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THE  
T R Y A L  
Of Lieutenant Colonel  
John Lilburn.

By an Extraordinary or Special Commission, of Oyer  
and Terminer at the Guild-Hall of London, the 24th,  
25th, and 26th. of October, 1649.

Being exactly Pen'd and taken in Short-Hand, as it  
was possible to be done in such a Croud and Noise,  
and Transcribed with an Indifferent and Even Hand,  
both in Reference to the Court, and the Prisoner;  
that so Matter of Fact, as it was there Declared,  
might truly come to Publick View.

In which is contain'd the Names of all the Judges, Grand  
Inquest, and Jury of Life and Death.

By THEODORUS VARAX.

The Second Edition.

Esther 4. vers. 13. and Is. 12. vers. 2, 3, 4.

Then Mordecai commanded to answer Esther, Think not with thy self that  
thou shalt escape in the King's House, more then all the Jews. Behold,  
God is my Salvation: I will trust and not be afraid, for the LORD  
JEHOVAH is my Strength, and my Song, he also is become my Salva-  
tion. Therefore with joy shall ye draw water out of the wells of Sal-  
vation. And in that Day shall you say, Praise the LORD, call upon  
his Name, declare his doings among the People, make mention that his  
Name is exalted.

Enter'd in the Hall-Book of the Company of Stationers, pursuant to Act  
of Parliament.

London: Printed for and Sold by H. Hills, in Black-fryars.

AT the earnest Desire of the Printer, I have read this following Discourse, and cannot say but that I do verily believe, the Pen-man of it hath done it with a very indifferent Hand betwixt the Court, and my self the Prisoner: And so far as in me lies, I am for my part willing, the World should see it.

Southwark, this 28. of November, 1649.

John Lilburn.

(1)

THE TRYAL

Of Lieutenant-Collonel

JOHN LILBURN,

At the Guild-Hall of London the 24th of October, 1649. being Wednesday.

THE Commissioners Names of the Extraordinary Commission of Oyer and Terminer, for the Tryal of Lieutenant-Collonel John Lilburn, thus followeth.

- |   |                               |
|---|-------------------------------|
| Thomas Andrews, Lord Mayor.                   | William Steele, Recorder.     |
| Richard Keble, L. Commissioner.               | John Fowke,                   |
| Philip Fermyn, Justice of the Upper Bench.    | Thomas Foote,                 |
| Thomas Gates, Baron.                          | John Kendrick,                |
| John Puleston, Justice of the Common Pleas.   | Thomas Cullum,                |
| Francis Thorpe, Baron and Member.             | Simon Edmonds,                |
| Rob Nicholas, Memb. } Justices of the         | Samuel Avery,                 |
| Richard Aske, } Upper Bench.                  | John Dethicke,                |
| Peter Warburton, Justice of the Common-Pleas. | Rob. Titchburn,               |
| Alexander Rigby, Baron, but absent.           | John Hayes,                   |
| Sir Thomas Fowler.                            | Henry Proby, Common Serjeant. |
| Sir Henry Holcroft.                           | Thomas Brigandine.            |
| Sir William Roe.                              | Nathaniel Snape.              |
| Sir Richard Saltonstall.                      | Edward Rich.                  |
| Sir Richard Sprignall.                        | Owen Roe.                     |
| Sir John Woolifson.                           | Tobias Lisle.                 |
| Sir William Roberts.                          | Austin Wingfield.             |
| John Green,                                   | Richard Downton.              |
| John Clarke, } Serjeants at Law.              | Daniel Taylor.                |
| John Parker, }                                | William Wibend.               |
|   | Silvanus Taylor.              |

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( 2 )

At the Guild-Hall of London, the 25th of October 1649, being Thursday, at the Tryal of Lieutenant Collonel John Lilburn.

Yes made, All persons that were adjourned to the Court required to make their Appearance.

The Lieutenant of the Tower of London Col. Francis West called, to bring forth his Prisoner according to the Precept.

Whereupon Col. West, Lieutenant of the Tower, brought up the Prisoner out of the Irish Chamber, where he had been some time before the sitting of the Court, and was guarded by the said Lieutenant, and a special Guard of Souldiers besides. And being brought to the Barr, the Sheriffs of London were directed to take the Prisoner into their Custody.

*Silence Commanded.*

*Cryer.* John Lilburn, Hold up thy Hand.

Lieut. Col. Lilburn directed himself to Mr. Keble, one of the Keepers of the Great Seal, as the President of the Court, and said to this purpose: Sir, will it please you to hear me; and if so, by your favour thus: All the Priviledge, for my part, that I shall crave this day at your hands, is no more, but that which is properly and singly the Liberty of every Free-born Englishman; viz. The Benefit of the Laws and Liberties thereof, which by my Birth-right and Inheritance is due unto me; the which I have fought for as well as others have done, with a single and upright Heart; and if I cannot have and enjoy this, I shall leave this Testimony behind me, that I died for the Laws and Liberties of this Nation; and upon this score I stand, and if I perish, I perish. And if the Fact that I have done, cannot be justified by the Law of England, let me perish; I mention none of this for the gaining of Mercy, or by way of Merit, no, I scorn it; for Mercy I crave from none but from the hands of my God alone, with whom I hope, and am assured one day to rest; whom I have set before my eyes, and so walked, as believing I am always in his Presence, in whose Power my Confidence is fixed, whom I take and own to be my stay, my staff, my strength and support, and in whom I rest as the life of my life, and whom I hope to meet with joy, when this fading and uncertain life shall have an end, to live with him in Glory and Blessedness for evermore. And therefore, because I would not willingly trouble you with many words, to cause you to spend your time impertinently; therefore, Sir, in reference to the Court, I shall crave but so much liberty from you as was given to Paul, when he pleaded for his life before the Heathen Roman Judges, which was free liberty of speech to speak for himself, the which I now humbly crave as my Right, not only by the Law of God and Man, but also by the Law and Light of Nature; And I shall do it with that respect, reason and judgment;

( 3 )

ment, that doth become a Man that knows what it is to plead for his life. I hope God hath given me ability to be master of my own Passion, and endowed me with that Reason, that will dictate unto me what is for my own good and benefit.

I have several times been arraigned for my Life already. I was once arraigned before the House of Peers for (sticking close to the Liberties, and Priviledges of this Nation, and those that stood for them) being one of those two or three Men that first drew their Swords in Westminster-Hall against Col. Lunsford, and some Scores of his Associates. At that time, it was supposed, they intended to cut the Throats of the chiefest Men then sitting in the House of Commons; I say for this, and other things of the like nature, I was arraigned by the King's special Command and Order, the First of May 1641. I mention it to this end, that when I came before the House of Peers, where was about three or fourscore Lords then sitting at the beginning of the Parliament; (who then were supposed the most arbitrary of any Power in England) yet I had from them free liberty of speech to speak for my Life at their Barr, without check or controle in the best manner, all those abilities God had given me would enable me; and when I was at Oxford, I was again arraigned as a Traytor before the Lord Chief Justice Heath, for levying War at the Command of the then Parliament against the Person of the King; and when I came before him in the Guild-Hall of Oxford, he told me (there being present with him (as his fellow Judge) Mr. Gardiner (sometimes Recorder of the City of London) now Sir Thomas Gardiner, and others that sat by a special Commission of Oyer and Terminer from the King; the which Commission I did not so well then understand, as I hope I do now. And my Lord Chief Justice Heath stood up, and in the face of all the Court, and in the face of all the Country present, there told me: Capt. Lilburn, you are brought here before us for High-Treason, for levying War in Oxfordshire against your Sovereign Lord and King; and though you be now in a Garrison, and were taken in Arms in open Hostility against the King, (yea Sir, and I must now tell you in such Hostility, that we were but about Seven hundred Men at Bransford that withstood the King's whole Army in the Field, about five hours together, and fought it out to the very Sword's point, and to the Butt-end of the Musket; and thereby hindred the King from his then possessing the Parliament's Train of Artillery, and by consequence the City of London, in which very act I was taken a Prisoner, without Articles of Capitulation, and was by the King and his Party then lookt upon as one of the activest Men against them in the whole Company;) yet, said Judge Heath, we will not take advantage of that, to try you by the Rules of arbitrary Marshal Law, or any other arbitrary ways; but we will try you by the Rules of the good old Laws of England; and whatsoever Privilege in your Tryal the Laws of England will afford you, claim it as your Birth-right and Inheritance, and you shall enjoy it with as much freedom and willingness, as if you were in Westminster-Hall, to be tryed amongst your own Parry: and this we will do for that end, that so at Lon-

( 4 )

don your Friends shall not have any just cause to say, we murder'd you with Cruelty, or denied you the Benefit of the Law, in taking away your Life by the Rules of our own Wills. Nay further, said he, Capt. *Lilburn*, it is true, I am a Judge made by my Sovereign Lord the King, according to his Right by \* Law, and so in a special manner am his Servant and Councillor, and am to act for his good, benefit and advantage: And yet notwithstanding, it is by the known Laws of this Land my duty, to be indifferent and free from partiality, betwixt my Master and you the Prisoner, and I am specially bound unto it also by my Oath; and therefore you shall have the utmost Privileges of the Law of *England*, which is a Law of Mercy, and not of Rigor, and hath the Life of a Man in tenderest and highest † estimation; and therefore, it is the duty of a Judge by Law, to be of Council with the Prisoner, in things wherein by his Ignorance, he falls short of making use of the benefit of the Law, especially when he is upon the tryal of his Life: Yea, and to exhort him to answer without fear, if he perceive him daunted, or amazed at the Presence of the Court; yea, it is my duty to carry my self with all fairness and evenness of hand towards you; And wherein that there shall seem any mistakes to appear, in circumstances or formalities, to rectifie you; For it's my duty to help you, and not to use any boisterous or rough language to you in the least, to put you in fear, or any ways prevent the freedom of your defence: and according to the Laws of *England* this is my duty, and this is the Law. And accordingly he gave me liberty to plead to the Errors of my Indictment, before ever I pleaded Not Guilty; yea, and also became willing to assign me what Council I pleased to nominate, freely to come to Prison to me, and to consult and advise with me, and help me in point of Law: This last he did immediately upon my Pleading to the Indictment before any Fact was proved; All which is consonant to the Declared Judgment of Sir *EDWARD COOKE*, that great Oracle of the Laws of *England*, whose Books are Publish'd by Special Orders ‡ and Authority of Parliament for good Law, who in his 3. part *Institutes*, *Chapt. Of High-Treason*, fol. 29. 34. compared with fol. 137, 230. asserts the same.

Truly, Sir, I being now come before you to answer for my Life, and being no professed Lawyer, may, through my own Ignorance of the practice part of the Law, especially in the Formalities, Niceties and Punctilio's thereof, run my self with over-much hastiness, in snares and dangers that I shall not easily get out of. And therefore being all of a sudden bid to hold up my Hand at the Barr, I cannot chuse but a little demur upon it; and yet with all respect to you, to declare my desirableness to keep

\* See the 27th of Hen. 8. chap. 24.

† See the 2. part, *Inst.* fol. 28. 30. 42, 43. 53. 315, 316. 591, & 3. part, fol. 34.

‡ Which Orders are dated May 12. 1641. and June 3. 1642, you may at large read at the last end of his 2d part. *Institutes*.

( 5 )

keep within the bounds of Reason, Moderation and Discretion, and so to carry my self as it doth become a Man that knows what it is to answer for his Life.

And therefore in the first place, I have something to say to the Court about the first Fundamental Liberty of an *Englishman* in order to his Tryal, which is, That by the Laws of this Land, all Courts of Justice always ought to be free and open for all sorts of peaceable people to see, behold, and hear, and have free access unto: And no Man whatsoever ought to be tried in Holes or Corners, or in any place where the Gates are shut and barr'd, and guarded with Armed Men: And yet, Sir, as I came in, I found the Gates shut and guarded; which is contrary both to Law and Justice.

Sir, the Laws of *England*, and the Privileges thereof, are my Inheritance and Birth-right: And, Sir, I must acquaint you, that I was sometimes summoned before a Committee of Parliament, where Mr. *Corbet*, and several others, have had the Chair; and there I stood upon my Right by the Laws of *England*, and refused to proceed with the said Committee, 'till by Special Order they caused their Doors to be wide thrown open, that the People might have free and uninterrupted Access to hear, see, and consider of what they said to me, although I think the Pretence that I am now brought before you for, be the very same in substance, that I was convened before Mr. *Corbet* for, which was about Books: and I am sure there I did argue the Case with him, and the rest of the Committee, soundly out in Law; proving, that they were bound in Law and Justice, freely to open their Doors, for the free Access of all sorts and kinds of Auditors: And I did refuse (as of right) to proceed with them, 'till by Special Order they did open their Doors. For no Tryal in such cases, ought to be in any place, unless it be publick, open and free; and therefore if you please, that I may enjoy that Legal Right and Privilege which was granted unto me by Mr. *Miles Corbet*, and the rest of that Committee, (when I was brought before them in the like Case that now I am brought before you;) Which Privilege I know to be my Right by the Law of *England*, I shall, as it becomes an understanding *Englishman*, (who in his actions hates deeds of darkness, holes or corners) go on to a tryal. But if I be denied this undoubted privilege, I shall rather die here than proceed any farther. And therefore foreseeing this before-hand, and being willing to provide against all jealousies of my escape, the fear of which I supposed might be objected against me as a ground to deny me this my legal right; and therefore before-hand I have given my engagement to the Lieutenant of the Tower, that I will be a faithful and true Prisoner to him.

And I hope the Gentleman hath so much experience of my faithfulness to my word, that he doth not in the least question or scruple it; I am sure he hath often-so declared to me that he doth not.

Nay; I have not only ingaged to be a true Prisoner in the Tower to him, but I have also solemnly ingaged to him, that I will come civilly and peaceably with him; and that I will go civilly and peaceably back with

(6)

him again. And that if any Tumult or Up-roar shall arise in the croud, of which I lose him, and he me; or in case I should be any ways by Force and Power rescued from him, I have also faithfully ingaged to him, that I will come again to him (by the assistance of God) as soon as ever I can get away from that force or rescue. And all this I intreated him to acquaint you with, that all jealousies and disputes might be avoided.

Judge Keble. Mr. Lilburn, look behind you and see whether the Door stands open or no.

L. Col. Libb. Well then, Sir, I am satisfied as to that. But then in the next place, I have read the *Petition of Right*, I have read *Magna Charta*, and abundance of Laws made in confirmation of it; and I have also read the *Act that aboliseth the Star-chamber*, which was made in the Year 1641. which last recited Act expressly confirms those Statutes that were made in *Edward the third's* time, which declares all Acts, Laws and Statutes that were made against *Magna Charta*, to be null and void in Law, and holden for Error.

In the reading of which Laws I do not find a special Commission of *Oyer and Terminer*, to be legal and warrantable. I beseech you Sir do not mistake me; for I put vast difference betwixt an ordinary and common Commission of *Oyer and Terminer*, for holding ordinary and common Assizes and Sessions, and betwixt an extraordinary and special Commission of *Oyer and Terminer* to try an individual person or persons, for a pretended extraordinary Crime; the Laws I last recited; and the Fundamental or Essential Basis of freedom therein contained, knows no such Names or Commissions of special *Oyer and Terminer*.

And those Statutes in *Edward the first*, and *Edward the third's* time, that doth erect those special and extraordinary Commissions, and warrant the usage of them are merely irrational \* innovations upon our in-

\* And excellent to this purpose is Lieutenant Colonel Lilburn's Argument, in his second Edition of his Picture of the Council of State, page 8. against the erection of extraordinary Courts, which thus followeth: He granting that the Parliament hath power to erect a Court of Justice to administer the Law, provided, that the Judges consist of Persons that are not Members of Parliament; And provided, the power they give them be universal, that is to say, to administer the Law to all the People of England indefinitely, who are all equally born free alike, and not to two or three particular Persons solely: the last of which for them to do is unjust, and altogether out of their power, &c. which Argument or Reason is most notably illustrated and enlarged in the second Edition of the legal fundamental Liberties of England, revived of the 8. of June, 1649. page 72.

(7)

indubitable Rights contained in *Magna Charta*, and meer Court and Prerogative devices to destroy the best of Men, by an extraordinary Court appointed to prejudge proceedings that should manfully stand in the way of the Prince, or any of his great Favourites; for sure I am from the *Petition of Right*, no ground or foundation for any extraordinary or special Commission of *Oyer and Terminer*, upon any pretended special, or great occasion cannot be founded; but rather the absolute quite contrary, as to me clearly appears by the very plain letter of that most excellent Law, and therefore such a special Commission upon any pretended occasion, being expressly against our undubitable Rights contained in *Magna Charta*, and the *Petition of Right*, viz. that no *Englishman* shall be subjected to any other Tryal, but the ordinary universal and common Tryals at ordinary Assizes, Sessions, or Goal-deliverys, and not in the least to be tryed by extraordinary and special prejudged, packed, over-awing Commissions of *Oyer and Terminer*: and therefore all such extraordinary and dangerous Tryals are absolutely abolished, by the late excellent Acts that confirms the *Petition of Right*, and all and every of the Clauses therein contained, and aboliseth the *Star-Chamber*, both made, Anno. 1641.

And Sir, with your favour, the then Parliament that made the last recited Laws, were so far from countenancing any special Commissions of *Oyer and Terminer*, upon any special or pretended great occasions whatsoever that I can read of, That I rather find and read the Parliaments proceedings in the year 1641. An extream Out-cry of the House of Commons, against special Commissions of *Oyer and Terminer*, with a great deal of bitterness and vehemency, as may fully and clearly be read in that excellent Argument of Mr. Hide, April 1641. Printed and published in a Book, called *Speeches and Passages of Parliament*, page 409. to 417. which I have here at the Bar to produce, which Mr. Hide was then the special and appointed mouth of the House of Commons before the Lords, who unto them in conformity to his Commission from the the House of Commons, complains to the House of Lords extreamly of a special Commission of *Oyer and Terminer*, that was exercised in the five Northern Counties of England, and earnestly in the name of the House of Commons, craves the special assistance of the House of Lords, to pluck up that Court by the very Roots, founded upon a special Commission of *Oyer and Terminer*, being so illegal and unjust in the very foundation of it, as it is inconsistent with the Peoples liberties, and as that which destroyed and disinherited all the people that were tryed; both of their Birth-right and Inheritance, viz. Their Liberties and Freedoms contained in *Magna Charta*. And this Sir, was the declared and avowed judgment and opinion of the House of Commons in April 1641. in their primitive purity and non-defilement, when they acted bravely and gallantly for the universal Liberties and Freedom of this Nation (and not self-interest) when they were in the Virginity of their

(8)

their Glory and Splendor, as he there fully and most excellently declares and yet he there gives an extraordinary reason for the original erection of that Court founded upon a special Commission of *Oyer and Terminer*, as can be rendered.

The original reason or occasion of which he there declares to be thus, that by reason of the suppression of the Abbys in the 27. of *Henry* the eighth's time; in the *North* of *England* (through discontent thereat) there did arise from the said 27. year to the 30. no fewer than six grand Insurrections, most of them under the Command of some eminent Man of those Countries, which Insurrections and Rebellions occasioned the levying of great Armys which had like to have set the whole Kingdom in an universal flame: for the suppressing and preventing of which in future times, King *Henry* the 8. caused a special Court to be erected, by a special Commission of *Oyer and Terminer*, which Court also continued in *Edward* the sixth's time, *Queen Mary's*, and first and seventh of King *James's*; The Basis of which Commission, was founded upon those fore-mentioned innovating Statutes, made in *Edward* the second, and *Edward* the third's time\*; which special Commission of *Oyer and Terminer* was several times renewed by the late King *Charles*, as in the fifth, eighth, and thirteenth year of his Reign. And the said Mr. *Hide* there in his Argument or Speech which I have here in print, names several of the Presidents of that illegal Court of special Commission of *Oyer and Terminer*; and he there also declares in what an extraordinary manner, and upon what an extraordinary occasion it was granted, which was so great, as that a greater could not be imagined; and yet notwithstanding he declares, that this extraordinary Commission, which being granted to suppress and quiet those many extraordinary Insurrections and Rebellions, which do not admit of so long delay as times of ordinary Tryal, in times of Peace, when the Ordinary, Legal, and common Courts of Justice are open and free will do, when peace and quiet is in the Nation, as now it is; and yet for all that he condemns it for illegal.

And therefore Sir, admit my actions in their tendency to be as dangerous and heinous as any of my Adversaries can imagine or declare them to be, yet they are but in Ashes, but in the Hearth, they are not broke out into visible and violent hostile actions; and therefore I say, if special Commissions of *Oyer and Terminer* granted in such special and transcendent cases as those in *Henry* the eighth's time were illegal, much more must a special Commission of *Oyer and Terminer* granted to try me barely for words, or at most, for pretended Writings or Books, at such a time when there is no burning flame of Insurrections or Rebellions in the King-

\* Which were Westmister, the Second being the 13. of Ed. 1. c. 29. and 2. Ed. 3. c. 2. and 34 Ed. 3. c. 1.

(9)

Kingdom, but all in visible peace, and all the ordinary Courts of Justice open and I and my Friends have often sought to enjoy the benefit of the Law in a Legal Trial, from first to last, but could never enjoy it in the least measure, although many Sizes and Sessions have past over my head since my first Commitment, now seven months ago, at the first of which, in the County where my pretended crime was committed, I ought by Law and Justice either to be Tryed or Acquitted; so that Sir, by what I have already said, you may see the judgment and opinion of the House of Commons upon special Commissions of *Oyer and Terminer* in their first purity, when as a full House, there being constantly 4 or 500 of them sitting in the House as the deputed and chosen Trustees of the People of England, whose opinion was to damn them, and pluck them up by the Roots, as unjust and illegal in their original Institution, which they have accordingly done, and declared to the whole Nation in the Act that abolished the Star-chamber; where that Court spoken against by Mr. *Hide*, is totally damned and pulled up by the Roots: So that now in Law I cannot see how special Commissions of *Oyer and Terminer* can be legal at this present, admit the Power never so just from whom it comes, but abundantly much more seeing there is no actual Wars, nor popular Insurrections; which if lately there had bin any, and yet were overcome, there is no pretence of ground by the good old Laws of England, for any extraordinary proceedings against any man, although he had bin in Arms against you, but he ought to have the benefit of the ordinary accustomed and common Tryals at the Common Law, as clearly appears by the express words of the Petition of Right. \* But I was never in any hostile manner against those that are the present Governors of the Nation, but have been under their command in several battels in the Nation, and have hazarded my life for them, and never yet in the least changed my original or first Principles, nor never was engaged in the least in any hostility against them, but have always, since I five years ago gave over my Command, lived in peace and quietness in mine own house and abroad, and was the same day at the House of Commons door, that their Votes passed against me, declaring me in general (which in Law signifies nothing) to be a Traytor; and spake with a Gentleman that is now a Judge amongst your selves (*viz.* Mr. *Rigby*) at the House door, who in some great Ones names proffered me large matters if I would do as I should be directed by them; after this I went home to mine own house in Southwark, where I stayed in peace and quietness, well enough knowing the Votes that that day past against me, without either particular accusation, or accuser, or any such thing; where I stayed, when as I might easily have escaped the hands of mine enemies, and been gone; but

\* Of which judgment Sir Edw. Cook is positively in part 2. Instit. f. 48. and part 3. f. 52. in Th. Earl of Lancasters case; which is singular well worth the reading. See also part 1. Instit. f. 13. a.

but having the sweet peace of a good Conscience within me, which did assure me that I had done nothing that was against the Welfare of the Nation of *England* in general, nor against the Welfare of any one particular man in *England*, but really wisht it well, and all its well-wishers.

I say that notwithstanding my certain knowledge of all that the House had past against me, and although I also knew that the further design against me, which was, that the Council of State (as they are called) would take me away thereupon with Armed force the next Morning; yet notwithstanding all this, I stirred not out of my House, but remained there till about five a clock the next Morning, at which time 2 or 300 armed Horse and Foot (without so much as one Civil or Magisterial Officer with them) came by force of Arms, and haled me out of Bed from my Wife and Children, not according to the Law of *England*, as is expressly provided in two several Statutes, *viz.* the 1 of *Ed. 6.* Chap. 12. and 5. & 6. of *Ed. 6.* Ch. 11. by which Rules of the Law, and no other, they ought to have proceeded against me from first to last; and I am sure they both expressly provide, that if any Man be accused of Treason, that he shall be accused first to one of the Kings Council, or to one of the King's Justices of Assize, or else to one of the King's Justices of the Peace, being at the *Quorum*, or to two Justices of the Peace within the Shire where the same offence or offences shall happen to be done or committed.\*

But contrary to these and other wholesome and good Laws (although there hath been an eighth years War in *England* (pretendedly) for the preservation of the Laws and Liberties of *England* yet I say, contrary to the express Tenor of these Laws, as also of the Petition of Right, yea and also of the express Letter of that excellent Law that abolished the Star-chamber this Parliament) was I by force of Arms (that never fortified my House against the present Power, nor never disputed any of their Summons, though sent by the meanest man that ever appertained to them, and who if they had sent their Warrant for me by a Child, I would have gone to them) I was fetched out of my Bed in terror and affrightment, and to the subversion of the Laws and Liberties of *England*, and led through *London* streets with hundreds of Armed Men (like an *Algier* captive to their main-Guard at *Pauls*, where a mighty guard staid for the further conducting me by force of Arms to *White-Hall*: Now Sir, if I had committed Treason, I ought not to have been apprehended and proceeded against by Armed mercenary Souldiers, but by Civil and Magisterial Officers, and no other; according to those excellent privileges that the Parliament themselves in the year 1641. in their own Book of Declarations, p. 36; 37. 76, 77. did claim for those  
six

\* See also to this purpose part 3. of Cooks Instit. Ch. High-Treason, s. 26, 27, 28; and part 1. Parl. Declar. in the case of the Lord Kimbolton, and the 5 Members, p. 38; 39, 76, 77.

six Members, *viz.* the Lord *Kimbolton*, Mr. *Pym*, Mr. *Hollis*, Mr. *Stroud*, Sir *Arthur Hasleridge*, and Mr. *Hamden*; I say and aver, I ought to have had the Process of the Law of *England*, due Process of Law according to the forementioned Statutes and Presidents, for I never forceably resisted or contended with the Parliament, and therefore ought to have had my Warrant served upon me by a Constable, or the like Civil Officer, and upon no pretence whatsoever, ought I to have been forced out of my Bed and House by Mercenary Armed Officers and Souldiers. But Sir coming to *White-Hall*, I was there also kept by Armed Men, contrary to all Law and Justice, and by Armed men against Law: I was by force carried before a company of Gentlemen sitting at *Darby-house*, that look upon themselves as Authorized by the Parliament, to be a Committee or Council of State, (who by the Law I am sure in any kind had nothing at all to do with me in cases of pretended Treasons) where I was brought before Mr. *John Bradshaw*, sometimes a Councillor for my self before the House of Lords against my unjust Star-chamber Judges; who there in my behalf *Feb.* 1645. did urge against the Lords of the Star-chamber as the highest Crime against the Liberties of the People that could be, as being Illegal, Arbitrary, and Tyrannical, that the Lords in Star-chamber should censure me to be Whipt, Pillered, &c. for no other cause but for refusing to answer their Interrogatories against my self; and when I was brought before the said Council of State, I saw no Accuser, no Persecutor, no Accusation, nor Charge, nor Inditement; but all the Grime that there was laid unto my Charge, was Mr. *Bradshaw's* very seriously examining me to Questions against my self; although I am confident he could not forget, that himself and Mr. *John Cook* were my Councillors in *Feb.* 1645. at the Bar of the House of Lords, where he did most vehemently aggravate, and with detestations condemn the Lords of the Star-chambers unjust and wicked dealing with English freemen, in censuring them for their refusing to answer to questions concern themselves, and yet notwithstanding, walked with his dealing with me in the very steps that formerly he had bitterly condemned in the Star-chamber Lords; yea and there for refusing to answer his questions, (for any thing he declared to me to the contrary) committed me to Prison for Treason in general; and you know very well, better than I do, that by your own Law, generals in Law signifie nothing.

Judge Jarmyn. Mr. *Lilburn*, you very much Abuse and Wrong your self; for you very well know Mr. *Bradshaw* is now denominated by another name, namely, Lord President to the Council of State of *England*, and it would well become you in your condition so to have styled him.

Lieut. Col. *Lilburn*. And although no Crime in Law (which ought to be particularly expressed) was laid unto my Charge, yet when I was first imprison'd; there were thousands of my friends (well-wishers to the Freedoms of *England*, and to the common Cause in which they had

( 12 )

had been engaged in for these eight years together) both old and young, both Masters of Families, Young men and Apprentices; and abundance of others of the feminine Sex too, with abundance of cordial honest Men in several Countries, joined in several rational and fair petitions, and delivered them to the House in the behalf of my self and my three fellow Prisoners; in which they most earnestly intreated them, that they would not prejudge us before we were heard, and knew our accusers and accusations; but rather that they would release us, and take off their prejudging Votes against us, which they had caused to be proclaimed in all the publique places of the Nation against us, and let us have a fair and legal Trial according to the Laws of England, and according to the undeniable Priviledges of the due Process of the Law from first to last, and they would put in any security that they would require of them, that we should be forthcoming at all times, to answer whatsoever in Law could be laid to our Charge; unto all which Petitions, which were very many, they could get no manner of satisfying answer; but slights, abuses, and scorns.

But besides this, Gentlemen, that you may see that I am rational, and that you may see I have an innocent and quiet Conscience within me, that does not accuse me nor terrifie me, therefore I must acquaint you that I again and again proffered my chiefest Adversaries, and sent often to them, being earnestly desirous to chuse two Members of the House of Commons, and let them chuse two more whom they pleased, and I would with all my heart freely refer all manner of difference betwixt them and me, to the final determination and judgment of four of their fellow Members; but all this would do no good, and yet they would not in the least let me understand what was the thing they desired of me, but by their Power and Will, I had my Pockets and Chamber searched to find out advantages against me, and also lock'd up close Prisoner, with Centinels Night and Day set at my Door, and denyed the access and sight of my Wife and Children for some certain time, and for about Twenty weeks together in the heat of Summer, kept a close Prisoner, and denyed the liberty of the Prison, and my Estate with a strong hand taken away from me, without any pretence (or due process) of Law, to the value of almost Three thousand pounds, that was legally and justly invested in me, and in my possession; but being I will avoid (at this time especially) provocations as much as I can, I will name no person by whose Power and Will it hath been done, although he be notoriously known, but the Gentleman that took it away by his pleasure, without all Rules of Law and Justice, told my Father to this purpose, That I was a Traytor, and under the Parliaments displeasure; and therefore he would secure it from me, although I were not in the least convicted of any Crime, neither in Law, then, or for many Months after, had I the least pretence of crime laid unto my charge; And although my own Estate by force against Law was taken from me, yet was I also denyed in my close imprisonment that Legal allowance

( 13 )

lowance that should have kept me alive; for in all this miserable condition I never yet received a Penny of my Legal allowance, but was positively denyed that Testimony and Legal Right that the late King constantly allowed to all the Members of the Parliament that were committed in the third year of his Reign, and several other times; unto whom for their diet he allowed Three, Four and Five pounds a Week, according to their quality, although they had great and large Estates peaceably in their possession: And one of them that is now beyond the Seas, a Collonel, I have forgot his name, (but it was Collonel Long) confessed in the Lieutenant of the Tower's own Chamber the last year, that the King was so bountiful to him and the rest of his fellow Prisoners, that he let them enjoy the allowance of about Four or Five pounds a Week for diet; and that while he was Prisoner in the Tower, he spent the King about 1500*l.* for his own particular self in Provision: but notwithstanding I was denyed all this, and to fill up the height of the insufferable provocations put upon me, abundance of my own and ancient acquaintance were set upon me to calumniate, bespatter, and reproach me; yea, and to endeavour to become instruments to take away my life, some of them confessing they were under-hand set on by some Parliament-men; all whose base and wicked Petitions, Papers and Books preferred and published against me, were hugged and embraced, although for my own part I do not know of any Man in this World that can justly tax me with any action, or maintaining any Principles or Tenents but what doth become a Man that doth believe all that is contained in the Law and the Gospel, and does believe the Resurrection of the dead and life Eternal; nay, that does believe that I my self shall arise and go to the Lord of Glory. Yet notwithstanding all these unparallel'd provocations put upon me, especially by divers of my old acquaintance, whom I had upon all occasions faithfully served, but never wronged, injured, nor provoked; being instigated (as they themselves confess in some of their own Congregations) by Parliament-men so to do.

Truly Sirs, I appeal to your own Judgments, and to your Consciences, and to all the People that hear me this day, whether all these provocations laid upon a poor man, which is but Dust and Ashes, as well as other Men, be not too insupportable a burden, and too much for the causers of them to take advantage of the fruits produced by them, to destroy me, and take away my life.

And therefore, Sir, in the first place, I shall humbly crave that favour and right, seeing I am brought before you by a piece of Parchment that truly I could not read, neither could he do it that shewed it me, (I mean the Lieutenant of the Tower,) for admit that if I did well understand Latin, as indeed I do not, only some ordinary words, yet was it in such an unusual strange hand that I could not read it; and therefore being I am brought before you implicitly, and not as I conceive an Englishman ought to be, who ought to see and read the Authority, by vertue of which he is convened before any power: It's true, I know some of you Gentlemen that I see sit before me, yet not many of you, and truly I have nothing but a piece of



( 14 )

of unlegible Parchment, which cannot satisfy my understanding of the Legality of my Convention before you; but being I am not able to dispute that Power that compulsively brought me, but here I am; and therefore in order to the declaring of my self to be a true Englishman, I most humbly crave (and that I think is consonant to Reason, and I hope to Law too) that I may see and here read, the Commission, by vertue of which you sit here this day, and convene my Person before you, that so I may compare it to the Law; and consider whether or no, that by my Pleading before you by vertue of it, I do not betray my Liberties: And therefore I humbly crave, that you would let me hear your Commission read; for this Court is no ordinary and common Assizes, Sessions, or Goal-delivery, the only proper Courts for trying me for all criminal faults, yea and those also ought to sit where the Crimes are committed; and I was Imprisoned for a pretended Crime, pretended to be committed in the County of Surry; where by the Common Law of England, and express Statutes, I ought to be tryed there, and no where else.

And therefore being brought in an extraordinary manner to such an extraordinary place as this, which is no ordinary Assizes nor Sessions, no, nor yet in mine own County; therefore I again humbly desire that you will be pleased to let me see and hear your extraordinary Commission, that so I may consider whether the extent or latitude of the Commission be consonant, or no, to the Petition of Right, and other the good old Laws of England; for those that now sit at Westminster, exercising the Supreme Power, by two special Declarations, the one dated the 9th of February last, and the other the 17th of March last, have positively declared, and called God to witness, that they will maintain, preserve, and defend that excellent of Laws, the Petition of Right, as in the seventh Page of the last Declaration they call it; and that the People of England shall enjoy all the benefit therein contained, whether to Life, Liberty, or Estate, with all things incident thereunto; and therefore I humbly beg and crave that favor from you, that seeing to me you appear to be sent in an extraordinary manner, not according to the ordinary Customs of the Laws of England, that you will be pleased to let me hear your Commission read, that so I may consider of the consonancy thereof to the Petition of Right, and other the good old Laws of England; and after the reading of it, I hope I shall return you such an answer as doth become a rational and ingenious man; who though he hath right to all the Privileges of the Laws of England, and hath read all the declared and plain Laws of England, that are to me the fundamentals of all, yet the practick part of the Law, which are in other Tongues besides the English, I cannot read; know nor understand; and in the Petition of Right, and other the good old Fundamental Laws of England, I can find no Foundation or Bottom for such an extraordinary Court as this before my eyes seems to be; and therefore I again make it my most humble suit to hear your Commission read.

Judge

( 15 )

Judge Keble. Mr. Lilburn, you are fully heard.

Mr. Prideaux Attorney Gen. My Lord, the Prisoner at the Barr nor none else have cause to complain that he hath wanted your patience in being fully heard. My Lord, that which at the beginning of his Arraignments you expected from him, which was to hold up his hand, he denied, and upon his denial, desired liberty of speech to speak, and he hath enjoyed it: But my Lord, how pertinent his discourse is, to what was proposed to him, the Court and all that hear him will judge; My Lord, I am not here to justify the actions of those that here he hath complained against, but they are a Court, they are a Council, and my thoughts are (and so ought his to be) honorable of them, and what they have done (my Lord) towards him in ordering this Court to try him, is but justice: My Lord, there is no Special Commission of Oyer and Terminer, but a General Commission, and upon that General Commission, here is a Special Presentment of Mr. Lilburn here at the Barr, the General Commission is according to the Law of the Land, and upon that Special Presentment it is expected he may be proceeded against according to Law. And for your Commission, my Lord, that hath been read and published to the Court, before Mr. Lilburn came to the Court, and the Court is satisfied with it, that it is in the ordinary way, and I hope the judgment you will give, will declare it to be according to the Law, in the ordinary Way: And as for the Commission it self in the form of it, it is not a tittle varied from the ordinary accustomed form. But, my Lord, the Petition of Right, Magna Charta, the Statutes, and all Declarations that have been spoken of, they are all confirmed in this, and all do confirm it, for in that ordinary tract that hath been practised in this Nation for five hundred years is Mr. Lilburn now to be tryed, and that by the old good Laws of England, Mr. Lilburn's Birth-right and every man's else; he has his Tryal, the beginning of which hath been Mr. Lilburn's Presentment, which is already found by the Grand Inquest, who are Men of Integrity, Men of Ability, Men of Knowledge. My Lord, he is now to come to his Tryal, not in an extraordinary way, but by a Jury of good and legal Men of the Neighbourhood, by Men that do know my Lord, and understand what is Fact, what is Law\*, and to do Justice indifferently between both.

And, my Lord, I do know, and publish to all that now hear me, that the Commission for Trial of Mr. Lilburn this day, for those differences that are between the State and Mr. Lilburn is free in Law from all those exceptions that he is pleased to put upon it, and is unquestionably Legal, and used for these many hundred years together. And as for Mr. Lilburn's declaring the fact for which he was originally imprisoned, for to be committed in Surry, and therefore there in Law he ought to be Tryed, and not here in London, being another County: As for Mr. Lilburn's Crimes committed in Surry, his own Conscience best

\* Mark that well, for Judge Jermyn called it a damnable Doctrine, when Mr. Lilburn declared, the Jury were Judges of Law as well as of Fact.

best knows what they are ; but Mr. Lilburn at most can but yet guess at what we intend to Try him here for or lay unto his Charge.

But, my Lord, if Mr. Lilburn will please to put himself upon his Trial, according to Law, my Lord I hope the Court, and all that hears and sees their proceedings will receive full satisfaction in the legality and fairness of their proceedings against him, and himself the benefit of Justice and Law,

Lieut. Col. Lilburn. Sir, by your favour, in two words, I shall not be tedious ; I now perceive who is my accuser and prosecutor, the Gentleman that is a very unequal one, for he is one of the Creators ( being a Member of the House ) of you that sit here this day to be my Judges, and therefore an overawing and unfit accuser or prosecutor.

Lord Keeble. Mr. Lilburn, I pray you hear me a Word, for now you speak not rationally nor discreetly, you have had a fair respect and hearing, what you speak of Liberties and Laws, we come here to maintain them for all, and for you too ; and we also come for to vindicate our actions ; and as for that you speak of in reference to the Commission, I must let you know, the Commission is warrantable by the Laws of England for this five hundred years, nay and before five hundred years in substance : The second thing that you speak to, is, that you were apprehended in such an hostile manner, understanding by Law you should have been taken in an ordinary way by an ordinary Officer : But Mr. Lilburn, in all apprehensions of Traytors, Felons and Murderers, is not the Power of the County to be raised, and the Sheriff is to call and take what Power he pleaseth.

Lieut. Col. Lilburn. By your favour Sir, not unless I resist, which I did not, and besides, there was no Sheriff nor no other civil Officer at my Apprehension.

Lord Keeble. Mr. Lilburn, spare your self, it is as they are informed of the danger of the Man, they may do it before ever they see him. The next thing you are upon, is the Wrong and injustice that you received by the proceedings in the Star-chamber against you, you see the proceedings there have been questioned, and you justified ; if there be any thing else that hath been by others in the North or elsewhere acted, there is no Man here that will justify them in their evil, but for a private Man as you are to tell us of them here, and to come and tell us to our faces that we are Created and constituted by the Attorney General, we will not suffer it, nor further hear of it ; and therefore Mr. Lilburn, although you have spoken fair words, (and happily more than your friends expected from you) I must tell you that words are but words, and it were well that you would do as well and as Rationally as become a Rational man, as you have declared you will.

Lieut. Col. Lilburne. With your favour but one word more.

Judge

Judge Jermyn. Mr. Lilburn, pray spare a word, and hear the Court, this Court sits here by lawful Authority, and that is from the Parliament, that are the Supreme Authority of England, so that our Power is not derived from those that have no Rightful Authority to constitute us, but our Power is from the Publick Authority of England, which is now by an Admirable act of Gods providence, lately, but truly revived, and settled by God upon them. By that Authority this Court doth now sit, and you are brought here before them that are most of us Judges of the Law, and we are sworn to do you and every Man Justice and Right according as his cause requires ; according to Law, Judgment, Equity, and Reason. And it was said truly, that which my brother H. ash (who now is dead) did say, Its the duty of the Judges to be of Council with the Prisoner, at the Bar before him and to do that which they are sworn to do, and that you shall have ; and accordingly you have received more favour then ever I heard of a Prisoner that was accused of Treason in my life ever had. And as for the Commission, I must tell you, it is usual to have Commissions of Oyer and Terminer, and that even in Term time for high Offences, and such as tend to the destruction of the Nation, as Overburies did ; and those that tend to Capital Treason, whereof you are now accused by a Grand-jury of London, that are Free-men of London, Citizens, able Men, Men of Religion, Men of Estates, Men of Conscience, Men of quality, these are your accusers ; who have found you upon their Oaths guilty of Treason, and cry out to us the Judge for justice against you ; and it is they, not we that proceeds against you : And as for our Commission, it is according to the good old Laws of the Land, founded upon the Statute made in Edward the firsts time, called Westminster the second : That Statute Authorizeth Commissions, according to that Commission we sit by here this day ; and Edward the 1st was a wise and a good Prince, and consented to the People, to let them have such Commissions as ours we sit by is, which the People had fought stoutly for, in the Barrons wars in his Fathers time, and also in his, for he himself was taken Prisoner at Lewes in the County of Suffex ; and being a wise Prince, he knew that the love of the People was not more to be got then by wholesome and safe Laws ; that every Mans life, and every Mans Estate, and every Mans Liberty might be preserved by, and not be subject to any Arbitrary Will or Power, but that the sober and discreet and wise Laws of the Kingdom, which our Ancestors won by their Swords, might be their protectors ; a special, one of which was this Statute of Westminster the Second made in Edward the Firsts time ; by vertue of which Statute is this Commission directed to the Justices of the one Bench and the other, and they be all here this day ; but onely those that of necessity must attend at Westminster, onely to preserve the Term. Now you are come to answer to that Charge, which hath been the greatest opposition to the settlement of Government that can be, I mean the settlement of the Supreme Authority of the Nation, in the Commons now assembled in Parliament, not newly erected

erected but revived into the right Place and Hands, for it is the Law of England revived, that the Supreme Authority is in the \* Commons assembled in the Parliament of England: For so it was in the Saxons time, and in the Romans time, and in all times † it hath been as it is now; which will sufficiently justify our present Proceedings against you; and therefore I say, for the Commission it self, it is in General for the Tryal of all Treasons whatsoever: But the grand Inquest have found out no other Traytor that they may accuse, but Master John Lilburn, who is now here at the Bar; But it is not a bare Accusation, but it is the solemn Verdict of almost a double Jury that hath appeared upon the Roll, and upon their Oaths do conceive those Crimes of Treason that are laid against you, to be of so dangerous Consequence against the State and Common-Wealth, that they do call for Justice against you as a Traytor, already found guilty: And therefore I do require you as you are an Englishman, and a rational Man, that you do conform your self, and tell us plainly what you will do, as in reference to the putting your self upon your Tryal by the Law, and hear with Patience those Offences of Treason that are laid to your Charge.

