right business : Do that in the first place ; make it appear how you came to know so exactly the whole carriage of this business, and how you came by the money and jewels.

Turner. I shall do it, my lord. The constable coming for me, by direction of Mr. Tryon, to assist him, I came to him : saith he, some villains have been here, and have robbed me this night ; which made me weep. Said I, these are wicked people : I gave you notice how you should have been robbed about a year since ; but that was prevented. And saith Mr. Tryon, for God's sake assist me in this, and I shall be thankful to you. Sir, said I, did you see the faces of them ? Said he, It run in my mind very strongly that one of them is Christmas. Said I, who is he ? Saith he, It was Hanson the grocer's man. I know Hanson, said I. Mosely, go and knock up Hanson, and know where Christmas is, and bring him to Mr. Tryon. Mosely took two or three men, and went to Thomas Hanson, in Mark-lane, and there found at a bricklayer's house where Christmas lay : He was a little refractory to rise. Another constable coming, he came down ; and then they sent Christmas to the Compter. Mosely came and told us he was in the Compter. I sat with Mr. Tryon that night. But, my lord, pray observe how my name came into question : the young man and maid being out, came home late, the constable was there then : Friends, saith he, where have you been ? saith he, I have been at col. Turner's at supper ; which was a notorious lie, and brought me here in question ; God forgive him

* But it seems that if this had been the fact, he should not have been convicted as a principal in this offence, but only as an accessory before the fact. " That, which makes an accessory before, is command, counsel, abetment or procurement, by one to another, to commit a felony, when the commander or counsellor is absent at the time of the felony committed : for if he be present, he is principal." 1 Hale's Pleas of the Crown, 616. But if in aid of the others he had stood to watch in some adjacent place, while they entered, &c. he would have been guilty of the burglary. See 1 Hale's Pleas of the Crown, 439, 555, 1 Hawkins Pl. Cr. 288 Ed. 1795. NB. The marginal reference in the last mentioned book to Kelyng, 111, seems to be not at all to the purpose. For more learning concerning accessories, see the Case of Mac Daniel and others, A. D. 1754, *infra*. See also Foster, Disc. 3, ch. 1, s. 4.

for it. Away comes the constable, by direction of Mr. Tryon, and Hill's lye together. He came to my house ; we were all asleep. I rose, and asked, Who is there ? It is I, said Mr. Mosely ; Mr. Tryon is robbed ; pray come down. I came down, and opened my door. Saith he, Was Mr. Tryon's men and maid here at supper ? When ? said I. To-night, said he. I have had no suppers these nine months, said I : This William is a very rogue. Whereupon the constable replied, Are your sons within ? Yes, in bed these two hours. Do you suspect any thing by my sons ? he went and looked, and saw my wife, he finds my sons fast asleep ; the one indeed was awake. Pray, said I, see that you know them again. Upon my honour, my lord, this boy (pointing to Ely) was asleep.

L. C. J. Hyde. Upon your honour, sir I pray speak by your honesty.

Turner. *Lapsus lingue*, my lord : It is my usual phrase. I hope I shall appear to be a good man. This child was awake : he saw the maid, my daughters : searched every room, searched every place that was to be imagined to be searched. Saith the constable, I am very glad that your servants, your children, and you are in this condition : I will acquaint Mr. Tryon, what a rogue this Hill is, how he hath belied you. Nay, said I, pray take me with you ; and so I went with my hair put under my cap. When I came to Mr. Tryon's, I asked him who had been there ? Pardon me, my dear lord, if I were guilty, I should not speak any thing to excuse it. When I had understood this, I gave the constable five shillings, and desired him to search about this business. I went to Mr. George Day the goldsmith, and gave him a note of those things, to be printed, that they said they had lost. Friday came ; and at night sir Thomas Aleyn was pleased to argue it with me : I told him and the gentleman these must be some rogues that know the house ; which put me in mind of a former crew that was to rob him a year since.

L. C. J. Bridgman. We would be glad you would speak to the purpose.

Turner. I did charge the constable and Mr. Pilkington that they would get up before day ; and that they would go to such and such places where the constable and I had privately spoken of, to Ratcliff, or Ratcliff-Cross. The constable and Mr. Tryon's man had been there ; but the man and his wife was gone into London ; But afterwards, by inquiry, the boy said they were gone into Hertfordshire a week before. This boy is in two tales : here is some, pray God these people be honest.

L. C. J. Bridgman. Go on.

Turner. Your honour's servant, my lord. Afterwards I went beyond the little postern between the two Tower-hills, near the Tower-ditch : There is one John Wild, who had been formerly here in Newgate ; he should have been transported. This fellow coming into my mind, I having before been to take him in East-Smithfield, I had news he used Whitechapel, East-Smithfield, and Tower-hill,

and had lodgings by the Blue Boar by the little Postern, and at Noah's Ark, and at the Lion-in-the-Wood, the corner house at Tower-ditch. This house about Tower-ditch and the Nag's-Head at Whitechapel were the two places where I found those persons about a twelvemonth since, that should have robbed him. Going now from house to house, I passed a fellow in black, in a large coat, such another man as this, (pointing at one that stood by:) he was in a black loose coat, and he was trimmed with ribband at the knees. This person I passed him, and he passed me; and then I out-went him: and meeting him on the other side, I was confirmed it must be one of these fellows I looked for, one Wild or White. Passing the second time, I ran to him, thrusting to him. What mean you, Sir? said he. Said I, I mean to lay flat felony to your charge. Do not you know me? No, said he, with a great oath. Then I know you. Who is it, colonel Turner? said he. I said, Ay. Saith he, What do you mean? Said I, Mr. Tryon's house was robbed, and you are the person that I will lay flat felony to; you should have been one of them that were to rob him a year since, when colonel Ashton betrayed you all. He began with some hard oaths: Be quiet, said I, I will call out; you are an undone man: I will lay this felony to you.

L. C. J. *Bridgman*. What night was this? *Turner*. The Friday night following, about 12 o'clock at night. I shifted my hold from his collar to the waistband of his breeches; I thought I had him secure. Said I, Wild, do not deceive yourself, play not the fool; if you will save your life, let me see where those goods and monies are, else you will go to pot. Saith he, Pray speak lower; we shall be heard. Well, I will speak lower. We walked to the hill. I had fast hold of his breeches all this while; and yet I was afraid he might have some dagger, and stab me: Said I, Be brief, you are alone; either resolve me, or I will call out. Then I will tell you, said he: Colonel Turner, I understand you are a person of honour, and a gentleman that will keep your word: and if you will upon a serious vow and promise save my life, I will unfold the business: but if you will not, with a great oath, saith he, you shall hang me, and lose all the jewels. Said I, What will you have of me? Saith he, You shall swear to me, 'That by the blood of that Jesus Christ that died for you, and I, and all sinners, that I shall have my life free, in case I discover the thing to you;' and then I will tell you more: if you will not I will tell you nothing, do with me what you will. Saith I, Wild, I shall stand with you so long, that I shall have my throat cut. Upon my salvation, saith he, stooping down upon his knees, saith he, Let me never rise up, if I am not just to you; and not a hair of your head shall be touched. Said I, Come, stand up: I do declare to you that I will endeavour with old Mr. Tryon: tell me where the things are. They are not far off. Where are they? They

are at two places: but do you swear to me. He did, in short, make me say the same words that I have repeated, and that I would get Mr. Tryon to engage himself too by the same oath. I did swear to him, thinking my life in danger, and thinking my friend's goods likely to be lost; and did and do intend by the help of God to make good my oath. Saith he, Walk with me. He whistled once, the second time, and at a pretty distance a third time; and within a little while came another fellow to him, at the further end, by the Horse-Shoe tavern. He comes. Saith he, Art thou come, Tom? I think he called him White. Ay, saith he. What shall we do? We are all undone; my face is known. But I have lit in the hands of a gentleman who will save my life; but for you, he knows you not. Saith he, the money must be returned; go and fetch that money. Said I, Shall not I go with them? No, said he. And truly, my lord, I was very glad to take him at his word: If I had gone, I might have had my throat cut. There was this 500*l.* brought at twice, three and two. They went again, and brought, as I take it, two and one; so there was three and two, and two and one.

L. C. J. *Bridgman*. Who brought it?

Turner. White. All this while I had the fellow by the breeches, and would not part with him. It was from a little past twelve till four bringing, and was left on the causey, and went away and fetched the other. This fellow and I, all alone together, had this discourse: Said I, What desperate villains were you to go and use the old gentleman in this manner, fourscore years of age! You beat and abused him; you are strange mad fellows: why could you not let him sleep in his bed? he was asleep when you came in: you were the maddest fellows that ever was. Saith he, Some of you have stabbed him. I think you deserve ten thousand deaths for laying your hands on him, though you did not take sixpenny worth of his goods. Saith he, There was no intention of hurting him: upon my soul, there was no order or commission. Saith I, How got you in? Saith he, The door stands open half a day together, almost: one got into the cellar, and stood till all was a-bed: he went into the kitchen, found a candle standing lighted, and went up into the old gentleman's chamber, and there he found the key of the door, came down, opened the door, and let the rest in. How many was there of them? Saith he, three or four. Said I, What did you do; and what would you have done? We would only have bound them. How got you the treasure? By a key out of the old gentleman's pocket: I think there is no hurt to the old gentleman; I would not for all the world there should. You shall have the things again: and pray keep your word with me. About 4 o'clock in the morning they brought the money. Now, said I, what shall we do with it? I can do nothing with it: you must carry it home to my house. These two fellows carried one three, and the other two bags.—We went through Aldgate

with the money, and so to my house : my wife, nor sons, nor no soul, God is my witness, knew any thing of this business but myself. I knocked at the door : This young man (pointing to John) came down, and he unbolted, unlocked, and unlatched the door. My parlour and kitchen is all of one floor : They followed me in, and threw down the money. He bringing the candle to me ; No, said I, do not bring it. Said I, Wild, what shall I do for the jewels and the rest of the money? You shall have them brought you where you will appoint to-day. I will have them brought hither. Saith he, That cannot be. I have forgot myself : This money must not lie here : you must remove it from hence : For the other youths that have the rest of the money and jewels, will never be brought into the city. If you will remove it into the Minorities, my life for it, you will have it all. I will pretend there we will share it. You must not let it lie at all, but carry it presently thither. I will tell what I will do : Have you any acquaintance about Tower-hill, where you will leave it? No, said he. Nor I neither, said I. I went up stairs to my wife; Mall, said I, have you any acquaintance about the further Tower-hill? I durst not trust my wife nor sons : for I thought their tongues might be too long, and left them in perfect ignorance. Truly, I must clear them. Mall, said I, there is a gentlewoman, whose husband is sailed, (this was a feigned story, my lord) it must be secured about Tower-hill : She was pretty well awake. Saith she, There is the commissary-general of the king, his daughter Betty Fry keeps a shop of linen at the lower end of the Minorities. Do you think she will be private, and let it lie for four or five hours? Undoubtedly she will, saith she. Prythee get up, and put on thy clothes, and go thither. Wild, where shall I find you about 8 or 9 o'clock? I will lodge this at the seamstress's shop, upon the right hand at the farther end of the Minorities : Tell me where I shall meet you, and we will have this money carried there; my son, and I, we will have it lodged. Saith he, You shall have me walking within three doors of the Blue Pig; so he called it, Saith I, What mean you? Saith he, It is a little sign, no bigger than a pig, but it is called the Blue Boar : There you shall have me walking in the under or upper causey. My lord, I took this boy, (pointing to John) who knew nothing : I told him it was a friend's money. I raised my wife : Mall, said I, come away. My wife went before; the boy and I took the money : I carried two, and he three. My wife went and knocked up the maid, the door was open when we came; God forgive this maid that swears it was this son, she is mistaken; upon my salvation, this boy was abed and asleep. When the money was there, I staid by my wife; said I, what have you done with this money? I did not tell my wife any thing. I came home, coming home, there was my son and wife. I drank a cup of cyder (for I kept a hoghead of cyder in my house); as soon as I drank it, I went out of doors immediately : Said I, to this youngest

son, Stay at home, I shall have occasion to use you by and by. I went to Mr. Tryon's; coming there, I found Mr. Gurney the merchant : Said I, Mr. Gurney, I have good news, I have some hopes of strong presumptions, that Mr. Tryon will not lose one pennyworth of his goods. Marry, said he, I am glad of that. We went up to Mr. Tryon's, we found him sitting by a little charcoal fire, as much as you may cover with your hands: he told us he had been ever since three of the clock. We asked him, what he would have to comfort him : he told us, he had something. Mr. Gurney after some discourse took his leave of him, so I sat down (Jesus ! what a noise is here in the Court. My lord, I can hear but with one ear). I say, I sat down at the bed-side of Mr. Tryon, he on the stool : Mr. Tryon, said I, I have good news for you. Saith he, Hast thou? I am glad of it with all my soul. Sir, said I, I am informed you will not lose any of your goods or money, there is but 38s. spent of all your money, the rogues took but 40s. out, and Wild told me there was 2s. saved : I dare boldly say, by three of the clock in the afternoon you will be master of them again. I would be glad of that, and will give you 500*l.* But, sir, said I, there is a tale hangs by this : You know you should have been robbed about a year since; and I have apprehended Wild, who was one of the intended thieves : then, he hath made me swear, By the blood of Jesus Christ, &c. that he shall have his life, if you have your goods : He hath engaged me that you shall likewise swear by the like oath, or else you shall hang him, and so lose your goods. Said I, I have a great part of your money, but the jewels and the rest of your money is wanting. The old gentleman was almost overjoyed : This is not true, said he. Said I, I do declare this is true in the presence of God, make no words of it; if the business be discovered, we shall lose the jewels. Well, said he, I will be ruled by you, colonel; and the Lord God make me thankful I have such a friend in the world that hath done this for me, I shall never make you amends : and thereupon be entered into the same oath, That by the blood, &c. the blood of the man should not be spilt though he lost both money and jewels. I discoursed with him, I told him over and over again, left him satisfied that I would be with him again, and bring him more tidings, but by 3 o'clock I doubted not but he should have all. Then it was almost 8 at night; away went I to Tower-hill to look my merchant John Wild, he was here in Newgate formerly : there found I him walking by the Blue-Boar, carelessly walking there, with his coat under his arms. Said I, How now, what news? I think I have now pleased you, saith he. What have you done? said I. I have lodged the money hard by, and all is right. What have you done? Is all right on the other side? All shall be well : But where have you lodged it? Here at a seamstress's at the corner of the Minorities : said he, The money must be removed, there are salesmen thereabouts, and the fellow that hath the jewels by

is known, he will not come thither; remove it towards the water-side, any where and the things shall come, my life for it. They had a cat's eye ring, they were such wise lapidaries, they called this a hundred pound ring, when it was not worth five pound. He gave order that the money might be again removed to the other end by the Horse-shoe tavern. I run home, fetched my son; said I, Wife, we must have away the money. My lord, he told me he would have away the money to the Half-Moon tavern in St. Catherine's or the corner tavern at the Iron-gate; said I, Are not you resolved? Well, said he, it shall be carried to St. Catherine's, he would meet my son at the Noah's-ark at Tower-ditch: let my son but hand the money over that path, and he would hand it to the other. We did carry it, carried it again. At this second carrying comes sir Thomas Aleyn, he had heard some cry of money left, he comes with a great company of people after him, and the foolish wench said to my son, Mr. John, fly for your life. John being surprised and affrighted, he went out of the back-door, went over the ditch, and went to my house. Sir Thomas Aleyn had also sent to secure my house. When the lad came home into the street, my doors were shut up: (Gentlemen of the Jury, do you understand?) The boy seeing such a rout at the door, saith the people, Mr. John, your father's house is shut up about Mr. Tryon's money. He walked by the street, and went into Bishopsgate-street, and Cheap-side, into Paternoster-Row, and so into Fleet-street: I did not hear of him till Saturday, in the afternoon.

When sir Thomas Aleyn came, saith he, Mr. Turner, here we have caught you and the money. Said I, if you be hasty and passionate, as you were last night, you will spoil all the whole business. Tell me, saith he, whose money it is? Said I, it is my money. The truth is, the old gentleman hath promised me 500*l.* it is the naked truth; I would not have sir Thomas Aleyn have the honour of gaining it, but I would have the honour of gaining it my way.

Sir Thomas would know whether it was my money, I told him I had received part of it at a goldsmith's; so I put sir Thomas off. Come, come, said he, we will carry this money to Mr. Tryon. Said I to Mr. Tryon, Here is part of your money, you know what I told you even now. Ay, saith he, God be thanked, before sir Thomas Aleyn. I asked him, what his promise was, and told him how the passage was in short; and the old man did acknowledge that such a promise was made, and would have down upon his knees. I passed my word to him, that by three o'clock I doubted not but he would have his jewels, and the rest of the mosey. Saith sir Thomas Aleyn, go (whether he said live and prosper, I know not) go, God bless you; and upon my honour, (I think that was his word) the old man shall make good his word. Ay; but sir Thomas, what will become of me and you, by this business, for I understand the law? How will this business be doubt-

ed up? You will be fined, sir Thomas; I must break my word, he must be apprehended, or I must suffer. Saith sir Thomas, do not trouble me with that, get but the goods, and the old man's word shall be made good, leave that to me. More than that, he said, He would make up the business, or he would smother it. My lord, you have a great deal of patience, I am humbly bound to you, here is nothing but the naked truth step by step, as I trod it. Afterwards Wild came and said, All will be well. Said I, What have you done? Are you sure, saith he, the jewels nor nothing shall be stirred? Said I, You see all is spoiled; sir Thomas Aleyn is come where we had lodged the money, the thing is known, do not they hear of it? Yes, they hear as well as you, and know what is done, and some have eyes upon you. Said I, they will run away with the jewels. No, you shall meet about three o'clock; nobody knows me but you, your wife, and your son, who saw me this morning at three o'clock, either by the Blue-Pig at Tower-Hill, or Nag's-Head over against White-Chapel church.

It is agreed, for God's sake look to it, your life and mine is concerned; if the jewels be lost, I will persecute you to the death, look they are preserved, and not purloined. Saith he, The bags were never opened. I parted with him, he was to look for me at three of the clock: coming home about Change-time, who should I meet with but Mr. Stubbs, who told me that it was all the news upon the Exchange, that you have been in the robbery. Said I, Do not trouble your head, I have discovered the business. Then said Stubbs, You know I and Thomas Lyon are bail for you. At that time I satisfied him. Afterwards that day I met with Mr. Cole the officer; said he, Colonel, I arrest you. For what? for more fooleries yet? Thomas Lyon will not be satisfied. By six o'clock this business will be all over: nothing will serve your turn but violence, violence, no force, no law. I was forced to go to the Hoop-tavern. I got them to send for Mr. Stubbs and Lyon; they came: said I, What will you have? I am in prosecution of a business for Mr. Tryon, you will undo it with this six-penny business: say what security you will have, and you shall have it; said I, Mr. Tryon and sir T. Aleyn shall give you their security, to save you harmless for being my bail. Said they, Hold Mr. Tryon, we'll do it; we are content; they went away, and told me they would get a bond, and come presently: hat what was this presently? I will warrant you they staid two hours; it was seven o'clock at night before I parted with them. I was fain to send the little boy for Mr. Hill, Mr. Pilkington, Mr. Millington; this was either a curse from God sent upon me, or a plot of reguery that the money should be lost. They came not back till seven o'clock, and then without a bond; and I fell a little violent: but I was telling them how these rogues told me the whole carriage of this robbery; when it came that Mr. Tryon and sir T. Aleyn heard that I

was in custody, he sent a constable with a warrant to bring us all before him. When we came there, I desired sir Thomas to let a gentleman go with me; I will break my oath with the fellow, and we will apprehend him, and make him bring the jewels. Sir T. Aleyn told them, if they would all go together, they might; but to go out of the liberties, he could not let them go: I have you, and I will keep you, and do find him if you will. How now, sir Thomas, said I, are you come to that? have you fooled me all this while? Faith, I thank you, for you have trepanned me very fairly; if any thing miscarry in my honour and reputation, or blood, you are in the fault: here I do declare, said I, if you will let me go, I will take him. Then sir Thomas did incline to let me: what say you, officers, will you go out of your liberties with this gentleman? Sir Thomas, said I, there is no liberty or privilege for felons; I will seize a felon myself in any ground in England without warrant. I do remember this Wild did condition, that in case I could not come, I should trust no man living but myself, because he had had my soul pawned to him. I asked him whom he would trust: He said, if I could send my wife, describing her to him, that she was a full short woman about forty or fifty years old, she had a long black scarf on; then let him alone if I cannot come, I will send such a woman, and send the things by her, and preserve your life. I told sir Thomas this story. My wife came to me publicly, I did not whisper with her—

Mrs. Turner. Nay, look you, husband—

Col. Turner. Prythee, Mall, sit down: you see, my lord, my wife will interrupt me with nonsense. Prythee sit thee down quickly, and do not put me out: I cannot hold women's tongues, nor your lordship neither.

Ld. Bridgman. This is not a May-game.

Col. Turner. My lord, it is a serious business, and I hope God will bless it. Pray, said I, Mall, go; as you love and honour my life and credit, or any thing that concerns me, I beg you to go. Then I will go, saith she; whither must I go? You must go to the further Tower-hill, six doors beyond the little postern: now it is so much o'clock, from five to seven he will walk there. A fellow will come to you in black, that man that in the morning took the money from Jack, he will know you, and once in a quarter or half an hour he will come to you. If you do not find him in half an hour, stay no longer, but pack away to White-chapel, ask for the Nag's-head in White-chapel, and once in a quarter of an hour you will have a man come to you, and take notice of you, and ask you who you are; and you must say, that you walk for one to give you somewhat: he will deliver you somewhat, and whatever he delivers you, bring it hither. Said I to them, You may send if you will, and dodge my wife, and catch him that way; they would not. I sent my poor wife away, and, saving your lordship's presence, she did all bedirt herself, a thing she did not use to do, poor soul: She

found this Nag's-head, she sat down, being somewhat fat and weary, poor heart! I have had 27 children by her, 15 sons and 12 daughters. Seven or eight times this fellow did round her—

Mrs. Turner. Let me give that relation.

Col. Turner. You cannot, it is as well: prythee sit down, dear Mall, sit thee down, good child; all will be well. When she came back, she came with something in her apron: What are you sped, saith he? I know not what: a man came to me, and asked me who I looked for; I told him, I looked for any man that would give me any thing. Are you col. Turner's wife? and upon her answer he gave her these bags into her apron, and was gone a matter of a yard from her: steps back again, that is not all, here is a diamond ring worth 100*l.*, give that to your husband. And this diamond ring proves a cat's-eye ring, and worth but 4*l.*

Mrs. Turner. Well, and did not I bring these—

Col. Turner. Look you, my lord, this woman will put me out. My lord, she did deliver all these things, and went home. I did take out these goods: Now, said I, Mr. Tryon, you see all is come, (sir Thomas Chamberlain was there) I have performed all my part, look to the rest, that you perform yours. Some people report, that there is other jewels of my own; my lord, they are all his own, and he will not disown it, and I do not expect my 500*l.* for what I have done, according to his promise, 'That as Jesus died,' &c. and the man should not be prosecuted, nor lose a hair of his head, if he lose his whole estate: and I do expect my money, not such a reward as this. After which I was committed by sir T. Aleyn, and so was my wife. Now pray let me call my witnesses, and if I cannot make it good, that I am clear, let me be hanged. My lord, I shall humbly intreat that Mr. Vandeput may be called, Mr. Cowel, and the others.

Ld. Bridgman. What do you prove by them.

Turner. To prove part of this business, That I did assure Mr. Tryon of his goods: and to my reputation. I forgot one chief thing, I am not a man in debt, take notice of that, no man in the world hath my bill for 5*l.* There is only this contest between Mr. Vanburgh and myself which is left to arbitrators, and the lord-mayor is umpire: It is known I have an estate, and there is one thing remarkable, gentlemen of the jury, I could have had all these jewels at any time in trust; I could have broke as well as others, and paid 5*s.* in the pound: I lately made payment of 2,600*l.* for goods, and can have 20,000*l.* credit any day upon the Exchange: Why I that had this credit, that might break for so much money, why should I put my neck in a halter? These are very strong arguments for me, that I am not such a person.

Ld. Bridgman. I will tell you what you have done: You have made a very long story,

and have taken up the time of the court these two hours in a narrative; and when all is done, answer me, Have you any witness to prove all this discourse passed between you and Wild?

Turner. I have by, witnesses to prove I said this, that there was such discourses between us.

Ld. Bridgman. No doubt of it; and so will many a man at Newgate frame such a story as this.

L. C. J. Hyde. You have told a long story about Wild, that you took him by the throat, and that you were alone; what weapons had you.—*Turner.* None, my lord.

Ld. Bridgman. Had you a lanthorn with you.—*Turner.* No, my lord.

Ld. Bridgman. What time of the night was it?

Turner. Twelve o'clock, my lord.

Ld. Bridgman. You staid till four, so they were four hours a bringing of the money?

Turner. Yes, my lord.

L. C. J. Hyde. You took a man in the dark by the throat, that man that was guilty of such a thing, as when that you did let him go to call his companions, to bring the money, bring fellows to you single; I would be glad to know, whether in this case they would not have knocked you on the head, and killed you?

Turner. My lord, Wild had engaged his soul, and I my soul to him, that if I would not discover him, I should go away free.

Ld. Bridgman. Great security indeed!

Col. Turner called several witnesses, viz. Vandeput, Mr. Cowel, Mr. Legoose, Mr. Snow, and Mr. Mosely the constable. I desire my maid may be called: pray ask sir Thomas Aleyn what he hath done with my maid, he took her up with sir Richard Brown and two marshal's men: (pray, gentlemen, make not a laughing business of this) sir Thomas, pray where is my maid?

Sir T. Aleyn. I had this maid upon examination, I found cause of further examination, thereupon directed an officer to take her, and she is now in the garden.

Mr. Mosely the constable examined.

When I came first to Mr. Tryon, at Mr. Tryon's house, he was bound; then he asked where his man and maid was? he said he could not tell. By and by the man came in, and being asked where he was, he answered he was at col. Turner's at supper. Presently after we went to col. Turner's he came to the window, his wife and two sons were in bed.

Ld. Bridgman. Did Mr. Tryon give you order to come to him?

Mosely. Yes, my lord, he did.

L. C. J. Hyde. Mosely, you were constable, were you not? What discourse had you with Mr. Turner about a dangerous place that you did suspect, where some people may be to do such a feat?

Mosely. I never heard of any such thing spoken.

Ld. Bridgman. You say Mr. Tryon he wished you to call Turner to him; did he give you any order or direction to search his house? Who wished you to go up to the house to see whether his sons and daughters were in bed?

Mosely. Mr. Turner did, my lord.

Turner. He doth not say true, my lord; pray ask him, when he came to my door, and I opened it, if he did not ask whether Mr. Tryon's servant was there at supper that night? I said, no. Is your sons within, said he? I said, Ay. Pray let me see them.

Mosely. I came to Mr. Turner's house, and knocked at the door with some others with me; at last the colonel came out of his bed. I suppose he came out of his bed, being partly naked; he came down to the door; I asked him, where are your sons? They are in bed, says he. Said I, Mr. Tryon is robbed, he would have you come to him.

Ld. Bridgman. Did he desire you to go up?

Mosely. No, my lord; but I asking him whether his sons were in bed, he said, I pry-thee go up and see.

Turner. My lord, I would prove where my sons were on Thursday night at ten o'clock.

Lord Marquis of Dorchester's servant examined.

My Lord, till nine o'clock they were with me at my Lord Marquis's house.

Ld. Bridgman. What time came they thither?

Marq. Servant. Between seven and eight at night.

Col. Turner's maid examined.

Turner. Come, maiden, pray tell my Lord and the court when my sons came home this night.

Maid. Between nine and ten o'clock.

Ld. Bridgman. Were your master and his sons in bed all Friday night, or no?

Maid. Yes, my Lord, they were.

L. C. J. Hyde. Did your master go forth on Friday night?

Maid. No, he was at home and in bed all that night till 8 in the morning, and Thursday night before.

Turner. A silly soul, she knows not what she says.

L. C. J. Hyde. I will ask you again, was your master at home on Friday night?

Maid. No, I think he was not.

L. C. J. Hyde. Why did you say so before?

Maid. I cannot remember, Sir.

Ld. Bridgman. She knows her master's mind.

Turner. No, upon my soul, my Lord.

Ld. Bridgman. My masters of the jury, this is the use of the maid's testimony; she will say any thing, she is no fit witness, no trust to be given to her either one way or other.

Turner. Pray call Mr. Cowel, Mr. Legoose, Mr. Cook the Goldsmith.

Ld. Bridgman. What do you call these for?

Turner. To prove my condition, my credit and reputation.

Ld. *Bridgman*. The jury knows that already.

Mr. *Cook*. Thus much I can say, that I have known him some twenty years, I have had dealing with him to the value of several hundred pounds, I have trusted him, and have found him very faithful; I have seen in his possession jewels to the value of 8 or 10,000*l.* by which I suppose if he had been such a person, he might have done himself a kindness by breaking.

Mr. *Legoosc*. All I can say, is, I have an acquaintance with this person, he was a solicitor, dealt honestly and faithfully in a business wherein I was concerned; he hath lived very well.

Sir R. *Brown*. Where you have heard one man say he is an honest man have you not heard a hundred say otherwise?

Mr. *Legoosc*. There hath been an ill report that he hath been a person that lived high.

Turner. Sir R. *Brown*, no man in England can say black is my eye.

Sir R. *Brown*. Mr. *Turner*, you say you were upon Tower-Hill all Friday night; whither went you in the morning?

Turner. I came home between 4 and 5 in the morning.

Sir R. *Brown*. Your maid offered to depose even now, that you did not rise all that morning before eight of the clock.

Turner. *Lapsus Linguae*, if the girl be mistaken.

Ld. *Bridgman*. Do not trouble yourself with that, her evidence is of no force.

Mr. *Jeffries*. Col. *Turner*, I cannot say any thing that will be advantageous to you; my lord, and gentlemen of the jury, I have heard Mr. *Tryon* hath trusted him with jewels to a good value, and that Mr. *Tryon* had a very good repute of him.

Sir R. *Brown*. Pray what report hath he upon the Exchange?

Turner. I owe nothing there, Sir Richard nor none there can lay any thing to my charge, except it be that I am a cavalier.

L. C. J. *Hyde*. Mr. *Turner*, have you any more.

Turner. My Lord, I do want these Goldsmiths, they do not appear, they promised me they would.

L. C. J. *Hyde*. How can we help it?

Turner. I do humbly beg your honour and this honourable bench, that the old gentleman, my old friend, may declare what passed between us on Saturday morning.

Ld. *Bridgman*. Consider what you do, for here would you have Mr. *Tryon* swear against himself; hear what you would put him to, take it as you put it, though I do not believe a word of it. As you put the case, here is Wild commits a robbery, you come and truck with Wild, and agree with him that Mr. *Tryon* shall let him go, shall not meddle with him, there shall be no prosecution, so the jewels and money may be brought; would not you get Mr. *Tryon* to conceal a felony and felon, and be confess against himself he made this agreement with you? that Mr. *Tryon* did consent to it, that he

promised you five hundred pound to shuffle up this business?

Turner. Hear me, pray; you put me out: I had not let this man go, I begged that they would go with me, sir T. *Aleyn* would not let us go, we would have taken him, I was sensible of the danger; it may be we might have had the felon and the goods too.

L. C. J. *Hyde*. No doubt, upon your own story, all this while you had no possibility of having the goods, unless the life of this fellow may be given you; so you were fain to agree, and plight your word to him, pawn your soul that he should be free, untouched, so he would discover the goods and money. Sir T. *Aleyn*, speak to that particular again.

Sir T. *Aleyn*. My Lord, and gentlemen of the jury, he tells a long story, that he was kept abroad till 7 at night; I do verily believe he was brought to Mr. *Tryon*'s at five o'clock, and there he kept us 'till 7, and all he would do, was, he desired to go himself, or with one person at the most, or else we shall lose all the jewels, saith he, for two souls are pawned: he did not in the least argue the taking of the thief. I must say this, when I came to him on Monday, he said if I had sent a good guard, we might have taken the thief. Said I, a liar had need have a good memory. Then you must only go yourself, or with one person; he hath told you, that I said there should be no prosecution. I said only this, whatever Mr. *Tryon* had promised you, I knew not; but if you expect favour, let the old gentleman have his jewels again.

Sir T. *Chamberlain*. I heard no such thing.

Ld. *Bridgman*. What did he tell you?

Sir T. *Chamberlain*. He would have gone with one with him, and pretended he could find out the jewels only.

Mr. *Millington*. There were some propositions made, he desired first I should go with him singly; I told him there would be no security, but if he would get a sufficient guard, I would go with him; but he went home to his wife, and never made mention of any party's name, but that there was a party he expected the jewels of.

Ld. *Bridgman*. Did he propose any thing touching the taking that man?

Millington. Nothing but that, he had pawned his soul there should be no discovery of it.

Bridgman. Did he desire that you should go and take the man?

Millington. No, but that we might go and secure the jewels.

Serj. *Cole*. My lord, there was a great deal of danger; we are bail for 800*l.*; if he had been taken away, we are all undone: he only propounded of having the jewels, and nothing of the man.

Mr. *Gurney*. I understood you, col. *Turner*, only for the jewels, and not for the man.

Mr. *John Marshall*. My lord, he did move sir T. *Aleyn* that I might go with him to White-Chapel and about Tower-Hill, I told

sir Thomas, it was very unsafe for me to go, being late, and out of the liberties; though I was a constable. I could not command assistance there; and intreated sir Thomas to excuse me: I thought it not safe for him. He did then repeat the engagement of his soul to the thief, and of Tryon's to him.

Ld. Bridgman. Did you ever hear him say, desire or propose, that you shall go and take the thief?

Marshal. No, my lord, it was to get the rest of the jewels.

Alderman Smith. Do not you know that I spake to you again and again, and advised you by all means to let us know where this man is; that I would go myself, or any of these persons present? You utterly refused it, and said there was two souls pawned, and you would not discover it.

Turner. That was at first, afterwards I mentioned them all.

Ld. Bridgman. For what?

Turner. To take the thief.

Ld. Bridgman. You see not any man testify any such thing.

Yeoman Cole. Sir T. Aleyn called my brother and I both into the room to him, and the Marshal and his man; and said, col. Turner would have us go without the liberties for these jewels; I think, saith sir T. Aleyn, it is not safe to go out of the liberties. Mr. Marshal said the same. He desired us to go with him, but sir Thomas refused it.

Ld. Bridgman. This is a notable piece of cunning; when he was moved by Alderman Smith and others, all this while he names no man; but now he was under an action, he would have them go with himself out of the liberties, and yet never saith a word to take the man: He knew very well it was out of the liberties. Truly I think, if sir T. Aleyn had done it, I should not have taken him to be sir T. Aleyn. Did you desire any of them to go with your wife?

Marshal. He denied us to go with his wife; his token was this, the thief would meet no man.

Turner. My lord, to the business now. I am here indicted for burglary; It appears to your honours and the bench, that it was 10 of the clock when my sons came from my lord the marquis of Dorchester's house; said I, You knaves you, what do you out so late? Said they, It was past 9 before we had done, and my lord's gentlemen made us stay supper. They were all in their beds at a little past 10 of the clock. You hear what Mosely the constable saith, he finds us sleeping in the house; how should this burglary be laid on me? I am indicted here for burglary, and that I cannot be, for that I was at home.

L. C. J. Hyde. Have you done?

Turner. Ay, my lord.

L. C. J. Hyde. William Turner, what say you? You see what is laid to your charge; first, you are a person of loose life: there were two at his bed-side, he believes you to be the

person that gagged him, and helped to bind him.
W. Turner. I was never in his house in my life, till with sir T. Aleyn.

L. C. J. Hyde. Where were you?

W. Turner. At home.

L. C. J. Hyde. Make that appear.

W. Turner. I have none here.

L. C. J. Hyde. He saith it was a man as like you as can be.

W. Turner. And I am as innocent as may be.

L. C. J. Hyde. John Turner, that which is against you is this: You on Saturday morning very early was busy with your father and mother in removing the money; and then when you had notice that you would be apprehended, you got away.

John Turner. Sir, I did not know who it was that was come, whether to apprehend, or upon any other score; but the woman speaking to me, 'Flee for your life,' or such expressions, made me go away I know not how.

L. C. J. Hyde. Did not you bring some money?—*J. Turner.* I did, my lord.

L. C. J. Hyde. How much was brought at that time?

J. Turner. I carried away two bags to Wild.

L. C. J. Hyde. Did you know him?

J. Turner. Yes, my lord.

L. C. J. Hyde. Did you carry these to Wild on Saturday-morning? Did not you carry them to Fry's house?

J. Turner. We took them afterwards from the house where Wild appointed us to meet.

Lord Bridgman. At what time of the day did you carry them back to Wild?

J. Turner. Before sir Thomas Aleyn came that day, I was coming for more.

Lord Bridgman. To what place?

J. Turner. At Tower-Ditch.

Lord Bridgman. At what house?

J. Turner. No house, but I delivered them at Tower-Ditch.

Lord Bridgman. At what time of the day?

J. Turner. It was before sir Thomas Aleyn came, about 8 or 9 in the forenoon.

Lord Bridgman. Was there no people there? Who was there?

J. Turner. I cannot tell; I saw several other persons.

Lord Bridgman. Did Wild stand in the street? *J. Turner.* Yes.

Lord Bridgman. How came you to know him?

J. Turner. By my father's direction; and I had seen the man at our house that morning when he brought in the money.

Lord Bridgman. Whereabouts? Was it near the quest-house? that is, the great house that stands in the middle of the way?

J. Turner. It was hard by the sign of Noah's-Ark.

Lord Bridgman. This is a likely story to be believed, that you should in the day-time, between 8 and 9 in the morning, meet in the Tower-Ditch that man that was a noted thief, that had been in Newgate; that you should tarry for this man to receive two bags of money, see how it hangs together!

L. C. J. *Hyde*. How often did you go?
J. Turner. Twice.
 L. C. J. *Hyde*. How much at a time?
J. Turner. A single bag.
 L. C. J. *Hyde*. Had you a coat or cloke?
J. Turner. Just as I am now.
 L. C. J. *Hyde*. Had Wild a great black coat? And what did he do with the money?
J. Turner. I know not: but I delivered one in the street, and then went and fetched another, and he staid ready for it.
 L. C. J. *Bridgman*. Was this all the money that was brought in the morning, save that that sir T. Aleyu brought away?
J. Turner. It was all, to my knowledge.
 Sir T. *Aleyu*. Col. Turner confessed to me on Thursday morning that more came unto his house, but that rogue Wild took it away.
 L. C. J. *Bridgman*. How much?
 Sir T. *Aleyu*. About 200l.
 Lord Mayor. How many turns did you make when the money was carried from your father's house to the Minories?
J. Turner. Twice.
 Lord Mayor. Who went first?
J. Turner. We went both together.
 Lord Mayor. How much was carried between you both?
J. Turner. The first time I carried 200l. as I can judge.
 Lord Mayor. Who carried any more?
J. Turner. My father.
 L. C. J. *Bridgman*. What did you bring the second time?
J. Turner. 300l.
 L. C. J. *Bridgman*. William, one thing more: what was the occasion of meeting you and James Turner at the alehouse?
W. Turner. I did not meet him, my lord.
 L. C. J. *Bridgman*. You came thither, and called for a pot of ale, and said you staid for col. Turner.
W. Turner. It is not right: I only asked if col. Turner used the house. By and by he came and paid for the pot.
 L. C. J. *Bridgman*. You two went together: what was the occasion of your meeting together?
Col. Turner. Finding him there, I said I could not drink with him; and so we parted.
W. Turner. I called for a pot of drink: and having no money to pay for it, col. Turner coming by, I called him in, and desired him to pay for it, which he did.
 L. C. J. *Bridgman*. The boy swore you said you staid for col. Turner; can you justify you were at home, or in any other place? It is a great suspicion. The old gentleman charged you to be very like the man; and you can give no account were you were; and Turner and you met together the day before.
W. Turner. I was at home.
 Lord Mayor. William Turner, when did you shave your beard last?
W. Turner. Before Christmas.
 Lord Mayor. Who shaved it for you?
W. Turner. A barber in Golden-Lane.
 Lord Mayor. When his hair is shaved off

his chin, the other man, whose name is Christmas, being a smooth chinned man, it is very possible that might beget the mistake in Mr. Tryon:

L. C. J. *Hyde*. You of the jury, it is high time to let you go together to consider your verdict: We will trouble you no more in this business to day. Here is an Indictment against James Turner, John Turner, and William Turner, for a burglary in breaking the house of Mr. Francis Tryon, in the night-time, and taking away a great deal of money and jewels; you have heard it particularly named. It is likewise charged, that Mary and Ely knowing of John to have committed this felony and burglary, did comfort and abet him afterwards. I shall speak to them two first: Mary the wife of James Turner, though it appears all along that she had a hand in this business, yet nothing appears at all but doing only that which her husband had directed; then by law she cannot be necessary for committing of felony. For Ely, the other accessory, I did not observe in the whole course of the evidence, any thing at all against him, that he was privy to any thing at all; for that of the carrying of the money, it appears to be John: For them two, Mary and Ely, nothing is fasten'd upon them. Then the matter is to James, John, and William Turner: I hope, and I am sure you are nearer, and you take notes of what hath been delivered: I have not your memories; you are young, and no persons letter; you are men of understanding, I need not repeat particulars to you. Thus much I must say in general, that it is not always necessary: But for that I shall desire my lord Bridgman to declare it to you. A man may be guilty of a burglary, though he be not in the place, in the room where it was committed: Or thus if three or four men come together with purpose to rob a house; two go in and do the feat, and the rest stay without, to see nobody comes to prevent, or to receive, one or other coming to that purpose; those that are without the house are as guilty of the burglary, as the other that went in. No man will deny the law to be so.—Then weigh your evidence: It appears by the coachman that he saw four men, that had handkerchiefs about their necks; two upon one side, the other two upon the other side of the door. Though there were but two appeared to Mr. Tryon, yet there being four in company, and Mr. Turner himself tells ye, that by the story from his intelligence there were three or four. Whom they were, or whether there was any or no, God knows; but rather suppose it to be a story of his own framing: He walked up and down on Tower-hill, took the thief by the throat, and there kept him about two hours, and past four o'clock before they brought the second bag. Then weigh that particular knowledge that Mr. Turner had of all these things: That upon Wednesday before he met with this William Turner, a person you see, of what quality I shall not repeat, he cannot give account of himself what he is; and that night, when this robbery was committed, he says he was

at home; they are his own words: He might have had witness to have proved this as well as Mr. Turner. But for James Turner, it is true it appears, and no doubt he was that night, at home: The constable went to his house upon the occasion of Tryon's man's saying he supped there, went to find whether he supped there; and that was indeed false; But the constable and those that went there, found them a-bed. But then take the time when this robbery was done: It was between eight and nine, and he was found in bed at past ten, though indeed the thieves said it was eleven, as you might understand by Mr. Tryon: It must be left to you upon the proof. You see when he comes the next day, he undertakes to find out the thieves, and that only upon a suspicion; that there being a purpose to rob Mr. Tryon a year before, he goes to the same place now, he found Wild out then. He had very good luck; that because he lodged there a year before, he must have the same lodging now: It is a likely matter that thieves, as Wild is, should keep their lodgings thus constantly. There he finds him, takes him by the throat, and there they were playing a while: There one comes, goes, and brings some part of the money. After all this, the next day he must take his word to come again, and to bring the jewels. Observe but this: after which time as the money was received yet by a token, though he never saw the woman before, describing her a short fat woman, with a long black scarf, he must meet her, asked her what she wanted, and must give her jewels of that value: 'Tis one of the finest framed stories that I have heard, that this man should come to be thus privy after himself stood charged, and the jewels brought for all this; and yet he must know nothing of it. You observe the evidences, and their circumstances themselves: The witnesses he called in point of reputation, that I must leave to you. I have been here many a fair time: Few men that come to be questioned, but shall have some come and say, he is a very honest man; I never knew any hurt by him: But is this any thing against the evidence of the fact? But you have here the whole; I shall leave it to you.

L. C. J. *Bridgman*. Gentlemen of the Jury, my lord hath repeated to you the evidence: I shall repeat nothing of that; only one or two things I shall observe to you. First, In point of law: And I must agree in opinion with what my lord says. But in this case there will be something more considered; that is, Whether or no (for this is the law) if a man have a false key, (we are now upon the point of law) and we ought to be of counsel with him and you, to direct that which is right, if he appear plainly to be an accessory, you must find him guilty of this Indictment: For that you must consider circumstances, whether he broke open the house or no. Then you must observe Mr. Tryon's door was shut; it was not broke open by a crow: Therefore you may conclude that it is very probable they had a picklock: But that I must leave to you. Either they must

come in by one being in the house, or by a picklock. But to say by one in that house, you have no reason to presume on that: If by a picklock, whosoever they were, they must be known, not strangers to the house: Not William Turner alone, but he that knew the house, and all the passages and doors; knew where the keys and jewels were. Then who probably should be in the house? It was not for a stranger to be in the house, only one that must know all. If that James Turner shall appear to you to have a hand in it, if you think he was accessory, you must find him guilty as principal.

Col. *Turner*. God forbid!

L. C. J. *Bridgman*. If he were amongst them, if the door be opened by a picklock, it is a direct burglary, as if broke open by an iron bar: But that must be left to you. In the next place, to prove the burglary, you see what a story he tells you, with all the circumstances, as if he had been there: He tells you from this Wild (if there be any such, you must take it upon his word) how the man's tooth came out, what he meant to do with the other persons, and all other things about that affair. Observe another thing of sir Thomas Chamberlain: Says he, We suspected him from the first: We could not examine any, but he would be thrusting in, and listening. I say, admit that you should be by the evidence persuaded he had a hand in the business, you must find him a principal: For nothing in the world more ordinary, if a man intend to commit such a felony or burglary, he will be sure to have witness to prove he was here, or in such a place, at the time when this robbery was committed. By all that I can guess, and I believe that I guess right, this robbery was between eight and nine o'clock at night. When the constable came to Mr. Turner, no doubt, as it was his wisest way, he was then in bed; but can prove nothing at all else. The truth is, upon all that he hath said himself, if it be true as he hath said, he hath made himself a direct accessory to a felony: For first of all, being examined before a justice of peace, sir Thomas Aleya, he said himself that the money he carried, was the money he had of a goldsmith: Truly his whole story is a direct romance. This man must go upon the Friday night, about 11, or 12 o'clock: And there is a proverb of 'a blind man's catching a hare;' if it can be applicable to any thing, it must be to this: He must go between 11 and 12 o'clock at night without a lantern, a good way above his own house, and there he must walk and think some Mephistophilus should come and tell him who is the man: That he should take him by the throat, though he could call two more with one whistle, and there get him to deliver the money: Truly he was a very noble and ingenious thief. But all this you must take upon his own word. Now he knows the money was discovered, then it was a merchant's that had failed, and must be secured for the use of his wife and children. If you do believe all this that he hath said, he was neither principal nor accessory to this felony, but ac-

cessary enough to Wild; but that is not the present business. It is whether upon all these circumstances, the money having been found with them, he being the man that brought the money, and his wife the jewels; whether you do believe the rest of the story he hath made for himself? If you believe he had a hand in the business, you must find him as principal. I shall desire a little further direction; Suppose it were as he says, That one was within, and he opens the door, and lets in others; if himself was one that did come in, I take it to be burglary in them all; it was an unlawful coming in. So that upon all these circumstances, first, whether you do believe that he had a hand in it, or no, or this fine story that is made; next, whether you do believe this was one that was there; you must believe him guilty as principal. But I leave it to you.

L. C. J. *Hyde*. To the last I say, if one comes in by day, with a purpose before-hand to rob the house by night, if he opens the door, which is almost impossible here, because the man swears it was double-locked, it must be opened with a key; if he opened the door, and the rest come in and rob him, that is burglary in them all.

Thereupon the Jury withdrew; and after near an hour's consultation, they returned to the Court, and took their places: Their names being called, they severally answered.

Cl. of the Peace. Are ye all agreed of your verdict?—*Jury*. Yes.

Clerk. Who shall speak for you?

Jury. Foreman.

Clerk. Set James Turner to the bar. Look upon him: How say you? Is he guilty of the felony and burglary whereof he stands indicted, or Not Guilty?—*Foreman*. Guilty.

John Turner, William Turner, Mary Turner, and Ely Turner, were by the said Jury severally acquitted*.

* "Turner et les autres fueront indict, quia ils felonice et burglarit' infringe le meason de Francis Tryan in tiel Ward in Lond', et la depris argent et jewells, al vallue de 5,000*l*. et sur rien culp plead, et long evidence le jury trove Turner culp de burglary (pur que fait apres pend in Cheapside) et lun de ses fils culp de felony (et les autres ils acquite) et le question fait a ceo fait bone verdict quant al felony vers fits sur que serra demand, et semble per les deux chiefe justices et auters que nemy, car coment jury puissoit aver trove touts culp de felony uncors ne poent trove lun culp de burglary et l'auter de felony sur mesme indictment et mesme evidence." *Siderfin*, 171.

Upon this Mr. East (Pleas of the Crown, chap. xv. sect. 28) observes: "In truth, such a finding shewed that the several prisoners were of a distinct nature, and therefore ought not to have been included in the same indictment."

Now true it is, larceny and burglary are offenses of different kinds, nevertheless where an

January the 19th.

In the morning the said William Turner was again arraigned and indicted for the felonious stealing of 4*5*l. of the moneys of William Hill, servant to the said Mr. Tryon, and stolen in the said robbery of Mr. Tryon; but the trial thereof was deferred till the next sessions.

Afterwards, some of the Justices of the Bench having received intimation that lodgings were lately taken in Duke's-place by the said Col. Turner, William Turner, and others, for the carrying on of the aforesaid robbery; the said Col. Turner and William Turner were severally examined by that worthy gentleman sir Thomas

indictment is for in the night time feloniously, &c. burglariously, &c. with intent to steal, &c. breaking and entering the dwelling house, &c. and there stealing, &c., any number of persons may be tried and convicted under such one indictment, of these two offences of different kinds; or some of the persons may be convicted of both or either of the offences, and the rest acquitted of both; It may therefore perhaps not be found easy to give a perfectly satisfactory and consistent reason, why some of the persons may not be found guilty of one of the offences, and others of the other.

"At the same sessions [for Newgate, April, 1664] there was this question, one James Turner and William Turner, at Christmas sessions last, were indicted of Burglary for breaking the house of Mr. Tryon in the night, and taking away great sums of money; and thereupon James Turner was found guilty and executed; but William Turner was then acquitted. And now there being great evidence that William Turner was in the same burglary with James Turner, and there being 47*l*. of the money of one Hill, a servant to Mr. Tryon, stolen at the same time, which 47*l*. was not in the former Indictment, they would have indicted William Turner again now for Burglary, for breaking the house of Mr. Tryon, and take thence 47*l*. of the money of Hill's; but we all agreed that William Turner being formerly indicted for Burglary in breaking the house of Mr. Tryon, and stealing his goods and acquitted, he cannot now be indicted again for the same burglary for breaking the house; but we all agreed, he might be indicted for felony, for stealing the money of Hill. For they are several felonies, and he was not indicted of this felony before, and so he was indicted. And afterwards I told my lord chief justice Bridgeman what we had done and he agreed the law to be so as we had directed." *Kelyng*, 30.

But it now seems that William Turner might have been again indicted for burglary, viz. breaking, &c. and taking the goods of Hill. See Mr. Justice Buller's very able judgment in the Cases of Vandercom and Abbot, East's Pl. Cr. c. xv, s. 99. Mr. J. Buller's division of burglary seems to be sound notwithstanding the Quere.

Aleyn, who with great prudence had managed this affair, who pressed several questions to the said prisoners; who finding their said design fully discovered, declared as followeth :

The Examination and Confession of Col. James Turner and William Turner, two of the persons in the robbery of Mr. Tryon, taken by sir Thomas Aleyn, knt. and bart. in the presence of the right hon. sir Anthony Bateman, knt., Lord Mayor of the city of London, sir Richard Brown knt. and bart. sir John Robinson knt. and bart. sir Rich. Ford, and sir Rich. Rives, knights, sheriffs of the city of London, the 19th of Jan. 1664.

That the contriving and setting of this robbery was wholly acted by col. James Turner; and that it was in agitation about Christmas last, and should have been put in execution a week sooner, but that the other friend, whom col. Turner brought, was drunk, and one White, who was one of the actors, would not venture his life with him : That there were four persons that robbed him : Col. James Turner, William Turner, White a Solicitor, and White's friend, whose name they knew not : That upon Thursday the 7th day of January instant, Col. James Turner, William Turner, White, and the other person, whose name they knew not, met at the Red-Lion in Bishops-gate-street, near to St. Helen's, about three of the clock in the afternoon, where they dined : Col. Turner fetched a neck of veal from the cook's for their dinner ; and then they agreed to rob Mr. Francis Tryon (who lives in Lime-street) that night, and went to meet again at the same house by six of the clock that evening : But the room where they were to meet being taken up, they went over to the Four Swans, or the Green Dragon, and there they all staid till eight of the clock. Col. Turner did then assure them that the doors should be opened; for that by his own confession he had got the impression of the key of the door in wax, and had another key made by it ; but knew not the smith that made the key. From that place col. Turner carried them to the new market in Leadenhall, where they sat upon the stalls for the space of half an hour; and then he came unto them, and told them the man and maid were now gone out, and that now was their time. Thereupon col. Turner opened the door with his key, and let them in. Then they went up the stairs, col. Turner leading the way. He lit a candle in the kitchen, and went up into Mr. Tryon's chamber all four of them. Col. Turner went near the bed's-foot, the curtains being drawn close. White and the other persons put a cloth into Mr. Tryon's mouth, stopped it, and bound his feet and his hands. Col. Turner brought down the key of the warehouse and the counting-house out of his pocket, opened the warehouse door and the counting-house, and took the keys of the iron chest, and took out the money and the jewels. William Turner carried two wallets with four bags of money, as he conceives : And col.

Turner said that the said Wm. Turner carried 400*l.* and White carried two wallets more, supposed to be four bags of some hundred pounds. Col. Turner and the other person carried the rest of the money, only col. Turner carried away the jewels in his two bags. That Wm. Turner did not see any money, but as they said it was money. They did not stay in Mr. Tryon's house above an hour. That they carried all the aforesaid money and jewels into a lodging in one Nicholas Hickenson's house in Lousy-lane in Duke's-place, which they hired some days before, pretending it for the use of a master of a ship, his mate, purser, and boatswain. They carried the money in about ten o'clock at night : When the maid let them in, they blew out the candle, carried up the money and jewels, Wm. Turner going under the name of purser. Col. Turner and Wm. Turner came away that night and left the money and the jewels there. The next morning col. Turner fetched away the money and jewels at five turns to his own house. And saith, That Wm. Turner was to have 100*l.* of the money for his pains, White and his friend 20*l.* a piece for their pains, and Col. Turner was to have the rest. That William Turner knew not of any of the jewels nor White, none but Col. Turner. That after that night William Turner never saw Col. Turner, nor the other persons in the robbery, till himself with Col. Turner and others were arraigned for the fact at Newgate. Neither did the said William Turner see any money or jewels opened; neither did he receive one penny of the money : neither was he in the counting-house of Mr. Tryon. That neither Col. Turner's wife nor sons knew of this robbery; only that they helped him to remove the money away on Saturday morning. That the money was in the house on Friday at night, when the constable and marshal searched his house; but they had hid them. That Col. Turner being asked where the jewels were on Saturday morning, said, he did deliver them at six of the clock to White in both the bags. That the carcanet of rubies were not in those bags. That Col. Turner, in the conclusion, confessed, that he had not done not that he did, but that he did lately understand that another person was made executor, and that he was resolved to have somewhat.

After Col. Turner's examination, Sir Thomas Aleyn told Col. Turner, that the first part of repentance was confession, the second restitution; and he being a convict person, and in all probability not likely to continue long in this world, it were much better for him to restore what was another's man's, than to think to enrich his wife and children, by leaving them that which he knew was none of his; and that one penny of his own estate left them, would continue longer with them than a pound of another body's : and thereupon he was pressed to restore Mr. Tryon the rest of his money, and the carcanet of rubies and diamonds yet in his custody. This had such a present influence upon Mr.

Turner, that he said he would immediately go and fetch the carcanet; which he accordingly did, and delivered the same into the hands of Sir Richard Rives, one of the sheriffs.

January 19, in the Evening.

Clerk. Set James Turner to the bar, James Turner, hold up thy hand: thou standest here convicted of Felony and Burglary, for the felonious stealing of the goods and money of Francis Tryou; what canst thou say, why the court should not give thee judgment to die according to law?

Col. Turner. My Lord, I humbly desire your honour, and the honourable bench, you would be pleased to grant me a reprieve.

J. Howel. That we cannot do; the court must give judgment upon you: If you can by any means prevail with his majesty to do it, you may use your interest; but the court cannot do it.

Col. Turner. I desire your honours I may be transported.

J. Howel. That likewise is in the power of his majesty: that he may do, if he please. It is not in the power of the court: we have nothing to do, but to give judgment.

Col. Turner. You do it with others.

J. Howel. No, not in this case of burglary; but leave that to his majesty's mere mercy and grace.

Col. Turner. My Lord, I shall humbly desire that my wife and the two youths may be discharged.

J. Howel. She is found Not Guilty; and therefore she shall have her acquittal upon the discharge of the gaol. Those that are acquitted, they must be discharged, if the court do not see cause for their further detention.

Col. Turner. I pray the young man and my wife may be discharged.

J. Howel. Whosoever are found not guilty must have their discharge according to law.

Col. Turner. My Lord, I hope the bench is satisfied about the young man.

J. Howel. Say no more.

Col. Turner. Your honour's humble servant.
Clerk. Set James Turner to the bar.

J. Howel. I must pronounce the Judgment of the court, which is, 'That you go to the place from whence you came, and so to that place of execution which shall be appointed to you by authority, there to be hanged by the neck till you be dead; and the Lord have mercy on your soul.'

Accordingly the said Col. James Turner was drawn in a cart from Newgate to Lime-street-End in Leadenhall-Street, the 21st of January, and was there executed on a gibbet erected for that purpose.

The Speech and Department of Col. JAMES TURNER, at his Execution in Leadenhall-street, January 21, 1664.

About eleven o'clock, col. Turner (attended with Mr. Ordinary of Newgate, and another

minister,) was drawn in a cart to a gibbet erected in Leadenhall-street at Lime-street end: where coming, col. Turner called the executioner to him, told him, that his friends were desirous of all his cloaths, and that in consideration thereof he gave him 50s. and 2s. 6d. to drink, and about 15s. to the Serjeants and Yeoman, attending to see his body and clothes delivered to one Mrs. Smith there: And standing in the cart said as followeth:

Sir Richard Ford, and you, the other Mr. Sheriff, and all you gentlemen: I am come hither to pay that debt I owe, and that every man owes to nature; it is the just hand of God upon me for my sins, and there is no man hath done me wrong in it, and truly, it is my sins, and the greatness of my sins (and that I am very sensible of) hath brought me hither; and the greatest sin that troubles me, and lies upon me, (which I hope the blood of Jesus Christ, may, I am confident, the blood of Jesus Christ, hath washed all my sins away,) is that sin which I was much addicted to, and that was the sin of prophaneness; of blaspheming God, of taking his name in vain. It is truth, I must not only accuse myself, but, in some sense, give you the truth of my conscience. I never heard any man or woman, or whatever they were, swear in my life, but I did tremble to hear them: For keeping of company with gentlemen of honour (they were men of quality, though that were an ill quality in them) was the occasion of it. I never kept company with any poor, base, inferior people, with any thief, or any such like base person, in all my life, but fled from them, and avoided them, till this accident. Truly, those poor men engaged in it, I must free them, I brought them into this business clearly, and freely; and I beseech you, Mr. Sheriffs, as I am a dying man, that you will help those people in this business; poor silly men! As I was telling you, for that great sin of swearing: keeping company with persons that did swear, I did get a habit of swearing, though I hated it and loathed it, when I observed it in myself, and yet may be, did it again, forgetting presently and not observing, being of a hasty nature. It was my rashness, and my inconsiderateness, that hath brought me hither. Gentlemen, it is expected by all the city, and by all the world, that knows me, that I should make some great and notorious confession; it is truth, I must, and freely do here confess, as I said before, that it is my sins in general, and that sin of blaspheming God's name; I discharge myself particularly with that, as the occasion of bringing me hither; as for the fact itself; I do tell ye, it was my own act, my own contrivance, and the poor souls that are yonder, knew nothing of it.

Gentlemen, you will live when I am gone; there is my two sons; I here declare, as I expect mercy by-and-bye, at the hands of my Saviour and my God, they are as innocent as any person that looks upon me. For the youngest, my son Ely, he never knew or heard

of one penny of the money, or business at all; therefore he is clear: he was in his bed that night it was done, and in the morning it was removed from my house: For the elder, he never knew of any monies, or any thing of it; only I did tell him, that it was a merchant's money that was broke, and that I would secure it for his wife and children; so that he was clearly innocent of any thing of the fact of the robbery of the house; he knew not that it was Mr. Tryon's money, but did carry that money with me to Tower-hill, as I bid him; so that he is as innocent as the younger. You understand me, Mr. Sheriffs; if you bid your servant take so much money, carry it, and dispose of it as you direct him, what is it to him how you came by that money? So that I say, this elder son, he is (I speak in the presence of God) as free as the other.

I do beg and beseech you, Mr. Sheriffs, in the bowels of tender mercy and compassion, that you would go to the lord-mayor, to the court of aldermen, that these two poor young men may be discharged; let them not lie there until the next sessions, among thieves and murderers, for they will be utterly undone. They are come from the loins of good parents; my father was an ancient, reverend divine, a parson within eleven miles of this town, a godly minister, forty odd years minister of one parish; no man more beloved than he, a man of charity, and for peace, never suffered them to go to law; he was justice of peace amongst them, mediator for them; if any poor wanted any thing, they came to him, he relieved them: he did all the poor's business, and composed the differences of the rich likewise: I am the son of that father, though an unfortunate son. My wife was a gentlewoman's daughter in Dorsetshire, her mother had a great portion, and is yet living; they are of the family of the Foyles, 8,000*l.* the old king had of her uncle, which was lent; they were persons of quality. I say, these children, they came from the loins of good persons. This I speak in reference that you will take that fatherly care, that these two poor boys may be turned out of prison. Their mother hath nothing to support them: Suppose it your own wife's case; add not affliction to affliction; restore her children to her this night, let me beg it, that God may be praised and glorified in the truth of all things. Will you promise it, Mr. Sheriffs, that you will endeavour it?

Sir Rd. Ford. I do; I have been ready at all times to promise you any thing which was in my power to perform; but ask not that which is not in my power to grant: You desire they may be discharged to-night.

Turner. That is but comparatively; as soon as possible.

Sir Rd. Ford. I do promise you, that this that you have declared concerning your sons, shall be communicated to the proper judges, and I will endeavour that they may be put out of our gaol.

Sir Rd. Rives. And I will use my endeavours in the thing.

Turner. Pray do, they know nothing of it; pray put them out, my wife will want them; she hath no comfort left, and this will ruin her.

Sir Rd. Rives. We will do our endeavour; proceed on.

Turner. I have done, that is for the children; then for William Turner, what he did, he did at my instigation; he acted this at my entreaty, it was wholly by my direction, therefore let the poor man be likewise discharged, if there be no other thing against him but this fault.

Sir Rd. Ford. We will promise that we will take all occasions to give an intimation to the lord chief justice what you have declared, in extenuating of his crime, as he was a hireling of yours.

Turner. I have told you that it was my sins that hath brought me hither; and truly I must deal really with you, this nation is very full of sin, of crying sins, of sins, that (without God's wonderful mercies) the land will suddenly mourn by his hand: I have every year expected the sweeping plague to come and take away two-thirds of the nation for the sins that lie upon us; and truly, notwithstanding the ministers of God do preach, and call, and cry aloud, yet nobody regards them. Truly, from the magistrate to the very peasant, there is abundance of neglect to the true service and fear of God, that my soul has bled and groaned within me, as I have gone up and down the streets, and as I have lain in my bed. And I must ingenuously confess to you, that I have not once or twice, nor a hundred times, but a thousand times, wished myself dissolved, and in another world. I have been sick of it, not for any want, but with the mere trouble, the dislike that did so displease me, to see all manner of business in tumults and disorders, and sin, and all manner of wickedness; that truly I have had no pleasure (these latter years) in the world; indeed I have not. I have (to my poor wife) said many a hundred times, Lord God, that thou wert in thy grave, and I too, were it not for these poor children; truly, I could beg it of God, seeing all people are in combustion, none tied in love and amity. When I was a boy, there was no such doings; my father, I told you, was a minister, there was eight or ten gentlemen, adjoining families, who kept a house of hospitality, loving friendship, peace and quietness; but now there is no such thing in the world: It is a new world, a world of malice and difference; and it is to blame, that brethren do not hang together in unity.

It is expected, that I should declare here, as a dying man, somewhat to free myself from those aspersions, accusations, and calumnies, that have been laid upon me; those marks with black coals that people have laid upon me; I do declare to you, there are a great many scandals that lie upon me. I shall not justify myself at all, but rather accuse myself, that I am, as St. Paul saith, 'The greatest of sinners.' But for those things that are laid upon me, I

must clear my family and my reputation, as I can before God, and in Jesus Christ. It is laid upon me, that I should take 200*l.* of Dr. Hewyt's lady, for to assist her in the helping her husband that was, in the getting him a pardon or reprieve. To that I answer, (I know not whether I shewed you, Mr. Sheriffs, my lady's certificate or no; I heard not of this business till within these two nights) I never heard of her, nor her husband, in such a manner; no, I would not have had that sin mixed with my blood, not for ten thousand worlds; I should have thought, whenever it had entered into my cogitations, I should have thought myself eternally lost: But about that, I sent Mr. Grny, of Black Friars, who rode 32 miles the other night, and he hath brought a certificate under her ladyship's hand to the king; which certificate, if they will go to my wife, they may have it, and priut it. She writes, shewing it to the king's most excellent majesty, that she was informed, that James Turner, gentleman, a prisoner in Newgate, is accused for taking 200*l.* of her towards the reprieving of her husband; she doth declare she never knew him, nor heard of him, therefore she is bound in conscience to free him; and so she humbly takes her leave. This is attested by that gentleman, with an affidavit under the hand of air John Brampton, knight. She got a letter from secretary Thurlow, wherein he writes, and sets forth all the business, That one col. Whetton had 255*l.* of my lady Hewyt, to procure this business; and that Whetton did pretend, that he had given Thurlow 100*l.* of it to that purpose, which he there, under his hand, denied that he ever received one penny, directly or indirectly; so that Whetton was the person clearly accused, and she sent me word, she is suing him for the money; so for that I hope I have vindicated myself before God and the world.

In the second place, there is another calumny thrown upon me, and that is, That I should cozen or deceive the king that now is of some money, when I was beyond sea with him; truly, it is well known to thousands of the world, I was never out of England, never beyond sea with the king, never cozened him of a penny; that I have served him and his father with all the substance that I had, with my blood, and with all my fortune and goods, as a hearty subject should, and I pray God receive my soul but with a drop of his mercy, so sure as I served the old king, and prayed for him, and loved him.

The first commission that ever I had, was eldest captain of horse to William marquis of Newcastle, in his own regiment; I gave him the troop, fourscore and seventeen men, well horsed; I never received one penny advance for the said troop, and but one week's pay for myself and officers, and three weeks pay for my troopers, in all my life not a penny more: I served him faithfully four years, or thereabouts. I was a prisoner at London house, at York, in the Tower, at the council of state, the court-martial, and the council of war of Oliver's: I

was a prisoner at Luton in Bedfordshire; bringing the king up from Newark to Oxford, I was wounded, shot in the neck, and taken prisoner: And 'tis very well known by Mr. William Cotton, who is one of the gentlemen harbingers of the king's, he is the ancientest to this king, and hath served his father in that office; It was his fortune to be hard by when I was shot, who was then a stranger to me, but he being one of the king's servants, and hearing a lieutenant colonel of the king's was slain, he came in; after I was shot, I was crept into an hedge among briars and thorns, so deep, that he was forced to cut a way to come at me, and so drew me out, or I had died there. I was prisoner at Luton, so to St. Alban's where I lay in cure in the compter, 'till it cost me my first penny reckoning, sixty odd pounds in gold; they trusted me, and took my word 'till I could send to York, where my wife lived, nineteen miles beyond York; When I was able to ride, I was brought to town, put into London-house, where I abided, and paid my ransom, no exchange would be allowed. The king that is dead, (of blessed memory) sent three exchanges for me, his own trumpet, Sir Marmaduke Langdale's trumpet, and my own trumpet. The committee at St. Alban's returned the trumpeters word that I was dead, for my wounds were mortal, and so I believe they did think I was dead. Afterwards I had command of more than one troop, and I was lieutenant-colonel to sir John Preston, and was eldest captain to the marquis of Newcastle.

Sir *Rd. Ford.* I have no pleasure to interrupt you; if you have any thing to say, that may fit you for your change, as marks (for avoiding these inconveniences,) to the people—
Turner. I have done, Sir Richard.

Sir *Rd. Ford.* I do not apprehend this a proper work for a dying man; in good earnest methinks, it is not a proper work, for you to give this narrative now of affairs in the army.

Turner. I have but a few words more; I have wholly told you, that it was my own contrivance, and nobody's else, that I come hither, and therefore I do justly suffer here by the hand of God and justice; and I do desire all Christian people, that either hear me, or see me, or shall hear of me, that they will take warning by me; it is the first offence of this nature that ever I had to do withal in my life. God is my witness, as I said before, I never knew a thief or dishonest man, but I avoided them: But I say, and I could wish with all my soul, and I desire it earnestly, that all people would take warning by me this day, and to avoid, as much as may be, all sins in general: And I must declare to you likewise, that if it had pleased God that two of the officers had not met me, and arrested me in St. Mary-Axe, between two and three of the clock, and carried me here to the Hoop tavern, where they staid me, Mr. Tryon had had every pennyworth of his goods and money, and not lost a farthing, nor a hair of his head; but God forgave them. A great deal of blame hath lain upon me about

those villains, who were half drunk, and beat Mr. Tryon. I say, he had had all his goods again. God above that hears me, knows my soul, it was not intended to rob him, or to hurt him, it was to ingratiate myself: the reasons I told him yesterday. He is the worse man, the best part of 10,000*l.* since his wife died; and I had lately discovered which way and how: I have told him of the person, but this is not a place to name him, or speak of these things; I hope God will give him wisdom to avoid dangers, and to make good of what I told him yesterday; a worse thing will come: for he will be robbed indeed, if he have not a care: He should have been robbed about a year since; and he did employ me to enquire after it, and discover it: I have given him warning several times: He is an honest brave gentleman, a good christian, and an honest, charitable man. But, Mr. Sheriffs, assure yourselves, so sure as I am going to heaven, I shall be there in glory, so sure had Mr. Tryon (if I had not met with those two foolish, timorous officers) have had his goods and money again, there never had one word of this business been known. It was a sad fate, that these two fellows out of a little fear should be the occasion of my coming hither; but God forgive them; Stubs and Lyon, I mean, these two villains, I have nobody to thank for my blood, but them; and yet do I free them, and freely forgive them: And I forgive the whole world, as freely as I desire God and Christ Jesus should forgive me. Mr. Sheriffs, are you satisfied in this? Would you have me say any more touching the fact?

Mr. *Sheriff.* It is satisfaction to us, if you are satisfied yourself.

Turner. This morning as I was coming out of the prison, to add scandal to scandal, one came and charged me I should clear myself about a fire in Lothbury, in the new buildings, whether I had any hand in that; the Lord Jesus Christ knows my soul, 'till even now they asked me the question, I never thought of it, but was then heartily sorry, and in my bed when I heard of it. Another sent me a letter, but I tore it, one John Marshall, touching some money that was lost in Coleman-Street; he might as well have asked the person to be born, as have asked me, for I knew not of it. And one brought a deed of one Katharine, I forgot her other name, alack, I know nothing of it. There was another large paper put into my hands, touching a man that died in my house, one Turner, a tall, proper gentleman, a clothier of Kent; he came to my house, and desired me to furnish one Daintry with 500*l.* which he had a place at the Custom-House for: This Turner was a stranger to me, only a namesake: It is thought, as by the paper was hinted, that he should have something put in his drink, which should occasion his death; he drank nothing at my house, more than what my wife and self, and two or three honest gentlemen, that were there. He told my wife once, Cousin, saith he, 'I am very ill, pray give me a cup of your water;' he had drunk a glass or

two of wine; there was but one bottle among five of them; and soon after, this gentleman fell asleep, with his hand on his cheek, and never waked again: He died of an apoplexy, or lethargy, as the Coroner found it. I must clear myself of this, because I have received a paper, it was at the end thereof hinted, Whether I did know if Daintry was not concerned in this business? The man could not put any thing into our drink sure; I have heard of your Spanish tricks, but I must free Daintry of that, according as I understand it. He was to do Daintry the courtesy, and surely he would not so reward him. I believe Daintry was as free as any body; but the Jury and Coroner did return, that he died of God's visitation, a natural disease, and I hope I have satisfied the world of that.

Ordinary of Newgate. Pray col. Turner, know you nothing of a glass jewel, delivered to the countess of Devonshire, in the room of another?

Turner. I know nothing of such a thing; I never had any jewels of her in my life; she is an honourable person, she will not speak of such a thing.

I will now give account of my faith. I have been bred up a true Protestant of the Primitive Church of England; my father bred me, and instructed me very strictly in the law of God: I will not tell you when I came to apprenticeship, I will let that alone: I am free of the company of Drapers; and I have lived civilly and honestly in St. Martin's, at the upper end of Cheapside; I am sure there are a thousand sorrowful souls and weeping eyes for me this day.

Sir *Rd. Ford.* Pray put that little time that you have to spend here to good use, and leave off these relations.

Turner. Have a little patience, let me satisfy the world of some particulars; I was a constant church-man, it is well known to my parishioners; I never durst see a man in the church with his hat on, it troubled me very much. If a man comes before a judge on earth, he is not suffered to wear his hat, much less should they before the magistrate of magistrates, the God of Heaven.

Sir *Rd. Ford.* Hear me one word; those reverend persons about you, methinks they should admonish you to leave off these discourses.

Ordinary. We press to the condemnation of a man's self, that he might be justified in God's sight.

Turner. Mr. Sheriff, I will hold you but a very little while longer; I do here truly confess that I have been, as I have said, a very great sinner, guilty of all the sins in the world.

Ordinary. Speak to some particulars.

Turner. Pray, be quiet, can ye?—Especially that of prophaneness; I am truly sensible, heartily sorrowful for my sins; and I do beg of God, of his infinite mercy, through the merits of Christ, who died for me, to wash away all my sins, and all the sins of this people here present.

sent, and all the sins of the whole world. I do beg, that God will open the heart of any man that staggers in faith, to confirm him. I do say, and pawn my salvation upon it, That no man dare gainsay that Jesus Christ died for sinners, of whom I am chief: That man that lays hold upon Christ by faith, the gates of hell shall never prevail against him. Truly, I am thought to be a great drinker, a company-keeper; my occasions did call me to taverns, but I bless God, I think there is no man (pardon me, for I will not speak it with ostentation,) I hope no man ever saw me disguised in drink, to my knowledge, except it was when I was a boy. I am truly, heartily, and sincerely sorrowful for my sins: I do confess them before my God, and the whole world, that the least of my sins are able to throw me into hell; but that the blood of Jesus Christ, that doth wash away the sins of the whole world, hath purged and cleansed mine. I say, I do here heartily, solemnly, and wholly confess my sins, and am truly sorrowful for them; that is my confession, with more trouble of soul than I am able to express. Here I have made my true and faithful confession. In the second place, I have made restitution, so far as in me lay; the gentleman hath every one of his jewels again, every farthing-worth; nay, he hath 2,000*l.* worth more than he missed, therefore there was no intention of felony: But my sad fate in meeting with those two sad officers, God of his mercy everlastingly forgive them—

Mr. Ordinary. Express your charity as to the world.

Turner. Do not put me out of my way, I must go step by step. First, I have given you my own confession: secondly, I have made restitution, I have restored all to my power: the third thing that is behind of a christian, is my true and unfeigned repentance, and my charity to the whole world; that God, that is the searcher of all secrets, that tries the reins, that knows all the inner parts, knows my soul, that I long and desire to be with Jesus Christ in glory.

Mr. Ordinary. Which is best of all.

Turner. I am in perfect charity with the whole world; it is expected by some, that I should fall upon some persons to recriminate on them; I shall not do it, the Lord God of his infinite mercy forgive them. It was reported to his majesty, that on Sunday last I was drunk and that I abused this reverend person *Mr. Ordinary*: This news was brought me by some that were present when the king was told such stories, that I was drunk, and ranted, and swore God damn me, and God sink me, and that I had 5,000*l.* and I would have a pardon and cared not for the business, and would have a pardon when I please. This great reproach was thrown upon me to the king, and that, with some other scandals, has taken off the king's affections: but this is altogether false, for *Mr. Hicks*, my landlord, can tell, that on Sunday morning he would have had me drunk my morning's draught; I told him, no, I would not drink: I only drank one small cup of cyder

in the morning, two little glasses of sack, and one glass of claret at dinner. I went to church with this reverend gentleman, where I received a great deal of comfort to my soul, for which I thank him; He made a sound scholar-like sermon, and fit for persons in our condition. I did perceive they wanted a clerk, and I took upon me to officiate as clerk, and I was happy I had that opportunity. I came home, and remained in my chamber. About eight or nine o'clock, Justice Stringer came to me in Chaucery-Lane, and two or three knights and persons of quality, eight or nine in all: they had one bottle of sack among them, of which I drank one little cup: and for the swearing of those oaths, I did not do it, I hate them, they were untruths, and the Lord forgive them that raised that scandal.

Sir, I must desire that you would now join with me in prayer; but I have forgot one thing, it is short: that night the sessions broke up, I was put in the Hole: it is a most fearful, sad, deplorable place; Hell itself, in comparison cannot be such a place; there is neither bench, stool, nor stick for any person there; they lie like swine upon the ground, one upon another howling and roaring; it was more terrible to me than this death: I would humbly beg, that Hole may be provided with some kind of boards like a court of guard, that men may lie down upon them in ease; for when they should be best prepared for their ends, they are most tormented, lying only upon the ground; they had better take them and hang them as soon as they have their sentence.

Jackson, the keeper. Seventeen out of nineteen made their escapes out of that Hole, they having only a form there.

Turner. I did with these poor souls pray heartily; none were able to pray, poor creatures! two were dying; I prayed with them, comforted them, assisted them, and gave them five shillings when I came out of the Hole: now pray join with me in prayer.

Sir *Richard Ford*. If I did think there were a reprieve to come for you, I could be contented to spin out the time thus; but, in good earnest, I expect none; unless you had an apprehension you were not to die, you would not thus run to so many impertinencies, that methinks, cannot fit you for death.

Turner. Truly, I expect none; pray join with me in prayer.

(Then he prayed some time, and *Mr. Welton*, the ordinary of Newgate, joined with him in prayer.)

Mr. Ordinary. The Lord Jesus have mercy upon thee!

Turner. *Mr. Sheriffs*, God be with ye: pray remember my duty and respects to my Lord Mayor, and to all the aldermen, and to all their families.

Turner. Executioner, I charge you meddle not with my cloaths.

Serjeants. Col. *Turner*, we will take care of them.

Turner. "Lord, I am assured to be with

thee in glory; I do rely and depend, all in all, upon Christ: refuse not my soul at the last hour, I have none in heaven, nor none in earth, nor any thing but thee to rely upon; and therefore into thy hands, both now, and for ever, I commit my soul, my body, my spirit, in sure and certain hopes of a joyful resurrection at the day of judgment, where I must appear and give account of my sins; but Jesus Christ hath washed them away in his blood. Pray, doctor, let me beg you to read those verses in the second of the Hebrews, to comfort me, being the 14, 15, 16, 17, and 18 verses. Forasmuch then as the children are partakers of flesh and blood, he also himself likewise took part of the same, that through death he might destroy him that had the power of death, that is the devil: and deliver them who, through fear of death, were all their life-time subject to bondage. For verily he took not on him the nature of angels, but he took on him the seed of Abraham; wherefore, in all things it behoved him to be made like unto his brethren, that he might be a merciful and faithful high-priest, in things pertaining to God, to make reconciliation for the sins of the people; for in that he himself hath suffered, being tempted, he is able to succour them that are tempted."

After this, he gave 40 shillings to a minister, to be given to the poor of that parish, and 18 shillings and sixpence more, to be delivered to his wife, to be given to his young son's school-master.

Turner. Mr. Jackson, God be with you: remember me to my landlord, and all there. My two children, I hope, will be freed. Mr. Sheriff, must I hang all day?

Sir Richard Ford. You will be cut down, as soon as you are dead.

Turner. Pray tell me true, Mr. Sheriff.

Sir Richard Ford. You will not hang above half an hour.

Thereupon, he directed the executioner to take off his halter from his shoulders; and

afterwards taking it in his hand, kissed it, and put it on his neck himself; then after he had fitted his cap, and put it on, he went out of the cart upon the ladder. The executioner tied him up, and pulling the rope a little, says Turner, What, dost thou mean to choke me? pray, fellow, give me more rope: what a simple fellow is this! how long have you been executioner; that you know not yet how to put the knot?

Mr. Secker, Minister, out of a window near. Mr. Turner, have you remembered those four things I spake to you of?

Turner. I have done them.

Mr. Secker. I trust this hour of heaviness will be an hour of happiness.

Turner. I am assured of it.

Mr. Secker. A living Christian in a dying hour is the best of all. The Lord be with you, and the Lord carry your soul safe through the jaws of death, to the joys of life!

Turner. I doubt not, but through a dark cloud I shall see a bright Saviour. Executioner; look ye, turn me not off, untill you have the sign from me, which shall be by laying my right hand on my left shoulder. The Lord God forgive thee, I do.

In the midst of some private ejaculations, offering to pull down his cap, he espied a gentlewoman at a window nigh, kissed his hand, said, Your servant, mistress.—His cap being pulled down, he lifted up his hands, and said, I disclaim any desert of mine own, there is nothing in me; look upon me through Jesus Christ. Lord Jesus, receive my soul! and thereupon giving the sign, the executioner turned him off. And after some short time he was cut down, and his body conveyed to a house near, there to rest for a space, untill they provided for him decent burial.

The confluence of people from the gaol to the place of execution was very great, beyond the memory of any upon the like occasion.

During his imprisonment, and to the last breath of life, his carriage was very undaunted.

218. The Trial of MARGARET FELL and GEORGE FOX, for not taking the Oath of Obedience: * 16 CHARLES II. A. D. 1664. [6 Harleian Miscellany, 258.]

The EXAMINATION and TRIAL of MARGARET FELL and GEORGE FOX (at the several assizes held at Lancaster, the 14th and 16th days of the first month 1663-4; and the 29th of the sixth month 1664) for their obedience to Christ's Command, who saith, "Swear not at all." Also something in Answer to Bishop Lancelot Andrew's Sermon concerning swearing.

Matt. xv. 6.

"Thus have you made the Commandment of God of none Effect by your Tradition."

She was called to the bar, and when she was at the bar, order was given to the gaoler,

by the judge, to set a stool and a cushion for her to sit upon; and she had four of her daughters with her at the bar, and the judge said, Let not Mrs. Fell's daughters stand at the bar, but let them come up hither, they shall not stand at the bar; so they plucked them up, and set them near where the judge sat: then, after a while, the Mittimus was read, and the judge spoke to her, and she stood up to the

* See this Oath and some account of the law connected with it in the Notes to the Case of John Crook, Isaac Grey, and John Bolton, pp. 201.—See also the Case of Isaac Martiot and others, in a Note, p. 202, *sup.*

bar, and he began to speak to her as followeth :

Judge. He said, Mrs. Fell, you are committed by the justices of peace for refusing to take the oath of obedience ; and I am commanded, or sent by the king, to tender it to any that shall refuse it.

Margaret Fell. I was sent for from my own house and family, but for what cause or transgression I do not know.

Judge. I am informed by the justices of peace in this county, that you keep multitudes of people at your house, in a pretence of worshipping God ; and, it may be, you worship him in part, but we are not to dispute that.

Marg. Fell. I have the king's word from his own mouth, That he would not hinder me of my religion. God forbid, said he, that I should hinder you of your religion, you may keep it in your own house : and I appeal to all the country, whether those people that meet me at my house be not a peaceable, a quiet, and a godly honest people ? And whether there hath been any just occasion of offence given by the meeting, that was kept in my house ?

Judge. If you will give security that you will have no more meetings, I will not tender the oath to you : you think if there be no fighting nor quarrelling amongst you, that you keep the peace, and break no law ; but I tell you, That you are a breaker of the law, by keeping of unlawful meetings ; and again, you break the law, in that you will not take the oath of allegiance.

Marg. Fell. I desire that I may have the liberty to answer to those two things that are charged against me : and, first, for that which is looked upon to be matter of fact, which is concerning our meetings ; there are several of my neighbours that are of the same faith, principle, and spirit, and judgment that I am of ; and these are they that meet at my house, and I cannot shut my door against them.

Judge. Mistress, you begin at the wrong end, for the first is the oath.

Marg. Fell. I suppose, that the first occasion of tendering to me the oath, was, because of meeting ; but, as for that, if I have begun at the wrong end, I shall begin at the other : and, first, then as to the oath, the substance of which is allegiance to the king ; and this I shall say, as for my allegiance, I love, own, and honour the king, and desire his peace and welfare, and that we may live a peaceable, a quiet, and godly life under his government according to the Scriptures, and this is my allegiance to the king ; and as for the oath itself, Christ Jesus, the king of kings, hath commanded me not to swear at all, neither by heaven, nor by earth, nor by any other oath.

Judge. He called for the statute-book, and the grand-jury to be present : then one of the justices, that committed her, said, Mrs. Fell, You know, that, before the oath was tendered to you, we offered, that, if you would put in security to have no more meetings at your house, we would not tender the oath to you.

Marg. Fell. I shall not deny that.

Judge. If you will yet put in security that you will have no more meetings, I will not tender it to you.

Marg. Fell. spoke to the judge, and the court, and the rest of the people: You all profess here to be Christians, and likewise you profess the Scriptures ; so in answer to those things that are laid against me :

First (John iv.) Christ Jesus hath left upon record in the Scriptures, that God is a spirit, and that his worship is in the spirit and truth ; and that he is seeking of such worshipers to worship him in which spirit, I and those that meet, in my house, meet and worship God, in obedience to his doctrine and command.

Secondly, Mat. iv. The same Christ Jesus hath commanded, in plain words, that I should not swear at all ; and, for obedience to Christ's doctrine and command, am I here arraigned this day ; and so, you being Christians, and professing the same things in words, judge of those things according to that of God in your consciences, and I appeal to all the country, whether ever any prejudice, or hurt, those meetings did ?

So, after she had spoken of the worship of God in spirit, and obedience to Christ's doctrine and command, &c.

Judge. You are not here for obedience to Christ's commands, but for keeping of unlawful meetings ; and you think that if you do not fight, or quarrel, or break the peace, that you break no law, but there is a law against unlawful meetings.

Marg. Fell. What law have I broken for worshipping God in my own house ?

Judge. What law ?

Marg. Fell. Aye, What law have I broken for worshipping God in my own house ?

Judge. The common law.

Marg. Fell. I thought you had proceeded by a statute. Then the sheriff whispered to him, and mentioned the statute of the 35th of Eliz.

Judge. I could tell you of a law, but it is too penal for you, for it might cost you your life.

Marg. Fell. I must offer and tender my life and all for my testimony, if it be required of me. Then the latter part of the statute was read to the jury for the oath of obedience ; and the judge informed the jury and the prisoner, concerning the penalty of the statute upon refusal, for it would be to the forfeiture of all her estate, real and personal, and imprisonment during life.

Marg. Fell. I am a widow, and my estate is a dowry, and I have five children unpreferred ; and, if the king's pleasure be to take my estate from me, upon the account of my conscience, and not for any evil or wrong done ; let him do as he pleases ; and further, I desire that I may speak to the jury of the occasion of my being here.

Judge. The jury is to hear nothing, but me to tender you the oath, and you to refuse it or take it.

Marg. Fell. You will let me have the liberty that other prisoners have, and then she turned to the jury, and said—Friends, I am here this day upon the account of my conscience, and not for any evil or wrong done to any man, but for obeying Christ's doctrine and command, who hath said in the Scripture, That God is a spirit, and that his worship is in the spirit and truth, and for keeping meetings in the unity of his spirit, and for obeying Christ's command and doctrine; who hath said, Swear not at all; am I here arraigned this day: now you profess yourselves to be Christians, and you owe the Scripture to be true, and, for the obedience of the plain words of Scripture, and for the testimony of my conscience, am I here; so I now appeal to the witness of God in all your consciences to judge of me according to that.

Secondly, you are to consider this statute what it was made for, and for whom it was made, for papists; and the oath was allegiance to the king. Now, let your consciences judge, Whether we be the people it was made for, who cannot swear any oath, at all, only for conscience sake, because Christ commands not to swear at all.

Judge. Then the judge seemed to be angry, and said, She was not there upon the account of her conscience; and said, She had an everlasting tongue, you draw the whole court after you, and she continued speaking on, and he still crying, Will you take the oath or no?

Marg. Fell. It is upon the account of my conscience, for, if I could have sworn, I had not been here.

Secondly, if I would not have meetings in my house, I need not to have the oath tendered to me, and so I desire the jury to take notice, that it is only for those two things that I am here arraigned; which are only upon the account of my conscience, and not for any evil done against any man: then the judge was angry again, and bid them tender her the oath, and hold her the book.

Judge. Will you take the oath of allegiance?

Marg. Fell. I have said already, that I own allegiance and obedience to the king at his just and lawful commands; and I do also owe allegiance and obedience to the king of kings, Christ Jesus, who hath commanded me not to swear at all.

Judge. That is no answer: will you take the oath, or will you not take it?

Marg. Fell. I say, I owe allegiance and obedience unto Christ Jesus, who commands me not to swear.

Judge. I say unto you, That is no answer: Will you take it, or will you not take it?

Marg. Fell. If you should ask me never so often, I must answer to you: the reason why I cannot take it, is, because Christ Jesus hath commanded me not to swear at all; I owe my allegiance and obedience unto him.

Then one of the justices, that committed her, said: Mrs. Fell, you may with a good conscience, if you cannot take the oath, put in

security, that you may not have any more meetings at your house.

Marg. Fell. Wilt thou make that good, That I may, with a safe conscience, make an engagement to forbear meetings, for fear of losing my liberty and estate? Wilt not thou, and you all here, judge of me, that it was for saving my estate and liberty that I did it? And do I not in this deny my testimony? And would not this defile my conscience?

Judge. This is no answer: will you take the oath? We must not spend time.

Marg. Fell. I never took an oath in my life; I have spent my days thus far, and I never took an oath; I owe allegiance to the king, as he is king of England, but Christ Jesus is king of my conscience.—Then the clerk held out the book, and bid her pull off her glove, and lay her hand on the book.

Marg. Fell. I never laid my hand on the book to swear, in all my life, and I never was at this assize before; I was bred and born in this county, and have led my life in it, and I was never at an assize before this time, and I bless the Lord, that I am here this day upon this account, to bear testimony to the truth.—Then they asked her if she would have the oath read. She answered: I do not care if I never bear an oath read; for the land mourns, because of oaths.

Judge. Then the judge cried, Take her away.—Then they took her civilly away; and asked her if she would give security, That she would have no more meetings.

Marg. Fell. Nay, I can give no such security, I have spoken enough for that.

Then George Fox was called before judge Twisden; being a prisoner, the gaoler brought him in.

Judge. What, do you come into the court with your hat on?—And then the gaoler took it off.

George Fox. Peace be amongst you all.—And said, The hat was not the honour that came down from God.

Judge. Will you take the oath of allegiance, George Fox?

Geo. Fox. I never took oath in my life.

Judge. Will you swear, or no?

Geo. Fox. Christ commands we must not swear at all; and the apostle: and, whether must I obey God, or man, judge thee, I put it to thee.

Judge. I will not dispute with thee, George Fox. Come, read the oath to him. And so the oath was read, and, when it was read, give him the book, said they; and so a man, that stood by him, held up the book, and said, lay your hand on the book.

Geo. Fox. Give me the book in my hand. Which set them all a gazing, and as in hope he would have sworn. Then when he got the book in his hand, he held up the book, and said: This book commands me not to swear, if it be a bible, I will prove it; and he saw it was a bible, and he held it up; and then they plucked it forth of his hand again, and cried,

cessary enough to Wild; but that is not the present business. It is whether upon all these circumstances, the money having been found with them, he being the man that brought the money, and his wife the jewels; whether you do believe the rest of the story he hath made for himself? If you believe he had a hand in the business, you must find him as principal. I shall desire a little further direction: Suppose it were as he says, That one was within, and he opens the door, and lets in others; if himself was one that did come in, I take it to be burglary in them all; it was an unlawful coming in. So that upon all these circumstances, first, whether you do believe that he had a hand in it, or no, or this fine story that is made; next, whether you do believe this was one that was there; you must believe him guilty as principal. But I leave it to you.

L. C. J. *Hyde*. To the last I say, if one comes in by day, with a purpose before-hand to rob the house by night, if he opens the door, which is almost impossible here, because the man swears it was double-locked, it must be opened with a key; if he opened the door, and the rest come in and rob him, that is burglary in them all.

Thereupon the Jury withdrew; and after near an hour's consultation, they returned to the Court, and took their places: Their names being called, they severally answered.

Cl. of the Peace. Are ye all agreed of your verdict?—*Jury*. Yes.

Clerk. Who shall speak for you?

Jury. Foreman.

Clerk. Set James Turner to the bar. Look upon him: How say you? Is he guilty of the felony and burglary whereof he stands indicted, or Not Guilty?—*Foreman*. Guilty.

John Turner, William Turner, Mary Turner, and Ely Turner, were by the said Jury severally acquitted*.

* "Turner et les autres fueront indict, quia ils felonice et burglarit' infringe le meason de Francis Tryan in tiel Ward in Lond', et la depris argent et jewells, al vallue de 5,000*l.* et sur rien culp plead, et long evidence le jury trove Turner culp de burglary (pur que fuit apres pend in Cheapside) et lun de ses fils culp de felony (et les autres ils acquite) et le question fait si ceo fait bone verdict quant al felony vers fts sur que serra demand, et semble per les deux chiefe justices et auters que nemy, car eoment jury puissoit aver trove tous culp de felony uncore ne poent trove lun culp de burglary et lauter de felony sur mesme indictment et mesme evidence." *Siderfin*, 171.

Upon this Mr. East (Pleas of the Crown, chap. xv. sect. 23) observes: "In truth, such a finding shewed that the several prisoners were of a distinct nature, and therefore ought not to have been included in the same indictment."

Now true it is, larceny and burglary are offences of different kinds, nevertheless where an

January the 19th.

In the morning the said William Turner was again arraigned and indicted for the felonious stealing of 45*l.* of the moneys of William Hill, servant to the said Mr. Tryon, and stolen in the said robbery of Mr. Tryon; but the trial thereof was deferred till the next sessions.

Afterwards, some of the Justices of the Bench having received intimation that lodgings were lately taken in Duke's-place by the said Col. Turner, William Turner, and others, for the carrying on of the aforesaid robbery; the said col. Turner and William Turner were severally examined by that worthy gentleman sir Thomas

indictment is for in the night time feloniously, &c. burglariously, &c. with intent to steal, &c. breaking and entering the dwelling-house, &c. and there stealing, &c., any number of persons may be tried and convicted under such one indictment, of these two offences of different kinds; or some of the persons may be convicted of both or either of the offences, and the rest acquitted of both; It may therefore perhaps not be found easy to give a perfectly satisfactory and consistent reason, why some of the persons may not be found guilty of one of the offences, and others of the other.

"At the same sessions [for Newgate, April, 1664] there was this question, one James Turner and William Turner, at Christmas sessions last, were indicted of Burglary for breaking the house of Mr. Tryon in the night, and taking away great sums of money; and thereupon James Turner was found guilty and executed; but William Turner was then acquitted. And now there being great evidence that William Turner was in the same burglary with James Turner, and there being 47*l.* of the money of one Hill, a servant to Mr. Tryon, stolen at the same time, which 47*l.* was not in the former Indictment, they would have indicted William Turner again now for Burglary, for breaking the house of Mr. Tryon, and take thence 47*l.* of the money of Hill's; but we all agreed that William Turner being formerly indicted for Burglary in breaking the house of Mr. Tryon, and stealing his goods and acquitted, he cannot now be indicted again for the same burglary for breaking the house; but we all agreed, he might be indicted for felony, for stealing the money of Hill. For they are several felonies, and he was not indicted of this felony before, and so he was indicted. And afterwards I told my lord chief justice Bridgeman what we had done and he agreed the law to be so as we had directed." *Kelyng*, 30.

But it now seems that William Turner might have been again indicted for burglary, viz. breaking, &c. and taking the goods of Hill. See Mr. Justice Buller's very able judgment in the Cases of Vandercom and Abbot, East's Pl. Cr. c. xv, s. 29. Mr. J. Buller's division of burglary seems to be sound notwithstanding the Quere.

Aleyn, who with great prudence had managed this affair, who pressed several questions to the said prisoners; who finding their said design fully discovered, declared as followeth:

The Examination and Confession of Col. James Turner and William Turner, two of the persons in the robbery of Mr. Tryon, taken by sir Thomas Aleyn, knt. and bart. in the presence of the right hon. sir Anthony Bateman, knt., Lord Mayor of the city of London, sir Richard Brown knt. and bart. sir John Robinson knt. and bart. sir Rich. Ford, and sir Rich. Rives, knights, sheriffs of the city of London, the 19th of Jan. 1664.

That the contriving and setting of this robbery was wholly acted by col. James Turner; and that it was in agitation about Christmas last, and should have been put in execution a week sooner, but that the other friend, whom col. Turner brought, was drunk, and one White, who was one of the actors, would not venture his life with him: That there were four persons that robbed him: Col. James Turner, William Turner, White a Solicitor, and White's friend, whose name they knew not: That upon Thursday the 7th day of January instant, Col. James Turner, William Turner, White, and the other person, whose name they knew not, met at the Red-Lion in Bishopsgate-street, near to St. Helen's, about three of the clock in the afternoon, where they dined: Col. Turner fetched a neck of veal from the cook's for their dinner; and then they agreed to rob Mr. Francis Tryon (who lives in Lane-street) that night, and went to meet again at the same house by six of the clock that evening: But the room where they were to meet being taken up, they went over to the Four Swans, or the Green Dragon, and there they all staid till eight of the clock. Col. Turner did then assure them that the doors should be opened; for that by his own confession he had got the impression of the key of the door in wax, and had another key made by it; but knew not the smith that made the key. From that place col. Turner carried them to the new market in Leadenhall, where they sat upon the stalls for the space of half an hour; and then he came unto them, and told them the man and maid were now gone out, and that now was their time. Thereupon col. Turner opened the door with his key, and let them in. Then they went up the stairs, col. Turner leading the way. He lit a candle in the kitchen, and went up into Mr. Tryon's chamber all four of them. Col. Turner went near the bed's-foot, the curtains being drawn close. White and the other persons put a cloth into Mr. Tryon's mouth, stopped it, and bound his feet and his hands. Col. Turner brought down the key of the warehouse and the counting-house out of his pocket, opened the warehouse door and the counting-house, and took the keys of the iron chest, and took out the money and the jewels. William Turner carried two wallets with four bags of money, as he conceives: And col.

Turner said that the said Wm. Turner carried 400*l.* and White carried two wallets more, supposed to be four bags of some hundred pounds. Col. Turner and the other person carried the rest of the money, only col. Turner carried away the jewels in his two bags. That Wm. Turner did not see any money, but as they said it was money. They did not stay in Mr. Tryon's house above an hour. That they carried all the aforesaid money and jewels into a lodging in one Nicholas Hickenson's house in Lousy-lane in Duke's-place, which they hired some days before, pretending it for the use of a master of a ship, his mate, purser, and boat-swain. They carried the money in about ten o'clock at night: When the maid let them in, they blew out the candle, carried up the money and jewels, Wm. Turner going under the name of purser. Col. Turner and Wm. Turner came away that night and left the money and the jewels there. The next morning col. Turner fetched away the money and jewels at five turns to his own house. And saith, That Wm. Turner was to have 100*l.* of the money for his pains, White and his friend 20*l.* a piece for their pains, and Col. Turner was to have the rest. That William Turner knew not of any of the jewels nor White, none but Col. Turner. That after that night William Turner never saw Col. Turner, nor the other persons in the robbery, till himself with Col. Turner and others were arraigned for the fact at Newgate. Neither did the said William Turner see any money or jewels opened; neither did he receive one penny of the money: neither was he in the counting-house of Mr. Tryon. That neither Col. Turner's wife nor sons knew of this robbery; only that they helped him to remove the money away on Saturday morning. That the money was in the house on Friday at night, when the constable and marshal searched his house; but they had hid them. That Col. Turner being asked where the jewels were on Saturday morning, said, he did deliver them at six of the clock to White in both the bags. That the carcanet of rubies were not in those bags. That Col. Turner, in the conclusion, confessed, that he had not done what he did, but that he did lately understand that another person was made executor, and that he was resolved to have somewhat.

After Col. Turner's examination, Sir Thomas Aleyn told Col. Turner, that the first part of repentance was confession, the second restitution; and he being a convict person, and in all probability not likely to continue long in this world, it were much better for him to restore what was another's man's, than to think to enrich his wife and children, by leaving them that which he knew was none of his; and that one penny of his own estate left them, would continue longer with them than a pound of another body's: and thereupon he was pressed to restore Mr. Tryon the rest of his money, and the carcanet of rubies and diamonds yet in his custody. This had such a present influence upon Mr.

ther set up than that which is now, and was persecuted by that power that then was, and suffered much hardship; and would you have us now to deny our faith and our principles, which we have suffered for so many years; and would you now have us turn from that which we have borne witness of so many years, and turn to your church contrary to our conscience?

Judge. We spend time about those things, come to the matter in hand, what say you to the oath and to the Indictment?

Marg. Fell. I say this to the oath, as I have said in this place before now, Christ Jesus hath commanded me not to swear at all, and that is the only cause and no other; the righteous Judge of Heaven and Earth knoweth, before whose throne and justice ye must all appear one day, and his eyes sees us all and beholds us all at this present, and he hears and sees all our words and actions; and therefore every one ought to be serious, for the place of judgment is weighty; and this I do testify unto you here, where the Lord's eye beholds us all, that for the matter or substance of the oath, and the end for which it was intended, I do own one part, and deny the other; that is to say, I do own truth and faithfulness and obedience to the king, and all his just and lawful demands and commands; I do also deny all plotting, contrivings against the king, and all Popish Supremacy and Conspiracy, and I can no more transgress against king Charles in these things, than I can disobey Christ Jesus his commands; and by the same power and virtue of the same word, which hath commanded me not to swear at all, the same doth bind me in my conscience, that I can neither plot nor contrive against the king, nor do him nor no man upon the earth any wrong; and I do not deny this oath, only because it is the oath of allegiance, but I deny it, because it is an oath, because Christ Jesus hath said I shall not swear at all, neither by Heaven, nor by Earth, nor any other oath; and, if I might gain the whole world for swearing an oath, I could not, and whatever I have to lose this day, for not swearing of an oath, I am willing to offer it up.

Judge. What say you to the indictment?

Marg. Fell. What should I say, I am clear and innocent of the wronging any man upon the earth as my little child that stands by me here, and if any here have any thing to lay to my charge, let them come down and testify it here before you all; and, if I be clear and innocent, you have no law against me: Then colonel Kirby and the sheriff whispered to the Judge, and I looked up and spoke to colonel Kirby, and said, let us have no whispering, I will not have so many judges one of one side, and another of another, here is one judge that is to be judge: and the judge said No, No, I will not hear them; and then I called to colonel Kirby, and said, If thou have any thing to lay to my charge, or to speak against me, come, come down here, and testify against me;

and I said, The judge represents the king's person and his power, and I own that.

Judge. Jury, take notice she doth not take the oath.

Marg. Fell. This matter is weighty to me, whatsoever it is to you, upon many accounts, and I would have the Jury to take notice of it, and to consider seriously what they are going to do; for I stand here before you upon the account of the loss of my liberty and my estate.

Secondly. I stand in obeying Christ's commands, and so keeping my conscience clear, which if I obey this law and king Charles's commands, I defile my conscience and transgresseth against Christ Jesus, who is the king of my conscience, and the cause and controversy in this matter, that you all are here to judge of this day, is betwixt Christ Jesus and king Charles; and I am his servant and witness this day, and this is his cause, and whatsoever I suffer it is for him, and so let him plead my cause when he pleaseth.

And the judge said to the jury, Are ye all agreed, have ye found it? And they said, For the king.

Margaret Fell then spoke to the judge, and said, I have council to plead to my indictment; and he said he would hear them afterwards in arrest of judgment; so the court broke up for that time; and, after dinner when they came again, they intended to have called us at the first, and they had called George Fox out, and was calling me; and I stepped up to the bar, and desired the judge that he would give us time till the next morning to bring in our arrest of judgment; and the judge said at the first we should, and I was stepping down to go my way; and the judge called me back again, and said, Mistress Fell, you wrote to me concerning your prisons, that they are bad and rains in, and are not fit for people to lie in; and, I answered, the sheriff doth know and hath been told of it several times; and now it is raining; if you will send to see, at this present, you may see whether they be fit for people to lie in or no; and colonel Kirby stood up and spoke to the judge to excuse the sheriff, and the badness of the room; and I spoke to him, and said, If you were to lie in it yourselves, you would think it hard, but your minds is only in cruelty to commit others, as William Kirby here hath one, who hath committed ten of our friends, and put them into a cold room, where there was nothing but bare boards to lie on, where they have laid several nights, some of them old ancient men above threescore years of age, and known to be honest men in their country where they live; and when William Kirby was asked, why they might not have liberty to shift for themselves for beds? he answered and said, they were to commit them to prison, but not to provide prisons for them; and we asked him who should do it then? and he said, the king. And then the judge spoke to him and said, they should not do so, they should let

them have prisons fit for men, with several more such like words; and then at that time we were returned to our chambers again; the next day we were called about the tenth hour, and I stood up to the bar, and said I had counsel there, and named them, that the judge might assign them to speak; and I said I had two or three words to speak before them, and I said, I did see all sorts of prisoners that did appear before the judge received mercy, what the law would afford them; but we desired only to receive justice and law, and the judge said what are we here for else; so I stepped down, and the lawyers spoke and shewed the judge several errors, and defects and places of contradiction, and confusion in the indictment; at which the judge seemed to give ear to some of them, others he seemed to wave; but he made a pause and a stop, and seemed dissatisfied, and then called George Fox; and so then when he came to plead, and bringing that by which his indictment was quite quenched; and then they put the oath to George Fox. Again the judge spoke to the lawyers and said, he would consider of those particulars they had spoken to, and he would speak to his brother Twisden before he passed judgment upon me; but, if I do pass judgment, you may have a writ of error; and the lawyers answered him again, will you pass an erroneous judgment my lord? so after they had called the grand jury, and tendered George Fox the oath again, they returned us to our chambers; and when they had drawn another indictment of George Fox, and found it, they called us again in the afternoon, and George Fox pleaded to his indictment and entered his traverse; when he had done, the judge spoke to me, and said, If such a word had been in, which was not in mine, but it was in George Fox's (and yet it was neither of those words, by which his indictment was quashed) but, if that had been in mine, he said he would not have passed sentence, but, being that it was not there, he passed sentence of premunire; then I stood up and told him that he had said to my council, that I might have a writ of error to reverse it; he said I should have what the law would afford me; so I said, The Lord forgive thee for what thou hast done, and this law was made for Popish recusants, but ye pass sentence but on few of them.

Margaret Fell.

The last Assizes holden at Lancaster, the 29th of the sixth month, 1664.

I George Fox, being called before the judge, was put amongst the felons and murderers, and there stood amongst them above two hours, the people and the justices, and the judge gazing upon me; and they tried many things before the judge, and they called me to the bar, and then the judge caused me to be brought, and he then caused the jury to be called, and then he asked the justices whether they had tendered me the oath at the sessions, and they said they had; and the judge caused the book to be given to the jus-

tics for them to swear, they tendered me the oath according to the indictment, and some of them would have refused, and the judge said he would do it to take away occasion, that there might be no occasion; and, when the justices and jury was sworn, the judge asked me whether I had not refused to take the oath the last assize? and I said I never took an oath in my life, and Christ the saviour and judge of the world saith, Swear not at all; and the judge asked me whether or no I had not refused to take the oath the last assizes? and I answered, the words that I said to them was, that if they could prove either priest or teacher, or justices, that, after Christ and the apostles had forbidden swearing, that afterwards they commanded that men should swear, I would swear.

The judge said he was not at that time to dispute whether it was lawful to swear, but to enquire whether or no I did refuse to take the oath.

George. Those things as concerning plotting and the pope's foreign powers, &c. contained in that oath, I utterly deny.

The judge said, I said well in that.

George. I said to them again as before, if they could prove, that, after Christ and the apostle forbade swearing, that again they commanded to swear, I would swear; but Christ and the apostle commanded not to swear, therefore I should shew forth christianity, for I am a christian.

The judge asked me again, whether I denied the oath, what did I say?

George. What would thou have me to say? I have told thee before what I have said.

The judge asked me if I would have those men to swear that I had taken the oath?

George. Would thou have those men to swear that I have refused to take the oath? at which the court burst out into laughter; I asked them if this court was a playhouse; where is gravity and sobriety, for that did not become them? and so the indictment being read, I told the judge I had something to speak to it; and I asked him whether all the oath was not to be put into the indictment, and he said yes; why, then, said I, here is 'pretended to be derived and his heirs and successors' left out; and I asked him whether the oath was to be put to the king's subjects, and he said yes.

I answered, why am not I put in as a subject? but the word 'subject' is left out of the indictment, which is in the oath, and so makes it not the same oath. Jury, take notice of it; but the judge said, I must speak to the jury; at which words the judge read the oath, and found it was as I had said; so he stood up, and said he could put the oath to me, or any man in the court, and so they began to be disturbed in themselves; also the justices. And there began to be a murmuring against the clerks; and the judge he got up, and began to cover the error; so I asked whether the last eleventh day of January the ses-

sions were kept at Lancaster, which they call Monday, and whether or no the sessions was not on that they call Tuesday, the 12th of January; all people take your almanacks, and see whether any oath was rendered G. F. the 11th of January, whether the sessions was not upon the 12th; and the clerks and people looked their almanacks, and saw it was the 12th; and the judge asked whether the 11th was not the first of the sessions, and they answered there was but one day, and it was the 12th; and the judge said then it was a great mistake; and then all the justices was struck, and some of them could have found in their hearts to have gone off, and said they had done it on purpose, and said, what clerk did it? and a great stir was amongst them: and then I spoke to the jury, how that they could not bring me in guilty according to that indictment; and the judge said I must not speak to the jury, but he would speak to them, and said they might bring me in guilty, I denying the oath; then I said what should you do with a form then, and do not go according to it? then you may throw the form away, and then I told the jury that it lay upon their consciences, as they would answer the Lord God before his judgment seat, before whom all must be brought; and so the judge spoke to me, and said he would hear me afterwards any reasons I could alledge, wherefore he should not give judgment against me, and so he spoke to the jury; and I bid him do me justice, and do justice, and so the jury brought in for the king guilty.

And I told them then that the justices had forsworn themselves and the jury both, and so they had small cause to laugh as they did a little before, and to say I was mad; and before I had brought forth my reasons, I stood a little while, and the judge said he cannot dispute; but then the people said, he is too cunning for them all, after I had brought forth my reasons, how contrary to their own indictment they had done and sworn, and brought me in guilty: Oh, the envy and rage, and malice that was among them against me, and lightness, but the Lord confounded it all, that abundance of it was slain; and so I told them I was no lawyer, and the judge said he would hear me what I could alledge before he did give judgment; and so I cried, All people might see how they had forsworn themselves, and gone contrary to their indictment, and so their envy and malice was wonderfully stopt, and so presently Margaret Fell was called, who had a great deal of good service amongst them; and so the court broke up near the second hour; many more words was spoken concerning the truth.

And so in the afternoon we were brought up to have sentence passed upon us, and so Margaret Fell desired that judgment and sentence might be deferred till the next morning; and we desired nothing but law and justice at his hands, for thieves had mercy; and I desired the judge to send some to see my pri-

son, being so bad, they would put no creature they had in it, it was so windy and rainy; and I told him that colonel Kirby, who was then on the bench, said I should be locked up, and no flesh alive should come at me; and most of the gentry of the country being gathered together, expecting to hear the sentence, but they were crost that time; so I was had away, to my prison, and some justices, with colonel Kirby, went up to see it; and when they came up in it they durst scarcely go in it, it was so bad, rainy, and windy, and the badness of the floor; and others that came up said it was a jakes house, I being removed out of the prison, which I was in formerly; and so colonel Kirby said I should be removed from that place ere long, that I should be sent unto some securer place; for he spoke to the judge in the court, saying, that he knew that the justices would join with him; but the judge said, after I have past sentence I will leave him to the jailor; and how I was not a fit man to be conversed with, none should converse with me; and all the noise amongst the people was that I should be transported; and so the next day, towards the 11th hour, we was called forth again to hear the sentence and judgment; but Margaret Fell was called first before me to the bar, and there was some counsellors pleaded, and found many errors in her indictment, and so she was taken by, after the judge had acknowledged them, and then the judge asked what they could say to mine; and I was willing to let no man plead for me, but to speak to it myself; and, though Margaret Fell had some that pleaded for her, yet she spoke as much herself as she would; and though they had the most envy against me, yet the most gross errors was found in mine; and before I came to the bar I was moved to pray, that the Lord would confound their wickedness and envy, and set his truth over all, and exalt his seed; the thundering voice answered, I have glorified thee, and will glorify thee again; and I was so filled full of glory, that my head and ears was filled full of it; and that when the trumpets sounded, and the judges came up again, they all appeared as dead men under me; and so when I was to answer to the errors of the indictment, seeing that all the oath, as he said himself, was to be in, I told him there was many words of the oath left out, which was pretended to be derived, and his heirs and successors and I bid them look the oath, and look the indictment, and they might see it, and they did, and found it according to my words; and I asked them whether the last assizes holden at Lancaster was in the 15th year of the king, which was the 10th day of March, and they said, nay, it was the 16th year; then, said I, look your indictment, and see whether or no it is not the 16th year, and then they were all of a fret both judge and justices, for it was the 15th in the indictment; then the judge bid them look whether Margaret Fell's was so or no, and it was not so: I told them I had something else to speak con-

cerning the indictment, but they said nay, I had spoken enough, so the indictment was thrown out; so I told them that they had small cause to laugh as they had done a little before, for they might see how the justices and the jury were forsworn men, and so I bid him do me justice, and he said, I should have law; and the judge said I was clear from all the former, and he started up in a rage and said, but he would prefer the oath to me again; I told him they had example enough for swearers and false swearers, both justices and jury, yesterday before their faces, for I saw before my eyes both justices and jury had forsworn themselves, who heard the indictment; and so he asked me, whether I would take the oath? I bid him do me justice for my false imprisonment, all this while; for what had I been prisoner all this while for, for I ought to be at liberty; Then he said I was at liberty, but I will put the oath to you again: Then I turned me about, and cried, All people, take notice this is a snare, and all was mighty quiet, and all people was struck and astonished; and he caused the grand jury to be called, for he had called them before, when I was there, when he saw they would be overthrown, and the jury would fain have been dismissed; but he told them, he could not dismiss them, for he had business for them, and they might be ready, when he called them, and I felt his intent, that if I was freed he would come on again; so I looked him in the face, and he was judged in himself, for he saw that I saw him; so he caused the oath to be read to me again, and caused the jury to be called, and then when the oath was read, he asked me whether I would take the oath, or no; and the jury standing by, I told him, I never took oath in my life, and he bid them give me the book, and I bid them give it me in my hand and I opened it; and he bid me swear, and I told him the book bid swear not at all; again he bid me swear, and I told him, the book said I should not swear, and held it open to them, and said by the book, I would prove that men should not swear.

And if they would prove, after Christ and the apostle had forbidden swearing, that afterwards they commanded to swear, then I would swear, for I was a man of a tender conscience; and, if they had any sense of a tender conscience, they would consider this; and the judge asked me, whether I would take the oath? And bid them give me the book again: I told them, ye give me the book to swear, and the book saith I should not swear at all: and so you may prison the book: The judge said, he would imprison George Fox; I answered, nay, you may prison the book, which saith swear not at all; and the sheriff and the judge said, the angel swore in the Revelations; I answered, I bring forth my first begotten Son into the world, saith God, let all the angels in heaven worship him, who saith swear not at all; and the judge said often, he would not dispute; and so then I spoke much to the jury, how that it was for Christ's sake, that

which I did; and therefore none of them to act contrary to that of God in their consciences, for before his judgment-seat they must all be brought; and for all those things contained in the oath, as plots, and persecuting about religion, and the pope's power, &c. I denied them in my heart, and I am a Christian, and shall shew forth Christianity, this day, and it is for Christ's sake that I stand, for it is 'lotish shabim de col dabor;' and they all gazed, and there was a great calm, and they took me away; but there were many more words, both to the jury and to them.

Then, in the afternoon, we was called again, where I stood among the thieves a pretty while, with my hat on, at the last the gaoler took it off; and when I was called to the bar, the jury brought in guilty for the king, and the judge asked me what I could say for myself; I bid them read the indictment, I would not answer to that I did not hear; and, as they read, the judge bid them take heed it was not false again; and they read it so amazedly, that, when they spoke to me, I did scarcely understand what they said, and the judge asked me, What I would plead? I told them, I desired to have a copy of that indictment, and to have some time to answer to it, for the last I had but lately, and never heard it read but once, and then in the court, and so the judge asked me, what time I would have? And I said till the next assizes, and the judge said I should: Then he asked again, what I would plead? I told him I was not guilty at all of denying swearing, swearing obstinately and wilfully, and those things contained in the oath, as jesuitical plots, and foreign powers, &c. I utterly denied them; and he said, I said well in that; And the judge said, the king was sworn, the parliament was sworn, and the justices and he was sworn, and the law was upheld by oaths: I told them, they had sufficient experience of men's swearing; Had not the justices and jury forsworn themselves? And had they not read the book of martyrs, how many of the martyrs suffered, because they could not swear, both in the ten persecutions, and in Bonner's days? And the judge said, I would the laws were otherwise: Then I said, our yea is yea and our nay nay, all along; and if we transgress our yea and nay, let us suffer as they do that break an oath, and so to deny swearing is not a new thing in obedience to Christ's command; and I said this we had sent to the king, who said it was reasonable: And so, after several more words, I was had away to my chamber, being, as I was before, to answer to the indictment; and so the truth and power of the Lord God was glorious over all, and many spirits was crost grievously in their envy and malice.

There was many things spoken both to judge, jury, and people, which were too large to mention.

And so the judge told Margaret Fell her sentence, and I lie upon a new indictment.

G. F.

There follows an Argument, on the unlawfulness of swearing, with this title :

“ Something in Answer to bishop Lancelot Andrews’s Sermon concerning Swearing, being

one of his Sermons upon the Third Commandment; the place that he treats upon is in Jer. the 4th, the words are these : ‘ And thou shalt swear, the Lord liveth, in truth, in judgment, and in righteousness.’ ”

219. A Trial of WITCHES, at the Assizes held at Bury St. Edmond’s for the County of Suffolk : 17 CHARLES II. A. D. 1665. Before Sir Matthew Hale,* knt. then Lord Chief Baron of his Majesty’s Court of Exchequer. Taken by a Person then attending the Court. London : Printed for William Shrewsbury, at the Bible, in Duck-lane, 1682.

[See the Cases of Mary Smith, A. D. 1616, *ante*, vol. 2, p. 1050 ; of the Essex Witches, A. D. 1645, *ante*, vol. 4, p. 817 ; of Lloyd and others, A. D. 1682, and of Wenham, A. D. 1712, *post*. The Case of Malcolm Macgregor cited in the Note, vol. 4, p. 829, is much more fully reported in Maclaurin’s Arguments and Decisions, &c. p. 595, (where the pannell is called Callum Macgregor, alias John Grant). To this report Mr. Maclaurin has subjoined an argument, in which, upon principle and from analogy, he questions the soundness of the decision in favour of the prescription, and this he says, “ may be done with the less diffidence, as a contrary opinion was given by some of the judges not many years ago.” In the Abstract of the Laws of New England (which, as Mr. Davenport observed, should rather be intitled, “ An Abstract of a Code or System of Laws prepared for the Commonwealth of the Massachusetts Bay ;” for although when they compiled their laws they made this abstract their plan in general, yet they departed from it in many instances, and in some which were very material) printed in London in 1655, and inserted in Hutchinson’s Collections of Papers forming the third volume of his History of Massachusetts Bay, the third and fourth articles of the seventh chapter are these : “ III. Witchcraft, which is fellowship by covenant with a familiar spirit, to be punished with death. IV. Consulters with witches not to be tolerated, but either to be cut off by death or banishment, or other suitable punishment.” New England seems to have had its share of witchcraft in the 17th century. The following Account is extracted from Hutchinson’s History :

“ The confusion the country was in from the supposed witchcrafts, seems to have occasioned an adjournment of the general court on the 2nd of July, to the second Wednes-

day in October, 1692 ; very little public business having been done during the session.

“ The great noise which the New England witchcrafts made throughout the English dominions, proceeded more from the general panic with which all sorts of persons were seized, and an expectation that the contagion would spread to all parts of the country, than from the number of persons who were executed, more having been put to death in a single county in England, in a short space of time, than have suffered in all New England from the first settlement until the present time. Fifteen years had passed, before we find any mention of witchcraft among the English colonists. The Indians were supposed to be worshippers of the Devil, and their powows to be wizards. The first suspicion of witchcraft among the English, was about the year 1645 ; at Springfield upon Connecticut river, several persons were supposed to be under an evil hand, and among the rest two of the minister’s children. Great pains were taken to prove the fact upon several persons charged with the crime, but either the nature of the evidence was not satisfactory, or the fraud was suspected, and so no person was convicted until the year 1650, when a poor wretch, Mary Oliver, probably weary of her life from the general reputation of being a witch, after long examination was brought to confession of her guilt, but I do not find that she was executed. Whilst this enquiry was making, Margaret Jones was executed at Charlestown (see vol. 1, p. 150) ; and Mr. Hale mentions a woman at Dorchester, and another at Cambridge about the same time, who all at their death asserted their innocence. Soon after, Hugh Parsons was tried at Springfield and escaped death (*id.* p. 179). In 1655 Mrs. Hibbins, the assistant’s widow, was hanged at Boston (*id.* p. 187). In 1662, at Hartford in Connecticut, about 30 miles from Springfield upon the same river, one Anne Cole, a young woman who lived next door to a Dutch family, and, no doubt, had learned something of the language, was supposed to be possessed with demons, who sometimes spake Dutch and sometimes Eng-

* In allusion to this Trial, Foster, in his Preface, observes of Hale, that ‘ the rectitude of his intentions while under the strong bias of strong prejudices, might sometimes betray him into great mistake.’

lish, and sometimes a language which nobody understood, and who held a conference with one another. Several ministers who were present, took down the conference in writing, and the names of several persons, mentioned in the course of the conference, as actors or bearing parts in it; particularly a woman then in prison upon suspicion of witchcraft, one Greensmith, who upon examination confessed and appeared to be surprized at the discovery. She owned that she and the others named had been familiar with a demon, who had carnal knowledge of her,* and although she had not made a formal covenant, yet she had promised to be ready at his call, and was to have had a high frolic at Christmas, when the agreement was to have been signed. Upon this confession she was executed, and two more of the company were condemned at the same time.† In 1669, Susanna Martin of Salisbury, was bound over to the court upon suspicion of witchcraft, but escaped at that time. She suffered death in 1692.

* In 1671, Elizabeth Knap, another *ventriloqua*, alarmed the people of Groton in much the same manner as Anne Cole had done those of Hartford; but her demon was not so cunning, for instead of confining himself to old women, he railed at the good minister of the town and other persons of good character, and the people could not then be prevailed on to believe him, but believed the girl, when she confessed she had been deluded, and that the devil had tormented her in the shape of good persons; and so she escaped the punishment due to her fraud and imposture.

† In 1673, Eunice Cole of Hampton was tried, and the Jury found her Not (legally) Guilty, but that there were strong grounds to suspect her of familiarity with the devil.

‡ In 1679, William Morse's house at Newbury, was troubled with the throwing of bricks, stones, &c. and a boy of the family was sup-

* "The Egyptians suppose a divine spirit may possibly approach a woman and produce in her the principles of generation; but on the other side, that it is impossible for a man to have any such intercourse with a goddess. It is however altogether irrational, to believe that any god or demon is capable of a sensual love for human bodily form or beauty. Plutarch's Life of Numa."—Hutchinson.

The scheme of Grecian mythology, replete as it is with intrigues between gods and women, goddesses and men, seems scarcely to admit the possibility of such congress being effected by those deities, in their proper persons. Homer tells us, that when Mars was knocked down by Minerva, "Ἐνὰ δὲ θυγὴν ἑλπίσιν ἔθηκεν." Iliad, book 21, v. 407.

† "Jan. 20, 1662; three witches were condemned at Hartford. Feb. 24. After one of the witches was hanged, the maid was well. Godd's the regicide's Diary."—Hutchinson.

posed to be bewitched, who accused one of the neighbours; and in 1682, the house of George Walton, a Quaker at Portsmouth, and another house at Salmon-falls, both in New-Hampshire, were attacked after the same manner.

‡ In 1683, the demons removed to Connecticut river again, where one Desborough's house was molested by an invisible hand, and a fire kindled nobody knew how, which burnt up great part of his estate; and in 1684, Philip Smith, a judge of the court, a military officer and a representative of the town of Hadley, upon the same river, an hypochondriac person, fancied himself under an evil hand, and suspected a woman, one of his neighbours, and languished and pined away, and was generally supposed to be bewitched to death. While he lay ill, a number of brisk ladstried an experiment upon the old woman. Having dragged her out of her house, they hung her up until she was near dead, let her down, rolled her some time in the snow, and at last buried her in it, and there left her, but it happened that she survived, and the melancholy man died.

§ Notwithstanding these frequent instances of supposed witchcrafts, none had suffered for near thirty years, in the Massachusetts colony. The execution of the assistant or counsellor's widow in 1655, was disapproved of by many principal persons, and it is not unlikely that her death saved the lives of many other inferior persons. But in 1685, a very circumstantial account of all or most of the cases I have mentioned, was published, and many arguments were brought to convince the country that they were no delusions nor impostures, but the effects of a familiarity between the devil and such as he found fit for his instruments; and in 1687 or 1688, began a more alarming instance than any which had preceded it. Four of the children of John Goodwin, a grave man and a good liver at the north part of Boston, were generally believed to be bewitched. I have often heard persons, who were of the neighbourhood, speak of the great consternation it occasioned. The children were all remarkable for ingenuity of temper, had been religiously educated and were thought to be without guile. The eldest was a girl of 13 or 14 years. She had charged a laundress with taking away some of the family linen. The mother of the laundress was one of the wild Irish, of bad character, and gave the girl harsh language; soon after which she fell into fits, which were said to have something diabolical in them. One of her sisters and two brothers followed her example, and it is said, were tormented in the same part of their bodies at the same time, although kept in separate apartments, and ignorant of one another's complaints. One or two things were said to be very remarkable; all their complaints were in the day time, and they slept comfortably all night; they were struck

dead at the sight of the Assembly's Catechism, Cotton's Milk for Babes, and some other good books, but could read in Oxford Jest, Popish and Quaker books, and the Common Prayer, without any difficulty. Is it possible the mind of man should be capable of such strong prejudices as that a suspicion of fraud should not immediately arise? But attachments to modes and forms in religion had such force that some of these circumstances seem rather to have confirmed the credit of the children. Sometimes they would be deaf, then dumb, then blind; and sometimes all these disorders together would come upon them. Their tongues would be drawn down their throats, then pulled out upon their chins. Their jaws, necks, shoulders, elbows and all their joints would appear to be dislocated, and they would make most piteous outcries of burnings, of being cut with knives, beat, &c. and the marks of wounds were afterwards to be seen. The ministers of Boston and Charlestown kept a day of fasting and prayer at the troubled house; after which the youngest child made no more complaints. The others persevered, and the magistrates then interposed, and the old woman was apprehended, but upon examination would neither confess nor deny, and appeared to be disordered in her senses. Upon the report of physicians that she was *compos mentis*, she was executed, declaring at her death the children should not be relieved. The eldest after this was taken into a minister's family, where, at first, she behaved orderly, but after some time, suddenly fell into her fits. The account of her affliction is in print; some things are mentioned as extraordinary, which tumblers are every day taught to perform; others seem more than natural, but it was a time of great credulity. The children returned to their ordinary behaviour, lived to adult age, made profession of religion, and the affliction they had been under they publicly declared to be one motive to it. One of them I knew many years after. She had the character of a very sober virtuous woman, and never made any acknowledgment of fraud in this transaction. The printed account was published with a preface by Mr. Baxter, who says, 'The evidence is so convincing, that he must be a very obdurate Sadducee who will not believe*.'

* "In the year 1720, at Littleton in the county of Middlesex, a family was supposed to be bewitched. One J. B. had three daughters, of 11, 9 and 5 years of age. The eldest was a forward girl, and having read and heard many strange stories, would surprise the company where she happened to be, with her manner of relating them. Pleased with the applause, she went from stories she had heard, to some of her own framing, and so on to dreams and visions, and attained the art of swooning and of being to all appearance for some time breath-

It obtained credit sufficient, together with other preparatives, to dispose the whole country to be easily imposed upon by the more extensive and more tragical scene, which was presently after acted at Salem and other parts of the county of Essex. Not

less. Upon her revival, she would tell of strange things she had met with in this and other worlds. When she met with the words, God, Christ, the Holy Ghost, in the bible, she would drop down with scarce any signs of life in her. Strange noises were often heard in and upon the house; stones came down the chimney and did great mischief. She complained of the spectre of Mrs. D——y, a woman living in the town; and once the mother of the girl struck at the place where the said D——y was, and the girl said, 'You have struck her on 'the belly,' and upon enquiry it was found, that D——y complained of a hurt in her belly about that time. Another time the mother struck at a place, where the girl said there was a yellow bird, and she told her mother she had hit the side of it's head; and it again appeared that D——y's head was hurt about the same time. It was common to find her in ponds of water, crying out she should be drowned; sometimes upon the top of the house, and sometimes upon the tops of trees, where she pretended she had flown; and some fancied they had seen her in the air. There were often the marks of blows and pinches upon her, which were supposed to come from an invisible hand.

"The second daughter, after her sister had succeeded so well, imitated her in complaints of D——y, and out did her in feats of running upon the barn, climbing trees, &c. and what was most surprizing, the youngest attempted the same feats, and in some instances went beyond her sisters. The neighbours agreed they were under an evil hand, and it was pronounced a piece of witchcraft, as certain as that there ever had been any at Salem; and no great pains were taken to detect the imposture. Physicians had been at first employed, but to no purpose; and afterwards ministers were called to pray over them, but without success. At length D——y, not long after the supposed blows, took to her bed, and after some time died, and the two eldest girls ceased complaining; the youngest held out longer, but all persisted in it, that there had been no fraud. The eldest, not having been baptized, and being come to adult age, desired and obtained baptism, and the minister then examined her upon her conduct in the affair, and she persisted in her declarations of innocency. In 1728, having removed to Medford, she offered to join the church there, and gave a satisfactory account of herself to the minister of the town; but he knew nothing of the share she had in this transaction. The Lord's day before she was to be admitted, he happened to preach from this text, "He that speaketh lies shall not escape." The woman supposed the sermon to be intend-

many years before, Glanvil published his *Witch Stories in England*; Perkins and other nonconformists were earlier; but the great authority was that of sir Matthew Hale, revered in New-England, not only for his knowledge in the law, but for his gravity and piety. The *Trial of the Witches in Suffolk* was published in 1684. All these books were in New-England, and the conformity between the behaviour of Goodwin's children and most of the supposed bewitched at Salem, and the behaviour of those in England, is so exact, as to leave no room to doubt the stories had been read by the New-England persons themselves, or had been told to them by others who had read them. Indeed, this conformity, instead of giving suspicion, was urged in confirmation of the truth of both; the Old England dæmons and the New being so much alike. The court justified themselves from books of law, and the authorities of Keble, Dalton and other lawyers, then of the first character, who lay down rules of conviction, as absurd and dangerous as any which were practised in New-England. The trial of Richard Hathaway the impostor, before Lord Chief Justice Holt, was ten or twelve years after. This was a great discouragement to prosecutions in England for witchcraft, but an effectual stop was not put to them, until the act of parliament in the reign of his late majesty.* Even this has not wholly cured the

common people, and we hear of old women ducked and cruelly murdered within these last twenty years. Reproach then, for hanging witches, although it has been often cast upon the people of New-England by those of Old, yet it must have been done with an ill grace. The people of New-England were of a grave cast, and had long been disposed to give a serious solemn construction even to common events in providence; but in Old-England, the reign of Charles the second was as remarkable for gaiety as any whatsoever, and for scepticism and infidelity, as any which preceded it.

"Sir William Phips, the governor, upon his arrival, fell in with the opinion prevailing. Mr. Stoughton, the lieutenant-governor, upon whose judgment great stress was laid, had taken up this notion, that although the devil might appear in the shape of a guilty person, yet he would never be permitted to assume the shape of an innocent person.* This opi-

land 7 were executed for witches in 1697, upon the testimony of one girl about 11 years old." Hutchinson.

* "A gentleman of more than ordinary understanding, learning and experience, desired me to write to N. England about your trials and convictions of witches, not being satisfied with the evidence upon which some who have been executed were found guilty; he told me that in the time of the great reformation parliament, a certain person or persons had a commission to discover and prosecute witches. Upon these prosecutions many were executed, in at least one county in England, until, at length, a gentleman of estate and of great character for piety was accused, which put an end to the commission, and the judges upon a re-hearing, reversed many of the judgments; but many lives had been taken away. All that I speak with, much wonder that any man, much less a man of such abilities, learning and experience as Mr. Stoughton, should take up a persuasion, that the devil cannot assume the likeness of an innocent, to afflict another person. In my opinion, it is a persuasion utterly destitute of any solid reason to render it so much as probable, and besides, contradictory to many instances of facts in history. If you think good, you may acquaint Mr. Stoughton and the other judges with what I write." Letter from London to Inc. Mather, Jan. 9, 1692-3.

"I suppose the Long Parliament must be intended by the great reformation parliament, for in 1644, 1645 and 1646, one Matthew Hopkins went from place to place to find out witches. Mr. Baxter says a great number were hanged by his discovery, and that Mr. Calamy went along with the judges to hear the confessions, and to see that there was no fraud or wrong done. Hopkins searched for teats, set some upon stools or tables cross-legged, and kept them 24 hours without meat or drink, within which time it was said their imps would come

ed for her, and went to the minister, who told her nobody had made any objection against her; but being determined to confess her guilt, she disclosed the fraud of herself and her sisters, and desired to make a public acknowledgment, in the face of the church; and accordingly did so. The two sisters, seeing her pitied, had become actors also with her, without being moved to it by her, but when she saw them follow her, they all joined in the secret and acted in concert. They had no particular spite against D——y; but it was necessary to accuse somebody, and the eldest having pitched upon her, the rest followed. The woman's complaints, about the same time the girl pretended she was struck, proceeded from other causes, which were not then properly enquired into. Once, at least, they were in great danger of being detected in their tricks; but the grounds of suspicion were overlooked, through the indulgence and credulity of their parents. M.S. of the Rev. Mr. Turell minister of Medford." Hutchinson.

* "I remember to have heard a gentleman, who in other respects was very sensible, express his surprize upon the first news of this act. The parliament, he said, had in effect declared that there were no evil spirits, he was afraid they would declare by another act that there are no good ones.

"From 1694 to 1701, there were 11 persons tried for witches before Lord Chief Justice Holt, all of whom were acquitted. In Scot-

nion, at first, was generally received. Some of the most religious women who were accused, when they saw the appearance of distress and torture in their accusers, and heard their solemn declarations, that they saw the shapes or spectres of the accused afflicting them, persuaded themselves they were witches, and that the devil, some how or other, although they could not remember how or when, had taken possession of their evil hearts, and obtained some sort of assent to his afflicting in their shapes; and thereupon they thought they might be justified in confessing themselves guilty.

"It seems, at this day, with some people, perhaps but few, to be the question whether the accused or the afflicted were under a preternatural or diabolical possession, rather than whether the afflicted were under bodily distempers, or altogether guilty of fraud and imposture. As many of the original examinations have fallen into my hands, it may be of service to represent this affair in a more full and impartial light than it has yet appeared to the world.

"In February 1691-2, a daughter and a niece of Mr. Parris, the minister of Salem^e village, girls of ten or eleven years of age, and two other girls in the neighbourhood, made the same sort of complaints as Goodwin's children had made, two or three years before. The physicians, having no other way of accounting for the disorder, pronounced them bewitched. An Indian woman, who was brought into the country from New Spain, and then lived with Mr. Parris, tried some experiments which she pretended to be used to, in her own country, in order to find out the witch. This coming to the children's

and suck; others he tried by swimming them, and at length raised the indignation of certain gentlemen, who caused him to be seized, and his hands and feet being tied, to be thrown into the water, where fortunately for him he was proved to be a witch or wizard himself, by his swimming or floating upon the water. The country was cleared of him, and some lamented that the experiment had not been made sooner." Hutchinson.

* "Douglas in his Summary says, "In Salem and its neighbourhood, enthusiasm and other nervous disorders seem to be endemic; it was the seat of the New-England witchcraft, A. D. 1692." I question whether he had any other foundation for this remark than merely this scene of witchcraft, which must be considered as the distemper of the country in general, rather than of any particular town or county, and had Mr. Parris's family lived in any other part of the province, perhaps the neighbourhood would have been as much infected; and no impression ought to be made to the disadvantage of a town the most ancient, and at this day the second in rank within the province, and upon other accounts justly respectable." Hutchinson.

knowledge, they cried out upon the poor Indian, as appearing to them, pinching, and pricking and tormenting them; and fell into fits.

Tituba, the Indian, acknowledged that she had learned how to find out a witch, but denied that she was one herself. Several private fasts were kept at the minister's house and several, more public, by the whole village, and then a general fast through the colony, to seek to God to rebuke Satan, &c. So much notice taken of the children, together with the pity and compassion, expressed by those who visited them, not only tended to confirm them in their design but to draw others into the like. Accordingly, the number of the complainants soon increased, and among them there were two or three women and some girls old enough for witnesses. These had their fits too, and, when in them, cried out, not only against Tituba, but against Sarah Osborn, a melancholy distracted old woman, and Sarah Good, another old woman who was bedrid. Tituba, at length, confessed herself a witch, and that the two old women were her confederates; and they were all committed to prison; and Tituba upon search, was found to have scars upon her back which were called the devil's mark, but might as well have been supposed those of her Spanish master. This commitment was on the 1st of March. About three weeks after, two other women, of good characters and church members, Cory and Nurse were complained of and brought upon their examination; when these children fell into fits, and the mother of one of them, and wife of Thomas Putnam, joined with the children and complained of Nurse as tormenting her; and made most terrible shrieks, to the amazement of all the neighbourhood. The old women denied every thing; but were sent to prison, and such was the infatuation, that a child of Sarah Good, about 4 or 5 years old, was committed also, being charged with biting some of the afflicted who shewed the print of small teeth on their arms. On April 3d Mr. Parris took for his text, 'Have not I chosen you 12, and one of you is a devil.' Sarah Cloyse, supposing it to be occasioned by Nurse's case who was her sister, went out of meeting. She was, presently after, complained of for a witch, examined and committed. Elizabeth Proctor was charged about the same time: her husband, as every good husband would have done, accompanied her to her examination, but it cost the poor man his life. Some of the afflicted cried out upon him also, and they were both committed to prison.

"Instead of suspecting and sifting the witnesses, and suffering them to be cross examined, the authority, to say no more, were imprudent in making use of leading questions, and thereby putting words into their mouths or suffering others to do it. Mr. Parris was over officious; most of the examinations, although in the presence of one or more of the magistrates, were taken by him. The

following examinations, of several of the accused, may serve as specimens, they being generally made in the same manner.

“ At a court held at Salem 11th April 1692, by the honoured Thomas Danforth, deputy governor.—Q. John; * who hurt you? A. Goody Proctor first, and then Goody Cloyse.—Q. What did she do to you? A. She brought the book to me.—Q. John! tell the truth, who hurts you? Have you been hurt? A. The first, was a gentlewoman I saw.—Q. Who next? A. Goody Cloyse.—Q. But who hurt you next? A. Goody Proctor.—Q. What did she do to you? A. She choked me, and brought me the book.—Q. How oft did she come to torment you? A. A good many times, she and Goody Cloyse.—Q. Do they come to you in the night as well as the day? A. They come most in the day.—Q. Who? A. Goody Cloyse and Goody Proctor.—Q. Where did she take hold of you? A. Upon my throat, to stop my breath.—Q. Do you know Goody Cloyse and Goody Proctor? A. Yes, here is Goody Cloyse. (Cloyse) when did I hurt thee? A. A great many times. (Cloyse) Oh! you are a grievous liar.—Q. What did this Goody Cloyse do to you? A. She pinched and bit me till the blood came.—Q. How long since this woman came and hurt you? A. Yesterday, at meeting.—Q. At any time before? A. Yes a great many times.—Q. Mary Walcot! who hurts you? A. Goody Cloyse.—Q. What did she do to you? A. She hurt me.—Q. Did she bring the book? A. Yes.—Q. What was you do with it? A. To touch it, and be well.—Then she fell into a fit.—Q. Doth she come alone? A. Sometimes alone, and sometimes in company with Goody Nurse and Goody Corey, and a great many I do not know.—Then she fell into a fit again.—Q. Abigail Williams; did you see a company at Mr. Parris's house eat and drink? A. Yes, sir. That was their sacrament.—Q. How many were there? A. About forty, and Goody Cloyse and Goody Good were their deacons.—Q. What was it? A. They said it was our blood, and they had it twice that day.—Q. Mary Walcot! have you seen a white man? Yes sir, a great many times.—Q. What sort of man was he? A. A fine grave man, and when he came, he made all the witches to tremble.—Abigail Williams confirmed the same, and that they had such a sight at Deacon Ingersoll's.—Q. Who was at Deacon Ingersoll's then? A. Goody Cloyse, Goody Nurse, Goody Corey, and Goody Good.—Then Sarah Cloyse asked for water, and sat down as one seized with a dying fainting fit; and several of the afflicted fell into fits, and some or them cried out, Oh! her spirit is gone to prison to her sister Nurse.—Q. Elizabeth

Proctor! you understand whereof you are charged, viz. to be guilty of sundry acts of witchcraft; what say you to it? Speak the truth, and so you that are afflicted, you must speak the truth, as you will answer it before God another day. Mary Walcot! doth this woman hurt you? A. I never saw her so as to be hurt by her.—Q. Mary Lewis! does she hurt you?—her mouth was stopped.—Q. Ann Putman! does she hurt you?—She could not speak.—Q. Abigail Williams! does she hurt you?—Her hand was thrust in her own mouth.—2. John! does she hurt you? A. This is the woman that came in her shift and choked me.—2. Did she ever bring the book? A. Yes sir.—2. What to do? A. To write.—2. What this woman? A. Yes sir.—2. Are you sure of it? A. Yes sir.—Again Abigail Williams and Ann Putman were spoke to by the court, but neither of them could make any answer, by reason of dumbness or other fits.—2. What do you say Goody Proctor to these things? A. I take God in heaven to be my witness, that I know nothing of it, no more than the child unborn.—2. Ann Putman! doth this woman hurt you? A. Yes sir, a great many times.—Then the accused looked upon them and they fell into fits.—She does not bring the book to you, does she? A. Yes sir, often, and saith she hath made her maid set her hand to it.—2. Abigail Williams! does this woman hurt you? A. Yes sir, often.—2. Does she bring the book to you? A. Yes.—2. What would she have you to do with it? A. To write in it and I shall be well.—Did not you, said Abigail, tell me, that your maid had written? (Proctor) dear child, it is not so. There is another judgment, dear child.—Then Abigail and Ann had fits.—By and by they cried out, look you there is Goody Proctor upon the beam.—By and by, both of them cried out of Goodman Proctor himself and said he was a wizard.—Immediately, many, if not all of the bewitched, had grievous fits.—2. Ann Putman! who hurt you? A. Goodman Proctor and his wife too.—Afterwards, some of the afflicted cried, there is Proctor going to take up Mrs. Pope's feet.—And her feet were immediately taken up.—2. What do you say Goodman Proctor to these things? A. I know not. I am innocent.—Abigail Williams cried out, there is Goodman Proctor going to Mrs. Pope, and immediately, said Pope fell into a fit.—You see the devil will deceive you; the children could see what you was going to do before the woman was hurt. I would advise you to repentance, for the devil's bringing you out.—Abigail Williams cried out again, there is Goodman Proctor going to hurt Goody Bibber; and immediately Goody Bibber fell into a fit. There was the like of Mary Walcot, and divers others.—Benjamin Gould gave in his testimony, that he had seen Goodman Corey and his wife, Proctor and his wife, Goody Cloyse, Goody Nurse,

* “ This was Tituba's husband, who seems to have been a cunning fellow, and to avoid being accused joined with the afflicted.” Hutchinson.
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and Goody Griggs in his chamber last Thursday night—Elizabeth Hubbard was in a trance during the whole examination.—During the examination of Elizabeth Proctor, Abigail Williams and Ann Putman, both made offer to strike at said Proctor, but when Abigail's hand came near it opened, whereas it was made up into a fist before, and came down exceeding lightly, as it drew near to said Proctor, and at length with open and extended fingers, touched Proctor's hood very lightly. Immediately Abigail cried out her fingers, her fingers, her fingers burned, and Ann Putman took on most grievously, of her head, and sunk down."

"Salem, April 11, 1692. Mr. Samuel Parris was desired by the honourable Thomas Danforth, deputy-governor, and the council, to take in writing the aforesaid Examinations, and accordingly took and delivered them in; and upon hearing the same, and seeing what was then seen, together with the charge of the afflicted persons, were by the advice of the council all committed by us,

JOHN HAWTHORNE, } Assistants."
JOHN CORWIN, }

"No wonder the whole country was in a consternation, when persons, of sober lives and unblemished characters, were committed to prison upon such sort of evidence. Nobody was safe. The most effectual way to prevent an accusation, was to become an accuser; and accordingly the number of the afflicted increased every day, and the number of the accused in proportion, who in general persisted in their innocency; but, being strongly urged to give glory to God by their confession, and intimation being given that this was the only way to save their lives, and their friends urging them to it, some were brought to own their guilt. The first confession upon the files, is of Deliverance Hobbs, May 11th, 1692, being in prison. She owned every thing she was required to do. The confessions multiplied the witches, new companions were always mentioned, who were immediately sent for and examined. Thus more than an hundred women, many of them of fair characters and of the most reputable families, in the town of Salem, Beverly, Andover, Billerica, &c. were apprehended, examined and, generally, committed to prison. The confessions being much of the same tenor, "one or two may serve for specimens.

"The Examination and Confession (8 Sept. 92.) of Mary Osgood, wife of Captain Osgood of Andover, taken before John Hawthorne and other their majesties justices.

"She confesses, that about 11 years ago, when she was in a melancholy state and condition, she used to walk abroad in her orchard and upon a certain time, she saw the appear-

ance of a cat, at the end of the house, which yet she thought was a real cat. However, at that time, it diverted her from praying to God, and instead thereof she prayed to the devil; about which time she made a covenant with the devil, who as a black man, came to her and presented her a book, upon which she laid her finger and that left a red spot; and that upon her signing, the devil told her he was her God, and that she should serve and worship him, and, she believes, she consented to it. She says further, that about two years ago, she was carried through the air, in company with deacon Frye's wife, Ebenezer Baker's wife and Goody Tyler, to Five-mile pond, where she was baptized by the devil, who dipped her face in the water and made her renounce her former baptism, and told her she must be his, soul and body for ever, and that she must serve him, which she promised to do. She says, the renouncing her first baptism was after her dipping, and that she was transported back again through the air, in company with the forenamed persons, in the same manner as she went, and believes they were carried upon a pole.—Q. How many persons were upon the pole? A. As I said before, viz. Four persons and no more but whom she had named above.—She confesses she has afflicted three persons, John Sawdy, Martha Sprague and Rose Foster, and that she did it by pinching her bed cloaths, and giving consent the devil should do it in her shape, and that the devil could not do it without her consent.—She confesses the afflicting persons in the court, by the glance of her eye. She says, as she was coming down to Salem to be examined, she and the rest of the company with her stopped at Mr. Phillips's to refresh themselves, and the afflicted persons, being behind them upon the road, came up just as she was mounting again and were then afflicted, and cried out upon her, so that she was forced to stay until they were all past, and said she only looked that way towards them.—Q. Do you know the devil can take the shape of an innocent person and afflict? A. I believe he cannot.—Q. Who taught you this way of witchcraft? A. Satan, and that he promised her abundance of satisfaction and quietness in her future state, but never performed any thing; and that she has lived more miserably and more discontented since, than ever before. She confesses further, that she herself, in company with Goody Parker, Goody Tyler and Goody Dean, had a meeting at Moses Tyler's house, last Monday night, to afflict, and that she and Goody Dean carried the shape of Mr. Dean the minister, between them, to make persons believe that Mr. Dean afflicted.—Q. What hindered you from accomplishing what you intended? A. The Lord would not suffer it to be, that the devil should afflict in an innocent person's shape.—Q. Have you been at any other witch meetings? A. I

know nothing thereof, as I shall answer in the presence of God and his people: but said, that the black man stood before her, and told her, that what she had confessed was a lie; notwithstanding, she said that what she had confessed was true, and thereto put her hand. Her husband being present was asked, if he judged his wife to be any way discomposed. He answered, that having lived with her so long, he doth not judge her to be any ways discomposed, but has cause to believe what she has said is true. When Mistress Osgood was first called, she afflicted Martha Sprague and Rose Foster, by the glance of her eyes, and recovered them out of their fits by the touch of her hand. Mary Lacey and Betty Johnson and Hannah Post saw Mistress Osgood afflicting Sprague and Foster. The said Hannah Post and Mary Lacey and Betty Johnson, jun. and Rose Foster and Mary Richardson were afflicted by Mistress Osgood, in the time of their examination, and recovered by her touching of their hands.

“ I underwritten, being appointed by authority, to take this examination, do testify upon oath, taken in court, that this is a true copy of the substance of it, to the best of my knowledge, 5 Jan. 1692-3. The within Mary Osgood was examined before their majesties justices of the peace in Salem.
(Attest.) JOHN HIGGINSON, Just. Pac.”

“ A miserable negro woman, charged by some of the girls with afflicting them, confessed, but was cunning enough to bring the greatest share of the guilt upon her mistress.

“ Salem, Monday July 4, 1692. The Examination of Candy, a Negro Woman, before Bartholomew Gedney and John Hawthorne, Esqrs. Mr. Nicholas Noyes also present.

“ Q. Candy! are you a witch? A. Candy no witch in her country. Candy's mother no witch. Candy no witch. Barbados. This country, mistress give Candy witch.—Q. Did your mistress make you a witch in this country? A. Yes, in this country, mistress give Candy witch.—Q. What did your mistress do to make you a witch? A. Mistress bring book and pen and ink, make Candy write in it.—Q. What did you write in it?—She took a pen and ink and upon a book or paper made a mark.—Q. How did you afflict or hurt these folks, where are the puppets you did it with?—She asked to go out of the room and she would shew or tell; upon which she had liberty, one going with her, and she presently brought in two clouts, one with two knots tied in it, the other one; which being seen by Mary Warren, Deliverance Hobbs and Abigail Hobbs, they were greatly affrighted and fell into violent fits, and all of them said that the black man and Mrs. Hawkes and the negro stood by the puppets or rags and pinched them, and then they

were afflicted, and when the knots were untied yet they continued as aforesaid. A bit of one of the rags being set on fire, the afflicted all said they were burned, and cried out dreadfully. The rags being put into water, two of the forenamed persons were in dreadful fits, almost choaked, and the other was violently running down to the river, but was stopped.

(Attest.) JOHN HAWTHORNE, Just. Peace.”

“ Mrs. Hawkes, the mistress, had no other way to save her life but to confess also.

“ Mr. Hale, the minister of Beverly, who has the character of an impartial relator, acknowledges that the confessors, generally, went off from their confessions; some saying they remembered nothing of what they had said, others that they had belied themselves, &c. but he thinks, if the times had been calm, the condition of the confessors might have called for a *melius inquirendum*; and thinks it remarkable that children and grandchildren should confirm their parents and grandparents confession, instancing in the case of Goody Foster, her daughter Mary Lacey, and grand-daughter Mary, Lacey, jun. and that other children should accuse their own parents, as in the case of Richard Carrier, a lad of 18 years of age. These confessions are preserved, and a few extracts from them will shew they were forced from them, through fear of losing their lives if they refused, and their fear, in some, was so great as to disorder their brains, and they scarce knew what they said.

“ 21st July 1692. Before Major Gidney, Mr. Hawthorne, Mr. Corwin and Capt. Higginson.

“ Q.—Goody Foster! you remember we have three times spoken with you, and do you now remember what you then confessed to us?—You have been engaged in very great wickedness, and some have been left to hardness of heart to deny; but it seems that God will give you more favour than others, inasmuch as you relent. But your daughter here hath confessed some things that you did not tell us of. Your daughter was with you and Goody Carrier, when you did ride upon the stick. A. I did not know it.—Q. How long have you known your daughter to be engaged? A. I cannot tell, nor have I any knowledge of it at all.—Q. Did you see your daughter at the meeting? A. No.—Q. Your daughter said she was at the witches meeting, and that you yourself stood at a distance off and did not partake at that meeting; and you said so also; give us a relation from the beginning until now. A. I know none of their names that were there, but only Goody Carrier.—Q. Would you know their faces if you saw them? A. I cannot tell.—Q. Were there not two companies in the field at the same time? A. I remember no more.—Mary Warren, one of the afflicted, said that

Goody Carrier's shape told her, that Goody Foster had made her daughter a witch.—*Q.* Do not you acknowledge that you did so about 15 years ago? *A.* No, and I know no more of my daughter's being a witch than what day I shall die upon.—*Q.* Are you willing your daughter should make a full and free confession? *A.* Yes.—*Q.* Are you willing to do so too? *A.* Yes.—*Q.* You cannot expect peace of conscience without a free confession. *A.* If I knew any thing more, I would speak it to the utmost.—Goody Lacey, the daughter, called in, began thus; Oh! mother! how do you do? We have left Christ, and the devil hath got hold of us. How shall I get rid of this evil one? I desire God to break my rocky heart that I may get the victory this time.—*Q.* Goody Foster! you cannot get rid of this snare, your heart and mouth is not open. *A.* I did not see the devil, I was praying to the Lord.—*Q.* What Lord? *A.* To God.—*Q.* What God do witches pray to? *A.* I cannot tell, the Lord help me.—*Q.* Goody Lacey! had you no discourse with your mother when riding? *A.* No, I think I had not a word.—*Q.* Who rid foremost on that stick to the village? *A.* I suppose my mother.—Goody Foster said, that Goody Carrier was foremost.—*Q.* Goody Lacey! how many years ago since they were baptized? *A.* Three or four years ago, I suppose.—*Q.* Who baptized them? *A.* The old serpent.—*Q.* How did he do it? *A.* He dipped their heads in the water, saying, they were his and that he had power over them.—*Q.* Where was this? *A.* At Fall's river.—*Q.* How many were baptized that day? *A.* Some of the chief; I think there were six baptized.—*Q.* Name them. *A.* I think they were of the higher powers.*—Mary Lacey, the grand-daughter, was brought in, and Mary Warren fell into a violent fit.—*Q.* How dare you come in here, and bring the devil with you, to afflict these poor creatures? Lacey laid her hand on Warren's arm, and she recovered from her fit.—*Q.* You are here accused of practising witchcraft upon Goody Ballard, which way do you do it? *A.* I cannot tell. Where is my mother that made me a witch, and I knew it not?—*Q.* Can you look upon that maid Mary Warren, and not hurt her? Look upon her in a friendly way. She, trying so to do, struck her down with her eyes.—*Q.* Do you acknowledge now you are a witch? *A.* Yes.—*Q.* How long have you been a witch? *A.* Not above a week.—*Q.* Did the devil appear to you? *A.* Yes.—*Q.* In what shape? *A.* In the shape of a horse.—*Q.* What did he say to you? *A.* He bid me not to be afraid of any thing, and he would not bring me out, but he has proved a liar from the beginning.—*Q.* When was this? *A.* I know not; above a week.—*Q.* Did you set your hand to the book? *A.* No.—*Q.* Did he

* "It was time to stop." Hutchinson.

bid you worship him? *A.* Yes, he bid me also afflict persons.—You are now in the way to obtain mercy if you will confess and repent. She said, the Lord help me.—*Q.* Do not you desire to be saved by Christ? *A.* Yes.—Then you must confess freely what you know in this matter. She then proceeded. I was in bed and the devil came to me and bid me obey him and I should want for nothing, and he would not bring me out.—*Q.* But how long ago? *A.* A little more than a year.—*Q.* Was that the first time? *A.* Yes.—*Q.* How long was you gone from your father, when you ran away? *A.* Two days.—*Q.* Where had you your food? *A.* At John Stone's.—Did the devil appear to you then, when you was abroad? *A.* No, but he put such thoughts in my mind as not to obey my parents.—*2.* Who did the devil bid you afflict? *A.* Timothy Swan. Richard Carrier comes often a nights and has me to afflict persons.—*2.* Where do ye go? *A.* To Goody Ballard's sometimes.—*2.* How many of you were there at a time? *A.* Richard Carrier and his mother, and my mother and grandmother.—Upon reading over the confession so far, Goody Lacey, the mother, owned this last particular. *2.* How many more witches are there in Andover? *A.* I know no more, but Richard Carrier.

"Carrier, at first, denied all, but was followed until he was brought to accuse his mother, much in the same manner with Foster's daughter and grand-daughter.

"It is urged by the writers of that day, as a principal part of the evidence against Mr. Burroughs, the minister, that seven or eight of the confessors witnessed against him. It will appear from the examinations, that the confession was drawn from the examinants by the court.

"*Q.* Mary Lacey! was there not a man also among you at your meeting? *A.* None but the devil.—*Q.* What shape was the devil in then? *A.* He was a black man, and had a high crowned hat.—*Q.* Your mother and your grandmother say, there was a minister there. How many men did you see there? *A.* I saw none but Richard Carrier.—*Q.* Did you see none else? *A.* There was a minister there, and I think he is now in prison. *2.* Were there not two ministers there? *A.*

* "Mr. Deane, one of the ministers of Andover, then near fourscore, seems to have been in danger. He is tenderly touched in several of the examinations, which might be owing to a fair character, and he may be one of the persons accused, who caused a discouragement to further prosecutions. "Deliverance Deane being asked why she and the rest brought in Mr. Deane as afflicting persons, she answered, it was Satan's subtlety, for he told her he would put a sham upon all these things, and make people believe that he did afflict. She said Mrs. Osgood and she gave their consent the devil should bring Mr. Deane's shape to afflict. Being asked

Cannot tell.—2. Was there not one Mr. Burroughs there? A. Yes."

"Carrier's Examination is in this manner; the questions are omitted. 'We met in a green which was the minister's pasture. We were in two companies at last. I think there was a few men with them. I heard Sarah Good talk of a minister or two. One of them was he that has been at the Eastward, his name is Burroughs, and is a little man. I remember not the other's name.'

"Margaret Jacobs had been brought to accuse herself, and then to charge Burroughs, the minister, and her own grandfather; but, struck with horror, chose to lose her own life, rather than persist in her confession; and begged forgiveness of Burroughs before his execution, who is said to have freely forgiven her; and recanted all she had said against her grandfather, but in vain as to his life. Her own life was saved by a disorder in her head, which prevented her trial at the first court; but before the next court, she made a formal recantation of all she had confessed, and delivered it to the judges.

"The humble Declaration of Margaret Jacobs unto the honoured Court now sitting at Salem, sheweth,

"That whereas your poor and humble declarant being closely confined here in Salem gaol for the crime of witchcraft, which crime thanks be to the Lord I am altogether ignorant of, as will appear at the great day of judgment: May it please the honoured court, I was cried out upon by some of the possessed persons, as afflicting them; whereupon I was brought to my examination, which persons at the sight of me fell down, which did very much startle and affright me. The Lord above knows I knew nothing, in the least measure, how or who afflicted them; they told me, without doubt I did, or else they would not fall down at me; they told me, if I would not confess I should be put down into the dungeon and would be hanged, but if I would confess I should have my life; the which did so affright me, with my own vile wicked heart, to save my life; made me make the like confession I did, which confession, may it please the honoured court, is altogether false and untrue. The very first night after I had made confession, I was in such horror of conscience that I could not sleep for fear the devil should carry me away for telling such horrid lies. I was, may it please the honoured court, sworn to my confession, as I understand since, but then; at that time, was ignorant of it, not knowing what an oath did mean. The Lord, I hope, in whom I trust, out of the abundance of his mercy, will forgive me my false forswearing myself. What I said, was altogether false

against my grandfather, and Mr. Burroughs, which I did to save my life and to have my liberty; but the Lord, charging it to my conscience, made me in so much horror, that I could not contain myself before I had denied my confession, which I did though I saw nothing but death before me, chusing rather death with a quiet conscience, than to live in such horror, which I could not suffer. Where, upon my denying my confession, I was committed to close prison, where I have enjoyed more felicity in spirit, a thousand times, than I did before in my enlargement.

"And now, may it please your honours, your declarant, having in part given your honours a description of my condition, do leave it to your honours pious and judicious discretions, to take pity and compassion on my young and tender years, to act and do with me, as the Lord above and your honours shall see good, having no friend, but the Lord, to plead my cause for me; not being guilty in the least measure of the crime of witchcraft, nor any other sin that deserves death from man; and your poor and humble declarant shall for ever pray, as she is bound in duty, for your honours happiness in this life and eternal felicity in the world to come. So prays your honours declarant.

MARGARET JACOBS."

"The Recantation of several persons in Andover; will shew in what manner they were brought to their confessions:

"We whose names are under-written, inhabitants of Andover; when as that horrible and tremendous judgment beginning at Salem village in the year 1692, by some called Witchcraft, first breaking forth at Mr. Parris's house, several young persons, being seemingly afflicted, did accuse several persons for afflicting them, and many were believing it so to be, we being informed that, if a person was sick, the afflicted person could tell what or who was the cause of that sickness: Joseph Ballard, of Andover, his wife being sick at the same time, he either from himself or by the advice of others, fetched two of the persons, called the afflicted persons, from Salem village to Andover, which was the beginning of that dreadful calamity that befel us in Andover, believing the said accusations to be true, sent for the said persons to come together to the meeting house in Andover, the afflicted persons being there. After Mr. Barnard had been at prayer, we were blindfolded, and our hands were laid upon the afflicted persons, they being in their fits and falling into their fits at our coming into their presence, as they said; and some led us and laid our hands upon them, and then they said they were well, and that we were guilty of afflicting them: whereupon, we were all seized, as prisoners, by a warrant from the justice of the peace and forthwith carried to Salem. And, by reason of that sudden surprisal, we knowing

again if Mrs. Osgood and she acted this business, she said yes." Mr. Deane was much beholden to this woman." Hutchinson.

ourselves altogether innocent of that crime, we were all exceedingly astonished and amazed, and consternated and affrighted even out of our reason; and our nearest and dearest relations, seeing us in that dreadful condition, and knowing our great danger, apprehended there was no other way to save our lives, as the case was then circumstanced, but by our confessing ourselves to be such and such persons as the afflicted represented us to be, they, out of tenderness and pity, persuaded us to confess what we did confess. And indeed that confession, that it is said we made, was no other than what was suggested to us by some gentlemen, they telling us that we were witches, and they knew it, and we knew it, which made us to think that it was so; and our understandings, our reason, our faculties, almost gone, we were not capable of judging of our condition; as also the hard measures they used with us rendered us incapable of making our defence, but said any thing and every thing which they desired, and most of what we said was but, in effect, a consenting to what they said. Some time after, when we were better composed, they telling us what we had confessed, we did profess that we were innocent and ignorant of such things; and we hearing that Samuel Wardwell had renounced his confession, and quickly after condemned and executed, some of us were told we were going after Wardwell.

“*Mary Osgood, Deliverance Dane, Sarah Wilson, Mary Tiler, Abigail Barker, Hannah Tiler.*”

“The testimonial to these persons characters by the principal inhabitants of Andover will outweigh the credulity of the justices who committed them or of the grand jury which found bills against them.

“To the honoured Court of Assize held at Salem. The humble Address of several of the Inhabitants of Andover.

“May it please this honoured court,

“We being very sensible of the great sufferings our neighbours have been long under in prison, and charitably judging that many of them are clear of that great transgression which hath been laid to their charge, have thought it our duty to endeavour their vindication so far as our testimony for them will avail. The persons in whose behalf we are desired and concerned to speak something at present are Mrs. Mary Osgood, Eunice Frye, Deliverance Dane, Sarah Wilton and Abigail Barker, who are women of whom we can truly give this character and commendation, that they have not only lived among us so inoffensively as not to give the least occasion to any that know them to suspect them of witchcraft, but by their sober godly and exemplary conversation have obtained a good report in the place, where they have been well esteemed and approved in the church of which they are members.

“We were surprized to hear that persons of known integrity and piety were accused of so horrid a crime, not considering, then, that the most innocent were liable to be so misrepresented and abused. When these women were accused by some afflicted persons of the neighbourhood, their relations and others, though they had so good grounds of charity that they should not have thought any evil of them yet, through a misrepresentation of the truth of that evidence that was so much credited and improved against people, took great pains to persuade them to own what they were, by the afflicted, charged with, and, indeed, did unreasonably urge them to confess themselves guilty, as some of us who were then present can testify. But these good women did very much assert their innocence, yet some of them said they were not without fear lest Satan had some way ensnared them, because there was that evidence against them which then was by many thought to be a certain indication and discovery of witchcraft, yet they seriously professed they knew nothing by themselves of that nature. Nevertheless, by the unwearied solicitations of those that privately discoursed them both at home and at Salem, they were at length persuaded publicly to own what they were charged with, and so submit to that guilt which we still hope and believe they are clear of. And, it is probable, the fear of what the event might be and the encouragement that, it is said, was suggested to them, that confessing was the only way to obtain favour, might be too powerful a temptation for timorous women to withstand, in the hurry and distraction that we have heard they were then in. Had what they said against themselves proceeded from conviction of the fact, we should have had nothing to have said for them, but we are induced to think that it did not, because they did soon privately retract what they had said, as we are informed, and, while they were in prison, they declared to such as they had confidence to speak freely and plainly to, that they were not guilty of what they had owned, and that what they had said against themselves was the greatest grief and burden they laboured under: now, though we cannot but judge it a thing very sinful for innocent persons to own a crime they are not guilty of, yet, considering the well ordered conversation of those women while they lived among us, and what they now seriously and constantly affirm in a more composed frame, we cannot but in charity judge them innocent of the great transgression that hath been imputed to them. As for the rest of our neighbours, who are under the like circumstances with these that have been named, we can truly say of them that, while they lived among us, we have had no cause to judge them such persons as, of late, they have been represented and reported to be, nor do we know that any of

their neighbors had any just grounds to suspect them of that evil that they are now charged with.

Dudley Bradstreet	Francis Dane, jun.
Francis Dane, sen.	George Abbot
Thomas Barnard	Wm. Chandler, jun.
Tho. Chandler, sen.	John Chandler
John Barker	Joseph Robinson
Henry Ingolls, sen.	Thomas Johnson
Wm. Chandler, sen.	Tho. Johnson, jun.
Samuel Martin	Andrew Peters.
Stephen Parker	Mary Peters
Samuel Ingolls	Elizabeth Rite
Ephraim Stevens	Wm. Peters
Daniel Poore	Sam. Peters
John Ingolls	Walter Wright
Henry Ingolls, jun.	Hooker Osgood
John Frie, sen.	Benja. Stevens
James Frie	Ann Bradstreet
John Aslebee	Joanna Dane
Samuel Holt	Eliza. Stevens
John Abbot, sen.	Eliza. Barnard
Samuel Blanchard	Phebe Robinson
Wm. Ballard	Hannah Chandler
Thomas Hooper	Hannah Dane
John Hooper	Bridget Chandler
Wm. Abbot	Mary Johnson
James Russell	Robert Russel
Oliver Holt	Mary Russel.
John Presson	

Among the confessing witches I find Dorothy Falkener, a child of ten years, Abigail Falkener of eight, and Sarah Carrier between seven and eight.

Sarah Carrier's Confession, Aug. 11th, 1696.

It was asked Sarah Carrier by the magistrates or justices John Hawthorne esq. and others: How long hast thou been a witch? *A.* Ever since I was six years old.—*Q.* How old are you now? *A.* Near eight years old, brother Richard says I shall be eight years old in November next.—*Q.* Who made you a witch? *A.* My mother, she made me set my hand to a book.—*Q.* How did you set your hand to it? *A.* I touched it with my fingers and the book was red, the paper of it was white. She said she never had seen the black man; the place where she did it was in Andrew Foster's pasture and Elizabeth Johnson, jun. was there. Being asked who was there beside, she answered her aunt Toothaker and her cousin. Being asked when it was, she said, when she was baptized.—*Q.* What did they promise to give you? *A.* A black dog.—*Q.* Did the dog ever come to you? *A.* No.—*Q.* But you said you saw a cat once. What did that say to you? *A.* It said it would tear me in pieces if I would not set my hand to the book. She said her mother baptized her and the devil or black man was not there as she saw, and her mother said when she baptized her, Thou art mine for ever and ever and amen.—*Q.* How did you afflict folks? *A.* I pinched them, and she said she had no puppets, but she went to

them that she afflicted. Being asked whether she went in her body or her spirit, she said in her spirit. She said her mother carried her thither to afflict.—*Q.* How did your mother carry you when she was in prison? *A.* She came like a black cat.—*Q.* How did you know that it was your mother? *A.* The cat told me so that she was my mother. She said she afflicted Phelps's child last Saturday, and Elizabeth Johnson joined with her to do it. She had a wooden spear, about as long as her finger, of Elizabeth Johnson, and she had it of the devil. She would not own that she had ever been at the witch meeting at the village. This is the substance,

(Attest.) SIMON WILLARD.*

"This poor child's mother then lay under sentence of death, the mother of the other two children was in prison, and soon after tried and condemned, but upon her confession reprieved and finally pardoned.

"I meet with but one person in near an hundred whose examinations are upon file, that was dismissed after having been once charged, for which he might thank one of the girls who would not agree with the rest of the accusation.

"The Examination of Nehemiah Abbot, at a court at Salem village, by John Hawthorne, and Jonathan Corwin Esqrs. 22d April 1693.

"What say you, are you guilty of witchcraft, of which you are suspected, or not? No sir, I say before God, before whom I stand, that I know nothing of witchcraft. Who is this man? Ann Putman named him.—Mary Walcot said she had seen his shape. What do you say to this? I never did hurt them. Who hurt you Ann Putman? That man. I never hurt her. Ann Putman said, he is upon the beam. Just such a discovery of the person carried out, and she confessed; and if you would find mercy of God, you must confess.—If I should confess this, I must confess what is false. Tell how far have you gone, who hurts you? I do not know, I am absolutely free. As you say, God knows. If you will confess the truth, we desire nothing else that you may not hide your guilt, if you are guilty, and therefore confess if so. I speak before God that I am clear from this accusation. What, in all respects? Yes in all respects. Doth this man hurt you? Their mouths were stopped. You hear several accuse you, though one cannot open her mouth. I am altogether free. Charge him not unless it be he. This is the man say some, and some say he is very like him. How did you know his name? He did not tell me himself, but other witches told me. Ann Putman said, it is the same man, and then she was taken with a fit. Mary Walcot, is this the man? He is like him, I cannot say it is he. Mercy Lewis said it is not the man. They all agreed, the man had a bunch on his eyes.

Ann Putman, in a fit, said, be you the man? ay, do you say you be the man? did you put a mist before my eyes? Then he was sent forth till several others were examined. When he was brought in again, by reason of much people and many in the windows so that the accusers could not have a clear view of him, he was ordered to be abroad and the accusers to go forth to him and view him in the light, which they did, and in the presence of the magistrates and many others discoursed quietly with him, one and all acquitting him, but yet said he was like that man, but he had not the wen they saw in his apparition. Note, he was a hilly-faced man, and stood shaded by reason of his own hair, so that for a time he seemed to some bystanders and observers, to be considerably like the person the afflicted did describe.

“Mr. Samuel Parris, being desired to take in writing the examination of Nehemiah Abbot, hath delivered it as aforesaid, and upon hearing the same did see cause to dismiss him.

JOHN HAWTHORNE, } Assistants.”
JONA. CORWIN, }

“We see, from the preceding examinations and confessions, the method of proceeding preparatory to the trial of the accused persons.

“For three or four months, the afflicted generally confined themselves to their own neighbourhood, in their accusations. In the examinations there is, sometimes, mention made of strangers, whose shapes or spectres were unknown to the afflicted. The first accused, in any other county, was Mrs. Cary, wife of Mr. Nathaniel Cary, a principal inhabitant of the town of Charlestown. He, as soon as he heard of it, carried his wife to Salem village, supposing she would not be known to the afflicted. They happened to arrive, just as the justices were going into the meeting house, where they held their court, to examine prisoners. All the prisoners which were brought in, were accused, and the girls fell into fits as usual; but Mrs. Cary came in and sat without any notice, except that one or two of the afflicted came to her and asked her name. After the examination, her husband went to the tavern, intending there to discourse with one of the girls, who he heard had accused his wife. John, the Indian who pretended to be one of the afflicted, was a servant in the house. Two of the girls were soon brought in, and instead of giving any opportunity of discoursing with them, they tumbled about the floor, crying out Cary, Cary, and a warrant came to apprehend her; the Indian joining with the two girls in the charge. No bail could be admitted, nor was it to any purpose to make any defence, and she was ordered to the prison in Boston; but, upon the request of her husband was removed to Cambridge goal, where she was kept in irons. Afterwards when the trials came on at Salem, her husband went there

to see how they were managed, and he thought the only chance his wife had for her life, was by an escape, which, by some means or other, he effected, and fled with her to New York, where governor Fletcher entertained them very courteously.—They petitioned, I suppose before the escape, that she might be tried in the county where she lived. If the Court thought they were held to try the fact in the county where it was committed, there seems to have been room for an argument, her body being in Middlesex at the same time that her spectre and the body of the afflicted persons were in Essex.

“Mrs. Cary was committed about the middle of May. Towards the end of the month, Capt. John Alden of Boston was accused, who was thereupon sent down to Salem. He had been many years commander of a sloop in the colony service, employed for supplying the forts east with provisions and stores; and although, upon his first appearing, the justices allowed that he always had the character of an honest man, yet one of them Gidney, soon after, let him know he then saw reason to think otherwise of him. Alden, in his account, says that the accuser first pointed to another man and said nothing, but that the man who held her stooped down to her ear and then she cried out Alden, Alden. All were ordered into the street and a ring made, and then she cried out, There stands Alden a bold fellow with his hat on, sells powder and shot to the Indians, lies with the squaws and has papposes, &c. He was immediately taken into custody of the marshal, and required to deliver up his sword. A further examination was had in the meeting house, and his hands were held open by the officer, that he might not pinch the afflicted, who were struck down at the sight of him, and made their usual cries; all which, the justices deemed sufficient grounds for committing him to goal, where he lay 15 weeks, and then he was prevailed on by his friends to make his escape, and to absent himself until the consternation should abate and the people recover the use of their reason.

“Although the number of prisoners had been increasing from February until the beginning of June, yet there had been no trials. The charter was expected from day to day, and the new constitution of government to take place. Soon after its arrival, commissioners of oyer and terminer were appointed for the trial of witchcrafts. By the charter, the general assembly are to constitute courts of justice, and the governor with the advice of council is to nominate and appoint judges, commissioners of oyer and terminer, &c. but whether the governor, with advice of council can constitute a court of oyer and terminer, without authority for that purpose derived from the general assembly, has been made a question; however, this, the most important court to the life of the subject which ever was held

in the province, was constituted in no other manner. It was opened at Salem, the first week in June. Only one of the accused, Bridget Bishop, alias Oliver, was then brought to trial. She had been charged with witchcraft twenty years before. The accuser, upon his death bed, confessed his own guilt in the accusation; but an old woman, once charged with being a witch, is never afterwards wholly free from the accusation, and she being, besides, of a fractious temper, all the losses the neighbours met with in their cattle and poultry, and accidents in oversetting their carts, &c. were attributed to, her spite against them, and now suffered to be testified against her. This evidence, together with the testimony of the afflicted, and of the confessors, what they had heard from the spectres and seen of her spectre, and an excrescence, called a teat, found upon her body, were deemed by court and jury plenary proof, and she was convicted, and on the 10th of June executed. The further trials were put off to the adjournment, the 30th of June. The governor and council thought proper, in the mean time, to take the opinion of several of the principal ministers upon the state of things as they then stood. This was an old charter practice. They gave their opinion as follows.*

The Return of several Ministers, consulted by his Excellency and the Hon. Council upon the present Witchcraft in Salem village."

Boston, June 15th, 1692.

- " 1. The afflicted state of our poor neighbours that are now suffering by molestations from the invisible world, we apprehend so deplorable, that we think their condition calls for the utmost help of all persons in their several capacities.
- " 2. We cannot but, with all thankfulness, acknowledge the success which the merciful God has given to the sedulous and assiduous endeavours of our honourable rulers to defeat the abominable witchcrafts which have been committed in the country, humbly praying, that the discovery of those mysterious and mischievous wickednesses may be perfected.
- " 3. We judge that in the prosecution of these and all such witchcrafts, there is need of a very critical and exquisite caution, lest by too much credulity for things received only upon the devil's authority, there be a door opened for a long train of miserable consequences, and Satan get an advantage over us; for we should not be ignorant of his devices.
- " 4. As, in complaints upon witchcrafts, there

* I fancy this must be what Douglas had heard something of and calls by mistake "the address of many of the very popular but very weak ministers or clergy to sir W. P. a very weak governor, with thanks for what was already done, and exhorting him to proceed." Hutch.

may be matters of enquiry which do not amount unto matters of presumption, and there may be matters of presumption which yet may not be matters of conviction, so it is necessary, that all proceedings, thereabout, be managed with an exceeding tenderness towards those that may be complained of, especially if they have been persons formerly of an unblemished reputation.

" 5. When the first enquiry is made into the circumstances of such as may lie under the just suspicion of witchcrafts, we could wish that there may be admitted as little as possible of such noise, company and openness, as may too hastily expose them that are examined, and that there may be nothing used as a test for the trial of the suspected, the lawfulness whereof may be doubted by the people of God; but that the directions given by such judicious writers, as Perkins and Bernard, may be observed.

" 6. Presumptions whereupon persons may be committed, and, much more, convictions whereupon persons may be condemned, as guilty of witchcrafts, ought certainly to be more considerable than barely the accused person's being represented by a spectre unto the afflicted; inasmuch as it is an undoubted and a notorious thing, that a dæmon may, by God's permission, appear, even to ill purposes, in the shape of an innocent, yea and a virtuous man. Nor can we esteem alterations made in the sufferers, by a look or touch of the accused, to be an infallible evidence of guilt, but frequently liable to be abused by the devil's leger-demain.

" 7. We know not whether some remarkable affronts given the devils, by our disbelieving those testimonies whose whole force and strength is from them alone, may not put a period unto the progress of the dreadful calamity begun upon us, in the accusation of so many persons, whereof some, we hope, are yet clear from the great transgression laid to their charge.

" 8. Nevertheless, we cannot but humbly recommend, unto the government, the speedy and vigorous prosecutions, of such as have rendered themselves obnoxious, according to the directions given in the laws of God and the wholesome statutes of the English nation for the detection of witchcrafts."

" The judges seem to have paid more regard to the last article of this Return, than to several which precede it; for the prosecutions were carried on with all possible vigour and without that exquisite caution which is proposed.

" At the first trial, there was no colony or provincial law against witchcraft in force. The statute of James the first must therefore have been considered as in force in the province, witchcraft not being an offence at common law. Before the adjournment, the old colony law, which makes witchcraft a capital offence, was revived, with the other local laws, as they were called, and made a law of the province.

" At the adjournment, June 30, five women were brought upon trial, Sarah Good, Rebebekah Nurse, Susannah Martin, Elizabeth How, and Sarah Wilder.

" There was no difficulty with any but Nurse. She was a member of the church and of a good character, and, as to her, the jury brought in their verdict not guilty; upon which the accusers made a great clamour, and the court expressed their dissatisfaction with the verdict, which caused some of the jury to desire to go out again; and then they brought her in guilty. This was a hard case, and can scarcely be said to be the execution of law and justice in mercy*. In a capital case, the court often refuses a verdict of, guilty, but, rarely, if ever, sends a jury out again, upon one of, not guilty. It does not indeed appear, that in this case the jury was ordered out again; but the dissatisfaction expressed by the court seems to have been in such a manner as to have the same effect. The certificate given by the foreman of the jury, to satisfy the relations of the woman, shews how the fact was.

July 4th, 1692.

" I Thomas Fisk, the subscriber hereof, being one of them that were of the jury last week at Salem court, upon the trial of Rebebekah Nurse, &c. being desired, by some of the relations, to give a reason why the jury brought her in guilty, after the verdict not guilty; I do hereby give my reasons to be as follows,

" When the verdict not guilty was given, the honoured court was pleased to object against it, saying to them, that they think they let slip the words which the prisoner at the bar spake against herself, which were spoken in reply to Goodwife Hobbs and her daughter, who had been faulty in setting their hands to the devil's book, as they had confessed formerly; the words were 'What! do these persons give in evidence against me now? they used to come among us.' After the honoured court had manifested their dissatisfaction of the verdict, several of the jury declared themselves desirous to go out again, and thereupon the honoured court gave leave; but when we came to consider the case, I could not tell how to take her words as an evidence against her, till she had any further opportunity to put her sense upon them, if she would take it; and then going into court, I mentioned the words aforesaid, which by one of the court were affirmed to have been spoken by her, she being then at the bar, but made no reply nor interpretation of them; whereupon, these words were to me a principal evidence against her.

THOMAS FISK.'

* A part of the oath the king takes at his coronation, "which judges should have written on their hearts." Foster's Crown Law.

" Nurse, being informed of the use which had been made of her words, gave in a declaration to the court, that "when she said Hobbs and her daughter were of her company, she meant no more than that they were prisoners as well as herself; and that, being hard of hearing, she did not know what the foreman of the jury said;" but her declaration had no effect.

" Mr. Noyes, the minister of Salem, a zealous prosecutor, excommunicated the poor old woman and delivered her to Satan, to whom he supposed she had formally given herself up many years before; but her life and conversation had been such, that the remembrance thereof, in a short time after, wiped off all the reproach occasioned by the civil or ecclesiastical sentences against her.

" It is said, that at the trial of Sarah Good, one of the afflicted persons fell into a fit, and after recovery, cried out, "that the prisoner had stabbed her and broke her knife in doing it;" and a piece of the knife was found upon the afflicted person; but a young man declared that the day before, he broke that very knife and threw away the piece, this afflicted person being then present. The court took so much notice as to bid her tell no more lies, but went on to improve her as a witness against other prisoners*. Something happened, not unlike to this, in a trial before sir Matthew Hale. The afflicted children, in their fits would shriek out upon the least touch from Rose Cullender, one of the witches, but remained quite insensible when any body else touched them. Lest there should be any fraud, lord Cornwallis, sir Edmund Bacon, serjeant Keeling and other gentlemen attended one of the girls, whilst she was in her fits, at another part of the hall, and one of the witches was brought, and an apron was put before the girl's eyes; but instead of the witch's hand, another person's hand was taken to touch the girl, who thereupon shrieked out as she used to do. The gentlemen returned and declared to the court they believed the whole was an imposture. Notwithstanding this, the witch was found guilty, and the judge and all the court were fully satisfied with the verdict, and awarded sentence accordingly.

" Susannah Martin had been suspected ever since 1669, so that many witch stories were reported of her and given in evidence against her. One of these women, being told at her execution by the minister Mr. Noyes, that he knew she was a witch, and therefore advised her to confess, she replied, that he lied, and that she was no more a witch than

* "This story is related by Calef, who, by his narrative, gave great offence, having censured the proceedings, at a time when in general the country did not see the error they had been in; but in his account of facts which can be evidenced by records, and other original writings, he appears to have been a fair relator," Hutch.

he was a wizard; and if he took away her life God would give him blood to drink*.

"At the trial of another of them, it is said, that, one of the afflicted cried out in court upon Mr. Willard, a minister of Boston, and that she was immediately sent out of court; and it was given out that she was mistaken in the person.† There was one Willard then in prison for witchcraft.

"At the next adjournment, Aug. 5th, George Burroughs, John Procter and Elizabeth his wife, John Willard, George Jacobs and Martha Carrier were all brought upon trial and condemned, and all executed upon the 19th of August, except Elizabeth Procter, who escaped by pleading her belly.

"Burroughs had been a preacher,‡ several years before this, at Salem village, where there had been some misunderstanding between him and the people. Afterwards he became a preacher at Wells in the province of Main. We will be a little more particular in our account of his trial.¶ The indictment was as follows:

"Anno Regis et Reginae, &c. quarto.

"*Essex ss.* The Jurors for our sovereign lord and lady the king and queen, present,

* "Calef.—They have a tradition among the people of Salem that a peculiar circumstance attended the death of this gentleman, he having been choaked with blood, which makes them suppose her, if not a witch, a Pythonissa, at least, in this instance." Hutchinson.

† Calef.

‡ "The confessing witches were examined concerning him.—Richard Carrier affirmed to the jury that he saw Mr. George Burroughs at the witch meeting at the village, and saw him administer the sacrament. Mary Lacey, sen. and her daughter Mary affirmed that Mr. George Burroughs was at the witch meetings and witch sacraments, and that she knows Mr. Burroughs to be of the company of witches. Aug. 3, 1692." Hutchinson.

¶ "Among the sufferers discovered in England by Matthew Hopkins in 1645, there was one Mr. Lewis, whom Mr. Baxter calls an old reading parson, and says that he confessed he had two imps, and that he sent one to sink a ship which he saw on the coast, and that afterwards he saw the ship sink. Dr. Hutchinson, in his observations upon the Suffolk witches, says, Mr. Lewis was an ancient clergyman, near fourscore, who read queen Elizabeth's homilies instead of sermons, but being what was then called a malignant parson, he was more easily convicted; that upon his trial he asserted his innocency, and at his execution read the service for burial himself; that the confession Mr. Baxter mentions was from the evidence of persons at his trial, and as Hopkins had swam him several times till he was near drowning, such confession, or any other, was not matter of great wonder." Hutchinson.

that George Burroughs, late of Falmouth in the province of Massachusetts-bay, clerk, the 6th day of May, in the 4th year of the reign of our sovereign lord and lady William and Mary, by the grace of God of England, Scotland, France and Ireland, king and queen, defenders of the faith, &c. and divers other days and times, as well before as after, certain detestable arts called witchcrafts and sorceries, wickedly and feloniously hath used, practised and exercised, at and within the town of Salem, in the county of Essex aforesaid, in upon and against one Mary Walcot of Salem village, in the county of Essex, single woman; by which said wicked arts, the said Mary Walcot, the 9th day of May, in the 4th year above said, and divers other days and times, as well before as after, was and is tortured, afflicted, pined, consumed, wasted and tormented, against the peace of our sovereign lord and lady the king and queen, and against the form of the statute in that case made and provided. Endorsed *Billa vera.*" Three other bills were found against him for witchcrafts upon other persons, to all which he pleaded Not Guilty, and put himself upon trial, &c.

"The afflicted persons, and the confessing witches were first examined; for although, by the advice of the elders, their evidence was not conclusive, yet some presumption arose from it, and with other circumstances to corroborate it, the proof might be sufficient to convict. One circumstance was, that, being a little man, he had performed feats beyond the strength of a giant, viz. had held out a gun of 7 feet barrel with one hand, and had carried a barrel full of cyder from a canoe to the shore. Upon his urging, that an Indian, who was present, held out the gun also, and the witnesses not remembering that any Indian was there, it was said the Indian must have been the black man or the devil, who the witnesses swore looks like an Indian. Other evidence was given of his harsh treatment of his wives, having been twice married, and of his pretending to them that he knew what had been said to them in his absence, and his persuading them to give it under their hands in writing, and to swear to it, that they would not reveal his secrets; and it was further said they had privately complained to the neighbours that their house was haunted with spirits: And a brother of one of his wives swore, that going out after strawberries, upon their return, he went into the bushes on foot, and though they rode a quick pace, yet when they came near home, to their astonishment, they found him with them, and that he fell to chiding his wife for talking to her brother about him, and said he knew their thoughts, which, the brother said was more than the devil knew; to which Burroughs replied, that his God told him. Against this evidence he urged, that a man was with him, to shew that another walked

as fast as he did; and this was immediately determined to be the black man also. And, upon the whole, he was confounded and used many twistings and turnings, which I think we cannot wonder at. At his execution, he concluded his dying prayer with the Lord's prayer; probably to convince some of the spectators of his innocence; for it was the received opinion, that a true witch could not say the Lord's prayer without blundering,* and in many of the examinations it was used as a test, and several of the old women not saying it right, this was improved against them.

* Sept. the 9th, Martha Cory,* Mary Esty,* Alice Parker,* Ann Pudeater,* Dorcas Hoar, and Mary Bradbury were tried, and September 17th, Margaret Scott,* Wilmot Read,* Samuel Wardwell,* Mary Parker,* Abigail Falkner, Rebecca Eames, Mary Lacey, Ann Foster and Abigail Hobbs, and all received sentence of death. Those marked* were executed the 22d following.

** Mary Esty, who was sister to Nurse, gave in to the court a petition; in which she says, she does not ask her own life, although she is conscious of her innocence, but prays them before they condemn any more, to examine the confessing witches more strictly; for she is sure they have belied themselves and others, which will appear in the world to which she is going, if it should not in this world.

*** Those who were condemned and not executed, I suppose all confessed their guilt. I have seen the confessions of several of them. Wardwell also confessed, but he recanted and suffered. His own wife, as well as his daughter,† accused him and saved themselves. There are many instances among the examinations, of children accusing their parents, and some of parents accusing their children. This is the only instance of a wife or husband, accusing one the other, and surely this instance ought not to have been suffered. I shudder while I am relating it. Besides this irregularity, there were others in the course of these trials. The facts laid in the indictments were, witchcrafts upon particular persons, there was no evidence of these facts, but what was called spectral evidence, which, in the opinion of the ministers, was insufficient; some of the other evidence was of facts ten or twenty years before, which had no relation to those with which they were charged; and some of them no relation to the

crime of witchcraft. Evidence is not admitted, even against the general character of persons upon trial, unless to encounter other evidence brought in favour of it; much less ought their whole lives to be arraigned, without giving time sufficient for defence.*

**** Giles Cory was the only person, besides those already named, who suffered. He, seeing the fate of all who had put themselves upon trial, refused to plead; but the judges, who had not been careful enough in observing the law in favour of the prisoners, determined to do it against this unhappy man, and he had judgment of *peine fort et dure* for standing mute, and was pressed to death; the only instance which ever was, either before this time or since, in New-England. In all ages of the world, superstitious credulity has produced greater cruelty than is practised among the Hottentots, or other nations, whose belief of a deity is called in question.

***** This court of oyer and terminer, happy for the country, sat no more. Nineteen persons had been executed, all asserting their innocence; but this was not enough to open the eyes of the people in general. The goal at Salem was filled with prisoners, and many had been removed to other goals; some were admitted to bail, all reserved for trial, a law having passed constituting a supreme standing court, with jurisdiction in capital, as well as all other criminal cases. The general court also shewed their zeal against witchcraft, by a law passed in the words of the statute of James the first, but this law was disallowed by the king. If the court was of opinion that the statute extended here, I see no necessity of a provincial act exactly in the same words; if the statute did not extend here, I know not by what law the first that was tried could be sentenced to death.

***** The time, by law, for holding the court at Salem, was not until January. This gave opportunity for consideration; and this alone might have been sufficient for a change of opinions and measures, but another reason has been given for it. Ordinarily, persons of the lowest rank in life have had the misfortune to be charged with witchcrafts; and although many such had suffered, yet there remained in prison a number of women, of as reputable families as any in the towns where they lived, and several persons of still superior rank, were hinted at by the pretended bewitched, or by the confessing witches. Some had been publicly named. Dudley Bradstreet, a justice of peace, who had been appointed one

* "She was bid to say the Lord's prayer. When she came to 'forgive us our trespasses as we forgive them that trespass against us,' she said, so do I. No other mistake, in saying the prayer, remarkable." A woman's examination, Sept. 21, 1692. Hutchinson.

† "The daughter upon a second enquiry denied that she knew her father and mother to be witches; the wife was not asked a second time." Hutchinson.

* "Against many of the women there was likewise given in evidence the return of a jury of one man, a doctor, and eight women appointed to examine their bodies for tetts and other devil's marks. The search was curious enough, but the return is too indelicate to appear in this relation. Some said the credulity was such that a flea bite would pass well enough for a tett or the devil's mark." Hutchinson.

of president Dudley's council, and who was son to the worthy old governor, then living, found it necessary to abscond. Having been remiss in prosecuting, he had been charged by some of the afflicted as a confederate. His brother, John Bradstreet, was forced to fly also. Calef says it was intimated that sir William Phips's lady was among the accused. It is certain, that one who pretended to be bewitched at Boston, where the infection was beginning to spread, charged the secretary of the colony of Connecticut.* Mrs. Hale, wife to the minister of Beverly, was accused also; which caused her husband to alter his judgment and to be less active in prosecutions than he had been.

“ At the court in January, the grand jury found bills against about 50 for witchcraft, one or two men, the rest women; but, upon trial, they were all acquitted, except three of the worst characters, and those the governor reprieved for the king's mercy. All that were not brought upon trial he ordered to be discharged.† Such a gaol delivery was made this court, as has never been known at any other time in New-England.

“ Several persons had been charged and imprisoned in the county of Middlesex also, and at the first court at Charlestown they were brought to trial, but the jury acquitted them all. Some of the court were dissatisfied. The juries changed sooner than the judges. However, it was not long before one, at least, of the judges of the first court of Oyer and Terminer was sensible of his error. Mr. Sewall, at a public fast, gave in to the minister a bill, acknowledging his error in the late

proceedings, and desiring to humble himself in the sight of God and his people. It is said, that, the chief justice, Mr. Stoughton, being informed of this action of one of his brethren, observed for himself that, when he sat in judgment, he had the fear of God before his eyes and gave his opinion according to the best of his understanding; and although it might appear afterwards, that he had been in an error, yet he saw no necessity of a public acknowledgment of it.

“ One of the ministers, who, in the time of it, was fully convinced that the complaining persons were no impostures, and who vindicated his own conduct and that of the court, in a narrative he published, remarks, not long after, in his diary, that many were of opinion that innocent blood had been shed. None of the pretended afflicted were ever brought upon trial for their fraud, some of them proved profligate persons, abandoned to all vice, others passed their days in obscurity or contempt.

“ The opinion which prevailed in New-England, for many years after this tragedy, that there was something praternatural in it, and that it was not all the effect of fraud and imposture, proceeded from the reluctance in human nature to reject errors once imbibed. As the principal actors went off the stage, this opinion has gradually lessened, and perhaps it is owing to a respect to the memory of their immediate ancestors, that many do not yet seem to be fully convinced. There are a great number of persons who are willing to suppose the accusers to have been under bodily disorders which affected their imaginations. This is kind and charitable, but seems to be winking the truth out of sight. A little attention must force conviction that the whole was a scene of fraud and imposture, began by young girls, who at first perhaps thought of nothing more than being pitied and indulged, and continued by adult persons, who were afraid of being accused themselves. The one and the other, rather than confess their fraud, suffered the lives of so many innocents to be taken away, through the credulity of judges and juries.”

* “ As to what you mention, concerning that poor creature in your town that is afflicted, and mentioned my name to yourself and son, I return you hearty thanks for your intimation about it, and for your charity therein mentioned, and I have great cause to bless God, who, of his mercy hitherto, hath not left me to fall into such an horrid evil.” Extract of a letter from Secretary Allen to Inc. Mather, Hartford, 18 March, 92-3.

† It is said, the governor's lady, when sir William was absent, saved one poor woman from trial. “ In sir William's absence, his lady, I suppose upon account of her name's being Mary, (William and Mary) was solicited for a favour in behalf of a woman committed by one of the judges, on accusation of witchcraft, by a formal warrant under his hand and seal, and in close prison for trial the next assizes, then not far off. The good lady, *propria virtute*, granted and signed a warrant for the said woman's discharge, which was obeyed by the keeper, and the woman lives still for aught I know. Truly, I did not believe this story till I saw a copy of the mittimus and discharge, under the keeper's hand, attested a true copy, for which discovery the keeper was discharged from his trust and put out of his employment, as he himself told me.” M.S. letter.

The following Reports are from lord Fountain-hall's Decisions, &c.:

“ Criminal Court. Sept. 10, and 11, 1678.

“ Eight or ten witches, all (except one or two)

* “ The general court, about 20 years after, upon the petitions of the relations of those who had been executed, and of several persons who had been charged and fled, and whose goods had been seized, made grants for and in consideration of the losses sustained; but the petitioners alledged, that they bore no proportion to the real damage. Philip English, a merchant in Salem, received 300*l*.—He computed his damages at 1500*l*.—Enquiry was made by a committee, and they proposed to report such sums as each petitioner had suffered.” Hutch.

poor miserable like women were pannelled, some of them were brought out of sir Robert Hepburn of Keith's lands, others out of Ormiston, Crighton, and Pancaitland parishes. The first of them were delated by these two who were burnt in Salt- Preston in May 1678, and they divulged and named the rest, as also put forth seven in the Lonehead of Leswade; and if they had been permitted were ready to file, by their delation, sundry gentlewomen and others of fashion; but the justices discharged them, thinking it either the product of malice, or melancholy, or the devil's deception, in representing such persons as present at their field-meetings who truly were not there. Yet this was cried out on as a prelimiting them from discovering these enemies of mankind. However, they were permitted to name Mr. Gideon Penman, who had been minister at Crighton, and for sundry acts of uncleanness and other crimes was deprived. Two or three of the witches constantly affirmed that he was present at their meetings with the devil; and that when the devil called for him, he asked, where is Mr. Gideon, my chaplain? and that ordinarily Mr. Gideon was in the rear in all their dances, and beat up these that were slow. He denied all, and was liberate upon caution. They declared and confessed the first thing the devil caused them to do was to renounce their baptism; and by laying their hand on the top of their head, and the other on the sole of their foot, to renounce all betwixt the two to his service: That one of them was at the time with child in fornication, and in her resignation she excepted the child, at which the devil was very angry. That he lay frequently with them, and kissed them, but was cold, and his breath was like a damp air; that he cruelly beat them when they had done the evil he had enjoined them; for that he was (said they) a most wicked and barbarous master. That he adventured to give them the communion or holy sacrament, I remember in 1670 we heard that the devil appeared in the shape of a minister, in the copper mines of Sweden, and attempted the same villainous apery: the bread was like wafers, the drink was sometimes blood, and other times black moss-water. That he preached and most blasphemously mocked them, if they offered to trust in God who left them miserable in the world, and neither he nor his Son Jesus Christ ever appeared to them when they called on them, as he had, who would not cheat them. That sometimes he transformed them into bees, ravens, and crows, and they flew to such and such remote places: which was impossible for the devil to do, to rarify the substance of their body into so small a matter; and some thought he might take away their spirit and convey it to these places, leaving the body behind, but this were to give him the power of the resurrec-

tion of the dead; for death is nothing but the removal of the soul from the body, which being once done it is not in his power to reunite them; so that all he deludes them in is by representing such and such ideas, shapes and objects to their imagination and fancy when asleep, and in our sleep we will have very lively conceptions of things, only in these diabolic transports their sleep is so deep that no pinching will awake them. Their confessions made many intelligent sober persons stumble much what faith was to be adhibite to them. See at the end of Feb. 1677, a large discourse about witchcraft, on the occasion of bewitching of Pollock Maxwell, and Janet Douglas the discoverer of it; Joseph Mead's story of the devil's apeing God in conveying the Tartars to Mexico, and Camerarii Meditat. Histor. centur. 1. c. 70. There is a story told of one who in king James the 6th's time was prosecuted as a witch, because a Scotchman being troubled with a disease in Italy, and craving a magician's help and cure for it, he was told he needed not have come so far from home, for there was one in Scotland could cure it, and gave him his marks; (after) some years, being returned, on the bridge of Earn, he met one to whom all the marks did quadrate, to whom having imparted the case, he cured him by application of some simple herba. This coming abroad he is accused of Necromancy, and compact with Satan, and found guilty, though he alledged that the cure was natural, and he would teach any of them to do as much; and that the devil's naming him could not make him guilty, else it should be in his power to ruin and destroy the most innocent and godly persons. As for the rencounter betwixt Mr. Williamson schoolmaster at Couper, (who has wrote a grammar,) and the Rosicrucians, I never trusted it till I heard it from his own son, who is present minister of Kirkaldie. He tells, that a stranger came to Couper, and called for him; after they had drank a little, and the reckoning came to be paid, he whistled for spirits; one in the shape of a boy came, and gave him gold in abundance; no servant was seen riding with him to the town, nor enter with him into the inn: he caused his spirits against next day bring him noble Greek wine from the Pope's cellar, and tell the freshest news then at Rome; then trysted Mr. Williamson at London, who met the same man in a coach near to London-bridge, and who called on him by his name; he marvelled to see any know him there; at last he found it was his Rosicrucian: He pointed to a tavern, and desired Mr. Williamson to do him the favour to dine with him at that house; whither he came about twelve o'clock; and found him and many others of good fashion there, and a most splendid and magnificent table, furnished with all the varieties of delicate meats, where they are all served by spirits. At dinner they debat-

ed on the excellency of being attended by spirits; and after dinner they proposed to him, to assume him into their society, and make him participant of their happy life: but among the other conditions and qualifications requisite this was one that they demanded, his abstracting his spirit from all materiality, and abandoning and renouncing his baptismal engagements. Being amazed at this proposal he falls a praying, whereat they all disappear and leave him alone. Then he began to forethink what would become him if he were left to pay that vast reckoning, not having as much on him as would defray it. He calls the boy, and asks what was become of these gentlemen, and what was to pay? He answered there was nothing to pay, for they had done it, and were gone about their affairs in the city. Some said he was left in a jacks, but this relation his son affirmed to be truth. As for appearances, by which the devil has actuated dead bodies, and made them move; see of Cornelius Agrippa and many others, some very odd stories recorded by Delrio, in his *Disquisitiones Magicae*, though Gabr. Nandæus in his *Apology*, endeavours to wash Agrippa's face very clean, and to justify him and the rest from the imputation of magic. There was one or two of these women that denied, and so were set at liberty; nine of them upon their confession (and so seemed very rational and penitent) were sentenced to be strangled, and then burnt, which was shortly after executed upon five of them between Leith and Edinburgh, and the other four were burnt at Painston-muir within their own parish where they had lived. The Secret Council gave a commission to sir John Nicolson, John Clerk of Pennycaik, John Johnston of Polton, and Mr. John Preston, advocate, to judge these seven who were defamed for witches in the Lonehead of Leswade.

“ At a Secret Council, Catharine Liddel exhibited a complaint against ——— Rutherford baron baillie to Morison of Prestongrange, and against David Cowan in Tranent, bearing that they had seized upon her an innocent woman, and defamed her as a witch, and detained her under restraint as a prisoner; and that the said Cowan had pricked her with long pins, in sundry places of her body, and bled her and tortured her most cruelly. The defences were, that she was delated by other witches, and that ‘*malâ famâ labora- bat*,’ and was thereupon apprehended, and yet so kindly used as not to be thrust into any public prison, but kept in a private house, that she and her son-in-law consented that she might be searched, ‘*et sic volenti seu consentienti non fit injuria neque dolus*,’ it being desired for the manifestation and vindication of her innocency. As for the pricker, 1st, He learned his trade from Kincaid a famed pricker. 2do, He never came unsent for, because he was either call-

ed by sheriffs, magistrates of boroughs, ministers or baillies of baronies, so what he did was ‘*auctore prætoris*,’ and so ‘*velle non creditur qui obsequitur imperio domini*,’ ‘*et non est in dolo qui judici obtemperat*.’ 3tio, The trade was not improbat or condemned by any law among us; and so not being prohibitum, it was ‘*de genere permissorum*.’ 4to, All divines and lawyers who write on witchcraft, as Perkins, Delrio, &c. acknowledge there are such marks, called by them, ‘*stigmata asgarum*,’ (vid. Feb. 1677) why then may there not be an art for discerning and distinguishing them from other marks in the body. 5to, ‘*Error communis facit jus*.’ The council may restrain that way of trial for the future, but must pardon bygones. Answered, 1mo, Denies consent. 2do, None can validly consent to their own torture, for ‘*nemo est dominus suorum membrorum*.’ As for the pricker, he was a cheat, and abused the people for gain; and the chancellor remembered that he had caused imprison that Kincaid the pricker in Kinross, for abusing the country there. The Lords of privy council first declared the woman innocent, and restored her to her good name and fame, and ordained it to be publicly intimate the next Sunday in her parish church: they reproved Rutherford the baron-baillie for his rashness, and discharged him to proceed so hereafter; and found that no inferior judge, much less a baron-baillie, had power to apprehend, or incarcerate, or detain any of the king's lieges under restraint, upon the pretence of their being delated or suspected as witches, but that they must immediately intimate it with the first occasion, either to the Lords of Privy Council, or to the Lords of Justiciary, and obtain their warrant for the taking of them: As also, ‘*found they might not use any torture by pricking, or by withholding them from sleep, &c. but reserved all that to themselves, and the justices, and those who acted by commissions from them*.’ And as a mark of their displeasure against the pricker, they commanded him to prison, there to lie during their pleasure.

“ Nov. 6, 1678. Criminal Court. Three witches brought in from Falls parish were condemned at the criminal court to be burnt, upon their judicial confessions.”

Hawkins in his Chapter of Witchcraft (Pl. of the Cr. book 1, c. 4) distributes offenders of this nature into three kinds; first, conjurers who by force of certain magic words endeavoured to raise the Devil, and compel him to execute their commands; secondly, witches, who by way of friendly conference are said to bargain with an evil spirit to do what they desire of him; thirdly, sorcerers or charmers, who by the use of certain superstitious forms of words, or by means of images, or other odd representations of persons or things, &c. are said to produce strange ef-

facts above the ordinary course of nature.

Before the statute 9 G. 2, c. 5, Chief Justice Holt had adopted a course which if generally pursued, must have been, very efficacious in prevention of accusations for Witchcraft. See the Cases of Hathaway, and of Hathaway and others, A. D. 1703, *infra*].

A TRIAL OF WITCHES.

At the Assizes and general Gaol Delivery, held at Bury St. Edmonds for the County of Suffolk, the 10th day of March, in the 16th year of the reign of our sovereign lord king Charles 2, before Matthew Hale, knt. Lord Chief Baron of his Majesty's Court of Exchequer; Rose Cullender and Amy Duny, widows, both of Leystoff in the County aforesaid, were severally indicted for bewitching Elizabeth and Ann Durent, Jane Bocking, Susan Chandler, William Durent, Elizabeth and Deborah Pacey: and the said Cullender and Duny, being arraigned upon the said indictments, pleaded Not Guilty: and afterwards, upon a long Evidence, were found Guilty, and thereupon had Judgment to die for the same.

To the READER.

THIS Trial of Witches hath lain a long time in a private gentleman's hands in the country, it being given to him by the person that took it in the court for his own satisfaction; but it came lately to my hands, and having perused it, I found it a very remarkable thing, and fit to be published; especially in these times, wherein things of this nature are so much controverted, and that by persons of much learning on both sides. I thought that so exact a relation of this Trial would probably give more satisfaction to a great many persons, by reason that it is pure matter of fact, and that evidently demonstrated; than the arguments and reasons of other very learned men, that probably may not be so intelligible to all readers; especially, this being held before a judge, whom for his integrity, learning, and law, hardly any age, either before or since could parallel; who not only took a great deal of pains, and spent much time in this trial himself; but had the assistance and opinion of several other very eminent and learned persons: so that this being the most perfect narrative of any thing of this nature hitherto extant, made me unwilling to deprive the world of the benefit of it; which is the sole motive that induced me to publish it.

The Evidence whereupon these persons were convicted of Witchcraft, stands upon divers particular circumstances.

1. THREE of the parties above-named, viz. Anne Durent, Susan Chandler, and Elizabeth Pacey were brought to Bury to the assizes and were in a reasonable good condition; but that morning they came into the hall to give in-

structions for the drawing of their bills of indictments, the three persons fell into strange and violent fits, shrieking out in a most sad manner, so that they could not in any wise give any instructions in the court who were the cause of their distemper. And although they did after some certain space recover out of their fits, yet they were every one of them struck dumb, so that none of them could speak neither at that time, nor during the assizes until the conviction of the supposed witches.

As concerning William Durent, being an infant, his mother Dorothy Durent sworn and examined deposed in open court, that about the 10th of March, nono Caroli Secundi, she having a special occasion to go from home, and having none in her house to take care of her said child (it then sucking) desired Amy Duny her neighbour, to look to her child during her absence, for which she promised her to give her a penny; but the said Dorothy Durent desired the said Amy not to suckle her child, and laid a great charge upon her not to do it. Upon which it was asked by the court, why she did give that direction, she being an old woman and not capable of giving suck? It was answered by the said Dorothy Darent, that she very well knew that she did not give suck, but that for some years before, she had gone under the reputation of a witch, which was one cause made her give her the caution. Another was, That it was customary with old women, that if they did look after a sucking child, and nothing would please it but the breast, they did use to please the child, to give it the breast, and it did please the child, but it sucked nothing but wind, which did the child hurt. Nevertheless after the departure of this deponent, the said Amy did suckle the child; and after the return of the said Dorothy, the said Amy did acquaint her, that she had given suck to the child contrary to her command. Whereupon the deponent was very angry with the said Amy for the same; at which the said Amy was much discontented, and used many high expressions and threatening speeches towards her; telling her, That she had as good to have done otherwise than to have found fault with her, and so departed out of her house; and that very night her son fell into strange fits of swooning, and was held in such terrible manner, that she was much affrighted therewith, and so continued for divers weeks. And the said examinant farther said, that she being exceedingly troubled at her child's distemper, did go to a certain person named Dr. Jacob, who lived at Yarmouth, who had the reputation in the country, to help children that were bewitched; who advised her to hang up the child's blanket in the chimney-corner all day, and at night when she put the child to bed, to put it into the said blanket, and if she found any thing in it, she should not be afraid, but to throw it into the fire. And this deponent did according to his direction; and at night when she took down the blanket with an intent to put her child

therein, there fell out of the same a great toad, which ran up and down the hearth, and she having a young youth only with her in the house, desired him to catch the toad, and throw it into the fire, which the youth did accordingly, and held it there with the tongs; and as soon as it was in the fire it made a great and horrible noise, and after a space there was a flashing in the fire like gun-powder, making a noise like the discharge of a pistol, and thereupon the toad was no more seen nor heard. It was asked by the court, if that after the noise and flashing, there was not the substance of the toad to be seen to consume in the fire? And it was answered by the said Dorothy Durent, that after the flashing and noise, there was no more seen than if there had been none there. The next day there came a young woman a kinswoman of the said Amy, and a neighbour of this deponent, and told this deponent, that her aunt (meaning the said Amy) was in a most lamentable condition, having her face all scorched with fire, and that she was sitting alone in her house, in her smock without any fire. And thereupon this deponent went into the house of the said Amy Duny to see her, and found her in the same condition as was related to her; for her face, her legs, and thighs, which this deponent saw, seemed very much scorched and burnt with fire, at which this deponent seemed much to wonder. And asked the said Amy how she came into that sad condition? and the said Amy replied, she might thank her for it, for that she this deponent was the cause thereof, but that she should live to see some of her children dead, and she upon crutches. And this deponent farther saith, that after the burning of the said toad, her child recovered, and was well again, and was living at the time of the assizes. And this deponent farther saith, That about the 6th of March, 11 Car. 2, her daughter Elizabeth Durent, being about the age of ten years, was taken in like manner as her first child was, and in her fits complained much of Amy Duny, and said, that she did appear to her, and afflict her in such manner as the former. And she this deponent going to the apothecary's for something for her said child, when she did return to her own house, she found the said Amy Duny there, and asked her what she did do there, and her answer was, That she came to see her child, and to give it some water. But she this deponent was very angry with her, and thrust her forth of her doors, and when she was out of doors, she said, You need not be so angry, for your child will not live long: and this was on a Saturday, and the child died on the Monday following. The cause of whose death this deponent verily believeth was occasioned by the witchcraft of the said Amy Duny: for that the said Amy hath been long reputed to be a witch, and a person of very evil behaviour, whose kindred and relations have been many of them accused for witchcraft, and some of them have been condemned.

The said deponent further saith, that not long after the death of her daughter Elizabeth Durent, she this deponent was taken with a lameness in both her legs, from the knees downward, that she was fain to go upon crutches, and that she had no other use of them but only to bear a little upon them till she did remove her crutches, and so continued till the time of the Assizes, that the Witch came to be tried, and was there upon her crutches; the Court asked her, That at the time she was taken with this lameness, if it were with her according to the custom of women? Her answer was, that it was so, and that she never had any stoppages of those things, but when she was with child.

This is the substance of her Evidence to this Indictment.

There was one thing very remarkable, that after she had gone upon crutches for upwards of 3 years, and went upon them at the time of the Assizes in the Court when she gave her Evidence, and upon the jury's bringing in their verdict, by which the said Amy Duny was found Guilty, to the great admiration of all persons, the said Dorothy Durent was restored to the use of her limbs, and went home without making use of her crutches.

2. As concerning Elizabeth and Deborah Pacy, the first of the age of 11 years, the other of the age of 9 years or thereabouts: as to the elder, she was brought into the Court at the time of the instructions given to draw up the Indictments, and afterwards at the time of trial of the said prisoners, but could not speak one word all the time, and for the most part she remained as one wholly senseless, as one in a deep sleep, and could move no part of her body, and all the motion of life that appeared in her was, that as she lay upon cushions in the court upon her back, her stomach and belly, by the drawing of her breath, would arise to a great height: and after the said Elizabeth had lain a long time on the table in the court, she came a little to herself and sat up, but could neither see nor speak, but was sensible of what was said to her, and after a while she laid her head on the bar of the court with a cushion under it, and her hand and her apron upon that, and there she lay a good space of time: and by the direction of the judge, Amy Duny was privately brought to Elizabeth Pacy, and she touched her hand; whereupon the child without so much as seeing her, for her eyes were closed all the while, suddenly leaped up, and catched Amy Duny by the hand, and afterwards by the face; and with her nails scratched her till blood came, and would by no means leave her till she was taken from her, and afterwards the child would still be pressing towards her, and making signs of anger conceived against her.

Deborah the younger daughter was held in such extreme manner, that her parents wholly despaired of her life, and therefore could not bring her to the Assizes.

The Evidence which was given concerning these two Children was to this Effect:

Samuel Pacy a merchant of *Leystoff* aforesaid, (a man who carried himself with much soberness during the trial, from whom proceeded no words either of passion or malice, though his children were so greatly afflicted,) sworn and examined, deposeth, That his younger daughter *Deborah*, upon Thursday the 10th of October last, was suddenly taken with a lame-ness in her legs, so that she could not stand, neither had she any strength in her limbs to support her, and so she continued until the 17th day of the same month, which day being fair and sunshiny, the child desired to be carried on the east part of the house to be set upon the bank which looketh upon the sea; and whilst she was sitting there, *Amy Duny* came to this deponent's house to buy some herrings, but being denied she went away discontented, and presently returned again, and was denied, and likewise the third time and was denied as at first; and at her last going away, she went away grumbling; but what she said was not perfectly understood. But at the very same instant of time, the said child was taken with most violent fits, feeling most extreme pain in her stomach, like the pricking of pins, and shrieking out in a most dreadful manner like unto a whelp; and not like unto a sensible creature. And in this extremity the child continued to the great grief of the parents until the 30th of the same month. During this time this deponent sent for one *Dr. Feavor*, a doctor of physic, to take his advice concerning his child's distemper; the Doctor being come, he saw the child in those fits, but could not conjecture, as he then told this deponent, and afterwards affirmed in open court, at this trial, what might be the cause of the child's affliction. And this deponent farther saith, That by reason of the circumstances aforesaid, and in regard *Amy Duny* is a woman of an ill fame, and commonly reported to be a witch and sorceress, and for that the said child in her fits would cry out of *Amy Duny* as the cause of her malady, and that she did affright her with apparitions of her person (as the child in the intervals of her fits related) he this deponent did suspect the said *Amy Duny* for a witch, and charged her with the injury and wrong to his child, and caused her to be set in the stocks on the 28th of the same October; and during the time of her continuance there, one *Alice Letteridge* and *Jane Buxton* demanding of her, as they also affirmed in court upon their oaths, what should be the reason of *Mr. Pacy's* child's distemper? Telling her, That she was suspected to be the cause thereof; she replied, 'Mr. Pacy keeps a great stir about his child, but let him stay until he hath done as much by his children, as I have done by mine.' And being further examined, what she had done to her children? She answered, 'That she had been fain to open her child's mouth with a tap to give it victuals.'

And the said deponent further deposeth, that

within two days after speaking of the said words, being the 30th of October, the eldest daughter *Elizabeth*, fell into extreme fits, insomuch, that they could not open her mouth to give her breath, to preserve her life, without the help of a tap which they were enforced to use; and the younger child was in the like manner afflicted, so that they used the same also for her relief.

And further the said children being grievously afflicted would severally complain in their extremity, and also in the intervals, that *Amy Duny* (together with one other woman whose person and clothes they described) did thus afflict them, their apparitions appearing before them, to their great terror and affrightment: and sometimes they would cry out, saying, There stands *Amy Duny*, and there *Rose Cullender*; the other person troubling them.

Their fits were various, sometimes they would be lame on one side of their bodies, sometimes on the other: sometimes a soreness over their whole bodies, so as they could endure none to touch them: at other times they would be restored to the perfect use of their limbs, and deprived of their hearing; at other times of their sight, at other times of their speech; sometimes by the space of one day, sometimes for two; and once they were wholly deprived of their speech for eight days together and then restored to their speech again. At other times they would fall into swoonings, and upon the recovery to their speech they would cough extremely, and bring up much phlegm, and with the same crooked pins, and one time a two-penny nail with a very broad head, which pins (amounting to forty or more) together with the two-penny nail, were produced in court, with the affirmation of the said deponent, that he was present when the said nail was vomited up, and also most of the pins. Commonly at the end of every fit they would cast up a pin, and sometimes they would have four or five fits in one day.

In this manner the said children continued with this deponent for the space of two months, during which time in their intervals this deponent would cause them to read some chapters in the New Testament. Whereupon this deponent several times observed, that they would read till they came to the name of *Lord*, or *Jesus*, or *Christ*; and then before they could pronounce either of the said words they would suddenly fall into their fits. But when they came to the name of *Satan*, or *devil*, they would clap their fingers upon the book, crying out, This bites, but makes me speak right well.

At such time as they be recovered out of their fits (occasioned as this deponent conceives upon their naming of *Lord*, or *Jesus*, or *Christ*), this deponent hath demanded of them, what is the cause they cannot pronounce those words: they reply and say, that *Amy Duny* saith, I must not use that name.

And farther, the said children after their fits were past, would tell, how that *Amy Duny*, and *Rose Cullender* would appear before them

holding their fits at them, threatening, that if they related either what they saw or heard, that they would torment them ten times more than ever they did before.

In their fits they would cry out, There stands Amy Duny, or Rose Cullender; and sometimes in one place and sometimes in another, running with great violence to the place where they fancied them to stand, striking at them as if they were present; they would appear to them sometimes spinning, and sometimes reeling, or in other postures, deriding or threatening them.

And this deponent farther saith, that his children being thus tormented by all the space aforesaid, and finding no hopes of amendment, he sent them to his sister's house, one Margaret Arnold, who lived at Yarmouth, to make trial whether the change of the air might do them any good. And how, and in what manner they were afterwards held, he this deponent refers himself to the testimony of his said sister.

Margaret Arnold, sworn and examined, saith, that the said Elizabeth and Deborah Pacy came to her house about the thirtieth of November last, her brother acquainted her, that he thought they were bewitched, for that they vomited pins; and farther informed her of the several passages which occurred at his own house. This deponent said, that she gave no credit to that which was related to her, conceiving possibly the children might use some deceit in putting pins in their mouths themselves. Wherefore this deponent unpinned all their clothes, and left not so much as one pin upon them, but sowed all the clothes they wore, instead of pinning of them. But this deponent saith, that notwithstanding all this care and circumspection of hers, the children afterwards raised at several times at least 30 pins in her presence, and had most fierce and violent fits upon them.

The children would in their fits cry out against Rose Cullender and Amy Duny, affirming that they saw them; and they threatened to torment them ten times more, if they complained of them. At some times the children (only) would see things run up and down the house in the appearance of mice; and one of them suddenly snapt one with the tongs, and threw it in the fire, and it screeched out like a rat.

At another time, the younger child being out of her fits went out of doors to take a little fresh air, and presently a little thing like a bee flew upon her face, and would have gone into her mouth, whereupon the child ran in all haste to the door to get into the house again, screeking out in a most terrible manner; whereupon, this deponent made haste to come to her, but before she could get to her, the child fell into her swooning fit, and at last with much pain, straining herself, she vomited up a two-penny nail with a broad head; and after that the child had raised up the nail she came to her understanding; and being demanded by this deponent, how

she came by this nail? she answered, that the bee brought this nail and forced it into her mouth.

And at other times, the elder child declared unto this deponent, that during the time of her fits, she saw flies come unto her and bring with them in their mouths crooked pins; and after the child had thus declared the same, she fell again into violent fits, and afterwards raised several pins.

At another time, the said elder child declared unto this deponent, and sitting by the fire suddenly started up and said, she saw a mouse, and she crept under the table looking after it, and at length, she put something in her apron, saying, she had caught it; and immediately she ran to the fire and threw it in, and there did appear upon it to this deponent like the flashing of gun-powder, though she confessed she saw nothing in the child's hand.

At another time the said child being speechless, but otherwise, of perfect understanding, ran round about the house holding her apron, crying hush, hush, as if there had been some poultry in the house; but this deponent could perceive nothing; but at last she saw the child stoop as if she had caught at something, and put it into her apron, and afterwards made as if she had thrown it into the fire: but this deponent could not discover anything: but the child afterwards being restored to her speech, she this deponent demanded of her what she saw at the time she used such a posture? Who answered, That she saw a duck.

At another time, the younger daughter being recovered out of her fits, declared, That Amy Duny had been with her, and that she tempted her to drown herself, and to cut her throat, or otherwise to destroy herself.

At another time in their fits they both of them cried out upon Rose Cullender and Amy Duny, complaining against them; Why do not you come yourselves, but send your imps to torment us?

These several passages, as most remarkable, the said deponent did particularly set down as they daily happened, and for the reasons aforesaid, she doth verily believe in her conscience, that the children were bewitched, and by the said Amy Duny, and Rose Cullender; though at first she could hardly be induced to believe it.

As concerning Ann Durent, one other of the parties supposed to be bewitched, present in court.

Edmund Durent her father sworn and examined; said, That he also lived in the said town of Leystoff; and that the said Rose Cullender, about the latter end of November last, came into this deponent's house to buy some herrings of his wife, but being denied by her, the said Rose returned in a discontented manner; and upon the first of December after, his daughter Ann Durent was very sorely afflicted in her stomach, and felt great pain, like the pricking of pins, and then fell into swooning fits, and after the recovery from her

fits, she declared, That she had seen the apparition of the said Rose, who threatened to torment her. In this manner she continued from the 1st of December, until this present time of trial; having likewise vomited up divers pins (produced here in court.) This maid was present in court, but could not speak to declare her knowledge, but fell into most violent fits when she was brought before Rose Cullender.

Ann Baldwin sworn and examined, deponeth the same thing as touching the bewitching of the said Ann Durent.

As concerning Jane Bocking, who was so weak, she could not be brought to the assizes:

Diana Bocking sworn and examined, deposed, That she lived in the same town of Leystoff, and that her said daughter having been formerly afflicted with swooning fits recovered well of them, and so continued for a certain time; and upon the first of February last, she was taken also with great pain in her stomach, like pricking with pins; and afterwards fell into swooning fits, and so continued till the deponents coming to the assizes, having during the same time taken little or no food, but daily vomiting crooked pins; and upon Sunday last raised seven pins. And whilst her fits were upon her she would spread forth her arms with her hands open, and use postures as if she caught at something, and would instantly close her hands again; which being immediately forced open, they found several pins diversely crooked, but could neither see nor perceive how or in what manner they were conveyed thither. At another time, the same Jane being in another of her fits, talked as if she were discoursing with some persons in the room, (though she would give no answer nor seem to take notice of any person then present) and would in like manner cast abroad her arms, saying, I will not have it, I will not have it; and at last she said, Then I will have it, and so waving her arm with her hand open, she would presently close the same, which instantly forced open, they found in it a lath-nail. In her fits she would frequently complain of Rose Cullender and Amy Duny, saying, That now she saw Rose Cullender standing at the bed's feet, and another time at the bed's-head, and so in other places. At last she was stricken dumb and could not speak one word, though her fits were not upon her, and so she continued for some days, and at last her speech came to her again, and she desired her mother to get her some meat; and being demanded the reason why she could not speak in so long time? She answered, That Amy Duny would not suffer her to speak. This lath-nail, and divers of the pins, were produced in court.

As concerning Susan Chandler, one other of the parties supposed to be bewitched and present in court:

Mary Chandler mother of the said Susan, sworn and examined, deposed and said, That about the beginning of February last past, the

said Rose Cullender and Amy Duny were charged by Mr. Samuel Pacy for bewitching of his daughters. And a warrant being granted at the request of the said Mr. Pacy, by sir Edmund Bacon baronet, one of the justices of the peace for the county of Suffolk, to bring them before him, and they being brought before him were examined, and confessed nothing. He gave order that they should be searched; whereupon this deponent with five others were appointed to do the same: and coming to the house of Rose Cullender, they did acquaint her with what they were come about, and asked whether she was contented that they should search her? She did not oppose it, whereupon they began at her head, and so stript her naked, and in the lower part of her belly they found a thing like a teat of an inch long, they questioned her about it, and she said, That she had got a strain by carrying of water which caused that excrescence. But upon narrower search, they found in her privy parts three more excrescencies or teats, but smaller than the former: this deponent farther saith, That in the long teat at the end thereof there was a little hole, and it appeared unto them as if it had been lately sucked, and upon the straining of it there issued out white milky matter.

And this deponent farther saith, That her said daughter (being of the age of 18 years) was then in service in the said town of Leystoff, and rising up early the next morning to wash, this Rose Cullender appeared to her, and took her by the hand, wherest she was much affrighted, and went forthwith to her mother, (being in the same town) and acquainted her with what she had seen; but being extremely terrified, she fell extreme sick, much grieved at her stomach; and that night after, being in bed with another young woman, she suddenly shrieked out, and fell into such extreme fits as if she were distracted, crying against Rose Cullender; saying, she would come to bed to her. She continued in this manner beating and wearing herself, inasmuch, that this deponent was glad to get help to attend her. In her intervals she would declare, That some time she saw Rose Cullender, at another time with a great dog with her: she also vomited up divers crooked pins; and sometimes she was stricken with blindness, and at another time she was dumb, and so she appeared to be in court when the trial of the prisoners was; for she was not able to speak her knowledge; but being brought into the court at the trial, she suddenly fell into her fits, and being carried out of the court again, within the space of half an hour she came to herself and recovered her speech, and thereupon was immediately brought into the court, and asked by the court, whether she was in condition to take an oath, and to give evidence, she said she could. But when she was sworn, and asked what she could say against either of the prisoners? Before she could make any answer, she fell into her fits, shriek-

ing out in a miserable manner, crying burn her, burn her, which were all the words she could speak.

Robert Chandler father of the said Susan gave in the same evidence, that his wife Mary Chandler had given; only as to the searching of Rose Cullender as aforesaid.

This was the sum and substance of the Evidence which was given against the prisoners concerning the bewitching of the children before mentioned. At the hearing this evidence there were divers known persons, as Mr. Serjeant Keeling, Mr. Serjeant Earl, and Mr. Serjeant Barnard, present. Mr. Serjeant Keeling seemed much unsatisfied with it, and thought it not sufficient to convict the prisoners: for admitting that the children were in truth bewitched, yet said he, it can never be applied to the prisoners, upon the imagination only of the parties afflicted; for if that might be allowed, no person whatsoever can be in safety, for perhaps they might fancy another person, who might altogether be innocent in such matters.

There was also Dr. Brown of Norwich, a person of great knowledge; who after this evidence given, and upon view of the three persons in Court, was desired to give his opinion, what he did conceive of them: and he was clearly of opinion, that the persons were bewitched; and said, That in Denmark there had been lately a great discovery of witches, who used the very same way of afflicting persons, by conveying pins into them, and crooked as these pins were, with needles and nails. And his opinion was, That the devil in such cases did work upon the bodies of men and women, upon a natural foundation, (that is) to stir up, and excite such humours super-abounding in their bodies to a great excess, whereby he did in an extraordinary manner afflict them with such distempers as their bodies were most subject to, as particularly appeared in these children; for he conceived, that these swooning fits were natural, and nothing else but that they call the mother, but only heightened to a great excess by the subtily of the devil, co-operating with the malice of these which we term witches, at whose instance he doth these villanies.

Besides the particulars above-mentioned touching the said persons bewitched, there were many other things objected against them for a further proof and manifestation that the said children were bewitched.

As first, during the time of the Trial, there were some experiments made with the persons afflicted, by bringing the persons to touch them; and it was observed, that when they were in the midst of their fits, to all men's apprehension wholly deprived of all sense and understanding, closing their fists in such manner, as that the strongest man in the Court could not force them open; yet by the least touch of one of these supposed witches, Rose Cullender by name, they would suddenly shriek out opening their hands, which accident would not happen by the touch of any other person.

And last they might privately see when they were touched, by the said Rose Cullender, they were blinded with their own aprons, and the touching took the same effect as before.

There was an ingenious person that objected, there might be a great fallacy in this experiment, and there ought not to be any stress put upon this to convict the parties, for the children might counterfeit this their distemper, and perceiving what was done to them, they might in such manner suddenly alter the motion and gesture of their bodies, on purpose to induce persons to believe that they were not natural, but wrought strangely by the touch of the prisoners.

Wherefore to avoid this scruple it was privately desired by the judge, that the lord Cornwallis, sir Edmund Bacon, and Mr. Serjeant Keeling, and some other gentlemen there in Court, would attend one of the distempered persons in the farther part of the Hall, whilst she was in her fits, and then to send for one of the witches, to try what would then happen, which they did accordingly: and Amy Dury was conveyed from the bar and brought to the maid: they put an apron before her eyes, and then one other person touched her hand, which produced the same effect as the touch of the witch did in the Court. Whereupon the gentlemen returned, openly protesting, that they did believe the whole transaction of this business was a mere imposture.

This put the Court and all persons into a stand. But at length Mr. Pacy did declare, That possibly the maid might be deceived by a suspicion that the witch touched her when she did not. For he had observed divers times, that although they could not speak, but were deprived of the use of their tongues and limbs, that their understandings were perfect, for that they have related divers things which have been when they were in their fits, after they were recovered out of them. This saying of Mr. Pacy was found to be true afterwards, when his daughter was fully recovered (as she afterwards was,) as shall in due time be related: For she was asked, whether she did hear and understand any thing that was done and acted in the Court, during the time that she lay as one deprived of her understanding? and she said, she did: and by the opinions of some, this experiment, (which others would have a fallacy) was rather a confirmation that the parties were really bewitched, than otherwise: for say they, it is not possible that any should counterfeit such distempers, being accompanied with such various circumstances, much less children; and for so long time, and yet undiscovered by their parents and relations: For no man can suppose that they should all conspire together, (being out of several families, and, as they affirm, no way related one to the other, and scarce of familiar acquaintance) to do an act of this nature whereby no benefit or advantage could redound to any of the parties, but a guilty conscience for perjurying themselves in taking the lives of two poor simple women

away, and there appears no malice in the case. For the prisoners themselves did scarce so much as object it. Wherefore, say they, it is very evident that the parties were bewitched, and that when they apprehend or understand by any means, that the persons who have done them this wrong are near, or touch them; then their spirits being more than ordinarily moved with rage and anger at them being present, they do use more violent gestures of their bodies, and extend forth their hands, as desirous to lay hold upon them; which at other times not having the same occasion, the instance there falls not out the same.

2ndly, One *John Soam* of *Leystoff* aforesaid, yeoman, a sufficient person, deposes, that not long since, in harvest time he had three carts which brought home his harvest, and as they were going into the field to load, one of the carts wrenched the window of *Rose Cullender's* house, whereupon she came out in a great rage and threatened this deponent for doing that wrong, so they passed along into the fields and loaded all the three carts, the other two carts returned safe home, and back again, twice loaded that day afterwards; but as to this cart which touched *Rose Cullender's* house, after it was loaded, it was overturned twice or thrice that day; and after that they had loaded it again the second or third time, as they brought it, through the gate which leadeth out of the field into the town, the cart stuck so fast in the gates-head, that they could not possibly get it through, but were enforced to cut down the post of the gate to make the cart pass through, although they could not perceive that the cart did of either side touch the gate-posts. And this deponent further saith, that after they had got it through the gate-way, they did with much difficulty get it home into the yard; but for all that they could do, they could not get the cart near unto the place where they should unload the corn, but were fain to unload it at a great distance from the place, and when they began to unload they found much difficulty therein, it being so hard a labour that they were tired that first came; and when others came to assist them, their noses burst forth a bleeding: so they were fain to desist and leave it until the next morning, and then they unloaded it without any difficulty at all.

Robert Sherringham also deposes against *Rose Cullender*, that about two years since, passing along the street with his cart and horses the axletree of his cart touched her house, and broke down some part of it, at which she was very much displeas'd, threatening him, that his horses should suffer for it; and so it happened, for all those horses, being four in number, died within a short time after: since that time he hath had great losses by the sudden dying of his other cattle; so soon as his sows pigged, the pigs would leap and caper, and immediately fall down and die. Also, not long after, he was taken with a lameness in his limbs that he could neither go nor stand for some days. After all this, he was very much vexed with

great number of lice of an extraordinary bigness, and although he many times shitt'd himself, yet he was not any thing the better, but would swarm again with them; so that in the conclusion he was forced to burn all his clothes, being two suits of apparel, and then was clean from them.

As concerning *Amy Duny*, one *Richard Spencer* deposes, that about the first of September last, he heard her say at his house; that the devil would not let her rest until she were revenged on one *Cornelius Sandeswell's* wife.

Ann Sandeswell, wife unto the above-said *Cornelius*, deposed, that about seven or eight years since, she having bought a certain number of geese, meeting with *Amy Duny*, she told her, if she did not fetch her geese home they would all be destroyed: which in a few days after it came to pass.

Afterwards the said *Amy* became tenant to this deponent's husband for a house, who told her, that if she looked not well to such a chimney in her house that the same would fall: whereupon this deponent replied, that it was a new one; but not minding much her words, at that time they parted. But in a short time the chimney fell down according as the said *Amy* had said.

Also this deponent farther saith, that her brother being a fisherman, and using to go into the Northern Seas, she desired him to send her a firkin of fish, which he did accordingly; and she having notice that the said firkin was brought into *Leystoff-Road*, she desired a boatman to bring it ashore with the other goods they were to bring; and she going down to meet the boatman to receive her fish, desired the said *Amy* to go along with her to help her home with it; *Amy* replied, she would go when she had it. And thereupon this deponent went to the shore without her, and demanded of the boatman the firkin, they told her, that they could not keep it in the boat from falling into the sea, and they thought it was gone to the devil, for they never saw the like before. And being demanded by this deponent, whether any other goods in the boat were likewise lost as well as hers? they answered not any.

This was the substance of the whole evidence given against the prisoners at the bar; who being demanded, what they had to say for themselves? they replied, nothing material to any thing that was proved against them. Whereupon, the judge in giving his direction to the jury, told them, that he would not repeat the evidence unto them, lest by so doing he should wrong the evidence on the one side or on the other. Only this acquainted them, that they had two things to enquire after. First, Whether or no these children were bewitched? Secondly, Whether the prisoners at the bar were guilty of it?

That there were such creatures as witches he made no doubt at all; For first, the scriptures had affirmed so much. Secondly, the wisdom of all nations had provided laws against such persons, which is an argument of their confidence

of such a crime. And such hath been the judgment of this kingdom, as appears by that act of parliament which hath provided punishments proportionable to the quality of the offence. And desired them, strictly to observe their evidence; and desired the great God of heaven to direct their hearts in this weighty thing they had in hand: For to condemn the innocent, and to let the guilty go free, were both an abomination to the Lord.

With this short direction the jury departed from the bar, and within the space of half an hour returned, and brought them in both Guilty upon the several indictments, which were thirteen in number, whereupon they stood indicted.

This was upon Thursday in the afternoon, March 13, 1665. The next morning, the three children with their parents came to the Lord Chief Baron Hales's lodging, who all of them spake perfectly, and were as in good health as ever they were; only Susan Chandler, by reason of her very much affliction, did look very thin and wan. And their friends were asked at what time they were restored thus to their

speech and health? And Mr. Pacy did affirm, That within less than half an hour after the witches were convicted, they were all of them restored, and slept well that night, feeling no pain; only Susan Chandler felt a pain like pricking of pins in her stomach.

After, they were all of them brought down to the court, but Ann Durent was so fearful to behold them, that she desired she might not see them. The other two continued in the court, and they affirmed in the face of the country, and before the witches themselves, what before hath been deposed by their friends and relations; the prisoners not much contradicting them. In conclusion, the judge and all the court were fully satisfied with the verdict, and thereupon gave judgment against the witches that they should be hanged.

They were much urged to confess, but would not.

That morning we departed for Cambridge, but no reprieve was granted: And they were executed on Monday the 17th of March following, but they confessed nothing.

220. The Trial of Mr. BENJAMIN KEACH, at the Assizes at Aylsbury, in Buckinghamshire, for a Libel: 17 CHARLES II. A. D. 1665.

BENJAMIN Keach of Winslow, in the county of Bucks, having wrote a little book, entitled, "The Child's Instructor; or, A New and Easy Primer:" in which were contained several things contrary to the doctrine and ceremonies of the church of England; as, That infants ought not to be baptized; That laymen may preach the Gospel; That Christ shall reign personally upon the earth in the latter day, &c. He had no sooner got it printed, and some of them sent down to him, but one Mr. Strafford, a justice of the peace for that county, received information of it. Whereupon, taking a constable with him, he went in quest of the said books; and coming to the house of Mr. Keach, found and seized several of them, bound Mr. Keach over to answer for it at the next assizes in a recognizance of 100*l.* and two sureties with him in 50*l.* each.

The next Assize holden for the said county was at Aylsbury on the 8th and 9th of October 1664. Lord Chief Justice Hyde being Judge. On the 1st of which days, in the forenoon, Mr. Keach was called upon; who answering to his name, was brought to the bar, and examined as follows:

Judge. Did you write this book? [Holding out one of the Primers in his hand.]

Keach. I writ most of it.

Judge. What have you to do to take other men's trades out of their hands? I believe you can preach as well as write books. Thus it is to let you, and such as you are, have the Scripture to wrest to your own destruction. You

have made in your book a new Creed: I have seen three Creeds before; but I never saw a fourth till you made one.

Keach. I have not made a Creed, but a confession of the Christian faith.

Judge. Well, that is a Creed then.

Keach. Your lordship said you had never seen but three Creeds; but thousands of Christians have made a confession of their faith.

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

Keach. My lord, as to those things—

Judge. You shall not preach here, nor give the reasons of your damnable doctrine,* to seduce and infect his majesty's subjects. These are not things for such as you are to meddle with, and to pretend to write books of divinity: but I will try you for it before I sleep.

After this he gave directions to the Clerk to draw up the Indictment; and the witnesses were sworn, and ordered to stand by the Clerk till the Indictment was finished, and then to go with it to the grand inquest.

* Upon the cruelty, brutality, and illegality of the conduct of Chief Justice Hyde in this Trial, see the observations of Mr. Dunning (afterwards lord Ashburton) in his Speech in the House of Commons, December 6th 1770. See Cobb. Parl. Hist.

Judge. Gentlemen of the Grand Jury, I shall send you presently a bill against one that hath taken upon him to write a new Primer for the instruction of your children: He is a base and dangerous fellow; and if this be suffered, children by learning of it will become such as he is, and therefore I hope you will do your duty.

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

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

Clerk. Benjamin Keach, come to the bar.

Mr. Keach comes to the bar.

Clerk. Hear your Charge. 'Thou art here indicted by the name of Benjamin Keach, of the parish of Winslow, in the county of Bucks: For that thou being a seditious, heretical, and schismatical person, evilly and maliciously disposed, and disaffected to his majesty's government, and the government of the Church of England, didst maliciously and wickedly, on the 1st day of May, in the 16th year of the reign of our sovereign lord the king, write, print, and publish, or cause to be written, printed, and published, one seditious and venomous book, entitled, "The Child's Instructor; or, A New and Easy Primer;" wherein are contained by way of Question and Answer, these damnable positions, contrary to the book of Common Prayer, and the Liturgy of the Church of England: That is to say, in one place you have thus written; '2. Who are the right subjects of baptism? A. Believers, or godly men and women only, who can make confession of their faith and repentance.' And in another place you have maliciously and wickedly written these words; '2. How shall it then go with the Saints? A. O, very well. It is the day they have longed for: Then they shall hear that sentence, Come, ye blessed of my Father, inherit the kingdom prepared for you; and so shall they reign with Christ on the earth a thousand years, even on Mount Sion, in New Jerusalem; for there will Christ's throne be, on which they must sit down with him.' Then follows this Question, with the Answer thereto, in these plain English words: '2. When shall the wicked and the fallen angels, which be the Devils, be judged? A. When the thousand years shall be expired, then shall the rest of the devils be raised, and then shall be the general and last judgment, then shall all the rest of the dead and evils be judged by Christ and his glorified saints; and they being arraigned and judged, the wicked shall be condemned, and cast by angels into the lake of fire, there to be burned for ever and ever.'

In another place thou hast wickedly and maliciously written these plain English words: '2. Why may not infants be received into the Church now, as they were under the

'law? A. Because the fleshy seed is cast out: Though God under this dispensation did receive infants in a lineal way by generation, yet he that hath the key of David, that openeth and no man shutteth, that shutteth and no man openeth, hath shut up that way into the Church; and hath opened the door of regeneration, receiving in none but believers. 2. What then is the state of infants? A. Infants that die are members of the kingdom of Glory, though they be not members of the visible Church. 2. Do they then that bring in infants in a fleshy and lineal way, err from the way of truth? A. Yea, they do; for they make not God's holy word their rule, but do presume to open a door that Christ hath shut, and none ought to open.' And also in another place thou hast wickedly and maliciously composed "A short Confession of the Christian Faith;" wherein thou hast affirmed this concerning the second person in the Blessed Trinity, in these plain English words: 'I also believe that he rose again the third day from the dead, and ascended into Heaven above, and there now sitteth on the right hand of God the Father; and from thence he shall come again at the appointed time of the Father to reign personally upon the earth, and to be judge of the quick and dead.' And in another place thou hast wickedly and maliciously affirmed these things concerning true Gospel-Ministers, in these plain English words following: 'Christ hath not chosen the wise and prudent man after the flesh, not great doctors and rabbies; Not many mighty and noble, saith Paul, are called: but rather the poor and despised, even tradesmen, and such-like, as was Matthew, Peter, Andrew, Paul, and others. And Christ's true ministers have not their learning and wisdom from men, or from universities, or human schools for human learning. Arts and sciences are not essential to making of a true minister, but the gifts of God, which cannot be bought with silver and gold; and also as they have freely received the gift, so they do freely administer: They do not preach for hire, for gain and filthy lucre: They are not like the false teachers, who look for gain from their quarter; who eat the fat, and clothe themselves with the wool, and kill them that are fed; those that put not into their mouths, they prepare war against: Also they are not Lords over God's heritage, they rule them not by force and cruelty, neither have they power to force and compel men to believe and obey their doctrines, but are only to persuade and intreat; for this is the way of the Gospel, as Christ taught them.'

And many other things hast thou seditiously, wickedly, and maliciously written in the said book, to the great displeasure of Almighty God, the scandal of the liturgy of the church of England, the disaffection of the king's people to his majesty's government, the danger of

‘the peace of this kingdom, to the evil example of others, and contrary to the statute in that case made and provided. How say you, Benjamin Keach; are you Guilty, or Not Guilty?’

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

Judge. It is your intention, I perceive, to delay your trial to the next assize.

Keach. No, my lord, I have no design by this to delay my trial.

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

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

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

Keach. It is what has been granted to others.

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

Keach. Not Guilty, my lord.

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

Keach. If I may have no longer time, I do not desire any.

Judge. I have something else to do than wait upon you; you are not a person fit to go abroad till next Assize, and you will think it hard if I should commit you to gaol till then: but because you shall not say but that you were offered fair, if you will find sufficient sureties for your appearance at the next assize, and for your good behaviour till then, you shall not be tried till then.

Keach. My lord, I am content to be tried now.

Judge. Go on then, a God's name.

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

Then the Jury were sworn, well and truly to try the traverse between the king's majesty and the prisoner at the bar.

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

Gentlemen of the Jury, the prisoner at the bar has pleaded Not Guilty, and your charge is to inquire whether he be guilty or not.

Then the Witnesses were sworn, who were Neal and Whitehall.

Neal deposed, That justice Strafford sent for him to his house; when he came there, the justice sent him back again for his staff of authority; which being done, he went with the justice to one Moody's stall, and asked for some Primmers which he had; he answered, that he had none. That from thence they went to Mr. Keach's house, where first they saw his wife, who told them he was in an inward room. They asked her, if there were not some Prim-

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mers in the house? She said, there was, and about thirty were brought forth and delivered to them.

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

Then a Copy of the prisoner's Examination before the said justice, signed with his own hand, was produced and read; wherein was contained, That the prisoner being asked whether he was the author or writer of the said Book? answered, Yes, he was. And further declared, That he delivered a part of the copy to one Oviat a printer at London, since dead; and that the rest of the copy he sent up by another hand, but that he knew not who printed it: That about forty of them were sent down to him, of which he had dispersed about twelve, and that the price was five-pence each book.

After this the Judge called for a Common-Prayer-Book, and laid it before him, and ordered one of the Primmers to be given to the gentlemen of the Jury, and bid them look on those parts where the leaves were turned down.

Judge. Clerk, read those sentences in the Indictment, which are taken out of the book, that the Jury may turn to them, and see that the said positions are contained in the book.

Clerk. ‘Q. Who are the right subjects of Baptism? A. Believers or godly men and women only, who can make confession of their faith and repentance.’

Judge. This is contrary to the book of Common-Prayer, for that appoints infants to be baptised, as well as men and women. [Here he read several places in the Liturgy, wherein the baptising of infants is enjoined and directed.]

Clerk reads. ‘Q. How shall it then go with the saints? A. Oh, very well! it is the day that they have longed for: then they shall hear that sentence, Come, ye blessed of my Father, inherit the kingdom prepared for you: And so shall they reign with Christ on earth a thousand years, &c.’

Judge. This is contrary to the Creed in the Book of Common-Prayer, and is an old heresy, which was cast out of the Church a thousand years ago, and was likewise condemned by the Council of Constance about 500 years ago, and hath lain dead ever since, till now this rascal hath revived it.

Clerk reads. ‘Q. Why may not infants be received into the Church now, as they were under the law? A. Because the fleshly seed is cast out, &c. Q. What then is the state of infants? A. Infants that die, are members of the kingdom of Glory, though they be not members of the visible Church. Q. Do they then that bring in infants by a fleshly lineal way, err from the truth? A. Yea, they do; for they make not God's holy word their rule, but do presume to open a door that Christ hath shut, and none ought to open.’

Judge. This also is contrary to the book of
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Common-Prayer, which appoints infants to be received into the Church, and directs the priest to say, when he hath sprinkled the child, ' We receive this child into the congregation of Christ's flock.' And whereas he says that infants that die are members of the kingdom of Glory, though not of the visible Church, he speaks this of infants in general, and so the child of a Turk or Heathen is made equal with the child of a Christian: But the Church hath otherwise determined; that is, if an infant die after baptism, and before it hath actually sinned, it is saved, because original sin is washed away in baptism. Read on.

Clerk. Also in another place thou hast wickedly and maliciously composed, ' A short Confession of faith,' in which thou hast affirmed thus, concerning the second person in the blessed Trinity, in these plain English words; ' I also believe that he rose again the third day from the dead, and ascended into heaven, and there now sitteth at the right hand of God the Father; and from thence he shall come again at the appointed time of the Father, to reign personally upon the earth, and to be the judge of the quick and the dead.'

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

Clerk. And in another place thou hast wickedly and maliciously affirmed these things concerning true Gospel-Ministers, in these plain English words following: ' Christ hath not chosen the wise and prudent men after the flesh, nor great doctors and rabbies; Not many mighty and noble, saith Paul, are called, &c. as above.'

Judge. This also is contrary to the Book of Common-Prayer: for whereas the position in the Indictment saith, Christ hath not chosen great rabbies and doctors, but rather the poor, and despised, and tradesmen; the Book of Common-Prayer doth admit of such. [Here he read some passages concerning the qualification of Ministers, and their manner of Consecration.] Because Christ, when he was upon the earth, made choice of tradesmen to be his disciples; therefore this fellow would have Ministers to be such now; taylors, and pedlars, and tinkers, and such fellows as he is: But it is otherwise now, as appears from the manner in which the Church has appointed them to be chosen, ordained, and consecrated.

The Judge having thus gone through the Indictment, the prisoner began to speak in his defence.

Keach. As to the doctrines—

Judge. You shall not speak here, except to the matter of fact: that is to say, whether you writ this book or not.

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

Judge. You shall not be suffered to give the reasons for your damnable doctrine here, to seduce the king's subjects.

Keach. Is my religion so bad, that I may not be allowed to speak?

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

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

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

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

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

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

Judge. He had them at your house, and it is not likely he should take them without your consent.

Keach. I do not say he had them without my consent.

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

Here the Judge summed up the Evidence, and gave his Charge to the Jury; but this the Amanensis has omitted.

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

Officer. My lord, the Jury about the Primers cannot agree.

Judge. But they must agree.

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

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

Then the officer called one, and he was set upon the clerk's table, and the Judge and he whispered together a great while; and it was observed, that the Judge having his hands upon his shoulders, would frequently shake him as he spake to him. Upon this person's returning, the whole Jury quickly came in, and being according to custom called over by their names, the clerk proceeded.

Clerk. Are you agreed in your verdict?

Jury. Yes, yes.

Clerk. Who shall speak for you?

Jury. Our Foreman.

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

Foreman. Guilty in part.

Clerk. Of what part?

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

Clerk. What is that?

Foreman. In the Indictment he is charged with these words, 'When the thousand years shall be expired, then shall all the rest of the devils be raised:' but in the book it is, 'Then shall the rest of the dead be raised.*'

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

One of the Jury. I cannot in conscience find him Guilty, because the words in the Indictment and the Book do not agree.

Judge. That is only through a mistake of the clerk's, and in that sentence only; and you may find him guilty of all, that Sentence excepted: but why did you come in before you were agreed?

Foreman. We thought we had been agreed.

Judge. You must go out again, and agree; and as for you, that say you cannot in conscience find him guilty, if you say so again, without giving reasons for it, I shall take an order with you.

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

Clerk. Are you agreed in your verdict?

Jury. Yes.

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

Foreman. Guilty of the Indictment; that

sentence, wherein 'devils' is inserted instead of 'dead,' only excepted.

Upon this, Benjamin Keach was called to the bar, and the Judge proceeded to pass Sentence upon him as follows:

Judge. Benjamin Keach, you are here convicted of writing and publishing a seditious and scandalous Book, for which the court's judgment is this, and the court doth award, That you shall go to gaol for a fortnight, without bail or mainprise; and the next Saturday to stand upon the pillory at Ailsbury for the space of two hours, from eleven o'clock to one, with a Paper upon your head with this inscription, "For writing, printing, and publishing a schismatical Book, intitled, The Child's Instructor, or a New and Easy Primer." And the next Thursday to stand in the same manner, and for the same time, in the market of Winslow; and there your Book shall be openly burnt before your face by the common hangmen, in disgrace of you and your doctrine. And you shall forfeit to the king's majesty the sum of 20*l.* and shall remain in gaol until you find sureties for your good behaviour and appearance at the next assizes, there to renounce your doctrine, and make such public submission as shall be enjoined you. Take him away, keeper.

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

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

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

According to the Sentence passed upon him, he was kept close prisoner till the Saturday following, and then about eleven o'clock was carried to the pillory at Ailsbury; where he stood full two hours to a minute, was denied the liberty of speaking to the spectators, and had his hands as well as his head carefully kept in the pillory the whole time. On the Thursday following he stood in the same manner and for the same time at Winslow, the town where he lived, and had his Book burnt before him. After this, upon paying his fine, and giving sufficient security for his good behaviour, he was set at liberty; but was never brought to make a recantation.

