

and taking into Consideration the whole Scope of the Affidavit, I cannot see that there can be any material Objection against Mr. *Turberville* for saying that my Lord came by *Calais* in the Company of Count *Gramont*.

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

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

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

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

'Twas impossible it could be a Contrivance among the Witnesses themselves to depose the same Crimes against this Lord; for Dr. *Oates* never knew Mr. *Dugdale*, till *Dugdale* was brought up, which was long after Dr. *Oates*'s Accusation of this Lord; nor could *Dugdale* know what Evidence *Oates* had given here, for *Dugdale* was a close Prisoner in *Stafford* Goal before *Oates* accused this Lord, and long after. And yet the first Evidence *Dugdale* gives against this Lord, doth in Substance concur with that given by Dr. *Oates*. So that since there could be no Intercourse nor Conference between

them, but as much Distance as from the Prison-Doors in *Stafford* to *London*, there could be no Contrivance between them, for both of them to accuse this Lord of the same Matters. And this I desire may be looked upon by your Lordships as a Matter of great Weight to support the Credit of the whole Evidence. And *Dugdale* does seem to be a Person of an unquestionable Credit, and every one that hears him must observe, he does give his Evidence with great Modesty, and all Probability of Truth.

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

My Lords, There may be other Particulars which I may have forgotten; I know not whether I observed that my Lord objected that we do not prove him a Papist: I hinted something before about his coming to *Mars* to my Lord *Aston*'s at *Tixall*, which is one sort of Proof of his being of the *Romish* Religion. Besides his perpetual Conversation with that Party, and his Endeavours to promote their Religion and Designs, all which have been fully proved: I think also my Lord deserted the House of Peers, for that he would not take the Test appointed by the late Act; your Lordships best know whether he did so or no. But, my Lords, let him, if he will, be a Protestant for this time; let that be suppos'd: If he were a Protestant, and should be guilty of the Offences proved upon him, he would not deserve more Favour from your Lordships.

My Lord hath been likewise pleas'd in further Proof of his Innocency to alledge, that after the Plot was discovered, he had seven Posts time to have escaped, and yet never fled. My Lords, 'Tis true he might have fled, so might *Coleman* too; that *Coleman* that left so fatal an Evidence against himself and all his Party under his own Hand, and for that had reason to believe himself very guilty: And so might the Jesuits have escap'd too, but that they had hopes the Oath of Secrecy, and the Means they had used to conceal their damnable Designs, would have been a sufficient Security against revealing it. They had that Opinion of their Priests, and of the Fidelity and Constancy of those that had been seduc'd by them, and recommended by them, that they apprehended nothing less than a Discovery. And those other Persons that were executed, did all stay about the Town after the Plot was discovered, as well as this Lord stay'd in the Country.

My Lord did very much complain, that our Witnesses were not positive in point of Time: I think *Dugdale* was positive enough as to the time of the Offer of 500*l.* but for other Matters, he would not confine himself to a Month: He talk'd of the latter

latter End of one Month, and the Beginning of another, I think he is the more to be believed; for I conceive unless a Witness hath some notorious Circumstance in his Memory to satisfy him about the Certainty of the Time, (such as was that of the Foot-Race, as to the Time of the Offer of 500*l.*) it is rather a Mark of Presumption than of Sincerity for a Witness to be too positive as to the Time. And is there so great a Distance between the latter End of one Month, and the Beginning of another, that a Witness need to be positive as to the very Day? But says my Lord, You talk of the Beginning; it was the 12th of *September* e'er I came thither. Does not every Man count, that till the Middle of a Month 'tis the Beginning of a Month? Sure in common Speech it is so. Therefore I look upon that as a Matter scarce worth the mentioning; I am sure, not worth the serious answering.

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

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

My Lords, I must observe to you, that there have been great Endeavours used to invalidate our Testimony; we have had Witnesses called against Witnesses, and my Lord hath had that Advantage to do it, which perhaps was never given in any Case before, and which I hope will never be again. The Evidence hath been printed and published to the World, before it hath been given. I say not that it was not necessary in this Case, which was a National Cause, and the Cause of our Religion; but I do say, it would not be fit to be done in other Cases; for the notifying of the Evidence is the Way to have it falsified and corrupted.

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

Your Lordships have the Record against *Reading* before you; and what Reference that hath to the Lords in the *Tower*, every one does remember, and my Lord is mentioned in that Record. And I might likewise mention the Business of *Calbar*, and what therein related to the Lords in the *Tower*.

And I'll name but two Witnesses more, that have been attempted upon in this Nature: There was *Wright* the Barber; all the Applications were made to him that could be; Money given, Letters writ, Insinuations that he was not to swear, he was but to write, and that was easily done; or if he would be so kind to swear it, he should never come into open Court, only go before a Justice of Peace: So that your Lordships will observe by what Steps and Degrees Men were endeavoured to be suborned. And then *Lauder* tells you what was offered to him to perjure himself, how he was brought to *Tixall*, and what Endeavours were used to make him swear against our Witnesses.

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

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

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

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

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

Sir Will. Jones. If there be any Mistake, pray tell us what it is.

L. Staff. First, my Lords, he did omit telling you that *Mr. Turberville's* Brother did say he came in 71 to my Lord *Powis's*. Secondly, he says, I have proved myself a Papist, because I have not taken the Test: My Lords, the Test was since I was in the *Tower*, and whether I will take it or not, I do not yet know, till it be offered me. The third is this, that this Letter was in my Pocket, which I produced to you: My Lords, I knew nothing what was in it, it was given into my Hand as I stood here at the Bar. Fourthly, he said *Hobson* did go out of *England* with the Almoner; he did not so.

Another

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

L. H. S. Gentlemen, I would ask you whether you take any Notice of the Points in Law?

Sir Ir. Win. After the Fact is stated, my Lords, we shall.

Then Mr. Powle, also one of the Committee appointed to manage the Evidence, proceeded further in summing up the same.

Mr. Powle. My Lords, The learned Person that spake last hath left very little for me to say in the summing up of this Evidence: But because this noble Lord hath been pleased to alledge several Reasons, from whence he would infer at least a great Improbability that he should be guilty of the Treasons whereof he stands accused, I shall crave your Lordships Patience, that I may give three or four Words in answer to those Particulars.

My Lords, In the first Place this noble Lord was pleased to begin, and afterwards to continue his Defence with making Protestations of his own Innocency: We very well know your Lordships sit now in the Seat of Justice, and whatsoever Credit or Regard your Lordships please to give to the Protestations of a Peer in another Case, your Lordships will proceed here only according to your Proofs and your Evidence, (*secundum Allegata & Probata*) and therefore all we shall say to this, is, that we hope our Proofs are so clear and evident, as will leave no Room to your Lordships to believe this noble Lord's Protestations.

In the next Place, my Lord is pleased to alledge, and withal to lay some Weight upon it, the voluntary surrendering of himself to Justice; and he laid it down as a Rule, that as Flight is an Argument of Guilt, so the surrendering of a Man's self to the Trial of the Law, is an Argument of Innocency.

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

My Lords, We do conceive that those Persons who contrived *Sir Edmundbury Godfrey's* Murder, had so great Confidence in the Favour and Protection of some of their Party, that they thought themselves able to outface Justice.

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

My Lords, I desire to be understood aright in this: I lay nothing of the Death of *Sir Edmundbury Godfrey* to the Charge of this noble Lord; I only use it as an Argument of the Presumption of the Popish Party at that Time.

My Lords, In the next Place, my Lord *Stafford* did observe from my Lord *Coke*, that in the Trials of Treasons we ought very much to guide our

Judgments by the Nature and Circumstances of the Fact (the Concomitants and Subsequents, as he termed them) with reference to the Person accused, whether they were likely to induce or deter him from such an Attempt; and here he was pleased to raise some Arguments from the whole Course of his Life, and did desire your Lordships to consider those Circumstances therein, that might make it improbable or impossible that he should commit a Treason of this Nature.

He desired also your Lordships to remember, that he was descended from an honourable Family, and that his Ancestors were very worthy and very deserving Persons, and such as had often ventured their Lives in Defence of their Country: And here he did likewise mention his own Services to the last King, and our present Sovereign in the late Wars.

It is not my Part, nor will I derogate any Thing from the Merits of this noble Lord, much less from the Honour of his Family: But in answer to this, we shall desire your Lordships to consider, that this noble Lord (however he is pleased to disown it at present) is notoriously known to be a *Roman* Catholick, (as they call themselves) and such we conceive we have sufficiently proved him to be, in the Course of our Evidence: And as there is nothing in the World, so much as a misguided Conscience, that can engage the best of Men into the worst of Actions; so we think the Principles of that Religion are such, as are more likely to pervert Men from their Duty and Allegiance, than any other Religion or Persuasion whatsoever.

And if the Zeal of this noble Lord did engage him to endeavour the Establishment of that Religion in this Kingdom, we may easily believe that his Reason did suggest to him the Means by which it must be effected, which could be no other but Blood and Confusion.

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

But by the Way, my Lords, give me leave to observe, that this noble Lord did upon this Occasion fully own (and I much commend his Ingenuity in it) the Reality of the Gun-Powder-Treason, since we know how much that Party have endeavoured to render it incredible: And as length of Time hath so fully manifested the Particulars of that execrable Design, that it hath brought such as are of that Persuasion to confess the Truth of it; so, we hope, this Day's Trial will convince both the Age we live in, and all Posterity, of the Truth and Reality of this present Conspiracy. But to go on with that Point from which I did digress: I am not, I confess, much versed in the Canons and Councils of the Church of *Rome*; but, my Lords, this I know, the most famous and celebrated Writers of that Church, especially of the Society of the Jesuits, have publickly avowed and maintained this Doctrine. And we know in all Times, when there hath been occasion to put it in Practice, it hath never failed to have been attempted; and we likewise know, that the Church of *Rome* and the Pope have always avowed the Acts when they have been done. From all which we might very reasonably conclude, that it is the Doctrine of that Church so to do.

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

My Lords, As to what concerns the Evidence, it hath been so fully stated to you, and the Objections that were raised to invalidate it, so well answered, that I will not trouble your Lordships with any Repetition of what has been said already: All we have further to desire, is, That your Lordships will please to take our Evidence into your Consideration, and to do thereupon what shall be agreeable to Justice.

Mr. Serj. *Mayn*. My Lords, As to the Matter of Fact I shall say nothing but only this, (and I wish it may be spoken with Gratitude to Almighty God) that the Discovery of this Plot is rather the Work of God than Man. It was first his Act, in prevailing upon *Oates* to make the Discovery; and when he stood single almost, what came to support his Credit but the Letters of *Coleman*? which were like a Tally to what *Oates* had said, for what *Oates* informs is in a great part made good by his Letters. Then when *Godfrey* was murder'd, how came that Discovery out, but by the voluntary Confession of one engaged in the whole Plot; I mean *Bedloe*? So that tho' these Men had engaged themselves by wicked Oaths, yet their own Consciences witnessing against them in themselves, they could not forbear coming in to testify against themselves. I shall say no more, than that we ought to acknowledge the Hand of God in the Discovery with great Thankfulness; for it is he, and he alone, that out of his own Grace and Goodness hath done it, and thereby preserved the Life of our Prince to us, and in Him us too.

But as to the Matter in Law:

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

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

But that which is most insisted upon, is, That this Charge that is made against this Lord, was presented in another Parliament. It is true; but under favour, what is once upon Record in Parliament, may at any time afterwards be proceeded upon. It

is a sudden Objection, but I conceive it hath been done: However, in a Case of this nature, when the Life of the King, when our own Lives, and our Nation, and our Religion lies at stake, if there were not a Precedent, I hope you would make a Precedent. But under favour, Reason is for it, the Charge is before you, the Proof is made, and we pray you will judge according as the Evidence hath been.

Sir *W. Jones*. My Lords, as to these Matters of Law, I think they are of so little difficulty, that my Lord will not desire to have Counsel assigned him; I am sure his Counsel will not desire to speak to them.

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

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

This is now become the Law of your House, and it is under favour, being so, the Law of the Kingdom; and you having thus declared it, and sent it to the Commons, I hope the Commons had very good reason to proceed upon this Impeachment at this time.

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

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

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

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

Sir *W. Jones*. That, my Lords, is of little weight, with submission; for our Impeachments, and our Proofs run to this, That my Lord had a Design and Intention to destroy the King: This was to be done by Force, and this was to be done by secret Assassination. Now if several Witnesses come and prove each a distinct Act, under this Head of killing the King, it is so many Proofs or Witnesses to the Treason.

For, my Lords, if a Man shall intend to kill the King, and shall buy a Knife in one County at one time, and send for a Man out of another County at another time, whom he shall hire to kill the

King, and these distinct Acts are proved by several Witnesses; if they concur to the same general Treason, they are all but Parts of that, and so are so many Witnesses to the whole. And so I am sure it was resolved in the Case of others of the Conspirators in the *Old-Bailey*, and before that in the Case of Sir *Henry Vane**. But,

My Lords, in this Case here is first a Proof that he accepted a Commission, which I do not use as an Act for the levying of War only, but as a Design to change the Government, and destroy the King. Here is meeting and consulting how to do this wicked Work, I mean to kill the King; that is another Overt-Act. Here is offering Money to one of the Witnesses for that end; that is a third Overt-Act. And there is attempting another of them, tho' not with Money, yet with Promises of Reward in general; that is another Overt-Act: All which are to this End, the killing of the King. And I am sure of it, your Lordships cannot but receive Satisfaction from my Lords the Judges, that it hath always been so held, that tho' there need two Witnesses to prove Treason, yet there needs no more than one to one Act, and another to another, if the several Acts fall under the same Head of Treason.

Sir *F. Win.* My Lords, I crave your Patience but for a Word or two, and this Noble Lord will have little reason to say his Objections in point of Law are of any weight. I confess he had said a great thing, if it were true, that the Articles of Impeachment did not alledge an Overt-Act; for then indeed they had been apparently defective: But, under his pardon, that is not a Point of Law, but a Point of Fact. Let us therefore resort to the Articles themselves: In the second Article it is alledged, that he, with the rest, did most wickedly and traitorously agree, conspire and resolve to imprison, depose and murder his sacred Majesty, and to deprive him of his Regal State and Government. And then the same Article alledges farther, that they did contrive and consult to effect the Murder of the King, by Shooting, by Poisoning, and by Stabbing. All these Particulars are expressed; so that when my Lord said the Articles were therein defective, all we can say, is, that he was misinformed.

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

It has been also objected, that this Prosecution ought to have been upon an Indictment: As if an Accusation of the House of Commons, who are the Grand Inquest of the Nation, were not as effectual to bring Offenders to Justice, as the finding of a particular Jury.

My Lords, I should wonder to hear this Objection made, were not my Lord to be easily excused for his knowing the Law no better. None who know any thing in the Law, would have urged such

a thing; his Council, I dare say, did not suggest this Matter to him.

It is true, my Lords, when a Peer comes to be tried by way of Commission, or in Parliament when it is not at the Prosecution of the Commons, there an Indictment is first found in the proper County, and brought up before the Peers by *Certiorari*, and upon that they proceed; but whether the Party be a Peer or Commoner, if he be impeached for many Crimes, surely no one can deny, but that by the constant Usage of Parliaments the Lords have proceeded to Trial, and have given Judgment thereupon without an Indictment found: So that this Exception will be of no force at all.

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

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

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

Sir *F. Win.* My Lords, I had taken a Note of that, but forgot to mention it. If my Lord at the Bar will say they have taken Money to swear, that is purely a Matter of Fact, which he ought to prove; and that which is said and not proved, ought to go for nothing: Let him prove his Case to be so, and then we will give him an Answer.

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

L. Staff. My Lords, I submit it to your Lordships, whether Dr. *Oates* and the rest have not had great Sums of Money, besides their Charges 10 l. a-week a-piece. But I desire your Lordships to consider, and I appeal to many of your Lordships, whether it has not been said that there was a Defect in *Coleman's* and *Langborn's* Trials, that they did not plead that; and if they had pleaded it, they must have been acquitted: I will name no body, but I appeal

appeal to your Lordships whether some of you have not said so. But I desire your Lordships to admit me to plead by my Counsel; if not, I submit it to you. I confess here is a Piece of Law that I never heard of before, that the House of Commons, and your Lordships at a Conference, have adjudged it to be the Law of Parliaments, That Impeachments shall continue from Parliament to Parliament. If you will please to hear my Counsel for me, so; if not, I submit.

L. H. S. What would you, or can you prove?

L. Staff. My Lords, those things that I have given in to your Lordships, I desire my Counsel may be heard to,

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

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

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

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

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

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

L. Staff. My Lords, If you will declare the Law to be as these Gentlemen say, I must acquiesce.

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

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

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

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

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

L. Staff. Yes, my Lords.

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

L. Staff. They are, my Lords.

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

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

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

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

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

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

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

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

L. Staff. Here they are, my Lords.

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

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

L. H. S. Look you, Sir, you are of my Lord's Counsel.

Mr. *Wallop*. I am, my Lords; and by the Order of your Lordships do attend here.

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

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

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

Mr. *Wallop*. We would know what it is we are to argue, if your Lordships please.

L. H. S. Why, if you are provided for it, you are to maintain, that by Law every Overt-Act ought to be proved by two Witnesses; if you are prepared, speak to it, and my Lords will hear you.

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

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

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

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

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

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

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

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

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

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

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

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

Lords. Ay, Ay.

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

Then the Lords returned to their House in their Order, and the Committee of Commons staid in their Places to attend their Resolutions.

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

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

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

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

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

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

Mr. Just. *Jones*. My Lords, If several Witnesses speak to the same kind of Treason, altho' they speak to several Overt-Acts, and give Evidence of several times, the one of them speaking to one time, and the other to another time, yet keeping still to the same kind of Treason, they are such two Witnesses as are required by the Statute of *Edward III.* and this I take to be the constant Opinion of the Courts below.

Mr. Just. *Dolben*. My Lords, I am of the same Opinion, and I know it hath been many times so resolved: I have been present when Sentence hath passed upon Persons by whom the same Case hath been urged, and it hath been so resolved. And it hath been moved in *Westminster-Hall*, and that was the constant Opinion of the Judges there; particularly in the Case of Sir *Henry Vane*. It was upon solemn Debate resolv'd, and divers times it hath been held, That the same Treason may be prov'd by two Witnesses to several Overt-Acts, tho' one speak of Words or Actions that were spoken or done at one Time and in one Place, and another speak of Words or Actions at another Time and in another Place; these are two good Witnesses in Treason within the Intent of the Law; and if the Law were otherwise, 'twere scarce possible to convict any Man of Treason, and therefore I take it to be very clear.

Mr. Just. *Raymond*. I am of the same Opinion, That where several Circumstances are brought to prove the same Treason, one Witness to each of the several Circumstances is sufficient; and this, I conceive, hath been always the Opinion of the Judges.

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

Mr. Baron *Gregory*. My Lords, I am of the same Opinion, it is Treason to conspire the Death of the King: Now each of the Witnesses is a Witness to prove that Treason; the one says, he offer'd him such a Reward, in such a Place; that is one Witness to prove that he conspir'd the Death of the King; and another says, that he offer'd him such a Reward in another Place; that is another Witness that he conspir'd the Death of the King. For the Party is not indicted upon one particular Overt-Act, but he is indicted for Treason, in conspiring the Death of the King; and each of the Witnesses being to prove that, tho' they speak to several Acts, they are good Witnesses according to the Law.

Mr. Baron *Weston*. My Lords, I am of the same Opinion with my learned Brethren who have spoke before him.

Mr. Just. *Charlton*. My Lords, I am of the same Opinion; and I think truly it would be the easiest matter for a Man to commit Treason, and escape without questioning, if it should be otherwise. But this is the first Time that I have heard it hath been made a Question, that to the same Treason there must be two Witnesses to every Overt-Act.

It hath been adjudged always according to the Law, that to prove Treason there must be two Witnesses, but to an Overt-Act there needs but one.

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

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

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

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

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

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

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

Lords. Ay, ay.

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

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

Mr. *Speaker* resum'd the Chair.

A Message was sent from the Lords by Sir *Timothy Baldwin* and Sir *Samuel Clarke*.

Mr. *Speaker*. The Lords have sent us to acquaint this House, that they have ordered *William Viscount Stafford* to be brought again to the Bar in *Westminster-Hall*, on Monday-Morning next at Ten of the Clock.

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

THE SIXTH DAY.

Monday, December 6th, 1680.

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

The Court being sat, Proclamation for Silence was made, and the Lieutenant commanded to bring

bring his Prisoner to the Bar; which being done, the Lord High-Steward began.

L. H. S. Read my Lord *Stafford's* Petition.

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

Humbly shewing unto your Lordships,

THAT he hath some things to offer unto your Lordships in order to clear himself, which he hopeth to do.

Your Petitioner doth therefore, with all Humility, most humbly beseech your Lordships to give him leave to offer some things unto your Lordships Consideration. And your Petitioner shall ever pray, &c.

S T A F F O R D.

L. H. S. My Lord *Stafford*, My Lords have been willing, upon your Petition, to come and hear what that is that your Lordship hath to offer: And they would know whether it be Matter of Fact, or Matter of Law. For your Lordships must know, that as to Witnesses the Process is closed.

L. Stafford. I do not pretend any more Witnesses, my Lords.

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

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

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

the Form; for I hope you will keep that great Maxim of your noble Ancestors, *Nolumus Leges Angliæ mutare*: And whether this be a Change of the Law or no, I submit it to your Lordships.