Lieut. Col. Lilburn. May it please you Sir, by your Favour, I shall not now trouble you with many words.

Lord Keeble. You go improperly to work.

Lieut. Colonel Lilburn. That Gentleman I do not know his Name, (pointing to Judge Fermyn) you were pleased to say that I have had more Favour then ever you have heard of any before ever had in the like Case: But Sir, by your Favour, I shall tell you of some that in the like Case have had as much, if not more, and that was Throgmorton in Queen Mary's time, who was impeached of higher Treason than now I am, and that in the Days of the commonly accounted bloodiest and cruellest Prince that this many hundreds of Years hath Reigned in England; and yet Sir, I am sure in this very place, and that by special Commission of Oyer and Terminer; who was accused for being one of the Chiefest Confederates with Wyatt in his Kentish Rebellion; which Wyatt marched with an Army against the Queen to London, for which actual War or Rebellion, Throgmorton was in this Place arraigned as a Traytor, and enjoyed as much, if not

\* But by his Favour never before practised nor used without both King and Lords, a President of which he is desired to shew and produce out of any of his Law Books.

† But there was before the Conquest neither Innes of Court, Lawyers, nor Term Judges in England, but only twelve good and legal Men, chosen in each Hundred, finally to decide all Controversies; which lasted till William the Conqueror subdued that excellent Constitution, and instead thereof, introduced by His Will and Sword (contrary to His Solemn Oath three several times taken) the intolerable Bondage of Westminster-Hall, or Term Judges, and their Outlandish or Norman Law Practise in the French Tongue; as all the English Chronicles univervally and truly declare.

not more Favour then I have now enjoyed, although his then Judges and Prosecuter were bent to take away his life, right or wrong; and therefore, Sir, by your Favour, it is no extraordinary Favour that you have afforded me, it is but only my right, by Law, Justice, and common Equity: But, Sir, I shall be short, and put my Business to a plain Issue, which is this.

I have here at the Bar given in many strong Arguments against the Validity and Legality of a Special Commission of Oyer and Terminer, and supposing that to be such an one by Vertue of which you sit, and intend to try me for my Life; and therefore I have humbly desired (as in reason, and I think in Law I may justly do) to hear your Commission read; But you have positively denyed me that, and therefore I desire all my Friends, and all the People that hear me this Day, to bear Witness and take Notice, that you contrary to Reason and common Equity, denyed me to let me hear read your Commission by Vertue of which you go about to take away my Life; which I cannot chuse but desire them to take Notice, I declare to be very hard measure.

But, Sir, to save my self from your fore-lay'd Snares, and desired advantage against me, I will come a little Closer to the Business: You demand I should hold up my Hand at the Bar, and I know not what it Means, neither what in Law it signifies; Its true, I have read the most part of the Laws that are in English, which I take to be the Foundation of all our English Legal Privileges, and in them I cannot find any thing that doth clearly declare unto me the full Signification or meaning of a Mans holding up his Hand at the Bar; Therefore if you please but to explain what the meaning and signification of holding up the Hand at the Bar is, I shall seriously consider of it, and I hope return you a Rational and discreet Answer; for truly in those Laws which are in the English Tongue that I have read, although I find mentioned maid of holding up the Hand, yet I cannot find much of the full Signification of it, only I find it to be of a large extent; and as for those Laws, or rather the practick part of the Law, that are in French and Latin, I cannot read them, and therefore much less understand them; in which regard, for me to hold up my Hand at the Bar, before I understand the true Signification of it in Law, (which tells me it is in it self a ticklish thing) were for me to throw away my own Life upon a puntillio or nicity, that I am ignorant of; and therefore truly I think I should be a very fool in my own Ignorance to run that danger, and therefore, Sir, I humbly desire the clear explanation of the meaning of it in Law, and after that I shall give you a fair and rational Answer.

Lord Keeble. M. Lilburn, you shall see we will deal very Rationally with you, (and not insnare you in the least manner) if that be all. The holding up of your Hand, we will tell you what it Means, and signifies in Law; the calling to the Party to hold up his Hand at the Bar, is no more but for the special Notice that the Party is the Man inquired for or called on, and therefore if you be Mr. John Lilburn, and be the Man that we charge, do but say that you are the Man, and that you are there, and it shall suffice.

Lieut. Col. Lilburn. I am John Lilburn, Son to Mr. Richard Lilburn of Lord Keeble, Mr. Lilburn, what you have to say we will hear presently, only take Notice, that we will take your acknowledging of your Name to be sufficient, if you will say that you are the Man; you are called by your Name, you have come and answered to your Name, in order to your answering, the Charge to be read against you; do but this and it shall suffice, without holding up your Hand: therefore let us have no more discourse as to that.

Judge Jermyn. Mr. Lilburn, pray spare me a word, for you have been heard with patience, you have desired to have the Right of the Law of England, and yet you do question a Fundamental thing that hath been always used in case of Criminal Offences. By the Law of England, that you desire to have the meaning of it, is but just; but you must know that the Law of England is the Law of God, and if there be any thing in the Law of England but what was by admirable Constitution and Reason, we would not meddle with it; but I pray know this, that the Law of England is no written Law, it is the Law that hath been maintained by our Ancestors, by the tried Rules of Reason, and the prime Laws of Nature; for it does not depend upon Statutes or Written and declared Words\*, or Lines; and this is our Laws that have been maintained by our Ancestors, and is subordinate to the Law and Will of God; therefore I say again, the Law of England is pure, Primitive Reason, uncorrupted and unpolluted by human Humors, or human Corruptions, Wits, or Wills; that's the Law of England. There be two Reasons why holding up the hand hath been used always. First for Notice that those that are called for Capital and Criminal Offences, that they hold up their hands, is, to declare that they are the Men. My Lord hath given you this one Reason already, which I say is, that he be notified by holding up the hand to all the beholders and those that be present and hear him, that he is the Man; but besides

\* But saith Mr. Hyde in his fore-mentioned Argument, against the Northern special Commission of Oyer and Terminer, pag. 411. *Miseria servitus est, ubi jus est vagum aut incognitum.* That is to say, It is a miserable Servitude, where the Law is uncertain or unknow: And the very same saith that great Oracle of the Law, Sir Edward Cook, in the Proem to the third Part of his Institutes; and in the fourth Part Fol. 332. and in several places besides. But the People may easily see hereby, that these present Judges drives to have no other Law in being in England, but what is in their own and their Masters breasts, (that so by pretence of Law, they may give away all the Liberties and Proprieties of the People of the Nation, as their Brother Judges did lately to the King, in the Case of Ship Money) and then wo and wo to the People to be brought back again to that Faith, that Ignorance is the Mother of Devotion or Obedience,

besides this, there is more in it, that's thus; a pure innocent hand, does set forth a clear unspotted heart, that so the heart and hand put together might betoken Innocency. And therefore hold up your hand, that thereby you may declare you have a pure innocent heart; if you refuse to do this, you do wilfully deprive your self of the Benefit of one of the Main proceedings and Customs of the Laws of England. Now for this do what you think fit.

Mr. Lilburn. Well then Sir, ( applying himself to M. Keeble as the President of the Court ) I take your Explanation of it, and lay hold of that.

Lord Keeble. You must answer Positively, Sir, for you have had advice enough, yea good Advice if you imbrace it, it is good Advice to you, but the Court doth not expect an Answer from you to what hath been already said to you, but they expect that without any more dispute you apply your self to Answer according to that which you are advised unto, do it if you will, and if you will but Answer to it so as hath been declared to you, it shall suffice; but so far you must go to this, as to declare whether you be the Man or no before you go away; and therefore dispute it no more, lest you deprive your self of the benefit of the Law,

Lieut. Col. Lilburn. Well then, Sir, according to your own explanation, I say my Name is John Lilburn Son to Mr. Richard Lilburn, of the County of Durham, a Free-man of the City of London, and sometimes Lieutenant Colonel in the Parliament's Army; and if you will not believe that I am the Man, my Guardian the Lieutenant of the Tower there ( pointing to him ) will aver that I am.

Lord Keeble. So then you are the Man.  
Judge Jarmyn. Ask him again, hearken Mr. Lilburn, hearken what he says, and use that Moderation, and Temper, and Discretion that you have promised.

Lieut. Col. Lilburn. One word more, and I shall have done, and that is by the Law of England, ( but being interrupted he cryed out ) with your Favour, Sir, I will come to the main thing, I hope you do not go about to circumvent me, therefore hear me I beseech you.

Lord Keeble. Hear the Court, Mr. Lilburn, there shall be nothing of Circumvention or Interruption, but as you have professed to be a Rational and understanding Man in words, let your deeds so declare you.

Lieut. Col. Lilburn. Sir, I beseech you do not surprize me with punctilioes, or nicities, which are hard things for me to lose my Life upon, I tell you again, my Name is John Lilburn, Son to Mr. Richard Lilburn.

Lord Keeble. Talk not of punctilioes with us, nor talk not of Judges made by the Laws, you shall not want Law; but if you talk of punctilioes here in this Room, we will stop that language.

Lieut. Col. Lilburn. Truly, Sir, I am upon my Life, and shall my Ignorance of the Formalities of the Law in the practice part thereof destroy me, God forbid! therefore give me but leave to speak for my Life, or else knock me on the head, and murder me where I stand, which is

( 22 )

more Righteous and Just then to do it by pretence of Justice. Sir, I know that Mr. Bradshaw himself, President to the High Court of Justice, as it was called, gave Duke Hamilton (*hosti le Enemy*) leave to speak to the punctillios of the Law; yea, and to my knowledg again and again made an Engagement unto him and the rest tryed with him, that the Court nor he would not by vertue of their Ignorance of the niceties or formalities of the Law, take advantage against them to destroy them; but did declare again and again that all advantages of formalities should be totally laid aside, and not in the least made use of against them to their prejudice, and I hope you will grant me, that have often been in Armes for you, but never against you, as much Favour and Privilege as was granted to Duke Hamilton, never of your Party, but a General of a numerous Army against you.

Lord Keeble. *Take it as you will, we have had patience with you, and you must and shall have patience with us; we will pass over all that is by past, but take heed by your surly crossness you give not advantage in the Face of the Court, to pass Sentence against you, without any further Proceedings, or Proof of your Actions, but what our own eyes see. The Ceremony is for your advantage more then you are aware of: but if you confess your self to be Mr. John Lilburn, we have done as to that.*

Judge Jermyn. *Mr. Lilburn, at the beginning you talked of Moderation, and that you would carry your self with Rationality, which methinks in your Actions you fall short of, for you have said that Mr. Atturney General was a very unequal prosecutor of you, because you say he was the Creator \* of our Commission. Pray hear me, I heard you; and do not you think to put Affronts upon us undeserv'd: And as for that Man that you call Mr. Bradshaw, I tell you again he is Lord President of the Council of State of the Common-Wealth of England, and why you should so much neglect him, doth not so much favour of Rationality and Moderation, as you pretend your self to be possessed with.*

Lord Keeble. *Come, will you read the Indictment?*

Mr. Broughton reads. *Hold up your Hand John Lilburn, and hearken to your Charge.*

*Thou stands Indicted of High Treason by the name of John Lilburn, late of London, Gentleman, for that thou as a false Traitor, not having the fear of God before thy eyes, but being stirred up and moved by the instigation of the Devil, &c. as it followed verbatim, in the second Days proceedings, to which the Reader is referred.*

Mr.

\* Mr. Lilburn here endeavored to speak, and shew the Judge his mistake, for he did not say that Mr. Prideaux was the Creator of the Commission, but that he was one of the Creators of all the Judges, and thereby was Judge of his Judges, and in that Regard he was no Competent Accuser or Prosecutor, but they would not suffer him to speak but cryed out, hear the Court, which thing also they frequently did afterwards.

( 23 )

Mr. Broughton. *What saist thou John Lilburn, art thou Guilty of this Treason whereof thou standest Indicted, or not Guilty.*

Lieut. Col. Lilburn. *Gentlemen, I require the Favour that I may be heard, and I shall desire nothing but that which may stand with Reason and Justice.*

Lord Keeble. *Mr. Lilburn, We shall deal with you according to Reason and Justice, and after such a manner as you your self shall judge Rational and Right.*

Lieut. Col. Lilburn. *Gentlemen, I shall speak but a few words, I beseech you hear me, for it is upon my Life.*

Lord Keeble. *You say you will deal Rationally in those ways; that is to be expected from you the first in Reason, is to Answer, and Plead, and before you so do, you cannot be heard.*

Lieut. Col. Lilburn. *Give me leave to speak, and I shall not speak 6 Lines (which with much strugling being granted, Mr. Lilburn went on and said to this effect.)*

Then Sir, thus, By the Laws of England I am not to Answer to questions against or concerning my self.

Lord Keeble. *You shall not be compelled.*

Another Judge. *Mr. Lilburn, is this to answer against your self, to say you are not Guilty, by the Laws of the Land you are to plead to your Charge, and it is no accusing of your self to say Guilty or not Guilty.*

Lieut. Col. Lilburn. *Sir, by your Favour.*

Judge Keeble. *To Answer that you are not Guilty, is no great Matter, nor definit in Law.*

Lieut. Col. Lilburn. *By the Law of England I am to be Tryed by a Rule, but I do not know by the Rules of the Law, what Benefit, in reference to my exception against the illegality of my Indictment, I may deprive my self of, in case I should Answer before I Except.*

Lord Keeble. *The Law is plain, that you are positively to Answer, Guilty or not guilty, which you please.*

Lieut. Col. Lilburn. *Sir, By the Petition of Right, I am not to Answer to any Questions concerning my self; therefore I humbly entreat you to afford me the Privileges of the Laws of England, and I will return a positive Answer to it, if you will but please to allow me Counsel, that I may consult with them, for I am ignorant of the formalities of Law in the practick part of it, although I here declare I own the good old Laws of England, and a Legal Jury of 12 Men, yea, and a Tryal by a Jury of legal Men: and I do humbly crave (Sir) a Copy of the Indictment, or so much of it as I may ground my Plea upon it, and reasonable time to consult with my Counsel, although it be but 8. or 9. Days.*

Lord Keeble. *You speak well, but you must do well, 'tis that we come for, the reasonableness of it is this, that you should shortly Answer (Sir) to that question, and in a Rational legal Way: when you have Answered it, you shall have liberty to make your Defence, to maintain that you say, but this that we speak now of, is a thing in your own Breast, in your*

*own Knowledge, whether you be Guilty of this that is laid to your Charges or no : And if you be clear, you cannot wrong your self, nor your conscience ; for in saying not Guilty, you know better what you say then any other doth.*

*Lieut. Col. Lilburn.* Sir, I am Ignorant of the Formalities of the Law, having no Books in *English* wherein I can read them : and as for other Tongues I understand none, and therefore for you to take away my Life for my Ignorance, when the practick part of the Law, or the Formalities thereof is lockt up in strange Language, that it is impossible for me to read or understand, is extream hard.

It is true, in those *English* plain Laws which I have read, I find something spoken of it ; but mult aver that I find there is a great deal of nicity and Danger in locking a Man up to single Formalities, in answering Guilty, or not Guilty, and therefore I beseech to assign me Counsel, to inform my Ignorance, and give me but leave to consult with my Counsel, and I will return you an Answer according to your Desire, without any Demurr, as soon as it is possible for me to know what ground I go upon.

*Mr. Broughton,* John Lilburn, *what saist thou, art thou Guilty of the Treason laid unto thy Charge, or art thou not Guilty.*

*Lieut. Col. Lilburn.* But under Favour thus, for you to come to insnare and entrap me with unknown Nicities and Formalities, that are lockt up in the *French* and *Latin* Tongue, and cannot be read in *English* Books, they being not exprest in any Law of the Kingdom, published in our own *English* Tongue : it is not fair play according to the Law of *England*, plainly in *English* exprest in the Petition of Right, and other the good Old Statute-Laws of the Land : Therefore I again humbly desire to have Counsel assigned to me to consult with what these Formalities in Law signifie, so that I may not throw away my Life ignorantly upon forms.

*Lord Keeble.* Mr. Lilburn, *we cannot grant you that Favour, it is not consistent to the Law, whatsoever you say to the contrary ?*

*Lieut. Col. Lilburn.* I hope you will not go about to insnare me, and take away my Life for punctillioes.

*Another Judge.* Well then, you will not Plead ?

*Lieut. Col. Lilburn.* Yes, If I may be allowed that which I conceive to be my Birth Right and Privilege, to consult with Counsel, or that you please to make the same Engagement to me that Mr. Bradshaw, as the President of the High Court of Justice made to Duke Hamilton, which was, that the Court would take no advantage at all at his Ignorance in the Nicities and Formalities of the Law in his Pleading ; let me but enjoy this Engagement from you, and I will Plead.

*Lord Keeble.* You shall have that which is according to the Law, therefore Mr. Lilburn I advise you for to Plead, and you shall have fair play, and no advantage taken against you by your Ignorance of the Formalities of the Law ?

*Lieut. Col. Lilburn.* Well then, Sir, upon that Engagement, and because, I see you are so positive in the thing——This is my Answer, that

that I am not Guilty of any of the Treasons in manner and form, as they are there laid down in that Indictment, pointing to it, and therefore now Sir, having Pleaded, I crave the Liberty of *England*, that you will assign me Counsel.

*Mr. Broughton.* By whom wilt thou be Tried ?

*Lieut. Col. Lilburn.* By the known Laws of *England*, and a legal Jury of my equals, constituted according to Law.

*Mr. Broughton.* By whom wilt thou be Tried ?

*Lieut. Col. Lilburn.* By the known Laws of *England*, I mean by the Liberties and Privileges of the Laws of *England*, and a Jury of my equals legally chosen : and now Sir, I again desire Counsel to be assigned me to consult with, in Point of Law, that so I may not destroy my self through my Ignorance ; this is but the same Privilege that was granted at *Oxford* unto me and the rest of my fellow Prisoners arraigned with me.

*One of the Clerks.* You must say by God and your Country, that's the form of the Law ?

*Lieut. Col. Lilburn.* Why must I say so ?

*Another Judge.* This is the Form and Law of the Land, will you plead Mr. Lilburn, according to the Laws of *England* ?

*Lieut. Col. Lilburn.* Truly I never read it, Sir, in the Laws of *England*, what it is to plead in this Nature.

*Lord Keeble.* You say you will be Tried by the Laws of the Land, then it is by the Country, and so you may Plead and do your self no harm ; for by the Country is meant a Jury of your equals ?

*Lieut. Col. Lilburn.* Sir, I am doubtful of my Ignorance in the Laws, yet I will return you an Answer, you making good your already engaged promises, that you will take no advantage against me, if through my Ignorance, and your Importunity, I Plead in any form, that in strictness of acceptation may deprive me of any real Benefit the Law will afford me.

*Judge Thorp.* Mr. Lilburn, you will be Tried by the Law, and by the Rules thereof, when you say so, you do really declare it to be by your Country, so that the true signification of being Tried by the Law, is the same thing in substance with being Tried by the Rules of the Law.

*Lieut. Col. Lilburn.* Then I hope my Answer is clear and fair, Sir.

*Judge Jermyn.* The Formality is shortly this, to be Tried by God and your Country, no more is meant by it but thus, by God, as God is every where present, yea, in all Courts of Justice, and sits and knows all things that are acted, said, and done ; the other part of it by your Country, that is, by your Country or Neighbourhood ; the Country is called *Patria*, because your Neighbour and your Equals which you are willing to put your self upon the Trial of ; by force of that Word, the Country, a Jury of the Neighbourhood for Trial of you are summoned, now do what you will.

*Lieut. Col. Lilburn.* Sir, under your Favour thus, then in the Negative, I say God is not locally or corporally here present to Try me, or Pass upon me ; but Affirmative I return this Answer, that I desire to be Tried in the presence of that God, that by his Omnipotent Power is present every

( 26 )

every where, and beholds all the Actions that are done upon the Earth, and sees and knows whether any of your hearts be possessed with a premeditated Malice against me, and whether any of you come with so much forethought of Malice against me, as that in your hearts you intend to do the utmost you can, Right or Wrong to destroy me, and before this alseeing God I desire to be Tryed, and by my Country, that is to say, by a Jury of my Equals, according to the good Old Laws of the Land.

*Justice Thorp.* You have spoken very well.

*Lord Keeble.* You have done like an English-man so far as you have gone, and I do assure that in any Formalities (as you express, or call them) there shall be no advantage against you, if you mistake in them. Now what you have the next to think upon, is your Jury of your Country-men, or Neighbours of your Equals, and I promise you we will take care of that, that they shall be good and lawful Men of England?

*Lieut. Col. Lilburn.* I thank you, Sir, but under your Favour thus, your Indictment is extream long, and of abundance of particulars, it is impossible that my Memory, or of any one Mans in England, can contain it, or carry it in our heads, and therefore that I may make my Defence so as becomes a rational English-man: I earnestly entreat you that now you will be pleased to give me a Copy of my Indictment, or so much of it, as you expect a Plea from me upon, or an Answer unto, and Counsel assigned me, and time to debate with my Counsel, and Sub-pœna's for Witnesses.

*Lord Keeble.* For Counsel you need none, Mr. Lilburn, for that not Guilty which you have Pleaded, is that which lies in your own Breast, which rests in your own Counsel, and you know how it is, and can best Plead that your self, Counsel lies in Matter of Law, not of Fact.

*Lieut. Col. Lilburn.* Under Favour I desire Conncel, for Matter of Law, and not for Matter of Fact: My Indictment I believe in Law, is all Matter of Law, and I have something to say to it in Law.

*Lord Keeble.* If Matter of Law do arise upon the Proof of the Fact, you shall know it, and then shall have Council assigned to you.

*Lieut. Col. Lilburn.* I my self have before this been upon some Trials, and never before this was denyed Council, no nor so much as ever disputed whether I should have it or no. I also was at a great part of the Earl of Strafford's Tryal, who was supposed a most notorious Traytor, and yet if my Observation and Memory do not exceedingly fail me, he had Council assigned him at his first Desire, and they were continually with him, not only at the Bar when he was there, but also had continual and free access to him in Prison.

Besides, Sir, I being accused of Treason in such an extraordinary manner, and being but an ordinary Man my self; no eminent experienced Lawyer, dare well meddle with my business, no nor so much as bestow a visit upon me; but he runs a hazard of being undone: and truly my state is in an extraordinary manner taken from me, so that I have not Money to send Messengers up and down privately to their Chambers, and there-

( 27 )

therefore that I may be freely and allowedly able, without danger of ruin to any Man that shall advise me, I shall humbly crave as my Right by Law, and I am sure by common Equity and Justice, that I may have Council and Soliciters also assigned me.

*Lord Keeble.* Mr. Lilburn, speak rationally for your self, when there comes a Matter of Law, that you are able to say, this is for Matter of Law, arising from Matter of Fact, that hath been proved or endeavoured to be proved, when you come beyond that, you shall have it as willingly as you can desire, and withal, this that you say concerning your Memory, which you say is not able to carry away, or contain the particulars of this Indictment. The Indictment so much as will charge your Memory will be very short, for it is the publishing of those Books charged upon you in the Indictment, that will be the Matter which will stick, and that Matter will be very short, which we must prove against you, which is only Matter of Fact, and not of Law: And therefore for Fact of Treason you can be allowed no Counsel, but must plead it your self.

*Lieut. Col. Lilburn.* Sir, under Favour, you expect from me impossibilities, for seeing I have been Seven months in Prison for nothing, and could not in the least know perfectly what would be laid to my Charge, nor after what manner I should be proceeded against (considering all proceedings against me hithertoward) have been so absolutely Arbitrary, that it was impossible for me in Law exactly to come provided) and therefore seeing I am now here, and you pretend to proceed with me according to the due Course of Law, and seeing the form of the proceedings in this manner with me is not expressly and exactly declared in Print in English, which Tongue only I can read and understand, and seeing by the Law which is in English, which I have read, and clearly understand, that there are a great many snares, and a great many niceties in the practick, that are formal proceedings of the Law, and seeing I know not certainly, whether if I proceed to matter of proof, before in Law I make my Exceptions against your Indictment, as to matter, time, and place, I be not in Law deprived of that Benefit, which I principally aim at for the preservation of my Life, therefore I beseech and most earnestly entreat you, to assign me Counsel to consult with, before I be too farr insnared, and if you will not do it, and give me some reasonable time to prepare my Plea and Defence, then order me to be knock'd in the head immediately in the place where I stand without any further Tryal, for I must needs be destroyed if you deny me all the means of my Preservation.

*Judge Jermyn.* Mr. Lilburn, It were reasonable to give you satisfaction, if you would receive it, you say you were present at my Lord of Strafford's Tryal, and you say he had Counsel assigned him, not only to stand by him at the Bar, but to repair to Prison to instruct and advise, but that was not a Tryal in such a way as this is: It was a Tryal by way of Impeachment before the Peers assembled in Parliament, and his Attainder was made up into an Act of Parliament, but that is not a Tryal as the common Law, per pares, which is that which your self have desired a Tryal

( 28 )

*a Tryal by lawful Men according to the Liberties of the Laws of England, After your Answer to your first question, that is to say, whether you be Guilty or not Guilty of the things whereof you are accused, no Council in the World can follow till the Fact be proved, and matter of Law do arise thereupon. So that the first thing that must be done, the matter of Fact must be proved against you, and then if it shall appear thereupon to the Court, that matter of Law do arise, and you do expect Council we must and will perform it, the Court are of your Council so far as to Fact. And then in that case, that Law arise thereupon, you may and ought to have other Council assigned, and do not you doubt but the Court will be as careful of you, as you can be of your self, and allow you more favour, it may be, then your friends do expect.*

*Lieut. Col. Lilb.* Under your favour, and by your good liking; I was once Arraigned at Oxford for my life, upon the matter of Treason, for leveying war in Oxfordshire against the King, as their Indictment then said, and my Arraignment was by vertue of a Commission of Oyer and Terminer, that was (and in Law I am sure of it) as legal and as just as yours is, and my Lord Chief-Justice Heath, the chief Commissioner or President who was in the eye of the Law, as legal a Judge as any of you, and yet he—

*Lord Keeble.* Mr. Lilburn, we do remember it.

*Lieut. Col. Lilb.* I beseech you give me leave to speak for my self, and to go on, for my Life lies upon it,

*Lord Keeble.* Hear me one word, and you shall have two.

*This that you did speak but even now, do not you think that we have such bad memories, as that we have already forgot it, your life is by Law as dear as our lives, and our Souls are at stake if we do you any Wrong,*

*Lieut. Col. Lilb.* I wish you may be sensible of that Sir.

*Judge Jarmyn.* Mr. Liburn you need not to say so, our Souls are upon it, and we are to stand or fall by Justice and righteousness as well as your self is.

*Lieut. Col. Lilb.* I say my Lord Heath, and the Court at Oxford, proffered me Council before any one witness was produc'd to my face, or any matter of Fact came to the proof, yea, and gave me Liberty to mak my exceptions to the insufficiency of the Indictment, which was very short in comparison of yours; I crave the same priviledge from you (the Nations pretended friends) that I found at Oxford, amongst its declared pretended Enemies, against whom in several Battles I had fought; And I hope you that pretend to be the preservators of the Liberties of England will not be more cruel, and Unrighteous then the Declared destroyers of them, if you will not allow me Council as I had there, I have no more to say to you, you may Murder me if you please.

Judge

( 29 )

*Judge Jermyn.* You were pleased to mention some presidents of those that have been accused of High Treason, that have had Council assigned to them, and for one you mention, that of my Lord of Strafford, whose Tryal I told you was Parliamentary before the House of Peers, upon the Impeachment of the Commons of England in Parliament assembled, and so it went on in a Parliamentary way, their proceeding is in an ordinary course of the ordinary qundam Court of Justice according to the common Law. Now for my Lord of Strafford, give me leave to observe this; he had no Council assigned him until such time as questions of the Law did arise, which required Council, and then he had Council assigned him, but not before; for that my Lord doth not say, that you shall have no Council, but that you shall have that which the Law allows: and as for that which you speak of Council at Oxford, it could not be; but when upon the proof of Matter of Fact, it appears to the Court, that there is any Question or matter of Law arising upon the Fact: And when it doth so appear unto us, then you shall have Council for that; but (I beseech you) hear me on, You are now come before us according to the Common Law, to be tried by your Country, there is now nothing in question, but whether that matter, that thing, those words contained in the Indictment read to you, be true, yea, or no; that is, whether they be done, or no, for we will not give Council to plead to the matter of Fact contained in your own Books, which you Remember very well.

*Lieut. Col. Lilb.* Those Books supposed mine: Pray let me have Fair play, and not be Wound and Scru'd up into Hazards and Snares.

*Lord Keeble.* If they be not yours upon good grounds proved before you, you are in no danger: and if upon the proofs of the Words and Deeds done, there do appear matter of Law, you must and shall have Council; stay till that be done, in the mean time the Court will take care that a Jury shall be returned of honest and sufficient legal men to judge of the proofs.

*Lieut. Col. Lilb.* There was arraigned with me at Oxford Collonel *Vivours* of *Banbury* now alive, and Captain *Catesby* who is dead: I will bring Collonel *Vivours* to depose here upon his Oath, that my Lord Heath and the rest of the Commissioners of Oyer and Terminer proffered me Council, and allowed me and him Council before ever so much as any Witnesses were produced, to prove the least matter of Fact: and if you will not be so just towards me as the Cavalliers were, and allow me Council as they did. I have no more to say, but resolve upon this score, to stand, and here to dye upon the Principles of an Englishman: If you will not be so just as the Cavalliers were, with whom you and the Parliament set us together by the Ears to Fight with, pretendedly for their injustice let God and all Righteous Men judge betwixt you and me.

*Judge Nichols.* If you will not be led by the proceedings of Law, it will be worse for you, and you are to know this is not Oxford.

Lieut.



Lieut. Col. Lilb. Sir, by what better rules of the Law can I be led by, then those that I have before my Eyes; I am sure at Oxford, as my right by Law, I was, before any fact was proved, and proffered Council by my Judges, which were my Lord Heath, and Mr. Gardiner. Now Sir Thomas Gardiner, who is now in London, if you please I will produce him to this Bar to justify it upon his Oath, that the Lord Chief Justice Heath in his presence proffered me Council upon my Arraignment for Treason there, as my right by the privileges of the Laws of England, before the Fact came to be proved; yea, and also gave me Liberty to assign the Errors of my Indictment. He is now in London, and I will produce him here at this Bar (if you please) to justify what I say if you will give me time, and enable me with Ability to Summon him in.

Judge Nichols. Mr. Lilburn, whether Mr. Gardiner will justify it or no, it is nothing to us, for we are not to walk by Oxford presidents, but by the rules of the Law, and the Law will afford you no Council, but in points of Law arising upon proof of the Fact †.

Lieut. Col. Lilb. Under favour thus: I conceive the presidents at Oxford, so far as they are righteous, are fit for your Imitation, and whether it be a righteous thing for you, when I am tryed for Treason before you, to be more cruel towards me, who have fought for you, then the Cavaliers at Oxford, in the like case were against whom I fought: and I must tell you, I further conceive it the most unequal and unjust thing in the World, for me to have to do, upon the Tryal of my life, with all the Judges of the Land (who are all engaged Men) that have had above 6 Months time to beat their brains together, with the assistance of divers of my Adversaries, who are Parliament-Men, that were the Creators of their Power, and for one of them to be my prosecutor: And in this so extraordinary case, for me to be denied to consult with Council, I tell you Sir it is most unjust, and the most unrighteous thing in my apprehension that ever I heard of, or see in all my life. O Lord! was there ever such a pack of unjust and unrighteous Judges in the World? Sir, in plain English let me tell you, if I had thought you would have bound me up to a single Plea, and not have given me in my Plea the just latitude of Law, Equity and Reason, but hold me thus close to your single Formalities contrary to your promises, I would rather have dyed in this very Court before I would have pleaded one word unto you, for now you go about by my own Ignorance and Folly to make my self guilty

† What a lying Judge is this Mr. Nichols, when as he himself with Mr. John Minard the Lawyer, was assigned by the President, Lord chief Baron Wild, to be of the Council with Major Rolph upon his desire, and that before ever the grand Jury found his Indictment of Treason, as is fully declared in the next days following Plea of Mr. Lilburn.

ty of taking away my own life; and therefore, unless you will permit me Council, upon this lock, I am resolv'd to dye.

Lord Keeble. This is not the Rational way you said you would go in.

Lieut. Col. Lilb. Sir, my life is before you, you may Murder me, and take away my Blood if you please.

Lord Keeble. I will not be out-voiced by you, our lives and our souls are upon it, therefore you shall have Equity and Justice, yea, such as you desire your self; but you are now going to fly into Extravagancys and heats which will manifest the rancour of the distemperdness and inveniendness of Spirit which is within you: And besides, if we should enter into it, we might agravate your crimes by your own words at the Bar. Take heed of it, that you give not advantage against your self to your own ruin.

Lieut. Col. Lilb. Sir, I am in no heats, I am but with earnestness pleading for my life, when you deny me all the just means of my preservation, which is my right and due by your own Law.

Judge Thorp. Mr. Lilburn, I desire to Correct a mistake of yours in the Law: You were pleased to condemn it as unjust; for the Attorney Generals speaking with me, when your Indictment was a reading, you are to know, he is the prosecutor for the State here against you, and he must confer with us upon several Occasions, and we with him, and this is Law.

Lieut. Col. Lilb. Not upon the Bench (Sir) by your favour, unless it be openly, audibly, and avowedly, and not in any clandestine and Whispering way: And by your favour, for all you are a Judge, this is Law, or else Sir Edward Cook in his † 3d. part Inst. Cap. High Treason or Petty Treason, hath published Falshoods, and the Parliament have Licensed them; for their stamp in a special manner, is to that Book.

Judge Thorp. Sir Edward Cook Law is, and he says the attorney general or any other prosecutor may speak with us in open Court, to inform us about their Business before us in open Court.

Lieut. Col. Lilb. Not in Hugger-mugger, Privately or Whisperingly

Judge Thorp. I tell you Sir, the Attorney General may talke with any in the Court by Law, as he did with me.

Lieut. Col. Lilb. I tell you Sir it is unjust, and not warrantable by Law, from him to talk with the Court, or any of the Judges thereof in my absence, or in Hugger-mugger, or by Private Whisperings.

Lord

† Whose words there fol. 29. 30. are so plain and express to prove what Mr. Lilburn said to be good law, as nothing in the World can be plainer, see also to the same Purpose the 2d. part Inst. fol. 49. 30. 124.

Lord Keeble. *No (Sir) it is no Hugger-mugger for him to do as he did: Spare your words, and burst not out into passion for thereby you will declare your self to be within the compass of your Indictment without any further Proof; look to it, that you behave your self according to the bounds of Reason and Law, and hear me, for we must cause the Jury to be returned.*

Lieut. Col. Lilb. Sir under favour I crave bur one word more, hear me out; I know very well, and I read in your own Law Books such a Prerogative, as that in cases of Treason no Council shall plead against the King, hath been sometime challenged to be the Kings Right by Law; but let me tell you, it was an usurp Prerogative of the late King, with all other arbitrary Prerogatives and unjust Usurpations upon the Peoples Rights and Freedoms, which has been pretended to be taken away with him: And Sir, can it be just to allow me Council to help me to plead for my estate, the Lesser, and to deny me the help of Council to enable me to plead for my life, the Greater. Nay, Sir, can it be just in you Judges, to take up 7 years time in ending some Suits of Law for a little Money or Land, and deny me a few Days to consider what to plead for my life? Sir, all these pretences of yours, were but all the Prerogatives of the Kings Will, to destroy the poor ignorant and harmless People by which undoubtedly died with him, or else only the Name or Title is gone with him, but not the power or hurtful Tyranny or prerogative in the least. Therefore, seeing all such pretended and hurtful prerogatives are pretended to be taken away with the King, by those that took away his life, I earnestly desire I may be assigned Council to consult with, knowing now especially no pretence why I should be denied that Benefit and Priviledge of the Law, of Just and equitable Law of England, having put my self upon a Trial according to the priviledges thereof: And it was declared to me at Oxford, upon the Trial of my life there, after I was taken prisoner, fighting against the King and his party, even almost to hand gripes, and to the Swords point, and to the Butt end of our Musquets, being in person one of that little number that for many hours together at *Brainsford* fought with the King's whole Army, where in the manner, without any Articles or composition I was taken a prisoner, and immediately thereupon arraigned at *Oxford*, where notwithstanding all this, it was declared to me by Judge *Heath* to be my right by the law of *England* to have Council assigned me to help me in point of Law, and I had it granted: I confesse he is my best Authority that point of Law, or else I had never pleaded to him, and he was upon his Oath to do justice and right, and he was an able and understanding Lawyer, and yet did allow me (an hostile Enemy) Council to help me as my right by Law, before ever any Proof to matter of Fact was produced, and I beg but the same Legal Priviledge from you, from whom I have more cause to expect it.

Lord Keeble. *Were you there Indicted for Treason?*

Lieut.

Lieut. Col. Lilburn. Yes, that I was, and for the Highest of Treasons by the Letter of the Law, for actual levying War against the King.

Judge Thorp. *And yet for all that you know it was no Treason, and so did he too, for you know that you had committed no Treason at all in obeying the Parliaments Command; for what you have done, was done by the Parliaments special Authority and Command, and you had your Commission to justifie you in your hostile Actions, and he knew it well enough your Act was no Treason, though he did offer you Counsel, or else he durst not allow you Counsel.*

Lieut. Col. Lilburn. I had nothing to justify me in that Act but the equitable Sense of the Law, the Letter of it being Point blank against me, and on the Cavalliers side, by which if they had prevailed, they might have hang'd both you and me for levying War against the King, notwithstanding our Parliaments Commissions: and this I know, Sir, you know to be Law in the Letter or punctillioes of it.

Judge Thorp. *It was no Treason in you, and he that assigned you Counsel knew it was no Treason, and this arraignment of you was as illegal as his assigning you Counsel.*

Lieut. Col. Lilburn. Sir, by your Favour, he was a Judge of the Law by legal Authority, being made by the King, in whom by Law that Power was invested, and he looked upon himself as a legal Judge, and so did I too, and as a legal Judge he arraigned me for doing that Act, that by the exprefs Letter of the Law was Treason, and as a legal and honest Judge according to his Duty in Law he allowed me Counsel.

Judge Jermyn. *For that Matter that you talk of, they knew it was no Treason, and therefore gave you more Priviledges than was their right by Law, very well knowing, that whatsoever was done to any of you that did fight for the Laws, Religion, and Liberties of their Country, there might be the like done to others that were Prisoners in the Parliaments Power, and this was the truth of it, and you know it very well, and therefore it is nothing to us, nor in Law his willingness.*

Lieut. Col. Lilburn. Upon my Letters after the first day of my Tryal, that Declaration of *Lex Talionis* was made, as clearly appears by the words and date of it now in Print, which the Reader may peruse in the 1. Part of the Parliaments Declarations, pag. 802, 803.

Judge Thorp. *I wonder they did not proceed in the prosecution of the Indictment, and find you guilty of Treason, and so to Execution!*

Lieut. Col. Lilb. Under your favour thus, I appeared at the Bar, I pleaded to my Indictment not guilty, I made exceptions against my Indictment, and my self and the other two Gentlemen arraigned with me had Council assigned us as our right by Law: And the Judges most fairly and rationally further told us, Because we will not surprize you, we will give you a Week's time to consider (with what Council you please in *Oxford* to chuse to come unto you) what to plead for your lives, and

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whatsoever other privileges you can claim by the Liberties of the Law of England, you shall enjoy them to the utmost: Upon which promise I spoke in open Court to the Judge, shewing him the Irons upon my hands, in which I was arraigned, and told him: My Lord, by the Laws of England, no prisoner for any Crime soever, that behaves himself civilly and peaceably in his Imprisonment, ought to be put in Irons, or to any other pain or torment before he be legally Convicted: and therefore I desire as my right by Law, that my Irons may be taken off. And I said further, My Lord, I am shut up a close Prisoner in my chamber, denyed the use of Pen, Ink, and Paper, which is contrary unto Law, especially in the time of my Tryal. Why, says he, you shall be releas'd from your Irons, from your close Imprisonment, and have the use of Pen, Ink, and Paper, and Captain, *Lilburn*, I tell you, you shall enjoy whatsoever other Priviledge you can Challenge as your right by Law; for the Law of England is a Law of Mercy, and I hope we shall appear just Judges of it: and therefore you shall freely have either Lawyer or whom you will in *Oxford*, to come unto you to help and advise you. And says he, because you shall see that Law and justice is of the King's side against the Parliament, and because they shall have no cause to calumniate us at *Westminster*, and to say we are unrighteous and unjust Judges, that surprize you, and thereby go about to Murder you; the Court is freely willing to give you a Week's time to consider with your Council in the mean time what this Day seven-night to plead for your life; in which time being freed of my Irons, and of my close Imprisonment, and enjoying Pen, Ink, and Paper at my Pleasure, by special order from the other two Gentlemen I writ a Letter to my Wife, and in it enclosed another to your Speaker and another to young Sir *Henry Vane*, then my familiar acquaintance, all which I sent in post haste away to my wife by the Hands of Captain *Primrose's* Wife, which Captain *Primrose* was Prisoner there; and his Wife who brought up the Letter to my Wife, is now in *London*, which Letter my Wife delivered to the Speaker, &c. and by her importunate sollicitation, procured the Declaration of *Lex Talionis*, the substance of which, in a Letter from Mr. Speaker, my Wife brought down to *Oxford*, and delivered to the Lord *Heath's* own hands, upon the Sunday after the first day of our Arraignment, and the 3d day before we were to appear again, my Wife arrived at *Oxford* with the Speaker's Letter which she delivered to Judge *Heath* himself, which Letter taking notice of our Tryal, threatned them with *Lex Talionis*, to do the like to their Prisoners, that they did to us, or any of us: and they having many of their great eminent Men Prisoners in the Tower, and in *Warwick Castle* and other Places, did induce them to stop all further Prosecution of *C. Vivvers*, *Capt. Gatesbie*, and my self. And if it had not been for this threatening Letter, in all likelihood we had all three been condemned by a commission of Oyer and *Terminer*, and executed; for my Wife did hear Judge *Heath* say to some of his Associates at his reading of the Letter, that as for all the threatening part of it, as to his particular self, I value it not; but said he,

he, we must be tender of the Lives of the Lords and Gentlemen that served the King and are in the Custody of those at *Westminster*, and that clause of *Lex Talionis* put a stop to our Proceedings and further Tryals at Law.

