

The Pop.
Roy. Favou-
rit. p. 31.

Commitment, if he did rail upon me. And 'tis confessed by Mr. *Prynn*, (tho' he had then received no Answer from myself) That he said he saw now how the Game went, and hoped ere long to see better Days, &c. He says, That *Smith*, alias *Fludd*, desired Sir *Kenelm Digby*, as he was going to *Lambeth*, to tell me that he could not dine with me that Day, but desired his Business might be remembered. No such Man ever dined at my Table, to my knowledge. And if any Priest would say so to Sir *Kenelm*, how could I possibly hinder it? And Sir *Kenelm*, when this *Cooke* was examined, was a Prisoner in *Winchester-House*; why was not he examined to sift out this Truth, if Truth be in it?

6. The sixth Witness was *John Thresher*, a Messenger too: He says, that he took *Mors* and *Goodwin*, too Priests; and that Secretary *Windbank* took away his Warrant, and dismissed them, saying, he would speak with me about it: And that when he came to me, I was angry with him about the Warrant. Mr. Secretary *Windbank* will, I hope, be able to answer for his own Actions. Why he dismissed the Priests, I know not; but he had great reason to take away his Warrant, and I a greater reason to be angry with him for it. For no Warrant can issue from the High-Commission Court, but under three of their Hands at least. Now *Thresher* having gotten my Hand to the Warrant, never goes for more Hands, but proceeds in his Office, upon this unwarrantable Warrant. Had not I reason to be offended at this? He says, That at the same time I said that *Graye* was an ill-tongued Fellow, and that if he kept him company, I should not regard him. I had good cause to say this and more, considering how *Graye* had used me: and I believe no Archbishop would have borne his words. Lastly, he says, That by a Warrant from me he arrested Sir *Toby Matthew*, and that the Earl of *Strafford* stayed him from going to Prison, saying, he should answer it before the Lords. Here by the Witness himself it appears that I did my Duty. And Sir *Toby* did appear before the Lords, as was^a assumed he should. In the mean time,

I was complained of to the Queen: and a great Lady (who perhaps made the Complaint) stood by, and made herself merry to hear me chid. The Queen was pleased to send to the Lords, and Sir *Toby* was released. Where my fault was in all this, I do not yet see.

7. The last of these famous Witnesses, was *Goldsmith*; who says nothing, but that one Day before the High-Commission Court began, I forewarned the Messengers of that Court of *Graye*, in regard he was openly spoke against at the Council-Table. Which, all things considered, I had great reason to do. He says likewise, That then *Graye's* Wife tender'd me a Petition, which I rejected, saying, *I would meddle with no Priest-catching Knaves*. I think his Carriage deserved no better of me, than to reject his Petition: But as for the Words,

Frigidè dic-
tum. W. S.
A. C.

I cannot own them; let the *Goldsmith* look to it that he have not forged them. And I would very willingly know, whether when the Apostle required, that an *Accusation* should not be received against an *Elder*, but under two or three Wit-

nesses, (1 *Tim.* v. 19.) he had any meaning they should be such as these?

IX. The ninth Charge was about the ordering of Popish Books that were seized, and the disposing of them. The sole Witness here, is *John Egerton*: he says, These Books were delivered to Mr. *Mattershead*, Register to the High-Commission. And I say so too; it was the constant Course of the High-Commission to send them thither, and have them kept in that Office, till there was a sufficient number of them, and then to burn them. Yea, but he adds, That *Mattershead* told him they were re-delivered to the Owners. This is but a Report, and *Mattershead* is dead, who should make it good. 'And tho' this be but a single Witness, and of a dead Man's Report; yet Mr. *Browne* thought fit to sum it up with the rest. But surely if any Books were re-delivered to the Owners, it was so ordered by the High-Commission, in regard the Books were not found dangerous: From me, *Mattershead* had never any such Command.' Lastly, he says, He met Sir *Toby Matthew* twice at *Lambeth*. But he confesses, he never saw him with me; and then me it cannot concern.

X. The Tenth Charge was concerning the Priests in *Newgate*; the Witnesses are Mr. *Deusiel*, and *Francis Newton*. They both agree, and they say, That the Priests there had the best Chambers, and Liberty to go abroad without Keepers. I hope these Men do not mean to make the Archbishop of *Canterbury* Keeper of *Newgate*. If any Man gave them this Liberty, he is to be blamed for it, not I, who never knew it till now. Nor do either of these Witnesses say, that they called on me for remedy, or ever did so much as acquaint me with it. And they say this was twelve Years since; and I had been Archbishop but seven Years when I was committed.

XI. The Eleventh Charge was about Words in my Epistle Dedicatory before my Book against Mr. *Fisher*. The Words these: *For, to my remembrance, I have not given him, or his, so much as coarse Language*. So the Charge is, because I have not given ill Words. And here Mr. *Nicolas* fell foul upon me again for taking such care, that the Whore of *Babylon* may have nothing but good Words, &c. But first, my Lords, I have always thought, and do still, that ill Language is no Proof against an Adversary: All the good it can do, is, it may bring Scorn upon the Author, and work Hardness of Heart in the Adversary, whom he doth or should labour to convert. And this I learned of two eminent Fathers in the Church, * *Gregory Nazianzen*, and † *St. Augustine*. The first would not use it, no not against the *Arians*, who (as he saith) made open War against the Deity of Christ. Nor would the other against the same Adversaries. The one accounts it Ignorance, tho' a Fashion taken up by many; and the other Loss of Time. And here I desired the Lords, that I might read what immediately followed this Passage, which was granted: And there, as their Lordships did, so may the Reader see, if he please, that tho' my Words were not uncivil, yet in the matter I favoured neither him nor his. And to avoid tediousness, thither I refer the Reader, with this, that sometimes Men apt enough to accuse me, can plead

* Non imperitè docemus, nec Adversarios Contumeliis incessimus, ut plerique faciunt, &c. *Greg. Naz. Orat.* 32.

† Abstineamus nos à conviciis, ne tempus inaniter impendamus, &c. *Aug. Epist.* 177.

* *In the Anti-queries to Mr. Prun, p. 12.*
 b *Sid. Simp-son's Anato-mist, p. 2, & 6.*

plead for this Moderation in their own Cases, and tell each other that *a* *Christ will not own Bitterness in maintaining any way, tho' consonant to his Word.* And *b* another finds just fault both with *Papist* and *Martin Mar-Prelate, for this reproachful Language.*

And yet it must be a Crime in me not to use it.

XII. The last Charge was the Commitment of one *Ann Hussy* to the Sheriff of *London*. The Business was this. She sent one *Philip Bambridge* to tell me of I know not what Plot against the King, (nor I think she neither.) *Bambridge* came to *Whiteball* toward the Evening, and could make nothing of this dangerous Plot. Yet because it pretended so high, I sent him presently to Mr. Secretary *Windebank*; I being the next Morning to go out of Town. The Business was called to the Council-Table. When I came back, I was present there. *Bambridge* produced *Ann Hussy*, but she could make nothing appear. She says, I thought she was out of her Wits. Not so, my Lords; but I did not think she was well in them; nor do I yet. And whereas she complains of her Imprisonment, it was her own desire she might be committed to the Sheriff; and Mr. *Hearn* (my Counsel here present) was assigned by the Lords to take her Examination. Therefore if any Particular in this Charge stick with your Lordships, I humbly desire Mr. *Hearn* may supply my Want of Memory. But it passed over, as well it might. Here this Day ended, and I was ordered to attend again *July 29*.

The twentieth, and the last Day of my Hearing.

MONDAY, *July 29, 1644*. This Day I appeared again, and they proceeded upon the Fourteenth Original Article, which follows in these Words.

XIV. That to preserve himself from being questioned for these, and other his traitorous Courses, he hath laboured to subvert the Rights of Parliaments, and the antient Course of Parliamentary Proceedings, and by false and malicious Slanders to incense his Majesty against Parliaments. By which Words, Counsels and Actions, he hath traitorously, and contrary to his Allegiance, laboured to alienate the Hearts of the King's liege People from his Majesty, to set a Division between them, and to ruin and destroy his Majesty's Kingdoms. For which they do impeach him of High-Treason against our Sovereign Lord the King, his Crown and Dignity.

I. The First Charge of this Day was prefaced with a Note out of my Diary at *May 8, 1626*. That *the Duke of Buckingham* was that Day impeached to the Lords by the House of Commons. And at *May 25*. The Difference arising in the House of Peers about the *Earl of Arundel's* Commitment to the Tower without a Cause declared. No use

See Heylin's Life of Archbishop Laud, p. 152.

made of these, but that I then Bishop of *St. Davids* took notice of these things. Then the Charge followed; and the first of it was, That I then being of the Lords House, and so to be one of the Duke's Judges, made a Speech for him, and corrected his Speech in some particulars; and of a Judge made myself an Advocate. Which Mr. *Nicolas* said

was a great Offence. I saw not these Papers, and therefore can say nothing, what is, or is not under my Hand. But to the thing itself I say first, That if in that Speech any particular Fault had been found, impeaching any Right or Power of Parliament, that I must have answered; but none is charged, but only the bare making of one Speech, and the mending of another. And this is a very poor Argument of any Enmity against Parliaments. Secondly, Seeing no Fault is charged upon me in particular, it was but the Office of a poor Friend to a great one, to whom being so much bound as I was I could not refuse so much Service, being intreated to it. And Thirdly, I do humbly conceive; that so long as there was nothing done against Law, any Friend may privately assist another in his Difficulties. And I am persuaded, many Friends in either House do what they justly may, when such sad Occasions happen. And this Answer I gave to Mr. *Browne*, when he summed up my Charge in the House of Commons.

But Mr. *Browne* did not begin with this, but with another, here omitted by Mr. *Nicolas*; tho' he had pressed it before in the fifteenth Day of my Hearing. Dr. *Potter* writ unto me for my Advice in some Passages of a Book writ by him, (as I remember against a Book intitled, *Charity mistaken*;) I did not think it fit to amend any thing with my own Pen, but put some few things back to his second Thoughts, of which this was one; That if he expresses himself so, he will give as much Power to the Parliament in Matters of Doctrine, as to the Church. This Mr. *Browne* said, took away all Authority from Parliaments, in that kind. But, under favour, this takes away not all, nor any that is due unto them. Not all, for my Words are about giving so much Power: Now he that would not have so much given to the one, as the other, doth not take away all from either: Not any that is due to them; for my Words not meddling simply with Parliamentary Power, (as appears by the Comparative Words *so much*) my Intention must needs be to have Dr. *Potter* so to consider of his Words, as that, that which is proper to the Church, might not be ascribed to Parliaments. And this I conceive is plain in the very Letter of the Law. The Words of the Statute, are, *Or such as shall hereafter be ordered, judged, or determined to be Heresy, by the High-Court of Parliament in this Realm, with the Assent of the Clergy in their Convocation.* Where 'tis manifest, that the judging and determining Part, for the Truth or Falshood of the Doctrine, is in the Church. For the Assent of the Church or Clergy cannot be given, but in Convocation, and so the Law requires it. Now Assent in Convocation cannot be given, but there must precede a Debate, a Judging, a Voting; and a Determining. Therefore the determining Power for the Truth or Falshood of the Doctrine, Heresy or no Heresy, is in the Church: But the judging and determining Power, for binding to Obedience, and for punishing, is in the Parliament, with this Assent of the Clergy. Therefore I humbly conceive the Parliament cannot by Law, that is, till this Law be first altered, determine the Truth of Doctrine without this Assent of the Church in Convocation; and that such a Synod and Convocation, as is chosen and assembled as the Laws and Customs of this Realm require,

‘ To this Mr. *Browne*, in his Reply upon me in
 ‘ the House of Commons, said two Things. The
 ‘ one, That this Branch of the Statute of 1 *Eliz.*
 ‘ was for Heresy only, and the adjudging of that;
 ‘ but meddles not with the Parliament’s Power in
 ‘ other Matters of Religion. If it be for Heresy
 ‘ only, that the Church alone shall not so deter-
 ‘ mine Heresy, as to bring those grievous Punish-
 ‘ ments which the Law lays upon it, upon the
 ‘ Neck of any Subject, without Determination in
 ‘ Parliament; then is the Church in Convocation
 ‘ left free also in other Matters of Religion, ac-
 ‘ cording to the first Clause in *Magna Charta*, which
 ‘ establishes the Church in all her Rights. And
 ‘ her main and constant Right when that Charter
 ‘ was made and confirmed, was Power of deter-
 ‘ mining in Matters of Doctrine and Discipline of
 ‘ the Church. And this Right of the Clergy is not
 ‘ bounded or limited by any Law, but this Cause
 ‘ of 1 *Eliz.* that ever I heard of.

‘ The other was, That if this were so, that the
 ‘ Parliament might not meddle with Religion, but
 ‘ with the Assent of the Clergy in Convocation,
 ‘ we should have had no Reformation: for the
 ‘ Bishops and the Clergy dissented. First, it is not
 ‘ (as I conceive) to be denied, That the King and
 ‘ his High Court of Parliament may make any
 ‘ Law what they please, and by their absolute
 ‘ Power may change Religion, *Christianity* into
 ‘ *Turcism*, if they please, (which God forbid:) And
 ‘ the Subjects, whose Consciences cannot obey, must
 ‘ fly, or endure the Penalty of the Law. But both
 ‘ King and Parliament are *sub graviore Regno*, and
 ‘ must answer to God for all such Abuse of Power.
 ‘ But beside this Absolute, there is a Limited Pow-

er; Limited, I say, by natural Jus-
 ‘ tice and Equity, by which no Man,
 ‘ no Court, can do more, than what
 ‘ he can by right: And according to
 ‘ this Power, the Church’s Interest must be con-
 ‘ sidered, and that indifferently, as well as the
 ‘ Parliament’s. To apply this to the Particular of
 ‘ the Reformation. The Parliament, in the begin-
 ‘ ning of Queen *Elizabeth*, would not endure Po-
 ‘ pish Superstition, and by Absolute
 ‘ Power abolished it, without any
 ‘ Assent of the Clergy in Convoca-
 ‘ tion. And then in her first Year,
 ‘ Anno 1559, she had a Visitation,
 ‘ and set out her *Injunctions*, to direct
 ‘ and order such of the Clergy as
 ‘ could conform their Judgments to the Refor-
 ‘ mation.

‘ But then so soon as the Clergy was settled,
 ‘ and that a Form of Doctrine was to be agreed
 ‘ upon, to shew the Difference from the *Roman* Su-
 ‘ perstition, a Synod was called; and in the Year
 ‘ 1562, the Articles of Religion were agreed up-
 ‘ on, and they were determined and confirmed by
 ‘ Parliament, with the Assent of the Clergy in
 ‘ Convocation, and that by a just and orderly
 ‘ Power. Nor is the Absolute Power of King
 ‘ and Parliament any way unjust in itself, but
 ‘ may many ways be made such, by Misinforma-
 ‘ tion, or otherwise. And this gives the King
 ‘ and the Parliament their full Power, and yet pre-
 ‘ serves this Church in her just Right: Just, and

acknowledged by some that loved
 ‘ her not over-well. For the Lord
 ‘ *Brooke* tells us, That *what a Church*
 ‘ *will take for true Doctrine, lies only*
 ‘ in Church. Nay, the very Heathen saw clear-

Id possumus,
 quod jure pos-
 sumus.

By the Ad-
 vice of her
 Honourable
 Council. Pre-
 fat. to the In-
 junctions.

Discourse,
 §. 1. c. 9. p. 51.

in Church.

‘ ly the Justice of this; for *M.*
 ‘ *Lucullus* was able to say in *Tully*,
 ‘ That *the Priests were Judges of Re-*
 ‘ *ligion, and the Senate of Law.*’

II. The second Proof is, That I
 made two Speeches for the King, to
 be spoken or sent to the Parliament
 that then was; and that they had some four and
 ill Passages in them. ‘ These Speeches were read
 ‘ to the Lords; and had I now the Copies, I
 ‘ would insert them here, and make the World
 ‘ Judge of them.’ First, I might
 shuffle here, and deny the making
 of them: For no Proof is offer’d,
 but that they are in my Hand, and
 that is no necessary Proof; for I had
 then many Papers by me written in
 my own Hand, which were not my making, tho’
 I transcribed them, as not thinking it fit to trust
 them in other Hands. But, Secondly, I did make
 them, and I followed the Instructions which were
 given me, as close as I could, to the very Phrases;
 and being commanded to the Service, I hope it
 shall not now be made my Crime that I was trust-
 ed by my Sovereign. Thirdly, As I did never
 endeavour to imbitter the King this way; so the
 smart Passages which Mr. *Nicolas* says are there, I
 hope will not be thought such, when ’tis consider’d
 whose Mouth was to utter them, and upon what
 Occasion: Yet if such they shall be thought, I am
 heartily sorry for them, and humbly desire they
 may be pass’d by. Howsoever, they can make no
 Proof that I am an Enemy to Parliaments. ‘ And
 ‘ this Answer I gave Mr. *Browne* in the House of
 ‘ Commons, for he there omitted it not.’

III. The third Proof that I am an Enemy to
 Parliaments, is the Testimony of one Mr. *Bland*: A
 forward Witness he hath been against me in other
 Particulars. Here he says, That Sir *Sackvil Crowe*
 shewed him a Paper, in which were fifteen or six-
 teen Passages concerning Parliaments, with some
 four Aspersions to boot; and that this Paper was
 subscribed *W. Laud*. First, my Lords, this Man
 is but a single Witness. Secondly, He says, He
 had this Paper from Sir *Sackvil Crowe*, and he is
 now in *Turkey*, and cannot be produced, that the
 Truth may be known. Thirdly, As I never gave
 Sir *Sackvil* any such Paper, so had he come by any
 such, ’tis more than probable somebody else
 might have seen it beside Mr. *Bland*, to make a
 second Witness. Fourthly, This is a very bold
 Oath; for he swears, the Paper was subscribed
 with my own Hand, *W. Laud*: Whereas I being
 then Bishop of *St. Davids*, never writ my Name
 to any thing other than *Guil. Menzies*. Let him
 bethink himself of this Oath, *ne quid gravius di-*
cam. Besides, it may be considered too, that this,
 with some Particulars mentioned by Mr. *Bland*,
 was charged in the first Additional Article, and
 now brought in upon the fourteenth Original;
 partly to confound me, that I might not see how,
 or against what to defend myself; and partly to
 make me secure, because they had
 quite passed over the first Additio-
 nal: But especially, because they had
 therein charged me, that these Pro-
 positions of mine had caused that Parliament to be
 dissolved; and yet in the same Article, and with-
 in three Lines, ’tis said expressly, That my Pro-
 positions were delivered to my Lord Duke of
Buckingham after that Parliament was dissolved.
 ‘ So this Article hangs as well together as Mr.
Bland’s

Religionis
 Judices Ponti-
 fices sunt, Le-
 gis Senatus.
 Cic. L. 4. L.
 11. ad nat.
 Ep. 2.

See the Diary
 at March 26,
 29. May 11,
 Anno 1626.
 H. W.

Art. 1. Addi-
 tional.

‘ *Bland’s* Testimony concerning it. Mr. *Browne* pressed this also hard against me; but I answered according to the Sum of that which is above-written.’ And as for the Particular said to be in that Paper, (were it mine, as it is not) or were the Words thought treasonable, (as well they cannot be) yet the Statute of Queen

1 Mariae, c. 1. § 3. *Mary* makes it, that no Words, nor Writings, nor Cypherings, nor Deeds, shall be Treason, but only such as are within the Statute of 25 *Edw.* 3. and no other. And this Statute I then read to the Lords, tho’ I conceive there was no need of it.

IV. The fourth Proof was out of my Diary, at June 15, 1626. The Words these: *Post multas agitationes privata Malitia in Ducem Buckinghamiæ superavit & suffocavit omnia publica negotia; nihil actum est, sed Parliamentum solutum.* And this was applied first by Mr. *Nicolas*, and after by Mr. *Browne*, as if I had charged this private Malice upon the Parliament. But this is utterly mistaken: For I spake not this of the Parliament, but of some few particular Men, some of the House, ‘ Men well enough known to the World;’ and more, not of the House, but Sticklers at large, who went between, and did very ill Offices, and so wronged both the King and the Parliament: which is no new thing in *England*. That my Words there cannot be meant of the Parliament, is two ways apparent. First, in that I say, *privata Malitia*, private Malice did it; but name not the Parliament nor charge any thing upon it. Secondly, Because had I spoken this of the Parliament, it could not have been called *private*, but *publick Malice*; nothing being more publick in this Kingdom, than what is done in and by the Parliament.

V. The fifth Proof was, That a Proclamation for calling in of the Remonstrance, was found in my Study: And Mr. *Nicolas* said, They conceived I had a hand in it. It was as lawful for me to have and keep this Proclamation, as for any other Subject. And their Conceit that I had a hand in it, is no Proof. Mr. *Nicolas* says, That my Preferments followed very quick upon this; and infers, That I was preferred for my ill Services in this kind. But all the Proof that he brings for this his uncharitable Inference, is the Comparing of the Times; and I shall be content to be tried by that. For by his own Acknowledgment this Proclamation came out June 16, 1622. I being then Bishop of *St. Davids*: And he confesses I was not made Bishop of *Bath and Wells* till June 20, 1626. full four Years after; nor a Privy-Counsellor till April 29, 1627. which was five Years after. Whereas Rewards for such Services are found to come much quicker. ‘ And Mr. *Browne*, when he made his summary Charge, slighted this, and passed it over.’

VI. The sixth Proof of my Enmity to Parliaments, was a Paper of Reasons, Mr. *Nicolas* said, against Parliaments. But, First, when this Paper was shewed and read to the Lords, it was found otherwise, and was but a Paper of Hopes and Fears, which were conceived of a Parliament: Not Reasons against them. Secondly, These Fears and Hopes were not of a Parliament then in Being, but of one in Deliberation, whether it should be or not at that time; which all Men know is often disputed, and without offence. And any considering Man may privately do it, for his own use and trial of his Judgment. Thirdly, In this Deliberation, I was not the Author of these *Fears and*

Hopes, but an *Amantensis* to higher Powers, in regard their Hands were slower; tho’ commanded also to set down my own Opinion, which I did. Fourthly, I was then either a Counsellor, or a sworn Servant to the King, and required, upon my Oath, to deliver truly, both my Fears and my Hopes; and I durst not perjure myself: And I hope the keeping of my Oath, and doing my Duty in that kind, shall not now prejudice my Life. Fifthly, These *Fears and Hopes*, whatever they contain, did relate to the being or not being of that one Parliament only, as appears in the very Paper itself; and the *Hopes* prevailed, and that Parliament sat. ‘ And this Answer I gave to Mr. *Browne*, who made all the use of this Paper, that could be, against me.’

Here Mr. *Nicolas* brings in Mr. *Bland* again, who says, That the four last Heads in this Paper, were in that Paper also which was shewed him. This single Witness hath an excellent Memory, that can remember four Heads of a Paper punctually sixteen Years ago. I asked why he did not complain of me then, when his Memory was fresher, and his Witness Sir *Sackvil Crow* nearer. ‘Twas replied, *He durst not for my Greatness.* Why, but he knows well enough, that Parliaments, when they have a just Cause of Proceeding, do neither fear nor spare any Man’s Greatness. And is it probable, that they which spared not the Duke of *Buckingham’s* Greatness, would have feared mine, being then a poor Bishop of *Bath and Wells*? And a Parliament was held again in the very next Year, 1627. so that he wanted not opportunity to complain. Nor can I believe any Opinion of my supposed Greatness stopped him: Let him look into himself.

Then Mr. *Nicolas* told the Lords with great vehemency, what Venom there was in this Paper which, he said, was in every Particular. A right Spider I see now he is, Venom out of anything.

[Here is a void space left, I suppose, with design to have the Paper (here mentioned) to be inserted: which was not done.]

VII. The seventh Proof out of my Diary at March 1628. where the Words are, *That the Parliament which was dissolved March 10, 1628. sought my Ruin.* ‘ This had been a better Argument to prove Parliaments an Enemy to me, than me to them.’ But nothing can be meant by this, but that my Ruin was sought in that Parliament by some particular Men whose Edge was too keen against me. And this appears in my Diary at June 14. preceding; at which time I was put into a Remonstrance, which, had I been found any way guilty, must needs have ruin’d me. But by God’s Blessing, the very same Day I did clearly acquit myself in open Parliament, of all the Aspersions cast upon me about Dr. *Manwaring’s* Sermons. ‘ This Particular Mr. *Browne* charged upon me, and I answer’d as before: But Mr. *Nicolas* did not touch upon it this Day.’

VIII. The eighth Proof that I was an Enemy to Parliaments, was taken from some Marginal Notes, which I had made upon a printed Speech of Sir *Benjamin Rudyard*, which he spake in the Parliament held Anno 1627. Mr. *Nicolas* named four; but Mr. *Browne*, in summing up my Charge, insisted only upon two. The word *Reducing*; and the *Aim of gaining from the King.* Sir *Benjamin Rudyard* is my old Acquaintance, and a very worthy

thy Member of that House, both now and then. But be a Man never so worthy, may he not use some Phrase amiss? Or if he do, may not I or another observe, yea, check at it, but by and by I must be an Enemy to Parliaments? Is there any Argument in this; I said a *Gentleman* in the House of Commons used an ill Phrase in a Speech of his in that House, therefore I am an Enemy to the Parliament in which he spake it? Say I am mistaken, and not he, and that the Phrase is without Exception; yet this is but my Error in Judgment, no Proof of Enmity, either to the Parliament, or him that spake it. That which I said was this: First, That *the Word Reducing, as there placed, was a hard Phrase.* Let any Man view that Speech considerately, and tell me whether it be not so. Secondly, That *I disliked the Word Gaining, being between the King and his People in Parliament.* For (as I humbly conceive) there will always be Work enough for both to join for the publick Good; and well it can never be, if they which should so join, do labour only to gain one from another. For if the King shall labour to *gain* upon the Liberty or Property of the Subject, or the Subjects in Parliament labour to *gain* from the just Power and Prerogative of the King; can any prudent Man think the publick can thrive there-while? Yea, but they say, That my Marginal Note upon this Phrase was, That this *Gaining* was the Aim of the lower House. If my Note be so, yet that cannot be otherwise understood, than that according to this Expression, this must be their *Aim.* And the Reason why I found fault with this Phrase was, because I saw this must follow out of it. So, under favour, I was not so bold with this Gentleman, as he was with the House in using this Speech.

IX. The next Proof was, That I found fault with eight Bills that were then in the House. This is a very poor Proof of my Enmity to Parliaments, that I disliked some Bills proposed in them; tho' there be no Proof of this urged at all, save only that I writ the time, *May 27, 1628.* upon the Paper where the Bills were mentioned. And I hope, to mention the time when any Bills were proposed, is not to dislike the Bills. But say I did dislike them, what then? It is lawful for any Member of the House (and such was I then) to take Exceptions, which he thinks are just, against any Bill before it pass. And shall not that which is lawful for any Man to do, be lawful for me? Beside, almost all Bills are put in by private Persons: The House is not interested in them, till they are passed and voted by them: So that till then any Man may spend his Judgment upon the Bill, without any Wrong at all to the Parliament. Mr. *Browne* saw this well enough, and therefore vouchsafed not so much as to name it.

X. The tenth Proof was, That I made an Answer to the Remonstrance set out by Parliament, *Anno 1628.* This was pressed before, and here 'tis laid hold of on all hands, to make as full a Cry as it can against me. Mr. *Nicolas* presses it here aloud (as he doth all things) and Mr. *Browne* lays it close in summing up the Charge. My Answer the same to both. 1. They charge me, That I made that Answer to the Remonstrance which came forth *Anno 1628.* I did this by the King's Command, and upon such Instructions as were given me. And as I obeyed the Command, so did I closely pursue my Instructions: and I durst do no

other, for I was then upon my Oath as a sworn Counsellor, and so employed in that Service. And I hope no Man will conceive, that I would, without such a Command, have undertaken such a kind of Service. 2. Yea, but they say, It doth not appear that I had any such Command. Yes, that appears as plainly as that I made it. For they bring no Proof that I made it, but because the Indorsement upon that Paper is in my Hand, and calls it my Answer: And the same Indorsement says, I made it by his Majesty's Command. So either the Indorsement is no sufficient Proof for the one, or if it be, 'tis sufficient for both; and must needs witness the one for me with the same Strength that it doth the other against me. For a kind of Confession that Indorsement is, and must therefore not be broken, but be taken with all its Qualities. 3. Thirdly, They say there are some four and bitter Passages in the Answer. 'Tis more than I perceived, if it be so. Nor was any Sourness intended. And I hope no such Passages found in it, the Person consider'd in whose Name the Answer was made. The Expressions indeed might have been too big for a Subject's Mouth. 4. Fourthly, They say I was displeas'd that this Answer was not printed; but all the Proof they brought for it is, That it is written upon the Paper, that there was an Intention to print it, but that I know not what hinder'd it. But this Argument can never conclude: *John a Nokes* knows not who hinder'd the printing of a Jewish Catechism in *England*, therefore he was displeas'd the Catechism was not printed. But I see every Foot can help trample him that is down. Yea, but they instanced in three Particulars, which they charged severally upon me. The first Particular was, That by this Remonstrance they sought to fill our People's Hearts more than our Ears. A second was, That they swelled to that bigness, till they brake themselves. But neither of these strike at any Right or Privilege of Parliaments; they only tax some Abuses, which were conceiv'd to be in the Miscarriage of that one Parliament. And both these Particulars were in my Instructions. And tho' I have ever honoured Parliaments, and ever shall, yet I cannot think them infallible. General Councils have greater Promises than they, yet they may err. And when a Parliament, by what ill Accident soever, comes to err, may not their King tell them of it? Or must every Passage in his Answer be sour, that pleases not? And for that Remonstrance, whither it tended, let the World judge; the Office is too dangerous for me. The third Particular, was the excusing of *Ireland*, and the Growth of Popery there, of which that Remonstrance *Anno 1628*, complained. This was in the Instructions too. And I had reason to think, the King and his Council understood the State of *Ireland*, for Religion and other Affairs, as well as other Men. And I was the more easily led into the belief, that Religion was much at one state in *Ireland* in Queen *Elizabeth's* and King *James's* time, and now; because ever since I understood any thing of those *Irish* Affairs, I still heard the same Complaints that were now made. For in all these times they had their *Romish* Hierarchy; submitted to their Government; paid them Tythes; came not to the Protestant Churches; and rebelled under *Tyrone*, under pretence of Religion. And I do not conceive they have gone beyond this now. If they have, let them answer it, who have

‘ have occasioned it.’ But to prove this great new Growth of Popery there, they produced first a Proclamation from the State in *Ireland*, dated *April 1, 1629*. Then a Letter of the Bishop of *Kilmore*’s to myself, dated *April 1, 1630*. Thirdly, A Complaint made to the State there, *Ann. 1633*. of this Growth, so that I could not but know it. Most true; when these Informations came. I could not but know it: But look upon their Date, and you shall find that all of them came after this Answer was made to the Remonstrance, and therefore could not possibly be foreseen by me, without the Gift of Prophecy. Then they produced a Letter of the Earl of *Strafford*’s, in which he communicated to me, *Mar 1633*. That to mould the Lower House there, and to rule them the better, he had got them to be chosen of an equal number of Protestants and Papists. ‘ And here Mr. *Maynard*, who pressed this Point of Religion hard upon me, began to fall foul upon this Policy of the Earl of *Strafford*, and himself yet brake off with this, *But he is gone.*’ Then he fell upon me as a Man likely to approve those ways, because he desired the Letter might be communicated to me. This Letter was not written to me, as appears by the Charge itself: for if it had, no Man else needed to communicate it to me. And I would fain know, how I could help any of this? If that Lord would write any thing to me himself, or communicate any thing to another that should acquaint me with it, was it in my power to hinder either of these? And there were other Passages in this Letter, for which, I conceive, his Lordship desired the Communication of that Letter to me, much more than the Particular urged, which could no way relate unto me. ‘ And Mr. *Browne* in his Sum said very little, if any thing, to this Business of *Ireland.*’

XI. After this Mr. *Nicolas*, who would have nothing forgotten, that might help to multiply Clamour against me, fell upon five Particulars, which he did but name, and left the Lords to their Notes. Four of these five were handled before. As First, the Words, *If the Parliament prove peevish*. Secondly, *That the King might use his own Power*. Thirdly, the Violation of the Petition of Right. Fourthly, The Canons. Fifthly, That I set Spies about the Election of Parliament-Men in *Gloucestershire*: And for this last, they produced a Letter of one *Allibon* to Dr. *Heylin*. To the four first, I referred the Lords to their Notes of my Answers, as they did. To this last, that Mr. *Allibon* is a mere Stranger to me, I know not the Man. And ’tis not likely I should employ a Stranger in such a Business. The Letter was sent to Dr. *Heylin*, and if there were any discovery in it of Jugglings there in those Elections, (as too often there are) and if Dr. *Heylin* sent me those Letters, as desirous I should see what Practices are abroad, what fault is there in him or me for this?

XII. Then Mr. *Nicolas* would not omit that which he thought might disgrace and discontent me, tho’ it could no way be drawn to be any Accusation: ’twas out of my Diary, at *Oct. 27, 1640*. this Parliament being then ready to begin. The Passage there is, *That going into my upper Study, to send away some Manuscripts to Oxford, I found my Picture which hung there privately, fallen down upon the face, and lying on the Floor; I am almost every day threatned with my Ruin, God grant this be no*

Omen of it. The Accident is true; and having so many Libels causelessly thrown out against me, and hearing so many ways as I did, that my Ruin was plotted, I had reason to apprehend it. But I apprehended it without Passion, and with looking up to God, that it might not be ominous to me. ‘ What is this Man angry at? Or why is this produced?’

XIII. But tho’ I cannot tell why this was produced, yet the next was urged only to incense your Lordships against me: ’tis in my Diary again, at *Feb. 14, 1640*. where Mr. *Nicolas* says confidently, I did abuse your Lordships, and accuse you of Injustice. My Lords, what I said in my Diary, appears not; if it did appear whole and all together, I doubt not but it alone would abundantly satisfy your Lordships. But that Passage is more than half burnt out (as ^a It was viewed. is ^a to be seen) whether of purpose by Mr. *Prym*, or casually, I cannot tell; yet the Passage as confidently made up, and read to your Lordships, as if nothing were wanting. For the thing itself, the Close of my Words is this; *So I see what Justice I may expect, since here’s a Resolution taken, not only before my Answer, but before my Charge is brought up against me.* Which Words can traduce no Man’s Justice: First, Because they depend upon an *If*; if the Parliament-Man there mentioned told me truth, that such a Resolution was taken. And Secondly, Because it can be no Justice in any Men, be the Sentence never so moderate in itself, to take up a Resolution what Sentence shall pass, before Answer given, or Charge put it: for else a Man may be punished first, and tryed after, which is contrary ^b to all Rules of Justice. And therefore if such a Resolution were taken (as I believe not) I might well say that which followed after.