* Where one is indicted for writing a libel *secundum tenorem sequentem*, or for forging a deed so and so described, any the least variance between the libel recited, or deed described, and those given in evidence, is fatal. But where the substance only of a libel is set forth in Latin, it is sufficient if the libel be proved to have the same sense as is set forth. Hawk. Pl. C. Book 2. c. 46. s. 36. *In manner and form following, that is to say*, do not require an exact recital. See, as to the tenor and effect following; and as to the kind and degree of variance that is fatal, and as to the danger of Judges indulging in solution of variances, the authorities referred to in Leach's edition of Hawkins, *ubi sup.*

221. THE CASE OF THE JURISDICTION OF THE HOUSE OF PEERS, BETWEEN THOMAS SKINNER, Merchant, and the East-India Company: 18 CHARLES II. A. D. 1666.

[Of this Case the fullest account which has been found in print, is contained in a small book published in the year 1669, under the title of "The Grand Question concerning the Jurisdiction of the House of Peers, stated and argued." The Report which is here given of the Case, has been extracted chiefly from a copy of that Work, obligingly imparted by the very learned Mr. Hargrave, who has published a concise but very perspicuous

abridgment of this Case, in that most valuable repository of legal knowledge, upon the subject of this Case and other matters connected with it, his "Introductory Preface" to lord Hale's "Jurisdiction of the Lords' House of Parliament." See also in Mr. Hargrave's "Judicial Arguments and Collections," (vol. 1, p. 1, vol. 2, p. 183.) his very full and elaborate Opinions on the Cases of Bond and Butler, who were fined and imprisoned by the

Irish House of Lords, and of Perry, who was fined and imprisoned by the English House of Lords. This Case of Skinner and the East India Company, was also noticed by Mr. Clifford in Flower's Case.]

SOON after his majesty's happy Restoration, one Thomas Skinner preferred a Petition to him in council, purporting 'Great oppressions and spoils sustained by him in the Indies from the East India Company, robbing him of a ship and goods of a great value, dispossessing him of a plantation he had there, a dwelling house and warehouse at Jamby, and an island called Barella (which he had bought of that king) assaulting his person to the danger of his life, and several other injuries done him; For which he prayed the king's justice to appoint a court, constable and marshal to hear and determine those matters, they not being otherwise determinable by the ordinary course of law, or to put it into any other way for just relief.' After some years attendance and solicitation and several Petitions of this poor man's, the king at last refers it to certain lords, viz. the Lord Archbishop of Canterbury, the Lord Chancellor, the Lord Privy Seal and the Lord Ashley, to call all parties before them, and compose the matter if they could; the Order of Reference runs thus:

'Whereas upon the Petition of Thomas Skinner merchant, setting forth his sufferings under the barbarous oppressions of the East India Company, his majesty was graciously pleased by order of the 27th of August last, to defer the clearing of the matter for erecting a court to determine affairs of this nature till the second meeting of this board at Whitehall, and in regard the said Company have slighted the orders of this board, and not complied with any references or mediations, designing to wear out the Petitioners' life in tedious attendances; he did by his Petition this day read at the board, humbly pray that the said court may be now erected, to relieve the Petitioner according to justice, and put a period to his grievances: Whereupon his majesty present in council did order, That his grace the Lord Archbishop of Canterbury, the Lord Chancellor, Lord Privy Seal, and the lord Ashley do send for the Governor and some of the Members of the East India Company, to treat with them, and to induce them to give the said Mr. Skinner such reasonable satisfaction, as may in some measure be answerable to the loss and damage he hath suffered under them. (Signed)

'JOHN NICHOLAS.'

It appears by the Report of the Lords Referrees, Dec. 6. 1666, that this Order was made on the 23rd of the March preceding.

These Lords Referrees met, took much pains in it, spent several days: Ordered Mr. Ayloff of counsel with Skinner, to give them under his hand a true state of the business, whose Report I will here set down in *terminis*.

THE CASE OF THOMAS SKINNER, Merchant, and his Demands against the East India Company, for Damages done him in 1659, in India.

In the year 1657, was a general liberty of trade into the East Indies; then Thomas Skinner furnished and set forth his ship called the Thomas from London, on a trading voyage to the Indies, and arrived there in 1658.

The Company by their letters May the 7th, 1658, which arrived in India in November following, commanded their agents to seize all ships and goods of English trading there, and dispose half to the Commonwealth, and half to the Company.

The agents of Bantam direct those of Jamby to seize the estate of Frederic Skinner in the hands of Thomas; saying, Thomas had nothing there of his own; and that Thomas Leaver, chief of Jamby, should secure in his hands what estate he had of Frederic's, for a debt suggested owing by him to the Company; upon which pretences they seized Thomas Skinner's ship and goods, broke open his warehouse, assaulted him in his house, and dispossessed him of his island Barella; for which injuries he hopes satisfaction, and therefore in particular demands,

For 128 peculls of pepper, 24 peculls of nutmegs, and for beef, strong waters and other provisions and merchandizes, taken out of his ship by the agents of Jamby and the crew of the ship Dragon, then in the Company's service, 3,355 rials.

The Company agree the value 3,160 rials brought to their account, but it being proved, That the rest was laden on board Skinner's ship, this embezzlement or subduction by the agents, is just to lie upon the Company.

For his ship and furniture, sworn by two witnesses to be worth 25 or 26,000*l.* sterling, and that she was worth as much or more in India when taken, yet abate a fifth for ware and tare, rests, 8,000 rials.

For eleven small copper ordnances, and their field carriages, 350 rials, and two quoyles of ropes 80 rials, in all 430 rials.

For 10 barrels of English powder, at 25 rials per barrel, and sword blades, spectacles, prospective glasses, boxes, knives, scissors and other small merchandises, iron works, nails, pistols, pictures and looking-glasses with ebony frames on board, and ship-plauks and other wood on shore and in the warehouse, valued by Marmaduke Grimston, and Peter de Barrier purser of the ship, at 1,730 rials.

For monies owing by Thomas Leaver to Frederic Skinner, assigned to Thomas, and accepted by Leaver with promise to pay, but detained by order of the Company, who have in their hands a greater sum of Leaver's to indemnify them against this demand, 1,521 rials.

For his charges at Jamby six months under that trouble and coming home over land from India 19 months travel; the Company's agents

refusing to give him passage in their ships, 1800 rials.

Total 16,836 rials.

Interest for 16,836 rials for six years. Rials are valued at Jamby 5s. per rial: But what they produce here, being brought over in black pepper to the company clear of all charges, as expected, they will ingeniously own.

For the assault of his person, loss of six years time, disappointment of his trade, attendance and charge here, disseizin of his island.

Being valuable at more than all the other particulars, are humbly submitted to your lordships discretion.

(Signed) JOSEPH ATLOFF.

The Lords Referrees to this requiring the Answer of the Company, receive this as follows.

To the right honourable the Lords Referrees, concerning the demands of Thomas Skinner upon the East India Company.

"In obedience to your lordships order and direction, the Court of Committees of the said Company have considered of the matter proposed by your lordships, and do humbly offer to your lordships; that for the nutmegs, white pepper and other things, which were seized by the justice of the place in part of a debt due to the Company from Frederick Skinner, which said goods were brought to the Company's accounts, though the same were afterwards lost in the ship Dragon; and in the regard the accounts between the Company and Frederick are concluded, and the said goods not included therein; the said Company have always offered to pay for the said goods, and are now ready to pay 3,160 dollars for the same, which at 4s. 9d. per dollar, amounts unto the sum of 750*l.* 10*s.* And concerning the 1,521 dollars demanded by Thomas Skinner, as a debt due unto him from Thomas Leaver; they in compliance with your lordships desires will be ready and willing to pay the said 1,521 dollars, amounting to 361*l.* 4*s.* 9*d.* to the said Thomas Skinner, so as they may be discharged by the administrator of the said Thomas Leaver, to whom only they are liable, it being very reasonable that the Company pay the debt but once. But the Company do utterly disavow, that the Company can by any law or equity be liable for their factors debts.

"Concerning Skinner's other demands for his ship and for other goods pretended to be seized on shore, the Company do humbly offer to your lordships; that the Company are not liable for the debt or action of their factors, unless done by their order; and if the Company should be liable to every one's clamours, and pretences for wrongs done, or pretended to be done by their factors (when if any such thing were done the same was not by their order or knowledge, nor applicable to their use and account) the same will necessarily impoverish and ruin the Company: And the Company gave no order for the seizure of Thomas Skinner's ship, nor nothing else of his; nor was the same brought

to the Company's account, and the Agents at Bantam expressly ordered the factors at Jamby not to meddle with the said Thomas Skinner's ship, who acted accordingly: For it appears clearly, that captain Allnut and his mariners had his provisions and stores for their wages, and that the king of Jamby and Jehore seized and kept the ship; And his goods on shore were seized on by Chinese, and other his creditors; and therefore they hope that his continual clamours of oppression shall not take any impression in your lordships' great judgments, the Company not being able to put a price upon an oppression, where none was, at least that they are concerned in: Yet for the procuring of their own peace and quiet, and to prevent all further trouble unto your lordships and the Company, they do submit unto your lordships disposal such further sum as will make the whole amount to 1,500*l.* which is more than his ship and goods were ever worth, or valued at upon the insurance at her going forth, so as the Company may have thereupon full and final releases and discharges from the said Thomas Skinner and Frederick Skinner. September 23, 1666. By order of the said Company. (Signed) J^r. STANNON, Sec."

To which Skinner makes this Reply.

To the right honourable the Lords Referrees, concerning the damages done to Thomas Skinner merchant, by the East India Company.

The humble Reply of Thomas Skinner, to the Proposals of the said Company.

"That since the rapine and spoil of the Company's Agents by their commands, took from me nutmegs, white pepper, provisions, &c. of 3,355 rials value, if but 3,160 rials came to their account, yet are they answerable for the whole, which as the justice of Jamby's attestation, That they took all without reason, monishes them of the duty of restitution, so the perishing thereof in and with the Company's ship Dragon threatens them with the impropriety of ill gotten goods; And then though rials cost put on ship-board in England but 4*s.* 9*d.* or 5*s.* as they go for India, yet they come home at above 15*s.* clear, as by oath of the Company's own servants appears, that when pepper was sold at London but 11*d.* a pound, though the Company sold ever since anno 1660 at 11*d.* 13*d.* 14*d.* and upwards; therefore they are justly so demanded with interest.

"The 1,521 rials owing formerly by Leaver is become the Company's debt, not only because he was their servant and agent, but because it was seized for them, and they have so much in their hands for my satisfaction, and therefore are receivers thereof to my use, and may now pay it as safely, as they ought honestly to have paid it long since with interest in manner as those above mentioned.

"Concerning my ship and goods taken on shore, my persecution in Jamby, and tedious

journey home, for which the Company offer payment by fictions and reproaches, the sense which the king of Jamby, (who would have made that factory a public example, had not my importunate intercessions in confidence to find justice at home prevented it) had of the agents inhumanity: and which, as their own letters witness against them, was by their order, what ever pretended against Frederick, executed against myself, and afterward owned by the Company, cannot but goad their private consciences, how insensible soever the politic conscience of a corporation be, as it did Allnuts upon his death bed, who confessed and repented sorely, that he had been enticed and incited by the agents unjustly against me, and had nothing of the depredations; with what modesty do the Company then upbraid me with pretended debts, and calumniate the king and people of those parts, and so much undervalue my ship and oppression, when the contrary to the Company's knowledge, is so clearly manifest; nor are they ignorant of the hopeful design in my plantation and valuable trade they have destroyed me of; which, though it plainly appears, that my ship's intended voyage for Maccassar, and freight thence, for which consideration above 2,000 rials is deducted from the ship's worth, and other particulars in a schedule, would have rendered alone above 20,000*l.* sterling yearly: yet I submit that, and my whole sufferings and concerns, to your lordships' determination, in hopes, that if I do not receive an adequate recompence, yet I shall by his majesty's grace, and your lordships direction, be enabled, by the restoring of my island Barella in India, to reap a future benefit without the East-India Company's further molestation or interruption, his majesty's late Charter granted the third of April 1661, prohibiting the Company expressly to undertake any thing against any Christian colony settled in India before the date thereof.

(Signed) "THOMAS SKINNER."

October 6th, 1666.

The Lords Referrees finding this vast disproportion between the demands and pretences of the petitioner, and the real loss and damage which he had sustained; and the offers on the other side of the Company for his reparation and satisfaction, and seeing no possibility of reconciling them, though much pains had been taken in endeavouring it, at last resolved to report it back to the king and council: and made their report as followeth:

"In pursuance of his majesty's order in council dated the 23d of March last; we have treated with the Governor and Company of merchants trading into the East Indies, and have heard the counsel both of the said Company, and Thomas Skinner complainant, in the disquisition whereof we found the said Thomas Skinner to have suffered much wrong by the said Company, and their Agents: and therefore endeavoured to persuade the said Company to give satisfaction to the petitioner: but there

being a great difference between the petitioner's demands of reparation for damages, and the Company's offer towards the same, our mediation proved ineffectual therein.

"As to the Island of Barella in the East Indies claimed by the said Thomas Skinner; we conceive that he ought to enjoy the same, and from thence to trade into any part of the world, except into England. Given under our hands the sixth day of December, 1666.

(Signed) GILB. CANT. CLARENDON C. J. ROBERTS, ASHLEY."

His majesty upon this finding the East-India Company would be brought to no reason, thought fit to recommend the business to the House of Peers, to do the petitioner justice according to the merits of his cause, which message was brought to the House the 19th of January 1666 by the lord privy seal, and all the proceedings in council transmitted thither, and withal a petition from Skinner himself was presented to them, setting forth the wrongs done to him by the East-India Company.

The House of Peers, thus possessed of this business, order a copy of Skinner's Petition to be given to the Governor and Company, and they to bring in their Answer to it upon Friday the 28th of January: they accordingly bring in for answer a Plea to the Jurisdiction of the House of Lords, and say; "That the petition is in the nature of an original complaint, not brought by way of appeal, bill of review, or writ of error, nor intermixed with privilege of parliament, nor having reference to any judgement of that court; therefore offer, if it will please to take any further cognizance of that cause: and then plead over and say, that the Company was incorporated by several charters in the reigns of queen Elizabeth and king James and likewise by a charter from Oliver, which excluded all others not members of the corporation from trading in any part of the East-Indies within the limits of the said charter, and that therefore if any such injuries were done, it was by virtue of the charter, and whether criminal or civil they were for ever released and discharged by the Act of Oblivion."

The Lords, upon debate of this plea, well knowing their own right to retain even original causes, when accompanied with such circumstances, as this then before them had; a poor man oppressed by potent adversaries, by a rich and numerous society, where there was a Peer of the realm, the lord Berkeley of Berkeley, gentlemen of great estates, very many wealthy merchants incorporated in one body, driving on a great trade in the Indies with one joint stock, resolved to employ that whole stock for the destruction of any man, that should presume but to touch upon that trade without their leaves, which was this poor man's case, and in a time when he had been encouraged thereunto by a general liberty then taken to trade in that country: who after the spoil of his goods and plantation these, to save his life, they having beset his passage by sea, was

glad to expose himself to the hazard and charge of a journey of many thousand miles over land, to return into England, that he might here endeavour to get some reparation for all those losses, which that Company with their great purse and power opposed, and had already made him spend that little estate he had left, and seven years attendance to prosecute that reparation without any fruit: so as to go to law with them, and abide all the delays and formalities even of the ordinary proceedings at law, much less what such adversaries would have raised to him, he was no ways able; the Lords I say knowing all this, and that what was pretended of the indemnity by the act of oblivion was of no validity, that act not at all intended for things of this nature, betwixt party and party not relating to the war, made no difficulty to over-rule their plea, and enter into the disquisition of the fact, and to do the poor man justice and give relief if they found cause for it, as a work worthy of them, much conducing to the administration of the public justice of the kingdom, and most agreeable to the constant practice of that House from the very beginning of parliaments: wherefore they appointed Tuesday the 24th of January for the counsel of both sides to be heard at the bar. But such art was used, so many delays cast in by the Company and their counsel, as the case could not be brought to hearing during all that session of parliament.

At the next meeting of the parliament in the year 1667, Skinner renewed his suit, and presented a Petition the 30th day of October, *in hæc verba*:

To the Right Honourable, &c.

The humble Petition, &c.

“That in the year 1657, private trade being open in the East Indies, the petitioner set forth his ship *Thomas* on a trading voyage to the said Indies, where being arrived in 1658 he possessed himself of a warehouse on the river side of *Jamby* on which his ship rode, wherein he put a great part of his goods, and also had a house at *Jamby* and goods therein, and purchased of the king of *Jamby* the island of *Barella*, and built a house for habitation, and had contracted for planting of pepper and other commodities thereon. That in May 1659, the Agents of the Governor and the Company of Merchants of London trading into the East Indies, by direction of the said Governor and Company, and of *Maurice Tompson*, and sir *Andrew Riccard*, seeing the petitioner's hopeful design in his plantation and way of trade with his ship, did seize for and on the behalf of the said Governor and Company his said ship, goods, houses, islands and 1,521 dollars of the petitioner's in the hands of *Thomas Leaver* the Company's chief Agent at *Jamby*, which hath damaged him 17,172*l.* sterling, besides the disappointment of his trade, disseizin of his said island, loss of above six years time with

attendance and vast charges here in endeavours for a just satisfaction, &c. being much more valuable than all the other damages; and the said agents used many violences upon his person in the said Indies, notwithstanding that the petitioner proffered bail and good security there, to answer all their pretences; which in human and unreasonnable dealing, forced the petitioner through infinite hazards and expence to come most over land for England to seek redress.

“That in the year 1661 and continually since he hath humbly besought his majesty for justice against the said Governor and Company, and persons aforesaid; and though his majesty hath been graciously pleased to convene the said Company and persons, and to hear the said matters; and also to refer it divers times to several lords of his majesty's most honourable privy council, to hear them and mediate an end; yet they could not be reduced to reason nor justice, albeit the petitioner's wrongs and damages were made to appear, as well by their own acknowledgment, as other evidence produced before the Lords referrees; but endeavoured by the strength of their joint purse to bear down the petitioner's relief, though never so just, by wearying him from further prosecution.

“That the petitioner's whole case not being remediable by the courts below, he is constrained humbly to address himself to your lordships, his majesty's great council and supreme judicature, whom the petitioner most humbly petitioned the last sessions, and your lordships were pleased to order their attendance, but by their dilatory pleas and several non-attendances upon slight excuses at the day appointed by your lordships, they frustrated the petitioner of obtaining your lordships' justice that session.

“Wherefore he most humbly prays, that your lordships will be pleased to cause the said Governor and Company and persons aforesaid to answer the premises before your lordships by a short day, and that he may receive from your lordships such relief as shall be consistent with justice and equity.

And he shall pray, &c.

(Signed) THOMAS SKINNER.”

The Lords, upon this, order the Company to put in their Answer in writing upon Wednesday the 6th of November. They bring in a plea as before; first by way of protestation, “That all the injuries supposed to be committed by them and their factors are untrue;” then plead as formerly, “That the petition is in the nature of an original complaint, not brought by way of appeal, &c.” as in their plea of the last session; but said, “And therefore these respondents do humbly demand the judgment of this honourable Court, whether it will please to take any other or further cognizance of the same; the rather, because the matters of complaint in the petition are such, for which remedy is ordinarily given in the courts of

Westminster Hall, wherein these respondents have right to be tried, and ought not to be brought hither *per saltum*, nor drawn *ad aliud examen*; and so pray to be dismissed.

The Lords having received this plea, to shew the clearness of their intentions, and their tenderness of doing any thing which might but carry a semblance, that they desired to engross to themselves the judging of particular causes, (when determinable elsewhere, and nothing extraordinary in the case to induce their lordships to take cognizance of the matter, which apparently was in this Case of Skinner's, as hath been said before) would have the opinion of all the judges, before they proceeded any further; and therefore made an Order, Monday the 2d of December, "That it be referred to all the judges to consider of Skinner's Petition, and to report to the house upon the Wednesday following, whether the petitioner were relievable upon the matters therein mentioned in law or equity; and if so, in what manner, upon the several parts of the complaints of the said petition."

The day appointed the Judges came, and the Lord Chief Justice of the King's Bench reported, That all the Judges had considered of the matter referred to them, and having met and considered thereof, were of opinion; That the matters touching the taking away of the petitioner's ship and goods, and assaulting of his person, notwithstanding the same were done beyond the seas, might be determined upon his majesty's ordinary courts at Westminster; And as to the dispossessing him of his house and island, that he was not relievable in any ordinary court of law.

Here then clearly by the Judges' own confession, part of the case was not within the power of Westminster-hall, and under favour of better judgments, I think it will be but a venial sin, if notwithstanding this declaration of our sages in the law, the doubt do still remain with us, if some of the other points also, as that of the taking of his ship, a robbery committed *super altum mare*, be punishable by the law of Westminster-hall; Nay I may not one be bold to affirm, that it is not? And may it not be doubted further, if any part of Skinner's case be triable there, and if their fiction in law, will reach any part of it? being all for injuries and violence against his person and estate in India: We know, that some judges and lawyers make it to extend to contracts and bonds made beyond the sea, which they ground upon a case in the year book of 48 E. 3, fol. 2, where sir Ralph Pole brings his action against sir Richard Tochester, upon an obligation bearing date at Harfleet in Kent, 'Lou de rei veritate il fust fait en Normandie;' the book saith; and his action was held good; And Brook (who makes it to be at Roan, not Harfleet) gives the reason in his Abridgement, saits 98, 'le lieu n'est traversable,' the place is not traversable; which is to be understood, when it is expressed in the bond, for a man cannot traverse the place

against his own act. But the law was ever understood to be otherwise till then, that the judges would *ampliare jurisdictionem*.

And (to shew what the law was before E. 3,) it was adjudged, Michaelmas 2 E. 2, That no action would lie for a bond made at Barwick (which did not then belong to England) 'ou cest court nau' conisans, where the court hath not cognizance, saith Fitzherbert, Obligation 15. And so Perkins, Faires 121. But both before and since the courts of law were so far from punishing injuries and trespasses done beyond sea, that even treason was not triable till the statute of 26 H. 8, cap. 13, which saith, "That if any of the king's subjects shall commit treason, though out of the limits of this realm, it shall be tried in any place that the king shall appoint by commission under the great seal." So a special commission was to be issued for it: And several other statutes were afterwards made of the same nature; But for trespasses, as this of the East India company against Skinner, there is no act of parliament to authorise the prosecution at common law, nor (I think) any book case to warrant the practice of it; Book cases against it there are many, even for trespasses in the king's dominions, because a *venire facias* could not go thither to summon a jury from thence, Mich. 42, (as Mr. Prynne cites it, or 41, as sir Edw. Coke) E. 3, coram rege, rot. 109. "An inhabitant of Jersey complains to the king and council of false imprisonment and several injuries done him in the island: They send this bill of complaint to the judges of the King's Bench, and there the bill is dismissed, 'quia compertum est,' saith the record, 'quod negotium predictum in curia hic terminari non potest, ed quod juratores iusulae predictae hic venire non possunt,'" &c. Other cases there are of the same nature. And if a fiction could not help for Jersey being part of the king's dominions, much less could it help for foreign parts, where the king had no authority at all. Yet the House of Lords hath in all times exercised jurisdiction upon crimes done and committed in foreign parts, as well as those within the kingdom, both treasons and other offences, as in the cases of the lord Latimer for the loss of St. Saviour in Normandy, and oppressions done by him in Britany, 50 E. 3, n. 21. Of William de Weston, for the surrender of Outherwick in Flanders, 1 R. 2, n. 38. John de Gomeniz for Ardes, 1 R. 2, n. 40. Pierce de Cressingham and John Spickworth, for the castle of Drinkham in Flanders, 7 R. 2, n. 17. The bishop of Norwich, for not doing service beyond seas according to promise, and as he ought to have done, for delivering up Graveling to the French, not mustering his army at Calice, as he should have done, and not having his number compleat, n. 18. Sir William Elinsham, sir Thomas Trevit, sir Henry Ferrers, sir William de Hurnedon, and Robert Fitz-Ralph, for delivering strong holds and fortresses for money, n. 24. John Hall a servant to the duke of Norfolk, for murdering the duke

of Gloucester at Calico, 1 H. 4, n. 11^o. Sir Wm. Richil, for betaking the examination of the duke of Gloucester at Calico, 1 H. 4, n. 98. And multitudes of others, who could not have been tried by the common law, were tried by the House of Lords: And in truth a man may say the whole case of Skinner in every point of it was only cognizable before them; However, it being out of all dispute, even by the confession of the judges, that some things in it are not triable in Westminster-hall, I hope it may be thought reasonable, to leave as great an extent of power to the House of Peers, which is the supreme judicature of the kingdom, as to the court of chancery, where the ordinary practice is to retain a cause, when there is equity in any part of it. The Lords therefore ordered the hearing of the cause, spent several days in it, and having with much patience heard all that could be said on both sides, appointed a day to consider what was fit to be done *super totam materiam*: Upon which day, after a solemn debate, they came to this resolution only in general, That Thomas Skinner was to be relieved by that House: And referred it to a committee to consider what damages he had sustained by the governor and company trading to the East Indies, and to report their opinions, what recompence was fit to be given him for the same.

Whilst the business was under the consideration of the Committee, and before the House of Peers had made any determination of it, a Petition was said to be presented by the East India Company, unto the House of Commons; which I will set down word for word before I give it any epithet, and upon reading it, I think every unprejudicate man will say, one cannot give it an epithet bad enough; the Petition was thus:

“ To the Honourable the Commons of England in Parliament assembled: The humble Petition of the Governor and Company of Merchants of London, trading to the East India.

“ Humbly sheweth;

“ That Thomas Skinner lately exhibited a Petition to the right honourable the Lords spiritual and temporal in Parliament assembled, against your Petitioners (many of which are and were members of this honourable House, when the said Petition was exhibited) for injuries pretended to be done by your Petitioners' factors in the East Indies, in seizing his ship, goods and money, and disposing him of a small island there: all which matters (excepting what concerns the island) are matters clearly determinable in his majesty's ordinary courts of law, as by the judges attending their lordships, hath been resolved and reported; And for the island, the same is parcel of the dominions of a foreign prince, and so the right thereof only determinable by the laws of that prince. That though

the Petitioners did humbly tender a plea to their lordships, for that the Petition was in nature of an original complaint (concerning commoners only) and not brought to their lordships by Writ of Error, or Bill of Review, or any way of Appeal, and that the matters therein were relievable in the courts of Westminster-hall, and thereupon prayed the judgment of that high court, whether it would please to take further cognizance thereof: Yet their lordships have been pleased not only to give a hearing to all the matters in the said Petition contained, but have denied to grant the Petitioners a commission, or so much as time to send for their witnesses now inhabiting upon the place, where the injuries were pretended to be done, and without whose testimony it was impossible for the Petitioners to make their defence.

“ That upon the said hearing, their lordships were further pleased to appoint a Committee to assess damages against your Petitioners, which Committee is now proceeding thereon accordingly, whereby several members of this honourable house, who are of the said Company as well as others your Petitioners, may be highly detrimented. All which proceedings, as your Petitioners humbly submit to your honourable judgments, are against the laws and statutes of this nation, and custom of parliament. In tender consideration whereof, and forasmuch as these unusual and extraordinary proceedings of their lordships are not only grievous to your Petitioners at present, but may also be a precedent of ill consequence to all the Commons of England hereafter, and forasmuch as your Petitioners have no way of relief in this case otherwise than by making their humble addresses to this honourable house, your Petitioners do therefore most humbly pray, That your honours will be pleased to take the premises into your grave considerations, and to interpose with their lordships for your Petitioners' relief therein, in such way and manner as to your great wisdoms shall seem meet. And your Petitioners, as in duty bound, shall pray, &c.

“ Signed by the Order and in the Name of the said Governor and Company.

ROBERT BLACKBORNE, Sec.^{ro}

* “ Copies of this flew about, were in every man's pocket, and in every man's mouth, that the Lords were even forced to take notice of it, yet scarce could believe the House of Commons would receive such a Petition against them, so scandalous and so false; nor did they in the whole debate so much as mention the House of Commons, but looked upon it as a thing done without doors, thrown abroad, only to blast and asperse the House of Lords, and to bring them into the ill opinion and disesteem of the people; which after a serious consideration and debate, their lordships voted, “ To be a scandalous Libel against the House of Peers.” And certainly so it was, both in matter and manner, and had the matter been true, yet the manner was scandalous: For though all had been true which was suggested, if the House of Lords had

* See vol. 1, p. 161.

The Lords then fell upon the consideration of the main business in question between Skinner and the East-India Company, and making reflexion upon what had been alledged on

committed an error, had done something grievous to the Petitioners, yet was it most unfit for private men to censure their proceedings, declare them "to be unusual and extraordinary, to be against the laws and statutes of the nation, and custom of parliament, grievous to the Petitioners at present, and of ill consequence hereafter to all the Commons of England." Can the tongue of man utter more reproachful and stabbing words against any man or society of men? If this were true, do they deserve to live who are guilty of such things, to continue so much as members of any state or commonwealth, much less to have power and jurisdiction in it? Certainly to revile in this manner, and throw dirt upon the highest judicature of the kingdom, was a most transcendent presumption, and of a most dangerous consequence to the whole nation, even to those Commons of England, whom these Petitioners pretend for so much, making themselves as it were, their patrons and protectors, tribunes of the people, and withal endeavouring to bring an odium upon the whole peerage. What is this but sowing sedition between the two houses of parliament, and between the Peers and the Commons of England? And what can it tend to, but to the very dissolution of the frame of government? The Scripture saith, "Thou shalt not speak evil of the rulers of thy people," and Elihu in Job moves this question, "Is it fit to say to a king, Thou art wicked, and to princes, Ye are ungodly?" Yet these Rabbshakebs dare heap up reproaches against the Lords of Parliament, and bring railing accusations against the highest order of magistracy under the king in the kingdom. And how little cause was given them for this, the preceding narrative of the proceedings of the Lords, is I think an evident demonstration. Their lordships had proceeded with all the tenderness imaginable, nothing of heat, nothing of precipitation had appeared in the whole transaction; They were not come to a full conclusion and determination of the business, which these merchants had no reason to suspect that it would be severe upon them; And they might at least have staid, till it had come, whatever it had been, and not have prejudged a court, before it declared itself, what judgment it would give: All it had then done, was but what the East-India company itself had, by their own offer of reparation for the wrong done, acknowledged to be just; For the Lords had only declared, that Skinner was fit to be relieved; but what relief, how much and in what sort, the *Quid* and the *Quomodo*, they had not determined, that was under the consideration of a committee. They themselves in their Answer to the Lords referees appointed by his majesty in council, had offered to pay unto Skinner for nutmegs, white pepper, and some other things

both sides and the proofs, gave this judgment "That the Governor and Company should pay unto Thomas Skinner, for his losses and damages sustained, the sum of 5,000*l.*; 1,000*l.*

which had been unjustly taken from him by their factors and had been brought to their account, 3100 dollars; And 1521 dollars more they offered, for so many taken from him in specie: And by this they confess they had done him wrong, and were willing to give him some reparation: So without condemning themselves, they cannot say the Lords had as yet done amiss: and notwithstanding all this moderation and circumspection, that opprobrious railing petition was referred against them; and which besides was full of untruths.

"For the main matter in it, and which in truth had carried a shew of injustice had it been true, is absolutely false; And that is, that the Lords denied them a commission, or time to send for witnesses inhabiting upon the place without whose testimony it was impossible for them to make their defence; First it is not true, that the Lords denied them a commission or time to send for witnesses, for they never insisted upon it, which must have brought on a resolution of the House, and have been entered in the clerk's book, which was not: Some such thing was once said by some of the counsel at bar, but themselves went off it, knowing it would have grossly manifested their intent to delay longer a poor man, who had already spent seven years in the prosecution of that suit; And as untrue is it that they could not else make their defence, for multitudes of witnesses were produced by them, and all fully heard with patience, and enough acknowledged even by their own witnesses, and more by their own offer, formerly mentioned, of giving Skinner so many thousand dollars reparation, for the Lords to ground that opinion which they had then declared, which was only, That Skinner should be relieved: A second untruth is; That they say all the matters complained of were clearly determinable in the ordinary courts of justice, excepting what concerns the Island, whereas it appears there was likewise a dwelling house at Janiby, and a warehouse by the river side, of which they dispossessed him, which were not so determinable even by the report of the judges in their opinion (but in truth one may say no part of the complaint was so determinable,) they say untruly then in saying there was only the Island, that he could not be relieved in, and as untruly do they vouch the opinion of the judges for it, who expressly mention the House as well as the Island. A third untruth is, to say the Island was parcel of the dominions of a foreign Prince, and the right to it only determinable by the laws of that prince; Whereas that Prince had made an absolute bargain and sale, and a total alienation of it from his dominion, and so had put it out of the protection of his laws. A fourth (and which they had inserted to be a bait to draw on the House of Commons to espouse their quarrel) is, that they suggest

within two days after the serving of this judgment, 2,000*l.* in 3 months after, and 2,000*l.* more in 3 months after that."

And they referred to the Committee for Privileges to examine, who was the publisher and disperser of that scandalous Paper or Petition, which they had voted a scandalous libel, and to make report thereof to the House.

The Commons, upon reading the above Petition, and upon its being owned by the Company's deputy governor, sir Samuel Barnardiston and others, ordered the committee recently appointed in respect to the jurisdiction of the Lords in the case of Mr. Fitton* and in

the complaint to be concerning commoners only, whereas the Lord Berckley of Berckley a member of the House of Peers, is likewise of that company, which intitles yet more particularly that House to the cognizance of the whole business upon point of privilege, one of their members being a party. All these untruths are in matter of fact. Then for their inference upon them, the judgment they give against the House of Lords, their censure of their proceedings, to be against the laws of the land, and the custom of parliament, to be unusual and extraordinary, to be a precedent of ill consequence to all the Commons of England now and hereafter, this I hope no man will say to have truth in it, but to be a false imputation and a slander, or (as the Lords themselves term it) a scandalous libel against the House of Lords. And as untrue it is, what they say in the close of their petition, and withal most injurious to the House of Peers, viz. That the petitioners had no way of relief in this case otherwise than by making their humble Addresses to the House of Commons: Whereas ever since parliaments have been in England, the constant practice hath been, (and multitudes of precedents there are of it,) of appealing to the next parliament from any judgment given by a former parliament, which was grievous and unjust; And never in this world before was there any appeal to the House of Commons from a judgment of the House of Peers, much less to take a business out of their hands, or give a stop to their proceedings, before they were come to a conclusion; Than which nothing can be a greater violation of the rights and privileges of either House; Nor would the House of Lords ever have endured, that any should have used the House of Commons so in any application unto their lordships. Yet upon the examination it appeared that this petition had been really presented to the House of Commons, and was there received." The Grand Question, p. 38.

* Mr. Hargrave has thus abridged this case. "It arose on petition to the Commons from a Mr. Fitton, complaining of some exercise of jurisdiction by the Lords: and on a report of the case from a committee that the matter of jurisdiction was fit to be argued at the bar of the House of Commons, the House appointed a day to hear it accordingly, and at the same

similar cases, to consider this case also in point of grievance and extent of jurisdiction; and particularly recommended the dispatch of it to Mr. Solicitor General Finch and all the gentlemen of the long robe. From this committee there soon came a Report, and thereupon the House passed the two following Resolutions against the jurisdiction and proceedings of the Lords.

1. 'That the House of Lords taking cognizance of, and their proceedings upon the matter set forth and contained in the petition of Thomas Skinner merchant against the governor and company of merchants of London trading to the East Indies, concerning

time appointed a committee to inquire into precedents in cases of a like kind; and amongst the committee were named, Solicitor General Finch afterwards lord chancellor Nottingham, Mr. Serjeant Maynard, Mr. Vaughan afterwards lord chief justice, and Mr. Prynne; and the three latter were desired to take special care in the business. What was the precise nature of this case of Mr. Fitton, is not stated in the journal of the Commons or in the printed account of the debate. But from various entries in the journal of the Lords the substance of the case appears on the whole to have been to this effect. Mr. Fitton and three others had been formerly proceeded against before the Lords for contriving and publishing a libel upon lord Gerard of Brandon; and the Lords in July 1663 had sentenced Fitton in a fine of 500*l.* to imprisonment in the King's-bench prison till he should produce Abraham Granger whose name was to the libel, and to find securities for good behaviour during life, with direction to the chief justice of the King's-bench to take such securities. Under this sentence, in a case at least mixed with privilege, Fitton, notwithstanding a prorogation of parliament, which confessedly terminates imprisonment by the House of Commons in privilege cases, still continued in prison; and one William Carr, on his owning the same libel and his having dispersed it, had been recently adjudged by the Lords to pay a fine of 1,000*l.* and to imprisonment in the Fleet during the king's pleasure and to the pillory. Being both thus imprisoned by the Lords, Fitton and Carr resorted by several petitions to the Commons for relief. A committee was appointed upon Carr's petition as well as upon Fitton's. However no report appears to have been ever made upon the petition of Carr, and what became of his case is not mentioned, except that three years afterwards he published a relation of it and of his sufferings, with a plea against the jurisdiction of the House of Lords. But Fitton's petition was reported upon as fit for solemn argument at the bar of the House of Commons as to the jurisdiction of the House of Lords, and was ordered to be argued accordingly in the manner before mentioned. It appears also, that the case was argued at the bar of the Commons by Fitton's counsel Mr. Offley, who said some strong things against the

' the taking away of the petitioner's ship and goods, and assaulting his person, and their lordships over-ruling the plea of the said Governor and Company, the said cause coming before that house originally, only upon the complaint of the said Skinner, and being a common plea, is not agreeable to the laws of this land, and tends to deprive the subject of his right, ease and benefit due to him by the said laws.

jurisdiction of the Lords, but is reproached with having so closely borrowed from a prior argument of the Solicitor General Finch afterwards lord chancellor Nottingham at the bar of the Lords, though in what case is not mentioned, as to have induced the latter to leave the Commons. When the argument was over, the debate was adjourned for a week. But the journal of the Commons is silent as to any further proceeding upon the case. Probably this case became absorbed in the consideration of the great case, which almost immediately followed, and brought the two houses to a direct issue on one great branch of the jurisdiction claimed by the Lords, but denied by the Commons: or perhaps the Commons thought this case of Fitton and that of Carr too much mixed with contempt and breach of privilege to be convenient cases to make their stand upon. However these two cases should not be forgotten. Either they were cases of breach of privilege and contempt, or they were not. If they were, the continuance of imprisonment after the prorogation of parliament, the fixing, and every other part of the sentence in both cases, become disputable: for it may be asked, how on breach of privilege are the Lords warranted to do more than can be done by the Commons in a like case? on the other hand, if they were not cases of privilege and contempt, then the proceedings of the Lords against Fitton and Carr were open to the objection of an exercise by the Lords of an original jurisdiction over crime, of having adjudged a commoner for misdemeanor without impeachment of the Commons or the verdict of jury, and of having expressed the imprisonment part of their sentence in both cases as to make it imprisonment for life, that is, in Fitton's unless they should interpose to declare it terminated, and in Carr's unless the king should please to determine it. To some of these objections Mr. Offley did in effect advert in arguing Fitton's case. In remarking also upon the consequence of such an exercise of criminal jurisdiction by the peers, he pointedly said, the jurisdiction of the Star-Chamber is now transformed into the House of Lords, but somewhat in a nobler way. It did not occur to him to add, that the jurisdiction of the Star-Chamber, though justly odious both for the mode of trial and the excessive punishments it had inflicted, and therefore wisely abolished, was in some degree sanctioned by the statutes of the realm: but that it remained to explain how the House of Lords had obtained the like or any other sufficient sanction

2. ' That the Lords taking cognizance of the right and title of the island in the petition mentioned, and giving damages thereupon against the said governor and company, is not warranted by the said laws of this land.'

Hereupon the Lords came to two Resolutions:

1. ' That the House of Commons entertain- ing the scandalous petition of the East India Company against the Lords House of parlia-

for exercising the same jurisdiction; and how it could be proper to tolerate that in an hereditary kind of Star-Chamber, without the sanction of statute and without any other limitation than such as their own moderation should prescribe, which the legislature had so indignantly abolished, in the case of a court sanctioned by statute and not pretending to adjudge crime of a higher order than misdemeanor.

" But though these two cases of Fitton and of Carr, which probably are the earliest instances to be met with of direct petitions of complaint to the Commons against the Lords for excessive assumption of jurisdiction by the latter, did not of themselves bring the two houses into actual quarrel with each other: yet there passed enough from the Commons to shew, that they were nearly ripe for serious contest on that head; and that as Fitton's case had already provoked them to appoint a committee to consider of the extent of jurisdiction by the Lords in all cases of the kind, and such committee was still existing, so very little of additional matter was requisite to excite the Commons into direct hostility."

* The Committee had reported the three following Resolutions:

1. " That the proceedings of the House of Lords, upon the petition of Thomas Skinner, Merchant, against the governor and company of Merchants of London trading to the East Indies, Sir William Thompson, and several other members of the House of Commons, being members of the said Company,—are a breach upon the Privilege of the House of Commons.

2. " That the House of Lords assuming and exercising a jurisdiction, and taking cognizance of the matters set forth and complained of in the petition of Thomas Skinner, Merchant, against the Governor and Company of Merchants of London trading to the East Indies; and their lordships over-ruling of the plea of the said Governor and Company, put in to the jurisdiction of the said House of Lords;—the said cause coming before the House originally only upon the complaint of the said Thomas Skinner, and the matters in the said petition complained of, concerning the taking away of the said petitioner's ship and goods, and assaulting his person, being relievable in the ordinary courts of law;—is contrary to the law of the land, and tends to the depriving of the subject of the benefit of the known law, and the introducing of an arbitrary way of proceeding.

3. " That the House of Lords, in the case

ment, and their proceedings, examinations and votes thereupon had and made, are a breach of the privileges of the House of Peers, and contrary to the fair correspondency which ought to be between the two Houses of parliament, and unexampled in former times.

2. That the House of Peers taking cognizance of the case of Thomas Skinner merchant, a person highly oppressed and injured in East India by the Governor and Company of merchants of London trading thither, and over-ruling the plea of the said Company, and adjudging 5,000*l.* damages thereupon against the said Governor and Company, is agreeable to the laws of the land, and well warranted by the law and custom of parliament, and justified by many parliamentary precedents ancient and modern.

Two Conferences past between the Houses upon this occasion: One asked by the House of Commons, the other by the Lords, and what past at both, the Objections of the one side, and the others Answers, what was said by the Commons against the proceedings of the Lords, and what by the Lords to maintain what they had

depending before them, upon the petition of Thomas Skinner, Merchant, against the Governor and Company of Merchants of London trading to the East Indies, allowing of affidavits taken before masters of the Chancery, and a judge of the Admiralty, as proof in the said cause, wherein also the Governor and Company had no liberty to cross-examine the said persons making such affidavits; and the House of Lords not granting a commission to the said Governor and Company for the examination of their witnesses, the same being desired by the said Governor and Company, is illegal, and a grievance to the subjects." 3 Hatsell, p. 337.

"The Lords were much surprised with these votes, which gave them cause to make a serious reflection upon what had passed in the business of Skinner, and to take a due examination of all circumstances. The way that it came unto them at first, upon the king's recommendation, their own right to take cognizance of, judge and determine and give redress in causes of that nature; then the merits of this particular cause, a poor man oppressed by great ones, very unable to contest with them at law, and so very unlikely there to receive relief, and have any reparation from them (admitting it had been in the power of the law to have helped him, which it was not) and the manner of their proceeding in the hearing, examining and determining of it, in which they had used all the moderation imaginable, going by steps and degrees, taking first the opinion of the judges, to know if the man were relievable elsewhere; who said he was but in part, and not for all relievable in Westminster-Hall, which made them undertake it; then giving way to and bearing with many delays of the East-India Company, suffering the business upon several pretences and excuses of theirs to be put off many days,

done; the substance of all that was said on both sides, I shall here set down as briefly as I can, as I find them entered in the Journal Book of the House of Lords, where they are now a public record.

The gentlemen of the House of Commons, that managed the Conference on their parts, endeavoured to maintain their votes by shewing the reasons of them.

They said, That pleas being of two natures, common pleas and pleas of the crown, in this case they said they did not meddle with any part of their lordships judicature concerning pleas of the crown, this being of the first sort, and those being of two natures, personal, or real actions, and in both all proceedings must be by the king's original writ. And this being a case between person and person, and so a common plea, ought to be proceeded in the ordinary way by the king's original writ: Precedents were brought for this, ushered in with a preamble "That where the party never pleads to the jurisdiction of the court, it is ordinary for courts to proceed, though in cases not within their jurisdiction." The precedents cited were out of the *Placita Parliamentaria*, four in Edw. 1*st* time.

when their lordships were prepared to hear it, and had laid aside other business for it, by which means a whole session was lost to the poor man; and when at the next meeting of the parliament it was heard, in which a great deal of time, and very many days were spent, yet not presently to come to a resolution, but appoint a day for the debate of it, and when that day came, not to give a full judgment, but only pass a previous vote, 'That some relief was fit to be given,' and take longer time to consider what and how much, and refer it to the consideration of a Committee to prepare it for the House; and that then, in that interim of time, before any thing was determined, whilst but in agitation and under consideration what should be done, a scandalous false railing petition to be delivered to the House of Commons against the House of Peers, contrary to all usage, right and privilege of parliament, and what was expressly forbidden, 9 H. 4. n. 22. And this notwithstanding (not knowing upon what mistake, for a mistake it must have been) to be received with approbation by the House of Commons, and seconded and confirmed by those forementioned votes, which were brought up to the Lords, and declared unto them at a public conference: all these things considered, made the Lords very sensible, who thought, if there had been failings, that a gentler application had yet been more convenient: but conscious to themselves of none, and very confident that what they had done was most justifiable by the constant course and practice of their House, and in itself most just and equitable, they conceived it absolutely necessary for the vindication of themselves and the asserting their rights, to pass likewise two Votes in answer to the two of the House of Commons." The grand Question, p. 80.

1 Precedent. 18 E. 1. "Johannes de Insula against the bishop of Winton, fol. 33. John de Insula prosecutes for the king, complains that the bishop had disposed of an Hospital which belonged to queen Eleenor the king's mother, and ejected her tenant, the bishop pleads, that he found his church seised of that advowson, et petit Judicium si debeat sine Brevis Domini Regis inde respondere;" The Judgment is, "Et quia prædictus Episcopus invenit Ecclesiam suam seisitam de prædicta advocacione tempore Creationis suæ, Ideo ipse quoad hoc eat inde sine die ad præsens, et Dominus Rex habeat Breve versus ipsum Episcopum, quod reddat ei Advocacionem, &c. et quoad Ejectionem inquiratur veritas per Patriam."

2 Precedent, in the same parliament 18 E. 1. "The Case of Hugh de Louthor and the heirs of Henry de Edelynthorp, f. 43, Where it was much insisted upon these words, "Nec est Juri consonum vel hæcenus in Curia ista usitatum, quod aliquis sine Lege Communi et Brevis de Cancellaria de Libero Tenemento suo respondeat, Et maxime in Casu ubi Brevis de Cancellaria locum habere potest, Therefore, dictum est prædicto Adæ, quod sibi perquirat per Breve de Cancellaria, si sibi viderit expedire."

3. The Case of William de Valentia earl of Pembroke, Jone his wife and Isabell le Mareschal 18 E. 1. p. 44. "Isabell complains of the earl for assuming jurisdiction in the commote or hundred of Esterlow, (which is in the king's county of Kermerdyn, and not in Pembrookshire which belongs to the Earl,) and ejecting her; he pleads that he is seised of it in the right of his wife, and they crave judgment, si sine Brevis Domini Regis inde debent respondere; the judgment is, Quia prædicti Willielmus et Johanna sunt in Seisina de prædicta Jurisdictione per discensum hæreditarium, et non per Usurpationem seu Purpresturam, quod eat inde sine die ad præsens, et Dominus Rex habeat Breve si voluerit." The gentlemen of the House of Commons observed upon this, "That if there had been a crime, as usurpation or purpresture, such cases had usually been tried in the Lords House, but then added, That if that had been the case, much might be said now, how the constitution of the government hath been altered since."

The 4th Precedent in the 18th of E. 1. f. 51, was the case of Roger de Somerton and the prior of Buttele; "Somerton follows for the king, and by petition complains, that the prior unjustly withheld from the king the manor of Somerton: the prior answers, that he holds it in the right of his church of Buttele, et petit Judicium si debeat inde sine brevis domini regis respondere; the judgment is, Ideo prædictus prior quoad hoc eat inde sine die ad præsens, et dominus rex habeat breve, &c." And this though the king was concerned, as was observed by them.

By these Precedents they said it did appear, that in cases of freehold there is no proceeding

without an original writ, and then necessarily and demonstratively it must follow; that the Lords cannot judge in these cases, for there was never any writ returnable Coram Dominis Spiritualibus et Temporalibus, none such is found in the Register, or Fitzherbert's Natura Brevium; and the reason they said was the same for personal actions, as those that concern freehold, that Magna Charta and several statutes made in Ed. 3's time provide for our trial by our peers.

Some other Precedents they mentioned out of the roll of petitions answered in the parliament of 14 E. 2, as that of William le Roux f. 408. Complaining of the kings bayliffs, who had twice dispossessed him of a house in Westminster, and praying remedy; the answer was, Habeat Breve novæ disseisinae in suo casu.

Then that the bishop of Winton elect in the same page, complaining that the king's officers had cut down the woods of the bishopric during the vacancy, and praying remedy; the answer is, Habeat breve de transgress. in Canc.

Next of Joane the widow of John Fouks, p. 409, by petition complaining of a wast committed in the manor of Radewynter; the answer is, Sequatur ad legem communem.

Another Precedent of Mariote the wife of Robert de Carle in the same page, praying remedy for a breach of the peace by the parson of Wormeale and others, the answer is, Adeat cancell. et habeat ibi breve in suo casu.

And to a petition of Robert le Sausser, p. 410, for a debt due to him, answered, Habeat in cancell. breve de debito.

The last Precedent cited was p. 411. Ralph de Draiton parson of Laffenham complaining against Robert de Vere and others for imprisoning him, till he resigned his living, taking away his goods, and committing other violences, for which he had a commission of inquiry in the country of York, and now prayed remedy: The answer is 'quoad resignationem non pertinet ad regem, et quoad commissionem habendam, ostendat in cancellaria privam commissionem et ibi respondeatur. Et habeat similiter in cancell. Brevia de transgressionibus sibi factis contra pacem, &c.'

To this first part of that conference, the Lords when they came to theirs, gave for answer in the first place, that they could not but observe something unusual in the very title of the petition, differing from the ancient stile of those presented to the House of Commons; then that they were much surprised, reading the petition to find so many falsities, and yet to hear the gentlemen that managed for the House of Commons say, that their House had examined it, and found all the allegations in it to be true; whereas in truth there were in it almost as many falshoods as lines; those falshoods have been mentioned before, so as it is not needful again to repeat them. The Lords took notice after, of the unusual proceeding of the House of Commons, to take cognizance of any matter depending in their House, before their lordships had given any judgment

therin, or communicated the same unto them; and to examine, proceed upon, and censure by vote the proceeding of the House of Peers, which they said the House of Commons could not legally do, because they were not a court of judicature in any case, much less of the House of Peers, which is the highest judicature: and that in truth they had not means to come to the knowledge of the truth, whereby to found a right judgment, because they have not power to give an oath; nor in this particular had they heard any more than one side, having not heard Skinner at all; nor yet had they conferred with the Lords, by which means they might have come to the knowledge of the grounds and reasons upon which their lordships had proceeded; so as the Lords could not but wonder at this judgment, which had been past upon them.

Then they came to that assertion concerning Common Pleas, That they must be proceeded in by the king's original writ, and consequently not before the Lords, for which the House of Commons brought some precedents, to prove that freeholds were never examined in parliament, but always left to the remedy at law; and in the next place the Lords took into consideration how they began their precedents with this preamble: "That where the party never pleads to the jurisdiction of the court, it is ordinary for courts to proceed, though in cases not within their jurisdiction."

To which the Lords said in the first place, as to the assertion viz. "That all Common Pleas must be proceeded in by original writ and consequently not before the Lords," That it was as easy for them to assert the contrary, and upon better grounds; being able to shew precedents all along from the first and the most ancient records we have, down to the latest and most modern ones of the proceedings of parliaments, even within the memory and knowledge of every young man, that the House of Peers have still exercised this jurisdiction, even in particular cases of *meum et tuum*, between man and man, when they have thought good, (though that but rarely) and when moved to it by something extraordinary in the case; and that no House of Peers hath done it less, and been more tender of entertaining such businesses, and more unwilling to be troubled with them, than this present House of Peers, upon which so much blame is laid, and which is the only House of Peers that ever private persons (found guilty and censured by it for foul oppressions) did presume in that manner to accuse and impeach to any court or council or company of men, no not to the king himself; or that ever were censured, and such votes passed upon before. But we shall hereafter in its due place examine the matter of this assertion, and shall shew that it holds not true even in the ordinary courts of Westminster-Hall, whether of common law, or equity, where cases of mens freeholds are tried every day without any original writ, and much less in parliament. In

the mean time we will take things in order as they were delivered.

And to the preamble which ushered in the precedents, "That where the party never pleads to the jurisdiction, it is ordinary for courts to proceed, though in cases not within their jurisdiction," upon which the inference must be, that precedents then signify nothing to prove a jurisdiction though never so many, though a constant series of them in all times be made appear, except there be still a pleading to the jurisdiction, and that plea overruled; the Lords thought this a strange argumentation, and took the force of the argument to lie rather the other way, that it is a clearer proof of a jurisdiction to have it never or seldom questioned, and be still exercised and submitted unto, than if it be sometimes opposed, though it be made good and maintained against that opposition: and they thought, that in this particular case, they had good warrant for their jurisdiction, finding it so seldom opposed, even by the House of Commons own shewing, who could bring but four precedents, where any had pleaded to their jurisdiction, and the plea seemingly admitted, (for it is but seemingly, as will be shewed upon the examination of the precedents themselves:) whereas multitudes were produced of the exercise of their jurisdiction, and some, where the parties had desired a trial at common law, and the Lords would not grant it, as that of William Paynell and Margaret his wife in the *Placita Parliamentaria* of the 30 of Ed. 1, p. 231. The case was this; Margaret had been formerly the wife of John Cameys, and be yet living had left him, (as she alledged) with his consent, and lived with Paynell as his wife, and was married to him: Cameys dying, Paynell and she sue for the thirds of the manor of Torpell which had been the land of Cameys. It was objected on the other side, that she lived in adultery with Paynell in Cameys life time, and so had forfeited her dower. They upon that desire to be tried by their country, if adultery or no; What say the House of Peers? Do they send them into the country as is desired? No,
 ' Videtur curiæ quod non est necesse contra
 ' tantas tamque manifestas evidentiæ, præ
 ' sumptiones, probationes, &c. ad aliquam in
 ' quisitionem patriæ capiendam procedere, &c.
 ' Et ideo consideratum est quod prædicti Wil
 ' lielmus et Margarita nihil capiant per peti
 ' tionem suam, sed sint in misericordia pro
 ' falso clamore, &c.'

This shews that the Lords sometimes would retain causes, though sometimes they did dismiss them, not for want of jurisdiction, but as it seemed to them convenient, and their occasions would give leave, and as they had or had not leisure for it from the greater affairs of the kingdom, or that some circumstances in the merits of a cause made it more or less worthy of their consideration. As if one of the parties was powerful in his country, and suspected to have an influence upon the jurie,

the Lords would then sometimes obtain a business and determine it themselves.

As in 8 R. 2, N. 24. The Case of John earl of Pembroke and William le Zouch complaining that they were sued for certain lands in Yorkshire by Thomas the son of sir Robert Roos of Ingmarshorp, and alledge, That the said Thomas sought to come to a trial in the country, which he had gained and corrupted. And therefore pray for redress, and a trial by parliament, giving this reason for it, 'Que ils par tels malveis compassemens, et procuremens en pais ne soient desheritez. That they may not lose their inheritance by such wicked contrivances and practices in the country. Do the Lords then suffer it to go on to trial in the country? No, they take the matter into their own hands, appoint John Keovert, and John Cavendish Chief Justice, and John Beknap Chief Justice of the Common Pleas to examine it and make report to them, which they did.

And so likewise in the Case of Pontyngdon and Courtney, 4 H. 4, n 24, Sir Philip Courtney a great man in the country oppresses Pontyngdon, dispossesses him of his land by force, he comes to the Lords, 'prais pur Dieu et en oeuvre de charite d'ordeigner remede dies en callous;' For God's sake and as a work of charity that they would give remedy in this case. "Sets forth in his petition, that he had before in a parliament held at Winchester made his complaint, at which time sir Philip laid the bastardy of his father as a bar, and that the Lords answer then was, That he should have right done him, and committed the business to the archbishop of Canterbury to take care of it; That before the archbishop, sir Philip and he agreed to go to a trial upon that issue, and that there should be a sufficient jury of the principal knights and esquires of the country, but that sir Philip had named some of these principal men, and withal poor men of less sufficiency, to the intent, that the great men making default, the poor should stand, and that these poor men stir not against sir Philip, maintain the truth 'les yeux pources hommes' mes'oisent envers le dit sir Philip la verite a dire.' That thereupon he petitioned again the Lords in the next parliament sitting at Westminster, and informed them of all these particulars, whereupon they ordered a Writ to go to the judges of Assize of that country, commanding them to admit none to be of the jury, but such as had 40*l.* a year land, and those to be chosen out of the whole country notwithstanding any usage or challenge to the contrary; But that now sir Philip finding that the charge of Bastardy would not hold, contriving still the wrongful disinherison of the petitioner, had started a release unduly gotten from one Thomas Pontyngdon a parson, whose heir the petitioner is, and the petitioner is thereby like to be ruined 'si il neit vostre tres hautissime et tres excellent secours et aide.' If the Lords would not afford him their most high and excellent succour and help." This was the effect of the Petition. The Lords upon this make an

order to direct the trial, the point in issue to be the bastardy, that the release should be laid aside as null and void, that if the bastardy be proved, Pontyngdon shall be for ever barred to sue hereafter, and if not proved, but that his father was mulier, he should then recover the land with costs and damages; And they further order writ to the sheriff to impanel none of the jury, that had not 40*l.* per annum land. So then three several times, in three several parliaments did the Lords take cognizance of this cause, being a common plea for a man's freehold, and that originally in the first instance, not upon an appeal, or Writ of Error, or any of those ways to which the House of Commons would now limit them; they direct the trial, the issue, the condition and qualification of the jury, and the judgment: and if this be not taking cognizance of a cause, I know not what is: And well was it for that poor gentleman, That the Lords had that jurisdiction that they could take cognizance of his cause, to give him relief then: As now it was well for Skinner, that the Lords took cognizance of his; otherwise this powerful company had trampled him in the dirt and ruined him, as that violent man sir Philip Courtney (for so he appears to have been by several complaints against him in the parliaments of those times) had served Pontyngdon: And well will it still be for many a poor man to have such an asylum, such a city of refuge to fly unto, to save himself from the violence and oppression of power and greatness. And perhaps some of those who now endeavour to lay low the House of Peers, who would make it to be of no signification, to have no power, no influence upon the kingdom, but as salt that hath lost its savour, only 'Magni nominis umbra,' a name of peerage without ability to help themselves or any body else; perhaps I say, even some of them, should they prevail now, may hereafter repent it, and wish they had not removed an ancient landmark, which heretofore was in veneration, and looked upon, as that which bounds both power and liberty, and is a guard to both by keeping both within their due limits, and hath ever been held most necessary to the constitution, the government of this kingdom for the preservation of it, and as serviceable to monarchy for the keeping up of regal dignity and authority, as useful to the subject for the maintaining of his just liberty and freedom.

But let us go on with the Conference, and see what was said by the Lords to the precedents cited by the Commons.

To the first of John de Insale against the bishop of Winchester, the Lords said, it was no diminution of the bishop for want of jurisdiction, for then it would not have been said, 'Eat inde ad presens,' but rather 'ad perpetuum'; this is but a temporary diminution, no more but as if they had said, Well, the bishop saith, he was seized of that advowson in right of his church; Let the king, for whom John de Insale prosecutes, take his writ out of the Chancery, and try for that; And for the ejection

tion complained of, let that be tried by a jury of the country, and see if things can be so ended; If not, come again then, and we will hear you; But for the present we dismiss you. So the Lords concluded, That this precedent made nothing against their jurisdiction.

To the second of Hugh de Louthier and the heir of Edelyngthorp, upon which the Commons did so much insist, and particularly upon the expression, 'Nec est juri consonum, nec hactenus in ista curia usitatum,' &c. The Lords said, That neither this precedent well examined would make much against them; For that Adam concerning whom and upon whose occasion that was said, was not at all before the Lords as a party in the cause before them, but came in of himself, consent for, unlooked for, lays in a claim which the Lords of that parliament had not heard of before, nor did at all then question: so as it cannot be said that there was any dismissal of him or of his business; but the Lords say, Let him pursue and recover his land by a writ out of the Chancery if he will, and that he sees it convenient for him 'si sibi viderit expedire,' and they go on to determine the business which was before them: The case was thus, Thomas de Normanvil an escheator, had order concerning Hugh de Louthier for certain lands then in his possession, which had been seized into the king's hands, as held of him in *capite* formerly by Henry de Edelyngthorp, to whom one Eston had granted them and to the heirs of his body lawfully begotten, and having none to return to Eston, under whom now Louthier claimed. The Order was, That Louthier should give pledge to come and answer at that parliament for the profits of those lands to the king: Louthier comes as he was bound, and at the same time one Adam comes also, pretends himself to be son and heir to Edelyngthorp, and demands the land, Louthier said, He is a bastard, and the lands belong not to him: And the Lords they say, they have nothing to do with him, let him sue for his land where he thinks best, and so send him away, but Louthier they adjudge to do his homage, and to be answerable to the king for the rent: And for the title of the land what do they? do they let it alone, and meddle no more with it, as a thing not at all within their cognizance or jurisdiction? nothing less: they command the escheator Normanvil to make enquiry upon oath, if Edelyngthorp had any heir lawfully begotten, who he was, and upon what title he claimed, and to give an account of it at the next parliament, 'Ita quod idem escheator ad proximum parlamentum post festum Sancti Michaelis domino regi distinctè et aperte inde respondeat.' So as the Lords then were far from thinking they must not meddle with such things: And for that expression of 'Non est consonum,' &c. rendered as the ground of that judgment of dismissal; first it is answered, it was no judgment at all, not only of dismissal, for Adam was no party in the cause; then it is no part of the judgment, if there were a judgment, but precedes

it; the judgment, such as it is, or rather the answer to Adam's demand, follows in these words, 'Dictum est prædicto Adæ quod sibi perquirat per brevè de cancellaria si sibi viderit expedire,' so as the preceding words may perhaps have been but inserted by the clerk that entered the Order; but take it at the strongest, admit that the Lords then present in the house had inserted those words, as their sense at that time, is that binding to the House, that it may not be of another opinion at another time? In that very parliament of 18 E. 1, how many times have they been of another mind? how many examples are there of particular causes judged and determined by them? And shall one swallow make a summer, one single precedent overbalance multitudes of precedents to the contrary?

In the last place it was said, That this precedent did not *quadrare*, suit with this present Case of Skinner's, for that was merely concerning a *liberum tenementum* and within the realm where the law had free course, here is rapine, oppression, spoiling of goods, dispossessing one of an island in foreign parts, *extra potestatem legis*, assaulting the person of a fellow subject, a violent interruption of the trade and commerce of the nation; which concerns the government of the kingdom, is a matter of state, and highly entrenches upon the authority of the king, which will suffer much, if he suffer one subject to exercise a tyrannical dominion over another, though in another country: And is against the profit of the king, which is much concerned, That no violence be used in the management of trade to bring a scandal upon the nation, make it stink in foreign parts, that none will have to do with us, which must needs become the ruin of our trade and so of all his customs.

If one merchant do that which is prejudicial to another, or to a company, let them complain of him to the king, who will command him home and punish him: And if he will not come, for that may be objected, being so far off, out of reach, then the king will give them leave that are wronged and grieved by him to right themselves. But that they should do it of themselves and in their own case be judges, witnesses and executioners, is against all reason and justice. So the Lords were not at all convinced with this precedent neither, but still thought they had done very well in censuring the East India Company for their misdemeanors and wrongs done to Skinner, and in adjudging them to give Skinner reparation for it.

The third precedent was that of William de Valentia and Isabel de Mareschal, in which the Lords observed the dismissal to have been only *ad præsens*; but withal observed that the bare reading of the case in the book will satisfy one of the jurisdiction of the Peers, to retain such causes: It says, That William de Valentia had at the foregoing parliament been 'ad querelas Isabellæ le Mareschall allocutus et ad rationem positus,' impleaded and put to

answer, by what right he assumed such an office and such power in the hundred of Hostereleigh, and that he then alledged he did it in the right of his wife, and that it being his wife's inheritance he ought not to be put to answer without her, 'Ita quod datus fuit dies ei ad hunc diem ad parlamentum domini regis, viz. a die Paschæ in tres septimanas.' And then his wife and he appeared by their attorney, and after pleadings, the Judgment is, 'Quia prædicti Willielmus et Johanna sunt in seisina de prædicta jurisdictione et de hæreditate ipsius Johannæ per descensum hæreditarium & non per usurpationem seu purpresturam, &c.' Consideratum est, quod eant inde sine die quoad præsens: et dominus rex habeat breve si voluerit, &c. The Lords knew they had jurisdiction, else they would have dismissed the cause the parliament before, and not have adjourned it to the next parliament upon that ground to make the wife a party, as we see they did: And whereas the Commons had upon this precedent observed, that if there had been crime in the case, as usurpation or purpresture, then they acknowledged that in such cases the House of Lords did usually proceed and try them, but without added, That if that were the question, much might be said how the constitution of government hath been since altered: so as they soon retracted their admittance of but so much of the Lords' right, and what they had given with their right hand, they would soon take again with their left.

But first, for their concession of judging crime, the Lords say, that suffices for their indemnity as to what they have done in this particular case of the East India Company and Skinner, for here is crime sufficient, and usurpation and purpresture, taking them in the larger sense for invading any other man's right, and not only where the king is concerned, as those terms are taken sometimes: And then for the qualification of their gift upon the change and alteration of the government, the Lords answer, That when they shew the time when that alteration was made, and the persons by whom, and the manner how (if legally done) they shall then believe and submit, and not till then: but they never heard of anything that till now so much as looked that way, except that vote of the assembly called the Rump, which declared the House of Lords useless and dangerous, and therefore to be abolished and taken away; and by a club law they did take it away. But even they that passed that vote, and did make that club law, thought the judicature necessary and fit to be continued, for they immediately assumed it to themselves, and fairly voted themselves into that power by the name of the Commons of England, the very same title that the East India Company do now make use of in their Petition to the House of Commons.

To the 4th of Roger de Somerton prosecuting for the king, and complaining of the prior of Buttele, for unjustly withholding from the king the manor of Somerton; and the judgment

upon it, 'Ideo prædictus prior quo ad hoc eat iude sine die ad præsens:' the Lords say, it is but a temporary dismissal as the others were, and signifies nothing as to the point of jurisdiction: and they wish the Commons would have pleased to cast their eye upon the ensuing case in the same leaf, of William de Valentia again, and of him upon the same occasion (concerning his wife's inheritance as formerly,) where there is not a dismissal of the cause as formerly, but a determination of it, and that determination again referred unto and confirmed by a succeeding parliament, to shew that the house of Lords sometimes would and sometimes would not judge and determine such causes as were brought before them: that case was thus, William de Valentia complains of the Lords of the council for admitting, during the king's absence beyond the seas, one Dionisia a pretended daughter of William de Monta Caniso tenant to the king of lands held *in capite* and formerly enjoyed by her father in his life time, whereas his wife was true heir to that William, and the land belonging to her; the lords of the council justify what they have done, say that Dionisia was notoriously known to be the true daughter of that William, and that the bishop of Winchester, in whose diocess she was born, testified it: the judgment is, 'Ideo videtur domino regi quod prædictus comes, thesaurar. et alii de consilio bene et ritè processerunt.' It is not now 'sibi perquirat per breve de cancel.' They do not refer him to the chancery, as they did in the other case. This was in 18 E. 1. In 20 E. 1. p. 103. he comes again to parliament, and renews his complaint, and that judgment given before is confirmed; the words are these, 'Et de aliis petitionibus suis, viz. De hæreditate Willielmi de Monte Caniso petenda, et etiam quod procedatur juxta Bullam quam iidem Willielmus et Johanna impetrarunt ad inficendum processum, perquod Dionisia filia prædicti Willielmi legitima censebatur, alias eis responsum fuit, viz. in parlamento post natale Domini anno 18. ut patet in rotulis ejusdem parlamenti, ad quam responsonem se teneant, &c.' Nothing can be clearer than the continual practice of this jurisdiction in the house of Lords, whensoever they pleased.

Not that it hath always pleased them to trouble themselves with exercising this jurisdiction, their time having been so taken up some times with businesses of a higher nature, that they could not attend it, so as many times they have tied up themselves by an order of the house, not to receive any private business: as in the close roll 18 E. 1. there is a memorable order to that purpose; I will set it down at length in the very words which are these, 'Purces ke la gent ke venant al parlement le roy sunt sovent destaez et destourbez a great grevance de eux e de la curt par la multitude des petitions ke sunt botez devant le roy, de quevx le plus pourient estre espleytez par chanceler et par justices. purveu est, ke tutes les petitions ke tuchent le sel vegnent prises

al chanceler, e ceux ke tuchent justices v ley
 veynent a justices, e ceux ke tuchent juerie
 veynent a justices de le juerie. Et si les be-
 soings seent si grans v si de graces, ke le chan-
 celer e ces autres ne le pussent fere sans le rey
 dunk ils les porterunt par lur meins de meine
 devant le roy pur saverent sa volenté. Ensi-
 que nulle petition ne veigne devant le roy e
 son conseil fors par les mains des avaunt ditz
 chanceler e les autres chief ministres. Ensi-
 que le rey e sun conseil pussent sanz charge de
 autre busoignes entendre a grosses busoignes
 de sun reume e de ses foreignes terres.
 Thus in English, 'in regard the people who come
 to the king's parliament, are oft delayed and
 disturbed to the great grievance of themselves
 and of the court, by the multitude of petitions
 exhibited before the king, of which most could
 be dispatched by the chancellor and justices ;
 it is provided, that all petitions, that concern
 the seal shall come first to the chancellor, and those
 that concern the exchequer, to the exchequer,
 and those that concern the justices, or the law,
 shall come to the justices, and those that concern
 the Jews to the justices appointed for the Jews ;
 and if the businesses be so great, or so of grace
 as the chancellor and the rest cannot end them
 without the king, then they shall with their
 own hands bring them before the king to know
 his pleasure therein ; so as no petition shall
 come to the king and his council, but brought
 by the chancellor and those chief ministers :
 that so the king and his council, may without
 the trouble of other business, attend the great
 businesses of his kingdom, and of his foreign
 dominions.'

This is the Order, in which two reasons are
 expressed, for their not receiving particular
 petitions, one in the beginning, the other in the
 end, first the ease of the petitioners, and of the
 house itself, which for their multitudes could not
 give every one his dispatch ; and secondly,
 that freed of them it might attend the public
 business of the kingdom ; not for want of ju-
 risdiction. And yet be all manner of businesses
 so put by ? No ; Great ones, and such as need
 grace and favour, are still reserved : but take
 it at the strongest, admit they had put all out
 of their own power, yet it will be granted, they
 had power, till they did in this manner divest
 themselves of it ; It appears they had by the
 order itself, which mentions such multitudes
 of petitions ; I then ask, if such resolution of
 the house at that time could be binding to
 perpetuity ? The houses of parliament we know
 are masters of their own orders, and themselves
 when they please alter the orders they have
 made ; much less then be they binding, to suc-
 ceeding parliaments. And it is obvious to
 every man, who will either look into the records
 of ancient parliaments, or will but recollect his
 memory and call to mind what hath passed
 in our late parliaments, that in all times
 the House of Peers hath acted contrary
 to this order ; taking cognizance even of
 smaller matters, which the ordinary courts
 of justice do every day dispatch : and no house

of peers did ever do it less than this, which in
 truth hath not done it at all, though it be now
 so quarrelled with for having relieved one
 poor man from the oppression of the mighty,
 when no inferior court could do it : and this
 too the only cause of this nature that they
 have meddled with during this whole parliament
 which hath lasted so many years, and hath had
 so many sessions ; and a cause particularly dit-
 z recommended unto them by the king (who is the
 fountain of all justice ;) not one taken up by
 themselves, which makes not their case the
 worse, as it may well be hoped.

But suppose there had been no reservation
 at all in that order of 3 E. 1. of any cause or
 any business, but that the king and lords had at
 that time bound up themselves absolutely from
 meddling with any of those petitioners cases
 and for the present waved the exercise of their
 jurisdiction in all such matters, had this been a
 renouncing of their jurisdiction and quitting it
 for ever ? No court but may upon some partic-
 ular occasion suspend and wave it's jurisdic-
 tion, it doth not therefore follow that it must
 never make use of it again. The court of chan-
 cery doth sometimes appoint a trial at law of
 points in a cause, which it might have deter-
 mined itself if it had pleased : and at another
 time it will determine things of the same na-
 ture, the House of Peers may do the same and
 wave their jurisdiction when they please. It
 did it 13 R. 2. n. 10. in Changeour's case.
 Adam Changeour (so is his name in the record
 though the Exact Abridgment calls him John)
 petitions the king and lords against sir Robert
 Knolls, sets forth, how owing 2000*l.* to sir
 Robert and his wife Constance, he had let him
 have lands to receive the rent till he was satis-
 fied his debt ; that sir Robert had received more
 than his money due, yet kept the land, so prays
 remedy. The Answer is indorsed upon the
 petition, Let a writ be directed to sir Robert
 Knolls to appear in parliament the Friday after
 Candlemas next, to answer the things contained
 in the petition. Upon hearing the business
 the Lords leave it to be tried at the common
 law. This seems a stronger precedent for try-
 ing all at law and not in parliament, than any
 which the gentlemen of the House of Commons
 urged at the conference ; for here was an abso-
 lute dismissal of the cause, and not *ad presens*
 only, as was in their precedents. But I believe
 such wise and knowing men could not but see,
 that this precedent would not so much have helpt
 one way, as done prejudice to their case an-
 other way. The prejudice, it would have done
 had been this, that themselves by their own
 shewing had overthrown one of their main
 arguments, which was, that all proceedings in
 cases of freehold should be by the king's writ,
 and that no writ was ever made returnable
 ' *Coram dominis spiritualibus et temporalibus ;*
 Whereas here had been in their own precedent
 mention of a writ returnable in parliament,
 which is tantamount, and signifies the same
 thing : but I have in this discourse given ex-
 amples of several others in the same kind ;

where writs are issued by order of parliament returnable in parliament: and many more there are, if it were necessary and worth the trouble to set them down. And then, what had they gotten by telling us, that the Lords once would not retain a cause, which was tryable at law, and would for once waive their jurisdiction in such matters? when it was shewed to them by multitudes of precedents, that the Lords had most frequently done otherwise at other times in cases of the same nature.

And precedents in the affirmative are those that prove a jurisdiction, especially when many in number are produced, and some of all times and in every king's reign (of which the records can be had,) which shews a continuance of, and so an unquestionable right to such a power. One, or two, or twenty then in the negative (that the Lords did not do so in such and such cases) may I say more, were the number equal as many in the negative as in the affirmative, yet it could not disprove their jurisdiction; it would only shew, that their lordships were free agents, to do it or not to do it, as they saw cause; but their jurisdiction remained still entire to do it, whensoever they would.

And when all is done, I may say, all this is 'Nihil ad rem,' and concerns not the point in question, which is, if the Lords have done well or ill in relieving Skinner against the East-India Company, for he was not relievable at the common law (as hath been shewed;) and if he had not been relieved, there had been a failure of justice: so as there was a necessity of their lordships acting in that particular, to keep up the public justice of the kingdom. And all precedents, and all that can be said and urged, to shew that the House of Peers ought not to meddle with matters determinable at law, are in truth out of doors, and cannot concern this House of Peers, which never did it, but the contrary; for whensoever it appeared, that any business before them was proper to be tried at law they presently dismissed it: yet since their right is questioned, they must defend it, though they gave no occasion for it, having not at all put that right in execution, nor (as it may well be presumed by their proceedings hereto) ever intending it.

As to the 6 other precedents, of petitions answered in parliament of the 14 of E. 3. which the gentlemen of the House of Commons themselves seemed not to lay so much weight upon; the Lords thought they did wisely in it, for they were not such as would bear weight to build upon; the Lords of that parliament, according to the several natures of the businesses petitioned for, dismissed the petitioners with several directions; which shews they took cognizance of those matters; one was directed to take out his writ 'novæ disseisinæ;' and another to bring his action of trespass; the third they send to the common law; the fourth into the chancery; the fifth they order to bring his action of debt; the sixth who complained of several things, to him they gave particular answers, and particular directions to every point;

one of which (they said) pertained not to the king, that is, to his laws, so they could give no order in it; it was concerning the resignation of a living, which was to be tried by the laws of the church; for the other points, they disposed them into their proper channels. Was this to be done by a court, that had no jurisdiction in these matters? No rational man can think so.

But it would be considered, that in this case of Skinner's the Lords could give none of those answers, neither 'sibi perquirat per breve de cancellaria,' nor 'sequatur ad legem commutem,' or to bring this or the other action. For neither law nor equity in the ordinary way of the inferior courts could relieve him for the loss of his real estate in the Indies: the judges said, he was not relievable for his house and island: So as none of those precedents are applicable to the point in question. Not that the law, even in the ordinary execution of it, provides not for the punishment of all crimes: It declares against and condemns the fact, but can not reach the person to punish him, when he hath committed that fact in a foreign country, 'ubi lex Angliæ non currit.' And the house of peers hath but helped the law to inflict such punishment upon offenders, as by the law was due to them, which otherwise they had escaped. And were it but this, it sufficiently justifies the proceedings of the Lords in that particular case. Then as to the jurisdiction of that house in the general it will be made as apparent as the sun at noon, how they have in all times exercised it to the relief of all persons, who stood in need of their relief, even for things done within the kingdom.

Where the law had provided a remedy, they applied it; Sometimes themselves would take the pains, in cases that deserved it, where there was something extraordinary to move them to it, and when they were at leisure from the more weighty and important affairs of the kingdom. Sometimes they would send it down to the inferior courts, to do it for them, and give them authority for it, (which they could not have done, if they had not had it themselves, for 'nemo dat id quod non habet') as in the case of certain rioters 11 H. 4, n. 38, in the Exact Abridgement, whom they turned over to the King's Bench, and gave those judges authority to end the business, where the law had not provided, there they would not meddle themselves, and declared it so, That none else neither should presume to meddle: As upon the petition of Martin Chamberlain is that 14 E. 2, p. 409, who upon the suppression of the Knights Templars desired to be put into the possession of a manor, which the Templars (whilst they stood) had held of him, The answer is, 'quod non est lex ordinata,' there was no law ordained in the case; And because the law had not determined, how those lands should be disposed of, the Lords would say nothing to it.

But will it not be said, that this makes good what the Commons objected, against the Lords retaining this cause of Skinner's, because some

parts of it were not determinable in Westminster-hall; whereas, there being no law concerning those points, till there had been one made, their lordships should not have meddled with them? As the Lords in that parliament of Ed. 3. would do nothing in Chamberlain's case, because the law had not provided for it: And as in those two cases mentioned by the House of Commons, that if an inheritrix forfeiting by her husband's default, where (as the statute of Westminster the second expressed it) *a durum est* was in the case: And that if the hospital of St. Leonards 2 H. 6, n. 37, which had a clear right to a corn rent, yet the Lords could not relieve them, but both were fain to have acts of parliament.

This receives a twofold answer; one, that there are other motives in this case to make the Lords retain it, and give Skinner relief; here is a poor man oppressed by a rich company, with whom he was no ways able to wage law: And that consideration hath in all times prevailed with that house, which is composed of persons of generous and noble spirits, who can not see poor men oppressed without feeling in their hearts an inclination and a desire to relieve them: But secondly we must distinguish between a fact not being a crime in the eye of the law, which is neither *'malum in se,'* nor *'malum prohibitum,'* and when the fact itself being odious and punishable by all laws of God and man, only a circumstance, as the place where it was committed, puts it out of the power of the ordinary courts of justice to take cognizance of it, which are kept to forms, and may not transgress them; In the first case, the House of Lords cannot punish that for a crime which the law doth not make a crime, but in the second case God forbid there should be such a failure of justice in a kingdom, that fellow subjects should rob and worry and destroy one another (though in foreign parts) and there should be no punishment for the wrong doer, nor relief for the party wronged, when they come home; For then the king might be deprived of many a good subject, the land lose many of her people, trading receive much prejudice, and so king and kingdom suffer great loss, and all without remedy.

But then say the House of Commons, where the law hath provided, and there is an ordinary remedy, an extraordinary ought not to be tried: To this the Lords answer, that their House is not an extraordinary remedy, but the ordinary remedy in extraordinary cases, and this of Skinner's was so, both in point of difficulty, and point of compassion.

And to what is said, That it is the interest of all men in England to be tried by juries, and there is remedy against wilful juries by attain, but here is no remedy nor no appeal, it is answered, That the Court of Chancery disposeth of mens estates without a jury, every court of justice, every judge in his circuit sets fines on mens heads upon several occasions without a jury; Many are tried for their lives and their liberties (which is more than estate) in the

House of Peers upon an Impeachment of the House of Commons, who are not a jury, nor are sworn; therefore that assertion holds not; That all men in all cases are tried by juries; And for matters of appeal, there doth lie one to the next parliament, or the next session: but it will be said, that is to the same persons; and what hopes of any remedy? for they will make good their own act: To this is answered, It is what the law of the land hath established; we must not be wiser than the law; It is what our ancestors thought sufficient, what hath been the practice of all times; and if we leave posterity in as good a condition as our ancestors left us, they will have no cause to complain. Then we must presume, that courts of justice will do justice, and will do right; that upon better reason shewed upon the appeal, they will alter their minds, and give another judgment: They have done so heretofore; How many judgments of parliament have been reversed by succeeding parliaments? and where there is cause for it, we must hope, they will do so again.

Then whereas it is said, That the greatness of the charge and the inconveniences of attending causes in the Lords' House is an argument against their judicature; They answer, That it is not the House of Lords, that appoints such great fees to counsel; it being left to their consciences that take them, and to the will and discretion of their clients who give them, and who (without an act of parliament to restrain it) may give what they will, or rather what they must: However the Lords say, that the charge in Chancery is greater, there having been some times forty, fifty orders made in one cause; and the delay much greater, so as some causes have lasted there very many years: And even at the common law, how many verdicts have been given in one cause, contrary verdicts, one for the plaintiff, another for the defendant? Contrary rules of Court, the judges give a rule one day, and three days after give another clean contrary? As an instance of it can be given but of last Trinity Term in the King's Bench. These are inconveniences, that lie not in the House of Peers. But admit there were inconveniences: Many laws are found inconvenient, which yet are put in execution, and all obedience given to them, whilst they stand unrepealed. And the question is not now of convenient or inconvenient, but matter of right. Is it the right of the House of Peers? hath it still been the custom and usage of parliaments, and consequently the law of parliament, that they should exercise such a power of judicature? If it be so (as it is and will be sufficiently proved) then the point of convenience or inconvenience is out of doors; well may it be a motive to alter it by the law. But we will play with them at their own weapon, and join issue upon that point, that the inconvenience is but imaginary, and so far from an inconvenience, that it is the great advantage of the subject that it should be so: As well to give relief in cases otherwise unrelievable, as to assist and help on the administration of justice,

when sometimes the greatness and power of some persons would else bear down, or much obstruct and hinder the proceedings of inferior Courts.

An objection also was raised, "How shall the Lords judgments be executed after the rising of the parliament? For so the subject may be deceived: And when he thinks, that with much charge he hath made an end of his business, he is never the nearer;" And it is answered, that the House of Peers is not as the House of Commons, whose orders are only of force, whilst they are sitting, they have power sufficient to require obedience to their judgments; Nor hath it been known, that ever any judgment of the House of Peers was not submitted unto and obeyed, till now in this Case of Skinner's, that the East-India Company stands out in defiance, and refuseth all obedience to it. In 15 R. 2. n. 17, in the Case of the Abbot of St. Oseches complaining against John Rokell for divers embraceries, and for not obeying an order of the duke of Lancaster's made therein, the Lords confirm that order, and charge the Lord Chancellor to see Rokell perform it. Why may not the Lords do the same still, if they doubt of obedience to their orders? But there was never question made of it before: And there are many precedents of orders given to persons to act something in the intervals of parliaments, and to give an account of it to the Lords at the next ensuing parliament, which shews, that their authority still continues, to empower those persons to act and to execute their orders even when the parliament is arisen; 15 E. 3. n. 48. The bishops of Duresme and Salisbury, the earl of Northampton, Warwick, Arundell and Salisbury are appointed to take the answer of the archbishop of Canterbury, and to report it to the next parliament: And 51 E. 3. n. 96. It is there specified, How in the parliament before, one Hugh Stafford had been accused of divers extortions, and that a commission was then granted to the earl of Suffolk and sir John Cavendish to inquire into it, who so had done, and had found him guiltless by 18 Inquests, which sir John Cavendish did in that present parliament witness to be true: By all this it appears, that the authority of the House of Peers ends not with the parliament, but their judgments still continue in full force and power; and they may appoint persons to see them executed if they please.

And whereas the House of Commons doth not deny them a power of judicature upon Writs of Error and upon appeals, Will not the same objection lie as well against their judgments in those cases? For seldom that they be put in execution before the parliament rise, so it takes away their whole judicature, as in truth all the other objections would do, could they be made good.

And whereas it was said, "That none of the king's courts can give remedy, where the king's writ cannot run; and where his majesty's sovereignty doth not come, the jurisdiction of the Peers can have no place;" It was answered,

that there chiefly the power of the House of Peers is to give remedy, because it only can: As for treasons (till the Statutes of 26 H. 8. c. 13. 32 H. 8. c. 2, and 5 E. 6. c. 11, which have made them triable within the realm) and all misdemeanors committed in foreign parts, which never were, nor yet are, triable at the common law: Of this there are multitudes of precedents, Gomeniz, Weston, Segrave, Hall, Richill, &c.

And here within the kingdom the king's writ doth not originally run in all places, as for example, in the counties palatine, yet no man will deny the authority of the Lords in parliament taking place there; 9 R. 2. n. 13. The duke of Lancaster complains of sir John Stanley for not suing out his livery for the manor of Latham in the duke's court of Chancery, and yet entering upon it; they declare his entry unlawful, and order him to sue out his livery in the duke's court. The king's writ did not run there, but the authority of the Lords did.

Another objection was, That all proceedings ought to be in Latin, and no record to be in English: But the Lords had thought, That none had ever yet doubted, but the House of Peers had been a Court of Record, where all the proceedings and orders and judgments have been in English ever since H. 6.'s time. All acts of parliament in English. All impeachments, even those brought up by the House of Commons, the proceedings, and the sentence, all in English. The ancient records were in French, and the pleadings likewise, till the statute of 36 Ed. 3, which appoints pleadings to be in English, and to be entered and enrolled in Latin (so the print saith, but in sir Robert Cotton's Abridgment of the Records it is observed that the record itself warrants no such thing;) Then the Chancery proceedings are all in English, the pleadings, orders, and decrees: yet it will not be denied but that is a Court of Record. Sir Edward Coke, who alone is of another opinion concerning the Chancery, and upon that ground, because the proceeding is in English, yet makes the House of Commons itself a Court of Record, where every body knows all is in English; Inst. 4. part p. 23, so he doth not *sibi constare*.

The last objection and indeed the chief one (if true) was, That it deprives the subject of the benefit of Magna Charta, which will have all men to be tried by their peers, or by the law of the land; and the 25th of Ed. 3, cap. 4, that none shall be apprehended upon petition to the king or council, (and council here they interpreted to be the House of Lords) but upon indictment or presentment, or by writ original; and the 42nd of Ed. 3, which is to the same purpose; It was urged further that no writ was ever made returnable '*Coram Dominis spiritualibus et temporalibus*;' and it was said in regard of the island, being in a foreign prince's jurisdiction, that it ought to have been done by act of parliament, for that no court of his majesty can give remedy, where his majesty's writ cannot run, nor can the jurisdiction

of the House of Peers have place there: Another observation they had upon *lex terræ* in Magna Charta, That in the arguments of the king's learned counsel 3 Car. they made *lex terræ* to be the pleasure of the king, and the Lords were desired to consider upon this, if by arguing that the proceedings of their house were maintained to be *secundum legem terræ*, it may not as well be said that Magna Charta will have men to be tried 'Per iudicium patrum aut per legem terræ,' that is, by the will of the Lords.

It now remains but to set forth the Precedents, which the Lords did on their part alledge, with some few more ancient ones, which shall be added for the vindicating and asserting of their right unto this (never before controverted) point of their judicature, in all cases of what nature soever, when something extraordinary in those cases did induce them to exercise it; of which they were the sole judges, that being a trust lodged in them by the very frame and constitution of the government.

In the black book in the Tower, which is printed by the name of *Placita Parliamentaria*, 30 E. 1, f. 231, is the case of sir William Paynell and Margaret his wife suing for dower upon the lands of John Cameys, who had been Margaret's former husband, and whom she had left he yet living; and they now desiring to be tried by their country upon the point of adultery, and the Lords not allowing of it; This hath been at large expressed before, therefore I only mention it now.

In the same book p. 266, 33 Ed. 1, the case of Nicholas Segrave, who was tried in parliament for leaving the king's army then in Scotland, and going over into France to fight with one John de Crumbwell upon a falling out between them, they being together in the king's army: This was a case not triable in Westminster-hall, nor punishable in any ordinary court of justice by the common law of England, yet the House of Lords could try him, and adjudge him worthy of death: and one thing more is observable in that record, That a writ is issued to the sheriff of the county to take four knights with him and in their presence to summon Segrave, 'Quod esset coram Domino rege in proximo Parlamento suo apud Westm. ad audiendum voluntatem ipsius regis, et ad faciendum et recipiendum ulterius quod curia Domini regis consideraret in præmissis:' so here is a writ returnable in Parliament, and the sheriff did accordingly make his return, that he had summoned and charged him, 'Quod esset coram Domino rege in isto parlamento nunc juxta formam et tenorem mandati prædicti,' &c. It was therefore a gross mistake to say, That never any writ was made returnable in parliament, as it was likewise one to say, That the House of Peers could give no remedy, where was not remedy at law, this precedent proving the contrary to both.

21 Ed. 1, p. 135, 136, &c. The archbishop of York is questioned in parliament for excommunicating the bishop of Duresme: The ground

of the excommunication was, for that the bishop of Duresme had imprisoned two persons employed by the archbishop to cite the bishop to appear before him. The archbishop appeals, 'Et dicit quod de sententia a canone lata, et per ipsum declarata, in curia Domini regis non debet respondere.' The House of Lords goes on: The other side alledging, That the bishop in his temporal capacity, as count palatine, had committed those men, and it pertained to the king, and not to the archbishop to take cognizance of the imprisonment, if or no it was lawful; The judgment is, 'Videtur domino regi in pleno parlamento, prædictis comitibus, baronibus, &c. Quod prædictus archiepiscopus quantum in ipso fuit, nitebatur usurpare super coronam et dignitatem regiam, &c. Propter quod per comites, barones et justiciarios et omnes alios de consilio ipsius domini regis unanimiter concordatum est, quod prædictus archiepiscopus committatur prisonæ pro offensa et transgressione prædictis. Et super hoc ante iudicium pronunciatum, (licet unanimiter de consilio prædict. Magnatum et aliorum concordatum fuisset tenendum in hoc casu et similiter in casibus consimilibus in perpetuum) prædictus archiepiscopus magnates et alios de consilio ipsius domini regis rogavit, quod pro eo dominum regem requirerent, ut ante pronunciatum iudicii ipsum ad gratiam suam admitteret et voluntatem suam.' They interceded for him, and he made fine to the king of 4,000 marks, and was received to favour. They did not only give a judgment in this particular case, (which being 'Contra coronam et dignitatem,' was triable in Westminster-hall) but they declare it to be a standing rule for the judging of all cases of like nature; which shews the absoluteness of that power of judicature, which is lodged in that House.

It was said, that the Lords could not take a cause to themselves *per saltum*, and before it had passed all the formalities below; that a Writ of Error did not lie from the Common Pleas to the Lords House, but must first be brought to the King's bench; and the case of the bishop of Norwich was urged, 50 Ed. 3. And it is acknowledged, the Lords would not receive that bishop's complaint, but sent him away with that answer, nor could they give him any other: For Writs of Error have their walk, and their gradual proceeding chalked out, and settled by several statutes, and by the common law of the land; but what doth that signify against the judicature of the House of Peers? No man, saith the Lords, can either take cognizance of causes, or judge causes against the law of the land, and take them *per saltum*, when the law prohibits it: But they do say and affirm, that by all the examples and precedents of former times, it hath been the usage of that house to receive complaints, and give remedy in all cases, where the law hath not expressly otherwise determined; and if there be any thing in the case which merits, or requires, and needs something above the ordi-

vary power and proceeding of the inferior courts of justice, to administer that relief which is just and due. As in cases of difficulty where a court cannot, or of delay where it will not proceed, the Lords, who have a general inspection into the administration of the justice of the kingdom, and into the proceedings of all other courts, have ever, upon application made to them, assumed to themselves the cognizance of such causes. 14 Ed. 3. Sir John Stanton, and his wife, had passed a fine of certain lands to Thomas Cranthorn, who reverts them back, and by that means settled them upon the wife; Sir Jeffrey Stanton, as next heir, brings his *Formedon en le descender* in the Common Pleas, where, after some proceedings, upon a demurrer in law, sir Jeffrey could not get the judges to proceed to judgment; upon which he petitions the king in parliament, which no man will deny to have been in the House of Peers. They examine the matter; and afterward order a writ under the great seal containing the whole matter to be sent to the judges there, willing them thereby, if the matter so stood, to proceed to judgment without delay: They not doing it, an Alias is sent; and the judges doing nothing then neither, and sir Jeffrey renewing his petition; The Lords commanded the clerk of the parliament, sir Thomas de Drayton, to go to sir John Stoner, and the rest of the judges of the Common Pleas, and to require them, according to the plea pleaded, to proceed to judgment, or else to come into the House with the whole record, so as in parliament judgment might be given for one or the other of the parties. The judges came at the day, and the business was heard, and it was adjudged, That sir Jeffrey should recover; and a writ under the great seal was sent to the judges to give judgment accordingly: Here then the king in parliament assembled, that is the House of Peers, upon a petition, assumes the cognizance of a cause, depending in the court of Common Pleas; which was so far from having passed all the formalities below, that is to say, an appeal to the King's-bench and Chaucery, that it was as yet undetermined in the Common Pleas. Nor did it appear unto them upon what ground it was, that the judges gave not judgment; so they might have answered sir Jeffrey Stanton's petition with saying, that they would first see what the court would determine, and what the King's-bench afterwards; But they apply themselves to give him relief: And yet no votes passed against that House for so doing, as now hath been in the case of Skinner against this.

So in the parliament of 18 Ed. 1. p. 16. of the *Placita Parliamentaria*, William de Washul complains of Matthew del Exchequer, for cozening him upon the levying of a fine before the judges of the Common Pleas, by procuring an attorney to slip in other lands unknown to Washul, and which he intended not to pass in the fine: This is returned back to those judges, because the fine had been levied before them, *Et dictum est iisdem justiciariis, quod re-*

cordum istud in rotulis suis faciant irrotulare, et tamen saper recordo isto quam super aliis ipsum Mattheum coram eis contingentibus procedant ad iudicium et debitum et festinum faciant iustitiæ complementum. True! the House of Lords is not so bound up to forms, but that it may, when it thinks good, to vary, and retain a cause at one time, which it will not do at any other time. Yet we see they were proper judges in this cause, for they order Washul's complaint, and the proceedings before them to be entered, as a record in the Common Pleas, and those judges to proceed upon it, which, if they had not had cognizance of the matter, had been all *'coram non iudice,'* and could have signified nothing.

And I must observe one thing, which I think will not be denied, that in all those *'Placita Parliamentaria,'* whatever is said to be done *'coram rege in parlamento,'* is to be understood of the House of Peers, where the king was in those times commonly present, and always understood to be there representatively; So as his name was ever mentioned in the proceedings, even when his person was absent, being sometimes out of the kingdom, sometimes detained away by sickness, or other occasion; As 50 Ed. 3. n. 35, it is said, The king ordains, That from thenceforth no woman should for maintenance pursue matters in the king's courts upon pain, &c. And then was the king sick at Eltham, and could not come to parliament, as appears by n. 42. and it was only the House of Peers that made that order. So in judgments, though in ancient times they were mostly entered as given by the king, yet it was the Lords' House, which was *Curia Regis*, that gave them.

For we must know the king hath a double capacity of sitting in the House of Peers, a legislative capacity, when he hath in himself a negative voice to what even both houses have concluded and done, which signifies nothing without his assent, and his single dissent makes it all full and void; this is in passing acts of parliament, and making of laws; the other is a judicial capacity, when he will please to assist, and be present at the ordinary transactions of the house, as heretofore was usual; which alters not the constitution of it as it is a court, gives it no more power nor jurisdiction than it had before, he being then but in a manner as chief judge, and not doing any thing singly, but according to the plurality of opinions; as when the kings would in person sit in the King's bench, which they have in former times done, (where still all is said to be done *coram rege*, though now he never come there) and in our memory king James hath sat in the Star Chamber; I think no body will say the Star Chamber then, or King's bench before, did or could vary from their ordinary forms and rules of proceeding: no more can the House of Peers alter their proceedings, or assume greater authority by reason of the royal presence, to take cognizance of other causes, or do any thing, which by the custom and usage

of the house, and the law of parliament, it could not else have done: but their jurisdiction, and their way of exercising that jurisdiction, is still one and the same. And therefore 26 H. 6. n. 52. When the king had given a judgment of himself, without the advice of the Lords, in the case of William de la Pole duke of Suffolk, who stood impeached for treason, banishing him the realm for five years: the Lords entered their protestation against it, as not done by their assent, and so no act of the house. And 5 H. 4. n. 11. The earl of Northumberland coming into the parliament before the king and lords, and by petition acknowledging to have done contrary to his allegiance, in giving of liveries, and gathering of power, for which he prayed pardon, in regard he yielded himself, and came in to the king at York upon his letters; and the king delivering this petition to the justices to be considered, the Lords made their protestation, That the judgment appertained only to them; and therefore as peers of parliament, to whom such judgment belonged, in weighing the statutes concerning treasons, and concerning liveries, they adjudged the fact of the said earl to be no treason nor felony, but only a trespass finable to the king: whereupon the king received him into grace, and pardoned him his fine. All power of judicature in parliament is then questionless in the House of Lords, where the king always is personally or virtually, and the judgment proceeds from them by the authority and in the name of the king; for the power of judicature in parliament is lodged in them, together with the king, as is declared 1. H. 4. n. 80. where it is said, that the Commons were only petitioners, and that all judgments appertain to the King and the Lords, unless it were in statutes, grants, subsidies, and such alike. This hath ever been the practice, and custom, and law of parliament, since there have been parliaments, and when this shall cease to be, the ancient way of free parliaments will cease likewise.

1 R. 2. n. 30. Sir John de Cobham sheweth that by the delivery of a ring of gold for seizin to Edward the 3d, he had settled the reversion of several manors there named in the crown, and now prays it may so remain according to his intention, divers lords are examined, the judges opinions are asked, who declare it to be a good livery and seizin: and so it is settled.

N. 32. William Fitzhugh, a goldfiner and citizen of London, exhibits a bill of complaint in the name of the commonalty of that mystery against John Chichester and John Bolsham of the same mystery, for divers oppressions done by them: the Lords send for them, examine them, they deny those oppressions: and Fitzhugh refusing then to avow his bill, the Lords commit him to the Tower.

N. 35. Robert Hawley and John Shakell, are by the Lords sent to the Tower for refusing to bring forth a Spanish prisoner taken in battle, whom they had in their keeping, and others laid claim to.

N. 41. Alice Perrers or Pierce, who had been much in favour with Edw. 3. is questioned in the Lords House, sir Richard Scrope lord steward of the Household managing the trial, for that contrary to an order made by the king and Lords, 50 Ed. 3. n. 35. that no woman, and she by name, should pursue any matters by way of maintenance, upon pain of perpetual banishment, and loss of the whole estate; she notwithstanding had persuaded king Edward to countermand sir Nicholas Dagworth from going into Ireland, when he had been ordained by the council to go thither for urgent business, which would have been profitable for the king and the realm: and another charge against her was, for persuading the king to pardon Richard Lyons, who had been farmer of the customs, and for abuses and extortions had been censured in parliament to forfeit his estate, and be committed to prison; she got all to be remitted, and his estate to be restored unto him, even that part of it which the king had given to two of his own sons for their lives: the hearing of this cause took up several days; many that had been counsellors and officers to the late king were examined as witnesses. At last she is found guilty, and judgment of banishment and loss of estate given upon her.

3 R. 2. n. 23. The case of the earl of Pembroke, and William le Zouch, complaining of Thomas Roos for suing them concerning lands in Yorkshire, and endeavouring to get a trial in the country, (the record is, 'desirant d'estre 'a l'issue du pays trop suspicieusement,' his desiring it being suspicious) so they pray, 'que ils 'par tels malue's compassemens & procurements en pais ne soient desheritez, That they may not lose their Inheritance by such wicked practices and procurements; the Lords upon this retain the cause, appoint some persons to examine and report it: but this precedent hath been cited before at large, so I do but touch it here.

N. 22. Sir Philip Darcy complains, That the prior of St. John's of Hierusalem sues him in Chancery for the Manors of Temple-hurst and Temple-newsom, which Ed. 3. had granted to John Darcy his father, and produces a deed shewing that the priors' predecessor had passed the fee of them to Ed. 2. The Lords order that deed to be sent to the Treasurer and barons of the Exchequer, to examine the king's title, and in the mean time stop proceedings in Chancery. This is more than taking cognizance of a matter originally, for they take it out of one court, where it depended and was undetermined, and send it to be examined in another court, which shews the ascendant they had upon all other courts.

4. R. 2. n. 17. Sir Ralph de Ferriers had been seized by the duke of Lancaster upon the Marches of Scotland upon suspicion of Treason, for holding intelligence with the French the king's enemies, upon some Letters of his to several French Lords found and taken up by a beggar. He was brought into parliament before

the Lords, and put to his answer. He first desired counsel, then offered the combat against any that would accuse him, both were denied him. Then he applied himself to his answer; and after several days hearing, the Lords still remanding him to prison, he so well defended himself, that the Lords suspected the letters to be forged, and therefore committed the beggar, and bailed sir Ralph, delivering him to his Manu- captors.

5 R. 2. n. 45. The Chancellor and university of Cambridge, petition against the mayor, bailiff, and commonalty of the town, for breaking up their Treasury, burning their Charter, and by force compelling them to make releases of some actions they had brought against the town, and enter into bonds to them for great sums. The Lords direct a writ to issue out to the mayor and bailiffs to appear in person, and the commonalty by Attorney. They appear, the Chancellor exhibits Articles against them. They being asked why their liberties should not be seized, plead to the jurisdiction, that the court ought not to have cognizance of them: they are told, judgment should be given, if they would not answer: then they answer, and the business is heard. The townsmen are ordered to deliver up those deeds forced from the university, which are presently cancelled: the town liberties are seized into the king's hands, and part of them granted to the university: some are granted back to the Town, for which they were to pay an increase of rent. Note, here is a plea to the jurisdiction, and that plea over-ruled.

8 R. 2. n. 12. The earl of Oxford complains of Walter Sibell of London for a slander, in having to the duke of Lancaster and other noblemen accused him of maintenance. The Lords hear the business, commit Sibell to prison, and give 500 marks damages to the earl.

9 R. 2. n. 13. The case of the duke of Lancaster complaining, That Sir John Stanley had entered upon the manor of Latham which held of him, and had not sued out his livery in his Court of Chancery. The Lords order him to sue out his livery. But this hath been already mentioned.

15 R. 2. n. 16. The prior of Holland in Lancashire complains of a riot committed by Henry Trebble, John Greenbow and others, and of an entry made by them into the parsonage of Whitwick in Leicestershire. John Ellingham the Serjeant at Arms is sent for them, who brings them into the parliament: the Lords commit them to the Fleet.

N. 17. The abbot of St. Oseches complaineth of John Rokell for Embracery. This case hath been already cited.

N. 18. Sir William Bryan had procured a bull directed to the two Archbishops, to excommunicate some that had broken up his house, and carried away writings. This was read in parliament, and adjudged to be prejudicial to the king, and to be in derogation of the laws; for which he is committed to the Tower.

N. 20. Thomas Harding accuseth Sir John

Sutton and sir Richard Sutton, and layeth to their charge, that by their conspiracy he had been kept prisoner in the Fleet: upon hearing of both parties, for that the two knights were known to be men of good fame, the Lords adjudged him to the Fleet.

N. 21. John Shadwell complains against the Archbishop of Canterbury for excommunicating him and his neighbours wrongfully, for a temporal cause appertaining to the crown and to the laws of the land: the Lords hear the business, find the suggestions untrue, and commit him to the Fleet.

1 H. 4. n. 93. Sir William Richill one of the justices of the common-pleas (who by express order of Ri. 2. went to Calais and took the examination and confession of the Duke of Gloucester, after murdered by Hall) was brought a prisoner into the Lords house, the king present, and by sir Walter Clopton chief-justice opposed: and answered so fully, shewing his sincere dealing, that the Lords one by one declared him innocent: and sir Walter Clopton pronounced him such.

4 H. 4, 21. The Case of Pontington and sir Philip Courtney, where the Lords direct the trial, appointing what the issue shall be; and what kind of Jury shall be impannelled to prevent sir Philip's practices in the country: It hath been cited before at large.

1 E. 4, m. 6, n. 16. The tenants of the manor of East-Maine belonging to the bishop of Winchester, the king being in his progress in Hampshire in the summer-time, complained to him of their bishop for raising new customs among them, and not suffering them to enjoy their old ones: The king bids them come to parliament in winter, and they should be relieved: they come, and the king recommends their business to the Lords: they commit it to certain justices to examine. Upon their report, and upon mature deliberation, it was adjudged, That the tenants were in fault, that they complained without cause, and they were ordered to continue their said customs and services. Here observe there was the recommendation of the king in the case, just as now in Skinner's, and this difference that a question of custom betwixt lord and tenants was properly determinable by the common law, and a jury of the visenage, and this of a trespass in the Indies, to be punished in parliament or no where: which justifies the proceedings there.

43 Eliz. Dec. 18th. A complaint was made to the Lords by the Company of Painters against the Company of Plaisterers, for wrong done them in using some part of their trade. Their lordships referred it to the Lord Mayor and Recorder of London, to be heard, examined, adjudged and ordered by them: which was all one as if they had done it themselves: For it was done by their authority and by their order: 'Qui facit per alium, facit per se.'

18 Jac. The Lords took notice of the proceeding of the House of Commons in the case of one Flood, whom they had convented before them for insolent and scandalous words spoken

by him against the prince and princess palatine, examined witnesses and given judgment in the cause; which they looked upon as deeply trenching upon the privileges of their House, all judgments properly and solely belonging to them. Thereupon they sent a message to the House of Commons and desired a conference; at which conference the Commons confessed, That out of their zeal they had censured Flood; but they left him now to their lordships, and hoped their lordships would censure him; in order to which they sent up a trunk of writings concerning his case: Then the Lords proceeded to the hearing of it, examined several witnesses and heard all Flood could say for himself: which done they adjudged him, Not to bear longer the arms of a gentleman, to ride with his face to the horse tail, to stand upon the pillory with his ears nailed, to be whipped at a cart's tail, to be fined 5,000*l.* and to be imprisoned in Newgate during life.

21 Jac. Thomas Morley was convented before the Lords, for delivering a scandalous petition to the House of Commons (as himself affirmed) against the Lord Keeper Coventry. Upon examination it appeared, that it had not been presented to the House of Commons, only to their committee of grievances, and that he had published very many copies of it, even since his being convented before their lordships, they adjudge him to be imprisoned in the Fleet, to pay 1,000*l.* fine, to stand with his neck in the pillory, to make his submission and acknowledgment at the bar.

22 Jac. Mary Brocas petitioned the Lords to be relieved for a debt of 1,000*l.* due unto her by bond from the Muscovia company. Upon hearing both sides, their lordships order the company to pay the debt, with 5*l.* per cent. interest out of the levations, which the said company had made among themselves for the payment of their debts.

The same parliament, May 23, Thomas Pynckney petitions the House in the behalf of himself and other creditors of sir John Kennedy, to be relieved for debts owing to them from sir John, by the sale of Barn-elms, lands in the possession of his heir John Kennedy. The Lords upon examination of the business, find cause and so they order it, That Barn-elms should be sold to the best value, and the profits to be sequestered in the mean time into indifferent hands; and that a recognisance of 2,000*l.* in which Pynckney stood bound in Chancery, should be withdrawn and cancelled.

The same parliament again, Grizzell Rogers widow, petitions the Lords for the settling her title to certain lands in Heygrove in the county of Somerset, and for quieting and ending divers suits and differences between her and sir Arthur Ingram, sir William Whitmore, &c. they order her satisfaction out of particular lands, and all suits to cease between them. And appointed releases of all differences on both sides to be drawn and sealed.

4 Car. 31 Jan. The Lords' committees for petitions, make report to the House of a peti-

tion of Benjamin Crokey against John Smith, in behalf of a grammar-school at Wotton-under-edge in the county of Gloucester, which school was endowed with great possessions by the widow of the lord Berkly in Richard 2nd's time, which were now much abated and brought to an undervalue by the cunning practices of the said Smith. Upon which the Lords awarded a commission to issue out of the Chancery, to survey all the said lands; and ordered also a special Habeas Corpus to be directed to the warden of the Fleet (where Crokey was a prisoner) to bring the body of the said Crokey before the Lord Keeper, to the intent he might attend the said commission; and ordered further, That if Crokey did make it appear the value of the lands to be so as he said, and that to be approved by the Lords' committees for petitions, then Smith to repay to the said Crokey such charges as he shall disburse in the prosecution.

In the parliament of 1640, December 16th, upon report from the Lords' committees for petitions, That mistress James complained against sir Edmund Sawyer, for sheltering himself under a royal protection which he had procured, by which means she could not sue him upon a bond of 500*l.* for so much money borrowed of her and two years interest, and so was debarred from helping herself by any legal course; the Lords ordered, That the said Mrs. James should proceed against the said sir Edmund Sawyer for the recovering of her debt in any court where she thought best, notwithstanding his protection.

December 21. The Lords committees report a Petition of Katherine Hadley, complaining that she had been kept a long time a prisoner in the common-gaol in the Old Bridewell, without any cause shewn; the Lords ordered her release.

The 22nd of December. Upon a report from the Lords committees of sir Robert Howard's case, complaining, that he had been committed close-prisoner to the Fleet by the high-commission court, and kept there three months, till he was fain for his enlargement to enter into several bonds with sureties in the sum of 3,500*l.* For which he desired reparations, and his bonds to be cancelled; The parties interested were summoned and heard. And after due consideration, the Lords ordered 1,000*l.* damages to sir Robert Howard, of which 500*l.* to be paid by the archbishop of Canterbury, 250*l.* by sir Henry Martin, and 250*l.* by sir John Lambe, the bonds to be forthwith cancelled, delivered to sir Robert Howard.

The 23d of December. They reported the case of William Dudley, that he having arrested the lord Wentworth (son to the earl of Cleveland) for a debt of 400*l.* entered a caution in Mr. Justice Bartley's chamber for good bail to be taken, yet justice Bartley had released the said lord Wentworth upon such bail, as the said Dudley was utterly disabled to recover his debt. Justice Bartly being called, made no

good answer thereunto. The Lords thereupon order, that the said justice Bartley should forthwith assure unto the said Dudley his house and land near Barnet, for securing the said debt with interest and damages.

The same day they report likewise the case of Mrs. Mary Stanhope widow, daughter-in-law to the earl of Chesterfield, complaining, that the said earl refused to assure unto her 40*l.* per annum during her widowhood, according to a former agreement made between them, which appeared to be true by a letter produced under the earl's hand; And his counsel being heard, and no good cause shewn, why the petitioner should not be relieved: The Lords ordered the earl of Chesterfield forthwith to assure to the said Mrs. Mary Stanhope, his daughter-in-law, 40*l.* per annum during her widowhood, and to pay unto her such money as was in arrear of the 40*l.* per annum due to her for the space of two years.

The 30th of December, the Lords committees for examining abuses in courts of justice, report the complaint of Turner, a prisoner in the Gate-house, committed thither by the high-commission court, where he had lain 14 years, for refusing to take the oath *ex officio*: The Lords ordered him to be forthwith released.

The 21st of January, the committee for petitions, report the complaint of William Waters and Thomas Waters, How they had suffered much by an untrue and false certificate, made by Dr. Clerk and Dr. Sibthorp unto the council-table, for their refusing to pay Ship-money; whereby they were forced to pay the sum of 34*l.* for fees: Upon which Dr. Clerk and Dr. Sibthorp were heard at large: the Lords ordered them to pay back the 34*l.* to the complainants, which they had paid for fees, and 100*l.* damages; And to be turned out of the commission of the peace.

The 22nd of January, the committee for courts of justice reported the complaint of the lady Frances Weld widow, against the archbishop of Canterbury and Mr. Dell, suggesting, that she had been much prejudiced by them in the recovering of a debt of 1,300*l.* due to her upon bond from Mr. Child: Upon hearing of all parties, the Lords find the archbishop and Mr. Dell free from blame, and order them to be discharged concerning that business.

The 5th of February, the committee reports the complaint of Jeremy Powel, That the bishop of Hereford had admitted a clerk to the vicarage of Burknill in Shropshire, though the said Powel in the right of himself and of Mary his wife, had caused a *ne admittas* to be directed to the bishop. The Lords upon hearing the business, found, that the bishop had done contrary to law, and thereupon ordered him to pay unto Powel, by way of damages, the sum of 30*l.* And the said Powel, as patron, to be left in the same condition for trial of his right, as he was before the bishop had put a stop to his business.

The 9th of Feb. the Committee for Courts of Justice reports the case of Nicholas Bloxam,

That Andrew Sandeland, clerk, had procured a sentence against him in the High Commission Court, by virtue whereof the said Sandeland had violently gained from him the possession of the rectory of Great Walsingham in the county of Suffolk. The Lords judging this proceeding of the High Commission to be most injurious and contrary to law, ordered, That the cause should be left to a trial at law next assizes for that county; That Sandeland should appear gratis, and plead not guilty that so the cause might come to a final determination that assizes.

The same day the same committee report that John Radway, William Newark, and Walter Cootes, were presented Ex officio in the ecclesiastical court of Gloucester, and afterwards excommunicated for going to church out of their own parish, and upon pretence of a Significavit which was imperfect, were arrested and cast into prison, where they continued eleven days, whereas there was no writ justly taken out. The Lords ordered that Dr. Baber chancellor of Gloucester should pay to those three persons 40*l.* for damages, and the undersheriff's deputy Richard Byford 20*l.* upon the account of the arrest.

The 23d of Feb. the same committee report, that Abraham Hill, a poor aged man, was committed to prison in the year 1636, by Robert Buxton then Mayor of Colchester, by verbal command only, without any warrant, or cause shewed and continued a prisoner sixteen weeks to his utter undoing: The Lords ordered, that the said Buxton should pay unto him 16*l.* by way of damages.

The 5th of March, the committee for petitions inform the House, that complaint had been made before them, That Nicholas Haws, gent. an ancient man, had not yet sued out his livery in the Court of Wards, the Lords order him to do it without delay.

The 11th of March, the committee for petitions gives account to the House, that according to their lordships direction, there had been a trial at the last assizes for Suffolk, between Bloxam and Sandeland, and that the verdict had passed for Bloxam; whereupon the Lords order, that Bloxam should discharge the cure as lawful incumbent, and that Sandeland should deliver unto him the quiet possession of it. It is worthy observation, that the Lords, after they had referred the decision of the title for matter of fact, as to the forcible entry, to the common law, remained still judges of the cause, and their judgment settled the possession.

The second of April, 1641, The committee reports, that Lambert Osbolstone clerk had complained of a sentence in the Star Chamber, by which he was degraded, and deprived of all his spiritual livings and preferments, being a prebend of Westminster, and parson of Whet-hampstead, fined 5000*l.* to the king, and adjudged to pay the like sum for damages to the arch-bishop of Canterbury, and to be imprisoned; The Lords order, that he shall be freed and discharged of his fine, damages and imprison-

ment, be restored to his prebendary and parsonage.

The 6th of April, 41. The committee reports, that the lady Dyer had made her complaint, that primo Caroli she had lent Sir Richard Titchburn 400*l.* upon bond, and sued it to a judgment, but Sir Robert Pye, Mr Button, and others, had extended all the lands liable to that judgment at a far undervalue, to deprive her of all the benefit of it: The Lords order that counsel of both sides should agree to draw up assurances for settling the payment of all the parties upon the judgment and extent, to be all signed and sealed by them, and that the lady Dyer should be first satisfied, and enjoy the lands till then. One thing by the way is to be noted, that sir Robert Pye was then a member of the House of Commons.

The 12th of April, 41. The committee reports, a complaint of Dr. Walker, that sir John Lamb had unjustly taken from him his offices of commissary of Leicester, and of official to the archdeaconry there, which he enjoyed by patent for life; That now sir John Lamb took the profits of them to himself, and had forced him by many menaces and oppressions to release all suits and actions to his utter ruin and undoing, and to his loss and damage of above 1500*l.* The Lords order, that sir John Lamb should pay unto the said Dr. Walker, by way of damage, the sum of 1500*l.* to be levied upon his lands and chattels, should be brought to the bar as a delinquent, and there receive a reprehension.

The 12th of June, 41. The committee reports a complaint of Edward Bagshaw, his brother Henry, and sisters Mary and Margaret, against their brother Thomas, concerning portions and annuities given them by their father's will: That all parties have been heard, and their witnesses. Upon hearing the state of the matter, the Lords order Thomas to put in security within four days for the payment of the portions according to the will; and to give security by land for the paying of an annuity of 20*l.* per annum to Edward for term of his life; That then the said Edward shall release by a fine to the said Thomas, all his estate, right, title and interest in the lands and goods of his father deceased: And that a statute of 1,600*l.* entered into by the said Thomas Bagshaw to John Gell, esq. shall be discharged and made void; and that Thomas shall make a release to the said Edward of all debts and demands.

The 16th of June, 41. The lord Audley complains by petition, That the lord Cottington kept from him the manor of Fonthill, and prayed relief therein: upon hearing counsel on both sides, the Lords dismissed the petition.

The 23d of June, 41. The committee for petitions, reports, That Mrs. Walter had preferred a petition setting forth, That William Walter her husband will not permit her to cohabit and dwell with him, nor allow to her and three children any thing for their support. The Lords order her to repair to her husband, and offer to live with him, and if he shall refuse to

admit her, that then he shall allow her 60*l.* per annum for her maintenance.

The 21st of July 41. A petition was exhibited before the Lords by sundry officers and clerks of the Court of Common Pleas, shewing, That the disposing of the offices of proto-notaries, philizers, exigenters, and other offices of the said court, had time out of mind belonged to the chief justice of that court for the time being, but several grants and patents had been obtained from his majesty for the disposing of the said offices, and therefore they prayed, That all those grants, and letters patents might be recalled. The Lords heard counsel upon it, and after mature deliberation declared, That the said offices do of right belong to the disposition of the Lord Chief Justice of the Common Pleas, and the grants formerly made by letters patents of the said offices to be illegal, and void, and ordered the said patents to be brought into the House.

There is likewise in the journal book of that parliament, mention made of a petition of one Thomas Smithick, preferred the 10th of June, 1641. Complaining of wrongs sustained from the East India Company, and likewise of a petition from the East India Company, full of respect and submission to the House of Lords, and praying a longer day (than it seems was appointed) for hearing the merits of the cause, which the Lords granted, and ordered all such books, certificates, and writings as were in the custody of the Company concerning that business, should be produced, and Smithick to peruse and take copies of them. What was more done upon this petition of Smithick's, appears not by the journal book, probable they compounded the business among themselves. But however it is observable the different spirits of the East India company then and of this now. The modesty of that, and the carriage of this so far differing. In those times no question was made of the power of the Lords in point of their judicature, nor no complaint against their practice of it. Yet we see the frequency of it, in cases of all natures, criminal, civil, mixt, between king and subject, between subject and subject; no protection; no privilege did exempt any body from their jurisdiction.*

But these Conferences between the two houses did not induce either of them to yield an iota of its original resolutions, or in any degree conciliate matters. On the contrary, new heats were generated. The Commons, on the report from their managers of the votes of the Lords, immediately voted negative resolutions, namely, that the petition of the East

* This account of the two Conferences is taken from the Grand Question, &c. It is not easy to say exactly which of the Cases cited or arguments alledged, were employed at the Conferences, and which were suggested by the author himself of that book; who appears to have been lord Holles, perhaps assisted. See Hargrave's Preface, civ. Note.

India Company to the Commons was not scandalous, and that the delivery of it to them and their proceedings upon it were no breach of the privilege or encroachment upon the jurisdiction of the House of Lords. On the very next day also, when both houses were on the point of an adjournment by order of the king, the Commons resolved, That whoever should be aiding, in execution of the order of the Lords in the case of Skinner against the East India Company, should be deemed a betrayer of the rights and liberties of the Commons of England and an infringer of the privileges of the House of Commons: and this with the resolutions of the preceding day was instantly sent to the House of Lords. Nor were the Lords less prompt in their anger. Before their last Conference with the Commons, the Lords had gone great lengths. They had ordered, that except one tax bill before them, no other business should be done till the privileges of their House were fully vindicated and settled, and that their committee for privileges should sit presently: and expecting an order from the king for immediate adjournment, they had moved him to defer it for a few days, in regard that their rights and privileges had been disputed by the Commons, and in order to have time to vindicate those rights and privileges. When also the king had consented to give a few days, with an explanation that he looked upon it as a thing wherein he was much concerned, the Lords were active enough, not only to perform the business of the second Conference with the Commons, but afterwards so to expedite a proceeding against sir Samuel Barnardiston the deputy governor of the East India Company, for a breach of their privilege in promoting the petition against their judgment for Skinner, as before the adjournment, though not time enough for notice by the Commons, to sentence sir Samuel in a fine of 300*l.* with direction that he should remain a prisoner in the custody of the black rod till payment.

When the quarrel had proceeded to these extremities, of all of which Mr. Prynne, on the excess of whose aristocratical principles the Lords seem throughout to have acted, lived to be a witness, both houses, in pursuance of an order from the king, adjourned themselves for three months. But a much longer time passed before their meeting to transact business: for two other adjournments followed by order of the king, and then by a prorogation their meeting was postponed till the 19th of October 1669. However, notwithstanding the long interval of above a year and a quarter, and notwithstanding an earnest recommendation in the king's speech to compose the past differences, hostilities between the two houses about Skinner's case were instantly renewed.

The Commons began. A book, intitled "The Grand Question concerning the Jurisdiction of the House of Peers stated and argued," and both relating the particulars of Skinner's case and vindicating the proceedings of the Lords in it, had been recently pub-

lished. Angry at its contents, the Commons the very day of the session ordered the publishing bookseller to be sent for. On the same day they appointed a committee to report how the case stood between the two houses in Skinner's business. The third day, upon receiving the committee's report, and finding by it that the Lords had fined sir Samuel Barnardiston, and that an entry had been made in the office of the auditor of the receipt of the exchequer as if the fine had been paid by him, and that he had been thereupon set at liberty, which gave the appearance of submission to the sentence of the Lords, the Commons examined sir Samuel; and discovering this to be a mere contrivance, and his having been mysteriously liberated on one of the adjournment days of the last session without payment of the fine, they resolved, that he had behaved as a good commoner of England. The next day they appointed a committee to bring in a bill for settling the difference in point of jurisdiction between the two houses, and Mr. Solicitor general Finch was desired to expedite it. On the same day they examined the bookseller who published the Grand Question; and found that the book was sent to him by lord Hollis, with direction to print it, and as it was printed without the licence then necessary, they ordered him to be indicted upon the licensing act. At the same time to do justice to their own side of the argument, they desired their managers at the conferences formerly had with the Lords, to perfect the arguments used for the Commons, and to deliver them to be entered on their journals. To shew the fixedness of their determination to have a bill for settling the matter, they stopped all other committees from sitting. In the course of a few days the bill they had ordered was brought in; and upon the second reading, a clause for vacating the judgment against sir Samuel Barnardiston and cancelling the relative proceedings was carried; and though the bill was re-committed, yet such expedition was used, that on the 3d of November the bill was passed, with the title of "An Act concerning certain proceedings in parliament;" and the next day sir Robert Atkins was sent with it to the Lords. Still further also to wound the Lords, the Commons a few days after resolved, that no member of their House and of the long robe should without their leave plead as counsel in any cause before the Lords.

Hitherto the Lords during this session had abstained from touching upon the subject of their contest with the Commons about jurisdiction in Skinner's case; and as if enough gratified by the device practised to give the appearance of submission to their sentence against sir Samuel Barnardiston, had been content with exercising the appellat judicature over equity. But upon receiving the judicature bill of the Commons, the Lords, though they had recently lost Mr. Prynne the indefatigable assertor of their claims, resumed their activity on the subject. Not only did the Lords reject

the bill from the Commons, but the Lords on the same day ordered their committee of privileges to prepare a bill "Concerning privilege and judicature in parliament," which, it may be well supposed, was of a very opposite description; and what was remarkable enough, lord chief justice Vaughan, who had been recently placed at the head of the Common Pleas, acted as Speaker of the Lords for lord keeper Bridgman, and so underwent the mortification of putting the question, without being at liberty to say a word against that original jurisdiction which he had in the beginning of Skinner's case, and so long as his being a member of the Commons gave the opportunity, uniformly concurred in resisting. In consequence of this order of the Lords for a bill concerning privilege and judicature in parliament, a bill was soon brought in; and having been read for the third time, it was passed by the Lords with the title of "An Act for limiting of certain trials in parliament and privilege of parliament, and for further ascertaining the trial of peers and all others his majesty's liege people;" and immediately after passing the Lords sent it to the Commons.

Upon receipt from the Lords of this counter-bill to the bill of the Commons concerning parliamentary judicature, the latter were provoked into further activity against the Lords. A day was indeed appointed for reading of the bill; and after one adjournment it was read for the first time. But, upon its being moved the same day for a second reading, it passed in the negative. Nor did the Commons stop here. A few days after, they resolved to desire a Conference with the Lords on their judgment and sense against sir Samuel Barnardiston; and with a view to such request, they appointed a committee to prepare Reasons for the Conference. Upon report also from this committee, the House resolved upon five distinct propositions as proper to be insisted upon to the Lords, namely; 1. That it is the inherent right of every commoner to present petitions to the House of Commons in case of grievance, and of that house to receive them;* 2. That it was the right of the House to determine how far such petitions are fit or unfit to be received; 3. That no court has power to censure a petition to the House of Commons unless transmitted from thence; 4. That the censure and proceedings of the Lords against sir Samuel Barnardiston were in subversion of the rights and privileges of the House of Commons and of the liberties of the Commons of England; and 5. That the continuance upon record of the judgment by the Lords in the case of Skinner and the East India Company was preju-

* So encouraging is the habit of the House of Commons to receiving petitions of grievance, that at the beginning of every new parliament, they appoint one grand committee for grievances, and another for courts of justice, and both are appointed to sit in the House once a week. See Journ. Comm. Nov. 13. 1761.

dicial to the rights of the Commons of England. Also upon a further report from the same committee, the House of Commons resolved upon several general heads of reasons*

* The heads of Reasons for the first three points resolved on by the Commons were these.—"It hath been always, time out of mind, the constant and uncontroverted usage and custom of the House of Commons, to have petitions presented to them from commoners, in case of grievance public or private; in evidence whereof it is one of the first works done by the House of Commons to appoint a grand committee to receive petitions and informations of grievances.—That in no age that we can find, any person, who presented any grievance by way of petition, to the House of Commons, which was received by them, was ever censured by the Lords without complaints of the Commons.—That no suitors for justice, in any inferior court whatever in law or in equity, exhibiting their complaint for any matter proper to be proceeded upon in that court, are therefore punishable criminally though untrue, or suitable by way of action in any other court whatever; but are only subject to a moderate fine or amercement by that court; unless in some cases specially provided for by act of parliament, as appeals or the like.—In case men should be punishable in other courts for preparing and presenting petitions for redress of grievances to the House of Commons, it may discourage and deter his majesty's subjects from seeking redress of their grievances, and by that means frustrate the main and principal end for which parliaments were ordained."

For the fourth point the instruction was to insist "That no petition, nor any other matter depending in the House of Commons can be taken notice of by the Lords without breach of privilege, unless communicated by the House of Commons."

The House of Commons, as a conclusion to the first four points, added the following instruction.

"Upon conclusion of the four first propositions it is further to be alledged, that the house of peers, as well as other courts, are in all their judicial proceedings to be guided and limited by law: but if they should give a wrongful sentence contrary to law, and the party grieved might not seek redress thereof in full parliament, and to that end repair to the House of Commons, who are part of the legislative power, that either they may interpose with their lordships for the reversal of such sentence, and prepare a bill for that purpose, and for preventing the like grievance for the time to come, the consequence thereof would plainly be, both that their lordships judicature would be boundless and above law, and that the party grieved should be without remedy."

For support of the fifth proposition the reference was to be to the reasons formerly offered against the judgment of the Lords against the East India Company.

to be used at the Conference intended to be desired; and at the same time resolved, That the Lords should be desired to vacate both their judgment against sir Samuel Barnardiston and their judgment against the East India Company.

Thus far had the House of Commons proceeded on the 10th of December 1669. But in this stage of the proceeding, it was thought fit by the king to stop the progress of quarrel between the two houses: and accordingly on that day he prorogued the parliament to the 14th day of February; and so the session terminated without passing so much as one act, and the consequence to the king was disappointment of a supply of 400,000*l.* which had been voted to him by the Commons.

On the day appointed by the prorogation the parliament being again assembled, the king made a speech, one part of which anxiously guarded the two houses against revival of the difference between them. But yet as early as the fifth day of the session the Commons fixed an early time for resuming consideration of the jurisdiction of the Lords. This was enough to convince the king, that unless something beyond a general dissuasion was adopted on his part the dispute would soon recommence; and that the supplies, for which he had urgently pressed in his speech, were in danger of being interrupted. In order, therefore, to prevent the further interruption of parliamentary business, the king made a speech to the Lords and Commons, offering his mediation between the two houses in the case of Skinner. His proposal to them for ending their difference was, that he should give present order to erase all records and entries of this matter in the council books and in the Exchequer; and that the two Houses should do the like; so that no memory might remain of the dispute. This proposal of the king* was instantly accepted by both houses. In the printed journal of the Commons there is an entry of the king's speech, and of their resolution in compliance with it to make a rasure or vacat in their journals of all matters relating to the business between the East India Company and Skinner, and of the making of such rasure or vacat accordingly in the House. But it is observable, that the printed journal of the Lords is with a blank on this part of the business of the day, neither giving the king's speech, nor an entry of their manner of proceeding upon the occasion. In other words, the Lords equally with the Commons accepted the king's expedient, and equally with them complied with the terms of it in point of rasure and obliteration: but the Lords chose to do

this in the way, which to them seemed least wounding to their extensive claims of judicature; and for that purpose left their journal without a trace of the cause and manner of obliteration, or scarce a memento of the subject of it.

This Narrative of what occurred subsequently to the Conferences is extracted from the Abridgement of the Case by Mr. Hargrave, who thus proceeds:

Thus at length this great case of Skinner against the East India Company, after engaging the Lords and Commons in serious quarrel during almost two years, was concluded through the source of recommendation whence the case was introduced into parliament: for from the king's recommending the case to the House of Lords their cognizance of it commenced, and from his recommendation also proceeded the compromise by which the quarrel of the two Houses about the case was finally disposed of. Whilst the contention lasted, it was a hard struggle on the part of the Lords to fix their claim of original jurisdiction over civil causes, to fix their claim of assessing damages, to fix their claim of fining and imprisoning at pleasure, and to assist their claim of the sole judicature of parliament. On the part of the king also it was obvious, that he was not averse to all these pretensions of the aristocracy, so far as they tended to exclude the Commons: for he not only first recommended the cognizance of the case to the Lords; but at their request postponed a prorogation to facilitate the completion of their operation of fining and imprisoning sir Samuel Barnardiston; and his ministers afterwards concurred in the contrivance of releasing him, as if he had submitted to the jurisdiction and paid the fine, when according to the reality of the case the payment was a mere juggle, and he was liberated by order of the Lords gratuitously, and without any submission whatever. But the issue was unfavourable both to the king and to the Lords. To the king it was discreditably; because, after having in some measure encouraged the Lords to take cognizance of the case, and avowed himself sufficiently to shew his wish to side with them in the contest, he found himself necessitated for the sake of pecuniary supply to propose a retreat to them. To the Lords the contest was all loss. From the stirring of the question, it was disclosed, that almost all Westminster Hall, except Mr. Prynne, was against the main pretensions of the Lords: and there followed votes of the house of Commons, proclaiming to the people of England, that the claim of exercise of original jurisdiction by the Lords in civil causes was an usurpation; that the supreme jurisdiction was not in the Lords but in the full and whole parliament; and that when the Lords fined and imprisoned persons for complaining by petition to the house of Commons, it was a breach of their privilege and an invasion of the rights of the people at large. In form, indeed the compromise of the quarrel

* See Hume's Hist. chap. 65. Mr. Hume's account is, "That the king prevailed with the peers to accept of the expedient proposed by the Commons." But the king's speech entered in the journal of the Commons sufficiently proves him to have been the proposer to both Houses.

between the two houses' was mutual cessation of hostility, with mutual obliteration from their journal. But in substance there was a vast difference between the two obliterations. The obliteration by the Lords included vacating the judgment against the East India company, and the judgment against sir Samuel Bernardiston, without an iota of protestation, exception or reserve; that is, included the whole of the requisition resolved upon by the Commons immediately before the king's mediation. But the Commons in their obliteration only yielded the nature of their own proceedings, when the object of them was sufficiently accomplished by an-

nullation of the judgments they had throughout sought to annul. The Lords gave up their two judgments. The entry, of the vigorous proceedings to obtain that sacrifice from the Lords, was the only concession made by the Commons. The consequences also of the compromise corresponded with these views of it: for it operated as a blow so fatal to the claim of the Lords to an original jurisdiction, that the exercise in civil causes has ever since been relinquished; and it also made such an impression upon the other judicative pretensions of the Lords, that new controversies were soon generated between the houses.

222. The Trial of the Lord MORLEY, for Murder, before the House of Lords: 18 CHARLES II. A. D. 1666.

MEMORANDUM (a) That upon Saturday the 28th of April, 1666, A. D. 18 Car. 2. all the Judges of England, viz. myself, J. K. Lord Chief Justice of the King's bench; sir Orlando Bridgman, Lord Chief Justice of the Common Pleas; sir Matthew Hales chief baron of the Exchequer, my brother Atkins, brother Twisden, brother Tyrell; brother Turner, brother Browne, brother Windham, brother Archer, brother Raynsford, and brother Morton met together at Serjeants-Inn in Fleet-street, to consider of such things as might in point of law, fall out in the Trial of the Lord Morley (b); who was on the Monday to be tried by his Peers for a murder: and we did all, *una voce*, resolve several things following, par. 1. First it was agreed, that upon the letter of the lord high-steward directed to us we were to attend at the trial in our scarlet robes and the chief-judges in their collars of SS, which I did accordingly. But my lord Bridgman was absent being suddenly taken with the gout; the chief baron had not his collar of SS, having left it behind him in the country; but we all were in scarlet, but nobody then had a collar of SS, but myself, for the reasons aforesaid.

2. It was resolved, that in case the Peers who are triers (c) after the evidence given, and the prisoner withdrawn, and they gone to consult of their verdict, should desire to speak with any of the Judges to have their opinion upon any point of law, that if the lord steward spoke to us to go, we should go to them; but when the

Lords asked us any question, we should not deliver any opinion, but let them know we were not to deliver any private opinion, without conference with the rest of the Judges, and that to be openly done in court. And this notwithstanding the precedent in the case of the earl of Castlehaven (d) was thought prudent in regard of ourselves, as well as for avoiding suspicion, which might grow by private opinions, all resolutions of judges being always done in public.

3. Although we were not all agreed in the precedent of the Lord Dacre's case, cited by sir Edw. Coke, in the Pleas of the Crown, p. 29. & 30. that the judges may deliver any opinion in open court, in the absence of the prisoner; yet it was agreed, that if the lord-steward should in open court, demand any of our opinions in any thing, though in the absence of the prisoner, we were to give an answer to the question, the lord high steward should demand of us; we being called to assist the court, and the demand of any question in such case being referred to the discretion of the high-steward. (e)

4. It was resolved by us all, That in case any of the witnesses which were examined before the coroner were dead, or unable to travel and oath made thereof, that then the examinations of such witnesses, so dead or unable to travel, might be read; the coroner first making oath that such examinations are the same which he took upon oath, without any addition or alteration whatsoever. (f)

5. That in case oath should be made, that any witness who had been examined by the co-

(a) Kelyng's Reports, p. 53.

(b) Vide Moore's Reports, 621. Resolved by all the Judges, that on a Trial by Peers, the prisoner cannot challenge any of the peers that are returned on his jury. See also in this Collection, vol. 1. p. 1335, and vol. 3. p. 402.

(c) This trial was in the 'Court of the High Steward;' as to which, and the difference between it and the 'Court of our Lord the King in Parliament,' see the Cases of lord Dehamere, A. D. 1685, and of earl Ferrers, A. D. 1760, and the Notes to those Cases, *infra*.

(d) *Ante*, vol. 3. p. 401.

(e) See the earl of Warwick's Case, A. D. 1699, *infra*.

(f) As to these 4th, 5th, and 6th Resolutions, see the Cases of lord Mohun, and of Harrison, A. D. 1692, *post*. Hawk. Pl. Co. Book 2. c. 46. s. 15, *et seq.* and the Books there referred to. See also the Case of sir John Fenwick, A. D. 1696.

roner, and was then absent, was detained by the means or procurement of the prisoner, and the opinion of the Judges asked whether such examination might be read; we should answer, that if their lordships were satisfied by the evidence they had heard, that the witness was detained by means or procurement of the prisoner, then the examination might be read; but whether he was detained by means or procurement of the prisoner, was matter of fact of which we were not Judges, but their lordships.

6. Agreed, That if a witness who was examined by the coroner be absent, and oath is made that they have used all their endeavours to find him, and cannot find him, that is not sufficient to authorize the reading of such examination.

7. Agreed, That no words, be they what they will, are in law such a provocation, as if a man kill another for words only, will diminish the offence of killing a man, from murder to be manslaughter. As suppose one call another son of a whore, or give him the lie, and thereupon he to whom the words are given kill the other, this is murder; but if upon ill words, both the parties suddenly fight, and one kill the other, this is but manslaughter, for it is a combat betwixt two upon a sudden heat, which is the legal description of manslaughter (g); and we were all of opinion that the statute of 1 Jac. for stabbing a man, not having first struck, nor having any weapon drawn, was only a declaration of the common law, and made to prevent the inconveniencies of juries, who were apt to believe that to be a provocation to extenuate a murder which in law was not. (h)

8. Agreed, that if upon words two men grow to anger, and afterwards they suppress that anger, and then fall into other discourses, or have other diversions for such a space of time as, in reasonable intendment, their heat might be cooled, and some time after they draw one upon another, and fight, (i) and one is killed, this is murder; because being attended with such circumstances as is reasonably supposed

(g) Vide Crompton's Justice, 23, a. b. Two play at tables, and fall out suddenly, and one with a dagger kill the other. If there be a quarrel, and a reasonable time before they fight, it is murder.

(h) As to these 7th and 8th Resolutions, see the Cases of Mawgridge, A. D. 1706, and of Oneby, A. D. 1726, post. See also East's Pleas of the Crown, c. 5. sect. 19, et seq.

(i) Two fall out suddenly, and fight presently, and one kill the other, it is but manslaughter: so if after they have quarrelled, they presently go into the field and fight, one kills the other, it is but manslaughter; for all is one continued act of fury. But if two fall out suddenly, and before any blows, presently appoint to go to the field and fight, and one kill the other, this is murder; because it appeareth by choosing a fit place to fight, their reason was above their passion, and so a deliberate act. Vide Crompton's Justice, p. 25.

to be a deliberate act, and a premeditated revenge upon the first quarrel; but the circumstances of such an act being matter of fact, the jury are Judges of those circumstances.

Lord High-Steward's Commission.

Carolus secundus Dei gratia Ang. Scot. Fran. et Hiber. Rex, fidei Defensor. &c. Clarissimo Consanguineo et Conciliario nostro Edwardo Comiti Clarendon Dom. Cancellar. Angliæ Salutem. Sciatis quod cum Thomas Dom. Morley et Mounteagle nuper de parochia S. Egidii in campis in Com. Midd. coram nobis apud Westm. de feloniam et murdr. per ipsum Thom. Dom. Morley et Mounteagle commissa. et perpetrat. per Sacram. probor. et legal. Hom. Coma. præd. indictat. existit. Nos considerantes quod Justitia est Virtus excellens et Altissimo complacens, eaq; præ omnibus uti volumus, ac pro eo quod officium Senescalli Angliæ cujus presentia pro Administratione Justitiæ et executione ejusdem in hac parte firm. requiritur (ut acceptimus) jam vacat, de fidelitate, prudentia provida, Circumspectione et Industria vestris plurim. confidentes, ordinavimus et constituvimus vos ex hac causa Senescallum Angliæ ad officium illud cum omnibus eodem officio in hac parte debit. et pertinen. (hac vice) gerend. occupand. et exercend. Dantes et Concedentes vob. tenore presentium plenam et sufficientem potestatem et autoritatem et mandat. speciale indictament. præd. eundem Thomæ Dom. Morley et Mounteagle concernen. cum omnibus illud tangen. a defect. et fidel. nostro Joh. Kelyng Milite capital. Justiciario nostro ad placita coram nob. tenend. et assign. in cujus custodia remanent. recipiend. et illud inspiciend. et ad certos diem et locum quos ad hoc providetis ipsum Thomæ Dom. Morley et Mounteagle coram vobis evocand. et ipsum superinde audiend. et examinand. et respond. compellend. ac sine debito terminand. Nec non tot et toties Dom. Proceres et Magnates hujus regni nostri Angl. ejusd. Thomæ Dom. Morley et Mounteagle pares per quos rei veritas in hac parte melius sciri poterit ad diem et locum præd. ex causa præd. coram vobis comparare astringend. veritateq; inde comperta ad Judicium per vos inde Senescall. nostrum Angl. in hac parte reddend. secundum Legem et Consuetudinem regni nostri Angliæ (hac vice) versus præfat. Thomam Dom. Morley et Mounteagle procedend. sentiend. adjudicand. et Executionem inde fieri præcipiend. Ceteraq; omnia et singula quæ ad officium Senescalli Angliæ in hac parte pertinent et requiruntur (hac vice) faciend. exercend. et exequend. et ideo vob. mandamus quod circa præmissa diligenter intendatis ac ea fac. et exequamini in forma præd. Datum autem universis et singulis Ducibus, Marchionibus, Comitibus, Vicecomitibus, Baronibus, et aliis Officiariis, Ministris, et Ligeis nostris quibuscunq; tenore presentium firmiter in Mandatis quod vobis in executione præmissorum intendentes sint consulentes, assistentes, obedientes et auxiliantes in omnibus prout decet. Man-

davimus enim præfat. Capitali iusticiar. nostro præd. quod indictamentum. præd. cum omnibus illud tangen. ex causa præd. vobis deliber. Mandavimus etiam Locumtenenti nostro Turris nostr. London. sive ejus deputat. ibidem quod ad certos diem et locum quos ei scire fac. præfat. Thomam Dom. Morley et Mounteagle coram vobis venire fac. in cujus rei Testimonium has literas nostras fieri fecimus patentes. Teste meipso apud Westm. duodecimo die Aprilis Anno Regni nostri decimo octavo.

(Per ipsum Regem propria manu signat.)

BARKER.

Breve de Certiorari.

Carolus secundus Dei gratia dilect. et fidel. nostro Joh. Kelyng Milit. Capital. Justic. nostro ad placita coram nobis tenend. assign. Salutem Vob. mandamus quod quoddam indictamentum de Felonia et Murdro unde Thomas Dom. Morley et Mounteagle nuper de parochia S. Egidii in campis in com. nostro Midd. in nostra curia coram nobis apud West. Indictat. existit, et penes vos in cur. nostra jam remanen. cum omnibus ill. tangen. Clarissimo Consanguineo et Consiliar. nostro Edwardo Comiti Clarendon Cancellar. nostro Angl. et hac vice Senescallo Angl. sub sigillo nostro deliberetis indilate, una cum hac brevi ut ipse Senescallus inspectit indictamentum. præd. et ceteris ill. tangen. ulterius inde (hac vice) fieri fac. quod de jure et secundum Legem et Consuetudinem regni nostri Angl. firmit. faciend. Teste, &c. BARKER.

Breve de Ventre Fac.

Carolus secundus, &c. dilecto et fidel. nostro Joh. Robinson Militi et Baronetto Locumtenenti Turris nostr. London. vel. deputat. suo ibidem Salutem. Vobis mandamus quod Thomam Dom. Morley et Mounteagle nuper de parochia S. Egidii in Campis in com. nostro Midd. de Felonia et Murdro indictat. et vestra in Custodia infra Turrem nostram London. præd. detent. coram Charissimo Consanguineo et Consiliar. nostro Edwardo Comiti Clarendon Dom. Cancellar. nostro Angl. et hac vice Senescallo Angliæ ad certum diem et locum quos ideam Senescallus vobis scire fac. præmissis responsur. salvo et secure venire fac. Et hoc nullatenus omittatis. Teste, &c.

BARKER.

Edwardus Comes Clarendon Dom. Cancellar. Angl. et hac vice Senescallus Angl. Joh. Kelyng Militi Capitali Justic. Dom. Regis ad placita coram ipso Rege tenend. assign. Salutem. Virtute Literarum Dom. Regis Patentium mihi direct. vobis mando firmiter injungend. quod quoddam Indictamentum de Felonia et Murdro unde Thomas Dom. Morley et Mounteagle nuper de parochia S. Egidii in Campis in com. Midd. in cur. Dom. Regis coram ipso Rege apud Westm. indictat. existit, et penes vos in cur. præd. jam remanen. cum omnibus ill. tangen. adeo plane et integre prout coram dicto Dom. Rege nuper capt. fuit quocunq; nomine præd. Thomas Dom. Morley et Moun-

teagle nuncupetur, in eodem coram me præfat. Senescallo sub sigillo vestro apud Westm. in magna Aula placitor. ibidem die Lunæ (viz.) tricesimo die instantis mensis Aprilis ad horam octavam ante meridiem, ejusq; diei liberetis una cum hoc præcepto ut ulterius inde fieri faciam, quod de jure ad secundum Legem et Consuetud. Regni Angl. fuerit faciend. Dat. sub sigillo meo apud Westm. 14 die Aprilis Anno Regni Dom. Caroli secundi, Dei gratia Angl. Scot. Fran. et Hiber. Regis fidei Defensoris, &c. decimo octavo. Per Senescallum.

FANSHAW.

Edwardus Comes Clarendon Dom. Cancellar. Angl. hac vice Senescallus Angliæ Joh. Robinson Militi et Baronetto Locumtenenti Dom. Regis Turris suæ London. vel Deputat. suo ibidem Salutem. Virtute Literar. Dom. Regis Patent. mihi direct. tibi mando firmiter injungendo quod Corpus Thomæ Dom. Morley et Mounteagle nuper de parochia S. Egidii in Campis in com. Midd. in Prisons Dom. Regis sub Custodia tua detent. ut dicitur, una cum causa detentionis suæ quocunq; nomine idem Thomas Dom. Morley et Mounteagle in eodem censeatur, habes coram me præfate Senescallo, apud Westm. in magna Aula placitor. ibidem die Lunæ viz. 30. die instantis mensis Aprilis, ad horam octavam ante meridiem ejusdem diei, ad subjiciend. et recipiend. ea omnia quæ Cur. Dom. Regis de eo tunc ibidem consideraverit: in hac parte, et habeas ibi tunc hoc præceptum. Dat. sub sigillo meo apud Westm. 14 die Aprilis, Anno Regni Dom. Caroli secundi Dei gratia Angl. Scot. Fran. et Hiber. Regis Fidei Defensoris, &c. 18. Per Senescallum.

FANSHAW.

Edwardus Comes Clarendon Cancellar. Angl. hac vice Senescallus Angliæ Rogero Harsnett Arm' servien. Dom. Regis ad Arma Salutem. Virtute Literar. Dom. Regis Patent. mihi direct. tibi mando firmiter injungendo quod summonneas tot et toties Dom. Proceres et Magnates hujus Regni Angl. Thomæ Dom. Morley et Mounteagle nuper de parochia S. Egidii in Campis in Com. Midd. Pares per quos rei veritas de Felonia et Murdro unde idem Thomas Dom. Morley et Mounteagle indictat. existit melius sciri potuit quod ipsi personalit. compareant coram me præfat. Senescallo apud Westm. in Com. Midd. in Magna Aula placitor. ibidem die Lunæ, viz. 30 die instantis Mensis Aprilis ad horam octavam ante Meridiem ejusdem diei ad faciend. tunc et ibidem ea quæ in hac parte fuerint faciend. et habeas ibi tunc nomina prædictor. Dom. Procerum, et Magnat. et hoc præcept. Dat. sub sigillo meo apud Westm. &c. Per Senescallum.

FANSHAW.

The Lord-Chancellor being then Lord-Steward, came from Worcester-house in his coach, having (besides his usual attendance) sir John Eaton, his majesty's chief gentleman-usber, carrying a white staff nine foot long; and sir Edward Walker, Garter king of arms in his coat

of office, attending on him. And he was met at Westminster-hall-gate with five maces more, who all went before him into the court, where he took his place in a chair of state; the five maces placed themselves on each side of the state; and serjeant Lee went into the body of the court, and there laid down his mace; and he supplied the place of marshal or crier of the court. Sir John Eaton with the white staff, and sir Edward Walker stood at the lower-end of the state; sir John Eaton on the right-hand of the lord-steward, and sir Edward Walker on the left.

The Clerk of the Crown in chancery, standing at the lower end of the court, with three obeisances coming up to the Lord-Steward, on his knee presented the Commission unto him.

Sir Thomas Fanshaw, clerk of the crown in the King's-bench, with the like reverence, came and received the Commission from the Lord-Steward, and returned to his place in the midst of the court.

Serjeant Lee, after an O yes, made proclamation, viz. The Lord High-Steward of England doth command all persons to keep silence, while his majesty's Commission is reading. Sir T. Fanshaw read the Commission.

Then sir John Eaton and sir Edward Walker carrying the white staff between them, on the knee presented it to my Lord-Steward, and he delivered it back to sir John Eaton, who placed himself with it on the lower end of the state, on the right hand of the Lord-Steward, and sir Edward Walker on the left, on a seat even with the body of the court, having a space between them for the Lord-Steward to see the prisoner; on which seat also sat the clerk of the crown in Chancery, and Mr. Kips, the seal-bearer, the seal being laid at the lower end of the state before the Lord-Steward.

O-yes again, and proclamation made; The Lord High-Steward of England doth command all persons whatsoever, except peers, and privy-counsellors, and judges, to be uncovered.

Serjeant *Barcroft* called to make return of the precept to him directed, who came into the body of the court, and delivered it to sir Thomas Fanshaw, and he read the return on the backside of the precept.

O-yes again, and the Lords required to answer to their names.

The Lords Triers called by the list, Mr. Warterhouse, assistant to sir Thomas Fanshaw, reading their names, and Serjeant Lee calling.

John lord Roberts, keeper of the privy-seal.

Edw. earl of Manchester, Lord-Chamberlain.

Henry lord Arlington, Secretary of State.

Aubery earl of Oxford.

Wm. earl of Bedford.

James earl of Suffolk.

Rich. earl of Dorset.

John earl of Exeter.

J. earl of Bridgewater.

J. e. of Northampton.

H. e. of Peterborough

—earl of Thanet.

N. earl of Scarsdale

John earl of Bath

Wm. earl of Craven.

T. vis. Falconbridge.

John vis. Mordaunt.

Philip lord Wharton.

William lord Paget.

William lord Maynard.

Francis lord Newport.

John lord Lucas.

Charles lord Gerrard.

John lord Berkley.

Hor. lord Townshend.

Anthony lord Ashley.

John lord Freshville.

O-yes again and the lieutenant of the Tower called, to make return of his precept, and bring in his prisoner.

The prisoner brought to the bar and the precept delivered to Serjeant Lee, and by him to sir Thomas Fanshaw, who read the return on the backside of the precept.

Then the Lord-Steward made a speech to the prisoner, telling him the cause of his being brought thither.

The Indictment read by sir Thomas Fanshaw and the plea made in the king's-bench, where he had pleaded Not Guilty, and put himself upon his peers.

Then the Lord Steward made a speech (by way of charge) to the peers.

O-yes, and proclamation made; If any will give evidence for our sovereign lord the king against Thomas lord Morley and Mounteagle, they shall be heard; the prisoner stands at the bar upon his deliverance.

Lord-Steward said, he heard the lord Morley was lame, and therefore bid the lieutenant of the Tower set a chair for him to ease himself.

Lord Morley desired to be heard; but the Lord Steward told him, that it was usual to hear the evidence first, and after that he might and should be heard any thing he had to offer; whereupon he sat down.

Serjeant Glyn, the king's eldest Serjeant, opened the Indictment, then Mr. Attorney-General Palmer.

Several witnesses examined; the prisoner asking them what questions he pleased. Two witnesses swore, that the lord Morley run him into the head. One witness swore a former grudge. Another, that when he had run Mr. Hastings through the head, he swore, 'God-damme, I promised thee this, and now I have given it thee.' And that the quarrel begun at the Fleece-Tavern about an half crown that the Lord Morley said he had laid down.

Mr. Solicitor-General Finch desired the depositions of some witnesses taken before the coroner (who were since dead) might be read; which the prisoner opposed, desiring that no evidence might be given against him, but face to face.

The Lord-Steward demanded the opinion of the judges, who by the Lord Chief-Justice Kelyng delivered their opinion; That upon proof made that the witnesses were dead, and oath by the coroner, that the depositions were unaltered, they ought to be read; which was done.

The Depositions of Three Witnesses read.

Serjeant Maynard desired, that the depositions of a material witness taken at the Coroner's Inquest (who had now absented himself so that they could not find him) might be read.

The Prisoner opposed it, and the opinion of the judges being required; the Lord Chief-Justice delivered the opinion, That if the court upon any evidence were satisfied, the witness

was withdrawn by the procurement of the prisoner, the deposition ought to be read, otherwise not. Whereupon

Thomas Harding sworn, deposed, That Thomas Snell, his apprentice, was lately run away from him, and that his fellows said, he told them, before he went away, that the Lord Morley's Trial was to be shortly but he would not be there. The court not thinking this evidence sufficient, the deposition was not read.

Lord Morley desired some witnesses might be heard on his side, on his behalf, who were admitted, but not upon oath.* Lord Morley heard to say what he pleased for himself.

* The history of the law concerning the examination of witnesses in behalf of prisoners accused of capital offences, is thus given briefly by Blackstone:

"It was an antient and commonly received practice (derived from the civil law, and which also to this day obtains in the kingdom of France) [Domat. publ. law, b. 3, t. 1, Mon. teaq. Sp. L. b. 29, c. 11.] that as counsel was not allowed to any prisoner accused of a capital crime, so neither should he be suffered to exculpate himself by the testimony of any witnesses. And therefore it deserves to be remembered, to the honour of Mary I, (whose early sentiments, till her marriage with Philip of Spain, seem to have been humane and generous) that when she appointed sir Richard Morgan chief justice of the common pleas, she enjoined him, 'that notwithstanding the old error which did not admit any witness to speak, or any other matter to be heard in favour of the adversary, her majesty being party; her highness's pleasure was, that whatsoever could be brought in favour of the subject should be admitted to be heard: and moreover, that the justices should not persuade themselves to sit in judgment otherwise for her highness than for her subject.' [Hollingsh. 1112.] Afterwards, in one particular instance (when embezzling the queen's military stores was made felony by statute 31 Eliz. c. 4.) it was provided that any person impeached for such felony, 'should be received and admitted to make any lawful proof that he could, by lawful witness or otherwise, for his discharge and defence: and in general the courts grew so heartily ashamed of a doctrine so unreasonable and oppressive, that a practice was gradually introduced of examining witnesses for the prisoner, but not upon oath [2 Bulstr. 147. Cro. Car. 292.]: the consequence of which still was, that the jury gave less credit to the prisoner's evidence, than to that produced by the crown. Sir Edward Coke [3 Inst. 79.] protests very strongly against this tyrannical practice: declaring that he never read in any act of parliament, book-case or record, that in criminal cases the party accused should not have witnesses sworn for him: and therefore there was not so much as *scintilla juris* against it. [See also 2 Hal. P. C. 283, and his Summary 264.] And the House of Commons were so sensible of

Mr. Solicitor summed up the Evidence as follows, viz.

April 30, 1666.

The SPEECH of Sir HENEAGE FINCH, Knt. the King's Solicitor-General, at the Trial of the Lord Morley (the Earl of Clarendon, Lord Chancellor, being then Lord High-Steward of England, *pro tempore*) who summed up the Evidence, &c.*

That a man is slain is not denied by my lord Morley; the manner how it came to pass we have proved for the king. His lordship hath endeavoured by his witnesses to difference

this absurdity, that in the bill for abolishing hostilities between England and Scotland [stat. 4 Jac. 1, c. 1.] when felonies committed by Englishmen in Scotland were ordered to be tried in one of the three northern counties, they insisted on a clause, and carried it [Com. Journ. 4, 5, 12, 13, 15, 29, 30 Jun. 1607.] against the efforts of both the crown and the House of Lords, against the practice of the courts in England, and the express law of Scotland [Ibid. 4 Jun. 1607.] 'that in all such trials for the better discovery of the truth, and the better information of the consciences of the jury and justices, there shall be allowed to the party arraigned the benefit of such credible witnesses, to be examined upon oath, as can be produced for his clearing and justification.' At length by the statute 7 W. 3, c. 3, the same measure of justice was established throughout all the realm, in cases of treason within the act: and it was afterwards declared by statute 1 Ann. st. 2, c. 9, that in all cases of treason and felony, all witnesses for the prisoner should be examined upon oath, in like manner as the witnesses against him."

Instances of refusal to hear witnesses for prisoners are to be found in this Collection, vol. 1, p. 885, 1281 (see also 1304) and from other of the early Trials it seems that no thought was entertained of examining witnesses for the prisoners.

The mischiefs attending the practice of not allowing witnesses for a prisoner to be sworn, are noticed by sir John Hawles with his usual spirit. See his Observations on Colledge's Case, *infra*. They are moreover to be found in the accounts published in this Collection, of Trials which occurred within the period in which that practice prevailed: See also the observations which were made in this very Case, by the Solicitor General on Jackson's testimony. "By the English law," says Fountainhall, writing as it seems in 1678, "no witnesses are examined upon oath against the king's interest, even though they be led by panels to prove their defences; but the witnesses' declaration is allegarij taken by the judge who makes of it whatever he pleases." Decisions vol. 1. p. 5.

* Taken from the Norfolk Collection in the Royal Society Library.

the case in some circumstances: the question will now be reduced to this; Whether this fact be murder, as it is charged upon him in the Indictment, or any less offence than that; in which I see, my lord Morley placeth his hopes, that it will fall? My lord, that this is a question of law, arising from fact; I will with your grace's permission, and the favour of my Lords the Peers, presume in the first place, to lay down some principles or conclusions in law, wherein I think, I am not deceived; and would be loth to prevaricate in case of blood. And when I have laid down the conclusions, I shall proceed to apply them to the fact now in proof before you, and compare it to such a proof as his lordship hath produced. There are in law but three cases imaginable, which are any way capable of excuse for the death of a man. These are, First, when a man kills another in his own defence. Second, when he doth it upon misadventure and mere accident. Third, when he doth it in heat of passion, or any sudden adventure (for that which is done in prosecution of justice hath no affinity with the present question). The two first of these do excuse à tort, 'tis not so much as felony; the last à tort, 'tis felony, but within clergy. But yet, my lord, the common law, the ancient common law of England, would not endure to hear of any excuse at all for the death of a man. By the ancient law, before the statute of Marlbridge, he that killed a man in his own defence; and after that till the statute of Gloucester, he that had killed a man by the most innocent misfortune in the world (the glance of an arrow, or any thing else than that) must have died for it, as a murderer. For murder is a sin so contrary to the genius and temper of the English nation, that whatsoever looks but like it, hath ever been prosecuted by our law, by a most strict and speedy vengeance. When the law began to let in some kind of excuses in these cases, yet they were circled in with as wary cautions and observations; and bound and limited with as nice distinctions and differences as could be. And therefore he that kills a man *se defendendo*, must not plead that he did it so; but he must plead Not Guilty: for it is a maxim in the law, that the death of a man can never be justified; nay, the jury cannot find him to be *se defendendo*, but they must find the special fact, and leave it to the court to judge, whether it were *se defendendo*, as in circumstances. For if the fact be so, that the man did not fly to the wall, or his last refuge, before he did give the mortal wound, he is a felon still. He that kills a man by accident or misadventure, must take care that the action he was about were absolutely lawful and necessary too: for if there were an unnecessary meddling with edge-tools, or fire-arms; if there were unnecessary recreation in the act which produced this event, he is responsible to the law for the utmost consequence. And at this day, if a man that kills another in the city escapes out of the city, the city is to be amerced for letting a notorious malefactor escape. Hitherto your lordships see, that in these two

cases, which are most pardonable of any, yet the law is very severe; and therefore in cases of an higher nature, it is still more rigorous. Now, because the hope of this case is, that it will end in manslaughter, and because that manslaughter is only distinguished from murder, in that it is not designed, but otherwise, it is in itself an act as wilful and as violent, (though not so malicious) and so borders upon murder: I shall proceed to shew your lordships how the law watches upon manslaughter, with all the jealousies and circumspections imaginable; and therefore it is an undoubted principle of law (and all the men in England hold their lives upon very miserable terms, if it were otherwise), if any man shall meet a man in the street, and kill him without any visible provocation, the law supposeth there was malice precedent, and judgeth this act murder. Secondly, as it is murder, to kill without any provocation, so if the provocation be slight and trivial, it is all one in law, as if there were none. For the law of England allows no man to value himself at such a rate, as if the blood of his neighbour were a fit sacrifice to expiate every mean and slight affront. This was the case that fell out in the time of the most reverend Chief-Justice, the lord Popham: A gentleman of Kent came by another, and made wry mouths and laughed, and made such signs as usually put men into passion; the other presently fell upon him and killed him: and my lord Chief-Justice Popham and his brethren delivered their opinions, that it was murder: for this was not a competent provocation, and the man was hanged upon an appeal of murder. Thirdly, As no provocation makes it murder, and a slight one, is all one with none; so if the provocation be great and high, and such as might be capable of excuse in itself, yet if a man be not slain in the very heat and bent of passion; if there be any interval of time, as a night's rest, and sleeping upon it, the law knows no such period: but if there be such an interval, that the law supposes the blood might and ought to have been cooled again; that a man might have come to himself, and then he falls on the person that gave him the provocation, that which was passion at the first, is malice at the last; and that which would have been manslaughter then, is murder now. This I submit to your lordships judgments, who hear me now; and if I did not think the law was clear in these points, I would not presume to affirm it in so great and solemn an assembly. To come to the matter of fact; I desire your lordships to consider what Mr. Hastings hath done, and what he hath suffered. First, there appears to be so little of provocation, that the poor gentleman that is murdered, offered any man 5*l.* to tell him what the quarrel was. His lordship makes his defence, that he hopes his peers will consider, that there is no other provocation than the half-crown. I am sorry for it. I am sure the laws of England allow no man to take away another's life for half-a-crown, without being guilty of murder. The

first thing that is said Mr. Hastings should do is this; he is in a manner suspected, and hears my Lord quarrel about an half-crown, and saith, I wonder a person of honour should make such a-do about an half-crown, and then throws down four half-crowns upon the table to make satisfaction: presently swords are drawn, and Mr. Brommidge draws his first, and hectors it for my lord; then they are put up again: there is one interval and recollection of time. My lord proceeds to quarrel with Mr. Hastings, and calls his sins to remembrance: and knowing that Mr. Hastings had been guilty of killing a man not long before, presently tells him, We come not here to stab folks; which was a bitter reply. Mr. Hastings is grieved to see himself so openly reproached by my lord, and could not chuse but tell him, he was a gentleman (and surely Hastings is a confessed gentleman, and a noble name in this kingdom, and always must be); but at last goes a little farther, and saith, as good a gentleman as my lord. This is not comparable to laughing at my lord, nor to making wry mouths; and yet if Hastings had done this, and his lordship had killed him for it, he had stood guilty of murder. Observe, I beseech your lordships, how Mr. Hastings is treated; he is four times drawn upon, twice by Brommidge in the house; in the street, Brommidge draws upon him again; and just under the arch in Lincoln-Inn-Fields he draws the fourth time. Now saith Mr. Hastings, I have no quarrel to you, captain; if there be any, it must be disputed between me and my lord. This is not such a speech to make a quarrel, but to prevent one: What could a gentleman do less, that found himself four times assaulted? For if he would decline the quarrel, the best way was to put Brommidge out of the case, as a likely expedient. When that would not do, to the field they come. And here, my lord Morley hath produced some witnesses, who being not to be sworn, have said freely, that Mr. Hastings pressed my lord to fight, and saw him draw, and attack with the three on the other side. Street said, he resolved to fight my lord; and another, that my lord said he would not fight. This they bring, to make my lord Morley purely passive, and only drawn to fight. Under favour, we must submit to the judgment of your grace and your lordships his peers. The thing that is said here is not probable. 'Tis plain, Mr. Hastings had said, he would give any man 5*l.* that would tell him what the quarrel was: Would be that knew no quarrel have the blood of my lord Morley? But then, compare this with the witnesses, which we have brought and sworn; all three expressly say, they saw the fight and the beginning of it. But with submission to your grace, a fight it cannot be called; in truth, it is a direct assassination: for three witnesses swore, there were two upon one all the while; viz. upon Mr. Hastings. And Mr. Hastings being thus pressed steps back to get a little ground; then my lord takes him at the advantage, and shortens his sword, and runs him in the head. Now

they that say, my lord Morley went away first towards his own house, have forgot that he came back again and killed the man. I press this case upon the bare want of provocation, because the consequence is great in law: I press it, as if the proof were to be set here, and no more were to be said; and do presume to affirm, it is a malice in the law, and murder in his lordship. But yet we shall not rest here; but if we go a little farther, your lordships will see, here is malice apparent, malice confessed and most evident. As soon as Mr. Hastings was slain, my lord Morley, with a most desperate imprecation, throws the sword upon him, God damn me, there you lie. Another swears his lordship said, I have promised, and now you have it. Can your lordships doubt now, whether my lord killed Mr. Hastings with a deliberate hatred? You see, he confesseth it was in discharge of a promise; and my lord is to be believed against himself. And the brother of this gentleman hath made a sad comment upon these words, and tells us, how the promise arose, and how it came to be performed. Mr. Hastings tells his brother, that he once had the unhappiness to have a quarrel with my lord many years ago, almost 10, and that fighting with my lord, he had the misfortune to give him an hurt; and though the witness speaks only out of his brother's mouth, yet he testifies, that his brother told it him in the anguish of his spirit, as a secret that troubled him, and which he did not tell out of design, but by way of lamentation. And yet if Mr. Hastings had been found bleeding in the field, and been asked who killed him, and had said, my lord Morley had slain him; it had been good evidence, though no other witnesses were, and though it came out of his own mouth. The brother swears farther, that my lord Morley coming by, and his brother paying his lordship due respect, my Lord received it with so much contempt, that his brother said presently, he knew not what it meant, I doubt he bears me a grudge. This was a year and an half before his death; but within a quarter of a year before, the witnesses say, his brother, his father, and my lord, were at an ale-house; no sooner was his brother gone down stairs, but when he came up again he finds my lord with a sword drawn, and swears that his brother then told him, that my lord was always urging him to drink; and then would seek all occasions he could to give and take offence. So then, it seems, it was my lord's custom to urge Mr. Hastings, and to give him frequent provocations, as if he had sought an occasion for manslaughter, that he might kill him within the protection of the law. This is the most desperate complication of malice that can be. To this purpose, I shall presume to put a case (which our books speak,) and which will highly concern the point in this case. If my lord Morley had fled to the wall, and had slain Mr. Hastings when he had fled to the wall, that would not have served his turn, as this case is; for our books tell us of one, who bore malice

to another, and then provoked him to draw his sword; seeing the sword drawn, he fled away, to tempt the adversary to pursue, and still retired till he came to the wall; now seeing himself at his last refuge, he thought to kill him legally and safely in his own defence. But since the pretence of law was but an art to disguise the malice of his heart, which he now executed freely, the book says it was murder: so it will be here. Your lordships will give me leave on this occasion to tell you, that it is either the misfortune or the just reproach of some governments in foreign states, that there are places abroad, where murder is a cheaper sin than theft; and the same people, that will rise up in arms as one man to pursue a pilferer, will yet make a lane through the midst of them, for the man-slayer to escape. Hence it comes to pass, that men are slain every day for any thing, for nothing; insomuch that a learned civilian writing of those republics, tells us plainly, 'Frequentiores sunt hominum cædes, quam nativitates.' But however it be in these Commonwealths, yet we, who have the happiness to live under a monarchy, (the best of governments) and under a king, (the best of monarchs) have all our lives secured to us, by his majesty's own royal and immediate protection; and therefore no corruption of manners will ever be able to bring this sin into fashion and credit amongst us, nothing will ever naturalise it here. I do acknowledge to your lordships (for why should I conceal any thing that makes for my lord Morley's advantage?) I do confess that an affront, or indignity offered to a peer, is much more heinous, than that which is offered to a private gentleman. But I must needs say withal, that the law hath provided another manner of reparation for a peer, than that which it gives a gentleman. The same words that being spoken of a gentleman, will bear no kind of action; when they are spoken to a Peer, become *scandalum magnatum*. The Peer recovers great damage; the king inflicts fine or imprisonment: so that upon the matter the offender is bound in chains, and brought and laid at my lord's feet. Now for him, whose honour is thus guarded by the law, to avenge himself by his sword, is a most unpardonable excuse: I do not pretend, I do not offer to say, that the killing of a man is more capital in case of a Peer, than would be in the case of a private gentleman: but I do presume to affirm, that no provocation in the world, can make that to be but man-slaughter in the case of a peer, that would be murder in the case of a gentleman; that is this case. Will your lordships therefore give me leave to turn the tables, and suppose Mr. Hastings had killed my lord Morley, upon so slight and groundless a pretence; as suppose, my lord Morley, in his life time, had with grief of heart complained to his brother, that Mr. Hastings did bear him a secret hatred, because in a former combat his lordship had worsted Mr. Hastings, and given him an hurt: Suppose, my lord Morley had long before this complained

farther, that he saw the effect of Mr Hastings's malice upon every occasion, and when his lordship did but offer to salute Mr. Hastings, and gave him a respect, Mr. Hastings received it sullenly and unmannerly, and returned it with contempt; suppose that his lordship had complained farther, that Mr. Hastings did nothing but seek occasions and pretences of a quarrel; and suppose that within a quarter of a year of my lord Morley's death, Mr. Hastings had been found in an alehouse, with my lord Morley, and had there drawn his sword upon my lord: and then my lord had complained to his brother, that he did believe Mr. Hastings would do him some mischief some time or other: And suppose, after all this, that my lord Morley had been slain just in such a manner, as Mr. Hastings hath been, would your lordship, would the kingdom have thought this a sufficient account for noble blood, if Mr. Hastings had only been found guilty of manslaughter, and escaped by his clergy, and a burning in the hand? My lords, the quality of an offender may serve to enhance the crime; but since the world stood, it never was counted any abatement. The same duty to the king, the same obedience to his laws, the same reverence to human nature, the same care to avoid the effusion of Christian blood, is expected from a lord, which is required from the meanest commoner of England. It is the case of all the people of England, who are highly concerned in the present example; if they put their trust in the law, as the great avenger of blood in the world, and once find themselves deceived, who knows the consequence that may follow; What feuds in private families? What massacres it may produce at last? And therefore, no doubt, but all the kingdom will observe, and mark the issue of this day; and will be curious to know, what will become of a lord, in whose eyes the blood of a gentleman hath been so vile and inconsiderable; if it were possible, I say, if it were possible, that so great a tribunal as this should either mistake the fact, or misunderstand the law, what judicature is there left on this side of Heaven for mankind to rely on? I pretend not to aggravate the matter: this is the place where no detestation of the crime, no passion of the prosecutor, and no compassion of your lordships towards a peer of the realm, is to have any ingredient in the verdict. And therefore, having observed to your lordships, that there is malice implied by the law, and in a manner confessed by the party, besides the direct and formal malice which hath been proved; I shall now submit all to the judgment, which the law hath wisely placed in your lordships most noble breasts; with this only consideration, it is the voice of blood that crieth, I know your lordships will give it such an audience as it ought to have; such an audience as may quiet it, and keep it from crying any more; such an audience as may cleanse the land from blood, and be a means to continue to your lordships that due veneration

which all men have to your lordships most righteous and impartial proceedings.

After him Serjeant Maynard spake.

Lord Steward desired the Lords to withdraw into the Court of Wards, and consider of their evidence; but he did not sum up the evidence.

Lieutenant of the Tower bid to withdraw his prisoner.

The Lords and the prisoner being withdrawn; serjeant Lee brought wine and biscuits to the Lord-Steward, and then round the court.

The Lords stayed about three hours, and then returned into the court, and took their places. Sir Thomas Fenshaw first called them according to their precedence; and all being present, he then called them again, beginning with the lowest, who answering to his name,

The Lord-Steward asked him, saying, My Lord Fresbeive, is my Lord Morley Guilty or Not Guilty? Who laying his hand on his breast, answered, Not Guilty of Murder, but Guilty of Manslaughter. And in the same manner

asking them all severally, they all gave the same answer, except two, the Lord Wharton, and Lord Ashley, who answered, Guilty of Murder.

The Lords having delivered their verdict, the Lieutenant of the Tower was commanded to bring in his prisoner. The Lord Steward told him, his Peers had found him Guilty of Manslaughter, and asked him, what he could say for himself? He answered, he desired the benefit of the clergy, and the benefit of the statute. Lord Steward said, he must have the benefit of the clergy; and that he conceived the statute was clear in his behalf; and asking the opinion of the Judges, they all bowed in token of consent.*

The Lord-Steward making a short speech of admonishment to the prisoner, told him he was discharged, paying his fees; and then dismissed the Court, and broke his staff.

* See the Case of Lord Pembroke, A. D. 1678, of Lord Warwick, A. D. 1699; and of the Dutchess of Kingstou, A. D. 1776, *infra*.

223. Proceedings* on an Impeachment of JOHN, Lord Viscount MORDAUNT, of High Crimes and Misdemeanors: 18 CHARLES II. A. D. 1666.

December 18, 1666.

SIR Thomas Gower reported to the House of

Commons from the committee of Grievances, the State of the Case to them referred, upon the

* This Case is briefly stated in p. xcvi. of Mr. Hargrave's elaborate and learned Preface to Lord Hale's Treatise "Of the Jurisdiction of the Lords House of Parliament."

The account which Lord Clarendon gives of Mordaunt's activity in bringing about the Restoration is to be found in the last book of "The History of the Rebellion, &c." The noble Historian likewise mentions in the "Continuation of his Life," Mordaunt's activity in support of the Royal Cause, after he had undergone a severe trial before the High Court of Justice, where, by his own singular address and behaviour, and his friends having wrought by money upon some of the witnesses to absent themselves, he was by one single voice acquitted, and after a long detention in prison, by the indignation of Cromwell, who well knew his guilt, and against the rules and forms of their own justice, he was discharged after most of his associates were publicly and barbarously put to several kinds of death. See Mr. Mordaunt's Trial, *ante*, vol. 5, p. 907, and Note.

In the "Continuation," &c. Lord Clarendon, while describing the selfish jealous and intriguing courses of the Royal Party after the Restoration, thus mentions the treatment which Mordaunt received from that foolish and profligate set of men:

"Mr. Mordaunt, whom the king had created a viscount before his return into England, and had been most eminent in the other con-

trivances, in a time when a general consternation had seized upon the spirits of those who wished best to his majesty; for when he resumed his former resolutions, so soon after his head was raised from the block, and when the blood of his confederates watered so many streets in the city and the suburbs, the most trusted by the king had totally withdrawn their correspondence, and desired that for some time no account or information might be expected from them; and therefore it must not be denied, that his vivacity, courage and industry, revived the hearts which were so near broken, before Cromwell's death, and afterwards prevailed with many to have more active spirits, than they had before appeared to have: this gentleman, I say, most unjustly underwent the heaviest weight of all their censures and reproaches. He was the butt at which all their arrows of envy, malice and jealousy, were aimed and shot; he was the object and subject of all their scurrilous jests, and depraving discourses and relations; and they who agreed in nothing else, were at unity and of one mind, in telling ridiculous stories to the king himself of his vanity and behaviour, and laying those aspersions upon him, as were most like to lessen the king's opinion of him, and to persuade him that the recompences he had already received, were abundantly more than the services he had performed: which kind of insinuations from several persons, who seemed

Petition of Mr. Wm. Tayleur, complaining of the lord Mordaunt,* and others; together with the Master of Fact; and Evidence on both sides; and the Votes and Resolves of the Committee thereupon: Which Report and Votes he delivered in at the clerk's table. And the Votes and Resolves of the committee were twice read; and were as followeth; viz.

Resolved, "That this committee doth find it proved, That upon an order from his majesty to the lord Mordaunt, to clear lodgings belonging to the chancellor of the garter in the castle of Windsor, Mr. Tayleur was turned out of certain lodgings in that castle, in March 1660, by soldiers of that garrison. 2. That this Committee do find, That Mr. Tayleur's first imprisonment in March 1660, was illegal and arbitrary. 3. That the second dispossession of Mr. Tayleur out of certain rooms in the timber-yard belonging to the castle of Windsor, by order of the lord Mordaunt, was illegal. 4. That the second commitment of Mr. Tayleur, by my lord Mordaunt, was illegal. 5. That the whole matter of fact he reported to the House to-

not to do it by concert, together with some prejudice the noble person did himself by some unseasonable importunities, as if he thought he had deserved very much, did for some time draw a more ungracious countenance from the king towards him, than his own nature disposed him to, or than the other's singular and useful activity, though liable to some levity or vanity, did deserve; and which the same persons, who procured it, made use of against those who were in most trust about the king, as arguments of the little esteem they had of those who had done the king most service, when a man of so eminent merit, as Mr. Mordaunt, was so totally neglected; and did all they could to infuse the same apprehensions into him. When the truth is, most men were affected, and more grieved and discontented, for any honour and preferment which they saw conferred upon another man, than for being disappointed in their own particular expectations; and looked upon every obligation bestowed upon another man, how meritorious soever, as upon a reproach to them, and an upbraiding of their want of merit."

* "This John lord Mordaunt was a younger son of an earl of Peterborough, and had been very active, as appears from Lord Clarendon's account of him, in bringing about the restoration; for which services he was created by Charles the 2d, Viscount Avalon, Baron Mordaunt; but in all the proceedings against him, and in the Lords' Journal, whenever his name is mentioned, it is by the title of Viscount Mordaunt. (Avalon was an ancient name for Glastonbury, so called from the quantity of Avellana, or Filbert-nuts, which grew in that district.) He was father to Charles Earl of Peterborough and Monmouth, who made so considerable a figure, both in civil and military affairs, in the reigns of King William and Queen Anne." 4 Hatsell, 110.

ther with the Votes and Opinion of this Committee."

Resolved, "That the House doth agree with the Committee, That Mr. Tayleur's first imprisonment, in March 1660, was illegal, and arbitrary. 2. That the House doth agree with the Committee, That the second dispossession of Mr. Tayleur, out of certain rooms in the timber-yard belonging to the castle of Windsor, by order of the lord Mordaunt, was illegal. 3. That the second commitment of Mr. Tayleur by my lord Mordaunt, was illegal. 4. That an Impeachment be drawn up against the lord Mordaunt, upon the Votes of the House."

Ordered, That it be referred to Sir Thomas Gower, Mr. Solicitor-General, Sir Job Charlton, Mr. Trevor, Mr. Serjeant Maynard, Mr. Edw. Seymour, Mr. Crouch, Colonel Strangeways, Sir Rob. Holt, Mr. Prynne, Mr. Whorwood, Mr. Garraway, Sir Robert Atkins, Sir Tho. Littleton, Sir Thomas Meres, or any three of them, to draw up the said Impeachment.

December 19. p. m.

Mr. Prynne, reports from the Committee appointed to draw up an Impeachment against the lord Mordaunt, That they find the House had not given any opinion in the first part of the Report made yesterday, from the Committee of Grievances, concerning the lord Mordaunt; being as followeth; viz. "That the Committee find it proved, That, upon an order from his majesty, to the lord Mordaunt, to clear lodgings belonging to the chancellor of the garter in the castle of Windsor, Mr. Tayleur was turned out of certain lodgings in that castle, in March 1660, by soldiers of that garrison."

Resolved, "That the House do agree with the Committee, That they find it proved, that, upon an order from his majesty to the lord Mordaunt, to clear lodgings belonging to the chancellor of the garter in the castle of Windsor Mr. Tayleur was turned out of certain lodgings in that castle, in March 1660, by soldiers of that garrison."

December 22.

The ingrossed Articles of Impeachment against the lord viscount Mordaunt were read. And some Amendments, upon the question, agreed and made thereto, at the table; The question being put, That the Articles of Impeachment against the lord viscount Mordaunt be agreed to; It was resolved in the Affirmative.

Ordered, That Mr. Prynne, Mr. Swinfin, Sir Robert Atkins, do withdraw, and search the Records; and see, what method hath been formerly used in Impeachments from this House."

December 29:

Ordered, 1. That Sir Thomas Gower do design a Conference with the Lords, concerning an

* The Report from this Committee does not appear in the Journals.

Impeachment of high crimes and misdemeanors, which they have prepared against the lord viscount Mordaunt, a member of the House of Peers. 2. That Sir Thom. Gower, Sir Robert Atkins, Mr. Serjeant Maynard, Mr. Pryn, Mr. Seymour, Colonel Strangways, Sir Robert Howard, Mr. Hobby, Mr. Swinfen, Sir Thom. Littleton, Sir Thom. Lee, Mr. Garraway, Sir Wm. Lowther, be appointed to manage the conference.

January 3, 1667.

This day, the earl of Anglesey reported to the House of Lords the matter of the Conference with the Commons on the 29th of December last, concerning the Impeachment of John viscount Mordaunt: "That Mr. Seymour said, he would not trouble their lordships with a large induction, or preface; but deliver the Articles against John viscount Mordaunt, Constable of the Castle of Windsor; which Articles would speak for themselves."—Then the particular Articles of Impeachment being read by Mr. Seymour, he said, The crimes are so fully expressed, that he had little to add; he expressed, that here is an illegal dispossession and arbitrary imprisonment of William Tayleur, esq. by the lord accused, because Mr. Tayleur's daughter would prostitute herself to his lust. He said, That all the Commons of England are wounded through the said Mr. Tayleur: for what the lord viscount Mordaunt hath done arbitrarily against one, he may by his power do against as many others as he please; and then concluded, that the Commons would be ready to make good the charge, and attend the prosecution in such ways and time as their lordships shall according to the course of parliament appoint.

Then the Lords commanded the said Impeachment to be read, as followeth:

ARTICLES OF IMPEACHMENT, by the Commons assembled, in the name of themselves and of all the Commons of England, against JOHN Lord Viscount MORDAUNT, Constable of the Castle of Windsor, for several High Crimes and Misdemeanors committed by him.

"I. That the said lord viscount Mordaunt, being a peer of this realm, and constable of the Castle of Windsor and commander of the garrison soldiers there; understanding that one William Tayleur, esq. (who had faithfully served his late majesty king Charles I, in his wars, and being a great sufferer for his loyalty to him during the time of the usurpation, and by his majesty king Charles 2, since his most happy Restoration by letters patents under his great seal of England, promoted to several offices of trust within the said Castle and Honour of Windsor, and in actual possession of certain lodgings with the said Castle, claimed by him as appertaining to his said offices or one of them), did intend to stand for the election of one of the burgeses of the borough of Windsor, to serve in this present parliament (for

which writs of summons were issued); in the month of March, 1660 (some weeks before the time of the election), to disparage and prevent the free election of the said William Tayleur, and strike a terror into those of the said borough which should give their voices for him, and deprive them of the freedom of their voices at the election, by colour of a warrant from his majesty, on or about the 17th of the said month of March, did, by soldiers, forcibly eject the said William Tayleur, together with his wife (then great with child), family, and goods, out of the said lodgings and Castle, the rude carriage of which soldiers then frightened a young child of the said Mr. Tayleur out of its wits, whereof it soon after died; and moreover, on the 23rd of the same month, the said lord Mordaunt did command and cause the said William Tayleur to be forcibly, illegally, and arbitrarily seized upon, by soldiers, in the prison of the said borough, out of the precincts of the said Castle, which soldiers broke open the said prison doors where the said William Tayleur was then prisoner under an arrest for debt, and carried him out of the said prison into the said Castle, without any warrant but their swords, or any lawful cause, and there detained him prisoner, by the said lord Mordaunt's command, from two in the afternoon, till near one the next morning, in a cold low room, some steps under ground, refusing to accept of 2,000*l.* bail, then proffered for his enlargement.

II. That the said lord Mordaunt at the time of Mr. Tayleur's imprisonment, when 2,000*l.* bail was proffered for his release, being told that the said Mr. Tayleur was the king's servant, and had the king's Great Seal for his place as well as he the said lord Mordaunt had for his, in high contempt of his majesty's royal authority and Great Seal, replied, "He would dispose of the said Mr. Tayleur's places, and break the Great Seal, and justify it when he had done."

III. That the said lord Mordaunt in March 1664, by letters and otherwise, made sundry uncivil addresses to the daughter of the said William Tayleur: which she rejecting, and threatening to make the said viscount's lady acquainted with them, the said viscount swore, by a most dreadful oath and imprecation, he would persecute her and her family to all eternity.

IV. That on the 23rd of November, 1665, by order of the said viscount Mordaunt, the said William Tayleur was forcibly and illegally dispossessed, by soldiers, of certain rooms in the Timber-yard belonging to the said Castle, without the walls thereof, claimed by the said William Tayleur as belonging to his offices of paymaster and surveyor of the said Castle.

V. That a warrant, obtained from his majesty by untrue suggestions and misinformations, dated November 30, 1665, but not produced till some months after, upon a Pluries Habeas Corpus, for the restraining of the said

William Tayleur from going out of the said Castle, was directed to the said lord Mordaunt, who, by virtue of his own warrant, not mentioning the said warrant of his majesty, about the 9th of December following, caused the said Mr. Tayleur to be again forcibly and illegally apprehended and taken into custody, in the said borough of Windsor, without the precincts of the said Castle, by one Richard Voyle, then marshal of the said Castle, assisted with a file of musketeers, who, by command from the said lord Mordaunt, carried him prisoner into the said Castle, and there continued and illegally detained him prisoner, during the space of 20 weeks, and 5 thereof a close prisoner, not admitting him to go to church though he desired it; and, locking him up every night, refused to take bail for him, when offered, soon after his imprisonment, whereas his majesty's warrant was only to restrain him within the Castle; at which time Henry Marten, a traitor, one of the late regicides, then a prisoner there, had liberty to go abroad out of the said Castle without a keeper.

VI. That the said lord Mordaunt during the said William Tayleur's imprisonment, illegally refused to return and obey an Habeas Corpus brought by the said Mr. Tayleur for his enlargement; and being afterwards served with an Habeas Corpus by Simondson, servant to the said Mr. Tayleur, for his enlargement, the said lord Mordaunt, in high contempt of his majesty's authority and laws of this realm, gave the said servant reproachful language, calling him 'rogue' for delivering the said writ; and saying, 'that was all the answer he would give to it,' directly refusing to obey the same; and continued the said Mr. Tayleur divers weeks after a prisoner till set at liberty upon a Pluries Habeas Corpus, by his majesty's Court of King's-Bench.

VII. That the said Mr. Tayleur, soon after his enlargement, hearing and fearing that he should be again illegally imprisoned by the said lord Mordaunt, did hereupon make application to his lordship by his friends, for a reconciliation; who answered them, 'he would never be reconciled to him;' and threatened to imprison him again; and then, if he brought another Habeas Corpus, he would imprison him again and again, and keep him prisoner as long as he lived, and likewise turn him out of all his employments and offices, and dispose of them to others as he pleased; by reason of which threats and menaces, the said Mr. Tayleur was enforced to desert his wife, family, and employments, at the said borough of Windsor, and to obscure himself elsewhere, till this present session of parliament, to prevent future illegal imprisonments by the said viscount.—All and every of which proceedings are contrary to the Great Charter, and other laws and statutes of this realm, and the rights and liberties of all the Commons and Freemen of England: and of dangerous consequence and example if unredressed. And the said Commons

by protestation, saving to themselves the liberty of exhibiting at any time hereafter any other Accusation or Impeachment against the said viscount, and also of replying to the Answer to the said Articles, or any of them, or of offering proof of the premises, or any other Impeachment or Accusations that shall be exhibited by them, as the case shall (according to the course of parliaments) require, do pray, That the said viscount Mordaunt may be called to answer the said several Crimes and Misdemeanors, and receive such condign punishment as the same shall deserve; and that such further proceedings may be upon every of them, had and used against him as is agreeable to law and justice."

January 17.

The lord Mordaunt gave the house humble thanks, for giving him so long time to advise for the putting in his Answer to the Impeachment of the House of Commons against him; and, in obedience to their lordships command, now presented his Answer in writing, with a desire that the same may be communicated to the House of Commons. Then the said Answer was read as followeth:

The Humble ANSWER of JOHN lord viscount MORDAUNT, Constable of his majesty's Castle and Honour of Windsor, to certain ARTICLES of IMPEACHMENT, exhibited against him by the Commons assembled in Parliament for several High Crimes and Misdemeanors supposed to be committed by him.

"The lord viscount Mordaunt, not being conscious to himself of any malice or purpose of evil to any man alive, nor having had other displeasure against William Tayleur, in the said Articles named, than what arose from his insolent and provoking deportment towards his majesty in disobeying his warrants and his lordship in the execution of his office (under whose immediate government he is by the offices he holds in Windsor Castle), and from the variety of complaints which have been reiterated to his lordship by the country against him for his oppression in those offices, and from the manifest abuses by him committed, in mis-spending the revenue of the said Castle, and defrauding the artificers, as also clandestinely and fraudulently endeavouring to pass accounts without controul, which matters are now depending in the courts below at Westminster-hall, accounts it a singular unhappiness, that so worthy a body as the honourable House of Commons, for whom his lordship hath ever had so great respect, should think themselves concerned in that one man's person to accuse him, in their names, and in the names of all the Commons of England; and he did well hope that it being offered to that honourable house on his behalf, that he would (with leave from your lordships) be ready to answer Mr. Tayleur in any action at law, and waive his privilege, they would have spared themselves and your

lordships the trouble of this examination, and him the misfortune of being accused by them: therefore, praying your lordships that no informality in this his Answer, nor any mistaken word or expression, may be construed to his disadvantage, and saving to himself all privileges and rights belonging to him as a peer of this realm, and all advantages of exceptions to the insufficiency and informality of the said Impeachments, humbly answers:

“To the 1st Article, Which concerns the dispossession of William Tayleur of certain rooms in Windsor Castle, the said lord viscount Mordaunt answereth, That he was very ignorant of those faithful services Mr. Tayleur had done to the late king of ever-blessed memory, or of any sufferings upon the account of his loyalty to him; which had he known, they would have obliged him to a due consideration of him; and doth affirm he is yet as great a stranger to his merits, as he was at that time to his person; and heartily wishes his obedience and integrity to his majesty that now reigns could have justified that character of him: but, to satisfy your lordships how ill he deserved from his majesty and the lord Mordaunt in the matters of this article, saith, That in the year 1660, when his majesty was pleased, on his grace and favour, to confer upon him that important trust of constable and governor of the Castle of Windsor, he found Mr. Tayleur in possession of that house which belongs to the Chancellor of the Garter; that, the first installation being presently to be solemnized, his majesty was pleased by his immediate warrant of the 24th Feb. 1660, to command that within 20 days the possession of that house, in habitable condition, should be delivered to the Chancellor of the Garter; with which Warrant Mr. Tayleur being acquainted, and having perused it, positively refused to remove upon that warrant; but he was advised by the lord Mordaunt to consider better of it: however, he afterwards returned the same answer, with somewhat more stubbornness: and his wife being importuned by his lordship to persuade her husband to yield obedience, she said, she would acquaint her husband with it: all those fair ways being essayed, and finding no obedience, rather than suffer his majesty's commands to be disputed by his servant, and contumaciously disobeyed in his own house, his lordship found it necessary, in observance to the said warrant, to command a serjeant of the garrison, with some few soldiers, to remove his goods and family, yet with all civility imaginable; which they punctually observed, and assisted them in carrying out their goods. As to the affrightment of the child out of its wits, his lordship cannot think the sight of soldiers in Windsor Castle should have such effect, the child having been seen playing and well after that time of removal, and, as his lordship is informed, was sick of the worms, and this affrightment never spoken of till this occasion.—The dispossession was indeed by soldiers; the

king's commands not being otherwise to be executed there, no sheriff or other civil officer being permitted to come into the king's house and garrison, by order of the place: and these were the only causes of his dispossession, and not any concernment in his election to parliament, which is most evident, in that he did stand for burgess, wherein the election was free, and was elected by the commonalty of the town; but his election afterwards was avoided by the House of Commons. As to the seizing Mr. Tayleur by soldiers out of the precincts of the Castle, and carrying him into the Castle, without warrant or any lawful cause, his lordship saith, That the time of his securing was 3 weeks before his election; and that the place where Mr. Tayleur was apprehended, was within the jurisdiction of the Castle (as he taketh it), for that the courts were there held by the said William Tayleur as clerk to the constable of the castle, who, being a counsellor at law, would not have kept courts there as his lordship's deputy, if the same had been out of the jurisdiction of the said castle. And his lordship saith, That he being informed and assured that the said Mr. Tayleur was not a prisoner for debt; and the said Mr. Tayleur having insolently disobeyed his majesty's commands concerning his own house, and spoken several scandalous and opprobrious words against his lordship, and his family, his lordship did command an officer and some few soldiers to carry him to the guard, where he was detained some few hours and after set at liberty; and his lordship denies that any bail was tendered to him for his enlargement: and his lordship being constable and governor of the said castle (it being then a garrison for the king), and believing that it might be a great encouragement to others to disobey commands, if this insolence were not taken notice of, and punished: these were the true causes of his being sent for; and hopes it will not be imputed to him as done arbitrarily, or in contempt of the law, to which he hath always shewn ready obedience, and hath asserted its authority in the worst of times, with the hazard of his life.

“To the 2nd Article, he saith, That, as Constable of the said Castle, his lordship claims to have the disposition of several of those offices in possession of William Tayleur, by colour of his patent: but denies any contemptuous words spoken of the king's Great Seal, or otherwise than to the effect and purpose to vacate his patent, which his lordship was informed by his counsel to be void in law.

“To the 3rd Article, his lordship denies any uncivil addresses to William Tayleur's daughter or of any threats of ruin to her family.

“To the 4th, he saith, That there were several rooms in the Timber Yard in the possession of the said William Tayleur, all which (except such as he claimed to belong to him as surveyor of the said Castle) did belong to several artificers, to some by patent, and to others by constant usage and enjoyment; and that, by his

majesty's order under his majesty's privy signet of the 23th February, 1666, the rooms belonging to the artificers of the said Castle are commanded to be restored to them; and, that his lordship might be sure to do no man injury, he desired several gentlemen of the neighbourhood, who had been well acquainted with the offices and usage of the said Castle (whereof the said William Tayleur was one), to make enquiry, and certify concerning the said rooms: which all of them (except Mr. Tayleur) accordingly returned, 'That the rooms possessed by the said William Tayleur belonged to divers artificers; whereof Mr. Tayleur having notice left at his house, his wife and family there refused to deliver possession according to his majesty's commands, but instead thereof returned reviling language; and at this time when he was removed from the said rooms, the said William Tayleur was suspended from the place of receiver by an order of his majesty and council, and Mr. Dudley House placed in the said office, the said rooms claimed to belong to the said office were delivered to the said person that was placed in the said office, and the rest to the artificers to whom they belonged; but the rooms as surveyor are still in his possession, without any disturbance.

"To the 5th Article he saith, That the suggestions in his majesty's Warrant of the 30th November, 1666, for restraining William Tayleur from going out of the said Castle, are true; and that he was taken by the marshal and brought into the Castle without any soldiers, and during his restraint there he was not a close prisoner by his lordship's directions, as by his lordship's warrant will appear; neither did he at any time refuse bail for him, for none was tendered. And as for Henry Marten's liberty, his lordship saith, it was not done with his privy or consent; but saith, he hath since enquired thereof, and finds the fact to be, that the Lord Lovelace, being Lord Lieutenant of the county, coming to Windsor, sent to the officer, to desire leave for Henry Marten (his brother in law) to dine with him, who accordingly gave him leave and sent the marshal with him, who brought him back again.

"To the 6th, he saith, That the first Habeas Corpus was returnable *immediatè* and was delivered in his lordship's absence, he being then attending his majesty at Oxford, and did not know of the same till after the return thereof. The 2nd Habeas Corpus was not delivered to his lordship till Saturday afternoon at Windsor, and the term ended on Monday following; so as, by reason of the shortness of the time, he could not make return thereof; and his lordship doth deny that he called the person that delivered the said writ, 'rogue;' or used any reviling or reproachful language against him for the delivery of the said writ; and upon the Pluries Habeas Corpus, his lordship made a return thereof in due time, and the court of King's bench saw cause to hold him bound by recognizance to appear the last day of the term,

to answer any information that should be exhibited against him for the matters in the Warrant.

"To the 7th he saith, That he knows not what Mr. Tayleur might hear concerning his future imprisonment, nor what his guilt might make him apprehend: but that his lordship had not the least thought of it himself. He assured a noble peer of this House, who wrote to him on Mr. Tayleur's behalf, that he would not imprison him; neither was he afterwards imprisoned by his lordship or did any warrant or command from his lordship issue to that purpose. And as to the allegation, that he hath been enforced to leave his wife and family, it is surely a great mistake, for he oftentimes since kept courts publicly at Windsor, without interruption, or cause of fear.—Having thus most plainly expressed to your lordships the truth of his proceedings, he humbly submits the same to your lordships' judgment."

The said Answer was communicated to the Commons.

On the 21st of January, the Commons desire the Lords to appoint a day for proceeding on the Impeachment. The Lords immediately appoint Saturday, the 26th instant; and at the lord Mordaunt's request, assign him counsel with an Order for Witnesses. On the 22nd the Commons appointed serjeant Maynard, sir Robert Atkins, Mr. Prynne, serjeant Seis, Mr. Coleman, sir Thomas Gower, sir Richard Temple, Mr. Seymour, sir Francis Goodrick, Mr. Mountague, Mr. Syfen, to manage the Evidence, at the hearing, upon the Articles of Impeachment.

January 26.

This day being appointed to hear the cause concerning the lord viscount Mordaunt, divers members of the House of Commons were present at the bar, to manage the Evidence on behalf of the House of Commons.

The lord viscount Mordaunt sitting on the form near the bar uncovered, sir Robert Atkins, one of the managers, desired the impeachment of the House of Commons against the said lord viscount Mordaunt might be read; which was accordingly done.

After which, sir Robert Atkins said, "He did observe, that the lord viscount Mordaunt (the person impeached) did sit in this house as a judge, which he excepted against, and did also except against the lord viscount Mordaunt's having counsel at the bar, to make his defence; which, he said, was contrary to former precedents, as that of the earl of Middlesex, Lord Treasurer, 21 Jac. and that of Michael de la Poole, in R. 2's time, who answered for himself."

Upon this the house commanded the company to withdraw, to take this business into consideration. And their lordships considering of the Precedents cited by the members of the Commons, especially that of the earl of Middlesex, which the house inspected in the Journal, the precedent being read; and also the

house considering of a standing order of this house, made within one month after the Case of the earl of Middlesex for allowing of counsel in making of defence in cases of misdemeanors; and after a serious consideration hereof:

It is Ordered, That the Committee for Privileges do meet this afternoon, to search precedents, concerning the demeanor of a peer at the time of his defence, being impeached by the House of Commons for misdemeanors, and concerning counsel to be allowed to a peer impeached for misdemeanors; and to report on Monday morning next.

January 28.

The Earl of Bridgewater reported, "That the Committee for Privileges, in obedience to their lordships' order on Saturday last, have perused several Precedents concerning the demeanor of peers impeached by the House of Commons for misdemeanors, and concerning the allowing of counsel to persons so impeached; and, upon search, their lordships find these Precedents following:

"March 24, 1641. The judges impeached by the House of Commons, upon their petition, had counsel assigned them, for putting in their answers, and making their defence. So, the 17th of February, 1641, the king's Attorney General, sir Edward Herbert, being impeached by the Commons for misdemeanors, had several counsel assigned him; and the 9th of March, 1641, when his cause came to hearing, sir Thomas Beddingfield and sir Thomas Gardiner Recorder of London were committed by this house to the Tower of London, for refusing to be of his counsel being assigned."

"Another precedent was the 6th of April, 1642, sir George Benyon's Case; who, being impeached by the Commons for misdemeanors, had counsel assigned him; and his counsel, and a committee of the Commons appointed to manage their Evidence, were present the same time at this bar when the cause was heard.

"So in the Case of sir Richard Gurney, Lord Mayor of London, who, upon his impeachment from the House of Commons, had counsel assigned for his defence the 5th of July 1612; and the 1st of August he was to attend with his counsel and witnesses; and on the 2nd of August his counsel pleaded in his defence at this bar, at which time a committee of members of the House of Commons were present, and did manage the evidence against him in behalf of the Commons.

"The next precedent was in the earl of Bristol's Case, charged with treason by his then majesty, who, on the 8th of May, 1626, sent a message to the House of Peers, against the allowing of counsel to the earl of Bristol: Whereupon the house made an humble address to his majesty, the 15th of the same May, wherein they took notice of their general order, made the 28th day of May, 1624, for allowing of counsel to delinquents, at which time his majesty was present in the house as prince of

Wales; to which address his majesty's answer of the 17th of May did allow counsel in all cases of misdemeanors, but not in cases capital; and yet his majesty was pleased, in that particular Case, to allow counsel, and observed, That the general order for counsel, dated the 28th of May, 1624, was made upon the occasion of former proceedings against the earl of Middlesex.

"Another precedent was the earl of Stamford's Case, who, being impeached by the Commons for misdemeanors, made his defence, by his counsel, at the bar, the 30th of September, 1645, in the presence of the Committee of the House of Commons, who managed the evidence against him; and it appears by the presence of Lords that day, that the earl of Stamford was present in the house both forenoon and afternoon.

"As concerning the precedent urged by the Committee of the Commons of Michael de la Pool, in R. 2's time, it appears that he answered in the house, but no mention is made of the bar."

The house entered into a serious consideration of this Report, in relation to the lord viscount Mordaunt's case, concerning his demeanor at the time of his defence upon his impeachment for misdemeanors; and ordered, "That the lower baron's bench should be removed, and a stool set near the bar, where the lord viscount Mordaunt is to sit uncovered, as a peer, but not in the capacity of a judge; and that he shall be admitted counsel for his defence."

A Message was sent to the House of Commons, to let them know, That the Lords are now ready to give an Answer to the two demands made by the Committee of the House of Commons on Saturday last in the case of the proceedings upon the lord viscount Mordaunt's impeachment.

The Messengers return with this Answer: That they had delivered their message to the House of Commons.

The Committee of the House of Commons being come to the bar (the lord viscount Mordaunt sitting on a stool near the bar within uncovered), the Speaker, by the direction of this house, told them,

"That the Lords think fit there should be a difference in the proceedings of cases capital, and crimes and misdemeanors which are not so; and therefore have ordered, the lord Mordaunt shall not sit in his place, but upon a stool within the bar, by his counsel, uncovered.

"As to the second demand, though they find the precedent of the earl of Middlesex, as it is cited, yet they find, that about a month after in the same session, there was a solemn Order made by the Lords, That counsel should be allowed for the future unto all persons; pursuant unto which, they find counsel to be assigned by my Lords, who did plead in the presence of a Committee of the House of Commons, on the behalf of persons impeached by them; and those were sir George Benyon, sir

Richard Gurney, Lord Mayor of London, and the earl of Stamford; according unto which, my lords have ordered, that the lord Mordaunt's counsel shall be heard, to plead in his defence; for which business their lordships are now ready."

Upon this, sir Robert Atkins, one of the Managers for the House of Commons, answered, "That he craved leave to acquaint the House of Commons with their lordships' Resolutions, because they receive their instructions in this business from the House of Commons." And so departed.

January 31.

The Committee of the Commons that were appointed to manage the Evidence against the lord viscount Mordaunt upon his Impeachment, were admitted to the bar (the lord viscount Mordaunt sitting near the bar upon a stool, uncovered).

Sir Robert Atkins said, "He and the rest were commanded by the House of Commons to attend their lordships concerning those two things desired by the House of Commons lately in the case of the lord viscount Mordaunt: 1. Concerning counsel not to be allowed to the lord viscount Mordaunt. 2. Concerning his standing without the bar.

"Touching the first, the Commons do acquiesce in their lordships' Resolution, for admitting him counsel in this case, that so he may want no help for his defence, though the contrary hath been a favour not denied to the House of Commons formerly.

"But as concerning his sitting within the bar, the Commons are not satisfied that the lord viscount Mordaunt should have such great respect shewed him, in regard their lordships did not mention any precedent for it; and the Commons conceive persons in the like case have constantly used to stand without the bar: Therefore they were commanded by the House of Commons to entreat their lordships to command the lord viscount Mordaunt to stand without the bar."

Upon this, the Committee of the House of Commons withdrew.

And the Lords took this business into serious consideration, as highly concerning the Judicature of their lordships (the lord viscount Mordaunt standing in the place where he sat during the presence of the Committee of the House of Commons): And Resolved, That the Speaker, by the directions of this House, should return this Answer to the Committee of the House of Commons:

"That their lordships have further considered of the desire of the House of Commons, in relation to the place and posture wherein the lord Mordaunt shall appear to make his defence; and judging it a right inherent in every court, to order and direct such circumstances, and matters of form, that can have no influence to the prejudice of justice, in such way as they shall judge fit, where the same are not settled otherwise by any positive

rule, do confirm the order already made in this case, as just and equal; and do wish you to proceed to matter of substance."

The Committee of the House of Commons were called in again, and received the aforesaid resolution of this House. Whereupon sir Robert Atkins begged their lordships' pardon for not agreeing to their lordships herein; but desired leave that they may resort to the House of Commons, for their directions herein.

February 1.

A Message was brought from the Commons, by Mr. Seymour and others: To desire a Conference touching the manner of the proceedings upon the Impeachment against the lord viscount Mordaunt.

The Answer returned was: That their lordships have taken their message into consideration, and will send an answer by messengers of their own.

Upon this Message, it is ordered, That the committee for privileges do meet to-morrow in the afternoon, and consider whether ever the House of Commons desired any Conferences concerning the manner of proceeding upon judicature before their lordships; and to search what Messages and proceedings have been upon cases of judicature: and to report the same to this House.

February 4.

The Lord Chamberlain reported, "That the Committee of Privileges have considered of some Precedents concerning the Message from the House of Commons, concerning the manner of proceedings upon the Impeachment against the lord viscount Mordaunt; and their lordships' opinion is, That none of those precedents they have seen do come home to the business; but the precedents being ready, they leave it to their lordships' pleasure, whether to peruse any of them."

The House commanded these Precedents following to be read; as,

"Primo Jacobi, 26 Maii; a Message from the House of Commons, concerning the bishop of Bristol, who was complained of for writing a book against the Union of England and Scotland; and ultimo Maii, there was a meeting between Select Committees of both Houses about the same; and 5th June, the said bishop made an acknowledgment of his error, before a Committee of both Houses."

Another Precedent was in 12 Jacobi, 28 Maii; a Message was brought from the House of Commons, against the bishop of Lincoln, for some words he spoke in the Lords' House.

The 4th of June, another Message was brought from the House of Commons against that business.

After a serious consideration and debate;

The question being put, "Whether to grant a Conference with the House of Commons, upon the desire of a late Message from the House of Commons, concerning the manner of proceedings upon the Impeachment of the lord

viscount Mordaunt?" It was resolved in the affirmative.

A Message was sent to the Commons, to let them know, that their lordships are now ready to give them a present Conference, in the Painted Chamber, by a Committee of both Houses, touching their Message concerning the Impeachment against the lord viscount Mordaunt.

The Messengers return this Answer: That they have delivered their Message to the House of Commons.

The House of Commons being ready, the House of Lords was adjourned during pleasure, and the Lords went to the Conference; which being ended, the House was resumed.

The earl of Anglesey reported to the Lords the effect of the late Conference with the Commons, concerning the business of the lord viscount Mordaunt's Impeachment:

"The Commons of England, in parliament assembled, desired this Conference, to continue a good correspondency betwixt the two houses, and to preserve the ancient manner of proceedings in parliament, in taking notice of their lordships' last Answer, adjudging it a right inherent in every court, to order and direct such circumstances and matters of form, that can have no influence to the prejudice of justice, in such a way as they shall judge fit, where the same are not settled otherwise by any positive rule.

"The Commons conceive that the first part, the admitting the lord Mordaunt to the place now given him upon his trial, may have influence to the prejudice of justice, by the intimidating of witnesses, when they shall see the lord Mordaunt admitted to so extraordinary a favour, being a person of great command, and divers of the witnesses living under his command.

"As to the other part of the Lords' Answer, 'That all courts have power to settle circumstances in matter of form, that have no influence to the prejudice of justice, in such way as they shall judge fit, where it is not settled by any positive rule;' the Commons conceive that precedents amount to a positive rule; and the manner of persons accused appearing at their trials was settled in the earl of Middlesex' case before cited, and that was ruled by the search of precedents.

"And they added, that as they are very tender of the rights and privileges of their lordships, so they hope their lordships will be of theirs; and concluded, that when this point of form shall be settled by the lord Mordaunt's coming to the bar, they shall be ready, according to their lordships' wish, to proceed to matter of substance."

Upon serious consideration hereof, the House of Lords resolved, To let the Commons know, the Lords are resolved, that their former Answer, given to the Commons the 28th of January last, and confirmed the 31st of January, shall stand; and a Conference to be desired, wherein the Lords that are to manage the Conference are to signify their lordships' continu-

ance of their former order; in which their lordships are further confirmed by the precedent of the bishop of Landaff's case, 18 Jacobi, and the earl of Stamford's case, 1645; and to let them know further, that their lordships will be ready to-morrow morning, to proceed in the business.

A Message was sent to the Commons, to let them know, that the Lords intend to sit this afternoon, at five of the clock; at which time their lordships desire a Conference, by a Committee of both Houses, in the Painted Chamber, concerning the subject matter of the last Conference, touching the Impeachment of the lord viscount Mordaunt.

February 4.

The Messengers sent to the Commons return with this Answer: That the Commons will give a Conference, as was desired, this morning.

The House was adjourned during pleasure, and the Lords went to the Conference; which being ended, the House was resumed. And the earl of Anglesey reported, "That the Lords that managed this Conference had obeyed their lordships' direction, in urging those precedents as were given them in charge."

February 5.

A Message was brought from the Commons, by sir Robert Holt and others; who said, "He was commanded by the Commons to desire a Free Conference, upon the subject matter of the last Conference, concerning the Impeachment against the lord viscount Mordaunt."

The House taking this Message into serious consideration; and, after a long debate, the question being put, "Whether to grant a Free Conference to the House of Commons in this matter?" It was resolved in the negative.

The Messengers of the Commons being called in; the Speaker, by directions of the House, gave them this Answer:

"That the Lords have already stated the manner of proceedings in the Impeachment of the lord Mordaunt; and have declared it in their last Conference, and in that Conference gave the House of Commons notice that they were ready to proceed this morning in that business; they adhere to their former resolution, and are ready to proceed in the trial."

February 6.

A Message was brought from the Commons, to desire a Conference, upon an Answer delivered to their Messengers who desired a Free Conference with their lordships upon the Impeachment of the lord viscount Mordaunt. The Answer returned was: That their lordships will take their Message into consideration, and will send an Answer by Messengers of their own.

February 7.

A Message was sent to the Commons to let them know, that the Lords will be ready to give a Conference, by a committee of both Houses, at 11 of the clock, in the Painted

Chamber, upon the matter they desired a Conference yesterday.

The Messengers sent to the Commons return this Answer: That they will come to the Conference, as is desired.

The Commons being come, the House was adjourned during pleasure, and the Lords went to the Conference; which being ended, the House was resumed.

The earl of Anglesey reported the effect of the Conference with the House of Commons; which was managed by sir Robert Atkins, who said, "That the House of Commons; have desired this Conference concerning their lordships Answer to a Message concerning a Free Conference. In their lordships' Answer in effect, their lordships denied a Free Conference. He said, He was commanded to acquaint their lordships, that Conferences, and Free Conferences, when desired, are essential to the proceedings of parliament, the only means to preserve the good correspondence between the two Houses of parliament: and the denial thereof, destructive to the proceedings of parliament, and unprecedented."

Upon a serious debate hereof; the Question being put, "Whether to desire a Free Conference from the House of Commons upon the subject-matter of the last Conference?" It was resolved in the Affirmative.

A Message was sent to the Commons, to desire a present Free Conference, in the Painted Chamber, by a committee of both Houses concerning the subject-matter of their last Conference.

The Messengers return with this Answer: That the Commons will give a Free Conference as is desired.

The same Lords as reported the last Conference, are appointed to manage this Free Conference; and the House gave them these directions:

"1. To let the Commons understand, that this Conference their lordships desire, not in reference to the Free Conference lately desired by them, but in relation to the assertion of the Commons in their last Conference, which their lordships can no way allow; and therefore commanded the Lords that are to manage this Free Conference, as to justify the proceedings of their lordships, so to make it appear to the House of Commons, that what they have done is neither destructive to the proceedings of parliament, nor unprecedented.—Then to shew the precedent of 1 H. 4. No. 79, about judicature in parliament.—And to urge the precedent of 12 Jac. when the Lords denied a Conference to the House of Commons upon the point of Impositions.—And their lordships are to offer what other arguments they think fit to offer to assert the proceedings of this House, and to destroy the assertions of the House of Commons."

Then the House was adjourned during pleasure, and the Lords went to the Conference; which being ended, the House was resumed.

The earl of Anglesey reported, "That the

Lords that were appointed to manage the last Free Conference have kept to their lordships' directions: and did justify the proceedings of their lordships, and made it appear to the House of Commons, that what their lordships had done is neither destructive to the proceedings of parliaments nor unprecedented; wherein they took this method;

"First, They took notice, that their lordships desired this Conference, not in reference to the Free Conference lately desired by the Commons, but in relation to the assertion or position of the Commons in their last Conference this morning, which their lordships could no way allow; for that their lordships had proceeded with great justice and caution in this affair, and little expected that, after their lordships had, upon three solemn Debates, two whereof were upon Conferences, given the same rule thrice, the House of Commons should insist further, and that in so positive a way as their last Conference imported? whereupon their lordships, being desirous to part with that House in that good union and fair correspondence with which this session began, and understanding that his Majesty intended to prorogue the parliament to-morrow, that there might not want time, but the Commons might have opportunity of free debate, and receive satisfaction, their lordships had thus presently appointed them a Free Conference, upon their own assertion, wherein, by the freedom their lordships shall use, the Commons will have a proof of their kindness, and desire of good intelligence.

"Thenupon their lordships urged, that what they had done in this cause (which the Commons called denying in effect a Free Conference, was so far from being destructive to the proceedings of parliament, that their lordships conceived it essential to the preserving thereof; judicature in parliament, by the parliament Roll of 1 H. 4. No. 79, belonging only to that House, and not to the Commons; and this by protestation of the Commons themselves. If judgment the principle, much more all circumstances, and the ruling of proceedings leading thereunto; a right inherent in all courts, without which no judicature can proceed. And shall this be denied to this, the highest court? or shall it be in the power of the House of Commons to confer as long as they please upon circumstantial and matters of form, to the losing of the substance? If this should be allowed, it would render it impossible for the Lords to do justice, either in condemning or acquitting; but the Commons might, if they please, delay in Conferences upon Forms, until the very delay, by the charge of counsel and witnesses, prove a punishment before trial, and so judicature in parliament prove a grievance and oppression to the subject, instead of justice. If three rules, given solemnly as aforesaid, shall not conclude, where shall debates period? Their lordships are so far from accounting judicature a right and privilege worth the insisting upon such terms, that they had

rather see it fairly buried, than so to enjoy it, when they can neither justly punish nor acquit persons accused; and, after having delivered their own judgment upon as full and free debates and consideration as they are capable of, to be further pressed, looks too like an impotency that former times have not been so unhappy as to meet with, and they little expected from this House of Commons. And their lordships are confident that House intended no attempt upon their lordships' judicature. Other arguments were used against the first part of the Commons' assertion.

"As to the second part of the assertion, that it was unprecedented, their lordships evinced the contrary by the precedent of 12 Jacobi, produced and urged for the denial of a Conference to the House of Commons upon the point of Imposition, the darling subject of debates in that House, and whereon they might best of any thing insist to confer. Their lordships doubted not, if they had taken time, more precedents would occur; but one was sufficient to destroy their general assertion.

"The Commons hereupon, vid. Sir Robert Atkins, Mr. Waller, sir Thomas Meares, and sir Francis Goodrick, by turns, told us, "It would be too great a disregard to what we had so fully offered, to make any present answer or give their own sense to what their lordships had delivered; besides, they were not provided nor instructed to discourse this matter now, being unexpected; and that they conceived a Conference ought regularly to have been desired by the Lords before this Free Conference, that they might have been convinced with the Lords' reasons, or had some point issued to treat and confer upon."

"To that the Lords replied, "That they were not now to dispute that; the Commons, having agreed to a Free Conference, allowed it to be regular, and they doubted not many precedents warranted it; but, if they had conceived otherwise, the House of Commons might have declined it."

"The Commons acknowledged, 'They had had it in debate in their House; but finding that, if they had refused us a Free Conference, they had done the same thing they took exception at in our proceedings, they had agreed to our desire; and, insisting again that they were not provided to confer upon what we had argued so largely, they desired leave to resort to their house, to acquaint the Commons with the particulars delivered by the Lords, and receive their directions; and according to what further order they should receive, they would attend their lordships.'

"The Lords said, 'They could not but wonder to see them wave a free conferring upon an assertion of their own, stated at the last Conference by themselves, and being the whole matter then delivered, and that so positively, that sure it was done upon some debate and consideration. We conceived we had given them an advantage by appointing a Free Conference immediately upon their own Confe-

rence; but were so well assured of our just and warranted proceedings, that they might see we were ready to assert them by arguments, precedents, and debate. If the Commons were not now ready, the failing was not on our part and they might use their liberty; concluding, that we had, by this Conference, manifested our desires of closing with a fair correspondence, when we undertook a Free Conference on the sudden, upon some disadvantage.' And so, with mutual expressions of kindness, we parted; the Commons desiring to have the liberty to peruse the Journal of 12 Jacobi, wherein the precedent is that was cited by their lordships; which we promised them.

But the whole of this dispute was put an end to by the king's coming, on the following day, to the House of Lords and proroguing the Parliament.

On the 25th of October, 1667, Mr. Tayleur, in a subsequent session, exhibits another Petition, with Articles of Impeachment annexed, against the lord viscount Mordaunt; which were read, and Mr. Tayleur was called in and affirmed he was ready to make out the matter contained therein.—A Committee is appointed to consider of this Petition and Articles, and to examine, what new matter is in them, not contained in the Articles and Petition formerly exhibited, and to state what that new matter is*, and the progress and proceedings in this business in the former session.—This committee are ordered, on the 7th of December, to compare those Articles with the former; and on the 14th of December, they are directed to hear and examine witnesses on behalf of the lord Mordaunt, and all others concerned, before they make their report†.

* "The direction to the Committee to examine, what new matter is in this Petition and Articles, not contained in those formerly exhibited, implies, that it could be only in this new matter, that the House could be now interested—every thing, which was alleged in the former Petition and Articles, remaining in the state, in which it was interrupted by the prorogation; and, as far as that complaint extended, liable to be proceeded in whenever the Commons should please, without any further enquiry or examination.—In the first volume of Grey's Debates, page 3, it is expressly stated, that it is only the new matter of the Petition and Articles, which was referred to the committee." 4 Hatsell.

† "Nothing further appears in the Journal relating to this matter; it should seem (from what lord Danby says, in his speech in the court of king's bench on the 27th of May 1684, which is reported in the State Trials, vol. II. p. 744) that about this time, lord Mordaunt was advised to take out a pardon from the king for these offences." 4 Hatsell.

"The House of Commons impeached the lord viscount Mordaunt, constable of Windsor

castle, for imprisoning Mr. Tayleur, who intended to stand for one of the burgesses for Windsor; which I mention, because the said Tayleur was a prisoner for debt in the town prison, when he intended to stand for a member of this parliament, and was taken thence by the lord Mordaunt's soldiers, to be put in hold in the castle; which lets us a little into the truth of the archdeacon's rich and wise men before spoken of. The Impeachment of the lord Mordaunt, who was the king's ser-

vant, disgusted the king, according to Echard, though Tayleur was his servant also. The greatest importance of it was, that it caused a misunderstanding between the two Houses, which lasted to the end of the sessions, when the Speaker, Turner, made a speech of unconscionable length, February the 8th, at which time the king also spoke almost as long; and then the lord Roberts, lord privy-seal, prologued the parliament to the 10th day of October." Oldmixon.

224. EXAMINATIONS CONCERNING THE FIRING OF LONDON: 18 CHARLES II. A. D. 1666.*

UPON the second of September 1666, the fire began in London at one Farryner's house, a baker, in Pudding-lane, between the hours of one and two in the morning, and continued burning until the 6th of September following; consuming, as by the Surveyors appears in print, 373 acres within the walls of the city of London, and 63 acres 3 roods without the walls. There remains 75 acres 3 roods yet standing

within the walls unburnt. Eighty-nine parish churches, besides chapels, burnt. Eleven parishes within the walls yet standing. Houses burnt, 13,200.

Per JONAS MOORE, } Surveyors.
RALPH GATRIX, }

Upon the 18th of September, 1666, the Parliament came together: And upon the 25th of

* From a Pamphlet, entitled, "A True and Faithful Account of the several Informations exhibited to the Hon. Committee appointed by the Parliament to enquire into the late dreadful Firing of the City of London. Together with other Informations touching the Insolency of Popish Priests and Jesuits; and the Increase of Popery, brought to the Hon. Committee appointed by the Parliament for that purpose. Printed in the Year 1667."

How this calamity was brought upon the City of London will probably never be ascertained. The following is Burnet's account of the matter:

"To compleat the miseries of this year: the plague was so sunk in London, that the inhabitants began to return to it, and brought with them a great deal of manufacture, which was lying on the hands of the clothiers and others, now in the second year of the war, in which trade and all other consumptions were very low. It was reckoned, that a peace must come next winter. The merchants were upon that preparing to go to market as soon as possible. The summer had been the driest that was known of some years. And London being for the most part built of timber filled up with plaister, all was extreme dry. On the second of September a fire broke out, that raged for three days, as if it had a commission to devour every thing that was in its way. On the fourth day it stopt in the midst of very combustible matter.

"I will not enlarge on the extent nor the destruction made by the fire: many books are

full of it. That which is still a great secret is, whether it was casual, or raised on design. The English fleet had landed on the Vly, an island lying near the Texell, and had burnt it; upon which some came to De Witt, and offered a revenge, that, if they were assisted, they would set London on fire. He rejected the proposition: for he said, he would not make the breach wider, nor the quarrel irreconcilable. He said, it was brought him by one of the Labadists, as sent to them by some others. He made no father reflections on the matter till the city was burnt. Then he began to suspect there had been a design, and that they had intended to draw him into it, and to lay the odium of it upon the Dutch. But he could hear no news of those who had sent that proposition to him. In the April before, some common-wealths-men were found in a plot, and hanged; who at their execution confessed, they had been spoken to, to assist in a design of burning London on the second of September. This was printed in the gazette of that week, which I myself read. Now the fire breaking out on the second made all people conclude, that there was a design some time before on foot for doing it.

"The Papists were generally charged with it. One Hubert, a French Papist, was seized on in Essex, as he was getting out of the way in great confusion. He confessed, he had begun the fire, and persisted in his confession to his death, for he was hanged upon no other evidence but that of his own confession. It is true, he gave so broken an account of the whole matter, that he was thought mad. Yet he was blindfolded, and carried to several

the same month; the House of Commons appointed a Committee to enquire into the causes of the late Fire, before whom the following informations were given in, and proved before the Committee; as by their report will more clearly appear, bearing date the 22nd of January 1666. And upon the 8th of February following, the parliament was prorogued; before they came to give their judgment thereupon.

September 25, 1666.

Resolved, &c. "That a Committee be appointed to enquire into the causes of the late fire, and that it be referred to

Sir Charles Harbord,	Sir Solomon Swale,
Mr. Sandys,	Sir Thomas Tomlins,
Col. Birch,	Mr. Seymour,
Sir Robert Brook,	Mr. Finch,
Sir Tho. Littleton,	Lord Herbert,
Mr. Prio,	Sir John Heath,
Mr. Jones,	Mr. Millward,

places of the city: and then, his eyes being opened, he was asked, if that was the place: and he being carried to wrong places, after he looked round about for some time, he said, that was not the place: but when he was brought to the place where it first broke out, he affirmed that was the true place. And Tillotson told me, that Howell, then the recorder of London, was with him, and had much discourse with him; and that he concluded, it was impossible that it could be a melancholy dream: the horror of the fact, and the terror of death, and perhaps some engagements in confession, might put him in such disorder, that it was not possible to draw a clear account of any thing from him, but of what related to himself. Tillotson, who believed that the city was burnt on design, told me a circumstance that made the Papists employing such a crazed man in such a service more credible. Langhorn, the Popish counsellor at law, who for many years passed for a Protestant, was dispatching a half-witted man to manage elections in Kent before the Restoration. Tillotson, being present, and observing what a sort of man he was, asked Langhorn, how he could employ him in such services. Langhorn answered, it was a maxim with him in dangerous services to employ none but half-witted men, if they could be but secret and obey orders: for if they should change their minds, and turn informers instead of agents, it would be easy to discredit them, and to carry off the weight of any discoveries they could make, by shewing they were madmen, and so not like to be trusted in critical things.

"The most extraordinary passage, though it is but a presumption, was told me by Dr. Lloyd and the countess of Clarendon. The latter had a great estate in the New River that is brought from Ware to London, which is brought together at Islington, where there is a great room full of pipes that convey it through all the streets of London. The constant order of that matter was, to set all the pipes a running

Sir Richard Ford,	Sir Robert Atkins,
Mr. Rob. Millward,	Sir Thomas Gower,
Sir William Lowther,	Mr. Trevor,
Sir Richard Vatley,	Sir Thomas Clifford,
Sir Rowland Beckley,	Sir Hen. Caesar,
Sir Thomas Allen,	Sir John Monson,
Mr. Whorwood,	Sir John Charlton,
Mr. Coventry,	Lord Ancram,
Sej. Maynard,	Mr. Peps,
Sir Jo. Talbot,	Sir Richard Everard,
Mr. Morley,	Mr. Crouch,
Mr. Garraway,	Mr. Merrel,
Sir Fran. Goodrick,	Sir Will. Hickman,
Col. Strangways,	Sir Richard Brown,
Sir Edw. Massey,	Mr. Maynard.
Sir Edm. Walpool,	

And they are to meet to-morrow at two of the clock in the afternoon, in the Speaker's chamber; and to send for persons, papers, and records.

WM. GOLDBOROUGH, Cl. Dom. Com.

on Saturday night, that so the cisterns might be all full by Sunday morning, there being a more than ordinary consumption of water on that day. There was one Grant, a papist, under whose name sir William Petty published his Observations on the Bills of Mortality: He had some time before applied himself to Lloyd, who had great credit with the countess of Clarendon; and said, he could raise that estate considerably, if she would make him a trustee for her. His schemes were probable: And he was made one of the board that governed that matter: And by that he had a right to come as often as he pleased, to view their works at Islington. He went thither the Saturday before the fire broke out, and called for the key of the place where the heads of the pipes were, and turned all the cocks that were then open, and stopt the water, and went away, and carried the keys with him. So when the fire broke out next morning, they opened the pipes in the streets to find water, but there was none. And some hours were lost in sending to Islington, where the door was to be broke open, and the cocks turned. And it was long before the water got to London. Grant indeed denied that he had turned the cocks. But the officer of the works affirmed, that he had, according to order, set them all a running, and that no person had got the keys from him, besides Grant who confessed he had carried away the keys, but pretended he did it without design. There were many other stories set about, as that the papists in several places had asked, if there was no news of the burning of London, and that it was talked of in many parts beyond sea, long before the news could get thither from London. In this matter I was much determined by what sir Thomas Littleton, the father, told me. He was a man of a strong head, and sound judgment. He had just as much knowledge in trade, history, the disposition of Europe, and the constitution of England, as served to feed and direct his own thoughts, and no more. He lived all

October 9, 1666.

Ordered, that the members following be added to the Committee appointed to enquire into the causes of the late Fire, viz. sir John Pelham, Mr. Hugh Buscoven, Mr. Giles Hungerford, Mr. William Lewis, sir Gilbert Gerrard, sir John Brampton, Mr. Milward, Mr. Buscoven; and all the members that serve for the city of London. W. GOLDSBROUGH, Cl. Dom. Com.

October 16, 1666.

Ordered, That Mr. Davies, sir Tho. Higgins, Mr. St. John, sir Richard Franklin, sir Tho. Tompkins, Mr. Devereux, Mr. Millard, Mr. Lewis, Mr. Dodswell, sir James Thyn, Sir

the summer long in London, where I was his next neighbour, and had for seven years a constant and daily conversation with him. He was Treasurer of the navy in conjunction with Osborn, who was afterwards Lord Treasurer, who supplanted him in that post, and got it all into his own hands. He had a very bad opinion of the king; and thought, that he had worse intentions than his brother, but that he had a more dexterous way of covering and managing them; only his laziness made him less earnest in prosecuting them. He had generally the character of the ablest parliament man in his time. His chief estate lay in the city, not far from the place where the fire broke out, though it did not turn that way. He was one of the committees of the House of Commons, that examined all the presumptions of the city's being burnt on design: And he often assured me, that there was no clear presumption made out about it, and that many stories, which were published with good assurance, came to nothing upon a strict examination. He was at that time, that the inquiry was made, in employment at court. So, whether that biased him, or not, I cannot tell. There was so great a diversity of opinions in the matter, that I must leave it under the same uncertainty in which I found it. If the French and Dutch had been at that time designing an impression elsewhere, it might have been more reasonable to suppose it was done on design to distract our affairs. But it fell out at a dead time when no advantage could be made of it. And it did not seem probable, that the Papists had engaged in the design, merely to impoverish and ruin the nation; for they had nothing ready then to graft upon the confusion that this put all the people in. Above twelve thousand houses were burnt down, with the greatest part of the furniture and merchandize that was in them. All means used to stop it proved ineffectual; tho' the blowing up of houses was the most effectual of any. But the wind was so high, that flecks of fire and burning matter were carried in the air cross several streets. So that the fire spread not only in the next neighbourhood, but at a great distance. The king and the duke were almost all the day long on horseback with the guards, seeing to all that could

Edw. Piers, Mr. Coleman, sir Tho. Allen, Mr. Giles Hungerford, Mr. Churchill, be added to the committee appointed to inquire into the causes of the late Fire.

WM. GOLDSBROUGH, Cler. Dom. Com.

The honourable committee, according to the forementioned orders of the house, did meet in the Speaker's chamber, and having chosen Sir Robert Brooke for their chairman, proceeded to receive many considerable informations from divers credible persons, about the matter where-with they were intrusted, and thereupon did at last agree that sir Robert Brook should make the ensuing Report to the honourable House of Commons.

be done, either for quenching the fire, or for carrying off persons and goods to the fields all about London. The most astonishing circumstance of that dreadful conflagration was, that, notwithstanding the great destruction that was made, and the great confusion in the streets, I could never hear of any one person that was either burnt, or trodden to death. The king was never observed to be so much struck with any thing in his whole life, as with this. But the citizens were not so well satisfied with the duke's behaviour. They thought he looked too gay, and too little concerned. A jealousy of his being concerned in it was spread about with great industry, but with very little appearance of truth. Yet it grew to be gradually believed, chiefly after he owned he was a Papist." Burnet.

"It was upon the first day of that September, in the dismal year of 1666 (in which many prodigies were expected and so many really fell out) that that memorable and terrible fire brake out in London, which began about midnight, or nearer the morning of Sunday, in a baker's house at the end of Thames-street next the Tower, there being many little narrow alleys and very poor houses about the place where it first appeared; and then fading such store of combustible materials, as that street is always furnished with in timber-houses, the fire prevailed so powerfully, that that whole street and the neighbourhood was in so short a time turned to ashes, that few persons had time to save and preserve any of their goods; but were a heap of people almost as dead with the sudden distraction, as the ruins were which they sustained. The magistrates of the city assembled quickly together, and with the usual remedies of buckets, which they were provided with: but the fire was too ravenous to be extinguished with such quantities of water as those instruments could apply to it, and fastened still upon new materials before it had destroyed the old. And though it raged furiously all that day, to that degree that all men stood amazed, as spectators only, no man knowing what remedy to apply, nor the magistrates what orders to give: yet it kept within some compass, burned what was next, and laid hold only on both sides; and the greatest apprehen-

THE REPORT OF SIR ROBERT BROOK, Chairman to the Committee that was appointed by the House of Commons to inquire into the Firing of the City of London; made the 22nd January, 1667.

In a letter from Alanson, of the 23rd of August, 1666, New Stile, written from one Dural to a gentleman in lodging in the house of one of the ministers of the French Church in London, called M. Herault, there were these expressions :

“ Pray acquaint me with the truth of certain news which is common in this country, that a fire from heaven is fallen upon a city called Belke, situated on the side of the River of Thames, where a world of people have been killed and burnt, and houses also consumed” which seemed a word of Cabal, cast out by some that were knowing, and others that might be ignorant of the signification of it.

Mrs. *Elisabeth Styles* informs, That in April last, in an eager discourse she had with a French

sion was of the lower, and all considerations entered upon how to secure that place.

“ But in the night the wind changed and carried the danger from thence, but with so great and irresistible violence, that as it kept the English and Dutch fleets from grappling when they were so near each other, so it scattered the fire from pursuing the line it was in with all its force, and spread it over the city : so that they who went late to bed at a great distance from any place where the fire prevailed, were awakened before morning with their own house's being in a flame; and whilst endeavour was used to quench that, other houses were discovered to be burning, which were near no place from whence they could imagine the fire could come; all which kindled another fire in the breasts of men, almost as dangerous as that within their houses.

“ Monday morning produced first a jealousy and then an universal conclusion, that this fire came not by chance, nor did they care where it began; but the breaking out in several places at so great distance from each other made it evident, that it was by conspiracy and combination. And this determination could not hold long without discovery of the wicked authors, who were concluded to be all the Dutch and all the French in the town, though they had inhabited the same places above twenty years. All of that kind, or if they were strangers, of what nation soever, were laid hold of; and after all the ill usage that can consist in words, and some blows and kicks, they were thrown into prison. And shortly after, the same conclusion comprehended all the Roman Catholics, who were in the same predicament of guilt and danger, and quickly found that their only safety consisted in keeping within doors; and yet some of them, and of quality, were taken by force out of their houses and carried so prison.

servant of sir Vere Fan, he hastily replied, You English maids will like the Frenchmen better when there is not a house left between Temple-Bar and London-Bridge. To which she answered, I hope your eyes will never see that: he replied, This will come to pass between June and October.

William Tisdale informs, That he being about the beginning of July at the Greyhound in St. Martins, with Fitz-harris an Irish Papist, heard him say, there would be a sad desolation in September, in November a worse, in December all would be united into one. Whereupon he asked him, where this desolation would be? he answered, in London.

Mr. Light of Ratcliff, having some discourse with *Mr. Langhorne* of the Middle-Temple, Barrister, (reputed a zealous papist) about February 15 last, after some discourse in disputation about religion, he took him by the hand, and said to him, You expect great things in 1666, and think that Rome will be destroyed, but what if it be London.

“ When this rage spread as far as the fire, and every hour brought reports of some bloody effects of it, worse than in truth there were, the king distributed many of the privy council into several quarters of the city, to prevent, by their authorities, those inhumanities which he heard were committed. In the mean time, even they or any other person thought it not safe to declare, “ That they believed that the fire came by accident, or that it was not a Plot of the Dutch and the French and Papists to burn the city;” which was so generally believed, and in the best company, that he who said the contrary was suspected for a conspirator, or at best a favourer of them. It could not be conceived how a house that was distant a mile from any part of the fire, could suddenly be in a flame, without some particular malice; and this case fell out every hour. When a man at the farthest end of Bread-street had made a shift to get out of his house his best and most portable goods, because the fire had approached near them; he no sooner had secured them, as he thought, in some friend's house in Holborn, which was believed a safe distance, but he saw that very house, and none else near it, in a sudden flame. Nor did there want in this woeful distemper, the testimony of witnesses who saw this villainy committed, and apprehended men who they were ready to swear threw fireballs into houses, which were presently burning.

“ The lord Hollis and lord Ashley, who had their quarters assigned about Newgate Market and the streets adjacent, had many brought to them in custody for crimes of this nature; and saw, within a very little distance from the place where they were, the people gathered together in great disorder; and as they came nearer saw a man in the middle of them without a hat or cloak, pulled and hauled and very ill used, whom they knew to be a servant to the Porta-

Mr. Kately of Barkin in Essex, informs, That one Mrs. Yazley, a papist, of Ilford in the said county, came unto his house, August the 13th, and being in discourse with his mother, said, They say the next Thursday will be the hottest day that ever was in England. She replied, I hope the hottest season of the year is now past: to which she answered, I know not whether it be the hottest for weather or for action. This Mrs. Yazley coming to the same house the week after the fire, Mr. Kately said to her with some trouble, I have often thought of your hot Thursday;

gal ambassador, who was presently brought to them. And a substantial citizen was ready to take his oath, 'That he saw that man put his hand in his pocket, and throw into a shop a fire ball; upon which he saw the house immediately on fire: whereupon, being on the other side of the way, and seeing this, he cried out to the people to stop that gentleman, and made all the haste he could himself; but the people had first seized upon him, and taken away his sword, which he was ready to draw; and he not speaking nor understanding English, they had used him in the manner set down before. The lord Hollis told him what he was accused of, and that he was seen to have thrown somewhat out of his pocket, which they thought to be a fireball, which was now on fire;' and the people had diligently searched his pockets to find more of the same commodities, but found nothing that they meant to accuse him of. The man standing in great amazement to hear he was so charged, the lord Hollis asked him, 'what it was that he pulled out of his pocket, and what it was he threw into the house:' to which he answered, 'that he did not think that he had put his hand into his pocket; but he remembered very well, that as he walked in the street he saw a piece of bread upon the ground, which he took up and laid upon a shelf in the next house;' which is a custom or superstition so natural to the Portuguese, that if the king of Portugal were walking, and saw a piece of bread upon the ground, he would take it up with his own hand, and keep it till he saw a fit place to lay it down.

"The house being in view, the lords with many of the people walked to it, and found the piece of bread just within the door upon a board, where he said he laid it; and the house on fire was two doors beyond it, which the man who was on the other side of the way, and saw this man put his hand into the house without staying, and presently after the fire break out, concluded to be the same house; which was very natural in the fright that all men were in: nor did the lords, though they were satisfied, set the poor man at liberty; but, as if there remained ground enough of suspicion, committed him to the constable, to be kept by him in his own house for some hours, when they pretended they would examine him again. Nor were any persons who were seized upon in the same manner, as multitudes were in all

to which she replied, It was not indeed upon the Thursday, but it happened upon the Sunday was sen'night after. Mrs. Yazley hearing this evidence produced against her, endeavoured to avoid the words, saying, That upon the 13th of August she did tell Mrs. Kately, that they say the next Thursday will be the darkest Thursday that ever was in England, but not otherwise; which she affirms to have received from one Finchman, an old woman of Ilford; who being examined by a justice of peace to discover the truth thereof, denied that

the parts of the town, especially if they were strangers or Papists, presently discharged, when there was no reasonable ground to suspect; but all sent to prison, where they were in much more security than they could have been in full liberty, after they were once known to have been suspected; and most of them understood their commitment to be upon that ground, and were glad of it.

"The fire and the wind continued in the same excess all Monday, Tuesday, and Wednesday, till afternoon, and flung and scattered brands burning into all quarters; the nights more terrible than the days, and the light the same, the light of the fire supplying that of the sun. And indeed whoever was an eye witness of that terrible prospect, can never have so lively an image of the last conflagration till he beholds it; the faces of all people in a wonderful dejection and discomposure, not knowing where they could repose themselves for one hour's sleep, and no distance thought secure from the fire, which suddenly started up before it was suspected; so that people left their houses and carried away their goods from many places which received no hurt, and whither they afterwards returned again; all the fields full of women and children, who had made a shift to bring thither some goods and conveniences to rest upon, as safer than any houses, where yet they felt such intolerable heat and drought, as if they had been in the middle of the fire. The king and the duke, who rode from one place to another, and put themselves into great dangers amongst the burning and falling houses, to give advice and direction what was to be done, underwent as much fatigue as the meanest, and had as little sleep or rest; and the faces of all men appeared ghastly and in the highest confusion. The country sent in carts to help those miserable people who had saved any goods: And by this means, and the help of coaches, all the neighbour villages were filled with more people than they could contain, and more goods than they could find room for; so that those fields became likewise as full as the other about London and Westminster.

"It was observed that where the fire prevailed most, when it met with brick buildings, if it was not repulsed, it was so well resisted that it made a much slower progress; and when it had done its worst, that the timber and all the combustible matter fell, it fell down to the bottom within the house, and the walls stood

ever she said any such words to Mrs. Yazly, or that she had discoursed with her about any such matter; and as to the subsequent words, she saith Mrs. Yazly denies ever to have spoken them; but Mr. Kiteley offered in her presence (if it should be demanded) to bring his mother and wife to testify the same.

William Ducket, esq. a member of the House, informs, That one Henry Baker of

and enclosed the fire, and it was burned out without making a further progress in many of those places; and then the vacancy so interrupted the fury of it, that many times the two or three next houses stood without much damage. Besides the spreading, inso-much as all London seemed but one fire in the breadth of it, it seemed to continue in its full fury a direct line to the Thames side, all Cheapside from beyond the Exchange, through Fleet-street; inso-much as for that breadth, taking in both sides as far as the Thames, there was scarce a house or church standing from the bridge to Dorset-house, which was burned on Tuesday night after Baynard's Castle.

“ On Wednesday morning, when the king saw that neither the fire decreased nor the wind lessened, he even despaired of preserving Whitehall, but was more afraid of Westminster-abbey. But having observed by his having visited all places, that where there were any vacant places between the houses, by which the progress of the fire was interrupted, it changed its course and went to the other side; he gave order for pulling down many houses about Whitehall, some whereof were newly built and hardly finished, and sent many of his choice goods by water to Hampton-Court; as most of the persons of quality in the Strand, who had the benefit of the river, got barges and other vessels, and sent their furniture for their houses to some houses some miles out of the town. And very many on both sides the Strand, who knew not whither to go, and scarce what they did, fled with the families out of their houses into the streets, that they might not be within when the fire fell upon their houses.

“ But it pleased God, contrary to all expectation, that on Wednesday, about four or five o'clock in the afternoon, the wind fell: and as in an instant the fire decreased, having burned all on the Thames side to the New-buildings of the Inner-Temple next to White-Friars, and having consumed them, was stopped by that vacancy from proceeding farther into that house; but laid hold on some old buildings which joined to Ram-alley, and swept all those into Fleet-street. And the other side being likewise destroyed to Fetter-lane, it advanced no farther; but left the other part of Fleet-street to the Temple-bar, and all the Strand, unhurt, but what damage the owners of the houses had done to themselves by endeavouring to remove; and it ceased in all other parts of the town near the same time: so that the greatest care then was, to keep good guards

Chippenham in the county of Wilts, coming from market with one John Woodman of Kelloway in the same county, the Thursday before the fire began in London, they had some discourse about the buying of a yoke of fat bullocks, wherein they differed, because Woodman who was to sell them was desired to keep them awhile in his hands; But the said Woodman denied so to do, for that as he alledged,

to watch the fire that was upon the ground, that it might not break out again. And this was the better performed, because they who had yet their houses standing had not the courage to sleep, but watched with much less distraction; though the same distemper still remained in the utmost extent, that all this had fallen out by the conspiracy of the French and Dutch with the Papists; and all gaols were filled with those who were every hour apprehended upon that jealousy, or rather upon some evidence that they were guilty of the crime. And the people were so sottish, that they believed that all the French in the town (which no doubt were a very great number) were drawn into a body, to prosecute those by the sword who were preserved from the fire; and the inhabitants of a whole street have ran in a great tumult one way, upon the rumour that the French were marching at the other end of it; so terrified men were with their own apprehensions.

“ When the night, though far from being a quiet one, had somewhat lessened the consternation, the first care the king took was, that the country might speedily supply markets in all places, that they who had saved themselves from burning might not be in danger of starving; and if there had not been extraordinary care and diligence used, many would have perished that way. The vast destruction of corn, and all other sorts of provisions, in those parts where the fire had prevailed, had not only left all that people destitute of all that was to be eat or drank; but the bakers and brewers, which inhabited the other parts which were unhurt, had forsaken their houses, and carried away all that was portable: inso-much as many days passed before there were enough in their wits and in their houses to fall to their occupations; and those parts of the town which God had spared and preserved were many hours without any thing to eat, as well as they who were in the fields. And yet it can hardly be conceived, how great a supply of all kinds was brought from all places within four and twenty hours. And which was more miraculous, in four days, in all the fields about the town, which seemed covered with those whose habitations were burned, and with the goods which they had saved, there was scarce a man to be seen: all found shelter in so short a time, either in those parts which remained of the city and in the suburbs, or in the neighbour villages; all kind of people expressing a marvellous charity towards those who appeared to be undone. And very many, with more expedition than

he could not stay in the country till that time, which Baker would have them delivered to him in, and being asked whither he was going, he refused to tell, asking what he had to do to

can be conceived, set up little sheds of brick and timber upon the ruins of their own houses, where they chose rather to inhabit than in more convenient places, though they knew they could not long reside in those new buildings.

"The king was not more troubled at any particular, than at the imagination which possessed the hearts of so many, that all this mischief had fallen out by a real and formed conspiracy; which, albeit he saw no colour to believe, he found very many intelligent men, and even some of his own council who did really believe it. Whereupon he appointed the Privy Council to sit both morning and evening, to examine all evidence of that kind that should be brought before them, and to send for any persons who had been committed to prison upon some evidence that made the greatest noise; and sent for the Lord Chief Justice, who was in the country, to come to the town for the better examination of all suggestions and allegations of that kind, there having been some malicious report scattered about the town, 'that the court had so great a prejudice against any kind of testimony of such a conspiracy, that they discountenanced all witnesses who came before them to testify what they knew;' which was without any colour of truth. Yet many, who were produced as if their testimony would remove all doubts, made such senseless relations of what they had been told, without knowing the condition of the persons who told them, or where to find them, that it was a hard matter to forbear smiling at their evidence. Some Frenchmen's houses had been searched, in which had been found many of those shells for squibs and other fireworks, frequently used in nights of joy and triumph; and the men were well known, and had lived many years there by that trade, and had no other: and one of these was the king's servant, and employed by the office of ordnance for making grenades of all kinds, as well for the hand as for mortarpieces. Yet these men were looked upon as in the number of the conspirators, and remained still in prison till their neighbours solicited for their liberty. And it cannot be enough wondered at, that in this general rage of the people no mischief was done to the strangers, that no one of them was assassinated outright, though many were sorely beaten and bruised.

"There was a very odd accident that confirmed many in what they were inclined to believe, and startled others, who thought the conspiracy impossible, since no combination not very discernible and discovered could have effected that mischief, in which the immediate hand of God was so visible. Amongst many Frenchmen who had been sent to Newgate, there was one Hubert, a young man of five or six and twenty years of age, the son of a fa-

make that question: But riding a little further, the said Woodman expressed these words. "You are brave blades at Chippenham, you made bonfires lately for beating the Dutch,

mous watchmaker in the city of Roan; and this fellow had wrought in the same profession with several men in London, and had for many years both in Roan and in London been looked upon as distracted. This man confessed 'that he had set the first house on fire, and that he had been hired in Paris a year before to do it: that there were three more combined with him to do the same thing, and that they came over together into England to put it in execution in the time of the plague; but when they were in London, he and two of his companions went into Sweden, and returned from thence in the latter end of August, and he resolved to undertake it; and that the two others went away into France.'

"The whole Examination was so senseless, that the Chief Justice, who was not looked upon as a man who wanted rigor, did not believe any thing he said. He was asked, 'who it was in Paris that suborned him to this action?' To which he answered, 'that he did not know, having never seen him before;' and in the enlarging upon that point he contradicted himself in many particulars. Being asked 'what money he had received to perform a service of so much hazard,' he said, 'he had received but a pistole, but was promised five pistoles more when he should have done his work;' and many such unreasonable things, that nobody present credited any thing he said. However they durst not slight the evidence, but put him to a particular, in which he so fully confirmed all that he had said before, that they were surprized with wonder, and knew not afterwards what to say or think. They asked him, 'if he knew the place where he first put fire;' he answered, 'that he knew it very well, and would shew it to any body.' Upon this the Chief Justice, and many Aldermen who sat with him, sent a guard of substantial citizens with the prisoner, that he might shew them the house; and they first led him to a place at some distance from it, and asked him 'if that were it;' to which he answered, presently, 'No, it was lower, nearer to the Thames.' The house and all which were near it were so covered and buried in ruins, that the owners themselves, without some infallible mark, could very hardly have said where their own houses had stood; but this man led them directly to the place, described how it stood, the shape of the little yard, the fashion of the door and windows, and where he first put the fire; and all this with such exactness, that they who had dwelt long near it could not so perfectly have described all particulars.

"This silenced all farther doubts. And though the Chief Justice told the king, 'that all his discourse was so disjointed that he did not believe him guilty;' nor was there a man who prosecuted or accused him: yet by a

but since you delight in bonfires, you shall have your bellies full of them ere it be long, adding, That if he lived one week longer, he should see London as sad a London as ever it was since

his own confession, and so sensible a relation of all that he had done, accompanied with so many circumstances (though without the least shew of compunction or sorrow for what he said he had done, nor yet seeming to justify or to take delight in it; but being asked whether he was not sorry for the wickedness, and whether he intended to do so much, he gave no answer at all, or made reply to what was said; and with the same temper died), the jury found him guilty, and he was executed accordingly. And though no man could imagine any reason why a man should so desperately throw away his life, which he might have saved though he had been guilty, since he was only accused upon his own confession; yet neither the judges nor any present at the trial did believe him guilty, but that he was a poor distracted wretch weary of his life, and chose to part with it this way. Certain it is, that upon the strictest examination that could be afterwards made by the king's command, and then by the diligence of the House, that upon the general jealousy and rumour made a committee, that was very diligent and solicitous to make that discovery, there was never any probable evidence (that poor creature's only excepted) that there was any other cause of that woeful fire, than the displeasure of God Almighty: the first accident of the beginning in a baker's house, where there was so great a stock of faggots, and the neighbourhood of much combustible matter, of pitch and rosin and the like, led it in an instant from house to house through Thames-street, with the agitation of so terrible a wind to scatter and disperse it.

“ Let the cause be what it would, the effect was very terrible; for above two parts of three of that great city were burned to ashes, and those the most rich and wealthy parts of the city, where the greatest warehouses and the best shops stood. The Royal Exchange with all the streets about it, Lombard-street, Cheapside, Paternoster-row, St. Paul's church, and almost all the other churches in the city, with the Old Bailey, Ludgate, all Paul's church-yard even to the Thames, and the greatest part of Fleet-street, all which were places the best inhabited, were all burned without one house remaining.

“ The value or estimate of what that devouring fire consumed, over and above the houses, could never be computed in any degree: for besides that the first night (which in a moment swept away the vast wealth of Thames-street) there was not any thing that could be preserved in respect of the suddenness and amazement (all people being in their beds till the fire was in their houses, and so could save nothing but themselves), the next day with the violence of the wind increased the distraction; nor did many believe that the fire was near them, or

the world began. And in some short time after, he should see as bloody a time, as ever was, since England was England.” This discourse was not much taken notice of at that

that they had reason to remove their goods, till it was upon them and rendered it impossible. Then it fell out at a season in the year, the beginning of September, when very many of the substantial citizens and other wealthy men were in the country, whereof many had not left a servant in their houses, thinking themselves upon all ordinary accidents more secure in the goodness and kindness of their neighbours, than they could be in the fidelity of a servant; and whatsoever was in such houses was entirely consumed by the fire, or lost as to the owners. And of this classis of absent men, when the fire came where the lawyers had houses, as they had in many places, especially Serjeants-inn in Fleet-street, with that part of the Inner Temple that was next it and White Friars, there was scarce a man to whom those lodgings appertained who was in the town: so that whatsoever was there, their money, books, and papers, besides the evidences of many men's estates deposited in their hands, were all burned or lost, to a very great value. But of particular mens' losses could never be made any computation.

