

## LIEUTENANT-COLONEL JOHN LILBURNE,

FOR HIGH TREASON,

AT GUILDHALL, LONDON, OCTOBER 24, 25, 26,

1649.

THE commissioners being set, and proclamation for silence made; the Lieutenant of the Tower was commanded to bring forth his prisoner.

Cryer. John Lilburne, hold up thy hand.

Col. Lilburne, directing himself to Mr. Keble (the president of the court) desired he might have the privileges of a free-born Englishman, and such as were due to him by birth-right and inheritance, having fought for them. He said he mentioned not this by way of merit, to gain mercy, he scorned it, and asked none, but from the hands of God; he craved but the liberty which St. Paul had, of speaking for himself when he pleaded for his life before the heathen Roman judges; this, he said, he was allowed when he was arraigned before the House of Peers, by the king's special order, the first of May, 1641, for sticking close to the liberties of the nation, being one of those two or three men who first drew their swords in Westminster-Hall, against Col. Lunsford and his associates, when it was thought they designed to cut the throats of the chiefest men in the House of Commons. That being taken in the action at Brentford, by the king's forces, and arraigned as a traitor before the Lord-Chief-Justice Heath at Oxford, for levying war against the king, he was tried by the good old laws of England, with all the fairness and equity imaginable, and permitted to plead to the errors in the indictment, before he pleaded not guilty; and had council freely assigned him to consult and advise with, and help him in point of law as soon as he had pleaded, and before any fact was proved; all which he said was consonant to Sir Edward Coke's judgment, in his third part of his Institutes, chap. of high treason, fol. 29, 34, 137, and 230. That being no professed lawyer, he could not be supposed to understand the forms and niceties of law; and therefore it behoved him to consider (lest he hurried himself into dangers) before he held up his hand.

He complained, that notwithstanding courts of justice ought to be open and free to all people, and no man tried in holes and corners, yet at his entrance the gates were shut and guarded.

He said he had been summoned before a committee of parliament, on much the same pretence he was brought before this court, and there he refused to proceed, till by their special order their doors were thrown wide open; and said if he were not allowed the same privilege here, he should rather die than proceed further; and that they might have no jealousy of his escape, he had engaged to the Lieutenant of the Tower to be his true and faithful prisoner, to come and go back peaceably; and if he should be separated from him by force or accident, to return to him as soon as he had liberty; and he believed the Lieutenant did not scruple it.

Lord Keble. Mr. Lilburne, look behind you, and see whether the door stands open.

He said he was satisfied as to that; but in the next place he said, by the act made for abolishing the Star-Chamber in 1641, all statutes made against *magna charta* were declared to be void; and consequently that of the First of Edw. III. which erected these extraordinary commissions of Oyer and Terminer was repealed, as being against the subject's indubitable right declared in *magna charta*, viz.: that no Englishman should be subjected to any other trial but at the ordinary assizes, sessions or goal-deliveries.

He added, that this was the opinion of the House of Commons (when they were in their purity, and acted in defence of the liberties of the subject) as appeared by the arguments of Mr. Hyde, published in a book, called *Speeches and Passages of Parliament*, from p. 409 to 417, who was commissioned from the then House of Commons to complain of the special commission of Oyer and Terminer, exercised in the five northern counties, as unjust in the foundation, and inconsistent with the liberties granted by *magna charta*; though the frequent insurrections of those counties, in Henry Eighth's time (after the suppression of abbeys) was then an extraordinary reason for erecting that court; and therefore if they were then illegal in those aggravating circumstances and dangers, much more must it be so now, to try him

for words or books only, when there is no insurrection in the kingdom, and the ordinary courts of justice open, in which he had often (since his first commitment seven months ago) sought a legal trial, but could never enjoy that benefit, though he ought, by law and justice, either to have been tried at the first assizes in the county where his pretended crime was committed, or acquitted. Then he went on as follows:—

I never acted in an hostile manner against the present governors; I have been in many battles under their command, and hazarded my life for them, and since I left my command, have lived at home in peace. I was at the Commons door the same day they voted me a traitor, and was offered by Mr. Rigby (who now sits as judge amongst you) very great matters, in the names of some great ones, if I would follow their directions; so that I might easily have avoided the snares of mine enemies, but I thought myself secure in a safe conscience. About five o'clock next morning, two or three hundred armed forces, horse and foot, hauled me out of bed from my wife and children,—not according to the law, as is expressly provided in 1st Edward VI. chap. 12, and 5th and 6th Edward VI. chap. 11, but contrary to all good laws, (though there has been an eight year's war pretended for the laws and liberties of England) carried me through the streets of London in a terror, like an Algier captive, to their main guard at Paul's, and thence with a new and mighty host conducted me, by force of arms, to Whitehall, though (if I had been a traitor) I ought to have been proceeded against by the civil officers, according to the privileges the parliament themselves, in 1641, claimed for the six members, in their own Book of Declarations, p. 36, 37, 76, 77. I was then carried to Derby House, before a company of gentlemen who thought themselves authorized to be a committee or council of state, who, I am sure, had nothing to do with me, for pretended treason; and Mr. John Bradshaw, who had been council for me before the House of Lords, in 1645, against my unjust Star-chamber judges, urged it as illegal, arbitrary, and tyrannical, that the lords in the Star-chamber should order me to be whipped, pillored, &c. for refusing to answer interrogatories against myself; and yet Mr. Bradshaw treads in the same steps, and very seriously asked me questions against myself, and because I refused to answer, committed me for treason in general; and you are sensible generals in law signify nothing.

Judge Jermin.—Mr. Bradshaw is now Lord President of the Council of State in England, and it would become you to style him so.

Lieutenant-Colonel Lilburne.—Though several thousands of my friends, old and young, masters and apprentices, and abundance of the female sex too, jointly petitioned in behalf of myself and three fellow prisoners, that the house would not prejudge us before we were heard, but let us have a legal trial, or at least release us, and they would give any security for our forthcoming, to answer what should be laid to our charge, yet they got nothing but slights, abuses, and scorns.

But that you may see I have a quiet conscience, I again and again offered to choose two of the House of Commons, and let my adversaries choose two more, and refer the difference to them; but instead of that, I had my pockets and chamber searched, to find accusations against me; they took my estate of almost 3000*l.* from me, without any legal process; but I will not name by whose power it was done, at this time especially, because I will avoid provocations as much as I can; but the man is notoriously known who said I was a traitor, and he would secure it from me; and yet for all this, a legal allowance to keep me alive was denied me; for I had never a penny, but was absolutely refused that right which the king always allowed to members committed, who afforded four or five pounds a-week for each of them, notwithstanding they had great estates; and Colonel Long confessed he spent the king 1500*l.* for his part, in provisions. Then many of my old acquaintance have been set to reproach me, and endeavour to take away my life, who have confessed they were instigated by parliament men so to do. I appeal to your consciences, and to all the good people present, if this burthen be not too insupportable to a poor man, that is but dust and ashes.

And therefore, though I ought to be tried in Surry, where the pretended crime was committed, as I am brought before you by a piece of parchment, that neither I nor the lieutenant of the Tower could read,—not as an Englishman, who ought to see and read the authority; and truly, this piece of illegible parchment cannot satisfy my understanding of the legality of my convention. But as I was not able to dispute it, here I am.

And therefore, being brought in this extraordinary manner to this extraordinary place, I desire to hear your extraordinary commission read; for those who now exercise the supreme power at Westminster, have on the 9th of February and the 17th of March last, positively declared and called God to witness, that they will maintain the petition of right; and I would consider the consonancy of your commission to that, and other good old laws of England, and shall then return an answer like a rational and ingenuous man.

To this Mr. Prideaux, Attorney-General, answered,

That the prisoner could not complain the court wanted patience; the liberty of speech he desired, he had fully enjoyed, though it were not pertinent to the matter; that this was not a special commission of Oyer and Terminer, but general, according to the accustomed form, as had been used these five hundred years; that it had been openly read before Mr. Lilburne came, and he hoped my lord would declare it to be according to law, in the ordinary way; that Mr. Lilburne's presentment was found by the grand inquest, who were men of ability, and understood law as well as fact, and averred the commission was free from all exceptions; and that for his crimes being committed in Surry, he said Lilburne best knew what he had been guilty of there, but he was yet ignorant what he was here to be tried for, and desired he might put himself upon his trial.