Lord Keeble. *It was well for you, by your story that you do tell, that you had so fair play; you shall have with us, who are upon our Lives and Oaths, as much as the Law will afford you, and so much as our Judgment and Consciences can lead us to, without doing Injustice in granting more than the Laws of England will afford: what was done there, is nothing to us here, for we are not to walk by their President, but by our own judgments, according to the Rules of the Law and here 'tis thus far just, that upon the proof of Matter of Fact, if Law do arise you are to have Counsel, if not, you are to have none. By your allegation, you say, you had Counsel assigned you before any Matter of Fact came to be proved, when as a Judge of the Law he could not but do it; but if he did it is nothing to us, we cannot do it; yet we have in this place proceeded legally hitherto with you, and when that Matter of Law doth arise from the Fact, as you had Counsel there assigned you, so shall you have here, and you shall have fair dealing, and fair play according to Law, which is absolutely as I tell you.*

Lieut. Col. *Lilburn*. Sir, by your Favour I crave but one word more, and that is this; here is a Gentleman that is a by-stander, a Friend of mine, and my Sollicitor, who by Law as well as any other by-stander may \* speak for the Prisoner at the Bar, in case he perceive things urged against him contrary to Law, and therefore I desire he may speak two or three words.

( Mr. *Sprat* beginning to speak. )

Lord Keeble. *Spare your self, when your time comes you shall speak.*

Mr. *Sprat*. *He asked leave for me first: And Sir it is easie to prove the whole Indictment to be Matter of Law.*

Judge *Jermyn*. *What impudent fellow is that, that dare be so bold as to speak in the Court without being called. M. Lilburn, by your own words you say you were told at Oxford, that by Law you were to have Counsel: that is as true, that the Court is of Counsel for the Prisoner arraigned at the Bar, and so we ought, and shall permit you other Counsel, if Matter of Law upon the proof of the Fact do arise; but for any other Counsel to be assigned you before that appear, is not by Law warranted, we shall tread the Rules of Justice: and we shall do wrong to the whole Common-wealth, if we should allow you Counsel before Matter of Law doth arise from the proof of Fact, and to allow Counsel in any other Case, the Court commits Injustice.*

Lord Keeble. *And this Mr. Lilburn, I will promise you, that when there comes Matter in Law, let be a Lawyer or your self, he shall speak in your Behalf, but before he cannot.*

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Lieut.

\* Cook in his *Inst.* 3. Part. c. *Petty Treason*, fol. 29. is express in this particular, so is he in c. 63. being his cap. of Counsel, learned in Pleas of the Crown, fol. 137.

( 36 )

*Lieut. Col. Lilburn.* Sir, the whole Indictment, under Favour, is Matter of Law, and the great Question that will arise ( admit the Fact should be true, and admit it should be granted ) is, whether the words be Treason in Law, yea, or no, and also it is Matter of Law in the Indictment, whether the Matter in the Indictment be rightly alledged, as to Matter, time and place. And it is Matter of Law in the Indictment where there divers several pretended Treasons committed in divers and several Counties, put into one and the same Indictment, be legal yea, or no.

*Lord Keeble.* Upon proof of the Matter of Fact, you shall hear and know whether Matter of Law will arise, and till the words be proved, we cannot say whether that be the Law that you suppose.

*Lieut. Col. Lilburn.* Truly Sir, you promised me a fair Tryal, and that you would not take advantage of my Ignorance in the Law's formalities; but the Lord deliver me, and all true hearted Englishmen from such unjust and unrighteous Proceedings as I find at your hands, you go about I now clearly see, by my Ignorance in holding me, to a single and naked Plea, which is purely as bad, if not worse than all the Prerogatives; and for the worst and grossest of his Prerogatives in a more rigorous manner than they were used in his life-time, to be thus prest upon me at this day, after he hath lost his Life for pretended Tyranny and Injustice, Liberty and Freedom in publick Declarations declared to the Kingdom, I say if there be Justice and Equity in this I have lost my Understanding, and the good Lord God of Heaven deliver me from all such Justiciaries.

*Lord Keeble.* Mr. Lilburn, you have been arraigned before us for High Treason, and we bid you forbear those terms of yours, long ago speak that you do rationally, and you shall have fair and Christian Answers and Replies; as ever any Man had at a Bar, and go on, you shall have it still, if you will be fair and rational, and not break out into extravagancies and bitterness of spirit.

*Lieut. Col. Lilburn.* For my part, Sir, I must look upon my self as a lost and dead Man, if I have not Counsel to help my Ignorance to pitch upon those things that tend to my Preservation: and therefore if you will not assign me Counsel to advise and consult with, I am resolved to go no further, though I die for it, and my innocent Blood be upon your Heads.

*Justice Jermyn.* You have alledged part of the Law of England for your own advantage; but every one that says so, does not prove it to be so: you have said you will be Tried by the Laws of England, and yet against the Laws of England you have utterly refused, in that you would not hold up your Hand, which I do not know any English that ever refused so to do, but your self: you have been told by the Court what the Law of England is, and yet you will not be satisfied. We are upon our Oaths, and therefore will discharge our Consciences, and that in, or more eminent manner than my brother Heath did, although we do not deny you liberty to speak for your self. But now you who would have Counsel assigned before any Matter of Law doth appear upon the proof of the Fact, which we cannot do: for it were to do Injustice, and to do against the Law, which the Court cannot justify.

Lieut.

( 37 )

*Lieut. Col. Lilburn.* Sir, under Favour, whether or no I have transgressed the Law, I will not judge; but I am sure the Law in the Equity and Intention of it, would have all Tryals to be Equal, and not Prejudicial. My Prosecutors have had time enough to consult with Counsel of all sorts and kinds to destroy me, yea and with your selves, and I have not had any time at all, not knowing in the least what you would charge upon me, and therefore could provide no Defence for that which I knew not what it would be: And if by the Law of England I cannot have Counsel, then upon your own grant, which is, That the Laws of God are the Laws of England, I desire to have the Privilege of the Law of God; which you your self said is the Law of England; and I am sure the Law of God is, that you should do as you would be done to: now it cannot be according to the Law of God, for my Adversaries to have the Helps of all manner of Counsels, by Snares, Tricks and Provocations to take away my Life, and for me to be denied the benefit to consult with any to preserve my innocent Life against Potent Malice.

*Lord Keeble.* You say well, the Law of God is the Law of England, and you have heard no Law else but what is consonant to the Law of Reason, which is the best Law of God, and here is none else urged against you.

Another Judge. The Laws of God, and the Laws of Reason, and the Laws of the Land, are all joyned in the Laws that you shall be Tried by.

*Justice Jermyn.* The Question is but this, Whether the Law of God and the Law of Reason, and the Law of Man may be consonant to each other, and whether the Court or John Lilburn shall be Judges thereof, that is the Question?

*Lord Keeble.* And that which you said M. Attorney hath had so much time against you, and opportunity to consult with all manner of Counsel to destroy you, your secret Actions, though they are now come to publick View, are so heinous, as that they do require time to put them into the most sure Way of Tryal, we have proved the clandestiness of them; you did this in secret, now it is come to the face of the World. Now this being Matter of Fact, no Matter of Law can appear till proof pass upon it, you have had times to compleat your treasonable venomous Books, which shall be proved upon you, and till this be done there is no Matter of Law to be look'd at. This is the Law of God, when a Man hath done such treasonable things, he shall answer directly and positively, whether he be guilty of them or no; and if he answer, Not guilty, and they be not fully proved against him, there needs no more to be said.

*Justice Thorp.* Mr. Lilburn, there fell some words from you even now, wherein you think you have this hardship put upon you, when you say the Judges and your Persecutors have had six Months time to meet together and consult together how to destroy you: First, I would not have you to believe, nor the rest that hear it, That that is true that you say: for I speak it for my own particular, that I never saw your Indictment till this time that I came here, and yet you say we have had six Months together to frame it. These are your words, this was not rightly done of you: for it is not true, I speak in my own particular.

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Lieut. Col. Lilburn. I am sure the substance of it you might see many Months ago, and though all you Judges have not at one time met about it, yet the greatest part of you have that commonly carry the Domination of the whole, and at Serjeants Inn with Mr. Attorney General; the most of the Judges of England have had several meetings, 6. 5. and 4. Months ago, for I have had Friends there that have seen it, and who have enquired into the Cause of such solemn meetings, and your own Servants have told them it hath been about me and my Tryal.

Justice Thorp. I speak as for my own particular that I was never there, and that I never see your Indictment till this time.

Justice Jermyn. Why Mr. Lilburn, might we not have such meetings as these, your businesses being a Matter of this importance as this is, through the hainousness of your Offence, and that it might be so grounded as the Warrant of the Law is, the Judges did meet, and they ought to meet \* to consider of it, that nothing should be done against you, or any Man else, contrary to the Law; but yet for my part, my dwelling is out of London, I heard not of it so soon as you speak of, but after I came to Town, I confess I heard of it, and have been present about some Debates about it.

Lieut. Col. Lilburn. Only this I say, if by your Prerogative you will destroy me as Nebuchadnezzar did endeavour to destroy Daniel by his Prerogative, I am as willing to dye, as he was to be thrown into the Lyons Den, and if you will not allow me Counsel to consult with, what Plea to make for my Life, I have no more to say, Sir, it is but a vain thing to spend any more words.

Lord Keeble. These are but words, and flourishes, Sir, that you are so willing and ready to die as you declare you are; but if you be, it is the better for you: And also it is well you have not to do with Judges, that would be austear upon you, for you to term us to be Men that come hither to destroy you as Nebuchadnezzar went about to do Daniel, you may judge of what is within you, but of us what is within us, you cannot judge; you shall have Justice here in the Face of the Country, and of all that hear us, these shall be Judges of our Proceedings towards you: take heed, Mr. Lilburn, this language is but the sparks of that venomous heat that is within you, and they may burst out to prove you Guilty before us, and in

\* But Cook in his Chapter of Petty Treason, in 3. Part. Instit. fol. 29. expressly saith, and to the end, that the Tryal may be the more indifferent, seeing the safety of the Prisoner, consisteth in the indifferency of the Court, the Judges ought not to deliver their Opinions before hand of any Criminal Case that may come before them judicially, and he there cites Humphry Stafford's Case, that arch Traytor, in which Husley Chief Justice, besought H. 7. not to demand of them their Opinions before hand, and in 4. Part. Institutes, Chapt. High Court Parliament, fol. 37. he fully shews the evil of asking Judges Opinions before hand.

in our presence, of that you are charged with, without any further Proof or Proceedings; for you may do it, you may do it where you stand, and therefore be advised, and take heed what you say.

Lieut. Col. Lilb. Sir, I have cast up my Account, And I know what it can cost me, I blest God I have learned to die, having always carried my Life in my Hand, ready to lay it down for above this twelve Years together, having lived in the favour and bosom of God, and I blest his Name, I can as freely die as live.

Lord Keeble. You shall not now lay it down, if you do not destroy nor cast away the Common-wealth; but if you go about to destroy the Commonwealth, the Common-wealth will spue you up and destroy you.

Lieut. Col. Lilburn. I desire nothing but Counsel, and a little time to consult with them, and to produce my Witnesses, and a Copy of my Indictment; if not, I am willing to die as the Object of your Indignation and Malice, do your will and pleasure.

Lord Keeble. We are willing to die too.

Mr. Attorney. What is agreeable to the Law of England, the constant settled practice of trying Prisoners, will not be denied Mr. Lilburn, but as for that Privilege that was granted unto him at Oxford, is no tie in Law to us, neither was it ever heard of in England; that any that did understand the Law, did ever as Mr. Lilburn now desires, allow Counsel to a Prisoner for such an Act as this is, or had the Copy of the Indictment, it shall not be denied Mr. Lilburn, which is his right by Law in its due place: But to make new Presidents and new Laws, which my Lord when done by such a Bench as this is, most of the Judges in England being present, runs to all Criminal Cases whatsoever, whether in Treason, Murther, or other Felonies; it's true, Mr. Lilburn is now only concerned in it, but if granted to him, it would be a President to all future times, by means of which, there would never be an end of Tryals in Criminal Cases. And it is a wonderful strange thing to me, That when the Prisoner hath pleaded the usual way, you proceed not immediately to Tryal, it's true Mr. Lilburn hath pleaded his own Ignorance, and therefore desires longer time; but my Lord, to make a President of this nature that never was known by the Laws of England is very dangerous, very perilous. My Lord, the things that I press is not in Relation to time, but in Relation to the publick Justice; for by the same reason it's granted him, it ought not to be denied to any Man that asketh it, neither for Treason or Felony, and of what evil consequence it would be, I leave your Lordship and the Court to judge.

My Lords, I do humbly desire that Mr. Lilburn may be dealt with all legal, just, and fair Proceedings from the Court. My Lord, I do desire accordingly, that Proceedings may for the Common-wealth be so too, and that Mr. Lilburn may be without delay according to Law, proceeded against for his notorious Treasons.

Lieut. Col. Lilburn. Sir, with your Favour I shall crave but one word, this Gentleman declares unto you what an evil President it would

be to give me a little time to consult with Counsel, to frame a Plea for my Life, and yet that Judge was pleased to say the Law of England is founded upon the Law of God, and the Laws of Reason, unspotted, uncorrupted, or undefiled, I am sure the Laws of God, and the Laws of uncorrupted Reason is to do as you would be done to, and not to lay snares for your Neighbour's Life, I am sure the Law of God would have all Tryals indifferent, and no Man's Life surprized or taken away by niceties or formalities, though never so notoriously accused. And Sir, for Mr. Prideaux and others of you, so often to call me notorious Traytor as you do: I tell you Sir, you reproach me, for though I am never so notoriously accused, yet in the eye of the Law of England, I am an innocent Man, yea as Innocent as any of those who call me Traytor, till such time as I be legally convicted of the Fact or Crime laid unto my Charge, and therefore, Sir, I beseech you cease your calumniating of me, for you thereby deal not fairly nor legally with me. And, Sir, I confidently hope, I shall appear in the eye of the Law, in the eyes of you, and in the eyes of all Men that hear me this Day, an Innocent, a Just, and a True English-man, that really Loves the Welfare of his Native Country, if I may have fair play, and the scope of the Law. And therefore, Sir, blemish me not in the Ears of the Auditors, till the Law, and a Conviction by it do blemish me; for I tell you, I am in the eye of the Law, as Innocent as any of your selves till I be justly convicted; and therefore I pray cease the calling of me Traytor in this manner.

Lord Keeble. *What need we any more when we are of your Opinion, we wish you may come as clearly off as you say you hope to do?*

Mr. Attorney. *My Lord, and that it may be so declared, and that the World may know whether Mr. Lilburn be an Innocent Man or no, I pray put it to the final issue, and let the Law judge.*

Lieut. Col. Lilburn. Under Favour, for me to be denied Law, which I conceive is done unto me, when I am denied Counsel, and to put the niceties and formalities of the Law upon me, the signification of which are writ in such Language and Tongues as I cannot read, much less understand; and would you destroy me for the not knowing of that which it is impossible for me to know? Sir, I beseech you be not so extream towards me; that Gentleman faith, the Law of God is the Law of England, and it would have no snares laid to take away a Man's life; I pray let me have the Benefit of that?

Mr. Attorney. *Once you had, and it is but just you should, and I am sure it will be granted unto you.*

Lord Keeble. *Mr. Lilburn you say well, the Prisoner doth not know the Law, you do not, and many others do not; but I tell you again, you know so much of the Law as is suitable to this Plea, you your self know, whether your Conscience accuse you Guilty of the Fact laid unto your Charge or not; for our parts, we say no more then 21 Men upon their Oaths have informed us, upon sufficient testimony of Witnesses, that what they had said, we should further inform our selves of before your life be taken*

taken away; yea such is the Law of England, the tenderest Law in the World of a Man's life. I say again, that no such Tryals for life, is to be found in the World: as in England—in any place but in England. A Man's life may be taken away upon two or three Witnesses, but in England two or three Witnesses do not do it; for there is two Juries besides, and you have 24 Men returned, you have 21 Men upon their Oaths and Consciences that have found you Guilty; and yet when you have done that; it is not enough by the Law of England, but you are also to have 12 rational understanding Men of your Neighbours to hear all over again, and to pass upon your Life. This is not used in any Law in the World but in England, which hath the righteousst and mercifullest Law in the World, and this we sit here to maintain, and let all the World know it, that according to the Rules thereof we have proceeded against you.

Judge Michel. *Mr. Lilburn, you were speaking of the Laws being in other Tongues, those that we try you by, are in English, and we proceed in English against you, and therefore you have no cause to complain of that.*

Lieut. Col. Lilburn. By your speeches you seem to bind me up to a single Plea. Truly I conceive that is not equitable by the Law of God and the Laws of Reason: No Man's Life is to be destroyed by niceties and formalities; yet contrary to your solemn Promises, you take all advantages against me by them, (and make my Ignorance in the ticklish formalities of the Law, to be the means of my own destruction,) although before I Plead you ingaged unto me you would take no advantage by my Ignorance in your Formalities, and my Mistakes in them, should be no disadvantage unto me, and yet now I have Plead, you seem to hold me close to a single Plea. Truly, Sir, I think that is not just nor fair to break your Promises, and by fair words to smooth me on into nets and snares, and to make use of my willingness to be Tried by the Law of England, to drill me on to my own destruction: Truly, Sir, had I ever thought or believed, I should have been denied Counsel, I would have died before ever I would in any manner have Plead to your Charge, or have yielded to your smooth Insinuations.

Justice Jermyn. *Those Men that know the Laws of England, know well, that it taketh away no Man's Life but upon clean proof; and upon manifest Contempts of the Law: The Law is, Whosoever shall go such a way in a Court as evidently gives affront to the Law, that such one takes away his own Life; The Facts that you are charged with, if they had taken effect, would have taken away the innocent Lives of many. Therefore you are now before us charged with the Fact, and every Man's Conscience knows whether he committed the thing charged upon him, or no, and your self does know whether you be Guilty of that you are accused of, or no. But the Court must not spend any further time: For Mr. Attorney General hath returned the Writ of Veneri facias. For the calling or summoning of a Jury of Life and Death.*

Lord Keeble. *Mr. Lilburn, you say you well understand your self: you*

( 42 )

*you knew of your coming, and you knew of the Fact that you have committed.*

*Lieut. Col. Lilburn.* Truly, Sir, six Months ago I heard much of my Tryal, and I longed for it, but could not have it, but was still kept in Prison, and abundance of provocations put upon me, to make me cry out of my Oppressions and then to hang me, therefore by a Law made after my pretended Crime was committed is not just; and truly, Sir, I heard by uncertain common fame of my Tryal now. But Parliament Men told my Wife and Friends, that my chiefest Crime was corresponding with the Prince; and to defend my self against that, I fitted my self, never dreaming that only Books should be laid to my Charge; and therefore I could not, as to that come prepared; and therefore do humbly desire Counsel, a Copy of my Indictment, and time to bring in my Witnesses.

*Lord Keeble.* Hear what is said to you, for your Witnesses, you should have brought them with you, we'll give you leave to send for them, we will give you time to do, to consider with your self, what to say for your self, you shall, till to morrow seven a Clock.

*Lieut. Col. Lilburn.* Sir, some of my witnesses Lives, abides 100. or 80 miles off, and yet I must bring them to Morrow Morning, how's that possible; and therefore I desire time to bring them in, and also *Subpnas*, for some of them are Parliament Men, and some of them Officers of the Army, and they will not come in without compulsion.

*Lord Keeble.* That's the time we will give you longer, you knew of your coming long ago, and therefore ought to have come provided.

*Lieut. Col. Lilburn.* Sir, I beseech you give me a convenient time, 8 or 10 days that so I may get them together, for how could I be provided before hand for any thing, but for that for which I was at the first imprisoned for, nothing of which is now laid to my Charge. Could I divine upon what you would proceed against me; but, Sir, I have that within me, I bless God, that will be a portion of comfort to me, to carry me through all your Malice and Injustice.

*Lord Keeble.* Never talk of that which is with you; God is in us as well as in you: never make a flourish of what is in you; for the fear of God is before our eyes as well as yours, and what we do we shall have comfort in, in that it is according to the Laws of England, the Rules of which we are sworn to observe, and every Man will do righteous things as well as you.

*Lieut. Col. Lilburn.* Pray will you give me but eight days time then?

*Lord Keeble.* We will give you no more, you ought to have brought them with you, you knew of it long ago; and the Court cannot, nor will not wait upon you.

*Lieut. Col. Lilburn.* By your Favour, Sir, thus, then let me have a little time to consult with Counsel.

*Lord Keeble.* I tell you, That if the Matter be proved, there needs no Counsel.

*Lieut. Col. Lilburn.* Sir, I shall not much insist upon that, but the Question

( 43 )

Question is, whether the Matter be Treason in Law or no, and whether in Law it be rightly expressed in the Indictment, as to time and place, with other circumstances thereunto belonging; and I Question the legality of the Indictment, and that ought in Law to be disputed before the Matter of Fact come to be spoken to.

*Lord Keeble.* Sir, you said at first, you would speak as a rational and moderate Man, and yet you will not be Answered. If Master of Law do arise out of your Fact, that we have told you again and again, you shall have Counsel and time.

*Lieut. Col. Lilburn.* Sir, by your Favour, it may be too late to desire Counsel after the Fact is proved. And besides, having legal exceptions against the Indictment, why should you run me upon the hazard of my Life, by ticklish Niceties and Formalities; and as my Prosecutor Mr. Prideaux saith, — (but being interrupted, cried out,) Sir, I beseech you, do but hear me.

*Lord Keeble.* Your distemper will break out, your heart is so full of boiling Malice and Venome, you cannot contain your self.

*Lieut. Col. Lilb.* Mr. Prideaux is pleased to urge, that the granting of me of my desire in reference to Counsel, will be so inconvenient a Precedent, as will destroy the Common-wealth, therefore to avoid the danger of such a destroying Precedent, as he is pleased to call it, I desire to have some time assigned me to get my Witnesses together, and then I shall, I doubt not, but convincingly shew you the hazard and destroying Mischief of that desperate Precedent in denying Men liberty to consult with Counsel, when they are upon Tryals for their Lives. For my own Judgment, my own Conscience doth tell me, that it is my undoubted Right by the Law of England, by the Law of God, and the Law of Reason; and if it be totally denied me, I can but die, and upon that Score, by the assistance of God, I am resolved to die.

*Lord Keeble.* You speak great words of your own Judgement, your own Conscience, your own Zeal, and the like: And I tell you, our Consciences and our Religion, and our Zeal, and our Righteousness, I hope shall appear as much as yours: you would make your self Judge in your own Cause, which you are not, and so make Ciphers of us, but all your high words of Conscience and Righteousness is but a flourish, to make the People believe or be apprehensive as though we had none, you had all, but you shall know, here we sit with as much Tenderness and Integrity as you stand there, and to do that uprightly which is according to Law and Justice.

*Lieut. Col. Lilburn.* I shall not in the least make any Comparisons, neither do I in that particular, I only speak of my own particular, in reference unto that God in whom I have believed, and in whom I enjoy Content, Peace and Quietness of Mind, and yet for my part I shall rather die than willingly go any further, except I have Counsel first.

*Lord Keeble.* Well, Mr. Lilburn, the Court is very tender not to take up any of your time, you have heard what was declared to you there, that Mr. Attorney hath made process against you returnable, to morrow at seven

( 44 )

seven of the Clock, and therefore to spend more time will be but your loss and damage, the Sheriffs of London are to take care to return the Jury to Morrow Morning, and therefore the Court doth adjourn till seven a Clock to Morrow in the Morning, and in the mean time they do commit the Prisoner at the Bar, to the Lieutenant of the Tower again.

Lieut. Col. Lilburn. Sir, I did not hear you the first words.

Lord Keeble. You shall not be denied to hear it again, the Court desires to be good husbands of time for you, we could have sat long enough, to have trifled away your time that you may spend your Meditations, and take your Friends Advice, do not stand upon and destroy your self by words; Mr. Lilburn, all that are here, are \* to take Notice of it, that the Prisoner at the Bar hath had more Favour already, than ever any Prisoner in England in the like Case ever had; for by the Laws of England, in the Matter of Treason, whereof you are Indicted, you ought to have been Tried presently, immediately; but because all the World shall know with what Candor and Justice the Court do proceed against you, you have till to Morrow Morning, which is the Court's extraordinary Favour, and the doors are wide open, that all the World may know it.

Lieut. Col. Lilburn. Sir, I can shew one hundred Presidents to the contrary in your own Books, to disprove what you say.

Lord Keeble. Adjourn the Court.

Lieut. Col. Lilburn. I humbly thank you for what Favour I have already received.

The Court adjourned till the next Morning, and the Prisoner remanded to the Tower.

Guild-Hall, 26 of October, 1649. being Friday.

At the Tryal of Lieut. Col. JOHN LILBURN,  
the Second Day.

THE Prisoner being brought to the Bar, spake as followeth: Sir, I pray hear me a word or two.

Lord Keeble. Mr. Lilburn, I am afraid something troubles you, I will have no body stand there † let all come out but one Man.

Lieut.

\* Just. Jermyn take Notice the Judge stood up and spake out an appeal to the People.

† That was in the Bar, where his Brother Col. Robert Lilburn, his Solicitor Mr. Sprat, and other of his Friends stood.

( 45 )

Lieut. Col. Lilburn. Here's none but my Brother and my Solicitor;  
Lord Keeble. Sir, your Brother shall not stand by you there, I will only have one hold your Papers and Books, and the rest not to trouble you, wherefore the rest are to come out.

Lieut. Col. Lilburn. Sir, I beg of you but one word, though I do not know any Reason why of my self I should not have the Privilege of the Law, as well as any Man in England; yet besides, what yesterday I alledged for my self, for to have Counsel assigned, yet to day give me leave to mention an unquestionable President for my Purpose, and that is Major Rolfe, who being an Officer in the Army, and being lately indicted for High Treason (before the Lord Chief Baron Wilde, that now is at Hampshire Assizes, for conspiring to Poison and Pistol the late King, which by Law was the Highest of Treasons) did conceive himself in regard of his Ignorance, unable to defend himself singly, against his Enemies design, which was to take away his Life; whereupon he becomes an humble Suitor to the Lord Chief Baron Wilde, that he might have Counsel assigned him, and the Court before ever the Grand Jury received any Testimony against him to find the Bill, assigned him Counsel, who as I understand were one Mr. Nichols, now a Judge of this Bench, and sitting there; and Mr. Maynard of the Temple, they were both assigned his Counsel, and from Mr. Maynard himself I have it, yea, from his own mouth: who being assigned his Counsel, they came into the Court, where the Grand Jury was called before the Judge: Mr. Maynard and Mr. Nichols, now a Judge here, had liberty there to be in the open Court, where the Witnesses before the Indictment was found, were called and in open Court were Sworn, and in open Court gave in their Evidence before the Grand Jury, Major Rolfe's Counsel being by in open Court, to hear all the Evidence that was given against Major Rolfe, who in his Indictment was Indicted for two Matters of Fact; the first was, that he had declared that in such a Month, and at such a place, he had an intent to Pistol the late King; which by the Letter of the Law of the 25 Edw. 3. Chap. 2. was Treason: then there was another Charge, that such a day he had so said or declared to Poison Him, in the presence of such a one, and they were both put into one Indictment; whereupon Mr. Maynard, being assigned by the L. Chief Baron Wilde, that now is, to be of Counsel for Rolfe in the same Case (but with abundance of more advantage to him, that I am now in) Mr. Maynard was then of Counsel to the Prisoner, and had liberty to hear what the Witnesses swore against him, and to make his best advantage of it, and that in open Court, before the Indictment was found by the Grand Inquest; and although there were two express Witnesses against him, yet but one of them swore to one thing, and another to another; Mr. Maynard being one that knew the Law better then Major Rolfe did himself, he applied the two Statues of Edward the sixth, viz. the 1 Edw. 6. Chap. 12. and 5. and 6. of Edw. 6. Chap. 11. to Rolfe's Case, which Statutes do expressly declare, That no Man ought to be convicted of Treason, but by two sufficient Witnesses upon plain and clear Evidence to each  
Fact



( 46 )

Fact of Treason, which Evidence, as Sir Edward Cook says in the third Part of his *Institutes*, ought to be as clear as the Sun at Noon-day, and not upon one single Witness, and upon conjectural Presumptions, or Inferences, or Strains of Wit: Now, Sir, I am an *English-man* as well as Major Rolfe, and I have been an Officer in the Parliament Army as well as he, and there fought for them as heartily as ever he did in his Life, and he was accused for the highest of *English* Treasons; and therefore I humbly crave that in regard there are many particular Errors in the Indictment, as to Matter, Time and Place: that therefore in reference to the illegality of the Indictment according to this President, by one of your own fellow Judges, that you would according to my Birth-right, declared in Major Rolfe's Case, assign me Counsel as he had, to help my Ignorance, that so I may not be destroyed by surprisal, and illegal, and unjust Prerogatives.

Lord Keeble. *You see with what a great deal of Favour, instead of a few words, we have heard you many, this is a Privilege; but this that you say upon it, it may be it was done, but that we do, shall be according to that, you and we, shall find to be according the Laws of the Land, and our Conscience, and the Privilege of the Subject: that that they did before the Grand Jury, and the Witnesses, the Witnesses are here sworn in Court in presence of the Grand Jury, so far we go with them; that of Mr. Maynard and Mr. Justice Nichols, being assigned Counsel, for what Cause it was then they best know, it is nothing that doth now concern us, though the Treason was against those Laws that then were in being; we must come to proof, it may be confess his Fact; if you will do so too it alters the Case.*

Lieut. Col. Lilburn. No, Sir, he never confess it, for if he had, he had been found Guilty; but he was saved merely by the skill and honesty of his Counsel Mr. Maynard, and his Indictment null and evaded, before ever the Grand Jury found it, and that upon this Point of Law, because by the two Statutes of Edward 6. there ought to be two plain and clear Witnesses, to every part of Treason; and though Rolfe, was accused by two Witnesses, yet there was two Facts, and but one Witness to the Proof of each of them.

Lord Keeble. *When you come to Tryal, if we see there be need of Counsel, the Court will be instead of Counsel to you; nay, the Court if they see any Matter of Law for Counsel, though you do not ask it, they will give you it; and therefore set your heart at rest, for if there be anything rational in Law that we can spee out, as well as your Counsel, we will help you in it.*

Lieut. Col. Lilburn. Sweet, Sir, I crave but one word more, I am upon my Life, and if you deny me what the Law affords me, and that which hath been granted to be Law by Cavalier Judges, yea, and by your fellow Judges, who are now in Power at this Day; the Lord deliver me from standing in need of you to be my Counsellors.

Lord Keeble. *We are upon our Lives too as well as you.*

Lieut. Col. Lilburn. No, by your Favour, not in so imminent a manner as I am.

Lord

( 47 )

Lord Keeble. *We are upon our Lives and our Souls to all Eternity.*

Lieut. Col. Lilburn. Sir, I beseech your hear me one word.

Lord Keeble. *I will hear no more.*

Mr. Prideaux. *My Lord, I desire the Court would proceed, and not prolong time, seeing he has pleaded not Guilty, and confessed something.*

Lieut. Col. Lilburn. No, Sir, you do me wrong, and abuse me, I never confessed any thing, neither did I Plead not Guilty; for my Plea was conditional, grounded upon your Promises, not to take any advantage of my Ignorance in your Formalities.

Lord Keeble. *Go on, be silent, Mr. Lilburn.*

Lieut. Col. Lilburn. If you take away my Life without affording me the Benefit of the Law, my innocent Blood be upon your heads.

Lord Keeble. *Sir, These passionate Words will do you no good, you had better forbear them.*

Lieut. Col. Lilburn. Pray hear me then?

Lord Keeble. *Do you say that we do offer to take away your Life, Sir, if we do take it away contrary to Law, we are liable to smart for it; but we shall judge what you have done (the Lieutenant Colonel pressing to speak was not suffered, but bid be silent) Sir, I advise you, Sir, spare your self with patience and hear the Court.*

Justice Jermyn. *Be quiet, Sir.*

Lieut. Col. Lilburn. I beseech you, Sir, let me hear but the Grand Jury speak, for I understand from some of themselves, they never found me Guilty of Treason, but do conceive themselves wronged by some words yesterday, that passed from some of the Judges; I pray let me hear them speak.

Lord Keeble. *Mr. Lilburn, You said you would be rational, you would be moderate; you do break out, you will do your self more hurt than any here can do you; you must be silent and hear the Court, we can lose no more time to hear you; Cryer call the Jury.*

Cryer. *The Jury called (and Mr. Lilburn earnestly pressed to be heard, but could not) Cryer. Miles Petry. William Wormwell.*

Lieut. Col. Lilburn. Sir, I beseech you let me but see these Gentlemen's Faces.

Lord Keeble. *You, Master Sprat, you must not talk to the Prisoner; you may stand and hold the Books; you did offend yesterday, but you shall not do so to day, for you shall not stand near the Prisoner to talk to him.*

Lieut. Col. Lilburn. My Lord, the Law says a stander by, may speak in the Prisoners behalf at the Bar, much more whisper to him, but especially if he be his Solicitor.

Cryer. *John Sherman, Thomas Dainty, Ralph Ely, Edmund Keyzer, Edward Perkins, Ralph Packman, Francis Woodall, William Gommis, Henry Hanson, Roger Jenkenfon, Josias Hamond, Richard Allen, Richard Nevil, John Mayo, Henry Joolley, Arthur Duc, Roger Sears.*

Clerk.

Clerk. You good Men of the City of London, appear.  
Steven Ives, John Sherman, Ralph Ely, Roger Jenkinson, Josias Hamond, Richard Allen, Richard Nevil, Roger Sears, John Mayo, Nicholas Murren.

Clerk. You Prisoner at the Bar, these good Men that are here presented before the Court, are to be of your Jury of Life and Death, if therefore you will challenge them, or any of them, you must challenge them before they go to be sworn, and then you shall be heard.

Cryer. Every Man that can inform my Lords the Justices, and the Attorney General of this Common-wealth, against Master John Lilburn Prisoner at the Bar, of any Treason or Felony committed by him, let them come forth, and they shall be heard, for the Prisoner stands upon his deliverance; and all others bound to give their attendance here upon Pain of Forfeiture of your Recognisance, are to come in.

Lieut. Col. Lilburn. Sir, I beseech you give me leave to speak?

Lord Keeble. You cannot be heard.

Lieut. Col. Lilburn. Truly, Sir, I must then make my Protest against your unjust and bloody Proceedings with me, before all this People, and desire them to take Notice, that yesterday I Pleaded to my Bill, conditionally, that no advantage should be taken against me, for my Ignorance in your Formalities, and you promised me you would not.

Lord Keeble. We give you too much time; you will speak words that will undo you; is this your Reason? you shall talk in your legal time, and take your legal Exceptions, we will hear you till midnight.

Lieut. Col. Lilburn. Then it will be too late, Sir.

Justice Jermyn. You have given a great slander, and that doth not become a Man of your Profession; you speak very black words.

Lieut. Col. Lilburn. I beseech you do but hear me one word; I do not know the Faces of two of the Men that were read unto me, I hope you will give me time to consider of them.

Lord Keeble. No, Sir, you ought not to have it.

Lieut. Col. Lilburn. Will you let me have some Friends by me that are Citizens of London, that know them, to give me Information of their Qualities and Conditions, for without this, truly you may as well hang me without a Tryal, as to bring me here to a Tryal and deny me all my legal Privileges to save my self by.

Lord Keeble. If you be your own Judge you will judge so, go on.

Mr. Sprat, or Col. Robert Lilburn. Whispers to the Prisoner, to challenge one of the Jury, which the Judge excepted against.

Lieut. Col. Lilburn. Sir, by your Favour, any Man that is a by-stander may help the Prisoner, by the Law of England.

Lord Keeble. It cannot be granted; and that fellow come out there, with the white Gap, pull him out.

Lieut. Col. Lilburn. You go not according to your own Law in dealing thus with me.

Justice

Justice Jermyn. Your words were never a slander, nor never will be, hold your Peace: Cryer go on.

Cryer. Stephen Blyth, look upon the Prisoner.

Abraham Seal, John King, Nicholas Murren, ( Thomas Dariel ) the Prisoner excepted against him ) Edward Perkins, Francis Peale.

Justice Jermyn. Was he recorded and Sworn before he spake or no?

Cryer. No, my Lord.

Justice Jermyn. Then let him continue if he be right recorded.

Cryer. The Oath was not given quite out.

Justice Jermyn. Then he hath challenged in time; let him have all the lawful Favour that may be afforded him by Law.

William Comins Sworn, Simon Weedon Sworn.

Lieut. Col. Lilburn. He's an honest Man, and looks with an honest Face, let him go.

Henry Tooley Sworn, Arthur Due ( excepted against. )

Lord Keeble. Take away, Mr. Due, let him stand a little by.

Henry Hanson put by being sick, one that could not hear excepted against, John Sherman, Ralph Head, Roger Jenkinson, Josias Hamond, Richard Allen, John Mayo, Roger Sears, Henry Hanson, excepted against, Edmund Kinyzer Sworn.

The Jury Called.

Clerk. Twelve good Men and true, stand together and here your Evidence.

Justice Jermyn. Cryer of the Court, let the Jury stand six of the one side and six of the other.

- |        |                   |                   |
|--------|-------------------|-------------------|
| Clerk. | 1 Miles Petty     | 7 Edw. Perkins    |
|        | 2 Stephen Lies    | 8 Ralph Packman   |
|        | 3 John King       | 9 William Comins  |
|        | 4 Nicholas Murrin | 10 Simon Weedon   |
|        | 5 Thomas Drinty   | 11 Henry Tooley   |
|        | 6 Edmund Keyzer   | 12 Abraham Smith. |

of the Jury, six lives about Smithfield, one in Gosling-street, two in Cheap-side, two in Bread-street, and one in Friday-street.

Justice Jermyn. It's well done.

Cryer. The Lords, the Justices, do straitly Charge and Command all manner of Persons to keep silence, while the Prisoner is in Tryal.

Mr. Broughton. John Lilburn, hold up thy hand.

Lieut. Col. Lilburn. As I did yesterday, I acknowledge my self to be John Lilburn Free-man of London, Son to M. Richard Lilburn, of the County of Durham, and sometime Lieutenant Colonel in the Parliament Army.

Justice Jermyn. You refuse to hold up your hand, and though you break the Law of England, the Court will not break it.

Lieut. Col. Lilburn. I do what the Court declares what is my Right and Duty to do, I do no more than declare my Name to be so as it is.

Lord Keeble. Read the Indictment.

E

Mr.

( 50 )

Mr. Broughton Reads, Hold up thy hand *John Lilburn*, thou standest here indicted of High-Treason by the Name of *John Lilburn*, late of *London* Gentleman, for that thou as a false Traytor, not having the fear of God before thine Eyes, but being stirred and moved up by the Instigation of the Devil, didst endeavour not only to disturb the Peace and Tranquility of this Nation, but also the Government thereof to subvert: now established without King or House of Lords, in the way of a Common-wealth, and a free state, and happily Established, and the Commons in Parliament assembled being the supream Authority of this Nation of *England*, to Disgrace, and into a Hatred, base Esteem, Infamy and Scandal, with all the good True and Honest Persons of *England* to bring into Hatred, That is to say, that thou the said *John Lilburn*, on the first day of *October* in the year of our Lord 1649. and in divers other days and times, both before and after, in the Parish of *Mary the Arches*, in the Ward of *Cheap London* aforesaid, of thy wicked and devilish Mind and Imagination, Falsly, Maliciously, Advisedly, and Trayterously, as a false Traytor, by writing and imprinting, and openly declaring, that is to say, by a certain Scandalous, Poisonous, and Trayterous Writing in Paper, intituled *A salva Libertate*; and by another Scandalous, Poisonous and Trayterous Book, intituled, *An Impeachment of High Treason against Oliver Cromwel, and his Son-in-Law Henry Ireton, Esquires, late Members of the late forcibly dissolved House of Commons, presented to publick View by Lieutenant Colonel John Lilburn, close Prisoner in the Tower of London, for his real, true and zealous Affections to the Liberties of this Nation*; and by another Scandalous, Poisonous and Trayterous Book, imprinted, and intituled, *An Out-cry of the Young-men and Apprentices of London, or an Inquisition after the lost fundamental Laws and Liberties of England, directed August 29. 1649. in an Epistle to the private Soldiers of the Army, especially all those that signed the solemn Engagement at Newmarket-heath, the fifth of June, 1647. but more especially the private Soldiers of the Generals Regiment of Horse, that helped to plunder and destroy the honest and true-hearted Englishmen, trayterously defeated at Burford, the fiftenth of May, 1649. and also by another Scandalous, Poysonous, and Trayterous Book, intituled, *The legal fundamental Liberties of the People of England, revised, asserted and vindicated*, did publish that the Government aforesaid, is Tyrannical, Usurped, and Unlawful; and that the Commons assembled in Parliament, are not the Supreme Authority of this Nation: and further that thou the said *John Lilburn*, as a false Traytor, God before thin eyes not having, but being moved and led by the Instigation of the Devil, endeavouring, and maliciously intending, the Govern-*

\* Note, that Mr. Lilburn was imprisoned by the Counsel of State as a Traytor, the twenty eight of March 1649. and they there came and after arraign him as a Traytor, for Actions done above five Months after, waiving all the pretended Crimes for which they first imprisoned him.