“ It was an incredible damage that was and might rationally be computed to be sustained by one small company, the company of stationers, in books, paper, and the other lesser commodities which are vendible in that Corporation, which amounted to no less than 200,000*l.*; in which prodigious loss there was one circumstance very lamentable. All those who dwelt near Paul's carried their goods, books, paper, and the like, as others of greater trades did their commodities, into the large vaults which were under St. Paul's church, before the fire came thither: which vaults, though all the church above the ground was afterwards burned, with all the houses round about, still stood firm and supported the foundation, and preserved all that was within them; until the impatience of those who had lost their houses, and whatsoever they had else, in the fire, made them very desirous to see what they had saved, upon which all their hopes were founded to repair the rest.

“ It was the fourth day after the fire ceased to flame, though it still burned in the ruins, from whence there was still an intolerable heat, when the booksellers especially, and some other tradesmen, who had deposited all they had preserved in the greatest and most spacious vault, came to behold all their wealth, which to that moment was safe: but the doors were no sooner opened, and the air from without fanned the strong heat within, but first the dryest and most combustible matters broke into a flame, which consumed all, of what kind soever, that till then had been unhurt there. Yet they who had committed their goods to some lesser vaults, at a distance from that greater, had better fortune; and having learned from the second ruin of

time it was spoken, but when the city of London was burned, the said Henry Baker gave this information to the said Mr. Duckett, and thereupon he issued out his warrant to apprehend Woodman, but he was gone out of the country, and cannot be heard of since.

their friends to have more patience, attended till the rain fell, and extinguished the fire in all places, and cooled the air: and then they securely opened the doors, and received all from thence that they had there.

“If so vast a damage as 300,000*l.* befel that little Company of Stationers in books and paper and the like, what shall we conceive was lost in cloth (of which the country clothiers lost all that they had brought up to Blackwell-hall against Michaelmas, which was all burned with that fair structure), in silks of all kinds, in linen, and those richer manufactures? not to speak of money, plate, and jewels, whereof some were recovered out of the ruins of those houses which the owners took care to watch, as containing somewhat worth the looking for, and in which deluge there were men ready enough to fish.

“The lord mayor, though a very honest man, was much blamed for want of sagacity in the first night of the fire, before the wind gave it much advancement: for though he came with great diligence as soon as he had notice of it, and was present with the first, yet having never been used to such spectacles, his consternation was equal to that of other men, nor did he know how to apply his authority to the remedying the present distress; and when men who were less terrified with the object pressed him very earnestly, “That he would give order for the present pulling down those houses which were nearest, and by which the fire climbed to go farther” (the doing whereof at that time might probably have prevented much of the mischief that succeeded), he thought it not safe counsel, and made no other answer, “Than that he durst not do it without the consent of the owners.” His want of skill was the less wondered at, when it was known afterwards, that some gentlemen of the Inner Temple would not endeavour to preserve the goods which were in the lodgings of absent persons, nor suffer others to do it, “because,” they said, “it was against the law to break up any man’s chamber.”

“The so sudden repair of those formidable ruins, and the giving so great beauty to all deformity (a beauty and a lustre that city had never before been acquainted with) is little less wonderful than the fire that consumed it.”—Clarendon’s Life, p. 347.

“There came a most dreadful calamity upon the city of London, of which, this account was given by authority. On September 2, at 1 of the clock in the morning, there happened to break out a sad and deplorable fire in Pudding-lane near New-Fish-street, which falling out at that hour of the night, and in a quarter of the town so close built with wooden

Robert Hubert of Rouen in Normandy, who acknowledged that he was one of those that fired the house of Mr. Farryner a baker in Pudding-lane, from whence the fire had its beginning, confessed, that he came out of France with one Stephen Peidloe about four months

pitched houses, spread itself so far before day, and with such distraction to the inhabitants and neighbours, that care was not taken for the timely preventing the farther diffusion of it by pulling down houses, as ought to have been: So that this lamentable fire in a short time became too big to be mastered by any engines or working near it. It fell out most unhappily too, that a violent easterly wind fomented it, and kept it burning all that day and the night following, spreading itself up to Grace-Church-street, and downwards from Cannon-street to the water-side as far as the Three Cranes in the Viatry. The people in all parts about it distracted by the vastness of it, and the particular care to carry away their goods: many attempts were made to prevent the spreading of it, by pulling down houses, and making great intervals, but all in vain; the fire seizing upon the timber and rubbish, and so continuing itself even through those spaces, and raging in a bright flame all Monday and Tuesday, notwithstanding his majesty’s own, and his royal highnesses indefatigable and personal pains to apply all possible remedies to prevent it, calling upon and helping the people with their guards, and a great number of nobility and gentry unweariedly assisting therein, for which they were rewarded with a thousand blessings from the poor distressed people. By the favour of God the wind slackened a little on Tuesday night, and the flames meeting with brick buildings at the Temple, by little and little it was observed to lose its force on that side, so that on Wednesday morning we began to hope well, and his royal highness never despairing or slackening his personal care, wrought so well that day, assisted in some parts by the Lords of the Council before and behind it, that a stop was put to it at the Temple Church, near Holbourn-bridge, Pie-Corner, Aldersgate, Cripple-gate, near the lower end of Coleman-street, at the end of Basing-hall-street, by the Postern, at the upper end of Bishopsgate-street and Leaden-hall-street, at the Standard in Cornhill, at the church in Fan-Church-street, near Clothworker’s-Hall in Mincing-lane, at the middle of Mark-lane, and at the Tower-dock.

“On Thursday by the blessing of God it was wholly beat down and extinguished; but so, as that evening it unhappily burst out again afresh at the Temple, by the falling of some sparks (as is supposed) upon a pile of wooden buildings: but his royal highness who watched there that whole night in person, by the great labours and diligence used, and especially by applying powder to blow up the houses about it, before day most happily mastered it.

before the fire, and went into Sweden with him, where he also staid with him as his companion four months, and then they came together into England in a Swedish ship called the Skipper, where he staid on board with the said Peidloe till that Saturday night, in which the fire brake

“ ‘ Divers strangers, Dutch and French, were during the fire apprehended, upon suspicion that they contributed mischievously to it, who are all imprisoned, and informations prepared to make a severe inquisition thereupon by my Lord Chief Justice Keeling, assisted by some of the Lords of the Privy Council, and some principal members of the City; notwithstanding which suspicions, the manner of the burning, all along in a train, and so blown forward in all its way by strong winds, makes us conclude, the whole was the effect of an unhappy chance, or to speak better, the heavy hand of God upon us for our sins, shewing us the terror of his judgment in thus raising the fire, and immediately after his miraculous and never-enough-to-be-acknowledged mercy in putting a stop to it, when we were in the last despair; and that all attempts for the quenching it, however industriously pursued, seemed insufficient. His majesty then sat hourly in council, and ever since hath continued making rounds about the city in all parts of it where the danger and mischief was greatest, till this morning, September 8, that he hath sent his grace the duke of Albemarle, whom he hath called for to assist him on this great occasion, to put his happy and successful hand to the finishing this memorable deliverance.’

“ Such was the account given by authority the same week wherein this conflagration happened. Various were the opinions how this fire began. Most people did then look upon it to be the hand of God in a terrible judgment upon a wicked city: Some said, it was contrived and carried on by a conspiracy of Papists, which was offered to be made appear in the Popish Plot. Others did suspect it an insidious way of the Dutch and French making war upon us, their two fleets being nearest to join at that very time. There was but one man tried at the Old-Bailey for being the incendiary, who was convicted by his own confession, and executed for it. His name was Robert Hubert a French Hugonot of Rohan in Normandy. Some people shammed away his confession and said he was *non compos*, and had a mind it seems to assume the glory of being hanged for the greatest villain: Others say, he was sober and penitent, and being after conviction carried through the ruins to shew where he put fire, he himself directed through the ashes and rubbish, and pointed at the very spot whereon the first burning house had stood. It was soon after complained of, that Hubert was not sufficiently examined, who set him to work, or who joined with him. And Mr. Hawles, in his Remarks upon Fitz-Harris's trial, is bold to say, that the Commons resolving to examine Hubert upon that matter, next day

out. When Peidloe taking him out of the ship carried him into Pudding-lane, and he being earnest to know whether he would carry him, he would not satisfy him till he had brought him to the place, and then he told him, he had brought three balls, and gave him one of them

Hubert was hanged before the house sat, and so could tell no farther tales. But among all the proofs or conjectures, nothing more certain than this, that in the beginning of this very year, John Rathbone, William Sanders, and six others, formerly officers or soldiers in the great Rebellion, were tried, convicted and executed for conspiring the death of his majesty, and the subversion of the government; in order whereunto the city of London was to be set on fire by them on Sept. 3, which by some astrological scheme they pitched upon as a lucky day for such an enterprise. So as the fire being afterward at the height of that very day, made people call that late trial to remembrance, and sent them back to a public gazette of April 30, 1666, Numb. 48, wherein a notorious account of the discovery and evidence of that plot to fire the city is delivered in print. And it so far increased a suspicion of the malice of our foreign enemies, that those conspirators so condemned and executed were said to be under the direction of a committee who sat constantly in London, and received orders from another council in Holland.” Kennett.

“ ‘ The misfortune which this year befel the city of London, I mean the Fire which laid so great a part of that vast city in ashes, gave a fresh occasion to the enemies of the republicans, to charge them with being the authors thereof. This was only because the fire happened to break out the 3d of September, a day esteemed fortunate by the republicans, on account of the victories of Dunbar and Worcester, obtained by Oliver Cromwell, when general of the armies of the commonwealth of England. Men failed not to give a scope to their imagination, and to form conjectures upon the causes and authors of this fire. The pious and religious ascribed it to the just vengeance of heaven, on a city, where vice and immorality reigned so openly and shamefully, and which had not been sufficiently humbled by the raging pestilence of the foregoing year. Some again, as I have said, ascribed this misfortune to the malice of the republicans; others to the papists. And there were some so bold, as even to suspect the king and the duke of York. But though several suspected persons were imprisoned, it was not possible to discover, or prove, that the baker's house, where this dreadful calamity first broke out, was fired on purpose. However, one Robert Hubert a French hugonot, native of Roan, and a lunatic, confessing himself guilty of this fact, was condemned and executed. But it appeared afterwards, by the testimony of the master of the ship, who brought him from France, that though he was landed at the time, he did not arrive in London till

to throw into the house, and he would have been further satisfied in the design, as he said, before he would execute it: But Peidloe was so impatient that he would not hear him, and then he did the fact, which was, that he put a fire-ball at the end of a long pole, and lighting it with a piece of match, he put it in at a window, and staid till he saw the house in a flame. He confessed that there were three and twenty complices, whereof Peidloe was the chief.

two days after the fire began. It is pretended likewise, that a Dutch boy, ten years of age, confessed, that his father and himself, had thrown fire-balls into the baker's house, through a window that stood open. But, besides the objection which may be made to this testimony from the boy's age, there must have been some circumstance in his narrative, not agreeable to the fact, since it was not thought proper to make a farther enquiry. Perhaps this was only a groundless report.

“But that which gives most cause to believe this fire did not happen casually, is the testimony of Dr. Lloyd, afterwards bishop of Worcester. That prelate told Dr. Burnet, ‘That one Grant, a papist, had some time before applied himself to Lloyd, who had great credit with the countess of Clareudon (who had a large estate in the New River—that is brought from Ware to London) and said, he could raise that estate considerably, if she would make him a trustee for her. His schemes were probable, and he was made one of the board that governed that matter; and by that he had a right to come as often as he pleased to view their works at Islington. He went thither the Saturday before the fire broke out, and called for the key of the place where the heads of the pipes were, and turned all the cocks that were then open: and stopped the water, and went away, and carried the keys with him. So when the fire broke out next morning, they opened the pipes in the streets to find water, but there was none. And some hours were lost in sending to Islington where the door was to be broke open, and the cocks turned; and it was long before the water got to London. Grant indeed denied, that he had turned the cocks. But the officer of the works affirmed, that he had, according to order, set them all a running, and that no person had got the keys from him besides Grant; who confessed, he had carried away the keys, but pretended he did it without design.’

“This is Dr. Burnet's account, and agrees in the main with Echard's in his History of England. However, an anonymous author, who has writ against Dr. Burnet's history, accuses him directly of falsehood, and asserts that ‘Grant was not one of the board till after the fire.’ But it is difficult to know, what regard is due to the testimony of this anonymous writer, whereas one can hardly help crediting that illustrious prelate, when he says, he had it from Dr. Lloyd, that Grant was made one

Mr. Graves a French merchant living in St. Mary Axe, informed this committee, that he had known Hubert ever since he was four years old, and hath ever observed him to be a person of a mischievous inclination, and therefore fit for any villainous enterprize; And because of his knowledge he had of him, he went to visit him in prison, where when he saw him, he could not but commiserate the condition whereinto he had brought himself. And

of the board before the fire, and that it was by his means. However, this great fire was generally imputed to the papists, and the rather, because several other things afterwards helped to confirm this suspicion.” 11 Rapin 285.

“The very great wickedness of introducing the Fire of London, with a tale of a plot carried on by Dissenters, is fit for no History but the Compleat one, and its copy the Archdeacon's. It is done to throw off any suspicion of guilt from the Papists. I have set the negotiation with general Ludlow in a fair light. Echard has his Memoirs before him, in which he had read, that Ludlow would not engage with the Dutch, but on certain conditions, which they did not think fit to comply with, and he blesses God that he had not engaged with them; since, by the Treaty of Peace soon after concluded, they obliged themselves to deliver up the very man whom they so much courted to serve them. Yet does Echard with unparalleled assurance affirm that Rathbone's plot was a concatenation with Ludlow's, and to honour Rathbone, and make somebody of him, gives him the command of a regiment. His fellow plotters were, Thomas Flint, William Saunders, Henry Tucker, Thomas Evans, John Myles, William Westcott, who besides killing the king, were to kill general George Monk, alderman sir John Robinson, and alderman sir Richard Browne, and when they had knocked them on the head, they were to declare for an equal division of lands. Mr. Ludlow was to put himself in arms, and come over to fight for some land. He had enough of his own, if they would have let him enjoy it; he had Maiden-Bradley in Wiltshire, but sir Edward Seymour kept it from him, and several other manors in Wiltshire and Somersetshire, a fairer inheritance than his countryman Hyde was born to; and if he fought for any lands, they must have been for less than his own, since upon an equal division, so much would not have come to his share; and because he was a half-witted credulous creature, he will do nothing but on some lucky day. Rathbone and he will have a planet on their side, and therefore they have the nativity of their plot cast in April, and found by Lilly's almanack also, that the 3rd of September was a day of luck. As to these plotters intending to join the Dutch if they had landed, I doubt it not, and that a great many thousands would have done the same, for one cannot think that the late acts of parliament and government had made the people in love with it. The French king said of king Charles

for his better discovery of the fact, he told him the said Hubert, that he did not believe he had done that of which he confessed himself guilty; To which Hubert replied, 'Yes sir, I am guilty of it, and have been brought to it by the instigation of M. Peidloe; But not out of any malice to the English nation, but from a desire of a reward, which he promised me upon my return into France.'

at this time, 'The king of England has no friend nor ally, and is obliged to carry on the war, with the forces of a kingdom only, divided into several sects, all disaffected to his government.' These plotters doubtless would have joined Ludlow, or Doleman, or the first commander that offered to lead them; they might intend it, they might talk of it, and say enough to be hanged for it; but that Mr. Sidney, and lieutenant-general Ludlow, would engage with such fellows is incredible and monstrous in imagination.

"I have mentioned the wickedness of joining Mr. Ludlow's negotiations with the Dutch with Rathbone's plot, and Rathbone's plot with the fire of London; and to prove it, I need only repeat the archdeacon's words: 'The third of September was a day auspicious, and full of expectation from one party, but at this time ominous and direful to the nation; and though the hand of justice laid hold of these last criminals, yet the city was burnt at the very time thus projected and prognosticated; which gave a strong suspicion, though not a full proof of the authors and promoters;' and that by concatenation, colonel Adney, lieutenant-general Ludlow, colonel Doleman, Mr. Say, &c. were concerned with Flint, Tucker, &c. who were hanged six months before, for a plot to set London on fire on the third of September. I might here make use of the strong phrase used by bishop Burnet before mentioned; but though such histories little deserve it, I will observe more decorum, and to shew I might make use of it, read what Echard says of the duke of York's diligence to put out the fire: 'He was as diligent as possible; he commended and encouraged the forward; he assisted the miserable sufferers, and gave a most generous example to all, by the vigorous opposition he made against the devouring flames.' Contrary to all which, it is known that the gaiety of his look and air discovered the pleasure he took in that dreadful spectacle. Bishop Burnet tells us, 'The citizens were not well satisfied with the duke's behaviour; they thought he looked too gay, and too little concerned.'

"On September the 2d, after midnight, London was set on fire. On September the 3d, the Exchange was burnt, and in three days almost all the city within the walls. The season before had been exceeding dry, and the wind in the east, where the fire began. The people having none to conduct them right, could do nothing to resist it, but stand and see their houses burn without remedy, the engines

It is observable, that this miserable creature who confessed himself to the committee to be a Protestant, was a Papist, and died so. And as for the aforesaid Peidloe, the said Mr. Graves informed, that he had had a full knowledge of him, and knew him to be a very debauched person, and apt to any wicked design. Moreover for a clear conviction of the guilt of the aforesaid Hubert, Mr. Lowman the keeper of the White-

being presently out of order and useless. The streets were crowded with people and carts to carry away what goods they could get out. They who were most active, and had also most money to pay cartage at exorbitant prices, as five, ten, twenty, and thirty pounds for a cart, saved much, and the rest lost almost all. The loss in houses and goods is scarcely to be valued; and among the rest, the loss of books was an exceeding great detriment not to the owners only, but to learning. Almost all the booksellers in St. Paul's Church-yard, brought their books into vaults under St. Paul's church, where it was thought almost impossible that fire should come. But the church itself being on fire, the prodigious weight of stones falling down, broke into the vaults, let in the fire, and the booksellers could not come near to save their books. The library at Sion college, and most private libraries in London were burnt; inso-much that the one article of books only, lost in the fire, amounted to 150,000l.

"The fire broke out in Pudding-lane, at the house of one Fariner a baker, and spread itself, besides breadth, from almost Tower-hill to St. Dunstan's church in Fleet-street. After it had burnt almost three days and nights, some seamen taught the people to blow up some of the next houses with gunpowder, which stopped the fire; so that contrary to the inscription on the Monument, 'there were human counsels' in the stopping of the fire, though these counsels must be acknowledged as the will of Heaven. It stopped at Holborn Bridge, and near St. Dunstan's church in Fleet-street, and at Sepulchre's church, when the church was burnt; and at Christ church, when the church was burnt; and near Aldersgate and Cripplegate, and other places at the wall; and in Austin-Friars; the Dutch church stopped it, and escaped. It stopped in Bishopsgate-street, and Leadenhall-street, and Fenchurch-street, in the midst of the streets, and short of the Tower. All beyond the river, and Southwark, escaped. There perished in the flames 13,200 houses, valued one with another at no more than 25l. yearly rent, amount at 12 years purchase to 3,900,000l. The 87 churches, the spacious cathedral of St. Paul's, the 6 chapels, the Exchange, Custom-house, Guildhall, the magnificent halls of companies, the several principal city gates, with other public edifices and colleges, may be well valued at 2,000,000l. The wares, household goods, money lost and spoiled by the fire, or pilfered away by those wretches that made their gains of the common calamity, may modestly be computed at above, 2,000,000l.

Lion prison was appointed to set him upon a horse, and to go with him, and to see if he could find out the place where he threw the fire-ball. Upon which, Hubert, with more

The money spent in general removing of goods into the fields, during the fire, and bringing them back afterwards, in the hire of boats, carts, and porters, may be reckoned at least 2,000,000*l.* the total of which is 10,050,000*l.*, of which general loss, alderman Jefferies had a particular loss in the one commodity of Tobacco, to the value of 20,000*l.*

"I have not made use of the account given by public authority, printed in the Compleat History, because I think my historian's authority, Mr. Baxter's, much better. He informs us, 'The great talk at that time was, who were the burners of the city? And there came in so many testimonies to prove it was the plotted weapon of the papists as caused the parliament themselves to appoint a committee to enquire after it, and receive information; upon which one Hubert, a French papist, confessed openly and constantly, to the last, that he began the fire.' The Compleat Historian and Archdeacon Echard are positive he was a French presbyterian, they say, Hugonot; for which we must in charity say, the Lord forgive them! Bishop Burnet assures us he was a French papist. Let us repeat what he says: 'The papists were generally charged with it. One Hubert a French papist was seized on in Essex, as he was going out of the way in great confusion. He confessed he had begun the fire, and persisted in his confession to his death, for he was hanged upon no other evidence but that of his own confession. It is true, he gave so broken an account of the whole matter, that he was thought mad. Yet he was blindfolded, and carried to several places of the city, and then his eyes being opened, he was asked if that was the place; and he being carried to wrong places, after he looked round about for some time, he said, that was not the place: But when he was brought to the place where the fire broke out, he affirmed that was the true place. And Tillotson told me that Howel, then the Recorder of London, was with him and had such discourse with him, and that he concluded it was impossible it could be a molencholy dream. The horror of the fact, and the terror of death, and perhaps some engagements in confession (remember Echard and the Compleat Historian call him a Hugonot or French presbyterian) might put him into such disorder, that it was not possible to draw a clear account from him; but of what related to himself, Tillotson, who believed the city to be burnt on design, told me a circumstance that made the papists employing such a crazed man the more credible, &c.' I omit several other circumstances in Burnet and Baxter, which corroborate the evidence against the papists, and shall only add the insinuation about the plinth of the lower pe-

readiness than those that were well acquainted with the place, went to Pudding-lane, unto the very place where the house that was first fired stood, saying, Here stood the house. The jailor

destal of the monument, which is designedly omitted by Echard, who has printed the large inscription on the pedestal itself.

'This pillar was set up in perpetual remembrance of the most dreadful burning this testant city, begun and carried on by the treachery and malice of the popish faction, in the beginning of September, in the year of our Lord 1666, in order to the carrying on their horrid plot for the extirpating the Protestant religion, and old English liberty, and introducing popery and slavery.'

"This inscription was erased by king James, upon his accession to the crown, but re-inscribed presently after the happy Revolution, in such deep characters as are not easily to be blotted out again.

"In direct opposition to these authorities, public and private, the archdeacon closes his wild account of the fire thus: 'That he will judge on the charitable, and perhaps probable side, that neither the beginning nor the end of this dreadful fire, were the effects of human means or counsels.' While the terrors occasioned by this conflagration remained on the minds of men, the persecuting bishops and magistrates suspended their rage against the Protestants who had not conformed, and many of their ministers preached in the midst of the burning ruins, to a willing attentive people; as Dr. Manton, Mr. Thomas Vincent, Mr. Wadsworth, Mr. Janeway, Mr. Thomas Doolittle, Dr. Amesley, Mr. Chester, Mr. Franklin, Mr. Grimes, Mr. Watson, Dr. Jacob, Mr. Nathaniel Vincent, Mr. Turner, Mr. Griffiths, Mr. Brooks, Dr. Owen, Mr. Nye, Mr. Caryl, Dr. Goodwin, Mr. Barker. Many pious, learned, and eminent divines of the Church of England, were more than ordinarily diligent in the discharge of their holy function in this calamitous time; as Dr. Tillotson, Dr. Stillingfleet, Dr. Whitchoy, Dr. Horton, Dr. Patrick, Mr. White, Dr. Outram, Dr. Horton, Mr. Gifford, Mr. Nest, Dr. Meriton, &c. Divines of equal merit and moderation, ornaments of their sacred profession and the established Church. When I am to speak of such men as these, I begin with pleasure and end with pain.

"On the 21st of September the parliament met at Westminster. They were, says Echard, the life and expectation of the nation; and to shew it in their actions, they gave the king 1,800,000*l.*, and thanked him for his great care in the management of the war, which they did in return for his majesty's most acceptable speech, wherein he told them, 'I wish with all my heart that I could bear the whole charge of the war myself, and that my subjects should reap the benefit of it to themselves.' Oldmixon.

"We are now to cast our eyes on one of the

endeavouring to draw him from that belief, and putting him upon seeking another place, but he positively persisted in what he had first said; and affirmed that to have been the said

most striking objects in our whole story; the Fire of London: The particulars of which terrible calamity it is needless to recount; they are already well known; and, as to the horror and confusion attending upon them, they are easier imagined than described.

“ Both the king and the duke, in person, beheld from time to time the amazing progress of the flames, and contributed all in their power to put a stop to their fury. For three whole days, however, they continued irresistible; and on the fourth, as if satiated with destruction, left the whole space from the Temple westward, to the Tower Dock, and from Pye-corner northward, to the water-side, a desolate chasm of smoking ruins. But, as nothing is better understood than the fact, nothing is more controverted than the cause.

“ In the preceding April, the nation had been alarmed with a new Republican plot; of which, and the execution of those concerned in it, the following account was published in the Gazette of April 30:

“ At the sessions in the Old Bailey, John Rathbone, an old army colonel, William Sanders, Henry Tucker, Thomas Flint, Thomas Evans, John Myles, William Wescot, and John Cole, formerly officers or soldiers in the late Rebellion, were indicted for conspiring the death of his majesty, and the overthrow of the government; having laid their plot and contrivance for the surprizal of the Tower, the killing his grace the lord general Monk, sir John Robinson, lieutenant of his majesty's Tower of London, and sir Richard Brown, and then to have declared for an equal division of lands, &c. The better to effect this hellish design, the city was to have been fired, and the Portcullises to have been let down, to keep out all assistance; the horse guards to have been surprised in the Inns where they were quartered, several ostlers having been gained for that purpose: The Tower was accordingly viewed, and its surprize ordered by boats over the Mote, and from thence to scale the wall. One Alexander who is not yet taken, had likewise distributed sums of money to these conspirators; and for the carrying on of the design more effectually, they were told of a council of the great ones, that sat frequently in London, from whom issued all orders; which Council received their directions from another in Holland, who sate with the States; and that the 3d of September was pitched on for the attempt, as being found by Lilly's Almanac, and a scheme erected for that purpose, to be a lucky day; a planet then ruling, which prognosticated the downfall of Monarchy. The evidence against these persons was very full and clear, and they accordingly were found guilty of High-Treason, and suffered accordingly.”

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house. It being intimated to the committee, That notwithstanding the confession of the said Hubert, it was confidently reported, the fire in the forementioned Farryner's house, began by ac-

“ Of this circumstance, advantage has been taken by Mr. Echard and others, to insinuate, that this enormous mischief took its rise from that quarter: But how unreasonably, and unjustly, appears from the very event itself; since no other part of the plot took effect; and, according to the very letter of this paragraph, the city was not to have been fired, merely for the sake of perpetrating so prodigious a piece of villany, but to facilitate a change of the government.

“ Besides: In July, lord Arlington, writing to sir William Temple, declares, That no discontented party shewed itself. And again, in August (the 23d) to lord Sandwich: ‘ I can assure you, with all truth, that, since you left us, we have had less trouble and alarms from the discontented party than ever we had in any year, since it hath pleased God to restore his majesty: On the contrary, upon the noise of the intentions of Holland and France to invade us, his majesty had the offer of having 20,000 men raised in fifteen days, by his own party, without a penny of expence to himself; and had the satisfaction of seeing the effect of those promises, by some troops that he thought fit to call for in the like manner: the suspected party concurring avowedly in the same resolution, have as frankly offered their estates and persons, in opposition to any invasion from abroad or insurrection at home, as if they did not differ in any degree from us, in their zeal to serve the king.’ And what is still more conclusive, the Account of the Fire, published by authority, concludes in the following remarkable manner:

“ And we cannot but observe, to the confusion of all his majesty's enemies, who endeavour to persuade the world abroad, of great parties and disaffection here at home, against his majesty's government, that a greater instance of the affections of this city could never be given than hath now been given, in this sad and deplorable accident; when, if at any time, disorder might have been expected from the losses, distraction and almost desperation of some persons in their private fortunes; thousands of people not having had habitations to cover them. And yet in all this time it hath been so far from any appearance of designs or attempts against his majesty's government, that his majesty and his royal brother, out of their care to stop and prevent the fire, frequently exposing their persons with very small attendance, in all parts of the town, sometimes even to be intermixed with those who laboured in the business; yet, nevertheless, there hath not been observed so much as a murmuring word to fall from any; but on the contrary, even those persons whose losses rendered their conditions most desperate, and to be fit objects of others' prayers,

3 H

cident. The committee therefore sent for him the said Parryner before them, who being examined, said, That it was impossible any fire should happen in his house by accident: For

‘ beholding those frequent instances of his majesty’s care of his people, forgot their own misery, and filled the streets with their prayers for his majesty, whose trouble they seemed to compassionate before their own.’

“ We have here, therefore, the most full and authentic testimonials, that neither the hated Nonconformists, nor even the more hated Republicans (if we may take leave to separate those whom church-policy hath always so carefully and artificially joined) are answerable for, nor chargeable with, so heinous a wickedness: And it may be yet further urged, that disposed as their adversaries were to accuse them of criminal designs, neither the ministers in their letters to each other, nor the public writings of those times, ever so remotely intimate, that they were even suspected of being concerned in it.

“ On the other hand, the State-Narrative just quoted declares, that divers strangers, Dutch and French, were, during the fire, apprehended upon suspicion that they contributed mischievously to it; and were all committed, in order to farther examination: But, in the very same paragraph, these strangers are in a manner disculpated: For the said Narrative proceeds thus: ‘ Notwithstanding which suspicions, the manner of burning all along in a train, and so blown forward in all its way by strong winds, makes us conclude the whole was an effect of an unhappy chance, or to speak better, the heavy hand of God upon us for our sins.’

“ Bishop Burnet, indeed, tells us, without specifying his authority, that, in resentment of the burning of the island Vlie, on the 7th of August, by the English, a project for the burning of London was communicated to Mr. de Witt, by whom it was rejected; notwithstanding which, so immediately after as the 2d of September, that very event took place.

“ And, in Mr. d’ Estrades’s Memoirs, we have a letter to him from the king his master, concerning the joint operations of the two powers during the winter, which contains the following passage:

“ However, as there is no room to think of a junction, the opportunity being slipt, for which I am the more sorry, on occasion of the fire of London, which, had our forces been joined, might have been a means of our putting a glorious end to the war, I give orders for disarming my ships, &c.’

“ This is all the evidence which occurs with respect to the concern of any foreign power in this dreadful visitation; and out of this, even a decypherer could scarce torture any solid conclusion either against France or Holland. Of these strangers, it is moreover remarkable, that the gazette never makes any farther mention: and, had any circumstances arose upon their examination, tending to inflame the na-

tion, he had after twelve of the clock that night gone through every room thereof, and found no fire but in one chimney, where the room was paved with bricks, which fire he diligently

artificial resentment at that time, it is not to be imagined, that those at the helm would have let slip so favourable an opportunity.

“ The populace, however, whether influenced by their own credulity, or misled by the artifices of their betters, were strongly persuaded, that the Papists were the incendiaries: and this conceit took so deep a root, and spread so far, that when the parliament met, a committee was appointed by the House of Commons to take examinations; who finding it unsupported with rational, sober, and consistent evidence, suffered it to drop, as a vulgar error.

“ It is true, the committee presented their report, but without an opinion of the particulars it contained: nor did the house countenance it with any vote; nor, when the torrent ran highest against the Papists, does it appear that this report was printed; but, on the contrary, the scandal was propagated, though the evidence was suppressed.

“ Even the wretch that was hanged (Hubert) on the presumption of having fired the City, was hanged on his own frantic confession: not one witness appearing against him: and it is remarkable, that Hawles, in his remarks upon Fitzharris’s Trial, takes occasion to say ‘ that the Commons resolving to examine Hubert upon the matter, next day Hubert was hanged before the House sat, and so could tell no farther tales.’ Whereas, on the very face of the report it appears, that Hubert was examined both leisurely and fully; and, upon the whole, as there is room to think the man was mad, it is matter of wonder that the man was hanged at all.

“ In truth, if the destruction was vast, if it began suddenly, and lasted long, it seems to have nothing, very surprizing or unaccountable in it: it began in a bake-house, where the buildings almost touched each other; the streets were every-where exceedingly close; the whole city was in a manner composed of lath and timber; the season had been exceedingly dry; and the wind blew very fresh. In overgrown cities, where the like circumstances meet, the like accidents are familiar; and those who are most injured by the effect, scarce enquire after the cause.

“ To close upon this head: Edmundbury Godfrey, esq. afterwards rendered so famous by the Popish plot, and his tragical death, who had greatly distinguished himself during the fire, and had as greatly contributed towards the suppressing it, was presented to the king, by the duke of York: upon which occasion, his majesty was not only pleased to give him his public thanks and acknowledgments, but also to confer on him the honour of knighthood.

“ Unless, therefore, it can be supposed, that

raked up in embers. He was then asked, Whether no window or door might let in wind to disturb those coals? He affirmed there was no possibility for any wind to disturb them; and that it was absolutely set on fire of purpose.

Dawes Weymansel, esq. one of his majesty's justices of the peace, informed, That he saw a man apprehended in the time of the fire, near the Temple, with his pockets stuffed with combustible matter, made of flax, tow, and such-like materials.

Doctor John Packer informs, That he saw a

all this was grimace and hypocrisy, which would be an affront to human nature, there is no more reason to suspect any great individual of conspiring against the city, than any body of men: and we must be forced to conclude, that next to the being guilty of so black a villainy, there is scarce any wickedness greater than the charging it on the innocent.

“But, if we are not to condemn without evidence, we are not to acquit where there is: though the parliament was to meet on the 21st of September, upon the 13th his majesty was pleased to put forth a declaration, relating to the rebuilding of the city, which partook more of the air of the monarch, and shewed less regard to the absolute dominion which every free subject has over his property, than was consistent with the constitution; by which, the execution of the laws only is left to the king, and he is never authorised to assume the legislative power himself.

“The very words of the Declaration here al- luded to, are as follow:

“We have therefore thought fit, most ne- cessary and agreeable to the great and con- stant affection we have always had, and always shall retain for this our native-city, to use this expedition in publishing our thoughts, re- solutions, and intentions, upon this great affair, that, though such present rules and directions cannot be formed, as must upon more ma- ture deliberation, be established for the re- edification: yet such inconveniences may and shall be prevented, which may arise by the hasty and unskilful buildings many may pro- pose to erect, for their present conveniences, before they can know how the same will suit and consist with the design that shall be made: And if this candor of ours, which resolves, with the blessing of God, so to provide for the just right and interest of all, that no man shall have cause to complain of wrong and op- pression; and if this our reasonable animad- version shall not meet with that prudent sub- mission we expect, but that some obstinate and refractory persons will presume to erect such buildings as they shall think fit, upon pretence that the ground is their own, and that they may do with it what they please, such their obstinacy shall not prevail, to the public prejudice; but we do hereby require the lord-mayor, and the other magistrates

person in the time of the fire, throw some com- bustible matter into a shop in the Old Bailey, which he thinks was the shop of an Apothecary, and that immediately thereupon he saw a great smোক, and smelt a smell of brimstone, the person that did this immediately run away; but upon the out-cry of the people he was taken by the guards.

Mr. Randal, *Mr. Hanslam*, *Mr. Humphrey*, *Bowyer*, do all agree, That they saw a person flinging something into a house near St. An- tholin's church; and that thereupon the house was on fire, and the smোক infested the adjacent

of the city of London, in their several li- mits, to be very watchful in such cases, and speedily to pull down whatsoever such men shall presume to set up, so much to the dis- turbance of public order and decency; and that they forthwith give notice to us, or our privy council, of such their proceedings, and return the names of such refractory persons, who presume to contemn this our injunction; and we shall give order for their exemplary punishment, without the violation of the pub- lic justice.

“Again, proceeding to particulars; ‘In the first place, the woeful experience, in this late heavy visitation, hath sufficiently convinced all men of the pernicious consequences which have attended the building with timber, and even with stone itself, and the notable benefit of brick, which in so many places hath resisted and even extinguished, the fire. And we do therefore hereby declare our express will and pleasure, that no man whatsoever shall pre- sume to erect any house or building, great or small, but of brick or stone: And, if any man shall do the contrary, the next magistrate shall forthwith cause it to be pulled down; and such further course shall be taken for his punishment, as he deserves.’

“It must however be acknowledged that this dictatorial power was exerted by the king, at the instance of the lord-mayor and aldermen; that, if ever such a strain of the prerogative would admit of palliation, it was now, when the city lay in ruins, when all were in haste to rebuild, and the mistakes, trespasses, and in- juries, which were like to follow thereupon, would probably create as much confusion as the fire had left: And that the king sweetened the harshness of this decree, with a significa- tion of his intention to part with any thing of his own, which might render the city more commodious or beautiful, and to remit the earth-money duty to all those who should con- form to the terms prescribed by it.

“Till the 30th of October, however, it did not appear, that any persons seem'd disposed to submit their property to be thus modelled after the king's good will and pleasure; and, by the manner in which the first act of conformity to it was made public, there is good reason to conclude, that it was not without much diffi- culty submitted to at all.” *Ralph,*

houses. And when this was done, there was no fire near the place.

Mr. *Michael March*, an officer in the trained bands in a company of sir Richard Brown's, apprehended a Walloon in the time of the fire, at the Nag's-head in Leaden-hall Street, with an instrument like a dark-lantern, made (as is conceived) to lay a train of powder, and it was filled with gun-powder. There were two more of the same nation in his company. They being asked to what use they employed the same instrument, would give no account thereof.

Newton Killingworth esq. informed, That he apprehended a person during the fire, about whom he found much combustible matter, and certain black things, of a long figure, which he could not indure to hold in his hand, by reason of their extream heat. This person was so surprized at first that he would not answer to any question; but being on his way to White-hall, he acted the part of a mad-man, and so continued while he was with him.

Sir *John Maynard*, a member of this house, affirms, That he had some of that combustible matter in his hands; and though it were in its natural substance, and unfired, yet the heat of it was scarcely to be endured by the touch.

Mr. *Freeman* of Southwark brewer, (whose house was lately fired) informs, That on the day his house was fired (about a quarter of an hour before that happened) a paper with a ball of wild-fire, containing near a pound weight wrapt in it, was found in the nave of a wheel, in a wheeler's yard, where lay a great quantity of timber. How his house was fired, he knoweth not; but this he affirmed to the Committee, that it could not be by accident, because there had not been any candle or fire in the house where the hay lay, that whole day; and that the hay being laid in very dry, and before Midsummer, could not possibly be set on fire within itself. Moreover he said, that the hay loft was on fire on the top of the house, and that the fire spread from the one end of the roof to another in an instant.

Mr. *Richard Hurwood* informs, That being near the Feathers Tavern by St. Pauls, upon the 4th of September, he saw something through a grate in a cellar, like wild-fire: by the sparkling and spitting of it, he could judge it to be no other; whereupon he gave notice of it, to some soldiers that were near the place, who caused it to be quenched.

I had order from the Committee to acquaint you, that we traced several persons upon strong suspicion (during the fire) to the guards, but could not make further discovery of them.

Thus far was the Report.

What follows was given in to the Committee, but not by them reported to the House at that time.

In obedience to an order directed to me, from the honourable committee of the House

of Commons, then sitting in the Speaker's Chamber, on the 2nd of Oct. 1666. I did carry Robert Hubert to St. Katherines Tower by water, to let me know the place where the Swedish ship lay, that brought him and other French-men from Stockholm, and he brought me to the dock over against Mr. Corcellis his brew-house, and did then verifie to me and Mr. Corcellis, that the ship lay there, until such time as he with Mr. Peidloe and others did go and set fire to a house. And this Hubert did then further say, That Mr. Peidloe did fix two fire-balls to a long pole, and put them into a window, and that he the said Robert Hubert did fire one in the same manner, and put it in at the same window. But with all the inquiry and diligence that I could use, I could neither find nor hear of any such vessel. And from thence I carried the said Robert Hubert to Tower-hill, and did then desire them to shew me the house that they did fire, and he said that it was near the bridge. So we went along Thames-street towards the bridge; but before we came to the bridge, the said Robert Hubert said, that the house was up there (pointing with his hand up Pudding-lane:) So I bid him go to the place, and he went along the bricks and rubbish, and made a stand: Then I did ask one Robert Penny, a wine-porter, which was the baker's house; and he told me, that was the house where the aforesaid Robert Hubert stood. So I went to Robert Hubert, and stood by him, and turned my back towards the baker's house, and demanded of him which house it was that he fired, (directing to other houses contrary to that house) but he turning himself about, said, This was the house (pointing to the baker's house) that was first fired. Then by reason of his lameness, I set him on a horse, and carried him to several other places, but no other place he would acknowledge; but rode back again to the baker's house, and said again, That was the house (pointing at the baker's house.) And this I humbly certify to this honourable committee.—By me JOHN LOWMAN, Keeper of his majesty's County-gaol for Surry.

Sir; Hearing that you are Chairman to the Committee for examining the fire of London, I thought good to acquaint you with this information that I have received. William Chapneys, a hatband-maker, now living upon Horslydown, was upon Tuesday morning, Sept. the 4th, 1666, in Shoe-lane, and there met with a constable who had apprehended a Frenchman whom he took firing a house there with fire-balls, and charged the said Chapneys to assist him, who carried the said Frenchman to Salisbury-court, hoping there to have found a justice; but finding that place burning down, returned into Fleet-street, who was presently called upon by the commander of the Life Guard, to know what the matter was: the constable told him, he had apprehended a Frenchman firing a house in Shoe-lane, he examined the person, and committed him to

the guard, and told the constable, he would secure him, and carried him along with him. The constable asked him, whether he should go along with him, to give in his evidence: He replied, that he had done enough, and might go home. But what became of the Frenchman, he knoweth not.—Your humble servant, S. G.

In a letter directed from Ipswich, for the honourable sir Robert Brook, it is intimated, That about the 30th of August, 1666, one of the constables of Cotton of Hartsmer Hundred, being about the survey of that town, about hearth-money, was told by one Mr. William Thoinson, a Roman Catholic in that town, That though times were like to be sad, yet if he found any cause to change his religion, he would see he should not want: And further said to him, What will you say, if you should hear that London is burnt?

The AFFIDAVITS touching a Frenchman, that said there were Three Hundred of them engaged in Firing the City.

The Informations of Richard Cound of St. Giles in the Fields, Ironmonger; William Cotes, Samuel Page, Francis Cogy, Edmond Dakins, and Richard Pardoe, taken the 8th day of September, 1666, by sir Justinian Lewen knight, one of his majesty's justices of the peace for the county of Middlesex, upon oath, as followeth:

Richard Cound saith, That upon Tuesday night last about twelve or one of the clock, there was a Frenchman brought by the watch to this Informant's father's house, being at the sign of the White-bart in King-street, taken as a suspicious person; the said person being questioned by them, whether he was not one of those that fired the city, or had any hand therein, or any privy or knowledge of any that had designed the same, or words to that effect; the said person answered a great while in a perverse manner, quite different from the question. But being farther pressed to tell the truth, and being told, that if he were guilty, it would be the only way to save his life; he did at first obstinately deny, that he knew any thing of any plot. Whereupon a young man took the prisoner aside, to the end of the room, and after some private discourse between them, they both returned to this informant and the rest of the company, and the said young man spake openly to us, in the hearing of the prisoner, That the said Frenchman and prisoner had confessed, there were 300 Frenchmen that were in a plot or conspiracy to fire the city. Upon which this informant and others spake to the said Frenchman in these words, or to the same effect: Well, Monsieur, you have done very well to confess what you have done, and no doubt but you may have your pardon, if you will confess all you know of this plot: and thereupon further asked him, Are there no more than 300 persons in the said Plot? He answered, There are no more than 300 persons. Then we enquired who they were, and how he

came to know they were 300? To which he would give no direct answer, but put it off with other extravagant discourse. And being asked why he came to St. Giles's parish (where he was apprehended.) He told a story, that he came from Islington Fields, where his master's goods were; but the goods were now removed, he could not tell whither; and that his master bid him go up and down the fields, but would not declare upon what occasion, or for what end he was so to do; and being asked whether there were 300 persons engaged in this design or plot? He replied that there were 300 engaged in it.

The several Informations of William Cotes of Cow-lane of London, painter; of Samuel Page of St. Giles in the Fields, weaver; of Edmund Dakins of St. Giles aforesaid, book-seller; of Francis Cogy of St. Andrews, Holborn; of Richard Pardoe, victualler, taken upon oath, &c. tend to the confirmation of the foregoing relation.

An Extract of a Letter from Hydeburgh in the Palatinate, Sept. 29, 1666.

Sir; Your's of the sixth current came on Wednesday to me, and brought the ill tidings of the burning of London, constantly expected and discoursed of amongst the Jesuits to my knowledge for these fifteen years last past, as to happen in this year. In which they do also promise to themselves and others introduction of the public exercise of the Catholic religion.

This letter was sent to Mr. Alton, who lives in New Gravel-lane in Shadwel, who negotiates the business of the Palatinate, and will produce the original if there be occasion.

The Information of JOHN CHISHUL, School-master in Enfield.

Upon Friday August 31, Mrs. St. George, and her eldest daughter Susanna St. George, both Popish Recusants, came to visit Mrs. Rebecca Eves, widow, at her house in Enfield; where speaking concerning the session of parliament drawing nigh, Mrs. St. George told her, that some would hereafter be called to account for a plot. Being asked for what? She told her in her ear, For burning the city. Mrs. Eves afterwards hearing of the firing of London, (and going to a place where she might behold it) met with Mrs. Susanna St. George, (and amongst other discourse) told her how much her mother's words, which she spake the Friday before, did run in her thoughts; which she repeated to her daughter, who made this reply, That her mother was very apt to talk, and that she had been fain to keep her mother within doors during the fire, fearing lest she should talk.

After this (during the fire) Mrs. Eves met with Mrs. Cook, another Popish Recusant, and of the same family; to whom she also related Mrs. St. George her words: who made this return, that she was a worthy woman to keep counsel.

Also the lady St. George at Enfield, in the Lord of Lincoln's house, declared to Mrs. Rebecca Eves of the said town, that within a few days, the city of London would be laid in ashes. This was spoken about two days before the fire happened.

Mrs. Eves of Enfield her EXAMINATION before Mr. Jolliff and Mr. Marvel, December 20, 1666, concerning Mrs. St. George.

Mrs. Rebecca Eves of Enfield, three or four days, or within a week before the fire, receiving a visit in her own house, from Mrs. St. George (amongst other discourse) Mrs. St. George asked her, what news she heard? And if she knew when the parliament sat? Mrs. Eves replied, She thought, shortly. The other asked, if she heard of any that were to be called in question before the parliament? Mrs. Eves said, About what? Mrs. St. George said, About a plot. Mrs. Eves asked, What plot? Mrs. St. George answered, About firing the city. Mrs. Eves said, I hope God will preserve the city; but people use not to be questioned before the fact be committed. So the discourse was waved for that time.

At the time of the fire, Mrs. Eves went out to look towards the fire; and mentioning Mrs. St. George, one in the company replied behind her, (but she cannot certainly fix the person) a prime woman to keep counsel! After the fire, Mrs. St. George her daughter came to Mrs. Eves, who asked her, If she remembered what her mother had said? She said, My mother is such a woman, she will speak what she thinks. Afterwards she said, That she had much ado to keep her mother in at the time of the fire, lest she should speak some things she should be questioned for.

At the first discourse, Mrs. Eves, her daughter, and others of the family were present. Mr. St. George, his wife, and family, have since left Enfield. They are all great Papists, and there are many more in the neighbourhood.

A LETTER directed, and sent by the post to Mr. Samuel Thurlton, in Leicestershire, from a person unknown, as followeth: dated October, 1666.

My friend; Your presence is now more necessary at London, than where you are, that you may determine how to dispose of your estate in Southwark: for it is determined by human counsel (if not frustrated by Divine Power) that the Suburbs will shortly be destroyed. Your capacity is large enough to understand: proceed as your genius shall instruct you.—Cave, Cave, Fuge, Vale.

Saturday the first of September, 1666, the day before the fire in London, came one Urms-traw from Ireland, with a letter from thence, to one esquire Holcroft, at Eastham in Essex, (being related to that family by marriage;) where he supped. After which he asked the esquire, if he had heard any thing of the firing of London? Who answered No. But Urms-traw said, he would shortly; for it was, or

would be so that night. The esquire answered, if it were, he hoped it might be quenched again; as it had been many a time. But Urms-traw answered, No, it would not be quenched; for it should be said, of it, as of Troy: repeating a Latin verse,

Nunc Seges est ubi Troja fuit.

Now corn grows where Troy-Town stood.

This discourse was managed pleasantly by him; after which they went to their beds: and in the morning, this Urms-traw enquires earnestly, Whether they had heard of the firing of London that night? They answered, No. But he prayed him to send one of the family out, to enquire; and, doubtless, they would hear of it. Upon which a messenger was sent; who brought word from a man that travelled upon the road, that it was on fire indeed. After dinner, this Urms-traw desired his horse to be saddled that he might be gone. The esquire intreats him to stay till next morning; but he answered, Therefore I would see London before it be quite burnt; for I shall never see it more.

Sunday morning, the fire being begun in London, a person coming from Deptford, when he came to Baruby-street end in Southwark, hears a woman cry out against a Frenchman, for throwing fire-balls; he runs after him and lays hold of him. He asked him, what commission he had for so doing? He answered, that his commission was in his constancy. The people coming in, they searched him, and found fire balls in his pockets. He was delivered to the guard in Southwark, but heard of no more.

A Citizen being fired out of his house, had hired a lodging in Queen street in Covent Garden; and going up Holborn, there being a crowd of people, steps in amongst them, hears a woman say, that she had a hand in firing the City. The people asked her, whether she was an Anabaptist? she said, no. Are you an Independent? She said, no. Are you a Presbyterian? She said, no. Are you a Roman Catholic? To which she would give no answer. The Citizen asked her, But, Mistress; had you a hand in burning the City? She answered, what would you have me to say? I have confessed it already, and do deserve to die for it. This she said, with great trembling; and seeming to be much troubled. The Citizen enquired for a constable: the people reply, there was one gone for. But a gallant comes and takes her by the arm, and leads her away: saying, he would have her examined: and forthwith, another gallant closeth with him; and they both carried her to the Griffin-Tavern in Holborn. The Citizen follows them, to see the result of the business: but they with the master of the house shut out the company (all but the Citizen, supposing him to be one of their own company), but asking one the other concerning him, and finding him not of them put him out again. Whereupon, he goes to the next company of soldiers, and enquires for

their captain : who replied, he was not there but told him, yonder is my L. C. Unto whom the Citizen repaired ; and acquainted his lordship, that there was a woman apprehended (and rescued by a couple of gallants) that had confessed she had a hand in burning the city, and was at such a tavern. Whereupon the L. C. called to a captain in the street and ordered him to go with that man, and apprehend the woman that he should direct him to. Whereupon, he goes with the Citizen, and takes her with the first gallant, who stood up highly in her defence, and carries them both to an ale-house on the other side of the way. The Citizen perceiving that nothing would be done with her, leaves his name with the captain, and where he might be found ; but was never called for, to justify the words spoken by her.

A woman standing in White-Chapel with a company about her, was asked what the matter was ? She said, that she met two young men in that place, and asked them how it was with the fire : they answered, It is now almost out, if it can be kept so ; but the rogues renew it with their fire-balls. As saith another woman young men if you have a heart to it, you may be hired to throw them. It was asked her, what was become of the woman that spake thus ? She answered, that she had apprehended her, and delivered her to the under-beadle of White-Chapel Parish. The woman falling under the accusation (not being able to deny it) there being many witnesses at that time that heard it ; she was delivered to sir John Robinson, but heard of no more.

One from France writes to his Correspondent in London, to know the truth of what was muttered in Paris, whether London was laid in ashes or no. The letter being dated a week before the fire began.

From Surrey in or near Darkin, a person in ordinary habit, who was yet observed to take place of all the nobility and gentry among the papists, seeing the people of Darkin mourn for the burning of the City, he spake slightly of it, telling them they should have something else to trouble themselves for ; and that shortly Darkin should be laid as low as London.

Whereupon the people made at him, and one Tr. H. a great Papist, rescues him, and sends him away in his coach to London. This was veposed before sir Adam Brown, a justice of peace and a member of parliament.

These following RELATIONS (for substance) were delivered to sir Robert Brooks, chair-man of the committee, a little before the prorogation of the parliament.

A true Relation made by one of the grand jury at Hick's-Hall, at a general Quarter-Sessions presently after the Fire in London, who was upon Trial of some of those that fired the City.

That near West-Smithfield in Chicklaue, there was a man taken in the very act of firing

a house, by the inhabitants and neighbours ; and carrying him away through Smithfield, to have him before a justice for the fact committed, the king's life guard perceiving it, made up unto them, and demanded their prisoner from them ; but they refused to let him go. The life-guard men told them, that he was one of the king's servants, and said, we will have him. And thereupon they drew out their swords and pistols, and rescued him out of the people's hands by force of arms.

A bill of indictment was brought against him, and two or three witnesses did swear unto it, and the bill was found by the grand-jury, who did carry it to the Old Bailey, and presented it to the Lord Chief Justice ; but it came to no further trial, nor was ever seen after at the Old Bailey, so far as this person, upon his best enquiry, could ever hear, or learn.

Concerning an House-keeper at Soho, who fired his own dwelling-house.

First he secured all his goods in his garden, and then went in and fired his house ; which when he had done, he endeavoured to get away out at his fore-door. A neighbour demanded of him, who had fired his house ? He answered, The Devil. Upon that, his neighbour bad him stand, or he would run his halbert into his guts. His answer was, if you do, there are enough left behind me to do the work. Whereupon he was secured, and a bill of indictment brought against him, and about three witnesses did swear to it : and his son came in as witness against him ; who was demanded by the foreman, what he could say as to the firing of his father's house ? He said, that his father did fire it with a fire-ball. It was demanded of him, whether he did fire it above stairs, or below ? He answered, above stairs. The Bill was likewise found, but the petty jury did not find him guilty.

A maid was taken in the street, with two fire-balls in her lap : some did demand of her, where she had them ? she said, one of the king's life-guard threw them into her lap. She was asked, why she had not caused him to be apprehended ? She said, that she knew not what they were. She was indicted for this, and the bill found against her, and turned over to the Old Bailey ; but no prosecution upon it.

In the time of the fire, a constable took a Frenchman firing an house, seized on him ; and going to a magistrate with him, met his H. H. the D. Y. who asked the reason of the tumult. One told him, that a Frenchman was taken firing a house ; his H. called for the man, who spake to him in French : The D. asked, who would attest it ? the constable said, I took him in the act, and I will attest it. The D. took him into his custody, and said, I will secure him. But he was heard of no more.

On Monday the third of September, there was a Frenchman taken firing a house ; and upon searching of him, fire balls were found about him. At which time four of the life-guards rescued the Frenchman, and took him

away from the people, after their usual manner in the whole time of the fire.

One Mr. Belland, a Frenchman, living at Marylebone, who bought great store of pasteboard for a considerable time before the fire of the city of London, to the quantity of 20 gross in one shop, and much more elsewhere, was asked by a citizen, What he did with all that paste-board? He answered that he made fire-works for the king's pleasure. The citizen asked him, What doth the king give you? He replied, Nothing, only I have respect at court: The citizen said, Take heed, Mr. Belland, you do not expend your estate, and then lose your respect at court, for you are at a great charge. Belland answered, Sir, do you think this a great matter? I use all this myself; But if you did see all the great quantities I have made elsewhere in three several places, three, four, and five miles off, you would say something. Another time the stationer with whom he dealt for the pasteboard, being at his house at Marylebone, and wondering at the many thousands of fire-works, that lay piled up of several sorts, he said, Sir, do you wonder at this? If you should see the quantity that I have made elsewhere by other men you would wonder indeed.

The Sunday before the fire began, this Belland came to the shop where he was wont to buy his pasteboard, but the stationer being not there, he desired a citizen (the stationer's neighbour) to speak to him; and to let him know that he had much wronged him in disappointing him of the four gross of pasteboard which he should have had of him, and said that he should not do his work by the time; and that if he had it not by Tuesday night, it would come too late, he should have no occasion for it after that (which was the Tuesday night before the fire) Mr. Belland, said the citizen, What is the reason of your haste? Have you any shew suddenly before the king? At which he blushed, and would give no answer. Says the citizen, What kind of fireworks do you make? only such as will crack and run? Belland answered, I make of all sorts; Some that will burn and make no crack at all, but will fly up in a pure body of flame, higher than the top of Paul's, and waver in the air. Says the citizen, Mr. Belland, when you make your shew, shall I see it? Yes, said Belland, I promise you, and gave his hand upon it. Which citizen in the time of the fire being upon the Thames in a boat, saw to his great amazement, sundry bodies of fire, burning above the fire of the houses as high again as Paul's, wavering in the air, directly according to Belland's description.

And after the burning of the city, some citizens agreed to go to Marylebone, to speak with this Belland; and by the way, met with his two maids and his boy; and having some knowledge of them, asked for young Mr. Belland: who told them he was not at home, neither knew they where he was. But the citizens observing, that they carried with them rabbits and capons ready dressed, concluded

they were going to him, and told them so, whereto they were surly, and bade them go look him, for they would not tell them where he was. Upon that, the citizens resolved to follow them, and did, till they came to Whitehall. The servants went up stairs, and down stairs, on purpose to have lost them, but could not, for they kept close to them: And at last, one of the maids went to a door, and knocked; crying out, they were dogged by two men, that they could not be rid of. With that, young Mr. Belland opened the door, saying to one of the citizens, Sir, your servant: How do you do? One of them answered, Both I, and many thousand families more, are the worse for you; for you, under pretence of making fireworks for the king, have destroyed a famous city, and ruined a noble people. To which Belland replies, I make nothing but innocent things, that will do no harm; for which I have a patent from the king. But the citizen answered, if the king gave you a patent, it was but for yourself. Who answered, No. Said the citizen, what made you then to employ so many men, in so many places? No, said Belland, I set no man to work; neither know I any man that makes of them, but myself; though he had often before said otherwise. While they were thus discoursing, old Belland looks from under the hangings; Sir, said he, I hear you charging my son with suspicion of burning the city; I pray you speak lower (casting his eyes about, fearing the ladies, passing by, might hear;) and said, My son doth nothing, but what he hath a patent from the king for; and shall have an order to sue any man that shall accuse him. And he said, my son is no prisoner, but lodged here, to prevent him from the rage of the common people. Well, said the citizen, you must give an account for what you have done: And so they shut the door upon them. The citizen went, and enquired whose lodgings they were; and were told, they belonged to a lady.

The Information of THOMAS MIDDLETON, chyrurgeon, late inhabitant of St. Bride's, London.

I the said Thomas Middleton do hereby certify, That upon the Sunday in the afternoon, the day wherein the dreadful fire brake out in Pudding-lane, which consumed the city, bearing the general outcry that the city was fired by Papists and French, I repaired to the top of a church steeple near the Three Cranes in the Vintrey; where myself and several others, observed the motion of the fire for two or three hours together: And we all took notice, that the fire did break forth out of several houses, when the houses which were then burning were at a good distance from them every way. And more particularly, I saw the fire break out from the inside of Lawrence-Poultney steeple, when there was no fire near it. These and such like observations, begat in me a persuasion that the fire was maintained by design. Upon Monday I repaired again into the city, and found, as the day before, that the fire did break forth in fresh

houses, at a great distance one from another. And as I was returning home, passing through Watling-street by a tobacco merchant's house, I saw the master of the house come down stairs, driving a young fellow before him; saying to him, 'You rogue, do you come to rob me? what did you do in my garret?' or words to that purpose; and pushed him out of doors: All which I observed, and he seemed to be a Frenchman; he was a short, black fellow, of about 22 years of age: And as soon as he was out of the house, he having a loose coat on in a way of privacy, shuffles something under his coat; whereupon I laid hold of him and said, 'Sirrah, what have you there?' The fellow replied, 'What is that to you; the master of the house knows me.' Upon that I asked the master of the house whether he knew the fellow? he answered, he knew him not. Whereupon I searched the fellow, and found a horn of powder about him; and as soon as the powder was discovered, he fell a rubbing of his hands, they being all black with powder. He had also about him a book intituled, The Jewish Government. I charged him that he was a Frenchman, because he spake broken English, but he denied it and did much vaunt himself. There coming a constable by with his staff, I required him to carry him to prison, and I would assist him: So we conveyed him to Old-Bridewell; and by the way the people were ready to kill him, calling him French rascal. I prayed them to forbear, for justice would give him reward. I told the fellow he would be hanged; he made slight of it, saying, 'If I die my soul shall be saved, but yours shall be damned.' And when he was put into Bridewell, I desired that he might be secured, and none suffered to speak with him till he were examined before a magistrate, because the tobacco merchant's house was presently burned upon it. But so it happened on the next day, that the fire came on and consumed my house and goods; so that I was forced, with my family, to flee into the country; and what became of the fellow I know not, Old Bridewell being burnt also. And understanding that the Parliament hath appointed a Committee to enquire after the actors in, and fomenters of that terrible fire; I thought good to inform the honourable Committee thereof, that they may send for the keeper of the said Bridewell, to know what became of the fellow, that he might receive justice according to his demerit. Thus much I thought myself obliged to do, as in duty bound to God and my country; all which I am ready to affirm upon oath, when I shall be thereunto called.

THO. MIDDLETON.

In the time of the fire near Bridewell, there was a man sadly bemoaning the great loss he was like to sustain (the fire then being within five or six houses of him) did beseech the people for God's sake (they having no goods of their own in danger) to come in and help him to throw out trunks, chests, beds, &c. out at a window, having procured two carts or waggons

to carry them away. Whereupon I ran into his house with several others, broke down his windows, threw out his goods and loaded the carts; and there being some interval of time before the return of the carts, and seeing a room wherein were many books and loose papers, which seemed to be a library, I went in and took down a book, which proved to be Ovid's *Metamorphosis*; and while I was looking upon it, there came into the same room an old man of low stature with a white frock, who looked also on the book as it was in my hand; I took him in my mind to be some groom come out of a stable, and thought him to be presumptuously foolish, supposing such a mean-like old man ignorant of that language in which the book was written, it being Latin; but I spoke not to him. In the mean time there brake forth a fire amongst the papers which were behind us, there being none in the room but he and I. Whereupon the rest of the people coming in, cried out, 'We had set the room on fire:' and rushing in upon us, put out the fire with their feet. Whereupon I took hold of the old man by the buttons under the throat, and said, 'How now, father! it must either be you or I that must fire these papers.' There was a small thing of a black matter, which looked like a piece of link burning, which questionless set fire on the papers, but it was immediately trod out. A tumult of people thronged in; and when I said, 'How now, father!' and took hold on him, he said, *Parce mihi, Domini*: The people which did not understand it, cried out, 'He is a Frenchman, kill him;' and with pulling of him his peruke fell off; then appeared a bald skull, and under his frock he had black cloaths, I think of *bishop-sattin*; whereupon he seemed to be a grave ecclesiastic person. I had much ado to save him from the people, but at last brought him before the Duke of York. We found in his pockets a bundle of papers closed up with wax like a packet, which was delivered to the D. of Y. I know not what was written in them, neither do I know what countryman he was; but methought he looked something Jesuit-like. This I am certain of, that when I went into the room there was no fire in it, and it was fired when there was none but he and I in it, yet I cannot say I saw him do it, though I cannot but suspect he did it, and the rather because there were several houses untouched betwixt this house, and where the fire was coming on, when the papers in the library were thus on fire as I have related. What became of this fellow, after we had delivered him to his royal highness, I have not heard.

JOHN STEWART.

Thus far concerning the Report and Informations about the Fire: now follows a true Account of what was represented to another Committee of Parliament, touching the insolency of Popish Priests and Jesuits and the Increase of Popery, &c.

At the Committee appointed to certify Informations touching the Insolency of Popish Priests and Jesuits, and the Increase of Popery.

Ordered, That these several Informations proceeded on, in pursuance of the said power of the Committee, be reported to the House in reference to the Insolency of the Popish Priests and Jesuits, and the Increase of Popery.

As to the Increase of Popery, Mr. Hancock, minister of Chilmoth in Wilts, informs, That meeting with one Mr. Thomson about a month since, coming from Mass out of Somerset-house chapel, and discoursing to him about his religion, asked him if there were many lately turned to it? Thomson answered, 'Thousands.' And being demanded what encouragement there was to it? Replied, 'There would be a change suddenly.' (Report his carriage to the Committee.)

Mr. Thomson being summoned before the Committee, did behave himself very insolently: they have commanded me to report it. Being asked, Whether he had not a shop in Somerset-house where Popish books and Popish knacks were sold? He said he had; and that his man sold such books and beads, and other things. And said, There was one crucifix, no relics; but wished he had some good one. He said that he was a Roman Catholic, and thanks God for it. He said he was no priest, but wished he were in a capacity to be one. He said he had not taken the Oath of Allegiance and Supremacy, nor would do it. He said he would take any oath that any Christian prince should require, but not the Oath of Allegiance, intimating some mixture in it. He said he had taken the Oath of Allegiance to the king of Spain, and was a subject to the king of Spain.

One Mr. Ash a minister, late of Capel in Surrey, informed, That being at Caufield in Lancashire this last summer, he saw great resort on Sundays to Caufield-house, the house of a Papist; and asking some that were going thither, what the occasion was of their resort thither, they told him they were going to Mass, and that one Mr. Robinson a priest did say Mass. Mr. Ash did likewise inform, that he thought the number of those that went to Mass to that house on Sundays, was as great as the Protestants that went to the parish church.

One Mr. Welden, deputy-ordinary for Middlesex, did inform, That in his accustomed attendance on the prisoners at Newgate, about the time of execution, Romish priests, and particularly one Mr. Harvy a Jesuit, hath constantly used to resort to the prison at those times, and doth persuade the prisoners to become Papists; and that divers have been altered in their religion by them, and turned to Popery.

Mr. Wootten informeth, That on Oct. 16th he went to Newgate, and meeting with one Howard an under-keeper at the door, desired to speak with Mr. Hubert the Frenchman, who

was then condemned: Howard told him that he could not speak with him yet, for Mr. Harvey, the queen-mother's confessor, was in private with him; and said, this Harvey used frequently to come to the prison after condemnation, and that where one prisoner died a Protestant, many died Papists. Mr. Wootten said, that after some stay he saw Mr. Harvey come out from Mr. Hubert, and then he was admitted to have speech with him.

Mr. Cawdry, keeper of Newgate, did inform, That Mr. Harvey the Jesuit did frequent the prison at Newgate about the times of the execution, upon the pretence of the queen's charity, and did spend much time with the prisoners in private, and particularly did so before the last execution, night after night. Mr. Cawdry said likewise of the nine that suffered, eight died Papists, whereof some he knew were Protestants when they came into the prison.

It appeared upon several informations, that Mr. Harvy and other priests, did not only resort to Newgate at times of execution, but likewise to the White Lion in Southwark, and other places in the country, and used their endeavours to pervert dying prisoners.

Thomas Barnet, late a Papist, informed, That when he was a Papist, and resorted to gentlemen's houses in Berkshire that were Papists; there was almost in every gentleman's house a priest, and instanced in divers private gentlemen in that county. Others inform the like in Surrey.

Mr. Cottman did inform, that one Mr. Carpenter, late a preacher at Colledge hill, did in discourse tell Cottman, "That the judgments of God upon this kingdom by the plague last year, and lately by the fire in London, were come upon this land and people, for their forsaking the true Roman Catholic religion, and shaking off obedience to the pope, and that if they would return to the church of Rome, the pope would rebuild the city at his own charge." Carpenter said likewise to Cottman, "That if he would come and hear him preach the next Sunday at his house in Queen street, he would give twenty reasons to prove, that the Roman Catholic was the true religion, and his the false; and that our bible had a thousand falsities in it, and that there was no true scripture but at Rome, and their church." Carpenter at the committee confessed, that he had formerly taken orders from the church of Rome to be a priest, but said he had renounced that church and taken orders in England.

The next thing is the Information of their Insolency, and I shall begin with their scorning and despising the Bible.

One Thomas Williams an officer in sir William Bowyer's regiment, informed, that one Ashley a Papist, seeing a woman read in a bible, asked her why she read in that damnable presbyterian bible, and said, a play book was as good,

Thomas Barnet of Binglefield in Berkshire, informed, that being at one *Mr. Young's* house in Binglefield, at Bartholomew-tide last, *Mr. Young* said to the brother of this *Thomas*, in his hearing, that within two years there should not be a protestant in England. *Thomas Barnet*, informed further, that being at *Mr. Doncaster's* house in Binglefield, one *Mr. Thural*, son-in-law to *Mr. Doncaster*, (and both Papists) said to this informer, (who was then likewise a Papist,) The people take me for a poor fellow, but I shall find a thousand or two thousand pounds to raise a party of horse, to make *Mr. Hathorn's* and *Mr. Bullock's* fat guts lie on the ground; for it is no more to kill an heretic, than to kill a grass-hopper, and that it was happy for him that he was a Catholic, for by that means he shall be one that shall be mounted.

Mr. Linwood, scrivener in White-chapel, informed, That about the 20th of October last, meeting with one *Mr. Binks* a Papist, and discoursing with him, *Binks* told him, that there was amongst the Papists as great a design as ever was in England, and he thought it would be executed suddenly. Being asked how many Papists there were about London? he answered, about seven thousand, and in England an hundred thousand were armed.

Mr. Oaks a physician dwelling in Shadwell, informed, That a little after the burning of London, one *Mr. Carpenter*, a minister, came to his house in Tower-wharf, and spake to him to this purpose: I will not say that I am a Papist, but this I will say, that I had rather die the death of the Papists, and that my soul should be raised with their resurrection, than either to be Presbyterian, Independant or Anabaptist; and I tell you, the Papists have hitherto been his majesty's best fortification; for when Presbyterians, Independants and Anabaptists forsook and opposed him, then they stood by him, and helped him; and he is now resolved to commit himself into their hands. And take it upon my word in a short time, the Papists will lay you as low as that house (pointing to an house that was demolished) for they are able to raise forty thousand men, and I believe, the next work will be cutting of throats. This was sworn by *Mr. Oaks*, before sir *John Frederick*, a member of the house.

Miriam Pilkington being present when the words were spoken, doth affirm them all, save only those, That the king is resolved to commit himself into the Papists hands. Those she doth not remember.

Henry Young, a distiller of hot-waters, informed, that about, April 1661, being in the Jesuits College in Antwerp, one *Powell*, an English Jesuit, persuaded him to turn a Roman Catholic, and said, That if he intended to save his life and estate he had best turn so, for within seven years he should see all England of that religion. *Young* replied, that the city

of London would never endure it. *Powel* answered, that within five or six years they would break the power and strength of London in pieces, and that they had been contriving it these twenty years; and that if *Young* did live, he should see it done. The said *Young* did likewise inform, that shortly after his coming into England, one *Thomson* and *Copervel*, both Papists, did several times say to him, that within five or six years at the farthest, the Roman Catholic religion should be all over in this kingdom.

Jasper Goodwin of Darking, in the county of Surry, informed, That about a month since one *Edward Complin*, a Papist, said to him, you must all be Papists shortly; and that now he was not ashamed to own himself a Roman Catholic, and to own his priest (naming two that were in Darking in the houses of two Papists;) and likewise said, that in twenty four hours warning, the Roman Catholics could raise thirty thousand men, as well armed, as any men in Christendom.

William Warner of Darking informed, That the said *Edward Complin* did tell him, that the Roman Catholics in England, could in twenty four hours, raise thirty thousand horse and arms: and upon saying so, pulled out his crucifix and beads, and said, He was not ashamed of his religion.

John Grawnger of Darking, informed that about a year since being in his house, reading the bible, one *Thomas Collins*, a Papist, said to him, Are you still a church-goer? had you not better turn Roman Catholic? if you stay till you are forced none will abide you. And said further, that there was a man beyond sea had prophesied, that in sixty six, if the king did not settle the Romish religion in England, he would be banished out of the kingdom, and all his posterity. And *Collins* further said, that he being lately turned a Roman Catholic, he would not be a Protestant for the world. He wished *Graunger* again, in the hearing of his wife, (which he affirmed to the committee) to turn his religion; for all the said prophecy would come to pass in sixty six.

Robert Holloway of Darking aforesaid informed, That one *Stephen Griffin*, a papist, said to him, That all the blood that had been shed in the late civil war, was nothing to that which would be shed this year in England. *Holloway* demanded a reason for these words, in regard the kingdom was in peace, and no likelihood of trouble; and said, Do you Papists intend to rise and cut our throats when we are asleep? *Griffin* answered, That's no matter, if you live, you shall see it.

Ferdinand de Mauisde, a Portuguese, and some years since a Romish priest, but turning Protestant, informed, That one father *Taff*, a jesuit, did the last year tell him at Paris, That if all England did not return to the church of Rome they should all be destroyed the next year.

Mr. Samuel Cottman of the Middle-Temple, barrister, informed, That about two years since, one Mr. Jeviston, a Popish priest, and called by the name of father Garret, did persuade him to turn papist, and he should want neither profit nor preferment. Mr. Cottman objected, that he intended to practise the law, which he could not do if he turned papist, because he must take the oath of Supremacy at his being called to the bar; and if he were a papist he must not take it. Mr. Jeviston replied, Why not take the oath? It is an unlawful oath, and void *ipso facto*. And after some pause, said further, first take the oath and then I will convert you. He said further, The king will not own himself to be head of the church. And said further, You in England that set up the Dutch to destroy our religion, shall find that they shall be the men to pull down yours.

Mr. Stanley, an officer to the duke of Ormond in Ireland, informed, That coming out of Ireland with one Oriel (who owned himself of the order of the Jesuits, and commissioned from the pope to be lord primate of Ireland, and archbishop of Armagh) and falling into some discourse with him, he told him, "That there had been a difference between him and some other of the jesuits in Ireland, and that part of the occasion was, that one father Walsh, and some other of the jesuits there did dispense with the papists in Ireland, to take the oath of allegiance and supremacy, by virtue of a standing commission from the pope which he had to do it, during this king's life; and Oriel thought they ought not to do it by virtue of the standing commission, but should take a new commission from the pope every year to do it." And likewise, "That he brought eight boys out of Ireland, whom he intended to carry to Flanders, to breed up in some of the colleges there." And at his taking shipping to go for Flanders, he shook his foot towards England, terming it Egypt, and said "He would not return into England, till he came with 50,000 men at his heels."

A French merchant being a papist living in St. Michael's lane, London, writes in a letter to his friend, That a great number of men and arms were ready here, if those he wrote to were ready there. He being upon the intercepting of this letter, searched; forty fire-locks were found in his house, ready loaden; which were carried to Fishmongers-hall, a month or more before the fire, and he committed to prison, but since released.

A poor woman retaining to one Belson's house, a papist, about Darking in Surrey, was solicited, that she and her husband would turn Roman catholics; which if they did voluntarily now, they would be accepted of; but if they staid a little longer, they would be forced whether they would or no; and then they would not be esteemed. This was deposed before sir Adam Brown, a member of parliament.

A complaint being made against a sugar-baker at Fox-hall, his house was searched by

lieutenant colonel Lantly, who found there several guns, with such locks, as no Englishman (who was at the taking of them) could discharge; together with brass blunderbusses and fire-works, of a furious and burning nature: Trial being made of a small part of them, the materials were discerned to be sulphur, aqua-vite, and gun-powder, whatever else.

In a letter to sir John Frederick and Mr. Nathaniel Heron, from Horsbam in Sussex, the 8th of September, 1666. Subscribed Henry Chowne. Wherein is mentioned, that the said Henry Chowne had thoughts to come to London that week, but that they were in distraction there concerning the papists, fearing they would shew themselves all that day; and that he had been to search a papist's house within six miles of that place. He, with another justice of peace met the gentleman's brother (who is a priest) going to London, whom they searched and found a letter about him, which he had received that morning from his sister, twenty miles off from him; wherein is expressed, That a great business is in hand, not to be committed to paper, as the times be.

Your Committee have thought fit to give no opinion upon these Informations; but leave the matter of fact to your judgments.

I am commanded to tell you, That your Committee have several other things of this nature under their Inquiry.

As a further instance of the audacious and insolent behaviour of these Papish Recusants, take the following Copy of Verses made, and then scattered abroad by some of their party in Westminster-hall, and several other places about the city, and elsewhere in the kingdom:

Covre la feu, ye Hugonots,
That have so branded us with Plots,
And henceforth no more bonfires make,
Till ye arrive the Stygian Lake. I E
For down ye must yee Hereticks, — —
For all your hopes of Sixty-six. 7 8
The hand against you is so steady,
Your Babylon is fallen already,
And if you will avoid that hap,
Return into your mother's lap;
The Devil a mercy is for those,
That Holy Mother Church oppose.
Let not your Clergy you betray;
Great eyes are open, and see the way.
Return in time, if you will save
Your souls, your lives, or ought you have.
And if you live till sixty-seven,
Confess you had fair warning given.
Then see in time, or aye be blind,
Short time will shew you what's behind.

Dated the 5th day of Nov. is the year 1666, and the first year of the Restoration of the Church of Rome in England.

Not long after the burning of London, Mr. Brook Bridges, a young gentleman of the Temple, as he was going to attend Divine Service in the Temple church, in a pew there found

this following Paper, which immediately either by himself, or a relation of his, was delivered to sir William Morrice, one of his majesty's principal secretaries of state; the contents of the Paper are as follows:

A Warning to Protestants.

I, who have been a Papist, from my infancy, till of late, and in zeal for their horrid principles, had too great a share in the firing of the city. And did intend to do further mischief to the Protestants (of which I am now and ever shall be a member) do upon abhorrence of that villainy, and religion that hath moved me to it, declare to all Protestants, the approach of their sudden ruin, that it may be prevented, if it be not too late.

When I, together with other Papists, both French, Irish, and English, fired the city; others were employed to massacre the Protestants, we thinking thereby to destroy the heads of your religion; but the massacre was disappointed by the fear of him, who was the chief agent in this villainy. And the fire not having done all its work, they have often endeavoured to fire the remaining part. They intend likewise to land the French upon you: to whose assistance they all intend to come, and for that purpose are stored with arms: and have so far deceived the king, that they have the command of most part of the army, and the sea posts. The French intend to land at Dover, that garrison being most Papists; and the Papists in England, have express command from Rome, to hasten their business before the next parliament; and to dispatch. Therefore as you love your lives and fortunes, prevent your ruin, by disarming all the Papists in England, especially C. L. — from the Tower, and the L. D. —, and all his adherents and soldiers, from Dover, and by disarming all Papists. I have such an abhorrence, that I would willingly undergo any punishment for it; and declare myself openly, were I not assured that I could do you more good in concealing my name for the present. Delay not from following these directions, as you love your lives; and be not deceived by any pretences whatsoever.

An Impartial Account of some INFORMATIONS taken before several Justices of the Peace, concerning the several Fires happening of late in and near the City of London.

About the latter end of June, and in July, one Joseph Harrison came several times to the Greyhound-inn, in Holborn, pretending to enquire for letters for himself; and about the beginning of July comes into the said inn, and meeting Mr. Atkins, the master of the said inn, he the said Harrison asked him for a can of beer; whereupon Mr. Atkins ordered his man to draw two cans, drinking one himself, and giving the other to Harrison. After which, the said Harrison took Mr. Atkins by the hand, and led him out of his own yard into Holborn, and by the rails in the street, the said Harrison

advised the said Atkins to put off his house and dispose of his goods as soon as he could; for within three weeks or a month, there would be great and dreadful fires in and about London. Mr. Atkins asked him, How he knew so? The said Harrison replied, If you will not believe me, you may choose: and so left him.

One Monday, July the 25th, Mr. Atkins's wife hearing of the fire at the George-inn, in Southwark, went to her mother at the Talbot-inn, in Southwark; the back part of which said inn is adjoining to the George-inn, and was likewise on fire; and being there, she espied the aforesaid Joseph Harrison in the yard, and remembering the aforesaid advice to her husband, desired some persons that were next her, to lay hold of him; which being done, he was conveyed to a foot company that stood in arms near the said inn, judging that the nearest place to secure him. After which, sir John Smith, one of the sheriffs of London, was acquainted with the whole matter. Upon which he, with the L. C. went to the said company, and in the hearing of several, gave charge to the captain of the said company to keep him safe until they had time to examine him. After the fire was put out, some went to enquire after the prisoner, and the captain told them, the L. C. had discharged him.

The next day being Tuesday, a person was informed that the said Harrison taught school in Threadneedle-street, and that he boasted of his deliverance, and said, That the L. C. was pleased to honour him so far as to take him in his barge with him to Whitehall, and bid him but be patient a while, and he should have satisfaction from the persons that had troubled him. But hearing where to find him, endeavours were used to retake him, and accordingly was accomplished on Wednesday, July 27, and had before the worshipful sir John Frederick, who sent him to Bishopsgate, and ordered him to be brought before the lord mayor and court of aldermen the next day to be examined. Before whom were these following things proved against him upon oath.

“1. That he hath had frequent correspondence with jesuits and papists. 2. That he hath spoken to several of his acquaintance to go with him to popish meetings, declaring that he knew of many. 3. That he hath been persuaded to turn Mendicant Friar, and hath been offered a stipend to turn to the Romish Religion. 4. That he knew there would be divers great and dreadful fires in and about London within a month. 5. That he advised friends to rid their hands of all their concerns in and about London, for there would be a great consumption of houses there. 6. That when he was in the custody of the Foot-Company aforesaid, Mr. Atkins aforesaid, affirming to swear the former Article; he threatened him, if he did, it should cost him the best house he had. 7. That he said there were 40,000 French Papists lately come over, to his knowledge; besides many that were amongst us already. 8. The Lord Mayor asking him,

who persuaded him to turn catholic? He answered, The king's under-barber, Phillips."

After which, he told the Court, That when he was apprehended for these things, my L. C. discharged him, and took him with him in his barge to White-hall. He further told the Court, That he was some time an assistant to Mr. Lovejoy, schoolmaster at Canterbury, and that he had letters testimonial of his good behaviour from the dean of Canterbury: Upon which my Lord Mayor remembering that he had seen him with Mr. Lovejoy, and said, that Mr. Lovejoy told him, That he was an idle rogue. And so he was committed to Newgate.

On Saturday the 30th of July, it was further deposed upon oath by Thomas Roe, before sir John Frederick, as follows:

The INFORMATION of Thomas Roe of Bernard-Inn, Gent. taken the 3d of July, 1670, by sir John Frederick, Alderman, one of His Majesty's Justices of Peace in the City of London, upon Oath, as followeth:

Thomas Roe saith, that he hath for at least 12 or 13 years last past been acquainted with one Joseph Harrison, who was examined lately at the Guild-hall, London, before the honourable the Lord Mayor and Court of Aldermen, upon suspicion of his being a conspirator in the firing the city and suburbs in several parts thereof.

Thomas Roe, and Joseph Harrison, having been school-fellows at Eton College, and being thereby acquainted; Joseph Harrison hath several times lately been with him, and advised him to withdraw his concerns, and remove above twenty miles out of the city; for that the city, and twenty miles round, would be suddenly destroyed and laid waste (or to that purpose.) Whereupon Thomas Roe asked him, Whether he were privy to any such conspiracy, or concerned in its agitation? pressing him with divers arguments to discover what he was acquainted with of that kind. Harrison replied, That he had no personal and positive knowledge thereof. Thomas Roe demanded upon what ground then he did thus advise him? Joseph Harrison replied, That he was sometimes conversant among some Papists, and perceived a plot or design was carrying on by them against the city of London, and the Protestant Religion; which plot or design, said he, the Papists call, The Game of Trap, or, do you understand *Trap ad Crucem*, which is the watch-word amongst them. Further, Joshua Harrison said, that he was informed of those things by some German Protestants, and that he had offers of 50*l.* per annum, made him by some Jesuits and Papists to turn to their religion; but he had refused it, and would not embrace the Romish religion.

Thomas Roe further saith, That above five weeks since, he walked through New-Cheapside, and from thence into Mark-Lane, with Joseph Harrison, in company with Mr. Mosely (a gentleman belonging to Bernards-Inn likewise) and one of his acquaintance, together

with another man, a stranger to Thomas Roe. Upon their first associating, Harrison said unto him, That he would not discover himself to be an Englishman, but pretend himself to be a German or Italian (whether of the two he doth not well remember) and that he might not detect himself, spake in the Company as occasions offered in Latin. But leaving the place where they tarried in Mark-lane, going towards Bishopsgate-street, Mr. Harrison told Mr. Roe secretly, That he believed that Mr. Mosely understood the Game of Trap by some signs he had observed from him, and that he would try him. Then going altogether into a house, about the end of Threadneedle-street, Mr. Harrison (having by this time discovered himself to be an Englishman, said Trap, and made a cross over his face with his finger, directing himself to Mr. Mosely: Whereupon Mr. Mosely did also say Trap, crossing his forehead and face two or three times, and with a quick motion drew his finger over his own throat. Upon which Mr. Roe asked Mr. Mosely what was the meaning of Trap? But he refused to tell. Mr. Roe urging him again, He replied, He would not; saying, You are not of my religion. Then Mr. Mosely asked Mr. Harrison what his name was? (for he knew him not by name) he answered, Harrison. Mr. Mosely replied, I never saw your name. Mr. Harrison made answer, It is Don Olanso del Harrisonio; if so, saith Mr. Mosely, I have seen your name.

After this, Mr. Mosely and the other stranger being parted, and Mr. Roe and Mr. Harrison being alone: said Harrison, I told you Mr. Mosely did understand Trap; you may see there is a list of the Trap-Gamesters. Now whether Mr. Mosely's imitation of Mr. Harrison was feigned or real, Mr. Roe could not distinguish: But as they two were passing through Cheapside homewards, Mr. Harrison looking upon the New-Buildings, said, To what purpose do they build this poor city, it will be again destroyed; at the same time he pointed at two several persons, saying, That is a Trap-Gamester, and there goes another Trap-Gamester.

Mr. Roe further informs, That since the last Term, Mr. Harrison told him, he would write all the rogueries of the Trap-Game and Gamesters in a Play; and that he would undertake to shew him 26 papists meetings in and about the city and suburbs of London; but, said he, some of them are very private, and if you be discovered not to be a papist, (you will peradventure) be poisoned or stabbed.

Mr. Roe doth further say, That when the said Harrison advised him to remove with all his concerns about 20 miles from London, that the said Roe asked him if Windsor were not far enough, it being both their native place, and about the distance? The said Harrison answered, Not; reflecting upon the Castle. And further, Harrison told Mr. Roe that the jesuits could, by a composition of ingredients, make such a matter, the fume of which would cor-

rupt any man's intellects; and that he the said Harrison could do it.

A faithful Account of the Apprehending of a Scotchman, some time since by William Colburne, at the Cross-keys in Fleet-street, as followeth.

A Scotchman pretending great respect he had for William Colburne aforesaid, came to him and advised him, That by all means he should remove his goods out of Loudon, and dispose of his house. William Colburne asked him, For what reason? The Scotchman replied, Because that he, with many others, were employed to set the remainder of London on fire; and that they would set it on fire in several places at one time: And Chancery-lane end (which is near the aforesaid Colburne's house (they intended to set first on fire. Upon which, William Colburne apprehended him; and being brought to his trial, he was sentenced to stand in the pillory; and did accordingly, three times; once at the end of Chancery-lane, and twice in, or about the Old Exchange.

Much more might be said, but that our aim is, to be as brief as is consistent with the truth of the matter of fact in our narrative. Therefore we refer any that desire further satisfaction, in every particular, to William Colburne aforesaid, who will fully inform them.

An Account of the Firing of Mr. Delanoy's house, near Pepper-alley, in Southwark, January 1666-7, by John Satterthwait, a Papist, as appears by the oath of Margaret Clarke, then servant to Mr. Delanoy, who was in by the said Satterthwait, to assist him in the burning of her master's house, and suffered death for the same.

I Margaret Clarke, being shortly to suffer death for that which I have deserved, and am much humbled for, and desire to lie low before God, under the sense of my own guilt, do give the world an account of the truth of my case; for I would not be guilty of a lie, now I am to appear before my Judge within a few minutes. Therefore I do say, and shall declare the truth of the matter, as I shall answer it before my Lord and Judge.

Upon the 26th of January 1666-7, John Satterthwait came to me, as I was going out of my master's gate, and did desire me to tell him whether my master and mistress were at home? And I answered him, No. And he told me, That he hoped he should have an opportunity to speak with me, for he had something to say. And I answered him, if he had any thing to say, I should be so civil to give him the hearing when I had time (for then I was in haste.) Then he came, the next day, with the same request; and I returned the answer. Then the third time being Wednesday, he came again, and used great importunity; and expressed some kindnesses, as if he had been a suitor; and prevailed with me to go into the Borough with him to an ale-house, where

were two men more of his company: And after some little discourse, he propounded to me this wicked and horrid design, which I was to have been engaged in with them; that is, to let them into my master's house, to set it on fire: And for a reward, they promised me 2,000*l.*; which sum I was to receive at the Fleece-Tavern in Holborn, enquiring for a room in the said Tavern, called the figure 9. Then coming out of the ale-house, they would fain have had me away with them; saying, Come let us take coach, and go into Fleet-street; for, said they, there we have a priest of ours, who lodges at a grocer's, that shall confess you, and give you the sacrament. I told him, I could not possibly go then.

So this John Satterthwait went homewards with me, almost to my master's house, and as we went along, he charged me that I should not divulge it to any person in the world living; for if I did, I should certainly die for it (and that quickly) in this world, and be damned in the other.

Then he came on the next day, and gave me the same charge to keep it secret.

And then, on Saturday he came and enquired of me, the best time that he might come to do this most horrid and devilish action; saying, Would not 4 or 5 of the clock be a good time? And I said, Yes.

Accordingly he came, and conveyed himself into the dye-house, or thereabout, while 9 or 10 of the clock that evening; about which time the fire was discovered.

Whereupon, with the fear and dread he had put upon me, I did deny it to the company that came in to quench it; but after that, he was there, whom I saw amongst the rest of the company: But I had much horror upon my conscience, and after some short time, I confessed the whole crime, for which I now die. And my examination before justice Reading, and justice Freeman was all true.

And this I affirm, and do desire all Protestants to believe, that; John Satterthwait kindled those three fires in my master's house: First, in the dye-house, by the pump: Secondly, in the buttry; and thirdly in the garret. Which last fire he kindled, whilst the people were putting out the other.

See the large account of this, called, 'A Warrant to Servants, and a Caution to Protestants,' printed in the year 1680.

An Account of the firing Mr. Robert Bird's house, in Fetter-lane, April the 10th, 1679, by the persuasion of Nicholas Stubbs, a Papist.

Elizabeth Orley, servant to Mr. Robert Bird, upon her examination saith, That about Michaelmas last, she was acquainted with Nicholas Stubbs, who had several times used many persuasions to turn her Papist; and after her shewing a liking to it, and that he supposed she embraced that persuasion, in his discourse to her at several times, he told her, that before the 28th of June next, she should see all the

Protestants destroyed that were in England; that the Pope should be king over England, that all that would turn to the Popish religion should live far better than now they did; that all the land were heretics, and it were a meritorious act to destroy them; and that all such as were Papists should have marks upon their hats whereby to distinguish them from Protestants, that they might not be destroyed amongst them: Adding, that the nation do believe that all things will be over before the 23d day of June, but they would be deceived, for all should be destroyed at or before that time. That the duke of York was the bravest prince living, and that he was gone out of the kingdom lest the hereticks should cut off his head, and he would not return till they were destroyed; that the lords in the Tower would not one of them suffer, for they would come off well enough, being to be tried by the lords; and that the scaffolds were set up for fashion sake. That she telling the said Stubbs that she was hired to live with one Mr. Bird about the middle of Fetter-lane, he used persuasions to her at several times to set fire on her master's house; telling her, if she would do it, he would give her 5*l.* and gave her half a crown, and said, he would have other houses in Holborn fired at the same time by others: That she being with the said Stubbs on Sunday before the said fire, promised to fire her master's house on Thursday or Friday night following, and accordingly on Thursday night she took a candle and set fire to her master's papers in his study, which were in a kind of a press; and they being on a light fire, she shut the doors and went up stairs into her own chamber in the top of the house, and packed up her own things, and undressed herself, lest her master should suspect her, and there stayed till a great knocking was at the door, and the watch-men crying out fire; whereupon she ran down stairs and cried fire, and her master gave her the keys to open the door; which done, all hands were employed to quench the fire. And she saith, she did not set fire on her master's house out of any malice to him, nor with intent to rob him, but merely to carry on the design which Stubbs had proposed to her, and out of hopes of his reward.

Nicholas Stubbs upon his examination, owns, and sets forth to have used discourses to the said Elizabeth as she declareth in her examinations; and saith, he did persuade her to fire her master's house, and was to give her five guineas for doing it, besides half a crown in hand: And saith, that one father Gyfford a Priest and his confessor had put him upon this business, and told him it was no sin to fire all the houses of heretics and hugonots.

That he acquainted Flower alias Darby, and one Roger another Irishman that lodged at the Coach and Horses in the same street. That the said father Gyfford promised him 100*l.* for the same, and told him he was to have the money from the church. That they used to meet the said Gyfford and the other two

persons in St. James fields in the dark of the evening, and to discourse of these matters; and that the several informations that he had given the said Elizabeth Oxley, he had from the said father Gyfford; and saith Flower and Roger told the said Stubbs, they would carry on the said fire, and that they had fire balls for that purpose, and that they would fire other houses in Holborn at the same time: That he was at the fire in the Temple, but was not engaged to do any thing in it. And said, that Gyfford told him that there were English, French and Irish Roman Catholics enough in London to make a very good army; and that the king of France was coming with 60,000 men under pretence to shew the dauphin his dominions; but it was to lay his men at Diep, Bulloign, Calais and Dunkirk, to be in an hour's warning to be lauded in England, and he doubted not but it would be by the middle of June, and by that time all the Catholics here will be in readiness; all were to rise in order to bring him in. That the papists here were to be distinguished by marks in their hats; that the said father Gyfford doubted not but he should be an abbot or a bishop, when the work was over, for the good service he hath done. That at their meeting father Gyfford used to tell them, it was no more sin to kill a heretic than a dog, and that they did God good service in doing what mischiefs they could by firing their houses. That it was well sir Edmondshury Godfrey was murdered, for he was their devilish enemy; that Coleman was a saint in heaven for what he had done. And saith, he is fearful he shall be murdered for this confession, father Gyfford having sworn him to secrecy, and told him he should be damned if he made any discovery, and should be sure to be killed; and that he should take the oaths, because he was a house-keeper; and that it was no sin. And saith, that Gyfford and Roger — told him when their forces meet, about the middle of June, then have at the —.

The MONUMENT, as is well known, was erected to commemorate this Fire, and bears the following insculptures:

On the South Side.

Carolus 2, &c. princeps clementissimus
 miseratus luctuosam rerum faciem; plorans
 fumantibus jam tum ruinis, in solatium civi-
 um, et urbis sum ornamentum providit, tri-
 butum remisit, preces ordinis et populi Lon-
 dinensis retulit ad regni senatum; qui con-
 tinuo decrevit, at publica opera, pecunia
 publica, ex vectigali carbonis fossilis oriunda
 in meliorem formam restituerentur; atque
 ades sacre et D. Pauli templum, à funda-
 mentis omni magnificentia extruerentur;
 pontes, portæ, carceris novi fierent, emun-
 darentur alvei, vici ad regulam responde-
 rent; clivi complanarentur, aperirentur an-
 giportus, fori et macella in areas sepositas
 eliminarentur. Censuit etiam uti singula

domus muris intergerinis concluderentur, univ[er]sæ in frontem pari altitudinæ consurg[er]ent omnesque parietes saxo quadrato aut cocto latere solidarentur; utique nemini liceret ultra septenniūm edificandū immorari. Ad hæc litis de terminis orituras lege lata præsidit; adiecit quoque supplicationes annuas, et ad æternam posterit[er]um memoriā H. C. P. C. Festinatur undique, resurgit Londinum-majori celeritate an splendore incertum; unum trienniū absolvit, quod sæculi opus credebatur.

On the North Side.

Anno Christi MDCCLXVI. Die IV. Nonis Septembris, hinc in orientem, pedam CCII intervallo (quæ est hujusce columnæ altitudo) erupit de mediâ nocte incendium, quod, vento spirante, hausit etiam longinqua, et partes per omnes populabundum ferebatur cum impetu et fragore incredibili; XXXIX Temp[er]a, Portas, Prætorium, Ædes publicas, Prochotrophia, scholas, bibliothecas, insularum magnam numerum, domuum CCCO OOOOOOCC, vicus CD absunsit: de XXVI regionibus XV funditus delevit, alias VIII laceras et seminstas reliquit. Urbis cadaver ad CDXXXVI jugera, hinc ab arce, per Tha-

mesis ripam ad Templariorum fanum, illino ab euro-aquilonali porta secundum muros ad fossæ Fletanæ caput, perrexit; adversus opes civium, et fortunas infestum, erga vitas innocuum, ut per omnia referret supremam illam mundi exustionem. Velox clades fuit; exiguum temp[us] eandem vidit civitatē florentissimam et nullum. Tertio die, cum jam plane evicerat humana consilia, et subsidia omnia, cœlitus, ut par est credere, jusus, stetit fatalis ignis, et quaquaversum elanguit. [Sed furor papisticus, qui tam dira patravit, nondam restinguitur.]

Round the Pedestal.

This Pillar was set up in perpetual remembrance of the most dreadful Burning of this City; begun and carried on by the treachery and malice of the Popish Faction, in the beginning of September, in the year of our Lord 1666, in order to the effecting this horrid Plot, for the extirpating the Protestant Religion, and English Liberties, and to introduce Poverty and Slavery.

To which Pope alludes in his opening of the story of Sir Balaam:

“—London’s column pointing to the skies, Like a tall Bully lifts its head and lies.”

225. Proceedings against PETER PETT, Gentleman, upon an Impeachment for several High Crimes and Misdemeanors: 20 CHARLES II. A. D. 1668.

November 13, 1667.

A REPORT being made to the House of Commons by Sir Robert Brookes, from the Committee of Miscarriages, in reference to Commissioner Pett; Resolved, &c. “That the matter concerning Commissioner Pett be recommitted to the committee appointed to inquire after the Miscarriages of the late War; to hear such witnesses, as shall be offered to them; and to expedite their report.”

November 14.

A motion being made, and a debate arising, upon the vote made yesterday, for committing the matter concerning Commissioner Pett to the Committee appointed to inquire after Miscarriages, to hear such witnesses as should be offered, and expedite their report; Resolved &c. “That leave be given to speak against the Order made yesterday, concerning Commissioner Pett.—That the Order made yesterday, concerning Commissioner Pett, be discharged.—That it be referred to the committee appointed to examine Miscarriages to draw up an Impeachment against Commissioner Pett, upon the whole matter before them.”

November 28.

Sir Robert Brookes reports Articles of Impeachment agreed on by the committee ap-
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pointed to inquire into Miscarriages, against Commissioner Pett, late one of the Commissioners of his majesty’s navy: which he read; and after delivered the same in at the clerk’s table.

ARTICLES OF IMPEACHMENT of several High Crimes and Misdemeanours against PETER PETT, Gentleman.

December 19.

The Articles of Impeachment against Peter Pett gentleman were severally agreed to; and are as followeth, viz.

“I. That the said Peter Pett, being one of the Commissioners of the Navy, especially authorized and intrusted with the charge and care of his majesty’s yard stores, and provisions, and the Navy royal, at Chatham; and having received orders from his royal highness the duke of York, Lord High Admiral of England, about the 26th day of March, requiring him, in pursuance of his trust, to bring and moor his majesty’s ship, called the Royal Charles, and other ships did, contrary to his trust and orders, wilfully neglect and refuse so to do: whereby the said ship, being one of the most important strength, of this kingdom, became lost, and made a prey to the enemy.

“II. That his majesty having, upon the 11th of June last, appointed the duke of Albemarle Captain General of all his majesty’s Armies and

land forces, to repair to Chatham, upon the invasion of the Dutch, to secure his majesty's ships and forts there; he the said Lord General did repair thither on the 11th of June: where, finding the said Royal Charles not brought up, but lying below, in a place of danger, subject to be surprized by the enemy who had then invaded the kingdom, and entered into the rivers Thames and Medway, he the said Lord General gave present orders to the said Mr. Pett, to cause the ship to be immediately brought up as high as he could, into a place of safety: but he the said Pett altogether neglected the doing thereof.

" III. That captain Brookes, one of the masters attendants at Chatham, under the care and direction of the said Peter Pett, knowing that the said Lord General had given express orders, on the said 11th day of June, to cause the said Royal Charles to be brought up, did prepare anchors, and other tackling, ready for the same; and desired the said Pett to give him orders for his so doing: which he refused so to do.

" IV. That his royal highness having given orders to the said Peter Pett to provide, and make ready, thirty boats for the defence of the said river, and navy; he the said Peter Pett, contrary to his trust, did not only himself misemploy some of the said boats, for the carrying away of his own particular goods; but suffered the rest to be, in the like manner, misemployed and diverted; and did also seize, and take away, a boat, particularly belonging to Sir Edward Sprague; so that, for want of the said boats, many of his majesty's ships were lost, and the defence and security of the rest was hindered.

" V. That the commissioners of his majesty's navy having, by their letter of the 4th of June signified to him, the said Peter Pett, that the Dutch were out; and thereupon, gave him special charge to command all captains on land to their ships; and to be vigilant and careful in the rest of the charge committed to him; but he the said Pett was so negligent therein, that, of 800 persons, or upwards, that were under his care and command in his majesty's pay, when the Lord General repaired thither the said 11th of June, there were not above ten ready, upon the invasion of the enemy.

" VI. That the said Lord General having appointed soldiers to raise batteries for the defence of his majesty's navy royal, there being few of those in his majesty's pay in his yards, to be employed; he the said Pett, to obstruct the service, refused to give them the number of tools required for the use aforesaid; notwithstanding that he had a sufficient quantity in his majesty's stores; as it appeared, when, by command of the said Lord General, the said stores were broke open.

" VII. That the said Lord General having about the said 11th day of June, sent orders

to the said Peter Pett to send, out of his majesty's yards, some oaken planks for the platforms and batteries, to oppose the enemy; he the said Peter Pett sent only deal boards: which were very prejudicial for the service; for that, upon the discharge of the guns, the carriages broke through the planks; notwithstanding that there were in his majesty's yard there, several oaken planks, fit for their service."

A Petition of Peter Pett gentleman was read.

Ordered, That the lieutenant of the Tower have leave to repair to the council; and acquaint them, that this house, upon reading the petition of Peter Pett gentleman, is content he should have his liberty, on good bail, if the council think fit.

April 23, 1668.

Resolved, &c. That the Articles against Peter Pett be ingrossed.

May 4.

Articles of Impeachment against Peter Pett ingrossed, were read; and, upon the question, severally agreed to;

And the title of the said Articles, and also the close of them, being altered, and some additions made thereto; the title, and close, and prayer of the Articles were as followeth; viz.

" Articles of Impeachment, by the Commons of England assembled in parliament, in the name of themselves, and of all the Commons of England, against Peter Pett gentleman, late one of the commissioners of his majesty's navy, for several high-crimes and misdemeanours committed by him.

" All and every of which Crimes and misdemeanours are of dangerous consequence and example, if undressed.

" And the said Commons by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any other accusation or impeachment against the said Peter Pett; and also of replying to the answer of the said articles, or any of them; or of offering proofs of the premises, or any other impeachment or accusation as shall be exhibited by them, as the case, according to the course of parliaments, shall require.

" And do pray that the said Peter Pett may be called to answer the said several crimes and misdemeanours, and receive such condign punishment as the same shall deserve: and that such further proceedings may be had upon every one of them, and used against him, as is agreeable to law and justice."

Which were again read;

Resolved, &c. That the whole Articles, as now amended, be agreed to: and that Mr. George Weld do carry up the Articles of Impeachment against Peter Pett, to the Lords.

It does not appear that this matter proceeded farther.

226. Proceedings against Sir WILLIAM PENN,* knight, upon an Impèachment for several High Crimes and Misdemeanors: 20 CHARLES II. A. D. 1668.

April 14, 1668.

SIR Thomas Lee presented to the House of Commons a second Narrative and Report from the Commissioners for taking the Public Accounts: which was read: and the first Narrative sent from them again read; and the

* Sir W. Penn was Vice-Admiral of England, and father of the founder of Pennsylvania. "From a common man he had grown up, under Cromwell, to the highest command, and was in great favour with him till he failed in the action of St. Domingo, when he went admiral at sea, as Venables was general at land, for which they were both imprisoned in the Tower by Cromwell, nor ever employed by him afterwards." Lord Clarendon's *Life*, p. 239. He died in 1670, aged 49.

Bishop Burnet's account of the transaction, out of which this Case arose, is as follows:

"A great fleet was set out, which the duke commanded in person; as Opdam had the command of the Dutch fleet. But as soon as the war broke out, a most terrible plague broke out also in the city of London, that scattered all the inhabitants that were able to remove themselves elsewhere. It broke the trade of the nation, and swept away about an hundred thousand souls; the greatest havock that any plague had ever made in England. This did dishearten all people: and, coming in the very time in which so unjust a war was begun, it had a dreadful appearance. All the king's enemies, and the enemies of monarchy said, here was a manifest character of God's heavy displeasure upon the nation; as indeed the ill life the king led, and the viciousness of the whole court, gave but a melancholy prospect. Yet God's ways are not as our ways. What all had seen in the year 1660 ought to have silenced those, who at this time pretended to comment on Providence. But there will be always much discourse of things that are very visible, as well as very extraordinary.

"When the two fleets met, it is well known what accidents disorder'd the Dutch, and what advantage the English had. If that first success had been followed, as was proposed, it might have been fatal to the Dutch, who finding they had suffered so much steered off. The Duke ordered all the sail to be set on to overtake them. There was a council of war called, to concert the method of action, when they should come up with them. In that council Penn, who commanded under the Duke, happened to say, that they must prepare for hotter work in the next engagement. He knew well the courage of the Dutch was never so high, as when they were desperate. The earl of Montague, who was then a volunteer, and one

matter of the Narratives relating to sir William Penn, as to the Embezzlement of Prize-Goods, being debated;

Ordered, That time be given to Sir William Penn till Thursday to make his Answer. Also, Ordered, That the Commissioners of Ac-

of the Duke's court, said to me, it was very visible that made an impression. And all the Duke's domestics said, he had got honour enough: why should he venture a second time? The Duchess had also given a strict charge to all the Duke's servants, to do all they could to hinder him to engage too far. When matters were settled, they went to sleep: and the Duke ordered a call to be given him, when they should get up to the Dutch fleet. It is not known what passed between the Duke and Brounker, who was of his bed-chamber, and was then in waiting: but he came to Penn, as from the Duke, and said, the Duke ordered the sail to be slackened. Penn was struck with the order; but did not go to argue the matter with the Duke himself, as he ought to have done, but obeyed it. When the Duke had slept, he, upon his waking, went out on the quarter-deck, and seemed amazed to see the sails slackened, and that thereby all hope of overtaking the Dutch was lost. He questioned Penn upon it. Penn put it on Brounker, who said nothing. The Duke denied, he had given any such order. But he neither punished Brounker for carrying it, nor Penn for obeying it. He indeed put Brounker out of his service; and it was said, that he durst do no more, because he was so much in the king's favour, and in the mistresses. Penn was more in his favour after that, than ever before, which he continued to his son after him, though a Quaker; and it was thought, that all that favour was to oblige him to keep the secret. Lord Montague did believe, that the Duke was struck, seeing the earl of Falmouth, the king's favourite, and two other persons of quality, killed very near him; and that he had no mind to engage again, and that Penn was privately with him. If Brounker was so much in fault, as he seemed to be, it was thought, the Duke, in the passion that this must have raised in him, would have proceeded to greater extremities, and not have acted with so much phlegm. This proved the breaking the designs of the king's whole reign: for the Dutch themselves believed that, if our fleet had followed them with full-sail, we must have come up with them next tide, and have either sunk or taken their whole fleet. De Wit was struck with this misfortune; and, imputing some part of it to errors in conduct, he resolved to go on board himself, as soon as their fleet was ready to go to sea again."

counts be desired to transmit all such evidence which they have in the matter relating to sir Wm. Penn, as to the Imbezzlement of Prize-Goods, against Thursday next.

April 16.

Sir Wm. Penn having tendered and delivered in an Answer in writing, as to the matter of Imbezzlement of Prize-goods objected against him in the Narrative of the commissioners of Accounts; the Answer of Sir Wm. Penn was read.

A Letter of the Commissioners of Accounts, directed to Mr. Speaker, was read.

Sir Nicholas Carew reports from the Commissioners of Accounts, that they had transmitted the original depositions and evidence relating to the Imbezzlement of Prize-goods, having not time to make extracts; but had sent a calender to direct to such particulars as did relate to sir Wm. Penn: which he delivered in:

And the Evidence concerning Sir Wm. Penn's Imbezzlement of Prize-goods being read; and sir Wm. Penn, in his place, giving Answer in several particulars which did arise upon debating the matters in the house.

A motion being made to call in sir Joseph Jordan, to testify his knowledge in this matter;

Resolved, &c. That sir Joseph Jordan be called in to the house.

Sir Joseph Jordan was called in, and examined. And the matter to sir Wm. Penn's Imbezzlement of Prize-goods being further debated; the question being propounded, that an Impeachment be had against sir Wm. Penn; the question being put, that the question be now put: it was resolved in the affirmative.

The main question being put, That an Impeachment be had against sir Wm. Penn; it was resolved in the affirmative.

Ordered, That it be referred to Mr. Pryn, sir Tho. Littleton, sir Rob. Howard, sir Nich. Carew, sir Thomas Meres, sir Francis Goodrick, sir Rob. Atkins, Mr. Weld Mr. Scawen, sir Rob. Carr, sir Job Charlton, Mr. Swynfen, Mr. Wright, col. Birch, Mr. Seymour, sir Tho. Lee, Mr. Steward, Mr. Milward, Mr. Vaughan, Mr. Waller, Mr. Coleman, sir John Moreton, or any three of them, to prepare and draw up the Impeachment; and to search into Precedents, in relation to the suspension of members from sitting whilst they are under Impeachment; and report it to the House.

April 21.

Sir Robert Howard reports from the Committee appointed to draw up an Impeachment against sir Wm. Penn, several Articles of Impeachment, of high crimes and misdemeanours committed by him: which he read in his place.

He also reports a precedent, in the case of sir Gyles Mompesson, 27 Feb. 18 Jac. viz.

"February 27, 1620, Resolved, &c. That

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'sir Gyles Mompesson be called in to the bar; and Mr. Speaker let him know the pleasure of the house, that, for his offences and faults, he shall, for the present, remain with the Serjeant: who is required to keep him safe, at his peril.'

Resolved, &c. "That the said Articles of Impeachment against sir Wm. Penn be ingrossed: That sir Wm. Penn be suspended from sitting in the house, whilst the Impeachment against him is depending. That the Committee do sit this afternoon, and search precedents touching the suspension or expulsion of members impeached, from sitting."

April 24.

A Message was brought to the House of Lords from the Commons, by sir Robert Howard knight and others: "That he was commanded by the House of Commons to desire a Conference, touching Articles of Impeachment against sir William Penn."

The Answer returned was: "That the Lords have considered of their Message, and agree to give a Conference, as is desired; and do appoint the same to be presently, in the Painted Chamber."

Then the House was adjourned during pleasure, and the Lords went to the Conference; which being ended the House was resumed.

And the Lord Chamberlain, the earl of Anglesey, and the other lords appointed, reported the effect of the aforesaid Conference: "which was managed by sir Robert Howard, who acquainted their lordships with the occasion of this Conference, which would shew itself in the mention of the crime. The accident was in September, 1665, when there was an offer of the greatest happiness to this kingdom, if we had had courage or wisdom to have made use of it: But a bribe was interposed by fortune; two rich ships, the Golden Phoenix and the Slothany, belonging to the Dutch East India company: This stopt the victory; and sir William Penn looked upon something better, as he counted, than danger, the plunder of the said two ships, of which a great part was distributed to him.

"The pretence of excuse was, that he had the command of a superior officer for what he did; and something there was of this: But this should not make one forget his allegiance to his prince, and good of his country; if any officer would attempt a fact so contrary to his duty, and the laws of the land, even a law of this parliament. After he had seized the Goods, he sold them, and (which shewed the unjustifiableness of the action in the opinion of both Buyers and Seller) was fain to warrant the sale; yet all was done with this caution, that the sale should be good, if the king should allow it. And afterwards sir William Penn addressed himself to the king, for an order of gift of those goods he had sold and disposed before; which was obtained. The goods consisted of divers bales of silks, nutmegs, and rich spices. First he plundered, and then cheated the king;

for the king granted, on his and others application, a distribution, after they had distributed the goods.

“The House of Commons think such corruptions and mal-administration of those men have drawn on the miseries and necessities of our nation, and produced but an inglorious success at best, after the vast expence of the kingdom in so just and hopeful a war.

“He said, This shews the impartial justice of the House of Commons stops nowhere, that they spare not their own members, but proceed against them in chief.

“Then sir Robert Howard read the Articles against sir William Penn; and after he said, he had forgot one thing he intended to say, which the close of the Articles reminded him of, that if many such conspiracies should escape unpunished, it may be more powerful to destroy the king and kingdom than all counsels and assistances to preserve them.”

This Report being ended, the Articles were read, as followeth :

“ARTICLES OF IMPEACHMENT, by the Commons of England assembled in Parliament, in the name of themselves and of all the Commons of England, against sir WILLIAM PENN knight, one of the now Commissioners of his majesty's navy, for several High Crimes and Misdemeanors committed by him.

“I. Whereas, in or about the month of September, in the year of our Lord 1665, the Golden Phoenix and the Slothany, two ships belonging to the subjects of the United Provinces of the Netherlands, were taken at sea as prize, during the late war, by his majesty's fleet then under the command of Edward earl of Sandwich, in which said fleet the said sir William Penn was the vice admiral, and commander in chief under the said earl, in the actual pay and service of his majesty; he the said sir William Penn did, contrary to his allegiance, duty, commission, and the articles of war established by an act of this present parliament made in the 13th year of his majesty's reign that now is, intituled, ‘An Act for the establishing articles and orders for the regulating and better government of his majesty's navies, ships of war, and forces by sea, and other good laws of the land,’ for his singular lucre, and with intent to share the same, conspire and advise with several persons, to open the holds of the said ships, divers and sundry times, before judgment thereof first passed the admiralty court, and from thence to take out and embezzle great quantities of rich goods, whereby his majesty was defrauded to the value of 115,000*l.* or thereabouts, besides great quantities of jewels and other rich commodities, of which no certain estimate can be made.

“II. That the said sir William Penn, in pursuance of the said conspiracy, did, on or about the 14th day of the said month of September, repair on board the said prize ship the Slothony, in the company of sir William Berk-

ley, then commander of his majesty's ship the Swiftshure, and vice admiral to the white squadron commanded by the said sir William Penn, and did then and there give order and command unto captain Robert Worden unto whose charge the said ship the Slothony was then committed, to follow such directions as he should receive from the said sir William Berkeley; who immediately thereupon caused the hatchways of the said ship to be broke open, and took out of the said ship several bales of Silk, Mace, and other Goods to a great value, and carried them away; and afterwards, at several other times, caused the hatchways of the said ship to be broken open, after they were closed and sealed up; at every of which times he took and carried away great quantities of rich goods, he the said sir William Penn having sent several men on board the said ship the Slothony, to assist the said sir William Berkeley therein.

“III. He the said sir William Penn got a considerable part of the said goods into his possession and converted them to his own use; and, on or about the latter end of the said month of September, or the beginning of October then following, did sell divers parcels of the said goods, and further warranted the sale thereof.

“IV. The better to colour the said fraud and embezzlement, Orders were obtained from the said earl of Sandwich, bearing date the 15th and 21st of September, 1665, for the taking and distributing of some part of the said Goods among several officers, whereof the said sir William Penn was one, and had a great proportion thereof allotted to him, submitted, as was pretended, to his majesty's further pleasure; although he the said sir William Penn very well knew that the said orders of him the said earl of Sandwich were void, and contrary to the commission of the said Earl, the Articles of War, and the law of this land; and afterwards a warrant, dated the 17th of October, 1665, was unduly procured from his majesty for distributing the said Goods, whereas in truth he the said sir William Penn had before the said warrant of his majesty, possessed himself of divers of the said Goods, and sold and warranted the same, as in the third Article is expressed; and further did take, sell, and dispose of, a far greater quantity of Goods than was contained either in the orders of the said earl of Sandwich or his majesty's said warrant, to the value of 2085*l.*, or thereabouts.

“All and every which proceedings are contrary to the Articles of War abovementioned, and to the laws of the land, and of dangerous consequence and example if unredressed.

“And the said Commons, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any other Accusation or Impeachment against the said sir William Penn, and also of replying to the Answer of the said Articles, or any of them; or of offering proofs of the premises, or any other impeachment or accusation that shall be exhib-

bited by them, as the case (according to the course of parliaments) shall require; do pray, That the said sir William Penn may be called to answer the said several crimes and misdemeanors, and receive such condign punishment as the same shall deserve; and that such further proceedings may be upon every one of them had and used against him as is agreeable to law and justice."

Upon this, the Lords made this following Order:

"Whereas, at a Conference desired by the House of Commons, and had this day in the Painted Chamber, between Committees of both Houses, Articles of Impeachment, by the Commons of England assembled in parliament, in the name of themselves, and of all the Commons of England, against sir William Penn knight, one of the now Commissioners of his majesty's Navy, for several high crimes and misdemeanors committed by him, were transmitted from the House of Commons to this House: It is ordered, by the Lords spiritual and temporal in parliament assembled, That the said sir William Penn be, and is hereby, required to appear at the bar of this House, on Monday the 27th day of this instant April, at 10 of the clock in the forenoon, to hear the said Articles of Impeachment against him read, and that he the said sir William Penn may be heard what he shall say for himself thereupon."

Ordered, That the Committee for Privileges do meet to-morrow in the afternoon, to peruse the Journals, and see what hath been the manner of proceedings formerly against persons that have been impeached by the House of Commons upon misdemeanors, and make report thereof to this House on Monday morning next.

April 27.

The earl of Bridgewater reported, "That the Committee of Privileges have perused several Precedents concerning the manner of proceedings against persons impeached of misdemeanors by the House of Commons; which they offer to their lordships, consideration."

The Precedents were:

The Case of sir Francis Michell and Foules, 22 March, 18 Jac. who, being charged by the House of Commons for misdemeanors, were committed by them before, and committed again by this House.

Also the Case of the Lord Chancellor Bacon, complained of by the House of Commons, 20 Martii, 18 Jac. but was never committed thereupon.

The Case of Norton and Unwood, who were committed upon complaint of the House of Commons, 26 Maii, 18 Jac. and afterwards bailed.

Likewise the Case of sir John Bennett, complained of by the House of Commons, 25 April, 18 Jac. He was committed before his charge, and afterwards bailed by the Lords.

The Lord Treasurer, 21 Jac. was summoned to appear, and answer his charge; and the 7th

of May he was brought to the bar, and kneeled, but was not committed.

Dec. 22, 1640, the judges who were complained of by the House of Commons, upon desire of the Commons, did enter into security to appear upon summons.

The 3rd January, 1666, the lord viscount Mordaunt was impeached by the House of Commons of misdemeanors, but was not committed.

Upon this, the House gave order, that sir William Penn should be brought to the bar. Which accordingly was done, by the gentleman usher of the Black Rod; he kneeling until the Lord Keeper bid him stand up.

And then his Lordship told him, "He was impeached, by the Commons of England assembled in parliament, in the name of themselves and of all the Commons of England, for several high crimes and misdemeanors committed by him; which charge should be read unto him."

Then the Articles against him were read; and the Lord Keeper asked him, "What he said to them?"

He said, "He looked upon himself as a very unhappy man, to be brought up hither upon this account; but it was his comfort, that he should have such honourable judges. He desired a short day might be given him, to put in his Answer in writing; and that counsel might be assigned him."

Upon this, sir William Penn withdrew,

And the House, taking into consideration what he desired, directed he should have a copy of his Charge, and that he should put in his Answer in writing on Wednesday morning next. He being called in again, the Lord Keeper told him, The Lords have appointed him to have a copy of his Charge, and Wednesday morning next to be the time for him to put in his Answer in writing; and asked him what counsel he desired to have."

Whereupon he named sir William Scroggs, Mr. Winington, Mr. Jones, Mr. Offley, sr Anthony Morgan, and sir Walter Walker, to be his counsel in this business. Which this House ordered accordingly.

April 29.

Sir William Penn, according to the order of this House the 27th instant, being appointed to put in his answer to the Impeachment of the House of Commons against him, was brought to the bar, by the Gentleman Usher; and having kneeled until the Lord Keeper commanded him to stand up, he humbly presented his said Answer; which was read, as followeth:

"The humble ANSWER of sir WILLIAM PENN knight, Defendant, to the Articles of Impeachment exhibited against him by the Commons of England assembled in parliament, in the name of themselves and of all the Commons of England, for several High Crimes and Misdemeanors committed by him.

“ The said defendant, by protestation, saving to himself all advantages of exceptions that may be taken to the manifold uncertainties and insufficiencies of the said Articles of Impeachment, for answer to so much thereof as he this defendant is advised in any way material for him to make answer to :

“ To the first Article of the said Impeachment, (doth say,) That he this defendant is not guilty of any crime objected against him in the said first article.

“ To the second Article of the said Impeachment, he this defendant saith, That, on or about the 14th day of the said month of September, this defendant did go on board the said Slothany, in company of the said sir William Berkeley, being required so to do by the said earl of Sandwich ; but doth deny that he did then, or at any other time, go on board the said Slothany in pursuance of the said conspiracy in the said first Article of the said Impeachment mentioned, or that he this defendant did command the said captain Worden to give way to, or permit, the said sir William Berkeley to take away any of the said goods, or that this defendant sent any men on board the said Slothany, to assist the said sir William Berkeley in breaking open the hatchways of the said ship, and taking out of the said ship and carrying away any bales of silk, mace, or other goods whatsoever.

“ To the third Article of the said Impeachment, this defendant doth answer and say, That true it is, that 19 bales and one half of silk, 10 bales of cinnamon, 12 cernes of mace, two bags of nutmegs, eight bags of pepper, and one puncheon of cloves, did, some time after the same were taken out of the said Phoenix, or the said Slothany, by way of distribution among the flag officers, come into the hands and possession of him this defendant, and were by him, as his share and proportion, sold and converted by him this defendant to his own use, by virtue of the said orders of the said earl of Sandwich, bearing date the 15th and 21st September 1665, in the fourth Article of the said Impeachment mentioned; and by virtue of his majesty's said Warrant, dated the 17th October, 1665, in the said fourth Article likewise mentioned; and by virtue of his majesty's letters of privy seal, bearing date the 26th day of January, in the 17th year of his majesty's reign : but this defendant doth deny that he had or sold to his own use, any other goods than those abovementioned; or that the said goods, so by him sold, were taken out of the said Phoenix, or the said Slothany, by him this defendant, or any other person or persons by his appointment or procurement.

“ To the fourth Article of the said Impeachment, this defendant answers, That the said orders of the earl of Sandwich, in the said

fourth Article of the said Impeachment mentioned, were not obtained from the said earl by this defendant, or by the procurement of this defendant, to colour any fraud or embezzlement done or committed by him this defendant, or for any purpose whatsoever. And this defendant doth deny that his majesty's warrant, in the said fourth Article of the said Impeachment mentioned, was by him this defendant, or by any other person by his direction, procured from his majesty. And this defendant doth further deny that he, or any other by his appointment, did take the said four bales or eight suckles out of the said Phoenix, or the said Slothany, or that he did sell or dispose of the same, or any part thereof, to his own use, benefit, or advantage. And this defendant doth deny that he did take, sell, or dispose of, any greater quantity of goods than was contained either in the said order of the said earl of Sandwich, or his majesty's said warrant in the said fourth Article mentioned, other than is in this defendant's Answer to the fourth Article of the Impeachment expressed. Without that, that any other matter, thing or things, Article, or allegation, in the said Articles of Impeachment contained, material or effectual in the law to be answered unto by this defendant, and not here in this his Answer sufficiently answered to, confessed, and avoided, denied, or traversed, is true.

“ All which matters he this defendant is ready to prove, as this high and honourable Court shall award. Wm. PENN.”

Then the Lord Keeper asked sir William Penn, whether he owned this to be his Answer. And he confessed and owned this to be his Answer.

It is ordered, That a copy of this Answer of sir Wm. Penn be sent to the House of Commons.

A Message was sent to the House of Commons, by sir John Coel and sir Walter Littleton : To let them know, that sir William Penn hath this day put in his Answer in writing to their Impeachment against him; a copy whereof the Lords have sent to the House of Commons.

May 4.

Ordered by the Commons, That it be referred to the committee formerly appointed to bring in an Impeachment against sir Wm. Penn, to consider of the Articles of Impeachment, and the Answer of sir Wm. Penn, and the Evidence from the Committee of Accounts; and to draw up a Replication upon the whole matter, to be sent up to the Lords.

It does not appear that this Committee made any Report, or that this matter proceeded further.

227. The Trials of PETER MESSENGER, RICHARD BEASLEY, WILLIAM GREEN, THOMAS APPLETREE, JOHN EARLES, WILLIAM WILKS, WILLIAM FORD, RICHARD FARRELL, EDW. COTTON, EDW. BEDLE, RICHARD LATIMER, JOHN SHARPLESS, RICHARD WOODWARD, THOMAS LIMERICK, and JOHN RICHARDSON,* at the Old Bailey, for High Treason, in tumultuously assembling themselves in Moorfields, and other Places, under Colour of pulling down BAWDY HOUSES: 20 CHARLES II. A. D. 1668.

UPON Easter-Monday last, being the 23d day of March, in the 20th year of the reign of our sovereign lord the king that now is, it, being the usual time of the Apprentices liberty for their civil recreations, a rude multitude of people met together in Moorfields; where being so assembled, were instigated by some factious persons amongst them; who, to colour their design, insinuated into the rabble the pulling down of Bawdy-Houses, under which colour of reforming Bawdy-Houses, they at length raised a great hubbub; and so increasing in their disorders, in a tumultuous manner committed many notorious crimes. But by the vigilancy of the magistrates of the city, with the assistance of his majesty's guards, were at last reduced: Some of the ringleaders whereof were apprehended, and committed to the gaol for their offences, to receive their Trials according to the known laws of the land.

And having been several times examined, upon confession of some, and preguant proof against others, by a special jury of several knights, esquires and gentlemen, of very great worth and esteem, of the county of Middlesex:

These persons following, to wit; Peter Messenger, Richard Beasley, William Green, Thomas Appletree, John Earles, William Wilks, William Ford, Richard Farrell, Edward Cotton, Edward Bedle, Richard Latimer, John Sharpless, Richard Woodward, Thomas Limerick, John Richardson, were indicted of High-Treason, for levying of a public war against our sovereign lord the king: And at the gaol-delivery of Newgate, held at the Session-House in the Old-Bailey, London, April 1, 1668, and continued till the fourth day; on which said fourth day, in the presence of sir John Kelyng, knt. L. C. Justice of the King's-Bench, sir Edward Atkins, sir Christopher Turner, sir Richard Rainford, barons of his majesty's Court of Exchequer: Together with sir Wil-

liam Wild, Recorder of the city of London; these prisoners following, viz. Peter Messenger, Richard Beasley, William Green, Thomas Appletree, were first called to the bar to receive their Trials; where, after proclamation being made, they severally pleaded to their Indictments, and put themselves for their Trial upon their country.

The names of the Jury sworn, were, Anthony Hall, William Knight, Heary Francis, John Baker, Robert Shaw, Thomas Constable, Thomas Jennins, John Nichols, Ralph Bradshaw, John Saving, John Marsb, Henry Kent.

The Jury being sworn, the Court proceeded to Trial.

Mr. North. You gentlemen of the jury, these four, Peter Messenger, Richard Beasley, William Green, and Thomas Appletree, stand indicted for High-Treason; having left their obedience to our sovereign lord the king, and being instigated by the devil, upon the 24th day of March last past, did contrive a design to levy war and rebellion against the king, being at the head of four or five hundred armed and arrayed. If this matter be proved against them, you must find them Guilty.

Mr. Pemberton. You gentlemen of the jury, these prisoners at the bar did contrive and levy war, and fell upon the king's officers, and beat them, and broke the prison, and let out the prisoners, some for felony: Among the multitude these were four of them, as we shall eudeavour to prove.

The Names of the Witnesses called and sworn, were Richard Dawson, John Cowley, Henry Bull, James Martin, Abraham Brookes.

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

Witn. My lord, I saw this Richard Beasley at the head of four or five hundred; he had a sword, and I took his sword from him: he had colours, a green apron upon a pole. I heard some of them cry, 'Down with the Red-coats; and I did see William Green there too, but not Appletree.

L. C. Justice. Did they go with the multitude or no, or were they with them?

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

Couns. Pray tell my lord what the multitude said at that time.

Witn. When we fell on them, they ran away.

L. C. Just. Did Beasley lead them on?

Witn. They said he was their captain.

* See in the Case of William Maclauchlan, A. D. 1737 *infra*, and Maclaurin's Arguments and Decisions, 633, an argument founded on the decisions, that the offences in this case and that of Dammaris and others, A. D. 1710, *infra*, amounted to treason.

This Case is thus mentioned by Mr. Hampden: "A few Apprentices for pulling down Bawdy Houses were hanged for Treason." See Mr. Hampden's Speech on the King's Message of Jan. 7th 1681, 4 Cobb. Parl. Hist. 1293.

John Cowley, second witness.

Couns. Mr. Cowley, tell my lord what you saw.

Cowley. My lord, he cut me and wounded me on the hand. The constable charged them to be gone, and disperse themselves; with that they struck at the constable, and knocked him down.

L. C. Just. Under what pretence did they pull down any house?

Witn. The constable and some more of us beat them up Nightingale-lane; I know not what their pretence was: I saw Appletree there, for he was the first that struck at the constable. This was on Easter-Tuesday.

L. C. Just. Did you see Green there?

Witn. I cannot tell.

L. C. Just. Did you see them pull down any house? What did you hear them say?

Witn. They said, Down with the bawdy-houses.

L. C. Just. Did you hear them talk of the Red-coats there? Was Green amongst them, as one that helped and acted with them?

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

Third Witness.

J. C. Just. What did you see them do?

Witn. All that I saw, was, that Peter Messenger came along with the colours in his hand, and I took him and carried him to prison myself: I did not hear them cry, Down with honest houses, but bawdy houses: I did not see all those, but only these two (pointing to two at the bar.)

L. C. Just. Ay, That was the captain and the ensign.

Fourth Witness.

Henry Ball. My lord, I saw this Beasley and Messenger in Moorfields, pulling down houses on Monday, and on Tuesday at the head of three hundred; and at that time we routed them. On Wednesday they came with four or five hundred, and cried, Down with the Red-coats.

James Martin, fifth Witness.

L. C. Just. What can you say?

Witn. All that I know is, Beasley made a blow at our ensign, and struck at him with his sword.

L. C. Just. What was their presence?

Witn. I cannot tell that.

Another Witn. I say Thomas Appletree help to pull down Peter Burlingham's house, and broke another.

Serj. Wild. What company had they?

Witn. About three hundred.

L. C. Just. Had they any colours? what did you hear them declare?

Witn. I heard them declare nothing, for I had like to have been knocked on the head.

L. C. Just. To the prisoner Beasley. Well,

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what do you say for yourself? You hear it is sworn against you, that you were at the head of this rabble, and they called you captain, and you led them up; and when the constable came to command peace in the king's name, you fell on him, and wounded him, so that he is hardly able to be here this day: Why did you gather this multitude together? It will be-hove you to make your answer; what reason had you for it?

Beasley Pris. I do not know the reason.

L. C. Just. I speak to you that you should give a reason: After all this trouble that we have had in this nation, it is a sad thing that a great number of giddy headed people must gather together under pretence of reformation, to disturb the peace of the nation again: if you can say no more for yourself, there will be little trouble with you.

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

Beasley Pris. We went to pull down bawdy-houses.

L. C. Just. How did you know which were bawdy-houses? If you had known them, you might have indicted them, there is a law against them; but this is a strange kind of reformation, if a rabble come, and say, This man is a papist, and this keeps a bawdy-house, and would pull it down; this is a mad reformation.

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

L. C. Just. Did not you carry a green apron on a pole for your colours?

Pris. My lord, as I passed along by the rout they flung a bottle at me, and had like to have knocked me down, and tore my apron off, and charged me to carry it on a pole; and I would fain have come away from them, and could not.

L. C. Just. Make this appear, that you would fain have got away, and that they did force you to do what you did, and I shall be glad of it.

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

L. C. Just. Then all that you say is of little use; for it is no great thing to make a lye to save one's life.

Pris. God is my witness—

L. C. Just. Have a care what you say.

A Constable (witness) sworn.

L. C. Just. What say you of these four at the bar?

Const. My lord, I heard they were pulling down houses, and I did what I could to preserve the king's peace; and that day I did save a great many houses and goods. The next day they were near my own house, and I did endeavour to do the same, and this fellow with his company did surprise my men, and knocked me down; yet I commanded the peace, and they beset me round about, and cut me over the hand: I do remember that Beasley. We

were in a place where there were three turnings, but they knocked me down, and beat me so, that I could not tell who it was that did hurt me.

L. C. Just. Do you know any more of this company?

Const. No, my lord: For if the soldiers had not come, they would not have left till they had killed me.

Couns. Had you your staff?

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

Another Witn. I saw Messenger on Tuesday, though he says to the contrary.

L. C. Just. Messenger, you hear what is said against you; you say you were not out on Tuesday: He hath sworn you were at the head of a company, with a green apron on a stick, and led them up.

Pris. I was not there.

Henry Bull, Wit. I saw him, my lord, on Tuesday, he and Beasley, about eleven of the clock in Moorfields, and they had gathered a great multitude of four or five hundred, and then they made an attempt to come into our parish, and they cried, Down with the Red-coats.

Messenger, Pris. Pray, my lord, let my witnesses be called in, for they swear false.

L. C. J. Your witnesses shall be called. A little of due consideration before-hand would have done you more good than now.

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

L. C. J. What say you concerning the prisoner?

Glover. I can say, my Lord, he was until five of the clock on Wednesday at Mr. Bennet's house in Golden-Lane.

L. C. J. Where was he on Monday and Tuesday?

Glover. I know not.

Bennet. On Wednesday he was at a kinsman's house.

L. C. J. These two witnesses give no account at all of you, where you were on Monday and Tuesday.

L. C. J. Greene, what say you?

Greene. I was not among them.

L. C. J. It is sworn you were amongst them, and threw up your cap. Were you not knocked down?

Prisoner. Yes, my Lord.

L. C. J. How could you be knocked down if you were not amongst them?

John Cowley witness.

L. C. J. Did you not see Greene in the multitude?

Cowley. I saw him do nothing; but I saw him with a staff in his hand. I did not see him act any thing but follow the colours.

Greene, Pris. I was not among them but as I came home.

L. C. J. You mean you did not take part with the n, but you were there; it is sworn you were upon Tuesday following your captain and

the colours; it is sworn by Mr. Bull you were among the rabble, and were knocked down: now if the jury do not believe that you did act among them, we will leave it to them.

L. C. J. Appletree, what say you?

Appletree. As I was passing along (my lord) I saw a croud, and I went to know what was the matter, and there came a company down, and some running after me did me a mischief; I did not see the constable, nor say, knock him down.

L. C. J. It is sworn that you were the first man that struck the constable, and that you were at the pulling down of Burlingham's house.

Pris. I did not offer to pull down his house, nor strike the constable.

Brooks, witn. My lord, he was in Peter Burlingham's house, and broke it down so that you might have ridden a horse through it; I spake to him two or three times to leave off, and if I had not stooped suddenly he had struck me down with a bedstaff.

Cowley, Wit. I did see him on Tuesday with their company, and I did see him strike at the constable.

L. C. J. to the Jury. Gentlemen of the jury, you have heard what these say; the prisoners are indicted for High-Treason, for levying of war against the king. By levying of war is not only meant, when a body is gathered together, as an army is, but if a company of people will go about any public reformation,* this is High-Treason, if it be to pull down inclosures, for they take upon them the regal authority; (3 Co. Inst. 9.) the way is worse than the thing. These people do pretend their design was against bawdy-houses; now for men to go about to pull down houses, under the pretence of Bawdy-houses, with a captain, and an ensign, and weapons, if this thing be endured, who is safe? It is High-Treason, because it doth betray the peace of the nation, for every subject is as much wronged as the king; for if every man may reform what he will, no man is safe: therefore this thing is of desperate consequence, we must make this for a public example: there is reason we should be very cautious, we are but newly delivered from rebellion, and we know that that rebellion first began under the pretence of religion and the law, for the devil hath always this vizard upon it; we know that, that rebellion began thus, therefore we have great reason to be very wary that we fall not again into the same error, but it should be carried on with a watchful eye. And because apprentices hereafter shall not go on in this road, we will have the solemn resolution of all the judges, and therefore you are to find it specially. You must find the matter of fact, and we will assemble all the judges together in a sober way, to give their judgment, whether it be high-treason or no; not that we

* See Luders's "Considerations on the Law of High Treason in the Case of Levying War" 82.

do doubt of it now, for we know it is high-treason, but for general satisfaction. It is proved that Beasley went as their captain, with his sword, and flourished it over his head; Messenger was there with his green apron on a pole in Moorfields on Tuesday, and on Wednesday he was in the same posture again.

Prisoners. My Lord, we would have our witnesses heard.

L. C. J. You shall have no wrong done to you. As for Green, it is proved he was with them shouting, and casting up his cap: now the act that any one does in such a tumult is the act of all, if they all join together. He was on Tuesday following there, and on Wednesday he was taken. And then for Appletree, he was the first man that struck the constable, and pulled down Burlingham's house.

Edmund Bedle, Richard Latimer to the bar.

Bill of Indictment. 'You that are now called, being moved through the instigation of the devil, and having not the fear of God before your eyes, have withdrawn your obedience to our sovereign lord the king, and against him did imagine and contrive war and rebellion the 21th day of March, with four or five hundred persons in a warlike manner, arrayed with long pikes and other arms there met and assembled against the peace of our sovereign lord the king, his crown and dignity, &c.'

Witnesses sworn. William Badley, William Riggs, John Maldey, John Williams.

King's Counsel. Gentlemen of the Jury, Bedle and Latimer stand indicted for high-treason; wanting that love and obedience that every man ought to have of his king, did, the 24th of March, assemble themselves together, to the number of four or five hundred persons to levy war and rebellion: if we prove this, you must find them guilty of high Treason.

Gaoler of Finsbury Prison, Witness, sworn.

Counsel. Tell my lord what you saw.

Witnesses. I can charge no particular person, I was from home; and when I came home I found the prison-doors open, and they had let out their own company and two others: and I locked up the prison doors, and they gathered together about the prison, and there came their captain with his half-pike, and commanded me to open the door. I told them I would not open the door. They told me, We have been servants, but we will be masters now; and if you will not open the door, we will do your business for you by and by. They had swords, and belts, and half-pikes, and they did push at me; and I came to a parly with them when I saw there was no remedy. I let their captain in, and when he could find none of his company there he went away; but had it not been for the company that stood without I would have kept him fast enough.

Another Witness sworn.

L. C. J. Were any of these that stand at

the bar, at Clerkenwell, with a stick in his hand?

Witness. Yes, my lord, I saw Latimer there knocking at the gate, and the prison was broke open, and there came down Justice Welsh to them to disperse them; but they let out two of their own rabble, and two of the felons.

Another Witness sworn.

Nine of the clock on Friday, I went to the gate of the New-prison, and they came and clapt a bar in between the gates to open them, and I saw Latimer throwing stones at the windows. Justice Welsh being there would have taken some of them; and they cried, One die and all die.

William Riggs, Witness, sworn. I saw Bedle, and took him; their number was about four or five hundred; and I got out two files of men, and took four men more, whereof this Bedle was one of them.

Judge. What do you say to this?

Latimer. This man hath a spite against me, my lord; for getting up behind the coach, I let my whip fall and gave him a lash.

L. C. J. But what says the other against you? What made you there? And Bedle, what do you say for yourself?

Bedle, Pris. My Lord, I was in Southwark, and came from thence to Bishopsgate-street, and met with a friend, and we drank four flag-gons of beer, so that I got a little too much drink in my head, and I stood and looked a-while at the prisoners at Bishopsgate; and my uncle coming along, I went with him a little way, and then turned about and left him, and there was a man came and said, Brother, will you not go and see what they do in the fields, and it was my hard fortune to be among them, but did not any hurt, blessed be God: but I followed them without doing any harm, and they went down Old-street to Clerkenwell; but I did not break the prison, nor do not know where the prison is; for there was a company made up to them, and they began to run.

L. C. J. What did you say when they run away? Did you not say, Face about?

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

L. C. J. You gentlemen of the jury, you see what their indictment is: they gathered a multitude together at Clerkenwell, and they had a captain with a half-pike, that came to the prison and forced open the door, and brought out two of their own crew, and two of the felons; and they said, They had been servants before, but now would be masters; and they cried out, One die, and all die. And you have three witnesses that swear, that these two were there, Latimer especially. The keeper says he was forced to come to a parly with them, and took in their captain, to give him satisfaction that there was none other there of their gang. Bedle says, he was there, but he was drunk, which is no sufficient excuse.

Richard Cotton, John Earles, William Wilde,

Richard Farrel, William Ford, called to the bar. Their Indictment read.

Sir Philip Howard, Witness, sworn.

L. C. J. Sir Philip, speak what you know of these men.

Sir Ph. I delivered these men into the constable's hands.

Counsel. Did not see a Multitude of these people gathered together in a warlike way? If so, tell my lord.

Sir Ph. There came some sober people and told me that the Tumult was greater than it was when my lord Craven was there, and they did desire my assistance; and so I went into the fields, and divided my men, half on the one side and half on the other: and the people looked upon us so contemptibly that they told us we should quickly be unhorsed; therefore I charged my men not to let any man come within my arms.

L. C. J. Had they any colours?

Sir Ph. They had a sheet for their colours, and when they saw my horse they got into the field, and stood as if they did not fear us; and I ordered some of my men to go and take him that had the colours, and so our men did, and I called for a constable, but there was no constable to be found; and I thought myself to govern them, and to bring them into better order. At length this man came with his watch and I delivered them into his hands, and I believe these are the men that I delivered to the constable.

Sir Edward Fish, Witness, sworn.

Counsel. Pray, sir, look upon the prisoners, and see if you know any of them.

Witness. I cannot say that these were any of the persons that we did take, but there was a Multitude of them gathered together, and we did desire them to go home; and they took up brickbats in their hands, and said, they had as much to do there as we had. I took a hanger from one of them myself, which is here in the court.

Robert Hoydon, Witness, sworn.

Couns. Tell my lord what you heard this rabble of people say.

Witn. There came a troop, and they thought it had been the duke of York's troop, and they ran with brickbats in their hands to them, and said, That if the king did not give them liberty of conscience, that May-day must be a bloody day.

Another Witness sworn.

L. C. J. Speak what you know of these people.

Witn. My lord, they asked if the duke of York was there, and answer was made, Yes, thinking they would have been satisfied and dispersed: but notwithstanding they came up to the Wind-mills, and flung stones amongst us.

Capt. Wilding, Witness, sworn.

My lord, we did desire them, by fair means,

to disperse themselves, and go home; they told me, No, They would be with us ere-long at White-hall.

Another Captain sworn. My lord, I was forced to make some resistance, but they flung stones very thick at us, saying, These Life-Guard rogues are but few; and because I commanded one of my officers to seize on one of them, they cried, Knock down the rogue.

Another sworn. My lord, I desired them to go home; their answer was, That we were rogues and dogs, and ere-long they would come and pull White-hall down: and their word was, Hey, now or never.

Constable sworn. My lord, I had these three at the bar; but Wilde was none of them, pointing to the third.

L. C. J. You say the other were.

Constable. Yes,

Pike and Gillington, Witnesses, sworn.

Pike. I did see this Cotton breaking down Burlingham's house.

Gillington. I can speak of the tall man, Cotton, I will swear he was one of them.

Ld. Ch. J. Sir Philip Howard says he delivered 5 to the Constable, and the Constable says he does not know whether these be the persons or no, but it is the same thing if they were among those that did it.

Serj. Wilde. Yea, the thing is the same.

Ld. Ch. J. You hear the Indictment is for High-Treason, you are persons of the same company, what do you say for yourselves?

Prisoners. We were not there.

Serj. Wildes. The Constable swears it.

Constable. I cannot say, these were they, but two of them, Farrel is one.

Pris. I was walking to Islington, and I did match a little way with them, but did nothing.

Ld. Ch. J. Where were you taken?

Pris. By Hollowell-Lane, and I was all alone, and a horseman rode after me, and asked me, if I were not one of them.

Ld. Ch. J. All the Constable can say, is this, There were men delivered to him from the guard, and this man does not deny but that the guard took him, but he did nothing; but many people are walking abroad in the holiday; it is pity to take away a man's life without sufficient evidence.

Ld. Ch. J. Farrel, what do you say?

Farrel. I was with my father and mother all the holidays.

Ld. Ch. J. Cotton, what say you?

Cotton. I came through Moorfields about noon, and I was taken by one of the Life-Guard.

Serj. Wilde. But you were pulling down a house.

Witn. He was pulling down a house on Monday, I was informed, and he was commonly among the players at Pigeon-holes; and after he had been pulling down a house, he was looking about to see what he could light of.

Pris. As I have a soul to save, he swears falsley.

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

You gentlemen of the Jury, here are five men more that are indicted for the same disorder, that the rest were, and we have now a little more discovery of their rising, and we have discovered other colours, for they thought the duke of York had been in the fields, and that enraged them the more, they taking sir Philip Howard for the duke of York; and when they did desire them to disperse themselves and go home, they said, They would not for such rogues as the king's Life-Guard were, but they would soon be at White-hall: but you shall see what a disguise is put upon it: If the king will not give us liberty of conscience, May-day shall be a bloody day. This is, gentlemen, to give us an alarm, that we may not be too secure: And this must be punished as High-Treason, else we do destroy all. I think nobody would have the innocent to suffer: I had rather a guilty person should escape, than a guiltless person suffer. You hear the Constable cannot swear that all those were the men, and some others, because in such a hurry a particular person cannot be known: Except you know any of them by sight, I cannot see how you can find them Guilty; God forbid.

John Richardson, Thomas Limerick, Richard Woodward, to the bar.

Couns. You gentlemen of the Jury, these three that were called last to the bar stand indicted as the others, for levying war and rebellion in Holbourn; you shall hear the evidence, and if we make good the evidence you must find them guilty.

W. Rogers, sworn Witness. My Lord, I found this man at the head of a party, and I took him, and committed him to the charge of a company.

Ld. Ch. J. Was he leading them on? are you sure he was there?

Witn. He will not deny that he was there, but he made no resistance at all; for we had three or four companies ready to surprise them.

Mrs. Burlingham, Witness sworn. My Lord, this was the first man that laid hands to pull down my house.

Serj. Wilde. Mistress, was yours a bawdy-house?

Mrs. Burlingham. No, but they dragged me out of it.

Ld. Ch. J. Was your house pulled down?

Husband's Answ. Yes: And all my goods destroyed, and ten pounds in gold taken out of my wife's pocket.

Another Witness sworn.

Judge. What can you say, of Woodward?

Witn. I cannot say he did take any thing out of the house that I know of.

Ld. Ch. J. I do not you ask that; but did he go along with them, or had he a staff in his hand?

Witn. That John Richardson, my Lord, is a tapster; I heard him say he had made work for us, for he had helped to pull down a house.

John Hand, Witness sworn. My Lord, on Saturday last at six of the clock, I heard him in the red bair say, 'I have made work for you all; I do not know what he is,

Ld. Ch. J. What do you say for yourself?

Limerick, Prisoner. My Lord, I went up to see what the tumult was doing, for I lodged hard by; and when they had pulled down the house, some run one way, and some another: and I was going to Westminster, and as I was walking up Holbourn, the rest of them were at my heels.

Ld. Ch. J. That was because you was their Captain, and dragged the woman out of the house that says she hath lost all she had, Woodward, what say you?

Woodward. My Lord, Mr. Brooks gave me a black pot to drink, and I staid no longer than the drinking of that.

Ld. Ch. J. What do you say that Richardson pulled down the woman's house?

Pris. My Lord, there was a whore that clapped hands on me, and I wrung myself from her, and told her that her house should be pulled down.

Ld. Ch. J. Truly I see scarcely an apprentice among you all, and I am glad of it there is no more.

Witn. I dogged him home to his master's house, but did not lay hold on him.

Pris. I am very innocent of any thing of hurt that I did.

Ld. Ch. J. Prove it.

Pris. I was alone, how can I prove it? I was not all the holidays abroad.

The Apprentice's Master. All Monday he was at home, and on Tuesday he was at home.

Serj. Wilde. It is impossible for him to be one of them; you might mistake.

Ld. Ch. J. You gentlemen of the jury, in this case take notice: as for Woodward, they say he was there with a stick in his hand. I would have you take notice that there is but one witness: for the other you have his own brags, if you will believe him, that he pulled down a house, you have no other; if you will believe him to be a bragging fool you may. And now for Limerick's witness, he shall be heard.

The Prisoner's Witness.

Ld. Ch. J. What do you know of the Prisoner at the Bar?

Witn. This man, my Lord, did lie in my house, and he did never stay out after nine or ten of the clock: he was at home every night betimes, and did give me all his money to lay up, and he did earn sixteen pence a-day.

Another Woman, Witness, sworn.

Ld. Ch. J. What can you say?

Witn. My Lord, I can say nothing but that he is a very honest man.

John Sharplesse, Prisoner at the Bar.

His Indictment read.

Couns. Gentlemen, he at the bar stands in-

dicted for High-Treason, and stirring up rebellion in Poplar at the head of 500 persons, and pulling down houses in Ratcliff-Highway, which we shall endeavour to prove.

John Harding, Owen Maxum, witnesses called, but came not in against the prisoner.

Ld. Ch. J. Gentlemen of the jury, you know for Matter of Fact you are judges: if you are not satisfied in the evidence, then you cannot find them Guilty. Consider who those persons are, where the evidence have not given sufficient satisfaction.

The Sum of the Jury's Verdict.

The Jury being dismissed to consider of their Verdict, after a short stay they returned, and found as to Messenger, Appletree, Beazley, and Greene, that according to the time in the Indictment mentioned, they were met together in a riotous manner in East-Smithfield in Middlesex, and about Moorfields, under colour to pull down the Bawdy-Houses. That their captain was Beasley, who led them on with his sword drawn, and that they had their ensign carried by Messenger, which was an apron carried upon a pole, and so they marched with their conductor. That they resisted the constable who charged them in the king's name to keep the peace, and struck him, and took away his staff; and that these several persons were abettors in that tumult.

And as to Bedle and Latimer, they found that a great number of people were met together armed with swords, clubs, and staves, &c. at Clerkenwell-green, to break New-Prison there; and had their commander, who had a pike in his hand, and came to New-Prison, and released the prisoners, some whereof were committed for felony; and that when they were commanded to be gone, they cried out that they had been servants, but now they would be masters; and that these persons were seen acting in the tumult, and there taken.

As for Cotton, they found, that the riotous persons were met together upon the 24th of March with a great number of people armed with their swords, and such-like warlike weapons, for pulling down Bawdy-Houses: that when sir Philip Howard with the king's guards came up to them, and commanded them to depart, they refused; and when it was given out that sir Philip Howard was the duke of York, thinking thereby they would be appeased, they were enraged the more, and declared, that if the king would not give them liberty of conscience, they would make May-day a bloody May-day, threatening to pull down Whitehall; and very contemptuously slighted the king's guards, because they were but a small number: and this Cotton was proved to be one of them in the action, and all along acting in the riot.

And further, as to Limerick, he was met with the same pretence of pulling down of Bawdy-Houses, being armed as the rest were, and was owned by the rabble to be the Captain of their Company: That he with his companions pulled down the house of Peter

Burlingham, and stole his goods. The rest were found Not Guilty.

The Jury having thus found it specially, my Lord Chief Justice commanded the prisoners again to the bar, to whom he spoke to this effect: That we all now see what great cause we have to bless God, that we live under so merciful a Prince, and so good a law as we now find we do live under; and that not only one Prince hath been so merciful, but such has been the graciousness of other former kings of England, that we shall rarely find any severity used in the execution of penal statutes, where any fair means (which constantly hath been used) could have any effect at all. That our justice is not privately but publicly administered in the sight of all people, like a beacon that gives warning to all; so that all might take notice thereof, and avoid the like danger that others have fallen into. That the prisoners more especially ought to bless God, and seriously to reflect within themselves this great mercifulness of our king, and law: for hereby they see they have not been served so as they have served others (for then upon the very apprehending of them they might have received their execution;) but contrariwise, they have had a fair trial, not by strangers, but by their own country and neighbours, having had the liberty to speak what they could for themselves, and witnesses for them, so that if it were possible all might have been found innocent; and he heartily wished all could have been so found; and that some, blessed be God, are not found Guilty, and to them he hoped this would be a sufficient warning, &c.

Now as to all these eight, against whom the Verdict was specially found, the Court took further time (because they would advise thereof) before they would give their judgment whether High-Treason or no, it being declared by my Lord Chief Justice to be matter of law; and in the mean time these persons are to remain in safe custody in his majesty's gaol at Newgate.

And for the other six, viz. John Earls, William Wilks, Richard Woodward, Richard Farrel, John Richardson, William Ford; The Jury found them Not Guilty, and so acquitted them of the offence whereof they stood charged, who after several admonitions by the Court for their future good behaviour, were discharged.

The Lord Chief Justice KELYNG'S Report of the Judgment of the Judges in relation to the aforesaid Trial.*

Memorandum, That at the sessions at the Old Bailey, after Easter, in the 20th year of

* Foster who considers at some length most of the cases of this class (Disc. 1. ch. 2) does not enter into any of the particulars of this case of Messenger and others, nor does he mention it by name.

With respect to the universality or generality of intention which has been held to give

king Charles 2, several dissolute persons having on Easter Tuesday and Wednesday next before assembled together, and led by persons whom they called captains, and having co-

to such riotous proceedings as had been had in this case the character of treason, it may be observed, that Messenger and his associates; and likewise Dammaree and his associates (See the Case, A. D. 1710, *infra*) do appear to have intended to destroy all houses of a particular description which were in their neighbourhood or at which they could easily get, as in the Weaver's Case, it appears that the offenders intended to destroy all engines of a particular description which were in their neighbourhood, or at which they could easily get, but in neither of the Cases does it appear that the offenders in general had any thought of hostility towards the princes respectively upon the throne, or towards their respective governments. It may therefore seem to be not easy to reconcile with the decisions, in the Cases of Messenger and others, and of Dammaree and others, which are approved by Foster, the opinion of five of the judges, which likewise is approved by Foster, that the offence in the Weavers' Case was not Treason. This last Case was as follows:

“ A great number of the weavers in and about London, being offended at the engine-loom, (which are instruments, that have been used above these sixty years,) because thereby one man can do as much in a day, as near 20 men without them, and by consequence can afford his ribbands at a much cheaper rate, after attempts in parliament and elsewhere to suppress them, did agree among themselves to rise and go from house to house to take and destroy the engine-loom; in pursuance of which they did on the 9th, 10th, and 11th of this instant, August assemble themselves in great numbers at some places to an hundred, at others to four hundred, and at others, particularly at Stratford-Bow, to about fifteen hundred.

“ They did in a most violent manner break open the houses of many of the king's subjects, in which such engine-loom were, or were by them suspected to be, they took away the engines, and making great fires burnt the same, and not only the looms, but in many places the ribbands made thereby, and several other goods of the persons whose houses they broke open; this they did not in one place only, but in several places and counties, viz. Middlesex, London, Essex, Kent, and Surrey, in the last of which, viz. at Southwark they stormed the house of one Thomas Bybby, and though they were resisted and one of them killed and another wounded, yet at last they forced their way in, took away his looms and burnt them; the value of the damage they did, is computed to several thousand pounds.

“ This they did after several proclamations made and command given by the justices of peace and the sheriffs of Middlesex to depart, but instead of obeying they resisted and af-

fronted the magistrates and officers: it is true they had no warlike arms, but that was supplied by their number, and they had such weapons, as such a rabble could get, as staves, clubs, sledges, hammers, and other such instruments to force open doors.

“ There was this further evil attending this insurrection, that the soldiers and officers of the militia were so far from doing their duty in suppressing them, that some, though in arms and drawn up in companies, stood still looking on while their neighbours houses were broken open and their goods destroyed, others encouraged them, and others, to whose custody some of the offenders, who were taken, were committed, suffered them to escape, so that during all the time of the tumult little or nothing was done to suppress them, until the Lords of the council were constrained at a time extraordinary to assemble, by whose directions and orders as well to the civil magistrates, as to the king's guards, they were at last quieted.”

“ Five of the judges seemed to be of opinion that this was treason within the act of 25 E. 3, upon the clause of levying war against the king, or at least upon the clause of the statute of 13 Car. 2, cap. 1.

“ 1. In respect of the manner of their assembling, who, though they had no weapons or ensigns of war, yet their multitudes supplied that defect, being able to do that by their multitudes, which a lesser number of armed men might scarce be able to effect by their weapons; and besides, they had staves, and clubs, and some hammers or sledges to break open houses, and accordingly they acted by breaking open doors and burning the engine-loom and many of the wares made by them.

“ 2. In respect of the design itself, which was to burn and destroy not the single engine-loom of this or that particular person, but engine-loom in general, and that not in one county only, but in several counties, and so agreeable to Burton's Case.

“ The other five judges were not satisfied, that this was treason within the clause of 25 E. 3, against levying of war, nor within the statute of 13 Car. 2, for conspiring to levy war.

“ 1. It was agreed, that if men assemble together and consult to raise a force immediately or directly against the king's person, or to restrain or depose him, whether the number of the persons were more or less, or whether armed or unarmed, though this were not a treason within this clause of the statute of 25 E. 3, yet it was treason within the first clause of compassing the king's death, and an overt-act sufficient to make good such an indictment, though no war was actually levied; and with this accord the resolutions before cited, especially that of the insurrection in the north at Farley wood; but no such conspi-

down some houses, and broke up the prison at Clerkenwell and let out four prisoners there, were, by the direction of the king's counsel, viz. Mr. Attorney sir Jeffery Palmer, having order to proceed against them, he directed four In-

dictments to be preferred against them who were taken, viz. one Indictment against Peter Messenger, Richard Beasley, William Green and Thomas Appletree, and another Indictment against Edward Cotton, and a third against Edward Bedle and Richard Latimer, and a fourth against Thomas Limerick. All the Indictments were, that they with other jurors, being armed in a warlike manner with swords, half-pikes, halberts, long staves and other arms offensive and defensive, with force and arms, unlawfully and traitorously assembled themselves together, and levied war against the king, &c. And first I told them they had not done well to make so many several Indictments, for by that means the king's evidence would be broken; whereas if all had been put into one Indictment, the evidence as to the main design would have been entire against all: and then the assembling in several places to the same intent had made the matter more foul, and would have been aptly given in evidence against them all to the same jury, and the several acts which each of them did, would have come in better. But however we proceeded upon the Indictments as they were; and after the evidence given against the four in the first Indictment, when I came to give directions to the jury, I told them, that although I was well satisfied in my own judgment that such assembling together as was proved, and the pulling down houses upon pretence they were bawdy-houses, was high-treason, because they took upon them regal power* to reform that which belonged to the king by his law and justices to correct and reform; and it would be a strange way and mischievous to all people to have such a rude rabble without an Indictment to proceed in that manner against all persons' houses, which they would call bawdy-houses, for then no man were safe; therefore as that way tore the government out of the king's hands, so it destroyed the great privilege of the people, which is not to be proceeded against, but upon an Indictment first found by a Grand Jury, and after upon a legal trial by another Jury, where the party accused was heard to make his defence; yet I told them, because the kings of this nation had oftentimes been so merciful, as when such outrages had been heretofore done, not to proceed capitally against the offenders, but to proceed against the offenders in the Star-chamber, being willing to reduce their people by milder ways, if it were possible, to their duty

racy or compassing appears in this case, and so that is not now in question, but we are only upon a point of constructive or interpretative levying of war.

"2. Here is nothing in this case of any conspiring to do any thing, but what they really and fully effected; they agreed to rise in multitudes to burn the looms, and accordingly they did it, but nothing of conspiring against the safety of the king's person, or to arm themselves; therefore if what they did were not a levying of war against the king within the statute of 25 E. 3, here appears no conspiring to levy such war within the statute of 13 Car. 2, cap. 1, for, for what appears, all was done, which they conspired to do.

"It seemed very doubtful to them, whether in the manner of this assembling it was any levying of war, or whether it were more than a riot, for in all indictments of this kind for levying of war it is laid, that they were 'more guerrino arraiati,' and upon the evidence, that they were assembled in a posture of war 'armis offensivis et defensivis,' and sometimes particular circumstances also proved or found, as banners, trumpets, drums, &c. and where they were indicted for conspiring only to levy war, yet there was this circumstance accompanied it, viz. a confederacy to get arms and arm themselves, as in Grant's case, and Burton's case.

"4. It seemed very doubtful to them, whether this design to burn engine-loomes were such a design, as would make it a levying of war against the king, for it was not like the designs of altering religion, laws, pulling down inclosures generally, as in Burton's case, nor to destroy any trade, but only a particular quarrel and grievance between men of the same trade against a particular engine, that they thought a grievance to them, which, though it was an enormous riot, yet it would be difficult to make it treason. Vide statutes 8 H. 6, cap. 27, 9 H. 6, cap. 5.

"Many of them therefore concluded, that if Mr. Attorney should think fit to proceed as for a treason, the matter might be specially found and so left to farther advice, or rather that according to the clause of the statute of 25 E. 3, the declarative judgment of the king and both Houses of Parliament might be had, because it was a new case and materially differed from other cases of like nature formerly resolved.

"Upon the conclusion of this debate we all departed, and Mr. Attorney upon consideration of the whole matter, it seems, thought fit to proceed for a riot, and caused many of them to be indicted for riots, for which they were convicted and had great fines set upon them, and were committed in execution and adjudged to stand upon the pillory." 1 Hale, 143.

* So Chief Justice Parker, directing the Jury, in *Dammaree's Case*, A. D. 1710, *infra*, tells them, That assembling to pull down meeting-houses, if the intention be general, is levying war, and is assuming royal authority; but half correcting himself, he adds, 'Nay more, for the queen cannot pull them down till the law is altered, therefore he has here taken on him not only royal authority, but a power that no person in England has.'

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and obedience; yet that lenity of the king in some cases did not hinder the king, when he saw there was need to proceed in a severer way, to take that course which was warranted by law, and to make greater examples, that the people may know the law is not wanting so far to the safety of the king and his people, as to let such outrages go without capital punishment, which is at this time absolutely necessary, because we ourselves have seen a rebellion raised by gathering people together upon fairer pretences than this was: For no such persons use at first to declare their wickedest design; but when they see that they may effect their design, then they will not stick to go farther, and give the law themselves, and destroy all that oppose them. But yet because there was nobody of the long robe there but my brother Wilde, then Recorder of London, and myself, and that this example might have the greater authority, I did resolve that the Jury should find the matter specially, and then I would procure a meeting of all the judges of England, and what was done should be by their opinion, that so this question might have such a resolution as no person afterwards should have reason to doubt the law, and all persons might be warned how they for the time to come mingle themselves with such rabble on any kind of such pretences: and thereupon the Jury as to the first four in the Indictment, gave a special verdict to this effect, &c.

They find that the 24th of March last, a great number of persons, to the number mentioned in the Indictment, were assembled in East-Smithfield and Moor-fields, in the county of Middlesex, with arms mentioned in the Indictment, on pretence of pulling down bawdy-houses; that Beasley led them, and was called their captain, and had in his hand a naked sword which he brandished over his head; and that Messenger had a piece of green apron on a staff, which he flourished as colours in the head of the company; and that Beasley and he led the company as their leaders; that they did the like on Wednesday the 25th of March and were breaking down houses. That Peverell, one of the constables of Middlesex, having a constable's staff in his hand, came to them with other persons to aid him, and charged them to depart and keep the peace, and thereupon Beasley with his sword struck him, and wounded him; and several persons assembled with him, struck him down and took away his constable's staff. That the said William Green was among them, casting up his cap, and hollowing, with a staff in his hand; and that whilst he was amongst them he was knocked down by a party of the king's soldiers that came to suppress them, and was then taken. That Beasley struck at the ensign that led those soldiers. That the said Appletree was amongst them both days, and was the first that struck at Peverell the constable, and was amongst them at Burlingham's house on Saffron-hill in the county of Middlesex, and pulled part of the house down and the next house to it, and struck at one

that admonished him to be quiet. And if upon the whole matter, it shall seem to the court that they are guilty of the offence mentioned in the Indictment, then they find them guilty, &c.

On the second Indictment as to Cotton alone, the jury did find that at the time and place mentioned in the Indictment, a great number of persons, to the number mentioned in the Indictment, met together armed with swords, clubs, staves, and other weapons, under pretence of pulling down bawdy-houses, and had a cloth on a staff for an ensign carried before them. And that Sir Philip Howard, with a troop of the king's guards, found them armed in such a seditious manner, and commanded them to disperse; that they refused so to do, and threw stones at him; that some of them enquired who it was that led those guards, whether it was the duke of York? and being told it was, they presently threw stones at sir Philip Howard who led the horse; and some of them said, that unless the king would give them liberty of conscience, May-day should be a bloody day; others bid kill the guards, and others said, that they would come and pull down Whitehall; and others said, they would be with them at Whitehall, (the king's capital palace) and that they cared not for the guards, for they were but two or three hundred, and they could easily knock them on the head; that they continued many hours till they were dispersed by the guards. That Cotton, who was indicted, was one of them assembled in this manner, and that Cotton was amongst them the next day when they were assembled in the same manner, and was pulling down a house in the parish of St. Leonard Shoreditch, in the county of Middlesex; and if on the whole matter, &c.

On the third Indictment against Bedle and Latimer, the jury find that, the day and place mentioned in the Indictment, a great number of persons, to the number mentioned in the indictment, armed as in the Indictment, did meet together on Clerkenwell-Green, in the county of Middlesex, on pretence of breaking open prisons, and releasing prisoners; that one of them who had a half-pike in his hand, owned himself to be their captain; that they came so assembled together to a place there called the New-prison, being a public prison of the county of Middlesex, and then and there said, that they came to search for prisoners: and brake open the prison-doors, and let out four prisoners, two whereof were committed thither for felony, and two for other offences: and that they being charged to depart, replied they had been servants long, but now they would be masters; that some being taken, they cried, One die, and all die. That Latimer was amongst them, and active in breaking of the prison, and was with the rest in the prison after it was broken open; and that Bedle was there, and being pursued by one of the king's soldiers, called out to the rest of the company to face

about, and not to leave him: and if on the whole, &c.

On the fourth Indictment against Limerick, the jury find that the day, year and place in the Indictment mentioned a great number of persons, to the number, &c. assembled together on pretence of pulling down Bawdy-houses; and being armed *prout* in the Indictment, they marched in warlike manner, and the said Limerick led them as their captain with a club in his hand, and was owned by the company to be their captain: that the said Limerick had the said persons to the house of Peter Burlingham, and they pulled down the said house, and destroyed and took away divers goods of the said Burlingham's, to the value of 30*l.* and if on the whole matter, &c.

And in Easter Term following, all the Judges met at my chamber, there being then but eleven. My Lord Bridgeman, who was Chief Justice of the common pleas, being then Lord Keeper, the judges were myself, chief justice of the king's bench, sir M. Hale the chief baron, and my brothers Atkins, Twisden, Tyrell, Turner, Wyndham, Archer, Rainsford, Morton, and Wyld.

And on the whole matter the chief baron Hale delivered his opinion, that there was no treason in the case, because he said that the Stat. 1 Q. Mary, cap. 12. is, That if any persons, to the number of twelve, or more, assemble to the intent to pull down inclosures, &c. with force, and continue together an hour after proclamation made for their departure, it shall be felony; and if those actions had been treason at common-law, it had been to no purpose to make it felony.

But all the other Judges answered, That this was the objection made by some Judges in the case of Bradshaw and Burton,* which is re-

* Case of Bradshaw & Burton, 39. Eliz. [Poph. 122, 2 and 66, 3 Co. Inst. 10.] "At the same time (an Assembly of all the Judges in Serjeants Inn for consultation) it was also resolved by them all (except Walmsley, Fennor and Owen) in the case of one Richard Bradshaw and Robert Burton, who with others lately by word entered themselves into an agreement one with another, to rise and put themselves in arms, and so to go from one gentleman's house to another, and so from house to house, to pull down inclosures generally. And this so appearing, by their own confession or by two witnesses, according to the statute, is High-Treason, by the statute of 13 Eliz. ch. 1. The words of which statute are "That if any intend to levy war against the queen, and this maliciously advisedly and expressly declare or utter, by any words or sayings, that this shall be High-Treason." [These are only a few of the words of the Act.] For all agreed that Rebellion of subjects against the queen, hath been always High-Treason at the common law. For the statute 25. E. 3, ch. 1, is that levying of war within the realm against the king is treason; and rebellion is all the war which a

ported by Popham in his Reports, p. 122, and there it was resolved, that if any persons assembled with force to alter the laws, or to set a price on victuals, or to lay violent hands on

subject can make against the king. But Walmsley and the others with him said, that the statute 12 Mar. ch. 13, 10. That if any to the number of 12 or more, assemble themselves to the intent to pull down inclosures, pales and the like with force, and continuing together, after proclamation according to the statute to go away, by the space of an hour, or do any of the offences mentioned in the statute, that this is felony. So that if these actions had been treason at the common law, it had been to no purpose to have made it felony. And it seemed to them that the resistance ought to be with force to the queen, before that such acts shall be said treason.

"But all the other justices agreed (and so it was put inure lately in the case of the Apprentices of London) That if any assemble themselves with force, to alter the laws, or to set a price upon victuals, or to lay violent hands upon the magistrate, as upon the Mayor of London, and the like, and with force attempt to put it in action, that this is rebellion and treason at common law, and this statute of 1 Mariz makes it in such a case but felony. And they put a diversity between the cases of pulling down inclosures, pales, &c. comprised in the statute of 1 Mar. For those are to be understood where divers to the number of 12 or more, pretending any or all of them to be injured in particular, as by reason of their common, or other interest in the land inclosed, and the like, and assembling to pull it down forcibly; and not to the cases where they have a general dislike to all manner of inclosures. And therefore the assembling in a forcible manner, and with arms to pull them down, where they have any interest, whereby they were in any particular to be annoyed or grieved, is not treason. But the case here tending to a generality, makes the act, if it had been executed, to be High Treason by the course of common law. And therefore the intention appearing as the case is here, it is treason by the statute of 13, aforesaid,

"Periam in some manner doubted of the principal case: But to intent to rise with force to alter the laws, to set a price upon any victuals, or to use force against a magistrate for executing his office of justice and the like, he said, that they were clearly treason by the statute of 13, aforesaid, if it may appear by express words or otherwise, as the said statute mentions: For all these tend against the queen, her crown and dignity; and therefore shall be as against the queen herself. And if it had been put in practice, it had been treason at the common law.

"Anderson's Report of this case is shorter, and somewhat different. He says the design was to kill several gentlemen, and to come to London, where they expected reinforcement,

the magistrate, as on the Mayor of London, and the like, and with force attempt to put the same in execution, this is rebellion and treason at the common law; and they there resolved, that that statute of 1 Mary was to be intended, where persons to the number of 12, or more, pretending any or all of them to be injured in particular, as by reason of their common, or other interest in the land inclosed, and the like, assemble to pull it down forcibly in cases where they have an interest, or where in particular they are annoyed or grieved, that is not treason: But in case their act goeth generally to pull down inclosures, in which they, or any of them, are not particularly concerned, this act, if it be put in execution by force, is treason at common law. And it was agreed by us all, that the statute of 13 Eliz. which maketh the intention in many cases treason, extends to nothing, but where if the act had been done, it had been treason at the common law.

And therefore all the rest of the judges did unanimously agree, that this rising with intent to pull down bawdy-houses in general, or to break open prisons in general, and let out prisoners, and putting their intention in execution by force, any of these instances was a levying war against the king, and High Treason at common-law, within the declaration of the statute of 25 Edw. 3. and for that, besides the resolution in Popham's Reports before cited, we considered the Case of the Apprentices* re-

He does not mention the difference of opinion among the judges: Confines the case to the statute of the queen, and makes the principal question to have consisted in the method of proving the guilt, according to that act.

* Sir E. Coke's account of this case, adds the design to get armour and artillery. He says expressly, It was resolved by all the justices to be no treason within the 25 Ed. 3, and that the offenders were punished by the statute of 13 Eliz. In the margin of the page are the words "I being Attorney General and present" [3 Inst. 10.] But in the former part of the case he states, that the judges did also resolve that a rising to cast down inclosures generally, would have been to levy war under the statute of Edw. 3, because the pretence is public and general and not private in particular. He says nothing of the difference of opinion among the judges." Luders.

* Case of Grant and the Apprentices, 37 Eliz. [2 Anderson, 5.]

"After Trinity 37 Eliz. this case was moved before the chief justices, master of the Rolls, baron Ewyns and baron Clarke, by command. Divers apprentices of London and Southwark were committed to ward for riots and making proclamations about the price of victuals; some of whom were adjudged in the Star Chamber to be whipped and pilloried. After which divers other apprentices and one Grant conspire together, to deliver those apprentices out of ward, to kill the mayor of London, burn his house, and break open two houses near the Tower, where

ported in the second part of Anderson's Reports, p. 4. 5. where it was resolved, that by the statute of 13 Eliz. if any intend to levy war for anything which the queen by her laws and justice

there were arms for 300 persons, and to furnish themselves with them. Afterwards divers of the apprentices devise libels, moving others to take part with them in their designs, and to assemble at Bunhill and Tower-hill. And accordingly divers assembled at Bunhill and 300 at Tower-hill, where they had a trumpet, and one who held a cloak upon a pole by way of flag. And in going to the mayor's house, the sheriffs and sword-bearer and others offered to resist them; whom the Apprentices treated with force and violence.

"Upon this matter the question was, if it were Treason or not. And the abovementioned agreed that it was treason by 13 Eliz. ch. 1. That if any intend, &c. And they held that when any one intends to levy war, for any thing which the queen by her law or justice, might or ought to do in government as queen, this shall be construed to intend to levy war against the queen. And it is not material whether they intend any harm to the person of the queen: But if they intend to levy war against the office and authority of the queen, it is within the words and intent of the statute. And afterwards Grant and others were indicted and executed on this statute."

Mr. Luders in his valuable and learned "Considerations on the Law of High Treason in the article of Levying War," after stating these cases as above, says, "I shall consider these two cases together, because the principle of both is the same: Many of the same judges presided, and the same arguments prevailed in both. First, It is clear that the decision of the first of them led to the second as a precedent, and that they arose altogether out of the statute of Elizabeth; and therefore ought to furnish no rule of construction upon the statute of 25 Edw. 3. whatsoever doctrine was advanced upon these trials, affecting the law of treason defined by this act, was extrajudicial, and as such can derive no support from these cases: Although the arguments of the judges were strained to that effect. The statute of Elizabeth was a temporary law for the purposes of her government, and security of her person, and limited to her life only. Sir E. Coke takes particular care to express this by a marginal note, for a caution that "The indictments and attainders of treason by force of this statute are not more to be followed, because the statute which made them good is expired." The effect of these cases, as precedents in judgment, is likewise extinguished, together with that of any doctrine to which they gave rise. Any opinions of the greatest judges preserved in them only, ought to have no authority, beyond that of any other opinions of the same men upon any other occasion; and are not intitled to the same respect as their writings would claim, because they were not free and

ought to do, and reform in government as queen, this shall be an intendment to levy war against the queen within that statute of 13 Eliz. And as we said before, nothing can be treason by the

impartial, but affected by circumstances of time and place.

"2dly. The reasoning of the judges is ill founded, as far as it appears to rely upon the common law of treason, for a connection with these cases. Treason is to be taken from the statute of Edward the 3rd alone; which not only declared what treason was, but what it should be in future. It fixed the period beyond which the judges should not extend their researches for the rule of law, without first consulting the legislature.

"3dly. These cases are liable to the objection before made to those of Henry the 8th's reign. The principle and disposition by which the judges were actuated, were such as no man would venture to rely upon in Westminster-hall, since the crown has lost its false and glaring jewel of right divine; being founded manifestly upon the notion of an absolute power in the crown. How else can we account for the following expressions, which are current in them, and made essential to the judgment? viz. "Intention to levy war for any thing which the queen by her law or justice might or ought to do in government as queen, shall be construed to intend to levy war against the queen"—"To set a price upon victuals, to use force against a magistrate for executing his office,——tend against the queen, her crown and dignity," "levying war against the queen because the pretence was public."

"This doctrine supposes that the queen by her law, &c. might set a price upon victuals, or level all inclosures. Some of her proclamations did in fact exercise a power of that sort: But is it the law, or justice, or government, of our present constitution, which the Bill of Rights declares to be the undoubted right of the subject? It is with peculiar propriety that the phrase, The queen by her law and justice, &c. was introduced into the case: For these were indeed altogether the sovereign's own, and not her subjects. It was the law and justice of the Star Chamber here, against whose sentence these disorderly apprentices had raised the tumult. The argument drawn from the offence to the royal crown and dignity, is equally applicable to every trespass prosecuted by indictment; for the law declares it in those very words.

"I do not mean to class the law proceedings of Elizabeth's reign with those of her father's, for their ordinary course was much to her honour and to the honour of the profession, nor her government with his. But I risk nothing in asserting that her maintenance of all the oppressive branches of the prerogative, was as firm and absolute as his, and more dangerous because more systematic. Her attention to minute profits of the revenue is well known; and the forfeitures in high treason, which made a

intention within this statute, which had not been Treason by the common-law, if it had been actually put in execution. And see the same book of Anderson, Part 2. pag. 66. and

considerable addition to it, were a temptation to prosecute with rigour, at a time when the administration of justice was too much in the power of the crown. Add to this, that during her whole reign, and from the time of her father's breach with Rome, there was a degree of irritation on the part of the crown, upon all occasions of popular outrage or commotion; from the well-grounded fear of mischief from papists and sectaries, under religious causes or pretences.

"4thly. Passing by the objection that might be made to the dangerous practice then usual, of which we have an example here, of consulting the judges *ex parte* for state prosecutions, the judges were not fairly consulted in the first of the two cases. Only the two chief justices and two others, with the Master of the Rolls, are said to attend upon command. In the second, four of the number (whether in all they were more or less than twelve, does not appear) dissented from the rest. Three of the four denied the doctrine in question absolutely, whose arguments are fair and sensible. They were adopted by sir Matthew Hale afterwards in their full extent, and were enforced by him in his place, on a similar question proposed to the judges in the time of Charles the 2nd. But they failed then in the same manner, being too reasonable for the government of that reign. Although to an impartial mind capable of understanding them in the present day, they afford satisfactory grounds of assent, and of regret for their want of success.

"5thly. Admitting for argument's sake the wisdom and justice of these decisions, and of the extrajudicial doctrine attending them, they do not strain the construction of Treason, to the extent of Dammaree's case. These were cases of armed insurrections; at least the resolutions were formed upon that fact: And one of them had a formidable appearance of regular contrivance and association, widely different from the transports of a midnight riot.

"Chief Justice Kelyng, in the Report of Messenger's case, advances a rule of construction, which may indeed be found in the foregoing cases, by which he would preserve their currency and authority still, notwithstanding the expiration of the law that occasioned them; namely, 'That the intention to levy war could not be treason within the statute of Elizabeth, unless the execution of that intention would have been levying war, within the statute of Treasons; and so these cases become indirectly constructions of the general statute.'

"I think this a very fallacious method of connecting the two statutes, as well as of stating the question. First, because it supposes the intention to be a matter for the judge to proceed upon, as a point of law; whereas it is a question of fact to be collected from the of-

by the case of several persons in Oxfordshire rising to pull down inclosures in general, resolved accordingly; in which case it was also resolved, that if any persons rise and assemble

feensive acts by the Jury, not the judge. Thus certain treasonable consultations, or outrageous acts of riot may be presumed by a Jury to shew an intention of levying war, if they were continued; which yet in the first instance, and of themselves would not amount to levying war. There might likewise be some small and feeble efforts made, from which a Jury might infer an intention of rebellion, though they might not be in their nature capable of being executed according to the intention.

"Secondly, because it assumes the unjust and ill-founded constructions of this article of the statute of Treasons, (which derive their only authority from the questionable decisions) to have made the just and true construction of that law; and then applies this as the law, to the fact of the intention, before it is so found by the Jury.

"The prosecution of the Apprentices seems to have proceeded according to my mode of reasoning: For if the contrary doctrine had prevailed, their conduct would have been held to be levying war itself. Yet the indictment against them was confined to the statute of the Queen; and the judges decided upon the intention, which it made treason, from that conduct. Whereas, according to Kelyng, they might have been indicted upon the statute of Edward the third. But the course then taken by the Attorney General, and the resolution of the judges, are a stronger proof of the rule of law than the reasoning of Kelyng. He urges the same arguments in pp. 20, 21, 22, of his Reports, against the opinion of Coke before mentioned, who holds the case of Bradshaw and Burton not to be treason by the statute of Edw. 3. Such artificial deductions of guilt are too dangerous to be followed.

"The next case is Bensted's, reported in Cro. Car. 583, for a tumult at archbishop Laud's palace in 1640, designed against his life, when he was of the Privy Council. It is not necessary for me to argue against this case, because that has been already done by higher authority. Mr. Justice Foster takes pains to prove it deficient, and formally rejects it. [Disc. pp. 211, 213, 345.] He is so far on my side in this argument. Yet to me it seems as reasonable in its principles as any of the foregoing, and perhaps better intitled to rank as a precedent; because of later date, and founded, as we may presume, on a consideration of them. Then by not depending on a temporary statute, it becomes a more direct decision upon the statute of Edward the third. Nor can I see why it should be less respected than Messenger's case, if that is to hold; for the Judges of the latter expressly approved of it. Sir Matthew Hale refers to it without censure, [1. Hal. P. C. 141, 152.] and with as much respect as to the rest. It happened

together with intent to levy war, the justices of the peace and sheriffs may use force to suppress such rebels, without any special commission or warrant, and this by the common-law.

during his practice at the bar, and is noticed in abstract in the proper section of his common-place book, which I have seen.

"The following is the report of Cro. Car. 583.

"Thomas Bensted, die Jovis post clausum termini, was indicted and arraigned before special Commissioners of Oyer and Terminer in Southwark, wherein all the justices and barons were in commission and present. At which time upon conference with all the justices it was resolved, First that going to Lambeth house in warlike manner, to surprise the Archbishop, who was a Privy Counsellor, (it being with drums and a multitude, as the indictment was, to the number of 300 persons) was Treason."

"It is not said of what species of treason, and is as good for the first clause of the statute, as the second. Foster in treating of another point of this case (p. 345,) says it was for levying war, but does not refer to his authority.

"The rest of the report relates to other matters; but shews a strange negligence in the reporter, who was one of those judges. He makes one of the points resolved, to arise out of a statute; whereas it was a case in the Year Book: And the statute referred to was not in force, if the application were just. On one of those likewise Mr. Justice Foster disapproves of their judgment. [Pp. 344, 5. See also 1. Hal. P. C. p. 269, and the note there.] The learned judge, among his objections to this case, takes no notice of the one which weighs strongest with me, viz. That the Ship Money judges were not fit to be trusted with the determination of constructive treason, or of any point of constitutional law, in the year 1640, or in which the Court and archbishop Laud were parties. I appeal to lord Clarendon's History for this part of their characters.

[For the Case of Ship Money, and the opinions of the judges thereon, see vol. 3, p. 825, of this Collection. Whitelocke, in his Memorials, A. D. 1636, has the following passage respecting Croke: "Judge Croke (of whom I speak knowingly) was resolved to deliver his opinion for the king, and to that end had prepared his argument: Yet a few days before he was to argue, upon discourse with some of his nearest relations, and most serious thoughts of this business, and being heartened by his lady, who was a very good and pious woman, and told her husband upon this occasion, That she hoped he would do nothing against his conscience, for fear of any danger or prejudice to him, or his family; and that she would be contented to suffer want, or any misery with him, rather than be an occasion for him to do, or say any thing against his judgment and conscience.—Upon these and many the like discouragements

And see Popham's Reports, p. 121 and a resolution of all the judges, 39 Eliz. That any justice of the peace, sheriff, or other magistrate, or any other subject of the king, may, by the common-

ments, but chiefly upon his better thoughts, he suddenly altered his purpose and arguments; and when it came to his turn, contrary to expectation, he argued and declared his opinion against the king." See the Cases of Dammaree and others, and of George Purchase, A. D. 1710; and the Notes to those Cases.]

"This tumult is mentioned by the archbishop in his Diary, in general terms. He speaks of 500 persons there. Lord Clarendon says some thousands. Whitelock, treating of it more like a lawyer, considers the judgment to have depended on the circumstance of warlike manner with a drum.

[The following is Foster's account of this Case:

"It was adjudged in the 16 Charles 1, a season of great agitation, that going to Lambeth-house in a warlike manner to surprize the archbishop, who was a privy-counsellor, it being with drums and a multitude to the number of 300, was Treason.

"This is a very imperfect account of an insurrection which hath found a place in the best histories of that time. The tumult happened on Monday the 11th of May 1640 about mid-night. On the Thursday following the special commission, under which the judges sat, was opened and proceeded upon; and Benstead a ring-leader in the tumult was convicted, and within a very few days afterwards executed.

"It is not easy from the short note of the case given by the reporters to collect the true grounds of this resolution: but the history of the times will enable us to form a probable conjecture concerning them.

"On the 5th of May the parliament was dissolved to the general dissatisfaction of the nation: and, which greatly increased the ill-humour of the people, the convocation was, by a new commission, impowered to continue sitting, notwithstanding the dissolution of the parliament. And the blame and odium of both these unpopular measures were laid upon the archbishop.

"On Saturday the 9th of that month a paper was posted up at the Exchange exhorting the apprentices to rise and sack the archbishop's house upon the Monday following; and accordingly on that very day an attempt was made upon Lambeth-house by a rabble of some thousands, with open profession and protestation, that they would tear the archbishop in pieces.

"It were to be wished, that the full import of the libel posted at the Exchange, in consequence of which the attempt was made, had been set out; and also that we were informed what was the cry among the rabble at the time of the attempt, more than that they would tear

law, arm themselves, to suppress riots, rebellions or resist enemies, and endeavour themselves to suppress such disturbers of the peace: But they said the most discreet way was for every one

the archbishop in pieces. These circumstances, could we come at them, would probably let us into the true reason and motives of the rising, and consequently into the reason and grounds of the opinion of the judges: for if it did appear by the libel or by the cry of the rabble at Lambeth-house, that the attempt was made on account of measures the king had taken or was then taking at the instigation, as they imagined, of the archbishop; that the rabble had deliberately and upon a public invitation attempted by numbers and open force, to take a severe revenge upon the privy-counsellor for the measures the sovereign had taken or was pursuing; if this may be supposed to be the case, I think the supposition is not very foreign, the grounds and reasons of the resolution would, in my opinion, be sufficiently explained, without taking that little trifling circumstance of the drum into the case. Upon such a supposition, the case came within the reason of Talbot's case 17 R. 2, cited by Hale, and I think too within the rules laid down in the two preceding sections. But without the help of some such supposition, I see nothing in the case, as stated by the report, which can amount to High-Treason.]"

"The case of Messenger for pulling down bawdy houses, is the next in order of time, and the most extraordinary of all these constructions of the law. It happened in 1668, and is reported at length by Chief Justice Kelyng, who presided at the trial. The following is the construction of the statute of treason, established on this occasion, viz. That a tumultuous rising of four or five hundred persons some of whom have clubs and swords, with a green apron borne on a pole for an ensign, led by one with a drawn sword, who cry Down with the bawdy-houses, and proceed to pull them down tumultuously, and beat a constable who opposes them, is levying war against the king, and high treason within the statute of treasons. Eleven judges, upon full consideration of a special verdict, were of this opinion, contrary to that of Sir M. Hale then Chief Baron, who was the only dissentient. The ruling opinion was founded upon the cases and authorities before related. The statute 13, 14 Cha. 2, of the same sort as that of 13 Eliz. does not appear to have been resorted to upon this occasion. The Chief Justice states their resolution in these words, "This rising with intent to pull down bawdy-houses in general, or to break open prisons in general and let out prisoners, and putting their intention in execution by force, any of these instances is a levying war against the king, and high treason at common law, within the declaration of the statute 25 Ed. 3."

"If any of the arguments before urged against the former cases, have induced the reader to

to attend and assist the justices in such case, or other ministers of the king in doing it: And Coke, Pl. Cor. 9. If any levy war to expulse strangers, to deliver men out of prison, to re-

doubt of their authority, he will not be inclined to respect the present, which was founded upon them. It seems likewise to be as obscure as to its external history, as that of Bensted, which for this defect is specially objected to by Mr. Justice Foster.

“The title which it bears in the State Trials is thus, “The Trials of P. M. &c. for high treason, in tumultuously assembling themselves in Moorfields, and other places, under colour of pulling down bawdy-houses.” In Kel. 70, it is “on pretence to pull down bawdy-houses and break open prisons, and set prisoners at liberty.” The Chief Justice in summing up to the Jury says, “These people pretend their design was against bawdy-houses.”

“The account of the trial begins thus, “Upon Easter Monday last, the usual time for the apprentices liberty for their civil recreations, a rude multitude of people met together in Moorfields, where being so assembled, they were instigated by some factious persons among them; who, to colour their design, insinuated into the rabble the pulling down of bawdy-houses. Under which colour of reforming bawdy-houses, they at length raised a great hubbub, and so increasing in their disorders in a tumultuous manner, committed many notorious crimes.” If we may rely on the short account given of the speech of the king’s counsel, they made little or no mention of pulling down bawdy-houses, but most of the falling upon the king’s officers and beating them, and breaking the prison and letting out prisoners. The evidence shews that the cry of the mob was, ‘Down with the red coats,’ as well as ‘Down with the Bawdy-houses,’ and the most prevailing; and ‘if the king did not give them liberty of conscience, that May day must be a bloody day;’ and that ‘they would come and pull Whitehall down,’ (at that time the king’s residence.)

“Upon seeing sir Philip Howard at the head of the guards, they took him for the Duke of York, and were on that account more irritated, and threw stones at him. The Chief Justice dwells upon these circumstances, in his address to the Jury. Other parts of his speech deserve consideration—as ‘After all this trouble we have had in this nation, it is a sad thing that a number of giddy-headed people must gather together under pretence of reformation, to disturb the peace of the nation again.’ And again, ‘This thing is of desperate consequence. We must make this for a public example: There is reason we should be very cautious. We are but newly delivered from rebellion; and we know that that rebellion first began under the pretence of religion and the law: For the devil hath always this vizard upon it.’ In his own report he uses similar expressions.

“These circumstances being considered, it is

move counsellors, or to any other end pretending reformation on their own heads without warrant, this is a levying of war against the king because they took upon them royal authority.

fair to argue, that there was something more in this case than the forensic accounts of it import; and that it may have been considered to be an insurrection against the government; at that time become unpopular on account of the recent disgrace of the Dutch war, and the loose manners of the court. The cry for liberty of conscience, may lead to one cause of the disturbance. The king had then lately issued a proclamation upon the address of parliament, against conventicles, which woefully disappointed the dissenters: For they had flattered themselves with hopes of indulgence, after the eal of Clarendon’s fall, which was then recent. The earl’s great enemy, the duke of Buckingham, become chief minister, is said to have encouraged them in these hopes. Perhaps this riot was the first outward shew of public discontent, and therefore was thought to require suppression with extreme rigour. The Chief Justice seems to have been actuated by some such principle.

“The state of men’s minds within so few years after the Restoration, of the Cavaliers especially and their connections, who had suffered severely from popular assemblies, and still felt the smart of their oppression, should be taken into the account. Most of the judges had been of the suffering party. The Chief Justice had the character of a violent Cavalier; an excessable fault in one who had suffered under the Usurpation. But I am afraid he carried this quality too far, and exercised his power arbitrarily. He was accused in the House of Commons, in the year next before this trial, of fining jurymen, and brought to answer for it at their bar. Yet he was only censured in the committee, by a vote which was never confirmed by the House. [9 Com. Journ. 35, 37.]

“The above circumstances may have operated in part, to bring about the decision of this case. But such a decision ought not to have outlived its generation. It will not bear the scrutiny of cool reflection, and is unworthy of appearing as a precedent under that happy administration of justice which we have enjoyed since the Revolution; and more especially under the government of the house of Hanover; which that glorious event procured to us. It is fit only for the Star-chamber, and such ministers and magistrates as a race of Tudors and Stuarts would employ to pervert the laws.

“Sir Matthew Hale’s learning and eminence confirm this observation with the force of legal argument and authority. His opinion is worth that of a host of his brethren. He differed from them in this judgment; and if weight and not number will establish truth, his reasoning must prevail. His argument is modestly stated by himself thus, [1 Hale H. P. C.

And Moor's Reports, pag. 620, 621. in the case of the earl of Essex, in which, amongst other things, it was resolved, that his attempt with force to remove the queen's counsellors was High-Treason: and likewise that the earl of Southampton, who adhered to him, although he knew of no other purpose of the earl of Essex,* but a private quarrel against some of the queen's servants, yet this was treason in him, the act of the earl of Essex being rebellion and treason; and so it was also resolved that all those who went with him out of Essex house in aid of him, it was Treason in them whether they knew any thing of his intent or not. And Cro. part 1. 583, in Benstead's case, it was resolved by all the Judges, that going to Lambeth-house in warlike manner with drums, and a multitude, as in the Indictment, to the number of three hundred, &c. to surprize the archbishop, who was a privy counsellor, was treason. And, 2dly, It was resolved that the justices of Oyer and Terminer may sit, enquire and try prisoners all in one day. 3dly, It was resolved, that the breaking of a prison, wherein traitors were in durance, and causing them to escape, was treason, although the parties did not know that traitors were there. And so to break a prison whereby felons escape, this is felony, though they do not know them to be in prison for such offence. Note, That resolution as to breaking a prison where felons, &c. are, must (as I think) be intended only where the intent was only to break open one prison, and no more; for if the design was to break open prisons in general, and they put that in execution as to one prison, that is High Treason according to the books before cited; but then on the evidence it must be proved that their intent was such, and by such proof as satisfieth the jury.

After this Resolution in general, we went to consider the particular cases as they were found upon the several special verdicts; and thereupon it was agreed by all of us, except the Chief Baron, who said he doubted on the main; that as to Messenger and Beasley in the first verdict, and to Cotton in the second special verdict, and as to Limerick in the fourth special verdict, that the matter, as it was found against these four, was high treason in them

134.] He dissented, "First, because it seem'd but an unruly company of apprentices. Secondly, because the finding To pull down bawdy-houses, might reasonably be intended two or three particular bawdy-houses; and the indefinite expression should not, in *materia odiosa*, be construed either universally or generally. Thirdly, because the statute 1 Mar. c. 12, though now discontinued, makes assemblies of above twelve persons, and of as high a nature, only felony. And that not without a continuance together an hour after proclamation made; as namely an assembly to pull down, &c.—And the statute 3, 4 Ed. 6, c. 5, is to the same purpose." P

* See vol. 1. p. 1339.

all, and accordingly they had judgment, and were executed: but as to Appletree in the first special verdict, and as to Latimer in the third special verdict, there was difference in opinion amongst us, whether the verdict was sufficiently found against them to judge it high-treason or not. For besides the Chief Baron, who was against all, my brother Atkins, Tyrell, Windham, and Wyde, held that the verdict was not sufficient against those two, for to give judgment that they were guilty of treason; because, they said, it was not expressly found that they were aiding and assisting. But myself, brother Turner, Twisden, Archer, Raynsford, and Moreton, thought the verdict, as it was found against them, to be as full and plain as any of the rest. For first, as to Appletree, the verdict first finds in general, that the number in the indictment were assembled, as in the indictment, with an intent to pull down bawdy-houses; that Beasley led them as their captain; that Messenger had a green apron upon a staff, which he flourished as colours; and then that Appletree, the person now in question, was amongst them both the days, and was the first that struck at Peverell the constable, and was amongst them at Burlingham's house at Saffron-Hill, and pulled part of that house down, and the next to it, and struck at one that admonished him to be quiet; so that here are several acts of force found to be actually committed by him in pursuance of their design, and then there is no need to find him to be aiding and assisting: for that clause, we said, was only necessary to be found where the jury find a person was there among them, and find no particular act of force done by him, but only his presence, there it is necessary that they find he was present aiding and assisting. And for the same reasons we held the verdict to be full also against Latimer, because it was first found that the multitude was assembled, as in the indictment, on pretence of breaking prisons and releasing prisoners in general, which is agreed by all (except the Chief Baron Hale) to be treason; and then they find that Latimer was amongst them, and active in breaking open the prison at Clerkenwell (where prisoners, some for felony, and others were let loose), and that he was with the rest in the prison after it was broken open, and so an act fixed upon him. But although six of us were well satisfied in our judgments as to them, yet when I waited on the king, I acquainted him there was some difference in opinion as to those two, upon finding of the special verdict; and although the greater number of us were of opinion, that the verdict was well found as to those also, yet I intreated his majesty to make use of that difference in opinion to shew his mercy towards them, the rather because we had agreed, that as to four of them the verdict was clearly good as to proceed to judgment against them, and that I hoped would be example enough to deter others from the like practices; and besides it would appear an instance of his majesty's great mercy that he

would not proceed to the last extremity against any, where there was not a full concurrence of all his judges: which his majesty was pleased to take very graciously, and ordered me to proceed accordingly, and so they two were spared. But as to Green in the first special verdict, and Beale in the third special verdict, we all agreed, that the verdict was not full enough as to them,* for us to judge it treason, in them, because the verdict only finds

* See 4 Burrow, 2080.

that they were present, and finds no particular act of force committed by them, and doth not find that they were aiding and assisting to the rest; and it is possible one may be present amongst such a rabble only out of curiosity to see: and whether they were aiding and assisting is matter of fact which ought to be expressly found by the jury, and not be left to us upon any colourable implication; and accordingly these two were discharged.*

* See the Case of Rex v. Boyce, 4 Burr. 2073.

228. Proceedings against the Earl of ORRERY, on an Impeachment of High Crimes and Misdemeanors: 21 CHARLES II. A. D. 1669.

November 25, 1669.

A PETITION of sir Edward Fitzharris, bart. and Philip Alder, gent. against the earl of Orrery* was read in the House of Commons, containing in substance, raising of monies by his own authority, upon his majesty's subjects; defrauding the king's subjects of their estates. The money raised was for bribing hungry courtiers to come to his ends, and if the king would not, he had 50,000 swords to compel him.

Mr. Garraway moves to have the point of time asserted when these things were done: if the Petitioners had concealed it long, then his majesty was in danger. The Petitioners were then called in, and affirmed the words spoken and things done, since the Act of Indemnity.

Colonel Sandys moved it to be taken into consideration; and attributed our misfortunes to monies so disposed of.

Sir R. Carr moves that the treasonable words may be read, and the gentlemen of the long robe may give their judgments what they amount unto.

Serj. Maynard. The charge is general, treason and misdemeanor. He thinks the words are treason. 25 Edw. 3rd, is the measure of treason.

Sir Fr. Goodrick. Words make not a treason, but this is by act 25 Edw. 3rd.

Mr. Edw. Seymour. We have found that a charge of high treason in the House of Commons, is a remedy for the gout. Wonders that the words have been called in question, 'reflecting on the duke of Ormond.' This had never been brought in question, if those had been silenced—Would have him summoned; but if he cannot come, would have his charge sent him.

Colonel Sandys. Would know who the persons are Seymour mentions.

Sir R. Howard. No discourses of well or ill men should come before us, when a person is accused: It is a hard thing these words should have been concealed thus long; no man can make this treason by 25 Edw. 3.

* Neither the Petition nor the Articles of Impeachment are entered in the Journals.

Lord Cavendish takes him down to the Orders. Not proper to launch into any thing that is not in the business before us.

Mr. Edw. Seymour. The charge had not been brought against lord Orrery, if one had been brought against the duke of Ormond.

Sir R. Howard. The earl of Meath came to acquaint him with his business, which he will tell you more of hereafter—Moves that the business may be prosecuted, and that if lord Orrery cannot come he may be brought in a chaise. What way would you go, pray resolve on presently: on 25 Edw. 3rd he cannot be accused; if on 18 Car. 2, it lies at their doors that so long have concealed it.

Sir Tho. Lee. Common fame has made these two great lords enemies. He hopes, by their falling out, the king and his subjects may be the better for it.

Sir R. Temple thinks the words are a misprision of the king's government: words though not treason, may be evidence of treason; if they do design to perpetrate some treason, they are treason: would have the Petitioners called in, to know whether they have two witnesses to prove these words. By too long silence, they might have time to execute their treason. If you conclude it treason, the person must hear his charge read in his place, and his answer, and then withdraw.

Sir Job Charlton cites Pine's case, 'That the king was a fool, and unfit to govern.' The Irish Friar at Lisbon, who said, 'He would come over to kill king James,' was guilty of treason.

Mr. Saynsie was informed how you will proceed, in order to information where he may be tried, the treasonable words being said to be spoken in Ireland. He must first be heard, and witnesses must be examined. The words may be treason, or not treason, according to circumstance: Thinks it a parliamentary way to appoint some short time for examination of witnesses, and then call it what you will, and draw up the charge.

Mr. Garraway would not have him committed, but heard in the house: would have the Petitioners give security to prosecute, and the member likewise be accused to appear.

Sir R. Howard. If they be trucking witnesses, to keep this in the dark so long, they deserve a rebuke, and at least to give security to prosecute. Lord Orrery will undergo any torture rather than the torture of not answering his charge.—On a division it was resolved, that Treasonable Matter was contained in this Charge, 182 to 144.

Sir *Winston Churchill* knew not how we could proceed against lord Orrery being a privy counsellor. But it was averred he had no Privilege in that case. It was then resolved, "That lord Orrery be sent for in custody of the serjeant at arms." It was also ordered, That a copy of the Articles against lord Orrery be sent him by the serjeant at arms, and his attendance required, to give his Answer to them; if he be not able to come, then that the serjeant is to leave a keeper with him, to attend him till he is.*

THE EARL'S DEFENCE.

December 1. The earl of Orrery, in his seat near the bar, answers his charge. Because of his indisposition of the gout † sir Robert Howard asked leave that he might sit, which was granted.—The earl began with acknowledging, with all humbleness, the justice and favour of the house, in having the ten Articles sent him. The Articles bring no less than his life and estate, and, what should be more than both, his loyalty, in question; but he has innocence, without which he durst not appear before the House. He should be unworthy to serve his country in this place, should he fly your justice. In some places the Articles are dark, in some places intricate and immethodical. If, by reason of some months sickness, and a spirit wounded with such a charge, he

* During the Debate no member was suffered to go out, without leave asked, and when obtained, was enjoined by the Speaker not to communicate any thing that passed in the House.—"It was the sentiment of a great and dangerous minister, sir Thomas Clifford, that he should be able to do nothing in Ireland, while Orrery was president of Munster; and this is the secret of bringing the impeachment against him into parliament. The earl having had timely notice of the design of his enemies, came over, and took his seat in the English House of Commons, but being seized with a violent fit of the gout, that opportunity was taken by his adversaries to bring on his affair, and to get him committed." *Love's Memoirs of the earl of Orrery.*

† "As the earl of Orrery, being scarce half recovered from his gout, was going up the stairs leading from Westminster-hall to the court of requests, one of his friends observing to him that he ascended the steps with great difficulty and pain, 'Yes,' said he 'my feet are weak, but if my heels will serve to carry me up. I promise you my head shall bring me safe down again.'" *Morrice's Memoirs of the earl of Orrery, chap. 6.* His lordship prophesied right.

mis-express himself, he hopes he shall be pardoned.

Art. 1. He thinks rather a narrative than a charge. The Charge says not that those he corresponded with were traitors or rebels. It is no crime to hold correspondence with the militia, for if they had power to do ill, they had power to keep from ill; they were the interest the king took care of. Should he say, 'England lies a bleeding now London is burning,' these were words to stir up compassion rather than rebellion. They (the petitioners) accuse him of no bad intention in what he did, and no ill consequence followed upon it.

To Art. 2. "That he gained to his own use great sums of money, to raise up sedition, and told the purchasers, that unless money was raised to feed the hungry courtiers nothing would be done, and levied 13.750*l.* to obtain his end, by corrupt means, which moneys were converted to his own use." Answers, It is not his custom to use uncivil language to any, much less to a courtier. The king will find those who exhibited the Articles more apt to rebel than the Irish interest. There were voluntary subscriptions of one penny per acre towards the charge of getting an Act of Settlement. Is it a likely thing that he should put them into rebellion, and not head them; cheat them of their money, and think to have an interest in them? If this Article were true, he was fitter to be sent to Bedlam than to answer it here: he protests he lost 300*l.* by that business: desires that he who received the money, may certify what he received. It is as ordinary to take subscriptions of this nature, as for the fens. This has been these 9 years, and no complaint made: denies the black list: it is strange that 700*l.* raised voluntarily in 1661, should beget a rebellion in 1663: another penny per acre was raised by act of parliament: it is not likely he should refuse what is given him by act of parliament.

To Art. 3. "Imprisoning of people for bringing certioraries." Answers, If any were punished it was for some insolence done, not for bringing certioraries. Denies letters for non-appearance. He has granted many petitions: denies encroaching upon any man's freehold, unless in forcible detainers. His court of precedency never meddles with it; but they have power to quiet possessions, after 3 years quiet possession. *Fitzgerald** was a person who forfeited his estate by rebellion. There was a letter from a high-sheriff, directed to the lord president of Munster, and, in his absence, to the vice president, complaining of *Fitzgerald's* forcible detaining a castle, and resisting the sheriff's power, defying his power in open words, as if running into rebellion. The lord chief justice of Ireland said to him, 'he was obliged to assist the

* The charge was, "That he, by a paper order, dispossessed one Edmund Fitzgerald of a house and 2000 acres of land: slew one of Fitzgerald's servants, and mostally wounded others, &c."

sheriff, and his forces to be subservient to the sheriff, and this in a time when we feared invasion from the French, and a strong place, and the best port in Ireland. Never heard complaint against any man, nor ever hindered due prosecution of law.—To

Art. 4. The Article before was of protecting English, now of an Irish murderer * that he should get him bailed, and so he escapes. If the justice, upon his letter, do bail a man not bailable by law, it was his fault; he knows not for what the man was committed.

To Art. 5. † Has witness to clear this. Sir John Broderick and sir Richard Osborne will prove the action to be voluntary; that land in his possession, and had set it for 99 years.

To Art. 6. † Denies any trust from either soldiers or adventurers, but as a friend to both and a privy-counsellor of England and Ireland.

To Art. 7. § Denies any creatures of his own to have taken to farm the King's revenue. The revenue is openly set at the council-board in Ireland: never saw the lord lieutenant, nor any counsellor, refuse the larger offer. Only the Excise beginning in 1663 and ending 1664 it was not valued at above 20,000*l.* But the aldermen of Dublin proffered, if he would take it, they would give 30,000*l.* rent, and if they might take it, they would secure the rest to lord Kingston and him. The Article mentions not in what kingdom. It is obscure, as if it meant more than it does express. By this they got but 150*l.* a-piece. They had a warrant after a full hearing to set it for 36,000*l.* and they gave 39,000*l.*

To Art. 8. || Answers, He paid arrears to the army, according to the king's Declaration at Breda: knows not to have done it either to those out of the army, or to such as opposed

* This was one John Mac Davey Mulcabilh who, being committed by the governor of Waterford for treason, murder, &c. was bailed by a justice of peace (as the Article recites) 'at the earl's direction.'

† Art. 5. This was 'for compelling one Thomas Walsh, of Piltown, esq. to convey to him lands of inheritance to the yearly value of 600*l.* under pretence of procuring witnesses to prove him guilty of the late rebellion.'

‡ Art. 6. This was 'for prejudicing the adventurers and soldiers, to whom the marquis of Antrim's lands were allotted, by granting a lease of a part of them to colonel Talbot, who married his sister.'

§ Art. 7. This was 'for causing some of his own creatures to take and farm several branches of the revenue, at far lower rates than others had offered.'

|| Art. 8. This was 'for converting several sums of his majesty's treasury in Munster to his own use, for ordering payment of arrears for service done for the late usurpers, and for employing some of the guard of halberdiers, who assisted at the late king's murder.'

the king's Restoration: only one gentleman of quality turned out of the army, for being an Anabaptist, a little before the king's Restoration. This was the man that came eight-score miles to discover the plot at Dublin, to whom he gave 100*l.* which he looked upon with contempt, and protested he would never serve any farther, if rewards were offered him: denies the 'employing the halberdiers that were the guard of the king's murder.' He turned out a nephew of his own, who had married a daughter of one of the king's judges.

To Art. 9. * Denies the selling of a foot of land to any Irish rebels: Denies the buying of any lands of any Irish Papist, except 15 acres near Dublin, for which he paid 400*l.* for the convenience of his horses; had the seller of it been judged nocent, he had lost his title: One acre of land in Limerick is valued at eight in Kerry, and his lot happened to be in Kerry, and so his troop after that rate were satisfied in Kerry, according to the claim; but they have lost both their time and money, for want of due claim by the Act.

To Art. 10, and last. † This Article, if true, would strike him dumb with its weight. The charge is general, and he denies it. All these look rather like aspersions than accusations, and so this general Article he must answer generally, No. He, being one of the council, advises one way for the farming of the king's rents; another, another way. He had nothing to do with what the king would do in mercy; they are only to do what law enjoins them. It is not crime, but difference of opinion, he is charged with. The great point is of 'compelling the king with 50,000 swords;' had it entered into his heart, he durst not have appeared here; and he wishes those 50,000 swords in his heart, if he said the words; hopes that his judges will consider the accusers, and the accused. At least it is not a probable thing he should utter such words in 1659; they had then such tumblings and tossings as were in England. He had then sent a letter to his brother, lord Shannon, then with the king, viz. 'That if your majesty will be pleased to transport yourself into Ireland, to your protes-

* Art. 9. This was 'for purchasing lands, before trial, of persons pretending to innocence, and then concealing and withdrawing the evidence against them; and for procuring lands to be assigned to himself and his troop, for service done to the usurped powers.'

† 10. This was 'for committing several breaches of trust to his majesty, and tempting the officers of the Treasury by bribes; and evidencing a great ambition and scorn to his majesty's power, by threatening, 'that if his majesty did not confirm the estates of a party, 'at that time headed by the said earl, that his majesty should be compelled to do it with '50,000 swords;' and for exercising high oppressions and extortions; and also for giving his majesty false informations and suggestions.'

tant subjects, we will receive you, and do our best to restore you to the rest of your dominions.' This was as early as any. If doubted, the king will clear it. If this be true, and whilst unaccompanied by necessity, and out of choice and duty, is it likely that when the king was actually restored he should say these words? Fitter for Bedlam, if ever he said them, than to be here, and is it likely than in six or seven years he should put nothing in action? 50,000 swords must surely be meant English. He has done several services since the words, but no overt act since the saying them. That a man, at the head of an army seven years, should not do some overt act, is strange. That these words should lie seven years concealed is a misprision of treason. Not accused of any overt act, since only men say it. What he can say in point of law will be ridiculous; yet though the words that were asserted, the judges declared formerly not treason, yet he trusts more in the judgment of the house. 'Concealing his majesty's affairs, and advancing his private fortune,' are general: Humbly desires no more to be done for him than your justice will put you upon; and so beseeches God to direct the house, and withdraws.*

Sir *Wm. Lewis* moved to have the Accusation remitted to the King's Bench.

Sir *Tho. Clifford*. Would not have the sword of this house of Impeachments be blunted upon offences of this nature: stars, in their courses, do not amaze us; but comets give us apprehensions. Would have impeachments of this nature upon great and considerable occasions.

Serj. *Maynard*, considering the time, and the thing, if ever it was, and the petitioners must go into Ireland for their witnesses, and this noble lord's reputation suffer in the mean time, would have it referred to the law. One of the king's council once under the gallery, he remembers, desired, in another case, this might be the question. If any man in his conscience thinks this to be treason, let him say Aye.

Mr. Solicitor *Fisch*. There is little foundation in lord Orrery's Answer made, to build upon: We may say by his Answer, that the greatest part is not probable, and some things impossible to be true. He affirms words may be treason, or not, according to circumstance and in a case of blood infinitely to be considered before acted—To say, 'I will kill the king,' ever was treason. By a statute of Hen. 8. it was felony to scatter papers that such and such a man has spoken treason. The words

* "Lord Orrery defended himself so well, that his Charge produced no effect, except opening the eyes of such of his old friends as had differed from him, and who now saw, with how small reason they had taken this step, and how far he was from endeavouring to return it restraining himself, on the contrary, within the strict bounds of a direct defence, as the answers to the charge show." Biogr. Brit.

to be treason must be within such a time; for the words should be after the settlement in Ireland; and what need 'compelling,' when the thing is done, and all the acts concomitant and subsequent have been for quiet and settlement? Let every man lay his hand upon his heart. It is an accusation to this house, and from this house; will you imprison upon out-doors accusation? You may have the house, at this rate, garbled when you please. Would have the accusations transmitted to the lord lieutenant in Ireland, where the offences charged were done, and so represent it to the king.

The question being propounded, That a day be appointed for the accusers to produce witnesses to make good the charge, the previous question for putting it was carried, 116 to 114. After which the main question passed in the negative, 121 to 118. It was then resolved, "That this accusation against the earl of Orrery be left to be prosecuted at law."

Dec. 10. Sir *Robert Carr*, moves that witnesses may be sent for by order, there being, he hears, strict proceedings against persons who come over out of Ireland, without leave, by loss of command: would not have the business lie at our doors.

Col. *Sandys*. The lord lieutenant of Ireland is so strict upon our members, that, if they come over to do their duty here, others must be put into their commands. Moves that some directions may be given to prosecute lord Orrery; for his being quit of his Charge will be the greatest honour that ever came to him.

Mr. *Wild* said, that when sir John Morley was accused of high treason, he was to answer it at the bar, and it was referred to the law, but no particular direction given in it.

Sir *Tho. Meres*. The lawyers, *una voce*, said, That the charge was Treason; but that question was not in lord Orrery, who was used very civilly; but would not have us lose our justice in our civility.

Col. *Birch* would not have the thing reached into but in a straight line.—It was then resolved to address the king, that witnesses may have liberty to come over from Ireland.*

* "Though the managers of this affair had interest enough to procure a vote for bringing over witnesses, yet they had more wit than to trust the house, or his lordship, with the examination of those witnesses, and so the matter fell." Biogr. Brit.

"Thus ended this affair. No witnesses ever came, no prosecution was carried on at law, nor was any farther attempt ever made against lord Orrery. Had he continued still president of Munster, it is more than probable, that the name of sir Edw. Fitzharris and master Philip Alder had not been entered, on any occasion, in the Journals of parliament. But when the lion has lost his strength, the wild asses and all the unclean animals of the wood, trot forth from their lurking-places, and cowardly spurn at him." Preface to the Earl of Orrery's State Papers, published by his great grandson.

229. The Trial of ROBERT HAWKINS, Clerk, late Minister of Chilton, at the Assizes at Aylesbury, for Felony : 21 CHARLES II. A. D. 1669. [Written by Himself.]

UPON Tuesday, being the 9th of March, 1669, I went to Aylesbury, and got thither about four of the clock in the afternoon, and about the same time came in the reverend judges, viz: Sir Matthew Hale, knt. (then Lord Chief Baron of his majesty's court of Exchequer, but now) Lord Chief Justice of England; and Hugh Windham, Serjeant at Law.

And upon Wednesday the 10th of March the Assizes began, and in the afternoon of the same day, Larimore, by the advice of sir John Croke, who had then got leave to come to the Assizes, carried his bill of Indictment against me, to the grand jury: Their names were as followeth, John Hill, Samuel Grange, Richard Cokeman, Jacob Sale, Thomas Redding, Thomas Berringer, Clement Summerford, John Winter, John Burnham, Ralph Rice, Jonathan Tomlins, William Barret, John Butterfield, William Pedder, John Fosket, John Sare, John Merydale, Robert Worrel, George Wells, in all 19.

These were the gentlemen of the Grand Inquest for the body of the county of Buckingham, and unto them the aforesaid Larimore exhibited his Bill of Felony against me; the sum and substance of it was as followeth:

'The Grand Inquest of our sovereign lord the king upon their sacred oaths present, that Robert Hawkins, late of Chilton, in the county aforesaid, clerk, did upon the 18th Sept. in the 20th year of the reign of our sovereign lord Charles the 2d, by the grace of God, &c. with force and arms, &c. at Chilton aforesaid, in the county aforesaid, two gold rings, each of them at the value of 10s.; one white Holland apron, of the value of 1s. 6d.; two pieces of gold, each of them at the value of 10s., and 19s. in silver, of the goods and chattels of Henry Larimore, in the parish and county aforesaid, then and there being found, then and there feloniously he did steal, take, and carry away, contrary to the peace, &c.'

This Bill was signed by the grand jury, *Billa Vera*, and returned to my lord chief baron Hale, who then sat on the crown's side, or upon life and death, about six of the clock at night.

Upon Thursday the 11th of March, 1669, my lord chief baron came to the hall about eight of the clock in the morning, and the court being set, I rendered myself willing to be tried according to the laws of this kingdom. And when the clerk of the assizes saw me bow to the court, he then informed my lord, and said, This is Mr. Hawkins, who stands indicted for felony; and then the clerk of the Arraignments read the bill, which was signed and returned,

as aforesaid; and then I was set to the bar, without any other prisoners.

Clerk of the Arraignments said, Robert Hawkins, hold up thy hand, which I then did, and then the clerk read the indictment against me as followeth:

'You stand indicted in Aylesbury, in the county of Bucks, by the name of Robert Hawkins, late of Chilton, in the county aforesaid, clerk, for that you the said Robert Hawkins, not having the fear of God before your eyes, upon the 18th of September, in the 20th year of the reign of our sovereign lord Charles the second, by the grace of God, &c. with force and arms, &c. at Chilton aforesaid, in the county aforesaid, into the dwelling house of one Henry Larimore feloniously did enter, and two gold rings at the value of 10s. each of them; one white Holland apron, of the value of 1s. 6d.; two pieces of gold, each of them at the value of 10s. and 19s. in silver, of the goods and chattels of him, the said Henry Larimore then and there being found, then and there feloniously you did steal, take, and carry away, contrary to the peace of our said sovereign lord the king, his royal crown and dignity, &c.'

How sayest thou, Robert Hawkins, art thou guilty of the felony whereof thou standest indicted, or Not Guilty?

R. Hawkins. Not Guilty, my lord.

Clerk. How wilt thou be tried?

Hawkins. By God and my country.

Clerk. God send you a good deliverance.

Court. Call the Jury. [which the clerk did.]

Crier. Call these, viz. Richard Lambourne, James Reynolds, jun. Robert Hoare, I challenged him. [L. C. B. Set him by.] Edward Butler, Tho. Coles, I challenged him. [L. C. B. Set him by.] Richard Hearnese, Thomas Sanders of Chilton was challenged by Larimore, contrary to custom. Edward Carter. John Goodwyn. William Porter. John Ringham. William Cannon, jun. William Welch, Edward Cope, Francis Russel.

All these being in number 15, but three of them were challenged, two of them by me (I being informed they were no friends to the church of England;) and for the third, viz. Mr. Tho. Sanders, he was challenged by Larimore contrary to custom, without shewing any reason, he being a neighbour that knew us both, and the business, better than any of the rest of the jurors. The other twelve were sworn as followeth:

Clerk. Rob. Hawkins, hold up thy hand; which I did.

Marshal. Richard Lambourne, lay thy

hand upon the book ; look upon the prisoner. ' You shall well and truly try and true deliverance make between our sovereign lord the king, and the prisoner at the bar, whom you shall have in charge according to your evidence, So help you God: kiss the book.' And so were all the rest sworn.

Clerk. Crier, count these. Richard Larimourne, James Reynolds, two, &c. twelve good men and true, stand together, and hear your evidence.

Clerk. Crier, make a proclamation.

O yes, &c.

' If any man can inform my lords, the king's justices, the king's serjeant, or the king's attorney, of any murders, felonies, or treasons, done or committed by the prisoner at the bar, before this Inquest be taken, between our sovereign lord the king and the prisoner at the bar, let them come forth and they shall be heard, for now the prisoner at the bar stands upon his deliverance. And all others bound by recognizance to give in evidence against the prisoner at the bar, come forth and give your evidence, or else you will forfeit your recognizances.'

Clerk. Crier, call the witnesses: viz. Henry Larimore, sen. the prosecutor. Richard Mayne, jun. constable. Tho. Beamsley, Tithingman (brother in law to the said Larimore.) Dodsworth Croke, esq.; (sir John Croke's eldest son.) John Cox. Henry Larimore, son to the said Larimore, near 20 years old, and not baptized.) Mary Keen, Joan Beamsley (sister to the said Larimore.) Margaret Larimore (wife to the said Larimore.) John Chilton. William Croke, gent. (son to sir John Croke.) John Boyse, Thomas Welch, Samuel Salter, John Stop [sir John Croke's man.] Francis Luce, William Mantill, alias Miles (nephew to the said Larimore.) Richard Mantill, alias Miles (brother in law to the said Larimore.) Tho. Croxton, of Weston, on the Green, in the county of Oxon, yeoman. Nicholas Sanders, Christopher Bethum. Edward Good, of Long Crendon, clerk, a person that committed a riot and forcible entry upon my church at Chilton.

All these (being in number 22) were witnesses procured (by sir John Croke and Larimore) and sworn against me.

Clerk. Rob. Hawkins, hold up thy hand, (which I did.)

Here the Indictment was again read.

The clerk speaks to the Jury thus. Look upon the prisoner, you that be sworn. You shall understand that the prisoner at the bar hath been arraigned upon this Indictment, and thereunto hath pleaded Not Guilty, and for his trial hath put himself upon God and the country; which country you are. Your charge is, to enquire whether the said Robert Hawkins be Guilty of this felony (in manner and form as he stands indicted,) or Not Guilty: if you find him Guilty, you shall enquire what goods and chattels, lands and tenements he had at the time of committing this felony, or at any time since: if

you do find him Not Guilty, you shall enquire if he fled for the same; if you do find that he fled for the same, you shall enquire what goods and chattels, as if you had found him Guilty: if you find him Not Guilty, and that he did not flee for the same, you shall say so, and no more; and hear the evidence.

Henry Larimore, the prosecutor, was sworn. Here I took pen, ink, and paper, to take notes at the bar.

Larimore said, May it please your honour, my lord, upon Friday the 18th of Sept. in the year of our Lord 1668 between twelve and one o'clock at noon, I locked my doors fast, and left nobody in my house, putting the keys in my pocket. I went to a hemp-plot, about two furlongs from my house, to pluck hemp; where I, and the rest of my family, continued till an hour and half of sun-set, and then coming home, found my doors wide open: so I went in, and run up the stairs into my chamber (or upper loft, over my inward chamber where I lie.) I then hearing a noise in the chamber where I lie, just under me, I peeped down through some of the chinks of the loft-boards: there I saw this Mr. Hawkins (pointing with his left hand towards me, but having his face all that time towards the judge) ransacking and rifling of a box, in which box, was then, amongst other goods, one white Holland apron, a purse, and in that purse was, at that time, two gold rings, each of them of the value of 10s. two ten shilling pieces of gold, and 19s. in silver, all the which said gold rings, gold and silver (except one small piece of silver or two) I then saw this Mr. Hawkins, that is now the prisoner at the bar, take and turn out of this very purse, which I do now shew unto your honour; and he did then steal and carry away all the foresaid rings and money, with the said Holland apron. All these things, my lord, I saw him take out of my box and purse, for I was all that time looking through the chinks of the board. And when Mr. Hawkins heard some noise above, I further saw the prisoner now at the bar go out of my said lower room where my box was, and glanced by the stair-foot door, and so run out of my house, with a great bunch of keys in his hand, down my yard, and hid himself in a close where there were some beans and weeds. All this, my lord, I saw with my own eye. Moreover, my lord, I having a warrant from sir Richard Piggot to search for the said rings and money, &c. I did upon the next day (it being Saturday, and the 19th of September) after Mr. Hawkins had robbed me, call Richard Mayne, jun. the constable, and Mr. Tho. Beamsley, tithing man, with some others of our town, to search Mr. Hawkins's house for my said money and goods, which the day before I saw him steal from me: but he refusing to open his doors or to let us search; when we saw that, the constable broke open his doors, and then we went in, and searching his house, I did then find in an inward room below stairs, in a basket hanging on a pin (put amongst papers and rags, and other trumpery)

this gold ring, and this five-shilling piece of silver. And I do swear, that this ring and piece of silver is one of the same rings and pieces of silver which the day before I saw the prisoner now at the bar take out of this very purse, it being Friday the 18th of Sept. and an hour and an half before sun-set.—This was the sum and substance of Larimore's evidence, whereupon my Lord Chief Baron asked Larimore these questions.

L. C. Baron Hale. Are you sure, Larimore, that you left your doors locked, when you went out to pluck hemp?

Larimore. Yes, my lord, I am sure I did.

L. C. B. When?

Lar. Between 12 and 1 o'clock at noon.

L. C. B. Upon what day was it?

Lar. It was upon the 18th of September last past, my lord.

L. C. B. Upon what day of the week was it?

Lar. It was upon Friday, my lord.

L. C. B. In what year was it?

Lar. It was in the year of our Lord 1668, my lord.

L. C. B. Are you sure that your chamber-door where your box stood was locked at that time?

Lar. I cannot certainly tell, my lord.

L. C. B. Was the box locked at that time?

Larimore to this question paused a while, and gave no answer.

Marshal. My lord desires to know whether your box was locked at that time when you lost your money and goods out of it.

Lar. It was locked, my lord.

Clerk. Was it at that time locked, by the oath you have taken?

Lar. It was locked, if it shall please your honour.

L. C. B. Were the locks of the doors and box broken?

Lar. My lord, I cannot certainly tell, but I do believe that they were picked open with some pick-lock or false key.

L. C. B. Did you see him, that is now the prisoner at the bar, in your house at that time, and in that posture, by the oath you have taken?

Lar. I did then see him that is now the prisoner at the bar, in my house, my lord, as I said before.

L. C. B. At what time of the day was it that you saw him in your house?

Lar. It was an hour and half before sun-set.

L. C. B. said to me, Sir, will you ask Larimore any questions before we call more witnesses?

Hawkins. Yes, my lord, if I may have leave.

L. C. B. Sir, you may proceed to your questions.

Hawkins. I humbly thank your honour.

Hawkins. I pray, my lord, ask Larimore if he be sure that I am the person that robbed him.

L. C. B. Larimore, answer to the question.

Lar. Yes, my lord, I am sure he is the person that robbed me, for I know him very well.

Hawk. Why did you say before sir John

Croke, when I was before him, that you could not say that I had stolen them?

Lar. I said no such thing, this all that were there can justify.

Hawk. My lord; I desire to know of Larimore if he be sure that it was upon a Friday, and the 18th of September 1668, and in an hour and half before sun-set, when he saw me in his house robbing him.

Lar. replied, that it was upon that day and time, as near as he could guess.

Hawk. Why (when Larimore found his doors open, which he expected to have found locked) did not he call some of his neighbours to assist him in searching his house, and to secure me, or any other person which he might find robbing him, rather than to run up stairs by himself to alarm any person that was in his house, and thereby giving them opportunity to escape?

Larimore said, He did not then so well consider of it as now; but being willing, seeing his doors open, ran up the stairs to know what the matter was, and looking through the chinks of the loft, saw me in his house, as aforesaid.

Hawk. Larimore, did you speak to me when you saw me, or endeavour to stay me?

Lar. replied, That he was for that time so amazed, that he could not speak to me.

Hawk. My lord, I think he is still in great amazement.

Hawk. Was my house the first, or the only house you searched?

Lar. replied, No.

Hawk. If you saw me commit the robbery in your house, why then did you search other houses for the goods which you saw me steal?

Lar. replied to this, That he had been robbed at several other times.

Hawk. Why did not you then rather send out hue and cries to apprehend my person, than to search my house; and why did not you charge me with flat felony before sir Richard Pigott, of whom you had your warrant, if you saw me rob you?

Lar. to these questions made no direct answer.

L. C. B. Mr. Hawkins, will you ask Larimore any more questions?

Hawk. No, my lord, not at present; but when I come to my defence, I hope I shall be heard.

L. C. B. You shall be heard at large, and so shall they.

Hawk. I humbly thank your honour.

Clerk. Ass. Larimore, who shall be next called?

Lar. Call Henry Larimore the younger.

Clerk. Crier, call Henry Larimore the younger: who answered, Here, sir.

Marshal. Lay your hand upon the book, look upon the prisoner.

Hawk. My lord, may I be heard a word?

L. C. B. Yes, sir, you may go on.

Hawk. I humbly thank your honour.

Hawk. My lord, is it usual to admit persons that are not baptized to give evidence upon a

trial of life and death for that person which is now about to be sworn (I suppose) is not baptized.

L. C. B. Sir, a person that is not baptized may be sworn, and give evidences, in cases of felony.

Hawk. My lord, I submit, but am not fully satisfied in it; and if occasion be I shall crave counsel in that point, it being matter of law, and not of fact.

L. C. B. The Jury may consider of it.

Hawk. My lord, I doubt not but they will weigh of what validity the oath and evidence of such a person is.

Larimore Jun. My lord, upon the 18th of September, I came home a little after my father, and coming in the yard, I saw this Mr. Hawkins, that is now at the bar, run out of my father's house, with a great bunch of keys in his hand, and run down my father's yard, and hid himself in a close with beans and weeds; and when I came into my father's house, I asked him what Mr. Hawkins did there; He answered me, that he had done too much there, for he had robbed him.

L. C. B. What day of the week was it?

Lar. Jun. It was upon a Friday.

L. C. B. In what year was it?

Lar. It was this last September, my lord.

L. C. B. Will you ask him any questions?

Hawk. Yes, my lord, if I may be permitted.

L. C. B. You may proceed to your questions.

Hawk. Larimore, are you sure that I am the person which you saw run out of your father's house?

Lar. Yes, I am sure that you are the same person that I then saw run down my father's yard.

Hawk. What time of the day was it when you saw me?

Lar. It was an hour and a half before the sun was down.

Hawk. Was your father within when you came there?

Lar. He was within when I came there, and I asked him as aforesaid.

Hawk. Did your father say no more to you, than what you have related? and did not he enquire which way I ran, or went?

Lar. He said no more, but that you had robbed him.

Hawk. My lord, and you of the Jury, Is it likely, that when the father had seen me commit a robbery in his house, and the son coming in immediately upon it, that the father would not ask of him which way I went?

Hawk. My lord, I have done with him at present.

Lar. Sen. My lord, pray let Joan Beamsly be called next.

Clerk. Cries, call Joan Beamsly.

Crier. Joan Beamsly. She answered, here, Sir.

Joan Beamsly. May it please your honour, my lord, upon Friday the 18th of September

last past, about an hour and a half before sunset, as I was going to milking, in the street, near Larimore's house, I met Henry Larimore the younger, and being at that time much troubled with the tooth-ach, I told him of it, desiring him to help me to some hot water, for I believed that might give me ease; Larimore replied, that if I would go with him to his father's house, he would help me to some: so going both together, we saw this Mr. Hawkins, that is now the prisoner at the bar, run out of Larimore's house, with a great bunch of keys in his hand, and run down Larimore's yard into a close of beans and weeds, and there hid himself; and when we came into Larimore's house, I there heard young Larimore ask his father what Mr. Hawkins did there; Larimore told his son that he had done too much there, for he had robbed him. [When my lord chief baron Hale heard how these three witnesses agreed in their evidence, he said, Here is enough sworn, if believed, to hang twenty men.

Hawk. I doubt not but to clear myself, notwithstanding their evidence, if I may be heard.

L. C. B. You shall be heard.

Hawk. I humbly thank your honour.

L. C. B. Larimore, have you any more witnesses?

Lar. Yes, if it may your honour, a great many more.

L. C. B. Who are they? Call them.

Lar. Call Richard Mayne, constable.

Mayne. My lord, upon Saturday the 19th of September last past, came Henry Larimore senior to me, and giving me a warrant from sir Richard Pigott to search, commanded me (amongst others) to search Mr. Hawkins for some money and goods, which he had lost; and when I saw his warrant, I went to Thomas Beamsly, tithing-man, and charged him, with three or four others, to assist me; and coming to Mr. Hawkins's house, he denying to open his doors, I broke them open, and I went into his house, and Henry Larimore sen. did find in a basket this gold ring, and five-shilling-piece of silver (Mr. Hawkins himself being by whilst he found them); so we had him before sir John Croke, who committed him to prison, and so on Sunday morning we brought him to Ailesbury. This also was sworn by Dodsworth Croke, esq.; Thomas Beamsly, and young Larimore.

L. C. B. said to me, Will you ask these witnesses any questions?

Hawk. Yes, my lord, if I may be permitted.

L. C. B. You may go on to your questions.

Hawk. Mayne, constable, did Larimore desire you to search my house alone, and did he then tell you, that he saw me rob him the day before.

Constable. Larimore did desire me to search several houses, but did not say to me that he saw you rob him.

Hawk. Where is the warrant upon which you broke open my house? I desire to see it.

Const. Here it is.

Hawk. Was it Larimore himself that found the ring and five-shilling-piece?

Const. It was Henry Larimore the elder that found it.

Hawk. Was I in the same room when he found them?

Const. You were in the same room when he found them.

Hawk. This was proved false, by Mr. Charles Wilcox and Nicholas Faulkner, which persons kept me in the Hall, whilst they pretended to find them in the buttry.

Hawk. Constable, why did you compel me to go before sir John Croke, which you knew was my adversary?

Const. We did not force you before him.

Hawk. This I proved to be so, by Michael Reed, gent. Mr. Tho. Saunders, Mr. Wilcox, Mr. Goulder, Robert Casemore, and many others that saw it.

Hawk. Constable, why did you advise the gaoler, Mr. Burch, to load me well with irons?

Const. I did not advise him to do so.

Hawk. Pray, my lord, ask the gaoler, Mr. Burch, what the constable said to him when he brought me thither.

Clerk. Mr. Burch, inform the court what the constable said to you, when he brought Mr. Hawkins to you as a prisoner.

Gaoler. My lord, when the constable delivered Mr. Hawkins to me on Sunday morning, he said, that Mr. Hawkins was a notorious picklock, and that he was confident he could pick every lock about the prison; and therefore he advised me to watch him narrowly, and load him well with irons.

Thomas Beamsly being sworn, his evidence being the same in effect with the constable's for brevity sake I omit; but I craved leave to ask him a question or two; which being granted, were as followeth.

Hawk. Beamsley, pray what discourse had you with Mr. Wilcox upon the 19th of September, presently after my house was broken up, concerning the time when (as your brother pretended to you) he lost the ring and five shilling-piece of silver?

Beamsly. He did not remember that he had any discourse with Mr. Wilcox about that.

Hawk. Did you not say to Mr. Wilcox, that your brother Larimore told you that he had lost the stone ring, and five-shilling piece of silver, (which as he pretended was found in my house) before the difference began betwixt me and your brother; and moreover that your brother said he had an intent to search for the same a month before?

Beamsly replied, that he did not remember any such discourse.

Hawk. My lord, may I be heard a word or two.

L. C. B. You may go on.

Hawk. My lord, I suppose that I can prove these Particulars.

1. That Larimore told Beamsly that he had

lost this gold ring and five-shilling-piece of silver now in question, before there was any difference between Larimore and myself, which began in Michaelmas term 1667. This was proved by Mr. Wilcox.

2. And that Larimore confessed upon his oath before sir John Croke (upon the 19th of Sept.) when I was committed, that he lost the said ring and piece of silver about a month before, which must be about Aug. 19. This was proved by Mr. Brown, Faulkner, and others.

3. I can prove that Larimore told sir Richard Pigott, when he went for his warrant to search, that he did suspect several persons for robbing him of this gold ring and five-shilling-piece, and that I was only one of the suspected persons. This sir Richard Pigott did acknowledge to be true.

But now he swears that he saw me steal the gold ring and five-shilling-piece out of his house on Friday the 18th of September, an hour and a half before sun-set, 1668.

Hawk. I pray, my lord, and you that are of this jury, take notice of this, and compare the times out of his own mouth; but more of this when I come to make my defence.

L. C. B. Larimore, have you any more witnesses?

Lar. Yes, my lord.

L. C. B. Call them, who are they?

Lar. Call Margaret Larimore.

Margaret, the wife of Henry Larimore being sworn said, That, when she was a servant to Larimore, which now is her husband, she had seen Mr. Hawkins, at several unseasonable hours in the night (when her master was in bed) lying lurking in and about her master's house, yard, windows, and doors, and said, that she believed he lay there for no good intent.

Hawk. My lord, may I ask this woman a question or two?

L. C. B. You may do so if you please.

Hawk. At what time was it, Margaret Larimore, that you saw me lurking in your master's yard, as you have said?

Marg. Lar. It was in the night time.

Hawk. But how long may it be since?

Marg. Lar. I can't tell, it might be about the time that my master was robbed. [Here Larimore prompts his wife, which I told my lord, for which he checked him.]

Hawk. Did you speak, or call to me, when you saw me there?

Marg. Lar. No, for I was affrighted at it. This same was also sworn by Richard Mantill, alias Miles, son-in-law to the said Larimore, and also by William his son, which for brevity sake I omit farther to relate.

L. C. B. Larimore, have you any more?

Lar. Yes, my lord, to prove that this ring and five-shilling-piece is mine.

L. C. B. Call them, who are they?

Lar. Esq. Dodsworth; sir John Croke's eldest son, and Mr. Good, minister of Long Crendon, my lord.

Clerk. Crier, call Dodsworth Croke, Esq. and Edward Good of Long Crendon, clerk: both answered, Here, sir. They both being sworn,

Mr. Dodsworth Croke said as followeth, (taking the ring in his hand, turned it up and down, and looked very narrowly upon it within and without, and put it upon his finger, and pulling it off several times in the face of the court and country, he then informed my lord) That he was confident, that this was Larimore's ring; and for his proof and credit, tells the court, that he had pawned it to Larimore.

Mr. Good took the five-shilling-piece into his hand, and swore, that he being at Buckingham last sessions, about some trouble which I had put him to, he then wanting some money, did pawn a five-shilling-piece to this Larimore for other money; and he desiring of him to take care that he had the same piece again, Larimore told him that he put a mark upon it: so seeing a mark upon this five-shilling-piece, he swore that he did verily believe that this was the same five-shilling-piece which he had pawned to Larimore at the sessions before.

L. C. B. said to me, Sir, if you will ask the witnesses any questions, you may.

Hawk. I humbly thank your honour for that freedom; but I do humbly conceive that the proving of the last point, viz. that the ring and five-shilling-piece was either Larimore's own goods, or pawned to him, is not much material to my case; for I am free to confess (as much as I can have ground to believe), which is, that Larimore might have the ring and five-shilling-piece of silver in his possession; but the charge against me is, that I stole them from him, which I do flatly deny, and do not doubt of clearing myself when I come to my defence, if I may be heard.

L. C. B. Sir, you need not question but you shall be heard.

Hawk. I humbly thank your honour, and crave your leave to be heard a word or two (if it be not unreasonable.)

L. C. B. You may go on.

Hawk. May it please your honour, and the jury, to take notice that Mr. Good swears he believes this to be the five-shilling-piece that he pawned to Larimore last sessions at Buckingham, but I desire to know if Larimore swears that this is that piece which Mr. Good pawned then to him, for he best knows.

L. C. B. Larimore, what say you to that?

Lur. My Lord, I do swear that this is the same five-shilling-piece which Mr. Good pawned to me, the last sessions at Buckingham.

Hawk. Then, my lord, and the jury, be pleased to observe, That sessions was held upon the 9th and 10th of July, 1668, but the difference between me and Larimore (for tithes) was begun in Michaelmas-Term, 1667, which is near nine months before that sessions; and notwithstanding Larimore did say to his brother Beamsly, upon the 19th of September, that he had lost this very ring and five-shilling piece of

silver before the difference began, which is impossible, my lord, as appears by the oaths of Larimore and Mr. Good; for how could he be robbed of that five-shilling-piece nine months before he had it? And that he did say the very words to his brother Beamsly we have already proved, by the testimony of Mr. Wilcox.

L. C. B. said, Mr. Hawkins, was this suit for tithes begun by you against this Larimore before the time that Larimore swears this felony was committed?

Hawk. Yes, my lord, for I began that suit for tithes in Michaelmas-Term, 1667, and Larimore swears that I robbed him upon the 18th of September, 1668, which is, my lord, about a year after. My lord, it is an easy way thus for the fanatics to pay tithes; if they can but hang up the clergy, they may cease all their future pleading for liberty of conscience.

Now Larimore began to stumble, and shew his malice in prosecuting me unjustly, by his multiplying of feigned felonies, wherewith he did then endeavour to load me, of which I appeared innocent.

L. C. B. Larimore, have you any more?

Lur. Yes, my lord, Pray call John Chilton.

Clerk. Crier, call John Chilton.

Crier. John Chilton: who answered, Here, Sir; and being sworn, my *L. C. B.* said to him, Come, Chilton, what can you say to this business?

John Chilton said, My lord, I can say nothing but that I am paid for my boots.

L. C. B. What boots?

Chil. My lord, I am paid for my boots.

L. C. B. Our business is not now about boots, but however, come and tell me what thou meanest by them?

Chil. My lord, Mr. Hawkins brought me a pair of tops, to put new legs to them, which I did, and he coming by my shop, told me he wanted his boots; I replied, they were done: but I being then about to go out, did promise Mr. Hawkins, to lay them in my window, so that he might take them as he went home, which accordingly he did; and when I came home I went to Mr. Hawkins, who at that time was at sir John Croke's house, where he contented me for my work before we parted: and this is all that I can say, my lord.

L. C. B. What is this to the purpose? Can you say any more, Chilton? If you can, go on.

Chil. My lord, Mr. Hawkins paid me honestly for the boots: but as soon as he began to demand the tithes of Chilton, and did sue for them, then they lay at me night and day to have me charge Mr. Hawkins with flat felony, for stealing the said boots out of my shop; but I told them, that I laid them in my shop-window for him, and did bid him take them as he came back; and he paid me for my work, and therefore I cannot say he stole them.

L. C. B. Who were they that desired you to charge Mr. Hawkins with the stealing of your boots?

Chil. This Larimore, Mr. Dodsworth Croke, Richard Mayne the constable, Miles and John

Saunders (who is since dead, my lord).—Larimore here interrupted Chilton, and said, My lord, I have five or six witnesses that can prove that all this is false which Chilton hath sworn.

L. C. B. Call them, for I will hear all, if I sit until eight.

Then Larimore called Dodswoth Croke, William Croke, John Stop, Thomas Welch, Samuel Selter, and William Saunders; all these being sworn, the sum and substance of their evidences was to this effect:

That they had heard John Chilton say, that I had stolen a pair of boots from him, to which Chilton (being then upon oath) said, that Mr. Hawkins did no otherwise than what before I have sworn; and he further added, that he never said that I had stolen any thing from him, for he had no reason for it.

L. C. B. Did this Larimore desire you to charge this Mr. Hawkins with felony? And when did he desire you to do so?

Chilton. My Lord, Larimore, and the rest that I have named, desired me to charge Mr. Hawkins with flat Felony, for stealing the said boots, as soon as he demanded the tithes of Chilton; and they would have forced me to fetch a warrant from a justice of peace to search for them, and did further threaten me, in case I would not do it, that sir John Croke would indict me at the assizes, as one accessory to the stealing of my own goods.

L. C. B. Was Larimore one of them?

Chilton. Yes, my lord, and he said, that he would make me swear that Mr. Hawkins had stole my boots, and for that end did serve me with a Subpoena to be here.—Here Larimore the second time interrupted Chilton, and said, My lord, this fellow (pointing at John Chilton) is hired by Mr. Hawkins to swear this.

Chilton replied, No, my lord, I am not hired by Mr. Hawkins to swear, but I might have been hired, or borne out, if I would but swear that Mr. Hawkins stole my boots, by one Croxstone.

L. C. B. How! what is that! hired or borne out to swear? By whom, and how? Tell me the story.

Chilton. My lord, I am not hired to swear by Mr. Hawkins; but if I would swear that he stole my boots out of my shop, I might have been borne out in so doing. For Tho. Croxstone, of Westone on the Green, in the county of Oxon, told me upon Monday last, it being the 8th of March 1668, that if I would but swear what he would have me against Mr. Hawkins (viz. that he stole my boots) he would bear me harmless; but I replied, that it went against my conscience to do it. I added further, that if I should be so wicked as to swear it, Mr. Hawkins can prove the contrary by Mr. William Croke and others; to which Larimore replied, that I need not fear what Mr. Croke knew in that case, for he is one of us, and will not justify any thing that may tend to our prejudices. I farther told him that I durst not do it; for if I should, Mr. Hawkins might make

me fly the country, as Smart did Wheeler: to which Croxstone replied, that if I would swear it, he would bear me out against the said Mr. Hawkins as far as an hundred pound would go, and if that would not do, as far as five hundred pound would go.

L. C. B. How! bear you out to swear! What Croxstone is this that would do so? This is not likely to be true.

Tho. Croxstone said, My lord, I said no such thing.

L. C. B. I do not believe it to be true.

Chilton run in, and said, As I live and breathe, my lord, Croxstone did say, if I would swear that Mr. Hawkins had stole my boots, he would bear me out, as I said before, and if I made any doubt of it, he would give me bond to make good his promise.

L. C. B. said, This is strange.

Croxstone. My lord, I said I would bear him out in speaking the truth, and no otherwise.

Hawk. My lord, may I be heard?

L. C. B. Yes, you may go on.

Hawk. I thank your honour. My lord, pray let me ask Mr. Croxstone two or three questions.

L. C. B. So you may; go on.

Hawk. Mr. Croxstone, do you confess that you did promise to bear out Chilton (as you said before) in swearing the truth?

Croxstone. Yes, sir, I did, and no otherwise.

Hawk. Was it not about the boots?

Croxstone. Yes, sir, it was so.

Hawk. Did not you desire Chilton to swear that I had stolen his boots, after that he had told you I had paid him for them, and thereupon promise to bear him out against me, in 100 or 500*l.*

Croxstone. I think you cannot prove it against me.

Hawk. I pray, my lord, and you of this jury, consider that this Chilton is one of Larimore's witnesses, and swears for the king, yet he swears that he had given me orders to take those boots, and that I then paid him for legging of them, and that he had repeated this to Larimore and Croxstone several times; and after all this, Larimore and Croxstone, with others, used their utmost endeavours to persuade Chilton to charge me with felony for stealing them, and Croxstone promised him to bear him out in so doing, as far as 100*l.* would go, and if that would not do, as far as 500*l.* and give him bond for his security, &c. My lord, if this amounts not to a subornation, I am mistaken. But my lord, I have two witnesses more to prove the same against Mr. Croxstone, and I pray that they may be heard.

L. C. B. Who are they?

Hawk. Ann Scoly, and John, the son of Mr. Tho. Sanders. Both these being called, justified in court what Chilton had sworn against Mr. Croxstone: Upon which my Lord Chief Baron said to Croxstone, Come, you did ill to solicit persons to swear these things

which you knew were false; and 'tis farther added, that this made not for the king, but rather for the prisoner at the bar. After all this, a rude fellow (Thomas Welch) came in, and said, my lord, I did hear Chilton say, that Mr. Hawkins had stole a pair of boots from him.

L. C. B. What, more boots still? Come, Larimore, have you any more?

Larimore said, Yes, my lord, one Mr. Boyce; who being sworn, said, That at a certain time, he coming into a house at Chilton, found this Mr. Hawkins, now the prisoner at the bar, and one James Noble (which Noble was then drunk, and asleep upon a bed), and I saw Mr. Hawkins have his hand in Noble's pocket, and the said Noble told me, that at that time he lost a gold ring and a piece of gold out of his pocket.

L. C. B. said to me, Sir, what say you to that?

Hawk. My lord, I desire to know if there be any bill or indictment against me for it.

Clerk. There is none, my lord, that I do know of.

Hawk. I desire, my lord, that Noble may be sworn, if he be here.

Lar. He is not here, my lord.

L. C. B. Why was not that Noble here himself to prosecute?

Lar. I could not find him, my lord.

Hawk. I desire to know whether Boyce came hither of his own accord, or if he be subpoenaed to be here; (if so) by whom, and who bears his charges?

Boyce. I was subpoenaed by Larimore, and he bears my charges, my lord.

Hawk. How long was it since, Mr. Boyce, that you saw my hand in Noble's pocket, as you said before?

Boyce. It may be near two years ago, my lord.

Hawk. Did you see me pick (or take) out of the said Noble's pocket, the said ring, or piece of gold or any thing else?

Boyce. I saw your hand in Noble's pocket, but did not see you take any thing out of it.

Hawk. Did Noble ever tell you, that I had picked his pocket of the said ring, or piece of gold, or any thing else?

Boyce. No; but said, he lost them at that time.

Hawk. But you say, that Noble was drunk at that time, and if so, it is possible he might be mistaken.

Boyce. So he was drunk, and asleep likewise.

L. C. B. I think you were all drunk.

Hawk. Boyce, you might have done well, to have told Mr. Noble of this, when he told you that he had lost his ring and piece of gold; but can you say any thing touching Larimore's being robbed, or do you know that I am the person that robbed him?

Boyce. No, not I, my lord, I cannot charge him.

Hawk. But you say that Larimore sub-

pœnaed you to be here, and that he bears your charges?

Boyce. Yes, my lord, and so he does.

Hawk. Mr. Boyce, if this be all you can say for Larimore, you will hardly requite his charges!

Hawk. My lord, may I be heard, as to the evidence of Boyce?

L. C. B. You may go on.

Hawk. I humbly thank your honour.

Hawk. This Boyce swears, my Lord, that about two years last past he saw my hand in Noble's pocket, and that Noble told him, he then lost a gold ring and a piece of gold. My Lord, I think, with submission to your honour and the Court, I am not bound to answer to this charge, because there is no indictment exhibited against me for it, nor is Noble himself here to prosecute, or can Boyce swear that I picked Noble's pocket, or that Noble ever told Boyce I did (as he himself swears). But, my lord, I observe in this the malice of Larimore's heart, as well as in that of the boots; for Boyce swears, that he can say nothing to Larimore's bill of robbery, and yet he forces him to come from London hither, to start a senseless story about Noble's ring and gold, which is of near two years standing. My lord, if there had been any truth in it, why was not Noble himself here to prosecute it? And why did he let it rest so long? I say again, my Lord, if it had been true that I had picked Noble's pocket, and if Larimore had known it, I pray, my Lord, and you of the jury, what had that concerned Larimore? But, my Lord, I am as clear of picking Noble's pocket, as I am of stealing Chilton's boots, and as clear of both these as I am of robbing this fellow Larimore, that now calls my life in question: Nay, if he can fairly prove me guilty of one, I am willing to suffer as guilty of all.

My Lord, I am bold to appeal to your honour, whether it be a fair prosecution in Larimore, to stir up Chilton falsely to charge me with felony in stealing his boots, when I had not only a right in them, but also leave from him to take them, and paid him for his work, which Larimore himself knows. Nay, my Lord, if I had never paid Chilton for his legs, the tops being mine, by law it had not been felony, but a trespass, because I had leave from him to take them, and right in them, the tops being mine. And again, my Lord, I appeal to your honour, whether it be fair in Larimore for him to ride up and down city and country, to bring a multitude of witnesses together that can say nothing to this bill (as Boyce swears he cannot): If this doth not discover malice in a prosecutor's heart, I know not what doth; and if that appears to your honour and the jury, to be in him, how far that ought, as well by law as equity, to frustrate his evidence, I am willing to leave to your honour and the jury; and so I have done as to Boyce's evidence.

L. C. B. Larimore, have you any more?

Larimore. Yes, my Lord, John Cox, and Francis Lucy. They being both sworn;

John Car said, My Lord, I being in Mr. Hawkins's company not long since, one asked him, how he thought to come off at the Assizes: Mr. Hawkins replied, he cared not much for this plot (though he should be convicted), for they could but burn him in the hand for it, and that he could bite out.

Lacy being sworn, said, that he heard Mr. Hawkins confess, that he owed Larimore 15s. but because he had dealt so unjustly with him, he would make it cost Larimore fifteen times 15s. before he would pay him.

L. C. B. said, This makes little to the purpose. Come, Larimore, have you any more?

Lar. I think not, my Lord.

L. C. B. If you have any more witnesses, call them, and they shall be heard, and do not say, when I am gone, that your witnesses could not be heard.

Lar. My Lord, I confess they have been fully heard, and I have no more to say.

L. C. B. said to me, Sir, you have heard the Indictment against you, and the evidence to prove it; you have heard the charge, now say what you can for your own defence, and you shall be heard.

Hawk. I humbly thank your honour; and I hope, my Lord, because the evidence is large, I shall have the more time allowed me to make my defence; and if so, I doubt not but fully to open this conspiracy.

L. C. B. Do not fear that; for as they have been heard at large, so shall you likewise (God forbid else).

Hawk. I humbly thank your honour, and do promise to be as brief as conveniently I can: And as I intend to offer nothing but the naked truth, so I will say no more, if I am not misinformed, than I can prove to be true. And, my Lord, because it may seem necessary for me to offer many things by way of defence, in answer to so great a charge; to save time, I pray that it may not be expected by your honour, or the jury, that I should call witnesses to prove every particular: But when I offer such things as are most material, if either your honour or the jury be not fully satisfied touching the truth of such material points, I do humbly pray, that I may be called upon to prove them; for when I am not called upon for proof, I shall, under favour, my Lord, take it for granted that I am believed. And for method herein, if I may have leave, I do intend this:

1. In general, to shew how improbable it is, that I should be guilty of this robbery, and also deliver some hints to move the Court and jury to question whether this prosecutor (Larimore) was robbed at all, or no.

And 2dly, More particularly to examine the evidence, as to matter of fact.

L. C. B. Go on, Sir, to your defence.

Hawk. May it please your honour, and you of this jury, I begin with the first part of my defence, which is to hint how unlikely it is, that I should be guilty of robbing this Larimore.