Colonel Lilburne observed,

That Mr. Attorney, as member of the House, was one of the creators of these judges, and therefore not fit to prosecute him.

Lord Keble.—Mr. Lilburne, we come here to vindicate the liberties and laws, and I must let you know our commission is warrantable by them. As to your apprehension in an hostile manner, the law allows the power of the county to be raised, and the sheriff may take what power he pleases.

Lieutenant-Colonel Lilburne.—Not unless I resist; neither was any sheriff, constable, or civil officer there.

Lord Keble.—They may do it before they see him, as they are informed of the danger of the man. As to the proceeding in the Star-chamber, or those in the North, no one here justifies it; but to tell us to our faces we are created by the attorney-general, is not to be suffered; therefore, behave yourself like a rational man.

Lieutenant-Colonel Lilburne.—With your favour, but one word more.

Judge Jermin.—Mr. Lilburne, pray hear the court. This court is constituted by the supreme and public authority of England; most of us are judges of the law, and sworn to do justice to every man, and that you shall have; and you have received more favour than any man accused of treason ever had. Our commission is founded on the statute of Westminster, 2, which was obtained by the Baron's wars, and purchased by the sword for the liberties and privileges of the subject. You are to answer the charge of opposing the supreme authority now settled in the House of Commons, not newly erected, but revived; for it was so in the Saxons' and Romans' time. Our commission is general; but the grand inquest have found no traitor but Mr. John Lilburne; and the treasons are so dangerous that they call for justice against you; and I require you to put yourself upon your trial, and hear the treasonable offences laid to your charge.

Lieutenant-Colonel Lilburne.—That gentleman says I have had more favour than ever he heard of: Mr. Throgmorton had as much or more, who was impeached of higher treason than I am, and that in the reign of Queen Mary, who was accounted the bloodiest prince that had reigned in England for many hundred years; he was tried in this place, although his judges and prosecutor were bent to take his life, right or wrong; so that it is no extraordinary favour; it is only my right by law. And as I have given good reasons against the legality of a special commission, and suppose yours to be so, I desire all my friends, and all good people present, to take notice that you refuse reading that commission by which you go about to take away my life. And Sir, you require me to hold up my hand at the bar. I have read those laws which are in English, and cannot find the meaning of it, only that it is of a large extent. As for those laws which are in French or Latin, I can neither read nor understand, but conclude the holding up my hand to be a very ticklish point, and that I may throw away my life if I hold up my hand before I know what it means. I desire, therefore, a clear explanation of the signification of it, and then I will give you an answer.

Mr. Broughton.—Hold up your hand, John Lilburne, and hearken to your charge. "Thou standest indicted," &c. [as follows in the second day's proceedings] Art thou guilty or not guilty?

Lieutenant-Colonel Lilburne.—Gentlemen, I desire I may only speak what stands with reason and justice.

Lord Keble.—We shall deal with you according to reason and justice; now in reason you are to plead before you can be heard.

Lieutenant-Colonel Lilburne.—Sir, I am not to answer questions for or against myself.

Another Judge.—Is pleading not guilty accusing of yourself?

Lieutenant-Colonel Lilburne.—I know not what benefit I may lose, according to rules of law, and humbly desire a copy of the indictment, and reasonable time to consult with counsel, if it be but eight or nine days.

Lord Keble.—You are a better judge of the truth than another. If you say Not Guilty, when you have answered, you shall have liberty to make your defence.

Lieutenant-Colonel Lilburne.—Sir, the forms and practical part of the law being locked up in a strange language that I cannot understand, it is hard you should take away my life for my ignorance.

Broughton.—John Lilburne, what sayest thou? Art thou guilty? &c.

Lieutenant-Colonel Lilburne.—But to be entrapped with niceties and forms that cannot be found in English books, is not fair play; therefore I again desire counsel, that I may not lose my life upon forms and punctilios.

Another Judge.—Then you will not plead?

Lieutenant-Colonel Lilburne.—Mr. Bradshaw once promised Duke Hamilton to take no advantage of his ignorance in niceties and forms of law in his pleading: give me the same engagement, and I will plead.

Lord Keble.—You shall have no advantage taken.

Lieutenant-Colonel Lilburne.—Well Sir, then, Not guilty of the treasons in manner and form as laid in that indictment; and now, Sir, I desire counsel.

Broughton.—By whom wilt thou be tried?

Lieutenant-Colonel Lilburne.—By the known laws of England, and a legal jury of my equals. And now, Sir, I again desire counsel.

Lord Keble.—The form is, that you will be tried by God and your country. If you will be tried by law, that is by the rules thereof; it includes being tried by your country.

Lieutenant-Colonel Lilburne.—Then I hope my answer is clear and fair, Sir?

Judge Jermin.—Answering according to that form means no more than this, that God is everywhere, and knows all things; and by your country is as much as to say, by your neighbours and equals.

Lieutenant-Colonel Lilburne.—Sir, under favour, God is not corporally here; but I will be tried in the presence of that God that knows if you are possessed with premeditated malice and design to destroy me, right or wrong, and by my country, that is, by a jury of my equals, according to the good old laws of England.

Lord Keble.—You have done like an Englishman ; and I promise you a jury of good and lawful men.

Lieutenant-Colonel Lilburne.—But the indictment is so very long, that neither I, nor any man, can carry it in our heads ; therefore, that I may make a defence like an Englishman, I desire a copy of the indictment, council to advise with, and subpoena's for my witnesses.

Lord Keble.—If matter of law does arise, upon proof of the fact, you shall have council assigned.

Lieutenant-Colonel Lilburne.—My Lord Strafford was thought a notorious traitor, and he had council assigned besides, Sir—my estate being gone, I cannot send after them, so desire I may have council and solicitors too.

Lord Keble.—You cannot be allowed council for fact in treason, but must plead it yourself.

Lieutenant-Colonel Lilburne.—If I proceed farther I know not what benefit I may lose, therefore if you will not assign me council to advise with before I am ensnared, order me to be knocked on the head without further trial.

Judge Jermin.—My Lord Strafford was tried by impeachment, and his attainder by act of parliament ; but till matter of law does arise, the court is of council for you.

Lieutenant-Colonel Lilburne.—Sir, my life is at stake ; and (as I told you) it was allowed me at Oxford, and their commission was (I am sure in law) as legal, and just as yours ; and my Lord Chief Justice Heath as legal a judge as any of you.

Lord Keble.—Your life is, by law, as dear as ours, and our souls are at stake if we do you any wrong.

Lieutenant-Colonel Lilburne.—I wish you take notice of that : but I desire the same privilege from you (the nation's pretended friends) I had at Oxford from its declared pretended enemies ; for I hope you that pretended to be preservators of our liberties will not be more unrighteous than the declared destroyers of them.

Judge Jermin.—We cannot grant council to plead to the matter of fact contained in your books.

Lieutenant-Colonel Lilburne.—My supposed books, Sir : pray do not screw me into hazards and snares.

Lord Keble.—If they are not proved to be yours, you are in no danger.

Lieutenant-Colonel Lilburne.—If you, for whom I fought, wont be as just as the cavaliers against whom I fought, I am resolved here to stand and die upon the true principles of an Englishman.

Judge Nichols.—You had better follow the proceedings of law ; for know this is not Oxford.

Lieutenant-Colonel Lilburne.—I think any legal precedents ought to be imitated ; and besides, I think it unjust to be tried by judges, who have been beating their brains above six months with my adversaries, who (being parliament men) are their creators ; and if I had thought you would have tied me up contrary to your promise, I would have died in this very court before I would have pleaded a word to you ; so murder me ; take my blood if you please.

Lord Keble.—You were advised to forbear reproaches, and act rationally, not break into extravagancies, and bitterness of spirit.

Lieut.-Colonel Lilburne.—I look upon myself as a dead man, for want of council to help my ignorance; and if you will not allow it, I will go no further, if I die for it.