XIV. Then was produced a Paper concerning the Subsidies or Aids which had been given in divers Parliaments, in which it is said, at the beginning of it, *That Magna Charta had an obscure Birth, and was fostered by an ill Nurse.* ‘ I believe that no Man that knows Mr. *Nicolas*, thinks that he spake softly upon this.’ No, he spake loud enough: What Laws would I spare, that spake thus of *Magna Charta*? First, Here is no Proof offered that this Paper is my Collection, but only that it is in my Hand: by which Argument (as is said before) I may be made the Author of any thing; and so may any Scholar, that is able and willing to inform himself. Secondly, The main Draught of that Paper is not in my Hand, tho’ some Notes upon it be. Thirdly, There are *Littleton*, and other Lawyers, quoted in that Paper, Authors which I never read. Nor is this now any disgrace to *Magna Charta*, that it had an obscure Birth: for say the Difficulties of the Times brought it obscurely forth, that’s no blemish to the Credit and Honour to which it hath for many Ages attained. Not only their Laws, but the greatest Empires that have been in the World, some of them have had obscure Beginnings: witness the *Roman Empire*. Fourthly, What if our Stories agree upon it, that it had an obscure Birth, and a worse Nurse? What if some Law-Books (which Mr. *Nicolas* never read) and those of good account, use almost the same words of *Magna Charta*, which are in that Paper? Shall the same Words be History and Law in them,

^b Potentia sequi debet Justitiam, non preire. *Aug. L. 13. de Trin. c. 13.*

Here is a void Space left in the Margin, with design (I suppose) to insert therein some Passages out of Law-Books concerning the obscure Bit of Magna Charta: which Space was not filled up. H. W.

and Treason in me? And somewhat certainly there is in it, ' that
' Mr. Browne, when he gave his
' summary Charge against me, first,
' to the Lords, and after in the
' House of Commons, quite omitted
' this Particular. Sure I believe he
' found nothing was in the Paper
' but known Truth, and so passed
' it over, else he would never have
' denied a Vindication to *Magna*
' *Charta.*'

XV. After all this, Mr. *Nicolas* concludes with a Dream, which he says was mine. The Dream (he says) was, that I should come to greater Preferment in the Church, and Power in the State, than any Man of my Birth and Calling had done before me, but that in the end I should be hanged. First, My Lords, if I had had any such a Dream, 'tis no proof of any thing against me. Dreams are not in the power of him that hath them, but in the Unruliness of the Fancy, which in broken Sleep wanders which way it pleases, and shapes what it pleases; *Numb. 11.* But this Dream is brought in, as the Fall of my Picture was, to make me a Scorn to your Lordships and the People, and to try whether any thing will yet at last break my Patience. This Dream is reported here according to Mr. *Prynn's* Edition of my Diary, somewhat different from that which Mr. *Prynn* printed in a former Book of his: but the beginning and the end agree. From Mr. *Prynn*, *Culmer* hath taken and printed it. And Mr. *Prynn* confessed before the Lords, that one Mr. *Badger* an Attorney at Law, a Kinsman of mine, told it him. The truth, my Lords, is this. This *Badger* married a near Kinswoman of mine; he was a notorious Separatist, and so nearer in Affection to Mr. *Prynn*, than to me in Alliance. This Man came one day to me to *Lambeth*, and told me privately (which was more Manners than usually the bold Man had) that he heard I had such a Dream when I was young, in *Oxford*: I protested to him there was no such thing, and that some malicious Fellow or other had set him on work to come and abuse me to my face. He seemed satisfied: but going to visit Mr. *Prynn* then in the *Tower*, he told it him; and Mr. *Prynn*, without further proof, prints it in the next Book he set out. When I saw it in print, and found that some in Court took notice of it, I resolved to acquaint his Majesty how I was used; and meeting with the Earl of *Pembroke*, then Lord Chamberlain, and my great Friend, as he pretended, (the King being not then come forth of his Chamber) I told his Lordship how I was used; and when the King came forth, I told it him also. But the Earl of *Pembroke*, then present in the House, and called up by them for a Witness, forgetting the Circumstances, but remembering the Thing, took it upon his Honour, that I said nothing of Mr. *Prynn's* printing it, but that I told him absolutely I had this Dream. Now God forgive his Lordship. I was much troubled in myself to hear him to take it upon his *Dis honour*, (for so it was) and yet unwilling (knowing his Violence) to contest with him in that Place, and in my Condition; and observing what Spleen he hath lately shewed against me, I stood a little still to gather up myself. When Mr. *Nicolas*, before I could make any Reply, fell on with great earnestness, and told the Lords, That the fore-part of my Dream was found true, to the great hurt both of Church and State;

and that he hoped they would now make good the latter, *That I might be hanged.* To which I answered, That I had not forgotten our Saviour's Prediction, *St. John xvi. 33. That in the World we should be sure to meet with Affliction.* Nor his Prayer; *Father, forgive these Men, for they know not what they do;* *St. Luke xxiii. 24.* No, nor is that out of my memory which *St. Paul* speaks, *1 Cor. iv. 3. de Humano Die.* But for the Publick, with this I shall conclude: *God of his infinite Mercy bless the King and his People with Love, and Peace, and Piety, and Plenty, which is the worst I ever wished or endeavoured, whatsoever it shall please God shall become of me; to whose blessed Will and Pleasure, in all humanity I submit myself.* And here ended this last Day of my Trial. But before I went from the Bar, I made three Motions to the Lords: The one, That I might have a Day to make a Recapitulation of this long and various Charge, or of the chief Heads of it, that it might appear in a Body together. The other, That after this, my Counsel might have a Day to speak to all Points of Law, incident to my Cause. The third, That they would be pleased to remember, that I had pleaded the Act of Oblivion to the thirteenth Original Article. Mr. *Nicolas* said they would acquaint their House with it. And the Lords promised to take all into Consideration. And so I was dismissed *sine Die.*

' But here I may not go off from this Dream so, ' since Mr. *Prynn* hath printed it at the end of my ' Diary: Where he shamelessly says, This Dream ' was attested from my own Mouth at my Trial ' in the Lords House. For I have set down all ' that passed exactly. Nor did I then give any At- ' testation to it; only before I could gather up my- ' self to answer the Earl of *Pembroke* in a fitting ' manner, and not to hurt myself, Mr. *Nicolas* fell ' upon me with that unchristian Bitterness, as di- ' verted me from the Earl, to answer him. But ' once for all, and to satisfy any Man that desires ' it, that is all true which I have here set down ' concerning this Dream: And upon my Christia- ' nity and Hope of future Salvation, I never had ' this Dream, nor any like it; nor did I ever tell ' it this Lord, or any other, any other way than ' in relation to *Badger* and *Prynn*, as is before rela- ' ted. And sure if I had had such a Dream I should ' not have had so little Discretion as to tell it any ' Man, least of all to pour it into that Sieve, ' the Earl of *Pembroke.* For that which follows, ' and wherein his Charity and Words are almost ' the same with those of Mr. *Nicolas*, I gave him ' the same Answer, and (forgiving him all his ' most unchristian and insatiable Malice against ' me) leave myself in the Hands of God, not in ' his.'

Aug. 23, 1644. I received an Order from the Lords, That if I had a mind to make a Recapitulation (as I had formerly desired) of my long and various Charge, I should provide myself for it against *Monday* next, (this Order came upon *Friday*;) and that I should give in my Answer the next Morning what I meant to do. The next day, *Aug. 24,* in obedience to this Order, I gave in my Answer; which was humble Thanks that I might have Liberty to make it, referring the Day to their honourable Consideration, with this, that *Monday* next was a very short Time for such a Collection. Upon this Answer an Order was presently made, that I should provide to make my Recapitulation upon

upon *Monday, September* the second. And about this time (the certain Day I know not) it was resolved in the House of Commons, that according to my Plea I should enjoy the Benefit of the Act of Oblivion, and not be put to answer the thirteenth Original Article, concerning the *Scottish* Business. And truly, I bless God for it, I did not desire the Benefit of that Act for any Sense of Guiltiness which I had in myself; but in consideration of the Times, and the Malice of the now potent Faction, which being implacable towards me, I could not think it Wisdom to lay by any such Power as might help to secure me. Yet in the former part of my History, when I had good reason to think I shou'd not be called to answer such general Articles, I have set down my Answer to each of them, as much as Generals can be answered. And thereby I hope my Innocency will appear to this thirteenth Article also.

Then came *Monday, Sept. 2.* And, according to the Order of the Lords, I made the Recapitulation of my whole Cause, in Matters of greatest Moment, in this Form following. But so soon as I came to the Bar, I saw every Lord present with a new thin Book in *Folio*, in a blue Coat. I heard that Morning, that *Mt. Pryn* had printed my Diary, and published it to the World to disgrace me. Some Notes of his own are made upon it. The first and the last are two desperate Untruths, besides some others. This was the Book then in the Lords Hands; and I assure myself that time picked for it, that the sight of it might damp me, and disenable me to speak. I confess I was a little troubled at it. But after I had gathered up myself, and looked up to God, I went on to the Business of the Day, and thus I spake.

My Recapitulation.

MY Lords, my Hearing began *March 12.* 1643 and continued to the end of *July.* In this time I was heard before your Lordships, with much Honour and Patience, twenty Days; and sent back without hearing, by reason of your Lordships greater Employments, twelve Days: The rest were taken up with providing the Charge against me. And now, my Lords, being come near an end, I am by your Grace and Favour, and the Leave of these Gentlemen of the Honourable House of Commons, to represent to your Lordships and your Memories, a brief Sum of my Answers to this long and various Charge: In which I shall not only endeavour, but perform also all possible Brevity. And as with much Thankfulness I acknowledge myself bound to your Lordships for your Patience; so I cannot doubt but that I shall be as much obliged for your Justice, in what I am innocent from Crime; and for your Clemency, in what the common Frailty of Mankind hath made me err. And I humbly desire your Lordships to look upon the whole Business with honourable Care of my Calling, of my Age; of my long Imprisonment, of my Sufferings in my Estate, and of my Patience in and thro' this whole Affliction; the Sequestration having been upon my Estate above two Years. In which; notwithstanding, I may not omit to give Thanks for the Relief which my Petitions found, for my

present Necessities in this Time of my Hearing; at your honourable Hands.

1. First then, I humbly desire your Lordships to remember the Generality, and, by occasion of that, the Incertainty of almost every Article charged upon me: which hath cast me into great Streights all along in making my Defence.

2. Next, That your Lordships will be pleased to consider what a short Space, upon each Day's Hearing, hath been allow'd me to make my Answer to the many Charges in each several Day laid against me: Indeed, some Days scarce Time enough to peruse the Evidence, much less to make, and then to review and weigh my Answers. Especially considering (to my greatest Grief) that such a Charge should be brought up against me from so great and honourable a Body as the Commons of *England.* In regard of which; and all other sad Occasions, I did at first, and do still in all Humility desire, that in all Particulars concerning Law, my Counsel may be heard before your Lordships proceed to Sentence; and that a Day may be assigned for my Counsel accordingly.

3. Thirdly, I heartily pray also, that it may be taken into your honourable Consideration how I have all manner of ways been sifted to the very Bran, for that (whate'er it amounts to) which stands in Charge against me.

(1.) The Key and Use of my Study at *Lambeth*, Books, and Papers, taken from me.

(2.) A Search upon me at the *Tower*, made by *Mr. Pryn*, and one and twenty Bundles of Papers, prepared for my Defence, taken from me, and not three Bundles restored to me again. This Search made before any particular Articles were brought up against me. My very Pockets searched; and my Diary, nay, my very Prayer-Book, taken from me, and after used against me: And that in some Cases not to prove, but to make a Charge. Yet I am thus far glad, even for this sad Accident: For by my Diary your Lordships have seen the Passages of my Life; and by my Prayer-Book the greatest Secrets between God and my Soul. So that you may be sure you have me at the very bottom. Yet, blessed be God, no Disloyalty is found in the one; no Popery in the other.

(3.) That all Books of Council-Table, Star-Chamber, High-Commission, Signet-Office, my own Registeries, and the Registeries of *Oxford* and *Cambridge*; have been most exquisitely searched for matter against me, and kept from me and my Use, and so affording me no Help towards my Defence.

4. I humbly desire your Lordships to remember in the fourth Place, That the Things wherein I took great pains, and all for the publick Good and Honour of this Kingdom and Church, without any the least Eye to my own Particular, nay, with my own great and large Expences, have been objected against me as Crimes: As, namely, the Repair of *St. Paul's*, and the settling of the Statutes of the University of *Oxford.*

(1.) For *St. Paul's*: Not the Repair itself; they say, (no, for very Shame they dare not say that, tho' that be it which galls the Faction) but the demolishing the Houses which stood about it. Yea, but without taking down of these Houses, it was not possible to come at the Church to repair it; which is a known Truth. And they

they were taken down by Commission under the Broad-Seal. And the Tenants had valuable Consideration for their several Interests, according to the Number of their Years remaining, and according to the Judgment of Commissioners named for that purpose, and named by his Majesty and the Lords, not by me: Nor did I ever so much as sit with them about this Business. And if the Commission itself were any way illegal, (as they urge it is) that must reflect upon them whose Office was to draw and seal it; not on me, who understood not the Legality or Illegality of such Commissions: Nor did I desire that any one Circumstance against Law should be put into it; nor is any such thing so much as offered in proof against me. And because it was pressed, That these Houses could not be pulled down but by order of Parliament, and not by the King's Commission alone; I did here first read in part, and afterwards, according to a *Salvo* granted me,

^a 1 Pars Pat. de An. 45 Ed. III. m. 34.

deliver into the Court three Records, two in *Edward I's* Time, and one in *Edward III's* Time, in which are these Words; *Auctoritate nostra Regali, prout opus fuerit, cessantibus quibuscunque Appellationum & reclamationum diffugiis, Juris, Scripti, aut Patriæ strepitu procedatis; Nova Ædificia quæ, &c. amoveri, & dissolvi penitus faciatis, &c.* And a little after, *Quousque per nos cum deliberatione & avisamento nostri Consilii super hoc aliter fuerit ordinatum, &c.* Here's no staying for a Parliament; here's no Recompence given; here's barring of all Appeal, nay, all Remedy of Law, tho' written, And all this by the King's own Authority, with the Advice of his Council. And is a far more moderate way taken by me, yet under the same Authority, and for the Removal of far greater Abuses, and for a more noble End, become Treason?

(2.) As for the Statutes of *Oxford*, the Circumstances charged against me are many; and therefore I crave leave to refer myself to what I had already answered therein.

5. Fifthly, Many of the Witnesses brought against me in this Business are more than suspected Sectaries and Separatists from the Church; which by my Place I was to punish, and that exasperated them against me, whereas by Law no Schismatick ought to be received against his Bishop. And many of these are Witnesses in their own Causes, and pre-examined before they come in Court; at which Pre-examination I was not present, nor any for me, to cross-interrogate. Nay, many Causes which took up divers Days of Hearing in Star-Chamber, High-Commission, and at Council-Table, are now upon the sudden easily overthrown by the Depositions of the Parties themselves. And upon what Law this is grounded, I humbly submit to your Lordships. And such as these are the Causes of Mr. *Prynn*, Mr. *Burton*, Mr. *Wilson*, Alderman *Chambers*, Mr. *Vassal*, Mr. *Waker*, Mr. *Huntly*, Mr. *Foxlye*, and many other. Where I humbly represent also, how impossible it is for any Man that sits as a Judge to give an account of all the several Motives which directed his Conscience in so divers

^b Cod. L. 1. Tit. 5. L. 12. & 21 Confer. at Hampton-Court, p. 26.

Causes, and so many Years past, as these have been, and where so many Witnesses have been examined, as have been here produced against me: My Lords, above an hundred and fifty Witnesses, and some of them three, four, six times over; and Mr. *Prynn* I know not how often. Whereas the Civil Law says expressly, That *the Judges should moderate Things so, that no Man should be oppressed by the Multitude of Witnesses; which is a kind of Proof too, that they which so do, distrust the Truth and Goodness of their Cause.* Besides, my Lords, in all Matters which came before me I have done nothing, to the uttermost of my Understanding, but what might conduce to the Peace and Welfare of this Kingdom, and the Maintenance of the Doctrine and Discipline of this Church established by Law; and under which God hath blessed this State with so great Peace and Plenty, as other neighbouring Nations have looked upon with Admiration. And what Miseries the Overthrow of it (which God in Mercy forbid) may produce, he alone knows.

6. Sixthly, My Lords, there have been many and different Charges laid upon me about Words. But many of them (if spoken) were only passionate and hasty; and such, upon what occasion so ever drawn from me, (and I have had all manner of Provocations put upon me) may among human Errors be pardoned unto me) if so it please your Lordships. But for such as may seem to be of a higher nature, as those witnessed by Sir *Henry Vane* the Elder, I gave my Answer again now fully to the Lords, but shall not need to repeat it here.

7. Seventhly, Then, my Lords, for my Actions: Not only my own, but other Mens have been heavily charged against me in many Particulars, and that criminally, and I hope your Lordships will think illegally: As Secretary *Windebank's*, Bishop *Montague's*, my Chaplains, Dr. *Heylin's*, Dr. *Cosen's*, D. *Pocklington's*, Dr. *Dove's*, Mr. *Shelford's*, and divers others: And many of these Charges look back into many Years past. Whereas the Act made this present Parliament takes no notice of, nor punishes any Man for any thing done and past at the Council-Table, Star-Chamber, or High-Commission, much less doth it make any thing Treason. And out of this Act I am no way excepted. Besides (as I have often pleaded) all Acts done in the Star-Chamber, at Council-Table, High-Commission, or Convocation, are all joint Acts of that Body in and by which they were done; and cannot by any Law be singly put upon me, it being a known Rule of the Law, *Refertur ad universos quod publice fit per majorem partem.* And Mr. *Prynn* himself can stand upon this Rule against the *Independents*, and tell us that the major Voice or Party ought to over-rule and bind the less; and he quotes a Scripture for it too. In which Place, that which is done by the major Part is ascribed to all; not laid upon any one, as here upon me. And in some of these Courts, Star-Chamber especially, and Council-Table, I was accompanied with Persons of great Honour, Knowledge, and Experience, Judges, and others: And tis to me

^c *Prynn in his Independency examined, p. 4.*

^d 1 Chron. 13. 4, 5. Acts 15. 22.

* *Judices moderentur, &c. ne effrenata potestate ad vexandos Homines superflua multitudo Testium protrahatur. Dig. L. 22. Tit. 5. L. 1. § 2. Adde & hanc rationem, quod qui prædicta licentia abutuntur, veniunt in suspicionem, quod non satis confidunt veritati, Gloss. Ibid.*

‘ strange, and will seem so to future Ages, that
 ‘ one and the same Act shall be Treason in me,
 ‘ and not the least Crime, nay, nor Misdemeanour
 ‘ in any other. And yet no Proof hath been
 ‘ offered that I solicited any Man to concur with
 ‘ me, and almost all the Votes given preceded
 ‘ mine, so that mine could lead no Man.

8. After this I answered to divers other Particulars, as namely, to the Canons, both as they concerned Aid to the King, and as they looked upon Matters of the Church and Religion.

9. To the Charge about Prohibitions.

10. To the base Charge about Bribery. But pass them over here, as being answered before: Whether I may refer the Reader now, tho’ I could not the Lords then.

‘ 11. My Lords, after this came in the long
 ‘ and various Charge of my usurping Papal Power,
 ‘ and no less than a Design to bring in all the
 ‘ Corruptions of Popery, to the utter Overthrow
 ‘ of the Protestant Religion established in *England*.

‘ And this they went about to prove,
 ‘ (1.) *By my Windows in the Chapel:* An Argument as brittle as the Glass in which the Pictures are.

‘ (2.) *By Pictures in my Gallery:* Which were there before the House was mine, and so proved to your Lordships.

‘ (3.) *By Reverence done in my Chapel:* As if it were not due to God, especially in his Church; and done it was not to any other Person or Thing.

‘ (4.) *By Consecration of Churches:* Which was long before Popery came into the World; as was also the Care of safe laying up of all hallowed and sacred Things. For which, I desire your Lordships I may read a short Passage out of Sir *Walter Raleigh’s* History; the rather because written by a Lay-Man, and since the Times of Reformation.’

Sir Wal. Raleigh’s Hist. of the World, L. 2. c. 5. § 1.

But this Mr. *Maynard* excepted against, both as new Matter, and because I had not the Book present, tho’ the Paper thence transcribed was offered to be attested by Oath to be a true Copy. But tho’ I could not be suffered to read it then, yet here it follows: ‘ So sacred was the moveable Temple of God, and with such Reverence guarded and transported, as 22000 Persons were dedicated to the Service and Attendance thereof, of which 8580 had the peculiar Charge, according to their several Offices and Functions, the Particulars whereof are in the Third and Fourth of *Numbers*. The reverend Care which *Moses* the Prophet and chosen Servant of God had, in all that belonged even to the outward and least Parts of the Tabernacle, Ark, and Sanctuary, witnessed well the inward and most humble Zeal borne toward God himself. The Industry used in the framing thereof, and every and the least part thereof, the curious Workmanship thereon bestowed, the exceeding Charge and Expence in the Provisions, the dutiful Observance in laying up and preserving the holy Vessels, the solemn removing thereof, the vigilant Attendance thereon, and the provident Defence of the same, which all Ages have in some degree imitated, is now so forgotten and cast away, in this superfine Age, by those of the *Family*, by the *Anabaptists*,

‘ *Brownists*, and other Sectaries; as all Costs and Care bestowed and had of the Church, wherein God is to be served and worshipped, is accounted a kind of Popery, and as proceeding from an idolatrous Disposition. Inasmuch, as Time would soon bring to pass (if it were not resisted) that God would be turned out of Churches into Barns; and from thence again into the Fields and Mountains, and under the Hedges; and the Office of the Ministry (robbed of all Dignity and Respect) be as contemptible as those Places; all Order; Discipline, and Church-Government, left to Newness of Opinion and Mens Fancies: Yea; and soon after as many Kinds of Religions would spring up, as there are Parish-Churches, &c.’ Do ye not think some body set Mr. *Maynard* on to prohibit the reading out of this Passage, as foreseeing whither it tended? For I had read one third part of it, before I had the Stop put upon me.

‘ (5.) But they went on with their Proof, by my censuring of good Men, that is, Separatists and refractory Persons.

‘ (6.) By my Chaplains expunging some Things out of Books which made against the Papists. It may be, if my Chaplains (whom it concerns) had Liberty to answer, they were such Passages as could not be made good against the Papists; and then ’tis far better they should be out than in. For as *St. Augustin* observed in his, and we find it true in our Time, *The Inconvenience is great, which comes to the Church and Religion by bold Affirmers*. Nay, he is at a *satis dici non potest*, the Mischief is so great as cannot be expressed.

‘ (7.) Then by altering some Things in a Sermon of Dr. *Sibthorp’s*. But my Answer formerly given will shew I had cause.

‘ (8.) By my Preferment of unworthy Men. So unworthy, as that they would be famous both for Life and Learning, were they in any other Protestant Church in Christendom. And they are so popishly affected, as that having suffered much both in State and Reputation (since this Persecution of the Clergy began; for less it hath not been) no one of them is altered in Judgment, or fallen into any liking with the Church of *Rome*.

‘ (9.) By the Overthrow of the *Feoffment*: But that was done by Judgment in the Exchequer, to which I referred myself. And if the Judgment there given be right, there’s no Fault in any Man: If it were wrong, the Fault was in the Judges, not in me; I solicited none of them.’

‘ (10.) By a Passage in my Book, where I say, *The Religion of the Papists and ours is one*: But that’s expressed at large, only because both are Christianity; and no Man, I hope, will deny that *Papists* are *Christians*. As for their notorious Failings in Christianity; I have in the same Book said enough to them.

Cont. Fifth. p. 376.

‘ (11.) By a Testimony of Mr. *Burton’s* and Mr. *Lane’s*, That I should say, *We and the Church of Rome did not differ in Fundamentals, but in Circumstantials*. [This I here followed at large; but, to avoid tedious Repetition, refer my Reader to the Place where ’tis answered.]

‘ (12.) By my making the *Dutch* Churches to be of another Religion. But this is mistaken (as my

* *Quid Molestia & Tristitia irgerant Prudentibus Fratribus temerarii Assertores, satis dici non potest. Aug. 1. de Gen. ad Lit. C. 19.*

‘ my Answer will shew the Reader;) and if they
‘ do not make themselves of another Religion, I
‘ shall never endeavour to make them.

‘ (13.) By a Pack of such Witnesses, as were ne-
‘ ver produced against any Man of my Place and
‘ Calling; Messengers and Pursuivants, and such
‘ as have shifted their Religion to and again; Pil-
‘ lory-Men and Bawds; and these the Men that
‘ must prove my Correspondence with Priests.

‘ (14.) In the midst of these, upon occasion of the
‘ Ceremonies at the Coronation, it was pressed
‘ against me, That *I had altered the King’s Oath.*

‘ (15.) And last of all, That *I had shewed myself
‘ an Enemy to Parliaments.* [Upon both these I
‘ did very much enlarge myself: But here also,
‘ that I may not be a Burden in repeating the same
‘ things, I desire the Reader to look upon them in
‘ their proper Places, where I doubt not but my
‘ Answer will give him full Satisfaction, that I did
‘ not the one, nor am the other.]

‘ But, my Lords, there are other strange Argu-
‘ ments produced against me, to prove my Com-
‘ pliance with *Rome*, which I most humbly desire
‘ your Lordships may not be forgotten.

‘ 1. As, First, my Lords, it hath been charged
‘ upon me, That I made the Oath recited in the
‘ first of the late Canons; one Clause whereof is
‘ this: *That I will never give my Consent to subject
‘ this Church to the Usurpations and Superstitions of
‘ the Church of Rome.* Whence the Argument drawn
‘ against me must be this, and can be no other;
‘ That I did endeavour to bring in *Popery*, because
‘ I made and took a solemn Oath, never to give
‘ my Consent to subject this Church of *England* to
‘ the Usurpations and Superstitions of the Church
‘ of *Rome*. I beseech your Lordships mark the
‘ Force of this Argument; and they which fol-
‘ low are as pregnant against me.

‘ 2. Secondly, My Book against *Fisher*, hath
‘ been charged against me; where the Argument
‘ must lie thus: I have endeavoured to advance
‘ *Popery*, because I have written against it: And
‘ with what Strength I have written against it, I
‘ leave Posterity to judge, when the Envy which
‘ now overloads me, shall be buried with me.
‘ This I will say with *St. Gregory Nazianzen* (whose
‘ Success at *Constantinople* was not much unlike

‘ mine here, save that his Life was
‘ not sought) *I * never laboured for
‘ Peace to the Wrong and Detriment of
‘ Christian Verity; nor I hope ever
‘ shall.* [And let the Church of *Eng-
‘ land* look to it: for in great Hu-
‘ mility I crave to write this (tho’

then was no time to speak it) That the Church
of *England* must leave the way it’s now going,
and come back to that way of Defence which I have
followed in my Book, or she shall never be able to
justify her Separation from the Church of *Rome*.]

‘ 3. Thirdly, All the late Canons have been
‘ charged against me; and the Argument which
‘ is drawn from thence, must lie thus: The third of
‘ these Canons for suppressing the Growth of *Po-
‘ pery*, is the most full and strict Canon that ever
‘ was made against it in the Church of *England*;
‘ therefore I that made this Canon to keep it out,
‘ am guilty of endeavouring to keep it in.

‘ 4. Fourthly, I have by my Industry, and God’s
‘ great Blessing upon my Labours, stayed as many
‘ from going, and reduced to the Church of *Eng-
‘ land* as many that were gone to *Rome*, as I be-
‘ lieve any Minister in *England* can truly say he
‘ hath done: I named them before, and had Scorn

‘ enough put upon me for it, as your Lordships
‘ could not but both see and hear; where the Ar-
‘ gument lies thus: I converted many from *Popery*,
‘ and settled them in the Religion established in
‘ *England*; therefore I laboured to bring in *Popery*,
‘ which out of all doubt can be no sober Man’s way.

‘ 5. Fifthly, The Plot discovered to *Sir William
‘ Boswell* and myself, by *Andreas ab Habersfield*,
‘ hath been charged against me: That Plot for
‘ altering of Religion, and by what ways, your
‘ Lordships have heard already, and

‘ is to be seen at full in *Rome’s Master-
‘ Piece.* Now if this Plot in the
‘ Issue proved nothing but a confused

*Mr. Pryn’s
Rome’s Mas-
ter-Piece.*

‘ Information, and no Proof of any Particular, as
‘ indeed it did; what’s become of *Rome’s Master-
‘ Piece*? But if it had any Reality in it, as it ap-
‘ peared to be a sad Plot, not only to me, but to
‘ all Men that saw the short Propositions which
‘ were first sent, with an absolute Undertaking to
‘ prove them; then it appears expressly, that I was
‘ in danger of my Life, for stiffly opposing the
‘ bringing in of *Popery*? and that there was no
‘ hope to alter Religion in *England*, till I was ta-
‘ ken out of the way. And tho’ in Conclusion
‘ the Proofs failed, yet what was consulted, and
‘ it seems resolved, concerning me, is plain e-
‘ nough. And then the Argument against me lies
‘ thus: There’s no hope to bring in *Popery*, till I
‘ am taken out of the way; therefore I did la-
‘ bour to bring it in. Do not these things, my
‘ Lords, hang handsomely together?

‘ 6. Lastly, There have been above threescore
‘ Letters and other Papers, brought out of my Stu-
‘ dy into this Honourable House; they are all about
‘ composing the Differences between the *Lutherans
‘ and Calvinists* in *Germany*. Why they should
‘ be brought hither, but in hope to charge them
‘ upon ’em, I know not; and then the Argument
‘ will be this: I laboured to reconcile the *Pro-
‘ testants* in *Germany*, that they might unanimously
‘ set themselves against the *Papists*; therefore I
‘ laboured to bring *Popery* into *England*.

‘ Now that your Lordships have heard the Ar-
‘ guments, and what Proof they make against me,
‘ I must be bold to put you in mind of that which
‘ was said here at the Bar, *April 16, 1644*. That
‘ they did not urge any of these particular Actions
‘ as Treason against me; but the Result of them
‘ altogether amounted to Treason. For Answer to
‘ which, I must be bold to tell your Lordships,
‘ That if no Particular which is charged upon me be
‘ Treason, the Result from them cannot be Treason,
‘ which will appear by these Reasons following:

‘ 1. First, The Result must be of the same
‘ Nature and Species with the Particulars from
‘ which it rises. But ’tis confessed no one of the
‘ Particulars are Treason: Therefore neither is
‘ the Result that rises from them. And this holds
‘ in *Nature*, in *Morality*, and in *Law*.

‘ In *Nature*, and that both for Integral and Es-
‘ sential Parts: for neither can the Body of a Bear
‘ and the Soul of a Lion, result into a Fox; nor
‘ the Legs of a Bull, the Body of a Horse, and the
‘ Head of an Ass, result into a Man.

‘ In *Morality*, and that is seen both in Virtues
‘ and Vices: For neither can many Actions of Li-
‘ berality, Meekness and Sobriety, rise up into a
‘ Result of Fortitude; neither can many Actions
‘ of Malice, Drunkenness and Covetousness, result
‘ into Treason.

‘ In *Law* ’tis so too: For be there never so ma-
‘ ny particular Crimes, yet there is no Law in

‘ this

* Non studeamus paci in
vera doctrinae
detrimentum,
Greg. Naz.
Orat. 32.

‘ this Kingdom, nor any where else that I know,
 ‘ that makes a Result of different Crimes to be
 ‘ Treason, where none of the Particulars are Treason
 ‘ by Law. So this imaginary Result is a Monster
 ‘ in Nature, in Morality, and in Law; and if
 ‘ it be nourished, will devour all the Safety of the
 ‘ Subject of *England*, which now stands so well
 ‘ fenced by the known Law of the Land. And
 ‘ therefore I humbly desire your Lordships, not
 ‘ for mine, but for the Publick’s sake, to weigh this
 ‘ Business well, before this Gap be made so wide,
 ‘ as there will hardly be Power left again to shut it.

‘ 2. My second Reason is joined to the Answer
 ‘ of an Objection: For when this Result was
 ‘ spoken of, it was added, That the Particulars
 ‘ charged against me, are of the same kind, and
 ‘ do all tend to the Subversion of Law and Reli-
 ‘ gion, and so become Treason. But, first, sup-
 ‘ pose that all the Particulars charged, do tend
 ‘ to the Subversion of Law, yet that cannot make
 ‘ them to be all of one kind: For all Crimes
 ‘ tend more or less to the Overthrow of Virtue;
 ‘ yet no Man can say, that all Crimes are of the
 ‘ same kind. Secondly, be they of the same, or
 ‘ different kinds; yet neither all, nor any of these
 ‘ charged against me, do tend to the Subversion of
 ‘ the Law: For ’tis one thing to break, dislike or
 ‘ speak against some particular Laws, and quite
 ‘ another to labour the Subversion of the whole
 ‘ Body of the Law, and the Frame of Government.
 ‘ And that I have done this by Conspiracy, Force,
 ‘ or any overt Action, is not so much as offered in
 ‘ Proof. And for the Breach of any particular
 ‘ Law, if I be guilty, I am to be punished by the
 ‘ Sanction of that Law which I have broken.

‘ 3. Thirdly, Whereas it hath been said, That
 ‘ many Actions of the same kind make a Habit.
 ‘ That’s true: But what then? For, First, the
 ‘ Actions urged against me are not of the same
 ‘ kind, but exceeding different. Secondly, if the
 ‘ Habit be treasonable, then all those particular
 ‘ Actions which bred that Habit, must be several
 ‘ Treasons, as well as the Result or Habit itself;
 ‘ whereas it hath been granted all along, that my
 ‘ particular Actions are not Treasons. And, Third-
 ‘ ly, a Habit in itself, neither is nor can be Treason;
 ‘ for all Treason is either *Thought, Word or Overt-*

‘ *Act*; but no Habit is either of these,
 ‘ therefore not Treason. For a Habit
 ‘ is that in the Soul which en-
 ‘ clines the Powers of it, and makes
 ‘ a Man apt and ready to think, speak, or do that
 ‘ to which he is habituated. So an ill Habit a-
 ‘ gainst Sovereign Power, may make a Man apt
 ‘ and forward to fall into Treason; but Treason it
 ‘ is not.

‘ 4. Fourthly, Nor can this Result be Treason
 ‘ at the Common Law, by which alone, I conceive,
 ‘ there is no Treason at all this Day in *England*:
 ‘ For the main end of that excellent Statute of 25
 ‘ *Ed. III.* was for the Safety of the Subject, against
 ‘ the manifold Treasons which variously fell up-
 ‘ on them by the Common Law; and bounded
 ‘ all Treasons, and limited them to the things ex-
 ‘ pressed to be Treason in and by that Statute.
 ‘ And in all times of difficulty since, Recourse
 ‘ hath still been had to that Statute: And to that
 ‘ Statute I refer myself, with this; That this Re-
 ‘ sult must be something within this Statute, or
 ‘ some other known Statute, or else it cannot be
 ‘ Treason: And no Proof at all hath been so much
 ‘ as offered, that this Result is Treason by any Law.

‘ My Lords, I do with all humble Submission
 ‘ desire, that when the Reply is made to this Mat-
 ‘ ter of Fact, a Day may be assign’d for my Coun-
 ‘ sel to be heard in Matter of Law, in all and
 ‘ every Particular which they shall find necessary
 ‘ for my just Defence.

‘ And now, my Lords, I do in all Humility lay
 ‘ myself low at God’s Mercy-seat, to do with
 ‘ me as he pleases; and under God, I shall rely
 ‘ upon your Lordships’ Justice, Honour and Cle-
 ‘ mency, of which I cannot doubt, And without
 ‘ being farther tedious to your Lordships (who
 ‘ have with very honourable Patience heard me
 ‘ thro’ this long and tedious Trial) I shall con-
 ‘ clude with that which *St. Augustine* said to *Ro-*
 ‘ *manianus*, a Man that had tried
 ‘ both Fortunes as well as I: *¶ If the* b S. Aug. l. 1.
cont. Academ.
 ‘ *Providence of God reaches down to us*
 ‘ (as most certain it doth) *Sic tecum* c. 1. S. Mat.
x. 29. Rom.
viii. 28.
 ‘ *agi oportet, sicut agitur*: It must so
 ‘ be done with thee (and so with me
 ‘ also) as it is done. And under that Providence,
 ‘ which will, I doubt not, work to the best to
 ‘ my Soul that loves God, I repose myself.’