1. Larimore is generally known to be a

notorious Anabaptist, and an enemy to the Church of England, and a hater of the ministry in general; but more particularly, he is most envious and malicious against myself, because I sued him for tithes, and caused him to be indicted for not coming to church, or baptizing his children: For which reason his malice against me hath appeared notorious several ways, as amongst others,

1. By dissuading all that owed me any money, not to pay me.
2. By his inducing those to whom I owed money to arrest and trouble me.
3. By dissuading those that I sued for tithes not to agree with me; he promising them, that sir John Croke and himself would force me to run the country ere-long.
4. By his continual tormenting, and vexing me with his false arrests, and illegal indictments.
5. By his constant endeavour to dissuade my friends from any ways relieving me, or ruine, in my greatest wants and necessities, advising them to starve us.

My Lord, and this jury, if you are not fully satisfied in any of these particulars that I have alledged, I am ready to prove them; but if this be granted, they are no doubt sufficient arguments to prove the malice of his heart. Again I say, that it is no ways possible that Larimore was robbed at all; and of this opinion are most of his neighbours round about him, as may appear by this certificate, which followeth;

“ We do humbly certify, that Henry Larimore of Chilton, in the County of Bucks, labourer, is a notorious Anabaptist, an enemy to the Church of England, and a perfect hater of all ministers of the same, but in particular, most inveterate and malicious against Robert Hawkins, clerk, late minister of the church of Chilton aforesaid; for that he doth not only seek and design utterly to ruin the said Mr. Hawkins himself, but makes it his business, and daily practice, to instigate others to do the like, and for no other cause, as he hath often confessed himself, but for that the said Hawkins hath caused him to be indicted for not coming to church, and sued him for tithes. And we do verily believe, and are justly satisfied in our consciences, that the said Mr. Hawkins is not at all guilty of the pretended felony, in stealing the ring, and piece of silver, which the said Larimore hath charged him with, but that it is meer contrivance inchoated, and set on foot by the said Larimore, Sir John Croke, and others, on purpose to revenge themselves. And we do also believe, that the said Mr. Hawkins is a very honest man, and that he is a very able minister, and a true and faithful labourer in God's wore, and never heard that he was suspected in the least of Felony, till this malicious prosecution, which is by the said Larimore and others, whom the said Mr. Hawkins sueth for tithes.

Witness our hands, March 8, 1668.

Michael Read, gent.	Richard Budd
William Read, gent.	John Budd
Mrs. Bulstrode, wid.	Thomas Higgs
Mr. John Bulstrode	Roger Gye
John Turner	Robert Coxhead
Joseph Parsons	William Hitchcock
Nicholas Faulkner	John Powel
Mr. William Bulstrode	Luke Turner
John Chilton	Richard Badger
The Widow Paverell	John Golder
Robert Sanders	John Newton
Christopher Hinton	William Collet
John Mortimer, sen.	John Beckley
Mr. John Daniel	Richard Kemp
Mr. John Clarke	The Widow Acreman
The Widow Clare	Robert Flint
William Landsdell	William Beckly
William Bouden	Robert Hicks
John Newman	John Barney
Thomas Coles	Robert Steele
The Widow Newman	Stephen Toms
Robert Barlow	Robert Willet
Theophilus Sanders	William Neighbour
John Sanders	Will. Chittle
John Mortimer, jun.	Henry Parker
Mr. Henry Golder	William Ash
Mr. Thomas Sanders	John Golder, jun.
Mr. Henry Lovell	William Golder
Mrs. Lovell, Widow	William Tipping
Owen Gibson	Richard Goodwyn
Mr. Tho. Sanders, sen.	John Bosley
Robert Casemore	Moses Collings
Edward Jarvice	Roger Carr
Thomas Green	John Cato
Edward Barker	William Hayward
John Grace	Edward Hollyman
John Freeman	Abraham Quelch
Richard Carr	John Pymm
John Carr	John Carter
John Acreman	William Toms
Thomas Whyte	Robert Budd
Thomas Ludet	William King
The Widow Meades	Cadwalider Crawton
Richard Toms	William Ash
Joseph Nero	Thomas Whyte, sen.
Richard Low	Thomas Whyte, jun.
John Culledge	David Turner
Richard Waude	Jonathan Hand
Theophilus Hinton	John Young
Edward Clarke	John Bedford
Jeffery Hart	John Norcutt

By this certificate, which you see subscribed with above an hundred names, wherein many others (for brevity sake) are omitted, although I made no use of it upon my trial; yet the world may see what an opinion Larimore's neighbours had concerning him, and his (pretended) robbery; which certificate I have for that purpose here inserted.

2. It is not likely that Larimore was robbed because he did not declare it to his neighbours immediately, which doubtless he would have done, had any such thing befallen him.

3. Nor is he certain (as to the time) when he was robbed.

For 1. He told his brother Beamsly, that he had lost the ring and five-shilling-piece (in question) before there was any difference between him and I: as may appear by this certificate under Mr. Wilcox's own hand, which is as followeth;

'These are to certify all whom it may concern, that Thomas Beamsley of Chilton, Titching-man, told me, Charles Wilcox, of Long Crendon (upon September 19, in the 30th year of his majesty's reign, An. Dom. 1668), that the five-shilling-piece of Silver, and the stone ring, which Larimore pretended he found in Mr. Hawkins's house, were both lost before there was any difference between the said Larimore and the said Mr. Hawkins; and he further added, that his brother Larimore told him, that he had an intent to search for the same ring and five-shilling-piece, above a month before he did. This I can and will depose, whensoever I shall be thereunto required. Witness my hand, Oct. 1, 1668.

CHARLES WILCOX.'

By this certificate, it appears (by Larimore's own confession to his brother Beamsly) that he had lost this ring, and five-shilling-piece, before there was any difference between him and I; and seeing I began my suit for tithes in Michaelmas term, 1667, against him and others, as it is well known to the inhabitants of Chilton (and also may appear by the records of the exchequer).

This is the first time that Larimore said he had lost the ring, and five shilling piece.

And that this is false, must needs appear by what Mr. Good and Larimore have already sworn in open court, viz. that Mr. Good pawned the five shilling piece to Larimore at Buckingham sessions last (which sessions were held upon the 9th and 10th of July, 1668), which is near nine months after the difference began.

And moreover, Larimore confessed upon his examination before sir John Croke, when I was committed (which was upon the 19th of September, 1668), that he had lost the ring and five-shilling piece a month before, which must (consequently) be about the 19th of August, 1668.

And if so, how is it possible that he could have lost them before the difference began betwixt us, which was above ten months before?

3. He now swears in open court, that he saw me steal the said gold ring, and five shilling-piece of silver, out of his house, upon Friday the 18th of Sept. 1668 (precisely), an hour and half before sun-set; all which times being compared together, can no ways be possible; for which I dare appeal to all that hear it. Nor is it likely, in case he could prove that he was robbed (which I am confident he never can) that I am the person that robbed him; as may appear upon these considerations amongst others.

1. Is it likely that I should commit a robbery in my own parish (in the day time), where all that saw me most needs know me, and at the house of such a person as this Larimore is, that

had solemnly swore (but a little before) that he would take away my life, as may appear by what his son said to Ann Scholy?

2. Is it probable, that if I were guilty, I would not have made my escape, having twenty four hours time, and four or five hours notice after they first attempted to search my house? Or that in all that time, I could find no better place to conceal a ring, and five-shilling piece, than in a little basket with two or three eggs (which all that time was hanging upon a pin)?

Again, if Larimore saw me rob him upon the 18th day of Sept. 1668 (as he swears he did), why did he not then secure me? He swears I ran away, why did he not send out Hue and cries, to discover and apprehend me? But the said Larimore was so far from doing it, that he never declared it to any of his neighbours, nor to the constable, when he commanded him to search, as may appear as well by the search itself, (in that they searched other houses before they searched mine) as by the constable's oath who swears that Larimore said not any thing to him, that he had seen me rob him; nor did the said Larimore declare it to sir John Croke, for if he had, sir John (no doubt) would have inserted it in the Mittimus, which he hath not done: Nor did he declare it to sir Richard Pigott, from whom he fetched his warrant to search, as may appear by the contents of it. Whereupon, my lord chief baron Hale calling to the constable for the warrant (which being delivered), the Judge (himself) immediately espied, that the said warrant bore date a day before the robbery was committed; which when my Lord observed, he asked Larimore if he fetched this warrant to search for this ring and five-shilling piece; to which Larimore replied, he did; and then my lord asked Larimore upon what day he was robbed, he replied upon Friday, the 18th of September, 1668.

L. C. B. How comes it then to pass, Larimore, that the warrant bears date the 17th day, and you swear that the prisoner at the bar did not rob you till the 18th day? This is likely to be true!

Larimore to this replied, that he was robbed at several other times.

Hawk. (My Lord) may I be heard a word?

L. C. B. You may go on.

Hawk. I humbly thank your honour. And I hope the jury will take notice how Larimore hath ensnared himself, by the date of the warrant, which my lord first discovered. And whereas Larimore replies, that he was robbed at several other times, he may have credit (but by those only that can believe all that he hath said and sworn): For he saith, that he was robbed before he and I differed, which must be before, October, 1667: and he told sir John Croke likewise (when I was committed) that he was robbed of the foresaid goods but a month before which must needs be about the 19th of August 1668; but now he swears in court, that he saw me steal these goods on Friday the 18th of September, 1668, which must needs be impossible, that I should rob him at three several

times of the same ring and five shilling piece; and besides this, it is improbable that he should be robbed before, October 1667, and again in Aug. 1668, because he never declared any of these robberies to any person before the 16th of September 1668, upon which day, he and sir John Croke concluded upon this conspiracy, as hereafter we shall make appear: And moreover Larimore (himself) confessed even now, that he fetched this warrant to search for this very ring and five-shilling-piece (which now he denies.) By this, all may see, how notoriously he contradicts himself.

L. C. B. Said to Larimore, Thou art very cunning, to be provided with a warrant a day before you was robbed. It seems you knew upon the 17th day, that you should be robbed on the 18th day, and also that this person, (now at the bar) should rob you. Surely you can divine.—Here the people began to cry out Shame on Larimore.

L. C. B. said to me, Sir, but if you were innocent of this robbery, why did you refuse to open your doors, or to have your house searched?

Hawk. My lord, I had several reasons that moved me so to do.

1. In general, most of those persons, that were present, were my inveterate enemies, and several of them had threatened to ruin me, and my family; and therefore I had reason to suspect, that they came to injure me, either in my possession, or goods; For the first, sir John Croke and Larimore had often threatened to pull down my house, and for that end, had hired several persons to make a forcible entry upon it, and particularly, they had lately hired Jaires the son of Leonard Styres of Thame (in the county of Oxon), by a ladder to climb up, and run down my chimney, and open my doors, when we were all abroad: And about the same time they also contracted with one Christopher Tyler of Chilton for the same purpose. And 2. I feared the seizing of my goods by the said persons, because they had then a writ of Levary (or execution) to seize them, which Larimore's son had a few days before in part executed, and he was then present: And if these reasons are not sufficient, I have more to justify my act, in refusing to have them search my house, which was all, my lord, I ever denied, for I then declared myself willing that Mr. Sanders the other constable, he being then at the next door, might charge whom he pleased, and search as narrowly as he could.

L. C. B. said, Mr. Hawkins, can you prove what you have said?

Hawk. Yes, my lord; which particular shall I prove?

L. C. B. Prove that about the ladder, if you can.

Hawk. I pray, my lord, call John Acreman: He being called, did fully justify what I said concerning their intended forcible entry, and added further, that he did help to set up the ladder for that purpose, being called by sir

John Croke's own sons, they and Larimore standing by all that time to watch. And touching the second particular, concerning the seizing of my goods, Mr. Sheriff himself can justify, that they had then in their hands such a writ: (my lord) he is in court, if your honour please to call him.

And for the 3d particular, that I shewed myself willing that Mr. Sanders should search, I can prove, my lord, by these witnesses following, viz. Michael Read, gent. Mr. Thomas Sanders, Mr. Henry Golder, Robert Casemore, Mr. Charles Wilcox, and several others that were present. My Lord Chief Baron hearing these reasons fully proved, commended my discretion, in not opening my doors; and he added further, that he should have done as much himself, saying it was a foul business; and the judge (then looking towards sir John Croke with an angry countenance) said to me, Sir, is this sir John Croke concerned in this business?

Hawk. If it may please your honour, my lord, with permission, I suppose that sir John Croke is deeply concerned in this conspiracy, and I doubt not but to make it appear to the world (if I may be heard).

L. C. B. You need not fear that, for you shall have time; go on.

Hawk. I humbly thank your honour; and I crave leave to call two witness, viz. Mr. Charles Wilcox, and Mr. Samuel Brown. Both these being called, Mr. Wilcox said, If it may please your honour, my lord, upon Friday, the 18th of September, 1668, I was at Larimore's house in Chilton (from noon till it was near night), with Larimore, a driving of some bargain about tiles, and other things; and, my lord, Mr. Hawkins was not at Larimore's house all that afternoon, nor did I hear any thing at all then, that Larimore was robbed, which, my lord, I must needs have done, if he had been robbed that afternoon, for I was there.

L. C. B. At what time came you to Larimore's house, Mr. Wilcox? take heed what you say.

Wilcox. Before noon, my lord.

L. C. B. Mr. Wilcox, how long did you stay there?

Mr. Wilcox. Until it was near night, my lord.

L. C. B. Was Larimore with you all that time?

Mr. Wilcox. Yes, my lord, for we were about to bargain for some tiles, and other things.

L. C. B. Are you sure that it was upon the 18th of September that you was at Larimore's house?

Mr. Wilcox. I am sure, my lord, that it was upon the 18th of September that I was there, and the day before Mr. Hawkins's house was broke open.

L. C. B. What day of the week was it upon?

Mr. Wilcox. It was upon a Friday, my lord, and Mr. Hawkins's house was broke open on the next day, it being Saturday.

Lar. It was upon Thursday; my lord, that Mr. Wilcox was at my house, it was not upon that day that my house was robbed, but the day before.

Sir Ralph Verney replied, No, no, Larimore, it could not be on the Thursday that Mr. Wilcox and you were together at your house, for that was the 17th day of September, and that was the day you was busied in fetching your warrant from sir Richard Pigott.

L. C. B. It is well observed, sir, and so be was, and therefore it could not be on the Thursday that Mr. Wilcox was with him at his house.

Sir Richard Pigott replied, I am sure, my lord, that Larimore, and that fellow the constable, were both at my house upon the 17th of September, as my warrant testifieth.

L. C. B. At what time was it, Mr. Wilcox, when you came that day from Larimore's house?

Mr. Wilcox. It was about sunset, my lord, for it was dark by that time I got to my house, at Crendon.

L. C. B. How far is it, from your house at Crendon, to Larimore's house?

Mr. Wilcox. It is about a mile and a half, my lord.

L. C. B. Were not the ways bad at that time?

Mr. Wilcox. No, my lord, the ways were very good.

L. C. B. Did not you stop, or stay, or meet with some body by the way that might hinder you?

Mr. Wilcox. No, my lord, I went a good pace; it being near night, my lord, I was afraid of being benighted, and yet it was dark by that time I got home.

L. C. B. You that are of the jury, do you know this Mr. Wilcox, of what credit is he?

Jury. We have known him a long time, and we know no harm by him.

L. C. B. He looks with an honest face, and you Larimore, do you know what that honest man, Mr. Wilcox, says? Do you know him? and did you ever see him at your house?

Lar. Yes, my lord, I know him well.

L. C. B. Larimore, do not you remember that he was at your house on Friday the 18th of Sept. 1668?

Larimore replied, No, my lord, sure it was not upon that day that I was robbed.

My *L. C. B. Hale* replied, Larimore, no, in my conscience thou sayest well, for it seems you were not robbed upon the same day that you have sworn you saw the prisoner at the bar commit this robbery.

Hawk. My lord, or upon any other day (as I do verily believe.) And here many of the people cried out, That they believed as much.

L. C. B. If that man Mr. Wilcox speaks true, then all is false that Larimore, his son and sister hath sworn, &c.

Come, Mr. Hawkins, said my Lord Chief Baron, have you any more to say?

Hawk. I have one witness more that I desire may be called, viz. Mr. Samuel Brown.

L. C. B. Yes, yes, call him; come, Mr. Brown, what can you say?

Mr. Brown said, My lord, I can say something, but I dare not speak.

L. C. B. Why dare you not? Come, speak the truth and spare not, and say no more.

Mr. Brown said, I dare not speak, for sir John Croke and this Larimore have threatened me, that if I came down to this assizes to testify what I heard about this plot, sir John Croke said, he would fling me in the gaol, and load me with action upon action of 1,000*l.* and ruin me and my family.

When the Judge and the Justices heard Mr. Brown relate this, every eye began to be fixed upon sir John Croke, and the people asked which was that sir John Croke? Then my Lord Chief Baron Hale commanded the clerk of the assizes to give Mr. Brown a writ of privilege, to protect him home again; which being immediately done in court, my *L. C. B.* said, Come, Mr. Brown, let us now hear what you can say to this business.

Mr. Brown said; If it please your honour (my lord) upon Wednesday, the 16th of September last past, early in the morning, as I lay in my bed at sir John Croke's house in Chilton, hearing a great noise (I being then entrusted by sir John Lentall as keeper to sir John Croke, which is a prisoner at the King's-bench), I fearing that they were contriving some way for him to escape, I started suddenly out of bed, having nothing on but my shirt, and stood at the dining-room door behind the hangings, and then, my lord, I heard this Larimore tell sir John Croke that he had undone him, by causing him to contend with the parson. Sir John Croke asked him why? Larimore replied, Because this Hawkins will undo me, for he hath entered me into most courts of England, and summoned me into the Crown Office and Chancery, and I cannot maintain so many suits: sir John Croke replied, Is that all? Come brother Larimore, be contented, we will have one trick more for Hawkins yet, which shall do his work. Larimore replied, Sir John, you have put me upon too many tricks already, more than I can manage, and the parson is too hard for us still. Sir John replied, If thou wilt but act, I will hatch enough to hang Hawkins. Larimore replied, But how shall we bring this to pass? Sir John Croke made answer, Canst not thou convey some gold or silver into into Mr. Hawkins's house, and have a warrant ready to search his house, and then our work is done? Larimore replied, Sir, if we could but bring this to pass, it might do well, but I know not how. Sir John Croke said to Larimore, Do you but go to sir Richard Pigott and inform him, that you have lost some money and goods, and desire his warrant to search for them, which sir Richard neither can nor will deny you, and then take Dick Mayne the constable, who is one of us, and will do whatever we desire him, and go and search Mr.

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Hawkins's house, and there you will find these things; and then charge him with flat felony, and force him before me, and no other justice, and I'll send him to gaol without bail. And we will hang him at the next assizes. Come, (said sir John Croke) brother Larimore, let us go and drink our morning's draught, and we will consult more about this business. And so, my lord, I heard no more for that time. But—

L. C. B. That was enough and too much too; but however, Mr. Brown, go on.

Mr. Brown. So upon Saturday next (being the 19th of Sept. 1668.) I having been abroad (and towards night) coming up the towr, I was informed that Mr. Hawkins (as Larimore pretended) had robbed him: I then began to think more seriously upon what I had heard pass the Wednesday before, between sir John Croke and this Larimore, and coming to sir John's house, I saw a paper lying upon the hall-table, full of writing, and Larimore with the constable, and several others, had brought Mr. Hawkins before sir John Croke, who committing Mr. Hawkins for robbing Larimore, as he pretended, took up the said paper and read it to the constable, and said, that it was Mr. Hawkins's Mitimus, which said Mitimus was written before Mr. Hawkins came to sir John Croke, as all that were there can justify. And on Sunday morning I went to an ale-house, where they had kept Mr. Hawkins all night, and there I saw Mr. H. go to the gaol, and then my heart began to tremble, and yet I durst not discover any thing of what I heard; but coming home, I said to sir John Croke, Sir, What, they have carried the poor parson to gaol? Sir John Croke replied, Yes, let him go, and the devil go with him, and more shall follow after; have I not often told you, that if my brother Larimore and I did but lay our heads together, none are able to stand against us? I replied, Yes, sir John, I have often heard you say so, but I never believed it until now.

L. C. B. Mr. Brown, is all this true which you have related?

Mr. Brown. Yes, my lord, all that I have said is true, and there sits sir John Croke (pointing to him with his finger), who knows that every word that I have said is true.

L. C. B. If but ever a word that Mr. Brown says be true, it is as foul a conspiracy as ever was heard of.

About this time sir John Croke stole away from the bench, without taking his leave of my Lord Chief Baron, or any of the Justices.

My L. C. B. said, Is this sir John Croke a gentleman, and contrives such plots as this? I never in all my days heard of the like: But I think once in this place I met with one something like it, but this far exceeds that, if this be true that Mr. Brown hath said.

But you of this Jury, there is an honest man (said my lord, pointing to Mr. Wilcox) he overthrows all; if that be true which he said, then all that is false which Larimore, his son, and sister hath sworn.

Larimore said, My lord what I have sworn, as to Mr. Hawkins is true.

My L. C. B. replied, Come, Larimore, thou art a very villain.

Larimore said, I wish that the ground may open, and swallow me, if any thing that I have sworn against Mr. Hawkins is false.

L. C. B. replied, Come, come, Larimore, thou art a very villain; nay, I think thou art a devil.

Hawkins. I hope your honour, and this jury, are by this time fully convinced, that sir John Croke is concerned in this plot; for, my lord, he hath appeared all along to be the grand contriver of it, as appears by Mr. Brown's testimony, and by what he said to Larimore before me and others. See their charge in those words.

L. C. B. Hale replied, I am fully satisfied, and so (I think) are all that heard it: And he said to the justices, Gentlemen, where is this sir John Croke? They replied, he is gone.

L. C. B. Is sir John Croke gone? He said, gentlemen, I must not forget to acquaint you (for I thought that sir John Croke had been here still), that this sir John Croke sent me this morning two sugar-loaves for a present, praying me to excuse his absence yesterday. I did not then know, so well as now, what he meant by them; but to save his credit, I sent his sugar-loaves back again. Mr. Harvey, did you not send sir John his sugar-loaves back again?

Clerk of the Assize. Yes, my lord, they were sent back again.

L. C. B. I cannot think that sir John Croke believes that the king's justices come into the country to take bribes. I rather think, that some other person (having a design to put a trick upon him) sent them in his name. And so taking the letter out of his bosom, shewing it to the justices, said, Gentlemen, do you know this hand? To which some of them replied, they believed it might be sir John Croke's own hand; which letter being compared with his Mitimus (for he had no clerk) and some other of his writings there it plainly appeared to be his own hand. So my L. C. B. seeing that (putting up the letter again into his bosom), said, he intended to carry that to London; and he added farther, that he would relate the foulness of the business, as he found occasions fit for it.

L. C. B. said, Mr. Hawkins, have you any more?

Hawk. My lord, I hope that the jury, and your lordship, is fully satisfied as to my innocency, if so, my lord; but if not, I humbly desire to know wherein I have not given full satisfaction, if any thing else shall be alledged against me, I humbly crave time and leave to answer it; for, my lord, I am confident, I can give a fuller satisfaction, if what I have said already be too short.

L. C. B. You of the Jury, what do you think? The prisoner at the bar desires to know whether you are satisfied as to the indictment; if not, you may do well to declare wherein you are not satisfied.

Jury. It is a very plain case, my lord.

L. C. B. And I think so too, but it is a very foul one.

L. C. B. said to me, Sir, have you any more?

Hawk. My lord, I humbly thank your honour and the court, for that great patience and liberty I have had, and intend to say no more, but with Quintilian I conclude, 'innocentia melior est quam eloquentia,' innocence is better than eloquence.

My Lord Chief Baron HALE'S Directions to the Jury were to this effect:

L. C. B. said, You that are of the jury, the prisoner at the bar stands indicted for robbing this Larimore, and you have heard at large both the prosecutor's evidence to prove him guilty (which if you do believe) I never heard a fuller. And 2dly, You have also heard the prisoner's defence, wherein (as I think) he hath as fully answered the same charge. I shall, First, repeat the evidence against him, which consists of two branches; the first is the prosecutor's proof of this indictment; and secondly, his charging him with other crimes of the like nature, as the stealing of Chiltou's boots, and the picking of Noble's pocket.

1. For to prove him guilty of robbing him, he observes this method:

First, He himself swears, that he saw the prisoner at the bar commit the robbery.

Secondly, His son and sister swear, that they saw him run out of the house at the same time.

Thirdly, He brings in four or five persons that swear the gold ring, and the five-shilling piece, was found in the house of him that is now the prisoner at the bar.

Fourthly and Lastly, He proves by two witnesses, that the gold ring and the five-shilling piece was pawned to him.

And for the first of these, Larimore swears, that upon Friday the 18th of September last past, he lockt his doors, between twelve and one of the clock at noon, and went out (leaving no body at home) to pluck hemp, about two furlongs from his house, where he stayed with the rest of his family till within an hour and a half of sunset; at which time, he coming home, found his doors open, and ran up into his chamber, and there through the chinks of the loft-boards he swears that he saw the prisoner, now at the bar, ransacking and rifling of a box, in which was at that time a holland apron, and a purse, in which purse was two gold rings, two pieces of gold, and nineteen shillings in silver, all which said rings, gold, and silver, with the said apron, he swears that he did see the prisoner now at the bar turn out of the said purse, take, and feloniously carry away, except one piece or two of the silver, and shews the very purse out of which he saw him take them. If you compare the evidence with the Indictment you may see the policy of the prosecutor; for he would gladly seem a moderate prosecutor, by indicting him for felony only, as the stealing of rings and money, &c. But by his evidence he would as gladly charge him with burglary

also, for he swears, he broke open or picked the locks of his doors, and box, which by law is the same.

And Secondly, To corroborate this his evidence, he brings in two witnesses more, viz. his son, and sister Beamsley, and they swear that they did, at the same time, see the prisoner that is now at the bar run out of Larimore's house, with a great bunch of keys in his hand, and he hid himself amongst beans and weeds: and note the keys, to intimate that, by the help of those, he picked Larimore's locks.

Thirdly, He brings in his son, Dodsworth Croke, the constable, and tithing-man, which all swear that they found this gold ring and five shilling piece of silver in a basket hanging upon a pin, in the house of the prisoner at the bar with a few eggs, which the prisoner at the bar the day before had stolen from him.

And Fourthly and Lastly, He brings in one of Sir John Croke's sons, and Mr. Good, who swear, that the one pawned the ring, the other the five-shilling piece to Larimore.

Thus Larimore swears he saw the prisoner rob him, his son and sister swear, that they saw him run out of the house, the same time four more swear, they found the ring and five-shilling piece in his house upon search: and lastly two swear that the ring and five-shilling piece was pawned to him. If all this be true, he must needs be guilty; and if so, although I have a great respect for his calling, yet that shall no ways excuse him, but rather aggravate his crime. And thus much touching the Indictment.

And Secondly, He seems to charge him with other acts of the like nature; as, 1. He brings in one Chilton to swear, that the prisoner at the bar did steal a pair of boots from him, and four or five persons swear, that they did hear Chilton say he did. 2. He brings in one Boyce from London, a person, I think, of no great credit; he swears, that he saw the prisoner at the bar about two years ago, have his hand in the pocket of one James Noble, and that Noble said, that he lost a gold ring, and a piece of gold at the same time. This (if true) would render the prisoner now at the bar obnoxious to any jury: thus far the evidence against the prisoner at the bar.

Now we come to the prisoner's Defence, which because it is so full, I shall be the briefer in it. The parts of his Defence were two, as himself observed. 1. He shews how too improbable it is. And 2. How, impossible that he should be guilty of this charge.

First, That it is not likely that Larimore was robbed at all, because he did not declare it to any of his neighbours, as soon as he saw the robbery committed; again, he varies as to the time when it was done, for that he told his brother Beamsly, that he had lost the ring and five-shilling piece, before there was any difference between him and the prisoner at the bar, as appears by Mr. Wilcox, and that difference began in Michaelmas term, 1667: and before sir John Croke he confessed that he had

lost this a month before the prisoner (viz. Mr. Hawkins) was committed, which must be about the 19th of August, 1668. And in court he swears that he saw the prisoner at the bar rob him of the same gold ring, and five-shilling piece of silver, upon Friday the 18th of September 1668, an hour and half before sunset; all this cannot be true; and for the warrant, that bears date a day before the robbery was committed. Whereupon the judge said to Larimore, Come, thou art a cunning fellow, for thou wentest to sir Richard Pigot for a warrant on the 17th day and was not robbed until the 18th day; Larimore, thou knowest, it seems, upon the 17th day, that thou shouldst be robbed on the 18th day, that the prisoner now at the bar should rob thee: surely, thou canst divine, if all this be true. Again, it is likely, that when the prisoner at the bar was charged with flat felony at his own doors, the constable likewise threatening to break open his house to search, if he had been guilty, his wife and himself having the opportunity of going abroad after they had so charged him, while they were gone to consult with sir John Croke, as the prisoner at the bar sufficiently proved they did, by the testimony of several witnesses, (as Mr. Read, Mr. Sanders, and others) that in all that time he would not have made his escape, or at least found a more convenient place to convey a ring, and five-shilling piece, than to let it remain all that time in a little basket with a few eggs, hanging on a pin? Again, who came first into the room where this egg-basket hung? Why, Larimore. And who took down the basket? Larimore. Who turned out the eggs? Larimore. And who had the dressing of the eggs? Larimore. He is a special cook. You gentlemen of the jury, it is an easy thing for Larimore to juggle a ring and five-shilling piece into a basket, he being the first that came into the room; as he put up his hand to take down the basket, he might with ease enough convey such things as those were into it. All this, and many more, are probable circumstances to move you and me to believe, that it is not possible that the prisoner at the bar is guilty of this robbery; but that I must leave to you to consider of.

Again, The Prisoner at the bar proves the whole business to be but a mere contrivance of sir John Croke's and this Larimore's, on purpose to ruin him, as is fully made manifest by the testimony of Mr. Brown, who justifies, that upon Wednesday the 16th of September last past, and but two days before this pretended robbery, he heard sir John Croke advise this Larimore to fetch a warrant to search the house of the prisoner at the bar, and then to convey gold and silver into it; which having done, charge him with flat felony, and bring him before the said sir John Croke, and no other justice, he then promising to the said Larimore to commit him to the gaol without bail, and hang him at the next assizes, which is now: And, as I take it, they do aim at it. You of this jury, if you do believe what Mr. Brown saith, it is as foul a conspiracy as ever was heard of: And I

am apt to think it may be probable, because that sir John Croke and Larimore did threaten to cast this Mr. Brown into prison, and so ruin him, if he came down and testified his knowledge about this business, which thing is of a very ill consequence. Again, it seems likely that Mr. Brown may be credited, if you compare their actions with the times; for upon Tuesday sir John arrested the prisoner upon a feigned action of 100*l*. Upon Wednesday the plot was concluded upon by sir John Croke and Larimore, as may appear by Mr. Brown's testimony. On Thursday they procured of sir Richard Pigott the warrant to search. On Friday, Larimore pretends that he was robbed (though in truth there appears no such thing). Upon Saturday the prisoner's house was broke open, and he apprehended; and upon Sunday he was carried to the gaol: It was a good week's work. But there is an honest man, said my lord chief baron (pointing at Mr. Wilcox), he knocks down all; for he justifies, that he came to Larimore's house upon Friday the 18th of September last past, (it being the same day that he swears he saw the prisoner at the bar robbing him, and an hour and half before sun-set) and there continued till it was near night; and he further saith, that Larimore was with him all that afternoon. And he said, that Larimore was not robbed that afternoon, nor was Mr. Hawkins there at that time. If this that Mr. Wilcox saith be true, then all that Larimore, his son, and sister hath sworn must need be false.

And as touching the boots, Chilton swears that he had legged a pair of boots for the prisoner at the bar, and laid them in his shop window, for him to take along with him as he went by, which he did, and paid him for his work; and yet this Larimore, sir John Croke, Croxstone, and others, did use their utmost endeavours to stir up this Chilton to indict the prisoner at the bar for stealing of them (Croxstone promising him to bear him out in it). This can argue nothing else but malice in those persons: And for that which Boyce swears, is a story that can argue nothing else; for neither is Noble here to prosecute, nor can Boyce swear that

the prisoner at the bar did pick his pocket, or that Noble ever said he did.

Thus I have repeated the Evidence to prove him guilty, and have not I think omitted any thing in it that is material. Which if you do believe, he must needs be guilty. And also the prisoner's defence, which I think is sufficient. It is a plain case, and I suppose you need not go from the bar; but that I leave to you.

And so the Jury not stirring from the bar, which the Clerk observing, he called the Jury, who severally answered to their names; which being done, the Clerk of the Arraignments asked whether they were all agreed upon their verdict.

Jury. Yes, we are all agreed.

Clerk. Who shall speak for you?

Jury. Our Foreman.

Clerk. Robert Hawkins, hold up thy hand. Which I did.—Jury, look upon the prisoner at the bar, How say you? Is he Guilty of the Felony whereof he stands indicted, or Not Guilty?

Foreman of the Jury said, Not Guilty, my lord.

L. C. B. Hale said to the Jury, You have found like honest men: I do believe, that he is not guilty. And he said to Larimore, Thou art a very villain.

Gaoler said, Is Mr. Hawkins, my lord, discharged of his imprisonment?

L. C. B. replied, Yes, yes, he is discharged, paying his fees.

Hawk. May it please your honour, my lord, I am poor; and this, with other troubles, which they have unjustly occasioned, hath cost me a great deal of money already.

L. C. B. I cannot help that, nor can I give away other mens' rights; if they will not remit their fees, you must pay them.

Hawk. I humbly thank your honour, and shall observe your lordship's commands.

And so the Court arose, there being no other business but my trial the whole morning, which lasted from eight until one. So as soon as my trial was over, sir John Croke, Larimore, and the rest of that crew, fled privately out of Ailenbury, and durst not stay.

230. The Trial of WILLIAM PENN and WILLIAM MEAD, at the Old Bailey, for a Tumultuous Assembly: 22 CHARLES II. A. D. 1670. [Written by themselves.*]

[To the account printed in 1670 there is this Introduction: "As there can be no observation where there is no action; so it is impossible,

there should be a judicious intelligence, without due observation. And since there can be nothing more seasonable than a right in-

* Published in the same year under the title of "The People's Ancient and Just Liberties, asserted, in the Trial of William Penn and William Mead, at the Sessions held at the Old-Bailey, in London, the 1st, 3rd, 4th, and 5th of Sep. 1670, against the most arbitrary procedure of that Court."

Isaiah, x. 1. 2. "Woe unto them that decree unrighteous decrees, and write griev-

ousness, which they have prescribed; to turn away the needy from judgment, and to take away the right from the poor, &c."

Psalm xciv. 20. "Shall the throne of iniquity have fellowship with thee, which frameth mischief by a law."

'Sic volo, sic jubeo, stat pro ratione voluntas.'

With a Prefatory Address as follows:

formation; especially of Public Acts; and well knowing, how industrious some will be, to mis-represent this Trial to the disadvantage of the cause and prisoners, it was thought requisite, in defence of both, and for the satisfaction of the people, to make it more public; nor can there be any business wherein the people of England are more concerned, than in that which relates to their civil and religious liberties, questioned in the persons above named, at the Old-Bailey, the 1st, 3rd, 4th, and 5th, of Sept. 1670.”]

PRESENT, Sam. Starling, mayor; Tho. Howell, recorder; Tho. Budworth, William Peak, John Robinson, Richard Ford, and Jo-

TO THE ENGLISH READER.

“ If ever it were time to speak or write, it is now, so many strange occurrences requiring both. How much thou art concerned in this ensuing Trial, where not only the Prisoners, but the Fundamental Laws of England, have been most arbitrarily arraigned, read, and thou mayest plainly judge.

“ Liberty of Conscience is counted a pretence for Rebellion, and religious assemblies, routs, and riots; and the defenders of both, are them, reputed factious and disaffected.

“ Magna Charta, is Magna F—— with the Recorder of London; and to demand right an affront to the court.

“ Will and Power are their great charter, but to call for England’s, is a crime, incurring the penalty of their Bale-dock, and Nasty-hole, nay, the menace of a Gag, and Iron Shackles too.

“ The Jury, though proper judges of law and fact, they would have over-ruled in both, as if their Verdict signified no more, than to echo back the illegal Charge of the Bench; and because their courage and honesty did more than hold pace with the threat and abuse of those, who sat as judges, after two days and two nights restraint for a verdict, in the end were fined and imprisoned, for giving it.

“ O! what monstrous, and illegal proceedings are these? Who reasonably can call his coat his own? When property is made subservient to the will and interest of his judges; or, who can truly esteem himself a free man? When all pleas for liberty are esteemed sedition, and the laws, that give, and maintain them, so many insignificant pieces of formality.

“ And what do they less than plainly tell us so, who at will and pleasure break open our locks, rob our houses, raze their foundations, imprison our persons, and finally deny us justice to our relief; as if they then acted most like christian men, when they were most barbarous, in ruining such, as really are so; and that no sacrifice could be so acceptable to God, as the destruction of those, that most fear him.

“ In short, That the conscientious should only be obnoxious, and the just demand of our

seph Sheldon, aldermen; John Smith and James Edwards, sheriffs; and Richard Browne.

Cryer. ‘ O Yes! Thomas Veer, Edward Bushel, John Hammond, Charles Milson, Gregory Walklet, John Brightman, William Plumsted, Henry Henley, Thomas Damask, Henry Michel, William Lever, John Bailly, you shall well and truly try, and true deliverance make betwixt our sovereign lord the king, and the prisoners at the bar, according to your evidence. So help you God.’

The Indictment sets forth, ‘ That William Penn, Gent. and William Mead, late of London, linen draper, with divers other persons to the jurors unknown, to the number of 300, the 14th day of August in the 22d

religious liberty, the reason, why we should be denied our civil freedom, us if to be a Christian and an Englishman were inconsistent, and that so much solicitude and deep contrivance, should be employed only, to ensnare, and ruin, so many ten thousand conscientious families, so eminently industrious, serviceable, and exemplary, whilst murder can so easily obtain pardons, rapes be remitted, public uncleanness pass unpunished, and all manner of levity, prodigality, excess, profaneness, and atheism, universally connived at; if not in some respect manifestly encouraged, cannot but be detestably abhorrent, to every serious and honest mind.

“ Yet that this lamentable state is true, and the present project in hand, let the London’s Recorder, and Canterbury’s Chaplain be heard.

“ The first in his public panegyric, upon the Spanish Inquisition, highly admiring the prudence of the Romish Church, in the erection of it, as an excellent way to prevent Schism, which unhappy expression, at once passed sentence, both against our fundamental laws, and Protestant Reformation.

“ The second, In his printed mercenary Discourse against Toleration, asserting for a main principle, ‘ That it would be less injurious to the government, to dispense with profane and loose persons, than to allow a toleration to religious dissenters.’ It were to over-do the business, to say any more, where there is so much said already.

“ And therefore to conclude, we cannot choose but admonish all, as well persecutors to relinquish their heady, partial, and inhuman prosecutions, as what will certainly issue in disgrace here, and inevitable condign punishment hereafter, as those who yet dare express their moderation, however out of fashion, or made the brand of fanaticism, not to be buffed, or menaced, out of that excellent temper, to make their parts, and persons subservient to the base humours, and sinister designs of the biggest mortal upon earth: But to reverence and obey the eternal just God, before whose great tribunal all must render their accounts, and where he will recompense to every person according to his works.”

year of the king, about eleven of the clock in the forenoon, the same day, with force and arms, &c. in the parish of St. Bennet Gracechurch in Bridge-ward, London, in the street called Grace-church street, unlawfully and tumultuously did assemble and congregate themselves together, to the disturbance of the peace of the said lord the king: and the aforesaid William Penn and William Mead, together with other persons to the jurors aforesaid unknown, then and there so assembled and congregated together; the aforesaid William Penn, by agreement between him and William Mead before made, and by abetment of the aforesaid William Mead, then and there, in the open street, did take upon himself to preach and speak, and then and there did preach and speak unto the aforesaid William Mead, and other persons there, in the street aforesaid, being assembled and congregated together, by reason whereof a great concourse and tumult of people in the street aforesaid, then and there, a long time did remain and continue, in contempt of the said lord the king, and of his law, to the great disturbance of his peace; to the great terror and disturbance of many of his liege people and subjects, to the ill example of all others in the like case offenders, and against the peace of the said lord the king, his crown and dignity.

What say you, William Penn and William Mead, are you Guilty, as you stand indicted, in manner and form, as aforesaid, or Not Guilty?

Penn. It is impossible that we should be able to remember the Indictment *verbatim*, and therefore we desire a copy of it, as is customary on the like occasions.

Recorder. You must first plead to the indictment, before you can have a copy of it.

Penn. I am unacquainted with the formality of the law, and therefore before I shall answer directly, I request two things of the court. 1. That no advantage may be taken against me, nor I deprived of any benefit, which I might otherwise have received. 2. That you will promise me a fair hearing, and liberty of making my defence.

Court. No advantage shall be taken against you; you shall have liberty; you shall be heard.

Penn. Then I plead Not Guilty in manner and form.

Clerk. What sayest thou, William Mead, art thou Guilty in manner and form, as thou standest indicted, or Not Guilty?

Mead. I shall desire the same liberty as is promised William Penn.

Court. You shall have it.

Mead. Then I plead Not Guilty in manner and form.

The Court adjourned until the afternoon.

Crier. O Yes, &c.

Clerk. Bring William Penn and William Mead to the bar.

Obser. The said Prisoners were brought, but were set aside, and other business prosecuted: Where we cannot choose but observe, that it was the constant and unkind practices of the court to the prisoners to make them wait upon the trials of felons and murderers, thereby designing, in all probability, both to affront and tire them.

After five hours attendance, the court broke up and adjourned to the third instant.

The 3d of September, 1670, the court sat.

Crier. O Yes, &c.

Clerk. Bring William Penn and William Mead to the bar.

Mayor. Sirrah, who bid you put off their hats? put on their hats again.

Obser. Whereupon one of the officers putting the prisoners hats upon their heads (pursuant to the order of the court) brought them to the bar.

Record. Do you know where you are?

Penn. Yes.

Record. Do not you know it is the king's court.

Penn. I know it to be a court, and I suppose it to be the king's court.

Record. Do you not know there is respect due to the court?—*Penn.* Yes.

Record. Why do you not pay it then?

Penn. I do so.

Record. Why do you not pull off your hat then?

Penn. Because I do not believe that to be any respect.

Record. Well, the court sets forty marks a piece upon your heads, as a fine for your contempt of the court.

Penn. I desire it might be observed, that we came into the court with our hats off (that is, taken off,) and if they have been put on since, it was by order from the bench; and therefore not we, but the bench should be fined.

Mead. I have a question to ask the Recorder: am I fined also?

Record. Yes.

Mead. I desire the Jury, and all people to take notice of this injustice of the recorder. Who spake to me to pull off my hat? and yet hath he put a fine upon my head. O fear the Lord, and dread his power, and yield to the guidance of his holy spirit, for he is not far from every one of you.

The Jury sworn again.

Obser. J. Robinson, lieutenant of the Tower, disingenuously objected against Edward Bushe, as if he had not kissed the book, and therefore would have him sworn again: though indeed it was on purpose to have made use of his tenderness of conscience in avoiding reiterated oaths, to have put him by his being a jurymen, apprehending him to be a person not fit to answer their arbitrary ends.

The Clerk read the Indictment, as aforesaid. *Clerk.* Crier, call James Cook into the court, give him his oath.

Clerk. James Cook, lay your hand upon the book: 'The evidence you shall give to the court, betwixt our sovereign the king, and the prisoners at the bar, shall be the truth, and the whole truth, and nothing but the truth. So help you God.'

Cook. I was sent for, from the Exchange, to go and disperse a meeting in Gracechurch-Street, where I saw Mr. Penn speaking to the people, but I could not hear what he said, because of the noise: I endeavoured to make way to take him, but I could not get to him for the crowd of people; upon which capt. Mead came to me, about the kennel of the street, and desired me to let him go on; for when he had done, he would bring Mr. Penn to me.

Court. What number do you think might be there?

Cook. About three or four hundred people.

Court. Call Richard Read, give him his oath.

Read being sworn was asked, What do you know concerning the prisoners at the bar?

Read. My lord, I went to Gracechurch-Street, where I found a great crowd of people, and I heard Mr. Penn preach to them; and I saw capt. Mead speaking to lieutenant Cook, but what he said, I could not tell.

Mead. What did William Penn say?

Read. There was such a great noise, that I could not tell what he said.

Mead. Jury, observe this evidence, he saith he heard him preach, and yet saith, he doth not know what he said.

Jury take notice, he swears now a clean contrary thing to what he swore before the mayor when we were committed: for now he swears that he saw me in Gracechurch-Street, and yet swore before the mayor, when I was committed, that he did not see me there. I appeal to the mayor himself, if this be not true. But no answer was given.

Court. What number do you think might be there?

Read. About four or five hundred.

Penn. I desire to know of him what day it was?

Read. The 14th day of August.

Penn. Did he speak to me, or let me know he was there? for I am very sure I never saw him.

Clerk. Crier, call — into the court.

Court. Give him his oath.

— My lord, I saw a great number of people, and Mr. Penn, I suppose, was speaking; I saw him make a motion with his hands, and heard some noise, but could not understand what he said. But for capt. Mead, I did not see him there.

Rec. What say you, Mr. Mead, were you there?

Mead. It is a maxim in your own law, 'Nemo tenetur accusare seipsum,' which if it be not true-Latin, I am sure it is true English, 'That no man is bound to accuse himself.' And why dost thou offer to insnare me with such a question? Doth not this shew thy malice? Is this like unto a judge, that ought to be counsel for the prisoner at the bar?

Rec. Sir, hold your tongue, I did not go about to insnare you.

Penn. I desire we may come more close to the point, and that silence be commanded in the court.

Crier. O yes, all manner of persons keep silence upon pain of imprisonment. Silence in the court.

Penn. We confess ourselves to be so far from recanting, or declining to vindicate the assembling of ourselves to preach, pray, or worship the Eternal, Holy, Just God, that we declare to all the world, that we do believe it to be our indispensable duty, to meet incessantly upon so good an account; nor shall all the powers upon earth be able to divert us from reverencing and adoring our God who made us.

Brown. You are not here for worshipping God, but for breaking the law; you do yourselves a great deal of wrong in going on in that discourse.

Penn. I affirm I have broken no law, nor am I guilty of the indictment that is laid to my charge; and to the end the bench, the jury, and myself, with these that hear us, may have a more direct understanding of this procedure, I desire you would let me know by what law it is you prosecute me, and upon what law you ground my indictment.

Rec. Upon the common-law.

Penn. Where is that common-law?

Rec. You must not think that I am able to run up so many years, and over so many adjudged cases, which we call common-law, to answer your curiosity.

Penn. This answer I am sure is very short of my question, for if it be common, it should not be so hard to produce.

Rec. Sir, will you plead to your indictment?

Penn. Shall I plead to an Indictment that hath no foundation in law? If it contain that law you say I have broken, why should you decline to produce that law, since it will be impossible for the jury to determine, or agree to bring in their verdict, who have not the law produced, by which they should measure the truth of this indictment, and the guilt, or contrary of my fact?

Rec. You are a saucy fellow, speak to the Indictment.

Penn. I say, it is my place to speak to matter of law; I am arraigned a prisoner; my liberty, which is next to life itself, is now concerned: you are many mouths and ears against me, and if I must not be allowed to make the best of my case, it is hard, I say again, unless you shew me, and the people, the law you ground your indictment upon, I shall take it for granted your proceedings are merely arbitrary.

Obser. At this time several upon the Bench urged hard upon the Prisoner to bear him down.

Rec. The question is, whether you are Guilty of this Indictment?

Penn. The question is not, whether I am

Guilty of this Indictment, but whether this Indictment be legal. It is too general and imperfect an answer, to say it is the common-law, unless we knew both where and what it is. For where there is no law, there is no transgression; and that law which is not in being, is so far from being common, that it is no law at all.

Rec. You are an impertinent fellow, will you teach the court what law is? It is 'Lex non scripta,' that which many have studied 30 or 40 years to know, and would you have me to tell you in a moment?

Penn. Certainly, if the common law be so hard to be understood, it is far from being very common; but if the lord Coke in his Institutes be of any consideration, he tells us, That Common-Law is common right, and that Common Right is the Great Charter-Privileges: confirmed 9 Hen. 3, 29, 25 Edw. 1, 13 Ed. 3, 8 Coke Instit. 2 p. 56.

Rec. Sir, you are a troublesome fellow, and it is not for the honour of the court to suffer you to go on.

Penn. I have asked but one question, and you have not answered me; though the rights and privileges of every Englishman be concerned in it.

Rec. If I should suffer you to ask questions till to-morrow morning, you would be never the wiser.

Penn. That is according as the answers are.

Rec. Sir, we must not stand to hear you talk all night.

Penn. I design no affront to the court, but to be heard in my just plea: and I must plainly tell you, that if you will deny me Oyer of that law, which you suggest I have broken, you do at once deny me an acknowledged right, and evidence to the whole world your resolution to sacrifice the privileges of Englishmen to your sinister and arbitrary designs.

Rec. Take him away. My lord, if you take not some course with this pestilent fellow, to stop his mouth, we shall not be able to do any thing to night.

Mayor. Take him away, take him away, turn him into the bale-dock.

Penn. These are but so many vain exclamations; is this justice or true judgment? Must I therefore be taken away because I plead for the fundamental laws of England? However, this I leave upon your consciences, who are of the jury (and my sole judges,) that if these ancient fundamental laws, which relate to liberty and property, (and are not limited to particular persuasions in matters of religion) must not be indispensably maintained and observed, who can say he hath right to the coat upon his back? Certainly our liberties are openly to be invaded, our wives to be ravished, our children slaved, our families ruined, and our estates led away in triumph, by every sturdy beggar and malicious informer, as their trophies, but our (pretended) forfeits for conscience sake. The Lord of Heaven and Earth will be judge between us in this matter.

Rec. Be silent there.

Penn. I am not to be silent in a case wherein I am so much concerned, and not only myself, but many ten thousand families besides.

Obser. They having rudely haled him into the Bale-dock, William Mead they left in court, who spake as followeth.

Mead. You men of the jury, here I do now stand, to answer to an Indictment against me, which is a bundle of stuff, full of lies and falsehoods; for therein I am accused that I met 'vi & armis illicite & tumultuose:' time was when I had freedom to use a carnal weapon, and then I thought I feared no man; but now I fear the living God, and dare not make use thereof nor hurt any man; nor do I know I demeaned myself as a tumultuous person: I say, I am a peaceable man, therefore it is a very proper question what William Penn demanded in this case, an oyer of the law, on which our Indictment is grounded.

Rec. I have made answer to that already.

Mead, turning his face to the jury, saith, You men of the jury, who are my judges, if the Recorder will not tell you what makes a riot, a rout, or an unlawful assembly, Coke, he that once they called the lord Coke, tells us what makes a riot, a rout and an unlawful assembly. A riot is when three or more, are met together to beat a man, or to enter forcibly into another man's land, to cut down his grass, his wood or break down his pales.

Obser. Here the Recorder interrupted him, and said 'I thank you, sir, that you will tell me what the law is,' scornfully pulling off his hat.

Mead. Thou mayest put on thy hat, I have never a fee for thee now.

Brown. He talks at random, one while an independant, another while some other religion, and now a quaker, and next a papist.

Mead. 'Turpe est doctori cum culpa redargui ipsum.'

May. You deserve to have your tongue cut out.

Rec. If you discourse on this manner, I shall take occasion against you.

Mead. Thou didst promise me, I should have fair liberty to be heard? why may I not have the privilege of an Englishman? I am an Englishman, and you might be ashamed of this dealing.

Rec. I look upon you to be an enemy to the laws of England, which ought to be observed and kept, nor are you worthy of such privileges as others have.

Mead. The Lord is judge between me and thee in this matter.

Obser. Upon which they took him away into the Bale-dock, and the Recorder proceeded to give the Jury their charge, as followeth:

Recorder. You have heard what the Indictment is, It is for preaching to the people, and drawing a tumultuous company after them, and Mr. Penn was speaking; if they should not be disturbed, you see they will go on; there are three or four witnesses that have proved

that, that he did preach there; that Mr. Mead did allow of it: after this you have heard by substantial witnesses what is said against them: now we are upon the matter of fact, which you are to keep to, and observe, as what hath been fully sworn at your peril.

Obser. The prisoners were put out of the court into the Bale-dock, and the charge given to the jury in their absence, at which W. Penn with a very raised voice, it being a considerable distance from the bench, spake.

Penn. I appeal to the jury who are my Judges, and this great assembly, whether the proceedings of the court are not most arbitrary, and void of all law, in offering to give the jury their charge in the absence of the prisoners; I say it is directly opposite to, and destructive of the undoubted right of every English prisoner, as Coke, in the 2 Instit. 29. on the chap. of Magna Charta.

Obser. The Recorder being thus unexpectedly lashed for his extra judicial procedure, said with an enraged smile,

Rec. Why, ye are present, you do hear, do you not?

Penn. No thanks to the court, that commanded me into the Bale-dock; and you of the jury, take notice, that I have not been heard, neither can you legally depart the Court before I have been fully heard, having at last ten or twelve material points to offer, in order to invalidate their Indictment.

Rec. Pull that fellow down, pull him down.

Mead. Are these according to the rights and privileges of Englishmen, that we should not be heard, but turned into the Bale-dock, for making our defence, and the jury to have their charge given them in our absence? I say these are barbarous and unjust proceedings.

Rec. Take them away into the Hole: To hear them talk all night as they would, that I think doth not become the honour of the court and I think you (i. e. the jury) yourselves would be tired out, and not have patience to hear them.

Obser. The Jury were commanded up to agree upon their verdict, the prisoners remaining in the stinking hole. After an hour and a half's time eight came down agreed, but four remained above; the court sent an officer for them, and they accordingly came down. The Bench used many unworthy threats to the four that dissented; and the Recorder, addressing himself to Bushel, said, 'Sir, you are the cause of this disturbance, and manifestly shew yourself an abettor of faction; I shall set a mark upon you, Sir.'

J. Robinson. Mr. Bushel, I have known you near this 14 years; you have thrust yourself upon this jury, because you think there is some service for you: I tell you, you deserve to be indicted more than any man that hath been brought to the bar this day.

Bushel. No, sir John, there were threescore before me, and I would willingly have got off, but could not.

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Bloodw. I said, when I saw Mr. Bushel, what I see is come to pass, for I knew he would never yield. Mr. Bushel, we know what you are.

May. Sirrah, you are an impudent fellow, I will put a mark upon you.

Obser. They used much menacing language, and behaved themselves very imperiously to the jury, as persons not more void of justice than sober education: After this barbarous usage, they sent them to consider of bringing in their verdict, and after some considerable time they returned to the Court. Silence was called for, and the jury called by their names,

Cler. Are you agreed upon your verdict?

Jury. Yes.

Cler. Who shall speak for you?

Jury. Our Foreman.

Clerk. Look upon the prisoners at the bar; how say you? Is William Penn Guilty of the matter whereof he stands indicted in manner and form, or Not Guilty?

Foreman. Guilty of speaking in Grace-church-street.

Court. Is that all?

Foreman. That is all I have in commission.

Rec. You had as good say nothing.

May. Was it not an unlawful assembly? You mean he was speaking to a tumult of people there?

Foreman. My Lord, This is all I had in commission.

Obser. Here some of the jury seemed to buckle to the questions of the Court: upon which, Bushel, Hammond, and some others, opposed themselves, and said, they allowed of no such word as an unlawful assembly in their Verdict; at which the Recorder, Mayor, Robinson and Bloodworth took great occasion to vilify them with most opprobrious language; and this verdict not serving their turns, the Recorder expressed himself thus:

Rec. The law of England will not allow you to part, till you have given in your Verdict.

Jury. We have given in our Verdict, and we can give in no other.

Rec. Gentlemen, you have not given in your Verdict, and you had as good say nothing; therefore go and consider it: once more, that we may make an end of this troublesome business.

Jury. We desire we may have pen, ink, and paper.

Obser. The Court adjourned for half an hour; which being expired, the Court returns, and the Jury not long after.

The Prisoners were brought to the bar, and the Jury's names called over.

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Our Foreman.

Clerk. What say you? Look upon the prisoners: Is William Penn Guilty in manner and form, as he stands indicted, or Not Guilty?

Foreman. Here is our Verdict; holding

forth a piece of paper to the clerk of the peace, which follows.

'We the jurors, hereafter named, do find William Penn to be Guilty of speaking or preaching to an assembly, met together in Gracechurch-street, the 14th of August last, 1670. And that William Mead is Not Guilty of the said Indictment.' Foreman Thomas Veer, Edward Bushel, John Hammond, Henry Henley, Charles Milson, Gregory Walklet, John Bailly, William Lever, Henry Michel, John Brightman, James Damask, Wil. Plumsted.

Obser. This both Mayor and Recorder resented at so high a rate, that they exceeded the bounds of all reason and civility.

Mayor. What, will you be led by such a silly fellow as Bushel? an impudent canting fellow? I warrant you, you shall come no more upon juries in haste: You are a foreman indeed, addressing himself to the foreman, I thought you had understood your place better.

Recorder. Gentlemen, you shall not be dismissed till we have a verdict that the court will accept; and you shall be locked up, without meat, drink, fire, and tobacco; you shall not think thus to abuse the court; we will have a verdict, by the help of God, or you shall starve for it.

Penn. My jury, who are my judges, ought not to be thus menaced; their verdict should be free, and not compelled; the bench ought to wait upon them, but not forestal them. I do desire that justice may be done me, and that the arbitrary resolves of the bench may not be made the measure of my jury's verdict.

Recorder. Stop that prating fellow's mouth, or put him out of the court.

Mayor. You have heard that he preached, that he gathered a company of tumultuous people, and that they do not only disobey the martial power, but civil also.

Penn. It is a great mistake; we did not make the tumult, but they that interrupted us: The jury cannot be so ignorant, as to think, that we met there, with a design to disturb the civil peace, since (1st) we were by force of arms kept out of our lawful house, and met as near it in the street as their soldiers would give us leave; and (2dly) because it was no new thing (nor with the circumstances expressed in the indictment), but what was usual and customary with us: it is very well known that we are a peaceable people, and cannot offer violence to any man.

Obser. The court being ready to break up, and willing to huddle the prisoners to their gaol, and the jury to their chamber, Penn spoke as follows:

Penn. The agreement of 12 men is a verdict in law, and such a one being given by the jury, I require the clerk of the peace to record it, as he will answer it at his peril. And if the jury bring in another verdict contradictory to this, I affirm they are perjured men in law: And look-

ing upon the jury, said, You are Englishmen, mind your privilege, give not away your right.

Bush. &c. Nor will we ever do it.

Obser. One of the jury-men pleaded indisposition of body, and therefore desired to be dismissed.

Mayor. You are as strong as any of them; starve them; and hold your principles.

Recorder. Gentlemen, You must be contented with your hard fate, let your patience overcome it; for the court is resolved to have a verdict, and that before you can be dismissed.

Jury. We are agreed, we are agreed, we are agreed.

Obser. The court swore several persons, to keep the Jury all night without meat, drink, fire, or any other accommodation; they had not so much as a chamber-pot, though desired.

Crier. O Yes, &c.

Obser. The court adjourns till 7 of the clock next morning (being the 4th instant, vulgarly called Sunday, at which time the prisoners were brought to the bar: The court sat, and the Jury called to bring in their verdict.

Crier. O Yes, &c.—Silence in the court, upon pain of imprisonment.

The Jury's names called over.

Clerk. Are you agreed upon your verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Our foreman.

Clerk. What say you? Look upon the prisoners at the bar; is William Penn guilty of the matter whereof he stands indicted, in manner and form as aforesaid, or Not Guilty?

Foreman. William Penn is Guilty of speaking in Gracechurch-Street.

Mayor. To an unlawful assembly?

Bush. No, my lord, we give no other verdict than what we gave last night; we have no other verdict to give.

Mayor. You are a factious fellow, I'll take a course with you.

Blood. I knew Mr. Bushel would not yield.

Bush. Sir Thomas, I have done according to my conscience.

Mayor. That conscience of yours would cut my throat.

Bush. No, my lord, it never shall.

Mayor. But I will cut yours so soon as I can.

Recorder. He has inspired the jury; he has the spirit of divination, methinks I feel him; I will have a positive verdict, or you shall starve for it.

Penn. I desire to ask the Recorder one question, Do you allow of the verdict given of William Mead?

Recorder. It cannot be a verdict, because you were indicted for a conspiracy, and one being found Not Guilty, and not the other, it could not be a verdict.

Penn. If Not Guilty be not a verdict, then you make of the jury and Magna Charta but a mere nose of wax.

Mead. How! is Not Guilty no verdict?

Rec. No, it is no Verdict.

Penn. I affirm, that the consent of a jury is a Verdict in law; and if William Mead be Not Guilty, it consequently follows, that I am clear, since you have indicted us of a conspiracy, and I could not possibly conspire alone.

Obser. There were many passages, that could not be taken, which past between the Jury and the Court. The Jury went up again, having received a fresh charge from the Bench, if possible to extort an unjust Verdict.

Cry. O Yes, &c. Silence in the Court.

Court. Call over the Jury. Which was done.

Clerk. What say you? Is William Penn Guilty of the matter whereof he stands indicted, in manner and form aforesaid, or Not Guilty?

Forem. Guilty of speaking in Gracechurch-street.

Rec. What is this to the purpose? I say, I will have a verdict. And speaking to Edw. Bushel, said, You are a factious fellow; I will set a mark upon you; and whilst I have any thing to do in the city, I will have an eye upon you.

Mayor. Have you no more wit than to be led by such a pitiful fellow? I will cut his nose.

Penn. It is intolerable that my jury should be thus menaced: Is this according to the fundamental laws? Are not they my proper judges by the Great Charter of England? What hope is there of ever having justice done, when juries are threatened, and their verdicts rejected? I am concerned to speak, and grieved to see such arbitrary proceedings. Did not the lieutenant of the Tower render one of them worse than a felon? And do you not plainly seem to condemn such for factious fellows, who answer not your ends? Unhappy are those juries, who are threatened to be fined, and starved, and ruined, if they give not in Verdicts contrary to their consciences.

Rec. My lord, you must take a course with that same fellow.

Mayor. Stop his mouth; gaoler, bring fetters, and stake him to the ground.

Penn. Do your pleasure, I matter not your fetters.

Rec. Till now I never understood the reason of the policy and prudence of the Spaniards, in suffering the inquisition among them: And certainly it will never be well with us, till something like unto the Spanish inquisition be in England.

Obser. The jury being required to go together to find another Verdict, and stedfastly refusing it (saying they could give no other Verdict than what was already given) the Recorder in great passion was running off the bench, with these words in his mouth, 'I protest I will sit here no longer to bear these things;' at which the Mayor calling, Stay, stay, he returned, and directed himself unto the Jury, and spoke as followeth:

Rec. Gentlemen, we shall not be at this trade always with you: you will find the next sessions of parliament there will be a law made,

that those that will not conform shall not have the protection of the law. Mr. Lee, draw up another Verdict, that they may bring it in special.

Lee. I cannot tell how to do it.

Jury. We ought not to be returned, having all agreed, and set our hands to the Verdict.

Rec. Your Verdict is nothing, you play upon the Court; I say you shall go together, and bring in another Verdict, or you shall starve; and I will have you carted about the city, as in Edward 3rd's time.

Forem. We have given in our Verdict, and all agreed to it; and if we give in another, it will be a force upon us to save our lives.

Mayor. Take them up.

Offic. My Lord, they will not go up.

Obser. The Mayor spoke to the slieriff, and he came off his seat, and said,

Sher. Come, gentlemen, you must go up; you see I am commanded to make you go.

Obser. Upon which the Jury went up; and several sworn to keep them without any accommodation, as aforesaid, till they brought in their Verdict.

Cry. O yes, &c. The Court adjourns till tomorrow morning, at 7 o'clock.

Obser. The prisoners were remanded to Newgate, where they remained till next morning, and then were brought unto the Court, which being sat, they proceeded as followeth.

Cry. O yes, &c. Silence in the Court, upon pain of imprisonment.

Cler. Set William Penn and William Mead to the bar. Gentlemen of the Jury, answer to your names; Tho. Veer, Edw. Bushel, John Hammond, Henry Henly, Henry Mitchell, John Brightman, Charles Milson, Gregory Walklet, John Bailly, William Leaver, James Dannask, William Plumstead. Are you all agreed of your Verdict?—*Jury.* Yes.

Cler. Who shall speak for you?

Jury. Our foreman.

Cler. Look upon the prisoners. What say you? Is William Penn Guilty of the matter whereof he stands indicted, in manner and form, &c. or Not Guilty?

Foreman. Here is our Verdict in writing, and our hands subscribed.

Obser. The clerk took the Paper, but was stopt by the Recorder from reading of it; and he commanded to ask for a positive Verdict.

Foreman. That is our Verdict; we have subscribed to it.

Cler. How say you? is William Penn Guilty, &c. or Not Guilty.

Foreman. Not Guilty.

Cler. How say you? is William Mead Guilty, &c. or Not Guilty?

Foreman. Not Guilty.

Cler. Then hearken to your Verdict; you say that William Penn is Not Guilty in manner and form as he stands indicted; you say that William Mead is Not Guilty in manner and form as he stands indicted, and so you say all?

Jury. Yes, we do so.

Obser. The Bench being unsatisfied with

the Verdict, commanded that every person should distinctly answer to their names, and give in their Verdict, which they unanimously did in saying, Not Guilty, to the great satisfaction of the assembly.

Rec. I am sorry, gentlemen, you have followed your own judgments and opinions, rather than the good and wholesome advice which was given you; God keep my life out of your hands, but for this* the Court fines you

* See Throgmorton's Case, vol. 1, p. 901; and the Case of Lilburne's Jury, Aug. 1653, ante, vol. 5, p. 445.

"The practice heretofore in use of fining, imprisoning or otherwise punishing jurors, merely at the discretion of the court, for finding their verdict contrary to the direction of the judge, was arbitrary, unconstitutional and illegal; and is treated as such by sir Thomas Smith, 200 years ago; who accounted such doings to be very violent, tyrannical and contrary to the liberty and custom of the realm of England. [Smith's Commonw. l. 3, c. 1.] For, as sir Matthew Hale well observes [2 Hal. P. C. 313.] it would be a most unhappy case for the judge himself, if the prisoner's fate depended upon his directions:—unhappy also for the prisoner; for if the judge's opinion must rule the verdict, the trial by jury would be useless. Yet in many instances [1 Lev. 9. T. Jones, 163.] where contrary to evidence the jury have found the prisoner Guilty, their verdict hath been mercifully set aside, and a new trial granted by the court of King's-bench; for in such case, as hath been said, it cannot be set right by attain. But there hath yet been no instance of granting a new trial, where the prisoner was acquitted upon the first [2 Hawk. P. C. 442]." Blackst. Comm. b. 4, c. 27, p. 361.

This practice of Fining is well treated by Hale, as follows:

"If a bill be against A. for murder, and the grand inquest upon the evidence before them, or their own knowledge be satisfied that it was but *per infortunium* or *se defendendo*, and accordingly return the bill specially, the court may remand them to consider better of it, or may hear the evidence at the bar, and accordingly direct the grand inquest; but I have known a judge blamed for setting a fine upon the grand inquest for such a return, because in truth it comes not up to felony.

"But if a bill goes out against B. for murder, and it doth *constare de personâ occidentis*, may the grand inquest find the bill for manslaughter and *ignoramus* for the murder? and is the court bound to receive such a return?

"In this case, of all hands it is agreed [upon this Emlyn remarks, "This is far from being agreed of all hands, for such an anticipation of the evidence by the grand jury is what they cannot avoid, they being bound by their oath as much as the petit jury, to present the whole truth and nothing but the truth; nor do they

40 marks a man; and imprisonment till paid. At which Penn stepped up towards the bench, and said:

Penn. I demand my liberty, being freed by the Jury.

Mayor. No, you are in for your fines.

Penn. Fines, for what?

Mayor. For contempt of the Court.

Penn. I ask, if it be according to the fundamental laws of England, that any English-

in this case so properly determine matter of law as matter of fact; for whether murder or not depends upon a preconceived malice, which though it is to be presumed, where no provocation appears, is matter of fact, and proper for the consideration of a jury." that the grand jury is to blame, because they take upon them to anticipate the evidence that is to be given to the petit jury, and so determine matter of law which belongs to the court to determine, and by this means many murders may escape under the disguise of manslaughter, and so escape with their clergy.

"Some therefore have made it a practice to set a fine upon the grand jury in this case, and it hath proceeded so far as to fine petit juries also in such like cases; whereof hereafter.

"That which I think herein and in other concealments of grand inquests, is as follows:

"1. That the court may receive such a return from the grand inquest, and it is a matter of discretion, especially if upon inquiry from the indictors or witnesses, or upon view of their examinations it doth plainly appear, that the crime amounts to no more.

"2. That barely upon such a return no fine can be set upon the grand inquest, unless the evidence to the grand inquest be given at the bar in the presence of the court; for otherwise the court cannot understand whether the grand inquest doth well or ill in such case.

"3. That if the evidence to the grand inquest be given at the bar upon an indictment in the King's-bench, and the grand inquest will not find a bill according to the direction of that court; as for instance, will find a man Guilty only *se defendendo*, or of manslaughter when it is murder, that court may set a fine upon the grand inquest, and so it hath been practised; for it is the highest court in England of ordinary justice, especially in criminal causes.

"4. That if the justices of Oyer and Terminer or gaol-delivery, having heard the evidence at the bar, the grand inquest will not find according to their directions, the justices may bind them over by recognizance into the King's-bench, and upon an information against them they may be fined.

"5. That in such a case justices of peace, Oyer and Terminer or gaol-delivery may, according to the statute of 3 H. 7, c. 1, impanel another inquest to enquire of their concealments, and thereupon set fines upon them.

"6. But in my opinion fines set upon grand inquests by justices of the peace, Oyer and Terminer or gaol-delivery for concealments, or

man should be fined or amerced, but by the judgment of his peers or jury; since it expressly contradicts the 14th and 29th chapters of the Great Charter of England, which say, 'No freeman ought to be amerced but by the oath of good and lawful men of the vicinage.'

Rec. Take him away, take him away, take him out of the Court.

Penn. I can never urge the fundamental laws of England, but you cry, Take him away, take him away. But it is no wonder, since the Spanish Inquisition hath so great a place in the Recorder's heart. God Almighty, who is just, will judge you all for these things.

Observ. They hauled the prisoners into the Bale-dock, and from thence sent them to Newgate, for non-payment of their fines; and so were their Jury. But the Jury were afterwards discharged upon an Habeas Corpus, returnable in the Common-Pleas, where their commitment was adjudged illegal.

See the next Case.

non-presentments in any other manner, are not warrantable by law; and though the late practice hath been for such justices to set fines arbitrarily, yea not only upon grand inquests, but also upon the petit jury in criminal causes, if they find not according to their directions, it weighs not much with me for these reasons; 1. Because I have seen arbitrary practice still go from one thing to another, the fines set upon grand inquests began, then they set fines upon the petit juries for not finding according to the directions of the court; then afterwards the judges of *assise prius* proceeded to fine jurors in civil causes, if they gave not a verdict according to direction even in points of fact; this was done by a judge of assize [Justice Hyde at Oxford. *Vaugh.* 145.] in Oxfordshire, and the fine estreated; but I, by the advice of most of the judges of England, staid process upon that fine: the like was done by the same judge in a case of burglary, the fine was estreated into the Exchequer; but by the like advice I staid process; and in the case of Wagstaff [*Vaugh.* 153.] and other jurors fined at the Old Bailey, for giving a verdict contrary to direction, by the advice of all the judges of England (only one dissenting) it was ruled to be against law: but of this hereafter [c. 42.] 2. My second reason is, because the statute of 9 H. 7; c. 1, prescribes a way for their fining, which would not have been if they had been arbitrarily subject to a fine before. 3. It is of very ill consequence, for the privilege of an Englishman is, that his life shall not be drawn in danger without due presentment or indictment, and this would be but a slender screen or safeguard, if every justice of peace, or commissioner of Oyer and Terminer or gaol-delivery, may make the grand jury present what he pleases, or otherwise fine them; and there is no parity of reason or example between inferior judges and the court of King's-bench, which is the supreme ordinary court of justice in such cases." 2 Hale's P. C. 158.

The following Article was subjoined to the account of this Trial printed in 1670 :

AN APPENDIX by way of DEFENCE for the PRISONERS, as what might have been offered against the Indictment and illegal Proceedings of the Court thereon, had they not violently over-ruled and stopped them.

Upon a sober disquisition into the several parts of the Indictment, we find it so wretchedly defective, as if it were nothing else but a mere composition of error, rather calculated to the malicious designs of the judges, than to the least verity of fact committed by the prisoners.

To prove this, what we say will be a main help to discover the arbitrary proceedings of the bench in their frequent menaces to the jury; as if it were not so much their business to try, as to condemn the prisoners; and that not so much for any fact they had committed, as what the court would have suggested to the jury to have been their fact.

Sec. 1. It is the constant common law of England, that no man should be taken, imprisoned, amerced, disseized of his free-hold, of his liberties or free customs, but by the judgment of his peers, which are vulgarly called a Jury, from *Jurare*, because they are sworn to do right.

Sec. 2. The only assistance that is given the Jury, in order to a verdict, is :

First, the Evidence given of the fact committed, by the person indicted.

Secondly, the knowledge of that law, act or statute the Indictment is grounded upon, and which the prisoners are said to have transgressed.

Sec. 3. We shall neglect to mention here how much they were deprived of that just advantage the ancient equal laws of England do allow, designing it for a conclusion of the whole, and shall only speak here to matter of fact and law.

Sec. 4. The evidence, you have read in the trial, the utmost import of which, is no more than this; That William Penn was speaking in Gracious-street, to an assembly of people, but knew not what he said, which is so great a contradiction, as he that runs may read it: for no man can say another man preaches, and yet understand not what he saith: he may conjecture it, but that is a lame evidence in law; it might as well have been sworn, that he was speaking of law, physic, trade, or any other matter of civil concernment. Besides there is no law against preaching what is truth; whether it be in the street, or any other place: nor is it possible, that any man can truly swear that he preached sedition, heresy, &c. unless he so heard him, that he could tell what he said.

Sec. 5. The evidence further saith, that William Mead was there, but till being in Gracious-street be a fault, and hearing a man speak the witness knows not what, be contrary to law, the whole evidence is useless, and impertinent.

but what they want of that, they endeavour to supply with Indictment; whose parts we proceed to consider.

Exceptions against the Indictment.

Sec. 6. It saith, that the prisoners were met upon the 15th day of August 1670, whereas their own evidence affirms it to be upon the 14th day of August, 1670.

Sec. 7. [That they met with force and arms] which is so great a lye, that the court had no better cover for it, than to tell the jury, it was only a piece of form, urging that the man tried for clipping of money, this present sessions, had the same words used in his indictment. But that this answer is too scanty, as well as it was too weak to prevail with the jury: we desire it may be considered, that the same words may be used more of course, and out of form at one time, than at another: And though we grant they can have little force with any jury in a clipper's case for meer clipping; yet they are words that give so just a ground of jealousy, nay, that carry so clear an evidence of illegality where they are truly proved and affirmed of any meeting, as that they are the proper roots from whence do spring those branches which render an indictment terrible, and an assembly truly the terror of the people.

Sec. 8. [Unlawfully and tumultuously to disturb the peace] which is as true, as what is said before, (that is, as false) this will evidently appear to all that consider how lawful it is to assemble, with no other design than to worship God, and their calling a lawful assembly an unlawful one, no more makes it so, than to say light is darkness, black is white, conclude so impudent a falsity true.

In short, because to worship God can never be a crime, no meeting or assembly, designing to worship God, can be unlawful. Such as go about to prove an unlawful assembly must prove the assemblers intent not to worship God, but that no man can do, because no man can know another man's intentions, and therefore its impossible that any should prove such an assembly unlawful. That is properly an unlawful assembly, according to the definition of the law, when several persons are met together, with design to use violence and to do mischief; but that dissenters meet with no such intention, is manifest to the whole world, therefore their assemblies are not unlawful; he that hath only right to be worshipped, which is God, hath only right to institute how he will be worshipped; and such as worship him in that way they apprehend him to have instituted, are so far from being unlawful assemblers, that therein they do but express the duty they owe to God.

[Tumultuously] imports as much as disorderly, or an assembly full of noise, bustle, and confusion, using force and violence, to the injury of persons, houses, or grounds. But whether religious dissenters in their peaceable meetings, therein desiring, and seeking nothing more than

to express that duty they owe to God Almighty be a tumultuous action, or meeting in the sense expressed (and which is the very definition of the law) will be the question. Certainly such as call these meetings tumultuous, as to break the peace, offer the greatest violence to common words, that can be well imagined: for they may as rightly say, such persons meet adulterously, thievishly, &c. as to affirm they meet tumultuously, because they are as truly applicable; in short, such particulars, as are required to prove them such meetings in law, are wholly wanting.

Sec. 9. [To the disturbance of the peace.]

If the disturbance of the peace be but matter of form with the rest, as is usually pleaded; leave out this matter of form and then see what great matter will be left.

Certainly such assemblies, as are not to the breach and disturbance of the peace, are far from being unlawful or tumultuary; but if the peace be broken by them, how comes it the evidence was so short? We cannot believe it was in favour of the prisoners. This may shew all the reasonable world, how forward some are to brand innocency with hateful names, to bring a suspicion, where there was none deserved.

Sec. 10. [That the said Penn and Mead met, by agreement before hand made.]

But if persons that never saw each other, nor converse together, neither had correspondence by any other hand, cannot be said to be agreed, to any action, before it be done; then the prisoners were far from an agreement; for they had never seen, conversed, nor corresponded, directly, nor indirectly, before the officers came to disturb the assembly: We well know how far they would have stretched the word 'Agreement, or Conspiracy;' but God who brings to nought the counsils of the wicked, prevented their cruel designs.

Sec. 11. [That William Mead did abet the said William Penn in preaching.]

No man can be said to abet another, whilst they are both unknown to each other, especially in this case, where abetting follows agreeing, and agreeing supposes fore-knowledge. Nay the word abet in law signifies to command, procure or counsel a person, which W. Mead, could not be said to do, in reference to W. Penn, they being so great strangers one to another, and at so great a distance; for the evidence proves that he was with lieutenant Cook, and lieutenant Cook swears he could not make his way to W. Penn, for the crowd.

Sec. 12. [That W. Penn's preaching and speaking caused a great concourse and tumult of people, to remain and continue a long time in the street.]

But this is so improbable to believe, that the very nature of a tumult admits of no such thing as preaching; but implies a disorderly multitude, where all may be said to speak, rather than any to hear.

Sec. 1. [In contempt of the king and his laws.]

They are so far from contemning the king and his laws, that they are obliged and constrained by their own principles, to obey every ordinance of man for the Lord's sake, but not against the Lord for man's sake, which is the question in hand. Besides, their continuance there, was not in contempt, but by the permission of the chief officer present, that came there by the king's authority; nor is it for the honour of the king that such persons should be said to act in contempt of his laws, as only meet to honour God and his laws.

Sec. 2. [And to the great disturbance of the king's peace.]

It is far from disturbing and breaking the king's peace for men peaceably to meet to worship God; for it is then properly broken and invaded, when force and violence are used, to the hurt and prejudice of persons and estates; or when any thing is done that tends to the stirring up of sedition, and begetting in people a dislike of the civil government: But that such things are not practised by us in our assemblies, either to offer violence to mens' persons and estates, or to stir up the people to sedition, or dislike to the civil government, is obvious to all that visit our assemblies.

Sec. 3. [To the great terror and disturbance of the king's liege people and subjects, and to the evil example of all others in the like case offending, against the king's peace, his crown and dignity.]

Were these black criminations as true as they are wretchedly false, we should give as just an occasion, to lose our liberties, as our cruel adversaries, are ready to take any to deprive us unjustly of them. O! How notorious it is to all sober people, that our manner of life is far from terrifying any; and how absurd to think that naked men, in the generality of their conversation, known to be harmless and quiet, should prove a terror or disturbance to the people; certainly, if any such thing should be in the time of our meetings, it is brought with the cruelty and barbarous actions of your own soldiers: they never learned by our example to beat, hale before magistrates, fine, and imprison for matters relating to God's worship; neither can they say, we are their precedents: for all those adulterous, prodigal, lascivious, drunken, swearing, and profane acts, they daily commit, and esteem rather occasion of brag and boast, than sorrow and repentance; No, they need not go so far, they have too many, God Almighty knows, of their own superiors for their example.

Sec. 4. But we can never pass over with silence, nor enough observe the detestable juggle of such indictments, which we require all English and conscientious men to mind, as they value themselves in the like occasions. How little a grain of fact was proved, yet how spacious an indictment was made? had it related

to the evidence, the bulk had been excusable but when it only swelled with malicious scaring phrases, to suggest to the people, that they were the merest villains, the most dangerous persons, and designing mutually the subversion of the laws, and breach of the peace, to the terrifying of the people, &c.

Who can choose but tell them of their romance-indictment, that is so forged; as it truly merits another against itself. This they childishly call form; but had an Italian or other stranger been in court, he would have judged it matter of fact, as thinking it unworthy of a king's court, to accuse men in terms, not legally, truly, or probably due to the fact, they really had committed; as well as that no court would practise it, but that which loved to deprive men of their liberties, and lives, rather than to save them; *Nolens Volens*.

Sec. 5. Had their cruelty and juggle ended here itself, they would have spared us the pains of any further observation. But that which we have to add, on the prisoners behalf, renders their actions so abominable, in the sight of justice, that all honest and ingenious hearts must needs abhor their base snares.

They tell the jury, That being but judges of fact only, they were to bring the prisoners in Guilty (that is of the fact) at their peril; and it was the part of the bench, to judge what was law; So that if the jury had brought them in Guilty, without any further additional explanation (though intentionally they meant only of the fact proved by evidence) yet the bench would have extended it to every part of the indictment, and by this impious delusion, to have perjured a well meaning jury, and have had their barbarous ends upon the innocent prisoners. But the jury better understanding themselves brought in William Penn Guilty of the fact proved, namely, That he was speaking to some people met in Gracious Church-Street, but not of an unlawful assembly, so circumstantiated (the mention of which stabbed their design of moulding the general answer of Guilty, to their own ends, to the heart) nor indeed could they do otherwise; for as well the jury as prisoners, were denied to have any law produced, by which they might measure the truth of the indictment, and guilt of the fact. But because the Recorder would or could not, perhaps it is so long since he read law that he may have forgotten it, we shall perform his part, in shewing what is that common law of the land, which in general, he said, they were indicted for the breach of, and which indeed if rightly understood, is the undoubted birthright of every Englishman; yea, the inheritance of inheritances, 'Major Heriditas venit unicuique nostrum a jure, et Legibus, quam a parentibus.' Coke Instit. 2. 56.

Sec. 6. All the various kinds or models of government, that are in the world, stand either upon will and power, or condition and contract, the first, rule by men, the second, by

laws; it is our happiness to be born under such a constitution, as is most abhorrent in itself, of all arbitrary government, and which is, and ever has been, most choice and careful of her laws, by which all right is preserved.

Sec. 7. All laws are either fundamental, and so immutable; or superficial and so alterable. By the first we understand such laws, as enjoin men to be just, honest, virtuous; to do no wrong, to kill, rob, deceive, prejudice none; but to do, as one would be done unto; to cherish good, and to terrify wicked men; in short, universal reason, which are not subject to any revolutions, because no emergency, time, or occasion can ever justify a suspension of their execution, much less their utter abrogation.

Sec. 8. By superficial laws we understand, such acts, laws, or statutes, as are suited to present occurrences; and which may as well be abrogated, for the good of the kingdom, as they were first made for it. For instance, those statutes, that relate to victuals, cloaths, and places of trade, &c. which have ever stood whilst the reason of them was in force, but when that benefit, which once redounded, fell by cross occurrences, they ended according to that old maxim, 'cessante ratione legis, cessat lex;' but this cannot be said of fundamental laws, till houses stand without their foundation, and English mankind wholly cease to be, which brings close upon the point.

Sec. 9. There is not any country, that has more constantly expressed her care and deep solicitude to the preservation of her fundamental laws, than the English nation: and though the evil of some particular times and persons have endeavoured an utter abolition of those excellent fundamentals, which we have before defined and defended from any just reason of revolution; yet God Almighty, who is always concerned to avenge the cause of justice, and those excellent good laws, by which it is upheld, has by his providence befooled their contrivances, and baffled their attempts, by bringing their designs to naught, and their persons frequently to condign punishment and disgrace, their age no antiquary living can assure us, unless they say, as old as reason itself: but our own authors are not lacking to inform us, that the liberties, properties and privileges of the English nation are very ancient.

Sec. 10. For Hern in his Mirror of Justice (writ in Edward the first's time) fol. 1. tells us, "That after God had abated the nobility of the Britons, he did deliver the realm to men more humble and simple, of the countries adjoining, to wit, the Saxons, which came from the parts of Almain to conquer this land, of which men there were forty sovereigns, which did rule as companions; and those princes did call this realm England, which before was named the greater Britain: these, after great wars, tribulations and pains, by long timesuffered, did chuse a king to reign over them to govern

the people of God, and to maintain and defend their persons, and their good in quiet; by the rules of right, and at the beginning they did cause him to swear to maintain the holy Christian faith, and to guide his people by right, with all his power, without respect of persons, and to observe the laws: and after when the kingdom was turned into an heritage, king Alfred, that governed this kingdom about 171 years before the conquest, did cause the great men of the kingdom to assemble at London, and there did ordain for a perpetual usage, that twice in the year, or oftner, if need should be, in time of peace, they should assemble at London in parliament; for the government of God's people, that men might live in quiet and receive right by certain usages and holy judgments."

"In which parliament (saith our author) the rights and prerogatives of the kings and of the subjects are distinguished and set apart; and particularly by him expressed, too tedious here to insert; amongst which ordinances we find, "That no man should be imprisoned, but for a capital offence. And if a man should detain another in prison, by colour of right, where there was none, till the party imprisoned died; he that kept him in prison should be held guilty of murder" as you may read p. 33, and p. 36. "He is declared guilty of Homicide, by whom a man shall die in prison, whether it be the judges, that shall too long delay to do a man right, or by cruelty of gaolers; or suffering him to die of famine; or when a man is adjudged to do penance, and shall be surcharged by his gaoler with irons, or other pain whereof he is deprived his life." And p. 149. "That by the ancient law of England, it was felony to detain a man in prison, after sufficient bail offered; where the party was pleivable; every person was pleivable; but he that was appealed of treason, murder, robbery or burglary," p. 35. "None ought to be put in common prisons, but only such as were attainted, or principally appealed or indicted of some capital offence, or attainted of false or wrongful imprisonment; so tender have the ancient laws and constitutions of this realm been of the liberty of their subjects persons, that no man ought to be imprisoned, but for a capital offence, as; treason, murder, robbery, or burglary."

Sec. 11. Nor is Lambard short in his excellent translation of the Saxon laws, from king Iva's time, 719, to Hen. 3, 1100. In describing to us the great obligation, and strong condition, the people were wout to put upon their kings, To observe the ancient fundamental laws, and free customs of this land, which were handed down from one age to another. And in the 17th chap. of Edward the Confessor's laws, the mention there made of a king's duty is very remarkable. That if he break his oath, or performed not his obligation 'Nec nomen regis in eo constabit.' The same Lambard farther tells us, that however any may affirm William of Normandy to be a con-

querer; he was received by the people as Edward's successor, and by solemn oath taken, to maintain unto them the same laws that his kinsman Edward the Confessor did; this doctrine remained in the general, unquestioned, to the reign of king John, who imperiously thought that *voluntas regis*, and not *salvus populi*, was *suprema lex*, or the king's will was the supreme law, and not the people's preservation; till the incensed barons that time, betook themselves to a vigorous defence of their ancient rights and liberties, and learnt him to keep those laws by a due restraint and timely compulsion, which his former invasion of them evidenced to the world he would never have done willingly.

Sec. 12. The Proposals and Articles of agreement, with the pledges given to the barons, on the behalf of the people by the king, were confirmed in Hen. 3d's time, his son and successor; when the abused, slighted, and disregarded laws, by his father, were thought fit to be reduced to record, that the people of England might not for ever after be to seek for a written recorded law, to their defence and security; for, '*miseria servitus est ubi jus est vagum aut incognitum*;' and so we enter upon that 'grand charter of liberty and privilege, in the cause, reason, and end of it.

Sect. 1. We shall first rehearse it, so far as we are concerned (with the formalities of Grant and Curse) and shall then say something as to the Cause, Reason and End of it.

A REHEARSAL of the MATERIAL PARTS of the GREAT CHARTER of ENGLAND.

"Henry, by the grace of God, king of England, &c. To all archbishops, or earls, barons, sheriffs, provosts, officers, and to all bailiffs, and our faithful subjects, who shall see this present charter, greeting. Know ye that we unto the honour of Almighty God, and for the salvation of the souls of our progenitors, and our successors, kings of England, to the advancement of holy church, and amendment of our realm, of our mere and free will have given and granted to all archbishops, &c. and to all freemen of this our realm, these liberties under written, to be holden and kept in this our realm of England for evermore. [9 H. 3. confirmed 28 Ed. 3.]

"We have granted and given to all freemen of our realm, for us, and our heirs for evermore these liberties under written, to have and to hold to them, and to their heirs, of us and our heirs fore-named. [Chap. 1. the form of ancient acts, &c. Co. 2. Inst. fol. 2.]

"A freeman shall not be amerced for a small fault, but after the quantity of the fault. And for a great fault, after the manner thereof, saving to him his contentments or free-hold. And a merchant likewise shall be amerced, saving to him his merchandize; and none of the said amercoements shall be assessed, but by the oath of good and honest men of the vicinage. [Chap. 14.]

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"No freeman shall be taken, or imprisoned, nor be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other ways destroyed; nor we shall not pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land; we shall sell to no man, we shall deny nor defer to no man either justice or right. [Chap. 29.]

"And to all these customs, liberties aforesaid, which we have granted to be holden within this our realm, as much as appertaineth to us and our heirs we shall observe; and all men of this our realm, as well spiritual as temporal, (as much as in them is) shall observe the same against all persons in like wise. And for this our gift, and grant of these liberties, and for other contained in our charter of liberties of our Forest, the archbishops, bishops, abbots, priors, earls, barons, knights, freeholders, and other our subjects, have given unto us the fiftenth part of all their moveables; and we have granted unto them on the other part, that neither we, nor our heirs, shall procure or do any thing whereby the liberties in this charter contained shall be infringed or broken; and if any thing be procured by any person contrary to the premises, shall be had of no force nor effect. These being witnesses, Boniface archbishop of Canterbury, &c. We ratifying and approving those gifts and grants aforesaid, confirm and make strong all the same, for us and our heirs perpetually, and by the tenor of these presents do renew the same willingly; and granting for us and our heirs, that this charter, in all and singular his articles for evermore shall be steadfastly, firmly, and inviolably observed. And if any article in the same charter contained, yet hitherto peradventure hath not been observed, nor kept, we will, and by our authority royal command, from henceforth firmly they be observed. Witness, &c."

THE SENTENCE OF CURSE given by the Bishops, with the King's Consent, against the Breakers of the GREAT CHARTER.

In the year of our Lord 1253, the third day of May, in the great hall of the king at Westminster, in the presence, and by the consent of the lord Henry, by the grace of God, king of England, and the lord Richard, earl of Coruwall, his brother; Roger Bigot, earl of Norfolk marshal of England; Humphry, earl of Hereford; Henry earl of Oxford; John, earl Warreo; and other estates of the realm of England: We Boniface, by the mercy of God, archbishop of Canterbury, primate of England, F. of London, H. of Ely, S. of Worcester, E. of Lincoln, W. of Norwich, P. of Hereford, W. of Salisbury, W. of Durham, R. of Exeter, M. of Carlisle, W. of Bath, E. of Rochester, T. of St. Davids, bishops, apparelled in pontificals, with tapers burning, against the breakers of the churches liberties, and of the liberties and other customs of this realm of England;

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and namely these which are contained in the Charter of the common Liberties of England, and Charter of the Forest, have denounced Sentence of Excommunication in this form, by the authority of Almighty God, the Father, the Son, and the Holy Ghost, &c. of the blessed apostles Peter and Paul, and of all apostles, and of all martyrs, of blessed Edward king of England, and of all the saints of heaven, we excommunicate and accurse, and from the benefits of our holy mother the church we sequester all those that hereafter willingly and maliciously deprive or spoil the church of her right; and all those that by any craft, or willingness, do violate, break, diminish, or change the churches liberties, and free customs contained in the Charters of the common Liberties, and of the Forest, granted by our lord the king to archbishops, bishops, and other prelates of England, and likewise to the earls, barons, knights, and other freeholders of the realm; and all that secretly and openly, by deed, word or counsel do make statutes, or observe them being made, and that bring in customs to keep them, when they be brought in, against the said liberties, or any of them, and all those that shall presume to judge against them; and all and every such person, before mentioned, that wittingly shall commit any thing of the premises, let them well know that they incur the aforesaid Sentence *ipso facto*."

A CONFIRMATION of the CHARTERS and LIBERTIES of ENGLAND, and of the FOREST, made the 25th. Year of EDWARD the FIRST.

"Edward, by the grace of God, king of England, lord of Ireland, duke of Guyan, To all those that these present letters shall bear or see, greeting. Know ye that we to the honour of God and to the profit of our realm, have granted for us, and our heirs, and the Charter of Liberties, and the Charter of Forest, which were made by common assent of all the realm, in the time of king Henry our father, shall be kept in every point, without breach; and we will that the same Charters shall be sent under our seal, as well to our justices of the Forest, as to others, and to all sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together with our writs, in the which it shall be contained, that they cause the aforesaid Charters to be published, and to declare to the people, that we have confirmed them in all points; and that our justices, sheriffs, mayors, and other ministers, which under us have the laws of our land to guide, shall allow the same Charters pleaded before them in judgment, in all their points; that is, to wit, the Great Charter, as the common law, and the Charter of our Forest, for the Welch of our realm.

"And we will, that if any judgment be given from henceforth, contrary to the points of the Charter aforesaid, by the justices, or by any other of our ministers that hold plea before

them, against the points of the Charters, it shall be undone, and holden for naught.

"And we will that the same Charters shall be sent under our seal to cathedral churches throughout our realm, there to remain, and shall be read before the people two times by the year.

"And that all archbishops and bishops shall pronounce the sentence of excommunication against all those that by word, deed, or counsel, do contrary to the foresaid Charters, or that in any point do break or undo them; And that the said curses be twice a year denounced and published by the prelates aforesaid; and if the same prelates, or any of them, be remiss in the denunciation of the said sentences, the archbishops of Canterbury and York, for the time being, shall compel and distrain them to the execution of their duties in form aforesaid."

The SENTENCE of the Clergy against the Breakers of the Articles above-mentioned.

"In the name of the Father, the Son, and the Holy Ghost; Amen: Whereas our sovereign lord the king, to the honour of God, and of holy church, and for the common profit of the realm, hath granted for him, and his heirs for ever, these Articles above-written; Robert archbishop of Canterbury, primate of all England, admonished all his province once twice and thrice, because that shortness will not suffer so much delay, as to give knowledge to all the people of England of these presents in writing; we therefore enjoin all persons, of what estate soever they be, that they, and every of them, as much as in them is, shall uphold and maintain these Articles granted by our sovereign lord the king, in all points: And all those that in any point do resist, or break, or in any manner hereafter procure, counsel, or in any wise assent to testify or break those ordinances, or go about it, by word or deed, openly or privily, by any manner of pretence or colour; we, the aforesaid archbishop, by our authority in this writing expressed, do excommunicate and accurse, and from the body of our Lord Jesus Christ, and from all the company of heaven, and from all the sacraments of holy church do sequester and exclude."

We may here see, that in the obscurest times of sottish popery, they were not left without a sense of justice, and the necessity of Liberty and Property, to be inviolably enjoyed, which brings us to the cause of it.

1. The Cause of this famous Charter, was, as we have already said, the encroachments that were made by several ministers of precedent kings, that almost became customary, and which had never extinguished the free customs due to Englishmen: How great care it cost our ancestors, it unbecomes us to ignore, or by our silence to neglect; It was that Yoke and Muzzle, which failed not to disable many raging bears, from entering the pleasant vineyard of

English freedoms, that otherwise would not have left a fruitful vine in being. Anon we may give the reader an account of some, with their wages as well as works.

2. The Reason of it, is so great, that it seems to be its own. It is the very image and expression of justice, liberty, and property; points of such eminent importance, as without which no government can be said to be reasonable, but arbitrary and tyrannical. It allows every man that liberty God and nature have given him, and the secure possession of his property, from the inroad or invasion of his neighbour, or any else of that constitution. It justifies no man in a fault, only it provides equal and just ways to have the offender tried; considering the malice of many prosecutors, and the great value of liberty and life.

3. The End of it was the most noble of any earthly projection, to wit, The relaxing of those shaken laws, held for many hundred years, by constant claim, that they living might be re-instated in their primitive liberty, and their posterity secured in the possession of so great a happiness.

Amongst those many rich advantages, that accrue to the free people of England, from this Great Charter; and those many confirmatory statutes of the same, we shall present the Reader with the sight of some few, that may most properly fall under the consideration and inquiry of these present times, as found in our Common Law books.

1. "That every Englishman is born free."

2. "That no such freeman shall be taken, attached, assessed, or imprisoned, by any petition or suggestion to the king or his council, unless by the indictment or presentment of good and lawful men where such deeds be done;" 5 Edw. 3. c. 9. 25 Edw. 3. c. 4. 17 R. 2. c. 6. Rot. Parl. 42 Edw. 3. Coke 2 Inst. 46.

3. "That no freeman shall be disseized of his freehold or liberties, or free customs, &c." Hereby is intended, saith Coke, "That lands, tenements, goods, and chattels," shall not be seized into the king's hands contrary to this Great Charter, &c. 43. Ass. p. 19. 43 Edw. 3. Coke 2 Inst. 32. Neither shall any such freeman be put from his livelihood without answer. Coke 2 Inst. 47.

4. "That no freeman shall be out-lawed, unless he shroud and hide himself voluntarily from the justice of the law," 2 and 3 Phil. and Mar. Dier. 114. 145.

5. "No freeman shall be exiled." Coke says there are but two grounds, upon which any man may be exiled. One by act of parliament (supposing it not contrary to the Great Charter.) The other in case of abjuration, for felony by the common law, &c. Coke 2 Inst. 47.

6. "No freeman shall be destroyed," that is, he shall not be "fore-judged, of life, limb, dis-herited, or put to torture, or death," every oppression against law, by colour of any usurp-

ed authority, is a kind of destruction, and it is the worst oppression that is done by colour of justice. Coke Inst. p. 48.

7. "That no freeman shall be thus taken, or imprisoned, disseized, out-lawed, exiled, or destroyed of his liberties, freeholds, and free customs, but by the lawful judgment of his Peers" (vulgarly called jury). So that the judgment of any fact or person, is by this fundamental law, referred to the breasts, and consciences of the jury; it is rendered in Latin 'per legale iudicium,' that is lawful judgment; from whence it is to be observed, that the judgment must have law in it, and be according to law, which cannot be where they are not judges, how far the fact is legal, or the contrary; 'Judicium quasi Juris Dictum,' the voice of Law and Right, and therefore is their verdict not to be rejected, because it is supposed to be the truth, according to their consciences: For 'Ver dictis' from 'vere dictum,' is 'quasi dictum veritatis' or a true saying or judgment, 9 Hen. 3. 29. Coke Inst. 1. 39. Inst. 4. 207. Coke says, that by the word *Legale* three things are implied. 1st. That this was by law, before the Statute, and therefore this statute but declaratory of the ancient law. 2d. That their verdict must be legally given; wherein is to be observed. 1st. The jury ought to hear no evidence, but in the hearing and presence of the prisoner. 2d. That they cannot send to ask any question in law of the judges, but in the presence of the prisoner, for, 'de facto jus oritur.' 3d. The evidence produced by the king's counsel, being given, the judges cannot collect the evidence, nor urge it by way of charge to the jury, nor yet confer with the jury about the evidence, but in the presence of the prisoner. Coke Inst. 2. 49.

8th "Or by the law of the land" It is a synonymous expression, importing no more than by a trial of peers or a jury; for it is sometimes rendered not (or) disjunctively, but (and) which is connectively; however, it can never signify any thing contrary to the old way of trying by Peers; for then it would be connected to a contradiction.

Besides Coke well observes, that in the 4th Chap. of the 25th Edw. 3, 'Per legem terræ,' imports no more, than a trial by due process, and writ original at common law, which cannot be without a jury; therefore, 'Per iudicium parum et per legem terræ,' signify the same privilege unto the people. Coke Inst. 2. page 50.

Thus have we presented you with some of those maxims of law, dearer to our ancestors, than life; because they are the defence of the lives and liberties of the people of England: it is from this 29th chap. of the Great Charter; Great, not for its bulk, but the privileges in it; as from a spacious root, that so many fruitful branches of the law of England springs, if Coke may be credited. But how sacred soever they have been esteemed, and still are by noble and just minds, yet so degenerate are

some, in their proceedings, that conscious to themselves of their baseness, they will not dare stand the touch of this Great Charter, and those just laws grounded upon it, of which number we may truly rank the mayor, and recorder of London, with the rest of their wise companions, in their late sessions, at the Old Bailey, upon the occasion of the prisoners.

1. The prisoners were taken, and imprisoned without presentment of good and lawful men of the vicinage, or the neighbourhood, but after a military and tumultuous manner, contrary to the Grand Charter.

2. They refused to produce the law upon which they proceeded; leaving thereby the prisoners, jury and whole assembly in the dark.

3. They refused the prisoners to plead, and directly withstood that great privilege, mentioned in the first chap. 25 Edw. 1. "Where all justices, mayors, sheriffs, and other ministers, that have the laws of the land, to guide them, are required to allow the said Charter to be pleaded in all its points, and in all causes that shall come before them in judgment." For no sooner did William Penn, or his fellow prisoner, urge upon them the Great Charter, and other good laws, but the Recorder cried, Take him away; take him away, put him into the Bale-Dock or hole; from which the recorder can never deliver himself, unless it be by avowing; the laws are not his guide, and therefore does not suffer them to be pleaded before him in judgment.

4. They gave the Jury their charge, in the prisoner's absence, endeavouring highly to insinuate the Jury against them.

5. The verdict being given, which is in law, "Dictum Veritatis," The voice of Truth herself, (because not suitable to their humour) they did five times reject it, with many abusive, imperious, and menacing expressions to the jury, such as no precedent can afford us) as if they were not the only constituted judges by the fundamental laws of the land, but mere cyphers only to signify something behind their figures.

6. Though the prisoners were cleared by their Jury, yet were they continued for the non-payment of their fines, laid upon them, for not pulling off their hats, in which the law is notoriously broken. (1st) In that no man shall be amerced, but according to the offence, and they have fined each forty marks. (2d) They were not merced by any Jury, but at the will of an incensed bench.—Besides there is no law against the hat, and where there is no law there can be no transgression, and consequently no legal amercement or fine, 9 H. 3, chap. 14. But how the prisoners were trepanned into it, is most ridiculous on the side of the contrivers, that finding their hats off, would have them put on again by their officers, to fool the prisoners, with a trial of putting them off again, which childish conceit not being gratified, they fined them the forty marks a piece.

7. Instead of accepting their verdict as good

in law, and for the true decision of the matter, according to the Great Charter (that constitutes them proper judges, and which bears them out with many other good laws, in what they agreed to, as a verdict, the court did most illegally and tyrannically fine and imprison them, as in the trial was expressed. And that notwithstanding the late just resentment of the House of Commons, in judge Keeling's Case, where they resolved, "That the precedent and practice of fining, and imprisoning of juries, for their verdicts, were illegal." And here we must needs observe two things.

1st. That the fundamental laws of England cannot be more slighted, and contradicted in any thing (next Englishmen being quiet destroyed) than in not suffering them to have that equal *medium*, or just way of trial, that the same law has provided, which is by a jury.

2d. That the late proceeding of the court, at the Old Bailey, is an evident demonstration, that juries are now but mere formality, and that the partial charge of the Bench must be the verdict of the jury; for if ever a rape were attempted on the consciences of any jury, it was there. And indeed the ignorance of jurors of their authority by law, is the only reason of their unhappy cringing to the court, and being scared into an Anti-Conscience Verdict, by their lawless threats.

But we have lived to an age, so debauched from all humanity and reason, as well as faith and religion, that some stick not to turn butchers to their own privileges, and conspirators against their own liberties. For however Magna Charta had once the reputation of a sacred unalterable law, and few hardened enough, to incur and bear the long curse, that attends the violators of it, yet it is frequently objected now, that the benefits there designed are but temporary, and therefore liable to alteration, as other statutes are. What game such persons play at, may be lively read, in the attempts of Dionisius, Palaris, &c. which would have will and power be the people's law.

But that the privileges due to Englishmen, by the Great Charter of England, have their foundation in reason and law: and that those new Cassandrian ways, to introduce will and power, deserve to be deteated by all persons professing sense and honesty, and the least allegiance to our English government; we shall make appear from a sober consideration of the nature of those privileges contained in that Charter.

1. The ground of alteration of any law in government (where there is no invasion) should arise from the universal discommodity of its continuance, but there can be no disprofit in the discontinuance of liberty and property, therefore there can be no just ground of alteration.

2. No one Englishman is born slave to another, neither has the one a right to inherit the sweat and benefit of the others labour, without consent, therefore the liberty and property of

an Englishman, cannot reasonably be at the will and beck of another, let his quality and rank be never so great.

3. There can be nothing more unreasonable than that which is partial, but to take away the liberty and property of any, which are natural rights, without breaking the law of nature (and not of will and power) is manifestly partial, and therefore unreasonable.

4. If it be just and reasonable for men to do as they would be done by, then no sort of men should invade the liberties and properties of other men, because they would not be served so themselves.

5. Where liberty and property are destroyed, there must always be a state of force and war, which however pleasing it may be unto the invaders, it will be esteemed intolerable by the invaded, who will no longer remain subject in all human probability, than while they want as much power to free themselves, as their adversaries had to enslave them; The troubles, hazards, ill-consequences, and illegality of such attempts, as they have declined by the most prudent in all ages, so have they proved most uneasy to the most savage of all nations, who first or last have by a mighty torrent freed themselves, to the due punishment and great infamy of their oppressors; such being the advantage, such the disadvantage which necessarily do attend the fixation, and removal of liberty and property.

We shall proceed to make it appear that Magna Charta (as recited by us) imports nothing less than their preservation.

“No freeman shall be taken, or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be out-lawed, or exiled, or any other ways destroyed; nor we will not pass upon him nor condemn him, but by lawful judgment of his peers, &c.

“A freeman shall not be amerced for a small fault, but after the manner of the fault, and for a great fault after the greatness thereof, and none of the said amercement shall be assessed, but by the oath of good and lawful men of the vicinage.”

1. It asserts Englishmen to be free; that's liberty.

2. That they have free-holds, that's property.

3. That amercement, or penalties, should be proportioned to the faults committed, which is equity.

4. That they shall lose neither, but when they are adjudged to have forfeited them, in the judgment of their honest neighbours, according to the law of the land; which is lawful judgment.

It is easy to discern to what pass the enemies of the Great Charter would bring the people.

1. They are now free-men; but they would have them slaves.

2. They have now right unto their wives, children, and estates, as their undoubted property; but such would rob them of all.

3. Now no man is to be amerced, or punished

but suitably to his fault; whilst they would make it suitable to their revengeful minds.

4. Whereas the power of judgment lies in the breasts and consciences of twelve honest neighbours; they would have it at the discretion of mercenary judges: to which, we cannot chuse but add, That such discourses manifestly strike at this present constitution of government; for it being founded upon the Great Charter, which is the ancient common law of the Land, as upon its best foundation; none can design the cancelling of the Charter, but they must necessarily intend the extirpation of the English government; For where the cause is taken away the effect must consequently cease. And as the restoration of our ancient English laws, by the Great Charter, was the sovereign balsam which cured our former breaches, so doubtless will the continuation of it, prove an excellent prevention to any future disturbances.

But some are ready to object, “That the Great Charter consisting as well of religious as civil rights, the former having received an alteration, there is the same reason, why the latter may have the like.”

To which we answer, That the reason of alteration cannot be the same, therefore the consequence is false. The one being matter of opinion, about faith and religious worship, which is as various as the unconstant apprehensions of men; but the other is matter of so immutable right, and justice, that all generations, however differing in their religious opinion, have concurred, and agreed to the certainty, equity, and indispensable necessity of preserving these fundamental laws; so that Magna Charta hath not risen and fallen with the differing religious opinions, that have been in this land, but have ever remained, as the stable right, of every individual Englishman; purely as an Englishman. Otherwise, if the civil privileges of the people had fallen with the pretended religious privileges, of the popish tyranny, at the first reformation, as must needs be suggested by this objection, our case had ended here, that we had obtained a spiritual freedom, at the cost of a civil bondage; which certainly was far from the intention of the first reformers, and probably an unseen consequence, by the objectors to their idle opinion.

In short, there is no time, in which any man may plead the necessity of such an action, as is unjust in its own nature, which he must unavoidably be guilty of, that doth deface or cancel that law by which the justice of liberty and property is confirmed and maintained to the people. And consequently, no person may legally attempt the subversion, or extenuation of the force of the Great Charter. We shall proceed to prove from instances out of both.

1. Any judgment given contrary to the said Charter, is to be undone, and holden for nought. 25 Edw. 1, Chap. 2.

2. Any that by word, deed, or counsel, go

contrary to the said Charter, are to be excommunicated by the bishops; And the archbishops of Canterbury and York, are bound to compel the other bishops to denounce sentence accordingly, in case of their remissness, or neglect; which certainly hath relation to the state, rather than the church; since there was never any necessity of compelling the bishops to denounce sentence in their own case, though frequently in the peoples. 25 Edw. 1, chap. 4.

3. That the Great Charter, and Charter of Forest, be holden and kept in all points, and if any statute be made to the contrary, that it shall be holden for nought. 42 Edw. 3, 1. Upon which Coke, that famous English lawyer, said, "That albeit judgments in the king's courts, are of high regard in law, and *judicia* are accounted as *juris dicta*; yet it is provided by act of parliament, that if any judgment be given contrary to any of the points of the Great Charter, it should be holden for nought."

He further saith, "That upon the Statute of the 25th of Ed. 1, chap. 1. That this Great Charter, and the Charter of Forest, are properly the common law of this land, or the law is common to all the people thereof."

4. Another statute runs thus, "If any force come to disturb the execution of the common law, ye shall cause their bodies to be arrested, and put in prison; Ye shall deny no man right by the king's letters, nor counsel the king any thing, that may turn to his damage, or dishonour. 18 Ed. 3, chap. 7. Neither to delay right by the great and little seal." This is the judges charge and oath. 2 Ed. 3, chap. 8, 14 Ed. 3, 14, 11 R. 2, chap. 10.

5. Such care hath been taken, for the preservation of this Great Charter, that in the 25th of Ed. 1. It was enacted, "That commissioners should issue forth, that there should be chosen in every shire-court, by the commonalty of the same shire, three substantial men, knights, or other lawful, wise, and well disposed persons, to be justices, which shall be assigned by the kings letters patents, under the great seal, to hear and determine, without any other writ, but only their commission, such complaints as shall be made upon all those, that commit or offend against any point, contained in the aforesaid Charters." 28 Ed. 1, chap. 1.

6. The necessity of preserving these Charters, hath appeared in nothing more, than in the care they have taken to confirm them; which as Coke observes, "hath been by 32 parliaments confirmed, established, and commanded to be put in execution," with the condign punishment they had inflicted upon the offenders. Coke's Proem to the second book of his Just.

7. That in the notable Petition of Right, many of these great privileges, and free customs, contained in the aforesaid Charters, and other good laws, are recited and confirmed, 3 Car. 1.*

8. The late king, in his Declaration, at

Newmarket, 1641, acknowledged, "The law to be the rule of his power." By which he doubtless intended fundamental laws, since it may be the great advantage of countries, sometimes to suspend the execution of temporary laws.

Having so manifestly evidenced that venerable esteem, our ancestors had of that golden rule, the Great Charter, with their deep solicitude, to preserve it, from the defacing of usurpation and faction. We shall proceed to give an account of their just resentment and earnest prosecution against some of those, who in any age have adventured, to undermine that ancient foundation, by introducing an arbitrary way of government.

1. As judicious Lambard reports in his Saxon translation; "That the kings in those days, were by their coronation oaths obliged to keep, the ancient fundamental laws, and customs of this land" (of which this Great Charter is but declaratory) "so did king Alfred (reputed the most famous compiler of laws amongst them) give this discovery of his indignation against his own judges, for actions contrary to those fundamental laws, that he commanded the execution of 40 of them," which may be a reasonable caveat to judges of our times.

2. Hubert de Burgo, once chief justice of England (having advised Ed. 1 in the 11th year of his reign, (in his council holden at Oxford) "To cancel this Great Charter, and that of the Forest) was justly sentenced according to law, by his peers, in open parliament. When the statute called Confirmationis Cartarum was made; in the 1st chapter whereof, Magna Charta is peculiarly called the common law, 25 Ed. 1, chap. 2.

3. The Spencers, both father and son, for their arbitrary domination, and rash, and evil counsel to Ed. 2, (by which he was seduced to break the Great Charter) were banished for their pains, as Coke relates.†

4. The same case attended Tresilian and Belknap, for their illegal proceedings.‡

5. The breach of this Great Charter, was the ground of that exemplary justice done upon Empson and Dudley,* whose case is very memorable in this point; for though they gratified Hen. 7. in what they did, and had an Act of parliament for their warrant, made the 11th of his reign; yet met they with their due reward from the hands of justice, that Act being against equity and common reason, and so no justifiable ground or apology, for those frequent abuses, and oppressions of the people, they were found guilty of. Here what the Lord Coke further saith, concerning the matter, "There was an Act of parliament, made in the 11th year of king Hen. 7. which had a fair flattering preamble, pretending to avoid divers mischiefs, which were (1st) The high displeasure of Almighty

* See 2 Cobb. Parl. Hist. p. 970.

† See vol. 1, p. 23 of this Collection.

‡ Ibid, p. 89. || See vol. 1, p. 283.

* See 2 Cobb. Parl. Hist. 374.

God. 2d. The great let of the common law. And (3d) The great let of the wealth of this land. And the purview of that act, tended in the execution contrary, *ex diametro*, viz. To the high displeasure of Almighty God, and the great let, nay the utter subversion of the common Law, and the great let of the wealth of this land, as hereafter shall appear; the substance of which Act follows in these words.

‘That from thenceforth, as well justices of Assize, as Justices of the peace, in every county, upon information for the king, before them made, without any finding or presentment by twelve men, shall have full power and authority, by their discretion; and to hear and determine all offences, as riots, unlawful assemblies, &c. committed and done against any act or statute made, and not repealed, &c.’ (a Case that very much resembles this of our own times.)

By pretext of this law, Empson and Dudley did commit upon the subjects, unsufferable pressure, and oppressions; and therefore this statute was justly, soon after the decease of Hen. 7. repealed, at the next parliament, after his decease by the statute of the 1 H. 8. chap. 6. A good caveat to parliaments, to leave all causes to be measured by the golden and straight meteward of the law, and not to the incertain and crooked cord of discretion.

“It is almost incredible to foresee, when any maxim, or fundamental, law of this realm is altered (as elsewhere hath been observed) what dangerous inconveniences do follow; which most expressly appeareth by this most unjust and strange act of the 11th of H. 7. For hereby, not only Empson and Dudley themselves, but such justices of peace (corrupt men) as they caused to be authorised, committed most grievous, and heavy oppressions and exactions; grinding the faces of the poor subjects by penal laws (be they never so obsolete, or unfit for the time) by information only, without any presentment, or trial by jury, being the ancient birth-right of the subject; but to hear and determine the same, by their discretions; inflicting such penalty, as the statute not repealed imposed. These and other like oppressions, and exactions by, or by the means of Empson, and Dudley, and their instruments, brought infinite treasure to the king’s coffers, whereof the king himself, at the end, with great grief, and compunction, repented as in another place we have observed.

“This statute of the 11th of H. 7. we have recited, and shewed the just inconveniences thereof; to the end, that the like should never hereafter be attempted in any court of parliament; and that others might avoid the fearful end of those two time-servers, Empson and Dudley, ‘Qui eorum utriusque insistant, eorum exitus per horrescant.’

“See the Statute of 8 Edw. 4. chap. 2. a Statute of Liveries, an Information, &c. By the discretion of the judges, to stand as an original, &c. This act is deservedly repealed, vide 1 R. 2. c. 15. Punishment by discretion,

&c. vide, 5th of H. 4. c. 68. See the Commission of Sewers; discretion ought to be thus described, ‘Discretio est discernere per Legem, quid sit justum,’ From whence three things seem most remarkable.

1. The great equity and justice of the Great Charter, with the high value our ancestors have most deservedly set upon it.

2. The dreadful maledictions, or curse, they have denounced upon the Breakers of it; with those exemplary punishments they have not spared, to inflict upon such notorious offenders.

3. So heinous a thing was it esteemed of old, to endeavour an enervation, or subversion of these ancient rights and privileges, that acts of parliaments themselves (otherwise the most sacred with the people,) have not been of force enough to secure or defend such persons from condign punishment, who in pursuance of them, have acted inconsistent with our Great Charter. Therefore it is, that great lawyer, the lord Coke, doth once more aggravate the example of Empson and Dudley (with persons of the same rank) into a just caution, as well to parliaments as judges, justices and inferior magistrates, to decline making, or executing any act, that may in the least seem to restringe or confirm this so often avowed and confirmed Great Charter of the liberties of England, since parliaments are said to err when they cross it; the obeyers of their acts punished, as time-serving transgressors, and that kings themselves, (though enriched by those courses) have with great compunction and repentance, left among their dying words their recantations.

Therefore most notable and true it was, with which we shall conclude this present subject, what the king pleased to observe in a Speech to the Parliament, about 1663, (viz.) “The good old rules of law are our best security.”

The manner of the Court’s behaviour towards the Prisoners, and Jury, with their many extravagant expressions, must not altogether slip our observation.

1. Their carriage to the Jury outdoes all precedents; they entertained them more like a pack of felons, than a Jury of honest men, as being fitter to be tried themselves, than to acquit others. In short, no Jury, for many ages, received so many instances of displeasure, and affront, because they preferred not the humour of the Court, before the quiet of their own consciences, even to be esteemed as perjured, though they had really been so, had they not done what they did.

2. Their treatment of the Prisoners was not more unchristian, than inhuman. History can scarce tell us of one heathen Roman that ever was so ignoble to his captive: what! to accuse, and not hear them; to threaten to bore their tongues, gag and stop their mouths, fetter their legs, merely for defending themselves, and that by the ancient fundamental laws of England too. O barbarous! had they been Turks and

* See 4 Cobb. Parl. Hist. 227.

infidels, that carriage would have ill become a Christian court, such actions proving, much stronger dissuaves, than argument to convince them, how much the Christian religion inclines men to justice and moderation above their dark idolatry. It is truly lamentable that such occasion should be given, for intelligence to foreign parts, where England hath had the reputation of a Christian country, by the ill treating of its sober and religious inhabitants for their conscientious meetings to worship God. But above all, Dissenters had little reason to have expected this boarish fierceness from the mayor of London, when they consider his eager prosecution of the king's party under Cromwell's government, as thinking he could never give too great a testimony of his loyalty to that new instrument, which makes the old saying true, That one renegade is worse than three Turks.

Alderman Bludworth, being conscious to himself of his partial kindness to the Popish Friars, hopes to make amends by his zealous prosecution of the poor Dissenters; for at the same sessions he moved to have an evidence (of no small quality) against Harrison, the friar, sent to Bridewell and whipped; that he was earnest to have the Jury fined and imprisoned, because they brought not the Prisoners guilty, for only worshipping their God: whence it may be easy to observe, That Popish friars, and prelatical persecutors are mere confederates.

But what others have only adventured to stammer at, the Recorder of London, has been so ingenious as to speak most plainly; or else what means those two fatal expressions, which are become the talk and terror both of city and country?

First, in assuring the Jury, 'That there would be a law next session of parliament, 'That no man should have the protection of the law, but such as conformed to the church:' which, should it be as true, as we hope it is false (and a dishonourable prophecy of that great assembly) the papists may live to see their Marian days outdone by professed Protestants. But surely no Englishman can be so sottish, as to conceive that his right to Liberty and Property, came in with his profession of the Protestant religion; or that his natural and human rights, are dependent on certain religious apprehensions, and consequently he must esteem it a cruelty in the abstract, that persons should be denied the benefit of those laws which relate to civil concerns, who by their deportment in civil affairs, have no ways transgressed them, but merely upon an opinion of faith and matter of conscience. It is well known that Liberty and Property, Trade and Commerce were in the world long before the points in difference betwixt Protestants and Dissenters, as the common privileges of mankind; and therefore not to be measured out by a conformity to this, or the other religious persuasion, but purely as Englishmen.

Secondly, But we should rather choose to esteem this an expression of heat in the Recorder, than that we could believe a London's

Recorder should say, an English parliament should impose so much slavery on the present age, and entail it upon their own posterity (who for ought they know may be reckoned among the dissenters of the next age) did he not encourage us to believe, it was both his desire and his judgment, from that deliberate eulogy he made on the Spanish inquisition, expressing himself much to this purpose: viz. "Till now I never understood the reason of the policy and prudence of the Spaniards, in suffering the inquisition amongst them: And certainly it will never be well with us, till some thing like unto the Spanish inquisition be in England." The gross malignity of which saying is almost inexpressible: What does this but justify that hellish design of the papists to have prevented the first reformation; If this be good doctrine, then Hogestrant, the grand inquisitor, was a more venerable person than Luther the reformer. It was an expression that had better become Cajetan the pope's Legate, than Howel a protestant city's recorder. This is so far from helping to convert the Spaniard, that it is the way to harden him in his idolatry; when his abominable cruelty shall be esteemed prudence, and his most barbarous and exquisite torturing of truth, an excellent way to prevent faction.

If the recorder has spake for no more than for himself it is well; but certainly he little deserves to be thought a protestant, and a lawyer, that put both reformation and law into the inquisition; There being nothing more destructive of the fundamental laws and liberties of England, and that noble design of primitive reformation; than the arbitrary power and terrifying racks of the Spanish inquisition. And doubtless the supreme governors of the land, are highly obliged in honour and conscience (in discharge of their trust to God and the people) to take these things into their serious consideration, as what is expected from them, by those who earnestly wish theirs and the kingdom's safety and prosperity.

The Copy of Judge KEELING'S Case,* taken out of the Parliament Journal.

December 11th, 1667.

'The House resumed the hearing of the rest of the report touching the matter of restraints

* "On the 16th of October, 1667, the House being informed, 'That there have been some innovations of late in trials of men for their lives and deaths; and in some particular cases, restraints have been put upon juries, in the inquiries,' this matter is referred to a committee. On the 18th of November, this committee are empowered to receive information against the Lord Chief Justice Keeling, for any other misdemeanors, besides those concerning juries. And on the 11th of December, 1667, the committee report several Resolutions [as above] against the Lord Chief Justice Keeling, of illegal and arbitrary proceedings in his office. The Chief Justice dearing to be heard, he is

‘ upon juries; and that upon the examination
‘ of divers witnesses, in several clauses of re-
‘ straints, put upon juries, by the Lord Chief
‘ Justice Keeling; whereupon the committee
‘ made their resolutions, which are as follow-
‘ eth:

‘ 1. That the proceedings of the Lord Chief

‘ Justice, in the cases now reported, are inno-
‘ vations, in the trial of men for their lives and
‘ liberties; and that he hath used an arbitrary
‘ and illegal power, which is of dangerous con-
‘ sequence to the lives and liberties of the peo-
‘ ple of England, and tends to the introducing
‘ of an arbitrary government.

admitted on the 13th of December, and heard
in his defence to the matters charged against
him, and being withdrawn, the House resolve,
That they will proceed no farther in the matter
against him.” 4 Hatsell.

Mr. Hatsell observes, that “The report of
the facts on which these Resolutions are
grounded, is not entered in the Journals; but
the cases complained of, in which innovations
had been had of late, were probably those of
Wagstaff and Hood. Wagstaff’s case in Trin.
term, 17 Ch. 2, is reported in Hardress’s Rep.
p. 409. ‘Wagstaff and others of a jury were
‘ fined an hundred marks a-piece by Lord
‘ Chief Justice Keeling, because, though evi-
‘ dence was given, that persons had assembled
‘ at conventicles and had bibles with them, the
‘ jury would not find them guilty of keeping a
‘ conventicle, upon the late act of 16 Ch. 2.
‘ And the jury were committed till they paid
‘ their fine: and on application to the court of
‘ Exchequer, Lord Chief Baron Hale directed
‘ the fines to be estreated.’ The other case
was in the 18th of Charles 2, Kelyng’s Reports,
p. 50.” 4 Hatsell, 113.

“Memorandum, At Lent circuit at Win-
chester, 18 Car. 2, one Henry Hood was in-
dicted for the murder of John Newen, and
upon the evidence it appeared, that he killed
him without any provocation, and thereupon I
directed the jury that it was murder: for the
law in that case intended malice; and I told
them they were judges of the matter of fact,
viz. whether Newen died by the hand of Hood;
but whether it was murder or manslaughter,
that was matter in law, in which they were
to observe the direction of the Court. But
notwithstanding they would find it only man-
slaughter; whereupon I took the verdict and
fined the jury, of which John Goldwier was the
foreman, 5*l.* a-piece, and committed them to
gaol till they found sureties to appear at the
next assizes, and in the mean time to be of the
good behaviour: but after, upon the petition of
the jurors, I took down their fines to 40*s.*
a-piece, which they all paid and entered in re-
cognisance, &c.” Kelyng, 50.

It is, perhaps, worth observation, that in this
case of Hood, Kelyng’s direction, (for not fol-
lowing which he fined the jury), seems upon his
own shewing to have been wrong. According
to his own report of the case, the only question,
which he left to the jury, was, whether Newen
died by the hand of Hood. Now most un-
doubtedly the circumstances of intention on the
part of Hood, and of provocation (the sufficiency
of provocation is altogether distinct) on the
part of Newen, were as much matters of fact,

and to be collected from the testimony of the
witnesses, as the giving the mortal wound.
Those matters therefore should have been left
to the jury. See the 8th Resolution of the
Judges in lord Morley’s case *ante*, p. 771. It is
not improbable, that in Hood’s case there was
some provocation, which the jury thought suffi-
cient to excite his sudden resentment, and put
him off his guard, and so reduce his offence to
man-slaughter, but which the judge did not
think sufficient for that purpose.

The following Case is in 2 Keble, 180.

“The King against Sir H. Windham and
others, Jurors of Somersetshire.

“The Chief Justice bound them over to ap-
pear here in regard they would not find a bill of
murder, albeit they were satisfied the man did
by the hands of the party indicted, and were told
this was but an accusation, and no trial of the
issue Guilty or Not Guilty, or whether it were
maliciously or *fortuito*, and that whether the
fact were murder or *se defendendo* was matter
of law; and because they would not find the
bill, the Chief Justice fined the eleven who re-
fused to find it, to 20*l.* a-piece at the assizes;
and now the Court delivered their opinions se-
verally that this was well assessed, in regard if
they should try the malice by the grand jury,
they would prevent the judgment of the Court,
and the grand jury is only for enquiry not for
conviction; also they are not to regard
the legal forms of *malitiose*, no more than the
saying *vi et armis* in trespass, which is found
every day without scruple; and when the petty
jury, contrary to directions of the Court, will
find a murder manslaughter, albeit it lie pro-
perly before them, yet the Court will fine
them, but because they were gentlemen of re-
pute in the country, the Court spared the fine,
yet in Parliament the Chief Justice was fain to
submit, being by sir H. W. accused.”

“This conduct of Chief Justice Kelyng,”
says Mr. Hatsell, “was grounded on the au-
thority of Wharton’s case, Mich. term, 4*l.*
Eliz. reported in Yelverton’s Rep. p. 23.
‘Wharton and others were indicted of murder;
‘ on which indictment all the parties were found
‘ Not Guilty; per q Popham, Gaudy and Fen-
‘ ner, *suerunt valde irati, et-touts les jurors*
‘ *comit et fine, et oblige a lour bon behaviour.*’
See the case of Watts v. Brains, in 1 Croke’s
Rep. p. 778.”

A bill was ordered in, which however did
not pass the House of Commons, to “declare
the fining and imprisoning of jurors to be il-
legal.”

‘ 2. That in the place of judicature, the Lord Chief Justice hath under-valued, vilified, and condemned Magna Charta, the great preserver of our lives, freedom, and property.

‘ 3. That he be brought to trial, in order to condign punishment, in such manner as the House shall judge most fit and requisite.’

December 13th 1667.

‘ Resolved, &c.

‘ That the precedents and practice of fining or imprisoning jurors, for verdicts, is illegal.’

Now whether the justices of this court, in their proceedings (both towards the prisoners, and Jury) have acted according to law, to their oaths and duty, and to do justice without partiality: whereby right might be preserved, the peace of the land secured, and our ancient laws established; or whether such actions tend not to deprive us of our lives and liberties, to rob us of (our birth-right) the fundamental laws of England? and finally to bring in an arbitrary and illegal power to usurp the benches of all our courts of justice, we leave the English reader to judge.

Certainly, there can be no higher affront offered to king and parliament, than the bringing their reputations into suspicion with their people, by the irregular actions of subordinate judges: And no age can parallel the carriage of this recorder, mayor, &c. Nor can we think so ignobly of the parliament, as that they should do less than call these persons to account, who failed not to do it to one less guilty, and of more repute, (to wit) judge Keeling: for if his behaviour gave just ground of jealousy, that he intended an innovation, and the introducing an arbitrary government, this recorder much more. Did Chief Justice Keeling say, Magna Charta was *Magna Charta*; so did this recorder too: And did justice Keeling fine and imprison Juries, contrary to law; so did this Recorder also. In short there is no difference, unless it be, that the one was questioned, and the other deserves it: But we desire in this they may be said to differ, that though the former escaped punishment, the latter may not, who having a precedent before, did notwithstanding notoriously transgress.

To conclude, the law supposes the king cannot err, because it is willing to suppose, he always acts by law (and ‘ voluntas legis, est voluntas Regis,’ or the king’s will is regulated by the law) but it says no such thing of his judges. And since they are obliged by oath to disregard the king’s letters (though under the broad and privy seal) if they any wise oppugn, or contradict the

laws of the land; and considering that every singular action of an inferior minister, has an ugly reference to the supreme magistrate, where not rebuked; we cannot but conclude, that both judges are answerable for their irregularities, especially, where they had not a limitation of a king’s letter, or command; and that the supreme magistrate is obliged, as in honour and safety to himself, Alfred-like, to bring such to condign punishment, lest every sessions produce the like tragical scenes of usurpation over the consciences of Juries, to the vilifying and contemning of justice, and great detriment, and prejudice of the good and honest men of this famous and free city. Fiat Justitia.

THE severe measures adopted in the early part of the reign of Charles the Second, against Protestant Non-Conformists, (See the Act of Uniformity, Stat. 13 and 14 Car. 2, c. 4, the first Conventicle Act Stat. 16, Car. 2, c. 4, The Five Mile Act Stat. 17 Car. 2, c. 2.) it is probable were occasioned by the sentiments of hatred and revenge which Clarendon felt towards the Presbyterians. The revival of that course of measures, after Clarendon had been removed, was perhaps the result of cool policy in favour of the Papists. It seems to have been supposed that by the enactment and severe enforcement of the second Conventicle Act, Stat. 22, Car. 2, c. 1. the Protestant Dissenters might have been driven to petition for a general Toleration. However this may be, it appears that an active persecution was exercised under the provisions of that statute.

“Many of the bishops,” says Neal, “chose to lie behind the curtain, and throw off the odium from themselves to the civil magistrate; but some of the more zealous could not forbear appearing in person, as bishop Ward, already mentioned, and bishop Gunning, who often disturbed the meetings in person; once finding the doors shut, he ordered the constable to break them open with a sledge; another time he sat upon the bench at the quarter sessions, upon which the chairman desired his lordship to give the charge, which he refusing, received a very handsome rebuke; it being hardly consistent with one that is an ambassador of the prince of peace, to sit in judgment upon the consciences of his poor countrymen and neighbours, in order to plunder and tear them to pieces. The bishop was so zealous in the cause, that he sunk his character by giving a public challenge to the Presbyterians, Independants, Anabaptists, and Quakers, and appointed three days for the disputation; on the first of which his lordship went into the pulpit in the church, where was a considerable congregation, and charged the former with sedition and rebellion out of their books, but would hear no reply. When the day came to dispute with the Quakers, they summoned their friends, and when the bishop failed, they paid him in his own coin; and followed him to his very house

* See Mr. Clifford’s argument in the Case of Flower, A. D. 1799, and Mr. Clifford’s Postscript to that Case, *infra*. See also what Mr. Hargrave says of this matter, in his Preface to lord Hale’s Treatise on the Judicature of the Lords’ House of Parliament. Some spirited observations on Kelyng’s conduct are to be found in the Tract concerning Juries, ascribed to lord Somers. See lord Shaftesbury’s Case, A. D. 1681, *infra*.

with repeated cries, "The Hiring flyeth;" The Non-conformist ministers did what they could to keep themselves within the compass of the law; they preached frequently twice a day in large families, with only four strangers, and as many under the age of sixteen as would come; and at other times in places where people might hear in several adjoining houses; but after all, infinite mischiefs ensued, families were impoverished and divided; friendship between neighbours was interrupted; there was a general distrust and jealousy of each other; and sometimes upon little quarrels, servants would betray their masters and ruin all their affairs. Among others that suffered at this time was Dr. Manton, who was apprehended on a Lord's day in the afternoon just as he had done sermon, the door being opened to let a gentleman out, the justice and his attendants rushed in and went up stairs; they stayed till the Doctor had ended his prayer and then writ down the names of the principal persons present, and took the Doctor's promise to come to them at an house in the Piazzas of Covent Garden, where they tendered him the Oxford oath, upon his refusal of which he was committed prisoner to the Gatehouse, where he continued till he was released by the indulgence. At another time his Meeting-house in White-hart-yard was broken up; the place was fined forty pounds, and the minister twenty, which was paid by Lord Wharton, who was then present: they also took down the names of the bearers for the benefit of the justices of peace and spiritual courts."

These severities seem to have been attended by the usual effects of religious persecution. The same author, by way of introduction to his Account of this Case of Penn and Mead tells us:

"The behaviour of the Quakers was very extraordinary, and had something in it that looked like the spirit of martyrdom. They met at the same place and hour as in times of liberty, and when the officers came to seize them none of them would stir; they went altogether to prison; they stayed there till they were dismissed, for they would not petition to be set at liberty, nor pay the fines set upon them, nor so much as the gaol fees. When they were discharged they went to their Meeting-house again, as before; and when the doors were shut up by order, they assembled in great numbers in the street before the doors, saying, they would not be ashamed, nor afraid to disown their meeting together in a peaceable manner to worship God; but in imitation of the Prophet Daniel, they would do it more publicly because they were forbid. Some called this obstinacy, others firmness; but by it they carried their point, the government being weary of dealing with so much perverseness."

The fanaticism of the Quakers had, indeed, occasionally displayed itself in an offensive manner some years earlier, as may be seen in the Case of James Nayler, *ante*, vol. 5, p. 801, and in the following curious narrative:

"In the year 1659, in the fourth month, the last day of the month being the 5th day of the week.

"The presence of the Lord God was felt within me, and in his light he let me see what his pleasure was with me; it was clearly shewed me that I should go to the Steeplehouse in Alderman-bury the first day of the week then following, and take with me something to work, and do it in the pulpit at their singing time.

"At which sight I found much unwillingness in myself, yet sitting still with trembling, there came upon me a very great weight pressing me to obedience; yea a heavy burthen was felt, till I had consented to obey; I felt the weight to increase, oh how hard my unwilling will was to yield, but the Lord strengthened me, and having consented, I found a little ease, yea I did resolve in the power of the Lord to go on: I purposed to carry with me a pocket to sow.

"So the first day morning being the 3rd day of the 5th month after the 8th hour one of the doors being open, I passed in, thinking to get into the pulpit to hide myself there till their singing time, and then get up and work; the Sexton spying me, took me by the arm, said friend we do not open yet, for it was their Communion day as they call: but the time I was in, I found the galleries were higher than the pulpit, and I should have been discovered before their song began; I see the clerk giving tickets: so about the 9th hour their doors were opened, I passed in as one of their own crowd, the throng came in very fast, I got into one of the galleries to spy if possible to get in the pulpit some way, but I found none at that time, so they began to read, and I came down, and finding no way to get into the pulpit, I came to the table that is prepared for that troop, I thought to get upon the table to work, but the table was set round with young men, and when they began their song, they laid on their hats upon the table, so I standing still waiting on the Lord, having a great mind to do the Lord's work; their song being up, my hat offended them, they took it off, and cast it away, and one of the young men gave it me again, I put it on, and it offended again, inso-much that Piercefall did perceive me, who came violently, and took my hat-off to fling it away, but I held it, then he took me by the hair of the head, and dragged me out, and as one of their own company testified to his face that he struck me, but I cannot say that, but a lusty red-haired man did strike me, I supposed him to be an officer in that hateful place, but Piercefall after he had dragged me out by the hair, said, Sirrah do you not know William Duike, I said nay, for I did not know him; Sirrah, said he, I put him in prison, and fined him ten pound, and you must be served so too, and so charged the constable with me, and went himself in again, and received the Sacrament for all this.

"The constable told me that I might go

away if I would, but in again I must not. So I stood a while and finding in myself no constraint, I passed away towards More-fields finding a little ease from the weight of the burden, being faithful to what might be done at that time: but the 6th day of the week being the 8th day of the month sitting at work in my shop but not on the shop board, the burden of the Lord came upon me, and the light making manifest the same thing that was not yet done, must be done, and the Lord would not discharge me, but laid a necessity upon me. I beholding this with trembling and fear; I did resolve in the power of the Lord not to eat nor drink, till I had performed the Lord's requiring. So having purposed in heart, I greatly desired the Lord's assistance; and it was shewed me how to do it, and the Lord made way for me.

“So the first day of the week being the 10th day of the 5th month, I waited opportunity till the singing time began, which when I heard, I passed in, but being fearful to be taken with the hat again; and so loose my main business, for the Lord: I stept out again, but staid not, I came in again; I looked towards the pulpit and spied the pew door open, that the priest might pass up the pulpit. So I waited thinking that Edmund Calomy would go up the pulpit, I intended to get in before him; for thought I that boy that sits upon the stairs will open the pulpit door for the priest, and I will get in before, but no priest came, whereupon in the power of the Lord I fixed my eye upon the pulpit, and I spied an iron hook, and I passed through the pew up the stairs, and unhooked the door, and pulled twice and got it open, and I sat myself down upon the cushion, and my feet upon the seat where the priest when he hath told out his lies doth sit down, and having my work ready, I pulled one or two stitches. The people lost their song, and some cried Pull him down, some break his neck down, and a lusty fellow came up and did intend to do me a mischief, and wrung my neck as if he would have wrung it in two. So I let go my hold and he flung me down stairs; but the Lord preserved me, and I felt no hurt; for having done that which the Lord required me to do I was full of peace;

and it had been little to me if they had there taken away or killed the body. For I was full of joy, and they were full of wrath and madness; so they tore my coat off and my hat, and dragged me out, and one took me by the hair and flung me upon the ground, and some that was without said, Why do you use the man so, but I got up again, then they dragged me quite out into the street, and there held me, and while they held me, one came, and gave me a violent kick on the shins, and said he could find in his heart to knock me down, he made my shin bleed, and another kicked me on the other shin, but did not much hurt, another said that I had been some notorious sinner heretofore and now came to do something that might merit, presently the church-warden as they call him, came out, and he and the bell-toller carried me away to the counter, till their Sermon was ended, as they call it, then they carried me away to Paul's Yard to stay for the mayor, but the sergeant said he would carry me away to the mayor's house and there stay me till he came in; and so he did: and all the way through Pateroster-Row as I went, the boys kicked my heels, so then the mayor came in, and they told him that I was at work in the pulpit; then said he to me, Wherefore did you work there? I said in obedience to the Lord's commandment: he said, It was a false spirit, and said he, where are your sureties? I said the Lord was my surety; he said, the Lord would not bear me out in this thing: said he to them, Carry him again to the Counter: so they carried me back again, and there I was till the third day.

“Now let all sober people judge whether I did this thing out of envy against either priest or people.

“Yea farther I say, the Lord God lay it not to their charge, who have said that I did it in malice, devilishness and envy; it is the desire of my soul that they might be saved.

“And so do write my name being a prisoner for the Testimony of the Lord in the common gaol in Newgate, London: committed the 15th of the 5th month, 1659.

“SOLOMON ECCLES.”

231. Case of the Imprisonment of EDWARD BUSHELL,* for alleged Misconduct as a Jurymen: 22 CHARLES II. A. D. 1670. [Vaughan's Reports, 135. †]

THIS important Case, which arose out of the preceding, is thus reported by Chief Justice Vaughan:

The king's Writ of Habeas Corpus, dat. 9 die Novembriis, 22 Car. 2. issued out of this court directed to the then Sheriffs of London,

* See also 3 Keble's Rep. 322. Freeman's Rep. 1. 2 Jones's 13, and 1 Modern Rep. 119.

† See the Observations of Lord Erskine upon this Case in his very able and eloquent

to have the body of Edward Bushell, by them detained in Prison, together with the day and cause of his caption and detention, on Friday then next following, before this court, to do and receive as the court should consider; as also to have then the said writ in court.

Argument in the Court of King's Bench in support of an application for a new trial in the Case of the Dean of St. Asaph (Shiply) in Michaelmas Term 1784, *infra*.

Of which Writ, Patient Ward and Dannel Foorth, then Sheriffs of London, made the return following, annexed to the said Writ.

That at the king's court of a session of Oyer and Terminer, held for the City of London, at Justice Hall in the Old Bailey, London, in the parish of St. Sepulchre's in Farringdon ward without London, on Wednesday 31 die August 22 Car. 2. before sir Samuel Sterling then mayor of London, and divers other his majesty's justices, by virtue of his majesty's letters patents, under the great seal of England, to them, or any four or more of them, directed to enquire, hear, and determine, according to the tenor of the said letters patents, the offences therein specified: and amongst others, the offences of unlawful congregating and assemblies, within the limits appointed by the said commission within the said city, as well within liberties as without. Edward Bushell, the prisoner at the bar, was committed to the gaol of Newgate, to be there safely kept, under the custody of John Smith knight, and James Edwards, then sheriffs of the said city, by virtue of a certain Order, then and there made by the said court of sessions, as followeth:

Ordinatum est per curiam hic quod Finis 40 marcarum separatim ponatur super Edwardum Bushell, and other eleven persons particularly named, and upon every of them, being the 12 jurors, then and there sworn, and charged to try several issues then and there joined between our lord the king, and William Penn and William Mead, for certain trespasses, contempts, unlawful assemblies and tumults, made and perpetrated by the said Penn and Mead, together with divers other unknown persons, to the number of three hundred, unlawfully and tumultuously assembled in Grace-Church-street in London, to the disturbance of the peace, whereof the said Penn and Mead were then indicted before the said justices. Upon which indictment, the said Penn and Mead pleaded they were Not Guilty. For that they, the said jurors, then and there, the said William Penn and William Mead, of the said trespasses, contempts, unlawful assemblies and tumults, 'Contra legem hujus regni Angliæ, et contra plenum et manifestum evidentiæ, et contra directionem curiæ in materia legis, hic, de et super præmissis eisdem juratoribus versus præfatos Will. Penn et Will. Mead, in curia hic aperta datam, et declaratam de præmissis, iis impositis in indictmento prædicto acquiesciverunt, in contemptum domini regis nunc, legumque suarum, et ad magnum impedimentum exemplum omnium aliorum juratorum in consimili casu delinquentium. Ac super inde modo ulterius ordinatum est per curiam hic quod præfatus Ed. Bushell, capiatur et committatur gaolæ dicti domini regis de Newgate, ibidem remansurus quousque solvat dicto domino regi 40 Marcas pro fine suo prædicto, vel deliberatus fuerit, per debitum legis cursum. Ac eodem Edwardo Bushell ad tunc, et ibidem

'capto et commisso existente ad dictam gaolam de Newgate, sub custodia præfat. Johannis Smith et Jacobi Edwards adtunc vic, civitatis Lond. prædict, et in eorum custodia in gaola prædict existente et remanente virtute ordinis prædict, iisdem Johannis Smith et Jacobus Edwards, postea in eorum exitu ab officio vic. civitatis Lond. prædict. scilicet 28 die Septembris, anno 22. supra dicto eundem Edwardum Bushell in dicta gaola dicti domini regis adtunc existentem, deliberaverunt nobis præfatis nunc vice comitibus civitatis prædict in eadem gaola, salvo custodiendum secundum tenorem, et effectum ordinis prædictæ. Et quia prædictus Edwardus, nondem solvit dicto domino regi prædictum finem 40 marcarum, nos iisdem nunc vicecomites corpus ejusdem Edwardi in gaola prædicta, hucusque detinimus, et hæc est causa captionis et detentionis præfati Edwardi, cujus quidem corpus coram præfatis justitiariis paratum habemus.'

The Writ of Habeas Corpus is now the most usual remedy by which a man is restored again to his liberty, if he have been against law deprived of it.

Therefore the writ commands the day, and the cause of the caption and detaining of the prisoner to be certified upon the return, which if not done, the Court cannot possibly judge whether the cause of the commitment and detainer be according to law or against it.

Therefore the cause of the imprisonment ought, by the return, to appear as specifically and certainly to the judges of the return, as it did appear to the court or person authorized to commit; else the return is insufficient, and the consequence must be,

That either the prisoner, because the cause returned of his imprisonment is too general, must be discharged; when as if the cause had been more particularly returned, he ought to have been remanded; or else he must be remanded, when if the cause had been particularly returned, he ought to have been discharged: Both which are inconveniences not agreeing with the dignity of the law. (There is a specious exception to this rule, but doth not materially vary it, as shall appear.)

In the present case it is returned, That the prisoner, being a juryman, among others charged at the Sessions Court of the Old Bailey, to try the issue between the king, and Penn, and Mead, upon an indictment, for assembling unlawfully and tumultuously, did 'contra plenam et manifestam evidentiæ,' openly given in court, acquit the prisoners indicted, in contempt of the king, &c.

The court hath no knowledge by this return, whether the evidence given were full and manifest, or doubtful, lame, and dark, or indeed evidence at all material to the issue, because it is not returned what evidence in particular, and as it was delivered, was given. For it is not possible to judge of that rightly, which is not exposed to a man's judgment. But here the evidence given to the jury is not exposed at all

to this court, but the judgment of the Court of Sessions upon that evidence is only exposed to us; who tell us it was full and manifest. But our judgment ought to be grounded upon our own inferences and understandings, and not upon theirs.

It was said by a learned judge, If the jury might be fined for finding against manifest evidence, the return was good, though it did not express what the evidence particularly was, whereby the court might judge of it, because returning all the evidence would be too long. A strange reason: For if the law allow me remedy for wrong imprisonment, and that must be by judging whether the cause of it were good, or not, to say the cause is too long to be made known, is to say the law gives a remedy which it will not let me have, or I must be wrongfully imprisoned still, because it is too long to know that I ought to be freed? What is necessary to an end, the law allows is never too long. 'Non sunt longa quibus nihil est quod demere possis,' is as true as any axiom in Euclid. Besides, one manifest evidence returned had sufficed, without returning all the evidence. But the other judges were not of his mind.

If the return had been, That the jurors were committed by an order of the Court of Sessions, because they did, 'minus juste,' acquit the persons indicted. Or because they did, 'contra legem,' acquit the person indicted. Or because they did, 'contra Sacramentum suum,' acquit them.

The judges cannot upon the present more judge of the legal cause of their commitment, than they could if any of these causes, as general as they are, had been returned for the cause of their commitment. And the same argument may be exactly made to justify any of these returns, had they been made, as to justify the present return, they being equally as legal, equally as certain, and equally as far from possessing the court with the truth of the cause: and in what condition should all men be for the just liberty of their persons, if such causes should be admitted sufficient causes to remand persons to prison.

To those Objections made by the prisoners counsel against the return, as too general.

1. It hath been said, That 'Institutum est quod non inquiratur de discretione Judicis.'

2. That the Court of Sessions in London, is not to be looked on as an inferior court, having all the judges commissioners. That the court having heard the evidence, it must be credited, that the evidence given to the jury of the fact was clear, and not to be doubted.

As for any such institution pretended, I know no such, nor believe any such, as it was applied to the present cause; but taking it in another, and in the true sense, I admit it for truth: that is, when the king hath constituted any man a judge under him, his ability, parts, fitness for his place, are not to be reflected on, censured, defamed, or vilified by any other person, being allowed and stamp

with the king's approbation, to whom only it belongs to judge of the fitness of his ministers.

And such scandalous assertions or inquiries upon the judges of both benches, is forbidden by the statute of scandalum magnatum, 2 R. 2. c. 5. Nor must we, upon supposition only, either admit judges deficient in their office, for so they should never do any thing right; nor on the other side, must we admit them entering in their places, for so they should never do any thing wrong.

And in that sense the saying concerns not the present case.

But if any man thinks that a person concerned in interest, by the judgment, action, or authority exercised upon his person or fortunes by a judge, must submit in all, or any of these, to the implied discretion and unerringness of his judge, without seeking such redress as the law allows him, it is a persuasion against common reason, the received law, and usage both of this kingdom, and almost all others.

If a court, inferior or superior, hath given a false or erroneous judgment, is any thing more frequent than to reverse such judgments, by writs of false judgment, of error, or appeals, according to the course of the kingdom.

If they have given corrupt and dishonest judgments, they have in all ages been complained of to the king in the Star Chamber, or to the parliament.

Andrew Horne, in his Mirror of Justices (f. 296.) mentions many judges punished by king Alfred before the conquest, for corrupt judgments, and their particular names and offences, which could not be had but from the records of those times.

Our stories mention many punished in the time of Edward 1. our parliament rolls of Edward 3.'s time, of Richard 2.'s time, for the pernicious resolutions given at Nottingham castle, afford examples of this kind: in later times, the parliament journals of 18 and 21 Jac. the Judgment of the Ship-money* in the time of Charles 1. questioned, and the particular judges impeached. These instances are obvious, and therefore I but mention them.

In cases of returns too general upon writs of Habeas Corpus, of many I could urge, I will instance in two only.

One Astwick brought by Habeas Corpus to the king's bench, was returned to be committed, per mandatum Nicholai Bacon militis, domini custodis magni sigilli Angliæ virtute ejusdam contemptus in curia cancellar. facti, and was presently bailed. (9 El.)

One Apsley, prisoner in the Fleet, upon a Habeas Corpus, was returned to be committed, per considerationem curiæ cancellar. pro contemptu eidem curiæ illato, and upon this return set at liberty. (13 Jac.)

In both these cases, no inquiry was made or consideration had, whether the contempts were to the law court, or equitable court of Chancery, either was alike to the judges, lest any

* See vol. 3. p. 826, of this Collection.

man should think a difference might arise thence.

The reason of discharging the prisoners upon those returns, was the generality of them being for contempts to the court, but no particular of the contempt express, whereby the King's Bench could judge, whether it were a cause for commitment or not.

And was it not as supposable, and as much to be credited, that the lord keeper and court of Chancery, did well understand what was a contempt deserving commitment, as it is now to be credited, that the court of sessions did understand perfectly what was full and manifest evidence against the persons indicted at the sessions, and therefore it needed not to be revealed to us upon the return?

Hence it is apparent, that the commitment and return pursuing it, being in itself too general and uncertain, we ought not implicitly to think the commitment was *re vera*, for cause particular and sufficient enough, because it was the act of the court of sessions.

And as to the other part, that the court of sessions in London is not to be resembled to other inferior courts of oyer and terminer, because all the judges are commissioned here (which is true) but few are there, at the same time, and as I have heard, when this trial was, none of them were present. However persons of great quality are in the commissions of oyer and terminer, through the shires of the kingdom, and always some of the judges; nor doth one commission of oyer and terminer differ in its essence, nature, and power from another, if they be general commissions; but all differ in the accidents of the commissions, which makes no alteration in their actings in the eye of law.

Another fault in the return is, that the jurors are not said to have acquitted the persons indicted, against full and manifest evidence corruptly, and knowing the said evidence to be full and manifest against the persons indicted, for how manifest soever the evidence was, if it were not manifest to them, and that they believed it such, it was not a finable fault, nor deserving imprisonment, upon which difference the law of punishing jurors for false verdicts principally depends.

A passage in Bracton is remarkable to this purpose concerning attainting inquests. 'Committit Jurator per jurium propter falsum Sacramentum, ut ex certa scientia aliter juraverit quam res veritate se habuerit, si autem Sacramentum fatuum fuerit licet falsum, tamen non committit perjurium licet re vera res aliter se habeat quam juraverat, et quia jurat secundum conscientiam eo quod non vadit contra mentem. Sunt quidam qui verum dicunt. mentiando, sed se perjerant quia contra mentem vadunt.' Bracton, l. 4, c. 4, f. 288, b.

The same words, and upon the same occasion, are in effect in Flem. 'Committit enim jurator perjurium quandoque propter falsum Sacramentum, ut si ex certa scientia aliter

'juraverit quam res in veritate se habuerit secus enim propter factum quamvis falsum;' Fleta, l. 5, c. 22, f. 336, n. 9. and lest any should think that these passages are to be understood only of jury-mens perjuries in *foro conscientie*, it is clearly otherwise by both those books, which shew how, by the discreet examination of the judge, the error of the jury not wilful, may be prevented and corrected, and their Verdict rectified.

And in another place of Bracton, in the same chapter: 'Judex enim sive Justiciarius ad quem pertinet examinatio, si minus diligenter examinaverit, occasionem prebet perjurii Juratoribus.' And after, 'Et si examinatus cum justo deducantur errore dictum suum emendaverint, hoc bene facere possunt, ante judicium et impune, sed post judicium non sine pena.' Bract. l. 4. f. 289, a.

After these Authorities,

I would know whether any thing be more common, than for two men students, barristers, or judges, to deduce contrary and opposite conclusions out of the same case in law? And is there any difference that two men should infer distinct conclusions from the same testimony? Is any thing more known than that the same author, and place in that author, is forcibly urged to maintain contrary conclusions, and the decision hard, which is in the right? Is any thing more frequent in the controversies of religion, than to press the same text for opposite tenets? how then comes it to pass that two persons may not apprehend with reason and honesty, what a witness, or many, say, to prove in the understanding of one plainly one thing, but in the apprehension of the other, clearly the contrary thing? Must therefore one of these merit fine and imprisonment, because he doth that which he cannot otherwise do, preserving his oath and integrity? And this often is the case of the judge and jury.

I conclude therefore, That this return, charging the prisoners to have acquitted Penn and Mead, against full and manifest evidence, first and next, without saying that they did know and believe that Evidence to be full and manifest against the indicted persons, is no cause of fine or imprisonment.*

And by the way I must here note, That the Verdict of a Jury, and Evidence of a Witness are very different things, in the truth and falsehood of them: A witness swears but to what he hath heard or seen, generally or more largely, to what hath fallen under his senses. But a jury-man swears to what he can infer and conclude from the testimony of such witnesses, by the act and force of his understanding, to be the fact inquired after, which differs nothing in the reason, though much in the punishment, from what a judge, out of various cases considered by him, infers to be the law in the question before him. Therefore Bracton, 'Es

* Of this mind were 10 judges of 11, the Chief Baron Turnor gave no opinion, because not at the arguments.

‘ licet narratio facti contraria sit sacramento, et dicto præcedenti, tamen falsum non faciunt Sacramentum licet faciunt fatuum Judicium, quia loquuntur secundum conscientiam quia falli possunt in Judiciis suis, sicut ipse Justitiarius.’ Bract. f. 289. a.

There is one objection which hath been made by none, as I remember, to justify this general Return, I would give answer to.

A man committed for treason or felony, and bringing a Habeas Corpus, hath returned upon it, That he was committed for High Treason or Felony; and this is a sufficient return to remand him, though in truth this is a general return: for if the specific fact for which the party was committed, were expressed in the Warrant, it might then perhaps appear to be no treason or felony, but a trespass, as in the Case of the earl of Northumberland, 5 H. 4. questioned for Treason in raising power. The Lords adjudged it a trespass; for the powers raised were not against the king, but some subjects.

Why then by like reason may not this return be sufficient, though the fact for which the prisoners stood committed particularly expressed, might be no cause of commitment?

The cases are not alike; for upon a general commitment for treason or felony, the prisoner (the cause appearing) may press for his trial, which ought not to be denied or delayed, and upon his indictment and trial, the particular cause of his imprisonment must appear, which proving no treason or felony, the prisoner shall have the benefit of it. But in this case, though the evidence given were no full nor manifest evidence against the persons indicted, but such as the jury upon it ought to have acquitted those indicted, the prisoner shall never have any benefit of it, but must continue in prison, when remanded, until he hath paid the fine unjustly imposed on him, which was the whole end of his imprisonment.

We come now to the next part of the Return, viz. ‘ That the jury acquitted those indicted against the direction of the court in matter of law, openly given and declared to them in court.’

1. The words, That the jury did acquit, against the direction of the court, in matter of law, literally taken, and *de plano*, are insignificant and not intelligible, for no issue can be joined of matter in law, no jury can be charged with the trial of matter in law barely, no evidence ever was, or can be given to a jury of what is law, or not; nor no such oath can be given to, or taken by, a jury, to try matter in law; nor no attaint can lye for such a false oath.

Therefore we must take off this vail and colour of words, which make a shew of being something, and in truth are nothing.

If the meaning of these words, finding against the direction of the court in matter of law, be, That if the judge having heard the evidence given in court (for he knows no other) shall tell the jury, upon this evidence, The law

is for the plaintiff, or for the defendant, and you are under the pain of fine and imprisonment to find accordingly, then the jury ought of duty so to do; Every man sees that the jury is but a troublesome delay, great charge, and of no use in determining right and wrong, and therefore the trials by them may be better abolished than continued: which were a strange new-found conclusion, after a trial so celebrated for many hundreds of years.

For if the judge, from the evidence, shall by his own judgment first resolve upon any trial what the fact is, and so knowing the fact, shall then resolve what the law is, and order the jury penally to find accordingly, what either necessary or convenient use can be fancied of juries, or to continue trials by them at all?

But if the jury be not obliged in all trials to follow such directions, if given, but only in some sort of trials (as for instance, in trials for criminal matters upon indictments or appeals, why then the consequence will be, though not in all, yet in criminal trials, the jury (as of no material use) ought to be either omitted or abolished, which were the greater mischief to the people, than to abolish them in civil trials.

And how the jury should, in any other manner, according to the course of trials used, find against the direction of the court in matter of law, is really not conceivable.

True it is, if it fall out upon some special trial, that the jury being ready to give their Verdict, and before it is given, the judge shall ask, whether they find such a particular thing propounded by him? or whether they find the matter of fact to be as such a witness, or witnesses have deposed? and the jury answer, they find the matter of fact to be so; if then the judge shall declare, The matter of fact being by you so found to be, the law is for the plaintiff, and you are to find accordingly for him.

If notwithstanding they find for the defendant, this may be thought a finding in matter of law against the direction of the court: for in that case the jury first declare the fact, as it is found by themselves, to which fact the judge declares how the law is consequent.

And this is ordinary, when the jury find unexpectedly for the plaintiff or defendant, the judge will ask, how do you find such a fact in particular? and upon their answer he will say, then it is for the defendant though they found for the plaintiff, or *è contrario*, and thereupon they rectify their verdict.

And in these cases the jury, and not the judge, resolve and find what the fact is.

Wherefore always in discreet and lawful assistance of the jury, the judge his direction is hypothetical, and upon supposition, and not positive, and upon coercion, viz. If you find the fact thus (leaving it to them what to find) then you are to find for the plaintiff; but if you find the fact thus, then it is for the defendant.

But in the case propounded by me, where it is possible in that special manner, the jury may find against the direction of the court in matter of law, it will not follow they are therefore

finable; for if an attaint will lie upon the verdict so given by them, they ought not to be fined and imprisoned by the judge for that verdict; for all the judges have agreed upon a full conference at Serjeants-Inn, in this case. And it was formerly so agreed by the then judges in a case where justice Hyde had fined a jury at Oxford, for finding against their evidence in a civil cause. That a jury is not finable for going against their evidence, where an attaint lies; for if an attaint be brought upon that verdict, it may be affirmed and found upon the attaint a true verdict, and the same verdict cannot be a false verdict, and therefore the jury fined for it as such by the judge, and yet no false verdict, because affirmed upon the attaint.

Another reason that the jury may not be fined in such case, is, because until a jury have consummated their verdict, which is not done until they find for the plaintiff or defendant, and that also be entered of Record; they have time still of deliberation, and whatsoever they have answered the judge upon an interlocutory question or discourse, they may lawfully have from it if they find cause, and are not thereby concluded.

Whereupon it follows upon this last reason, that upon trials wherein no attaint lies, as well as upon such where it doth, no case can be invented; wherein it can be maintained that a jury can find, in matter of law, nakedly against the direction of the judge.

And the judges were (as before) all of opinion that the return in this latter part of it, is also insufficient, as in the former, and so wholly insufficient.

But that this question may not hereafter revive if possible, it is evident by several resolutions of all the judges, that where an attaint lies, the judge cannot fine the jury for going against their evidence or direction of the court, without other misdemeanour.

For in such case, finding against, or following the direction of the court barely, will not barr an attaint, but in some case the judge being demanded by, and declaring to, the jury what is the law. Though he declares it erroneously, and they find accordingly, this may excuse the jury from the forfeitures; for though their verdict be false, yet it is not corrupt, but the judgment is to be reversed however upon the attaint; for a man loseth not his right by the judge's mistake in the law. Ingeralls C. Cr. 35 El. f. 309, n. 18.

Therefore if an attaint lies for a false verdict upon indictment not capital (as this is) either by the common or statute law, by those resolutions the court would not fine the jury in this case for going against evidence, because an attaint lay.

But admitting an attaint did not lie (as I think the law clear it did not) for there is no ease in all the law of such an attaint, nor opinion, but that of Thirnings 10 Il. 4. Attaint 60. and 64, for which there is no warrant in law, though there be other specious authority against it, touched by none that argued this case.

The question then will be, Whether before
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the several acts of parliament; which granted attaints, and are enumerated in their order in the Register, [f. 122. a.] the judge by the common law, in all cases, might have fined the jury, going against their evidence and direction of the court, where no attaint did lie, or could so do, yet if the statutes which gave the attaints were repealed.

If he could not in civil causes before attaints granted in them, he could not in criminal causes upon indictment (wherein I have admitted attaint lies not) for the fault in both was the same, viz. finding against evidence and direction of the court, and by the common law; the reason being the same in both, the law is the same.

That the court could not fine a jury at the common law, where attaint did not lie (for where it did, is agreed he could not) I think to be the clearest position that ever I considered, either for authority or reason of law.

After attaints were granted by statutes generally; as by Westminster the first c. 38. in pleas real, and by 34 E. 3. c. 7. in pleas personal, and where they did lie at common law (which was only in writs of assise) the examples are frequent in our books of punishing jurors by attaint.

But no case can be offered, either before attaints granted in general, or after, that ever a jury was punished by fine and imprisonment by the judge, for not finding according to their evidence, and his direction, until Popham's time, nor is there clear proof that he ever fined them for that reason, separated from other misdemeanour. If juries might be fined in such case before attaints granted, why not since; for no statute hath taken that power from the judge. But since attaints granted, the judges resolved they cannot find where the attaint lies, therefore they could not fine before. Sure this latter age did not first discover that the verdicts of juries were many times not according to the judge's opinion and liking.

But the reasons are, I conceive, most clear, that the judge could not, nor can fine and imprison the jury in such cases.

Without a fact agreed, it is as impossible for a judge, or any other, to know the law relating to that fact or direct concerning it, as to know an accident that hath no subject.

Hence it follows, that the judge can never direct what the law is in any matter controverted, without first knowing the fact; and then it follows, that without his previous knowledge of the fact, the jury cannot go against his direction in law, for he could not direct.

But the judge, *quod* judge, cannot know the fact possibly but from the evidence which the jury have, but (as will appear) he can never know what evidence the jury have, and consequently he cannot know the matter of fact, nor punish the jury for going against their evidence, when he cannot know what their evidence is.

It is true, if the jury were to have no other evidence for the fact, but what is deposed in court, the judge might know their evidence, and the fact from it, equally as they, and so direct what the law were in the case, though even then the judge and jury might honestly differ in the result from the evidence, as well as two judges may, which often happens.

But the evidence which the jury have of the fact is much other than that: for,

1. Being returned of the vicinage, whence the cause of action ariseth, the law supposeth them thence to have sufficient knowledge to try the matter in issue (and so they must) though no evidence were given on either side in court, but to this evidence the judge is a stranger.

2. They may have evidence from their own personal knowledge, by which they may be assured, and sometimes are, that what is deposed in court, is absolutely false: but to this the judge is a stranger, and he knows no more of the fact than he hath learned in court, and perhaps by false depositions, and consequently knows nothing.

3. The jury may know the witnesses to be stigmatized and infamous, which may be unknown to the parties, and consequently to the court.

4. In many cases the jury are to have view necessarily, in many, by consent, for their better information; to this evidence likewise the judge is a stranger.

5. If they do follow his direction, they may be attainted and the judgment reversed for doing that, which if they had not done, they should have been fined and imprisoned by the judge, which is unreasonable.

6. If they do not follow his direction, and be therefore fined, yet they may be attainted, and so doubly punished by distinct judicatures for the same offence, which the common law admits not.

A fine reversed in *Banco Regis* for infancy,* per inspectionem et per testimonium del. 4. *habe dignorum*. After upon examination of divers witnesses in chancery, the supposed infant was proved to be of age, 'tempore finis levati,' which testimonies were exemplified, and given in evidence after in *Communi Banco* in a writ of entry in the quibus there brought. And though it was the opinion of the court, that those testimonies were of no force against the judgment in the King's-Bench, yet the jury found, with the testimony in chancery, against direction of the court, upon a point in law, and their verdict after affirmed in an attaint brought, and after a writ of right was brought, and battle joined.†

7. To what end is the jury to be returned out of the vicinage, whence the cause of action

* *Chevin and Paramour's Case*, 3 El. Dyer. 201. a. n. 63.

† The progress in this writ of right till judgment for *Paramour* the defendant, is at large 13 El. Dyer f. 321. n. 40.

ariseth? To what end must hundreds be of the jury, whom the law supposeth to have nearer knowledge of the fact than those of the vicinage in general: To what end are they challenged so scrupulously to array and pole? To what end must they have such a certain free-hold, and be 'probi et legales homines,' and not of affinity with the parties concerned? To what end must they have in many cases the view, for their exacter information chiefly? To what end must they undergo the heavy punishment of the villanous judgment, if after all this they implicitly must give a verdict by the dictates and authority of another man, under pain of fines and imprisonment, when sworn to do it according to the best of their own knowledge?

A man cannot see by another's eye, nor hear by another's ear, no more can a man conclude or infer the thing to be resolved by another's understanding or reasoning; and though the verdict be right the jury give, yet they being not assured it is so from their own understanding, are forsworn, at least in *fero conscientie*.

9. It is absurd a jury should be fined by the judge for going against their evidence, when he who fineth knows not what it is, as where a jury find without evidence, in court of either side, so if the jury find, upon their own knowledge, as the course is if the defendant plead *solvit ad diem*, to a bond proved, and offers no proof. The jury is directed to find for the plaintiff, unless they know payment was made of their own knowledge, according to the plea. [14 H. 7. f. 29 per *Vavator* in *Camer. Scacc.* without contradiction *Hob. f. 227.*]

And it is as absurd to fine a jury for finding against their evidence, when the judge knows but part of it; for the better and greater part of the evidence may be wholly unknown to him, and this may happen in most cases, and often both, as in *Graves and Short's case*. [40 El. Cro. f. 616.]

Error of a Judgment in the Common Bench, the error assigned was, The issue being, whether a feoffment were made? and the Jurors being gone together to confer of their verdict, one of them shewed to the rest an 'Escrow pro petantibus,' not given in evidence by the parties *per quod*, they found for the demandant, upon demurrer adjudged no error; for it appears not to be given him by any of the parties, or any for them, it must be intended he had it as a piece of evidence about him before, and shewed it to inform himself and his fellows, and as he might declare it as a witness, that he knew it to be true.* They resolved, if that

* The late Mr. Justice Butler in conversation concerning a case which had been tried before him (*Smith v. Hollings, Stafford, Spring Assizes, 1791*) said to the editor of this work, that where a jurymen has knowledge of any matter of evidence in a cause which he is trying, he ought not to impart the same privily to the rest of the jury, but should state to the court that he had such knowledge, and thereupon

might have avoided the verdict, which they agreed it could not, yet it ought to have been done by examination, and not by error.

That Decantatum in our books, 'Ad questionem facti non respondent Judices, ad questionem legis non respondent Juratores,' literally taken is true; for if it be demanded, What is the fact? the Judge cannot answer it: if it be asked, What is the law in the case, the Jury cannot answer it.*

be examined, and subjected to cross examination, as a witness. See too what Chief Justice North says as to sir John Cutler in Reading's Case, A. D. 1679, *infra*. See also Burn's Justice, "Of the Demeanour of Jurors in giving their Verdicts." In the trial of an Impeachment, a peer, who is one of the judges, may be examined as a witness. Lord Stafford's Case, A. D. 1680, *infra*. Upon the Trial of the Earls of Essex and Southampton (*ante*, vol. 1, p. 1333) the Lord Keeper Egerton, the Earl of Worcester, (one of the Lords Tryers) and the Lord Chief Justice Popham gave evidence 'upon their honours' against the prisoners. Upon the trial of Hacker, one of the regicides, Secretary Morrice and Annesley President of the Council, who were both Commissioners for trial of the Prisoners, and as such sat on the bench, came off from the bench and being sworn gave evidence on the part of the Crown, but did not go up to the bench upon that man's trial, *ante*, vol. 5, p. 1181, and note. Oates in his trial for perjury, May 8th, 1685, *infra*, proposed that the Chief Justice (Jefferies) who tried him should be sworn to give an account of what had passed at a former trial, to which Jefferies answered, 'No, there will be no need of that: I will acknowledge any thing I said then.' [For more matter relating to these points, see sir John Hawles's Observation on Lord Shaftesbury's Grand Jury, A. D. 1681, and on Cornish's trial for treason, A. D. 1685; also the speech in the House of Commons of the same sir John Hawles when Solicitor General upon the Bill of Attainder against sir John Feawick, A. D. 1696, *post*.]

Mr. Barrington observes on the statute of York (13 Ed. 2.) that the witnesses to a deed seem to have been antiently a necessary part of the Jury, which was to try the validity of such an instrument.

* "The most usual trial of matters of fact," says Lord Coke, (First Inst. 155, b.) "is by twelve such men ('liberi et legales homines') for 'ad questionem facti non respondent judices;' and matters in law the judges ought to decide and discuss, for 'ad questionem juris non respondent juratores.'"

Upon which passage his learned commentator, Mr. Hargrave, has given the following Note:

"This *decanatum*, as Lord Chief Justice Vaughan calls it on account of its frequency in the books, about the respective provinces of judge and jury, hath, since lord Coke's time, become the subject of very heated controversy,

Therefore the parties agree the fact by their pleading upon Demurrer, and ask the Judgment of the Court for the law.

In special verdicts the Jury inform the naked fact, and the Court deliver the law; and so is it in Demurrers upon evidence, in arrest of judgments upon challenges, and often upon the judge's opinion of the evidence given in Court, the plaintiff becomes nonsuit, when if the matter had been left to the Jury, they might well have found for the plaintiff.

But upon all general issues; as upon not culpable pleaded in trespass, 'nil debet' in debt, 'nul tort, nul disseisin' in assize, 'ne disturba pas' in 'quare impedit,' and the like; though

especially on prosecutions for state libels; some aiming to render juries wholly dependent on the judge for matters of law, and others contending for nearly a complete and unqualified independence. On the trial of John Lilburne for treason in 1649, high words passed between the Court and him, in consequence of his stating to the jury that they were judges both of law and fact, and citing passages in the Coke upon Littleton to prove it. 2 State Tr. 4th ed. 69 and *post*. 228, a. In the case of Penn and Meade, who in 1670 were indicted for unlawfully assembling the people and preaching to them, the jury gave a verdict against the directions of the Court in point of law, and for this were committed to prison. But the commitment was questioned; and on a Habeas Corpus brought in the court of Common Pleas, it was declared illegal; Lord Chief Justice Vaughan distinguishing himself on the occasion by a most profound argument in favour of the rights of a jury. Bushell's case 1 Freem. 1, and Vaughan 135. However the contest did not cease, as appears by sir John Hawles's famous Dialogue between a Barrister and a Jurymen, which was published in 1680 to assert the claims of the latter against the then current doctrine decrying their authority. Since the Revolution also many cases have occurred, in which there has been much debate on the like topic. See King v. Poole in Cas. B. R. temp. Hardwicke 23. Franklin's case in the St. Tr. Peter Zenger's *ibid*. Owen's case in the St. Tr. and Woodfall's case 5 Burr. 261. By attending to the cases before referred to, it will be easy to trace the progress of this controversy on the limits of the jury's province.

"In respect to my own ideas on this subject, they are at present to this effect:

"On the one hand, as the jury may, as often as they think fit, find a general verdict, I therefore think it unquestionable, that they so far may decide upon the law as well as fact, such a verdict necessarily involving both. In this I have the authority of Littleton himself, who hereafter writes, That if the inquest will take upon them the knowledge of the law upon the matter, they may give their verdict generally. Post. sect. 368 and fol. 228.

"But on the other hand I think it seems clear, that questions of law generally and more

it be matter of law whether the defendant be a trespasser, a debtor, disseisor, or disturber in the particular cases in issue; yet the jury find not (as in a special verdict) the fact of every case by itself, leaving the law to the court, but

properly belong to the judges; and that, exclusively of the fitness of having the law expounded by those who are trained to the knowledge of it by long study and practice, this appears from various considerations. 1. If the parties litigating agree in their facts, the cause can never go to a jury; but is tried on a demurrer; it being a rule, and I believe without exception, that issues in law are ever determined by the judges, and only issues of fact are tried by a jury. Ant. 71. b.—II. Even when an issue in fact is joined, and comes before a jury for trial, either party, by demurring to evidence, which includes an admission of the fact to which the evidence applies, may so far draw the cause from the cognizance of the jury; for in that case the law is reserved for the decision of the Court, from which the issue of fact comes, and the jury is either discharged or at the utmost only ascertains the damages. Ant. 72. a. Dougl. Rep. 127, 213. Buller's Nisi Pri. 2nd edition, 313.—III. The jury is supposed to be so inadequate to finding out the law, that it is incumbent upon the judge who presides at the trial, to inform them what the law is; and as a check to the judge in the discharge of this duty, either party may under the statute of Westminster the 2nd, c. 31, make his exception in writing to the judge's direction, and enforce its being made a part of the record, so as afterwards to found error upon it. See post. 2 Inst. 426. Trials per Pais, 8th ed. 222, 466. Case of Fabrigas and Mostyn in the State Trials. Case of Money and others v. Leach, 3 Burr. 1742. Buller's Law of Nisi Pri. 2nd ed. 315.—IV. The jury is ever at liberty to give a special verdict, the nature of which is to find the facts at large and leave the conclusion of law to the judges of the court from which the issue comes. Formerly indeed it was doubted, whether in certain cases, in which the issue was of a very limited and restrained kind, the jury was not bound to find a general verdict. But the contrary was settled in Downman's case, 9 Co. 11 b. and the rule now holds both in criminal and civil cases without exception. See post. 227. b. Staundf. Pl. C. 165. a. Oneby's case, 2 L. Raym. 1494. [A. D. 1726, *infra*.]—V. Whilst attainds which still subsist in law were in use, it was hazardous in a jury to find a general verdict, where the case was doubtful, and they were apprised of it by the judges; because if they mistook the law, they were in danger of an attaind. Post. 228. a. Hob. 227. Vaugh. 144. 2 Hal. Hist. Pl. C. 310. Gilb. Com. Pl. 2nd edit. 128.—VI. If the jury find the facts specially, and add their conclusion as to the law, it is not binding on the judges; but they have a right to controul the verdict, and declare the law as they conceive it to be. At least this is the language of

find for the plaintiff or defendant upon the issue to be tried, wherein they resolve both law and fact complicately, and not the fact by itself; so as though they answer not singly to the question what is the law, yet they determine the

some most respectable authorities. Staundf. Pl. C. 165. a. Plowd. 114, a. b. 4 Co. 42, b. Hal. Hist. Pl. C. v. 1. p. 471, 476, 477. and v. 2. p. 302.—VII. The courts have long exercised the power of granting new trials in civil cases, where the jury find against that which the judge trying the cause or the court at large holds to be law, or where the jury find a general verdict, and the court conceives that on account of difficulty of law there ought to have been a special one. King v. Poole, Cas. B. R. temp. Hardwicke 26. Though too in criminal and penal cases the judges do not claim such a discretion against persons acquitted, the reason I presume is in respect of the rule that 'nemo 'bis punitur aut vexatur pro eodem delicto,' or the hardship which would arise from allowing a person to be twice put in jeopardy for one offence; and if this be so, it only shews that on that account an exception is made to a general rule. 4 Blackst. 8th ed. 361. 2 L. Raym. 1585. 2 Stra. 899. 4 Co. 40, a. and Wingate's Maxims, 695.

“Upon the whole, as my mind is affected with this interesting subject, the result is, that the immediate and direct right of deciding upon questions of law is entrusted to the judges; that in a jury it is only incidental; that in the exercise of this incidental right the latter are not only placed under the superintendance of the former, but are in some degree controulable by them; and therefore that in all points of law arising on a trial, juries ought to shew the most respectful deference to the advice and recommendation of judges. In favour of this conclusion the conduct of juries bears ample testimony; for to their honour it should be remembered, that the examples of their resisting the advice of a judge in points of law are rare, except where they have been provoked into such an opposition by the grossness of his own misconduct, or betrayed into an unjust suspicion of his integrity by the misrepresentation and ill practice of others. In civil cases, particularly where the title to real property is in question, juries almost universally find a special verdict as often as the judge recommends their so doing; and though in criminal cases special verdicts are not frequent, it is not from any averseness to them in juries, but from the nature of criminal causes, which generally depend more upon the evidence of facts than any difficulty of law. Nor is it any small merit in this arrangement, that in consequence of it every person accused of a civil crime is enabled by the general plea of Not Guilty to have the benefit of a trial, in which the judge and jury are a check upon each other; and that this benefit may be always enjoyed, except in such small offences as are left to the summary jurisdiction of a justice of the

law in all matters, where issue is joined, and tried in the principal case, but where the verdict is special.

To this purpose the lord Hobart (f. 227.) in Needler's Case against the bishop of Winchester, is very apposite:—"Legally it will be very hard to quit a jury that finds against the law, either common law, or several statute law, whereof all men were to take knowledge, and whereupon verdict is to be given, whether any

peace; which exception from the necessity of the times is continually increasing, but which however cannot be too cautiously extended to new objects. Thus considered, the distinction between the office of judge and jury seems to claim our utmost respect. May this wise distribution of power between the two long continue to flourish, unspoiled, either by the proud encroachment of ill-designing judges, or the wild presumption of licentious juries.

"It would be wrong to conclude this note, without referring the reader to the very forcible reasoning on the same subject, in a modern work, which contains much general legal instruction elegantly conveyed. See "Eunomus, or Dialogues concerning the Law and Constitution of England," vol. 3, p. 196.

"See further on the origin of English Juries, Spelm. Gloss. voc. *jurata*, Dissertat. Epistolar. in Ling. Septentrion. Thesaur. Hickes. Stiernh. de jure Sueon. et Goth. vetust. lib. 1, c. 3, and Dr. Pettungal's Enquiry into the Use and Practice of Juries amongst the Greeks and Romans." See, too, the dean of St. Asaph's Case, A. D. 1784, *infra*.

On the right of jurors to find general verdicts Blackstone is very decisive.

"Sometimes, if there arises in the case any difficult matter of law, the jury, for the sake of better information, and to avoid the danger of having their verdict attained, will find a special verdict; which is grounded on the statute Westm. 2. 13 Edw. 1, c. 30, s. 2. And herein they state the naked facts, as they find them to be proved, and pray the advice of the court thereon; concluding conditionally, that if upon the whole matter the court shall be of opinion that the plaintiff had cause of action, they then find for the plaintiff; if otherwise, then for the defendant. This is entered at length on the record, and afterwards argued and determined in the court at Westminster, from whence the issue came to be tried.

"Another method of finding a species of special verdict, is when the jury find a verdict generally for the plaintiff, but subject nevertheless to the opinion of the judge or the court above, on a special case stated by the counsel on both sides with regard to a matter of law; which has this advantage over a special verdict, that it is attended with much less expense, and obtains a much speedier decision: the *postea* (of which in the next chapter) being stayed in the hands of the officer of *nisi prius*, till the question is determined, and the verdict is then entered for the plaintiff or defendant as the case

'evidence be given to them or not. As if a feoffment or devise were made to one *imperpetuum*, and the jury should find cross, either an estate for life, or in fee simple against the law, they should be subject to an attain, though no man informed them what the law was in that case.'

The legal verdict of the jury to be recorded, is finding for the plaintiff or defendant, what they answer, if asked to questions concerning

may happen. But, as nothing appears upon the record but the general verdict, the parties are precluded hereby from the benefit of a writ of error, if dissatisfied with the judgment of the court or judge upon the point of law. Which makes it a thing to be wished, that a method could be devised of either lessening the expense of special verdicts, or else of entering the case at length upon the *postea*. But in both these instances the jury may, if they think proper, take upon themselves to determine, at their own hazard, the complicated question of fact and law; and, without either special verdict or special case, may find a verdict absolutely either for the plaintiff or defendant." 3 Bl. Com. 377.

"When the evidence on both sides is closed, the jury cannot be discharged till they have given in their verdict; but are to consider of it, and deliver it in, with the same forms, as upon civil causes: only they cannot, in a criminal case which touches life or member, give a privy verdict. But an open verdict may be either general, guilty, or not guilty; or special, setting forth all the circumstances of the case, and praying the judgment of the court, whether, for instance, on the facts stated, it be murder, manslaughter, or no crime at all. This is where they doubt the matter of law, and therefore chuse to leave it to the determination of the court: though they have an unquestionable right of determining upon all the circumstances, and finding a general verdict, if they think proper so to hazard a breach of their oaths; and, if their verdict be notoriously wrong, they may be punished and the verdict set aside by attain at the suit of the king; but not at the suit of the prisoner." 4 Bl. Com. 361.

The following is the passage in Littleton, (sect. 368.)

"Item en tel case l'ou l'enquest poit dire leur verdict a large, s'ils voient prendre sur eux le conusance de la ley sur le matter, ils poient dire leur verdict generalment, come est mis en leur charge; come en le case avant dit ils poient bien dire, que le lessor ne disseisa pas le lessee, s'ils voient, &c."

Whereupon Lord Coke thus comments:—"Although the jury if they will take upon them (as Littleton here saith) the knowledge of the law, may give a general verdict, yet it is dangerous for them so to do, for if they do mistake the law, they run into the danger of an attain; therefore to find the special matter is the safest way where the case is doubtful." See also the Law Dictionary, Articles *Attain*, *Jury*.

some particular fact, is not of their verdict essentially, nor are they bound to agree in such particulars; if they all agree to find their issue for the plaintiff or defendant, they may differ in the motives, wherefore, as well as judges, in giving judgment for the plaintiff or defendant, may differ in the reasons wherefore they give that judgment, which is very ordinary.

I conclude with the statute of 36 H. 8, c. 4. 'That if any jurors in Wales do acquit any felon, murderer, or accessory, or give an untrue verdict against the king, upon the trial of any traverse, recognizance, or forfeiture, contrary to good and pregnant evidence ministered to them by persons sworn before the king's justiciar, That then such jurors should be bound to appear before the Council of the Marches, there to abide such fine or ransom for their offence, as that Court should think fit.'

If jurors might have been fined before, by the law, for going against their evidence in matters criminal, there had been no cause for making this statute against jurors, for so doing in Wales only.

Objections out of the Ancient and Modern Books.

1. A juror kept his fellows a day and a night, without any reason or assenting, and therefore awarded to the Fleet: [8 Ass. pl. 35.]

This book rightly understood is law, That he staid his fellows a day and a night, without any reason or assenting, may be understood, That he would not in that time intend the verdict at all, more than if he had been absent from his fellows, but wilfully not find for either side: In this sense it was a misdemeanor against his oath, for his oath was truly to try the issue, which he could never do, that resolved not to confer with his fellows.

And in this sense it is the same with the Case 34 Ed. 3, where 12 being sworn, and put together to treat of their verdict, one secretly withdrew himself, and went away, for which he was justly fined and imprisoned; and it differs not to withdraw from a man's duty, by departing from his fellows, and to withdraw from it, though he stay in the same room, and so is that book to be understood. [34 E. 3 Bra. Title Jurors n. 46.]

But if a man differ in judgment from his fellows for a day and a night, though his dissent may not be as reasonable as the opinion of the rest that agree, yet if his judgment be not satisfied, one disagreeing can be no more criminal than four or five disagreeing with the rest.

2. A juror would not agree with his fellows for two days, and being demanded by the judges, if he would agree; said, he would first die in prison; whereupon he was committed, and the verdict of the 11 taken; but upon better advice the verdict of the 11 was quasht, and the juror discharged without fine, and the justices said, the way was to carry them in carts, until they agreed, and not by fining them; and as the judges erred in taking the verdict of 11, so they did in imprisoning the 12th; and

this case makes strongly that the juror was not to be fined, who disagreed in judgment only. [41 Ass. p. 11.]

Much of the office of jurors, in order to their verdict, is ministerial, as not withdrawing from their fellows, after they are sworn, not withdrawing after challenge, and being tried in before they take their oath, not receiving from either side evidence after their oath not given in court, not eating and drinking before their verdict, refusing to give a verdict, and the like; wherein if they transgress, they are finable; but the verdict itself, when given, is not an act ministerial, but judicial, and according to the best of their judgment, for which they are not finable, nor to be punished, but by attain. 36 H. 6, f. 27, Br. Jurors 18.

3. The Case of 7 R. 2, Title Coronæ Fitz, 108, was cited, where upon acquittal of a common thief, the judge said, The jury ought to be bound to his good behaviour, during his life: But saith the book, 'quere per quelley,' but that was only *gratis dictum* by the judge, for no such thing was done, as binding them.

4. Bradshaw and Salmon's Case was urged, where a jury had given excessive damages upon a trial in an action of covenant, and the court of Star Chamber gave damages to the complainant almost as high as the jury had given upon the trial: But the jury, who gave the damages, were not questioned: Though, saith the book, they might have been, because they received briefs from the plaintiff, for whom they gave damages, which was a misdemeanor; but the express book is, That the jury could not be punished by information for the excessive damages, but only by attain, therefore not for their false verdict without other misdemeanor; which answers some other cases alleged. [Hob. f. 114.]

Nor can any man shew (though it was said) That a jury was ever punished upon an information, either in law, or in the Star Chamber, where the charge was only for finding against their evidence, or giving an untrue verdict, unless imbracery, subornation, or the like, were joined.

5. It was said, a perjury *in facie curiæ* is punishable by the judge; and such is it if jurors go against their evidence; perhaps a witness may be punished for perjury *in facie curiæ* (which I will not maintain to be law) but a jury can never be so punished, because the evidence in court is not binding evidence to a jury, as hath been shewed.

6. Some records were cited, of *finæ pro concealamento*; no doubt it is an article inquirable in every Oyer and Terminer, and one jury may find it upon another.

7. Braynes Case was urged, but the jurors were there fined for a manifest combination to delude the court, by agreeing upon two verdicts, and concealing the latter, if the court would be satisfied with the former. [42 El. Cr. 778.]

8. Wharton's Case, reported by two reporters, Yelverton saith, That the judges, where

of Popham was one, and a privy counsellor, were very angry, and fined the jury for their verdict, and finding against direction.

In those reports that pass under the name of Noy's, the same case is reported with this, that the judges conceived the jury had been unlawfully dealt with to give that verdict; which, if true, the fining was lawful, and the case therein reported short by Yelverton.

9. Wagstaff's Case, in the King's Bench lately, was the same with the present Case; but by the record it is reasonable to think the jurors committed some fault besides going against their evidence, for they were unequally fined.

But however, all the judges having, upon this return, resolved, That finding against the evidence in court, or direction of the court barely, is no sufficient cause to fine; the jury answers all these cases, if not answered before.

10. There remains Southwell's Case, reported by Leonard; some cases out of the Court of Wards in Lannoy's Case, reported by serjeant Moore, f. 730, where jurors were sent to the Fleet, or threatened to be sent, for not finding officers according to the direction of the court. [Lannoys C. Moore 730.]

1. An inquest of office is not subject to an attain.

2. It neither determines any man's right, nor doth any party put any trial upon them.

3. They are only to find naked matter of fact, as the books are of 3 H. 7, f. 10 b. and 2 H. 4, f. 5, a. but principally an office for the king is in many cases, as necessary, as an entry for a common person, without which he can never come by, or try his right, nor can the king, without an office, know whether he hath a right to a ward, a mortmain, or the like; and as it is an injury to hinder a man from his entry, whereby his right may be tried, so it is not to find an office for the king, whereby his right may be tried, which concludes no man, but enables the king to a trial of his right, and in truth is only a finding of matter of fact, and no more.

Therefore perhaps it may be an offence, as of a witness refusing his Testimony, not to find an office for the king, when clear proof is made of the matter of fact; but if proof be not made at all, or be altogether doubtful, or that the matter be matter of law, the Inquest may find an Ignoramus, which a jury, upon a trial, can never do: But of this I shall say no more, it concerning not the case in question.

PRECEDENTS. That the Court of Common Pleas, upon Habeas Corpus, hath discharged persons imprisoned by other Courts, upon the insufficiency of the return only, and not for privilege.

Sir Anthony Roper, committed by the High Commission Court, discharged absolutely in the Common Pleas, as unlawfully committed and detained, without any mention of privilege.

George Milton, imprisoned for contempt, scandalous words of the Court, and convicted of drunkenness; the cause resolved insufficient, and therefore *dimittitur á prisona*, and the gaoler discharged of him; but he gave bail to attend the pleasure of the Court. [5 Jac. Sir Anthony Roper's Case, 12 Rep. Sir William Chanseys C. and Edward Thicknes C. 12 Rep. 8 Jac.]

Elizabeth Ash committed by the High Commission, *pro lenocinio*, in like manner discharged; the cause being insufficient to detain her in prison, or to hinder her from the privilege of that Court, but no other mention of privilege put in bail. [4 Car. 1.]

Richard Hayes, for refusing to do penance, as enjoined, committed by the High Commission, the cause judged insufficient to commit, but gave bail as before; he demanded a Habeas Corpus by reason of privilege. [7 Jac.]

But it is to be observed, That privilege lies only where a man is officer of the Court, or hath a prior suit in the Common Pleas depending, and is elsewhere arrested to answer, and molested, that he cannot prosecute his suit, he is then privileged justly, and without wrong, because his prosecutor, elsewhere might have sued, if he pleased, in the Common Pleas.

All privilege is either for officers, clerks, or attorneys of the Court, not to be sued elsewhere; or for persons impleading or impleaded, having priority of suit in the Common Pleas, arrested or sued in other jurisdictions; or for the menial servants of such officers.

These privileges are not detrimental to any, because whoever hath occasion to sue an officer, or any other, having priority of suit as before, is not restrained to sue them in the Common Pleas, but is restrained from suing elsewhere. And this is the true privilege of the Court.

And the way of enjoying this privilege, was, by writs of privilege to supersede the proceeding of other Courts against such, who had the privilege of the Common Pleas, as is yet ordinary in the cases of attorneys, officers, and clerks.

And in such writs the cause of privilege is mentioned, and as to their menial servants, if not true, may be traversed. As 22 H. 6. 38. Debt was brought against baron and feme, and a supersedeas out of the Chancery, was cast for the baron, as menial servant to an officer of Chancery; whereupon the plaintiff said it was contained in the writ that the husband was menial servant to R. J. del Chancery, whereas he was not his menial servant, and thereupon issue was taken. But quere of the officers appearing of record in the Court may be traversed.*

Hence it follows, Though proceeding in

* 21 H. 6. f. 20. 22 H. 6. f. 38. 34 H. 6. f. 15.—Vide Dyer 12 El. f. 287. pl. 48.—Vid. the supersed for clerks of the Court, and for attorneys anciently, and their great difference. Reg. Jud. f. 84. a. But now attorneys are inrolled as well as officers.

other Courts against a person privileged in Banco, might be superseded, yet it was when the matter proceeded upon in such Courts, might as well be prosecuted in the Common bench; but if a privileged person, in Banco, were sued in the Ecclesiastical Courts, or before the High Commission, or constable and marshal, for things whereof the Common Pleas had no cognizance, they could not supersede that proceeding by privilege. And this was the ancient reason and course of privilege.

1. Another way of privilege, by reason of suit depending in a superior Court, is, when a person impleading or impleaded, as in the Common Bench, is after arrested in a civil action or plaint in London, or elsewhere, and by Habeas Corpus is brought to the Common Pleas, and the arrest and cause returned; if it appear to the Court, That the arrest in London was after the party ought to have had the privilege of the Common Pleas; he shall have his privilege allowed, and be discharged of his arrest, and the party left to prosecute his cause of action in London, in the Common Pleas, if he will.

2. If the cause of the imprisonment returned, be a lawful cause, but which cannot be prosecuted in the Common Pleas, as felony, treason, or some cause wherein the High Commission, Admiralty, or other Court, had power to imprison lawfully, then the party imprisoned, which did implead, or was impleaded in the Common Bench before such imprisonment, shall not be allowed privilege, but ought to be remanded.

3. The third way is, when a man is brought by Habeas Corpus to the Court, and upon return of it, it appears to the Court, That he was against law imprisoned and detained, though there be no cause of privilege for him in this Court, he shall never be by the act of the Court remanded to his unlawful imprisonment, for then the Court should do an act of injustice in imprisoning him, *de novo*, against law, whereas the Great Charter is, 'Quod nullus liber homo imprisonetur nisi per legem terræ;' This is the present case, and this was the case upon all the precedents produced and many more that might be produced, where upon Habeas Corpus, many have been discharged and bailed; though there was no cause of privilege in the case.

This appears plainly by many old books, if the reason of them be rightly taken, For insufficient causes are as no causes returned; and to send a man back to prison for no cause returned, seems unworthy of a Court.

If a man be impleaded by writ in the Common Pleas, and is after arrested in London upon a plaint, thereupon a Habeas Corpus he shall have privilege in the Common Pleas, if the writ, upon which he is impleaded, bear date before the arrest in London, and he returned, although the plaintiff in the Common Pleas be nonsuit, essoined, or will not appear, and consequently the case of privilege at an end before the *Corpus cum causa* returned; but if the

first writ be not returned, there is no record in Court that there is such a defendant. [9 H. 6. 54. 58. Br. n. 5. 14 H. 7. f. 6. n. 19. 9 E. 4. 47. n. 24. 19 H. 4. f. 24. n. 11. Br.]

The like where a man brought debt, in Banco, and after for the same debt arrested the defendant in London, and became nonsuit in Banco; yet the defendant, upon a Habeas Corpus, had his privilege, because he had cause of privilege at the time of the arrest, 14 H. 7. 6. Br. Privilege, n. 19.

The like case 9 E. 4, where a man appeared in Banco, by a *Cepi Corpus*, and found mainprise, and had a day to appear in Court, and before his day was arrested in London, and brought a *Corpus cum causa* in Banco Regia, at which day the plaintiff became nonsuit, yet he was discharged from the serjeant at London, because his arrest there was after his arrest in Banco, and consequently unlawful, 9 E. 4. f. 47. Br. privilege 24, and a man cannot be imprisoned at the same time lawfully in two Courts.

The Court of King's Bench cannot pretend to the only discharging of prisoners upon Habeas Corpus, unless in case of privilege, for the Chancery may do it without question.

And the same book is, That the Common Pleas or Exchequer may do it, if upon return of the Habeas Corpus, it appear the imprisonment is against law.

An Habeas Corpus may be had out of the King's Bench or Chancery, though there be no privilege, &c. or in the Court of Common Pleas, or Exchequer, for any officer or privileged person there; upon which writ the gaoler must return by whom he was committed, and the cause of his imprisonment; and if it appeareth that his imprisonment be just and lawful, he shall be remanded to the former gaoler; but if it shall appear to the Court that he was imprisoned against the law of the land, they ought, by force of this statute, to deliver him; if it be doubtful and under consideration, he may be bailed.—The King's Bench may bail, if they please, in all cases; but the Common bench must remand, if the cause of the imprisonment returned be just.

The writ 'de homine replegiando,' is as well returnable in the Common Pleas, as in the King's Bench.

All prohibitions for insinuating jurisdiction issue as well out of the Common Pleas as King's Bench.

Quashing the order of commitment upon a *certiorari*, which the King's Bench may do, but not the Common Pleas, is not material in this case.

1. The prisoner is to be discharged or remanded barely upon the return, and nothing else, whether in the King's Bench, or Common Pleas.

2. Should the King's Bench have the order of commitment certified and quashed, before the return of the Habeas Corpus, or after, what will it avail the prisoners; they cannot plead *nil tiel record*, in the one case or the other.

3. In all the precedents shewed in the Common Pleas, or in any that can be shewed in the King's Bench, upon discharging the prisoner by Habeas Corpus, nothing can be shewed of quashing the orders or decrees of that Court, that made the wrong commitment.

4. It is manifest, where the King's Bench hath, upon Habeas Corpus, discharged a prisoner committed by the Chancery, the person hath been again re-committed for the same cause by the Chancery, and re-delivered by the King's Bench; but no quashing of the Chancery order for commitment ever heard of. [Glanvill's C. Moore f. 836.]

5. In such cases of re-commitment, the party hath other and proper remedy besides a new Habeas Corpus; of which I shall not speak now.

6. It is known, That if a man recover in assise, and after is a re-disseisin, if the first judgment be reversed in the assise, the judgment in the redisseisin is also reversed. So if a man recover in waste, and damages given, for which debt is brought (especially if the first judgment be reversed before execution) it destroys the process for the damages in debt,

though by several originals. But it may be said, That in a Writ of Error in this kind, the foundation is destroyed, and no such record is left.

But as to that in Drury's case, 8 Rep. an outlawry issued, and process of Capias upon the outlawry, the sheriff returned, *non est inventus*; and the same day the party came into Court and demanded Oyer of the exigent which was the warrant of the outlawry; and shewed the exigent to be altogether uncertain and insufficient, and consequently the outlawry depending upon it to be null. And the Court gave judgment accordingly, though the record of the outlawry were never reversed by error; which differs not from this case, where the order of commitment is judicially declared illegal, though not quashed or reversed by error, and consequently whatever depends upon it, as the fine and commitment doth, and the outlawry in the former case was more the king's interest, than the fine in this.

The Chief Justice delivered the Opinion of the Court, and accordingly the Prisoners were discharged.

232. Proceedings in the House of Commons against the Duke of LAUDERDALE*, 25 CHARLES II. A. D. 1674.

THE Commons' House of King Charles the second's Long Parliament had in their 11th session manifested much discontent. They had devoted much attention to the consideration of Grievances. On the 31st of October, 1673, they resolved: "That this house, considering the present condition of the nation, will not take into any farther debate, or consideration, any Aid, or Supply, or Charge upon the subject, before the times of payment of the eighteen months Assessment, &c. granted last session, be expired: unless it shall appear, that the obstinacy of the Dutch shall render it necessary; nor before this kingdom be effectually secured from the dangers of Popery, and popish counsels and counsellors, and the other present Grievances be redressed."

On the 4th of November, after the Speaker (Beymour, against whom in the preceding week several objections and reproaches had been alleged in the house by different members) who came not to the house till 10 o'clock, though the house was the day before adjourned to eight, had been called to the Chair by a great voice, he at last took the chair; and then sir Robert Thomas moved to take into his consideration the business of 'evil counsellors,' as 'a grievance,' hinted the other day, and would name one, 'the duke of Lauderdale.' The word was

no sooner out of his mouth but the usher of the

some years in the Tower of London, in Portland Castle, and in other prisons, till he was set at liberty by those who called home the king. He was very learned, not only in Latin, in which he was a master, but in Greek and Hebrew. He was a man, (as the duke of Buckingham called him to me) of a blundering understanding: He was haughty beyond expression, abject to those he saw he must stoop to, but imperious to all others. He had a violence of passion, which carried him often to fits like madness, in which he had no temper. He was the coldest friend, and the violentest enemy I ever knew. He at first seemed to despise wealth; but he delivered himself up afterwards to luxury and sensuality. He was in his principles much against Popery and arbitrary government; and yet, by a fatal train of passions and interests, he made way for the former, and had almost established the latter; and whereas some, by a smooth deportment, made the first beginnings of tyranny less discernible and unacceptable; he, by the fury of his behaviour, heightened the severity of his ministry, which was more like the cruelty of an inquisition than the legality of justice. With all this, he was a Presbyterian, and retained his aversion to king Charles 1, and his party, to his death [which happened in 1682." Barnet.—Many years after his death there was published a translation by him of Virgil's *Æneid*, which had been shewn in MS. to Dryden, and from which he has borrowed many lines.

* "The duke of Lauderdale had been for many years a zealous Covenanter; but in 1647 he turned to the king's interest; and had continued a prisoner all the while after Worcester fight, where he was taken. He was kept for

black rod knocked at the door, and the serjeants gave notice of it to the Speaker, who forbade sir Robert proceeding any farther.*

The next session commenced on the 7th of January 1674, and on the 12th the House of Commons resolved, "That this house will proceed, in the first place, to have Grievances effectually redressed, the Protestant Religion, Liberties, and Properties, effectually secured, to suppress Popery, and to remove persons and Counsellors, popishly affected, or otherwise obnoxious, or dangerous to the government." 2. "That the humble and hearty Thanks of this house be returned to his majesty for his gracious Promises and Assurances in his last Speech, and for those Acts which he has done since the last prorogation, towards the suppressing and discountenancing of Popery; and that he would please to give order for the Militia of London, Westminster, and Middlesex, to be ready at an hour's warning, and the other Militia of the kingdom at a day's warning, for the suppressing any tumultuous meeting of Papists, or other malcontent persons whatsoever; and that the house will go with this Address to his majesty in a body."

On the next day the following Proceedings took place.

Mr. Stockdale. Many Grievances have been represented; the way is now, how you will redress your grievances; the last session produced many good votes as to that, but we were prorogued; and to the intent that that may not happen again, consider that the same Counsellors are interposing, and interpreting our intentions may procure the same prorogation; therefore moves to begin with the last part of the vote first, viz. 'Evil Counsellors.' You cannot have Grievances effectually redressed, without removing those that

* "The Address (agreed to the day before) was to have been presented this afternoon; but the king disappointed all by coming unexpectedly to the House of Lords, and ordering the Commons to attend him. It happened that the Speaker and the usher both met at the door of the House of Commons, and the Speaker being got within the house, some of the members suddenly shut the door, and cried out 'To the Chair! To the Chair!' while others cried, 'The Black Rod is at the door.' The Speaker was immediately hurried to the chair, and then it was moved, 1. 'That our Alliance with France was a Grievance. 2. That the Evil Counsellors about the king were a Grievance. And 3. That the duke of Lauderdale was a Grievance, and not fit to be trusted or employed in any office or place of trust.' Upon which there was a general cry, 'To the Question! To the Question!' But the Black Rod knocking earnestly at the door, the Speaker leaped out of the chair, and the house rose in great confusion." Echard.

have advised these things, and, when that is done, he perhaps will name one.

Sir Robert Thomas. We have a great many Grievances; hazard of Religion, Counsellors advising the king to take away religion and properties; must name one; (by the bye, the Black Rod being called in by you, Mr. Speaker, the last session, before he knocked, he could not do it then) a person that has contributed as much to our misfortunes as any man; the duke of Lauderdale.—You will have proofs of his advice by four of your members; viz. * 'Your majesty is bound in honour to justify your Edicts; I wonder at the confidence of any person to deny your majesty's Edicts, and those persons that do, I think, deserve to be most severely punished †.' The act of the Militia in Scotland, 'which forces are to be in a readiness to be called to march into England or Ireland, upon any service where the honour, authority, or greatness of the king shall be concerned.' Other gentlemen know more: he has great forces in readiness and pay, and for no other end, he believes, than to awe us.

Sir Nick. Carew. We should never have Grievances, but by such 'Counsellors': the duke is at the head of a great army in Scotland; desires that we may move the king, that he may keep there and return no more into England.

Sir T. Littleton. The words are ready, and desires you will order the gentlemen that heard them, to declare them.

Sir R. Thomas names sir Scroope Howe, Mr. Man, and Mr. Robert Pierpoint, who heard the words, and lord St. John.

Lord St. John. The last session, February he was called to do it, but then refused, because there was a dispute then betwixt the duke of Lauderdale and himself; Mr. Howe, then sick, being concerned for Mr. Whalley, desired him to go hear the business at the Council, where Mr. Whalley (a justice of peace in Nottinghamshire) was summoned, who had committed a preacher contrary to the Declaration. Whalley was to answer the contempt, the parson had no licence to preach, but entry was made of it in the Secretary's Book; a law bound Whalley, and a Declaration did not bind him. Lauderdale then spoke the words mentioned by sir Robert Thomas, that he wondered at the words and said, 'Lauderdale may be questioned in parliament.' Some members

* The expressions mentioned in the Journal are, "Your majesty's Edicts ought to be obeyed; for your majesty's Edicts are equal with the laws, and ought to be observed in the first place."

† "A gentleman, there present, informed me, that the king should say to Mr. Penynson Whalley (the person then before the council) 'I wonder that you should withstand my Declaration. I would have you know, that I will be obeyed according to my interpretation of the law, and not yours; and if you will not I shall put in those that will.'" Grey.

being present, Lauderdale spoke as before, none else of the Council spoke, and all were bid to withdraw.

Sir Scroope Howe averred the words as before; Mr. Pierpoint, and Mr. Man likewise.

Sir T. Littleton. Now you are possessed of this, he shall offer his sense; the last session, we were cut off in the beginning; in Scotland, an army is raised by this great duke; though by act of parliament, yet his power is great, and the army under his power: it is in vain to act here, without converting our thoughts to Scotland. Pray God! this be not elsewhere: a man, so principled and arbitrary! You had need look about you; needs say nothing to aggravate, the bare thing aggravates itself; a cloud hangs over us, and it is high time it was scattered; it has made Counsellors in England so much the bolder; moves 'to address the king to exclude the duke of Lauderdale from his Councils in England;' keep him from councils here, and you may shake his authority in Scotland: he is in all respects a commener*, and so we cannot clash with the Lords in point of trial; there are 20,000 foot, and 2,000 horse, ready in Scotland, and no colour for it; a man of such principles is not fit to be trusted with such an army, nor with our councils, and, without any more ceremony, would address the king, as he is a commener.

Sir C. Harbord has a double charge against him, that of the army in Scotland, and his words at the Council here. You may miss of trial, but an Act may reach him.

Mr. Dalmahoy has heard the duke of Lauderdale deny the words; he was not in Scotland when the Act about the Militia was made; he knows not who was then commissioner.

Mr. Powle supposes that every man is sensible of a pernicious design to alter the government, and these Counsellors have brought us to the brink of destruction; we have a gracious prince, but the great design was, first to abuse the king, and then to oppress the people, fearing his good disposition to us; the Triple League was made to check a great prince; to ruin the Protestant religion was the design, and, without Money, that was not to be carried on, which money was given for the maintaining the Triple Alliance; and then more money was got, by stopping the Exchequer, to the undoing of many hundreds of persons.—Then a Declaration for the ease of tender consciences, and, under pretence of Toleration, suspending by it all ecclesiastical laws, and, in consequence, laying all laws aside; upon the declaration of war against Holland, armies were raised, and popish officers at the head of them, and in places of civil authorities, honours, and dignities; then Popish officers are sent over into Ireland, Papists put into trust and office there; then in Scotland, an army

is raised to march into England, &c. or for any other cause wherein 'the king's honour or greatness may be concerned;' but the greatness of the king consists in governing a free people; the parliament supplied and brought him from banishment, and, because the king would hearken to their advice, they must be prorogued, the juncture of their time not being fit for the fleet against Holland; they suppose we would give, and, if not, the necessity must justify raising of money: what benefit had we but fruitless battles at sea, and engaging us, by the French, with his allies? The king was persuaded that the parliament would not assist his interest, but doubts not but time will demonstrate the contrary: when we would have reached these men, we were prorogued, and now there is a necessity of giving money; the king's credit lost, the people poor, jealousies great, and all might have been remedied by our meeting.—Lauderdale asserted 'edicts superior to law,' and it was spoken in the presence of the king and council; no greater argument, though some, he doubts not, have done it privately, but he publicly: Hamilton's book asserts the king's authority of raising Money without Parliament, and it was countenanced by Lauderdale in 1667. When lord Rothes was commissioner, then was the foundation of this army, but it came not to maturity till 1669, when Lauderdale was commissioner; it was then kept on foot, and boasted of; it is not unknown at what vast greatness this person has lived, thereby bringing the king into necessity, and disobliging the house, that we should not supply: Lauderdale sued out the king's pardon; a new trick our great men have gotten, fearing our enquiry, and would arm themselves against us with the king's pardon; let this be considered and weighed well: less crimes than these have brought men to the scaffold, but the temper of this house is not desirous of blood. The 5th R. 2. counsellors were removed without cause: the people only spoke ill of them. 11 R. 2. the duke of Ireland, and sir John Crosby were impeached; the people spoke ill of them, 20 Hen. 6. the lord Dudley for the same cause: It may be the case of peers of England, and this upon no other article but merely the people speaking ill of them. 3d C. 1. remonstrance against the duke of Bucks; bishop Neale, arch-bishop Laud, to be removed as evil counsellors: moves, "That this great person, the duke of Lauderdale, may for ever be removed from the king's presence."

Mr. Secretary Coventry. To condemn a man, without hearing, he never knew the precedent before in this house.

Mr. Stockdale. If for taking away blood, witnesses must be sworn; but to remove this man you have testimony sufficient to ground an Address to the king; so notorious a man!

Sir Rob. Carr. A person was accused, and you gave a day: moves to consider of it.

Col. Birch. It is true, there was a person had a day, but he had no pardon, and he would

* The Duke was at this time only a Peer of Scotland. But in June following he was created an English peer, by the title of earl of Guilford.

have Lauderdale sent where 'Edicts' are in fashion.

Sir John Duncombe. It is hard to condemn a man without being heard; 'removed from the king's presence' is as hard a judgment as a man can have: thinks it worthy consideration to give him a day.

Sir John Trevor. If you proceed merely to suspend him from the king's 'Councils,' you may do it, but if from the king's 'presence,' where no manner of proof is taken, you ought to give him a day; by way of confiscation, or attainder, you give time, but as to 'removal from counsels,' you need give none.

Mr. Howe. He was the most active person to bring the late king to his murder: he was solicitor from Scotland to bring the late king to the block, and to destroy this king by giving ill advice to him.

Mr. Garroway has often heard that this man brought the declaration from Scotland to bring the late king to the block, and those people had a horror for the fact would have him come and answer it here, and all that are concerned with him: he has heard of one Murray kept in the Tower, by the instigation of Lauderdale, for complaining against him; these are violences, when no writs of Habeas Corpus can be had; and would send to the Gatehouse, where he now stands committed, for the *Mitimus*: you will find it of his own making, and illegal: agrees to the Address for removing him; and would have a Bill to make it treason if ever he return hither again.

Mr. Sec. Coventry. If he be guilty of this horrid crime alleged, will not defend him; neither will he condemn him without proof.

Sir John Birkenhead. The duke of Ireland, Oxford, and Somerset, had a day assigned them—No man has been banished the king's presence on this formality, though you cannot have greater evidence; it may be he may confess it; many things are law in Scotland, and not so here; would not have a precedent to reach every body: assign him a day, and you will tread more safely, and do him right, and no man wrong.

Sir Thomas Littleton has heard a great man in the Rump, and a counsellor then, say, 'That Lauderdale did solicit that bloody Kirk-Declaration against the king;' does not name the person, because desired not to do it: would have him removed from the king's person and counsels for ever. This thing is not so hard, he at a great distance, and great affairs in Scotland to attend, and so he may excuse himself from coming, and perhaps when come we may not be sitting, and if he will come, at any time, he may be tried by parliament.

Col. Sandys. Since he has heard that Lauderdale had some part in the king's murder, that has raised him; and would have him as much sequestered from the world, as from the king, and would have 'a Bill of Attainder against him.'

Mr. Sacheverell fears that this lord has not lost his old evil principles, but improved them;

the Scotch Act of Militia plainly shows it: It puts the king in power plainly to alter any thing in Church or State, and so, by this army, popery may be set up: not content to keep their law in Scotland, but printed here by authority; it was done this time twelvemonth, when the question was, whether all your laws must be set aside; and therefore is for secluding him for ever from the king's presence, and an Act of banishment.

Col. Strangways would have the words 'obnoxious and dangerous' retained in the vote: our Saviour pardoned them that persecuted him, but where a man, by after-actions, has done ill, his righteousness shall be forgotten, when transgressing *de novo*: he abhors the crime; but consider your case; 'sequestering him from the king's presence and the kingdom:' common fame from this house is a greater ground for accusation than thought to be.

Sir R. Temple does not remember that, by any of the precedents, men were sent for, and time given them to answer; this vote is with that moderation, 'to remove' only: would add something, that it may have more strength, viz. 'as a man found by this house to be dangerous.' Has heard of his being no less arbitrary in Scotland than here; to have made himself a perpetual commissioner there.

Sir John Monson hears it said, 'that every subject has a right to come into the king's presence;' therefore to prevent that, when we are up, would have a Bill, as well as an Address now.

Sir Eliab Harvey would have a Bill ordered to make it treason for him to return to England.

Mr. Waller thinks as bad of this case as any man here; If so much had been against lord Strafford, would not have then been against his Impeachment.

Sir W. Coventry. The bill as proposed, is contradictory to what you have spoken of 'removing him from the king's presence.' The king may remove him, by his own power, 'from his presence,' at the request of any private man, and when it is done, it is well done: every subject has a right of petitioning the king, though he be not of his bed-chamber of council; but it is not so easy a thing to exclude any man out 'of the kingdom.' To make a precedent to exclude a man 'the kingdom,' without hearing him, cannot agree to it.

Mr. Bacon desires that lord Clarendon's Bill of Banishment may not be a precedent: that was done somewhat hastily.

Sir T. Clarges would have a Bill, to forbid him coming within 12 miles of the court, wherever the king shall be: will consent to that and no farther.

Resolved nem. con. "That an Address be presented to his majesty to remove the duke of Lauderdale from all his employments, and from his presence and councils, for ever; being a person obnoxious and dangerous to the government."

For an account of Lauderdale's abominable misgovernment of Scotland, see the fourth volume of the History of that kingdom by Mr. Laing, who in relating the transactions of the year 1663, thus describes him :

"Originally not less attached to the covenant than at present to the court, he engaged in its measures with the zeal of a proselyte ; determined that no compliance should be omitted to promote his ambition or to preserve his place. His personal appearance is perhaps satirically described as enormous or uncouth ; his hair was red and disbevelled ; his tongue too big for distinct articulation ; his address ungracious, and his manners coarse, boisterous, and unseemly to the fastidious refinement of a court. During a long imprisonment, his mind had been carefully improved by study, and impressed with a sense of religion which was soon effaced on his return to the world. His learning was extensive and accurate ; in public affairs his experience was considerable, and his elocution copious, though unpolished and indistinct. But his temper was dark and vindictive, incapable of friendship, mean and abject to his superiors, haughty and tyrannical to his inferiors ;

and his judgment, seldom correct or just, was obstinate in error, and irreclaimable by advice. His passions were furious and ungovernable, unless when his interest or ambition interposed ; his violence was ever prepared to suggest or to execute the most desperate counsels ; and his ready compliance preserved his credit with the king, till his faculties were visibly impaired with age."

The descriptions left of him may perhaps, as Laing suggests, aggravate the unfavourableness of his personal appearance : there is no reason, however, to doubt that it was sufficiently uncouth. In the following ironical description (which is said to have been composed by Rochester, but which I have never seen in print) of Charles 2, and a party of his associates, the ugliness of Lauderdale is selected as the topic of characteristical allusion to him :

See Monmouth the witty,
And Lauderdale pretty,
And Fraser that learned Physician,
Then the Duke for a jeat,
And above all the rest,
The King for a wise Politician.

233. Proceedings in the House of Commons against the Duke of BUCKINGHAM : 25 CHARLES II. A. D. 1674.

THE Proceedings against Lauderdale were closely followed by others against Buckingham.

On the 13th day of January, 1674, a Letter being brought in to the Speaker of the House of Commons, signed "Buckingham," on his offering to read it,

Mr. Stockdale said, He would not have the Letter now read, he having something to offer against the duke of Buckingham.* Whatever

* "The duke of Buckingham was a man of a noble presence. He had a great liveliness of wit, and a peculiar faculty of turning all things into ridicule with bold figures and natural descriptions. He had no sort of literature ; only he was drawn into chemistry ; and for some years he thought he was very near finding the Philosopher's Stone. He had no principles of religion, virtue, or friendship ; pleasure, frolic, or extravagant diversion, was all that he laid to heart. He was true to nothing, for he was not true to himself. He had no steadiness, nor conduct. He could never fix his thoughts, nor govern his estate, though then the greatest in England. He was bred about the king, and for many years he had a great ascendancy over him ; but he spoke of him to all persons with that contempt, that at last he drew a lasting disgrace upon himself ; and he at length ruined both body and mind, fortune and reputation, equally. The madness of vice appeared in his person in many instances ; since at last he became contemptible and poor, sickly, and weak in his parts, as well as in all other respects ; so that his conversation was as much

that Letter contains, he has a charge against the person, of as high a nature as the Letter can be : says, it is irregular for the Speaker to bring us a new business ; the Letter—He was interrupted by

Sir CA. Wheeler. To order of proceeding, in reference to your vote, after what manner I Would have some previous consideration, that one man may not prevent another.

avoided as ever it had been courted. The main blame of the king's ill principles, and bad morals, was owing to the duke of Buckingham." Burnet.

Dryden in his Absalom and Achitophel says, that he was

"A man so various, that he seemed to be
Not one, but all mankind's epitome ;
Stiff in opinion, always in the wrong ;
Was every thing by starts, and nothing long ;
But, in the course of one revolving moon,
Was chymist, fidler, statesman, and buffoon ;
Then all for women, painting, rhyming, dribbling,
Besides ten thousand freaks that dy'd in thinking.
Blest madman ! who could every hour employ,
With something new to wish, or to enjoy !
Railing and praising were his usual themes,
And both (to shew his judgment) in extremes ;
So over violent, or over civil,
That every man, with him, was god or devil.
In squandering wealth was his peculiar art ;
Nothing went unrewarded but desert.

Mr. Stockdale. Would have all men concerned, named: and you are possessed of one against whom he has a charge, the duke of Buckingham; that, if encouraging or practising, and, he supposes, establishing Popery; if taking money from the subject, and breaking the Triple Alliance, and engaging us in this French alliance, be a Charge, he has a Charge against the duke of Buckingham: the proofs are not so ready as the last, but the particulars will all be proved: offers not an Impeachment: though the crimes may be proved, impeachments take up a long time; it may be longer than we have to sit: his own letters show corresponding with Peter Talbot, the pretended archbishop. When Ireland was in

Beggar'd by fools, whom still he found too late;
He had his jest, and they had his estate.
He laugh'd himself from Court; then sought relief

By forming parties, but could ne'er be chief:
For, spite of him, the weight of bus'ness fell
On Absalom and wise Achitophel:
Thus, wicked but in will, of means bereft,
He left not faction, but of that was left."

• Pope thus paints at once his character and the last scene of his life, which on April 16, 1688, was closed at Kirby-moor-side. The Biographia says, that he left much more than enough to pay his debts:

"In the worst inn's worst room, with mat half-hung,

The floors of plaister, and the walls of dung,
On once a flock-bed, but repair'd with straw,
With tape-ty'd curtains never meant to draw,
The George and Garter dangling from that bed
Where tawdry yellow strove with dirty red,
Great Villiers lies—alas! how chang'd from him,

That life of pleasure, and that soul of whim!
Gulant and gay, in Cliveden's proud alcove.
The bow'r of wanton Shrewsbury and love;
Or just as gay, at council, in a ring
Of mimic statesmen, and their merry king.
No wit to flatter, left of all his store!

No fool to laugh at, which he valu'd more:
There, victor of his health, of fortune, friends,
And fame, this lord of useless thousands end!"

Sir John Dalrymple, 4to edition, vol. 2, p. 431, notices that Barillon writes March 16, 1672, to his court, That Buckingham dares not attend the House of Lords, in the prosecution of lord Danby, because Danby threatened him with a prosecution for Sodomy. There is in Tremaine's Pleas of the Crown, 17, an Indictment at the suit of the King and Buckingham against eleven persons, of the names of Hickley, Higgins, Smith, Jones, Haley, Curtis, Blood, Christian, O'Brian, Lemarr, and Bradley, for endeavouring to suborn persons to swear against the duke of Buckingham that he was guilty of Sodomy. As to this and other imputations on Buckingham, see the duke of Buckingham's Litany, inserted in a Note to his Life in the Biographia Britannica.

great danger by Popery, he advised the army to be drawn out of that kingdom, and headed his own regiment with Popish officers. At Knaresborough, Whitsuntide last (the Standing Army was then forming) this duke came into Yorkshire to raise men; a poor man, being pressed, came to the overseers of the poor, and told them, 'You must provide for my wife and children, I am pressed away and cannot maintain them.' The duke sent for the overseer, and beat him for not doing it, and sent a warrant to the marshal of the West Riding of Yorkshire, to keep him till farther order from him; the man applied to the duke, and, after 3 days imprisonment, was delivered by the marshal (Wainman) who demanded 30*l.* fees, and got 5*l.* for three days: this was done, when there was a prospect of arbitrary power, and this was the first action of martial law, committed by a martial-man. The next is the duke's taking of money, 2*s.* 6*d.* upon every horse exported at Dover, by virtue of his place as Master of the Horse, against law: breaking of the Triple Alliance: the duke was sent into France, and what treaty he made there we know by the effect; the Triple Alliance broken: lord Bellasis was sent to Dunkirk, and the duke, though he had no business, yet would go to see the king of France, and has heard what presents he had there, and believes it will be proved: his endeavours to take away the affections of the king's good subjects, by saying 'that the king was an arrant knave, and unfit to govern;' Dr. Williams can prove it: he has defrauded the king's servants of their wages, so disadvantageous to his service; this is public; now, there is a Petition against him in the House of Lords of a strange nature: killing the earl of Shrewsbury,* and living scandalously with his widow. Not only that, but he has attempted a horrid sin not to be named; not to be named at Rome, where their other practices are horrid: moves, 'That a person so dangerous to the government, and of so ill a life and conversation, may be removed from the king's presence and from all his employments: and for 'an Act of Banishment' against him, as against the duke of Lauderdale.

Sir John Coventry. This man has made it his business to sow dissention betwixt the king and this House, but he is not a man to put things in execution when much danger is in

* This was in a duel, March 16, 1667. "The Countess is said to have held the duke's horse, disguised like a page, during the combat; to reward his prowess in which, she went to bed to him in the shirt stained with her husband's blood." Walpole's Noble Authors, vol. ii. p. 82, 3.

Of this intrigue, Marvell, in one of his Letters, makes the following mention: "Buckingham runs out of all with Lady Shrewsbury; by whom he believes he had a son, to whom the king stood godfather: it died young, earl of Coventry."

the case: when the king had his ministers in France, the duke of B. put many of his servants, incognito, to treat with the ministers of that state, Papists and persons ill affected to our government: it is a sad condition we are in, to have a man so near the king's person that contemns his person: this duke has given night and lantern counsels, not to be owned by the rest of the counsellors. He corresponds with a traitor, Peter Talbot; the letter was burned in the king's bed-chamber, and part remains: some say the duke is not ashamed of that profession; it is known to you all, that these people have been protected by him: it may be said, that the officers of his regiment are Protestants, but we may thank the Commons of England for it: if these things be proved, he desires the duke may be removed from the king's person for ever.

Mr. *Howe*. Besides all this, when the king was at Windsor, because he would not stay so long as the duke would have him,† he took the bridle from the king's horse, to the great danger of the king's person, and the duke was then Master of his Horse.

Sir *Winston Churchill*. He that would answer this charge of the duke's may do himself more wrong than the duke has. Wishes the particulars as easily proved as charged: the business of Windsor he knows: the duke is not far from you, and supposes, if the Letter be not of importance, the duke has forfeited his understanding, as the charge makes him forfeit his reputation: men of his quality will not inform you of trifles: the Letter may be of concernment; it may discover something you know not (as that in the Lords' House about a plot) therefore would read it.

Lord *Cavendish*. Should the artifice of the man put it out of our power to proceed, it would be of ill consequence: would have him removed from offices and councils about the king and suspended his presence till farther proceeded against.

Sir *Tho. Charges* would first put the question for 'the Address,' and then read the Letter. No great need of particular proof; but all you desire, is, that he may not be near the king's person to pursue these dangerous counsels: in Scotland, did he not correspond with Argyle, and ransack the king's close-stool for papers? There were shrewd suspicions of him in the rebellion in the north, and soon after he got his pardon. Is it no crime to kill the husband, and prostitute the wife? He accuses him not, for it may be pardoned; but for us to countenance such things, will bring God's judgments upon us: after so great an accusation, to come so familiarly amongst the lords, his judges, and to do his offices about the king, argues a strange boldness: there are seven persons that have had five pardons since the Restoration of the king; two by act of parliament, and three under the great seal, for murder, treason, &c.

† It was whispered "at a drinking-bout." Grey.

so that you can never lay hold of him: since March last he has got another Pardon, and as the docket says, 'for all treasons, insurrections, murders, misprisions, manslaughter, &c. committed or done before the 14th of Nov. last.' This is in some sort a confession of the guilt of so many crimes as are enumerated in the pardon: you must give it, by Vote, for the safety of witnesses, and he to be 'removed from the king's person.' Men are awed; and at the reading of the Petition against him, in the house of lords, there was a great silence: he has not common bowels of mercy; he beat an old gentleman for desiring him not to ride over his corn, till the blood ran down his hoary head. At Barnet he beat a poor soldier in bonds about the unfortunate killing lady Shrewsbury's coachman: moves as before.

Sir *Edm. Jennings*. The Letter may be of consequence. The paper of discovery was read in the Lords house, and he would have the duke's Letter read.

The Duke's Letter was then read, as follows:

'Mr. Speaker; I desire you to do me the favour to get leave of the hon. House of Commons, that I may inform them, in person, of some truths relating to the public; by which you will much oblige, &c. BUCKINGHAM.'
'Jan. 13, 1674.'

Mr. *Sacheverell*. You ought to hear the Duke, because the matter, he pretends, is public, and you may be concerned.

Mr. *Garraway* hopes you will do justice to all men. If you pass your vote against him, of what validity will any thing be that he can say? Moves that that right may be done to the duke, which you will not deny to the meanest commoner: lord chief justice Keeling, and the earl of Bristol, had a chair set for them: you heard them speak, and Bristol cleared your member, sir Rd. Temple*: would now hear the duke.

Sir *Tho. Charges*. This man has done his impieties in the face of the sun; he prevented our meeting in Oct. last. Has he not perverted the king's word? Would only now have him removed from the king's council. My lord of Bristol's coming hither was a voluntary desire, and nothing against him here: is not against his coming in, but would first remove him from the king's person.

Col. *Birch*. Such things as the duke has done, cannot be without company: would have him come in, and hear him what he can say.

Mr. *Sawyer*. Your vote may discourage him, that he may say little to you, and possibly he may reveal something in compensation, by way of discovery: would hear him.

Col. *Strangways*. Hear him what he can say: some vices of the man may not take away a man's testimony.

The Duke of Buckingham was ordered to be

* See p. 283 of this Volume.

called in,* and a chair was set for him on the left hand of the bar, the serjeant standing with his face on his right hand. Then the duke entered the house round.

Ordered, "That the Speaker ask him, Whether he owned the Letter he sent him, and what he has to communicate to the house, of concernment?"

The Duke sat a short space, covered: then the Speaker asked him, &c. and showed him the Letter, which the Duke owned. The Speaker then said, "The house is ready to hear what your grace has to say, relating to the public service."

The Duke's Speech to the House of Commons.

The Duke, standing, then said, "I have written something," [tumbling a Paper in his hand] "but will trust to my own present thoughts. I give this hon. house humble thanks for the honour done me, in admitting me to come and speak here. I have always made it my business to get the good opinion of this house; I desire that my actions may be examined, and I will stand, or fall, by the censure and judgment of this house: the business against me, I understand, is the breaking of the Triple Alliance; I had as great a hand in making it as any man: my going to Holland was to hinder De Witt's conjunction with France, and I did no ill service in it, and the more the thing is examined, the more my innocence will appear. I was not of the opinion of a war, and France to take all, and give us nothing; if my advice had been followed, there would have been better effects; it is not my practice to accuse, but it is hard if a man may not clear himself. I have been in as much danger, for my respect to this house, as any man; have been turned out of all my places at court; proclaimed traitor; witnesses hired to swear against me, and confessed so; no man can be exempted from malicious accusations, and all for favouring Bills from this house; and after the proclaiming me traitor, I had a Letter from a sister of mine, which was alledged one from Dr. Haven a conjurer, but through his name any man might see Richmond and Lenox.† I was

* Burnet says, "That the Duke, the first day of his being before the house, fell into such a disorder, that he pretended he was taken ill, and desired to be admitted again. But that next day he was more composed."

† "There was a poor fellow, who had a poorer lodging about Tower Hill, to whom the duke often repaired, in disguise, in the night; and lord Arlington had caused that fellow to be apprehended, and his pockets and chamber to be searched; where were found several letters to the duke of Buckingham, and one original letter from the duke to him, in all which these were many unusual expressions, which were capable of very ill interpretations, and could not bear a good one. This man and

not afraid of my enemies in the house of commons, but afraid of being tried for my life, before you met. There have been great desires of having me removed from the king. I can hunt the hare with a pack of hounds, but out with a pack of lobsters.* If this house desires it, I will remove from the king, and go beyond sea; no man ought to serve the king, whom the nation has no good opinion of. I have spent an estate in the king's service, when others have got thousands. Beggar that run away with the bags, when a robbery is done, you stop; but a fine gentleman, riding upon the highway, you let go. I desire to be removed from my place, and to have leave to sell it. Persons are vehement upon me, and would ruin me. I submit myself, and actions, to the good construction of the hon. house." —He then withdrew.

Debate thereon.

Mr. Stenhook desires, that seeing the duke is of your mind, you may join issue with him, and let him go beyond sea.

Lord Buckhurst.† The duke has informed you of nothing concerning "public affairs," and

some others, were sent close prisoners to the Tower, and a warrant being issued, under the king's sign manual, to apprehend the duke, he at last surrendered himself, and, on his examination at the council board, the letter being produced, as soon as he cast his eyes upon it, he said, "It was not his hand, but his sister's 'the duchess of Richmond's, with whom, he said, it was known he had no correspondence.' Whereupon the king called for the letter, and having looked upon it, he said, 'He had been mistaken,' and confessed, 'that it was the duchess's hand; and seemed much out of countenance at the mistake: though the letter gave still as much cause of suspicion, for it was as strange that she should write to such a fellow, in a style very obliging, and in answer to a letter; so that it seemed very reasonable still to believe, that she might have written it upon his desire and dictating.'" Earl of Clarendon's Life, p. 430, 434.

* "The duke justified his own designs, laying all the ill counsels upon others, chiefly on lord Arlington; intimating plainly, that the root of all errors was in the king and the duke of York. He said, 'Hunting was a good diversion, but if a man would hunt with a brace of lobsters he would have but ill sport.' He had used that figure to myself; but had then applied it to prince Rupert and lord Arlington. It was now understood to go higher." Burnet.

† "Son of the earl of Dorset, to which title he succeeded in 1677, having been created earl of Middlesex, 1675. He was a volunteer in the first Dutch war, in 1665, and the night before the engagement, composed the famous song, 'To all you ladies now at land,' &c. At the Revolution he was early engaged in the interest of the prince of Orange, and was pitched upon to convey the princess (afterwards queen)

why will you put him out of all capacity? Though his relation to him were ever so near, or obligations ever so great, would have him answer his accusations: but hear him first.

Mr. Sec. Coventry. This duke's is not the same case with the duke of Lauderdale's. The king may turn any man out of his service; and especially on your desires; but when it shall be upon record, that the duke has uttered such words against the king, if a man asks whether such words are treason, it may be represented, that he said the words, 'of the king's being a knave, and unfit to govern.'

Mr. Boscawen has no kindness nor relation to the duke, but we ought to hear him. Your judgment will not be thought just, though it is so in truth, by persons that understand not the reasons; would have him acquainted with what is against him, and then you may proceed.

Col. Birch. The duke has not spoken one word of 'public' in what he has offered, but all 'private.' It seems to him, that he would be drawn to accuse, but in modesty would not do it of himself: would adjourn now, and let him know, if he has any 'public' thing to say, we are ready to hear him.

Mr. Garroway would make no false steps in the business; would adjourn the debate, but would have nothing said to the duke. He seemed discomposed, and fumbled with a paper, and would 'sell his place,' and could hunt 'with hounds and not with lobsters;' but if any man desires he may be heard on any 'public occasion,' would have him heard, but not any thing 'private' from him.

Lord Cornbury observes that the duke has good intelligence of what we do here; for he began his discourse with the great business of France: if you accuse him, he is pardoned, and has the king's pardon; being so secured, there is no justice to proceed upon these crimes: but suppose he should acquit himself of all the great matters relating to the king, yet here is a crime in the face of the sun, a murder, and his living with that miserable woman in that perpetual adultery. He never was tried for killing her husband, and would be satisfied how you may try him; but how will you reach him? He must be tried by the Lords. Every body knows the great friendship that you, Mr. Speaker, have for him; and would not have you write or speak to him: but if he has any thing more to say, you may hear him to-morrow.

Sir Rob. Howard moves to adjourn the debate till to-morrow.

Mr. Powle. In Impeachments, 'by way of justice,' is another way of proceeding, but, 'in point of fame,' every man must lay his hand upon his heart, in his judgment of him.

Anne, out of the reach of her father's displeasure. He was a great patron of men of letters, who have not been ungrateful in transmitting his name with lustre to posterity. He died in 1705." *Biog. Brit.*

VOL. VI.

Sir John Monson has attended this noble lord's speech, but wonders that he should interpret the weighty affairs of this house to be his own private affairs, and believes, that his mind changed from what he had to say at first upon our debate.

The debate was adjourned till the next day.

The Speaker reminded the house, that it is against order, that members should salute messengers from the Lords house, as if this house was the School of Compliments: the Speaker only ought to do respect for the whole house.

The Speaker reported, "That he had presented the Addresses to his majesty, who was pleased to return Answer to this effect: "That he was always ready to preserve them in their Liberties and Properties, and to secure the Protestant Religion; and would take care the Militia should be in readiness upon all occasions to secure the Government."

January 14.

Sir John Monson would know whether the Speaker has any more letters, or intimations from the duke; and that, if he had, he would produce them.

Sir Eliab Harvey moves to state the question, upon the matter of the debate adjourned yesterday; the question, 'to remove the duke of Buckingham from his majesty's person, and employments, for ever,' to be the Address to the king.

Sir Cs. Wheeler would do things so like an honest man, that, if informed of any other matter, he may not repent him of his vote. The debate arises fairly from the first vote, 'all Papists, and persons obnoxious, to be removed from the king.' That he will stick close to. If the house will add 'all others guilty of murder' &c. and have all scandalous livers removed, he is content: many others may be as perplexed in the vote, and entangled as he is; therefore would come to a fair debate. If any person, be it who it will, is 'so obnoxious,' would fairly give his vote to have him removed: would a man be content that every duke in England that has killed a man, or lived in adultery, should be comprehended in your vote as dangerous to the government? Whether 'seizing on money,' 'popishly affected' or 'has made a league,' let all these come fairly before us: How carefully did we proceed in the duke of Lauderdale's vote? The duke said 'he was not a man to be an accuser, but, if examined, he would throw himself upon the judgment of the house;' if he did not make the League (French Alliance) he may know who did it: shall we lose such an opportunity, as this offer of the duke's? Though not expressed, yet it is fairly implied, that he can tell you, would set the saddle upon the right horse, and send for him, if he will come.

The Speaker. Dr. Williams addressed himself to him thus: 'that his name, he has heard, was made use of in the house, about what he should hear the duke say of the king; protests

he never heard the words, nor said he heard them.

Mr. Rob. Philips. Dr. Williams told him, 'That the words were not only spoken once, but frequently, by the duke.'

Sir John Coventry has no malice against the duke, but could not be silent when a worthy member, col. Titus, can tell you as much.

Col. *Titus* rises up very unwillingly to speak in the matter, for he has been under a misfortune from this person: will not do a public good for a private revenge: he has heard the same things from Dr. Williams.

Mr. Sacheverell. We are not going to hang the duke, nor try him for his life, we only desire to remove him from the king. The question might have been yesterday, but he being too foul we would not touch him: Wheeler said, 'affairs are not mended since lord Clarendon's banishment;' but the house is a judge of that, not he; but if this person is not removed, will never move to have any removed more.

Sir Tho. Clarges. The duke told you, 'he had no hand in the French Alliance,' and at the same time that, 'he would have had no ships, but towns.' Averse from the war, and yet would have towns and no ships! When he told you, 'he was not for breaking the Triple Alliance,' a thing of great honour! but 'for putting most of the towns into the French hands,' it was one of the elegancies of speech which men call a Bull: 'would have leave to sell his place:' he has, under the signet, 2,400*l.* a year, in compensation of what he has given for the place of Master of the Horse; and yet he affirms 'he has nothing from the crown:' the method we take is by common fame here; the wisest parliaments have taken it before us. Hen. 4. in the case of the Abbot of — his Confessor, removed him for no other reason but for not being loved by the people, though the king knew nothing against him: many more have been removed at the instance of the Commons: would not have a hair of his head touched, but a learned judge (Atkins) said here, in lord Clarendon's case (about removing him) 'Was he a young gentleman, and came to town with money in his pocket, and gave it to a gamester to improve it for him by play, and he lost it, believes he should not put another bag into such unlucky hands to play for him?' would have the question, 'That he is not a man fit to be about the king.' Whom will you impute your Grievances to? No man will say, to the king; but if such a man's crimes must be alleviated, he is for the king and the common-wealth: would, perhaps move you, that no member for the future, whilst parliaments sit, should have the temptation of offices; moves for the single question, as before.

Col. *Sandys* has met with a servant of the duke's, who informs him, 'that the duke desires to be heard here again; being under a surprize yesterday, he has something farther to say.'

Sir Joseph Tredenham says the same.

Mr. Russell has no malice against the duke, but would have this question 'for removing him' passed; fearing the danger the king and the nation are in, from a knot of persons that meet at the duke's, who have neither morality nor christianity, who turn our Saviour and parliaments into ridicule, and contrive prorogations; and would have such persons removed.

Col. *Sandys* remembers that my Lord Keeper Finch* desired to be heard, and was heard, but ran away; but the duke has no reason to do so; you have dealt favourably with him: but would hear him; you cannot, it may be, have notice of things without hearing him.

Sir Tho. Lee knows nothing of what the duke intends, but he has been at the head of councils, and knows much: the kingdom is in misery, a little knowledge of affairs may bring you to more, and you may at last know the end: he has no design, nor hopes, but to keep his property in the country: pardons, it seems, in parliament have not served the turn: would call in any man that can inform the house.

Lord *St. John* is a friend to no man that gives ill counsels: any in the private Cabal that advised against the House of Commons, 'to force the House of Commons to pass Bills, and, if any refused, to take off their heads †' would have these things enquired into: he has been told it by one of the Cabal †.

Mr. Sawyer did not expect, yesterday, excuses, from the duke, of his own actions, but discoveries of matters of concernment to the nation, relating to the public: but would not call him in to do the same thing again, only would have light into those causes that have produced such ill effects. He was called in only for discovery: the house proceeds not by fame of vulgar persons, but upon things as plain as the sun. This new light, a thing called wit, is little less than fanaticism, one degree below madness: of Democritus's family, he laughs always at all religion and true wisdom: we come here to take away examples of such things; such as this duke as great as any. This kind of wit's best ornament is most horrid blasphemy, oaths, and imprecations, which have done more hurt, in a few years, than all the convents and Jesuits could do in 100 years: prays, that the duke may not be heard to 'matters of excuse,' to acquaint you with that

* See vol. 4, p. 1, of this Collection.

† Burnet says, "That sir Ellis Leighton assured him, that the duke of Buckingham, and lord Berkeley, offered to the king if he would bring the army to town, that they would take out of both houses the members that made the opposition to the declaration."

‡ The Cabal (so called from the initial letters of their titles) consisted originally of Clifford, Arlington, Buckingham, Ashley, (afterwards Shaftesbury) and Lauderdale. Of these, three only, who were now attacked by the Commons, remained; Clifford being dead, and Shaftesbury having made his peace,

which all the world is satisfied in; but confined only to matters of discovery.

Mr. *Garroway* fears not any thing the duke can say, in 'excuse' of himself; he had little advantage upon us by it yesterday. 'Sequestering him only from his employments, and the king's presence,' is a gentle way, and would have it done in as gentle words as possible: it is likely he may have been as ill an instrument as any; you have grievances, but will you not have the causes discovered? would call him in, and hear him at large: would have lord St. John's question asked the duke, or any other delivered you.

Mr. Sec. *Coventry*. Lord St. John said, 'one of the Cabal told him, &c.' would know what the meaning of the Cabal is.

Mr. *Garroway*. That is so great a mystery, that he would know it above all things.

Mr. Sec. *Coventry*. We do things, not voluntarily, but by law; the king's privy counsellors! and it is perjury for us to reveal: as for the committee of foreign affairs (of which he is the only man of this house) wishes (he protests to God) that you knew what opinion he has ever given of affairs.

Sir *Wm. Lewis*. The way is to hear him at large and then propose your questions, and he has time by it to ask the king's leave to answer: that has been anciently done in these cases.

Mr. *Powle* commends secretary *Coventry* for his secrecy. This house has liberty to examine any man, not being a peer, and what he discovers is no breach of his oath: but if this house must take no notice of things, and persons are rescued from punishment, we may be all destroyed. A privy counsellor may do it safely, without breach of his oath: in lord *Strafford's* case, examination was upon oath of what was done at the council-table, and no exception was then taken against it: Cabal is a new word, and what is said there is not said in council, any more than in the bed-chamber; and those few men of the Cabal to encroach upon royal power as the duke of Ireland did, would have that question 'of the Cabal' proposed to the duke.

Sir *Tho. Meres*. 'Cabal' and 'Council' are different, but we have power over both.

Sir *John Birkenhead*. In lord *Strafford's* case the attorney general, when he was examined here, said, 'he would answer, when he had his master's leave: it is perjury in any privy counsellor to answer without it.'

Sir *Cha. Harbord*. To give counsel to the king 'to take away privilege of parliament!' no council can protect him.

Serj. *Maynard*. Supposed this 'of the parliament-men's heads' [said in the king's council] 'to be set upon the house;' will not meddle with that; knows not how the question proposed about the Cabal is understood.

Mr. *Sacheverell*. The duke said, '3, 4, or 5,000*l.* a year some had got;' would have him asked to every one of them.

The *Speaker*. The things proposed to be asked the duke he will state; 'the private

Cabal to destroy the privileges of this house' 'altering the government where and by whom?' 'What meant by 4, 5, or 6,000*l.* a year gotten?' 'Who got it? and by what means the Triple Alliance was broke?' 'The Smyrna fleet set upon?' 'The Parliament Prorogued?'

Sir *Rob. Holmes*. He was commanded to fall upon the Smyrna fleet, and has his orders to show from the lord high admiral to do it*.

Sir *Nick. Carew*. 'By whose advice a Frenchman was made general of an army, when here raised,' another question.

Mr. Sec. *Coventry*. Count *Schomberg* is far from a Frenchman; his mother was an Englishwoman, and his father a German. He first commanded the Scots under the duke; and, would he have been a Papist, might long ago have been Marshal of France†. Though Germany be one country, they are not of one mind, in this war; divers princes are now arming in Germany, that will neither obey the emperor, nor the king of France: he came first to marshal *Turenne*, when he was a Protestant.

Sir *Wm. Coventry*. What was said from the bar, of M. *Schomberg*, needs not his confirmation. This gentleman might be abler than another man, it may be reasonably supposed, for the king's service, having served long in Holland, and knows the condition of that country: would lay no more weight on this than will be borne: I wish this was our greatest Grievance; the gentleman came only for the command of the army, when intended for foreign service, and when that intention was laid aside, he went away.

Sir *Tho. Lee* is for avoiding all things that give any umbrage or jealousy: it may be thought as necessary to have 'a foreign army,' as to have 'a foreign general;' they may both give umbrage or jealousy, and therefore would avoid them.

Sir *Ch. Wheeler* does not believe that an English general would serve for such purposes; but a 'foreigner' has given us great jealousies, and would have that one of the questions.

Mr. *Love* would have it another Question, who advised that the army should be appointed to draw up towards London, to awe this house, to make us vote what they please?

* "This perfidious and piratical attempt on the Smyrna fleet, though performed with the utmost bravery and resolution by sir Robert Holmes, and the earl of Ossory, miscarried. Though the Dutch defended themselves with amazing obstinacy, they could not have escaped (as they did) if sir Rob. Holmes had condescended to impart his design to sir Edw. Spragge, (whom he met at sea) and desired his assistance. But though sir Robert applied to him for intelligence concerning the game he sought, he kept the secret that he might engross the whole honour and profit to himself, and thereby fell into the disgrace of undertaking a bad thing, without having the glitter of good success to gild it over. Ralph.

† He was made Marshal in 1676.

The Duke's Second Speech to the House of Commons.

The Duke of Buckingham was then called in, as before, and spoke thus:

“ In the first place, I return this honourable house humble thanks for the honour of twice admitting me; especially when I consider, how ill I expressed myself yesterday; consider the condition I am in; in danger to pass for a vicious person, and a betrayer of my country, all the world over. I have the misfortune to bear the blame of other men's faults. I know that it is laid against me the ‘revealing the king's counsels,’ ‘correspondency with the enemy, in time of war,’ and ‘having hindered what the Council would have done.’ I hope I shall have pardon, if I speak truth for myself. I told you, that, if the Triple Alliance had advantage in it, I had the honour to have as great a hand in it (I speak it without vanity) as any man: then upon the French ambassador's and other intelligence, I had orders to compliment upon the sad subject of Madame.* I thought it for the service of the king, that the French ought not to endeavour to be considerable at sea; we were jealous of them, that the Dutch should make their peace with them, because they had power to conquer. When I returned, I had all the demonstrations imaginable that the French had no such thoughts, but that the king of England should be master at sea. I pretend not to judge, whether I, or another, was in the right, but leave the house to judge. At that time, I, and lord Shaftsbury, were of opinion not to begin a war, without advice of the parliament, and the affections of the people, that the parliament might join in it; and I believe the king, at the head of his parliament, the greatest prince in the world: this was Shaftsbury's opinion and mine, but not lord Arlington's. Then I was of opinion not to make use of the French ships? but to have half the value of them in money, for English ships, which would have been of more service; the French ships of no use to us, because of no experience, and the use of our seas, learned by them, of great danger to us: lord Arlington was of a contrary opinion. I was sent to Dunkirk to the king of France, Arlington to Utrecht. I endeavoured to have money, instead of ships; at my first audience, the French king was willing to comply with it, but, after some time, by letters and returns from hence, it was altered. I make no reflections, but declare matter of fact. Then lord Shaftsbury and I were of opinion to order the war so, that the French were to deliver towns into our hands; an useful precedent! lord Ar-

* King Charles's sister, the duchess of Orleans, who, in 1671, soon after her return from an interview with her brother at Dover, was poisoned at Paris, (as was supposed) by the direction of her husband. The duke of Buckingham was sent over, on that occasion, with compliments of condolence.

lington was of opinion to have no towns at all delivered, for one year, and here is the case of the condition of affairs, with that of the fleet, and the French army let go on to conquer; they get all, and we nothing, and agree for none neither; consider who it was locked up with the French ambassador; * my spirit moves me to tell you. When we are to consider what to do we must advise with the French ambassador: I will not trouble you with reports. Look not upon me as a peer, but as an honest English gentleman, who have suffered much for my love to my country. I had a regiment given me, which was sir Edward Scott's; and, not knowing the law of England, I gave him 1,500*l.* for it; no Papists, nor Irish in the regiment. I will say nothing of my extraordinary gains. I have lost as much estate as some have got, and that is a big word. I am honest, and when I shall be found otherwise, desire to die. A man that has not gotten by all this. I leave it to you. If I am a Grievance, I am the cheapest Grievance, after all this, that ever this house had: and so humbly ask pardon of the house for the trouble I have given it.”

Questions put to the Duke: with his Answers.

Then the Speaker told the duke, ‘That he was commanded, by the house, to ask his grace some Questions, if he pleased to make answer to them.’ The duke answered, ‘he was willing.’

Question 1. “ Whether any persons have, at any time, declared to him any of their advices, or ill-purposes, against the liberty of this house, or propounded any ways to him for altering our government; and if they did, what was that advice, and by whom? *Ans.* It is an old proverb, ‘over shoes, over boots.’ This reflects upon one now not living [lord Clifford] and I would have pardon for not naming him, and fear it will be thought a malicious invention of mine. I have said nothing yet but what I can justify; but this not.—2. What his grace meant by this expression yesterday ‘that he had gotten nothing, and that others had gotten 3, 4, and 5,000*l.*’ who they were that had gotten it, and by what means? *Ans.* I cannot acquaint you how they got it, because not well acquainted myself with the means of getting money. What the duke of Ormond has got is upon record. Lord Arlington has not got so much, but a great deal.—3. By whose advice the army was raised, and Papists set to officer them, and M. Schomberg to be their general? *Ans.* I cannot say ‘by whose

* Reflecting on lord Arlington. The French ambassador, here mentioned, was M. Rouvigny, a Protestant, whose son was created earl of Galway, by king William, and commanded the British forces in Portugal, in the reign of queen Anne. Barret says, “he had the appointment of an ambassador, but would not take the character, that he might not have a chapel, and was said in it.”

advice,' but, on my honour, not by my advice; but was told by a man that is dead, 'that lord Arlington sent for him,' and it will be easily proved.—4. Whether he knows, that any have advised to make use of the army to awe the debates and resolutions of this house? *Ans.* 'This is the same question of a discourse from a man that is dead to a man that is living. If I had desired it, I might have had the command of the army that M. Schomberg had; but I have been told, that lord Arlington would have the government by an army.—5. By whose counsel and ministry the Triple League was made? *Ans.* Lord Arlington and I were only employed to treat, and finding the danger that we were in of being cheated, pressed the ambassadors to sign before they had power. It was an odd request to the ambassadors, yet they did sign.—6. Who made the first Treaty with France, by which the Triple League was broken, and the Articles thereof? *Ans.* I made no Treaty.—7. Who advised the shutting up the Exchequer, whereby the orders of assignment and credit of the exchequer were broken and destroyed? *Ans.* I was not the adviser. I lost 3,000*l.* by it.—8. And the Declaration about matters of Religion made? *Ans.* I do not disown that I advised it, but no farther only than what might be done by the Declaration by law.—9. And the Smyrna fleet fallen upon, before war was declared? *Ans.* It was lord Arlington's advice; I was against it: so much against it (as careful of the honour of the nation) that I incurred some anger from the king. Lord Arlington principally moved it: and I might say more.—10. And the second Treaty with the French king at Utrecht, and the Articles thereof? *Ans.* Lord Arlington and I were sent over to Utrecht, and found in the common people of Holland, in our journey thither, the greatest consternation imaginable: like burning the Rump in England, crying, 'God bless the king of England!' and 'cursing the States;' and had we then gone over and landed our men, we might have conquered the country; the prince of Orange would have had peace with France; but what share should we have had? Though he was the king's nephew, yet the king must be kind to his own country. If peace had been then, we had been in worse condition than we were before: at last, the prince of Orange hoped for a good peace; but I was not for France to have all, and England nothing. The consequence would have been, Holland must depend on France, if France had conquered near Germany. I think it a wise Article, that France should not make peace without us.—11. By whose counsel the war was made, without advice of parliament; and the parliament thereupon prorogued? *Ans.* Lord Shaftsbury and I were for 'the advice of parliament for the war.' I can say nothing to 'the prorogation'. I believe the parliament will never be against a war for the good of England; and so desire the pardon of the House: I know not how words may have slipped me, and lay myself at

the feet of the House, as an English gentleman."

The Duke then saluted the House, as before, and withdrew.

Debate on the Duke's Answers.

Colonel Birch. What the duke has told us are personal discourses of one that 'is dead.' He may inform us, if he pleases, of one of those, 'living:' would have him declare them, and have him called in again.

Mr. Sawyer. What came from a dead man can be of no use imaginable; but here is no answer made to 'setting upon the Smyrna fleet.' Probably he is less guilty as to state affairs, but for public scandal, would have the Question put 'for his removal.'

Sir Nich. Carew hoped for great light from the duke, but he gives no light as to persons of a contrary opinion to him.

Sir Courtney Poole, thinks us not so much in the dark: thinks this noble lord will satisfy you farther to-morrow; he named but one about the army, he may tell you more.

Sir Tho. Lee. All he has said terminates in one man; but he believes no man so big as he represents him: it was in his power to have given larger answers if he would: he cannot believe that some one person, without help, could carry counsels against two or three; not one evil against two good: by the same right, you may send for him, as he came before; and if not, you may send to the House of Peers for their leave.