Judge Jermin.—You have transgressed the laws of England by not holding up your hand, which I never before knew an Englishman refuse. We are on our oaths, and will discharge our consciences; and we have told you what the law is, yet you will not be satisfied.

Lieutenant-Colonel Lilburne.—Sir, my prosecutors have had a long time to consult with council, yea, and with yourselves, to contrive tricks and snares to destroy me; and I have had no time for defence against such potent malice: you yourself said the law of God is the law of England; act by that; do as you would be done to.

Another Judge.—The laws of God, of reason, and of the land, are joined in the laws you shall be tried by.

Judge Thorpe.—For my particular part, I never saw your indictment before this time, nor ever was at any consultation about it.

Lieutenant-Colonel Lilburne.—You might have seen the substance many months ago, and most of the judges in England have had meetings with Mr. Solicitor at Serjeant's-Inn about it.

Judge Jermin.—It was requisite (from the importance of the offence) such meetings should be, that it might be grounded as the law directs.

Lieutenant-Colonel Lilburne.—If you are resolved to destroy me by the same prerogative Nebuchadnezzar did Daniel, I am as willing to die as he was to be thrown into the lion's den; it is in vain to make more words.

Lord Keble.—Take care the sparks of your venom do not burst out to declare you guilty without further proof.

Lieutenant Colonel Lilburne.—I know the worst, I can but die; and I have lived not to fear it.

Mr. Attorney-General.—What is consonant to the laws of England neither is, nor will be denied, Mr. Lilburne; but what he now desires, viz. Council, a copy of the indictment, and longer time, is what no one that understands the law ever asked; and if granted to him, ought not to be denied to any man for felony or treason, so there would be no end of criminal trials; and of what dangerous consequence such a precedent may be, I leave your lordship and the court to judge.

My Lords, I desire Mr. Lilburne may be used with all just and legal proceedings, and I desire the same for the commonwealth; and, as Mr. Lilburne has pleaded, that you immediately proceed to trial.

Lieutenant-Colonel Lilburne.—If the law of England be founded upon the laws of God and reason, it is not to lay snares to take away your neighbour's life, as trying me upon forms without help of council must be: besides, Sir, for some of you to reproach me with the name of notorious traitor, when I am as innocent in the eye of



the law (till I am legally convicted) as any of those that call me so : do not blemish me in the ears of the auditors.

Mr. Attorney General.—If Mr. Lilburne be innocent, pray put it to a final issue, and let the world judge.

Lord Keble.—The law of England is the most tender of any in the world : you have been found guilty by twenty-one men, upon their oaths and consciences, yet this is not thought sufficient, but you are to have twelve intelligent men of your neighbourhood to hear all over again before they pass upon your life, and according to the rules of this law we proceed.

Judge Jermin.—And though you say the laws are in another tongue, you have no reason to complain ; for we try you by English laws, and proceed in English against you.

Lieutenant-Colonel Lilburne.—Truly, I think it is not just to smooth me into snares by fair promises ; and when you have drilled me into destruction, break them : if I had thought you would have denied me council, I would have died before I would have pleaded.

Lord Keble.—You have had time to prepare ; you knew of your coming, and knew the fact you have committed.

Lieutenant-Colonel Lilburne.—I was informed corresponding with the prince was my chiefest crime, and prepared my defence to that, not dreaming of an accusation for books only, and then to hang me by a law made after the supposed crime was committed, is not fair.

Lord Keble.—We will give you time to send for your witnesses, and consider of your defence till to-morrow morning seven of the clock.

Lieutenant-Colonel Lilburne.—Some of them are 80 or 100 miles off ; how is it possible they should be here to-morrow morning ? and some (being parliament-men, and officers of the army) will not come without compulsion, I therefore desire subpoenas.

Lord Keble.—As you knew of your coming long ago, you ought to have brought them with you.

Lieutenant-Colonel Lilburne.—How could I provide for any thing but that I was first imprisoned for ? Could I divine ? Pray give me but eight days.

Lord Keble.—We will give you no more ; the court neither can or will wait on you.

Lieutenant-Colonel Lilburne.—My judgment and conscience tell me it is my right by the law of England, the law of God, and the law of reason.

Lord Keble.—You insinuate to the people as if no one had judgment and conscience but yourself ; but I tell you, our consciences, religion, zeal and righteousness are as much as yours.

Lieutenant-Colonel Lilburne.—I shall not make comparisons ; I speak as to myself.

Lord Keble.—Mr. Attorney hath made process against you, returnable to-morrow morning seven o'clock, therefore more talk will be loss of time to you. And [speaking aloud to the people] all here are to observe you have had more favour than ever prisoner had ; you ought to have been tried presently : but that the world may know with what candour the court proceeds, you have till to-mor-

row morning, which is an extraordinary favour, and the doors are wide open that all the world may know it.

Lieutenant-Colonel Lilburne.—I thank you for the favours already received. [Then he was remanded to the Tower, and the court adjourned.]

October 26.—The court being set, and the prisoner brought to the bar. [Mr. Lilburne's brother being in the bar by him, was ordered out; and only one (Mr. Sprat) allowed to hold his books and papers.]

Lieutenant-Colonel Lilburne.—Besides, what I yesterday alledged for council, I shall mention an unquestionable precedent: when Major Rolfe was indicted for high treason, in conspiring to poison and pistol the late king, the Lord Chief Baron Wilde assigned Mr. Nichols, now a judge amongst you, and Mr. Maynard, as his council, before ever the grand jury received testimony to find the bill. Now, Sir, I am an Englishman, as well as Mr. Rolfe; have been an officer in the parliament army as well as he, and fought for them as heartily as ever he did for his life: I desire, therefore, as there are many errors in the indictment, I may be assigned council, according to this precedent of one of your own fellow judges, and my birth-right.

Lord Keble.—What was then done nothing concerns us; perhaps he confessed the indictment; if you will do so too; it alters the case.

Lieutenant-Colonel Lilburne.—No, Sir, he was saved by the skill and honesty of council Maynard, who (there being two facts, and but one witness to the proof of each) quashed the indictment, as contrary to the Statute of Edward VI.

Lord Keble.—If law arise that you perceive not, the court will help you as well as your council.

Lieut.-Colonel Lilburne.—Sweet, Sir, if you deny me (being upon my life) what the law allows, the Lord deliver me from wanting such counsellors.

Mr. Prideaux.—My Lord, I desire the court would proceed, as he has pleaded and confessed something.

Lieutenant-Colonel Lilburne.—Sir, you abuse me, I have done neither; my plea was conditional; and you have broke your promise; so my innocent blood be upon you.

'The jury called.

Lieutenant-Colonel Lilburne.—Sir, some of the grand jury did not find me guilty of treason, and think themselves wronged in what was said yesterday by some of the judges. Pray let them speak.

Lord Keble.—Be silent and hear the court, you cannot be heard.

Lieutenant-Colonel Lilburne.—Then, Sir, before all this people, I make my protest against your unjust and bloody proceedings.

Lord Keble.—When your legal time comes, you may talk till midnight.

Lieutenant-Colonel Lilburne.—It will be too late then.

[Here Mr. Sprat, or Colonel Robert Lilburne, whispered him to challenge one of the jury, and the judge excepted against it.]

Lieutenant-Colonel Lilburne.—Sir, any by-stander may help the prisoner by the law of England.

Lord Keble.—It cannot be granted.

[After the prisoner had challenged two or three, the jury were sworn and charged with the prisoner.]

Mr. Broughton.—John Lilburne hold up thy hand.

Lieutenant-Colonel Lilburne.—As I did yesterday. I am John Lilburne, freeman, &c.

Lord Keble—Read the indictment.