‘ Here ended my *Recapitulation*, and with it the
 ‘ Work of that Day: And I was ordered to appear
 ‘ again the *Saturday* following, to hear Mr. *Browne*
 ‘ sum up the whole Charge against me. But upon
 ‘ *Tuesday, Septemb. 3.* this was put off, to give Mr.
 ‘ *Browne* more time, to *Wednesday, Septemb. 11.*

ON *Wednesday, Septemb. 11.* Mr. *Browne* made
 ‘ in the Lords House, a Sum or Brief of the
 ‘ Charge which was brought against me, and touch-
 ‘ ed, by the way, at some things in my *Recapitula-*
 ‘ *tion*. But in regard I might not answer him, I took
 ‘ no perfect Notes, but stood still, and possessed
 ‘ my Soul in Patience; yet wondring at the bold,
 ‘ free, frequent, and most false Swearing that had
 ‘ been against me. When Mr. *Browne* had ended, I
 ‘ humbly desired again, that my Counsel might be
 ‘ heard in Point of Law. And they were hereupon
 ‘ ordered to deliver in Writing under their Hands,
 ‘ what Points of Law they would insist upon, and
 ‘ that by *Saturday, Septemb. 14.*

‘ This Day my Counsel, according as they were
 ‘ ordered, delivered into the Lords House, these
 ‘ two Points following by Way of Question. First,
 ‘ Whether in all, or any of the Articles charged a-
 ‘ gainst me, there be contained any Treason by the
 ‘ established Laws of this Kingdom? Secondly,
 ‘ Whether the Charge of the said Impeachment and
 ‘ Articles, did contain such Certainty and Particu-
 ‘ larity as is required by Law, in a Case where
 ‘ Treason is charged? This Day I petitioned the
 ‘ Lords, that my Counsel might have access to, and
 ‘ take Copies of all such Records as they thought
 ‘ necessary for my Defence; which was granted and
 ‘ order’d accordingly.

‘ My Counsel’s *Queries* having been formerly sent
 ‘ down to the House of Commons, they were there
 ‘ referred to a Committee of Lawyers to consider
 ‘ of: And on *Friday, Septemb. 27.* they were earnest-
 ‘ ly called upon to hasten their Report. And on
 ‘ *Friday, Octob. 4.* Mr. *Nicolas* made a great Noise
 ‘ about me in the House, and would have had me
 ‘ presently censured in the House; and no less would
 ‘ serve his turn, but that I must be *hanged*; and was
 ‘ at *Suf. per Coll.* till upon the Reasons before gi-
 ‘ ven, that if they went on this way, they must
 ‘ condemn me unheard: this violent Clamour ceased

for that time. And a Message was sent up to the Lords for my Counsel to be heard, as touching the first Question concerning Treason; but not concerning any Exception that they shall take against the Articles in point of Certainty. This Message the Lords took into present Consideration, and order'd it accordingly: And appointed the Friday following, being Octob. 11. for my Counsel to be heard, and myself to be present.

This Day, according to this Order of the Lords, I and my Counsel attended. My Counsel were Mr. *Hern* and Mr. *Hale* of *Lincoln's-Inn*, and Mr. *Gerard* of *Gray's-Inn*. When we were called into the House, and the Lords settled in their Places, Mr. **John Hern* (who was the Man that spake what all had resolved on) delivered his Argument very freely and stoutly, proving that nothing which I have either said or done according to this Charge, is Treason, by any known established Law of this Kingdom. The Argument follows in these Words, according to the Copy which Mr. *Hern* himself delivered me.

My Lords,

A first Introduction.

THE Work of this Day, we humbly conceive, is in many respects of very great and high Concernment.

1. In that it concerns Matter of Life, a thing of the highest Consequence.

2. The Life of an Archbishop, a Person who had attained the highest Dignity conferred in the Church of *England*.

3. Those happy Laws, many Years since enacted and confirmed by several Parliaments, to be the Boundaries what was Treason; a Crime before so various, as it had no Bounds; and so odious, that the Punishment of it was an infamous Death, a total Confiscation, with a Brand of Infamy to all Posterity.

4. In that the Charge against him moves from no less a Body than the whole Commons of *England*, which presents him now a Prisoner at this Bar before your Lordships, in the High and Supreme Court of Judicature in Parliament.

And if any thing shall fall from us, subject to any doubtful Construction, we shall humbly crave your Lordships Pardon, and Leave to make our Explication: For as there is upon us a Duty to be wary, not to offer any thing which may minister just Offence; so neither may we be unfaithful, to omit what may justly tend to our Client's Defence.

The Charge upon what it consists.

The Titles of the several Parcels of the Articles, upon which the Charge against the AEp was made up.

The Charge against him, we find to be made up of two several Parcels of Articles, exhibited by the Honourable House of Commons.

1. The first, *In Maintenance of their accusation, whereby he stands charged with High Treason.*

2. The latter, intituled, *Farther Articles of Impeachment of High-Treason, and divers High Crimes and Misdemeanours; for all which Matters and Things they have impeached*

him of High-Treason, and other High Crimes and Misdemeanours, tending to the Subversion of Re-

ligion, Laws and Liberties, and to the utter Ruin of this Church and Commonwealth.

Concerning this Charge, and the Archbishop's Defence he hitherto made before your Lordships, we (by your Lordships Command assigned his Counsel) neither have nor could (by reason of the mix'd Charge, without distinguishing what was thereby intended to be a Charge of Treason, and what of Misdemeanour only) be farther useful to him, than to advise the Form of his Plea and Answer, which we received from him, as to all the Matters of Fact, to be a Not Guilty.

We have not in all or any the Facts charged or evidenced against him, in any sort intermeddled. But the same (how proved and how applicable to the Charges, without mention of any of them) shall wholly leave to your Lordships Notes and Memories.

What Defence he hath offered hitherto, hath been wholly his own: he without us in that, and we without consulting him in the Work of this Day.

Wherein, having received your Lordships Commands, we did present in Writing the Points in Law we then humbly conceived fit for us to insist upon.

I. Whether in all, or any the Articles charged against him, there was contained any Treason by the established Laws of this Kingdom.

II. Whether the Charge of the said Impeachment and Articles, did contain such Certainty and Particularity, as is required by Law in a Case where Treason is charged.

But being enjoined by your honourable Order, to speak only to the former; we shall, as in Duty becomes, conform thereunto.

For our Method herein shall follow the Course holden in the Reply made upon the whole Articles, whereby we conceived the Charges contained in them were reduced to these three Generals.

1. A traiterous Endeavour to subvert the Fundamental Laws of the Realm; and instead thereof, to introduce an Arbitrary and Tyrannical Government against Law; contained in the first Original and first Additional Articles.

2. Secondly, A traiterous Endeavour to subvert God's true Religion by Law established; and instead thereof, to set up Popish Superstition and Idolatry: this contained in the seventh Original and seventh Additional Articles.

3. Thirdly, That he laboured to subvert the Rights of Parliament, and the antient Course of Parliamentary Proceedings, and by false and malicious Slanders to incense his Majesty against Parliaments. And this contained in the fourteenth Original and tenth Additional Articles.

All other the Articles, we humbly conceive to be but Instances, conducing and applied to some of those Generals.

Concerning

The Straits upon his Counsel by reason of the mix'd Charge, without distinguishing what was intended to be a Treason, what a Misdemeanour.

The two Points presented by Counsel in writing, to be insisted upon for his Defence in point of Law.

The first only admitted.

The Method proposed.

The three general Charges.

* *The Lord Chancellor Finch told me, that this Argument was not Mr. Hern's, (tho' he pronounced it) for he could not argue; but it was Mr. Hale's, afterward Lord Chief Justice. And he said farther, that being then a young Lawyer, he stood behind Mr. Hern, when he spake at the Bar of the Lords House, and took Notes of it; and that it will be published among his Reports. W. S. A. C.*

Concerning those three General Heads of the Charge, we shall crave leave to propose two Questions to be debated.

Two general Questions to be insisted upon.

Whether there be at this Day any other Treason, than what is declared by the Statute of 25 Ed. III. cap. 2. or enacted by some subsequent particular Statute; which we humbly conceive, and shall endeavour to satisfy your Lordships, there is not any.

Whether any the Matters in any of the Articles charged, contain any of the Treasons declared by that Law, or enacted by any subsequent Law; which we likewise conceive they do not. And for the clearing of both these, shall humbly insist, That,

(1.) An Endeavour to subvert the Laws, an Endeavour to subvert Religion, a Labouring to subvert the Rights of Parliaments; are not Treasons, either within the Statute of 25 Ed. III. or by any other particular Statute.

(2.) That not any of the Particulars, instanced in any other the Articles, is a Treason within the Statute 25 Ed. III. or any other Statute.

And to make good our Tenet upon our first Question, shall humbly offer,

In Maintenance of our first Tenet upon the first Question.

That before this Statute of 25 Ed. III. Treasons at the Common Law were so general and uncertain, that almost any Crime, by Inferences and Constructions, might be, and was often extended to be a Treason; insomuch as we find in 22^o of the Book of Assize, killing the King's Messenger was Treason. And in the Parliament-Roll, 21 Ed. III. num. 15. accroaching the Royal Power (wherein every Excess was subject to a Construction of Treason) was Treason; for which divers having suffered, the Commons in Parliament finding how mischievous and destructive it was to the Subject, petitioned it might be bounded and declared. And this, not to give any liberty, but to give bounds to it; one while it being construed an Accroachment of Royal Power, as in the Case of the Earl of Lancaster, temp. Ed. II. for being over-popular with the People; and in the same King's Reign to Spencer, for being over-gracious with the King.

The Uncertainty of what was, or was not Treason, produced the Law of 25 Edw. III.

The Sense of these and other Mischiefs by the Uncertainty of Treason, brought on this Law of 25 Ed. III. And the Benefit it to the Subject, says Sir Ed. Coke in his Treatise of the Pleas of the Crown, begot that Parliament the Name of *Parliamentum Benedictum*; and that except *Magna Charta*, no other Act of Parliament had more Honour given it by the King, Lords, and Commons.

The Act of 25 Ed. III. the Rule in Parliament to judge Treasons by.

And this Law hath been in all times the Rules to judge Treasons by, even in Parliament; and therefore in the Parliament-Roll, 1 H. IV. Num. 144. the Trial and Judgment in Cases of Impeachment of Treason, is prayed by the Commons might be according to the antient Laws. And in the Parliament-Roll 5 H. IV.

num. 12. in the Case of the then-Earl of Northumberland, this Statute of 25 Ed. III. was the Guide and Rule by which the Lords judged, in a Case endeavoured to have been extended to be a Treason, the same to be no Treason.

Parliament-Roll, 55 H. IV. num. 12. Case of E. of Northumberland.

And it is, as we conceive, very observable, That if at any time the Necessity or Excess of the Times produced any particular Laws in Parliament, for making of Treasons not contained in that Law of 25 Ed. III. yet they returned and fixed in that Law.

Treason particularly enacted after 25 Ed. III. still reduced to that Law.

Witness the Statute of 1 H. IV. cap. 10. whereby all those Facts which were made Treasons in the divided Time of R. II. were reduced to those of Ed. III.

Treasons made in the divided time of R. II. reduced per Stat. 1 H. IV. c. 10.

In the Time of H. VIII. wherein several Offences were enacted to be Treasons, not contained in the Statute of 25 Ed. III. the same were all swept away by the Statute of 1 Ed. VI. 12.

Made in the Time of Hen. VIII. reduced 1 Ed. VI. c. 10.

And again, where in the Time of Ed. VI. several Treasons were enacted, they were all repealed, and by an Act made 1 Marie none other Offence left to be Treason, than what was contained and declared by the Statute of 25 Ed. III.

Made in the Time of Ed. VI. reduced by the Act of 1 Marie, c. 10.

And from 1 H. IV. to Queen Mary, and from thence downward, we find not any Judgment hath been given in Parliament, for any Treason not declared and contained in that Law, but by Bill.

From 1 H. IV. to this Day, no Judgment in Parliament given of any Treason not contained in that Law.

Thus in Succession of all Times, this Statute of 25 Ed. III. in the Wisdom of former Parliaments, hath stood and been the constant fixed Rule for all Judgments in Cases of Treason.

This Law in all Times the Standard to judge Treasons by.

We shall now observe, what Offences are in and by that Law declared to be Treasons; whereby your Lordships will examine, whether you find any of them in the Charge of these Articles: For which purpose we shall desire this, Statute of 25 Ed. III. be read.

- The Treasons by that Act declared, are
1. Compassing and imagining the Death of the King, Queen, or Prince, and Declaring the same by some Overt-Act.
 2. Murdering the Chancellor, Treasurer, &c.
 3. Violating the Queen, the King's eldest Daughter, or the Prince's Wife.
 4. Levying War against the King.
 5. Or adhering to the King's Enemies, within the Realm or without, and declaring the same by some Overt-Act.
 6. Counterfeiting the Seals and Coin.
 7. Bringing in Counterfeit Coin.

Treasons declared per Stat. 25 Ed. III. c. 2.

Stat. 25 Ed. III. may admit no Construction by Equity or Inference to make other Treason than thereby declared.

Next we shall lay for a ground, that this Act ought not be construed by Equity or Inference.

1. For that it is a declarative Law, and no Declaration ought to be upon a Declaration.

Reafens why not.
 ' 2. It was a Law provided to fe-
 ' cure the Subject, for his Life, Li-
 ' berty, and Estate; and to admit
 ' Constructions and Inferences upon
 ' it, were to destroy the Security provided for
 ' by it.

' It hath been the constant Opinion in all
 ' times, both in Parliament and upon Judicial De-
 ' bates, that this Act must be literally construed,
 ' and not by Inference or Illation: nor would it
 ' be admitted in a Particular declared by this Law
 ' to be Treason; which a Man would have thought
 ' might have been consistent with it.

' Counterfeiting the Coin of the Kingdom,
 ' is by this Law declared Treason.

Instances where it would not.
 ' Washing, Filing, and Clipping
 ' the Coin, is an Abuse, an Abasing,
 ' and not making it current: yet in
 ' 3 H. V. when the Question was in
 ' Parliament, whether that Offence
 ' was Treason within the Statute of
 ' 25 Ed. III. it is declared by a spe-
 ' cial Act then made, 3 H. V. cap. 6. That foraf-
 ' much as before that time great Doubt and Ambi-
 ' guity had been, whether those Offences ought
 ' to be adjudged Treason, or not, inasmuch as
 ' mention is not thereof made in the Declaration
 ' of the Articles of Treason by that Statute of
 ' 25 Ed. III. the same was by that particular Act
 ' made Treason, which before was none: and
 ' counterfeiting of foreign Coin made current here,
 ' an equal Mischief with counterfeiting of the
 ' Coin of this Realm; yet because the Words of
 ' the Statute are *his Money*, this not Treason until
 ' the Act of 1 *Marie*, cap. 6. made
 ' it so. And Sir *Ed. Coke*, in his Book
 ' before-mentioned, saith, A com-
 ' passing to levy War, is not a Trea-
 ' son within that Law, unless it pro-
 ' ceed into Act; but only to compass the Death
 ' of the King: Yet if a Constructive Treason should
 ' be admitted, it might happily, without any great
 ' straining, be inferred, That Compassing to levy
 ' War is in some sort a Compassing of the King's
 ' Death: and of this kind many more Instances
 ' may be given.

Stat. 3 H. V. cap. 6.

' So that the Result of all this is, That what-
 ' soever is not declared to be a Treason within
 ' the Letter of this Law, may not be adjudged a
 ' Treason, by Inference, Construction or other-
 ' wise.

' Having done with this first, we now shall
 ' come to our second Question.

1 M. cap. 6. Coke Collections of Pleas the Crown.
 ' Whether any the Matters in all,
 ' or any the Articles charged, con-
 ' tain any the Treasons declared by
 ' that Law, or enacted by any subsequent Law;
 ' wherein, altho' the Charges may appear to be
 ' great and enormous Crimes; yet we shall endea-
 ' vour, and hope to satisfy your Lordships, the same,
 ' nor any of them, are Treasons by any established
 ' Law of the Kingdom. For clearing whereof,
 ' we shall pursue the Order first proposed.

' First, That an Endeavour to subvert Funda-
 ' mental Laws, is not Treason by any Law in this
 ' Kingdom established: and particular Act to
 ' make it Treason there is none; so as we must
 ' then return to apply those former general Obser-
 ' vations of that Act of 25 *Ed. III.* to this Particular;
 ' and shall add for Reasons,

' 1. That it is not comprized within any the

' Words of that Law, nor may by any Construc-
 ' tion or Inference be brought within it, for the
 ' Reasons formerly alledged.

' 2. Because an Endeavour to subvert Laws, is
 ' of so great a Latitude and Uncertainty, that
 ' every Action not warranted by Law, may be
 ' thereby extended to be Treason.
 ' In the sixth *Report*, in *Mildmay's*
 ' Case, *Fol. 42.* where a Conveyance
 ' was made in Tail, with a Proviso,
 ' if he did go about or attempt to
 ' discontinue the Entail, the same should be void:
 ' It was resolved the Proviso was void; and the
 ' principal Reason was, That these Words, *at-*
 ' *tempt or go about*, are Words uncertain and void
 ' in Law. And the Words of the Book are very
 ' observable, *viz. God defend, that Inheritances and*
 ' *Estates of Men should depend upon such Uncertainties;*
 ' *for that misera est Servitus, ubi Jus est vagum,*
 ' *& quod non definitur in Jure quid fit conatus;*
 ' *and therefore the Rule of the Law doth decide this*
 ' *Point. Non efficit conatus nisi sequitur effectus;*
 ' *and the Law doth reject Conations and Goings about,*
 ' *as things uncertain, which cannot be put in issue.*
 ' These are the Words of the Book: And if
 ' so considerable in Estates, your Lordships, we
 ' conceive, will hold it far more considerable
 ' in a Case of Life, which is of highest Conse-
 ' quence.

' And if it should be said this Law
 ' of 25 *Ed. III.* takes notice of Com-
 ' passing and Imagining: We answer,
 ' it is in a Particular declared by
 ' that Law to be Treason, in compassing the Death
 ' of the King: But this of endeavouring to sub-
 ' vert Laws, not declared by that or any other
 ' Law to be a Treason.

' And if it should be granted, that this Law
 ' might in any Case admit any other Fact to be
 ' Treason by Inference or Construction, other than
 ' is therein particularly declared, which we con-
 ' ceive it cannot:

' Yet it is not imaginable, that a Law intro-
 ' duced purposely to limit and ascertain Crimes
 ' of so high Consequence, should by Construc-
 ' tion or Inference be subject to a Construction
 ' of admitting so uncertain and indefinite a thing,
 ' as an Endeavour to subvert the Law is, it
 ' being not comprized within the Letter of that
 ' Law.

' 3. That the Subversion of the Law is an im-
 ' possible thing; therefore an Endeavour to do an
 ' Act which cannot be effected, cannot be Trea-
 ' son.

' 4. That in all times the Endeavouring to sub-
 ' vert the Laws hath been conceived no determi-
 ' nate Crime, but rather an Aggravation only of a
 ' Crime than otherwise: And therefore hath been
 ' usually joined as an Aggravation or Result of
 ' Crimes below Treason.

' As appears in the Parliament-Roll,
 ' 28 *H. VI. num. 28* to *num. 47.* in the
 ' Case of the Duke of *Suffolk*, where
 ' the Commons in Parliament having
 ' preferred Articles of Treason against
 ' him, did not make that any part of
 ' their Charge. Yet in the same Par-
 ' liament, and within few Days after, the first being
 ' in *February*, the latter in *March*, exhibiting other
 ' Articles against him, they therein charged all the
 ' Misprisions, Offences, and Deeds, therein men-
 ' tioned,

Mildmay's Case, 6 Report. Coke, Fol. 42.
Objection. Answer.
Parliament-Roll. 28 H. VI. n. 28, to 47. In the Case of the Duke of Suffolk.

tioned, to have been the Cause of the Subversion of Laws and Justice, and the Execution thereof; and nigh likely to tend to the Destruction of the Realm. So as it appears it was then conceived an Offence of another nature, and not a Treason.

Articles, Cardinal Woolsey in Parliament, 21 Hen. VIII. Indictment K Bench Ligham, 23 Hen. VIII. And it appears as well by the Articles exhibited in Parliament, 21 H. VIII. against Cardinal Woolsey, as by Indictment in the King's-Bench against Ligham 23 H. VIII. Rot. 25 That the Cardinal did endeavour to subvert *Antiquissimas Leges hujus Regni, Universumque hoc Regnum Anglie Legibus Imperialibus subjugare*: which altho' it be a Charge of subverting the ancient Laws of the Kingdom, and to introduce new and arbitrary Laws; yet neither upon the Articles or Indictment was the same imputed to be Treason; but ended in a Charge of a Premunire.

Empson, 1 H. VIII. And if it shall be said, that Empson, 1 H. VIII. had Judgment, and died for it, upon an Indictment in London; we answer,

1. This was not the Substance of the Indictment, but only an Aggravation.

2. And if charged, it is with an actual subverting, not an with an Endeavour to subvert the Laws; and is joined with divers Offences.

3. Which is a full Answer, The Indictment upon which he was tried, was *Pasche* 2 H. VIII. at Northampton, and was for levying War against the King, a Treason declared by the Law of 25 Ed. III. upon which he was convicted and suffered; and no Proceeding upon the other Indictment ever had.

And as to the second general Charge of endeavouring to subvert Religion:

This no more than that former of subverting the Laws is any Treason, within any Law established in this Kingdom.

And herein as to the Charge of the Endeavour, we shall rely upon what hath been already said upon the former.

With this further:

That until that happy Reformation, begun in the Time of King Edward VI. there was another Frame of Religion established by Law; which was conceived until then to have been the True Religion; and any Endeavour to change or alter it, prosecuted with great Extremities. Yet was not any Attempt to alter it conceived to be Treason; but several special Acts of Parliament were made for Particular Punishments against Persons who should attempt the Alteration thereof;

Stat. 5 R. II. c. 5. 2 H. V. c. 7. witness the Statute of 5 R. II. c. 5. and 2 H. V. c. 7.

In which latter, altho' mention is made of endeavouring to destroy and subvert the Christian Faith, yet was not the Offence made or declared to be Treason. And at this day Heresy, of what kind soever, is not punishable, but according to the old Course of the Law.

And we may add the Statute of 1 Ed. VI. cap. 12. that of 1 Mar. c. 12. which makes it but Felony to attempt an Alteration of Religion by Force; The worst kind of Attempt certainly.

To the third and last general Charge, labouring to subvert the Rights of Parliaments. To the labouring to do it, we shall add nothing to what hath been said to the Charge of Endeavour in the two former; only thus much we shall observe:

That in the Parliament of 11 R. II. amongst the many Articles preferred against the Duke of Ireland, and others, the 14th Article contains a Charge much of this nature, viz. *That when the Lord and others in divers Parliaments, had moved to have a good Government in the Realm, they had so far incensed the King, that he caused divers to depart from his Parliament; so that they durst not, for fear of Death, advise for the Good of the Kingdom.* Yet when the Lords came to single out the Articles, what was, or what was not Treason, That, altho' a Charge transcending this, was none of the Articles by them declared to be Treason.

My Lords, having done with these Generals, it remains only that we apply ourselves to those others Articles, which we conceive were insisted upon as Instances conducing and applied to some of the Generals we have handled.

Wherein, if the Generals be not Treason, the particular Instances cannot be: And on the other side, if the Instances fall short of Treasons, the Application to those Generals cannot make them Treasons.

We shall only single out two Particulars, and in those be very brief, in that most which hath been said to the former Generals is applicable to them; inasmuch as none of them is declared to be a Treason by the Statute of 25 Ed. III. or by any other Law enacted.

1. The first of these in the 10th Original Article, viz. That he hath traitorously endeavoured to reconcile the Church of England with the Church of Rome. Which, if it be any Treason, must be a Treason within the Statute of 5 Jac. cap. 4. whereby is provided, That if any Man shall put in Practice to reconcile any of his Majesty's Subjects to the Pope or See of Rome, the same is enacted to be Treason; which we conceive clearly is none of this Charge.

(1.) First, for that here only is charged an Endeavour; there a putting in practice.

(2.) Here a Reconciling of the Church of England with the Church of Rome; there a Reconciling some of his Majesty's Subjects to the See of Rome. And a Reconciling with, may as well be a Reducing of that of Rome to England, as England to Rome.

The second, in the 7th Additional Article, for wittingly and willingly receiving and harbouring divers popish Priests and Jesuits, namely, *Sancta Clara* and Monsieur *St. Giles*.

Which Offence, as to the harbouring Priests and Jesuits, born within his Majesty's Dominions, by the Statute of 27 Eliz. cap. 2. is made Felony, not Treason; and extends only to Priests English

Answer to the third general Charge, labouring to subvert and incense the King against Parliaments.

Articles against the Duke of Ireland, and others, 11 R. II.

14 Article.

Answer to the particular Articles insisted upon principally in the Charge.

The first Particular.

Differences between the Matters charged, and the Fact made Treason by the Statute 3 Jac. c. 4.

The second Particular.

‘ *English* born, which these are not charged to be.

‘ My Lords, we have now gone thro those Articles wherein we conceive the Treasons charged were intended, and have endeavoured to make it appear, that none of the Matters in any of the Articles charged are Treason within the Letter of any Law.

‘ And if not so, then they cannot by Inference or Parity of Reason, be heighten’d to a Treason.

‘ It is true, the Crimes as they are laid in the Charge are great and many.

‘ Yet if the Laws of this Realm, which have distinguished Crimes, and accordingly given them several Names and inflicted Punishments, raise none of these to a Treason ;

‘ That we humbly conceive will be worthy of your Lordships Consideration in this Case ; and that their Number cannot make them exceed their Nature. And if they be but Crimes and Misdemeanours apart, below Treason or Felony, they cannot make a Treason by putting them together.

‘ Otherwise the Statute of 25 *Ed.* III. which we have so much insisted upon, had been fruitless and vain ; if after all that Exactness any Number of Misdemeanours (in themselves no Treason) should by Complication produce a Treason, and yet no mention made of it in that Law, much less any Determination thereby, that any Number, or what Number, and of what Nature of Crimes, below Treason, should make a Treason.

‘ It is true, my Lords, that by the Statute of 25 *Ed.* III. there is a Clause in these Words :

Power to declare Treasons, per Stat. 25 Ed. III. c. 2. Wherein we conceive there is no Power to declare an Offence below a Felony to be a Treason.

‘ *It is accorded, That if any other Case, supposed Treason, which is not therein specified, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treason, until the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or Felony.*

‘ And that hereby might seem to be inferred, That there should be some other Treasons than are mentioned in that Law, which may be declared in Parliament.

‘ But, my Lords, we shall observe, 1. If such Declaration look only forward, then the Law, making it Treason, precedes the Offence, and is no more than an enacting Law.

‘ If it look backward to the Offence past, then it appears by the very Clause itself, of 25 *Ed.* V. it should be at the least a Felony at the Common Law ; and that a Crime or Crimes below a Felony, were never intended to be by this Law to be declared, or to be heighten’d to a Treason. And we find not any Crime declared Treason with a Retrospect, unless it were a Felony before. And in the late Case of the Earl of *Strafford*, attainted by Bill, there is a Treason within

‘ this Law charged, and declared by the Bill of his Attainder to have been proved.

‘ 2. Secondly, We are not now in Case of a Declaration of a Treason, but before your Lordships only upon an Impeachment ; and in such Case we humbly conceive the Law already established, as it hath been, so it will be the Rule *.

‘ Thus, my Lords, we have gone through that Part which belongs to us, directed us by your Lordships, *viz.*

‘ Whether in all or any the Articles exhibited before your Lordships, there is contained any Treason by any established Law of this Kingdom, without meddling at all with the Facts or Proof made of them ; which together with our weak Endeavours, we humbly submit to your Lordships great Judgment. And for any Authorities cited by us, are ready (if so commanded) to produce them.

Here this Day ended ; and I had a few Days rest. But on *Tuesday, October 22.* being a Day made solemn for Humiliation, my Chamber at the *Tower* was searched again for Letters and Papers ; but nothing found.

After this, there went up and down all about *London* and the Suburbs, a Petition for the bringing of Delinquents to Justice ; and some Preachers exhorted the People to be zealous in it, telling them it was for the Glory of God, and the Good of the Church. By this means they got many Hands of Men which little thought what they went about. In this Petition, none were named but myself and the Bishop of *Ely* ; so their Drift was known to none but their own Party ; and was undoubtedly set on foot to do me Mischief. Whose Design this was, God knows ; but I have cause to suspect Mr. *Prynne*’s Hand in it. This barbarous way of the People’s clamouring upon great Courts of Justice, as if they knew not how to govern themselves and the Causes brought before them, is a most unchristian Course, and not to be endured in any well-govern’d State. This Petition, with a Multitude of Hands to it, was delivered to the House of Commons on *Monday, October 28.* Concerning which I shall observe this, That neither the Lord-Mayor nor the Sheriffs made any Stop to this illegal and blood-thirsty Course, tho’ it were publicly known, and the People exhorted to set Hands to it in the Parish-Churches. What this, and such-like Courses as these, may bring upon this City, God alone knows, whom I humbly pray to shew it Mercy.

November 1. This Day, being *All-balan-day*, a Warrant came to the Lieutenant from the House of Commons to bring me to their Bar, to hear the Evidence formerly summed up, and given against me in the Lords House. I knew no Law nor Custom for this ; for tho’ our Votes, by a late Act of Parliament, be taken away, yet our Baronies are not : And so long as we remain Barons, we belong to the Lords House, and not to the Commons. Yet how to help myself, I knew not : For when the Warrant came to me, the Lords

House

* *Whatsoever hath been hitherto placed in the Margin of this Argument, was transcribed from Mr. Herne’s own Copy ; but this which followeth, I transcribed from a loose Note, wrote by an unknown Hand, and affixed to this Place.* H. W.

Concerning the Proviso in 25 *Edw.* III. (last mentioned) it is observable, that Mr. Lane, in the Lord *Strafford*’s Trial, saith, That that Clause of Provision 25 *Edw.* III. is quite taken away by 6 *Hen.* VIII. cap. 4. & 20. So that no Treason is now to be reckoned, but what is literally contained in 25 *Ed.* III. See for this *Whitlock’s Memoirs*, p. 43. See also *Burnet’s Hist. Reform.* Part II. pag. 253. about the Repeal of Treasons.

House was risen, and I was commanded to the House of Commons the next Morning before the Lords came to sit; so I could not petition them for any Privilege. And had I done it, I doubt it, would have been interpreted for an Endeavour to make a Breach between the Houses: And should I have under any Pretence refused to go, Mr. Lieutenant would have carried me.

Therefore on *Saturday, November 2.* I went, according to the Warrant, to the House of Commons. So soon as ever I was come to the Bar, Mr. *Speaker* told me, There was an Ordinance drawn up to attain me of High-Treason; but that they would not pass it till they had heard a Summary of the Charge which was laid against me; and that I was sent for to hear it also. I humbly besought them that my Counsel and my Solicitor (who were always present with me in the Lords House) might stand now by me: But it would not be granted. Then Mr. *Browne*, by Order from the Speaker, delivered the Collection and Sum of the Charge against me; much at one with that which he formerly made in the Lords House. Now I took Notes of it as exactly as I could. He had no sooner done, but Mr. *Speaker* pressed me to make Answer presently. I humbly besought the House I might not be put to that, the Charge being long and various; but that I might have Time, and that my Counsel might be heard for Matter of Law. I was commanded to withdraw. And when I was called in again, I received an Order preremptory, to answer the *Monday* Seven-night after to such Things as the Reporter was mistaken in. But not a Word of hearing my Counsel. I returned to my Prison.

This *Wednesday, November 6.* I got my Prayer-Book, by the Help of Mr. *Hern* and Mr. *Browne*, out of Mr. *Prynn's* Hands, where it had been ever since the last of *May, 1643.*

Monday, November 11. I came to the House of Commons again; and, according to their preremptory Order, made my Answer to the Summary Charge which Mr. *Browne* made against me. But here I shall advertise the Reader, That, to avoid troublesome and tedious Repetition, I shall not set down my Answer at large, as there I spake it; because there is nothing in it but what is in my former Answers, the Beginning and the End only excepted. But it was necessary for me then to make a whole and an entire Answer, because the House of Commons had then heard no part of my Defence. But I presume the Charitable Reader will look upon my Answers in their proper Place, rather than be troubled a second Time with the same Thing. Yet because Mr. *Browne* went a different way in his Summary from the Charge lately given, I shall represent a Skeleton of my Answer, with all the Limbs of it intire, that it may be seen, as it were, together; tho' I report nothing which hath been already said. And thus I began:

My Defence in the House of Commons.

MR. *Speaker*, I was here *November 2.* It was the First time that ever I came within these Doors. And here then you gave me the most uncomfortable Breakfast that ever I came to; namely, that this Honourable House had drawn up an Ordinance against me of High-Treason: But that before they would proceed farther, I should hear the Sum of the Charge which was against me; which was the Cause I

was sent for then: And to give my Answer to that which was then said, or rather mistaken in saying and inferring, is the Cause of my coming now.

1. And, First, Mr. *Speaker*, I give Thanks to this Honourable House that they have given me leave to speak for myself. 2. Secondly, I do humbly desire if any Word or Thing should be mistaken or unadvisedly expressed by me, (which shall be fore against my Will) I may have Liberty to recal and expound myself. 3. Thirdly, That you will favourably consider into what Straits I am cast; that after a long and tedious Hearing, I must now come to answer to a Sum or an Epitome of the same Charge; which how dangerous it may be for me, all Men that know Epitomes cannot but understand.

Mr. *Speaker*, I am come hither to make a Brief of my Answer to a Sum of my Charge; wherein I may receive as much Detriment by my own Brief, for want of larger Expression, as by the other of my Charge by Omission or Mistake: Yet since your Command is upon me, I shall without farther Preface, (which I conceive would be as tedious to you, as to me troublesome) address myself, and with as much Brevity as the many Heads of the Charge will bear. And that my Answer may be the clearer both to this Honourable House and to the Gentleman who reported the Charge, I shall follow every Thing in the same Order he proceeded in: So far forth, at least, as an old slow Hand could take them, a heavy Heart observe them, and an old decayed Memory retain them.

This worthy Gentleman hath pressed all things as hardly against me, as the Cause can any way bear. That was his Duty to this Honourable House, and it troubles me not: But his Carriage and Expressions were civil towards me, in this my great Affliction; and for this I render him humble and hearty Thanks, having from other Hands pledged my Saviour in Gall and Vinegar, and drunk up the Cup of the Scornings of the People to the very Bottom.

