

Far to let him have Ten Pounds, saying, Titus was in want, and upon this I lent him Ten Pounds: the Letter was read at Mr. Love's House when he came from Calais. So, my Lord, here is now, under favour, his Proof before you of this Meeting at Dowgate, at the Swan there, finished in Breadstreet, carried over unto Jersey, Titus the Messenger furnished with Money by a Party from hence in this Errand, as we told you. My Lord, all this while I do not hear of Mr. Love; if he were, my Lord, he was like the Mole under ground; but however, my Lord, Mr. Love hath carried himself (as some have said) like a Rat among Joint-Stools, a Man can see him, but cannot hit him. But, my Lord, I doubt he will appear to be too busy in what follows, and that he had a hand in it at first.

My Lord, the next to go on with is this, in time; That when Titus finish'd his Work in Jersey, he was then to give an account to his Masters that employed him, and upon his Return he was to do it faithfully, as he thought. But being informed, that the State had vigilant Eyes, and they discovered him what he had been doing there, and he having notice from some of his stedfast Friends here of it, he thought it was not safe for him to come in Person, so that his guilty Conscience kept him off. But then he did desire that he might give an account by the hand of some others, by their Memories; and for that purpose wrote a Letter, to whom I cannot tell, I think to Drake: the Letter was written, and under favour, my Lord, this Letter from Titus was read in Mr. Love's House, to have one sent to him; and there it was propounded for some to be sent. Adams was propounded for him to go; Far propounded for him to go: but not them, but Alford was agreed to go, and did accept of it; but not that he was there, my Lord. My Lord, for this I shall crave the same Favour from you, to read Adams and Far, as to that Particular. This is Major Adams; It was moved in Mr. Love's House, Mr. Love being there present, that I should go to Calais to meet Titus; but Alford going thither, did at his Return give an account of the State of things at Mr. Love's House. My Lord, that I read him for, is for that part, that it was moved in Mr. Love's Chamber, Mr. Love being then present: That I should go to Calais to meet Titus; it was moved, that Adams should go: my Lord, this I read to show Mr. Love was privy to this before the Messenger was sent. My Lord, the next is Captain Ralph Far: I was in Mr. Love's House in his Study, wherein (in Mr. Love's Study) a Letter was read from Titus, desiring one might be sent to him to Calais; and thereupon it was moved that I should go, but afterwards it was agreed that Alford should go, who went accordingly. That is now as to that Particular, that before any Man was sent unto Calais, it was made known in Mr. Love's House, and some propounded for to go, and at last another did go; this, my Lord, I offer to you, as that which will not be controverted by Mr. Love, for I have read you two Witnesses to it. The next, my Lord, is, in which (I think) we do not differ; but that when Alford had been at Calais, and had taken the account that Titus gave him, the Copy of the Letter which he said was from the King to the Presbyterian Party here, the Narrative of all the Transactions and Proceedings to Jersey: that upon his Return, I think we do

not differ, nor is it denied; I am sure Mr. Love acknowledged it in his last Defence, because proved by four, therefore confessed, my Lord, that this Narrative, the Copy of this Letter was read in his House; and for that I have the Testimony of Adams, Alford, Jaquel, and Far; which, if it be your Pleasure, I shall humbly read unto you.

The first is Major John Alford; Having received at Calais a Narrative in writing of Titus's Transactions in Jersey, I brought the same to Drake, to whom it was directed. Now it appears to whom the Direction was. And he brought it to Mr. Love's House, where it was read; afterwards there was a Commission so called. But, my Lord, if you please, that is for this in the first place, That this Narrative brought from Titus by Alford, was read at Mr. Love's House.

The next is Adams; But Alford going to Calais, did at his Return give an Account of the State of Things at Mr. Love's House, which Account was the Narrative from Titus, and the Copy of the Letter said to be the King's Letter: The Contents whereof I remember was as followeth, The King expressed a great deal of Affection to the Ministry in general in England, and promised them great Favours, when he was in a condition, and desired them to continue stedfast in the way they were in; which Letter was read and published in Mr. Love's Study, and Mr. Love was there some times of the reading. At the same time a Motion was made, of giving thanks to Titus for his well managing Affairs there, and at the same time the Commission and Instructions were. So that here is another Testimony, that this was done at Mr. Love's House; the Narrative, says this Gentleman, and the Copy of the King's Letter.

My Lord, the next I shall read unto you, is Mr. John Jaquel: After Alford's coming home, I was at Mr. Love's House, where was Potter, Drake, and Alford; and Mr. Love was there some times, though divers times somebody came to speak with him, and called him, and he went to speak with them. A Narrative from Titus was there read by Alford or Drake, wherein was declared the King's Inclination to make peace with the Scots, but his wicked Council hindered him. I think it was a Narrative of what had passed between the King and Titus at Jersey. This is that that Jaquel says.

The next, my Lord, is Far. Alford being returned, he gave an Account of his Employment at Mr. Love's House; a Copy of a Letter was there read, from the King to the Presbyterian Party in England: The Substance was to send Commissioners to the Treaty at Breda. The Narrative brought from Titus was communicated at Mr. Love's House, where were present ten or twelve Persons. So, my Lord, you have heard these four Witnesses, what they have said concerning this: Now you shall give me leave to make Application of this to the former, I shall crave your Favour to go thorough this: There follows more at Mr. Love's House, this is not ended yet. My Lord, after this, there was somewhat propounded to be done upon this Narrative and a Letter from the King; somewhat was propounded at this Meeting: My Lord, then there was (as I know the Court remembers) Speech of a Commission that was somewhat controverted. There was Speech of a Commission, and a Commission read; Mr. Love ingenuously acknowledgeth, and it was proved, and

he declared his dissenting from it, and that he was against it, because as private Persons they had no Power to do any such thing. But, my Lord, that there was a Commission read there, brought by *Drake* (I do not say that this proves that *Mr. Love* corrected it;) that there were Instructions and Letters read for to be sent over, I think, is not denied: But, my Lord, for that, if you please, I shall read you the Witness. The first is *Alford*: *Afterwards there was a Commission, so called, agreed among us, sent over to the Lord Willoughby of Parham, Maffey, Graves, and Titus, at Breda, to advise with the Scotch Commissioners there, in behalf of the Presbyterian Party in England. This Commission was read in Mr. Love's Study, and at the same time Instructions for the Commissioners to walk by, were agreed on to be sent; which Commission and Instructions were the Substance of the Petition formerly sent, to press the King to take the Covenant, and to prosecute the Ends of it. This Petition was (I conceive) what was formerly agreed upon at Dowgate; which Commission and Instructions one Mafen, the Lord Piercy's Man, carried over. This is Alford's Testimony as to this. And being asked by Mr. Love, Did not I dissent from sending the Commission and Instructions? he says this, It was agreed in the general, that the Commission and Instructions should be sent, Mr. Love being then present. All present are Principals, my Lord.*

My Lord, in the next place is Major *Huntington's* Testimony; and the first is this, *That at Mr. Love's House in the beginning of March 1649, I found Drake and others, and there was read a Paper in the nature of a Commission, commissionating my Lord Willoughby of Parham, Graves, Titus, Maffey and Bunce, to treat in the behalf of the well-affected Party of England, and to join with the Scotch Commissioners, according to such Instructions as should be therein inclosed. And this Question being asked, What Power have we to give or send such a Commission? Drake answered, We have the King's Command for it, and the Authority of some secluded Parliament-Men; for I look upon them beyond the Power that is now sitting. Whereupon Mr. Love replied, Come, come, let it go. You have heard Huntington's Testimony, and Mr. Love's Paraphrase upon those Words.*

The next is *Adams*: *At the same time a Commission and Instructions were spoken of at Mr. Love's House to be drawn up and sent: As I remember Mr. Gibbons brought the rough Draught. I am very confident that Master Love was there some part of this time, and it was in his Study where this was generally consented unto. The Instructions were there agreed also, and read by Drake, as I remember. Sterks, the Scotch Agent, met with us sometimes at Master Love's House. This is what was testified by Adams. There is another to this, and that is Captain *Far*. William Drake read there a Paper of the Nature of a Commission, which was not agreed to by the Company, because private Persons had no Authority to give Commission. The Commission was in the Name of the Presbyterian Party. A Letter and Instructions was then agreed upon; the Commissioners were to be the Lord Willoughby of Parham, Bunce, Maffey and Titus, who were to move in the behalf of the Presbyterians. Papers then were read, to have been sent to the Queen, to persuade the King to give Satisfaction to the Scots; but they were not assented to.*

My Lord, I have done with this that concerns

this Meeting; and now I shall apply that which I intended, and spoke of before. The Design you heard, that, my Lord, was at the *Swan at Dowgate*, was treasonable enough in Conscience, high enough; a Party employed to agitate! And though we do not find *Mr. Love* to have been knowing or privy to it at first, yet, my Lord, if there be a Treason hatched and designed, a Party sent in it, and any subsequent Act of any other Party that shall come into this, and approve of it, and join in it in what way soever, this Man, my Lord, is guilty of the first Transaction of Treason. So that though Master *Love* did so walk under ground, that we cannot bring him in to be knowing at first, yet I bring him approving at last: And, my Lord, tho' here be his first appearing, it is enough, and too timely. And, my Lord, *Titus* departing, and an Account given of all, and, for ought appears, not to be proved by me, nor by any for the Commonwealth, whether Master *Love* did approve or not, or how far he went in it. But he was present, and at the Debates and Discourings about it, and Actings in it. My Lord, this is far from Misprision of Treason; for Misprision of Treason is a bare silent Act that carries nothing of Discourse nor Debate with it; it is a simple Act of Omission. But when Treasons are hatch'd and are designed, and others shall come and treat, and debate, and discourse upon carrying them on; my Lord, by the subsequent Act he hath approved of all that pass'd before, and made himself Party to it. Here is an Account given by *Titus* of what had passed there; this is brought into Master *Love's* House, there are Debates concerning a Commission; whether they took the King for the Authority, or the King wrote of it, it doth not much move me. A Copy of a Letter from the King was read there, let them take it among themselves as they please. Here was a Commission debated, and Master *Love* acknowledgeth he debated against it. My Lord, under favour, if he had declared an utter Dislike, and (as he himself says) a Detestation and Abomination against it; but he goes on, though not in that Particular, yet in another, and he is guilty of all. In Treason there are no Accessaries, all present are Principals.

The Crime of Treason is beyond the crying Blood of Murder; one is but private, the other is publick: so as, my Lord, though *Mr. Love* acknowledgeth, that he so far owned the Narrative from *Titus*, and the Proceedings there, the reading of it, but did dissent from the Commission, and did speak against it, and at present I shall take it so too; yet for the Instructions sent, and for the Commission named, you have had four Witnesses named to you. My Lord, Dissent will not serve his Turn; and yet to that there is not a Pretence of a Dissent from the Instructions, and what was sent, and that is a Consent and Concurrence, and that is an Approbation of all precedent Actions, and makes himself a Party in it, and that is by one Witness: And, my Lord, you have heard by Master Serjeant *Witherington*, that to every Circumstance there needs not two Witnesses, but to the Design there must be two: And *Adams* himself says, it was propounded to have given *Titus* Money, as you shall hear by and by; and *Far* tells you, That there was going on so far in it, that a Paper was read for Letters to be sent to the Queen, to move her to persuade the King, but that

was not assented to; but it was moved among them.

My Lord, the next thing I shall take, as near as I can, was when this was done, and this Transaction passed over, and the Instructions sent, that were agreed upon for Commissioners at *Breda*, then begins the Troubles in *Ireland*. You have heard of a Paper-book sent, written in Sack, and returned a Year after; that comes next. There was sent over from Col. *Bamfield* (Mr. *Love* says he knew not the Face of the Man) but he lik'd his Employment it seems, that would be privy to such Proceeding from a Man he knew not. There came a Servant over, I take it from *Bamfield*, and that was about *Christmas* last, that is the time expressed after *Dunbar* Fight. My Lord, this was brought, the Letter was delivered to *Potter*, and their Supercription was singly with the Letter *L.* which I may say, may be better applied to Master *Love*, than to any other, all Circumstances considered; yet I shall not conclude from it, but though he says he had no Letters directed to him, I shall say as truly, that they were directed to him, as much as to any Man else, and a little more; for Master *Love* was very unfortunate that these Letters should be brought to him, read in his House, the Transactions there, and Mr. *Love* to have no hand in it, this is hardly to be believed.

My Lord, in the next place are these Letters that came from *Bamfield*; if it please you, for that I shall read *Potter*. *I received Letters out of Scotland from Bamfield, with the Letter L. upon it, wherein was a large Narrative of the Affairs of Scotland, from Dunbar Fight, to the time of the Date of them, which (I think) was about Christmas. I carried those Letters to Mr. Love's, where was one or two more with us, Jaquel, and, I think, Dr. Drake; we three, I am sure of it. There were Letters from a nameless Person, whom we supposed to be Master Bailey; and a Letter from my Lords of Argyle, Lothian, and Lowdon. These Letters wrote for Ten thousand Pounds for buying of Arms, and hiring of Shipping; and for Five thousand Men to be landed in England. These Letters were disliked and dissented from; and it was agreed to give a negative Answer: And we thought fit (for our own Safety) to raise some Money for the Messenger and Bamfield: The Sum agreed on was Forty Pounds, to which I contributed Ten Pounds. I carried the Letter to Mr. Love's to take Advice upon it. Mr. Love, and I, and Jaquel, read those Letters that were opened, and those that were not opened, we did open and read, and discourse on them; and upon Advice resolved to do nothing in it: Neither did they reveal it. And then being demanded, Whether at Mr. Love's House there was not a Discourse for raising 4 or 500 l. ? he answered, There was. Being demanded, Whether Letters were not return'd to Bamfield, with the Money sent him? He answered, A Letter was left at my Shop, and I apprehended it came from Master Love, or Mr. Drake. And Jaquel being demanded, Whether Mr. Love and Mr. Drake were not appointed to draw up the Letter? He answered, Yes, they were. And that is Potter's Testimony.*

The next mention is, That *Jaquel* was present there, here is sure of it, Master *Love* himself and *Jaquel*. This is *Jaquel's* Testimony: *At a Meeting at Mr. Love's House, Master Love being present, it was thought fit that Forty Pounds should be*

raised for Bamfield. A Letter was read from Bamfield at Master Love's House, Master Love being present: Mr. Love declared, he never saw, or knew Bamfield. The Letter was for Five thousand Pounds to hire Shipping. And another Letter from my Lords of Argyle, Lothian, and others, at the same time and place were read, to induce the Confederates to give credit to Bamfield. Potter moved, That Ten Pounds might be given to the Messenger that brought the Letter, and Thirty Pounds to Bamfield; which was considered of, and nothing said against it: There was no Agreement, but it was thought convenient by all then present. Upon this Mr. Love ask'd Mr. Jaquel a Question, and he said, I cannot say that Mr. Love said, it was convenient, but it was not dissented from, or spoken against by any.

My Lord, I suppose this is a faithful Relation of what the Witnesses said. My Lord, you have heard of this, and the time when it was, that *Bamfield's* Servant was sent, and Letters brought from *Scotland*, giving an Account of Proceedings there: Letters from *Argyle, Lothian, Lowdon, and Belcarris*, to give credit to what *Bamfield* should relate: Money provided, though not the Sum, nor the Means those Letters did hint to them; perchance their Purfes could not reach that; but so far as they could go, they would: they would reward him that brought it, and him that sent it; and thereupon 40 l. was provided, ten Pounds for the Messenger, and thirty Pounds for *Bamfield*. In this Repetition I think I have not wronged Mr. *Love*.

The next is the Letter that came from *Massej* and *Titus*, who were then in *Scotland*; and in what Condition, I think every Man knows, in what Condition they are there: though by the way I should be sorry to repeat that which Mr. *Love* did say the first Day, That it did not appear to him, that the *Scots* were in Arms against the Parliament of *England*, but in Arms for their own Preservation; and therefore did desire Counsel. Here was one of his Reasons why he desired Counsel to be informed, to advise him whether they were in Arms for their own Preservation, or in opposition to the Parliament of *England*. This was that Mr. *Love* was pleased to say the first Day. My Lord, this of *Massej* and *Titus* gives them Account likewise of the Affairs in *Scotland* after *Dunbar* Fight too. If you please, my Lord, I will read you three Witnesses to that, and that neither doth Mr. *Love* deny, but that these Letters were read at his House.

This is Major *John Alford's*. *After Dunbar Fight we met at Mr. Love's House in his lower Room, where a Letter from Massej was read, which gave an Account of the Fight there; wherein he also wrote for Arms, mentioning his own and Titus's Necessities. Thereupon a Proposition was made for raising of Monies for the supplying of their Necessities; and Five hundred Pounds being propounded, it was brought down to Two or Three hundred Pounds to be raised among our selves. Mr. Love did then move for Contribution-Money to that purpose; and I thereupon promised Ten Pounds, which my Man paid. This, my Lord, is the Testimony which *Alford* gives as to this concerning *Massej*.*

The next is *Adams*. *When the Money was propounded to be raised for Massej and Titus, certainly Mr. Love was then present; [and this after the Fight at Dunbar] and the Money was agreed to be raised*

raised by those that were privy to the Correspondency. Mr. Love had then a Paper in his Hand, and did write something, I saw not what he did write; and so every Man that was there did write what he would lend; I conceive Mr. Love summed up every Man's Sum. Maffey's Letter was for Arms, and the Money propounded was for Titus and Maffey; for Titus, because he was sent by us; and Mr. Love was there. This, my Lord, is Adams's Testimony; and though he did not know what Mr. Love writ, yet he knew what Mr. Love moved.

My Lord, here is another, and that is Captain Far, which I shall make bold to read to the Court likewise, concerning the same Action. After Dunbar Fight I came somewhat late to a Meeting at Mr. Love's House, where Mr. Love told me a Letter was come from Maffey, to assist the King with Money and Arms; but it was not agreed that any Money or Arms could be sent. And I understood from Mr. Love, they could not do it. Mr. Love then likewise told me, they agreed to raise a Sum of Money for Titus, Maffey and Graves, to be sent to relieve them in their Necessity: which Sum, whether it was 250l. or 300l. I cannot positively say; but Mr. Love moved me to contribute. I told him I would give him Five Pounds, which I brought wrapp'd up in a Paper, and laid it down on Mr. Love's Table, Mr. Love and several others being in the Room; it was so done, that there might be no Discovery. And Mr. Love asking him some Questions upon this, Whether it was done so by Mr. Love, or no? he did not know that; but it was done so by himself, that there might be no Discovery. My Lord, Mr. Love did not disagree: For being cross-examin'd by Mr. Love, did not say, that Mr. Love did disagree to the sending the Money to Maffey and Titus. So I have done with that Particular likewise, the receiving Letters from Maffey, and of the Account from Scotland, and the Fight there.

That which Adams saith, Mr. Love having replied unto it, concerning a Letter writ to the General Assembly and Kirk of Scotland; and in that, my Lord, he is pretty positive. Adams's Testimony is; *There was a Letter written to the General Assembly and Kirk of Scotland, at Mr. Love's House, Mr. Love was sometimes present at this Meeting: which Letter was taken to be penn'd by Mr. Love and Mr. Drake; and I thought it to be so, because of the Language of it: and that after Drake escaped, all the Meetings I know of, were at his House; [and so, my Lord, say some others.]* Being examined, he says, *I saw Letters which were read in Mr. Love's House, Mr. Love was present and privy to the debating of them, and did not declare any Dissent.*

My Lord, I have now done with these Particulars; you have seen Mr. Love at the End, though you found him not at the Beginning: it is not good to come at the ending of the Quarrel. But, my Lord, under favour, by the Laws and Rules of Justice, if any ill thing be contrived and plotted, and afterwards any other Person shall come into the Contrivance of it, and carry it on; my Lord, I think I shall not need to say much in it, but he is culpable and guilty of the whole, from the first to last. And that Mr. Love should be but a mere Spectator, a mere concealed Person, it is very hard to be believed by any that are rational Men: for after that once Titus had done his Errand at Jersey, and gives his

Account here, my Lord, That his Transactions, and the subsequent Employment, all that we know of, are all transacted, and carried on in Mr. Love's House, in Mr. Love's Study, in Mr. Love's Presence: It was not one or two, or three times, which had been enough, and very well had it been for Mr. Love, if he had done as Baines did, or as Barton did; they, when they heard (though they were too much for them, my Lord, to conceal, as they have done, yet did confess it when required) they left off when they heard of it, they would go no further in it, they knew the Danger of it. Mr. Love, my Lord, as you will hear anon, by what himself hath proposed, what Judgment and Conscience led him to carry on this; it was a Conscience of his own covenanting Interest and Principles for the Scots and Religion, that led him on to carry on this Design.

My Lord, I have done with this, that is, the Evidence against him; for Application to it, you have heard the several Laws read before the Charge opened: that Man is guilty of High-Treason, and is a Traitor by the Laws of the Land now, that doth any way promote, declare, or publish Charles Stuart to be King of England. My Lord, you have heard the Evidence, what Titus hath plotted, what Drake hath carried on, what Mr. Love hath approved of, and how far he hath consented and joined in the Design. My Lord, I shall say it again, if Titus and Drake be Traitors, as their own guilty Consciences have made themselves judge themselves so: he that flies, confesseth the Fact; my Lord, they are fled. My Lord, if they be Traitors, Mr. Love must be the same with them; for Mr. Love was carrying on, and hath agreed, and concurred, and approved of carrying on the Design that Titus and Drake have acted: Consenters and Agents are to have the same Punishments; in Treason there are no Accessaries. My Lord, the next Point is this; the next Act is that of the 17th of January, 1649. Having given you the Evidence, you will give me leave now shortly to repeat the Law. The first is, for promoting Charles Stuart, &c. That if any Person shall maliciously and advisedly plot, contrive and endeavour to stir up, or raise Forces against this present Parliament, and for the Subversion of the same, and shall declare it by any open Deed, &c.

My Lord, Mr. Love is pleased to express himself, That none can accuse him, nor none have sworn against him, that he hath raised any Seditions, any Insurrection, any Rebellions; my Lord, I cannot say it fully, whether he be guilty of that, or no: but this I will say (the Judgment I shall leave to the Court upon the Evidence heard) if Mr. Love be guilty of any thing moving or tending towards the raising of Forces, Seditions or Rebellions; though the thing be not done, yet, my Lord, it is Treason; those Practices, those Purposes are Treason by the Law, though they never come to Act. We shall not look, I hope, to see a Rebellion raised before we shall say it is Treason, and endeavour against it; but for that, how far he is guilty upon the Evidence of being instrumental of the War in Scotland, and to have endeavoured to have a Party got in England, my Lord, I shall leave it to your Judgment, upon the Evidence you have heard.

My Lord, there is likewise another in the same Law: If any Person procure, invite, agree, aid, or assist any Foreigner or Stranger to invade *England* or *Ireland*, or adhere to any Forces raised by the Enemies of the Parliament or Commonwealth, or Keepers of the Liberties of *England*; this is High-Treason. For this you have heard the Evidence what Mr. *Love* hath done towards this; still upon the same foot of Account it is 'Treason, though but proposed and intended, though not acted. Then there is another Clause upon the Law that Mr. *Love* hath insisted upon, of constituting this Court. But for those former I have said, and you shall give me leave to repeat it again, That these Laws offended against, though in time before this Court was constituted, yet this Court hath, in express Words, Commission and Authority given them by the Parliament, to take cognizance of all Facts and Offences done after that Law, though done before your Commission; and that, my Lord, is not to be doubted, to be a very good and legal Authority. And yet for this the Law that constitutes this Court, of the 26th of *March* 1650, That no Person after the 29th of *March* 1650, shall give or hold any Intelligence by Letters, Messages, or otherwise, with *Charles Stuart*, *James Stuart*, or the late Queen their Mother, or the Council abiding with any of them, prejudicial to the Commonwealth, or with any that shall be in Arms against the Parliament of *England*, or shall bring or send in *England*, *Ireland*, or any Dominions of this Commonwealth, Letters, Messages or Instructions, tending to raise Insurrections, or a new War within this Nation, and shall not forthwith reveal the same to the Speaker of the Parliament, or to the Council of State, or two Members thereof, or to two Justices of Peace, shall be guilty of, &c. That is a Clause in the Law that constitutes this Court. And no Person shall voluntarily relieve any Person in Arms, or that shall be in Arms against the Parliament, with any Money, Victuals, or Ammunition on pain of Death, or other corporal Punishment. And whosoever shall voluntarily take up Arms against the Parliament, and shall encourage others to do so, shall die without Mercy.

These, my Lords are Clauses contained in the Act that constitutes this Court; and I read the Law before the Charge: and now, my Lord, I have repeated the Evidence faithfully, now let it be considered how far the Evidence goes with them. There are three Acts of Parliament, I suppose Mr. *Love* knew not of the next; for he says, he knew not of that of the 2d of *August*; but it was publish'd solemnly at the *Exchange*, and at *Westminster-Hall*: but Ignorance cannot excuse him, that no Man will pretend. This, my Lord, is in relation to *Scotland*; it was made in *August*. The Battle at *Dunbar*, I cannot well tell whether it was in *September* or *October*; in *September* this Correspondency from *Bamsfield*, *Argyle*, *Lowdon*, and *Lothian*, *Belcarris*, *Maffey*, and the rest, were all since *Dunbar* Fight; that is clear, they were since that time: The Words of the Law are these; 'Whoever, after the 5th of *August*, shall use, hold or maintain any Correspondency or Intelligence with any of the *Scotch* Nation residing in *Scotland*, without Licence from the Parliament, or with any other Person or Persons of the *Scotish* or any other Nation, whom they know to adhere to the *Scotish* Nation against

' the Parliament; or shall abet, assist, countenance, or encourage the *Scotish* Nation, or any other Person adhering to them in their War against the Parliament and Commonwealth of *England*, or shall send, or cause to be sent and conveyed any Money, Horse, Arms, Ammunition, or any other Furniture of Plate, Goods, Merchandise, or any Supply whatsoever, to the *Scots*, or to any Port or Place thereof, or in their Power, or in Confederacy against this Nation, these Facts are High-Treason by this Law.' And the High Court of Justice is to take cognizance of the Contents by express Provision of that Law.

My Lord, I shall not need to repeat the Evidence again; but upon these, my Lord, I must leave him to your Justice and Judgment to do what in your Consciences you think is just upon these Laws, and what Mr. *Love* hath done in Transgression against them.

My Lord, Mr. *Love* was pleased, at the beginning of his Trial, to make some deep Protestations; I think he did move all honest Men that heard him: and truly I did think, and did hope that they were not made with any relation to Equivocation, or mental Reservation, but to a positive Denial of any Facts of Treason, or looking that way; that it had been made in that Sense, that he had been clearly not guilty of any thing. But, my Lord, having looked upon them, and caused them to be transcribed to me, I do find that they are somewhat cautious, and perchance they may be true, my Lord, in the Sense spoken by Mr. *Love*; but whether true in the Sense they should have been spoken by a Christian in a publick Assembly, that I shall not judge. His first Protestation was, in the presence of God and this Assembly, 'That I never wrote any Letter to the King, or to the Church, nor to the Queen, or Church and State of *Scotland* in general, or to any particular Person of the *Scotch* Nation, since the War began to this very day.'