The indictment set forth—

That the said John Lilburne, late of London, gent. as a false traitor, not having the fear of God before his eyes, &c. intending to disturb the government then happily established, without King or House of Lords, in the way of a commonwealth and free state; and intending to disgrace the commons of England, the supreme authority of the nation, and to bring them into hatred and contempt with the good people of England, did on the first day of October, 1649, in the parish of Mary the Arches, in the ward of Cheap, London, maliciously, advisedly, and traitorously, by writing, and printing and publishing a certain traitorous book, intitled a *Salva Libertate*; and by another traitorous book, intitled An Impeachment of High Treason against Oliver Cromwell and his Son-in-law, Henry Ireton, Esqs. late Members of the late forcibly dissolved House of Commons, presented to public View, by Lieutenant-Colonel John Lilburne, close Prisoner in the Tower of London, for his real true and zealous Affections to the Liberties of this Nation. And a third book, intitled A Hue and Cry after Sir Arthur Haslerig. And by another traitorous book, intitled An Outcry of the young Men and Apprentices of London, or an Inquisition after the lost Fundamental Laws and Liberties of England, directed by way of Letter to the Soldiers in the Army; especially to all those that signed the Solemn Engagement at Newmarket Heath, the 5th of June, 1647, but more especially to the private Soldiers of the General's Regiment of Horse, that helped to plunder and destroy the honest and true hearted Englishmen, traitorously defeated at Burford the 15th of May, 1649. And also by another traitorous book, intitled The Legal Fundamental Liberties of the People of England, revived, asserted and vindicated; Did declare and publish that the government aforesaid was tyrannical, usurped and unlawful; and that the commons assembled in Parliament were not the supreme authority of this nation. [Here the words laid to be treasonable in the said libels are recited, but such of them as were insisted on at the trial, appearing hereafter in the evidence, it is not necessary to insert them here.] And the indictment further charges, that the said John Lilburne (not being an officer, soldier, or member of the army) did also, at the time and place aforesaid, traitorously endeavour to incite a mutiny and rebellion in the army

under General Fairfax; and particularly did endeavour to draw Thomas Lewis, John Skinner, and John Toppe, from their obedience to their superior officers; and did deliver unto the three aforesaid soldiers the said book, intitled *An Outcry of the young Men and Apprentices of London* [containing such and such treasonable expressions, which appear afterwards in the evidence] which said books did also contain divers other traitorous, malicious, and tumultuous expressions (not mentioned in the indictment) and were written and published to the intent to stir up and raise forces against the government aforesaid, in the way of a commonwealth and free estate established, and for the suppression and alteration of the said government, and to stir up mutiny in the army aforesaid, &c. in manifest contempt of the laws of the said commonwealth, and against the form of the statutes, &c.

The jury being charged with the prisoner, he alleged that he pleaded Not Guilty, upon condition he might have as much privilege as Duke Hamilton and others had; and said the indictment appeared defective, both as to matter and form; and therefore he again insisted on having time and council to speak to the errors in the indictment; but the court rejected his demands.

Then Mr. ———, of council for the commonwealth, opened the indictment; and Mr. Prideaux, Attorney-General for the commonwealth, having further enlarged upon and aggravated the charge, proceeded to call his witnesses; and first, to prove the book, intitled the "*Outcry*," to be the prisoner's.

Mr. Thomas Newcomb the printer was called, and the book being shewn him, he deposed, that about seven or eight weeks since, Lieutenant-Colonel Lilburne and Captain Jones brought that book to him, and Captain Jones agreed with deponent for the printing of it, and he received the copy from Captain Jones, and that afterwards Mr. Lilburne examined and looked over one proof-sheet, and the deponent's corrector another, and Captain Jones read the manuscript to the corrector; that the deponent printed only some few impressions of the last sheet of the book; which, with the forms, were taken before he had perfected the sheet; and that he knew not where the former part of the book was done.

Mr. Attorney General.—Mr. Jones read the original, and Mr. Lilburne corrected the copy?

Lieutenant-Colonel Lilburne.—Sir, you abuse me, by endeavouring to make him say more than his conscience dictates; he says I cast my eye upon the copy; I desire to know if I was at his house to give any directions after the copy was taken.

Mr. Attorney General.—That is no thanks to either of you.

John Tooke, John Skinner, Thomas Lewis, John Hawkins and John Merriman sworn.

Tooke deposed, that about seven weeks before, Thomas Lewis,

John Smith, and the deponent, met Lieutenant-Colonel Lilburne in Ivy-lane; and that Thomas Lewis claiming acquaintance with Mr. Lilburne, Mr. Lilburne asked them to drink, which they did; and that Mr. Lilburne asked them if they had seen a book called "The Apprentices Out-cry;" and Thomas Lewis answering no, but had thoughts to buy one; Mr. Lilburne said he had one in his pocket, and would give it him, which he did, and named a place (which the deponent had forgot) where more were to be sold.

Lieutenant-Colonel Lilburne.—You charge me in the indictment with going amongst the soldiers to seduce them; now I always endeavoured to avoid meeting them, or discoursing with them; and desire to know if they did not speak to me first.

Lord Keble.—It is no matter who spoke first, if you gave them the book.

Lewis.—On the sixth of September last, I met Lieutenant-Colonel Lilburne, and asked him how he did, and having told him I knew him formerly, and had visited him in the Tower, he asked me to drink, on which we went to the Red Cross in Newgate-market, and there he asked me if I had heard of a book called "The Out-cry of the Apprentices," and I acknowledging a desire to have one, Mr. Lilburne said he had one given him, and he would give it me; and on my asking him where I might buy more, he desired me to go to a friend of his in Martin's-lane, (the man's name I have forgot) and tell him Mr. Lilburne was there; and says he, perhaps where you find that man, you may have more books. And the same book I had from Mr. Lilburne, I delivered to the Lieutenant.

Mr. Attorney General.—What did Mr. Lilburne say to you concerning your pay?

Lieutenant-Colonel Lilburne.—Sir, do not direct him, leave him to his own conscience and memory.

Lewis.—He said, "You soldiers keep us all in slavery," and asked how was our pay, saying there was money come for us, and ready to be delivered to us.

Skinner deposed, that the beginning of September, the deponent and Mr. Lewis met Mr. Lilburne in Ivy-lane, and that they went to the Red Cross in Newgate-market to drink, (but knew not whether it was Mr. Lilburne or Mr. Lewis that proposed going) that Mr. Lilburne asked Mr. Lewis if he had seen the book called "The Apprentices Out-cry," and told Lewis he had one which was given him, and said he would give it to Lewis, and did so, it was afterwards delivered to the Lieutenant.

Lieutenant.—I delivered it to my Captain.

Captain Merryman. This individual book I delivered to Mr. Secretary Frost, who made me sign it, that I might not be mistaken.

Lieutenant-Colonel Lilburne. My Lord, I desire the witnesses may answer if that be the very book in the indictment; and if they have examined it with the indictment.

Here Mr. Attorney repeated the evidence to the jury; and again observed, that Mr. Lilburne was corrector, and read the original copy.

Lieutenant-Colonel Lilburne. They have not answered my

question; I desire the jury will take notice of the question, and that I am denied an answer.

Mr. Attorney General. The next thing charged upon him, is a paper intituled, "Salva Libertate;" I sent to him to come to me about it, but he refused coming with the Lieutenant of the Tower, unless I directed my warrant to bring him.

Lieutenant of the Tower. I sent Mr. Lilburne word, I had orders to carry him to Mr. Attorney's chamber; he came to me and desired a sight of the warrant; and having told him I had none, he answered, I shall not obey a verbal warrant, nor will I go, unless you force me." When I had a warrant, he desired to read it, and to take a copy of it, which he did: about three hours after, he came again to me, and said, "pray receive this, viz. (The Salva Libertate) for I intend not to own that gentleman's power who sent the warrant;" and said he gave it me to shew to Mr. Attorney; and this is the same he delivered to me, and afterwards went very quietly with me to Mr. Attorney's chamber, which is all I can say.

Lord Keble. Mr. Lilburne, is this your hand-writing? Shew it him.

Lieutenant-Colonel Lilburne. I am too old to be snapt in such gins, or caught with fooleries; I will look on none of your papers; prove it.

Lord Keble. Your writing or not writing is nothing; you delivered the book.

Lieutenant-Colonel Lilburne. Sir, I desire to know in what part of the Tower you received this paper, whether the place was in the liberties of London, or county of Middlesex?

Lieutenant of the Tower. It was at the steps by the narrow passage at my garden-end, it is commonly reputed to be in Middlesex, but I know not certainly.