This Gentleman began with four Generals, which he said I complained of, and I say I had cause so to do. 1. The first Complaint was, *That I had lain three Years in Prison before I was heard.* And this, he said, was my own Fault, because I delayed the putting in my full Answer when I was called. But herein he is quite mistaken: For I could not answer till I was called, and I was not called in three Years; nor then could I plead to more Articles than were put to me. [Nor did this delay three Months of the three Years: Yet this Gentleman in his Reply said still, it was my Fault because I did not petition to be brought to hearing. But this, under favour, is a weaker Reason than the former. For the Condition of the Times considered, neither my Counsel, nor my other Friends, nor myself, could think that a fit or a discreet way. Besides, it is well known that had I petitioned I could not have been heard, my Business being in a manner cast aside, till Mr. *Prynn's* Malice, actuated by a Search into my own Papers, undertook it.] 2. The Gentleman said, my second Complaint was, *That my Papers were seized:* But he said, that was done by Authority. And I never denied that: But that which he added is much mistaken; namely, That I ever seized any Man's Papers without Authority, or by my own

own Power; but what was done in that kind, was by the joint Authority of that Court in which I then sat. Nor was my Complaint general, that my Papers were seized; but that the Papers prepared for my Defence were taken from me, and not restored when I needed them, and petitioned for them. 3. He said, my third Complaint was, *That many of the Witnesses produced against me were Separatists.* I did indeed complain of this, and I had abundant Cause so to do: For there was scarce an active Separatist in *England*, but some way or other his Influence was into this Business against me. And whereas the Gentleman said, *The Witnesses were some Aldermen, and some Gentlemen, and Men of Quality:* That's nothing; for both Gentlemen, and Aldermen, and Men of all Conditions, (the more's the pity) as the Times now go, are Separatists from the Doctrine and Discipline of the Church of *England* established by Law. And I would to God some of my Judges were not. 4. My fourth Complaint, he said, was, *of the excessive Number of the Witnesses.* And he added, That if I would not have so many Witnesses, I should not have given Occasion for it, by committing so many Crimes. But, first, whether I have committed so many Crimes as are urged against me, is yet in question. And Secondly, 'tis one thing to give Cause, and another thing to give Occasion: For an Occasion may be taken when 'tis pretended as given. And so I hope it will be found in my Case. But the thing here mistaken is, That these are all said to be *legal Witnesses*; whereas almost all of them have at some time or other, been before me as their Judge, either at *Star Chamber*, or *Council-Table*, or *High-Commission*, or as Referree. And then I humbly desire it may be considered; First, how impossible it is for a Judge to please all Men. Secondly, How improbable it is, that Witnesses displeas'd should be indifferent in their Testimony. And, Thirdly, how hard is it to convince a Man by such interested Witnesses, now (upon

Quomodo potest malus litigator laudare Judices? Aug. Ep. 166.

the matter) becoming Judges of him that judged them. And (as St. Augustine speaks) *Quomodo potest, how is it possible for one that is contentious and evil to speak well of his Judge?*

From these Generals the Gentleman passed to the Particulars of the Charge; and he caused the 7, 8, 9, 10, 11th Original Articles, and the 7th Additional to be read. That done, he divided the Charge into two main Heads: The one, an Endeavour in me to subvert the Laws of the Kingdom; and the other, a like Endeavour to alter the true *Protestant Religion* into *Popery*. The Evidence given in the Lords House, began at the *Laws* and ended in *Religion*; but this Gentleman in his Sum, both there and here, began with *Religion*, and ended with the *Laws*.

I. The Charge concerning Religion, he said, would bear two Parts; the Ceremonial, and the Substantial Part of Religion.

(1.) And he profess'd he would begin at the Ceremonial, where having first charg'd in general, the Statute of the 3 and 4 of *Ed. VI. c. 10.* for the Destruction of Images he gave these particular Instances following, to shew my Intention to alter Religion.

1. The setting up of coloured Glafs with Pic-

tures in the Windows of my Chapel; the Communion-Table Altar-wise; Candlesticks thereon, with Reverence and Bowings.

2. A Bible in my Study with the five Wounds of Christ wrought upon the Cover in Needle-Work.

3. Three Pictures in my Gallery; the *Ecclesiastical*; the four *Latin* Fathers, and the History of (St. *John* 10.) the true Shepherd entering in by the Door, and the Thief by the Window.

4. The Crucifix hung up in the Chappel at *White-Hall* on *Good-Friday*; and what happened there upon Dr. *Brown's* coming in and doing Reverence.

5. The Copes and Bowings used in Cathedral Churches since my Time.

The Ceremonies used at his Majesty's Coronation.

7. The Abuses in the Universities, especially *Oxford*.

1. The Titles given me from thence.

2. Divers Particulars in the new Statutes.

3. Images countenanced there, by me, in divers Chapels.

4. The Picture of the Virgin *Mary* at *St. Mary's* Church Door.

5. Nothing to be done without me in Congregations.

8. The Ceremonies in some Parish-Churches, and some punished for Neglect of them. Instances in some of *Beckington*, some of *Lewes*, and in Mr. *Chancy of Ware*.

9. That I preferred no Men, but such as were active for the Ceremonies.

10. Passages expunged out of Books, if contrary to these Courses; as that in Dr. *Featly's* Sermons concerning Images.

11. Bibles with Pictures in them.

12. The severe Punishment of Mr. *Workman* of *Gloucester*, only for a Sermon against Images.

13. Words spoken to take Bishop *Jewell's* Works and the *Book of Martyrs*, out of some Parish-Churches.

14. The Consecration of *Cree-Church*, and *St. Giles in the Fields*. In all which, as I humbly conceive, here's nothing (especially my Answers being taken to them) that can co-operate to any Alteration of Religion. Nor is there any Treason, were all that is urged true.

(2.) From hence, Mr. *Speaker*, this worthy Gentleman passed over from the Ceremonies, to those things which, he said, concerned the Substance of Religion: In which the Particulars which he charg'd were these;

1. A Doubtfulness, if not a Denial of the Pope's being *Antichrist*.

2. Dislike of the Name, *the Idol of Rome*.

3. The Alteration of some Passages in the Publick Prayers appointed for *Novemb. 5.* and the *Coronation-Day*.

4. The *Antichristian Yoke* left out of the Brief for the *Palatinate*, with an Expression, as if we and those Reformed Churches were not of the same Religion.

5. That Men were punished for praying for the *Queen* and *Prince*.

6. That the Church of *Rome* is a true Church.

7. That the Communion-Table or Altar is the Chief Place; for there is *Hoc est Corpus meum*.

8. Restraint of all Books against *Popery*, Instances in a Book of Bishop *Carleton's*: One ten-

dred

‘dred by Sir *Edward Hungerford*. Dr. *Clark’s*
 ‘Sermons. Dr. *Jones*. None called in but *Sales*.
 ‘That I myself did expunge some Passages out of
 ‘a Sermon of Dr. *Sibthorp’s*. Popish Books seized,
 ‘re-delivered to the Owners. That for these I
 ‘must answer for my Chaplains, since *John*, Arch-
 ‘bishop of *York*; was fined for his Commissary’s
 ‘Act against the Bishop of *Durham*; who having
 ‘a Patent, could not so easily be put out of his
 ‘Place, as I might change my Chaplains.

‘9. Three Ministers in my Diocess suspended
 ‘for not Reading the *Book of Recreations* on the
 ‘Lord’s Day.

‘10. The Feoffment for buying in of Impro-
 ‘priations, overthrown, to the Hindrance of
 ‘Preaching, and Scandal to Religion.

‘11. Incroachment upon the Lord Chamberlain
 ‘for naming of Chaplains to the King; and upon
 ‘the Master of the Wards for giving of Benefices.

‘12. Familiarity with Priests and Jesuits, *S.*
 ‘*Clara* and Monsieur *S. Giles*.

‘13. The Testimonies of Mr. *Chaloner*, Sir
 ‘*Henry Mildway*, and his Brother Mr. *Anthony*,
 ‘what Opinion was held of me beyond the Seas,
 ‘for my cunning introducing of Popery.

‘14. That an Offer was made unto me to be
 ‘a Cardinal. And thus far this Gentleman pro-
 ‘ceeded in Points of Religion.

‘But because there hath passed divers things
 ‘done at and by the *Council-Table*, the Courts of
 ‘*Star-Chamber*, and *High-Commission*, and in *Con-*
 ‘*vocation*; and because many more things so done,
 ‘are to come in the next Head concerning the
 ‘Law; I humbly crave leave, for avoiding te-
 ‘dious Repetition, to say it once for all, That no
 ‘Act done by any of these, either by full Consent
 ‘or major Part, which involves the rest, ought to
 ‘be charged singly against me: And that for these
 ‘Reasons following;

‘1. First, Because this is not *peccare cum multis*:
 ‘For they meet not there in a Relation as *multi*,
 ‘but as *unum Aggregatum*, as Bodies made one
 ‘by Law. And therefore the Acts done by them,
 ‘are Acts of those Bodies, not of any one Man
 ‘sitting in them. And in this Sense a Parliament
 ‘is one Body consisting of many; and the Acts
 ‘done by it are Acts of Parliament. For which
 ‘(should any of them prove amiss) no one Man
 ‘is answerable, tho’ many times one Man brings
 ‘in the Bill.

‘2. Secondly, Because I could sway no Man’s
 ‘Vote in any of those Places (tho’ this hath been
 ‘often urged against me, as an *over-potent Mem-*
 ‘*ber*) for my Vote was either last, or last save
 ‘one, in all these Places; so I could not lead.
 ‘Nor is there any so much as shew of Proof of-
 ‘fered, that I moved, or prepared any Man to a
 ‘Sentence one way or other, in any one of these
 ‘Courts or Places.

‘3. Thirdly, Because in those Court of Judica-
 ‘ture, there was the Assistance of able Judges,
 ‘Lawyers and Divines for Direction. And how
 ‘can that be a Treason in me, which is not made
 ‘so much as a Misdemeanour in any of the rest?

‘4. Fourthly, Because the Act of this present
 ‘Parliament, which hath taken away the *Star-*
 ‘*Chamber*, and the *High-Commission*, and bound-
 ‘ed the *Council-Table*, looks forward only, and
 ‘punishes no Man for any Act past; much less
 ‘doth it make any Man’s Actions done in them
 ‘to be Treason: And I am no way excluded from
 ‘the Benefit of that Act.

‘5. Lastly, Because in all my Proceedings, both
 ‘in the High-Commission and elsewhere, I kept
 ‘strictly to the Doctrine and Discipline of the
 ‘Church of *England* established by Law, against
 ‘both Papists and other Sectaries. And under
 ‘this Government, and Doctrine of this Church,
 ‘it hath pleased God, now for above Fourscore
 ‘Years together, to bless this Kingdom and Peo-
 ‘ple above other Nations. And I pray God, if
 ‘we forsake the one, it prove not a Cause to de-
 ‘prive us of the other.

‘II. And now, Mr. *Speaker*, I shall follow this
 ‘worthy Gentleman, as he went on to the se-
 ‘cond General Head, *the Subversion of the Laws*.
 ‘And here, when he had caused the 1, 2, 3, 5,
 ‘and 14th Original Articles to be read, as also the
 ‘2, 9, and 10th Additional; he then said, That
 ‘I had labour’d this Subversion by my Counsels,
 ‘and by my Actions.

‘(1.) By my Counsels first; of which he gave
 ‘three Instances.

‘1. The Vote of the *Council-Table* to assist the
 ‘King in extraordinary Ways, if the Parliament
 ‘should prove peevish and refuse: And this out
 ‘of my Diary at *Decemb. 5, 1639*.

‘2. The Passage in the Epistle before my Speech
 ‘in the *Star-Chamber*; *Not one way of Government*,
 ‘*since the Humours of the People were in continual*
 ‘*Change*.

‘3. A Speech at *Council-Table*, That now the
 ‘King might use his own Power, &c. witnessed
 ‘only by Sir *Henry Vane* the Elder.

‘(2.) From my Counsels, Proceed was made
 ‘to my Actions; where the Particulars were;

‘1. That I attempted to set *Proclamations* a-
 ‘bove the *Law*.

‘2. That I was for all illegal Projects at the
 ‘*Council-Table*; instanced in *Inclosures*, in *Ship-*
 ‘*Moncy*, and Sir *John Corbet’s* Commitment.

‘3. The taking down of the Houses about St.
 ‘*Paul’s*, with the large Commission for the Re-
 ‘pair of the West-End.

‘4. The stopping of two Brewers in their
 ‘Trade, being in *Westminster*, and pretended to
 ‘annoy the Court.

‘5. Things done by me as *Reseree*; instanced
 ‘in a Case between *Rich* and *Pool*, and another of
 ‘one *Symmes*.

‘6. Obstructing the Course of Law, by sending
 ‘to Judges; instanced in the Parishioners of *Bec-*
 ‘*kington*, in the Case of *Ferdinando Adams*; in Sir
 ‘*Henry Martyn’s* Case about an Attorney at Law;
 ‘Judge *Richardson’s* Words in *Huntley’s* Case, and
 ‘Baron *Trevor’s* Words in *Grafton’s* Case.

‘7. The punishing Men that came in a legal
 ‘Way; instanced in the Case of *Newcomin* and
 ‘*Burrowes*; that I said in the High-Commission,
 ‘I hoped to see the Clergy exempt again the
 ‘next Hundred Years: The two Church-Wardens
 ‘of *Cbesham*, with Words concerning Sir *Thomas*
 ‘*Dacres*.

‘8. The Case of Prohibitions; and Mr. *Whee-*
 ‘*ler’s* Note out of a Sermon of mine concerning
 ‘them.

‘9. That no Pope ever claimed so much Juris-
 ‘diction, not from the King.

‘10. The Canons; and I the main Man; the
 ‘over-grown Member again.

‘11. The Statutes of *Oxford* enforced a second
 ‘time; *Nevil’s* Case of *Merton-College* instanced
 ‘in.

‘ 12. Books printed that are against the Law; ‘ instanced in *Cowell’s Interpreter*, and *Dr. Man-* ‘ *waring’s Sermons*.

‘ 13. The Alteration of the *King’s Oath* at his ‘ Coronation.

‘ 14. My Enmity to Parliaments. To all which, ‘ as I then gave sufficient Answers, so I hope the ‘ courteous Reader hath found them at large in ‘ their several Places. And for this last concerning ‘ *Parliaments*, I humbly and heartily desire, that ‘ this may be taken notice of, and remembered, ‘ That there is not in any one of these Paper- ‘ Proofs produced against me, any one thing ‘ that offers to take away any Rights of *Parlia-* ‘ *ments*, rightly understood; much less any that ‘ offers to take away *Parliaments* themselves; ‘ which is a continued Mistake all along this par- ‘ ticular Charge. And if any rash or unweighed ‘ Words have fallen from me, yet these cannot ‘ be extended to the disannulling of *Parliaments*, ‘ or their Privileges in any kind, which I defended ‘ in Print long since, before I could foresee any

‘ of this Danger threatening me. It ‘ is in my Book^a against *Fisher*: It ‘ was read in the Lords House, and ‘ I humbly desire I may read it here.

‘ And it was read.

‘ After this, it was inferred by this worthy ‘ Gentleman, *what a great Offender I was, and ‘ greater than Cardinal Wolsey*. Mr. Speaker, I ‘ have seen the Articles against the Cardinal, and ‘ sure somebody is mistaken; for some of them ‘ are far greater than any thing that is proved ‘ against me. In which (I thank Christ for it) ‘ my Conscience is at peace; whereas the Car- ‘ dinal confessed himself guilty of them all, and ‘ yet no thought of Treason committed; and a ‘ *Premunire* was all that was laid upon him.

‘ Then he gave a touch, That ‘ in *Edward III’s* time, there was ‘ a Complaint, that too much of the ‘ Civil Government was in the hands ‘ of the Bishops: and that in the 45th Year of ‘ his Reign, they were put out, and Laymen put ‘ in. But, First, this concerns not me. Second- ‘ ly, The late Act of this Parliament hath taken ‘ sufficient Order with that Calling for meddling ‘ in Civil Affairs. Thirdly, The Time is memo- ‘ rable when this was done: it was in the Forty ‘ and Fifth Year of *Edward III.* that’s enough.

‘ Mr. Speaker, I shall draw towards an end. Yet ‘ not forgetting what Ordinance you told me was ‘ drawn up against me; if that which I have now ‘ said may any way satisfy this Honourable House ‘ to make stay of it, or to mitigate it, I shall bless ‘ God and you for it. And I humbly desire you to ‘ take into consideration my Calling, my Age, ‘ my former Life, my Fall, my Imprisonment long ‘ and strict; that these Considerations may move ‘ with you. In my Prosperity (I bless God for ‘ it) I was never puffed up into Vanity, whatever ‘ the World may think of me. And in these last

‘ full four Years durance, I thank ‘ the same God, ‘ *gravem Fortunam ‘ constanter tuli*; I have with decent ‘ Constancy borne the weight of a ‘ pressing Fortune: And I hope God will strengthen ‘ me unto, and in the end of it.

‘ Mr. Speaker, I am very ‘ aged, ‘ considering the Turmoils of my ‘ Life; and I daily find in myself ‘ more Decays than I make shew of:

‘ and the Period of my Life, in the Course of Na- ‘ ture, cannot be far off. It cannot but be a great ‘ Grief unto me, to stand at these Years thus ‘ charged before ye: Yet give me leave to say ‘ thus much without offence, Whatsoever Errors ‘ or Faults I may have committed by the way, in ‘ any my Proceedings, thro’ human Infirmity; ‘ as who is he that hath not offended, and broken ‘ some Statute-Laws too by Ignorance, or Misap- ‘ prehension, or Forgetfulness, at some sudden time ‘ of Action? yet if God bless me with so much Me- ‘ mory, I will die with these Words in my Mouth; ‘ *That I never intended, much less endeavoured, the ‘ Subversion of the Laws of the Kingdom, nor the ‘ bringing in of Popish Superstition upon the true Pro-* ‘ *testant Religion established by Law in this Kingdom.*

‘ And now, Mr. Speaker, having done with ‘ the Fact, I have but this one thing to put to the ‘ Consideration of this Honourable House. My ‘ Charge hath been repeated, I confess, by a very ‘ worthy, and a very able Gentleman: But *Ability* ‘ is not absolute in any. The Evidence given ‘ against me before the Lords, was (as by the ‘ Law it ought to be) given in upon Oath: But ‘ the Evidence now summed up, and presented ‘ to this Honourable House, is but upon the Col- ‘ lection and Judgment of one Man, how able ‘ or intire soever: and what he conceived is pro- ‘ ved against me, is but according to his Judg- ‘ ment and Memory; which perhaps may differ ‘ much from the Opinion and Judgment of the ‘ Judges themselves, who heard the Evidence at ‘ large. Nor was this Gentleman himself present ‘ every Day of my Hearing; and then for those ‘ Days in which he was absent, he can report no ‘ more here, than what others have reported to ‘ him. So for so much, his Repetition here is ‘ but a Report of a Report of Evidence given; ‘ and at the best but a Report of Evidence, and ‘ not upon Oath. And, I suppose, never any ‘ Jurors, who are Triers of the Fact in any Case, ‘ Civil or Criminal, did ever ground their Ver- ‘ dict upon an Evidence only reported before ‘ them, and which themselves heard not.

‘ And if this manner of Proceeding shall be ‘ thought less considerable in my Person, yet I ‘ humbly desire it may be thoroughly weighed in ‘ the prudent Judgment of this Honourable House, ‘ the great Preserver of the Laws and Liberties of ‘ the Subject of *England*, how far it doth or may ‘ trench upon these in future Consequences, if ‘ these great Boundaries be laid loose and open.

‘ And because my Infirmities are many and ‘ great, which Age and Grief have added to ‘ those which are naturally in me, I most humbly ‘ desire again, That my Council may be heard for ‘ point of Law, according to the former Con- ‘ cession of this Honourable House: For I assure ‘ myself, upon that which hath been pleaded to ‘ the Lords, That no one, nor all of the things ‘ together which are charged against me, if ‘ proved, (which I conceive they are not) can ‘ make me guilty of High-Treason, by any ‘ known established Law of this Kingdom.

‘ The Sum of all is this: Upon an Impeach- ‘ ment arising from this House, I have pleaded ‘ *Not Guilty*. Thereupon Issue hath been joined ‘ and Evidence given in upon Oath. And now I ‘ must humbly leave it to you, your Wisdom and ‘ Justice, Whether it shall be thought fit, and just, ‘ and honourable, to judge me here, only upon a ‘ Report, or a Hearsay, and that not upon Oath.’

Here

Here ended the heavy Business of this Day. I was exceeding faint with speaking so long; and I had great Pain and Soreness in my Breast for almost a Fortnight after: then, I thank God, it wore away. I was commanded to withdraw, and to attend the House again on *Wednesday Nov. 13. 1644.* which I did. Then Mr. *Browne* made a Reply to my Answer: the Reply had some great Mistakes in it, but else was for the most part but a more earnest affirming of what he had delivered. And I conceived I was not to answer to his Reply, but that he was to have the last Speech: for so it was always carried, during my Hearing in the Lords House. Therefore being dismissed, I went away: And I was no sooner gone, but the House called for the Ordinance which was drawn up against me, and without hearing my Counsel, or any more ado, voted me guilty of High-Treason. And yet, when I came that Day to the House, all Men, and many of the House themselves, did much magnify my Answer before given: I will forbear to set down in what Language, because it was high; and as no time can be fit for Vanity, so least of all was this time for me. And vain I must needs be thought, should I here relate what was told me from many and good hands. But it seems the Clamour prevailed against me.

On *Saturday, Novemb. 16.* this Ordinance was passed the House of Commons suddenly, and with so great deliberation, as you have heard, was transmitted to the Lords, and by them the Debate concerning it put off to *Friday Novemb. 22.* Then the Earl of *Pembroke* began more fully to shew his canker'd Humour against me: how provoked, I protest, I know not, unless by my serving him far beyond his Desert. There, among other coarse Language, he bestowed (as I am informed) the *Rascal* and the *Villain* upon me: and told the Lords, they would put off giving their Consent to the Ordinance, till the Citizens would come down, and call for Justice, as they did in my Lord *Strafford's* Case. Was there not Justice and Wisdom in this Speech? Hereupon the Business was put off to *Saturday, Novemb. 23.* and then to *Friday, Novemb. 29.* But then upon *Thursday, Novemb. 28.* Mr. *Strowd* came up with a Message from the Commons, to quicken the Lords in this Business: And at the end of his Message, he let fall, That *they should do well to agree to the Ordinance, or else the Multitude would come down and force them to it.* At this, some Lords very honourably took exception; and Mr. *Strowd* durst not bide it, that this was any part of the Message delivered him by the House of Commons. But the matter was passed over, and Mr. *Strowd* not so much as checked. This, it may be, was thought seasonable by some, to hearten on the Violence of the Earl of *Pembroke.*

The Business not long heard on *Friday,* was put off again to *Monday Decemb. 2.* and the House of Lords put into a Committee, to examine Particulars by their Notes: the Earl of *Northumberland* on the Wool-Sack during the Debate, which continued, more or less, some Days. Where their own Notes failed, they called to Mr. *Browne*, Clerk of their House, for his. But at last, finding him very ready and quick for any thing that was charged against me, but loth to be known what Answer I gave to any Point, some Lords observed it. And it did after appear, that the Notes which he put to the Lords, were not the Notes which himself took, but that he had a Copy given him,

(whether by Mr. *Prynn* or any other, I know not) and I was inform'd that the Earl of *Warwick* had another Copy of the very same. This is marvellous just and honourable in that Earl; and most Christian-like in Mr. *Browne.* It may be, he learned it out of the Notes which his Father-in-Law takes at Sermons.

Upon *Monday, Decemb. 16.* there was (the Times considered) a very full House of Lords; about twenty present, and my Business largely debated, and ready to come to the Question. I wish with all my heart it had, while the House was so full. But the Earl of *Pembroke* fell again into his wonted Violence, and asked the Lords what they stuck at? And added, *What, shall we think the House of Commons had no Conscience in passing this Ordinance? Yes, they knew well enough what they did.* One of the Wits hearing this excellent Passage of the Earl's, protested, if ever he lived to see a Parliament in *Bedlam,* this prudent Earl should be Speaker, if he were able to procure him the Place.

In the mean time this unhappy Clamour of his, put the Business off again to the next Day, being *Tuesday, Decemb. 17.* Then there were but fourteen Lords in the House. My Business was assumed, and proposed in three Questions, and I was voted guilty of the Fact in all three. Namely, Guilty of endeavouring to subvert the Laws; to overthrow the Protestant Religion; and that I was an Enemy to Parliaments. Then it being put to the Judges, whether this were Treason or no; the Judges unanimously declared, that nothing which was charged against me was Treason, by any known and established Law of the Land, with many things to and fro concerning this Business.

On *Tuesday, Dec. 24. Christmas-Eve,* the Lords had a Conference with the Commons about it. In which they declared, that they had diligently weighed all things that were charged against me, but could not by any one of them, or all, find me guilty of Treason. And therefore desired that the Argument made by my Counsel might be answered. And if it could be made appear unto them by any Law to be Treason, they would then proceed farther, as in Honour and Justice they should find it. Then came *Christmas-Day, Dec. 25.* the last *Wednesday* in the Month, and a most solemn Fast kept on it, with as solemn an Ordinance for the due Observance of this Fast, and against the manner of keeping of that Day in former Superstitious Times. A Fast never before heard of in *Christendom.*

After this Conference, Mr. Serjeant *Wilde* speaking freely to some Friends about this Business, told them, he wonder'd the Lords should so much distrust their Judgments, as to desire a Conference about it. To see how good Wits agree! Surely, I believe he was of the Earl of *Pembroke's* Counsel, or the Earl of his, they jump so together. It seems in these Mens Opinions, the House of Commons can neither err in Conscience nor Judgment. Howsoever, that House thought it fit the Lords should be satisfied, that I was by Law guilty of High-Treason: and to that end sent up a Committee, *Jan. 2, 1644.* to make proof of it to their Lordships. At this Meeting, two Judges were present, Justice *Reeves* and Judge *Bacon.* The Managers of the Business against me, were three Lawyers, Mr. *Browne,* Serjeant *Wilde,* and Mr. *Nicolas.* Neither myself nor any of my Counsel there. What this will effect upon the Lords, Time must discover, as it doth the Effects of other Eclipses.

And thus far I had proceeded in this sad History by Jan. 3, 1644. The rest shall follow, as it comes to my knowledge.

[H. W. Next Day, the Archbishop receiving the News that the Bill of Attainder had passed in the House of Lords, broke off his History, and prepared himself for Death.]

The Reasons of the Commons for the Attainder of the Archbishop, were at a Conference Jan. 2. by Sergeant *Wilde*, Mr. *Browne*, and Mr. *Nicolas*, communicated to the Lords; who thereupon, on the 4th of *January*, passed the Ordinance of Attainder: whereby it was ordained, that he should suffer Death, as in Cases of High-Treason. And on the 6th of *January* it was ordered by both Houses, that he should suffer accordingly on *Friday* the 10th. But on the 7th, the Lords at a Conference acquainted the Commons with a Letter and Petition from the Archbishop, and a Pardon to him from the King, dated the 12th of *April*, 19 Car. of which he desired the Benefit: but the same was over-ruled and rejected. His Petition was, that in case he must die, Dr. *Stern*, Dr. *Heywood*, and Dr. *Martin*, might be permitted to be with him before and at his death, to administer Comfort to his Soul; and that the Manner of his Execution might be altered to Beheading. To which the Lords agreed, but the Commons then refused both; only granted, that Dr. *Stern*, and Mr. *Marshal*, and Mr. *Palmer*, should go to him; and one or both of the later to be constantly present, whilst Dr. *Stern* was with him. But the next Day, upon another Petition of his, setting forth Reasons, from his being a Divine, a Bishop, one that had had the Honour to sit in the House of Peers, and of the King's most Honourable Privy-Council, &c. praying, in those regards, not to be exposed to such an ignominious Death; the Commons consented to remit the rest of the Sentence, and that he should suffer Death by being beheaded. Accordingly on the 10th of *January* he was conducted from the *Tower* to the Scaffold on *Tower-Hill*; where being arrived, holding a Paper in his Hand, he spake to the People as followeth.

Good People,

THIS is an uncomfortable time to preach, yet I shall begin with a Text of Scripture, *Heb. xii. 2. Let us run with Patience the Race that is set before us, looking unto Jesus, the Author and Finisher of our Faith; who, for the Joy that was set before him, endured the Cross, despising the Shame, and is set down at the Right Hand of the Throne of God.*

I have been long in my Race, and how I have looked unto Jesus, the Author and Finisher of my Faith, he best knows: I am now come to the End of my Race, and here I find the Cross; a Death of Shame: but the Shame must be despis'd, or no coming to the Right Hand of God: Jesus despis'd the Shame for me, and God forbid but I should despise the Shame for him. I am going apace (as you see) towards the Red Sea, and my Feet are now upon the very Brink of it; an Argument, I hope, that God is bringing me into the Land of Promise, for that was the Way through which he led his People; but before they came to it, he instituted a Passover for them, a Lamb it was, but must be eaten with four Herbs. I shall

obey, and labour to digest the four Herbs as well as the Lamb; and I shall remember it is the Lord's Passover: I shall not think of the Herbs; nor be angry with the Hand that gathereth them, but look up only unto him who instituted that, and governs these. For Men can have no more Power over me than what is given from above. I am not in love with this Passage thro' the Red Sea; for I have the Weakness and Infirmity of Flesh and Blood plentifully in me, and I have pray'd with my Saviour, *ut transfret Calix iste*, that this Cup of red Wine might pass from me; but if not, *God's Will, not mine, be done*: And I shall most willingly drink of this Cup as deep as he pleases, and enter into this Sea, yea, and pass thro' it in the Way that he shall lead me; but I would have it remember'd, good People, that when God's Servants were in this boisterous Sea, and *Aaron* amongst them, the *Egyptians* who persecuted them, and did in a manner drive them into the Sea, were drown'd in the same Waters, while they were in pursuit of them.—And as for this People, they are at this Day miserably misled; God of his Mercy open their Eyes, that they may see the right Way; for at this Day the Blind lead the Blind, and if they go on, both will certainly fall into the Ditch. Tho' the Weight of my Sentence be heavy upon me, I am as quiet within as ever I was in my Life. And tho' I am not only the first Archbishop, but the first Man that ever died by an Ordinance in Parliament, yet some of my Predecessors have gone this Way, tho' not by this Means.—Here is a great Clamour that I would have brought in Popery: I shall answer that more fully by and by. In the mean time, you know what the *Pharisees* said against Christ himself, If we let him alone, all Men will believe in him, *& venient Romani*, and the *Romans* will come and take away our Place and Nation. Here was a causeless Cry against Christ, that the *Romans* would come: And see how just the Judgment was; they crucify'd Christ for fear the *Romans* should come, and his Death was it that brought in the *Romans* upon them: God punishing them with that which they most feared. And I pray God this Clamour of *venient Romani*, for which I have given no Cause, help not to bring them in: For the Pope never had such an Harvest in *England* since the Reformation as he hath now upon the Sects and Divisions that are among us.—This I shall be bold to speak of the King, our gracious Sovereign: He hath been much traduced also for bringing in Popery, but in my Conscience (of which I shall give God a very present Account) I know him to be as free from the Charge as any Man living, and I hold him to be as sound a Protestant (according to the Religion by Law established) as any Man in this Kingdom, and that he will venture his Life as far, and as freely, for it. And I think I do, or should, know both his Affection to Religion, and his Grounds for it, as fully as any Man in *England*.—I have been accused as an Enemy to Parliaments. No! I understand them, and the Benefit that comes by them, too well to be so; but I did mislike the Misgovernments of some Parliaments many Ways, and I have good Reason for it, for *Corruptio optimi est pessima*. There is no Corruption in the World so bad as that which is of the best thing within itself; for the better the thing is in Nature, the worse it is corrupted. And that being the highest Court, over which no other hath Jurisdiction; when it is misinform'd, or misgovern'd,

govern'd, the Subject is left without all Remedy: But I have done. I forgive all the World, all and every of those bitter Enemies which have persecuted me, and humbly desire to be forgiven of God first, and then of every Man, whether I have offended him or not, if he do but conceive that I have: Lord do thou forgive me, and I beg Forgiveness of him; and so I heartily desire you to join in Prayers with me.

Having ended his Prayers, and finding the Scaffold crowded, he desir'd they would give him room to die, that he might have an end of the Miseries he had so long endur'd; and coming near the Block, he said, *God's Will be done.* I am willing to go out of the World, none can be more willing to send me; and perceiving some People under the Scaffold thro' the Boards, he desir'd the Chinks might be stop'd, or the People remov'd, for he did not desire his Blood should fall upon their Heads. Sir John Clotworthy demanded of him, what was the most comfortable Saying a dying Man could have in his Mouth: He answer'd, *Cu-*

pio dissolvi & esse cum Christo. Sir John still press'd him with several impertinent Questions, to which his Grace answer'd with abundance of Meekness; and turning to the Executioner, he gave him Money, and said, Here honest Friend, God forgive thee, and I do, and do thy Office upon me with Mercy. Having made another short Prayer, he laid his Head down upon the Block, and pray'd a little time to himself, after which he said aloud, *Lord receive my Soul;* and this being the Signal, the Executioner immediately sever'd his Head from his Body at one Blow. He was buried after the manner of the Church of England, in the Church of *Allhallows, Barking;* the very Day the Liturgy was abolished by an Ordinance of Parliament, and the Directory set up in the room of it. A Brass Plate was nail'd on his Coffin with this Inscription: *In hac Cistula conduntur Exuvie Guilielmi Laud, Archiepiscopi Cantuariensis, qui securi percussus Immortalitatem adiit Die X. Januarii, Ætatis sue 73, Archiepiscopatus XII.*



XLII. *The Trial of CONNOR Lord MACGUIRE**, at the King's-Bench for High-Treason, in being concerned in the Irish Massacre. Feb. 10. 1644. Hil. 20. Car. I.

Rush. Col.
Vol. 5.
p. 729.

ON Monday the 11th of November 1644. the Prisoner was brought to the Bar of the King's-Bench to be arraign'd: By the Indictment he was charged, That he, together with Sir Phil. O-Neale, Philip O-Relly, Roger Moore Esq; Roger Macguire Esq; Toole O-Coule Clerk, (being a Roman Priest) Hugh Macmabune, and divers other Persons, false Traitors, unknown, as a false Traitor against the King's Majesty, his supreme Liege Lord, not having the Fear of God in his Heart, nor considering his Duty or Allegiance, but being seduced by the Instigation of the Devil, intending altogether to withdraw, blot out, and extinguish the cordial Love and due Obedience which faithful Subjects owe to their Sovereign; did, on the 20th of October, 17 Car. at Dublin in Ireland, in the Parts beyond the Seas, and at divers other Times, both before and after, as well at Dublin, as elsewhere, falsely, maliciously, and traitorously conspire, imagine, and compass utterly to deprive and disinherit the King's Majesty of his Royal Estate and Kingdom of Ireland; to bring his Majesty's Person to Death and Destruction; to raise Sedition, and breed and cause miserable Slaughter and Destruction amongst the King's Subjects throughout all the whole Kingdom; to make an Insurrection and Rebellion

against the King his Sovereign; to levy publick, open, bloody, and fierce War against the King in that Kingdom; to change and alter, according to their own Wills, the Government of the Kingdom, and the Religion there established, and totally to subvert the well-ordered State of that Commonwealth; to procure and bring in divers Strangers and Foreigners (not being the King's Subjects) in a warlike manner to invade that Kingdom of Ireland, and to levy War there.

And in execution of these their wicked Treasons and traitorous Conspiracies, 20 Octob. 17 Car. the Defendant, Connor Macguire, at Dublin, and divers other Times and Places; by one Toole O-Coule, and divers other Messengers, by him sent to Owen O-Neale, being then in Flanders, did move and incite Phil. O-Neale to levy and raise an Army in Flanders, and thence to bring that Army over into Ireland in an hostile manner, to invade that Kingdom.