My Lord, this may be true, but whether any Letter hath been sent from the King, or from the *Scotish* Nation, or others, or by *Maffey*, or the rest, that shall be believed as the Evidence is.

Mr. *Love*. It is in my second Protestation.

Attorn. Gen. 'Again (saith he) I do likewise declare in the presence of the same God, I never received Letter written to me from the King, or from the Queen his Mother, or from the Church or State of *Scotland* in general, or any particular Person of the *Scotish* Nation since the War began. I protest and declare likewise in the presence of the same God, I never collected, gave or lent Penny of Money either to send into *Scotland*, or any foreign Parts, either to the King of *Scots*, or to the Queen his Mother, or to the Church or State of *Scotland* in general, or to any particular Person of the *Scotish* Nation, since the Wars began.' But that Mr. *Love* did not move others to contribute, we have not a word of that. Truly, I did think it when he spoke it? But it seems these Assèverations were studied to evade, and that he would speak true, but not the whole Truth. I have given them but a touch; these may be true, my Lord, but, under favour, there is something else that is as true, and goes almost as near as this.

My Lord, Mr. *Love* the last day had your Patience and Justice to make a large Defence, and he was very large in it; and though he did beat us down that are the Counsel for the Publick, that we should not use Oratory, nor Flourishes, nor Querks of Law, nor Niceties, in which I shall be guided by him, and shall not do it; yet he is pleased fully to make use of all Insinuations to the Court to trip up every Witness upon Niceties, upon Not-expression, upon Non-sense, and such, my Lord, which I shall not follow him in: for I shall deal as Truth ought to deal, in pure Nakedness and Simplicity, and not use any Oratory, but to set the Matter of Fact before you, and leave it unto the Court, who are the Judges between the Commonwealth and himself for Life and Death. But, my Lord, you shall give me leave to touch upon some few things in the late Defence of his; it was divided into four Parts.

The first, the Charge; the second, the Witnesses and Testimony, both in one: The Witnesses for the Persons, the Testimony for the Fact. The third, concerning himself; the fourth, some Proposals to the Court: which truly, my Lord, might better have been termed rather Threatnings than Proposals.

My Lord, for the Charge, you have heard it hath been gone through, and the Evidence concerning it. Concerning the Witnesses, my Lord, I have read unto you (for I do take it upon my Conscience) what I knew, and nothing but what was true: I have not varied, that I know of, a Syllable; and I think I ought not to do it; the Duty of my Place requires it not from me.

My Lord, concerning himself, he is pleased to say something, and much of his Merit: But, my Lord, it is a Grief to this Court, to my self, and all that are Well-wishers to the Publick, that any Man that hath been a Friend to the Parliament, that hath gone along with them, acted for them, suffered for them, done as he hath done, that this Man should be called to publick Justice: I hope, my Lord, all that hear me bear witness, that I think, my Lord, we are all sensible of it.

But, my Lord, look upon who hath been the Cause of it; let that be look'd into, and every Man will be satisfied in his own Judgment and Conscience, whether Mr. *Love* were provoked, or no, or whether he hath not provoked the State to bring him to be thus exemplary in Justice. Mr. *Love* says, my Lord, (I shall desire to make use of the Paper) *I confess it is not so much the Danger of my Life; I am a sickly Man, and I know a Disease will ere-long kill me, whatsoever you do with me: But this grieves me more, That I should suffer from your Hands, for whom I have done and suffered so much in my obscure Station, and according to my weak Measure. Had I been so dealt with at Oxford, at the Junctio there! But to be so dealt withal in Westminster-Hall, this troubles me.* And, my Lord, it doth trouble me to deal so with him. My Lord, whether may we or himself take up this Complaint? Had the State been thus used by a Cavalier, by a professed open Enemy, it had not been so much Trouble to us; you would have come to Justice upon a little more Desire than now: But that Mr. *Love*, a Minister, a Minister of the Gospel, a Man that hath preached for us, prayed for us, acted with us, gone along with us; that he should go to undermine us, that he should be joined, or in

Confederacy with others to undermine the State, where he did live peaceably and quietly, where none interrupted him: He had a free Liberty, as much as a King in this Commonwealth: Truly, that Mr. *Love* should do this, it is (I think) an Aggravation; and not an Aggravation upon the Court or State, that they should prosecute where a Man is prosecuting them. What he hath done, my Lord, you have heard; what his Offences have been, and who gave the Cause; That a Minister should do this; one that had a Calling elsewhere, and better to employ himself, than to meddle with States and secular Affairs: And these Things to be done in Mr. *Love's* House, and in his Study, where he should have been studying better Things. My Lord, next he says, *I could not leave such Relations as I have, nor such a loving People and competent Living, as any Minister hath within London, only Conscience carried me another way; and till Conscience be satisfied, I cannot stir one jot.* My Lord, this his Conscience, I do not know what it hath to do in Government, or what Mr. *Love's* Conscience had to do in these Affairs: He had a Calling of his own to use; and should I go out of my Calling, and meddle with other Men, I humbly conceive I were a Busy-body. Mr. *Love* had a Calling enough for any one Man to employ himself in; and, methinks, when he says he had such a Relation to a loving People, a Competency of Livelihood, that he should not apply himself to return to them, but to wander abroad: And when we once wander, it is hard coming in again, till perchance we are fetch'd in again with the Whip. But, my Lord, Mr. *Love* had other Relations, of Wife and Children, which he might have look'd upon also, and taken care of them.

In the last place, he is pleased to say, (and that I believe hath carried on his Design) *The Covenant-Interest.* You have heard what *Titus* did, what *Drake* did, and what the rest did; that all this, it was upon the Covenant; and the Covenant is urged, I am sure, to Things the Parliament hath forbid. Mr. *Love* is pleased to declare himself still to retain his old Principles, from which (by the Grace of God) he will not be taken off by any Terror. My Lord, you will hear by and by what the Covenant he supposes leads him to: And, my Lord, I shall take it asunder, and bring it next, if you please, that is, the Covenant-Interest. Says Mr. *Love*, *Though I own not the way of managing any Papers, I neither writ them, nor sent them, yet thus far I own the Thing; I confess it was agreeable to my Judgment and Conscience, and I thought the Interest of Godliness would be more promoted if the King went into Scotland upon Covenant-Terms; it would be more for the Good of the Nation.*

Mr. *Love*. No, Sir, those are not my Words: I said, *Than to fall in with the Irish Rebels, or to offer this Kingdom to the Spaniard.* I thought a greater Foundation of Trouble would be laid, if this Reception were not laid by that Nation. And the Covenant hath a Clause in it, That we are to seek the Good and Union of both Nations; and they are judged to be Incendiaries and Malignants that not only divide the King from his People, but the Kingdoms one from another.

Now they declaring him to be their King, according to my Apprehension, I thought it agreeable to my Covenant to pray and desire, as a private Man, and no more, that there might be an Agreement upon those Terms, consisting with Religion and the Terms of the Covenant.

Attorn. Gen. But had you gone on as a private Man, Mr. Love, we had not stir'd you now. My Lord, this is plain of it self what Interest this Covenant-Interest is, *Till the King and the People in the two Nations, &c.* Truly, my Lord, Mr. Love is pleased to express himself somewhat obliquely against the present Government: He saith, my Lord, *When I look upon all the Vows, Covenants, Declarations, Protestations, of both Houses of Parliament, I find a Suitableness between my Judgment and them, and am not conscious to my self of any thing I have done in Opposition or Contradiction therunto; I repent not of whatsoever I have done; though I could wish the Ends of that just War had been better accomplished: Then should we have been happy, and united among our selves, and honoured among the Nations round about us. I am so far from repenting of what I have done, both by doing, and contributing, and suffering in the Parliament's Quarrel, that were it to be done again upon the same unquestionable Authority, for the same declared Ends, and against the same malignant Persons, I should manifest as much Readiness of Mind to engage, according to my measure.*

After this, where he had mentioned his Troubles at Oxford, when a Scholar there; and at London, when he came to a Lecture here; at Newcastle, when he spake for the Parliament there; and in Kent, when he spake against the King there; when these were over, after this he had a little Breathing, whilst the two Houses of Parliament were in power. This Gentleman was troubled in the Time of the King, in the Time of the Bishops, in the Time of these Wars, for being for the Parliament: But I appeal to his own Conscience and Judgment, whether ever he was troubled or disturbed by this Parliament, or by this Government of the Commonwealth, whether he had not as free and as full Liberty to preach the Gospel, to instruct others, and to save Souls, as his Heart could wish; and I desire to know whether ever the Parliament did interpose with him, till he did interpose with us. He went out of his Way, my Lord: He was quiet and safe, in as much Security as any of us; and, my Lord, even those that were the Watchmen for the Safety of this Commonwealth, did watch and take as much Care even for his Preservation, as for any one of ours: And thus he hath requited them. My Lord, I will repeat it: I appeal to his own Conscience, and to any of his Friends here, whether ever, till his Judgment and Conscience did interpose in State-Affairs, to dispose of Kingdoms and Commonwealths, whether ever he were in the least interrupted.

My Lord, he says himself, when he came to be a Lecturer in London, the Bishop would not admit of him in three Years; yet, my Lord, he is admitted here three Years, and none hath interrupted him. And your self say, you have a competent Livelihood, and a People very loving to you; and you might have so continued, if you would.

My Lord, his Proposals to the Court, I do say, were hardly fair Proposals; for they had a little

of Threatning in them: *For (says he) if you censure rather upon a political Interest, than of the Merit of the Fact, the Scripture counts it not Justice, but Murder.* Truly, my Lord, I think Justice is a political Interest, the Preservation of the general: But surely I do not think the Person will come in Judgment before you, but the Merit of his Fact; and as yet I may say, I suppose the Treasons he hath committed, if those find him guilty, if the Court finds him guilty of those Facts laid to his Charge, and if you are satisfied in your Judgments that they are proved, my Lord, it is Justice, not Murder; and it is Justice that which political Interest requires of you, that Justice be done upon the Prisoner. And he is pleased to say in his last Defence, That he denied the Commission to be sent, and entitling the Presbyterian Party to it: and he hath acknowledged it had been very high Presumption if they should have done it, and a notorious Falshood. And in that I join with him; and whether he hath not done so, my Lord, that I shall leave to you. That the Presbyterian Name was made use of, you have had many concurrent Evidences; and Mr. Love was present when these Things were mentioned: And if it be a Fault, which himself hath acknowledged, it is Right done to the Presbyterian Party, who, I am sure, will not own him in it.

My Lord, but a Word more: This last Day he was pleased to mention his * Sermon; which made me a little to enquire after it: It was preached at Uxbridge, (my Lord, I had the Honour to be at the Treaty) which hath been so much spoken of; and truly I wonder this Gentleman did not remember what he said then. If you please, my Lord, I shall put you in mind of some Passages: I have the Sermon here.

[Mr. Attorney-General reads out of the Book, which he said was Mr. Love's Sermon.]

I have ever thought that too much Mercy towards Malignants hath made more Delinquents than ever Justice hath done. Mercy should not weigh down Justice; (my Lord, these are good Instructions.) In God they are both equal; why should it not be so in Man? Pity to the Bad, hath proved Cruelty to the Good: The sparing of Offenders hath made many worse; few or none better. (And, my Lord, we know it.) To them that have shewed no Mercy, let Judgment be shewed without Mercy: Much Guilt contracted; much innocent Blood spilt; which either must be avenged on us, or by us. My Lord, that is one of his Clauses; and here is another: 2. The Lord heals a Land by cutting off those distempered Members that endanger the Health of a Land. (Here is good Doctrine, my Lord) It was the Lord troubled Achan, and cut him off, because he troubled Israel. Oh, that in this our State-Physicians would resemble God, to cut off those from the Land, who have distempered it; (I suppose he meant, or shall do.) That, my Lord, was his Opinion then. And those who lie under the Guilt of much innocent Blood are not meet Persons to be at peace with, till all the Guilt of Blood be expiated either by the Sword of the Law, or the Law of the Sword; and a Peace can never be safe nor just till then. What Mr. Love hath endeavoured since, my Lord, I shall say nothing. And I have but one Word more, and it is this; my Lord, he

says

says it is not likely to have a Peace with such Men as these, the Malignant Party, while they continue thus. *We can as soon make Fire and Water agree, yea, I had almost said Heaven and Hell, as their Spirits and ours; for either they must grow better or we worse, before we can agree.* My Lord, I think there is little hope of their growing better; and, my Lord, we have not grown worse.

My Lord, I shall trouble you no further: I shall use nothing of Aggravation; but as Justice is blinded, so let the Evidence appear to you in pure Nakedness.

My Lord, you have heard the Evidence (as I humbly conceive) in the same Language, in the same Habit, in the same Words, as spoken by the Witnesses: And, my Lord, having heard those, and the Laws, and the Charge against him, upon the whole I shall humbly leave him to stand or fall by your Justice and Judgment.

Mr. *Love*. My Lord, I humbly crave leave to speak but one Word: Mr. Attorney-General hath replied to my Defence, as to the Matter of Fact. Concerning his Reply I shall not insist upon it; yet I shall humbly crave leave to insist upon two Particulars. —

Attorn. Gen. If I have given any new Evidence, Mr. *Love* ought to be heard: But, my Lord, I have declined it. And for those Passages in his Sermon, I do not urge one Word of Evidence against him; and for the rest, they are his own Words, which he hath said the last Day; And I have brought nothing new before you. And if the Sermon preached at *Uxbridge* should be an Occasion, I shall cast it aside.

Mr. *Love*. I humbly conceive there are new Suggestions expressed in Court by those worthy Gentlemen, whose Names I know not, nor their Employments neither. But as to those I shall humbly crave leave in a Word or two; and then, as to the whole Matter of the Depositions, I shall humbly offer some Matter of Law, arising upon the whole Matter given in. —

Attorn. Gen. I shall crave leave too, my Lord, and leave it to you: For any Suggestions, they are but Suggestions, as Mr. *Love* says himself; and that is nothing for the Evidence. Mr. *Love*, my Lord, had the last Day, and I should have this. Had he said he had any thing to say, or if he had had any thing more, he might have said it; I did wait if he would have said any thing: But, my Lord, then the whole was clos'd, and no new Evidence. I did not answer all the Suggestions of Mr. *Love* the last Day: His Evidence and Depositions will conclude the Court, that it is not Suggestions and Insinuations; the Court are above these. When the Evidence is clos'd for the Commonwealth, let it be concluded there: If they offer any new Evidence, Mr. *Love* may have Liberty to answer.

Mr. *Love*. Though I dare not tax Mr. Attorney-General for discharging his Duty in his Place; yet for the Preservation of my own Life, I must not be wanting to my self, if your Lordship and the Court will give leave; and that is humbly to beseech your Lordship to take notice that Mr. Attorney-General, in the Relation of the Matter of Fact in the Depositions, is pleas'd to raise the Correspondency (as he is pleas'd to call it) as high as *Jersey*; and so makes me to be *Particeps criminis*, that I should be judged by you upon the whole Matter. Now *Alford* upon

Oath did declare, That *Drake* and *Titus* held Correspondency; and that the Ministers knew nothing of it.

Attorn. Gen. I do not say you did.

Mr. *Love*. Therefore I beseech you I may not be judged upon that Matter: and then I beseech your Lordship to observe that Mr. Attorney-General is pleas'd to say he would not insist upon Inferences, nor Strains of Wit; but truly I have discerned both.

Ld. President. You totally err from the Way you ought to walk in, and take upon you to judge others. The Court will consider whether he hath offer'd any thing or not: We have Notaries, and so have you. You spent the last Day only in making Comments and Collections; yet that you might have some Liberty of Discourse, we sat here patiently two Hours; and did hear that which we ought not, nor you ought to have spoken. And now you are entering the same way of Inferences and Collections, as though we did not sit here to take notice of what was done, but we must receive the last Word from you and your Comment. If you had new Matter the last Time, you might have been heard: We expected you would have brought new Witnesses; but they were in the same Crime with yourself; and you would rather betray your self than them, and God and the Truth than them. But we will be as careful of any Comments as you your self can be. And I think that we have so much Piety and Charity, that we sit here with as good Affections of Justice and Piety, as are in your own Breast. This Book was not given as Evidence against you; and all that is in your Comments, we shall understand it.

Mr. *Love*. My Lord, I have only one Motion: I have some Matters in Law to offer to your Lordship, to consider by way of Exception to the Charge, and also to the Depositions of the Witnesses. I have a Paper that I humbly desire might be read in Court as Matter in Law, arising from the Charge, and from the Depositions of the Witnesses.

Attorn. Gen. Why did you not this before?

Mr. *Love*. I am ignorant of the Customs of the Court.

Ld. President. I believe you have wronged your own Breast in many Things you have said; and you have said you have been ignorant in many Things that you have known very well: It is not good to dally. You will be ignorant at one time, and at another time more knowing than others.

Mr. *Love*. I beseech your Lordship, it is a new Suggestion of the Attorney-General, That Concealment of Treason for a Tract of Time is Treason.

Ld. President. There is no new Words of Suggestion: If Mr. Attorney hath not spoken it, nor read it according to the Truth we will examine it.

Mr. *Love*. He hath done it with disadvantage to me.

Ld. President. If we have, he shall not do it with disadvantage to us; for we will be as indifferent as your own Breast: Therefore be not you a Commentator of that. We understand so well as God enlightens; for whether he hath done it with advantage or disadvantage, that is our part to consider.

Mr. *Love*. I desire to have Counsel upon this Matter of Law arising from the Evidence, That Concealment of Treason, by your Acts, suppose it be for Continuance or Tract of Time, yet by the Law it is not Treason. And my Counsel informs me, That the Act of the 26th of *March*, that constitutes this Court, gave you Power to inquire into Treason, but could not take Cognizance of Misprision of Treason till there was a subsequent Act. Therefore I desire this Favour, That seeing it is so much suggested in Court, and seeing the Witnesses none can prove a personal Act of mine, to bring me under your Law, as to Treason, I desire my Counsel to clear this, That Concealment of Treason, though for never so long a Tract of Time, is not Treason by the Law of the Land.

Attorn. Gen. I will out Mr. *Love* of that Scruple: He is not charged for Misprision of Treason, tho' I could have done it; but that I insist upon, is flat Treason. It is true, Sir *Thomas Witherington* was pleased to express it in the way of Argument, That Concealment of Treason long, comes to be Treason: But here are Acts, and I insist upon the Evidence; and the Court will judge, for they have heard the Evidence.

Mr. *Love*. I beseech your Lordship that the Paper might be read, the Exceptions that I have against the Indictment, and the Matters of Law arising from the Evidence.

Attorn. Gen. My Lord, truly I profess, I hope I am not in my Nature cruel, that I should do Injury to Mr. *Love*: But, my Lord, I cannot favour him, to do Injury to the Law of the Nation. My Lord, he hath one by him that hath taken every Word of the Charge.

Mr. *Love*. I did plead upon your Lordship's Promise that I should have a fair and indifferent Hearing; and if Matter of Law did arise from Matter of Fact, which could not, you said, be known till the Witnesses were deposed, I had your Lordship's Promise, and I think the Court's, that I should have Counsel to plead to Matter of Law.

Attorn. Gen. My Lord, I think here is no Legislative Power in this Court to change Laws. My Lord, I appeal to all here, whether the Evidence we gave were not closed upon Saturday, and all the Depositions; whether Mr. *Love* did not take Care and Pains to make his own Defence, as to Matter of Fact, and spent so many Hours on Wednesday last. My Lord, he had all before that; if he had Matter of Law, it was more proper to move then: But when he hath gone so far, and we have closed all, do but consider the Consequence, that when this is done, and all the Evidences heard, then to come with Matter of Law.

Ld President. Mr. *Love*, that you have said hitherto, is nothing but of the same Nature of that you said the last Day; and the Court will take it into Consideration, and judge of it: But if you have any thing in your Paper that is so included upon the Evidence; for I tell you the Evidence was ended the last Day, and your Reply; and if you had any thing, you should have offered it the last Day. Here hath been nothing new offered concerning you, but as it is usual for the Counsel for the State to state the Matter of Fact to the Court; for they have the last Word: But you had fully ended before, and shall we go out of the Way for you, more than

for a whole Generation which the Law runs unto? I do not know how to do it: You had this Paper in your Pocket; you might have pulled it out; and you have had Time in a nearer degree to it: Yet the Court is willing, if you can out of your Paper, by Advice of Counsel, shortly read what you insist upon for Matter of Law, they will hear it, if such Exceptions are not of your own, but by the Advice of Counsel.

[Mr. *Love* gives in his Exceptions.]

Exceptions taken by Christopher Love, Clerk, to the Charge of High-Treason, and other high Crimes and Offences, exhibited to the High Court of Justice against him by Edmond Prideaux, Esq; Attorney-General for the Commonwealth of England.

[These Exceptions are not here printed, for that they come in more properly afterwards; being again in Substance given into the Court, and signed by Mr. *Love*'s Counsel, and the Substance of them then debated in Court by Mr. *Hale*, a Counsel for Mr. *Love*.]

Attorn. Gen. My Lord, you have now some Fruits of the Notary. By the Law of *England*, he that is impeached of High-Treason, is not to have the Copy of the Indictment: It is said the Court are Judges for the Prisoner, and Counsel for him. To you all Things be substantially charged. That there is a substantial Charge, the Evidence makes out. But this Precedent being admitted, and the former of *Lilburne*'s cited, I shall have little Encouragement to go on with any Charge of Indictments.

Ld President. Though it be more than the Law permits, yet the Court will take Consideration of it.

Attorn. Gen. He did read his Papers: I think it is more than ever was heard of in any Court in the World. But to take his Papers in by your Clerk; I hope this is no Replication to the Charge: I hope he answers not that way; then we shall dispute that way again. If he gives Papers, I may; and, as Ambassadors, treat by Papers.

Ld President. Mr. *Love*, we have gone out of our Way for you: And whatever hath been suggested by the Counsel this Day is nothing, unless they had offered new Matter; and they have offered none; and therefore it is against any Law that was ever yet practised in *England*. You were concluded before, though haply the neglecting of it might have been a Prejudice to you: Yet you have offered a Paper, which the Court will take as a Paper to consider of.

[The Court adjourns into the *Painted Chamber*: And upon their Return, the Lord President speaks.]

Ld President. Mr. *Love*, our long Absence upon this account may seem to you and others, that we have had something of great difficulty among us, which we have considered of. That which

which hath been upon your Papers last offered; in which you have set down the Parts of the Charge, and the Statutes, and your Exceptions; these we have considered of. But to these, though you do affirm it here to us, that it is by Advice of your Counsel, yet it is not under your Counsel's Hand, nor your own, which in order it should be. We have considered of them; and our examining of them hath taken up a great deal of this Time we have been absent. We find that there may haply be some Mistakes in your Notes: Therefore it is resolved, though there seem not much Difficulty to us, yet you shall have Counsel, thus doing, That they shall set it down under their Hands, what Matter of Law they will argue to, and bring it under their Hands, upon Tuesday next at Eight o' Clock to this Place, or to the *Painted Chamber*.

Mr. *Love*. Shall the Counsel have only bare Liberty, or will the Court assign them me?

Ld. *President*. If you desire it, and name them, they shall be assigned you.

Mr. *Love*. I desire Mr. *Maynard*, Mr. *Hale*, Mr. *Waller*, and Mr. *Archer*.

[The Clerk was called upon to read the Order]

Clerk. 'Friday, the 27th of June, 1651. Ordered by the High Court of Justice, That if the Prisoner's Counsel shall under their Hands assign any Matters of Law, fit to be argued and presented to this Court, on Tuesday next at Eight o'clock in the Morning, this Court will take the same into further Consideration.'

Mr. *Love*. I would know whether they are assigned to plead here in Court, or to bring a Paper under their Hands.

Ld. *President*. If they will, under their Hands, set down what they will stand to for Law, it shall be considered, and they shall plead.

Mr. *Love*. I humbly thank your Lordship's Favour, and the Favour of the Court.

[Mr. *Love* is commanded away. The Court adjourns.]

The Fifth Day's Proceedings, July the 1st, 1651.

THESE Exceptions following, signed by Mr. *Love*'s Counsel, were delivered this Morning by Mr. *Love*'s Solicitor into the Court, sitting in the *Painted Chamber*.

Exceptions to the Charge of High-Treason, and other High Crimes and Offences, exhibited to the High Court of Justice, by Edmond Prideaux Esq; Attorney-General for the Commonwealth of England, against Christopher Love, Clerk; and Matter of Law, humbly presented to the said High Court, according to the Direction of an Order hereunto annexed.

[For this Order, see above.]

First, THE Charge is, 'That *Christopher Love*, as a false Traitor and Enemy

' to the Commonwealth of *England*, and out of
' a traitorous and wicked Design to stir up a new
' and bloody War, and to raise Insurrections,
' Sedition, and Rebellion within this Nation, in
' several Days and Times, that is to say, in the
' Years of our Lord God 1648, 1649, 1650;
' 1651, at *London*, and in divers other Places
' within this Commonwealth of *England*, and
' elsewhere, together with *William Drake*, and
' divers other Persons, did traitorously combine,
' confederate, and complot together, to stir and
' raise Forces against the present Government of
' this Nation, since the same hath been settled in
' a Commonwealth and Free State, without a
' King and House of Lords, and for the Subver-
' sion and Alteration of the same.'

The Act of the 17th of *July*, 1649, is, That if any Person shall maliciously or advisedly plot, contrive, or endeavour to raise Forces against the present Government, or for the Subversion or Alteration of the same, and shall declare the same by open Deed, that every such Offence shall be Treason.

Exception 1. The Words *Maliciously* or *Advisedly* are left out of the Charge.

2. That the Words of the Act are omitted; which are, *Plot, Contrive, or Endeavour*.

3. It is not Treason within the Act to plot, contrive, or endeavour to stir up or raise Forces against the present Government, or for the Subversion or Alteration of the same, unless the same be declared by some open Deed. But the Charge is, 'That *Christopher Love* did combine, confederate, and complot to stir and raise up Forces against the present Government, &c.' And it is not charg'd that he the said *Christopher Love* did declare the same by any open Deed.

Secondly, Whereas the said *Christopher Love* is by the said Articles charged, 'That for the Subversion and Alteration of the same, and to carry on the said traitorous Design, that he did traitorously and maliciously declare, publish, and promote the eldest Son of the late King to be King of *England*, (meaning this Commonwealth) without the Consent of the People in Parliament first had, and signified by Authority or Ordinance to that purpose.'