Mr. Secretary Coventry. We have little light from the duke without explaining: no oath of secrecy does bind a man to promote an ill act; but as for promoting, or not promoting a league, it is no sin: in one of the Answers, the duke makes lord Arlington instrumental in breaking the Triple Alliance; but it is not the duke's saying it, that makes him so: nor lord Arlington's saying it that makes the duke so; otherwise, happy is the first accuser: would be equal on both sides, but would ask, Whether any man believes that lord Arlington would own all this? You are to have farther light from the duke. Send to him to come again, if he be willing, or, if not, to the House of Lords, for leave for him.

Col. Birch would send out two gentlemen to know, whether the duke has any thing farther to say: that is parliamentary.

Sir Rob. Howard. Some things came from the duke that require us to proceed more carefully, than we are about to do; but the question that is pressed is like hearing him after, and condemning him first. Upon the whole, you cannot but think the time of the day, and the thing, great enough to put us upon considering it till to-morrow.

Mr. Russel. If the debate be adjourned, the duke, by his power, may prorogue us again, as he has done formerly.

Mr. Sawyer pities the duke's condition here, and the loss of his estate; but would have you proceed in it,

Sir *Nich. Pedley*. The duke may have patents for life. The serjeant of your mace has a patent for his place, for life, and it is a freehold in him. You cannot take away the duke's office without legal proceedings against him: by rule of law, there must be a *scire facias*: you cannot put a man from his freehold; and he would not have the question.

Sir *Tho. Lee* sees not such danger in this, as is alledged: by impeachments, the Lords are judges. By the Address we make to the king, the king cannot grant against law more than is in his power would clear it to the house. It may fall out to have the same case before you again, and would not have any person out of the power of the House of Commons.

Mr. *Waller* moves, not for the duke's sake, but for his own. You take away from him more than you leave him: common fame against one of the lords is the same thing here: you go with an humble desire to the king to have our judgment put in execution: because you have not liked men, they have been removed: some say, he never said the word alledged against him; others say, others said them—no proof—witnesses may be corrupted: not many men are hanged for want of their pardon, if recorded: never any man was hanged, with his pardon in his hand: this is a great convulsion of state, a peer to come down to your house. If times are so corrupt, I must piece out my innocence with a pardon: if this nation be ever preserved, it must be in this place; and where so great a power is, if not as exact a justice with it, we are not safe: God has given us great power, and thank God for it.

Mr. *Sec. Coventry*. The duke's office is a patent, and a freehold: the duke may have a recompence for his office.

Sir *Cha. Harbord*. The duke's office cost him a great sum of money, and it may be any man's case: pray be tender in what you cannot put the king upon, in point of law.

Sir *Wm. Lewis*. We have cause to be tender in the things offered, and 'to desire that the king would be pleased to give him leave to sell his place.'

Lord *Cavendish*, should not be for the latter part of the question, if it 'took his place' from him, for the king may 'give him leave to sell it.'

Lord *Cornbury* is not for taking away the duke's life. Would have things rightly understood: it concerns not his freehold; he holds it only during the king's pleasure. Is not against his 'leave to sell it': do you intend to leave 'employment' wholly out of the question? He has a patent for gentleman of the bedchamber, and a pension for it, and his lieutenantancy of Yorkshire; and, on the other side, would not recommend him to the king, and not think him fit to be about his person.

Sir *John Duncombe* has a great compassion for this honourable person's misfortunes: what comfort can a man have, after such a charge, without some compensation for his place: which he moves for,

Mr. *Harwood* has had great honour for this person, but now must lay all aside here: with what face can you make such an Address to the king? you do nothing to take away the king's charity, in compensation of his places, and doubts not but the king will do it: it is a burden greater than he could wish he had, but would not put it upon the king by our Address.

Sir *Wm. Coventry*. 'To remove him' is the general sense, but would not wound other men, by destroying his patent, nor wound his freehold, nor take away his blood: would have added to the question, 'reserving to him the profits of such places, as of right, he has by any inheritance, or freehold.'

Mr. *Psalle* would have him removed out of offices that are granted him at his majesty's pleasure.

Mr. *Swynfin*. Be the offender ever so great, or the offence, you may err in the manner of proceeding: would have you proceed by such rules as agree with justice: in the duke of Lauderdale's case, persons did prove things against him (your members): looks for judicial proof before you; information has been but remembers no proof: it has been the course that great ministers of state do take out those pardons, sometimes one or two in a year: as to impeachment, this way was well; for then all evidence on both sides is heard: does not think 'removal from the king's presence' a light thing. Put the case, you had this upon your own members—would you have freeholds taken away without proof? Thinks it an ill precedent: let the case be this, Lords or whose it will, we have nothing but justice for our own preservation: whoever shall judge a man, and not hear him to the point, though his judgment be just, he is unjust in judging.

Col. *Strangways*. There is no freehold in a grant 'at the king's pleasure': will you make 'Lex et consuetudo parliamenti' nothing? We do as a grand jury does, persuaded in conscience that the thing is so.—'Neither fornicator, nor adulterer, &c. shall enter into the kingdom of Heaven'—Hopes that virtue will be countenanced here: this vote is only 'to remove such a Counsellor,' to restore the king, and honour and integrity unto the kingdom: no sanguinary law: not for taking away his freehold, but only what he holds at the king's pleasure: hopes that men of sobriety and honesty will be near the king, and would have the duke removed.

Sir *Tho. Meres*. 'Removing from the king's person' is, in consequence, removing from places and employments: it is also said, 'we are heard as a grand jury, in impeachments'; but, as you proceed now, there are objections; you now give your last judgment, whatever the king will do. Says another gentleman, 'you have heard no proofs'; but these shall not go without an answer: this House had great power in judgment by common fame, as every one of us is told without doors. *Lex Parliamentaria*. Thirty persons, in Mr. Prynne's books, were desired to be removed from former

kings, because the people spoke ill of them; some of them, though not all, were removed: the duke is a fine person, and taking with us, and we have a tenderness; but it does not become this house to countenance selling of places: though common fame is the great prerogative of this House, yet would use it very sparingly.

Sir *John Berkenhead* is against clancular and clandestine proceedings: in the common law, if the Christian neighbourhood say, 'one keeps another man's wife,' yet upon his oath he may clear himself: lord Bacon calls common fame 'a common liar;' and the precedents cited, of removals, were in ill times: is against the latter part of the question.

Mr. *Poole*. Birkenhead said, 'the precedents, cited, were of ill times,'—11 Richard 2, a great while before his deposing: that was done in the 22d. The effects of those censures then kept things quiet, till his deposing: the duke of Ireland was then removed, for encroaching upon royal power: wishes we might ever use this power moderately, and that we had no occasion of using it now.

Col *Birch* is one of those who desired no resolution of this matter till another day; and did it then for another reason, not for favour to the duke: it is the custom, that the Speaker call for a clear account, and wishes it had been now from the duke: but cannot a gentleman give a clear opinion in the question? Would not call for it: when once the debate was, in the Convention, of recommending Counsellors to the king, it was answered, 'all the awe you have upon the king's Council hereafter is, if

they be such as the people have an ill opinion of, you may remove them; and it is better for us then to name them, for we must be responsible for them: shall you depart from this, and call for direct proof of persons only, and not things? You have great prejudice by it: you cannot take his freehold from him by your vote, and he is therefore for the question.

Sir *Tho. Littleton* fears, that you may clash with the Lords upon another thing: when the point was of removal from the king's presence, 29 Hen. 6, as now, the king answered, 'he is content to remove them from his presence, except they be Lords, unless they approve.' Whether any clear precedent, the Commons originally to go to the king to remove, in case of peers, is not satisfied: it is not the case of the duke of Lauderdale, who is no peer.

Lord *Cornbury*. Littleton is mistaken in the precedent of 29 Hen. 6. The duke of Somerset, and the bishop of Winchester, were removed: the words of the accusation were, 'the people spake ill of them:' the king grants the request of the Commons, unless to some few persons that were Lords, who are necessary about him: the Lords' Concurrence will beget another debate, but the king is still at the same freedom.

Resolution against the Duke.

At length it was resolved, "That an Address be presented to his majesty to remove the duke of Buckingham from all his Employments that are held during his majesty's pleasure, and from his Presence and Councils for ever."

234. Proceedings in the House of Commons against the Earl of ARLINGTON.* 25 CHARLES II. A. D. 1674.

ON the 15th of January, 1674, Sir Gilbert Gerrard states to the House of Commons, that he has a Complaint against a great minister of state, the earl of Arlington †; all great

affairs and transactions go through his hands: he has been the great treasurer; the management of that must pass by him: he has no prejudice to him, or disobligation from him, but it is a duty he owes the king and nation: it was just upon your heels the taking away your Liberties, contrary to the laws of the kingdom; and to back this, an Army was raised of dangerous men, unfit to command; nothing has passed for some years but through his hands; the Army, the Declaration; he the great conduit-pipe; this instance many within these walls know, and abroad he is reported a papist, and reconciled to the church of Rome: in the Journal you may find the Act for suppressing Conventicles; upon his majesty's power to suspend Laws in the Proviso; upon the division of the house, Arlington staid in for it with not above 30: every thing passed through his hands; all Licences according to the declaration.

He then opened and presented to the House the following

ARTICLES of treasonable and other Crimes of High Misdemeanor against the Earl of Arlington, principal Secretary of State:

* See an account of him in the Note to Clarendon's Case, p. 307, of this volume.

† "Bennet, advanced afterwards to be earl of Arlington, was made secretary of state, by the interest of the popish party, [in 1662.] He was a proud man. His parts were solid, but not quick. He had the art of observing the king's temper, and managing it beyond all the men of that time. He was believed a Papist. He had once professed it, and when he died, he again reconciled himself to that church. Yet in the whole course of his ministry, he seemed to have made it a maxim, that the king ought to show no favour to popery, but that all his affairs would be spoiled, if ever be turned that way; which made the Papists become his mortal enemies, and accuse him as an apostate, and a betrayer of their interest." Burnet.—He died in 1685, leaving an only daughter, married to king Charles's favourite son, the duke of Grafton.

I. "That the said earl hath been a constant and most vehement promoter of Popery and Popish Counsels: 1. By procuring commissions for all the Papists lately in command, and who made their application to him, as a known favourer of that faction; there being not one commission signed by the other secretary; many of which commissions were procured and signed by him, since the several Addresses of the two houses of parliament to his majesty and the passing the late Act against Popery: 2. By procuring his majesty's Letter, commanding Irish papists and rebels to be let into corporations, and admitted into the commissions of the peace, and other offices of trust military and civil, contrary to the established laws and constitutions of that realm, to the great terror of the king's protestant subjects there: 3. By not only setting up and supporting the aforesaid Papists there, but bringing the most violent and fiercest of them to command companies and regiments of the king's English subjects here to the great dishonour and danger of this kingdom: 4. By openly and avowedly entertaining and lodging in his family a Popish priest, contrary to the known laws of the land; which said priest was a noted solicitor and promoter of the Popish faction, and has since fled out of this kingdom. 5. By procuring Pensions, in other mens names, for Papist officers, contrary to, and in violation of the late act of parliament: 6. By obtaining several Grants of considerable sums of money, to be charged upon the revenue of Ireland, for the most violent and pernicious papists there; particularly 2,000*l.* for one colonel Fitz Patrick, a notorious Irish rebel, whose mother was hanged in the late war, for murdering several English, and making candles of their fat; this grant being procured for the said Fitz Patrick at a time when he was accused to the lord Arlington of high crimes, by the now lord lieut. of Ireland: 7. by procuring his majesty to release several Irish Papists (some whereof deeply engaged in the horrid rebellion of that kingdom) the chiefries or head rents reserved to the crown, out of the forfeited estates of Papists there, being a principal part of his majesty's revenue in that kingdom.

II. "That the said Earl had been guilty of many and undue practices to promote his own greatness; and hath embezzled and wasted the treasure of this nation; 1. By procuring vast and exorbitant Grants for himself, both in England and Ireland, breaking into the settlement of that kingdom, and dispossessing several English Adventurers and Soldiers of their properties and freeholds, in which they were duly and legally stated, without any colour of reason, or suggestion of right. 2. By charging excessive and almost incredible sums for false and deceitful intelligence: 3. By procuring his majesty's hand for the giving away, between his first entrance into his office, the value of three millions of sterling money, at the least; the several Grants whereof are extant, counter-

signed by him, and by him only. 4. That the said Earl, presuming to trample upon all estates and degrees of the subjects of this realm, the better to subdue them to his will and pleasure, hath causelessly and illegally imprisoned many of his majesty's subjects. 5. That he did procure a principal peer of this realm to be unjustly imprisoned and to be proclaimed traitor, without any legal proceed or trial; and did maliciously suborn false witness, with money to take away his life, upon pretence of treasonable words.

III. "That the said Earl hath falsely and traitorously betrayed the great trust reposed in him, by his majesty, as counsellor and principal secretary of state; 1. By entertaining a more than usual intimacy with the French ambassador; not only lodging him in his house, but letting him into the king's most secret counsels. 2. By altering in private, and singly by himself, several solemn determinations of his majesty's councils. 3. By procuring a stranger to have the chief command of the late raised army, for invasion of Holland, to the great dishonour and discouragement of all the loyal nobility and gentry of this nation. 4. By advising his majesty to admit of a squadron of French ships to be joined with our English fleet; the sad consequence whereof we have since felt, notwithstanding the king of France had agreed to send a supply of money, in order to the having the fleet wholly English. 5. Whereas the king was advised by several of his council to press the French king to desist from making any further progress in his conquest of the inland towns of Holland, whereof England was to have no benefit, and to turn his arms upon those maritime towns that were by the treaty to have been ours, his lordship gave the king counsel to desist; whereby that part of our expectation was wholly frustrate. 6. Whereas the king was advised, by several of his council, not to enter into this war, till his majesty was out of debt, and had advised with his parliament, his lordship was of opinion to the contrary, and gave his advice accordingly. 7. When the French ships were dispersed after the late Fight at sea, and had lost all their anchors and cables, by reason of the foul weather that then ensued, he persuaded his majesty to send them fourscore cables and anchors; although it was then objected, and he knew it to be true. That his majesty had not at that present time any more in his stores than would supply his own ships, in case of the like necessity. 8. He hath traitorously corresponded with the king's enemies, beyond the seas, and contrary to the trust reposed in him, hath given intelligence to them."

The above Articles being delivered in at the Clerk's table and read,

Sir Robert Carr assures the house that he does not oppose the bringing in the Articles, or any thing objected against lord Arlington; but he has a letter to the Speaker to be communicated to the house.

Lord *O'Brien* knows not but what has been said yesterday may have been the occasion of this Letter, and would have it read.

THE EARL'S LETTER to the HOUSE of COMMONS.

The Speaker moves that he may read lord *Arlington's* Letter. The Letter was read accordingly, as follows :

' Mr. Speaker ; hearing that the honourable House of Commons are informing themselves of public affairs, wherein, I humbly conceive what I can say may be of use, and satisfaction to them, I beseech you to do me the favour, by the means of this house, to obtain, leave for me to be heard by the honourable house. ARLINGTON.

Mr. *Thomas Lee* moves that lord *Arlington* may be asked the same Questions with the duke of Buckingham, excepting that of M. *Schoinberg*, being one of the Articles lord *Arlington* is accused of.

Mr. *Sec. Coventry* hopes that the house will not vote that we shall examine him. no member of the Lords house can answer us.

Sir *William Lewis*. He is at his own pleasure for answering our questions : he, by his letter, offers information only.

Sir *Thomas Lee*. He is judge of his own discretion ; you may ask him what you please.

Sir *Robert Carr* believes, that any question this house will ask this noble lord he will answer.

The Speaker reminded the house of making a noise yesterday, and that we ought not particularly to salute any man, because the respects of the house are paid by the Chair ; an irregular motion when performed by any else.

Sir *Edmund Jennings*. If you lose the opportunity of asking him questions here, perhaps you will not see him again.

Col. *Birch*. Can any thing be more natural than asking of questions ? and the Speaker has drawn questions this way and that way, till you have come to the bottom : if he gives full Answers, you need go no farther : it was not so managed yesterday.

Sir *Charles Harbord*. If, upon the relation he makes, you find no cause, then would have no questions asked ; you cannot examine a peer, nor can you send for him again.

Mr. *Sacherevell* would have no questions asked him to accuse himself : five of the questions concern him, and he would have all these laid aside.

THE EARL'S SPEECH to the HOUSE of COMMONS.

The Earl of *Arlington* was admitted into the house, in the same manner, in all respects, with the duke of Buckingham. He then spoke to this effect :

" I acknowledge the honour the House has done me in admitting me to speak here ; in private conversation, and at dinners, I have met with a paper of Articles against me, in the nature of an Impeachment, though upon uncertain grounds : had I as much memory as

innocence, I assure myself of all favour from this House : I have a bad memory, and so must make use of papers.

" I reduce the accusations to three heads. 1. Matter of Religion. 2. Matter of War and Treaties. 3. Particular Fortune and Acquisitions I have got since the king's Restoration.

" 1st, For Religion. I never did one act to derogate from the protestant religion, neither have I heard mass, nor made any reconciliation to the Church of Rome. I hope you will not rest upon aspersions, unless any honourable member will aver it on his knowledge, and, if so, I am content it should pass for a conviction. I am accused, of having a part in ' composing the declaration for Liberty of ' Conscience.' I was present in council when it was resolved, that, in time of war, it might be of great advantage to do any temporary thing till the parliament might consider of it ; but, as soon as I was convinced that it was contrary to laws I was the first man that advised to desist from what was not tenable by law ; as for what concerns the papists (Roman Catholics) I suppose, that according to the function of my place, I might pen it, but it was brought to me changed to what was resolved in council : to the charge of being ' a favourer of Papists,' I answer, in particular I have favoured those of the Church of England ; but I have promiscuously obliged men of merit, without distinction of religion.

To the 2d. " That I have promoted Irish ' Papists and Rebels, to be let into corporations and commissions of the peace, offices of ' trust, military and civil, &c.' This is so ill imputed to me, that I was not at London, at the council, but at my country house, when the order was made. Any gentleman here, that knows the forms in this matter, can tell, that these letters are by the king's particular direction.

3. " Bringing the most violent Papists into ' command of companies and regiments of the ' king's English subjects, &c. and though they ' refused the oaths by the act enjoined, procur- ' ing them new commissions.' It was affirmed to me, that colonel *Panton* would take the oaths and test, and by his looks seemed to accept his commission accordingly. I dare pronounce that not one commission was signed by me, but for such as went into foreign parts, and were not likely to return.

4. " That I stopped prosecution of the piracy ' in Ireland of one *Fitzpatrick*.' My hand is no way seen in it, but in an order for his prosecution. A letter was sent me from the lord lieutenant of Ireland ; but I gave no interruption directly nor indirectly to his prosecution.

5. " Entertaining and lodging in my house ' a Priest, contrary to the known laws, a noted ' solicitor of the Popish faction, &c.' I know of none, except father *Patrick*, that ever frequented my house, unless by chance, upon some sudden emergency."

6. " That I was the adviser to begin the

'war, without consent of parliament.' Whatever others may have done, few had a more positive share in hindering it than myself. There was no such thing as 'constraining the ambassadors to sign,' as was alleged.* What was done was on the other side of the water, and I was sensible of all approaches of violation of the league; in this I can scarce vindicate myself without reflection on others: I cannot affirm, but will lay before you my presumptions and others in this business. France, to bring the duke of Buckingham on their side, contrived his going over to Paris, on pretence of some easy couches for the king, which he had leave for. The king warned him by no means to meddle with affairs. The king of France used him well, and gave him a jewel. He counselled me about it; to requite him, I told him in what state matters lay: 'I see you fast to the Spanish interest, if you will procure me a pension from the Spanish ambassador;' the duke took the pleasure of telling the tale, and, upon my honour, I appeal if many have not heard the duke say, with oaths, 'Arlington is to be turned out, and he would furnish the king with a better secretary;' which he might easily have done. The first time the duke discovered himself, he desired to go with a compliment into France, which might have been done by a more ordinary man. He had authority to sound that court, and brought word of the French resolutions for war, and so magnified that king and his ministers, that all wondered at it. He brought accounts of resolutions of France for our interest, but no particulars; sometimes seriously, sometimes pleasantly. The king told me the reports. I answered, 'Examine the thing, and be not guided by partial partiality.' I have leave from the king for my coming hither, for the purgation of myself. I am taxed with having spoiled the treaty with France. Many, that I can name, present in council, have heard the duke say, 'I am persuaded, what lord Arlington says is with reflection. Either I did, or did not say, he changed the Treaty.' I fear the Duke has forgot the Treaty. This French Treaty confirmed the Triple Alliance; the king established it in the treaty. It is true, the progress of the war has begotten some disturbance; as the business of Charleroy. If France disturbs, this Treaty is violated: France was thus warned. The king of France asked leave for some forces to pass through Flanders; Montereau gave him a civil denial; which being resented by the king, on the behalf of France, diverted the French king from marching.

"As for 'the delivery of towns to us,' it is so silly a thing, that it deserves not an answer. We have ever pressed France for money instead of ships. France had stores, but could not spare money. The king sent to compliment the king at France at Dunkirk; Buckingham offered himself, and treated of things un-

known to me; he hoped satisfaction to wait upon so great a king, so obliging, when we approached so near the war. Ambassador Montagu, under the king's own hand, was commanded not to speak to the ministers, but to the king of France himself; 6,000 men for the king to maintain. I pressed the king that Montagu might desist from that proposition. Buckingham was the head of them, and his officers.

"As to my charge of 'being privately shut up with the French ambassador;' my doors were not shut to him, nor the Spanish ambassador; but as for 'Pensions,' those that wrote the paper of Articles should have had the good manners to have told mine.

"As for 'M. Schomberg's being general of the English;' his mother was an English woman, and he commanded the king's troops in Portugal. If he would have changed his religion, he might have been marshal of France. It was not strange he should be sent for to command, when a descent was intended into Holland, in which country he had long commanded. Though Buckingham is a man of wit and parts, yet his experience is little or none at all in military affairs. Buckingham proposed that he might go to Utrecht, and I be joined with him, to temper him with my slow pace. Hard by, the king of France staid in his camp ten days, expecting the Holland Deputies; neither prince was to treat without the other. I and Halifax were for moderate courses; Buckingham was for exorbitant.

"As to 'the Parliament's not being acquainted with the war by my means;' it was represented, that the king had money to carry it on; it was never moved, nor urged, by any, that the war should come to the parliament. And as for our 'having towns,' what should we have done with them, if the king of France had given us half his conquests? To 'the falling upon the Smyrna fleet before war was declared against Holland,' I remember that my opinion was not prevalent, for I never pretended to maritime affairs; neither do I remember, that I had more concernment in it than others. 'That we should be governed by a Standing Army.' None in this house, nor out of it, abominate it more than I. I think it impossible to awe it with 20,000 men. I never heard the thing said, no, not by the duke of Buckingham. It was never in debate, and we never had it in our mouths.

"As for 'my having had extraordinary Grants from the king, &c.' had I presumed to beg of the king, as others have done, I might have had more; but if I have to maintain half the dignity of my employment, I am the falsest man that lives. I never begged any thing in England, but 'I have had 10,000*l.* out of Ireland.' I have lord Beuse's estate, in Ireland, given me, (which I begged) which he forfeited in the Rebellion, worth 1,000*l.* per ann. I proved I was never in rebellion, and so I claimed his estates myself. 'Engrossing all affairs into my hands,' I should think myself

* See the duke of Buckingham's Speech, p. 1018.

the happiest man in the world, if I might retire from the management of affairs. Any gentleman of honour or parts, that hath had any business with the king, I have gone with and assisted.

"I beg pardon for tiring the house with this abrupt paper. I doubt not but to be found an innocent man. If what I have said is applicable to any thing the house desires to be informed of, I will serve the house: I think myself safe in your hands, and lay myself at your feet."

Questions put to the Earl: with his Answers.

Then the Speaker desired to know, "Whether he was pleased to make answer to some Questions he had in command from the house to ask his lordship?" Who answered, "he was willing."

Question 1. "Whether any persons have, at any time, declared to him any of their advices or ill purposes against the liberties of this house, or propounded any ways to him for altering the government; and if they did, what was that advice, and by whom? *Ans.* I cannot apply this to any discourse I have heard, either public or private.—*2.* By whose advice the army was raised, and Papists set to officer them? *Ans.* On account of the war there was a necessity of good officers, and the Papist officers, many of them, were represented more skilful; but cannot apply the advice to any person.—*3.* And that army to awe the debates of this house? *Ans.* I can say nothing to it.—*4.* By whose counsel and ministry the Triple League was made? *Ans.* It has been suggested by me. Sir Wm. Temple was the fortunate man that dispatched it.—*5.* Who advised the first treaty with France? *Ans.* The making that League was the concurrent opinion of us all. I did not expect the French in earnest, if some blots had not happened.—*6.* By whose advice the Exchequer was shut up? *Ans.* You may easily believe I was passive in it. I can say but suspicions only: many things were proposed, but I have nothing to do with the Treasury.—*7.* By whose advice the Declaration for Liberty was made and published? *Ans.* It was a concurrent opinion, and, we thought, upon good grounds, and advisable by law; but when found contrary to law, I detested it.—*8.* By whose advice the Smyrna fleet was fallen upon? *Ans.* It was a concurrent advice, and I cannot apply it to any man's particular advice.—*9.* By whose advice the war was undertaken without advice of parliament? *Ans.* There was all probability of peace imaginable, and it was ill to show our adversaries any ill distempers, and it was a concurrent opinion.—*10.* And the parliament prorogued upon it, in Nov. last? *Ans.* It is a hard matter to say who was the adviser. I protest, I know not the author of it. I may wrong persons. I have presumptions, but no evidence."—Then his lordship, after saluting the house, withdrew.*

RESOLUTION AGAINST THE EARL.

After several long debates upon the above Articles, the question being put, "That an Address be presented to his majesty to remove the earl of Arlington from all his employments that are held during his majesty's pleasure, and from his majesty's presence and councils for ever;" it passed in the negative, 166 to 127.

It was then resolved, "That the Articles be referred to a committee, and that they report what matter is therein contained, and can be proved, that is fit for an Impeachment."†

was expected: he excused himself, but without blaming the king; and this had so good an effect, that though he, as secretary of state, was more exposed than any other, by the many warrants and orders he had signed, yet he was acquitted, though by a small majority. But the care he took to preserve himself, and his success in it, lost him his high favour with the king, as the duke was out of measure offended at him. So he quitted his post, and was made lord chamberlain." Burnet.

The Author of his Life, in the Biographia, says, "That it was neither his speech, nor his cause, that brought him off, but the personal friendship of a noble person nearly allied to him, viz. the earl of Ossory, eldest son to the duke of Ormond, and then the most popular man of his quality in England, who stood for five days, that the debate lasted, in the lobby of the house of commons, and solicited the members in his favour as they entered the house."

† Nothing further appears to have been done in this Accusation. "No greater mistake," says Ralph, "can be made by the prosecutors of a bad minister, than to charge him with any one Article which they cannot support with undeniable proofs. If he has it in his power to loosen any one link of the chain, he infallibly makes his escape; and, instead of being punished himself, renders odious his accusers. This was the circumstance in the case before us: these gentlemen had suffered their Charge to outrun their evidence, by dealing in presumptions instead of proofs: lord Arlington saw the opening, and improved it with all the address imaginable: for, being admitted to be heard by the house, in his turn, he so far exploded, or evaded, all that the duke had said the day before, and set so plausible a gloss on his own actions, that the Impeachment died away, and he escaped, even without the least censure: he had been charged in particular with corresponding with the king's enemies beyond the seas: his friends, who had taken heart on seeing him come off so triumphantly, called upon sir Gilbert Gerrard for his vouchers: he was unprovided, would have withdrawn that Article, was not allowed, had recourse to the wretched expedient of desiring time; and, at last, took refuge in saying, that this treacherous correspondence was carried on during the last Dutch war."

* "Lord Arlington spoke much better than

235. The Proceedings in the Court of King's-Bench, Exchequer, and House of Peers, in the Case of Sir SAMUEL BARNARDISTON, bart. against Sir WILLIAM SOAME, Sheriff of Suffolk, concerning the Election of Members to Parliament: 26 CHARLES II. A. D. 1674.*

A COPY OF THE RECORD *inter* SOAME AND BARNARDISTON.

Placita coram Domino Rege apud Westmonasterium de Termino Sancte Trinitatis Anno Regni Domini Caroli Secundi nunc Regis Anglie, &c. vicesimo sexto, Rotulo 1577.

Midd. ss.

MEMORANDUM quod alias scilicet Termino Pasche ultimo preterito coram Domino Rege apud Westmonast. venit Samuel Barnardiston Baronet. per Tho. Ditchfield Attornatum suum et protulit hic in curia dicti Domini Regis tunc ibidem quandam Billam suam versus Willielmum Soame Militem nuper Vicecomitem Comitatus Suffolcie in custodia Marrescalli, &c. de placito transgressione super casum et sunt pleg. de proc. scilicet Johannes Doe et Ricardus Roe. Que quidem Billam sequitur in hæc verba ss. Middl. Samuel Barnardiston Baronettus queritur de Willielmo Soame Milite nuper Vicecomite Comitatus Suffolcie in custodia Mar. Marrescall. Domini Regis coram ipso Rege existentem pro eo. videlicet, quod cum Dominus Rex nunc octavo die Februarii anno Regni dicti domini Regis nunc vicesimo quinto per breve suum gerend. dat. eisdem die et anno emanans extra Cancellariam suam apud Westmonasterium predict. in dicto Com. Middl. adtunc existent, tunc Vicecomit. Com. Suffolcie predict. directum, recitando per idem breve, quod cum Henricus North Barouettus nuper elect. fuerat unus Mil. Com. predict. pro adtunc present Parlamento dicti Domini Regis inchoat. apud Civitatem suam Westmonasterij octavo die Maii Anno Regni dicti Domini Regis tertio decimo, et ab inde per diversas Prorogationes usq; tricesimum diem Octobris Anno Regni ejusdem nunc Regis vicesimo quarto continuat. et ab eodem tricesimo die Octobris idem Parliamentum usq; quartum diem tunc instantis Februarii ulterius prorogat. fuerat, ibidem tunc tenend. et pro sequend. Quodque ipse sic elect. et debito modo retornat. juxta formam Statuti in hujusmodi casu edit. et provis. in domo inferiori communitate Regni dicti Domini Regis Anglie constitut. fuerat. prout per Record. dicti Parlamenti sui in Cancellaria sua residend. plenius constabat, ac idem Henricus North unus Militum pro Com. predict. existend. diem

* See the statute (7 and 8 Will. 3. c. 7.) to prevent false and double returns of members to serve in parliament. See also the case of Myddleton v. sir Watkin Williams Wynne, 1 Wilson's Rep. 125. better reported in Willes's Rep. 597. See also Comyns's Dig. title Parliament. (D. 15.)

suum clausit extremum ut dictus Dominus Rex acceperat, cujus pretextu subditi dicti Domini Regis Com. Suffolcie pred. de uno Milite ad tractandum pro utilitate ejusdem Com. destituti fuerunt, idem Dom. Rex nolens tamen quod Communitas Regni sui in dicto Parlamento suo ad negotia dicti Domini Regis et statum Regni sui et Ecclesie Anglicane aggregat. ex causa predicta immoraretur seu extenuaretur, quo minus negotia illa debitum sorcierentur, effectum eidem Vicecomit. dicti Com. Suff. per breve ill. precipisset quod loco predicti Henrici in pleno Com. suo immediate post receptum brevis illius unum alium militem gladio cinctum idoneum et discretum Com. predict. (proclamatione prius ac premissis ac de die et loco facta) libere et indifferenter per illos qui hujusmodi proclamation. ill. interessent juxta formam Statuti inde editi et provis. eligi faceret, et nomen ejusdem Militis in quibusdam indenturis inter predict. Vicecomitem et illos qui hujusmodi Electioni interessint inde conticiend. (licet hujusmodi eligend. presens esset vel absens) inferi eumq; ad dictum Parliamentum venire faceret, ita quod idem Miles sic eligend. plenam et sufficientem potestatem pro se et Communitate Com. predict. haberet ad faciend. et consentiend. his que in Parlamento de communi consilio dicti regni sui (favente Deo) contingereat ordinari super negotiis ante dictis (noluit dictus Dominus Rex tamen, quod predictus Vic. Suff. nec aliquis alius Vicecomes dicti Regni sui aliqualiter esset electus) et Electionem illam sic factam distincte et aperte sub sigillo ejusdem Vic. et sigillis eorum qui Electioni ill. interessent dicto Domino Regi in Cancellariam suam certificaret indilate remittend. Dicto Domino Regi alteram partem Indenture predictæ eidem brevi consuetam, una cum eodem brevi prout in eodem brevi plenius continetur. Quod quidem breve postea scilicet duodecimo die Februarii Anno Regni dicti Domini Regis nunc vicesimo quinta supradict. apud Gippovicum in dicto Com. Suff. prefato Willielmo Soame tunc Vic. dicti Com. Suff. existens deliberatum fuit in forma juris exequendum quodq; predictus Will. Vic. Com. predicti tunc existend. ad prox. Com. suum ejusdem Com. Suff. post receptionem dicti brevis, scilicet, vicesimo quarto die Februarii Anno Regni dicti Domini regis nunc vicesimo quinta supradict. ac vigore brevis illius in pleno com. suo tunc tent. apud Gippovicum predict. in dict. Com. Suff. coram eodem Williel. adtunc, Vic. ejusdem Com. breve illum legi fecisset nec non publicam Proclamationem de die et loco in brevi predicto in ea parte content. fecisset nec non de uno milite gladio cincto magis idoneo et discreto Com.

predict. juxta formam et exigentiam brevissillius eligend. adveniend. ad Parliamentum predictum. in pleno Com. ill. prout ill. per breve ill. precept. fuit et secundum formam ill. precept. fuit, videlicet int. horam octavam et horam undecimam antea meridiem ejusdem vicesimi quarti die Februarii Anno vicesimo quinto supradicto usper quo processum fuit tunc ibidem in pleno Com. ill. ad Electionem unius alius Militis pro eodem Com. in loco predicti Henrici, per Gentes in Com. illius residentes ac eidem Proclamationi interessentes, ac licet idem Samuel in eodem pleno Com. tent. apud Gippovicum predict. (qui tunc et diu antea fuit Miles gladio cinctus in predicto Com. videlicet apud Brightwell commorans et conversans et in eodem Com. Suff. natus) secundum exigentiam brevis predicti debite electus et nominatus fuit eodem vicesimo quarto die Februarii inter horem octavam et horem undecimam fore Militem Com. illius in loco predicti Henrici North pro predicto Parlamento adveniend. pro eodem Com. ad idem Parliamentum per majorem numerum Gentium tunc residentium infra dictum Com. Suffolcie, predicto tempore Proclamationis predicti tunc et ibidem present. eidem Proclamationi interessentium quorum tunc quilibet expendere potuit quadraginta solidos liberi tenementi et ultra per annum infra Com. ill. Ac licet predictus Willielmus ad tunc Vict. dicti Com. Suffolcie existens premissa satis sciens, postea scilicet eodem vicesimo quarto die Februarii anno regni dicti domini Regis nunc vicesimo quinto in Cancellarium dicti domini Regis nunc apud Westmonasterium predictum in dicto Com. Middl. breve predict. retornabit simul cum quadam Indentura inter ipsum Vicecomitem et predict. Electores ipsius Sam. de præd. Electio e ipsius Sam. fact. secundum exigentiam brevis præd. Predictus tamen Willielm ad tunc Vicecomes predicti Com Suff. existens Officii sui debitum minime ponderans, sed machinans et malitiose intendens ipsum Sam. in hac parte minus rite pregravare ac eundem Samuellem de fiducia et officii unius Militis Comitatus predict. in dicto Parlamento exercend. omnia frustrare et deprivare, et predictum Samuel. ad diversus magnas et grandes pecuniarum summas expendend. causare, contra debitum officii sui predicti falso, malitiose et deceptivè ad tunc in eandem Cancellariam apud Westmonasterium predictam retornavit, una cum Indentura predicta quoadum aliam Indenturam eidem brevissimiliter annex. specifican. ill. fore fact. inter præfatum Willielmum ad tunc existent Vicecomit. dicti Comitatus Suffol. ex una parte et diversas alias personas dicti Comitatus in Indentura illa specificata et continens, quod dicte alie persone ut major pars totius Comitatus predicti in predicto pleno Comitatu Suffol. apud Gippovicum predictum dicto vicesimo quarto die Februarii anno supradicto eligerunt quandam Lionel. Talamach Baronettum alias dictum Dominum Hunningtore in Regno Scotia in loco predicti Henrici North un. Militem Comitatus Suffol. predicti pro Parlamento predicto adveniend. eidem Parlamento pro Comitatu illo ubi (re vera) predictus Lionel. non fuit elect. per ma-

jorem partem Comitatus illius fore Mil. in loco predicti Henrici pro Comitatu predicto, prout per ultimam Indenturam predictam falso supponitur, ratione cujus quidem falsi retorn. de predicta alia Indentura per predictum Willielmum Vicecomitem dicti Comitatus Suffol. existen. in forma predicta fact. idem Samuel in domo inferiori pro Communitate hujus regni Anglie in dicto Parlamento ad predict. retorn. predicti brevis et diversa tempora postea assemblat. apud Westmonasterium præd. constituit. admitti non potuit, quousque, idem Samuel suppeticionem suam Communitati dicti Parlamenti pro remedio suo congruo in ea parte exhibit. et post diversas ingentes denar. summas in et circa manifestationem et verificationem dicte Electionis ipsius Samuelis coram dicta Communitate expend. et diversos labores in ea parte per ipsum Samuelem susten. postea scilicet vicesimo die Februarii anno regni Domini regis nunc vicesimo sexto pro Communitat. dicti Parlamenti in domo Communitat. præd. admissus fuit, et electio ipsius Samuelis præd. per Communitat. præd. declarat. fuit fore bona, unde idem Samuel dicit quod ipse deterioratus est et dampnum habet ad valentiam trium mille librarum et inde producit sectam, &c. Et modo ad hunc diem, scilicet diem Veneris proximam post crastinum sancte Trinitatis isto eodem Terminio usque quem diem præd. Williel. habet licentiam ad billam præd. interloquendi et tunc ad respondendum, &c. coram Domino Rege apud Westmonasterium venit tam præd. Samuel per Attornatum suum præd. quam præd. Willielmum per Johannem Needham Attornatum suum, et idem Willielm defendit vim et injuriam quando, &c. et dicit quod ipse non est inde culpabilis, et de hoc ponit se super patriam, et præd. Samuel similiter, &c. Ideo veniende Juratores coram Domino Rege apud Westmonasterium die Veneris proximo post tres septimanas sancti Michaelis et qui nec, &c. ad recogn. &c. quia tam, &c. idem dies datus est partibus præd. ibidem, &c. De quo die jurata præd. inter partes prædictas de placito præd. posita fuit inde inter eas in respectum coram Domino Rege apud Westmonasterium usque diem Jovis in crastino sancti Martini ex tunc proximo sequente pro defectu Juratorem, &c. Ad quem diem coram Domino Rege apud West. venit tam præd. Samuel quam præd. Williel. per attornatos suos præd. & Juratores jurat illius exact similiter ven. qui ad veritatem de et super premissis dicend. elect. triat. et jurat. dicunt super Sacramentum suum quod præd. Williel. est culpabilis de præmissis præd. modo et forma prout præd. Samuel superius versus eum queritur et assidunt dampna ipsius Samuelis occasione premissorum præd. ultra misas et castagia sua per ipsum circa sectam suam in hac parte apposita ad octingentas libras, et pro misis et castagijs illis ad quadraginta solidos. Sed quia Curia dicti Domini Regis nunc hic de judicio suo de et super premissis reddendum nondum advisatur dies inde ulterior datus est partibus præd. coram Domino Rege apud Westm. usque diem Veneris proximum post Octobas Purificat.

beate Marie de iudicio suo inde audiend. eo quod curia dicti Domini Regis hic inde nondum, &c. Ad quem diem coram Domino Rege apud Westm. venit tam præd. Samuel quam præd. Williel. per Attornatos suos præd. super quo visis et per curiam dicti Domini Regis nunc hic plene intellectis omnibus et singulis premissis maturaque deliberatione inde habita, consideratum est quod præd. Samuel Barnardiston recuperet versus præfatum Williel. Soame dampna sua præd. per Juratoris præd. in forma predicta assess. necnon nonnaginta et octo libras pro misis et custagijs suis præd. eidem Samuel per curiam dicti Domini Regis nunc hic assensu suo de incremento adjudicat. Que quidem dampna in toto se attingunt ad noningentas libras et præd. Williel. in miseracordia, &c. Postea scilicet die Sabbati vicesimo quarto die Aprilis Anno Regni Domini Regis nunc, &c. vicesimo septimo transcript. Record. et process. præd. inter partes predictas de placito earum omnibus tangentibus pretextu cuiusdam brevis dicti Domini Regis de errore corrigend. per præf. Williel. Soame in premissis prosecut. coram iusticiariis Domini Regis de Comuni Banco et Baronibus de Scaccario dicti Domini Regis de gradu de le Coife in Cameram Scaccarii juxta formam Statuti in Parlamento Domine Elizabethæ nuper Regine Angliæ apud West. vicesimo tertio die Novembris Anno Regni sui vicesimo septimo tent' edit. a predicta curia dicti Domini Regis hic coram ipso Rege transmissa fuerunt, predictusque Williel. Soame in eadem curia Camere Scaccarii comparen' diversas causas et materias pro errore in Recordo et processu præd. pro revocatione et adnullatione iudicii præd. assignavit, ad quos præd. Samuel Barnardiston in eadem curia, Camere Scaccarii præd. similiter comparent. placitavit, quod nec in Recordo nec in processu præd. nec in redditione iudicii præd. in ullo fuet errat. Postmodum; scilicet die sabbati decimo die Junii Anno Regni dicti Domini Regis nunc vicesimo octavo visis premissis et per curiam Camere Scac. præd. diligent. examinat. et plenis intellectis tam Record. et Process. præd. quam iudicio præd. super eisdem reddit. videbatur curia Camer. Scac. præd. quod iudicium præd. vitiosum et defectivum in lege existit. Ideo adtunc et ibidem per eandem curiam consideratum fuit quod iudicium præd. in omnibus reversetur, adnulletur et penitus pro nullo habeatur, et quod præd. Williel. ad omnia que occasione iudicii præd. amisit restituatur, super quo Record præd. nec non process. præd. iusticiar. dicti Dom. Regis de Comuni Banco Baron. de Scacc. dicti Dom. Regis coram eis in premissis habit. coram Domino Rege ubiq; &c. remittebatur secund. formam statuti præd. et in eadem curia dicti Dom. Regis hic coram ipso Rege jam resident, &c. Postea scilicet vicesimo quarto die Maii Anno Regni Domini Gulielmi et Marie nunc Regis et Regni Angliæ primo Record. et Process. præd. inter partes præd. cum omnibus ea tangentibus pretextu cuiusdam brevis de errore corrigend. per

præf. Samuel Barnardiston in premissis præd. prosecut. dicto Domino Reg. et Regine in present. Parl. a præd. curia dicti Dom. Reg. et Regine hic transmis. fuit, predictusq; Samuel in eadem curia Parl. comparens, diversas causas and materias pro erroribus in Recordo et processu præd. pro revocatione et adnullatione iudicii præd. assignavit; et postea, scilicet vicesimo quinto die Junii Anno dictorum dom. et Dom. Reg. et Regine supradict. in præd. curia parlamenti visis et per curiam ibidem diligenter examinat. et plenus intellectis tam Record. et process præd. iudicio super eisdem reddit quam præd. errore superius assignat. pro eo quod videtur curie Parl. præd. quod Record. ill. in nullo vitiosum aut defectivum existit et quod Record. ill. in nullo fuit erratum. Ideo adtunc et ibidem consideratum est per eandem curiam Parl. præd. quod iudicium præd. in omnibus affirmetur et in omni suo robore stet et effecten.

Sir SAMUEL BARNARDISTON against Sir WILLIAM SOAME, late Sheriff of Suffolk in B.R.*

Case, and declares that a writ issued out of Chancery to the defendant, then Sheriff of Suffolk, to elect a knight of the county for the parliament: and that the plaintiff was chosen by the majority of freeholders, and that the defendant returned the writ with an indenture of the said election, but maliciously intending to deprive the plaintiff, 'de fiducia et officio' præd' falso et deceptive, una cum indentura 'præd' retornavit unam alteram indenturam 'in cancellaria præd' specificant' quod alie persone liberi tenentes vel major pars liberorum 'tenentium elegerunt quemdam Lionellum Tolmach, ubi vera præd' Lionellus non fuit 'electus per majorem numerum liberorum 'tenentium; ratione cujus,' the Plaintiff was kept out of the House of Commons, and put to great charge to prove his election in the House of Commons. The defendant pleaded *non culp.* and upon trial at bar, Twisden, Bainsford, and Wyde held, and so directed the Jury, That if this double return was made maliciously, they ought to find for the plaintiff, which accordingly they did, and gave him 800*l.* damages, though the evidence as to the malice and falsity, was very slender. For the poll was granted; upon which the matter seeming doubtful, whether some of them who voted for the plaintiff had sufficient freehold to qualify them to give their votes; the Sheriff, by advice of counsel then present, and of some members of parliament there also, made this double return, to prevent an action for a false return, in case that it should appear that some freeholders that voted for the plaintiff had sufficient freehold. And after, upon examination in parliament, the election of the plaintiff was adjudged good, and the defendant committed by them for making this double return: And now it was moved in arrest of judgment by *North, At-*

* 2 Levinz's Rep. 114. 3 Keble's Rep. 365, 369, 389, 419, 428, 439, 442, 586, 664. Pollexfen's Rep. 470. 1 Freeman's Rep. 380, 387, 390.

torney-General, and Scroggs, king's serjeant, that this action lies not, and that no such action was ever yet maintained in this case; for the case of Nevil and Stroud was never resolved, but in respect of difficulty sent to parliament; where it never received a determination. And the reasons they urged against the actions, were, First, Because the falsity or verity of the return is only examinable in the House of Commons, who are the sole judges, and will punish such falsities; and accordingly they have so done in this case, by committing the Sheriff, and he ought not to be twice punished for the same fault. And before the statute of H. 6. no action lay for a false return, and that only gives an action of debt for 100*l*. Secondly, The right of the party is not considerable in this case; for this is not an office of profit, but of trust, concerning the state. Thirdly, What the Sheriff does in this case, he doth as a judge; for he is judge of the election, and therefore no action lies against him. Fourthly, What the Sheriff doth in this case, is *propter difficultatem*, upon his doubtfulness of the matter, and judges of assize may, *propter difficultatem*, adjourn an assize: the Sheriff hath done no more in this case than laid the matter before the House of Commons, that the validity of the votes may be there deliberately examined. To which it was answered by *Maynard* king's serjeant, and *William Jones*, solicitor; First, That here was malice and falsity in the Sheriff, and thereby damage and charge to the plaintiff, and all this found by the jury, which is sufficient to maintain an action in all cases, whether there has been a like action in such case or not before; for actions upon the case are founded upon the particular case, which is mostly new. And the case of *Nevil and Stroud* was not for a double return, but for making no return; for there two were elected, and the Sheriff made no return as to one, and for that he brought the action. Secondly, The commitment by the parliament is only to punish the contempt of the Sheriff, as to them and the state, but not to repair the party for the damage he sustained; and thus in several respects, one may be twice punished *pro uno delicto*. As it falls out often in many cases, particularly in criminal matters, wherein the party is punished for the king by indictment, and by the party for the special damage he sustained. Thirdly, the Sheriff is not a judge of the election in this case, but a minister to take the polls; of which, in point of sufficiency, the House of Commons is judge. Fourthly, Though the statute of H. 6, gives to the party the 100*l*. penalty, that will not prove this action does not lie at common law. The parliament intended only to give a certain penalty to the party, which was considerable then, though not so considerable now, and not leave them to a jury's discretion altogether for damages. 'Et adjournatur ad proximum terminum,' when *Hale* being in court, he, *Twysden* and *Wylde*; forasmuch as the return is said to be 'falso et malitiose et ea intentione,' to put the plaintiff

to charge and expence, and so found by the jury; held the action lay, and gave judgment for the plaintiff; *Rainsford* doubting.

Upon this a Writ of Error was brought in the Chequer-chamber, where six Judges were for reversing the Judgment, and two for affirming it.

Their Arguments here follow:

BARNARDISTON *versus* SOAME. In Case.

The Case.

On the death of *sir Henry North*, one of the knights for *Suffolk*, a writ was issued forth for the election of a new member; and *sir Samuel Barnardiston*, and my lord *Huntingtowre*, were the two candidates; but *sir Samuel* carried it by 78 voices, and was returned: And my lord *Huntingtowre* having made an interest with the sheriff, got the sheriff to return him too; and he sat in the House till the election was there determined for *sir Samuel*. Whereupon *sir Samuel Barnardiston*, for this double return, brought an action upon the case against the sheriff, and tried it at the King's-bench bar 19 Nov. 1674, before my Lord Chief Justice *Hale*, and recovered 1,000*l*. damages: and afterwards a Writ of Error was brought in the Exchequer-chamber, and there the Judgment in the King's-bench was reversed; only *Atkins* and *Ellis* were for affirming it.

Judge *Ellis's* Argument is as followeth:

First, The declaration does consist of the Writ to the sheriff, his Return, and the averment of the plaintiff's damage. The Writ does shew the great import of what was to be done, and what he should do.

Now as to the Return: 1. It is impossible to be a true return, but it is a false return; for that *simul et semel*, both should be chosen at the same time, that can't be: So then he hath not observed the Writ.

2. The Writ requires that the House should be full, and have a member of parliament, but by this return neither can sit in parliament; for it appears, that from the 24th of Feb. 25 Car. 2, until the confirmation he was kept out. So the end of the writ not at all observed, and the business of the parliament retarded as much as could be.

3. It may be said, This may be done by mistake, he may mistake the law; but when the plaintiff comes and says, That he knowing the plaintiff was duly elected, and on purpose to keep him out of the House, did *falso et malitiose* make this return; then here is a false and malicious return, and made knowingly upon him: Then an action lies.

Then to consider the Case,

1. At common law; and I conceive it will lie.

2. The acts of parliament have not taken away the remedy which the common law gave.

1. That the common law gave remedy; for that it was falsely and maliciously done, we

must not doubt it: It is a matter of fact, and the jury have found it so, and that there was a wrong done to Barnardiston, and it is of the sheriff's own knowledge: then,

2. When I suffer an injury, joined with a loss, the common law gives me a remedy for it.

Cooper and Andrews's case, Hob. 43.

Then take it as done by an officer of justice, and a sworn officer, one of the greatest in the kingdom: If it should not lie in that case, there would be a failure of justice, but no failure of wrong.

Second, That in cases of far less concern, as to officers, it will lie, and then we shall see in this case what it will do.

Powle and Godfrey's case, Rolls, lib. 1, 63. Co. lib. 12, 128. In that case because there was a temporal loss to the party, though for a spiritual wrong, the law gave him damages.

Rolls 1 lib. 1, 108, 24. Ford and Hoschin's case against an archdeacon, F. N. B. 47, and yet an archdeacon is a spiritual officer: So that if he do not induct the parson, he may have his remedy; for where he suffers a loss, the law gives him his remedy.

Now here is *injuria et dampnum*, he does complain about the nature of his election, and the undue return of an election; and to a court that never yet did give damages to the party.

3. Then when there is a colour of justice, and a man does proceed in a legal way, yet *falso et malitiose* an action lies, Hob. 266.

Waterer and Freeman's case. If a man will arrest one and put him to special bail, a special action of the case lies against him.

Cro. 3, 130. Windham and Clere's case against a justice of peace: Whereas in truth the justice never had any complaint. An action will lie against him, because he did *falso et malitiose*.

Id. 21 E. 4, 22, 23. If a misinformation be in a court of justice, an action lies against him. Now here is a very great misinformation given to the Chancery upon this return.

Obj. This is a new case, and a case of a great deal of danger, and therefore we must have a great deal of care of making new laws.

Ans. It were endless to put cases where there never was a case before; yet an action will lie, if damage: there was no precedent for an action of the case for falsely and maliciously accusing one of treason, before Smith and Crashaw's case. Rolls Abr. l. 1, 1131.

Bulstr. 2, 270. Jones 93. Cro. 1, 15. Though there it was objected, that never any precedents were that this action was brought for maliciously and falsely accusing one of treason, and the danger of that action would lie, yet the judges resolved otherwise, being falsely and maliciously; and though never any precedents could be shewn, yet they gave judgment expressly that the action would lie.

3 Cro. 534. Moor and Blackwell's case: Objected, That no precedent could be found where insufficient returns have been amended;

yet the court said, If there never was a precedent, they would make a precedent thereof. The first precedent had a beginning, and there was none at first.

2. There is a great difference where the law is silent in the case.

Before Stade's case they never could shew any action of the case upon an *indebitatus assumpsit*; multitudes of actions of debt, but none of the case, yet adjudged it would lie: For where there is *eadem ratio*, there is *eadem lex*: and will any man doubt where there is a false return whether an action will lie? In actions of the case there is less reason to expect precedents than in other things; they grow as the invention of man grows; according as new frauds and new deceits arise, so should new remedies.

Obj. Never an action brought for such a return; and Littleton's rule is, That if such an action could be brought, it would have been brought before now.

Ans. 1. My lord Coke says, The not user of an action does not take away the action, but ye may bring the action if ye have cause.

2. May it not be said as it was said to the former cases? There were accusations of treason, and false ones too, and no actions brought; therefore no action ought to lie now. I cannot see if ye reverse this judgment, ye must reverse many more of the same nature.

It is true, there is a great difference, that if the nature of the thing be such as it cannot be falsely and maliciously, the adding these words will not change the nature; but if the nature of the thing be so, and the jury do find *falso et malitiose*, the action will lie. As for the first part, as for a false accusation of stealing an apple off a tree, an action will not lie, though the declaration is *falso et malitiose*, for the nature of the thing will not permit it: so Moor, 491. Palmer and Porter's case, there no action will lie upon that reason: but in our case, the nature of the thing is of such a wrong, that an action may lie.

Then though the acts of parliament may give remedy, yet that takes not away the remedy at common law, which was his ancient remedy. Plow. 113, puts many cases to that purpose; and the difference is plain, for if it were no crime and offence at common-law, but given by the act, then no action could lie but upon the act; but where there was another remedy, he may take either that as common law, or the other upon the act.

The common law gave an action of the case upon too little issues returned by the sheriff, the statuto gives an averment, yet he may take the action still.

Now consider the remedy this act gives, and see whether it be so good a remedy: for first, he must bring his action within the time, limited by the act, or else he is out of the act; now if there be a double return depending in the house, no man will bring an action, depending that return undecided, and the judges will not

countenance such an action; so the party is quite deprived of his remedy. Then secondly as this case is the sheriff is not within the act at all, for he has returned the plaintiff. Now if this should be sufficed, there would be an evasion out of the statute, and the statute would give no remedy at all. Thirdly, it is the same mischief to the plaintiff; if my lord had been singly returned, he might have vindicated his election as much as in this double return, and have been in the house as soon.

Obj. This is a general matter, and all the subjects of England are concerned in it; and *Co. Rep.* 3. *William's case*, where there is a general nuisance, every man shall not have an action.

Resp. Where there is a general concern, and no particular damage, every man shall not have an action; but when there is particular damage there he may. Here is a particular damage to the plaintiff, and so he is well intitled to his action. *Rep.* 9. *Marie's case.* 1 *Inst.* 59. *Powell's case.* 3 *Cro.* 664. *Fineux and Hovenden's case.*

Obj. This matter is matter proper to be determined in parliament, and a hard case the sheriff should be condemned for that he could not help.

Resp. As to the right of election that is determinable there, and it was so; but for his damage, it neither was, nor could be examined there. If the house of commons had given damages, and the parliament had broken up, how should he have recovered them?

1. Here is no action brought against a member.

2. No action brought for any thing done in parliament.

3. The return is into Chancery; the sheriff's work was ended in Chancery; it was filed in chancery, and there remains, and there must remain. So that all the malice and falsity was done in Chancery; and the action is not brought for any right of election, but for what was done to put him to charges.

If there had been an equality of voices, he must have returned so; nor is here a little mistake; but what is done, is done falsely and maliciously, and with an intent to put him to charges.

Obj. The sheriff is not concerned himself for what was done in the Commons House.

Ans. He was not charged with it there; this action is not brought purely for a double return; yet if so, and he does it knowingly, an action will lie, the return is plain, for the sheriff is a great officer and the law does give that credit to him, that it will not suffer any averment against his return, but an action of the case will lie, *Rep.* 11. *Bagg's case*; and the sheriff is a sworn officer, and the law imposes this man upon me, and the law is my caution in that case, and gives me a remedy.

Obj. Here is no double return, for it is no return at all, it not being under seal; and the statute says, all returns shall be under the seal of the electors: so here is no harm at all; he

might have gone into the house, if he had pleased.

Ans. At the Common Law there was no necessity the return should have been under the seal of the electors: so it is a good return until avoided, and not a void return. If it were not good unless under the seal of all that elect what will become of those that sit now? It was never done yet, if he makes a return without seal, it is good, *primâ facie*.

As to the exceptions taken to the declaration, it is well laid in strictness of pleading; he says *secundum exigentiam brevis*; and though he says *per aliam indenturam factum*, it was as much as *factum indentatum*, 1 *Inst.* 103. *Leo.* 310. *Maydwell and Andrew's case.* How should it be a return, unless it be as it should be? And ye must intend so as it should be, 3 *Cro.* 737.

The pleading of *Bulkley's case* is the same with this, and no exception taken to it: but if it had been upon a demurrer, there might have been more said for the exception; but now it is an exception upon a verdict, and it shall be intended, that they that tried it had the right of the return, 2 *Bulst.* 41. *Yelv.* 247. after a verdict a vicious plea shall be made good, *Allen and Nashe's case*, 3 *Cro.* 53. *ibid.* 371. *Southwell and Browne's case* and *Fulwood's case*, 4 *Rep.* is a stronger case than has been cited, and yet adjudged good.

Though there be no seal, yet when he returns this, and a man suffers damage by it, and all the mischief that may happen, who is the party would take advantage of it? he that has done the wrong? No, he cannot, 21 *E.* 4. 22; 15 *E.* 4. 18, 19.

So therefore both because the declaration is well laid, and the party well entitled to his action,

The Judgment ought to be affirmed.

An ARGUMENT in the great Case concerning Election of Members to Parliament, by sir ROBERT ATKINS, knt. of the Hon. Order of the Bath, and late one of the Judges of the Court of Common-Pleas.

Trinity Term, 26 Car. 2.

In the Court of King's-Bench, Rot. 577.

Sir SAMUEL BARNARDISTON, bart. Plaintiff:
Sir WILLIAM SOAME, Defendant.

In Trespass upon the Case:

That whereas the king, 8 Feb. 25. of his reign, by a writ out of the Chancery, directed to the then sheriff of Suffolk, commanded that he should cause an election to be made of another knight for the said shire in the place of sir Henry North, lately dead; and that he should certify the election under his own seal, and the seals of those that were present at the election, into the Chancery.

Which writ, 12 Feb. 25 Car. 2, was delivered to the defendant, then sheriff.

And, 24 Feb. 25 Car. 2, in full county, by

the people resident in that county, the writ was read. And although the plaintiff was duly elected to be knight for that county, by the greater number of the people then resident in the said county, every one whereof could spend 40s. per annum within that county: And although the defendant, then sheriff of the said county, *premissa satis sciens*, afterwards the same 24 Feb. 25 Car. 2, returned the said writ into the Chancery; together with an indenture between him the said Sheriff, and the aforesaid electors of the plaintiff, of the aforesaid election of the plaintiff, made according as the said writ requires.

Yet the defendant, then sheriff, 'Officii sui debitum minime ponderans, sed machinaus et malitiose intendans ipsum Samuelem in hac parte minus rite pręgravare,' and to deprive the plaintiff of the trust and office of one of the knights of the shire, to be exercised in parliament; and to cause the plaintiff to expend great sums of money, against the duty of his office,

Falsely, maliciously and deceitfully returned into the Chancery, together with the aforesaid indenture; another indenture annexed to the said writ, purporting the same to be made between him the said defendant, then sheriff, of the one part, and divers other persons; containing, That the said other persons, as the greater part of the said county, did chuse one sir Lionel Talmach, bart. otherwise Lionel lord Huntingtore, as knight of the shire, to come to parliament. Whereas in truth, the said Lionel was not chosen by the greater part. By reason of which false return of the said other indenture, the plaintiff could not be admitted into the lower house at the return of the said writ, and a long time after.

Till the plaintiff, upon his petition to the Commons, and till after he had spent divers great sums of money about the proving of his election, and divers pains and labours in that behalf sustained, afterwards, scil. 20. Feb. 26 Car. 2, he was admitted, and his election was declared to be good.

To his damage of 3,000l.

Plea. Not Guilty.

Verdict. *Pro quer' dam.* 800l.

Judgment. *Pro quer'* sir Samuel Barnardiston, in the King's-Bench, for the 800l. damages, and for the 98l. costs.

The defendant, sir William Soame, sued a Writ of Error before the justices of the Common-Bench, and the barons of the Exchequer, in the Exchequer-Chamber, to reverse the said judgment given by the judges of the King's-Bench.

And two of the justices of the Common-Bench, viz. sir Robert Atkins, and sir William Ellis, upon argument, were of opinion, That the said judgment was good in law, and were for affirming that judgment.

But the other two judges of the Common-Bench, and the four barons of the Exchequer, holding the said judgment in the King's-Bench erroneous, were for reversing the said judgment.

And the said Judgment still stands reversed; but needs a redress by error in parliament.

Sir SAMUEL BARNARDISTON, Bart. Plaintiff,
Sir WILLIAM SOAME, Defendant, in an
Action upon the Case.

I shall divide the Record into the several parts of it:

1. There is first, the occasion, or as we commonly call it, the inducement to the action; that is, sir Henry North, who served in parliament as knight of the shire for Suffolk, died; and a new writ issued to chuse another in his place.

2. In the next place, the right that accrued to the plaintiff, sir Samuel Barnardiston, he was duly elected knight of the shire.

3. The injury done him by the defendant, with the aggravations of it, viz. Although the defendant well knew the plaintiff was duly elected, and though he did return him; yet contrary to the duty of his office as sheriff, and intending to oppress him, and to deprive him of the right he had, and on purpose to put him to great expence and charges,

He did falsely, maliciously, and deceitfully return another indenture with the former; importing, that another person was chosen by the greater part of the county.

4. The damage sustained by the plaintiff, after the writ was returned.

1. He could not for a long time he admitted to sit to do his duty, and discharge his trust.

2. He was put to great charges to prove his election.

3. He did sustain great pains and labour.

5. The right done him at last, and the satisfaction and amends made him.

1. By the House of Commons. His election was declared good, and he was admitted to sit.

2. By the Jury. They have found the wrong done by the defendant, and the damage sustained by the plaintiff; and they have repaired him with 800l. damages.

3. By the court of King's-Bench. They have given judgment for the plaintiff.

And the question before us, is, whether this Judgment be erroneous? I hold the judgment not to be erroneous. I am for affirming of the judgment.

1. I conceive the matter set forth in the plaintiff's declaration, to be actionable. 2. That the wrong and injury complained of, is such for which the law gives him a remedy. And 3. That he has taken his proper remedy, by bringing this action upon the case.

All this being in the affirmative, the proof of it lies upon me.

My ground and foundation is this, That where one person does injury to another, and the person to whom the wrong is done sustains particular damage and loss by the injury, there the law gives a remedy, by action, to the party injured.

But here is an injury done.

And here is a particular damage sustained. Therefore an action lies.

I shall first prove the ground or foundation, which is the major proposition, That where a wrong or injury is done, and a particular damage sustained, there the law gives a remedy by action.

1. From the nature and quality of the law; which is to do right to all, and to give relief and redress to those that receive wrongs. And should there be any case where a person might receive an injury and damage, and yet have no remedy nor redress, the law would be defective; which would be a reproach to the law and government.

The law has appointed several courts, and given them several powers and jurisdictions; so that in the one or the other, every person that has suffered injury and damage may make his complaint, and have right done him.

Sir Edw. Coke, in his *Mag. Chart.* fol. 405, in his *Expos.* upon the *Stat. of W. 2, c. 14*, says, It is an ancient maxim of the common law, 'Non recedant quærentes a curia regis sine remedio.' Whoever has just cause to complain, shall have their just remedy. And 'curia regis non debet deficere in justitia exhibenda.'

Both these rules and maxims, which have one and the same sense, are remembered in that *Stat. of Mag. Chart. c. 24*.

In *Pinchoi's case*, 9 *Rep.* fol. 88, *b. adjud.* That an action upon the case lies against executors for a debt, due by the testator upon a simple contract. And in the argument of that case it is said, That by that resolution, justice and right is advanced, and the creditor paid his just debt; and if the debt should be discharged by the death of the debtor, it would (say the judges) be a great defect in the law, that there should be a right, and no remedy for it: and the judges urge the maxim I mentioned but now, 'curia Domini Regis deficere non debet consequentibus in justitia exhibenda.'

In *Meriel Tresham's case*, 9 *Rep.* fol. 3, it is urged as an absurd thing in law, that a man should have wrong done him, and yet should be without remedy: and the reporter does observe, that the judges in all ages have endeavoured to put the rule of *W. 2*, in execution, 'Curia domini regis non debet deficere consequentibus in justitia exhibenda.'

Nay, the law has so great a zeal for redressing of wrongs, that as sacred as the maxims and rules of the law are, yet if there were any rules or maxims that stood in our way to hinder, the law would break through those rules and maxims, rather than suffer an injury to be without remedy. 4 *Inst.* fol. 71, about the middle, 'No wrong or injury, either public or private, can be done, but it shall be reformed or punished in one court or other, by due course of law.' And in the lower end of that folio, 'A failure of justice is abhorred in law.'

Sir Fran. Bacon, amongst the elements of the law, fol. 51, delivers this as a principle, 'Receditur a placitis juris potius quam injuria et delicta remaneant impunita;' which he himself expounds in this sense, the law will dis-

pense with some maxims, rather than wrongs should be unpunished.

2. My next argument to prove this position, 'That where an injury is done, and damage sustained, the law gives remedy,' shall be taken from the nature of an action, which is the ordinary remedy the law gives for the repairing of a private wrong.

Now what the nature and definition of an action is, we learn from the most ancient authors of the law, as *Bracton* and *Fleta*, and the *Mirror of the Justices*, as they are collected by sir E. C. 2 *Inst.* fol. 40, and they all agree almost in the same words: 'Actio nihil aliud est quam jus prosequendi in judicio, quod alicui debetur, et quod nascitur ex maleficio, vel quod proveuit ex delicto vel injuria.' It is nothing else but a means or remedy for a man to have right done him, that has suffered wrong and injury.

It is the argument commonly used, and the reason given to maintain an action, and in particular an action upon the case, viz. That there is an injury done, and a damage sustained.

Sir E. C. 12 *Rep.* fol. 128, res. p. tot. cur. If a Sumner return one summoned, or cited into the Spiritual Court, where in truth he was never summoned, and he is pronounced contumax, and thereupon excommunicate; he shall have an action upon the case against the Sumner: and the reason given is, because there is *injuria et damnum*. It is the same case that is reported in *Rolls 1 Rep.* fol. 68, by the name of *Powle and Godfrey*: which I shall have further occasion to mention before I have done: you have the same case reported by sir *Francis Moor*, fol. 835.

This may suffice to prove the major proposition, 'That where wrong and injury is done to any man, and particular damage sustained by it, there the law entitles him to an action.'

For the minor proposition, That in the case before us, there is a wrong and injury done to the plaintiff, and a particular damage sustained by him: to make this out, I shall need to do no more than barely to relate the very fact; and put it as a question to any plain man, that has but a common capacity, and no learning, nor acquired parts; and to stand to his judgment in the case.

And the case is no more than this: The plaintiff had the honour to be chosen to that great trust and employment, of a knight of the shire, by his countrymen, to serve in parliament; by which he was justly entitled to several great privileges, and to wages for the time he served. And it is an honour and employment we all know is highly esteemed, and generally desired and sought after; and he that desires it, desires a good office. The defendant having the office of a sheriff, and being bound by his office and oath to do justly and truly, 'Et præmissa satis sciens;' that is, well knowing the plaintiff had the only right to be returned, and that no other had the least colour for it, and where there was not the least doubt or difficulty in the case:

Yet falsely, deceitfully, and maliciously to deprive him of his trust and office, on purpose to put him to great charges, he returned another person with him.

And after all, the question is, Whether he has done him any wrong or no? By occasion of this, the plaintiff was hindered from sitting in the house, and was put to great expence, and underwent great trouble and labour. And the question is, Whether the plaintiff has been at any particular damage?

Shall I have my action for a halfpenny trespass *pedibus ambulando*? Does the law give me an action of assault and battery, if a man does but lift up his hand to strike me? Or for a few ill words, that will break no bones? And shall I recover damage for these petty things, and shall no action lie for so notorious an injury as is done in this case?

But our greatest work is to answer the many Objections that have been made against this action; which yet, I will be bold to say, have much more of wit than of weight in them.

And the difficulty rather lies in the great power and interest of the parties to the action, and of those that concern themselves in the example and consequence of it, upon a politic account, than from any uncertainty of the law: that is, there is a design to model the parliament to the humour of the court.

Sir Ed. Coke, in his preface to Rep. fol. 6, in the beginning of the folio, affirms, That he never saw any case of great value proceed quietly, without many exceptions in arrest of judgment.

Object. 1. This is a matter that concerns the government, and is of a public nature; the employment of a parliament-man, consisting 'in negotiis regum, statum, et defensionem regni et ecclesiarum concernentibus;' and therefore the punishment of an offence committed, in reference to this, should be by a public prosecution, and not to be appropriated to any particular private person; nor the amends and satisfaction made to any one man.

Ans. It must be agreed, That public injuries wherein all, or very many are concerned are proper for a public prosecution; as in the name of the king, or by a presentment at a leet, or quarter-sessions, &c. But if any particular man receive a particular damage by the public offence or injury, he shall have his action; and this is consistent enough with the prosecution for the public. As the case of 27 H. 8, fol. 26, 27, Br. Abr. Act. Sr. Ca. Plac. 6. If a man make a ditch upon the king's highway, this is a wrong to every man that has a right to pass that way; and he is presentable at a leet for this offence; but if I and my horse happen to fall into the ditch, riding along the way, and so receive a particular damage, I may have an action upon the case against him that made the ditch, 9 Rep. 113, 5 Rep. 79, 73. It is the ordinary case, *A.* makes an assault and battery upon *B.* this is but one single act, but it has a double aspect; it is a breach of the king's peace, and for that *A.* is indictable, and may be fined to

the king, and imprisoned. It is a particular wrong to *B.* for which *B.* may have an action of assault and battery, and recover damages; and both of them consistent.

So in our case, this false and malicious double return, it was an injury to the king and kingdom; and to the House of Commons, in that while the election by this means was under dispute, they wanted the plaintiff's service and assistance. It was a wrong to the county of Suffolk, for the knight of a shire has 'plenam protestationem pro se et communitate comitatus ad faciendum et consentiendum;' but it was more particularly an injury to the plaintiff, in that he was for some time deprived of the honour done him by his country; who by their electing of him, settled that character upon him, that he was 'magis idoneus et discretus;' for the writ commands such to be chosen.

He was hindered from discharging his trust, committed to him by his own country; hindered from doing service to the king and kingdom; hindered of his wages.

The stat. of 27 H. 8, c. 26, which unites England to Wales, enacts, That for every shire in Wales there shall be chosen one knight to serve in parliament, and one burgess for every borough; and that the knights and burgesses shall have like dignity, pre-eminence, and privilege, and shall be allowed such fees as other knights and burgesses of the parliament have, and are allowed: by which it appears there are dignities, pre-eminences, privileges and fees, belonging to such as serve in parliament; of all which the plaintiff, for a time, was hindered by this false return.

And that it does concern the government it argues the greater injury done to the plaintiff; for every member of parliament, for the time he serves there, is instrumental in carrying on the government, which is an high honour to him. 'Tu regere imperio populos, hæ tibi erunt artes.' It is a noble employment.

And since it does so nearly concern the government, we that are judges should be the more careful to discourage all abuses committed by sheriffs in elections: it is of vast concernment to the kingdom that elections should be fair, and returns duly made, without partiality and indirect means used. And we, by judgments, should encourage all remedies against such abuses and practices.

Besides all this the plaintiff has been put to great expences, and undergone great labour and trouble; which is a private and particular damage, and therefore entitles him to his particular action.

A Justice of peace may have an action of slander in relation to his office, yet that was not an offence at Common Law neither; and yet it concerns the government.

The Stat. of 7 H. 4, cap. 1, recites, That the Commons made a grievous complaint to the king, of the undus elections of the knights of the counties, 'which' (says the preamble) 'be sometimes made by affection of the she-

'riffs, to the great slander of the counties, and hindrance of the business of the commonalty of the said counties.'

By which it appears, how great the mischief was in these days, and whence it came principally, viz. from the partiality of the Sheriffs: And that stat. to prevent the abuses, does appoint the return of indentures under the seal of the sheriff, and the seals of the electors: But the defendant in our case has practised an abuse even in the very remedy, by returning several indentures, and so evading the good provision made by that statute.

The stat. of 11 H. 4, c. 1, observes, That no pain is set in special by that stat. of 7 H. 4, upon sheriffs, if they make returns contrary to that statute, and give power to judges of assize to punish them, and to inflict the penalty of 100*l.* upon the sheriff; and the knights unduly returned are to lose their wages: And all this depends upon the enquiry made by the judges of assize. At this time surely this matter of elections, and the examining and determining of the right, was not held so sacred and so incommunicable a thing as some would have it now; for by this statute it is referred to the judges of the assize.

But the principal statute in this matter, is that of 25 H. 6, c. 15, which sets out the great abuses by sheriffs committed in elections; it recites, That of late divers sheriffs, for their singular avail and lucre, have not made due elections of the knights. One would think by those words (for their lucre), that there was money stirring upon these occasions, even in those times; and that some men paid dear to be chosen parliament-men: Or else, how could a sheriff make profit to himself by an election? And to be a parliament-man, it seems, was a very desirable thing in those days.

'And forasmuch' (says that statute) 'as a sufficient pain, and convenient remedy' for the party in such case grieved, is not ordained in the said statutes against the sheriffs: It therefore provides a better remedy.

But let us to our purpose observe by the way, that it mentions 'the party grieved:' so that there is a party grieved: It is not merely a public offence, but an injury to some particular persons, and to some one person: for it says the party grieved, but it does not mention who that party grieved is. So that it may be objected, that those words (the party grieved) refer to every elector, as well as the knight elected.

But the enacting clause expounds the words, and declares whom the makers of that law meant; for it makes the first offer of the forfeiture to every person chosen knight, and not duly returned: So then it is plain, that the knight elected, and not returned, is the party grieved. If he have a particular wrong done him, then it follows he ought to have a particular remedy and satisfaction: And he was a party grieved before these statutes made, and this penalty and remedy given; for these statutes do not first make him a party grieved, but

mention him as being so before. If he were so before, surely the law gave him some remedy, or else there was a *grossum* without *remedium*; which would have been a defect in the same.

Object. 2. Is that which I think is most relied upon, and that has most weight laid upon it, viz. That this action concerns an election of a knight to the parliament, and therefore belongs to the jurisdiction of the parliament, and ought to be determined there, and not by any court inferior to it.

Answer. To this it has been truly answered, That though in this case we have often occasion to speak of the parliament, and to mention an election to parliament, yet the right of election is not called in question, nor was it to be tried in this action, but was determined by the House of Commons; and this action is pursuant to that decision of the right of election by the parliament, and grounds itself upon it.

I shall, however, take this occasion, in the first place, to shew in what matters that concern the parliament, the judges of Westminster-hall have in all times, and must meddle, and take cognizance of them. And in the next place, what they have declined and left to the parliament.

1. They have debated and resolved, 'What is a good session of parliament, and what is not, and what makes a session,' as in Tr. 12. Jac. in B. R. Rolls, Rep. 29. There were several acts of parliament that had passed at a former parliament, which were continued only to the first session of the next parliament; and in that case they held those acts then still in force: for though the parliament had met, yet no act passing, they therefore adjudged it was no session, and there was a necessity that the judges should determine this. For though the king and parliament make acts, yet the courts in Westminster-hall put those acts in execution, and therefore must first satisfy themselves.

2. Whether they are in force or not so, in the prince's case, 8 Rep. whether the charter made by king Ed. 3, to the prince, were an act of parliament or not, is here argued and resolved. So 4 Hen. 7. 18. 6 and 7 Hen. 7. 14, 15.

3. In Rolls Ab. 1st part. fol. 93. c. 19, under the title of Action upon the Case, there is cited 17 E. 3. in B. R. Rot. 69, where an action is brought by John Bokeland, knight of Wiltshire, against the sheriff of that county, for not levying 10*l.* 4*s.* 'pro expensis suis in attendencia sua in parlamento.' Now, in order to the recovery of this action, many things relating to the parliament, as, When the parliament began? How long his attendance was? and divers other questions relating to the parliament, must of necessity be incident.

10 Eliz. Dy. fol. 275. The very lower end of that folio, there is an action brought against the keeper, for letting a burges of parliament go at large by writ *de privilegio parliamenti*, who was in execution: The lord Dyer says nothing there, what became of it; but sir

Francis Moor, in his Rep. fol. 57, at the lower end of that fol. reports, that it was held by Dyer, that if one condemned in debt or trespass be chosen to the parliament, and after taken in execution, that he shall not have his privilege of parliament. And, as he says, it was so held by the sages of the law, in the case of Ferrers; and that though his privilege was indeed allowed, yet, (as they held) it was *minus juste*; which case of Ferrers was the same here mentioned before to be in Dy. fol. 275, as appears by Mr. Crompton in his Jurisdiction of Courts, fol. 8. b.

So that some things relating to the parliament, the courts of Westminster-hall must determine; and the judges cannot avoid it, if they will do justice.

2. But some things are concerning the parliament, which the courts of Westminster-hall may determine if they think fit; or they may at the discretion of the judges suspend their further proceeding, and refer them till the parliament meets to determine them.

33 H. 6. fol. 17, 18. It is there debated by the judges, whether it were a perfect and legal act that passed in parliament against sir John Pilkington, for a rape committed by him; and it depended upon the course of the two Houses, in their transmitting of bills from one to another, and of indorsing the bills; and they sent for the clerk of the parliament and consulted with him about it; and there, Fortescue, Chief-Justice, held the act in question to be a good act of parliament; but, says he, peradventure the matter, or question, shall wait till the next parliament meet, and then we may be certified by them of the certainty of the matter. By this it appears that the judges did not disown the jurisdiction of that cause, that was so nearly depending upon the usage of parliament, but that it belonged to them, and not to the parliament; yet it was convenient to be advised by the parliament, and to wait till then.

And sir Ed. Coke, in his 2 Inst. 408, tells us, that matters of difficulty were usually adjourned to parliament.

3. Some things there are that concern the parliament, wherein the courts of Westminster-hall must not intermeddle, but the jurisdiction belongs to the parliament only.

By the statute of 4 H. 8. c. 8, though all in that act that concerns one Richard Strode is a private act; yet there is one clause which is a general act, and is declaratory of the ancient law and custom of parliament, viz. It is enacted, 'That all suits, accusations, condemnations, executions, fines, amerancements, punishments, corrections, charges, and impositions, at any time from thenceforth, to be put or had upon any member, for any bill, speaking, reasoning, or declaring of any matter concerning the parliament, to be commuined or treated of, be utterly void and of none effect.' This concerns none but members of parliament, and it provides for freedom of debates in matters that are proper to be treated of in parliament.

The Lords, for themselves only, and for their own house, made claim of this privilege and jurisdiction, 11 R. 2. numb. 7. Sir Robert Cotton's Abr. fol. 321, but it is limited only to matters moved in parliament, and the king allowed it in full parliament.

And sir Ed. Coke, in his 2 Inst. fol. 15, says, That *pari ratione*, the like belongs to the House of Commons: * And this is the reason, says sir E. C. that judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common laws used in other courts, but '*secundum legem et consuetudinem parliamenti*.'

So likewise in case of the privilege of a member of parliament, against suits and executions, sitting the parliament, the judges have refused to give their opinion, though demanded by the Lords; as they did in the case of Thorp, Speaker of the House of Commons, who was taken in execution between two sessions of parliament, of which the Commons made complaint to the Lords, and the Lords asked the advice of the judges whether the Speaker ought to be delivered by privilege of parliament? The judges answered, 'That they ought not to determine the privilege of the high court of parliament: the case is 31 H. 6. fol.—Rolls Ab. 2d part. 94. c. 1. See 39 H. 6. Sir Robert Cotton's Abridg. nom. 6.

Concerning departure from parliament, (sitting the parliament) and not attending according to their duty; the case seems doubtful, whether any other court than the parliament can determine of that offence, it seeming to be of a middle nature. For though it be an offence committed by a member, and that in parliament time, which argues for their privilege, and against the jurisdiction of any inferior court, especially while the parliament sits, who undoubtedly may take cognizance of it, and punish it: yet on the other side, when the parliament has not taken cognizance of it, and the parliament is risen, why should not that offence, at the king's suit, be punished in the Star chamber, while that was a court, and now in the King's-bench? and why should privilege protect against non-attendance, when the true ground of privilege is by reason of attendance? And Mr. Plowden, who was a very learned lawyer, submits to the jurisdiction, but traverses his departure; as the case of the bishop of Winchester, 3 Ed. 3, remembered by sir Ed. Coke, in his 2 Inst. in his Chapter of Parliament, (as far as he reports it) seems rather to be an authority against the jurisdiction of any other court besides the parliament itself, in such case of proceeding against a member to punish him for non-attendance: for the bishop being impleaded by original writ at the king's suit, (which I suppose was in the King's-bench) 'quia recessit a parlamento sine licentia regis.'

* Sir John Elliot, and Denzel Holles, pleaded the like plea to the jurisdiction of the King's-bench. See the Case in vol. 3, p. 293, of this Collection.

The bishop pleaded 'Quod ipse est unus de paribus, et dicit, quod si quis eorum deliquerit in dominum regem in aliquo parlamento, in parlamento debet corrigi et emendari, et non alibi in minori curia.' And so sir Ed. Coke seems to leave the victory on the bishop's side, and that his plea succeeded. But sir Francis Moor, 779, 780, reports the case of the lord Sturton, and the lord Morland, how they were deeply fined in the Star chamber; 4 Jac. for absenting from parliament, at the complaint of the Attorney General, *ore tenus*. And there were then present in the Star chamber, the lord chancellor, chief justice Popham, Fleming, and Walawly. And for precedents to justify the proceeding against them in that court, they cite the case of the earl of Cornwall, 4 H. 3, and the bishop of Winchester's case, (which I mentioned but now) 3 E. 3, how that for departing from parliament, without licence, their lands were seized.

But the objection in our case is, 'concerning a matter of election of a knight of a shire' to serve in parliament: that no other court but the parliament must meddle in it, as the objectors would have it.

Ans. It is not impertinent, therefore, to enquire briefly of the true jurisdiction in this matter.

Sir Robert Cotton affirms, that writs of summons for knights of the shire to serve in parliament, began 49 H. 3, and that the admittance of commoners into the parliament, was purposely to lessen and curb the power of the lords, after the daring earl of Leicester was slain in the battle of Evesham (which was that very year), and the barons were totally routed by prince Edward, (afterwards king Ed. 1.) and king H. 3 was rescued out of their hands. And to back that opinion, it is observed, that the first writ to the sheriffs, to summon two knights out of every shire, that is to be found upon record, is that of the close roll 49 H. 3, (the very same year) *dorso* 10 and 11. Thus Mr. Prynne affirms, in his preface to the Abridgment of the Records of the Tower, fol. 11, in the beginning of that fol. and fol. 13, b. in the middle of that fol.

But we must not be governed by historians in matters of law; and therefore, notwithstanding this observation of sir Robert Cotton's and Mr. Prynne's, we must presume that the House of Commons, and elections of knights of the shire, are as ancient as the common law, and have been time immemorial; because we find no written law that does first begin any such institution.

But to come closer to the Objection, and to enquire who are the proper judges of the right of elections?

Mr. Prynne, in the same Preface, fol. 14, b. in the middle of it, (as I myself have folio'd it, for the print has no folios to the Preface;) "The King and Lords" (says he) "were anciently sole judges of the legality of elections of members of the House of Commons, till the time of king Henry 7."

And in sir Robert Cotton's Abridgment, fol. 392, the year 1 H. 4, num. 80, at the prayer of the Commons, the king declares, that the Commons were only petitioners, and that all judgments appertain to the King and Lords, unless it were in statutes, grants, subsidies, or such like; the which order the king would from that time to be observed.

But we know that the House of Commons is now possessed of the jurisdiction of determining all questions concerning the election of their own members; so far at least, as is in order to their being admitted or excluded from sitting there. But how far their judgment is concluding to all others to other purposes, I have now no just occasion to examine; for, as has been observed, the plaintiff in this case grounds his action upon his original right of election, and mentions the determination of the House on his side; and not only alleges that he was duly elected, but so returned by the defendant himself: and that though he were for some time hindered from sitting, by occasion of the false return, made by the defendant on purpose, and the election was under question by it, yet he proved it clearly to the House, and was admitted, and his election declared good; and taking it for granted that he was duly elected, he sues in the King's-bench, by this action to recover damages for the injury done him by the defendant, for which the House of Commons could not have helped him. For to that purpose they have no jurisdiction, for they cannot examine a witness upon oath, nor can they act the part of a jury to give damages, nor have they any power to award a trial, or to cause the sheriff to impanel a jury.

Obj. 3. This is an action of a new invention; and *prima impressio*, and never any such was brought before, save that of Nevil against Stroud; which never had any determination.

Ans. It is true, it is new, in the particular circumstances, but not in the main, nor in the substance; 'tis new, in that 'tis brought by one elected knight of the shire against the sheriff, for a false and malicious return of another indenture, whereby the plaintiff was put to great expence and trouble; but 'tis not new in the general nature of the action. For nothing is more frequent than actions upon the case, where an injury is done and damage sustained; nay it is very frequent for actions upon the case to be brought against the sheriffs, for mere false returns, and that where there is no malice, nor any of those great aggravations that appear in this case.

For this I refer you to the case in Roll's Abr. 1. part. fol. 99. Getin, Palmer and Marshal, in the king's bench, where the bailiff of a franchise was newly removed; but though he were removed, took upon him to answer, but made a false answer to the sheriff's warrant, to execute *Fieri fac'* against an administrator, and the sheriff made that return to the court; and thereupon an action upon the case brought against the sheriff, and adjudged it lies: And that the sheriff at his peril must take notice who

is the rightful benefit of the franchise, and accept of no answer to his warrant from any other.

19 H. 6. 29. An action upon the case against a deputy sheriff, for embezzling a Writ.

19 H. 6. 38. by Paston. If a sheriff upon a *Venire fac'* return a jury that is insufficient to pay issues, the next sheriff to whom the issues are estreated to be levied, must charge himself with the issues, and must not return a Nihil, but shall have an action upon the case against his predecessor, for his false return; yet here is no malice, but at the most a neglect, or a mistake only.

30 E. 3. 7. Brook. action upon the case, 67. An action upon the case against a sheriff for not summoning and warning a man in due time, upon a writ of *Pramunire* or attachment, whereby he sustained damage, as judgment given against him, or the like. This is but a bare neglect or omission, and seems to be the least or lowest sort of injuries; and yet being accompanied with a particular damage to the party, though without any malice on the sheriff's part, the action will lie.

3 E. 4. 10. Brook. action upon the case, pl. 91. by Dandy and Pigot, for a false return only.

If a Nihil be returned against me who have had, P. N. B. 93. 21 E. 3. Fitz. Abr. Proceas 55.

So for not returning a writ of second deliverance, which is a mere neglect and non-cessance. though there be no malice, 21 E. 3. 49. Br. Act. s. ca. pl. 48. 5 Rep. 38. b. 9t. 7 Rep. 1.

So against a bishop, if he falsely return, that an executor has not refused the executorship, when *re vera* he has refused it, 2 Leon. 221.

So against an escheator, 9 H. 6. 60. 21 E. 4. 23. 27.

Much more shall the action upon the case lie against the sheriff, as the circumstances of this case are, where the return is not only false but he knew it to be false, and he did maliciously, with a purpose to hinder the plaintiff from sitting, and to put him to expence, and where the plaintiff has had so great a damage. And the sheriff by his oath is obliged to do right as well to poor as to rich, in all that belongeth to his office. 2. To do no wrong to any man for favour nor hate. 3. To disturb no man's right. 4. Truly to return, and truly to serve all the king's writs, as far forth as shall be within his cunning. And the jury, by their verdict in this case, have found the defendant to fail in every one of the clauses of his oath. And though the circumstances that do diversify all cases are new in this case; yet it is very frequent in actions upon the case, to have new cases and new circumstances; and that there is nothing more frequent than this variety and novelty.

Sir Francis Bacon, in his book of Advancement of Learning, speaking of cases omitted in law, fol. 38. says, 'That the narrow compass of man's wisdom cannot comprehend all cases which time hath found out;' and therefore cases omitted and new, do often present themselves, but, every new case does not require

a new law; for then the legislative power must be continually exercised: But though it differ from former cases in circumstances, yet it may fall under a general rule, or be proceeded upon by parity of reason; 'ubi est eadem ratio, idem est jus.'

And the statute of W. 21. cap. 24. has met ample provision for all such new cases that fall under a general rule, but have no formed writ or writ of course, that fits it in all the particulars and circumstances. 'In consimili casu, simili remedio indigenete, fiat breve,' say that statute.

In the 8th Rep. fol. 48. Jehu Webb's case. there you have the distinction of writs; some are 'brevia formata seu de cursu,' and from thence the cursitors have their name, because they have the drawing of those writs.

Some are 'brevia Magistralia, que nec sunt de cursu nec formata, i. e. de aliqua certa forma, sed sapinus variant secundum varietatem casuum, factorum & querularum;' as are actions upon the case, &c. which have not any certain form, but are upon occasion drawn by the masters of the chancery, and from thence are called *Magistralia*; all this is by virtue of the words of the statute of W. 2. c. 24. 'concordant clericis in Cancellaria de brevi faciundo.' 2 Inst. 405, 406, 407.

And many new Cases may be put, that have no parallel cases to be found in our books, if all the particulars and circumstances be regarded, as the Case, 8 Car. Croke 291. in the king's bench, where an action upon the case is brought against an *Apparitor*, for what he did in his office, viz. for falsely and maliciously presenting one, and that in the spiritual court, for incontinency. This was against an officer for what he did in his office, and to which his oath obliged him; and this was for a thing done in the spiritual court, viz. the consistory court at Exeter, and for a matter merely of ecclesiastical cognisance, viz. incontinency, wherein the common law had nothing to do; and this case had no parallel nor precedent before it: and yet being an injury and damage to the party presented, and done falsely and maliciously, and without colour, and for which the party injured could have no recompence in any other court but at common law, it was adjudged the action lay. This case, though it had not parallel before it in all the circumstances, yet in many respects it is a parallel to the case before us. There is the like action against constables for making a false presentment, Croke Car. 467. and the case I cited before against a sumner 12 Rep. 128.

And for that objection and observation concerning the novelty of this action, this more may be said in answer to it; That till of late years sheriffs have given no occasion for the like actions of this; for double returns upon elections to parliament, have not been in ancient times.

Mr. Fryne, in his "*Brevia Parliamentaria Rediviva*," fol. 137. observes, that there were not above two or three cases of elections questioned from 49 H. 3. till 22 E. 4. for aught

appears by the returns, or Parliament-Rolls, and not so much as one double return or indenture.

And the common law does comply with, and conform to the general opinion and genius of the kingdom, and values what they generally esteem and value, and disesteems what they value not.

Heretofore an election to serve in parliament was not a thing so desirable, and so much sought after as now-a-days it is; and it is not the desire or seeking for it that is to be disliked or condemned, for he that desireth the office of a bishop (says the Apostle) desires a good office; but it is the undue means used, or the ill ends for which it is desired, that makes the seeking bad.

Mr. Prynne, *ut supra*, fol. 165. anno 1. E. 3. a writ issued to elect two knights for the county of Northumberland, and the Sheriff returned this answer, 'Communitas commit. Northumbria sic respondet, quod ipsi per inimicos Scotias adeo sunt destructi, quod non habent unde solvere expensa duobus militibus proficissuris ad consilium apud Lincoln. tendendum.'

In his fourth Part of his Register of Parliamentary Writs, is mentioned a Patent of Exemption granted 49 E. 1. to the town of Torrington in Devonshire; which Patent recites in its preamble, 'That the men of that town never used to send Burgesses to parliament till the Sheriff, 31 E. 1. summonites fuisse malitiose retornavit.'

So that a malicious return to parliament is no new thing, but has been formerly done; and as the plaintiff in this action has well sued the Sheriff for returning another with him, so I make no doubt but as the case then stood with the general humour and opinion of the people, those of Torrington might have had their remedy against the then Sheriff for returning them summoned.

And the law is still the same, in that it still sets a price and esteem upon that which the people generally esteem and value.

And several cases have been put to prove, that new Statutes have given occasion to new actions upon the case, which actions could not have been sued at the Common Law; and yet those new laws and Statutes do not give those new actions, but only occasioned them.

Barnes v. Carey 12 Jac. King's-bench, Roll's Rep. fol. 47.

The plaintiff there brought an action upon the case against the Sheriff of Bristol, for suffering J. S. to escape out of his custody, J. S. being committed by the commissioners of bankrupts, for refusing to answer interrogatories, the plaintiff being one of the creditors, and J. S. a bankrupt; and after many exceptions taken to the declaration, the court gave judgment for the plaintiff. And yet there was no such thing as a commission of bankrupt at the common law; but the common law takes occasion by the statutes of bankrupt, to give such an action upon the case, which before those statutes could not have been sued,

In like manner the common law takes occasion by those statutes that give the action of waste against tenant for life, or years, against whom it lay not by common law, to give an action upon the case against such tenants, if they will not permit their lessors to enter upon the thing demised, to view whether waste be done or not. *Croke 2 part, 478.*

Object. 4. That there is not one case in law parallel to this case, for a Sheriff to be sued for returning the whole truth, and something more than the truth: though actions for false returns are frequent.

Ans. This is an action for a false return, and something more. That it is for a false return, appears by that allegation, that he did falsely make his return, and the jury have found it so, and we must believe it. And it was false in this, in that he returned an indenture pretended to be under the hands and seals of divers persons, as the greater part of the said county, purporting the choice of another than the plaintiff to be knight of the shire. The plaintiff does not alledge, that there ever was any such indenture sealed by any person; but that the defendant did falsely return another indenture, purporting the same to be made by divers persons, &c. So that we may reasonably understand it, that in truth there never was any such indenture sealed by any but the Sheriff himself, and not by any others that were present at the election. 2dly, Though the Sheriff have returned the whole truth, yet together with that truth he returned a falsehood; and till it was re-examined, it could not appear which was the truth; and in the mean time the plaintiff sustained all his damage.

Object. 5. That the Sheriff acted herein as a judge, and therefore if he err, he is not to be sued for it, but his error may be reformed; and the law will not suffer an averment tending to the discredit of a judge. *Pl. comment. 491. b. and Dy. 89. b.*

Ans. All this is true, as to one that is a judge of record, in respect of the greatness of his authority, and the great trust the king and the law repose in a judge of record; but the Sheriff is no judge at all in what he acts in the election of knights for the shire, but is only an officer upon record, 9 H. 6. 58. and 60 Br. Ab. Tit. Act. s. ca. plac. 6. though in some particular cases indeed, the Sheriff is a judge, as in a justicies, 6 Rep. 12. ad. fin. and a judge of record, as in a re-disseisin, by the statute of Merton, c. 13.

Object. 6. The Statute of 23 H. 6. c. 16. has provided a remedy against the Sheriff for any abuse committed by him in elections, viz. the penalty of an hundred pound, in case of knights of the shire, to the knight injured; and it does recite in the preamble, that a convenient remedy for the party grieved is not ordained in the former statutes; and from hence it is inferred, that there was no remedy for the party grieved at the common law, nor before this statute.

Ans. I have already proved, that there was

a remedy at the common law, and before this statute; and this statute is an argument to prove it, for this statute mentions a party grieved, and there could be no grief without a remedy, otherwise the law would have been defective. And it cannot be denied, but that if there were a remedy at the common law, this statute being in the affirmative does not take it away, only it gives another remedy.

And for the words of this statute of 25 H. 6. that 'a convenient remedy' for the party grieved is not ordained by the former statutes; this does not argue that there was no remedy at the common law, nor does it argue that there was no remedy at all; but that there was no 'convenient' remedy by those former statutes, and thereupon the statute of 25 H. 6. gives an hundred pound to the knight injured by an undue return.

I shall put some like cases where acts of parliament give remedies, where yet there were other remedies before at common law, and the party may sue for either; Rolls Ab. 1. part. fol. 93. case 20.

A Distingas is awarded to the Sheriff to distrain the defendant in an action, and the Sheriff returns too small issues, though an averment lies by the statute of W. 2. c. 43. yet the plaintiff may well have his action upon the case against the Sheriff, because it appears by the words of the statute, that it is a false return. Observe the argument there used, viz.

If the action upon the case did not lie, in such case the plaintiff had not any remedy at the common law, which was greatly mischievous; and the statute (as is there observed) though it gives a new remedy, and takes no notice of any remedy that was before in the case, yet it does not restrain the plaintiff from any remedy that he had at the common law. It is there indeed made a *Quere*; but serjeant Rolls has this note upon it, That Tr. 3 Car. one Mrs. Bennet, upon good advice, brought such an action upon the case against the Sheriff of London, for returning too small issues against the mayor and commonalty of London.

The statute of W. 2. c. 24. (sir E. C. 2 Inst. fol. 404, 405.) first gives an assize of nuisance against the alienee of him that levied that nuisance; and that statute seems (as sir E. C. observes) to understand that the party grieved was without any remedy before; for it provides in these words, 'de cetero non recedant quantitates a curia Regis sine remedio.' yet sir E. C. takes notice, fol. 405. of his 2. Inst. at the lower end of that folio, upon the word 'a curia.' That the maker of that Act knew well that the party injured by the nuisance might enter upon the ground of the wrong-doer, not only when it was in his hands, but after it was aliened too, and abate the nuisance, and so prevent himself of the remedy by assize of nuisance given by this Act. And besides this, he had another remedy by action, viz. If he had any particular damage (says sir E. C.) he might bring his action upon the case, and recover damage, 'Ne quantitates recedant a curia sine remedio.'

Object. The ground of this action against the sheriff is for making a double return. Now the declaration sets forth only one perfect return, and that is of the plaintiff's election, which the declaration says, was 'secundum exigentiam brevis;' and it was by indenture, under the seal of the sheriff and electors: And though the plaintiff alleges, that the late sheriff and the electors returned another indenture of the election of another person, (which is the *gravamen* that he complains of) yet that appears to be no return; for it was not said, 'that that Indenture was under any seals.' And the statutes of 7 H. 4. c. 15. and 8 H. 6. c. 7. require indentures ensealed by the electors to be tacked to the writ, which indentures so sealed and tacked, shall be holden for the sheriff's return.

Ans. This other Indenture last mentioned, must be understood an Indenture ensealed, in like manner as the former; for the declaration just before mentions the first Indenture, whereby the plaintiff was returned to be chosen, and that it is said to be so ensealed, as the statutes require; and then the declaration says, that the sheriff, together with that Indenture, returned another Indenture; so that it must be reasonably understood, to be an Indenture, in like manner ensealed.

And then it is said by the declaration of this last Indenture, that it was annexed to the writ; and so returned by the defendant the sheriff, which must therefore be presumed to be an Indenture ensealed, or else to what purpose did the defendant annex it to the writ, and return it.

And further the declaration says, that by reason of the false return, the plaintiff could not be admitted into the Lower House, till he had made proof of his election. Now, if that other Indenture were not ensealed, it could not be said to be a false return; for it would indeed have been no return, and it could not have hindered the plaintiff from being admitted, nor put him to the proof of his election.

And that the Indenture must be understood an Indenture ensealed, by those that were present at the election, appears by the Writ; the form whereof you will find in "Crompt. Jurisdiction of Courts," fol. 1. b. the clause is this; 'Et nomina eorumdem militum, sic electorum, in quibusdam Indenturis, inter te et illos qui hujusmodi Electioni interfuerint inde conficiendis, inseri.' And in another clause, 'Et Electionem illam sub sigillo tuo et sigillis eorum qui Electi qui illi interfuerint nobis in Cancellariam certiores, remittens nobis alteram partem Indenturar. predictar. presentibus consutam una cum hoc breve.'

Lord Chief Justice NORTH's Argument, in the Case between Sir William Somme, sheriff of Suffolk, and Sir Samuel Barnardiston, bart. adjudged in the Court of Exchequer-chamber, upon a Writ of Error, containing the reasons of that Judgment.

Sir Samuel Barnardiston, the plaintiff, brings an action upon the case in Banco Regis against

the defendant, Sir William Soame, late sheriff of Suffolk, setting forth, that a Writ issued for the chusing of a knight for that county, to serve in the then parliament, instead of sir Henry North, deceased; that at the next county court the freeholders proceeded to an election, and although the plaintiff was duly chosen 'per majorem numerum gentium tunc resident. infra dict. Comit. quorum tunc quilibet expendere potuit 40s. libri ten'ti et ultra per annum infra Comit. illud, ac licet prædictus Willielmus, præmissa satis sciens, postea brevem præd. in cur. Cancellar. retornavit, simul cum quadam Indentura inter ipsum Vicecomitem et prædict. Electores ipsius Samuelis de prædicta Electione ipsius Samuelis fact. secund. Exigentiam brevis prædict. Prædictus tamen Willielmus adtunc Vicecomes Officii sui debitum minime ponderans, sed machinans et malitiose intendens ipsum Samuelem in hac parte minus rite prægravare, ac eundem Samuelem de fiducia et officio unius Mil. Comit. prædict. in dict. Parlamento exercend. omnino frustrare, et deprivare et prædict. Samuelem ad diversas magnas et grandes pecuniarum summas expend. causare, contra debitum officii sui præd. falso, malitiose, scienter et deceptivè, adtunc in ead. Cancellar. apud Westmonast. prædict. retornavit una cum Indentura prædict. quandam aliam Indenturam eidem brevi similiter annex. specificat. illam fore fact. inter præfat. Willielmum, &c. una parte, et diversas alias personas dict. Comit. in Indentura illa specificat. et continent. quod dictæ al. personæ, ut major pars totius Comit. prædict. in prædicto pleno Comit. elegerunt quend. Lionellum Talmash, Bar. alias dict. Lionel Dom. Huntingtowre, in Regno Scotiæ, in loco prædicti Henrici North un. Mil. Com. Suffolk prædict. pro Parlamento prædicto adveniend. eidem Parlamento pro Com. il. Ubi re vera prædictus Lionellus non fuit electus par majorem partem, prout per ait. Indent. falso supponitur. Ratione cujus quidem falsi retorn. de prædicta al. Indent. &c. idem Samuel in Dominum inferiorum pro Comit. hujus Regni Angliæ, &c. assemblat. admitti non potuit, quousque idem Samuel per petitionem suam Comit. dicti Parlamento pro remedio congruo exhibet; et post diversas ingentes denar. summas in et circa manifestationem et verificationem dictæ Electionis coram dict. Comit. expendit, et diversos labores in ea parte sustinet, postea scil. &c. per Comit. in Domum Comit. prædict. admissus fuit et electio ipsius Samuelis per Comit. declarat. fuit, fore bona, unde deteriorat. est, et damnum habet ad Valenc. 3,000l.

There is a verdict given for the Plaintiff, and damages found to the value of 800l. and Judgment thereupon, and a Writ of Error is brought to reverse that Judgment.

I have but a little time left me to say what I have to offer, it being very late; and yet I must desire leave to produce those reasons I have in

maintenance of my opinion: I will be careful not to detain you longer than will be necessary. And therefore, I will not trouble you with starting the case again, nor will I speak of any exceptions that have been made to the declaration, for I love not the niceties of the law, in cases where they do prevail: and in this case I have only considered the foundations of the action; which if I had found well established upon reason, or the grounds of the law, I would have examined what has been objected to the forms of the declaration, which must have brought great weight to have overturned those proceedings.

But as the point of the action, upon the most serious consideration I could have of it, and weighing what has been before now, and also at this time, said in support of it; I am of opinion, that the Judgment ought to be reversed; for that no such action as this, at bar, does lie by the common law.

Because this is a cause of considerable value, great damages being recovered; because it is a judgment of great authority, being upon a cause tried at the King's-Bench bar, and given upon deliberation there; because it is a case of an extraordinary nature, and of great import, each party pretending benefit to the parliament by it; because it is an action *prime impressionis*, that never was before adjudged, the report of which will be listened after: I have taken pains to collect and set down the reasons that I must go upon in determining this case; that as the judgment had the countenance of some deliberation in the court where it was given; so the reversal being with greater deliberation, may appear grounded upon reasons that ought to prevail.

I can say with my brother Windham, that I love rather to affirm Judgments, than to reverse them; but I can attribute nothing of authority to the judgment, though it were given in a superior court, and upon deliberation; I must judge of it as if the case came to be judged originally by me: the argument to support a judgment from the authority of itself, is, 'Exceptio ejusdem rei cujus petitur Dissolutio' which must not be admitted in cases of Writs of Error. We are entrusted to examine and correct the errors of that court, and for that purpose we are made superior to it; we must proceed according to our own knowledge and discretion, or else we do not perform the trust reposed in us.

I must needs say, this is a cause that imports it more than any cause I have known to come before us, for it is a cause *prime impressionis*; and the question is, Whether by this judgment a change of the common law be introduced? It is the principal use of Writs of Error, and appeals, to hinder the change of the law; therefore do Writs of Error in our law, and appeals in the civil law, carry judgments and decrees to be examined by superior courts until they come to the highest, who are entrusted that they will not change the law.

Therefore do Writs of Error lie from Ireland,

which is a subordinate kingdom, to England, by whose laws it is governed; that they might not be able to change the law by their judgments, and not so much for the particular right of the party.

For otherwise it would be very easy for judges, by construction and interpretation, to change even a written law; and it would be most easy for the judges of the common laws of England, which are not written, but depend upon usage, to make a change in them, especially if they may justify themselves by such a rule as my brother Atkins lays down to support this case, viz. that the common law complies with the genius of the nation. I admit that the laws are fitted to the genius of the nation; but when that genius changes, the parliament is only entrusted to judge of it, and by changing the law to make it suitable to it. But if the judges shall say it is common law, because it suits with the genius of the nation, they may take upon them to change the whole as well as any part of it, the consequence whereof may easily be seen; I wish we had not found it by sad experience.

If the case at the bar be a change of the law, it is happy that it comes to be questioned in the first instance; for if this cause had been any way agreed and quitted, and a second case of this nature had been questioned, there would have been a precedent urged, which cannot be spoke of here; for this case hath no fellow, there never having been the like judgment before.

The method I shall take in what I have to say, shall be,

1st, To remove some prejudice the case is under.

2dly, Give my reasons against the action.

3dly, Weigh what has been said to maintain the action.

1st, The case is under this prejudice, that an action of the case lies for false returns of sheriffs, and why should it not lie in this case as well as any other?—To remove this prejudice, I shall shew some material differences betwixt the nature of ordinary returns and this return. In ordinary returns the party is concluded, and absolutely without remedy; for the court must take the return as the sheriff makes it. In ordinary cases the sheriff may, and frequently does, take security of the plaintiff, or the sheriff hath means by law to be secure; as, if he doubts the property of the goods, he may return a *Fieri Facias*, 'Nullus venit ad mon' strandum bona.' In some cases he may, for his safety, impanel a jury, as upon an *Elegit*; or he may resort to the court, and pray reasonable time to prepare his return, if the matter be difficult; and hath other shelters, that if he be wary, will save him from danger.

But in this case the party is not concluded, for upon a petition to the parliament, if they see it just, they will cause the return to be altered by the clerk of the crown, if the sheriff be not in the way; in this case, the sheriff may not take security, it were criminal in him to

make such a return by compact, nor can the sheriff make a fruitless return or obtain delay to consult his safety.

These differences are of that nature, that they change the case in the reason of it, as I shall hereafter make appear: and no man can infer, because an action lies for false returns, in ordinary cases; therefore it lies in case of a return to parliament, where the sheriff is clearly upon terms.

My reasons against this action are applicable to this case, and make it different from all the cases, that have been put by my brothers that argued for the action: I observe they argued only upon generals, without any other application to this case than by the topic of concluding, *à minori ad majus*, because an action lies in cases of inferior nature, therefore it will lie in this; which rule holds not in diverse cases, where there are particular reasons to the contrary, as I shall by-and-by shew to be in this.

2dly, I shall give you my Reasons against this action, which are as follow:

(1.) My first Reason is this, because the sheriff as to the declaring the majority is Judge; and no action will lie against a judge, for what he does judicially, though it should be laid *factum malitiosè et scienter*; as appears in Co. 12 Rep. fol. 24. They who are intrusted to judge, ought to be free from vexation, that they may determine without fear; the law requires courage in a judge, and therefore provides security for the support of that courage. But:

1. Is the sheriff a judge in this case? And, 2. Is there the same reason he should be freed from all actions?—As to the first it is of necessity, that as to the declaring the majority, he should be judge upon the place: in other cases, in the county court, the freeholders are the judges, and he is the minister. When we say the freeholders, we mean the major part of them is to judge; but when the question is, Which is the major part? they cannot determine the question; but of necessity the sheriff must determine that, the nature of the thing speaks it.

Therefore it was held rightly in Letchmere's Case, 13 and 14 Car. 2. that as to the election of knights to the parliament, the court is properly the sheriff's court, and the writ is in the nature of a special commission, *Elegi facias*.

I know a judge may have many ministerial acts incumbent upon him, as the chief-justices have to certify records upon writs of error; therefore it is necessary for me to observe, that the suit here is for what he does as a judge, and not for any thing ministerial; which appears by the averment, that the sheriff annexed another indenture, specifying it to be made by the major part of the freeholders, and containing that the lord Huntingtoure was chosen, *ubi re vera* the lord Huntingtoure was not chosen by the major part of the freeholders. If it had been said *ubi re vera* the freeholders supposed to seal the same, never did seal the same, there had been a falsity in his ministerial part of sending in the indenture; but his sending his two

indentures, which were really sealed by the eeholders, as they import; wherein the freeholders of each indenture (and not the sheriff) is, that they are the major part, is no falsity in his ministerial part, but only deferring to the judge between them, which is the major part; more properly judging that they are both equal in number.

They object, that the matter of this question is not matter of judgment, it is but counting the poll, which requires arithmetic, but not judgment; but certainly if it be rightly considered, it will be thought this question of majority is not barely a question of fact, but a question of judgment, a question of difficult judgment, there are so many qualifications of electors.

1. They must have 40s. per annum, there be value must be judged.

2. It must be freehold; there the title.

3. It must be their own; there colourable and fraudulent gifts made many times on purpose to get voices, must be judged.

4. The electors must be resident; here the settlement of the party must be determined.

5. There are many things that incapacitate voices, as bribery, force, &c. and many other questions arise, that are of such difficulty in debate of them, much time is spent in parliament; and sometimes a Committee determines one way, and the House another. Is not this then a question that refers to judgment.

They object again, the sheriff may give an oath concerning all the qualifications, and he is to look no farther.

I answer, the statute has given the sheriff power to give an oath in assistance of him; but the statute does not say that whosoever takes that oath shall have a voice: neither does the statute 23 Hen. 6. say, that the sheriff shall not be charged with a false return, that pursues that way: so that although he may use those means for his direction, yet he must consider his own safety, and not make a false return. If a man, upon taking such an oath, give the sheriff a special answer, or if it should be known to the sheriff he swears false, the sheriff must determine according to his own judgment, and not by what is sworn.

It may hence be concluded, that the sheriff, as to declaring a majority, is a judge; and if so, my next assertion is, that there is the same reason he should be free from actions, as any judge in Westminster-hall, or any other judge. Does it not import the public, that the sheriff should deal uprightly and impartially? Ought he not to have courage, and for that end should not the law provide him security?

Consider his disadvantages, what a noise and croud accompany such elections; what importunity, nay, what violence there is upon him from the contending parties.

We may say, no other judge has more need of courage and resolution to manage himself, and determine uprightly, than he. No other judge determines in a case of greater consequence to the public, or difficulty, than he;

expose him to such actions, and in most elections he must have trouble; for commonly each party is confident of his strength, his conduct, and his friends; that let the sheriff return never so uprightly, the party that is rejected will revenge it by a suit, especially if he may sue at common law, to have boundless damages, without running any hazard himself, but of the loss of his costs.

If we judges, that find ourselves secure from actions, should not be tender of others that are in the same circumstances; it may well be said, 'Wo unto you, for you impose heavy burthens upon others, but will not bear the least of them yourselves.'

2. My second Reason is, because it is *alieni fori*, either to examine the right of the election, or behaviour of the sheriff; both which are incident, and indeed the only considerations that can guide in the trial of such causes, if they be allowed.

It is admitted, that the parliament is the only proper judicature to determine the right of election, and to censure the behaviour of the sheriff. How then can the common law try a cause, that cannot determine of those things, without which the cause cannot be tried?

No action upon the case will lie for breach of a trust, because the determination of the principal thing, the trust, does not belong to the common law, but to the court of Chancery: certainly the reason of the case at bar is stronger, as the parliament ought to have more reverence than the court of Chancery.

They object, that it may be tried after the parliament hath decided the election; for then that which the common law would not try is determined, and the parliament cannot give the party the costs he is put unto.

Then I perceive they would have the determination of the parliament binding to the sheriff in the action, which it cannot be; for that is between other parties to which the sheriff is not called: it is against the course of law, that any judgment, decree or proceeding betwixt other parties should bind the interest of, or any way conclude a third person; no more ought it to do here: it may be easy for parties combining to represent a case so to the parliament, that the right of election may appear either way as the parties please. Is it fit the sheriff, who is not admitted to controvert such determination, should be concluded by it, in an action brought against him, to make him pay the reckoning?

Did the parliament believe, when they determined this election, that they passed sentence against the sheriff, upon which he must pay 800*l*.? Sure if they had imagined so, they would, nay, in justice, they ought to have heard his defence, before they determined it.

And yet that was the measure of this case, the Sheriff was not heard in parliament, indeed he was not blamed there: and yet upon the Trial, which concerned him so deeply, he was not allowed to defend himself, by shewing any

majority or equality of voices, the parliament having determined the election.

I do not by these reflections tax the law of injustice, or the course of parliament of inconsequence; I am an admirer of the methods of both: it is from the excellency of them, I conclude this proceeding in this new-fangled action, being absurd, unjust and unreasonable, cannot be legal.

To answer the other branch of this objection, I say, it does not follow, that because the parliament cannot give costs, therefore this new-devised action must lie, to help the party to them.

For then such an action might as well lie in all cases, where there is a wrong to be remedied by course of law, and no costs are given for it.

At the common law no costs were given in any case, and many cases remain at this day, where the statutes have given no costs: as in a prohibition, *scire facias*, and *quare impedit*, and divers other cases; and yet no action will lie to recover those costs, and why should it lie in the case at bar?

In this case the parliament have already had it under their consideration in the statute 23 Hen. 6, and have appointed what shall be paid by the Sheriff that offends, viz. 100*l.* to the party, 100*l.* to the king, and imprisonment; the parliament have stated what shall be paid for compensation, and what for punishment, and would have provided for costs, if they had thought fit.

3. My third Reason is, because a double return is a lawful means for the Sheriff to perform his duty in doubtful cases. If this be so, then all aggravations of *fales*, *malitiosè et scienter*, will not make the thing actionable; for whatever a man may do for his safety, cannot be the ground of an action.

There is sometimes *Damnum absque injuria*, though the thing be done on purpose to bring a loss upon another, without any design of benefit to himself; as if a new house be erected contiguous to my ground, I may build any thing on purpose to blind the lights of that new house, and no action will accrue, though the malice were never so great; much less will it lie, when a man acts for his own safety.

If a Jury will find a special verdict; if a judge will advise and take time to consider; if a bishop will delay a patron, and impanel a jury to enquire of the right of patronage; you cannot bring an action for these delays, though you suppose it to be done maliciously, and on purpose to put you to charges; though you suppose it to be done *scienter*, knowing the law to be clear: for they take but the liberty the law has provided for their safety, and there can be no demonstration that they have not real doubts, for these are within their own breasts; it would be very mischievous, that a man might not have leave to doubt without so great peril.

The course of parliament makes out the ground of this reason to be true in fact, so that a double return is lawful when the Sheriff

doubts; for if the parliament did not allow a double return in doubtful cases, they ought never to accept a double return: If it were itself a void and unlawful return, they ought not to endure it a moment, but send for the Sheriff, and compel him forthwith to make a single return. But we see where there is doubt, the parliament sends not for the Sheriff before they have examined the case, and given particular directions.

And it must of necessity be the course: for suppose the voices are equal: suppose the election is void for force; suppose the Sheriff doubts upon the validity of some voices, shall he transmit his doubts especially to parliament? Was there ever any such thing done? Was there ever any other way but to make a double return, and leave it fairly to the decision of parliament?

It was said by my brother Ellis, that if the Sheriff had returned, in the nature of a special verdict, the special matter, and had concluded in this manner, viz. if the parliament shall adjudge sir Samuel Barnardiston to be chosen, then he returns him; and if the parliament shall adjudge the lord Huntingtower to be chosen, then he returns him; that such a return as this had been safe, and could not have borne an action.

This is a pretty invention, found out for argument sake, but methinks it furnishes no force at all to the part for which it is brought, but rather shews the right to be the other way: for let any man of reason say, whether a double return, as it is now used, be not the same thing in consequence? Is not a double return, as if the Sheriff should say to the parliament, "The right of election is between these two, I am in doubt which of them I shall reject, and expect your directions." This is the import of a double return, and is the same in effect, as if it had concluded like a special verdict; and so my brother Ellis's instance should not be actionable, though he concluded otherwise.

That other new-fangled way could not be received.—For,

1. The freeholders would never join in such a return.

2. Such a return is not capable of being amended by the Sheriff.

But the judgment of the parliament must be entered upon record, to make it any return; it concluding nothing of itself, as a special verdict concludes nothing, till the judgment of the Court be entered upon the roll with it.

3. The parliament will not, as I believe, admit of new devices in the course of their proceedings, whatever we do at law.

But the double return is practicable in the county, for the freeholders of each part will tender their indentures; and it is easily amended in parliament, by rejecting the indenture of those freeholders that were not the major part, which way has been practised in doubtful cases for many years. So that I apprehend the case

at bar to be more regular and favourable, than that case, which my brother Ellis put as a case that would bear an action.

Again, suppose the sheriff had informed the parliament of his doubts, and that he could not readily determine where the majority was, but it was betwixt two persons, A. and B. and thereupon desired their favour, either to grant him time to determine it, if they pleased to command him so to do, or else, that they would decide it themselves, and he would obey what directions they should make in it; and thereupon the parliament had taken upon themselves to determine it.

This most clearly had not been actionable, for it is not actionable to delay a return to any court of justice, where the sheriff had leave from the court so to do. A double return, in my understanding, speaks the same thing to the parliament; and upon it they may either direct the sheriff to make a single return, which is to cause him to decide it, or they may do it themselves.

And here, I must needs reflect upon the second reason I gave against this action, that the matter of it is *alieni fori*; I find myself and my brothers that argued for the action, engaged in a discourse of the nature of a double return, and the course of parliament upon it, which, as a judge, I cannot so well speak to. I had the honour to be of this House of Commons, and whilst I was there, I considered as well as I could the course of the proceedings of the House, and am therefore able to speak something of them, and I am brought into this discourse necessarily by this action; but I must needs say, it is an improper discourse for judges, for they know not what is the course of parliament, nor the privilege of parliament. When the lords in parliament, whom they are bound to assist with their advice, ask the judges any thing, concerning the course or privilege of parliament, they have answered, that they know them not, nor can advise concerning them.

If in parliament we do not know, nor can advise concerning these things; how can we judge upon them out of parliament? We ought to know before we judge, and therefore we cannot judge of things we cannot know.

Our being engaged in a discourse improper for judges, shows the action to be improper, as much as any other argument that can be made; and this argument arises from my brothers that argued for the action.

But now I am in this discourse, I must go a little farther; my observation from the course of parliament has been, that they will not permit the sheriff to delay his return, to deliberate, and he cannot take security of either party; and if a single return be not justified by the Committee of Elections, he is in danger of the statute of 23 Hen. 6.

It follows, that there is no way for an innocent sheriff to be safe, where he conceives doubt, but in making a double return; and if that should be actionable too, the service of the parliament would be the most ungrateful service in the world.

It seems ridiculous to me, that it should be objected, that this course of law is necessary to prevent the great mischief arising from double returns; whereas, if it be a mischief, or disliked by the parliament, either in general or any particular case; they may reject them when they please, and command the sheriff to make a single return; so that they may remedy it by their practice, without their legislative power.

Their practice hitherto has been to receive double returns, which therefore in some cases must be lawful, and in this very case the double return was accepted, and the sheriff no way punished for it; which he ought to have been, if he had been blameable.

If double returns are accepted by parliament, they are allowed, and we must say they are lawful, which is the ground of my third reason; for which I hold this action not maintainable.

4. My fourth Reason is, That there is no legal damages occasioned by the sheriff. The damages laid in the declaration are,

1. Being kept from sitting in the House.

2. The pains and charges he was put unto, to get his admittance into the House.

1. That of his being kept from sitting in the House, is as much every man's damage in the whole county, nay, in the whole kingdom; and any man else might as well have an action for it, as the member chosen.

To sit in parliament is a service in the member, for the benefit of the king and kingdom; and not for the particular profit of the member.

It is a rule in law, that no particular man may bring an action for a nuisance to the king's highway; because all the men in England might as well have actions, which would be infinite; and therefore such an offence is punishable only by indictment, except there be special loss occasioned by that nuisance.

For the same reason, the exclusion of a member from the House, being as much damage to all men in England, as to himself, he, nor any man else in England, can have an action for it; but it is punishable upon the public score, and not otherwise.

For this reason was the statute 23 Hen. 6, wisely considered: by that statute the action is not given to the party for his particular damage; but the action given is a popular action, only the party grieved hath a preference for six months: but if he do not sue in that time, every man else is at liberty to recover the same sum.

2. The other point of damage, is the pains and charges he was put unto, and that is not occasioned by the sheriff, but by the deliberation of the House. Why should the sheriff pay for that? It may be, if the parliament had sent for the sheriff the first day, and blamed the double return, he would have ventured to determine the matter speedily, and there should have been no cause of complaint for delay; but the parliament saw so much cause of doubt, that they think it not fit to put the sheriff to determine, but to resolve to examine the matter, and give him directions that may guide him in

mending his return; thereupon they give a day to the parties on both sides, and finding the matter of long examination, and withal difficult, they deliberate upon it.

It seems very unreasonable the sheriff should be made pay for this, which he did not occasion; but was a course taken by the parliament for their own satisfaction, who found no fault in the sheriff for putting them to all that trouble.

Suppose sir Samuel Barnardiston had been returned alone, and the lord Huntingtowre had petitioned against that return, there had been the same charge to have defended that return; so that it was the contest of the opposite party that occasioned the charge, the deliberation of the parliament that occasioned the delay; but neither of them can be imputed to the sheriff.

I cannot differ this case, from the case of bringing an action against a jury, for maliciously, knowingly, and on purpose, to put the party to charges, finding a matter specially, whereby great delay and great expences were, before the party could obtain judgment; and yet I think no man will affirm that an action will lie in that case.

In this case the damages are found entire, so that if both parts, viz. the not sitting in the house, and the pains and charges are not actionable causes of damages; it will be intended the jury gave for both, and so the judgment is for that cause erroneous.

I suppose the wages of parliament will not be mentioned for damages, for in most places they are only imaginary, being not demanded; but if there were to be any consideration of them, it will not alter this case; for upon this return they are due as from the first day, and so no damage can be pretended upon that score.

5. My fifth Reason is drawn from the statute of 23 Hen. 6. which has been so often mentioned; that statute is a great evidence to me, that no action lay by the common law against a sheriff, for a false return of a writ of election to the parliament; and this evidence is much strengthened by the observation that hath been made, that never any action was brought otherwise than upon that statute.

I must admit, that if an action lay by the Common Law, this statute hath not taken it away, for there are no negative words in the statute; but it is not likely that the parliament would have made that law, if there had been any remedy for the party before.

The statute observes, that some laws had been made before, for preventing false returns, but there was not convenient remedy provided for the party grieved; and therefore gives him an action for 100*l*. If the Courts of Justice had, by the Common Law, jurisdiction to examine misdemeanors concerning the returns of sheriffs to the parliament; what needed the parliament to be so elaborate, to provide law after law, to give them power therein, and at last to give the party grieved an action? Can any man imagine but that the parliament took the law to be, that the party was without re-

medy? I know preambles of acts of parliament are not always Gospel; but it becomes us, I am sure, to have respect to them, and not to impute any falsity or failing to them, especially where constant usage speaks for them.

It has been objected, that in those times, it was reckoned a damage to be returned to serve in parliament, which is the reason that no man then did bring his action against the sheriff for returning another in his stead. This cannot be true, for the statute calls him the party grieved, and is careful in providing convenient remedy for him; and we see by the many statutes about those times, that it was a mischief very frequent, and there wanted no occasion for those actions; which does extremely strengthen the argument of the non-user of this pretended Common Law.

An action upon the case; where it may be brought, is a plaster that fits itself for all times and all sores; and if such an action might then have been brought, there was no need for the parliament to provide a convenient remedy.

By Littleton's rule, often mentioned by my brothers, we may conclude this action will not lie; for if such an action had lain, it would have been brought before this time.

In the Case of Bulkley against Rice Thomas in Plowden's Commentaries, 118, which appears to be so elaborately argued both at bar and bench; if this common law had been thought upon, they might have prevented the question, whether the sheriffs of Wales were bound by the statute 23 Hen. 6.

It seems plain to me, that the makers of the said statute were ignorant of this Common Law; and yet my brother Thurland observes, the judges, in those times, usually assisted in the penning of the laws.

The judges and counsel in the time of Bulkley's case were ignorant of this Common Law, else it would have been mentioned in the argument of that case.

This Common law was never revealed, that I find, until a time that there were divers other new lights: I mean those times, when Nevil brought an action for a false return against Stroud during the late troubles; but in those times, it could never obtain judgment, I have heard that the court of Common Pleas sent the record to the parliament, as a case too difficult for the Courts of Common Law to determine.

The statute of 23 Hen. 6. is not only evidence, that no such action lay at the common law; but, in my opinion, is not consistent with any remedy at the common law, unless it be allowed that the party should be doubly punished.

If the party grieved has brought his action upon the statute, and recovered, it was admitted by the counsel, that no action can be brought at the common law; nor *à contra*, can he recover by the statute, after he has recovered by the Common Law, because 'nemo bis punitur pro eodem delicto.'

So far it stands well; but suppose the party

grieved has let slip his time of three months and then a third person brings a popular action and recovers 100*l.* upon the statute; there is nothing can bar the party grieved from his action at Common Law, for his sitting still will not conclude him; no statute of limitations extending to this case. And if it be so, then must the party, besides his fine and imprisonment, be doubly punished by this statute; which was made, as the letter of it imports, because there wanted convenient remedy.

And now I am discoursing of this statute, I must observe the great wisdom of the course of parliament in these cases, which hath in great measure prevented the bringing actions against sheriffs, even upon this statute.

Where the sheriff mistakes the person in his return, he incurs the penalty of 23 Hen. 6. though it be without malice: and it may happen that any where there are 21 electors of one side, and 20 of the other, the sheriff returns him that hath 21, and the parliament adjudging an incapacity in two of the 21, may determine he that had the 20 voices was duly chosen. In such case the sheriff had made a false return, within the penalty of the statute 23 Hen. 6. and no evidence shall be given against the determination of the parliament.

This was a very hard case for the sheriff; and if we were liable to such a mischief, many a past sheriff might be awakened, that takes himself to be secure.

But the course of parliament prevents this, as it is reason; for immediately upon their determinations, they send for the sheriff, and cause him to amend his return; and thenceforward the amended return is the sheriff's return; and there is no record that can warrant any action to be brought for a false return: as when the Marshal of the King's-Bench or Warden of the Fleet have made an improvident return, omitting some causes wherewith the prisoner stood charged in their custody, whereby they came liable to action, they frequently move the court to amend the return; and when the return is amended, all is set right, for there is no averring against a record: in like manner, when the sheriff hath amended his return, he is secure from any action upon that occasion.

By this means, there has of late years been no recovery upon the statute, because all persons chuse rather to compel the sheriff to amend his return, that they might be admitted to sit in the House, than to take their remedy upon the statute; and no man can recover upon the statute first, and have afterwards their return amended: for I have been told, that by the course of parliament, unless the petition be lodged within some few days after the return, it cannot be received afterwards. So that a man cannot upon that statute have remedy at law, and also in parliament: which seems to be wisely provided, to prevent any contrariety of determinations.

This statute of 23 H. 6. furnished those that argued for this action, with one argument,

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which doth now vanish: They said that all the inconveniences that could be objected to this action, were the same upon the statute of 23 H. 6. viz. That upon that statute, the right of election must be examined upon a trial, where there might be a contrariety of determinations; for it appears by what I have said, that there can be no contrariety of determinations.

And there are other inconveniences in this remedy by the common law, which are not in the remedy given by the statute; for by the statute the sum to be recovered is limited; the informer hath a time prefixed, so that there are bounds set which cannot be exceeded; but the remedy by the Common Law is without limitation of time, which is considerable; for all sheriffs that ever made any return otherwise than the parliament determined, will be liable, during their whole lives, to them that will call them to account for it. I say, this is without limitation of time, without measure of damages, or any rules contained in a written law: It depends upon a general notion of remedy, which may be enlarged by construction, as it is now introduced without precedent.

To finish my observation upon this statute, I say it is great wisdom in the parliament to call the sheriff to amend the return, and so prevent any remedy against him upon the statute 23 H. 6. for I do not see that the rules of law concerning elections, are so manifestly clear and known, that it is fit that the sheriff should, upon all returns that are corrected by the parliament, pay the reckoning of the contest.

6. I have a sixth reason against this action; which is, because the sheriff is not admitted to take security to save him harmless in such cases: I take this reason to be *instar omnium*, and there needs no other in the case.

It were the most unreasonable and grievous thing in the world, that the sheriffs should be bound to act without any deliberation, and not to be allowed to take any security; and yet be liable to an action, which way soever he takes: there is no course can avoid it but this of a double return, as I have before shewn.

It has not been said, by any that argued the other way, that the sheriff may take security: and, I suppose, will not be said; for it would be a dangerous course for parliaments, for then the most litigious man must be returned, and not he who is truly chosen.

If the sheriff may not take security, the law must be his security. It was an argument used by my brother Ellis, that because the law imposes an officer, to wit, the sheriff, therefore the law must give the party an action against that officer, if he misdeemean himself: the argument does not hold universally, for the law imposes a judge, and yet no action lies against him: But the reason of that argument, if turned the other way, is irrefragable; as thus, the law will not suffer the sheriff to take a security, therefore the law must be his security, else it were a most unreasonable law. This reason of itself is sufficient to bear the whole case; for no case can be put in our law, nay,

no case can be in any reasonable law, where a man is compelled to judge without deliberation, and cannot take security, and yet shall be liable to an action.

I have two more reasons to add, upon which I lay great weight, though they depend not upon any particular circumstances of this case, but the general consideration of it.

1. That it is a new invention.
2. That it relates to the parliament.

1. As it is a new invention, it ought to be examined very strictly, and have no allowance of favour at the end; and it will have the same fortune that many other novelties, heretofore attempted in our law, have had.

Actions upon the case have sometimes been received in new cases, where it stands with the rules of law, and no inconvenience appears; but they have been more often rejected. I shall instance some cases that have been rejected, because it will be manifested by them, that all the arguments and positions laid down by my brothers that would support the action, are as well applicable to several cases that have been already rejected, as to the case at bar.

An action upon the case was brought against a grand-jury-man, for falsely and maliciously conspiring to indict another, and adjudged it would not lie. Against a witness for testifying falsely and maliciously; and an action was brought against a judge, for acting falsely and maliciously; but adjudged that no action would lie in those cases.

These three instances are applicable to every argument urged for this action. The arguments my brothers made in depressing falsity and malice, those which they made from the comparison of other actions upon the case *a minori ad majus*; the argument, that because the law imposes the officer, it will punish the malice, has the same force in the case of a judge, juror, or witness: and yet my brothers admit in those cases, an action will not lie, which shews the invalidity of those arguments.

Now I shall give other instances where actions upon the case have been rejected for novelty and reasons of inconvenience.

An action of the case was brought against the Lord of a Manor for not admitting a copyholder, and it was adjudged it would not lie. Cro. Jac. 368.

There was a verdict found, and damages given by the jury in that case: the Lord is compellable in chancery to admit a copyholder; and what harm would it have been if there might have been a remedy given by the common law, there being a custom broken by which the Lord was bound? The reasons of the books are, because it was a novelty, and it would be vexatious, if every copyholder should have an action against the Lord, when he refused to admit him upon his own terms.

It has been adjudged, that an action upon the case will not lie for the breach of a trust, because the common law cannot try what a trust is; but if such actions were allowed, the law

might declare that to be a trust, which the court of chancery, that properly judges of trusts, might say is none; and where the common law cannot examine the principal matter, the damages that were but dependant upon it shall not be regarded.

Anthony Maddison brought an action against Skipwith, for maliciously killing sir Tho. Wortley: the case was thus; The plaintiff was a young lawyer that had expended all his gains in the purchase of a rent that was determinable upon the death of sir Tho. Wortley: Skipwith quarrelled with sir Thomas Wortley in the streets, about a mistress, and killed him, whereby Maddison lost his rent. It was held the action would not lie, though it were laid to be done maliciously, on purpose to determine the plaintiff's rent.

I observed in that case, that although Mr. Maddison knew very well that there was a mistress in the case, and that the rent was not aimed at, yet he would fain try his fortune in the suit: thinking that a jury, perhaps, out of compassion to him, or to discourage the like facts, might make the manslayer pay him for his loss: but the judges would not suffer it to go on, it being a mere device and a new, fangled action.

It hath been held, that an action will not lie against a parson for suing for tithes in-kind, knowing that there was a *modus*, because it might then be perilous for any parson to insist upon his right.

It was held by the court of common-pleas, that no action will lie for suing an attorney, knowingly, in any other court against his privilege; for his means to enjoy his privilege, is to claim it by writ of privilege; and he is not bound to claim his privilege, nor can his adversary know he will claim it.

An action was lately brought in the King's-bench, (as I have heard) for delaying a post-letter maliciously, whereby the plaintiff wanted intelligence that might have been of great advantage to him. The court discountenanced the action, so that it proceeded no further. It was then said (as I heard) to this effect; That if such precedents were admitted, there could hardly be any dealing or correspondence, but might be matter for actions at law; and although the case depended upon proof of particular malice, and the defendant will be acquitted if his case be not odious; yet we must consider that there is both charge and vexation of mind that attends the defence of a just cause, and we must not subject men for all their actions to such trouble and hazard.

These instances shew, that although an action upon the case be esteemed a catholicum, yet when actions have been applied to new cases, they have always been strictly examined, and upon considerations of justice or inconvenience they have been many times rejected.

For though the law advances remedies, as my brothers observed, yet it is with consideration that vexation be not more advanced than remedy.

It is my opinion, that no new device ever was, or can be introduced into the law, but absurdities and difficulties arise upon it, which were not foreseen: which makes me very jealous of admitting novelties. But,

2. In matters relating to the parliament, which is my second ground, there is no need of introducing novelties; for the parliament can provide new laws to answer any mischiefs that arise, and it ought to be left to them to do it.

Especially in a case of this nature, concerning elections, which the parliament have already taken care of, and prescribed remedies by the several statutes that have been made concerning them; I say, in such a case, there is little need to strain the law.

The Judges in all times have been very tender of meddling with matters relating to parliament. I do not find that ever they tried elections, but where statutes give them express power; or that they ever examined the behaviour of a sheriff, or any officer of the parliament, in relation to any service performed to the parliament, but upon those statutes; And in *Brouncker's case*, Dyer 168, the statute was their rule in the Star-Chamber, and they inflicted the same punishment that is appointed by that statute.

If we shall allow general remedies (as an action upon the case is) to be applied to cases relating to the parliament, we shall at last invade privilege of parliament, and that great privilege of judging of their own privileges.

Suppose an action should be brought in time of prorogation, against a member of parliament, for that he falsely and maliciously did exhibit a complaint of breach of privilege to the parliament, whereby the party was sent for in custody, and lost his liberty, and was put to great charges to acquit himself, and was acquitted by the parliament.

If upon such a case the jury should find the defendant guilty, why should not that action be maintained as well as this at bar; It may be said for that action, that the judgment of the parliament is followed, and the privilege is not tried at law, but determined, 1. In the House; 2. It may be said, the party has no other way to recover his charges.

It would be dangerous to admit such an action, for then there would be peril in claiming privilege; for if the party complained of, had the fortune to be acquitted by the House, the member that made the complaint would be at the mercy of the jury, as to the point of malice and quantity of damages. Such a precedent, I suppose, would not please the parliament; and yet it may with more justice be the second case, than this at the bar the first.

Actions may be brought for giving parliament-protections wrongfully, actions may be brought against the clerk of the parliament, serjeant at arms, and Spenker, for aught I know, for executing their offices amiss, with averments of malice and damage: and then must judges and juries determine what they

ought to do by their officers. This is in effect prescribing rules to the parliament for them to act by.

It cannot be seen whither we shall be drawn, if we meddle with matters of parliament in actions at law. Therefore, in my judgment, the only safety is in those bounds that are warranted by acts of parliament or constant practice.

Suppose this action had been brought before the election had been decided in the house, and the jury had found one way, and the parliament had determined contrary; how inconsistent had this been?

But it was said in the King's-Bench that the court would not try it, before parliament had determined the election, and then that cannot be contested, but the judgment of the parliament must be followed: And my brother Ellis but now said, "Surely no man will be so indiscreet as to bring such an action before the parliament hath determined it; and the Court will not try it, before such time as the election be determined contrary; how inconsistent had this been?"

But it was said in the King's-bench that the Court would not try it, before the parliament had determined the election, and then that cannot be contested, but the judgment of the parliament hath determined it; and the Court will not try it, before such time as the election be determined in a proper way.

In my opinion this was not rightly considered, for how can the Court stay any suit, to expect the determination of the parliament? And what reason or justice is there, that the sheriff, who is no party called to answer in the parliament, should be concluded in any thing by a judgment between other parties, to defend himself from a demand of damages in a court of law, where witnesses are examined upon oath, which they cannot be in the Commons-House?

There is no reason the suit of law should stay till the House have determined the election, if the determination of the House be not conclusive in that suit.

And for the discretion of the parties that are like to bring such actions, I cannot depend upon it: for I see in this age, some men will insist upon their private rights to the hindrance of public affairs of higher consequence than any that can come before the Courts in Westminster-hall.

It may be, there will not want men that will press us to judge in such cases; and not only before the parliament have determined, but against what the parliament have determined; and will tell us, that the sheriff was no party, that witnesses were not there examined upon oath, and produce arguments from antiquity which we shall be very loath to judge of.

I can see no other way to avoid consequences derogatory to the honour of the parliament, but to reject the action; and all others that shall relate either to the proceedings or privilege of parliament, as our predecessors have done.

For if we should admit general remedies in matters relating to the parliament, we must set bounds how far they shall go, which is a dangerous province: for if we err, privilege of parliament will be invaded, which we ought not any way to endamage.

This I speak of general remedies: Now I will consider this particular case, which, in my opinion, would bring great danger and dishonour to the parliament.

It is dishonourable to the parliament that there should be no protection in their service; I have shewn that the sheriff can be safe in no case, if he shall be sued in such a case as this: And can there be a greater reproach, than that there is no safety in their service? Nobody can serve them cheerfully and willingly at that rate.

It has been objected that the sheriff is not their officer, but is the officer of the Court of Chancery, which sends forth the writs, and receives the returns. The argument is plausible, but will not pass in the parliament; for they say the court of chancery is the repository for their writs, but will not allow them to issue without warrant from the house: They will not suffer the court of Chancery to meddle with the returns of the sheriff. The parliament sends immediate order to the sheriff; if the return be too slow, they direct the sheriff to amend his return, and they punish the sheriff where they find him faulty; so that it appears they exercise an immediate jurisdiction over the sheriff. And I suppose they would judge it very false doctrine to say, that the court of Chancery, or us, can any way meddle with the returns or the officer.

Admitting the sheriff to act in returns as the officer of the parliament, it concerns them that he should be liable to no other punishment but what they inflict, otherwise they cannot expect to be obeyed.

To have others judge when their servants do well, will be to have others give rules to their servants and service, which they will think inconvenient.

Let it be considered how hard a task sheriffs have in the elections of knights to the parliament: The appearance commonly is very numerous, the parties contesting very violent, the proceeding tumultuous, the polling sometimes is at several places at once: so that the sheriff can hardly be a witness of the action; and if the dispute be in the House of Commons, he is no party to it. If after all this, the sheriff, who cannot indemnify himself by security, still be liable to an action, the service of the parliament may be reckoned a miserable slavery; which is not for their honour.

As this is dishonourable, so it is dangerous to parliaments; it concerns the kingdom that returns to the parliament should be upright and impartial, and that they may be so, the sheriff should be secure from all fears.

Judges are not liable to actions, that they may proceed uprightly and impartially; if they were subject to suits for their judgments, there is that earnestness and confidence on both

sides, that one side would be dissatisfied and trouble them, and they could not discharge their duty without apprehensions of disquiet.

If the sheriff be exposed to actions thus, let us consider what and whom he is to fear: He may fear the suit of the party, and he may fear the suit of the king. And it follows necessarily, that if an action lies, an information for the king will also lie for the misdemeanor in his office: If it be not a case privileged by the complexion of it, as parliamentary, from being examined in Westminster-hall, but that he may be punished at the suit of the party, he may certainly as well be punished at the suit of the king: If so, Where is the sheriff's security? Will his own innocence secure him? That must be tried by a jury of the county where the parliament sits: who are, it may be, strangers to him as well as to the matter; or by a jury of the county where the election was, where, it may be, they will be of an opposite party; the plaintiff may wait his opportunity, and question him twenty years after: And if he be condemned, his punishment is unlimited, a fine may be set to any height for the king, and damages may be given to any value for the party. Where is his security upon such proceedings? Will he not be more afraid of such punishment out of parliament, than of any punishment in parliament? Will not, nay, may not his terror make him desire to please them that can punish him out of parliament, rather than to do right? Will not that be dangerous to the constitution of parliaments?

As the punishment out of parliament may be a terror to those who mean well, so colourable punishments may be as mischievous on the other side; for they may prevent any punishment in parliament, for *nemo bis puniatur pro eodem delicto*; they may serve for protection of men that do ill. When it is seriously weighed, of what consequence this may be, the case at bar will not be thought a case fit to be received by the judges without the countenance of a new law.

The object, here is malice found by the verdict, and that there can be no danger or inconvenience that malice should be punished.

This objection fortifies my opinion; for malice, upon which they would have the scales turn in this case, is not a thing demonstrative, but interpretative, and lies in opinion; so that it may give an handle to any man to punish another by.

The instance of this very case shews, that a good man may reasonably be afraid of the event of his defence in such a case.

For although the matter was of great examination in parliament, and at last decided but by few voices, and no observation of the sheriff's miscarriage there; though it appeared upon the trial (which I may say, being present there,) that the sheriff was guided by the advice of his friends, of counsel, and of parliament men, that told him the only safe course was to make a double return; yet the jury condemned him to pay 800*l.* against the ex-

pectation of the court: for the judges that were present at the trial did all declare publicly, that they would not have given that verdict.

The judges heard all the evidence the jury could go upon; for being of a remote county to the place of election, the jury could know nothing of their own knowledge, and yet the judges concurred not with the jury in their opinion.

I know we are not to examine the truth of the verdict, we must take it for gospel; neither doth any partiality in this particular lead me in judgment: but I shew it as an instance that malice is not demonstrative; men's minds may be mistaken, and innocent men may therefore have reason to be afraid, especially in ill times, and may use such means for their safety as may not be convenient for parliaments.

But there can be no danger or inconvenience in the censure of the parliament, that represents the whole kingdom, who hitherto have alone exercised this power, and who may at any time reform the law, if the present practice be any way inconvenient.

Upon these reasons which I have produced, I ground my opinion: now it will be necessary to weigh what hath been said in opposition to it.

The arguments urged on the other side, related either to the ingredients or circumstances of this action, or to the foundation or substance of it.

I call the ingredients and circumstances of the action, that it is laid with these words, *falso, malitiose, deceptive, et scienter*: and that there is a verdict in this case, and damages are found.

The words *falso, malitiose, et deceptive*, will sometimes make a thing actionable, which is not so in itself, without malice proved, though there be the same damage to the party.

As where a man causes another to be falsely indicted, yet if it be not *malitiose*, no action lies; though there be the same trouble, charge and damage in one case as the other.

But it is only where a man is a voluntary agent; for if a man be compellable to act, you cannot molest him upon any averment of malice: as if a grand-jury-man causes another to be indicted, though you aver malice, you cannot have an action against him; so for a witness that doth testify, or a judge that judgeth.

In the case at bar, the sheriff is compellable to act, and not barely as a minister to send the indenture, but as a judge to say which is the major part of the due electors; and if he mistakes, there is no reason it should subject him to an action upon an artificial averment of malice.

I remember in *Shepherd and Wakeman's* case in the King's Bench, Mr. justice Wyndham said well, that the words *falso et malitiose* were grown words of course, and put into every action: so that to his knowledge juries many times had no regard to them, that he looked upon them as words of form.

If we should make the words *falso et malitiose* support an action without a fit subject matter, all the actions of mankind would be liable to suit and vexation: they that have the cooking (as we call it) of declarations in actions of the case, if they be skilful in their art, will be sure to put in the words *falso et malitiose*, let the case be what it will; they are here pepper and vinegar in a cook's hand, that help to make sauce for any meat, but will not make a dish of themselves.

Falso et malitiose will not enable an action against a judge.

Nor against an indictor or witness, nor where words are not actionable, though the plaintiff hath a verdict and damages found; nor for a breach of trust, which is *alieni fori*.

The reason of every one of these cases holds in the case at bar: therefore it ought to have the same resolution.

As to the word *scienter*, it hath weight sometimes; and if an action be brought for keeping a dog that worried another's sheep, *sciens carem ad mordend' oves esse consuetud.* or for detaining the servant or wife of another, *scienter*: in these cases, if the defendant hath been told that the dog did worry sheep, or that it was the servant or wife of another, though it may be he did not believe it, yet it was *scienter*; for the word implies no more than having notice: and in those actions he must inform himself at his peril, and may, if he doubts, avoid danger by putting away those things which give offence. But in this case he could receive information by none, and is not to believe or misbelieve any body, but is bound to judge of the thing himself, and to act according to his judgment; so that no proof could be made of the *scienter*, for one side tells him the election was one way, and the other side tells him it is the other way; but he being present to the whole action, must follow the dictates of his own judgment. Hence it appears, *scienter*, in this case, is an empty word not referring to notice of a fact, but a matter of judgment, which cannot any way be proved.

It has been often urged, that this case is stronger by being after a verdict and damages found by the jury; and it has been said, that perhaps upon a demurrer, it might have been found more doubtful.

The case is the same to me upon a verdict, that it would have been upon a general demurrer, and no stronger; for a demurrer is the confession of the party, of all that can be proved, or can possibly be found upon that declaration.

It is my lord Coke's advice in *Cromwel's* case, 4th part, 14. a. never to demur to a declaration, if there be any hopes of the matter of fact; for the matter in law will as well serve after a verdict as upon a demurrer.

It had been a very odious case, if the sheriff should have admitted all this fact to be true by a demurrer.

The finding the plaintiff's damages adds no strength to the case; for we see every day

which is a subordinate kingdom, to England, by whose laws it is governed; that they might not be able to change the law by their judgments, and not so much for the particular right of the party.

For otherwise it would be very easy for judges, by construction and interpretation, to change even a written law; and it would be most easy for the judges of the common laws of England, which are not written, but depend upon usage, to make a change in them, especially if they may justify themselves by such a rule as my brother Atkins lays down to support this case, viz. that the common law complies with the genius of the nation. I admit that the laws are fitted to the genius of the nation; but when that genius changes, the parliament is only entrusted to judge of it; and by changing the law to make it suitable to it. But if the judges shall say it is common law, because it suits with the genius of the nation, they may take upon them to change the whole as well as any part of it, the consequence whereof may easily be seen; I wish we had not found it by sad experience.

If the case at the bar be a change of the law, it is happy that it comes to be questioned in the first instance; for if this cause had been any way agreed and quitted, and a second case of this nature had been questioned, there would have been a precedent urged, which cannot be spoke of here; for this case hath no fellow, there never having been the like judgment before.

The method I shall take in what I have to say, shall be,

1st, To remove some prejudice the case is under.

2dly, Give my reasons against the action.

3dly, Weigh what has been said to maintain the action.

1st, The case is under this prejudice, that an action of the case lies for false returns of sheriffs, and why should it not lie in this case as well as any other?—To remove this prejudice, I shall shew some material differences betwixt the nature of ordinary returns and this return. In ordinary returns the party is concluded, and absolutely without remedy; for the court must take the return as the sheriff makes it. In ordinary cases the sheriff may, and frequently does, take security of the plaintiff, or the sheriff hath means by law to be secure; as, if he doubts the property of the goods, he may return a *Fieri Facias*, 'Nullus venit ad mon-
'strandum bona.' In some cases he may, for his safety, impanel a jury, as upon an *Elegit*; or he may resort to the court, and pray reasonable time to prepare his return, if the matter be difficult; and hath other shelters, that if he be wary, will save him from danger.

But in this case the party is not concluded, for upon a petition to the parliament, if they see it just, they will cause the return to be altered by the clerk of the crown, if the sheriff be not in the way; in this case, the sheriff may not take security, it were criminal in him to

make such a return by compact, nor can the sheriff make a fruitless return or obtain delay to consult his safety.

These differences are of that nature, that they change the case in the reason of it, as I shall hereafter make appear: and no man can infer, because an action lies for false returns, in ordinary cases; therefore it lies in case of a return to parliament, where the sheriff is clearly upon terms.

My reasons against this action are applicable to this case, and make it different from all the cases, that have been put by my brothers that argued for the action: I observe they argued only upon generals, without any other application to this case than by the topic of concluding, *a minori ad majus*, because an action lies in cases of inferior nature, therefore it will lie in this; which rule holds not in diverse cases, where there are particular reasons to the contrary, as I shall by-and-by shew to be in this.

2dly, I shall give you my Reasons against this action, which are as follow:

(1.) My first Reason is this, because the sheriff as to the declaring the majority is Judge; and no action will lie against a judge, for what he does judicially, though it should be laid *facto malitiosè et scienter*; as appears in Co. 13 Rep. fol. 24. They who are intrusted to judge, ought to be free from vexation, that they may determine without fear; the law requires courage in a judge, and therefore provides security for the support of that courage. But,

1. Is the sheriff a judge in this case? And, 2. Is there the same reason he should be freed from all actions?—As to the first it is of necessity, that as to the declaring the majority, he should be judge upon the place: in other cases, in the county court, the freeholders are the judges, and he is the minister. When we say the freeholders, we mean the major part of them is to judge; but when the question is, Which is the major part? they cannot determine the question; but of necessity the sheriff must determine that, the nature of the thing speaks it.

Therefore it was held rightly in *Letchmere's Case*, 15 and 14 Car. 2. that as to the election of knights to the parliament, the court is properly the sheriff's court, and the writ is in the nature of a special commission, *Elegi facias*.

I know a judge may have many ministerial acts incumbent upon him, as the chief-justices have to certify records upon writs of error; therefore it is necessary for me to observe, that the suit here is for what he does as a judge, and not for anything ministerial; which appears by the averment, that the sheriff annexed another indenture, specifying it to be made by the major part of the freeholders, and containing that the lord Huntingtower was chosen, *ubi re vera* the lord Huntingtower was not chosen by the major part of the freeholders. If it had been said *ubi re vera* the freeholders supposed to seal the same, never did seal the same, there had been a falsity in his ministerial part of sending in the indenture; but his sending his two

indentures, which were really sealed by the freeholders, as they import; wherein the freeholders of each indenture (and not the sheriff) say, that they are the major part, is no falsity in his ministerial part, but only deferring to judge between them, which is the major part; or more properly judging that they are both equal in number.

They object, that the matter of this question is not matter of judgment, it is but counting the poll, which requires arithmetic, but not judgment; but certainly if it be rightly considered, it will be thought this question of majority is not barely a question of fact, but a question of judgment, a question of difficult judgment, there are so many qualifications of electors.

1. They must have 40s. per annum, there the value must be judged.

2. It must be freehold; there the title.

3. It must be their own; there colourable and fraudulent gifts made many times on purpose to get voices, must be judged.

4. The electors must be resident; here the settlement of the party must be determined.

5. There are many things that incapacitate voices, as bribery, force, &c. and many other questions arise, that are of such difficulty in debate of them, much time is spent in parliament; and sometimes a Committee determines one way, and the House another. Is not this then a question that refers to judgment.

They object again, the sheriff may give an oath concerning all the qualifications, and he is to look no farther.

I answer, the statute has given the sheriff power to give an oath in assistance of him; but the statute does not say that whosoever takes that oath shall have a voice: neither does the statute 23 Hen. 6. say, that the sheriff shall not be charged with a false return, that pursues that way: so that although he may use those means for his direction, yet he must consider his own safety, and not make a false return. If a man, upon taking such an oath, give the sheriff a special answer, or if it should be known to the sheriff he swears false, the sheriff must determine according to his own judgment, and not by what is sworn.

It may hence be concluded, that the sheriff, as to declaring a majority, is a judge; and if so, my next assertion is, that there is the same reason he should be free from actions, as any judge in Westminster-hall, or any other judge. Does it not import the public, that the sheriff should deal uprightly and impartially? Ought he not to have courage, and for that end should not the law provide him security?

Consider his disadvantages, what a noise and crowd accompany such elections; what importunity, nay, what violence there is upon him from the contending parties.

We may say, no other judge has more need of courage and resolution to manage himself, and determine uprightly, than he. No other judge determines in a case of greater consequence to the public, or difficulty, than he;

expose him to such actions, and in most elections he must have trouble; for commonly each party is confident of his strength, his conduct, and his friends; that let the sheriff return never so uprightly, the party that is rejected will revenge it by a suit, especially if he may sue at common law, to have boundless damages, without running any hazard himself, but of the loss of his costs.

If we judges, that find ourselves secure from actions, should not be tender of others that are in the same circumstances; it may well be said, 'Wo unto you, for you impose heavy burthens upon others, but will not bear the least of them yourselves.'

2. My second Reason is, because it is *alieni fori*, either to examine the right of the election, or behaviour of the sheriff; both which are incident, and indeed the only considerations that can guide in the trial of such causes, if they be allowed.

It is admitted, that the parliament is the only proper judicature to determine the right of election, and to censure the behaviour of the sheriff. How then can the common law try a cause, that cannot determine of those things, without which the cause cannot be tried?

No action upon the case will lie for breach of a trust, because the determination of the principal thing, the trust, does not belong to the common law, but to the court of Chancery: certainly the reason of the case at bar is stronger, as the parliament ought to have more reverence than the court of Chancery.

They object, that it may be tried after the parliament hath decided the election; for then that which the common law would not try is determined, and the parliament cannot give the party the costs he is put unto.

Then I perceive they would have the determination of the parliament binding to the sheriff in the action, which it cannot be; for that is between other parties to which the sheriff is not called: it is against the course of law, that any judgment, decree or proceeding betwixt other parties should bind the interest of, or any way conclude a third person; no more ought it to do here: it may be easy for parties combining to represent a case so to the parliament, that the right of election may appear either way as the parties please. Is it fit the sheriff, who is not admitted to controvert such determination, should be concluded by it, in an action brought against him, to make him pay the reckoning?

Did the parliament believe, when they determined this election, that they passed sentence against the sheriff, upon which he must pay 800*l.*? Sure if they had imagined so, they would, nay, in justice, they ought to have heard his defence, before they determined it.

And yet that was the measure of this case, the Sheriff was not heard in parliament, indeed he was not blamed there: and yet upon the Trial, which concerned him so deeply, he was not allowed to defend himself, by shewing any

June 11, 1689.

The clerk of the parliament, in pursuance of the Order yesterday, shewed several instances where proxies have been used in preliminaries to private causes: It is ordered by the Lords spiritual and temporal in parliament assembled, That proxies may be used in such preliminary cases, but not in giving judgment; and that this Order be added to the roll of Standing Orders.

Ordered, That the counsel of sir Samuel Barnardiston shall be heard on Friday next, to reply to what Mr. Mountague gave for his reasons for reversal of sir Samuel Barnardiston's judgment; and that all the judges do attend at the same time.

June 14, 1689.

After hearing counsel in sir Samuel Barnardiston's case this day, to reply to what Mr. William Mountague said for his reasons to reverse the judgment given in the Exchequer; it is ordered, That this House will hear all the judges give their opinions in this case on Tuesday the 25th of this instant June, at ten of the clock in the forenoon.

June 25, 1689.

The House heard the opinion of all the judges in the case of sir Samuel Barnardiston, upon his Writ of Error depending in this House.

And the question being put, Whether to go on in the debate of this business new? It was resolved in the affirmative.

After debate, the question being put, Whether to reverse the reversal of the judgment given between sir Samuel Barnardiston and sir William Soame? It was resolved in the negative.

Leave is given to several Lords to enter their dissent to the abovesaid question, and accordingly do enter their dissent for the reasons ensuing.

1. Because it is a denying sir Samuel Barnardiston the benefit of law, which gives relief in all wrong and injury: And though this be an action of the first impression, yet there being a damage to the plaintiff, the common law gives him this action to repair himself; and if it were not so, there would be a failure of justice, which cannot be admitted.

2. Because the allowing this reversal tends towards the giving the power and encouragement to Sheriffs to make false and double returns; by which means the right of elections

will be avoided, and it tends thereby to the packing of a House of Commons, which may overturn the whole frame of the government, and establish what religion and government a packed parliament shall think fit.

BOLTON,
MACCLESFIELD,
P. WHARTON,

S. STAMFORD,
HERBERT.

Whereas by virtue of their majesties Writ of Error, returnable into the House of Peers, a record of the Court of King's-Bench was brought into this House the 24th of May, 1689, with the transcript thereof, wherein judgment is entered for sir Samuel Barnardiston against sir William Soame: upon which Writ, Errors being assigned, after hearing counsel at the bar, to argue the said Errors assigned, and due consideration had of what was offered thereupon, the Lords spiritual and temporal in parliament assembled, do order and adjudge, That the judgment given in the Exchequer Chamber, for the reversal of the judgment given in the Court of King's-Bench for sir Samuel Barnardiston against sir William Soame, be, and is hereby affirmed: And that the said Writ of Error, and transcript annexed, be remitted to the Court of King's-Bench.

The tenor of which Judgment to be affixed to the transcript to be remitted, follows;

Et postea, scilicet quarto die Maii Anno Regni Domini Gulielmi et Dnæ. Mariæ nunc Regis et Reginæ Angl. primo transcript. Record. et process. præd. inter partes præd. cum omnibus ea tangent. pretext. cujusdam brev. de Error corrigend. et præfat. Samuel. Barnardiston, in premiss. persecut. dict. Dom. Reg. et Dom. Reginæ in present. Parliament. à præd. curia dict. Dom. et Domine Regis et Reginæ hic transmiss. fuit præd. Samuel. in eadem curia Parliament. comparens, diversas causas et materias per Erroribus in Record. et process. præd. pro revocatione et annullatione Judicii præd. assignaverit; et postea scilicet 25 die Junii Anno dict. Dom. et Domine Regis et Reginæ, supradict. in præd. cur Parliament. præd. visis, et per cur. ibidem diligenter examinat. et plenus intellect. Sam. Recordo et Process. præd. ac Judicio super iisdem reddidit. qua Errore superius assignat. pro eo quod videtur cur. Parl. præd. quod Record. illum in nullo vitiosum aut defectum existit, et quod in Record. ill. in nullo erratum, adtunc et ibidem consideratum est per eandem curiam Parliament. præd. quod Judic. præd. in omnibus affirmetur et in omni suo robore stet et effectu.

236. Case of PRIVILEGE OF PARLIAMENT:* being Proceedings in Parliament, on an Appeal brought in the House of Lords, by Dr. SHIRLEY, against Sir JOHN FAGG, and other Members of the House of Commons: 27 CHARLES II. A. D. 1675.

HOUSE OF COMMONS, May 4, 1675.

A MOTION being made in the House of Commons, on the behalf of sir John Fagg, a member of this House, That he is served with an Order of the House of Lords, made on the Petition of Thomas Shirley, esq. to put in an Answer to the Petition on Friday next;

* The whole of the first volume of Mr. Hatsell's valuable Collection of Precedents relates to the matter of Parliamentary Privilege, and from the perusal of that volume it should seem to be a subject of considerable uncertainty. Neither its antiquity, nor its origin, nor its extent, appears to be well ascertained; and the diversity of opinions respecting it, is very remarkable.

It is part of that *Lex et Consuetudo Parliamenti* of which lord Coke tells us 'ista lex est ab omnibus querenda, à multis ignorata, à paucis cognita.' "We have seen," says Mr. Hatsell in the beginning of the fifth chapter of his first volume, "in what manner the Commons were at different periods obliged to make new claims of privilege, and to exert new modes of maintaining and defending those claims, in proportion as the lengthening the duration of the session made other avocations inconvenient and incompatible with their first duty, and as the increase of their consequence in the state and their influence in the management of affairs, rendered them more an object of the attention of the ministers of the crown."

The whole of Mr. Hargrave's very learned Preface to lord Hale's Treatise on the Jurisdiction of the Lords' House of Parliament, is one continued commentary of the unsettledness of this *Lex et Consuetudo Parliamenti*, and of disputes between the two Houses concerning their respective privileges. And the same topics are still farther illustrated by his opinions on the Cases of Bond and Butler, and of Perry. See Juridical Arguments, &c. vol. 1, p. 1. vol. 2, p. 183. I will add a few particulars. The House of Commons in their Apology and satisfaction to be presented to his majesty,* (after asserting that their privileges and liberties were their right and due inheritance no less than their very lands and goods, and that their making of request in the entrance of parliament to enjoy their privilege, is an act only of manners, and doth weaken their right no more than their suing to the king for their lands by petition; whereas the king would have it that their privileges were derived

* Inserted in Hatsell's Precedents Appendix to vol. 1, and also in 1 Cobb. Parl. Hist. 1030, from Pety's Jus Parliamentarium.

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And the opinion of the House being desired, Whether by his Privilege, as a member of this house, he is not excused from answering the Petition in the Lords house; and a Precedent being urged in the like case;

Ordered, That the further consideration of the matter touching the Privilege of sir John Fagg, a member of this House, be adjourned

from the grace and permission of his ancestors and himself; see 1 Hatsell 78, 138: 2 Hatsell 214, 215, 216.) avouch that their House is a court of record, and so ever esteemed; and in Fitzherbert's case, 1 Hatsell 109, they recite that they are a court of record. Lord Coke (Co. Litt. 260, a. see also 117, b.) describes a court of record to be a court of justice, which hath power to hold plea according to the course of the common law of real or mixed actions or of actions *quare vi et armis*, or of personal actions whereof the debt or damage amounts to 40 shillings or above. (No other court hath authority to fine or imprison. See 8 Coke's Reports 38 b. 60 b. 120 a. 1 Salk. 200. 3 Blackst. Comm. 24.) The House of Commons (see the Journals 10th and 11th of May, 1571,) assert, That they ordered a fine of 20l. to be assessed upon the corporation of Westbury. Lord Mansfield, Burr. Rep. 1336, in speaking of that particular case asserts, that no fine could be imposed in the House of Commons, and lord Hobart, in the case of the King against lady Arundel and Howard, Hob. Rep. 110, cited by Mr. Clifford in Flower's case, and lord Holt in the King and Queen against Knollys, 1 Salk. 511, do, it may be argued, deny that the House of Commons is a court of record, in asserting that the Journals are no records. Mr. Hatsell's book abounds in reports of contradictory interpretations as to the extent of the Privilege of Parliament, in matters of criminal prosecutions against members. In April, 1763 (see Wilkes's Case in that year, *infra*.) the Judges of the court of Common Pleas unanimously decided, That privilege of parliament extended to cases of writing and publishing seditious libels. Six months afterwards both Houses of Parliament resolved, that privilege of parliament did not extend to such cases. On Feb. 17, 1769, the House of Commons resolved, "That John Wilkes esq. having been in this session of parliament expelled this house, was and is incapable of being elected a member to serve in this present parliament," and in the course of several proceedings which subsequently occurred respecting Mr. Wilkes, that House of Commons uniformly adhered to that same doctrine. On May 3, 1783, it was resolved, That the resolu-

till to-morrow morning. And it is referred to sir Trevor Williams, Mr. Hales, sir Rob. Carr, sir Anth. Irby, or any one of them, to inspect the journals; and give an account to the House, of the Precedent in the case of Mr. Hales.

tion Feb. 17, 1769, should be expunged from the Journals of the House, as being subversive of the rights of the whole body of electors of this kingdom, and ordered, That all the Declarations, &c. respecting the election of John Wilkes, esq. should be expunged.

Lord Coke, as we have seen, writes that the "Lex Parliamenti est à multis ignorata," and it is plain that in the passage where that phrase occurs he means to represent the knowledge of it as very difficult of acquisition: but lord Holt tells us, that as to what my lord Coke says, "that the 'lex parliamenti est à multis ignorata,' it is only because they will not apply themselves to understand it." See *Ld. Raym. Rep.* 1114.

In Crosby's case, A. D. 1771, *infra*, Lord Chief Justice De Grey says, "I wish we had some code of the law of parliament, but till we have such a code it is impossible we should be able to judge of it." But Mr. Justice Blackstone on the other hand tells us, that the dignity and independence of the two Houses are in great measure preserved by keeping their privileges indefinite: and according to him, if all the privileges of parliament were once to be set down and ascertained, and no privilege to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case not within the line of privilege, and under pretence thereof to harass any refractory member and violate the freedom of parliament. His editor, Mr. Christian, observes upon the fallacy of this reasoning: and, most undoubtedly, the uncertainty of the extent of parliamentary privileges must afford a refractory or arbitrary House of Parliament, the means on the one hand of usurping upon the rightful prerogatives of the crown, and on the other, of invading the just liberties of the people. And accordingly the House of Lords on Feb. 25, 1705, resolved, "That neither House of Parliament hath any power by any Vote or Declaration, to create to themselves any new privilege that is not warranted by the known Laws and Customs of Parliament." See the Case of Ashby and White, *infra*.

In Crosby's Case, the Chief Justice lays it down, that when the House of Commons adjudge any thing to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence is execution: and that case seems to assert the doctrine, that the courts of law have no cognizance of questions of contempt or breach of privilege of the House of Commons. "It is true," said Gould, Justice, "this court did in the instance alluded to (Wilkes's case) determine upon the privilege of parliament in the case of a libel, but then that privilege was promulged and known; it existed in records and law books,

May 5.—Resolved, That a Message be sent to the Lords, to acquaint them that this House hath received information, That there is a Petition of Appeal depending before them, at the suit of

and was allowed by parliament itself. But even in that case we now know that we were mistaken; for the House of Commons have since determined, that privilege does not extend to matters of libel."

Blackstone, after telling us that the privileges of parliament are very large and indefinite, proceeds:

"And therefore when in 31 Hen. 6, the House of Lords propounded a question to the judges concerning them, the Chief Justice, sir John Fortescue, in the name of his brethren declared, 'That they ought not to make answer to that question: for it hath not been used aforetime that the justices should in any wise determine the privileges of the High Court of Parliament. For it is so high and mighty in it's nature, that it may make law: and that which is law, it may make no law: and the determination and knowledge of that privilege belongs to the lords of parliament, and not to the justices.' [*Seld. Barouage.*]"

In this passage it is material to note the phrase 'High Court of Parliament,' and also to consider how far the premises establish the conclusion. This declaration of Fortescue was made in the notable Case of Thomas Thorpe, 31 Hen. 6, which is reported at some length in 1 Hatsell's Precedents, 93, and the like doctrine is to be found in many other places. [See what is said by the Managers of the Commons on the fifth day of Lord Stafford's Trial, A. D. 1680, *infra*. See also the Case of Lord Delamere, A. D. 1685, *infra*; where, as it seems, a very nice and subtle distinction, as to the consequence of the Judges, is made between the privilege of the peerage, and another point of the *Lex Parliamenti*. See, too, the proceedings upon the matter of Jay and Topham, A. D. 1689, and those in the earl of Devonshire's Case, A. D. 1687, *infra*.] But it has not by any means been uncontested. See the Observations of lord Clarendon (note to lord Shaftesbury's Case, A. D. 1677, *infra*). See also the language of Holt, C. J. in the cases of the King v. Knollys, of Ashby and White, and of the Queen v. Paty. So likewise lord Kenyon, in the case of Rex v. Wright, 8 Term Rep. says, "I do not say there can be no case in which the House of Commons, and House of Lords too, may carry their privileges beyond the law; and when that is the case, and the subject comes judicially before a court of law, a court of law will not swerve from its duty, but will decide according to law." See, too, Mr. Hargrave's writings already referred to, and particularly his opinion in the case of Bond and Butler. In addition to which (not to mention Wilkes's case) Mr. Hatsell (see 1 Prec. 41, e. scq.) has given us two ancient cases copied by Prynne in the Fourth Register, p. 752, from the Records in the court of Ex-

Thomas Shirley, esq. against sir John Fagg, a member of this House; to which petition, he is, by order of the House of Lords, directed to answer on Friday next; and to desire the Lords to have a regard to the privileges of this

chequer, in both which it appears that the judges did take upon them to determine privilege of parliament:

“The first is that of Donne and Walsh, 12 Edw. 4, Rot. 20.

“Barthol. Donne brings his bill against John Walsh, a servant of Henry earl of Essex, for the sum of 14l. 18s. which Walsh owed upon his bond: To this John Walsh in his answer, produces the king's writ under the great seal; *cujus tenor sequitur in hæc verba*:

“Edwardus Dei gratia rex Angliæ et Franciæ, et dominus Hiberniæ, thesaur. et baronibus suis de scaccario, salutem. Cum secundum consuetudinem in regno nostro hactenus optentam et approbatam, domini magnates, milites comitatum, ac cives et burgenses civitatum et burgorum, ad parlamenta nostra de summonitione nostra venientes, ac eorum familiares, ratione alicujus transgressionis, debiti, computi, conventionis aut alterius contractus cujuscunque, dum sic in parliamentis nostris morentur, arrestari minime debeant, imprisonari, aut “implacitari;” ac jam ex querela &c. &c. vobis mandamus, quod si ita est, tunc placito illi coram vobis alterius tenendo supersedeatis omnino, et ipsum a prisona, siqua occasione prædicta et non alia, detineatur in eadem sine dilatione deliberari faciat. Teste meipso apud Westm. 25 die Novembris, anno regni nostri 12.

“Et prædictus Johannes Walshe jam defendens dicit, quod ipse est et dicto 25 die Novembris et semper postea fuit serviens familiaris prædicti comitis, et cum eo ad prædictum parlamentum venit. Et petit judicium &c. Et super hoc prædictus Bartholomæus petit, quod breve illud, pro eo quod non habetur nec unquam habebatur talis consuetudo, quod magnates et milites comitatum, ac cives et burgenses civitatum et burgorum ad parlamentum de summonitione regia venientium, ac eorum familiares ratione alicujus transgressionis, debiti, computi, conventionis, aut alterius contractus cujuscunque dum sic in parlamento regio morentur, minime debeant implacitari, prout in brevi illo aspecificatur et recitatur, disalloctur.

“Et super hoc viso et prælecto brevi prædicto per barones, &c. habitoque avisamento justiciariorum domini regis de utroque banco; Quia videtur prædictis baronibus de avisamento justiciariorum prædictorum, quod talis habetur et habebatur consuetudo, quod magnates et milites comitatum, ac cives et burgenses civitatum et burgorum ad parlamentum de summonitione regia venientes, ac eorum familiares, ratione alicujus transgressionis, debiti, computi, conventionis, contractus cujuscunque, dum sic in parlamento regis morentur, capi nec arrestari non debent: sed nullam

House; and that sir Trevor Williams do go up with the Message to the Lords.

Sir Trevor Williams reports, That he had attended the Lords with the Message of this House, concerning sir John Fagg: and that the

‘hujusmodi consuetudinem fore, quod quin
‘implacitari debent, prout in brevi illo suppo-
‘nitur; ideo consideratum est per barones
‘prædictos, quod breve illud disalloctur, et
‘quod prædictus Johannes Walshe respondeat,
‘brevis prædicto non obstante &c.’

“The next case is that of Ryver and Cosins, taken from the plea roll of the Exchequer, 13l. term, 12 Edw. 4, rot. 7. Here the defendant pleads the king's writ, in which the custom is set forth as followeth:

“Edwardus Dei gratia rex &c. thes. et baronibus suis de scaccario, salutem. Cum, secundum consuetudinem in regno nostro Angliæ hactenus obtentam et approbatam, domini magnates et milites comitatum, ac cives et burgenses civitatum et burgorum ad parlamenta nostra de summonitione nostra venientes, et in eisdem morantes seu residentes, ac eorum familiares et servientes ratione alicujus transgressionis, computi, conventionis, seu alterius contractus cujuscunque, dum sic in parliamentis nostris morentur, arrestari minime debeant, imprisonari, “seu implacitari.” Et jam ex gravi querela &c. vobis mandamus quod, si ita est, tunc placito illi supersedeatis omnino &c. &c. Et prædictus Robertus Cosyn jam defendens dicit, quod ipse ad respondendum non compelli debeat, et petit judicium et breve prædictum sibi alloctari, &c.

“Et super hoc, prædictus Johannes Ryver petit, quod breve illud, pro eo quod non habetur, nec unquam habebatur talis consuetudo, quod magnates &c. minime debeant implacitari, disalloctur.’

“Et super hoc, The barons with the advice of the judges of both the other courts, reciting, *verbatim*, their opinion in the former case of Walsh and Donne, ‘That no such custom existed to prevent their being impleaded,’ disallow the writ.”

Mr. Hatsell refers his readers to Frynn's Observations on these two cases in the 4th Register, p. 762, as containing matter of much parliamentary instruction, but I have not now an opportunity of making such reference.

Mr. Hargrave [See his Preface to *lead Hale's Treatise on the Judicature of the Lords' House*, p. cxxxix.] possesses a very full report in MS. of Lord Chief Justice Bridgeman's learned judgment in the Case of Benyon and Evelyn, C. B. Trin. 14 Car. 2, in which after a very extensive investigation of the law upon the subject, the authority of the judges to take cognizance of questions of Privilege of Parliament is asserted, and that authority was accordingly exercised in that Case.

This topic of the unsettledness of the *Lex et Consuetudo Parliamenti*, might be enlarged by

Lords will return an answer by messengers of their own.

May 7.—A Message from the Lords by sir William Beversham, and sir Samuel Clarke.

“Mr. Speaker, The Lords have considered of the Message received from the House of Commons, concerning privilege in the case of sir John Fagg, and do return this answer, That the House of Commons need not doubt, but that “the Lords will have a regard to the “Privileges of the House of Commons as they “have of their own.”

May 8.—A Committee was appointed to inspect the Lords Journals, to see what entries

the introduction of other particulars, such for instances, as the anciently contested question, Whether Privilege of the House of Commons should be enforced by Writ of Privilege (operating as a supersedeas), or the Speaker's Letter (operating as a prohibition or injunction); the attempt made by the House of Lords, and successfully resisted by Chief Justice Holt, to compel that magistrate to give the reasons of his judgment in *Rex v. Knollys* [See the Case, *infra.*]; the sharply-mooted question whether proceedings upon impeachments are abated by dissolution of parliament; the changes in practice set forth by Mr. Hargrave in his learned opinions on the Cases of Bond and Butler and of Perry [See his Juridical Arguments and Collections.]; the uncertainty which prevailed as to the course to be pursued when the exercise of the royal functions was interrupted by his majesty's illness in 1788; the questions frequently agitated and perhaps not yet finally set at rest, concerning the Bishops' right of judicature in cases of blood, and the Lords' interference in money bills. See also in Lord Shaftesbury's Case, A. D. 1677, *infra*, the proceedings in the House of Lords against him and other peers, and the order for rescinding the same. But enough has already been said upon the subject.

“All privileges,” says Blackstone, “which derogate from the common law are now at an end, save only as to the freedom of the member's person: which in a peer, by the privilege of peerage, is for ever sacred and inviolable; and in a commoner, by the privilege of parliament, for forty days after every prorogation, and forty days before the next appointed meeting [2 Lev. 72.]; which is now in effect as long as the parliament subsists, it seldom being prorogued for more than fourscore days at a time. As to all other privileges which obstruct the ordinary course of justice, they were restrained by the statutes 12 W. 3, c. 3. 2 and 3 Anne c. 18, and 11 Geo. 3, c. 24, and are now totally abolished by statute 10 Geo. 3, c. 50, which enacts, that any suit may at any time be brought against any peer or member of parliament, their servants or any other person entitled to privilege of parliament; which shall not be impeached or delayed by pretence of any such privilege; except that the person

are therein made against sir John Fagg a member of this House, and to report the same.

May 12. Dr. Shirley ordered by the Commons to be sent for in custody, to answer his breach of the Privileges of this House, in prosecuting a suit by petition of appeal in the Lords' house, against sir John Fagg a member of this House during the session and privilege of parliament.

And a Committee is also appointed to inspect the Lords Journals, to see what has been done in like cases; and the said sir John Fagg is ordered not to proceed, or make any answer to the said appeal, without the license of this House.

May 14. Sir T. Lee reports from the Committee

of a member of the House of Commons shall not thereby be subjected to any arrest or imprisonment. Likewise, for the benefit of commerce, it is provided by statute 4 Geo. 3, c. 33, that any trader having privilege of parliament, may be served with legal process for any just debt, (to the amount of 100*l.*) and unless he makes satisfaction within two months, it shall be deemed an act of bankruptcy; and that commissions of bankrupt may be issued against such privileged traders, in like manner as against any other.”

By stat. 47 G. 3, st. 2, c. 40, it is enacted, That when any bill shall be exhibited in a court of equity against a member of the House of Commons, a sequestration for non-appearance may be obtained, without previously leaving a copy of such bill with such defendant.

Mr. Hatsell informs us:

“On the meeting of the new parliament in November, 1774, a doubt was conceived whether the act which had lately passed, and which had taken away all privilege of parliament [the 10th Geo. 3, ch. 50.] from the servants of members, ought not to have made some alteration in the form of the Speaker's prayer. I confess I was of that opinion; and sir Fletcher Norton at first intended to make an alteration, by claiming all the usual privileges, except where the same had been varied or taken away by any act of parliament. And accordingly as soon as he was elected Speaker, he communicated this his intention to the House. However, upon further consideration and conversation with lord Apsley the Lord Chancellor, he thought it better to abide by the ancient form: Lord Apsley advised this and said, ‘That as no alteration had been made formerly on the passing of the act in king William's time, relating to the privilege of parliament; and as whatever the Commons claimed, neither the allowance of the king, nor indeed the claim itself, could be supposed to include privileges not warranted by law; he was of opinion that it would be the safer way, in order to prevent any difficulties which might arise upon an alteration, to adhere to the usual form; and that he was ready to give the king's answer in the accustomed words.’ Sir Fletcher Norton acquiesced in

appointed to inspect the Journals of the House of Lords, and the entries therein, in the case between Dr. Thomas Shirley and sir John Fagg a member of this House, That the Committee had perused the Lords' Journals, and found the entries to be as follows :

" April 30. Thomas Shirley, esq. presented a Petition to the Lords.

" Ordered, That the said sir John Fagg may have a copy of the said Petition, and put in his answer thereunto, in writing, on Friday the 7th day of May next, at ten of the clock in the forenoon, if he thinks fit.

" May 5. The Commons send a Message by sir Trevor Williams :

" The Knights, Citizens, and Burgesses of the House of Commons in parliament assembled, have been informed, that there is a Petition of appeal depending before their lordships, at the suit of Thomas Shirley, esq. against sir John Fagg a member of their House. To which Petition he is, by their lordships order, directed to answer on Friday next, and desire their lordships to take care of their privileges.

" Answer, That this House have considered of their Message, and will send an Answer by messengers of their own.

" Ordered, That the Committee for Privileges do meet this afternoon, to consider of the Message received from the House of Commons this day, concerning Thomas Shirley, esq. and sir John Fagg, a member of the House, and search precedents in the case, and report to the House to morrow morning.

" May 6. The earl of Berks reported, " That the Committee of Privileges having met and considered of what was referred to them in the case between Thomas Shirley, esq. and sir John Fagg a member of the House of Commons, and the Message from the House of Commons thereupon; have ordered him to

this; and accordingly sent to acquaint lord Ashley, that he would make the claim in the ancient form of words, without any alteration; he did so, and received the usual answer.

" This matter, therefore, whether at the time decided right or wrong, is now at rest."

Upon this Mr. Hatsell, after referring to st. 12 and 13 W. 3, c. 3, observes :

" But the difference between this act and the statute of the 10th of Geo. 3, ch. 50, with respect to this question is, that the former act left certain privileges to the servants of members; so that the Speaker might still very properly claim those privileges, whatever they were: But the latter act expressly takes away from servants all privilege whatever, personal, as well as privilege from suits: It seems therefore rather particular, that the Speaker of the House of Commons should pray, and the Lord Chancellor in his majesty's name should allow, privileges to a set of men, who, by law, have no privilege at all."

It appears that the claim is still made in the ancient form of words. See Cobb. Parl, Deb.

report, That the Committee have found that the House did refer the business of Mr. Hale and Mr. Slingsby,* upon the like Message of the House of Commons, to the Committee of Privileges; who did report to the House, That it is the undoubted right of the Lords in judicature, to receive and determine in time of parliament, appeals from inferior courts, though a member of either House be concerned, that there may be no failure of justice in the land; and the House did agree with the Committee therein: and thereupon the Committee do humbly offer to their lordships, upon this occasion, to take the same course, and to insist upon their just rights in this particular, which their lordships will be pleased to signify to the House of Commons, in such manner as they shall think fit."

" The House agreed with the Committee in this Declaration, and ordered the same to be entered into the Journal-book of this House, as their Declaration, viz.

" That it is the undoubted right of the Lords " in judicature, to receive and determine in " time of parliament, appeals from inferior " courts, though a member of either House be " concerned, that there may be no failure of " justice in the land."

" Then it was moved, That the former Answer sent to the House of Commons, in the case of Mr. Slingsby and Mr. Hale, might be given now to the House of Commons, in this case of sir J. Fagg; and that the Declaration and Report agreed to this day, might be added to it.

" The Declaration aforesaid was read, and the question being put, Whether this shall be as a part of the Answer to be given to the House of Commons? It was negatived.

" The Answer returned formerly to the House of Commons, in the case of Mr. Slingsby and Mr. Hale, was in these words; " That the " House of Commons need not doubt but that " their lordships will have a regard to the privi- " leges of the House of Commons, as they " have of their own."

" The question being put, Whether this Answer shall be now returned to the Message from the House of Commons? It was resolved in the affirmative.

" May the 7th, it was sent accordingly.

" May 7. Whereas this day was appointed for sir John Fagg to put in an Answer to the petition and appeal of Thomas Shirley, esq. depending in this House, if he thought fit; the said sir John Fagg appearing personally this day at the bar, and desiring longer time to put in an Answer thereunto; It is thereupon ordered, That the said sir John Fagg hath hereby further time given him for putting in his Answer, till Wednesday next, being the 12th day of this instant May, at ten o'clock in the forenoon."

HOUSE OF LORDS, May 14.

The Lord Mohun acquainted the House of

* See the quotation from Hargrave concerning this affair, at the end of this Case.

Lords, "That going out of this House into the Lobby, Dr. Thomas Shirley, calling to his lordship, told him, That a messenger of the House of Commons had arrested him, by virtue of a Warrant under the Speaker's hand, dated the 14th of this instant May; and told him he would not leave him, but follow him until he submitted himself; upon this, the messenger came to the lord Mohun, and delivered him the Warrant; who having read it, the officer would have snatched it out of his hand; but his lordship told him, he would carry it where another use should be made of it."

And his lordship presented the said Paper to this House; which was read as followeth:

"By virtue of an order, made the 13th day of May 1675, by the honourable the House of Commons assembled in parliament, these are to require and authorize you forthwith to apprehend Dr. Thomas Shirley, and bring before the House, to answer his breach of privilege, in prosecuting a suit, by petition of appeal, in the Lords House, against sir John Fagg a member of this House: And for so doing, this shall be your Warrant. Given under my hand on Friday the 14th day of May, in the 27th year of the reign of our sovereign lord King Charles the second, &c. Annoque Domini 1675. EDWARD SEYMOUR, Speaker."

"To sir James Northfolk knight, one of his majesty's serjeants at arms in ordinary now attending the hon. House of Commons, his deputy or deputies."

The House took this matter into consideration, as being a violation of their Privileges. And after some debate, a question being put, "Whether Dr. Thomas Shirley shall be now called in?" It was resolved in the affirmative.

Upon this Dr. Thomas Shirley, Patrick Porter, and Richard Clayton, were examined, upon oath, at the bar, concerning this business.

After a further debate, it is ordered, That this Message should be sent to the House of Commons; viz. "That the Lords spiritual and temporal in parliament assembled, having received a Warrant brought before them, for the apprehending Dr. Thomas Shirley, signed "Edw. Seymour, Speaker," which they have herewith sent to be shewed to the House of Commons, do desire to know from that House, whether it be a Warrant ordered by that House or no?"

This Message was sent by sir M. Brampton and sir Wm. Glascocke: who are to let the House of Commons know, "That they are appointed to return with the original Warrant."

HOUSE OF COMMONS, May 14.

Sir John Fagg put in his Answer to the petition of Mr. Shirley.—A debate arising thereupon, touching the privilege of the House,

Resolved, That the Appeal brought by Dr. Shirley in the House of Lords, against sir John Fagg, a member of this House, and the proceedings thereupon, are a breach of the undoubted right and privileges of this House."

The House of Commons being informed, that the Warrant of this House for taking of the said Dr. Shirley into custody, was forcibly taken away and detained from the Serjeant at arms his deputy, attending this House, by the lord Mohun; And the serjeant's deputy being called in and examined as to the matter of fact gave this testimony:

"That he found Dr. Shirley in the inner lobby of the House of Lords, and that he came to him, and desired to speak with him, and acquainted him that he had a warrant from the House of Commons to apprehend him, and desired to know, whether he could shew him any reason to excuse him, that he might not serve the warrant on him: and that he likewise told him, that he would not execute the warrant on him in that place, but desired of him, that he would go along with him freely; and that in case he would not, he would take his opportunity in another place.

"And that the said lord Mohun coming in, in the mean time, required him to shew his warrant; which he producing, the lord Mohun laid hands on it, and held it so fast, that it was in danger of being torn, and that therefore he was forced to part with it, and desiring to have it again, the lord Mohun refused it, but carried the warrant into the House of Lords. That Dr. Shirley afterwards refused to go along with him, saying, that he was not then his prisoner; and that several persons interposing, the doctor escaped from them." Upon debate,

Resolved, "That a Message be sent to the Lords to complain of the lord Mohun for forcibly taking away and detaining the warrant of this House, from the deputy serjeant at arms, for taking of Dr. Shirley into custody; and to demand the justice of the Lords House against the said lord Mohun."

And that the lord Ancram do go up to the Lords with the Message.

Ordered, That Mr. Speaker do issue forth a new warrant to the serjeant at arms attending this house, for apprehending Dr. Thomas Shirley, to answer his breach of privilege, for prosecuting a suit by petition of appeal in the Lords House, against sir John Fagg a member of this House, during the session and privilege of parliament.

HOUSE OF LORDS, May 14.

A Message was brought from the Commons, by the earl of Ancram and others, to this effect:

"My Lords; I am commaunded, by the knights, citizens, and burgeses of the House of Commons, to complain to your lordships of the lord Mohun, for forcibly taking, and detaining from the deputy serjeant of this House, the warrant of this House, for the apprehending of Dr. Thomas Shirley; and demand the

* Possibly father of the Lord Mohun who was twice tried for murder. See the cases *a. p.* 1693, and 1699 *infra*. In the first of those cases the lord-high-steward speaks to him as being at that time a very young man.

justice of your lordships against lord Mohun."

Ordered, That this Answer be returned to this Message brought from the House of Commons: "That this House hath considered of the Message, and the matter therein complained of; and do find that the lord Mohun hath done nothing herein but what was according to his duty."

The messengers were called in; and the lord-keeper gave them the answer abovesaid.

Whereas Thomas Shirley, esq. his majesty's physician in ordinary, hath a cause depending in this House, by way of appeal, against sir John Fagg, a member of the House of Commons, and, by law and course of parliament, ought to have privilege and freedom from arrest:

It is ordered, by the Lords spiritual and temporal in parliament assembled, "That the said Thomas Shirley be, and he is hereby, privileged and protected accordingly, by the authority of this House, during the depending of his said cause in this House; and all persons whatsoever are hereby prohibited from arresting or otherwise molesting the said T. Shirley upon any pretence whatsoever, as they and every of them will answer the contrary to this House."

HOUSE OF COMMONS, May 15.

The lord Ancram reports, from the Lords, that he had in obedience to the commands of the House of Commons attended the Lords, and delivered the Message concerning the lord Mohun's taking away and detaining the warrant for apprehending Dr. Shirley: And that the Lords had returned this Answer;

"Gentlemen of the House of Commons; The Lords have considered of your Message, and of the complaint therein; and they return you this Answer, That they find lord Mohun hath done nothing but what is according to his duty."

Resolved, That the appeal brought by Dr. Shirley in the House of Lords against Sir John Fagg, a member of the House of Commons, and the proceedings thereupon, is a breach of the undoubted Rights and Privileges of the House of Commons; and therefore the Commons desire, that there be no further proceedings in that cause, before their lordships.

Ordered, That a Conference be desired with the Lords concerning the privileges of this House, in the Case of sir John Fagg; and that sir Thomas Lee do go up to the Lords to desire a Conference.

A Message from the Lords by sir Mondeford Brampton, and sir William Glascock:

"Mr. Speaker; We are commanded to let this House know, that the Lords spiritual and temporal assembled in parliament, have received a Warrant, signed Edward Seymour, which they have appointed us to shew you; and desire to know, whether it be a warrant ordered by this House?"

The matter of the Message being debated, the question being put, that the word 'unparliamentary,' be part of the Answer to the Lords Message.—It passed in the negative.

Resolved, That the messengers be called in,

and that this Answer be returned, "That this House will consider of the Message."

The messengers being called in, Mr. Speaker does acquaint them, that the House will consider of the Message.

Resolved, That the Message last received from the Lords, is an unparliamentary Message.

Resolved, That a Conference be desired to be had with the Lords upon the subject matter of the last Message received from the Lords.

Resolved, That it be referred to Mr. Garraway, &c. to draw up Reasons to be offered at the said Conference.

Then the House being informed, that there is a cause upon an appeal brought up by sir Nicholas Stoughton, against Mr. Onslow, a member of this House, appointed to be heard at the bar of the Lords House:

Resolved, That a message be sent to the Lords to acquaint them, that this House has received information that there is a cause upon an appeal brought by sir Nicholas Stoughton against Mr. Onslow a member of this House, appointed to be heard at the bar of their House, on Monday next; and to desire their lordships to have regard to the privileges of this House: And that sir Richard Temple do go up with the Message to the Lords.

Ordered, That Mr. Onslow do not appear any further in the prosecution of the Appeal brought against him by sir Nicholas Stoughton, in the House of Lords.

Ordered, That sir Nicholas Stoughton be sent for in custody of the serjeant at arms attending this House, to answer his breach of privilege in prosecuting a suit in the House of Lords, against Arthur Onslow, esq. a member of this House, during the session and privilege of parliament.

Resolved, That whoever shall appear at the bar of the Lords House, to prosecute any suit against any member of this House, shall be deemed a breaker and infringer of the rights and privileges of this House.

HOUSE OF LORDS, May 17.

The Messengers sent to the House of Commons on Friday last, with the Message concerning the business between Dr. Tho. Shirley and sir John Fagg, return with this Answer:

That they have delivered their lordships Message, with the warrant, to the House of Commons; who return this answer, That they will consider of their lordships Message, as to return of the warrant (which they demanded), they had no answer from the House of Commons.

A Petition of sir Nicholas Stoughton was read; complaining, "That there is an Order of the House of Commons issued out, to attach his person, and so deprive him of his liberty from following his Appeal depending in this House against Mr. Onslow."

A Message was brought from the House of Commons, by sir Thomas Lee and others; who did, in the name of the House of Commons, desire a Conference, touching their Privileges in the case of sir John Fagg.

The Answer returned was: That this House agrees to a Conference, and do appoint the same to be presently, in the Painted Chamber. The Lord-Keeper, the Lord-Privy-seal, E. Bridgwater, E. Bolinbroke, E. Shaftsbury. Bp. Sarum, Bp. Rochester, Ld. Hollis, were appointed reporters of this Conference.

The House was adjourned during pleasure, and the Lords went to the Conference: which being ended, the House was resumed.

Then the Lord Keeper and the rest of the Reporters gave the House a Report of the effect of the late Conference; which was, "to communicate to their lordships, by sir Richard Temple (who said he was appointed by the House of Commons to communicate to you), a Resolve of that House; viz. Resolved, &c. That the appeal brought by Dr. Shirley, in the House of Lords, against sir John Fagg, a member of the House of Commons, and the proceeding thereupon, is a breach of the undoubted rights and privileges of the House of Commons; and therefore the Commons desire, that there be no further proceedings in that cause before their lordships."

The House took the matter of this Conference into consideration; and, after a serious debate, made this declaration following;

"The Lords do order and declare, That it is the undoubted right of the Lords, in judicature, to receive and determine, in time of parliament, appeals from inferior courts, though a member of either House be concerned therein, that there may be no failure of justice in the land; and from this right, and the exercise thereof, the Lords will not depart."

A Message was brought from the House of Commons, by sir Richard Temple and others: To acquaint their lordships, that the Commons have received information, that there is a cause upon an appeal brought by sir Nicholas Staughton against Mr. Onslowe, a member of the House of Commons, to be heard at the bar of their Lordships House on this day; and to desire their Lordships to have regard to the privileges of the House of Commons.

The Messengers were called in; and had this answer returned to their Message:

"That the Lords have considered of their Message: and do declare, That it is the undoubted right of the Lords, in judicature, to receive and determine, in time of parliament, appeals from inferior courts, though a member of either House be concerned therein, that there may be no failure of justice in the land; and from this right, and the exercise thereof, the Lords will not depart."

The House, taking the petition of sir Nicholas Staughton into consideration, made this ensuing Order:

"Upon reading the petition of sir Nicholas Staughton; shewing, That, having an appeal depending in this House, against Arthur Onslow, esq. a member of the House of Commons, he is in danger of being arrested, by an order of the House of Commons, for that appeal; and therefore prayeth the protection of

this House, that he may have liberty to prosecute his said appeal with freedom: It is thereupon Ordered, That the said sir Nicholas Staughton, and his attorney, and such other person or persons as he shall employ in prosecuting the said appeal before this House, be, and are hereby, privileged and protected accordingly by this House, during the depending of the said appeal before this House; and all persons whatsoever are hereby prohibited from arresting, imprisoning, or otherwise molesting, the said sir Nicholas Staughton, or his said attorney or agents upon any pretence whatsoever, during the time aforesaid, as they and every of them will answer the contrary to this House."

HOUSE OF COMMONS, May 17.

Sir Richard Temple reports, That the person appointed had attended the Lords, and delivered the Vote of this House, concerning the Appeal brought by Dr. Shirley against sir John Fagg.

Sir Thomas Lee reports from the committee appointed to draw up Reasons for the Conference to be had with the Lords, Reasons agreed by the committee; which are as follow,

"For that the Message is by way of interrogatory upon the proceedings of the House of Commons, in a case concerning the privilege of a member of that House, of which they are proper judges. For that the matter of the Message carries in it an undue reflection upon the Speaker of the House of Commons. For that the matter of the Message doth highly reflect upon the whole House of Commons, in their Lordships questioning that House concerning their own orders; which they have the more reason to apprehend, because the day before this message was brought to them, the warrant was owned by the complaint of the House of Commons to their lordships, that the same was taken and detained from a servant of theirs, by a peer; which imports, that the question in that Message could not be for information only, and so tends to interrupt that mutual good correspondence, which ought to be preserved invariably between the two houses of parliament.

HOUSE OF COMMONS, May 18.

Sir Richard Temple reports from the Lords, That he had attended their lordships according to the command of this House, with the Message in the case of Mr. Onslow: to which the Lords returned an answer, which being in writing, was delivered in at the clerk's table, and read; and is as followeth:

"The Lords do declare, That it is the undoubted right of the Lords in judicature, to receive and determine in time of parliament appeals from inferior courts, though a member of either House be concerned, that there may be no failure of justice in the land; and from this right, and the exercise thereof, their lordships will not depart."

The matter of the Lords Answer being debated, Resolved, "That it is the undoubted right of this House, that none of their mem-

bers be summoned to attend the House of Lords during the sitting or privilege of parliament."

Ordered, That Sir Henry Ford do go up to the Lords, to desire a Conference upon the subject-matter of their Message concerning the Warrant for apprehending Dr. Shirley.

HOUSE OF LORDS, May 19.

The same Lords that reported the last Conference with the Commons are appointed to report this Conference the Lords are going to. The House was adjourned during pleasure, and the Lords went to the Conference; which being ended, the House was resumed.

The Lord Keeper reported the effect of the Conference; which was managed by Mr. Powle, who said, "That the House of Commons had desired this Conference upon the subject-matter of the Message which the Lords sent to them the 14th of May, concerning the Warrant for apprehending of Dr. Thomas Shirley; to which that House had returned Answer, That they would consider of it; and they found great cause so to do, it being a strange and unusual Message, and that for these reasons following: For that this Message is by way of interrogatory upon the proceedings of the House of Commons, in a case concerning the privilege of a member of that House, of which they are proper judges. 2. For that the matter of the Message carries in it an undue reflection upon the Speaker of the House of Commons. 3. For that the matter of the Message doth also highly reflect upon the whole House of Commons, in their lordships questioning that House concerning their own Orders; which they have the more reason to apprehend, because the day before the Message was brought to them, the warrant was owned, by the complaint of the House of Commons to their lordships, that the same was taken and detained from a servant of theirs by a Peer; which imports that the question in that Message could not be for information only, and so tends to interrupt that mutual good correspondency which ought to be preserved inviolably between the two houses of parliament. Then sir Thomas Lee added, That the House of Commons had hereupon resolved, That it was an unparliamentary Message."

Upon this, the House made this Order following:

"It is Ordered, by the Lords spiritual and temporal in parliament assembled, That it be referred to the Committee for Privileges, to consider and prepare what is fit to be done upon the matters offered this day by the House of Commons, at a Conference had touching the Message of the Lords concerning the warrant for apprehending Dr. Thomas Shirley, and report upon the House; and that the committee meet this afternoon."

HOUSE OF COMMONS, May 20.

Sir Thomas Lee reports, from the Committee.

tee appointed to draw up Reasons to be offered at the Conference to be had with the Lords upon the Privileges of this House, contained in the Lords' Answer to the last Message of this House, in the case of Mr. Onslow; which Reasons were twice read, and with some alterations at the clerk's table (upon the question severally put) agreed to: which are as follow, viz.

1. "That by the laws and usage of parliament, privilege of parliament belongs to every member of the House of Commons, in all cases, except treason, felony, and breach of the peace; which hath often been declared in parliament, without any exception of appeals before the Lords.

2. "That the reason of that privilege is, that the members of the House of Commons may freely attend the public affairs of that House, without disturbance or interruption; which doth extend as well to appeals before the House of Peers, as to proceedings in other courts.

3. "That by the constant course and usage of parliament, no member of the House of Commons can attend the House of Lords, without the especial leave of that House first obtained, much less be summoned or compelled so to do.

4. "If the Lords shall proceed to hear and determine any appeal where the party neither can, nor ought to attend, such proceedings would be contrary to the rules of justice.

5. "That the not determining of an appeal against a member of the House of Commons, is not a failure of justice, but only a suspension of proceedings in a particular case, during the continuance of that parliament, which is but temporary.

6. "That in case it were a failure of justice, it is not to be remedied by the House of Lords alone, but it may be by act of parliament."

Then sir Trevor Williams reports from the Lords, That he had attended, and desired a Conference with the Lords on the Privilege of this House, contained in the Lords Answer to the Message of this House, in the case of Mr. Onslow: And that the Lords will return an Answer by messengers of their own.

Mr. Powle reports, from the Conference had with the Lords upon the subject matter of the former Conference, concerning the Warrant for apprehending Dr. Shirley, That the Lords had returned an Answer to the Reasons of this House, delivered at the former Conference, and are as follow:

"The Lords have appointed this Conference, upon the subject matter of the last Conference, and have commanded us to give these Answers to the Reasons and other matters then delivered by the House of Commons.

"To the first Reason the Lords conceive, that the most natural way of being informed, is by way of question; and seeing a paper here which did reflect upon the privileges of the Lords' House, their lordships would not pro-

ceed upon it till they were assured it was owned by the House of Commons: But the Lords had no occasion at that time, nor do they now think fit to enter into the debate of the House of Commons being or not being proper judges in the case concerning the privilege of a member of that House; their lordships necessary consideration upon sight of that paper, being only, how far the House of Commons ordering (if that paper was theirs) the apprehension of Dr. Shirley, for prosecuting his appeal before the Lords, did entrench upon their lordships' both privilege and undoubted rights of judicature in the consequence of it, exempting all the members of both Houses from the judicature of this the highest court of the kingdom; which would cause a failure of that supreme justice, not administrable in any other court, and which their lordships will never admit.

"As to the second Reason, the Lords answer, That they do not apprehend how the matter of this Message is any reflection upon the Speaker of the House of Commons.

"To the third Reason. The Lords cannot imagine how it can be apprehended in the least to reflect upon the House of Commons, for the House of Peers, upon a paper produced to their lordships, in form of a warrant of that House, whereof doubt was made among the Lords, whether any such thing had been ordered by that House, to enquire of the Commons, whether such warrant was ordered there or no? And without such liberty used by the Lords, it will be very hard for their lordships to be rightly informed, so as to preserve a good correspondence between the two Houses, which their lordships shall endeavour; or to know when warrants in the name of that House are true or pretended: And it is so ungrounded an apprehension, that their lordships intended any reflection in asking that question, and not taking notice in their Message of the complaint of the House of Commons owning that warrant, that the Lords had sent their Message concerning that paper to the House of Commons, before the Lords had received the said Commons' complaint.

"But their lordships have great cause to except against the unjust and strained reflection of that House upon their lordships, in asserting that the question in the Lords' Message could not be for information, as we affirm, but tending to interrupt the mutual correspondence between the two Houses; which we deny, and had not the least thought of.

"The Lords have further commanded us to say, That they doubt not when the House of Commons have received what we have delivered at this Conference, they will be sensible of their error, in calling our Message strange, unusual, or unparliamentary. Though we cannot but take notice, that their Answer to our Message, That they would consider of it, was the first of that kind that we can find to have come from that House."

The question being put, Whether the House be satisfied with the Reasons delivered by the

Lords at the last Conference? it passed in the negative.

Resolved, That a Free Conference be desired with the Lords upon the matter delivered at the last Conference; and that the former managers do attend, and manage the Free Conference.

May 21.

The House resolved on Wednesday next to proceed in the further consideration of that part of the Message relating to appeals from inferior courts. Sir Treror Williams ordered to go up to the Lords, to desire a Conference upon the privileges of this House, contained in their Answer to the Message touching Mr. Onslow's case, which he accordingly did; and reports, That the Lords will return an Answer thereto by messengers of their own.

HOUSE OF LORDS, May 27.

A Message was brought from the House of Commons, by Sir Thomas Lee and others, to this effect:

"That the House of Commons heretofore did desire a Conference, touching their privileges, in the case of Mr. Onslow; and their lordships returned Answer, That their lordships would send an Answer by messengers of their own. The House of Commons looks upon this as a case of great consequence to the privileges of their House; and therefore now desire a Conference, concerning the privileges of their House in the case of Mr. Onslow."

The Lords entered into a serious debate of this Message, and a paper was offered to the House, as an Answer to be returned to this Message. The said Paper was read, as followeth:

"The Lords have considered of their Message: and shall be ever ready to grant the House of Commons a Conference, in any thing which may concern the privileges of their House: but they find that the desire of this Conference is upon the same ground with the former Message of 12th instant, which was upon the Answer sent by the Lords in the case of Mr. Onslow on the 17th instant, wherein the whole case concerns the judicature of the Lords, on which they can admit of no debate, nor grant any Conference."

The question being put, "Whether the Answer which shall be returned to this Message from the House of Commons shall be the substance contained in this Paper?"

It was resolved in the negative.

Memorandum, Before the putting of the abovesaid question, these Lords following desired leave to enter their dissents, if the question was carried in the negative, which accordingly they did:

"Because, they do humbly conceive, this question being carried in the negative, deprives this house of the advantage of making use of that Answer to the House of Commons, which would have been the surest way to have just-

fied and preserved the right of the Lords in judicature upon this occasion. (Signed) J. BRIDGWATER. MORUN. STAMFORD. GREY DE ROLLESTON.

Then a second Paper was offered to the consideration of the House, and read as followeth :

“ That the Lords did not agree to a Conference on the Message of 21st instant, because it was desired upon the Answer sent by the Lords in the case of Mr. Onslow on the 17th instant, wherein the whole matter concerns the judicature of the Lords, on which they can admit no debate, nor grant any conference: but this present Message being for a Conference concerning the privileges of the House of Commons; the Lords have agreed to a Conference and appoint it to be to-morrow morning, at ten of the clock, in the Painted Chamber; always provided, That nothing be offered at the Conference that may any ways concern their lordships judicature.”

The question being put, “ Whether this Paper shall be the Answer returned to this Message of the House of Commons?”

It was resolved in the affirmative.

Dissentiente, “ STAFFORD.”

The messengers that brought this Message from the House of Commons were called in, and had the abovesaid Answer delivered to them by the lord keeper.

Then the House nominated these Lords following to be reporters of this Conference with the House of Commons: Ld. Privy Seal. Marq. Winton, Earl Bridgwater, Earl Bolingbrooke, Abp. York, Bp. Sarum, Bp. Rochester.

The Instructions to be given to the Reporters of the Conference with the House of Commons to-morrow are, “ That they be limited, in case the managers of the said Conference from the House of Commons shall enter upon any reasons contrary to the proviso upon which the same was granted, and particularly if they shall offer any thing against the judgment of this House delivered the 17th instant, in answer to the Message brought by sir Richard Temple in the case of Mr. Onslow, the Reporters shall withdraw from the said Conference, and resort to the Lords, without further attendance.”

HOUSE OF COMMONS, May 28.

Sir Thomas Lee reports, from the Committee to whom it was referred to draw up Reasons to be offered at a Conference to be had with the Lords upon the subject-matter of their Answer to the last Message of this House, in the case of Mr. Onslow, several Reasons agreed by the said committee; which he read in his place, and afterwards delivered the same in at the clerk's table; where the same being twice read were, upon the question, severally agreed unto, and are as follow, viz.

“ For that the Commons desired a Conference upon their privileges concerned by the Lords' Answer to a Message sent to the Lords the

18th of May, in the case of Mr. Onslow; their lordships have not agreed any Conference in the case of Mr. Onslow; but have only agreed a Conference concerning their privileges in general, without reference to the case of the said Mr. Onslow; which was the only subject-matter of the desired Conference.

“ The limitation in the Lords' agreement to a Conference, with proviso that nothing be offered at the Conference that may any way concern their lordships judicature, is in effect a denial of any Conference at all, upon the subject on which it was desired; which ought not to be: the judicature which their lordships claim in appeals against a member of the House of Commons, and the privilege of that House, being in that case so involved, that there can be no Conference upon the latter, without some way touching upon the former.

“ That this manner of agreeing to a Conference with any limitation or proviso, is against the course of proceedings betwixt the two Houses of parliament, in coming to Conference; and doth seem to place a power in the managers of such Conferences, to judge whether such provisos be broken or not; and accordingly to proceed, or break off the Conference upon their own judgments.”

HOUSE OF LORDS, May 31.

A Message was brought from the House of Commons, by sir Lionel Jenkins and others: To desire a Conference, upon the matter of the Lords Answer to the desire of the Commons, for a Conference in the case of Mr. Onslow.

The messengers of the House of Commons were called in, and had this Answer returned: That the Lords have considered of this Message, and will send them an Answer by messengers of their own.

A Message was sent to the House of Commons, by sir Mundiford Brampton and sir William Beversham: That the Lords desire a present Conference, in the Painted Chamber, upon their not coming to the Conference desired by them on Thursday last, and by the Lords appointed to be at ten of the clock, in the Painted Chamber, on Friday the 28th of this instant May.

Ordered, That the Lord Treasurer, Lord Privy Seal, earl of Bridgwater, earl of Shaftsbury, and the lord Holles, do presently withdraw, and prepare what is fit to be said to the House of Commons at this Conference, and report the same to the House.

The Lord Privy Seal reported what the Lords had prepared to be said at the Conference; which was read as followeth:

“ The Lords have appointed this Conference, out of that constant desire and resolution they have to continue a fair correspondence between the two Houses, which is of the essence of parliamentary proceedings.—For this end, their lordships have commanded us to tell you, That they cannot but take notice of the House of Commons failing to be on Friday last at a Conference desired by themselves; and appointed

by the Lords, at ten of the clock, in the Painted Chamber. That they conceive it tends to an interruption of all Parliamentary Proceedings, and to evade the right of the Lords, to appoint time and place for Conferences."

The House approved of this, to be delivered to the House of Commons at this Conference.

Whereas Thomas Shirley, esq. hath an Appeal depending in this house, to which sir John Fagg, a member of the House of Commons, hath put in his answer as defendant: it is this day ordered, That this house will hear counsel at the bar, in the cause upon the said appeal and answer, on Tuesday the 8th day of June next.

Whereas Thomas Shirley, esq. hath a Petition and Appeal depending in this house, against sir John Fagg, a member of the House of Commons: This House being moved, "That counsel may be assigned to plead the cause of the said Thomas Shirley, upon his said Appeal;" it is ordered, That serjeant Pemberton, Mr. Offley, Mr. Richard Edwards, and Mr. Samuel Trist, (named for the said Thomas Shirley) be, and are hereby, appointed to manage and plead the said cause, at the bar of this house, on the part and behalf of the said Thomas Shirley, on Tuesday the 8th day of June next, and at such other times as it shall be depending in this house.

HOUSE OF COMMONS, May, 31.

Sir Leoline Jenkins reports, That he had attended the Lords, with the Message of this House, for a Conference upon the subject matter of the Lords' Answer to the last Message of this House, in the case of Mr. Onslow; and that the Lords had sent answer, that they would return Answer by messengers of their own.

A Message from the Lords by sir Mondeford Brampton, and sir William Beversham.

"Mr. Speaker; The Lords have commanded us to acquaint you, that they desire a Conference presently in the Painted Chamber, with the House of Commons, upon their not coming to the Conference desired by them on Thursday last, and by the Lords appointed to be at ten of the clock in the Painted Chamber, on Friday the 28th of this instant May."

The messengers being withdrawn, and the Message debated, a present Conference upon the question was agreed. And the messengers being called in, Mr. Speaker acquaints them, that the House had agreed to a present Conference.

Ordered, That the former members that were appointed to manage the former Conference in the case of Mr. Onslow, do attend and manage this Conference.

Ordered, That it be referred to the former Committee, who are appointed to draw up Reasons, to be offered at a Conference to be had with the Lords, upon the subject matter of their Answer to the Message of this house, in the case of Mr. Onslow; to consider of the matter delivered by the Lords at the last Conference; and to prepare and draw up further Reasons, to be offered at another Conference to be had

with the Lords, upon the subject matter of the last Conference. And that the Committee do meet this afternoon at five of the clock in the Speaker's chamber. And Mr. serjeant Maynard, and Mr. Sawyer, are to have notice to attend the same.

June 1.

Sir Thomas Lee reports, from the Committee appointed to inspect the Journals of the House of Lords, and to see what proceedings have been entered, in the case of Mr. Dalmahoy and Mr. Onslow; that they had inspected the Lords Journals, as to the case of Mr. Dalmahoy, and collected what proceedings had been in that case; but had no opportunity or time, yet to do it in the case of Mr. Onslow. Which proceedings being reported, were read, and delivered in at the clerk's table; and are as follow, viz.

"April 19, 1675. The Appeal brought by Crispe and Crispe, complaining against a decree in Chancery made, wherein Mr. Dalmahoy is recited to be one of the petitioners; Cranbourne and Bowyer are ordered to put in an Answer, and Dalmahoy, if he please.

"May 12. Ordered, That this house will hear counsel at the bar, upon the petition and appeal of sir Nicholas Crispe and others, against the lady viscountess Cranbourne, the lady Anne Bowyer, and Thomas Dalmahoy, esq. and their answer thereunto, depending in this house, on Wednesday the 19th of this instant May, at ten of the clock in the forenoon; whereof the petitioners are to cause timely notice to be given to the said defendants, or their agents in the said cause, for that purpose.

"May 16. Whereas sir Nicholas Crispe, bart. having an appeal depending in this house, against the lady Cranbourne, lady Bowyer, and Thomas Dalmahoy, esq. a member of the House of Commons; hath prayed that counsel may be assigned him to plead his cause upon the said appeal, and hath named counsel for that purpose:

"It is ordered, That sir John Churchill, serjeant Peck, serjeant Pemberton, and Mr. Porter, named by the said sir Nicholas Crispe, be, and are hereby appointed to open, and manage the said cause, on the part and behalf of the said sir Nicholas Crispe, on Thursday the 27th day of this instant May, at ten of the clock in the forenoon; and at such other times, as it shall be depending in this house.

"Upon reading the Petition of sir Nicholas Crispe, bart. Thomas Crispe and John Crispe, esqrs. shewing, that having an appeal depending in this house against Thomas Dalmahoy, esq. a member of the House of Commons, and others; they are in danger of being arrested by an Order of the House of Commons; and therefore pray the protection of this house, that they may have liberty to prosecute their said appeal with freedom:

It is thereupon ordered, That the said sir Nicholas Crispe, bart. John Crispe, and Thomas Crispe, or any of them, their or any of

their counsel, agents or solicitors, or such other person or persons as they shall employ, in prosecuting the said Appeal before this House, be; and are hereby privileged, and protected accordingly by this house, until the matter upon the Appeal be determined by their lordships. And all persons whatsoever are hereby prohibited from arresting, imprisoning, or otherwise molesting the said sir Nicholas Crispe, John Crispe, and Thomas Crispe, or any of them, their or any of their counsel, agents, or solicitors, upon any pretence whatsoever, during the time prefixed, as they or such of them will answer the contrary to this house.

" May 26. The cause between sir Nicholas Crispe, &c. plaintiffs, and Thomas Dalmahoy, esq. defendant, appointed to be heard the 27th, was ordered to be heard the 28th May.

" May 27. Upon reading the petition of sir Nicholas Crispe, complaining, that the counsel, assigned him by this house, to plead his cause at the bar, wherein Mr. Dalmahoy is one of the defendants, do refuse to plead for him in this case, in regard of a vote of the House of Commons; sir Nicholas Crispe was called in, and testified, that he shewed the order of this house to serjeant Peck, serjeant Pemberton, sir John Churchill, and Mr. Porter.

" Whereupon it is ordered, That whereas sir John Churchill, serjeant Peck, serjeant Pemberton, and Mr. Porter, were by order of this house, dated on the 19th instant, assigned to be of counsel for sir Nicholas Crispe, John Crispe, and Thomas Crispe, in their cause depending in this house against Thomas Dalmahoy, esq. a member of the House of Commons, and other defendants, at such time as the said cause shall be appointed to be pleaded at the bar of this house; having appointed to hear the said cause by counsel on both sides, to-morrow at three of the clock in the afternoon: it is this day ordered, That the said John Churchill, serjeant Peck, serjeant Pemberton, and Mr. Porter, be, and are hereby required, to appear at the bar of this house, to-morrow, at three of the clock in the afternoon, as counsel to plead in the said cause, on the behalf of the said sir Nicholas Crispe, John and Thomas Crispe, as they will answer the contrary to this house.

" May 28. Counsel heard at the bar on both parts, upon the Petition and Appeal of sir Nicholas Crispe, &c. and the answer of Diana viscountess Cranbourne, &c. and Thomas Dalmahoy, esq. put in thereunto, concerning a decree in Chancery: Resolved, the petition and decree be dismissed.

" May 28. This day the house heard the counsel of sir Nicholas Crispe, John Crispe, and Thomas Crispe, upon their petition and appeal depending in this house; and also the counsel of the lady Bowyer, and Mr. Dalmahoy, upon their answer thereunto; and after a serious consideration thereof, the question being put, Whether this petition and appeal shall be dismissed this House?

It was resolved in the affirmative.

Mr. Serjeant Pemberton, sir John Churchill,

Mr. Serjeant Peck, and Mr. Porter, attending at the door, in obedience to the order of this house; and being severally called in; Mr. Speaker did severally acquaint them, that they were summoned to give an account to the house of their appearing as counsel at the bar of the House of Lords, in the prosecution of a cause depending upon an Appeal, wherein Mr. Dalmahoy, a member of this house, is concerned; in the manifest breach of the order of this house; and giving up, as much as in them lies, the rights and privileges of the Commons of England.

And they having answered, and made their excuses to the effect following. That they had no notice of the Order or Vote of this house, but what they had heard in common discourse abroad; and because they conceived Mr. Dalmahoy, a member of this house, might be concerned, they refused several times to appear as counsel, or to accept their fees: but being assigned of counsel, for sir Nicholas Crispe; and an Order of the House of Lords being served on them, to attend, at their peril; and that then, attending; and Mr. Dalmahoy having put in his Answer in the Lords House, and not insisting on his Privilege afterwards; and the counsel for the lady Bowyer, who was the principal party concerned, denying to be of counsel for Mr. Dalmahoy; they conceived they might safely appear as counsel, without breach of the Order, or invading the rights and privileges of this House; which was not intended by them. And sir John Churchill, by way of further excuse for himself, said, that he had witnesses ready to prove, that Mr. Dalmahoy was willing and desirous to have the business go forward. And the said Mr. Serjeant Pemberton, sir John Churchill, Mr. Serjeant Peck, and Mr. Porter, did all of them haubly submit themselves to the pleasure of the House, if they had in any thing misbehaved themselves:

And being withdrawn; and the matter debated;

The question being put, That Serjeant Pemberton be taken into the custody of the Serjeant at Arms attending this House:

The House divided; for the Yeas, 154, for the Noes, 146.

And so it was resolved in the affirmative.

Ordered, That serjeant Pemberton,* sir John Churchill, Mr. serjeant Peck, and Charles Porter, esq. be taken into the custody of the serjeant at arms attending this house, for their breach of the privilege of this house.

* " During the debate upon this Resolution, some ladies were in the gallery peeping over the gentlemen's shoulders. The Speaker spying them, called out, ' What Borough do those ladies serve for?' to which Mr. Wm. Coventry replied, ' They serve for the Speaker's Chamber!' Sir Thomas Littleton said, ' The Spenker might mistake them for gentlemen with fine sleeves, dressed like ladies.' Says the Speaker, ' I am sure I saw petticoats.' † Cobb. Parl. Hist. 732.

A motion being made, That sir John Fagg, a member of this house, who without leave, has appeared in the Lords house, and put in his Answer to the appeal of doctor Shirley; after the matter of his privilege was, at his instance, in question in this house, and a message sent up to the Lords, on his behalf; for his breach of privilege of this house, might be sent prisoner to the Tower; And the matter being debated;

Ordered, That sir John Fagg, a member of this house, be sent to the prison of the Tower. And that Mr. Speaker do issue his warrant to the serjeant at arms attending this house, for conveying him to the Tower, to be there kept in safe custody, during the pleasure of the house, for his offence in breaking the privilege of this house.

Ordered, That the lieutenant of the Tower of London, do take sir John Fagg, a member of this house, into his custody, for his offence in breaking the privilege of this house; and him to detain in safe custody, during the pleasure of the house.

A motion being made, That Mr. Dalmahoy might be sent to the Tower, for waving his privilege, and putting in an Answer to a Petition exhibited against him in the House of Lords; but it appearing, that his Answer was put in, before any thing of the privilege of this house was in question; and that he had since stood upon his privilege, without appearing any further, or making any defence therein;

The question being put, that Mr. Dalmahoy be sent to the prison of the Tower; It passed in the Negative.

Ordered, that sir Nicholas Crispe, Mr. John Crispe, and Mr. Thomas Crispe, be summoned to attend this house to-morrow morning, ten of the clock.

HOUSE OF LORDS, June 1.

Information was given to this house, by the oaths of sir William Waller and Mr. Buchanan, "That they did see serjeant Peck, sir John Churchill, serjeant Pemberton, and one more, going with a Serjeant at Arms to the Speaker of the House of Commons, being in the custody of the Serjeant upon account of being committed by the House of Commons; and that serjeant Pemberton desired Mr. Buchanan to acquaint the Lord Privy Seal, that they were in the custody of the Serjeant at Arms of the House of Commons."

The like sir William Waller testified.

Mr. Buchanan, being called in again, said, "That he discoursing with them as they were going into the House of Commons to appear there, they told him it was because they were of counsel with sir Nicholas Crispe."

The house entering into debate of this business, appointed the Lord Privy Seal, the earl of Bridgewater, the earl of Shaftsbury, and the lord Holles, to draw and pen an Order, in this extraordinary case: to declare the sense and resolution of the house according to the debate,

and for the bringing these persons before this House to-morrow morning, to be released.

The Lord Privy Seal reported the draught of the ensuing Order; which was read, as followeth:

"The House of Peers being made acquainted by examination of two witnesses upon oath at their bar, that the lower house of parliament had ordered into custody of their serjeant, Mr. Serjeant Peck, sir John Churchill, Mr. Serjeant Pemberton, heard at their lordships bar, for doing their duty therein; and judging this to be a great indignity to the king's majesty in this his highest court of judicature in this kingdom, and an unexampled usurpation, and breach of privilege against the whole House of Peers, and tending to the subversion of the government of this kingdom, and a transcendent breach on the right and liberty of the subject, which is not to be impeached but by due process of law, and being by the law of the land concerned in all respects to do themselves and any oppressed subjects right; do order the gentleman usher of the black-rod attending this house to repair to any place or prison within the kingdom of England where the said persons, or any of them, or Mr. Charles Porter counsellor at law, are, or shall be, detained or held in custody; and from any person or persons detaining them, or any of them, to demand delivery of them without fees; and the said usher of the black-rod is hereby empowered to call all persons necessary to his assistance herein, and to make return of this warrant to-morrow morning, by eight of the clock, to this House; and this shall be a sufficient authority on that behalf."

"To the gentleman usher of the black rod attending this House, his deputy and deputies; and to all mayors, sheriffs, bailiffs, constables, and other his majesty's officers and loving subjects, who are to be aiding and assisting in the execution hereof."

The House approved of this Order, and ordered it to be signed by the clerk of the parliaments.

HOUSE OF LORDS, June 2.

The gentleman usher of the Black Rod gave the House an account of the execution of the Warrant of this House made yesterday: which was to this effect:

"That he hath met with serjeant Peck, sir John Churchill, serjeant Pemberton, and Mr. Porter: and sir John Churchill only was in the custody of the Serjeant at Arms attending the House of Commons; whom he took into his care, and required him and the other persons, by virtue of his warrant, to appear before the Lords in parliament this morning."

He further said, "That this morning, sir John Churchill being in the room adjoining to this house, the Serjeant at Arms attending the House of Commons came to him, and would have had him go along with him as his prisoner: upon this the gentleman usher took sir John Church-

ill into his care, from the custody of the serjeant."

Then serjeant Peck, sir John Churchill, serjeant Pemberton, and Mr. Porter, were called one after another; and gave the House a large and particular account of the proceedings against them by the House of Commons, and their Serjeant at Arms. They all confessed, "That they were all called into the House of Commons and told by the Speaker, That they had subverted and betrayed the liberty of the subject and privilege of parliament, in pleading for sir Nicholas Crispe, against Mr. Dalmahoy, at the bar of the House of Lords."

After a serious debate of this business, it was proposed, "To send a Message, to have a Conference with the House of Commons to-morrow morning, in the Painted-Chamber, upon matters of high importance, concerning the dignity of the king, and the safety of the government."

Then it was moved, "That these words ["In his highest court of judicature"] might be part of the Message."—And the question being put "Whether these words shall be part of the Message?" It was resolved in the Negative.

A Message was sent to the House of Commons, by the Lord Chief Justice of the court of Common Pleas and the Lord Chief Baron: to let them know, that the Lords desire a Conference with the House of Commons, at ten of the clock tomorrow morning, in the Painted Chamber, upon matters of high importance, concerning the dignity of the king, and the safety of the government.

Next, the House thought it requisite to give sir John Churchill and the other counsellors the protection of this House, to preserve them from any future arrests concerning this business.

Whereupon the Order following was made:

"Whereas sir John Churchill hath been taken into custody by the Serjeant at Arms attending the House of Commons, by virtue of a warrant signed by the Speaker of that House, and that endeavours have been to take Mr. Serjeant Peck, Mr. Serjeant Pemberton, and Mr. Charles Porter, into custody, by that or the like warrant, for appearing at the bar of the House of Peers, as counsel for sir Nicholas Crispe, in his appeal against Thomas Dalmahoy esq. a Member of the House of Commons, as upon the several examinations of them at the bar of this house, and by other proofs, was attested: it is this day ordered, That the said Serjeant Peck, sir John Churchill, Serjeant Pemberton, and Mr. Porter, and every of them, be and are hereby privileged and protected by this House: and all persons whatsoever are hereby prohibited from arresting, imprisoning or otherwise molesting, the said Serjeant Peck, sir John Churchill, Serjeant Pemberton, and Mr. Porter, or any of them, upon any pretence of authority whatsoever, for the cause aforesaid, as they will answer the contrary to this House.

The serjeant Peck, sir John Churchill, serj. Pemberton, and Mr. Porter were called in.

And the Lord-Keeper told them, "That this

House takes notice that they had done their duty, in attending at the bar, as they were commanded, in the case of sir Nicholas Crispe and others; and did commend them for it: That this House will never suffer those who obey their commands to be arrested, or detained by any arbitrary or illegal imprisonment: That therefore this House had resolved to take them into their protection, and for that end have caused the Order of this House for their protection to be delivered to each of them; to the end that whosoever shall presume to attach them may be the more inexcusable, when they shall see the Order of this House to the contrary, And this House expects from them, that they do not presently submit to any illegal imprisonment; and if any attempt shall be made upon them, that then they resort to this House for further directions."

And then an Order of Protection was delivered to each of them.

A Message was brought from the House of Commons, by sir Edward Deering and others: To desire a Conference upon the subject matter of the last Conference.

The Answer returned was: That the Lords have taken their Message into consideration; and do agree to a Conference, as is desired: And they do appoint it to be presently, in the Painted Chamber.

The House was adjourned during pleasure, and the Lords went to the Conference; which being ended, the House was resumed.

Then the Lord Privy Seal reported the effect of this Conference; which was managed by Mr. Vaughan, who said,

"That this Conference was desired by the House of Commons upon the matter delivered by the Lords at the last Conference.

"The House of Commons do agree with the Lords, that Conferences between the two Houses of Parliament are essential to parliamentary proceedings, when they are agreed in the usual and parliamentary way: But the manner of the Lords agreement to a Conference to have been upon Friday the 28th of May last at ten of the clock, in the Painted Chamber, with limitation and proviso, was such as did necessitate the House of Commons to forbear to meet at that Conference, and gave the first interruption to parliamentary proceedings in Conferences between the two Houses.

"For that the Conference desired by the Commons was upon their privilege, concerned in the Answer of the Lords to a Message of the House of Commons sent to the Lords the 17th of May, in the case of Mr. Onslow, to which the Lords did not agree; but did only agree to a Conference concerning their Privileges in general, without reference to the case of the said Mr. Onslow, which was the only subject matter of the desired Conference.

"The limitation in the Lords agreement to a Conference, 'with proviso that nothing be offered at the Conference that may any way concern the Lords Judicature,' is in effect a denial of any Conference at all upon the sub-

ject upon which it was desired; which ought not to be.

“The judicature which the Lords claim in appeals against a member of the House of Commons, and the privilege of that House in that case, is so involved, that no Conference can be upon the latter, without some-way touching the former.

“That this manner of agreeing to a Conference with any limitation or proviso, is against the course of proceedings between the two Houses of Parliament in coming to Conferences; and doth seem to place a power in the managers of such Conferences to judge whether such provisos be broken or not, and accordingly to proceed; or break off the Conference, upon their own judgments.

“That the particular limitation, that nothing be offered at the Conference that may any way concern the judicature of the Lords, appears unreasonable; for that your lordships judicature in parliament is circumscribed by the laws of the land, as to your proceedings and judgments; and is, as well as all other courts, subject to parliament.

“The House of Commons doubt not but that, when the Lords have considered of what is delivered at this Conference, the good correspondence which the Lords express they desire to continue between the two Houses (which the Commons also are no less careful to maintain) will induce them to remove the present interruption of coming to Conferences; and therefore to agree to the Conference, as it was desired by the House of Commons, upon the Privileges of their House, concerned in the Lords' Answer to the Message of the House of Commons in the Case of Mr. Onslow.”

HOUSE OF COMMONS, June 2.

The House called upon sir James Norfolkke, the Serjeant at Arms attending this House, to give an account of Mr. serjeant Pemberton, sir John Churchill, Mr. serjeant Peck, and Mr. Charles Porter, who were yesterday committed to his custody for their breach of privilege of this House: who thereupon informed the House, That he was, by force, interrupted in the execution of the Order, and they were escaped from his custody.

And the matter being debated; and the House altogether unsatisfied with the Account given, and the excuse by him made, for not executing the Order of this House;

Resolved, That sir James Norfolkke, the present Serjeant at Arms attending this House, for betraying his trust, in not executing his office, according to the Order of this House, in bringing in custody sir John Churchill, serjeant Pemberton, serjeant Peck, and Mr. Cha. Porter, to answer their breach of privilege against this House, be sent prisoner to the Tower: and that Mr. Speaker do issue out his warrant to the lieutenant of the Tower, for taking him into custody.

Ordered, That his majesty be addressed to appoint another Serjeant at Arms to attend this

House, in the stead of sir James Norfolkke; he having betrayed his trust, in not executing his office, according to the orders and direction of this House: and that such members of this House, as are of his majesty's privy council, do present the Address of this House to his majesty.

Whereas sir James Norfolkke, Serjeant at Arms attending this House, after the order of this House pronounced for his commitment to the Tower, did withdraw himself, without leave of the House; and being not to be found, though inquiry and search was made for him;

Ordered, That Robert Read, esq. the Serjeant at Arms now attending this House *pro tempore*, by direction of this house, do apprehend sir James Norfolkke; and bring him to the bar of this House.

Resolved, That sir James Norfolkke shall not any longer have the privilege of this House.

Ordered, That the thanks of this House be returned to Mr. Speaker, for his great care of the honour and service of this House, in issuing his warrant for executing the Order of this House, for taking the persons into custody, which were committed yesterday to the Serjeant at Arms.

Whereas sir John Churchill, Mr. serjeant Peck, and Mr. serjeant Pemberton, were, by virtue of an Order of this House yesterday, in the custody of the Serjeant at Arms then attending this house; and, by the negligence of the said Serjeant, have made their escape:

Ordered, That Mr. Speaker do issue out his warrant to Robert Read, esq. the Serjeant at Arms now attending this House, to bring the said sir John Churchill, Mr. serjeant Peck, and Mr. serjeant Pemberton, in custody to the bar of this House to-morrow morning, nine of the clock.

HOUSE OF LORDS, June 3.

Whereas Mr. serjeant Peck, sir John Churchill, Mr. serjeant Pemberton, and Mr. Charles Porter counsellor at law, have the protection of the House of Peers granted to them, and every of them, from all arrests and imprisonments, for appearing as counsel at the bar of this House, upon an appeal brought by sir Nicholas Crispe, against the lady Bowyer, Mr. Dalmahoy, and others:

It is this day ordered, That the lieutenant of the Tower of London, and all other keepers of prisons, and gaolers, and all other persons whatsoever, be, and they and every of them is and are hereby, strictly prohibited from arresting, imprisoning, detaining, or otherwise molesting or charging, the said gentlemen, or any of them, in this case, as they and every of them will answer the contrary to this House at their peril.

HOUSE OF COMMONS, June 3.

Mr. Vaughan reports, That the Lord Privy Seal did manage the Conference; and had delivered the occasion and intent of the Confer-

ence: Which Mr. Vaughan did report to the House, to the effect following; viz.

“ The Lords do take notice of the House of Commons their ordering into custody of their serjeant, Mr. serjeant Peck, sir John Churchill, Mr. serjeant Pemberton, and Mr. Charles Porter, counsellors at law, assigned by their lordships to be of counsel in an appeal, heard at their lordships bar, in the case of sir Nicholas Crispe, against the lady Bowyer, Mr. Dalmahey, and others. The Lords in parliament, where his majesty is highest in his royal estate, and where the last resort of judging upon Writs of Error, and appeals in equity, in all causes, and over all persons, is undoubtedly fixed, and permanently lodged.

“ It is an unexampled usurpation, and breach of privilege, against the House of Peers, that their orders or judgments should be disputed, or endeavoured to be controuled, or the execution thereof obstructed, by the lower house of parliament, who are no court, nor have authority to administer an oath, or give any judgment.

“ It is a transcendent invasion on the right and liberty of the subject, and against Magna Charta, the Petition of Right, and many other laws, which have provided, that no freeman shall be imprisoned, or otherwise restrained of his liberty, but by due process of law.”

“ This tends to the subversion of the government of this kingdom, and to the introducing of arbitrariness and disorder :

“ Because it is in nature of an injunction from the lower house, who have no authority nor power of judicature over inferior subjects ; much less over the King and Lords, against the orders and judgments of the supreme court.”

“ We are further commanded to acquaint you, That the Lords have therefore, out of that justice, which they are dispensers of, against oppression, and breach of laws, by judgment of this court, set at liberty, by the Gentleman Usher of the Black Rod, all the said serjeants and counsellors ; and prohibited the lieutenant of the Tower, and all other keepers of prisons, and gaolers, and all persons whatsoever, from arresting, imprisoning, detaining; or otherwise molesting or charging the said gentlemen, or any of them, in this case : and if any person, of what degree soever, shall presume to the contrary, their lordships will exercise the authority with them intrusted, for putting the laws in execution : and we are further commanded to read to you a roll of parliament in the first year of the reign of king Hen. the fourth, whereof we have brought the Original with us.”

And a debate arising thereupon ;

Resolved, That a Conference be desired with the Lords, upon the subject matter of the last Conference.

Ordered, That Mr. Speaker do issue his warrant to the Serjeant at Arms attending this House, for the apprehending Charles Porter, esq. and bring him to the bar of this House,

to answer the breach of privilege objected against him.

A petition of sir John Fagg, was read, submitting himself to the House, and craving their pardon for his offence, and praying, he might be released of his imprisonment.

Ordered, That sir John Fagg be released and enlarged from his imprisonment in the Tower.

HOUSE OF COMMONS, June 4.

Ordered, That the thanks of the House be returned to Mr. Speaker, for causing Mr. serjeant Pemberton, formerly committed, by order of this House, to the custody of the Serjeant at Arms attending this House, for a breach of privilege, to be seized, and taken into custody, in Westminster-Hall, for his breach of privilege.

The House being informed, That sir John Churchill, Mr. Serj. Peck, and Mr. Charles Porter, who were ordered to be taken into the custody of the Serjeant at Arms attending this House, are now in Westminster Hall ;

Ordered, That the Serjeant at Arms now attending this House do go with his mace into Westminster-Hall, and do execute the order of this House, and the warrant of Mr. Speaker thereupon, for seizing and bringing in custody Mr. serjeant Peck, sir John Churchill, and Mr. Charles Porter, for their breach of the privilege of this House.

The Serjeant returning, gave an account, That he had executed the order of this House, and Mr. Speaker's warrant thereupon ; and had brought the said Mr. serjeant Peck, sir John Churchill, and Mr. Charles Porter, in custody, into the Speaker's chamber.

The question being put, That sir John Churchill be sent to the Tower, for his breach of privilege, and contempt of the authority of this House ; the House divided. For the Yeas, 152. For the Nays, 147 : and so it was resolved in the affirmative.

Ordered, That Mr. serjeant Peck, for his breach of privilege and contempt of the authority of this House, be sent to the Tower.

Ordered, That Mr. serjeant Pemberton be sent to the Tower, for his breach of privilege, and contempt of the authority of this House.

Ordered, That Mr. Charles Porter be sent to the Tower, for his breach of privilege and contempt of the authority of this House.

Ordered, That Mr. Speaker do issue his warrant to the lieutenant of the Tower, to take into his custody the bodies of sir John Churchill, Mr. Serjeant Peck, Mr. serjeant Pemberton, and Mr. Charles Porter, for their offence in breaking the privileges, and contemning the authority of this House ; there to remain in safe custody during the pleasure of this House.

Ordered, That Mr. Speaker do issue his warrant to the Serjeant at Arms now attending this House, to convey sir John Churchill, Mr. serjeant Peck, Mr. serjeant Pemberton, and Mr. Charles Porter to the Tower, there to be kept in safe custody during the pleasure of this

House, for their offence in breaking the privileges, and contemning the authority of this House.

HOUSE OF LORDS, June 4.

It was moved, "That this House would proceed to take into consideration the great Breach of Privilege committed in Westminster Hall this morning, whereof a member of this House can give an account."

Whereupon the Lord Lovelace said, "That, being in the Court of Chancery this morning, he did see the serjeant of the House of Commons, come down into the Court of Chancery, and seize sir John Churchill within the bar, and Mr. Porter at the bar: that they refused to go with him, and did read the protection of the Lords: notwithstanding that, he seized them; and would not suffer Mr. Porter to go on in a cause that he was then pleading."

Several persons, that were eye-witnesses to the matter of fact, did deliver their knowledge at the bar upon oath, as followeth:

Nathaniel Reading, esq. saith, "That he was present in the Court of Chancery, when the Serjeant at Arms attending the House of Commons, being accompanied with several of the door keepers of that House, and others, went into the said Court; and saw him lay his hand upon sir John Churchill, and demanded him to go along with him: whereupon the said sir John Churchill desired that he might not be taken out of the said Court, for that he was under the protection of the House of Lords, and desired that the said serjeant would hear the said protection read; and some part of the same was read by the said sir John Churchill accordingly. But, notwithstanding the same; the said Serjeant took the said sir John Churchill, and forced him to rise up. Whereupon the said sir John Churchill, before his being carried away out of the Court, applied himself to the Honourable the Master of the Rolls, and said, "That he was very sorry to see that he was so carried away in the face of that Court where his majesty was always taken to be personally present." And the said sir John Churchill and Mr. Charles Porter (who read his protection from the House of Lords to the said Serjeant likewise) were carried up, by the said Serjeant and several others who attended him, into the lobby before the door of the House of Commons, and were clapped up into the little room belonging to the said Serjeant; and the door was shut upon them, and guarded by Cary, one of the servants belonging to the said Serjeant."

And he further declared, "That going along with the said Serjeant, as he was carrying up his prisoners, he said to him, "That he believed the House of Lords would ill resent what had been done by him; and that he believed the Gentleman Usher would be sent again to demand the prisoners." And thereupon the said Serjeant declared to him, "That, in case the Black Rod came to demand the prisoners, he would not deliver them."

And further he testified, "That he was present in the said lobby when the Speaker of the House of Commons brought Mr. serjeant Pemberton up with him, and heard the Speaker give order to the Serjeant attending the House of Commons to secure Mr. serjeant Pemberton; and the door was forthwith locked up, and Mr. serjeant Pemberton was presently after carried up into the Speaker's chamber."

Next, *Jasper Churchill*, gentleman, testified, "That he was at the bar of the Court of Chancery, when the Serjeant at Arms attending the House of Commons, being accompanied with sir Henry Ford and several other members of the said House, and Mr. Goldsborough the younger, clerk of the said House, and several others of the officers of the said House, did go into the said Court; and saw the said Serjeant take sir John Churchill by the hand, and bring him forth of the said Court; and some of the said Serjeant's servants laid hands on the said sir John Churchill, and they carried him and Mr. Charles Porter into the lobby of the House of Commons; and the said Mr. Goldsborough, and Cooper the door-keeper told him, that thirty or forty of the members of the House of Commons went along with them."

Then this House being informed, "That sir William Beversham and sir Edward Lowe sat in the Chancery as masters of the Chancery when this fact was done;" they were sent for. Who, being come, declared upon oath their knowledge in this business.

Sir William Beversham testified, "That he did see the Serjeant of the House of Commons, with his mace, come this morning into the Court of Chancery, the Court then sitting, and the Master of the Rolls then sitting judge, with two masters (whereof he was one; and the Serjeant did lay hold upon sir John Churchill, then sitting within the bar, and charged him to go along with him. Upon which demand, sir John Churchill pulled out of his pocket a paper, purporting a protection of the Lords in parliament (as he said), and read it to the Serjeant openly in the said Court: yet, notwithstanding, the Serjeant pulled him up, and caused him to go along with him; who, before his going out of the Court, turned to the bench, and declared, "That it was the first time that any person was taken out of that Court by any such means," or used words to that effect; and was then led away by the Serjeant."

He said further, "That soon after, the same Serjeant came again, with his mace, and took hold of Mr. Porter, then standing without the bar of the Chancery, and demanded him to go along with him: to which the said Mr. Porter replied, "That he had a protection from the Lords in parliament," and openly shewed and read the same to the said Serjeant: howbeit, the said Serjeant pulled him down by the sleeve, and led him away."

He testified further, "That about half a quarter of an hour after, the same Serjeant came

again, with his mace, into the Court of Chancery, and demanded serjeant Peck to go along with him; who made answer, "That he had a protection from the House of Lords," and shewed the same unto him: yet, nevertheless, the said Serjeant took him out of the said Court, and led him away.

"That there was a great multitude of people standing in and about the Court when the said Serjeant did carry the said persons away; so as, by reason of such interruption, the Court could not proceed in their business for some time."

Then sir *Edward Lowe*, One of the masters of the chancery, declared upon oath, "That he this morning, about ten of the clock, sitting in the High Court of Chancery, did see and observe the Serjeant of the House of Commons, with his mace, come into the said Court, and made towards sir John Churchill, one of his majesty's counsel; and laying his hand on him, the said sir John Churchill told the Serjeant, "That he had the protection of the House of Lords; and, as he believes (he not being able, by reason of the noise in and about the Court, and a crowd of people then interposing, to hear distinctly), read the same: Which being done, the said Serjeant, being within the Court, reached over the bar, and in like manner laid his hand on Mr. Charles Porter counsellor of law (at that time either making or defending a motion); who also declared he had the Lords' protection, and taking it out of his pocket, did very audibly read the same all over. After which, the Serjeant taking sir John Churchill with him, the said sir John, as he was going away through the Court, turning his face towards the bench, spoke these, or words to the like effect: (*videlicet*.) "I am the first man that ever after this manner was taken out of this Court, where the king is, or is supposed to be personally present." The said Serjeant then, going on the outside of the bar, took down the said Mr. Charles Porter from the place wherein he stood before the motion was over wherein he was engaged."

He further said, "That whilst these things as above mentioaed were acting, the business of the Court was somewhat interrupted.

"That the said Serjeant of the House of Commons, about half a quarter of an hour after he had taken away sir John Churchill and Mr. Charles Porter, he came a second time into the Court of Chancery, and there took into custody Mr. serjeant Pecke, one other of his majesty's counsel; but whether the said Mr. serjeant Pecke did produce, read, or declare he had any protection, he did not observe."

Then *William Pecke*, esq. upon oath, declared, "That he, being this morning at the bar of the Court of Chancery, did see one bearing a mace (which was said to be the mace of the House of Commons) come into the Court of Chancery, to sir John Churchill; who publicly reading in the said Court a writing, which he doth apprehend to be the protection of the

House of Lords, the said sir John Churchill did soon after go along with the said Serjeant; and presently after the said Serjeant came to Mr. Charles Porter, and took him away from the said Court; and about half a quarter of an hour after, the said Serjeant came to Mr. serjeant Pecke, and took him also from the said Court."

He further said, "That about one hour before the Court of Chancery sat, he did see Mr. serjeant Pemberton go along part of Westminster Hall, with the Speaker and the said Serjeant of the House of Commons; and did hold a paper towards the said Speaker and Serjeant, which he doth believe was the protection of the House of Lords."

Paul Bowes, esq. upon his oath, declared, "That he was this morning at the Court of Chancery bar, and did see one bearing a mace (which was said to be the mace of the House of Commons) come into the Court of Chancery, and did lay his hand upon sir John Churchill, then in the said Court; and said, "That he arrested him." And thereupon the said sir John Churchill did take out of his pocket a paper which he declared to be the protection of the House of Lords, and did read part of the same openly, without interruption: and then a gentleman, who was affirmed to be one of the House of Commons, and followed the Serjeant who bare the said mace, said, "Do not let him read it," or used words to that effect. Notwithstanding which, the said sir John Churchill did proceed in reading the said protection; and afterwards the said Serjeant told him, "That (notwithstanding the said protection) he must go with him;" or used words to that effect. And the said sir John Churchill did then rise from his seat, and went with the said Serjeant; and the said Serjeant did then also put forth his hand to Mr. Charles Porter, and told him, "He arrested him." And the said Mr. Porter did acquaint him, "That he had the protection of the House of Lords;" and did openly read part of the same; but, by reason of the noise in the Court, he did not hear the same read out: But the Serjeant said, "He must go with him;" and then came to the outside of the bar, where the said Mr. Porter stood, and took him along with him; and about half a quarter of an hour after, the said Serjeant came into the Court of Chancery again, with his mace, and arrested Mr. serjeant Peck, who told him, "He had the like protection of the House of Lords;" and the said Serjeant did reply, "That he had the like warrant against him;" or used words to that effect: And thereupon the said Mr. serjeant Peck did go along with the officer that bare the mace."

The House hereupon Ordered, That the gentleman usher of the black rod attending this house do forthwith attach the body of serjeant Topham, at present attending the House of Commons, for having seized and taken into custody Mr. serjeant Peck, sir John Churchill, Mr. serjeant Pemberton, and Mr. Charles

Porter, contrary to the order and protection of this House granted to them, and produced to him; and that the said Usher of the Black Rod is hereby authorized and required to demand the persons of the said serjeant Peck, sir John Churchill, serjeant Pemberton, and Mr. Porter, from what person soever he shall find them to be in the custody of, without paying fees; and this shall be a sufficient warrant in that behalf.

To the Gentleman Usher of the Black Rod attending this House, his Deputy and Deputies.

Ordered, That an humble Address be made to his majesty (by the Lord Treasurer, Lord Great Chamberlain, Lord Steward, viscount Newport, and the lord Maynard), from this House, to desire that his majesty would be pleased to appoint another Serjeant to attend the House of Commons, in the place of serjeant Topham, whom the Lords have, for some great offences, ordered to be taken into custody by the Gentleman Usher of the Black Rod.

HOUSE OF LORDS, June 4, p. m.

A question was propounded: "Whether this House will proceed upon no other business, except what shall be recommended by his majesty, till they have received full satisfaction, and vindicated themselves in this breach of their privileges." The question being put, "Whether this question shall be put?" It was resolved in the affirmative.

Then, instead of putting the question, it was ordered, That this House will proceed upon no other business (except what shall be recommended by his majesty), till they have received full satisfaction, and vindicated themselves in this breach of their privileges.

Then the Gentleman Usher of the Black Rod gave the House an account of what was committed to his care, as followeth:

"My Lords; In pursuance of your lordships Order committed to my charge, I enquired where serjeant Peck, sir John Churchill, serjeant Pemberton, and Mr. Porter, were gone; and being informed that they were sent by water through sir John Cotton's garden to the Tower, I took a pair of oars, and so I went to the Tower, and went to the lodging of the Lieutenant of the Tower, and so went up stairs; and in a great room I found the said Lieutenant, and in the said room were serjeant Peck, sir John Churchill, serjeant Pemberton, and Mr. Porter: And so, taking my black rod in one hand, and the Lords' warrant in the other, I did address myself to the said Lieutenant, and told him, 'That I was commanded, by the Lords spiritual and temporal in parliament assembled, to demand the persons of Mr. serjeant Peck, sir John Churchill, Mr. serjeant Pemberton, and Mr. Porter: I did, therefore, in the name of the Lords spiritual and temporal, and by the authority of the black rod, command him to deliver me the afore-named persons.' He did after demand to see my warrant: I did

shew it him; and he would have shewed me his, but I would not look upon it, but demanded his answer: and he told me, 'That they were committed by order of the Commons, and that he could not release them without their order; and if the Lords did commit any to him, he could not release them without their lordships' order.'

"My Lords; I did likewise endeavour to take serjeant Topham, according to your lordships' order and command; but was informed that he kept himself up with Mr. Speaker, in the Speaker's chamber, so that I could not come at him."

The Lord Treasurer reported, "That the Lords appointed to present the humble Address of this House to his majesty, for appointing a new serjeant at arms to attend the House of Commons in the place of serjeant Topham, have attended his majesty with the said Address; who returns this Answer; That his majesty had given order for sending a new serjeant to attend the House of Commons, before the Address was presented to him."

Ordered, That the Lord Treasurer, the Lord Great Chamberlain, Lord Steward, viscount Newport, and the lord Maynard, do present the humble thanks of this House to his majesty, for appointing a new serjeant at arms to attend the House of Commons, in place of serjeant Topham.

Ordered, That the humble Address of this House be presented to his majesty, by the Lord Treasurer, Lord Great Chamberlain, Lord Steward, viscount Newport, and lord Maynard; shewing, "That whereas this House directed the Gentleman Usher of the Black Rod to demand the persons of serjeant Peck, sir John Churchill, serjeant Pemberton, and Mr. Charles Porter, of what person soever he should find them in custody of; and, in pursuance of that direction, finding them to be committed prisoners to the Tower of London by order of the House of Commons, repaired to sir John Robinson, his majesty's Lieutenant of the Tower, and demanded them of him, who refused to deliver them otherwise than by order of the House of Commons; This House humbly desires his majesty, that he will be pleased to remove the said sir John Robinson from that trust, and to appoint some other person to be his Lieutenant of the Tower."

The Lord Treasurer reported, "That he and the rest of the Lords have presented the humble Address of this House to his majesty, for removing sir John Robinson from his trust of being lieutenant of the Tower; and his majesty says, he will return an Answer thereunto at the first sitting of the House to-morrow."

A Message was brought from the House of Commons, by sir Henry Capell, &c. To desire a Conference, upon the matter delivered by their lordships at the last Conference.

The Answer returned was: That the Lords have considered their Message, and will return an Answer by messengers of their own.

HOUSE OF COMMONS, JUNE 4, p. 3.

Ordered, That Mr. Speaker do issue out a warrant to John Topham, esq. serjeant at arms now attending this House, to authorize and require him, that, if any person or persons shall attempt or go about to arrest, imprison, or detain him from executing his office, or from his attendance upon this House, to apprehend such persons, and bring them in custody, to answer their breach of privilege; and to require and authorize all persons to be aiding and assisting to him therein.

Resolved, That John Topham, esq. serjeant at arms now attending this House, shall have the privilege of this House.

Resolved, That sir Henry Capell do go up to the Lords, to desire a Conference upon the matters delivered at the last Conference.

Sir Thomas Lee reports, from the committee, the Reasons agreed to be offered at the Conference to be had with the Lords, upon the matters delivered at the last Conference: which were twice read; and, with some amendments made at the table, severally agreed; and are as followeth; viz.

"Your lordships having desired the last Conference upon matters of high importance, concerning the dignity of the king, and the safety of the government; the Commons did not expect to bear from your lordships at that Conference, things so contrary to, and inconsistent with, the matter upon which the said Conference was desired, as were then delivered by your lordships.

"It was much below the expectation of the Commons, that, after a representation in your lordships' Message of matters of so high importance, the particular upon which the Conference was grounded, should be only the commitment of four lawyers to the custody of their own serjeant at arms, for a manifest violation of the privileges of their House.

"But the Commons were much more surprized, when your lordships had introduced the Conference, with an assurance it was in order to a good correspondency between the two Houses, that your lordships should immediately assume a power to judge the order of the House of Commons, for the imprisonment of Mr. serjeant Peck, sir John Churchill, Mr. serjeant Pemberton, and Mr. Charles Porter, to be illegal and arbitrary, and the execution thereof a great indignity to the king's majesty, with many other high reflections upon the House of Commons, throughout the whole Conference; whereby your lordships hath condemned the whole House of Commons as criminal: Which is without precedent, or example, or any ground of reason so to do.

"It is not against the king's dignity for the House of Commons to punish by imprisonment a commoner, that is guilty of violating their privileges, that being according to the known laws and custom of parliament, and the right of their privileges, declared by the king's royal predecessors in former parliaments; and by himself in this.

"But your lordships claiming to be the supreme court, and that his majesty is highest in his royal estate in the court of judicature, there is a diminution of the dignity of the king; who is highest in his royal estate, in full parliament; and is derogatory to the authority of the whole parliament, by appropriating it to yourselves.

"The Commons did not infringe any privileges of the House of Peers, but only defend and maintain their own; On the other side, your lordships do highly trench upon the rights and privileges of the House of Commons, denying them to be a court, or to have any authority or power of judicature; which, if admitted, will leave them without any authority or power to preserve themselves.