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

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

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

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

I hope, my Lords, I have clear'd my self to your Lordships, and made my Innocency appear, by making appear the Perjury of the Witnesses, and the Falshood of those things they said against me. Against *Dugdale* I have proved it by two of his own Witnesses; the one was *Eld*, the Woman that swore for him, That he took up a Glass of Cyder and wish'd that it might be his Poison if he knew any thing of the Plot; the other was *Whitby*, who says, he had given my Lord *Aston's* Father warning long ago what a Knave he was. So 'tis clear. For *Dr. Oates* I hope from his Contradictions against himself as well as *Dugdale*, who does contradict himself, at one time *August*, at another time the latter End of *August* or the beginning of *September*: And I hope your Lordships will give no Credit to *Oates's* Testimony; for he said before your

Lordships

Lordships he had declared all he knew, ('tis true, I was then accused, but not for having a Commission, as he now swears) and afterwards he accus'd the Queen; so here is *Oates* against *Oates*, and *Dugdale* against *Dugdale*: And for *Turberville*, I have proved by his Affidavit, first he swears one thing and then another; and the Truth of it is, his Brother proved him false in his last Oath, that it was (71.) and not (72.)

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

L. H. S. What says my Lord? Speak out.

L. S'off. My Lords, I do believe since the Reformation from the Church of *Rome* to (what it is now establish'd) the Church of *England*, those of that Religion have had several wicked and ill Designs and Plots: I do believe they had a Design in Queen *Elizabeth's* Time, *Babington's* Plot, (that is a long time ago) how far it was to take away the Queen's Life I can't tell, but a Plot it was: And I do believe there was another in her Time, called *Earl of Westmoreland's* Plot, wherein there was a Rebellion in the *North*, for which some fled and some were executed, that was a very ill Design: As for those Poisonings of her Saddle, and the like, I take them to be but Stories.

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

My Lords, Next to that was the execrable Treason that I spoke of at first, the Gun-powder-Treason: And I protest before Almighty God, I did from my Infancy detest and abhor those Men that were engaged in it; and I do think, and always did think, the Wit of Man nor the Devil's Malice can't invent an Excuse for it. For the Men concern'd, they all acknowledg'd it, confess'd it, and begg'd pardon of the King, and God, and all good Men for it; that is all I shall say to that now.

My Lords, Since his Majesty's happy Restoration, I do conceive, and I think I may safely say it, (for you all know it) he was gracious and good to all Dissenters, particularly to them of the *Romish* Church; they had Connivance and Indulgence in their private Houses; and I declare to your Lordships, I did then say to some that were too open in their Worship, that they did play foul in taking more Liberty upon them than was fitting for them to do, and that brought the Misfortune upon me which I will not name.

My Lords, It was not long ago that your Lordships at your own Bar did allow all the Dissenters from the Church of *England* to give some Reasons to your Lordships why those Laws that were against them should be repeal'd, as well Protestant Dissenters as those of the Church of *Rome*, and why they should have some Kind of Toleration;

among whom you did permit those of the *Romish* Religion to appear too, I forget their Names. And I remember particularly one of the Sorts of them, an *Anabaptist* I think, did urge for a Reason, that which is a great Truth, That they held Rebellion to be the Sin of Witchcraft; I believe it is as bad as any Sin can be.

My Lords, That came to nothing at that time; but, my Lords, I believe that after that, all of all Religions had Meetings among themselves to endeavour to get that Toleration which they propos'd humbly to your Lordships; there I will never deny, my Lords, that my Opinion was, and is; that this Kingdom can never be happy till an Act of Parliament pass to this effect; it was my Opinion then, and I did endeavour it all I could, that the Dissenting Protestants might have a Comprehension, and the other a Toleration: I acknowledge it to be my Intention, and I think it was no ill one; for if that be a true Copy of the Commons Votes which is in Print, there is some such thing designing there as a Comprehension; and I was of opinion, that it were sufficient that such as were of the Church of *Rome* might by Act of Parliament serve God in their own Houses, and privately in their own way, not in publick; and that for it they should pay something to the King out of their Estates, but truly not much; that they should be severely punished if they or any of them did endeavour to persuade any Subject to their opinion, or did come to Court, or enjoy any Office whatsoever, though it were but that of a Scavenger, but that they should pay their Proportion to all chargeable Offices: That I profess, my Lords, was my Opinion, and I confess to your Lordships 'tis so still. I was in some hopes that it would have been done in that Session, because I was afraid it was unlikely to be done at any time else. I confess to your Lordships, I was heartily and cordially against the Test, because it hinder'd those just and honest things that were for the Good of the Kingdom.

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

My Lords, I do declare that ever since I had the Honour to set among your Lordships, which is now 40 Years, (for in the Year 1640, I was by his Majesty's Favour call'd up a Peer,) I have valued myself upon the Honour of sitting with you; and I do declare, when I have sat in this House, when your Lordships have desir'd the King, when it was hot Weather and unseasonable, to put off the sitting of the Parliament, I was never glad of it, but sorry when they were prorogued but for a short time. This I profess is true, and I hope I am no Criminal in it; for I do value the Parliament's sitting to be the only Means to keep this Kingdom quiet.

My Lords, 'Tis very true by *Coleman's* Letters, and what I have seen in Print since, I do believe there have been some Consultations for a Toleration;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Next I submit to your Lordships Judgments this Point, That the Impeachment being founded upon the Common Law, and the Statute of 25th *Edw. III.* and not upon the Statute of the 13th of this King, two of the Witnesses, *Dugdale* and *Turberville*, do only swear treasonable Words spoken by me, and not my Overt-Act; for they swear only that I promised them Money and Rewards to kill the King. Now I humbly pray your Lordships Judgment, whether bare speaking of Words be an Overt-Act, and Treason at the Common Law, or upon that Statute; and whether there be more than speaking of Words in a Consult, or otherwise proved by *Dugdale* and *Turberville*, I appeal to you. Then the other Witness, *Oates*, is but a single Witness, who speaks of the receiving of a Commission. This is that I offer to your Lordships now for your Judgments, and then I desire I may have your Opinion in other things.

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

L. Staff. For the present, my Lords.

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

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

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

L. Staff. I humbly conceive there is.

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

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

L. H. S. Otherwise Men may promise Rewards to twenty several Persons to kill the King, and then say 'tis all but Words.

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

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

L. Staff. My Lords, I have something to say, which I desire to speak first: My Lords, I hope I have cleared to your Lordships, that all the Witnesses have swore false against me, and this I have made out by Proofs: I say not much to that.—(*My Lord was searching for his Papers.*) Truly, my Lords, I am confounded with the Noise and other Circumstances; but, my Lords, I shall, if your Lordships please to give me leave, humbly represent my Case to you, how I take it to be in Matter of Fact, (as to my own Condition not any Thing, but) how I am now before your Lordships.

I was, my Lords, committed by my Lord Chief-Justice's Warrant, on the 20th or 21st of *October*, (78.) *Friday*, 25th of *October*, I was brought to your Lordships Bar; I was impeached; I do not remember the Day, my Lords, the Beginning of *December*; in one Parliament Articles exhibited against me; in another Parliament I was brought upon these Articles exhibited, and being called to your Lordships Bar, the Articles were read to me, and I gave in my Answer; that was some Time in *May* (79,) and in the End of *May*, the 27th, (if I mistake not, if I do, I desire it may be rectified by your Books) I, with the other Lords, were brought to this Place in order to our Trial. We staid some Time there, and then were remanded by your Order to the *Tower*, where I continued till *November* twelve Months after, without having heard any Thing concerning it. So that I was first impeached in one Parliament, Articles brought against me and pleaded to in a second, and now brought to my Trial in a third; and what your Lordships will say upon this, I submit to you; and whether these be Proceedings according to Law your Lordships will judge.

My Lords, I humbly conceive that *Magna Charta* says, That Justice shall be denied nor delayed to no Man; whether it hath not been delayed to me let your Lordships judge. If you say the Prorogation of the Parliament is the Cause of that Delay, I hope your Lordships will give me leave to say, That from the 5th of *December* to the 30th, when the first Parliament was prorogued, or during the Session of the other Parliament, there was Time enough sure wherein I might have been brought to my Trial; and if these Proceedings be lawful and just, there is no Man living, but may be kept off from Time to Time, till some Accidents happen that their Ends may be gained. I leave it to your Judgment, whether it may be only my Case now, or of some of your Lordships in future Ages, to be accused of Things that you never heard of before, and not brought to justify yourselves, but kept in Prison.

My Lords, There is a Statute, I have forgot where it is, (but such a one I have read) that tho' the King by his Great Seal, or little Seal, command that Justice should be delayed or denied, yet however the Judges shall not obey it, but proceed. So I hope there is no Pretence of Delay on my Part, and the Benefit of that Statute shall not be de-

nied me. And that Statute of the *Great Charter*, which cost so many of your Ancestors their Lives to maintain, I hope you will never go from. Now your Lordships noble Ancestors, amongst other Things, took great Care that Justice should be denied or delayed to none; and this I desire you to take into Consideration.

I am in your Lordships Judgment either to be acquitted or condemned. I hope your Lordships will, and I know you will, lay your Hands upon your Hearts, consult your Consciences and your Honours; and then you will do what is just and equitable, I doubt not.

My Lords, Mr. *Oates* said I came by the Name of Mr. *Howard* of *Effingham*, but that I did to my Letters sign *Stafford*; surely, my Lords, if I was ashamed to own my Person, I should have been as much ashamed to have owned my Name. He says, he saw me take a Commission, and whether that be an Overt-Act, your Lordships are to determine. Upon the whole Matter, I conceive, there is nothing proved against me but Words, nor pretended to, but only by *Oates*. And whether you will credit a Man that so dissembles with God, as I have told you, I appeal to your Lordships, and beg you to consider of it.

That these Witnesses have sworn for Money, if you send to the Exchequer-Office, and see what Money they have received, you will find by the great Sums that 'tis so; and then I hope you will not allow them to be heard, nor credit any that swear for Gain. I had a Suit in *Westminster-Hall*, that had like to have gone expressly against me, only because one of my Witnesses was to gain 8*l.* if the Suit went for me. But pray consider how much these Men have had. And for the Point, that there are not two Witnesses, I beseech your Lordships give me leave to put you in Mind, That not many Years ago, you passed an Act against Frauds and Perjuries, wherein you were so careful to preserve Mens Estates, that you required three Witnesses to prove a Will of Goods or Lands above 100*l.* and will you allow but one Witness to take away a Man's Life for Words? Though your Lordships will never commit Treason, yet no Man can preserve himself from the Misfortune that happens to me, of being falsely accused.

'Tis true, my Lords, the Managers have given an Answer to the Business of the Money, by saying, The King may give as liberally as he pleases; but to give so great Sums, whereby Men poor before, are now become rich, I think will be an Objection against their Credit.

My Lords, I have said what I do think convenient, though I think much more might be said by an abler Man to your Lordships, for the clearing of himself. I hope I have done it, nay, I am confident I have; and this I have done for the Memory of that Great and Blessed King, who first made me a Peer, that it may not be said he did me the Honour forty Years ago to call me up to this Dignity, and I should fly in the Face of his Son in so horrible a Manner as these Men would make me. I do owe it to the Honour of my Father and Mother, who, I think I may safely say, were both honourable and worthy Persons: My Father was a learned Man, and a wise Man, as I may appeal to some of your Lordships who knew him well; I say, I owe it to their Memory, and to the Honour of the Family from whence I sprang, which all the World knows what it is. And I should be

an infamous Man to dishonour them so much, as to bear their Name, and commit Treason. My Lords, I owe it to my Wife, who hath been a very kind Wife to me as ever Man had: She is Heiress at Law to the great Estate of that great and unfortunate Man *Stafford*, Duke of *Buckingham*, who was cut off in the Reign of King *Henry* the VIIIth, and all his Estate, if it were not for that Attainder, would have come to her.

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

of the Plot, or any such Thing, than any one here does. That those of the *Remiss* Religion had Meetings, I believe, to obtain those Ends that I spake of before: *Coleman* went too far; how far he was criminal in it, I can't tell. Meetings, I say, there were, but I was never at one of them, nor do I know what was done there. I do leave it to your Lordships to do Justice, as I know you will, and with all Submission I resign myself up to you.

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

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

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

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

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

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

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

for tho' we have not given his Lordship any Disturbance, yet we submit to your Judgment, whether it be regular, or according to the course of Proceedings, when his Lordship hath summ'd up his Evidence, and we that are the Prosecutors have concluded ours, he should begin that Work again; which, if it should be admitted, we were to reply, and he might rejoin upon us, and so there would be no end of Proceedings.

And, my Lords, I hope, tho' this Lord hath had the Favour to do it, yet it shall not for the future be brought into Example, for it will make Trials endless.

My Lords, For the Matter of Law, there is nothing that deserves an Answer; for tho' the Law does admit the Prisoner Counsel in Matters of Law, yet it must be in things doubtful; and if there be any thing of that in our Case, I submit it to your Lordships. I am sure, I have heard nothing new but what hath been over-ruled already, unless it be a Matter of Law which rises upon the Matter of Fact, and that not proved, to wit, the Corruption of Witnesses. The last Day, all was said by his Lordship he could say, and all said by us that we thought fit to say; and now to begin the same Matter again, I think ought not to be admitted. We shall not follow his Lordship in that way of Proceedings, and hope it shall never fall into Example.

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

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

L. H. S. Is it your Lordships Pleasure to adjourn?

Lords. Ay, Ay.

L. H. S. Then this House is adjourned to the Parliament-Chamber.

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

Mr. *Speaker* resum'd the Chair, and a Message was sent from the Lords by Sir *Timothy Baldwin* and Sir *Samuel Clarke*.

Mr. Speaker,

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

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

THE SEVENTH DAY.

Tuesday, December the 7th, 1680.

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

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

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

L. H. S. My Lord *Butler* of *Weston*, Is *William Lord Viscount Stafford* Guilty of the Treason whereof he stands impeached, or Not Guilty?

Lord Butler. Not Guilty upon my Honour.

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

Lord Arundel of *Trevice.* Not Guilty upon my Honour.

Lord Crew. Guilty upon my Honour.

Lord Cornwallis. Guilty upon my Honour.

Lord Halles. Not Guilty upon my Honour.

Lord Wootton. Not Guilty upon my Honour.

Lord Rockingham. Guilty upon my Honour.

Lord Lucas. Not Guilty upon my Honour.

Lord Astley. Guilty upon my Honour.

Lord Ward. Not Guilty upon my Honour.

Lord Byron. Not Guilty upon my Honour.

Lord Hatton. Not Guilty upon my Honour.

Lord Leigh. Guilty upon my Honour.

Lord Herbert of *Cherbury.* Guilty upon my Honour.

Lord Howard of *Esrick.* Guilty upon my Honour.

Lord Maynard. Guilty upon my Honour.

Lord Lovelace. Guilty upon my Honour.

Lord Deincourt. Not Guilty upon my Honour.

Lord Gray of *Werk.* Guilty upon my Honour.

Lord Brook. Guilty upon my Honour.

Lord Norris. Not Guilty upon my Honour.

Lord Chandois. Guilty upon my Honour.

Lord North and *Grey.* Guilty upon my Honour.

Lord Pagett. Guilty upon my Honour.

Lord Wharton. Guilty upon my Honour.

Lord Eure. Guilty upon my Honour.

Lord Cromwell. Guilty upon my Honour.

Lord Windsor. Not Guilty upon my Honour.

an infamous Man to dishonour them so much, as to bear their Name, and commit Treason. My Lords, I owe it to my Wife, who hath been a very kind Wife to me as ever Man had: She is Heiress at Law to the great Estate of that great and unfortunate Man *Stafford*, Duke of *Buckingham*, who was cut off in the Reign of King *Henry* the VIIIth, and all his Estate, if it were not for that Attainder, would have come to her.

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

of the Plot, or any such Thing, than any one here does. That those of the *Romish* Religion had Meetings, I believe, to obtain those Ends that I spake of before: *Coleman* went too far; how far he was criminal in it, I can't tell. Meetings, I say, there were, but I was never at one of them, nor do I know what was done there. I do leave it to your Lordships to do Justice, as I know you will, and with all Submission I resign myself up to you.

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

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

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

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

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

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

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

for tho' we have not given his Lordship any Disturbance, yet we submit to your Judgment, whether it be regular, or according to the course of Proceedings, when his Lordship hath summ'd up his Evidence, and we that are the Prosecutors have concluded ours, he should begin that Work again; which, if it should be admitted, we were to reply, and he might rejoin upon us, and so there would be no end of Proceedings.

And, my Lords, I hope, tho' this Lord hath had the Favour to do it, yet it shall not for the future be brought into Example, for it will make Trials endless.

My Lords, For the Matter of Law, there is nothing that deserves an Answer; for tho' the Law does admit the Prisoner Counsel in Matters of Law, yet it must be in things doubtful; and if there be any thing of that in our Case, I submit it to your Lordships. I am sure, I have heard nothing new but what hath been over-ruled already, unless it be a Matter of Law which rises upon the Matter of Fact, and that not proved, to wit, the Corruption of Witnesses. The last Day, all was said by his Lordship he could say, and all said by us that we thought fit to say; and now to begin the same Matter again, I think ought not to be admitted. We shall not follow his Lordship in that way of Proceedings, and hope it shall never fall into Example.

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

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

L. H. S. Is it your Lordships Pleasure to adjourn?

Lords. Ay, Ay.

L. H. S. Then this House is adjourned to the Parliament-Chamber.

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

Mr. Speaker resum'd the Chair, and a Message was sent from the Lords by Sir *Timothy Baldwyn* and Sir *Samuel Clarke*.

Mr. Speaker,

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

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

THE SEVENTH DAY.

Tuesday, December the 7th, 1680.

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

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

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

L. H. S. My Lord *Butler* of *Weston*, Is *William* Lord *Viscount Stafford* Guilty of the Treason whereof he stands impeached, or Not Guilty?

Lord Butler. Not Guilty upon my Honour.

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

Lord Arundel of *Trerice.* Not Guilty upon my Honour.

Lord Crew. Guilty upon my Honour.

Lord Cornwallis. Guilty upon my Honour.

Lord Holles. Not Guilty upon my Honour.

Lord Wootton. Not Guilty upon my Honour.

Lord Rockingham. Guilty upon my Honour.

Lord Lucas. Not Guilty upon my Honour.

Lord Astley. Guilty upon my Honour.

Lord Ward. Not Guilty upon my Honour.

Lord Byron. Not Guilty upon my Honour.

Lord Hatton. Not Guilty upon my Honour.

Lord Leigh. Guilty upon my Honour.

Lord Herbert of *Cherbury.* Guilty upon my Honour.

Lord Howard of *Escrick.* Guilty upon my Honour.

Lord Maynard. Guilty upon my Honour.

Lord Lovelace. Guilty upon my Honour.

Lord Deincourt. Not Guilty upon my Honour.

Lord Grey of *Werk.* Guilty upon my Honour.

Lord Brook. Guilty upon my Honour.

Lord Norris. Not Guilty upon my Honour.

Lord Chandois. Guilty upon my Honour.

Lord North and *Grey.* Guilty upon my Honour.

Lord Pagett. Guilty upon my Honour.

Lord Wharton. Guilty upon my Honour.

Lord Eure. Guilty upon my Honour.

Lord Cromwell. Guilty upon my Honour.

Lord Windfor. Not Guilty upon my Honour.

Lord *Conyers*. Guilty upon my Honour.
 Lord *Ferrers*. Not Guilty upon my Honour.
 Lord *Morley*. Not Guilty upon my Honour.
 Lord *Moxbray*. Not Guilty upon my Honour.
 Lord Visc. *Newport*. Guilty upon my Honour.
 Lord Visc. *Faulconberge*. Guilty upon my Honour.

Earl of *Conway*. Guilty upon my Honour.
 Earl of *Berkeley*. Not Guilty upon my Honour.
 Earl of *Macclesfield*. Guilty upon my Honour.
 Earl of *Hallifax*. Not Guilty upon my Honour.
 Earl of *Feversham*. Not Guilty upon my Honour.
 Earl of *Suffex*. Guilty upon my Honour.
 Earl of *Guilford*. Guilty upon my Honour.
 Earl of *Shaftesbury*. Guilty upon my Honour.
 Earl of *Burlington*. Guilty upon my Honour.
 Earl of *Ailesbury*. Not Guilty upon my Honour.
 Earl of *Craven*. Not Guilty upon my Honour.
 Earl of *Carlisle*. Guilty upon my Honour.
 Earl of *Bath*. Not Guilty upon my Honour.
 Earl of *Essex*. Guilty upon my Honour.
 Earl of *Clarendon*. Not Guilty upon my Honour.
 Earl of *St. Albans*. Not Guilty upon my Honour.
 Earl of *Scarsdale*. Guilty upon my Honour.
 Earl of *Sunderland*. Guilty upon my Honour.
 Earl of *Thanz*. Not Guilty upon my Honour.
 Earl of *Chesterfield*. Not Guilty upon my Honour.

Earl of *Carnarvon*. Not Guilty upon my Honour.
 Earl of *Winchelsea*. Guilty upon my Honour.
 Earl of *Stamford*. Guilty upon my Honour.
 Earl of *Peterborough*. Not Guilty upon my Honour.

Earl of *Rivers*. Guilty upon my Honour.
 Earl of *Mulgrave*. Guilty upon my Honour.
 Earl of *Berkshire*. Guilty upon my Honour.
 Earl of *Manchester*. Guilty upon my Honour.
 Earl of *Westmoreland*. Guilty upon my Honour.
 Earl of *Clare*. Guilty upon my Honour.
 Earl of *Bristol*. Guilty upon my Honour.
 Earl of *Denbigh*. Not Guilty upon my Honour.
 Earl of *Northampton*. Guilty upon my Honour.
 Earl of *Leicester*. Guilty upon my Honour.
 Earl of *Bridgewater*. Guilty upon my Honour.
 Earl of *Salisbury*. Guilty upon my Honour.
 Earl of *Suffolk*. Guilty upon my Honour.
 Earl of *Bedford*. Guilty upon my Honour.
 Earl of *Huntingdon*. Guilty upon my Honour.
 Earl of *Rutland*. Not Guilty upon my Honour.
 Earl of *Kent*. Guilty upon my Honour.
 Earl of *Oxford*. Guilty upon my Honour.
 Lord *Chamberlain*. Not Guilty upon my Honour.
 Marquis of *Worcester*. Not Guilty upon my Honour.