The Act of the 30th of *January*, 1648, is That no Person do presume to proclaim, publish, or any way promote *Charles Stuart*, Son of the late King *Charles*, commonly called the Prince of *Wales*, or any other Person, to be King or Chief Magistrate of *England*, by colour of Inheritance, Succession, Election, or any other Claim whatsoever.

Exception. It is not expressly charged that the same was done after the said Act made; neither doth the Charge pursue the Words or Intent of the Act.

Thirdly, The Charge is, 'That to accomplish the said traitorous and wicked Design, the said *Christopher Love*, on several Days and Times in the Years aforesaid, at *London*, &c. together with *William Drake*, and other Persons, did traitorously and maliciously invite, aid, and assist the *Scots*, being Strangers, to invade this Commonwealth of *England*, and hath adhered to the Forces of the Enemies, raised against the Parliament.'

The Act of the 17th of *July*, 1649, is, That if any Person 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 Commonwealth, or Keepers of the Liberties of *England*, every such Offence shall be taken to be Treason.

Exception 1. That it is not alledged in his Charge who in particular were the Strangers that were invited to invade *England*.

2. That it is not alledged that at the Times of the Invitement, Aid, and Assistance, laid in the Charge, the *Scots* were Strangers.

3. That it is not alledged particularly in the Charge, to the Forces of what Enemies, raised against the Parliament, *Christopher Love* did adhere.

4. It chargeth the Prisoner for a treasonable Assistance in some Years that were before the said Act of the 17th of *July*, 1649, was made.

5. To advance the said traitorous and wicked Design, is uncertain to what Design it shall have reference, several Charges of Treason being before expressed.

Fourthly, The Charge is, ' That *Christopher Love*, divers Days and Times between the 29th of *March*, 1650, and the first Day of *June*, 1651, at *London* &c. did traitorously and maliciously give, hold, use, and maintain Correspondency and Intelligence by Letters, Messages, Instructions, or otherwise, prejudicial to this Commonwealth, with *Charles Stuart*, Son of the late King, with the late Queen his Mother, and with *Henry Jermin*, *Henry Percy*, and divers other Persons, being of Counsel, and abiding with *Charles Stuart*.'

By the Act of the 26th of *March*, 1650, the Matters charged herein are only prohibited, but are not made Treason.

Exception 1. That this Charge is mislaid, being charged to be done traitorously.

2. The Charge is uncertain, being alledged in the Disjunctive (or otherwise) and shews not in what other manner.

Fifthly, The Charge is, ' That *Christopher Love*, within the Times and at the Places afore said, did traitorously and maliciously use, hold and maintain Correspondency and Intelligence with divers Persons of the *Scotish* Nation; that is to say, with the Earl of *Argyle*, and others of the *Scotish* Nation, and with divers other Persons of other Nations, whom *Christopher Love* well knew to adhere to the said *Scotish* Nation in the War against the Parliament.'

The Act of the 2d of *August*, 1650, is, That all and every Person that shall use, hold or maintain any Correspondency or Intelligence with any Person or Persons of the *Scotish* Nation, residing in *Scotland*, without the Licence of the Parliament, the Council of State, or the Lord General; or with any Person or Persons of the *Scotish*, or any other Nation, whom they shall know to adhere to the *Scotish* Nation in this War against the Parliament.

Except. 1. That it is not laid, that the Persons of the *Scotish* Nation mentioned in the Charge were residing in *Scotland*, nor expressly alledged that they did adhere.

2. That it is not aver'd, that such Correspondency

was holden without the Licence of Parliament, Council of State, or the Lord General, nor in what War the Correspondence or Intelligence was held.

3. It is not laid, with what particular Persons of any other Nation adhering to the *Scotish* Nation, Correspondency or Intelligence was holden, nor of what Nations.

4. This Correspondency and Intelligence is not laid to be after the fifth of *August* 1650, mentioned in the said Act of the 2d of *August* 1650, but refers to a time preceding that Act.

Sixthly, The Charge is, ' That *Christopher Love*, within the Times and at the Places before-mentioned, did traitorously and maliciously abet, assist, countenance and encourage both the *Scotish* Nation, and divers other Persons adhering to them in this War against the Parliament: And did send and convey, or cause to be sent and conveyed, Moneys, Arms, Ammunition, and other Supplies to *Scotland* and other places, and to the said *Titus*, &c. in Confederacy against this Nation, without Licence of the Parliament of *England*, or Council of State, or General of the Army.'

The Act of the 2d of *August*, 1650, is, That no Person that shall abet, assist, countenance or encourage the *Scotish* Nation, or any other Person or Persons adhering to them in their War against the Parliament and Commonwealth of *England*; or shall go or send, or cause to be sent, &c. any Money, Horse, Arms, Ammunition, or other Supplies into *Scotland*, &c. or to any Person under their Power, or in Confederacy with them against this Nation, without the Licence of the Parliament of *England*, Council of State appointed by their Authority, and of the Captain-General of the Parliament's Forces as aforesaid.

Except. 1. That there are no particular Persons named, who were abetted, assisted, countenanced, or encouraged, neither of the *Scotish* Nation, nor of any other Persons adhering to them.

2. In the Charge, the sending of Money, &c. is not laid to be done without the Licence of the Parliament of *England*, or of the Council of State, or General of the Army.

The words of the Act are, ' Without the Licence of the Parliament of *England*, or Council of State appointed by their Authority, or of the Captain-General of the Parliament's Forces.'

3. The Time to which this refers, is between the 29th of *March* 1650, and the 1st of *June* 1651; and so it takes in the time between the 29th of *March* 1650, and the 2d of *August* 1650, which is before the making of the Act.

Seventhly, The Charge is, ' That the said *Christopher Love*, at the Times and Places before mentioned, did traitorously and voluntarily relieve the said *Sylas Titus*, and one *Sterks* a *Scotchman*, which then were and yet are, under the power of the *Scotish* Nation, and in Arms against the Parliament of *England*, with Moneys, Arms and Ammunition.'

By the Act of the 26th of *March* 1650, the Matters charged herein are only prohibited, but not made Treason.

Except. 1. That this Charge is mislaid, being charged to be done traitorously.

2. It is laid to be at the Times before mentioned, whereas there are several Times before mentioned; so as it is uncertain to which of those Times this Charge relates.

3. And of these Times, sundry of them are laid to be in several Years before the making of the Act upon which this Charge is grounded.

Allegations by Christopher Love, touching the Matters and Proof upon the Charge.

THO' I do not conceive any sufficient Proof is made of the Charges against me, yet I shall be ready to make it appear upon Proof:

That one of the principal Witnesses hath deposed against me upon Promise of Reward, and upon Menace of Punishment.

That one hath received extraordinary Rewards for his deposing.

That divers of the Witnesses against me have been by their own Confession detected of contributing of Supplies and Assistance, sending and receiving Letters contrary to the late Acts.

That no two lawful Witnesses produced prove any one Treasonable Act.

That no Witness doth depose farther than Concealment, or Misprision of Treason at the most.

Christopher Love.

AS this Case is stated, we conceive these Questions may arise:

1. Whether in this Case these be lawful and sufficient Witnesses, as by Law is required?

2. Whether here be two lawful Witnesses?

3. Whether any Concealment of Treason be Treason within the late Acts?

We have not seen any Authentical Copies of the Charge or Evidence; but upon the Copies we have seen, we humbly conceive fit to tender these Matters and Exceptions to the Consideration of this High-Court. And we shall be ready to speak to them, or any of them, or to any other Matters arising upon the Case, as we shall receive further Directions.

Matthew Hale.

John Archer.

Thomas Waller.

After the Court had received the precedent Exceptions, and were sat in Westminster-Hall, Mr. Love was commanded to the Bar.

When Mr. Love appeared at the Bar, he desired the Court that his Counsel might be heard to these Exceptions. And when Mr. Archer and Mr. Waller, who were of his Counsel, appeared in Court, the Court demanded of them, whether they were of Mr. Love's Counsel? they answered, they did understand they were assigned to be of his Counsel by the Court. Then the Attorney-General demanded of them, whether or no they had subscribed the Engagement? they answered, they had not done it; and spake further to this purpose, That they were by the Court assigned to be of Mr. Love's Counsel, and were sent for into the Court, and in obedience thereunto they had appeared, and were ready to speak, if they might be heard. It was demanded of them by the Court, whether or no they would subscribe the

the Engagement? they answered, That they desired time to consider of it; and so withdrew.

After they had withdrawn, Mr. Love moved the Court that Mr. Hale, another of his Counsel, might be sent for.

[Upon the coming in of Mr. Hale, the Lord President said;]

Ld President. You come as Counsel for Mr. Love; the Gentlemen that were here, are brought into an Incapacity of doing him service that way; we asked them whether they have engaged: we doubt not you, but tell you the Reason why we did it.

Mr. Hale. My Lord, I have done it.

Ld President. Therefore you are assigned.

Mr. Hale. I had very late notice of this Business, it was Saturday Night late before I had notice of it, and the next day was not a day to think of those things. Yesterday was Monday, and the most part of that day I spent in looking over those things that had been, I think, presented to your Lordship and the Court; we did not know what Command your Lordship would put upon us, whether you would admit us to speak, and to what you would admit us to speak, and when you would admit us to speak. It is impossible, (my Lord) I must deal plainly, I profess it is impossible for me, in a Business of this great consequence, to undertake to speak any thing for the present, till such time as I know your Lordships Directions; and this was that we acquainted this Gentleman with, as soon as ever I saw him, and the first time that ever I saw him, which was but this day.

Attorn. Gen. I think that Mr. Hale hath put somewhat under his Hand.

Mr. Hale. We have done so.

Attorn. Gen. Nay, you must stand single, the other two are set aside, it must be you only; I suppose Mr. Hale knows what he is to speak to.

Mr. Hale. Truly we know what we are to speak to; but to speak upon such a Business on such a sudden, when we did not know what Directions the Court would give, that I could not undertake, and I think Mr. Attorney-General will not press it upon us, it were a hard case if he should.

Attorn. Gen. Mr. Hale knows as well as any Man what is to be done in these Cases, none better than himself; the Court useth not to assign Counsel to pick Flaws, but those that are just Exceptions: and the Court is doubtful too, how they will allow Counsel to debate them, and stand to the Judgment of the Court. I suppose he comes to speak to that that the Party hath alledged.

Mr. Hale. It is true, we do so: but Mr. Attorney-General knows likewise, that when Matters of Law are assigned, that there is some reasonable time, we expect not long, but some reasonable time is assigned also for the Parties to prepare themselves; for truly otherwise I should not do that Duty I owe to the Court and my Client, if I should speak *ex improviso*, in such a manner as I have done; for the first time I saw any thing of it, was on Saturday Night, between Eight and Nine of the Clock.

Ld President. Tho' that was the first Sight of this Paper, as it is now set down, it was not the first

first notice you had to be of his Counsel, but himself hath declared it here long ago, that the former Paper was by your Advice.

Mr. Hale. No, my Lord, if he did so, I will plead Not Guilty.

Ld President. I will not say your Name, but when he gave us in his Paper before this, the last Day, you said it was the Advice of your Counsel.

Mr. Love. Not *Mr. Hale*.

Ld President. Then haply we shall ease you a great deal: that that is under your Hand, is very short, and we shall ease you of some of that too; and you know that upon all Assignments in the Upper Bench and Common Law, when they first open it, they show some Causes upon which they will argue it; and when you have had time already, now shew something that may be worthy of it, and we will consider of it.

Attorn. Gen. Before he speak, my Lord, I desire that he will give it under his Hand positively, not Queries, but positive, that this in his Judgment he thinks fit to be Matter of Law, and to be argued.

Mr. Hale. My Lord, we think that these things are such.

Ld President. Then you must upon the first sight open it so far, that it may be your Judgment.

Attorn. Gen. But not suffer it to be debated unless you think it doubtful.

Mr. Hale. We are here assigned Counsel for him, and if your Lordship will please to give us that Time that may be convenient for us to do our Duty for him; if not, we shall do but your Lordship wrong, and our Client wrong if we should speak.

Ld President. You may have some convenient time, but you must open it now, that we may judge what time is proportionable; if you will not open it, that this is the Point you will argue upon, we can say nothing.

Mr. Hale. Then the reading of that which we have exhibited to the Court, will be as much as possibly I shall be able to do at this time, for we have had no Copy of the Charge.

Ld President. Nor must have.

Mr. Hale. And we have taken a Copy at random, according as it hath been offered to us by those that have taken Notes, and we have presented upon those Notes, and we have applied ourselves to Mr. Attorney for a Copy of the Charge, and he conceived that it was not fit for him to do it without Direction of the Court; but for a Copy of the Charge, when Exceptions are taken, it is usual to have it granted: and for us to speak and spend your Lordship's time upon Matters that are contained in a Charge, whereof, for my own part, I never heard, and which is usual upon Exceptions offered to be granted, it would be very—

Ld President. It is an excellent thing to speak to Men of Understanding: Did you ever know an Indictment in this nature, a Copy of it delivered upon the Prisoner's Prayer?

Mr. Hale. Yes, I have known it very often.

Ld President. He shall, as his Memory serves him, speak to the Substance; but to have a Copy of the Charge, I take it, you have not known.

Mr. Hale. Thus far I have known it. I have been commanded to be of Counsel with Persons

that have been impeached of Treason by the Parliament; I know that the Archbishop of *Canterbury*, when he was impeached of Treason, had a Copy of his Charge, that I know he had: I know this is the usual Course, that if a Person takes Exceptions to a Matter contained in an Indictment, though it is true he shall not have the Copy of the whole Indictment, yet he shall have a Copy of so much whereupon his Exception grows; that hath been done, and will not be denied: but for the other matter, I know that in the Archbishop of *Canterbury's* Case there was a Copy of the whole Charge granted, and the like was done in the Case of the Lord *Strafford*.

Attorn. Gen. I shall give that Answer a little more than I did: Parliamentary Proceedings are no Rule for other Courts to walk by; besides, my Lord, you sit here upon a known published Law, and the Offence charged is against those Laws. I believe *Mr. Hale* well remembers, that both my Lord of *Strafford's* Case, and the Archbishop of *Canterbury's* Case, were both of them for many several Facts several times a long time committed; which several Facts being judged by Parliament, were judged to be Treason not against any settled positive Law: And for *Strafford's* Case, you know how the Judgment at last was given by Act of Parliament, King, Lords, and Commons. And for the Archbishop of *Canterbury's* Case, you know what the several Complaints against him were, many of them not Treason, but so many of them together, that in Parliament they thought fit to judge him guilty of Treason; but those Privileges are not to be parallel'd, he knows very well it was not against such and such a Law, to make those Offences Treason. Having given thus much favour, I may say to the Prisoner, that he may by Memory exhibit his Exceptions, he hath done it; if you judge that those Exceptions are worth the debating, be worthy of it, you may (as *Mr. Hale* saith) give Directions for so much to be given him, otherwise (for my part) I did never give it unto any; but those that have been in my place before, did never give it but by immediate Warrant from the King, or the Parliament now, but for so much as the Court thinks fit, for so much as concerns the Exceptions.

Sir Tho. Witherington. For that that *Mr. Hale* objects to the Indictment, it stands with a great deal of Justice; for if a Prisoner lays hold of part of an Indictment, and says there is a Mistake in it, there is reason it should be so, because the Court must judge it whether it be so or not, therefore there is necessity of it that there should be a Copy of so much; but I think he never knew that all the Indictment was, but that part, and that is of necessity for the Court, that they may see whether the Exceptions accord with the Indictment, or no: If there be any Exception to an Indictment, if that Exception remains not as a Doubt or Question, there shall be no Copy of so much of the Indictment given. If he shall raise a Doubt that there is any Doubt in Law, or any Question and Variance between the Acts and the Charge, if he shall raise any such Doubt, then I think according to the old Law he may have that Part of the Charge; but we desire he may raise some Doubt to the Court.

Mr. Hale. My Lord, we have raised the Doubts, and we are ready to deliver in those that we conceive

ceive to be Exceptions to the Charge; if we be over-ruled in them, we have no more to say: but if your Lordship, upon the View of these things we have offered, think them worthy to be spoken to before your Lordship, then surely that is agreeable with that very Rule which the Council of the State is pleased to state; that is, that in case we alledge that which the Court shall think fit for us to debate before them, that then we may have that whereby it may appear whether we debate upon that which is, or is not.

Attorn. Gen. Mr. Hale saith he hath given them in, but I have seen none of them, my Lord.

Ld. President. Whether their Memory be perfect or imperfect, that we shall help you withal; and then I will tell you what you were best do, for Time goes away: we will, before you take it, take the several Statutes and the Charge, and your Exceptions, and compare them all together before you, and you shall except to every one as you go.

Attorn. Gen. I desire the Exceptions may stand as they are.

Ld. President. Ay, but he shall see whether there be any material Variance between the Notary and the Charge.

Attorn. Gen. That Notary was upon favour too, Mr. Love will acknowledge it.

Mr. Love. I do with all Thankfulness acknowledge it, my Lord.

Attorn. Gen. I desire it may be no Precedent for After-Times.

The Clerk. If you please, read your Exceptions.

Mr. Hale. My Lord, we begin with the first, and these are the Exceptions: We take it, that the Charge is grounded upon the Act of the 17th of July 1649, and we take some Exceptions to that first part of the Charge; that is, concerning what Offences shall be adjudged Treason.

Ld. President. Read your Exceptions, and then you shall hear the Charge.

Mr. Hale. Our Exceptions are these; first, That whereas the Words of the Act are, 'That if any Person shall maliciously and advisedly plot, contrive, or endeavour to stir up, or raise Forces against the present Government, or for the Subversion or Alteration of it;' that the Words *maliciously* or *advisedly* are left out of the Charge, which we conceive are material Words.

Attorn. Gen. Read.

Mr. Barnard the Clerk. *That be the said Christopher Love, as a false Traitor and Enemy to this Commonwealth and Free State of England, and out of a traitorous and wicked Design to stir up a new and bloody War, and to raise Insurrections, Seditions, and Rebellions within this Nation, did several Days and Times in the several Years of our Lord 1648, 1649, 1650, 1651, at London, and in divers other Places within this Commonwealth of England, and elsewhere; together with William Drake late of London Mercer, Henry Jermin late of London Esquire, Henry Piercy late of London Esquire, Richard Graves late of London Esquire, Edward Massie late of London Esquire, John Gibbon late of London Gentleman, &c. and other their Complices yet unknown, did traitorously and maliciously combine and confederate themselves together, and plot, contrive, and endeavour.*

Attorn. Gen. What say you, Mr. Hale?

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Mr. Hale. Now we find what the Inconvenience is, of coming to put in our Exceptions, when we have not a clear Copy of the Charge; and that was the Cause why we did subjoin this, that in case any Mistake arise by mistake of the Copies, that we may amend: it is true, we find *maliciously* is in.

Attorn. Gen. Traitorously will be enough.

Mr. Hale. I think not. That is over; for if it be maliciously alledged, that is over. Then the next Thing we except to, is, *be traitorously combined, confederated, and complotted together*: it is true, there is *Plot* in it, but there wants the Words *contrive* and *endeavour*; but that is not the principal matter we stand upon.

The Clerk. They are in.

Mr. Hale. Then that is answered too. The next Exception that we take to the Charge, is, That the Act upon which this part of the Charge is grounded, says, that he must manifest it by an Overt-Act, by an open Deed: now we say, there is (as we conceive) nothing charged upon him in pursuance of this Act, that is, there is no overt or open Deed laid in the Charge; for the Words of the Act are so, *That if any Man shall maliciously plot, contrive, and endeavour to stir up, or raise Forces against the present Government, and shall declare the same by open Deed, that then every such Offence shall be Treason.*

Attorn. Gen. If Mr. Hale hath read the Copy of the Charge as it was taken, I think he finds divers of them in the Charge of open Acts.

Mr. Hale. The Business is not, whether there be open Deeds, but whether they are applied to this Act, or be Substantive Charges of themselves.

Attorn. Gen. I would ask him whether that open Act must be in the Indictment, or in the Evidence?

Mr. Hale. In the Indictment: it must be expressly laid in the Indictment, or else it is no good Indictment.

Attorn. Gen. But for that, that we may not dispute upon those Things, my Lord, there are the several Charges against the several Acts; there are several open Acts that are laid in the Indictment, and (I think) if he look upon it, he will find that they are laid to every one of them, and relate and refer to every one of them.

Sir Tho. Witherington. There is writing of Letters, contributing of Money, and receiving of Messages.

Mr. Hale. That will appear by the subsequent parts of the Charge.

Ld. President. The subsequent parts of the Charge will make that appear, for if he did lend Money, &c. if they be really there, we shall hear it by and by.

Mr. Hale. I take it, that the Law is very plain, that the Act must be mentioned in the Indictment.

Attorn. Gen. But we will not debate that when we are express in the thing; we are not so tied to Form, as to pin them to every Word of it.

The Clerk. *And further to carry on and accomplish the said wicked Practice and Design, be the said Christopher Love, divers Days and Times between the 29th of March 1650, and the 1st of June in the Year of our Lord 1651, at London, and other Places as aforesaid, did traitorously and maliciously give, hold, use and maintain Correspondency and Intelligence*

telligence by Letters, Messages, Instructions, and otherwise.

Ld. President. These are open Acts.

Mr. Hale. Then favour us in this: we take it that between this, and the first Charge, there comes a particular Charge, that relates to *Charles Stuart*, that is intervenient between the first Charge and this that is now read, or else we are misinformed by the Prisoner; and if there be so, then we think our Exceptions will take place.

Sir Tho. Witherington. It is all contained in one Indictment, and then that that explains the Overt-Act follows afterwards, as a distinct thing in the Indictment; and so it was in my Lord *Cobham's* Case in that Indictment, and in my Lord of *Essex's* Case.

Ld. President. He may make Overtures.

Mr. Hale. We confess it; but we suppose it very certain, that both as this Act is penn'd, and as the Act of ——— is penn'd, which are much at one as to the manner of penning them, there is of necessity an Overt-Act to be laid, to make good that general Charge: that, we conceive, will be plain; and that is admitted and agreed by the Lord *Coke* in his Collections of the Pleas of the Crown, fol. 12, 13, where he saith, 'The Indictment of the Earl of *Somerset*, in the Time of *Edward VI.* and all other of the like Form, were against Law:' Because he said, that he did not follow the Words of the Act, and that he did it *per apertum factum*, and shews not what that open Deed was; that was not a good Indictment, for the Fact must be set forth in the Indictment; that must be done. Then the Question is, Whether this be so done here or no? We conceive by this Charge it is not so done here, upon this ground; we say, there follows after this a particular Charge concerning his Promotion of *Charles Stuart*; and then subsequent to that, there follows this that the Court hath now read. We say, that in this Case here is not a Charge of an Overt-Act, neither by the one nor by the other; there is not a Charge by the former, because that is a distinct Treason, made distinctly treasonable by another Act: and therefore that which is made a distinct Charge of Treason by another Act, shall not be an Overt-Act within the former; that is one thing we say. And another thing we say is this, That in this Case, the Second, that is that which the Court hath been pleased to direct to be read to us concerning his holding Correspondence, that shall not be an Overt-Act relating to the first Charge; for it is an uncertain Relation: for there be two Designs mentioned before, the one is a Design contained in the first Charge, the other a Design contained in the second Charge, for the promoting of *Charles Stuart*; and we say, the third shall not be coupled up to the former, because it is a distinct Charge of Treason in itself, and because it is uncertain to which it relates: for it refers not more to the first Charge than to the second concerning the promoting of *Charles Stuart*, that is called the Prince of *Wales*.

Ld. President. For this I take it for the present, that the Charge is founded upon four Statutes; if he lay the Offence against the first, second, third, and fourth, and he shall come and conclude it without relation to any Particular of these Treasons, he did thus and thus by Letters

and Correspondencies, that will relate to them every one, tho' it comes but in the Conclusion; and tho' the Statutes be various, yet the Indictment is but one, and he may put in this of the Overtures in one place sufficiently, to be a sufficient Overture to every one: and therefore tho' to one of them there should be no Overture in it at all, but *valet ut valere potest*, it will hang upon so much, as it will bear an Overt-Act, and then you will not deny but that those Words are Overtures.

Mr. Hale. It is true, they are so; but yet still we conceive this third, which we call the third Charge, that is concerning holding Correspondence, the third or fourth, I cannot tell which it is, but it is one of them; we say, that that is not an Overt-Act applied to the first Charge. When we come to the Substance of that Charge as it stands by itself, then our Exceptions will rise upon it, as it stands singly by itself; but we conceive that shall not be a supplemental Charge to make good that first Charge, that is concerning endeavouring to subvert the State as it stands established, it shall not be used as an Overt-Act to make good the first Charge. When we come to that particular Charge, that is concerning the maintaining of Correspondence, whether it be a good Substantive Charge of itself, then we shall offer our Exceptions to that; but in the meanwhile we are but upon Debate of the first, whether the first containeth such a Charge, as by the Act of the 17th of *July*, 1649, is required.

Attorn. Gen. My Lord, we are heard before you concerning it; *Mr. Hale* will find, that after all these Laws are repeated, and after all his Offences against those Laws are repeated, it is concluded that all are against the several Acts of Parliament in such Cases made and provided. If *Mr. Hale* will single them, the Impeachment doth not, but relates to all of them; and, I think, that in this way of Impeachment, we are not tied to those very nice and strict formal Rules upon Indictments: but if Substance doth appear, it doth appear to you, my Lord, that in Substance the Acts are pursued, and that upon the whole Impeachments there are, even this that is required, the Expression of an open Deed, an Overt-Act; those are laid, and it will be acknowledged by *Mr. Hale*, that they are in themselves sufficient, being thus expres'd and concluded, that those several Practices, and Designs, and Treasons, are against the Form of the several Statutes in that Case made and provided, not in relation to the 17th of *July*, nor the 2d of *August*, but to all of them. And I believe that all of these Facts, all of this Treason, all of this Design, whether with the *Scotch* Nation, or Members of the *Scotch* Nation, or those adhering to the *Scotch* Nation, had all but one Foundation, the Subversion of this present Government, that was the Foundation and Treason of the Whole, that was it that was intended: for to bring one in, and not to cast out the other, would have done no Good; but upon the whole, that was the Treason. And upon all these Circumstances and open Deeds and Designs, the Sum, though it be a Treason to hold Correspondence, though it be a Treason to promote *Charles Stuart*, though it be a Treason to do other Things; yet the Treason is in this, the *Scotch* Nation to come in with intent to subvert the Government, *Charles Stuart*

Stuart to be made King to subvert the Government. So that the grand Work at heart, at root, was the Subversion of the present Government; and as for that, I wish heartily, for Mr. *Love's* sake, there were not so many open Deeds exprest by him.