( 51 )

Government aforesaid, as is aforesaid, well and happily established; thou the said *John Lilburn*, afterwards ( that is to say ) the, the aforesaid first Day of *October* \* in the Year of our Lord, 1649. aforesaid, and divers others days and times, as well before as after, at *London* aforesaid, that is to say, in the Parish and Ward aforesaid, *London* aforesaid, Maliciously, Advisedly, and Trayterously didst Plot, contrive and endeavour to stir up, and to raise Force against the aforesaid Government, and for the subverting and alteration of the said Government, and to do those Wicked, Malicious and Trayterous Advisement to put in Execution, &c. and thou the said *John Lilburn*, afterwards, that is to say, the aforesaid first Day of *October* in the Year of our Lord, 1649. aforesaid, and divers days and times as well before as after, at *London* aforesaid, that is to say, in the Parish and Ward aforesaid, of thy depraved Mind, and most wicked Imagination, in and by the aforesaid Scandalous, Poisonous, and Trayterous Book, intituled, *An Impeachment of High Treason against Oliver Cromwel, and his Son-in-Law Henry Ireton, Esquires, late Members of the late forcibly dissolved House of Commons; presented to publick View by Lieutenant Colonel John Lilburn, close Prisoner in the Tower of London, for his real, true and zealous Affection to the Liberties of his Native Country*; Falsely, Maliciously, Advisedly, and Trayterously, didst publicly declare amongst other things in the said Book, those False, Scandalous, Malicious and Trayterous Words following: but my true Friends ( meaning the Friends of the said *John Lilburn* ) I ( meaning the aforesaid *John Lilburn* ) shall here take upon \* me the \* This Passboldness, considering the great distraction of the present sage you may times; to give a little further Advice to our Friends read in that aforesaid, from whose Company or Society, or from some of Book, pag. 5. them, hath been begun and issued out the most transcendent, clear, rational and just things for the People's Liberties and Freedom; That the aforesaid *John Lilburn*, had seen or read in this Nation, as your notable and excellent Petition of May the 20th, 1647. burnt by th hands of the Common Hangman, recorded in my Book called *Rash Oaths* unwarrantable, pag. 29, 30, 31, 32, 33, 34, 35. with divers Petitions of that nature, and the Petition of the 19th of January, 1648. recorded in the following Discourse, pag. 45, 46, 47, 48. and the Masculine Petition of the eleventh of September, 1648. so much owned by Petitions out of several Counties, yea, and by the Officers of the Armies large Remonstrance from *St. Albans*, the sixteenth of November, 1648. pag. 67, 68, 69. the substance of all which I ( thou the aforesaid *John Lilburn* meaning ) conceive is contained in the printed Sheet of Paper, signed by my Fellow Prisoners, Mr. *William Walwin*, Mr. *Richard Overton*, and Mr. *Thomas Prince*, and my self, dated the first of May 1649. and intituled, the Agreement of the free People in *England*; which False, Scandalous and Trayterous Book; called the Agreement of the People of *England*, tends to the Alteration, and Subversion of the Government aforesaid; the Principles of the aforesaid Agreement; I meaning your self the said *John Lilburn* ) hope

hope and desire you ( the Friends of the foresaid *John Lilburn* meaning ) will make the final Centre, and unwavering Standard of all your Desires, Hazards and Endeavours, as to the future Settlement of the Peace and Government of this distressed, wasted, and divided Nation, the firm establishing of the Principles therein contained, being that only which will really, and in good earnest marry, and knit that Interest, whatever it be that dwells upon them, unto the distressed or oppressed Commons of this Nation.

*\* These lines are in page. 7.* But the Principles of the foresaid Agreement, being so detestable and abominable to the present \* ruling Men, as that which they know will put a full End to their Tyranny and Usurpation, and really ease and free

the People from Oppression and Bondage ; that it is something dangerous to those that go about the Promotion of it ; yet I shall advise and exhort you, ( meaning the Friends of him the foresaid *John Lilburn* ) vigorously to lay all fear aside, and to set on foot the Promotion of it ( meaning the said Agreement ) in the same Method we took for the Promotion of the foresaid Petition of the ninth of *January*, 1647. laid down in the following Discourse, pag. 23, 24, 25. and write to all your Friends in all the Counties of *England*, to chuse out from amongst themselves, and send up some Agents to you ( two at least, for each County, with Money in their Pockets to bear their Charges ) to consider with your called and chosen Agents, of some effectual Course, speedily to be taken, for the settling of the Principles thereof ( meaning the foresaid false Agreement devised by your self, the foresaid *John Lilburn* ) and to set up the promoting of ( the foresaid feigned Agreement meaning ) as that only which in an earthly Government can make you ( the foresaid Friends of the said *John Lilburn* ) happier, at least to know one another's minds, in owning and approving the Principles of the foresaid false Agreement, that so it may become to you ( meaning the foresaid Friends of the foresaid *John Lilburn* ) and all your Friends, your Centre, Standard and Banner, to Flock together to, in time of those Foreign Innovations, and domestick Insurrections, that are like speedily to bring Miseries enough upon this poor distressed Nation ( the foresaid Nation of *England* again meaning ) and unanimously resolve and engage one to another, neither to side with, or fight for, the *Chimera's*, Fooleries, and Pride of the present Men in Power ( the foresaid Parliament of *England* meaning ) nor for the Prince his will, nor any other base Interest whatsoever, the which if you ( the foresaid Friends of the said *John Lilburn* meaning ) should fight for, it would be but an absolute Murther of your Brethren and Country-men you know not wherefore, unless he or they will come up to those Just, Righteous, and Equitable Principles therein contained, and give rational and good Security, for the constant adhering thereunto.

And upon such Terms, I do not see but you may justifiably before God or Man, joyn with the Prince himself, yea, I am sure, a thousand times more justly, than the present Ruling Men ( upon a large and serious debate )

bate ) joyned with *Owen-Roe-Oneale*, the grand bloody Rebel in *Ireland* ; who, if we must have a King, ( I meaning he the foresaid *John Lilburn* ) for my part I had rather have the Prince ( meaning CHARLES STUART, Son to the late KING, than any Man in the World, because of his large pretence of Right, which if he come not in by *Conquest*, by the Hands of Foreigners ( the bare attempting of which, may apparently hazard him the loss of all at once ) by glewing together the now divided People, to joyn as one Man against him, but by the Hands of *Englishmen*, by Contract upon the Premises foresaid ( which is easily to be done ) the People will easily see, that presently thereupon they will enjoy this transcendent Benefit ( he being at Peace with all Foreign Nations, and having no Regal pretended Competitor ) viz. The immediatly disbanding of all Armies and Garisons, saving the Old Cinque-Ports, and so those three grand Plagues of the People will cease, viz. Free-quarter, Taxations, and Excise, by means of which, the People may once again really say, they enjoy something they can in good earnest call their own ; whereas for the present Army to set up the pretended false *Saint Oliver*, ( or any other ) as their elected King, there will be nothing thereby from the beginning of the Chapter, to the End thereof, but Wars, and the cutting of Throats, Year after Year ; yea, and the absolute keeping up of a perpetual and everlasting Army, under which the People are absolute and perfect Slaves and Vassals, as by woful and lamentable experience they now see they perfectly are, which Slavery and absolute Bondage is like daily to increase, under the present Tyrannical, and Arbitrary new Erected, Robbing Government, and therefore rouse up your Spirits before it be too late, to a vigorous Promotion, and settling of the Principles of the foresaid Agreement, as the only absolute and perfect means to carry you off all your Maladies and Distempers.

Here Lieutenant Colonel *Lilburn* in the first days reading the Indictment, taking Notice of the Judge *Thorp*, and Mr. *Prideaux* to whisper together, cryed out and said to this effect.

Lieutenant Colonel *Lilburn*. *Hold a while, Hold a while, Let there be no Discourse but openly, for my Adversaries or Persecutors whispering with the Judges, is contrary to the Law of England, and extream foul and dishonest Play, and therefore I pray let me have no more of that Injustice.*

Mr. *Attorney*. It is nothing concerning you ( let me give him satisfaction ) it is nothing concerning you, Mr. *Lilburn*.

Lieutenant Colonel *Lilburn*. *By your Favour, Mr. Prideaux, that is more than I do know, but whether it be or not, by the express Law of England, it ought not to be, therefore I pray let me have no more of it.*

Mr. *Broughton*. And further, thou the said *John Lilburn* stands Indicted, for that thou the foresaid first Day of *October*, in the Year of our Lord, 1649. and divers days and times, as well before as after, in *London* foresaid, and in the Parish and Ward foresaid, didst Maliciously, Advicedly, and Trayterously publish another False, Poisonous, Trayterous,

( 54 )

and Scandalous Book, Intituled, *An Out-cry of the Young-men and Apprentices of London, Or an Inquisition after the lost fundamental Laws and Liberties of England*: having these Trayterous and Scandalous Words (amongst other things) following; that is to say, we (meaning the

Young-men and Apprentices of London) considering what  
 \* Which is before premised, \* are Necessitated and Compelled to do  
 Words are in the utmost we can for our own Preservations, and for the  
 pag. 11. Preservation of the Land of our Nativity, and never (by  
 popular Petitions) address our selves to the Men sitting at  
 Westminster any more, or to take any more Notice of them, than as of  
 so many Tyrants and Usurpers; and for the time to come, to hinder as  
 much and as far as our poor despised Interest will extend to.) all other  
 whatsoever from subscribing or presenting any more popular Petitions to  
 them, and only now as our last Paper refuge, mightily to cry out to each  
 other, of our intollerable Oppressions, in Letters and Remonstrances sign-  
 ed in the behalf, and by the appointment of all the rest, by some of the  
 stoutest and stiffest amongst us, that we hope will never apostatize, but  
 be able by the strength of God, to lay down their very Lives for the  
 maintaining of that which they set their Hands to: And further, that  
 thou the aforesaid *John Lilburn* afterwards, that is to say, the aforesaid  
 first Day of *October*, in the Year of our Lord, 1649, and divers other  
 days and times as well before as after, not being an Officer or Soldier, or  
 Member of the Army aforesaid, at *London* aforesaid, in the Parish and  
 Ward aforesaid, as a false Traytor did Maliciously, Advisely and Trayterous-  
 ly endeavour to stir up a dangerous Mutinous, and Trayterous Distem-  
 per, Mutiny and Rebellion in the Army, now under the Command of  
*Thomas Lord Fairfax*, and didst endeavour to draw *Thomas Lecoeis*, *John  
 Skinner*, and *John Toppe* from their Obedience to their Superiour Officers,  
*&c.* and further, didst deliver unto the three Soldiers before named, the  
 said Book, intituled, an Out-Cry of the Young-men and Apprentices of  
*London*; having these words following contained therein; Surely all  
 Sense and Compunction of Conscience is not totally departed from you,  
 hear us therefore in the earning bowels of love and kindness we intreat  
 and beseech you with Patience, and do not abuse us, for complaining  
 and crying out, for the knife hath been very long at the very throats of  
 our Liberties and Freedoms, and our burthens are too great and many for  
 us, we are not able to bear them and contain our selves; our Oppressions  
 are even ready to make us despair (or forthwith to fly to the prime Laws  
 of Nature, viz. the next violent remedy at hand, light where it will, or  
 upon whom it will) they are become as devouring fire in our bosoms  
 ready to burn us up, rendring us desperate and careless of our Lives,  
 prizing those that are already dead, above those that are yet alive, who  
 are rid of that Pain and Torment that we do and must endure, by sensi-  
 ble seeing and beholding, not only the dying, but the daily burial of  
 our native Liberties and Freedoms, that we care not what become of us,  
 seeing that we are put into that Original Estate or Chaos of confusion,  
 wherein

( 55 )

wherein Lust is become a Law; Envy and Malice are become Laws, and  
 the strongest Sword rules and governs all by will and pleasure; all our an-  
 cient Boundaries and Land-marks, are pulled up by the Roots, and all the  
 Ties and Bonds of Humane Society in our *English* Horizon totally destroyed  
 and extirpated; Alas, for pitty we had rather die than live this Life of a  
 languishing Death, in which our Masters possess nothing (to buy them-  
 selves or us bread to keep us alive) that they can call their own, there-  
 fore it's no boot for to serve out our times, and continue at our drudging,  
 and coyling trades, whilst these Oppressions, Cruelties, and Inhumani-  
 ties are upon us, and the rest of the People, exposing thereby the Na-  
 tion, not only to Domestick-Broils, Wars and Blood-sheds (wherein  
 we are sure our Bodies must be the principal Buts) but to Foreign Inva-  
 sions by *France*, *Spain*, *Denmark*, *Sweedland*, &c. as was well observed  
 by an endeared and faithful Friend of the fore-mentioned late Treache-  
 rously defeated Party at *Burford*, in their Book of the twentieth of *Aug-  
 ust*, 1649. Intituled, the Levellers vindicated, or the case of the twelve  
 Troops truly stated; Page eleven and twelve, which we cannot but se-  
 riously recommend with them, to your serious perusal and judgment,  
 and desire to know of you (but especially the private Soldiers of the Gen-  
 eral Regiment of Horse, who we understand, had a hand in seizing upon and  
 plundering our true Friends at *Burford*) whether you do own the abo-  
 minable and palpable treacherous Dealing of your General, and Lieute-  
 nant General *Cromwel*, and their perfidious Officers with them, or no?  
 (that so we may not condemn the Innocent with the Guilty, and may  
 know our Friends from our Foes) as also to tell us, whether you do ap-  
 prove of the total defection of your Army, under which it now lieth, from  
 their Faith and fallen Engagement, made at *Newmarket-beath*, June the  
 fifth, 1647. not one of those righteous Ends, in behalf of the Parliament  
 and People, on which your Vow was made, being yet fulfilled or obtained,  
 but on the contrary (as we have before rehearsed) a whole flood-gate of  
 Tyrannies are let in upon us, and overwhelm us, and whether you (the  
 aforesaid private Soldiers meaning) justify all those Actions done in the  
 Name of the Army, upon your account, and under the preence of that  
 Engagement, since the Engagement it self was broken, and your Council  
 of Adjutators dissolved? And whether you will hold up your Swords to  
 maintain the total Dissolution of the Peoples choicest Interest of Freedom;  
 viz. Frequent and successive Parliaments, by an Agreement of the People,  
 or obstruct the Annual Succession? Whether you do allow of the late Shed-  
 ding the Blood of War in time of Peace, to the Subversion of all our  
 Laws and Liberties? And whether you do countenance the Extirpation  
 of the fundamental Freedoms of this Common-wealth; as the Revocati-  
 on and Nullity of the great Charter of *England*, the Petition of Right,  
*&c.* And whether you do Assent to the Erection of Arbitrary Preroga-  
 tive Courts, that have or shall over-rule, or make void our ancient way  
 of Tryals in Criminal Cases, by a Jury of twelve Men of the Neighbour-  
 hood? And whether you will assist or joyn in the forcible Obstruction of  
 this

( 56 )

this Martial and Tyrannical Rule over us? Also, whether you will fight against and destroy those our Friends that shall endeavour the composition of our differences together, with the Procurement of our Freedoms and Settlement of our Peace ( your plenty and prosperity ) according as it was offered by the four Gentlemen Prisoners in the Tower of London, upon the first Day of May, 1649, as a Peace-offering to the Nation, by the Agreement of the People, ( the aforesaid feigned Agreement meaning ) lastly, we ( the aforesaid young Men and Apprentices of London meaning ) earnestly beseech you, ( the aforesaid private Soldiers again meaning ) to acquaint us whether from your hands, to your Power, we may expect any help or assistance in this our miserable, distressed Condition, to the removal of those Iron Bonds and Yokes of Oppression, the aforesaid Government in way of a Common-wealth and Council of State meaning ) that have thus enforced us to complain and address our selves thus to your Consideration; for we ( the aforesaid young Men and Apprentices again meaning ) cannot chuse but acquaint you ( the aforesaid private Soldiers again meaning ) that we are seriously resolved through the strength and assistance of God, with all the Interest we have in the World, to adhere to the righteous Things, contained in our Treacherously defeated fore-mentioned Friends Vindication, ( the aforesaid Trayterous Book, intituled, The Levellers vindicated, or the Case of the Twelve Troopers truly stated again meaning. ) And further, thou the said John Lilburn as a false Traytor, by most wicked Trayterous Conspiracies, Designs and Endeavours of thine aforesaid, afterward, that is to say, the aforesaid first Day of October, in the Year of our Lord, 1649. above said.

And divers other days and times, as well before as after, didst in the Parish and Ward of London aforesaid, in and by the aforesaid Scandalous, Poisonous and Trayterous Book, intituled, An Impeachment of High Treason against Oliver Cromwell, and his Son-in-law Henry Ireton, &c. most Falsly, Maliciously and Trayterously publish, and openly declare amongst other things, in the said Book, these following, Scandalous, Treacherous, Tumultuous and Trayterous Clauses and Words following, that is to say, But I ( meaning thy self the said John Lilburn ) and many other Persons ( meaning the aforesaid Friends ) intreat you seriously to consider that I cannot advise you to make Addresses to him ( meaning the aforesaid THOMAS Lord FAIRFAX, Captain General ) as the General of the Nation's Forces ( the Forces of this Nation of England meaning ) for he ( the aforesaid Captain General meaning ) is no General, but is meerly a great Tyrant ( meaning the aforesaid Captain General ) standing by the Power of his own Will and a strong Sword, born by his Vassals, Slaves, and Creatures ( the Soldiers of the Army aforesaid meaning ) having no Commission to be General, either from the Law or the Parliament, nor from the prime Laws of Nature and Reason. For first, when he was made General by both Houses of Parliament, it was expressly against the Letter of the Laws. And secondly, when he refused to disband, &c. he hath rebelled against his Parliament Commission, and thereby destroyed, and annihilated it, &c.

The

( 57 )

The Reader is desired to take Notice, that in the Indictment it self, there was a great many other things than in this is expressed, as particularly, divers Passages out of a Book called Mr. Lilburn's, Intituled, *The Legal Fundamental Liberties of England revived, &c.* as also out of another Book Intituled, *A preparative to an Hue and Cry after Sir Arthur Haslerigg, &c.* as also out of *The Agreement of the People* of the first of May, 1649. with several other remarkable things in Matter and Form, that was more neglected to be taken than the Pleadings, because it was not supposed, but the Indictment ( being a Record ) a true Copy of it might easily be had, considering that by Law, all Records ought freely to be used by any Free-man of England, and Copies of them to be denied to none that desire to take them; but that Privilege being already in this Cause disputed and denied, in which regard, the Reader must at present accept of the best imperfect Notes the Publisher could pick up. But to go on.

And further, that thou the said John Lilburn, as a false Traytor, all and singular the Clauses and English Words aforesaid, and many other Trayterous, Poisonous and Malicious Expressions, in and by the aforesaid Writings, and by the aforesaid several Books, as aforesaid Recorded, and by thee the aforesaid John Lilburn, published and openly declared in the several Books so as aforesaid Printed, and by the aforesaid Writings, and by thee the aforesaid John Lilburn, in manner and form aforesaid, published, and openly divulged and declared divers other Scandalous, Malicious, Tumultuous and Treacherous Clauses, and Words in the said Books contained, Falsly, Maliciously, Advisedly and Trayterously, hast published and openly declared, to the intent to stir up, and raise Forces against the Government aforesaid, in the way of a Common-wealth, and free State as aforesaid established, and for the suppressing and alteration of the said Government, and to stir up Mutiny in the Army aforesaid, and also to withdraw the said John Took, Thomas Lewis, and John Skinner, and many other Soldiers from their Obedience to their Superiour Officers and Commanders, and to set them in Mutiny and Rebellion against the publick Peace, and to manifest Contempt of the Laws of this Common-wealth, and free State, and against the form of the Statutes in this Case made and provided.

The Indictment being reading, and the noise of the People in the Hall great, the Prisoner said he could not hear, and had some few lines before read over to him.

Lieut. Col. Lilb. Pray, hold your Peace, Gentlemen, I beseech you, be quiet, ( speaking to the People. )

Lord Keeble. Quiet your your self, we will quiet them for you.

Mr. Broughton. Which Country are you? so that you are to find whether he is Guilty or no, he having already pleaded, Not Guilty. If you find that he is Guilty of any of the High Treasons laid to his Charge, then you are to enquire what Goods, Lands, or Chattels he stood possessed of, when he committed the said High Treasons; but if you find him not Guilty,

you

you shall then enquire whether he did not fly for it, and if he did not fly for it, Then you are to say so and no more, therefore hearken to your Evidence ?

Lieut. Col. Lilburn. May it please your Honour,

Cryer. If any Man can give any Evidence to my Lords the Justices of Oyer and Terminer, against Mr. John Lilburn, let him come in and he shall be heard.

Lieut. Col. Lilburn. I desire to be heard to speak two or three words. I humbly desire the Favour to speak two or three words. I humbly desire the Favour to be heard two words.

Lord Keeble. It is not a fit time, you shall be heard in your due time, but hear what the Witnesses say first.

Lieut. Col. Lilb. I conceive I am much wronged, in saying that I pleaded not Guilty, for I pleaded no such Plea, I appeal to the Court, and to all that heard me, whether I pleaded any such Plea ; for before I pleaded, the Court became engaged to me, to take no advantage of my Ignorance of the Formalities of the Law, and promised to give me as much Privilege as my Lord Duke of Hambleton, and others enjoyed, before the Court of Justice.

Lord Keeble. We know all this.

Lieut. Col. Lilburn. Sir, by your Favour, I pleaded conditionally, and now I make my absolute Plea to the Indictment, which is this ; That I except against the Matter and Form of it in Matter, time and place, and humbly crave Counsel to assign and plead to the Errors thereof.

Lord Keeble. You must hear us, we hear you, a word is a great deal, these things we have taken perfect Notice of, the Court is not ignorant of them.

Therefore they need not so suddenly be repeated to us again, you need not repeat these things ; for I tell you again, they are all fresh in our Memories, and that we have done we must maintain, or we have done nothing.

Lieut. Col. Lilburn. Truly, it is requisite for me to say, that I am wronged, I had no such single Plea ; I plead a Plea at large to the Errors of the Indictment, and first now crave Liberty of the Law of England, to have time and Counsel assigned me.

Lord Keeble. You shall have the Laws of England, although you refuse to own them, in not holding up your hand ; for the holding up of the hand hath been used as a part of the Law of England these 500 Years. Go on.

Mr. the Counsel that was an Assistant to Mr. Prideaux. My Lord, the Prisoner at the Bar stands Indicted as a Traytor, for that he Contriving, and Maliciously intending not only to disturb the publick Peace ; but also to bring the Government of the Nation happily settled in a free State, or Common-wealth, without a King, or an House of Lords, and the Commons in Parliament assembled, to bring in Disgrace and Contempt amongst all good

good Men, he did the first of this instant October, and divers times before and since in this City, Falsly and Maliciously, Advisedly and Trayterously by Writing, Printing and openly declaring, in and by one Paper of his called, A Salva Libertate, and by divers other Papers and Books, whereof one he calls, An Impeachment of High Treason against Oliver Cromwel, and his Son-in-Law Henry Ireton ; and another Book of his intituled, An Out-Cry of the Young-men, and Apprentices of London, directed to all the private Soldiers of the Army, &c. a Third, A preparative to an Hue and Cry after Sir Arthur Haslerigg, and a Fourth, The Legal Fundamental Liberties of the People of England revived, that he did in these Books publish, that the said Government is Tyrannical, usurped and unlawful ; and that the Commons in Parliament assembled, are not the Supream Authority of this Nation ; he stands further indicted, that he as a false Traytor did Maliciously, Advisedly and Trayterously Plot, and Contrive, to raise Force against the present Government, and for the Subversion and Alteration of it, and for the fulfilling of his most Malicious and Trayterous Designs, he did in and by the said Trayterous Books, Falsly, Maliciously and Advisedly, utter and declare several most false and Scandalous, Malicious and Trayterous Words and Writings, that in the Indictment are particularly named and expressed. And thirdly, that as a Traytor not being an Officer, nor a Soldier, or a Member of the Army under the Command of the now Lord General Fairfax, he did most Maliciously and Trayterously endeavour, to withdraw certain Soldiers of that Army from their Obedience to their Superiour Officers, which are particularly named in the Indictment, and that for the full Accomplishment of his Contrivances and Endeavours, he did Maliciously, Advisedly and Trayterously publish, and deliver the poisonous Book, called An Impeachment, and in particular directed by the Title of the Book, to all the People of England, being for that End published by him to publick View ; in which Book are contained, most False and Scandalous, Malicious, Malignous and Trayterous Expressions as in the Indictment are set forth ; And further that in the said Book which he called An Impeachment, that the present Government is Tyrannical and Usurped, and that the Commons of England in Parliament assembled, are not the Supream Authority. And he further stands Indicted, and the Jury further finds, and presents, that all these and other Expressions written by him, and published by him in written Papers and Printed Books, he hath Falsly, Maliciously and Trayterously stirred up, strife on purpose, and to the intent, to stir up and raise Force against the present Government, settled in the way of a Common-wealth and free State, without King and Lords, on purpose, it to subvert and destroy. And further, he hath also most Trayterously endeavoured to withdraw the private Soldiers from their Obedience and Subjection to their Superiour Officers ; and all this in manifest Contempt of the Laws of this Common wealth, in that behalf made and provided, and to the hazard of the overthrow, and utter Subversion of the said Government.

To this Indictment the Gentleman hath pleaded not Guilty, and hath

( 60 )

put himself upon his Country, and if we can prove this against his Plea, it is at an Issue.

Lieut. Col. Lilburn. I deny that, Sir, I never pleaded any such single Plea as not Guilty, and you, Gentlemen of the Jury, I beseech you take Notice he extremely wrongs me in saying so, for my Plea was a conditional Plea, as a Plea at large.

Mr. Attorney. My Lord, and you, Gentlemen of the Jury, You have heard the Indictment read unto you, and you have heard it opened unto you, and you have heard what Mr. Lilburn says, that he did not plead not Guilty, and I hope he is ashamed of his Plea, now he hears the Indictment opened unto him. My Lord, in this Indictment there is contained these several Grand Treasons.

The first is, that he hath Advisedly, Trayterously, and Maliciously published, that the Government that is now established by way of a free State or Common-weath, without either King or House of Lords, is Tyrannical, Usurped and Unlawful; and further, that the present Parliament now assembled, are not the Supream Authority of the Nation.

The second is this, that he hath Plotted, Contrived and Endeavour'd to stir up, and raise Forces against the present Government, and for the Subversion and Alteration of the same.

The third is this, that relates to the Army, you have heard what his Expressions have been, and they have been read unto you, concerning them and the rest, that he, not being an Officer or Soldier, or Member of the present Army, hath offered to stir up Mutiny in the Army, and to withdraw the Soldiers from their Obedience and Subjection to their Superior Officer, and thereby to stir them up to Mutiny and Discontent.

These are the main parts, and substance of what I intend to Charge him with in the Evidence, to prove that which was contained in the Indictment. My Lord, you have heard in what hath been read out of the Indictment, what Expressions they are, those that are Trayterous to the Publick, and have been so declared, so judged, so executed, these are here Mr. Lilburn's engaged true Friends; the Parliament, the Government, the Authority, of both Parliament and Army, they are Tyrants, Usurpers, Mercenaries, Fanisaries, Murderers, Traytors, standing by their own Power and Swords, and over-ruling all by their Wills; these are the Expressions that he hath used. My Lords, I shall not trouble you with any thing of Aggravation; for my Lord, I do conceive, that the reading of the Books themselves aggravates every thing against him; and I think there is no English-man (as Mr. Lilburn so often styles himself to be) will own such Words or Acts as these are.

And truly, my Lord, if I had read the Books and not known the Person, I should not have thought he had been either a Christian, or a Gentleman, or a Civil Man, to have given such base and bitter Language; but my Lords, and you of the Jury, I shall hold you no longer the Evidence being so plain, and the Matter so foul, that it will not admit over much stand in need of any Dispute, and to make it plain and clear to your

Judge

( 61 )

Judgments, and Consciences, there are Witnesses in the Court evidently to prove every thing that will stand in need, to be proved for the Indictment.

My Lords, the Words are Maliciously, Advisedly and Trayterously, I shall not catch at Words, but as himself says, what he Prints is of Mature and Deliberate Consideration, and such are his Books in Print; that himself hath either Printed, or caused to be published.

The first that he is Charged withal, is that which is called An Out-Cry, it hath a very dangerous Title, and in the Direction especially to the Soldiers of the Army, but especially to the private Soldiers of the General's Regiment of Horse, that helped to Plunder the true hearted Englishmen, Trayterously defeated at Burford, so that the Rebels at Burford were Mr. Lilburn's dear Friends. My Lord, it hath not only a dangerous Title, but was published at a dangerous Time; yea and for a dangerous End, which was to stir up the great Mutiny that was in the City of Oxford. My Lord, for the proof of this, we shall offer this, That Mr. Lilburn himself was Captain Jones's Associate in the publishing that Book; For Mr. Lilburn and this Captain Jones brought this Book to the Press to be Printed, we shall offer unto you where he hath published it to Soldiers of the Army, to engage them in a Mutiny, and Discontent against their Superior Officers; therefore in the first Place call Thomas Newcomb.

Thomas Newcomb Sworn.

Just. Jermyn. Before you speak look upon the Prisoner first, whether you know him or not.

Mr. Attorney. My Lord, if you please, he may take the Book in his hand, and see whether he Printed it, and when he Printed it, and who brought it to the Press?

Mr. Newcomb. I Printed of this Book only the last sheet, not knowing where the former part of it was done, which Book was brought to me by Lieutenant Colonel Lilburn, and Captain Jones, which Captain Jones did agree with me in the price, I was stopt in the proceedings in it: I say, that Captain Jones together with Lieutenant Colonel Lilburn did bring it to me, and that Captain Jones did agree with me in the price, but I was taken before I did perfect it, but Captain Jones did indent with me for the price; but this I must say, Lieutenant Colonel Lilburn came alone with the Copy, and afterwards at Night he came again, and had a Proof of it, and that he was present when it was Corrected.

Mr. Attorney. And when the first sheet was Printed, then they came at Night again, and examined the Proof with Captain Jones, and his Corrector.

Lord Keeble. And he brought the Copy of the whole draught of the Book unto you.

Lieut. Col. Lilburn. Sir, by your Favour, if Mr. Prideaux have done with the Witness, I crave my Right by Law to ask him some Questions. In the first place, I desire he may be asked, whether I was either Reader of

of



of the Original Copy, or the over-looker of the Printed proof?  
Mr. Newcomb. You had a printed sheet of it and that was all.

Lieut. Col. Lilburn, I desire to know, whether I was either the Reader of that he Printed, or the Looker upon the written Copy?

Mr. Newcomb. You look'd upon the sheet that was Printed, Captain Jones read the Manuscript.

Lieut. Col. Lilburn. Ask him the Question thus, whether was I the Corrector of the thing Printed, or the Looker on upon the printed Copy? And whether or no he can swear, That that Printed sheet that he says I had, was Corrected and Revised, and was a true and perfect sheet according to the Original?

Mr. Newcomb. It was a Copy of the sheet before it was Corrected or Revised.

Mr. Attorney. And Mr. Jones did read the Original, and Lieutenant Colonel Lilburn corrected the Copy.

Lieut. Col. Lilburn. Under Favour, you are mistaken, he says, that I cast my eye upon the Copy; but doth not in the least say, that I Corrected it; and therefore, Sir, you do abuse me, in going about to make him say more than his own Conscience tells him is truth.

Lord Keeble. While the Examination was, he saith you read the Proof.

Lieut. Col. Lilburn. Sir, he says no such thing, by your Favour.

Lord Keeble. Mr. Newcomb, was not Mr. Lilburn there the second time at Night, and did he not look upon the Copy?

Mr. Newcomb. That he did, my Lord, but, my Lord, I shall tell you the manner of our Trade in this particular, the manner is, that after we have set a Form of the Letter, we make a Proof of it, which Proof we have a Corrector does read, my Corrector he had one being he Corrected it, and Captain Jones look'd upon the Manuscript, and Lieutenant Colonel Lilburn had a Copy of the same sheet uncorrected, but he did not Correct it, nor read to the Corrector, there was two pull'd off, the Corrector had one, and Mr. Lilburn had the other, and Captain Jones look'd upon the Manuscript, and read it to the Corrector.

Lieut. Col. Lilburn. He has declared unto you, That he was taken Printing the thing before it was Perfected, I desire to know, whether I was at his House to give any further Directions at all after it was taken?

Mr. Attorney. That's no thanks neither to you nor him.

Lieut. Col. Lilburn. I pray let him Answer the thing, let me have fair play above board. Sir, I beseech you let me hold him close to the Question, he says he was taken before the sheet was perfected, truly I think they are his very words.

Mr. Newcomb. I said in my Examination, that it was a Proof of that Printed which you had.

Lieut. Col. Lilburn. I desire again to know this of him, whether before he had printed or perfected that sheet, he had doing, he was not taken, and both the Forms?

Lord

Lord Keeble. Mr. Lilburn, you must desire to ask him the Question, and not you to demand it of him your self.

Mr. Lilburn. I shall, Sir.

Mr. Newcomb. It was before the Forms were taken.

Lieut. Col. Lilburn. I ask you, whether before the things were compleat and perfect, your Forms were not both taken, and your Person seized upon?

Mr. Newcomb. There were only some few Copies printed, and then I was seized upon, and the Forms taken away before I had perfected the sheet; but this I say, he did not indent with me for the price, neither had I the Copy from Mr. Lilburn's hands, but from Captain Jones his hands.

Just. Jermyn. You say that he had one Proof, and Jones another, when was this you speak of? give us the time as near as you can?

Mr. Newcomb. I cannot say justly the time, but as I remember, it was about seven or eight Weeks since.

Mr. Attorney. Stand you aside, and call John Took, John Skinner, Thomas Lewis, John Hawkins and John Merriman, Witnesses Sworn.

Mr. Attorney. John Took, Do you declare now your knowledge. That which I call him for, is to this purpose, that Mr. Took being a Soldier of the Army, one of them mentioned in the Indictment, Mr. Lilburn delivered him one of the Out-Cries, on purpose to draw him from his Obedience to his Superiour Officers.

Lord Keeble. Shew him the Book.

Mr. Took. I have seen the Book, but I had not the Book in my hand before.

Mr. Attorney. Tell what you know, that's all we ask you.

Mr. Took. About seven Weeks ago, being at Dinner with Thomas Lewis and John Smith, all Soldiers, after Dinner we met with Lieutenant Colonel Lilburn in Ivy-lane, and Thomas Lewis knowing of him, took acquaintance of him.

Just. Jermyn. All Soldiers under my Lord General Fairfax?

Mr. Took. Yes, Sir.

Just. Jermyn. Go on.

Mr. Took. Mr. Lilburn asked me to go and drink a Cup of Beer; we did so, and so when we went in, he asked, whether we had seen such a Book as the Apprentices Out-Cry? And Mr. Lewis answered, that he had seen it in a Man's hand, then Lieutenant Colonel Lilburn, said, he had one in his Pocket that was given him, and if he pleased to accept of it he would give it him; so told him he had thought to buy one of them; for he heard they were sold in the City, but he would accept of his; So Mr. Lilburn delivered it to Mr. Lewis.

Mr. Attorney. What did Master Lilburn say further unto you?

Mr. Took. He said, that you Soldiers keep us all in Slavery.

Lieut. Col. Lilburn. I beseech you, let me ask him one Question.

Mr. Took. There was some to be sold, but I forgot the Place.

Mr.

( 64 )

Mr. Attorney. Did he name a Place and Person to you where you might have some of them?

Mr. Took. He did name a Place, but I have forgot it, where there were more Books to be sold.

Lieut. Col. Lilburn. Sir, I beseech you, let me ask you one Question.

Lord Keeble. Mr. Lilburn, for your Direction you must make your Question to us, and require us to ask him the Question, and then if your Question be fair it shall not be denied you.

Lieut. Col. Lilburn. Then thus: Whatsoever this Gentleman says of meeting him in Ivy-lane, and desiring him to go to drink with me, yet I desire you to ask him whether I did take Notice or Cognizance of any of them first, or whether they did speak to me before, before ever I said any thing unto them.

Lord Keeble. To what End do you ask this?

Lieut. Col. Lilburn. Because in your Indictment I am Charged, that I went among the Soldiers to seduce them from their Obedience to their Superiour Officers, when I have made it my Endeavour to shun them as much as I can, and not to come nigh the place where I know they are, if I can avoid it; no, although I meet with them, not to Discourse with any of them, unless they begin first.

Lord Keeble. I tell you this which may direct you afterwards, whoever began to Discourse first, if you did give them the Book afterwards, it is all one.

Lieut. Col. Lilburn. But shall please you I am upon my Life, and by Law I ought not to be denied, to ask the Witnesses that swear against me any Question that I please, that I my self judge pertinent for my Advantage.

Mr. Attorney. Call Thomas Lewis.

Thomas Lewis. And it shall please you, I am upon my Oath to speak the Truth, and I shall desire by the Help of God so to do, and no more. One Day, which I conceive to my Remembrance, was the 6th day of September last, we being upon Guard at Paul's, went to an House to refresh our selves and when I came forth, I met with Lieutenant Colonel John Lilburn, whom I had formerly known, and sometimes visited in his Imprisonment, and whom I was very glad to see, having a little before heard as though some sudden Accident or Mischance had befallen him, and I did ask of him how he did, he said unto me he was well; and so with that, says he, what are you upon the Guard, to my best Remembrance this was his Expression, yet see whether it was he, or another that said it, as I take it. These were his Words, says he, I have almost forgotten you: Sir, I was known to you formerly, having some times been with you in the Tower; says he, will you go drink? if you please we will; and so upon that we went to a Place called the Red Cross in Newgate-marker: and

having not much Discourse for the present, having heard of a Book called

( 65 )

called the Out-Cry of the Apprentices? Sir, said I, I have heard of it, and have a longing desire to buy one of them to read it, and my reason why I so said, was, because I did understand it was to be sold at the Exchange, there I intended to go to get one of them: Says he, I had one given to me, and if you will, I will give it unto you; so I received the Book with thankfulness, and further expressing, which was something mean, this would save me a Penny in buying of it. And I further entreated him, if he could direct me, where I might buy some more of them: I have a Friend, says he, in such a place, if you would go to him, and tell him that I am here, I should think my self beholding to you; Now the Place's Name was Martin's-lane, but the Man's Name whither I went, I have forgot, and the Man too, I never heard of the Man before nor since, so I told Mr. Lilburn. Now, he said to me, Peradventure when you find that Man, you may have some more of these Books; now these were the Words to my best Remembrance and Knowledge: as I desire to speak with a pure Conscience.

Mr. Attorney. Mr. Lilburn gave you one of those Books?

Mr. Lewis. Yes, Sir, and I put it into my Pocket, and when I had done, Mr. \_\_\_\_\_

he will deliver him. \_\_\_\_\_  
Whether there was any Books or Passages betwixt them; and upon which he told him, yes, There is a Book that Mr. Lewis has, that has such a Title.

Mr. Attorney. What did you with the Book?

Mr. Lewis. I delivered it to the Lieutenant.

Mr. Attorney. The same Book that you received from Mr. Lilburn, you delivered to the Lieutenant.

Mr. Attorney. What did Lieutenant Colonel Lilburn say to you concerning your Pay, did not he ask you, &c.

Lieut. Col. Lilburn. I pray, Sir, do not direct him what to say, but leave him to his own Conscience and Memory, and make him not for fear to swear more than his own Conscience freely tells him is true.

Mr. Lewis. The Discourse was thus; says he, you Soldiers (to my best Remembrance) are the Men that keep us all in Slavery; now what to conceive of that Expression I must leave that unto you: And as concerning our Pay, he asked us, how is your Pay? these were the Words, or to that effect, but there was Money come for us, and ready to be delivered out unto us.

Mr. Attorney. Call John Skinner, he was one of those that was in Company, and can speak to it.

Mr. Skinner. To my best Remembrance, and it shall please you, 'twas the beginning of September, I cannot justly tell what day, that I met with Mr. Lilburn in Ivy-lane, near unto Paul's, and meeting with him, I was going towards the Guard, and so was Mr. Lewis with me, being walking forth of the Lane, having been refreshing our selves; and near the end of the Lane, we met Lieutenant Colonel Lilburn, which Lieutenant Colonel;

( 66 )

lonel, Mr. Lewis very well knew, and knowing of him, asked him how he did, and how it went with him, in regard he had heard before he was in Prison; and so I did not take any heed what he said further, neither do I know whether Mr. Lewis asked Mr. Lilburn to go with him to drink, or Mr. Lilburn asked him; but to the Red-Cross in Newgate-Market we went to drink, and Mr. Lilburn did ask Mr. Lewis whether or no he had seen the Book which was called the Apprentices Out-Cry: Mr. Lewis answered him that he had not seen the Book (as I remember) but he had heard of that Book that it was forth, and he did intend to buy one of them in regard they were publickly sold abroad; says Mr. Lilburn, I have such a Book in my Pocket, which was given me even now, and I will give it you if you will.

Lieut. Col. Libb. I pray let me hear two or three Lines before.

Mr. Skinner. Whereupon you answered, and said, I have the Book in my Pocket, and it was given me, and I will give it you, and Mr. Lewis received it, and that was all, and presently I went away.

Mr. Attorney. You hear, Gentlemen of the Jury, that it is the same Book that he received from the hands of Lieutenant Colonel John Lilburn.

Lieut. Col. Lilburn. My Lord, I beseech you hear me before the Witnesses go, and he that was Sworn before, I desire to ask him this Question, whether or no that this is the very Book that is mentioned in the Indictment, and whether or no they have examined the Words of it with the Indictment?

Mr. Prideaux. You need not, that shall be proved presently.

Mr. Attorney. That Book which Mr. Lilburn gave you, what did you with it, Mr. Skinner: It was delivered unto my Lieutenant, who stands there.

Lieutenant. It was delivered unto my Captain upon the Guard.

Captain Meriman Took the Book in his hand, and said, this individual Book, signed in several places by me, I delivered to Mr. Frost, Secretary to the Council of State, and Mr. Frost caused me to sign it in several places, whereby it could not be mistaken, and that is the very individual Book.