Mr. Attorney General. I must desire the jury to observe, that though Mr. Lilburne does not acknowledge his hand, he implicitly confesseth it.

Lieutenant-Colonel Lilburne. Sir, I deny nothing, and what you can prove, I have a life to justify, but prove it first.

Mr. Attorney General. The next thing he is charged with, is intituled "An Impeachment of High Treason against Oliver Cromwell, &c." I suppose he will not own it, but may be asked the question.

Lieutenant-Colonel Lilburne. I shall answer none of your questions, make your advantage of it.

Thomas Daffern, Richard Landar Marshal, Major Hawksworth, Governor of Warwick-castle, all sworn.

Daffern deposed, that on the 12th of August last, the prisoner gave him a book at Winchester-house, in Southwark, to carry to Colonel Ayres, who was then removed to Warwick-castle, and that he delivered it accordingly.

Landar deposed that he was present; took it from him, and delivered it to the governor.

Hawksworth deposed that he sealed it up with three or four seals, and sent it to Colonel Purefoy.

## Colonel Purefoy sworn.

Lieutenant-Colonel Lilburne. I except against his evidence, I am indicted for crimes against the keepers of the liberties of England as they call themselves, and he is one of them, therefore a party, and no witness in law.

Purefoy.—I declare this to be the very individual book I received sealed up from Major Hawksworth, and my hand is at it.

Mr. Attorney observed, that this was proved to be the very same book which Mr. Lilburne delivered Mr. Daffern; and that the next thing he was charged with, was intitled "A Preparative to the Hue and Cry," &c. Mr. Lieutenant of the Tower, I desire you will speak your knowledge.

Lieutenant of the Tower.—My Lord, Mr. Lilburne gave me such a book, and I have such another at home, but I cannot swear either to be the same he gave me.

## Mr. Nutleigh and Edward Radney sworn.

Lieutenant-Colonel Lilburne—Pray what are these gentlemen? I never saw either of them before.

Mr. Attorney General.—They are my servants, Mr. Lilburne.

Nutleigh.—The 14th of September last I saw the prisoner deliver this specifical book to Mr. Attorney, and called himself the author of it, the erratas of the printer only excepted.

Lieutenant-Colonel Lilburne.—Let him be asked if the words "which are many" did not follow.

Radney deposed, he saw him deliver the book and owned it, but neither of them remembered the words "which are many" to have been added.

Lieutenant of the Tower.—My Lord, I was present, and the words were, "Here is a book which is mine, which I will own, the erratas or errors of the printer excepted, which are many."

Mr. Attorney General averred, that this was the individual book that Mr. Lilburne gave him, and that there was another in the indictment, intitled "The Legal Fundamental Liberty," &c. which had Mr. Lilburne's name to it, and though he would not own it, he should prove it from his other books, viz. "The Preparative to the Hue and Cry," and "The Salva Libertate;" that "The Preparative" he owned before three witnesses, and that Mr. Lieutenant of the Tower received "The Salva" from his own hands. Read the marginal note, p 2.

Clerk reads.—See my second edition of my book of the 8th of June 1649, intitled "The Legal Fundamental Liberties of the People of England revived and asserted," p. 48, 49, to 63.

Mr. Attorney General.—This book hath Mr. Lilburne's name, and he owns it in his "Hue and Cry," in the margin in the third page.

Clerk reads.—Peruse the quotations in the sixth and eighth pages of my forementioned impeachment of high-treason against Oliver Cromwell, as also the 12th and 15th pages of the second edition of my aforementioned book, dated the 8th of June, 1649, intitled, &c.

Mr. Attorney General. Read the fourth in the body of the book.

Clerk. "See also the second edition of my book of the eighth of June, 1649, intitled 'The Legal Fundamental, &c.'"

Mr. Attorney General. Read the 24th page of the "Salva," in his own written hand.

Clerk. "See also the edition, &c. the same as before."

Mr. Attorney General. Read where it is marked.

Clerk. "I have published my plea against the present power, in my second edition, et supra."

Mr. Attorney General. My Lords, he here, in several places, owns the book, viz. "The Legal," &c. to be his; I shall now proceed to shew his words in these books, to make good the charge against him, and begin with the act itself, which makes the fact treason.

Clerk. "Die Lunæ, 14th of May, 1649"——

Lieutenant-Colonel Lilburne. Hold, Sir, first prove that it is an act of parliament.

Mr. Attorney General. My Lords, when an act is published, the court is bound to take notice of it; but we will prove it.

Lieutenant-Colonel Lilburne. Mr. Prideaux, there may be counterfeit statutes as well as money, therefore prove it.

Nutleigh deposed that it was a true copy, which he had examined with the record at Westminster.

Lieutenant-Colonel Lilburne. Is he able to depose that it is a true law in all parts of it; and that it has been proclaimed in every hundred and market-town, according to the old law not yet repealed?

Lord Keble.—Read, clerk.

Clerk reads.—The act the 14th of May, 1649, declaring, that whereas the parliament had abolished kingly government, and resolved that the people should be governed by their own representatives, it was enacted that whoever should maliciously publish by writing, &c. that the said government is tyrannical, usurped or unlawful, and not the supreme authority; or shall plot or endeavour to stir up or raise force against the present government, for subversion thereof, or against the keepers of the liberties of England, or the council of state, or either of them, shall be deemed guilty of high treason: And that whoever, not being an officer or soldier, should endeavour to stir up any mutiny in the army, or withdraw the soldiers, &c. from their obedience, or should invite or aid foreigners to invade England or Ireland, or adhere to them, or counterfeit the great seal, shall be likewise deemed guilty of high treason, and forfeit, &c. provided the offender be prosecuted within a year after the offence committed.

Lieutenant-Colonel Lilburne.—The act which I have, does not agree with that which was read, which I design to make use of by and bye.

Clerk reads.—The people now see their slavery and absolute bondage is like to increase, under the present tyrannical, arbitrary, new erected, robbing government.

Mr. Attorney-General.—See the title page of the last book.

Clerk reads.—Before a legal magistracy, when there shall be one, which now there is not.

Mr. Attorney-General.—See folio the first.

Clerk reads.—The present junto are no parliament, according to



law or reason, but are a company of usurping tyrants and destroyers of your laws, liberties, &c.

Mr. Attorney-General.—Mr. Lilburne is more than a leveller, he endeavours to pull up the laws of England by the roots, for he says there is no magistracy, and if so, I conclude there is no propriety.

Lieutenant-Colonel Lilburne.—Mr. Prideaux, it is not long since you suffered the same aspersion, and were penned down in a black bill to my knowledge; pray who were the greatest rooters, those who endeavoured to prevent the mischief, or those who gave the cause? And your inference is very strange, since propriety is antecedent to magistracy, and first in being; I wish your practices were as consonant thereto as my principles.

Mr. Attorney-General.—Read the second page at the mark.

Clerk reads.—I shall hinder (as much as I am able) all addresses to the usurping tyrants as a parliament, &c.

Mr. Attorney-General.—Read page 2.

Clerk.—Your officers have often styled them no better than a mock parliament, a shadow of a parliament, &c.

Mr. Attorney-General.—Read page 3, at the mark.

Clerk reads.—Misery, poverty, &c. never were so extreme under the most tyrannical of our kings, as under the sepretended friends, &c.

Mr. Attorney-General.—Read page 4.

Clerk reads.—And nothing but the groundless wills of these men of blood rageth and ruleth over us, &c.

Lieutenant-Colonel Lilburne.—Pray, Sir, are those quotations verbatim in the indictment?

Mr. Attorney-General.—No, we say you published those among other clauses and things in the books, and produce no books but those charged in the indictment.—Read pages 68 and 72.

Clerk reads.—That the high court of justice is unlawful, if those who set it up were a legal parliament, which they were not, but a pack of traitorous tyrannical usurpers, &c. and they being no Parliament, the other is no court of justice.

Mr. Attorney-General.—Now read in *The Salva Libertate*, at the mark.

Clerk reads.—That a paper warrant, from any pretended power now visible, was not valid, because Fairfax had broke the magistracy, and set up pretended magistrates, and amongst them the Attorney-General, in opposition to whom I will spend my blood, &c.