Sir Tho. Witherington. Mr. *Hale* speaks of the Charge; the Words are these: *And further, to carry on and accomplish the said traitorous and wicked Practice and Design, he the said Christopher Love* (now this I take to be the Overt-Act) *divers Days and Times between the 29th of March 1650, and the 1st of June 1651, at London and divers other Places, as aforesaid, did traitorously and maliciously use and hold Correspondence and Intelligence by Letters, (those are open Acts) Messages, Instructions, and otherwise, to the Prejudice of the Commonwealth:* and these are laid within the Time, and not a distinct Charge, as Mr. *Hale* would infer; but they do directly set forth an Overt-Act done by Mr. *Love*.

Mr. *Hale.* Is it your Lordship's Pleasure I should reply any thing, because I come utterly unprovided for it, I must profess?

Attorn. Gen. We may give him this, and one or two more.

Ld. President. Go on, Master *Hale*; if you have that that is material for another Reply, do; but take this, Master *Hale*, I take it very strong both in Grammar and Logick too, as well as in Law, that when all the whole Charge is radically and fundamentally but one Treason, though there be many Branches of it, the Charge hath knit them all together, and made but one Act of so many complicated Treasons as are here; and when he comes to the latter end, if some of them were *de facto*, not by an Overt-Deed published, yet if he come and prove, that it was so done by the Proofs, that there was Correspondence, and these things *de facto* done, and that Charge *de facto* done, you cannot break it there, to say that this Fact did not reach to all: for if there be any one, it is sufficient; but here it is to all, even to that one that you speak of.

Attorn. Gen. My Lord, I shall read a Word to Mr. *Hale*; *All which Treasons, and traitorous and wicked Practices and Designs of him, the said Christopher Love, were, and are to the apparent Hazard of the publick Peace of this Commonwealth and Free State, Parliament and People of England, [Mr. Hale findeth not these in any Indictment.] and to the manifest Breach, Contempt and Violation of the Laws of this Land, and contrary to the Form of divers Statutes and Acts of Parliament in such case made and provided;* in general, my Lord.

Mr. *Hale.* We conceive, under favour, and we think that it cannot be denied, that such a Conclusion will not serve the turn.

Attorn. Gen. No, not in an Indictment.

Mr. *Hale.* If there be a substantial part of the Charge omitted, that ought to be alledged in Fact, it is not in the Conclusion, *that contrary to the Form of the Statutes in this Case made and provided,* will help it. My Lord (I come unprovided) the Case of my Lord *Dyer*, that known Case upon an Indictment for Recusancy, or for a wilful or knowing harbouring of a Jesuit or Priest: Saith my Lord *Dyer*, *It is not enough to say, he did harbour him contrary to the Form of the Statute, but he must say, he did it knowingly: he must alledge and pursue the substantial words of the Act of Parliament.* And so again, an Indictment

for absenting from Church; it is not enough to say, He did it *contrary to the Form of the Statute*; but that he did it *obstinately*. Therefore that general Conclusion, that this was *to the Hazard of the Commonwealth*; (it is true, it is an ill thing for a Man to do such a thing that is to the Hazard of the Commonwealth) but those Words serve not the Statute neither: and then to say at the Conclusion, *contrary to the Form of divers Statutes*, that will not help it, under favour, in case of an Indictment. Then Mr. Attorney makes a Difference between the Case of an Indictment and this Charge. I conceive that in this Case there is no Difference; the Matter is the same, the one concerns the Life of a Person, and so doth the other: the Offence is the same; the one is a Charge of High Treason, and so is the other. It is true, those Formalities that concern the Manner of the Trial, those (it is true) are laid by, because here is no Jury to come before your Lordship; but your Lordship trieth upon the hearing of the Testimony, and according to things alledged and proved. But for other Matters that especially are substantially required by the Act of Parliament, we conceive that those shall be supplied no more by an Intendment in case of a Charge before your Lordship, than in case of an Indictment for Treason. To this I shall say no more, but leave a word or two to your Lordship's Judgment. For the other thing (we are still but upon the first Charge, the first Article) it hath first of all been insisted upon, that an Over-Act is not necessary to be alledged, because supplied by the Words of the Conclusion, *contrary to the Form of the Statute*. To that I have answered, I conceive, it is not, nor can it be supplied, because it is a substantial thing in the very Words and Bowels of the Act, and cannot be supplied by a general Conclusion. Then it hath been said by Sir *Thomas Witherington*, the State's Serjeant, That in this case those subsequent Matters and Charges shall be an Overt-Act within the Statute; that is that which he hath read to you; it is in the fourth Article (as I take it) *That Christopher Love divers Times between the 29th of March 1650, and the 1st of June 1651, did traitorously and maliciously hold and use Correspondence and Intelligence by Letters and Messages.* But that cannot be; I may say it, that is not a sufficient Manifestation of an Overt-Act, because there do precede it these particular Charges of Treason within particular Acts of Parliament. Why then, if so be (to maintain his Design, for the carrying on of his Design aforesaid) this should be said to relate to the first Design, why not to the second Design of promoting *Charles Stuart* to be King? And why not to the third Design? So that where there are three several Designs before, all made Treason by the Acts of Parliament, that cannot be an Overt-Act to make good the first part of the Charge, with Submission to your Lordship's Judgment. And then another thing we say, That this Charge which Sir *Thomas* would carry up to the first Charge, and make it as an Inforcing and Overt-Act within the first Charge, that cannot be, for this other Reason; because it is charged as a traitorous distinct Act in him. Now we have this Learning delivered by Sir *Edward Coke* in his Comment upon this, in the 25th Year of *Edward* the Third; that is where there are several Acts made Treason, the one is an Act for levying of War: Now there

the Case was Treason against the Person of the King, Queen, Prince, &c. that one part shall not be an Overt-Act in case of an Indictment, shall not be construed as an Over-Act for the making good of another part; because where all are made equally traitorous, and all are charged as equally traitorous, we think, with Submission, those parts shall not be made an Overt-Act to another Treason. So when here is a Treason made by the Act of the 17th of July, and another by a subsequent Act, that which is charged as a Treason in the subsequent Act, shall not be said to be an Overt-Act for the making good of the former; if the former be not a Treason, able to maintain and support it self, this subsequent Act shall not serve as a Bolster to uphold it, and to supply that which is laid as a distinct Treason of it self. Now these are the three things we insist on: First, That an Overt-Act is necessary to be laid. Secondly, That it is not supplied by the general Conclusion, nor can it be. Next of all, That this Act that is here laid to be done traitorously, to hold Correspondence and Intelligence, it refers no more to the first Design, than to the second or to the third Design, which are charged as three distinct Treasons; and this is charged as a distinct and positive Treason of it self, and therefore shall not be carried over as a Supplement to another.

Attorn. Gen. We granting that an Overt-Act is necessary to be express'd; grant it should be so, but no more but in Evidence: and then granting in the next place, That the general Conclusion will not be sufficient to maintain it, when it is requisite and open Deed should be express'd. Then for the third, I cannot be of his Judgment in this way of Impeachments; but as we see one Person may commit four or five Treasons, and one Act may be an Offence against four or five Acts of Parliament; and this is the Truth: for where the several Acts are repeated, that (my Lord) are those Laws against which this Treason, and this treasonable Practice and Design is laid to be; then follows the several Enumerations of those Practices, Designs and open Acts of his, now applied by us: but *Mr. Hale* would take them and apply them to one singly. But I observe to your Lordship, that those open Acts of his, are Offences by an open Act against the several Acts of Parliament; but it serves his turn for his Client to apply them so: but I hope you will not apply them so; but when they come between the Offences, and the Overt-Acts follow it, and the Conclusion upon the whole, that all those traitorous and wicked Practices and Designs are against the several Acts of Parliament: And if there be an open Act, so express'd, in the Impeachment, that in Law is an open Act, suppose it should be required to be express'd, if there be an open Act, then I hope you will be satisfied, when it has been well proved, if it be express'd in the Indictment an open Act, that I hope will satisfy your Judgments and Consciences; especially when open Acts shall appear to you to be an Offence against the Acts of Parliament. I shall leave this to your Judgment, and trouble you no further; and you will find in its place whether it be requisite or not.

Ld. President. That that *Mr. Hale* said, if it were a thing of absolute Necessity in an Indictment, then the Conclusion will not help; if the thing were of absolute Necessity there charged,

and not charged *contra formam Statuti*, will not do it: but if I understand it right, it is fully laid in this Charge, that he did by open and Overt-Acts do the thing; it is laid so: the Words of open Act are not, but the Value, that is, that he did by Writing, by Words, by Messages, by Money; and these are really Overt-Acts, though he did not call these Overt-Acts; these are laid fully in the Charge: and then, if they be laid fully in the Charge, and we satisfied in the full Proof of that Charge, that we have heard Overt-Acts to maintain it, then I think this cannot come within any of those Cases, that when an essential thing is left out of an Indictment, there the Conclusion will not help: this I conceive so far. Then the next, what Method or Order this can be, by setting down the Statutes, and then withal these Overt-Acts of Letters, of Messages, of Money, will reach to every one of the Qualities, that these Treasons are manifested by this Act; but if it were a Treason of such a nature, that none of these could reach to the Manifestation of it, then you say well: but when these Words reach to the Manifestation of every Charge laid in the Charge, then it is effectual and real, and the Conclusion is sufficient.

Attorn. Gen. Before he goes to the next, I shall crave your Direction in it; for I profess, my Lord, to you, that I, in drawing the Impeachments, take not my self to be so strictly tied to the Forms of Indictments in Letters and Syllables; and the Forms I have taken and do take, are those that have pass'd heretofore, and I follow them; and till I receive your Direction to the contrary, I take not my self bound but to express the Substance of that which is laid to his Charge, by which he may know his Offence, and give an Answer: But to Forms, and Quiddities, and Niceties, I conceive I was not bound to that.

Mr. Hale. I press not Forms, nor Quiddities, nor Niceties in this Business. The next is concerning the Charge of promoting the Prince of Wales.

Attorn. Gen. No, there is no such thing in it; your Copy is amiss again; read it.

Mr. Hale. Our Exception is this (we have been but upon the first all this while, I take it so) the next is, That he did traitorously publish the Son of the late King of England, to be King of England (meaning this Commonwealth) without the Consent of the People in Parliament first had or signified by Ordinance to that purpose. I think we shall not trouble your Lordship much with that; for if that be as our Copy is, it is true, it is not well laid: but if it be never so well laid, I conceive, as I am informed, there is nothing of that endeavoured to be proved.

Attorn. Gen. That we leave to the Court, *Mr. Hale.*

Mr. Hale. Then the next is, That to accomplish the said traitorous and wicked Design, *Christopher Love* did at several Days in the Years aforesaid, traitorously and wickedly advise the Scots. Our Exception to that is this: There is a treasonable Assistance charged, in some of the Years that were before the making of the Act that did prohibit it.

Attorn. Gen. And afterwards too, *Mr. Hale.*

Mr. *Hale*. It lays it in some of the Years before the making of the Act, and that is sufficient to invalidate this Charge.

The Clerk. *And further, to carry on and accomplish the said traitorous and wicked Practices and Design, he the said Christopher Love several Days and Times in the respective Years aforesaid, at London, and divers other Places within this Commonwealth of England, and elsewhere, as aforesaid together with the said William Drake, Henry Jermin, and other their Complices aforesaid, did traitorously and maliciously invite, aid and assist the Scots, being Foreigners and Strangers, to invade this Commonwealth of England, and hath adhered to the Forces raised by the Enemies of the Parliament and Commonwealth aforesaid, and Keepers of the Liberties of England, as aforesaid.*

Attorn. Gen. You will find this in a Statute before this.

Mr. *Hale*. Not before the 17th of July 1649, and then your Charge is repugnant; you charge us for an Offence which is precedent to the Statute.

Attorn. Gen. For that, you go and take them and pick them; but we lay them all together: there were Treasons he committed in 1648, and that which I pitch upon still is this (that Mr. *Hale* thought was waved) That this Man did not promote the Interest of *Charles Stuart* late King, or that he had not endeavoured a Subversion of this Government; I lay that against this Act made in 1648. Then by consequence to maintain that, he did it to promote his Interest, and to subvert the Government; and there was a Law in 1648 that did inhibit that: there is a Law inhibits the calling in of Strangers; and it follows by that, that he who calls in Strangers, may promote the Interest of *Charles Stuart* too: and that Foundation is to this purpose, that he did promote him to have been King of *England*: and you know what he express'd to you, what Tenderness of Conscience he had to take care that he might not go elsewhere.

Mr. *Hale*. If it be so, then we must desire that part of the Charge may be read.

Attorn. Gen. I have not charged them, nor until I receive Command, shall I vary from what I have received formerly, that I shall charge this to be against this, and that against that; but I have laid down the Acts of Parliament that have made things Treason, and the Offences severally, and upon the whole conclude, that these are Treasons against several Acts of Parliament severally; if one or all together serve turn, I hold it well enough. If you put me to every one of them particularly, I must have more time, and better Clerks to draw the Indictments.

Mr. *Hale* Still the same Objection meeteth (with Submission to the Court and Mr. Attorney, the same Objection meets) with them; we say then, he will make this a kind of an additional Charge to the first or to the second, or to both; but we know not to which.

Attorn. Gen. Yes.

Mr. *Hale*. But we say, That that is not sufficient upon these Reasons, because it is a Charge of Treason in itself, and therefore shall not be made an additional and supplemental Charge to make out another. And then we say, that this is uncertainly charged, whether you will make it supplemental to the first Charge of Treason,

that is, the endeavouring of the Subversion of the Commonwealth; or to the second Charge of Treason, which is a distinct Charge of Treason, of the Promotion of the Interest of *Charles Stuart*.

Attorn. Gen. I cannot divide them.

Ld. President. Are not these as perfect as before? Doth not the Subversion of this Commonwealth promote the Interest of *Charles Stuart*? And doth not the Promotion of *Charles Stuart* subvert the Interest of this Commonwealth? If he hath laid it, that he did both of these by assuming it, by a double or multiplied Act; and all these multiplied Acts are but one Subversion: if I subvert it by one, or by twenty Acts, both of them are the same in nature; for the Subversion of the one, is the bringing in of the other; and the bringing in of the one is the Subversion of the other; and so they are Relatives fully one to the other, and there cannot be more express'd in the Charge than this. And notwithstanding all these Acts, though that Act hath made the Treason, cannot it be by another Act? You may prosecute by virtue of this subsequent Act, any thing that was understood to be general Treason by the Law of the Land.

Mr. *Hale*. My Lord, this is that we insist upon. It is true, we do conceive, though the Promotion of the Interest of *Charles Stuart* is not consistent with the Preservation of the Interest of the Commonwealth, yet every Destruction of the Interest of the Commonwealth is not therefore a Promotion of the Interest of *Charles Stuart*; for then there could be no Treason against the Commonwealth, but it must be a Promotion of the other's Interest. Now there may be a Treason against the Commonwealth, without the Promotion of the other's Interest. I urge it to this purpose, to make it appear, that they are several Charges bottomed upon several Acts; and therefore the reference here made to promote the Design aforesaid, is uncertain to which it shall relate: it may fall out the Party may be guilty upon the first Article; it may fall out he is not guilty upon the second Article, and then it is uncertain to which Article it relates, that he is guilty of, or not guilty of: and here may be the Consequence of it, then you will make a Treason, which to this third Clause is a Substantive, and contained in it self, to be an Overt-Act to another Charge of Treason, and that you cannot do; you cannot make a Treason which is so charged, to be an Overt-Act, or Exposition, or a Declaration of that which is contained in the former; like that Case I instanced in before, of the 25th of *Edward* the Third, That no Man shall go about to destroy the Person of the King, nor to raise War against his People: so that we use it not in any other reference, but only to explain and bring the Reason of that ancient Law to this Law. In that Case a Man cannot charge the Overt-Act of going about to destroy his Person, which is a distinct Treason of itself, to be an Overt-Act to the Charge of levying War, which is another distinct Treason. And if he alledge, such a one did go about to destroy the Prince, or the Consort of the King, or the King, and to make the levying of War to be an Overt-Act to it, this he cannot do; because though it is true, it might be an Overt Act to it, yet notwithstanding it being made a distinct Treason, it cannot be an Overt-

Overt-Act to another Treason: And so here, this very assisting and inviting of Forces is made a distinct Treason. And so if you take it substantively, it is insufficiently laid: And if relatively, you may not do so, because it is a Treason of it self, and shall not be brought in relation to another Treason laid before it.

Attorn. Gen. For that, I hope Mr. Hale will leave me to that Liberty I have; that is, That if one Act be an Offence against several Acts, I may aggravate it so, as to make him know it is so. And I take it for an Aggravation of his Offence, when he hath offended against so many several Laws, which he hath done; and that I may have Liberty to say so, though perhaps that Subversion of this Government is not in every respect a promoting of the Interest of *Charles Stuart*: But the Subversion of this Government, as it is here laid in this Indictment, is a Promotion of the Interest of *Charles Stuart*. And so it is here. And I have done now with that.

Ld President. Then Mr. Hale, I will add a Word, because that you did put the Case of a Man destroying the Person of a King, and levying of War. If it be laid; those very Acts, if they be laid as a continued, or a *Medium*, or an Enterprize, that he had taken up a War to destroy the Person of the King; those Words in one Sense, if it had been laid solitarily by it self, and destroying the King in another; but if he shewed that by levying of War, he endeavoured it, then the Denomination is from the End in that place: and though they be two Treasons substantively, yet when they are laid as one continued Act, they are but one. And so it is in this Case: All these, though there are several Statutes, and several Treasons, these multiplied Acts make up but one compleat in the Conclusion. If there want one of these, if there be sufficient in the other, it is Treason enough, and too much too, (I would it were not so:) If they be laid in Subordination, as all these are, every one of them further to promote this, and to promote that, so they are laid in Promotion of it to every one: And then they are contiguous, and depend one upon another, and are substantive; and so substantial, as that they may be Relatives one to another. And so are these.

Attorn. Gen. The next, Mr. Hale.

Mr. Hale. The next is the fourth Charge; and that is concerning holding Correspondence by Letters and Messages with *Charles Stuart*, and the late Queen his Mother: We say that this Part of the Charge is ill laid also. It is laid in nature of a Felony by the Act, and laid to be done traitorously in the Charge; and that a substantial (not a mere Formality, but a substantial) Mistake: For if so be a Woman be indicted of Petty Treason, because it is *Proditoria*, yet in truth it amounts but to Felony. Now, in Case where she is an Accessary to a Felony, the Indictment is naught. If a Man be accused that he did traitorously such an Action, which in it self amounts but to a Felony, that Charge is nought. And so it is here; it is mislaid: For by the Act of the 29th of *March*, 1650, the Matters therein charged are not made Treason, at most but capital, but we think it only prohibited, and then we say it is an uncertain Charge. And so, it is under favour: For though the Act saith no Man shall hold Correspondence by Let-

ters, Messages, or otherwise; yet when we come to inform upon it, or to indict upon it, it is not enough to say he held Correspondence by Letters, Messages, or otherwise: but, if you will ground your Deed upon that Act, you must shew what that *otherwise* is. And that is the Exception to that Part of the Charge.

The Clerk. *And further, to carry on the said traitorous and wicked Practice and Design, be the said Christopher Love divers Days and Times, between the 29th of March, 1650, and the 1st of June, 1651, at London and other Places, as aforesaid, did traitorously and maliciously give, hold, use, and maintain Correspondence and Intelligence by Letters, Messages, Instructions, and otherwise.*

Mr. Hale. Or *otherwise* was our Notes; then that is out of doors: But our Exception is, That it is alledged to be done traitorously.

Ld President. And the Statute saith it shall be Treason.

Mr. Hale. No, it saith not so: The Act lays it only in nature of a Felony, and in the Charge it is laid to be done traitorously; and so the Charge is mislaid.

Attorn. Gen. I confess it is exprest so in the 29th of *March*, 1650, and it is not said what the Offence is; but I conceive, in the first place, that by the Law of *England* he that holds Correspondence with a Traitor will go very near it, my Lord. And then I humbly conceive that still, he going upon the first Act, it is laid to be with *Charles Stuart*, and the Queen and Counsel with him, (I think) it is a promoting of his Interest: He to hold a Correspondence with him whom the Parliament hath said, You shall in no case promote his Interest.

Mr. Hale. I must be bold still a little, to crave Mr. Attorney's Favour, to reply upon him in this kind of way; for I have not had Time.

Attorn. Gen. You have had more Time than I; for I heard not of it till now.

Mr. Hale. We say the Charge is not good, because it is made Felony only by the Act, and laid in the Charge to be done traitorously; and then we say that Charge is uncertain to what Design it relates: If it relates to the Business concerning the promoting of *Charles Stuart's* Interest, if it be so, we conceive it is not proved: For the Proof I mention not; but that is not insisted upon, that Master *Love* did promote the Interest of *Charles Stuart*, contrary to the Act of Parliament; that (I think) is not insisted upon.

Attorn. Gen. O, yes.

Mr. Hale. I conceive no.

Attorn. Gen. I conceive very much otherwise, Mr. Hale.

Mr. Hale. I desire that Charge once more may be read, concerning the promoting the Interest of *Charles Stuart*.

The Clerk. *And the better to carry on and accomplish the said traitorous and wicked Practice and Design, be the said Christopher Love, with the said William Drake, &c. (since the Death of Charles Stuart, late King of England, who, for his notorious Treasons, and other Tyrannies and Murders by him committed in the late unnatural and cruel Wars, was by Authority, derived from the Parliament, justly condemned to Death, and executed) several Days and Times, in the respective Years aforesaid, at London aforesaid, and sundry other Places within this Commonwealth, and since this Nation*

Nation was settled in the Way of a Commonwealth, or a Free State, as aforesaid, did traitorously declare, publish, and promote Charles Stuart, eldest Son to the late King, to be King of England.

Mr. Hale. We are informed that there is nothing of any particular Act of his concerning that: But we have nothing to do with the Fact. But we conceive that no subsequent Thing, by way of Construction or Interpretation, shall make a publishing and promoting in such a manner as this is, it must be such a Thing as expressly publisheth and promotes him to be the chief Magistrate of *England*, according to the Words of the Act, and not by way of Dilation: We say this is not a Thing to be applied to serve the Turn, upon this Reason; we say that the holding of Correspondence and Intelligence with *Charles Stuart*, eldest Son to the late King, cannot be coupled to the Promotion of the Interest of *Charles Stuart*, to be King of *England*, seeing that is but by way of Interpretation to bring it within the first part of the Act.

Attorn. Gen. For that, I shall crave your Direction.

Ld President. It is not interpretative, but positive.

Attorn. Gen. But I shall crave your Pleasure; Whether I shall in my Impeachments afterwards put in all my Evidence? What is charged, and Evidence proves, that you will judge upon, I hope.

Mr. Hale. Then the next part of the Charge, and that is the fifth, That he did hold Correspondence with divers Persons of the *Scotch Nation*. Our Exception to that is plain: We conceive that part of it is not well laid neither; it is not laid in pursuance of the Act of Parliament, as our Notes are. This is that we say, That it is not expressly alledged, that they were Persons residing in *Scotland*, our Notes are.

Attorn. Gen. Like enough so, Sir.

The Clerk. *And further, to carry on and accomplish the said traitorous and wicked Design, he the said Christopher Love, several Days and Times in the respective Years aforesaid, at London aforesaid, and divers other Places within this Commonwealth of England, and elsewhere, as aforesaid, did traitorously and maliciously bold and maintain Correspondence and Intelligence with divers Persons of the Scotch Nation, viz. with the Earl of Argyle, Lowdon, Lothian, Bailey, Belcarras, and divers other Persons of the Scots and other Nations, whom he well knew to adhere to the Scotch Nation in this War against the Parliament and Commonwealth of England.*

Mr. Hale. This we conceive is not a good Charge; for the Words of the Act of the 2d of *August*, 1650, upon which this is grounded, are, That no Man shall hold Correspondence with the *Scotch Nation* residing in *Scotland*.

Attorn. Gen. You were best read further, Mr. Hale.

[Then Mr. Hale read part of that Act, beginning at these Words, [Be it enacted, ordained, and declared by this present Parliament,] and ending with these Words, [Without the Allowance, Licence, &c.]

Mr. Hale. It is true, there is no Residing; for that yet comes not home, we conceive, to part of the Charge. There are two Parts of the

Charge; the one, That he did maintain Correspondence with divers of the *Scotch Nation*; and with divers others Persons of divers other Nations, whom he well knew to adhere to the *Scotch Nation* in this War against the Parliament. As to the first, that is out of doors: Then here is no full Charge of holding any Correspondence with any of the *Scotch Nation*; for that part of the Charge rests upon this, that it must be with holding of Correspondence with any such Persons as are residing in *Scotland*, and with any other Person residing there. Then as to the other part —

Ld President. It is a continued Speech; Not with the *Scots*, nor any other.

Mr. Hale. Then here is another Thing in it: That it is not averred that such a Correspondence and Intelligence was held without the Licence of Parliament.

Attorn. Gen. You are mistaken in that; your Notes are not true.

The Clerk. *And he the said Christopher Love, within the Times, and at the Places before mentioned, did traitorously assist, encourage, without the special Licence of the Council of State, or Parliament, or Captain-General of the Parliament Forces.*

Mr. Hale. We say then, these are two distinct Charges, and grounded upon two distinct Parts of an Act. But there is this more in it, which we conceive is not to be answered, with Submission; under favour, it is said he did it within the Times aforesaid: The Times that are aforesaid are between the 29th of *March* 1650, and *June* 1651. Now this Act, whereby this is made traitorous or treasonable, takes not place till the 5th of *August* 1650: So that it might be done within the Times aforesaid, that is, between the 29th of *March* 1650, and *June* 1651, and yet not contrary to the Act of the 2d of *August*, which was 1650.

Sir Tho. Wither. We lay it within all the Times aforesaid: And I suppose the Matter of the Evidence hath told you the Times, which now we are not to dispute.

Mr. Hale. Whatsoever is done between the 29th of *March* 1650, and the 2d of *August* 1650, is not done contrary to the Act of the 2d of *August* 1650, upon which Act this Charge is grounded: There is a Time between them, and between the Time of exhibiting of these Articles. Whatsoever is said to be done between the 29th of *March* 1650, and the exhibiting the Articles, is not said to be done after the 2d of *August* 1650: For if it be done between the 29th of *March* and the 2d of *August*, it is done within the Time aforesaid, that is, between the 29th of *March* 1650, and *June* 1651; and yet not done contrary to the Act of the 2d of *August*, because done before the Act came forth.

Attorn. Gen. Though Mr. Hale will not consent to it, we will strike out the 29th of *March*; and then he will not deny but that is good enough, with that striken out, before the first of *June* 1651. Whether it be not good enough, and no Time laid before it?

Mr. Hale. No indeed, it is not good enough.

Attorn. Gen. Why not? It is after the Offence committed.

Mr. Hale. Because it may as well be before the Act, as after the Act.