"As to what your lordships call a transcendent invasion of the rights and liberty of the subject, and against Magna Charta, the Petition of Right, and many other laws; the House of Commons presume, that your lordships know, that neither the Great Charter, the Petition of Right, nor many other laws, do take away the law and custom of parliament, or of either House of parliament; or else your lordships have much forgotten the Great Charter, and those other laws, in the several judgments your lordships have passed upon the king's subjects, in cases of privilege.

"But the Commons cannot find, by Magna Charta, or by any other law or ancient custom of parliament, that your lordships have any jurisdiction, in cases of appeal from courts of equity.

"We are further commanded to acquaint you, that the enlargement of the said persons imprisoned by order of the House of Commons, by the Gentleman Usher of the Black Rod; and the prohibition, with threats to all officers and other persons whatsoever, not to receive or detain them, is an apparent breach of the rights and privileges of the House of Commons: and they have therefore caused them to be retaken into the custody of the Serjeant at Arms, and hath committed them to the Tower.

"As to the Parliament-Roll of 1st Hen. 4. caused to be read by your lordships at the last Conference, but not applied, the Commons apprehend it doth not concern the case in question; for that this record was made upon occasion of judgments given by the lords, to depose and imprison their lawful king; to which the Commons were unwilling to be made parties: and therefore the Commons conceive it will not be for the honour of your lordships, to make further use of that record.

"But we are commanded to read to your lordships the Parliament-Roll of the 4th of Edward the 3rd, n. 6; which if your lordships please to consider, they doubt not but your lordships will find occasion to apply it to the present purpose."

Sir Hen. Capell reports, that he had attended the Lords, to desire a Conference: and that the Lords made Answer, that they would return Answer by messengers of their own.

HOUSE OF LORDS, June 5.

The Lord Treasurer reported, "That his majesty intends to give their lordships an Answer to their Address about removing the lieutenant of the Tower himself: therefore it is his majesty's pleasure, that this House do wait upon him in the banquetting house at Whitehall at four of the clock this afternoon; and his majesty desires their lordships would adjourn to that time."

He was further commanded to let their lordships know, "That his majesty had sent the like Message to the House of Commons."

The Lords agreed to meet here half an hour after three of the clock; and go in a body to Whitehall, to attend his majesty.

HOUSE OF COMMONS, June 5.

Mr. Secretary Coventry acquainted the House, that it was his majesty's desire, that the House would adjourn till four of the clock in the afternoon, and that both Houses should at that time attend him in the banquetting house at Whitehall.

A debate arising touching the removal of John Topham, esq. Serjeant at Arms in ordinary, attending the House yesterday, the further debate thereof was adjourned till five of the clock in the afternoon. And then the House adjourned till four in the afternoon.

HOUSE OF LORDS, June 5, p. m.

The House was adjourned till five of the clock; and the Lords went to attend the king at Whitehall. The Lords being returned, the House was resumed.

Then the Lord Keeper reported, "That the Lords and Commons attended the king, in the Banquetting House at Whitehall, this afternoon; where his majesty told them, he had something to say wherein he desired he might not be mistaken, and therefore had put it in writing."

Which the Lord Keeper read as followeth:

"My Lords and Gentlemen;

"You may remember that at the meeting of this session, I told you, no endeavours would be wanting to make the continuance of this parliament unpracticable. I am sorry that experience hath so quickly shewed you the truth of what I then said: but I hope you are all convinced that the intent of all this, in the contrivers, is to procure a dissolution. I confess, I look upon it as a most malicious design of those who are enemies to me and to the church of England; and were the contrivers known, I should not doubt but the dislike of their practices would alone be a means of bringing the Houses to a good understanding. But, since I cannot prescribe any way how to arrive at the discovery of it, I must tell you plainly my opinion, that the means of coming to any composition betwixt yourselves cannot be without admitting of such full Conferences as either convince one another by the reasons then offered, or enable me to judge rightly of the differences when all hath been said upon both sides

which the matter will afford: for I am assured these differences to grow to disorders in the whole kingdom, if I can prevent it; and am sure my judgment shall always be impartial between my two Houses of parliament: but must let you know, that whilst you are to debate about your privileges, I will not suffer you to be invaded.

"I have nothing more to say to you at this time; but to desire, as I did when we met last, that you would consider, and not suffer ill designs to hinder this session from a happy conclusion."

After this, his majesty said to the Lords, "That he would give them an Answer to the Address concerning the removal of the Lieutenant of the Tower, so soon as their lordships should return to their House; thinking it fit to do it before the House of Commons."

Then the Lord Treasurer reported, "That his majesty's Answer to the Lords' Address, is the removing sir John Robinson from the Lieutenant of the Tower, is, That his majesty hath considered the circumstances of that matter, and is not satisfied how with justice he can remove him."

HOUSE OF COMMONS, June 5, p. m.

The House then took into consideration the majesty's Speech, and resolved *scm. con.* In the humble Thanks of this House be returned to his majesty, for the gracious expressions in his speech this day made to both Houses of parliament; and such members of this house as are of his majesty's privy-council are desired to present the humble thanks of this House to his majesty.

Resolved, That it doth not appear to this House, that any member thereof hath contrived or promoted the difference between the two Houses of Parliament; or in asserting the rights of the Commons of England, or the privileges of this House; or to have done any thing inconsistent with his duty, or to trust reposed in him.

HOUSE OF LORDS, June 7.

The Serjeant at Arms attending this House was called upon, to give an account what hath done in the execution of the delivery of the four writs of Habeas Corpus delivered to him by the Lord Keeper. And he gave the account following:

"In obedience to your lordships' command I received from the right hon. the lord keeper of the great seal of England, about half an hour past eight of the clock, or thereabouts, four writs of Habeas Corpus; and immediately I did repair to the Tower, and delivered them to the Lieutenant of the Tower; and after he received them, he desired me to present his humble duty and service to this honourable house, and that he should do his duty inasmuch as in him lay to both houses; and desired me to let the right hon. the lord keeper know, that he would wait upon him to-morrow morning; or words to that effect."

Then the Lord Keeper gave the house an account of sir John Robinson's coming to him early this morning: "That he acknowledged the receipt of the Habeas Corpus; and would have excused himself to his lordship, by reason of some votes or orders of the House of Commons, which his lordship would not examine; but told him, the writs were not returnable to him, but to the Lords in parliament whose servant the lieutenant of the Tower is, and ought to do his duty according to law."

The Gentleman Usher of the Black Rod was commanded to enquire without, whether the Lieutenant of the Tower did appear; who returned this account "that the lieutenant did not appear."

Whereupon the House commanded the serjeant at arms to go, with his mace, into Westminster-hall, and make O yes three times, and then make proclamation in these words: "Sir John Robinson, Lieutenant of the Tower, come forth, and return the writs of Habeas Corpus before the Lords in parliament, as you are commanded."

The Serjeant at Arms gave the House an account "that he had made proclamation, at the top of the stairs between the court of Chancery and the court of King's-bench in Westminster-hall, to command sir John Robinson to return the writs of Habeas Corpus before the Lords in parliament, as he was commanded."

Upon consideration what to do next:

The Lord Keeper gave an account, "That the Order yesterday was directed to the cursitors, to prepare the writs of Habeas Corpus; whereas the said writs should have been made by the clerk of the crown in Chancery."

Hereupon the House had the Opinion of the Judges this day present; viz. The Lord Chief Justice of the court of Common Pleas, and Judge Atkins.

And these two questions were propounded to them:

"Whether these writs of Habeas Corpus, sealed with the great seal of England, be effectual in law, though the writs be written by the cursitors, and not by the clerk of the crown?"

The Opinion of the Judges was, "That the writs, being under the great seal of England, are good and effectual in law, by what hand soever they were written."

"Whether there may an alias Habeas Corpus be issued out of the office of the clerk of the crown, notwithstanding the former were issued out as aforesaid, and not returned by the lieutenant of the Tower?"

And the Opinion of the Judges is, "That an alias Habeas Corpus is good in law, and well issued in that case; else it were in the power of the gaoler, by the not returning the first writ, to hinder the issuing out of an alias."

The same Opinion Mr. Attorney General was of.

Upon this, the House made this Order following:

"Forasmuch as oath hath been made, that four writs of Habeas Corpus have been delivered to the Lieutenant of the Tower, returnable in parliament this day, which are not returned: It is ordered, That the clerk of the crown in Chancery do prepare four several and respective writs of alias Habeas Corpus (with a penalty of 40*l.* in each writ to be contained), to be sealed by the Lord Keeper of the great seal of England, and directed to the Lieutenant of the Tower, and returnable into the House of Peers, for bringing the bodies of Edward Peck serjeant at law, sir John Churchill knight, Francis Pemberton serjeant at law, and Charles Porter, esq. counsellor at law, with the cause of their commitment, to the House of Peers, to-morrow morning, at ten of the clock; and that the Serjeant at Arms attending this House, or his deputy, be, and is hereby required to carry the said writs to the lieutenant of the Tower for that purpose."

A Message was brought from the House of Commons, by sir Thomas Littleton and others; "For preserving a good correspondence between the two Houses, he was commanded to put their lordships in mind of a Message from the House of Commons lately, to desire a Conference, concerning the matter of the last Conference; to which the Lords had returned this Answer, That they would send an Answer by messengers of their own."

HOUSE OF COMMONS, June 7.

The House resumed the adjourned debate concerning John Topham, esq. serjeant at arms.

Resolved, That what John Topham, esq. serjeant at arms attending this House did, in retaking, bringing in custody, and conveying to the Tower, sir Jo. Churchill, Mr. Serjeant Peck, Mr. Serjeant Pemberton, and Mr. Ch. Porter, was in pursuance of his duty and by the order of the House.

Resolved, That the further debate concerning Jo. Topham, esq. serjeant at arms, be adjourned till Wednesday morning next.

A copy of an Order of the Lords spiritual and temporal in parliament assembled, dated the 31st of May last, and served on sir John Fagg on Friday last, was tendered and read; whereby the Lords have ordered to hear counsel at the bar, in the cause upon the Appeal there brought by Thomas Shirley, esq. against the said sir John Fagg, and the Answer thereunto on Tuesday the 8th of this instant June, at ten o'clock in the forenoon: And a debate arising thereupon;

Resolved, *nem. con.* That as to the case of Appeal, brought against sir John Fagg in the House of Lords, sir John Fagg shall have the protection and the assistance of this House.

Resolved, *nem. con.* That if any person or persons shall be aiding or assisting in putting in execution any Sentence or Judgment that shall be given by the House of Lords, upon the Appeal brought by Dr. Shirley, against sir John Fagg, a member of this House; such

person and persons shall be adjudged and taken to be betrayers of the rights and liberties of the Commons of England, and the privileges of this House; and shall be proceeded against accordingly.

Ordered, That these Votes be made public, by setting them up in Westminster-hall, and in the lobby of this House: And that the clerk of the House do take care to see it done.

The House being informed, that the House of Lords have ordered a Habeas Corpus to issue forth under the great seal, for bringing sir John Churchill, Serjeant Peck, Serjeant Pemberton and Mr. Charles Porter, to the bar of their House;

Ordered, That those members that were appointed to inspect the Journals of the House of Lords, in the case of the Lords' proceedings touching the making navigable the rivers in the counties of Hertford and Bedford, do inspect the Journals and Minutes of the proceedings of the House of Lords, touching the commitment of the said sir Jo. Churchill, Mr. Serj. Peck, Mr. Serj. Pemberton and Mr. Ch. Porter, by order of this House.

June 7, p. m.

Sir Thomas Littleton reports, That in pursuance of the Order of the House, the Committee appointed to inspect the Journals of the House of Lords, went to Mr. Browne's house; and that Mr. Walker went to Mr. Browne to acquaint him therewith: And that Mr. Browne returned this answer, That he could not shew the Minutes, or acquaint them with any thing that hath been done this day.

Resolved, *nem. con.* That no person committed for breach of privilege by order of this House, ought to be discharged during the session of parliament but by order or warrant of this House.

Resolved, *nem. con.* That the Lieutenant of the Tower in receiving and detaining in custody sir John Churchill, Serjeant Peck, Serjeant Pemberton and Mr. Porter, performed his duty according to law: And for so doing he shall have the assistance and protection of this House.

Resolved, *nem. con.* That the Lieutenant of the Tower, in case he hath received or shall receive any writ, warrant, order or commandment to remove or deliver any person or persons committed for breach of privilege, by any order or warrant of this House, shall not make any return thereof, or yield any obedience thereunto before he hath first acquainted this House, and received their order and directions how to proceed therein.

Ordered, That these Resolves be immediately sent to the Lieutenant of the Tower.

June 8, 1675.

Ordered, That a Message be sent to the Lords to acquaint them, That in order to preserve a good correspondency between the two Houses, the knights, citizens and burgesses in parliament assembled, had sent to remind their

lordships of the last Message, wherein a Conference was desired with them by this House, upon the matters delivered at the last Conference by the Lords: And that sir Thomas Littleton do go up to the Lords with the said Message.

Sir John Robinson, Lieutenant of the Tower, gives an account to the House of his receiving the persons committed to the Tower into his custody, in obedience to the Order of this House; and that the black rod coming afterwards with an Order from the Lords, and demanding them out of his custody, he denied to deliver them because they were committed by Order of this House: And that after he had received the Votes of this House last night, relating to the said persons now prisoners in the Tower by Order of this House, sir George Charnock serjeant at arms, attending the Lord Keeper of the great seal of England, brought him four several writs of Habeas Corpus under the great seal of England, for bringing the said several persons this morning at ten o'clock, before his majesty in his present parliament at Westminster: and that he did, according to the vote of this House, humbly crave the advice and direction of this House, what he should do therein.—And the matter being debated;

Resolved, That the Thanks of the House be given to the said sir John Robinson.

Mr. Speaker did, by the direction of the House, intimate to sir John Robinson Lieutenant of the Tower, that he should forbear to return the said writs of Habeas Corpus; acquainting him, that it was the opinion of that House, that he could be in no danger in not returning the same.

The several writs of Habeas Corpus issued out under the great seal of England, and directed to sir John Robinson, Lieutenant of the Tower, for bringing the bodies of Mr. Serjeant Peck, Mr. Serjeant Pemberton, sir John Churchill and Mr. Porter, before his majesty in his present parliament at Westminster, about ten o'clock this morning, being severally read; and the matter debated;

Resolved, That the Committee that was yesterday appointed to inspect the Journals of the Lords' House, do inspect the said Journals and see what proceedings hath been since had there, concerning Mr. Serjeant Peck, Mr. Serjeant Pemberton, sir John Churchill and Mr. Porter; and report the same to the House.

Resolved, That it be referred to the Committee formerly appointed to inspect the Lords' Journals, and all the gentlemen of the long robe, or any three of them, to inspect and search all such rolls, records and entries, as they shall think necessary; and see what precedents they can find in cases of like nature, concerning writs of Habeas Corpus and returns thereof; and to report the state of the whole matter, with their opinions therein, to the House to-morrow morning: And they are to meet at three o'clock this afternoon, in the

Speaker's chamber: And are empowered to send for persons, papers and records.

Ordered, That all committees that were to sit this afternoon (except the said committee last appointed) be adjourned.

Resolved, That the further debate of the matter touching the writs of Habeas Corpus, directed and delivered to the Lieutenant of the Tower, be adjourned till to-morrow morning.

June 9.

Sir Thomas Clarges reports, from the committee, to whom it was referred to search for Precedents, touching writs of Habeas Corpus returnable in parliament; That the Committee had found several precedents of writs of Habeas Corpus returnable in parliament, and had considered of them; and that the committee thereupon had agreed upon four resolves, to be presented to the House: Which he read in his place; and afterwards, delivered the same in at the clerk's table: Where they, being twice read, were, upon the Question, severally agreed: and are as followeth:

Resolved, nem. con., That no commoners of England, committed by order or warrant of the House of Commons for breach of privilege or contempt of that House, ought, without order of that House, to be by any writ of Habeas Corpus, or other authority whatsoever, made to appear, and answer, and do and receive a determination in the House of Peers, during the session of parliament, wherein such person was so committed.

Resolved, nem. con., That the order of the House of Peers, for the issuing out of writs of Habeas Corpus, concerning serjeant Peck, sir John Churchill, serjeant Pemberton, and Mr. Charles Porter, is insufficient and illegal; for that it is general, and expresses no particular cause of privilege; and commands the king's great seal to be put to writs not returnable before the said House of Peers.

Resolved, nem. con., That the Lord Keeper be acquainted with these resolutions; to the end that the said writ of Habeas Corpus may be superseded, as contrary to law, and the privileges of this House.

Resolved, nem. con., That a Message be sent to the Lords, to acquaint them, that serjeant Peck, sir John Churchill, serjeant Pemberton, and Mr. Charles Porter, were committed by order and warrant of this House, for breach of the privilege, and contempt of the authority of this House.

Resolved, That a Conference be desired with the Lords, upon the subject matter of the last Conference.

A Message was this day sent from his majesty in the House of Lords, by sir Edward Carteret, Usher of the Black-Rod, commanding this honourable House to attend his majesty forthwith in the House of Peers; and accordingly Mr. Speaker went up with the House,

where his majesty was pleased to make the following Speech to them:

" My Lords and Gentlemen,

" I think I have given sufficient evidence to the world, that I have not been wanting on my part, in my endeavours to procure the full satisfaction of all my subjects, in the matters both of religion and property: I have not only invited you to those considerations at our first meeting, but I have been careful, through this whole session, that no concern of my own should divert you from them.

" Besides, as I had only designed the matter of it to be the procuring of good laws, so for the gaining of them, I have already waited much longer than I intended; and should have been contented still to have continued my expectation, had there any hopes remained of a good conclusion. But I must confess, the ill designs of our enemies have been too prevalent against those good ones I had proposed to myself, in behalf of my people; and those unhappy differences between my two Houses are grown to such a height, that I find no possible means of putting an end to them, but by a prorogation. It is with great unwillingness that I make use of this expedient, having always intended an adjournment for the preserving of such bills as were unfinished. But my hopes are, that by this means the present occasion of differences being taken away, you will be so careful hereafter of the public, as not to seek new ones, nor to revive the old.

" I intend to meet you here again in winter, and have directed my Lord-Keeper to prorogue you till the 13th of October next."

October 13, 1675.

The King came to the House and began thus:

" I meet you now with more than an usual concern for the event of this session; and I know it is but what may be reasonably expected from the care I have for the preservation of the government. The causes of the last prorogation, as I for my part do not desire to remember, so I hope no man else will, unless it be to learn from thence how to avoid the like occasion for the future: And I pray consider how fatal the consequences may be, and how little benefit is like to redound to the people by it. However, if any of that kind shall arise, I desire you would defer those debates, till you have brought such public bills to perfection, as may conduce to the good and safety of the kingdom." [The rest of the speech relates to his majesty's recommending the security of the protestant religion, the supply for building ships, and public debts, &c.]

Then the lord Finch, by his majesty's order, made a Speech to both Houses, recommending unanimity, and making good laws, and the care of religion, &c.

HOUSE OF LORDS. October 19.

A Petition was presented to the House, from Thomas Shirley, to desire a day for hearing

the cause depending in this House the last session, between him and sir John Fagg, which is now *sine die*.

But, in regard some matter in his majesty's Speech on the 13th of October instant will concern this Petition, the House appointed his majesty's Speech to be first read, according to the order of the 14th of October instant. Then his majesty's and the Lord-Keeper's Speech were read throughout. And afterwards the first paragraph was read, being,

"The causes of the last prorogation, as I, for my part, do not desire to remember, so I hope no man else will, unless it be to learn from thence how to avoid the like occasions for the future; and I pray consider how fatal the consequences may be, and how little benefit is like to redound to the people by it: However, if any thing of that kind shall arise, I desire you would defer those debates, till you have brought such public bills to perfection as may conduce to the good and safety of the kingdom."

And, after a long debate, It is ordered, That this debate be adjourned till to-morrow morning, at 10 of the clock; and nothing to intervene.

October 20.

According to the order yesterday, the house proceeded in the debate, which was then adjourned till this day; and, for the freer debate thereof, the House was adjourned into a Committee.

The House being resumed; It was moved, "That the last Petition of Thomas Shirley might be read:" Which was done. And, after a long debate, it is ordered, That this House shall be adjourned to Monday morning next, at ten of the clock.*

The Earl of SHAFTSBURY'S Speech in the House of Lords, upon the Debate of appointing a day for the hearing Dr. Shirley's Cause, the 20th of October, 1675.

"My Lords,

"Our all is at stake, and therefore you must give me leave to speak freely before we part with it. My lord bishop of Salisbury† is of opi-

* "Some thought that the king had consented to the renewal of this Appeal-dispute, as disliking the warm proceedings of both houses; of which opinion was Marvell. Others believed that the lords of the country interest had persuaded the doctor thereto, with a view thereby to kindle such a flame between the two houses, as should oblige the king either to prorogue or dissolve them; the said lords apprehending that if this parliament should sit much longer, the majority might be gained over by places and money, so as to become quite obsequious to the court; and this, Savile lord Halifax, then in the interest of lord Shaftsbury, his uncle; told sir John Reresby was his opinion." Ralph.

† Dr. Seth Ward the learned mathematician.

nion, That we should rather appoint a day to consider what to do upon the Petition, than to appoint a day of hearing; and my Lord-Keeper, for I may name them at a Committee of the whole House, tells us in very eloquent and studied language, That he will propose us a way far less liable to exception, and much less offensive and injurious to our own privileges, than that of appointing a day of hearing. And I beseech your lordships, did you not after all these fine words expect some admirable proposal? But it ended in this; That your lordships should appoint a day, nay, a very long day, to consider what you would do in it: And my lord hath undertaken to convince you, that this is your only course, by several undeniable reasons; the first of which is, That it is against your judicature to have this cause, which is not proper, before us, nor ought to be relieved by us. To this, my Lords, give me leave to answer, That I did not expect from a man professing the law, that after an answer by order of the Court was put in, and a day had been appointed for hearing, which by some accident was set aside; and the Plaintiff moving for a second day to be assigned, that ever, without hearing counsel of both sides, the Court did enter into the merits of the cause. And if your lordships should do it here in a cause attended with the circumstances this is, it would not only be an apparent injustice, but a plain subterfuge, to avoid a point you durst not maintain.

"But my Lord's second reason speaks the matter more clearly; for that is, Because it is a doubtful case, whether the Commons have not privilege, and therefore my Lord would have you to appoint a further, and a very long day to consider of it: Which, in plain English is, that your lordships should confess upon your books, that you conceive it on second thoughts a doubtful case; for so your appointing a day to consider will do; and that for no other reason, but because my Lord-Keeper thinks it so: which I hope will not be a reason to prevail with your lordships, since we cannot yet, by experience, tell that his lordship is capable of thinking your lordships in the right, in any matter against the judgment of the House of Commons; it is so hard a thing even for the ablest of men to change ill habits.

"But my Lord's third reason is the most admirable of all, which he stiles unanswerable, viz. That your lordships are all convinced in your consciences, that this (if prosecuted) will cause a breach. I beseech your lordships consider, whether this argument, thus applied, would not overthrow the law of nature, and all the laws of right and property in the world: for 'tis an argument, and a very good one, that you should not stand or insist on claims, where you have not a clear right, or where the question is not of consequence and moment, in a matter that may produce a dangerous and pernicious breach between relations, persons, or bodies politic, joined in interest and high concerns together. So, on the

other hand, if the obstinacy of the party in the wrong, shall be made an unanswerable argument for the other party to recede and give up his just rights? how long shall the people keep their liberties, or the princes or governors of the world their prerogatives? How long shall the husband maintain his dominion, or any man his property, from his friends or his neighbours obstinacy? But, my lords, when I hear my Lord Keeper open so eloquently the fatal consequences of a breach, I cannot forbear to fall into some admiration how it comes to pass, that (if the consequences be so fatal) the king's ministers in the House of Commons, of which there are several that are of the cabinet, and have daily resort to his majesty, and have the direction and trust of his affairs; I say, that none of these should press these consequences there, or give the least stop to the career of that House in this business: but that all the votes concerning this affair, nay, even that very vote, That no appeal from any court of equity is cognizable by the House of Lords, should pass *nem. con.* And yet all the great ministers with us here, the bishops and other lords of greatest dependance on the court, contend this point, as if it were *pro aris & focis*. I hear his majesty in Scotland hath been pleased to declare against appeals in parliament: I cannot much blame the court, if they think (the Lord-Keeper and the judges being of the king's naming, and in his power to change) that the justice of the nation is safe enough; and I, my lords may think so too, during this king's time, though I hear Scotland, not without reason, complain already. Yet how future princes may use this power, and how judges may be made not men of ability or integrity, but men of relation and dependance, and who will do what they are commanded: and all men's causes come to be judged, and estates disposed on, as great men at court please.

"My lords, the constitution of our government hath provided better for us; and I can never believe so wise a body as the House of Commons will prove that foolish woman which plucks down her house with her hands.

"My Lords, I must presume in the next place, to say something to what was offered by my lord bishop of Salisbury, a man of great learning and abilities, and always versed in a stronger and closer way of reasoning, than the business of that noble lord I answered before did accustom him to; and that reverend prelate hath stated the matter very fair upon two heads:

"The first, Whether the hearing of causes and appeals, and especially in this point, where the members have privilege, be so material to us, that it ought not to give way to the reason of state, of greater affairs that pressed us at that time?

"The second was, If this business be of that moment, yet whether the appointing a day to consider of this petition, would prove of that consequence and prejudice to your cause?

"My lords, to these give me leave in the first place to say, that this matter is no less than

your whole judicature; and your judicature is the life and soul of the dignity of the peerage of England; you will quickly grow burdensome, if you grow useless: you have now the greatest and most useful end of parliaments principally in you, which is not to make new laws, but to redress grievances, and to maintain the old land-marks. The House of Commons business is to complain, your lordships to redress, not only the complaints from them that are the eyes of the nation, but all other particular persons that address to you. A land may groan under a multitude of laws, and I believe ours does: and when laws grow so multiplied, they prove oftener snares than directions and security to the people. I look upon it as the ignorance and weakness of the latter age, if not worse, the effect of the designs of ill men; that it is grown a general opinion, that where there is not a particular direction in some act of parliament, the law is defective; as if the common law had not provided much better, shorter, and plainer, for the peace and quiet of the nation, than intricate, long perplexed statutes do; which has made work for the lawyers, given power to the judges, lessened your lordships power, and in a good measure unhinged the security of the people.

"My lord bishop tells us, that your whole judicature is not in question, but only the privilege of the House of Commons, of their members not appearing at your bar: my lords, were it no more, yet that for justice and the people's sake you ought not to part with: how far a privilege of the House of Commons, their servants, and those they own, doth extend, Westminster-Hall may with grief tell your lordships. And the same privilege of their members being not sued, must be allowed by your lordships as well; and what a failure of justice this would prove, whilst they are lords for life, and you for inheritance, let the world judge: for my part, I am willing to come to conference whenever the dispute shall begin, and dare undertake to your lordships, that they have neither precedent, reason, nor any justifiable pretence to shew against us; and therefore, my lords, if you part with this undoubted right merely for asking, where will the asking stop? And, my lords, we are sure it doth not stop here; for they have already, nemine contradicente, voted against your lordships power of appeals from any Court of Equity! so that you may plainly see where this caution and reason of state means to stop; not one jot short of laying your whole judicature aside, for the same reason of passing the king's money, of not interrupting good laws, and whatever else must of necessity avoid all breach, upon what score soever; and your lordships plainly see the breach will be as well made upon your judicature in general, as upon this; so that when your lordships have appointed a day, a very long day, for to consider whether Dr. Shirley's cause be not too hot to handle; and when you have done the same for sir Nicholas Saunton, whose petition I hear is coming in, your lord-

ships must proceed to a vote, to lay all private business aside for six weeks: for that phrase of private business hath obtained upon this last age, upon that which is your most public duty and business; namely, the administration of justice. And I can tell your lordships, besides the reason that leads to it, that I have some intelligence of the designing such a vote. For on the second day of your sitting, at the rising of the Lords House, there came a gentleman into the lobby, belonging to a very great person, and asked in very great haste, Are the Lords up? Have they passed the vote? And being asked, What vote? He answered, The vote of no private business for six weeks.

“My lords, if this be your business, see where you are; if we are to postpone our judicature for fear of offending the House of Commons for six weeks, that they in the interim may pass the money, and other acceptable bills that his majesty thinks of importance; are so many wise men in the House of Commons to be laid asleep, and to pass all these acceptable things; and when they have done, to let us be let loose upon them?

“Will they not remember this next time there is want of money; or may not they rather be assured by those ministers that are amongst them, and go on so unanimously with them, that the king is on their side in this controversy? And when the public businesses are over, our time will be too short to make a breach, or vindicate ourselves in the matter. And then I beg your lordships, where are you, after you have asserted but the last sessions your right of judicature, so highly, even in this point; and after the House of Commons had gone so high against you on the other hand, as to post up their declaration and remonstrances on Westminster-Hall doors; the very next session after, you postpone the very same causes; and not only those, but all judicatures whatsoever? I beseech your lordships, will not this prove a fatal precedent and confession against yourselves? It is a maxim, and a rational one among the lawyers, That one precedent where the case hath been contested, is worth a thousand where there hath been no contest. My lords, in saying this, I humbly suppose I have given a sufficient answer to my lord bishop's second question; Whether the appointing a day to consider what you will do with this petition, be of that consequence to your right? For it is a plain confession, that it is a doubtful case, and that infinitely stronger than if it were a new thing to you, never heard of before: for it is the very same case, and the very same thing desired in that case, that you formerly ordered, and so strongly asserted; so that upon time, and all the deliberation imaginable, you declare yourselves to become doubtful, and you put yourselves out of your own hands, into that power that you have no reason to believe on your side in this question.

“My lords, I have all the duty imaginable to his majesty, and shall with all submission give way to any thing he should think of im-

portance to his affairs: but in this point it is to alter the constitution of the government, if you are asked to lay this aside; and there is no reason of state can be an argument to your lordships to turn yourselves out of that interest you have in the constitution of the government; it is not only your concern that you maintain yourselves in it, but it is the concern of the poorest man in England, that you keep your station: it is your lordships concern, and that so highly, that I will be bold to say, the king can give none of you a requital or recompence for it. What are empty titles? What is present power, or riches, and a great estate, wherein I have no firm nor fixed property? It is the constitution of the government, and maintaining it, that secures your lordships and every man else in what he hath: the poorest Lord, if the birth-right of the peerage be maintained, has a fair prospect before him for himself or his posterity; but the greatest title, with the greatest present power and riches, is but a mean creature, and maintains those in absolute monarchies, no otherwise than by servile and low flatteries, and upon uncertain terms.

“My lords, it is not only your interest, but the interest of the nation, that you maintain your rights; for let the House of Commons and gentry of England think what they please, there is no prince that ever governed without mobility or an army: if you will not have one, you must have the other, or the monarchy cannot long support, or keep itself from tumbling into a democratical republic. Your lordships and the people have the same cause, and the same enemies. My lords, would you be in favour with the king? It is a very ill way to it, to put yourselves out of a future capacity, to be considerable in his service. I do not find in story, or in modern experience, but that it is better, and a man is much more regarded that is still in a capacity, and opportunity to serve, than he hath wholly deprived himself of all for his prince's service. And I therefore declare, that I will serve my prince as a peer, but will not destroy the peerage to serve him.

“My lords, I have heard of twenty foolish models and expedients to secure the justice of the nation, and yet to take this right from your lordships, as the king by his commission appointing commoners to hear appeals; or that the twelve judges should be the persons, or that persons should be appointed by act of parliament, which are all not only to take away your lordships just right, that ought not to be altered any more than any other part of the government, but are in themselves, when well weighed, ridiculous: I must deal freely with your lordships, these things could never have risen in men's minds, but that there have been some kind of provocation that has given the first rise to it. Pray, my lords, forgive me, if on this occasion I put you in mind of Committee dinners, and the scandal of it, those droves of ladies that attended all causes; it was come to that pass, that men even hired or borrowed of their friends handsome sisters or daughters to deliver

their petitions: but yet for all this, I must say that your judgments have been sacred, unless in one or two causes; and those we owe most to that bench, from whence we now apprehend most danger.

“There is one thing I had almost forgot to speak to, which is the conjuncture of time, the hinge upon which our reason of state turns; and to that, my lords, give me leave to say, if this be not a time of leisure for you to vindicate your privileges, you must never expect one. I could almost say, that the harmony, good agreement, and concord that is to be prayed for at most other times, may be fatal to us now; we owe the peace of these last two years, and the disengagement from the French interest, to the two houses differing from the sense and opinion of Whitehall: so at this time, the thing in the world this nation has most reason to apprehend, is a general peace, which cannot now happen without very advantageous terms to the French, and disadvantageous to the House of Austria. We are the king's great counsellors, and if so, have a right to differ, and give contrary counsels to those few that are nearest about him: I fear they would advance a general peace, I am sure I would advise against it, and hinder it at this time by all the ways imaginable. I heartily wish nothing from you may add weight and reputation to those counsels who would assist the French. No money for ships, nor preparations you can make, nor personal assurances our prince can have, can secure us from the French, if they are at leisure. He is grown the most potent of us all at sea: he has built 24 ships this last year, and has 30 more in number than we; beside the advantage, that our ships are all out of order, and his so exquisitely provided for, that every ship has his particular storehouse. It is incredible the money he hath, and is bestowing in making harbours; he makes nature itself give way to the vastness of his expence: and after all this, shall a prince so wise, so intent upon his affairs, be thought to make all these preparations to sail over land, and fall on the back of Hungary, and batter the walls of Kaminits? Or is it possible he should oversee his interest in seizing of Ireland, a thing so feasible to him, if he be master of the seas, as he certainly now is; and which, when attained, gives him all the Southern Mediterranean, East and West India trade, and renders him both by situation, and excellent harbours, perpetual master of the seas without dispute?

“My lords, to conclude this point, I fear the court of England is greatly mistaken in it, and I do not wish them the reputation of the concurrence of the kingdom: and this out of the most sincere loyalty to his majesty, and love to my nation.

“My Lords, I have but one thing more to trouble you with, and that peradventure is a consideration of the greatest weight and concern, both to your lordships and the whole nation. I have often seen in this House that the arguments, with strongest reason, and most convincing to the lay-lords in general,

have not had the same effect upon the bishops bench; but that they have unanimously gone against us in matters, that many of us have thought essential and undoubted rights: and I consider, that it is not possible that men of great learning, piety, and reason, as their lordships are, should not have the same care of doing right, and the same conviction what is right, upon clear reason offered, that other your lordships have. And therefore, my lords, I must necessarily think we differ in principles; and then it is very easy to apprehend, what is the clearest sense to men of my principle, may not at all persuade or affect the conscience of the best man of a different one. I put your lordships the case plainly, as it is now before us. My principle is, That the king is king by law, and by the same law that the poor man enjoys his cottage: and so it becomes the concern of every man in England, that has but his liberty, to maintain and defend, to his utmost, the king in all his rights and prerogatives. My principle is also, That the Lords House, and the judicature and rights belonging to it, are an essential part of the government, and established by the same law: the king governing and administering justice by his House of Lords, and advising with both his Houses of parliament in all important matters, is the government I own, I am born under, and am obliged to. If ever there should happen in future ages (which God forbid) a king governing by an army, without his parliament, it is a government I own not, am not obliged to, nor was born under. According to this principle, every honest man that holds it, must endeavour equally to preserve the frame of the government, in all the parts of it, and cannot satisfy his conscience to give up the Lords House for the service of the crown, or to take away the just rights and privileges of the House of Commons to please the Lords. But there is another principle got into the world, my Lords; that hath not been long there; for archbishop Laud was the first author that I remember of it; and I cannot find that the Jesuits, or indeed the Popish clergy, have ever owned it, but some of the Episcopal clergy of our British isle; and it is withal, as it is new, so the most dangerous, destructive doctrine to our government and law, that ever was. It is the first of the canons published by the Convocation 1640, That monarchy is of Divine Right. This Doctrine was then preached up, and maintained by Sibthorp, Manwaring, and others, and of later years, by a book published by Dr. Sanderson, bishop of Lincoln, under the name of archbishop Usher; and how much it is spread amongst our dignified clergy is very easily known. We all agree, That the king and his government is to be obeyed for conscience sake; and that the divine precepts require not only here, but in all parts of the world, obedience to lawful governors. But that this family are our kings, and this particular frame of government is our

* See Mainwaring's case, ante vol. 8, p. 335.

lawful constitution, and obliges us, is owing only to the particular laws of our country. This Laudean Doctrine was the root that produced the Bill of Test last session, and some very perplexed oaths, that are of the same nature with that, and yet imposed by several acts of this parliament.

"In a word, if this doctrine be true, our Magna Charta is of no use, our laws are but rules amongst ourselves during the king's pleasure. Monarchy, if of divine right, cannot be bounded or limited by human laws; nay, what is more, cannot bind itself: and all our claims of right by the law, or constitution of the government, all the jurisdiction and privileges of this House, all the rights and privileges of the House of Commons, all the properties and liberties of the people, are to give way not only to the interest, but the will and pleasure of the crown. And the best and worthiest of men, holding this principle, must vote to deliver up all we have, not only when reason of state, and the separate interest of the crown require it; but when the will and pleasure of the king is known would have it so. For that must be, to a man of that principle, the only rule and measure of right and justice. Therefore, my Lords, you see how necessary it is, that our principles be known; and how fatal to us all it is, that this principle should be suffered to spread any further.

"My Lords, to conclude, your lordships have seen of what consequence this matter is to you, and that the appointing a day to consider, is no less than declaring yourselves doubtful, upon second and deliberate thoughts; that you put yourselves out of your own hands, into a more than a moral probability of having this session made a precedent against you. You see your duty to yourselves and the people, and that it is really not the interest of the House of Commons, but may be the inclination of the court, that you lose the power of appeals: but I beg our House may not be *Felo de se*, but that your lordships would take in this affair the only course to preserve yourselves, and appoint a day, this day three weeks, for the hearing of Dr. Shirley's cause, which is my humble motion."

October 25.

The House being resolved to resume the whole debate which was on Wednesday last, the House was adjourned into a Committee, for the freer debate thereof. After a long debate, the House was resumed. And it being moved, "That the order concerning Judicature, made the 29th of March, 1673, might be considered; it was directed, that those precedents mentioned therein be in readiness to-morrow morning; and likewise the precedents reported in *Slyngsby's* and *Hale's Case*. Then it was ordered, That the present debate be adjourned, to be resumed to-morrow morning."

October 26.

The House resumed the debate which was yesterday. For the better consideration there-

of, the House was adjourned into a Committee. And, after a long debate, the House was resumed. And it is ordered, That to-morrow morning this House be put into a Committee, to carry on the debate as was this day in the Committee of the House.

October 27.

The House was adjourned into a Committee, to carry on the debate as was yesterday in the Committee of the House. And, after a long debate, the House being resumed; it is ordered, That the debate which was in the Committee of the House this day shall be taken up at the next sitting of this House, in a Committee of the whole House; and no other business to intervene.

November 4.

The House was adjourned into a Committee, and took up the debate which was in a Committee of the House on Wednesday the 27th of October last. And, after a serious debate, the House was resumed.

And this question was proposed, "Whether the 20th of this instant November shall be the day appointed for the hearing of the cause between Dr. Thomas Shirley and sir John Fagg?"

Then this previous question was put, "Whether this abovesaid question shall be now put?" It was resolved in the affirmative.

Upon this, the question being put, "Whether the 20th day of this instant November shall be the day appointed for the hearing of the cause between Dr. Thomas Shirley and sir John Fagg?" It was resolved in the affirmative.

"Before the putting of the said question, leave being demanded, and given to such lords as thought fit (if the same were carried in the affirmative) to enter their protestation and dissent; accordingly this protestation is entered against the said vote, for the reasons following:

"1. Because it seems contrary to the use and practice of this high court (which gives example to all other courts), upon a bare petition of the plaintiff Dr. Shirley, in a cause depending last session, and discontinued by prorogation, to appoint a day of hearing of the cause, before the defendant is so much as summoned, or appears in court, or to be alive.

"2ndly. The defendant, by the rules of this court, having liberty upon summons to make a new answer, as sir Jeremy Which'ott was admitted after summons to do last session in Darrell's cause against him, discontinued by prorogation, or to mend his answer, or to plead as he shall see cause, is deprived of this and other benefits of law, by appointing a day of hearing without these essential forms.

"3rdly. It appears by the plaintiff's own shewing in his petition, that his case against a purchaser is not relievable in equity; and therefore ought to be dismissed, without putting the parties to further charge.

"4thly. It appears, by his own shewing, and the defendant sir John Fagg's plea, that he comes hither *per saltum*, and ought to at-

tend judgment in the inferior courts, if his appeal be relievable; and not to appeal to the highest court till either injustice is done him below, or erroneous judgment given against him, and relief denied him upon review.

“ 5thly. The danger of this precedent is so universal, that it shakes all the purchasers of England.
“ ANGLESEY.”

Whereas Thomas Shirley, esq. hath an appeal depending in this House, to which sir John Fagg, a member of the House of Commons, hath put in an Answer as defendant:

It is resolved, by the Lords Spiritual and Temporal in parliament assembled, That Saturday the 20th day of this instant November shall be the day appointed for hearing the cause between the said Thomas Shirley and the said sir John Fagg.

HOUSE OF COMMONS, November 13.

The House being informed, That the House of Lords had appointed to hear the cause upon the appeal brought by Dr. Shirley against sir John Fagg, a member of this House, on Saturday the twentieth of this instant November; and that the said order was this day served upon sir Jo. Fagg; And the order being read;

Resolved, That the further consideration thereof be adjourned till Monday morning next.

November 15.

The House resumed the adjourned debate of the matter concerning the appeal, brought in the House of Lords by Thomas Shirley, esq. against sir John Fagg a member of this House.

Resolved, That the prosecuting of an Appeal, by Thomas Shirley, esq. in the House of Lords, against sir John Fagg a member of this House, is a breach of the privilege of this House.

Resolved, That sir John Fagg do not proceed to make any defence in this cause.

Resolved, That the further consideration of the matter concerning the Appeal, brought by Thomas Shirley, esq. in the House of Lords against sir John Fagg, a member of this House, be adjourned till to morrow morning ten of the clock.

November 16.

Resolved, That this House will to-morrow morning, at ten of the clock, proceed in the consideration of the matter concerning the Appeal brought by Thomas Shirley, esq. in the House of Lords, against sir John Fagg a member of this House.

HOUSE OF LORDS, November 17.

Whereas Thomas Shirley, esq. hath a Petition and Appeal depending in this House against Sir John Fagg; this House being moved, “ That Counsel may be assigned, to plead the cause of the said Thomas Shirley upon the said Appeal.”

It is ordered by the Lords spiritual and temporal in parliament assembled, That Mr. Richard Wallop, Mr. Thomas Turner, and Mr.

Samuel Tryst (named for the said Thomas Shirley), be, and are hereby appointed to plead the said cause, at the bar of this House, on the part and behalf of the said Thomas Shirley, on Saturday the 20th day of this instant November, at ten of the clock in the forenoon, and at such other times as it shall be appointed by this House.

HOUSE OF COMMONS, November 18.

The House proceeded in the debate of the matter concerning the Appeal, brought in the House of Lords by Thomas Shirley, esq. against sir John Fagg, a member of this House.

A motion being made, That the House would renew the vote made last session, that whosoever shall appear at the bar of the House of Lords, to prosecute any suit against any member of this House, shall be deemed a breaker and infringer of the rights and privileges of this House; or declare the same to be now in force.

The question being put, That candles be now brought in: it was resolved in the affirmative.

The question being propounded, That this House will declare the vote of the last session, that whosoever shall appear at the bar of the Lords House to prosecute any suit against any member of this House, shall be deemed a breaker and infringer of the rights and privileges of this House, to be now in force;

The question being put, That this question be now put; It passed in the negative.

The question being propounded, That a Conference be desired with the Lords for avoiding the occasions of reviving the differences between the two Houses in matters of Appeal;

A motion being made, That these words, “ brought by Dr. Shirley,” may be added to the question;

The question being put, That the words “ brought by Dr. Shirley,” be made part of the question; It passed in the negative.

A motion being made, That the words “ in matters of Appeals,” may be left out of the question;

The question being put, That the words “ in matters of appeals,” do stand in the question;

The House divided: Nocs, 130, Yeas, 84: And so it passed in the negative.

Resolved, That a Conference be desired with the Lords, for avoiding the occasions of reviving the differences between the two Houses.

Ordered, That a committee be appointed to prepare and draw up reasons to be offered at the said Conference.

November 19.

Sir William Coventry reports, from the committee to whom it was referred to prepare and draw up Reasons to be offered at the Conference to be desired of the Lords, for avoiding the occasions of reviving the differences between the two Houses, a paper of Reasons, agreed by the said committee to be reported to the House:

which he read in his place; and afterwards delivered the same in at the clerk's table: Where it was again read; and, upon the question, agreed to; and is as followeth; viz.

"His majesty having recommended to us, at the opening of this session of parliament, the avoiding this difference, if possible; and, if it could not be prevented, that we should defer those debates till we had brought such public bills to perfection, as may conduce to the good and safety of the kingdom; the Commons esteem it a great misfortune, that contrary to that most excellent advice, the proceedings in the appeal brought the last sessions against sir John Fagg, by Mr. Shirley, have been renewed, and a day set for hearing the cause: and therefore the Commons have judged it the best way, before they enter into the argument for defence of their rights in this matter, to propose to your lordships the putting off the proceedings in that matter for some short time; that so they may, according to his majesty's advice, give a dispatch to some bills now before them of great importance to the king and kingdom: which being finished, the Commons will be ready to give your lordships such reasons against those proceedings, and in defence of their rights, as we hope may satisfy your lordships, that no such proceedings, ought to have been."

Resolved, That a Message be sent to the Lords, to desire a Conference to preserve the good correspondence between the two houses.

Ordered, That sir Wm. Coventry do go up to the Lords with the said Message.

Sir William Coventry reports, from the Lords, that he had attended their lordships with the Message to desire a Conference; and that their Lordships had agreed to a present Conference in the Painted Chamber.

Resolved, That the several members to whom it was referred to prepare and draw up Reasons to be offered at the said Conference; do attend and manage the said Conference.

Sir Wm. Coventry reports from the Conference had with the Lords, that they had attended, and delivered the Lords the Reasons agreed by this House.

Whereas this House hath been informed of several Appeals depending in the House of Lords, from courts of Equity, to the great violation of the Rights and Liberties of the Commons of England; it is this day

Resolved and Declared, "That whosoever shall solicit, plead, or prosecute any appeal against any Commoner of England, from any Court of Equity, before the house of Lords, shall be deemed and taken a betrayer of the Rights and Liberties of the Commons of England; and shall be proceeded against accordingly."

Resolved, That copies of this Resolution and Declaration be forthwith publicly affixed upon the door of the lobby of this house, and Westminster Hall gate, and upon the gates of the two Serjeants-Inns, and the four inns of court and the several inns of Chancery; to the end all persons concerned may take notice thereof;

and that the Serjeant at Arms now attending this House do cause the same to be so affixed accordingly.

November 30.

Ordered, That Thomas Shirley, esq. be taken into custody of the Serjeant at Arms now attending this house, for his breach of privilege in prosecuting an Appeal in the House of Lords against sir John Fagg, a member of this House.

The House being informed, That sir Nicholas Staughton did yesterday serve Mr. Onslow, a member of this house, in Westminster-Hall, with an Order of the House of Lords for hearing an Appeal brought there by the said sir Nicholas Staughton against the said Mr. Onslow on the day of November instant; and that he refused to retract the same, after he had notice of the resolution of this House, made yesterday, about Appeals to the Lords from Courts of Equity;

Ordered, That sir Nicholas Staughton be taken into custody of the Serjeant at Arms now attending this House, for his breach of privilege in prosecuting an Appeal in the House of Lords against Mr. Onslow, a member of this House.

Ordered, That Mr. Onslow do not proceed to make any defence in this cause.

HOUSE OF LORDS, November 30.

This day being appointed for hearing counsel at this bar, upon the Petition and Appeal of Thomas Shirley esquire, against sir John Fagg:

Thomas Shirley appeared in person, with Mr. Richard Wallop, one of those assigned counsel; who made it his humble desire, that he might be excused from being of counsel with Mr. Shirley in this cause, in regard he is utterly unacquainted with the proceedings in chancery, neither is he now instructed in the cause, being not served with the Order of this House until last night.

As for Mr. Turner, one other counsel assigned Mr. Shirley; the House was satisfied that he was sick, and so not able to come and plead.

But neither sir John Fagg appeared (though it appeared upon oath at the bar that he was served with the order of this House at his lodging, by leaving it at his lodging), nor any counsel for him.

Then Dr. Shirley was asked, "Whether he would go on with this cause now?" And he said "He desired to go on presently, if he could have counsel to plead his cause."

Whereupon Mr. Wallop was called in; and told, "That this House allows not of his excuse, but commands and enjoins him to be of counsel with Mr. Shirley in this cause; and this House will protect him for so doing."

And in regard of the shortness of time now to hear this cause, and instruct counsel, this House made the ensuing Orders:

"Whereas this day was appointed for hearing the cause, at the bar, upon the appeal of Dr. Thomas Shirley against sir John Fagg, at which time the said Thomas Shirley appearing in prison, but no counsel instructed for him;

nor did sir John Fagg, or any counsel for him appear, though notice of this day was left at the said sir John Fagg's lodgings, as appeared by oath made at the bar this day : it is ordered by the Lords Spiritual and Temporal in parliament assembled, That this House will hear the said cause, by counsel, at the bar, on Monday the 22th instant, at ten of the clock in the forenoon."

And the said Dr. Shirley, Mr. Wallop, and sir N. Staunton, were ordered to have the protection of the House.

And upon debate of the Commons' Vote made yesterday, it was ordered, "That the Paper posted up in several places, signed by William Goldsbro, Cler. Dom. Com. against the Judoature of the House of Peers in Cases of Appeals from Courts of Equity, is illegal, unparliamentary and tending to the dissolution of the government."

DEBATE in the House of Lords on a Motion for an Address to the King to dissolve the Parliament.

Upon consideration of the said Vote of the Commons, it was proposed by lord Mohun to address his majesty to dissolve the parliament. This gave rise to a vehement debate, "in the course of which," says Mr. Ralph, "all imaginable arguments that could either influence court or country, were made use of to procure an affirmative : the king was flattered with the hopes, or rather bribed with the promise, of a large sum to pay his Debts : and the Church received the warmest assurances, that though Protestant Dissenters should find some favour and ease, her lands and dignities should be safe : and on the popular side of the question, the conduct of the present House of Commons was exposed with as much severity, as if the nation had not one true representative. From the length of time which the purse of the people had been in their hands, and the free use they had made of it, it was urged that they were become 'more than lords.' They were charged with having violated the ancient rules of parliament, by not admitting the right of the Lords to reduce their grants. They were reproached for having several times rejected with scorn, a Bill for the more fair and equal Trial of the Peers. It was said seriously, that they had never met without exciting the greatest apprehensions in all sober and wise men, and ironically, that it was owing to the goodness of the prince and the virtue of the members, that honours, offices, pensions, money, employments and gifts, had not been bestowed and accepted as a consideration for reducing the government to the model of France, Denmark, &c. where the will and pleasure of the prince had taken place of the laws. It was added, How easily this may be done in future ages, under such princes, and such an House of Commons as may happen if 'long and continued parliaments' be allowed for law, may be had some measure of judging by this ; where though the prince had no design, and the members of the

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House of Commons have shewed so great candour and self-denial, yet the best observers are apt to think, that we owe it to the strong and opposite factions at court, that many things of great alterations have not passed.—It was also observed, that in former times when parliaments were short and frequent, the members constantly received their Wages, both from their counties and boroughs ; many of the poorer boroughs petitioned to be excused from sending members, as not being able to bear their charge, and were so : laws were made in favour of the gentry, that corporations should *compel* none but the freemen of their own town to serve for them ; nay, that in all the ancient returns of writs for knights of the shires, their sureties for their appearance were returned with them. But that now the case was so altered, that 1,500*l.* and 2,000*l.* and lately 7,000*l.* was a price that men paid to be *entrusted*. That it was to be hoped the charity of those worthy persons, and their zeal for the public interest, had induced them to be at this expence : but that it were better to be otherwise, there being a scurvy English Proverb, 'That men that buy dear, cannot live by selling cheap.'

The debate continued till 8 o'clock, when it passed in the negative by two voices. Content, 48 ; not content, 50.

The House then adjourned to Monday.

On which day the House being met, a Message was sent by his majesty, for the House to attend him forthwith in the House of Peers ; which the House accordingly did, when his majesty passed three bills, and the Lord Keeper by his majesty's order, prorogued both Houses of Parliament till the 15th day of February come twelvemonth, 1676, which ended the Dispute.

The PROTESTATION, with Reasons of several Lords for the Dissolution of this Parliament, entered in the Lords' Journal, Nov. 22, 1675, the day the Parliament was prorogued.

"We whose names are under-written, peers of this realm, having proposed, 'That an humble Address might be made to his majesty 'from this House, that he would be graciously 'pleased to dissolve this parliament ;' and the House having carried it in the negative : for the justification of our loyal intentions towards his majesty's service, and of our true respect and deference to this honourable House ; and to shew that we had no sinister and indirect ends in this our humble proposal, do with all humility herein set forth the grounds and reasons why we were of opinion, that the said humble Address should have been made.

"1. We do humbly conceive that it is according to the ancient laws and statutes of this realm, that there should be frequent and new parliaments, and that the practice of several years hath been accordingly.

"2. It seems not reasonable that any particular number of men should for many years en-

gross so great a trust of the people, as to be their representatives in the House of Commons: and all other the gentry and the members of corporations of the same degree and quality with them, should be so long excluded. Neither, as we humbly conceive, is it advantageous to the government, that the counties, cities and boroughs should be confined for so long a time to such members as they have once chosen to serve for them; the mutual correspondence and interests of those who chuse and are chosen, admitting of great variations in length of time.

“3. The long continuance of any such as are entrusted for others, and who have so great a power over the purse of the nation, must, in our humble opinion, naturally endanger the producing of factions and parties, and the carrying on of particular interests and designs, rather than the public good.

“And we are the more confirmed in our desires for the said humble Address, by reason of this unhappy breach fallen out betwixt the two Houses, of which the House of Peers hath not given the least occasion; they having done nothing but what their ancestors and predecessors have in all times done, and what is according to their duty, and for the interest of the people that they should do: which notwithstanding the House of Commons have proceeded in such an unprecedented and extraordinary way, that it is, in our humble opinion, become altogether unpracticable for the two Houses, as the case stands, jointly to pursue those great and good ends for which they were called. For these reasons we do enter our Protestation against, and dissent unto, the said Vote. (Signed.) Buckingham, Winchester, Salisbury, Bridgewater, Dorset, Westmoreland, Chesterfield, Stamford, Berks, Clarendon, Shaftesbury, Faulconbridge, Halifax, Yarmouth, Newport, Sandys, Wharton, Petre, Mohun, De la Mer, Townsend, Grey of Rolston.”

These were all the Lords that were in the House early enough to sign the Protestation before the parliament was prorogued.

Mr. Hargrave in his Preface to lord Hale's Treatise on the Jurisdiction of the Lords' House of Parliament, gives a concise but satisfactory account of this business, as follows:

“After the compromise in Skinner's case, the business of the session both on the supply

to the crown and otherwise went on smoothly for many months. More particularly nothing further appears to have occurred between the two Houses as to judicature, except a slight communication between them about a summons or notice to Mr. Hale a member of the Commons on a petition of appeal against him by a Mr. Slingsby to the Lords. Sir Thomas Lee, father of the late Lord Chief Justice of that name, and his brother the judge of the prerogative court, moved for a Conference with the Lords, the summons of Mr. Hale noticing him as a member. But after some short conversation, the House only resolved upon a Message to the Lords, desiring them To have regard to the privileges of the House of Commons. The Answer of the Lords was, That the House of Commons need not doubt, but that their lordships will have a regard to their privileges as they have of their own. After this Answer, the Lords examined Mr. Slingsby, as to the manner of intimating to Mr. Hale the hearing of the cause. On a subsequent day Mr. Slingsby petitioned the Lords to withdraw his original petition, on the ground of his being advised by his counsel, that he might have his remedy in Chancery, and that there was no order entered upon which he could ground an appeal. But the Lords, perhaps jealous of having the relinquishment of the appeal construed to the prejudice of their judicature, and perhaps also suspicious that fear of the privilege of the Commons was the real cause of the application, referred the business to the consideration of their committee of privileges. After almost a month's consideration, the earl of Anglesey reported from the committee as their opinion, “That the Lords do declare, that their proceedings had been according to the course of parliament and former precedents; and that the Lords do assert it to be their undoubted right in judicature to receive and determine in time of parliament appeals from inferior courts, though a member of either House be concerned, that there may be no failure of justice in the land.”—To this report the Lords immediately assented; and it is observable, that on the afternoon of the very day upon which it was made and approved, the king made a good-humoured speech to both Houses, and in pursuance of his pleasure they adjourned themselves for six months.—Thus this Case of Hale and Slingsby, and the whole of the first part of the session passed off without breach of any kind between the two Houses.”

237. Proceedings against Mr. FRANCIS JENKES,* for a Speech made by him on the Hustings, at Guildhall, in the City of London, on Midsummer-day, 28 CHARLES II. A. D. 1676. [Published by his Friends.]

MR. JENKES having been a trader for many years, and observing the daily Decay of Trade in the City, occasioned by such mischiefs, as lay not in the industry of its inhabitants, but only in the power of the government to redress; and that did require a more speedy redress than a Parliament prorogued for fifteen months could afford; after having in vain solicited the Lord-Mayor for a Common-Council, that might consider of a Petition about Trade, out of a hearty zeal for the good of the city, as well as encouraged by the consent and desire of many sober citizens, the liberty reserved to the lord-mayor, aldermen and common-council, by the statute of the 13th of this king, concerning Petitions, the votes of a majority of temporal Lords in the last sessions, together with the unanswerable reasons given in their Protestation; did at the Folk-mote (or Common-hall) holden the 24th of June last past, in the Guildhall of London, thus deliver himself:

“ Mr. Common Serjeant,

“ It seems a vain thing for this Court to be serious about the choice of magistrates and officers for the well government of this city; except they first take care to remedy those many mischiefs and grievances, which this city now groans under; and which seem so to threaten the ruin and destruction of the whole, that if there be not some speedy redress, there will be little need of magistrates and officers, for there will be no city or people left here to be governed.

“ London has once already been burned to ashes, and firing is now become such a trade, that not only London, the borough of Southwark, and the places adjoining, but all the cities, boroughs, towns corporate, and places of principal trade throughout the whole kingdom, are perpetually in danger; so that no rational or considerate man amongst us can promise himself, his wife, his children, or estate one night's security, but they may all be devoured in the consuming flames, except some speedy and effectual course be taken.

“ But this is not all; for were our houses secure from fire, yet such is the general decay of trade, if not remedied, as must unavoidably bring the whole city to poverty and ruin: and it is conceived, that this is very much occasioned by the French, who have laid such great impositions upon our woollen cloth, stuffs and other manufactures, that we have almost lost our trade with France. They have spoiled our trade with Holland, Flanders, and Germany,

by a destructive war. They have ruined our trade at home, and beggared many thousands of our honest and industrious weavers, and other English manufacturers and traders, by the vast quantity of their silks, and other unnecessary commodities imported hither. So that upon an exact balance of the trade between us and them taken, it has been demonstrated, that this city and kingdom doth lose 1,100,000*l.* every year. By means whereof they who in queen Elizabeth's time might not be suffered to build men of war, are now grown so powerful at sea, as to be able to beat both Dutch and Spaniard, and have made themselves in a manner sole masters of the Mediterranean sea. And they are grown so presumptuous, as daily to affront our English merchants, and sometimes in his majesty's own ports. The privateers daily take our merchantships, plunder others, strip, imprison and torment our seamen, to the great discouragement of our English navigation, and almost ruin of the merchant.

“ I shall instance in but one thing more, but that is worse than all the rest; that is, the just apprehension that is upon the minds of good men, of danger to his majesty's person, and the protestant religion. I had not spoken this at this time and place, but having the honour to serve the City in Common-Council; I have endeavoured at several times to bring these things before the Court, but could not. In the end of the last Common-Council I did desire my Lord-Mayor, that a Common-Council might speedily be held, to hear and consider of a Petition about Trade, subscribed by a great number of citizens of good quality; and his lordship did then promise, that a Common-Council should speedily be held: but it is a good time since, and there have been many fires and losses, but no Common-Council.

“ Wherefore, methinks, it does become the wisdom and gravity of this Court, not to admit of any longer delay in a matter wherein their all is concerned. And I do humbly move, (and I conceive it is not only my sense, but the sense of the far greater part of this Court) that some members of this Court may accompany the Sheriffs and Mr. Common-Serjeant, before we proceed to any other matter, to wait upon my Lord Mayor and the Court of Aldermen, to desire that a Common-Council might speedily be held, humbly to petition his majesty, that for the quieting and satisfying the minds of his liege people, and for remedy of the many mischiefs and grievances we now groan under, he would graciously be pleased (according to the statutes of the 4th and 36th of Ed. 3.) timely to call a New Parliament”—

* See the Trial of him and others for a Riot, A. D. 1683.

Scarcely were the words 'a New Parliament, pronounced, but the greatest part of the assembly cried out, 'Well moved, well moved!' And though none spake up formally to the sheriffs, yet several amongst them spake enough to shew a high approbation of what had been said, and not one word was spoken in contradiction: which when the Common-Serjeant saw, to prevent (as is conceived) others speaking to the same matter, he spake to this purpose:

"That what had been moved, seemed to be the general sense of the whole Court; and since the gentleman that made the motion was pleased to join him with the Sheriffs, and that he must offer his opinion in the matter, it was this, That it was not so proper to carry up that Message before they did proceed to their elections, as first to determine their elections, and then carry up an account of these and that together."

But many in the Court did insist upon the motion, and desired a Message might be sent up immediately; whereupon one of the Sheriffs spake, and did acknowledge, "That what had been said by the gentleman that spake first, was true; but that he was an old citizen, and had long known Common-Halls, and he did believe that the proper work of the day was the election of officers; and therefore he did desire that the Court would proceed, and not to carry up the Message till after that was done;" To which one replied, "That according to his utmost understanding, that Court was one of the ancientest, greatest, and most powerful Courts of this City; and although the customary business of this day were the choice of officers, yet that Court had cognizance of any thing whatever that did relate to the good of the city; and therefore it was conceived, that nothing was more proper at that time, than this which concerned the preservation of the city from utter ruin."

Upon which the other Sheriff directing his discourse to the Assembly, said, "That what the gentlemen had moved there, was true, and not unknown to most of the persons there present; but that he was of his brother's opinion, that it was fit first to go on to the work of the day, and not to carry up that Message till after the election."

Many persons being still dissatisfied, and calling for a present Message to be sent up, the gentleman who first moved the business, made it his request, "That since there seemed a difference touching the circumstance of time, that they would proceed to election, and carry up the Message with the persons elected, as the Sheriffs desired;" to which the Common Hall unanimously agreed. Upon which, silence being made, the Common Hall proceeded to election, and sent up an account thereof to the Lord Mayor and Aldermen by the Sheriffs and Common-Serjeant, as is usual in such cases.

The Lord Mayor and Aldermen presently came down, and took their seats in the court of Hustings, according to custom; upon which,

the Common-Serjeant came forth to the front of the court, and declared the names of the persons elected, and immediately gave back. Whereupon the Common-Hall called out for an Answer to their Message; upon which, the Common-Serjeant stepping forward again in the presence of the Lord Mayor, Aldermen and Sheriffs, said, "That he had acquainted his lordship and the aldermen with their request, and that his lordship had commanded him to declare unto them, That he would be ready to join with them in that or any other thing for the good of the city." And with that the Lord Mayor and Aldermen, &c. left the court of hustings, and dismissed the assembly.

After dinner, the Recorder, sir John Howel, out of a great pretence of loyalty, but indeed a personal grudge against Mr. Jenkes, conveyed the news to Whitehall; where, with his usual strain of rhetoric, he made such a dismal representation of the matter, and was so powerful in his eloquence, as to occasion both the sheriffs and some other of the city-officers to be sent for; who were examined by the Lord Chief Justice Rainsford, in the presence of the king, the lord chancellor*, lord treasurer†, duke Lauderdale, and other lords.

The Sheriffs and two others made affidavits; but a copy of them could never be obtained.

Upon the 27th of June, Mr. Jenkes was summoned by a messenger to appear at the council-board the next day; accompanied with many of his friends, he attended in the lobby, near the council-chamber, according to his summons, and after sometime was called in; but his friends pressing to follow him, (as is usual on such occasions) were kept out, and not one suffered to go in with him.

The king sitting in council, the lord chancellor, duke Lauderdale, and other lords about him, the clerk read an affidavit made by the two sheriffs, the common crier, and one John Green, an attorney; the substance whereof was,

'That Fr. Jenkes, at a Common-Hall, in London, the 24th of June last past, did complain of Grievances; and did desire, that before they went upon any other business, certain members of that Court might accompany the Sheriffs and the Common Serjeant to wait upon the Lord Mayor, then in the Chamber, to desire that a Common-Council might be called to petition his majesty, in the name of the city, to call a new parliament.'

The affidavit being read, the council-board proceeded to this effect:

Lord Chancellor. Sir, what say you to this matter?

Mr. Jenkes. I desire to know if this be all you have to charge against me?

A Lord. Then you make little of this, you will find it to be enough.

* Heneage lord Finch, afterward earl of Nottingham.

† Lord Osborne, earl of Danby, afterwards marquis of Carmarthen, and duke of Leeds.

L. Chan. Sir, did you move for a Common-Council to petition for a new parliament?

Jenkes. Is it any crime to petition for a new parliament?

To which his lordship not thinking fit to give answer, proceeded,

L. Chan. Answer to the matter in charge.

Jenkes. With the liberty of his majesty and this board, I will.

The King. Go on.

Jenkes. May it please your majesty, of all the subjects you have—

A Lord. (interrupting him) Answer to the matter.

Jenkes. If his majesty will be pleased to hear me, I hope you will.

King. Let him go on.

Jenkes. May it please your majesty, of all the subjects you have, none are more loyal than your city of London, and in the city none more loyal than myself: and no man there did more desire, and, in my circumstances, act more, in order to your majesty's Restoration, than myself. And I do defy any citizen, or other whomsoever, to say I have forfeited my loyalty by any one individual act—

King. (Interrupting him) Sir, you are not Lord-Mayor, and I am very well satisfied with the loyalty of the city, and that it needs no such vouchers.

L. Chan. Speak to the matter.

Jenkes. May it please your majesty, being summoned to a Court of Common Hall in London, which is a Court that consists of the main body of the city—

L. Chan. (Interrupting him) Sir, you are under a double mistake; for first, it was not a Court; and next, it did not consist of the main body of the city of London.

Jenkes. With your lordship's leave, it was a Court which did consist of all the livery of the city of London; which, if I understand any thing, is the main body of the city of London. And every member of that Court hath freedom to propose and debate any such matter or thing as he believes is for the service of his majesty, and the good of the city; and no man can use more understanding than God hath given him. And I assure your lordship, what I then moved was according to the utmost of my understanding for his majesty's service, and the good of the city. And, my Lord, if I were under a mistake, I had the fortune to have good company; for what I moved was approved by the whole Court.

King. It was not so.

Secretary. We have a deposition to the contrary.—*Jenkes.* It was so.

Other Lords. It was not so.

Jenkes. May it please your majesty, if you have a hundred depositions to the contrary, if the matter of fact were so, it was so; and I do affirm it was approved by the whole Court.

A Lord. How came you to be a privy-counsellor?

Jenkes. I never had any such ambitious thought in my head.

A Lord. How came you then to meddle with matters of state?

Jenkes. I thought any of his majesty's subjects, in an humble manner, might petition his majesty for a remedy of any grievance whatsoever.

A Lord. Do you think any one may petition for a parliament?

Jenkes. I believe they may.

The King. I know whose scholar you are, and I will take care that none such as you shall have to do with the government.

Several Lords. What was it you moved? What was it you moved?

Jenkes. My Lords, what I spake was not in a corner, but openly in the face of a multitude, and therefore cannot want a witness to attest it.

A Lord. Just now it was a Court, and now it is a multitude.

Jenkes. We citizens pretend not to place our words so exactly in form, but that there may be some mistake in them; but I think my expression was no great absurdity: For though it were a Court, yet the persons there were so numerous, that it may not be very improper to term them a multitude. Yet, if I have failed in due expression, I beg his majesty's pardon. I know somewhat of the customs of the city of London, and the powers and privileges of the Courts there; and somewhat also of the laws of England; but what the powers and customs of this Court are, I know not, and therefore shall desire to say little, lest I should unwillingly offend.

L. Chan. Sir, pray tell us, who advised you in this matter?

The King. Who advised you?

Jenkes. What I then proposed was consented to by the whole Court, and so became their act, as I said before.

L. Chan. and others. Answer directly to the question, or declare you will not.

Jenkes. Since I see your majesty and the Lords are angry, though I am not sensible that I have given you any just cause for it; I must not say I did it without advice, lest you should be more angry; and to name any particular person (if there were such) would be a mean and unworthy thing, therefore I desire to be excused all farther answer to such questions; since the law doth provide, that no man be put to answer to his own prejudice.

King. We will take that for an answer.

L. Chan. Since you name the law, by the law you shall be tried.

Jenkes. I thank you and this board.

L. Chan. You may withdraw.

He immediately withdrew, and the room being cleared of all his friends, and other company, Mr. Jenkes was kept there for the space of an hour and an half; and, after that, without being called in any more, was, by a warrant of the council, sent to the prison of the Gatehouse within the liberties of Westminster. Soon after his commitment, he demanded of the Keeper a copy of the Warrant by which he

was committed; as he might, and by law ought to have. The Keeper gave him a promise of it, but delaying the performance for two days, Mr. Jenkes resolutely demanded it of him as his duty, but could not yet obtain it. Some time after, the Keeper sent him one voluntarily, by his man, with this excuse, That before he had positive order to deny him one, and now had to give it him.

The Copy of the Warrant.

Whereas it appears to his majesty in council, by the examination of sir Thomas Gold, sir John Shorter, knights, sheriffs of the city of London, John Wells, common-crier of the said City, and John Green, one of the attorneys of the Lord-Mayor's Court, taken upon oath before the Lord-Chief-Justice Rainsford, That Francis Jenkes, of the said City, linen-draper, did, on the 24th of this instant June, at a Common-Hall, then assembled at the Guildhall of the said City, for chusing officers for the ensuing year, in a most seditious and mutinous manner, openly move and stir the persons then present, That before they did go on to the choice of new officers (which was the only occasion of that assembly) they should go to the Lord-Mayor, and desire him to call a Common-Council, that might make an address to his majesty in the name of the City, to call a new parliament. And whereas the said Francis Jenkes, being now called in, and heard before his majesty in council, was so far from denying or extenuating his offence, that he did in a presumptuous and arrogant manner endeavour to justify the same: These are therefore to command you, to take into your custody the body of the said Francis Jenkes, herewith sent you, and him to keep safely, until he shall be delivered by due course of law; for which this shall be your warrant. Dated at the Council-Chamber in Whitehall, this 28th day of June, 1676.
To the Keeper of the Gate-house, Westminster, or his Deputy.

‘Lindsey,	Arlington,
Peterborough,	Bathe,
C. Craven,	J. Williamson,
G. Carter,	R. Carr,
Lauderdale,	Finch,
Northampton,	Ormond,
Carbery,	Bridgwater,
W. Maynard,	Hen. Coventry,
Tho. Chichely,	J. Ernle,
Danby,	Robert Southwell.’
Anglesey,	

Next day, being the 29th of June, divers of Mr. Jenkes's friends waited upon Mr. Secretary Williamson, and desired to become bail for him; but Mr. Secretary refused to take any bail; but told them, if they did mind him of it on Wednesday morning, he would move it at the council. But Mr. Jenkes believing that to be (as it proved) but a delay, ordered some of his friends to wait upon the Lord Chief-Justice Rainsford, and moved him for an Habeas Cor-

pus *ad subjiciend. et recipiend.*, &c. which accordingly was done, but his lordship denied to grant it, alledging no other reason but that it was vacation: though his lordship could not but know that writ to be the subject's right at all times, as well out of term as in term; and Mr. Jenkes's friends were ready to offer him multitudes of precedents when it had been granted out of term, both anciently, and since his majesty's Restoration.

Mr. Jenkes resolving to leave no legal course to attain his liberty untried, upon Friday, the 30th of June, at a general seal, did by his counsel move the Lord-Chancellor for an Habeas Corpus. At first his lordship did seem much surprized, and did refuse to hear his counsel; but after a little pause, his lordship bid Mr. Jenkes's counsel to move it again the next seal, and ordered the seal to be put off from Tuesday the 4th, until Thursday the 6th of July.

Upon Wednesday the 5th of July, Mr. Jenkes's friends waited upon Mr. Secretary Williamson, and desired him, according to his promise, to move in council, that Mr. Jenkes might be bailed; but he said he had spoke with the king, and could do nothing without a petition. So upon Thursday the 6th of July, being a public Seal, Mr. Jenkes's counsel did again move the Lord-Chancellor (according to his lordship's order), and asserted the authority of the lord Coke, who is most clear in the case. 2 part. Inst. fol. 53. speaking of the Writ of Habeas Corpus in the King's-Bench, he saith, The like writ is to be granted out of the Chancery, either in term (as in the King's-Bench) or in the vacation; for the Court of Chancery is *Officina Justitiæ*, and is ever opened, and never adjourned; so as the subject being wrongfully imprisoned may have justice for the liberty of his person, as well in the vacation time as in term.

And in the 4th Inst. fol. 88. speaking of the Court of Chancery, he saith, And this court is the rather always open, for that if a man be wrongfully imprisoned in the vacation, the Lord-Chancellor may grant an Habeas Corpus and do him justice according to law; vid. 4 Inst. fol. 182, 190. Thus the lord Coke.

Mr. Jenkes's counsel did likewise offer a precedent or two; but the Lord Chancellor making light of the lord Coke's opinion, saying, 'The lord Coke was not infallible;' and slighting all that Mr. Jenkes's counsel offered, over-ruled the matter, denying to grant the writ.

On Tuesday morning, July 11, at the quarter-sessions, holden for the liberty of Westminster, Mr. Jenkes being still a prisoner in the Gatehouse, did move by his council to be bailed; where this was the substance of what passed, as it was taken by a person present.

Court. We have no such name in our calendar; and we sitting here by a limited commission, can take no notice of any person that is not in our calendar.

Counsel. Every keeper of a prison, either in county or franchise, ought by the Statute of 3 Hen. 7. c. 3. to certify the names of every prisoner in their custody; at the next general gaol-delivery there, to be calendered before the justices of gaol-delivery, that the parties may be delivered according to law, upon pain of 100*l.* for every default there recorded. And I demand that this default of the gaoler may be recorded according to that statute; and that you would, as you may, command him to calendar him now.

The Statute was read.

Court. We are no general gaol-delivery, for we cannot try several felons, but they must be tried at the general gaol-delivery for the County.

Coun. You are a general gaol-delivery for all offences within the cognizance of your franchise; and therefore, unless the fact for which he is committed be such as is above your cognizance, he ought to be tried here; and if it be such a fact, he ought notwithstanding to be calendered here, that you may send him to the County-gaol, where he may be tried.

Gaoler. I never did calendar any man that was committed by the council-table.

Coun. The neglect hath not taken away your duty; and as often as you have omitted so to do, so it have you deserved to be fined. And I do again demand of this court, that this default of yours may be recorded.

The court inclined to the gaoler, and would not record his fault; whereupon the counsel proceeded.

Coun. Since you exclude him from the benefit of your present commission, I apply myself to you, without respect to that, as you are justices of peace in general; and as such, you have power to bail any man bailable by law, except in some particular cases, where you are restrained by statute.

Court. By whom is he committed?

Coun. By the council-board.

Court. Do you believe the council-board can commit to prison?

Coun. I admit it.

Court. We don't know for what offence he is committed.

Coun. I have here a copy of the Commitment, and desire it may be read.

But the Gaoler refusing to own it for a true copy, though given by himself, and the court requiring a nicer proof that it was a true copy, than could at that time be made, they ordered the counsel to attend in the afternoon; and in the mean time the gaoler to give a true copy. In the afternoon the counsel appearing, the court called to him, and asked him what he had to say.

Coun. I have now a copy given and signed by the gaoler for a true copy, and desire it may be read.

The Gaoler, who was to prove it a true copy, upon the counsel coming into the court, took an

occasion to slink away; and the court (as if it had been by design) were ready to take hold of that opportunity to evade the business; but Mr. Jenkes's friends fetched him back, and he swearing it to be a true copy it was read.

Court. What is it you demand?

Coun. What I did before: That there being nothing in this warrant, for which he is not bailable by law, I demand that he may be bailed.

Court. You have taken a wrong course in coming to us.

Coun. I presume he applies himself properly to you; for he being a prisoner within your liberty, you are the most proper persons to bail him. As justices of the peace, you have power to bail any man within your jurisdiction, bailable by law, and where you may bail by the law, you ought so to do: and I demand it for Mr. Jenkes.

Court. Where do you find such power given to justices of the peace?

Coun. By the same statute of Hen. 7. that I cited against the gaoler; the enacting part whereof saith, 'That the justices of the peace in every shire, city or town, or two of them at the least, whereof one to be of the *quorum*, have authority or power to let any such prisoner or persons, mainpernable by the law, that have been imprisoned within their several counties, city or town, to bail or mainprize, unto their next general sessions; or unto the next gaol-delivery of the same gaols, of every shire, city or town, as well within franchises as without, where any gaols be, or hereafter shall be, &c.'

The whole Statute was read; and the Court taking hold of the preamble, said, This Statute was made for the prevention of bailing felons not bailable by law, and enables us only to bail felons bailable by law.

Coun. The preamble of the act recites the mischief occasioned by the statute of 1 R. 3. but the enacting part repeals that act, and gives you a general power of letting any person, mainpernable by the law, to bail; and I am sure no statutes made for the liberty of the subject, ought to receive such a strait construction.

Court. Do you consider by whom he is committed? The privy council?

Coun. I do, and think that alters not the case.

Court. He is committed by a superior Court, and we, who are an inferior one, cannot bail him.

Coun. It is not the Court that commits, but the fact for which the party is committed, ought to direct you in bail. The statute of H. 7. hath no such exception in it; nor hath any other since put any such restraint upon you.

Court. Would you have us bail him, after the lord chancellor and the lord chief justice have refused to grant a Habeas Corpus?

Coun. They did not deny the Habeas Corpus because he was not bailable by law, but because the course of their Courts, in their opi-

nions, would not admit it: but, however, if you ought to bail him, (as by the statute, I think, you ought) their refusal does not lessen your duty.

Court. We doubt very much that any inferior Court can bail a man committed by a superior one.

Coun. Scruples and fears do not alter the law: This doubt was once made in the King's-bench, in the great case of Selden, and others;* but the law was for the prisoner before that time, and was sufficiently settled then; and this case differs nothing from that in reason.

Court. It does, for that was upon a Habeas Corpus out of the King's-bench.

Coun. That is but a circumstantial difference. The Habeas Corpus from that Court is only to remove the prisoner, and the cause before them, that justice may be done to him: Mr. Jenkes is already within your jurisdiction, and the statute gives you authority to bail him; and your authority makes it your duty, and I rely upon that.

Court. We considered upon it at dinner, and do believe it a rare case, and fit to be advised upon; and we will advise. Why did you not move yesterday when my lord chief justice was in town? now there are no judges in town to advise with.

Coun. That we did not come yesterday was no design, for he is not so fond of a gaol; and if it be an indiscretion, yet that is no sufficient reason to detain a man in prison. However, if you have power (which you ought to know) you have it as well when they are not in town, as when they are. Is he bailable by law, or not?

Court. There is nothing in the warrant, for which he is not bailable by law.

Coun. For what reason then do you deny him?

Court. We do not deny him, but we will advise, because he is committed by a superior Court.

Coun. No man ought to be imprisoned for any misdemeanor before conviction, without bail; and it is against the Petition of Right, that any man bailable by law, should be detained in gaol without it. I do not know how, by such denials as this, the being committed by a superior Court may grow to be a reason; but at present I think the Petition of Right spoils it for being a good one.

Court. You can give us no precedent of any one being bailed by justices at the sessions, who was committed by the council board.

Coun. I believe it is a rare case that a man should be forced to apply himself to such, but I think I can furnish you with an instance; and that is of one Cannon, a quaker, who was committed by the privy council about Christmas last, and was bailed at the sessions of the Old Bailey.

A pert by-stander, no ways concerned, suggested to the Court, and the Court repeated after him,

Court. He was committed to Newgate prison, and was calendared there.

Coun. If you stick to the reason of being committed by a superior Court, that is no answer; but if it must be an answer, Mr. Jenkes is committed to the prison of this liberty, and ought to have been calendared here; and then I do again demand that the gaoler be fined.

Court. We think it a rare case, and fit to be advised upon; and our commission we here sit by, directs us to do so in difficult cases.

Coun. I told you before, I had nothing to do with the commission you here sit by; and you yourselves excluded me from it: but I apply myself to you as justices of the peace merely, and as such you ought to take upon you the knowledge of your office.

Court. In the great case of Selden, that you cited, the judges took two terms to advise.

Coun. You very well know what opinion was had of their doing so. Will you advise upon it to-night with the king's counsel, and I will attend you to-morrow morning?

Court. We think fit to advise with the judges about it, till next sessions.

Coun. I can easily interpret what such advising means.

Court. You say you apply yourself to us as justices of the peace merely; then you may come to any two of us a fortnight hence, or more, and perhaps we may advise in the mean time.

Coun. I believe it will be a difficult matter to get any two of you together upon this occasion.

Mr. Jenkes finding all these common doors to liberty shut against him, did by advice betake himself to another method, not less legal than the former; though the power granted by the statutes to justices of peace, and the constant issuing of the writ of Habeas Corpus upon demand (both more easy courses) have occasioned it to be more seldom used.

Justice Fitzherbert, in his *Natura Brevium* (an author, and a book of justly venerable authority in our law), in his Chapter of Mainprize, declares, That if a man be taken by the king's commission, and kept in prison for felony or misdemeanors, he may by his friends put in sureties in the Chancery, that he will appear before the justices, &c. and be of good behaviour, &c. and that body for body; and thereupon he shall have a writ out of the Chancery, unto the sheriff, or unto the constable of the castle where he is imprisoned, to set him at liberty, if he be imprisoned for that cause and no other.

Which words seem plainly to declare the writ of Mainprize to be the subject's right, and not to leave a discretionary power to the officers of Chancery in granting it. But the scarcity of precedents being the great objection against the Habeas Corpus out of Chancery, Mr. Jenkes resolved to offend no more in that kind, and therefore caused a search to be made in the Rolls in the Tower, for the Writs of Mainprize, where a multitude of them was found, and many in the case of a commitment by the

* See vol. 3, p. 235, of this Collection.

king's command. A copy of one, and a note of several others were taken out, to back the authority of Fitzherbert.

With this provision, on Monday, July 17, four of Mr. Jenkes's friends, substantial merchants, attended by a counsel, went to the lord chancellor; and though upon tender of themselves as bail for him, they might have demanded their writ of Mainprize as the subject's right, without other formality, yet they addressed themselves to him in a more respectful manner, by way of Petition, thus :

To the Right Hon. Henry Lord Finch, Baron of Daventry, and Lord High-Chancellor of England; the humble Petition of A. B. C. D. of London, Merchants, friends to Francis Jenkes, now a Prisoner in the Gatehouse of Westminster, sheweth :

“ That the said Francis Jenkes was committed to the said prison, by virtue of a warrant, a true copy whereof is hereunto annexed, for a fact bailable by law; for which, and no other cause, he yet remains there a prisoner; And that in this and all other cases of like nature, your Petitioners are advised, upon putting in bail in the court of chancery, according to the ancient course and usage thereof, a Writ of Main-prize ought to issue under the great-seal, to be directed to the sheriff or keeper of the prison where such prisoner stands committed, to deliver the prisoner so committed.

“ That your Petitioners being men of good estates, (as shall, if your lordship require, be made out to your lordship) do desire, and are ready to become bail for the said Francis Jenkes; according to the course of the chancery, and according to the law.

“ The Petitioners therefore pray, that your lordship would accept of bail accordingly; and that thereupon your lordship would order a writ to be made forthwith, to be directed to the keeper of the Gatehouse, for the discharge of the said Francis Jenkes. And your petitioners shall always pray, &c.”

The Petition being sent in to, and read by his lordship, was returned by the Secretary with this answer; ‘ That his lordship did very well approve of the Petition; but since Mr. Jenkes was committed by the council-board, he thought fit that they should be petitioned, and should bail him.’

But Mr. Jenkes's friends not being satisfied with that answer, pressed to speak to his lordship, and were by his lordship's order called in, who coming towards them, spake to this effect :

Lord Chan. Who is it that puts you on these improper methods?

Coun. We presume this address to your lordship to be a proper course in our case, and is such as we have precedent for.

Lord Chan. Are you a lawyer?

Coun. Yes, my lord.

Lord Chan. Have you read Fitzherbert's *Nat. Brevium*? Look in his Writ *de Homine replegiando*.

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Coun. We have nothing to do with that writ, but it is by Fitzherbert that we are directed to this course, in his chapter of Main-prize, where he saith (what is before cited); and we are confirmed in his opinion by a multitude of precedents out of the close rolls in the Tower; I have the copy of one here, and the number and roll of many more.

The Precedent shewn to his lordship was this :

‘ Ex Rot. claus. de Anno Regni Regis Ed. 3, 11, parte prima, membr. 28.

‘ De Deliberand. Ric. Monyword, à prisona.
‘ Rex Senescallo et Marescallo Hospitii nostri, salutem; cum Ric. Monyword, in prisona Mariscallæ nostræ per præceptum nostrum, pro quibusdam transgressionibus et contemptibus nobis factis ut dicitur detentus existat sub custodia Janitoris nostri, &c.
‘ Williel. Stury, Chivalier, Tho. Pride, de Comit. Salop. Oliverius de Bourdeaux, de Com. Berk. Andreas Aubray, Johannes Pisselan, et Petrus Fan, de London, coram nobis in Cancellaria nostra, personaliter constituti manuceperunt predictum Richard. viz. quilibet eorum corpus pro corpore habere coram nobis, vel Justiciariis nostris, aut consilio nostro, quandocumque; et ubicumque; voluerimus ad mandatum nostrum ad stand. rect. de transgressionibus et contemptibus et aliis excessibus quibuscumque; unde indictatus vel restatus est, et quod bene et fideliter erga nos, et populum nostrum, de cetero se gerit, vobis mandamus, quod prefatum Richard. a Predictis, si ea occasione, et non alia, detineatur in eadem, deliberari faciatis, per manuceptionem supradictam.—Teste Regis apud Westmonast. decimo nono die Martii, Per ipsum Regem. Convenit cum Recordo, Laur. Halsted, Deput. Algernon May, militis.

The note of the number and roll of several Writs of Main-prize, upon surety put into chancery, shewn to his lordship, was this;

2 Ed. 3, p. 1. To the constable of the Tower, to deliver John Brice.

2 Ed. 3, p. 1, m. 29. To the constable of the Tower, to deliver Bernard Pouch.

2 Ed. 3, p. 1, m. 28. To the constable of the Tower, to deliver Henry Compton. Teste 26 Martii.

Eodem Rot. 23. To the constable of the Tower, to deliver John de Wassenham. Teste 18 Aprilis.

44 Ed. 3, p. 1, m. 6, custod. Forest. For delivery of several persons committed for hunting in forests since the stat. 28 Ed. 3, cap. 9.

Eodem Rot. m. 10. The like. Teste 20 Aug.

Eodem Rot. m. 17. The like.

Eodem Rot. m. 25. The like for Will. de Clark.

3 Rich. 2, m. 3. To the sheriff of London, to deliver Nich. de Swederton and John Deyfa. Teste 5 Decembr.

Eodem Rot. m. 23. To the justices of North Wales, to deliver Lloyd.

4 H

Lord Chan. One precedent of discretion is worth a thousand of these precedents.

His lordship read the precedent, and observing it to bear *Teste* the 19th day of March, which could never be in term, asked, When it was returnable? and said, it must be returnable in some court at Westminster.

Coun. This precedent hath no return, neither doth the nature of the writ in this case require one; for it is only a mandate to the gaoler, to set him at liberty upon sureties first taken in chancery for his appearance before the justices; which justices, and the time of his appearance, I suppose, are to be named in the recognizance.

Lord Chan. Whether there ought to be a return, is the question; besides, this is a writ directed immediately to the marshal of the household, and is a different case.

Coun. With submission to your lordship, it makes no difference who is the gaoler; and those I have given your lordship the number and roll of, are to several gaolers.

Then Fitzherbert's *Nat. Brevium* was shewn to his lordship, and upon reading the words there, 'If a man be imprisoned by the king's commission,' &c. his lordship said, That it was intended of one imprisoned by virtue of a commission out of chancery.

Coun. I humbly presume, that is not the sense of the book; the precedents I have shewn your lordship seem to interpret it, and are upon other comments; and Fitzherbert, in his *Abridgement*, Tit. *Maia-prize*, pl. 23, cites a *Book-case*, that shews this to have been a course in the Chancery; but we submit it to your lordship's judgment.

Lord Chan. A little submission in a proper place will do, but he hath a mind to come out with a high hand.

Coun. He has a mind to be discharged by law, as the warrant for his commitment directs.

Lord Chan. I am not to control any act of the privy council.

Coun. At the last motion for a *Habeas Corpus*, your lordship was pleased to say, That though that was not a proper method for Mr. Jenkes to obtain his liberty by, yet there was one: and upon that encouragement from your lordship, search has been made, and this course we have now taken, found to have been the ancient course; and we did presume, the same that your lordship meant.

Lord Chan. You have used a great deal of industry to miss the right way. Your precedents of *Edw. 3.* and *Rich. 2.* (300 years old) I will consider of till next term. Upon which answer, Mr. Jenkes's friends withdrew.

Now plenty of precedents proved as great a fault as want of them did before; and their age, which used to add to their authority, and give them a greater respect, made them contemned. Such always is the success, where 'stat pro ratione voluntas.' In the afternoon, the Secretary that first carried in the Petition, came to Mr. Jenkes in a dissembled confusion,

and told him, That he had committed a mistake in returning the Petition;* That his lordship had asked him for it, and would be very angry with him if he had it not; That he had left his lordship looking over some papers, and had taken that opportunity of coming for it; and desired that he might have it, to preserve him from his lordship's displeasure.

Though the morning's action gave Mr. Jenkes a great deal of reason to suspect the Secretary's tale to be a mere contrivance, and it was easy to surmise the truth; yet he took no notice of what had then passed, but sent the Petition (which was then in some of his friends hands) that evening to him. Upon the second thoughts which his lordship bestowed upon the matter of the Petition, he was better reconciled to it, and proved better than his word in considering the precedents, for instead of pausing upon them till the next term, he was pleased to carry them and the petition to the privy council, the next Wednesday; where, though all the particulars are not known, upon credible information, this was the substance of what passed.

His lordship acquainted the board with the Address that had been made to him; and moved, that the Petition might be there read. After it was read, his lordship told them, that it had some appearance of law, and desired that the Attorney-General (sir W. Jones) might give his opinion. Mr. Attorney told him, if it were law, his lordship ought to grant it; if it were not law, then to deny it; if it were of such difficulty as he could not satisfy himself, that then he should advise with the judges.

His lordship then moved for an order of council for his direction in the matter; to which some of the Lords replied, That they were a court of state, and not of law, and that it did belong to him, as Lord Chancellor, to inform them of matters of law: Thereupon his lordship clapping his hands to his breast, said, I thank God I have courage enough to serve his majesty.

About the latter end of July, some of Mr. Jenkes's friends attended his lordship again, and offered him bail; insisting upon the Writ of *Main-prize* as the subject's right; alledging to his lordship the hazards that his health, his family, and his trade were exposed to by his confinement. His lordship asked them, why they had not petitioned the king and council? and told them, if Mr. Jenkes thought it better to lie in prison and complain, than petition and be bailed, he might do as he pleased.

They told him they had tendered bail to Mr. Secretary Williamson, who promised them to move the king in council in it. But when they reminded him of it upon the next council-day, he was pleased to excuse himself. His lordship told them he never heard they had tendered bail; but the Writ of *Main-prize* was forgotten in all his answer.

* Note, That he had returned it by his lordship's order.

They then told him, that the general report was, that the king and council had referred it to his lordship; but his lordship would take no notice of that likewise, but said, the king would advise with the judges when they came to town. His lordship withdrew from them; and they left word with his secretary, That Mr. Jenkes looked upon himself to be his lordship's prisoner.

On the — of August, Mr. Jenkes's friends went again to my Lord Chancellor's, but his secretary told them, his lordship could not be spoke with.

They prevailed with his Secretary to go up to him, and remind his lordship of his last answer of advising with the judges; and tell him, that several of the judges had been in town, and they did now desire his lordship's resolution.

The Secretary at his return told them, that as soon as he began to mention the business, his lordship fell into a fit of the stone; but when that was over, he would mention it to him. About two hours after, they returned; and the Secretary being absent, another of his lordship's servants came to them, and told them that his lordship was not well, and could not be spoke with: but had ordered him to tell them, that Mr. Jenkes might advise with his counsel what was fit to be done, for he was none of his counsel; and if he would petition the king and council, he might; and that that was his answer.

On the 11th of August, being the last council day that was to be before the 3d of October, Mr. Jenkes thought fit again to tender bail to the council; and that the Lord Chancellor, who disowned all knowledge of his doing so before, and that the whole council might know of it, he sent this Letter by his bail to the Lord Privy Seal, then president of the council, which was publicly read.

“ My Lord, I have been imprisoned since the 28th of June, to my great loss, charge, and prejudice of my health. I have hitherto been denied bail, Habeas Corpus and the Writ of Main-prize; which I am informed, were never before denied to any of his majesty's subjects in the like case: And this only for moving in a lawful court, and in a quiet and peaceable manner, that which I did believe to be for his majesty's service, and the good of the city and kingdom, and the preservation of the Protestant religion; and which I conceive I can make appear to be according to the laws and statutes of this realm, if I am publicly called thereto. Wherefore I do not beg a discharge, for I desire nothing more than to clear my innocence by a public trial: but since Mr. Murrel and others, committed to this prison for matters of a far other nature, are daily bailed out; my humble request to your lordship is, that you would be pleased to move his majesty, that I, as well as any other of his majesty's subjects, may enjoy the benefit of the laws; and that the Writ of Main-prize may be granted to me; or that my bail, which now

attend, may be taken: Your lordship will very much oblige your lordship's humble servant,
FRANCIS JENKES.”

This Letter was by some improved into a Petition; and when they had given it that name, (though that was the only thing wanting to please the Lord Chancellor) yet it could not procure the acceptance of bail; but the method proposed by his lordship, proved as ineffectual as those that were demanded of him. The Lord Chancellor's resolutions being sufficiently discovered, Mr. Jenkes's friends forbore all farther solicitation of his lordship, and made fresh application to the Lord Chief-Justice Rainsford, on August 18, then just returned from the circuit.

The time of sessions at the Old Bailey drawing on, they caused two Writs of Habeas Corpus to be made (the common course of removing prisoners from one gaol to another); one, *ad deliberandum*, directed to the Keeper at the Gate-house; and the other, *ad recipiendum*, directed to the sheriffs of London, and desired his lordship to sign them, that Mr. Jenkes might be removed and brought to trial; for that the keeper of the Gate-house not calendar any state-prisoner, (as he called him) at the sessions for Westminster, he might lie there all his life-time without trial, which no subject ought to do. His lordship excused himself upon his late return to town, which had not yet afforded him leisure to advise; and sent them to the Attorney-General, to know whether he were ready for a trial, before he would give them any answer.

Mr. Attorney, upon their coming to him, very worthily told them, That he had no order in it, but that he would not oppose the granting of those writs: adding, God forbid but that the law should have its due course.

They returned to the Lord Chief-Justice with this answer, and offered to make oath that it was Mr. Attorney's answer; but he would give credit to nothing, but a note under Mr. Attorney's own hand. They told him, it was hard that a man should lie in prison, who was willing to bring himself upon trial; that writs of this nature were every day granted, and did presume, could not reasonably be denied. His lordship answered, he would know whether Mr. Attorney were ready for a trial. They replied, That they did not know when Mr. Attorney would be ready, and Mr. Jenkes must stay for his trial till then.

They then moved his lordship, as they had done formerly, That he would grant a Habeas Corpus to bring him before his lordship, and that he would accept of substantial citizens for bail, who should render him whensoever Mr. Attorney should call for him; alledging, that such writs had been frequently granted by the Lord Chief-Justice Keeling, and one of the now justices of the King's-Bench.

His lordship returned, That he did not doubt the security they should offer him; but he had never granted such a writ, and he knew not

upon what authority others had done it : and in short, refused to grant either that or the other writs.

After all these denials of right, Mr. Jenkes resolved to sit still, with the satisfaction, that his ill success was not imputable to the injustice of his cause ; but to the pleasure or fear of those that had the power of making it otherwise : and with patience to expect it till the term should set open the prison-doors ; which will not brook the denial of a Habeas Corpus, though a long vacation must.

No further address was therefore made to either of their lordships ; but themselves, after they had taken the pleasure of denying him, were pleased to condescend to intercede for him : for, as we heard by very credible information, the Lord Chief Justice went to the Lord Chancellor and told him, " That the " writs demanded of him, were according to

" law, and could not be denied ; and that he " had only taken time till he had acquainted " his lordship with it."

The Lord Chancellor directed him to the Lord Treasurer for further advice ; who sent him to the king. As soon as his majesty understood, that what was demanded was the subject's Right, he immediately commanded that the laws should have their due course, which their lordships had stopped : and accordingly he was bailed."

He was afterwards, in 1683, tried with Thomas Pilkington, Henry Cornish, esqrs. and others, for a riot at Guildhall, and fined 300 marks.

* It has been said, and seems probable, that this case contributed to the passing of the Habeas Corpus Act stat. 31 Car. 2, c. 2.

238. The Trial of JAMES MITCHEL,* in Scotland, for attempting the Murder of Dr. James Sharp, Archbishop of St. Andrews, and wounding the Bishop of Orkney : 29 CHARLES II. A. D. 1677.

JAMES Mitchel being indicted for an attempt to murder the archbishop of St. Andrews, in July 1668, was committed 1674 prisoner to the Tolbooth at Edinburgh ; whereupon the

* The attempt upon archbishop Sharp is thus related by Burnet :

" A strange accident happened to Sharp in July 1668, as he was going into his coach in full daylight, the bishop of Orkney being with him. A man came up to the coach, and discharged a pistol at him with a brace of bullets in it, as the bishop of Orkney was going up into the coach. He intended to shoot through his cloak at Sharp, as he was mounting up : but the bullet stuck in the bishop of Orkney's arm, and shattered it so, that, though he lived some years after that, they were forced to open it every year for an exfoliation. Sharp was so universally hated, that, though this was done in full daylight, and on the high street, yet nobody offered to seize the assassin. So he walked off, and went home, and shifted himself of an odd wig, which he was not accustomed to wear, and came out, and walked on the streets immediately. But Sharp had viewed him so narrowly, that he discovered him afterwards, as shall be mentioned in its proper place. I lived then much out of the world : yet I thought it decent to go and congratulate on this occasion. He was much touched with it, and put on a shew of devotion upon it. He said with a very serious look, My times are wholly in thy hand, O thou God of my life. This was the single expression savouring of piety, that ever fell from him in all the conversation that passed between him and me. Proclamations were issued out with great rewards for discovering the actor :

Lord Commissioner and the Lords of the privy-council appointed a committee to examine him, viz. Lord Lulithgow, Preses (President) : Hatton, treasurer depute ; Dundonald, Ross,

but nothing followed on them. On this occasion it was thought proper, that he should be called to court, and have some marks of the king's favour put on him. He promised to make many good motions : and he talked for a while like a changed man : and went out of his way, as he was going to court, to visit me at my parsonage house, and seemed resolved to turn to other methods."—Afterwards, relating the history of the year 1678, he says :

" Things being in great disorder, by reason of the numbers and desperate tempers of those who were intercommuned, [Letters of intercommuning, similar to the 'Aquis et ignis in-terdictio' of the Roman law, concluded thus " We command and charge all our lieges and subjects, that none presume to reset, (receive) supply, or intercommune with any of the foresaid our rebels, nor furnish them with meat, drink, house, harbour, or victuals ; nor any other thing useful or comfortable to them ; nor have any intelligence with them by word, writing, message, or otherwise, under the pain of being repute and esteemed art and part with them in the crime foresaid, and to be pursued therefore with all rigour." 4 Laing's Hist. of Scotland, 74 Note.] Sharp pretended he was in great danger of his life ; and that the rather, because the person that had made the attempt on him was let live still. Upon this I must tell what had past three years before this. Sharp had observed a man that kept shop at his door, who looked very nar-

and Murray, justices; Craigh, Collington, &c. When he was brought before the committee, he was persuaded to make acknowledgment of the fact; a relation whereof is thus given by himself.

rowly at him always as he passed by: and he fancied, he was the man that had shot at him six years before. So he ordered him to be taken up, and examined. It was found, he had two pistols by him, that were deeply charged, which increased the suspicion. Yet the man denied all. But Sharp got a friend of his to go to him, and deal with him to make a full confession: and he made solemn promises, that he would procure his pardon. His friend answered, he hoped he did not intend to make use of him to trepan a man to his ruin. Upon that, with lifted up hands, Sharp promised by the living God, that no hurt should come to him, if he made a full discovery. The person came again to him, and said, if a promise was made in the king's name the prisoner would tell all. So it was brought before the council. Lord Rothes, Halton, and Primerose were ordered to examine him. Primerose said it would be a strange force of eloquence, to persuade a man to confess, and be hanged. So Duke Lauderdale, being the king's commissioner, gave them a power to promise him his life. And as soon as these Lords told him this, he immediately kneeled down, and confessed the fact, and told the whole manner of it. There was but one person privy to it, who was then dead. Sharp was troubled to see so small a discovery made: yet they could not draw more from him. So then it was considered, what should be done to him. Some moved the cutting off his right hand. Others said he might learn to practise with his left hand, and to take his revenge; therefore they thought both hands should be cut off.—This cruelty was spared by means of a coarse jest of Lord Rothes, "and" proceeds Burnet, "when the truth of the promise now given was afterwards called in question, this jest was called to mind, and made the whole matter to be remembered. But Primerose moved, that since life was promised, which the cutting off a limb might endanger, it was better to keep him prisoner during life in a castle they had in the Bass, a rock in the mouth of the Frith: and thither he was sent. It was thought necessary to make him repeat his confession in a court of judicature: [Laing says the justiciary court was instructed secretly to pronounce a sentence for the amputation of his hand] so he was brought into the justiciary court, upon an indictment for the crime, to which it was expected he should plead guilty. But the judge, who hated Sharp, as he went up to the bench, passing by the prisoner said to him, Confess nothing, unless you are sure of your limbs as well as of your life. Upon this hint he, apprehending the danger, refused to confess: which being reported to the council, an act was past mentioning the promise and his confession, and

" My indictment I take up in these two particulars: first, as they term it, rebellion and treason, aeneit which I answered to my Lord Chancellor in committee, that it was no rebellion, but a duty which every one was bound

adding, that since he had retracted his confession, they likewise recalled the promise of pardon: the meaning of which was this, that, if any other evidence was brought against him, the promise should not cover him: but it still was understood, that this promise secured him from any ill effect by his own confession. The thing was almost forgot after four years, the man being in all respects very inconsiderable. But now Sharp would have his life. So duke Lauderdale gave way to it: and he was brought to Edinburgh in order to his trial. Nisbit, who had been the king's advocate, and was one of the worthiest and learnedest men of the age, was turned out. And Mackenzie was put in his place, who was a man of much life and wit, but he was neither equal nor correct in it: he had published many books, some of law, but all full of faults; for he was a slight and superficial man. Lockhart was assigned counsel for the prisoner. And now that the matter came again into peoples memory, all were amazed at the proceeding. Primerose was turned out of the place of lord register, and was made justice general. He fancied orders had been given to raze the act that the council had made: so he turned the books, and he found the act still on record. He took a copy of it, and sent it to Mitchell's counsel: that was the prisoner's name. And, a day or two before the trial, he went to duke Lauderdale, who, together with Sharp, lord Rothes, and lord Halton, were summoned as the prisoner's witnesses. He told him, many thought there had been a promise of life given. Duke Lauderdale denied it stiffly. Primerose said, he heard there was an act of council made about it, and he wished that might be looked into. Duke Lauderdale said, he was sure it was not possible, and he would not give himself the trouble to turn over the books of council. Primerose, who told me this, said his conscience led him to give duke Lauderdale this warning of the matter, but that he was not sorry to see him thus reject it. The trial was very solemn. The confession was brought against him, as full evidence: to which Lockhart did plead, to the admiration of all, to shew that no extrajudicial confession could be allowed in a court. The hardships of a prison, the hopes of life, with other practices, might draw confessions from men, when they were perhaps drunk, or out of their senses. He brought upon this a measure of learning, that amazed the audience, out of the lawyers of all civilized nations. And, when it was opposed to this, that the council was a court of judicature, he shewed, that it was not the proper court for crimes of this nature, and that it had not proceeded in this as a court of judicature. And he brought out likewise a great deal of

Scarcely were the words 'a New Parliament, pronounced, but the greatest part of the assembly cried out, 'Well moved, well moved!' And though none spake up formally to the sheriffs, yet several amongst them spake enough to shew a high approbation of what had been said, and not one word was spoken in contradiction: which when the Common-Serjeant saw, to prevent (as is conceived) others speaking to the same matter, he spake to this purpose:

"That what had been moved, seemed to be the general sense of the whole Court; and since the gentleman that made the motion was pleased to join him with the Sheriffs, and that he must offer his opinion in the matter, it was this, That it was not so proper to carry up that Message before they did proceed to their elections, as first to determine their elections, and then carry up an account of these and that together."

But many in the Court did insist upon the motion, and desired a Message might be sent up immediately; whereupon one of the Sheriffs spake, and did acknowledge, "That what had been said by the gentleman that spake first, was true; but that he was an old citizen, and had long known Common-Halls, and he did believe that the proper work of the day was the election of officers; and therefore he did desire that the Court would proceed, and not to carry up the Message till after that was done;" To which one replied, "That according to his utmost understanding, that Court was one of the ancientest, greatest, and most powerful Courts of this City; and although the customary business of this day were the choice of officers, yet that Court had cognizance of any thing whatever that did relate to the good of the city; and therefore it was conceived, that nothing was more proper at that time, than this which concerned the preservation of the city from utter ruin."

Upon which the other Sheriff directing his discourse to the Assembly, said, "That what the gentlemen had moved there, was true, and not unknown to most of the persons there present; but that he was of his brother's opinion, that it was fit first to go on to the work of the day, and not to carry up that Message till after the election."

Many persons being still dissatisfied, and calling for a present Message to be sent up, the gentleman who first moved the business, made it his request, "That since there seemed a difference touching the circumstance of time, that they would proceed to election, and carry up the Message with the persons elected, as the Sheriffs desired;" to which the Common Hall unanimously agreed. Upon which, silence being made, the Common Hall proceeded to election, and sent up an account thereof to the Lord Mayor and Aldermen by the Sheriffs and Common-Serjeant, as is usual in such cases.

The Lord Mayor and Aldermen presently came down, and took their seats in the court of Hustings, according to custom; upon which,

the Common-Serjeant came forth to the front of the court, and declared the names of the persons elected, and immediately gave back. Whereupon the Common-Hall called out for an Answer to their Message; upon which, the Common-Serjeant stepping forward again in the presence of the Lord Mayor, Aldermen and Sheriffs, said, "That he had acquainted his lordship and the aldermen with their request, and that his lordship had commanded him to declare unto them, That he would be ready to join with them in that or any other thing for the good of the city." And with that the Lord Mayor and Aldermen, &c. left the court of hustings, and dismissed the assembly.

After dinner, the Recorder, sir John Howel, out of a great pretence of loyalty, but indeed a personal grudge against Mr. Jenkes, conveyed the news to Whitehall; where, with his usual strain of rhetoric, he made such a dismal representation of the matter, and was so powerful in his eloquence, as to occasion both the sheriffs and some other of the city-officers to be sent for; who were examined by the Lord Chief Justice Rainsford, in the presence of the king, the lord chancellor*, lord treasurer†, duke Lauderdale, and other lords.

The Sheriffs and two others made affidavits; but a copy of them could never be obtained.

Upon the 27th of June, Mr. Jenkes was summoned by a messenger to appear at the council-board the next day; accompanied with many of his friends, he attended in the lobby, near the council-chamber, according to his summons, and after sometime was called in; but his friends pressing to follow him, (as is usual on such occasions) were kept out, and not one suffered to go in with him.

The king sitting in council, the lord chancellor, duke Lauderdale, and other lords about him, the clerk read an affidavit made by the two sheriffs, the common crier, and one John Green, an attorney; the substance whereof was,

"That Fr. Jenkes, at a Common-Hall, in London, the 24th of June last past, did complain of Grievances; and did desire, that before they went upon any other business, certain members of that Court might accompany the Sheriffs and the Common Serjeant to wait upon the Lord Mayor, then in the Chamber, to desire that a Common-Council might be called to petition his majesty, in the name of the city, to call a new parliament."

The affidavit being read, the council-board proceeded to this effect:

Lord Chancellor. Sir, what say you to this matter?

Mr. Jenkes. I desire to know if this be all you have to charge against me?

A Lord. Then you make little of this, you will find it to be enough.

* Heneage lord Finch, afterward earl of Nottingham.

† Lord Osborne, earl of Danby, afterwards marquis of Carmarthen, and duke of Leeds.

L. Chan. Sir, did you move for a Common-Council to petition for a new parliament?

Jenkes. Is it any crime to petition for a new parliament?

To which his lordship not thinking fit to give answer, proceeded,

L. Chan. Answer to the matter in charge.

Jenkes. With the liberty of his majesty and this board, I will.

The King. Go on.

Jenkes. May it please your majesty, of all the subjects you have—

A Lord. (interrupting him) Answer to the matter.

Jenkes. If his majesty will be pleased to hear me, I hope you will.

King. Let him go on.

Jenkes. May it please your majesty, of all the subjects you have, none are more loyal than your city of London, and in the city none more loyal than myself: and no man there did more desire, and, in my circumstances, act more, in order to your majesty's Restoration, than myself. And I do defy any citizen, or other whomsoever, to say I have forfeited my loyalty by any one individual act—

King. (Interrupting him) Sir, you are not Lord-Mayor, and I am very well satisfied with the loyalty of the city, and that it needs no such vouchers.

L. Chan. Speak to the matter.

Jenkes. May it please your majesty, being summoned to a Court of Common Hall in London, which is a Court that consists of the main body of the city—

L. Chan. (Interrupting him) Sir, you are under a double mistake; for first, it was not a Court; and next, it did not consist of the main body of the city of London.

Jenkes. With your lordship's leave, it was a Court which did consist of all the livery of the city of London; which, if I understand any thing, is the main body of the city of London. And every member of that Court hath freedom to propose and debate any such matter or thing as he believes is for the service of his majesty, and the good of the city; and no man can use more understanding than God hath given him. And I assure your lordship, what I then moved was according to the utmost of my understanding for his majesty's service, and the good of the city. And, my Lord, if I were under a mistake, I had the fortune to have good company; for what I moved was approved by the whole Court.

King. It was not so.

Secretary. We have a deposition to the contrary.—*Jenkes.* It was so.

Other Lords. It was not so.

Jenkes. May it please your majesty, if you have a hundred depositions to the contrary, if the matter of fact were so, it was so; and I do affirm it was approved by the whole Court.

A Lord. How came you to be a privy-counsellor?

Jenkes. I never had any such ambitious thought in my head.

A Lord. How came you then to meddle with matters of state?

Jenkes. I thought any of his majesty's subjects, in an humble manner, might petition his majesty for a remedy of any grievance whatsoever.

A Lord. Do you think any one may petition for a parliament?

Jenkes. I believe they may.

The King. I know whose scholar you are, and I will take care that none such as you shall have to do with the government.

Several Lords. What was it you moved? What was it you moved?

Jenkes. My Lords, what I spake was not in a corner, but openly in the face of a multitude; and therefore cannot want a witness to attest it.

A Lord. Just now it was a Court, and now it is a multitude.

Jenkes. We citizens pretend not to place our words so exactly in form, but that there may be some mistake in them; but I think my expression was no great absurdity: For though it were a Court, yet the persons there were so numerous, that it may not be very improper to term them a multitude. Yet, if I have failed in due expression, I beg his majesty's pardon. I know somewhat of the customs of the city of London, and the powers and privileges of the Courts there; and somewhat also of the laws of England; but what the powers and customs of this Court are, I know not, and therefore shall desire to say little, lest I should unwillingly offend.

L. Chan. Sir, pray tell us, who advised you in this matter?

The King. Who advised you?

Jenkes. What I then proposed was consented to by the whole Court, and so became their act, as I said before.

L. Chan. and others. Answer directly to the question, or declare you will not.

Jenkes. Since I see your majesty and the Lords are angry, though I am not sensible that I have given you any just cause for it; I must not say I did it without advice, lest you should be more angry; and to name any particular person (if there were such) would be a mean and unworthy thing, therefore I desire to be excused all farther answer to such questions; since the law doth provide, that no man be put to answer to his own prejudice.

King. We will take that for an answer.

L. Chan. Since you name the law, by the law you shall be tried.

Jenkes. I thank you and this board.

L. Chan. You may withdraw.

He immediately withdrew, and the room being cleared of all his friends, and other company, Mr. Jenkes was kept there for the space of an hour and an half; and, after that, without being called in any more, was, by a warrant of the council, sent to the prison of the Gate-house within the liberties of Westminster. Soon after his commitment, he demanded of the Keeper a copy of the Warrant by which he

the commissioner and the council thereabout, I answered as I said to my Lord Chancellor before: in the year 1656, Mr. Robert Lighton being then Primar in the college of Edinburgh, before our laureation, he tendered to us the National and Solemn League and Covenant: he stopt me, saying, I'll wad ye are come here to give a testimony: and then being demanded what I called rebellion, if it was not rebellion to oppose his majesty's forces in the face: to the which I answered, viz. My Lord Chancellor, if it please your grace, I humbly conceive they should have been with us: meaning, that it was the duty of these forces to have joined with us; according to the National and Solemn League and Covenant; at which answer I perceived him to storm: but, saith he, I heard ye have been over seas, with whom did ye converse there? Answer, with my merchant. But, saith he, With whom in particular? Answer, With one John Mitchel, a cousin of mine own. Saith he, I have heard of him, he is a factor in Rotterdam; to which I conceded. But, saith he, did ye not converse with Mr. Livingston, and such as he? To which I answered, I conversed with all our banished ministers. To which he replied, banished traitors; ye will speak treason at the bar. Then he answered himself, saying, But they would call the shooting at the bishop an heroic act. To which I answered, That I never told them any such thing. But where did you see James Wallace last? Answer, Towards the borders of Germany, some years ago. But what ailed you at my lord St. Andrews? (pointing at him with his finger). Answer, My Lord Commissioner, the grievous oppression and horrid blood-shed of my brethren, and the eager pursue after my own, as it appeareth this day to your grace, and to all his majesty's honourable

are mentioned in the letters of Algernon Sidney.

Mitchel's attempt on Sharp, Laing mentions thus:

"The apostacy of Sharp had excited such deep resentment, his rigors had inspired such implacable revenge, that it is not surprising if, among a persecuted sect, and a fanatical party, some attempted to perpetrate a deed of which few disapproved. While sitting in his coach by day, in the public streets, a pistol was discharged at his person, through Honyman, the bishop of Orkney's cloak, while ascending the carriage; but the bishop's arm intercepted the balls. Such was the hatred of the archbishop, that the assassin was permitted to cross the street and to escape through a lane. On disengaging himself from his disguise, he returned to the crowd; and, notwithstanding the most vigilant search, remained undiscovered, till recognized six years afterwards by Sharp himself. For a time the primate affected a transient lenity, but as such an atrocious attempt must exasperate the mind, no real moderation was inspired by his escape." 4 Hist. of Scotland 58.

privy-council. After which he commanded to take me away, that they might see what to do next with me.

"The second is, the shooting of the shot intended against the bishop of St. Andrews, whereby the bishop of Orkney was hurt; to which I answered my Lord Chancellor in private, viz. That I looked on him to be the main instigator of all the oppression and bloodshed of my brethren, that followed thereupon, and the continual pursuing after my own; and my Lord, as it was creditably reported to us (the truth of which your lordship knows better than we) that he kept up his majesty's letter inhibiting any more blood upon that account, until the last six were execute: and I being a soldier, not having laid down arms, but being still upon my own defence, and having no other end nor quarrel at any man (but according to my apprehension of him) that as I hope in sincerity, with fixing either my sense or action upon the Covenant itself, as it may be understood by the many thousands of the faithful, besides the prosecution of the ends of the same Covenant, which was, and in that point the overthrow of prelates and prelacy, and I being a declared enemy to him on that account, and he to me in like manner: so I never found myself obliged, either by the Law of God, or nature, to set a centry at his door for his safety, but as he was always to take his advantage, as it appeareth, so I of him, to take any opportunity offered. Moreover we being in no terms of capitulation, but on the contrair, I, by his instigation, being excluded from all grace and favour, thought it my duty to pursue him at all occasions: also, my lord, sir William Sharp making his apology, anent his unhandsome and cheating way taken, he took me under the pretence to have spoken with me about some other matters. I not knowing him until five or six of his brothers, and his servants were laying fast hold on me, they being armed of purpose, desired I would excuse him, seeing what he had done was upon his brother's account, which excuse I easily admitted, seeing that he thought himself obliged to do what he did to me without law or order, in the behalf of his brother; much more was I obliged to do what I did, in the behalf of many brethren, whose oppression was so great, and whose blood he caused to be shed in such abundance. Moreover, he persisting in his bloody murders, as witnesseth the wounding of Mr. Bruce at his taking, by his emissaries, some few days before that fell out concerning himself, I was desirous, if by any means in taking him away I could, to have put a stop to the then current persecution. Thus far I have truly resumed what passed. My confession was made upon oath and promise made to me upon life and safety, and indeed the promise made to me by my Lord Chancellor was in these words: 'Upon my great oath and reputation, if I be Chancellor, I shall save your life, and if ye will not confess, the council will take another way to make it out,'

which I took for the Boots,* as I found afterwards.”

After two years imprisonment, upon the 18th of Jan. 1677, he was unawares, at six o'clock of the night (about the time of the inclosing of the Wards), called forth before the committee.

* “ They put a pair of iron boots close on the leg, and drive wedges between these and the leg. The Common Torture was only to drive these in the calf of the leg: but I have been told they were sometimes driven upon the shin bone.” 1 Burnet's Own Times, 237.

Mr. Maclaurin, concerning Torture in Scotland (Introduction to Criminal Trials, sect. 9.) says :

“ On the 24th of June 1596, John Stewart, master of Orkney, was indicted for consulting with Alison Balfour a witch, for the destruction of Patrick earl of Orkney, his brother, by poison. The confession of Alison Balfour was libelled upon. He gave in a written declaration by way of defence, hearing *inter alia*, as to the confession, ‘ No regard can be had to it, in respect the said confession was extorted by force of torment; she having been kept 48 hours in the Caspie laws; her old husband, a man about ninety years of age, put in heavy irons; her son put in the buits, where he suffered fifty-seven strokes; and her little daughter about seven years old, put in the pilliwinks; all in the poor woman's presence, to make her confess.’ MS. Abst. i. 166.

“ It was pleaded for Alaster Grant, who was indicted for theft and robbery, 3d Aug. 1632, ‘ That he cannot pass to the knowledge of an assize, in respect he was twice put to the torture, first in the boots and next in the pilliwinks or pinniewinks; in both which he constantly denied his guilt or accession to the crimes libelled, and so ought to be free from any further prosecution; as is clear by Clarus, &c. He was convicted and condemned to death.’ MS. Abst. i. 346.

“ Lord Roystoun observes, ‘ The instruments in use amongst us in later times were, the boots and a screw for squeezing the thumbs, thence called thummikins. The boot was put upon the leg, and wedges driven in; by which the leg was squeezed sometimes so severely, that the patient was not able to walk for a long time after: and even the thummikins did not only squeeze the thumbs, but frequently the whole arm was swelled by them. Sometimes they kept them from sleep for many days, as was done to one Spence, A. D. 1635. And frequently poor women accused of witchcraft, were so used. Anciently I find other torturing instruments were used, as pinniewinks or pilliewiuks, and caspitaws or caspicaws, in the master of Orkney's case, June 24, 1596; and tosots, Aug. 1632. But what these instruments were I know not, unless they are other names for the boots and thummikins.’

“ The boots and thummikins were (it is said)

At his appearance, the Lords Justiciaries obscuring themselves by putting their hands upon their faces, and leaning upon their elbows upon the table: my lord Prees said, Sir, Ye are brought here before the committee, to see if you will adhere to your former confession, or

imported into this country from Russia by a Scotchman, who had been long an officer in the service of that power.

“ No inferior judge could torture. It was employed by the privy council and judiciary only. By the last, never during trial before the jury, but by way of precognition. What the person who underwent it confessed, was proved at his trial.”

Algernon Sidney writes of the *Boots* as being brought into fashion by Lauderdale. See his Letters, edit. of London, 1742, p. 121.

The following passages concerning Torture are extracted from Fountainhall's Decisions. See under date August 16th, 1683; Nov. 23, of the same year :

“ Gordon of Earlstone is brought to the bar of the criminal court, and the sentence of forfeiture and death formerly pronounced, is read to him, and the time of execution is prefixed, viz. 28th September next: But there came a letter from the king proroguing the time, and appointing him to be put in the boots aent his accomplices, he having been hitherto very disingenuous. The council wrote back to the king, that it was not very regular or usual to torture malefactors after they were condemned to die, but only before conviction. He attempted to escape, but was hindered. Vid. 3d Nov. 1683.

“ Earlston (conform to his majesty's command) being brought to the council chamber to be tortured, he through fear or distraction roared out like a bull, and cried and struck about him, so that the hangman and his man durst scarce lay hands on him: At last he fell in a swoon, and then reviving, he told that general Dalziel and Drummond were to head that fanatic party, and duke Hamilton was on their side; which improbable things made some call it revery, and others, a politic design to invalidate all he should say; and the physicians were ordained upon soul and conscience to report his condition, if they judged him really mad, or only feigned, as David at Gath with Achish, as also to prescribe him a diet for curing him; and for more quietness, they sent him to the Castle. ‘ De simulatâ dementia, aliorumque morborum simulatione,’ see Zacc. question. medico-legal.”

Afterwards on Dec. 13th following, it appears, that “ This Earlston mentioned 3d Nov. last, is reprieved by the council till the last Friday of January next. They thought once to have given way to his execution; but being furious, others thought it cruel then to bereave a man of his life and endanger his soul, when he could not repent; and l. 14, D. de officio præsid. says, if it be not ‘ simulata dementia,

not. To which he answered, My Lord, it is not unknown to your lordship, and others here present, that by the council's order I was remitted to the Lords Justiciaries, before whom I received an indictment, at my Lord Advocate's instance, wherein I was indicted both of

life and fortune, although, my Lord, fortune have I none. To which indictment I answered at three several dyets, being deserted by my Lord Advocate. I humbly conceive, that both by the law of the nation, and the practice of the House at that time, I ought to have been

'satis ipso furore punitur.' Though the king's advocate alleged that the end of the punishment of malefactors was not only their own good, but "in emendationem et terrorem aliorum;" which end held even in decapitating a traitor, though from horror and fear turning mad: Yet see his own Criminals, where fury excuses.

"July 26, 1684. Mr. William Spence, late servant to the earl of Argyle, by order of the privy council, is tortured and put in the boots, to force him to reveal what he knows of the earl's and other persons accession to the late English fanatic plot, and the association and design of rising; and in regard he refused to depone upon oath, if he had the key whereby he could read some letters of the earl's, produced by major Holmes, written in cyphers; and seeing he would not say upon oath that he could not read them, and that they offered to secure him by a pardon for his life, it rendered him very obnoxious and suspect of prevarication; so that after the torture, he was put in general Dalziel's bands; and it was reported that by a hair-shirt and pricking (as the witches are used) he was five nights kept from sleep, till he was turned half distracted. He ate very little, of purpose that he might require the less sleep; yet all this while he discovered nothing, and though he had done it, yet little credit was to be given to what he should say at such a time.

"August 7, 1684. At privy council, Spence (mentioned 26 July) is again tortured, and his thumbs crushed with thumbikins: It is a new invention used among the colliers when transgressors; and discovered by general Dalziel and Drummond, they having seen them used in Muscovy. After this, when they were about to put him again in the boots, he being frightened, desired time, and he would declare what he knew; whereon they gave him some time, and sequestered him in the castle of Edinburgh, as a place where he would be free from any bad advice or impression, to be obstinate in not revealing.

"August 22. Mr. William Spence, mentioned 7th current, to avoid any farther torture, reads these hieroglyphic letters; and agrees with Mr. Holmes's declaration, that Argyle, Loudon Campbell, the late President Stair, sir John Cochran and others, had formed a design to raise an army in Scotland, and to land at such convenient places as they hoped the people would join with them, and hoped, if they once gave the king's forces a foil, they would get many to flock in to them; and had advanced money to this purpose; and that there were three keys, whereof he had one and Mr. Carstairs another (which caused him to be tor-

tured) and Holmes a third; and they expected help from England; and also he approved of Gray of Crigie's reading them. On this, Campbell of Ardkinlas was apprehended by John M'Naughtan in Inverary; and Spence got the liberty of the Castle, and his remission was recommended to be past by the king; and Gordon of Earlston was sent for from the Bass, not to be execute as some said, but to be tortured and confronted with Spence. They resolved not to admit of his madness for an excuse, which they esteemed simulate; as the late Chancellor had done.

"September 5 and 6, 1684. Mr. Wm. Carstairs, son to Mr. John Carstairs, once minister at Glasgow, is brought before the secret committee of council, and is tortured with the thumbikins. He confessed there has been a current plot in Scotland these ten years past: some were for raising forces; others were only for associating with the English, for holding out the duke of York from succeeding, and to preserve the reformed religion: he named many that were upon the knowledge of it; as the earl of Tarras, Osnocks elder and younger, with the other prisoners, Murray of Philiphaugh, Pringle of Torwoodlee, Home of Polwart, Home of Bassendean, Mr. Gilbert Elliot, Scot of Gallowshiels, Hay of Park, sir James Dalrymple, Mr. Robert Martine, Hamilton of Aikehead, &c. and some gave out the duchess of Lauderdale as a resetter of Argyle since his forfeiture, and a furnisher of him with money; and who offered, in 1677, to procure the fanatics an indulgence from the king for a sum of money. Fame wrongously also named Ker of Cherrie-tree, Campbell of Caddel, Carnegie of Belnarmore, the lairds of Brodie and Grant, Crawford of Ardmillan, Elliot of Stobs, Murray of Spot, &c. Such of them as could be got are presently apprehended, and put in close prison; and then major Monro and Philiphaugh are first examined; and standing on their denial, they are threatened with the boots; which makes them ingenuous, and confess their accession. This did so discompose and confound Alexander Monro, to discover others, that he desperately offered money to the keeper of the tolbooth's man to run him through with his sword, and roared, that he knew he behoved to do some base thing before he died; and regretted that he should have denied it before the king, by lying so obstinately, and should have been so instrumental in drawing so many gentlemen upon that which would stand them both their lives and fortunes, and he behoved to be a drudge and witness against them. Philiphaugh cast himself upon the high treasurer's mercy and protection. Then Campbell of Ardkinlas is examined, and he freely

set at liberty, yet notwithstanding I was, contrary both to law, justice, and equity, returned to prison. And upon what account I am brought this night before your lordship, I know not. To the which my Lord Preses answered, Ye are not accused here; neither upon life nor

confesses he sent to Argyle since his escape, 100*l.* sterling; but, finding this draws to treason, he desires to correct his deposition, and avers it was only given by him to Argyle's children, and not to himself. Duke Hamilton opposed this torturing much; and alledged that, at this rate, they might, without accusers or witnesses, take any person off the street and torture him; 'et nemo in aliorum caput est torquendus;' and he retired, and refused to be present, on this ground, that if the party should die in the torture, the judges were liable for murder, at least were severely censurable.

"It was doubted, how far these testimonies extorted *per torturam* can be probative against third parties, seeing witnesses should be so far voluntary and spontaneous as to be under no impressions, or terrors of fear of life or limb; others judge them best to be credited then. Some thought our privy council would have been at some loss, and contracted some tash by this cruel torture, had they suffered it as they did the boots (which they regarded not, their legs being small) without discovering or revealing this conspiracy; but their confessing tends to justify the privy council's procedure.

"Nov. 13, 1684. Three fellows called Wat, Semple, and ———, who were suspected and apprehended as owners of the late apologetical declaration of war against the king, and threatening to murder all their persecutors, (which was affixed on the 8th of Nov. last, on Linlithgow market-cross and church-door and sundry other places), were brought in and examined, and they owned the contents of that scandalous paper, and did obstinately bide the torture of the thumbikins without shrinking, till they were taken out of them, and then they fell down. See more of them 24th Nov. current.

"August 2, 1687. James Muir, Preston-grange's servant, pursues sir John Ramsay of Whitehill, sheriff-depute of East Lothian, for oppression, in holding a pretended court at Cockeny without a clerk or fiscal, and fining him in 100 dollars far above his jurisdiction, and for detaining him *in privato carcere* in Seton, and putting him in the irons and thumbikins, though torture belongs only to the privy council. Answered, That sir John Ramsay had also a reconvention against him, for tearing papers and discharges he had given, and for beating, bleeding and deforcing the sheriffs' officers, which were heinous crimes, and proven to him, not only as justice of peace, but also as sheriff; that he might hold a court *pro re nata* within any part of the sheriffdom, his territory, as well as in Haddington, and might chuse a clerk and fiscal for that particular act; and he was not tied to 50*l.* Scots of fine; and the sheriff might use any baron's prison, and

fortune, but to see whether you will adhere to your former confession. To which it was answered, I am not convinced of any crime, therefore I know not any such confession as your lordship alledges. To which my Lord Treasurer Depute replied, He is one of the most arrogant rogues,

much more the sheriff-principal's own prison; and that he was so furious, he behaved to be kept in irons like a madman, and having broke them, the thumbikins were put upon him, not to torture, but to secure him from flying.—Yet a guard of men could have done that. The privy council admitted both libels to probation; and at advising, were clear, that a sheriff-depute nor no inferior judge could use torture; and that sir John Ramsay had exceeded his power: Yet not to discourage the government, both were called in, and Muir was rebuked for his violence, and sir John was desired to exercise his power with greater moderation, and to restore the fine."

See also 1 Fountainhall, 325.

It therefore appears that the use of the torture was not confined to the subject of preconviction of the guilt of the party tortured.

Burnet (1 Own Times, 583) after mentioning that the unrelenting severity of the Duke of York had appeared very indecently in Scotland, says: "When any are to be struck in the boots it is done in the presence of the Council: And upon that occasion almost all offer to run away. The sight is so dreadful, that without an order restraining such a number to stay, the board would be forsaken. But the Duke, while he had been in Scotland, was so far from withdrawing, that he looked on, all the while, with an unmoved indifference and with an attention, as if he had been to look on some curious experiment. This gave a terrible idea of him to all that observed it, as of a man that had no bowels nor humanity in him. Lord Perth observing this, resolved to let him see how well qualified he was to be an Inquisitor General. The rule about the Boots in Scotland was, that upon one witness and presumptions both together, the question might be given; but it was never known to be twice given; or that any other species of torture besides the boots, might be used at pleasure. In the Court of Inquisition they do, upon suspicion, or if a man refuses to answer upon oath as he is required, give him the torture; and repeat it, or vary it, as often as they think fit; and do not give over, till they have got out of their mangled prisoners all that they have a mind to know from them. He then proceeds to relate the application of the Torture to Spence and Carstairs. Sir John Dalrymple (1 Memoirs p. 94 to Ed. 1771,) professes to exculpate the duke of York from the imputation of personally attending the application of torture, but Laing (4 Hist. of Scot. 111, and Note 4 at the end of the the book, 2d Ed.) exposes the futility of Dalrymple's exculpation. For more concerning torture, See in this Collection Emlyn's Preface p. xxv.

cheats, liars, and what not. To which he replied, My Lord, if there were fewer of such persons of whom your lordship have been speaking, in this nation, I would not be standing the night at your bar: but my Lord Advocate knows, that what hath been alledged

Vol. 1, p. 505, Note (c). Vol. 2, p. 773, and note (a). Vol. 3, p. 567, Felton's Case.

There was in France an instrument of torture called the brodequin (Buskin) which corresponded to the boots. It is thus described in a printed Account of the Trial of Ravailiac:

"The brodequin is a strong wooden box, made in the form of a boot, just big enough to contain both the legs of the criminal, which being put therein, a wooden wedge is then driven with a mallet between his knees, and after that is forced quite through; a second wedge, of a larger size, is applied in the same manner."

The barbarous circumstances of the sentence and execution of that bloody bigot are thus related in the same account:

"May 27th, 1610, the Court sat in the afternoon in the *Chambre de La-Beuvette*.

"We the presidents, and several of the counsellors being present, the prisoner, Francis Ravailiac, was brought into Court, who having been accused and convicted of parricide committed on the person of the late king, he was ordered to kneel, and the clerk of the court pronounced the sentence of death given against him; as likewise that he should be put to the torture to force him to declare his accomplices.

"His oath being taken, he was exhorted to redeem himself from the torments preparing for him, by acknowledging the truth, and declaring who those persons were that had persuaded, prompted, and abetted him, in that most wicked action, and to whom he had disclosed his intention of committing it.

"He said, by the salvation I hope for, no one but myself was concerned in this action.

"He was then ordered to be put to the torture of the brodequin, and the first wedge being driven, he cried out, 'God have mercy upon my soul, and pardon the crime I have committed; I never disclosed my intention to any one.' This he repeated as he had done in his interrogation.

"When the second wedge was driven, he said with loud cries and shrieks, 'I am a sinner, I know no more than I have declared, by the oath I have taken, and by the truth which I owe to God and the court; all I have said was to the little Franciscan, which I have already declared: I never mentioned my design in confession, or in any other way: I never spoke of it to the visitor of Angoulême nor revealed it in confession in this city. I beseech the court not to drive my soul to despair.'

"The executioner continuing to drive the second wedge, he cried out, 'My God receive this penance as an expiation for the great

against me, is not my confession. To which he replied, Do you not remember that before the Lord Commissioner and the council ye said such and such thing? To which it was replied, That my Lord Commissioner never enquired about any such thing; only he said, he heard

'crimes I have committed in this world; Oh God! accept these torments in satisfaction for my sins. By the faith I owe to God, I know no more than what I have declared. Oh! do not drive my soul to despair.'

"The third wedge was then driven lower near his feet, at which a universal sweat covered his body, and he fainted away. The executioner forced some wine into his mouth, but he could not swallow it; and, being quite speechless, he was released from the torture, and water thrown upon his face and hands. Some wine being forced down his throat, his speech returned, and he was laid upon a mattress in the same place, where he continued till noon. When he had recovered his strength he was conducted to chapel by the executioner; and two doctors of the Sorbonne being sent for, his dinner was given him; but before the divines entered into a conference with him, the clerk admonished him to think of his salvation, and confess by whom he had been prompted, persuaded, and abetted in the wicked action he had committed, and so long designed to commit; it not being probable, that he should of himself have conceived and executed it without communicating it to any other.

"He said, that if he had known more than what he had declared to the court, he would not have concealed it, well knowing, that in this case he could not have the mercy of God, which he hoped for and expected; and that he would not have endured the torments he had done, if he had any further confession to make. He said, he acknowledged that he had committed a great crime, to which he had been incited by the temptation of the devil; that he intreated the king, the queen, the court, and the whole kingdom, to pardon him, and to cause prayers to be put up to God for him, that his body might bear the punishment for his soul. And being many times admonished to reveal the truth, he only repeated what he had said before. He was then left with the doctors, that they might perform the duties of their office with him.

"A little after two o'clock the clerk of the court was sent for by the divines, who told him, that the condemned had charged them to send for him, that he might hear and sign his confession, which he desired might be revealed and even printed, to the end, that it might be known to the whole world; which confession the said doctors declared to have been, That no one had been concerned with him in the act he had committed; that he had not been solicited, prompted, or abetted, by any other person whatever, nor had discovered his design to any one; That he acknowledged he had committed a great crime, for which he hoped to have the

that I had been abroad, and over seas, and enquired with whom I did converse there; to which it was replied, with my merchant, my Lord; But with whom in particular? To which I answered, With one John Mitchel, a cousin of mine own; so that there was no such dis-

mercy of God, which was still greater than his sins, but which he could not hope to obtain if he concealed any thing.

"Hereupon the clerk asked the condemned, If he was willing that his confession should be known and revealed? and, as above, admonished him to acknowledge the truth for the salvation of his soul. He then declared upon his oath, that he had said all he knew, and that no one had incited him to commit the murder.

"At three o'clock he came from the chapel; and as he was carrying out of the Conciergerie, the prisoners, in great numbers, thronged about him, with loud cries and exclamations, calling him Traitor, Wicked Wretch, Detestable Monster, Damned Villain, and the like; they would have struck him, had they not been hindered by the bailiffs, and the other officers of justice, who kept them off by force.

"When he was put into the tumbrel, the crowd was so great, that it was with the utmost difficulty the bailiffs and officers of justice could force themselves a passage; and as soon as the prisoner appeared, that vast multitude began to cry out as above, Wicked Wretch, Traitor, &c.

"The enraged populace continued their cries and exclamations till he arrived at the Greve, where, before he was taken out of the tumbrel to mount the scaffold, he was again exhorted to reveal his accomplices; but he persisted in his former declaration, that he had done; again imploring pardon of the young king, the queen, and the whole kingdom for the crime he had committed.

"When he had ascended the scaffold, the two doctors comforted him, and exhorted him to acknowledge the truth; and after performing the duties of their function, the clerk approached him, and urged him to think of his salvation now at the close of his life, and to confess all he knew; to which he only answered as he had done before.

"The fire being put to his right hand, holding the knife with which he had stabbed the king: he cried out, Oh God! and often repeated Jesu Marie! While his breast, &c. were tearing with red-hot pincers, he renewed his cries and prayers; during which, being often admonished to acknowledge the truth, he persisted in denying that he had any accomplices. The furious crowd continued to load him with execrations, crying, that he ought not to have a moment's respite. Afterwards by intervals, melted lead and scalding oil, were poured upon his wounds; during which he shrieked aloud, and continued his cries and exclamations.

"The doctors again admonished him, as likewise the clerk, to confess, and were preparing to offer up publicly the usual prayers for the

course before the council. But, says my Lord Preees, we will make a sharper thing make you to confess. To which it was replied by his pannel, I hope your lordships are Christians, and not Pagans. To which the Treasurer Depute added, saying, That the pannel was no

condemned; but immediately the people, with great tumult and disorder, cried out against it, saying that no prayers ought to be made for that wicked wretch, that damned monster. So that the doctors were obliged to give over. Then the clerk remonstrating to him, that the indignation of the people was a judgment upon him, which ought to induce him to declare the truth, he persisted to answer as formerly, saying, I only was concerned in the murder.

"He was then drawn by four horses, for half an hour, by intervals.

"Being again questioned and admonished, he persisted in denying that he had any accomplices; while the people of all ranks and degrees, both near and at a distance, continued their exclamations, in token of their great grief for the loss of their king. Several persons set themselves to pull the ropes with the utmost eagerness; and one of the noblesse, who was near the criminal, alighted off his horse, that it might be put in the place of one which was tired with drawing him. At length, when he had been drawn for a full hour by the horses, without being dismembered, the people, rushing on in crowds, threw themselves upon him, and with swords, knives, sticks, and other weapons they struck, tore, and mangled his limbs; and violently forcing them from the executioner, they dragged them through the streets with the utmost eagerness and rage, and burnt them in different parts of the city."

"Sentence of Death against FRANCIS RAVAILLAC, May 28, 1610.

Extracted from the Registers of the Parliament.

"The court, consisting of the great chambers of the Tournelle and the Edict, being assembled, and having seen the criminal proceedings, formed by the presidents and counsellors in that behalf, appointed by commission, at the requisition of the king's attorney-general, against Francis Ravailac, a practitioner of the law, of the city of Angoulême, prisoner in the Conciergerie of the palace; as also the information made against him, the interrogatories, confessions, answers, and cross examinations of witnesses, and the state of the case by the king's attorney-general; and the said Ravailac having been heard and examined by the said court, touching the matters laid to his charge; and touching the verbal process of the interrogatories administrated to him on the rack; which, by order of the said court, he underwent on the 25th of this month, for discovery of his accomplices: On consideration of the whole,

"The said court hath declared, and doth

Christian. To which the pannel replied, My Lord, you know the old Proverb, Turpe est Doctori, &c. And so he was returned to prison for that night.

Upon the 32d day, he being called before the said committee, who sate in the town's council-house, at which time my lord Preses said to

declare, the said Ravailiac duly attainted of the crime of high-treason, divine and human, in the highest degree, for the most wicked, most abominable, and most detestable parricide, committed on the person of the late king, Henry 4. of good and laudable memory; for reparation whereof, the court hath condemned, and doth condemn him, to make the amende honorable, before the principal gate of the church of Paris, whither he shall be carried and drawn in a tumbrel in his shirt, bearing a lighted torch of two pound weight, and that he shall there say and declare, that wickedly and traitorously he hath committed the aforesaid most wicked, most abominable, and most detestable parricide, and murdered the said lord king, by stabbing him twice in the body with a knife; that he repents of the same, and begs pardon of God, the king, and the laws: from thence he shall be carried to the Greve, and, on a scaffold to be there erected, the flesh shall be torn with red hot pincers from his breasts, his arms, and thighs, and the calves of his legs; his right hand, holding the knife wherewith he committed the aforesaid parricide, shall be scorched and burned with flaming brimstone; and on the places where the flesh has been torn with pincers, melted lead, boiling oil, scalding pitch with wax and brimstone melted together, shall be poured: after all this, he shall be torn in pieces by four horses, his limbs and body burnt to ashes, and dispersed in the air. His goods and chattels are also declared to be forfeited and confiscated to the king. And it is further ordained, that the house in which he was born shall be pulled down to the ground (the owner thereof being previously indemnified) and that no other building shall ever hereafter be erected on the foundation thereof: and that within fifteen days after the publication of this present sentence, his father and mother shall, by sound of trumpet and public proclamation in the city of Angoulême, be banished out of the kingdom, and forbid ever to return, under the penalty of being hanged and strangled, without any further form or process at law. The court has also forbidden, and doth forbid, his brothers, sisters, uncles, and others, from henceforth to bear the said name of Ravailiac, enjoining them to change it to some other, under the like penalties; and ordering the substitute of the king's attorney-general to cause this present sentence to be published and carried into execution, under pain of being answerable for the same; and before the execution thereof, the court doth order, that the said Ravailiac shall again undergo the torture, for the discovery of his accomplices."

him: Sir, ye are called here again to see if ye will adhere to your former confession (opening a paper to the pannel, and alledged it to be subscribed by him.) To which it was answered, My lord, I acknowledge no such thing. Then he replied, Sir, ye see what is upon the table before you: I shall see if that can cause you do it. To which it was answered, By that torture you may cause me blaspheme God, as Saul did compel the saints; you may by that torture cause me to speak amiss of your lordship; to call myself a thief, a murderer, or warlock, and what not, and then pannel me upon it: but, if ye shall, my lords, put me to it, I here protest before God and your lordship, that nothing extorted from me by torture shall be made use of against me in judgment, nor have any force against me in law, or any other person whomsoever; but to be plain with your lordship, I am so much a christian, that whatever your lordship shall legally prove against me, if it be a truth I will not deny it. But, my lord, on the contrary, I am so much a man, yea, and a Scots man, that I never held myself obliged, either by the law of God or nature, or by the law of nations, to become my own accuser. Then said my lord depute treasurer to the Preses, he hath the devils logic, and sophisticates like him. Ask at him whether or not that be his subscription? to which he answered, he acknowledged no such thing. To which Hatoua answered, bid him say, yea, or not. Then my lord Preses said, (pointing his hand to the Boot) you see what is before you, say either yea or not. He answered, I say not; and so he was returned to close prison as before.

Upon the 34th day they solemnly assembled, to wit, with their robes, in the parliament house, where the lords of the session sit, at which time the executioner was present with the boots, and the pannel being brought as before to the bar, the lord preses said, you are now brought here to see if you will yet confess before you be put to torture. But the pannel knowing, according to the rate of the Spanish Inquisition, that always the more he confessed, either concerning himself, or any other person, the more severely the torture would be made use of, to make him confess more; therefore he answered after this manner: My lord, I shall study brevity by speaking a few words what I have to say, to wit, that I have been now these two full years in prison, and more than one of them in bolts and fetters, and upwards of thirty weeks in close prison, so that my imprisonment hath been more intolerable to me than the pains of many deaths, if I had been capable thereof: yea, and it is well known, that within a shorter time in regard of my imprisonment, several have made away themselves rather than endured the affliction of a prison; but, my Lord, an obedience to the express commandment of God hath made me to

* See what Felton said to bishop Laud's Proposition, ante, vol. 3, p. 371.

undergo all hardships I have hitherto met with, and to undergo this present torture; to wit, the preservation of my life, and the lives of others, as far as it is in my power, and to keep off innocent blood from your lordship, and your families and relations, which by shedding of mine, doubtless you would bring upon yourselves, posterity, and relations, wrath from the Lord, to the consuming thereof, until there should be no remnant nor escaping. And now my Lords, I do again protest before God and your lordships, that whatever may be extorted from me by torture, may not be made use of against me, nor any other person in judgment nor have any force in law. And so, my Lords, I have done: you may call the men whom you have appointed to your work. After which they caused the macer to call upon the executioner, and two officers appointed for that effect, who tied him in an armed chair, and brought the boots, and enquired which of his legs they should take; but they, after speaking amongst themselves, commanded the executioner to take any of them, upon which he laid the left leg upon the boot, but the pannel lifted it out again, saying, Seeing ye judges have not determined it, take the best of the two, for I freely bestow it in the cause; and laid his right leg into the torture; after which the king's advocate said, I shall speak but one word or two, but notwithstanding continued his discourse for a considerable time; so when he had made an end, the pannel answered thus; My Lord Presea, the advocate's one word or two hath multiplied to so many, that my memory cannot serve me, in the condition wherein I am, to resume them so as to answer them in particular: but I shall answer to the scope of his discourse. First, Whereas he hath been speaking to the sovereignty of the magistrate, I shall say somewhat more than he hath said; to wit, that the magistrate whom God hath appointed, is God's Deputy, and that both the throne and the judgment is the Lord's while he judgeth for God, and according to the law of God, and that a great part of his office is to deliver the oppressed out of the hand of the oppressor, and to shed no innocent blood, according to the commandment of God to Zedekiah by the prophet Jeremiah, chap. xxii. 3. And, my lords, disobedience to his commandment brought the wrath of God upon him, his princes, and the whole nation of the Jews, chap. xxxvii. Secondly, my lord advocate hath been hinting at the sinfulness of lying upon any account: It is answered, my lords, that not only lying is sinful but also a perfidious speaking of the truth is a horrid sin before God, while it tendeth to the shedding of innocent blood, as witnesseth that of Doeg, Ps. lii, compared with 1 Sam. xxii. 29. But what my lord advocate hath forged against me is false, so that I am standing upon my former ground, viz. the preservation of my life, and the lives of others, as far as it lies in my power, the which I am expressly commanded to do by the Lord of Hosts. After which, the clerk's servant being called by the

advocate, they interrogate him of many questions, upward to the number of thirty, only to see if they could catch him in a contradiction, or to see if they could find out any person to witness against him; but he understanding their drift, answered as followeth: My lords (not knowing that I shall escape this torture with my life) therefore I beseech you to remember what Solomon says, 'He who sheweth no mercy shall have judgment without mercy.' And if there be any here present, as I hope there are few or none, yet if there be any such here, whose disposition is so eager in pursuing after innocent blood, that nothing less than a full draught will satisfy them, I say, let such remember what is spoken, Rev. xix. 5, 6. 'Thou art righteous, O Lord, which wast, and art, and shalt be, because thou hast judged thus, for they have shed the blood of the Saints and Prophets, and thou hast given them blood to drink, for they are worthy, &c.' And now, my Lords, I do freely from my heart forgive you who are judges sitting upon the Bench, and the men who are appointed to be about this piece of horrid work, and also these who are vitiating their eyes beholding the same. And I do intreat that God may never lay it to the charge of any of you, as I beg that God may be pleased for his Son Christ's sake to blot out my sins and iniquities, and never lay them to my charge here nor hereafter.

Quest. Are you that Mr. James Mitchel who was excepted out of the king's act of grace and favour, or not? *Ans.* I never committed any such crime deserving me to be excluded, but rather to be included, protected and defended. *Q.* Know you any more of that name? *A.* Yes, there are two within Midlothian; and what know I, but there may be more elsewhere? *Q.* When knew you of the rising in arms, Anno 1666? *A.* My Lords, I knew of it when the rest of the citizens knew of it. *Q.* When was that? *A.* When there was a messenger to the council for that effect, and when Dalziel and his soldiers marched out at the West Port in order thereto. *Q.* Went not you out of the town with captain Arnot? *A.* No. *Q.* Where did you meet with James Wallace? *A.* I did not know him at that time. *Q.* Was you at Air? or, did you join with the rebels there, or any where else? *A.* I never joined with any such. To which my lord Hattoun, treasurer depute, replied, saying, My Lord, he never acknowledges these men to be rebels. To which the pannel answered, My Lord, I shall in answer to what is spoken follow Solomon's advice, in that he says, at some times even a fool by holding his peace, will be reputed wise. Whether or not Hattoun took it to be spoken of him, I cannot tell, but there was nothing replied thereto by any of them. *Q.* Where was you at the time of Pentland? *A.* In Edinburgh. *Q.* Where was you before it? *A.* In Edinburgh. *Q.* Where was you after it? *A.* In Edinburgh. *Q.* Where did you lodge before that time? *A.* In one Girseil Whiteford's. *Q.* Where did

you stay at that time, and was you still in the town, or not? *A.* My Lord Advocate, I do not know what you mean by being still in the town, for you may call it out of the town, if I was at the Wind-mill, or at Leith. *Q.* What, was you no where further abroad, than at such places? *A.* My memory cannot serve me now, after ten years space, to determine where I was; neither do I keep a diurnal of times past, nor is it my duty so to do; neither do I think any man's memory here present can serve him for so long a time: But this I judge, that it is my duty every day to be about my lawful employment and calling, according as God hath commanded, and therewith to rest satisfied. *Q.* What took you out of the town at that time? *A.* I was making myself ready to go over to Flanders. *Q.* With whom went you? *A.* With one John Forrester, an Ostender. *Q.* How long was it after Pentland before you went? *A.* I cannot tell. *Q.* Can you not give it a guess? *A.* About a month or six weeks. *Q.* What was you doing all that time? *A.* I was making myself ready, and thereafter there came a contrary wind. *Q.* Who was merchant in the ship? *A.* I enquired not. *Q.* But went not the merchant along with you? *A.* No. *Q.* What was the reason of that? *A.* It was the time of the Dutch War against the English, and at such times merchants of ships do not hazard their persons with their goods, but commit their affairs to factors abroad. *Q.* How long stayed you there? *A.* About three quarters of a year. *Q.* Why stayed you so long there? *A.* It was a space before I was ready to return, and thereafter the report of peace came, which thereafter followed, and I thought it better to wait a little time than hazard in war. *Q.* With whom came you home again? *A.* With Dutchmen, who were Amsterdammers. *Q.* Was there no Scotsman with you? *A.* I have told you, my Lords, I came home with Dutchmen. *Q.* Who was the skipper of the ship? *A.* I cannot remember, but he came to Lime Kills for a loading of coals from sir James Hacket. *Q.* What goods fetcht you home? *A.* I cannot remember the particulars. *Q.* Where did you enter them? *A.* I made the best shift I could to shun the customers. At which sir William Parvas riseth to cause call the excise-men; to which the pannel replied, O sir William, it was out of your time and theirs. *Q.* Did you know Peniry? *A.* Yes. *Q.* Is he living? *A.* No. *Q.* Did you know sir James Stirling, and Mr. Robert Ferguson? Are they alive? *A.* They are both dead; the one in this town, and the other in the Indies, being called by the Indian merchants to be a minister in one of their plantations. *Q.* Knew you William Young, and whose tenant he was? *A.* Yes; I both knew him, and that he was a tenant of sir John Gibson's. *Q.* Bought you a horse from him at that time? *A.* I never bought a horse from him. *Q.* From whom had you a horse, when you went out of the town? *A.* There was none in the city who had a horse to lend for hire, who would have re-

fused me for my money. *Q.* But of whom had you a horse? *A.* Where I could have none, I took me to my feet.

Which Examination being ended, the executioner being commanded thereto, took down his leg from off a chest upon which it had been lying the whole time in the Boot, and it being set upon the ground, he began to thrust in the shafts, and drive the wedge. And at every stroke they enquired, if I had any more to say. To which it was answered, No more, my lords; and thus it continued to the number of nine strokes, upon the head of the wedge, at the end of which he fell by into a little swarfe through the extremity of pain, at which the executioner cried out, Alas! my Lords, he is gone, he is gone. Then they commanded to leave off the torture, and rising from their seats went away. After which he was returned to the Tolbooth, being carried by his friends in the chair in which he was tied during the time of his torture.

He still continued prisoner in the Tolbooth, till the 7th of Jan. 1678, when they proceeded against him before the justices, as follows:

29 Car. 2, 1678.

Curia Justiciarie. S. D. N. Regis testis in Prætorio Burgi de Edenburgi, Septimo die Mensis Januarii, 1678. Per honorabiles viros Dominos Archibaldum Primrose de Caringtoun Justiciarium Generalem, Jacobum Fouchis de Colintoun, Robertum Nairn de Strathurd, Joannem Lockhart de Castlehill, Davidem Balfour de Ferret, et Thomam Murray de Glendoick, Commissionarios Justiciarie dicti S. D. N. Regis.

Curia legitime affirmata.

Intran' Mr. James Mitchell, Prisoner.

Indicted and accused, forasmuch as by the common law and law of nations, and the law of this kingdom, murder and the assaulting and attempting upon any person or persons, by way of forethought felony 'et per insidias et industria,' of purpose and design to kill, are most atrocious and detestable crimes, destructive to and against the being of human society, and are severely punishable, but especially when the same are committed upon the persons of counsellors and other officers who do represent authority, and are liable to the mistakes and malice of wicked persons for doing their duty, or when the same are committed upon the persons of churchmen, bishops or ministers, who are of the sacred function; who by the laws of all nations are privileged and secured, so much as can be, from the malice and sacrilegious attempts of wicked persons. And particularly, it is statute by the fourth act of the sixteenth parliament of king James the 6th, that whatsoever person invades or pursues any of the lords of session, secret council, or any of his majesty's officers, for doing of his majesty's service, shall be punished with death. And by the seventh act of the first parliament of his majesty's royal father in A. 9,

1633, intitulat, anent the invading of ministers, it is statute that the same shall be extended to all archbishops, bishops, and ministers whatsoever. And be the fourth act of his majesty's second parliament, and second session of the same, it is statute, That whatsoever persons shall be guilty of the assaulting the lives of ministers, that they shall be punished with the pain of death and confiscation of their moveables. And be the laws and acts of parliament of this kingdom, the mutilation and dismemberment of any of his majesty's subjects, by way of forethought felony, is ane high and capital crime, and punishable with the pain of death. Nevertheless, it is of verity, that ye having shaken off all fear of God and conscience, respect and regard to his majesty's authority and laws, and conceiving a deadly hatred and malice against a reverend father in God, James archbishop of St. Andrews (a person who had never known or seen you, so as to take notice of you, and much less had given you any offence), without any ground or quarrel, and upon account only that he was advanced and promoted to be archbishop, and to be of his majesty's privy council, and did serve God and his majesty faithfully in the saids stations and offices; you did daily contrive, resolve and design the murder and assassination of the said archbishop: and in order thereto, having provided yourself with a pair of long Scots iron pistols near musket bore, you did upon the 9th day of July, 1668, or ane or other of the days of the said month, proceed and take the opportunity to execute and go about your horrid and cruel design, when the said archbishop in the afternoon of the said day did come down his own stair, and was going to his coach, being to go abroad upon his occasions with a reverend father in God, Andrew bishop of Orkney. And you having a charged pistol with powder and ball, did most cruelly and feloniously assault the saids bishops, and did fire, discharge, and shot the said pistol upon them, being within the said coach; and God of his goodness having preserved the archbishop whom you intended to murder, you did by the said shot grievously wound the bishop of Orkney, to the great hazard and danger of his life; so that having, for a long time, and with great pain, torture, and expece of blood, languished of the said wound, being in a most dangerous place in the joining of the hand and aru, where there is a confluence of nerves and fibres, he never did recover his health to that measure and vigour that he had, or might have had, if he had not gotten the said wound. And he was mutilat and dismembered as to his arm and hand, so that he could make no use of the same, but languished thereof until he died. And after you had attempted and committed the said assassination and villany 'tanquam insidiator et per industriam,' and by way of forethought felony, ye did go away and escape through the multitude and throng that had gathered upon the noise of the said shot, having another charged and bended pistol in your hands, of purpose and de-

sign to have killed any person who should have offered to take and apprehend you. The foresaid attempt and villany being without any parallel, the circumstances being considered, viz. That it was committed by one who professed to be of the reformed religion, and who did pretend to be and serve as a chaplain in several families; that it was committed to the great scandal and disadvantage of Christian religion, and especially of the Protestant reformed religion, the professors and preachers of the same having so much declared against, and be their preaching and writing having expressed their detestation of such attempts and practices committed by persons, and owned by writers of the Roman profession: and that it cannot be instanced that any of the Protestant religion was guilty of any attempt upon the account of religion: and that the worst of men being ashamed to commit such villainies; for covering of the same, and for their security, doth take the opportunity of darkness and solitude, in corners and solitary places; your malice was so implacable, that you was prodigal of your own life to be master of the life of the said archbishop; and in the high street of Edinburgh, and in the day-light, and in the face of the sun, and before many witnesses, near or at a little distance from the said coach, where you could not but expect to be presently seized upon, you did devote yourself and did adventure to commit the said most villainous and wicked attempt. Yet notwithstanding of all the saids aggravations and circumstances of horror and remorse, you did continue in your implacable malice, and did converse and keep correspondence with Robert Cannon of Mondrogatt, and with — Welsh, of Cornlie, and — Mac-Clelland of Barscop, declared and excepted rebels and traitors; had divers meetings with them, and upon discourses concerning the said attempt, every one of the saids persons putting it upon one another, when it was put to you, you said and uttered these or the like speeches, 'Shame fall the misse,' and that 'ye should make the fire hotter.' And after the time and attempt foresaid in the year 1668, and subsequent years, months, and days of the saids respective years, and in ane or other of them, your guilty conscience disquieting and pursuing you, you did rove and go abroad several times to Holland, England, and Ireland, until divine justice did drive and bring you back to this kingdom, that justice might be satisfied and vindicat, in some measure, where you had committed so great villainies. After your return you did proceed to that height of boldness and confidence, or rather impudence, that you did repair to and live in Edinburgh, and was married there with your wife, who is yet living, by Mr. John Welsh, who is a declared and excepted traitor, and foresault for his accession to the rebellion, 1666. And your boldness was so great in out-daring both God and authority, that for a long time ye have been lodged and has kept a shop near that place where the archbishop doth and is in use to lodge when he is in Edinburgh, until at length ye was discovered

and apprehended, having upon you when you was taken the same pistol which ye shot when ye committed the said attempt, which was found under your coat charged with powder and three ball, of purpose to attempt again and execute your bloody design against the said archbishop, at least against any person who should offer to take you. From all which premises, it is evident that you are guilty of the said atrocious crimes of murder and assassination by way of forethought felony, and is a Percussor et Siccarius, and of mutilation, and of the other crimes above-mentioned: and therefore the said pains ought to be inflicted upon you as an murderer and assassinat, and as guilty of the crimes foresaid, in an exemplary manner to the terror of others.

Persuer, Sir George Mac Kenzie of Rosehaugh, our sovereign lord's Advocate.

Proctors in Defence, Sir George Lockhart. Mr. John Eleis.

His majesty's advocate produced ane Warrant from his majesty's privy council for persuing the said Mr. James Mitchel, whereof the tenor follows; Edinburgh, the sixth day of December, 1677, the Lords of his majesty's privy council do hereby grant, order, and warrant to sir George Mac Kenzie of Rosehaugh his majesty's advocate, to raise and pursue a criminal process before the Lords commissioners of justiciary against Mr. James Mitchel for the assassination attempted by him upon the archbishop of Saint Andrews and the bishop of Orkney. Extract by me,

(Sic Subscritur.) AL. GIBSON.

Master John Eleis advocate produced ane act of his majesty's privy council empowering sir George Lockhart and him to appear for the pannel's defence, whereof the tenor follows; Edinburgh, the third day of January, 1678, the Lords of his majesty's privy council, having considered a petition presented in behalf of Mr. James Mitchel prisoner, representing, that he is upon Monday next to undergo a trial before the justices at the instance of his majesty's advocate, as the alledged person who shot a pistol at the archbishop of St. Andrews: Yet no advocate will undertake to appear for him, without they be specially commanded so to do. And therefore supplicating, that sir George Lockhart and Mr. John Eleis, advocates, may be ordered to that effect, the saids Lords do hereby order and recommend the said sir George Lockhart and Mr. John Eleis to appear and plead for the supplicant before the justices, in the cause above mentioned, upon Monday next, and other diets of that process, and appoints intimation to be made hereof to the said sir George Lockhart and Mr. John Eleis, and to the petitioner. Extract by me,

(Sic Subscritur.) AL. GIBSON.

His majesty's advocate declares he passes from my Lord Justice General as a witness in this cause.

Mr. John Eleis advocate, as proctor for the pannel, declares, that they sustain my Lord

Justice General to be a judge in this cause notwithstanding of his being cited as a witness both by pursuer and defender.

Mr. James Mitchel pannel denies the dittay, and any pretended confession alledged emitted by him.

Mr. John Eleis for the pannel alledges, that he cannot pass to the knowledge of any assise: And the conclusion that the pannel has committed murder, cannot be inferred from the subsumption of the libel, because by the laws of this kingdom, the civil law, the common opinion of doctors, the law and general custom of all nations, 'Nudus conatus et affectus sine effectus,' even in the most atrocious crimes, except treason, parricide, and other excepted crimes, is not punishable by death. And it were against all reason, seeing punishments ought to be proportional to the crimes, that a naked and simple design of murder should be punished as murder that had taken effect. 'Et in criminibus gravioribus et gravissimis,' viz. 'Adulterium, Furtum, Sodomie, &c.' the naked design is not punished 'pena ordinaria,' even by the civil law. And though 'Lex Cornelia de siccariis' by an extraordinary stretch does declare 'si quis cum telo ambulaverit,' yet it is but a statutory law, and derogot to by the law of nations, and the special laws of our nation, in so far as murder in our law is defined to be, and has only place in 'interfectis per feloniam,' and these who were killed upon forethought felony. (2do.) In so far as the libel concludes him guilty of assassination, the same is so ways relevant, it being both a term and a crime unknown in our law. And be the laws and acts of parliament of this nation, the subjects of Scotland are to be governed by the laws of Scotland. And though the crime of assassination were a point of dittay by our law, as it is not; yet it is not, nor cannot be pretended he was hired for that effect, nor is it libelled. (3tio.) In sua far as the libel concludes the pain of death for mutilation of the bishop of Orkney; it is answered, that the same is no ways relevant. And the said conclusion cannot be inferred from the subsumption, because the act of parliament does only declare demembration to be punished as slaughter. (2do.) The said act declares demembration to be only punished as slaughter when it proceeds upon forethought felony. (3tio.) The said act requires another qualification, viz. That it be persued by the party: None of which can be subsumed upon in this case, because it is not libelled that the bishop was dismembered, or had his hand cut off, but only had a wound in the hand. And the libel does expressly bear, that the bishop of Orkney got the shot in his hand accidentally, when the design was against the bishop of Saint Andrews, and so was not upon forethought felony as to him. And lastly, the bishop's nearest of kin does not concur nor pursue, which is a special requisite in the said act of parliament. Likas the said act is exolet, and in no register can it be made appear that any person was capitally punished for dismembration; But upon

the contrary, many accused and condemned in arbitrary punishments. So that the libel is no ways relevant as to that article, for the reasons foresaids; specially seeing dismemberment is not so much here as libelled or pretended. And whereas it is insinuat, that the bishop did languish and die of the said wound; It is answered, that the libel is no ways relevant, he conceived, because it is not libelled that the wound was 'ex sua natura' lethal or mortal. And it is offered to be proven, that the bishop did live several years thereafter, and go about his ordinary function as a bishop, by preaching, &c. which is a sufficient ground of exculpation and defence.

4to. In sua far as the libel is founded upon the act of parliament anent invading of counsellors, it is answered, that this present case does not fall under the compass of the said act of parliament, because it is not libelled that the cause of the pretended invasion of the archbishop was upon the account he was in the prosecution of his majesty's service; but upon the contrar it may appear strange to any rational man 'Quorum et cui bono he' could have done it.

5to. As to the acts anent invading of ministers, they import no capital punishment, but only confiscation of moveables, and as to which the said acts are opposed, and as to the act 1670, it is posterior to the fact libelled.

In sua far as the libel seems to be founded on a confession; and in sua far as the confession may be made use of as a sole or conjunct probation, the pannel does object against the samen upon the grounds and reasons following. Primo, if any such confession was emitted by the pannel, which he has absolutely denied in presence of your lordship (no ways acknowledging the libel) no respect can be had thereto: and it is not probatorie, because the samen is extrajudicial and *extra Bancam*, in regard it is not made in presence of the assise, who are judges to the probation, which is expressly contrar to the 90 Act 7. parliament, king James 6. which requires the hail probation to be led in presence of the assise and party. And which act of parliament was not only made for security of pannels, as to a just and legal procedure against them; but also that the assisers to whom the truth of the lives of the subjects of this kingdom is committed, as to the point of probation, might not proceed upon fame and report, but upon a clear probation before them. For if that were not, the assise would be altogether deprived to know how the confession was emitted, if spontaneously or 'ex constantia vel trepidatione, or spe venie.' And the most that ever was sustained in this case, was, that the assise did find a party guilty upon a confession emitted before a *quorum* of the justices in a fenced court. Esto the said pretended confession should be sustained probative, as for the reasons above-represented (the pannel with all submission to your lordships humbly conceives) it cannot: yet, if any such confession was, it is null because it was

'elicete spe venie et immunitatis.' And for proving thereof, the pannel does repeat his exculpation, which he conceives is relievant in law; and craves the witnesses therein to be examined upon the contents thereof. 2do. The said confession being emitted 'extra judicium' 'et spe venie,' as said is, 'est in se, nulla,' and cannot be confirmed or validat by the testimony of any witnesses whatsoever. And to evidence that the pannel's life was never intended to be taken upon the said pretended confession: The same (if any was) is opposed; by which it evidently appears that he was examined upon oath, as to the most material part of the crime, viz. his complices, which makes it more than evident, that it being 'in materia' 'criminale et capitale,' in which oaths cannot be taken by law, renders the confession null and invalidat, at least makes it evident that the libel has been restricted 'ad civiles effectus.'

My lord advocat insists in the first place upon the fourth act of the 16th parliament, James 6. By which *nudus conatus* attempting and invading though nothing follow, is found relevant to infer the pain of death. But so it is that the said Mr. James Mitchel did attempt the killing the Archbishop of St. Andrews, a privy counsellor; which attempt 'devenit ad actum proximum,' the said Mr. James having done all that was in his power. And as to the quality adjected in the act, insinuating the defence, that it must be proven, that it was for doing of his majesty's service; it is replied, That this quality is inferred, and cannot, nor requires not to be otherways proven, than by a presumed inference. For the design of the attempter being ane act of the mind and the secret of the heart, it cannot be otherways proven, but simply by the attempting a secret counsellor, or any of his majesty's officers, against whom the pannel could have no quarrel, but for doing of his duty, and therefore the law still concludes the same, except the pannel will offer to condescend upon another relevant reason, viz. any private feud; for if it were otherwise, the act would be absolutely useless, since any person might attempt or kill a privy counsellor, it being impossible to prove what was the design. And this act was designed merely to make all attempts against privy counsellors, punishable by death; for otherwise it could be no fence nor protection for privy counsellors if it were only granted to them under a quality which were impossible to be proven. Nor can this seem hard, since the subjects have only themselves to blame, who attempt against the lives of privy counsellors. And it were very ridiculous to think, that if the brother of a pannel should attempt to kill the judge or king's advocate immediately after a process, that it were necessary to prove the design otherwise than by the natural contingency which obviously arises from the quality and circumstances of the perpetration: but in this case, as Mr. James Mitchel is a person who can condescend upon no private offence betwixt the archbishop and him, they being absolute

strangers to one another; so besides the presumption of law above specified, it is offered in fortification of the act, That, *Primo*, the said Mr. James owns himself to be of a profession, who hates and execrates that hierarchy, and of which sect the unhallowed penman of Nephthali declares it lawful to kill those of that character. 2do. It is notour and offered to be proven, that Mr. James himself defended that it was lawful to kill such, and endeavoured by wrested places of scripture to defend himself, and gain proselytes thereby. And if need were, as there is none, it is specifically and distinctly offered to be proven, that he acknowledged that the reason why he shot at the archbishop, was, because he thought him a persecutor of the nefarious and execrable rebels who appeared on Pentland-hills: nor can designs nor acts of the mind be otherwise proven than by such emitted declarations, arguments and acknowledgments. Like as in the whole course of our law, the invading or attempting any of that sacred function is still declared equivalent to killing: And though the last act be posterior, yet it is sufficient to demonstrate and clear. And, *Stio*, By the Common Law *conatus* and endeavour is in *crimibus atrocissimis* punishable by death, 'ubi reus devenit ad actum proximum et omne quod in se erat fecit,' which is in itself most reasonable, since the atrocity of the crime should put the same even beyond an attempt. And there can be nothing more just than that the extraordinariness of a crime should have an extraordinary allowance. And guilt attempted in atrocious crimes, such as sacrilegious assassination, is in the eye of the law as great and greater than the stealing a horse or cow, specially where security from the effect proceeded from no innocency in the committer, who did all he could; but from the special providence of God disappointing the effect of a cause he so much hated. And Carpsovius requires only three qualifications to make endeavour punishable by death: *Primo*, 'Quod eventum erat ad actum morti proximum. (2do.) Quod nonstetit per assassinum quin consummaretur delictum. (Stio.) Quod occidendus fortuito casu tantum evaserit;' all which concur but too well here. And that in 'omnibus criminibus atrocissimis Conatus' is punishable, is clear from 'Gothofred. tit. de Conatu,' from 'Covarivius in Clementina, si furiosus, num. f 6.' And particularly in the crime of assassination *totidem verbis*, by Matheus de Sicariis, num. 3. 'Assassinus tamen nihil prodesse debet solusque conatus capite puniendus,' a great instance whereof is given in a decision by Gothofred in the Senate of Savoy, where death was inflicted on a person who but struck with a batton. And whereas it is pretended that assassination is no crime in our law, and that it is only inferred where the design of murdering proceeds from the committers taking money: It is answered, that this part of the defence is most groundless: And our nation would be more barbarous than those of Lapland or the Tartars, if the lying in wait with a constant

design to kill clandestinely *et per insidias* any person who had never offended us, should not be raised to a higher degree of detestation than ordinary murder. For, though the law does not always punish a meer endeavour when designed against such as have offended us, when nature pleads some excuse from the greatness of passion and resentment, or where the party killed gave some occasion by doing the wrong, or where the suddenness of the design allowed no time to consider or repent; yet where a person after mature deliberation ripens his own villany, and resists the motions of reason and the inspirations of God Almighty, by lying in wait to kill a person who never offended, the law thinks the commonwealth can never be secured as long as such a viper is alive, who wants nothing but opportunity to kill mankind one by one. And the speciality of taking money is only demonstrative, and not restrictive, since the guilt in this, and such like cases, is greater and more dangerous than that of taking money. For, he who takes money will not kill but in darkness, and where he may escape; but the Sun, and the cross, and the confluence of all the world, cannot secure against murderers, where the party imagines that the crime deserves Heaven, or at least where he thinks that these of his persuasion will rise in a tumult upon the streets for his defence. Like as since the law has inferred death *ob conatum* in the crimes of *raptus*, *robbrie*, &c. much more should it infer death in this unparalleled and execrable crime.

As to what is alledged against the acts of invading ministers; it is answered, That the first act appoints that it shall be punished with all rigour. And the 7th act, king Charles 1, and the last act is sufficient, though posterior to the crime, to declare what was the meaning of that general of punished with all rigour. And since our law makes the attempting of such as are doing his majesty's service capital, that general ought to be extended to death, since lesser crimes and other crimes are for the same reasons which are applicable to this, punishable by death: Nor can there be any hazard in this, since there is a law for the future. And no man shall ever die for so great a crime in our nation.

Whereas it is alledged, that here the pannel did only confess upon hopes of life: It is replied, that *primo*, the promise of life from a judge, who could not grant the same, cannot defend, especially where no threatening preceded; and where it is clear that what was confessed was founded on other presumptions *et indicia*. Nor is this relevant, except the pannel could offer to prove, First, Threatening, to the fear whereof he yielded; 2do. That he expressly pactioned that this confession should not operate against him, which is very clear from Bossius, tit. 'De confessis per torturam,' num. 12. where he states the case, and concludes, that a spontaneous confession, though life were promised, does not defend: Nor is the guilt less, nor the truth less, that a judge

promise. And if this were sufficient, every judge might make himself king, and grant remissions at his pleasure. And though this might weigh with the judge who promised; yet the law considers the party confessing still guilty, and so does never secure him. 'et quod potest condemnari tenent, cinus cod. de iis qui ad ecclesiam effugiunt, Alciad. lege de verborum significatione;' and Clarus himself says, That 'Ego suspicor opinionem ceni esse majus communem;' but giving his own opinion rather as a private man than as a lawyer, he says, 'Ego tamen non condemnarem ad mortem nisi aliis indicis fuerit gravatus. Ergo reus indicis gravatus, est morte plep-tanda,' which is most just and reasonable. For, though the law be jealous where a meer silly innocent confesses to a judge, who may terrify him, or have an interest in causing him to confess to lay the blame off his friends, yet where the confession proceeded from a person suspect by all the world, by a person who publicly in all places since has owned the deed; who fled upon that account; who was taken with unlawful weapons, unfit for his profession, and the specific weapons which committed the attempt; who condescended upon all the circumstances, and declared that he gloried in being a martyr upon that account: In being seen run away immediately upon doing of the deed with a pistol in his hand; in being found out in a thousand lies and prevarications when he was examined; in having renewed his confession publicly; It were but to scorn the law and massacre mankind, to think that a confession so admiculcat should not bind the confessor, who can alledge nothing of any threatening used against him by the judge to whom he confessed. And lawyers do in that case consider the quality of the judge as severe, unjust, rigid, or partial: but the confession is alledged to be made here upon promise of life given by my Lord Chancellor, whose benign, gentle temper frees him from all suspicion. And the proponing of exculpation acknowledges the deed to be done by Mr. James Mitchel the pannel, against which the protestation denying the libel cannot be sustained, being *contraria facte*, as is evident to any rational man; and that the pannel cannot either pretend *alibi*, nor any other pretence of error, for excusing his retraction: so his majesty's advocate opposes his confession, bearing no qualification. And though he is very secure that the exculpation cannot be proven, yet since it is notorly known that he is the committer, and that this may be a preparative to other pannels, against whom no probation is ordinarily had, but confessions *elicite* by judges with fair and gentle promises, be *mordicus* adheres to the relevancy. For, as Bossius says, 'Et si judex dixerit nihil mali eveniet tibi vel etiam promittat ut liberabitur majus tamen communis est opinio confessionem valere quia judex etiam poterat ita fingere ad veritatem inveniendam.' And as this is most advantageous to the commonwealth and man-

kind, so there can be no hazard to a private pannel, since if he can but astruct his own innocency, or the reason of his error, by his alledging that he was *alibi*, or that there was severe threatenings or torture used, the same will still be allowed to qualify his confession. But the general presumption lies, that a judge will not damn his own soul, stain his function, ruin his fame, expose himself to the terrors of God Almighty, by alluring a confession from a poor innocent.

As to what is objected against the confession as extrajudicial and before an incompetent judge: it is replied, that confessions are of all probations the most infallible, since witnesses may, but it cannot be presumed a man will wrong himself: and the rise of that maxime, that extrajudicial confessions are not relevant, was only to exclude probation upon confessions emmitted where there was no judge nor no design of inquiry. But the confessor being loose and inconsiderate, and under no reason of advertance, did at random own a deed of which they were most innocent, either for ostentation or to please the company, or in raillerie: but to say that a man should not be judged by what he deliberately confesses, where he knows the design is to inquire into the crime, and that the event must be a criminal trial, is without all foundation or probability of reason: nor can judges or assisers be so much convinced by what mistaken witnesses will say, who may have malice, or be bribed, or mistaken; as what proceeds from a man's own breast deliberately and in cold blood, which in effect is often times the inspiration and influence of Almighty God, who to show his love to justice and kindness to mankind, draws even from the greatest of malefactors the clearest confessions. And since men do not use to bring witnesses when they commit crimes, nor can the nature of the thing allow probation by writ, to cut off confessions, in these cases, were to make crimes for ever pass unpunished, and to make law, which is founded upon principles of reason, and the good of the common wealth, evanish in meer terms of art and hard words, contrar to the design of lawyers and the solid principles of sincere truth.

That this confession is then judicial is clear, being taken by authority of the privy council, the supreme judicatory of the nation, and where the design was to explicate this truth. And the pannel knew that he was upon a trial for his life: nor can the incompetency of that judicatory be here alledged, since as the session is a judicatory meerly civil, so the council is a judicatory above both, comprehending the power of both. And being so far competent in the cognition of crimes, that they take recognitions in criminal causes; they modify and qualify the sentences of the Criminal Court; they determine intricate cases remitted to them be the justices in point of law. And the king and the greatest part of the Criminal Court being there; it were absurd to think, that a confession emmitted before them should not prove,

And if in a precognition a party should confess and so the trial there cease, what could be more absurd than to think that this confession should not bind, especially seeing confessions emitted before the lords of session in cases of improbation, and decreets following thereupon, are a sole, a final, and plenary probation before the justice court? Likeas that principle in law, that 'Confessio coram Judice incompetente' does not hold, is where, 'Judex est incompetens tam ad inquisitionem quam ad accusationem, as, 'in foram penitentia,' such as Kirk sessions, or 'foram mere civile.' Neither of which can be said in this case where the judge before whom the confession was emitted is the ordinary judge of inquisition, and trial in criminal causes, 'et Judex non solum jurisdictionis prerogabilis;' but a judge who originally and generally examines all the pannels of Scotland. Like as this confession was made in presence of his majesty's privy council and the king's commissioner, in whom all the judicatories of the kingdom doe eminentlie reside. And who might have sent the pannel to the scaffold without any assise, seeing 'in confitentem nullas sunt partes judicis.'

Whatever favour may be allowed to retraction of confessions 'facta ex incontinenti, ubi potest docere de errore;' yet what reason can there be where a pannel denies without shewing of proofs of his innocency; And therefore Bosaius, tit. de confessis, Num. 64. concludes, 'Est etiam necessarium allegare errorem caeterum si simpliciter revocaverit confessus non est audiendus.' And Num. 70. he adds, 'Quis fateor quod quis non auditur simpliciter dicendo post confessionem: non est verum quod confessus fui, tamen si per testes constare potest de innocentia majus attenditur veritas quam confessio.' And since Minors in law are obliged *docere de errore*, when they revoke, it were absurd to think that the law would be so ridiculous, that a man confessing before a grave judicatory should have liberty to retract without shewing any reason of his retraction: and the guilt rather grows *per inficiationem*, and by that impudent lye, than is lessened by the retraction.

In the case likewise where debates are concerning the validity of a confession, lawyers consider whether what was confest was or can be adimniculat by other collateral probation, *argumenta et indicia*, and whether the probation be *veri similis*; whereas here this confession is adimniculat by many other circumstances, such as persons who saw him run away, by his owning of the principle since, by his fleeing, &c. So that here neither can be instruct why he retract, and the thing confest is *adimniculata et circumstantiis et indicis*. As to the objection founded upon the act of parliament, that the probation must be in presence of the assise, it is replied, that the whole frame of that act is grossly mistaken; for the design of that act was to correct a barbarous custom, whereby accusers were allowed to solist and to produce to them such writ and witnesses as they pleased

for probation of the crime, to preclude the pannel of what he could say against the same, since false papers might be thrown in as confessions and proofs: but that cannot reach in this case, where a confession is produced before a pannel and his proctors, and they heard to object against the same. Nor can it be urged from this act that no paper can be relevant but what is owned by the pannel in presence of the assise; for we daily see that letters produced under the pannel's hand, though he should deny his subscription, will be sustained; and it will be sufficient to prove by witnesses, that he did subscribe, or by comparison of letters. Likeas this act of parliament does not exclude that confessions before the lords of session in matters of falshood, and decrees following thereupon, may not probative before the justices. Like as confessions taken before the justices though no assise be present, do without all controversy and debate prove the crime: yet neither can the justices condemn without an assise, nor does that act of parliament militate more against that case than against this. And in the case of Finlay Mac Gibbon, a confession taken in the Tolbooth without a fenced court, and before one judge, was found sufficient to infer the pain of death both by the council and justice. And it is admired how it can be thought that presumptions can be sustained as the foundation of a criminal sentence: as we daily see; and that witnesses which in effect are but presumptive, and a man's own confession emitted seriously and in cold blood, should not be sufficient. And as there could be nothing more dangerous to the common-wealth than that crimes should be thus rendered unsearchable; so what hazard can there be to the people on the other hand, or the pannel, when they are made their own judges? and to take off all possibility of danger, it shall be allowed to them to prove error, force, innocence or mistake. And this probation has been in all ages and nations sustained as uncontraverted, as David ordained the person who said he had killed Saul immediately to be execute without further inquiry, giving as the undoubted reason, that he had condemned himself out of his own mouth; and which is registrate in Scripture, to secure the image of God against those who would deface it. And if such confessions should be sustained in any case, much more in this, where the nature of the crime is atrocious, and the manner of the discovery extraordinarily difficult. And if either atrocity or difficulty prevails with lawyers to remit something of its ordinary rigour in exacting clear probation, as we see 'in criminibus exceptis et criminibus domesticis,' much more where both these occur, ought a man's own confession to be admitted. And whereas ordinarily pannels are penitent first when examined, the horror of the crimes softning their hearts; that their confessions then should not prove is very strange: and it were impossible and fruitless to expect, that after they are imprisoned amongst a com-

pany of other malefactors, and after they have a kind of men towards the law to teach them the art of retractation, and that their conscience turns *callus*, and acquainted with the idea of their own crime, a sincere confession may be then expected from them.

My Lord Advocat declares, he does not insist against the pannel for conversing with rebels at this time, and upon the shooting at a Bishop or Minister, before the late act of parliament, anno 1670, to infer an arbitrary punishment: and insists upon mutilation as capital upon the act of parliament anent demem-bration, which is 'reddere membrum inutile.' And a man is as much dismembered when he has an useless hand, as if he had no hand; and insists upon the 28th act parl. 3 James 4. wherein slaughter and mutilation upon fore-thought felony are equiparate, and the pannel declared to be punished by death in both these cases, but refers the punishment of mutilation to be qualified by the justices, according to what shall be found here proven, and to what has been in custom of the justice court formerly in such Cases,

Sir George Lockhart duplies, That the libel is no ways relevant, as founded upon the fourth Act 16. Parl. king Ja. 6. And the defeuce is no ways eleided by the alleadgances, contained in the reply. For, Primo, The Lords of justiciary would be pleased to take notice, that there is no speciality in the case of this act of parliament, as to privy counsellors; but that it extends to all his majesty's officers, and consequently the meanest officer being invaded in the terms and under the qualification contained in the act of parliament, might plead the benefit thereof. And if the Libel should be sustained in general terms without the express qualification in the act of parliament, the simple act of invasion of a Lion Herald, though neither death nor wound followed on it, would infer the pain of death; but that no such thing is in the meaning, nor can subsist with the act of parliament, is so clear and evident, as it was impossible for the wit of man to express the qualification to be libelled and positively proven in more plain and direct terms than is set down in the said act. In sua far as the act of parliament requires be way of provision and condition in the statutory part thereof in thir termes; it being verified and proven, that any of the said counsellors, sessioners, and officers, was pursued and invaded for doing of his highness service, shall be punished to the death. And there is great reason and necessity for this qualification, because the act of parliament intending contrary to the general customs of nations, and of this kingdom, in all other crimes that *Conatus et attentatum*, which is only relevant in the crime of treason, should be reputed *Crimen consummatum* in case of invasion of any of his majesty's officers. Therefore the law requires this qualification in matter of fact, that it be verified that the person invaded was doing his majesty's service; in which case the crime

had a respect in the construction of law, as done against his majesty's authority, which he was then executing. And this qualification in matter of fact, that it was for doing of his majesty's service, is not here so much as libelled. And in the common opinion of all lawyers, as may appear by Julius Clarus, §. Assassinum, Num. 2. 'Ubi agitur de imponenda poena alicujus constitutionis specialis requiritur quod concurrent ornnes qualificationes de quibus in ipsa constitutione.' And quest. 85. Num. 9. he has the same words, 'Ubi agitur ad imponenda poena alicujus specialis constitutionis oportet quod in eo casu verificetur omnes qualitates' in ipsa constitutione expressas, alias poena non committatur, et hæc (says he) est doctrina communitur ab omnibus recepta,' and most especially when it is not an intrinsic quality and aggravation, but where it is a qualification required by law itself as 'intrigans delicti,' and as Gomes says, it is 'alterativum poene,' and therefore it must be *totidem verbis* libelled and positively proven.

And as to that pretence that it is presumed and inferred from the circumstances, and the way and manner of the committing of the fact itself, and that *propositum* and *design* cannot be otherwise proven nisi per *indicias et conjecturas*: It is duplied, That the qualification required by the act of parliament is *toto calo* different from the design: For, if a person did invade any of his majesty's officers in doing of his majesty's service, and would pretend that he had no design to invade, certainly the pretence were absurd. And in that case the design 'presumitur ex natura attentati.' But the discharging of his majesty's service is not a design, but a matter of fact, which consists in an extrinsic action, and must be proven, and may and does often occur. As for instance, if a magistrate should be invaded in the actual execution of his majesty's authority, or if the invader should be so transported with rage, as when he invades a judge, to tell him, that it was because he has unjustly decerned: These and the like cases are indeed the terms of the act of parliament. And there simple invasion, though no wounds followed, being directly levelled against his majesty's authority, 'nudus conatus et effectus delinquendi reputatur pro effectu.' And as this is clear from the express words of the act of parliament, and which being 'in materia correctoria et criminale,' is strictly to be interpret; so it is unanswerable evidenced from the act of parl. king Ch. 1. of blessed memory, by which it is provided, that the invasion and violence done to ministers is punishable, conform to the act of parliament 1587, to which it relates, which is confiscation of moveables, and declares that the said act is to be extended to archbishops and bishops, from which the pannel's proctors argue thus, if by the posterior act of parliament in anno 1633, the invasion and violence done to archbishops and bishops is not punishable with the pain of death, but only an arbitrary punishment, how is it possible that the 4 Act

Parl. 16 Ja. 6. should infer the pain of death upon the invasion, as it is circumstantiatur and libelled, wherein nothing is libelled but that the archbishop was invaded, who was a privy counsellor, and not the qualification that is required by the act of parliament; that it was for doing of his majesty's service?

As to that alleadgance, That the pannel cannot condescend upon any private ground of quarrel or other reason why he did invade the archbishop: It is answered, if this alleadgance were sustained, it were contrar to the act of parliament libelled upon, which does not require the pannel to prove, but says that it must be tried and verified, that the invasion was for doing of his majesty's service; and so his majesty's advocate must prove the samen by a clear and positive probation, as a point in matter of fact.

As to that pretence that the pannel did glory that he had committed the fact and invasion libelled, and endeavoured to justify the same, and persuade others that it was lawful: It is duplied, That as the saids qualifications are altogether disowned, so they are no ways the qualifications in matter of fact required by the act of parliament, viz. That the invasion and violence was for doing of his majesty's service, which is indispensibly required upon the reasons abovementioned, otherways the act of parliament should have said no more, but that all invasions of his majesty's privy counsellors, or other officers, should be punished with the pain of death; whereas the act of parliament thought it fit, necessar and just for all mens security, that a single act of invasion of any of his majesty's officers, however it might be punished *pæna arbitraria*, yet should not import or infer the pain of death.

In sua far as the Dittay is founded upon the common law, and that it is *Assassinium*, in which 'Conatus et attentatum habentur pro crimine consummato.' It is answered, the Dittay is no ways relevant, because it is not founded upon any law or act of parliament of this kingdom. And the common Roman law cannot be the foundation of criminal Dittays, whereby to draw in hazard the lives of any of his majesty's subjects. Like as there is clear, express and positive acts of parliament to the contrar, as the 48 act of parl. 3 Ja. act 79 parl. 9 Ja. 4. Declaring that the laws of no other realm are to be regarded, especially whereupon to found criminal indictments. And albeit by the common law *Conatus in homicidio* especially where it was *homicidium dolosum*, and designed to be committed 'proditorie et per insidias' was punished as *Crimen consummatum*; yet all lawyers agree, as may appear by Julius Clarus, Quest. 102, Farm. Quest. 80, and by the authorities by them cited, That by the general custom of all nations, 'in omni genere homicidii affectus conatus et attentatum' is not punishable 'pœna ordinaria delicti,' and so cannot infer a capital punishment or pain of death, as is concluded in this indictment. As to that pretence that the crime

libelled is the crime of assassination, in which 'nolus conatus' is sufficient, especially 'si devenerit ad actum proximum.' It is answered, primo, That all lawyers agree in this, that 'crimen assassinii' is only, where a person does hire or conduce another to commit the same 'interveniante pretio.' And for which Julius Clarus, § *Assassinium*, where he so describes the crime. And Matheus de Criminibus does so describe the same, and does expressly assert that unless money or reward intervene, the crime of assassination cannot be committed, where the words are, 'Crediderunt tamen nisi merce certa et sceleris proposita et constituta fuerit sive in specie seu corpore sive in pecunia numerata non posse enim videri assassinium.' And there is no lawyer extant did ever otherways describe the crime; and there is great reason why money or reward should be considered in the constitution of this crime, because the law did consider the crime with respect to the hazard; and the hazard lay where persons were hired or conducted by infidels giving money or other reward to kill Christians. And albeit even in the proper crime of assassination itself in some particular nations, where the said crime was too frequent, as in Italy, Conatus is punishable: Yet Julius Clarus in the same § and others does maintain, that by the general custom of most nations, in the precise crime of assassination, 'Conatus seu attentatum' is not punishable with the pain of death. But the pannel has no reason to insist upon this; the matter of fact libelled being no ways the crime of assassination, but only that which lawyers call a design to commit murder, *proditorie et per insidias*. In which all agree, that by the custom of all nations 'Conatus faciendi non reputatur pro facto.'

As to that point of the Dittay founded upon the mutilation of the deceast bishop of Orkney, conform to the 28 act parl. 3 James 4. It is answered, that denying that the deceast bishop of Orkney was mutilate so, albeit it could be proven, it cannot infer the pain of death; First, because it is clear by the said act of parliament, that it is not in the case of mutilation, but demembration. And it were a strange imagination to think that if a party were mutilate, or lost a finger, that the pain of death could be inferred. And there is a great difference betwixt mutilation and demembration: Mutilation being only an inability or privation of the use; whereas demembration is the intire loss of the member. And it is a principle in law, that acts of parliament, especially 'in casu criminale et capitale,' cannot be extended 'de casu in casum etiam ex veritate vel paritate rationis;' and that 'Cortici verborum adherendum est et Casus omissus habetur pro omissa.' And here there is no parity of reason, both the prejudice and deformity being far greater in demembration than mutilation.

And whereas it is pretended, That though the pannel's confession had been 'elicite sub spe impunitatis,' that yet it is not sufficient whereupon to liberate from capital punish-

ment, because a judge cannot remit a crime: And that Bossius and others are clear, That notwithstanding of any such confession upon promise of impunity, yet a judge might and ought to condemn 'ad poenam ordinariam delicti;' it is answered, The pretence does not elide the defence, because, supposing it should be proven that the confession was 'elicite sub spe veniæ,' and upon assurance of life: Such a confession so elicite, cannot be a ground whereupon to violate the faith and impunity given; and far less can such a confession (though any could be proven) being retracted be considered as a confession: And as to which law and lawyers are very clear and positive. The law is, 'Lex. S. Cod. de custode reorum,' and lawyers, as may appear by Mathæus de Criminibus, Quest. 16, where his express words are, 'Querunt an Confessio promissa impunitate et spe veniæ elicita sufficiat ad condemnandum? Respondendum, Non sufficere, tametsi eoim in Judicis potestate non sit promittere impunitatem adeoque ex promissione non obligatur, tamen dolo extorta est, et per hanc fraudem etiam innocentes illaqueari possunt.' And Bossius in that title De Confessis, after he has stated the case, resolves it thus, 'Tutius tamen est ut dicamus requirere perseverantiam et est ex mente Doctorum et cum ratione quin negari non potest quin talis Confessio sit obumbrata,' and says, it were against humanity itself to condemn 'ad poenam ordinariam delicti' in such a case. And Julius Clarus, cited be his majesty's advocate, says, 'Ego non condemnarem ad mortem,' and which is indeed the constant and irrefragable opinion of all lawyers, and practice of all criminal tribunals. And whereas it is pretended, that Julius Clarus subjoins these words, 'Nisi alius indicis sit gravatus,' and his majesty's advocate condescends upon several presumptions: It is answered, that if his majesty's advocate will lay aside the confession, and adduce such a presumptive probation, whereupon the pannel may be condemned, then he may plead the benefit of that qualification: But the presumptions condescended upon any remote conjectures, and no ways concluding; and the pannel after the alledged committing of the fact, did return and live peaceably for several years, and denies the fact, and cannot otherways be convict thereof. And if any pretended confession should be made use of, either *per se*, or in *modum adminiculi*, it cannot be divided from the quality under which it was granted, which the pannel offers to prove, was upon express assurance. And whereas it is pretended, that the granting of an assurance and impunity is upon the matter a remission which no inferior judge can grant, but that notwithstanding he may and ought to condemn; it is answered, *primo*, it will appear by the probation of what character and quality the granter of the assurance was.

2do. Lawyers do not consider whether a judge *potest veniam concedere*, or remit a crime: But a confession being *elicite sub spe veniæ*, is

not a full and absolute confession, but a qualified, and cannot be made use of, and the quality not performed and made good. And it were a prejudice to public interest, and a way to preclude the ingenuity of all confessors, if notwithstanding of the interposition of public faith and the granting of assurances, and the eliciting of confessions *sub spe veniæ*, these confessions might be made use of, and the quality and condition upon which it was omitted altogether neglected, which is downright inconsistent with the opinion of lawyers and the practices and customs of criminal judicatories.

As to what is pretended, that though this confession be not emitted before the lords of justiciary, yet it was not extrajudicial or revocable, because it was deliberately given, and before a committee, who had authority from the lords of his majesty's privy council: It is answered, this point is of extraordinary importance and consequence, as to the lives and fortunes of his majesty's subjects, and as to the lords of justiciary and the procedure of the inquest, who are judges to the probation; and therefore it is represented in behalf of the pannel, That admitting any pretended confession should be produced, yet if it was not emitted before the lords of justiciary it is not a judicial but an extrajudicial confession; *et fides non facit*, as to the probation of the crime. As to which, *primo*, There is an universal concord in the opinion of all lawyers, and in the practice and customs of criminal judicatories, and as to which the lords of justiciary are desired to cast their eye upon all who have written upon this point. And as Clarus says, 'Non invenies dissentientem in mundo;' and it is strange that all lawyers and the custom of all nations should have hallucinated in this point. For which the pannel's proctors cites Julius Clarus, Quest. 55 Farin. Quest. 31, and many others.

2do. Lawyers are likewise clear, that confessions emitted 'coram iudice competente sed non sedente pro tribunali,' is but an extrajudicial confession, and much more where it is 'confessio emissa coram iudice incompetente.' And when the question is, who is to be reputed *iudex incompetens*; it is positively resolved, That *omnes iudex is incompetens* who could not proceed *ad condemnandum*, as to the crime anent which the confession is emitted. And certainly though any confession were produced emitted before a committee of the lords of privy council, they have no criminal jurisdiction so as to proceed 'ad condemnandum in crimine capitale;' that being clear by Craig. dieg. 8, that 'ex eorum Statutis nec periculum vitæ, hereditatis aut omnium futurorum subire posse.' And whereas it is urged that the lords of Privy Council have a mixed jurisdiction, and may proceed be way of precognition 'et per modum inquisitionis,' and may resolve doubtful cases and qualify sentences: It is answered, That it is not denied but the lords of privy council have and do very well deserve that jurisdiction; but as to criminal

jurisdiction in capital crimes, it is only competent to the lords of justiciary: And the recognitions, or previous inquisitions, tend not *ad condemnationem*, but only as to this, whether to stop or remit to the lords of justiciary. And nothing is considered as a judicial confession, but where there is *formatus processus*, and where a party is called 'coram iudice competente,' and is 'sub instante periculo vite,' and knows that the infallible import of his confession is to that very effect for his condemnation, none of which can be pretended where the confession is emitted, 'coram iudice incompetente ad condemnandum.'

And whereas it is alleged, That, a confession in the opinion of lawyers cannot be retracted, unless the party could *docere de errore*, and purge his innocency, and did it *ex incontinenti*; It is answered, the alleadgance is groundless; for though confession were emitted 'coram iudice competente pro tribunali,' it might be retracted *ex incontinenti* if he were able *docere de errore*: And there is no lawyer ever required it in other terms. But where the confession is emitted 'coram iudice incompetente' *fidem non facit quoad probationem indicti*, and may be retracted either *ex incontinenti* or *ex intervallo*, and without shewing of any error or purging of innocence, such confessions in law amount not to any probation, no more than as lawyers argue if the depositions of witnesses taken in *uno iudicio* would *fidem facere* either in 'casu civile aut criminale in alio iudicio.' And certainly there is less reason for confessions where parties disown the same, and retracts them if emitted; and much more here where the pretended confession was *elicite sub spe venia*, so far was the pannel from thinking that the emitting of this confession was in order to condemnation, specially seeing it neither is, nor can be proven, that the said pretended confession was so much as judicially given in face of privy-council, where his grace the duke of Lauderdale; being then his majesty's commissioner, was present: And though it were, the pannel's proctors will not debate the import of his grace's commission, but remits the same to the commission itself, in case it be offered to be proven, that the confession was emitted before him, and the lords of privy-council.

And whereas it is alleadged that the act, 9 parl. king James 6, ordaining all probation to be led in presence of the assize, does not concern the case, and is misunderstood, seeing here the confession will be produced in presence of the assize: It is answered, The act of parliament is clear to the contrar, and can admit of such interpretation. For albeit the narrative of the act of parliament was only *causa impulsiva*, and the statutory part of the act of parliament is clear and positive, that all probation should be adduced in presence of the assize, who are judges of the probation. And of all other probation there is the greatest reason, that the very act of confession should be in presence of the assize, who are judges to the

probation, and who are to proceed upon oath, and whose consciences are to be satisfied and instructed as to the way, manner, conditions and terms whereupon such confessions were elicite; all which are concealed where there is nothing produced to them but a confession taken without their presence, especially seeing the pannel alleadges and offers to prove that several points of fact and other particulars, were condescended upon and declared, none of which are mentioned in this pretended confession; all which should have been insert, and could not be divided as being in *articulo conexo*.

And whereas it is pretended that decreets pronounced before Lords of session, is *Probatio probata*; whereupon assizers may and ought to condemn: It is answered, the argument is in *materia disparata*, and does not concern the matter of confession, and is only in the special case of falsehood, and that upon a special reason, because the investigation of falsehood depended upon a trial and concurrence of many and violent presumptions, which may require a long tract of time and examination of parties and witnesses. It were impossible that such trials could be adduced before an inquest; these depending several years many times before the session before they can be brought to a close: and therefore law and custom in that case has sustained a decret of the Lords of session as a probation in *Judicio criminale*; but it is absolutely denyed that it would in any other crime. And certainly if the crime of theft were pursued civilly before the Lords of session *ad damnum et interesse*, though the theft should be proven or confest before the Lords of session, it would not 'fidem facere in *Judicio criminale*,' as is evident by the authority of lawyers who agree, that 'acta probatoria in uno processu fidem non facit in alio'; Nay, which is more, 'acta probatoria in uno processu fidem non facit in alio processu coram eodem Iudice.' And as to the instance of the *Practique* of Mac Nabb, the Pannel opposes the same, wherein there were depositions of witnesses; and though many times in the adjournal books, the cases of confessions emitted has been obtruded, yet it cannot be instanced that ever the Lords of justiciary did by interloquitor sustain the same as probation; but on the contrar it does appear in the case of Fraser, in the year 1641, that sir Thomas Hope being then his majesty's advocate declared, that a confession emitted before a sheriff depute who has a criminal jurisdiction in some cases in the terms allowed by law, and who beyond all doubt is judge competent *per modum inquisitionis*; yet so convinced was he, that it was an extrajudicial confession, that he only insisted therein *in modum admittendi*, and joined it with the other probation mentioned in that *Practique* which was *per se* convincing and sufficient; As also since his majesty's happy restoration in the case of one Robertson, although the confession was emitted before one of the Lords of justiciary and his majesty's advocate for the time; yet he was so convinced of the insuffi-

ciency of the same, that after it was produced *per modum probationis*, he took up the samens even in that state of the process when the assize was sworn. And as to the instance of divinity in David's practice, it does not concern the point of law, and cannot be made appear that the party retracted his confession; and it is a *Practique*; that either *nimum* or *nihil probat*. In respect whereof, &c.

The Lords commissioners of justiciarie continue the advising of this debate till the ninth day of this instant, at two o'clock in the afternoon; and ordains assizes and witnesses to attend ilk person under the pain of ane hundredth merks.

The said day John Graham post-master, Patrick Graham his brother,—Keith of Ludgharne, Mathew Colvill writer in Edinburgh, Alexander Levingsone ensign to captain Wyrhame, Walter Kennoway merchant in Edinburgh, James Fleicher of New Cranstoun, John Achmoutie ensign to the Castle of Edinburgh, being oftymes called to have comparred before the Lords commissioners of justiciary this day and place in the hour of cause to have past upon Mr. James Mitchel's assize, as they who were lawfully cited to have made their appearance for the effect foresaid, lawful time of day bidden, and they nor none of them enterand nor appearand; the Lords commissioners and justiciarie therefore, be the mouth of Gibert Mair, macer of court, decerned and adjudged, the forenamed persons and ilk ane of them to be in ane unlaw and amercement of ane hundredth merks Scots, which was pronounced for doom.

Curia Justiciarie S. D. M. Regis tenta in Pretorio Burgi de Edinburgh, Nono die Mensis Jan. 1678, Per honorabiles viros Dominos Archibaldum Primrose de Caringtonoun Justiciarium Generalem, Jacobum Fouclis de Colintoun, Robertum Nairn de Strathurd, Joannem Lockhart de Castlehill, Davidem Balfour de Ferret, et Thomam Murray de Glendoick, commissarios Justiciarie dicti S. D. N. Regis.

Curia legitime affirmata.

Intran' Mr. JAMES MITCHEL, Prisoner.

Indicted and accused for the crimes of assassination, invading of privy counsellors, ministers and others, ut in die precedente.

Pursuer, Sir George Mac Kenzie of Rosehaugh, our sovereign Lord's advocate,

Proctors in defence.—Sir George Lockhart, Mr. John Eleis, Mr. John Stewart.

The Lords Commissioners of justiciary having considered the Dittay and debate relating thereto, find that article of the Dittay founded upon the 4th act, 16 Parl. king James 6 bearing the pannel's invading by shooting and firing of a pistol at his grace the archbishop of St. Andrews, a privy counsellor, for doing of his majesty's service, relevantly libelled, his majesty's advocate proving the presumption in his reply, viz. That the pannel said that he

did make the same attempt and invasion because of the archbishop his persecuting those that were in the rebellion at Pentland, or some words to that purpose, relevant to incur the pain contained in the foresaid act of parliament, and remit the samens to the knowledge of ane assize.

And likewise find that part of the Dittay anent the invading of bishops and ministers, relevant to infer ane arbitrary punishment, and remit the samens to the knowledge of an assize.

And siclike that article of the Dittay anent the invading, wounding and mutilating of the bishop of Orkney, relevant to infer ane arbitrary punishment, and remit the samens to the knowledge of an assize.

And also having considered that part of the debate anent the pannel's confession made and emitted before ane committee appointed by authority of council to receive it, and thereafter adhered to and renewed in presence of his majesty's high commissioner and lords of privy council convened in council, find it is judicial and cannot be retracted.

And also having considered the debate and Defence against the said confession, viz. That the same was emitted upon promise or assurance of impunity of life and limb, find the samens relevant to secure the pannel as to life and limb, reserving to the Commissioners of justiciary to inflict such arbitrary punishment as they shall think fit, in case the defence shall be proven, and remits the samens to the knowledge of ane assize.

Assisa.—Gordon of Cairnehorrowe, David Burnet, merchant in Edinburgh, James Wood at the College Port, Chan., David Forsyth, taylor, Robert Campbel, apothecary, captain Andrew Dick, David Bruce, gent., John Hay of Baro. Thomas Comlie, vintner, Mr. Alexander Achmoutie, ensigne, capt. John Binning, vintner, Alexander Levingsone, ensigne, William Steinson younger, merchant, Charles Scot of Bonnetoun, Peter Wishart, lieutenant. The assize lawfully sworn, no objection in the contrar:

His majesty's advocate for probation adduced the pannel's own Confession, with the witnesses after deponing; of the whilk Confession, the tenor follows:

' Edinburgh, 10 Feb. 1674. In presence
' of the lord chancellor, lord register, lord ad-
' vocate, and thesaurer depute, Mr. James
' Mitchel, prisoner, being called, did freely con-
' fess he was the person who shot the pistol at
' the archbishop of St. Andrews, when the bishop
' of Orkney was hurt thereby, in the year 1668,
' and depones upon oath, that no living creature
' did persuade him to it, or was upon the know-
' ledge of it. *Sic subscribitur*, James Mitchel,
' Rothes, A. Primrose, John Nisbet, Ch. Mait-
' land.'

Master William Paterson, advocate, purged of partial counsel, and solemnly sworn, depones, he met a man with a pistol in his hand in Black-frier Wynd, immediately after the

pistol was shot at the archbishop, but knows not the pannel, nor if he was the person that shot. And this is the truth as he shall answer to God.

Patrick Vanse, keeper of the Tolbuith of Edinburgh, purged of partial counsel, and solemnly sworn, depones, That a day or two before or after the pannel was examined by the council, he confessed to the deponent, that he shot a pistol at the archbishop of saint Andrews, and escaped down Black-frier Wynd, and went up the Cowe-gate and into Mr. Robert Ferguson's house, and put on a periwig, and then came to the street and searched for the man that shot the pistol. Being demanded if he heard Mr. James Mitchel justify the deed : he depones he remembers it not.

Mr. *John Vanse*, son to the keeper of the Tolbuith, purged and sworn : being interrogate, if he heard the pannel acknowledge the deed of shooting at the bishop, or defend it, depones, That being in conference with the pannel in the prison-house, he inquired at him how he or any man could be necessary to so impious an act, as to kill a man in cold blood who had not wronged him; he said it was not in cold blood; for the blood of the saints was reiking at the cross of Edinburgh.

John bishop of Galloway, being purged of partial counsel, sworn and examined, depones, That the first time he saw the pannel was in sir William Sharp's outer room, where he saw a pistol, which was said to be taken from him, out of which (as he supposes) there were three balls taken; and that the pistol was like to the pistol produced. Depones that at that time the pannel did not confess any guilt, but seemed to be in a great consternation, and fell a trembling. And that the deponent hearing that he had made a confession, went to prison to speak to him about it, who acknowledged to the deponent, that he had made confession of that attempt against the archbishop before the chancellor, and some others of the council; and that he had hopes of life, and desired the deponent to intercede for him. And the deponent having asked him how he could do such a deed against an innocent man : he answered, that he thought him an enemy to the godlie, and that they could not be in security so long as he was alive. And the deponent having inquired of him if he was sorry for it; he did not say he was sorry for it, but if it were to do again he would not do it. And this is the truth as he shall answer to God.

Dr. *Christopher Irvin*, purged of partial counsel, and solemnly sworn, depones, that he was the first surgeon that came to the bishop of Orkney after he had received the shot, and that he did see a ball fall out of his sleeve, so that he knew that it was with a shot, and that the bones were fractured, and that they cured him so as he was able to lift his hand towards his head; but there was still scales coming out of the orifice of the wound.

Depones, the bishop said he got the wound when he was laying his hand upon the archbishop's coach.

John Jossie, surgeon, purged sworn and examined, depones, That he was called to the bishop of Orkney's cure, and that he had a wound betwixt the wrist and the elbow, which did cast out several small bones at the two small orifices; and that the bishop was not able to lift his hand towards his head.

William Borthwich, surgeon, purged of partial counsel, solemnly sworn and examined, depones, conformis to John Jossie in all things.

John earl of Rothes, lord high chancellor of Scotland, being sworn, and the confession under master James Mitchell's hand being shown to him, depones he was present and saw Mr. James Mitchell subscribe that paper; and depones that he heard him make the confession contained therein, and that he thereafter heard him ratify the same at the council-bar, in presence of the king's commissioner and lords of privy council sitting in council, and that his lordship subscribed the said confession. Depones, that his lordship the advocate, and Thesaurer Depute, were appointed by the privy council to examine Mr. James Mitchell. And being interrogate, if after they had removed the pannel to the council-chamber, whether or not his lordship did offer to the pannel upon his confession to secure his life in these words, upon his lordship's life, honour and reputation : depones, that he did not at all give any assurance to the pannel for his life; and that the pannel never sought any such assurance from him : and his lordship does not remember that there was any warrant given by the council to his lordship for that effect; and if there be any expressions in any paper which may seem to infer any thing to the contrary, his lordship conceives it has been insert upon some mistake.

*Charles Maitland** of Hatton, lord thesaurer depute, being sworn, and the confession under Mr. James Mitchell's hand being shewn unto his lordship, depones he was present when Mr. James Mitchell made that confession, and his lordship first heard him make it verbally, and then he saw him subscribe it; and that his lordship subscribed it also, and at that time there was nothing spoken of any assurance: but when the pannel was asked by some of the committee, upon what account he committed that fact; at first he seemed unwilling to answer, but thereafter said, it was because the archbishop is an enemy to the good people or godly people in the west. Depones, that within few days thereafter, at a meeting of the council, where the duke Lauderdale then his majesty's commissioner was present, the pannel being brought to the bar, and the confession produced being shewn to him, he acknowledged the same to be his hand writing; adhered unto

* See the following Case..

and renewed the same in presence of his majesty's commissioner and council: and depones that he did not hear the pannel either seek assurance of his life, or any other person offer the same to him.

John duke of Lauderdale, being sworn, depon's, That his grace was present as the king's commissioner in council, when Mr. James Mitchel was brought to the bar. Depon's his grace saw the pannel's former confession made at the committee of council shewn to him, and he acknowledged it to be his confession, and that he did adhere thereto and renew the same in presence of his grace and the council. His grace heard no assurance given to him, and that his grace did not give him any assurance, nor gave commission to any others to give him any assurance, and could not do it, having no particular warrant from his majesty for that effect.

James, archbishop of Saint Andrews, being sworn, depon's, That that day that the pannel did fire a pistol at his grace, he had a view of him passing from the coach and crossing the street, which had such impression upon his grace, that upon the first sight he saw of him after he was taken, he knew him to be the person who shot the shot. Depon's, his grace saw him at the council-bar in presence of his majesty's commissioner and the council acknowledge his confession made before the committee, and heard him adhere thereto and renew the same; and there was no assurance of life given him, nor any sought by him there. Depon's, that his grace himself did never give him any assurance, nor give warrant to any others to do it: only he promised at his first taking, that if he would freely confess the fault, and express his repentance for the same at that time, without farther troubling judicatories therein, his grace would use his best endeavour to favour him, or else leave him to justice: But that he either gave him assurance, or gave warrant to any to give it, it is a false and malicious calumny; and that his grace made no promise to Nicholl Somervell other than that it was best to make a free confession. And this is the truth, as he shall answer to God.

The pannel, Mr. James Mitchel, after swearing of the assize, produced a copy of a pretended act of council, and craved that the register of council containing the said act might be produced. And after the examination and depositions of the witnesses upon the Dittay and exculpation, the pannel and his proctors farther urged, that the register of council might be produced. Seeing the pannel produced an instrument against Mr. Thomas Hay, one of the clerks of council, for giving an extract thereof; and the pannel and his proctors alledged, that the register of council containing the said act was produced in court the day before, and that the said act was read by several members of court; and being once produced, and an instrument taken against one of the clerks of council, who with the

other clerk were cited as witnesses by his majesty's advocate, the clerks ought to be ordained either to give an extract or produce the register containing the aforesaid act; and the pannel and his proctors desire to be heard in writ upon the said act of council.

His majesty's Advocate answers, That he was not obliged to produce a register for the Pannel; and if any such pretended act was, he should have used a diligence and cited the clerks of council for producing of the registers, or giving any extract; which the Pannel not having done he cannot be allowed a diligence in this state of the process. And if any such act of council was, it was unwarrantable and could not be made use of, after the lord Chancellor, the duke of Lauderdale, the lord Treasurer Depute, and other lords of council had deponed that there was no such assurance given, as is either pretended by the exculpation, or insinuate by the pretended act of council. And be the copy produced it is evident, that the design thereof is to take from the pannel any pretended favour he pleads; and if the act be founded one, it cannot be divided; so that an meer narrative must prove, and the statutorie words should not prove: especially seeing there is nothing more notour and ordinar, than for the council not to consider a narrative if the statutorie words be right. And as the pannel pretends that his confession cannot be divided from the assurance given, but that it must taken with the quality; so much less must this act be divided. And the pretended act is long posterior to the pannel's confession, and even posterior to a former dyet in the justice court appointed for the pannel's trial for the said crime. And farther, no such assurance could have been granted, seeing none but his majesty can grant remissions.

The Pannel and his Proctors desired the copy produced to be read.

His majesty's Advocate consents to the reading of the pretended copy of the Act of Council, and which being publicly read, is of the tenor following.

Edinburgh, March 12, 1674.

"The Lord Commissioner his grace, and the lords of his majesty's privy council having appointed a committee of council to examine Mr. James Mitchel, prisoner in the Tolbuith of Edinburgh; the said Mr. James being brought before the said committee, did make a free and voluntary confession of his accession to the rebellion, and rising in arms in the west; and that after he had notice of the same he went from Edinburgh with colonel Wallace and others, and joined with the rebels there, and from thence came along, and was with them until the night before the fight at Pentland-hills; and that at the desire of Captain Arnot he came then to Edinburgh to speak to some persons there concerning them. And being examined upon the attempt made upon the

person of the archbishop of St. Andrews, and who shot the pistol at the said archbishop, when the bishop of Orkney was hurt in the month of July 1668, he did declare that at that time, and the day that the said attempt was made he was in the town of Edinburgh; and that he had bought the pistol, which was about him charged with three balls when he was apprehended, about that time when the bishop was shot, from Alexander Logan, dagger-maker in Leithwynd: but refused that he was the person that made the said attempt until having retired a pace with one of the said committee, he did confess upon his knees that he was the person, upon assurance given him by one of the committee, as to his life, who had warrant from the lord commissioner and the council to grant the same. And did thereafter confess freely, before all the lords that was upon the said committee, that he shot the foresaid pistol at the said archbishop, and did subscribe his confession in presence of the said committee, which is also subscribed by them. And thereafter the said Mr. James in presence of the commissioner his grace and council, did renew and adhere to the said confession, both as to the accession to the rebellion and the attempt foresaid; and acknowledged he made the said attempt because he thought that the said archbishop had ane hand in troubling and persecuting those that were in the rebellion. And nevertheless, being brought before the lords commissioners of the justiciary, and asked if he did own the confession foresaid, he did altogether refuse to answer and adhere to his said confessions, notwithstanding he was told by the lords commissioners of justiciary and his majesty's advocate that if he would adhere to his said confessions, he should have the benefit of the said assurance and if otherways, that he should lose the same. Therefore the lord commissioner his grace, and the Lords of his majesty's privy council, do declare, that they are free, and that the said Mr. James ought not to have the benefit of any such promise or assurance, and that the same is altogether void; and that the Lords of the justiciary and the assize ought to proceed without any respect to the same. And farther do declare, that the said Mr. James Mitchel is the person intended and meaued in the proclamation in the years 1666 and 1667 (discharging any intercomoning with the rebels therein mentioned, and excepting the said Mr. James, and the other persons therein, from his majesty's favour and indempnity, and no other under the name of Mr. James Mitchel, though there had been any other of that name involved in the said rebellion.

“The Pannel and his Proctors renew their desire, and crave to be heard to debate upon the act of council in writ.

The lords commissioners of justiciary considering that the copy of the pretended Act of Council produced was never urged, nor made use of, nor any diligence craved for producing

the registers of council, until this afternoon that the assize was swort, after which no diligence can be allowed nor granted in this state or the process be the law of the kingdom, and practice of this court; especially seeing it appears be the said copy, that the design was to take away any assurance that the pannel could have pleaded; and that the truth of the narrative of the copy founded upon insinuating that there was ane assurance, is cancelled be the depositions of the duke of Lauderdale, then his majesty's commissioner, the lord chancellor, and other members of the committee and council: The said lords therefore ordain the assize to inclose and return their verdict to-morrow at two o'clock in the afternoon.

Curia Justiciarie S. D. N. Regis tenta in Prætorio Burgi de Edenburgo, Decimo die Mensis Januarii, 1678, Per honorabiles viros Dominos Archibaldum Primrose de Carington Justiciarium Generalem, Jacobum Foulis de Colintoun, Robertum Nairn de Strathurd, Joannem Lockhart de Castlehill, Davidem Balfour de Ferret, et Thomam Murray de Glendoick, Commissarios Justiciarie dicti S. D. N. Regis.

Curia legitime affirmata.

The said day the persons who past upon the assize of master James Mitchel, returned their Verdict in presence of the said lords: wherof the tenor follows:

“As to the first part of the libel, founded upon the 4 act, 16 parl. king James 6. the chancellor and whole assize, with one voice, find it proven conform to the lords interloquitor.

“As to the invading of bishops and ministers, and wounding the bishop of Orkney, siclike proven with one voice.

“As to the third part of the lords interloquitor concerning his confession, first before a committee, and thereafter before his majesty's high commissioner and council, the whole assize with one voice find it proven conform to the lords interloquitor.

“As to the fourth and last part of the interloquitor concerning the exculpation, the whole assize with one voice find it no ways proven. And further concerning the exculpation, when the pannel was pressing it strongly upon my lord chancellor the whole assize heard his own confession and acknowledgment of the fact.

(Sic Subscriptur,) Jo. Hay, Chancellor.”

After opening and reading of the whilk Verdict of Assize, the lords commissioners of justiciary, by the mouth of Adam Auld, dempster of court, decerned and adjudged the said Mr. James Mitchel to be taken to the Grass Market of Edinburgh, upon Friday the 18th day of January instant, betwixt two and four o'clock in the afternoon, and there to be hangd on ane gibbet till he dead, and all his moveable goods and gear to be escheat and inbrought to his majesty's use; which was pronounced for

doom. Upon which day he was executed according to the sentence.

He had prepared a Speech, which he intended to have delivered, but being interrupted by the beating of drums he threw it over the scaffold; it was as follows:

“ Christian People,

“ It being rumoured abroad immediately after I had received my Sentence, that I would not get liberty to speak in this place, therefore I have not prepared a formal discourse and account of these pretended crimes, for which I was accused and sentenced, neither did I think it very necessary, the fame of your process having gone so much abroad, what by a former indictment given me near four years since, the dyet whereof was suffered to desert in respect the late advocate could not find a just way to reach me, with that extrajudicial confession they opposed unto me. All know he was zealous in it, yet my charity is such unto him, that he would not suffer unwarrantable zeal so far to blind him, as to overstretch all laws of the land beyond their due limits, in prejudice of the life of any natural subject, and next by an extreme enquiry of torture, and then by exiling me to the Bass, and after all, giving me a new indictment at the instance of the new advocate, who before was one of mine, when I received the first indictment, to which new indictment and debate in that process I remit you, and particularly to these two defences of extrajudicial confession, and to the promise of life given to me thereupon by my lord chancellor, upon his own, and the public faith of the kingdom, upon the verity whereof I am ready to die, and consent to lay down my life. And I hope, your

“ Doubtless the fanaticism of Mitchel was of the most daring and atrocious nature; but the guilt of that fanatic is lost in the complicated perfidy, cruelty, perjury and revenge which accomplished his death. It was the ardent desire of ministers to involve the whole body of presbyterians in his guilt; but in the prosecution of this object they incurred the just imputation of more detestable crimes. Horror and universal execration were excited by the treachery and almost unexampled perjuries of the first ministers in the church and in the state; and the precautions employed by Sharp for his safety and revenge, contributed two years afterwards to his disastrous fate.” 4 Laing, 80.

charity will be such to me (a dying man) as no to misconstrue me therein, especially when it is so notoriously adminiculated by an act of the secret council, and yet denied upon oath by the principal officers of state, present in council at the making of the said act, and which the act bears to have been present thereat; the duke of Lauderdale being then his majesty's commissioner, and which act of council was by the lords of justiciary their interloquitor most illegally repelled; but I shall have charity to some of these lords, whom I knew would have given law and justice place, even as to my just absolution, if they had not been overpowered by the plurality of votes of those who were over-awed and dared by the lords of the secret council. But that will not absolve their consciences at the last day. As to my advocats and lawyers, I ingenuously acknowledge their care, fidelity and zeal in my defence, and which, I hope, shall be some standing fame to them for this, and all future generations. So thus much as a short account of that affair, for which I am brought unjustly to this place. But I acknowledge my particular and private sins have been such, as have merited a worse death unto me: but I die in the hope of the merits of Jesus Christ to be freed from those eternal punishments due to me for sin; yet I am confident, God doth not plead with me in this for my private and particular sins; but I am brought here, that the work of God may be made manifest, and for the trial of faith, Joh. ix. ver. 3. and 1 Pet. i. ver. 7, and that I may be a witness for his despised truth and interest in this land, who am called to seal the same with my blood. And I wish heartily that this my poor life may put an end to the persecution of the true members of Christ in this kingdom, so much cheated by these perfidious prelates, and in opposition to whom, and in testimony of the cause of Christ, I at this time willingly lay down my life. And I thank God, that he hath thought me so worthy as to do the same for his glory and interest. Finally, conceiving it a Christian duty in a singular and extraordinary case aenent my particular judgment concerning both church and state, it is evidently declared and manifested more fully elsewhere. So farewell all earthly enjoyments, and welcome Father, Son, and Holy Spirit, into whose hands I commit my spirit. JAMES MITCHEL.”

See the following Case.

239. Proceedings before the Lords of the Articles, &c. against CHARLES MAITLAND, of Halton, Treasurer Depute, for Perjury, in having given a false Testimony, at the Trial of JAMES MITCHEL: 33 CHARLES II. A. D. 1681.*

A PARLIAMENT being summoned and

* This case is inserted in this place, out of chronological order, on account of its connection with the preceding Article.

holden at Edinburgh the 28th day of July, 1681, by his Royal Highness, the king's High-Commissioner, on the — day of —, William Noble, of Denotter, did deliver the following Petition, or accusation, into the hands

of the Lord Register, to be by his lordship presented to his Royal Highness, and the Lords of the Articles:

To his Royal Highness, his Majesty's High-Commissioner, and the Right Honourable the Lords of the Articles.

"It is humbly represented,
"That, whereas the deceased Mr. James Mitchel being convened before the justices, for attempting to assassinate the late archbishop of St. Andrews, and his confession before the duke of Lauderdale, his majesty's commissioner for the time, and the Lords of the privy-council, being adduced in *modum probationis*, against him, the said Mr. James proposed this defence, that his confession was emitted upon promise and assurance of life made to him; for proving whereof, he did adduce Charles Maitland, Lord Treasurer-Depute, as a witness, who deponed negative, notwithstanding that by letters under his hand, directed to the late earl of Kincardin, he expressly writes, 'That the said Mr. James had confessed upon assurance made to him of his life.' And 'that he now thought that his punishment would be the loss of his right hand,' which perjury will be clearly proven by production of the said Letters and Deposition; for which is humbly craved, a warrant may be granted against the Havers for exhibition of the same, and that the Lord Treasurer-Depute may be declared infamous, and suffer the other pains appointed by law in such cases.

(Sic Subscribitur) "W. NOBLE."

The Letters which the Petition refers to, and upon which the whole Accusation is founded, are these two that follow, both sent to my lord of Kincardin:

"*Holyrood-house, Feb. 10, 1674.*

"This afternoon yours came, which should have come this morning, so that the post is now more regular. I read it all, and it is a full account of all passages: I hope shortly we may find matters grow better, and indeed there is great need of it here, for at present we are out of joint. Saturday last, in the morning, information was given, That one Mr. James Mitchel, who was alledged to have shot at the archbishop of St. Andrews, was discovered by — and sir William Sharp, and being seen to come down sir William's own close, by sir William, and two of his brother's footmen, he called to Mitchel, and carried him back to his house (the signet-office). He had a long iron pistol, and a short sword about him, in shoes and stockings; and though he was so armed, yet he did not resist, though none came up to him, but sir William alone, till he came up his stair. Being asked his name, he denied it, and varied in several others of his answers; and by warrant of the Chancellor, was committed close prisoner. This day he was examined by Order of Council, by the Chancellor, Register, Advocate, and me: the Commissioner had ordered us to charge him with his being in

the Rebellion, and that he was excepted by name out of the act of indemnity, and so let him see his condition, and to be led to execution: this was done very soon, and against his next examination he confessed his being with the rebels, but denied this assassination of the archbishop, yet acknowledged his being in town at that time; and that the pistol he was taken with he had bought at that time; so it was moved by one, That the Chancellor might take him apart, to see what he would then say: this being done, upon assurance of life, he fell upon his knees, and confessed it was he that shot the bishop of Orkney, and which he aimed at the archbishop; and here is his confession, the double of it signed by him, the Chancellor, and us. His punishment, it is thought, will be the loss of his right hand, and condemned to perpetual imprisonment in the Bass. I think I told you before, that his grace had retrenched his allowance to ten pounds sterling a day, since the 20th; though his charge be little retrenched, for his table holds yet 24 persons. I hope, when matters are over, you will give us some account of his majesty's pleasure about the Miners affairs, wherewith ye know their friends have been sufficiently reproached, without any shadow of reason. And so, my good Lord, Adieu."

"*Holyrood-House, 12 Feb. 1674.*

"This day, Mr. Mitchel, who assassinated the Archbishop of St. Andrews, was again examined in face of the council, and said nothing but what he said to us of the committee: he is remitted to the justice court, to receive his Indictments, and Sentence, to have his right hand cut off at the cross of Edinburgh, and the forfeiture of his whole goods and posterity. This last part is not to be put in execution till his majesty be acquainted, because assurance of his life was given him upon his confession. The cutting off his hand is to be executed by the hand of the hangman."

The Deposition which is pretended to be contradictory to what is delivered here in these two Letters, from whence perjury is inferred, will be found at p. 1256).

This Petition being read, the Lord Treasurer Depute desired that he might have it delivered to him in common form, and might have liberty to put in his Answer to it; and became further an humble and earnest suitor to their lordships, that he might be put to a speedy trial, whereby he might make his innocence appear to the parliament, and the whole world, which his royal highness, and the Lords of the Articles, were pleased to grant; not because they found any thing in the accusation relevant against him, but that they might gratify his lordship's earnest desire, of being put upon his trial. Afterwards, William Noble was called in, who owned his accusation, and did again sign it in presence of his royal highness, and Lords of the Articles; and being asked by the president of parliament, the marquis of Atholl,

if he knew the Lord Treasurer-Depute, or was acquainted with him? He answered, No: Being then interrogated how he came to accuse his lordship upon the head of perjury? Or whether it did fall within his proper knowledge? Or whether he did ever see the Lord Treasurer Depute's letters, or deposition? He replied, No; but that he was so informed, and that he was induced to do it as a member of parliament: and being thereupon asked, Who he received his information from? He refused to make any reply to that question.

Presently after this, the Lord Halton put in his Answer to the Information exhibited against him, which is as followeth:

"Whereas it is represented, That Mr. James Mitchel, in his trial, having alledged that his confession was emitted upon assurance of life, and having adduced the Treasurer-Depute as a witness in his exculpation for proving the same, he deponed negative, notwithstanding, by a letter under his hand to the earl of Kincardin, he asserts, that he had confessed upon assurance of life; which he offers to prove by the missive letter now produced, and therefore concludes, that the Treasurer-Depute is guilty of perjury, and ought to be declared infamous, and subjected to other legal penalties therean-
t.

"It is answered, that this accusation is neither relevant nor proven, for as to the relevancy, perjury being a high crime, is not to be presumed against any man, much less a person of so high quality and office, except the deeds inferring the perjury were of knowledge, and directly contradictory; and to infer perjury must not only be deposition, contradicting another deposition which is upon the matter false, because a man may depone an error, *bona fide*, through forgetfulness; but perjury must be a false deposition against one's knowledge; and so he must be *sciens et volens*. So that two oaths, after the interval of four years (which is the distance between the letter and deposition), suppose they had contradicted, yet, in charity, a person of entire fame might be excused from perjury; but where the contradiction is only alledged, betwixt a transient missive letter of news, and an oath emitted four years after the date of the letter, no rational man can think, that albeit these did contradict, it could infer perjury, but only an error or mistake in the missive letter, and the writing of a missive upon mistake or design, though it were produced to a party, when he is called to depone; if he were convinced that he had been mistaken in his missive, he behoved to depone according to his knowledge, and the truth, though that contradicted his letter, which can never infer the least insinuation of perjury, suppose the letter had been obligatory and serious; whereas this letter was only an overly indigested account of news, and unsubscribed.

"2. As the accusation is no ways relevant, so it is not at all proven; because both the letter and the oath are consistent, in so far as Mitchel being examined before a committee of

the council, in the Treasury-Chamber, he did deny the attempt of assassinating the primate; but thereafter, the Chancellor having retired with him to the council-chamber, after a little time, they did return, and Mitchel did confess the attempt before the committee, and some days after, reiterated that confession before the council; and it was generally reported, and until the Chancellor deponed the contrary, it was universally believed, that the Chancellor had given him assurance of life privately: but it neither is probable that assurance was promised by the committee or council, nor did Mr. James Mitchel assert it in his trial, and therefore the universal report, that assurance was given privately, was a sufficient foundation for the Treasurer-Depute's letter; but when he came to be examined in the exculpation, whether he heard assurance given him, suppose he had all the grounds of credibility, yet he could not depone that he heard assurance given, except he had been ear-witness to the promise; and by this letter that appears impossible; for it bears, That it was moved, that the Chancellor and Mitchel should retire, and this being done, upon assurance he confessed; so that the assurance related in the Letter, was not given in the committee, or where the Treasurer-Depute was present; but where the Chancellor had retired with Mitchel in the council-chamber: and the Treasurer-Depute is so cautious in his deposition, that he restricts it to two precise times, viz. When Mitchel confessed in the committee, and when he renewed his confession before the council; and he depones, That being present at these two times, he heard neither assurance asked nor offered; so that albeit, at any other time, assurance had been given him, it doth not at all contradict the oath: and it had been perjury, if the Treasurer-Depute had deponed affirmative, though he had heard the general surmise, or though this letter, written upon the faith of that report or rumour, had been in his hand. And in this case, the Treasurer-Depute's deposition being a concurring testimony with several other persons of the greatest eminency, trust, and integrity, in this kingdom, some whereof deponed in relation to their proper fact, and who were only pretended to have given the assurance, his oath can never be suspected, without the greatest reflection upon the considerabest part of the king's principal ministers.

"From all which, it is evident that this accusation is a most unjust, calumnious, and scandalous libel, to which the accuser hath been hounded out, tending to diminish the confidences of the lieges and subjects to his majesty's officers of state, and thereby wounding his majesty's authority, and weakening his government by such presumptuous attempts against his ministers: and it is humbly hoped and expected from his royal highness, and the Lords of the Articles, that since the letter founded upon doth not, in the least, instruct the irrelevant and illegal accusation, which is only probable by writ, according to our law;

that therefore the Treasurer-Depute may be vindicated and assolized from this false and infamous libel; and that the calumniator may be punished, by being declared infamous, and otherwise in his person and goods, according to the demerit of his crime, and to the terror of others."

This answer being given in by my lord Halton, it was so full and clear, that unless some other trick were found out, the Lords of the Articles could not but immediately proceed to give their Judgment in favour of his lordship; Mr. Noble, therefore, who had before restrained his proof of the accusation to those two letters written to my Lord of Kincardin, and to which the Answer referred, that he might buoy up his sinking cause as long as he could, was pleased (by a second Petition) to desire that witnesses might be summoned in, and the registers of the council and justice court produced to prove the contents of his accusation; and the Treasurer-Depute still pressing for a fair trial, the Articles, before they would give answer, allowed him to condescend upon all the sederunts of council, and all the members of council at that time, when Mitchel was examined at several diets, and craving further, several other witnesses to be examined, and the said registers to be produced. This being again considered by the Articles, the Treasurer-Depute begged leave to answer for himself, and for his Defence said;

"1. That in law, no man's letter can invalidate his oath, even though it contradict his oath, but that his letters are consistent with his oath, being diversly related, and to divers times and circumstances.

"2. That Noble's accusation having restricted the manner of proof to Halton's letters only, he could not now refile from that, without giving in a new formal accusation against him: and though the sense of his own innocence had induced him to press a legal trial, yet he could not consent to suffer his accuser to shift himself off, by proposing new and illegal methods of probation, to procure delay.

"3. That the crime of perjury could not be inferred but by contradictory oaths, which could not be alledged against him in this case.

"4. That the crime of perjury, by the law of Scotland, was not probable, nor could be proven by witnesses, but by writ only, and that especially by oaths contradicting one another.

"5. That in this case, his oath did conclude that he did not hear Mitchel ask assurance of life, or any person give it him, and that therefore no witness could swear, that Halton heard the assurance given to Mitchel, unless his ears had been fixed in that witness's brain, which is impossible; and unless they swore so, it would not prove this, or any crime against him; and though it were possible to prove he heard assurance given, yet, after so long time, he might have forgot.

"6. The Treasurer-Depute was a concurr-

ing witness with the late Chancellor, the late murdered archbishop of St. Andrews, the duke of Lauderdale, and the now bishop of Edinburgh; and though witnesses were allowable in this case, as they were not, yet they cannot be led against these persons deponing with him in Mitchel's trial, who are either dead or absent: besides that, what they might be presumed to swear, he what it will, would rather rake into the graves and ashes of those noble persons, now dead, than militate any thing against the Treasurer-Depute.

"7. As to any register craved to be produced, that can operate nothing, unless they contain papers signed by the Treasurer-Depute, and must be oaths contradictory, and which ought particularly to be condescended upon, and are not so much as alledged; and if they were, Mr. Noble may get extracts, as other subjects do. But however, he submitted himself to his royal highness, and their lordships determination."

Upon this his Royal Highness, and the Lords of the Articles, having fully considered the Accusation, and the Letter, upon which it is founded, and also the Lord Treasurer-Depute's Answers, and his Deposition, concurring with the Depositions of the Lord Chancellor, Archbishop of St. Andrews, and duke of Lauderdale, his royal highness was pleased to say in the Articles, that he did not see how he, being the king's Commissioner, could give way to any such accusation against one of his majesty's servants and officers of state, or that any such matter should come to a trial, unless it had been the Treasurer-Depute's own earnest desire: and that now their lordships having seen and considered the whole matter, it was fit for them to consider what was to be done. Whereupon, the Lords of the Articles declared their sense of the Treasurer-Depute's innocence in this crime of which he was accused; and they did humbly offer to his royal highness, that he would be pleased to transmit the whole affair to his majesty, and submit the same to his royal consideration; to the end his majesty might declare his royal pleasure; both for the Treasurer-Depute's vindication, and punishing the accuser according to the pains usually by law inflicted in such cases.

What follows is the copy of Mitchel's two Confessions.

Edinburgh, Feb. 10, 1674.

In the presence of the Lord Chancellor, the Lords Register, Advocate, and Treasurer-Depute.

Mr. James Mitchel being called before the committee, and examined as to his accession to the rebellion in the year 1666, acknowledges he was in that rebellion, and joined with them at the Burgh of Ayr, and stayed with them until the night before Pentland, at which time, at the desire of captain Arnot, he came into Edinburgh, to speak with one Mr. James Sterline, and Mr. Robert Ferguson, and the laird of Pen-

zarie, who were then in Edinburgh, anent an address to be given in to the council, in behalf of those in the rebellion, declares he was in Edinburgh, and stayed in the house of Grissel Whytford, in the Cannon-Gate, before he went out; and having notice from col. James Wallace, capt. Arnot, John Lindsay, and one William Young, from whom he brought a horse, went out of Edinburgh, about eight o'clock at night, and immediately rode towards Air, and joined with those that were there in the rebellion. Declares that it was in the house of one widow Robison in Currie's close, that he spoke with Penzerie.

(Sic Subscritur)
James Mitchel.

ROTHES.
A. PRIMROSE.
JOS. NISBET.

Edinburgh, Feb. 10, 1674.

In presence of the Lord Chancellor, Lords Register, Advocate, and Treasurer-Deputa, Mr. James Mitchel, prisoner, being called, did freely confess he was the person who shot the pistol at the Archbishop of St. Andrews, when the bishop of Orkney was hurt thereby, in the year 1668. And depones upon oath, That no living creature did persuade him to it, or was upon the knowledge of it.

(Sic Subscritur)
James Mitchel.

ROTHES.
A. PRIMROSE.
JOS. NISBET.
C. MAITLAND.

It is certain, that Mr. Noble had, by the advice of his own friends, without the knowledge of my lord Halton, subscribed a Paper wherein he renounced and retracted his accusation, and that he had shewn the same to John Campbell, of Succoch, Commissioner for Argyle-shire, after it was subscribed by him before witnesses. He, at first, was pleased to think fit to deny it, but being immediately confronted with the said Mr. Campbell before the Articles, he then

confessed he had shewn that paper subscribed by him to that gentleman; by which a man may easily conjecture at the nature of both his accusation and accuser.

Lord Fountainhall's Account of the proceeding against Halton, is as follows:

"A complaint was exhibited by William Noble of Dannottar, or Kipperminisoch, one of the Commissioners for Dumbartonshire, against my Lord Halton for perjury, in so far as he had deponed in Mr. James Mitchel's criminal trial in 1678 that he knew no promise of life given him, and yet by a letter produced all written with his own hand, in 1674, directed to the earl of Kincarden, he wrote that Mitchel had confessed (on a promise of life given him by some of the committee of council, meaning the Chancellor,) that it was he that shot the pistol at the late Archbishop of St. Andrews, in July 1668, which contradicted his oath. But some thought albeit he had not deponed so cautiously, yet it was not precisely perjury; seeing his letter proceeded on a rumour and misinformation that promise of life had been given him, which the Chancellor having denied upon oath before Halton deponed, it clears him that he and others had been in a mistake, and so he needed not in his oath take any notice of that alleged promise of life, though there was an act of privy council that seemed to mention it. See Mitchel's trial at the 7th and 8th of February 1678. The parliament's adjourning stopt the decision: but it had the effect of Machiavel's advice, 'calumniare audacter, aliquid semper adhaerebit.' Some made a mock allusion to the old history 'de Hattonne quodam A. Episcopo Moguntino 'perjuro,' who by a false oath beguiled Albert earl of Bamberg, and betrayed him to the emperor Lewis the fourth: the ridiculous allusion lies in the vicinity of the names."

240. Proceedings in the Case of ANTHONY Earl of SHAFTSBURY,* at the King's Bench, on an Habeas Corpus: † 29 CHARLES II. A. D. 1677.

ON the 27th of June, 1677, the earl of Shaftesbury was brought to the bar upon the Return of an Alias Habeas Corpus directed to the constable of the Tower of London; the effect of

the Return was, That Anthony earl of Shaftesbury, in the writ mentioned, was committed to the Tower of London, Feb. 16, A. D. 1677, by virtue of an Order from the Lords Spiritual

* See 1 Freem. 153. 1 Mod. Rep. 144. 3 Keble, 792. See also lord Shaftesbury's Case (before a grand jury) for Treason, A. D. 1684, *infra*.

† "The parliament of England," says Burnet, "had been prorogued for about a year and some months, by two different prorogations. One of these was for more than a year. So upon that it was made a question, Whether by that the parliament was not dissolved. The argument for it was laid thus: By the ancient laws a parliament was to be held 'once a year, and oftener if need be.' It was said,

the words, 'if need be,' in one act, which were not in another that enacted an annual parliament without that addition, did not belong to the whole period, by which a session was only to be held once a year if it was needful; but belonged only to the word 'oftener. So that the law was positive for a parliament once a year; and if so, then any act contrary to that law was an unlawful act; by consequence, it could have no operation. From whence it was inferred, that the prorogation which did run beyond a year, and by consequence made that the parliament could not sit that year, was il-

upon what authority others had done it : and in short, refused to grant either that or the other writs.

After all these denials of right, Mr. Jenkes resolved to sit still, with the satisfaction, that his ill success was not imputable to the injustice of his cause; but to the pleasure or fear of those that had the power of making it otherwise: and with patience to expect it till the term should set open the prison-doors; which will not brook the denial of a Habeas Corpus, though a long vacation must.

No further address was therefore made to either of their lordships; but themselves, after they had taken the pleasure of denying him, were pleased to condescend to intercede for him: for, as we heard by very credible information, the Lord Chief Justice went to the Lord Chancellor and told him, "That the writs demanded of him, were according to

"law, and could not be denied; and that he had only taken time till he had acquainted his lordship with it."

The Lord Chancellor directed him to the Lord Treasurer for further advice; who sent him to the king. As soon as his majesty understood, that what was demanded was the subject's Right, he immediately commanded that the laws should have their due course which their lordships had stopped: and accordingly he was bailed."

He was afterwards, in 1683, tried with Thomas Pilzington, Henry Cornish, esq. and others, for a riot at Guildhall, and fined 200 marks.

* It has been said, and seems probable, that this case contributed to the passing of the Habeas Corpus Act stat. 31 Car. 2, c. 2.

238. The Trial of JAMES MITCHEL,* in Scotland, for attempting the Murder of Dr. James Sharp, Archbishop of St. Andrews and wounding the Bishop of Orkney: 29 CHARLES II. 1677.

JAMES Mitchel being indicted for an attempt to murder the archbishop of St. Andrews, in July 1668, was committed 1674 prisoner to the Tolbooth at Edinburgh; whereupon the

Lord Commissioner and the Lords of the council appointed a committee to try him, viz. Lord Linlithgow, Preses (Pr. Hatton, treasurer depute; Dundonald

* The attempt upon archbishop Sharp is thus related by Burnet:

"A strange accident happened to Sharp in July 1668, as he was going into his coach in full daylight, the bishop of Orkney being with him. A man came up to the coach, and discharged a pistol at him with a brace of bullets in it, as the bishop of Orkney was going up into the coach. He intended to shoot through his cloak at Sharp, as he was mounting up: but the bullet stuck in the bishop of Orkney's arm, and shattered it so, that, though he lived some years after that, they were forced to open it every year for an exfoliation. Sharp was so universally hated, that, though this was done in full daylight, and on the high street, yet nobody offered to seize the assassin. So he walked off, and went home, and shifted himself of an odd wig, which he was not accustomed to wear, and came out, and walked on the streets immediately. But Sharp had viewed him so narrowly, that he discovered him afterwards, as shall be mentioned in its proper place. I lived then much out of the world: yet I thought it decent to go and congratulate on this occasion. He was much touched with it, and put on a shew of devotion upon it. He said with a very serious look, My times are wholly in thy hands O thou God of my life. This was the expression savouring of piety which he made him in all the conversation he had with him and me. From that time he lived with great reward."

but nothing followed on them. On this occasion it was thought proper, that he should be called to court, and have some marking's favour put on him. He proposed to make many good motions; and he was a while like a changed man: and was in his way, as he was going to court, to my parsonage house, and seemed to turn to other methods."—After relating the history of the year 1678.

"Things being in great disorder, of the numbers and desperate temper who were intercommuned, [Letter concerning intercommuning, similar to the 'Aqua terdictio' of the Roman law, comes] "We command and charge all our subjects, that none presume to receive supply, or intercommune with any said our rebels, nor furnish them with drink, house, harbour, or victuals, or other thing useful or comfortable; nor have any intelligence with them by writing, message, or otherwise, nor of being reputed and esteemed as such with them in the crime foresaid; nor pursued therefore with all rigour of law." Hist. of Scotland, 74.

and Temporal then in parliament assembled: the tenor of which Order followeth in *hæc verba*:

‘Ordered, by the Lords Spiritual and Temporal in parliament assembled, That the constable of his majesty’s Tower of London, his

legal; and that therefore the parliament could not sit by virtue of such an illegal act. Lord Shaftesbury laid hold on this with great joy, and he thought to work his point by it. The duke of Buckingham was for every thing that would embroil matters. The earl of Salisbury was brought into it, who was a high spirited man, and had a very ill opinion of the court. Lord Wharton went also into it. And lord Hollis writ a book for it; but a fit of the gout kept him out of the way. All the rest of the party was against it. They said, it was a subtilty; and it was very dangerous to hang so much weight upon such weak grounds. The words, ‘if need be,’ had been understood to belong to the whole act; and the long Parliament did not pretend to make annual parliaments necessary, but insisted only on a triennial parliament; if there had been need of a parliament during that long prorogation, the king by proclamation might have dissolved it, and called a new one. All that knew the temper of the House of Commons were much troubled at this dispute, that was like to rise on such a point. It was very certain the majority of both Houses, who only could judge it, would be against it. And they thought such an attempt to force a dissolution, would make the Commons do every thing that the court desired. Lord Halifax set himself much against this; and did it not without expressing great sharpness against lord Shaftesbury, who could not be managed in this matter. So, upon the first opening the session, the debate was brought on; and these lords stood against the whole House. That matter was soon decided by a question.

“But then a second debate rose, which held for two days, whether these lords were not liable to censure, for offering a debate, that might create great distractions in the subjects’ minds, concerning the legality of parliament. Lord Halifax with the rest of the party argued against it strongly. They said, if an idle motion was made, and checked at first, he that made it might be censured for it, though it was seldom, if ever, to be practised in a free council, where every man was not bound to be wise, nor to make no impertinent motion; but when the motion was entertained, and debate followed, and a question was put upon it, it was destructive to the freedom of public councils, to call any one to an account for it: they might with the same justice call them to an account for their debates and votes; so that no man was safe, unless he could know where the majority would be. Here would be a precedent to tip down so many lords at a time, and to garboul the House, as often as any party should have a great majority. It was said on the other hand, here was a design to put the

‘deputy, or deputies, shall receive the bodies of James earl of Salisbury, Anthony earl of Shaftesbury, and Philip lord Wharton, members of this House, and keep them in safe custody, within the said Tower, during his

nation into great disorder, and to bring the legality of a parliament into dispute. So it was carried to oblige them to ask pardon as delinquents; otherwise it was resolved to send them to the Tower. They refused to ask pardon; and so were sent thither. The earl of Salisbury was the first that was called on: for the duke of Buckingham went out of the House. He desired, he might have his servants to wait on him: and the first he named was his cook; which the king resented highly, as carrying in it an insinuation of the worst sort. The earl of Shaftesbury made the same demand. But the lord Wharton did not ask for his cook. The duke of Buckingham came in next day; and was sent after them to the Tower. And they were ordered to continue prisoners during the pleasure of the House, or during the king’s pleasure. They were much visited. So to check that, though no complaint was made of their behaviour, they were made close prisoners, not to be visited without leave from the king, or the House; and particular observations were made of all those that asked leave. This was much cried out on; and the earl of Danby’s long imprisonment afterwards, was thought a just retaliation for the violence with which he drove this on. Three of the lords lay in the Tower for some months; but they were set at liberty upon their petitioning the king. Lord Shaftesbury would not petition; but he moved in the King’s-bench that he might be discharged. The king’s justice, he said, was to be dispensed in that court. The court said, he was committed by an order from the House of Lords, which was a court superior to them. So they could take no cognizance of the matter. Lord Danby censured this motion highly, as done in contempt of the House of Lords; and said, he would make use of it against him next session of parliament. Yet he was often forced to make the same motion at that bar; and he complained of the injustice of the court for refusing to bail or discharge him, though in that they followed the precedent, which at that time was directed by himself.” Burnet.

“That which most interrupted the proceedings in both Houses, was an important question, ‘Whether they were any longer a legal body? and, Whether their long prorogation were not, in its true effect, a dissolution of them?’ This contest was highest in the House of Lords, where the duke of Buckingham stood up first, and argued with great appearance of reason, and with greater wit. That according to the law and constitution of parliaments, an unprecedented prorogation was null, and consequently the parliament was in truth dissolved; offering to maintain it to the face of all the judges, and desiring (as is usual in such cases)

'majesty's pleasure, and the pleasure of this House, for high contempts committed against this House: and this shall be a sufficient warrant on that behalf. J. BROWN CL. Parl.'
'To the Constable of the Tower,' &c.

that they might give their opinion in it: But this motion relished so ill with the Lords that were in the ministry; that one of them moved that the duke, for that Speech, might be called to the bar. The earl of Shaftsbury opposed this motion, as improper and extravagant; and did with courage, and sharpness of application, second and enforce the duke of Buckingham's argument: and the earl of Salisbury and the lord Wharton fell in boldly on the same side: But the majority were so warm upon them, that they were all sent prisoners to the Tower for contempt of the authority and being of the present parliament, and were to remain there during his majesty's and the House's pleasure. The same matter was debated in the House of Commons, and there too the majority resolved not to be dissolved; yet they committed none of their members for arguing the contrary. It was indeed no wonder that both Houses should agree in their own preservation and continuance: for the great Lords in the ministry could not bear to think of parting with a parliament which they had been at a prodigious expence to keep in a giving humour; and they had indeed managed them so well, that they had given the king more money than ever had been granted in a parliamentary way to all the kings of England from William the Norman to the Union of the two kingdoms: And the major part of the Commons had as good reason to desire to keep their places in the House, that by offices or pensions were so beneficial to them, and which indeed had cost them a dear purchase; for upon the death of any of the old members, few or none had been chosen to succeed them without a prodigious expence; which must have been as great a folly in them as it was a shame to the nation, if they had not known how by their votes and engagements to reimburse themselves. The duke of Buckingham, the earl of Salisbury, and the lord Wharton, petitioned the king, and were discharged; but the lord Shaftsbury was kept 13 months in prison; and for not complying with a formal recantation of his speech, all his petitions were rejected: when finding it in vain to apply longer to his majesty, he had recourse to the King's Bench, whither he was brought by a Habeas Corpus on the 27th of January next ensuing, where Mr. Williams, Mr. Wallop, and Mr. Smith, his council, argued that the Court ought to relieve him; and the earl spoke himself with great reason and eloquence for the liberty of the subject and his own discharge: yet the judges denied him redress, one of them declaring before the cause was heard, 'That the Court could not help him;' and being absent when it came to a hearing, deputed judge Jones to speak for him, that the Bench might be unanimous. So the Earl was remanded to

The earl of Shaftsbury's counsel prayed that the Return might be filed, and it was so, and Friday following appointed for debating the sufficiency of the Return, and in the mean time directions were given to his counsel to attend

prison, and staid there till another session of parliament, when his application to an inferior Court was voted a breach of privilege by the Lords, for which the Earl was to answer his contempt at the bar of the House. On the 22d of February he was accordingly brought to the bar, where he offered to acknowledge his asserting the dissolution of the parliament to be an unadvised action, and to beg their lordship's pardon for his offence in bringing his Habeas Corpus. The Lord Treasurer produced a paper which one Blaney had delivered him, pretending to give information of some words spoken by the lord Shaftsbury in the Court of King's Bench: yet Blaney being called into the House, could not affirm that what was written in that paper was really spoken by the Earl: Upon which the Lord Treasurer dropped the matter, and the House proceeded to a resolution, That the lord Shaftsbury should make his submission and acknowledgment in a form prescribed by that House. And accordingly a declaration was prepared much to the same effect with what the Earl himself had before offered. The Lord Chancellor read the words to him, and the lord Shaftsbury kneeling repeated them at the bar, and then withdrew. So the House ordered the Lords with white staffs to acquaint his majesty, that they had received satisfaction from the earl of Shaftsbury in the matter of the Habeas Corpus, and the other contempt, and prayed him to discharge the Earl from his confinement; which was done." Kennet.

Roger North gives what he calls "The Point stated on the Faction's side, and the same answered."