Mr. Attorney-General observed, that in these books it was said the present government was a mock power, a tyrannical, usurped and unlawful authority; that they were murderers, thieves and robbers, no parliament, but Thomas Pride's junto, destroyers of the liberties, &c. and he hoped the court and jury were sensible that the proof was clear, as to Mr. Lilburne's publishing those books, which he thought was sufficient without further charge; however he should proceed to prove likewise, that Mr. Lilburne had plotted and contrived to raise forces to subvert the present government, though what had been already said (being declared to the army) was sufficient proof thereof, and ordered the fifth page of his book, intitled "An Impeachment of High Treason," &c. to be read; wherein he says, that he hoped the people would make the scheme in his book, called

"The Agreement of," &c. their final centre for a settlement of peace in the distracted nation, &c. for that in the late wars the King's party were merely selfish, the presbyterians no better, and the present independents only dissembled an interest for the people's liberties, when it was chiefly for themselves, and to set up the false saint and villainous murderer, traitor, &c. Oliver Cromwell, &c.

He then ordered the seventh and eighth pages to be read, where he says, "That the people of London should write to their friends to send two agents from each county, to consider with those agents they themselves should chuse, to settle the principles thereof, that what they concluded on might be as a standard to flock to, and not to side either with the pride and fooleries of the present power, joined with Owen Roe O'Neale, or with the prince's will, unless he or they would acquiesce to those settled principles: and, on those terms, he did not see but they might justly join with the prince, who had a large pretence of right; and believed, if he came in by the hands of Englishmen, and by contract of the said settled principles, three great plagues would be avoided, viz. free quarter, taxes and excise, and the people again live in peace and safety, whereas now under St. Oliver there is nothing but cutting of throats, and a daily increase of bondage and slavery," &c.

Mr. Attorney-General.—Now, my Lord, we shall come to his "Agreement of the People," &c. which strikes at the root of all government.

Lieutenant-Colonel Lilburne.—Pray, Sir, see if it be not licensed; and if so, question the licenser.

Mr. Attorney-General.—We shall question the author; read pages 2 and 3,

Wherein he says, "That the supreme power shall be lodged in the people's representatives, to the number of four hundred persons and no more, the places for and manner of election, with the salary for subsistence, to be settled by the present parliament, who are to act as a parliament till the month of August, 1649, and then end; and the new representatives to commence and sit the first Thursday after, and if this parliament should omit or be hindered from settling such election, that they should be elected at the same places, and in the same manner as usual, and the like number also; but that such persons should not be electors or elected as are excepted in the first, third, and fourth heads of the said book, called The Agreement, &c. and that all laws made or to be made contrary to this agreement should be void."

Mr. Attorney-General.—My Lords, Mr. Lilburne, in this Agreement, regulates the number of the supreme government, orders the time of dissolution of this parliament, and when his own shall meet; and that all laws contrary to this shall be void; and desires in his book before, that this Agreement may be the banner or centre to prosecute the design for destruction of the present government, which is treason; and now, my Lords, we shall proceed to shew the tendency of his "Outcry." Read page 11.

The substance of this is, "That the young men and apprentices of London, &c. are obliged to exert themselves, for their own and the nation's advantage; and neither to address, or suffer the tyrants in power to be addressed or petitioned, but to chuse some of the ablest amongst themselves, who would venture their lives

to oppose the present usurpers; and desires the soldiers (if they have any commiseration) to assist in their redemption from slavery: And that the soldiers, especially those who signed The Solemn Engagement, should chuse two out of each troop and company to correspond and consult with the said young men's friends, for establishing the liberties and freedom of the people."

Mr. Attorney-General.—Read pages 9 and 57.

The substance is, "That they, the young men and apprentices of London, &c. are fully resolved to instigate their fellow-apprentices of the out-parishes to chuse agents likewise, and desire by letter each county in England to do the same; which agents should, with their Burford friends, all meet, to consider the speediest method of chusing a new parliament, according to the said Agreement, seeing the present pretended Parliament only share the public treasure and most beneficial places among themselves, without redressing oppressions, or receiving petitions of complaint; for notwithstanding the many oaths, promises, &c. of the present commonwealth, to maintain the liberties and good of the people, that they are perjured tyrants, &c. and ought to be abhorred by all men."

Mr. Attorney-General observed, that the long forbearance towards Mr. Lilburne's traitorous provocations was sufficient testimony of the state's clemency; and that he could scarcely contain himself to hear such dangerous expressions and insufferable treasons.

Lieutenant-Colonel Lilburne.—The exclamations of people, who are oppressed, is not treason within the old laws of England.

Mr. Attorney-General observed, That to call the parliament tyrants, usurpers, and traitors, and stir up the people to destroy them, might be brought within the statute 25 Edw. III. chap. 2. and that Mr. Lilburne had vilified General Fairfax and his chief officers, and called the Lord General Cromwell, murderer; and that he would prove Mr. Lilburne had endeavoured to draw the soldiers from their obedience, which was high-treason in the last clause of the act. Read the epistle to the legal fundamental, &c.

The substance is, That he positively accused Cromwell for the wilful murder of Mr. Richard Arnold, near Ware.

Mr. Attorney-General observed, that Mr. Arnold was condemned by a council of war, for a mutineer.

Lieutenant-Colonel Lilburne.—It being done in a time of peace, when the courts of justice are open, is contrary to the petition of right; and that the Earl of Strafford (who was as great a general) suffered for such like acts; therefore if the judgment of Strafford or the petition of right be legal, the shooting of Arnold is absolute murder.

Clerk reads.—That Cromwell and his confederates were guilty of most of the crimes (in kind) charged against the late king though under a new denomination.

Mr. Attorney-General—Read pages 35, 37, and 38.

Here he says, that no promises could bind the chief jugglers and leaders of the army: and that he (Lilburne) left the council they had called, esteeming them a pack of dissembling knaves, especially Commissary Ireton; and dared aver that the General and chiefest of the council were fully determined to spend their hearts' blood rather than condescend to the book intitled "Agreement of the People for a just Freedom;" for that a new and just parliament was more dreadful to:

them than the day of judgment; and that neither Korah, Dathan, and Abiram of old, nor the anabaptists, with John of Leyden, and Buperdullion at Munster, nor Jack Straw or Wat Tyler, were comparable to the General and his council for rebellions and treasons against all kinds of magistracy.

Mr. Attorney General.—We shall now proceed to his “Outcry,” directed to the soldiers of the army. Read page 8.

The substance of it is, A grievous complaint of the oppressions the nation now lies under, and a recommendation thereof to the soldiers, especially the private men in the General’s regiment of horse, for that the nation was now not only exposed to domestic broils, but to foreign invasions, from France, Denmark, Sweden, &c. And appeals to the private soldiers of the army for help, and that they would speedily chuse two out of each troop, &c. as before in page 620.

Mr. Attorney General.—Read the second page of his impeachment against Oliver Cromwell, &c.

In which there is an account of his apprehension by soldiers, his being carried to Derby House, and afterwards committed, as Lilburne himself relates in page 584.

Mr. Attorney General.—Read page 3, of his “Outcry,” directed to the soldiers of the General’s regiment.

Here he tells the soldiers, That they assist rather than endeavour to suppress the destroyers of the liberties of the people; that if any one complains, his house is immediately beset with armed janizaries, to take away the people’s courage, and prevent the maintaining their freedoms.

Mr. Attorney General.—My Lords, the last clause of the act is, that if any person, not being an officer, &c. shall endeavour to stir up mutinies in the army, &c. it is high treason; you have heard the calumnies (read in these books) to asperse the officers and stir up the soldiers against them; as likewise the reproachful abuses thrown on the noble General, not to mention the advantage that might be made of the words which have slipped from himself, or more witnesses which I could have called to have proved Mr. Lilburne’s publishing the books, which (though he will not own them) I think is already sufficiently proved against him.

[Here Lilburne compared his behaviour to this court, to that of our Saviour’s before Pilate, who confessed nothing; and added, That, Mr. Prideaux, says it (they are my books) but prove it.]