And further, to put in execution their traitorous Purposes, the Defendant, together with Hugh Macmabune, Phil. O-Neale, Phil. O-Relly, Roger Moore, Roger Macguire, and Toole O-Coule the Priest, 20 Oct. 17 Car. at Dublin, and divers other Times and Places in Ireland, before and after, did traitorously conspire to enter into, seize, get into their own Power, and surprize the King's Castle at Dublin,

* This Macguire was one principally design'd for the Surprizal of the Castle of Dublin, and the securing or murdering the Lords Justices and Council, for which Intent he came purposely to Dublin the Day before; but the Plot being detected that Night, he fled disguised from his usual Lodgings at one Nevil's, a Chirurgion in Castle-street, and secretly hid himself at one Ker's, a Taylor in Cook-street, where he was found in a Cock-loft by John Woodcock, one of the Sheriffs of Dublin, standing with his Cloak wrapt about him in an obscure Place, in which Posture he was apprehended and brought before the Lords Justices and Council, where he made some sort of a Confession, upon which he was committed Prisoner to the Castle the 23d of October 1641. from whence he was sent into England the 12th of June following, and continued Prisoner there till the 18th of August 1644. when he made his Escape; but was retaken the 20th of October following.

lin, and all other the King's Castles and Forts in that Kingdom, and the Magazine therein. And at the same time unlawfully and traitorously did endeavour and actually attempt to gain into their Possession and Power, and to surprize the said Castle of *Dublin*, and the Munition therein.

That the Defendant, with the other Persons named, *Philip O-Neale* and others, further to bring to pass their most horrid wicked Treasons and Conspiracies, on the 22d of *October*, 17 *Car.* at *Charlemont*, and other Places, before and after, being armed and arrayed with a great Multitude in a warlike manner, with Banners displayed, Drums, Swords, Staves, Guns, and other invasive and defensive Weapons, did falsly and traitorously prepare and levy open, fierce, and bloody War against the King's Majesty; and the same 22d of *October*, seized and surprized the King's Fort at *Charlemont*, and then and there maliciously and traitorously did kill and murder *Toby Lord Calfield*, *Francis Davies*, and others of the King's Subjects, that were Protestants.

That the Defendants, 4 *Junii*, 18 *Car.* at the Castles of *Keilagh* and *Cragan*, and other Times and Places, before and after, levied War, seized and surprized those Castles, and did kill and murder *Owen Powel* and *William Cosens*, and many other of the King's Protestant Subjects in that Kingdom.

Which several Offences are laid against his Duty and Allegiance against the Peace of the King's Crown and Dignity, in manifest Breach and Contempt of the Laws and Statutes of this Kingdom.

The Defendant pleaded Not Guilty. And being demanded how he would be tried;

The Copy of the Plea.

HE pleaded the Statute of *Magna Charta*, 10 *Feb.* 9. *Hen.* iii. That none should be condemned but by Trial of his Peers; and pleaded the Statute of 10 *Hen.* vii. That all the Statutes made in *England* should from thenceforth be in force in *Ireland*.

And pleaded, That before the Time of the several Treasons charged in the Indictment, *Bryan Macguire*, his Father, by Letters Patents was created Baron of *Enniskillen*, in *Ireland*, to him and the Heirs Males of his Body: By force whereof his Father was seized of the Barony in Fee-Tail, and 1 *Feb.* 12 *Car.* died so seized; after whose Death the Barony descended to the Defendant, by virtue whereof he was a Baron of *Ireland*. And that at a Parliament held at *Dublin*, 16 *March*, 16 *Car.* which was there continued till the 7th of *August* after, and then adjourned to the 9th of *November* following, and then prorogued to the 24th of *Feb.* thence next following, and from thence continued till the 24th of *June*, 18 *Car.*

That he was as one of the Noblemen and Peers of that Parliament; and that the 23d of *October*, 17 *Car.* he was arrested and imprisoned upon pretence of the several Treasons in the Indictment mentioned, and there continued till the 12th of *June*, 18 *Car.* when he was brought against his Will to *Westminster*, and thence committed to the *Tower of London* in strict Custody. And averred his Plea, and prayed that he might be tried and judged by his Peers in *Ireland*.

Whereunto the King's Counsel demurred in Law, and the Defendant's joined in the Demurrer.

Upon this Plea * of the Lord *Macguire*, the beginning of *Hilary* Term, Judge *Bacon* delivered his Judgment, That a Baron of *Ireland* was triable by a Jury in this Kingdom. After which, the House of Commons declared their Assent unto his Opinion in this following Vote.

Die Sabbati, 8 *Feb.* 1644.

RESolved upon the Question, That the House doth approve of the Judgment given by Master Justice *Bacon*, in over-ruling the Plea of the Lord *Macguire*, and of the Manner of the Trial upon the Indictment of High-Treason in the *King's-Bench*; and the Judge is hereby required to proceed speedily thereupon, according to Law and Justice. The Lords Concurrence to be desired herein; Master Recorder is appointed to carry it up.

Upon this Vote of the Honourable House of Commons, the House of Peers afterwards declared their Concurrence; and thereupon this ensuing Order was passed by both Houses of Parliament.

Die Lunæ, 10 *Feb.* 1644.

ORDered by the Lords and Commons in Parliament assembled; That the said Houses do approve of the Judgment given by Master Justice *Bacon*, in over-ruling the Plea of the Lord *Macguire*, and of the Manner of the Trial upon the Indictment of High-Treason in the *King's-Bench*; and the Judge is hereby required to proceed speedily thereupon, according to Law and Justice.

John Brown, Cler. Parl.

Hen. Elsing, Cler. Parl. D. C.

ON *Monday Feb.* 10. the Lord *Macguire* was brought from the *Tower of London*, by the Guard belonging thereunto, unto the *King's-Bench* Bar; where he was arraigned by the Name of *Connor Macguire*, alias *Cornelius Macguire* Esq; (for his Plea of Peerage was found invalid, and so declared by the Court; and that Opinion of the Judge was since assented unto, and confirmed by both Houses of Parliament.) At his coming to the Bar, the Prisoner spake as followeth.

Macguire. I do humbly move, that I may have time allowed me by this Court to send for my Witnesses.

^a *Judge*. You have had a long time; you were indicted about the beginning of the last Term, you might have prepared Witnesses the last Term. ^a *Mr. Justice Bacon*.

Mac. I did not expect a Trial.

Judge. You should expect it at your Peril.

Mac. I was told, when I came into the Kingdom, that I might have Witnesses.

Judge. The Proof lies upon the King's part.

Mac. Tho' the Proof be of the King's part, yet I must have time to clear myself.

Judge. But if every Man should ask so much time as you require, he should never come to his Trial.

Serj.

* See *Mr. Pryn's long Argument of this Point*, intitled, *The Case of the Lord Macguire*, in *State Trials*, Vol. VIII. p. 335. See also *Hale's H. P. C.* Vol. I. p. 155.

Serj. *Whitfield*. Mr. Justice *Bacon*, we know that my Lord *Macguire* was indicted here the last Term; he was arraigned at this Bar, he pleaded *Not Guilty*, he could not but expect that he should then have been tried, if it had not been for the Plea of Peerage which he then put in: upon which he knows there was a deliberate Dispute, and he could not tell but that there would be an end before this time; and if he had any Witnesses he might have sent for them the last Term. But it is a very unusual Course, especially in that he could not but expect that he should be tried before this time; but then the Court did conceive this was a legal Information. No Place is mentioned by the Prisoner where the Witnesses should be, nor are they named who they are, nor any particular thing that they should testify; but the Proof lies clear on our part: there's no Justification in Treason; if we prove that this Lord hath committed Treason, there's no Justification of that, by any Witnesses he can produce.

Judge. The Lord *Grege*, that was Lord-Deputy of *Ireland*, committed his Treasons in *Ireland*, for which he was brought over hither, and try'd here; yet the Court did not stay for his sending over into *Ireland* for Witnesses.

Mac. I desire Witnesses.

Judge. What can your Witnesses say for you? Can they say thus much, That you did not conspire, as this Indictment charges you? That there was no taking of these Castles? Can they swear in the Negative? The Proof lies in the Affirmative on the King's part.

Mac. They may be mis-informed.

Judge. Who may be mis-informed?

Mac. The Court. I have been kept close Prisoner a long time, and could not provide my Witnesses.

Serj. *Whitfield*. If we were not tied to that, to nothing but his own Confession, there's enough to condemn him: for that he says he was kept close Prisoner, he might have desired that the last Term.

Serj. *Roll*. If we go upon your own Examination, the Witnesses concurring with that, what can you have?

Judge. If you had Witnesses here, we would hear them; but to stay upon a mere verbal Supposal for those Witnesses in *Ireland*, they may be in that Rebellion too, and they will never come hither, and so the Matter must never come to a Trial.

Mac. I desire that it may be the next Term.

Judge. We cannot protract Time; they are the King's Witnesses, there are (I suppose) divers here, many Witnesses of the King's come out of *Ireland*; if you will ask them any Questions for your Defence, you shall. There are many Witnesses of the King's that know how Things were in *Ireland*, the Court shall put them to speak.

Mac. I humbly desire to have a formal Trial.

Judge. In what respect do you mean? I think it is so now. Now you are come to be arraigned, and the Evidence is to come in against you, I conceive it is a formal one.

Then the Prisoner was required to hold up his Hand at the Bar; and it was demanded, if he would challenge any of the Jury that were to pass upon him in the Matter of Life and Death.

Then the Jury being called, he looked upon them, and challenged those which did appear, being Twenty-three; there being only One absent. Being demanded whether his Challenge was pe-

remptory or no? he answered, It was for Causes best known to himself.

Jury challenged.

Sir <i>William Brownlow</i> Kt. and Baronet.	<i>John Pawlet</i> Gent. <i>Thomas Poltock</i> Gent.
Sir <i>Henry Row</i> ,	<i>Henry Smith</i> Gent.
Sir <i>Matthew Howland</i> ,	<i>Francis Child</i> Gent.
<i>Thomas Marsh</i> Esq;	<i>Edward Wilford</i> Gent.
<i>Thomas Wilcox</i> Esq;	<i>William Vincent</i> Gent.
<i>William Lane</i> Esq;	<i>John Barnes</i> ,
<i>Edward Rogers</i> Esq;	<i>John Arnold</i> ,
<i>Edward Claxton</i> Esq;	<i>John Huckesley</i> Esq;
<i>Richard Zachary</i> Esq;	Sir <i>James Harrington</i> Kt.
<i>Humphrey Westwood</i> Esq;	<i>Thomas Moore</i> Esq;
<i>John Jackson</i> Esq;	<i>Henry Arundell</i> Gent.

Serj. *Whitfield*. The Prisoner hath challenged all the Jury that does appear; Twenty-three appear, and he hath challenged them, and his Challenge is for Causes best known to himself, which is a peremptory Challenge. Truly, it is that which the Law doth allow, and we do not oppose it; but we do desire that we may have another Writ returnable To-morrow.

Judge. You must have a *Venire Facias*.

Serj. *Whitfield*. This Cause is a Cause of very great weight, there are many Witnesses that have long attended in Court, we are informed that some of them are gone away into *Ireland*; that there is the Sheriff of *Dublin*, and some others that are now present in Court, that cannot be here, if we should defer this Trial, as the Prisoner doth desire: and we do desire that it may be referred till To-morrow, we shall be ready to give in Evidence against him.

Judge. He hath spent three Days this Term already, this is the fourth: we would have proceeded now, but for his peremptory Challenge; but if we stay till To-morrow, he must be content to be try'd by a meaner Jury.

Mr. *Prym*. This being a publick Case, we desire a speedy Progress in it: our Witnesses have been long detained here, and cannot attend till the next Term, some of them being to depart within two Days.

Judge. A publick Case must have publick Justice on both Sides: for your Witnesses, you shall stay your Witnesses here. We must do that which the Law doth allow.

Serj. *Whitfield*. The Law does allow of his peremptory Challenge; we desire to have a new Writ, and that it may be returnable To-morrow. For the doing of it, we shall leave it to those that are to prosecute it; and to the Sheriff. We see that this Cause cannot be try'd this Day, we desire we may have a speedy end of it; there have been many Days spent in it, and we that are of Counsel for the King do desire that we may confer together, departing the Court for some time; and when we have conferred together, we will return to the Court again, and then we will propound to you what Course we do desire for the speedy Trial of this Cause.

To this Motion the Judge assented, and Serjeant *Whitfield* and the rest of the Counsel went to consult together about it; and after a short stay, upon their return, Serj. *Whitfield* spake thus:

Serj. *Whitfield*. We that are Counsel for the King have consulted together with the Clerk of the Crown, and the Secretary; we have withdrawn ourselves, and perused several Precedents, and we

do find by several Precedents, that whereas a peremptory Challenge shall be, it is in the Power of the Court to order the Course of Trial, and the Course is this: There goes a Writ to the Sheriff, that he shall distrain all them that make default, and that he shall amove those that are challenged by the Prisoner; and further, that he shall return so many more for the Trial. This we conceive to be the constant Course of this Court; and in this Case my Lord *Macguire* having challenged 23 of the 24, we are to distrain the other that made default, and to amove the 23 that he hath challenged of them, and have a *Tales* returnable To-morrow for a new Jury.

Serj. *Roll*. That was in *Standish's* Case and *Friar's* Case.

Judge. I know the Court may grant a *Tales*, but the Matter is, whether it can be done so soon as To-morrow or no, if the Sheriff can do it To-morrow.

Serj. *Whitfield*. We do find this in the Precedent of *Friar*, that in 3 *Hen. VII.* the Jury did appear on *Friday*, and all those that did appear were challenged, and there was a *Distringas* returned the next Day, which was *Saturday*. It may be *immediatè*.

Judge. Then make your *Distringas* against To-morrow Morning, make out a *Quadrageinta Tales* against To-morrow.

Mac. I desire I may not be so severely dealt with.

Judge. It hath been so often-times, and the Court doth proceed in these Cases *de die in diem*, from Day to Day; and there is no Difficulty in the granting of it, but whether the Sheriff can return it so soon. If the King's Counsel will have it To-morrow, the other Businesses of the Court must be put off.

Hereupon the Prisoner was discharged, and a Rule granted to the Lieutenant of the *Tower*, to bring him again the next Day.

On *Tuesday, Feb. 11*, the Lord *Macguire* was again brought to the *King's-Bench* Bar, where he made a Motion that his Plea of Peerage might be referred to another Court. To which it was answered;

Serj. *Whitfield*. We know not for what end this Motion is, and we know this, that this is no time for my Lord to make this Request; for you know how far we have proceeded: He hath been arraigned, and indicted for High-Treason, and one Jury he challenged, the other is returned, so as now he is in the way of his Trial; we are now to proceed with such Evidence as we have, to prosecute instantly. We do not desire this to be produced again, and if it be, we know not how it could be material one way or other.

After this, the Lord *Macguire* further urged the Court to the former Purpose: to which it was answered, That he was then brought to his Trial as a Prisoner upon the Indictment, and that both the Lords and Commons had approved of the Opinion of the Court therein.

Mac. Please you, Sir, one Word more: I desire to appeal to the Lords.

Serj. *Whitfield*. When one is come here, to appeal to the Lords, that was never known: now you have put yourself upon the Country.

Mac. Under favour, I conceive I may, to an higher Court,

Judge. It cannot be granted, the Lords approved it: if you would have gone to an higher Court before, you might have taken your Course; now the Jury is returned, and you are appointed to be try'd here.

After this, the Lord *Macguire* desired further to appeal; to which the Answer was:

Serj. *Whitfield*. Here lies no such Appeal here: you are out of the Ecclesiastical Court, there is no such Plea here; you are now upon the Middle of your Trial, we desire you may go on, you have challenged 23 of the Jury already.

Judge. We have no such Course in the Common Law; if a Man will appeal from me, I cannot let him appeal to any Man.

Upon this, these of the Jury following were named, which he challenged; viz *George Hanger* Esq; *Sir Michael Wharton*, *James Hawley* Esq; *George Smith* Esq; *Edmund Besley* Esq; *William Ewingsby* Esq; *Stephen Bourman* Gent. *George Weaver-Basset*, *J. Nicolls* the Younger, *Henry Walker* Gent. *Randolph Nicoll*, *Andrew Brent*. Upon his challenging of these, which being added to the rest, make 35 in all, the other Jury being about to be called, the Lord *Macguire* moved:

Mac. Under favour, I conceive, that my Lands being sequestred, those Men that have bought my Lands, should not pass upon my Trial; and therefore I desire they may make answer to it upon Oath, whether any of them have adventured or no.

Serj. *Whitfield*. To desire that a whole Jury may be demanded such a Question upon their Oath, is that that hath not been known. If my Lord *Macguire* have cause now against any, he hath run out the Liberty which the Law gave him, to challenge 35 peremptorily. Now if he should challenge any more, he must make a particular Challenge to every particular Man that comes to be sworn, and he must have such a Challenge notwithstanding as is warrantable by Law; but this general Challenge is not warrantable by Law, and if it were particular, it were not warrantable neither.

Serj. *Roll*. If you will challenge any more, the Law does not debar you to shew cause.

Mac. I conceive, that any that have given Money for *Ireland* for my Destruction, ought not to pass against me.

Serj. *Whitfield*. This is for the King, this is for no particular Person whatsoever.

Mac. I beseech you hear me in it.

Judge. You know this, that the King cannot grant it without the Consent of both Houses, and in this Case it may be put to the Jury to try upon their Oath. Thus far I shall agree, that if any of this Jury be to have any particular Benefit in *Ireland*, of Land or Goods by his Attainder, it is good; but if his Lands come to the King, and that the King is no way bound to give it any of them, it is no Challenge: look the Statute.

Mr. *Prynn*. Under favour, Mr. Justice *Bacon*, it doth not appear to the Court, that the Prisoner hath any Lands or Goods in *Ireland*; and therefore no such Question is to be demanded of the Jury.

Judge. You may make needless Disputes upon it.

Then the Jury being accordingly required to answer upon Oath, whether they had adventured, or had any Share in *Ireland* for the Rebels Land; *Macguire* desired the Question might be, Whether they themselves, their Children, or Brothers? But that would not be agreed unto, as being unreasonable.

.Then

Then the Jury following was sworn: *J. Carpenter, John Cooper, A. Cordall, Rich. Atkinson, Jofius Hendall, William Greenwood, William Barnes, Robert Stiles, George Norfolk, Edward Hudson, John Wait, Esab Risby.* The Oath which they took was this:

You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and Connor Macguire Esq; now Prisoner at the Bar, and a true Verdict give according to your Evidence.

The Jury being sworn, *Macguire* moved that he might have a Jury of 24; to which it was answered;

Judge. There have been 40 named.

Mac. Under favour, I conceive, I ought to be try'd by 24; there were so many returned at first.

Judge. They returned 24; that is, because if any of them did fail, and some may be challenged, then there might be twelve left.

Mac. Under favour, I conceive, there should be 24 now left for my Trial.

Judge. You are deceived in that. You challeng'd 23, and so there were 40 more added; now you have challeng'd 12 of this 40, and out of them their remains so many as will make up a Jury of 12.

Then the Court proceeded to his Trial, and the Indictment against him was read.

Clerk. Gentlemen of the Jury, Upon this Indictment he hath been arraigned, and to his Arraignment he hath pleaded *Not Guilty*, and thereupon put himself upon his Country; and your Charge is, to inquire whether he be guilty of the Indictments, or any of them: If you find him not guilty, you are to declare it; if guilty, then you are to give in your Verdict accordingly.

Then these Witnesses following were sworn to give in Evidence against the Prisoner: *The Lord Blaney, Lady Calfield, Sir Arthur Loftus, Sir John Temple, Sir William Stewart, Sir Francis Hamilton, Sir Edward Borlace, Sir William Cole, Sir Charles Coot, Mrs. Wordrofe, John Carmick, Walter Gubson, M. Bunbury, Captain Michael Balfoure, Captain Berisford.*

Sir William Cole's Testimony.

Serj. Whitfield. You know, *Sir William Cole*, a great many of their Names, which you have heard, that were Conspirators with this Lord; what Religion were they of?

Sir W. Cole. They were all Papists.

Serj. Whitfield. Who were they?

Sir W. Cole. The Lord *Macguire*, *Sir Phelim O-Neal*, *Roger Moore*, &c.

Serj. Whitfield. *Sir Francis Hamilton*, upon what occasion was it, that the Conspirators got an Order to view the Magazine?

Sir F. Hamilton. I was a Member of the House of Commons there, and I remember very well there came a Message from the House of Lords to the House of Commons, to let them know, that there was some Plot for the blowing up of the Parliament-House in *Ireland*; and they sent a Message, to desire that they might search under the Parliament-House: and there was a Search made, and (as I remember) the Lord *Macguire* was one of the Committee from the House of Lords made

search there; but what they found, I do not know. Afterwards they desired that they might search the Castle of *Dublin*, and other Magazines.

Counsel. What was the Cause?

Sir F. Hamilton. There was a Coachman of my Lord of *Strafford's*, that had utter'd some big Words, (as was given out) That the Parliament-House should be blown up: but what was the Ground, I am persuaded in my Conscience, it was to know where the Store and Ammunition lay, that they might know where to surprize it.

Sir William Stewart's Testimony.

I was one of the Committee that was sent by the Parliament, and by Order from the House of Lords, to search the Parliament-House, and the Lord *Macguire* was one of the Lords: they made a very strict Search, and then they inquired for the King's Magazine, and I believe my Lord *Macguire* now here was one of the Committee that went to search for the House of Lords, and he did search very narrowly, and they were desirous to know where the Store was.

The Lord Blaney's Testimony.

Counsel. Whether this Search were moved by the Lord *Fingball*, and what was the End of it?

Ld. Blaney. So near as I can, I will give you the Business; it is so long ago. This I remember, that there was one of the Lords House, whether it were my Lord *Fingball* or my Lord *Macary*, moved it, I cannot certainly depose, but I am sure it was one of them. This Occasion was, one of the Earl of *Strafford's* Coachman said, he hoped to see some of the Lords blown up for it; it was about a Fortnight after the Earl of *Strafford* was beheaded here. Thereupon they got an Order for it, and so they went down, and they did not find the Powder, but they made as narrow a Search as ever any was. I asked what the Meaning was of this, for we had strange Censures of it ourselves. Says one of them, the Lord *Clamorris*, they are afraid of a Powder-Plot of the Protestants. I answered, that I had heard of a Powder-Plot of the Papists, but never of the Protestants in my Life. But if you ask the Reason of it, it was to assure themselves of their Strength, for we found by woful Experience afterwards it was their end. My Lord *Borlace* said, Let them not be afraid, for upon my Honour there is no Powder below. It's a great House, the House of Commons sit on one side, and the Lords on the other, and the Block-House in the Middle.

Counsel. What Religion is my Lord *Fingball* and my Lord *Clamorris* of?

Ld. Blaney. The Lord *Fingball* is a Papist, and *Clamorris* a pestiferous Papist.

Serj. Whitfield. All Papists. We shall now read the Examination of the Manner of his taking, and then his own Examination. The first we shall read, is this of *Mr. Woodcock*, that was Sheriff of *Dublin*; he was in Town, but he could not stay, but he was examined before this Court.

The Information of John Woodcock the 27th of October 1644. taken upon Oath before J. Bacon.

THE said Examinee deposed and saith, That he being one of the Sheriffs of the said City of *Dublin*, in the Year 1641, having Notice given him in the Night upon the 22d of *October* in the same Year, of some great Design intended, did by Virtue of his Office walk up and down the City that Night; and coming to the House of one *Nevil*, a Chirurgeon in *Castle-street*, he understood by the said *Nevil*, that the Lord *Macguire* with some ten or twelve others were there: this Examinee told him it was fit for his Guests to be in bed at that time of Night; but the said *Nevil* did bring this Examinee word, that the Lord *Macguire* and his Company were then going to Bed. The said Examinee departed, setting a Watch near his House; by which Watch he was informed, that the said Lord *Macguire* and the rest were gone from the House, and were at the House of one *Kerne* a Taylor: whereupon he searched the said House, and there found some Hatchets with the Helves newly cut off close to the Hatchets, five Petronels, five or six Swords, three or four small Pistols, five or six Skeines, with other Arms of the Lord *Macguire's* in an House of Office in the said House; in another Place divers Pole-Axes, and also behind a Hen-roost some great Weapons with sharp Pikes of Iron in one end of them: the said *Kerne* affirming, that he knew nothing of any of the Particulars before-mentioned, nor how they came in his House. The said Examinee shewed all the said Instruments unto the said Lords Justices and Council of *Ireland*; and thereupon the said Lords Justices and Council commanded Search to be made for the said Lord *Macguire*. Upon which, the said Examinee searching narrowly for him, at last found him in a Cock-loft, with a Cloke wrapt about him, standing by a Bed, the Door lock'd upon him, there being no Key to be found; as also the Master of the House flying away, and making an Escape to the Enemy.

After this, the Lord *Macguire's* own Examination was read, taken the 26th of *March* 1642, (for as Sir *John Temple* declared to the Court, the Lord *Macguire* was then brought to the Council-Board, and they could get nothing out of him) whereupon he was sent back to Prison for that time.

The Examination of Connor Lord Macguire, Baron of Enniskillen, taken before us, Charles Lord Lambert, and Sir Robert Meredith Kt. Chancellor of his Majesty's Court of Exchequer, the 26th Day of March, 1642, by Direction of the Right Honourable the Lord Justices and Council.

WHO being examined, saith, That about the time when Mr. *John Bellew* came out of *England* with the Commission for the Continuance of the present Parliament, *Roger Moor*, in the said *Moor's* Chamber, in the House of one *Peter de Costres* of this City, acquainted him this Examinee, That if the *Irish* would rise, they might make their own Condition, for the regaining of their own Lands, and Freedom of their Religion. At which time the said *Moor* also acquainted him this Examinee, That he had spoken with sundry of *Leinster*, who would be ready for that Purpose: and withal told him this Examinee, That he was

assured a good Part of *Conaught* would do the like; and thereupon moved this Examinee to join likewise with them; with all he could make: unto which Motion, he this Examinee yielded. And the next Day following, there was a Meeting in his the said *Moor's* Chamber aforesaid, where were Col. *Mac-Bryan*, *Macmahone*, *Tirelagh O-Neal*, *Philip Mac-Hugh O-Rely*, this Examinee, and *Roger Moor*; where Discourse was had on that Business, yet nothing concluded on, save that *Roger Moor* and the rest should go and prepare their Parties. And this Examinee further saith, That about *May* last he this Examinee, *Roger Moor*, *Philip O-Rely*, and *Roger Macguire* this Examinee's Brother, dispatched a Priest, one *Toole O-Cocle*, who lived in *Leinster*, unto *Owen O-Neale* into *Flanders*, to acquaint him with the Business concerning the general Rebellion then in Preparation; which said Priest returned about a Month before the time appointed for Execution thereof. And the Answer which the said Priest brought from the said *Owen O-Neale*, was, That he would (within fifteen Days after the People were up) be with them, with his best Assistance and Arms. And it being demanded why the said *Owen* should bring Arms, considering that the Castle of *Dublin* was to be taken, with the Arms therein; this Examinee answered, That they so provided for Arms, that they might not want any, in case they could not take the said Castle, whereof they doubted. And this Examinee acknowledgeth, That the Castle of *Dublin* was to have been surprized by himself, Capt. *Bryan O-Neale*, Capt. *Con O-Neale*, Capt. *Macmahone*, one *Owen O-Rely*, *Roger Moor*, *Hugh Macmahone*, Col. *Plunket*, and Capt. *Fox*; and likewise further acknowledgeth, That *Hugh Mac-Pbelim*, Capt. *Con O-Neale*, and *Bryan O-Neale*, brought from *Owen O-Neale*, out of *Flanders*, the very same Message which the said Priest brought. And this Examinee further saith, That he was told by *Roger Moor*, that a great Man was in the Plot, but he might not name him for the present. And at another time, and during the sitting of the Parliament the last Summer, he this Examinee was informed by one *John Barnwell* a Franciscan Fryar, then resident in this City, That those of the Pale were also privy unto the Plot, (meaning the present Rebellion.) And lastly saith, That of those Persons who came to attend him this Examinee for the Surprize of the said Castle of *Dublin*, only *Cobonogh Macguire* was privy unto the Business in Hand; and that the last Meeting (when the Day appointed for Execution thereof was resolved on) was at *Logh-Rosse*, where were present only *Ever Macmahone*, Vicar-General of the Diocese of *Clogher*; *Thomas Mac-Kearnan*, a Fryar of *Dundalk*; Sir *Pbelim O-Neale*, *Roger Moor*, and *Bryan O-Neale*.

Concordat cum Originali Ex. Charles Lambert,
per Parl. Harris. Robert Meredith.

This being read, and opened unto the Jury, being the Lord *Macguire's* free and voluntary Confession, which he afterwards acknowledged, since his coming to the Tower, viz.

Memorandum, That this within written being shewed and read unto the within-named Lord *Macguire*, and himself having perused the same, his Lordship did acknowledge the same to be true in all things, saving that he doth not now acknowledge that *Barnard* told him, That those of the Pale were privy to the Plot; neither doth acknowledge,

ledge, that *Cobonagh Macguire* was privy to the Plot before his coming to *Dublin*.

This Examination and Acknowledgment was made and taken the 22d Day of June 1642. Anno Regni Caroli Regis decimo octavo, before us.

John Bramston, Thomas Mallet.

In the Prefence of John Conyers, William Ayloffe, Nathaniel Finch.

June 24, 1642. The Examination of Connor Lord Macguire, Baron of Enniskillen, taken before Sir John Bramston, Knight, Lord Chief Justice of the King's-Bench.

WHO saith, that he is of the Age of Twenty-six Years and upwards, and that he was born in the County of *Fermanagh* in *Ireland*; and saith, That his Examination taken at *Dublin* the 26th Day of *March* 1642, before *Charles* Lord *Lambert*, and *Sir Robert Meredith*, with his Acknowledgment thereof the 2d of *June* before Judge *Bramston* and Justice *Mallet*, is true in such manner as in the said Examination and Acknowledgment is expressed. *Connor Macguire.*

The Examination of Cornelius Macguire, Lord Baron of Enniskillen in Ireland, taken before Isaac Pennington Esquire, Lieutenant of the Tower of London, and Laurence Whitaker Esquire, two of his Majesty's Justices of the Peace for the County of Middlesex, the first Day of October 1644.

HE denieth the receiving of any Letters or Messages out of *England* before the Rebellion, nor did he ever hear of any. He saith, he was but a mean Instrument in the Design in *Ireland*; he confesseth he intended to seize upon the Castle of *Dublin*, and the Magazine there, and keep it till they had Redress of some Grievances, which they purposed to propound to the Parliament there; one whereof was, to have a Toleration of the *Roman* Catholick Religion. He confesseth, that he came accidentally to *Philip O-Rely's* Houle, as he came up to *Dublin*; and, as he remembreth, *Macmahone* was then there: and that his Intention of coming up to *Dublin*, was to put the aforesaid Design in execution, and that then and there they had Speech about that Design; but he remembreth not the Particulars: which Design was to be put in execution the 23d Day of *October* in that Year; and that he was taken there that very Day, being *Saturday*, upon Search made for him, carried before the Lords Justices, examined, committed, and sent over into *England*.

He saith further, That he made his Escape out of the *Tower* of *London* upon *Sunday* the 18th of *August* last about Four of the Clock in the Morning. *Laurence Whitaker, Isaac Pennington.*

John Carmick's Testimony.

THAT upon the 21st of *October* 1641. *Fergus O-Howen*, one of the Followers of *Brian Macguire* Esquire, came to his Chamber in the Castle of *Enniskillen*; and after he endeavoured to bind him to keep secret a Matter of great Concernment, which *Fergus* said he had to disclose, and particularly to conceal it from *Sir William Cole*, and all other *Englishmen*; this Examine told him, He would be secret so far as it went with

his Allegiance and Conscience. He discovered unto the said Examine, that the Lord *Macguire* and *Hugh Oge Macmahone*, accompanied with several *Irishmen* of the Counties of *Fermanagh* and *Monaghan*, did take their Journies out of the said Counties upon the 19th and 20th Days of *October* 1641, to the City of *Dublin*, with Resolution and Intent to murder and kill his Highness's Lord's Justices, and Council of the Kingdom of *Ireland*, and the rest of the Protestants there; and also to possess themselves of the City of *Dublin*, and to put all the Protestants there likewise to the Sword: and that to that effect there were other great Men, and others of the Papists of that Kingdom to repair unto, and meet them in *Dublin* on *Saturday*, the 23d of *Octob.* 1631. or thereabouts. And that all the Castles, Forts, Sea-ports and Holds that were in the Possession of the Protestants in the several Counties and Provinces in the Kingdom of *Ireland*, were then also designed and resolved to be surprized and taken by the *Irish* Papists, and the Protestants in every of those Castles, Forts, Sea-Ports and Holds, to be then also put all to the Sword by the *Irish* Papists in *Ireland*, in their own several Parts and Limits, by Men thereunto chiefly and particularly appointed by the Contrivers thereof: and that especially the Town and Castle of *Enniskillen*, with the rest, would be taken, and all the Protestants in it put to the Sword; and therefore advised the Examine to get himself and Goods out of the Town: whereat the Examine smiling, *Fergus* bid him not to slight it, for he could assure those Things would come to pass in seven Days, or else he would be bound to lose his Head. Whereupon the said *Fergus O-Howen* departed, and the Examine acquainting *Sir William Cole* with it, there came one *Flartagh Mac-Hugh*, a Gentleman and Freeholder of that County, and affirms to the same effect to *Sir William Cole*, that the Plot for surprizing the City and Castle of *Dublin*, the Castle of *Enniskillen*, and all the Castles and Strengths in *Ireland*, was to be put in full execution by the Papist, *Octob.* 22 and 23, 1641. throughout the said Kingdom; and that *Brian Mac-Conagh Macguire* Esq; did send him the said *Flartagh Mac-Hugh* to give notice and warning thereof to the said *Sir William Cole*, whom he earnestly desired to be upon his Guard upon *Friday* the 22d and *Saturday* the 23d of *October*; for the *L. Macguire* was gone with *Macmahone* and others, that Week, with purpose to possess themselves of the Castle and City of *Dublin*: And the *L. Macguire* had written his Letters to *Con O-Bourke*, *Owen O-Roreicke*, *Martagh Oge O-Fantagm*, and others, to go on with that Plot in those Parts; and had appointed his Brother *Rori Macguire* (in his absence) to command the *Irish* Papists of the County of *Fermanagh*, for the surprizing of the Castles and Houses of the Protestants. Of all which *Sir William* advertised the Lords Justices and Council of *Ireland* the same Day. And this Examine saith, that Captain *Mac-Hugh*, seven or eight Days before the Rebellion brake forth, declared, That the *L. Macguire* posted Letters, and rode up and down to divers Gentlemen and others of that County, to be very active in the Business: That it was averred upon the Oaths of *Flartagh Mac-Hugh*, *John Oge Mac-Hugh*, and *Terlagh Oge Mac-Hugh*, before the said *Sir William Cole*, that 150 Men were appointed to surprize the Castle of *Enniskillen*, under the Leading of *Don Macguire* and *Rori Macguire*, who were to murder the said *Sir William Cole*,

and his Wife, Children and Servants, and throw them over the Wall into the River, and then to do the like unto the Protestants in the Town and Corporation of *Enniskillen*: for which Service they were not only to have the Spoil and Riches of the said Castle and Town, but to have also the Barony of *Clanawley* granted and confirmed in Fee to them and their Heirs from the said Lord *Macguire* and his Heirs. The Examine then also produced a Letter written in *Irish*, from the Lord *Macguire*, to his Cousin *Brian Macguire*, wherein taking notice that he was abundantly inclined to the *English*, which did very much trouble him; and therefore desired him to banish such Thoughts out of his Mind, and not to pursue those Resolutions which in the end might be his own Destruction, as he thought it would be to all those that did not appear.