Duke of *Newcastle*. Not Guilty upon my Honour.
 Duke of *Monmouth*. Guilty upon my Honour.
 Duke of *Albmarle*. Guilty upon my Honour.
 Duke of *Buckingham*. Guilty upon my Honour.
 Lord *Privy-Seal*. Guilty upon my Honour.
 Lord *President*. Guilty upon my Honour.
 Lord *High-Steward*. Guilty upon my Honour.
 Prince *Rupert*, Duke of *Cumberland*. Guilty upon my Honour.

L. H. S. My Lords, Upon telling your Votes, I find there are Thirty-one of my Lords that think the Prisoner Not Guilty, and Fifty-five that have found him Guilty. Serjeant, Make Proclamation for the Lieutenant of the *Tower* to bring his Prisoner to the Bar.

[Which was done, and his Lordship came to the Bar.]

L. H. S. My Lord *Stafford*, I have but heavy Tidings for you; your Lordship hath been impeached of High-Treason, you have pleaded Not Guilty; my Lords have heard your Defence, and have consider'd of the Evidence, and their Lordships do find you Guilty of the Treason whereof you are impeached.

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

L. H. S. What can your Lordship say for yourself, why Judgment of Death should not be given upon you according to the Law?

L. Stafford. My Lords, I have but very little to say; I confess, I am surpriz'd at it, for I did not expect it; but God's Will be done, and your Lordships, I will not murmur at it: God forgive those that have sworn falsely against me. My Lord, I conceive I have something to say for respite of Judgment: I have been at many Trials in my Life, but I never saw any Trial where the Party tried did not hold up his Hand, which I was never ask'd to do: I thought it had been a very material Point in the Law, that by the holding up of the Hand he might be known to be the Person. I have read lately, since I had the Misfortune to be thus accused, Sir *Edmond Coke* upon the Pleas of the Crown; and he says, That Misnomer, the not giving a Man his right Name, or Addition, is likewise a just Cause to arrest the Judgment. There is likewise another Question, how far it may be valued I know not; I submit it, as I do all, to your Lordships. Tho' I am tried upon the Act of the 25th of *Edw. III.* yet there is nothing more in that Act, than what is included in the Act of the 13th of this King; and I humbly conceive, my Lords, by that Act, and the last Proviso in it, a Peir that is accused and found guilty of the Crimes therein mentioned, is to lose his Seat in Parliament; those are the Words; and since 'tis so put down in the Act, it is so to be understood, and that is all the Punishment. And I humbly demand your Lordships Judgment upon these Points, whether it be so or no.

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

L. Staff. No, my Lords, I submit to your Lordships, and desire your Judgment in these Points.

Then the Lords adjourned into the Parliament-Chamber, and the Committee of Commons returned to their own House; and their Speaker having resumed the Chair, the whole Body of the House went with their Speaker to the Bar of the House of Lords, to demand Judgment of High-Treason against *William Viscount Stafford*, upon the Impeachment of the Commons of *England* in Parliament, in the Name of the Commons in Parliament, and of all the Commons of *England*.

The Commons, with their Speaker, went back to their House.

Then the Lords took into Consideration what Judgment was to be given upon *William Viscount Stafford*, and it was moved that he might be beheaded. After some Debate, the Judges were asked, whether if any other Judgment than the usual Judgment for High-Treason were given upon him, it would attaint his Blood? The Judges were of Opinion, that the Judgment for High-Treason appointed by Law, is to be drawn, hanged, and quartered; and in the Courts and Proceedings below, they can take no notice of any Judgment for High-Treason but that.

Then Sir *Creswell Levinz*, the King's Attorney-General, desired to be heard on his Majesty's behalf,

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

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

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

Mr. Speaker,

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

[Mr. Speaker left the Chair.]

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

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

L. H. S. My Lord *Stafford*,

THAT which your Lordship hath said in Arrest of Judgment hath been found by my Lords, upon due Consideration had of it, to be of no moment at all. It is no essential Part of any Trial, That the Prisoner should hold up his Hand at the Bar; there is no Record ever made of it when it is done; the only Use of it is to shew the Court who the Prisoner is, and when that is apparent, the Court does often proceed against him, though he refuse to hold up his Hand at the Bar; therefore the Omission of that Ceremony, in this Case, is no legal Exception, as all the Judges have declared.

And as to the Proviso's in the Statute of the 13th Year of this King, their Lordships do find that they are in no Sort applicable to this Case, forasmuch as the Proceedings against your Lordship are not grounded upon that Statute, but upon the Statute of 25 *Edw. III.* And yet if the Proceedings had been upon the latter Statute, the Proviso's therein could have done your Lordship no Service at all.

My Part therefore which remains, is a very sad one: For I never yet gave Sentence of Death upon any Man, and am extremely sorry that I must begin with your Lordship.

Who would have thought that a Person of your Quality, of so noble an Extraction, of so considerable Estate and Fortune, so eminent a Sufferer in the late ill Times, so interested in the pre-

‘ fervation of the Government, so much obliged to the Moderation of it, and so personally obliged to the King and his Royal Father for their particular Favours to you, should ever have entered into so infernal a Conspiracy as to contrive the Murder of the King, the Ruin of the State, the Subversion of Religion, and, as much as in you lay, the Destruction of all the Souls and Bodies in three Christian Nations?

‘ And yet the Impeachment of the House of Commons amounts to no less a Charge, and of this Charge their Lordships have found you Guilty.

‘ That there hath been a general and desperate Conspiracy of the Papists, and that the Death of the King hath been all along one chief Part of the Conspirators Design, is now apparent beyond all Possibility of doubting.

‘ What was the meaning of all those Treatises which were published about two Years since against the Oath of Allegiance, in a Time when no Man dreamt of such a Controversy? What was the meaning of Father *Conyers's* Sermon upon the same Subject, but only because there was a Demonstration of Zeal, as they call it, intended against the Person of the King? Which the Scruples arising from that Oath did somewhat hinder:

‘ To what Purpose were all the Correspondencies with foreign Nations? The Collections of Money, among the Fathers Abroad and at Home? What was the meaning of their governing themselves here by such Advices as came frequently from *Paris* and *St. Omers*? And how shall we expound that Letter which came from *Ireland*, to assure the Fathers here, that all Things were in a readiness there too, as soon as the Blow should be given?

‘ Does any Man now begin to doubt how *London* came to be burnt? Or by what Ways and Means poor Justice *Godfrey* fell? And is it not apparent by these Instances, that such is the frantick Zeal of some bigotted Papists, that they resolve, no Means to advance the Catholick Cause shall be left unattempted, though it be by Fire and Sword?

‘ My Lord, As the Plot in general is most manifest, so your Lordship's Part in it hath been too plain. What you did at *Paris*, and continued to do at *Tixall* in *Staffordshire*, shews a settled Purpose of Mind against the King; and what you said at *London* touching honest *Will*, shews you were acquainted with that Conspiracy against the King's Life which was carrying on here too: And in all this there was a great Degree of Malice; for your Lordship at one Time called the King Heretick and Traitor to God; and at another Time you reviled him for misplacing his Bounty, and rewarding none but Traitors and Rebels.

‘ And thus you see that which the Wise-Man forewarned you of, is come upon you: *Curse not the King, no, not in thy Heart: For the Birds of the Air shall reveal, and that which bath Wings will declare the Matter.*

‘ Three Things I shall presume to recommend to your Lordship's Consideration. In the first Place, your Lordship now sees how it hath pleased God to leave you so far to yourself, that you are fallen into the Snare, and into the Pit, into that very Pit which you were digging for others. Consider therefore, that God Almighty never yet left any Man, who did not first leave him.

‘ In the next Place, Think a little better of it
‘ than hitherto you have done, what kind of Re-
‘ ligious that is, in which the blind Guides have
‘ been able to lead you into so much Ruin and De-
‘ struction as is now like to befall you.

‘ In the last Place, I pray your Lordship to con-
‘ sider, That true Repentance is never too late. A
‘ devout penitential Sorrow, joined with an hum-
‘ ble and hearty Confession, is of mighty Power
‘ and Efficacy both with God and Man.

‘ There have been some of late who have refused
‘ to give God the glory of his Justice by acknow-
‘ ledging the Crimes for which they were condemn-
‘ ed; nay, who have been taught to believe, that
‘ ’tis a mortal Sin to confess that Crime in publick,
‘ for which they have been absolved in private;
‘ and so have not dared to give God that Glory
‘ which otherwise they would have done.

‘ God forbid your Lordship should rest upon
‘ Forms; God forbid your Lordship should be
‘ found among the Number of those poor mistaken
‘ Souls, whom the first Thing that undeceives is
‘ Death itself.

‘ Perhaps your Lordship may not much esteem
‘ the Prayers of those whom you have long been
‘ taught to miscall Hereticks; but whether you
‘ do or no, I am to assure your Lordship, That all
‘ my Lords here, even they that have condemned
‘ you, will never cease to pray for you, That the
‘ End of your Life may be Christian and Pious,
‘ how tragical soever the Means are that must bring
‘ you thither.

‘ And now, my Lord, this is the last Time that
‘ I can call you my Lord; for the next Words I
‘ am to speak will attain you †.

‘ The Judgment of the Law is, and this Court
‘ doth award, That

YOU go to the Place from whence you came; from
thence you must be drawn upon a Hurdle to the
Place of Execution: When you come there, you must
be hanged up by the Neck, but not till you are dead;
for you must be cut down alive, your Privy-Members
must be cut off, and your Bowels ript up before your Face,
and throen into the Fire. Then your Head must be
severed from your Body, and your Body divided into
four Quarters; and these must be at the Disposal of
the King. And God Almighty be merciful to your Soul.

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

L. H. S. My Lord *Stafford*, I believe I may,
with my Lords leave, tell you one Thing further,
That my Lords, as they proceed with Rigor of

† This Attainder was attempted to be reversed in 1 Jac. II.
and a Bill for that Purpose passed the House of Lords, but was
dropped in the House of Commons.

Justice, so they proceed with all the Mercy and
Compassion that may be; and therefore my Lords
will be humble Suitors to the King, that he will
remit all the Punishment but the taking off your
Head.

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

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

His Majesty afterward ordered the Lord High-
Chancellor to issue out under the Great-Seal of *Eng-
land* the following Writs for executing the said
late Viscount *Stafford*; the first being to the Lieu-
tenant of the *Tower*, to deliver him on the 29th
of *December* 1680, between nine and eleven
o’Clock in the Forenoon, at the usual Place with-
out the *Tower-Gate*, to the Sheriffs of *London* and
Middlesex; and the other being for them then and
there to receive him into their Custody, and to
lead him to the usual Place upon *Tower-Hill*, and
there to cause his Head to be cut off, and severed
from his Body: Which Writs were in Form fol-
lowing:

CAROLUS Secundus Dei gratia Angliæ, Scotiæ,
Franciæ, & Hiberniæ Rex, fidei defensor,
&c. Locumtinenti Turris nostræ London salutem: Cum
Will’ Vicecomes Stafford, per Communes Regni nostri
Angliæ in Parlamento assemblat’, de alta prodicione
necnon diversis aliis criminibus & offensis per ipsum
perpetrat’ & commissis, impetit’ fuit, ac superinde
per Dominos Temporales in presenti Parlamento no-
stro convent’, triat’, convict’ & debita juris forma
attinet’ fuit, & morti adjudicat’ existit; cujus quidem
Judicii executio adhuc restat facienda. Cumq; præ-
dictus Vicecomes Stafford in Turri nostra London, sub
custodia tua detent’ existit: Præcipimus tibi & per
præsentes firmiter injungendo mandamus, quod in &
super vicessimum unum diem instantis mensis Decem-
bris, inter horas nonam & undecimam, ante Meri-
diem ejusdem diei, ipsum Vicecomitem Stafford, usq;
locum usulem extra portam Turris prædictæ ducas; ac
ipsum, Vicecomitibus Civitatis nostræ London & Mid-
dlesex, adtunc & ibidem deliberes: Quibus quidem Vice-
comitibus nos per aliud breve eis inde direct’, percepimus
prædictum Vicecomitem Stafford adtunc & ibidem reci-
pere, ut fiat executio Judicii prædicti, modo & forma
prout dictis Vicecomitibus London & Middlesex, per
aliud breve nostrum prædictum præcipimus: Et hoc
nullatenus omittas, sub periculo incumbente; aliquo
Judicio. Loge, Ordinatione, seu mandato præcætes
habiti, fact’, ordinat’, seu dat’ in contrarium non ob-
stante. Teste meipso apud Westm. decimo octavo die
Decembris, Anno regni nostri tricesimo secundo.

BARKER.

CAROLUS Secundus Dei gratia Angliæ, Scotiæ,
Franciæ & Hiberniæ Rex, fidei defensor, &c. Vic.
London & Vic. Middlesex salutem: Cum Will’ Vi-
cecomes Stafford, per Communes regni nostri Angliæ
in Parlamento assemblat’, de alta prodicione, necnon
diversis aliis criminibus & offensis per ipsum perpe-
trat’ & commissis impetit’ fuit; ac superinde per Do-
minos Temporales in presenti Parlamento nostro con-
vent’, triatus, convict’ & debita juris forma attinet’
fuit, & morti adjudicat’ existit; cujus quidem Judi-
cii

ei executio ad huc restat facienda; Præcipimus vobis, & per præsentem firmiter injungendo mandamus, quod in & super vicesimum nonum diem hujus instantis Decembris, inter horas nonam & undecimam, ante meridiem ejusdem diei, dictum Vicecomitem Stafford, extra Portam Turris nostræ London, vobis tunc & ibidem deliberandum, prout per aliud breve Locumtenenti Turris nostræ London directum præcepimus, in custodiam vestram ad tunc & ibidem recipiatis, & ipsum sic in custodia vestra existentem, statim usque usualem locum super le Tower-hill ducatis; ac caput ipsius Will. Vicecomitis Stafford, ad tunc & ibidem amputari, ac a corpore suo omnino separari faciatis; aliquo Judicio, Lege, Ordinatione, seu Mandato præantea habit, fact, ordinat, seu dat in contrarium, non obstante: Et hoc (sub periculo incumbente) nullatenus omittatis. Teste meipso apud Westm. decimo octavo die Decembris, Anno regni nostri tricesimo secundo.

BARKER.

There were two Writs to the Sheriffs, both alike *verbatim*, one delivered in *London*, the other in *Middlesex*.

Whereupon the Sheriffs doubting whether that was a sufficient Authority for them to execute the Prisoner by Beheading only, the Sentence of Death being otherwise given, petitioned the Lords in Parliament to take the Premises into Consideration, and to make such Order as should be agreeable to Right and Justice, as by the following Petition appears.

To the Right Honourable the Lords Temporal in Parliament assembled; The Humble Petition of Slingsby Bethel, Esq; and Henry Cornish, Esq; Sheriffs of London and Middlesex:

Sheweth,

THAT your Petitioners have received a Writ under the Great Seal of *England*, reciting, That Judgment had been given by your Lordships against *William Viscount Stafford*, for High-Treason, and divers other Crimes and Offences, upon the Impeachment of the Commons in Parliament assembled, and commanding your Petitioners to cause the said Viscount *Stafford's* Head to be sever'd from his Body upon the 29th Day of this instant *December*, notwithstanding any Judgment, Law, Ordinance, or Command to the contrary:

That your Petitioners have not as yet received any Command from your Lordships for executing the said Judgment.

May it therefore please your Lordships to take the Premises into Consideration, and to make such Order therein, as shall be agreeable to Right and Justice. And your Petitioners shall always pray, &c.

Upon which Petition, the Lords did declare as followeth:

Die Martis 21 Decembris, 1680.

UPON Application from the Sheriffs of *London* and *Middlesex*, making some Scruples concerning the Execution of the late Lord *Viscount Stafford*, which were found by this

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

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

Die Jovis 23 Decembris, 1680.

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

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

Before the Prisoner came, several People were upon the Scaffold, among which were two appointed to write.

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

BY the Permission of Almighty God, I am this Day brought hither to suffer Death, as if I were guilty of High-Treason. I do most truly, in the Presence of the Eternal, Omnipotent, and All-knowing God, protest, upon my Salvation, That I am as innocent as it is possible for any Man to be, so much as in a Thought, of the Crimes laid to my Charge.

I acknowledge it to be a particular Grace and Favour of the Holy Trinity, to have given me this long time to prepare myself for Eternity. I have not made so good use of that Grace as I ought to have done, partly by my not having so well recollected myself as I might have done, and partly, because not only my Friends, but my

Wife

‘ Wife and Children have for several Days been
 ‘ forbidden to see me, but in the Presence of one
 ‘ of my Warders. This hath been a great Trouble
 ‘ and Distraction unto me, but I hope God of his
 ‘ infinite Mercy will pardon my Defects, and ac-
 ‘ cept of my good Intentions.

‘ Since my long Imprisonment, I have consider’d
 ‘ often, what could be the original Cause of my
 ‘ being thus accused, since I knew myself not cul-
 ‘ pable, so much as in a Thought ; and I cannot
 ‘ believe it to be upon any other Account than my
 ‘ being of the Church of *Rome*. I have no reason
 ‘ to be ashamed of my Religion, for it teacheth
 ‘ nothing but the right Worship of God, Obe-
 ‘ dience to the King, and due Subordination to
 ‘ the temporal Laws of the Kingdom. And I do
 ‘ submit to all Articles of Faith believed and
 ‘ taught in the Catholick Church, believing them
 ‘ to be most consonant to the Word of God.
 ‘ And whereas it hath so much and often been ob-
 ‘ jected, that the Church holds that Sovereign
 ‘ Princes, excommunicated by the Pope, may, by
 ‘ their Subjects, be deposed or murdered : As to
 ‘ the Murder of Princes, I have been taught as a
 ‘ Matter of Faith in the Catholick Church, that
 ‘ such Doctrine is diabolical, horrid, detestable,
 ‘ and contrary to the Law of God, Nature, and
 ‘ Nations; and as such, from my Heart I renounce
 ‘ and abominate it. As for the Doctrine of depo-
 ‘ sition of Princes, I know some Divines of the Catho-
 ‘ lick Church hold it; but as able and learned as
 ‘ they have writ against it: But it was not pre-
 ‘ tended to be the Doctrine of the Church, that
 ‘ is, any Point of Catholick Faith : Wherefore I
 ‘ do here in my Conscience declare, that it is my
 ‘ true and real Judgment, that the same Doctrine
 ‘ of deposing Kings, is contrary to the fundamen-
 ‘ tal Laws of this Kingdom, injurious to Sovereign
 ‘ Power, and consequently would be in me or any
 ‘ other of his Majesty’s Subjects, impious and
 ‘ damnable. I believe and profess, that there is one
 ‘ God, one Saviour, one Holy Catholick Church,
 ‘ of which, through the Mercy, Grace, and Good-
 ‘ ness of God, I die a Member.

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

‘ All the Members of either House having Li-
 ‘ berty to propose in the House what they think fit
 ‘ for the Good of the Kingdom ; accordingly, I
 ‘ proposed what I thought fit ; the House is Judge
 ‘ of the Fitness or Unfitness of it ; and I think I
 ‘ never said any thing that was unfitting there, or
 ‘ contrary to the Law and Use of Parliament ;
 ‘ for certainly if I had, the Lords would (as they
 ‘ might) have punished me : So am not culpable
 ‘ before God or Man.

‘ It is much reported of Indulgences, Dispen-
 ‘ sations, and Pardons, to murder, rebel, lie, for-
 ‘ swear, and commit such other Crimes held and
 ‘ given in the Church ; I do here profess, in the
 ‘ Presence of God, I never learnt, believed, or
 ‘ practised any such Thing, but the contrary ; and
 ‘ I speak this without any Equivocation or Reser-
 ‘ vation whatsoever: And certainly, were I guilty,
 ‘ either myself, or knew of any one that were guilty,
 ‘ whosoever that were so, of any of those Crimes
 ‘ of which I am accused, I were not only the great-
 ‘ est Fool imaginable, but a perfect Mad-man, and
 ‘ as wicked as any of those that so falsely have ac-
 ‘ cus’d me, if I should not discover any ill Design

‘ I knew in any kind, and so upon Discovery save
 ‘ my Life, I have so often had so fair Occasions
 ‘ proposed unto me, and so am guilty of Self-
 ‘ Murder, which is a most grievous and heinous
 ‘ Sin ; and though I was last impeached at the
 ‘ Lords Bar, yet I have great Grounds to believe,
 ‘ that I was first brought to Trial, on the Belief,
 ‘ that to save my Life, I would make some
 ‘ great Discovery ; and truly so I would, had I
 ‘ known any such thing of any ill Design, or illegal
 ‘ dangerous Plot, either of myself, or any other
 ‘ Person whatsoever, without any Exception. But
 ‘ had I a thousand Lives, I would lose them all,
 ‘ rather than falsely accuse either myself, or any
 ‘ other whatsoever. And if I had known of any
 ‘ Treason, and should thus deny it, as I do now
 ‘ upon my Salvation at this time, I should have no
 ‘ Hope of Salvation, which now I have, through
 ‘ the Merits of Christ Jesus.

‘ I do beseech God to bless his Majesty, who is
 ‘ my lawful King and Sovereign, whom I was al-
 ‘ ways, by all Laws human and divine, bound to o-
 ‘ bey ; and I am sure that no Power on Earth, ei-
 ‘ ther singly or all together, can legally allow me,
 ‘ or any body else, to lift up a Hand against him,
 ‘ or his legal Authority. I do hold that the Con-
 ‘ stitution of the Government of this Kingdom is
 ‘ the only way to continue Peace and Quietness,
 ‘ which God long continue.