Mr. Attorney. My Lords, and you, Gentlemen of the Jury, we have thus far gone in the Evidence, that Mr. Lilburn brought the last sheet of it to the Press, the first time he came with Captain Jones, and he came the second time with him to examine it, that is, he had a printed Copy that was then printing, to be printed, and was the Corrector for the Press, reading the Original Copy: so far he is privy to the printing of the Book. In the next place three Witnesses, (Soldiers of the Army) swear, he gave them one of those Books, and one of them gave it to his Lieutenant, and the Lieutenant to the Captain, and the Captain swears this individual Book is that which Master Lilburn gave into the hands of Mr. Lewis; what can be more plain than this, I pray you, Judge; for here is plain-Testimony of Mr. Lilburn delivering this Out-Cry to the three Soldiers, and one of them to his Lieutenant, and his Lieutenant to his

( 67 )

his Captain, and his Captain to Mr. Frost, with marks upon it, so this is by Consequence proved unto you, this is the individual Book, that Mr. Lilburn, Prisoner at the Bar gave to the three Soldiers, and which is to be made use of, when you have Occasion upon the Evidence, to read it as now it is in the Court with you.

Lieut. Col. Lilburn. By your Favour, I have had no Answer to the Question that I humbly craved an Answer to, which is, whether the Soldiers are positively able to swear, that this is the individual Book which they say they had from my hands, and whether they are able to swear that this individual Book is a true and exact Copy without Addition or Subscription of that Original Manuscript that the Printer said Captain Jones delivered to his hands, which he saith I had an uncorrected sheet of.

Mr. Attorney. We shall clear that to you, when we come to make use of it.

Lieut. Col. Lilburn. I beseech you, Gentlemen of the Jury, to take Notice of my Question, and what I am denied.

Mr. Prideaux. The next thing that is charged upon him, is a Paper written, and intituled, A Salvo & Libertate, my Lord shall open the thing to you being directed (my Lord) for the Prosecution of Mr. Lilburn: and having things of very high Concernment that are charged against him, I did by word of Mouth send to have him come to me, which I understood he did decline, because he had no Warrant; The Lieutenant of the Tower was pleased to acquaint me with it, and I thereupon directed my Warrant to the Lieutenant to bring him before me: and Mr. Lilburn, &c.

Lieut. Col. Lilburn. My \* Lord, and please your Honours, thus, if we be upon Matter of Fact, let us come to it, let us have no Introduction to teach the Witnesses what to say, beyond what their own Consciences dictate unto them.

Mr. Attorney. I shall go no further in it, let the Lieutenant of the Tower speak himself.

The Lieutenant of the Tower Sworn.

Mr. Attorney. Lieutenant of the Tower, you are questioned about the Salvo Libertate that Mr. Lilburn delivered unto you, have you the Original?

Lieut. of the Tower. Yes, Sir, I have.

Mr. Attorney. How come you by it?

Lieut. of the Tower. I shall be short in what I say, because I will not trouble the Court.

Lieut. Col. Lilburn. Let me hear you then.

Lieut. of the Tower. Being abroad, there was a Message left with

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\* This was the first or second time that Mr. Lilburn's Tongue slipt in calling him Lord.

my Servants, that I should bring up Lieutenant Colonel Lilburn to Mr. Attorney's Chamber in the Temple, and when I came in, I had Notice of it: I did then send to Lieutenant Colonel John Lilburn, to let him know what Command I had received from the Attorney General, the next day to carry up Lieutenant Colonel John Lilburn to the Attorney General's Chamber: But Lieutenant Colonel Lilburn not well understanding whether I had a written Warrant or no; but before he came at home he recalled himself, and came back, and desired the sight of my Warrant, I told you before I had no Warrant, but by word of Mouth; why says he, do you think I will go upon a verbal Warrant? saith he, I will not go unless you force me, but the next day Mr. Attorney General was acquainted that he refused to come without a Warrant. When the Warrant was made, I met with Lieutenant Colonel Lilburn about ten of the Clock in the Tower, who intreated me to let him see it. I shewed it him, he read it, he desired a Copy of it, takes it; which when he had, he went from me, and about two hours after he came to me about one of the Clock, and said I—pray receive this from me, for, says he, I do intend not to own the Authority and Power of that Gentleman that sends me the Warrant, whereupon I told him I would shew this same to the Attorney General, why, says he, I give you it to that purpose.

When the time came, Lieutenant Colonel Lilburn did go along with me in an orderly civil Way: I had no Body but my Man, for I told him I will take no Body but my Man, if you will engage your self to me that you will return peaceably, which he did, and so we went very orderly to Mr. Attorney's Chamber, which is all for that I can say.

Mr. Attorney. If you please that the Lieutenant may, upon his Oath, declare whether that be the true Original he had from Mr. Lilburn's own hands or no?

Lieut. of the Tower. It was never out of my Custody since he gave it me.

Lord Keeble. Mr. Lilburn, you do acknowledge it to be your own hand-writing: Shew it him.

Lieut. Col. Lilburn. Sir, I am too old with such simple Gins to be catch'd, I will cast mine eyes upon none of your Papers, neither shall I Answer to any Questions that concerns my self; I have learned more Law out of the Petition of Right, and Christ's Pleading before Pilate, than so.

Mr. Attorney. Would you had learned more Gospel.

Justice Jermyn. You may Answer a Question whether it be true or false, and confess, and glorifie God.

Lieut. Col. Lilburn. I have said, Sir, prove it, I am not to be catch'd with such Fooleries.

Lord Keeble. You see the Man, and the Quality of the Man, this is the Paper that he delivered into his own hand, and that is sufficient, as well as if it was of his own hand-writing.

Lieut. Col. Lilburn. Good Sir, your verbal Bench-law is far short of your written Text in your own Law-books.

Judge Jermyn. Put it into the Court.

Lord Keeble. Your Writing or not Writing is nothing, you delivered the Book.

Lieut. Col. Lilburn. Sir, I desire to know in what Place, whereabouts in the Tower of London, the Lieutenant of the Tower, saith he, received this Paper.

Lord Keeble. Let him name the Place where it was delivered.

Lieut. of the Tower. The Place was at the steps, at the bottom of the narrow passage at my Garden end, in the Cart way where the carriages comes up.

Lieut. Col. Lilburn. Whether is that Place in the Liberties of London, or is it part of the County of Middlesex.

Lieut. of the Tower. The Tower is in † London some part of it, and some part in Middlesex; but unto which Place that part of the Tower belongs, I am not able certainly to say, but it hath commonly been reputed in Middlesex.

Mr. Attorney. My Lord, you may see the Valiantness of this Champion for the Peoples Liberties, that will not own his own hand although I must desire you, Gentlemen of the Jury, to observe, that Mr. Lilburn implicitly confesseth it.

Lieut. Col. Lilburn. Sir, I deny nothing: and what now can be proved mine, I have a Life to lay down for the Justification of it, but prove it first.

Mr. Attorney. My Lord, the next thing to prove the Charge against him is a very high One, it is stiled Master Lilburn's, and his Name is to it: It is intituled, An Impeachment of High Treason against Oliver Cromwel, and his Son-in-Law, Henry Ireton, Esquires, late Members of the late forcibly dissolved House of Commons, presented to publick View by Lieutenant Colonel John Lilburn, close Prisoner in the Tower of London: My Lord, I doubt he will not own it, but yet, my Lord, he may be asked the Question.

Lieut. Col. Lilburn. I shall deny nothing I do: And yet I have read the Petition of Right, Sir, that teacheth me to Answer to no Questions against, or concerning my self, and I have read of the same to be practised by Christ and his Apostles.

Mr. Attorney. You will not own it, the Book you have read?

Lieut. Col. Lilburn. You may make your Advantage of it.

Mr. Attorney. We shall prove it, call

Witnesses, Thomas Daffern, Richard Lander, Marshal, Major Hawksworth, Governour of Warwick-Castle, all Sworn.

Mr. Attorney. Mr. Daffern, if you please, he may be asked where he

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† But it is sure that Place is in Middlesex, as was resolved in Sir Thomas Overburies Case, see Cook's 3d. Part. Inst. fol. 130. Chap. Indictment.

( 70 )

met Mr. Lilburn, the time when, what Book was given him, and to what purpose it was given him.

Mr. Daffern. Why, it was upon the 12th of August last; having been in Southwark, I met with Lieutenant Colonel Lilburn upon the Bridge, I went back with him to his House at Winchester-house in Southwark, he had leave to visit his Family at that time, being very sick, and I told him I was going into Warwick-shire the next day: and he having heard that Colonel Ayres was then removed from Oxford to Warwick-Castle, he gave me a Book to carry to him, and I delivered it to him at Warwick-Castle.

Mr. Attorney. The Book that he gave you, you gave to the Governour, did you see any more of them.

Mr. Daffern. I never saw any of them but that, which was both the first and the last I have seen of them?

Mr. Attorney. Lander the Marshal was present at that time, was he not?

Mr. Lander. That I was, and I had it from him, and I delivered the Book to Major Hawksworth the Governour.

Mr. Attorney. Major Hawksworth, what did you do with the Book?

Major Hawksworth. I sent it to Colonel Purfrey, in a Paper sealed with three or four Seals.

Mr. Attorney. Call Colonel Purfrey: Colonel Purfrey Sworn.

Lieut. Col. Lilburn. I hear not one Word; under Favour but one Word, I crave but one Word, I have an Exception. First, Colonel Purfrey is one of those that call themselves the Keepers of the Liberties of ENGLAND, and for committing Crimes against them I am Indicted, and he is one of them, and therefore a Party, and in that Respect, in Law he can be no Witness against me; it would have been very hard for the King to have been a Witness against that Man that was Indicted for committing Crimes against him; such a thing in all his Reign was never known.

Col. Purfrey. I received this Book, sealed in a Letter from the Governour of Warwick-Castle, Major Hawksworth, I know his Hand, and I know the day he sent me this very individual Book, and my hand is at it, and the Governour who sent it up to me, which I declare to be the very individual Book that I received from him.

Mr. Attorney. Mr. Lilburn, you are mistaken, Colonel Purfrey is a Member of Parliament, he is none of the Keepers of the Liberties of England; but why will you put us to all this Trouble, to prove your Books, seeing your hand is to them; my Lord, I had thought the great Champion of England would not be ashamed to own his own hand.

Lieut. Col. Lilburn. I have answered once for all, I am upon Christ's Terms, when Pilate asked him whether he was the Son of God, and adjured him to tell him whether he was or no: he replied, thou sayest it: so say I, thou Mr. Prideaux sayest it, they are my Books; but prove it, and when that is done, I have a Life to lay down to justify whatsoever can be proved mine.

Judge

( 71 )

Judge Jermyn. But Christ; said afterwards, I am the Son of God confess, Mr. Lilburn, and give glory to God.

Lieut. Col. Lilburn. I thank you, Sir, for your good Law, but I can teach my self better.

Mr. Attor. Here Mr. Lilburn makes a Book which was given to the hands of Mr. Daffern, by Mr. Lilburn himself, Mr. Daffern he swears that the same Book he gave to Colonel Ayres: Mr. Lander the Marshal of the Garrison of Warwick, swears that the same Book Daffern gave to Colonel Ayres, he had from him, and gave to Major Hawksworth the Governour; the Governour swore that that Book he received from the Marshal, he sent sealed up in a Letter to Mr. Purfrey, who also swears that that same Book he set his hand to it to know it again by, and that the individual Book that is now given into your hands, is the same Book that was delivered to him; The Title is an Impeachment of High Treason against Oliver Cromwel, Esq;

Lieut. Col. Lilburn. Sir, I wonder you are not ashamed so far to press the Testimony beyond that they themselves swear, Mr. Daffern doth not name the Book at all that was given to him, neither doth he swear it to be mine, and therefore, Sir, you abuse your self, the Court, the Witnesses, and me too.

Mr. Attorney. Master Lilburn, I have done you Right in it, and no wrong at all; for Colonel Purfrey doth Name it; The next is a very dangerous Book of his, called A Preparative to the Hue and Cry after Sir Arthur Haslerig, Mr. Lieutenant of the Tower, you are upon your Oath, I pray you speak your knowledge to that.

Lieut. of the Tower. My Lord, it is true, Lieutenant Colonel Lilburn gave me in the Tower such a Book, but I cannot say, whether that be the same Book that he delivered to me, or no, I have such a Book also at home, but I am not able to say that is the very Book he gave me, and whether this be the same Book, I know not.

Mr. Prideaux. Call Mr. Nutleigh and Mr. Radney.

Master Nutleigh Sworn.

Lieut. Col. Lilburn. I pray let the Witnesses stand here, the Jury say they cannot hear them.

Edward Radney called and Sworn.

Lieut. Col. Lilburn. I pray you let me know what these Gentlemen are, I do not know them, neither can I remember at present that ever I saw them before.

Lord Keeble. You see they look like Men of Quality.

Mr. Prideaux. They are my Servants, Mr. Lilburn.

Mr. Nutleigh. My Lord, and \* please your Lordship, the 14th of Sept. last,

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\* But Mr. Lilburn hath been heard to profess, he see not those Gentlemen in the Chamber that he discoursed with Mr. Prideaux in, although he looked divers times about him.

last, the Prisoner at the Bar, Lieutenant Colonel John Lilburn, being before Mr. Attorney General: And I being by in the Chamber, I did see him deliver this Book to Master Attorney General, this specifical Book, and he did own it, and called him self the Author of it, save only the Errata's of the Printer.

Lieut. Col. Lilburn. The last Clause, I beseech you, Sir, the jury desires to hear the last Clause.

Mr. Nutleigh. My Lord †, he said he was the Author of that Book, the ERRATA of the PRINTER excepted.

Lieut. Col. Lilb. Let him be asked this Question, whether in that Expression, saving the Errata of the Printer, there did not follow these words, which are many: I desire to know whether there were not such words or no.

Mr. Radney. I was present, my Lord, when the Prisoner at the Bar presented this Book to Mr. Attorney, and owned it, saving the Errata of the Printer.

Lieut. Col. Lilburn. Were there no more words.

Mr. Radney. Not to my Remembrance, and so said they both.

Lieut. of the Tower. My Lord, I was present at the same time, when Lieutenant Colonel Lilburn did present a Book to Master Attorney General, with such a Title as this: And truly if I be not much mistaken, there was used by him these Words, which are many: Thus it was in the whole; Says he, here is a book which is mine, which I will own, the Errata of Errours of the Printer excepted, which are many, if I mistake not very much, those are the very Words Master Lilburn said.

Mr. Attorney. My Lords, and you, Gentlemen of the Jury, you see that here are three Witnesses, and they do all agree, and they do all agree in this, that Master Lilburn the Prisoner at the Bar did deliver this Book to me, owning it as his \* own, the Errours or Errata of the Printer only excepted: And as for that Clause which are many, only the Lieutenant of the Tower swears to that singly, and therefore I desire it may remain in Court, as that individual Book that they see Master Lilburn give me. But, my Lord, there is another Book in the Indictment, intituled, The Legal Fundamental Liberties of the People of ENGLAND, revived and asserted: Or, An Epistle written the eighth of June, 1649. by Lieutenant Colonel JOHN LILBURN, to Mr. WILLIAM LENTHALL, Speaker to the remainder of those few Knights, Citizens, and Burgeses, that Colonel THOMAS PRIDE at his late Purge thought convenient to leave sitting at Westminster. My Lords, for this Book it owns

† That is an errant lye; for divers that heard the Words, aver them to be thus: It is my Book, and I will own it, and so it might be, although he had bought it.

\* So is an Ox, a Man buys with his Money, it is his own, and so is a Gold Ring he finds, after he hath found it, it is his own, and yet it doth not follow, that the owner either begot the Ox, or made the Gold Ring.

owns Master Lilburn, if he will own it, it hath his Name to it; but I have my Lesson from him: My Lord, he will own nothing, he will publish, enough, but, my Lord, he will not own it when he comes to be questioned for it; that is not the true Principle of a true Christian, nor an Englishman, nor a Gentleman.

Lieut. Col. Lilburn. I deny nothing, by your Favour.

Mr. Attorney. And confess as little; My Lord, for this you have two Books in Proof before you: The Preparative to the Hue and Cry, and the Salva Libertate owns these very individual Books; for the Preparative to the Hue and Cry in the Marginal Note, at the second page, owns and avows this Book, called The Legal Fundamental, &c. to be Master Lilburn's: And Master Lilburn himself did own the Preparative to the Hue and Cry before three Witnesses to be his: and therefore the Salva Libertate, Mr. Lieutenant of the Tower hath sworn that he received it from his own hands.

My Lords, as for this Book, the Salva, which he does not acknowledge, We shall read the Words in the Indictment, although it had been as Ingenuous for Master Lilburn to have confessed it, as for us to have proved it, and for the Proof of it read the Title.

Clerk. The Title read.

A Preparative to an Hue and Cry after Sir Arthur Hasterig a late Member of the forceably dissolved House of Commons, and now the present Wicked, Bloody, and Tyrannical Governour of Newcastle upon Tyne.

Mr. Prideaux. Read the Marginal Note in page 2.

Clerk. Page 2. in the Margent.

That those Men that now sit at Westminster are no Parliament, either upon the Principles of Law and Reason; see my Argument or Reasons therefore in my second Edition of my Book of the 8th of June, 1649. Intituled, The Legal Fundamental Liberties of the People of ENGLAND, revived and asserted, pag. 48, 49, to 63.

Mr. Attorney. This Book hath Mr. Lilburn's Name to it, and here in this his Hue and Cry he owns it, and the third page in the margent hath it again.

Clerk. Page 3. Peruse carefully I entreat you, the Quotations in the 6. and 8. pages of my forementioned Impeachment of High Treason against Cromwel. As also the 12. and 15. pages of the second Edition of my forementioned Book, dated the eighth of June, 1649. Intituled, The Legal Fundamental Liberties, &c.

Mr. Attorney. Read the fourth in the Body of the Book.

Clerk. Page 4. At which Tryal by strength of Arguments, I forced the Judges openly to confess, that Generals were nothing in Law, see also the second Edition of my Book of the eighth of June, 1649. Intituled, The Legal Fundamental Liberties of the People of England, revived, asserted, and vindicated, page 49.

Lieut. Col. Lilburn. Let him speak whether it be 29. or 49.

Clerk. Forty nine. (but there is not so many pages in the Book.)

Mr.

( 74 )

Mr. Attorney. My Lord, here is a *Salva Libertate*, which is his own Book, though he will not own it.

My Lord, I had thought the great Champion of England for the Peoples Liberties, would never have been so unworthy as not to have owned his own hand; but read in the 24. page of the *Salva* in his own written-hand.

Clerk. Page 24. I have by almost eight Years dear-bought experience found the Interest of some of my forementioned Judges to be too strong for me to grapple with, and the only \* This was brought in by \* cause to my Apprehension; that all this while keep me head and shouldera. from my own: and in the Margent he saith; see also the second Edition of my forementioned Book, intituled, The Legal Fundamental Liberties of England, revived, &c.

Mr. Attorney. Now, my Lord, there is the *Salva Libertate* that was given from his own hand that owns it, I meant his Book, called The Legal Fundamental Liberties, &c.

Mr. Attorney. Read the Title of it.

Clerk. A *Salva Libertate* sent to Colonel Francis West, Lieutenant of the Tower of London, on Friday the fourteenth of September, 1649. by Lieutenant Colonel John Lilburn.

Mr. Prideaux. Read where it is marked.

Clerk. But if you would produce unto me a written Warrant which hath some more face of Legal Magistracy in it, than verbal Commands, and according to my Right and Privilege let me read it, I would go with you either by Land or Water, as you please, because I was in no Capacity to resist you, although I then told you I judged a Paper-Warrant (although in Words never so formal) coming from any pretended Power, or Authority in England now visible, to be altogether illegal, because the intruding General, Fairfax, and his Forces, had broke and annihilated all the Formal and Legal Magistracy of England; yea, the very Parliament it self, and by his Will and Sword (absolute Conquerour like) had most Tyrannically erected, set up, and imposed upon the free People of this Nation a Junctio, or mock Power sitting at Westminster, whom he and his Associates call a Parliament, who like so many armed Thieves and Robbers upon the high Way, assume a Power by their own Will, most Trayterously to do what they like.

Mr. Attorney. That's not the Place, look towards the latter End.

Clerk. Then here it is; sure I cannot chuse but acquaint you that I have long since drawn and published my Plea against the present Power, in my second Edition of my Book of the 8th of June, 1649. intituled, The Legal Fundamental Liberties of the People of England, revived, asserted, and vindicated, which you may in an especial manner, read in the 43, 44, 45. to the 49. pag. which by the strength of the Lord God Omnipotent, my large experienced help in time of need, I will seal with the last Drop of my Blood.

Mr. Attorney. My Lord, for the Book, called The Legal Fundamental Liberties of England, his Name is to the Book; but I shall not put  
much

( 75 )

much weight upon that; but in others of his Books, as in his Preparative to an Hue and Cry, which he owns, and which is proved he owns by three Witnesses. In several places of that Book he owns this as his Book, viz. The Legal Fundamental Liberties of England, revived, &c. He calls it mine; and his forementioned Book: and in his *Salva Libertate*, he owns it again, gives it the very date, and the very Title that is in this Book: my Lords, we have done with this. My Lords, now I shall go on to make use of it, and to shew, my Lord, out of these Books, his Words and Language, to make good the Charge that hath been read in the Indictment against Mr. Lilburn. My Lords, if you please for that I shall begin first, in reading to the Jury the very Act it self, which makes the Fact to be Treason.

My Lord, for that, here is the Act, that doth declare the Commonwealth for the Future to become hereafter a free State, and the other declaring that Fact to be Treason, that shall say it is Tyrannical or Unlawful, these are general Acts which need not be proved, but if the Prisoner does desire it, we shall prove it.

Clerk. Die Lunæ, 14. of May, 1649. Ordered by the Commons assembled in Parliament.

Lieut. Col. Lilburn. Hold, Sir, prove your Act first, whether it be an Act of Parliament.

Mr. Attorney. My Lords, I shall not struggle with Mr. Lilburn in plain Terms; but I thought when Acts were published, the Courts of Justice were bound in duty to take Notice of them; but if it be so he will have it proved, we will, although it be but a slender Cavil, for this is one of the published Copies.

Lieut. Col. Lilburn. But under your Favour, Mr. Prideaux, as there may be counterfeit Money (which we see there is every day) so there may be counterfeit Statutes too, and this may be one for any thing I know; therefore I desire it may be proved to be a true Statute or Act of Parliament.

Mr. Nutleigh. This is a true Copy of the Act of Parliament, which I examined with the Record.

Lieut. Col. Lilburn. The Record, where is that to be found?

Mr. Nutleigh. At Westminster, with the Clerk of the Parliament.

Lieut. Col. Lilburn. Is this Gentlemen able to depose it to be a true Law in all the parts of it; for by the Laws of England, the People are not to take any Notice of Acts made, but by a Parliament: neither are they to take Notice of those Acts that are not proclaimed: Sir, I beseech you let me know where the Record and Rolls are, and where he examined this, and whether he is able to swear whether they have been proclaimed in every Hundred and Market-town, according to the Old, and not yet repealed Law of England.

Lord Keeble. At Westminster, he tells you.

Lieut. Col. Lilburn. I beseech you where, at Westminster.

Lord Keeble. The Clerks of the Parliament are known to the City of London here, you know it well enough.  
Lieut.

*Lieut. Col. Lilburn.* That is no Answer to my Questions, I pray let me have fair play ; for it is a Question to me whether the Books of the Clerk of the House of Commons be a \* Record in Law or no.

*Lord Keeble. Read, Clerk.*

*Clerk. An Act of the 14. of May, 1649. Declaring what Offences shall be adjudged Treason.*

**W**Hereas the Parliament hath abolished the Kingly Office in *ENGLAND* and *IRELAND*, and in the Dominions and Territories thereunto belonging, and hath resolved and declared that the People shall for the Future be Governed by its own Representatives, or National Meetings in Counsel, chosen and intrusted by them for that purpose, hath settled that Government in the Way of a Common-wealth and free State, without *KING* or House of *LORDS*. Be it therefore, enacted by this present Parliament, and by the Authority of the same, that if any Person shall Maliciously, or Advisedly Publish, by Writing, Printing, or openly Declaring, That the said Government is Tyrannical, Usurped, or Unlawful ; Or that the Commons in *PARLIAMENT* assembled are not the Supreme Authority of this Nation, or shall Plot, Contrive, or Endeavour to stir up, or raise Force against the present Government, or for the Subversion or Alteration of the same, and shall declare the same by any open Deed ; That then every such Offence shall be taken, deemed, and adjudged by the Authority of this present *PARLIAMENT* to be High Treason. And whereas the Keepers of the Liberty of *ENGLAND*, and the Council of State constituted, and to be from time to time constituted by Authority of *PARLIAMENT*, are to be under the said Representatives in *PARLIAMENT*, entrusted for the Maintenance of the said Government, with several Powers and Authorities limited, given, and appointed unto them by the *PARLIAMENT*. Be it likewise enacted by the Authority aforesaid, that if any Person shall Maliciously and Advisedly, Plot, or Endeavour the Subversion of the said Keepers of the Liberty of *ENGLAND*, or the Council of State, and the same shall declare by any open Deed, or shall move any Person or Persons for the doing thereof, or stir up the People to rise against them, or either of them there, or either of their Authorities, that then every such Offence and Offences shall be taken, deemed, and declared to be High Treason.

And whereas the *PARLIAMENT* for their Just and Lawful Defence, have raised and levyed the Army and Forces under the Command of *THOMAS*, Lord *FAIRFAX*, and are at present necessitated by Reason of the manifold Distractions within this Common-wealth, and In-

vations

\* And well might be for Mackwel-----in his manner of passing of Statutes, in his Preface thereunto, saith, that the Commons had no Journals at all before Edward the sixth's time.

vations threatned from abroad, to continue the same, which under God must be the Instrumental Means of preserving the Well-affected People of this Nation in Peace and Safety. Be it further Enacted by the Authority aforesaid, that if any Person, not being an Officer, Soldier, or Member of the Army, shall Plot, Contrive, or Endeavour to stir up any Mutiny in the said Army, or withdraw any Soldiers or Officers from their Obedience to their Superiour Officers, or from the present Government as aforesaid, or shall Procure, Invite, Aid, or Assit any Foreigners or Strangers to invade *England* or *Ireland* ; or shall adhere to any Forces raised by the Enemies of the *PARLIAMENT*, or Common-wealth, or Keepers of the Liberties of *ENGLAND*. Or if any Person shall counterfeit the Great Seal of *England* ( for the time being ) Used and Appointed by Authority of Parliament : That then every such Offence and Offences, shall be taken, deemed, and declared by the Authority of this Parliament, to be High Treason : And every such Person shall suffer Pain of Death, and also Forfeit unto the Keepers of the Liberty of *England*, to and for the Use of the Common-wealth, all and singular his and their Lands, Tenements and Hereditaments, Goods and Chattels, as in Case of High Treason, hath been used by the Laws and Statutes of this Land, to be Forfeit and Lost, provided always that no Persons shall be Indicted or Arraigned for any of the Offences mentioned in this Act, unless such Offenders shall be Indicted or Prosecuted for the same within one Year after the Offence committed.

*Mr. Prideaux. Read the other Statute.*

*Clerk. Tuesday, 17. July, 1649.*

*Ordered by the Commons assembled in Parliament that this Act be forthwith Printed and Published.*

*Hen. Scobel Cler. Parl.*

*An Act declaring what Offences shall be adjudged Treason.*

**W**Hereas the Parliament hath abolished the Kingly Office in *England* and *Ireland*, and in the Dominions and Territories thereunto belonging, and having Resolved and Declared, that the People shall for the Future be Governed by its own Representatives, or National Meetings in Council, Chosen and Entrusted by them for that Purpose, hath settled the Government in the Way of a Common-wealth, and free State, without King or House of Lords ; Be it enacted by this present Parliament, and by the Authority of the same, that if any Person shall Maliciously or Advisedly Publish by Writing, Printing, or openly Declaring, that the said Government is Tyrannical, Usurped, or Unlawful, or that the Commons in Parliament assembled are not the Supreme Authority of this Nation, or shall Plot, Contrive or Endeavour

to



to stir up, or raise Force against the present Government, or for the Subversion or Alteration of the same, and shall declare the same, by any open Deed, that then every such Offence shall be taken, deemed and adjudged by Authority of this Parliament to be High Treason; and whereas the Keepers of the Liberties of *England*, and the Council of State, constituted, and to be from time to time constituted, by Authority of Parliament, are to be under the said Representatives in Parliament, intrusted for the Maintenance of the said Government with several Powers, and Authorities limited, given and appointed unto them by the Parliament; Be it likewise enacted by the Authority aforesaid, that if any Person shall Maliciously, and Advisedly, Plot or Endeavour, the Subversion of the said Keepers of the Liberties of *England*, or the Council of State, and the same shall declare by any open Deed, or shall move any Person or Persons for the doing thereof, or stir up the People to rise against them, or either of them, their, or either of their Authorities, that then every such Offence and Offences shall be taken, Deemed and Declared to be High Treason. And whereas the Parliament for their just and Lawful Defence, hath Raised and Levied the Army and Forces now under the Command of THOMAS Lord FAIRFAX, and are at present necessitated by Reason of the manifold Distractions within this Common-wealth, and Invasions threatned from abroad, to continue the same which under God, must be the Instrumental Means of preserving the well affected People of this Nation, in Peace and Safety; Be it further enacted by the Authority aforesaid, that if any Person not being an Officer, Soldier or Member of the Army, shall Plot, Contrive or endeavour to stir up any Mutiny in the said Army, or withdraw any Soldiers or Officers from their Obedience, to their Superior Officers, or from the present Government as aforesaid; Or shall Procure, Invite, Aid or Assist any Foreigners or Strangers to invade *England*, or *Ireland*, or shall adhere to any Forces, Raised by the Enemies of the Parliament, or Common-wealth, or Keepers of the Liberty of *England*; Or if any Person shall counterfeit the Great Seal of *England*, for the time, being Used and Appointed by Authority of Parliament, that then every such Offence and Offences shall be taken, Deemed and Declared by Authority of this Parliament to be High Treason; And every such Person shall suffer Pains of Death, and also Forfeit unto the Keepers of the Liberty of *England*, to and for the Use of the Common-wealth all, and singular, his and their Lands, Tenements and Hereditaments, Goods and Chattles as in Case of High Treason hath been used by the Laws and Statutes of this Land, to be Forfeit and Lost, provided always, that no Persons shall be Indicted and Arraigned, for any the Offences mentioned in this Act, unless such Offenders shall be Indicted and Prosecuted for the same within one Year after the Offence committed; And be it further enacted by the Authority aforesaid, that if any Person shall counterfeit the Money of this Common-wealth, or shall bring any False Money into this Land, counterfeit, or other like to the Money of this Common-wealth, knowing the Money to be False, to Merchandize or make Payment

ment in Deceit of the People of this Nation; Or if any Person shall hereafter Falsly Forge, and Counterfeit any such kind of Coyn of Gold or Silver, as is not the proper Coyn of this Common-wealth, and is or shall be current within this Nation, by Consent of the Parliament, or such as shall be by them Authorized thereunto; or shall bring from the Parts beyond the Seas into this Common-wealth, or into any the Dominions of the same, any such False and Counterfeit Coyn of Money, being current within the same, as is above said, knowing the same Money to be False and Counterfeit, to the intent to utter or make Payment with the same, within this Common-wealth, by Merchandize or otherwise; Or if any Person shall Impair Diminish, Falsify, Clip, Wash, Round or File, Scale or Lighten, for wicked Lucre or Gains sake, any the proper Monys or Coyns of this Common-wealth, or the Dominions thereof, or of the Monys or Coyns of any other Realm, allowed and suffered to be Current within this Common-wealth, or the Dominions thereof, that then all, and every such Offences above mentioned, shall be and are hereby Deemed and Adjudged High Treason; and the Offenders therein, their Counsellors, Procurers, Aiders and Abettors, being convicted according to the Laws of this Nation, of any of the said Offences shall be Deemed and Adjudged Traytors against this Common-wealth: and shall suffer and have such Pains of Death, and Forfeitures, as in Case of High Treason is Used and Ordained. Provided always and be it enacted by the Authority aforesaid, that this Act touching the Monys and Coyns aforesaid, or any thing therein contained, nor any attainder of any Person for the same, shall in any wise extend or be judged to make any Corruption of Blood, to any the Heir or Heirs of any such Offender, or to make the Wife of any such Offender to Lose or Forfeit her Dower, of, or in any Lands, Tenements or Hereditaments, or her Title, Action or Interest in the same.

*Mr. Attorney. My Lords, and you Gentlemen of the Jury, you have heard these Laws read unto you, the Clauses that we are to make out in Proof against Mr. Lilburn are these, That if any Person shall Maliciously or Advisedly publish by Writing, Printing, or openly Declaring, that the said Government is Tyrannical, Usurped or Unlawful, or that the Commons in Parliament assembled are not the Supreme Authority of this Nation, are Traytors; these we shall joyn together with his Books; My Lord you are here in Court, and have received the Proofs against him, and we shall now make it out, that he hath done what this Statute forbids out of his own Books that have come from himself, as the Author of them; My Lord, we shall begin with that Charge against him, in declaring the Government Tyrannical, Usurped and Unlawful, and for that End, see his Impeachment of Lieut. Gen. Cromwel, &c. page. 8.*

*Justice Jermyn. Mr. Lilburn, Doth your Paper of the 17 of May agree with that which was read, or no.*

*Lieut. Col. Lilburn. No, Sir, I conceive, Sir, you ask'd me whether this Act I have in my hand do agree with that which was read.*

*Justice Jermyn. Yes, Sir, I do.*

*Lieut.*

( 80 )

*Lieut. Col. Lilburn.* It does not.  
*Justice Jermyn.* Then you will make use of it by and by.  
*Lieut. Col. Lilburn.* I, Sir, I intend so, if you will let me.  
*Mr. Attorney.* My Lord, The first is, that Mr. Lilburn hath declared the present Government to be Tyrannical, Usurped and Unlawful, and that in ipissimis Verbis, that he hath so declared, in a very high Way, in the very words; so his Book intituled, An Impeachment of High Treason against Oliver Cromwell, and his Son-in-Law, Henry Ireton, &c. Read folio 8.

*Clerk. Fol. 8.* Yea, and the absolute keeping up of a perpetual and everlasting Army, under which the People are absolute and perfect Slaves and Vassals, as by woful and lamentable Experience, they now see, they perfectly are, which Slavery and absolute Bondage, is like daily to encrease, under the present Tyrannical and Arbitrary, new Erected, Robbing Government.

*Mr. Attorney.* And so, my Lord, it is here express to be a Tyrannical and Arbitrary Government, which are expressly within the Word of the Law, for they are a Tyrannical Government. My Lords, we shall not stick here with him, but you shall see the whole Course of his Pen's writing hath been to this Purpose, that goes very far, my Lord, see the Title page of the last Book.

*Clerk Title page.* Before a Legal Magistracy, when there shall be one in England, which now in the least there is not.

*Mr. Prideaux.* See fol. 1.

*Clerk. Page 1.* I have fully both by Law and Reason, undeniably and unanswerably proved, that the present Junctio sitting at Westminster, are no Parliament at all in any Sense; either upon the Principles of Law or Reason, but are a Company of Usurping Tyrants and Destroyers of your Laws, Liberties, Freedoms and Proprieties, sitting by Virtue of the Power and Conquest of the Sword.

*Mr. Prideaux.* Read the Title page of the same Book.

*Clerk.* An Impeachment of High Treason against Oliver Cromwell, and his Son-in-Law Henry Ireton Esquires, Members of the late forcibly dissolved House of Commons, presented to publick View, by Lieutenant Colonel John Lilburn, close Prisoner in the Tower of London, for his real, true and zealous Affections to the Liberties of his Native Country. In which following Discourse or Impeachment he engageth, upon his Life, either upon the Principles of Law (by way of Indictment, the only and alone Legal Way of all Tryals in England) or upon the Principles of Parliaments Ancient Proceedings, or upon the Principles of Reason, (by Pretence of which alone they lately took away the King's Life) before a Legal Magistracy, when there shall be one again in England, which now in the least there is not.

*Mr. Attorney.* Indeed, my Lord, and you of the Jury, Mr. Lilburn is a very great Rooter, not a Leveller, but a Rooter, to root out the Laws of England by the Roots.

*J.* There is not.

Lieut

( 81 )

*Lieut. Col. Lilburn.* By your favour, Mr. Prideaux, I knew the time, when others said it as well of you, and it is not long since, you were penned down, in a Black Bill to my Knowledge, as unfavoury Salt, with many others to be thrown out of the House of Commons; I pray, Sir, whether were those Rooters, that went about to root up that House, by Force of Arms, or Mr. Prideaux and others to give them Cause, at least in their Apprehensions.

*Mr. Attorney.* My Lord, A Legal Magistracy in England as now, he saith, in the least there is not, if there be no Magistracy, I will conclude, there is no Propriety, my Lord, left in this Nation; but Mr. Lilburn saith, there is no Magistracy, and if so then no Propriety.

*Lieut. Col. Lilburn.* It would be a very strange Argument, that you would infer, I wish you and I were to dispute that in Point of Law for our Lives, that to deny a Magistracy Legally Constituted, according to the Formalities of the Law, does not destroy Propriety; for indeed, Sir, Propriety is an Antecedent to Magistracy, and is first in being before it: but, Sir, to End the Dispute, and that owns the Law of England, (as I do) that distinguisheth *meum & tuum*, can never be a Destroyer of Propriety; I wish your practise were as consonant to Propriety as my Principles.

*Mr. Prideaux.* Read the 2 Pag. at the mark.

*Clerk.* Now, I say, considering that which is before declared, I cannot upon any Terms in the World, either with Safety, Justice, or Conscience, as things stand with me at present, give my Consent, but hinder (as much as I am able) all Addresses from me or any other, that shall own the Usurping Tyrants, as a Parliament, especially by Petition, (which was a Course,) (saith the pretended Parliament Solicitor, against the King, in his Case stated page 24.) which God's People did not take with Rehoboam, for they never petitioned him (although he was their Lawful Supreme Magistrate) but advised him, he refusing their Counsel, and hearkened to Young and Wicked Counsellors, and they Cry out, to thy Tents, O Israel, and make quick and short Work of it.

*Mr. Prideaux.* My Lord, here is Words again to make good as aforesaid, that the Parliament are Usurping Tyrants, read also Page 28.

*Clerk.* Read on. Page 23. In the Margent of the said Book: And if those very things should now be judged Treason, as they are and were in the Earl of Strafford; I wonder what should become off all our present Junctio at Westminster, and their new thing called a Counsel of State, undoubtedly, the most if not all of them, must go to Tyburn, or Tower-hill, there by a Halter, or Ax, to receive their just Deserts, Amen.

*Mr. Attorney.* There is an Amen pronounc'd to us, let him have it that deserves it, but to go on: Read the 11. pag. of his Book, called The Apprentices Out-Cry.

*Clerk reads 11. page.* We say, considering what is before premised,

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we are necessitated and compel'd to do the utmost we can, for our own Preservation, and the Preservation of the Land of our Nativity, and never by Popular Petitions, &c. Address our selves to the Men sitting at Westminster, any more, or to take any more Notice of them, than as of so many Tyrants and Usurpers ; and for time to come to hinder, ( as much and as far as our poor despised Interest will extend to ) all others whatsoever from subscribing, or presenting any more Popular Petitions to them. And only now as our last Paper refuge mightily Cry out to each other, of our intollerable Oppressions in Letters and Demonstrances, signed in the behalf, and by the Appointment of all the rest, by some of the stoutest and stiffest amongst us, that we hope will never Apostatize, but be able through the strength of God, to lay down their very Lives for the maintaining of that, which they set their hands to,

Mr. Prid: Read page 2.

Clerk reads on, Page 2. But even our Parliament (the very Marrow and Soul of all the Peoples Native Rights) put down, and the Name and Power thereof transmitted, to a Pickt-party of your forcible selecting: and such, as your Officers (our Lords and Riders) have often and frequently stiled no better than a Mock Parliament, a Shadow of a Parliament, a seeming Authority, or the like; pretending the continuance thereof, but till a New and Equal Representative, by mutual Agreement of the free People of England, could be elected, although now for subserviency to their Exaltation, and Kingship, they Prerogue and Perpetuate the same, in the Name, and under colour thereof, introducing a Privy Council; or as they call it a Council of State, of Superintendency and Suppression to all future Parliaments for ever, erecting a Martial Government, by Blood and Violence, impuled upon us.

Mr. Prid: Read page 3. at the mark.

Clerk. Page 3. Trade is decayed and fled, Misery, Poverty, Calamity, Confusion, yea, and Beggary, grown so sore and so extream upon the People, as the like never was in England, under the most Tyrannical of all our Kings, that were before these in present Power; since the days of the Conquerour himself, no Captivity, no Bondage, no Oppression like unto this, no Sorrow and Misery, like unto ours, of being enslaved, undone and destroyed by our large pretended Friends.

Mr. Prid: Read page 4.

Clerk. page 4. And yet nothing, but the groundless Wills and Humours, of those fore-mentioned Men of Blood rageth and ruleth over us; and is this all the Return and Fruit, that People are to expect from your Hands?

Mr. Prideaux. Take his Preparative to an Hue and Cry after Sir Arthur Haslerigge, and read page 2.

Clerk reads on. The Preparative to the Hue and Cry after Sir Arthur Haslerigge at page 2. in the Margent, that those Men that now

sit at Westminster, are no Parliament, either upon the Principles of Law or Reason.

Mr. Prideaux, Read page 3.

Clerk. page 3. They promise to amend, and to proceed according to the Form of the Law, as fully appears in their last fore-mentioned Declaration, and several others, as particularly the present Declaration, of this present Juncto against Kingship, dated the seventeenth of March, 1648.

Mr. Prideaux. Read page 4.

Clerk. page 4. But the said Sir Arthur Haslerigge, &c. more Arbitrarily, and more Trayterously than Strafford, having no Pretence of Regal, Legal, or Parliamentary Commissions, or Authority; no nor so much as from the present nothing, or Illegal Juncto, or the present Illegal thing called the Council of State, Mr. John Jordan now Member.

Mr. Attorney. My Lord, he doth declare who he Means by Juncto: Mr. Jordan, a Member of the present Juncto, the Pretended House of Commons, in the third Place, for the Proof of this first particular, I shall produce his Book, intituled, the Legal and Fundamental Liberties of England reviewed, &c. Read page 41.