Attorn. Gen. If we lay it after the Offence committed, I suppose it is well enough; and the wisest

wifest will think so. Lay it to be the 1st of *June* 1651: Suppose it were in *September* before, it is good enough.

Mr. *Hale*. If you lay it upon the 1st of *June*, it is a Year; before it is not good enough.

Attorn. Gen. That that Mr. *Hale* insists upon, he may say it is before the 1st of *June* 1651, so long since; but in a just and reasonable Intendment, when we insist upon that Law that makes it Treason to hold it after such a Time, and we say that before the first of *June* 1651, he did commit Treason in holding Correspondence, and sending Provisions of War before that Law, though it were before the second of *August* 1650, that were not against that Law.

Mr. *Hale*. Still we say, That *contrary to the Form of the Statute, or contrary to the Form of the Law*, which is but the Conclusion, shall not supply that which is material to be alledged. Now when here is an Act laid to be done, certainly it is material to alledge that it is done in such a Time as may appear to be after the Time of the Prohibition of it to be done. The Prohibition runs to the 2d of *August* 1650, That no Man after the 5th of *August* shall do such an Act: Then it must be laid to be an Act done after the 5th of that *August*. But it is not laid so here; but laid so as may be intended to be done before the 5th of *August*: For here is a Time laid between the 29th of *March* 1650, and the Time of the exhibiting the Articles, which is in *June* 1651, and that he did this within the Time aforesaid. Now he that saith he did it the 30th of *March*, saith he did it within the Time aforesaid; and yet saith not that it is within the Act.

Sir *Tho. Wither*. We have given an Answer to that: We have laid it within and without the Time. That is within the Time, the Witness doth prove it; and Mr. *Hale* speaks not to what we have proved, and cannot speak to it.

Mr. *Hale*. The Proof shall never supply the Insufficiency of the Charge: For we may as entirely offer you an Exception to this Matter after you have heard the Proof, as before you have heard it; for it stands no ways upon the Charge singly; so that it shall not be supplied out of Matter that appears in the Proof, but it must be considered whether the Charge can supply itself, or not: for that that is alledgable against the Charge before the Proof made, is alledgable as well afterwards. If it were not good before the Proof, the Proof shall not be supplemental to it: For upon that Reason, if an Indictment did want Time or Certainty, then after the Party were heard upon his Defence, it might be said, when this Exception was taken to the Indictment, all this might appear upon the Evidence. But that will not supply the Defect of the Indictment.

Attorn. Gen. I am sure we have laid it late enough, the first of *June* 1651, before that Time; and Mr. *Hale's* Exception is still upon that way of Proceedings upon Indictments: He must have that positive and strict Certainty in it in each Particular. I must give it that Answer still, that if you do in these Cases put me to it, to express every particular Circumstance of every particular Fact, and every particular Time, and that it must conduce in the Conclusion of it, I must make you Impeachments that will not be fit for you to read, nor hear: But, under fa-

vour, if that it contains in it in this way of Charge that convenient Certainty, that Convenience that may put the Prisoner to the Knowledge of it, and to prove it. For this relates not singly: For if I should go that way Mr. *Hale* hath laboured to draw me, that is, to take every one of these severally, and that I must make a distinct Charge upon one, and upon the other, and a distinct Evidence upon one, and upon the other; I conceive these run quite through all the Laws, every one of them. Had I confined this now between the 5th of *August* 1650, and *June* 1651, then what had become of all the Laws before that Time? Therefore to make them relative to all, I have express'd such a Time as may relate to all: For had I confined it singly upon this or that Act, whereas I humbly conceive that these Acts, and these Offences of Mr. *Love*, are relative to more than one Act of Parliament, and go to several Acts: And therefore I cannot confine myself to one Act, and say it was done at such a Time, and there limit it, and let it die. But my Endeavour hath been, and upon this Particular we debated it, when we did draw it: we put it so that the several Acts may have the several Effects, and Mr. *Love's* Treasons look upon every one of them, and they upon every one of his Treasons; and as his Offences run through, and against all the Acts, so must our laying it upon him run, and the Evidence also. And though we took care to lay it back far enough, that was, to the 1st of *June* 1651, and so laid it high enough to the other, that it might reach the rest. And in this way we are not tied so to express it in every Particular, as other Indictments run.

Mr. *Hall, Attorney of the Dutchy*. He would charge it upon the Times between the 29th of *March*, and the 1st of *June*; that be not the Times that we have express'd in this; for it is that within the Times aforesaid we have positively laid, that it was in the Year 1651: For we have laid before, that in the Years 1648, 1649, 1650, 1651; then in the Times aforesaid we have positively laid that this Fact was done in the Year 1651, which of necessity must be since that Act concerning the *Scots* was made: And that I conceive is an express positive Time mentioned in the Charge, and gives a full Answer to that Objection; for it is not within such a Time, but in the Year 1651.

Mr. *Hale*. That Charge is within the Times aforesaid, which is last mentioned, between *March* 1650, and 1651.

Mr. *Hall*. That we shall submit to the Court, whether in the same Times aforesaid shall not relate to all the Times before mentioned, as well as the particular Times he hath picked out; for we mention that in the Year 1651 these Things were done.

Attorn. Gen. For that I have given you, that that is the general Answer, if I be put to it: Whereas Mr. *Love* had transgressed against those several Acts of Parliament, we have put it so, that we conceive his Offences run through them all; and so we have laid them: And (I hope) we are not upon those Niceties, that we must express the direct Days and Times, as Indictments run: But here is enough to make him know his Offences.

Ld President. I conceive it is much better as it is too, and more obvious to every Understanding, and

and their Interpretation, than as you would have it, a great deal: For the Necessities of the Day, it is not material, that you will agree; nor the Week, if they lay a Time so many Months before, or after, if the Proof come and fall within the compass of the Charge. As the Proof is laid, so is the Fact; The Proof determines whether it were within the Times without the Law, or within the Times aforesaid; for it is not within that Time, and every of them, but within the Times generally laid, all those Acts were done. And those must be laid in particular which was at one Time, and one at another, which were two Years a brewing, and are by the Proofs laid in general; that is best to say one Fact was done at one Time, and another at another Time, and at such a Time, and not at such a Time. It can be no Man's Judgment to be so laid in an Indictment or Charge; but they must be laid thus in general, and the Evidence must make it particular, that it was within the Times that are laid; as when there are no Times, as from *March* to *June* and *August*; and after, if they be both laid, if the Fact be within such a Time that is within the Law, all the other is out of doors.

Mr. *Hale*. My Lord, thus, if it please your Lordship, I think, with Submission to your Lordship's Judgment, that in such a Case it is not in the Proof to make good a Charge: If the Charge do not contain a sufficient Certainty, it is not in the Proof to make it good. My Lord, I insist now upon the Necessity of a Day to be precisely laid. I know (though it is true, it hath been otherwise held in some Cases) yet in a Case of this nature, the Day is now material; for now we are upon Act of Parliament. As now, if so be the Statute of the 29th of *Elizabeth* enacts that every Man that shall knowingly entertain a Jesuit, that that Man shall be a Traitor, shall stand guilty of Treason; if so be a Man would say in an Indictment, that such a Man between the 28th of *November* in the 28th Year of the Queen, and the 28th of *December* in the 29th Year of the Queen, did entertain such a Jesuit, this Indictment would be naught, not upon the Uncertainty of the Day, but because it takes in a Time which is not prohibited by the Statute. The Indictment may be true, that he did receive a Jesuit within that Time, and yet that he did not receive him contrary to the Form of the Statute; and to say in the Conclusion *contrary to the Form of the Statute*, will not help it. For that is our Objection, that it is not done contrary to the Form of the Statute, because it takes in such a Time, as that it might be done before the Statute came forth. We say, that when there is a Time laid between the 29th of *March* 1650, and *June* 1651, and that within that Time he did do thus and thus, there is the Fault; it doth over-reach the Time of the Prohibition of the Statute, for any thing appears to the Court: The Court may find the Indictment or Information true, that he did it within this Time, that is, between the 29th of *March* 1650, and *June* 1651, and yet for all that the Party not in fault to be impeached, because he might not do it contrary to the Act; for he might do it between the 29th of *March* 1650, and *June* 1651, and yet do it before the Act came forth, which was in *August* 1650.

Mr. *Hall*. My Lord, I conceive Mr. *Hale* hath not answered that I alledged: But now, if

there were no other Times mentioned in all the Charge, but only between the 29th of *March* and *June* 1651, then it were somewhat; but when the Times are express'd before, though that it was in the Year 1651, and then we say in the Times before said, I conceive that in the Times aforesaid shall relate expressly to that Time in the Year 1651, and then it must be within the Act.

Mr. *Hale*. That cannot be; that will make the Charge worse.

Ld *President*. That I conceive you are upon, is this, The very Letter of the Charge: For you say, At this Time that is laid he could not be a Traitor, and you join it with a Time in which he might be a Traitor. This (you say) they lay in the Indictment, That he did in such a Time of *March*, and afterward; and at that Time there was no Law to prohibit it, and so that could not be a Crime against him; and this, you say, no Proof will help it: I take it, Mr. *Hale*, this is the Substance. But if this be thus laid, and the Proof doth come in, this is very essential in my Judgment, when upon the Matter, if this be, as you see it appears upon the face of the Thing, that the Proof must go to that Time within the Law; and therefore that will not vitiate at all such an Indictment, if it were so as you say. But I take it, that this being complicated with more Laws, as I said before, though he were not guilty upon this, yet in the Conclusion he is found guilty of that which is as to other Offences.

Attorn. *Gen*. I shall say but this: We all know that a Time is express'd but for Formality; and that Time that is express'd, is not material, so it be laid far back enough. But if I lay it in *June*, and prove it in *June* Twelve-months, it is time enough for this, as your Lordship was saying. That which I do say is, That I cannot confine this very Act that is supposed to be, and yet not laid to be against that Act of the 2d of *August* 1650, from this Clause, in express Terms, not singly. But that which I humbly insist upon is this, That never a one of these Offences singly transgress one single Law, but is an Offence against several Laws. I conceive I had done my self and the Commonwealth wrong, had I limited it to any one; for his complying with the *Scots*, and joining with them, and contributing with them, and receiving Intelligence, it is more than against that single Act. It is Promotion of his Interest, and Subversion of the Government, and against every one of the Laws. And therefore, I conceive, I had not done right to the Place I am intrusted with, if I should have laid it singly. But he is indicted, That as a false Traitor he hath done these Things: that is the Preamble. And then we instanced the Particulars, and give a Time; which Time he will acknowledge is not positively necessary to be true, that that Time must be the Day the Fact was committed; but if it be before, it is enough. But he infers, because this seems to be an Offence within the Statute of the 2d of *August* 1650, and is laid between the 29th of *March* 1650, and the 1st of *June* 1651, and so whether this can relate to that Act: And by Evidence you know it is afterwards. But this being an Offence against several Laws, I cannot charge it to be against one Law: But the Art is now, as Mr. *Love* began, to take it asunder and singly, and then it is nothing: And Mr. *Hale* takes it singly. It is not

against this, nor against this; but it is against every one of them; and not against this singly, but against the rest of them.

Sir Tho. Wither. My Lord, it cannot be contrary to the Form of the Statute, unless it be done after the Time, so that the Conclusion shews it was laid within the Time. But for the Case, as Mr. Hale instanced in: He puts a Case of one Act of Parliament; we are now upon Offences against several Acts of Parliament. In that Case, of retaining a Jesuit, he is a Traitor by the Act of the 29th of *Elizabeth*; so that if he lays it between the 28th of the Queen, and the 29th, if the Jury find that he did retain him knowingly on the 10th of *May* 29, then it will not be denied but that it is an Offence against the Statute.

Mr. Hale. But still we say the Indictment is naught in that Case, because it takes in a Time which was before the Act came forth; so that the Party might do it within the Time express'd in the Indictment, and yet not do it contrary to the Act: And this is our Case.

Attorn. Gen. My Lord, you have heard us for that.

Mr. Hale. The last Thing is concerning Contribution to *Silas Titus*, and *Sterks* a Scotchman. And to that we have the same Exception; That that is not made Treason by any Act of Parliament: And therefore it is mis-laid to be done traitorously; for the Statute of the 26th of *March* 1650, only prohibits it, and so makes it penal, but not Treason. But then we say again, it is laid very uncertainly too, that is, at the Times before mentioned. If Mr. Attorney of the Dutchy's Constructions should stand, that is, that the Times before mentioned refer to the Time past, then he may refer to a Time before the Act. But we conceive the Thing itself is not Treason by the Act, but only prohibited; and we conceive, under favour, still, that by way of Reduction to any of the former Charges, this shall not be made as an Instance or an Overt-Act, by way of Reduction to any of the former Charges, because it is charg'd particularly to be traitorously done, because there are several Charges of Treason before: And that which Mr. Attorney was pleas'd to observe upon another occasion, That in this Case the Charge is against several Acts of Parliament, it is true; but tho' it be against several Acts of Parliament, yet it must bind and pinch upon one: For we say one Treason is not to be made an Instance to another, and so to be made accessory, and depending, and accidental to another. And then we say in this Case, that this being not a Treason in itself, and being as uncertain to which of the former Treasons it is apply'd, it cannot be well laid, nor well apply'd, that is, to the last, that he did voluntarily relieve *Silas Titus*, it is not made Treason.

Attorn. Gen. It is against the Act of the 2d of *August* 1650, in express words: read the Impeachment.

The Clerk. *And further to carry on and accomplish the said traitorous and wicked Practice and Design, be the said Christopher Love, within the Times and at the Places last aforesaid, did traitorously and voluntarily relieve the said Silas Titus, Edward Maffey, Col. Bamfield, one Mason late of London Gentleman, and one Sterks late of London Gentleman, who then were, and yet are under the*

power of the Scotch Nation in Arms against the Parliament and Commonwealth of England, with Monies and Ammunition. Which Treasons and traitorous and wicked Practices and Designs of him the said Christopher Love, were and are to the apparent Hazard of the publick Peace of the Commonwealth and Free-State, Parliament and People of England, and to the manifold Breach, Contempt, and Violation of the Laws of this Land, and contrary to the Form of divers Statutes and Acts of Parliament in such case made and provided.

Mr. Hale. Then we say, it is uncertainly alledged, and uncertainly laid; but we take it, it is not within the Words of the Act: we desire that Act may be read.

The Clerk. *That shall from and after the 5th of August 1650, use, hold, and maintain any Correspondence, &c.*

Mr. Hale. Then this is not within this Act, because that this is concerning sending to Persons that are in *Scotland*; I observe not that it is charged that they were in *Scotland*.

Attorn. Gen. Or shall abet, assist, countenance or encourage the Scotch Nation, or any other Person or Persons adhering to them in their War against the Commonwealth. What think you of relieving, is not that abetting and encouraging?

Mr. Hale. It should be laid so then. I desire that part of the Charge may be read again.

The Clerk. *And further to carry on, &c.*

Mr. Hale. My Lord, we think this is not fully charged according to the Act.

Attorn. Gen. I will read you another, of the 26th of *March* 1650.

Mr. Hale. That makes it not Treason.

Attorn. Gen. It comes very near it; but I insist upon it, it is under the other, relieving them with Money, buying of Arms:

Mr. Hale. Still the same Exception lies upon it, within the Times aforesaid, which certainly cannot be acknowledged.

Attorn. Gen. We acknowledge the same Exception; and the same Answer lies to it, that of the 26th of *March* 1650, it is, he shall suffer Death: and upon this it is Treason upon both together, we cannot divide them, but must express them so.

Mr. Hale. Under favour, the one makes it Felony, and the other a Treason.

Attorn. Gen. But it is a deadly one.

Ld President. If a Statute Law makes a thing Felony that was not Felony, or recites a thing that is Felony, and saith it shall be punished with Death, being a Petty Larceny, therein you say well; but if the Statute recites that that is Treason in itself actually, and saith that they that do these things shall suffer Death, according to the nature of that Offence that is formerly recited, and limits it so in the Recital, if the Recital be Treason in the beginning, and then say, that that Traitor shall suffer Death without mercy.

Mr. Hale. We have shewed our Reasons in the Case, my Lord; it is as much as we can say upon this sudden, concerning this Charge; there are some other things that are mentioned here by Mr. Love, as how far forth there be sufficient Witnesses, admitting the Charge were good; how far forth the Witnesses are sufficient in themselves; and then whether here be two concurring Witnesses to any one Act, and whether any thing be more proved than Misprision of

Trea-

Treason, and Concealment of Treason: these are things Mr. *Love* takes upon him in fact to say. And now for those, when the Case is made, we shall be ready to speak to these things; for truly it is sudden and new to me, for these matters came not to my knowledge till this Morning after Eight o'Clock; that is, concerning the last Paper he offers to your Lordship, and that is, Exception to Witnesses, Proof, and Matter of the Proof, whether the bare Concealment (for thus it is stated unto us, the *Concealment*) of any thing that is Treason, whether that be Treason or no in the Party that conceals it; these are things that if we were prepared for, we should speak to. First, we conceive by the Statute of *primo & quinto Elizabethæ*, there is a necessity in this Proceeding before your Lordship, to have two lawful and sufficient Witnesses. Next of all, we think, that if these Witnesses be such as he hath stated them to be; which whether they be or no, we know not, for we are utterly unacquainted with the Evidence, yet we should think they are no sufficient Witnesses: and then admitting they were sufficient Witnesses, yet if so be one Witness speaks to one Fact, another to another, we conceive these are not sufficient Witnesses within the Statute, not sufficient to convict him. And then, if that which they have witnessed be nothing that amounts to Treason, haply committed by others, that makes him not guilty within the Acts. If we had time to understand, and digest, and consider, what were the Matters that are alledged, we should be able to say somewhat to it. My Lord, that which we have said, we have said of a sudden; and so it appears, because we had not that clear understanding of the Charge, as otherwise we might have had, and so have saved much of your time.

Attorn. Gen. For that that hath been said suddenly by Mr. *Hale*, I shall suddenly give it this Answer: He hath had more time than I, he hath said from Mr. *Love*, and not from himself: he saith when the Case is made; I think it will appear then, that these Exceptions have been made to the Court, that the Witnesses have not been competent neither in Quality nor Number, they have been spoken to. For the Witnesses, the Exception to the Quality, because they were of the same Gang, they had a hand in the same Treason, that was the Exception; I think that will not be allowed to be a legal Exception, they are Persons that (as Mr. *Love* pretended) had a hand with him in this Fact, and therefore they should not be competent Witnesses; that I shall appeal to Mr. *Hale's* Judgment, before Conviction, and upon a Proceeding, whether they may not discover (and after Conviction) if they be Approvers. For the next, for two Witnesses; when the Case is made, you will find one, two, three, four, five, six, and to most of them two, three, and four, for so I may make bold to say, for so I read them to you the last day. And then for the last Exception, that was for the Concealment of Treason, it is far from it, for I know not what a Concealment Mr. *Love* may intend; I am sure Mr. *Hale* will not think that a Concealment, to run one, two, or three Years, and run on, and send Letters; that when he acts along with them, and hath the Meetings at his House continually, moves them to receive Money, and contribute; I think he was the highest Actor amongst them, for the Meetings were continually at his House,

the Advices were there resolved upon Debates, there he gave his Advice one way, and they another way: I think he will not think this is but Misprision of Treason; and we never did charge it, nor intend it so, but went a little higher.

Mr. *Hale*. If that be declared to be insisted upon, that the non-revealing of Treason, tho' it be a Month or two, or a Year or two, can be no Treason, then we have done with that Question; for that it will rest singly upon the Fact before your Lordship, whether there be any thing more proved than such a Concealment, then it is true we are discharged of that Question. But then concerning the Proof, if Master Attorney will please to admit, that the Proofs are such as Master *Love* hath stated in this Paper—

Attorn. Gen. That I shall not do before-hand, but to debate upon the Proof, I shall crave your Lordship's Directions; I have gone over them already, and it hath been trouble enough to me; if it be your Lordship's pleasure I must go over the Proof again, I shall submit to you, but not to him.

Ld. President. Mr. *Hale*, there are no Witnesses that have been heard, but they have been of the said Confederacy, that was one Exception Mr. *Love* made; it was debated at the producing, and over-ruled, and I believe your Judgment will go well with us, that it was no Exception. Another was, That they have been promised Rewards; that was likewise moved and over-ruled, the Court was of opinion that they may do it; that if there be a Treason, and there be many Correspondents in it, and one out of remorse, as some of these did say, that when they had been there they did not like their ways, but went from them, and came to them no more; if this Man, or any other Man afterwards shall come and reveal this, it is in the power of the State either to reward him with Moneys, and to promise him Life too, if he shall faithfully do it. And this, we say, is a stronger Case than the Case of an Approver, which afterwards when they became Approvers, they must confess the Fact, and say they are guilty of the Fact plainly and openly, and yet then they are good Witnesses to discover this, as it was plotted in Hell, for this was no other, though they had a Vizard upon them, which was no otherwise: I say, if any one will discover such; nay, haply it was offered to Mr. *Love* himself, if he would have done it; I believe there were some Overtures made to him. But this is Law too, by the Law of this Land, which is the Law of God; for we have no Law practised in this Land, but is the Law of God; and so did the Lawyers maintain it before the King, in *Henry* the Eighth's time, the Pope's Legates, and chief Archbishops and Bishops of *England*; and did then prove it to them, that there was no Law practised in *England* but the Law of God, which our Ministers are loth to touch, and busy themselves to study, but study the Ceremonial Laws of the *Jews*, which are *Mortue Mortiferæ*, which are not to be practised by any other Nation, till they be established by a Law: and that which is the Law of God in this Land, that hath so much preserved it, these they are wilfully ignorant of, and say, it is Civil; but I say, it is Christian Law. And therefore never distinguish

in a Christian Nation, that the Laws are Moral and Ecclesiastical, with that feigned Distinction; but all the Laws of this Nation are Christian, and stand with Evangelical Truth, as well as with natural Reason, and they are founded upon it: and therefore, Master *Hale*, we are here now to go on by these Laws, which are the Laws of God, and we must walk in them, as we would walk to Heaven. And for that you speak of now, Mr. Attorney hath answered all the Exceptions every one; and I think for that Matter of Fact, every one of them particularly. Mr. *Love* did take his Exceptions too, and they were over-ruled. Now to come whether these are lawful Witnesses over again, when it is in Matter of Fact, and over-ruled by the Judgment of the Court, Master *Hale* will not think that is regular. And then, whether there be two to one Point or not, that is another of your Exceptions; that, I take it (Master *Hale*) is not Matter of Law, but for the Judges to consider of it: that which should be Matter of Law, is this, whether that single Proofs, some to one, and some to another, joined all together do issue out all this Treason. We want not Precedents for that, for this is a heterogeneal Treason; every Particular that these Statutes make a Treason, they are all of them complicated, he hath gone through them all in his Act, and we must pass through them all in our Judgments: though every one is particular Treason, had it been singularly laid by it self; yet now being laid as one concatenated Treason, they all of them make but one. For the next, for that of Misprision, he is not charged here with Misprision at all, but direct Treasons; and if it be but Misprision, we shall not for Misprision judge him a Traitor upon this Charge. But then, what is in his Judgment Misprision? If this be nothing but a Concealment, I think that the Court upon the Evidence will judge that it is more than a bare Concealment; and whether Mr. *Hale* will think, if I be a Promoter and Concealer from one to another, and have so many continued Meetings, whether two or three Years together acting with them, and concealing them, for it is not a bare Concealment, but a complicated Act: for if it were but a bare Notion of it, we should have much ado to prove it; but (I think) the Court is satisfied, it is more than Notion.

Sir *Tho. Witherington*. I shall speak a word to that Mr. *Hale* moved last, whether you will be pleased to hear any more of Counsel in these three Particulars; for, under favour, these three Particulars concerning the Witnesses, concerning their Quality and Number, and the Treason it self, these are Matters of another kind of nature than all the rest he insisted upon, for the rest are mere Matters of Law, upon the Formality and Insufficiency of the Charge: these Questions of the Witnesses are Questions that are mix'd; for they depend upon the Matters in Fact, and cannot be otherwise stated. Now Mr. *Love*, tho' he had no Counsel appeared before, yet he had in his Defence all these Objections too; as of the Incompetency of them, because they were *Participes criminis*, and for that I think (under favour of your Lordship's Judgment) he had a full and clear Answer to it: in case of an Approver, he is *Particeps criminis*, and accuseth Men that are *Particeps criminis*, yet that Man, even *ex merito justitiæ*, he shall be pardoned, saith

our Law: and therefore that Objection that is made against the Witnesses, that they are promised Rewards and Pardon, that is no Objection, for in that Case the Approver shall have his Pardon *ex merito justitiæ*. Then for the other Point, that is, whether by two Witnesses in such a Plot or no, to prove a Treasonable Act, that is, consisting merely upon the Matter of Fact; that I shall not take upon me to repeat, you have heard it: but this I said then, and this I humbly offer now, that if there be two Witnesses, tho' they concur not in the same individual Act, yet if they concur in two Acts, concurring to the same Treason, they prove the same Treason; if one prove the sending of Letters, and another the sending of Money, I take it these are two Witnesses, tho' they speak of two distinct Acts: but in our Proof we have gone on to two Witnesses, three or four in most Points. But then for the Misprision of Treason, we did apprehend that that which Mr. *Love* himself hath confessed, is Treason it self; but Mr. *Love* is pleased to make his own Collection upon his own Confession: *For I confess my Presence and Silence after these Meetings and Consultations, but this I take to be Misprision of Treason*. To this I replied, we took it to be Treason it self; for our Books say, a Man must not sleep, nor look back, but go presently to a Magistrate to reveal it: but when a Man will not only sleep upon it, but keep it back, and act in it, this is more than Misprision. But our Charge is for Treason it self, and truly Treason comprehends a Misprision of Treason in it; but this Point I think neither will come in question now: for we say and charge, that it is a Treason it self, not Misprision; and that Collection Mr. *Love* makes, it is his own, but the Judgment is yours, whether it be a Treason or not.

Mr. *Hale*. If it be your Lordship's Pleasure, we are ready to say what we can in the Shortness of time; but if it be not your Lordship's Pleasure, we shall not say it.

Attorn. Gen. If your Lordship please to declare what he should speak to.

Mr. *Hale*. These Points I shall only mention them, I cannot argue them now. This is that I conceive; first of all, according as the Case is stated, that is, Whether a Person menaced, that he shall lose his Life if he discover not a particular Person, and that he shall have his Life, if he do discover him, whether such a Person be a competent Witness or no?

Attorn. Gen. Hear a word; I appeal then to you, whether any such Person were produced before you.

Mr. *Hale*. First, we only go upon what Supposition Mr. *Love* makes.

Mr. *Love*. I humbly crave leave to that effect, to prove that Particular.

Attorn. Gen. No, not now, Sir.