Mr. Attorney General.—I think here are too many proofs; therefore, gentlemen of the jury, if you have any respect for the present government and council of state, or the preservation of the laws, you will find the prisoner guilty.

Foreman.—We desire the act of treasons to make use of.

Lieutenant Colonel Lilburne objected, that according to the third part of Coke’s Institutes, a man ought to be tried in the county where the treason is committed; that his pretended crimes were laid in three different counties, and that there was but one witness to most of the particular treasons; and therefore he conceived it just, and thought it reasonable they should perform their promise and assign him a council. That this and greater privileges were granted to Major Rolfe and Duke Hamilton. That it was impossible for him to give an extempore answer to so long a charge; and besides, that he had

stood five hours wasting his spirits already; and now to stand to answer a five hours' charge, was a burden too heavy for a horse; and he hoped they did not design to hang him because he was tired, and had not strength left to pronounce his defence.

Lord Keble.—The books are but three, which can be no great charge to your memory, neither do we expect the jury should remember the particulars; what you have to do is to acquit yourself first of publishing and owning these books, and then of the matter contained in them; and until this is cleared, we cannot allow you any council.

Lilburne still insisted, that to have council allowed him was his right by law, and no greater privilege than was given Major Rolfe, &c. and said, if he had council, he questioned not (by that means) clearly to acquit himself of the treason alleged against him.

Lord Keble.—Mr. Lilburne, you have often urged this, and have been as often answered; and I shall add, you have in this court so many grave judges, as never man in your condition had.

Lieutenant-Colonel Lilburne.—I am neither daunted at the number of my judges, their glittering robes, the majesty of their presence, or their austere deportment towards me.

Lord Keble.—You are tried thus publicly that all persons may observe the fair play allowed you, and unless you take the matter alleged as proof, you must make your defence to clear the fact, before you shall or can be assigned council.

Lieutenant-Colonel Lilburne.—I hope (as the length of my trial has exhausted my strength) you will not put me to a present answer; I desire a week's time; or (if not so) till to-morrow morning only.

Lord Keble.—No, you must do it presently.

Lieutenant-Colonel Lilburne. Then permit me to recollect myself, and peruse my notes in a private room for an hour, and to refresh my spirits. [Which being refused he added with a mighty voice. Well, if you are resolved to have my blood, right or wrong, I appeal to the Lord God Omnipotent, and a mighty judge between you and me, to require and requit that blood on you and your posterity to the third and fourth generation; [presently after which a scaffold fell, but he continued perusing his papers.] If you will not allow me liberty to withdraw, and ease nature, I desire I may do it in the court.

Then a pot was fetched him, and he had some little time given him to look over his papers in court.

Lord Keble.—Take away his chair; the court cannot wait his motions; speak what you have to say.

Lieutenant-Colonel Lilburne.—I desire to be satisfied whether (a by law allowed) after I have pleaded to matter of fact, you will permit me to speak in my behalf to the jury, on whose integrity my life depends; and who are judges of the law as well as fact, and you only pronouncers of their will.

Lord Keble.—My Lord Coke says the juries are judges of fact, but it is the court's opinion they are not judges of law.

Lieutenant Colonel Lilburne.—You, who call yourselves judges of law, are only Norman Intruders, cyphers to pronounce their sentence who are judges of law as well as fact.

Judge Jermin.—Was ever such damnable, blasphemous heresy, to call the judges cyphers, the judges have ever been judges of law,

from the first settlement of the law in England, and the jury only judges of fact.

Lieutenant-Colonel Lilburne.—If you will permit me to read, I will disprove it from your own law: here is the first part of Coke's Institutes, which all lawyers allow to be good law.

Lord Keble.—Convince us that law concerns the jury, and you do somewhat.

Lieutenant-Colonel Lilburne.—Sir, I apply myself to the jury; let read me your own law to them, and I shall leave myself to their consciences: Coke says in the first part of his Institutes, sec. 366, fol. 226, 227, 228, in his exposition of Plowden.

Lord Keble.—Those quotations are not for your purpose, neither is there any such book; proceed to the matter of fact, and let this drop; you shall not read.

Judge Jermin.—There is no book intitled Coke's Commentary on Plowden, and you cannot be permitted to broach that erroneous opinion, that the jury are judges of law.

Lieutenant-Colonel Lilburne.—Then here I'll die: jury observe, is it easy to mistake Plowden for Littleton, and these are his words: [In this case the recognitors of the assize may say and render to the justices their verdict at large upon the whole matter;] and says in another place, [That the jurors have cognizance of the case as well as of the condition;] and says further, [That a special verdict, or at large, may be given in any action and upon any issue general or special.] And in sec. 368, Littleton has these words, [Also in such case where the Inquest may give their verdict at large, if they will take upon them the knowledge of the law, upon the matter they may give their verdict generally;] and Coke saith thereon, [Although the jury, if they will take upon them (as Littleton saith) the knowledge of the law, may give a general verdict.] This being to my purpose, I have done, Sir.

Lord Keble.—You have spent time to no purpose; I thought you had known law better.

Lieutenant-Colonel Lilburne.—I shall now, Sir, proceed to matter of fact, and desire the jury will take notice, that by the statutes of 1st Edward VI. c. 12. and 5th and 6th of Edward VI. c. 11. no man shall be condemned of treason, but by the clear proof of two legal witnesses; and in Coke, 3d Instit. c. High Treason, fol. 12. it is said it must be by the direct and sufficient proof of two witnesses, and not on surmises, or conjectural inferences; and that he be attainted by due course of law, and by no absolute power, or other means whatsoever; and in fol. 24, that there must be two lawful witnesses, as well on the trial as indictment: and in fol. 240, he says the same attainers of treason must be upon plain and direct evidence; for though restitution of lands may be had, there can be none of life.

Lord Keble.—The proof has been so plain as (I hope) it will convince the jury, and that they will find the prisoner guilty.

Judge Jermin.—What you have urged makes much for the jury.

Lieutenant-Colonel Lilburne.—I shall now answer your proof in the same manner as the witnesses swore. Mr. Newcomb swears I was with Captain Jones, from whom he received the "Outcry;" that Captain Jones (not I) agreed for the printing; and that I took

away a single sheet before it was corrected, which was useless, and no true copy of that charged in the indictment; neither was the title there, or knows he if the first part of the book had any dependence on that sheet; so that it is uncertain whether that sheet be part of the book contained in the indictment; neither is there more than one witness to this; and if it be the same, I was only present with my friend, accompanying him, and you may find the names of ten that own the book; so it does not affect me.

The three soldiers depose the same in substance, that I gave Lewis one out of my pocket, and told him where I believed he might buy more: they were publicly sold all over the city; so I hope the jury, being men of conscience, will not think, that giving away a sheet and a half of paper, or drinking with an acquaintance, crimes sufficient to take away my life. For though they say I asked them a question, viz. when they received any pay, yet I used no aggravating expressions, or mutinous provocations, or malicious counsel, to incense them against their officers, or stir them to rebellion; so that it is no evidence of treason against me.

The next thing charged is the "Salva Libertate," which the Lieutenant of the Tower says I delivered to him. He is but one witness; and as I have a suit now depending against him for four or five thousand pounds, he is a professed adversary, therefore no good witness; neither does he swear the hand is mine, or that I wrote it; so his testimony is invalid. I likewise commenced a suit against Colonel Titchburn for the like sum; so that as he is my adversary, he is no legal judge; and I desire he may be ordered off the bench. I believe likewise that part of the Tower where the Lieutenant says I gave him those papers, is not within the liberties of the city; then why should I be tried by a London jury? not that I have any objection against the gentlemen of the jury; but if the fact be committed in Middlesex, the trial ought to be by a jury of the same county.

Thomas Daffern deposes, that he went with me to Winchester House in Southwark, where I delivered him a book to carry to Colonel Ayres; he doth not say the book is mine, or of my writing; but however, Winchester House being in Surry, is not triable by a London jury; therefore I shall say no more to that, neither need I give any answer to the testimony of the Marshal, or Governor of Warwick Castle, or to the evidence of Colonel Purefoy.