‘ Next to Treason, I hold Murder in Abhorrence,
 ‘ and have ever done and do ; and I do sincerely
 ‘ profess, that if I could at this time free myself
 ‘ immediately, and establish what Religion I
 ‘ would, and what Government I would, and
 ‘ make myself as great as I could wish, and all
 ‘ by the Death of one of these Fellows, that by
 ‘ their Perjuries have brought me to the Place
 ‘ where I am, I so much abhor to be the Cause
 ‘ of any Man’s Death, that I would not any way
 ‘ be the Cause of their Murder ; how much less
 ‘ would I endeavour the Assassination of his Ma-
 ‘ jesty, whom I hold to be as gracious a King as
 ‘ ever this, or any other Nation had, and under
 ‘ whom the People may enjoy their Liberties, as
 ‘ much as ever any did ? And if it please God to
 ‘ grant him Life and Happiness, according as I
 ‘ have always wished and pray’d for, I am morally
 ‘ persuaded, that he, and all his Dominions, will
 ‘ be as happy and prosperous as ever People were,
 ‘ which I beseech God grant.

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

‘ I do desire that all People will forgive me any
 ‘ Injury that I have done them in any thing, ei-
 ‘ ther willfully or by Chance ; and I do heartily
 ‘ forgive all People in this World that have injur’d
 ‘ me ; I forgive even those perjured Men, that
 ‘ so falsely have brought me hither by their Per-
 ‘ juries.

‘ I do now upon my Death and Salvation aver,
 ‘ That I never spoke one Word either to *Oates* or
 ‘ *Turbervile*, or, to my Knowledge, ever saw them
 ‘ until my Trial ; and for *Dugdale*, I never spoke
 ‘ unto him of any thing, but about a Foot-boy, or

‘ Foot-man, or Foot-Race; and never was then
 ‘ alone with him: All the Punishment that I wish
 ‘ them, is, that they may repent and acknowledge
 ‘ the Wrong that they have done me; then it will
 ‘ appear how innocent I am: God forgive them!
 ‘ I have a great Confidence that it will please Al-
 ‘ mighty God, and that he will, in a short time,
 ‘ bring Truth to Light; then you, and all the
 ‘ World, will see and know what Injury they
 ‘ have done me.

‘ I hope that I have made it appear that I have
 ‘ some Conscience; for if I had none, certainly I
 ‘ would have saved my Life, by acknowledging
 ‘ myself guilty; which I could have done, though
 ‘ I know I am not in the least guilty. And I ha-
 ‘ ving some Conscience, make very ill use of it,
 ‘ for I throw myself into eternal Pain, by thus
 ‘ plainly and constantly denying at my Death,
 ‘ the Knowledge of what I am accused of in the
 ‘ least.

‘ I have said thus much in discharge of my Con-
 ‘ science, and do aver, upon my Salvation, what
 ‘ I have said to be really true.

‘ I shall say little of my Trial; and whether it
 ‘ were all according to the known Law, I am too
 ‘ much a Party to say much of it: if it were not
 ‘ so, God forgive him or them that were the Cause
 ‘ of it.

‘ My Judges were all Persons of Honour, who
 ‘ were all as much bound to judge rightly, as if
 ‘ they had been upon Oath upon what was legally
 ‘ proved; and not to vote but according as in their
 ‘ Consciences they were satisfied; and if any of
 ‘ them did otherwise, upon any Account whatso-
 ‘ ever, I beseech God forgive them, I do hear-
 ‘ tily.

‘ I shall end with my hearty Prayers for the Hap-
 ‘ piness of his Majesty, that he may enjoy all Hap-
 ‘ piness in this World and the World to come,
 ‘ and govern his People according to the Laws of
 ‘ God; and that the People may be sensible what
 ‘ a Blessing God hath so miraculously given them,
 ‘ and obey him as they ought. I ask Pardon with
 ‘ a prostrate Heart of Almighty God, for all the
 ‘ great Offences that I have committed against his
 ‘ Divine Majesty, and hope, through the Merits
 ‘ and Passion of Christ Jesus, to obtain everlasting
 ‘ Happiness, into whose Hands I commit my
 ‘ Spirit, asking Pardon of every Person that I have
 ‘ done any Wrong unto; I do freely forgive all that
 ‘ have any ways wronged me; I do, with all the
 ‘ Devotion and Repentance that I can, humbly
 ‘ invoke the Mercy of our Blessed Saviour.

‘ I beseech God not to revenge my innocent
 ‘ Blood upon the Nation, or on those that were
 ‘ the Cause of it, with my last Breath. I do with
 ‘ my last Breath truly assert my Innocency, and

‘ hope the omnipotent; all-seeing, just God will
 ‘ deal with me accordingly.’

His Speech being ended, he deliver’d several Co-
 pies signed with his own Hand, to Mr. Sheriff
Cornish, and other Gentlemen about him; one
 whereof, wrote with his own Hand, he sent to
 the King. He then desired he might have Liber-
 ty to pray in his own Way, which being granted;
 he kneeled down by the Block, and taking out of
 his Pocket another Paper, he read a *Latin* Prayer;
 which done, he gave the Paper to Mr. Sheriff *Be-
 tbel*, and then spoke to the People about the Scaf-
 fold to this effect; *God bless you all, Gentlemen;
 God preserve his Majesty; he is as good a Prince as
 ever govern’d you: Obey him as faithfully as I have
 done, and God bless you all, Gentlemen.* Then a
 Minister applied himself, and said, *Sir, Do you
 disown the Indulgences of the Romish Church?* To
 which he answer’d with great Passion, *Sir, What
 have you to do with my Religion? However, I do say,
 that the Church of Rome allows no Indulgences for
 Murder, Lying, &c. and whatever I have said is
 true.*

Min. *Have you received no Absolution?*

Answ. *I have received none at all.*

Min. *You said that you never saw those Witnesses.*

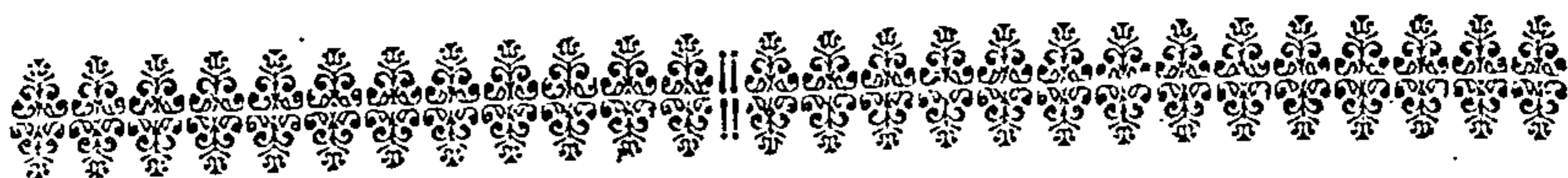
Answ. *I never saw any of them but Dugdale, and
 that was at a time when I spoke to him about a Foot-
 Boy.*

Then turning about to his Friends, he distribu-
 ted among them his Watch, two Rings off his
 Fingers, his Staff, and his Crucifix from off his
 Neck; and his Gentleman stripping him of his
 Coat and Peruke, put on his Head a Silk Cap;
 and having accommodated his Hair, Shirt and
 Waistcoat for the Execution, he laid down his
 Neck on the Block and stretched himself.

The Executioner being demanded by the She-
 riffs, Whether he had any Sign, he answer’d; No,
 Whereupon the Prisoner rose up, and asked, *What
 they wanted:* To which it was answered, *What
 Sign will you give?*

Answ. *No Sign at all: Take your own Time;
 God’s Will be done.*

Whereupon the Executioner said, *I hope you for-
 give me:* He made answer, *I do.* Then lying down
 again, the Executioner at one Blow severed his
 Head from his Body, save only a small Part of the
 Skin and Wind-pipe, which was immediately cut
 off with a Knife. After which, the Headsman
 holding up the Head in his Hand, carried it about
 the Scaffold, shewing it to the People, and say-
 ing, *Here is the Head of a Traitor.* The Corpse
 with the Head were put into a Coffin, and con-
 veyed to the *Tower*, where they were interr’d.



The Report of the COMMITTEE of the House of Commons appointed to examine the Proceedings of the Judges, made December 23. 1680. 32 Car. II.

THIS Committee being inform'd, That in *Trinity-Term* last, the Court of *King's-Bench* discharg'd the Grand-Jury that served for the Hundred of *Ossulston* in the County of *Middlesex*, in a very unusual Manner; proceeded to enquire into the same, and found by the Information of *Charles Umfreville*, Esq; Foreman of the said Jury; *Edward Proby*, *Henry Gerard*, and *John Smith*, Gentlemen, also of the said Jury, That on the 21st of *June* last, the Constables attending the said Jury were found defective in not presenting the *Papists* as they ought, and thereupon were order'd by the said Jury to make further Presentments of them on the 26th following, on which Day the Jury met for that Purpose; when several Peers of this Realm, and other Persons of Honour and Quality, brought them a Bill against *James Duke of York* for not coming to Church: But some Exceptions being taken to that Bill, in that it did not set forth the said Duke to be a *Papist*, some of the Jury attended the said Persons of Quality to receive Satisfaction therein. In the mean time, and about an Hour after they had received the said Bill, some of the Jury attended the Court of *King's-Bench* with a Petition, which they desired the Court to present in their Name unto his Majesty for the sitting of this Parliament. Upon which the Lord Chief Justice *Scroggs* raised many Scruples, and on Pretence that they were not all in Court, (tho' twenty of the Jury had subscrib'd the Petition) sent for them, saying, he would dispatch them presently. The Jury being come, and their Names called over, they renewed their Desire that the Court would present their Petition: But the Chief Justice ask'd, if they had any Bills? They answer'd they had, but the Clerks were drawing them into Form. Upon which the Chief Justice said, they would not make two Works of one Business; and the Petition being read, he said, This was no Article of their Charge, nor was there any Act of Parliament that required the Court to deliver the Grand Jury's Petitions: That there was a Proclamation about them; and that it was not reasonable the Court should be obliged to run on their Errands; and he thought it much, that they should come with a Petition to alter the King's Mind declared in the News Book. The Jury said, They did it not to impose on the Court, but (as other Juries had done) with all Submission they desired it. But the Court refused, bidding the Crier return them their Petition: And Mr. Justice *Jones* told them, they had meddled with Matters of State, not given them in Charge, but presented no Bills of the Matter, given in Charge. They answered as before, They had many before them that would be ready in due time. Notwith-

standing which, the said Justice *Jones* told them, They were discharged from further Service. But *Philip Ward* (the Clerk that attended the said Jury) cried out, No, no; they have many Bills before them; for which the Court understanding (as it seems to this Committee) a secret Reason, which the Clerk did not, reproved him, asking, If he or they were to give the Rule there? The Crier then told the Court, they would not receive their Petition; the Chief Justice bid him let it alone: So it was left there, and the Jury returned to the Court-House, and there found several Constables with Presentments of *Papists* and other Offenders, as the Jury had directed them on the 21st before; but could not now receive the said Presentments, being discharged. Whereby much Business was obstructed, tho' none of the said Informants ever knew the said Jury discharged before the last Day of the Term, which was not till four Days after. And it further appeareth to the Committee, by the Evidences of *Samuel Astrey*, *Jasper Waterhouse*, and *Philip Ward*, Clerks, that have long served in the said Court, That they were much surprized at the said discharging of the Jury, in that it was never done in their Memory before; and the rather, because the said *Waterhouse*, as Secondary, constantly enters on that Grand Jury's Paper, that the last Day of the Term is given them to return their Verdict on, as the last Day but one is given to the other two Grand Juries of that County; which Entry is as followeth:

Trinit. 32 Car. II.

Juratores habent diem ad Veredictum suum reddendum usque diem Mercurij proxime post tres Septimanas, sancte Trinitatis.

Middlesex
Ossulston
Hundred.

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

Resolved, That it is the Opinion of this Committee, That the discharging of the Grand Jury of the Hundred of *Ossulston* in the County of *Middlesex*, by the Court of *King's-Bench* in *Trinity-Term* last, before the last Day of the Term, and before they had finished their Presentments, was illegal, arbitrary, and an high Misdemeanor.

This Committee proceeded also to enquire into a Rule of the Court of *King's-Bench*, lately made against the publishing a Book, called, *The Weekly Pacquet of Advice from Rome*; or, *The History of Popery*: And *Samuel Astrey*, Gent. examined thereupon, informed this Committee, That the Author of the said Book, *Henry Carr*, had been informed against for the same, and had pleaded to the Information; but before it was tried, a Rule was made on a Motion, as he supposeth, against the said Book: All the Judges of that Court (as he remembers) being present, and none dissenting. The Copy of which Rule he gave in to this Committee, and is as followeth:

Dies Mercurij proxime post tres Septimanas sanctæ Trinitatis. Anno 32 Car. II. Regis.

Ordinatum est quod liber intitulat. The Weekly Pacquet of Advice from Rome; or, The History of Popery, non ulterius Imprimatur vel publicetur per aliquam Personam quancunq;

Per Cur.

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

Resolved, That it is the Opinion of the Committee, That the Rule made by the Court of *King's-Bench* in *Trinity Term* last, against printing a Book, called, *The Weekly Pacquet of Advice from Rome*, is illegal and arbitrary.

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

VOL. III.

Upon *Joseph Brown* of *London*, Gent. on an Information for publishing a printed Book, called, *The Long Parliament dissolved*; in which are set forth these Words: *Nor let any Man think it strange, that we account it Treason for you to sit and act contrary to our Lawes: For if in the first Parliament of Richard the Second, Gomecys and Weston for lack of Courage only, were adjudged guilty of High Treason for surrendring the Places committed to their Trust; how much more you, if you turn Rènegadoes to the People that entrusted you, and as much as in you lie, surrender not a little pitiful Castle or two, but all the legal Defence the People of England have for their Lives, Liberties and Properties, at once! Neither let a vain Persuasion delude you, That no Precedent can be found, that one English Parliament hath hanged up another; tho' peradventure even that may be proved a Mistake: For an unprecedented Crime calls for an unprecedented Punishment; and if you shall be so wicked to do the one, or rather endeavour to do (for now you are no longer a Parliament) what ground of Confidence you can have that none will be found so worthy to do the other, we cannot understand; and do faithfully promise, if your Unworthiness provoke us to it, that we will use our honest and utmost Endeavours (whenever a new Parliament shall be called) to chuse such as may convince you of your Mistake: The old and infallible Observation, That Parliaments are the Pulse of the People, shall lose it's Esteem; or you will find, that this your Presumption was over-fond; however, it argues but a bad Mind to sin, because it is believed it shall not be punished.* The Judgment was, That he be fined 1000 Marks, be bound to the good Behaviour for seven Years, and his Name struck out of the Roll of the Attorneys, without any Offence alledged in his said Vocation. And the publishing this Libel consisted only in superscribing a Pacquet, with this inclosed, to the *East-Indies*. Which Fine he not being able to pay (living only upon his Practice) he lay in Prison for three Years, till his Majesty graciously pardoned him, and recommended him to be restored to his Place again of Attorney, by his Warrant dated the 15th of *December* 1679. Notwithstanding which, he has not yet obtained the said Restoration from the Court of *King's-Bench*.

Upon *John Harrington* of *London*, Gent. for speaking these Words laid in *Latin* thus: *Quod nostra Gubernatio de tribus statibus consistebat, & si Rebellio eveniret in regno, & non accideret contra omnes tres status, non est Rebellio.* A Fine of 1000 *l.* Sureties for the good Behaviour for seven Years, and to recant the Words in open Court; which Fine he was in no Capacity of ever paying.

Upon *Benjamin Harris* of *London*, Stationer, on an Information for printing a Book, called, *An Appeal from the Country to the City*, setting forth these Words: *We in the Country have done our Parts, in chusing for the Generality good Members to serve in Parliament; but if (as our two last Parliaments were) they must be dissolved or prorogued whenever they come to redress the Grievances of the Subject, we may be pitied, not blamed, if the Plot takes Effect; and in all Probability it will. Our Parliaments are not then to be condemned, for that their not being suffered to sit occasioned it.* Judgment to pay 500 *l.* Fine, stand on the Pillory an Hour, and give Sureties for the good Behaviour for three Years. And

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

Notwithstanding which Severity in the Cases forementioned, this Committee has observed the said Court has not wanted in other Cases an extraordinary Compassion and Mercy, though there appeared no publick Reason judicially in the Trial; as in particular:

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

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

Pat. 32 Car. II. Upon *John Tasborough* Gent. on an Indictment for Subornation of *Stephen Dugdale*, tending to overthrow the whole Discovery of the Plot; the said *Tasborough* being affirmed to be a Person of good Quality, a Fine of 100*l.*

Eod. Ter. Upon *Anne Price* for the same Offence, 200*l.*

Trin. 32 Car. II. Upon *Nathaniel Thompson* and *William Badcock*, on an Information for printing and publishing a weekly Libel, called *The true Domestick Intelligence, or News both from City and Country*, and known to be popishly affected, a Fine of 3*l.* 6*s.* 8*d.* on each of them.

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

Trin. 32 Car. II. Upon *Loveland*, on an Indictment for a notorious Conspiracy and Subornation against the Life and Honour of the Duke of *Buckingham* for Sodomy, a Fine of 5*l.* and to stand an Hour in the Pillory.

Mich. 32
Car. II. Upon *Edward Christian*, Esq; for the same Offence, a Fine of 100 Marks, and to stand an Hour in the Pillory. And upon *Arthur Obrian*, for the same Offence, a Fine of 20 Marks, and to stand an Hour in the Pillory.

Upon Consideration whereof, this Committee came to this Resolution:

Resolved, That it is the Opinion of this Committee, That the Court of *King's-Bench* (in the Imposition of Fines on Offenders of late Years) hath acted arbitrarily, illegally and partially, favouring Papists, and Persons popishly affected, and excessively oppressing his Majesty's Protestant Subjects.

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

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

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

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

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

Resolved,

That it is the Opinion of this Committee, That the refusing sufficient Bail in these Cases, wherein the Persons committed wereailable by Law, was illegal, and a high Breach of the Liberty of the Subject.

And this Committee being informed of an extraordinary kind of a Charge given at the last Assizes at *Kingston* (in the County of *Surrey*) by *Mr. Baron Weston*, and proceeding to examine several Persons then and there present; it was made appear to this Committee, by the Testimony of *John Cole*, *Richard Mayo*, and *John Peirce*, Gentlemen, and others (some of whom put down the said Baron's Words in writing immediately) that Part of the said Charge was to this Effect: He inveighed very much against *Farel*, *Luther*, *Calvin*, and *Zuinglius*, condemning them as Authors of the Reformation, which was against their Princes Minds; and then adding to this Purpose, *Zuinglius set up his Fanaticism, and Calvin built on that blessed Foundation: And to speak Truth, all his Disciples are seasoned with such a Sharpness of Spirit, that it much concerns Magistrates to keep a strait Hand over them; and now they are restless, amusing us with Fears, and nothing will serve them but a Parliament. For my Part, I know no Representative of the Nation but the King; all Power centers in him: 'Tis true, he does entrust it with his Ministers, but he is the sole Representative; and I faith he has Wisdom enough to entrust it no more in these Men, who have given us such late Examples of their Wisdom and Faithfulness.* And this Committee taking the said Matter into their Consideration, came to this Resolution.

Resolved,

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

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

Ang. ff. **W H E R E A S** there are divers ill disposed Persons, who do daily print and publish many seditious and treasonable Books and Pamphlets, endeavouring thereby to dispose the Minds of his Majesty's Subjects to Sedition and Rebellion; and also infamous Libels reflecting upon particular Persons, to the great Scandal of his Majesty's Government: for suppressing whereof, his Majesty hath lately issued out his Royal Proclamation. And for the more speedy suppressing the said seditious Books, Libels and Pamphlets, and to the end that the Authors and Publishers thereof may be brought to their Punishment:

These are to will and require you, and in his Majesty's Name to charge and command you, and every of you, upon Sight hereof, to be aiding and assisting unto *Robert Stephens*, Messenger of the Press, in seizing on all such Books and Pamphlets as aforesaid, as he shall be informed of, in any Bookellers or Printers Shops or Warehouses, or elsewhere whatsoever, to the end they may be disposed as to Law shall appertain: Also if you shall be informed of the Authors, Printers or Publishers of such Books or Pamphlets as are above-mentioned, you are to apprehend them, and have them before one of his Majesty's Justices of the Peace, to be proceeded against according to Law. Dated this 29th Day of November, 1679.

To *Robert Stephens* Messenger of the Press, and to all Mayors, Sheriffs, Bailiffs, Constables, and all other Officers and Ministers whom these may concern.

WILLIAM SCROGGS.

Ang. ff. **W H E R E A S** the King's Majesty hath lately issued out his Proclamation for suppressing the printing and publishing unlicensed News-Books, and Pamphlets of News: notwithstanding which, there are divers Persons who do daily print and publish such unlicensed Books and Pamphlets.

These are therefore to will and require you, and in his Majesty's Name to charge and command you, and every of you, from time to time, and at all times, so often as you shall be thereunto required, to be aiding and assisting to *Robert Stephens*, Messenger of the Press, in the seizing all such Books and Pamphlets as aforesaid, as he shall be informed of, in any Bookellers Shop, or Printers Shop or Warehouses, or elsewhere whatsoever, to the end they may be disposed of as to Law shall appertain. Likewise, if you shall be informed of the Authors, Printers or Publishers of such Books and Pamphlets, you are to apprehend them, and have them before me, or one of his Majesty's Justices of the Peace, to be proceeded against as to Law shall appertain. Dated this 28th Day of May, Anno Dom. 1680.