Mr. *Hale*. We conceive such a Person is not a competent Witness: then that is out of the Case, it should seem, Sir. Truly, then the Case that is put concerning an Approver, comes not to the Question, under favour; for tho' it is true, an Approver at Common Law might be an Accuser, yet we are not now upon a Proceeding at the Common Law, when we talk of Witnesses now, but we are upon a Proceeding how far forth warranted for the Witnesses, by the Statute of the first and fifth of *Edward 6*. So that what is said

concerning an Approver, comes not to this Question; he that may be a competent Witness at Common Law, he is not a competent Witness upon those Statutes, for the Words of the Statute are expressly, *That he shall be a lawful and a sufficient Witness.* And if so be that such a Case were now, it is not to sample this Case that is before you with the Case of an Approver, which is a bare Accusation at Common Law, and where the Jury likewise are to have other Evidence: for either the Defendant may wage his Battle, or put himself upon his Country; and then it is at the pleasure of the Jury, whether they will believe the Approver or no. But by the Act of the first and fifth of *Edward 6.* it is expressly said, *There shall be two sufficient Witnesses in case of Treason:* so that that hath made an Alteration of what was in the Common Law before; one Witness was enough before, now two Witnesses are requisite: and we conceive, the Words *lawful and sufficient* conclude such Persons. If there be not any such, we are not to say we know, or know not: but if so be any Person is drawn to make such a Testimony for the Preservation of his Life, and shall make such an Expression, we think, that tho' it is true he is not a Person that is attainted, yet he is a Person that is thus drawn, and we think he is not such a Witness as is intended, especially in such a Case as this is, where the Trial of the Fact is before your Lordship, which is both Jury and Judge; to try the Fact, and determine the Law; and therefore perhaps here will be a more rigorous Expectation who should be, and who should not be a sufficient Witness, than in case it were a bare Trial by Jury: there may be those Exceptions alledged against a Witness when the Trial is as now it is, that may not be when a Trial is by a Jury; and therefore if so be that a Party be thus drawn to testify for the Preservation of his Life, we think that this is not such a lawful and sufficient Witness as is required in such a Case. Next of all it is said in the Paper, That they have detected themselves, being Parties of as deep a Guilt as the Person that is accused. I will not dispute that at this time; for it is not the Case, whether a Person that is a Plotter and Confederate with one that commits Treason, may be a Witness; but when a Person is detected by lawful Authority, before the Charge exhibited, whether such a Person who is so detected, whose Life is in the hands of the State, be one of these competent Witnesses, we must leave it to your Judgment in that: but we think he is not a competent Witness; for there is not a bare Accusation of a Person, but (as the Case is stated to us) by a Person that should be examined, and confess himself guilty of those things whereof *Mr. Love* is impeached, and that before the Charge is exhibited. My Lord, the next Matter is concerning the Plurality of Witnesses, the number of them; we think, under favour, with submission, that in this Case suppose the Charge had been singly upon one Act of Treason, we conceive, that in that case there is a necessity of two Persons to prove that Charge: If the Charge be upon several Acts of Treason, be the Charge so; yet if you will bring them within any one of the Acts, you must have two Witnesses to bring them within that Act. For suppose a Man were indicted of Treason heretofore for levying of War, and another Treason for adhering to the Enemies, and

another Treason for counterfeiting of the Coin, or those kind of things; these are several Treasons, tho' they are all put into one Information, and haply may be put, in case of necessity, into one Indictment, as here are several Acts put into one Charge. But now a Proof of Treason within one of the Acts by one Witness, and a Proof of a Treason within another of the Acts by another Witness, will not be esteemed and accounted a Proof by two Witnesses; for it must be a Proof, not that he is within the Charge, but within that part of the Charge upon which he is to be arraigned: and here is not a proving each distinct part of the Charge by two Witnesses, as the Statute requires. And then to come nearer, suppose the Charge were but upon one Act, as that he held Correspondence with the *Scots*, and did invite them, &c. I conceive that in this Case, under favour, that that particular Act with which you will charge him to be a Traitor within any one Law, must be proved by two Witnesses. The Star-Chamber Course, I know what it was, that in case there were one general Charge, and when it did descend to several Particulars; one Witness would serve for one, and another to another, and a third to a third, and these should make up two Witnesses to convict the Party: but we are not now in a Proceeding of Star-Chamber, that is laid by, it was not altogether so regular in all things; and then we are not in a thing barely criminal, but in a Case of Life; and not in the Case of Life ordinarily, but in a Case wherein a Party is accused of Treason; wherein the Statute doth provide that there shall be two Witnesses (as I conceive) to swear to the same thing, by which you would bring him within it; otherwise they stand as single Witnesses, every one apart. I have heard of a Case (I have not had so much time as to look into it) concerning *Mr. Rolph*, indicted at *Winchester*; I will not so much as repeat over the Case upon my Credit to the Court; but I take it, it was thus: He was indicted for somewhat about the Person of the King; one Witness deposed about the presenting of a Pistol, or that he said he would; another about poisoning, or that he said he would: these two things did conclude in one and the same Act; and tho' they concluded in one and the same as Evidences, complicated Evidences to make good one Charge, and either of them had been sufficient, if proved by two; yet as I am informed (this is the Inconvenience; upon the sudden we cannot offer it upon the confidence of our own Knowledge, which a little time would make us wholly decline the mentioning of it, or affirm it upon our Credit; but this I am informed) was not held a Case proved by two Witnesses: and if that be so, then I conceive these Steps; the first will be agreed, that the Proof of several Charges by several Witnesses, against several Acts, will not make a Proof by two Witnesses; it must be a Proof by two Witnesses against one Act. Therefore the Proof of any thing against the Act of the 17th of *July 1649*, and another Proof of a thing done against the Act of the 30th of *January 1648*, and another for a thing done against the Act of the 2d of *August 1650*; here the Offences are several, the Treasons several, and the Witnesses to either stand singly by themselves. How the Case of the Fact is upon the Proof, I cannot tell; that is, whether this falls out to be
the

the Case. But again, if the Charge were single, as now upon the Act of the 30th of *January* 1648, for proclaiming of the King, or promoting the Prince of *Wales's* Interest to be King of *England*; we think, with Submission (which we shall leave to your Judgment) that in that case there is a necessity of two Witnesses to speak to one thing; and not one to supply one part, and another to supply another: That shall be as much as I shall say concerning that; and I could wish that we had had so much time as to look into it, to enquire what the Truth of that Case was which was tried at *Winchester*, as I take it. Now for the other Matter, that is, Whether Misprision of Treason, Concealment of Treason, be Treason; if that be not insisted upon.

Attorn. Gen. No, no.

Mr. Hale. Under favour, the Law is, That Concealment of Treason is not Treason; but if that be not insisted upon, then the Question of the Fact is, whether there be any more than a Proof of a Concealment, or of a Misprision of Treason? which if so be it be not, I can say no more.

Attorn. Gen. Truly, my Lord, I did intend to speak to that of *Mr. Love's* Case, and as of his making, but not now of his making, but as he hath made it formerly; surely, it is a great deal of Patience and Favour you have afforded him, that for Matter of Fact and Law you have heard it all over again. As for that first, of the Competency of the Testimony, I shall remember his own Division; First, of the Charge; Secondly, of the Witnesses and the Testimony; the Third, concerning himself; and the Fourth, his humble Proposals to the Court. One part of his Defence was concerning the Witnesses and Testimony, that he made a long Defence to; and if it be not good Evidence, that Parties that are of the same Robberies may not accuse their Fellow-Thieves, I think some must be unhanged that have been hanged: but that I shall not speak to, for I think not that *Mr. Hale's* Judgment leads him to it; but if they were threatned, and should be made afraid of their Lives, that were somewhat, but that is not the Case here. The next is for two Witnesses: I might say, that by the Common Law of *England* one Witness was enough before the Law of *quinto Edwardi sexti* was made; for else it was not needful to be made. And *Mr. Hale* knows again, that as to Trial, those Laws are repealed. But not to trouble you with these things, or to say wherein they must concur, I did crave the Favour of you to read the Witnesses as they deposed, and I did tell you when it was by Hear-say, and when upon Knowledge, and when by two, three, and four, to several Acts of *Mr. Love's* own acting, two, three, four Witnesses, I think they are number enough to accuse, and detect a Person of as high Quality. And for the last, for Misprision of Treason, *Mr. Love* hath said that which never came into my Thoughts, that such Actings done by *Mr. Love* could be judged Misprision; he that acted with them, consulted, and debated, and plotted, gave his Judgment one way, moved to raise Money, received Intelligence, all brought to his House, and transacted there: I would appeal to *Mr. Hale's* Judgment, whether this could be Misprision of Treason, when a Party acts in it, hath the Meetings at his own House, and hath there Debates of Commissions, and Instru-

ctions, and Letters; I think this goes as far beyond Misprision, as Treason is beyond Misprision. But seeing these are new Cases before you, you have spent enough of your time, I shall not spend more to argue the Cases that are not.

Mr. Love. I humbly crave leave, that seeing my Counsel some of them are rejected by the Court, as not fit to plead before you; and seeing another of them, *Mr. Maynard*, the Necessity of his Affairs is such, he could not be here this Day to plead here; and seeing this worthy Gentleman came here unprepared, whose Face I never saw till this Morning; therefore I humbly pray there may be more Time and Counsel assigned me, with your Favour and Leave, that they may fully debate the Argument before you, those Matters of the Law which are under his Hand, and the Hands of the two worthy Gentlemen rejected by you to plead here, that others may be added to *Mr. Hale* to plead the Matters of Law before you, and that I may have a Copy of the Charge.

Attorn. Gen. I hope we have had Delays enough, it is with the Court, now we have done.

Mr. Love. And, Sir, there are Witnesses here present that will prove that which *Mr. Attorney-General* thought none could prove, to wit, not only general Threats, if they would not confess in the general, but Promises of Favour, and Threatning of Death if they would not testify against me in particular: and I have manifold Exceptions touching the Incompetency not only of Number, but Quality. One Witness said, he could not in Conscience, and did not swear till he was threatned, nay, fined by you, and drawn out of the Court: Another Witness had Money laid to him by *Cobbet*, which was given his Wife, which did seem to conceal the Bribery the more; but he confessed himself, that the Money was laid down in his House, and given him to make use of, and to be the Price of my Blood (Sir) to testify against me. I have Witnesses to produce, *Major Adams* said, he should be hanged, if he did not testify against me; for he had given Information, and been in hire for many Months together. *Major Cobbet*, and three other Messengers have come to him, and offered him Preferment, for four Months together, if he would reveal what he calls a Design against the Commonwealth; and he hath not revealed this, till he had these Promises of Preferment, and did not declare against me till he was threatned by Death if he did not do it: therefore I beseech you, hear what Witnesses I can bring in, to invalidate the Testimonies of these Men.

Attorn. Gen. My Lord, it seems I must be for all. Now *Mr. Love* begins with the Court, that you threatned them, and punished them: I appeal to all here, whether a Witness brought into a Court in Matter of Property, and refuse to take his Oath, whether that Court be not bound in Justice to punish him; and yet if he shall see his Error, and submit himself to do that which to Justice belongs, then (I think) it is Justice and Mercy in you to remit him of both: and that is the Case of this Gentleman; in Conscience he could not swear against him, a Conscience well wrought upon; he could not in Conscience swear against him: for him it was
done

done in the Court, and by the Court, and (I think) undeniably justified.

Mr. Love. He is not under an Oath to this Day, he hath declared it himself.

Attorn. Gen. This is to satisfy other Men, but it is not so regular and orderly to be done: but my Lord and the Court are pleased to give you a fair Hearing and Proceedings, that no Exceptions may be taken to it. There was another that was as good as his Word, that he could not find in his Conscience to swear against Mr. Love, and that was a Minister; that Conscience deserved to be rectified more than Five Hundred Pounds come to, and perpetual Imprisonment: that Man that cannot find in his Conscience to judge him that was a godly Person (as he thought) and against him he must not give witness, not for Treason, not to save a Commonwealth; and he hath had your Sentence, and most justly: I think all that was, was too little, my Lord. Then for the rest, this is a Discourse to satisfy People, the Spectators here; for surely these are Extravagancies, and total Irregularities; he hath had his time to except, and heard to except, and said all that he hath said now: and so there is nothing more to be done, but now for us to rest in your Judgments what you will do further.

Mr. Love. I beseech you, I acquainted your Lordship and the Court, that some of the Witnesses were not well, others I could not get them here present, but did make offer to bring Witnesses to prove against Major Adams, that he hath confessed himself he was threatned with Death if he did not inform against me; and he said these Words, He could not tell whether he should in Conscience think rather better to be hanged, than to come in against me; and he could swear only Generals; and could not swear that ever I did write or receive Letters. And Mr. Jaquel himself, since he was sent away from the Court, hath said he was not under an Oath.

Attorn. Gen. What Course shall we hold? If you will not be regular, let the Court be regular: had you not time for to do it then? Did he not demand Indemnity for them? And rather than he would produce others to hurt themselves, he would rather die himself first.

Mr. Love. But these are not under a Crime; I beseech you, the Court would be tender in Matters of Blood.

Attorn. Gen. Be tender of Justice.

Ld President. I would you had been so too.

Mr. Love. This Man declares himself he is not under an Oath to this Day, he did but put his Hand upon his Buttons.

Ld President. Those were your very Words, and very uncivil and indiscreet; you have not spoke at any time yet, but you have hurt yourself more than any body else hath, and yet your Language is so liberal, that no Man shall escape the Lash of your Tongue.

Mr. Love. I fear no Man, my Lord.

Attorn. Gen. That is a bold Word.

Ld President. You have as ill Comments as any Man that wears a Cap; your Guiltiness appears in this you say; we have heard all this that you require before: those very Words that you say of this Man now particularly, go to them first, that he was saying, he was not under an Oath: It was said so again and again, and again

at that time we brought him, and before he was examined, holding up his Hand, we asked him it, and he said, he did; and put it to him again and again, Are you under an Oath? till at last he did conclude and testify he was under an Oath. I testify this before all the Company here, this is noised abroad again by many People, the Care we had of that very Man you speak of; you asked him three or four times then, and at the last, upon the Conclusion, he confessed himself he was under an Oath: he did not do as you do, you will say things are Truth, but you will not speak those Truths before God in a testimonial way; though some of your Witnesses that proved it, said it was true in the presence of God, what they gave under their hands: These Men that do thus, are no better than Jesuits in Reality, though not in Name. You made a Confession of Misprision of Treason, you said, but you have confessed Treason. I will tell you who did the like in the very words almost that you did, and that was Father Garnet; when he came to see the Evidence produced so full against him by those that were *Participes Criminis*, as you are, himself confessed when he came to the last. Had I thought (said he) that the State had had such clear Proof against me, I would have ingenuously confessed it, and not trifled with them as I have done. So you said, you did not think it would have been proved so far as Misprision: but when it was proved sufficiently in your Apprehension, and convicted, and your Counsel had informed you it could not be less than Misprision, then you would ingenuously confess; so did Garnet. The other Witness that was threatned, it was testified by a worthy Captain; I speak it again, was not it debated as much as the Wit of Man could? Did you not object that then, that you do now? And did not the Court then satisfy you, or at least satisfy themselves that it was not so? For I tell you in that very thing wherein you say he was threatned, it was told you, That the Captain that was here then, deposed what he had done, and how he had done it, and at what time it was delivered; for you were discovered long before that, and your Examinations taken long before that. Upon this, now when your Treason was discovered and declared by several Witnesses, and that such a one was in Confederacy; and I think the State might safely promise him Life, and Reward too; for there is more in the Plot yet, than is yet found out, and that some are like to hear of within this Fortnight, that were here, which is a dangerous thing: but this you did declare, and the Court was satisfied, that all that was promised as a Reward, was for discovering of a Plot against the State; and that was lawful by the Laws of God and Man. And now you bring Witness; you were at first demanded, whether you would bring them or no? and you asked Indemnity for them; and the next time you denied, you would bring none; and now you asked, What you have to offer to the Court? and after all this time, what come you to do now? To prove that that was acted here in the Court: you say we threatned them; true, that we did threaten some; and I think we went thus far, that if he would not, we would set Five Hundred Pounds Fine upon his Head; but he would none of that, but came in again, and delivered his Knowledge. But you had a-

another

nother of your own Robe too that came in, and he would not testify; and why? His Conscience was tender; his Science was perfect enough to speak against you, for he was Confederate with you, and hath confessed enough of it: but his Conscience was tender. No Man can tell here whose Conscience is crazy and tender: Conscience is a thing betwixt God and Man only; and they that lay nothing upon their Consciences to prove their Integrity, they had as good say nothing before a Judge: For though we have a Law of Conscience in *England*, yet that Law is judged by Rules: and therefore he, whoever he be, that pretends Conscience, there are so many Consciences as there are Men; and no Men have Power to judge of it, but God. But, Sir, for that cause that he would not for his tender Conscience we did set a Fine of 500*l.* upon him, and sentenced him to the *Fleet* till he paid it. We call not this terrifying, neither deth the Law, nor any Reward, Favour, or Affliction for the Discovery of a Traitor, is no illegal Act; this we told you before, but you must have it again, and again, and again; so that you may delay, no time shall be omitted by you.

Mr. *Love*. I have but a few words more: Your Lordship was pleased to say, that you could justify promising Rewards to those that would discover, and threatening Punishments to those that would not; but you said, if I could prove promising of Rewards or Threatnings to them that would not testify against me, they should be heard: now I produce not Witnesses in general, that they were promised Favour, or threatned if they would or would not; but I offer to produce Witnesses that can witness against some of the particular Witnesses that said, They should be hang'd, if they did not witness against me: and this, as your Lordship promised, I humbly crave.

Attorn. Gen. Truly, he will not want Suggestions, he hath had his time to prove it; and one Favour I shall beg of the Court, that this your Patience to Mr. *Love*, your just Favour toward him, may be no Precedent hereafter; but for this, when we closed the Evidence Saturday was sevennight for the Commonwealth, he had till Wednesday following to make his Defence. For his Witnesses he offered them, you offered to receive them; he said, he would have none; now he comes to offer: we produce you no new Witness, nor offered nothing since Saturday was sevennight; if we come to Witnesses again, we shall come to an aspersing one another; we shall make it a pretty endless Work: we have done our parts, and followed the Rules of Justice; and Mr. *Love* hath had his full Liberty to justify, to say what he could, and prove what he could for himself; if he neglect his own time, to his own Peril be it; the Court, I hope, will not be guilty of it, to alter the ways of Justice.

Mr. *Love*. I could not compel Witnesses, there was no *Subpœna's*; but they must come when they offer themselves.

Ld. President. You were asked, and you would produce none.

Mr. *Love*. They were not in a Capacity to come, my Lord.

Attorn. Gen. There is nothing resting more to be done, but now all being done (if you please,

my Lord, all being done) for the Issue of the Fact, all his Exceptions to the Impeachments, which are Matters of Law, we are now humbly craving your Judgment upon this Impeachment between the Keepers of the Liberty of *England*, and Master *Love* the Prisoner at the Bar. I now humbly demand your Judgment.

Mr. *Love*. I humbly pray, that since I never saw the Face of this worthy Gentleman till this Morning, and so could have no particular Advice from him, that there might be longer time allowed to this Gentleman, and an Addition of three Gentlemen more, and a Copy of the Charge.

Attorn. Gen. You have had more than ordinary Prisoners have had before, I will assure you, Mr. *Love*.

Ld. President. Mr. *Hale*, you have heard a little opened of our Passages and Proceedings, which you did not before, but every Man else hath lift up his Voice; you have gone over a great deal of the Fact: now for Matter of Law, for that of Misprision, that will rest, I think, in the Judgment of the Court; there is no Misprision laid, but Treason: and I think the Court will find Treason upon the Proofs that are before them; they will not need to have any Argument of Misprision, if the Court think there is sufficient Treason laid, then that Argument, we need not desire more Time for that; and if it be Misprision, that the Court shall judge it so, then upon the Matter there is no Charge against him for us to proceed upon; so that by that Charge, I cannot see what you can ground your Argument upon.

Mr. *Hale*. The Charge is not only for Treason, but for Treason and other high Crimes and Misdemeanours.

Attorn. Gen. But not Misprision.

Mr. *Hale*. Though the Word be not in, we think it will reach it.

Ld. President. It will not indeed.

Attorn. Gen. We insist upon it for the Commonwealth, for the Charge is as it is laid.

Ld. President. For the two next, so I told Mr. *Love* before, and he spent two Hours at the least in recapitulating the Evidence of the State, not any thing of his own, for he gave no Witnesses; but he did go over the whole Evidence of the State from Point to Point, and made, I think, himself (as he said) the Exceptions that were made against them: these he went over, though we might have shut him up at the first. For him to sum up that which was the Duty of the Court, when he had no Evidence, to sum up the Evidence of the State, which we might not have let him: but this he did; and it is our part to examine the Evidences, and the Nature of them, and what the Nature of the Thing is, and how many Witnesses are to every Point; whether there be two Witnesses to a Point or no, cannot fall under Dispute of Law, it is Matter of Fact.

Mr. *Hale*. It is true, we are here only to do that Duty which your Lordship enjoins us to, my Lord. It is true, for us to dispute whether this Evidence proveth such a thing or no; haply it may not belong to us to do that. But thus far, if your Lordship think fit, this may haply be allowable (with submission to the Court, that is, Whether, if the Proofs be admitted, this Man positively proves thus, the other Man
proves

proves positively thus; whether that these two Proofs do make a Proof of one Act? Haply (if your Lordship shall think so fit) there may be somewhat of Law in that; that is, whether it make a double Testimony within the Statute of *Primo* and *Quinto*. For (with submission to your Lordship) the Statute of *Primo* and *Quinto* is not repealed as to point of Testimony; it is repealed as to the Place from whence the Trial is to come, but not in point of Witnesses; therein it may come in, questionless, if your Lordship shall think fit. But truly, I have not seen one word of the Evidence from the Beginning to the End: and if so be that any Matter should rise, that the Court should think fit as well as proper for me to offer in the Defence of this Gentleman, I must profess I cannot, unless I had seen the things; for I have not seen one word.

Ld President. For seeing the Evidence further than Memory, you, nor no Man else ought to know, tho' we have given you leave to write; and therefore tho' we have given leave to take notice of them, yet that is more than ever any Court did, or we need to have done, but only to trust to their own Memories. But in that you speak of now, for you to have Day to argue, when you are not able to say, nor we neither, that there is any such thing; did you ever hear such a thing, to pray Day to argue, that you do not know positively it is so?

Atton. Gen. We have spent a great deal of time, and all that can be said, will be to run a round; what is to be done, is your own Consultation among your selves.

Ld President. Withdraw your Prisoner.

Mr. Love. I beseech you, allow me time for Counsel.

The Court adjourns.

The Sixth Day's Proceedings, July the 5th 1651.

THERE was but little said this Day besides the Sentence. When *Mr. Love* appeared at the Bar, the Attorney-General spake to the Court to this purpose; That there had been much time spent, and *Mr. Love* had had a fair Trial, and therefore he desired the Court to proceed to Sentence. Upon which the Lord President spake to *Mr. Love* to this effect; That he had heard what the Attorney-General desired in the behalf of the Commonwealth; and therefore demanded of *Mr. Love* what he had to say why Sentence should not be passed upon him? *Mr. Love* answered, That he had somewhat to say, and desired longer Time, and more Counsel to argue those Matters of Law contained in that Paper that he had formerly given into the Court: But the Court would not yield to him in it. Then *Mr. Love* would have spoken further, but the Lord President told him, he would speak *ad Populum*. *Mr. Love* answered, No, he would speak *ad Magistratum*. But the Court presently overruled him in it, and would not suffer him to speak. Then the Lord President told *Mr. Love*, That he had gone out of his Place and Calling in what he had done. Then speaking something about an Elder, That an Elder was one that was so, either in respect of his Age, or in respect of his Office, with some other things about Presbytery; and when he had done, he commanded

the Clerk to read the Sentence, which was in this manner: The Clerk read over the whole Charge, beginning thus; *Whereas Christopher Love, the Prisoner at the Bar, stands charged (on the behalf of the Keepers of the Liberties of England, &c.) of High Treason, and other High Crimes and Offences, &c.* [and so he read on as it is in the Charge; and ending thus] *For all all which Treasons and traitorous and wicked Practices of him the said Christopher Love, this Court doth adjudge him to suffer the Pains of Death, by having his Head severed from his Body.*

Mr. Love. My Lord; I would speak a word.

Ld President. You cannot be heard now, *Mr. Love.*

Mr. Love. But a word, my Lord, and 'tis this, in the words of the Apostle; *I have received the Sentence of Death in my self, that I should not trust in my self, but in God, which raiseth the Dead.* And, my Lord, though you have condemned me, yet this I can say, that neither God nor my own Conscience doth condemn me.

Mr. Love withdraws, and the Lieutenant of the Tower takes him into custody.

Mr. Love was ordered for Execution the 15th of July, but by the favour of the Parliament it was respited till the 15th of August, and from thence to the 22d, during which time, (it is said) such application was made to *Cromwell*, that he granted him a Pardon, but the Express who brought it from *Cromwell* (then in the North) fell into the hands of some Cavaliers, before he arrived at London; and they, considering that *Mr. Love* had been a great Incendiary, and had pursued the King's friends with great violence, detained the Express, till the Execution was over, which was on the said 22d of August.

Mr. Love was then brought from the Tower by the Sheriffs of London to the Scaffold on *Tower-hill*, about two o'clock in the Afternoon: The Ministers that accompanied him were *Mr. Ash*, *Mr. Calamy*, and *Mr. Manton*. When he was upon the Scaffold, Sheriff *Titchburn* shewed him the Warrant for his Suffering, telling him, that he took no Pleasure in this Work, but it was a Duty laid upon him.

Mr. Love. I believe it, Sir.

Sheriff *Titchburn.* I have done my Duty for you.

Mr. Love. The Lord bleis you.

Lieutenant of the Tower. The Lord strengthen you in this Hour of your Temptation.

Mr. Love. Sir, I bleis God my Heart is in Heaven, I am well. Then turning to Sheriff *Titchburn*, said, May I have the Liberty to speak and pray?

Sheriff *Titchburn.* Yes: But I desire you to consider, we have the other [meaning *Mr. Gibbons*] to execute afterwards, and six o'clock is our Hour; but we will give you as much time as we can.