The next charge is the "Preparative to an Hue and Cry," &c. which the Lieutenant of the Tower says I gave him in the Tower, which I am certain is in Middlesex, so not to be tried by a jury of citizens of London; neither knows he if this be the same book I delivered to him.

James Nutleigh and Edward Radley depose they saw me deliver a "Preparative" to their master's hands, and say I owned it to be mine, the printer's errata excepted, which the lieutenant of the Tower swears I expressed to be many. Now I question whether the Temple be within the liberties of London; however, the errata, which are many, for ought the witnesses or jury know, may be those very clauses with which I am charged, for they are not proved to be otherwise; so that they not proving six lines thereof to be mine, and I owning no more than was free from the errata, which were many, their testimonies are of no weight.

What they would next fix on me is "The Legal Fundamental Liberties," &c. and there is no proof to that but from relations out of the other books, so I shall give no further answer to that.

Lastly, for the "Agreement of the People," it is dated May, 1649, licensed and printed before either of the acts on which I am indicted bear date; so I may say with St. Paul, "Where there is no law there is no transgression." I shall only add, there has been no proof that the books charged against me are truly dated; therefore, if the books were really proved mine, (which they are not) yet not being proved to bear date exactly with the original copies, they might be made before the acts commence; by which I have fully made appear to the jury, that there is not any proof to fix the least guilt upon me; and believing them to be men of unbiassed principles, I shall leave it to their judgments and consciences.

I beg leave likewise to acquaint the jury, that could I have had time allowed me to produce my witnesses, they would have testified several material things for my justification. And though I think I have sufficiently cleared myself from the facts charged upon me, by shewing there must be two express witnesses to each particular act of treason, as I have mentioned in Major Rolfe's case, of which Mr. Nichols, who sits as judge here, is sensible, yet I shall desire the gentlemen of the jury to consider the intention of the law, as laid down in Co. 3. Inst. fol. 6:—*Et actus non facit reum, nisi mens sit rea*,—"It is the intention, not the act, that shews the guilt." During the whole course of my life I have endeavoured the prosperity of the nation, never endeavoured the prejudice of any particular person, yet was proclaimed a traitor through all the chief towns in England, and imprisoned for crimes which have not since been laid to my charge; and now, (for complaining of my hard usage only) there have been acts made long since my confinement, in order to charge me with high treason, though I have often declared my willingness to determine all differences.

Here he made a narrative of his application to the parliament, the petitions of many thousands of his friends for his trial or releasement, his signal services in the parliament army, &c. as before recited, and concluded, he was made close prisoner in the heat of summer, without either wife or child being permitted to see or comfort him.

Lord Keble.—Mr. Lilburne, instead of making your defence, you tell a long story of your own life; and should we reply to each particular, it would take up much time, but do you no service; therefore leave your discourse, or answer to the proof of the fact.

Lieutenant-Colonel Lilburne.—Though I have told it you before the jury did not hear it: and as my life lies on it, it is material to my preservation.

Lord Keble.—It is nothing to the purpose, were it in order to your defence you should not be hindered.

Lieutenant-Colonel Lilburne.—Well, if you will not let me pro-



ceed, my blood be upon your heads: and I desire the jury will take notice of your unjust and cruel usage.

Lord Keble.—You shall not be refused any thing that is material.

Lieutenant-Colonel Lilburne here exclaimed against the barbarity and tyranny with which he had been oppressed, viz. that his estate was taken from him (which should have maintained him in the Tower) and the customary allowance refused him; that his solicitor was not permitted to speak for him, though the law allowed any by-stander to do it; that he was refused council, &c. though it was his right; and resigns himself to the care and consciences of his fellow-citizens, the honest jury, who (he again said) were judges of law as well as fact; whom he prayed God to direct to act according to justice.

The audience cried Amen, Amen, and gave a great hum, which made the judges apprehensive, and caused Major-General Skippon to send for three companies of soldiers more.

Then Mr. Attorney Prideaux summed up, and made his observations on the evidence for the commonwealth, and tells the jury that the statutes of Edward VI. which required two witnesses to every fact, were rendered of no force by a later statute, 1 and 2 Ph. and Mar. And observed, that though the book intitled "The Agreement of the People" was dated the first of May 1649, before the ordinances were made on which he was indicted; yet in his other books, which were published since, he quoted that book, and referred to it; and so had republished it since the ordinances were made. And he told the jury that the fame of that gallant army, and those officers who had been so faithful and true to their trust, and had so much advanced the peace and happiness of the nation, and whom God had blessed and owned in a miraculous manner, were to be put in the balance against Mr. Lilburne, and the services he pretended to have performed.

Here Lilburne interrupted Mr. Prideaux, and told him, notwithstanding his encomiums on the army, he [Prideaux] was once one of those who voted them traitors, and was set down by the commissioners of the army as a malignant: but he said, it seemed Mr. Prideaux

had recanted his errors, and was become a good acquiescing creature, or he had not been there that day; and demanded, if, notwithstanding that boasted faithfulness, the army had not twice rebelled against their creators, their lords and masters?

Still Mr. Attorney went on, shewing what great things the army had done, who, notwithstanding, he said could not escape Mr. Lilburne's vile tongue and pen, any more than the parliament and magistracy: and therefore he told the jury, as they wished for the honour of them all, and if they had any remembrance of the great and wonderful things that renowned army had done; and with what confidence and despite to all law and authority Lilburne had published these books, he hoped they would take care he should smart for it; and concluded, that the court were judges of the law, as the jury was of fact; and prayed God to direct all their judgments.

Then Lord Keble directed the jury, and told them that the two statutes of Edward VI. which required two witnesses, was repealed by that of Queen Mary, which enacted, that the common law should be the rule in all trials of treason: and that by the common law one witness, with concurring circumstances, was sufficient: he told them, that this was the greatest treason that ever was attempted by one man; that it struck at no less than the subversion of the commonwealth and state, and to have laid them all in blood: that he did not observe that any fact the prisoner was charged with stood upon a single testimony, but was supported by many aggravating circumstances; and left it to their consciences if he was not guilty of the most transcendent treason that ever was hatched in England.

The jury desired, that they might have a quart of sack amongst them to refresh them before they went out; but judge Jermin answered, that in civil cases indeed he had known the jury permitted to drink before they went out, but never in capital cases; but said the court would permit them to have a light with them, if they pleased.

Lilburne moved, that another indifferent person might be joined with the officer who was to keep the jury; for he apprehended the officer to be his enemy; which the court granted, and another was sworn.

Then the jury withdrew (being about five o'clock) and the sheriffs were commanded to carry their prisoner into the Irish chamber; and the court adjourned till six.

At six the court returning, and the prisoner being brought to the bar again, the jury came in with their verdict; and it being demanded, if the prisoner was guilty of the treasons with which he was charged? The foreman answered, Not Guilty of all of them.

Clerk.—Not of all the treasons, or any of them, that are laid to his charge?

Foreman.—Not of all, or any of them.

At which the people unanimously shouted for half an hour without intermission. Notwithstanding the acquittal of the prisoner, the Lieutenant of the Tower was commanded to carry him back to the Tower, and Major-General Skippon to guard him; and all others were commanded to assist them, if required. And the mob attended them with loud acclamations to the Tower gates, and made abundance of bonfires in the streets that night. And on the 8th of November, the council of state, finding the people uneasy at their continuing Lilburne a prisoner, directed their warrant to the Lieutenant of the Tower to discharge him: which warrant was signed by John Bradshaw, the president.

It appears, that some time after the parliament made an ordinance for the banishment of the said John Lilburne; and enacted, that he should be adjudged guilty of felony, if ever he was found in England after such a limited time.

Upon which act or ordinance the said John Lilburne was taken into custody again, and brought to his trial at the Old Bailey, on Saturday the 20th of August, 1653: and the jury acquitted him of the felony; at which the parliament were so incensed, that they made an order that the jurors should be brought before the council, and give their reasons why they acquitted him of the felony, against plain evidence. But the jurors being separately examined, would give no other answer, but that they looked upon themselves to be judges as well of law as fact; and that they decided according to their consciences: and as to the reasons that induced them to acquit him, they would give none.

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