Presently after, upon the 29th of *October*, one Captain *Rori-Macguire* took upon him the managing of all Businesses in his absence; he fortifies first the *Castle-Hafen*, the House wherein he dwelt himself, he took in the Castle of one *Edward Aldritch* Esq, he put out all the *English* there; he went to the Town, burnt that, but killed none of the Men; went thence to another Place, and hanged one *Eleazar M.* one that was Clerk of the Peace of the County; and from thence he went to *Newton*, four Miles off from it, took in the Town, strip'd and disarmed all the Protestants that were in the Church, the next Day after march'd away, and kill'd and destroy'd most of the *English* in those Parts; murder'd *Arthur Champion* Esq; and many more. Two and twenty Castles were seized upon, and the Church of *Monah*, with Eighteen Protestants burnt in it: Seven hundred ninety-four Protestants were destroyed in that County; and I did hear there was about One hundred and fifty-two-thousand, that they had destroyed in that Province of *Ulster*, in the first four Months of the Rebellion.

John Carmick.

Then Sir *William C* (being present in Court) gave in his Evidence much to the same effect as in *Carmick's* Testimony.

Serj. *W.* We desire to shorten, we have a great many Witnesses; we shall go upon these Particulars: 1. Captain *O-Neale's* landing in *Ireland*, and what he brought with him. 2. *Guilo* and *Crocán*. Lastly, How long besieged, and how many murdered.

Then Sir *William Steward* gave in Testimony to this effect.

That *Con Owen O-Neale* landed in *July* the same Year the Rebellion began, brought many Commanders, much Arms and Ammunition; many of his Commanders, Nine of the chief of them, were taken Prisoners at one Battle.

Serj. *W.* It is his own Confession, that he sent a Priest over to fetch Arms to come into *Ireland*.

[Then the Lady *Calfield* was desired to declare her Knowledge concerning the taking of *Charlemont-Castle*.]

Lady *Calfield*. The 23d of *October* 1641. Sir *Pbelim O-Neale* and others came into the Castle, they seized upon all, murdered his Servants; and those that were alive, they bound them, and put them in Prison; and at that time Sir *Pbelim O-Neale* himself, and other of his Companions, told her, That *Dublin Castle and City, and most other Forts of Ireland were surprized by their Confederates the Papists;*

and that he was sorry for his Cousin the Lord *Macguire*, and that he was afraid he was taken.

Serj. *W.* What was done with my Lord *Calfield*?

Lady *Calfield*. He was murdered: he beg'd for his Life, and they durst not but do it.

Serj. *W.* When Sir *Pbelim O-Neale* had taken my Lord *Calfield*, then they got this Lady to write to the Lords Justices, that my Lord *Macguire* might be exchanged for her Son, but that would not be; and thereupon they murdered my Lord *Calfield, Francis Davis, and others.*

Mrs. Mary Wordrofe's Testimony.

That he came on *Friday* Night about 10 or 11 a-Clock to break into the Castle; I hearing the Noise, asked what was the matter? I went to call up some of our Gentlemen; when I came in again, they had taken some of our Gentlemen and bound them.

She also testified the murdering of the Lord *Calfield, Francis Davis, and others*; and the former Words concerning the Lord *Macguire*.

Serj. *W.* These two Witnesses prove that of *Charlemont*, how far the Rebels owned the Lord *Macguire*, as to endeavour his Exchange. We shall now come to the other Castles, how long they besieged them, and who was murdered.

Walter Gabson's Testimony.

They besieged it a Quarter of a Year before they took it; divers of the chief Conspirators, and *Powell* and *Cofens* took the Castle by force in an hostile manner.

Sir Francis Hamilton's Testimony.

Philip O-Relly came to the Castle, to *Guilo* and *Crocán* Castles, and they lay before it a Quarter of a Year with 2000 or 3000 Men, sometimes 1500, but never less.

Sir Charles Coote's Testimony concerning the Generality of the Rebellion.

Sir *Pbelim O-Neale* and *Roger Moore* were the Actors in the Massacres, and by publick Directions of some in place, and of the Titulary Bishops, for the sending of an exact Account of what Persons were murdered throughout all *Ulster*, a fourth Part of the Kingdom of *Ireland*, to the Parish-Priests in every Parish; and they sent in a particular Account of it; and the Account was an Hundred Four Thousand Seven Hundred in one Province, in the first three Months of the Rebellion.

Serj. *W.* What say you concerning the general Council and the Pope's Bull?

Sir *Charles Coote*. The Supreme Council, they took up a new Form of Government upon them of their own; and by this Authority it was granted to the Lady *Macguire*, that she should have the Rent of such Lands in Recompence of the Loss that he was at in their Causes. They have made several Judges of their own Courts: They print, they coin, they do all in their own Names.

The Copy of the Pope's Bull.

Ad futuram Rei Memoriam.

Urbanus Octavus, &c.

HAVING taken into our serious Consideration the great Zeal of the *Irish* towards the propagating of the Catholick Faith, and the Piety of the Catholick Warriors in the several Armies of that Kingdom (which was for that singular Fervency in the true Worship of God, and notable

Care

Care had formerly in the like Cafe, by the Inhabitants thereof, for the Maintenance and Preservation of the same Orthodox Faith, called of old, *The Land of Saints*;) and having got certain Notice how, in Imitation of their godly and worthy Ancestors, they endeavour by force of Arms to deliver their thrall'd Nation from the Oppressions and grievous Injuries of the Hereticks, where-with this long time it hath been afflicted, and heavily burdened, and gallantly do in them what lieth to extirpate, and totally root out those Workers of Iniquity, who in the Kingdom of *Ireland* had infected, and always striving to infect the Mass of Catholick Purity with the pestiferous Leven of their heretical Contagion: We therefore being willing to cherish them with the Gifts of those spiritual Graces, whereof by God we are ordained the only Disposers on Earth, by the Mercy of the same Almighty God, trusting in the Authority of the blessed Apostles *Peter* and *Paul*; and by virtue of that Power of binding and loosing of Souls, which God was pleased (without our deserving) to confer upon us; to all and every one of the faithful Christians in the foresaid Kingdom of *Ireland* now, and for the time militating against the Hereticks, and other Enemies of the Catholick Faith, they being truly and sincerely penitent, after Confession, and the spiritual refreshing of themselves with the sacred Communion of the Body and Blood of Christ, do grant a full and plenary Indulgence, and absolute Remission for all their Sins, and such as in the holy Time of Jubilee is usual to be granted to those that devoutly visit a certain Number of privileged Churches, within and without the Walls of our City of *Rome*: by the Tenor of which present Letters, for once only and no more, we freely bestow the Favour of this Absolution upon all and every one of them; and withal, desiring heartily all the Faithful in Christ, now in Arms as aforesaid, to be Partakers of this most precious Treasure.

To all and every one of these foresaid faithful Christians, we grant License, and give Power to chuse into themselves, for this effect, any fit Confessor, whether a Secular Priest, or a Regular of some Order; as likewise any other selected Person approved of by the Ordinary of the Place; who, after a diligent hearing of their Confessions, shall have Power to liberate and absolve them from Excommunication, Suspension, and all other Ecclesiastical Sentences and Censures by whomsoever, or for what Cause soever pronounced, or inflicted upon them; as also from all Sins, Trespasses, Transgressions, Crimes and Delinquencies, how heinous and atrocious soever they be, not omitting those very Enormities in the most peculiar Cases, which by any whatsoever former Constitutions of ours, or of our predecessor Popes (than which we will have these to be no less valued in every Point) were designed to be reserved to the Ordinary, or to the Apostolick See: from all which the Confessor shall hereby have Power granted him to absolve the foresaid Catholicks at the Bar of Conscience, and in that Sense only. And furthermore, we give them power to exchange what Vow or Vows soever they were formerly astricted to (those of Religion and Chastity excepted) into any other pious and good Work or Works, imposed or to be imposed on them, and every one of them to perform in all the aforesaid Cases, by a wholesome Penance, according to the Mind and Will of the Confessor.

Therefore, by the Tenor of these present Letters, and by the Virtue of that holy strict Obedience, wherein all Christians are bound unto us, we charge and command all and every one of the Reverend Brethren, Archbishops, Bishops, and other Ecclesiastical Prelates, and whatsoever Ordinaries of Places now residing in *Ireland*, together with all Vicars, Substitutes and Officials under them; or these failing, we command all such to whom in those Places the Care of Souls is incumbent; that as soon as they shall have received the Copies of these our Letters, they shall forthwith, without any Stop or Delay, publish them, and cause them to be published throughout all their Churches, Diocesses, Provinces, Countries, Cities, Towns, Lands, Villages, and Places whatsoever.

Nevertheless we do not intend by these present Letters, where any publick or secret Irregularity is made known, or any Defection, Apostacy, Incapacity or Inability in any manner of way contracted, to dispense therewith, or grant to any other any Power or Faculty of Dispensation, Rehabilitation, or restoring the Delinquent to his former Condition, tho' but at the Bar of Conscience: Neither can nor should these our present Letters avail or be steadable to those, who by us and the Apostolick See, or by any Prelate or Ecclesiastick Judge, have been excommunicated, suspended, interdicted, or declared, and publickly denounced to have justly incurred the Sentences and Censures of the Church, till first they have satisfied and agreed with the Parties therein concerned, notwithstanding all other Constitutions and Apostolical Ordinations; whereby, nevertheless, the Faculty of Absolution in these, as well as other expressed Cases, is so reserved to his Holiness the Pope for the time being, that no kind of Jubilee, nor Power of granting such Indulgences can in any sort avail, unless express mention be made of the Fault or Faults in particular, and the whole Tenor of them fully deduced by an individual Relation from Word to Word, and not by general Clauses importing the same thing. This, or some other requisite Form of the like nature, being carefully observed, we in that case especially, expressly and namely, by the effect of these Presents, do totally abolish and remit them all and every one of them their Offences, notwithstanding any thing to the contrary.

Now that these principal Letters of ours, which cannot be conveniently brought to every Place, may the sooner come to the notice of all, our Will and Pleasure is, that any whatsoever Copies of Transcripts, whether written or printed, that are subscribed by the Hand of a Publick Notary, and which have the Seal of some eminent Person in Ecclesiastical Dignity affixed thereunto, be of the same Force, Power and Authority, and have the like Credit in every respect given unto them, as would be to these our principal Letters if they were shewn and exhibited.

Dated at *Rome* in the *Vatican*, or *St. Peter's* Palace, the 25th of *May* 1643. and in the Twentieth Year of our Pontificat.

M. A. Maraldus.

Serj. Whitf. We have troubled you with a long Relation of the Actions of the Confederates with the Lord *Macguire*, tho' not done in his own Person, and his own particular Act; but for this that was done by the Generality, I heard my Lord say

say at the Bar, What's that to me? Yes, my Lord, this is to you; you were one of the Conspirators in the first Plot, and you contrived the business. And that had been Treason alone, to send the Priest to fetch *Owen O-Neale* into *Ireland* with Arms and Soldiers: but you contrived this, and conspired it, and you are as guilty in Law, in all these cruel Murders and Burnings in every Place: For the Law of *England* is, in Treason you are all Principals and no Accessaries. Your Son was there, your Lady is rewarded; for the supreme Council they have taken care of you: Why! because you were one of the first Complotters of it; and this will light upon you, and fall very heavy. And for your Exchange, it was propounded for the Lord *Calfield*; but when they could not have that agreed upon, then what becomes of the poor Lord *Calfield*? murdered too! And you see what Incouragement you have from the Complotters, and from the Devil too; for they were both together in it. And now you have seen the Indictment fully made good.

Then the Lord *Macguire* proceeded to make his Defence, wherein he first of all denied his Examination, (altho' testified, as before, by so many credible Witnesses) and said, That he knew no such Examination.

That at the time of his Apprehension at *Dublin*, he came about his own particular Occasions, as his Estate was in Danger, if he did not follow it; That because he was found about the City, he was therefore apprehended; That his Lodging was not within the City, but he lodged without the City; That he did lodge at Mr. *Nevil's* House formerly, but not at this time; That for some of the Places mentioned, where he should be about the Conspiracy, he had not been there a Year before, he was certain of it. For the Number of Protestants that were mentioned to be slain, he said he did not think there were so many Protestants in the whole Kingdom; That he was continually either at his own House, or at *Dublin*, and knew nothing of the Plot, but by Hear-say.

Judge. You confess ... your Examination, when the Day was for the Rising, that you were in the Conspiracy, and appointed for the taking of *Dublin-Castle*; and that you were taken when you came about it: also you rode about it, and provided Arms.

Mac. I was in the House in the Cock-loft where I was taken, I did not know where any Army was.

Serj. Whitfield. My Lord *Macguire* does forget himself, what he acknowledges under his own Hand.

Then the Examination being shewed him, he said, There's my Name, but not my Hand.

Judge. I am sorry to hear it: I did rather expect that you should have acknowledged it: Here are two able Witnesses that can testify it against you; your denying your own Hand, which is so manifestly proved, will be a great Discredit to what you say: You acknowledged it at two several Times.

Mac. What did I acknowledge?

Judge. You say that you came to *Dublin* to settle your Estate: By your own examination you acknowledged, That the Castle of *Dublin* was to be surprized by yourself. But it is now time we should draw to the Jury: You hear my Lord *Bramston* and my Brother *Finch* here justify it to you.

Then my L. *Macguire's* Examination was shewed to my L. *Blaney*, being present in Court, demanding whether he thought it to be *Macguire's* Hand, or no?

Lord *Blaney*. It is my Lord's own Hand, he hath written to me many Letters.

Mac. I don't think I have written many Letters to your Lordship.

Judge. Gentlemen of the Jury, you may go to the Business; if there were nothing that you see in this Case, but what is in the Examination, if you believe it to be his, his Confession does acknowledge it: You hear this by the Testimony of my Lord *Bramston* and my Brother *Finch* expressly, who were present when he did acknowledge it, and set his Hand to it; and yet you see, tho' it is here proved by my Lord *Blaney*, he denies it. If you find this to be true, here is Treason enough, and too much too; for he does here confess, That *Roger Moore* did acquaint him, That if the *Irish* did rise, they might make their own Conditions for regaining their Lands: And he acquainted him, that he had spoken with fundry in *Leinster*, that would be ready for that purpose; and that a great part of *Conaught* would do the like: and then moved him (this Lord) the Prisoner at the Bar, to join likewise with him, which he did; so then was the Plot. The next Day they met; he goes to *Moore's* Chamber-again, where Col. *Mac-Brian*, *Mac-Mahone* and others had Discourse again about it. Then he says, That they did send over to *Owen O-Neale*, to acquaint him concerning the general Rebellion in *Ireland*, then in preparation. He confesses expressly, That being demanded why the said *Owen* should bring over Arms, seeing the Castle of *Dublin* was to be surprized? he answered, That they so provided Arms, that they might not want any thing, if they should not take it, whereof they doubted. And then you have him acknowledging. That the Castle of *Dublin* was to be surprized by himself, and Captain *Brian O-Neale*, and others, These Words shew here expressly, That the Day whereon the Execution, was appointed, by the L. *Macguire's* own confession, he was come to *Dublin* for the Surprize of the Castle. So that it is apparent, that he was about this Plot expressly. If this be true, That you did conspire to make War or Rebellion within that Kingdom, tho' you were taken yourself before it was executed, yet it was your own Conspiracy: And besides, endeavouring after that to bring it to Perfection by sending over for Arms; all these do discover your own Intention to execute it.

Mac. I confess it not, I refer myself to the Jury.

Judge. Gentlemen, you are to know, That to conspire to raise a War, if any of that Conspiracy do act it, as you see here Sir *Phelim O-Neale* did, if you observe the Testimony of my Lady *Calfield*, he came and surprized the Castle of *Charlemont*, and then it was given out, That my Lord *Macguire* had taken *Dublin*; so that tho' it did not take effect, that which is done by any, is Testimony enough.

Go together and consider of it.

Upon this the Jury went together, and staying a short space, returned their Verdict, which was, That they found him guilty of all the Treasons according to the Indictment.

Clerk. *Connor Macguire*, alias *Cornelius Macguire*, thou hast been indicted for several High-Treasons, and thou hast been arraigned. Upon the Arraign-
ment

ment thou haft pleaded, Not Guilty; and for thy Trial haft put thyself upon the Country, which Country have found thee guilty, according to the Indictment: therefore prepare thyself to receive the Sentence.

Macg. I desire to know by what Law?

Judge. The Law is well enough known: That is a Treason within the Statute without doubt.

Macg. I was not tried by my Peers.

Judge. This is a general Exception, formerly annexed in your Plea: If you can shew some particular Cause also, you shall be heard.

Macg. I desire Counsel to advise me.

Judge. When you did put in a Plea therein, you had Counsel to advise you in your Plea, and to argue it: Now your Time is past for Counsel; you must have none assigned to pick Holes in the Indictment.

Macg. I desire the Court would consider of it before they proceed to Sentence.

Judge. You offer nothing to the Court that is of any difficulty: You had Counsel whether you should be tried by your Peers, or the Jury here; which Jury are to try any Man under a Nobleman in this Kingdom.

Macg. I desire to know under what Seal you thus proceed against me; for I think you sit here by the new Seal.

Judge. What Seal do you mean? I sit here by virtue of the old, by order of Parliament.

Macg. Under favour, I conceive that the Ordinance of Parliament for the new Seal, makes all done by the old Seal to be void.

Judge. Here is nothing done but by good Authority and the Parliament's Approbation.

Macg. I conceive the Ordinance for the new Seal cuts off all Proceedings of the old.

Judge. My Authority is not cut off: I was made by the old Seal before there was any new Seal, and so I am continued by the Parliament; and the Parliament did take notice that I have been allowed to sit. Besides this, there is nothing done in this Court by the new Seal: The Sheriffs are here by a Charter, and that comes in from Year to Year; and there is no Seal in order of Execution.

Judge. Well, if you have nothing to say for yourself, I am to pronounce Sentence, as I am a Minister of Justice. You have been indicted here for several Treasons contained in your Indictment, as was here of late read unto you; and you have had a fair Proceeding, and very deliberately: For your Indictment came in about *Albhalowmas* last, three Weeks or a Month before the end of the last Term, three Weeks at least. You then made a Question, Whether you ought to be tried by your Peers in *Ireland*, or a Jury here? The Court did so far deliberate in it, as to allow you Counsel to plead with the best Advantage you could: And afterwards, this Term, there have been two Arguments at the Bar on each side, where hath been said as much for you as can be. The Court overruled that, and so you are tried by a Jury; and you had the Liberty to challenge them, and had all the Advantages that the Law will afford, and take all the Exceptions you could. Truly for my part, I see that there is not any one of them for me, to sway the Judgment: The Treason and the Offences that you are charged withal are very heinous, your Crimes very impious; great Destruction hath followed upon your Plot, which the Jury have found you guilty of. What a mighty cruel War

and great Devastation in that Kingdom? Most horrid to speak or rehearse! It is fitter for you now to bethink yourself what your Offences are, and prepare yourself for Death, rather than seek to mask or put colours upon those Things which are so manifestly proved to all the World. And now you are found guilty; and therefore there is no Contradiction or Gain-saying will avail you: You ought to repent, and pray to God to forgive that Offence whereof you are guilty. The Judgment that I am by the Law to pronounce against you, is this: *Connor Macguire* Esq; you being found guilty of the Treasons whereof you are indicted, your Judgment is, That you shall be carried from hence to the Place from whence you came, that is, the *Tower*, and from thence to *Tyburn*, the Place of Execution; and there you shall be hanged by the Neck, and cut down alive, your Bowels taken out, and burnt before your Face, your Head to be cut off, your Body to be divided into four Quarters, and the Head of your Body to be set up and disposed of as the State shall appoint. And the Lord have Mercy upon your Soul.

After Judgment pronounced, the King's Counsel demanded of him whether he would have any Ministers come to him, to prepare him for his end, and to advise him for the good of his Soul.

Macg. I desire none of them: But I desire I may be sent Prisoner to *Newgate*.

Counsel. His Reason is, Because there are some Popish Priests there.

Judge. That cannot be: Your Judgment is to return to the *Tower*; where you may have Ministers (if you please) to return to advise you for your Soul.

Macg. I desire that some Gentlemen of my own Religion may have Access to me, to confer with me; and some who are my Fellow-Prisoners in the *Tower*, to speak with me in my Keeper's Presence.

Judge. You must name somebody in particular.

Macg. I desire to confer with Mr. *Walter Mountague*. [*Belike he knew him to be a Popish Priest or Jesuit.*]

Judge. You must prepare yourself to die against *Saturday* next.

Macg. I desire a fortnight's Time to prepare myself.

Judge. That is too long a Space, and I cannot grant it; but you shall have convenient Time.

Macg. I desire you that I may have three Days notice at least to prepare myself.

Judge. You shall have three Days warning; but however delay no Time to prepare yourself.

Macg. I desire my Execution may be altered, and not according to the Judgment; and that I may not be hanged, and quartered.

Judge. This lies not in my Power to grant: But here are some Members of the House of Commons in Court, and you were best address yourself to them, that they may acquaint the House with your Desires.

Macg. I shall desire the Gentlemen of the House of Commons, so many as are here, to move the House in my behalf, that I may have a Fortnight's Time to prepare myself, and that the Manner of my Execution may be changed.

Sir John Clotworthy. My Lord, I have been your School-fellow heretofore, and I have found some Ingenuity in you; and I have seen some Letters of yours importing some Remorse of Conscience in you for this Fact; and I should be glad to discern the

the like Ingenuity in you still: And shall move the House that you may have some Ministers appointed to come to you; and likewise acquaint them with your other Desires.

Then the Prisoner departing from the Bar, Mr. *Prym* advising him to confer with some godly Ministers for the Good and Comfort of his Soul; he answered, That he would have none at all, unless he might have some *Romish* Priests of his own Religion.

To which Mr. *Prym* replied, my Lord, these *Romish* Priests are the chief Instruments who have advised you to plot and perpetrate those execrable Treasons, for which you are now condemned, and have brought upon you that shameful Judgment of a Traitor, the Execution whereof you even now so earnestly deprecated. Since then they have proved such evil destructive Counsellors to you in your Life, you have great Reason to disclaim them with their bloody Religion, and to seek out better Advisers for you at your Death, lest you eternally lose your Soul as well as your Life, for the Blood of those many thousand Innocents which have been shed by your Means. To which he, pausing a little, answered, That he was resolved in his Way. Whereupon another Lawyer said, My Lord, you were best to hear both Sides. To which he answered, in an obstinate Manner, I am settled on one Side already, and therefore I desire not to confer with any other. And so departed thro' the Hall towards the *Tower*, the People crouding and running about to behold his Person.

After the Sentence pronounced against the Lord *Macguire*, as before said, he petitioned the Parliament as followeth:

To the Right Honourable the Commons now assembled in Parliament, the humble Petition of the Lord Macguire;

Humbly sheweth,

THAT your Petitioner stands condemned for his Life, and adjudged to be drawn, hanged, and quartered: The Performance whereof (he humbly conceives) in some more favourable Manner, will be satisfactory to Justice. And forasmuch as your Petitioner hath hitherto enjoyed the Degree and Dignity of a Lord, which he humbly conceives your Honours are well acquainted with:

In tender Consideration whereof, he desireth that your Honour will graciously be pleased in Mercy to mitigate the Rigour of his Sentence, and turn it to that Degree which most befits the Denomination he hath: And as he hath been looked on by the Eye of Justice in his Condemnation, so in this Particular he may be pitied, and have Mercy. *And he shall ever pray, &c.*

Cornelius Macguire.

But this Petition was rejected by the Parliament, and on *Thursday, February* the 20th he was drawn on a Sledge from the *Tower* thro' *London*, and so to *Tyburn*; where being removed into a Cart, he kneeled and prayed a-while: After which, Sheriff *Gibbs* spake to him, representing the Heinousness of his Crime, and the vast Numbers who had been murder'd by that Conspiracy, for which he was to suffer, and therefore exhorted

him to express his Sorrow for it; in answer to which he said, *I desire Almighty God to forgive me my Sins.*

Sheriff Gibbs. Do you believe you did well in those wicked Actions?

Macg. I have but a short time, do not trouble me.

Sher. Sir, it is but just I should trouble you, that you may not be troubled for ever.

Macg. I beseech you, Sir, trouble me not, I have but a little time to spend.

Sher. Sir, I shall give you as much time after as you shall spend to give Satisfaction to the People: I do require you, as an Instrument set in God's Stead here, to make an Acknowledgment to the People, whether you are sorry for what you have done or no, whether it be good or no.

Macg. I beseech you do not trouble me, I am not dispos'd to give you an Account. Pray give me leave to pray.

Dr. Sibbald. Give Glory to God, that your Soul may not be presented to God with the Blood of so many thousand People.

Sher. You are either to go to Heaven or Hell. If you make not an ingenuous Confession, your Case is desperate: Had you any Commission, or no?

Macg. I tell you that there was no Commission, that ever I saw.

Sher. Who were Actors or Plotters with you? or who gave you any Commission?

Macg. For God's Sake give me leave to depart in Peace.

Then they asked him, *If he had not some Pardon or Bull from the Pope for what he did?* To which he only answer'd, *I am not of the same Religion with you.* And being further urg'd about a Bull or Pardon, said, *I saw none of it; all that I knew, I deliver'd in my Examinations; all that I said in my Examinations are true; all that I said, is right. I beseech you let me depart in Peace.* And so not returning them any Answer to their Question, he continued mumbling over a Paper, which he had in his Hand, as he had done from his first coming. The Sheriffs commanded his Pockets to be search'd, whether he had no Bull or Pardon about him; but they found in his Pockets only some Beads and a Crucifix, which were taken from him. And then *Dr. Sibbald* said to him, Come, my Lord, leave these, and acknowledge your Offence to God and the World; one Drop of the Blood of Jesus Christ is able to purge away all the heavy Load of Blood that is upon you: It is not your *Ave Maria's*, nor these things, will do you any good; but it is *Agnus Dei qui tollit peccata Mundi.* The Lord *Macguire* seem'd not to regard his Discourse, but read out of his Paper to the People as followeth.

Since I am here to die, I desire to depart with a quiet Mind, and with the Marks of a good Christian; that is, asking Forgiveness first of God, and next of the World. And I do forgive (from the Bottom of my Heart) all my Enemies and Offenders, even those that have an Hand in my Death. I die a Roman Catholick, and altho' I have been a great Sinner, yet am I now by God's Grace heartily sorry for all my Sins; and I do most confidently trust to be saved (not by my own Works, but only) by the Passion, Merits and Mercy of my dear Saviour Jesus Christ, into whose Hand I commend my Soul. And then added, I beseech you

you Gentlemen, let me have a little time to say my Prayers.

Sher. Sir, If you answer ingenuously to these Questions we shall ask you, you shall have time afterwards: Whether do you account the Shedding of the Protestant Blood to be a Sin, or not; and whether do you desire Pardon of God for that Sin?

Macg. I do desire Pardon of God for all my Sins: I cannot resolve you in any thing for my Part.

Sher. You can tell what your Conscience dictates to you; do you think it was a Sin, or not?

Macg. For my Part I cannot determine it.

Sher. Then now it seems nothing to you to kill so many.

Macg. How do you mean killing of them? To tell you my Mind directly, for the killing I do not know that, but I think the *Irish* had a just Cause for their Wars.

Sher. Was there any Assault made upon you? Had you not enter'd into a Covenant? Had you not engag'd by Oath yourself to the King?

Macg. For Jesus Christ Sake, I beseech you to give me a little time to prepare myself.

Sher. Have Pity upon your own Soul.

Macg. For God's Sake have Pity upon me, and let me say my Prayers.

Sher. I say the like to you, in Relation to your own Soul; whether you think the Massacre of so many thousand Protestants was a good Act? For Jesus Christ's Sake, have Pity upon your own Soul.

Macg. Pray let me have a little time to say my Prayers. All this while his Eye was mostly upon his Papers, mumbling over something out of them to himself. Whereupon one of the Sheriffs demanded those Papers of him. He flung them down; they were taken up and given to the Sheriff. They ask'd him farther, whether they were not some Agreement with the Recufants here in *England*? Whereunto he answered, I take it upon my Death, I do not know that any Man knew of it; and after some other such-like Talk, the Sheriff bidding him prepare himself for Death, he said, I do beseech all the Catholicks that are here to pray for me. I beseech God to have Mercy upon my Soul. *And so was executed.*



XLIII. *The Trial of Sir ROBERT SPOTISWOOD, President of the College of Justice in Scotland, and Secretary there to King Charles I. for High-Treason, in the Parliament held at St. Andrews, November, December, and January, 21 Car. I. 1645.*

SIR *Robert Spotiswood* having been sent by the King into *Scotland* to negotiate Matters with the Marquis of *Montrose*, and to carry him, among other things, a Commission to be Generalissimo of all his Forces there, took the Opportunity of the Army's marching Southward for his more safe Return to

his Master, to whom he was to give an Account of his Negotiation; but being unfortunately taken Prisoner at the Battle of *Philiphaugh*, where *Montrose's* Army was defeated by General *Leslie*, he was carry'd first to *Glasgow*, and afterwards to *St. Andrews*, where the following Procces was prosecuted against him.

D I T T A Y against Sir *Robert Spotiswood*.

SIR *Robert Spotiswood*, you are indicted and accused before the Committee of Estates of Parliament; that for suameikleas, by the common Law, Law of Nations, Laws and Acts of Parliament, and Practick of this Kingdom; and by all Justice, Reason, Equity, and Conscience, all that rise in Arms, and concurr with the Adversaries of this Kingdom, for subduing of their native Country; all Invaders, Assaulters, or Subduers of this Kingdom, or any Part thereof, by Force of Arms; all who contribute their Help, Countenance, and Assistance, to the Adversaries, Assaulters, or Invaders thereof in an hostile Way: All who are either Authors, Abettors, Maintainers, Suppliers, or concurr with the Adversaries of this Kingdom, in the assaulting, or subduing thereof, or any Part thereof: And all who are Art

and part of the saids Crimes, Misdeeds, and Malversations above specified, or any of them, incurr the Pain of High-Treason against his Majesty, his Crown, and against the Estates of this Kingdom, and the Pain of Forfaulture of Life, Lands, Estate, and Goods to be execute against them, by the Estates of this Kingdom, and the Benefit thereof to be apply'd to the Use of the Publick for Relief of their Burdens: And the Committers of the saids Crimes above-specify'd, or any of them, are otherwise censurable and punishable in their Persons, Names, and Fame, and in their Lands, Goods, Means, and Estate, by Fining, Confining, or otherwise, as the Estates of this Kingdom shall think expedient. And albeit, That by the Acts of Parliament of this Kingdom, especially by the 130th Act of the 8th Parliament of King *James VI.*

in *May 1584*. It is statute and ordain'd, that none of the King's Ledges and Subjects presume, or take upon Hand, to impugn the Dignity and Authority of the Estates of Parliament, or to seek or procure the Innovation or Diminution of the Power and Authority of the Seamen, or of any of the Estates thereof in any time coming, under the Pain of Treason. Likeas, albeit by the fourth Act of the third Parliament of King *Charles*, dated 29th of *June 1644*, all takers up of Arms against the Kingdom and Estates of the Country, are guilty of Treason, and punishable by Forfeiture of Life, Lands, and Goods, or any other Censure the Parliament shall please to inflict. Yet nevertheless, the said *Sir Robert Spotiswood* having shaken off all Fear of God, and due Respect to the Laws of the Kingdom, and all Duty that as a Subject thereof you ought to have carry'd to the Kingdom, and to the Defence thereof, especially in these troublesome Times, when this Kingdom has been threaten'd to be ruin'd and destroy'd, with the hostile Invasion of some of her unnatural Brood, and some *Irish* Rebels, and forgetting and contemning that gracious Favour mentioned in the 33d Act of King *Charles's* second Parliament, of Date 16 of *November 1641*, whereby the Estates of Parliament therein conven'd did then declare, that for the good and grave Considerations mentioned, they would not proceed to a final Sentence against you, for such Crimes and Misdemeanors as at that time you were cited before them, and accused as guilty of, nor would insist upon the Punishment thereof. You have presum'd and taken upon Hand, to abuse the King's Majesty, in purchasing from his Majesty by your pretended Ways, the Office of Secretary to yourself, and have receiv'd the Signet thereof, which was formerly kept by the Earl of *Laurik*, who was appointed by his Majesty and the Estates of Parliament in *Anno 1641*, to be Secretary to his Majesty for this Kingdom of *Scotland*, and that contrary to his Majesty's Declaration emitted by his Majesty in the said Parliament; whereby his Majesty did declare, that he would not imploy you in any Office or Place of Court or State without Consent of Parliament, nor grant you Access to his Person, whereby you might interrupt or disturb the firm Peace was then so happily concluded. Likeas, since your purchasing of the said Office of Secretary, at least taking the same Office upon you, and of the keeping of the Signet thereof, you have docqueted with your Hand, signeted with the Signet of the said Office, several Commissions granted to *James Graham* sometime Earl of *Montrose*, a declared and forfeited Traitor, and an excommunicated Person: and especially, a Commission dated the 5th of *June 1645*, given by the King's Majesty to the said *James Graham*, making and constituting the said *James Graham* Lieutenant-Governor, and Captain-General of all Forces rais'd or to be rais'd within this Kingdom; and giving Power and Authority to the said *James Graham*, to raise and levy Forces within this Kingdom, and to lead and conduct them against the King's Majesty's good Subjects, and against the Forces rais'd and levy'd in Arms by Authority of the Estates of Parliament of this Kingdom, for the Maintainence, Defence, and Prosecution of the mutual League and Covenant. By which Commission so docqueted and signeted by you, as said is, the King's Majesty's good Subjects who have risen in Arms for the Defence of

the said League and Covenant, and whose rising in Arms is allow'd and authoriz'd by the Estates of Parliament of this Kingdom, are design'd as traitorous and seditious Persons. And als, you have docqueted and signed with your Hand, a Proclamation alledged emitted by the King's Majesty for holding of Parliaments within this Kingdom; which Proclamation is totally destructive of, and derogatory to the Dignity and Authority of the Estates of Parliament presently conven'd by vertue of the last Act of the last Parliament 1641, and which Proclamation annuls and condemns the Procedure thereof. And als, you have docqueted and sign'd with your Hand, a Commission granted by the King's Majesty to *James Graham* sometime Earl of *Montrose*, to be Commissioner for his Majesty for holding of the said pretended Parliament: in docqueting and signing of which Proclamation, Commissions and Warrants, you have abused the aforesaid Office of Secretary, and that to the Derogation and Diminution of the Honour, Dignity, and Authority of the Estates of Parliament of this Kingdom. Likeas, you not being contented with your abusing of his Majesty, in purchasing of the foresaid Office of Secretary from his Majesty, contrary to his Majesty's Declaration in Parliament, in manner and at the time as said is, at least with the taking the same upon you, and with the docqueting the foresaid Commissions to the said *James Graham*, and of the foresaid Proclamation for the Parliament; which is not only derogatory to the Dignity and Authority of the Estates of Parliament, but also destructive of the whole Power thereof, and which declares the Procedure of the Estates of Parliament to be Treason: You have actually and really joined yourself in an unnatural and traitorous way against this Kingdom, with the said *James Graham* and his rebellious Army, wherewith he infested and troubled the Peace of this Kingdom, and cruelly and unnaturally destroy'd and murder'd the King's Majesty's loyal Subjects; and have been with the said *James Graham* at all the Acts of Hostility committed by him and his rebellious Army within this Kingdom, within the Months of *August* and *September* last 1645, or one or other of them. And in special, you was with him and his rebellious Army after the Conflict at *Kilsyth*, which was upon the 15th of *August* last 1645, betwixt the Army and Forces of this Kingdom, and the said rebellious Army conducted by the said *James Graham*, where you did join yourself with the said *James Graham* and his rebellious Army, and was actually with him thereafter, in his Progress going thro' the Country in subduing the same, viz. From *Kilsyth* to *Bothwell*, and from *Bothwell* to *Caldar*, and from thence to *Limphoy*, and from thence to *Cramston-riddel*, and from thence to *Torwoodley*, and from thence to *Keiso*, and from thence to *Jedburgh*, and from thence to *Selkirk*, and to the Fields betwixt *Selkirk* and *Philiphough*, where the said *James Graham* and his rebellious Army, were upon the 13th of *September* last, by the Mercy of God upon his distressed People, and by the Strength of his Right-hand against his Enemies, defeat and confounded, and where you were actually with the said *James Graham* and his said rebellious Army; at least you the said *Sir Robert Spotiswood* did join with the said *James Graham* and his rebellious Army, at one or other of the saids Places particularly above-specified; and during your being
with

with the saids *James Graham* and the saids Rebels the time foresaid, you did subscribe a Letter written by yourself to some Nobleman about the King's Person in *England*, of the Date, from about *Kelfo* to 10th of *September* last 1645, which was after the foresaid Conflict at *Kilfyth*; wherein you boast, that you had dispersed the King's Majesty's Enemies within this Kingdom, some of them to *Ireland*, and some to *Berwick*; whereby you do expostulate, that no Party was sent after Lieutenant-General *David Lesley*, who at that time came in with, and conducted Forces within this Kingdom for repressing and subduing that rebellious Army, wherein you were for the time: And in which Letter, you profess'd a Resolution to follow that rebellious War whereunto you had associate your self, and to clear the Kingdom of the Rebels that had fled to *Berwick*. By which Name of Rebels you did mean and express his Majesty's best and most loyal Subjects, within this said Letter of yours, containing many Expressions of your joining the said *James Graham* and his rebellious Army, and of your unnatural and traitorous Resolution to assist the Prosecution of the ruin and destruction of this Kingdom as the said Letter bears. Which Crimes above-specify'd, or one or other of them, you can-

not deny; and therefore you as a Traitor to this Kingdom have incurr'd the pain of High-Treason, and the pain of Forefaulture of Life, Lands, Estate, and Goods to be execute against you by the Estates of this Kingdom, and the Benefit thereof to be apply'd to the use of the Publick, for the Relief of their Burdens, or otherwise, in the option of the saids Estates of this Kingdom, you are censurable and punishable in your Person, Name, and Fame, and in your Lands, Goods, Means and Estate, by fining, confining, or otherwise, as the saids Estates of this Kingdom shall think expedient.