Clerk reads, page 41. But, Sir, I say, no wonder, all the things foregoing rightly considered, they do own you now ( as Thomas Pride hath made you ) for the Supreme Authority of the Nation, although before they would neither submit to King nor Parliament, when ( it was a thousand times more unquestionable, both in Law and Reason than now you are, but fought against both King and Parliament, their Setters up, Conquered them, Repelled them, Subdued them, and Broke them both: and so Pull'd up by the Roots, all the Legal and Visible Magistracy and Authority in the Nation, and thereby left none but themselves, who stand in parallel to none ( as they managed their Business ) but to a Company of Murderers, Thieves and Robbers, who may justly be dispossessed; by the first Force that are able to do it; no pretended Authority, that they of themselves, and by their Swords can set up, having in the sight of either God or Man, either in Law or Reason, any more just Authority in them, than so many Alger Pirates, and Robbers upon the Sea have.

Lieut. Col. Lilburn. You read as I take it a second Edition, whether is that a second Edition or no?

Mr. Attorney. No, no: It is not so in the Indictment, it is no second Edition, but the first. Read page 56.

Clerk. page 56. To which I answer, first, That, that Company of Men at Westminster, that gave Commission to the High Court of Justice, to try and behead the King, were no more a Parliament by Law, nor a Representative of the People, by the Rules of Justice and Reason, than such a Company of Men are a Parliament or Representative of the People; That a Company of armed Thieves chuse and set a part to try, Judge, Condemn, Hang or Behead any Man that they please, or can prevail over by the Power of the Sword; to bring before them by Force of Arms, to have their

( 84 )

their Lives taken away upon pretence of Justice, grounded upon Rules meerly flowing from their Wills and Swords.

Mr. Prideaux. Read the Title Page.

Clerk. *The Legal Fundamental Liberties of the People of England, revived, asserted and vindicated, or an Epistle written the eighth of June, 1649. by Lieutenant Colonel John Lilburn, ( Arbitrary and Aristocratical Prisoner in the Tower of London, ) to Mr. Will. Lenthall Speaker, to the remainder of those few Knights, Citizens and Burgeses, that Colonel Thomas Pride, at his late Purge, thought convenient to leave sitting at Westminster, ( as most fit, for his and his Masters Designs, to serve their Ambitious and Tyrannical Ends, to destroy the Good Old Laws, Liberties and Customs of England, the Badges of our Freedom ( as the Declaration against the King of the 17. of March, 1648. page 23. calls them ) and by Force of Arms, to rob the People of their Lives, Estates and Properties, and Subject them to perfect Vassalage and Slavery, as he clearly evinceth in his present Case, &c. they have done ) and who ( in truth no otherwise than pretendedly stile themselves, the Parliament of England.*

Mr. Prideaux. Read page 2.

Clerk. *Sir, For distinction Sake, I will yet stile you, Mr. Speaker, although it be but to Colonel Pride's Juncto or Parliament sitting at Westminster, ( not the Nation's, for they never gave him Authority to Issue out Writts, to elect or constitute a Parliament for them, ) and a little below in the same second page, I accused Oliver Cromwel for a wilful Murderer, and desire you there to acquaint your House therewith, ( who then had some little hand of a Parliament Stamp upon it. )*

Mr. Prideaux. Read page 28.

Clerk. page 28. *The like of which Tyranny the King never did in his Reign, and yet by S. Oliver's means lost his Head for a Tyrant; but the thing that I principally drive at here, is to declare that Oliver and his Parliament now at Westminster ( for the Nation's it is not ) having plucked up the House of Lords by the Roots.*

Page 44. *So that if it be Treason to call this a \_\_\_\_\_  
\_\_\_\_\_ a Mock Parliament, yea and to say \_\_\_\_\_*

*and if this be true, for true it is, \* then there is neither Legal Justice, nor Justice of Peace in England.*

Mr. Prideaux. Read page 37.

Clerk. page 37. *For if they ever had intended an Agreement, why do they let their own lie dormant in the pretended Parliament ever since they presented it; seeing it is obvious to every knowing eye, that from the Day they presented it, to this hour, they have had as much Power over their own*

\* These Words cannot be found in page 44. but are in the Book it self, which time will not permit to read all over, and therefore at present it passeth lame and imperfect.

( 85 )

*own Parliament now sitting, as any School-master in England had over his Boys.*

Clerk. page 45. *For Your Interest and the King's, both being Interests of Trust, as your Declarations do plentifully and plainly declare; but especially your present Juncto's late Declaration against the late be-headed King, and Kingly Government.*

Mr. Prideaux. Read pag. 58.

Clerk. page 58. *And let the present Generation of swaying Men, that under pretence of Good, Kindness, and Friendship, have destroyed and trod under Foot all the Liberties of the Nation, and will not let us have a New Parliament, but set up by the Sword their own Insufferable, Insupportable, Tyrannical, Tyranny.*

Lieut. Col. Lilburn. I pray, Sir, are all these Quotations in the Indictment Verbatim? I do not remember that I heard them there.

Mr. Attorney. *No, We do not offer any Book but what is charged in the Indictment; for we do say, that he published those things among other Clauses and things in those Books; so that we bring in no Book that is not contained in the Indictment. Read page 64.*

Clerk. page 64. *That so that might Rule, Direct and Counsel their Mock-Parliament.*

Mr. Prideaux. Read page 68.

Clerk. page 68. *That that High Court of Justice was altogether Unlawful, in Case these that had set it up, had been an unquestionable Representative of the People, or a Legal Parliament; neither of which they are not in the least, but as they have managed their Business in opposing all their primitive Declared Ends, are a Pack of Trayterous self-seeking Tyrannical Men, Usurpers of the Name and Power of a Parliament.*

Mr. Attorney. Read page 72.

Clerk. page 72. *Then with much more Confidence say I, this that now sits is no Parliament, and so by Consequence, the High Court of Justice no Court of Justice at all.*

Mr. Attorney. *My Lord, that which we shall offer you next, is the Salva Libertate, which the Lieutenant of the Tower had from Mr. Lilburn himself, read at the mark.*

Clerk †. *A Salva Libertate, although I then told you I judged a Paper Warrant, ( although in Words never so formal ) coming from any pretended Power or Authority in England now visible, to be altogether Illegal; because the intruding General Fairfax and his Forces, had broke and annihilated all the Formal and Legal Magistracy of ENGLAND; yea the very Parliament it self; and by his Will and Sword ( absolute Conqueror like ) had most Tyrannically Erected and Set up; and imposed upon the free People of this Nation, a Juncto or Mock-Power sitting at Westminster; whom he and his Associates call a Parliament, who like so many Armed Thieves and Robbers upon the Highway, assume a Power by their own Wills, most Trayterously to do what*

they like ; yea and to fill the Land with their Mock or Pretended Magistrates, amongst the number of which, is the Pretended Attorney General ; in perfect Opposition of whom, to the utmost of my Might, Power, and Strength, I am resolv'd by Gods Gracious Assistance to spend my Blood and all that in this World is dear unto me, supposing him not ready and substantially worthy the Name of an English Free-man, that in some measure in this particular is not of my Mind.

Mr. Attorney. My Lord, in the Case of this Charge what Mr. Lilburn is pleas'd to say concerning me, I shall say no more but only this, I shall not do so by him I shall not spend my Blood against him, you see what he saith ; that the present Government is Tyrannical Usurped, and Unlawful ; that the Commons of England in Parliament assembled, are not the Supreme Authority, but a Junctio ; a Mock-Power, a Mock Parliament, a Company of Traytors that Rule merely by the Dictates of their own Will ; I could alledg more of his Books unto you, which have words in them very Notorious, and very Publick, he doth in express words say, that the Government is Arbitrary, Tyrannical, and a new Erected Raining, Inslaving, Robbing Government ; To stile them Tyrants, Usurpers, Traytors, parallel to none but Murtherers, Robbers, Thieves, no Parliament at all, but Thomas Prides Junctio and School boys, Destroyers of the Laws and Liberties of the Nation, the present Junctio ( Chimera's, Fooleries, and the like ) all these Expressions and many more, which I am sorry I have Occasion to repeat to you, that so much dirt should be thrown into the Face of any Magistrates of England. My Lords, these are now the best which do Rule ; My Lords, I hope you, and the Gentlemen of the Jury will take Notice of it, as to be very clear, pregnant, evident Proof, that Mr. Lilburn hath thus published and thus said ; and besides this you see what he does go too, he denies all Magistracy \*, so that now we are all alike, a Chaos, a Confusion and this he hath brought us too, or would have endeavour'd it ; my Lords, I shall not aggravate, and if I did say no more it were enough, but I come to the second general Head of the Charge, which is ; That he hath plotted and contriv'd to levy or raise Forces to subvert and overthrow the present established Government, in the way of a free State or Common-wealth ; my Lords, if I should say nothing more to the Jury, this that hath been already read is evident Proof of that, for certainly those that shall say that the Governors be Tyrants, that the Parliament is Tyrannical, that they are Men of Blood, Destroyers of Laws and Liberties ; this cannot be of any other Use, but to raise Force against them, for Subverting and Destroying of them, as he himself saith, as so many Weasels or Pole-cats, especially if

\* That's false, he doth no such thing, but at most saith the Army, hath destroyed all the Legal Magistracy of the Nation, and they are the Men that thereby are the real Levellers and Rooters.

\* if you consider to whom these words were declared, to the Army in General, especially to the Generals Regiment of Horse, that helped to Plunder and Destroy Mr. Lilburn's true Friends defeated at Burford, and some of which were most justly as Traytors executed.

My Lords, if I would say nothing more to the Jury but this, there is full and pregnant Proof already ; but yet, my Lord, further to shew the Malice of Mr. Lilburn's Heart, and that he did intend to raise Force, to incite and invite them to help him to Subvert and Destroy the Parliament, and for the Proof of this, read the fifth page of his Impeachment of High Treason against Oliver Cromwell.

Clerk read page 5 t. But my true Friends, I shall here take upon me the Boldness ( in regard of the great Destructions of the present Times ) to give a little further Advice to you, from whose Company or Society ( or from some of them ) hath begun, and issued out the most transcendent, clear, rational, and just Things for the Peoples Liberties and Freedoms, that I have seen or read in this Nation ; as your Notable Petition of May 20. 1647. burnt by the Hands of the Common Hangman, recorded in my Book called Rash Oaths unwarrantable, page 29, 30, 31, 32, 33, 34, 35. with divers other Petitions of that Nature, and the Petition of the nineteenth of January, 1647. recorded in the following Discourse, page 45, 46, 47, 48, &c. and the Masculine Petition of the eleventh of September, 1648 so much owned by Petitions out of several Counties, yea and by the Officers of the Armies large Remonstrance, from St. Albans of the sixteenth of November, 1648. page 67, 68, 69. The substance of all which, I conceive is contained in the Printed Sheet of Paper signed by my Fellow Prisoners Mr. William Walwyn, Mr. Thomas Prince, and Mr. Richard Overton, and my self, dated the 1. of May, 1649. and intituled, An Agreement of the Free People of England, &c. The Principles of which I hope and desire you will make the final Centre and unwavering Standard of all your Desires, Hazards, and Endeavours as to the future Settlement of the Peace and Government of this Distracted, Wasted, and Divided Nation ; the firm establishing of the Principles therein contained, being that only which will really and in good earnest marry and knit that Interest whatever it be that dwells upon them, unto the Distressed and Oppressed Commons or People of this Nation ; yea, the settling of which Principles, is that that will thereby make it evident and apparent unto all understanding People in the World, that the real and hearty Good and Welfare of this Nation, hath Cordially and in good earnest been that, that their Souls have hunted for, and thirsted after, in all the late Bloody Civil Wars and Contests ; all the Contests of the King's Party for

\* In calling Tyrants Weasels and Pole-cats, he hath said no more but what he hath learned out of St. John's own Argument, of Law against the Earl of Strafford ; at which you have no Cause to be angry, because they are the words of one of your own Brother Lawyers.

( 88 )

his Will and Prerogative, being meerly selfish, and so none of the Peoples Interest, and the Contest of the Presbyterians, for their make bate dividing Hypocritical Covenant no better in the least, and the present Contest of the present Dissembling Interest of Independants; for the Peoples Liberties in general. (read the following Discourse page 27, 28, 29. meerly no more but self in the highest) and to set up the false Saint, and most desperate Apostate, Murderer, and Traytor Oliver Cromwel, by a pretended Election of his Mercenary Soldiers, under the false Name of the Godly Interest, to be King of England, &c. (that being now too apparently, all the intended Liberties of the People that ever he fought for in his Life) that so he might Rule and Govern them by his Will and Pleasure, and so destroy and envasalize their Lives and Properties to his Lusts, which is the Highest Treason that ever was committed or acted in this Nation in any Sense or Kind; either 1. in the Eye of the Law, or 2. in the Eye of the Antient (but yet too much Arbitrary) Proceedings of Parliament; or 3. in the Eye of their own late declared Principles of Reason (by Pretence of which and by no Rules of Law in the least) they took away the late King's Head, which if there were any Law or Justice in England to be had, or any Magistrates left to execute it (as in the least there is not) &c.

Mr. Prideaux. Read page 7.

Clerk page 7. But the Principles of the foresaid Agreement being so detestable and abominable to the present ruling Men, as that which they know will put a full End to their Tyranny and Usurpation, and really ease and free the People from Oppression and Bondage; that it is something dangerous to those that go about the Promotion of it; yet I shall advise and exhort you vigorously, to lay all Fear aside, and to set on Foot the Promotion of it, in the same Method we took for the Promotion of the foresaid Petition of Jan. 19. 1649. laid down in the following Discourse, p. 23, 24, 25. and write to your Friends in every Country of England, to chuse out from among themselves and send up some Agents to you; (two at least from each Country, with Money in their Pockets to bear their Charges) to consider with your culled and chosen Agents of some effectual Course speedily to be taken, for the settling the Principles thereof, (as that only which in an earthly Government can make you Happy) or at least to know one anothers minds in owning and approving the Principles thereof; that so it may become to you and your Friends, your Center, Standard, and Banner to flock together too in the time of these Foreign Invasions and Domestick Insurrections, that are like speedily to bring Misery enough upon this Poor and Distressed Nation; and unanimously resolve and engage one to another, neither to side with, or fight for the Chimera's Fooleries and Pride of the present Men in Power; nor for the Prince's Will, or any other base Interest whatsoever (the which if you should fight for, it would be but an absolute Murdering of your Brethren and Country-men you know not wherefore) unless he or they will come up to those Just, Righteous, and Equitable Principles therein contained, and give rational and good Security for the constant Adhering thereunto; and upon such Terms I do not see but you may justifiably be-  
fore

( 89 )

fore God or Man, joyn with the Prince himself; yea, I am sure a thousand times more justly than the present ruling Men (upon a large and serious debate) joyned with Owen-Roe-Oncale, the grand bloody Rebel in Ireland; who if we must have a King, I for my part had rather have the Prince, than any Man in the World, because of his large pretence of Right, which if he come not in by Conquest by the hands of Foreigners (the bare attempting of which may apparently Hazard him the loss of all at once, by gluing together the now divided People, to joyn as one Man against him) but by the hands of Englishmen, by Contract upon the Principles aforesaid (which is easie to be done) the People will easily see, that presently thereupon they will enjoy this transcendent Benefit (he being at Peace with all Foreign Nations, and having no regal pretended Competitor (viz. the immediate disbanding all Armies and Garisons, saving the Old Cinque-parts, and so those three grand Plagues of the People will cease; viz. Free-quarter, Taxations, and Excise, by means of which, the People may once again really say they enjoy something they can in good earnest call their own, whereas for the present Army to set up the false pretended S. Oliver (or any other) as their elected King, there will be nothing thereby from the beginning of the Chapter to the End thereof but Wars, and the cutting of Throats Year after Year, yea, and the absolute keeping up of a perpetual and everlasting Army, under which the People are absolute and perfect Slaves and Vassals, as by woful Experience they now see they perfectly are; which Slavery and absolute Bondage is dayly like to encrease, under the present Tyrannical and Arbitrary new Erected Robbing Government.

Mr. Attorney. He hath blown the Trumpet for all that will to come in, he hath set up his Center, he would have it to be a Standard for all his Friends to flock to him, and to make them the more quick in betaking them to their Arms, he hath Falsly and Maliciously there said, that the Parliament had joyued with Owen-Roe-Oncale, which I can assure all that hear me this Day, the Parliament always Detested, Abominated, Disavowed, and Declared against, and never had any thoughts that Way, my Lord, the false Imputations of his laid upon the Parliament, are almost numberless. But in the second place, I come to that pretty Bauble that's of his own making, The Agreement of the People, dated at the Tower, 1 of May, 1649. and shall desire your Lordships to judge whether this Agreement of the People which he made, and his Friends then in the Tower, and intituled it, The Agreement of the People, as signed by them, for they called it, An Agreement of the Free People of England: strikes not at the very Root of all Government.

Lieut. Col. Lilburn. Pray, Sir, look whether it be licensed or no, according to the Law of the Nation, and if it be licensed by publick Authority, how comes it to be Treason, that's very strange.

M. Attorney. It is so.

Lieut. Col. Lilburn. Pray, Sir, go and Question the Licenser then.

Mr. Attorney. We must Question the Author, the Licenser will not excuse it, read page 2.

Clerk.

( 90 )

Clerk read page 2. *This Agreement being the ultimate End and full Scope of our Desires and Intentions concerning the Government of this Nation. And a little below after the long and tedious Prosecution of a most Unnatural, Cruel, Home-bred War, occasioned by Divisions and Distempers amongst our selves, and those Distempers arising from the uncertainty of our Government, and the Exercise of an Unlimited or Arbitrary Power, by such as have been trusted with Supreme and Subordinate Authority, whereby multitudes of Grievances and intollerable Oppressions have been brought upon us; and finding after eight Years Experience and Expectation, all Endeavours hitherto used, or Remedies hitherto applied, to have increased rather than diminished our Distractions; and that if not speedily prevented, our falling again into Factions and Divisions, will not only deprive us of the Benefit of all those wonderful Victories God hath vouchsafed against such as sought our Bondage, but expose us first to Poverty and Misery, and then to be destroyed by foreign Enemies.*

Mr. Attorney. Read page 3.

Clerk page 3. *Agrees to ascertain our Government, to abolish all Arbitrary Power, and set bounds and limits, both to our Supreme and all Subordinate Authority, and remove all known Grievances, and accordingly do declare and publish to all the World that we are agreed as followeth. Page ibid. That the Supreme Authority of England, and the Territories therewith incorporate, shall be and reside hence forward in a Representative of the People, consisting of four hundred Persons, but no more.*

Mr. Prideaux. *The manner of the Choice of whom, &c. they leave to this Parliament. Read a little below.*

Clerk. *All things concerning the Distribution of the said four hundred Members proportionable the respective Parts of the Nation, the several Places for Election, the manner of giving and taking, of Voices, with all Circumstances of like Nature, tending to the completing and equal Proceedings in Elections; as also their Salary is referred to be settled by this present Parliament, in such sort as the next Representative may be in a certain Capacity to meet with safety, at the time herein expressed; and such Circumstances to be made more perfect by future Representatives.*

*We agree that this present Parliament shall End the 1 Wednesday in August next, 1649. thenceforward to be of no Power or Authority; and in the mean time shall Order and Direct, the Election of a New and Equal Representative, according to the Intent of this our Agreement, and so as the next Representative may meet and sit in Power and Authority, as an effectual Representative upon the Day following; namely, the 1 Thursday of the same August, 1649.*

Page ibid. *We agree, if the present Parliament, shall omit to Order such Election, meeting of a New Representative, or shall by any means be hindered from the performance of that Trust, that in such Case we shall for the next Representative proceed, in electing thereof in those Places, and according to that manner and number formerly accustomed in the Choice*

( 91 )

*of Knights and Burgesse; observing only the Exceptions of such Persons from being Electors or Elected, as are mentioned before in the 1, 3, and 4th. Heads of this Agreement; it being most unreasonable, that we should either be kept from now frequent and successive Representatives, or that the Supreme Authority should fall into the hands of such as have manifested Disaffection to our Common Freedom, and endeavoured the Bondage of the Nation. And for preserving the Supreme Authority from falling into the Hands of any whom the People have not or shall not chuse. We are resolved and agreed (God willing) that a New Representative shall be upon the 1 Thursday in August next aforesaid, the ordering and disposing of themselves, as to the Choice of a Speaker, and the like Circumstances, is hereby left to their Discretion; but are in the extent and exercise of Power, to follow the Direction and Rules of this Agreement; and are hereby Authorized and required according to their best Judgments, to set Rules for future equal Distribution and Election of Members, as is herein intended and enjoyned to be done, by the present Parliament.*

Mr. Attorney. Read page 8.

Clerk. page 8. *And all Laws made, or that shall be made, contrary to any part of this Agreement, are hereby made null and void.*

Mr. Attorney. *My Lords, hear by this Agreement of the People, that Mr. Lilburn hath published to the World, in which, my Lord, he had designed how many the Supreme Authority shall consist of, the time when the Parliament shall dissolve, as also the time when his own Parliament shall meet; this Parliament to be dissolved the first Wednesday in August, 1649. all Laws contrary to this to be null and void; and in it you shall find some Expressions of Treason in the height, that whosoever shall do contrary to it, shall be most severely punished: In the next Book before this, it is desired by him, that this Agreement of the People may be the Center the Banner and Standard of all his Friends, and that they go on vigorously with it; which is, my Lord, to dissolve this Parliament, and to put on this new one of Mr. Lilburn's appointing: This we conceive which is of Mr. Lilburn's appointing, would (if effected) be an absolute Subversion of this in being, and this is High Treason. My Lord, we shall go on with more yet, and that is, with his Out-Cry; my Lord, if you please to see the Title, and see to whom it is directed, what was intended to be done with it; it is intituled, An Out-Cry of the Young-Men and Apprentices of London, directed (August 29. 1649.) in an Epistle to the Private Soldery of the Army, especially all those that signed the Solemn Engagement at New-market-heath the 5. of June, 1647. but more especially, to the private Soldiers of the Generals Regiment of Horse, that helped to Plunder and Destroy the Honest and True-hearted Englishmen, Trayterously defeated at Burford the 15th May, 1649.*

Mr. Attorney. *A good Incouragement, they were Trayterously defeated at Burford; but we are Rebels and Traytors, and our Army Murderers, and Butchers, for giving some of those declared Traytors their due Deserts, but that you may see his tendency by this Book read, page 11.*

Clerk.

( 92 )

*Clerk. page 11.* We say, considering what is before premised, we are necessitated, and compelled to do the utmost we can for our own Preservation, and for the Preservation of the Land of our Nativity, and never (by Popular Particulars) address our selves to the Men sitting at *Westminster* any more, or to take any more Notice of them than of so many Tyrants, and Usurpers, and for time to come to hinder (as much and as far as our poor despised Interest will extend to) all others whatsoever from subscribing or presenting any more Popular Petitions to them. And only now as our last Paper-refuge, mightily Cry out to each other, of our intollerable Oppressions in Letters, and Remonstrances signed in the behalf and by the Appointement of all the rest, by some of the Stourest and stiffest amongst us that hope will never Apostatize, but be able through the Strength of God to lay down their Lives for the maintaining of that which they set their Hands to.

You our Fellow-Country-men (the private Soldiers of the Army) alone being the Instrumental Authors of your own Slavery and ours; Therefore as there is any Bowels of Men in you, any love to your Native Country, Kindred Friends or Relations, any spark of Conscience in you, any hopes of Glory or Immortality in you, or any Pity, Mercy, or Compassion, to an Inslaved, Undone, Perishing, and Dying People; O help, help, save and redeem us from total Vassalage and Slavery, and be no more like Brute Beasts, to fight against us, or our Friends, your loving and dear Brethren after the Flesh, to your own Vassalage, as well as ours.

And as an assured Pledge of your future Cordialness to us (and the true and real Liberties of the Land of your Nativity) we beseech and beg of you (but especially those amongst you that subscribed the *Solemn Engagement at Newmarket-Heath, the 5. of June, 1647.*) speedily to chuse out amongst your selves two of the ablest, and constantest faithful Men amongst you in each Troop and Company, now at last (by corresponding each with other, and with your honest Friends in the Nation) to consider of some effectual Course (beyond all Preerences and Cheats) to accomplish the real End of all your *Engagements and Fightings, viz.* the settling of the Liberties and Freedom of the People, which can never permanently be done, but upon the sure Foundation of a Popular Agreement; who (*viz. the People*) in Justice, Gratitude, and common Equity, cannot chuse but voluntarily and largely make better Provision for your future Subsistence (by the Payment of your Arrears (then ever your Officers, or this pretended Parliament intends, or you can rationally expect from them; Witness their cutting off three parts of your Arrears in four, for free Quarter; and then necessitating Abundance of your Fellow-Soldiers (now cashiered, &c.) to sell their Debentures at two Shillings six Pence, three Shillings, and at most four Shillings per l.

*Mr. Attorney. See, my Lord, here we are still Tyrants, Usurpers, introducing Government, Oppressions of the People, and Mr. Lilburn is resolved with his Friends to joyn together, and to lay down their very Lives for this: This I think is a Trumpet blown aloud for all the Discontented People*

( 93 )

*People in the Nation, to flock together, to root up and destroy this Parliament, and so the present Government: but read also in the same Book, page 9.*

*Clerk. page 9.* For the effectual Promotion of which said Agreement, we are necessitously compelled to resolve in close Union to joyn our selves, our Commissioners (chosen for that end) in Council, with our foresaid *Burford-friends*, or their Commissioners, and to resolve to run all Hazards to Methodize all our honest Fellow-Apprentices, in all the Wards of *London*, and Out-Parishes, to chuse out their Agents to joyn with us, or ours, to write exhortative Epistles to all the Honest-hearted Free-men of *England*, in all the particular Countries thereof, to Erect several Councils amongst themselves; out of which we shall desire (and exhort them) to chuse Agents or Commissioners (impowered and intrusted by them) speedily to meet us, and the Agents of all our (and the Agreement of the People) Adherents at *London*, resolvedly to consider of a speedy and effectual Method and Way how to promote the Election of a New and Equal Representative, or Parliament: by the Agreement of the Free People, seeing those Men that now sit at *Westminster*, and pretendedly stile themselves the Parliament of *England*; and who are as they say (although most falsely) in the Declaration for a Free State, dated *March 17. 1648. pag. 27.* Intrusted, and Authorized by the Consent of all the People of *England*, whose Representatives they are, make it their Chiefest and Principallest Work, continually to part and share amongst themselves, all the great Rich, and Profitablest Places of the Nation; as also, the Nations publick Treasure and Lands, and will not ease our intollerable Oppressions; no not so much as of late receive our popular Petitions, having upon Thursday last, *August 23. 1649.* rejected that most Excellent of Petitions ready at their door to be presented to them by divers honest Men (our true-hearted Neighbours of *Surrey*) the true Copy of which, for the worth of it, although it be at large already Printed in *Friday Occurrences*, and the *Tuesday Moderate*, we desire here to insert.

*Mr. Attorney. My Lord, this is a loud one, whom does he joyn us withal, but only with those very Men that justly suffered Death, many of them for it? My Lord, now it's resolved that these Men shall be closely joyned with them, and what to do? still to promote The Agreement of the People, that which Mr. Lilburn hath hatched, and that must be the Baby that those declared open Traytors and Rebels, that Mr. Lilburn will joyn with, must nourish up. My Lord, we shall go on further to shew what Mr. Lilburn drives at, which is not much differing from us, for he would have a Free State, but, my Lord, this that is now in being, it doth not go in Mr. Lilburn's way, and therefore it must be overthrown by Force and Arms, that so way may be made for his new \* Common-wealth,*  
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\* And yet a few Days before his Tryal, several principal Leading Members



(94)

we shall go further on, my Lord, and in the next Place quote his Book intitled, The Legal Fundamental Liberties of the People of England revived, asserted and vindicated, &c. Read page 57.

Clerk. Read page 57. And the present Setters up of this Tyrannical new Common-wealth, considering their many Oaths, Covenants, Promises, Declarations and Remonstrances to the contrary, (with the highest Promises and Pretences of Good for the People and their declared Liberties, that ever was made by Men) are the most Perjured, Perfidious, False, Faith and Trust-breakers, and Tyrants that ever lived in the World, and ought by all rational and honest Men, to be the most detested and abhorred of all Men that ever breathed, by how much the more under Pretence of Friendship and Brotherly Kindness, they have done all the Mischief they have done, in destroying our Laws and Liberties.

Mr. Attorney. My Lord, and you, Gentlemen of the Jury, you see Mr. Lilburn hath been pleased very often to give the Name of Tyrants to the Parliament; I would give no other Instance, nor shew no other example but Mr. Lilburn himself, to disprove himself, and with much confidence affirm it, that never State had before (neither King nor State) since the Foundations of it: so much enmity, nor have endured with so much Patience any Man whatsoever, as they have done Mr. Lilburn, who notwithstanding all his Trayterous Provocations, and Trayterous Designs, undertaken against them, is yet alive at this Day and now hath fair play to plead for his Life, I would take him for his own Confuter, and see by all that has been done by him, and see if he could make good his actions, and make good the Parliaments dealing with him therefore, can be demonstrated by him, to prove them Tyrants. My Lord, I can hardly forbear to see, and hear his dangerous and desperate Expressions, to invite all People for to take up Arms against the Parliament to cut their Throats like Pole-cats and Weasels. My Lords, here to stile them the most Perfidious, Perjured, False, Faith and Trust-breakers, and Tyrants that ever lived in the World; and to be the most abhorred and detested of all the People, above all Men that ever breathed, O insufferable, and the highest of Treasons!

Lieut. Col. Lilburn. Sir, all the Wit of all the Lawyers in England, could never bring it within the compass of High Treason, by the Old and Just Laws of this Nation, that abhors to oppress Men contrary to Law, and then if they seem but to cry out of their Oppressions to make them Traytors for Words.

Mr. Attorney. I am Confident the least Lawyer in England, would have brought this within the Statute of Treason of the 25. Ed. 3. Ch. 2. My

Members of the House and Council of State told his Wife, and several other of his Friends, that Mr. Lilburn was turned Cavalier, and had joyned with the Prince, and they had several Letters under his own hand to prove it.

(95)

My Lords, you shall see there is none escape, the Parliament with him are Tyrants, Traytors and Usurpers; and therefore he stirs up the People to destroy them. But in the third Place, you shall see what Titles he gives to my Lord General Fairfax, and his Chief Officers, that, my Lord, he that reads the Books and doth not know the Persons; he would think that they were Musters and not Men, although they are so Famous and Glorious, that all the World have rung of them to their Praise. But saith he, never was there more glorious Declarations made by Men than by them, and yet never performed any of them; Nay, he doth not only call them also Covenant and Engagement-breakers; but he calls the Lord General, Tyrant, Murtherer, and what not: And the Officers, Perfidious Officers. My Lords, what I observed in the last Clause of the Act is, that whosoever goes about to draw the Soldiers from their Obedience to their Superiour Officers, or from their Obedience to the present Government, that is High Treason, and this likewise we shall find him Guilty of, in his Legal Fundamental Liberties of England inserted and vindicated, it is in the first side of the Epistle that in the first place I pitch upon, read it.

Clerk. pag. 1. of the Epistle. I positively accuse Mr. Oliver Cromwel, for a wilful Murtherer, (and desire you to acquaint your House therewith) for Murthering Mr. Richard Arnold near Ware.

Mr. Attorney. Which Man, my Lord, was condemned for a Mutineer by a Council of War, where the Lord Lieutenant of Ireland was but one Member, and the Parliament gave him, and the rest of that Council thanks, for shooting that mutinous Soldier to Death. And yet, Mr. Lilburn calls him Murtherer therefore; and this is laid to my Lord Lieutenant's Charge for his part.

Lieut. Col. Lilburn. Doth not the Petition of Right absolutely condemn all such Acts in time of Peace, when the Courts of Justice are open, and the Judgment of the Earl of Strafford doth abundantly condemn it, who lost his Life for a Traytor, for doing the very same Act in kind and likeness, at that time, when he in the Eye of the Law, was as Legal a General, as the General was that condemned that Man.

Mr. Attorney. My Lords, ———

Lieut. Col. Lilburn. I pray, Sir, hear me out; and sure I am, the Declarations of all the Powers extant in England, ever since, hath been to maintain the Petition of Right inviolably; yea, even those that are now in present Power; and if the Petition of Right be true, to shoot Soldiers, as Arnold was, is absolute Murder: Nay further, if the Judgment of the Parliament upon the Earl of Strafford for such an Act be Legal; then all those that had a hand in shooting that Soldier, are Traytors, and ought to die for it, as well as Strafford.

Clerk. Reads on the second side in the Epistle. Of all which Crimes and Charges, and all your others against the King, contained in your foresaid Declaration, I know not three of them, but Cromwel and his Confederates, in your pretended House and Army, are as Guilty of the like

( 96 )

like in kind, though under a new Name and Notion, as the King was of the forementioned, if not more Guilty.

*Mr. Prideaux. Read page 35.*

*Clerk. Page 35.* But alas poor Fools! we were merely Cheated and Cozened; it being the principal Unhappiness to some of us, as to the Flesh, to have our Eyes wide open, to see things long before most honest Men come to have their Eyes open; and this is that which turns to our Smart and Reproach, and that which we Commissioners feared at the first, *viz.* that no Tye, Promises, nor Engagements were strong enough to the Grand-juglers and Leaders of the Army, was now made clearly manifest; for when it came to the Council, there came the General, *Cromwel*, and the whole Gang of Creature-Colonels, and other Officers, and spent many Days in taking it all in Pieces, and there *Ireton* shewed himself an Absolute King, if not an Emperour; against whose Will no Man must dispute: and then *Shuttlecock*, *Roe* their Scout, *Okey*, and Major *Barton* (where *Sir Hardress Waller* late President) begun in their open Council, to quarrel with us, by giving some of us base and unworthy Language, which procured them from me a sharp retortment of their own baseness and unworthiness into their Teeth, and a Challenge from my self into the Field; besides, seeing they were like to fight with us in the room in their own Garrison, which when *Sir Hardress Waller* in my ear reproved me for it, I justified it, and gave it him again, for suffering us to be so affronted; and within a little time after, I took my leave of them for a pack of dissembling jugling-Knaves: amongst whom in Consultation, ever thereafter I should scorn to come (as I told some of them,) for there was neither Faith, Truth, nor common Honesty among them; and so away I went to those that chose and intrusted me, and gave publicly and effectually (at a set-meeting appointed on purpose) to divers of them, an exact Account how they had dealt with us, and Cozened and Deceived us; and so absolutely discharged my self; from meddling or making any more, with so Perfidious a Generation of Men, as the great Ones of the Army were; but especially the Cunningest of *Machavilians*, Commissary *Henry Ireton*.

*Mr. Attorney. Read pag. 37. at the mark.*

*Clerk. page 37.* Which the General and his Council knew well enough: and I dare safely say it upon my Conscience, that an Agreement of the People, upon Foundations of just Freedom, gone through with, is a thing the General, and the Chiefest of his Council, as much hates, as they do Honesty, Justice, and Righteousness (which they long since abandoned) against which, in their own Spirits, they are absolutely resolved (I do verily believe) to spend their Hearts blood, and not to leave a Man breathing in *English* Air (if possibly they can) that throughly and resolutely prosecutes it; a New and Just Parliament being more dreadful to them, than the great Day of Judgment, so much spoken of in Scripture; and although they have beheaded the King, yet I am confidently perswaded, their Enmity is such at the Peoples Liberties, that they would sooner run

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( 97 )

the hazard of letting the Prince in, to Reign in his Father's stead, than further really a just Agreement, or Endeavour a New Parliament rightly constituted.

*Mr. Attorney. Read page 38.*

*Clerk. page 38.* When as alas! it is as visible, as the Sun when it shineth in its glory and splendor, that *Korah*, *Dathan*, and *Abiram*, of Old, were never such Rebels against Authority, as the General and his Council are; nor the Anabaptists at *Munster*, with *John of Leyden*, and *Buperdullion*, were never more Contemners of Authority; nor *Jack Straw*, nor *Wat Tyler*; nor all those Famous Men, mentioned with a black Pen in our Histories, and called Rebels and Traytors, can never be put in any Scale of equal Ballance, for all manner of Rebellions and Treasons, against all sorts and kinds of Magistracy, with the General and his Council.

*Mr. Attorney. See, my Lord, and you, Gentlemen of the Jury, you see Mr. Lilburn, gives the General and his Officers as bad Titles, as he can give the worst of Rebels and Traytors, or the worst of Men; but we go on to his Out-Cry; read the Title of it.*

*Clerk. An Out-Cry of the Young-men and Apprentices of London, page 8.* where it is thus: Sure all Sense and Compunction of Conscience is not totally departed from you.

*Mr. Attorney. If it please you, my Lord, because the Jury may observe it, The Book is directed to the Soldiers of the Army, and that in an Out-Cry, &c. now read page 8.*

*Page 8.* Sure all Sense and Compunction of Conscience is not totally departed from you; hear us therefore, in the earning Bowels of Love and Kindness, we intreat and beseech you with Patience, and do not abuse us for complaining and crying out; for the Knife hath been very long at the Throats of our Liberties and Freedoms, and our Burthens are too great and too many for us; we are not able to bear them, and contain our selves; our Oppressions are even ready to make us despair, or forthwith to fly to the prime Laws of Nature, *viz.* the next violent Remedy at hand, light it where it will, or upon whom it will: they are become as devouring Fire to our Bones ready to burn us up; rendring us desperate and careless of our Lives; Prisoning those that are already dead, above those that are yet living, who are rid of that Pain and Torment, that we do and must endure, by sensibly seeing and beholding not only the dying, but the Daily Burial of our Native Liberties and Freedoms; that we care not what becomes of us, seeing that we are put into that Original State, or Chaos of Condition; wherein lust is become a Law. Envy and Malice are become Laws, and the strongest Sword rules and governs all by Will and Pleasure; all our Ancient Bondaries and Bondmarks are pull'd up by the Roots, and all the Tyes and Bonds of Human Society in our *English* Horizon totally destroyed, and extirpated; Alas for pity! we had rather dye, than live this Life of languishing Death, in which our Masters possess nothing (to buy themselves or us Bread, to keep us alive)

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( 98 )

that they can call their own : therefore it's no boot for us to serve out our times, and continue at our drudging Trades, while those Oppressions, Cruelties, and Inhumanities are upon us, and the rest of the People; exposing thereby not only the Nation to domestick Broyls, Wars, and Blood-sheds ( wherein we are sure our Bodies must be the principal Buts ) but to Foreign Invasions, by *France, Spain, Denmark, Sweed-land, &c.* as was well observed by our endeared and faithful Friends, of the forementioned late Treacherously defeated Party at *Burford*, in their Book of the 20. of *August, 1649.* intituled, *The Levellers vindicated, or, the Case of their 12. Troops truly stated,* pag. 11, 12. which we cannot but seriously recommend ( with them ) to your serious Perusal and Judgment; and desire to know of you ( but especially the private Soldiers of the Generals Regiment of Horse, which we understand had a hand in seizing upon, and plundering our true Friends at *Burford* ) whether you do own the abominable and treacherous Dealings of your General and Lieutenant General *Cromwel*, and their Perfidious Officers with them, or no, that so we may not condemn the Innocent with the Guilty, &c.

Mr. Attorney. Read page 11.

Clerk. Page 11. You our fellow Country-men ( the private Soldiers of the Army ) alone, being the Instrumental Authors of your own Slavery and ours; therefore as there is any Bowels of Men in you, any Love to your Native Country, Kindred, Friends, or Relations, any Sparks of Conscience in you, any Hopes of Glory or Immortality in you, or any Pity, Mercy or Compassion to an Enslaved, Undone, Dying, Perishing People; O Help, Help, Save and Redeem us from total Vassalage and Slavery, and be no more like brute Beasts, to fight against us or our Friends, &c.

And as an assured Pledge of your future Cordialness to us, ( and the true and real Liberties of the Land of your Nativity ) we beseech and beg of you ( but especially those amongst you, that subscribed the solemn Engagement, at *New-market* the 5th of *June, 1647.* ) speedily to chuse out from amongst your selves two of the ablest, and constantest faithful Men amongst you, in each Troop and Company, now at last ( by corresponding each with other, and with your honest Friends in the Nation ) to consider of some effectual Course ( beyond all Pretences and Cheats ) to accomplish the real End of all your Engagements and Fightings, viz. the settling the Liberties and Freedoms of the People, which can never be permanently done, but upon the sure Foundation of a popular Agreement, who ( viz. the People ) in Justice, Gratitude, and common Equity, cannot chuse but voluntarily and largely make better Provision for your future Subsistence, than ever your Officers, or this pretended Parliament intends, &c.

Mr. Attorney. Read the Title of his Impeachment.

Clerk. An Impeachment of High Treason against *Oliver Cromwel*, &c.

Mr. Attorney. Read page 2.

Clerk.

( 99 )

Clerk. Page 2. But I shall rather desire and advise you, by Letter like your selves, to address your selves to the Lord *Fairfax*, by the Sword of whom and his Soldiers, I am now in Prison for my Honest and Innocency, and nothing else, and demand my Liberty of him; if he refuse print it, and do as God and Reason shall direct you; for it was his and his Soldiers Force, that fetcht me out of my Bed the 28th of *March, 1649.* without all shadow of Law or Justice; and against the tenour of all their own Declarations, the particular Pages of which you may read in my following Letter to Mr. *Holland*, page 5. and by Force of Arms carried me to *White-Hall*, and then to *Darby-house*, before a Company of Men that in Law had no more Power to commit my Body to Prison, than so many Thieves and Robbers upon *Suiters-hill* have, who by the Rules of their own Wills, ( as in the second Edition of the Picture of them, I have fully declared ) sent me by Force of Arms to the Tower: for all my short Eternity in this World.

But I entreat you seriously to consider, that I cannot advise you to make address to him as the General of the Nation's Forces, for he is no such thing: but is merely a great Tyrant, standing by the Power of his own Will, and a strong Sword, born by his Vassals, Slaves and Creatures, having no Commission to be General, either from Law, the Parliament, or from the prime Laws of Nature and Reason.

Mr. Attorney. Read. An Out-Cry of the Young-men and Apprentices, page 3.

Page 3. Your heart seems to us as obdurate, as the flinty Rock, as Savage and Inhuman, as if the Flesh and Blood, the Bones and Marrow of the People were become your Meat.

Mr. Attorney. Stay, Mr. Broughton: The Fury will take Notice, that this is direct to the Soldiers of the General's Regiment, this speaks to them.

Clerk Reads on. Directed ( *August 29. 1649.* in an Epistle to the private Soldiery of the Army especially, ) all those that signed the solemn Engagement at *New-market* Heath the fifth of *June, 1649.* but more especially to the private Soldiers of the General's Regiment of Horse.

Mr. Attorney. Now, read page the 3.