"As to the question, raised upon the essence of the parliament, with the *Tricum in lege*, the Faction had found out, to shew that it was legally dissolved; it stood thus: By the statute of 4 Edw. 3. cap. 14, it is enacted, 'That a parliament shall be holden every year, and more often, if need be.' Then follows the statute of 36 Edw. 3. cap. 10, for maintenance of the said Articles and statutes, and redress of diverse mischiefs and grievances, which daily happen, 'That a parliament should be holden every year, as another time was ordained by statute.' It fell out that the prorogation, last mentioned, was for a longer time than a year, viz. fifteen months. Now, said they, if the king be obliged to hold a parliament every year, a parliament ought to sit, at least (or rather to be new summoned) every year, which being made impossible by that prorogation, the prorogation itself is against those laws, and, consequently, void. Then the parliament rests without day, which is a discontinuance, and

the Judges and Attorney-General, with their exceptions to the return, and my Lord was remanded until that day; and it was said, that though the return was filed, the Court could remand or commit him to the Marshalsea at their election.

amounts to a legal dissolution. So stood the point, such as it was, on that side.

“The Answers were, that those acts have not been so understood, nor hath the usage been to regulate the holding of parliaments, upon that foot, ever since the laws were made; and it is a rule of law, that ancient Statutes are to be construed by the general usage. That the words, ‘if need be,’ go as well to the holding every year, as to the more often; and, repeated them accordingly, it runs thus: ‘A parliament shall be holden every year, if need be, or more often, if need be;’ and the king is judge of the need. That it is ridiculous to say the parliament is *sine Die*, when a day stands appointed by the prorogation. And, if the king were by law obliged to hold a parliament every year, and doth it not, but seldomer; it may be construed a misgovernment, or grievance, to be redressed in the ordinary way, by petition, but not to vacate future parliaments, and their acts. And, farther, (what is not argumentative, but express) the time of parliamentary vacation is altered by latter laws; as that called the Triennial Act, Temp. Car. 1, and 16 Car. 2, which repeals the other. It is thereby enacted, ‘That, hereafter, the sitting and holding of parliaments shall not be intermitted, or deferred, above three years;’ which amounts to an allowance of a vacation not exceeding three years. That parliament had then been continued above four years: And this question, if it should turn upon the reasoning on the other side, would avoid all the acts of parliament made after the year expired; which would make strange work with the laws of this and other parliaments. Therefore the exception shews more of impudence in moving it, than reason for any scruple.” Examen, p. 65.

He then proceeds as usual to rail against Kennet, of whose account he says:

“There needs only a perusal of this choice passage, out of a Compleat History, to frame an idea of the whole work. It is all he says observable in this whole business; touching which, he brazenly sides with a rabble-backed faction, against the whole legislative power; saying all the evil he can imagine, without any authority or warrant. One would think he had the accounts of the secret service by him, or that he wrote in a saint-like age, when no officer or pensioner appeared within St. Stephen’s walls, or when no persons sold themselves to their shirts in competitions to be chosen. All he says here, in a libellous sense, may, in some measure, fit every parliament; so that whoso will cast a stone at the best of them may use it accordingly. But it is his

On Friday the Earl was brought into Court again, and his counsel argued the insufficiency of the return.

Williams said, That the cause was of great consequence, in regard that the king was

way, to take all occasions to improve calumny. If his relation, here given, be attentively considered, it will appear, that, as in matters of greater moment, so here, one cannot gather from him any thing of the merits of the cause, or what shape it had, whereby to form a judgment; but, instead of the matter of fact (as one would expect) he glances forth his false colours. What fact he is pleased to deal out, is only in scraps, just enough to stick his slanders upon, and if those would subsist, (any more than form) without matter, we should have none at all.

“As here again: ‘The duke of Bucks argued with great appearance of reason and greater wit,—desiring (as in such cases is usual) that the judges might give their opinions, and offered to maintain it against them.’ His grace had a great mind to banter the twelve judges. But, in earnest should we not conclude the duke in the right, when they would not accept his challenge? The case must needs be obviously clear in law; and there is the cause now, why the author mentions this provocation to the judges, saying, it is usual, &c. Now he doth not know or knavishly conceals, that the judges in parliament have a standing declinatory upon record, which serves to screen them from interposing their opinions in matters of government, such as is the being of the parliament. In old time, upon the like question put to them, it was answered, that such matters were above their knowledge. And ever since it hath not been usual (though the author ignorantly, as I take it, affirms the contrary) to put questions of state to the judges. So what becomes of his grace’s improper defy to them?

“But the author says, ‘The motion relished so ill with the ministry, that one of them moved—to the bar.’ I do not remember that the lord Fretchville, that my other libellous author says moved to the bar, or Tower, was a minister of state at that time. But, to shew an instance of the author’s tacking the terms, used of late, to the affairs of that time, one of his libelling arts, I must tell him, that the word ministry was not then in use, but counsellors, or courtiers. For the king himself then took so much upon him, that the ministers had not that aggregate title, as if the government had been but a party, and the ministers swayed it as they were disposed to favour, or to frown. But, to go on: ‘The earl of Shaftesbury opposed this, and did, with courage, and sharpness of application, second and enforce the duke of Bucks’s motion, and the earl of Salisbury, and lord Wharton fell in boldly on the same side, but the majority’—Alack! to be oppressed with numbers, such champions, in

touched in his prerogative; the subject was touched in his liberty, and this Court in its jurisdiction.

1st. The cause of commitment which is returned, is not sufficient, for the general allegation of high contempts is too uncertain, for

such a cause, notwithstanding these shining colours given us here of—courage—sharp application,—fall in boldly! O, for a Tasso or Ariosto, to describe the battle, which ended in an Order of the House of Lords for the sending these four noble peers, advocates for the dissolution, to the Tower.

“Must not any one, that reads this, knowing no better, conclude, as if it were plainly expressed, that these noble patriot Lords moved a point of law, clear as the sun, on the side of the people, against this assembly, called a parliament; but that they were borne down by a majority, swayed by a corrupt ministry; and thereby a beggarly, bribed, and what is worse, dissolved parliament was kept on foot, to do the work of popery, and to enslave the nation? All which is both false and wicked libel. For, in truth, the parliament were as fierce, in all points of fears and jealousies, as the most suspicious would desire; and far enough from complying with the court, even in, what was about that time most pressed upon them, money; much less popery and slavery, which lie concealed under the author's handling of this mob-dissolution; for which he might have had more colour, if all the addresses, messages, and votes, were not, as they are, extant in print. But the true cause of this insult was, as I hinted, that the parliament, though averse enough to the court, could not be drawn to extremities, tending to pull the crown and monarchy piecemeal; but hitherto maintained its foundations with resolution. Methinks, a compleat historian might have found this, so apparent and demonstrated by what came after, and have alledged it, though couched, as only the insinuation of some people (forsooth) that he might be able, so far, to purge himself, as not concealing what all knowing people then were, and now are satisfied was the truth of the matter.

“But it is most remarkable, even to the degree of a jest, that, if any credit may be given to the letters of Mr. Coleman (of which afterwards) the whole popish interest was engaged, together with these patriots and their long train, in the good work of getting this parliament dissolved. The French were solicited to lend money on that account: and Coleman was so forward, as to have framed an instrument, in the nature of a declaration to be published for making known the king's reasons for so doing. And this was found among his papers, and published with his letters; a perusal of which will shew much of the factious exception to the parliament at that time. So strangely did papist and fanatic, or (as it stood then) the anti-court party, p—s in a quill; agreeing in all things that tended to create troubles and dis-

the Court cannot judge of the contempt, if it doth not appear in what act it consists.

2dly. It is not known where the contempts were committed, and in favour of liberty, it shall be intended they were committed out of the House of Peers.

turbances, and so to endanger the legal establishment of church and state in England. I do but touch the instances of this wonderful union, as they fell in my way, desiring they may be remembered when I come to that matter express; but here they sufficiently confute the author's invention of the papists hating this noble Earl. A new edition of his book would sell admirably, if, instead of *Compleat History*, it were titled, *Lies wrote in Water Colours*.

“After this commitment, the three Lords, Bucks, Salisbury, and Wharton, petitioned the king, with a recantation of this opinion touching the parliament's being dissolved, and were by his majesty discharged. But Shaftsbury, being a peer of more constancy, did petition indeed and more than once, but still without such a recantation of this opinion as was satisfactory, so he lay by it. Then, the parliament being adjourned (not prorogued) his lordship thought he had a fair opportunity to trouble the waters, and, perhaps, get his liberty, with a Salvo to his Dogma, which he laboured hard to preserve entire. He brought his Habeas Corpus returnable at the king's bench, whereupon he was brought up, and the return was read, which was of the Order of the House of Lords for his commitment, viz. February 6, 1678.—“To be kept in safe custody during his majesty's pleasure, and the pleasure of the House, for high contempts and misdemeanors against the House.” There was a deal of arguing by the lawyers of factious practice one after another, to shew that his lordship ought to be discharged or bailed; and they were answered by Mr. attorney general, and others of the king's council, and at length the court gave their sentences, that his lordship ought to be remanded, and not bailed nor discharged. This was done seriatim with reasons, which, being shortly expressed by the Lord Chief Justice Raiesford, I will give them in his words, taken out of print, viz. “The court hath no jurisdiction of this cause: And therefore the form of the return is not considerable. We ought not to extend our jurisdiction beyond the due limits; And the actions of our predecessors will not warrant us in such an attempt. The consequence would be very mischievous, if this court should deliver a member of the House of Peers and Commons who is committed, for thereby the business of the parliament may be retarded. For, it may be, the commitment was for evil behaviour, or indecent reflections on other members, to the disturbance of the affairs of the parliament. The commitment, in this case, is not for safe custody, but he is in execution of the judgment given by the Lords for a contempt. Therefore, if he should be bailed, he would be de-

Sdly. The time is uncertain, so that, peradventure, it was before the last Act of General Pardon.

4thly. It does not appear whether the commitment were on a conviction or accusation only.

livered out of execution. For a contempt in *Facie Curie*, there is no other judgment or execution. Therefore he ought to be remanded. I give no opinion whether it would be otherwise in case of a prorogation.

“I need not stay to shew that difference, for it is a common notion in our law, that an adjournment is a continual session, and a prorogation a vacation of parliament. Now would it not be a jest, if Westminster-hall should, sitting the parliament, turn out their prisoners for breaches of privilege and contempts? Or to bail them under their noses? And then, to what trial? There is nothing so impudent and senseless, which that faction, and their learned counsell, would not urge to the courts of justice about that time, if it was set up by them, and was to serve any turn of theirs; of which among many, as may in course be produced, this is a clear instance. It was the case of a peer, head of a party ripe for clamour, else the pretence had been refelled upon the opening; but, for the cause afore hinted, the judges thought fit to give their judgments, seriatim, after solemn argument had. I guess the earl had more reach in this business than did appear, or any, out of his cabal, thought of. And that was to try the temper of the multitude that he was to work with, whether they would swallow nonsense or no. For if not, there was no good to be done with them at present; and the fire must be a little more exasperated, to work them up to a pitch. At present his lordship made the utmost of his point; I say his, because it was not doubted but he, with his council of party-legaleians, invented this question upon the parliament, and then, what was wanting, in law and common sense, was to be made good by party. But his lordship finding that few or none came over to his side, and he had no other expedient for his liberty, his great heart condescended to petition, and thereto to recant in due form; and so, by the king's order, he was discharged. And there ended this *Ignis fatuus*, which made a great stir while it glared in our parliamentary horizon.

“But now right must be done to the author, who employs all his art, shuffling and cutting, to bring his peer off this business with honour, and to persuade his readers, that his lordship was all along in the right, and King, Lords, Commons, and Judges, all in the wrong, to oppress his lordship after this manner, as they did. We have not forgot what persecutions depended on the anger of the papists. This is a beginning, for he was kept prisoner, although by law he ought to have been bailed. And why? The author says ‘the earl spoke himself with great reason and eloquence, for the liberty of the subject and his own discharge, yet’

It cannot be denied, but that the return of such a commitment, by any other Court, would be too general and uncertain, *More. 893.* Astwish was bailed on a return, ‘quod commissus fuit per mandatum. N. Milit. Dni. Custod. Magn. Sigil. Anglie virtute cujusdem

—Note here the liberty of the subject is brought in neck and heels, as they say, that the earl might be popular, standing up for the rights of the people; although in all that which his lordship said at the hearing, there is nothing at all by him argued of the subject matter: so far from being an advocate at large for the liberty of the people, as here is counterfeited. But mark the emphasis of that ‘yet—the judges denied him redress.’ Doth not this say plainly the judges did him wrong; nay more, delivered up the liberty of the people, for which his lordship spoke so eloquently? Redress and wrong are relatives, and imply each other; the former is ever due because it supporteth the latter. Why could not the author have said what was true, viz. that the judges, upon full hearing, were of opinion that his lordship could not, in that case be bailed by law; with the short reason, that the cause was out of their jurisdiction? Or why did not he make use of the print to extract a short state from? He had it before him, or else he was poorly furnished with materials for a *Compleat History*. But with signal fraud, first he recommends the earl's speech, without a word of the matter, and then, ‘yet,’ &c. Now, to shew he had the print by him, and that he has wilfully suppressed the truth here; observe the title page of the book, and you will find this expressed, viz. “—With a speech of the worthy earl, pleading his own cause, and the liberty of the subject.” This very pathetic sentence the author has stole, and put in his book here, as I set them down before; which do vary only a little in the order of the words, but are the same conceit and sense exactly; that it might be moving in his *History*, as it was in the pamphlet's title page, coined for the selling design of the hawkers.

“But, after all, were not the judges corrupt? For the print, which the earl himself put out, says “justice Twisden was absent, but he desired justice Jones to declare, that his opinion was, that the party ought to be remanded.” Now nothing is more usual than this course, in case of an absent judge, when the opinion is solemnly given; for the public satisfaction therein is greater. But says the author, ‘one of them declaring, before the cause was heard, that the court could not help him.’ If he had declared otherwise, he had been an *Ignoramus*. But observe the insinuation. I know not whether his mother wit helps him, or some extraordinary inspiration; but, it is certain, the scandal here is notably couched: For is it not strange a judge should give his sentence before he heard the cause? The papists had great power over him, to procure this preposterous judgment! Now, to solve the riddle of this, we must note a differ-

'contemptus in curia facti,' and in that Book, that divers other persons were bailed on such general returns, and the cases have been lately affirmed in Busbel's case,* reported by the late Lord Chief Justice Vaughan, where it is expressly said that such commitment and return being too general and uncertain, the Court cannot believe in an implicit manner, that in truth the commitment was for causes particular and sufficient.

Vaughan's Reports, 140, Accord. 2 Inst. 52, 53, and 55, and the 1 Rolls. 218, and though the commitment of the jurors was for acquitting Penn and Mead, 'contra plenam et manifestam evidenciam.' It was resolved to be too general, for the evidence ought to appear as certainly to the judge of the return, as it appears before the judge authorized to commit. Rush. case. 137.

Now, this commitment being by the House of Peers will make no difference; for in all cases where a matter comes in judgment before this Court, let the question be of what nature it will, the Court is obliged to declare the law, and that without distinction, whether

ence between a trial, and a case upon record. None can declare of the one antecedently, because none can say what may, or may not, be made the case, or fact, when proved. But the other is fixed, and cannot be diversified, and may be so plain (as it was here) that it shall be ridiculous to pretend to argue it. And, in matters so prefixed, it is common practice for judges to consult one another, or put the case at their hall table, and then declare in public; that their brothers, upon putting the case, were of that opinion. I am not sure the author thought right, but, it is plain, his malice lopes at a venture, and his ignorance is no check to it, and it is a sorry thing, for his sake, to make such trite distinctions as these. But I have no hopes he will walk steady, if any thing of law comes in his way: as here, he will have another sing at this judge Twisden.—

'And, being absent when it came to an hearing, he deputed judge Jones to speak for him, 'that the court should be unanimous.' And, so, the confederacy of the judges was fortified in giving a wrong judgment, or, as the author has it, Denial of Redress. How cleverly was it patched up by the seeming unanimity? Good lack, that the judge should be so concerned! If this be not popish hunting a peer to disgrace and ruin, what is so? But, I guess, the reputation of that excellent judge will remain candid in Westminster Hall; and the sentences of the law, as diverse will, I guess, be derived from under him, will illustrate his learning and justice, against the wicked endeavours, and slanderous pen, of this foul writer to the contrary." Examen, p. 69.

For other particulars relating to this business, see 4 Cobbett's Parl. Hist. and the Appendix; also 1 Oldmixon 602.

* See this Case, ante, p. 999.

the question began in parliament or no. In the case of Geo. Binion in C. B. there was a long debate, Whether an original writ might be filed against a member of parliament, during the time of privilege: and it was urged, That it being during the session of parliament, the termination of the question did belong to the parliament: but it was resolved that an original might be filed; and Bridgman, then chief justice, said, that the Court was obliged to declare the law in all cases that came in judgment before them. H. 4, Ed. 4, Rut. 4, 7, 10, in Scacc. In debt by River v. Cousin, the defendant pleads that he was servant of a member of parliament, 'et ideo capi seu arrestari non debet,' and the Plaintiff prays judgment, and afterwards by advice of all the judges the judgment was entered. 'Videtur Baronibus, quod tale habetur Privilegium, quod Magnates,' &c. 'Et eorum familiares capi seu arrestari non debent, sed nullum habetur Privilegium, quod non debent implacitari, ideo respondeat outer.' So in Triviniard's case, a question of privilege was determined in this Court. Dyer 60 in 14 Ed. 3, in the case of sir John and sir Jeffery Stanton, which was cited in the case of the earl of Clarendon, and is entered in the Lords Journal.

An action for waste depended between them in the common-pleas, and the Court was divided, and the Record was certified into the House of Lords, and they gave direction that the judgment should be entered for the plaintiff; afterwards on a Writ of Error brought in this Court that judgment was reversed, notwithstanding the objection, that it was given by order of the House of Lords: for the Court was obliged to proceed according to the law in a matter that was before them in point of judgment. Not long since the earl of Bristol exhibited an Accusation against the earl of Clarendon to the House of Lords,* and it contained divers matters, whereof some did arise out of parliament, and it was referred to the judges to consider whether that procedure was parliamentary; and the 4th of July 1663, it was resolved by the judges, that the Lords ought not to proceed only upon an impeachment by the Commons, when the matters arise out of the House.

The construction of all acts of parliament are given to the courts of Westminster, and accordingly they are judges of the validity of acts of parliament, they have searched the rolls of parliament, Hub. 109. Lord Hunsdon's case, they have determined, whether the journal be a record, Hub. 110. When a point comes before them in judgment, they are not foreclosed by any act of the Lords, but ought to judge according to the law, by which the realm is governed, and not by the Lords: if it appears that an act of parliament be made by the king and Lords without the Commons, that act is *Felo de se*, and the Courts of Westminster ought to judge it void, 4 H. 7, 18 Hub.

* See ante, p. 304.

111, and accordingly they ought to do, if this return contain in it that which is fatal to itself. It hath been a question often resolved in this Court when a Writ of Error in parliament shall be a Supersedeas; and this Court hath determined what shall be said to be a session of parliament, 1 Rolls. 29, and if the law were otherwise there would be a failure of justice. If the parliament were dissolved, there would be no question but the prisoner should be discharged on a Habeas Corpus, and yet then the Court must examine the cause of commitment, and by consequence a matter parliamentary, and the Court may now have cognizance of the matter, as clearly as when the parliament is dissolved. The party would be without remedy for his liberty, if he could not find it here, for it is not sufficient for him to procure the Lords to determine their pleasure for his imprisonment, for before his enlargement he must have the pleasure of the king to be determined, and that ought to be in this Court, and therefore the prisoner ought first to resort hither.

Let us suppose (for it does not appear in the return, and the Court ought not to enquire of any matter out of it), that the supposed contempt was a thing done out of the House; it would be hard for this Court to remand him: suppose he were removed to a foreign prison, during the pleasure of the Lords: no doubt, but that would have been an illegal commitment against Magna Charta and the Petition; there the commitment would have been expressly illegal, and it may be this commitment may be no less; for if it had been expressly shewn, and if he be remanded, he is committed by this Court, who are to answer for his imprisonment.

But 2. The limitation of the imprisonment during the pleasures of the king and the house is illegal and uncertain; for since it ought to determine in two courts, it can have no certain period, a commitment until he shall be discharged by King's-Bench and Common Pleas is illegal; for the prisoner cannot apply himself in such a manner as to obtain his discharge. If a man be committed to further order, Coke saith, he is bailable presently, for that imports until he shall be delivered in good course of Law; and if this commitment have not that sense, it is illegal, for the pleasure of the king is that, which shall be determined according to law in his courts, as where the Stat. of Westminster, 1 chap. 15, declares that he is not replevisable, who is taken by command of the king; this does not extend to an extrajudicial command, but in his courts of justice, to which all matters of judicature are delegated and distributed. 2 Inst. 186 and 187.

Wallop, to the same purpose, cited *Bushel's case*, *Vaughan*, 137, that the return for high contempts was not sufficient, and the court that made the commitment in this case makes no difference in the case, for otherwise one may be imprisoned by the House of Peers unjustly, for a matter relievable here, and yet shall be without any manner of relief by such

a return; for on supposition that this court ought not to meddle where the person is committed by the Peers, any person at any time and for any cause may be subject to a perpetual imprisonment at the pleasure of the Lords.

And the law is otherwise, for the House of Lords is the supreme court, yet their jurisdiction is limited by the common and statute-law, and their excises are examinable in this court; for there is a great difference between the errors and excise in and of a court, between an erroneous proceeding with jurisdiction, which is void and a mere nullity, 4 H. 7. 18. 6. in the parliament the king would have one attained of treason, and lose his lands, and the Lords assented, but nothing was said of the Commons; wherefore all the justices held clearly that it was no act, and he was restored to his land; and without doubt in the same case if the party had been imprisoned, the justices might have made the like resolution that he ought to have been discharged.

It is a solecism that a man shall be imprisoned by a limited jurisdiction, and it shall not be examinable, whether the cause were within the jurisdiction or not. If the Lords without the Commons should grant a tax, and one that refused to pay it should be imprisoned, the tax is void; but by a general commitment the party shall be remedyless, if so be the Lords should award a *Capias* for treason or felony.

By these instances it appears that their jurisdiction was restrained by the common-law, and it is also restrained by divers acts of parliament, 1 H. 4, c. 14, no appeals shall be made, or any ways pursued, or where a statute is made a power is implicitly given to this court, by the fundamental institution, which makes the judges expositors of act of parliament; and peradventure if all this case appeared upon the return, this might be a case in which they were restrained by the stat. 4 H. 8. c. 8. That all the suits, usements, and condemnations, &c. many time from henceforth, at any time to be put or had upon any members for any bill speaking or reasoning of any matters concerning the parliament to be communed or treated of, shall be utterly void and of no effect; now it does not appear, but this is a correction and punishment imposed upon the earl, contrary to the statute. There is no question now made of the power of the Lords, but it is only urged that it is necessary for them to declare by virtue of what power they proceed, otherwise the liberty of every Englishman shall be subject to the Lords, whereof they may deprive any of them against an act of parliament, but no usage can justify such a proceeding. *Elsmore's Case of the Post-Nati*. 19.* The duke of Suffolk† was impeached by the Commons of high-treason, and misdemeanors, the Lords were in doubt whether they should proceed upon such a general impeachment to imprison the duke, and the advice of the judges

* See this Case, *ante*, vol. 2, p. 559.

† *Ibid.* vol. 1, p. 371.

being demanded, and their resolution given in the negative, the Lords were satisfied. This case is mentioned with design to shew the respect given to the judges, and that the judges have determined the highest matters in parliament. At a Conference held between the Lords and the Commons, 3d April, 4 Car. concerning the Right and Privilege of the Subject, it was declared and agreed, That no freeman ought to be committed or restrained by commitment of the king or privy-council, or any other (in which the House of Peers is included) unless some cause of commitment, restraint, or detainer be set forth, for which by law he ought to be committed, &c.

Now if the king, who is the head of the parliament, nor the privy-council, which is a court of state, to which secrecy is so necessary, may not imprison without shewing cause, *a fortiori*, the Lords in parliament cannot, which are a court of law as well as a court of state, and therefore ought not to proceed in an illegal manner. It is true in 1 Rolls. 192. Rushworth's Case, Coke is of opinion that the privy-council may commit without shewing cause, but in his more mature age he was of another opinion, and accordingly the law is declared in the Petition of Right.

Smith argued to the same purpose, and said, A judge cannot make a judgment unless the fact appears to him, and on an Habeas Corpus, the judge can only take notice of the fact returned; it is lawful for any subject that finds himself aggrieved by any sentence or judgment to petition the king in an humble manner for redress, and where the subject is restrained of his liberty, the proper place for him to apply himself unto is this court, which hath the supreme power as to this purpose, over all courts, and an Habeas Corpus issuing hence, the king ought to have an account of his subject, Rolls. Hab. Corp. 64. Witherly's Case; and though the commitment be by the Lords, yet if it be illegal, this court is obliged to discharge the prisoner, as well as if he had been illegally imprisoned by any other court; the House of Peers is a high court, but the King's bench hath ever been intrusted with the liberty of the subject, and if it were otherwise in case of imprisonment by the Peers, the power of the king was less absolute than the power of the Lords.

It does not appear but that this commitment was for breach of the privilege, but nevertheless if it were, this court might give relief, as appears in sir George Bigmore's case before cited, and Mich. 12 Ed. 4. Rut. 20. for the court which has power to judge what is privilege, has also power to judge what is contempt of privilege;* if the judges may judge of

* See the Case of Crosby, A. D. 1771, *infra*. See also the Notes to the Case of Dr. Shirley and sir John Fagg, *ante*, p. 1122.

Lord Clarendon has in the 4th book of his History of the Rebellion, some observations upon this subject which may perhaps be found to de-

an act of parliament, *a fortiori*, they may judge of an Order of the Lords, 20 Edward Butcher's case, where he in reversion brought an action of waste and died before judgment,

serve attention. After relating the transactions respecting the Five Members, and the answer of Charles the First, he proceeds:

"This gave them new offence and trouble, and if the king's counsel had had the courage to have insisted upon the matter of law, and the Lords would have given them reasonable countenance, they would have been much puzzled to have procured a resolution that would have served their purposes to all parts, and been content to have suspended their judgment, and so the king might have suspended his prosecution. For if the judges had been called to deliver their opinions in point of law, which they ought to have been, they could not have avoided the declaring, that by the known law which had been confessed in all times and ages, no privilege of parliament could extend in the case of treason; but that every parliament-man was then in the condition of every other subject, and to be proceeded against accordingly. In the next place, as they would never have ventured themselves upon the House of Peers under an impeachment, and thereby made them their judges, which indeed was incongruous, every subject being to be tried for his life *per parces, vel per legem terræ*, to both which the Lords and the impeachment were directly opposite; so they would less have trusted an indictment at law, and a well chosen sober jury, who had been bound to follow their evidence of fact, and were not judges of the law, which was severe in any conspiracy against the crown, or the persons of king or queen.

"But having shut the doors against any mention of law, they made no scruple of resolving and answering his majesty, that they were first to see the evidence he had to prove the guilt, before they could give any direction for the manner of the prosecution and proceeding, which they grounded upon a maxim they had but lately established, though never till then heard of, that no member of parliament for what offence soever, could be arrested or proceeded against but by the consent of that House of which he was a member; and then they said they could not give or deny their consent by any other measure than the knowledge of the crime and proof, upon which such member stood accused. Which conclusion had been reasonable had the premises been just; whereas the argument was to be inverted, that their consent was not to be asked, because they had no cognizance of the crime of which their members were accused, nor were judges whether their accusation were valid in law, or sufficiently proved in fact.

"It is not to be believed how many sober, well-minded men, who were real lovers of the peace of the kingdom, and had a full submission and reverence to the known laws, were

and his heirs brought an action for the same waste, and the king and the lords determined that it did lie, and commanded the judges to give judgment accordingly for the time to come; but by Ryley, 39, it appears that it is only an order of the king and the lords, and that was the cause the Judges conceived that they were not bound by it, but 39, 3, 13, and ever since have judged the contrary if it be admitted. For that for breach of privilege may commit, yet it ought to appear on the commitment that that was the cause, for otherwise they may be

imposed upon and had their understandings confounded and so their wills perverted, by the mere mention of Privilege of Parliament; which instead of the plain and intelligible notion of it, was by the dexterity of those bou-tefeus and their under agents of the law, and the supine sottishness of the people, rendered such a mystery as could be only explained by themselves, and extended as far as they found necessary for their occasions, and was to be acknowledged a good reason for any thing that no other reason could be given for. "We are, say they, and have been always confessed, the only judges of our own privileges; and therefore whatsoever we declare to be our privilege, is such: otherwise whosoever determines that it is not so, makes himself judge of that whereof the cognisance only belongs to us." And this sophistical riddle perplexed many, who, notwithstanding the desperate consequence they saw must result from such logic, taking the first proposition for true, which, being rightly understood, is so, have not been able to wind themselves out of the labyrinth of the conclusion: I say the proposition rightly understood: they are the only judges of their own privileges, that is, upon the breach of those privileges, which the law hath declared to be their own, and what punishment is to be inflicted upon such breach. But there can be no privilege, of which the law doth not take notice, and which is not pleadable by and at law.

"The truth and clearness of this will best appear by instance: If I am arrested by process out of any court, I am to plead in the court, that I am a member of parliament, and that by the privilege of parliament my person ought to be free from arrests. Upon this plea the judge is bound to discharge me; and if he does not he is a criminal, as for any other trespass against the law: but the punishing the person who hath made this infringement is not within his power, but proper to that jurisdiction against which the contempt is; therefore that House of which I am a member, upon complaint made of such an arrest, usually sends for the persons culpable, the party at whose suit the arrest is made, and the officers which executed it, and commits them to prison till they make acknowledgment of their offence. But that House never sends, at least never did till this parliament, any order to the court out of which the process issued, to stay the proceed-

called a breach, which is only a refusal to answer to a matter whereof the House of Lords is restrained to hold plea by the stat. of the 1st of Hen. 4, and for a contempt committed out of the House they cannot commit,* for the word appeal in the statute extends to all misdemeanors, as it was resolved by the judges in the earl of Clarendon's Case, July 1663. If the imprisonment be not lawful, the court cannot remand him to his wrongful imprisonment, for that would be an act of injustice, to imprison

ings at law, because the privilege ought to be legally pleaded. So after the dissolution of parliament if I am arrested within the days of privilege, upon any plea of privilege the court discharges me, but then the party that arrests me escapes punishment till the next parliament, the judge having no more power to commit the man that sued or arrested me, than he hath to imprison a man for bringing an action at law, when he hath no good title; neither is he judge of the contempt.

"Again; If a man brings an information or an action of the case, for words spoken by me, and I plead that the words were spoken by me in parliament when I was a member there, and that it is against the privilege of parliament that I should be impleaded in any other place for the words I spoke there; I ought to be discharged from this action or information, because this privilege is known and pleaded at law, but that judge can neither punish nor examine the breach of privilege, nor censure the contempt. And this is the true and proper meaning of the old received axiom, that they are judges only of their own privileges.

"And indeed these two, of freedom from arrests for their persons (which originally hath not been of that latitude to make a parliament a sanctuary for bankrupts, where any person outlawed hath been declared incapable of being returned thither a member) and of liberty of speech, were accounted their chiefest privileges of parliament: For their other, of access to the king and correspondence by conference with the Lords, are rather of the essence of their councils, than privileges belonging to them. But that their being judges of their privileges should qualify them to make new privileges, or that their judgment should create them such, as it was a doctrine never before now heard of, so it could not but produce all those monstrous effects we have seen; when they have assumed to swallow all the rights and prerogatives of the crown, the liberties and lands of the church, the power and jurisdiction of the peers, in a word, the religion, laws and liberties of England, in the bottomless and insatiable gulph of their own privileges. And no doubt these invasions, on pretence of privilege, will hereafter be judged to have been the most unparalleled and capital breach of those privileges, that had ever yet been attempted."

* See Flower's Case A. D. 1799, *infra*, and 6 Term Reports.

him, *de novo* Vaughan, 156. It does not appear whether the contempt was a voluntary act, or an opinion, or an inadvertency, and he has now suffered five months imprisonment already; false imprisonment is not only where the commitment is unjust, but where the imprisonment is too long, 2 Inst. 53. In this case if this court cannot give remedy, peradventure, the imprisonment shall be perpetual; for the king, as the law is now taken, may adjourn the parliament for 10 or 20 years.

But all this is said on supposition that this session has continuance. I conceive that by the king's giving his royal assent to several laws which have been enacted, the session is determined, and then their order for the imprisonment is also determined,* Brook parliament, 86. Every session in which the king signs bills is a day of itself, a session of itself, 1 Car. 1, 7 †. A special act is made, that the giving the royal assent to several bills, shall not determine the session. (It is true it is there said to be made for the avoiding all doubts.) In the stat. 16 Car. 1, there is a proviso to the same purpose, and also 12 Car. 1, 2; 22 and 23 Car. 2, 2, 1, 11, Ro. 2, No. 12.

By the opinion of Coke, 4 Inst. 27, the royal assent does not determine; but the authority on which he relies, does not warrant his opinion; for first in the parliament, Roll. 1 H. 7. it appears that the royal assent was given to the act, for the reversal of the attainder of the members of parliament, the same day it was given to the other bills; and the same year the same parliament assembled again, and then it is probable, that the members which had been attainted were present, and not before, 8 R. 2, No. 13, is only a judgment in case of Treason, by virtue of a power reserved to them on the statute, 25 Ed. 3, Rot. parl. 7 H. 4, No. 29, is not an act of parliament, 14 Ed. 3, N. 789. The act is first entered on the roll, but on condition the king will grant their other petitions; the inference my lord Coke makes, that the

* It might be worth while to endeavour to ascertain on what principle this doctrine and the correspondent practice rest. Note the diversity between proceedings of judicature and proceedings of legislation as to the effects wrought on them by determination of a session of parliament, which distinction is very well set forth by Mr. Percival in his able tract entitled 'A Review of the Arguments in favour of the continuance of Impeachments, notwithstanding a dissolution, &c.' mentioned in a note to vol. 2, p. 1446 of this Collection. On the point of the continuance of Impeachments, see in addition to the articles referred to in that Note, Mr. Selden's Speech cited in a Note to lord Clarendon's Case, ante, p. 351. See in Crosby's Case, A. D. 1771, the observations on sir Fletcher Norton's Paper Writing and on the omission of the addition of *Speaker* and on his *Double Capacity*.

† As to this matter, see Blackstone's Commentaries, Book 1, ch. 2, s. 7.

act for the attainder of queen Catherine, 33 H. 8, was passed before the determination of the session, yet it was on a judgment given against her by the commissioners of Oyer and Terminer, and the subsequent act is only an act of confirmation; but Coke ought to be excused, for all his notes and papers were taken from him, so that this book did not receive his last hand, but it is observable he was one of the members of parliament, 1 Car. 1, when the special act before-mentioned was made; and no instance can be given where an act was passed, and afterwards the parliament did proceed in that session, only where there was a precedent agreement between the king and the Houses; so I conclude that the order is determined with the session, and the earl of Shaftsbury ought to be discharged.

Eyres argued to the same effect; That the warrant is not sufficient, for it does not appear that it was made by the jurisdiction is desired in the House of Peers; for that is 'coram Rege in parlamento,' so that the king and the Commons are present in supposition of law, and the Writ of Error in parliament is 'Inspecto Recordo nos consilio et advisamento spiritualium et temporalium, et communitatum in parlamento predict existent', &c.' it would not be difficult to prove that anciently the Commons did assist there, and now it shall be intended that they were present; for, there can be no averment against the record. The Lords do several acts as a distinct house, as the debating bills, the enquiring of breaches of privileges; and the warrant in this case being by the Lords spiritual and temporal, cannot be intended otherwise, but that it was done by them in their distinct capacity, and then the commitment being during the pleasure of the king and the House of Peers, it is manifest that the king is principal, and his pleasure ought to be determined in this Court.

If the lords should commit a great minister of state, whose advice is necessary for the king and the realm; it cannot be imagined that the king shall be without remedy for his subject, but that he may have him discharged by his writ out of this court.

This present recess is not ordinary adjournment; for it is entered in the journal that the parliament shall not be assembled at the day of adjournment, but adjourned or prorogued to another day, if the king do not signify his pleasure by proclamation.

Some other exceptions were made to the return.

1. That no commitment is returned, but only a warrant to the constable to receive him.

2. The Return does not answer the mandate of the writ; for that is to have the body of A. E. of S. and the return of the warrant is for the imprisonment of A. Ashley E. of S.

Serjeant *Maynard* argued to maintain the return; The House of Lords is the supreme court of the realm; it is true this court is superior to all courts of ordinary jurisdiction. If

this commitment had been by any inferior court, it could not have been maintained: but the commitment is by a court that is not under the controul of this court; and that court is in law sitting at this time and therefore the expressing the contempt particularly, is a matter that continues in the deliberation of that court: it is true, this court ought to determine what the law is in every case that comes before them, and in this case the question is only whether this court can judge of a contempt committed in parliament during the same session of parliament, and discharge one committed for such contempt. When a question of privilege ariseth in an action depending in this court, the court may determine it; but now the question is, whether the Lords have capacity to determine their own privileges, and whether this court can controul their determination, and discharge during their session a Peer committed for contempt. The Judges have often demanded what the law is, and how a statute should be expounded of the lords in parliament, as on the statute of amendments, 40 Ed. 3. 34. 6. 8. Co. 157 158. a fortiori. The Court ought to demand their opinion, when a doubt ariseth on an order made by the House of Lords now sitting.

As to the determination of the imprisonment, doubtless the pleasure of the king is to be determined in the same court where the judgment was given.

As to the determination of the session, the opinion of Coke is good law, and the addition of provisoes in many acts is only in majorem cautelam.

Sir William Jones, (Att. Gen.) To the same effect, as to the uncertainty of the commitment, it is to be considered that this case differs from all other cases in two circumstances. 1. The person which is committed is a member of the House by which he is committed (I do not take upon me to say that the case would be different if the person committed were not a peer). 2. The court that does commit is superior to this court, and therefore if the contempt had been particularly shewn, of what judgment soever this court should have been as to the contempt, yet they would not have discharged the earl, and thereby take upon them a jurisdiction over the House of Peers.

The judges in no age have taken upon them the judgment of what is 'Lex et consuetudo parliamenti'; but here the attempt is to engage the judges to give their opinion in a matter whereof they might have refused to have given it, if it had been demanded in parliament. It is true, if a writ be brought where privilege is pleaded, the court ought to judge of it as an incident to the suit whereof the court was possessed; but this will be no warrant for this court to assume a judgment of an original matter arising in parliament, and that which is said of the judges power to expound statutes, cannot be denied.

But it is not applicable to this case; by the

same reason that this commitment is questioned every commitment of the House of Commons may be likewise questioned in this court. It is objected that there would be a failure of justice if the earl should not be discharged; but the contrary is true; for, if he be discharged; there would be a failure of justice for offences in parliament, and therefore the earl would be discharged from all manner of punishment for his offence, if he be discharged (for he must be discharged or remanded; for the court cannot bail but where they have jurisdiction of the matter), and so delivered out of the hands of the Lords, who only have power to punish him.

It is objected, that the contempt is not said to be committed in the House of Peers, but it may well be intended to be committed there; for it appears he is a member of that House, and that the contempt was against the House; and besides, there are contempts whereof they have cognizance, though they are committed out of the House. It is objected, that it is possible this contempt was committed before the general pardon; but surely such injustice shall not be supposed in the supreme court, and it may well be supposed to be committed during the session in which the commitment to prison was.

It would be great difficulty for the Lords to make their commitments so exact and particular, when they are employed in the arduous affairs of the realm; and it has been adjudged on a return out of Chancery of a commitment for a contempt against a decree, that it was good, and yet the decree was not shown.

The Limitation of the imprisonment is well, for if the king or the House determine their pleasure he shall be discharged, for then it is not the pleasure of both that he should be detained, and the addition of those words 'during the pleasure,' is no more than was before implied by the law; for if those words had been omitted, yet the king might have pardoned the contempt, if he had but expressed his pleasure under the broad seal. If a judgment be given in this court, that one shall be imprisoned during the king's pleasure; his pleasure ought to be determined by pardon, and not by any act of this court, so that the king would have no prejudice by the imprisonment of a great minister, because he could discharge him by a pardon. The double limitation is for the benefit of the prisoner, who ought not to complain of the duration of his imprisonment, since he has neglected to make application for his discharge in an orderly way.

I confess by the determination of the session, the orders made the same session are discharged, but I shall not affirm whether this present order will be discharged or no, because it is a judgment. But this is not the present case, for the session continues notwithstanding the royal assent given to several bills, according to the opinion of Coke, and all the judges. Hutton 61. 62. Every proviso in an act of parliament is not a determination of what was the

law before: for they are often added for the satisfaction of those that are ignorant of the law.

Turner, (Solicitor Gen.) To the same effect, in the great case of Mr. Selden, 5 Car. 1. the warrant was for notable contempt committed against us and our government, and stirring up sedition: and although that be almost as general as that in our case, yet no objection was made to it for that clause in any of the arguments, Rushworth's Collections. 18, and 19, in the Appendix. But I agree that this return could not have been maintained if it were out of an inferior court, but during the session this court can take no cognizance of the matter, and the inconvenience would be great if the law were taken otherwise; for this court might judge one way, and the House of Peers another; which doubtless would not be for the advantage and benefit of the subject. For the avoiding of this mischief, it was agreed by the whole court in the case of Barnardiston and Soame, that the accord for the double return could not be brought in this court until the parliament had determined the right of election, lest there should be a difference between the judgments of the courts.

When a judgment of the Lords comes to this court, though it be of a reversal of a judgment of this court, the court is obliged to execute it; but their judgment was never examined or corrected here. In the case of the lord Hollis, it was resolved that this court had no jurisdiction of a misdemeanor committed in parliament; when the parliament is determined, the judges are the expositors of the acts, and are intrusted with the lives, liberties, and fortunes of the subject, and if the session were determined, the earl might apply himself to this court, for the subject shall not be without a place where he may resort for the recovery of his liberty, but this session is not determined: For the most part the royal assent is given the last day, as with Plowden, Partridge's Case; yet the giving the royal assent does not make it the last day of parliament without a subsequent resolution or prerogative, and the court judicially takes notice of prorogation and adjournments of parliament. 'Cro. Jac. 111. Ford versus Hunten,' and by consequence no order is discontinued, but remains as if the parliament were actually assembled. Cro. Jac. 324. Sir Chr. Hauden's Case, so that the earl ought to apply himself to the Lords, who are his proper judges.

It ought to be observed, That this attempt is *prima impressio*, and though imprisonment upon contempt hath been frequent by the one and the other House, till now no person ever sought enlargement here: The court was obliged in justice to grant the Habeas Corpus, but upon the whole matter being disclosed, it appears upon the return, that the cause belongs 'ad aliud examen'; they ought to remand the party.

As to the limitation of the imprisonment, the king may determine his pleasure by a pardon

under the Great Seal of England, as in the case of Reinger and Flagossa, Plowden 20.

As to the exception that no commitment is returned, the constable can only shew what concerns himself, which is the warrant to him directed; and the writ does not require him to return any thing else.

As to your exception, that he is otherwise named in the commitment than in the writ: The writ requires to have the body of A. earl of 'S. quocunque nomine censeatur' in the commitment:

After this, my lord Shaftsbury made a speech; the substance thereof followeth:

"My lords; I did not intend to have spoken one word in this business, but something hath been objected and laid to my charge by the king's counsel, Mr. Attorney and Mr. Solicitor, that enforceth me to say something for your better satisfaction. They have told you that my counsel in their arguments said, that this court was greater than the House of Peers, which I dare to appeal to your lordships and the whole court, that it was never spoken by them, I am sure was not by any directions of mine. What is done by my counsel, and by me, is, that this is the most proper court to resort unto, where the liberty of the subject is concerned. The Lords House is the supreme house of judicature in the kingdom; but yet there is a jurisdiction that the Lords House does not meddle with. The king's counsel hath mentioned, as a wonder, that a member of the Lords House should come hither to diminish the jurisdiction of the Lords. I acknowledge them to be superior to this, or any other court, to whom all appeals and writs of error are brought; and yet there are jurisdictions that they do not challenge, and which are not natural to them, or proper for them. They claim not to meddle in original causes, and so I might mention in other things; and I do not think it a kindness to any power or body of men, to give them such powers that are not natural or proper to their constitution. I do not think it a kindness to the Lords to make them absolute and above the law, for so I humbly conceive this must do, if it be adjudged that they by a general warrant, or without any particular cause assigned, do commit me, or any other man, to a perpetual and indefinite imprisonment: and, my lords, I am not so inconsiderable a person, but what you do in my case, must be law for every man in England.

"Mr. Attorney is pleased to say, I am a member of the Lords House, and to lay weight on the word member. It is very true, I am one of them, and no man hath a greater reverence or esteem for the Lords, than myself: but, my lords, I hope my being a peer, or a member of either House, shall not lose my being an Englishman, or make me to have less title to Magna Charta and the other laws of English liberty.

"My opinion is not with one of my counsel, who argued very learnedly, that the passing

an act by the king's royal assent can make a sessions, because the usual proviso was not in it. It was without any instruction of mine to mention that point.

"The king's counsel tells your lordship of the laws and customs of parliament; and if this was so, I should submit: but this case of mine is *prime impressionis*, and is a new way, such as neither Mr. Attorney nor Mr. Solicitor can shew any precedent of, and I have no other remedy nor place to apply to than the way I take.

"Mr. Attorney confesseth that the king's pleasure may release me without the Lords. If so, this court is *coram rege*. This court is the proper place to determine the king's pleasure. This court will, and ought to judge of an act of parliament void, if it be against Magna Charta, much more may judge an order of the house, that is put in execution to deprive any subject of his liberty. And if this order of commitment be a judgment, as the king's counsel affirms, then it is out of the Lords hands, and properly before your Lordships, as much as the acts which were lately passed, which I presume you will not refuse to judge of, notwithstanding that the king's attorney general saith that this parliament is still in being. I take it something ill that Mr. Attorney tells me I might have applied elsewhere.

"My lords, I have not omitted what became my duty towards the king; for besides the oath of allegiance I took as a peer, or an Englishman, there is something in my breast that will never suffer me to depart from the duty and respect that I owe him; but I am here before him, he is always supposed to be here present, and he alloweth his subjects the law.

"My lords, they speak much of the custom of parliament; but I do affirm to you, there is no custom of parliament that ever their members were put out of their own power; and the inconveniences of it will be endless.

"Mr. Attorney was pleased easily to answer the objection of one of my counsel; if a great minister should be so committed, he hath the cure of a pardon, a prorogation, or a dissolution; but if the case should be put, why forty members, or a greater number, may not as well be taken away without remedy in any of the king's courts, he will not so easily answer; and if in this case there can be no relief, no man can foresee what will be hereafter.

"I desire your lordships well to consider what rule you make in my case, for it will be a precedent that in future ages may concern every man in England.

"My lords, Mr. Attorney saith you must either release or remand me; I differ from him in that opinion. I do not insist upon a release: I have been a prisoner above five months already, and come hither of necessity, having no other way to get my liberty, and therefore am very willing to tender your lordships bail, which are in or near the court, good

as any are in England, either for their quality or estate, and I am ready to give any sum or number.

"My lords, this court being possessed of this business, I am now your prisoner."

The court delivered their Opinion *seriatim*.*

Sir Tho. Jones, Justice. Such a commitment by an ordinary Court of Justice, would have been ill and uncertain; but the case is different when it comes before this High Court, to which so much respect has been paid by our predecessors, that they have deferred the determination of doubts conceived on an act of parliament, until they have received the advice of the Lords: and now, instead thereof, it is demanded of us to control the judgment of all the Peers, given on a member of their own House, and during the continuance of the same session. The cases where the Courts of Westminster have taken cognizance of privilege, differ from this case: for in those it was only an incident to the case before them, which was of their cognizance; but the direct point of the matter is now the judgment of the Lords.

The course of all Courts ought to be considered, for that is the law of the Court, Lane's Case, 2 Rest. and it has not been affirmed. That the usage of the House of Lords has used to express the matter more particularly on commitments for contempts, and therefore I shall take it to be according to the course of parliament. 4 Inst. 50. It is said that the judges are assistants to the Lords, to inform them of common law; but they ought not to judge of any law, custom, or usage of parliament.

The objection as to the continuance of the imprisonment, has received a plain answer, for it shall be determined by the pleasure of the king, or of the Lords: and if it were otherwise, yet the king could pardon the contempt under the great seal, or discharge the imprisonment under the privy seal.

I shall not say what would be the consequence (as to this imprisonment) if the session were determined, for that is not the present case: but as the case is, the Court can neither bail nor discharge the Earl.

Wild, Justice. The return, no doubt, is illegal; but the question is a point of jurisdiction, Whether it may be examined here? This Court cannot meddle with the transactions of the most High Court of Peers in parliament during the session, which is not determined; and therefore the certainty or uncertainty of the return is not material, for it is not examinable here: but if the session had been determined, my opinion would be, that he ought to be discharged.

Rainsford, Chief Justice. This Court has no jurisdiction of the cause, and therefore the form of the return is not considerable. We

* See the Case of Lord Danby, A. D. 1682, and of Brass Crosby, A. D. 1771, *post*.

† This was the Case afterwards of the earl of Danby. See his Case, A. D. 1682, *post*.

ought not to extend our jurisdiction beyond its due limits, and the actions of our ancestors will not warrant us in such an attempt.

The consequence would be very mischievous if this Court should deliver a member of the House of Peers and Commons who are committed, for thereby the business of parliament may be retarded; for it may be the commitment was for evil behaviour, or indecent reflections on other members, to the disturbance of the affairs of parliament.

The commitment in this case is not for safe custody, but he is in execution of the judgment given by the Lords for the contempt; and therefore if he should be bailed, he would be delivered out of execution; for a contempt *in facie curiæ* there is no other judgment or execution.

This Court has no jurisdiction, and therefore he ought to be remanded. I deliver no opinion whether it would be otherwise in case of a prorogation.

Twissden, Justice, was absent, but he desired justice Jones to declare that his opinion was, That the party ought to be remanded.

So the Earl was remanded to prison, and staid there till another session of parliament; when his application to an inferior Court was voted a breach of privilege by the Lords, for which the Earl was to answer his contempt at the bar of the House.

On the 29d of February he was accordingly brought to the bar, where he offered to acknowledge his asserting the dissolution of the parliament to be an unadvised action, and to beg their lordships pardon for his offence in bringing an Habeas Corpus.*

Upon which the House proceeded to a resolution, That the lord Shaftsbury should make his submission and acknowledgment in a form prescribed by that House; and accordingly a declaration was prepared for that purpose. The Lord Chancellor read the words to him, and the lord Shaftsbury, kneeling, repeated them at the bar, and then withdrew. So the House ordered the Lords with white staves to acquaint his majesty, That they had received satisfaction from the earl of Shaftsbury, in the matter of the Habeas Corpus, and the other contempt, and prayed him to discharge the Earl from his confinement, which was done.

Mr. Hatsell has, in his valuable Work, vol. 2, Appendix, No. 5, collected the Entries concerning this business to be found in the written Journal of the Lords. Notwithstanding the Order of November, 13th 1680, they are still legible, and are as follow :

February 15, 1677.

It was moved, That this House would consider, Whether this parliament be not dis-

* "When he saw an army raised he had no mind to lie longer in prison." Burnet.

solved, because the prorogation of this parliament for 15 months is contrary to the statute of 4 Ed. 3, and 36 Ed. 3. And after debate thereof, the question being put, Whether this debate shall be laid aside, it was resolved in the affirmative.

The duke of Bucks, the earl of Sarum, the earl of Shaftsbury, and the lord Wharton were charged, for proposing, asserting, and maintaining that this parliament is dissolved.

It was moved, That the question might be put, for adjourning the debate of this business till to-morrow morning, at ten of the clock.

The question being put, Whether this question shall be put, it was resolved in the affirmative.

Then the question being put for adjourning the debate of this business till to-morrow morning, at ten a clock, it was resolved in the affirmative.

February 16, 1677.

The House, according to the resolution yesterday, resumed the debate, touching the charge of the duke of Bucks, earl of Sarum, earl of Shaftsbury, and the lord Wharton, for proposing, asserting, and maintaining that this parliament is dissolved. And for the method of proceeding in the business, it was moved that the said four Lords should withdraw. And after the said Lords had spoken in their defence, the earl of Sarum, earl of Shaftsbury, and the lord Wharton denied the charge; after debate the question being put, Whether the duke of Bucks, earl of Sarum, earl of Shaftsbury, and the lord Wharton shall withdraw, it was resolved in the affirmative. Upon this the aforesaid Lords withdrew; and the House took into consideration the nature of the offence of these Lords; and first concerning the duke of Bucks, upon debate, the House was of opinion, that he was guilty of proposing, asserting, and maintaining that this parliament is dissolved, and gave this Judgment upon him, that he should be brought to the bar of this House, and, upon his knees, should make his acknowledgment in these words, viz.

"I do acknowledge, that my endeavouring to
"maintain that this Parliament is dissolved,
"ed, was an ill-advised action, for which
"I humbly beg the pardon of the King's
"Majesty, and of this most honourable
"House."

After this, the House commanding the gentleman Usher of the Black Rod to bring in the duke of Bucks to the bar, to receive this judgment, the gentleman Usher gave the House an account that he had sought for the duke of Bucks in all the rooms belonging to this House, but could not find him. And the House being informed that one Edward Cranfield did see the duke of Bucks go towards the water side lately, the House called the said Mr. Cranfield in, and upon his oath he declared he did see the duke of Bucks, about half an hour before, go towards the water side, but did not see

him take water. The House took this as a great contempt, that he should thus absent himself without leave of the House, when he was to expect the pleasure of this House; and made this ensuing Order, viz.

Ordered, by the Lords spiritual, and temporal in parliament assembled, That the gentleman Usher of the Black Rod attending this House, shall forthwith attach the person of George duke of Bucks, and bring him in safe custody to the bar of this House, to-morrow, at ten of the clock in the forenoon, and this shall be a sufficient warrant on that behalf:

To the Gentleman Usher of the Black Rod attending this House, his Deputy and Deputies; and to all Mayors, Justices, and other his Majesty's officers, to be aiding and assisting in the execution hereof.

Next the House took into consideration the offence of the earl of Sarum; and considering that his lordship before his withdrawing had denied, upon his honour, his asserting and maintaining that this parliament is dissolved, did order that the earl of Sarum shall be called to his place, and that the Lord Chancellor shall say to him as followeth:

“ My Lord of Salisbury;

“ Since your withdrawing, the House hath considered of your lordship's demeanor in this place; and, though they do not find that your lordship hath positively asserted, and maintained, that the parliament is dissolved, and therein give credit to your lordship's disclaimer upon your honour, yet they do observe your lordship did assert and maintain that this prorogation is illegal; at which the House have taken very great offence, and commanded me to reprehend your lordship for it; and to let you know they look upon it not only as an offence to the House, but a great offence against the king; and therefore they require your lordship to ask pardon of the king's majesty, and pardon of this House.”

His lordship being in his place, the Lord Chancellor read the paper unto him, but his lordship refusing to make the said submission, he was commanded to withdraw; and then the House taking this as a contempt to his majesty and this House, ordered that he should be brought to the bar as a delinquent, and committed to the Tower of London during the pleasure of the king and this House; and accordingly his lordship was brought to the bar, and kneeled and received the said sentence.

After this the House took into consideration the offence of the earl of Shaftesbury; and upon debate, the House was of opinion that he was guilty of asserting and maintaining that this parliament is dissolved, and gave this judgment upon him: That he should be brought to the bar of this House, and upon his knees, should make his acknowledgment in these words, viz.

“ I do acknowledge, that my endeavouring to maintain that this parliament is dissolved,

was an ill-advised action, for which I humbly beg the pardon of the king's majesty, and of this most honourable House.”

His lordship being accordingly brought to the bar, the Lord Chancellor having read the said acknowledgment to him, and required him to make it at the bar, which his lordship refused to do, thereupon he was commanded to withdraw; and then the House taking this as a contempt to his majesty and this House, ordered that he shall be brought to the bar as a delinquent, and committed to the Tower of London during the pleasure of the king and this House; and accordingly his lordship was brought to the bar, and kneeled, and received the said sentence.

Then the House took into consideration the offence of the lord Wharton; and considering that his lordship, before his withdrawing, had denied upon his honour his asserting and maintaining that this parliament is dissolved, did order that the lord Wharton shall be called to his place, and that the Lord Chancellor shall say to him as followeth:

“ My lord Wharton,

“ Since your withdrawing, the House hath considered of your lordship's demeanor in this place; and though they do not find that your lordship hath positively asserted and maintained, that this parliament is dissolved, and therein give credit to your lordship's disclaimer upon your honour, yet they do observe your lordship did assert and maintain that this prorogation is illegal; at which the House hath taken very great offence, and commanded me to reprehend your lordship for it, and to let you know they look upon it not only as an offence to the House, but a very great offence against the king; and therefore they require your lordship to ask pardon of the king's majesty, and pardon of this House.”

His lordship being in his place, the Lord Chancellor read the said paper unto him; which submission his lordship not making, but saying that before his withdrawing he had begged pardon both of the king and the House, the Lord Chancellor said to his lordship, that he was required by the House to make that submission now; but the lord Wharton making still no answer but that he had already done it, was commanded to withdraw. And then the House, taking this as a contempt to his majesty and this House, ordered that he shall be brought to the bar as a delinquent, and committed to the Tower of London during the pleasure of the king and this House. And accordingly his lordship was brought to the bar, and kneeled and received the said sentence.

Ordered, by the Lords spiritual and temporal in parliament assembled, that the gentleman usher of the black rod attending this House, shall take into his custody the bodies of James earl of Salisbury, Anthony Ashley earl of Shaftesbury, and Philip lord Wharton, members of this House, and them in safety convey to the Tower of London, for their high contempts committed against this House, there to

remain in safe custody during his majesty's pleasure, and the pleasure of this House.

To the gentleman usher of the black rod attending this House, his deputy and deputies.

Ordered, by the Lords spiritual and temporal in parliament assembled, that the constable of his majesty's Tower of London, his deputy or deputies, shall receive the bodies of James earl of Salisbury, Anthony Ashly earl of Shaftesbury, and Philip lord Wharton, members of this House, and keep them in safe custody within the said Tower, during his majesty's pleasure and the pleasure of this House, for their high contempts committed against this House; and this shall be a sufficient warrant on that behalf.

To the constable of the Tower, his deputy and deputies, &c.

February. 1676.

The gentleman usher of the black rod gave the House this account, That, in pursuance of the Order of this House yesterday, he had, both last night and this morning, been at the house of the duke of Bucks, but he cannot find him; he came not home last night, and his servants know not where he is. Whereupon the House made this ensuing Order:

Whereas it was ordered yesterday, that the gentleman usher of the black rod should bring George duke of Bucks to the bar of this House in custody, who departed hence yesterday, in contempt of this high court: And whereas the said duke doth still abscond himself; and that the said gentleman usher informs this House, that the said duke is not to be found at his own house, nor came thither all the last night; and that he cannot learn where to find the said duke; it is therefore ordered by the Lords spiritual and temporal, in parliament assembled, That unless the said duke of Bucks shall render himself this morning (sitting the House of Peers) that his majesty be humbly desired by this House to issue out his royal proclamation for stopping all the ports, and for seizing and apprehending the person of the said duke wherever he shall be found, and him to bring before the House of Peers, if this session of parliament shall then be continuing; or otherwise to carry the said duke directly to the Tower of London, there to remain a prisoner, until he be from thence delivered by due course of law.

This day as the House was in business, the duke of Bucks came in, and went to his place; at which divers Lords called upon him to withdraw, which he did: Then the House commanded the gentleman usher of the black rod to bring the duke of Bucks to the bar, as a delinquent; which being done, the Lord Chancellor told him: My lord, I am to tell you in what condition your affairs stand here. My Lords find you highly guilty, in asserting that this parliament is dissolved, and very active in maintaining it; and have therefore ordered

that you make this acknowledgment at the bar which I shall read unto you:

“I do acknowledge, that my endeavouring to maintain that this parliament is dissolved, was an ill-advised action; for which I humbly beg the pardon of the king's majesty, and of this most honourable House.”

The duke of Bucks refusing to make the said acknowledgment, was commanded to withdraw; and then the House, taking this as a contempt to his majesty, and this House, ordered that he should be brought to the bar, as a delinquent, and committed to the Tower of London, during the pleasure of the king, and this House; and accordingly his lordship was brought to the bar, and kneeled, and received the said sentence.

Ordered, by the Lords spiritual and temporal, in parliament assembled, that the gentleman usher of the black rod, attending this House, shall take into his custody the body of George duke of Bucks, a member of this House, and him in safe custody convey to the Tower of London, for his high contempt committed against this House, there to remain in safe custody during his majesty's pleasure, and the pleasure of this House.

To the gentleman usher of the black rod attending this House, his deputy and deputies.

Ordered by the Lords spiritual and temporal, in parliament assembled, that the constable of his majesty's Tower of London, his deputy and deputies, shall receive the body of George duke of Bucks, a member of this House, and keep him in safe custody, within the said Tower, during his majesty's pleasure, and the pleasure of this House, for his high contempt committed against this House, and this shall be a sufficient warrant on that behalf.

To the Constable of the Tower his deputy and deputies, &c.

Whereas George duke of Bucks, James earl of Salisbury, Anthony Ashley earl of Shaftesbury, and Philip lord Wharton, stand committed prisoners to the Tower of London, by order of this House; it is this day further ordered, by the Lords spiritual and temporal in parliament assembled, that the constable of the said Tower, his deputy and deputies, do take care that the said Lords remaining prisoners, be kept severally and apart; and that they be not suffered to meet together (unless it be at church); and that no persons be suffered to visit them without the leave of this House, except their necessary servants and attendants: for which this shall be a sufficient warrant.

To the Constable of the Tower of London his deputy and deputies.

April 16, 1677.

Upon reading the petition of Philip lord Wharton (now a prisoner in the Tower by

order of this House) shewing that he is deeply sensible of the displeasure he is under; and prayeth, that, in regard of his bodily infirmities, and the affairs of his family, which suffer much by his imprisonment, he may have his liberty granted him in such manner as this House shall think fit; it is ordered, That this House refers the petitioner to apply himself to his majesty, and humbly submit to what his majesty, in his good pleasure, shall think fit to do thereupon.

January 28, 1677.

The Lord Chancellor further acquainted the House, That three of those Lords, who stand committed to the Tower of London by this House, viz. the duke of Bucks, the earl of Salisbury, and the lord Wharton, have presented their humble petitions to his majesty, and therein have made their humble submission to his majesty, who thereupon hath been graciously pleased to release them, but conditionally that they make their submission to this House, when they shall be required.

Then a Petition was humbly presented to this House from the duke of Buckingham, which was read, as followeth:

To the right honourable the Lords Spiritual and Temporal, in Parliament assembled.

The humble Petition of George duke of Buckingham, sheweth, That your Lordships having committed your petitioner prisoner to the Tower of London, because he did not obey your Lordships' order, and he hath suffered much by reason thereof.—In obedience therefore to your Lordships, he doth acknowledge, that his endeavouring to maintain that the parliament is dissolved, was an ill-advised action: for which he humbly begs the pardon of the king's majesty, and of this most honourable House; and prays, That your Lordships would be pleased to discharge him from the said commitment, and restore him to your Lordships' favour; and your petitioner shall pray, &c.

BUCKINGHAM.

The House being made acquainted that the duke of Bucks was not far off, if their Lordships would please to permit him to attend them presently; the House agreed to it.

The House being informed that the duke of Bucks attends without, to make what submission this House shall please to direct; the Lords ordered he should be brought in; and, being come to the bar, the lord chancellor told him, by directions of the House, as followeth,

“My Lord; My Lords have received your petition, and are well pleased to find your lordship disposed to give them the satisfaction they expected; the submission the House expect you should make, I shall read to you, as it is entered in the journal; which you are to declare at the bar: viz.

“I do acknowledge that my endeavouring to maintain that this parliament is dissolved, was an ill-advised action; for which I hum-

bly beg the pardon of the king's majesty, and of this most honourable House.”

The duke of Bucks having read the above said declaration at the bar, he came in, and was admitted to his place.

February 4, 1677.

It being signified to the House, that the earl of Salisbury was without to receive their Lordships' commands, and to do what their lordships shall direct for his submission; hereupon the House perusing the journal book, found that his lordship was required, the 16th of February, 1676, that he should ask pardon of his majesty, and this House, for asserting and maintaining that the prorogation of this parliament was illegal. The earl of Salisbury being directed to come to his place, the lord chancellor told him, that the House expected he should make the same submission as was formerly required of him. Whereupon the earl of Salisbury said, In obedience to your lordship's command, I do ask pardon of his majesty, and this House, for asserting and maintaining that the prorogation of this parliament was illegal.

The House being satisfied with this submission, his lordship sat in his place as a peer.

February 7, 1677.

It being signified to the House, that the lord Wharton was without, to receive their lordships commands, and to do what their lordships shall direct for submission; hereupon the House, perusing the Journal book, found that his lordship was required, the 16th of February, 1676, that he should ask pardon of his majesty, and this House, for asserting and maintaining that the prorogation was illegal. The lord Wharton being directed to come to his place, the Lord Chancellor told him, that the House expected he should make the same submission as was formerly required of him. Whereupon the lord Wharton said, In obedience to the commands of this House, I do ask the pardon of his majesty and this House for having offended them by what I unadvisedly said, concerning the illegality of the late prorogation.

February 20, 1677.

A Petition from the earl of Shaftsbury was presented to the House, and read, as followeth:

To the right honourable the Lords spiritual and temporal, in Parliament assembled:

The humble Petition of ANTHONY earl of SHAFTSBURY,

Sheweth; That your Petitioner, on the 16th of February, 1676, was committed prisoner to the Tower of London by your lordships, because he did not obey your lordships' order, where he hath continued under close confinement, to the great decay of his health, and danger of his life, as well as prejudice of his estate and family.—In all humble obedience, therefore, unto your lordships, he doth acknow-

ledge, that his endeavouring to maintain that this Parliament is dissolved, was an ill-advised action, for which he humbly begs the pardon of the king's majesty, and of this most honourable House; and doth, in all humble duty and observance to your lordships, beseech you to believe, that he would not do any thing willingly to incur your displeasure.—Wherefore your petitioner, in all humble duty and obedience both unto his majesty and your lordships hath made his humble submission and acknowledgement, in his most humble petition unto the king's most sacred majesty, and is ready to make his farther submission and acknowledgement to his majesty, and to this honourable House, according to the directions thereof: and he doth most humbly implore your lordships, that you will be pleased to restore him into your favour, and discharge him from his imprisonment. And your petitioner, as in duty bound, shall, &c. SHAFTESBURY.

This being read, the Lord Chancellor did let the House know, that his majesty hath received a third petition from the earl of Shaftesbury, more submissive in form than the two first; but his majesty, understanding that the earl of Shaftesbury hath endeavoured to free himself from the censure of this House, by appealing to the King's-bench, to have their judgment thereupon during the late adjournment, doth not think fit as yet to signify his pleasure as to his discharge, till this House hath taken that matter into consideration.

After a long debate hereof, the question was proposed, Whether an Address shall be now made to his majesty to discharge the earl of Shaftesbury from his imprisonment upon his petitions to his majesty, and to this House.

Then the question being put, Whether this question shall be put, it was resolved in the negative.

After this the House considered the matter of the earl of Shaftesbury's appealing from this House to the King's-bench, to be released by Habeas Corpus; and after debate, it is ordered, that the further debate of this business is adjourned till to-morrow morning; at which time the records of the court of King's-bench, touching the earl of Shaftesbury's business there, shall be brought into this House; and the judges are also to attend this House.

February 21, 1677.

This day the House resumed the debate concerning the earl of Shaftesbury's endeavouring to free himself from his commitment. by this House, by a Habeas Corpus in the court of King's-bench; and for the better knowledge of the matter of fact, the records of the King's-bench were produced, by which it did appear, that two rules of that court were obtained upon the motion of the earl of Shaftesbury's counsel, in Trinity term, 1677; and the returns thereupon were read, by which it did appear that the earl of Shaftesbury was committed the 16th of February, 1676, by this House, for a con-

tempt; and then the remittitur of the earl of Shaftesbury to the Tower was also read.

After this a petition of the earl of Shaftesbury was presented to this House, and read; wherein his lordship took notice of an order of this house of the 20th instant, for bringing the records of the court of King's-bench into this House, concerning the matter of the Habeas Corpus brought by him; that he takes himself to be greatly concerned, and to have a right to be present, and heard, when any debate of any new matter against him be entered upon; that he cannot pretend, but he may have erred for want of a precedent to guide him; and being deprived of the benefit of counsel, by reason of his close confinement, and being resolved not to do any thing willingly which might in the least offend his majesty, or their lordships, he humbly takes this opportunity to give further evidence thereof, by casting himself at their lordships' feet; and as he hath humbly begged the pardon of his majesty, so he begs also the pardon of this House, for having offended them in any thing whatsoever.

After a long debate hereof, the House made these resolutions following:

Resolved and declared, That it is a breach of the privilege of this House, for any Lord committed by this House to bring a Habeas Corpus in any inferior Court, to free himself from that imprisonment during the session of parliament.

Resolved, That the earl of Shaftesbury shall have liberty to make his full defence, notwithstanding the resolution and declaration aforesaid.

February 22, 1677.

The House taking into consideration, when the earl of Shaftesbury shall come to this House, and in what manner, and what shall be said unto him; it is ordered, That he shall be brought to the bar on Monday next, by the constable of the Tower, or his deputy; and then the Lord Chancellor shall say unto him to the same effect as his lordship was directed this day by the House.

Ordered, by the Lords Spiritual and Temporal in parliament assembled, That the constable of his majesty's Tower of London, or his deputy, be, and is hereby required to bring Anthony earl of Shaftesbury (now a prisoner in the said Tower, for his high contempt committed against this House) to the bar, on Monday the 25th day of this instant February, at ten of the clock in the forenoon, and this shall be a sufficient warrant on that behalf.

To the constable of his majesty's Tower of London, his deputy and deputies, and every of them.

February 25, 1677.

The earl of Northton, constable of the Tower of London, acquainted the House, that in obedience to their lordship's order, he hath brought the earl of Shaftesbury, who is without, ready to receive their lordships' commands.

Upon this the Lord Chancellor desired to know the pleasure of the House, what he shall say to the earl of Shaftsbury, when he comes to the bar; which words were written down, and being read, were approved of.

Then it was moved, that the earl of Shaftsbury might answer (as an aggravation of his offence) for some words which he spake in the Court of King's Bench, when he appeared upon his Habeas Corpus, which was conceived to be contrary to the privilege of this House; and that witnesses might be heard to prove the same, before the earl of Shaftsbury be called to the bar: but this was left to be as it is, 'until the earl of Shaftsbury had been called to the bar, and his answer received to what he stands already charged with.

The earl of Shaftsbury being brought to the bar, and having kneeled, the Lord Chancellor said to him as was afore directed by the House; viz.

“ My Lord of Shaftsbury;

“ The Lords have received a petition from your lordship, taking notice of the contempt for which you are committed by this House together with your submission to the judgment of this House: and while the Lords were taking into consideration that petition, there were brought before this House some records of the King's Bench, whereby it appears that your lordship endeavoured, by Habeas Corpus, to free yourself by the judgment of that inferior Court, from the censure of this. I am to acquaint your lordship, that this House has resolved and declared, that for any Lord committed by this House, to bring a Habeas Corpus in any inferior Court, to free himself from that commitment during the session of parliament, is a breach of the privilege of this House: but withal, their lordships have likewise resolved, that it shall be permitted to your lordship to make your full defence, notwithstanding the resolution and declaration aforesaid; and therefore I am commanded to ask your lordship, what you are pleased to say for yourself upon the whole matter.”

Whereupon the earl of Shaftsbury answered to this effect:

“ My Lords;

“ I have presumed to offer two petitions to this honourable House; the first your lordship mentions I do again here personally renew, humbly desiring that I may be admitted to make that submission and acknowledgment your lordships were pleased to order; and that after a twelvemonth's close imprisonment, to a man of my age and infirmities, your lordships would pardon the folly or unadvisedness of any of my words or actions: and as to my second petition, I most humbly thank your lordships for acquainting me with your resolution and declaration in that point; and though liberty be in itself very desirable, and, as my physician (a very learned man) thought, absolutely necessary to the preservation of my life, yet I

do profess to your lordships upon my honour, that I would have perished rather than have brought my Habeas Corpus, had I then apprehended, or been informed, that it had been a breach of the privilege of this honourable House. It is my duty, it is my interest, to support your privileges; I shall never oppose them. My lords, I do fully acquiesce in the resolution and declaration of this honourable House: I go not about to justify myself, but cast myself at your lordships' feet; acknowledge my error, and humbly beg your pardon, not only for having brought my Habeas Corpus, but for all other my words or actions, that were in pursuance thereof, and proceeding from the same error and mistake.”

Then his lordship withdrew; and after some debate the question proposed was, Whether witnesses shall be now called in.

The question being put, Whether this question shall be now put, it was resolved in the affirmative.

Then the question being put, Whether the witnesses shall be now called in, it was resolved in the affirmative.

There being a paper made mention of in the House, which was said to be a copy of what the earl of Shaftsbury said in the King's Bench, but not permitted to be read, Robert Blaney was called in, and sworn as a witness; who being asked, Whether he was present in the Court of King's Bench when the earl of Shaftsbury moved for his Habeas Corpus; and whether he heard all that the earl of Shaftsbury said there?

He answered to this effect, That he was present in the King's-bench when the earl of Shaftsbury was there, and he heard the most part what his lordship said, but he cannot tell now what he said, but he took some notes, and that afternoon compared notes with Mr. Rushworth, who also had taken notes; and thereupon they perfected a copy, which he gave to the lord treasurer. He also said, that he cannot for a thousand worlds say, that he heard all that is in the paper, nor he cannot now say what it was that he took, and what he had from Mr. Rushworth, it being so long since, by reason of the many interlineations made in the paper, by comparing notes with Mr. Rushworth.

Then the said Robert Blaney withdrew.

After this, the House agreed what acknowledgment the earl of Shaftsbury should make at the bar for his offences; which if his lordship should make, the House would then declare their satisfaction in his submission and acknowledgment; the Submission is as followeth:

“ I do acknowledge that my endeavouring to maintain that the parliament is dissolved, was an ill-advised action, for which I humbly beg the pardon of the king's majesty, and of this most honourable House: And I do also acknowledge, that my bringing of an Habeas Corpus in the King's-bench, during this session, was a high violation of your lordships' privileges, and a great aggravation of my former of-

fence. For all which I likewise most humbly beg the pardon of this most honourable House."

The earl of Shaftesbury was brought again to the bar; and the lord chancellor told him, the Lords had prepared a particular acknowledgment, which the House expected he should make; and read the same to him: And then the earl of Shaftesbury made the said acknowledgment in these words; viz.

"I do acknowledge, that my endeavouring to maintain that the parliament is dissolved, was an ill-advised action, for which I humbly beg the pardon of the king's majesty, and of this most honourable House: And I do also acknowledge that my bringing of an Habeas Corpus, in the King's-bench, during this session, was a high violation of your lordships' privileges, and a great aggravation of my former offence. For all which I likewise most humbly beg the pardon of this most honourable House."

His lordship being again withdrawn;

It is ordered, that the Lords with the white staves now present, wait on his majesty, to give his majesty an account, that this House hath received satisfaction from the earl of Shaftesbury, in the matter of the Habeas Corpus, and the other contempt for which he stood imprisoned; and are humble suitors to his majesty, that he would be pleased to discharge him from his imprisonment: and that their lordships do acquaint the House to-morrow what they have done in this matter.

Ordered, That the earl of Shaftesbury be in the mean time remitted to the Tower.

February 26, 1677.

The lord treasurer reported to the House,

that the Lords with white staves, according to the order of this House, have attended his majesty, to give his majesty an account, that this House hath received satisfaction from the earl of Shaftesbury in the matter of the Habeas Corpus, and the other contempt, for which he stood imprisoned; and are humble suitors to his majesty, that he will be pleased to discharge him from his imprisonment: to which his majesty was pleased to give this answer, That he will give order for the earl of Shaftesbury's discharge.

November 13, 1680.

Whereas the duke of Buckingham, earls of Salisbury and Shaftesbury, and the lord Wharton, were, contrary to the freedom of parliament, committed to prison, by order of the Lords' House, of the 15th of February, 1676; whereupon followed a series of many unprecedented proceedings, derogatory to the authority of parliament, and of evil example and precedent to posterity.

For vacating, making void, and destroying such precedents for ever, and in vindication of the authority and freedom of parliament, upon complaint hereof made, and due consideration and debate thereof by the Lords spiritual and temporal in parliament assembled; it is ordered, decreed, and adjudged, That the said order and proceedings concerning the said Lords were unparliamentary, from the beginning, and in the whole progress thereof; and therefore are all ordered to be vacated (by virtue of this judgment) in the Journal books of this House, that the same, or any of them, may never be drawn into precedent for the future.

241. The Trial of PHILIP EARL OF PEMBROKE and MONTGOMERY,* at Westminster, for the Murder of Nathanael Cony: 30 CHARLES II. A. D. 1678.

March 1, 1678.

A PETITION was presented to the House of Lords from the earl of Pembroke; which was read, as follows:

"To the right honourable the Lords Spiritual and Temporal in parliament assembled:

The humble Petition of Philip earl of Pembroke;

Sheweth: That an inquisition being lately

taken, viz. the 11th day of this instant February, 1678, before the coroner of the county of Midd. upon view of the body of Nathaniel Cony, gentleman, deceased, your Petitioner is thereby charged with his death; and although he is well assured of his own innocency, yet he is grievously afflicted to lie and continue under so heinous an accusation, without help by such relief as appertains to the peers of this realm in time of parliament. Wherefore

London, for uttering such horrid and blasphemous words, and other actions proved upon oath, as are not fit to be repeated in any christian assembly."

January 29. A Petition was presented to the House, from the earl of Pembroke; which was read, as follows:

"To the right honourable the Lords spiritual and temporal in Parliament assembled:

The humble Petition of PHILIP earl of PEMBROKE and MONTGOMERY;

* The following Entries respecting this Lord Pembroke occur in the Lords' Journals of this year:

January 28, 1678. The Lord Chancellor told the House, "That as he had given them an account of the enlargement of some members of this House, he should now give them an account of the commitment of one of their members, which his majesty thought fit this House should be made acquainted with, because it was done in time of privilege; viz. the commitment of the earl of Pembroke to the Tower of

your Petitioner humbly beseecheth your lordships, that the said matter may be put into such a speedy way of Examination and Trial, as your lordships great wisdom shall think fit. And your Petitioner shall pray, &c.

PEMBROKE."

"Humbly sheweth; That your petitioner is a prisoner in the Tower of London, committed thither by warrant under the king's majesty's royal signature, expressing the cause to be for blasphemous words, which your petitioner doth from his soul detest and abhor; and since he hath been accused but by one person (to whom he intended no injury, nor was at that time in a condition of imposing on him), he hopes your lordships will not believe the accusation, or your petitioner to be capable of so horrid a crime; However, he is heartily sorry to have been thought in any sort to have offended: and his health being much impaired by his long restraint, he humbly implores pardon of God, of the king, and of this House: and that he may be released from his imprisonment, and attend his duty in parliament. And your petitioner shall pray, &c.

PEMBROKE."

The House, in the first place, to shew their great sense and abhorrency against Blasphemy, which is now grown so common, ordered, That a bill be brought into this House, for the severe punishment of all blasphemies for the time to come.

Then the House took consideration of the earl of Pembroke's Petition. And, after a serious debate thereof, it was moved, "That an humble Address should be made to his majesty;" a draught or form of which Address was offered to the House and read, viz.

"Upon hearing of the causes of the earl of Pembroke's imprisonment, which, by his majesty's direction, have been delivered to this House by the Lord Chancellor, and due consideration had of the proof against him by a single witness, together with the Petition of the earl of Pembroke, detesting the fact, whereof he stands charged by one witness only: It is resolved, by the Lords spiritual and temporal in parliament assembled, That an humble Address be made to his majesty, in the name of this House, to beseech his majesty, that the earl of Pembroke may be released from his imprisonment, and have leave to come to his place in parliament; and that, at the same time, his majesty may be also informed, That this House, in detestation of all crimes of this nature, have ordered a bill to be brought into their House, for the due and severe punishment of all blasphemies for the time to come."

The question being put, "Whether this Address, now read, shall be made to his majesty in behalf of the earl of Pembroke?" It was resolved in the affirmative.

The same day "An act for punishing of Atheism and Blasphemy," was read the first time.

Feb. 5. Upon reading the Petition of Philip Ricaut, esq. complaining, "That he being to visit a friend in the Strand last Saturday

Hereupon the House made the ensuing Order: viz.

"Upon reading the Petition of Philip earl of Pembroke; shewing, That, by an inquisition taken before the coroner of the county of Middlesex on the 11th of February last, the said

in the evening, whilst he was at the door taking his leave, the earl of Pembroke coming by, came up to the door, and with his fist, without any provocation, struck the said Philip Ricaut such a blow upon the eye, as almost knocked it out; and afterwards knocked him down, and then fell upon him with such violence, that he almost stifled him with his gripes in the dirt; and likewise his lordship drew his sword, and was in danger of killing him, had he not slipped into the house, and the door been shut upon him: The said Ricaut humbly begs that this House will be an asylum to him, and give him leave to proceed against the said earl of Pembroke as the law shall direct, that thereby he may have that security and satisfaction the law allows."

The Petitioner upon oath at the bar, averred the Petition to be true; and made a narrative of the whole business.

The House upon consideration thereof, ordered, That the said Philip earl of Pembroke shall give security by recognizance of 2,000*l.* to keep the peace towards the said Philip Ricaut, and all other his majesty's subjects.

The earl of Pembroke declared in the House, That he would waive his privilege, and answer any proceedings at law as the said Philip Ricaut shall bring in this case.

Then the earl of Pembroke entered into a recognizance before the Lords in parliament; viz.

'Philippus comes de Pembroke recognovit
'se debere domino regi duo millia lib. le.
'vari ex bonis, terris et catallis suis, ad
'usum domini regis.'

The condition of the abovesaid recognizance is, That if the said Philip earl of Pembroke shall keep the peace, towards the said Philip Ricaut and all others of his majesty's subjects, during the space of one year, then this recognizance to be void; otherwise to stand in full force and virtue.

This being done, the House caused the Petitioner to be called in; and the Lord Chancellor told him, That the earl of Pembroke had declared, that he will waive his privilege in this case; so he is at liberty to proceed at law if he think fit: As to the other part of his Petition, this House hath taken a course for the securing of his person during the time of his proceeding at law against his lordship; his lordship having entered into a recognizance to the king, of 2,000*l.* for the keeping of the peace towards him and all other of his majesty's subjects.

November 27. The House being informed of a quarrel which happened lately, between the earl of Pembroke and the earl of Dorset: It is ordered, That the gentleman usher of the black rod do give notice to the earl of Pem-

earl of Pembroke is charged with the death of Nathaniel Cony, gentleman, and praying that the said matter may be put into a speedy way of examination and trial: It is ordered, That it be, and is hereby, referred to the Lords committees appointed to consider of the privileges of the Peers of this realm, &c. to examine and consider what hath been done in the like cases, and what is fit to be done in this case; their lordships having power to send for the record of the coroner, and are to make report upon the whole matter."

March 2.

Ordered, That all the assistants now present, viz. the Lord Chief Justice of the court of Common Pleas, the Lord Chief Baron, baron Thurland, and his majesty's Attorney-General, do assist the Lords committees for privileges, in the consideration of the manner of the trial of the earl of Pembroke.

March 6.

The Lord Privy Seal reported, That the

broke, that he attend this House presently; and that Mr. Lloyd and the footman be summoned to appear presently, to give this House an account hereof.

In the mean time, the earl of Dorset gave the House an account, That on Wednesday last, late at night, the earl of Pembroke sent one Mr. Lloyd who told him, That the earl of Pembroke desired him to speak with him, at Mr. Lockett's house. The earl of Dorset asked, Whether the earl of Pembroke was sober? and was answered, Yes. And when his lordship came, he found the earl of Pembroke in a low room; who told him, That he had done him an injury; therefore he would fight him. The earl of Dorset asked him, Where, and when? The earl of Pembroke told him, Now, in this room; and then laid violent hands upon him. And the earl of Pembroke's footman took away his sword from his side; but Mr. Lloyd closed in, and parted them: And so his lordship got loose from him.

The earl of Pembroke being come, standing in his place; the Lord Chancellor told him what an account the earl of Dorset had given to the house.

The earl of Pembroke said, He remembered no such thing; but confessed he desired to speak with the earl of Dorset about business, but had no intent of fighting; and that the earl of Dorset had two men with him, and that his own servant took his sword away.

The House directed the earl of Dorset to relate again, in the presence of the earl of Pembroke, what passed between them. Then both these lords withdrew themselves. The House, taking this business into consideration, and how much the honour of this House was concerned therein, made these Orders following.

For the better preservation of the peace, and preventing any mischief which may happen between the earl of Pembroke and the earl of Dorset: It is ordered, by the Lords spiritual

and temporal in parliament assembled, That the earl of Pembroke and the earl of Dorset be and are hereby confined to their respective houses or lodgings, till further order; and that they, or either of them, send not any message or write to the other during their confinement.

Ordered, by the Lords spiritual and temporal in parliament assembled, That Mr. Lloyd an officer in sir Charles Wheeler's regiment, and the footman who waited on the earl of Pembroke, and the two footmen who waited on the earl of Dorset to Lockett's ordinary on Monday night last, and Robin the waiter at the said ordinary, be and are hereby required to appear at the bar of this House to-morrow, at ten o'clock in the forenoon.

Ordered, That this House agrees with the committee in this Report.

Ordered, by the Lords spiritual and tempo-

ral in parliament assembled, That the earl of Pembroke and the earl of Dorset be and are hereby confined to their respective houses or lodgings, till further order; and that they, or either of them, send not any message or write to the other during their confinement.

Ordered, by the Lords spiritual and temporal in parliament assembled, That Mr. Lloyd an officer in sir Charles Wheeler's regiment, and the footman who waited on the earl of Pembroke, and the two footmen who waited on the earl of Dorset to Lockett's ordinary on Monday night last, and Robin the waiter at the said ordinary, be and are hereby required to appear at the bar of this House to-morrow, at ten o'clock in the forenoon.

Then the earl of Pembroke and the earl of Dorset were called again to their places. And the Lord Chancellor declared to them what the House had ordered; and laid on them the commands of the House, not to resent any thing further concerning this business.

November 28. This House being moved by the duke of Bucks on behalf of the earl of Pembroke and the earl of Dorset, now under confinement by order of this House, by reason of some difference between them, occasioned by the earl of Pembroke, who remembereth not what he did say or do to the earl of Dorset on Monday night last, but is very sorry for the provocation then offered, and prays that he may be discharged from the confinement he lies under, and have leave to retire to his house at Wilton:

The earl of Dorset also declaring that he is satisfied concerning this matter; and prays, that he may be no longer under confinement: It is ordered, by the Lords spiritual and temporal in parliament assembled, That the confinement the earl of Dorset is under be taken off; and also the confinement under which the earl of Pembroke is, who hath hereby leave given him to retire himself to his house at Wilton.

ral in parliament assembled, That the Lords with white staves now present do attend his majesty, from this House, to present to his majesty the resolution this day passed in the case of the earl of Pembroke; and humbly to desire his majesty in the behalf of this House, That a commission of Oyer and Terminer be issued out accordingly.

The Lord Treasurer reported, "That himself and the other Lords with white staves according to the command of this House, attended his majesty yesterday, and presented to him the resolution passed in the case of the earl of Pembroke; and humbly desired his majesty, from this House, That a commission of Oyer and Terminer may be issued out. And his majesty was pleased to give order presently to his Attorney-General, to issue a commission of Oyer and Terminer accordingly."

March 19.

The Lord Chancellor acquainted the House, "That his majesty having issued out a commission of Oyer and Terminer, under the Great Seal, to commissioners before whom the earl of Pembroke might be tried, his lordship hath been indicted, and the said indictment committed to a grand jury, empannelled for that purpose, who hath found the said earl of Pembroke guilty of felony and murder. The record and whole proceedings thereupon is returned and brought into this House, by Writ of *Certiorari*, that so his lordship may receive his trial in full parliament by all his Peers. To that end, his majesty hath appointed a Lord High-Steward for this time."

The House caused the Indictment and the Proceedings thereupon to be read; and made these Orders following:

"Whereas, by virtue of his majesty's Writ of *Certiorari*, the proceedings against Philip earl of Pembroke and Mountgomery, upon an indictment for the death of Nathaniel Cony, had before the commissioners of Oyer and Terminer at Hicke's Hall, in the county of Middlesex, upon which his lordship is found guilty of felony and murder, are brought into this House, in order to the trial of the said Earl by all the Peers in full parliament: It is thereupon ordered, That the trial of the said Earl of Pembroke and Mountgomery shall be had before the Peers in parliament on Thursday the 4th day of April next; and that, in order thereunto, it be, and is hereby, referred to the Committee for privileges, to consider of the several circumstances, ceremonies, and methods of proceedings, and summons of witnesses necessary to be thought on, in order to the said trial; and make report thereof to the House."

"Whereas, upon an indictment brought against Philip earl of Pembroke and Mountgomery, before the Commissioners of Oyer and Terminer, his lordship is, by the grand jury before them empannelled, found guilty of felony and murder; the which proceedings being by his majesty's Writ of *Certiorari* brought into this High Court in due form: It appearing that

the said earl of Pembroke and Mountgomery is notwithstanding at large, and not under any restraint; it is thereupon ordered, by the Lords spiritual and temporal in parliament assembled, That the said Philip earl of Pembroke and Mountgomery shall be, and is hereby, committed to the Gentleman Usher of the Black Rod attending this Court, by him to be kept in safe custody till further order of this Court: And this shall be a sufficient warrant on that behalf.

"To Sir Edward Carteret Knight, Gentleman Usher of the Black Rod attending this Court, his Deputy and Deputies, and every of them."

April 4.

The House, taking into consideration the formalities to be observed in the proceedings of the Trial of Philip earl of Pembroke and Mountgomery in Westminster-Hall, agreed, that the Serjeant at Arms be continued in the House, to make proclamations. That, after proclamation is made for all persons to be uncovered, the Judges are not to be covered until the Lord High Steward ask leave of the House.

THE TRIAL.

ABOUT nine of the clock the Prisoner with his guard came from the Tower, with the ax before him, and went into the room appointed for him. Between the hours of eleven and twelve at noon, the Lords, Judges, and assistants of the House, came in order, two and two, from the House of Lords, to the Court erected in Westminster-Hall, with four maces before them, and before the Lord High-Steward four more, besides his own serjeant and purt-bearer, with Garter King at Arms, and the Deputy Black-rod bearing the white staff. After obeisance made to the throne, each Lord, and the others, took their places, the Serjeants, with their maces erect, kneeling, four on each side of the throne.

Then the Clerk of the Crown in Chancery on the right hand, and the Clerk of the Crown in the King's-Bench on the left hand, making three reverences to the Lord High-Steward, came up to his seat, and there both kneeling, the Clerk of the Crown in Chancery delivered the commission for the office of High-Steward, *pro hac vice*, to his grace, who delivered it to the Clerk of the Crown in the King's Bench to read, and then they both in the same manner went back to their seats at the table.

Then the Clerk of the Crown in the King's-Bench said as followeth:

Clerk of the Crown. Serjeant at Arms, make proclamation.

Serjeant at Arms. O yes, O yes, O yes! My Lord High-Steward of England straitly chargeth and commaundeth all manner of persons here assembled, to keep silence, and give ear to his majesty's commission, unto my Lord High-Steward his grace directed, upon pain of imprisonment.

Then all the Peers and Assistants standing up, and uncovered, he read the commission in *hæc verba* :

Clerk of the Crown. Carolus, &c.

Serjeant. God save the king.

Then Garter and the Usher that held the staff, making three reverences to his grace, Garter on his knees presented him the white staff, which his grace delivered to the Usher, who likewise kneeled to hold the same, during the rest of the ceremony.

Clerk of the Crown. Serjeant at Arms, make proclamation.

Serjeant. My Lord High-Steward of England his grace straitly chargeth and commandeth all manner of persons here present, to be uncovered, upon pain and peril shall fall thereon.

Then the Clerk read the *Certiorari* to the Commissioners, before whom the Indictment was found, to return the same into the House of Lords with the return in *hæc verba*.

Clerk of the Crown. Carolus, &c. Virtute, &c. Serjeant at Arms, make proclamation.

Serjeant. O yes! Constable of the Tower of London, return thy precept and writ to thee directed, and bring forth thy prisoner Philip earl of Pembroke and Mountgomery, on pain and peril shall fall thereon.

The constable of the Tower of London being a peer, by sir John Robinson his Lieutenant returned his precept, and with the ax borne on his left hand, the edge from him, the earl of Pembroke was brought to the bar: the Lord High-Steward of England having then ordered the Judges to be covered, spake to the prisoner as followeth :

Lord High Steward. [Earl of Nottingham.] My lord of Pembroke, Your lordship is now brought before this great assembly in order to your trial, wherein you have to maintain all that can concern you in this world, your estate, your honour, and your life itself. There is no less a crime charged on you, than the murder of one of the king's subjects; and this is not charged on you by common voice and fame, nor by the growing rumour of the multitude, but by the grand inquest of this county, which was made up of gentlemen of good quality and consideration. Though all this amount to no more than a bare accusation, (for God forbid that they who neither did nor could hear the evidence on both sides, should any way prejudge your trial by their partial examination) yet hath produced the presentment of such a crime as is attended with extraordinary and unusual circumstances.

And now for this fact your lordship is to be tried in full parliament, and your arraignment is to be made as full and as solemnly as is possible. The king (who will have a strict account of the blood of the meanest of his subjects, by whomsoever it is shed) hath for this purpose appointed an high-steward: and now your lordship is to be tried not by a select number of Lords, but by the whole House of Peers, who are met together to make inquisition for this blood.

Doubtless the shame of being made a spectacle to such an assembly as this, and the having a man's faults and weaknesses exposed to the notice and observation of such a presence as this is, to a generous mind must needs be a penance worse than death itself; for he that outlives his own honour can have very little joy in whatsoever else he lives to possess.

In such a state and condition as this is, it will be very fit for your lordship to recollect yourself with all the care and caution you can; it will be necessary for you to make use of the best temper, and the best thoughts you have, when you come to make your defence; let not the disgrace of standing as a felon at the bar, too much deject you; no man's credit can fall so low but that if he bear his shame as he should do, and profit by it as he ought to do, it is in his own power to redeem his reputation. Therefore let no man despair, that desires and endeavours to recover himself again, much less let the terrors of justice affright you; for though your lordship have great cause to fear, yet whatever may be lawfully hoped for, your lordship may expect from the peers.

It is indeed just cause of dreadful apprehensions, when you consider how strict and impartial the judicature is which you stand before, and how impossible it is that any consideration of your lordship's relation or family, shall have any kind of ingreience into their lordships judgment; nay, you have cause to fear all this will make against you, when you consider how the quality of the offender doth aggravate the crime.

You have reason to fear and be dismayed again, when you consider how severe, and how inexorable the rule of law is, in the case of blood; and how certain it is that the Lords will make that rule of law the measure of your life or death: But yet, my lord, there are other considerations that may support you.

Your lordship may be sure that they will receive no proof against you, but direct and positive evidence; it will not be left to any proof, but such proof as by the manifest plainness of it deserves to be called evidence. In the next place, your lordship shall suffer no prejudice for want of counsel, for where there are any advantages that the law can give you, this court takes itself obliged in honour to put you in mind of it; * nor can your lordship suffer an inconvenience, by having counsel to plead against you, for no arguments nor skill can pervert their lordships' justice; you shall not fall by the charms of eloquence; nothing shall load or press you but your own crime; and even that burden may be alleviated, if there be any room for an abatement, so far as it doth not contradict what they owe to the king, to themselves, to the law, and to the justice of the kingdom.

Hearken therefore (my lord) to your indiot-

* See the Notes to the Cases of Don Pantaleon Sa, *ante*, vol. 5. p. 466, and of Twyn p. 513, of this volume.

ment with patience and attention, give no interruption to the counsel or witnesses that speak against you, and reserve what you have to say for yourself 'till the time come, when your witnesses shall be examined, and you make your defence, of which I will give you notice. And this you may rely upon, that when you do come to speak for yourself, you shall be heard with as much favour and candor as the matter will bear; and when my Lords have heard all that can be said on both sides, doubtless their lordships will give such a judgment in the case, as is fit for you to receive, such a judgment as becomes this great court, and such a judgment as is suitable to that known equity, which their lordships do always observe in all their proceedings.

Lord High Steward. Read the Indictment to my Lord.

Clerk of the Crown. Philip earl of Pembroke and Montgomery, hold up your hand.

Which he obeyed by holding up his right hand.*

* In the case of lord Mohun, (A. D. 1693, *infra*, the Lord High Steward (marquis of Carmarthen) addressing the prisoner before his arraignment, said, 'My lord Mohun; I am to let your lordship know you are not to hold up your hand upon your arraignment.' And the subsequent practice seems to have been agreeable to that direction. Lord Delawere, previously to his arraignment, (A. D. 1686, *infra*) thought it worth while to make a special application on this point. He asked, "whether a peer of England be obliged by the laws of this land to hold up his hand as a commoner must do." Upon which Jefferies the Lord High Steward said, "My Lords, this being a matter of the privilege of the peerage it is not fit for me to determine it one way or the other," [the trial was in the court of the High Steward] "but I think I may acquaint your lordships, that in point of law, if you are satisfied this is the person indicted, the holding or not holding up of the hand is but a formality, which does not signify much either way." See the Trials. The duke of Norfolk, *ante*, vol. 1, p. 959, The earl of Arundel, vol. 1, p. 1252, The earl of Essex and Southampton, vol. 1, p. 1336, The countess of Somerset, vol. 2, p. 954, The earl of Somerset, vol. 2, p. 967, held up their hands. It does not seem that lord Audley did so. See vol. 3, p. 408.

Blackstone says, "When the prisoner is brought to the bar, he is called upon by name to hold up his hand: which though it may seem a trifling circumstance, yet is of this importance, that by the holding up of his hand *constat de personâ*, and he owns himself to be of that name by which he is called. [2. Hal. P. C. 219.] However it is not an indispensable ceremony; for, being calculated merely for the purpose of identifying the person, any other acknowledgment will answer the purpose as well; therefore, if the prisoner obstinately and contemptuously refuses to hold up his hand,

Cl. of Cr. You stand indicted by the name of Philip earl of Pembroke and Montgomery, late of the parish of St. Martin's in the Fields, in the county of Middlesex, for that you had having the fear of God before your eyes, but being moved and seduced by the instigation of the Devil, the 4th of February, in the 30th year of the reign of our sovereign lord Charles the second, by the grace of God, of England, Scotland, France, and Ireland, king, defender of the faith, &c. with force and arms, at the parish aforesaid, in the county aforesaid, and upon one Nathaniel Coney, gent. in the peace of God, and of our said sovereign lord the king, then and there being, feloniously, voluntarily, and of your malice forethought did make an assault; and that you the said Philip earl of Pembroke and Montgomery, with the right fist of you the said Philip, &c. the said Nathaniel Coney, in and upon the left part of the head of the said Nathaniel Coney, then and there feloniously, wilfully, and of your malice forethought, did strike and bruise him the said Nathaniel Coney, with your right fist aforesaid, did beat and throw down to the ground; and that you the said Philip, &c. the said Nathaniel Coney so lying upon the ground, in and upon the head, neck, breast, belly, sides and back, of him the said Nathaniel Coney, then and there feloniously, wilfully, and of your malice before-thought did strike and kick, by reason of which said kicking and bruising of the said Nathaniel Coney on the said left part of the head of the said Nathaniel Coney with the said fist of you the said Philip, &c. and of the beating and throwing him to the ground aforesaid; and also by reason of kicking of the said Nathaniel Coney, with the said feet of you the said Philip, &c. on the head, neck, breast, belly, sides and back of the said Nathaniel, he the said Nathaniel Coney, from the aforesaid 4th of Feb. in the aforesaid year, to the 10th of the same month of February, in the parish aforesaid, did languish and languishing did live; on which said 10th day of February in the year aforesaid, he the said Nathaniel Coney, of the striking and bruising, beating and kicking died; and so you the said Philip, &c. the said Nathaniel Coney, at the parish aforesaid, in the county aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of your malice forethought, did kill and murder, against the peace of our said sovereign lord the king, his crown and dignity. How say you, Philip earl of Pembroke and Montgomery, Are you guilty of this felony and murder whereof you stand indicted, or not guilty?

E. of Pemb. Not guilty.

Cl. of Cr. Culprit, How will you be tried?

E. of Pemb. By my peers.

but confesses he is the person named, it is fully sufficient." [Rayn. 408.] See more of this in Lilburne's case, *ante*, vol. 4, pp. 1282, 1289. See also Hawk. Pl. Cr. Book 2. c. 22. s. 2, and the Case of Lord Stafford, A. D. 1680, *infra*.

Cl. of Cr. God send you a good deliverance. Serjeant at Arms make proclamation.

Serj. O yes, if any one will give evidence for our sovereign lord the king against Philip earl of Pembroke and Montgomery, the prisoner at the bar, let them come forth and they shall be heard, for the prisoner stands at the bar upon his deliverance.

Then sir William Dolben, kn^t. the king's serjeant at law, recorder of the city of London, opened the Indictment thus:

Sir *William Dolben.* May it please your grace my Lord High-Steward of England, and the rest of my noble lords:

Philip earl of Pembroke and Montgomery stands indicted, for that he, the 4th day of February last, in the parish of St. Martin's in the Fields, in the county of Middlesex, of his malice forethought did make an assault upon one Nathaniel Cony, in God and the king's peace there being; and that he the said Philip earl, &c. with his right fist, on the left part of the head of the said Nathaniel, then and there feloniously did strike and bruise, and with his right fist aforesaid him did cast and throw down to the ground, and being so on the ground, with his feet did kick and strike, of which said striking, bruising and kicking, the said Nathaniel Cony, from the said 4th of Feb. to the 10th of Feb. following, did languish and then died: and so the jurors do upon their oaths say, That the said Philip earl of Pembroke, &c. the said Nathaniel Cony, at the parish and county aforesaid, feloniously, wilfully, and of his malice forethought, did murder against the king's peace, his crown and dignity. To this indictment the earl of Pembroke hath pleaded Not Guilty, and put himself upon his peers for his trial: We who are of counsel for the king, shall produce our evidence to confirm this accusation: with what it is, and of what nature, his majesty's Attorney-General will acquaint your grace, and the rest of you my noble lords.

Then sir William Jones, Attorney General (who being called by writ, as assistant to the House, was within the bar), opened the evidence to this effect:

Att. Gen. May it please your grace my lord high steward of England, and the rest of my noble lords; Philip earl of Pembroke and Montgomery stands here indicted for the murder of Nathaniel Cony: That my lord of Pembroke was the cause of his death, I humbly conceive, will need very little question before your lordships, for we have such proof that it was his hand threw him down, and his feet that trod upon him and kicked him, which was the cause of his death, that it cannot be denied: but whether or no this killing amount to murder, may be a matter of further controversy; and I hold it my duty to acquaint your grace and my lords, what the proof is, and then what we have to offer to prove it to be an offence even of this nature.

My lords, I know to maintain an indictment of murder, there must be a proof of malice;

but the law is plain (your lordships know, and my lords the judges will tell it you) that there are two sorts of malice; the one is malice expressed, and that is when a man can be proved to have borne before-hand an ill will and hatred to the person he killed; this sort of malice we pretend not to be in this case: but there is another sort of malice, which also in law gives the denomination of murder to the killing of a man, which is malice implied, when any one shall without any provocation given by the party slain, bring another by violence to his death: for one law supposeth, and that upon good ground, that no man without a provocation would kill his brother, unless he had notice to him before-hand; and that is the malice that falls out to be the ingredient of this case, for the poor unfortunate gentleman that was killed, did not for ought that did appear to me (and I have had all the proof given at the coroner's inquest under my examination), give the least provocation to this noble lord. Some have thought that a person might be guilty of malicious murder, though the party killed had given the murderer a blow; but I shall not contented for so strict a construction of a provocation, for there was not in this case a blow struck, no nor an angry word given: all that I can find came from Mr. Cony was, to complain that a friend of his that came into the company with him, was turned out of doors; and sure such a thing will never be taken to be a provocation, as leastwise such a one as will take away malice implied. I shall now (my lord) give your lordships an account of the nature of our evidence, as to the fact, and that (my lords) in short; for as I shall not use any aggravation above what the cause requires, so I shall not tire your grace and my lords with any long speech, but barely open the evidence, and tell you in short what will come in proof before you.

It was on Sunday the 3rd of February, that my lord of Pembroke and his company were drinking at the house of one Long in the Haymarket, (I am sorry to hear the day was no better employed by them) and it was the misfortune of this poor gentleman, together with one Mr. Goring, to come into this house to drink a bottle of wine; my lord of Pembroke saw them coming in, and knowing Mr. Cony, was very importunate with him to join company: he at first refused, because of his friend, and told his lordship they had business together; but no denial he would take, and so at last they did go into my lord's room. After some distance of time, when it was near 12 of the clock at night, there fell out a difference between my lord and Mr. Goring (the gentleman that came in with Mr. Cony), who, it seems, gave my lord of Pembroke some words which provoked him to express his distaste of them, by throwing a glass of wine in his face; which injury Mr. Goring so far resented, as that he was about to draw his sword, but was prevented by some of the company, and put out of the room to avoid further mischief: This gentleman Mr. Cony that was killed, was not at all concerned in the mat-

ter of the difference, but only desired to go out of the room, that he might look after his friend, who was thrust out of doors, he knew not why (without any provocation, as you will hear by and by). My lord of Pembroke falls upon him, strikes him with one blow to the ground, and when he was there trod upon him on his back, on his belly, on his side, and kicked him so that the poor gentleman fell into a swoon, and was after some time with some difficulty brought to himself again: After they had perceived there was life in him, they lifted him up, and laid him down on some chairs that were in the room, and thinking too much had been done by them already, they take their leaves of him, and commit him to the care of the drawer. He was not (as it should seem) so carefully attended by the drawer, whose ignorance could not look after him as his condition required, and so fell down off the chairs again divers times. After some time, early in the morning he was carried away in a sedan to his own lodging, and being there put to bed, as he grew a little more and more recovered out of his stupefaction, so he grew more and more in pain, and sent for doctors and chirurgeons to consult with, by whom he had all the means used that was possible to have saved his life, but it proved there was so much blood forced out of his veins, and gathered into one place of his body, by those blows and bruises, that he could not be recovered, and so after a week's time passed in intolerable pain, died: but yet all the time of his dying, and even constantly to his death, he did complain that it was my lord's bruises brought him into that condition. It will also be proved, that after his death, upon view of the body by the coroner and his jury, there was the appearances of those blows and abuses, by broad bruises in several parts of the body, and this some of the jury will testify. This in short is the matter of the evidence, which we shall briefly prove, and then submit it all to your lordship's judgment.

L. H. St. Call the witnesses together, and speak out, Mr. Attorney.

Att. Gen. Those we shall call first are Mr. Henry Goring, Mr. Richard Savage, Mr. John Shally, and capt. Fitz-Patrick.

Cl. of Cr. The evidence which you and every one of you shall give for our sovereign lord the king, against Philip earl of Pembroke and Montgomery, the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth: So help you God.

L. H. St. Mr. Attorney, whom do you begin with?

Att. Gen. Mr. Henry Goring.

L. H. St. Stand forward, Goring.

Att. Gen. Pray, sir, acquaint my lords of the manner of your coming with Mr. Cony to Mr. Long's, and what happened there.

L. H. St. Sir, you must speak so loud that I may hear.

Goring. May it please your grace, Mr. Cony and I did on Sunday, the 3rd of Feb. last, dine in the city, we staid very late there, and I must ingeniously confess, we had drank

more than was fit for us to have done; after that, if it please your grace, I offered to set down Mr. Cony at his lodgings, but he was so very ceremonious, that he would see me at home; it seems Long's house, the tavern in the Hay-Market, was in the way, and Mr. Cony would needs have us drink another bottle of wine ere we parted: It was late, and the door shut, but we knocking pretty hard for admittance, did get it opened, and as soon as the door was opened, Mr. Cony went towards the bar, and made some noise, being in drink; my lord of Pembroke was then in a low room in the house, and knowing Mr. Cony (as I thought), came and asked him if he would come in and drink with him; he replied, My lord, I am with a friend, and we have some business together: At length my lord asked me very civilly to come in, and we did after some time come in; and when we were in, my lord drank to me as I remember, and we stood round the table awhile, and at last sat down in some chairs, for we were not so much ourselves as to be able to stand all the while; then there was, it seems, some dispute between my lord of Pembroke and me, wherein my lord did conceive I had done him some injury, and threw a glass of wine in my face.

Att. Gen. What kind of discourse was that, pray, Sir?

Goring. Truly, may it please your grace, I cannot remember all the discourse, because I was so much in drink at that time; they say, it was about families and play, I cannot positively say what it was; but after my lord of Pembroke rose up to draw his sword, and I laid my hand on mine.

Att. Gen. Well, Sir; and what followed then?

Goring. Captain Savage stept in between my lord and me, and the drawer came bustling about, and took me and shoved me out of the room; while I was thrusting out I heard a noise behind me, and I saw my Lord make somewhat towards Mr. Cony; but more I cannot say what was done, because Mr. Savage was between my lord and me. When I was out of the room I found my sword gone, and my hat and periwig; I then made a noise at the door, and would not go away until I had recovered my things; the man of the house was in bed, it seems, (for he was then undrest and in his night gown) came and asked me what was the matter? I told him, I had been in the room with my lord of Pembroke, where I had received some ill usage, and had lost my hat and periwig; and they had broken a piece of my sword, and had taken it from me, which I desired to have again; and, said I, Mr. Cony, I doubt, is in danger, for there is quarrelling within, and I desired to come in to see what they did with him.

Att. Gen. Well, Sir, when you came in, what then?

Goring. Upon this, the master of the house did desire me to go into a room, and a gentlewoman, his sister, as I after understood, did also press me to go into another room, and

promised they would bring Mr. Cony to me ; upon which I went into a room thereby, but it was long before I heard from them ; and being under some impatience, they at last came and told me, Now, Sir, you may go in, if you please ; When I came in, I found a gentleman lying along upon the chairs, and nobody else in the room ; I began to be suspicious, for I was then as I thought somewhat soberer, that he had some wound, and took the candle and walked about him, and would fain have awakened him, but could not by all my endeavours ; the drawer told me, he was only dead drunk, and would in a little time come to himself ; upon which I desired them to lay some blankets upon him, and some pillows under him, and set some more chairs, to make the place broader, that he might not fall down, and I ordered the drawer to be sure to watch with him till he awaked, and make a good fire, which he promised to do.—The next day Mr. Cony sent to my lodging to come and see him ; but I did not that day, because I did go out early, and did not return till late ; but the very next day after (being Tuesday), when I came to him, Harry, said he, I was very much abused the other night in my Lord's company ; I am sorry for that, said I, with all my heart ; and asked him how he came to be abused ; My lord of Pembroke, said he, threw me down, and there somebody trod upon me and kicked me, and he shall know that he has abused me, and that I expect satisfaction for it. I hope you will let him know so much, and carry him a challenge from me. Mr. Cony, said I, who did tread upon you ? I know not, said he, for I was in a swoon ; either my lord of Pembroke, or some of his creatures for him. I never had the honour to know my lord of Pembroke before, nor above one or two of the gentlemen that were with him then in the company.

Att. Gen. Sir, had you any discourse with him afterwards ?

Goring. Yes, every day till Thursday at night.

Att. Gen. Did he complain of much pain ?

Goring. Yes, constantly in his belly, his sides, and his shoulders.

Att. Gen. What did he tell you of the cause of his death ?

Goring. He said it was my lord of Pembroke that had done him the injury in throwing him down ; who trod on him, or kicked him, he could not tell ; but said, my Lord should answer for it to him.

Att. Gen. Do you remember what part he complained of most ?

Goring. His belly.

Att. Gen. And what else ?

Goring. I think his sides and shoulders.

Att. Gen. What distance of time was it between your being thrust out of the room, and your coming in, and finding him upon the chairs.—*Goring.* About half an hour.

L. H. St. Mr. Goring, you say you saw no stroke given by my lord of Pembroke to Mr. Cony ?

Goring. No, truly, may it please your grace ; I saw my Lord make towards him, but Mr. Savage was between my lord and me, and I was put out of the room.

L. H. St. You did not hear Mr. Cony charge my Lord with kicking him, or stamping on him ?

Goring. He did not in my hearing charge him with stamping on him, but that he threw him down, and that then some one did kick him.

Att. Gen. My Lords, we have done with this witness.

L. H. St. My lord of Pembroke, will your lordship please to ask that witness that spoke last any questions, for now is your time ?

E. of P. No, my Lord.

Att. Gen. Then we desire Mr. Savage may be examined : Mr. Savage, pray do you acquaint his grace and my lords what you know of this business.

Savage. May it please your grace, I was in company with my Lord of Pembroke, at Mr. Long's house in the Hay-market, when Mr. Cony came in, and making a great noise at the bar, my Lord of Pembroke being in a lower room, looked out at the door, and seeing who it was, my Lord saluted him very kindly, and told him he was glad to see him, and desired him to walk into his room. Mr. Cony told him he had a friend at the door, and desired his lordship to admit him, which my Lord embraced very kindly : and then Mr. Cony goes to the door and calls Mr. Goring, desiring him to come in, and they came together into the room ; my Lord desired him to sit down and drink a glass of wine, which they did, and after some time falling into discourse, Mr. Goring began to make use of some impertinent language to my Lord, and amongst the rest told him he was as good, or a better gentleman than he was.

Att. Gen. Goring did ?

Savage. Yes, Goring did ; upon which my Lord threw a glass of wine in his face and immediately stepped back and drew his sword : Mr. Goring was going to draw, but I came up to him, and took his sword from him, and broke a piece of it, and upon my persuasion my Lord put up his sword again ; but for fear there might be more words, I took Mr. Goring in my arms, and shoved him out of the room : and whilst I was thrusting him out of doors, I heard a noise of a bustle behind me, and leaving the drawer to keep Mr. Goring out, I saw my Lord of Pembroke strike Cony with his right hand, who immediately fell down, and then gave him a kick ; and so upon that, finding him not stir, I took Mr. Cony, being on the ground (I and my Lord together, for I was not strong enough to do it myself) and laid him on the chairs, and covered him up warm, and so left him.

Att. Gen. You say, my Lord struck him & blew ?

Savage. Yes, he did strike him.

Att. Gen. On what part ?

Savage. I suppose on the face.

Att. Gen. You say, Sir, my Lord of Pembroke did kick him when he was upon the ground?—*Savage.* Yes.

Att. Gen. Did he kick him once or oftener?

Savage. But once, that I saw.

Att. Gen. Pray, Sir, on what part was it?

Savage. Somewhere on the body, but I cannot tell what part.

Att. Gen. With what force did his leg move?

Savage. Not with a very great force.

Att. Gen. How high was his leg lifted up?

Savage. He pushed his leg with a quick motion forward.

Att. Gen. When you took him up he was senseless, you say? Pray, Sir, how long was it ere he was brought to life again?

Savage. Two or three minutes.

Att. Gen. What means did you use to bring him to himself?

Savage. We chafed him over the temples, and such things.

Att. Gen. When he came to life again, did he speak?

Savage. He did open his eyes, but did not speak.

Att. Gen. What followed then?

Savage. We laid him upon some chairs gently, for his pulse was almost gone, that we could feel.

Att. Gen. Did his eyes continue open after he was revived?

Savage. Not long; for I asked him if he knew me, he seemed to shake his head, as if he did, and then closed his eyes again.

Att. Gen. Before that accident, what condition was he in? Was he able to talk?

Savage. He was very drunk, but he did say something.

Att. Gen. What discourse had he before he was struck down?

Savage. I cannot well remember, but I think he proposed play to my Lord.

Att. Gen. Why did my Lord strike Cony?

Savage. I cannot tell, I was then putting Goring out of the room, and hearing the noise of my Lord's motion towards Cony, I looked back and saw my Lord strike him.

Att. Gen. What language did he use to my Lord, to provoke him to it?

Savage. I cannot tell any at all.

Att. Gen. Did you see Mr. Cony after that time, and what did he then say to you?

Savage. I went two days afterwards to see Mr. Cony, who told me he was then in a pretty good condition. He asked me whether my Lord had struck him? I told him, Yes. Truly, said he, I did not know that my Lord had struck me, but finding myself so much in pain, I thought I had fallen, partly through my drink, and partly through my fits I used to have.

Att. Gen. We (my Lord) have now done with this witness.

L. H. St. My Lord of Pembroke, will you ask Mr. Savage any questions?

E. of P. No, my Lord.

L. H. St. Mr. Savage, I think you say you saw my Lord of Pembroke kick him once; in your judgment, was that kick of such force as to give any great bruise?

Savage. I did, my Lord, see him kick him once, but not with any great force, as I conceive.

L. H. St. You did not hear Mr. Cony complain my Lord had kicked him?

Savage. No; for, as I told your lordship, when I was to see him two days after, he asked me the question, and he said he did not know it before.

L. H. St. Mr. Attorney, pray go on with your witnesses.

Att. Gen. We shall next call Mr. John Shelly: Mr. Shelly, pray tell his grace and my Lords your knowledge in this untoward accident.

Shelly. May it please your grace, I was in the room at Long's, when Mr. Cony and Mr. Goring came in; they were both very far in drink, inso much that Goring could hardly stand, but desired he might have leave to sit down, which he had: Mr. Goring in a little time proposed play to my Lord, and my Lord told him, he would throw with him for 500*l.* and was sending away for the money; but then Mr. Goring would not play: I believe (said my Lord to him) you are an idle fellow, that you will propose these things and not pursue them: upon that Mr. Goring tells my Lord, his name was a better name than his lordship's, and he a better gentleman than my Lord: then my Lord takes some wine, and threw in his face; hereupon Mr. Goring steps back, and drew his sword, and my Lord did the same: captain Savage steps in between them, and keeps my Lord, while Goring was put out of the room: my Lord then desired Mr. Cony to go out with his friend: Said he, I do not know upon what account my friend is sent out; whereupon my Lord hit Cony a box on the ear, and that threw him down.

Att. Gen. Pray, Sir, before my Lord struck him, did not Cony give my Lord some ill language?

Shelly. He only said, as I told you before, I know not upon what account my friend is turned out of doors.

Att. Gen. Did you see my Lord strike him?

Shelly. Yes.

Att. Gen. Whereabouts?

Shelly. On the head, with his fist, or his hand.

Att. Gen. Did he fall at the first blow?

Shelly. Yes.

Att. Gen. Did he afterward say any thing?

Shelly. No.

Att. Gen. Did you see my lord kick him?

Shelly. No.

Att. Gen. Did you see my lord hold up his foot to do it?—*Shelly.* Yes.

Att. Gen. How high?

Shelly. A pretty height.

Att. Gen. Pray what became of the gentleman afterwards?

Shelly. They took him up in their arms, and laid him upon some chairs.

Att. Gen. Did you see him laid there?

Shelly. Yes.

Att. Gen. Was he senseless when he was taken up?—*Shelly.* Yes.

Att. Gen. What was the reason, do you think, that he did not open his eyes, and keep them open?

Shelly. Truly, I believe his drink, as well as the blows;

Att. Gen. The one as well as the other?

Shelly. Yes.

Att. Gen. What then did they do with him?

Shelly. They laid blankets upon him, and pillows under him, and laid him upon the chairs.

Att. Gen. How many chairs?

Shelly. As many as reached his length.

Att. Gen. Who did you leave him in charge withal?

Shelly. With the drawer.

Att. Gen. Did he speak between the time of his first fall, and your going away?

Shelly. No.

Att. Gen. Did you see him after?

Shelly. Yes, three days after.

Att. Gen. What did he then say to you?

Shelly. That he had a fit, but was pretty well recovered.

Att. Gen. When was it you saw him after that?

Shelly. On the Saturday after, and then he told me the same again.

L. H. St. Did he impute any thing to my lord of Pembroke?

Shelly. He said nothing at all to me of the ground of his illness, but that which I have told your grace.

L. H. St. My lord of Pembroke, will your lordship ask this witness any questions?

E. of P. No, my lord.

Att. Gen. Then we for the king desire to examine Mr. Fitz-Patrick. Captain Fitz-Patrick, pray tell my lord high-steward, and my lords the peers, what you know.

Fitz-Pat. My lord, I was in the room at Long's with my lord of Pembroke, and my lord was walking about the room, and he hears a noise without, and steps to the door, where opening the door half, he saw Mr. Cony at the bar, who was just come in, and seeing my lord, comes to salute him; my lord returning into the room, said to him, will you come in and join company? Mr. Cony answered, I have my friend here, my lord; and brings Mr. Goring to my lord, who saluted him kindly, and desired them both to walk in: Upon which all we that were in the room stood up, and the drawer gave them chairs; after the drinking about of a glass or two, Mr. Goring (both being drunk) said, amongst other discourse, I will drink, I will play, I will fight with any man. Who is this gentleman, said my lord of Pembroke, that I should never hear of, or know him? how, said Goring, ('sblood) not hear of me? my name is Goring, a name and family as good as any gen-

tleman's in England. There is nobody doubts it, said my lord. Your betters, said Goring; and then my lord threw the wine in his face; and Goring going to draw, was put out of the room by Mr. Savage, and my lord, upon some words from Cony, struck him down with his hand.

Att. Gen. What words were those?

Fitz-Pat. When I asked my lord the reason why he struck Cony, he told me, it was because Cony had told him Goring should not go out of the room till he knew the reason of it.

L. H. St. Did you hear him say so?

Fitz-Pat. No, not I; but my lord, upon my asking, gave that for the reason.

L. H. St. What was the reason?

Fitz-Pat. Because Mr. Cony told him, Goring should not go out of the room, till he knew some reason for it: after my lord had struck him, I was on the other side of the table, and could not see whether my lord did stamp on him, or kick him: but I saw my lord's knee stir, and if he did kick him, he kicked him but once, for we ran in and took him up to lay him upon the chairs, and taking his handkerchief out of his pocket to wipe his face, we plucked out of his pocket with it some false dice, which we afterwards put into the hands of Mr. Long, to prove that they intended and proposed play; and after we had laid him on the chairs, and wrapt him up warm, we left him.

Att. Gen. How was he after he was taken up?

Fitz-Pat. He opened his eyes, but being very drunk before, could not keep them open, but shut them again; and we made a bed for him on the chairs; and having wrapped him up warm, we left him, and ordered the drawer to make him a fire.

L. H. St. Did you hear him speak after he was up?

Fitz-Pat. No, my lord: Mr. Savage spoke to him, and asked him, if he knew him; he only looked out him, and by a turn of his head seemed to answer him yes.

L. H. St. On the oath you have taken, did you hear him speak to my lord of Pembroke at any time before he was struck?

Fitz-Pat. Yes, my lord, he had spoken before, and I saw his lips make a motion towards my lord, but what he said, I know no otherwise than as I said before.

L. H. St. My lord of Pembroke, will your lordship ask this witness any questions?

E. of P. No, my lord.

Att. Gen. We have now, my lord, done with the witnesses that were by when the fact was committed; by all whom your lordships hear, the blows were all given by my lord of Pembroke, and in their company; they are all gentlemen of quality, and therefore, I believe, speak the truth: we will now call some witnesses that were with the unfortunate gentleman in his sickness, whereof one was his physician, another his nurse, and others, who were often with him, and after his death had a view of the body. These will give your grace and my lords an account, that he died of those

wounds and bruises he then received; they are these four, Dr. David Bruce, Mr. Thomas Hemes, Mr. Charles Jackson, and Alice Avery.

Cl. of Cr. Hearken to me, you four. The evidence that you and every of you shall give for our sovereign lord the king, against Philip, earl of Pembroke, shall be the truth, the whole truth, and nothing but the truth; so help you God.

L. H. St. Whom do you call first, Mr. Attorney?

Att. Gen. Dr. Bruce, my lord: pray, sir, acquaint my lord high steward his grace, and my lords the peers, what you know of Mr. Cony's sickness, and the cause of his death, as you apprehend.

Dr. Bruce. May it please your grace, all that I can evidence in particular of Mr. Cony's sickness is this: on Monday morning after his being in company of the earl of Pembroke, I was sent for to come to Mr. Cony's lodgings, and about ten of the clock I came; he was then in extremity of pain in both shoulders, so that he could not move, and his pains were so acute, that he could not admit of touching: upon the abating of those pains by my application the next day, he then began to complain of pains in his belly, but those not so extreme as those in his shoulders; after some applications thereto, he complained of both, but in a little time was so eased, that he kept well all night, and till nine or ten the next morning. The next day, which was Wednesday, when I came to see him; I told him of the common report of his being kickt; he seemed displeas'd that such a thing should be reported, and throwing down the bed-clothes, shewed me his belly, but I could not see any blemish upon it then, either by discolouring or bruising; I found him indeed very backward in receiving remedies, but left him then in a hopeful way of recovery; but I saw him not after, because being sick myself, I could not attend him.

Att. Gen. Did he complain of any hurt about him then?

Bruce. Only in his belly.

Att. Gen. Did you then see his belly?

Bruce. Yes, sir, for he threw away the clothes.

Att. Gen. Did you see upon his breast, or any where else?

Bruce. He did not complain of any ail there, so I lookt not for any thing.

Att. Gen. What did he complain of when you came first to him?

Bruce. Only his shoulders.

Att. Gen. And after his belly?—*Bruce.* Yes.

L. H. St. Hark you, doctor, what day was that you came to look on his belly, whether he had any bruises or no?

Bruce. Wednesday morning, my lord.

E. H. St. And then you say upon your oath, you saw there no swelling or discolouring?

Bruce. None at all, my lord; I gave it in upon my oath before the coroner, and the same I say now.

Att. Gen. We have done with the Doctor, my lord.

L. H. St. My lord of Pembroke, will your lordship examine him to any thing?

E. of P. No, my lord.

Att. Gen. Then there is Mr. Hemes; pray, sir, acquaint my lords what you know of this gentleman, Mr. Cony, and first pray you tell his grace when you came to him first.

Hemes. It was on Monday morning after this accident, about eight of the clock.

Att. Gen. Did he send for you?

Hemes. Yes, sir.

Att. Gen. How did you find him when you came?

Hemes. In great extremity of pain, and very sore, complaining of pains over all his body, especially on his shoulders and buttocks. Then the doctor, who came in soon after, did apply plaisters to him, and when he anointed him he was so sore, that he could not endure any one to touch him, nor could we tell how to turn him in his bed, or how to place him so as to apply the ointment, but were fain to get a sheep-skin to wrap him in, and by pillows, and a broad joint-stool, raise him up by degrees: I did then look upon his body, but saw no swelling or bruise there.

L. H. St. Did you see his belly?

Hemes. No, my lord, but he did complain of an inward grief there.

Att. Gen. When did he first complain of that?

Hemes. The first morning when I came.

Att. Gen. What words did he then use? tell the very words he used, if you can remember them.

Hemes. No, sir, I cannot; but he complained of a great soreness in his belly, and an inward soreness.

Att. Gen. Where, in what part of his body?

Hemes. In his belly, I say.

Att. Gen. Well, now go on; how long did you continue with him? how many days did you come to him?

Hemes. I came to him every day all along.

Att. Gen. Were you with him till the day he died?

Hemes. Yes; there was indeed a new physician sent for, but I saw him all along usually once a day.

Att. Gen. Did he complain more than once of his belly?

Hemes. Yes, all along from the first morning.

L. H. St. Did you see him opened after he was dead?

Hemes. Yes, my lord.

L. H. St. What can you say as to what you saw on him then?

Hemes. When he was opened, in the lower part of his belly there was a great deal of blood gathered together on both the hypocondria's, which is not usual; I cannot tell the meaning of it, the physician knows that best.

Att. Gen. Was it congealed black blood?

Hemes. It was of an ugly colour.

Att. Gen. What colour?

Hemes. Of a blackish livid colour.

Att. Gen. Have you observed it often so in others? have you used to see people opened at other times?

Hemes. No indeed, not I, but very seldom.

Att. Gen. Well, then, stand down you, for we have done with you.

L. H. St. My lord of Pembroke, have you any thing to say to him?

E. of P. No, my lord.

L. H. St. Then call your next witness.

Att. Gen. That is Mr. Jackson. Pray you, sir, tell my lords what you know of this business: when were you sent for to Mr. Cony?

Jackson. On Wednesday.

Att. Gen. What acquaintance had you with him?

Jackson. I had a very particular acquaintance with him, and I looked upon him as a person of a strong, healthy constitution, and not subject to any dangerous distemper; my acquaintance with him was of twelve years standing, and therefore I must needs know him pretty well. Upon the Wednesday, after this accident, hearing he was very weak, I went to visit him, and when I came, he told me, he had been troubled with very unusual swooning, and then fell into one of them, but with some cordials we revived him again, when we thought all of us he had been dead. The Friday and Saturday before he died, I was with him all day; he complained of great griefs in his belly; he said, he had great torment there, and believed he had received some ill usage lately, which occasioned these pains.

Att. Gen. From whom had he received it?

Jackson. He was very sparing in telling whom it came from.

Att. Gen. Who did he name?

Jackson. He said, he was drinking with my lord of Pembroke; but he was in such pains, that I could not ask him many questions which he would answer.

Att. Gen. Where were his pains?

Jackson. In his lower belly, and he had sometimes strange fainting fits.

Att. Gen. When did he first complain of his fits to you?

Jackson. On the Wednesday.

Att. Gen. When did he die?

Jackson. On Monday following.

Att. Gen. Did he complain on Saturday of his belly?—*Jackson.* Yes.

L. H. St. What discourse had you further with him?

Jackson. None but what I tell your lordship that I can remember.

L. H. St. My Lord of Pembroke, have you any thing to say to him?

E. of P. No, my Lord.

L. H. St. Who is next then, Mr. Attorney?

Att. Gen. Alice Avery, my Lord, who was his nurse—Were you attending upon Mr. Cony in the time of his sickness?

Avery. Yes, I was.

Att. Gen. Pray tell my lord your whole knowledge.

Avery. When he came in on the Monday morning, I found he was very ill, and could not well stand: Sir, said I to him, sure you are very much in beer; no, said he, I am very sore, and full of pain: sir, said I, I believe you have been in some bad company: yes, said he, I have been in some company, where I have received a great deal of wrong, I am not able to go nor stand, I have been beaten and kicked more than ordinary, I was never so abused in all my life; and upon his dying bed he wished to God, he had never been in my Lord Pembroke's company, for he did think in his conscience my Lord had been the death of him.

Att. Gen. Speak that again.

Avery. He wished to God he had never been in my Lord Pembroke's company, for he did think in his conscience that he had been the death of him.

L. H. St. How long before he died was that?

Avery. About two or three hours before he died.

Att. Gen. Did he continue sensible to the time that he died?

Avery. Yes, to the last minute.

Att. Gen. How often did he complain of his pain?

Avery. All along from the time he came out of my Lord Pembroke's company.

Att. Gen. What time did he come home?

Avery. About 7 or 8 of the clock on Monday morning.

Att. Gen. Where and what part did he complain of then?

Avery. His sides and all parts about him.

Att. Gen. How often did you discourse with him about his pain?

Avery. Every day divers times, from the time he came home till he died.

Att. Gen. And he spoke those words a little before he died?

Avery. Yes, and often complained of his being abused.

L. H. St. My lord of Pembroke, will you ask this woman any questions?

E. of P. No, my Lord.

L. H. St. Have you any more witnesses, Mr. Attorney?

Att. Gen. Now, my Lord, we shall call three more that had a view of the body after his death, upon the coroner's inquest, who will give your grace an account what appearances of murder were there visible; and they are, Richard Wheeler, William Brown, Thomas Roberts.

Cl. of Cr. Lay your hands on the book: the evidence, &c.

Att. Gen. Which is Mr. Brown? Did you see the body of Mr. Cony after he was dead?

Brown. Yes, my lord, I was one of the coroner's inquest, which after view of the body went into another house; but some of us seeing the body swelled at that rate as it was, and being unsatisfied of the cause, went back again to look upon it, and there I saw upon his right breast a great black bruise; and I looked upon the caul, which was all wasted

away; and on his left side again a great black spot, and in the bottom of his belly a quantity of very ill-looking blood.

Att. Gen. When was this you saw it? what day? how long after his death?

Brown. The day after he died.

Att. Gen. Where did you observe any hurt and bruise upon him besides?

Brown. As he lay before he was opened, we saw him all over swelled at a prodigious rate, and black and blue in divers places; so that I was unsatisfied till I had seen the inward parts, and therefore went up and saw what I said before.

L. H. St. Did you know the gentleman before?—*Brown.* No, my Lord.

L. H. St. My Lord of Pembroke, do you desire to ask him any thing?

E. of P. No, my Lord.

L. H. St. Then go on, Sir.

Att. Gen. Richard Wheeler, pray tell my Lord what you know.

Wheeler. My Lord, I was summoned upon the Jury by the Coroner, and according to my duty I made such an inspection as I could into the body; I did observe upon his right breast a very black and great bruise, which was indeed of another-guise colour than that of settled blood, for I have of my own knowledge had a sad experience of that kind.

Att. Gen. Did you know the gentleman before?

Wheeler. Yes, I knew the gentleman very well, and I had not known him to be the same person then, but by their description that were about him, for all the parts of his body were most violently swelled.

Att. Gen. Did you see the settled blood at the bottom of his belly?

Wheeler. Yes; and as I was informed, that was occasioned by his being forced to lie on his back continually, because his pain would not suffer him to move: that on the side, and ribs, was a perfect bruise.

Att. Gen. Where is Mr. Roberts? Did you see this gentleman's body after his death?

Roberts. I saw the body after it was opened and viewed the inward lower parts of the belly, where there was a quantity of blood gathered together.

Att. Gen. Was it more black in that part than in others?

Roberts. It was black congealed blood.

Att. Gen. How broad were the spots?

Roberts. About the breadth of my hand.

L. H. St. Mr. Roberts, did you see the left side of the belly bruised?

Roberts. Yes, my Lord; and (as I said) in the lower inward parts black congealed blood.

L. H. St. Was there any swelling?

Roberts. Yes, my Lord, very much.

L. H. St. The Doctor that was examined before, said there was no swelling nor discolouring.

Att. Gen. He did so, my Lord; but this was several days after that.

L. H. St. My Lord of Pembroke, will you examine these men?

E. of P. No, my Lord.

Att. Gen. My Lord, we have but one witness more for the king, and that is Mr. Charles Cony, who is brother of the gentleman that died, who will give you an account what he said in his sickness; and the sayings of a dying man in such circumstances are remarkable.

Cl. of Cr. Charles Cony, hearken to your Oath. The evidence, &c.

Att. Gen. Now, Mr. Cony, tell his grace and my Lords the occasion of your brother's sickness and death.

Cony. May it please your Grace, on Monday the 4th of February I was sent for by my brother, about nine of the clock in the morning, to come to speak with him, but not believing his business to be urgent, deferred my going; the messenger immediately comes back again, and tells me my brother was exceeding ill; as soon as I came, I found him almost dying, his eyes set, and he extremely ill, but we recovered him in a little time: whilst he complained of great pain, I examined what might be the cause, and where he had been last night (for I understood he came not home till morning) and in what company. And when I was told of my Lord Pembroke's company, who had struck him down with a box of the ear, both he and I quickly concluded how his ill came: but to be satisfied, (he telling me he could not remember what he did) we sent for the drawer, to know the truth of the matter: but in the mean time to comfort him, I told him I hoped it was only a fainting fit, which would be over again in a while. The drawer came, and did assure me that my lord did never strike him; which upon assurance I did believe, especially when he came again in the afternoon, and told me the same story. All the while he was in the hardest pain that could be, and could not be touched, but was forced to lie upon his back. The Doctor told us, for application to ease his pain, the best thing to wrap him in was a whole wether's skin; which we did at two of the clock in the afternoon, by the help of a chirurgeon, raised him up, and put on him. On Tuesday morning I sent to know how he did, being necessitated to go another way; he sent word back, he was pretty well at ease, and had rested pretty well. On Wednesday, he rose, and sat; on Thursday he was so well, that he would have some friends to dine with him in his chamber; on Friday he was a little ill again, but on Saturday he was so well, that he would have gone abroad, and truly we did never (I'm sure I did not) believe he would have died, till about two hours before he died. One day when Dr. Conquest came out of his chamber, he seemed to be in a huff, and said, he was only kept there to do the drudgery; and when I asked him what he thought of my brother? he answered me short, I cannot tell whether it be a Pembroke-kick or no. And when I, upon the report of my lord's having abused him, (which yet upon the drawer's answer I believed not) spoke to him about it, he would seem displeas'd any should mention it.

he once indeed told me, he had something else to reveal to the Doctor, but what it was I cannot tell.

Att. Gen. Did you apprehend him to be so ill as he was?

Cony. No, I never believed it, till an hour before he died; and this is all that I can say, my Lord.

L. H. St. Will you, my Lord Pembroke, ask Mr. Cony any question?

E. of P. I desire your Grace to ask him what chirurgeons they were that did view the body after dead.

L. H. St. Mr. Cony, come forward. My Lord of Pembroke desires to know what chirurgeons viewed the body?

Cony. Mr. Small the chirurgeon, I think my Lord.

E. of P. I desire your Grace he may be examined.

L. H. St. If the king's counsel have done, then your lordship may examine who you please: what would your lordship examine into?

E. of P. To give your Grace an account what might be the cause of the blood found in Mr. Cony's body.

Att. Gen. Because we did omit to examine Jackson to that matter, we desire for the king we may call him to that point now.

L. H. St. You should have examined all your witnesses fully at first.

Att. Gen. We acknowledge it, my lord; but since we did forget it, we humbly crave leave to do it now.

L. H. St. Here is Mr. Jackson, what do you ask him?

Att. Gen. Mr. Jackson, were you present at the opening of Mr. Cony's body?

Jackson. Yes, sir.

Att. Gen. What did you see there?

Jackson. There was an extraordinary quantity of extravasated blood in the lower part of his belly.

L. H. St. Extravasated blood?

Jackson. Yes, my lord.

Att. Gen. How might that come? Might it not proceed from a natural cause?

Jackson. I believe it came from some bruises given him, and from some violencees that were done to him.

Att. Gen. In the belly was it?

Jackson. Yes, in the belly.

Att. Gen. You saw then: Did you see any swelling there?

Jackson. Yes, and the diaphragma bruised, &c.

Att. Gen. Now, my lord, we have done with our evidence for the king.

L. H. St. My lord of Pembroke, if your lordship have any witness to call, or will say any thing for yourself, now is the time.

E. of P. I desire your grace that Dr. Lower, and Dr. Conquest, and one Mr. Raven, may be examined for me.

L. H. St. Call Dr. Lower, Dr. Conquest, and Mr. Raven,

Cl. of Cr. Here they are, make room for them.

L. H. St. My lord of Pembroke, who will your lordship begin with?

E. of P. Dr. Conquest, my lord.

L. H. St. Doctor, you are not upon your oath*, but you must have a strict care what you say, for there will be a good account to be taken of it at another place, and it being a testimony before a court of judicature, the obligation upon you to speak the truth is as great, as if you did swear.

Dr. Conquest. The account I now give, my lord, is that account which I gave upon my oath before the coroner.

L. H. St. You must give it again *vice versa*; we must not read your examination before the Court.

Conquest. The first occasion I had to see Mr. Cony as a physician, was about three months before this unhappy accident; he was then in a fainting fit at the Rose-Tavern, &c. where I was sent for to him: He had for half an hour lain quite dead, as they thought, but with their rubbing him, and giving him some mulled sack, he was come to himself just as I came, but he had no pulse, and was relapsing into his fit: I gave him some drops and cordials, and sent him home pretty well again. We went from thence, and the next morning his man came to call me, and told me his master was dying, which was (as I take it) the 6th of December last. When I came thither, I found his man sitting by the fire; and asking for his master he told me he was asleep; I was something vexed at the fellow for troubling of me so, and while I was speaking to him, Mr. Cony at last heard my voice, and calling me to him, desired me I would come again in the afternoon, for he had a mind to rest this morning: I came at one of the clock again, where I found him very ill, and very melancholy; he wept, and sent his man down stairs, and when the man was gone, I asked him what was the occasion? He told me, he found so great an oppression at his heart, that he could hardly speak: I desired he would take some advice, and send for another physician; but he would have none else, but would needs go abroad that afternoon; I desired him all I could; but not prevailing with him, I gave him some cordial drops, and desired him to return home sometimes; but he did not, but, as I heard, drank very hard, and returned not till very late. In short, in the space of two months, I have been called out of my bed above twenty times, to give him advice, and to recover him out of his fits: but he would take no advice, do whatever I could. After this was his meeting with my lord of Pembroke, which he thus gave me relation of: He told me, he had been with Mr. Goring in the city that day drinking hard; and when he came to Long's he was so extremely

* See lord Morley's Case, ante, vol. 6, p. 770, and the note thereto respecting the examination of witnesses.

drunk, that he could not remember any thing that was done there, but finding himself much in pain the next day; he was so ignorant of the transactions there, that he only thought he had had several falls off the chairs near the fire; he said indeed, he afterwards sent to enquire what had passed in his company that night, and he heard my lord of Pembroke should give him a box on the ear, but he remembered it not. Two or three days after he sent for me and told me, now he would take advice of me, and enter into a course of physio; but knowing his condition to be so bad, I would not venture upon it alone, and desired that he would join some one else with me in consultation: He asked me, what physician he should send for? I desired him to name any one whom he had a mind to; he said he knew none, and therefore would have me take whom I would, and then named Dr. Lower, and obtained his consent to have his advice, whom I brought with me to his lodgings. And the Saturday before he died, as we were coming in the coach, I told Dr. Lower what I had known of his distemper before, and what might be the occasion of it, which (when we came thither) I repeated again in Mr. Cony's presence, who did confess the whole to be as I said, that he had been a very hard drinker of wine, and strong waters upon it, which had (he believed) caused a stagnation of blood in his body, which might be the occasion of his fainting fits. We consulted the whole cause; he owned no blow or kick that he had received, neither did I believe his intrails had received any such prejudice, because I saw him myself take two or three glisters, as particularly that evening: Yet he would not be regular, but that night drank three whole tankards of cold small beer, which did put him into a very violent fit of the gripes. He sent for me, and having left him pretty well I wondered what alteration could cause so violent a distemper in him so suddenly; He fell a vomiting, and vomited all night; and when I came and found him in a dying fit, I gave him some drops I had about me, and fetched him to life again; but still he was very had, and he had a gister for the gripes; he would fain have had some more small beer, which I dissuaded him from, and advised him rather to white-wine-possiet-drink, but he swore a great oath he would have small beer. Dr. Lower, I suppose, saw him that morning. An hour before he died I came again and thought fit to bleed, and so he was; he bled about eight ounces, and was a little better, so I left him: An hour after I came again, and found he was dead; but for his complaining of any bruise or hurt that way received, I remember not.

L. H. St. Did you see him after he was dead, and when he was opened?

Conquest. Yes, my lord, I did see him opened.

L. H. St. What was your judgment then?

Conquest. My lord, there was clotted blood among the bowels, that was extravasated. My lord, the breaking out of which, I did at-

tribute to the great quantity of small beer he had drunk, and the gripings that followed upon it; but the bowels were none of them touched, and he himself attributed his fits to that.

L. H. St. Mr. Attorney, will you ask him any cross question?

Att. Gen. No, my lord.

L. H. St. Then, Dr. Lower, pray speak your knowledge.

Lower. All the account, my lord, that I can give is, that the day before Mr. Cony died, Dr. Conquest did come to me to desire to go with him, and by the way (as he related) told me the manner of his fits, and what he thought was the occasion of them; and in this discourse we continued till we came to his lodgings, where we found him in his bed; and when he was up Dr. Conquest repeated what he had told me before, and he acknowledged all that to be true: I myself asked him many questions how he found himself: he said, those fits came upon him suddenly by sickness upon his stomach; but there was not any discourse in my hearing, of any bruise or hurt that way, nor had I any reason to suspect any such thing should be the cause of his illness, for he had no symptom of a fever upon him, either in tongue, pulse, or urine, which would have been, had he owed his distemper to any thing of that kind. The next day I was sent for to him early, but my necessary attendance on other patients would not let me come quickly to him: when I came I found him dying, and seeing no hopes of his recovery, left him; I was desired to be present at the dissection, but because of the rumour of this business, I said it would be a troublesome matter, and therefore would purposely avoid it.

L. H. St. So you did not see him dissected?

Lower. No, my lord, I did fear being troubled, and would have avoided it, but could not, it seems, for I am here come to testify this.

L. H. St. Did he use any words to you whilst he was sick, complaining of any abuse or wrong offered him by beating or kicking?

Lower. No, my lord.

L. H. St. How long was it before he died that you saw him?

Lower. It was on Saturday at four of the clock in the afternoon, and he died on Sunday at noon.

L. H. St. And when you came to see him again, you found him dying?

Lower. Yes, my lord.

L. H. St. But you say, all the time you were with him, you saw no symptom of a fever on him?

Lower. No, none at all, my lord.

L. H. St. I then ask you this question, doctor, can any man be mortally hurt and bruised, whereof he may languish, and not have a fever?

Lower. According to my knowledge and experience, my lord, usually and most commonly upon a mortal bruise, an inflammation follows, and that inflammation causes a fever,

which will be evident in the patient's pulse, or tongue, or water; but none of these I found so affected with Mr. Cony.

L. H. St. Have you any thing to say to this gentleman, Mr. Attorney?

Att. Gen. No, my lord.

L. H. St. Where then are the rest of your witnesses? My lord of Pembroke, Will you call any more evidence?

E. of P. Yes, my lord, Mr. Raven.

L. H. St. Dr. Conquest, pray, before you go; you say you told Dr. Lower of Mr. Cony's fits before, were they the same with those he had in his last sickness?

Conquest. Yes, my lord, the same fainting fits.

L. H. St. And you imputed them to the same cause?

Conquest. Yes, my lord, to his hard drinking wine, and strong-waters, and then great quantities of small-beer; I told his landlady often it would kill him, but I could never get him to be regular, nor take any advice.

L. H. St. Hath your lordship any more witnesses?

E. of P. Mr. Raven, my lord.

L. H. St. Come forward, Mr. Raven, and speak out.

Raven. I viewed the body, my lord, before and when it was opened, and it was reported to me that there was a bruise in each side of the belly, of which thereupon I took a stricter view, and could find no blackness nor blueness, nor marks of bruises; upon which the body was opened, and there issued thence clotted blood; then I looked upon the caul, which was withered and consumed, and the heart was as loose as a rag, and his lungs stuck to each side of his ribs; and as to the matter of the blood, that was not an extraordinary thing, for it is known to physicians, that in all natural deaths there must be extravasated blood in the lower belly.

L. H. St. How did you think there came to be that quantity of blood there?

Raven. This blood, I think, my lord, must be extravasated by the violence of his gripes, for it is proved he drank a great quantity of claret, and afterwards of small-beer, which set the blood upon a fermentation; that set him a vomiting; by the violence thereby used to nature this blood was thrown down into the belly; but in all natural deaths, if there be not so great a consumption of the blood that there is none left, there must be some extravasated; it is a clear case.

L. H. St. My lord of Pembroke, hath your lordship any more witnesses?

E. of P. Yes, my lord, two more, Benjamin Long and William Viner.

L. H. St. Who does your lordship begin with?

E. of P. Long.

L. H. St. Do you hear, Long, you must have as great a care what you say, as if you were upon your oath.

Long. A little before this business hap-

pened, Mr. Cony comes into my house at Covent-Garden, and said he was very ill; he was just going to sit down and missed the chair, and had like to have fallen down, being almost in a swoon; whereupon he said, send for Dr. Conquest presently, or else I shall die: so I sent my servant to call him, who found him at the coffee-house: When he came in, said he, Sir, how do you? I am glad you are come, said Mr. Cony, for I am very ill; and there were two gentlemen came in with the Doctor, that were then going to the play-house: said Mr. Cony, I am taken with the fainting fits, and fear they will kill me; upon that Dr. Conquest bid him have a care of drinking, for it would ruin him.

L. H. St. When was this?

Long. A little before Christmas, my lord.

L. H. St. How long before he died?

Long. It was before he was hurt?

L. H. St. How long?

Long. Five or six weeks, my lord, as I remember; I cannot tell exactly.

L. H. St. Well, and what followed?

Long. Dr. Conquest would have him go home to his bed, which I know not whether he did or no, but he went away from our house, and the doctor said he would send him a glistar and some other things the next morning: And this is all I can say.

L. H. St. Is that all you can say?

Long. Yes, my Lord.

L. H. St. Why, was not this accident done at your house?

Long. No, my Lord, it was at my brother's in the Haymarket.

L. H. St. Then call next Viner; what say you?

Viner. May it please your grace, I am drawer at Mr. Long's in the Haymarket, I did see my lord strike him with his hand, and that is all; I came in just as he struck the blow, and captain Savage bid me keep out Mr. Goring; which while I was doing I knew not what was done more; but after they had laid him upon the chairs, they charged me to make a fire, and look after him, and left him: He fell down divers times off the chairs; and when he came to himself a little, I asked him how he did? He told me he was very sick, and I got him still up again upon the chairs: And then he had several fainting fits in the room; and about seven of the clock in the morning, we sent him home in a chair to his lodging. The same day at one of the clock he sent for me, to know what had happened, for his own memory would not serve him to tell: I did not think fit then to tell him my lord had struck him, but told him he had many falls in the room: 'Tis fits, said he, that I have had not long since, and it comes with my hard drinking, and not looking to myself.

L. H. St. He supposed it to be so.

Viner. Yes my lord, he himself did.

L. H. St. Did you see my lord Pembroke tread upon him?

Viner. No, my lord, I only saw the blow

of his hand, for I was getting Mr. Goring out of the room.

L. H. St. Did he say my lord of Pembroke did tread upon him?

Finer. No, he could not tell any thing that my lord had done to him; he was drunk that night, and therefore sent for me to know how it was.

L. H. St. My lord of Pembroke, hath your lordship any more witnesses?

E. of P. No, my lord.

L. H. St. Did not your lordship speak of one Snell, my lord, a surgeon, at first?

E. of P. I did expect, my lord, they should have brought the person your grace speaks of.

L. H. St. Why, my lord?

E. of P. Because he was their surgeon.

L. H. St. What say you now of the king's counsel to my Lord's defence?

Sol. Gen. If my lord hath done, we are ready to go on for the king.

L. H. St. Will your lordship say any thing more for yourself?

E. of P. I have nothing more to say, my lord.

Mr. Sol. Gen. [sir Francis Winnington.] May it please your grace my Lord-High-Steward of England and my noble Lords, that are now judges of this cause of blood; I shall with all faithfulness endeavour to discharge my duty in this great court, and confine myself solely to the evidence that hath been given, and I hope I shall not do this noble lord, the prisoner at the bar, any injury by misrepetition. * The

* In a Note to the Case of Don Pantaleon Sa [ante vol. 5, p. 406.] a quotation was made from a Note of Mr. Professor Christian upon the allowance of counsel. What sir Francis Winnington here says will justify the insertion of some matter there alluded to in the professor's Note which certainly deserves to be recorded:

“An honourable barrister will never mistake either law or facts within his own knowledge, but he is justified in urging any argument, whatever may be his own opinion of the solidity or justness of it, which he may think will promote the interests of his client; for reasoning in courts of justice and in the ordinary affairs of life seldom admits of geometrical demonstration; but it happens not unfrequently that the same argument, which appears sophistry to one, is sound logic in the mind of another, and every day's experience proves that the opinions of a judge and an advocate are often diametrically opposite. Many circumstances may occur, which will justify or compel an individual member of the profession to refuse the defence of a particular client, but a cause can hardly be conceived which ought to be rejected by all the bar; for such a conduct in the profession would excite so strong a prejudice against the party, as to render him in a great degree condemned before his trial. Let the circumstances against a prisoner be ever so atrocious, it is still the duty of the advocate to see that his client is convicted accord-

evidence, my Lords, that hath been produced for the king to make it out, that the prisoner at the bar is guilty of murder, doth, may it please your grace, consist of three parts.

1. In the first are contained those matters of fact, which did arise at the time when the poor unfortunate gentleman came into my lord Pembroke's company, and what happened before my lord of Pembroke did depart from that place.

2. The second part of the evidence consists of matters that did arise by confession of the party, and his discoursing with persons who came to visit him, or were with him during the time of his sickness.

3. The third part doth consist of matters arising after his death, upon the view of the body. Under these three heads are comprehended all the king's evidence, and with humble submission, I humbly conceive, that the evidence doth reach the Indictment, which is for the crime of wilful murder. But when I have humbly stated the fact, I must submit it to the judgment of my noble lords and peers.

But to take a due method, I shall begin with

ing to those rules and forms, which the wisdom of the legislature has established as the best protection of the liberty and the security of the subject. But the conduct of counsel in the prosecution of criminals, ought to be very different from that which is required from them in civil actions, or when they are engaged on the side of a prisoner; in the latter cases they are the advocates of their client only, and speak but by his instruction and permission; in the former they are the advocates of public justice, or to speak more professionally, they are the advocates of the king, who in all criminal prosecutions, is the representative of the people; and both the king and the country must be better satisfied with the acquittal of the innocent, than with the conviction of the guilty. Hence in all criminal prosecutions, especially where the prisoner can have no counsel to plead for him, a barrister is as much bound to disclose all those circumstances to the jury, and to reason upon them as fully, which are favourable to the prisoner, as those, which are likely to support the prosecution.

“When this note was written, the editor was not aware that the general observations contained in it were sanctioned by so great authorities as Cicero and Paoletius. Cicero makes the distinction that it is the duty of the judge to pursue the truth; but it is permitted to an advocate to urge what has only the semblance of it. He says he would not have ventured himself to have advanced this (especially when he was writing upon philosophy,) if it had not also been the opinion of the gravest of the stoics, Paoletius, ‘Judicis est semper in causis verum sequi: patroni nonnunquam versimile, etiam si minus sit verum, defendere: quod scribere (præsertim cum de philosophia scriberim) non audeam, nisi idem placeret gravissimo stoicorum Paoletio.’ Cic. de Off. lib. 2. c. 14.”

a word or two of what Mr. Attorney-General was pleased to hint, when he opened the cause, that is, to shew what murder is, and wherein we conceive the evidence comes up to the Indictment. Murder in our law is, when one man kills another upon malice fore-thought; now that malice is comprehended under two particulars: The one is exprest a former grudge, discontent, and hatred to a man, to lye in wait to slay him: The other is malice implied, and that is when a person will come and fall upon another, and kill him with violence, without any provocation; and that I take to be the case now before your grace, and these noble lords; whether this noble lord, the prisoner at the bar, be guilty of murder, under the head of malice implied, having killed a man, without any provocation given; for if it should be made appear, as I humbly conceive it hath, with submission, that Mr. Cony did receive his wound, whereby his death came, from the earl of Pembroke, it is with our law murder.

That my lord of Pembroke did invite him into his company is sworn by four witnesses; for when they came into the house they did not so much as enquire whether my Lord was there or no; and when my lord asked him to come into the room, Mr. Cony did excuse it, in a manner, by having his friend with him; pray bring your friend in with you, said my Lord: After a little while it was said, there were several discourses passed between my Lord and Mr. Goring concerning play, and their families; but the third witness doth swear, that when they were speaking of playing for 500*l*. Mr. Goring declined; my lord of Pembroke first called him idle fellow, and that occasioned Mr. Goring to give that language, which was not so fit for him to give a noble lord of his quality. But, may it please your grace, let the discourse between Mr. Goring and my lord of Pembroke be what it will, the question will be, Whether or no the party that was killed gave my lord of Pembroke any provocation, or cause of discontent, which might make him give him that blow? or whether or no the striking or kicking was the cause of his death? That comes in the last place, for I am now under that head; there was no provocation given by Mr. Cony to my Lord to strike him, and four witnesses there were to that, the persons by at the time when it was given, who all, as to the substance, swear the same thing, only one or two circumstances come from some of them, that do not come from all. Mr. Savage, a man of quality, and an honourable family, swears, That at the time when Mr. Goring was put out of the room, he saw the earl of Pembroke (turning his face) give Cony a blow on the head, and one kick when he was down. The question was asked him, Whether he kicked him upon the belly; but that he could not answer to: He likewise doth particularly say, after the blow was given by the earl of Pembroke, that struck him down to the ground, he saw his knee lifted up to kick him, higher than the motion of usual walking, so

that some violence was used as to that. Mr. Fitz-Patrick, though they all agree in substance, yet he hath one particular differing from the rest; he saith, That when my lord of Pembroke was asked why he struck Mr. Cony, he answered, Because he said Mr. Goring should not go out of the room, without his knowing some reason for it; this he swears the earl did say, but whether it was so or no is the question. Shelly says, No such word passed, nor doth Savage speak of it: But be that circumstance true or not (for all the witnesses agree in substance, and may not be able to agree in all circumstances) yet under submission, I must leave it to the judgment of my Lords the Peers, whether that be provocation sufficient to lay violent hands on a man. Shelly, indeed, says the words were, I know not why my friend is turned out of doors; now whether these are a provocation, such as in judgment of law can be deemed sufficient to lay violent hands on a man to kill him, is the question,* we suppose it is not, but such a stroke is given without a provocation, in which the law implies malice. This (may it please your grace) is the sum of that which I humbly take the boldness to remember your lordship of, as to the first part of the evidence.

2dly. The second part is upon what ariseth after the blow was given. My lord of Pembroke at that time was certainly apprehensive he had done the gentleman some wrong, and that is evident by his care of him after; for his own witness, Viner, doth say, that my Lord bid him make a fire and watch with him; surely if my Lord had not been conscious to himself, that he had done something extraordinary to the person of that gentleman, that caution had not been given to the man; But besides (my Lord) there are little circumstances, which are always allowed for evidence in such cases, where men receive any wounds to ask them questions while they are ill, about it, who hurt them. Now as to this there are four witnesses also, Dr. Bruce, Mr. Hemes, Mr. Jackson, and Alice Avery.

Dr. Bruce swears, That when he came on the Monday to enquire of Mr. Cony what his illness was, he did complain of soreness about his shoulders, but did not make mention of the lower part of his belly, or any discolouring there.

But Hemes the apothecary says, he not only complained of extreme pains in his shoulders, but also of extreme inward soreness in the lower part of his belly, and this person was frequently with him, and the same complaints came from him, till he expired his last breath.

Jackson, He did know him for a long time before; he said indeed, He had about two or three months before a fainting fit or two, but to this time he looked upon him as a healthy

* As to the law concerning the sufficiency of a provocation as an excuse, see the seventh Resolution in lord Morley's case, *ante*, p. 771. and the Notes there alluded to.

man, and he continued with him off and on till he died, and to him he did declare he had received injury from the earl of Pembroke, though he was very loth to say what: And he also tells your lordships, that he saw the blood in his belly after the dissection, which he imputed to some hurt he had received. Indeed, there is a chirurgeon that tells your lordships, that it is an ordinary thing, and that it is so in all natural deaths, and it might be occasioned by his drinking the beer, which made him vomit, and concluded with these words (I noted them), It is a clear case; but the man not being upon his oath, and giving it in as his single opinion, I hope will not bear so much weight with your lordships.

The nurse that was continually with him to the last moment, swears, he did continually complain after he came into the house, of pains all over his body, and (as she saith) continued in his senses, and the right use of his understanding, till his last breath, but principally complained of soreness in his shoulder, his side, and his belly, and did likewise often mention my lord of Pembroke's unkindness to him, declaring about two hours before he died, that he thought in his conscience the earl of Pembroke was the cause of his death.

These four witnesses swear what I have truly repeated, for I would be very unwilling in a cause of blood, to misrepeat the evidence, either to the prejudice of a just cause for the dead, or to press for unjust vengeance upon the living, it being my duty only to recollect what is sworn, and leave it all to your lordship's judgment.

3rdly. We have that which is evidence in law, upon the view of the body after his death. It was viewed legally by a jury of indifferent persons, summoned by the coroner, three of them being produced to swear, that there were a great many visible bruises upon the body, and swellings all about: and for the discolouring of the parts bruised, Roberts swears, the patch was about the breadth of his hand: Brown likewise swears, that he was black and blue up and down the body in broad patches: these are jurymen, disinterested persons. It is true, Mr. Cony's brother, the last witness for the king, saith, He knew nothing of the business, for his brother would never acknowledge any thing to him; but something that he speaks is very material. That Dr. Conquest, my lord's witness, coming out of the chamber one day, seemed angry, and to have taken some distaste, as if he were neglected, and used an expression, which your lordship may remember, upon Mr. Cony's asking him what ailed his brother, he could not tell, he said, It might be a Pembroke-kick. And this is the sum of the evidence for the king.

For the evidence on the other side, I think the substance of it is only, That this gentleman was used to have fainting fits, and those occasioned, as they think, by his hard drinking, and that might bring his death upon him; but they offer no counter proof of the fact.

But the question is now, Whether or no this man came to his death by other means; for it

is no argument to say, because a man is sick, it is lawful to kill him: but we are to enquire, whether he came to his death by those blows given him by the prisoner at the bar? if then it be admitted that the blow was the cause of his death, and the kicks withal, I humbly then submit to your lordships' consideration, whether the king's evidence hath not reached up to the indictment: Here is murder with malice implied by the law, for there is no colour of pleading a provocation of the blow, to be the cause of his death. Now whether or no it be so, I humbly offer these reasons for the affirmation; this man was not looked upon to be a man in that condition as to be a dying man, before the blow.

Obj. But he was a great drinker; that brought him to those fits, and that hastened his end.

Ans. Though he was so, yet from the instant that he did receive the blow, he never had any ease till he died, insomuch that Mr. Savage tells your lordships, he took him up immediately after my lord kicked him, and he was some minutes before he could get him to life again, and then he could not keep him from fainting again: so that upon the circumstances of what the witnesses for the prisoner have said, and the evidence offered in behalf of the king, if this were the cause of his death, we leave it to your lordships' consideration, whether it be not murder in this noble lord the prisoner at the bar: to that determination we submit the cause; and whatever opinion your lordships shall be of in the cause, I have no more to say, but that the king's justice, in this prosecution, was suitable to the law given by the Almighty in the infancy of the world, 'That whosoever sheddeth man's blood, by man shall his blood be shed.'

L. H. St. Will your lordships please to withdraw to consider of the evidence?

Then the Lords went back in the same order they came in, and went into the House of Lords; and from thence, after two hours debate, they returned into the Court, and Proclamation was made as followeth:

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. O Yes! my lord high steward of England his grace straitly chargeth and commandeth all manner of persons here present, to keep silence upon pain of imprisonment.

Then his Grace spake to the Peers.

L. H. St. Your lordships have heard the evidence against the prisoner, and for him, on both sides; and the solemnity in this case is, that your opinions are to be delivered severally, in the absence of the prisoner, who is to hear all that is by the witness or counsel said against him, but is to have his judgment from the High-Steward.

Upon the whole matter the question is this; Whether my lord of Pembroke be Guilty of the felony whereof he stands indicted, for the

murder of Mr. Cony, or Not Guilty? The order of your opinions being delivered, is to begin with the puisne baron, and so upwards. I desire time to take your lordships judgments distinctly, and I desire each of your lordships to speak out, that I may hear it.

L. H. St. My lord Butler, what is your opinion? Is Philip earl of Pembroke and Montgomery guilty of the felony and murder whereof he stands indicted, or not guilty?

J. Butler. Not guilty of murder, but guilty of manslaughter.

The same question to the rest.

The Lord High Steward counted their numbers.

L. H. St. Six of my lords find him guilty: Eighteen find him not guilty: Forty find him guilty of manslaughter. Call for the prisoner to the bar.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. O Yes! Constable of the Tower of London, bring forth the body of thy prisoner Philip earl of Pembroke and Montgomery, on pain and peril shall fall thereon.

Then the Prisoner came in, with the edge of the ax still from him, and his grace spake to him as followeth:

L. H. St. My lord of Pembroke, You have been indicted for the murder of Nathanael Cony, and upon your arraignment you have pleaded Not Guilty, and have put yourself upon the judgment of your peers; and your peers have considered what hath been said for you, and against you, and the judgment of my lords is this, That you are guilty of manslaughter for

killing of Nathanael Cony: What can you say for yourself, why judgment should not pass upon you to die according to the law?

E. of P. I claim the privilege of the statute made in that case, my lord.

L. H. St. You must have it, my lord, it cannot be denied you; for by the act of parliament, where clergy is allowed to a common person, by reading, and burning in the hand, a peer convicted of such felony is to be delivered without either,* therefore we cannot deny it you: But your lordship must give me leave to tell you, that no man can have the benefit of that statute but once, and so I would have your lordship take notice of it as a caution to you for the future.

Your lordship is now to be discharged, paying your fees.

Then the Prisoner went from the bar, and his Grace by Proclamation thus dissolved his Commission.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. O yes, O yes, O yes! My Lord High Steward of England willetth and commandeth all persons here assembled, to depart in God's peace and the king's from this place, for his grace doth now dissolve his Commission.

God save the King.

Then his grace concluded the ceremony by breaking his staff.

* See the Cases of Lord Warwick, A. D. 1699, and of the Duchess of Kingston, A. D. 1776, *post*.

242. Case of the CONSTITUTION of the Island of JAMAICA: 30 CHARLES II. A. D. 1678.

THE conquest of the Island of Jamaica was effected by Cromwell's forces commanded by Penn and Venables in May 1655. And in the same year the Protector issued the following Proclamation relative to that island:

Whereas, by the good Providence of God, our fleet, in their late expedition into America, have possessed themselves of a certain island called Jamaica, spacious in its extent, commodious in its harbours and rivers within itself, healthful by its situation, fertile in the nature of the soil, and well stored with horses and other cattle, and generally fit and worthy to be planted and improved, to the advantage, honour, and interest of this nation.

And whereas divers persons, merchants and others, heretofore conversant in plantations and trade of the like nature, are desirous to undertake and proceed upon plantations and settlements upon that island; we, therefore, for the better encouragement of all such persons so inclined, have, by the advice of our council, taken care, not only for the strengthening and securing of that island

from all enemies, but, for the constituting and settling a civil government, by such good laws and customs as are and have been exercised in colonies and places of the like nature; and have appointed surveyors, and other public officers, for the more equal distribution of public right and justice in the said island.

And, for the further encouragement of the industry and good affection of such persons, we have provided and given orders to the commissioners of our customs, that every planter, or adventurer to that island, shall be exempt and free from paying any excise or customs for any manufactures, provisions, or any other goods or necessaries, which he or they shall transport to the said island of Jamaica within the space of seven years to come from Michaelmas next; and also, that sufficient caution and security be given by the said commissioners, that such goods shall be delivered at Jamaica only. And we have also, out of our special consideration of the welfare and prosperity of that island, provided, that no customs or other tax or impost,

‘ be laid or charged upon any commodity which shall be the produce and native growth of that island, and shall be imported into any of the dominions belonging to the commonwealth; which favour and exemption shall continue for the space of ten years, to begin and be accounted from Michaelmas next. We have also given our special orders and directions that no embargo, or other hindrance, upon any pretence whatsoever, be laid upon any ships, seamen, or other passengers, or adventurers, which shall appear to be engaged and bound for the said island. And we do hereby further declare, for ourselves and successors, that whatsoever other favour, or immunity, or protection, shall or may conduce to the welfare, strength, and improvement, of the said island, shall from time to time be continued and applied thereunto. Given under our hand, &c.

‘ OLIVER, Protector.’

Notwithstanding what is mentioned in this Instrument respecting a Civil Government, it appears that the country remained under military government from the conquest of it until the Restoration. Upon that event Colonel D’Oyley, who had then the chief command under a commission from the Lord Protector, and who it appears was much beloved in the Island, was confirmed in that command by a commission from king Charles, dated the 19th of February, 1661.

His commission, which recites the king’s desire to give all protection and encouragement to the people of Jamaica, and to provide for its security and good government, empowers him to execute his trust according to such powers and authorities as are contained in his commission and the instructions annexed to it, and such as should from time to time be given to him by his majesty, and according to such good, just, and reasonable customs and constitutions as were exercised and settled in other colonies, or such other as should, upon mature advice and consideration, be held necessary and proper for the good government and security of the island, provided they were not repugnant to the laws of England.

It farther empowers him to take unto him a Council of Twelve persons, to be elected by the people according to the manner prescribed in the instructions; and by the advice of any five or more of them, to constitute civil judicatories, with power to administer oaths; to command all the military forces in the island, and put in force and execute martial law; to grant commissions, with the advice of his council, for the finding out new trades; and to do and perform all other orders, which might conduce to the good of the island. The instructions consist of fifteen articles:

The first directs the commission to be published, and the king proclaimed:

The third regulates the manner of electing the council, eleven of which to be chosen indifferently, by as many of the officers of the

army, planters, and inhabitants, as could be conveniently admitted to such election, either at one or more places; which said persons, with the secretary of the island, who was thereby appointed always to be one, were established a council, to advice and assist the governor in the execution of his trust; and five were to be a quorum.

The fourth and fifth articles direct the taking the oaths and settling judicatories for the civil affairs, and affairs of the admiralty, for the peace of the island, and determining controversy.

The sixth directs the governor to discountenance vice and debauchery, and to encourage ministers, that Christianity and the Protestant Religion according to the Church of England, might have due reverence and exercise among them.

The seventh directs the fortifications at Cagway to be completed, and empowers him to compel, not only soldiers, but planters, to work by turns.

The eighth directs him to encourage the planters, and to assure them of his majesty’s protection: and by the ninth, he is to cause an accurate survey to be made of the island.

By the tenth it is directed, that the secretary shall keep a register of all plantations, and the bounds thereof; and that all persons shall be obliged to plant a proportionable part thereof within a limited time.

The eleventh and twelfth direct all encouragements to be given to such negroes and others as shall submit to the government, and to merchants, and such as shall bring any trade there; and forbid monopolizing.

The thirteenth directs, that any vessel which can be spared from the defence of the island, shall be employed in fetching settlers from any other colonies, and that no soldiers be allowed to depart without licence.

The fourteenth relates to the keeping of the stores and provisions sent to the island, and the fifteenth directs the governor to transmit, from time to time, a state of the island, and all his proceedings.

In 1662, Lord Windsor was appointed governor of Jamaica, by commission under the great seal; which, besides containing the same powers as those contained in col. D’Oyley’s commission, directs that, in case of Lord Windsor’s dying or leaving the island, the government shall devolve on the council or any seven of them, and appoints a salary of 2,000*l.* per ann. payable out of the exchequer.

His instructions consist of twenty-two articles. The first directs the publication of his commission: and the second, the appointment of the council according to his commission and the instructions. But it must be observed upon this article, that no directions whatever are given, either in the commission, which refers to the instructions, or the instructions themselves, as to the mode in which the council shall be appointed; but it appears that the governor named them himself.

The third, fourth, fifth, sixth, and seventh articles relate to the administering oaths, establishing judicatures, and providing for the security of the adjacent isles.

The eighth directs encouragement to be given to the planters to remove to Jamaica from the other colonies.

The ninth directs 100,000 acres of land to be set apart in each of the four quarters of the island, as a royal demesne, a survey to be made, and a register kept of all grants, and a militia formed.

The tenth directs the planters to be encouraged, their lands confirmed unto them by grants under the great seal, and appoints 50,000 acres of land to the governor, for his own use.

The eleventh relates to the encouragement of an orthodox ministry, and the twelfth establishes a duty of five per cent. upon all exports after the expiration of seven years.

The thirteenth, fourteenth, fifteenth, and sixteenth articles contain general directions as to the liberty and freedom of trade (except with the Spaniards), assistance to the neighbouring plantations and the security of the island, by obliging planters to reside in bodies together, and in contiguous buildings.

The seventeenth directs, that as an encouragement to men of ability to go to the island no offices shall be held by deputy; and gives a power to the governor, of suspension or removal, in case of bad behaviour.

The nineteenth empowers the governor to grant royalties and manors, or lordships, to contain less than five hundred acres.

The twentieth empowers the governor, with advice of the council, to call assemblies, to make laws, and upon imminent necessity, to levy money; such laws to be in force two years, and no longer, unless approved of by the crown.

He also carried out with him the following PROCLAMATION.

“ We, being fully satisfied that our island of Jamaica, being a pleasant and most fertile soil, and situate commodiously for trade and commerce, is likely, through God’s blessing, to be a great benefit and advantage to this and other our kingdoms and dominions; have thought fit, for the encouraging of our subjects, as well such as are already upon the said island, as all others that shall transport themselves thither, and reside and plant there, to declare and publish, and we do hereby declare and publish, that thirty acres of improveable lands shall be granted and allotted to every such person, male or female, being twelve years old or upwards, who now resides, or within two years next ensuing shall reside, upon the said island; and that the same shall be assigned and set out, by the Governor and Council, within six weeks next after notice shall be given in writing, subscribed by such planter or planters, or some of them in behalf of the rest, to the Governor, or such officer as he shall appoint in that behalf, signifying their resolutions to plant

there, and when they intend to be on the place; and, in case they do not go thither within six months then next ensuing, the said allotment shall be void, and free to be assigned to any other planter; and that every other person and persons, to whom such assignment shall be made, shall hold and enjoy the said lands so to be assigned, and all houses, edifices, buildings, and inclosures thereupon to be built or made, to them and their heirs for ever, by and under such tenures* as is usual in other plantations subject to us. Nevertheless, they are to be obliged to serve in arms upon any insurrection, mutiny, or foreign invasion. And that the said assignments and allotments shall be made and confirmed, under the public seal of the island, with power to create any manor or manors, and with such convenient and suitable privileges and immunities as the grantees shall reasonably desire and require; and a draught of such assignment shall be prepared by our counsel learned in the law, and delivered to the Governor to that purpose; and that all fishings and pisceries, and all copper, lead, tin, iron, coals and all other mines (except gold and silver) within such respective allotments, shall be enjoyed by the grantees thereof, reserving only a twentieth part of the product of the said mines to our use. And we do further publish and declare, that all children of our natural born subjects of England, to be born in Jamaica, shall, from their respective oaths, he reputed to be, and shall be, free denizens of England, and shall have the same privileges to all intents and purposes as our free born subjects of England; and that all free persons shall have liberty, without interruption, to transport themselves and their families, and any their goods (except only coin and bullion,) from any other dominions and territories to the said island of Jamaica. And we do strictly charge and command all planters, soldiers and others, upon the said island, to yield obedience to the lawful commands of our right trusty and well beloved Thomas lord Windsor, now our governor of our said island; and to every other governor thereof, for the time being: under pain of our displeasure, and such penalties as may be inflicted thereupon.

“ Given at our Court at Whitehall, Dec. 14.
Per ipsum Regem.”

This Proclamation was published by lord Windsor upon his arrival; but nothing else material arises out of his short administration worth notice: for he staid but two months; and left the island, and the execution of his commission, to sir Charles Lyttleton, who had been appointed lieutenant governor, and who governed with the advice of a council of twelve appointed by himself, and called an assembly

* Fee and common socage, paying a trifling quit rent for every hundred acres yearly to the crown.

that made a body of laws, amongst which was one for raising a revenue.

Nothing, however, which appears to be material, as to the form of the constitution, occurred during his administration, which continued about twenty months; when he was superseded by the arrival of sir Thomas Modyford, who was appointed governor in chief by a commission under the great seal, which empowered him either to constitute, by his own authority, a privy council of twelve persons, or to continue the old one, and to alter, change, or augment it as he thought proper; to create judicatories; and make laws, orders, and constitutions, provided they did not extend to take away any right of freehold, or the interest of any person in their rights or freeholds, goods or chattels, and that they were transmitted to his majesty for allowance or disapprobation.

He was further empowered to command and discipline all military forces, to use martial law upon persons in military service, and establish articles of war; to create courts of admiralty, according to such authority as he should receive from the lord high admiral; to erect forts and fortifications; to establish ports, cities, towns, boroughs, and villages; to create manors and lordships; to grant charters to hold fairs; to take surveys, and keep records of all grants of lands, under such moderate quit-rents, services, and acknowledgments as he should think fit; and to prescribe terms of cultivation; and grants so made under the seal, and enrolled, were to be good and valid against the crown; to grant commissions for finding out new trades; to pardon all offences, except murder and treason, and in these cases to reprieve for twelve months.

He was also empowered, with the advice of the majority of council, to frame a method for establishing general assemblies, and from time to time to call such assemblies together, and with their consent, to pass all manner of laws, reserving to himself a negative voice; as also, upon imminent occasions, to levy money. These laws not to extend to taking away any one's freehold, or to the loss of a member, and to be in force only two years, unless approved and confirmed by the crown.

This commission appoints a salary to the governor, of one thousand pounds per annum, payable out of the exchequer.

The instructions, which consist of twenty articles, relate to the encouragement to be given to planters to come from the other colonies; to the allowance settled upon himself and the other officers; and extend to most of the points contained in lord Windsor's instructions; but direct, that the measure of setting out the 400,000 acres, as a royal demesne shall be suspended; that no duties shall be laid in the island upon the import or export of any goods, for 21 years, nor shall any duty be laid here upon the produce of Jamaica for five years.

By these instructions it appears, that the crown allowed 2,500*l.* per annum for the support of government; and what was wanted

over and above, was to be made good by a duty on strong liquors, either made or imported; but, by the authority of the governor and council.

In July, 1664, sir Thomas Modyford issued writs for electing two assembly-men for each parish; which assembly met in October following.

It does not appear that this assembly sat above a month or two, before they were dissolved; but, during their sessions, they passed a body of laws, which was transmitted to the Lord Chancellor to be laid before the crown; but which were not confirmed.

In 1670 sir Thomas Modyford was recalled, and sir Thomas Lynch appointed lieutenant-governor and commander in chief, with the same powers as sir Thomas Modyford had.

On the 1st of December, 1671, he issued writs for calling an assembly to consist of two persons for each parish; which met on the 8th of January and sat till June following, when the governor dissolved them, after having passed a body of laws, which were transmitted to England but were not confirmed.

In May, 1673, sir Thomas Lynch called another assembly; but dissolved it after sitting only a few days; and in January following, a new assembly was called, which met the 18th February; and on the 14th of March a new body of laws was passed, which were transmitted to England, but not confirmed by the crown.

On the 3d of December, 1674, lord Vaughan was appointed governor of Jamaica. A council, consisting of twelve persons, was named in the commission, with power to him to expel or suspend any one of them, and in case of vacancies to fill up the council to nine. He was also empowered to call assemblies, according to the usage of the island; and with the council and assembly, to pass laws, which laws were to be in force for two years, unless the crown's pleasure was in the mean-time signified to the contrary, and no longer, except they were approved and confirmed within that time. In the passing of these laws, the governor was to have a negative voice, and to dissolve any assembly as he should think proper.

Upon lord Vaughan's arrival in his government, he called an assembly, which met on the 26th of April, 1675, and passed a new body of laws.

It does not appear when this assembly was dissolved; but in March, 1676-7, writs were issued for a new assembly, which met on the 26th of that month; and having passed several other laws, they were dissolved on the 26th of July; and the laws passed by both assemblies having been transmitted to England, the council took them into their consideration, and after frequent deliberations upon them, and many alterations proposed, they were referred with the council's observations upon them, to the Attorney General, to consider thereof, and to form a new body of laws for the good government of this island.

With these laws, the council took into consideration the state and constitution of Jamaica, and made two Reports upon it. [See the two first Articles in the Case below.]

These Reports having been confirmed, a commission passed the great seal, constituting lord Carlisle governor of Jamaica; by which and by the instructions annexed thereto, [See the third and fourth Articles in the Case below.] the form of government proposed in the council's report was adopted and established.*

Upon lord Carlisle's arrival in his government, he found the people very much dissatisfied with, and averse to this new form of government; as will better appear by his letters, [inserted in the Case below.]

The right honourable the Lords of the Committee for trade and plantations having this day presented to the Board the ensuing Report, viz.

May it please your majesty;

We having, according to the trust reposed in us in reference to your majesty's plantations, taken into consideration the present state and government of the island of Jamaica,† par-

ticularly such matters as, from the nature of affairs as they now stand there, we have judged necessary to be recommended to the right honourable the earl of Carlisle, whom your majesty has been pleased to nominate and constitute governor of the said island; and having, after several meetings, agreed upon the following particulars, we most humbly crave leave to lay them before your majesty, for your royal determination.

The first point that did occur, most worthy to be considered by us, was the power and manner of enacting laws for the civil, military, and ecclesiastical government; and upon taking a view of what has been practised, since your majesty's happy restoration in the legislation, we find, that the methods and authorities, for the framing and ordaining the said laws, have been only such as were directed by your royal commission unto your majesty's several governors, or prescribed by the instructions given them from time to time; and that as the constitution and exigency of affairs have often changed, so your majesty has thought fit variously to adapt your royal orders thereunto; and by the last commission, given unto the lord Vaughan, your majesty was pleased to empower his lordship, with the advice of your majesty's council, from time to time to summon general assemblies of freeholders, who have authority, with the advice and consent of the governor and council, to make and ordain laws for the government of the island; which laws are to be in force for the space of two years, except in the mean time your majesty's pleasure be signified to the contrary; and no longer, unless they be confirmed by your majesty within that time. Having, therefore, directed our thoughts towards the consequences and effects, which have been produced or may arise from this authority derived unto the said freeholders and planters, which we observe to have received a daily increase by the resolutions they have taken, less agreeable to your majesty's intention, we do most humbly offer our opinions, that the laws transmitted by the lord Vaughan, which are now under consideration in order to be enacted by your majesty, may be entrusted in the hands of the earl of Carlisle, who, upon his arrival in the island, may offer them unto the next assembly, that they may be consented unto as laws originally coming from your majesty; and that, for the future, no legislative assembly be called without your majesty's special directions; but that upon emergencies, the governor do acquaint your majesty by letters, with the necessity of calling such an assembly, and pray your majesty's consent and directions for their meeting; and at the same time do present unto your majesty a scheme of such acts as he shall think fit and necessary, that your majesty may take the same into consideration, and return them in the form wherein your majesty shall think fit that they be enacted; that the governor, upon receipt of your majesty's commands, shall then summon an assembly, and propose the said

* "In the beginning of 1678," says Edwards, "a new system of legislation was adopted for Jamaica. This system was nearly founded on the plan of the Irish constitution under Poyning's act; and in order to enforce it, the earl of Carlisle was appointed chief governor of the island. The privy council of England prepared a code of laws, and a bill for settling a perpetual revenue on the crown, which his lordship was to offer to the assembly; requiring them at the same time to adopt the whole code without any amendment or alteration. The heads of all bills, except those relating to money, were to be sent to his majesty after they had been suggested by the governor and council; if the king approved them, they were to be returned under the great seal, in the form of laws, and passed by the general assembly; which was to be convened for no other purpose than that, and voting the usual supplies, special orders from England being expected.

"The most probable opinion respecting the origin of this project seems to be this. In the year 1663, the assembly of Barbadoes were persuaded by very unlawful means, as will be shewn hereafter, to grant a perpetual revenue to the crown, of four and a half per cent. on the gross produce of that island. The Jamaica planters steadily refused to submit to a similar imposition; and this, it is likely, suggested in the mind of the king the idea of depriving them of their constitutional franchises, as a punishment for their non-compliance. Fortunately, however, neither secret intrigue nor open violence was attended with success."

† As to the operation of the laws of England within Colonies conquered by the arms of England, See the Case of *Hall v. Campbell* n. d. 1774, and the Notes to that Case, *infra*.

laws for their consent, so that the same method, in legislative matters, be made use of in Jamaica, as in Ireland, according to the form prescribed by Poyning's law; and that therefore the present style of enacting laws, By the governor, council, and representatives of the Commons assembled, be converted into the style of, Be it enacted by the king's most excellent majesty, by and with the consent of the General Assembly.

We are further of opinion, that no escheats, fines, forfeitures, or penalties, be mentioned in the said laws, to be applied to the public use of the island; and that your majesty do instruct your governor to dispose thereof for the support of the government. It is also our opinion, that in all laws for levying of money, and raising a public revenue, the clauses whereby the said levies are appropriated unto the public use of the island, without any mention made of your majesty, or unto your majesty for the said public use, are so far derogatory to your majesty's right of sovereignty, that they ought to be, for the future, altered and made agreeable to the style of England.

We do likewise offer it unto your majesty as necessary, that no minister be received in Jamaica without licence from the right reverend the lord bishop of London; and that none having his lordship's licence be rejected, without sufficient cause alledged; as also, that in the direction of all church affairs, the minister be admitted into the respective vestries.

And whereas it has upon some occasions proved inconvenient, that the members of the council have been constituted by your majesty's commission; we are of opinion, that for the future, they be only named in the instructions of the governor; for the strengthening of whose authority under your majesty, we do offer, that he may have power to suspend any of the said members, if he see just cause, without receiving the advice and consent of the council; and also, that none of the said members so suspended, or by your majesty's order displaced, from that trust, may be permitted to be received into the General Assembly.

And whereas nothing can contribute more to the welfare of your majesty's island, than that all means be found out for the increase of trade; we do offer, for the encouragement thereof, that a mint be allowed in Jamaica, in such manner that no prejudice do arise unto your majesty's other dominions, or that what bullion is brought from thence may be coined here in England; provided that all such coins may bear your majesty's royal superscription, and not be imposed in payment elsewhere.—
All which, &c.

FINCH, FAUCONBERRY,
DANEY, CRAVEN,
WORCESTER, H. COVENTRY,
ESSEX, Tho. Dolinn.

His majesty, taking the same into consideration, was pleased to approve thereof; and did order, That the right honourable Mr. Secretary

Coventry do prepare a commission and instructions for his majesty's royal signature, for the earl of Carlisle, according to the tenor of the said report.

At the Court at Whitehall, Feb. 15, 1677-8.

Present, the KING's most excellent Majesty in Council. Upon reading this day at the Board, a Report from the Right Hon. the Lords of the Committee for Trade and Plantations, in the words following:

May it please your majesty; Having received, on the 12th of January last past, from the right honourable Mr. Secretary Coventry, a Draft of a Commission and Instructions for the earl of Carlisle, whom your majesty has appointed to be your governor of Jamaica, and having, after several additions and alterations, remitted the same unto Mr. Secretary Coventry on the 2d instant, we crave leave to offer to your majesty the most material points which did occur unto us upon perusal of the said draft; which are as followeth:

1. As we are of opinion that all members of council in Jamaica may, for the more easy passing of laws, be admitted into the assembly, if duly elected by the freeholders; so we cannot but advise your majesty, that as well the members of the said council suspended by your majesty's governor, as the members displaced by your majesty, may be rendered incapable, during such suspension, of being admitted into the assembly.

2. That although your majesty has, by an order of the 16th of November last past, thought fit that no assembly be called without your majesty's especial leave and directions; we think it very important, for your majesty's service, and safety of the island, that in case of invasion, rebellion, or some other very urgent necessity, your majesty's governor may have power, with the consent of the assembly, to pass acts for raising of money, to answer the occasions arising by such urgent necessities.

3. That whereas hitherto, within your majesty's island of Jamaica, the Oaths of Allegiance and Supremacy have not been imposed on persons that bear any part of the government, except the members and officers of the council, and all judges and justices; so, for the prevention of future inconveniencies, and greater assurance of loyalty towards your majesty, we are humbly of opinion, that all persons elected into the assembly shall, before their sitting, take the oaths of allegiance and supremacy, which your majesty's governor shall commissionate fit persons, under the seal of the island, to administer unto them, and that, without taking the said oaths, none shall be capable of sitting, though elected.

We have likewise, pursuant to your majesty's orders, prepared a body of laws, such as the right honourable the earl of Carlisle may be empowered to carry with him, and to offer unto the assembly of Jamaica for their consent. Whereas we do not find, since your majesty's

happy Restoration, that any laws transmitted from your majesty's plantations, have been confirmed by your majesty, either under the great seal of England, or any other signification of your majesty's pleasure (the act of four and a half per cent. in the Caribbee islands only excepted, which was confirmed by the order of council); and the intended method of enacting laws in Jamaica hath not as yet been put in practice; we humbly crave your majesty's royal determination, whether the said laws shall pass only by order of your majesty in council, or under the great seal of England, that we may accordingly be enabled fitly to present them unto your royal view.—All which, &c.

His majesty was pleased to order, that Mr. Secretary Coventry do prepare lord Carlisle's commission and instructions concerning these matters accordingly: and as for the laws of the said island, his majesty by an order of the board, hath been pleased this day to declare his pleasure, that they shall pass under the great seal of England.

Extract of King Charles the Second's Commission to the Earl of Carlisle.

And we do hereby give and grant unto you, with the advice and consent of the said council, full power and authority from time to time as need shall require, to summon or call general assemblies of the freeholders and planters within the said island, and other the territories under your government, in such manner and form as hath been formerly practised and used in the said island of Jamaica.

And our will and pleasure is that the persons thereupon duly elected, and having before their sitting taken the oaths of allegiance and supremacy (which you shall commissionate fit persons, under the seal of our island, to administer; and without taking which none shall be capable of sitting, though elected) shall be called and held the General Assembly of the said island of Jamaica, and other the territories thereon depending; and shall have full power and authority to agree and consent unto all such statutes and ordinances for the public peace, welfare and good government of the said island, and other the territories thereon depending, the people and inhabitants thereof, and such others as shall resort thereunto, and for the benefit of our heirs and successors, as having been by you with the advice and consent of the said council, framed and transmitted unto us, in order to be here enacted by our giving our consent thereunto, shall be by us approved and remitted unto you under our great seal of England; which said statutes, laws and ordinances, are to be by you framed as near as conveniently may be, to the laws and statutes of our kingdom of England.

And we do hereby nevertheless, authorise and empower you, in case of invasion, rebellion or some very great necessity, to pass an act or acts by and with the consent of the Ge-

neral Assembly, without transmitting the same first to us, to raise money within the said island and the territories within your government, to answer the occasions arising by such urgent necessities.

And we give you likewise full power from time to time, as you shall judge it necessary, to dissolve all General Assemblies as aforesaid.

Extract of King Charles the Second's Instructions to the Earl of Carlisle.

And whereas by our commission we have directed, that for the future no General Assembly be called without our special directions; but that upon occasion you do acquaint us by letter with the necessity of calling such an assembly, and pray our consent and directions for their meeting; you shall at the same time transmit unto us, with the advice and consent of the council, a draft of such acts as you shall think fit and necessary to be passed, that we may take the same into our consideration, and return them in the form we shall think fit to be enacted in: and upon the receipt of our commands, you shall then summon an assembly, and propose the said laws for their consent.

And accordingly we have ordered to be delivered unto you herewith, a certain body of laws for the use of our said island, framed in pursuance of other laws transmitted unto us by former governors, with such alterations and amendments as we have thought fit, with the advice of our privy-council here; which upon your arrival in our said island, you shall offer unto the next assembly, that they may be consented to and enacted as laws originally coming from us.

We are willing, nevertheless, that in case of invasion, rebellion or some very urgent necessity, you pass an act or acts with the consent of the general assembly, without transmitting the same first unto us, to raise money within the said island and the territories depending thereon, to answer the occasions arising by such urgent necessities.

And you shall take care that the present style of enacting laws, "By the governor, council and representatives of the Commons assembled," be converted into the style of, "Be it enacted by the king's most excellent majesty, by and with the consent of the General Assembly."

Extract of a Letter from the Earl of Carlisle to Mr. Secretary Coventry.

I have spoken with several of the council, and find some of them much dissatisfied at the alterations in the laws and manner of passing them, particularly at the latter part of the clause in the militia bill: 'but that in all things 'he may, upon all occasions or emergencies, 'act as captain-general and governor in chief, 'according to and in pursuance of all the 'powers and authorities given unto him by his 'majesty's commission; any thing in this case 'or any other to the contrary in any wise notwithstanding;' which they are jealous of, lest

that thereby they shall make it legal to execute all instructions that either are or shall be sent to me, or any other succeeding governor; which scruple might easily be avoided, but that the great seal being affixed to the laws, I have no power to make alteration, which I might have done, both to their satisfaction and the preservation of the king's rights. The act for the revenue too, I fear, will not without difficulty pass; but I shall endeavour all I can to bring them to pass, for which I have greater inducements than my being here, without any hopes from the present state of the treasury, which is exhausted and in debt for their new fortifications.

Copy of a Letter to Mr. Secretary Coventry from the Earl of Carlisle.

St. Jago, Sept. 11, 1678.

Sir;—The assembly met on the 2nd instant, and, I find, are so dissatisfied with the alteration of the government, that I question whether they will pass any of these laws: they have objections against several of them; as the act for the revenue that is perpetual, and may be diverted: they are nettled at the expression in the preamble, that the revenue was raised by the governor and council: and though they cannot deny it to be truth, yet they say that council was elected by the people, and though continued under the name of a council, yet was in effect an assembly or representative of the people.

I have given into their hands a copy of that act and fourteen more, and gave them liberty to compare them with the original. The act of militia, and some others, I keep by me, till I see what they will do with those they have. All the acts are not yet transcribed; for but one man can write at a time, and they are bulky; but I have enough to keep them employed. The Speaker came to me on Saturday, to desire liberty to adjourn for a few days, which I consented to, and they adjourned till Thursday morning. Lieut. col. Beeston is Speaker, whom I recommended to them upon sir H. Morgan's assurances that he would behave himself well. He hath the general repute of an honest and discreet gentleman, though he signed the order about the privateer, at which so much offence was taken; but I am satisfied he was no further faulty, than in complying with the directions of the assembly; and I the rather proposed him (whom they had a mind to chuse) to gain the point quietly of recommending, which my lord Vaughan, I am told, neglected to do.

The assembly appointed a committee to compare these laws with their former: It is said they differ in many things, especially from those laws last sent from lord Vaughan, which are most usefully framed for their present benefit.

Popular discourses prevail here as well as in England; and I find a few men's notions have taken such place with the leading men of the assembly, that they rather set themselves to

frame arguments against the present constitution, than to accommodate things under it. I cannot yet tell you what course I shall take to remove this difficulty: but I will do the best I can. I find one of the council more faulty in this, than any man in the island, but am unwilling to name him, till I have tried the utmost to reclaim him.

Whilst we are here busy about small matters, I doubt your hands are full of greater and may therefore forget us. We hear the French and Dutch are agreed. I am, sir, &c.

CARLISLE.

Extract of a Letter from the Earl of Carlisle to the Committee.

My lords; I have met with the difficulties here I foresaw, but could neither avoid nor prevent in England. The general assembly meeting the 2d of September last, I recommended and sent to them the several bills I brought over under the great seal of England, for their consent to be enacted; but being much dissatisfied at the new frame of government, and their losing their deliberative part of power in altering and amending, they would not pass any one of them, but threw them all out; but prepared an address, with a bill of impost upon wines and other strong liquors for one year, without giving me notice thereof, in such terms and form as was not fit for me to pass it: but afterwards changing the style of enacting, as directed in my instructions, with some other amendments to this bill, the public necessities of the island, having contracted many debts from new fortifications, and salaries already due requiring it; I gave the royal assent; and then, on the 12th this instant October, I dissolved them. My earnest suit to all your lordships is, that you will please to have me in your thoughts, and the present state of this colony under your lordships' consideration, for some expedient which may be elucidatory to the power given me by my commission and instructions, which may quiet the minds of persons generally dissatisfied in this island, which is most certainly under the greatest hopes of all the islands in the West Indies, and therefore most fit for to be encouraged with the king's countenance and support, with good and acceptable laws.

What bills I shall send to Mr. Secretary Coventry, I pray may be speedily dispatched, when brought before your lordships, and received, and ordered to be passed through all offices without delay, being in part of what is so very much wanting towards the support of the good government of this island.

Copy of a Letter from the Earl of Carlisle to the Committee.

My lords; A fortnight ago I gave you an account upon what terms I had parted with the assembly. I have since thoroughly considered of what might in this place most conduce to his majesty's service, and could not think of any better expedient than to send the bearer, Mr.

Atkinson, to wait upon your lordships. He was secretary to sir Thomas Lynch and my lord Vaughan, and has been enough acquainted with all my proceedings since my arrival, so is perfectly able to satisfy your lordships in any thing you may desire to know concerning the place, and to lay before you all the several interests of his majesty relating to it.

My lords, I find that the present form appointed for the making and passing of laws, considering the distance of the place, is very impracticable, besides very distasteful to the sense of the people here, as you may observe by the assembly's address to me; and if your lordships will please to move his majesty to send me a general instruction to call another assembly, and to re-enact and make what laws are fit for this place, I could then order the matter to conclude effectually to his majesty's service. I have, by Mr. Atkinson, sent you the drafts of such bills as are the most fundamental, and chiefly concern his majesty's interest; and I do assure you that I will not, in any material point, vary from them. He will, when your lordships order him to attend you, lay them all before you, and I believe, give your lordships such thorough satisfaction, that you will rest assured that what I desire is for his majesty's service, and that I shall be enough enabled by it to settle every thing upon so good a foundation, that neither his majesty nor your lordships will ever repent of having made any deference to my opinion. In it, my lords, much success depends upon the dispatch, and of the circumstances Mr. Atkinson will give you an account. His business is wholly to attend your lordships, and, I believe, he will always be in the way. He has prayed me to intercede with your lordships to excuse what errors he may commit as having been a West Indian for these eight years past: and do on his behalf beg that favour of your lordships; but hope that he will prove so discreet, as to give your lordships no manner of offence. I thought it the readiest and best way to have all things rightly understood, and do hope that issue will be produced from it.

I am your lordships' most humble

And obedient servant,

St. Jago de la Vega, Nov. 1678. CARLISLE.

Extract of a Letter from the Earl of Carlisle to Mr. Secretary Coventry.

On the 2d of September last, the general assembly met; but under so much dissatisfaction, from the new frame of government, and their losing their deliberate part of power in framing, altering, and amending laws, that they spent near a fortnight very uneasily about some of the laws, and would have begun with the bill of revenue, to have thrown that out first, as a mark of their disallowing the new method of government, being so highly incensed that they were near questioning the king's power and authority to do it: insomuch, that I, taking the maintenance thereof to be in my charge, and finding some of the council equal-

ly disgusted at the change of government, and foreseeing that it was like to encourage discontent in the assembly to take them off and leave the assembly upon their humour by themselves, I thought it absolutely necessary to put this question to each of the counsellors, in these words: "Do you submit, and consent to this present form of government, which his majesty hath been pleased to order for this island of Jamaica?" to which the chief-justice, col. Long, refused to answer, with two more, col. Charles Whitfield and col. Thomas Freeman. The chief-justice being a man of very great influence upon the assembly, I presently suspended, and gave the other two (less dangerous) till morning to consider on it; and then the chief-justice sent to me his submission under his hand, and col. Freeman submitted; but col. Charles Whitfield, otherwise a very good man, went away into the country.

The assembly received and examined all the laws I brought over, and drew up their reasons against passing them; of each, many were very frivolous, and the best was, because they were not compared with and amended by the last laws of my lord Vaughan's, now with you, and received some two days before my coming away, the fleet then staying in the Downs, and my departure much pressed upon the expectation of war. These reasons against the revenue bill I answered individually; but no means or endeavours, either I myself, the council, or both could use, would prevail with them to pass any one of them; and I look upon this to be their chief reason, that by not passing them they might the better shew their dislike of that new way of government; though they urge this for their enjoying a power of altering and amending laws, the necessity of changing them as often as occasions do require; and the distance from this place is so great, that, before the king's approbation can be obtained to a law, and returned hither, it may be fit for the public good either to lay that law aside, or much to change and alter it; and indeed in this part of the objection I think they are in the right, for that they will want temporary laws till the colony be better grown; and upon thorough consideration of the whole matter in this part, I am of opinion, it is very advisable and requisite that there should be leave and power from the king to make laws (not relating to his majesty's power or prerogative) to endure for some term, till his royal approbation may be had therein; and of this I do earnestly entreat your care.

Having used all methods possible with the several members apart, and jointly with the body of the assembly, for the passing the laws, I was, after many conferences and debates, and several adjournments, frustrated, and they threw them all out. Afterwards, in a full body, by the Speaker, they gave me the inclosed address, and presented to me a bill for a public impost, prepared, without giving me notice thereof, in such terms and forms, as was not fit for me to pass it in; but at last in some

parts consented to such amendments as I and the council thought fit, changing the style of enacting, as directed in my instructions, but restraining it to one year, from a fear that, if they should have made it perpetual, they should be assembled no more, but be governed by governor and council, as they were in col. D'Oyley's time, when they enacted laws, not only for the revenue, but other occasions, by governor and council, and some part of sir Charles Lyttleton's time, as appears by our council-book upon the place; and sir Thomas Modyford had an instruction to continue this revenue by order of governor and council, the assembly in his life time passing it perpetual; and in sir Thomas Lynch's time the assembly made it perpetual; but for want of the king's consent, they both are fallen; but now, the assembly say, they are of a better understanding than to give the reins out their own hands.

To this bill, the island's affairs being under great pressures from public debts contracted for the new fortifications, and salaries already due, I gave the royal assent: and then, being the 12th instant, I dissolved them.

Which having done, and not being satisfied with the behaviour of the assembly in their proceedings in relation to the government I stood charged with, most of them being in military trusts, I put this question to each of them: "Do you submit to this form of government, which his majesty hath been pleased to order for this island of Jamaica?" to which several of them neither gave me a dutiful nor cheerful answer: some did, and at this some were much dissatisfied.

MAY it please your Excellency; We, the members chosen by his majesty's writ to be the general assembly for this his island of Jamaica, do, with a great deal of thankfulness, acknowledge the princely care which his majesty hath been ever pleased to have of this his colony, and of which your excellency hath likewise given to us very late and fresh assurances: and in obedience to his majesty's commands, we have perused the several bills which your excellency gave us; and, having duly examined the matters contained in them, there being divers fundamental errors, which we particularly observed, and did cause them to be entered in our Journal; and from the consideration of them we cannot but reflect, and do humbly beg your excellency to represent unto his most sacred majesty, the great inconveniencies which are like to redound unto this his island by this method and manner of passing of laws, which is absolutely impracticable, and will not only tend to the great discouragement of the present planters, but likewise put a very fatal stop to any further prosecution of the improvement of this place; there being nothing that invites people more to settle and remove their family and stocks into this remote part of the world, than the assurance they have always of being governed in such manner as that none of their rights should be lost, so long as they were

within the dominions of the kingdom of England: nor can we believe that his majesty would have made this alteration, had he been truly informed of his own interests, and of that which is proper and natural for the constitution of this island.

My lord, you, that are now our governor, and are upon this place, cannot but distinguish both, and plainly see that which, at great distance, is impossible to be known, being always distinguished with the false colours of interest and design. It is to you therefore we address ourselves; and do humbly beg you to assure his majesty, which we do from the bottom of our hearts unfeignedly declare, that we are his true, faithful, and loyal subjects. In the next place, sir, we humbly beg you to lay before his majesty the true condition of this island, and the several circumstances wherein it stands: The situation and natural advantages of the place will very probably, by God's blessing, make it very considerable. It were pity, therefore, that any stop in its infancy should be put to it, which may hinder its future growth, and disappoint those hopes which his majesty hath ever had, and which will no doubt come to pass, that, if this island be encouraged by good government and wholesome laws, it will effectually serve very many interests, both of his majesty's crown and the nation's trade.

Sir, the present form of the government, as it is now appointed, has these plain and manifest inconveniences in it:

1st. That the distance of this place renders it impossible to be put in practice, and does not in any manner fall under the same consideration as Ireland does, from which, we conclude, the example is taken.

2d. The nature of all colonies is changeable, and consequently the laws must be adapted to the interest of the place, and must alter with it.

3d. It is no small satisfaction, that the people, by their representatives, have a deliberative power in the making of laws; the negative and barely resolving power being not according to the rights of Englishmen, and practised so where but in those commonwealths where aristocracy prevail.

4th. This manner of form of government brings all things absolute, and puts it into the power of a governor to do what he pleases; which is not his majesty's interest, and may be a temptation for even good men to commit great partialities and errors.

5th. The method which has been always used, both in this island and all other colonies, in the making of laws, was a greater security to his majesty's prerogative, than the present form; for a governor durst not consent to any thing against his interest; and if he did, the signification of the king's pleasure determined the laws, so that his majesty had thereby a double negative.

Thus, sir, we have truly laid before your excellency our real sense; and do hope that your excellency, being thoroughly satisfied of the mischiefs which will certainly arise to this place,

from the reasons we have given, will in that manner represent our condition to his majesty, that he may be thereby induced to give an instruction to your excellency, to pass such laws as are municipal and fit for us, and in the same manner which has been ever practised in this island, and other his majesty's colonies; we having no other claim in it than to express our duty to our king, and our unfeigned service and gratitude to your excellency, for mediating that which is so much for his majesty's and the island's interest.

And we do here likewise present unto your excellency a bill for raising a public impost unto his majesty, his heirs and successors, for the support of this his government; and do hereby beg your excellency to accept of it as a real demonstration of our loyalty to our prince, and service to your excellency, with assurance that we shall, upon all occasions, be ready to express such further testimonies of the same as may be suitable to our duty and allegiance.

At the Court at Whitehall, April 4, 1679.

Present, the KING's most excellent majesty in Council.

Whereas the right honourable the Lords of the committee for trade and plantations did this day make report unto his majesty in council.

That having, in pursuance of his majesty's order considered the present state and constitution of Jamaica, and the government thereof, as it is settled by his majesty's command, their lordships see no reasons why any alterations should be made in the method of making laws according to the usage of Ireland, for which their lordships are preparing reasons to evince the necessity and legality of the same: and that whereas a ship is now lying in the Downs, bound for that island, their lordships advise, that the right honourable Mr. Secretary Coventry do, by this conveyance, inform the earl of Carlisle of his majesty's pleasure herein, with directions that all things be disposed to this end; and that, in the mean time, the present laws enacted by lord Vaughan be continued by proclamation or otherwise, until his majesty's pleasure be further known; as also that his lordship do, by the first conveyance, send over an authentic copy of the act for a public impost, lately enacted there, according to his lordship's instructions for matters of that nature.

His majesty, having thought fit to approve thereof, was pleased to order, as it is hereby ordered, That the right honourable Mr. Secretary Coventry do signify his majesty's pleasure unto the earl of Carlisle, according to the said report.

At the Court at Whitehall, May 28, 1679.

Present, the KING's most excellent majesty in Council.

Whereas there was this day read at the board, a Report from the right honourable the lords of

the committee for trade and plantations, in the words following, viz.

May it please your majesty; We have, in obedience to your majesty's commands, entered into the present state of your majesty's island of Jamaica, in order to propose such means as may put an end to the great discouragement your majesty's good subjects there lie under by the unsettled condition thereof, occasioned by the refusal of the laws lately offered by the earl of Carlisle to the assembly for their consent; at which proceedings, dissatisfaction appears to have risen in the manner following:

By the commission granted by your majesty unto the lord Vaughan and several preceding governors, it was your royal pleasure to entrust the assembly of Jamaica with a power to frame and enact laws by the advice and consent of the governor and council; which laws were to continue in force for the space of two years, and no longer: but so it hath happened, that your majesty, finding the inconveniences which did attend that power and manner of making laws, by the irregular, violent, and unwarrantable proceedings of the assembly, was pleased, with advice of your privy council, to provide, by the earl of Carlisle's commission, that no laws should be enacted in Jamaica, but such as being framed by the governor and council, and transmitted unto your majesty for your royal approbation, were afterwards remitted to Jamaica, and consented unto by the assembly there; and in pursuance thereof, the earl of Carlisle carried over a body of laws under the great seal of England; which laws, upon his lordship's arrival there, have been rejected by the general assembly, upon grounds and reasons contained in an address to your majesty's governor, and in divers letters received from his lordship in that behalf.

1st. In the first place, we find they are unsatisfied with the clause in the militia bill, whereby it is provided, that the governor may, upon all occasions or emergencies, act as governor in chief, according to and in pursuance of all the powers and authorities given unto him by your majesty's commission; fearing that thereby they shall make it legal to execute all instructions that either are or shall be sent your majesty's governor.

2dly. They have likewise rejected the bill for raising a public revenue, as being perpetual, and liable (as they say) to be diverted.

3dly. It is objected, that the said laws contain divers fundamental errors.

4thly. That they were not compared with, and amended by, the last laws sent over by lord Vaughan.

5thly. That the distance of the place renders the present method of passing laws wholly impracticable.

6thly. That the nature of all colonies is changeable, and consequently the laws must be adapted to the interest of the place, and alter with it.

7thly. That thereby they lose the satisfaction of a deliberative power in making laws.

8thly. That this form of government renders your governor absolute.

9thly. That by the former method of enacting laws, your majesty's prerogative was better secured.

These being the objections and pretences, upon which the assembly has, with so much animosity, proceeded to reject those bills transmitted by your majesty, we cannot but offer, for your majesty's information and satisfaction, such a short answer thereunto, as may not only give a testimony of the unreasonableness of their proceedings, but also furnish your governor, when occasion shall serve, with such arguments, as may be fit to be used in justification of your majesty's commission and powers granted unto him.

1st. It is not without the greatest presumption, that they go about to question your majesty's power of the militia in that island, since it has been allowed and declared, even by the laws of this your kingdom, that the sole supreme government, command and disposition of the militia, and of all forces by sea and land and of all forts and places of strength, is residing in your majesty, within all your majesty's dominions.

2d. The objection, made against the bill for the public revenue, hath as little ground, since its being perpetual is no more than what was formerly offered by them unto your majesty, during the government of sir Thomas Lynch, in the same measure and proportion as is now proposed; nor can it be diverted, since provision is thereby expressly made, that the same shall be for the better support of that government; besides, that it is not suitable to the duty and modesty of subjects, to suspect your majesty's justice or care for the government of that colony, whose settlement and preservation have been most particularly carried on by your majesty's tender regard, and by the great expense of your own treasure.

3d. It cannot with any truth be said, that these laws contain many and great errors, nothing having been done therein but in pursuance of former laws, at divers times enacted by the assembly, and with the advice of your majesty's privy council, as well as the opinion and approbation of your attorney-general, upon perusal of the same.

4th. To the fourth objection it may be answered, that if any thing had been found of moment or importance in the last parcel of laws transmitted by the lord Vaughan, your majesty's tender care of your subjects' welfare, would have been such, as not to have sent those bills imperfect, or defective in any necessary matter.

5th. As to the distance of the place, which renders (as they say) the present method of making laws altogether impracticable, your majesty having been pleased to regulate the same, by the advice of your privy council, according to the usage of Ireland, such care was taken, as that no law might be wanting which might conduce to the well-being of the planta-

tion, and that nothing might be omitted which in all former governments had been thought necessary; nor is it likely that this colony is subject to greater accidents than your kingdom of Ireland, so as to require a more frequent and sudden change of laws, in other cases than such as are already provided for upon emergencies, or in other manner than is directed by your majesty's commission; whereby the inhabitants have free access to make complaints to your governor and council, of any defect in any old law, or to give reasons for any new one, which, being modelled by the governor and council into form of law, and transmitted unto your majesty, if by your majesty and council found reasonable, may be transmitted back thither, to be enacted accordingly.

6th. It was sufficiently apparent unto your majesty, that laws must alter with the interest of the place, when you were graciously pleased to lodge such a power in that government as might not only from time to time, with your majesty's approbation, and by the advice both of your privy-council here, and of the governor and council there, enable the assembly to enact new laws answerable to their growing necessities, but even, upon urgent occasions, to provide, by raising money, for the security of the island, without attending your majesty's orders or consent.

7th. It is not to be doubted but the assembly have endeavoured to grasp all power, as well as that of a deliberative voice, in making laws; but how far they have thereby entrenched upon your majesty's prerogative, and exceeded the bounds of their duty and loyalty, upon this pretence, may appear by their late exorbitant and unwarrantable proceedings during the government of the lord Vaughan, in ordering and signing a warrant unto the marshal of the island, your majesty's officer of justice, for the stopping and preventing the execution of a sentence passed according to the ordinary forms of law, upon a notorious pirate, and disturber of your majesty's peace: and they have further taken upon them, by virtue of this deliberative power, to make laws contrary to those of England, and to imprison your majesty's subjects; nor have they forborne to raise money by public acts, and to dispose of the same according to their will and pleasure, without any mention made of your majesty, which has never in like case been practised in any of your majesty's kingdoms. How far, therefore, it is fit to intrust them with a power which they have thus abused, and to which they have no pretension of right, was the subject of your majesty's royal commission, when you were pleased to put a restraint upon those enormities and to take the reins of government into your own hands, which they in express words against their duty and allegiance, have challenged, and refused to part with.

8th. It cannot with any truth be supposed, that, by the present form of government, the governor is rendered absolute, since he is now, more than ever, become accountable unto

your majesty, for all his most important deliberations and actions, and is not warranted to do any thing but according to law, and your majesty's commission and instructions, given by advice of your privy council.

9th. And whether your majesty's prerogative is prejudiced by the present instructions, is more the concernment of your majesty, and subject of your own care, than of their considerations.

Lastly, and in general, we humbly conceive, that it would be a great satisfaction to your subjects there inhabiting, and an invitation to strangers, when they shall know what laws they are to be governed by; and a great ease to the planters, not to be continually obliged to attend the assemblies, to re-enact old laws, which your majesty has now thought fit, in a proper form, to ascertain and establish; whereas the late power of making temporary laws could be understood to be of no longer continuance, than until such wholesome laws, founded upon so many years experience, should be agreed on by the people, and finally enacted by your majesty, in such manner as hath been practised in either of your majesty's dominions to which your English subjects have transplanted themselves. For as they cannot pretend to further privileges, than have been granted to them, either by charter, or some solemn act under your great seal; so, having from the first beginning of that plantation, been governed by such instructions as were given by your majesty unto your governors, according to the power your majesty had originally over them, and which you have by no one authentic act ever yet parted with, and having never had any other right to assemblies, than from the permission of the governors, and that only temporary, and for probation, it is to be wondered how they should presume to provoke your majesty, by pretending a right to that which hath been allowed them merely out of favour, and discourage your majesty from future favours of that kind, when what your majesty ordered for a temporary experiment, to see what form would best suit the safety and interest of the island, shall be construed to be a total resignation of the power inherent in your majesty, and a devolution of it to themselves and their wills, without which, neither law nor government, the essential ingredients of their subsistence and well-being, may take place among them.

Since, therefore, it is evident that the assembly of Jamaica have, without any just grounds, and with so much animosity and undutifulness, proceeded to reject the marks of your majesty's favour towards them, and that your majesty's resolutions in this case are like to be the measure of respect and obedience to your royal commands in other colonies; we can only offer, as a cure for irregularities past, and a remedy against all further inconveniences, that your majesty would please to authorize and empower your governor to call another assembly, and to represent unto them the great

convenience and expediency of accepting and consenting unto such laws as your majesty has under your great seal transmitted unto them; and that, in case of refusal, his lordship be furnished with such powers as were formerly given unto col. D'Oyley, your first governor of Jamaica, and since unto other governors, whereby his lordship may be enabled to govern according to the laws of England, where the different nature and constitution of that colony may conveniently permit the same; and, in other cases, to act with the advice of the council, in such manner as shall be held necessary and proper for the good government of that plantation, until your majesty's further orders; and that, by all opportunities of conveyance, the governor do give your majesty a constant and particular account of all his proceedings, in pursuance of your instructions herein.

All which is most humbly submitted, &c.

Upon reading of which Report, and full debate thereupon, his majesty was pleased to approve the same; and the right honourable Mr. Secretary Coventry is hereby directed to prepare such suitable orders and instructions, as may answer the several parts and advices contained in the said Report.

ROBERT SOUTHWELL.

Extract of a Letter from the Committee to the Earl of Carlisle.

After our very hearty commendation unto your lordship, we have received two letters from you, the one of the 24th of October, the other of the 15th of November, 1678; both of which gave us an account of the distaste the assembly had expressed at the new frame of government, and of their throwing out all the bills transmitted under the great seal; and your lordship having therein recommended unto us the speedy dispatch of the bills sent to Mr. Secretary Coventry, for passing them through the offices here, we did thereupon take the same into our consideration: but finding that they contained such clauses as we had formerly (your lordship being present) disallowed in the laws enacted by the lord Vaughan, as most prejudicial to his majesty's right and prerogative, one of them appropriating and disposing of the quit-rents in the same terms as was formerly done, so much to his majesty's dissatisfaction; another, declaring the laws of England to be in force, which clause (your lordship cannot but remember) was postponed here, upon very serious deliberation; besides divers other particulars, altogether unfit to be passed by his majesty: we have, withal, perused the several letters, which your lordship had written to Mr. Secretary Coventry, in relation to your government: and as for the laws, we could not advise his majesty to proceed in any other manner, than by giving power to call another assembly, and to offer unto them the same laws your lordship carried over, as being the most usefully framed and settled, for the good of the island and his majesty's service: and that in case of refusal, you might be ena-

bled to govern according to commissions and instructions given unto former governors, as your lordship will more fully understand by our Report unto his majesty, and the Order of Council thereupon, to which we refer your lordship, as setting forth at large the grounds and reasons inducing the resolutions his majesty has now taken.

Extract of a Letter from the Earl of Carlisle to Mr. Secretary Coventry.

St. Jago de la Vega, August 30, 1679.

Your packet by captain Buckingham, having inclosed his majesty's letter of the 31st of May last, and an order in council of the 28th of May, 1679, together with the animadversions of the council upon several points of the 22d of May last, and two letters from yourself, I received the 26th inst. at night. The next morning I read them in council. The assembly then having sat some seven days, to renew the bill for a revenue, the last being just expiring, I sent for the general assembly, and read the order of council, and the king's letter thereupon, to them, which I hope will have some good effect; but they came in as good time, so much contrary to their expectation. I herewith send you a copy of their address thereupon, which they presented to me, the 28th; and finding them nettled and warm, I thought it discretion to let them take time to digest their thoughts; and having continued the revenue bill for six months longer from the 1st of September next, I passed it, and then prorogued them till the 28th of October following.

Copy of a Vote of the Assembly, Aug. 22, 1679.

Die Veneris. The committee appointed to examine Mr. Martyn's accounts, reported that Mr. Martyn, appearing before them, said, that my lord had ordered him to come and tell them, that, both from the king and from my lord, he was not obliged to shew his accounts to the assembly; but that he had given them unto my lord, and his excellency had told him, that if any of the assembly had a mind to see them, they might see them there.

The house, considering the return of the committee ordered to inspect Mr. Martyn's accounts, re-assumed that debate, and thereupon did vote, That notwithstanding my lord's answer by Mr. Martyn to that committee, it was and is their undoubted and inherent right, that as all bills for money ought and do arise in their house, so they ought to appoint the disposal of it, and to receive and examine all the accounts concerning the same. *Vera Copia.*

ROWLAND POWELL.

Extract of a Letter from the Earl of Carlisle to the Committee.

St. Jago de la Vega, Sept. 15, 1679.

My Lords; Your lordships' letters of the 25th of March, 4th of April, and 31st of May last, I received on the 26th of August, as also your

lordships' orders, and reports to his majesty, touching the laws and government of Jamaica, which I communicated to the council (the assembly then sitting to continue the revenue bill, expiring the 2nd of September), on the 27th of August; and afterwards, the same day, I communicated, the council being present, his majesty's letter of the 31st of May last, and your lordships' order and report of the same date, to the assembly, which came to me as seasonably as they received them surprisedly, making me the next morning the inclosed address: upon which, having passed a bill of impost for six months, I prorogued them, by advice of the council, till the 28th of October next, hoping in that time they would fall off their heat, and, upon recollection, better bethink themselves of their duties and allegiance, and, upon my offering them again the laws, which I propose to do upon their first meeting, better demonstrate their obedience, by readily giving their consent that they might be enacted.

But, from what I can learn from the chief leaders among them, I find the same averseness as formerly, averring that they will submit to wear, but never consent to make, chains, as they term this frame of government, for their posterities; so that I scarce expect better success, of which I have writ at large to Mr. Secretary Coventry.

Extract of a Letter from the Earl of Carlisle to Mr. Secretary Coventry.

St. Jago de la Vega, Nov. 23, 1679.

Sir: The assembly meeting on the 28th of October, I, with the council, went to them: commanded the council's report of the 28th of May, and his majesty's letter of the 31st of May last, to be read again to them; pressed them very much to consider how much it imported, at this juncture, for the interest of the island, that they should pass these laws I brought to them under the great seal of England, or at least part of them; desiring that any one or more of the assembly would there and then argue the reasonableness of their objection, which none of them would undertake; and so I left the body of laws with them. They having the last session passed a vote, that the raising money, and disposing of it, was the inherent right of the assembly (of which I had no account, either from the members or their Speaker, in fourteen days afterwards, they presuming it to be their privilege, that their proceedings should be kept secret from me), I then appointed and swore them a clerk, which before used to be of their own choice; and this they are very uneasy under.

They proceeded to read over the body of laws: notwithstanding the great care, pains and trouble, I had taken with them, both apart individually, as well as assembled together, they threw out and rejected all the laws, again adhering to their former reasons, rather than admitting or honouring those from their lordships, for rules of obedience.

I thereupon presently, with the council, framed a bill of revenue indefinite, and sent

that to them : but that had no better success ; and they then attended me with the Address, to be presented to his majesty, which I herewith send you ; as also the humble desire of justification of his majesty's council thereupon, which I and they earnestly desire your favour in humbly presenting to his majesty, being unanimously agreed to by all the council. Colonel Samuel Long (chief justice of the island, whom I have found all along since my arrival here to be a most pertinacious abettor and cherisher of the assembly's stubbornness, in opposing this new frame of government, having had a hand, being their Speaker, in the leaving the king's name out of the revenue bill) refuses to join with the council in their genuine act, and has sufficiently possessed himself of the opinion of the Assembly, by advising and assisting them in the framing of their Address: thinking their resolutions to be unalterable as his own, he is withdrawn to his plantation, some thirty miles from this town, where, at this juncture, we have most need of council.

Upon serious and deliberate consideration of all which, I have sent him his *quietus*, and appointed Col. Robert Byndloss chief justice in his place, of whose fidelity to the king's interest I have many proofs, having formerly executed the place, and was now one of the judges of the supreme court.

I have also suspended col. Long from being one of the council, proposing, by the advice of the council, to bring or send him, with six more of the Assembly, to attend the king and council in England, to support their own opinions, reasons, and address, wherein they are not ordinarily positive ; and this I do from the council here unanimously agreeing, that there is no better expedient for the settlement of this government to a general consent.

Extract of a Letter from the Earl of Carlisle to the Committee.

St. Jago de la Vega, 23 Nov. 1679.

My Lords ; Mine of the 10th of September last to your lordships I hope you have received, and what I therein sent your lordships, as my conjecture in prospect since the general assembly's meeting on the 28th of October last, have found to be no vain prophecy.

Upon the assembly's meeting on that day, I with the council went to the place where they were met, and again, in the presence of the council and the assembly, commanded to be read your lordships' report of the 28th of May last past, made to his majesty, as also his majesty's commands to myself, of the 31st of the same ; and thereupon offered to the assembly the body of laws brought over under the great seal of England, for their consent ; at the same time declaring to them the great expediency it would be to all the officers of the island, and reason to persuade his majesty they were another people than represented at home ; that it would induce the king to gratify them in what was necessary ; and that, otherwise, they could not appear up in great contempt, to the les-

sening of the island's interest in his royal favour, and what I urged in general to them at their meeting, I had not been wanting to press to them apart individually before it ; then swore them a clerk of my appointing, which they took not well, alledging it was their right to choose their own clerk. I told them, no ; for that the king did grant by patent the clerk of the parliament, so that they were uneasily over-ruled. The reason of my doing this was from their having an opinion that the votes of the House should be kept a secret from me, and their passing a vote the former sessions that to raise money and dispose of the same, was a right inherent in the assembly, of which I had no notice in some fourteen days after, from any of them, or their Speaker.

I much urged the whole assembly freely to argue, in the presence of the council and their own members, for the reasonableness of the matter commanded by the king, that upon their discussing it openly and freely, they might be the better convinced of the necessity of their being dutiful therein : but none of them, in my presence and the council's would undertake it ; so we left them, and the body of laws with them.

Some days they spent in reading over again the body of laws under the great seal, left with them : but rejected the many arguments I had laboured them with, and threw out all the laws again, whereupon they appointed a committee to draw up an address, to be presented by me to his majesty on their behalfs : and in that time, with the council, I drew a bill of revenue indefinitely, and gave it myself to their Speaker ; but that bill had no better success, but was rejected also.

Upon this on the 14th instant, the Speaker and Assembly being sent for, to attend me in council, to show cause why they did reject the bill of revenue so framed by us in pursuance of his majesty's pleasure therein, they gave me no answer ; but by their Speaker, desired to present to me their Address, the Speaker contending to give it its due accent, by reading it himself ; a copy whereof is here sent inclosed.

This Address is founded greatly upon the advice of lieutenant colonel Samuel Long, chief justice of the island, and one of the king's council, who principally contends for the old frame of government, of whom the Assembly is highly opinionated, and esteem him the patron of their rights and privileges as Englishmen, who had a hand in leaving the king's name out of the revenue bill, being then Speaker, and denies not his having a hand in framing and advising some parts of the Address, which in whole is not truth ; for,

1st, Whereas they allege, that the civil government commenced in my lord Windsor's time ; it is generally known and recorded in our council book, fifteen months before, in colonel D'Oyley's time ; and will be proved by sir Thomas Lynch, who then himself had an occasion of a trial by jury, the foreman of which was colonel Byndloss.

3dly, They alledge the readiness of governors to use martial law, particularly in sir Thomas Lynch's time, which is here contradicted; for there was only an order in council for the putting it in force upon condition of any actual descent or invasion, and not otherwise; neither was it on foot really all this time here as I am credibly informed upon good enquiry.

3dly, As for its being in force in my time it was not from my affecting, but the council advising, and their desiring it; as also the putting off the courts till February, in favour generally of the planters. Then, for their alledging so much to be done during the martial law wholly at the charge of the country; that it is done, is true, but the charge thereof they would clog the revenue bill with, amounting to 1,328*l.* when, *communibus annis*, the bill of impost is but 1,500*l.* of which 1,328*l.* there is not yet made payment of one farthing, nor any prospect how it may, since the revenue is so much anticipated from the want of money in the treasury, occasioned by my lord Vaughan's letting fall the bill of revenue before his departure.

To his Excellency Charles Earl of Carlisle, Captain-General, Governor, and Commander in Chief of his majesty's Island of Jamaica, &c.—The humble ADDRESS of the Assembly of this his Majesty's Island in answer to the Report of the right honourable the Lords of the Committee of Trade and Plantations, made to his Majesty's Council, which we entreat his Excellency may be humbly presented to his most sacred Majesty and his Council.—

We, his majesty's most loyal and obedient subjects, the Assembly of this his island of Jamaica, cannot without infinite grief of mind read the Report made to his injury by the right honourable the lords of the committee for trade and plantations; wherein by the relations made by their lordships unto his majesty, they have represented us as a people full of animosity, unreasonable, irregular, violent, undutiful, and transgressing both the bounds of duty and loyalty; the bitterness of which characters were we in the least part conscious to have deserved, we should, like Job, have said, "Behold, we are vile: what shall we answer; we will lay our hands upon our mouths."

But, lest our silence should argue our guilt, we shall, in all humility, endeavour to make appear we have always demeaned ourselves as becometh good and obedient subjects, and those who acknowledge and are truly sensible of the many favours received from his majesty; the truth of which resting only on matter of fact being related, and the false colours, which hitherto have been thrown on us, being washed off, we shall not doubt but his majesty will soon entertain a better opinion of his subjects of this island.

We must, therefore, humbly beg that his majesty will with patience be pleased to hear the account of our proceedings; which truly to ma-

nifest, we must be forced to look back so far as sir Charles Lyttleton's and sir Thomas Medford's entrance upon their government.

At which time, we humbly conceive, the island began really to take up the form of a civil government, and wholly to lay aside that of an army, which until that time, was deemed the supreme authority; when after, upon their several arrivals, by order from his majesty, and according to the method of his majesty's most ancient plantations, they called Assemblies, and settled the government of the island in such good form, that until his excellency the earl of Carlisle's first arrival, his majesty thought not fit to alter it, though several governors in that time were changed, which must necessarily infer the goodness and reason of it, as well as the satisfaction of the people (since, from that time, they betook themselves to settle plantations) especially the merchants, by which means the estates here are wonderfully increased, as is evident by the great number of ships laden here by the industry of the planter; and the satisfaction they received by those wholesome laws, then begun, and until that time continued, the change of which laws we had no reason to expect, being done on such mature deliberation from home.

But to return to answer: the first thing their lordships are pleased to accuse us of, is presuming to question his majesty's power over the militia; which how much they are misinformed in it, will hereunder appear: but we must first repeat the clause, against which, we humbly conceive, we had just reasons to take exceptions, which clause is as followeth:

"Provided always, and it is hereby further enacted and declared by the authority aforesaid, that nothing, in this act contained, be expounded, construed, or understood, to diminish, alter, or abridge, the power of the governor or commander in chief for the time being; but that in all things he may, upon all occasions or exigencies, act as captain-general, and governor in chief, according to and in pursuance of all the powers and authorities given to him by his majesty's commission; any thing in this act or any other to the contrary in anywise notwithstanding."

In their lordships' observations, in which they take no notice that the power, given by that clause, extends as well to the governor as captain-general, nor of the words "any thing in this act or any other to the contrary notwithstanding," which words, being plain, need no reference: to expound them, being consented to, there is no occasion of making any other law, because that makes all the powers and authorities, given by his majesty's commission; and by that commission, the instructions, which shall be after given to him, shall be law, though it be to the nulling of any beneficial law, made either here or in England, by which we are secured both in life and estate; the like of which was never done in any of his majesty's dominions whatsoever, and is in effect to enact will to be a law, and will be construed (we fear)

to bind us by the old rule of law, that every man may renounce his own right; and if their lordships had been pleased to have as well remembered the other clauses of the act of the militia, we cannot think they would have said we had questioned his majesty's power over it; for no act of England gives his majesty the like power over the militia, as ours doth; for, on any apprehension of danger, the general with his council of officers have power to put the law martial on foot for what time they please, and to command us in our own persons, our servants, negroes, horses, even all that we have, to his majesty's service; which having been so often put in practice, will need the less proof; but how readily and willingly we have obeyed, and in that faith is best justified by works, it will not be amiss to instance some times, and what hath been done in those times, by the charge and labour of his majesty's subjects here, under the several governors: none of which have left unexperimented the strength of his majesty's commission, and the virtue or force of that act, upon the least seeming occasion.

In the government of sir Thomas Modyford, in the year 1665 and 1666, the whole island was put under law martial for many months together; in which time, by the inhabitants and their blacks, Fort-Charles was made close, which to that time wanted a whole line, and also the breast-work at Port-Royal was built, with a very small charge to his majesty.

In the time of sir Thomas Lynch, in the year 1673, the law martial was again set on foot; Fort-James built by the contributions of the gentlemen of his majesty's council and assembly, and several other of his majesty's subjects in this island, which amounted to a very considerable sum of money; a breast-work thrown up at Old-Harbour, and several other places; and guns mounted on a platform placed at Port-Morant.

In Lord Vaughan's time, though there was no probability of war, yet he wanted not the trial of his power also in the militia, and our obedience to it; for he commanded out a company of the inhabitants in search of a Spanish *bergua longa*, who was said to have robbed a sloop belonging to this island upon the coast of Cuba: he, likewise, in favour of the royal company commanded out to sea two vessels, with a company of the militia and their captain, from Port-Royal, to seize an interloper riding in one of his majesty's harbours, and there by force seized her.

In the time of sir Henry Morgan being commander in chief we were again put under martial law; in which time Fort-Rupert, Fort-Carlisle, and a new line at Fort-James, were built.

Lastly, in his excellency the earl of Carlisle's time (the present governor) the law martial was again put in force for about three months; in which time Fort-Morgan with its platform, and another line at Fort-James, and the breast-work reinforced very considerably in thickness and height, and new carriages were

made for the guns, those that came out of England not being fit for land service; all which fortifications are substantially built with stone and brick, at the charge and labour of the country.

Neither have we ever been wanting in due respect to his majesty's governors; the militia having always waited on them to church, in their progresses, and on all public occasions; and we may safely affirm with truth, that no militia in his majesty's dominions undergo the like military duty as his subjects in Jamaica; as is evident to all men that ever set foot in Port-Royal, which cannot be distinguished from a garrison, either in time of peace or war, but by their not being paid for their service.

To answer their lordships' objections to the bill of revenue wherein his majesty's name was left out, there are several members of this assembly now sitting, who were members when that bill passed three times in form in the assembly; and, upon the best recollection of their memories, they are fully persuaded and do believe the bill was again sent down with that amendment from the governor and council, according as it passed at the last: but, should it have risen in the assembly, they are very unfortunate if they must bear the censure of all mistakes that may happen in presenting laws to be passed, when both the governor and his council have their negative voices, which had either of them made use of in this point, would have been readily consented to by the assembly, as they had formerly done, both under the government of sir Thomas Modyford and sir Thomas Lynch, before whose time it had been raised without mentioning his majesty's name, and that without check; and we always concluded the governor's name in the enacting part to be of the same effect as his majesty's is in England; whom, in this particular, he seems rather to personate than represent: for which reasons we hope, it ought not to have been imputed to the assembly as their crime: altogether, being consented unto by his majesty's governor without any debate, and all applied, by the act whereby it was raised, to the very same public use his majesty directs; and we are certain no instance can be given of any money disposed of to any private use, but was always issued by the governor's warrant, for the payment of his own and other his general officers' salaries in this island, with some small contingent charges of the government.

Their lordships also affirm, that the assembly offered this bill, in the same measure and proportion as it is now proposed, to sir Thomas Lynch; in which their lordships are misinformed; for his majesty's instructions were, that the laws should be in force for two years and no longer, which their lordships also acknowledge in the prior part of the report; so that the assembly needed not to have expressed any time, and the particular uses therein appointed.

But had their lordships known how great sums of money have been raised here, and how

small a part hath been applied to his majesty's service for the defence and strengthening the island, we humbly conceive their lordships would have been of opinion, that we have no reason to bar ourselves to perpetuity, and pass the said act without limitation of uses or time; nor can we be so presumptuous as to imagine the king can be hindered from making such use of his own money as he shall think fit, and apply it where he finds most necessary.

It is very true the laws contain many and great errors, as their lordships may see by the assembly's journal; so that were the assembly as much petitioners to his majesty for this new form, as they are to be restored to their old, above half the body of these laws, without amendment, would never be reasonable to pass.

As, to instance some few amongst many: in the act for preventing damages by fire, a single justice of the peace hath power of life and death; and the act of militia empowers the governor and council to levy a tax on the whole island; and in the act directing the marshal's proceedings, there is a clause, that makes it felony for any person to conceal his own goods, left in his own possession, after execution levied by that law, so that a man may be hanged for being poor, which, though inconvenient, was never till then accounted capital; with others too long to be repeated.

And whereas their lordships are pleased to say, that there is nothing imperfect or defective in these bills transmitted hither; yet we humbly conceive, that no notice being taken in this body of laws, how or in what nature we are to make use of the laws of England, either as they have reference to the preservation of his majesty's prerogative or the subjects' rights, we ought not in reason to consent to these bills: for, nothing appearing to the contrary, the governor is left, *ad libitum*, to use or refuse as few or as many as he pleases, and such as suit with his occasions; there being no directions in them how to proceed according to the laws of England, either in causes criminal or testamentary, and in many other cases which concern the quiet of the subject, both in life and estate.

We conceive also, that whatsoever is said to the contrary by their lordships in answer to the distance of places, this very last experiment is sufficiently convincing of the truth of that allegation; since it is a year since this model came over and was debated, and before their lordship's report came back, notwithstanding one of the advices went home by an express. And,

Whereas their lordships say, we cannot be subject to more accidents than his majesty's kingdom of Ireland; to that we object, that advice and answers thence may be had in ten or fourteen days, and that kingdom is already settled, our plantation but beginning. But further, we cannot imagine that Irish model of government was, *in principio*, ever intended for Englishmen: besides, their lordships cannot but know, that that model was introduced

amongst them by a law made by themselves in Ireland, and so consequently bound them, which being now generally known to all those who remove thither, they have no cause to repine at, that being their choice to live under it or stay from it, and was made for the preservation of the English against the Irish faction. As there is not the same cause, so there is not the same reason for imposing the same on us, unless we did it ourselves, who are all his majesty's natural-born subjects of his kingdom of England; which is the reason the parliament give, in all their acts concerning the plantations, for obliging us by them to what, and with whom, and in what manner, we may trade, and impose a tax on us here, in case of trade from one colony to another; and it is but equity then, that the same law should have the same power of loosing as binding.

His majesty giving a power on urgent occasions to raise monies the old way, only secures the king's officers their salaries, of which else they had been disappointed; the act of the militia, which was heretofore consented to, ever providing that on alarm or invasion, the commander in chief should have unlimited power over all persons, estates and things, necessary on such urgencies.

As to the 7th, the assembly say, they never desired any power but what his majesty's governors assured them was their birth-right, and what they supposed his majesty's most gracious proclamation allowed them: also his majesty was graciously pleased to write a letter to his governor sir Thomas Lynch, after the double trial of one Peter Johnson a pirate, signifying his dislike that any thing should be done that should cause any doubt in his subjects, in not enjoying all the privileges of subjects of the kingdom of England, or to that effect.

But as to the obstructing of justice against Brown the pirate, what they did, though not justifiable in the manner, was out of an assurance, that we had no law in force then to declare my lord chancellor of England's power and our chancellor's here equal, in granting commissions in pursuance of the statute of Henry the eighth; which also his majesty and council perceiving, have in the new body of laws, sent one to supply that want: and if they not meddling with the merits of the cause, endeavoured to preserve the form of justice, and justice itself; and after denial of several petitions, joined with the council, were led beyond their duty (for which they were sharply reprimanded by the then governor), they do hope for and humbly beg his majesty's pardon.

And as for the act upon which he came in, it arose not in the assembly, but was sent from the council to be consented to by them, which was accordingly done.

And as to the imprisonment of Mr. Thomas Martyn, one of their members, for tending out process in Chancery in his own private concern against several other members, and of the

council, the assembly then sitting, and for other misdemeanors and breach of the rules of the house; they hope it is justifiable, the king's governor having assured them, that they had the same power over their members which the House of Commons have, and all Speakers here praying and the governors granting, the usual petitions of Speakers in England.

Seeing the governor hath power to turn out a counsellor, and turning out incapacitates him from being an assembly-man, no counsellor dares give his opinion against the governor, under danger of less penalty than losing that which he thinks his birth-right: also a governor being chancellor, ordinary and admiral, joined with his military authority, lodges so great a power in him, that being united and executed in one person to turn it *totum in qualibet parte*, so that he may invalidate any thing done under his commission.

There is no doubt but by this new way, it is in the assembly's power to consent to and perpetuate such laws as are wholly of benefit to them, and leave unpassed all that may be thought most necessary for his majesty; which advantage they not laying hold on, hope it will be an evidence they are careful of his majesty's prerogative, as it is the duty of every good subject to be.

It is without controversy, that the old form of government, which was ordered so like his majesty's kingdom of England, must of consequence be of greater encouragement to all his majesty's subjects, as well as strangers, to remove themselves hither. Upon his majesty's proclamation in my lord Windsor's time, and by those gracious instructions given to sir Thomas Modyford, all or most part of the sugar plantations have been settled; and the major part of the said planters being such who arrived here and settled upon the general liking of the model first constituted, and in belief that they lost not any of the privileges of his majesty's subjects of the kingdom of England by their removal hither; and having by no act, as we believe, either provoked his majesty or forfeited our rights, or ever desiring or attempting to lessen or question his majesty's prerogative, the preservation whereof we ever deemed the best means of preserving our own privileges and estates, we shall presume to hope for the continuance of his majesty's favour, which is impossible for us ever to forget.

And whereas their lordships are pleased to offer their advice to his majesty, to furnish his governor with such powers as were formerly given to col. D'Oyley and others, in whose time the then accounted army was not disbanded, but so continued till lord Windsor's arrival, who brought over the king's royal donative, and order to settle the civil government: we hope their lordships intend not that we are to be governed by or as an army, or that the governor be empowered to levy any tax by himself and council; since his majesty having discharged himself and council by an act of parliament, of any such power over any of his ma-

esty's subjects of his kingdom of England, as we undoubtedly are, it will be very hard to have any imposition laid on us but by our own consents; for their lordships well know that no derived power is greater than the primitive.

However, if his most gracious majesty shall not think fit to alter this model, but we are to be governed by the governor and council according to their lordships' advice, yet we humbly beseech his majesty to do us the grace to believe, that we are so sensible of our duty and allegiance, that our submission to and comportment under his majesty's authority shall be such, as that we hope he, in his due time, will be graciously pleased to restore unto us our ancient form of government, under which it hath hitherto pleased God to prosper us: ending with our hearty prayers for his majesty's long and happy reign over us, and most humbly begging his majesty's pardon of all our errors and mistakes, and a gracious interpretation of this our answer; protesting, from the bottom of our hearts, that we are and resolve to die his majesty's true, loyal and obedient subjects.

A True Copy.

ROWLAND POWELL, CL. CONC.

The humble DESIRE and JUSTIFICATION of the Members of his Majesty's Council, to his Excellency the Governor in Jamaica.

The alterations of the frame of government in this his majesty's island of Jamaica, unto that of his kingdom of Ireland, which his majesty, the best and greatest of kings, hath graciously commanded us to submit unto and own, we, his majesty's truly loyal and dutiful subjects, hitherto have and yet do, by a willing readiness, and ready willingness, declare our entire obedience and hearty conformity thereunto, because his majesty commands.

And although his majesty's great perspicuity and truly royal prudence is best able to determine what government is the fittest for his subjects in this island, yet, with all due submission, in all humility, we beg leave to represent to his majesty the great inconvenience attending the present frame, in transmitting our laws home.

The vast distance of place will of necessity require a great expace of time, between the first framing our laws here, and the transmitting and return of them hither again; so that, before they can be passed into laws by the assembly here, there will probably as great causes arise to alter, as there were at first to make them.

And, with all due submission, we judge it even impossible to adapt laws to the present constitution, so as not to admit of often and great alterations: for according to our experience hitherto, we have found urgent occasions to alter and amend the laws, that have more immediately concerned us here, at the least every two years; and we cannot foresee, but we shall lie under the same necessity still; so that if his majesty graciously please to take it

3d. Whether the subsidies of tonnage and poundage upon goods that may by law, or shall be directly carried to Jamaica, be not payable, according to law, by his majesty's subjects inhabiting that island, or trading there, by virtue of the acts of tonnage and poundage, or other acts made in England?

4th. Whether wine or other goods, once brought into England, and transported from thence, upon which the respective abatements are allowed upon exportation, according to law, the same being afterwards carried to Jamaica, and landed there, shall not be liable to the payment of the full duty of tonnage and poundage, which it should have paid, if consumed in England, deducting only such part of the said duty as shall not be repaid in England upon exportation of the said goods from thence?

Which Queries were accordingly transmitted to Mr. Attorney and Mr. Solicitor General, with a Paper containing the past and present state of Jamaica, in relation to the government.

Letter to Mr. Attorney and Mr. Solicitor General.

Council Chamber, March 11, 1679-80.

Gentlemen; The right honourable the lords of the Committee for Trade and Plantations, upon consideration of the affairs of Jamaica, have stated the Questions following, viz.

[Here were recited the Queries stated in the preceding article.]

To which Questions their lordships desire your Answer in writing, with all convenient speed: and for your further information, I have inclosed a Paper containing a short account of the past and present state of the government of Jamaica; and in case you should require any further satisfaction therein, or touching the Queries referred unto you, I am ordered by the Lords of the Committee to attend you at any time and place you shall think fit to appoint.

I am, with all respect, gentlemen, &c.

Extract of an Order in Council.

JAMAICA.—At the Committee of Trade and Plantations, in the Council-Chamber at Whitehall, April 27, 1680. Present, Prince Rupert, Lord President, Earl of Sunderland, Earl of Essex, Viscount Fauconberg, Mr. Hyde, Mr. Secretary Jenkins.

Mr. Attorney and Mr. Solicitor General having likewise acquainted the Committee, that, upon consideration of the four Questions concerning Jamaica, referred unto them the 11th of March, they did find them of such difficulty and moment, as to deserve the opinion of the Judges; upon whom Mr. Attorney and Mr. Solicitor General are desired to attend with them; Mr. Attorney having first delivered his opinion, "That the people of Jamaica have no right to be governed by the laws of England, but by such laws as are made there, and estab-

lished by his majesty's authority:" But whereas Mr. Solicitor General doth deliver his opinion that the word "dominion," in the act of parliament for tonnage and poundage, may seem rather to imply the dominion of Wales and Berwick-upon-Tweed only, than to extend to the plantations; and more especially, as Mr. Attorney alledges, since the islands of Guernsey and Jersey are not concerned in that act; their lordships order the two first Questions only to be sent unto the Judges, without any intention to be made of the two last, which particularize the act of tonnage and poundage.

References to the Judges about Jamaica.

Council-chamber, April 27, 1680.

Gentlemen; I am commanded by the right honourable the Lords of the privy-council appointed a Committee of Trade and Foreign Plantations, to signify their desires, that you attend his majesty's Judges with the questions following:

1st. Whether from the past and present state of Jamaica, his majesty's subjects inhabiting and trading there have a right to the laws of England, as Englishmen, or by virtue of the king's proclamation, or otherwise?

2d. Whether his majesty's subjects of Jamaica, claiming to be governed by the laws of England, are not bound by such laws as are beneficial to the king, by appointing taxes and subsidies for the support of the government, as by other laws which tend only to the benefit and ease of the subject?

Which Questions their lordships desire his majesty's Judges to consider and answer in writing and to return the opinions to the committee with convenient speed.

I am with respect, &c.

Order to the Judges about the Question of Jamaica.

At the Court of Whitehall, June 23, 1680. Present, His Majesty, Prince Rupert, Archbishop of Canterbury, Lord Chancellor, Lord President, Lord Privy Seal, Duke of Albemarle, Marquis of Worcester, Earl of Ossory, Lord Chamberlain, Earl of Sunderland, Earl of Clarendon, Earl of Bath, Lord Bishop of London, Mr. Hyde, Mr. Finch, L. C. J. North, Mr. Coventry, Mr. Secretary Jenkins, Mr. Chancellor of the Exchequer, Mr. Godolphin.

It is this day ordered in council, that Mr. Attorney and Mr. Solicitor General do attend his majesty's Judges, and desire them to assemble with all convenient speed, and being assembled, to confer with them concerning this question; viz.

Whether by his majesty's letter, proclamation, or commissions, annexed, his majesty hath excluded himself from the power of establishing laws in Jamaica, it being a conquered country, and all laws settled by authority there being now expired?

And that, upon receiving the Opinions of his majesty's judges, under their hands in writing, they do report the same to the lords of the privy-council appointed a committee for trade and foreign plantations.

Extract of an Order in Council.

JAMAICA.—At the Committee of Trade and Plantations, in the Council-Chamber at Whitehall, Sept. 7, 1680. Present, Lord President, Mr. Secretary Jenkins, Marquis of Worcester.

Mr. Secretary Jenkins acquaints the committee that col. Long, of Jamaica, had some days before surrendered himself to him, upon a bond of ten thousand pounds given to the earl of Carlisle to that purpose; and that he had taken his security for the like sum, that he would attend the first council, on Friday next, being the 10th instant.

Copy of an Order in Council.

JAMAICA.—At the Committee of Trade and Plantations, in the Council-Chamber at Whitehall. Present, Prince Rupert, Lord President, Marquis of Worcester, Earl of Clarendon, Earl of Bath, Mr. Secretary Jenkins.

The earl of Carlisle is called in, and delivers a paper containing a charge against col. Long, which is read, consisting chiefly in three points; viz. That he had razed the king's name out of the act for raising a public revenue; that he had granted an Habeas Corpus, being judge; for a person condemned by law; and had opposed the settlement of the country pursuant to the king's orders.

And his lordship declaring, that he had nothing more to say against col. Long, than was contained in that paper, only reserving to himself the liberty of explaining what he had therein mentioned, col. Long is called in, and the paper read to him; whereupon he positively denies that he had done any thing to the bill without the directions of the assembly; and that he believes the rasure happened, inasmuch as the clerk of the assembly had transcribed the bill passed in sir Thomas Lynch's time, which was now blotted out by the agreement of the governor, council, and assembly, and the words written in his hand were only added to make up the sense, which otherwise would have been wanting, which he did as Speaker of that assembly from whom he had directions; which is confirmed by the letters of major Molesworth, Mr. Bernard, Mr. Ashurst, Mr. Burton, and of the clerk of the assembly.

As to the granting an Habeas Corpus, he declares he did not know the person was condemned; and that it is usual for the judges to sign blank Habeas Corpus's, which the clerk gives out in course.

And that he never opposed the king's orders, otherwise than by expressing his opinion, that they were not for his majesty's service, nor the good of his country.

Extract of an Order in Council.

JAMAICA.—At the Committee of Trade and Plantations, in the Council-chamber at Whitehall, Tuesday 13 Oct. 1680. Present, Prince Rupert, Lord President, Lord Privy Seal, Marquis of Worcester, Earl of Sunderland, Earl of Clarendon, Earl of Halifax, Viscount Fauconberg, Mr. Hyde, Mr. Godolphin, Mr. Secretary Jenkins, Mr. Seymour.

The earl of Carlisle attending acquaints the committee, that the act for raising a public revenue will expire in March next, and that the government will be left under very great necessities, in case the king do not give sir Henry Morgan leave to pass a temporary bill, until the full settlement of affairs shall be agreed on, which is like to take up a considerable time; and therefore proposes, that the Order in Council, dated the 14th of January last (which is read) forbidding the governor to raise money by any other act or order whatsoever, than by the bill transmitted by his majesty, which the assembly will not be willing to pass until the government be entirely settled in such manner as may be more agreeable to them than the Irish model, be suspended. His lordship proceeds to give an account of his transactions with the assembly to persuade them to pass the revenue bill, and reads the objections of the assembly, and his answer to them; whereof, and of the council-books, his lordship is desired to give a transcript to the committee.

There having been two laws read, which were entered therein, the one made by col. D'Oyley and the council, for raising imposts on liquors, the other by sir Charles Lyttleton and his council, being a supplemental act to the former:

And his lordship acquainting the committee; that, as for licenses of taverns, he had set them on foot before he passed any bill of revenue:

It is thereupon thought fit, by some of their lordships, That the assembly of Jamaica be induced to pass a perpetual bill, by having leave to appropriate the revenue to the support of the government.

And the committee is appointed to meet again on this business on Thursday, at nine o'clock in the morning; when col. Long, and the other assembly-men lately come over, are to attend.

JAMAICA.—At the Committee of Trade and Plantations, in the Council Chamber at Whitehall, Thursday Oct. 14, 1680. Present, Prince Rupert, Lord President, Lord Privy-seal, Marquis of Worcester, Earl of Clarendon, Earl of Essex, Earl of Halifax, Viscount Fauconberg, Lord Chief Justice North, Mr. Secretary Jenkins.

The earl of Carlisle attends, and produces an entry in the council-book of Jamaica, of a law passed by col. D'Oyley and the council, for raising a public revenue; and of another

passed by sir Charles Lyttleton and the council, being a supplemental act to the former, both which are indefinite; and not determined by the commissions of col. D'Oyley or my lord Windsor, whose deputy sir Charles Lyttleton was.

After which, col. Long and Mr. Ashurst are called in (the other gentlemen of Jamaica being in the country) and being asked, why they were not willing that a perpetual bill of revenue should pass in Jamaica? they made answer, that they have no other way to make their aggressions known to the king, to have them redressed, than by the dependance of the governor upon the assembly, which is preserved by passing temporary bills of revenue; and that a perpetual bill being passed, all the ends of government would be answered, and there would be no further need of calling assemblies. To which my lord of Carlisle replies, That, notwithstanding any act for raising an impost on liquors should be passed in that manner, yet the necessities and contingencies of the government are such as to require the frequent calling of assemblies, for raising money by other means, and doing public works; the present revenue coming far short of the expence of the government.

Their lordships tell col. Long, that in case they be willing to pass the act of revenue indefinitely, the king may be induced to settle other perpetual laws, which they shall propose as beneficial to them.

The gentlemen of Jamaica being withdrawn, their lordships enter upon a debate concerning a continuance of the two laws made by col. D'Oyley and sir Charles Lyttleton before mentioned, and how far the English laws and methods of government ought to take place in Jamaica; and it is there alledged, "that the laws of England cannot be in force in another country, where the constitution of the place is different from that of England."

Upon the whole matter, the committee desire my lord chief justice North to report his opinion in writing on Monday next, upon the questions following; viz.

1st. Whether the king by his proclamation published during my lord Windsor's government, his majesty's letter dated 15th of January, 1672-3, or any other act, appearing by the laws of England or any laws of Jamaica, or by his majesty's commissions or instructions to his governors, has divested himself of the power he formerly had to alter the forms of government in Jamaica?

2d. Whether any act of the assembly of Jamaica, or any other act of his majesty or his governors, have totally repealed the acts made by col. D'Oyley and sir Charles Lyttleton for raising a public revenue, or whether they are now in force?

Memorandum. His majesty being present, my lord chief justice North was added to the committee.

Memorandum. Col. Long having mentioned some transactions of my lord Vaughan's during

his government, his lordship is to be summoned for the next meeting.

JAMAICA.—At the Committee of Trade and Plantations, in the Council Chamber at Whitehall on Monday the 18th of October 1680. Present, Lord President, Lord Privy-Seal, Lord Chamberlain, Earl of Essex, Earl of Clarendon, Earl of Halifax, Lord Visc. Fauconberg, Lord Chief Justice North, Mr. Secretary Jenkins, Mr. Seymour.

My lord chief justice North having acquainted the committee, that he had considered of the two questions proposed by their lordships; and that, although some further time would be requisite for him to give in his answer, yet, in respect of the haste that was necessary for settling the revenue, his lordship undertakes to return his answer at the next meeting upon the second question; wherein his lordship is desired to take to his assistance some other of his majesty's judges, viz.

Whether any act of the assembly of Jamaica, or any act of his majesty or his governors, have totally repealed the acts made by col. D'Oyley and sir Charles Lyttleton, for raising a public revenue, or whether they are now in force?