Glasgow, 5th *November* 1645.

The Committee ordains the Dittay to be transmitted, sent and deliver'd to the above-written Sir *Robert Spotiswood*, where he is presently in the Castle of *Glasgow*; and ordains the said Sir *Robert* to be ready to answer to the said Dittay. At *St. Andrews*, upon the 13th of *November* Instant 1645.

Sic Subscribitur,

J. A. PRYMROSE.

ANSWERS to the Dittay given in against Sir Robert Spotiswood.

IN regard the Defences given in by *James Ogilvie*, against the Relevancy of his Dittay, will militate likewise in my behalf, I repeat the same for me *brevitatis causa*.

This of mine is founded upon two Acts of Parliament, the one in *May* 1584, and the other in *June* 1644. By the first, it is declared to be Treason, to impugn the Dignity and Authority of the Estates of Parliament, or to seek and procure the Innovation or Diminution of the Power and Authority of the sament, or any of the Estates thereof. It is subsumed, that I have forefaulted against this Act, in so far as I, forgetting and contemning the Favour granted to me in the last Parliament 1641. have abused his Majesty, in purchasing from him the Office of Secretary, contrary to the Declaration emitted by his Majesty in the said Parliament. Likeas, since the Purchasing thereof I have doqueted and signeted with the Signet of the said Office, the two Commissions and Proclamation mentioned in the Dittay: In doing whereof I am alledged to have abused the foresaid Office of Secretary, and that to the Derogation and Diminution of the Honour, Dignity and Authority of the Estates of Parliament of this Kingdom.

First, To this Act of Parliament I answer; It cannot militate against me, in regard of the Scope and Intention thereof, which was only to restrain the Liberty which some in those Times took to themselves, to call in Question the Power that one of the three Estates then had to sit and vote in Parliament. Which is clear, both by the Preface of the said Act (*viz.* finding the Power, Dignity and Authority of the Court of Parliament of late Years called in some doubt; at least some curiously travelling to have introduced some Innovation thereanent) and by other Records of that time; especially a Declaration of the King's, yet extant in print, publish'd in *Anno* 1585. In which he who knew best what was meant thereby, declareth this to have been only the Parliament's In-

attention in making of this Act. So that it cannot be extended to other Cases, namely this in hand.

Secundo, Giving, that this Act of Parliament could be extended beyond the true Intent and Meaning thereof; yet the particular Deeds libelled, whereby I am alledged to have transgressed the same, and consequently to be guilty of Treason, are not relevant to import so much. And first, whereas to aggravate the Matter, I am charged to have been unmindful and unthankful for the Favour I received at the last Parliament: Let me say this much without Offence, That as I esteem highly of their Favour, so I was not obnoxious to their Censure at that time: Whereanent I refer myself to that Process, wherein nothing was proven of all that was alledged against me.

As to the Purchasing of the Secretary's Office, what past about that, and how far I had Interest therein, I remit to the Declaration given in by me to the Committee at *Glasgow*, which I use as a part of my Defence against this Point. The Truth is, That the Lord Secretary being from Court at the time, and there being sundry Solicitors to his Majesty for Grants of divers Natures, having relation to this Kingdom, he was pleased (there being none then about him fit for the Employment) to intrust me with a signing and presenting of the same unto him, by sending me a Warrant under his Sacred Hand to that effect, and the Signet withal, to be kept by me during the absence of the Secretary, or while his Majesty should take further Order thereanent. In accepting whereof, I cannot imagine that I did commit any thing worthy of Blame; or that his Majesty did any thing contrary to the Declaration emitted by him in Parliament, he having conferred no ordinary Place or Office upon me, but only a temporary Employment *in casu necessitatis*, having none else for the time to lay it upon. Likeas I see not how I can be charged with Presumption (as the Dittay bears) in doing thereof; in respect that by natural

Allegiance (from which no Power under Heaven can loose me) I am bound to serve and obey his Majesty whensoever he calls upon me for that effect. And as to that part of his Majesty's Declaration, not to grant me access to his Person; it was never his Intention otherwise but in the Case annexed, *viz.* whereby I might interrupt or disturb the firm Peace then so happily concluded; which (I thank God) never so much as once enter'd into my Thought, as my own Conscience, and my Behaviour about his Majesty this while past doth bear me Witness. Besides his Majesty's Declaration, That he should not give any access to those therein mentioned, is not a penal Statute, or Act of the Estates, disabling or restraining them to repair to his Majesty, under any Pain or Certification in case they should contraveen, but only a Declaration emitted by his Majesty himself, that he would not admit them to the end expressed in the Act. And therefore the same is inept to be the Ground or Aggravation of a Criminal Dittay.

As for docqueting and signeting Commissions, and other Warrants presented by me, I hope in itself it is no Crime, altho' I was not actual Secretary, I having done it by his Majesty's special and exprefs Command. For the three Particulars chopt at in the Dittay, I can answer: *First*, To the Commission of Lieutenantry docqueted by me, it is but a Double, as the Docquet, I believe, bears, the Principal having been sent long before by the *English* Secretary, who was the sole mover and procurer of it.

Next, To the Proclamation for holding a Parliament, it was drawn *in terminis* by his Majesty's special Direction, and docqueted by me, as it is, blank in Day and Place, and other Circumstances; his Majesty's Intention in it being only this, to have it come to his hand, to whom it was intrusted, who by special Order was to dispose of it, as should be found best for the Peace of the Kingdom, without Derogation to the standing Laws thereof: neither hath there any Use at all been made of it, he having indicted a Parliament before it came to his Hands, by virtue of a preceding Warrant. Wherein it may seem to annul and condemn the Procedure of the Estates of Parliament presently conven'd, or be otherwise destructive and derogatory to the Dignity and Authority thereof, it is not my part to meddle with, his Majesty being most concerned therein, whole Business it is, I having no further hand in it, but in so far as I was obedient to my Master's Directions; which by no Law nor Act of Parliament can bring me within the Compass of the least Censure, let be the Guilt of Treason. For I am not here (neither can be) called in Question for that

which usually the Ministers of Princes have been charged with (*viz.* giving of bad Counsel) but only for docqueting and signeting these three Warrants, which I could not in Duty refuse, being commanded by his Majesty to do the same.

To the third and last Commission I make the same Answer.

The second Act of Parliament, whereupon this Dittay is founded, is in *June* 1644, bearing, That they who take up Arms against the Kingdom and Estates of the Country, are guilty of Treason. For Answer to this part of the Dittay, I say, it is not relevantly sublimed, that I took up Arms against the Kingdom: Only it is alledged, that I was in Company with *James Graham* in his Progress thro' the Country, after the Conflict at *Kilsyth*, which by no Interpretation, can be thought to be a taking up of Arms against the Kingdom; especially since I was directed to him from his Majesty, and by that Occasion, and none other, was with him in Company.

Secundo, In the Act itself, it being proponed in the Quere, Whether assisting, or taking Arms with those who have invaded the Country, shall be relevant to make up a Dittay against the Doers thereof, no Answer is given thereunto by the Parliament; which imports as much, that they thought it not reasonable to make the Assisters of such as are in Arms against the Kingdom and Estates, guilty of Treason: If not their Assisters, far less such as were only in Company with them occasionally, as I was.

As to the Letter written by me about *Kelsö*, whatever be in it, it cannot be charged upon me; because it went no further than Intention, I having upon better Thoughts called it back, in regard of some Expressions in it, which might seem injurious to those engaged on the other Side. For whatever I think of the Course, I thank God, I hate no Man's Person that is imbarcked therein, nor could wittingly irritate the meanest of them by any opprobrious Compellation. Always the most can be in it, is Inadvertancy.

To close all, in all this Dittay (laying aside the second Act, which I hope is sufficiently answered) I am not charg'd with any thing that is declared by any Law or Act of Parliament to be Treason, which by the 28 Act, 1641. is required, before any Person can be declared a Traitor.

These Answers for your Lordships Satisfaction, I have given in presently, under Protestation, That (in respect I have been straitned with Time, and could not gather my Thoughts so well as was requisite) I shall be heard to alledge what further I can bethink myself of, before the closing of the Process, either by Writ or Word, as your Lordships shall be pleased to allow.

REPLIES to *Sir Robert Spotiswood's Answers to his Dittay,* 12 December 1645.

WHERE the Defender repeats the Defences given in by *James Ogilvie*, against the Relevancy of his Dittay, alledged by the Defender to militate in his behalf. It is replied, That there are no Defences given in by *James Ogilvie*, but only the Defence of Quarters, which is answered in the Reply given in against the Defence of Quarters.

To the first Defence, bearing, That the Act of Parliament in *May* 1584, does not militate against the Defender, alledging that the Scope and Intention thereof, was only to restrain the Liberty of some who called in Question the Power of one of the three Estates. It is answered, The Defence ought to be repell'd, in respect of the dispositive Words of the said Act, militating against all those
who

who should procure the Innovation or Diminution of the Power and Authority of the Estates of Parliament, or any of them; and the Parliament are the best Judges and Interpreters of the Acts of Parliament, and of the extent of the Sense and Meaning thereof.

Where the Defender in his second Defence seems to insinuate, that nothing was proven against him in his Process in *Anno* 1642, wherein he received the Parliament's Favour. It is answered, that the Time prescribed by the Parliament for the Trial of that whole Process being but two Months, the Committee for the Incendiaries could not proceed at that time to further Trial, and if they had had time, sufficient Probation would have been gotten in these Processes, for proving of all, or the most part of the Points contain'd therein.

Where in the said second Defence, the Defender affirms that he committed nothing worthy of Blame, and that he cannot be charg'd with Presumption, in taking upon him the Secretary's Office; because by his natural Allegiance, he was bound to obey the King's Majesty. It is replied, That seeing in the Parliament 1641, the Secretary's Office, and all the Officer's of Estate are to be provided and filled by Advice and Approbation of the Estates of Parliament, during their sitting, and of the Council, during the Interval betwixt the Parliaments: It was a high Presumption in the Defender, to accept of the said Office, without Advice and Approbation foresaid; and his accepting thereof is a presumptive Deed in prejudice of the Liberty of Parliament, by whose Advice he should have been chosen and provided to the said Office; his Presumption being the greater, by the embracing of the said Office, the same not being vacand, but was fill'd by Advice of Parliament: And therefore he ought modestly to have refused the said Office, which he did not, but embraced the same, and used it in manner libell'd in his Dittay, to the Dishonour of the Estates of Parliament of this Kingdom, by expeding and docqueting Commissions and Proclamations, declaring their Procedures to be seditious and treasonable, chiefly the said Commissions being in favour of *James Graham* a declared Traitor.

Where in the said second Defence, it is alledged, That his Majesty's Intention was never to grant the Defender Access to his Person, only in the Case annexed to his Majesty's Declaration in *Anno* 1641. *viz.* whereby the Defender might disturb the firm Peace then so happily concluded. It is replied, That these Words of the King's Majesty's Declaration, are not of the nature of a restricting Quality of the denied Access mentioned in the King's Declaration, as if Access to his Majesty's Person had been granted to the Defender, upon Condition that the Defender should not disturb the firm Peace: But the Words are declaratory, That in respect the Estates of the Kingdom had upon just Grounds conceived, that the Defender's Access to his Majesty's Person heretofore, had disturbed the Peace, and his Access to his Majesty's Person thereafter would disturb the Peace; therefore his Majesty was graciously pleased to make the foresaid Declaration, That he should not have Access to his Person, and so the Estates would be in Security, that he should not disturb the Peace by his Access. Likeas *de facto* the Defender's Actions, since his attending his Majesty's

Person, do testify, that he has had no small hand in disturbing the Peace, which are presently laid to his Charge in his Dittay.

Where in the said second Defence, it is alledged, That the King's Majesty's Declaration is no Penal Statute, restraining the Defender from having Access to his Majesty's Person, and therefore is ineptly libell'd to be a Ground, or Aggravation of a criminal Dittay. It is replied, That albeit it were granted, That his Majesty's Declaration were no Penal Statute restraining the Defender; yet the same is pertinently libell'd, to aggravate the Defender's Carriage against the Honourable Estates of Parliament, by his expeding under his Hand, as Secretary to his Majesty, the Commissions and Proclamations mentioned in his Dittay; which Office of Secretary he did accept, whilst he did accede to his Majesty's Person, contrary to his Majesty's Declaration made in Parliament.

Where the said second Defence bears, That the Defender cannot be quarrell'd nor challenged for docqueting of the three particular Papers mention'd in his Dittay, he having done the same by his Majesty's special Command, and he not being quarrell'd for giving Counsel to the same. It is reply'd, That the Defender's docqueting thereof, not only clears his Accession to the evil Counsel, given to his Majesty for granting the said Commissions and Proclamations, but also is a part of the prosecuting of that evil Counsel, and of its desired Effect. And it was the Defender's Part, as the part of a true and loyal Subject to his Majesty, to have diverted his Majesty from giving Ear to such evil Counsels: But on the contrary, it is acknowledged by the Defender in his first Section of his third Defence, That he was sent by his Majesty to *James Graham*, whereby it is more than evident, that the Defender has had a great hand, not only in the framing or advising of the said Commissions and Proclamations, but also in the conveying of the same to the said *James Graham*, he being a declared Traitor, and being in Arms against the Estates of this Kingdom both with Fire and Sword.

Lastly, the whole second Defence ought to be repell'd, in respect of the Dittay, bearing the Defender his acceding to his Majesty's Person contrary to his Majesty's Declaration in Parliament; his accepting of the said Office of being Secretary, contrary to the Act of Parliament, anent the providing of the Places of Officers of Estate; and his abusing of the same Office by docqueting and signeting Commissions and Proclamations, destructive of, and derogatory to the Dignity and Authority of the Parliament.

To the first Part of the third Defence, bearing that the Defenders being in Company with *James Graham* in his Progress thro' the Country after the Field at *Kilsyth*, cannot be interpreted the taking up of Arms against the Country, he being sent to *James Graham* by his Majesty. It is replied, that the Dittay is relevantly subsum'd from the Act of Parliament, *viz.* That the Defender did join himself with *James Graham* and his rebellious Army, and was with him and his Army at the Places libell'd in his Dittay, at least at one or other of them; which joining of the Defender with the Rebels, who were in Arms against the Country, is a taking up of Arms against the Country. Likeas, the Defender in his Defence founded upon

Quarters, grants that he was taken Prisoner by an Officer of our Army, and so grants that he was in the Rebels Army against ours.

To that part of the third Defence, bearing that the Act of Parliament 1644, makes no Answer to that part of the Query therein mentioned, anent Assisters. It is replied, That the Dittay is founded upon the dispositive Words of the Act of Parliament against taking up of Arms, and not upon what the Act of Parliament has not answered. And where the Defender affirms, that he was only occasionally in Company with *James Graham*: It is replied, That it is contrary to the preceding Article of his third Defence, bearing that he was sent to *James Graham* by the King's Majesty, and so cannot alledge that he was there occasionally.

To that part of the said third Defence, bearing that the Letter mentioned in the Defender's Dittay, went no further than Intention, and was called back again. It is replied, That the Letter, albeit found upon the Defender himself, is a Declaration of the Defender's Resolutions therein, and is mentioned in his Dittay, as an aggravation of his Carriage, whereof if he had repented, he would surely have destroyed the Letter, and retired himself from the Rebels. And where the Defender affirms, that he is not charged with any thing that is declared to be Treason by any Law or Act of Parliament, except upon the Act of Parliament 1644. ought to be repell'd in respect of the Dittay, which is also founded upon the Act of Parliament 1584.

Item, To the first Part of the Eik anent the Defence of Quarters, the Procurators for the Estates refer the sament to the Commissioners for the Process.

To that part of the Eik given in by the Defender upon the 13th of *December* 1654. bearing, that the Proposition of his Dittay is not relevant, in so far as it is founded upon the Common Law, Equity, Reason and Conscience, because it is provided by diverse Acts of Parliament, That the King's Lieges should be governed by the King's

Laws, and the Laws of the Realm. It is replied, That the Proposition of the Dittay is relevant, as being founded upon the Common Law, Equity and Reason, because by the 69th Act of the 6th Parliament of King *James V.* it is found by the Estates of Parliament, That the King's Majesty has just Action to pursue all Summonds of Treason done and committed against his Person and Commonwealth, conform to the Common Law, good Equity and Reason, notwithstanding there is no special Law, Act nor Provision of the Realm made thereupon before, and the Defender's Dittay is a Dittay of Treason.

Item, To that Part of the Eik given in by the Defender upon the 15th of *December*, bearing that the Defender cannot be challenged upon the Act of Parliament 1644; because the sament was not made by the King's Majesty and Estates join'd together, making *communem reipub. sponsonem*, which is the ordinary Definition of Law. It is replied, That the Defence clears the Defender's Carriage, and all the Passages libelled in his Dittay, to have been clearly against the Estates of Parliament, he now averring, that it were heard to challenge him upon the Act of Parliament 1644, because the King's Majesty was not present thereat. The Defence itself insinuates tacitly, That this present Parliament is no Parliament: For if this be a Parliament, and was a Parliament *in Anno* 1644, then the Act is Obligatory, and does oblige all the Lieges, so that the Defence is rather a Declinator of the Honourable Estates of Parliament, than a Defence, and in effect merits no Answer, but Censure.

22d. *December*, 1645.

Produced by the Procurators of the Estates, and given up to Sir *Robert Spotiswood* this Day, with the Papers formerly given in by him, and orders him to give his Duply to this, against *Thursday* next at Ten a Clock in the Forenoon *peremptorie*.

DUPLIES given in by Sir Robert Spotiswood, to the Replies made by the Procurators of Estate against his Answers to his Dittay.

First, **W** Hereas it is Replied, That the dispositive Words of the Act of Parliament *May* 1584. militates against those who procure the Innovation or Diminution of the Estates of Parliament. It is Duplied, That neither the dispositive Words of the Act, nor the Reply militates against me; because neither is it, nor can be subsumed that I have impugned the Authority of the Estates of Parliament, or have procured the Diminution of their Power, by calling in doubt or in question, or denying their Power anent the providing the Secretary's Office, and all other Places of the State by their Advice, and by procuring the Power and Liberty granted unto them by the Act of Parliament 1641. to be retreated and innovated, and taken from them; which is the only Crime forbidden by the dispositive Words of that Act, as is clear by the sament, and by the Narrative of the said Act anent the Occasion of it, which declares the Dispositive. And albeit I had accepted the Office of Secretary without the Advice and Approbation foresaid, which is de-

nied, my accepting thereof could not import a Contravening of the said Act 1584, and a downright treasonable Impugning of the Authority of the Estates, because the contravening of an Act of Parliament, or the accepting of an Office not conform to an Act of Parliament, is not a direct Impugning of the Authority of the Estates of Parliament, but a null Act; *Et quod est nullum de jure, nullum sortitur effectum*: Otherwise if the consequential Impugning of the Authority of the Estates of Parliament by contravening of Acts of Parliament, should fall under the compass of the said Act 1584. Treason should be too frequent, in regard the Contraveners of any Act of Parliament does in consequence impugn the Authority of the Estates.

Secondly, Whereas it is Replied, That if there had been sufficiency of Time, there should have been sufficient Probation gotten against me in my former Process. It is answered, *De his quæ non sunt, Et non apparent, idem est judicium*; and notwithstanding the pretended shortness of time, there

there was Proceſs gotten againſt others, but none againſt me.

Thirdly, Where it is further Reply'd, That it was a Preſumption in me to accept the ſaid Office, being already filled by the Advice of Parliament. It is answered, That all Preſumption is not Treason, and the Act of Parliament anent the providing of theſe Places by Advice of the Eſtates, does not bear, that if they ſhould be provided otherwiſe, the Accepters ſhould be puniſhed as Traitors.

2d, Repeats the Declaration given in by me and my Defence, and denys, that I embraced or accepted the ſaid Office; and the doing of Acts otherwiſe incumbent to the Secretary, cannot import the accepting of the Office, ſeeing it cannot be denied, but either the neceſſary abſence of a Secretary, or in time of Sickneſs, or in the Vacancy, before his Maſtey could acquaint the Parliament or Council, or have the Advice and Approbation anent the filling theſe Places, his Maſtey may command any of his Subjects to ſupply the Place, without any hazard of Treason.

Fourthly, Whereas to the Defence, bearing, That his Maſtey's Declaration, that he ſhould not grant me acceſs to his Royal Perſon, whereby I might diſturb the Peace, it is no penal Statute, and conſequently it can be no Ground of a Dittay: It is Reply'd, That the Declaration is not of a reſtricting Quality; and that tho' his Maſtey's Declaration be not a penal Statute, yet the ſamen may be enough to aggravate my Carriage. I Daply, That I repeat the Defence, and oppoſes the Declaration itſelf: And if the Declaration be not a penal Statute, as it is acknowledged, it cannot be libelled pertinently to be a relevant Ground of a Dittay, and conſequently it cannot aggravate the Defender's Carriage; & *quod non relevat, non aggravat*.

Fifthly, Whereas it is Reply'd, That my docquetting the Papers mentioned in the Dittay, clears, that I gave ill Counſel in granting the ſaid Commiſſions and Declarations, and is a part of the proſecuting of that Counſel, and that as a good Subject I ſhould have diverted his Maſtey. It is Daply'd, That all theſe who are employed to docquet or ſign Papers, are not admitted to be of his Council, and cannot in good manners intrude themſelves to divert his Maſtey from his Reſolutions, and reſuſe to ſign or docquet ſuch Papers as his Maſtey is pleaſed to cauſe preſent to them, upon pretext, that they in their Judgment diſprove them; and I repeat my Answer, whereunto no Reply is made, That what I did in theſe Particulars, was in obedience to his Maſtey's expreſs Commands, and in Law *qui juſſu Judicis aliquid facit (multo magis of the Supreme Judge and Magiſtrate) non videtur dolo malo facere, qui parere neceſſe habet. ff. de Regul. Juris L. 167. § 1.*

Sixthly, Whereas it is Reply'd, That the Dittay is relevantly ſubſum'd; That I did join myſelf with *James Graham*, and was with him in his Army, and that in oppoſing my Defence for Quarters, grants that I was in the Rebels Army againſt our Army: The Defence is repeated, and that Subſumption is no wiſe relevant, becauſe it is not conform to the Act of Parliament, that he took Arms: And an occaſional being in an Army cannot import a joining with it, and taking of Arms. And altho' I have granted that I was

taken Priſoner, being occaſionally in the Army, I have not granted that I was in the Army as an actual Taker of Arms againſt the Country.

Seventhly, And where the Reply bears, That I cannot alledge, that I was occaſionally in the Army, becauſe I have granted in my Defence, that I was ſent by the King: It is answered, That in affirming that I was occaſionally in Company with *James Graham*, I am not contrary to myſelf, and my Meaning being, that I was there being ſent, but not there of purpoſe to join actually with him in taking of Arms.

Eighthly, Whereas it is further Reply'd, That my Letter, albeit found upon me, is a Declaration of my Reſolution, and is mentioned as an Aggravation of my Dittay. The Defence is repeated, and the keeping and not ſending of that Letter, argues my Reſolution to the contrary.

Ninthly, Whereas to that Part of the Defence, bearing, That the Propoſition of the Dittay is not relevant, in ſo far as it is founded upon the common Law, and other Grounds not authorized by Acts of Parliament: It is Reply'd, That by the 69 Act of the 6th Parliament of King *James Vth*, it is found, That the King's Maſtey has juſt occaſion to purſue all Summonds of Treason conform to the common Law, Equity and Reaſon, notwithstanding that there is no ſpecial Law nor Act of Parliament made thereupon. I Daply, That by the ſaid Act of Parliament in *Anno 1540*. it is provided, That tho' there be not a ſpecial Law or Act of Parliament anent the raiſing of Summonds, and regulating of Proceſſes againſt Parties accused of Treason, the ſamen may be done conform to the common Law, Equity and Reaſon: but it is not meant, that Dittays of Treason may ſubſiſt on theſe pretended Grounds, without an Act of Parliament prohibiting the Lieges, and putting them in *mala fide* anent the committing of unlawful Acts under the pain of Treason; which is clear from the Act itſelf, being made upon the occaſion of raiſing of Summonds againſt the Heirs of umquhil *Robert Leſly*, and to ſee his Memory delete and extinct, for certain Points of Leſe Maſtey. The Queſtion was then, and it was murmured, as the Act bears, not that he was accused of certain Points which were not Treason by any Act of Parliament or Law of the Country; but only that it was a Novelty to raiſe Summonds and move Action againſt a dead Perſon: And therefore the ſaid Act being only ordinatory *quoad* the Regulation of Proceſs, does not derogate from ſo many fundamental Laws, providing, that the King's Lieges ſhould be governed by the Laws of this Kingdom, and of no other; eſpecially ſeeing it is declared likewise by the 28 Act of his Maſtey's 2d Parliament, That no Perſon can be declared Traitor but for contravening a Law or Act of Parliament made, under pain of Treason. And it were abſurd, that the Subjects of this Kingdom, who cannot in reaſon be obliged to obey Laws, but *in quantum ſunt notificatæ*, ſhould be judged by Laws, which they neither know, nor can know.

Tenthly, Whereas the Replyer repeats as a Defence, that which is only humbly repreſented by me, and not proponed by way of Defence, in regarding how hard my Condition is to be judged, upon the late Act of Parliament made in the time of theſe unhappy Combuſtions, and draws odious Conſequences to irritate the Eſtates. I repeat my Paper,

Paper, and conceive, that without giving Occasion of such cruel Inferences, and without Offence, I might regrave my hard Fortune, having adhered to His Majesty *bona fide*, and following the Light of my Judgment, out of Confidence that I was not contravening any known Law. And now being brought to answer a Dittay founded upon a late Act of Parliament, made before the end of

these unhappy Distractions *re non integra*, when I was out of the Kingdom, I would have expected, That since these Revolutions have brought the Replyer and me to appear in other Stations than we have been in formerly, that he should have forbore to have used such Expressions, as in the end of his Reply he hath done.

ANSWERS for Sir Robert Spotifwood, founded upon Quarters.

ALTHO' the Answers to these things, where-with I am charg'd in my Dittay, be both easy and obvious; yet I do adhere mainly to that Defence, founded upon the Law of Nations and Humanity itself: That I cannot be put to my Answer, in regard when I was taken Prisoner, I had Quarters granted me by an honourable Person, an Officer of the Army, unto whose Promise and Word of Honour I do appeal. As to that which may be said for the Equity and Necessity of maintaining this universal Practice of Nations, because it is sufficiently touched in the Defences given in by some others at this time, to avoid unnecessary Repetition, I refer myself thereunto; whereunto I add this much only.

That hitherto, since the Beginning of this unhappy War, Quarters and Exchange of Prisoners too, have been allowed on both sides; which never having been discharged, to deny now to these are in your Power, after that by the Fortune of War you have got the Advantage in the Matter of Prisoners, I leave it to your Lordship's Consideration, if it be fair, and how it may be construed in the Opinion of the World. Besides, I hope

your Lordships will use your Prisoners no worse than your Friends and Associates in *England* (who are in Arms for the self-same Cause) are accustomed to do; between whom and the King's Party, there have always fair Quarters been granted. Which makes me wonder the more of the Report that is going, of some that come from thence, with Instructions to press the Execution of Justice upon the Prisoners. The which Advice, if it come from them, being so unsuitable to their own Practice, ought to be suspected, as tending to the Discredit and weakning of this Nation.

Now because upon the Decision of this Point dependeth much of the Welfare of this Kingdom, both Parties presently in Arms, being to take it for a Rule hereafter, in the Matter of Quarters; I hope your Lordships will amongst other Respects, have before your Eyes the Safety of many innocent Souls, who will be interested in the Result thereof; and will not listen to any Motions, which instead of curing the Sore, will inflame it, and be the ready Means to perpetuate our unnatural Divisions, and make them Irreconcilable.

Eiked Defences given in for Sir Robert Spotifwood.

THAT he adhereth to the Defence already given in by him, founded upon Quarters, and craveth that it may be first discuss'd, being a peremptory Defence *impediens Processum*, and eliding both the Proposition and Conclusion, in so far as Capital Punishment and Forfaulture of Life is inferr'd against him. And as in a criminal Pursuit before the Justice, if a Defence were propon'd upon a Remission, remitting the Crime of Treason in so far as may infer Forfaulture of Life only, and not of Lands and Goods: The said Exception, albeit, partial, and not elusory of the whole Proposition and Conclusion, being propon'd *primo loco*, will be first discuss'd. And therefore the Defender being in the same Case, and the Exception upon Quarters being in Effect equivalent to a Remission, so far as it secures his Life, and elides the Conclusion of Capital Punishment, he ought to have the like Benefit.

It is further answer'd for the Defender, that the Proposition of the Dittay is nowise relevant, in so far as it is founded upon the common Law of Nations, Equity, Reason, and Conscience; because the foresaid Grounds before they be determined and authorized by positive Laws and Statutes, are not relevant to be Grounds of criminal Dittays, whereupon capital or arbitrary Punishments are inferr'd, in regard it is a fundamental Law in all well-govern'd Kingdoms, *penam alicui non esse indicendam, nisi expresse jure cautum sit.* ff. de Verb. signif. l. 131. Likeas it is expressly provided by

diverse Acts of Parliament, that the King's Lieges should be govern'd by the King's Laws, and Laws of this Realm allenarly, namely, by an Act of the 5th Parliament of King *James I.* cap. 48. and another of the sixth Parliament, King *James IV.* cap. 79.

Whereas the Dittay is founded upon the 4th Act in *June 1644.* The Defender represents, that as he had no Hand in the Beginning, and hath never been a Fomenter since of this unhappy Combustion and Division between His Majesty and his People, so he will carefully avoid all ticklish Dispute anent these Questions between them. Nevertheless he is confident, that without Offence he may remonstrate how hard his Condition is, being put to answer a Dittay, having no other Warrant in Law but a late Act of Parliament, not made as all other former Acts and Laws, by his Majesty and the Estates joined together, and making *communem Reipublicæ sponsonem*; which is the ordinary Definition of Laws: but during, and in the time of an unhappy Division between his Majesty and his Subjects, being in Arms, as they both profess, for maintaining of their Rights and Privileges, without Intention to prejudge or diminish the known Right one of another. When such fatal Questions do fall out between such Parties, and when Necessity involves all Men to side with one of them, and Men are left to their own Judgments and the Light of their Consciences, without the clear Direction of positive Laws, determining expressly what the

Carriage of private Men and Subjects should be in so unhappy a Case: It hath ever been thought excusable, that they should follow the Light of their own Consciences and Judgment, albeit mistaken and erroneous; and therefore should enjoy the Benefit and Privileges of the Law of War and Nations, whereof one of the main and principal is, that they should not be judged by the Rules and Laws of these against whom they have sided; especially such as are made during the Dispute,

and while the War is not ended, but either by the preceding Laws made in time of Peace, or by such as are agreed upon by both Parties after a happy Pacification. The Reason of this Law and Practice of Nations is, because *in omnibus statibus controversiarum, fieri potest ut neutra litigantium pars sit improba: & sicut ex probabili causa litigantes in disceptationibus fori, victi lite atque sententia non condemnantur calumnia, utrinque tamen juratur de calumnia; ita censetur in disceptatione & lite armorum.*

REPLIES, to the Defences given in by Sir Robert Spotiswood, founded upon Quarters.

WHEREAS his Defence given in upon the 8th of December 1645, bears, that he cannot be put to answer his Dittay; in regard, when he was taken Prisoner, he had Quarters granted to him by an honourable Person, an Officer of the Army; and referring himself to the Defences given in by others, anent the Equity and Necessity of maintaining the universal Practice of Nations, anent Quarters.