Clerk. Page 3. Your Hearts seem to us as obdurate, as the flinty Rock, as Savage and Inhuman, as if the Flesh and Blood, the Bones and Marrow of the People were become your Meat, as already it is in effect, and instead of Incouragement and Support to our true Friends, and real Relievers, ( as least in faithful Desire and Endeavour ) as shall stand in the Gap betwixt our Destroyers and Us, always, and means are used to Impoverish, Destroy and Suppress them, and in them to break and Vassalage the Spirits of all the *English*, which in all Ages have had the Preheminencies of other Nations, that there may not be so much of Gallantry or Courage left amongst the People, that one amongst them shall dare to assert or maintain their Freedoms. And a little below, if any do but Murmur and Complain, presently their Houses as with Furies, are

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( 100 )

B. set, with armed Mercenary Janisaries, Guards and Sentinels set upon their Doors and Passages.

Mr. Attorney. My Lord, and you, Gentlemen of the Jury, you hear what Stuff this of Mr. Lilburn's is, yea, such Stuff as that it would make any Man loath to bear it: The last Clause of the Act is, if any Person not being an Officer, Soldier, or Member of the Army, shall Plot, Conceive or Endeavour to stir up any Mutinies in the Army, or to withdraw any Officers or Soldiers from their Obedience to their Superiour Officers, or to present Government; It is High Treason, you have here the several Books read to you, and the Calumniation laid upon the Chiefest of them to stir the rest up to Mutinies against them, but they are very well known, and therefore nothing that Mr. Lilburn can say will stick upon them, to their Prejudice. But, my Lord, you see here, and you of the Jury, how he appeals from the Officers to the Soldiers interrogates, to know what they could do, and whether they will acknowledge they will own them, and not fight against them, and what Aid and Assistance they will give to him and his Friends, against their own General, and the rest of their Superiour Officers; You see also what he calls that Noble General, that all the World doth Honour, and his Fame wrings through the World, and yet he calls him a grand Tyrant, standing by the Power of his own Will, and a strong Sword, a Destroyer of the Parliament, of the Laws and Liberties of England, you see what he calls the common Soldiers: Furies and Mercenary Janisaries, which none but Turks have. You have heard the several Charges proved unto you, for my part I think it is as clear as Noon-day. We have not raised any Advantage upon any slipping Words that have slipt from him, which we might have done, and I could have urged some more Witnesses, to have proved his Books, published by him, to publick View, though when he comes in the Face of the publick Court of Justice, he will not own them, which shews his Design to be the more dangerous; he will Write, Print, Publish, Bespatter, and Reproach: yea, and raise Tumults and Rebellion in a Clandestine Way, but if we chance to Question him therefore, he will not own it, you see we have been feign to fetch it out of the Fire, and yet this is one of England's and its Liberties Valiant Champions.

Lieut. Col. Lilburn. You have done no more to me than the Scribes and Pharisees did to Jesus Christ, and in my dealing with you, I have but walked in the steps of my Lord and Master, Jesus Christ and his Apostles. For I am sure of it Jesus Christ, in his Pilgrimage on Earth, Freely, Openly and Publickly taught and declared himself to be the Son of God, the Messiah or Saviour of the World, that was Prophefied of, and yet when he came amongst the Scribes and Pharisees, and Pilate the Roman Governour, who by Questions went about to insnare him, he confesseth nothing but faith, I speak openly to the World, I ever taught in the Synagogues and in the Temple whither the Jews always resort, and in the Secret have I said nothing, why askest thou me? ask them which heard me, what I have said unto them, behold, they know what I have

( 101 )

have said; and when Pilate adjured him to Answer him, whether he was such a one or no, well saith he, thou sayest it: So say I, thou Mr. Prideaux sayest it, they are my Books, but prove it.

Mr. Attorney. But I think here are enough, and too many, and therefore, Gentlemen of the Jury, if you Respect the Government of the Parliament, the Honour of the Council of State, the Honour of the Nation, or of the Army, or the Preservation of the Law of the Nation you cannot say, but that the Prisoner is Guilty of such Crimes and Treasons, as he is now accused of and accordingly find him so; for it cannot be supposed that you will lay him in a single Ballance, against the Honour of all the Powers in the Nation and also the Peace thereof.

Fore-man. We desire the Act of Treasons to make use of.

Lieut. Col. Lilburn. I beseech you, hear me a few words, they desire to have it along with them. Sir, with your Favour, I shall humbly crave Liberty to speak a few words, I shall keep me close to that, which is my Right and my Duty, and that is to the Matter of Law in my Indictment, there are many things put into the Indictment by the Testimonies of Witnesses now Sworn, that are pretended to be acted in several Counties, whether that be according to Law or no, I do not know, whether you will judge it so or no, but sure I am, if either those express Statutes, that I have already cited to the Jury, or the third part of Cooks Institutes be Law, I ought not to be Tryed for Treason, but by a Jury of the next Neighbourhood, in the self-same County, the Fact is pretended to be committed in, and therefore it is very questionable to me, whether my Indictment be Legal, for that it chargeth me with Facts of Treason, committed in three several Counties, and that being Matter of Law, I desire Counsel to argue that Point in the first Place, there are also a great many other Exceptions I have to make against the Illegality of the Indictment, and having particularised one, I humbly crave that which is my Right by Law, that I may have Counsel assigned unto me, you have said, you will do what shall become Ingenious and Understanding Men, and just Judges in it, and therefore I crave leave according to my undoubted Right, to have Counsel assigned to plead in Matters of Law to the insufficiency of the Indictment, and particularly, to that Point I have nominated. There are also a great many things arises out of the Matter of Fact, that will be Points of Law likewise, and some of them appear to be so, there was never two clear and positive Witnesses to one Fact Sworn against me, but to most of the particular Treasons, there is but one a Piece, and I cannot yield that to be Legal but questionable in Law which I desire Counsel to dispute: I know not any of all the Books fixed upon me, but the Out-cry that hath two plain Witnesses to it, and yet it is not Sworn that I am the Author of it, the State of the first is this, that I was at the Printers before the Copy was taken away, and that I gave one of those Books to a Soldier: to sum up the Notes of the Matter of Fact, that thereon hath been endeavoured to be proved, is to hard a task to be done by me immediately, and therefore I conceive it but just so for

( 102 )

you, to assign me Counsel, to agree with the Counsel against me, what are the Points of Fact upon the Proof, from which the Points of Law are to be deducted, and whatever you, that call your selves my Judges, may think of this, yet I hope and verily believe, that these my honest Fellow Citizens, that are the Gentlemen of my Jury, who have ( thereby ) as Men, the Issues of my Life and Death in their Hands, and will think it but a just and rational Motion and Request, and therefore before them again, I desire to have Counsel assigned to plead in Law, to the Errors of the Indictment, and also to the Law arising upon the Fact; this with a larger Privilege, was granted by one of your own Brother Judges, to Major Rolfe last Year, as his Right by Law; and I do again appeal to Mr. Justice Nichols, then one of Rolfe's Counsel for the Truth of this, I pray speak, Sir, is it not true? *but the Judge sitting as if he had neither Life nor Soul, Mr. Lilburn further said, I hope, Sir, it doth not enter into your thoughts presently to put me to an undigest, extemporary Answer, to so large an Indictment as that is that hath been read against me, that it is impossible for any Man's Brain, if it were as big as the biggest Magazine in London, to carry it in his head; and, Sir, I hope you do not conceive that my Memory is of a greater largeness than the greatest Magazine in this City; you engaged unto me when I pleaded first to my Indictment, that you would not take Exceptions nor Advantage against me, for my Ignorance in the Formalities of the Law; I desire you to make good your Promise now unto me, and assign me Counsel to help my Ignorance, that so the Counsel against me and my Counsel may agree, as I have seen it done heretofore in the Case of Duke Hambleton, upon the Points of Fact, from which Law is to be deducted; and if you please to grant me this Legal and Equitable Favour, I shall think my self very much obliged unto you; without which Justice, I cannot conceive upon what Ground it can be apprehended I can go on, for my time and strength now it is so far spent, that I conceive you cannot think my Body is made of steel, to stand here four or five Hours together spending my Spirits to Answer so many as I have to deal with; and be able after all this, to stand to return an Answer to above five Hours Charge, and that upon Life, when it seems you will suffer me to mend no Blots; I hope you do not lie upon the catch to weary and tire me out, by putting more upon me than a Horse is able to endure, and then go about to hang me, because I through tiredness, want bodily strength and abilities to make and pronounce my Defence.*

Sir, to my Apprehension, there does arise upon the Matter of Fact divers Disputes in Law; I beseech you therefore allow me my Right in Law, by assigning me Counsel to help me where I am Ignorant, and you shall see I shall do that which shall become an Ingenuous and Rational Man, and I will put my self clearly upon the Tryal of the Country or my Jury according to the Law.

Lord Keeble. Mr. Lilburn, *This that you have heard, and that we have patiently sat to hear, and prepared a Stool for you to have sat upon,*

( 103 )

*upon, to have given you that Liberty that no Body should interrupt you more than us, you have heard the fair Course that hath been taken in it; the Books, the Charges upon the Matter they are but three, they are not hard for your Memory; the particulars of those we do not expect that the Jury should remember them; the Books are here, they have of them; but amongst them there are many more, but free your self from the Matter of Fact, if you can, and these Books, and when you have freed your self from the Matter of Fact charged upon you, and then make it appear that from the Matter of Fact Law arises, and then if you can when the Matter of Fact is clear, and Law doth arise, you shall have Counsel; and you shall have no Defect in us to interrupt you, but to help you in what we may properly know as our Right to do; but if you do not first clear and make out this which is the Issue upon the Point, to Answer the Matter of Fact; we cannot allow you any Counsel: the thing that is to be disputed cannot possible be much on your side, it will be but very short; for it is not possible I say, to be much in time, or confusion of your Memory, to give an Answer to this particular Matter of Fact: the first is the publishing of those Books, and the owning of them; and the next is the Books of themselves; but this must be first cleared, before you can have any Counsel assigned you at all.*

Lieut. Col. Lilburn, I must confess it is a very hard Task for me to contest with the present Power, whose Agents have free Liberty to say against me what they please, and I am denied and that upon my Life, all the Privileges of an English-man, and with your Insinuations and great Words, drawn on by my Ignorance to ensnare my self; and notwithstanding all your Promises to take no Advantage against me for my Ignorance in the Formalities of the Law; yet are the Punctillioses and Niceties thereof, more urged against me than they have been against hostile Enemies; and yet for my part, no Man can tax me for being in Hostility at any time against them in present Power; and yet upon my Life, I am denied that which I had from these as my Right by Law against whom I have been in Arms, and fought against in the field, yea, and that which in a higher Nature than I desire, hath been acknowledged just and Legal, by some of your own Brother Judges, but the last Year, which they have granted to some of my own Country men, Free-men of England, but this last Year in a higher Nature by many Degrees, than I plead for; There is Judge Nichols, that I understand was one of Major Rolfe's Counsel, and I understand from Mr. Maynard's own Mouth, that he and Mr. Maynard was by Baron Wild, assigned of Rolfe's Counsel in Case of the Highest Treason, that the Law of England ever knew, and that before the grand Inquest found the Indictment, and that Mr. Maynard, &c. had Liberty as Major Rolfe's Counsel by Baron Wild's Order, to stand in the Court, not only to hear the Witnesses Sworn, but also to hear the Words of their Testimony, then caused by the Judge to be given in open Court, and there being but two Witnesses to two Facts contained in the Indictment, Mr. Maynard upon the Allegation of the two Statutes,

( 104 )

of Edward the sixth, that requires two Witnesses to the Proof of every Fact of Treason, and that to be plain and clear, overthrew Rolfe's Indictment in Law, that it was never found, and so saved the poor Man's Life, who in likelyhood had perished, had it not been for the Ability and Integrity of his Counsel: And all this Mr. Justice Nichols knows, is very true, and that I have told you nothing about it, but what is just; It's true, I have read part of the plain Law of England, that is in English; but I am ignorant of that part of your Law, which is three times so much, as that which is in English, and that Law, or the practick part of the Law is in French and Latin, which I have truly told you, I can neither read nor understand; therefore I humbly crave my Privilege and undoubted Right by the Law of England, (which in a higher Nature was granted to Major Rolfe as his unquestionable Right) to have Counsel assigned me, to help me in those things I am ignorant of, I mean the Formalities and Bottom of your Law. I beseech you, Sirs, do not put me upon Extremities, and upon extraordinary things, but consider among your selves, that Righteous Rule of Jesus Christ, and of the Scripture, to do as you would be done to: and do not put Impossibilities upon me, by over-ruling by your Power all my just Claims and Pleas in Law, and require more of me than I am capable to perform. And therefore I beseech you, as you would approve your selves, to be as Righteous Judges before the Eye of that God, that sees your heart, and knows whether Malicious and fore thoughts of Malice harbours therein against me his faithful Servant: do not cunningly and designedly destroy me for my Ignorance, in the essential or circumstantial Matter or Form of that huge Indictment, that has so much Matter of Law in it, as it hath, and to take away my Life by denying me that which is the unquestionable Legal Right of the Free-men of England, the which if you will but allow me, I do not doubt but to come off clearly and freely.

Lord Keeble. Mr. Lilburn. You are now at a full Point, and this you have said now, you have said often and we have heard it, and that which you say now was answered before.

Lieut. Col. Lilburn. Sir, It's your own Law, Sir Ed. Cook declares, I ought to

Lord Keeble. Mr. Lilburn. I shall add this more to it, that you at this time, have here such a Court, which never any of your Condition ever had in England, so many Grave Judges of the Law.

Lieut. Col. Lilburn. Truly I had rather have had an ordinary one, Sir, I mean a Legal and Ordinary Assizes or Sessions.

Lord Keeble. But this you have, and this is to take off or prevent, that which you would do now, if there had been one Judge and no more, and if you had not had this great presence of the Court, you would have been male-part, and have out talked them, but you cannot do so here.

Lieut. Col. Lilburn. Truly, Sir, I am not daunted at the Multitude of my Judges, neither at the glittering of your Scarlet-Robes, nor the Majesty of your Presence and Harsh, Austere Deportment towards me,

( 105 )

I bless my good God for it, who gives me Courage and Boldness.

Lord Keeble. That your Tryal is so Publick, as your Offence, is for this End, that all Men may take Notice, that you have fair play, and therefore according to Law, you ought to make your Case in Matter of Fact clear, for that I must tell you again and once is as good, as if I had told you a thousand times over, unless you can clearly do that, you say nothing to it, if you will take that for clear Proof, that hath been alledged against you, you may shorten your self: but otherwise make that Defence that you judge most sufficient to disprove the Fact, for till that time, you are clear gone in Law, and no Counsel must or can be assigned you.

Lieut. Col. Lilburn. I have been a great while yesterday pleading my Right by Law, for Counsel, and now I have stood many Hours to hear your Proofs to the Indictment. I hope you will not be so Cruel, to put me to a present Answer, when bodily strength is spent.

Lord Keeble. We know it as well as your self, you were here and stood divers Hours yesterday, and so day you have done the like, but we came before you, and stand after you.

Lieut. Col. Lilburn. Sir, will you put a Man to more than a Horse is put to, or is able to go through with, the Righteous Man is Merciful even to a very beast.

Lord Keeble. We have been as long as you have.

Lieut. Col. Lilburn. But, under Favour, you have sat.

Lord Keeble, You had that Liberty too, dispute no more, we must go on.

Lieut. Col. Lilburn. I desire but a Week's time, to return you an Answer to your large Indictment: and if not so long, then give me leave but till to Morrow Morning, to consider of my Answer. I am upon my Life.

Lord Keeble. No, you must dispatch it now.

Lieut. Col. Lilburn. Then give me leave but to withdraw into any private Room, for an Hour to recollect my Thoughts, peruse my Notes, and refresh my Spirits: and hereabouts Judge Fermyn did whisper the Lord Keeble in the ear, and presently said Judge Fermyn, It's against the Law to allow you any more time, the Jury stand here charged, the Evidence is given, you must immediately go on, or yield that for truth which hath been proved against you.

Lieut. Col. Lilburn. Well then, if it must be so, that you will have my Blood Right or Wrong and if I shall not have one Hour's time to refresh me, after my Strength is spent, and to consider of that which hath been alledged against me, then I appeal, (which he uttered with a mighty Voice) to the Righteous God of Heaven and Earth against you, where I am sure, I shall be heard and find Access, and the Lord God Omnipotent, and a Mighty Judge betwixt you and me, and require and requite my Blood upon the Heads of you and your Posterity, to the third and fourth Generation: immediately after the uttering of which the Scaffold fell down, which was on the left hand, which occasioned a great Noise and

( 106 )

and some Confusion by Reason of the Peoples tumbling, but silence being made, the Prisoner was busy at his Papers and Books, being invited by Sheriff Pack to come out of the Bar, for fear he should have fallen with the rest, and so he might have lost his Prisoner.

Lord Keeble. *How came the Prisoner there?*

Lieut. Col. Lilburn. I went not thither, Sir, of my own accord, but by Mr. Sheriff's Invitation, and if I am in a place where I ought not to be, blame Mr. Sheriff, and not me.

Lord Keeble. *Dispatch, Sir.*

Lieut. Col. Lilburn. Sir, if you will be so Cruel as not to give me leave to withdraw to ease and refresh my Body: I pray you, let me do it in the Court. Officer, I entreat you to help me to a Chamber-pot; which whilst it was fetching, Mr. Lilburn followeth his Papers and Books close, and when the Pot came, he made Water, and gave it to the Foreman.

Lord Keeble. *Proceed, Mr. Lilburn, but he pressed for a little respite, which was granted him with much ado, as also a Chair to sit down upon, but within a very little space the Lord Keeble said:*

Lord Keeble. *The Court cannot stay for you, proceed on to Answer.*

Lieut. Col. Lilburn. Good Sir, Would you have me to Answer to impossibilities, will you not give me breath? if you thirst after my Blood, and nothing else will satisfy you, take it presently, without any more to do. But the Prisoner struggled out a little respite.

Lord Keeble. *The Court can stay no longer, take away his Chair, for I cannot see the Bar, and plead what you have to say, for it grows very late.*

Lieut. Col. Lilb. Well, seeing I must to it, the Will of God be done; but his Brother being next to him, was heard to press him to pause a little more, No, Brother, saith he, my Work is done, I will warrant you by the Strength of God, I will knock the Naylor upon the Head; and so he went into the Bar, and set the Chair before him, and laid his Law Books open upon them, in order as he intended to use them, and being ready, said, Sir, I humbly crave the favour since it is my hard Lot and Fortune, at least in my own Apprehension, to have so much hard Measure and Injustice as I have, to know whether or no you will permit me, after that I have pleaded to a Matter of Fact, according to the Law of ENGLAND, that has been allowed to the Highest Traytors in all the Books that I have read of, that I may speak in my own behalf unto the Jury, my Country-men, upon whose Consciences, Integrity, and Honesty, my Life, and the Lives and Liberties of the honest Men of this Nation now lies, who are in Law Judges of Law as well as Fact, and you only the Pronouncers of their Sentence, Will, and Mind, I say, I desire to know when I have pleaded to Matter of Fact, whether you will be pleased to give me leave to speak to them a few words besides.

Lord Keeble. *Mr. Lilburn, quietly express your self, and you do well, the Jury are Judges of Matter of Fact altogether, and Judge Cook says*

fo.

( 107 )

fo, but I tell you the Opinion of the Court, they are Judges of Matter of Law.

Lieut. Col. Lilburn. The Jury by Law are not only Judges of Fact, but of Law also, and you that call your selves Judges of the Law, are no more but Norman Intruders, and indeed and in Truth, if the Jury please, are no more but Cyphers, to pronounce their Verdict.

Judge Jermyn. *Was there ever such a damnable blasphemous Heresie as this is, to call the Judges of the Law Cyphers? Sir, I entreat you give me leave to read the Words of the Law then, for to the Jury I apply, as my Judges both in the Law and Fact.*

Lord Keeble. *We will not deny a Title of the Law.*

Judge Jermyn. *Let all the Hearers know, the Jury ought to take Notice of it, That the Judges that are Sworn, that are twelve in number, they have ever been the Judges of the Law, from the first time that ever we can read or hear that Law was truly express in England, and the Jury are only Judges, whether such a thing were done or no, they are only Judges of Matter of Fact.*

Lieut. Col. Lilburn. I deny it, here's your own Law to disprove you, and therefore let not me but read it; it is a hard Case when a Man is upon the Tryal of his Life, that you will not suffer him to read the Law to the Jury, for his own Defence; I am sure you have caused to be read at large those Laws that makes against me.

Lord Keeble. *But I shall pronounce to clear the Righteousness of that Law, whatsoever others, will pretend against it, that know it not.*

Lieut. Col. Lilburn. Sir, under Favour I shall not trouble my self with any thing, but what is pertinent to my present Purpose; here is the first part of Cooks Institutes; it is owned by all the Lawyers that I know, or ever heard of in England, for good Law.

Lord Keeble. *If you can convince us, that Matter of Law does concern you the Jury, you say something.*

Lieut. Col. Lilburn. Sir, I have been shuffled too much out of my Liberties already, give me leave to read but the Law to the Jury, I will make use of nothing now to them, but your own words, and when I have done, I will leave my self to them, and the guidance of God upon their Conscience; and having the Book open in his hand, he said in the first part of Cooks Institutes, Sect. 366 fol. 226, 227, 228. in his Exposition of Ployden, hath these Words.

Lord Keeble. *Have we dealt so fairly with you all this while, Pray be confident, those that are Quotations there, are not for your Purpose; but I thought how good a Lawyer you were, for to set Cook's Commentaries upon Ployden; when there is no such Book or Commentary: go to your Matter of Fact, which is clear, but for this, let it fall down, and spare your self, and trouble your self no more with Cook; he has no Commentary upon Ployden. But Mr. Lilburn prest to speak.*

Justice Jermyn. *Hold, Sir.*

Lieut.

Lieut. Col. Lilburn. What, will not you allow me Liberty to read your Law? O Unrighteous and Bloody Judges!

Judge Jermyn. By the Fancy of your own Mind, you would puzzle the Jury, we know the Book a little better than you do, there is no such Book as Cook's Commentary upon Ployden.

Lord Keeble. Sir, you shall not read it.

Judge Jermyn. You cannot be suffered to read the Law, you have broached an erroneous Opinion, that the Jury are Judges of the Law, which is enough \* to destroy all the Law in the Land; there was never such a damnable Heresie broached in this Nation before.

The Cryer. Cries out. Hear the Court.

Lieut. Col. Lilburn. Do your Pleasure, then here I'll dye; Jury take Notice of their Injustice; but seeing they will not hear me, I appeal to you, and say, It is an easy Matter for an abler Man than I am, in so many Interruptions as I meet with, to mistake Ployden for Littleton; I am sure here is Cook's Commentaries upon Littleton, and these be 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, which I am sure is good Law, forasmuch as we see it continually done in all Actions of trespass or assault, where the Jury doth not only Judge of the Validity of the Proof of the Fact, but also of the Law, by assigning what damages they think is just.

Lord Keeble. I am sure you are in an Error, in a gross one, as possible a Man can be in, this is so gross, that I thought it could not have come from Mr. Lilburn, that professeth himself to be a rational and knowing Man.

Lieut. Col. Lilburn. And in another Place, he said: For as well as the Jurors may have Cognizance of the Lease, they also as well may have Cognizance of the Condition. And further there, Cook saith, Here it is to be observed, that a special Verdict, or at large, may be given in any Action, and upon any Issue, by the Issue General or Special. And in Section 368. Littleton, hath 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. Cook's Words upon it are fully to the same Purpose, who saith, Although the Jury, if they will take upon them (as Littleton here saith) the knowledge of the Law, may give a general Verdict, I am sure this is pertinent to my Purpose, and now I have done, Sir.

Lord Keeble. You have spent a little time, but you have done yourself no good, I thought you had understood the Law better than I see you do.

Lieut.

\* Yes but there was at Redding, when Colonel Martin after they were Sworn, caused all the Jury before the Judges sitting upon the Bench, to put on their hats, as their Right; being they were then the Chief Judges in the Court, and the other Inferiour to them.

Lieut. Col. Lilburn. Now, Sir, as to Matter of Fact, according to your own desire, seeing you will have broke your Promise, and will allow me no Counsel, but lie at carch with me, I shall come to it without any Preamble. The Statute of the 1 Edward 6 Chap. 12. (I desire the Jury may take Notice of the Statutes) and the 5. and 6. of Ed. the sixth, Chap. 11. here's the Statute Book, which doth expressly declare, That no Man shall be condemned for Treason, petty Treason, nor any such like Crime, but by the Evidence and clear Proof of two legal and sufficient Witnesses. Sir Edward Cook in his third part Institutes, Chapter of High Treason, is absolutely of the same Opinion, fol. 12. in this Branch, says he, four Things are to be observed. First, this Word (Proveablement) proveably, that is upon direct and manifest Proof, not upon conjectural Presumptions or Inferences, or Strains of Wit, but upon good and sufficient Proof of two Witnesses, and this is Folio 12. And here in the Adverb, (Proveablement) proveably hath a great force, and signifieth a direct and plain Proof.

And Secondly, This Word (attaint) necessarily implyeth, that he be proceeded with, and attainted, according to the due Course and Proceedings of Law, and not by absolute Power, or by other means, as in former times it hath been used.

And Folio 24. Chap. Petty Treason, he saith, It hath been holden, that upon the Tryal of Misprision of Treason, there must be two Lawful Witnesses as well upon the Tryal as the Indictment, as it was resolved by the Justices in the Lord Lumley's Case. Hill, 14. Eliz. reported by the Lord Dier under his own hand, and in the Margent he hath this Note upon it, That this is the last Resolution of the Judges upon it: And a little below, in the same folio, and folio 25. he saith, Therefore upon the Indictment, which is in manner of an Accusation, by the Statutes of 1. Edward 6. Cap. 12. & 5. & 6. Edward 6. Cap. 11. Two Lawful Witnesses as requisite. And in folio 240 he hath the same, his Words are these: Attainders of T R E A S O N, &c. ought to be upon plain and direct Evidence (as before is said) for if the party be executed, Restitution may be had of his Lands, but never can be had of his Life: now I have done, Sir.

Lord Keeble. I hope the Jury hath seen the Evidence so plain, and so fully, that it doth confirm them to do their Duty, and to find the Prisoner Guilty of what is charged upon him.

Judge Jermyn. This that you have said makes much for the Jury.

Lieut. Col. Lilburn. We shall see that by and by; but I shall proceed on to Answer your Proof to the Indictment, and that in the same Method that your Witnesses Swore: And therefore, Sir, in the first Place, to the first, which is THOMAS NEWCOMB, the PRINTER, he swears in these Words: That I was present with CAPTAIN Jones, from whose hand, he says, he received the last Sheet of the Book, called the Out-Cry of the Young-men and Apprentices of L O N D O N; but, he says, Captain Jones aged with him for the Printing of it, and not I; for in that particular he doth not in the least accuse me, neither doth he in the



( 110 )

the least accuse me in any manner in the World of being the Author of it: And that I did any more at his House, but take away a single Sheet of it before it was Corrected, which, says he, I brought away with me: In Answer to whose Testimony I return this, and I earnestly entreat you, Gentlemen of the Jury, to observe it well, and therefore in the first Place he is but a single Testimony to this: But secondly, I answered, that he confesses moreover; that before he had compleated that Sheet that he received from Captain Jones, he was taken, and not only he, but his Forms also was taken from him: so that by his own Confession, that Copy that was brought by Captain Jones when I was present with him, proved abortive, it was never wrought. For, he says, it was taken before he had perfected it, and to my knowledge they had it in their possession: so that it clearly appears, it was never perfectly wrought off, and therefore the Books were never perfected; Therefore I hope that it will not be Treason in me, being a Free-man of *England*, to walk the Streets with my Friend, and to go into a House with him where he hath Business to do, admit it be a Printing house, where he intends to have a Sheet of Paper Printed, his Affairs, Business, or Actions are nothing to me, neither are they now in the least laid unto my Charge: And if they were, as they are not, yet that Sheet miscarried, and was taken before it was perfected: so that truly, Sir, you may go seek the Printer of it, for you see that miscarried that Captain Jones delivered to the Printer in my Company, and that Sheet which he saith I had away, was an Uncorrected one, which could serve me for no other use, but wast Paper, and cannot be adjudged to be a true Copy of that which was contained in the Indictment; neither doth he or any other Swear, that at the Printer's they see, or know where was done the Title of that *OUT-CRY*, contained in the Indictment: So that for any thing the Jury knows, the first part of that Book hath no dependance upon the Sheet that was spoiled, and not brought to maturity in Master *Newcomb's* hand, as he himself upon his Oath declares: so that truly, Sir, in Law Mr. *Newcomb's* Testimony proves nothing at all against me, as to that before-mentioned and contained in the Indictment, and therefore you, Gentlemen of the Jury, my Life is in your Hands, I beseech you take Notice, that in all his Testimony, there was not one word that he declared to accuse me to be the Author of that Book, or that my Name was to it; for you shall find the Name of them that own it, so that I think his Testimony is to it, and is not worth a Straw.

In the next Place there were three Soldiers, viz. *John Took*, *Thomas Lewis*, and *John Skinner*, that Swears against me, the substance of all their Testimonies centers in one: and *John Took* in the first place saith, about seven Weeks ago he met with Lieutenant Colonel *John Lilburn* in *Ivy-lane*, where *Lewis* knowing of him, gave him a Salute: and they being glad to see him that he was well in health, and the like, out of Friendship went to drink a Cup of Beer together at the *Read-Cross* in *Newgate-market*, where he saw a Book called the *Apprentices Out-Cry*,

given

( III )

given unto Mr. *Lewis*, and he heard these Words uttered by Lieutenant Colonel *Lilburn*, You Soldiers are those that keep us in Slavery. The second Witness being *Thomas Lewis*, saith, That the 6. of *December*, or *September*, for so was his Words, he met me in *Ivy-lane*, and took acquaintance of me, asked me how I did, and I thank'd him: and he further declares, that he was very much refresh'd to see me, that I was well, and in health, and was glad to see that those things that were given out of me, by common Fame, (that I was killed or dead, that they were not true; therefore he being my Old Acquaintance as he saith, we went to drink a Cup of Beer together; and, says he, (as he remembers) Lieutenant Colonel *Lilburn* asked him if he had seen a Book called the *Apprentices Out-Cry*, and, he says, no, he had not seen it, but he had heard of it, and was thinking to go and buy one of them, for that he longed to read it, and heard it was publickly Sold, and, says he, Lieutenant Colonel *Lilburn* said, he had one which was given him, and if he pleased he would give it me, which he thankfully received, and afterwards we staid a little time to drink a Cup of Beer, and had some Discourse; but he doth fix no Evil upon me, that fell from me in that Discourse, neither doth, he say that I did stir him up to Mutiny, or to make Division in the Army, only, he saith, I told him, that if he went to such a Man, whose Name he hath forgot, it is possible he might buy some more of them, for they were publickly Sold all over the City; so that you, Gentlemen of the Jury, may take Notice that he declares the things by common Fame publickly Sold, and one of them, he says, was given to me, and I gave it to him. Truly I hope the Jury hath more Conscience in them, than to go about to take away my Life for giving away a single Sheet and an half of Paper, that no Man Swears I was the Author of, or the Causer of it to be Printed and Published; But the most that can be fixed upon me, is, that I had one of them given me, and I gave it to a Soldier, my familiar Friend, who had a great Desire to see it, and was going to buy one of them, being publick up and down *London* at that time, which is all that he doth Charge upon me; only, he says, further, that there was a little Discourse: but his Testimony doth not reach to accuse me of any Evil or Malicious Counsel given them, or any Aggravations of Spirit, as though I did incense him of them against their Officers or Fellow-Soldiers, thereby to stir them up to Mutiny and Rebellion. For truly I have made it my Work, for to be as sparing in my Discourse as could be, in the Company of any belonging to the *ARMY*; yea, and to shun coming nigh the place, if I can avoid it where they are: and he saith I had no aggravating Spirit within me, nor uttered any Provocations to make them rise in Mutiny against their Officers, and there is none of them all that does in the least fix that Book upon me, to be mine, as the Author of it.

Only, he saith further, that upon his declaring he longed to see the Book, that Lieutenant Colonel *Lilburn* told him that such a Man, whose Name he hath forgot, might possibly sell them some of them if they had

2

( 112 )

a mind to them or to get some of them, and truly I do not believe that Treason.

Further, he says, all the worst Discourse I had with them, was, that I asked them a Question, which was, when they had any Pay, and they told me they had not had any Pay in five Weeks, and that was the worst of all, here proceeded from me no aggravating Expressions upon it, or Mutinous Provocations, but truly that this Discourse should come within the Compass of Treason, to ask my Old Acquaintance a Question, that had often times visited me, when I was the Lords Prisoner in the Tower, or to drink a Cup of Beer with him, or give a Sheet and a half of Paper, that was publickly Sold; Truly I hope there will be no Righteous Jury in the World, that will give a Judgment against me for Treason therefore, no, I hope for more Righteous Justice, from a Jury of Citizens of London, whom I hope to find Men of Consciences and Judgment, yea, of such Righteous Judgment, as that they will abhor to go about, to take away my Life, and my Blood, and lay the Blemish and Stain of Treason upon me and my Posterity for ever, upon such a thing as this is, and this is all, and the utmost of all, that the Evidence doth Witness against me. Then in the third Place, there was *John Skinner*, who was the third: and he says, the same in effect and no more, and therefore I need not to go upon that any further, but shall leave it I hope to the enlivened Consciences of my Jury, my Fellow Citizens of London: in the next Place, the second thing laid to my Charge, is the *Salva Libertate*,

delivered to the Lieutenant of the Tower, as he says; *The Lieutenant of the Tower's Testimony.* Now truly the Lieutenant of the Tower is but a single Witness to this, and the Law saith positively, there shall be two Legal Witnesses, to prove every Fact of Treason, whose Testimony or Evidence ought to be as clear and evident as the Sun at Noon-day, without any conjectural Presumptions or Inferences, or Strains of Wit, and truly the Lieutenant is but a single Witness at most. I should be loath to reproach or bespatter the Man, yet I must say this, being upon my Life, that he is not only a single Witness, but a Gentleman, in whose Custody I was Prisoner contrary to Law; who kept me Prisoner in times by-past, above twelve Months together at the House of Lords Illegal Command contrary unto Law and Justice, for which above a Year since, I did commence at the Common Law an Action of four or five thousand Pound against him, as I did also against Colonel *Tichburn*, that I have seen upon this Bench, sitting as one of my Judges which I think, is not Equal nor Just, nor Legal that he with whom I have a suit of four or five thousand Pound depending, when thereby my professed Adversary should be one of my Judges, and therefore I desire he may be commanded off the Bench, and withdraw as being my professed Adversary, and therefore in Law incapable to be my Judge; and truly having the same Action depending still against the present Lieutenant of the Tower, before the Judges of the King's Bench, for his detaining me in Prison, above a Year together, contrary to Law,

( 113 )

he is thereby in the Eye of the Law, my professed Adversary, and therefore in Law cannot be admitted, as a competent Witness against me, upon my Life, yet the Lieutenant of the Tower doth not in the least Swear that the hand is mine, or that he did see me Write it; but only, he saith, that I did deliver such a Paper to him, but he is but a single Witness, and so, I say, by the Law of the Land, not Valid or Good, but his Testimony is clearly gone, and wiped off, as also all things that doth depend thereupon; There is besides five or six Witnesses produced to several Charges; but the Law expressly saith, that there must be two plain and clear Witnesses to every particular Charge, or Fact of Treason, that must take away my Life, and this is your own Law, and therefore he is but a single one, and therefore Invalid and altogether not Satisfactory, or binding; and then beside, which is considerable, truly I think the Tower of London, in the Place where he saith, I gave him those Papers, is not within the Jurisdiction of the City of London, and how I should come to be arraigned by a Jury of my Fellow Citizens here in London therefore, against whom I must confess that for my part, I have nothing for their Honesty and Integrity to object, I know not, for I know not the Faces of any two of them, and therefore impossible for me to say any thing against them; I say, I know not how by a London Jury I can be tryed for a Fact fixed upon me, to be committed in *Middlesex*. I beseech you, Gentlemen of the Jury, mistake me not: For I have nothing to accuse you of, and I hope you will be so Conscientious and Tender in the Tryal of me for my Life, that you will put your Case as my Case, and do by me as you would be done unto by me, if you were in my Case and Condition. And the Righteous God of Heaven and Earth direct you so to do: and therefore the Lieutenant of the Tower being but a single Witness at most, and in Law not a competent one neither, being my professed Adversary, that hath most Illegally kept me in Prison, for which I have commenced long since my Action at Law for my Legal Reparations against him; I say, therefore in the Eye of the Law, his Testimony sticks not; and I hope in the Righteous Opinion of my Jury, can do me no harm; and if so his Testimony be Invalid, then the *Salva Libertate* can not reach me, to do me any hurt, but it and all those my pretended Books called by my Name, are all washed away and gone, and my Adversaries must go seek new Authors for them, or at least procure new and better Testimony to prove them mine, for that which they have produced hitherto, is worth nothing. Then the next is *Thomas Daffern's* Testimony. *Thomas Daffern*, and he says, that the twelfth of August 1649. he met with Lieutenant Colonel *Lilburn* upon the Bridge, as he was going home to visit his Sick and Distressed Family, and he went back with him, to his House in *Southwark*, at *Winchester House*, which I am sure is not in London; And therefore at *Guild-hall* in London, by a London Jury in Law cannot be tried; for he positively saith, that at *Winchester House* in *Southwark*, which is in the County of *Surry*. Lieutenant Colonel *John Lilburn* gave him a Book, to carry to Colonel *Ayers*,

*Ayres*, a Prisoner at *Warwick-Castle*; but he does give in no Testimony at all that it is mine, or that that Book was Lieutenant Colonel *Lilburn's* Book, of his making or penning, but a Book he gave him: and that is all he says, which is no more but that he received a Book at *Winchester-House* in *Southwark*, from the Hands of Lieutenant Colonel *Lilburn*, to carry to Colonel *Ayres*, now a Prisoner at *Warwick-Castle*. Now truly he is but a single Testimony, and he Swears nothing particularly as to me, and besides, what he Swears is to a Fact done in another County, and therefore his Testimony is not worth a Straw; it's gone, it's Invalid in Law, it signifies nothing, it is not so good as a Spider's Webb; by Virtue of which the Marshal's Testimony and the Governours of *Warwick-Castle*, as also Colonel *Purfrey* need no other Answer from me, but to Pity them for the long Journey they have made to no purpose.

The next thing charged upon me is the *Preparative to an Hue and Cry* after Sir Arthur Haslerigge, to of the Tower's which the Lieutenant of the Tower says, that Lieutenant Colonel *John Lilburn* gave him one of those second Testimony. Books in the Tower: which truly I am confident is in *Middlesex*, and truly I conceive under Favour, it will

be a Point disputable in Law, that I should be tried for my Life in this Place; admit there were a thousand Witnesses to make it good, that the Lieutenant of the Tower had one of them from me, either in the Place he formerly nam'd, or at his own House: For that Fact was done in the Tower, that is out of the County of *London*, and so not Tryable by a Jury of Citizens of *London*; but he further saith, whether the Book that he now has be the same that he received from the Hands of Lieutenant Colonel *Lilburn*, that he is not able to depose. Then the rest of the Witnesses that do depose against me in Relation to the *Hue and Cry*, and

*James Nutley*, and *Edward Raddon*, both of them of James Nutley, Mr. *Prideaux* Servants; and the most that they say, is that when I was before their Master, upon the 14. and Edward Rad- of September, 1649. at his Chamber in the Temple to don. be examined by him, they say, they saw me deliver a

*Preparative to an Hue and Cry* after Sir Arthur Haslerigge to this Master's hands, and tell him, that that was mine, and I would own it saving the Printer's Errata's, which says, the Lieutenant of the Tower upon his Oath, I expressed to be many.

In Answer to which, I say, I do not know whether the be *Temple* within the Liberties of *London* or no, and if it be not, I know no ground in Law, wherefore a *London Jury* should try me here: but more fully, I say, for any thing the Jury knows, or for any thing the Witnesses Swear, the Printer's Errata's, which are many, are all and every of those Clauses that Offence or Exceptions are taken against, for not one of those Clauses which you except against, are not proved to be the Printer's Errata's, and therefore there is no Validity or Weight in those Testimonies also, for they do not prove in the least that any six Lines of the Book is mine, all

of them say, that I owned no more of the Book than was free from the Printer's Errata's. And the Lieutenant of the Tower Swears that the Clause was added, which are many: And therefore you, the Gentlemen of the Jury, I appeal to your Consciences, and to your Judgments, and the Lord set it home to your Understandings, that you may not be Guilty of the Blood of an innocent Man, by Partiality, Fear or Affrightment of Spirit, for in Law, Equity and Justice all their three Testimonies put together, has no Validity, no Strength, nor Force in them, and so much for that.

The next thing fixt upon me, is the *Legal Fundamental Liberties of the People of England*, revived, asserted and vindicated, and truly all that's brought to prove the Legal Fundamental Liberties of *England* to be mine, is but meerly the Relations that are in the fore-mentioned Books, for I do not remember, (nay I am sure of it,) that there is so much as a single Testimony that does give in any Evidence against me that it is mine, and therefore I can answer to that nothing more than what I have said already. The Testimonies all being Invalid at least in the Eye of the Law; and therefore that's gone too, and blown away as Chaff before the Wind.