To all Mayors, Sheriffs, Bailiffs, Constables, and all other Officers and Ministers whom these may concern.

WILLIAM SCROGGS.

To *Robert Stephens*, Messenger of the Press.

Upon View whereof this Committee came to this Resolution :

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

And this Committee being informed of certain scandalous Discourses, said to be uttered in publick Places by the Lord Chief Justice *Scroggs*, proceeded to examine Sir *Robert Atkins*, late one of the Justices of the *Common-Pleas*, concerning the same; by whom it appears, That at a Sessions Dinner at the *Old Bailey*, (in the Mayoralty of Sir *Robert Clayton*) who was then present, the said Chief Justice took occasion to speak very much against petitioning, condemning it as resembling ± 1 , as factious and tending to Rebellion, or to that Effect; to which the said Sir *Robert Atkins* made no Reply, suspecting he waited for some Advantage over him: But the Chief Justice continuing and pressing him with the said Discourse, he began to justify petitioning as the Right of the People, especially for the sitting of a Parliament, which the Law requires, if it be done with Modesty and Respect. Upon which the Chief Justice fell into a great Passion; and there is some Reason to believe, that soon after he made an ill Representation of what the said Sir *Robert* had then spoke unto his Majesty. And this Committee was farther informed, That the said Sir *Robert Atkins* being in Circuit with the said Chief Justice at Summer Assizes was Twelve-month at *Monmouth*, (Mr. *Arnold*, Mr. *Price*, and Mr. *Bedloe* being then in Company) the Chief Justice fell severely in publick upon Mr. *Bedloe*, taking off the Credit of his Evidence, and alledging he had overshot himself in it, or to that Effect, very much to the Disparagement of his Testimony: And the said Sir *Robert* defending Mr. *Bedloe's* Evidence and Credit, he grew extreme angry and loud, saying to this Effect, *That he verily believed Langhorn died innocently.* To which the said Sir *Robert* replied, He wondred how he could think so, who had condemned him himself, and had not moved the King for a Reprieve for him. All which Matters of Discourse this Committee humbly submit to the Wisdom and Consideration of this House, without taking upon them to give any Opinion therein.

And this Committee proceeded farther to enquire into some Passages that happened at *Lent-Assizes* last for the County of *Somerset*, at the Trial of *Thomas Dare*, Gent. there, upon an Indictment for saying falsely and seditiously, *That the Subjects had but two Means to redress their Grievances, the one by Petitioning, the other by Rebellion:* And found, that though by his other Discourse when he said so, that it appeared plainly he had no rebellious Intent, in that he said, *Then God forbid there should be a Rebellion, he would be the first Man to draw his Sword against a Rebel;* yet he was prosecuted with great Violence: And having pleaded *Not Guilty*, he moved Mr. Justice *Jones* (who then sat Judge there) that he might try it at the next Assizes, for that Mr. *Scarle* (who was by at the speaking of the Words, and a material Witness for his Defence) was not then to be had, and an *Affidavit* to that Purpose was made and receiv'd. But the said Justice *Jones* told him, That was a Favour of the Court only, and he had not deserved any Favour, and so forc'd him to try it presently. But the Jury, appearing to be an extraor-

dinary one, provided on purpose, being all of Persons that had highly opposed petitioning for the sitting of this Parliament, he was advised to withdraw his Plea; and the said Justice *Jones* encouraging him so to do, he confess'd the Words, denying any evil Intention, and gave the said Justice an Account in writing of the Truth of the whole Matter, and made a Submission in Court, as he was directed by the said Justice; who promised to recommend him to his Majesty, but imposed a Fine of 500 *l.* on him, and to be bound to the good Behaviour for three Years; declaring, also, That he was turned out from being a Common-Councillor of the Corporation of *Taunton* in the said County, on Pretence of a Clause in their Charter, giving such a Power to a Judge of *Affize*. And the said *Thomas Dare* remains yet in Prison for the said Fine; in which Matter of the Trial aforesaid, this Committee desireth to refer itself to the Judgment of this House.

Upon this Occasion Sir *Francis Warrington* made the following Speech.

Mr. Speaker,

IN the Front of *Magna Charta* it is said, *Nulli negabimus, nulli deferemus Justitiam*, we will defer or deny Justice to no Man: To this the King is sworn, and with this the Judges are entrusted by their Oaths. I admire what they can say for themselves; if they have not read this Law, they are not fit to sit upon the Bench; and if they have, I had almost said, they deserve to lose their Heads.

Mr. Speaker, The State of this poor Nation is to be deplored, that in almost all Ages, the Judges, who ought to be Preservers of the Laws, have endeavoured to destroy them; and that to please a Court-Faction. They have by Treachery attempted to break the Bonds asunder of *Magna Charta*, the great Treasury of our Peace: It was no sooner passed, but a Chief* Justice in that Day persuades the King he was not bound by it, because he was under Age when it was passed. But this Sort of Insolence the next Parliament repented, to the Ruin of the pernicious Chief Justice. In the time of *Richard* the Second, an unthinking dissolute Prince, there were Judges that did insinuate into the King, that the Parliament were only his Creatures, and depended on his Will, and not on the fundamental Constitutions of the Land; which treacherous Advice proved the Ruin of the King, and for which all those evil Instruments were brought to Justice. In his late Majesty's Time, his Misfortunes were occasioned chiefly by the Corruptions of the Long Robe; his Judges by an extrajudicial Opinion gave the King Power to raise Money upon an extraordinary Occasion without Parliament, and made the King Judge of such Occasions. Charity prompts me to think they thought this a Service to the King; but the sad Consequences of it may convince all Mankind, that every illegal Act weakens the Royal Interest; and to endeavour to introduce absolute Dominion in these Realms is the worst of Treasons, because, whilst it bears the Face of Friendship to the King, and designs to be for his Service, it never fails of the contrary Effect.

The two great Pillars of the Government are Parliaments and Juries: it is this gives us the Title

of Free-born *Englishmen*: For my Notion of free *Englishmen* is this, That they are ruled by Laws of their own making, and tried by Men of the same Condition with themselves. The two great and undoubted Privileges of the People have been lately invaded by the Judges that now sit in *Westminster-Hall*; they have espoused Proclamation against Law; they have discountenanced and opposed several legal Acts, that tended to the sitting of this honourable House; they have grasped the legislative Power into their own Hands, as in that Instance of Printing; the Parliament was considering that Matter, but they in the Interim made their private Opinion to be Law, to supersede the Judgment of this House; they have discharged Grand Juries on Purpose to quell their Presentments, and shelter great Criminals from Justice; and when Juries have presented their Opinion for the sitting of this Parliament, they have in Disdain thrown them at their Feet, and told them, they would be no Messengers to carry such Petitions; and yet in a few Days after, have encouraged all that would spit their Venom against the Government; they have served an ignorant and arbitrary Faction, and been the Messengers of Abhorrences to the King.

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

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

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

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

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

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

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

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

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

Resolved,

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

Resolved,

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

Resolved,

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

Ordered,

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

Ordered,

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

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

* See *Stat. Tri.* Vol. VII. p. 479.

Octob. 29. 1680.

Resolved, That Sir Francis Withens, by promoting and presenting to his Majesty an Address, expressing an Abhorrence to petition his Majesty for the calling and sitting of Parliaments, hath betrayed the undoubted Rights of the Subjects of England.

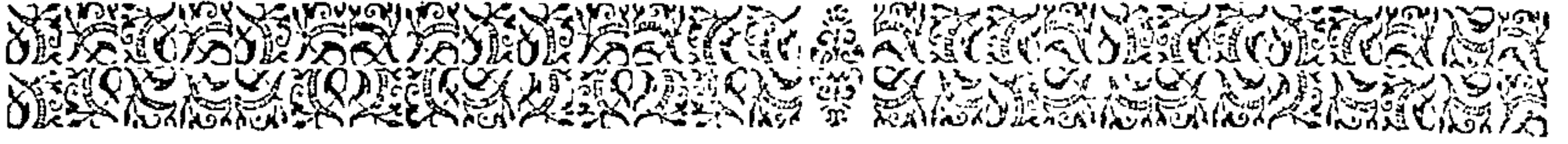
Ordered, That Sir Francis Withens be expelled this House for this High Crime; and that he receive his Sentence at the Bar of this House upon his Knees from Mr. Speaker.

(Which he received accordingly.)

Nov. 13. 1680.

Resolv'd, That Sir George Jefferies, Recorder of London, by traducing and obstructing petitioning for the sitting of this Parliament, hath betrayed the Rights of the Subject.

Ordered, That an humble Address be made to his Majesty, to remove Sir George Jefferies out of all publick Offices.



CIII. Proceedings in Parliament against EDWARD FITZ-HARRIS, upon an Impeachment for High-Treason, March 25, &c. 1681. 33 Car. II.

ON the 25th of March, 1681, the House of Commons took into Consideration the Affair of *Fitz-Harris*; they began with reading his Examination, taken March 10. before Sir Robert Clayton and Sir George Treby, which was in Substance as follows.

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

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

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

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

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

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

That in March 1680, he met Father Patrick at Paris; and talking of a Rupture that might be between England and France, the Father said,

That

That the *French* intended, in such Case, to send Marshal *Bellfonds* into *Ireland* with 10000 Foot and 2000 Horse, and Arms and Ammunition for 30000 Men to be raised there; and the Father promised the Examinee a Regiment of the Men to be so raised, and the Design was to restore that Kingdom to it's former Owners in Subjection to *France*.

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

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

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

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

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

Upon *Saturday* the 26th of *March* 1681, the House of Commons being informed, that the House of Lords had refused to proceed upon the Impeachment,

Sir *Thomas Lee* said, That he saw, by the Lords refusing the Impeachment, no farther Use of Parliaments; That they would be a Court, or not a Court, to serve a present Purpose.

Sir *William Jones*. Indictments were brought against the Lords in the *Tower*, and yet that was no Impediment to their Impeachment in the *Lords House*; but here is no Indictment or Prosecution brought against *Fitz-Harris*. We have an Instance fresh in Memory; *Scroggs* a Commoner, and not indicted at Common Law, yet the Lords without scruple accepted his Impeachment. We find the Lords have determined a great Point; the Lords Spiritual, as well as Temporal, have voted the Refusal of the Impeachment of *Fitz-Harris*; which we own not in this Judicature, and I hope never shall; and we are denied Justice by the Lords Spiritual, who have no Right to

vote. This is a double Act of Injustice: Let us then vote, *That the Commons have a Right to impeach in capital Cases; and that the Lords have denied us Justice, in refusing the Impeachment in a Parliamentary way.* At a Conference, let us show how unwarrantable the Lords Actions have been; and if the Dissolution of the Parliament follows, it is the Fault of those Men who will not hear our Reasons.

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

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

Mr. Serjeant *Maynard* then added, We all know what Arts and Crafts have been used to hide the Plot; it began with Murder, Perjury and Subornation: This of *Fitz-Harris* is a second Part of it; the Lords deny to receive our Impeachment; in effect, they make this no Parliament; if we are the Prosecutors, and they will not hear our Accusation. 'Tis strange, when their own Lives, as well as ours, are concerned in the Plot——When all is at Stake, we must not prosecute: If this be so, *Holland* and *Flanders* must submit to the *French*, and they over-run all. This is a strange Breach of Privilege, and tends to the Danger of the King's Person, and Destruction of the Protestant Religion.

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

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

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

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

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

This Matter, thus agitated in the House of Commons, was countenanced by a Protestation of many Temporal Lords; which was to this Effect:

“ That in all Ages it hath been an undoubted Right of the Commons to impeach before the Lords any Subject for Treasons, or any other Crime whatsoever.

“ That they could not reject such Impeachments, because that Suit or Complaint can be determined no where else; for an Impeachment is at the Suit of the People, but an Indictment is at the Suit of the King; as, the King may

“ indict at his Suit for Murder, and the Heir, or the Wife of the Party murdered may bring an Appeal; and the King cannot release that Appeal, nor his Indictment prevent the Proceedings in it.

“ It is an absolute Denial of Justice, in regard it cannot be tried any where else. The House of Peers, as to Impeachments, proceed by virtue of their Judicial Power, and not by their Legislative; and as to that, act as a Court of Record; and can deny Suitors (especially the Commons of *England*, that bring legal Complaint before them) no more than the Judges of *Westminster* can deny any Suit regularly commenced before them.

“ Our Law saith, in the Person of the King, *Nulli negabimus Justitiam*, We will deny Justice to no single Person; yet here, Justice is denied to the whole Body of the People. This may be interpreted an Exercise of arbitrary Power, and have an Influence upon the Constitution of the *English* Government; and be an Encouragement to all inferior Courts to exercise the same arbitrary Power, by denying the Presentments of Grand Juries, &c. for which, at this time, the Chief Justice stands impeached in the House of Peers.

“ These Proceedings may misrepresent the House of Peers to the King and People, especially at this time; and the more, in the particular Case of *Edward Fitz Harris*, who is publicly known to be concerned in vile and horrid Treasons against his Majesty; and a great Conspirator in the Popish Plot to murder the King, and destroy and subvert the Protestant Religion.

Monmouth,
Kent,
Huntington,
Bedford,
Salisbury,
Clare,
Stamford,
Sunderland,
Essex,
Shaftesbury,

Macclesfield,
Mordant,
Wharton,
Paget,
Greye of Werke,
Herbert of Chisbury,
Cornwallis,
Lowelace,
Crew.

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

† Which was always to be preferred; and upon Notice thereof, all Prosecutions at the King's Suit were to stop, till the Prosecution at the Suit of the Party was determined.

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

ON *Wednesday*, *April* the 27th 1681. the Grand Juries for the County of *Middlesex* were sworn; and after the Charge delivered by Mr. Justice *Jones*, his Majesty's Attorney-General desired, That some of that Grand Jury which served for the Hundreds of *Edmonton* and *Gore* (that for *Ossulston* Hundred being immediately adjourned for a Week) might be present at the swearing of the Witnesses, upon an Indictment

for High-Treason, to be preferred against *Edward Fitz-Harris* Prisoner in the *Tower of London*, which was granted; but the Grand Jury being under some Scruples against receiving of the Bill, desired the Opinion of the Court therein; which Mr. Justice *Jones* alone thought not fit to give, but ordered them to attend next Day when the Court was full.

And accordingly on *Thursday*, April 28. the said Grand Jury came to the Bar, and Mr. *Michael Godfrey* (Brother to Sir *Edmundbury Godfrey*) who was their Foreman, address'd himself thus to the Court.

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

* Sir Francis Pemberton. * L. C. Justice. † What is it? a Petition?

Cl. of the Crown. It is not subscrib'd by any body.

Jurors. But we do all own it, my Lord.

L. C. J. What is it? Read it.

Cl. of Crown. We *Michael Godfrey*, &c. being sworn to serve in the Grand Inquest for the Hundreds of *Edmonton* and *Gore* in this County of *Middlesex*, &c. and being yesterday sent for into the Court of *King's-Bench*, by a Messenger from the said Court, to be present at the swearing of several Witnesses produced on the behalf of our Sovereign Lord the King, to prove the Truth of some Indictments, then in the Hands of the Clerk of the Crown; and observing that Sir *William Waller*, *Smith* and others were sworn to give Evidence against *Edward Fitz-Harris*, now Prisoner in the *Tower*, who in the late Parliament at *Oxford* was impeached by the honourable House of Commons in the Name of themselves, and of all the Commons of *England*; of which, we the said *Michael Godfrey*, &c. are Part, and as Jurymen, be his Judges also.

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

We therefore humbly desire the Opinion of this Court upon the whole Matter, Whether legally and safely we may proceed to find the Indictment of *Fitz-Harris*, or no?

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

L. C. J. Look you, Gentlemen of the Jury, we do not apprehend so.

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

Sir Robert Sawyer.

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

Mr. *Godfrey*. Yes, my Lord.

L. C. J. We are very ready and willing to satisfy any of the King's Subjects in any Matters in Judgment before us, that they may see there shall be nothing but fair Proceedings in all Cases: We do tell you it is our Opinion, that notwithstanding any thing of this matter that you suggest in the Case before you, it is fit for you to enquire upon the Indictment; and you are bound to enquire by virtue of your Oaths, if an Indictment be exhibited to you: you cannot, nor ought to take any notice of any such Votes of the House of Commons afterwards, if any such there were, for they will not excuse you (who are sworn to enquire of the Matters given you in Charge) in case you do not your Duty; and therefore if you have Evidence enough given you, to satisfy you that the Indictment is true, you are to find it. And likewise we ought to proceed according to Justice, in Cases that are brought before us. Neither you nor we can take notice of these things, in case there be any such as you suggest; nor will they excuse us before God or Man for the Breach of our Oaths, if we should do the contrary. And this we declare to you, not only as our Opinions, but as the Opinion of all the Judges of *England*. For when we did hear there was a Scruple made by you the Gentlemen of the Jury, because we

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would

would make the way fair and clear, all the Judges did assemble to debate the Matter for your Satisfaction; not that we were dissatisfied at all in it our selves, but that it might appear to you and the Kingdom, that there is nothing but Fairness used in this Case, as in all others; and all the Judges, *Nemine contradicente*, were all of Opinion, that you are not to take notice of any of these things; but if the Indictment be exhibited, and you have Evidence enough, you ought to find it. This we have endeavoured for your Satisfaction, to make your way clear.

Jurors. We humbly thank your Lordship.

[*Then the Jury went away, and afterwards found the Bill.*]

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

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

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

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

Mr. Serj. *Jfferies*. I beg this of your Lordship, That you will be pleased to stay a little; I know not how he comes to be brought up here; Mr. Attorney, it seems, says, he knows nothing of it.

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

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

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

L. C. J. Why so?

Mr. Serj. *Stringer*. My Lord, we would have him examined concerning Sir *Edmundbury Godfrey's* Death.

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

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

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

Mrs. *Fitz-Harris*. My Dear, plead to the Jurisdiction of the Court; here's a Plea drawn by Counsel for you.

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

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

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

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

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

L. C. J. You shall have it.

Mr. *Fitz-Harris*. I desire this Plea may be allowed.

Mr. Just. *Dolben*. Hear your Indictment first, and plead afterwards.

L. C. J. Look you, Mr. *Fitz-Harris*, let us thus far direct you: Your holding up of your Hand, and hearing the Indictment read, will not hinder you from any manner of Plea, which you may have to make afterwards; but you can plead nothing before.

Cl. of Crown. Pull off your Glove, and hold up your Hand; (*which he did.*) And then the Clerk of the Crown read the Substance of his Indictment to him in *English*. And then speaking to him, said, How sayest thou, *Edw. Fitz-Harris*? Art thou guilty of this High-Treason whereof thou standest indicted, and hast been now arraigned, or Not Guilty?

Mr. *Fitz-Harris*. My Lord, I offer this Plea to be read first, before I answer.

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

Mr. Just. *Jones*. Not to allow it.

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

Cl. of Crown reads,

E*T præd. Edwardus Fitz-Harris in propria persona sua venit & dic. quod ipse ad Indictament. præd. modo versus eum per Jurator. præd. in forma præd. compert. respondere compelli non debet, quia citat quod ante Indictament. præd. per Jurator. præd. in forma præd. compert. scilicet ad Parliam. Dom. Regis nunc inchoat. & tenuit apud Oxon. in Com. Oxon. 21. die Martii, Anno Reg. Dom. Car. Secundi nunc Regis Angliæ, &c. Tricesimo Tertio, ipse idem Edwardus Fitz-Harris per Milites, Cives, & Burgens. ad idem Parliament. ad tunc & ibid. convocatus. & assemblatus. de & pro præd. Prodition. Criminibus & Offens. unde ipse idem Edwardus Fitz-Harris per Indictament. præd. modo indictatus. existit secundum Legem & Consuetudinem Parliamenti accusatus. & impetit. fuit coram Magnatibus & Proceribus hujus Regni Angliæ in eodem Parlamento per Summonition. ipsius Dom. Regis ad tunc & ibid. assemblatus. Quodque impetitio præd. in plenis suis robore & effectu adhuc remanet, sicut per Record. inde in Cur. Parliament. præd. remanen. plenius liquet & apparet. Et idem Edwardus Fitz-Harris ulterius dicit, quod si quis in aliquo Parlamento Dom. Regis hujus Regni Angliæ de aliquibus Proditionibus, Criminibus, & Offensis, per Milites, Cives, & Burgens. ad hujusmodi Parliament. convocatus. & assemblatus. in hujusmodi Parliament. accusatus. & impetit. fuit coram Magnatibus & Proceribus hujus Regni Angliæ in eodem Parliament. per Summonit. ipsius Dom. Regis assemblatus. tunc hujusmodi Prodition. Crimina & Offensa de & pro quibus hujusmodi persona in hujusmodi Parliament. accusatus. & impetit. fuit in Parliament. Dom. Reg. hujus Regni Angliæ audiri, triari, & terminari debeant, & semper hætenus consueverunt, & de jure debuerunt, & non alibi in aliqua Curia infer. quam in Parliament. Et hoc idem Edwardus Fitz-Harris parat. est verificare, unde non intendit quod Dominus Rex nunc velit in Cur. nunc hic de & pro Prodition. Criminibus, & Offens. præd. responderi, & petiti. Judic. si ipse ad Indictament. præd. per Jurator. præd. in forma præd. compert. ulterius respondere compelli debeat, &c. Cum hoc quod præd. Edwardus Fitz-Harris verificare vult, quod Proditio, Crimina, & Offens. præd. in Indictament. præd. per Jurator. præd. in forma præd. compert. specificat. & mentionat. & pro quibus ipse idem Edwardus Fitz-Harris per Indictament. ill. modo indictatus. existit, & Proditio, Crimina & Offens. pro quibus ipse præd. Edwardus Fitz-Harris in Parliament. præd. in forma præd. accusatus. & impetit. fuit, & existit, sunt unum & eadem Proditio, Crimina, & Offens. & non al. neque diversa, quodque impetit. præd. adhuc in plenis suis robore, vigore, & effectu remanet.*

L. C. J.

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

Mr. *Fitz-Harris*. I desire your Lordship to assign me Counsel.