Mr. Love. I shall be the briefer. Then he put off his Hat two several times to the People, and spake as followeth:

Beloved Christians,

I AM made this Day a Spectacle unto God; Angels, and Men: And among Men, I am made a Grief to the Godly, a Laughing-stock to the Wicked, and a Gazing-stock to all; yet blest be God, not a Terror to myself. Altho' there be but little between me and Death; yet this bears up my Heart, there is but little between me and Heaven. It comforted *Dr. Taylor* the Martyr, when he was going to Execution, that

there were but two Styles between him and his Father's House; there is a lesser Way between me and my Father's House; but two Steps between me and Glory; it is but lying down upon the Block, and I shall ascend upon a Throne. I am this Day sailing towards the Ocean of Eternity, thro' a rough Passage to my Haven of Rest; thro' a Red Sea to the promised Land. Methinks I hear God say to me as he did to *Moses*, *Go up to Mount Nebo, and die there*: So to me, *Go up to Tower-hill, and die there*. *Isaac* said of himself, that he was old, and yet he knew not the Day of his Death; but I cannot say so, I am young, and yet I know the Day of my Death, and I know the Kind of my Death, and the Place of my Death also. I am put to such a kind of Death as two famous Preachers of the Gospel were put to before me, *John* the Baptist, and *Paul* the Apostle, they were both beheaded; you have mention of the one in Scripture Story, and of the other in Ecclesiastical History. And I read in *Rev. xx. 4.* *The Saints were beheaded for the Word of God, and for the Testimony of Jesus*: But herein is the Disadvantage which I lie under in the Thoughts of many, they judge that I suffer not for the Word of God, or for Conscience, but for meddling with State Matters. To this I shall briefly say, That it is an old Guise of the Devil, to impute the Cause of God's Peoples Sufferings, to be Contrivements against the State, when in Truth it is their Religion and Conscience they are persecuted for: The Rulers of *Israel* would have put *Jeremy* to Death upon a civil Account, tho' indeed it was only the Truth of his Prophecy that made the Rulers angry with him; and yet upon a civil Account they pretend he must die, because he fell away to the *Chaldeans*, and would have brought in foreign Forces to invade them: The same thing is laid to my Charge, of which I am as innocent as *Jeremy* was. Yea, I find other Instances in Scripture, wherein the Cause of the Saints Sufferings were still imputed to their meddling with State Matters. *Paul*, tho' he did but preach Jesus Christ, yet he must die, if the People might have their Will, under Pretence that he was a Mover of Sedition. Upon a civil Account my Life is pretended to be taken away, whereas indeed it is because I pursue my Covenant, and will not prostitute my Principles and Conscience to the Ambition and Lusts of Men. Beloved, I am this Day making a double Exchange, I am changing a Pulpit for a Scaffold, and a Scaffold for a Throne; and I might add a third, I am changing this numerous Multitude, the Presence of this numerous Multitude on *Tower-hill*, for the innumerable Company of Saints and Angels in Heaven, the holy Hill of *Sion*; and I am changing a Guard of Soldiers for a Guard of Angels, which will receive me, and carry me into *Abraham's* Bosom. This Scaffold is the best Pulpit that ever I preach'd in; in my Church-Pulpit, God thro' his Grace made me an Instrument to bring others to Heaven; but in this Pulpit he will bring me to Heaven. These are the last Words that I shall speak in this World, and it may be I shall bring more Glory to God by this one Speech on a Scaffold, than I have done by many Sermons in a Pulpit.

Before I lay down my Neck upon the Block, I shall lay open my Cause unto the People that hear me this Day, that I might not die under all that Obloquy and Reproach that is cast upon me;

and in doing it, I shall avoid all Rancor, all Bitterness of Spirit, Animosity and Revenge; God is my Record, whom I serve in the Spirit; I speak the Truth, and lye not; I do not bring a revengeful Heart unto the Scaffold. This Day, before I came here, upon my bended Knees I have beg'd Mercy for them that denied Mercy to me, and I have prayed God to forgive them who would not forgive me; I have forgiven from my Heart the worst Enemy I have in all the World; and this is the worst that I wish to my Accusers and Prosecutors, who have pursued my Blood, that I might meet their Souls in Heaven.

I shall divide my Speech into three Parts: I shall speak something concerning my Charge, and a Word concerning my Accusers and touching my Judges, without any Animosity at all; and then something concerning myself, for my own Vindication, and then a Word of Exhortation, and so I shall commit my Soul to God.

Concerning my Charge, it is black and hideous, many things falsely suggested, hardly a Line of it true, and nothing Capital sufficiently prov'd against me by any one Act that I am conscious to myself I did. The Charge is high and full, but the Proof empty and low; tho' there were eight Witnesses that came in against me, yet none of them did prove that ever I writ any Letter, or directed any Man to write a Letter into *Scotland*, or into foreign Parts; no Man did prove that I sent away any Letter, that I received any Letter, that I collected or gave, or lent any Money to assist or promote the *Scottish* War: This is all that is sworn against me, that I was present where Letters were read, and that I made a Motion for Money to give to *Massey*; so that (Beloved) my Presence at, and Concealment of Letters that were receiv'd and sent from foreign Parts, is that for which I must die.

As concerning my Accusers, I shall not say much; I do forgive them with all my Heart, and I pray God forgive them also. Yet what the Evangelist said concerning Christ's Accusers, I may (without Vanity or Falshood) say of mine, That they did not agree amongst themselves: One Witness swears one thing, and another the quite contrary; yea, not only did they contradict one another, but sometimes a single Witness contradicted himself. And tho' their Testimony did condemn my Person, yet I have condemned their Testimony. And truly there are many remarkable Circumstances that I might take notice of, either in, or before, or since the Trial, that might be worthy Observation; but I will not insist upon it, only in the general (for I shall name none of my Accusers) some of them have sent to me, to pray me to forgive them the Wrong they have done me: And one of them hath written to me under his own Hand, to pray me to forgive him the Wrong that he hath done me; and told me withal, that that Day I should die a violent Death, his Life would be no Comfort to him, because he was an Instrument in taking away of mine. Others of the Witnesses were some terrified before they would testify; some were hired, some fined before they would bear Witness against me. But I will be off of this. As concerning my Judges, I will not judge them, and yet I will not justify them: I will say but this of them, I believe that what moved *Herod* to cut off *John* Baptist's Head, that moved them to cut off mine; and that was for his Oath's sake: *Herod*, to avoid Perjury, would

would commit Murder; whereas if *John's* Head had been upon his Shoulders, he would have been guilty of neither.

I have something in the second Place to speak concerning myself, and then I shall come briefly to a Conclusion. Concerning myself, I have gone thro' various Reports; there are many Sons of Slander, whose Mouths are as open Sepulchres, in which they would bury my Name, before my Friends can bury my Body; but my Comfort is, there will be a Resurrection of Names as well as Bodies at the last Day: God will not only wipe off all Tears from my Eyes this Day, but he will also wipe off all Blots and Reproaches from my Name before many Days be over; and tho' my Body will soon rot under Ground, yet my Hope is my Name will not rot above it. I am not ignorant what Calumnies are cast upon me, and more likely to be after I am dead and gone. The very Night before my intended Execution, the last Month, there was an insulting Letter written to me, to tell me, that after my Death there should be something publish'd against me to my Shame. I hope you will have so much Charity as not to believe Reproaches cast upon a dead Man, who will be silent in the Grave, and not able to speak a Word in his own Justification. I am aspersed both as to my Practice, and as to my Principles. I shall begin with the first. There are five Aspersions, as to my Practice, that are laid upon me, That I am a Liar, an Extortioner, an Adulterer, a Murderer, and a turbulent Person: Crimes scandalous in any Man, but much more abominable in a Minister. Now I hope you will believe a dying Man, who dares not look God in the Face with a Lye in his Mouth: I am accus'd of Lying, that what I denied before the High Court of Justice, that that afterwards I should confess, or else was proved against me. Now, in the Presence of God I tell you, as I would confess nothing that was criminal, so I did deny nothing that was true; and that I may seal it to you with my Blood, the same Protestations I made before the High Court, I shall make briefly now. 1. That I never writ Letter to the King, Queen, Church or State of *Scotland*, or to any particular Person of the *Scotish* Nation, since the Wars began, to this Day. 2. That I never received any Letter writ to me, either from the King, or from the Queen, or from the Church or State of *Scotland*, or from any particular Person of the *Scotish* Nation, since the Wars began, to this Day. 3. That I never collected, gave or lent one Penny of Money, either to the King, Queen, Church or State of *Scotland*, or to any particular Person to send into *Scotland*, to any Person of the *Scotish* Nation, to this Day. It is true, I did confess, tho' it was not prov'd (and haply upon that Ground the Mistake might arise) I did give Money to *Massey*, and I did also write a Letter to him; but he is of the *English*, not of the *Scotish* Nation. That for which I come here, is only for moving for Money for him, and that not upon a military Account, but merely to relieve his personal Necessities, and for being present where Letters were read from him and others. And altho' Man hath condemned me, yet I am so far from thinking that either God or my own Conscience condemns me, as sinning in what I am condemn'd for, that both God and my own Conscience doth acquit me: And what I said at the Bar, when I re-

ceiv'd my Sentence, that I shall say upon the Scaffold, That for those things for which I am condemned, neither God nor my own Conscience condemns me.

Again, I am accused to be an Extortioner; and this is in the Mouths — I am loth to name them, because I would avoid all Rancor: But I am charged as if I should be a grievous Extortioner, to receive thirty Pounds for the Loan of three hundred Pounds, besides eight Pounds *per Cent.* for Interest, which in the Presence of God, and of you all, I do declare to you, is a most notorious and abominable Falshood.

I am accused likewise to be an Adulterer, and this Report is not in the Mouths of mean Men, but in the Mouths of those that sit at the Stern: As if I were a debauched Person, and were guilty of Uncleanness. Now I tell you, as *Luther* said of himself in another Case, that he was not tempted to Covetousness; so thro' the Grace of God I can say, I have not been tempted in all my Life to Uncleanness. It doth not much grieve me, tho' these Slanders be cast upon me: I know my Betters have been worse accused before me: *Athanasius* was accused by two Harlots, that he had committed Folly with them; and yet the Man was chaste and innocent. *Beza* was charged not only with Drunkenness, but with Lasciviousness also; and many others have been accused with the same, if not with worse Slanders than I have been.

But (that which goeth nearest my Heart) I am accus'd to be a Murderer also; and this is a Charge high indeed; I am charged with the Guilt of all the Blood of *Scotland*; whereas, did I lie under the Guilt of one Drop of Blood, I could not look upon God with so chearful a Countenance, and I could not be fill'd with so peaceable a Heart and Conscience as I have at this Day. I bless my God, I am free from the Blood of all Men: Those who lay this to my Charge, they do to me as *Nero* did to the Christians: He set *Rome* on fire, and then charged the Christians with it: So they put *England* and *Scotland* into a Flame, and yet charge me with the Guilt of that Blood, who have poured forth Tears to God Night and Day, to quench the Burning which these Mens Ambitions and Lusts have kindled: And I would fain know of any Man what Act it is that I have done? Or what is it that was proved in the High Court against me, that makes me guilty of *Scotland's* Blood? Did I ever invite the *Scots* to invade *England*? What Man doth lay that to my Charge? Did I ever encourage the *English* Army to invade *Scotland*? What Action is it that I have done that makes me guilty of that Blood? Indeed this I have done, and this I have, and this I do stand to; I have, as a private Man, prayed unto God many a Day, and kept many a Fast, wherein I have sought God that there might be an Agreement between the King and the *Scots*, upon the Interest of Religion and Terms of the Covenant: Now, by what Consequence can this be strain'd, to charge me with *Scotland's* Blood? For my Part, I was but only at one Meeting where the Question was propos'd (Fasts only excepted) what should be thought fit to be done to promote the Agreement between the King and the *Scots*? and that was moved in my House: And to that End, when there were some things there proposed which they call'd a Commission, or In-

Instructions to send to *Holland*; as soon as ever I heard them, I did declare against them. I did declare that it was an Act of high Presumption for private Persons to commissionate; an Act of notorious Falshood, to say it was in the Name of the *Presbyterian* Party, when none knew of it (that I know of) but only those few then present. Now this is only a political Engine to make the *Presbyterian* Party odious, who are the best Friends to a well-order'd Government, of any sort of People in the World.

I am accused likewise to be a Man of a turbulent Spirit, to be an Enemy to the Peace and Quiet of the Nation. Now, as to this, let my Congregation and my Domestical Relations judge for me, whether I am not a Man that would fain have lived quiet in the Land: I am, as *Jeremy* was, *born a Man of Contention*; not actively; I contend, I strive with none: But passively, many strive and contend with me. God is my Witness, my Judgment hath put me upon endeavouring after all honourable and just Ways for Peace and Love among the Godly. The Grief of my Heart hath been for the Divisions, and the Desire of my Soul for an Union among God's People. But when I speak of an Union, I would not be misunderstood, I do not mean a State Union, to engage to the present Power, that is against my Principles; that is to say, *A Confederacy with them that say, A Confederacy*: That is rather a Combination, than a Gospel Union: O join not with them, lest ye be consumed in their Sins; they who get Power into their Hands by Policy, and use it with Cruelty, will lose it with Ignominy. It was said of Pope *Boniface*, He did enter into the Popedom like a Fox, reign'd like a Lion, but died like a Dog. Beloved, the Union for which I plead, is a Church Union; to wit, Love among the Godly; for this the Desires of my Soul have ever been, that those that fear God might walk Hand in Hand in the Fellowship of the Gospel, both in Truth and Love: If this Union be not, I am afraid, through our Divisions, a Company of loose Libertines will arise, who will endeavour not only to overthrow the Doctrine of Faith, and the Power of Godliness, but even good Manners also. I remember an Observation of holy *Greenham's*, giving his Judgment upon the State of *England*, saith he, *There is great Fear that Popery is coming into England, and I fear it too; But (says he) I fear more the coming in of Atheism into England than the coming in of Popery*; and truly, that is my Fear also. Thus as to my Practice: A Word now as to my Principles.

I am accus'd to be an Apostate, to be a Turncoat, to be this, to be that, to be any thing but what I am: In the general, I will tell you, I bless my God, a High-Court, a long Sword, a bloody Scaffold, have not made me in the least to alter my Principles, or to wrong my Conscience: And that I might discover to you my Principles, I hope I shall do it with Freedom; I will irritate and provoke none; what I shall say, shall not be an Irritation or Provocation of others, at least not intended by me; but only as a genuine and clear Manifestation of my own Principles how they stand.

First then, my Principles, as to Civil and Religious Affairs, I do declare that I die with my Judgment set against Malignity, I do hate both Name and Thing; I still retain as vehement a

Detestation of a Malignant Interest as ever I did; yet I would not be misunderstood: I do not understand, nor count the godly Party, our covenanting Brethren in *Scotland*, to be a Malignant Party; nor the *Scots* defending their Nation and Title of their King to be a Malignant Interest, but an honest and justifiable Cause.

Secondly, Tho' I am against Malignity, yet I am not against, but for a regulated Monarchy; a mixt Monarchy, such as ours is, I judge to be the best Government in the World: I did, it's true, in my Place and Calling, oppose the Forces of the late King, but I was never against the Office; I am not only against Court-Parasites, who would screw up Monarchy into Tyranny, but against those who pull down Monarchy to bring in Anarchy.

Thirdly, I was never for putting the King to death, whose Person I did promise in my Covenant to preserve: It is true, I did in my Place and Calling oppose his Forces, but I did never endeavour to destroy his Person. There is a Scandal rais'd of me, that in a Sermon at *Windsor* I should have these Words, that *It would never be well with England, 'till the King were let blood in the Neck-vein*; which Speech I utterly detest, professing, as a dying Man, in the Presence of God and of you all, I never spake such Words, as relating to him: Tho' my Judgment was for bringing Malignants, who did seduce him and draw him from his Parliament, to condign Punishment; yet I deem'd it an ill way to cure the Body-Politick, by cutting off the political Head.

Fourthly, I die with my Judgment absolutely set against the Engagement; I pray God forgive them that impose and subscribe it, and preserve those that refuse it.

Fifthly, I would not in the next place be look'd upon, now I am a dying Man, as a Man owning this present Government; I die with my Judgment against it: It is true, in a Case of Life, I did petition the present Power, and did give them the Titles they take to themselves, and that others give them; but herein I did not wrong nor thwart my Principles; there are many Instances in Scripture to justify this: *Hushai* did give the Title of King to *Absalom*, tho' *Absalom* had no Right to that Title; for *David* was the lawful King: And *David* himself gave him that Title as well as *Hushai*. And *Calvin* he gave the Title to the *French* King, calling him *the most Christian King*, yet we know he was a Papist: And we give a Title to King *Henry VIII.* and call him *the Defender of the Faith*, and yet he had no Right to that Title; for he was an Opposer, not a Defender of the Faith; that Title was given him upon an evil ground, because he opposed the Faith; he opposed the Doctrine of *Luther*, therefore the Pope gave them that Title, *The Defender of the Faith*; and yet none did scruple to give him that Title that was then commonly given him.

Sixthly, In the next place (I discover my Judgment, I provoke none, only tell you what my own Thoughts are, that so after I am dead and gone, I might not be belied, for I dare not now belye my Principles) my Judgment is against the Invasion of the *Scottish* Nation by the *English* Army. They, who gave us a friendly Assistance, who are joined with us in the same Covenant; who drew a Sword with us in the same Quarrel, should I live a Thousand Years, I should never draw

Sword against them; but the *English* Army have forgot the Brotherly Covenant: So that *Scotland* may say as *Edom*, *The Men of my Confederacy, who were at Peace with me, have risen up and prevailed against me*: Because *Scotland* will not be a Commonwealth, they shall not be a People; because they will not break Covenant, some Men would have them broken; because they will not lay their Consciences waste, their Land must be laid waste.

Lastly, And so I have done, (only with a Word of Exhortation) I die cleaving to all those Oaths, Vows, Covenants, and Protestations that were imposed by the two Houses of Parliament, as owning them, and dying with my Judgment for them; to the Protestation, the Vow and Covenant, the Solemn League and Covenant. And this I tell you all, I had rather die a Covenant-keeper, than live a Covenant-breaker.

I am now come to the third and last part of my Speech, and so I shall have done, and commit my Soul to God who gave it. My Exhortation first shall be to this great City, unto the godly Ministry of it; and unto my own Congregation, from whom Death parts me, which nothing else could.

To the City I wish an Affluence and Confluence of all Blessings upon it; and yet I fear gray Hairs, as the sad Symptoms of a Declension, are here and there upon *London*, and yet she knows it not. O *London, London*, God is staining the Pride of all thy Glory. Thy Glory is flying away like a Bird; Contempt of the Ministry, Opposition against the Reformation, general Apostacy, Covenant-breaking have brought *London* low, and I fear will yet bring it lower; I tremble to think what Evils are coming upon it: This City it is the Receptacle of all Errors; that as your Commodities are vented and spread from hence into every Corner of the Land, so have Heresies and Blasphemies had their first Rise from this great and populous City, and from hence are spread into all Countries.

To the Inhabitants of this City I commend but these few Particulars: First let me beg you to love your painful and your godly Ministers: If they be taken away, you are like to have worse come in their rooms. I know the Presbyterian Ministers are the great Eye-fore, who have formerly been counted the Chariots and Horsemen of *Israel*: But I will say of *London* (as was said of *Leyden*, *That after Junius, an Orthodox Minister, was taken away, Arminius, that pestilent Heretick, came in his room.*) If your godly Ministers (and there have been Ten already at one blow taken from you) if they be taken away, *Arminians, Anabaptists, nay Jesuits*, are likely to supply their rooms, if God in Mercy prevent not. 2. Submit your selves to Church-Government; that would lay a Curb and Restraint upon your Lusts: It is a golden and easy Yoke, to which if you do not submit, God may lay a heavy and an iron Yoke upon your Necks. 3. Take heed of those Doctrines that come under the Notion of *New Light*: Those Doctrines you ought to suspect, whether true, which the Broachers of them say are new; for Truth is as old as the Bible. A remarkable Passage I would suggest unto you, in *Deut. xxxii. ver. 17*. It is said there, *They chose them new Gods that were newly come up; and what were these new Gods? The next Words tell you, they were old Devils; for they sacrificed to*

Devils, and not to God: Now their sacrificing to old Devils is call'd a *sacrificing* (to deceive the People) to *new Gods, that were newly come up*; yet their new Gods were but old Devils. Why, so I say, tho' many things go under the Notion of *New Light*, yet they are but old Darknes, old Heresies rak'd out of the Dunghil, and which were buried in former Ages of the Church; with Contempt and Reproach, many Hundred Years ago. 4. Bewail your great Loss which you have, in the taking away of so many Ministers out of your City; there are Ten Ministers (if I mistake not) that have been taken away and remov'd at one Blow, who were burning and shining Lights in their several Candlesticks, and bright Stars in their several Orbs; tho' I am not worthy of the World, and therefore am taken out of it; yet, as for my suffering Brethren, who are now in Bonds and Banishment, the World is not worthy of them. 5. Again, in the next place, take heed of engaging in a War against your Brethren of the *Scottish* Nation: For my part, I have oppos'd the Tyranny of a King, but I never oppos'd the Title. — Take heed what you do.

I have something in the next place to speak to the godly Ministry of this City: Were it not that I am a dying Man, I would not speak to such reverend and grave Men; I would say as *Elihu* did (being but a young Man) *Multitude of Years should teach Wisdom*, and I would hold my Tongue; but the Words of a dying Man take, whether they be discreet or no; or so well order'd or manag'd, or no; as to them, I would first desire God to shew them Mercy, who have beg'd Mercy for me; now at the Day of my Death I would beg but this of them, that as they have not been asham'd of my Chain, so they would now wax confident by my Bonds, and by my Blood. I know they are maligned and threatened, yet my Prayer for them is that in *Acts iv. 29*. *And now, O Lord, behold their Threatnings; and grant that thy Servants may preach thy Word with all Boldness*. Tho' I am but young, yet I will offer my young Experience to my grave Fathers and Brethren, and that is this; Now I am to die, I have abundance of Peace in my own Conscience, that I have set my self against the Sins and Apostacies of this present Age. It is true, my Faithfulness hath procur'd me Ill-will from Men, but it hath purchas'd me Peace with God: I have liv'd in Peace, and I shall die in Peace: That which I have to beseech of the Ministers is this, to beg them to keep up Church-Government; whatever God doth with the Governments of the World, turning Kingdoms upside down, yet the Government of the Church shall stand; and of all Governments, I die with this Persuasion, that the Presbyterian Government makes most for Purity and Unity throughout the Churches of the Saints. I would beg them therefore to keep up Church-Government, that they would not let their Elderships fall, that they would take heed of too general Admissions to the Lord's Supper, that they be not too prodigal of the Blood of Christ; by too general Admissions of Men to the Supper of the Lord, that sealing Ordinance. And now I am speaking to them, I shall speak a Word of them, and so I have done: I have heard many Clamours since I came to Prison, as if all the City-Ministers were engag'd in the Plot (as 'tis call'd) that I am condemn'd

denn'd for: Now, as a dying Man, I tell you, that all the Ministers that were present at the Meetings, and had a hand in the business for which I am to be put to death, are either in Prison, or they are discover'd already; and therefore I do here, upon my Death, free the Ministers of the City, who are not yet in Trouble, nor discover'd to the Committee of Examinations; none of them had a hand in the Business in which I was engaged; in which my Conscience tells me, I have not sin'd. I have done immediately, for I would fain be at my Father's House.

I have but a Word to speak to my own Congregation; I return Praises unto God, and Thankfulness to them, for the Love I have had from them; I found them a solid, judicious, and many of them a religious People: The Ministry of that learned Man, Mr. *Anth. Burgess*, did much good amongst them; tho' I have cause to be humbled, that my weak Ministry did but little. They afforded me a great deal of Love, and a liberal Maintenance; and this is all I desire of them, that they would choose a godly, learned, and orthodox Minister to succeed, such an one as may keep up and carry on Church-Government: It would be a great Comfort to me before I go to Heaven, if I had but this Persuasion, that a learned, orthodox, godly Man should fill that Pulpit. And for Encouragement to any godly Minister, whose Lot may be to succeed me, I will say this, that he will have as comfortable a Livelihood, and as loving a People, as are any People in *London*, a few only excepted: I had as much satisfaction among them as ever I had in any Condition in all my Life, and should never have parted from them had not Death now parted us; to which I do submit with all Christian Meekness and Chearfulness. I am now drawing to an end of my Speech, and to an end of my Life together; but before I do expire my last Breath, I shall desire to justify God, and to condemn myself in all that is brought upon me. Here I come to that which you call an untimely End, and a shameful Death; but (blessed be God) it is my Glory, and it is my Comfort: I shall justify God, he is righteous, because I have sinned; he is righteous, tho' he cut me off in the midst of my Days, and in the midst of my Ministry: I cannot complain that Complaint in *Psalms* xlv. 12. *Thou sellest thy people for nought, and dost not increase thy wealth by their price.* My Blood it shall not be spilt for nought; I may do more good by my Death, than by my Life, and glorify God more in dying upon a Scaffold, than if I had died of a Disease upon my Bed. I bless my God, I have not the least Trouble upon my Spirit; but I do with as much Quietness of Mind lie down (I hope I shall) upon the Block, as if I were going to lie down upon my Bed to take my Rest. If Men hunger after my Flesh, and thirst after my Blood, let them have it, it will hasten my Happiness, and their Ruine, and greaten their Guiltiness: Tho' I am a Man of an obscure Family, of mean Parentage, so that my Blood is not as the Blood of Nobles, yet I will say it is a Christian's Blood, a Minister's Blood, yea, it is innocent Blood also: My Body, my dead Body, it will be a Morfel, which I believe will hardly be digested, and my Blood it will be bad Food for this Infant-Commonwealth (as Mr. *Prideaux* call'd it) to suck upon:

Mine is not malignant Blood, tho' here I am brought as a grievous and notorious Offender. Now, Beloved, I shall not only justify God (as I do without a Compliment; for he were very just, if my Prison had been Hell, and this Scaffold the bottomless Pit; I have deserved both; so that I do not only justify God) but I desire this Day to magnify God, to magnify the Riches of his glorious Grace, that such an one as I, born in an obscure Country (in *Wales*) of obscure Parents, that God should look upon me, and single me out from amongst all my Kindred, to be an Object of his everlasting Love; that when as the first Fourteen Years of my Life I never heard a Sermon, yet in the Fifteenth Year of my Life God (through his Grace) did convert me. And here I speak it without Vanity (for what should a dying Man be proud of?) tho' I am accus'd of many scandalous Evils, yet (I speak to the Praise and Glory of my God) for these Twenty Years God hath kept me, that I have not fallen into any scandalous Sin; I have laboured to keep a good Conscience from my Youth up, and I magnify his Grace, that he hath not only made me a Christian, but a Minister, and judg'd me faithful to put me into the Ministry: And tho' the Office be troden upon and disgraced, yet it is my Glory that I die a despised Minister; I had rather be a Preacher in a Pulpit, than a Prince upon a Throne; I had rather be an Instrument to bring Souls to Heaven, than to have all the Nations bring in Tribute to me: I am not only a Christian and a Preacher, but whatever Men judge, I am a Martyr too, I speak it without Vanity; would I have renounc'd my Covenant, and debauch'd my Conscience, and ventur'd my Soul, there might have been hopes of saving my Life, that I should not have come to this place; but blessed be my God, I have made the best Choice, I have chosen Affliction rather than Sin, and therefore welcome Scaffold, and welcome Ax, and welcome Block, and welcome Death, and welcome All, because it will send me to my Father's House: I have great cause to magnify God's Grace, that he hath stood by me during mine Imprisonment; It hath been a Time of no little Temptation to me, yet (blessed be his Grace) he hath stood by me and strengthened me; I magnify his Grace, that tho' now I come to die a violent Death, yet that Death is not a Terror to me; through the Blood of sprinkling, the Fear of Death is taken out of my Heart; God is not a Terror to me, therefore Death is not dreadful to me; I bless my God, I speak it without Vanity, I have formerly had more Fear in the drawing of a Tooth, than now I have at the cutting off my Head: I was for some Five or Six Years under a Spirit of Bondage, and did fear Death exceedingly; but when the Fear of Death was upon me, Death was not near me; but now Death is near me, the Fear of it is far from me: And blessed be my Saviour that hath the Sting of Death in his own Sides, and so makes the Grave a Bed of Rest to me, and makes Death (the last Enemy) to be a Friend, tho' he be a grim Friend. Further, I bless my God, that tho' Men have judg'd me to be cast out of the World, yet that God hath not cast me out of the Hearts and Prayers of his People; I had rather be cast out of the World, than cast out of the Hearts of godly Men. Some think me (it is true) not worthy

worthy to live; and yet others judge I do not deserve to die: But God will judge all, I will judge no Man.