Lastly, for the Agreement of the People, truly that's dated the first of *May*, 1649. And truly for ought I know, and I am sure of it too, it is before the date of any of those Acts upon which I am indicted for my Life, and therefore not within the compass of it: for *Paul* that great Apostle said, and he that spoke by the Spirit of God that dwelt within him, and to whom it was given in an extraordinary manner, that so he might thereby be enabled to write the infallible Truths of God, said where there is no Law, there can be no Transgression, but that Agreement was in being and publickly abroad with a Legal Imprimatur to it, before any of the Acts, upon which I am arraigned, had a being, and therefore admit it should be granted to be mine, yet it can be no Transgression or any thing prejudicial in the Eye of the Law unto me, but besides, there is not any Testimony at all, that so much as lays it to my Charge to be mine, and therefore it pinches me not, nor does any of all the rest of your Charges, and besides all that I have already said in my own behalf, to shew in Law the Invalidity, and Insufficiency of all the Testimony, you have produced against me; I add this, by way of Addition to it, that there hath not been so much as one single Witness or Testimony to prove that the Books laid to my Charge, are rightly and truly dated, and not *post* dated, which if any of them or all of them should be, admit the Proofs were sufficient in Law, yet unless the Days of them be firmly proved to be exactly according to the Original Copies, and not *post* dated, for any thing the Jury knows, they might be made and writ before ever the Acts, they are said to transgress, had a being. And therefore if there were so many Testimonies in Law, to prove the Books mine, (which there is not in the least) yet, I say admit, there had been a thousand Witnesses to the Proof of every one of those Books, yet notwithstanding

( 116 )

standing in the Eye of the Law : I leave it to the Consciences of my Jury, whether I be not free in that particular, seeing there is none Swears punctually and positively to the Dates of them ; but to put all out of danger, as I deny nothing, so in that particular, I do not own a Jor, a Line, a Word, a Syllable, of any of them. Now, Sir, having done so far as I have, and clearly discovered to the Jury, and all that hear me this Day, that all the Proofs alledged against me, does not stick in the least any Guilt upon me, truly I have clearly answered, and invalidated all the verbal Proofs, according to the clear Letter and true Intention of the Law, I have no more to say to all the Evidences, that have been read in Books against me, I leave it to the Consciences of my Jury, believing them to be a Generation of Men, that believe in God the Father, and believes they shall have a Portion in the Resurrection of the Dead, and stand before the Tribunal of the Lord Almighty, to give an Account unto him the Lord of Life and Glory, and the Judge of all the Earth, of all there Actions done in the Flesh ; I leave it to their Judgments and Consciences to judge Righteously, between me and my Adversaries ; and the Lord of Life and Glory, to judge Right between me and you, that in all those things in your long Scrowl you pretend me Guilty of ; I hope I have so clearly and fully answered all and every of your Proofs, that not any one thing sticks ; and to their Consciences I cast it ; hoping that they do look upon themselves, as standing in the presence of him that sees their Hearts, and knows now whether there be any Malice in them towards me or no, which for my part I do not believe there is, for I profess I know no wrong I have particularly done them as Men, or generally as *English*-men ; my Conscience is free and clear as in the sight of God, and hope of all unbiassed Men ; and to my knowledge I never see the Faces of any two of them before this Day, and therefore intirely as an *English*-man, that Loves and Honours the good Old Laws of *England*, and earnestly Desires and Endeavours, and Struggles for the Preservation of Justice and Just Magistracy, which I wish with all my Soul may be preserved ; and therefore having suffered much for the Preservation of the Common and just Liberties of *England*, to their Consciences, and to their Judgments, I leave both this Matter, and the constant Series of all my Actions in this my Pilgrimage, and Veil of Tears here below.

Lord Keeble. Mr. Lilburn.

Lieut. Col. Lilburn. Your pleasure, Sir?

Lord Keeble. Nothing, Sir, but this, our Consciences are before God as well as your's, and therefore you need not speak thus.

Lieut. Col. Lilburn. Sir, I have only two or three words more, which I have spoken to you, but these Men that are my Jury and Judges, in whose Hands only are the Issues of my Life, have not as yet heard them, I pray you give me Liberty according to your Promise, to go on without Interruption : You, Gentlemen of the Jury, I have many material things to produce Witnesses unto for my Justification, but no time in the least will

( 117 )

will be allowed me, as you see, to produce them, which I ought by Law to have had, especially considering I have been lockt up so long close Prisoner, and have nothing for which I was first Imprisoned laid unto my Charge ; and have so High, Potent and Mighty Adversaries as I have ; that truly every Man is shy of me, for fear he may come in Trouble for coming near me ; and therefore I have but two or three words more to speak to the Jury, I beseech you let me freely go on.

Lord Keeble. Make them thirty to your Defence, and you may speak them.

Lieut. Col. Lilburn. I shall by God's Assistance, I shall keep close to my Defence : Now, Gentlemen of the Jury, I think I have sufficiently pleaded for my self at this present, and that to clear up fully unto your Judgments, unto your Understandings, that by the Law of *England* there is not so much as any one Fact proved against me ; for the Law is express, that to every particular Fact of Treason, there must be two sufficient Witnesses, not by Constructions or the like, upon which Score and Plea, that Gentleman Mr. Nichols that sits there as a Judge, and Mr. John Maynard, saved Major Rolfe's Life, being to be arraigned for the Highest of *English* Treason, before Baron Wild : Now, Gentlemen, if notwithstanding what I have said, any thing shall yet stick upon your Spirits, I shall intreat you to consider the Intention of the Law of *England*, it is repeated several times in Sir Edward Cook's Institutes, it is a Maxim in the Law, I have it here in the third Part of his Institutes fol. 6. *Et actus non facit reum, nisi mens sit rea* ; Sir, if you please to do me the Favour but to *English* it, and explain it for the Jury ; for though I understand the Substance of it, yet I am not exactly able to *English* the *Latin*, but only to understand the Sense of it ; I conceive the Sense of it is this, it is not the Act, but the Intention of the Mind, that declares Guilt ; but therefore as in reference unto that I shall say no more but only this to them, that the constant Series of all my Actions from my Youth hitherto, have manifested that I have with an affectionate and compassionate *English* Spirit within me, that hath put me forth for many Years together, really to endeavour the Prosperity and Good of the Land of my Nativity ; and not its Mischief and Destruction ; and that hitherto-ward, in all my Contests, I have had the Law, and the declared publick Justice of the Nation of my side ; having never done any Mischief to my Country, unless it be a Mischief to oppose great Men's Wills ; I have now been seven Months in Prison I know not wherefore, although Originally I was committed to Prison pretendedly for Treason, and both the Acts upon which now I am indicted, hath been made long since my first Commitment, there is not any one Syllable of all those things for which I Originally in general, without Accuser or Prosecutor was Voted a Traytor by the present Power, and for which I was proclaimed a Traytor throughout all the Market and great Towns in *England* six Months ago ; there is not now I say, any one of those things laid to my Charge ; but truly I have been laid into Prison for nothing ; as by this Day's Work clearly appears, by the Men

( 118 )

in present Power, unto divers of whom I have often sent to know what it is they require at my hands, and have also from time to time, declared my ready willingness to compose and end all differences that concern me, having proffered again and again, to refer my self unto the final Determination of four of their own Members, finally to end and determine all differences betwixt them and me, whereof I was willing that Judge *Rigby* should be one of them, a Gentleman (though now a *Judge*). I have found very honest and faithful, and to whom I have been much obliged to, for many hearty Favours I have from time to time received from him; I say, I have sent to him and Colonel *Martin* and abundance of the Members besides, from time to time; to some of whom I have written, with some of whom I have spoken to; I say, I have sent many Messages with the earnestest desire in the World, that if I had offended any Man in the House, that if he would be pleased fairly and friendly, to refer it to the final Judgment and Determination of four Members of their own House, and would stand to it; and let all the World judge whether or no this Proposition was not surable to a Christian, and surable to an honest Man, yea, to a Man that judged himself in the strictest scrutiny of his own Conscience to be free and innocent in his own Soul, and in his own Conscience, from all Guilt, Crimes or Treasons, or else if I had not, I would not have put my self upon the judgment of those that were engaged in Interest and self Preservation against me; and yet for the things that they imprisoned me for as a Traytor in general which I hear nothing of this Day, which is wonderful strange Law and Proceedings to my Understanding: But besides, Sir, under Favour, I have not only done this, but I have yet thousands of my Friends: I will undertake, I could produce ten thousand of Old and Young, Males and Females, Citizens and Country-men, Men of Honesty and Integrity, that have in the common Cause always adhered to the Freedoms of the Nation, that have petitioned the Parliament several times; yea, from time to time, with abundance of rational and fair Petitions, and truly stated my Case to them, and acquainted them with my Condition, and with the rest of my Fellow Prisoners, and earnestly begged and intreated of them that they would not be hasty in condemning and destroying me, before they heard me and afforded me a Legal Tryal, from first to last, according to the due Forms and Process of the Law of *England*; and yet for all this, till I came before you, I never saw Accuser, or Prosecutor, nor Indictment, nor Charge, nor nothing in all the Earth, Legally to demonstrate me so much as a supposed Offender; and yet for all this, no Satisfaction in the World would be received; notwithstanding in one Petition they desiring, that they would be pleased, seeing they were incensed against us, and that they had taken Indignation against us, they did not desire to justify us in any thing we had done; but in regard to their own Knowledge, we had been all four faithful, zealous, and serviceable Instruments in the common Cause of the Nation; in which to the hazard of my Life an hundred times over, I have engaged for them, with my Sword in my hand, with

( 119 )

as much resolution, and as much faithfulness, as any Man on Earth ever served a Generation of Men, having never betrayed my trust, or ever given any suspicion in the least that I would, or ever so much as staggered in my Principles, nor ever so much as disputed any Commands, though never so desperate that was laid upon me; no, nor ever turned my back in the field of their Enemies in any of their Services, so long as it was possible for a Man that had any Brains left him to stand; but was one of those seven hundred Men at *Brainford* (my self being there a Volunter without any particular Command) that with dint of Sword stood it out against the whole Body of the King's numerous Army for many hours together, and never stir'd off the ground, till both Horse and Foot had as it were incompass'd us round, and till we came to a readiness to beat out one another Brains with the but End of our Muskets, where I was taken a Prisoner, and led Captive in a most Barbarous and Disgraceful Manner to *Oxford*, where I suffered abundance of unexpressible Hardships, and underwent the Shock and rid the Storm as stoutly as any Man there; although I believe I was as much courted by Messages from the King himself, as any, or all the Parliament Men that were there my Fellow-Prisoners; for there I have had no less than four Earls and Lords in one Day sent unto me, by Him, to draw me over unto them; but I bless God that kept me upright, and intire unto my Integrity and Principles, and suffered me not to turn my back upon them: But, Sir, notwithstanding all this (I say) our Friends desired of the Parliament, that they would be pleased to take sufficient Security according to the Law, for our forth-coming at all-times, to Answer such things as shall be laid to our Charge; but their Petitions were contemned, themselves slighted and abused, and by no means could get any satisfactory Answers to them, Sir, I speak here to you, and to my Fellow-Citizens the Jury, as in the Sight and presence of God, that knows I ly not: and if you find me to be in a ly, in the least, in what I have said, then never Credit Man of my Profession again for my Sake: Truly, Sir, I say, they desired them, that we might be released from our Imprisonment, putting in Security to Answer whatsoever Legally could be charged upon us, only they craved, that we might have the same Legal Privileges, that they demanded at the Hands of the King, when he impeached the Lord *Kimbolton*, and the five Members of High Treason; which Privileges is easily and plainly to be read, in their own first *Primitive Declarations*, pag. 38, 39. and 76, 77. Now abundance of the Free-People of this Nation, in my behalf, having craved the same Privileges that was demanded for the Lord *Kimbolton*, and in the behalf of the five Membres, and the like, all that they desired was no more, but the same Privilege that they craved for them, which was, that I might have the due Process of the Law, from first to last; and I and my Accusers come Face to Face at the beginning before an ordinary Magistrate; and if they had any thing to lay to my Charge, that they would Legally according to Law proceed with me; but I say none of these would be granted, although themselves in several of their

( 120 )

Declarations, have declared all these things to be the common Right of all or any of the People of *England*, as well as Parliament-Men; yet notwithstanding all this, they continued in their incensed Condition against me, and would come to no Legal nor Fair Issue with me; nor let me in the least know what was the End or thing they required of me; or what was the thing that would satisfy for the extenuation of their Indignation against me; but contrariwise dealt Harder and Harder with me, in laying new and fresh insupportable Burdens and Provocations upon me: For after all this they caused me to be lockt up close Prisoner in the heat of Summer, set Centinels Night and Day at my Door, denied me the Accets of my Wife and little Babes; for a certain Season neither Wife nor Child could so much as set their Feet within the Cases of the *Tower*, to see me, or Comfort me in my Distress.

Lord Keeble. *Mr. Lilburn, is this your Defence?*

Lieut. Col. Lilburn. I beseech you, as either the Law, or Fear of God, Conscience or common Honesty dwells within you, let me have a little fair play to go on to speak for my Life without interruption, I shall not trouble you long, for I have almost done.

Lord Keeble. *When your Matter of Fact is to defend your self, and to Answer the Proof upon that, and that is it we are to hear, and not to hear you tell the Story of all your Life; and then if we should reply to these particular things, they will be such as most of them will vanish, and do you no Service; but take up a great deal of time: do not tell us a Story, but go on to finish the Matter of Fact.*

Lieut. Col. Lilburn. It has been your Favour to give me leave to tell it over to you, I pray give me leave to declare it to my Jury, who hath not heard it before, and it is very material to my Preservation, and my Life lies upon it; therefore do not deal with me as Proctors, and engaged Men, with those that thirst for my Blood, and laying aside that Evenness of hand betwixt both Parties, that ought to be in all Just and Righteous Judges.

Lord Keeble. *'Tis nothing to this; if it be any thing in the World to do you good, in the way of your Course of Defence, you should have it.*

Lieut. Col. Lilburn. Well if you let me go on no further to make my Defence, I cannot over-rule you, though you over-rule me, my Blood be upon your Heads, and the Lord God of Heaven and Earth reward you for all your Blood-thirsty Cruelty towards me his innocent Servant this Day; and so I have done with it; and what I have said I have done with it, and leave it to the Jury, earnestly begging and intreating them to take Notice of your Cruel and Unjust Dealing with me, in denying me all the Privileges of an *English-man*, when I am upon my Life.

Lord Keeble. *What is material, you shall not be debarred in it.*

Lieut. Col. Lilburn. O Lord, Sir! What strange Judges are you, that you will neither allow me Counsel to help me to plead; nor suffer me my self to speak for my own Life? Is this your Law and Justice, Sir? I have no more to say but this, seeing you straiten me; although you said you would

( 121 )

would hear me till Midnight: I hope I have made it evident to all rational Men, that all or any part of the Testimony given in against me, does not in the exact eye of this Law, in the least, touch me; although I have been most Unjustly imprisoned, and most Barbarously used and Tyrannized over; yea, and my Estate by Will and Power taken from me; that should have kept me and mine alive; and the Legal and Customary allowance of the *Tower* denied me to this Day; and although I have used all Christian and Fair Means, to compose my Differences with my Adversaries; but nothing would serve their turns, but I must have Oppression upon Oppression laid upon me, enough to break the back of a Horse; and then if I cry out of my Oppressions in any kind, I must have new Treason-fears made to catch me, many Months after their Oppressions were first laid upon me, that if I so much as whimper or speak, in the least, of their unjust Dealing with me, I must dye therefore as a Traytor: O miserable Servitude! and miserable Bondage, in the first Year of *England's* Freedom! I have now no more to say unto you, but only this; your own Law tells me, Sir *Edward Cook* speaks it three or four times over in his 3 Part *Institutes*, That it is the Law of *England* that any by-stander may speak in the Prisoner's behalf, if he see any thing urg'd against him, contrary to Law, or do apprehend he falls short of urging any material thing that may serve for his Defence and Preservation. Here's your own Law for it, Sir, *Cook* is full and pregnant to this Purpose, in his 3. part *Institutes*, fol. 29, 34, 37. But this hath several times been denied me, in the Case of *Mr. Sprat* my Soliciter; and now I demand it again, as my Right by Law, that he may speak a few words for me, according to his often desire, both to me, and the Court: I have almost done, Sir, only once again, I claim that as my Right which you have promised, that I should have Counsel to Matter of Law; and if you give but your own Promise, which is my undoubted Right by your own Law, and I fear not my Life: But if you again shall deny both these Legal Privileges, I shall desire my Jury to take Notice, that I aver, you rob me of the Benefit of the Law, and go about to Murther me, without and against Law; and therefore as a free-born *English-man*, and as a true Christian, that now stands in the Sight and Presence of God, with an upright Heart and Conscience, and with a chearful countenance, cast my Life, and the Lives of all the Honest Free-men of *England*, into the Hands of God, and his Gracious Protection, and into the Care and Conscience, of my honest Jury and Fellow-Citizens, who I again declare by the Law of *England*, are the Conservators and sole Judges of my Life, having inherent in them alone, the Judicial Power of the Law, as well as Fact; you Judges that sit there, being no more, if they please, but Cyphers to pronounce the Sentence, or their Clarks, to say *Amen*, to them, being at the best, in your Original, but the *Norman* Conquerours, Intruders; and therefore, you, Gentlemen of the Jury, my sole Judges, the Keepers of my Life; at whose hands, the Lord will require my Blood, in case you leave any part of my Indictment to the Cruel and Bloody Men: And therefore

( 122 )

I desire you to know your Power, and consider your Duty, both to God, to Me, to your own Selves, and to your Country; and the Gracious Assisting Spirit, and Presence of the Lord God Omnipotent, the Governour of Heaven and Earth, and all Things therein contained, go along with you, give Counsel, and direct you, to do that which is just and for his Glory.

[The People with aloud Voice, cried, Amen, Amen, and gave an extraordinary great Hum, which made the Judges look something unto-wardly about them, and caused Major General Skippon to send for three more fresh Companies of Foot Soldiers.]

Mr. Attorney. Gentlemen of the Jury, You have heard the Evidence, in behalf of the State; You have heard the Insinuations of the Prisoner upon them, as calling you his Fellow-Citizens, and the like: He hath said, and spoken, we have proved, and it is in your Consciences to believe Proof, before saying: the Prisoner begun to cite you two Acts of Parliament: the one in the 1. of Edw. 6. and the other the 5. and 6. of Edw. 6. and by those two Acts he would signifie to you, that you should have two plain and evident Witnesses to every particular Fact; yet he did forget to cite another Statute, made in the first and second Year of Philip and Mary, that overthrows and annihilates those two Statutes that would have two plain Witnesses to every Fact of Treason, and in all Cases of Treason will have them freed, according the common Course of Law the common Law for the Tryal of them: if that must be material, or if that stick with you, that you cannot determine it, my Lords the Judges will direct you in it, and in all other Points of Law; But certainly that exception was a little vain too; for we did not insist with one particular Witness in nothing at all: For that of Newcomb, the Prisoner did not repeat fully what he said: for I remember he said this, that Mr. Lilburn, and Captain Jones, came together, and brought the Copy of the last Sheet that was to be Printed: if one come with him, and the other delivered it to the Printer, they are both equally Guilty alike: they came again the same Day at Night, and when the first Sheet was Printed, to be sure, it was true and right, that Mr. Lilburn did take the Pains to take one of the Copies into his Hand, and Corrected it.

Lieut. Col. Lilburn. By your Favour, Sir, he urg'd no such thing; by your Favour, Sir, they are the express Words of the Testimony, to the quite contrary; and I wonder Mr. Prideaux you are not ashamed, to aver such notorious Falshoods, as you do, in the open Face of the Court, before thousands of Witnesses; for Newcomb said no such thing, as you falsely affirm; neither is there any such Statute in Queen's Mary's time that doth abolish those two Statutes of Edw. 6. that I insist upon for two Witnesses; name your Statute if you can, here's the Statute-book, let the Jury hear it read, and do not abuse them with your impudent Falshoods.

Mr. Attorney. Well, Sir, I leave it to the Judgment of the Jury, Sir: My Lord, as for all the rest, and particularly for that of the Salva Libes-

( 123 )

Libertate, it is true, there is but one Witness which is sufficient enough by the fore-mentioned Act of Queen Mary; but, my Lord, it is under Mr. Lilburn's own hand, he will not deny it.

Lieut. Col. Lilburn. By your Favour, there is no Man so swears, in the least, that it is my Hand, Jesus Christ denied none of his Accusation; yet when they went about to ensnare him by Questions, he answered Pilate, &c. Thou sayst so, go to those that heard me, they know what I said, why ask you me? Sir, I beseech you, produce your Act of Parliament in Queen Mary's time, to prove, in Cases of Treason, there ought to be but a single Witness.

Mr. Attorney. Do not interrupt me, Mr. Lilburn.

Lieut. Col. Lilburn. I pray you then do not urge that which is not Right nor True, but notoriously False; for if you persevere in't, I will interrupt you, and tell you of it to the Purpose.

Justice Jermyn. Though you do recite many things; yet I must tell you, the Law of the Land saith, the Counsel for the Common-wealth must be heard.

Lieut. Col. Lilburn. I beseech you then, let there be no more added to the Testimony, than Right and Truth; for my Life lies upon it, and I must and will declare the Business, and the Falshood of it.

Mr. Attorney. I would not do the tenth part of the hair of your Head wrong; but being intrusted, I shall do my Duty, and discharge my Conscience in my Place, which is fully and plainly to open that unto them, which in my Conscience I think is Right and Just.

Lieut. Col. Lilburn. I do repeat it thus, as in my Conscience, that he did say, when the Copy was first brought, Captain Jones gave him the Copy, and Captain Jones did agree with him for the Printing of it, and Captain Jones did read the Original to his Corrector; which Corrector amended the Printer's Faults, and that I had an uncorrected Sheet away, and that his Forms were taken before he had Perfected that.

Mr. Attorney. And Mr. Lilburn came the second Time.

Lieut. Col. Lilburn. Will you spend all Day in vain Repetitions? you would not give one leave to breath, nor freely to speak truth, without Interruption, although you were laying load upon me for five Hours together: I pray, Sir, do not now go about to tire the Jury with tedious Repetitions, nor to Sophistate or Adulterate their Understandings with your Falshoods and Untruths.

Justice Jermyn. Mr. Lilburn, the Law of the Land is, that the Counsel for the State must speak last.

Lieut. Col. Lilburn. Sir, your Law is according to the Law of God, you said, and that Law I am sure, it will have no Man to bear false Witness; why doth Mr. Prideaux tell the Jury such Falshoods, as he doth, and takes up six times more time to take away my Life, than you or he will allow me to defend it.

Mr. Attorney. For the Salva, that it was delivered in the Tower which is not in London, I hear not one Witness to prove that.

Lieut.

( 124 )

*Lieut. Col. Lilburn.* That is a disputable Point in Law, whether it be in London or Middlesex.

*Mr. Attorney.* And then, my Lord, as for the Agreement of the People, Mr. Lilburn says, it was dated the first of May, 1649. and it was before the Act was made; that is dated May, 1649. and it is before the Law was made in July, 1649. We do not Question him for that; but when he comes to bring in those Books in August last; then he does new publish that Agreement of the People, he incites them to set it up, as their Center, Standard, and Banner.

*Lieut. Colonel. Lilburn.* Let me not thus be abused; that Book was never fixt upon me, I was never taxt to be the Author of it, or so much as the disperser of one of them; what baseness is this in you Mr. Prideaux thus falsely to use me.

*Lord Keeble.* He does you no wrong, but all the fair play that can be; he doth fix that Agreement no otherwise upon you, than by your Books it is.

*Mr. Attorney.* I do acknowledge the Agreement of the People that you are charged with is dated the 1. of May, 1649. and that the Evidence may allow this; as also, that that Agreement of the People that was then Published, and which you in your Books did own, was and is signed by M. Walwin, Mr. Prince, and Mr. Overton, your Fellow-Prisoners, as well as your self.

*Lieut. Col. Lilburn.* There is no Book yet proved mine, and if that Agreement were mine, yet it is dated before both your Acts, and was in Print before they had a being; and therefore in the Eye of your own Law, can be no Transgression; and you your self doth not so much as accuse me for Publishing or Dispersing one of them, since your Acts were publickly declared.

*Mr. Attorney.* That which you owned and signed, Mr. Lilburn.

*Lieut. Col. Lilburn.* By your Favour, Sir, I never Owned or Signed any Book that is proved against me yet; and no Book in the Eye of the Law can be accounted it mine, until it be Legally proved mine, or voluntarily confessed to be mine by my self.

*Mr. Attorney.* My Lord, that is Own'd to be so Printed, when he must come and incite the People, and stir them up upon those particulars therein contained, to insist with particulars, are the dissolving of the Parliament, the having of a new, and such other particulars therein contained; and that this Agreement shall be the Center, the Banner, and the waved Standard, unto which they shall flock, and to send Agents into several Countries to put this into Execution. \* Now, my Lords, for this Book it is not doubted, but that there are two Witnesses, that the Pre-

\* Note that the Indictment chargeth no such thing upon Mr. Lilburn, neither was there any Proof at all brought so much as to accuse him of any such thing.

( 125 )

parative to the Hue and Cry, was Owned by Mr. Lilburn to be his own; the Errata's of the Printer only excepted, and that the Lieutenant of the Tower likewise joyns in it. My Lords, I think there was not a Clause read to you out of it, but what is full and home to the Purpose; and as for the Out-Cry, the Printer's Testimony is compleat, and the Legal Fundamental Liberties, is Owned by him in his Impeachment of High Treason against Lieutenant General Cromwel, and his Son-in-Law, Commissary Ireton; and he doth there also sufficiently own the Agreement of the first of May. And, my Lords, I do not know there was any thing, that was offered here in that Book, but was first proved in the Court: We do not offer anything of Errour that was past, to take Mr. Lilburn upon any Speeches that fell from him unawares, although he hath sufficiently done it; but in much speaking, there wants not Offence; it falls out here in this: Mr. Lilburn hath been very free in his Writing, in his Speaking, in his Printing, and it now riseth in Judgment against him, and the Law must now give him his due, which you, my Lords, are Sole Judges of, and from whom the Jury, and the Prisoner both must receive, for all that which Mr. Lilburn hath said to the contrary. And the Jury Answers to the Matter of Fact, and they are upon their Oaths Sworn to do the things that are Just and Right. My Lords, I shall leave the Evidence to them, with this Note or Observation upon it, that notwithstanding all Mr. Lilburn hath flourish'd and said; I will not say as he hath done, and seek by glossing Speeches or Insinuations, to wind into the Affections of the Jury, as he cunningly and smoothly hath done, by calling them his Fellow Citizens and the like; you, Gentlemen of the Jury, you are to Answer now according to your own Consciences, betwixt God and you; your Oath is that you are not to Respect, Favour or Affection, nor to meddle with him upon any Respect, than Injustice; and as it is already clearly witnessed and proved before you: My Lords, you have heard the several Charges he is accused upon, you have heard a great deal of foul Matter and Dirt, that is fit for nothing but to be cast upon the Ground, and returns to Mr. Lilburn again; for truly when he cast it upon the purest Marble or Brass, it falls of again, God be thanked that it returns to Mr. Lilburn the right owner; the Prisoner hath cast these Accusations, and these Blemishes upon others, but now they are upon the Ground they will fall off, and doth retort and return upon his own Face; he hath taken a great deal of Pains to dig deep for Mistakes, nay for notorious and gross Calumniations, had he the Ingenuity to remember the Words of the Scripture, that the Pit he had digged for others, he is fallen into himself, he would have some Remorse of Conscience in him; but all the Mischiefs and all the Evils that can be thought upon, which he imagined to heap upon others, is now most justly fallen upon himself: It is said of those flies, whose Matter is Corruption, they always light upon sore Places, upon galled backs, upon Carrion, other Birds when they fly upon fair Meadows, will not touch these: Certainly the Parliament of England, the Army, all the Officers of it ( whose fame both as Parliament and Army, all Men know



( 126 )

know in an extraordinary manner) are now put in a Ballance against Mr. Lilburn; but for the Army and the Officers of it, no Man can say but they have been faithful and true to their Trust, Gallant and Courageous, and extream successful, to the Peace and Happiness of this Nation; and God is pleased at this Instant to own them, and bless them in a miraculous Manner.

Lieut. Col. Lilburn. And yet notwithstanding did not you help to Vote them Traytors once? I am sure I was in a Chamber in White-Hall last Year, when their Commissioners (now Members of your House) put your Name down in their black Bill, for a Malignant; but it seems you have recanted your Errors, and engaged to be a good acquiescing Creature, or else you had not been here this Day in the Condition you are in; but for all their faithfulness, &c. have they not rebelled twice against their Creators, Lords and Masters?

Mr. Attorney. Never Army hath done greater things, and yet they have not scaped Mr. Lilburn's Tongue and Pen, they have not scaped it, my Lords, but he hath lashed them to the Purpose: I shall be as good as my word, not to aggravate the Offences, for they are so vile, they aggravate themselves enough, and therefore I leave it thus, the naked truth, and the worth of it, as the Books themselves have offered themselves; but I shall say thus much more, the Honour of the Parliament of England, all the Magistracy therein, the Honour of the Government; the Honour and Renown of the Army, that hath done such great and wonderful things, is now at stake against Mr. Lilburn; and there being a Law published that did give Warning; and Mr. Lilburn had been Tried for his Life sooner, upon my Knowledge, I say, Mr. Lilburn had been sooner Tried, and sooner Condemned and Executed, if the Law had been sooner made and published; but as he saith right well, where there is no Law, there is no Transgression, and therefore there being a Law against which he hath offended, he must smart for it.

Lieut. Col. Lilburn. I am sure I was Imprisoned most unjustly, without any the least shadow or colour in Law, many Months before your Acts were made, and extreamly oppressed; and now you go about to hang me as a Traytor, for at most, but crying out of your Oppression: O Unrighteous Men, the Lord in Mercy look upon me, and deliver me and every honest Man from you, the vilest of Men.

Mr. Attorney. And that Law was published and proclaimed in this City, by means of which Mr. Lilburn and others, had timely Notice that they should not do such things as are there forbidden; it also told them the Penalties of it, which are those that are due for the Highest High Treason; and yet notwithstanding you see with what Boldness, with what Confidence, in despite of all Law and Authority, these Books have been made and published by Mr. Lilburn; and whereas he is pleased to say many times that many Men have petitioned for him to the Parliament; he will not affirm to you, that ever he petitioned himself; out in all his Discourse here, he calls them, the present Men in Power, the Gentlemen at

( 127 )

at Westminster; nay, my Lord, he hath not so much as owned the Power of the Court since he came before you; but hath often called you Cyphers and the like.

Lieut. Col. Lilburn. That's no Treason, Sir, they intitle themselves the present Power; and would you hang me for not giving them a better Stile, than they themselves give to themselves? I think the Stile of present Power or present Government, is a very fit Stile for them.

Mr. Attorney. My Lord, I have told you long, it is the Jury that are Judges upon the Fact; and to you I must appeal for Law, if you do believe, the Evidence is plain and full against him, for which he stands indicted, and so God direct all your Judgments, I have done.

Lieut. Col. Lilburn. Sir, by your Favour, I shall desire to address myself in one word to you, which is to desire that the Jury may read the first Chapter of Queen Mary, in the Statute-Book, and the last Clause of the Chapter of the thirteenth of Elizabeth, where they shall clearly see, especially in the Statute of Queen Mary, that they abhorred and detested the making of Words or Writing to be Treason, which is such a Bondage and Snare, that no Man knows how to say or do, or behave himself; as is excellently declared by the Statute of Hen. 4. v. 2.

I have done, Sir.

Lord Keeble. You, Gentlemen of the Jury, you are Sworn, you are Men of Conscience, Gravity and Understanding to tell you of the Duties of your Place, that have gone through it so often, is a vain thing, the Sacredness of an Oath which a Man must not transgress in the least, not to save the World; you have gone so often through it, and understand it, that I need say no more, the Charge you have heard, and the Proofs; but for Proof single or double, or treble, as some of them do amount unto a Witness in this; yea, that doth double another Man's Witness; if I swear this thing, and another swear the same, a third the same, that is doubled upon all their Testimonies: Mr. Lilburn hath cited two Statutes of Edw. the sixth, to prove there must be two Witnesses; but I must tell him, were there but one to each Fact, it were enough in Law; for as for that which was cited of King Edw. the sixth, you have had it fully answered by a later Law of Queen Mary; which doth over-rule that, and also in Acts that the Common Law of England shall be the Rule by which all Treasons shall be Tried, which reacheth to this Case too, that there need no more but one Witness, and this Law; and therefore, Gentlemen of the Jury, that must not stick with you; that which you have heard, to concern you of the Truth of the Matters is this, you are not bound affirmatively to have two Witnesses, but in that one Witness with the Circumstances concurs, that is sufficient; that which should prevail with you, is to consider the Strength of the Accusation, which rests in the Books, and doth consist in three Heads, which are laid down in the Books themselves, which doth in the first Place, so firmly express, and so far willify the Parliament and State as it is now established in England; the second, doth look unto the Counsels and Incitations of him for the stirring up

( 128 )

of Tumults, Commotions and Wars in this Nation; and the third, are the things cited in his Books to that End and Purpose to divide the Army; and then the other will take the better effect: these are the three main Charges; and these the Books that come from him, do so plainly testify; that the Books are proved to be his, you are fit Judges of; but it clearly appears by those his Books that these things were in his Intention.

For that he says, it is Mens that does make a Man Guilty, the mind, that is intended as it is express: *A&us non facit reum nisi mens sit rea.*

Now that Mind is rea, when there is Faith published, but I tell you this, the Books being admitted true; I say that never Man, that acted the Highest of Treasons as he hath done, hath had so much Liberty as he hath had, and as I said before, never Man of his Condition nor any Condition in England, that was indicted in such a Case, ever had a Tryal in such a Court, in such an Auditory, such a Presence as he has had.

Lieut. Col. Lilburn. The more's my sorrow.

Lord Keeble. The more's your sorrow indeed, you have good Cause to be sorrowful indeed, for this Act of yours thus declared, if your Intentions had taken effect, your Plot was the greatest, that ever England saw, for it struck at no less than the Subversion of this Common-wealth, of this State, to have laid, and put us all in Blood, your Plot was such, that never such was seen in the World before, to proceed from a private Man as you are, therefore it must needs be heavy upon your Conscience, therefore, my Masters of the Jury, look into your Conscience, and see what that saith unto you, which he stands so much upon the Witnesses Testimony, are now plain and good in Law, in this Cause they are multiplied, I do not know in one particular, that there is a Testimony single, but it is aggravated with many Circumstances, therefore let not that trouble you, you are the proper Judges of the Matter of Fact, being of the Country, and if you have fully apprehended the dangerous things Plotted in those Books of Mr. Lilburn's, you will clearly find, that never was the like Treason hatched in England, and so in God's Name, as the Prisoner doth lead to your Consciences, so go and do.

Lieut. Col. Lilb. I desire your Favour, that there may be a Course taken, that neither my Prosecutors, nor any belonging to them, may have Access unto the Jury, till they have done.

Justice Jermyn. You, Gentlemen of the Jury, I did expect it, it was expected by the Court, that some Matter of Law, or some Question of Law, might arise upon the Evidence, which if it had, it was the Duty of the Court, to have cleared it, but there does not appear, and therefore there is an End, as to the Dispute of the Law.

Fore-man. We are no Lawyers indeed, my Lord.

Lieut. Col. Lilburn. I have beg'd it, and you have promised it, that I should have Liberty to plead in Law, to the Illegalities of the Indictment, but you have denied me that Legal Right, yea; you will not permit my Solicitor, to speak a few words for me, I dare undertake, there was never such a Tryal upon English ground as this hath been, where a

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( 129 )

Man hath been denied, all the Legal Rights of an English-man, as I have been; You, Gentlemen of the Jury, who now are my Sole Judges, I pray, you take Notice of it.

Justice Jermyn. There was never any such kind of abuse offered to a Court as you have given, nor never was such Language used to any Court of Justice before, that I did hear of as you have given, and certainly, the Behaviour at the Bar doth set forth what the Humours and Character of the Man is; for in this Case, if any such dangerous thing of Acting of Commotion or Mutiny in the Army or in the Nation should have followed, it had been too late then, to have thought of the Remedy; therefore the Wisdom of the Parliament hath declared, that whosoever shall by Writing, Printing, or by openly Declaring, Publish, that the present Government of England is Usurp'd or Tyrannical, it is Treason, there is the Fact, upon which all the Evidence does depend, and you are to judge, whether in all those Books there be not by Mr. Lilburn, a Traiterous Fact committed; and how clearly this does appear unto you, with all Circumstances thereunto belonging, I leave you to Judge, and how short his pretended Replies are to be seen, or Invalidate the Strength of the Witnesses, I also leave you to Judge. I say, I might easily shew you, how short his prevented Answers are of real Satisfaction, but I leave it to your Judgments.

Lieut. Col. Lilburn. Sir, my Answers are real Answers, not pretended ones, as you are pleased to call them.

Justice Jermyn. But in this Business the Evidences are sufficient to make a Man Guilty of Treason, for here was not simply a passionate Act, or inconsiderate Speech, but what he hath done Deliberately, and Advisedly, which is sufficient to make him or any Man, that so doth, Guilty of Treason. All this that was Published was in August, the Act is in July preceding. Now it is very true, and I will English it. For Mr. Lilburn, *A&us non facit reum nisi mens rea*: The Act of a Man does not make him Guilty, unless his mind be Guilty; But I pray, how shall any Man know the Guilt of a Man's mind but by those Polluting and Poisonous Words that comes out of his Mouth? That's the mind, what I hear a Man say, I may lawfully say, he thinks; and it is a Rule in Law, that the outward Acts do shew forth inward Intentions, that very Rule I will not speak it in Latin, because I speak to one that does say, he does not understand Latin; otherwise I could speak more Latin; now here is the Matter, whether or no upon the whole Evidence that you have heard, there does not appear sufficient Matter to make this Prisoner Guilty, not of rash but of advised and deliberate Treason, and as plainly of Plotting and Contriving to raise Mutiny and Sedition in the Army, thereby totally to Subvert and Destroy the present Government, and truly, I have not heard more of Skill has been used, and more Attempts made than I think you have heard, and do remember, I doubt not, but as you will take care of the Life of a Man, that you must not take away the Life of an Innocent, so you will be as careful of your own Souls, and the publick Safe-

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ty, and that's all that I desire, and I pray God to direct you for the best.

Lieut. Col. Lilburn. If you will not let me have Counsel, let my Solicitor speak Matter of Law for me.

Justice Jermyn. Mr. Attorney, you must take some care to suppress this, he will not be answered by us, I pray demand Justice of the Court against him.

Lieut. Col. Lilburn. Well, Sir, then I have done,

[ The Fore-man desires the AG for Treason, and one of the Jury desired to drink a Cup of Sack, for they had sat long, and how much longer the Debate of the Business might last, he knew not, and therefore desired, that they might have amongst them a quart of Sack to refresh them. ]

Justice Jermyn. Gentlemen of the Jury, I know for my part in ordinary Juries that they have been permitted to drink before they went from the Bar, but in Case of Felony or Treason; I never so much as heard it so, or so much as ask'd for, and therefore you cannot have it.

But one of the Judges moved, they might have it.

Justice Jermyn. I may not give leave, to have my Conscience to err. I dare not, and thus if the rest of the Judges be of Opinion, you shall have a Light if you please, the fellow that keeps you shall help you to it, but for Sack you can have none, and therefore withdraw about your Work.

Lieut. Col. Lilburn. Sir, I understand the Officer that is to keep their Door hath declared some thing of Bitterness of Spirit against me, I desire therefore, he may have some indifferent Man joyned with him to see I have fair play, which was granted, and he Sworn.

The Jury go forth about five a Clock, the Court adjourned till six a Clock, and the Court Commands the Lieutenant of the Tower, and the Sheriffs to carry the Prisoner into the Irish Chamber, which they did. The Prisoner stays about three quarters of an Hour, and the Jury being come into the Court again, the Prisoner was sent for, and after the Cryer had caused Silence, the Juries Names were called, viz.

- |                    |                     |
|--------------------|---------------------|
| 1 Miles Petty.     | 7 Edmond Keyfar.    |
| 2 Stephen Iles.    | 8 Edward Perkins.   |
| 3 Abraham Smith.   | 9 Ralph Packman.    |
| 4 John King.       | 10 Willian Commens. |
| 5 Nicholas Murren. | 11 Simon Werdon.    |
| 6 Thomas Dainty.   | 12 Henry Tooley.    |

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Our Fore-man.

Cryer.

Cryer. John Lilburn, hold up thy Hand, what say you, ( look upon the Prisoner, ) is he Guilty of the Treasons charged upon him: or any of them, or not Guilty?

Fore-man. Not Guilty of all of them.

Clerk. Nor of all the Treason, or any of them that are layed to his Charge?

Fore-man. No, of all, nor of any one of them.

Clerk. Did he fly for the same?

Fore-man: No.

Which No being pronounced with a loud Voice, immediately the whole Multitude of People in the Hall, for Joy of the Prisoners acquittal gave such a loud and unanimous Shout, as is believed, was never heard in Guild-Hall, which lasted for about half an Hour without intermission: which made the Judges for Fear, Turn-pale, and hang down their Heads; but the Prisoner stood silent at the Bar, rather more sad in his countenance than he was before, but Silence being made,

Clerk. Then hearken to your Verdict, the Court hath heard it, you say, that John Lilburn is not Guilty of all the Treasons, laid unto his Charge, nor of any one of them, and so say you all, and that he did not fly it.

Jury. Yes, we do so.

Clerk. Gentlemen of the grand Inquest, the Court doth discharge you.

And you, Gentlemen, of Life and Death, the Court doth discharge you also.

Lieutenant of the Tower, you are to carry your Prisoner to the Tower again, and Major General Skippon is to Guard you, and all whom you shall desire, are to assist you.

The Prisoner withdrawn, and the Court adjourned till Wednesday following.

And extraordinary were the Acclamations for the Prisoner's Deliverance, as the like hath not been seen in England, which Acclamations, and loud rejoycing Expressions, went quite through the Streets, with him to the very Gates of the Tower, and for Joy the People caused that Night abundance of Bonfires to be made all up and down the Streets; and yet for all his acquittal by the Law, his Adversaries kept him afterwards so long in Prison, that the People wondered and began to grumble, that he was not Discharged, and divers of his Friends went to the Judges, the Parliament, and Council of State, by whose Importunities, by the seasonable Help of the Lord Gray of Groby, Colonel Ludlow, Mr. Robinson, and Colonel Martin, his Discharge was procured, a Copy of which thus followeth.

The

The COUNCIL OF STATE'S ORDER.

W Hereas Lieutenant Colonel John Lilburn, hath been Committed Prisoner to the Tower, upon Suspicion of High Treason, in Order to his Tryal at Law, which Tryal he hath received, and is thereby \* acquitted. These are therefore to will and require you upon sight hereof to Discharge and Set at Liberty the said Lieutenant Colonel John Lilburn, from his Imprisonment, for which this shall be your sufficient Warrant.

\* The Jury justified in their Verdict by the Council of State.

Given at the Council of State, at White-Hall, this 8th. Day of November, 1649.

To the Lieutenant of the Tower of London, or to his Deputy.

Signed in the Name and by the Order of the Council of State appointed by Authority of Parliament.

JOHN BRADSHAW, President.

ADVERTISEMENT.

THERE being several Pamphlets, written by Lieutenant Colonel John Lilburn, [ besides this Tryal, ] Therefore all Gentlemen that have any of his Works by 'em, if they please to communicate them to the Printer, he having several by him already, they shall be justly and faithfully Printed and Published, and the Favour most thankfully acknowledged, by

H. H.