L. C. J. Who would you have assign'd Counsel?

Mr. *Fitz-Harris*. Sir *William Jones*, Sir *Francis Warrington*, Sir *George Treby*, Mr. *Williams*, Mr. *Pollexfen*, Mr. *Wallop*, and Mr. *Smith*.

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

Mr. *Fitz-Harris*. Then I desire Sir *Francis Warrington*, Mr. *Williams*, Mr. *Pollexfen*, Mr. *Wallop*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *At. Gen.* This Motion of his, I fear, is designed to put off his Trial.

L. C. J. It shall not, Mr. *Attorney*. It is true, 'tis a busy time, the middle of the term; but they will sure find time to dispatch this Business within the time we have allotted. On the other side,

some time they must have to consider of it: I do therefore tell him, it may be fatal and peremptory to him for ought I know. Indeed if we would insist upon it, we might compel him to be ready presently, but that we will not in this Case.

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

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

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

L. C. J. Mr. *Fitz-Harris*, 'tis time enough; we must not waste the Term; for as we would shew you all the Favour we can in Equity and Justice, so we must not deny the King Justice neither. And you hear Mr. *Attorney* say, that these things (if they should delay the Business too long) would be prejudicial to much of the King's Business. It may be, that this dilatory Plea may spend so much time of the Term, that we cannot try it; and therefore if we do give a just Favour, you must not grow upon us.

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

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

L. C. J. Do not complain of Severity, Mr. *Fitz-Harris*. I do not believe any such thing hath been used towards you.

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

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

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

Mr. *Just. Dolben*. 'Tis fit you should have it to see it, Mr. *Attorney*, before-hand.

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

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

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

L. C. J. Yes, at seasonable Hours, when there may be somebody by, to see that nothing be done to the King's Prejudice. And your Wife must do this; she must submit to be searched, that she carry nothing with her that may be prejudicial. And with these Cautions we will admit her to come to you.

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

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

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

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

L. C. J. Sir, this is our Rule, and we have declared it to this purpose. Then as to your Matter, Brother *Stringer*, this we will do; Let the Lieutenant of the *Tower* keep Mr. *Fitz-Harris* safely till we return out of the *Exchequer*, and then we will examine him.

Mr. Serj. *Stringer*. My Lord, we think it well be a short Business and soon over, if you please to do it first.

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

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

Mr. Serj. *Stringer*. My Lord, Mr. *Godfrey* desires it.

L. C. J. Then we will presently:

Lieut. of *Tower*. Must his Lady speak with him?

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

Mrs. *Fitz-Harris*, to her Husband, (*the Court being just risen*.) My Dear, do not confess any thing about the Death of Sir *Edmundbury Godfrey*, nor the Plot, for you will be betray'd: speak only to little things.

[*Then the Prisoner was carried away to be examined, and after that to the Tower.*]

On *Monday*, the 2d of *May*, Sir *Francis Winnington*, and the other three Gentlemen assigned of Council for Mr. *Fitz-Harris*; came to the Bar, and moved the Court for an Explanation of the Rule concerning themselves, and the Business they were assign'd for.

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

L. C. J. The Lieutenant sent to me on *Saturday* about it, and I told him it did not extend to you.

Sir *Fran. Winnington*. We think it may have a Construction either way; but we desire it may be made plain, as you meant it.

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

Sir *Fran. Winn*. Therefore we taking it that your Lordship pronounced and meant it so, do desire it may be so expressed. We are satisfy'd that it was your Lordship's Intention; we desire the Clerk may make it in plain and intelligible Words. And there is this farther in it, my Lord—

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

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

L. C. J. We deny that, Sir *Fran. Winnington*.

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

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

Mr. *Wallop*. For my part, my Lord, the Notice I had was but very lately: I was by indeed when this Person *Fitz-Harris* did desire Counsel, and your Lordship assigned me amongst the rest; but nothing of the Order was brought to me till this Morning: so that I know nothing of the matter less or more, than what I heard upon the reading of the Paper here on *Saturday*. I do not desire time for time-sake, or for Delay; but we think the Nature of the thing is such, as will require great Consideration, and we desire convenient time to prepare it for the Court.

L. C. J. Look you, Sir *Francis Winnington*, you must consider here the Nature of your Case: This is an Indictment of High-Treason, and there is nothing I see that is so greatly considerable in the Case, but the Height of the Crime. 'Tis an extraordinary Crime indeed, if he be guilty of it, (for I speak not to prejudice your Client, but of the thing itself.) 'Tis a Treason of a very high Nature: and then what have we to consider in this Case? We might have taken your Client at advantage here, and it had been no Injustice if we had made him plead immediately as he would stand by it: And we are not to consult your leisure, but your Client's Cause: he hath pitch'd upon you for his Counsel; we have given him three Days time to plead as he will stand by it, *Saturday*, *Monday* and *Tuesday*, and he is to come with his Plea upon *Wednesday*. We have appointed for Convenience-sake, that you should give a Copy of the Plea to-morrow Morning to Mr. *Attorney*; but we do not tie you so peremptorily to that Copy, that you may not vary in Words from that Form. Give him but the Substance of the Plea, and we will not tie you to the particular formal Words. Peradventure Mr. *Fitz-Harris* could not have expected three Days time, in Course of Law, upon such a Crime, to put in such a Plea, when he tells us, he will plead specially to the Jurisdiction of the Court. But we have done it in this Case, to shew, that

that all the Fairness that can possibly be used shall be used. On the other side, we must not spend all our time so, as to let the Term slip for his Neglect of waiting upon you. Therefore if he will delay to send to advise with you, he must suffer for it. Suppose he did not come to you till to-morrow, what can we help it?

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

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

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

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

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

Cl. of *Crown*. Another Copy they had from me that Evening.

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

Mr. *Pollexfen*. My Lord, I think it will be very hard upon us that are of Counsel, to be so straitned in point of Time; for my part, the Rule was left under my Door the last Night, and I had it not till this Morning: It will be a mighty hard matter for us to get the Plea ready, without a Sight of the Indictment. Things must be averr'd to be the same; which we cannot, unless we see what is there alledged. This Man hath been kept close Prisoner, and no body suffer'd to come at him to instruct him; and we have not so much as Copies of any thing that we must make use of. We have no Concernment, my Lord, in this matter, but what is assign'd us by the Court; and we do not know by any Papers, if there be any, how we should put it into Form; and that is it, my Lord, which may lie heavy upon us; if this Man's business should miscarry for want of putting it into due Form, the Blame will be upon us, who are assigned his Counsel. Therefore if your Lordship please, under these Considerations, to give us time and leave to see the Indictment we are to plead to, we may be the better enabled to do our Duty.

Sir *Fran. Win*. Really, my Lord, I ought to deal clearly with the Court; without a Copy of the Indictment, I know not how we shall be able to plead as we should do.

Mr. *Williams*. My Lord, I do really move, not in favour of *Fitz-Harris*, but for my own Reputation: I cannot put my hand to a Plea of this Consequence, without time to consider very well of it, and unless, in Truth, I can see the Indictment, and compare the Plea with it, to put it into Form fit for the Judgment of the Court. And if these things cannot be granted, I desire to be excused.

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

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

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

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

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

L. C. J. Sir *Fran. Winnington*, for you to come and say these things here, methinks is very strange. I think you can shew us no Precedent, that ever so long time was given to any Man to plead to the Jurisdiction of the Court, nor that ever a Copy of the Indictment was granted in High-Treason; and for you, because of the Greatness of the Treason, therefore to go about to make us believe, that it is more reasonable that a Copy of the Indictment should be granted in this Case than in another; that the Greatness of the Crime should be meritorious, and deserve a Favour of the Court, not granted in other Cases, is a thing extraordinary.

Sir *F. Win*. I do not press it that way; I pray I may be understood aright. Upon what appeared the other Day, upon the Nature of the Plea, I present it to your Consideration, Whether or no, when you have been pleased to admit a special Plea, you will not let us see that which we are to plead to?

L. C. J. No, it was never thought of surely.

Mr. Just. *Dolben*. No, it hath been constantly denied in Cases of Felony and Treason; and so you will find the Practice to have always been. But I'll tell you what hath been done sometimes; they have granted some Heads out of the Indictment, that should enable the Party to fit his Plea to the Charge; and that was done in *Wittypole's* Case, upon a Plea of *Auter seis acquit*. They gave him the Times, and some other Circumstances, to fit

his Plea to his Case; but never was there a Copy of the Indictment granted.

Mr. *Wallop*. My Lord *Coke*, in his Preface to the third Report, declares, That it was the ancient Law of *England*, and so declared by Act of Parliament in *Edward III*'s Time, That any Subject may, for his necessary Use, have access to Records and Copies of them, be they for the King or against the King; and that the Practice to the contrary is an Abusion.

L. C. J. So then, Mr. *Wallop*, you take it, that we are bound when any Man is indicted of Felony or Treason, or any capital Crime, if he say he must have a Copy of the Record, we must grant him a Copy of the Indictment: if you think so, the Court and you are not of the same Opinion.

Mr. *Wallop*. I inform the Court what I have read and seen, and where 'tis to be found.

Mr. *Williams*. My Lord, it may be necessary, for ought we know, for him to plead over to the Fact laid in the Indictment, Not Guilty, as sometimes it is requisite for the Party to do. Now if we should mistake for want of having what is necessary, and thereby preclude him of the Advantages he might have had if the Plea had been rightly drawn, for ought I know, it will lie upon me for ever. My Lord, I do it merely out of Caution, and for my own Reputation sake: If any legal Advantage should be lost by my Unwariness, it will be a perpetual Reflection upon me; and therefore I am so earnest in this Case. And, my Lord, I can tell you what was done in a Case wherein I was of Counsel; it was not a Case of Treason indeed, but it was Murder, the next Crime to it; it was the Case of *King and Thomas*. *Thomas* was indicted of Murder in one County, and found guilty of Manslaughter; and afterwards was indicted for the same Murder in another County, and being to plead this matter, I did insist upon it, that we ought to have a Copy of the Indictment. There was some Debate about it; but at last we had a Copy, and we alledg'd there, as here, it was impossible to plead without it; and the Cause was removed hither into this Court for Judgment.

Mr. *Just. Dolben*. The first Indictment you might have a Copy of, for you were to plead the whole Record.

Mr. *Williams*. Nay, we had a Copy of that to which we pleaded.

L. C. J. Mr. *Williams*, you tell us, you may peradventure have occasion to plead over when you know 'tis High-Treason that you are indicted of, in framing and publishing a treasonable Paper. Can't you direct your Client to plead over without a Copy? Certainly what you alledge in that, for a Copy of the Indictment, is *Non Causa pro Causa*.

Mr. *Just. Jones*. What Prejudice will it be to your Client to plead over?

Sir *Fran. Win*. My Lord, we only offer these things for ourselves, and we hope we shall not be pressed to do such a thing as this, without having reasonable time to consider and deliberate of it, and without having what is necessary in order to it.

[Then Mr. Attorney being sent for, came into the Court.]

L. C. J. Look you, Mr. Attorney, these Gentlemen that were assign'd of Council for *Fitz-Harris*, do move the Court here, and say, they would have longer time to draw up his Plea, for they must make use of several Copies of Papers, and they cannot so soon obtain them, nor find out those Records they must use, or other things as Ingredients to this Plea, in so short a time; and they say likewise, that they desire a Copy of the Indictment. Now,

in truth, they ought to have given you notice of this, that you might have been here likewise to hear what they say: If you do consent to give them longer time, we shall be ready to do it: but without it, we shall not be willing to delay it.

Mr. *At. Gen*. I think your Lordship and the Court gave them a very just and reasonable Time, when you allowed them four Days; and these Gentlemen are mistaken, if they think they are assign'd as Counsel to all Events. They are only to draw up a Plea upon that Matter that is alledg'd by the Prisoner, and to the Jurisdiction of the Court.

Sir *Fran. Win*. No, my Lord, I beg your Lordship's Pardon: The Rule is to plead the special Matter without more saying.

Mr. *At. Gen*. My Lord, under favour, it is as I say, and so is the Course of Law; for the Prisoner ought to acquaint you with the Points he desires his Counsel to be heard to: And in this Case, *Fitz-Harris* did acquaint the Court before he would plead, that he had something to object to the Jurisdiction of the Court; and so his Wife directed him when she gave him the Paper. I suppose she had other Advice upon it; for she could not draw it up in that Form it was herself: and he did acquaint the Court, he had Matter to plead to the Jurisdiction of the Court, and concluded so in the Paper that was read. And thereupon, according to his Prayer, he had Counsel assign'd him, these Gentlemen. I consented to it, as it was just I should; but that they should think, that they are to advise him in other Matters than that Particular upon which they are assign'd, I know they know their Duty better than to offer at any such thing. Now since then there is but one single Point, the Jurisdiction of the Court and nothing else, for they are not to advise in other Matters; I think it was more than strict Justice, nay, it was a very great Favour, for all Men ought to be ready to plead such Pleas immediately.

L. C. J. Yes, in strictness, we might have required him to plead, as he would stand by it, presently.

Mr. *At. Gen*. The Law is, that he must have all ready, *in Poigne*, to make it appear that what he avers in his Plea is so; therefore you needed not to have given him any longer time: but because all the World might see the Court and King's Counsel dealt fairly in this Matter, and did not mean to take advantage of any thing that look'd like a Surprise, I consented to that time that your Lordship was pleas'd to set: And as for the Copy of the Indictment, I know not any Reason they have to desire it; for they are not to advise in that, what Defence he shall make, but only upon this Matter he hath alledged.

L. C. J. Look you, Gentlemen, what Mr. Attorney tells you is so, and we do expect that you should conform yourselves to it: We have given you three Days time, which is sufficient for such a thing as this. And Mr. Attorney, we told them thus when we did direct them, That they should deliver you a Copy of the Plea to-morrow Morning. We are not so critical with them, as that we will not receive their Plea, if it be variant in Form from that which they deliver to you. That that we intend by it is this, That they should deliver you a Plea, the same in Substance as that which they do plead here: If they would alter it in the Form, we can give them leave to do that without any Prejudice.

Mr. *At. Gen*. We will never pinch them in Form; I think I have Matter enough.

L. C. J. I tell you truly, I do believe some Friends of his had Counsel to draw up this Plea for him.

Mr. *At. Gen*. A great Cabal, no doubt of it, my Lord!

Mr. *Wal-*

Mr. *Wallop*. My Lord, I desire that Counsel may be assigned in my Place.

L. C. J. We assigned him those that he required, excepting Sir *William Jones*; and we did not deny to put in Sir *William Jones*'s Name because we would not assign him, but because he hath declined the Bar, and does not practise here.

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

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

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

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

Mr. *Wallop*. Here are many Particulars and many Averments, which cannot so suddenly be set right as the Time allotted.

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

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

Mrs. *Fitz-Harris*. There was in the Paper Sir *William Jones*, his Majesty's late Attorney-General, Sir *Francis Winnington*, Mr. *Williams* late Speaker of the House of Commons, Sir *George Treby* Recorder of London—

Mr. *Pollexfen*. Your Lordship may easily perceive by this Gentlewoman's Carriage, how we are like to be instructed in this Cause, when no body follows it but she.

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

Mrs. *Fitz-Harris*. Yes, I do.

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

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

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

Mr. *Just. Dolben*. Why, Mistress, you are got into the Hands of Gentlemen that are as learned and able in their Profession, as you can have; you need no more.

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

Mrs. *Fitz-Harris*. Yes, my Lord.

L. C. J. Then add him.

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

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

Judges. Yes, my Lord.

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

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

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

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

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

Mr. *Att. Gen.* You are assigned, Gentlemen, but

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to one Point, the Jurisdiction of the Court; remember that.

Mr. *Pollexfen*. Your Lordship is pleased to say, That we may vary in Form from what we deliver to the *Attorney-General*; and Mr. *Attorney* is pleased to say, he will not pinch us as to Form: How shall we be secure no Advantage shall be taken of the Form?

L. C. J. 'Tis only as to that Particular. You shall not be tied up to the Form you deliver to him. What Advantages there may be concerning the Form of the Plea you bring hither, we will see shall not be taken.

Sir *Fran. Win.* Will your Lordship please to afford us no longer Time?

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

Sir *Fran. Win.* Shall not we have a Copy of the Indictment neither?

L. C. J. You will offer Things that are not to be granted to you, *ad captandum populum*, that you may say you are hardly used, and mightily straitened in this Case.

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

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

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

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

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

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

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

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

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

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

Mr. *Wallop*. Thus, my Lord: If we can have no farther Instructions, nor can by any other Means come to a Sight of these Things, then it is the best Plea we can make in such a Case, and I avow the Plea: But if any Thing should fall out amiss to the Prisoner for want of such a Sight, I pray it may not lie upon me.

L. C. J. Read the Plea.

Cl. of Crown. *Et prædictus Edwardus Fitz-Harris in propria persona sua ven. & dic. quod ipse ad Indictament. prædict. respondere compelli non debet, quia dic. quod ante Indictament. præd. per Jur. præd. in forma præd. compert. scil. ad Parl. Dom. Reg. nunc incubat. & tent. apud Oxon. in Com. Oxon. vicesimo primo die Martii anno Regni dict. Dom. Reg. nunc tricesimo tertio, ipse idem Edw. Fitz-Harris per Milites Civiles & Burgenses in eodem Parl. assemblat. nomine ipsor. & omnium Com. Anglie, secundum legem & cons. Parl. de alta proditione coram Magnat. & Procerib. hujus Regni Angl. in eodem Parl. assemblat. impetit. fuit; que quidem impetio in plenis suis robore & effectu. adhuc remanet & existit, prout per Record. inde inter Recorda Parlamenti remanens plenius liquet & apparet. Et præd. Edw. Fitz-Harris ulterius dic. quod alta Proditio in Indictamento præd. per Jur. præd. in forma præd. compert. specificat. & mentionat. & alta proditio unde ipse prædict. Edw. Fitz-Harris in Parl. præd. modo ut presert. impetit. fuit & existit, sunt una & eadem alta Proditio, & non alia neque diversa; & quod ipse præd. Edw. Fitz-Harris in Indictamento præd. nominat. & præd. Edw. Fitz-Harris in impetitione præd. nominat. est una & eadem persona, & non alia neque diversa: & hoc parat. est verificare, &c. Unde ipse præd. Edw. Fitz-Harris petit. Judicium si Cur. Dom. Reg. sic super Indictamentum præd. versus ipsum ulterius procedere vult, &c.*

Mr. Williams. My Lord, we humbly pray, being assigned of Counsel for this Gentleman Mr. Fitz-Harris, that this Plea may be received.

L. C. J. Mr. Attorney, have you been attended, according to the Rule of Court, with this Plea?

Mr. Att. Gen. No, my Lord.

L. C. J. What is the Reason of that?

Mr. Att. Gen. Here is no more in effect, than what was offered four Days ago, when Counsel was allowed him. I sent last Night late to them for a Copy of the Plea: Indeed Yesterday at Noon they sent me this Note, That *Fitz-Harris* intends to stand upon his Plea, that he stands impeached in the House of Peers. I sent to know of them whether they would plead this to the Jurisdiction, or in Abatement, or in Bar: They declared, they would not plead to the Jurisdiction, but now I see 'tis to the Jurisdiction.

L. C. J. It is so; and that he proposed to plead at first.

Mr. Att. Gen. It is true, my Lord: But thus they sent me Word.

L. C. J. And as a Plea to the Jurisdiction, so it concludes.

Mr. Williams. My Lord, we have done all that is possible for us to do in this Case. The Court directed us to attend Mr. Attorney with the Substance, and so we have done; but the Form, we had Liberty to do as we pleased in.

L. C. J. You need not go about to excuse it, that you have not done it; we charge you with nothing.

Mr. Williams. I don't go about to excuse it; we don't take it as a Charge upon us.

L. C. J. All we say is this: If Mr. Attorney had had it, peradventure he might have considered of a Replication by this Time, or what he would do concerning it; but if he hath not had Time, we cannot expect it from him.

Sir Fr. Winn. My Lord, I only beg one Word as to Matter of Fact, and 'tis material as to ourselves to urge it. We did send several Messengers to get, if it were possible to be obtained, a Copy of the Impeachment in Parliament. We sent to the House of Lords Clerk to get it; but they that went down, tell us the Clerk is not in Town, or else we had sent Mr. Attorney the whole Plea at that Time.

L. C. J. I only ask the Question, to see whether Mr. Attorney hath had Time to think of it.

Mr. Att. Gen. My Lord, I think I need not any Time in this Case.

L. C. J. Pray go on, Sir.

Mr. Att. Gen. My Lord, I do pray your Judgment upon it; for 'tis a Plea that is insufficient: nay, 'tis no Plea to bar you of your Jurisdiction. First, I observe that whosoever will plead a Plea to the Jurisdiction, if he have any Record to plead, must have it in *poigne*, must produce it in the Court, or at least must produce a Copy sworn, that the Court may see there is nothing dilatory in the Case. And for this Matter, it will appear upon Examination to be a plain frivolous Plea; for there is no such Matter depending as this Plea alledges. But I speak of it as a Plea to the Jurisdiction of the Court; and such an one as will plead such a Plea, he must have the Record ready, to shew it to the Court, and by the Course of Law ought to have it ready to assert to the Court, that they have not Jurisdiction: So then 'tis certainly naught. That is the first Thing. Another Thing is this, with Submission; I say, They have pleaded no Record at all, nor any Impeachment at all, as this Case is; for the Notes that I have taken, my Lord, are, They say he was impeached by the Commons *de alta Proditione*; but that is naught. He ought in his Plea to have set forth his Impeachment, and for what Crime particularly; for either an Indictment or an Impeachment *de alta Proditione*, or Felony, or any other Crime, is naught, the Law allows it not. He ought to set forth, and must not aver upon a Record, but set it forth *in hæc verba*, or in the Substance of it; and so ought to plead the Record entirely as it is. And for those necessary Averments that cannot otherwise be made, the Law allows of them. But in this Case he cannot come and aver upon this Record; for he hath set forth the Impeachment not as it was, but only barely *de alta Proditione* in general, which the Record must shew, so as the Court may judge of it, and it must not be intended. But as they have set it forth, in this Case there is nothing of Treason specified in the Record averred, that can intend this to be the same; and, my Lord, so are all the Precedents. Whosoever pleads a private Act of Parliament, must plead it as it is, not in general that it is for the same Matter; for I take it then it is naught: And we are in your Judgment, that this is no Plea to the Jurisdiction upon that Point.