It is reply'd, The Defence founded upon Quarters, alledged granted to him, is not relevant as it is set down; the Defence not condescending upon the Person Giver and Granter of the Quarters, and Time and Place, when and where. 2. Albeit it were condescended who gave him Quarters; yet the Defence bears not what the Granter of the Quarters promised to the Defender the time of the granting thereof: for at the taking of Captives, several Takers give several Promises to their Captives of several and distinct Natures. 3. The Defence founded upon Quarters, as being proponed to liberate the Defender from the Crimes libelled in his Dittay, and of the condign Punishment thereof, ought to be repell'd; because, whatsoever hath been heretofore, or is presently the Custom of other Nations in their Wars, when one Nation is in Arms against another, the Estates of Parliament of this Kingdom are not to take notice thereof, but *in casu de quo nunc agitur*, anent the bringing to due Trial and condign Punishment, these who have risen in Arms, and taken Arms against the Estates of this Kingdom. The Alledgance founded upon any Promise, Pardon, Impunity, or Quarters given by some particular Men, cannot free the Defender from just Trial, and condign Punishment, seeing the Question is not here of any Man taken *in bello*: But the Question is anent the punishing of these who have taken Arms in a treacherous and unnatural way against their own native Kingdom, and joined themselves with a declared Traitor, risen in Insurrection within the Kingdom; who not only has taken Arms against the Estates of this Kingdom, and the Liberties of the Nation, but also against the Religion presently professed within this Kingdom, and against the mutual League and Covenant establish'd by the Parliament and Assembly of this Kingdom: In Defence whereof, many Thousands of his Majesty's good Subjects within this Kingdom have been cruelly cut off by that declared Traitor *James Graham*, to whom the Defender did join himself at the times libelled in his Dittay. The Case being thus stated, that the Defender is challenged and accused for rising in Arms, and joining with *James Graham*, a declared Traitor and Enemy to this Kingdom, who had taken Arms against the Estates of the Kingdom, for opposing of the mutual League and Covenant: There is none who will think, that if any of his

Adherents, Counsellors, or those who are joined with him in Arms, being by the Lord's Mercy towards his distressed People in this Kingdom, deliver'd into the Hands of the Estates of this Kingdom, should alledge for their Defence and Impunity, upon this Ground, that when they were taken, their Takers promised to save their Lives, or their Fortunes: It cannot be thought that this should free the Delinquent, unless it be thought in the Power of any private Man in the Army whatsoever, in his private Way, to pardon the greatest Offenders against the Estates, and Opposers of our solemn League and Covenant; *quod est absurdum*. If this Evasion be sustain'd, then (without any great Hazard) there is a Door opened to all close Malignants (who in their cautelous Way, dare not appear what truly they are) to join in Arms with the publick Traitors, and to have some of their own Temper in our Army, ready to give them Quarters, when an adverse Wind blows. Likeas, if this Defence of Quarters be sustain'd, then the whole Nation, especially the Estates of Parliament, do violate the Oath of the Covenant, and the Oath of the Parliament, anent the prosecuting and censuring of Malignants, opposers of the Covenant. And therefore there cannot be any Impunity promised in the Fields to a Delinquent, by any private Man whatsoever, in Prejudice of the solemn League and Covenant, and Defence and Maintenance thereof: But these who have risen in Arms against the Estates of this Kingdom, as they are punishable by the Laws of the Kingdom, so these Laws cannot be evacuate, and made of no Effect by any Man's Protection or Promise.

Where in the Defence founded upon Quarters, an Example is cited of the Wars of *England*. It is answer'd, That the Estates of Parliament are not to be ruled by the Example of the Army of the Parliament of *England*, but are to proceed and to judge before God, that all Means may be essayed to divert his Wrath from this Nation; and are to proceed conform to the Laws of the Kingdom, in Prosecution of the solemn League and Covenant.

Where in the said Defence it is insinuate, that the Safety of many innocent Souls will be interested in the Result of the Question of Quarters. It is answer'd, that the saven needs no Answer in Law; but it may justly receive the Answer, That if Justice be done upon God's Enemies, the Lord will let us see Judgment upon the Enemies of this Kingdom, whose Terror is now casten up, and upbraided.

And where in the Defence upon Quarters, it is alledged, that Scripture confirms the Law and Practice thereof, the 22d Verse of the 6th Chapter of the 2d of the *Kings*, anent the Answer made by the Prophet *Elisha* to the King of *Israel's* Question, *If he should smite the Syrians whom the Pro-*

phet miraculously led blind into Samaria. It is answer'd, that that Passage of Scripture does not confirm the Law and Practice of Quarters, because the Prophet thereby does not confirm and allow the Law and Practice of Quarters, but cites a Custom of the Kings of *Israel*, which of itself is not allowable; being reproved by the Spirit of God, both in *Saul* for *Agag*, and in *Abab* for *Benbadad*, in the 15th of the 1st of *Samuel*, and in the 20th of the 1st of the *Kings*. And the Prophet *Elisha* was alledging the Kings of *Israel* their unlawful Customs, not to confirm the Custom, but to shew the Kings of *Israel* what Miracle the Prophet had wrought. And where it may be answer'd, That there was an exprefs Command of the Lord for the not sparing of *Agag*; yet it is to be remember'd, that there is no fuch exprefs Command for *Benbadad*. 2. The Tye of the Covenant is no small Tye, for punishing the Enemies of Religion, and these who have risen in Arms against the Estates of this Kingdom; and is a Bond tying the

Estates of Parliament to the Prosecution of Delinquents to their condign Punishment.

Item, Albeit Quarters were to be sustain'd within this Kingdom, (as they are not to be sustain'd as aforesaid) yet no Quarters could be granted to this Defender, he being by the Propositions of Peace ratified in both Parliaments of *Scotland* and *England*, put amongst the Number of these who should expect no Pardon. In Prejudice of which Declaration of the Estates of Parliament, none but the Estates of Parliament, or others having their Power, could promise Impunity.

22 December 1645.

Produced by the Procurators of the Estates, and given up to Sir *Robert Spotiswood* this Day, with the Papers formerly given in by him, and orders him to give in his Duply to this against *Thursday* next, at Ten a-Clock in the Forenoon, *peremptorie*.

D U P L I E S by Sir Robert Spotiswood, to the Replies made against his Defences upon Quarters.

W Hereas it is reply'd, that the Defence upon Quarters is not relevantly set down, because it is not condescended upon the Giver of Quarters, and the Time and Place. It is duply'd, that Time and Place, when and where I was taken, is so nottour, that there needs not any further condescending; it being known that I was taken in the Field about *Philiphaugh*, immediately after the Conflict there. And the said Defence is relevant, without condescending upon the Giver of Quarters, because by the Law of War and Nations, these who are taken in the Field, *eo ipso* that they are taken, by whomsoever, have the Right and Benefit of Quarters; neither are they obliged to take precise Notice of the Name and Quality of these who take them: Neither is it sometimes possible in these Occasions, when so many together are promiscuously in Action. And yet I condescend that it was my good Fortune to be taken by an Officer belonging to a Man of Honour and Eminence, both in the State and the Army, the Earl *Lanerk*, to whom I was brought immediately thereafter, and had from him that courteous and favourable Reception that could be expected from such a Man, in being secured from all Violence and Wrong. And as Honour and Nobility did weigh down in him these Prejudices, which he might have had, upon Misinformation, against me; so I am confident that the unquestionable Law of Arms will not be violated in me; who am Prisoner of such a Nobleman.

Where it is reply'd, that the Defence bears not what the Granter of Quarters promised to me in time of granting thereof, and that at the taking of Captives, several Takers make several Promises of distinct Natures. It is answer'd, that in these Occasions, when Men are so much taken up with Action, they have not Leisure, neither are they in use to stand upon Promises and Capitulations; and the granting of Quarters, without any other Expression or Condition, is as binding by the Law of Arms, and secureth as much the Receiver's Life, as if there were a formal Instrument upon it: *Qui enim hostem non interficit, sed capit, tribuit capto jus extacita pollicitatione*, tho' there were no other Expression. Yet to clear this part too, I refer my Quarters, and the manner thereof, to the Relation

of the said noble Earl, and of the Laird of *Silvertonhall*, one of his Captains, by whom I was first taken.

Where it is reply'd, that whatsoever hath been, or is the Custom of other Nations, when one Nation is in War against another; *in casu de quo nunc agitur*, Quarters cannot free me, because I was not taken *in bello*, but in a treacherous way against my Country, and have joined myself with a declared Traitor. It is duply'd, 1. Albeit the Reply bears, that the Estates of Parliament are not to take notice of the Law and Custom of Nations: Nevertheless, I (without prescribing or prejudicating what the Estates of Parliament will, or are to take notice of) do adhere to the common Law of Nations and War, which hath Force every where; *jus enim gentium omni humano generi commune est*. Neither is the said Law limited to the Case of a national and foreign War, when one Nation is in Arms with another; but hath place *in omni bello*, whether Foreign or Intestine, which falls under the Definition of War. For War is defined, *Publicorum armorum contentio*, upon some probable Grounds and Motives, which either Side conceive they have to be in Arms; which agreeth to Civil Wars as well as Foreign. And therefore the Necessity and favourable Laws of War have place in these Civil Wars and Distractions, and that with greater reason than in any other; because albeit they be called Wars, those who are engaged on either side, are not properly called *Hostes*, but *Adversarii*; for this reason, *quia in civilibus dissensionibus, quamevis saepe Respub. ledatur, non tamen in exitium Reipub. contenditur*, as the Law saith. So that the Benefit of Quarters cannot be deny'd in Civil Wars, no more than in Foreign. Likeas, it was acknowledged elsewhere by the Replier, that Parties taken *in procinctu* of this War, may challenge the Benefit of Quarters; as appears by the Replies and Triplies in *James Ogilvie's* former Process, which are in the Clerk's Hands, and are repeated by me, *brevitatis causa*.

2. Where the said Reply bears, that I was not taken *in bello*, but in an Insurrection, and as the Replier states the Question, it is affirmed, that none can think that the Defence upon Quarters should free me. I humbly crave, that what I am

necessitate

necessitate to alledge for my just Defence be not mistaken, seeing I have no Intention to dispute so high a Question as the Lawfulness or Unlawfulness of the War; but only to vindicate myself, and make it appear that the Benefit of the Law of Nations ought not to be deny'd to me. Therefore I answer, that I cannot be judged by the Replyer's Thought and Assertion, either in stating the Question, or deciding it; and I cannot conceive, that I can be said to be taken in an Insurrection, and not *in bello*, seeing Insurrection in the Notion and Definition of Law is properly, when in time of a happy Peace and Harmony betwixt a Prince and the collective Body of his People, private and factious Men, for their own Ends and Designs, *Plebem contra Rempub. colligunt*; as *Sheba* the Son of *Bichri* did against *David*. But when there is a Division betwixt the Prince and his People, it cannot be said that he or his Adherents, who upon probable (tho' possibly erroneous) Grounds, follow their own Judgment, are in an Insurrection. And the Question being stated, as truly it is, when a Sovereign Prince is in Terms of Difference with his People, and both profess that they are for the same Ends, and that the Prince intends nothing but the Maintenance of his just Right, without Prejudice of Religion or Liberty of the Subject establish'd by the Laws; and on the other Part, these who are on the other Side profess, that they intend nothing but the Preservation of Religion, and their Liberty, without Diminution of the King's Greatness, Power and Sovereignty, established by so many Laws; and none being to interpose themselves to be Judges of so high Differences, both Sides conceive they are necessitated to take Arms for these Ends respective. If the Prince give Commission and Command to any of his Subjects who are of the same Opinion with himself, to make a Diversion; whether or not are these who are taken upon that Side, to be thought to be taken *in bello*, or in an Insurrection? The Question being so stated, it is evident upon the foresaid Grounds, and from the Story of all Times, and the Treatises of these who have written upon War, and the Laws thereof, that such a War by the Law and Practice of all Nations, admitteth and challengeth the Privileges & *Jura Belli*, whereof that of Quarters is a main one. Neither are the Persons or Conditions of these who are intrusted with the managing of the War to be consider'd, in prejudice of those who adhere to the Prince, and are with these whom he employeth, not out of any personal Respect to them, but as they represent the Prince by Commission. Neither can this War be thought to be of another Nature than that in *England*, where Quarters are neither deny'd nor violated. And what Moderation hath been used in the like civil Distractions in this Country, during that Contest and War betwixt the *Bruce* and the *Baliol*, and in the Times of King *James III.* and Queen *Mary*, and in the beginning of King *James VI.* his Reign, as also during the cruel Wars in *France*, or yet in those of the Low Countries, the Histories of those Times bear Record. It is reported, that King *Robert the Bruce* having taken many Prisoners, *dimisit omnes humaniter habitos*; which are *Buchanan's* own Words. These who sided with King *James III.* and were at the Field of *Stirling*, tho' not only the greatest part of the Nobility and Country were on the other Side, but also the Prince, were not e-

steem'd or design'd Enemies to the Country, but are said to have been of another and of an ill Opinion, *Act. 3. & 5.* of the 1st Parliament of King *James IV.* and are said by *Buchanan* to have follow'd *diversam sectam*; and divers of the Nobility who had adhered to King *James III.* did vote in the next Parliament held by King *James IV.* as appears by the 8th Act of his first Parliament, of the Edition of *Likprivik*. And likewise these who adhered to the Queen Regent in the beginning of the Reformation, and thereafter in the Troubles of Queen *Mary*, divers of them being Noblemen of the highest Condition, as the Earls of *Argyle*, *Glencairn* and *Cassils*, the Lord *Home* and *Boyd*, &c. tho' they proceeded to the highest Acts of Opposition, and some of them were at the Battle of *Langside*, and indicted and held a Parliament at *Edinburgh*, the same Time that another was holden in the *Cannongate* in the King's Name, yet were so favourably construed, that *Archibald* Earl of *Argyle* was in the List to be Regent after the death of the Earl of *Lennox*. And what were the happy Effects of the Moderation used towards them, it appear'd by the happy and firm Peace that follow'd, and by the loyal Carriage both of them and their Posterity ever thereafter. And therefore, for these Reasons, and because Prisoners have been exchanged in this War, it cannot be deny'd, but the Laws and Benefit of Quarters being of the same nature, and founded upon the same Principles of Law and Nations, should be received and practis'd in this War.

Whereas the Inconvenient is represented and aggravated, if it should be in the Power of private Men to pardon the greatest Offenders, a Door should be opened to close Malignants to use the cautelous way mentioned in the Reply, to join in Arms with the publick Traitors, upon hope that some of their own Temper on the other Side will be ready to give them Quarters when an adverse Wind blows. It is duplied, that the Question is not of granting an absolute Pardon, which is not craved by the Defence of Quarters, but a securing of the Life of these who are taken: And if the Defence of Quarters should not be sustained, the repelling of it will open a greater Door to all sort of Cruelty, and to far greater Inconvenience than that imaginary one in the Reply; seeing it cannot be thought that Men will engage and expose themselves to Hazard, upon Confidence that they might when they pleased have recourse to their close Friends for Quarters, considering the Difficulty to find them out in a Time of such Confusion.

Where it is further reply'd, That if Quarters be sustained, the whole Nation, and especially the Estates of Parliament, will violate the Oath of the Covenant, and that other of the Parliament anent the Prosecution of Malignants; and that there cannot be any Impunity granted to Delinquents by any private Man. It is duplied, that tho' the Oaths of Covenant and Parliament oblige the Takers of these Oaths to discover Malignants, that they may be brought to Trial, that they do not prejudice those who are called in question of their lawful Defences, competent to them by the Law of Nations, as that of Quarters; neither do they oblige the Judges to repel such Defences, seeing by the Covenant they are not obliged to proceed against those who are questioned as Malignants, notwithstanding of such Defences. 2. The Practice of

the Estates in some particular Cases evinceth, that they do not think themselves so limited by the said Oaths, as the Replier would have, because they have before this condescended to the exchanging of divers Prisoners, and have dismissed divers others who were in the like Condition with me, being taken in the Field; and have not only spared some who were on the other side, but have employed them thereafter. And it were absurd and injurious to charge upon the Estates Perjury and Violation of their Oaths, because of these Practices, being founded upon the Law of Nations and good Considerations.

3. The Question is not of Impunity granted by any private Man in the Field, as the Reply bears, but of Quarters granted by the Laws of War and Nations, which is authorized and approved by the Lieutenant General and Commander in Chief the Day of the Conflict at *Philiphaugh*, in so far as he gave no Command discharging Quarters to be given in general, but only discharging any to be given to the *Irish*: Which Exception of the *Irish*, militates in Favour of all others not excepted, *quia exceptio firmat regulam in non exceptis*.

Whereas it is further replied, That the Estates of Parliament are not to be ruled by the Example of the Parliament of *England*, but to judge before God, and to divert his Wrath, by proceeding against Delinquents conform to the Laws of this Kingdom. It is answer'd, That the Practice of *England* is urged, not as a Rule to the Estates of this Kingdom to regulate their Procedure by, but as an Instance of the Practice of Nations, conform to the Law of Nations; which being receiv'd in *England* in this War, which is principally for obtaining the Reformation of Religion and settling the Liberties of that Country, ought with far greater Reason to be received by us who were involved in that War, out of our Desire to have these Ends establish'd there, after we had obtained the same our selves.

Neither can the Laws of this Kingdom, and the mutual League and Covenant be still obtruded for the repelling of the Defence of Quarters; because there is no Law of this Kingdom discharging Quarters to be granted or kept, neither any Clause of the mutual League and Covenant against the same; otherwise the whole Nation of *England* and the Estates there, should be involved in Perjury, seeing they joined with us in the mutual League and Covenant; and notwithstanding think not themselves obliged to refuse Quarters contrary to all Nations.

Where it is urged by the Replier, to make me odious, That the Terror of the Enemies of this Kingdom is casten up and upbraided, and therefore if Justice be done upon God's Enemies, the Lord will let us see Justice done upon the Enemies of this Kingdom. I am confident, that if my Defence and Expressions be considered, it will appear they cannot be wrested to import any upbraiding, or casting up of any Terror; and whatever odious Characters be put upon me, I cannot be thought to be an Enemy to God, except it were shown that I had intended something against the Honour of God, Purity of Religion, or the Liberty of my Country. For in Civil Combustions, the naked difference of Opinion anent Civil Questions, and adhering of a Subject to his Prince, was never thought to be Enmity against God. This is evident from the 2 *Sam.* chap. ii. ver. 26, and 27. for

in that Civil War between *David* and the House of *Saul*, tho' *David* (God's Prophet, and Anointed to be King,) was on the one side with God's People, yet they who were upon the other side of *Ishbo-sheth* were not called Enemies to God, but their Brethren; and upon that respect *Joab* did not exhort them that were with him to pursue eagerly their Adversaries, as God's Enemies, but bid them return from following their Brethren. And in chap. iv. ver. 11. *David* calleth *Ishbo-sheth*, tho' the Head of that Faction against him, a righteous Person. Likewise, when it pleased God to work Deliverances for his People, it was not conceived that there was a necessity to divert God's Wrath, by proceeding in Rigour against those who had fallen in their Hands; but by the contrary, *David* after that great Victory against *Absalom*, being pressed to that purpose, answered, *Shall there any Man be put to Death in Israel?* 2 *Sam.* xix. 22. And *Saul* after his victory against the *Ammonites*, when the People urged that they should be put to Death who had been against *Saul*, and had said that he should not be King; he answered, *There shall not a Man be put to death this Day, for to Day the Lord hath wrought Salvation in Israel,* 1 *Sam.* xi. 13.

Where it is further reply'd, That the Passage of Scripture cited in the Defence, out of 2 *Kings* chap. vi. doth not confirm the Law and Practice of Quarters, but that the Prophet citeth a Custom of the Kings of *Israel*, which of itself is not allowable, being reproved by the Spirit of God, in the Case of *Agag* and *Benhadad*; and that that unlawful Custom is alledged not to confirm the same, but to shew what Miracle the Prophet had wrought. It is answered, That the Text itself is opposed, whence it is clear, that the Prophet useth an Argument *a majori*; *quasi dicat, ne eos quidem occideres, quos abducceres gladio tuo & arcu tuo; ergo multo minus alieno beneficio comparatos fas est occidere*. So it is understood by *Tremellius* commenting upon that Place, and *Diodati* in his Annotations upon the same. And therefore the Gloss of the Reply, bearing that nothing is meant by the Prophet but to shew what Miracle he hath wrought, is absurd, seeing there needed no Probation of that which was evident and undeniable; and is contrary to the express Words of the Text, which containeth a Question moved by the King of *Israel* unto *Elisba*, whether he should smite the *Syrians* or not; and a Negative Answer of the Prophet, that he should not, fortified with an Argument by way of Enthymeme: *Capti in bello non sunt occidendi; Ergo multo minus alieno beneficio & miraculo comparati*. Which should be an ill Argument, if the Antecedent were only founded upon an evil and reproved Custom: And the Prophet cannot be thought to use an ill Custom, to enforce a good Conclusion; it being as much against Rules, both of Goodness and good Reasoning, to use an Argument from that which is Evil, to prove that which is Good, as to do Ill that Good may come of it. And that it was not only the Custom of the Kings of *Israel* to spare Captives, but an Universal and ancient Custom of Nations, it is evident, not only from innumerable Passages, as well of the Civil Law, as of History, but from the 14th of *Genesis*, where it is clear, that these who were taken by *Chedorlaomer*, were taken Captives and carried away with *Lot*.

Where the Reply bears, That the said Custom is reproved in the Case of *Agag* and *Benbadad*. It is answered, That for the first, it is acknowledged by the Replier himself, that there was a great Disparity betwixt the Case of *Agag*, and of these who have gotten Quarters, because *Agag* was in that Condition, that he was incapable of Quarters, in regard God commanded *Saul* expressly to go and smite *Amelek*, and destroy all that they had, and spare neither Man, Woman, Infant, Ox, or Sheep; so that this was an extraordinary Case of a Person by God's Command devoted to Destruction, 1 Kings 15. As for the Case of *Benbadad*, it is clear from the Text, that he was appointed to Destruction by the Lord, for his Arrogancy and Blasphemy against God: And the Word in the 42 ver. chap. xx. of the 1st of Kings, used by the Prophet when he told *Abab* that he had let go a Man whom God had appointed to utter Destruction, *Anathemati devotum*, as it is rendred by *Tremellius*, evinceth that there was an extraordinary Warrant for destroying of *Benbadad*; because that Word is only used in such cases, as when there was an extraordinary Command to destroy and devote *Jericho* and *Agag*; *nunc abi ut percutias Amalechum & Anathemati devoveas*: which is likewise more clear from the whole Context of 1 Kings chap. xx. for after *Benbadad* was foil'd the first time by *Abab*, a Prophet came to the King of *Israel*, and told him that the King of *Syria* would come up against him at the return of the Year, and advised him to mark and see what he should do. And when the Prophet came thereafter to *Abab*, after he had dismiss'd *Benbadad*, to convince him, did suppose the Case of a Man that had brought to him a Prisoner, and said keep this Man, and that upon Condition, if by any means he should be missing, his Life should be for his Life. In which Case there was an express Charge given to keep the Prisoner, and not to let him go: which must be understood likewise in the true Case of *Benbadad*, otherwise there should not be a Parity between the Cases; neither could *Abab* have been convinced, but might have had an Evasion and Pretext, that he had not got the like Charge, and that God's Will concerning the Destruction of *Benbadad* had not been intimated to him.

I humbly represent how hard it is that such Arguments should be brought from extraordinary Cases of Blasphemous Pagans, devoted and anathematized by God, and enforced upon People at such times and places, where they whom it concerns cannot make Answer; whereas it may be evinced from diverse Places of Scripture, what

Moderation was used in Times of Civil Distraction, and that these who had been active, and leading on the other Side, were not only spared, but advanced: Witness the Civil War betwixt the *Israelites* and the *Benjamites*; in which, tho' the Cause was most unjust upon the *Benjamite's* part, and that they had provoked mightily the rest of the Tribes, by reason of two great Overthrows they had given them; yet after the *Israelites* had got the better of them, their Revenge went no further, than to kill such as they could overtake in the Battel: But as for them that escaped to the Rock *Rimmon*, they called peaceably to them, and notwithstanding of their Oath, provided Wives for them, and made up again the Breach of that Tribe. The fair Quarters *Abner* and his Men had from *Joab* (tho' in flying he had kill'd *Asabel*) is toucht before. Tho' *Adonijab* exalted himself against King *Solomon*, and usurped the Kingdom, yet upon his Submission he was spared and dismissed: so was cursed *Shimei*. *Amasa* Captain of *Abfalom's* Host, was received into Favour, and made Captain over *Judab*. These and many more Places clearly evince, that Scripture is on our Side, and that not one Passage thereof can be wrested against us.

Whereas it is reply'd, That Quarters could not be granted to me, because I am excepted in the Propositions of Peace, and declared to be such a Person as could expect no Pardon. It is answered, first, The Question is not of Pardon, which is not craved, but of Quarters already granted for securing my Life: And the said Propositions of Peace, are not a positive Declarator of my Incapacity and Exception in case of a happy Peace, but only contains the Desires and Propositions of the Estates to be made to his Majesty, which may be altered upon a mutual condescending betwixt his Majesty and them, before they be settled by an Act of Pacification; and the said Exception is only to take effect against such as should be Processed and Condemned, and therefore is to be understood without prejudice of their lawful Defences, and namely that of Quarters; seeing by no Act of Parliament, nor by the foresaid Propositions, it is declared, that these who are excepted should be incapable of Quarters, and of the Benefit of the Law of Nations. And that this was not the Intention of the Estates of either Kingdom, is clear by their Practice; for notwithstanding of the said Propositions contained in the said Exception, some of these who are excepted, have been exchanged, as the Laird of *Drum* Younger with us, and Col. *Goreing* and others in *England*.

DEFENCES for my Lord *Ogilvie*, 10 February, 1645.

MY LORDS,

I Conceive that my Answer to the Dittay may be very short, and that I need not enter in a subtille Dispute of Law against it; the Subject is so tender and ticklish, that I shall be loth to be put to the Question, unless I be necessitate.

My Answer then at this time is, that I conceive, that by the Law of Nations and War, I cannot be brought to answer a Dittay of Treason upon hazard of my Life and Estate, as long as I am in this Condition; because I am a Prisoner of

War, and was taken by the *Lancashire* Forces, with my Sword in my Hand, and upon Quarters and Assurance that my Life, and such Stuff and other Things as I had about me, should be safe and unquestioned. War, albeit with its Noise it seem to cry down all other Laws, wants not its own necessary and inviolable Laws, without which it should be rather a bloody and brutish Butchery, than a lawful War, which God himself is pleased to own, entitling himself the God of Hosts and Battels.

Battels. That the Law of Quarters, amongst all other *Jura Belli*, is the most necessary and equitable, it cannot be called in question: the Issues of Life and of Death are in God's Hands, who is pleased to dispense with that which is called the Fortune of War in so variable a way, that it may be justly said, *Inter utrumque volat dubiis victoria pennis*; to the end, that neither Side should refuse to the other that Humanity and Favour which they may have occasion possibly the next Day to desire themselves. And it is not to be conceived that Quarters consist in the Favour only and Grant of the Giver, but as founded rather upon the Equity and Obligement of a mutual Paction, whereby the Receivers of Quarters redeem their own Safety, with the Safety of moe who would be in hazard upon the other Side; it being always to be presumed, that Men being prodigal of themselves, and despairing of their Life and Quarters, tho' in the end they may be overcome by Multitudes, will sell their Lives at a dearer Rate, than those who would live to enjoy the Victory would be content to have it. This Law, as in all other Wars, so more especially is to be kept in Civil Dissensions, in regard the Ties and Interests both Parties have in others, plead both for excusing those who are taken, by reason of Interest they conceive they had to adhere to the Side which they followed, and likewise for Favour of those who have taken their Friends, in respect of the Interest they have in their Prisoners. I may instance many Practicks in these late Troubles in *England*,

but shall only remember one, because it is famous and nottour. One Captain *Lilburn* was taken by some of his Majesty's Forces; the Gentleman being both a Parliament-Man and a Commander, had been so active in both ways, that he wanted not powerful Enemies, who upon probable Grounds and Motives, moved his Majesty to put him to a Trial for divers high Points of Treason. The Gentleman alledged the inviolable Privilege of a Prisoner of War, and the Law of Nations, and that he could not be put to answer any Charge, tho' never so just, until he were dismissed. General *Ruthven*, and all other Soldiers of Fortune did interpose themselves, and solicited that the Law of War should not be violated. In end, Justice did prevail with his Majesty's all other Respects, and the Gentleman was upon the said Ground acquit. Upon these Grounds I conclude, that I am in the like Case, and cannot be holden to answer to this Dittay: And yet, lest I should seem to shadow myself only under the said Privilege and Defence, and that my Actions may not appear still to your Lordships so ugly and horrid as they look in my Dittay, being represented naked, and without the Vesture of the favourable Circumstances, and probable Grounds and Motives, and the Sincerity of my Intentions, whereupon they proceeded, without any thought of Treason or Hostility: I have joined with this Defence, a short and true Relation of my Carriage in these late Troubles, for Information to your Lordships.

The Relation of James Lord Ogilvie his Carriage in these late Troubles.

Whatever the World may conceive of me and my Carriage in the first and late Troubles, my Conscience bears me witness, and I may appeal to the knowledge of all those who have had the Occasion to know me inwardly, how free I have ever been of Dissention either to the Purity of Religion establish'd here, or to my Native Country; and that I never countenanced nor complied with any thing which was conceived to be a Corruption nither in Church or State, but was one of the first who petitioned for Redress of the same during the first Troubles, tho' some of our Houses suffered the Extremity of War and Hostility: It cannot be instructed, that I appeared in any hostile way, or did any Act against my Country. After the Pacification of these Troubles, the Rebellion of *Ireland* having fallen out, I resolved to take hold of that Occasion, to express to the World my constant Zeal for Religion and my Country. And to that purpose there having past some Discourse betwixt General *Lesley* and me, concerning the Expedition for *Ireland*, which I conceived to imply an Invitation to engage in that Service; I sent therefore a Gentleman of my own Name, to show him, that I should be content to serve in that War, upon such Terms as others of my Quality were to have. But having found, that the General had not absolute Power to dispose of Places, and to prefer Officers; and not presuming to have the like way and favour with others who had a Vote in the disposing of them, I retired and lived quietly at home, without any meddling, until the Com-bustions in *England* broke out, and came to such height, that they were like to involve this Kingdom, and to occasion a Rupture betwixt his Ma-

jesty and us. Then I began to bethink myself what my Carriage should be: And in end I thought it best to keep myself free, and to convoy myself out of his Majesty's Dominions, until it should please God to put an end to these unhappy Differences. Upon this Resolution I went to *England*, intending thence to go to *France*; but having gone to take leave of his Majesty, I was commanded to stay and wait upon him. Being his Majesty's Subject, and commanded to wait upon his Royal Person, at such a time, when he was in distress and hazard, I neither did, nor can conceive how I could disobey, without rubbing upon myself the Imputation both of Disloyalty and Baseness. This Country at that Time had not entred in Covenant with the Parliament of *England*: I know not any Law obliging Scots-Men his Majesty's Native Subjects, trusted by his Majesty in Places of Respect and Eminence about his Person, wherein they may be useful to their Country, to desert his Majesty's Person and their Places, upon any occasion of Rupture betwixt his Majesty and his Subjects of *England*. I conceived then, that his Majesty's Command did oblige me as well as others to wait upon his Person. The Article of the Treaty, which I am charg'd to have contraven'd (tho' I profess I was altogether ignorant of it, holding it no shame for one of my way to be unacquainted with some particular Laws) appears to me, having looked upon it upon this occasion, not to mean or include the Case of personal Attendance, and Service of private Subjects, who in a private and personal way, adhere to his Majesty in the Time of Troubles and Question with his People of *England*, as I did: For I went to *Eng-*
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land without Forces, yea without my ordinary Train, and accompanied only with one Servant. During my being in the South, I had no Charge but to wait upon his Majesty; I neither commanded Forces, nor was inroll'd in any Regiment, or under the Command of any.

This was my Carriage in the South, until my Master commanded me with *Montrose* and all our Countrymen who were about him, to go homeward. The Marquis of *Newcastle* being then in the Fields with an Army for his Majesty, I could not have passed without seeing of him; my stay with him was so short, that I neither had, nor could have had any Charge or Employment under him. I do not deny but I came to this Country, but I profess it was by his Majesty's express Warrant and Command, and without any sinister Intention against my Country and Countrymen. I came to *Dumfries* without any purpose of Hostility, but only to accommodate myself: and I believe none can complain of any Injury done at that time by me. Finding that the Country was displeas'd, I returned immediately, without doing harm to any. After my return I was accessary to neither of these Exploits libell'd in the Dittay, of taking of *Morpeth* and the *Sheills*; neither was I present at either of these Places when they were taken; but I am able to make good, that I was at *Newcastle* at Six or Seven a-Clock at Night, that Day the Castle of *Morpeth* was taken, it being taken at One or Two o-Clock in the Afternoon: And having heard at *Newcastle* that it was taken, and being sollicitous for my Countrymen, that they should not have been well treated by the *English*, who had been irritate by them, in regard they had lost some Men of Quality at the Place, I went of purpose at Seven a-Clock at Night from *Newcastle*, to procure favour to them; and I am confident, that these whom I found there will not deny, that they received such Tokens of my Favour as they stood in need of, and as I at that time was able to give. I neither had, nor could have had any Employment under Colonel *Slavering*, being a Gentleman beneath my own Quality.

When it was my Fortune to be taken, it was not in any Service or hostile Intention, but being upon my way to his Majesty, with such a small number of People, as appeared afterwards not to be sufficient for a Convoy, I was surprized and forced to bestir myself for my just Defence, and safety of my Life, wherein it pleas'd God so to assist me, that these who were at the taking of me,

were content to offer and give me Quarters; whereupon I suffered myself to be taken, and doubt not but that I may expect, that the Law of Nations and War, which is observed as sacred and inviolable, when all other Laws are silent *inter arma*, shall not be broken in my behalf.

This is the true Relation of my Carriage in these troublesome Times; for my Carriage before I should be sparing to speak of it myself, if my after Actions were not painted with so foul and ugly Colours. To my knowledge, before these Times, it cannot be condescended that I have offended any by any scandalous or injurious Act. And I am confident, that with God's Assistance I might have regulate so the whole Course of my Life to the end, that I should not have seem'd to have fail'd to any, much less in my Duty either to my Prince or Country, if the Times had not fallen out so irregular, that I could not witness my respect to either, without seeming to fail to the other. It being then my Misfortune to have fallen in such hard Times, having so much Interest on both Sides, I have not been suffered to have been an idle Spectator; I followed the Light of my Conscience, which bindeth even when it is mistaken, as Divines hold. I believe none will suspect me to have been a Contriver, Plotter or Fomenter of this unnatural War, and am assured, that if from this Relation it may appear, that I have been in any wise an Actor, there was never one more harmless. None of my Countrymen may charge me with any Act of Insolency, Wrong or Prejudice to them; and I doubt not but some will bear me witness, that I have shown them favour. Tho' I conceived, that my adhering to my Prince in his distress by his special Command, was incumbent to me by my Oath of Allegiance, and in Duty, Conscience and Honour; yet if any thing may be thought to have escap'd me, being a young Man, and not acquainted with Subtilties and Laws, in a Business of so tender a Nature, which hath both in the Dispute of the Question in the general, and in this particular Case, divided so many Lawyers, Statesmen, Divines, and others, in their Opinions, and hath set a-work their Tongues, Pens and Swords, to maintain the same, I may say with far better reason than an old Statesman and Lawyer did in the like Case of Civil Dissensions; *Erat obscuritas, erat certamen inter clarissimos duces: multi dæbitabant quod optimum esset, & si aliquâ culpâ tenemur erroris humani a scelere certe liberi sumus.*

DEFENCES for Ogilvie.

IT is answer'd, That he cannot be called in question of Life and Fortune, and forced to answer at this time to this Dittay; because he is Prisoner of War taken upon Quarters, and express Capitulation with his Takers for his Safety; and by the Law and received Customs of all Nations, where War is not turned in a downright Butchery, there be *jura Belli* held sacred and inviolable: Whereof a main one is *captivis parcendum, & sicut resistenti violentia redditur, ita captivo misericordia debetur*, which are *Augustin's* Words repeated in C. 3. 23, 4, 1. *Danda enim est ad minimum vita his qui vitam hostibus & capientibus reliquerunt.* This was the Law of *Lycurgus*, of the *Romans*, and other Warlike Nations, as is clear

from History and Writers *de jure Belli*. It is founded not only upon common Equity, but upon the special Equity of an express Paction, where any Capitulation is made; and where there is no express Capitulation, it is founded upon a tacite and presumed Paction, *nam qui hostem non interficit, sed capit, videtur velle eum vivum habere: & capto est jus ex tacita pollicitatione ne possit postea interfici, & qui se dedit cum hoste pacisci de vita videtur: especially where Captives have rendred themselves in Arms, qui pugnando potuerunt non capi, aut non sine sanguine.*

Scripture itself confirmeth this Law and Practice: For the *Syrians* being striken blind, and brought Captives by *Elisba*, to the King of *Israel*