JAMAICA.—At the Committee of Trade and Plantations, in the Council Chamber at Whitehall, on Wednesday Oct. 20, 1680. Present Lord President, Earl of Sunderland, Earl of Bridgewater, Earl of Essex, Earl of Halifax, Lord Chief Justice North, Lord Bishop of London, Mr. Secretary Jenkins, Mr. Seymour.

My lord chief justice North having delivered his opinion in writing upon the question recommended to him at the last meeting, col. Long, Mr. Beeston, Mr. Ashurst, and other planters and merchants of Jamaica, together with the earl of Carlisle, are called in, and his lordship's opinion is read to them; whereby his lordship concludes, that the act of revenue made in 1665 by sir Charles Lyttleton is yet in force; as being not repealed by any subsequent acts which were limited to the term of two years by his majesty's commands. But col. Long objects, that there was a law made by sir Thomas Modyford, which declares all laws, passed at sir Charles Lyttleton's assemblies, void for want of due form in the writs and other particulars; whereupon they are bid to withdraw; and whereas my lord chief justice North was not present when this objection was made, their lordships think fit that he be acquainted therewith, and desired to renew his opinion; and the gentlemen of Jamaica are also desired to be ready with the objections they have to make to his lordship's report, at the next meeting, which is appointed for to-morrow at three in the afternoon.

JAMAICA. At the Committee of Trade and Plantations in the Council-Chamber at Whitehall, Thursday, Oct. 21, 1680. Present, Prince Rupert, Lord President, Mar-

quis of Worcester, Earl of Bridgwater, Earl of Clarendon, Vic. Fauconberg, Mr. Hyde, Id. Ch. Just. North, Mr. Secretary Jenkins.

The lords being met to consider the business of Jamaica, order the proclamation, published in my lord Windsor's time, to be read: and thereupon their lordships express their opinion, that his majesty did thereby assure and settle the property of the inhabitants, but not the government and form: thence these questions did arise, viz.

1st. Whether, upon the consideration of the commission and instructions to col. D'Oyley, and sir Charles Lyttleton, and the constitution of the island thereupon, the acts of council made by colonel D'Oyley and sir Charles Lyttleton were perpetual laws, binding to the inhabitants of the island?

2d. Whether, supposing those laws good and perpetual, any of the subsequent laws, or the proclamation in my lord Windsor's time, have taken away the force of these laws?

And because the gentlemen of Jamaica made divers objections against the validity of those laws, as being made by the governors and council without an assembly, and against the perpetuity of them, as being repealed by subsequent laws; their lordships do therefore think it most conducing to his majesty's service, that colonel Long, major Beeston, and Mr. Ashurst, do attend my Lord Chief Justice North, in order to explain to his lordship what is chiefly expected by them, whereby they may be induced to settle the revenue for the support of the government, to the end matters may be brought to an accommodation.

JAMAICA.—At the Committee of Trade and Plantations in the Council-Chamber at Whitehall, *Wednesday, Oct. 27, 1680.* Present, Lord Privy Seal, Earl of Bridgwater, Lord Chamberlain, Earl of Bath, Earl of Halifax, Mr. Chancellor of the Exchequer.

My Lord Chief Justice North reports, that he has been attended by the gentlemen of Jamaica, who have declared themselves willing to grant the king a perpetual bill for the payment of the governors, and another bill for the payment of contingencies, to continue for seven years, provided they may be restored to their ancient form of passing laws, and may be assured of such of the laws of England, as may concern their liberty and property.

Their lordships taking notice that the revenue of Jamaica will expire in March next, direct a letter to be prepared for the approbation of the council, empowering sir Henry Morgan to call an assembly, and to endeavour the passing a temporary bill with their consent, for the revenue; and, in case of their refusal, to raise the same in such manner as hath been done by former governors.

Memorandum. At a council on the iast. a draught of the aforementioned letter was read.

And upon reading the petition of the planters, merchants, and inhabitants of Jamaica, praying to be restored to their ancient method of making laws, the lords of the committee are ordered to meet *de die in diem*, until they shall have agreed on such a method for the making of laws, and the settlement of the government, as they shall find most convenient for his majesty's service.

JAMAICA.—At the Committee of Trade and Plantations, in the Council-Chamber at Whitehall, on Thursday the 28th of October, 1680. Present, Prince Rupert, Lord Privy Seal, Lord Chamberlain, Earl of Bridgwater, Earl of Sunderland, Earl of Clarendon, Earl of Essex, Earl of Halifax, Viscount Fauconberg, Bishop of London, Mr. Hyde, Lord Chief Justice North, Mr. Secretary Jenkins.

Their lordships having considered that part of the letter from the council of Jamaica, dated 20th of May last, that concerns the laws, and having read the petition of the merchants and planters of Jamaica, presented in council on the as also a paper prepared by Mr. Blackwayt, concerning the manner of making laws in Jamaica, their lordships, upon full consideration, and debate, of what may best conduce to his majesty's service, agree, That the present method of making laws in Barbadoes, as settled by the commission of sir Richard Dalton, be proposed unto his majesty in council: and that powers be drawn up for the earl of Carlisle, with instructions suitable to that scheme, and with respect to the present circumstances of Jamaica; and that the assembly may be the more easily induced to grant a revenue for the support of the government, their lordships are of opinion, that his majesty's quit-rents, and the tax on the wine-licenses, as well as all other levies which now are or shall be made, be appropriated to the support of the government, and to no other use whatsoever.

JAMAICA.—At the Committee of Trade and Plantations, in the Council-Chamber at Whitehall, on Saturday, the 30th of October, 1680. Present, Prince Rupert, Duke of Albemarle, Lord Chamberlain, Earl of Bridgwater, Earl of Sunderland, Earl of Clarendon, Earl of Essex, Viscount Fauconberg, Earl of Halifax, Mr. Secretary Jenkins.

Colonel Long, and the other gentlemen of Jamaica, attend, and are acquainted with the resolutions of the Committee, to report to his majesty, that they may enjoy the same method of making laws, as is now appointed for Barbadoes; with which the gentlemen express themselves very well satisfied.

Copy of Powers to the Earl of Carlisle, for making Laws.

CHARLES the Second, by the grace of God, king of England, Scotland, France, and Ireland,

Defender of the Faith, &c.—To our right trusty and right well-beloved cousin Charles, Earl of Carlisle, our Captain-General, and Governor in Chief in and over our Island of Jamaica, and other the Territories depending thereon; and to our Deputy-Governor and Commander in Chief of our said Island: and, in case of their death or absence, to our Council of Jamaica.

Whereas, by our royal commission, bearing date the 1st of March, in the 30th year of our reign, we have thought fit to constitute and appoint you, Charles earl of Carlisle, Captain-General and Governor in Chief in and over our island of Jamaica, and the territories depending thereon, thereby commanding and requiring you, or, in your absence, our deputy-governor, or our council, to do and execute all things belonging to the said command, and the trust reposed in you, according to the several powers or directions granted or appointed you by the said commission, and the instructions therewith given you, or by further powers and instructions to be granted or appointed you under our signet and sign-manual, as by our said commission (reference being thereunto had) doth more at large appear: and whereas it is necessary that good and wholesome laws and ordinances be settled and established for the government and support of our island of Jamaica; we do hereby give and grant unto you full power and authority, with the advice and consent of the said council, from time to time, as need shall require, to summon or call general assemblies of the freeholders and planters within the said island, in manner and form as is now practised in Jamaica. And our will and pleasure is, that the persons thereupon duly elected by the major part of the freeholders of the respective parishes and places, and so returned (having, before their sitting, taken the oaths of allegiance and supremacy, which you shall commissionate fit persons, under the public seal of that island, to administer, and without taking which, none shall be capable of sitting, though elected) shall be called and held the General Assembly of our island of Jamaica; and that they, or the major part of them, shall have full power and authority, with the advice and consent of yourself, and of the council, to make, constitute, and ordain laws, statutes, and ordinances,

for the public peace, welfare, and good government of the said island, and of the people and inhabitants thereof, and such other as shall resort thereto, and for the benefit of our heirs and successors; which said laws, statutes, and ordinances, are to be (as near as conveniently may be) agreeable to the laws and statutes of our kingdom of England: provided, that all such laws, statutes, and ordinances, of what nature or duration whatsoever, be, (within three months, or by the first conveyance after making the same) transmitted unto us under the public seal, for our allowance and approbation of them, as also duplicates thereof by the next conveyance; and in case all or any of them (being not before confirmed by us) shall, at any time, be disallowed and not approved, and so signified by us, our heirs, or successors, under our or their sign-manual or signet, or by order of our or their privy-council, unto you, the said earl of Carlisle, or to the commander in chief of our said island for the time being, then such or so many of them, as shall be so disallowed and not approved, shall from thenceforth cease, determine, and be utterly void, and of none effect, any thing to the contrary thereof notwithstanding. And to the end nothing may be passed or done in our said island by the said council or assembly, to the prejudice of us, our heirs, or successors, we will and ordain, that you the said Charles, earl of Carlisle, shall have and enjoy a negative voice in the making or passing of laws, statutes, and ordinances, as aforesaid; and that you shall and may likewise, from time to time, as you shall judge it necessary, dissolve all General Assemblies, as aforesaid; any thing in our commission, bearing date as aforesaid, to the contrary hereof notwithstanding. And our will and pleasure is, that, in case of your death, or absence from the said island, our deputy-governor, for the time being, exercise and enjoy all and singular the powers and authorities hereby granted unto you, the said Charles, earl of Carlisle; and in case he likewise happen to die, or be absent from our said island, we do hereby authorize and empower our Council of Jamaica to execute the powers hereby given you, until we shall declare our further pleasure therein.

Given at our Court at Whitehall, this 3rd day of November, in the thirty-second year of our reign.

INTRODUCTION

TO THE

TRIALS FOR THE POPISH PLOT.

WE are now arrived at the Trials respecting that cause of extensive, various and pertinacious contention; that source of copious bloodshed; that origin of tremendous and lasting national convulsions—the POPISH PLOT. A knowledge of the transactions relating to it, of the different impressions which they made upon the minds of different men who lived at the time they occurred, and of the representations of them which have been exhibited, may be collected from the reports of the Trials connected with the alleged Plot, and contained in this Collection (of which that of Staley or Stayley, Nov. 21, 1678, is the earliest, and that of Oates, May 9, 1685, is the latest), from the fourth Volume of Cobbett's Parliamentary History, and from the writings of bishop Burnet, Oldmixon, Echard, and Roger Coke. ["Your Burnets, Oldmixons, and Cokes," are by no means such despicable historians, as the sneer of Mr. Pope and the commentary of Warton would induce us to believe], from Algernon Sydney's Letters (published in London by Dodsley, A. D. 1712), from The Secret History of the reigns of king Charles 2, and king James 2; (a small volume printed in the year 1690), from Rauleigh Redivivus, or the Life and Death of the Right Hon. Anthony earl of Shaftsbury, by Philanax Misopappas, (a small book of which the second edition was published in 1683), from Kennett, and Roger North; from the Weekly Packet of Advice from Rome: (See Hen. Carr's Case, A. D. 1680, *infra*); from Harris's Historical and Critical Account of the Life of Charles the Second; from the published Memoirs of different persons who lived at the time, and from the compilations of subsequent historians.

Hume, in his eighth volume, enters much at large into the history of this Plot, deriving his materials principally from Burnet, and from Roger North. Burnet's narrative is, indeed, intitled to particular attention. It is very circumstantial, and seems to authenticate all that its author says of it. "I am," says he, "so well instructed in all the steps of the Plot, that I am more capable to give a full account of it than any man I know. And I will do it so impartially that no party shall have cause to censure me for concealing or altering the truth in any one instance." Hume, in another place, (vol. 5, Note N, of the later editions of his history) says, "There are three events in our

history which may be regarded as touchstones of party-men: An English Whig, who asserts the reality of the Popish Plot; an Irish Catholic, who denies the massacre in 1641; and, a Scotch Jacobite, who maintains the innocence of queen Mary, must be considered as men beyond the reach of argument or reason, and must be left to their prejudices."

Sir John Dalrymple (Memoirs, vol. i. p. 43, Note) tells us, "that some papers which he had seen convinced him that Shaftsbury contrived the Popish Plot, though the persons he employed as informers, ran beyond their instructions."

In the piece which Macpherson chose to publish under the title of "The Life of James the Second, written by himself," (see the Note to lord Clarendon's Case, *ante*, p. 297), the Plot is styled "Ores's Plot."

The following are the reflections of Mr. Fox on these transactions:

"When the minds of men were in the disposition which such a state of things was naturally calculated to produce, it is not to be wondered at, that a ready, and perhaps a too facile, belief should have been accorded to the rumour of a Popish Plot. But with the largest possible allowance for the just apprehensions which were entertained, and the consequent irritation of the country, it is wholly inconceivable how such a Plot as that brought forward by Tongue and Oates could obtain any general belief. Nor can any stretch of candour make us admit it to be probable, that all who pretended a belief of it did seriously entertain it. On the other hand, it seems an absurdity, equal almost in degree to the belief of the Plot itself, to suppose that it was a story fabricated by the earl of Shaftsbury, and the other leaders of the Whig Party; and it would be highly unjust, as well as uncharitable, not to admit, that the generality of those who were engaged in the prosecution of it were probably sincere in their belief of it, since it is unquestionable that at the time very many persons, whose political prejudices were of a quite different complexion, were under the same delusion. The unanimous votes of the two Houses of Parliament, and the names, as well as the number, of those who pronounced Lord Stafford to be guilty, seem to put this beyond a doubt. Dry-

den, writing soon after the time, says, in his *Absalom and Achitophel*, that the Plot was

“Bad in itself, but represented worse :”

that

“Some truth there was, but dash'd and brew'd
“with lies.”

and that

“Succeeding times did equal folly call

“Believing nothing, or believing all.”

and Dryden will not, by those who are conversant in the history and works of that immortal writer, be suspected either of party prejudice in favour of Shaftsbury and the Whigs, or of any view to prejudice the country against the duke of York's succession to the crown. The king repeatedly declared his belief of it. These declarations, if sincere, would have some weight ; but if insincere, as may be reasonably suspected, they afford a still stronger testimony to prove that such belief was not exclusively a party opinion, since it cannot be supposed, that even the crooked politics of Charles could have led him to countenance fictions of his enemies, which were not adopted by his own party. Wherefore, if this question were to be decided upon the ground of authority, the reality of the Plot would be admitted ; and it must be confessed, that, with regard to facts remote, in respect either of time or place, wise men generally diffide in their own judgment, and defer to that of those who have had a nearer view of them. But there are cases where reason speaks so plainly as to make all argument drawn from authority of no avail, and this is surely one of them. Not to mention correspondence by post on the subject of regicide, detailed commissions from the Pope, silver bullets, &c. &c. and other circumstances equally ridiculous, we need only advert to the part attributed to the Spanish government in this conspiracy, and to the alledged intention of murdering the king, to satisfy ourselves that it was a forgery.

“Rapin, who argues the whole of this affair with a degree of weakness as well as disingenuity very unusual to him, seems at last to offer us a kind of compromise, and to be satisfied if we will admit that there was a design or project to introduce popery and arbitrary power, at the head of which were the king and his brother. Of this I am as much convinced as he can be ; but how does this justify the prosecution and execution of those who suffered, since few, if any of them, were in a situation to be trusted by the royal conspirators with their designs ? When he says therefore, that, that is precisely what was understood by the conspiracy, he by no means justifies those who were the principal prosecutors of the plot. The design to murder the king, he calls the appendage of the plot : a strange expression this, to describe the projected murder of a king ! though not more strange than the notion itself when applied to a plot, the object of which

was to render that very king absolute, and to introduce the religion which he most favoured. But it is to be observed, that though in considering the Bill of Exclusion, the Militia Bill, and other legislative proceedings, the plot, as he defines it, that is to say, the design of introducing popery and arbitrary power, was the important point to be looked to ; yet in courts of justice, and for juries and judges, that which he calls the appendage was, generally speaking, the sole consideration.

“Although therefore, upon a review of this truly shocking transaction, we may be fairly justified in adopting the milder alternative, and imputing to the greater part of those concerned in it, rather an extraordinary degree of blind credulity, than the deliberate wickedness of planning and assisting in the perpetration of legal murders : yet the proceedings on the Popish Plot must always be considered as an indelible disgrace upon the English nation, in which king, parliament, judges, juries, witnesses, prosecutors, have all their respective, though certainly not equal, shares. Witnesses of such a character as not to deserve credit in the most trifling cause, upon the most immaterial facts, gave evidence so incredible, or, to speak more properly, so impossible to be true, that it ought not to have been believed if it had come from the mouth of Cato ; and upon such evidence, from such witnesses, were innocent men condemned to death and executed. Prosecutors, whether attorney and solicitors-general, or managers of impeachment, acted with the fury which in such circumstances might be expected ; juries partook naturally enough of the national ferment ; and judges, whose duty it was to guard them against such impressions, were scandalously active in confirming them in their prejudices, and inflaming their passions. The king, who is supposed to have disbelieved the whole of the plot, never once exercised his glorious prerogative of mercy. It is said he dared not. His throne, perhaps his life, was at stake ; and history does not furnish us with the example of any monarch with whom the lives of innocent or even meritorious subjects ever appeared to be of much weight, when put in balance against such considerations.”

The whole passage of his favourite Dryden, from which Fox has extracted four lines, is worth insertion. It follows an encomiastic representation of the government of Charles the Second. It is scarcely necessary to premise that ‘Jerusalem’ denotes ‘London,’ ‘Jebusites’ ‘Papists,’ ‘David’ ‘Charles the Second,’ ‘Egypt’ ‘France.’

Th' inhabitants of old Jerusalem
Were Jebusites ; the town so call'd from them ;
And theirs the native right—
But when the chosen people grew more strong,
The rightful cause at length became the wrong ;
And ev'ry loss the men of Jebus bore
They were still thought God's enemies the more.
Thus worn or weaken'd, well or ill-content,
Submit they must to David's government ;

Impoverish'd, and depriv'd of all command,
Their taxes doubled as they lost their land;
And what was harder yet to flesh and blood,
Their gods disgrac'd, and burnt like common
wood.

This set the heathen priesthood in a flame;
For priests of all religion are the same.
Of whatsoever descent their godhead be,
Stock, stone, or other homely pedigree,
In his defence his servants are as bold
As if he had been born of heathen gold.
The Jewish Rabbins, though their enemies,
In this conclude them honest men and wise:
For 't was their duty all the learned think,
To espouse his cause by whom they eat and drink,
From whence began that Plot, the nation's curse,
Bad in itself, but represented worse;
Rais'd in extremes, and in extremes decry'd;
With oaths affirm'd, with dying vows deny'd;
Not weigh'd, nor winnow'd by the multitude;
But swallow'd, in the mass, unchew'd and
crude.

Some truth there was, but dash'd and brew'd
with lies,

To please the fools, and puzzle all the wise.
Succeeding times did equal folly call,
Believing nothing, or believing all.
Th' Egyptian rites the Jebusites embrac'd,
Where gods were recommended by their taste.
Such sav'ry deities must needs be good,
As serv'd at once for worship and for food.
By force they could not introduce these gods;
For ten to one, in former days, was odds.
So fraud was us'd (the sacrificer's trade):
Fools are more hard to conquer than persuade:
Their busy teachers mingled with the Jews,
And rak'd, for converts, e'en the court and stews;
Which Hebrew priests the more unkindly took,
Because the fleece accompanies the flock:
Some thought they God's anointed meant to slay
By guns, invented since full many a day:
Our author swears it not; but who can know
How far the devil and Jebusites may go?
This Plot, which fail'd for want of common sense,
Had yet a deep and dang'rous consequence:
For, as when raging fevers boil the blood,
The standing lake soon floats into a flood,
And ev'ry hostile humour, which before
Slept quiet in its channels, bubbles o'er;
So several factions, from this first ferment,
Work up to foam, and threat the government.
Some by their friends, more by themselves
thought wise,
Oppos'd the pow'r to which they could not rise:

Some had in courts been great, and thrown
from thence,

Like fiends were harden'd in impenitence:
Some, by their monarch's fatal mercy, grown
From pardon'd rebels kinsmen to the throne,
Were rais'd in pow'r and public office high,
Strong bands, if hands ungrateful men could tie.
Of these the false Achitophel was first,
A name to all succeeding ages curs'd;
For close designs and crooked councils fit,
Sagacious, bold, and turbulent of wit;
Restless, unfix'd in principles and place,
In pow'r unpleas'd, impatient of disgrace:
A fiery soul, which, working out its way,
Fretted the pigmy body to decay,
And o'er-inform'd the tenement of clay.
A daring pilot in extremity.

The Popish Plot deservingly occupies an extensive space in English story. Burnet's Account of it has been already mentioned. That Account bears so many marks of authenticity, and withal appears to throw light upon so many particulars, both of the men and of the things which were introduced into the following Trials, that it has been thought proper to insert it here. Several of the chief witnesses, as Oates, Bedloe, Praunce, Jennison, published Narratives of the matters which, as they alleged, had come within their respective knowledge. All these Narratives are curious. The only one, however, of them to which historians have much adverted, is that of Oates; which is here inserted, because it is intimately connected with the ensuing Trials, and also materially explanatory of the accounts given by Burnet and the other historians. It must, moreover, appear to be in itself an astonishing document, in whatever light it may be contemplated. In former editions of the State Trials, Atkins's account of his Examination before the Committee of the House of Lords, appointed to enquire after the murder of sir Edmondbury Godfrey, and also the Examinations of Bedloe taken before that Committee, and his subsequent Examination at Bristol in his last sickness by Lord Chief Justice North, were inserted in an Appendix to the eighth volume. But as these matters altogether relate to the Popish Plot, it seems preferable that they should be consolidated with the other introductory information which it has been thought proper to prefix to the Trials arising out of that Plot. Accordingly, they are here subjoined to Oates's Narrative.

BURNET'S ACCOUNT OF THE POPISH PLOT.

THREE days before Michaelmas Dr. Tonge came to me. I had known him at sir Robert Murray's. He was a gardener and a chymist, and was full of projects and notions. He had got some credit in Cromwell's time: and that kept him poor. He was a very mean divine, and seemed credulous and simple. But I had always looked on him as a sincere man. At this

time he told me of strange designs against the king's person; and that Coniers, a Benedictin, had provided himself of a poniard, with which he undertook to kill him. I was amazed at all this; and did not know whether he was crazed, or had come to me on design to involve me in a concealing of treason. So I went to Dr. Lloyd, and sent him to the secretary's office

with an account of that discourse of Tonge's, since I would not be guilty of misprision of treason. He found at the office, that Tonge was making discoveries there; of which they made no other account, but that he intended to get himself to be made a dean. I told this next morning to Littleton and Powel. And they looked on it as a design of lord Danby's, to be laid before the next session, thereby to dispose them to keep up a greater force, since the papists were plotting against the king's life: This would put an end to all jealousies of the king, now the papists were conspiring against his life. But lord Halifax, when I told him of it, had another apprehension of it. He said, considering the suspicions all people had of the duke's religion, he believed every discovery of that sort would raise a flame, which the court would not be able to manage.

Oates's Character.

The day after that Titus Oates was brought before the council. He was the son of an Anabaptist teacher, who afterwards conformed, and got into orders, and took a benefice, as this his son did. He was proud and ill-natured, haughty, but ignorant. He had been complained of for some very indecent expressions concerning the mysteries of the Christian religion. He was once presented for perjury. But he got to be a chaplain in one of the king's ships, from which he was dismissed upon complaint of some unnatural practices, not to be named. He got a qualification from the duke of Norfolk as one of his chaplains: and there he fell into much discourse with the priests that were about that family. He seemed inclined to be instructed in the Popish religion. One Hutchinson, a jesuit, had that work put on him. He was a weak and light-headed man, and afterwards came over to the church of England. Hutchinson was a curate about the city near a year, and came oft to me, and preached once for me. He seemed to be a sincere devout man, who did not at all love the order, for he found they were deceitful and meddling sort of people. They never trusted him with any secrets, but employed him wholly in making converts. He went afterwards back to that church. So all this was thought a juggle only to cast an odium upon Oates. He told me, that Oates and they were always in ill terms. They did not allow Oates above ninepence a day, of which he complained much. And Hutchinson relieved him often. They wished they could be well rid of him; and sent him beyond sea, being in very ill terms with him. This made Hutchinson conclude, that they had not at that time trusted Oates with their secrets. Oates was kept for some time at St. Omers; and from thence sent through France into Spain; and was now returned into England. He had been long acquainted with Tonge; and made his first discovery to him. And he, by the means of one Kirby, a chymist, that was sometimes in the king's laboratory, signified the thing to the king. So Tonge had an audience; and told the king

a long thread of many passages, all tending to the taking away his life; which the king, as he afterwards told me, knew not what to make of: Yet among so many particulars he did not know but there might be some truth. So he sent him to lord Danby, who intended to make some use of it, but could not give much credit to it, and handled the matter too remissly: for, if at first the thing had been traced quick, either the truth or the imposture of the whole affair might have been made appear. The king ordered lord Danby to say nothing of it to the duke. In the meanwhile some letters of an odd strain, relating to plots and discoveries, were sent by the post to Windsor, directed to Beddingfield, the duke's confessor; who, when he had read them, carried them to the duke, and protested he did not know what they meant, nor from whom they came. The duke carried them to the king. And he fancied they were writ either by Tonge or Oates, and sent on design to have them intercepted, to give the more credit to the discovery. The duke's enemies on the other hand gave out, that he had got some hints of the discovery, and brought these as a blind to impose on the king. The matter lay in a secret and remiss management for six weeks.

Oates's Discovery.

At last, on Michaelmas-eve, Oates was brought before the council; and entertained them with a long relation of many discourses he had heard among the Jesuits, of their design to kill the king. He named persons, places, and times, almost without number. He said, many Jesuits had disguised themselves, and were gone to Scotland, and held field conventicles, on design to distract the government there. He said, he was sent first to St. Omers, thence to Paris, and from thence to Spain, to negotiate this design; and that upon his return, when he brought many letters and directions from beyond sea, there was a great meeting of the Jesuits held in London, in April last, in different rooms in a tavern near St. Clements; and that he was employed to convey the resolutions of those in one room to those in another, and so to hand them round. The issue of the consultation was, that they came to a resolution to kill the king by shooting, stabbing, or poisoning him, that several attempts were made, all which failed in the execution, as shall be told when the trials are related. While he was going on, waiting for some certain evidence to accompany his discovery, he perceived they were jealous of him: and so he durst not trust himself among them any more. In all this there was not a word of Coniers, of whom Tonge had spoke to me. So that was dropped. This was the substance of what Oates told the first day. Many Jesuits were upon this seized on that night, and the next day. And their papers were sealed up next day. He accused Coleman of a strict correspondence with P. de le Chaise; (whose name he had not right, for he called him Father Le Shee;) and he said in general, that Coleman was acquainted with all their designs.

Coleman and his Papers seized.

Coleman had a whole day free to make his escape, if he thought he was in any danger. And he had conveyed all his papers out of the way: Only he forgot a drawer under the table, in which the papers relating to 74, 75, and a part of 76 were left. And from these I drew the negotiations, that I have formerly mentioned as directed by him. If he had either left all his papers or withdrawn all, it had been happy for his party. Nothing had appeared, if all his papers had been put out of the way. But if all had been left, it might have been concluded that the whole secret lay in them. But he left enough to give great jealousy. And no more appearing, all was believed that the witnesses had deposed. Coleman went out of the way for a day, hearing that there was a warrant out against him. But he delivered himself the next day to the Secretary of State. When Oates and he were confronted, Oates did not know him at first: But he named him, when he heard him speak. Yet he only charged him upon hear-say. So he was put in a messenger's hands. Oates named Wake-man, the queen's physician; but did not know him at all. And being asked if he knew any thing against him, he answered he did not; adding, God forbid he should say any thing more than he knew, he would not do that for all the world. Nor did he name Langhorn the famous lawyer, that indeed managed all their concerns. The king found him out in one thing. He said, when he was in Spain he was carried to Don John, who promised great assistance in the execution of their designs. The king, who knew Don John well, asked him what sort of a man he was: He answered, he was a tall lean man: now Don John was a little fat man. At first he seemed to design to recommend himself to the duke and the ministers: For he said he heard the Jesuits oft say, that the duke was not sure enough to them: And they were in doubt, whether he would approve of their killing the king: but they were resolved, if they found him stiff in that matter, to dispatch him likewise. He said, they had oft made use of his name, and counterfeited his hand and seal without his knowledge. He said, the Jesuits cherished the faction in Scotland against duke Lauderdale; and intended to murder the duke of Ormond, as a great enemy to all their designs. And he affirmed he had seen many letters in which these things were mentioned, and had heard them oft spoke of. He gave a long account of the burning of London, at which they intended to have killed the king: But they relented when they saw him so active in quenching the fire, which, as he said, they had kindled.

The whole town was all over enflamed with this discovery. It consisted of so many particulars, that it was thought to be above invention. But when Coleman's letters came to be read and examined, it got a great confirmation; since by these it appeared, that so many years

before they thought the design for the converting the nation, and rooting out the pestilent heresy that had reigned so long in these northern kingdoms, was very near its being executed: Mention was oft made of the duke's great zeal for it. And many indecent reflections were made on the king for his inconstancy, and his disposition to be brought to any thing for money: They depended on the French king's assistance: And therefore were earnest in their endeavours to bring about a general peace, as that which must finish their design.

On the second day after this discovery, the king went to Newmarket. This was censured as a very indecent levity in him, to go and see horse-races, when all people were so much possessed with this extraordinary discovery, to which Coleman's letters had gained an universal credit. While the king was gone, Tonge desired to speak with me. So I went to him to Whitehall, where both he and Oates were lodged under a guard. I found him so lifted up, that he seemed to have lost the little sense he had. Oates came in; and made me a compliment that I was one that was marked out to be killed. He had before said the same to Stillingfleet of him. But he made that honour which he did us too cheap, when he said Tonge was to be served in the same manner, because he had translated the Jesuits' morals into English. He broke out into great fury against the Jesuits; and said he would have their blood. But I, to divert him from that strain, asked him, what were the arguments that prevailed on him to change his religion, and to go over to the Church of Rome. He upon that stood up and laid his hands on his breast; and said, God and his holy angels knew that he had never changed, but that he had gone among them on purpose to betray them. This gave me such a character of him, that I could have no regard to any thing he either said or swore after that.

Godfrey is murdered.

A few days after this, a very extraordinary thing happened, that contributed more than any other thing to the establishing the belief of all this evidence. Sir Edmondbury Godfrey was an eminent justice of peace, that lived near Whitehall. He had the courage to stay in London, and keep things in order during the plague; which gained him much reputation, and upon which he was knighted. He was esteemed the best justice of peace in England; and kept the quarter where he lived in very good order. He was then entering upon a great design of taking up all beggars and putting them to work. He was thought vain, and apt to take too much upon him. But there are so few men of a public spirit, that small faults, though they lessen them, yet ought to be gently censured. I knew him well, and never had reason to think him faulty that way. He was a zealous Protestant, and loved the Church of England; but had kind thoughts of the Nonconformists, and was not forward to

execute the laws against them. And he, to avoid being put on doing that, was not apt to search for priests or mass-houses. So that few men of his zeal lived in better terms with the Papists than he did. Oates went to him the day before he appeared at the council board; and made oath of the Narrative he intended to make, which he afterwards published. This seemed to be done in distrust of the privy council, as if they might stifle his evidence; which to prevent he put it in safe hands. Upon that Godfrey was chid for his presuming to meddle in so tender a matter. And it was generally believed, that Coleman and he were long in a private conversation, between the time of his (Coleman's) being put in the messenger's hands, and his being made a close prisoner: Which was done as soon as report was made to the council of the contents of his letters. It is certain, Godfrey grew apprehensive and reserved: For meeting me in the street, after some discourse of the present state of affairs, he said, he believed he himself should be knocked on the head. Yet he took no care of himself, and went about according to his own maxim, still without a servant: For he used to say, that the servants in London were corrupted by the idleness and ill company they fell into, while they attended on their masters. On the day fortnight from that in which Mr. Oates had made his discovery, being Saturday, he went abroad in the morning, and was seen about one o'clock near St. Clement's church; but was never seen any more. He was a punctual man to good hours: So his servants were amazed when he did not come home. Yet, he having an ancient mother living at Hammersmith, they fancied, he had heard she was dying, and so was gone to see her. Next morning they sent thither, but heard no news of him. So his two brothers, who lived in the city, were sent to. They were not acquainted with his affairs: So they did not know whether he might not have stepped aside for debt; since at that time all people were calling in their money, which broke a great many, but no creditors coming about the house, they on Tuesday published his being thus lost. The council sat upon it, and were going to order a search of all the houses about the town; but were diverted from it, by many stories that were brought them by the duke of Norfolk. Sometimes it was said, he was indecently married: And the scene was often shifted of the places where it was said he was. The duke of Norfolk's officiousness in this matter, and the last place he was seen at, being near Arundel house, brought him under great suspicion. On Thursday one came into a Bookseller's shop after dinner, and said, he was found thrust through with a sword. That was presently brought as news to me: But the reporter of it was not known. That night late his body was found in a ditch, about a mile out of town, near St. Pancras church. His sword was thrust through him. But no blood was on his cloaths, or about him. His shoes were

clean. His money was in his pocket. But nothing was about his neck. And a mark was all round it, an inch broad, which shewed he was strangled. His breast was likewise all over marked with bruises; and his neck was broken. All this I saw; for Dr. Lloyd and I went to view his body. There were many drops of white wax-lights on his breeches, which he never used himself. And since only persons of quality, or priests, use those lights, this made all people conclude in whose hands he must have been. And it was visible he was first strangled, and then carried to that place, where his sword was run through his dead body. For a while it was given out, that he was a hypocondriacal man, and had killed himself. Of this the king was possessed, till Dr. Lloyd went and told him what he had seen. The body lay two days exposed, many going to see it, who went away much moved, with the sight. And indeed mens spirits were so sharpened upon it, that we all looked on it as a very great happiness, that the people did not vent their fury upon the papists about the town.

Oates made a new Discovery.

The session of parliament was to be opened within three days: And it may be easily imagined in what a temper they met. The court party were out of countenance. So the country party were masters this session. All Oates's evidence was now so well believed, that it was not safe for any man to seem to doubt of any part of it. He thought he had the nation in his hands, and was swelled up to a high pitch of vanity and insolence. And now he made a new edition of his discovery at the bar of the House of Commons. He said, the Pope had declared that England was his kingdom, and that he had sent over commissions to several persons: And had by these made lord Arundel of Wardour chancellor, lord Powis treasurer, sir William Godolphin, then in Spain, privy seal, Coleman secretary of state, Bellasis general, Petre, lieutenant general, Ratcliffe major general, Stafford paymaster general, and Laughorn advocate general, besides many other commissions for subaltern officers. These, he said, he saw in Laughorn's chamber; and that he had delivered out many of them himself, and saw many more delivered by others. And he now swore, upon his own knowledge, that both Coleman and Wakeman were in the plot; that Coleman had given 80 guineas to four ruffians, that went to Windsor last summer, to stab the king; that Wakeman had undertaken to poison him, for which 10,000*l.* was offered him, but that he got the price raised to 15,000*l.* He excused his not knowing them, when confronted with them; and said, that he was then so spent by a long examination, and by not sleeping for two nights, that he was not then master of himself; though it seemed very strange, that he should then have forgot that which he had made now the main part of his evidence, and should have then objected only reports upon

hearsay, when he had such matter against them, as he now said, upon his own knowledge. And it seemed not very congruous, that those who went to stab the king had but 20 guineas a piece, when Wakeman was to have 15,000*l.* for a safer way of killing him. Many other things in the discovery made it seem ill digested, and not credible. Bellasis was almost perpetually ill of the gout. Petre was a weak man, and had never any military command. Ratcliffe was a man that lived in great state in the north, and had not stirred from home all the last summer. Oates also swore, he delivered a commission to be a colonel, in May last, to Howard, the earl of Carlisle's brother, that had married the duchess of Richmond. But a friend of mine told me, he was all that month at Bath, lodged in the same house with Howard, with whom he was every day engaged at play. He was then miserably ill of the gout, of which he died soon after. Oates did also charge general Lambert, as one engaged in the design, who was to have a great post when set at liberty. But he had been kept in prison ever since the Restoration; and by that time had lost his memory and sense. But it was thought strange, that since Oates had so often said, what I once heard him say, that he had gone in among them on design to betray them, that he had not kept any one of all these commissions to be real proof in support of his evidence. He had also said to the king, that whereas others ventured their lives to serve him, he had ventured his soul to serve him: And yet he did suffer the four ruffians to go to Windsor to kill him, without giving him any notice of his danger. These were characters strong enough to give suspicion, if Coleman's letters, and Godfrey's murder, had not seemed such authentic confirmations, as left no room to doubt of any thing. Tillotson indeed told me, that Langhorn's wife, who was still as zealous a protestant as he was a papist, came oft to him, and gave him notice of every thing she could discover among them; though she continued a faithful and dutiful wife to the last minute of her husband's life. Upon the first breaking out of the plot, before Oates had spoke a word of commissions, or had accused Langhorn, she engaged her son into some discourse upon those matters, who was a hot indiscreet papist. He said, their designs were so well laid, it was impossible they could miscarry: And that his father would be one of the greatest men of England; for he had seen a commission from the Pope, constituting him advocate general. This he told me in Stillingfleet's hearing.

Bedlow's Evidence.

While things were thus in a ferment at London, Bedlow delivered himself to the magistrates of Bristol, pretending he knew the secret of Godfrey's murder. So he was sent up to London. The king told me, that when the Secretary examined him in his presence, at his first coming he said he knew nothing of the

plot; but that he had heard that 40,000 men were to come over from Spain, who were to meet as pilgrims at St. Jago's, and were to be shipped for England: But he knew nothing of any fleet that was to bring them over. So this was looked on as very extravagant. But he said, he had seen Godfrey's body at Somerset House; and that he was offered 4,000*l.* by a servant of the lord Bellasis, to assist in carrying it away: but upon that he had gone out of town to Bristol, where he was so pursued with horror, that it forced him to discover it. Bedlow had led a very vicious life. He had gone by many false names, by which he had cheated many persons. He had gone over many parts of France and Spain, as a man of quality. And he had made a shift to live on his wits, or rather by his cheats. So a tenderness of conscience did not seem to be that to which he was much subject. But the very next day after this, when he was brought to the bar of the House of Lords, he made a full discovery of his knowledge of the plot, and of the Lords in the Tower: for all those against whom Oates had informed were now prisoners. The king was upon this convinced, that some had been with Bedlow after he had been before him, who had instructed him in this narration, of which he had said the night before that he knew nothing: and yet he not only confirmed the main parts of Oates's discoveries, but added a great deal to them. And he now pretended, that his rambling over so many places of Europe was all in order to the carrying on this design; that he was trusted with the secret, and had opened many of the letters, which he was employed to carry.

Other Proofs that seemed to support the Discovery.

Here were now two witnesses to prove the plot, as far as swearing could prove it. And among the papers of the Jesuits that were seized on when they were clapt up, two letters were found that seemed to confirm all. One from Rome mentioned the sending over the patents; of which it was said in the letter, that they guessed the contents, though their patrons there carried their matters so secretly that nothing was known, but as they thought fit. The Jesuits, when examined upon this, said, these were only patents with relation to the offices in their order. Another letter was writ to a Jesuit in the country, citing him to come to London by the 24th of April, which was the day in which Oates swore they held their consult, and that fifty of them had signed the resolution of killing the king, which was to be executed by Grove and Pickering. In the end of that letter it was added, I need not enjoin secrecy, for the nature of the thing requires it. When the Jesuit was examined to this, he said, it was a summons for a meeting according to the rule of their order: and they being to meet during the sitting of the parliament, that was the particular reason for enjoining secrecy. Yet, while mens minds were strongly possessed,

these answers did not satisfy, but were thought only shifts.

Carstairs' Practices.

At this time Carstairs, of whose behaviour in Scotland mention has been made, not having met with those rewards that he expected, came up to London, to accuse duke Lauderdale, as designing to keep up the opposition that was made to the laws in Scotland, even at the time that he seemed to prosecute Conventicles with the greatest fury; because he had often drawn the chief of their teachers into such snares, that upon the advertisements that he gave they might have been taken, but that duke Lauderdale had neglected it: so he saw, he had a mind that Conventicles should go on, at the same time that he was putting the country in such a flame to punish them. This he undertook to prove, by those witnesses of whom on other occasions he had made use. He also confessed the false date of that warrant upon which Baillie had been censured. He put all this in writing, and gave it to the marquis of Athol; and pressed him to carry him to duke Hamilton, and the earl of Kincardin, that he might beg their pardon, and be assured of their favour. I was against the making use of so vile a man, and would have nothing to do with him. He made application to lord Cavendish, and to some of the House of Commons, to whom I gave such a character of him, that they would see him no more.

Staley's Trial.

While he was thus looking about where he could find a lucky piece of villany, he happened to go into an eating house in Covent-garden, that was over against the shop of one Staley, the Popish banker, who had been in great credit, but was then under some difficulties; for all his creditors came to call for their money. Staley happening to be in the next room to Carstairs, Carstairs pretended he heard him say in French, that the king was a rogue, and persecuted the people of God; and that he himself would stab him, if nobody else would. The words were writ down, which he resolved to swear against him. So next morning he and one of his witnesses went to him, and told him what they would swear against him, and asked a sum of money of him. He was in much anxiety, and saw great danger on both hands. Yet he chose rather to leave himself to their malice, than be preyed on by them. So he was seized on: and they swore the words against him: and he was appointed to be tried within five days. When I heard who the witnesses were, I thought I was bound to do what I could to stop it. So I sent both to the Lord Chancellor, and to the Attorney-General, to let them know what profligate wretches these witnesses were. Jones, the Attorney General, took it ill of me, that I should disparage the king's evidence. The thing grew public, and raised great clamour against me. It was said, I was taking this me-

thod to get into favour at Court. I had likewise observed to several persons of weight, how many incredible things there were in the evidence that was given: I wished they would make use of the heat the nation was in to secure us effectually from Popery: we saw certain evidence to carry us so far, as to graft that upon it: but I wished they would not run too hastily to the taking mens lives upon such testimonies. Lord Hollis had more temper, than I expected from a man of his heat. Lord Halifax was of the same mind. But the earl of Shaftsbury could not bear the discourse. He said, we must support the evidence; and that all those who undermined the credit of the witnesses were to be looked on as public enemies. And so inconstant a thing is popularity, that I was most bitterly railed at by those who seemed formerly to put some confidence in me. It went so far, that I was advised not to stir abroad for fear of public affronts. But these things did not daunt me. Staley was brought to his trial, which did not hold long. The witnesses gave a full evidence against him: and he had nothing to offer to take away their credit. He only shewed how improbable it was, that in a public house he should talk such things with so loud a voice as to be heard in the next room, in a quarter of the town where almost every body understood French. He was cast: and he prepared himself very seriously for death. Dr. Lloyd went to see him in prison. He was offered his life, if he would discover their plots. He protested, he knew of none; and that he had not said the words sworn against him, nor any thing to that purpose. And he died, the first of those who suffered on the account of the plot. Duke Lauderdale, having heard how I had moved in this matter, railed at me with open mouth. He said, I had studied to save Staley, for the liking I had to any one that would murder the king. And he infused this into the king, so that he repeated it in the House of Lords to a company that were standing about him.

Yet so soon could the king turn to make use of a man whom he had censured so unmercifully, that two days after this he sent the earl of Dunbarton, that was a papist, and had been bred in France, and was duke Hamilton's brother, to me, to desire me to come to him secretly, for he had a mind to talk with me. He said, he believed I could do him service, if I had a mind to it. And the See of Chichester being then void, he said, he would not dispose of it, till he saw whether I would deserve it, or not. I asked, if he fancied I would be a spy, or betray any body to him. But he undertook to me, that the king should ask me no question but should in all points leave me to my liberty.

The Queen charged as in the Plots.

An accident fell in, before I went to him, which took off much from Oates's credit. When he was examined by the House of Lords, and had made the same narrative to them that he had offered to the Commons, they asked

him, if he had now named all the persons whom he knew to be involved in the plot? He said, there might be some inferior persons whom he had perhaps forgot, but he had named all the persons of note. Yet, it seems, afterwards he bethought himself: And Mrs. Elliot, wife to Elliot of the bed-chamber, came to the king, and told him. Oates had somewhat to swear against the queen, if he would give way to it. The king was willing to give Oates line enough, as he expressed it to me, and seemed to give way to it. So he came out with a new story, that the queen had sent for some Jesuits to Somerset house; and that he went along with them, but staid at the door, when they went in; where he heard one, in a woman's voice, expressing her resentments of the usage she had met with, and assuring them she would assist them in taking off the king: Upon that he was brought in, and presented to her: And there was then no other woman in the room but she. When he was bid describe the room, it proved to be one of the public rooms of that court; which are so great, that the queen, who was a woman of a low voice, could not be heard over it, unless she had strained for it. Oates, to excuse his saying that he could not lay any thing to the charge of any besides those he had already named, pretended, that he thought then it was not lawful to accuse the queen. But this did not satisfy people. Bedlow, to support this, swore that being once at chapel at Somerset house, he saw the queen, the duke, and some others, very earnest in discourse in the closet above; and that one came down with much joy, and said, the queen had yielded at last; and that one explained this to him beyond sea, and said, it was to kill the king. And, besides Bedlow's oath that he saw Godfrey's body in Somerset house, it was remembered, that at that time the queen was for some days in so close a retirement, that no person was admitted. Prince Rupert came then to wait on her, but was denied access. This raised a strange suspicion of her. But the king would not suffer that matter to go any farther.

Coleman's Trial.

Coleman was brought to his trial. Oates and Bedlow swore flatly against him, as was mentioned before. He denied, that he had ever seen either the one or the other of them in his whole life: And defended himself by Oates's not knowing him when they were first confronted, nor objecting those matters to him for a great while after. He also pressed Oates to name the day in August, in which he had sent the fourscore guineas to the four ruffians. But Oates would fix on no day, though he was very punctual in matters of less moment. Coleman had been out of town almost that whole month. But no day being named, that served him in no stand: He urged the improbability of his talking to two such men, whom he had by their own confession never seen before. But they said, he was told that they were trusted

with the whole secret. His letters to P. de la Chaise was the heaviest part of the evidence. He did not deny, that there were many impertinent things in his letters; But, he said, he intended nothing in them, but the king's service and the duke's: He never intended to bring in the catholic religion, by rebellion, or by blood, but only by a toleration: And the aid, that was prayed from France, was only meant the assistance of money, and the interposition of that court. After a long trial, he was convicted: and sentence passed upon him to die as a traitor. He continued to his last breath, denying every tittle of that which the witnesses had sworn against him. Many were sent to him from both Houses, offering to interpose for his pardon, if he would confess. He still protested his innocence, and took great care to vindicate the duke. He said, his own heat might make him too forward: For, being persuaded of the truth of his religion, he could not but wish, that all others were not only almost, but altogether, such as he was, except in that chain; for he was then in irons: He confessed, he had mixed too much interest for raising himself in all he did; and that he had received 2,500 guineas from the French ambassador, to gain some friends to his master, but that he had kept them to himself; he had acted by order in all that he had done: And he believed the king knew of his employment, particularly that at Brussels. But, though he seemed willing to be questioned concerning the king, the committee did not think fit to do it, nor to report what he said concerning it: Only in general they reported, that he spoke of another matter, about which they did not think fit to interrogate him, nor to mention it. Littleton was one of the committee; and gave me an account of all that passed that very night. And I found his behaviour made great impression on them all.

He suffered with much composedness and devotion; and died much better than he had lived. It was given out at that time, to make the duke more odious, that Coleman was kept up from making confessions, by the hopes the duke sent him of a pardon at Tyburn. But he could not be so ignorant, as not to know that, at that time, it was not in the king's power to pardon him, while the tide went so high.

The nation was now so much alarmed, that all people were furnishing themselves with arms, which heightened the jealousy of the court. A bill passed in both Houses for raising all the militia, and for keeping it together for six weeks: A third part, if I remember right, being to serve a fortnight, and so round. I found, some of them hoped when that bill past into a law, they would be more masters; and that the militia would not separate, till all the demands of the two Houses should be granted. The king rejected the bill, when offered to him for his assent.

The King's thoughts of this whole matter.

I waited often on him all the month of December. He came to me to Chiffinck's, a page

of the back stairs; and kept the time he assigned me to a minute. He was alone, and talked much, and very freely with me. We agreed in one thing, that the greatest part of the evidence was a contrivance. But he suspected, some had set on Oates, and instructed him: And he named the earl of Shaftsbury. I was of another mind. I thought the many gross things in his narrative shewed, there was no abler head than Oates, or Tonge, in the framing it: And Oates in his first story had covered the duke, and the ministers so much, that from thence it seemed clear that lord Shaftsbury had no hand in it, who hated them much more than he did popery. He fancied, there was a design of a rebellion on foot. I assured him, I saw no appearances of it. I told him there was a report breaking out, that he intended to legitimate the duke of Monmouth. He answered quick, that, as well as he loved him, he had rather see him hanged. Yet he apprehended a rebellion so much, that he seemed not ill pleased, that the party should flatter themselves with that imagination, hoping that would keep them quiet in a dependance upon himself: And he suffered the duke of Monmouth to use all methods to make himself popular, reckoning that he could keep him in his own management. He was surprised, when I told him that Coleman had insinuated that he knew of all their foreign negotiations; or at least he seemed so to me. I pressed him much to oblige the duke to enter into conferences with some of our divines, and to be present at them himself. This would very much clear him of jealousy, and might have a good effect on his brother: At least it would give the world some hopes; like what Henry 4. of France, his grandfather, did, which kept a party firm to him for some time before he changed. He answered, that his brother had neither Henry 4's understanding, nor his conscience: For he believed, that king was always indifferent as to those matters. He would not hearken to this, which made me incline to believe a report I had heard, that the duke had got a solemn promise of the king, that he would never speak to him of religion. The king spoke much to me concerning Oates's accusing the queen, and acquainted me with the whole progress of it. He said, she was a weak woman, and had some disagreeable humours, but was not capable of a wicked thing: And, considering his faultiness towards her in other things he thought it a horrid thing to abandon her. He said, he looked on falsehood and cruelty as the greatest crimes in the sight of God: He knew he had led a bad life; (of which he spoke with some sense:) But he was breaking himself of all his faults: And he would never do a base and a wicked thing. I spoke on all these subjects what I thought became me, which he took well. And I encouraged him much in his resolution of not exposing the queen to perish by false swearing. I told him, there was no possibility of laying the heat that was now raised, but by changing his ministry. And

I told him how odious the earl of Danby was, and that there was a design against him: But I knew not the particulars. He said, he knew that lay at bottom. The army was not yet disbanded: and the king was in great straits for money. The House of Commons gave a money bill for this. Yet they would not trust the court with the disbanding the army, but ordered the money to brought into the chamber of London, and named a committee for paying off, and breaking the army. I perceived the king thought I was reserved to him, because I would tell him no particular stories, nor name persons. Upon which I told him, since he had that opinion of me, I saw I could do him no service, and would trouble him no more; but he should certainly hear from me, if I came to know any thing that might be of any consequence to his person or government.

This favour of mine lasted all the month of December 1678. I acquainted him with Carstairs practice against duke Lauderdale, and all that I knew of that matter; which was the ground on which I had gone with relation to Staley. The king told duke Lauderdale of it, without naming me. And he sent for Carstairs, and charged him with it. Carstairs denied it all; but said, that duke Hamilton and lord Kincardin had pressed him to do it: And he went to the king and affirmed it confidently to him. He did not name lord Athol, hoping that he would be gentle to him for that reason. The king spoke of this to duke Hamilton, who told him the whole story, as I had done. Lord Athol upon that sent for Carstairs and charged him with all his foul dealing, and drew him near a closet, where he had put two witnesses. Carstairs said, that somebody had discovered the matter to duke Lauderdale, that he was now upon the point of making his fortune, and that if duke Lauderdale grew to be his enemy, he was undone. He confessed, he had charged duke Hamilton and lord Kincardin falsely: But he had no other way to save himself. After the marquis of Athol had thus drawn every thing from him, he went to the king with his two witnesses, and the paper that Carstairs had formerly put in his hand. Carstairs was then with the king, and was, with many imprecations, justifying his charge against the two Lords: But he was confounded, when he saw lord Athol. And upon that his villain appeared so evidently, that the part I had acted in that matter was now well understood, and approved of. Carstairs died not long after, under great horror; and ordered himself to be cast into some ditch as a dog; for he said he was no better. But I could never hear what he said of Staley's business.

The Trial of Ireland and Others.

In December, Ireland, Whitebread, and Fenwick, three Jesuits; and Grove and Pickering, two of the servant's in the queen's chapel, were brought to their trial. Oates and Bedlow swore home against Ireland, that in August last he had given particular orders about killing the

king. Oates swore the same against the other two Jesuits. But Bedlow swore only upon hearsay against them. So, though they had pleaded to their indictment, and the jury was sworn, and the witnesses examined; yet, when the evidence was not found full, their trial was put off to another time, and the jury was not charged with them. This looked, as if it was resolved that they must not be acquitted. I complained of this to Jones: but he said they had precedents for it. I always thought, that a precedent against reason signified no more, but that the like injustice had been done before. And the truth is, the crown has, or at least had, such advantages in trials of treason, that it seems strange how any person was ever acquitted. Ireland, in his own defence, proved by many witnesses, that he went from London on the second of August to Staffordshire, and did not come back till the twelfth of September. Yet in opposition to that, a woman swore that she saw him in London about the middle of August. So, since he might have come up post in one day, and gone down in another, this did not satisfy. Oates and Bedlow swore against Grove and Pickering, that they undertook to shoot the king at Windsor; that Grove was to have 1500*l.* for it; and that Pickering chose thirty thousand masses, which at a shilling a mass, amounted to the same sum: they attempted it three several times with a pistol: once the flint was loose: at another time there was no powder in the pan: and the third time the pistol was charged only with bullets. This was strange stuff. But all was imputed to a special providence of God: and the whole evidence was believed. So they were convicted, condemned, and executed. But they denied to the last every particular that was sworn against them.

Dugdale's Evidence.

This began to shake the credit of the evidence, when a more composed and credible person came in to support it. One Dugdale, that had been the lord Aston's bailiff, and lived in a fair reputation in the country, was put in prison for refusing the oaths of allegiance and supremacy. He did then, with many imprecations on himself, deny, that he knew of any plot. But afterwards he made a great discovery of a correspondence that Evers, the lord Ashton's Jesuit, held with the Jesuits in London; who had writ to Evers of the design of killing the king, and desired him to find out men proper for executing it, whether they were gentlemen or not. This, he swore, was writ plain in a letter from Whitebread, the provincial, directed to himself: but he knew it was meant for Evers. Evers, and Govan, another Jesuit, pressed this Dugdale to undertake it: they promised he should be canonized for it: and the lord Stafford offered him 500*l.* if he would set about it. He was a man of sense and temper; and behaved himself decently; and had somewhat in his air and deportment that disposed people to believe him: so that the king himself began to think there was some-

what in the plot, though he had very little regard either to Oates or Bedlow. Dugdale's evidence was much confirmed by one circumstance. He had talked of a justice of peace in Westminster that was killed, on the Tuesday after Godfrey was missed: so that the news of this must have been writ from London on the Saturday night's post. He did not think it was a secret: and so he talked of it as news in an ale-house. The two persons, he said he spoke it to, remembered nothing of it, the one being the minister of the parish: but several others swore they had heard it. He saw this, as he swore, in a letter writ by Harcourt the Jesuit to Evers, in which Godfrey was named. But he added a strange story to this, which he said Evers told him afterwards; that the duke had sent to Coleman, when he was in Newgate, to persuade him to discover nothing, and that he desired to know of him, whether he had ever discovered their designs to any other person; and that Coleman sent back answer, that he had spoke of them to Godfrey, but to no other man: upon which the duke gave order to kill him. This was never made public, till the lord Stafford's trial. And I was amazed to see such a thing break out after so long a silence. It looked like an addition to Dugdale's first evidence; though he had been noted for having brought out all his discoveries at once. The earl of Essex told me, he swore it in his first examination: but, since it was only upon hearsay from Evers, and so was nothing in law, and yet would heighten the fury against the Duke, the king charged Dugdale to say nothing of it.

Prance discovers Godfrey's Murder.

At the same time a particular discovery was made of Godfrey's murder. Prance, a goldsmith, that wrought for the Queen's chapel, had gone from his house for two or three days, the week before the murder. And one that lodged in his house, calling that to mind, upon Bedlow's swearing he saw the body in Somerset-house, fancied that this was the time in which he was from home, and that he might be concerned in that matter; though it appeared afterwards, that his absence was the week before. He said, he went from his own house, fearing to be put in prison, as many were, upon suspicion, or on the account of his religion. Yet upon this information he was seized on, and carried to Westminster. Bedlow accidentally passed by, not knowing any thing concerning him; and at first sight he charged somebody to seize on him; for he was one of those whom he saw about Godfrey's body. Yet he denied every thing for some days. Afterwards he confessed, he was concerned in it: and he gave this account of it: Gerald and Killy, two priests, engaged him and three others into it; who were Green, that belonged to the Queen's chapel, Hill, that had served Godden, the most celebrated writer among them, and Berry, the porter of Somerset-house. He said, these all, except Berry, had several meetings, in which the priests persuaded them it was no sin, but a

meritorious action, to dispatch Godfrey, who had been a busy man in taking depositions against them, and that the taking him off would terrify others. Prance named an alehouse, where they used to meet: and the people of that house did confirm this of their meeting there. After they had resolved on it, they followed him for several days. The morning before they killed him, Hill went to his house to see if he was yet gone out, and spoke to his maid. And finding he was yet at home, they staid for his coming out. This was confirmed by the maid, who, upon Hill's being taken, went to Newgate, and in a crowd of prisoners, distinguished him, and said, he was the person that asked for her master the morning before he was lost. Prance said, they dogged him into a place near St. Clement's Church, where he was kept till night. Prance was appointed to be at Somerset-house at night. And, as Godfrey went by the water gate, two of them pretended to be hot in a quarrel. And one run out to call a justice of peace, and so pressed Godfrey to go in and part them. He was not easily prevailed on to do it. Yet he did at last. Green then got behind him, and pulled a cravat about his neck, and drew him down to the ground, and strangled him. Upon that Girald would have run him through: but the rest diverted him from that, by representing the danger of a discovery by the blood's being seen there. Upon that they carried his body up to Godden's room, of which Hill had the key, Godden being then in France. Two days after that they removed it to a room cross the upper court, which Prance could never describe particularly. And, that not being found a convenient place, they carried it back to Godden's lodgings. At last it was resolved to carry it out in the night in a sedan to the remote parts of the town, and from thence to cast it into some ditch. On Wednesday a sedan was provided. And one of the centinels swore he saw a sedan carried in: but none saw it brought out. Prance said, they carried him out, and that Green had provided a horse, on whose back he laid him, when they were got clear of the town, and then he carried him, as he believed, to the place where his body was found. This was a consisting story, which was supported in some circumstances by collateral proofs. He added another particular, that, some days after the fact, those who had been concerned in it, and two others, who were in the secret, appointed to meet at Bow, where they talked much of that matter. This was confirmed by a servant of that house, who was coming in and out to them, and heard them often mention Godfrey's name. Upon which he stood at the door out of curiosity to hearken: but one of them came out, and threatened him for it. The priests were not found: but Green, Hill, and Berry were apprehended upon it. Yet some days after this, Prance desired to be carried to the king, who would not see him, but in council: and he denied all that he had formerly sworn, and said it was all a fiction. But as soon as he

was carried back to prison, he sent the keeper of Newgate to the king to tell him, that all he had sworn was true, but that the horror and confusion he was in put him on denying it. Yet he went off from this again, and denied every thing. Dr. Lloyd was upon this sent to him to talk with him. At first he denied every thing to him. But Dr. Lloyd said to me, that he was almost dead through the disorder of his mind and with cold in his body. But after that Dr. Lloyd had made a fire, and caused him to be put in a bed, and began to discourse the matter with him, he returned to his confession; which he did in such a manner, that Lloyd said to me, it was not possible for him to doubt of his sincerity in it.

Some condemned for it, who died denying it.

So, he persisting in his first confession, Green, Hill, and Berry were brought to their trial. Bedlow and Prance, with all the circumstances formerly mentioned, were the evidence against them. On the other hand they brought witnesses to prove, that they came home in a good hour on the nights, in which the fact was said to be done. Those that lived in Godden's lodgings deposed, that no dead body could be brought thither, for they were every day in the room that Prance had named. And the centinels of that night of the carrying him out said they saw no sedan brought out. They were, upon a full hearing, convicted and condemned. Green, and Hill, died, as they had lived, papists, and, with solemn protestations, denied the whole thing. Berry declared himself a protestant; and that though he had changed his religion for fear of losing his place, yet he had still continued to be one in his heart. He said, he looked on what had now befallen him, as a just judgment of God upon him for that dissimulation. He denied the whole matter charged on him. He seemed to prepare himself seriously for death: and to the last minute he affirmed he was altogether innocent. Dr. Lloyd attended on him, and was much persuaded of his sincerity. Prance swore nothing against him, but that he assisted in the fact, and in carrying about the dead body. So Lloyd reckoned, that, those things being done in the night, Prance might have mistaken him for some other person, who might be like him, considering the confusion that so much guilt might have put him in. He therefore believed Prance had sworn rashly with relation to him, but truly as to the main of the fact. The papists took great advantage from Berry's dying a protestant, and yet denying all that was sworn against him, though he might have had his life if he would have confessed it. They said this shewed it was not from the doctrine of equivocation, or from the power of absolution, or any other of their tenets, that so many died, denying all that was sworn against them, but from their own conviction. And indeed this matter came to be charged on Dr. Lloyd, as if he had been made a tool for bringing Berry to this seeming conversion, and that all was done on

design to cover the queen. But I saw him then every day, and was well assured that he acted nothing in it, but what became his profession, with all possible sincerity. Prance began, after this, to enlarge his discoveries. He said, he had often heard them talk of killing the king, and of setting on a general massacre, after they had raised an army. Dugdale also said, he had heard them discourse of a massacre. The memory of the Irish massacre was yet so fresh, as to raise a particular horror at the very mention of this; though where the numbers were so great as in Ireland, that might have been executed, yet there seemed to be no occasion to apprehend the like where the numbers were in so great an inequality, as they were here. Prance did also swear, that a servant of the Lord Powis had told him that there was one in their family who had undertaken to kill the king; but that some days after he told him, they were now gone off from that design. It looked very strange, and added no credit to his other evidence, that the papists should be thus talking of killing the king, as if it had been a common piece of news. But there are seasons of believing, as well as of disbelieving, and believing was then so much in season, that improbabilities or inconsistencies were little considered. Nor was it safe so much as to make reflections on them. That was called the blasting of the plot, and disparaging the king's evidence; though indeed Oates and Bedlow did, by their behaviour, detract more from their own credit, than all their enemies could have done. The former talked of all persons with insufferable insolence: and the other was a scandalous libertine in his whole deportment.

The Lord Chief Justice at that time was sir William Scroggs, a man more valued for a good readiness in speaking well, than either for learning in his profession, or for any moral virtue. His life had been indecently scandalous, and his fortunes were very low. He was raised by the earl of Danby's favour, first to be a Judge and then to be the Chief Justice. And it was a melancholy thing to see so bad, so ignorant and so poor a man raised up to that great post. Yet he, now seeing how the stream run, went into it with so much zeal and heartiness, that he was become the favourite of the people. But when he saw the king had an ill opinion of it, he grew colder in the pursuit of it. He began to neglect and check the witnesses: Upon which they who behaved themselves as if they had been the tribunes of the people, began to rail at him. Yet in all the trials he set himself, even with indecent earnestness, to get the prisoners to be always cast.

Jennison's Evidence.

Another witness came in soon after these things, Jennison, the younger brother of a Jesuit, and a gentleman of a family and estate. He observing that Ireland had defended himself against Oates chiefly by this, that he was

in Staffordshire from the beginning of August till the 12th of September, and that he had died affirming that to be true, seemed much surprised at it; and upon that turned Protestant. For he said, he saw him in London on the 19th of August, on which day he fixed upon this account, that he saw him the day before he went down in the stage coach to York, which was proved by the books of that office to be the 20th of August. He said, he was come to town from Windsor: and hearing that Ireland was in town, he went to see him, and found him drawing off his boots. Ireland asked him news, and in particular, how the king was attended at Windsor? And when he answered, that he walked about very carelessly with very few about him, Ireland seemed to wonder at it and said, It would be easy then to take him off: To which Jennison answered quick, God forbid: But Ireland said, he did not mean that it could be lawfully done. Jennison, in the letter in which he writ this up to a friend in London, added, that he remembered an inconsiderable passage or two more, and that perhaps Smith (a priest that had lived with his father) could help him to one or two more circumstances relating to those matters: But he protested, as he desired the forgiveness of his sins and the salvation of his soul, that he knew no more; and wished he might never see the face of God, if he knew any more. This letter was printed. And great use was made of it, to shew how little regard was to be had to those denials with which so many had ended their lives. But this man in the summer thereafter published a long narrative of his knowledge of the plot. He said, himself had been invited to assist in killing the king. He named the four ruffians that went to Windsor to do it. And he thought to have reconciled this to his letter, by pretending these were the circumstances that he had not mentioned in it. Smith did also change his religion; and deposed, that when he was at Rome, he was told in general of the design of killing the king. He was afterwards discovered to be a vicious man. Yet he went no further than to swear, that he was acquainted with the design in general, but not with the persons that were employed in it. By these witnesses the credit of the plot was universally established. Yet no real proofs appearing, besides Coleman's letters and Godfrey's murder, the king by a proclamation, did offer both a pardon and 300*l.* to any one that would come in and make further discoveries. This was thought too great a hire to purchase witnesses. Money had been offered to those who should bring in criminals. But it was said to be a new and indecent practice to offer so much money to men, that should merit it by swearing: And it might be too great an encouragement to perjury.

Practices with the Witnesses discovered.

While the Witnesses were weakening their own credit, some practices were discovered that did very much support it. Reading, a lawyer

of some subtilty but of no virtue, was employed by the Lords in the Tower to solicit their affairs. He insinuated himself much into Bedlow's confidence, and was much in his company: And in the hearing of others, he was always pressing him to tell all he knew. He lent him money very freely, which the other wanted often. And he seemed at first to design only to find out somewhat that should destroy the credit of his testimony. But he ventured on other practices; and offered him much money, if he would turn his evidence against the Popish Lords only into a hear-say, so that it should not come home against them. Reading said, Bedlow began the proposition to him; and employed him to see how much money these Lords could give him, if he should bring them off: Upon which Reading, as he pretended afterwards, seeing that innocent blood was like to be shed, was willing, even by indecent means, to endeavour to prevent it. Yet he freed the Lords in the Tower. He said, they would not promise a farthing: Only the Lord Stafford said, he would give himself 2 or 300*l.*, which he might dispose of as he pleased. While Reading was driving the bargain, Bedlow was too hard for him at his own trade of craft: For as he acquainted both prince Rupert and the earl of Essex, with the whole negotiation, from the first step of it, so he placed two witnesses secretly in his chamber, when Reading was to come to him; and drew him into those discourses, which discovered the whole practice of that corruption. Reading had likewise drawn a paper, by which he shewed him with how few and small alterations he could soften his deposition, so as not to affect the Lords. With these witnesses and this paper, Bedlow charged Reading. The whole matter was proved beyond contradiction. And as this raised his credit, so it laid a heavy load on the Popish Lords; though the proofs came home only to Reading, and he was set in the pillory for it. Bedlow made a very ill use of this discovery, which happened in March, to cover his having sworn against Whitebread and Fenwick only upon hear-say in December: For being resolved to swear plain matter upon his own knowledge against them, when they should be brought again on their trial, he said, Reading had prevailed on him to be easy to them, as he called it; and that he had said to him that the Lords would take the saying of these Jesuits, as an earnest of what he would do for themselves; though it was not very probable, that these Lords would have abandoned Ireland, when they took such care of the other Jesuits. The truth was, he ought to have been set aside from being a witness any more, since now by his own confession he had sworn falsely in that trial: He had first sworn, he knew nothing of his own knowledge against the two Jesuits, and afterwards he swore copiously against them, and upon his own knowledge. Wyld, a worthy and ancient judge, said upon that to him, that he was a perjured man, and ought to come no more into courts, but to go home and

repent. Yet all this was passed over, as if it had been of no weight: and the judge was turned out for his plain freedom. There was soon after this another practice discovered concerning Oates. Some that belonged to the earl of Danby conversed much with Oates's servants. They told them many odious things that he was daily speaking of the king, which looked more like one that intended to ruin than to save him. One of these did also affirm, that Oates had made an abominable attempt upon him not fit to be named. Oates smelled this out, and got his servants to deny all that they had said, and to fasten it upon those who had been with them, as a practice of theirs: And they were upon that likewise set on the pillory. And to put things of a sort together, though they happened not all at once: One Tasborough, that belonged to the duke's court, entered into some correspondence with Dugdale, who was courting a kinswoman of his. It was proposed, that Dugdale should sign a paper, retracting all that he had formerly sworn, and should upon that go beyond sea, for which he was promised, in the duke's name, a considerable reward. He had written the paper, as was desired: But he was too cunning for Tasborough, and he proved his practices upon him. He pretended he drew the paper only to draw the other further on, that he might be able to penetrate the deeper into their designs. Tasborough was fined and set in the pillory, for tampering thus with the king's evidence.

Reflections upon the whole Evidence,

This was the true state of the Plot, and of the Witnesses that proved it; which I have opened as fully as was possible for me: And I had particular occasions to be well instructed in it. Here was matter enough to work on the fears and apprehensions of the nation: So it was not to be wondered at, if parliaments were hot and juries were easy in this prosecution. The visible evidences that appeared, made all people conclude there was great plotting among them. And it was generally believed, that the bulk of what was sworn by the witnesses was true, though they had by all appearance dressed it up with incredible circumstances. What the men of learning knew concerning their principles, both of deposing of kings, and of the lawfulness of murdering them when so deposed, made them easily conclude, that since they saw the duke was so entirely theirs, and that the king was so little to be depended on, they might think the present conjuncture was not to be lost. And since the duke's eldest daughter was already out of their hands, they might make the more haste to set the duke on the throne. The tempers, as well as the morals of the Jesuits, made it reasonable to believe, that they were not apt to neglect such advantages, nor to stick at any sort of falshood in order to their own defence. The doctrine of probability, besides many other maxims that are current among them, made many give little credit to their witnesses, or so

their most solemn denials, even at their execution. Many things were brought to shew, that by the casuistical divinity taught among them, and published by them to the world, there was no practice so bad, but that the doctrines of probability and of ordering the intention, might justify it. Yet many thought, that what doctrines soever men might by a subtilty of speculation be carried into, the approaches of death,

with the seriousness that appeared in their deportment, must needs work so much on the probity and candour which seemed rooted in human nature, that even immoral opinions, maintained in the way of argument, could not then resist it. Several of our divines went far in this charge, against all regard to their dying speeches; of which some of our own church complained, as inhuman and indecent.

OATES'S NARRATIVE.

A true NARRATIVE of the horrid PLOT and CONSPIRACY of the POPISH PARTY against the Life of his SACRED MAJESTY, the GOVERNMENT, and the PROTESTANT RELIGION: With a List of such Noblemen, Gentlemen, and others, as were the Conspirators: and the head Officers, both Civil and Military, that were to effect it. Published by the Order of the Right Hon. the Lords Spiritual and Temporal in Parliament assembled. Humbly presented to His Most Excellent Majesty.

To his Sacred Majesty CHARLES the SECOND, by the Grace of God, of Great-Britain, France, and Ireland, king, Defender of the Faith.

Great Sir; This Narrative of the present Horrid Plot against your majesty and government, which was first heard, and narrowly discussed before your Sacred Majesty and Council, and afterwards by both Houses of Parliament, with universal assent to the power of truth herein, is at last to appear abroad, for the satisfaction of these nations, and Europe perhaps, touching the mystery and consequence of such designs. I hope I have good equity on my side, to presume to dedicate the same to your royal name and patronage, and to no other; because I am well assured, both the rise and progress thereof, hath wholly sprung from an inbred indelible love and loyalty to your majesty and kingdoms, as its support and success to be owing (under God's extraordinary and miraculous appearance for his people in its defence) to your majesty's gracious pardon of several human frailties in the management.

Great and many are the arts and hoverings that have been, and may yet be used in vain both at home and abroad, to suppress and traduce the evidence, by those who are more zealous and industrious not to be thought or suspected, rather than really not to be very traitors and rebels against their king and country; whose many past treasons and encroachments upon several princes, for these last thousand years in the world, will prove their inclinations for future; whereof there are as many tragical instances against your majesty's own family and person, within fresh memory

(and to be made out by new proofs out of their own mouths and records, if need) as against any other of God's anointing and appointment.

Your grandfather king James, though he escaped their powder, is well known not to have escaped their poison. Your other grandfather, Henry the fourth of France, was basely and villainously stabbed in the heart, which he had designed and bequeathed after his death unto them, notwithstanding all the indulgences and immunities that the heart of man could wish or desire, which he had granted them in his life. Who besides these, were the first authors and contrivers of the late unnatural war, by their known diabolical art of inflaming parties and passions against each other, and of your royal father's unspeakable sufferings and barbarous usage? It was these that brought him to his end, and flourished swords, and triumphed over his dead body, whom they durst not approach when living. What shall I say of him who then cried out, 'Now is the enemy of God and of his Church fallen? I believe your majesty hath been well-informed of the traitorous executioners, but hardly at all of the Putney-projectors, who were in most, if not all the councils that contrived his ruin. What broke the Uxbridge-Treaty, but the Romish interest and policy? Who continued to baffle all designs of peace and settlement to this nation, and prosperity to your majesty's family, but those incendiaries? It may not be inconvenient to remind with what zeal and interest they did persuade the Scots in 1650, to impose that upon your majesty which your royal law hath forbidden others; for the effecting whereof, some thousands of pounds were spent and given by them. After your majesty's escape at Wor-

cester, how did they, above all men, endeavour to betray and sacrifice your majesty into the hands of your enemies? And who was it that was to pay the thousand pound promised for your being discovered and taken, but Father Joseph Simmonds, and Father Carleton Compton, both jesuits? It is true, that one or two of the Romish persuasion, amongst many loyal and faithful protestants, male and female, might then have contributed to your majesty's deliverance: But have not such been well lessened and reproached, and called fools by their own party, for this grain of loyalty, more owing to their English blood than Romish principles?

The popish lord is not forgotten, or unknown, who brought a petition to the late Regicides and Usurpers, signed by about 500 principal papists in England; wherein was promised upon condition of a Toleration of the popish religion here by a law, their joint resolution to abjure and exclude the family of the Stuarts for ever, from their undoubted right to the crown. Who, more disheartened the loyalty and patience of your best subjects, than their confident scriblers, White and others? And Milton was a known frequenter of a popish club. Who more forward to set up Cromwell, and to put the crown of our kings upon his head, than they? Give me leave to tell your majesty, that his new fangled government was contrived by a popish priest, and Lambert, a papist for above these 30 years. Who betrayed your majesty's secrets and councils during your exile, but they, even the Benedictine Monks, whereof a whole convent was maintained with a large annuity by the late Usurper for such use and purpose? And he (Manning) that was caught and executed by your majesty's justice for such treachery, was of the same red-letter, and had Masses sung for him after his death, as an usual reward and plaister. After your majesty's escape from England, what promises did they make to Cromwell, to persuade the French king for your banishment out of France? and what interest they made use of in order thereunto, can be made appear to their disgrace. I shall leave it to your majesty to call to mind their usage of your royal person when in Flanders: And a noble peer surviving, is able to speak aloud what was there intended against you, to prevent your majesty from your right to reign over us. The present relation upon oath, and most true to a tittle, and sir Edmoudbury Godfrey's usage, is sufficient to convince all unbiassed judges, how little they have flagged or degenerated from their wonted belish principles and natures.

How little therefore the criminals concerned in this plot deserve from your majesty, the world will better judge, if they will but consider how graciously your majesty hath dealt with them, and connived at them, while the rigour of the law was let loose upon your other dissenting subjects, who yet continued more quiet and loyal under their pressures and provocations, than these under favours and carresses. Hath not your majesty hazarded

the hearts and affections of your best subjects, and much of royal honour, in appearing for the late indulgence with frustration, to win and oblige, if possible, these everlasting holy cut-throats?

But what arguments of clemency and grace can persuade them to be true to their natural, who profess allegiance out of conscience to a foreign contrary sovereign? Or how can your majesty expect truth and sincerity, where treasons and lies are virtues and merits? They are by an orderly conspiracy wholly governed by priests, their priests by their bishops, and their bishops by their popes; the sum of whose religion, or ungodly ambition rather, or that which we call Popery, consists, in a word, in an Antichristian pretence of a Fifth Monarchical Sovereignty over all the kings and princes of Christendom, as is of late irrefragably demonstrated by the right reverend and learned bishop of Lincoln; yea in an higher usurpation upon Christ's eternal and peculiar sovereignty over men's hearts and judgments, as is likewise evinced by another worthy pen and sufferer, in his treatise of The right Sovereign of the Heart. They therefore that brutishly and traitorously surrender their souls over into implicit slavery to an impostor, what allegiance can they reserve inviolable with all sober and true Christians, either to king, or Christ, or conscience?

I question not, great sir, but that he in whose hands are the hearts of princes, will in time fully convince your majesty of all their unworthy principles and practices, and of my integrity too, how strange soever some open or secret Papists, whom time also may discover, have endeavoured to represent me. Till that time I commit my cause to the most righteous and all-seeing Judge, with a resolution to persevere through his assistance in my truth and testimony against all discouragements or terrors, or blandishments either, to the last gasp.

And next to Christ and the truth, I shall with the utmost of breath and power, according to my oath and duty, in what place and station soever I am, endeavour to be found ever loyal and true to your majesty in all your rights and honours, as all good subjects and christians ought, and as I find this noble and loyal parliament are resolved to be to an hair, or an expression; and therefore cannot forbear to pray to God out of my sincerity and zeal for public peace and concord between king and people, that seeing your majesty must highly trust some or other for your necessary ease and help, that God would put it into your majesty's heart more to trust and rely upon your two Houses of Parliament (who will be most true to your laws, and consequently both to you and your people) than to any single minister or ministers whatsoever, unaccountably, who may pretend to more loyalty, or more comply with any humour, or human frailty of your majesty's, but are not true friends either to your majesty, or their country, or themselves therein; but erect and prefer an imperial paramount self-end, or lust, before all; which your majesty by their

must be brought unworthily to serve and promote, to public disturbance always, and the confusion of themselves and their posterity, most an end, by God's just vengeance.

It is a false suggestion which such tempters use, that a king that rules by will, is more great, or glorious, or strong, than a king that rules by law. The quality of the retinue best proves the state of the lord; the one being but a king of slaves, while the other, like God, is a king of kings and hearts. No prince was ever more absolute to have what he wished, than queen Elizabeth, who wished for nothing more than the subjects rights and welfare.

Your majesty being so often marked out for destruction by these conspirators, is, and ought to be as great a proof and demonstration to your people, that the Papists themselves hold you not their friend, as any act of parliament against tongues, but especially your generous resentment and proportionable royal indignation against these assassins of your person, and destroyers of our cities, murderers of your subjects, corrupters of christianity, and disturbers of mankind.

But nothing will make your majesty so amiable and acceptable in the eyes of God and man, and your name and memory blessed and glorious for ever, as the copying of the laws of our Saviour in your life, by a decent paternal example before the sons and daughters of your people, to increase the fear of God and its consequences amongst us: it being the chief end and work of all supreme powers, to suppress vice, and encourage virtue amongst their charge according to St. Paul, Romans 13, which is best done abroad, when first and effectually begun at home in your own house and family, according to the same apostle, 1 Tim. 3, by banishing all vicious livers from your presence and converse, and advancing the virtuous in their stead: by the neglect of which principal part of their royal trust and office, princes depose themselves, as useless before God and their own consciences whatever may be their state or glory in fact, and by human laws and power before men.

That your majesty therefore may long live to be a great asserter of laws, of the laws of Christ in your own soul, to your eternal, and of the good laws of this land, to the temporal high peace and felicity of your majesty and people, and abound in all the blessings of this and the other life, health, grace, wisdom, wealth, power, and victory over all your enemies and temptations, shall be ever the study and prayers of your majesty's most humble and most loyal subject and servant,
TITUS OATES.

Courteous Reader,

I here present thee with a short Narrative, or Minutes, till I may find an opportunity to put forth my larger Account and Journal; in which the whole mystery of this bellish Plot shall be more fully laid open. It is true, I did not absolutely design this for the press, had not the

daily clamours of these execrable rotaries for the Romish interest stirred me up thereunto, by charging the Protestants with the horrid design; and the indirect course of a Bookseller, who falsely and imperfectly presumed to print the same, to my great wrong and detriment. It was presented to his majesty the 13th of August last, by the means and introduction of that worthy and honest gentleman Mr. Christopher Kirkby; as likewise sworn upon oath on the 6th of September following, before sir Edmund-bury Godfrey by myself; and the 28th of the same month, before the Lords and others of his majesty's most honourable privy council: and the proceedings afterwards made upon the same being sufficiently known, I shall not trouble thee with at present; but leave the whole to thy candid consideration, taking my leave of thee at present, and will ever appear thy hearty well-wisher and servant in Jesus Christ,
April 15, 1679.

TITUS OATES.

A true and exact NARRATIVE of the HORRID PLOT and CONSPIRACY of the Popish Party against the Life of his sacred Majesty, the Government, and the Protestant Religion.

I. Richard Strange, provincial, John Keins, Basil Langworth, John Fenwick, and Mr. Harcourt, jesuits, did write a treasonable letter to one Father Suiman, an Irish jesuit at Madrid, in the kingdom of Spain, in which was contained their plotting and contriving a rebellion in Scotland, of the presbyterians against the episcopal government: in order to which they had employed one Matthew Wright, and William Morgan, and one Mr. Ireland to go and preach, under the notion of presbyterians, and give the disaffected Scots, a true understanding of their sad state and condition, in which they were, by reason of the episcopal tyranny, exercised over them: and withal to tell them, they had now a fair opportunity to vindicate their liberty and religion; and that it could be done by no other way but by the sword; and that now the king was so addicted to his pleasures, that he would, and could take but little care in that concern. And in the said letter it was expressed, that they had gotten an interest in his royal highness, but they would deal with him as they thought fit; and that they were resolved to use all means to weaken the king of England's interest, by informing his friends of his own intent to betray them into the hands of a foreign power, to wit, to send them to fall by the sword in the French king's wars, against the confederate princes, which letter bore date of April 19th, O. S. 1677, and 29th, N. S.

II. That the persons abovementioned gave the deponent 10*l.* to carry the said letters to the said Father Suiman into the kingdom of Spain to Madrid; the said Father Suiman being their procurator general for the kingdom of England and Ireland; and in order to which message, the deponent embarked himself in the ship called the Biscay Merchant, whereof Luke

Roch was then master, to go for Bilbao, and there took mules for Valladolid, but staying a day at Burgos in Spain, the deponent broke up the said letters, and found these contents in the same.

III. That they of the society of Jesus, in the English seminary at St. Omers, sent a mission of twelve students into the kingdom of Spain, viz. eight to Valladolid, and four to Madrid, (there being English colleges in both places) in order to study philosophy and divinity; which missionaries were sent by Richard Ashby, Richard Peters, Nicholas Blundell, and Charles Peters, as appeared by the patents of the several missionaries, by which they had power to demand admission in the respective colleges to which they were sent, which missionaries were obliged by the jesuits of the colleges, to renounce their allegiance to his majesty of Great Britain, in the hearing of the deponent; and those of Valladolid were taught by Daniel Armstrong, jesuit, minister of the English college at Valladolid, that the said oath of allegiance is heretical, antichristian, and devilish; and that Charles Stuart the king of England is no lawful king, but comes of a spurious race, and that his father was a black Scotchman, and not king Charles the First; this was delivered in a sermon, Sept. 29, 1677, to the students there, which sermon the deponent did hear, and in this sermon the said Daniel Armstrong in plain words did say, that the king of England was a bastard; now this Daniel Armstrong goeth in Spain by the name of Joseph Mundford, in Spanish, P. Joseph Montefortio.

IV. That the said Daniel Armstrong, alias Joseph Mundford, did bring letters from St. Omers to the English college at Valladolid to the Fathers of that college, written in Latin (they being Spaniards) in which it was expressed and related from the Fathers of St. Omers, that the Father of the Society in London had procured one Father Beddingfield to be confessor to his royal highness, but if they saw his royal highness did not answer their expectations, they would dispose of him as they did intend to dispose of his brother the king, which they hoped to effect within a year: which letters bore date June 10, 1677, and subscribed by Richard Ashby, alias Thimbleby, rector of the English seminary of the Society of Jesus at St. Omers, Richard Peters, minister, Edward Nevill, prefect of the studies; Charles Peters, prefect of the sodality, Thomas Fermor, prefect of manners: which letters the deponent saw and read in the month of September at Valladolid in the kingdom of Spain.

V. That Father Suiman abovementioned wrote to the English college, to the Fathers there, that the king of England was poisoned, to the great joy of the English Fathers, and that they would serve king James so, if he did not give them good assurance of bringing in of the Catholic religion, and of rooting out Protestant religion; this letter bore date July 1, 1677, and was seen and read by the deponent at Val-

ladolid, in the month of July, near the latter end.

VI. That one Father John Blake, alias Cross, who went with the four students to Madrid, did bring letters from Richard Strange, provincial of the Jesuits, and one Father Grey a jesuit, and John Keines, to Father Suiman abovementioned, in which was specified, that all diligence was used by the said Richard Strange, Father Grey, and John Keines, to procure some persons to dispatch the king, and to put a period to his days, which letter bore date June 10, 1677, N. S. And now the deponent being sent to Madrid in the month of August, read it in Father Suiman's chamber, he shewing it also at the same time to James archbishop of Tuam, in the kingdom of Ireland.

VII. That the said Father Suiman received another letter bearing date July 20, 1677, N. S. from Richard Strange, Father Grey, John Keines, Basil Langworth, John Fenwick, Father Ireland, and Father Harcourt, in which they did manifest, that they were very sorry for informing him, that he might assure himself that the business was done, their man William being faint hearted, could not then do it, though he had 1,500*l.* promised him for his pains; of which letters the English missionaries were one by one informed; those at Madrid by John Cross, alias Blake, and those at Valladolid by Daniel Armstrong, jesuits: Which letter of the 20th of July, the deponent saw in the chamber of the said Suiman at Madrid; at the same time when he saw the letters of July the 10th, mentioned in the 6th paragraph or number.

VIII. That on the 3rd of November, N. S. Father Pedro Jeronimo de Cordoba, provincial of the jesuits in New Castile, did write to Richard Strange, and John Keines, that if the business of dispatching the king of England could be effected, they should have 10,000*l.* for their pains; which letter the deponent brought from Valladolid to Bilbao, and embarked in a ship within five days after his arrival thither, and in five days more arrived at a little town near Exeter, and in six days more came to London, and delivered the letter to Richard Strange, and when opened, it was written in Latin, and read by the said Strange; and he said, that all means should be used to answer father Pedro's expectation. And in the letter to Strange was one enclosed to this Keines, by the name of Juan de Neoporto de la Compania de Jesu; which letter the said Keines offered the deponent to read, but being written in Spanish, the deponent did not well understand the letter, and could make but little of it by reason of the Spanish abbreviations; therefore the said Strange did give the deponent the letter directed to himself, saying, he thought the deponent did understand Latin better than Spanish; so that the deponent read the said letter, and in it the contents abovementioned; and the said Strange being then ill upon Keines's bed, said, that he hoped God would strengthen honest William's heart to do his work. Now this honest William is a sc-

vant to the Society in London. This Strange did then lay at one Mrs. Saunders's house, a part of Wildhouse in Wild street, where the deponent heard this discourse from the said Strange and Keines.

IX. That the said Richard Strange and John Keines, Basil Langworth, Father Harcourt, John Fenwick, Father Ireland, Father Grey, Father Jennison, Father Saunders, and Father Ecclesdon, did write a letter, and subscribed it, and sent it to St. Omers, to Richard Ashby, rector of the English Seminary there; in which he and the rest of the Fathers were given to understand that the king was altogether given to his pleasures, and that they had an intent to procure one to stab him at his court of Whitehall; and if that could not be conveniently done, they would employ one of his physicians to poison him; for which work they had 10,000*l.* in the hands of one Worsly, a goldsmith in London; which money was procured for them by one Father Leshee, a French jesuit, and confessor to the French king; which letter the deponent saw and read, and saw it subscribed by the persons above mentioned, and carried it to St. Omers. He went to Dover by coach, a place in which was taken up for him by the said William their servant, whose name indeed is John Groves. The letter that the deponent carried bore date the beginning of December, O. 8.

X. That letters were inclosed in this letter aforementioned to the said Leshee, in which thanks was given him by the said Fathers that had subscribed the said letter to Richard Ashby, for his great charity to them, and his care for the propagating the catholic religion; and that all means should be used to destroy the opposers of it, both root and branch; which letters bore date either the 6th or 7th of December, and the deponent carried them inclosed in those of Richard Ashby to St. Omers, and from St. Omers to Paris, and delivered them into the hands of the said Father Leshee, about the 18th of December, as near as the deponent can remember.

XI. That other letters bearing date December 12, 1677, were sent from Richard Strange, and others of the Society in London, to those of the Society in the English Seminary at St. Omers, and in them letters were enclosed to Father Leshee, in which they told him, that they had stirred up the presbyterians in Scotland to a rebellion; and that 20,000 would be in arms, if that his majesty of France would break with the king of England; and that a way also was made for the French king's landing an army in Ireland: And further, that the Irish catholics were ready to rise; in order to which there were 40,000 black bills provided to furnish the Irish soldiers withal: Which letters were subscribed by Rich. Strange, John Keines, and John Fenwick, and the outside letter directed to Richard Ashby, rector; which letter was shewed to the deponent at his return from

Paris to St. Omers, by the said Richard Ashby; and told the deponent that the letters to Leshee were carried by an especial messenger to the said Father Leshee, for which the said messenger had ten patacoons or royals of eight, as the said Ashby informed the deponent: And the said messenger was a drummer, in the town of St. Omers.

XII. That another packet bearing date December 18, 1677, in was specified that the Father General of the Society of Jesus had written from Rome, and had removed Richard Strange from being provincial, and had conferred the provincialship upon Thomas White, alias Whitebread, and the said Thomas Whitebread ordered, that one Father George Coniers should preach on St. Thomas of Canterbury's day, in the Sodality church, in the English Seminary, against the oaths of allegiance and supremacy; and that he should exhort the Fathers to stand by the new provincial, who would be as zealous to promote the bringing in of catholic religion into England, as ever his predecessor was; and would not leave one stone unturned to promote the same: Which said letter was directed to, and received by Richard Ashby, and communicated by him to the deponent about the 24th day of December.

XIII. That in another packet bearing date December 26, it was ordered by Thomas Whitebread, Richard Strange, John Keines, Basil Langworth, John Fenwick, Father Gray, Father Harcourt senior, Father Harcourt junior, Father Micho, Father Bennifield, Father Ireland, Father Blundell, Father Jemison, and some others of the society, that Father Leshee should be written unto by Richard Ashby, and the Fathers of St. Omers, and informed that the Fathers before mentioned had met together to contrive the advancement of the design of the happy disposal of his majesty of Great Britain, and of his royal highness, if he should not appear to answer their expectations. But the former giving no hopes at all, they would endeavour his dispatch with all speed that might be, that he might not hinder their designs in bringing in catholic religion. And if they could not find an opportunity to take him from his kingdom they would soon take his kingdom from him; which letter the deponent saw in the hands of Richard Ashby, and desired to read it, but the said Richard would read it to him in his chamber on January 2.

XIV. That in the said letters of December 26, it was specified, that Richard Nicholas Blundell, was constituted by patent from the provincial, to be ordinary at Newgate, to go and visit the condemned prisoners, and to reduce them to the catholic faith and religion; and to catechize some youth in the city of London; and every day in the week he hath his several places where he teacheth the youth treasonable and mutinous doctrines against the interest and person of his sacred majesty, and giveth certain sums of money to their parents

(if poor) to encourage them to send their children to be thus instructed; which passage was contained in the aforesaid letters, and afterwards practised in London.

XV. That another Packet came to Richard Ashby to Saint Omers, from Thomas White, John Keines, and others of the society of Jesus in London; in which letters, from them and others, were inclosed letters to Father Thomas Stapleton, procurator at Brussels, to persuade the Father Confessor of duke de Villa Hermosa, to inform, that his majesty of Great Britain did not intend to assist his majesty of Spain, but to stand a looker on till he was ruined by the French king, which letter, being not sealed, was seen and heard read by Richard Ashby then rector of Saint Omers; in which it was further ordered, that if the said Father Confessor should not be ready to comply with the said Stapleton, that messengers should be forthwith sent to Father Suiman at Madrid to inform his majesty of Spain of the said concern, and to make the same relation of the business to the archbishop of Tuam in the kingdom of Ireland, now at the court at Madrid, that he the said Swiman, and he the said archbishop might jointly give an account to the king of Spain of the motion made or to be made, to the said Father Confessor of duke de Villa Hermosa, and also to advise the Spanish king to seize the estates of the English merchants in the several factories in his dominions; for that they had endeavoured to transport their estates, and did transport them to England, which would tend highly to the prejudice of the kingdom of Spain, and for the confirmation thereof they procured letters from one Fonseca, sometimes an agent in London, to attest the same, to which the said Fonseca willingly condescended and sent his letter to Saint Omers, to be sent to the court of Spain, that the Fathers might give their approbation: which letter was long and large attestations therein made against the merchants resident in their several factories, concerning the matter of fact before mentioned, and also other letters to Daniel Armstrong at Valladolid, and to John Cross at Madrid, in the which they were ordered to confirm this affirmation made or to be made by the Fathers in England, and of the English Seminary at St. Omers, and of the said Stapleton, together with that of the said Fonseca, the above mentioned Spanish agent, who now dwelt at Bruges in Flanders. All which letters bore date the first or second of January 1678, N. S. and all of them the deponent saw at Saint Omers; and in the two letters to those two fathers in Spain, viz. Daniel Armstrong and John Cross, was contained an especial order, that the former, if he could not go to Madrid, should send his attestations to Don Juan of Austria, for the carrying on of which 200*l.* sterling was transmitted by bills of exchange to the said Father Suiman and the said English Fathers.

XVI. That when the letters came from England about the business aforesaid-mentioned

to Saint Omers, Edward Nevil and Thomas Fermor did say, that they would not let this black bastard go to his grave in peace (meaning the king of England) for that he had cheated them so often, and that now they were resolved to be served so no more. But the deponent standing by, said, what if the duke should prove slippery! They both replied, his passport was ready whenever he should appear to fail them. These words were heard by the deponent on the 3rd of January in the afternoon, in the library of the Jesuits of Saint Omers.

XVII. That on the 4th of January, 1678, N. S. letters were sent by Richard Ashby, Edward Hall, Edward Nevil, Charles Peters, Michael Constable, William Busby, James Janion, and Thomas Fermor, Jesuits of the English seminary at St. Omers, as also Francis Williams rector of Watton, and master of the novices there, sir John Warner barouet alias Clare, Father Sanches alias Ditchling, to the Father Confessor of the emperor's majesty, to advise the emperor's majesty, that his majesty of Great-Britain had treacherously plotted the ruin of the confederates, especially of the German empire, and of his catholic Princes under him, and had under hand stirred up the Hungarian rebels against his imperial majesty, and found them money to go on with their rebellion, and that his design was not to keep any alliance with his imperial majesty, but only in shew, that he might advance his nephew the prince of Orange and make him absolute, and therefore prayed that the States of Holland might be acquainted with it. Which letter was seen and perused by the deponent, it being written in Latin, all which letters were sent away by a lay-brother that was a Dutchman, and when these letters were sending away, one of the lay-brothers whose name was George, did say, that the prince of Orange was more fit to rob an orchard than to be general of an army.

XVIII. That letters bearing date January 1, 1678, N. S. arrived at St. Omers, January 20, from Talbot arch-bishop of Dublin, wherein it was expressed, that the Fathers of the Society in Ireland, were very vigilant to prepare the people to arise, for the defence of their liberty and religion, and to recover their estates, and that if the parliament that was to sit in England should join with the king in declaring war against France, that a place should be open to receive the French king's army in Ireland, when his most christian majesty should think fit to land one there: And in the letter he advised the Fathers of St. Omers to advertise Father Lesbes of the same, and other Jesuits that had an interest in the French king: and that his majesty of Great Britain was brought to that pass, that if any mal-content amongst them should not prove true to their design his majesty would never give ear to their information, and therefore prayed them to be diligent, for now was the time or never: which letter the deponent saw and read, and in order to the Fathers compliance with the letter of

the said archbishop, they dispatched away letters to Father Leshee at Paris; and appointed Edward Nevil and William Busby, to carry and deliver them to the said Leshee, which letters were answered with all speed by the aforesaid messengers, Jesuits as above, the one of them being the prefect of studies, and the other procurator for the seminary, and by them wrote letters to Thomas White provincial, and to the rector of St. Omers, viz. Richard Ashby; Of that to the provincial the deponent can give no account, but of that to Ashby the deponent saith, that there was in it expressed, that the Father General of the Society of Jesus, would contribute 800,000 crowns to be paid in the month of June next ensuing, and that his holiness, the pope, would not be wanting to supply them, when they had made some progress in that glorious attempt.

XIX. That another packet arrived at St. Omers directed to Richard Ashby, rector of the English seminary there; The date of which is not well remembered by the deponent, but as near as he doth remember, it was about the beginning of the parliament, for there came the speeches of the King and lord Chancellor, and the votes of the parliament, which were put into ridiculous phrases, in contempt of the king and both Houses of parliament, for the Fathers and Scholars to laugh at, and then translated into the French tongue, and presented to the governor of St. Omers, who sendeth them to the French king his master: and in the packet was contained an account of the attempt of one Pickering, a lay-brother; that waits upon the Jesuits lying at Somerset house, to shoot the king as he was walking in St. James's park, when he was at some distance from his nobles and attendants, but the flint of his pistol being somewhat loose, he did defer the action till another opportunity, and if he had done it and had suffered, he should have had 30,000 masses said for the health of his soul: Which letters were signed by Thomas White alias Whitebread provincial, which letters, when read, the Fathers of the English seminary were in great trouble, for the negligence of the said Pickering, and the deponent saw and read them in the latter part of January, and the votes put into such mock phrases, as also the speeches of the king and lord Chancellor in the month of February.

XX. That the deponent, went on the 29th of January to know of his confessorius, whether he might keep the 30th of January as a fast, the confessorius replied, that the account with them was on the 9th of February, because the account of England did differ from the account on that side the water: The deponent asked him, whether then he might keep the 9th of February as a day of fasting? The confessorius asked him, why? The deponent replied, because of the martyrdom of the late king, the confessorius answered, that the late king was no martyr but an heretic, and withal added, that he was none of king James's son, but a

bastard begotten upon the body of Ann of Denmark by her taylor. This confessorius is a Jesuit, and his name Charles Peters, perfect of the sodality.

XXI. That letters bearing date February the 1st, N. S. from Thomas Whitebread, John Keins, John Fenwick, Father Ireland, and Father Micho to Richard Ashby rector of St. Omers, (then ill of the gout) and to the English Fathers there, did let them understand, that they had sent William Morgan into Ireland to see how affairs stood in that kingdom, and expected his return by the end of March next, and that he set out the 26th of January, and that they had given him instructions to order the affairs in hand, and to encourage the Irish natives to defend their religion and liberty: And his companion was one Father Lovel, who was to go into the North of Ireland to see the Fathers of the Society there; and carried 2,000*l.* to supply their present wants and to promise them 4,000*l.* more in case there should be any action.

XXII. That another packet came from Thomas White alias Whitebread, Father Micho, Father Ireland, Father Harcourt and others of the Society in London, bearing date February the 7th, 1678. N. S. in which was contained an account of the Fathers' progress in Berkshire, Oxfordshire, and Essex; in persuading the Catholics that were votaries for the order of Saint Ignatius to contribute for the Irish rebellion, and maintaining a civil war in that kingdom, in case the French king should break with the king of England: and also that they had received letters from Scotland, in which they were informed that the people would rise to oppose duke Lauderdale, and the royal party in that kingdom, and also that they would endeavour by themselves, their agents, and their purse to provoke the Scots against the English, and withal told the Fathers of Saint Omers to whom this packet was directed, and by whom it was received, that they should be glad to effect such a design. Which packet the deponent saw and read, letter by letter.

XXIII. That the Fathers of St. Omers, viz. Richard Ashby rector, Edward Hall, Edward Nevil, and others of the English Seminary, did write to Thomas Whitebread and other Fathers, in which was expressed that it was now apparent, that the Catholic Religion was to be brought in the same way, that they had used for the destruction of the father of this king, and as that could not be effected till much blood was spilt on both sides, so this must be effected by effusion of blood. And withal prayed them to prosecute their design in taking away the king; and if his royal highness should not comply with them, to dispatch him too: for they did fear that never any of the Stuarts were men for the effecting of their ends and purposes. And in this letter, instructions were given to the Fathers to feel how his royal highness stood affected. Which letter bore date, February the 10th, N. S. and was signed by the

persons above named in the presence of the deponent, who did compose these letters for them, according to direction given him by them, which Letter was to the deponent's knowledge carried into England by one Father Every, who then went for England.

XXIV. That an answer of the aforesaid letters of February the 10, N. S. dated February the 20th O. S. came from Thomas White, John Keines and Basil Langworth, Richard Peters, John Fenwick, Father Ireland, Father Harcourt, Father Blundell, Father Matthew Wright and Father Thomas Wright, Father Jennison, and one Father Simmons, who some time belonged to Somerset house, who also signed with the rest, the said answer, which told the Fathers at St. Omers (viz. Richard Ashby to whom the letters was directed and the rest) that they had found, that although the duke was a good Catholic, yet he had a tender affection to the king, and would scarcely be engaged in that concern, and if they should once intimate their designs and purposes unto him, they might not only be frustrated of their design but also might lose his favour. Which letter the deponent saw and read in the month of February.

XXV. That the Fathers of the English Seminary at St. Omers did oblige one brother George a lay brother in the said Seminary to go for Ghent in Flanders to the English Jesuits there with a letter from St. Omers dated February 26, O. S. In which they had an account of that letter of February 20, and the said brother George arrived there February 28, O. S. and the Jesuits there advised the Fathers in one of March the 1, O. S. that the secular clergy should be treated withal about the business but they finding them at that time to be men inclined to live in peace and obedience to their prince, the Fathers, viz. Thomas White, &c. answered them in one of March 10, O. S. that the clergy were a sort of rascally fellows that had neither wit nor courage to manage such a great design; and did pray them of Ghent and them of St. Omers to be of good cheer, for their designs went on well both in Scotland and Ireland, and the fatal blow should be given to the black boy at Whitehall with all the speed that might be. Which Letters to them at Ghent, and from them at Ghent to the provincial (they being brought back to St. Omers before they went to the provincial) and also these of March 10th the deponent saw and read.

XXVI. That there was an attempt to make an assassination upon the person of his sacred majesty in the month of March several days as he was walking in the park, and once as he was going to the parliament-house, by this honest William and Pickering, but opportunity did not offer itself, for the which the former, viz. honest William, was chidden, and the latter had a penance of 20 strokes with a discipline on his shoulders, it being judged by the Fathers the effect of his negligence: which passage the deponent saw mentioned in a letter from Thomas

White to Rich. Ashby, bearing date March the 26th, 1678.

XXVII. That of the 5th of April letters came from Thomas White, and the Fathers in London, to Rich. Ashby and those of the English Seminary at St. Omers; in which the Fathers at London did give them of St. Omers an account that Will. Morgan and Father Lovell were returned out of Ireland, who gave them to understand, that the Irish were ready to rise at ten days warning, with 20,000 foot and 5,000 horse, and would let the French king into that kingdom if he should come to land an army there, and that Father Lovell did give an account that 15,000 horse and foot would rise in the North of Ireland, and that the people were very patient but very resolute; and that the duke of Ormond, now Lord Lieutenant, is in a great perplexity to see Catholic Religion thrive so well in Ireland, and that there are persons that have secretly taken commissions from the general of the society of Jesus, by virtue of a breve from the pope, dated Oct. 1, 1673, and that they resolve to cut the throats of the Protestants again, when once they rise. And in the said letters to the provincial summoned a general consult to be held in London, and therefore commanded the Fathers on the other side of the water to be present. In which letter the deponent did see himself summoned to assist at that consult, as a messenger from Father to Father. This letter the deponent saw in the month of April.

XXVIII. That in order to this command, on April 24, 1678, N. S. Father Warren, rector of Leige, sir Thomas Preston, bart. Father Marsh, rector of Ghent, Father Williams, rector of Watton, and master of the novices, sir John Warner, bart. (Rich. Ashby, rector of the English seminary at St. Omers, being sick of the gout could not go) but out of the said seminary went sir Robert Brett, bart. Father Poole, Edward Nevill; there were in all with the deponent about nine or ten who met in London in consult with Tho. Whitebread, Father Harcourt, senior, and Father Harcourt, junior, John Fenwick, Basil Langworth, William Morgan, John Keines, Father Lovell, Father Ireland, Father Blundell, Rich. Strange, Father Mico, Father Gray, and others, to the number of fifty Jesuits, met at the White-horse Tavern, in the Strand, where they plotted their designs for the society, and ordered Father John Cary, who was also there, to go Procurator for Rome: At which consult, thus held in the month of May, the deponent was present to attend the consulters, and delivered their concerns from company to company; and then a little after they left the White-horse Tavern, and divided themselves into several clubs or companies. Some met at Mrs. Saunders' house, in Wild-street; others at Mrs. Fenwick's, at Ayre's house, in Drury-lane; others at Mr. Ireland's, in Russel-street near Covent-garden, and in other places; all which though in several companies, five or six in a company, did contrive

the death of the king: In order to which, there were papers sent from company to company, which the deponent carried, containing the opinions of the timing their business, and the manner how it was to be done: and within three or four days after, the deponent went to St. Omers with the Fathers that came from the other side of the water.

XXIX. That on the 10th of June, N. S. came Thomas White to St. Omers, in order to visit his colleges in Flanders and Germany; and in his chamber the 11th day, where the deponent was present, together with Rich. Ashby, rector, he there told the deponent and the said Ashby, That he hoped to see the fool at Whitehall laid fast enough; and that the society need not fear, for he (that is the king) was grown secure, and would hear no complaints against them, and if the duke should set his face in the least measure to follow his brother's footsteps, his passport was made to lay him to sleep.

XXX. That the said Thomas Whitebread, on the 13th of June, did tell the rector of St. Omers, That a minister of the church of England had scandalously and basely put out the Jesuits Morals in English, and had endeavoured villanously to render them odious to the people, and asked the said rector whether he thought the deponent might possibly know him? and the rector not knowing, called the deponent, who heard these words as he stood at the chamber door of the said provincial, and when the deponent went into the chamber of the said provincial, he asked him, If he knew the author of the Jesuits Morals? the deponent answered, his person, but not his name. The said Thomas Whitebread demanded then, Whether he would undertake to poison or assassinate the author? which the deponent undertook to do, having 50*l.* reward promised him by the said provincial, and appointed to return to England. And the deponent doth farther testify, that at the same time the said provincial did in his chamber say, That he and the society in London would procure Dr. Stillingfleet to be knocked on the head, and also Poole, the author of Synopsis Criticorum, for writing some things against them.

XXXI. That Rich. Ashby, rector of St. Omers, being ill that evening with the gout and stone, viz. June 13, desired the company of the deponent, and did tell the deponent, That Father Warren, who is now rector of the college of Jesuits at Leigh, did, when he was procurator at Paris, reconcile the late lord chancellor Hyde to the church of Rome upon his death-bed; which words were occasioned by the deponent's taking notice of the duchess of York (daughter of the said lord chancellor) dying a papist. And the deponent, when he heard the said Ashby speak these words, replied, That he never heard any thing of the return of the said lord chancellor: answer was made, That he, the said Ashby, was certain that the said lord chancellor was reconciled by the said Warren.

XXXII. That on the 23rd day of June, in the morning, N. S. the deponent had express orders presently to go for Calais, and then to take the packet boat, and so away for England, to attend the motions of the Fathers in London, and to remain in London till he had orders from the provincial to the contrary, and gave the deponent 4*l.* for his charges, and promised him 80*l.* for services already done for the society in Spain and elsewhere. And the deponent saith, That he obeyed the orders, and that night got to Calais, and there met with four Jesuits that were ordered for London; and on Friday the 24th, N. S. the deponent saith, they took the packet boat together, and arrived safely to Dover on Saturday morning, where the deponent met with John Fenwick, who had brought eight students to Dover to transport them to St. Omers: And the deponent farther saith, That the four Jesuits and Fenwick who were at Dover by the name of Thomson, and he the deponent took coach about 11 o'clock at noon; and at Borton, six miles on this side Canterbury, the coach was stopped, and a box was seized of the said John Fenwick's by the searchers of that place, and when by them opened, in it they found beads, pictures, images, and Agnus Dei's, which were to be given by Blundel the catechist, to young children, to encourage them to come to his catechising schools, and to be catechised by him. Accordingly there was a direction on the said box fixed, as, To the honourable Rich. Blundel, esq. London: Which box remaineth so seized by the said searchers; and if they had searched the pockets of the said Fenwick, they had found such letters upon him, as the said Fenwick confessed to the deponent, might have cost him his life; they being, saith he, the concern in hand; but the said letters the deponent did not see.

XXXIII. That in the month of July, Richard Ashby came to London with instructions from the said Thomas Whitebread or White, that the 10,000*l.* procured by father Lesbae, and then in the hands of the society in London, should be put into the hands of one Worsly their banker; and that the said Richard Ashby, with other Fathers, should treat and agree with sir George Wakeman about the concern of poisoning the king; and that if he would undertake it he should have the 10,000*l.* which the said Richard Ashby told the deponent, abewing him the said instructions, by way of memorandum, in writing. In which memorandum was contained an item given by the said Thomas Whitebread, for the procuring the assassination of the right rev. father in God Herbert, [Croft] lord bishop of Hereford; for the said bishop had been educated in the Popish religion, and was fallen, and they were resolved not to pity nor spare any apostate from the Roman faith. The said Richard Ashby asked the deponent, whether the said bishop were not a forward man against Catholics? and the deponent not knowing the said bishop, told the said Ashby he could not tell; and the

said Ashby did say, That times now being ready to change, they would be ready to give not only apostates, but also these heretics that had obstinately opposed the proceedings of the society and their agents, in propagating the faith and interest of the Church of Rome, a just reward for their apostacy and infamous obstinacy; and though the parliament have taken away the act for burning heretics, they should not escape the vengeance of Catholics.

XXXIV. That in the month of July, 1678, Richard Strange, the last provincial of the Jesuits, came to the lodgings of Mr. Richard Ashby, who, before he went down to the Bath, lay in the new provincial's lodgings at Mrs. Saunders's house, a part of Wildhouse in Wildstreet, and finding the deponent with the said Ashby, did desire the deponent to meet him at his chamber at Mr. John Groves in Yorkstreet, near Covent-Garden, and after a short stay at Ashby's lodgings, took his leave of the said Ashby, and presently after the deponent took his leave also of the said Ashby, and followed Strange, and got to his chamber presently after him; where the said Strange did encourage the deponent to go on in assisting the society in carrying on the design; and thereupon told the deponent that they got 14,000*l.* in the Fire of London, in the year 1666. The deponent asked the said Strange how they came to effect that great and famous business? The said Strange replied, That himself and one Gray, and Pennington, and Barton, Jesuits, with some others, together with one Keimash, a Dominican friar, joined with one Green, and met at one William West's house, who kept the Green Dragon in Puddledock: The said West was by trade a taylor, whom they employed to make them some clothes, and there they did debate about the manner of firing the city, and where they should begin, and did attempt it in February, 1664-5. But not being provided of assistance enough, and the Thames being frozen over and the sickness coming on apace, they then altered their purpose: And in January, 1665-6, they met with this Green again, who closed in with them in this design. And that they might ingratiate themselves with this Green, furnished him with 80*l.* (he being poor) yet they found him an active man, and fit for their purpose. And the more to engage him the said Green, they pretended to hold many of the Fifth Monarchy principles; which when Green perceived, judging them to be real, brought them acquainted with 8 others, who were zealous in the business. The aforesaid Jesuits were earnest to have the business done in February, before the return of the inhabitants to London; but Green did pray these persons, viz. the Jesuits, to suspend that resolution because that then they should be sooner discovered, and such a design must have an uproar; and besides all this, the king would not be much in town, if at all, till the plague was more abated, whom Green did say must be cut off too, when the people was in a hurry

by reason of the fire: And this motion pleased the Jesuits and Dominican well, and so it was put off. In a very little time after the said Green, and the rest of those Fifth-Monarchy men, together with the four Jesuits and Dominican above-named, were suspected by the said West that kept the said house in Puddledock, and were forewarned his house. And presently after Green and his eight acquaintance were clapped up in prison (but for what the said Strange did not tell the deponent.) And upon the imprisonment of these nine persons, the said Jesuits and Dominican did go to St. Omers, and there remained till the May after the execution of eight of these persons thus imprisoned. (Green dying in Newgate.) But one Fitz Gerard, an Irish Jesuit, and one Neale of Whitechapel, did write to Strange, as the said Strange informed the deponent, that none of the Fathers' names was mentioned in the business of these men, and thought they might safely return. So in the latter part of May they set forth for England, and got to London in the beginning of June; and then, concealing their names and lodgings, they began afresh to consult about this fire, which was still carried on by the society in the absence of these persons, and determined by them in the fire-time to cut off the king, that the number of the beast might be accomplished. In the uttering of which words, the said Strange broke out into a great laughter. But, said the said Strange, to be short, we got fifty or sixty Irish to ply the work, and one Edward Everard was very diligent to preserve their fireworks which they had made, and put into granado-shells; And the more to palliate this their design, they procured this Everard a place in the king's service, to look after the ammunition that was to be carried down to the fleet, it being in the time of the first Dutch wars. And the said Strange told the deponent, That great attempts were made on the Tower, but without effect. But, said Strange, To return to our ordering our affairs, we were in ser also with several Frenchmen, who were faithful in the business: And all things being ready and the place pitched upon, Strange removed his quarters, and got to lie at a house in Fenchurch-street, and went by the name of Walker; and this he did in the month of August, 1666, and with him he took Keimash, the Dominican, and lodged together. And Pennington and Barton lay at an apothecary's shop in Shoe-lane; and Gray and Fitz Gerard lay at Neale's house in Whitechapel; which Neale was one to see the fire carried on through Thames-street, and so to the Tower. In a word the said Strange told the deponent, that they spent 700 fire-balls, and when the fire-merchants were at work, then others, men and women were employed to plunder what they could; and they had a warehouse in Wild-street, where some things so plundered were laid; and other things they concealed in Somerset-house, as hollandes, cambrics, fine cloth, and some considerable quantities of plate, and a box of jewels: the owner

gave the box to these men to carry away, and ordered his servant to go along with them, but they having increased their number, ordered the servant to be knocked down; but the servant being afraid he should be killed, ran away. This was the greatest plunder of one sort they got; for, as the said Strange informed the deponent, there were 1,000 carrats of diamonds lapped up in several papers for several goldsmiths, and the diamonds were conveyed away to St. Omers, the first opportunity they met withal: but the deponent asked the said Strange how one man should trust him with so much goods, for never any jeweller had so many jewels at one time. The said Strange replied, that he could not tell, but it was certain they met with them, and sold them for 3,500*l.* sterling in Flanders; and had a fish-dinner into the bargain at the Salutation Tavern in Holborn at the return of the money. The deponent asked Strange, how the fire began? and he told him, that Neale came and knocked him up at 12 o'clock in the night, and before he was dressed the fire was begun. The deponent further asked the said Strange, how many servants the society employed? He said, about 80 or 86, he could not tell well which. The deponent asked how the king came to escape? The said Strange replied, indeed they were resolved to have cut him off, when at work in person about the fire, but then they were not secure of the duke, who then was but a well-wisher to them, and besides, they seeing the king so industrious, could not find in their hearts to do it. Whilst this discourse was in hand, a gentleman knocked at the door, and so he broke off, beginning at nine o'clock in the morning, and ending at almost eleven that forenoon. And the deponent went to his lodging, which was then in Drury Lane.

XXXV. That Richard Ashby, the day before he went down to the Bath, which was in the month of July, had conference with Father Harcourt, Father Fenwick, Father Ireland, Father Keines, Father Strange, Mr. Jennison, Father Blundell, and others of the society, by order from the provincial, to send new messengers into Scotland, to promote the commotions there, and to inform the people of the great tyranny they did lay under, by reason of their being denied then liberty of their conscience, and that not being to be procured but by the sword, they must take that course to purchase their liberty. By which means (said the Fathers thus assembled) we shall weaken both the presbyterian and episcopal faction. At which conference the deponent was present, and heard these words.

XXXVI. That in the month of July, the said Richard Ashby went down to the Bath, in order to be cured of his gout, and on the morning he went away, the deponent being then in the chamber of the said Ashby to take his leave of him; Father Harcourt, rector of London, came to him, and told him, that if after he left the Bath, he could make a progress into Somers-

setshire, to inform those of the society of the intended design, it would do well, and wishal desired the said Ashby to hasten to town after he had finished the said information. All which the deponent did hear.

XXXVII. That on the first of August, came letters from Thomas Whitebread, bearing date July 22nd, to John Fenwick, in which was, that he would that 15,000*l.* should be proposed to sir George Wakeman, if he refused 10,000*l.* But whether sir George hath been treated with about that concern, the deponent cannot inform here in this article; but sir George Wakeman hath been divers times in the company of the said Ashby; and he saw the letters to John Fenwick on the 4th of August, 1678.

XXXVIII. That letters arrived to London, bearing date August 5, 1678, from Thomas White or Whitebread, provincial, to John Fenwick from St. Omers, in which he did inform the Fathers, that he had made his visit within his province, and that he had ordered twelve Jesuits to go for Holland, and to inform the Dutch that the prince of Orange did intend to assume the crown of a king, and that he resolved to bring them under another government. Which missioners took their leaves of the said Thomas White on St. Ignatius's day, July 31, but got no farther than Watton, by reason of a mischance they met withal upon the way. By which mission the said Thomas White did design to beget in the Dutch an evil opinion of the prince of Orange, and to cause a commotion there amongst the Dutch, against the said Prince and his party. Which letter the deponent saw and read in Mr. Fenwick's chamber on the 11th of August.

XXXIX. That another letter of the 10th of August, came to Blundel and the Fathers in London, from Thomas Whitebread, in which he blamed the Fathers in London for not giving him an account of what progress they had made in their proposal, made or to be made unto sir George Wakeman; and if made, how he resented it; if not made, to make it quickly, for it would not be convenient to defer it; and told them, Ireland was safely arrived to him at St. Omers, who only told him, That the king was very secure; and therefore, he, the said provincial, admonished the Fathers to be very vigilant. Which letter Blundel showed the deponent on the 19th of August.

XL. That another packet of the 15th of August came from St. Omers, from Thomas White provincial, to Father John Fenwick, in the which were letters inclosed to Father Harcourt, Jennison and others, which the deponent did not see; but that to John Fenwick the deponent did see and read it. Therein the said Thomas White did say, that the figure 366 should lie as low as ever 666 did; and if poison would not take the king away, fire should, for catholic religion would never flourish unless I H S took this course. Now the deponent saith that 365 is to be understood Westminster,

and the figure 666 London, they being the ciphers for both those places, and the letters I H S Jesuits, they using it always.

XL. That the deponent was informed by the said John Fenwick and others of the society, then in his chamber, that the Jesuits have 60,000*l.* per ann. good rents, and 100,000*l.* in Bank, and that he and the rest of the Society have in the name of their Trustees lent out money at 50*l.* per cent. the improvement of which money in Bank is used about these practices; and that it costeth them 4,000*l.* per ann. in intelligence, besides their daily special messengers, on which vast sums of money are spent, and besides another part is transported beyond the seas by Bills of Exchange, which the deponent himself knoweth in a great part to be true, and of the rest they themselves have informed him at several times: All which tends highly to the damage of the kingdom.

XLII. That on Monday the 5th of August, Father Harcourt, Father Keines, John Fenwick, and another of the society whose name the deponent doth not remember, did say, that they did intend to raise a commotion in the kingdom of England and dominion of Wales; which also did appear to the deponent by several letters which the deponent did see and read: The date of which letters the deponent doth not well remember, but saw them in August 1678.

XLIII. That two new messengers were sent into Scotland, on the said 5th of August; one by the name of Father Moore, and the other by the name of Father Saunders alias Brown, with instructions to carry themselves like non-conformist ministers, and to preach to the disaffected Seats, the necessity of taking up the sword for the defence of liberty of conscience. These the deponent saw dispatched and ordered to go by Father Harcourt in the name of Thomas White provincial.

XLIV. That they have several times communicated, and do still communicate what secrets they can have revealed to them of the king, which they purchase by giving money, and then send them over to Leshee the French king's confessor. And the deponent hath seen several particulars (as they pretend) how the king standeth affected, for war or peace: And this they do by one Smith, who daily lurketh about White-hall, and in parliament time about Westminster-hall and the lobby. And the said Smith did say, that he was in fee with the clerks of the parliament, who give him the intelligence, and with the clerks officers of the privy council and cabinet council. The deponent saith further, that one Coleman formerly secretary to her royal highness doth assist this Smith, with private intelligence, as John Keines, jesuit, and this Smith, have told the deponent several times in the months of July and August.

XLV. That these Jesuits drive several trades in town, as merchants, tobacconists, goldsmiths, scriveners, and by means of their

scriveners, they come to the knowledge of several estates of several persons of quality; and by other scriveners, of their religion and practices: By which means they take an estimate of the strength of the nation, their scriveners having great practice in the city of London, as John Keines informed the deponent in the month of August.

XLVI. That on Friday the 9th of August, came letters of the 16th N. S. by an especial messenger from Thomas White provincial, and subscribed by the Fathers at St. Omers; in which they did rejoice very much that sir George Wakeman had taken the business into his hand, and if he did it, the 15,000*l.* should be paid, but ordered, that Pickering and his companion, viz. Honest William, should not desist their endeavouring to assassinate the king's person: Which letters the deponent read, and asked Fenwick, how the provincial came to understand that sir George Wakeman had undertaken the business? He the said Fenwick told the deponent, that they had dispatched away a special messenger, and that the said messenger brought this answer, and withal the said Fenwick did tell the deponent, that it cost 10*l.* to send him word of it.

XLVII. That because one William Berry, now a secular priest, who had formerly been a Jesuit, had written and was about to print some sheets of paper in vindication of the oaths of allegiance and supremacy, and in it persuaded Roman Catholics to a more charitable compliance with protestants, Basil Langworth, and others of the society, did offer 10*l.* to the deponent to kill the said Berry; and if the deponent dared not to do it himself, to procure some other to do it, assuring the deponent, that whosoever did it, and were questioned for it, should have a pardon. This was proposed August 9, 1678.

XLVIII. That on the 9th of August in the evening in the chamber of John Keines, Jesuit, in Warwick-street, where John Fenwick and the deponent were together, there came one Rich. Heath, a lay-brother of the society, who after some discourse about the design of killing the king, did say, That he was a bastard, and did endeavour to rule by the sword. Which words the deponent did hear, and so did Keines and Fenwick, who after one another replied, The bastard should not trouble the world long.

XLIX. That on the 10th of August, N. S. the deponent did meet with John Groves in Wild street in the afternoon, and as near as the deponent can remember, it was about five o'clock, and he having made several promises to give him an account of the fire of Southwark in the year 1676, the said Groves took the deponent into Wild-house Garden, and thus began: He said that he had certain fire works made for that very purpose, and he with three Irishmen, that were his assistants, went into the Borough, and not finding an opportunity nor a fit place, went to St. Margaret's-hill,

where they found an oil-shop, which the said Groves bragged he fired. The deponent asked the said Groves how he came acquainted with the said Irishmen? He said his acquaintance with them was not much, but they were procured by Dr. Fogarty, the Irish doctor, for which the society (Richard Strange then provincial) gave them 1,000*l.* viz. 400*l.* to Groves, and 200*l.* a piece to the three Irishmen. And the said Groves told the deponent, that the society got at least 2,000*l.* by that fire, which was also told the deponent at another time by Richard Strange.

L. That on the 11th of August being Sunday, the deponent saw letters from St. Omers, bearing date August 17th, New-style, written by Father Ireland, in the name of the provincial Thomas White alias Whitebread, to John Fenwick, in which letter, by the contents thereof, there were letters to John Keines, Mr. Jennison, and Mr. Blundel, and others, which the deponent did not see, but in this to John Fenwick it was specified what diligence was used for the destruction of the duke of Ormond, and for the procuring another demonstration of zeal for the promoting the Catholic religion and interest in that kingdom, and that which arguments could not effect the sword should, to the great vexation of the Protestants there; and he intimated the great joy that he had, that there was yet great hopes, that the disaffected Scots would not lay aside their endeavours for and after the defence of their liberty and religion, and that the Catholics of Scotland had promised to use the utmost of their interest to keep up the commotions there; and the said Father Ireland had the said Fenwick exhort the Fathers to be earnest in their designs, for now was the time that the English nation was to be reduced. And furthermore ordered, in the name of the provincial, that letters should be written to all the society in England, that they made it their business to encourage the friends to braveness of mind, for that God had hitherto given them such a hopeful prospect of things, and that no opportunity on his part was or should be lost, and that they in London (if they thought it fit to communicate these things) should have a care that they did it to no more than to one at a time, lest they should be baffled in their enterprise. Which letter, when read by the deponent, the said Fenwick, to whom the letter was directed, told the deponent, that it was his duty to offer up a mass or two, that God would prosper those holy endeavours of the Fathers of the society, in promoting Catholic Religion and Faith; and told him further, That if he, the deponent lived till Christmas, he should see a good change of things, either that forty eight should be taken from the world, or the world (especially the little he was concerned in) should be taken from him: and one that was a Catholic should play such a game, as never was played since the conquest. All which the said Fenwick told the deponent in his chamber;

and the deponent asked the said Fenwick, Who this Catholic was? And Fenwick said it was the duke of York. And the deponent saith, the Ciphers 48 are put for the king.

LI. That on the said 11th of August in the evening, the deponent went to the lodgings of John Keines, where he found another Jesuit with him, whose name the deponent doth not remember, in whose presence the said John Keines told the deponent that the provincial had taken great care of keeping alive the difference betwixt the disaffected Scots and duke Lauderdale, and that the affairs in Ireland went on with great expedition, and that all means were now used to beget a difference betwixt the Dutch and the prince of Orange, and if that could be effected, there was no question to be made, but that the Protestant interest would fail in Holland, and that Forty Eight would not last long in England, for it was high time to hinder Forty-Nine from being effected: that Barley-broth-trade should grow dead, and Twelve would be cut off, and that Mum and Chocolate should be put down, and the order of the Magpies should be turned into their primitive institution and habit. Now the deponent saith, that the words [hinder Forty Nine from being effected] is an odd expression, that is amongst them used for the cutting off the king, that he may not live to be compleat forty nine years of age, and by Barley-broth, is meant the House of Commons, which shall be turned out and sit no more. And by Mum and Chocolate, is meant the Protestant Peers; which, if not destroyed, shall never have any vote in the House of Peers more, after the death of this king. And by Magpies, they understand the bishops, whose habit in parliament is black and white, which shall be changed into purple. And by Twelve, is meant the duke of Monmouth.

Whilst the said Keines with the other Jesuit entertained the deponent with these treasonable expressions, Mr. Jennison came to the said Keines, and told him, that he had lost a letter which he had received from Thomas White, the provincial of St. Omers, in a walk he took to Islington, and would give 10*l.* to any friend that would give it him, and was afraid that some inconvenience might follow, if found by some Heretic: which words put the said Keines into such a consternation, that he asked him, Whether he had a mind to ruin them all: but Jennison had the said Keines be quiet, for none could understand it; which words the deponent did likewise hear.

LII. That Mr. Keines on the 12th of August, determined to go for Windsor, in order to settle some business therein and towards the dispatching Forty-eight (which the deponent saith is by them understood the king) at Windsor, if the king should go down thither. And it was judged that the said Forty-eight would go to Windsor, to make his abode there for some weeks, but the said John Keines told the deponent, that he might chance to fall

short of his return again. These words were spoken by John Keines to the deponent in his own chamber: but the said Keines did not go down to Windsor so soon, as afterwards it appeared to the deponent.

LIII. That Smith, within mentioned, lieth in Drury Lane, at one Mr. Lowds a taylor, in Cockpit-alley in the aforesaid Lane, and is also employed to go from house to house to see how the Catholics stand affected; and Jennison said, That if the Catholics had courage enough, they might rise and cut the throats of a hundred thousand Protestants in London; which expression of the said Jennison's, the said Smith did tell the deponent, asking the deponent's opinion of the same: to which the deponent did say, That Mr. Jennison talked like a person that had more heat than light. The said Smith did at the same time tell the deponent, that the Society did give him 50*l*. per annum for his intelligence that he getteth of the affairs of the Court, and of the king's actions, words and counsels, and transmitteth the same to John Fenwick, which the said Fenwick transmitteth to St. Omers, and there it is translated into the French Tongue, and sent to Father La Chaise, the French king's confessor; which daily intelligence the deponent did daily see from the said Smith; he lodging in the same house with the deponent. And the said Smith, did at the same time tell the deponent, that he was a lay-brother, of the society of Jesus, and was of the order of the Politians, as they term it, and attended Father Blundel to Newgate, in order to covert the prisoners. All which the said Smith did tell the deponent on August 13, 1678. And likewise the said Blundel did say as much to the deponent, who hath seen the said Blundel and Smith go together to Newgate.

LIV. That one Matthew Medburn, a player in the Duke's theatre, and Mr. Penny, Mr. Mannock, Mr. Sharp, Mr. Seddon, William Smith school-master at Islington, and Mr. Edw. Everard, meeting in a club on Thursday nights, and Sunday nights, with one Jones a priest, and Kemash within mentioned, and all these are employed by the Jesuits to vilify the House of Commons, and go about the city of London to incense the people against them and against the bishops of the nation; and they deliver this treasonable position; That the Commons assembled in parliament are the devil's representatives and not the nation's. Which treasonable and detestable words, the deponent did hear in the said club (which is kept at the Pheasant in Fullers Rents near Grays Inn) in the month of August. And the deponent was ordered by the Jesuits in London, to give the said persons great respects, and in their names to thank the club for their faithfulness to them in that particular.

LV. That Mr. Jennison did on the 12th of August say and boast, that he had put several out of love to the king's interest, and would so continue, if that the king did not turn a Roman

Catholic, and if the king did not become R. C. he should not be C. R. long.

LVI. That a Packet on Aug. 29th, N. S. arrived in London from Thomas White, provincial, Mr. Stapleton, Mr. Nevil, Mr. Peters, Mr. Busby procurator, together with the masters of the Humanity-schools, to John Fenwick, in which it was specified, that the twelve Jesuits were gotten into Holland, and would use all their skill and interest to make a commotion there: and that Apple-tree Will, (which the deponent saith is meant the prince of Orange) should not be great, and that they hoped that the Fathers in London would follow their business closely there. Which letter the deponent saw and read.

LVII. That a Packet went from London, dated August 12, in which the provincial was informed by John Fenwick, and the rest, that the king was gone or going for Windsor, and that the Fathers and honest William were ready to attend the court there, as the deponent was informed by John Fenwick abovenamed.

LVIII. That on August 13, in the afternoon, about six of the clock, a sermon was preached by John Keines to twelve persons, men in poor habits, yet men of quality, as the deponent doth suppose by the whiteness of their hands; in which sermon he delivered, that Protestant and other heretical princes were *ipso facto* deposed, because such; and that it was as lawful to destroy them as an Oliver Cromwel, or any other usurper. At which Sermon the deponent was present, not designedly, but by accident.

LIX. That on the 15th of August John Keines and John Fenwick, went to a gentleman in, or about Westminster, and persuaded him to remove from his quarters, lest God should destroy him with the sinners of that city; for God had raised him and others of that society to do such things against that city, as should make a man's ears ring that should hear it. The same day towards the evening the said John Keines and John Fenwick told the deponent the said story, and laughed to think what a fright the said gentleman was put into. And they told the deponent the name of the said gentleman, but he hath forgot it.

XL. That John Keines came to the lodging of the deponent, on Saturday August 17, and said it was endeavoured to dispatch Forty-eight at Windsor, if possible (by which number the deponent saith, they mean the king) and withall told the deponent, That Mr. Howard, prior of the Benedictines, and Mr. Hitchcock sub-prior, and Mr. Skinner, Mr. Corker, and other Benedictines, had promised to assist them with 6,000*l*. in order to the design. The said Monks did then lie at or near the Wardrobe behind the Savoy; which report the deponent did believe, because the said Mr. Howard, prior of the Benedictines, and Mr. Hitchcock sub-prior, told the deponent in the morning, August 17, that they had promised such a sum, and withall that the securing of his majesty's person in his

flight from Worcester was the worst days work that ever simple Jack Huddleston did in all his life. But now it was their business to get the Stuarts out of the way: which the deponent related to John Keines, and then Keines did tell the deponent, that if he would undertake to assist in the dispatching of the king, he should be well rewarded, if not here, in heaven: and the deponent replied that he never shot off a gun in his life, and withal told Keines that he could not be guilty of such a thing for the world. And then the said Keines did farther inform the deponent, that Mr. Coniers a Benedictine monk was resolved to pursue the design of dispatching the king, which did appear to be evidently true to the deponent, because he did hear the said Coniers on the 14th of August lay a wager of 100*l.* with a gentleman not known to the deponent, in the Benedictine Convent in the Savoy: ten guineas were deposited in the hands of Hitchcock sub-prior of the Benedictines. Now the wager which Coniers did lay was, That the villain, the king, should not live to eat any more Christmas pies; and the other gentleman did lay that he would: so that the deponent saith, that Keines told him no more of the concern of Coniers, than the deponent had heard of the said Coniers before, on the 14th of August. But the deponent before he parted from Keines, asked him, what news about the town? Keines replied, that all the news about the town was, war with the French: and Keines did say that if that held true, then have at the rogues of the House of Commons, they should be remembered for all their long bills against the Catholics. The deponent replied, that (with submission) he thought the revenge proposed against them would not do the business, and therefore not a resolution consistent with a Catholic spirit, for the enterprise must be more noble: and withal the deponent urged, that he feared the death of the king would scarcely do the business and effect the design, unless his R. Highness would pardon those that did the business, and stand by them in it. To which the said Keines replied, that the duke was not the strength of their trust, for that they had another way to effect the setting up the Catholic Religion: for when they had destroyed the king, they had a list of 20,000 Catholics in London, that were substantial persons and fit for arms, that would rise in twenty four hours time and less: and if James did not comply with them, to pot he must go also.—It being late in the night the said John Keines prayed the deponent to come to him the next morning and he would have one hour's discourse with him before he went to mass, and being about to take leave of the deponent, asked him, what he meant by those words (he could not be guilty of any such thing, as to assist in dispatching the king) there being no guilt in the case; the deponent smiled and said, he could not be guilty of so much courage. Besides the deponent saith, that he told the said Keines, that it was his opinion, that it would be more safe to let sir George

Wakeman try his skill, and then the people would not apprehend it so much.

LXI. That the deponent went to the chamber of the said Keines about eight or nine in the morning, on the 18th of August, but he was gone abroad, and ordered the deponent to call upon him about four in the afternoon, and then he would have some discourse with him: And the deponent accordingly went, but met with the said Keines in the Mews, who told the deponent that he was to meet with some Fathers in Covent Garden, and there would meet them some Dominicans, and would have the deponent go along with him, and at the house where they were appointed to meet, the Doginicans were already met, viz. Mr. Vincent, provincial of the Dominicans in England, Joseph David Keimash, Mr. Dominick, Mr. Collins, Mr. Fedding, Mr. Mansel, Mr. Lumsdale (as they said) in the name of all the rest of the order in England, to consult and comply with the Fathers of the Society to propagate the Catholic Faith; and when John Keines was set, with the Fathers of the Society by him, all of a side, viz. John Keines, Father Harcourt, Father Fenwick, Father Wright, Father Blundel, the said John Keines propounded to the Dominicans to contribute to the design of killing the king, and carrying on the business of England and Scotland: The Dominicans replied by their provincial, that they were poor and not able to do much, for they had little or no money, but they would let them have their personal assistance and counsel, and would procure what interest they could, but as for money they could not part with any at all, for they were in debt, and had scarce 400*l.* in stock, and the most they could make per annum of their estate, was not above 360*l.* At which consult the deponent was to and fro, and what was more said he cannot tell, for he was sent with the proposals to the Carmelites, viz. Dr. Handson, Mr. Kimbal, Mr. Trevers, and they said that they had not one penny in stock, nor any income besides what the Spanish ambassador allowed them for assisting in his chapel.

But they by the deponent did present their service to the Fathers met together, and bid the deponent tell them, that their prayers to God and our blessed lady should not be wanting: All this was acted by order from the provincial of the society.

LXII. That the deponent went to see John Fenwick on August the 19th in the afternoon; and whilst he was with him, in came John Keines, and presently after him Mr. Blundel; and after a salutation was passed, they asked the deponent, What news? The deponent told them, he heard none but what was in the Gazette: And Blundel said, he had been with his workmen, and they wanted oil: What the meaning of this was, the deponent cannot tell, but believes it was sheep's fat: and the said Blundel would not tell the deponent his meaning when asked by him. The deponent asked

ies, When he was for Windsor? He replied, The court was scarcely settled as yet; said, that Mr. Conyers and one Anderson to go down on the morrow Aug. 20, in the morn; and if they did any thing as to the necessity in hand, it would hasten his going; and therefore as yet could not be certain. The deponent asked further, How did William do? Keines replied, that he was troubled with a sore throat, and was very unfit for service. And then the deponent asked his leave of them, it being near six of the clock in the afternoon, and went to the Monks' convent, and enquired of one Rumly a lay brother of that order, for Mr. Conyers; he said, he was not within, but not far off; however, he would be spoken withal, for he was with some of the Benedictine Fathers about business, and would go out of town to morrow betimes in the morning; and so the deponent left him, and went by a little way from the place met the said Conyers; who laughing upon the deponent, told him, That the Hill People were fools, to be upon 48 at Windsor, because he was seldom in a posture to receive their kindness: that he would see his worship, and talk with him in some other language than in Torment: The deponent asked, How? He replied, that if the shirt on his back should know, he would burn it. But if that should not take effect, no opportunity should be neglected in order to the dispatch of 48. He further told the deponent, he was in haste, and his time was short, and his business great; but told him, that honest William and Pickering should be in town, seeing the party concerned was *act ubique*, never long in one place.

LXIII. That on Wednesday the 21st of August, a consult was held by the Jesuits then in London, with certain Benedictine Monks, about three of the clock in the afternoon, concerning a packet that came from Talbot, Archbishop of Dublin, to the Father of the Society. In which they were given to understand, that four Irish Jesuits had undertaken the death of the duke of Ormond; and that on his death, the Irish were ready to rise. The deponent, when this letter he told them, that a Legate was arrived in Ireland, and had asserted the Pope's authority in that kingdom; and that the kings of England being no longer Catholics, they did cease from being concerned there; it being given to them during the good pleasure of his Majesty; and therefore did encourage the said Archbishop to contrive and use all means for the recovery of the said kingdom out of the hands of the English. And in the said letter it was mentioned, that if opportunity did not permit the said Jesuits to do their business, that when they should send one Doctor Fogarty, now lodging at Mrs. Simmonds, the widow of the late Simmonds an apothecary, in Drury-lane,

and that he and the Fathers in Ireland, together with the said Fogarty, would find out an expedient way for the death of the said duke. And furthermore he did specify, that they had procured several Irish to be made commission-officers in the garrisons in Ireland; and that he and the rest had dispensed with them to take the oaths of allegiance and supremacy. And that the Irish, who had gotten commissions by means of the archbishop, had promised to betray their interest into their hands, when the business should be ripe; and desired the Fathers to be as diligent in England, as he and the rest of the clergy were in Ireland: which letter John Keines did shew the deponent, and was read by the deponent; And Keines and Blundel gave him an account of the consult; and the said Fogarty did himself tell the deponent the same; and on the said 21st of August, did say, That he had a great interest in the court of Ireland.

LXIV. That the said Fogarty is a main agent in this hellish-plot, and hath promised, That if this bishop Talbot will make use of him, he will do all the service he can: which the deponent is ready to justify to the face of the said Fogarty; who did tell the deponent, that he and Coleman were in the consult, when Wakeman was contracted withal in order to poison the king; and said, That if he had the interest in the king, as Wakeman had, he would have undertaken it himself. And all this was told the deponent on the 21st of August, in the chamber of the said Fogarty. And furthermore, the said Fogarty then and there did tell the deponent, That he had hired four Irish ruffians, whose names he did neither tell the deponent; and these Irish ruffians were to mind the king's postures at Windsor: But the deponent telling the said Fogarty, that he heard the king was going to Portsmouth, he was wonderfully troubled at it, and said, It did very much impede their design, and nothing would be attempted so long as he was absent from Windsor.

LXV. That the lord ambassador, sir William Godolphin, at the Court of Spain, holdeth great correspondence with Hierom Swiman the Irish-jesuit (who as beforementioned, was procurator for the jesuits of the kingdom of England and Ireland) and with the Irish archbishop of Tuam now at Madrid; and is a friend in this business, as the said Swiman did inform the Society in one of July the 30th New-style; and likewise in one to the deponent, wherein he did specify, that sir William was as industrious as any man could be, to answer the expectation of the Society; and that he had but one protestant-servant then in his house, viz. the cook, and the parson (when there) made up a goodly couple: And the deponent knows, that Godolphin is a papist, and hath perverted a kinsman of his own; and the deponent knoweth, that the said Ambassador is very familiar to the said persons, the Irish jesuit at Madrid, and the

Irish archbishop of Tuam. And the deponent doth verily believe, that Mr. Hodges, sometimes chaplain to the said lord Ambassador, can, if required, testify as much; and the deponent doth further say, That when he was at Madrid, the said chaplain of the Ambassador left the employ, because of the Ambassador's being a papist; and the deponent hath seen the said Ambassador at Mass; and he hath a jesuit that comes to his house, who hath read both philosophy and divinity to the said Ambassador; of which the deponent was personally informed by the said Hierome Swiman an Irish jesuit, and by the said Irish archbishop when at Madrid: but the letters of which the deponent speaks, he saw and read them at Mrs. Sanders' house in Wild street the 22nd of August.

LXVI. That on the 22nd of August, money was sent from the society, by a servant of theirs, to supply the expences of the four Irish ruffians above-mentioned, who were gotten to Windsor on the 21st at night; and the sum so sent was 80*l.*, which the deponent saw told: And they were written to, and informed, that if more were wanting, they should have it. And they were bidden not to be frequent in one another's company, and always to profess but small acquaintance one with another. Which order and money was dispatched away by Harcourt, rector of London, in the name of the provincial and whole society.

LXVII. That the deponent went to the chamber of the said John Fenwick, who told him, that he was to go to St. Omers with some students thither, (about 10 or 11, as near as the deponent can remember :) and the said Fenwick was to attend the provincial, and was to return, as he said, within 10 or 12 days, together with Mico and the rest. And whilst the deponent was with the said Fenwick, a messenger came in, viz. John Grove, with order from Harcourt rector of London, John Keines, Richard Blundell, Mr. Jennissen, Mr. Wright, Basill Langworth, and four other jesuits that lay at Somerset-house, to pray the provincial that he would write to Leshee the French king's Confessarius, and give him to understand how well the business in Ireland stood: and that in his letters to Leshee, he should pray him to certify the French king thereof. The deponent asked Grove where those Fathers were met? Who said, they met again at Mrs. Sanders' house. And the deponent, after he had read the order or memorial, (as indeed the title was) and saw their names, about two in the afternoon, went to the house of Mrs. Sanders, where the deponent saw those Fathers, who told him of the said order, and after a short stay, took his leave of them; and by them was ordered to meet them at 4 of the clock at Mr. Keines's chamber. And at four of the clock the deponent met; where he saw Dr. Fogarty, who shewed him a letter written to Mr. Bedingfield by his own hand. And likewise the deponent saw letters from Blundell and John

Fenwick, with one from Father Ireland, at St. Omers. That of Dr. Fogarty to Mr. Bedingfield, did contain in it an account of 80 letters that were written to the jesuits in England; some of which were delivered to the Post-office in Russel-street; others to the Post-office General; others were sent by private messengers; and one to Mr. Peters a jesuit, that liveth now with sir Charles Shelly in Sussex, that married the relict of the baron of Abergavenny: In which the said Peters was ordered to meet the provincial at London, about the design in hand: which if it took not effect at Windsor speedily, then John Keines was to go to Windsor to meet with Coniers, who was designed to go out of town on the 20th of August with Mr. Anderson to 440, (which number is by them put for Windsor :) And after their business was done in Keines his chamber, the deponent left them.

LXVIII. That the deponent being to meet with Dr. Tonge on the 22nd of August, at the King's head in Grays-Inn-Lane, about six of the clock at night, accordingly went; and finding that the said doctor was not there, he walked in Grays-Inn-walks, and there he met with Coniers, who was supposed to be gone to Windsor. The deponent asked him, how it happened that he did not go his journey? he replied that his horse fell so lame, that he could scarce carry him five miles on the way, and so was forced to return; and that he himself was taken ill with the sciatica, which had given him great trouble for all the night before. The deponent was then urgent with him to tell him how he would kill the king, seeing he did laugh at the means the Fathers intended to use, viz. by shooting him. Then the said Coniers, by reason of the deponent's importunity, shewed him a dagger or knife two edged, with a very sharp point; and it was broader and broader towards the haft, which was of buckhorn, and was a foot long in the blade, and near half a foot in the haft. With this (said he) the villain shall fall to the ground, if possible. Coniers demanded of the deponent, what he thought it might cost him? the deponent said, he could not tell: Coniers replied, 10*s.* or thereabout. The deponent told him it was too dear: he replied, nothing could be too dear for the king. The deponent asked him where he bought it? Coniers replied, of the old cutler in Russel street. The deponent asked him why he would have it so long? he replied, that the villain might fall by it. The deponent asked, how? he replied, through my cloak will I stab him. The deponent asked him how he thought to escape? Coniers answered, that he doubted not but to obtain a pardon, if he were not knocked on the head upon the place. The deponent, after some discourse, went to the King's head, where he met with Dr. Tonge between six and seven of the clock.

LXIX. That the deponent did on the 22nd of August, about nine o'clock, meet with Blundell; and seeing him have a bag, asked him what he had? and he replied, Tewsbury mus-

tard-balls, a notable biting sauce, and would furnish Westminster when he had enough of them. The deponent saith, that by Tewxbury mustard-balls, we are to understand, fire-balls.

LXX. That on the 24th of August, Blundell told the deponent in Fenwick's chamber, that it would be so ordered by the society, that the catholics of England would advance the design of shortning the king's days; and bade the deponent be of good cheer, for Protestant religion was on its last legs.

That the deponent met with Blundell on August the 30th, who told him, that he must shew him what Westminster, and the houses on both sides the water, were to be done withal; and carried him to Fenwick's chamber, and there drew out of a paper case a paper, in which was the manner of firing Westminster and Wapping, Toolies-street, Barnaby-street, and St. Thomas Apostles. First for Westminster, if the wind blew northerly, then they were to begin at the next house to the Palsgrave's head tavern, where the Jesuits and their agents were to carry on the fire to the Savoy; and then the Benedictines and they to carry it on both sides to Charing-cross; and then the fire was by them and their agents to be carried to Whitehall: and near the end of the stone-gallery another company is to begin and carry it on to Kings-street and Channel-row; which was first designed to be acted in the time of the great frost, in the year 1676, but then they were not assured of the French king's assistance, of which they are now assured by Leshee, the French king's confessor. At the same time Wapping, and the ships in the river, were to be burnt: and the said fire (in case the wind blow up the river) is to begin at a place near Bugbies-hole or Limehouse-hole, and is to be carried on by four men (of whom they had made choice) to Wapping middle stairs, and then four or five more were to carry it up higher. And the deponent found himself with seven more, ordered to ply about the Armitage; and his business was to encourage the seven men committed to his care; and for his reward 1,000*l.* was therein promised him, besides 80*l.* for his former services. But the deponent saith if the wind stood contrary, they were to change the commencement of the fire. At the same time others were to have the charge in Barnaby-street, Tooley-street, and St. Thomas Apostles on the other side of the water, committed to them; and the fire was to begin at Rotherhithe when it was begun on Wapping-side: And this is to be done when the water is low, that the ships might not get off from the keys. In order to the deponent's managing that part of the fire that was to be begun about the Armitage, he was ordered to remove his lodging into Wapping as soon as order was given him, and he should have a priest come and say mass unto him in his chamber every day for a good success on the design. But the deponent saith, he did not know he was to be an agent in the business till he saw that paper; which paper was signed

by the provincial Tho. White, in the name of the whole society.

LXXII. That the deponent saith, the Pope hath issued out a Bull, a copy of which Blundell shewed the deponent on the said 30th of August; and as near as the deponent doth remember, it bears date either the month of November or December last; in which the Pope hath been pleased to order and dispose of bishoprics of England, and other dignities of the same, as followeth:

ARCHBISHOPS.

Canterbury. Cardinal Howard, with an augmentation of 40,000 crowns per annum, for the maintenance of his legantine authority.

York. Perrott, superior of the secular priests: he hath power of probats of wills, licenses for marriage, and all episcopal jurisdiction; ordination and confirmation only excepted.

BISHOPS.

London. Corker, President of the Benedictines.

Winchester. White, Provincial of the Jesuits.

Durham. Strange, last Provincial of the Jesuits.

Salisbury. Dr. Godden.

Norwich. Napper, a Franciscan friar.

Ely. Vincent, Provincial of the Dominicans.

Exeter. Wolfe, one of the Sorbon.

Peterborough. Gifford, a Dominican.

Lincoln. Sir John Warner, bart. a Jesuit, and confessor to lord Powis.

Chichester. Morgan, a Jesuit.

Bath and Wells. Dr. Armstrong, a Franciscan friar.

Carlisle. Wilmot, alias Quarterman, a secular priest.

Chester. Thimbleby, a secular priest, now canon of Cambray.

Hereford. Sir Thomas Preston, bart. a Jesuit.

Bristol. Mundson, a Dominican.

Oxon. Williams, rector of Watton, and master of the novices, a Jesuit: he is also to have the deanery of Christ-church, and is to preside over the professors of divinity in that university, and peruse their letters before they read them publicly.

St. Davids. Belson, a secular priest.

St. Asaph. Jones, a secular.

Bangor. Joseph David Keimash, a Dominican friar.

ABBOTS.

Westminster. Dr. Sheldon, a Benedictine monk.

Sion-house. Skinner, a Benedictine monk.

DEANS.

Canterbury. Betton, a Sorbonist.

St. Pauls. Leybourn a secular, and secretary to the cardinal.

Windsor. Howard, with twelve Benedictine canons.

Chichester. Morgan, a secular.

Winchester. Dr. Watkinson, President of the English college at Lisbon.

Many dignities of the church, not here mentioned, are to be supplied with Spaniards and other foreigners, because they have not clergy enough to be professors: nor are there any prebendaries or other places undisposed. And in the same Bull it was ordered, That the Jesuits should read philosophy and divinity in all great towns and places where they had colleges; but not give degrees. And whilst the English Jesuits were employed in instructing youth in humanity and philosophy, and others reading divinity, and preaching and catechising, they should be supplied with Spanish Jesuits and other foreigners, to assist them at the altar, and in the care of the colleges.

LXXIII. That the deponent on the second of September, saw a packet out of Scotland, directed to John Grove, dated August 10, 1678, in which the Fathers met at Edinburgh, from thence did tell the Fathers here, That they had not much to write, but that 8,000 Catholics were ready to rise and assist, when the business should grow hot; and would join with the disaffected Scots, when required by the Scotch Jesuits there. And in the said letter was mentioned, That one Westby was destroyed by one that was servant to Lovel the Jesuit, for endeavouring to detect the rebellion, with its authors and contrivers, to the council in Scotland.

LXXIV. That the deponent saw on the said 2nd of September, O. S. letters of the fourth N. S. from St. Omers, written and subscribed by Thomas White provincial; in which notice was given to Richard Blundel, to whom they were directed; that 12 Scotch jesuits were sent into Scotland by order from the general of the society, and have 1,000*l.* given them by Leshee the French king's confessor, to keep up the commotions in Scotland, that the French king might land an army: And that the said jesuits had instructions given them to carry themselves like Nonconformist ministers amongst the Presbyterian Scots.

LXXV. That on the 3d of September, the deponent saw a letter from the provincial at St. Omers, dated December 1, by which the deponent did perceive, that though the letter was dated from thence, yet it came not from thence, because it was Old Style; and did believe, that the said provincial was then in England. And in this letter directed to Blundel, it was specified, that the provincial was informed of some discovery that was made, at which he was somewhat surprized. But upon second thoughts, he ordered the said Blundel, not to desist the business in hand, but to write to Bedingfield not to take notice of what Keines said: it being but a conjecture of his own. And the said Blundel did on the third day write to Bedingfield, and did advise him of the provincial's thoughts concerning what had passed about that concern. And in the letter of the provincial to Blundel, it was ordered by the said provincial, That thanks should be given to Dr. Fogarty for his care in the business of Forty-eight (which is the king) and for his forwardness

to assist those in Ireland: and ordered letters to be written with all speed into Ireland to give them his thanks, and to tell them, That he would not cease to pray for their good success.

LXXVI. That the provincial came to London the third day at night; and the deponent went to the provincial's lodgings, and was ordered to wait on him the next day in the morning.

LXXVII. That the deponent went on the 4th of September in the morning, according to the aforesaid order given him over night; and when the provincial saw the deponent, he asked him, With what face he could look on him, since he had played such a treacherous trick with them? And struck the deponent three blows with his stick, and a box on the ear; and charged him with being with the king, and a minister with him whom he suspected to have informed the king of those things: because that Bedingfield had related in a letter to Blundel, that the Duke of York had related some such thing to him; and did therefore judge, that it must be the deponent that must have been drawn in by some persons to the same. But at last the provincial told the deponent, that he was willing to be reconciled to him, if he would discover what the parson was, his name and place of abode, to the end they might be secure of him; and were resolved to kill him. And in the mean time the deponent was ordered to make himself ready to go beyond the seas within 14 days, as he the provincial said. And that the deponent might not cheat them, they were to pay for his coach hire, and ordered his entertainment at Sittingburn, and in other places upon the road to Dover, and there Mr. Conyers, master of the Kings-Head, was to pay for his passage to Calnis; and the master of the Feathers in Calais to pay for his passage to St. Omers, where the deponent was to remain till farther order from the provincial, And Richard Blundel was to take care of carrying on the fire in Wapping in the deponent's room.

LXXVIII. That on the 6th of September, Mr. Pickering told the deponent, that Conyers was gone for Windsor, and he said, that after ten days stay there, he would go to the lord Brudenal's house.

LXXIX. That at night the deponent attending at the door of the provincial, and about to go in, heard White, and some others (whom the deponent supposed by their voices to be Mr. Mico, and one Mr. Poole) consulting about the disposing of a person, whom the deponent supposes to be himself. Their words were these: 'This man hath betrayed us, and therefore we will give a coach-man 20*l.* to take him up, and carry him directly to Rochester to esq. Lee's house, who lives near the town; and from thence to Dover, by some by-way, because he is acquainted at Sittingburn; and said, that if they could but get him on the other side of the water, they would torment him till he had confessed to them, who it was

'that had been with the king, and informed 'him of the business.' When the deponent heard these words, he went down the stairs with all the speed he could make, and durst not return to his lodgings that night, but lay in another place.

LXXX. That the deponent, on the 7th of September at night, returned to his lodging, where he intended not to lie; but only to take some necessaries for his use the next day; but meeting with one Grigson, a papist, at whose house he had formerly lodged, near the Red-Lion, in Drury-Lane, who told him, 'the jesuits were displeas'd with him, because he had not answer'd their expectations, in being true to them; and that the jesuits were dangerous persons, and would ruin him (the deponent) if they could.' And the said Grigson said further, 'That he had known their roguery these 12 or 14 years.' And the deponent being, through discourse, detain'd by the said Grigson, was forced to lie in his lodging in Drury-Lane; and when he was lain down in his bed, one Stratford (a person utterly unknown to the deponent, and whom he never discours'd or any way provok'd) endeavour'd to break open the house where the deponent lay; and did break down a door to get into his lodging, but was forced to retreat, because he saw himself observ'd by some of the servants of the house.—And when he saw he could not come to assassinate him (as the deponent verily believes) he reviled him, and broke several quarries of glass in a window, under the lodgings of the deponent.—And therefore being verily perswaded, that the said Stratford was employ'd by the said Jesuits to do him a mischief, made his escape thence early on Sunday morning; and did not return thither again, because the said Stratford threaten'd to kill him. Now, the house in which the deponent lay, was a school, where the within mentioned Blundell used to catechize every Sunday in the afternoon.

LXXXI. The 8th day, being Sunday, whilst that the deponent was going to attend the public worship of God in the city, a papist, who goes by the name of Nevil, as the deponent remembers, met him in the Strand, and told him: 'That there was a very great murmuring amongst the jesuits against him, because of a complaint that was made against them by some persons, of whom they suspected him to be one.' And said further; 'That the deponent must either destroy the jesuits, or the jesuits destroy the deponent.' And told him moreover; 'That the bishop of Rochester was made acquainted with the complaint, and would lead them such a dance as they never follow'd since the fool their founder appear'd in the world.' To which the deponent made no reply, suspecting this person to be a trepan; and when at parting, he asked the deponent where he lodg'd? the deponent gave him not that account as he desired.

A List of such Noblemen and Gentry, as are in this Conspiracy, whose Names occur at present.

Lord Arundel, of Wardour, lord chancellor.
Lord Powis, lord high treasurer of England.
Sir William Godolphin, lord privy seal.
Coleman, secretary of state.
Stafford, a principal secretary of state.

The Sea-Officers were named to the deponent, but their names being most French and some Irish, occur not.

MILITIA.

Lord Bellasis, lord general.
Lord Peters, lieutenant general.
Sir Francis Radcliff, major general.
John Lambert, adjutant general.
Langhorne, advocate general.
Mr. Arundel of Wardour, commissary general.

All these had their commissions or patents stamped by the general of the Jesuits Johannes Paulus d' Oliva, and sent from Rome to London; and were deliver'd to them with patents of indulgences sent also from Rome, and conditional patents stamped by the provincial Strange or White: White and his seal were taken.

COLONELS.

Who have their commissions from the provincial.

Lord Baltimore, colonel of horse; at whose lodgings 500 case of pistols, &c. were found, as is reported.

Colonel Thomas Howard, deceased, confessed he had received and accepted his commission.

Lassels, Roper, Winter or Witter, received their commissions from the deponent, and accepted them.

CAPTAINS.

Roper, son to the colonel afore-named; Radcliff, esq. Medburn, the player; Penny; Carl, Junior, and Townly, did also receive their commissions from the informant, and accepted them.

Sir George Wakeman, physician to the army.

IRISH OFFICERS.

Lord Legate, bishop of Cassel in Italy.
Peter Talbot, lord chancellor.
Richard Talbot, esq., lord general.
Viscount Mountgarret, lieutenant-general.
His office to be executed by Mr. Butler his son.
John Pipard, esq., colonel.

Note, That the major part of the colonels appointed for the English army, are also Irish.

Note also, That Mr. Pierson, secretary to the lord Powis, did in the informant's presence, promise on the behalf of his Lord, that he should raise and furnish 300 horse, and had 300 armed men, ready to rise in less than 24 hours. These words were spoken a little after the consult, to White the provincial, at Wild-House.

The said lord Powis hath also contributed 300*l.*, towards the Jesuits design.

Note, That lord Stafford is a principal officer of state, and a chief conspirator; having contributed several sums of money, not remembered by the deponent.

The Names of the Conspirators.

Benedictines.—Mr. Howard, Mr. Hitchcock, Mr. Reeves, at Doway.—Mr. Anderton, Mr. Conyers, Mr. Rumly, Mr. Corker, Mr. Skinner, Mr. Crosby; in England.

Carmelites. Dr. Handson, Mr. Trevers, Mr. Kimball; in England.

Franciscans. Dr. Armstrong, Mr. Napper.

Dominicans.—David Joseph Keimash, Mr. Dominick, Mr. Collins, Mr. Vincent, Mr. Fidding, Mr. Mansell, Mr. Lumsdale, Mr. Bingly in England.—Mr. Cooper at Rome.—Mr. Munson in England.

Jesuits.—Tho. White Provincial, Richard Strange late Provincial, Rich. Ashby alias Thimbleby, Mr. Harcourt, Mr. Jennison, Mr. Keines, Mr. Wright, Mr. Blundel, Mr. Pennington, Mr. Gray, Mr. Pool, Mr. Mico, Mr. Bennyfield, Mr. Simmons, Mr. Langworth, Mr. Morgan, Mr. Rd. Peters, Mr. Dorrington, Mr. Lacy, Mr. Vaughan, Mr. Ewry, Mr. Conyers, Jo. Peters, Mr. Wilkinson, Mr. Wolf, in England.—Sir Tho. Preston, Mr. Saunders, at Leige—Sir Jo. Warner, Mr. Williams, Mr. Eggleston, Mr. Janion, Mr. Crane, at Watton.—Sir Rob. Bret, Tho. Stapleton, Tho. Fermour, Tho. Ditchling, Edw. Hall, Mr. Cannel, Charles Peters, Mr. Nevile, Mr. Constable, Mr. Sarrbrand, Mr. Walter, Mr. Roper, at St. Omers.—

Jesuits.—Mr. Marsh at Ghent.—Mr. Blake, alias Cross, Mr. Mundford Vore, Armstrong, in Spain.—Mr. Cary at Rome.

English Jesuits in Scotland.—Mr. Lovel, Mr. Saunders, Mr. Moore.

Twelve Scotch Jesuits lately gone into Scotland whose names I know not but I know their persons.

Secular persons.—Dr. Fogarthy, Sir George Wakeman, Mr. Coleman, John Groves. Four Irish Ruffians.

Lay Brothers.—Pickering, Smith.

These fourteen secular priests I have only by information from Thomas Whitebread: Mr. Perrot, Mr. Morgan, Mr. Wilmot, Dr. Godden, Mr. Jones, senior, Mr. Jones, junior, Mr. Gerard, Mr. Henrique, Mr. Fisher, Mr. Jackson, Mr. Pinchard, Mr. Sharp, Dr. Bettam, in England.—Mr. Wolf in France at the Sorbon.

Other Persons.—Archbishop Talbot, Archbishop Lynce, Hierom Swiman, Sir William Godolphin, Lord Ambassador in Spain.

Titus Oates, Clerk, maketh Oath, That the information set down in these papers, containing eighty one articles, all written and subscribed by his own hand, are true in the whole, and every particular thereof, that is to say, that such particulars as he hath set down, to be seen, heard, done, or known by him, he knows to be true, and what he hath set down only to be heard by him, and related to him, were so heard and

related as he hath set them down, and he believes to be true.

Witness his hand, TITUS OATES.
Sept. 27, 1678.

September 27, 1678.

Sworn before me Sir Edmund-Bury Godfrey, one of his majesty's justices of the peace for the County of Middlesex.

(Witnessed) EDM. B. GODFREY.
Es. Tonge, Chr. Kirby.

The General Design of the Pope, Society of Jesus, and their confederates in this Plot, is, the reformation, that is, (in their sense) the reduction of Great Britain and Ireland, and all His Majesty's Dominions by the Sword (all other ways and means being judged by them ineffectual) to the Romish Religion and obedience.

To effect this Design;

1. The Pope hath entitled himself to the kingdoms of England and Ireland.
2. He hath sent his legate the bishop of Casal in Italy into Ireland to declare his title, and take possession of that kingdom.
3. He hath appointed Cardinal Howard his legate for England to the same purpose.
4. He hath given commission to the general of the Jesuits, and by him to White their provincial in England to issue, and they have issued out, and given commissions to captains, generals, lieutenant generals, &c. namely, the general of the Jesuits hath sent commissions from Rome to Langhorn their advocate-general for the superior officers; and White hath given commissions here in England to colonels, and inferior officers.

5. He hath by a consult of the Jesuits of this province assembled at London, condemned his majesty, and ordered him to be assassinated, &c.

6. He hath ordered, that in case the duke of York will not accept these crowns as forfeited by his brother unto the pope, as of his gift, and settle such prelates and dignitaries in the church, and such officers in commands and places civil, naval and military, as he hath commissioned as above, extirpate the protestant religion, and in order thereunto *ex post facto*, consent to the assassination of the king his brother, massacre of his protestant subjects, firing of his towns, &c. by pardoning the assassins, murderers and incendiaries, that then he be also poisoned or destroyed, after they have for some time abused his name and title to strengthen their plot, weakened and divided the kingdoms of England, Scotland and Ireland thereby in civil wars and rebellions as in his father's time, to make way for the French to seize these kingdoms, and totally ruin their infantry and naval force.

Besides this papal, there appears also another French plot or correspondence carried on by sir Ellis Layton, Mr. Coleman, and others.

More particularly, 1. The royal family of the Stuarts are condemned to be cut off root and

branch, and namely the king, duke of York and prince of Orange, because that family hath not answered their expectations, nor have they any hopes that any of them will comply fully with this their bloody design, when fully discovered to them.

1. The king's person which stands in their way they more especially, and in the first place design to remove with all possible speed, by dagger, pistol or poison.

To stab him, Conyers and Anderton Benedictine Monks, and four Irish ruffians are employed.

To shoot him, Groves and Pickering are furnished with jointed carabines.

To poison him, 5,000*l.* hath been told out, entered in their books, and affirmed to be paid to sir George Wakeman, in part of 15,000*l.* upon a contract made with him in presence of Dr. Fogarthy and Mr. Coleman.

2. The duke of York, notwithstanding they acknowledged his sincerity and affection to their religion, and the society, and his demonstration thereof by his taking Bedingfield, a Jesuit, for his confessor, they design to dispose of him as is abovesaid.

3. The prince of Orange is also condemned and designed against by name, and twelve missionaries sent into Holland have in charge to put that people in mutiny against his person and government.

4. The conquest and subduing of his majesty's dominions is designed and contrived in this manner.

1. The Conquest of Ireland and subduing it to the tyranny of the Pope and French.

1. By a general rebellion and massacre of the protestants as formerly, which they term another demonstration of zeal for the catholic faith; This to be done immediately upon the assassination of the duke of Ormond, as the watch word, for which four Jesuits are employed.

2. By the pope's nuncio sent thither, and commissions there given out by the provincial of the Irish Jesuits, &c. to a general, lieutenant general, &c.

3. By arms and money already sent, whereof 800,000 crowns by the pope.

4. By traitorous officers who are dispensed with by the archbishop of Dublin and the clergy there, to take the oaths of allegiance and supremacy, upon promise to betray their garisons and other trusts.

5. By the assistance of the French forces to be landed there, and received by 25,000 Irish ready to join them.

2. England and Scotland are to be divided, weakened, wasted and exhausted of their Infantry, Naval force and wealth, by civil war, rebellion, &c. and finally exposed to foreign force of French, &c.

To attain to this design, they apply themselves and agents:

1. By impudently questioning and denying the king's legitimation, and consequently his

present right and title to his crown, and so exposing him as a tyrant without title.

2. By confuting and weakening as much as possibly they can the obligation of the oath of allegiance and supremacy, causing them to be renounced, rendering them very odious, as blasphemous and heretical, and terrifying all of their communion from writing for them, offering money to have Berry the priest murdered for writing in favour of them.

3. By disaffecting the king's best friends at home and abroad, and subjects, against his person and government.

1. Charging him with tyranny and designs of oppressing, governing by the sword, and without parliaments, and exposing his most faithful and valiant subjects to be wasted and slain in foreign service.

2. By aspersing, deriding, exposing and declaiming against his person, councils and actions in parliament and elsewhere; and particularly scoffing at his security and confidence in them, and by this means animating and encouraging their party and assassins, especially to attempt upon his life, and to hasten his ruin.

3. By disclosing the king's councils to France, by Coleman, Smith, and others.

4. By misreporting and raising false news of his affairs, &c.

5. By disaffecting his majesty's allies, Holland, Spain, and the German emperor and princes, by false intelligence, &c.

6. By disturbing trade.

7. By seditious preachers and catechists set up, sent out, maintained, and directed what to preach in their own or other private or public conventicles and field-meetings.

8. By setting up pretended false titles to the succession of the crown, and animating different parties one against another on this or such like false pretences to arm, and put the people in blood upon the king's death.

9. By firing and plundering our best cities and towns, by Irish, French, lay-brethren and others, disguised in frocks and otherwise, directed by order under the provincial's hand how to carry on these designs.

10. By poisoning and assassinating by picked quarrels or otherwise, those whom they suppose to be ready or able to detect or otherwise obstruct their designs; of whom they kept catalogues in their books.

11. By horrid, worse than Jewish interest, transportation of trading people, stock and money, adulterating money and plate. To which ends they have bankers, brokers, merchants, goldsmiths and other traders, whom they stock and set up with money of their society, of which they boast to have 100,000*l.* in cash, &c.

12. By suborning felons condemned, by Blundel their Newgate Ordinary, through hopes of pardon or transportation, to turn papists, and then putting such as they find fit and desperate, on firing houses, plundering, and other wicked and mischievous designs.

Mr. SAMUEL ATKINS's Account of his Examination before the Committee of Lords, appointed to examine the Murder of Sir Edmundbury Godfrey. [From the MSS. of Samuel Pepys, esq. formerly Secretary to the Admiralty, which are preserved in Magdalen College, Cambridge.]

November 1st, 1678, being Friday, in the afternoon, about five o'clock, Mr. Smith, one of the king's messengers, came to Mr. Lawrenson's, at the Rhenish wine house in Westminster, (in company with Mr. Haunch, chamber-keeper to Mr. secretary Coventry) and sent from thence to Derby house, to speak with me; who being then not in the way, Mr. Walband went over, supposing he might have done what business they came about; but he presently returning, upon their telling him their business was with me, I went over to them, and after I had a very little while, Mr. Smith told me, his errand was to desire me to go with him to Mr. secretary Coventry, to which I assented most readily; and asked him, if he knew what the occasion of it was, he told me, no, and then pulled a warrant out of his pocket, for the apprehending me; but told me, he had commands from Mr. Secretary, not to tell me of it, or put it in execution, unless upon my refusal to go with him; to which I answered, There should be no occasion for the warrant, being very free to go with him; which I thereupon presently did, and coming to Mr. Secretary's office, I met Mr. Thinn, and enquired of him, if he knew the reason of Mr. Secretary's message to me? he answered, That it was grounded from a letter he had newly received from a Committee of Lords appointed to examine after the murder of sir Edmundbury Godfrey, desiring him to find out, and send to them one Samuel Atkins. After a little stay at Mr. Secretary's office, he came in, and immediately gave orders for the preparing a letter to the Committee, to accompany me thither, which was accordingly done, and I went under the care of the aforesaid messenger, to the said Committee, then sitting at the lord marquis of Winchester's house, in Lincoln's-Inn-fields; when being come, and the letter from Mr. Secretary sent in to them, I was instantly called for before them, who were the duke of Buckingham, lord Shaftsbury, lord Halifax, lord M. Winchester, lord Essex, lord bishop of London. And sir Philip Howard, attending. And the following questions were asked of, and answered by, me.

Ld. Shaftsbury. Pray, Mr. Samuel Atkins, do you know one Mr. or Capt. Charles Atkins?

Samuel Atkins. Yes, my lord.

Ld. Shaftsbury. How long have you known him?

S. Atk. About two or three years, I think.

Ld. Shaftsbury. Are you related?

S. Atk. No, my lord, only for name-sake have called cousins.

Ld. Shaftsb. Do you know, or believe, he has any reason to do you a prejudice?

S. Atk. No, my lord, I know of none, nor ever gave him occasion to have any.

Ld. Shaftsb. Did you ever tell him, upon discourse about the plot, that there was no kindness (or a want of friendship, I think it was) betwixt Mr. Pepys and sir Edmundbury Godfrey?

S. Atk. No, my lord, I never mentioned sir Edmundbury Godfrey's name to him in my whole life, upon any occasion that I remember; nor ever talked with him about the plot.

Ld. Essex. Do you know one Child?

S. Atk. No, my lord; I have heard of such a man's being concerned in the victualling of the navy, but, to my knowledge, never saw him.

Essex. No, no, this is another sort of a man, and one whom you will be found to know very well.

Atk. My lord, if upon seeing him I shall so, I shall not stick to own it.

(Hereupon, Child was called for in, and appeared to be an ordinary sort of a seafaring man.)

Essex. Now, pray, don't you know this man?

Atk. No, sir, I never saw him in my life, to my remembrance.

Essex. No! What say you, Child, don't you know him?

Child. No, my lord, I never saw him in my life.

(Then Child was presently carried out of the room, and capt. Atkins called for, who came in at another door of the room, and after mutual salutations betwixt us, the following questions were asked.)

Ld. Shaftsbury. Pray, capt. Charles Atkins, what did Mr. Samuel Atkins tell you about Mr. Pepys and sir Edmundbury Godfrey?

C. Atkins. My lord, he told me there was a difference betwixt his master and sir E. Godfrey, and I asked him, If sir E. Godfrey was a parliament man, or no? he said, No. I asked him, Whether the difference was upon an occasion of Mr. Pepys being formerly accused for a Papist in the House of Commons? and whether sir E. Godfrey might not be concerned in doing that? he answered, No; and that it was upon this occasion.

S. Atkins. My lord, I guess not at what has led capt. Atkins to say this; I assure you, I never told him in my life one word of it, never talked to him about the plot, or mentioned sir E. Godfrey's name to him (as I re-

member) on any occasion, I am sure I never made him a subject for any discourse.

Ld. Shaftsbury. Did you not ask capt. Atkins, Whether this Child was a man of courage and secrecy, and bid him send Child to Derby house, to enquire for your master, but be sure not to ask for you?

S. Atk. No, sir, not in my life, one word like it.

Capt. Atkins then answered me, You know, Mr. Atkins, this discourse was between us in the Lords room, at Derby house, in the window.—Capt. Atkins, says I, God, your conscience, and I, know it is notoriously untrue: the last time I saw you at Derby house was, as I remember, on a Monday, Mr. Beverly (late lieutenant of the Montague) being there present; which I well remember, because we all three came out of Derby house together, about one o'clock at noon, and parted in King-street; I went to dinner, and you two towards White-hall: Mr. Beverly, to whom I talked all the way going, having invited me to dine the next day at his house, being Tuesday, which I accordingly did. All that passed between us then (our stay alone together, as I believe Mr. Beverly remembers, being not half a quarter of an hour), was, That coming all three out of the little office together, into the Lords room, you pulled me to the window next the office door in the said room, and asked me to lend you a crown, to which I assented: and so going down stairs, I staid back, Mr. Beverly going down first, and pulled you by the coat, and put the crown into your hand, to prevent Beverly's observing. This passed the last time I saw you; the time before was about the middle of August, a little before Bartholomew Fair, when you came to me in the Lords Room, with one capt. Hurst (your familiar, but a stranger to me, having never but once, that I know of, seen him before,) and told me, there was a friend of capt. Hurst's (possibly you might name his name, and it might be Child, but I don't remember it) that wanted the employment of a purser in one of the king's ships, and had applied himself to capt. Hurst, to do him what kindness he could, and offered him ten guineas to be assistant to him. Now, says capt. Atkins to me, Pray let's bring the man to you, and upon your promising to do him what kindness you can, capt. Hurst and I shall have the ten guineas, and you know five guineas, says he, will do very well for me, this Bartholomew-fair-time. I then asked you, What the man was? Whether he had been at sea? and whether he had good certificates? you answered me, You could not tell, being a stranger to you, but you would bring him to speak with me: I then bid you so to do; and told you, all I could, or had in my power to do for him, was to lay his papers before the secretary, who, if he appeared a good man, would lay them, with others, before the king, when occasion offered: you replied then, That that was enough, and all you expected. After this, I called you (as I know you remember) to

the other side of the room, from capt. Hurst, and told you my desires were, you should not engage me in this matter, to get the poor man's money, for that I would not do it for any consideration: You said, indeed, you would not, nor would have me do any thing, untill I had seen and discoursed with the man. You then called to capt. Hurst, and invited him and me to come to dinner on the morrow, to your lodging; to which I agreed, and asked you where you lodged; you said, you had told me oft enough, but I had never been so kind to come to see you, and then told me where it was, which I have now forgot, but think it was in or near Wild-street. After this discourse, you know, we parted, and you and capt. Hurst left me at Derby-house, and expected me, I suppose, at dinner next day; but, I, indeed, desirous to be quit of any thing that appeared so ill as the business proposed to me, came not to you, nor ever heard more of it from yourself, or capt. Hurst; nor saw you again, till the aforesaid 21st of October. This, capt. Atkins, you know, is all true; I appeal to yourself if it be not.

Ld. Shaftsb. Come, come, Mr. Atkins, you are a seeming hopeful young man, and, for aught I see, a very ingenious one: capt. Atkins has sworn this positively against you, to whom he bears no prejudice, or malice, but has acknowledged several obligations from you; and to tell you truly, I do not think he has wit enough to invent such a lye; be ingenious priuice, with us, and confess what you said.

S. Atk. I assure your lordship, upon my faith, which I am ready to bind with my oath, if you please, I never said one word in all my life like it.

Ld. Shaftsb. Indeed, we believe capt. Atkins to be a man that has loved wise and women, and been a debauched man; but whence would you have us to think him to be a rascal?

S. Atk. Why, my lord, I would offer this, and submit to you to judge how far a coward is to be reckoned so.—And hereupon, I related at large the surrendering of the king's ship basely to the Turks, and being now a prisoner. To which no answer was given.

Ld. Shaftsb. Pray, Mr. Atkins, what religion are you off?

S. Atk. A Protestant, sir, and my whole family ever so.

Ld. Shaftsb. Did you ever receive the sacrament, or take the oaths?

S. Atk. No, sir; but was under an intension to do it on Sunday next.

Ld. Essex. It is indeed time.

Ld. Shaftsb. Now, I am sure you won't do it; you can't forgive capt. Atkins?

S. Atk. Yes, my lord, I assure you I can, and do; and to shew it to you, I also remit to him the money he owes me, about fifty shillings, and am ready to receive the sacrament with a clean conscience. I confess I have not done it; as not thinking myself obliged by any

employment I had to do it, and many thousands of my age, (good Protestants) will be found not to have done it.

Ld. *Shaftsb.* How long have you lived with Mr. Pepys?

S. *Atk.* Four years last August.

Ld. *Shaftsb.* How old are you?

S. *Atk.* Twenty one years, the 49th of that month.

Ld. *Shaftsb.* Where did you live before you came to Mr. Pepys?

S. *Atk.* I lived, Sir, formerly with commissioner Middleton.

Lord *Shaftsb.* Then I am sure he was a Protestant; but now you are brought into business, and have access to St. James's; 'tis to be feared you may be otherwise, for we are apt to suspect people inclining to the sea.

S. *Atk.* I never had temptation from within, or without, to alter my religion, and hope in God I never shall.—Then the Duke of Buckingham came from the other side of the room towards me, and said,

D. of *Buck.* Well, Mr. Atkins; I never saw you before that I remember; but I swear you are an ingenious man: I see (putting his finger to his forehead) the great workings of your brain, and would gladly, for your own sake, have you declare to us what you know of this matter.

S. *Atk.* My Lord, I can never say otherwise than I have, (I thank your Lordship for your good thoughts of me) nor do I know one word more.

And to this effect, one after another, did most of the Lords of the Committee urge me to say somewhat, repeating very often their good opinion of me, and their great sorrow for my obstinacy, which would bring the prejudice to myself, while by a confession I could not injure, but advantage myself; Captain Atkins joining with them to urge me to it, with promises of making my fortune thereby: I still gave the same answer, declaring my utter inability to say one word, and avowing I never had to captain Atkins.

Hereupon we were both ordered to withdraw, which we did, and after a little stay without, they called me again to them, and my lord *Shaftsbury* began.

Ld. *Shafts.* Mr. Atkins, truly we are, every Lord of this Committee, very sorry to be thus plain with you, but here being so positive an oath against you, we cannot answer to the parliament the doing less than committing you to Newgate.

S. *Atk.* What your lordships please; if you send me to be hanged, I can say no more, or otherwise.

Then they again repeated their advices severally to me, to declare what I knew, and greatly pitied me in the ill fortune which otherwise would attend me. I as often repeated what I said at first, of my knowing nothing of what captain Atkins had sworn. At last sir

Philip Howard (who stood by all this while) told me, I could not have lived so long time in an office of business, but I must know the laws of this nation to be such as would bring me under severe punishment, if I should be found to conceal this matter, which I am well persuaded you must know of, (says he,) for that I have so seriously and very strictly examined capt. Atkins about it, and I know he would not tell me a lye. Besides he has no reason to do it towards you, and being a gentleman, son of sir Jonathan Atkins, my nephew, otherwise well related, and won't want an estate of his father (if he pleases) when he dies, he can't be thought to attempt to do it against any body. I told him, I very well knew the laws of this nation in that point, and as well knew the laws of God to be such as would draw a worse punishment upon my head, if I could tell a lye, or invent any thing to the prejudice of another man, and that I must do, if I said any thing in this matter different from what I have done.

After this, I was ordered to withdraw, and captain Richardson keeper of Newgate, (who waited without with the aforesaid Child,) called in, and a Warrant delivered to him in the following words, for his keeping me in his custody, viz.

“You are herewith to receive the body of Mr, Samuel Atkins, for suspicion of Felony, in concealing the murder of sir Edmund-bury Godfrey, and him safely to keep, until he shall be thence delivered by due course of law: and for so doing, this shall be your warrant sufficient. Given under our hands and seals this 1st day of Nov. 1678.”

(Signed) BUCKINGHAM,
WINCHESTER,
P. HOWARD.

“To the keeper of the gaol of Newgate, for the City of London, and County of Middlesex.”

Memorandum. The Deposition made by captain Atkins against me, from whence these Examinations proceeded, and my being committed to prison was grounded, hereafter follows in the express words, thereof, as they were reported by the Committee to the House of Lords, and entered in their book, viz.

November 12, 1678.

“The Examination of Charles Atkins, esq. taken upon oath before me, one of his Majesty's Justices of the Peace for the County of Middlesex, and liberty of Westminster, this 1st of November, 1678.

“Saith, That in Derby-House, being in discourse with Samuel Atkins, [clerk to Mr. Pepys, Secretary of the Admiralty] the said Samuel did say, That sir Edmund-bury Godfrey had very much vilified his master, and that if he lived long would be the ruin of him; upon which the said Samuel did ask this Examinant whether he did think Child to be a man of courage and secrecy; to which this Examinant

did reply, That the said Child had been at sea, and had behaved himself very well, as he had been informed: upon which the said Samuel bid this examinant send the said Child to his master, Mr. Pepys, but not to him the said Samuel, for that he would not be seen to know any thing of it. This examinant did endeavour to find out the said Child, but did not meet with him till the day after this discourse had happened betwixt him and Samuel Atkins, at the Three Tobacco-pipes in Holbourn, where this examinant did tell Child, that Secretary Pepys would speak with him; and the next time that this examinant did see the said Child, (after that he had given him that direction) he the said Child, did endeavour to engage the said examinant to join with him in the murder of a man. The particulars of which, this examinant hath declared before the king and council, Wednesday last past.

“Taken before me, one of his majesty's Justices of the Peace for the County and Liberty above-mentioned. P. HOWARD.”

Upon this Deposition was grounded the afore-recited Warrant for my commitment, by virtue whereof, capt. Richardson carried me presently to prison, where I remained in a room of his own house, without having liberty to write, to see, or speak with any body, till Wednesday the 6th of November, 1678, when having well ruminated on what had past at my late Examination, I desired capt. Richardson to acquaint the lords of the Committee, that at their next meeting I would pray to be brought before them; which he promised to do, and did; and on the said 6th of November, 1678, being Wednesday, I was carried by him to the Committee, consisting of the same Lords as before, then sitting at the Lord Privy-Seal's chamber by the Parliament-House, where the following questions were asked:

Ld. Halifax. Well, Mr. Atkins, we hope you have considered of this business, and are ready to give us some light in it.

S. Atk. My lord, I have well indeed considered of it, and I hope am prepared to shew your lordships that nothing is to be expected from me, and so my liberty will not be denied me.

Ld. Halifax. Nay then Mr. Atkins, if you come to that, you must stay till we send for capt. Atkins, if it be aught you would say against him, or his accusation.

S. Atk. My lord, I hope I shall confute him in several circumstances, which I have better considered, and clear to you my innocence.

Ld. Shaftsb. Why, Mr. Atkins, captain Atkins declares to us he has much more against you, and several other circumstances, by which, he says, you'll appear the worst man living.

S. Atkins. My lord, if you please, I desire he may be sent for.

Upon this I was ordered to withdraw, and captain Atkins being sent for to sir Philip Howard's in Scotland-Yard, came in about half an hour, and meeting me in the passage

leading up the stairs to the chamber where the council was sitting, I observed his countenance altered extremely, and took notice of it to him: He passed by me, and went up the stairs, and staying there in expectation of being called, I went to him with my keeper, (Mr. Lion,) and discoursing together I asked him what had induced him to bring this mischief upon me, and whether he designed to ruin me, that had preserved him from it? He answered, No, no, not he. I further asked him, if I looked like one that had done or knew of any murder; and whether he thought in his conscience I did? No, faith, says he, I dare swear for you for that matter, only these words past between us; Well, says I, you say it was between us, so it is impossible to contradict your oath; but God, you and I know, it was not so. Hereupon, after some little other discourse, he went down stairs, and I following him, asked him over again, Whether he had any thing more to say against me, or whether indeed he thought I knew any thing of the murder? To which he answered (as before,) no, not he, he did not think it; of which I desired Mr. Lion to take notice; and presently after this the lords called for us both in, and said;

Ld. Shaftsb. Well, Mr. Atkins, What is it you have to say?

S. Atkins. I desire, my lords, if you please, that captain Atkins's information may be read to me, or else I shall repair to my memory to repeat it.

Lords. Do, repair to your memory.

Then I recited it as it is herein before mentioned, and answered to it thus: As to his positive oath, my lords, about the difference he says I told him was between sir E. Godfrey and Mr. Pepys, that can admit of no more than my denying it; and being ready and desirous, if you please, to swear to the truth of what I say. As to his question, Whether sir E. Godfrey was a parliament man or not, and the answer he says I should give him, that he was not, I am also as ready to depose, that to this minute I don't know whether he was so or no, and so could not make him that answer. Then as to the rise of the difference to be, as he calls it, 'upon this occasion,' the last time I saw capt. Atkins (before sir E. Godfrey's death) was about the middle of August, a little before Bartholomew fair time, and long enough before any discovery was made of the Plot; so pray what means he by 'upon this occasion?' Besides, I assure your lordships, I did not know till after the death of sir E. Godfrey, that he took any depositions, or was otherwise instrumental in discovering any part of the plot; and the first notice I had of it, was from my fellow clerk, Mr. Walbank, who told me (I think on the Monday) in this manner of it: Poor sir E. Godfrey! Why, says I, pray what's the matter with him? Why, they say, replies he, he is murdered by the Papists, having been gone from his house, and not heard of this day or two: Lord, says I, why should he be murdered, a very good and honest gentleman? I

but (says Walbank) the reason of it was, as it is said, because he was the first that took the Depositions, &c. about the Plot. Upon this the Lords all cried out, they did not believe it was possible I that lived in an office of so great business, should not hear of his taking the Depositions till after his death, since they were done, (I think they said a month before the king went to Newmarket) and carried to the council. I answered, and industriously asserted, what was really truth, that I did not. But my lords, says I, pray suppose (what is so utterly in fact untrue) I had said to capt. Atkins what he swears I did; I must now declare I had no ground to say so; and that it must arise purely from my own invention, and if I invented a lye, I must suffer for doing it; And pray, my lords, what will come on't? Nay, says my lord Shaftsbury, leave us to make the use of it; do you but confess it, you shall be safe, and we'll apply it. My lord, says I, I can't do it; I hope I never shall tell a lye to any man's prejudice, though I meet with ne'er so great danger. My lord Shaftsbury answered, Indeed, Mr. Atkins, ten then may swear against you, and for aught I know all helpe you; And are you innocent? You're most unfortunate, and captain Atkins the greatest villain in the world. Pray, look one another in the face, (so we gazed very earnestly) and my lord Shaftsbury went on, speaking to captain Atkins: Come, captain Atkins, confess truly and ingenuously, Have you belyed Mr. Atkins, or no? May be you may have mistaken; pray consider it, and remember the injury you'll do this young man, if this be not true: You won't have more to answer for before God, if you should waste and destroy an emperor and his country, than you'll have if you wrongfully ruin him, who is in himself as (every man is) a little emperor. After this sort my lord Shaftsbury pressed capt. Atkins very home, and while he was doing so, and we looking stedfastly upon each other, captain Atkins's countenance changed very white, which I taking notice of, and observing to the lords, my lord marquis of Winchester cried, Where, where? I don't see it. My lord says I, I humbly conceive it is very apparent: I, I, where? says his lordship, turning his head away: the other lords said nothing. Then captain Atkins having a tobacco-pipe rolling about in his fingers upon the table, threw it down, and said, Why should I say so, my lords, if he had not told me? Thereupon I grew indeed angry, and pressed very hotly for my liberty, avowing my innocence with several protestations; but all was too little. My lord bishop of London (whom I took to be more tender hearted than the rest) I applied myself to, and talked about my religion, and of my having never gone to mass, nor ever known, or seen any priest in my life that I remembered. He at last was pleased to say, Truly I believe you are a protestant; but this oath is greatly against you and he still affirms it positively. My lord, says I, it is very strange I should invent such a lye to tell captain Atkins of my

master; I hope I shall not be found to faithless a servant, when I never in my whole life heard Mr. Pepys mention sir E. Godfrey's name, that I remember, but upon an occasion (which I mentioned at large) of our going before him about some money lost from Mr. Pepys's house; and then they appeared as great friends as could be, and shewed mutually very great expressions of kindness and respect. It is strange I should ask him of the courage and secrecy of a man I never saw; and as strange to bid him send him to my master, who will, I suppose, declare whether I ever spoke to him about any such man, as I am sure I did not, nor could. At last, my lord, says I, I avow to you, Mr. Pepys never in his life committed any secret to me of any kind, nor ever mentioned, upon any occasion one word about sir E. Godfrey. And this your lordship would easily believe, if you knew how tottering I stand in his opinion, having been once parted from him, and at this moment I believe remain under his ill apprehension. Why, says my lord bishop, are you given to drink, or debauchery? No, my lord, I thank God not. But Mr. Pepys is very severe in his house, and for the least absence from it without his knowledge, will discard any of his servants from his favour: I coming very young to him, was inclined, through boyishness, to too much desire of ease and liberty, and so begot and continued his severity towards me.

While I was thus talking to my lord of London, captain Atkins was discoursing to the other lords, at the other end of the room; and my lord Shaftsbury observing what we both said, turned towards me, and stopped my going on: Why, you talk, Mr. Atkins, (says my lord) it will be made appear, that you are the greatest favourite he has; you read all his letters, read to him by night; and what say you, if I can prove, from the servants in your own house, that you are reputed a papist? My lord, says I to that, if your lordship can do that, or any man in the world, prove I am in the least wise, or ever was inclined that way, I'll be contented to be hanged, without saying a word more. My lord Shaftsbury goes then on again; Pray, Mr. Atkins, What books did you use to read to Mr. Pepys? My lord, says I, I have not lately read any to him; but formerly I have read the Bible, and other good books; sometimes History, other times Divinity. Never any Popish books? No, never in my life, I assure your lordship, never any; but, as I remember, one book of an English divine's, about their error in their doctrine of transubstantiation, but the book's name I forget.

After all this, I found I must return to prison; I offered bail, which being denied me, I prayed liberty, that my sister might come to see me; which was granted she should for one time, the keeper of the prison to be by while she stayed with me; and after that I withdrew, and captain Atkins together; he, as soon as I was out, stepped in to the Lords again, and (as I understood afterwards) desired the keeper might have orders for his coming to me, upon

his suggestion to the lords, he would bring me to confess, which was granted he should; and so I was recarried to prison, and remained there till Friday the 8th of November, without having heard from, or seen any person, saving my sister who came to me the day before, and remained in the room half a quarter of an hour, with captain Richardson.

Friday morning, being the 8th of November, captain Atkins comes up to my chamber (with captain Richardson, in whose house I still remained), and finding me in bed, throws open the curtain, and bids me good-morrow; I seeing who it was, leaped out of the bed, and returning his good-morrow, called to captain Richardson, who was going down stairs again, and prayed I might speak a word with him, and so taking him into the next room, For God's sake, says I to him, don't leave me alone with this man, who having already sworn falsely against me, will, for aught I know, go back to the lords, and swear any thing more he lists; capt. Richardson answered, The lords had directed he must, and he must be alone with you: Oh! pray, says I, suffer it not, for I vow I won't speak one word to him alone. Notwithstanding this, captain Richardson pulled to the door; and left us both together, promising to return immediately. The door was not sooner shut, and captain Richardson gone than captain Atkins wringing his hands, and crying with the tears upon his face, said to me, Oh! Mr. Atkins, we are both undone! How undone? says I, Oh Lord! says he, there's a man come to town last night, lay at Mr. secretary Williamson's, was examined two hours by the king, and has sworn positively against you, That you were, or were to have been at the murder of sir E. Godfrey; I am not, says he, very perfect whether. Well, says I, God bless him: But how pray, are you undone? It is I am so, if this be true: Says he, (still crying, and laying his hand upon his breast) I am undone. That's true indeed, says I, your guilt upon your conscience, in bringing this falsely upon me, has undone you to the purpose. But, pray, who is this man? Do you know him? I don't know his name, says he, nor ever saw him but once before, and that was in Essex buildings; the woman of the house being arrested where we were, he and I rescued her from the bailiffs. It is strange, says I, he should come and enquire for you and find you out as soon as ever he came to town, and you not know him, nor ever saw him but once. It is so says he; he came to me, to enquire about a gentleman we had business with before he went out of town. Well, I answered, I can't help what he has done; I thank you for all this, but won't doubt, if twenty swear against me, I shall appear innocent, I am sure I shall, to the last moment of my life. Pray, Mr. Atkins, says he, consider of it: My uncle, Phil. Howard, bid me come to you, to tell you of it, and pray confess, before it is too late, and you repent you did not; there is nothing can hurt you, but your fortune may be made by it; and what need you care for your

master? Pray, says I, why don't you as well ask me to forego my salvation? a thousand deaths shall not extort a lye from me; and you know I can say nothing: pray, consider you of it, and repair the injury you have done me, as well as you can. In the middle of our discourse, walking together in the room, he suddenly stood still, and turning toward me, You did not tell me, says he, your master had a house at Roan, in France, neither, did you? Oh strange! says I; why, have you sworn that too? no, not I, replied he, what should I swear it for? but you told me so. At which, being greatly surprised and amazed, I could not presently say any thing to him, and while I was silent he goes on. And you know, says he, you desired me to impeach your master about this murder, because he should keep it off from the duke of York. Oh! Lord of Heaven! says I, and have you deposed that too? no, not I, says he; what should I swear it for? but you know you told me so. Mr. Atkins, says I, you are the greatest villain, and worst man in the world, and I am sure you will repent the cursed mischief you have endeavoured to do me, by your damned false invention and oaths: and while I was, after this sort, talking to him, he interrupted me, bidding me consider of it against the afternoon, when he said I should be called for before the Committee of Lords; and so took his leave, and went away.

In the afternoon of the said Friday, being the 8th of November, 1678, capt. Richardson sent for me out of my chamber, and causing a pair of irons to be put upon my legs, he searched me, and took what papers he found in my pockets, into his possession, and immediately carried me to the Committee of the same Lords as before at my lord privy-seal's chamber, adjoining to the parliament-house; where having waited without some time, the Lords sent for me into the room, where I found a person standing on the far side of the table, with a blackish perriwig, and a campaign coat (and whom I since understand to be Mr. Bedlow); he came toward me at my coming in, looked me earnestly in the face, saluted me, which I returned, and so went again to the further side of the table; and these questions were asked and thus answered:

Ld. Shaftsbury. Mr. Atkins, do you know this gentleman?

S. Atkins. No, my lord, I don't know I ever saw him in my life.

Bedlow. I believe, Sir, I have seen you somewhere, I think, but cannot tell where: I don't, indeed, remember your face.

D. of Buckingham. Is this the man, Mr. Bedlow? (Pointing to me.)

Bedlow. My lord, I can't swear this is he; 'twas a young man, and he told me his name was Atkins, a clerk, belonging to Derby-House, but I cannot swear this is the same person.

Ld. London. Where were you, Mr. Atkins, on Monday the 14th of Oct. last, between nine and ten at night?

S. Atk. I can't well remember, my lord, but I suppose at home, for I am seldom out at that time of night.

Ld. London. Were you in the Pall-Mall, or that way, that you remember?

S. Atk. No, my lord, I believe verily not.

[Hereupon, the gentleman, Mr. Bedlow, was ordered to withdraw; and my lord Shaftsbury calling me to him, said to me;]

Ld. Shaftsbury. Mr. Atkins, if you are innocent, you're the most unfortunate wretch living. Pray attend to what I say; I assure you, 'tis good news for you. There remains but one way in the world to save thy life, and that I would have you make use of; and you may do it without injury to yourself, if you will: Confess all you know, and make a discovery of this matter, and your life shall be saved.

S. Atk. My lord, had I any to make; could I say one word, more or less, in this matter; or were I at all guilty in any part of it, I suppose you'll please to believe, that the horror of my conscience, and the punishment I should justly expect from God and man, for such offence, would lead me to make an ingenuous confession, to save my own life, that I might thereby get time to repent, and beg forgiveness from God Almighty. But as I am innocent in every part of what is said about me, I hope you'll neither advise or desire me to go about to wrong my conscience, or stain my soul, to endeavour to live a few moments in this world, and to avoid death for a time, which will, at length, overtake every body. I assure your lordships, my prayers are to God Almighty, to give me grace and strength to go through to the last, and rather suffer a thousand deaths, than as much as tell a solemn lie to the prejudice of any person.

Ld. Shaftsb. Then I tell you what, Mr. Atkins, and that I ne'er said to you before; since you are so gallant, I assure you, you'll either be hanged or knighted; if the Papists rise and cut our throats, you'll be knighted; if not, you'll be hanged. Here's first what you said to Mr. Atkins, and then this gentleman's oath, which, though not positive, yet with such circumstances against you, as I doubt, whether a jury in this case, won't find you guilty; besides other collateral circumstances there may be: And another thing there is, that there are several others, well known to this Mr. Bedlow, to have been concerned in it.

D. Buck. And are here in the House, in custody.

Ld. Shaftsb. And if one of those swear you were in it, all the world cannot save you.

S. Atk. My lord, my prayers are and shall be, that one person may but be detected who was really in the murder, and I am sure I shall be acquitted; and I cannot suffer, but from the thing's being misplaced.

D. Buck. Oh, he'll confess nothing, he expects a pardon.

Ld. Shaftsb. I'll secure him from that, I warrant you; there's three hundred to one.

S. Atk. My lord, I expect no pardon, but desire death when I am found to deserve it: I have nothing to trust to but my innocence, next to the goodness and justice of God Almighty, to whom I commit myself.

[After this I was directed to withdraw, and the Keeper ordered to carry me back to prison, which was accordingly done.]

Memorandum, The Deposition made this 8th of November, 1678, before the Lords of this Committee, by Mr. Bedlow, concerning this matter, hereafter follows in the express words thereof; as they were reported by the said Committee to the House of Lords, and entered in their Journal Book, viz.

“*Die Martis, 12 Novembris, 1678.*”

“The EXAMINATIONS taken, November the 8th, 1678, at the Committee of Lords, for enquiring into the Murder of Sir Edmund-bury Godfrey, were read as follows:

“William Bedlow being sworn in the Lords' House, was called in and examined, saith on his oath, That this examinant being treated with by Mr. Leefaire and Mr. Welch, who are two Jesuits, about the beginning of Oct. last, they offered him a reward of 4,000*l.* if he would be one of the four or six that should kill a man that was a great obstacle of their design; he, this deponent, promised to be one to do it, upon their giving him notice. Afterwards (*viz.* the Friday before sir Edmund-bury Godfrey was missing) Mr. Leefaire met him, this deponent, about four o'clock, in Grays-Inn-Walks, and appointed to meet him again in the same place about four o'clock the next day, to do that business: That upon taking the Sacrament to do it, he, this deponent, should have the money paid to himself, or any friend he should name; but he, this deponent, not liking the design, failed of meeting him: The next night after, being Sunday, he met Mr. Leefaire, again, by accident, in Fleet-street, going into Red-lion-court, about five o'clock; Mr. Leefaire then desired him not to fail of meeting him the next night (being Monday) about the same hour, at the Palsgrave's-head tavern, that he might employ this deponent in some other special business; but this deponent came rarer than the time appointed, and so failed to meet him there, but left word at the bar of that tavern, that he would meet him at eight o'clock in the cloister of Somers-house court; and accordingly, betwixt eight and nine o'clock, this deponent came thither and found Leefaire walking there, who said, he had stayed almost an hour for him; they passed the time there about half an hour, Leefaire telling him how much the Church of Rome and the Pope were obliged to him, and what rewards he should have for his secrecy and fidelity to them.

“Afterwards he desired him, this deponent, to walk into the midst of the court, where he, the said Leefaire, might say something to this deponent, and nobody over-hear it; and there

he told this deponent, that the person whom he was to kill, was killed, and his body then lay in Somerset-House; and that he did believe, that the excuse which this deponent had made him before, for not coming to the murdering of him, was real; and that he knew his fidelity was such, that he should have half the reward, if he would help to carry the body to a place where they had chose to lay him.

“ This deponent asked to know first, Who were to be the persons that were to go with him? Leefaire told him, they were himself, Mr. Walsh, the lord Bellasis's gentleman, Mr. Atkins (Pepys's clerk,) and one that he had often seen in the queen's chapel: Then Leefaire brought this deponent by the hand, in the dark, through the entry, unto that room, which he shewed the duke of Monmouth, and knocked softly with his finger at the door; and when it was opened, Leefaire led this deponent into it, which was dark; Leefaire then pulled a dark lanthorn from under his coat, and shewed a small light in the room, where this deponent saw the persons he before-mentioned: of whom this deponent knew Leefaire, Mr. Walsh, and the other person he saw often in the chapel; and the other two owned themselves, the one to be the lord Bellasis's servant, and the other to be Mr. Atkins (Pepys's Clerk).

“ And this deponent saith, That they did agree to carry the body in a chair to the corner of Clarendon-house, and there to put him in a coach, to carry him to the place where he was found. Having concluded this, they agreed to carry him off at eleven of the clock the same night: Then some of them turning about, they throwed off a cloak that lay upon him, and shewed this deponent the body. This deponent asked them, who it was? They told him, it was an old man, that belonged to a person of quality, who had taken some examinations tending to the discovery of their design. This deponent asked them further, Why it was not proper to kill the person of quality himself? They answered, No; for this man had the examinations in his own custody; and that their design of getting him thither, was to get him to send for them by fair means or foul, and then they did not question, but the next examination would be so contrary to that, that it should, upon their trials, appear two several stories; and when they should be brought to trial, upon the latter examination, they would produce the former to contradict it, that it might seem partiality to the world: Upon which reasons, this deponent seemed satisfied, and asked them, Where they killed him? they told him at Somerset-house. Then this deponent begged pardon for half an hour, and he would wait upon them again; but this deponent went away, and came no more; But the next day, about eleven of the clock, this deponent met Leefaire by accident, crossing Lincoln's-Inn-Fields, and then they went together unto the Greyhound tavern in Fleet-street; Leefaire (putting his cane up to his nose) said, He had something to say to him: Leefaire then charged this de-

ponent for not coming the last night, according to his promise; this deponent told him, He was not willing to come, because he knew the person: Leefaire then asked him, Who it was? This deponent told him, it was justice Godfrey; Leefaire then acknowledged it was so, and he was willing to dispense with this deponent's not coming, if he would assure him of his fidelity.

“ This deponent then asked Leefaire, How they got him thither, and where they found him? Leefaire told him, That himself, Walsh, and the lord Bellasis's gentleman, met him by the King's-Head inn, in the Strand, crossing the street, in the evening, before five of the clock, and told him that if he would please to go with them so far as Strand-Bridge, they would bring him to a place near St. Clement's church, where there were a company met, principal plotters of that design, against the king, and there (if he would go presently) he might take them, and the principal of their papers; he answered, That he thought it not convenient to go himself, but he would send his warrant; and the constable: They told him, If he did make so much delay, they might be gone; and that if he would walk up so far as Strand-Bridge, one of them would go and call a constable to him there, and he might give his order presently: Whereupon, he walked with them so far as Somerset-house, and there they made a halt: They told him, it would be less observed, if he walked in Somerset-house, than to stand in the street; and thereupon, two of them walked in with him, and the other pretended to go call a constable; and when they had walked a turn or two in the court, two more persons came forth, and shewed him into a room, and when they had him secure there, they held a pistol to him, threatening, if he made a noise, they would shoot him, but if he would answer their expectations, they would do him no harm. Then they asked him to send for those examinations he had taken about those that were committed; he answered, They were not in his power, for he had sent them to Whitehall. Upon that, and refusing to answer other questions, they seized him, and stifled him with a pillow, and so they thought he had been dead; but coming into the room some time after, they found him struggling, and then they strangled him with a long cravat (which cravat this deponent saw the Monday, at night, about his neck). Then this deponent asked Leefaire, Why they carried him into the fields? Or what they designed by it? He answered, that they had made a wound in his body, and laid his sword by him, that it should seem he had killed himself; and that they did not question, that the discovery of killing him would ever have been made; neither did they doubt, but that their design would have its effect. Then Leefaire told this deponent, That as he would be answerable to Christ Jesus, at the last day, he should be faithful to the cause; and so they parted.

“ The same time, Mr. Atkins being called in

before Mr. Bedlow, Mr. Bedlow saith, That he is, in all things, very like the person he saw in the room with sir Edmundbury Godfrey's dead body; and he doth verily believe it was him that owned himself to be Pepys's clerk; but because he never saw him before that time, he cannot positively swear, it, but he doth verily believe him to be that man."

On Friday, the aforesaid 8th of Nov. in the evening, I was brought back to prison in irons (which I kept on till the Monday following, but were then, by the favour of captain Richardson, taken off), and remained that night in capt. Richardson's house; the next day was removed thence into the Press-yard, where I continued kept very close till Monday the 11th of November, 1678.

Monday morning being the 11th of Nov. capt. Atkins made me a second visit, and saluting me with the good-morrow, asked if I had been before the Lords? I told him, Yes I was, last Friday, and saw a person there I knew not, nor he me, nor did he swear any thing (that I knew) against me: Ay, says he, but he has since that, in the House of Commons, on Saturday night, swore, that you were at Somerset-house when sir E. Godfrey's body lay there; and my uncle, Phil. Howard, bid me come to you, to tell you of it, that you may consider, and confess what you know before it be too late. After which sort he earnestly seemed to press me to say somewhat. I told him, My last breath (if I suffer) must and shall agree with what I said at first, of my being unable to say any thing of this whole matter, more than the unborn child. Pray, capt. Atkins, who is this man? Why, says he, his name is Bedlow. Who is he, pray? Is he a man of any good fame? No, answered he, I think of no very good fame. Do you know him, pray? Yes, says he, I have known him three or four months, but have no very great acquaintance with him (observe, he at first told me, he never saw him but once). Pugh, says he, I do not believe a word he says; they are all shams; he is certainly hired by those that did it. Do you think so, says I? Ay, ay, says he, trouble not yourself about it. And so he took his leave of me; telling me, he believed I should be called again before the Lords.

The next day morning, being Tuesday the 12th of November, four gentlemen of the House of Commons came to me to Newgate (two of whom only I knew, Mr. Sacheverel, and col. Birch), and having sent for me to them in capt. Richardson's house, they told me the occasion of their coming, and in what a desperate posture my life lay in, so as there seemed no possibility to expect the saving of it, but by pouring myself out in a confession to them: and so aggravated the murder, with its (indeed) ill circumstances, and asked me, what I had to say? I first told them, I heartily wished I could give them any light in it, I should deem myself very happy, to be so enabled to ac-

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quit myself of the duty I owe to his majesty, and the interest of this nation; but I was purely innocent, and whatever hath been sworn against me (let it be more or less, and by more or fewer hands), might with the same truth be sworn against a man who never was on this side York: So desiring their patience, I briefly run over to them what had happened at my several examinations before the Lords. They asked me then, Whether I knew one Welch, or Prichard? I told them, No, nor ever heard of them that I remembered. Whether I remembered no circumstance on Monday about a dark lantern? My answer was, No; that I had not seen one, as I remembered, many months. Whether I was not then at Somerset-house? I said, No: neither then, nor any time before or since in my whole life. How, and where, I spent my time the Saturday, Sunday, and Monday, the 12, 13th and 14 of October? I answered, I could not presently tell, but could soon recollect. They told me, I did not seem to have so ill a memory. I said, I supposed most would be found to have as ill to answer such a question. Some other little questions they asked, and I made true answers to, though not to their satisfaction; and so they left me, asking me over again, just at their departure, very seriously, if I knew any thing of the murder, or the plot? I avowed with several asseverations, I did not.

Upon my returning to my chamber, I considered, and brought to my perfect remembrance, how I had passed almost every hour of those aforesaid three days: And so I remained there without hearing from, seeing or speaking with any creature, till Thursday the 21st of November, 1678.

On Tuesday morning, being the 19th of November (in the interval), my keeper comes to me, and bidding me rise, and dress myself, which I accordingly did, he puts a great pair of irons on my leg, and told me, I must go then to have my trial at the King's-bench bar. Lord, says I, I wonder I had no forehand notice of it; I have no witnesses ready: He answered, He could not help it, but go I must. After I had been ready about an hour, expecting their calling me down, my keeper comes up, and informs me of the mistake, the order being for one Mr. Staley to be brought up, and not me; but that on the morrow I should prepare to go. The morrow comes, I hear nothing of it.

The following day, being Thursday the 21st of November, my sister and a gentleman of my acquaintance (having relation to the law) Mr. Hayes, came to see me with a keeper, by order from my Lord-Chief-Justice, and brought me ill news of what Bedlow had sworn against me, and the little hopes there remained of saving my life; but that they were doing all they could for me, towards the making my defence, and so shewed me a paper they had drawn up (by collections they had made from several people in whose company I spent the time), of

my passing the 12th 13th and 14th days of October, which agreed with what I had done in my memory in substance, and different in no essential circumstance: And so they left me, bidding me consider what I had to say, for that my trial would be in a day or two.

Accordingly, having the use of pen, ink and paper given me, by order from my Lord-Chief-Justice, I set upon drawing up in writing, what I had to say in my defence, and did it in a little time as well as I could. In the mean while a grand jury was summoned, and a bill found against me at the King's bench, for a principal in the murder of sir Edmondbury Godfrey; but (upon what occasion I know not) my trial came not on this term. Presently, after it was over, capt. Richardson sent for, and took from me (by order I suppose) all the papers I had drawn up preparatory to my trial, and carried them (I have great reason to believe) before the committee of Lords, who, I suppose, from thence having learnt who were the witnesses I should have to prove the exence of the evening on Monday the 14th of October, the very time Mr. Bedlow accuses me to have been at Somerset-house; found out where they lived, sent for them by a messenger to attend them, and in Mr. Bedlow's presence, and the king's counsel, having put them all to their oaths, examined them distinctly and crossly, about all they could say relating to me, and my passing my time, where, and with whom, on the said Monday night.

I remained in prison till the following term (two sessions of gaol-delivery having passed), beginning the 23d of Jan. 1679, and desisted from moving in court for my trial, till the latter end of it, being in expectation I should be brought to it without trouble or charge to myself.

But finding no intention, or preparation for it from the Attorney-General (whom we consulted in it, and desired not to oppose us in our motion in court for a trial), on Thursday, being the 6th of February, a motion was made for my being tried before the end of the term, and granted; the king's counsel declaring their being ready on his part: pursuant thereto, another motion was made, the next day, being Friday, for my being brought to the bar on the morrow after to be arraigned, in order to my trial.

Accordingly on Saturday morning, I was brought thither and arraigned upon a bill found against me, just before my coming to the bar, as accessory to the murder of sir E. Godfrey: After the Indictment was read, I asked the court when my trial would come on? And was answered by my Lord-Chief-Justice, that he thought on Monday: Then I moved his

lordship and the court, that a rule of court might be granted for the bringing in thither against my trial, such papers as were in the hands of either of the secretaries of state, clerk of the House of Lords, or recorder of the city of London, relating to my affair; and had for answer, that it was not proper to grant a rule of court for it; but they doubted not, if I had the Attorney-General attended about it, he would see I should receive all that was just and fit for me therein. After I had done speaking, my Lord-Chief-Justice asked, if I was, or ever had been a papist? To which answering No, I was directed to withdraw, and so went back to prison.

On Monday morning I was brought again to the Beneh-bar, in company with Mr. Hill, Green, and Berry, three persons accused by Mr. Prance, as actors in the murder of sir E. Godfrey, and after a short stay there, the court directed I should be carried aside, till the trials of those three persons were over; and accordingly I was so. About three of the clock in the afternoon, their trials being ended, I was called to the bar, and my Lord-Chief-Justice told me, their trials had taken them up so much time, and it being so near the end of the term, I must be content to stay till the sessions for mine; and so asked me if I had bail ready, and my liberty should be had thereupon. I answered, I was better prepared for my trial, than with bail, and insisting upon the hardship I had endured in a long imprisonment, earnestly begged for my trial. His lordship told me, their business could not all be put off for mine, and I must be contented. I thereupon was proposing bail to the court, while captain Lloyd, one of my witnesses, stood up and told them, he was, and had been detained a considerable time in town to give evidence for me, and could not possibly be in England at the next sessions; which I also backed with assurances, that it was his and several other of my witnesses cases, whose occasions indispensably called them away: Upon which, the morrow-morning, very early, was appointed for my trial, and so I was directed to withdraw, and went back to prison.

On the morrow-morning, being Tuesday, the 11th day of February, 1679, I was accordingly brought to the bar, and arraigned with two Indictments, one as principal, the other as accessory to the murder of sir Edmondbury Godfrey, and after a very full hearing of the Evidence against me, and being suffered to say very little of the great deal of matter I had to urge in my defence, the jury (who were all gentlemen of quality of the county of Middlesex), without stirring from the bar, gave their verdict in, Not Guilty: And I was thereupon immediately ordered to be discharged.

The Examination of Captain WILLIAM BEDLOW, deceased, relating to the Popish Plot; taken in his last Sickness, by Sir Francis North, Chief Justice of the Court of Common-Pleas. Together with the Narrative of Sir Francis North, at the Council-Board: and the Letter of Sir Francis North, to Mr. Secretary Jenkins, relating to this Examination. Perused and signed to be printed, according to the Order of the House of Commons, by me, William Williams, Speaker.*

The EXAMINATION of Capt. WILLIAM BEDLOW, taken upon oath before the Lord Chief Justice North, at Bristol, on Monday the 16th of August, 1680.

The Examinant saith, That the duke of York hath been so far engaged in the Plot, as he hath seen by Letters in Cardinal Barbarini's secretary's Study, that no part that hath been proved against any man already, that hath suffered, but that to the full those letters have made him guilty of it; all but what tended to the king's death. And at Rome I asked Father Anderton, and Father Lodge, two Jesuits, What would the duke do with his brother when he was king? and they answered me, They would find a means for that; they would give him no trouble about it. Then I told them, I believed the duke loved his brother so well, he would suffer no violence to be done to him: they said, No; if the duke could be brought to that, as he had been religiously to every thing else, they might do their work; their other business was ready; and they might do it presently. But they knew they could not bring him to that point, but they would take care for that themselves. They had not begun with him, to leave him in such scruples as that, but they would set him into his throne, and there he should reign blind-fold three or four days; for they had settled some, they should pitch the action upon, should clear their party, and then should fly upon them with the sword of revenge.

And this Examinant doth further add, That the queen is not, to this examinant's knowledge, nor by any thing that he could ever find out, any way concerned in the murder of the king, but barely by her letters consenting and promising to contribute what money she could to the introducing the Catholic Religion. Nay, it was a great while, and it made her weep, before she could be brought to that.

Aug. 16, 1680, WILLIAM BEDLOW.
(Coram Me,) FRA. NORTH.

* Bedlow having been so remarkable a witness in the several Trials of the Popish Plot, it is thought proper to insert here what he declared upon oath to the Lord Chief Justice North, four days before his death, (which happened August 20, 1680.

The NARRATIVE of sir FRANCIS NORTH, Lord Chief Justice of the Common-Pleas, at the Council Board.

At my first coming to Mr. Rumsey's house, where I was to lodge at Bristol, upon Monday the 16th day of August in the afternoon, being the first day of the assizes, sir John Knight came to me, and said, That Mr. Bedlow lay dangerously ill of a fever, and had little hopes of life; and desired that I would give him a visit, that he might impart something of great consequence to me before his death. I told him, I would give him a visit that night after supper, about nine o'clock, if I might be satisfied of two things: 1. That there was no infection in his distemper: 2. That the time would not be inconvenient, but he might discourse to me without prejudice to his condition. After a little while, two physicians came to me, and assured me, that there was no danger of infection, and that the time I had appointed would be most proper; for commonly he took his repose in the afternoon, and at nine o'clock he would, in all probability, be refreshed, and fit to discourse with me. Thereupon, I declared my resolution of going, and desired the company of the two sheriffs, and my brother, Roger North, and appointed my marshal, William Janes, to go with me. As we were upon the way, Mr. Crossman, a minister in that city, told me, Mr. Bedlow had desired him to come with me to him: I said, It was very well, and I should be glad of his company. Whereupon we went all together: and being come into the room where Mr. Bedlow lay, I saluted him, and said, I was extreme sorry to find him so ill; I came to visit him upon his own desires: I did imagine he had something to impart to me, as a privy-counsellor, and therefore if he thought fit, the company might withdraw. He told me, that needed not yet, for he had much to say which was proper for the company to hear: and having saluted the Sheriffs, and Mr. Crossman, he discoursed to this purpose.

That he looked upon himself as a dying man, and found within himself that he could not last long, but must shortly appear before the Lord of Hosts, to give an account of all his actions. And because many persons had made it their business to baffle and deride the Plot, he did, for the satisfaction of the world, there declare upon the faith of a dying man, and as he hoped

for'salvation, That whatever he had testified concerning the plot, was true; and that he had wronged no man by his testimony, but had testified rather under than over what was truth; that he had nothing lay upon his conscience upon that account; that he should appear cheerfully before the Lord of Hosts, which he did verily believe he must do in a short time. He said, he had many witnesses to produce, who would make the plot as clear as the sun; and he had other things to discover, which were of great importance to the king and the country. Hereupon, he making some pause, I told him, The plot was so evidently made out that no reasonable man, no protestant; I was sure, could doubt of the truth of it: but he ought not to have concealed any thing that concerned the king so highly; he ought to discover his whole knowledge in matters of treason, that traitors may be apprehended and secured, who otherwise may have opportunity to execute their treasonable designs. To this he replied, That much of that which he had not discovered, was to corroborate his former testimony, that he had concealed nothing that was absolutely necessary to the king's preservation; that he thought it not fit to accuse more persons, till he had ended with those whom he had already accused. He expressed great grief and trouble at the condition of his poor king and country, (so he termed them) whom he knew at that time to be in imminent danger from the Jesuits, who had resolved the king's death; and he was sure they would spare him no longer than he continued to be kind to them. He said, he was privy to their consultations at Salamanca and Valladolid, where they used to observe the favourable conjuncture they had to introduce their religion into England; which consisted in their having a head, who must be set up, whatever came of it; and, if they let slip that opportunity, they should never have such another; for without a head, they could do nothing. He said further he knew the wickedness and resolution of the Jesuits; they struck at nothing to compass their own ends: they had attempted to poison him, but he had escaped.

When he had finished this discourse, (which lasted about a quarter of an hour) I asked him, if the company should now withdraw? And he said, Yes; and ordered his nurses to go out, and only his wife to stay to tend him: and thereupon, all went out, saving Mrs. Bedlow, myself, and my servant William James. Then I told him, I thought it convenient that what he should then say unto me, should be upon oath: he replied, that it was necessary it should be so; and called for a bible; but my servant having brought a book with him, administered the oath to him; and laying his paper upon a chair by the bedside, writ down his deposition as he delivered it.

When Mr. Bedlow had concluded, and said, That was all he had to inform me of, I took the paper, and read it over distinctly to him,

and he approved it, and signed it, laying the paper upon a pillow.

I thought it not fit, considering his condition, to perplex him with questions, but took his information as he offered it, and held no discourse with him when the company was withdrawn, but concerning the true setting down his depositions; and when he seemed to be weary, to mind him of taking cordials, which his wife reached to him as he desired them.

The next day, Mr. Bedlow's brother came to me, and told me, that his brother desired a copy of the Deposition he made before me: but I told him I had well considered it, and could not give him a copy without the king's leave; but I would move the king in it, and if he gave leave, I would take care to send one to him; and Mr. Bedlow's brother then told me, That it was his brother's desire that I should represent to his majesty his condition, and that his sickness was very chargeable; and move his majesty on his behalf for some supply of money for his subsistence; which I promised to do.

This is all that I can recollect of what passed upon this occasion, and is in substance true; but the very words, or the order, I cannot positively remember. FRA. NORTH.

To the Right Honourable Sir Lyonell Jenkins, one of his Majesty's Principal Secretaries of State.

"Sir; I always intended to write from hence, to pay my thanks for the whole circuit, which was much more pleasant, by your favour of holding correspondence with me. But now I have business of some importance: for as soon as I came to this city, I received a message from Mr. Bedlow, by air John Knight, that he being very ill, and, in the judgment of physicians, in great danger of death, had some business of great moment to impart to me. I knowing the man, and the season, would not refuse the pains to give him a visit; and being satisfied by physicians that there was no contagious quality in his distemper (though I did not much fear it), I went well accompanied; and in the presence of the company he declared, That whatever he had said relating to the Plot was true; and he being a dying man, had nothing lay upon his conscience upon that score. The greatest trouble he had was the danger the king (whom he loved above all things) was in from the Papists at this time, who would attempt his life as soon as ever he should cease to be kind to them; and many other expressions of this kind. After this, I asked, if he had any thing to impart to me in private: he told me, he had. And having made the company withdraw, all but my clerk, I took the enclosed examination upon oath. You may imagine I was not curious to perplex him with questions: I took it just as he deli-

vered it. Of what signification it will be, I leave to wiser men. I think my duty is to send it to you, that you may inform his majesty of the truth. I shall wait upon you at Windsor, upon Sunday next, to receive your further

commands. Your most humble and faithful servant,
"FRA. NORTH."

"Ten at night. The copy enclosed is hastily and ill taken. I shall bring the original with me."

The following curious Passages are published by Sir JOHN DALRYMPLE, as Extracts from Lord Keeper North's MS.

Extract from the Lord Keeper North's manuscript Memorandum.

"1st. The parliament was to meet the beginning of October, and the discovery was in the middle of August, time enough to blazon it abroad to irritate the minds of men, but not to do any thing for the trial.

"2d. Dr. Tong (the first mover) would not have it exposed so much as to the council before the parliament met, but said it was fitter for the parliament: and when it was objected that Papists might kill the king in the meantime, he said, care should be taken, for that they should be watched so narrowly they should not be able to do it.

"3d. There was but one witness before the parliament met, which is not sufficient in treasons, so the council could not order a trial, though they might commit, except in case of Coleman, whose letters were produced under his own hand.

"4th. No lord or person of quality, but only inferior people and priests were named before the parliament met, that the court might not be startled, but might engage in the prosecution of those despicable people, for whom no man would have regret, but they might be bountifully thanked for it by the House of Commons.

"5th. To make the ministers of state less suspicious and more easy, they were courted, not only in the applications of the discoverers, but in the discovery, viz. that the Papists intended to kill the king, duke of Lauderdale, duke of Ormond, &c. which made the earl of Danby not only give way to the prosecution of it, but to press the belief of it in all places and to all persons; and the Duke of York was not only acquitted of all design, but was to be killed himself if he did not comply.

"In the month of September it (the plot) had its full course, and so much countenance at Whitehall, that a great many thought it a court stratagem to pretend fears and dangers to keep up the army that had been raised, and was by act of parliament to be disbanded before 20th August.

"And within a little time, by the murder and exposing the body of sir Ed. Bury Godfrey in the middle of October, the violence and rage of the people was grown to that height against the Papists, that no reason could be heard, but every foolish story against them passed for gospel; and when all force seemed bent against

the papists, it was reported sir Ed. Bury Godfrey was seen last at Somerset-House, and by others at Arundale-House (the Duke of Norfolk's;) it was also whispered that he was seen at the Cockpit (the earl of Danby's) and threatened by the earl of Danby.

"It was cunningly done to spread these reports, that it might be known what these persons could say in defence of themselves, and that they might be ready (especially the Cockpit and Arundale-House) to toss the fire from one to the other. It was wondered at, that the Lord Treasurer was so soon glanced at, who had been so earnest to follow the discovery. But afterward he was found to be forward in it, to carry it to the parliament for fear he should be struck at directly, and it should find belief. It is certain the Church of England men joined in this cry as heartily as any else, for they were always most eager against Popery, although they had friendship with the Cavalier Papists, and many considering men seeing an army kept up against an act of parliament were really zealous that fetters might be put upon the king, and therefore would join in shewing any discontent.

"By this means the outcry was so very great that the court, who thought before, they might play with the plot, now saw plainly it would be no easy matter to get rid of it, and therefore it was thought the best way to shew a confidence in this loyal House of Commons, who would be sure to take notice of it themselves; and therefore the king mentioned it in his speech at the opening of the session of parliament as a plot of the Jesuits, but with that caution that he would leave it to law, and give no opinion of it for fear of saying too little or too much.

"And therefore it was an unpardonable folly to give force to a design that was formed and conducted by the opposite party, as this must be concluded to be."

Extract First.

"They let none know the bottom of the accusation; for then no further use can be made of it; but they let the people press to have it searched to the bottom; and then they can manage and improve it as they please, and bring whom they will into the snare; and at first the discovery must not be made to the ministers of state, but to some justice of peace, mayor of a great city, as London, Bristol, &c. or committees of parliament for the better

noise, and that it may not be suppressed, and they take care to have some forensical sciolist, a lawyer, who shall manage and direct the accusations, so as they may be skillful and agree with the rules of law."

Extract Second.

"Godfrey's murder they shall contrive as a stratagem of mischief: so that if there be two or three adverse parties, they may all be thought guilty. Then will they, to avoid the odium, quarrel, and lay it upon one another; and laying it upon which the faction pleaseth, they shall have the help of all the rest."

Extract Third.

"They took advantage of Popery by a good law to exclude the Popish Lords out of parliament, and by working upon some great families to come into the Church of England, as Norfolk's heir, Shrewsbury, Cardigan's heir, Lumley, &c."

Extract Fourth.

"And the anti-court party was very great even in the court itself: and all trimmers then were called the party volant in the House of Commons, and now declared and voted against the court in all things; and no wonder; for the king's affairs were looked upon at home as very declining, and most men thought if there should break out any troubles, it might endanger the monarchy; and men were willing to be safe at least, if they could not find their account in a change."

Extract Fifth.

"The most loyal pretence that ever was thought of was that of the king's safety: who could be sure of that but such as had him in possession? which directly tends to his destruction."

Extract Sixth.

"The republicans applied themselves to all methods of sedition, and were so open in it that they had public councils for carrying it on, as the King's Head club in Fleet-street was, (though I doubt not but they had cabals of a more dark and dangerous nature) and many coffee-houses both in city and country where they vented news and libels, and proceeded with that success, that in 24 hours they could entirely possess the city with what reports they pleased, and in less than a week spread it all over the kingdom.

"They could give out that any man who was averse to them was a Papist: and when the king did any thing pleasing to the people, they would discredit it before it could be known; and could put what colour they pleased upon foreign affairs, which they did by the help of foreign ministers. They had correspondents in all parts of the kingdom of the most active and greatest credit, so that when any members of parliament were to be chosen, they could disgrace every loyal person, and recommend whom they pleased; and they were most industrious in parliament time, when by having divers members in their councils, and those who were not members being always near the bars possessing the world with news they had

fitted for the time, and arguing the questions that were in debate in the House, and taking care that all the members should be minded to repair to their seats before the question should be put.

"By these means they influenced elections not only in the country, but upon disputes in the house. And they came to that boldness, that when this parliament could not be prevailed upon to pass an act of comprehension, or to undermine the crown, they possessed the people that it was time to dissolve them, that the minds of the people were changed since their choice, and that they were a grievance; and were about to have grand juries to represent it to the judges at the assizes; but that was not ventured for fear when the parliament sat it should be punished. But upon a prorogation of more than a twelvemonth, they attempted to have the parliament declare themselves dissolved; but the members would not drive that nail into their own flesh, which set the game a little back.

"I thought it wonderful that when these things were visible, the House should suffer such a combination of men to sit openly, who made it their business not only to traduce the king's government but even their actions: and I concluded that when they were so negligent of their own frontiers, and did not preserve their credit by destroying these enemies of it, they could not be long lasting, and so it happened. For they (that is the major part of them) joined in thwarting the king in every thing he designed, and in laying obloquies upon his government to that degree that it was not to be borne; and at last procured their dissolution to their great surprize, who thought the king would never have made so bold a step, and to the great joy of the King's Head club, who fell to work with all diligence to model the next House of Commons by their correspondencies in the country."

Extract Seventh.

"That incredible fictions should ever pass in courts of justice, without the courts making just observations upon them, was extraordinary: but care was taken to terrify the judges with shouts and acclamations on the one part, and hissings on the other, by which they were to be persuaded, not only of the sense of the people, but of their violent desires, whereby they might imagine dangers to themselves if they should appear to check the stream."

* From the following reports of the Trials, it may be doubted whether the judges required the influence of these shouts, acclamations, and hissings, to stimulate them to severity against the prisoners whom they tried. Mr. Hargrave, in his very learned unpublished "Opinion and Argument, as to the right of Lady Anastasia Stafford Howard to the new Barony of Stafford," [See Lord Stafford's Case, *infra*], has inserted a review of the History of the Popish Plot, with some important remarks upon it.

Extract Eighth.

“Tradesmen, if such* are not considerable, they are not worth notice; but if one be he who hath great power by the many that live under him, and having grown in riches by outwitting other men, and arrived at the government of the place, as mayor, alderman,

&c. the faction may easily persuade him that the world is best governed that way, which makes him a commonwealth's-man: when they have their ends, and raised a force, they may fright him into any thing; for know that he is the most insolent fool and cowardly knave that is in nature.”

243. The Trial of WILLIAM STAYLEY, Goldsmith, at the King's-Bench, for High Treason: 30 CHARLES II. A. D. 1678.*

MR. STAYLEY being accused of High-Treason on the 20th day of November, 1678, brought from Newgate, and arraigned at the King's-bench bar, and the next day was brought to the same place to receive his trial; where being come, and the jury impannelled, the court told the prisoner, that if he would challenge any of the jury he must speak unto them as they came to the book to be sworn, and before they were sworn; the prisoner challenging none, the jury were sworn, &c. viz. Sir Philip Matthews, sir Reginald Foster, sir John Kirke, sir John Cutler, sir Richard Blake, John Bisfield, esq. Simon Middleton, esq. Thomas Cross, esq. Henry Johnson, esq. Charles Umfrevil, esq. Thomas Eglesfield, esq. William Bohee, esq.

The Indictment read: You stand indicted by the name of William Stayley, &c.

Crier. If any can give evidence on the behalf of our sovereign lord the king against William Stayley, let him come forth, and he shall be heard.

Sir Creswell Levins. The Prisoner stands indicted as not having the fear of God before his eyes, being led by the instigation of the devil, not minding his allegiance, but traitorously endeavouring the death and destruction of our sovereign lord the king, he did on November the 14th, in the 30th year of the king, falsely, wickedly, and traitorously compass, imagine, devise, and invent the killing the king; that he did maliciously contrive, (I say) the death of our lord the king of England.

To this he hath pleaded Not Guilty. You are to try whether he be Guilty or not.

King's Serjeant, (Maynard.) The offence is as great as can be, and will be proved as clear as can be. Call the Witnesses to prove the offence.

* From a pamphlet, entitled, “The Trial of William Stayley, Goldsmith, for speaking Treasonable Words against his most sacred majesty: and upon full Evidence found Guilty of High-Treason, and received Sentence accordingly on Thursday November 21, 1678. London, Printed for Robert Pawlet at the Bible in Chancery-Laue near Fleet street, 1678.”

November 20, 1678. I do appoint Robert Pawlet to print the Trial of William Stayley: and that no other presume to print the same.

‘WILLIAM SCROGGS.’

Att. Gen. Sir William Jones. It would be fitting, before we enter upon the evidence, to give some account, why (among so many offenders, some of them of greater quality than William Stayley) we chose first to bring this man to trial. It is not unknown to any man that lives in England, what discoveries there have been of horrid and damnable designs against the king's person and the Protestant Religion. There are a sort of men in the world, that endeavour what they can to cry down this Discovery, as that it was altogether supposititious, and a fable. It is true, some are so charitable as to think the Roman Catholics in England do promote the Roman Catholic Religion, but the design against the king's person is a fiction. But they shall do well to take warning by the trial of this man, and imprisonment of so many offenders, as that even since this Discovery made, some have had this treasonable mind, and traitorous attempt against the king, and said those words for which in the Indictment he is charged with. This prisoner by religion, is a Roman Catholic, he calls himself so; in plain English he is a Papiat; and finding that since this plot was discovered, his trading decayed, (being one that dealt in monies) he was one of their party, he grew enraged their money was called so fast for, being in the company of one Fromante, a foreigner, at a cook's shop, and were considering of matters of trade, this man was complaining his money was so fast called in for. Taking notice of the Discovery of the Plot, (being a very great well-wisher to it) entered into a great passion, and spake these words of the king: ‘That he was the greatest Heretic in the world, that he was a great Rogue;’ for his part, holding up his hand, clapped it then upon his heart, and said ‘I will with this hand kill him.’ These words were heard by the gentlemen that were present spoken in French.†

William Castars, a Witness.

Att. Gen. Acquaint the court and jury what you know of any word spoken by the prisoner about killing the king.

Witness. So far as I know, or can give an account, it was about eleven of the clock in the day, on the 14th day of this month he called for a pot of ale, and a slice of roast beef,

† See East's Pleas of the Crown, c. 2. sec. 58.

which when it was called for, his landlord said it should be brought him; there was another Frenchman with Stayley, a stranger to me: they discoursed together in French, and Stayley then said twice over, 'The king was a grand Heretic,' making this demonstration with his hand upon his breast, and stamp't five or six times with his foot in great fury. The old man, Fromante, his friend, said, 'That the king of England was a tormentor of the people of God;' and he answered again in a great fury, 'He is a great heretic, and the greatest rogue in the world; there is the heart, and here is the hand that would kill him; and the king and parliament think all is over, but the rogues are mistaken.'

Sir *William Scroggs*,* L. C. J. Did you know Stayley?

Witness. No, my Lord, I had never seen him before.

L. C. J. What did you do upon this?

Witness. I did not know what to do, being ignorant of the laws of the country. I thought it was a great matter, and being sensible that Stayley was gone out, I caused one to attend him, and came to his father's shop, and looked up and down, and the next day I apprehended him.

L. C. J. Are you sure (looking upon the prisoner) that was the man?

Witness. Yes.

L. C. J. Did you see him when he spake the words?

Witness. Yes, I saw him; there was no more distance betwixt the two doors, but just as far as that gentleman and me; his face was straight towards us.

L. C. J. Were you in the same room?

Witness. No, but just over against it; the doors were open.

L. C. J. How near were you to him?

Witness. Seven or eight foot from the place where I was and where he was. He was standing at one door, and I at the other. In French the words were spoken, he making a demonstration, stamping with his foot, 'I would kill him myself' (which the prisoner would have evaded by saying, the words signify I would kill myself.) The prisoner farther said, that the king and parliament thought all was over, but the rogues were beguiled and deceived.

Alexander Southerland, Witness.

Mr. Southerland, tell what you heard the prisoner at the bar say. Were you there?

Witness. Yes.

L. C. J. Which was nearest to him, he or you?

Witness. He was nearest to him, and I just by the gentleman. He said afterwards when a word or two past betwixt them, 'The rogues are deceived, they think the business is done, but

* See his character as drawn by Burnet in his account of the Popish Plot, *ante*, p. 1406, and see more of him in a note to the case of Gallier for Treason, June 11, 1680, *post*.

'they are deceived.' The old man said, 'That the king of England was a tormentor of the people of God;' the prisoner answered, 'The king of England is the greatest heretic, and the greatest rogue in the world, and the king and parliament think their business is done, but the rogues are mistaken.'

Prisoner. I said (replied the prisoner:) I would kill myself.

L. C. J. Would you kill yourself because you said the king was a heretic? You acknowledge yourself to be a Roman catholic.

Pris. And in that faith I intend to die.

Att. Gen. Here the prisoner doth not deny but he said, 'The king of England was a great heretic;' and can we imagine him to be in such a passion, that he would kill himself? Whether that be a natural conclusion from the premises, I must submit to—

L. C. J. Did you see Mr. Stayley perfectly? Was the door open?

Witness. I saw him perfectly.

L. C. J. Did you know him before?

Wit. I never saw his face before.

L. C. J. Did you write the words presently?

Wit. I writ them down presently, as God shall be my witness.

L. C. J. Look upon the writing, is it your hand?

Wit. It is; and it was written the 14th of November, 1678. About 11 o'clock they came to the Black-Lion in King street, and called for a quart of ale, and a slice of roast beef, and it was answered, it should presently be had. William Stayley said, having struck on his breast, and stamping with his foot five or six times, 'I myself would do it.'

L. C. J. Did you write all that is in the paper at that time?

Wit. I writ the words in French, as I heard them from him, then formed it as to the person and the time, afterwards, when I was gone.

L. C. J. Who told you it: was Stayley the goldsmith?

Wit. We asked the man of the house; and we found he went to his father's house in Covent Garden; we asked his father's name, and his name; and that is the very man.

L. C. J. He confesseth he was in this place at that time with the old man. He acknowledged that he spoke some words, but denied he spake those: That he was the man he doth not deny.

Att. Gen. The third man is a gentleman that does not understand the French tongue, he was in the company of these two men at that time; we do not call him to prove the words, because he doth not understand the language.

L. C. J. There is no mistake of the person, the prisoner doth not deny he was there. Call the third person to know what he hath to say.

Philip Garret, third Witness.

Wit. All that I can say is this: my captain, William Castars, came to me in a great

passion, and said, I cannot suffer this, I will run upon him, I cannot be quiet.

L. C. J. What are those words be charged upon him?

Wit. That he would kill the king himself: It is impossible to suffer it, I will run out for a constable presently, this cannot be suffered. I went to enquire for his name; the answer was, he was a goldsmith, and that his name was Stayley. That is the very man (looking upon him) I saw there, and heard him speak.

L. C. J. What were the first words?

Wit. [The French words were spoken twice, in English thus] The king is a grand heretic. [French again] 'Here is the hand, 'here is the heart, I would kill him myself.'

L. C. J. What can you say to this?

Prisoner. My lord, the matter of fact happened thus: This gentleman, Mr. Southerland, comes over to me in the morning when I was in the shop, and said, Sir, I would have a red button like this; I said I had none of that nature, you had better go to the Exchange. I would have one of a true stone. You must (I reply'd) go to the jewellers, I have none of these. Upon that I dismissed him; he went over, and presently comes, in a quarter of an hour after, and tells me, that an honourable person would speak with me: I went over; this gentleman makes a great many ceremonies to me, and reads me this paper; he tells me, you see what the gentleman reads, I would advise you to look to it, then taking me aside by the window, I said, I do not understand you, I am innocent you must not put any bubble upon me; with that the captain runs out in a fury, and fetcheth a constable, and carrieth me to the Gate-house. I was in my shop the day before, which very day I did intend to go out with a friend into the country, and prepared myself accordingly; and Mr. Fromante, the old man that was the friend of mine, comes saying to me, the constable would have something, I know not what it is, come and assist me; I went to the place, the constable told me, that I was to appear by ten of the clock; with that comes the old man out. I owed him a little money, I went and paid him the money which I owed him. I came back, and sat down by the window out of sight, the old man sat at the right hand, so we sat and discoursed as innocently, as I thought, and (before God) as ever I spake in my life.

L. C. J. What discourse had you?

Pris. Our chief discourse was about the materials of our business, and it was about the king of France his usurpation over his subjects, and the happiness of our little people, the commonalty of England, that was indeed usually our discourse when we met together.

L. C. J. Did you say you would kill the king of France? and that he was a great heretic? Do you believe the king of France is an heretic?

Prisoner. I know not what his opinion is, that is to his own conscience.

L. C. J. Did you name the word heretic?

Prisoner. Not to my knowledge, upon my

soul, not of the king of England; we might have discoursed of the happiness and of the difference of their governments. I have been thought a person of some intelligence, and of some understanding in the world, and not to expose myself to speak in a public large room, the door being open, with so high a voice that these gentlemen being in the next room should hear me in French, and in a street where almost all are Frenchmen, to speak these blasphemous words, words that I abhor. I have been a great admirer of my prince.

Court. Read the statute of Decimo tertio, &c.*

* It was St. 13 Car. 2. c. 1, intitled 'An Act for safety and preservation of his majesty's person and government, against treasonable and seditious practices and attempts,' the first clause of which is as follows:

"The Lords and Commons assembled in parliament, deeply weighing and considering the miseries and calamities of well nigh twenty years, before your majesty's happy return, and withal reflecting upon the causes and occasions of so great and deplorable confusions, do in all humility and thankfulness acknowledge your majesty's incomparable grace and goodness to your people, in your free and general pardon, indemnity and oblivion, by which your majesty hath been pleased to deliver your subjects, not only from the punishment, but also from the reproach of their former miscarriages which unexampled piety and clemency of your majesty hath enflamed the hearts of us your subjects with an ardent desire to express all possible zeal and duty in the care and preservation of your majesty's person, (in whose honour and happiness consists the good and welfare of your people) and in preventing (as much as may be) all treasonable and seditious practices and attempts for the time to come: (2) And because the growth and increase of the late troubles and disorders, did in a very great measure proceed from a multitude of seditious sermons, pamphlets and speeches, daily preached, printed, and published, with a transcendent boldness, defaming the person and government of your majesty and your royal father, wherein men were too much encouraged, and (above all) from a wilful mistake of the supreme and lawful authority, whilst men were forward to cry up and maintain those orders and ordinances, oaths and covenants, to be acts legal and warrantable, which in themselves had not the least colour of law or justice to support them; from which kind of distempers, as the present age is not yet wholly freed, so posterity may be apt to relapse into them, if a timely remedy be not provided: (3) We therefore, the Lords and Commons in parliament assembled having duly considered the premises, and remembering that in the 13th year of the reign of queen Elizabeth of ever blessed memory, a right good and profitable law was made for preservation of her majesty's person, do most humbly beseech your

L. C. J. Speak the words in English about killing the king, speak them all.

Witness. That the prisoner's companion did say, 'The king was a tormenter and persecutor of the people of God.' The prisoner's words were again, 'The king of England is the greatest heretic, and the greatest rogue in the world; here is the heart, and here is the hand that would kill him; I myself.'

Pris. Here is the hand, and here is the heart which would kill myself; Not, would kill him myself.

L. C. J. What Jesuit taught you this trick? It is like one of them. It is the art and interest of a Jesuit so to do.

The Statute read.

L. C. J. Have you any thing more to say for yourself than what you have already said?

Court. Sir John Kirk, do you understand French?

One of the Jury. I do, my Lord; the words have been interpreted all right.

L. C. J. Let me ask you one question: When you said the king was 'a great heretic and a rogue, and here is the heart, and here is the arm that would kill him myself;' was it not the king you would kill?

'most excellent majesty, that it may be enacted: (4) And be it enacted by the king's most excellent majesty, by and with the advice and consent of the Lords and Commons in this present parliament assembled, and by authority of the same, that if any person or persons whatsoever, after the 24th of June, in the year of our Lord 1661, during the natural life of our most gracious sovereign lord the king, (whom Almighty God preserve and bless with a long and prosperous reign) shall within the realm, or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person, of the same our sovereign lord the king; (5) or to deprive or depose him from the stile, honour, or kingly name of the imperial crown of this realm, or of any other his majesty's dominions or countries; (6) or to levy war against his majesty within this realm or without; (7) or to move or stir any foreigner or strangers with force to invade this realm, or any other his majesty's dominions or countries, being under his majesty's obedience: (8) And such compassings, imaginations, inventions, devices or intentions, or any of them, shall express, utter or, declare, by any printing, writing, preaching, or malicious and advised speaking, being legally convicted thereof upon the oaths of two lawful and credible witnesses, upon trial, or otherwise convicted or attainted by due course of law, then every such person and persons, so as aforesaid offending, shall be deemed, declared and adjudged to be traitors, and shall suffer pains of death, and also lose and forfeit, as in cases of high treason.'

Prisoner. I have this to say in justification of myself, and allegiance to my prince and king, that I never thought, nor imagined or contrived any way, but have been a true subject to the king upon all occasions; I am sorry it proves so, God's will be done, my soul depends upon it; I am a dying man by the Statute; never with intention, or any thought or ill-will, spake any word about this matter.

L. C. J. Out of the abundance of the heart the mouth speaks; the Statute hath been read, which hath made it criminal.

Call a Witness for the prisoner.

Witness for the Prisoner. *One Anselm spake.*

They came to my house, where I lived at the Cross-keys in Covent-Garden, about 8 o'clock in the morning, these two gentlemen; the day they took him away, was the day after these words were spoke, and he was kept prisoner from 8 till 11 of the clock without any constable; they had 5 bottles of wine, and bespake meat, but they did not stay to eat the meat.

L. C. J. How came you to stay so long?

Wit. I was two hours in looking for a constable; they would not come with me, without a warrant from a justice of peace.

L. C. J. Who told you you had best take it up?

Pris. The middlemost man, the first witness.

Wit. We were about three long hours, I sent out this gentleman for a constable, in the mean time the prisoner's father sent his maid for him to come home; I told him he should not go, if he desired to eat we would eat there. I sent to White-Hall and desired a guard, the officer of the guard told the messenger it was a constable's part.

Court. Call another Witness for the prisoner.

Witness for the Prisoner.

I have heard him often declare as much loyalty to his prince as any person. One day we fell into a discourse of these affairs, the business of the Jesuits, which are a people he did as much condemn as any; for in Padua he saw so many cheats, that he forsook the Jesuitical Religion, and if he knew any of the persons concerned in this Plot, he would be the executioner himself, and whoever comes to reign afterwards, they shall never enjoy so much peace as now; and I heard him often say he would lose his blood for the king, and heard him speak as loyally as I ever heard any man speak in my life.

L. C. J. That is when he spoke to a protestant.

Court. Have you any thing else to say for yourself, or have you any more witnesses that you would have examined on your behalf?

Prisoner. No.

Lord Chief Justice's Speech.

'The Statute hath been read, which was made since the king came in, for the preservation of his person, and during his life: The parliament thought it reasonable, even to make

desperate words to be Treason, although there was no other thing but words, that is, such words, as if the thing had been done would be Treason, the speaking it is Treason. When we come to observe the manner of this speaking, methinks there is no great difficulty to satisfy the jury that they were spoke advisedly and maliciously. They were in a public house, and by accident heard: They concealed them not a moment, and not from the man that did not understand French. To hear a man say in a great passion; That his king was a heretic, and the greatest rogue in the world, and that he would kill him, to write down the words presently, they slept not upon it, they found out who he was, the next day they came to attack him; they kept him, for what? Till they could get a constable. So that here is nothing doubtful either in the circumstance or substance of his case: So that you cannot have a plainer proof in the world than there is in this. For my own part, when it is in the case of a man's life, I would not have any compliance with the rumours or disorder of times, that should be an evidence against him, but would have a Verdict depend upon the Witnesses that swear the fact downright upon him. You and we all are sensible of the great difficulties and hazards that is now both against the king's person, and against all protestants, and our religion too, which will hardly maintain itself, when they have destroyed the men; but let them know, that many thousands will lose their religion with their lives, for we will not be papists, let the Jesuits preach what they will (who are the foundations of all this mischief) in making proselytes, by telling them, Do what wickedness you will it is no sin, but we can save you, and if you omit what we command, we can damn you. This they will not own when it comes to be an objection and penal upon them, but they will never get the Pope of Rome to declare he hath not a power to excommunicate what he calls a heretic king, and if he does, that the subject is not discharged from his obedience; they would do great service to their papist friends, if they could obtain such an edict. They print, preach, dispute, and maintain otherwise, and thereby lead people to their own destruction and the destruction of others. Excuse me if I am a little warm, when perils are so many, their murders so secret, that we cannot discover the murder of that gentleman, whom we all knew so well, when things are transacted so closely, and our king in so great danger, and religion at stake. It is better to be warm here than in Smithfield. But that the man might have justice done him, he hath had his witnesses, and might have had this old man, if he had named him to Mr. Richardson: and to shew what fair play he has had, Mr. Attorney tells you the old man hath been examined upon oath, and offers him the copy of his examination to use, but he thinks not fit to use it for his defence, therefore nothing is smothered. The offence you have heard in words plain enough, unless the sense is perverted by Jesuitical cunning and equivoca-

tion; the best part of their learning and honesty. They swear it expressly, 'That the king was a heretic, and the greatest rogue in the world, and here is the heart and hand, that he would kill him himself;' and hath and can have no other signification. The statute saith 'advisedly and maliciously.' The manner of speaking, and the words spoke, prove both. When a papist once hath made a man a heretic, there is no scruple to murder him. Whoever is not of their persuasion are heretics, and whoever are heretics may be murdered, if the Pope commands it, for which they may become saints in heaven; this is that they have practised. If there had been nothing of this in this kingdom, or other parts of the world, it would be a hard thing to impose it upon them; but they ought not to complain, when so many instances are against them. Therefore discharge your consciences as you ought to do; if guilty let him take the reward of his crime, and you shall do well to begin with this man, for perchance it may be a terror to the rest. Unless they think they can be saved by dying in the Roman faith, though with such pernicious and traitorous words and designs as these are; let such go to heaven by themselves. I hope, I shall never go to that heaven, where men are made saints for killing kings."

William Stayley, Hold up your hand.

Cl. of Cr. Is William Stayley guilty of the high treason whereof he hath been indicted?

Jury. Guilty.

Cl. of Cr. What goods, chattels, lands, or tenements?

Jury. None.

L. C. J. Now you may die a Roman Catholic, and when you come to die, I doubt you will be found a priest too.

K. Coun. I pray judgment according to the verdict.

Cl. of Cr. You have been indicted of high treason, you have put yourself upon your country, which country have found you guilty, what have you to say for yourself, wherefore the Court should not proceed to judgment against you?

Pris. I have nothing to say.

L. C. J. I pronounce Judgment upon you. You are here found guilty by the jury of high treason, for saying you would kill the king, with other irreverent words; but the matter which makes you a traitor is proved upon you by most apparent evidence. The matter, manner, and all the circumstances of it make it plain; you may harden your heart as much as you will, and lift up your eyes, but you seem instead of being sorrowful, to be obstinate; between God and your conscience be it, I have nothing to do with it, my duty is to pronounce judgment upon you according to law, which is this: 'You shall return to the prison, from thence shall be drawn to the place of execution, where you shall be hanged by the neck, cut down alive, your quarters shall be severed and be disposed of as the king shall think fit, and your bowels burnt, and so the Lord have mercy upon your soul.'

November the 26th he was executed at Tyburn, according to the Sentence.

An Account of the digging up of the Quarters of WILLIAM STAYLEY, lately executed for High Treason, for that his relations abused the King's mercy. *Imprimatur* Nov. 30, 1678. William Scrogga.

Whereas William Stayley, being found guilty of High Treason at the King's-bench bar, on Thursday the 21st day of November, 1678, received then his Sentence to be drawn on a sledge to the place of execution, there to be hanged by the neck, cut down alive, his quarters to be severed and disposed of as the king should think fit, and his bowels burnt; which Sentence, on Tuesday next following, was accordingly executed at the common place of execution: and his quarters were brought back and left at Newgate in order to their being set up on the gates of the city of London, and his head on London-bridge, as traitor's quarters usually are. But the said William Stayley having behaved himself very penitently, from the time of his conviction until the time of his execution, which was attested by the several ministers that visited him, during that time: and the relations of the said William Stayley humbly petitioning his most sacred majesty, that he would be graciously pleased that his quarters might be delivered back to them to be privately buried, and not to be set up on the gates of the

city. Which his most sacred majesty, out of his princely clemency and compassion, was pleased to grant, and ordered the sheriff of the county of Middlesex to deliver the quarters to his friends, by them to be disposed of, as aforesaid; which were delivered accordingly: but since that (to the great indignity and affront of his majesty's mercy and favour) the friends of the said Stayley caused several Masses to be said over his quarters, and used other ceremonies according to the manner of the church of Rome, and appointed a time for his interment, viz. Friday the 29th of November 1678, in the evening, from his father's house in Covent-garden, at which time there was made a pompous and great funeral, many people following the corpse to the church of St. Paul's Covent-garden, where he was buried: which his majesty hearing of was justly displeased, and commanded the coroner of the liberty of Westminster to take up the body of the said William Stayley, and deliver it to the sheriff of the county of Middlesex, and that the said sheriff should cause the quarters to be set up on the gates of the city of London, and his head on London-bridge. The coroner, according to his majesty's command, did immediately go to the churchwardens of St. Paul's Covent-garden, and caused the body of the said William Stayley to be taken up, and the coffin to be broken open, to see that he had the right body, which when he had done, he caused the body to be carried to Newgate, and there delivered it to the sheriff of Middlesex to be disposed of, as aforesaid.

END OF VOL. VI.

E. M.