L. C. J. Mr. Attorney, Do you think it prudent to argue it this Time, or will you take a Day? Pray consider of that a little.

Mr. Att. Gen. My Lord, I think Delay is very dangerous and mischievous in this Case.

L. C. J. We can give you as short a Day as you please.

Mr. Att. Gen. But to satisfy the Court, the Clerk will be ready with the Journals, to shew that the Fact is not as they plead it.

L. C. J. Look you, Mr. Attorney, we must go on in a legal and formal Way, when we have a Plea put in; therefore whether you will not take Time for a Day or two to consider of this Plea: You had the Substance of it, but nothing concerning the Manner of the pleading; they would not tell you whether they would plead it in Abatement, or in Bar, or how: Therefore whether you will not take Time to consider of this pleading for a Day or two, pray consider with yourself.

[Then the King's Counsel consulted one with another.]

Mr. Att. Gen. My Lord, not only for what I have already offered, but for many other Reasons, we can see this can be no Way a Plea to the Jurisdiction

dition of this Court; for upon any Impeachment or Indictment, the King hath Election to proceed upon which he will: And if there were ten Indictments for one and the same Thing, if none of them are come to a Judgment, the King may proceed upon which he pleases, as in that Case of *Ireland* Yesterday; though the Party were arraigned and ready to be tried in *Ireland*, yet the King might, if he pleased, try him here; and the King hath ordered it so to be. But, my Lord, I take it, that this is not only apparently a false Plea, but a frivolous Plea in itself, being to the Jurisdiction of this Court: For there was never any thing of a Crime so great, but this Court of *King's-Bench*, which hath a sovereign Jurisdiction, for Commoners especially, could take Cognizance of it; and I put it upon that, my Lord. Never was such a Plea pleaded to your Jurisdiction; and therefore we pray your Judgment upon it.

Mr. *Sol. Gen.* My Lord, before we come to that which is the Question, if there were such a Plea pleaded to the Jurisdiction as they would have this to be, we humbly pray the Judgment of the Court, whether this be any such Plea at all as can bear any Debate: For it will not be a Question now, how far an Impeachment depending is a Bar to your Jurisdiction? But the Question is, first, whether this be such a Plea? For, my Lord, I do take it, no Man can plead any Record in another Court, any Indictment or Acquittal upon it, by pleading it in this Form as this is pleaded, by saying generally, that such a Time in such a Court, he was indicted for the same Offence, and was acquitted; yet thus this Plea is, and no more. But he that will plead *auter foitz acquit*, must plead that such a time he was indicted in such a Court, and set forth the Indictment and all the Proceedings of that Court upon that Record, and then 'tis proper for Judgment; such a Plea is formal, and requires an Answer, and it will be proper for us to give it an Answer: And when such a Plea is put in, we shall either demur to it, or give it the Answer that it requires of *null tiel Record*. But this does not require any particular Answer, because it sets forth no Record at all that we can answer to: for it is not sufficient to say in general, that he was indicted and acquitted, or impeached, and then aver that it was for the same Offence; but he ought to shew forth the Impeachment, and set forth in the Plea the Record, that upon it you may pass a certain Judgment. Therefore we hope you will set this aside, as not being at all formal, or requiring any Answer to it.

Mr. Serj. *Maynard*. My Lord, If you please to consider in this Case what is the Question, and what not. At present 'tis not the Question, whether if a Man be impeached of High-Treason by the Commons before the Lords, and this Impeachment stands unreversed in the Court of Parliament; I say, 'tis not the Question, whether this Court have Jurisdiction over this Man for that Offence; but the Question is, Whether he hath put in such a Plea before you, as will put that in question? Under favour, 'tis not sufficient for him that will plead a particular Record, in bar or other way, and make use of it, that he plead it in general Terms, but he must set forth that Record as it is; he must not give you the Title only, or say, he was indicted for such a thing generally; but he must so set it forth to the Court, that if Issue be taken the Court may, by comparing the Record with the Plea, judge whether it be the same Matter or no. Now when he pleads he was impeach'd for the same Treason, he must set forth what that was, that it may appear it was for the same Treason; and if that be particularly set forth as it ought, upon *null tiel Record*, the Question will be, Is there such a Re-

cord or not? Now if he comes and says he was indicted or impeached, and not for what in particular; the two things that upon the Issue are to be compared, are not made so fit for your Judgment. In our Law, my Lord, if a Man will plead, he need not set forth a general Act of Parliament; but if he will plead a particular Act, he must set forth the Matter of it, to bring his Case under the Judgment of the Court; and whether this be so pleaded or no, we submit it to you.

L. C. J. Pray let me speak two or three Words to you: do you speak it against our receiving of the Plea?

Mr. *Att. Gen.* Yes, my Lord, we hope you will not admit such a Plea.

L. C. J. That will be hard. Pray then consider with yourself, whether if it be an insufficient Plea (for we'll say nothing at present to that) and if the Plea be such that no Issue can be taken upon it (admitting it were so) whether you should not demur to it, before you demand our Judgment, that we may have somewhat upon the whole before us to judge upon? And I speak it to you, Mr. *Attorney*, to this purpose, that you may consider, whether you shall think fit to demur to this Plea, or whether you shall think convenient to take Issue upon it, or to reply to it, that it may come judicially for our Opinion; for in a regular way, if a Plea be admitted, it must be either demurred to, or reply'd to. Pray consider of it in this Case; and we will give you time to consider, if you please.

Mr. Serj. *Maynard*. Under favour, my Lord, if a Plea be apparently vicious when it is upon Record, we need not demur to it, nor take Issue; for else the Mischief will be, we shall admit all that is well pleaded to be true.

Mr. Serj. *Jeff.* My Lord, if your Lordship please, I do confess that according to the usual Course and Practice, if there be a doubt upon a Plea that is read, whereon any Point in Law may arise, you do put the Party to demur or take Issue: but according to the common course of this Court in common Cases, and much more in extraordinary Cases, and especially in capital Cases, and most of all in a Case of High-Treason, such as this, if it do appear to the Court and your Lordship, that the Plea is in its nature a frivolous Plea, you do usually refuse to admit such a Plea, and give Judgment upon it. Now we would acquaint your Lordship with our Apprehensions in this Case, and we would pray you to consider what the danger may be upon us to demur, if this Plea be frivolous, as it appears to be: For whether an Indictment in this Court, or an Indictment in another Court be for one and the same Offence, and so a bar to the Jurisdiction, we are not so much as admitted into the Question of that, as this Plea is. Whereas according to the course in other Pleas, we pray you would be pleased to see the Inconvenience, if we should be put to demur to it; for then we do admit by this Demurrer, that this Impeachment is for one and the same thing; and we humbly conceive, my Lord, that is a little dangerous. How then will it be possible for you ever to judge, that the Impeachment (which in Fact is otherwise) and the Indictment is for the same thing, unless you will put them to pursue the common Methods, how it was in the House of Lords, by shewing forth the Record? And what can we do otherwise (it being apparently against the common Form of Pleas, and manifestly for Delay only) than pray the Judgment of the Court, which we hope will be to reject this Plea?

L. C. J. Brother *Jefferies*, you need not be afraid, that you shall be concluded by this Demurrer, that there is such an Impeachment in the Lords House for the same Offence: there will be no colour for it. And Brother *Maynard*, formerly I confess, when

they pleaded Pleas *Ore tenus*, and took their Exceptions *Ore tenus* too, they would demand Judgment of a Plea presently; and so it was in the Bishop of *Winchester's* Case, 3 *Edw. III.* where there was an Indictment against the Bishop here in this Court, forgoing away from the Parliament at *Sbrewsbury* without the Leave of the Lords: There *Sbard* comes in, and pleads *Ore tenus* this Matter, and says, This is a Thing that concerns the Lords in Parliament, of which they have Cognizance only, and so prays the Judgment of the Court presently, Whether they have Jurisdiction of the Cause or no? And he pleads it in Abatement. There they over-ruled him presently without any more to do, because their Pleadings were not as now they are; now they are grown into a formal Way, all entred upon Record, or at least written in Paper: And what should be the Reason why you should not do according to the common Course of the Court, I leave it to you to consider of it.

Mr. Serj *Maynard*. It is very true, my Lord; anciently the Course was so, my Lord, and the Law was so too, to plead *Ore tenus*; but pleading in Paper is the same Thing; and the Course of the Court hath been, when they saw it in Paper to be a frivolous Plea, to give Judgment presently: And you have the same Privilege upon this Account, as they had when Pleas were by Word of Mouth. If there be a Demurrer, it may hang longer than is convenient this Cause should do.

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

Mr. *Att. Gen.* I have looked upon all the Precedents, and could never meet with one Demurrer where the Plea was to the Jurisdiction: But I pray your Judgment upon the first Matter, whether whosoever pleads to the Jurisdiction ought not to have the Record *in poigne* to justify his Plea? In a Plea in Bar indeed it may come in by *Mittimus*, but in a Plea in Abatement, the Party ought always to be ready with those Matters, that are to out the Court of their Jurisdiction; and besides, the Court is to maintain their own Jurisdiction, the King's Counsel have nothing to do to assert that, but they ought to avoid all Things that may be to the King's Prejudice, and therefore it ought to be by the Judgment of the Court in this Case set aside. But I do think you will never find a Demurrer that was to a Plea to the Jurisdiction.

L. C. J. Pray consider of that.

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

L. C. J. If you do insist upon it, that you won't demur, nor do nothing, we will give Judgment; but we will take Time to consider it, if you won't demur, nor take Issue, or Reply.

Sir *Ivan. Withens*. Will your Lordship please to spare me one Word? As it hath been observed to your Lordship, this is a Plea to the Jurisdiction of the Court; and if they do plead a Plea of that nature, the Court always expects the Plea should be substantially good, otherwise 'tis not to be received. Now it is not substantially good here; for it says, that *Fitz-Harris* was impeached of High-Treason: Now such an Impeachment is naught, for no body can be impeached of High-Treason generally. It ought to come and set forth the particular Acts that make up the Treason; for the calling of a Thing so, does not make it so: Therefore they that would plead this Plea, must come and shew that there is an Impeachment that hath such Matter in it as does amount to Treason; so that then it being a naughty

Plea in the Substance of it, and the end of it to put this Court out of a Jurisdiction, we hope for that Reason you will not receive it.

Mr. *Sanders*. One Word farther, if your Lordship please, on the same Side for the King. As for this Plea that he hath pleaded here, if it had had substantial Matter in Law, whereupon to ground a Debate, we should not press your Lordship not to receive it, but we must get off of it as well as we could; but when it is manifestly pleaded merely for Delay, and it so appears to your Lordship upon the reading of it, and that there is nothing of Substance in it, then we hope you will not receive it, nor put Mr. *Attorney* to demur to it, or take Issue upon it. Now for the Plea the Case is thus: Here is an Indictment for Treason against Mr. *Fitz-Harris*, for conspiring the Death of the King, compassing of it, and declaring such his Intention by a venomous Libel. Now he comes and pleads to out this Court of their Jurisdiction; and what does he plead? He says he was formerly impeached of High-Treason in the Parliament, that is all he says concerning the Impeachment; then he does come and make an Averment, without shewing more, that this High-Treason, and that for which he was impeached, is the same; and takes upon himself to judge, whether the Court will or not, and will not submit it to the Court, which certainly is not the right Way of pleading. If Mr. *Fitz-Harris* should come and plead *autre foitz acquit*, That he had been tried at another Time for the same Offence and acquitted, he should not have said generally he had been formerly indicted and acquitted, and this for the same Thing; but he must have shewed the Record, and then averred upon the Record that it was for one and the same Crime. For suppose in this Case, which would have appeared perhaps to be so, if he had done as he should have done, shewn that there was such an Impeachment, whereby he was impeached of High-Treason, and which Impeachment did charge him with Treason for levying War against the King, and then have made a Conclusion as he does now, with an Averment, that the Impeachment and the Indictment was for one and the same Offence: Under favour, notwithstanding his Averment, the Court would have adjudged them not to be the same; for if so be the Treason do not appear upon the Record to be the same, his Averment will signify nothing; why then his pleading now thus insufficiently for want of the Record, will be better for him than if he had pleaded it sufficiently. Why then if he had now pleaded, that there is a Record of the former Impeachment, and set forth the Record, and then averred this was for the same, Mr. *Attorney* might take Issue either there was no such Record, or said it was another Treason, and traversed it that it was not for the same; and so there would either have been one Trial by the Record, or the other upon the Fact, by the Country. But now as he hath made it, this Trial both upon the Record, and upon the Fact, is only triable by the Country, not by the Record. For if Mr. *Attorney* take Issue that there is no such Record, then all the Record is, that he was impeached for High-Treason, and then a Record of Impeachment for any High-Treason would serve the turn; which if it be not for the same, it ought not: So then the Issue of *null tiel Record* could not be taken. Why then now, my Lord, as to the Fact: If Mr. *Attorney* take Issue, that it was not the same Treason, then the Record must be tried; that is, whether there was such a Record that does contain an Impeachment for the same Treason for which he stands indicted; this I say, must be tried by the Country. And if he have pleaded it so, that Matter of Record

cord upon Issue must be tried by the Country, for that reason his Plea is naught; and if that be so, then the Court may be satisfied, and 'tis apparently pleaded only for Delay, because he would not come to the principal Matter, and plead Guilty or not Guilty, which is the Matter of Fact most proper for the Country. I rather hope he is not Guilty than that he is: but if he be Guilty, 'tis the most horrid venomous Treason as ever was spread abroad in any Age. And for that reason your Lordship will not give Countenance to any Delay. And therefore we pray the Plea may be rejected, and he may answer over.

Mr. *Att. Gen.* He hath not pleaded *prout patet per Record.*

L. C. J. Yes, 'tis *prout patet in Rotulis Parliamenti.* He does say that he was impeach'd of High-Treason by the Commons before the Lords, as appears by the Records thereof amongst the Records of Parliament.

Mr. *Att. Gen.* I did not truly remember that; but I beg your Pardon if it be so, for I had not a View of the Plea till now; but I am ready thus far to satisfy the Court, 'tis a pure false and frivolous Plea. And then with Submission I offer it to your Consideration, whether you will give any time, or presently reject it.

L. C. J. We will give them no time, that is sure. But the Question is, Whether time should not be taken, not in Favour of the Prisoner, but of the King and of the Court?

Mr. *Att. Gen.* I am ready to make out, if it were necessary, that there is nothing of all this true; 'tis all Fiction that is pleaded, and nothing in the Record to warrant it: I have a Copy of the whole Journal, and of the Transactions in the House of Lords, the Book is close by and ready to be shewn; but when 'tis a frivolous Plea, I hope there will be no need of that trouble.

L. C. J. But, Mr. *Attorney*, whether we can take notice of the Journal Book now, you had best consider, as this Case stands.

Mr. *Att. Gen.* They ought to have it here ready, they ought to have it here *in poigne.*

Mr. *Just. Jones.* There have been very many good Arguments urged by you, upon which perhaps the Plea will be judged insufficient; but the Question is, Whether you are now in any such Form as we can pass Judgment upon this Plea, or no? Therefore it being offer'd to you to consider of it, what you will do in it; sure it is reasonable you should consider of it, and when you are agreed, then you may ask our Judgment.

L. C. J. We cannot put you to it to give a final Answer to bind the King: therefore let it stand as it is; we will consider of it.

Mr. *Att. Gen.* Then, my Lord, I'll demur immediately.

Mr. *Sol. Gen.* And we pray they may join in Demurrer immediately.

Mr. *Serj. Jeff.* If they do not mean it for Delay, now Mr. *Attorney* hath demurred, I suppose they will join Demurrer immediately.

[Then the Clerk of the Crown drew up a general Demurrer, which Mr. *Attorney* signed, and it was read in the Court by the Clerk of the Crown.]

Mr. *Att. Gen.* We pray they may join in Demurrer.

Mr. *Williams.* My Lord, we that are assigned of Counsel for this Gentleman, the Prisoner at the Bar, (that your Lordship may be satisfied, and all that hear us, that we do not design or desire to delay one Minute in this Cause) do declare, that we will join in Demurrer with them immediately.

[Then the Clerk drew up the Joinder in Demurrer, which being signed by the four Gentlemen of Counsel]

with Mr. *Fitz-Harris*, was also read in Court.]

Mr. *Att. Gen.* My Lord, I pray your Judgment; here is an Indictment for framing a treasonable Libel—

Mr. *Williams.* My Lord, we hope we shall not be put—

Mr. *Att. Gen.* Pray, Sir, hear what I pray. My Lord, I desire your Judgment, that the Plea may stand over-ruled for a plain fatal Error in it. This is a particular Indictment for the framing a most pernicious scandalous Libel against the King and the Government, for Treason in that particular; and I think there is no Person does doubt, but that this is a Matter within the Jurisdiction of this Court to try: There is no Difficulty in that. What do they do to out this Jurisdiction? They come and plead, that *Fitz-Harris* was impeached *de alta Proditione*; that's all they plead of High-Treason in general, to out the Court of a Jurisdiction of a particular Treason, for framing a malicious traitorous Libel; and this is a particular Treason upon the Statute of the 13th of this King. Now they have pleaded no particular Treason upon that Statute they were impeach'd for, nor upon the Statute of the 25th of *Edward III.* which hath a general Clause of a declaratory Power, and it may be he was impeach'd upon that, and we shall not intend it otherwise, that being the general Law, the other but a particular Law for this King's Life. Now in all Pleas to the Jurisdiction, they ought to be the strictest and most certain of any Pleas whatsoever. And as I offered before to you, so I do now again, they ought to be ready with the Record to justify their Plea: but this in short I insist upon, that to out a Court of its Jurisdiction for a particular Treason, 'tis not a good Plea, by saying he was impeached or indicted generally of High-Treason, and no Averment can possibly help it. For it appears by the Impeachment 'tis not for the same, and 'tis rather to be intended that it was not; but the Impeachment being general, that they went upon a declaratory Power, in the Statute of the 25th of *Edward III.* which reserves to them the Power of declaring Treason at large, and not upon that which may be tried here in an inferior Court upon a particular Statute: I say, my Lord, they ought to have pleaded it certainly, which they having not done, 'tis fatal; and I pray your Judgment upon it: and I hope they are ready to make good their Plea.

Mr. *Sol. Gen.* My Lord, that which we do say to it, is, That this Plea is neither good in Matter nor Form; and if it had been pleaded never so formally, perhaps we would have demurred to it: but as now it is pleaded, it is not formal, and therefore we pray it may be over-ruled. The Exception we take it in point of Form, we think is fatal; for there is no Man that pleads an Indictment or an Impeachment in another Court, but must set forth the Indictment in the Plea, which is not done in this Case, and we take that to be fatal to it. For a Man that will plead *auter foitz acquit*, must set forth the Indictment, and all the Proceedings of the Court upon that Indictment; this is the constant pleading in all Cases, and particularly in *Haux's Case*, the fourth Report. Whoever will plead *auter foitz acquit*, must set forth the Record, before it will require an Answer to be given to it.

L. C. J. What do you say to it, Gentlemen, for the maintaining of your Plea?

Mr. *Williams.* This is that we say, my Lord: We hope your Lordship, and the Court, in this Case, will not tie us up presently to come and argue this Matter. One thing I would mention, because it hath been said there never was such a Precedent;

cedent; I think, to this purpose, the Precedent of *Elliot's Case* is very full in it. Mr. *Attorney* is pleased to say, he never found that any Plea to the Jurisdiction did ever require a Demurrer, but was over-ruled or allowed by the Court presently; but that Case is plain to the contrary upon that very Matter. It was an Indictment brought against *Elliot*, for some Misdemeanors committed by him in the House of Commons; this being pleaded to the Jurisdiction of the Court, the Attorney-General at that time said it was not to be received; that was the Matter he insisted on then, that it should be rejected: but the Court did then, as you do now, over-rule the Attorney in it, and put him to demur.

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

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

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

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

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

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

L. C. J. Look you, I'll tell you; you might, if you had pleased, have entituled yourselves better to have had time to speak to the Plea, if you had pleaded over to the Treason; then we could have given you time to have spoken to it, and not delay'd the King at all: but you have thought fit not to plead over. I must confess, I did expect you would have pleaded over, as you might have done, and I thought you would; therefore having not done it, it is in our Consideration, whether we will give you time, and what time we will give you.

Mr. *Wallop*. It is under your Lordship's Favour, according to the usual Course of modern Practice. I have been an unprofitable Attendant here near forty Years, and, for my part, I did never yet see so swift a Proceeding as this is now; it is as swift as Lightning. It is a very extraordinary thing; we might well conceive, that nothing more should be expected from us than what is usual, and that we should not be put out of the ordinary Proceedings. Anciently indeed, as your Lordship did observe the other Day, they pleaded *Ore tenus*, and then the Proceedings were very quick: now indeed it is otherwise; modern, and what we may call ancient Practice too, hath made an Alteration from that Method: and we humbly pray we may not proceed, but according to the rate of modern Practice. My Lord, whereas they are pleased to call it a frivolous Plea, I believe it is a Plea of the greatest

Import that ever these Gentlemen came here about, whatsoever they are pleased to say. But your Lordship knows, the Life of a Man is the greatest Favourite in Law; and that to be a most ancient and wise Rule, *De morte hominis nulla est cunctatio longa*. And since we could not reasonably expect to be thought to come provided in this Case, we humbly pray, that your Lordship will allot us such a reasonable time as your Lordship shall think fit.

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

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

L. C. J. Certainly, Mr. Pollexfen, *in favorem vite*, it would not hurt the Plea to plead over.

Mr. Att. Gen. My Lord, if your Lordship please to favour me a Word in this Case; I hear several things urged, particularly instancing in modern Practice. If that Gentleman will shew that in any Case the King and the Court were so indulgent to give four Days to plead to the Jurisdiction of the Court, then he will shew me something of modern Practice, which I know not; but if that Gentleman will remember modern Practice in a great Nobleman's Case, for whom he was of Counsel, it was told him, if he would debate the Point of Law, he must do it presently: They never would give him time to prepare for his Argument, there was no such modern Practice then. I would desire him to give me one Instance, that when Gentlemen are assigned of Counsel to plead a Matter to the Jurisdiction, and deal so with the King's Counsel as they have dealt with us, not to let us see the Plea till now; the modern Practice hath been to give them any time. For them to say, that they could not foresee what we would be at; could they not foresee the Points of Law? Could they not foresee a plain Case? But they do not take off the great Matter, that he that doth plead to the Jurisdiction, ought to have the Record ready in his Hand; but, my Lord, we lay our Thumb upon that which is our Exception; they have pleaded no Impeachment of any Crime, that can appear to be the same with that for which they are indicted, that is the Point. Is there such Difficulty? Did not these learned Gentlemen think? Could they not foresee that we should look into their Plea, that it should be legal? Therefore I did, and do pray your Judgment. If they had pleaded, and set forth the Record truly, as it is, and as it ought to be set forth, in case they would have any Benefit by it, we would have given them another Answer; but if it be done purposely, as it is done with Artifice, I am bold to say, for these Gentlemen know how to plead a Record as it ought to be, and how this ought to be pleaded to, to out the Court of a Jurisdiction of a particular Crime. They say the Life

of a Man is concerned, and so is the Peace of the Kingdom concerned too, in the Life of as great a Traitor as ever was tried in *Westminster-Hall*. For if his Treason had taken effect, certainly the Kingdom had been very near embroil'd in Civil Wars by this time; therefore the whole Peace of the Kingdom depends upon his Life, and it depends upon the clearing of the whole Matter. And I challenge them again, if they can shew me any Instance of the like nature. That of *Eliot's Case* that was mentioned, it was an Information; and to Pleas upon Informations there have been Demurrers, but to Indictments found by twelve Men, we do not meet with any Demurrer any where to a Plea to the Jurisdiction. But I pray your Judgment, that he may plead in chief; for 'tis but a *Respondes oyster*, and if these Gentlemen desire to take time, I hope you will not delay the King by giving countenance to such a plain imperfect Plea; and for those high Matters they talk of, that will be the Consequence, they can never come in question upon this Plea.

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

Mr. Serj. Jeff. Will your Lordship be pleased to spare me one Word: I wonder at what Mr. Wallop seems now to urge concerning the Life of a Man that is concerned in this Case; 'tis true, the Life of a Man is concerned, which is a dear thing to the Law; but certainly the Life of the Government is more dear to the Government, and all Courts of Justice, than the Life of any one single Person: And I am sure this one Person hath done

as much as in him lies to strike at the Life of the Government, in case this be true that is laid to his Charge. Now to make this Case like to *Plunket's* the other Day, is strange: I think your Lordship hath given an account of that. For hath he pleaded to the Fact, Not Guilty, as *Plunket* did? We that are of the King's Counsel would in common Charity hope, that he is not guilty; but I am sure, if he be guilty, no *Englishman* can think that he deserves to live: Why then should we be so fond of a Man's Life, that hath been guilty of such a Fact as this? For Example sake; surely, if that be the thing in question, we ought to have speedy Justice executed upon a Man that deserves no Mercy. Your Lordship was pleased to take notice of another Circumstance in the Case of *Plunket*: He was indicted, he was arraigned, and was to have had his Trial in *Ireland*, and was to fetch his Witnesses from thence; all these things were in that Case. He desired time to consider what he should plead; but your Lordship finding an Indictment found against him, according to the Rules of Justice, over-ruled that Matter he suggested, and made him plead Not guilty, before ever you admitted him to debate any thing of that Fact. And then it appearing to your Lordship to be in another Kingdom, and that it was impossible, in regard of the Hazards of the Winds and Seas, to get over his Witnesses in a little time, your Lordship gave him time; but you gave him as strait a time as could be consistent with the Rules of Justice, and as his Case would bear. Now, my Lord, this being offered in a Case of that Expectation which the Case before you seems to have, we desire the Dispatch of it as much as we can. In case the Man be innocent, God forbid but he should be acquitted; but if he be guilty, God forbid he should live a Minute.

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

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

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

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

Mr. Serj. Mayn. Pray how then is your Life in question upon the Decision of this Plea?

L. C. J. Brother, they do not speak as to this Plea, that it hazards his Life, but the *subjecta materia*, upon the Decision of it, supposing Judgment be against the Plea. Therefore, *Mr. Attorney*, we do think fit to give him till *Friday* Morning, and he shall be brought hither then again by the Lieutenant of the *Tower*; then we will hear these Gen-

tenien: and if they do not shew us any considerable Matter to maintain the Plea, they must expect Judgment presently.

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

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

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

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

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

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

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

Mr. Sol. Gen. My Lord, I believe they are not in haste.

L. C. J. *Mr. Attorney*, we would give them a reasonable time; but yet we would do nothing that might make unnecessary Delays in this Case.

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

L. C. J. As to that, *Mr. Attorney*, every Case stands upon it's own Bottom.

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

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

L. C. J. Look you, Gentlemen, to accommodate you, the Court does think fit thus to do: we will be here on *Saturday* by Seven o'Clock in the Morning. On *Friday* we can do nothing, for there is a long Trial at Bar that will take up our time; but on *Saturday* we will be here by Eight o'Clock sitting, and expect you to be here by that time: and we cannot afford you then long time to argue in, because it is an *Exchequer-Chamber* Day.

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

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

Mr. Serj. Jefferies. But then they ought not to pretend they have no notice, their Witnesses are out of the way, and so hinder the Trial.

Mr. Just. Jones. No, no.

Mr. Fitz-Harris. My Lord, I desire I may have these Lords come to me; my Lord of *Essex*, my Lord *Salisbury*, my Lord Mayor, your Lordship, and *Sir Robert Clayton*, to perfect my Discovery. I have something to discover to your Lordship and them.

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

Mr. Fitz-Harris. Of the Plot, and of the Murder of *Sir Edmundbury Godfrey*.

L. C. J. We did examine you about the Murder of *Sir Edmundbury Godfrey*.

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

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

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

L. C. J. We were not in haste; we asked you often that Question.

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

Mr. *Just. Dolben*. To some of the Questions we asked you, you answered readily and freely; but to some we could not get a positive Answer by any means.

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

Mr. *Fitz-Harris*. Did I say so, Mr. *Attorney*?

Mr. *Att. Gen.* Yes, you are the Man.

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

L. C. J. Lieutenant of the *Tower*, take your Prisoner, and be here before eight a-clock on *Saturday* Morning.

Sir *Fran. Win.* My Lord, now I desire we may have a Copy of the whole Record.

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

Sir *Fran. Win.* But, my Lord, I hope you will let the Indictment be read upon *Saturday*, because Mr. *Attorney* had fixed his Exception upon part of the Indictment, which is the Libel that he calls the particular Treason, and I desire it may be in Court.

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

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

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

Mr. *Williams*. MAY it please your Lordship, I am assigned of Council for this Person, Mr. *Fitz-Harris*, the Prisoner at the Bar.

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

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

Mr. *Att. Gen.* That is the reason, my Lord, why I would lay my Finger upon those Points that will be the Questions between us. Now the Exceptions I take to the Plea are these: This is a Plea to the Jurisdiction of the Court, and some of our Exceptions are to the Form, and one is to the Matter. To the Form, my Exceptions are these: First, We say that the general Allegation that he was impeached *de Alta Proditione* is uncertain, and too general; it ought to have been particularly set out, that the Court might judge, whether it be the same Crime, and it is not helped by the Averment. And the next Exception I take to it, is, here is no Impeachment alledged to be upon Record: I mentioned this the last time, and looking more strictly

into it, I find it is so as I said: For they come and make a general Allegation, that *Fitz-Harris*, such a time, was impeached, *Impetitus fuit*, by the Commons before the Lords, *Quæ quidem impetitus in pleno robore existit, prout per Recordum inde, &c.* Now, my Lord, there is no Impeachment mentioned before: And *quæ quidem Impetitus* is a relative Clause, and if there be no Impeachment mentioned before in the Plea, then there is nothing averred upon the Record, to be continued or discontinued; for *Impetitus* does not actively signify the impeaching, or passively the Person impeached, but it signifies the Indictment or Impeachment, that Instrument which contains the Accusation, and which is to be and remain upon Record. Therefore, when they come and say he was impeached, and afterwards alledged, *Quæ quidem Impetitus* remains upon Record, that cannot be good. If a Plea should be *Indictatus fuit*, and afterwards they say *quod quidem Indictamentum, &c.* it cannot be good, for the Relative there is only illusive. These are our Exceptions to the Form. For the Matter of it, it is a Plea to the Jurisdiction of the Court; and, with Submission there the Point will be, whether a Suit depending, even in a superior Court, can take away the Jurisdiction of an inferior Court, who had an original Jurisdiction of the Cause, of the Person, and of the Fact, at the time of the Fact committed. What Use might be made of it, as a Plea in Bar, might be of another Consideration; but whether this be enough to make it amount to such a Plea, as will take away the Jurisdiction of a Court, that had an original Jurisdiction, that is the Question before you. These are the Exceptions I take, and do insist upon: And I desire, my Lord, the Council will apply themselves to these Exceptions, to answer them; and when we have heard what they can say, I hope to give them an Answer.

Mr. *Williams*. My Lord, I am assigned of Council for the Prisoner at the Bar, *Edward Fitz-Harris*, who is indicted here for High-Treason, and hath pleaded a special Plea to the Jurisdiction of the Court: And I must crave leave to state his Case upon the Indictment, the Plea to the Indictment, and the Demurrer to the Plea. And the Case, my Lord, upon the whole Record stands thus: He was indicted this Term, by one of the Grand Juries for this County, of High-Treason. As to the Indictment, it cannot be expected I should state the Parts of it, it being an Indictment I never saw. To this Indictment thus presented, *Fitz-Harris* hath pleaded thus: That he ought not to be compelled to answer to this Indictment, because that before the Indictment was found, at a Parliament held at *Oxford* the 21st of *March* last, he was impeached by the Knights, Citizens, and Burgeesses of the House of Commons in Parliament assembled, in the Name of themselves, and of all the Commons of *England*, of High-Treason; and that this was before the Court of Lords in that Parliament. He says farther, that this Impeachment is remaining in full Force and Effect before the Lords in Parliament, *prout per Recordum inde int' Record. Parliamenti remanens plenius liquet & apparet.* These are the Words of the Plea: And then he avers, that the High-Treason mentioned in the Indictment, and the High-Treason specified in the Impeachment, are one and the same. And he further avers, that he is the same *Fitz-Harris* named in that Indictment, and mentioned in the Impeachment. And after the Averments, he concludes, to the Jurisdiction of the Court; whether upon all this Matter, they will proceed any farther against him upon this Indictment;

ment; and demands the Judgment of the Court to that Purpose.

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

First, That the Prisoner stands impeached, by the Commons of *England* in Parliament assembled, of High-Treason. *Secondly*, That the Impeachment thus made by the Commons, in the Name of themselves, and of all the Commons of *England*, before the Lords in Parliament, for Treason, is now in being. *Thirdly*, which I omitted in the opening of the Plea, that this was done *secund. Legem, & Cons. Parliamenti*; and being so, remains *in plenis suis Robore & Effectu*. And more particularly this Plea does refer to the Record, for the Parts and Circumstances of the Impeachment, *prout patet per Record. inde inter, &c.* So that it does refer the Impeachment itself to the Record, and tells you this is among the other Records of that Parliament: all this is admitted by the Plea. *Fourthly*, And moreover, that this Treason, for which he stands impeached before the Lords, and the Treason for which he stands indicted before this Court, are one and the same Treason, and no way diverse; and so they are the same numerical Thing, and there is no manner of difference: And that this Person *Fitz-Harris*, now indicted, and the *Fitz-Harris* impeached, are one and the same Person, and no way diverse. And withal, my Lord, it appears plainly upon the Record, that this Impeachment was depending before; the Indictment found for the Parliament was the 21st of *March*, and it appears by the Record this is only an Indictment of this Term. And another Thing I must intreat you to observe, my Lord, it does not appear but that this Parliament is still in being, for any thing to the contrary in the Record, and as I take the Case, then it must be admitted so to be.

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

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

Question, Whether this Court may proceed upon an Indictment for the same Offence the Parliament was for. And here I shall distinguish upon Mr. *Attorney*: He does allow the Parliament to be a superior Court; but admitting that, he says, though it be so, yet the inferior Court having original Jurisdiction of the Person and the Cause, it may proceed notwithstanding an Indictment in the superior Court; and, *ergo*, he does infer that this Court may proceed upon an Indictment, notwithstanding an Impeachment in Parliament.

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

I would

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

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

Another Thing is this, my Lord, the common Argument in any extraordinary Case, there is no Precedent for this Way of proceeding; it is my

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

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

Now, my Lord, for my Authority, that Impeachments are not pardonable, I would only hint a little to compare it to the Case of an Appeal, as *Penryn* and *Corbet's* Case in 3 *Croke, Hill.* 38 *Eliz. fol.* 464. There was an Appeal of Murder; upon which he is found guilty of Manslaughter, and not guilty of the Murder. Then there was a Pardon pleaded of the Burning in the Hand, or of the Punishment: It is not plain in the Book whether the Pardon was after the Verdict, or before (that I cannot be clear in;) but however there was a Question whether the Queen could pardon the Burning in the Hand; however it was there allowed: But there was an Exception my Lord Coke, who was then Attorney-General, took, that the King could not pardon, if it had been an Appeal of Homicide; and he concurred with the Court in that Opinion. But that Appeal being for Murder, and the Verdict of Manslaughter, they passed over the Question, for this Reason that I have mentioned. That the Appeal was not for Manslaughter, it was for Murder; and if he had been found guilty of the Murder, it was not in the Power of the King to pardon him, it being at the Suit of the Party: So the Opinion of that Book, is, and of the then Attorney-General.

Thus I have stated the Thing, and the Consequences

quences of it, and it is not fit for me to dwell upon it: You will consider of it, I am sure.

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

My Lord, I now come to this, the Time, how unseasonable a Thing it is, and how dangerous to the Government: I take it to be a critical Thing now at this Time to make such Attempts as these are. There are Lords now that lie under Impeachments of Treason, the highest Treason, I think, that ever was contrived; and upon this Impeachment one Lord hath been convicted and executed. Suppose upon the Dissolution of that Parliament that impeached the late Lord *Stafford*, there had been an Indictment against him for one and the same Treason: And by the same Reason that this Court may proceed, his Majesty may appoint a High Steward to try by a Jury of Peers. For the Court held before the High Steward, is as much a Court as any Court in the Kingdom, except that of Parliament. I say, suppose the King had appointed an High Steward, and that Lord High Steward had proceeded against my Lord *Stafford*, I think my Lord *Stafford* had been alive at this Day. For in the Case of Treason your Lordship knows there must be two Witnesses; and I am sure there came in fresh Testimony against my Lord *Stafford* after the second Parliament after the Impeachment. I appeal to those noble Lords that are here, if it were not so; and had it not been for that fresh Testimony that came in afterwards, possibly my Lord *Stafford* might have been alive at this Time. And the Lords in Parliament, as I have observed in the Beginning, when they find an high Crime before them, when they find such a general contagious Design to subvert the Government, and yet they cannot come to cut off the principal Agents in this Design, because perhaps there may not be two Witnesses in strictness of Law at the first, it is the Wisdom of a Parliament to deliberate and to take Time. The good Queen who was used to say, Truth was the Daughter of Time, and Time would produce Truth, *Veritas filia temporis*. If then there had been any such hasty Proceedings, as in this Case, I doubt my Lord *Stafford* had been now alive. Now then for these Lords that are now in the *Tower*, if your Lordships do go on in this Way, do you not open such a Gap, as may be a ground to deliver them by the same Justice (I speak it

under Correction here, and I only offer it to your Judgment, for I have not had many Hours to consider of it; but your Lordship will think well of it before you give any Judgment; by the same Justice) the other Lords may be tried by another Court? This I offer in point of Reason, that this Proceeding will be very hard, and is an imprudent Thing, if not an illegal Proceeding. My Lord, I am sure it will have this Effect, it will stir up a Question between the Jurisdiction of this Court and the Court of Parliament: For in all Probability, if this Person should be acquitted, the Commons and the Lords will look into it. They are a Court that make a Survey of the Proceedings of all other Courts; and they will examine this Proceeding, or at least may do. And if he be found guilty, here is the Power of the Commons in Impeaching, and the Jurisdiction of the Lords in Trial and Judgment, taken away by an inferior Court to them, and so stir a Question between this Court and that highest of Courts, the Parliament. And what will be the Consequence of that? the Judgment of that Question will be in the superior Court, for there is no middle Court between this Court and the Parliament to judge of it; therefore I submit it to your Lordships.

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

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

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

But I say in the first Place, I take it to be a very good Plea, and that it is good according to the Pleading of *autre foitz acquit*. In pleading of a general Act of Parliament, we need not set forth the Act, but refer to the Record; and that will depend upon the Method of Impeachments in Parliament, which I am of Opinion, being the general Law of Parliaments, this Court ought to take Cognizance of. In the Case of *autre foitz acquit*, there is first an Indictment proceeding of the Court upon the Plea, a fair Trial, and a fair Acquittal, and a Record of all this Matter. If now this Person comes to be indicted again for the same Offence, there is a Record for him to plead that will shew forth the whole Matter; and if he does not plead that Record, 'tis his own Default. But in this Case here is

no such Record to plead, and there is the Mistake upon which Mr. Attorney has gone all along. And you must in this Case be governed by the Rule and Method of Parliament, which is this: The Commons, in the Name of themselves, and of all the Commons of *England*, impeach such a Person, and they bring up this Impeachment to the Lords in general, and there they have Liberty to present Articles in due Time, after due Consideration, which ought not to be done hastily. All this is no Record, such as may be had in the Case of *auter foitz acquit*: For first, the Impeachment of the Commons is no Record; when 'tis brought up to the Lords, there is only an Entry into the Journal of the Lords, that such a Day such a Person came from the House of Commons, and impeach'd such a one. And you are not to expect the same strict Method, and Form of Proceeding, as in other Courts, the Courts in *Westminster-Hall*, or inferior Courts. Your Lordship in this Case must be govern'd by such Proceeding as is in Parliament, and must take it as it is; and we have said enough, and as much as can be in our Case. We have not indeed set forth an Indictment, a Plea, a *Venire facias*, &c. for there is no such Proceeding in Parliament; but there was an Impeachment by the Commons, in the Name of themselves and of all the Commons of *England*, before the Lords, that it is *in pleno robore & effectu*, and that it was *secundum legem & consuetudinem Parliamenti, prout patet inter Recorda remanen.* &c. And here is enough. For when we refer you to a Record, that is as much as if we had set forth the Record itself; for we tell you there is such a Record, and we point you to the Place where you may find it. So we take it, 'tis a very full Plea; and if not, 'tis as much as any Man can plead in such a Case, though it be not pleaded particularly.

And, my Lord, that your Lordship is to judge in this Case, according to the Methods of Parliament, I depend upon the Authority of my Lord *Coke*; I will repeat you some of his Words: Speaking of the Law of Parliaments, he says, and he borrow'd it out of *Fleta*, That this High Court of Parliament *propriis suis Legibus & Consuetudinibus subsistit. Et ista lex ab omnibus querenda, à multis ignorata, & à paucis cognita.* But he tells you, and certainly he says true in it, Whoever will be learned in the Law of Parliaments, must repair to the Rolls of Parliament: And give me leave to cite his Opinion, which, I hope, may be of great Weight with this Court: It is in the fourth Institutes, *fol. 15.* he says, For any thing mov'd or done in the House of Commons, it ought to be determined, adjudged and discussed by the Course of Parliament, not by the Civil Law, nor yet by the Common Laws of this Realm, used in more inferior Courts, which was declared so to be *secundum legem & consuetudinem Parliamenti*, concerning the Peers, and the like, *pari ratione*, for the Commons; and that stops this Court in our Case: For so it is said in this Plea, which is the Matter you are to be governed by, that it is *secundum legem & consuetudinem Parliamenti*. He tells you further, there is no Notice to be taken of any thing said or done in the House of Commons; but by the Report of that House, and every Member thereof hath a judicial Place; he takes it out of *Henry VII.* and so the Book is expressly. And he goes on; 4 *Inst.* 15. This is the Reason that Judges ought

not to give any Opinion of Matters of Parliament; because it is not to be decided by the Common Laws, but *secundum legem & consuetudinem Parliamenti*. So he tells you, you are bound by the Methods of Parliament; and I need not press the thing much after his Authority; for he was learned in Parliament Matters.

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

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

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

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

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