I have now done, I have no more to say, but to desire the Help of all your Prayers, that God would give me the Continuance and Supply of divine Grace to carry me through this great Work that I am now about: That as I am to do a Work I never did, so I may have a Strength I never had: That I may put off this Body with as much Quietness and Comfort of Mind, as ever I put off my Clothes to go to Bed: And now I am to commend my Soul to God, and to receive my fatal Blow, I am comforted in this, *Tho' Men kill me, they cannot damn me; and tho' they thrust me out of the World, yet they cannot shut me out of Heaven.* I am now going to my long Home, and you are going to your short Homes; but I will tell you, I shall be at Home before you; I shall be at my Father's House, before you will be at your own Houses: I am now going to the Heavenly Jerusalem, to the innumerable Company of Angels, to Jesus the Mediator of the New Covenant, to the Spirits of just Men made perfect, and to God the Judge of all, *In whose Presence there is Fulness of Joy, and at whose Right Hand are Pleasures for evermore.* I conclude with the Speech of the Apostle, 2 Tim. iv. 6, 7. *I am now to be offer'd up, and the Time of my Departure is at hand; I have finish'd my course, I have fought the good Fight, I have kept the Faith, henceforth there is a Crown of Righteousness laid up for me; and not for me only, but for all them that love the appearing of our Lord Jesus Christ, through whose Blood, when my Blood is shed, I expect Remission of Sins and eternal Salvation.* And so the Lord blefs you all.

Then turning to the Sheriff, he said, May I pray?

Sheriff *Titchburn.* Yes, but consider the Time.

Mr. *Love.* I have done, Sir. Then turning to the People, he said, Beloved, I will but pray a little while with you, to commend my Soul to God, and I have done. After which he pray'd with an audible Voice.

His Prayers being ended, Mr. *Asb* said, *You make a Christian End, I hope.*

Mr. *Love.* Ay, I blefs God.

Then turning to Mr. Sheriff *Titchburn*, he said, *I thank you for this Kindness, you have express'd a great deal of Kindness for me.* Well, I go from a Block to the Bosom of my Saviour.

Mr. *Love.* Where is the Executioner?

When the Executioner came forward, he said, *Art thou the Officer?*

Executioner. *Yes.*

Mr. *Love.* (Lifting up his Eyes) *O blefsed Jesus, that hath kept me from the Hurt of Death. O blefsed be God! blefsed be God!*

Then taking leave of the Ministers, he said, *The Lord be with you all.*

And taking leave of Sheriff *Titchburn*, he kissed his Hand; then kneeling down, he made a short Prayer privately.

Rising up he said, *Blefsed be God, I am full of Joy and Peace in believing: I lie down with a World of Comfort; as if I were to lie down in my Bed: My Bed is but a short Sleep, and this Death is a long Sleep, where I shall rest in Abraham's Bosom, and in the Embraces of the Lord Jesus.*

And then saying, *The Lord blefs you,* he laid himself down upon the Scaffold with his Head over the Block; and, when he stretched forth his Hands, the Executioner cut off his Head at one Blow.



XLVIII. The Trial of Mr. JOHN GIBBONS*, before the High Court of Justice, for High-Treason, July 18, 1651. 3 Car. II.

POTTER and Gibbons were both brought to the Bar together.

Potter's Charge was first read, unto which he pleaded Guilty, and made a large Narrative of all his Crimes against the State: very much was he examined against Master Gibbons, but no hurt at all he did him. After they had done with him, the Charge of Master Gibbons was read, which when he heard, he spake in this manner.

Gibbons. My Lord, this Charge is very new to me; I have been a Prisoner under close Imprisonment for many Weeks together, and ne-

ver knew before this time what it was, in particular, that was laid to my Charge: And now I do hear my particular Accusation, it is so strange to me, that I do not know what to say to it at the first hearing; therefore I humbly beseech your Lordship, that I may hear it read again.

* *Attorney-General.* My Lord, * *Mr. Prideaux.* Master Gibbons heard Potter's Charge read, which was very like to his own; so he hath heard it twice already: however, my Lord, he may hear it read again; for he may hear it thrice.

* Clar. Hist. Vol. III. p. 434.

Keble. Come let him hear it again, he is a young Man, let him have what Favour he may have: mark it well, now you hear it again.

After reading, Master *Gibbons* spake in this manner:

Gibbons. My Lord, I am brought hither by an Order of this Court, which Order mentions a Charge of Treason exhibited against me; I should betray the Liberty I am born unto, if I should not desire a Trial, according to the Fundamental Laws of this Nation, which is by a Jury of my Neighbourhood: the Benefits and Advantages are exceeding great, therefore I do earnestly crave to have them.

Keble. The State hath thought of another way of Trial, which you must have, and submit to; this is best for your Advantage, and more honourable; than any other you can have, therefore you must plead Guilty, or not Guilty.

Gibbons. My Lord, I shall never be so prodigal of my Blood, as to throw away my Life by refusing a Trial before you, though I am not satisfied in this new way of Trial; yet I shall not refuse to plead in Confidence of my own Innocency, and in hope of your Tenderness in Matters of Blood. But before I plead, and answer to my Charge, I have this humble Motion to make.

Here he spake very much on the first Day of his Trial, moving very much for Counsel; but after he had used many Arguments to persuade the Court to incline to it, and could not have it, he desired the Court to be the Counsel for him, and take care of his Life, and not suffer him by his own Ignorance to weave a Web for his own Ruin and Destruction. After much said of this nature, he pleaded Not Guilty: the which being entered in the Book, they proceeded to the Trial.

Attorn. Gen. The Attorney-General began with a long Speech, how Master *Gibbons* had plotted and contrived these Treasons; named the Meetings and the Places where he said it began presently after the late King's Death, under the pretence of getting the King to *Scotland*; but the Truth was, they intended to settle him upon this Commonwealth. And further, That he the said *John Gibbons*, as a false Traitor, and out of a malicious and wicked Purpose and Design to raise Insurrections in this Nation, did several Days and Times in the Years 1648, 49, 50, and 51, and at divers other Times and Places within this Commonwealth, together with *Christopher Love*, *Piercy*, *Jermin*, *Massey*, &c. and other their Complices, being false Traitors to this Commonwealth, traitorously, maliciously conspire, contrive and endeavour to raise Forces against this Commonwealth, settled in way of a Free State, without King or House of Lords: and for the subversion of the same, did raise and collect divers great Sums of Money, and did hold Intelligence by Letters, Messages and Instructions, with *Charles Stuart*, Son of the late King, and with the Queen his Mother, and divers other Persons, being false Traitors to this Commonwealth.

And further, he the said *John Gibbons*, together with *Christopher Love*, *William Drake*, *Piercy*, *Jermin*, &c. and other their Complices, since the Death of the late King, several Days and Times in the Years aforesaid, within this Commonwealth of *England*, and elsewhere, did traitorously and maliciously declare, publish, and promote *Charles Stuart*, Son of the late King, commonly called the Prince of *Wales*, to be King of *England*, meaning of this Commonwealth.

And further to carry on the said Design, he the said *John Gibbons* several Days and Times in the respective Years aforesaid, together with *Christopher Love*, *William Drake*, *Piercy*, &c. did endeavour to procure the *Scots* to invade this Commonwealth of *England*.

And further, That he the said *John Gibbons* on the 6th of *April* 1650, and on divers other Days and Times between the 29th Day of *March* 1650, and the first Day of *June* 1651, at *London*, and elsewhere, did give, use, and hold Correspondence with the said *Charles Stuart*, Son of the late King, and the Queen his Mother, *Jermin*, *Piercy*, &c.

And further, to accomplish the said Designs, he the said *John Gibbons*, on the 6th Day of *April* 1651, at the Places aforesaid, did hold and give Correspondence and Intelligence with divers Persons of the *Scotish* Nation, as *Argyle*, *Lowdon*, *Lothian*, &c. Enemies to this Commonwealth, and adhering to the King in the War against them.

And further, the said *John Gibbons* did traitorously and maliciously abet, assist, countenance, and encourage the *Scotish* Nation, and divers other Persons adhering to them; and did convey great Sums of Money, Arms, and Ammunition into *Scotland*, and elsewhere. All which wicked Practices and Designs of him the said *John Gibbons* were against this Commonwealth, Parliament, and People; and in manifest Contempt of the Laws of this Nation, and Acts of Parliament, in such Cases made and provided.

And further, the said *John Gibbons* did traitorously and maliciously abet, assist, countenance, and encourage the *Scotish* Nation, and divers other Persons adhering to them; and did convey great Sums of Money, Arms, and Ammunition into *Scotland*, and elsewhere. All which wicked Practices and Designs of him the said *John Gibbons* were against this Commonwealth, Parliament, and People; and in manifest Contempt of the Laws of this Nation, and Acts of Parliament, in such Cases made and provided.

[After he had ended, the Witnesses were called: The first was Major *Adams*; the second Colonel *Barton*; the third was Captain *Hatsell*; the fourth Colonel *Baines*; the fifth Major *Alford*; the sixth Captain *Far*; the seventh was Master *Jaquel*; the eighth was Major *Huntington*; the ninth Master *Harvey*; the tenth was Major *Corbet*. *Adams* being first examined, his Testimony was to this effect.]

Adams's Testimony.

That the Correspondency of *John Gibbons* with the rest aforesaid, was to endeavour an Agreement between the King and the *Scots*. The first Meeting was at the *Swan* in *Fish-Street*, where Master *Gibbons* was. At that Place there was only a Consideration how to carry on the Correspondency. There was also a Petition to be sent to the King, (as I was informed;) and the Meeting in this Place was in reference to that also. There was Letters written to *Scotland*, and some received thence; which Mr. *Gibbons* was privy to.

After Master *Drake* went away, we met at Master *Love's* House, where Master *Gibbons* met also. There were Letters read; and I think Master *Gibbons* did hear them, and did confer about them. The Letter sent to *Jermin*, *Piercy*, &c. at one time or other Master *Gibbons* was present, and heard them read. This was before *Titus's* going away.

Then

Then after there were Letters sent from the King, which were read at Master *Love's* House; where Master *Gibbons* was present, and heard them read. Master *Gibbons* brought likewise a rough Draught of the Instructions that were to go to *Holland*.

Also there was a Letter read at Mr. *Love's* from Alderman *Bunce*, where Master *Gibbons* was present. Also a Letter after *Dunbar* Fight from *Scotland*, relating how Affairs stood there, (and that Letter, as I remember, was for Arms and Money) was read at Master *Love's* House; where Master *Gibbons* was present at the reading of it.

Master *Gibbons* was a constant Man at all Meetings.

A Letter was sent from *Massej*, read at Master *Love's*, for Arms and Money: Master *Gibbons* was present. And three or four hundred Pounds agreed to be sent.

A Letter was written to the Estates of *Scotland*, to procure *Massej* and the *English* to be in esteem.

Master *Gibbons* sometimes acquainted me where we were to meet.

Lieutenant-Colonel Baines's Testimony.

A little while after the Death of the late King, there was a Meeting at the *Swan* at *Dowgate*, where several Persons were: But whether Mr. *Gibbons* was there, I know not. But Captain *Titus* was there, and gave a large Commendation of the young Prince; and moved that a Petition might be drawn up, and sent to the Prince from the Presbyterian Party here. There was a Debate upon it; and this Design was looked upon as the only visible Way to preserve the Presbyterian Party, and to bring the Prince to the Crown.

Colonel Barton's Testimony.

A while after the Death of the late King I was going into *Canon-Street*, and at *Dowgate* I met with *William Drake*, who desired me to meet him at the *Swan* at *Dowgate*. When I came there, I found Captain *Titus*, Lieutenant-Colonel *Baines*, and divers other Persons: I believe Mr. *Gibbons* was not there. I came in while they were in discourse, and I could not well hear them. But at their rising, I asked Mr. *Drake* what was the Occasion of their Meeting; and he told me that Captain *Titus* had given a good Report of the Prince, and did desire that some Addresses might be made to him, that thereby he might be taken off from his Cavaliering Counsellors.

After a while *William Drake* came to me for 10*l.* which he said was to furnish a Friend of his which did want 100*l.* He desired I would not deny him; and because he was a good Customer to my House, I did lend it him. And after I heard it was for Captain *Titus*. As for the Prisoner, I think he was not at the *Swan* at *Dowgate*; for I did not know him till afterwards.

Major Alford's Testimony.

At the Meeting at the *Swan* at *Dowgate*, where divers were, Captain *Titus* made a large Narration of the Prince's Deportment, declaring how inclinable he was to cast off his Cavaliering Adherents, if he were but assured there was a Peo-

ple in *England* that stuck to their Covenant; he was weary of his other Counsels, and was ready to apply himself to the Ends of the Covenant.

A Petition was brought to the *Bear* in *Bread-street*, where it was read, and debated among us, and agreed to be drawn up; and Captain *Titus* and *Drake* were sent away with it.

I do not remember that Master *Gibbons* was at either of these Meetings.

There was Money raised for *Titus*: *Drake* had 10*l.* of me; he had it in private. Captain *Titus* had 30*l.* for his Journey. He went over twice, I think; and if so, the second time Master *Gibbons* was there. The second time I saw Master *Gibbons*, he brought me to his Chamber; and the third time he and I went with some Papers to *Gravesend*, agreed on at Master *Love's*. These Papers were either a Commission, or Instructions, or both together in one. But this was the Substance, That the Lord *Willoughby*, and others, should go to the Treaty at *Breda*, and to press the King concerning this Agreement with *Scotland*.

Master *Gibbons* was at Master *Love's* House when the Commission and Instructions were agreed upon. He and I went to *Gravesend*; and (I think) he carried the Papers. But of this I am sure, That he knew the end of our going. We tarried there all Night; and delivered the Papers to Mr. *Mason*.

I did go to *Calais* when I came back; but I do not know whether the Papers that I brought over (being read at Master *Love's* House) were read all at one time, or not: If they were, then Master *Gibbons* was there.

I was present when the Letters came, after *Dunbar* Fight, at Mr. *Love's*. The Letters came from Colonel *Massej*: They gave an Account of the Fight there, and of the State of Affairs; and withal, writ for Money and Arms, to be sent by way of *Holland*. I cannot say Mr. *Gibbons* was present. There was Money agreed upon there to be raised for *Massej* and *Titus*. Mr. *Gibbons* was many times at the *Swan* at *Dowgate*; he was constant at the Club. But after Mr. *Drake* fled, we did take in other Men into the Club: Mr. *Gibbons* was as little absent as any Man.

Mr. *Gibbons* did put me upon it, to shew Friendship to Mr. *Mason*; and he gave me this Reason, That so Mr. *Mason* might represent our good Affections to the King: And Mr. *Gibbons* did desire me to defray the Charges of that Night's Expences at *Gravesend*; where Mr. *Mason* was telling me, That if I were not allowed it by our Friends, he would do it.

Master Harvey's Testimony.

I came to the Knowledge of this Design at several Meetings and Places. Mr. *Gibbons* told me of 2000*l.* which was to be sent into *Scotland*; and that *Massej* was to land Forces in the *West*: And concerning my Lord General's Soldiers, that many of them were run away: And concerning the Trained Bands of the *North*, he said they waited but for one Blow to be given in *Scotland*. He told me also of a Town that was to be delivered.

Major Huntington's Testimony.

The first that made me acquainted with this Design was Mr. *Gibbons*; who told me, That

if I would come to Mr. *Love's* House, I should hear the News. I went to Mr. *Love's*: And when I came there, that which I heard was a Paper sent from *Massej*, *Graves*, and *Titus*, brought by *Drake*, and read by him. Mr. *Gibbons* was there then: There was many more there in Mr. *Love's* Closet; but I cannot say well who they were.

[The Testimonies of the rest of the Witnesses could not be well heard; neither can they be had, the Books being so close kept.]

[After all was ended, Mr. *Keble* desired Master *Gibbons* to speak for himself.]

Gibbons. My Lord, I have now stood here near five Hours, and am both spent in my Body and Spirit; and that I am as unable in Body to speak for myself, as I am disabled to make my Defence without the Court grant me Time, a Copy of my Charge, the Depositions of the Witnesses, and assign me Counsel. And therefore, before I plead or answer to my Charge, I have this humble Motion to make, (I being a Man altogether ignorant and unacquainted with the Laws) That this Court would be pleased, as I said before, to assign me Counsel to advise me in my Chamber, and to plead for me in the Court; and that your Lordship and this Court would be pleased to give me a Copy of my Charge, and to assign me a Solicitor, to solicit my Business for me.

Keble. Mr. *Gibbons*, you must proceed to make some general Defence for the present.

Gibbons. My Lord, I hope you will do as God use to do, allow some grains of Allowance, that a Man that hath nothing but Weakness and Ignorance may help himself.

Upon this Motion the Court adjourn'd, and Mr. *Gibbons* was taken away by the Keeper of *Newgate*; and thereafter came a Warrant to bring him to the Bar the Wednesday following.

In the mean time there were several Friends that went to mediate and speak for him to the Judge, who did lay out his Simplicity and Innocency, labouring what they could for the saving of his Life. The Judge answered, That he was not so simple as he was set out by them; and that he doubted not but he was a Servant to greater Persons, who had employed him: But if he would be ingenuous, and discover the Parties that were in that Design, he would labour to save his Life, and do him good; but if he would not confess, he could not help him. Yet still they interceded for him, until at last the Judge told one of them, That verily he was persuaded that he was innocent: But nevertheless, if he did not reveal all those whom he knew to have any Knowledge of the Business besides himself, nothing could be expected but Death. He was extremely desirous to have a Discovery of some Persons of Quality: But Mr. *Gibbons* constantly affirmed he knew of none; neither would he accuse any; for he had rather die than be a means to scandal or hazard any good Man. This he constantly affirmed with an undaunted Resolution to the last.

Wednesday, the second Day's Trial, July 23.

After *Gibbons* being brought before the Court, my Lord *Keble* spake as followeth:

Keble. Master *Gibbons*, the Court out of abundance of Favour to you, have given you time from Friday till now, whereby you may be able to make your Defence: Therefore it is now expected you should proceed, and plead what you have to say.

Gibbons. My Lord, the last time I was before this honourable Court, after I had desired a Jury, and was denied it, I did, in Confidence of my own Innocency, and your Tenderness in Matters of Blood, submit to a Trial, tho' I was no way satisfied in this new Way of Trial: But before I could plead, I made this humble Motion, perceiving the Charge against me for High Treason, was against several Statutes, Laws, and Acts of Parliament, which I never saw, heard, or read them in my Life.

My Life and Estate being thus drawn into question, my Lord, it did very much concern me to be well advised, there being many Things in the Statutes which made for my Advantage, both in my Plea and Defence: Therefore I did humbly beseech your Lordship and this High Court that I might have Counsel in Law assigned me, both to advise me in my Chamber, and plead for me in this Court, that so I might be able to take all those lawful Advantages which the Statutes and Acts of Parliament afford me; which I was not able to do myself, being ignorant of the Laws. This being denied, and I seeing I could no way obtain Counsel to preserve my Life, as I did see the State had got great Counsel against me, to prosecute me for my Life; I did humbly beseech your Lordship, and this High Court, that you would be so far of Counsel for me, a poor Prisoner standing at the Bar, drawn in question before the Justice for my Life, that you would not let the learned Counsel of this Commonwealth take any advantage against me, through my Ignorance or want of Skill in the Laws; but that if the Statutes and Acts of Parliament, and Laws of the Land, did afford me any Advantage, which I might overslip through my Ignorance, that your Lordship and the Court, out of your Bowels of Compassion to a poor Prisoner, would stand for me, that I might not have any Wrong done, nor Law denied me, which by right was due unto me. Upon these Considerations, my Lord, I did plead Not Guilty. I do humbly thank your Lordship and the Court for the Time you have given me; but am as unable to answer or speak for my self now, as I was the last time I took my leave of this Court, being wholly unfurnished, and altogether disabled to make my Defence: For when I came back to my Prison at *Newgate*, with an Expectation of meeting both the Copy of my Charge, and the Deposition of the Witnesses, I found all was taken away from my Notary, whom I brought on purpose to this Place to help me therein. Seeing my self thus totally deprived and cut off from all Helps and Hopes of making my Defence, I could not tell whither to go or send, but to your Lordship, whom I thought, upon my humble Petition, might have granted both a Copy of my Charge, and the Depositions of the Witnesses: But seeing that could not be granted, I am left without all Possibilities of pleading, or making any Defence. Therefore I do now again, with all Humility, address myself to your Lordship and this honourable Court, and do most earnestly desire a

Copy of the Charge, also the Depositions of Witnesses, and Counsel assigned me to come to my Chamber, to advise me there; also Counsel to plead for me before this Court, and a Solicitor assigned me, to follow my Business. And if God shall not incline your Hearts to shew this Mercy, I do not look upon myself as able to make my Defence, as to stand before a Company of armed Men.

Kettle. The Court will be very tender of your Blood; and they must and will be as tender to preserve the Blood of the Commonwealth, in execution of Justice upon Traitors, that seek to destroy them. You have had a great deal of Favour, and Time given you; therefore now you must make your Defence.

Gibbons. My Lord, if ever Prisoner that came before this Court had reason to cry and call for all possible Helps and Advantages that may be allowed them, much more have I cause to do the same; verily believing never until now there was ever any brought before Justice so unable to help or answer for himself, as I am. Therefore I humbly beseech your Lordship, and this High Court; and I do withal earnestly desire Counsel, a Copy of my Charge, the Depositions of the Witnesses, without which I am never able to plead, or make any Defence for my Life: And the rather am I invited to crave and desire the same, for that I have both heard and seen Precedents before mine Eyes of this nature. Major *Rolfe*, that was accused for High Treason, had Counsel assigned him; by whose Assistance he saved his Life. Sir *John Gell*, before this Court of Justice, had his Brother, Master *Gell*, to speak for him. And since, Mr. *Love* had Counsel to plead for him in this very Place.

Kettle. Mr. *Gibbons*, you will not be denied Counsel, or any thing else, that may help you, if there be found Matter of Law. Go on, and make your Defence; and make it appear to the Court that there is Matter of Law, and you shall not be denied Counsel, and whatever else may do you good.

Gibbons. My Lord, had I the several Advantages the others have had, to offer such Matters of Law, I should be as ready as any else to do it: But being deprived of all these Helps by the Officers of the Court, who took away the Book from my Notary, after he had written the Charge; therefore, my Lord, without a Copy of the Charge, and the Depositions of the Witnesses, it will be in vain for me to trouble this honourable Court, when I never had sight of the Charge, nor Depositions of the Witnesses; the want of which have so disabled me, (seeing I could not have Help of Counsel to advise me) that I cannot tell what in the world to say myself.

Kettle. Mr. *Gibbons*, you must proceed to plead, or else you will incense the Court more than you are aware of: For you to stand out thus, and plead for that which cannot be granted, will do you no good; therefore I advise you no longer to stand out, but make your Defence.

Gibbons. My Lord, if I should begin to proceed, and make my Defence, being (as I said already) totally ignorant in all the Laws, and utterly unable both in Memory and Parts to take all just and clear Objections against the Advantages of the Charge and Evidences; if I should make my Defence when all Means are thus taken a-

way, I should certainly throw away my own Life, and become guilty of shedding my own Blood: Therefore I had rather, a hundred times, leave myself to the Mercy and Justice of the Court, who, I hope, are very sensible how much the Life of a Man is worth; and withal consider the hard Measure I had in taking away the Books of those that wrote for me, that so I could never have sight of the Charge, nor Depositions of the Witnesses, which all others have had, nor no Counsel to advise me. Thus being left naked and destitute of all Helps, I had rather submit to the Mercy of the Court, than ever plead to save my Life. My Lord, I am persuaded I stand to be judg'd by a Court, where I see the Faces of those that truly fear God; and that they will seriously weigh and consider that the Blood of any for whom Christ hath died, is exceeding precious in the sight of God, who will not take any Advantage against any for their Ignorance; and that you also do remember that all your Judgments will be judged over again at the Tribunal of Christ, who will both be a Counsel and Advocate for me, Prisoner now standing at the Bar. Thus hoping that you will reckon the Life and Blood of the meanest Person, for whom Christ hath died, as much worth as the Life of the greatest, I will rather submit to your Mercy than plead, if I cannot have what I do desire. But being very unwilling to have any hand to destroy myself, and so become guilty of my own Death, therefore though for want of Help I be not able to make my Defence, yet I shall make an Appeal to the Court; which is all I can do. And therefore I desire you seriously to weigh and consider how far short the Evidences come, and how full of Contrarieties and Contradictions. By the Law there ought to be two lawful and sufficient Witnesses to make a Man guilty of Treason: These Witnesses must agree punctually in their Testimony, and the Treason they prove must be against the express Words of the Act. Also the Law will not suffer those that are guilty and convict of the same Crime by their Confessions, whereof they accuse me, to give Evidence against me: These Witnesses therefore cannot be lawful and sufficient against me, they having confessed thus much against themselves, and so do either witness against me out of fear of Death, or promise of Reward. This I am certainly inform'd will be proved against Major *Adams*, and was declared in the Face of the Court at Mr. *Love's* Trial, concerning the Testimony of Major *Adams*, which is the most material Witness against me. I hope your Lordship and the Court will look upon it, as not only he hath been offered, received, and taken Money to discover the Design, and witness against me; but also in regard to whatsoever he swears, as that I should bring in the rough Draught of Instructions to Mr. *Love's*: And as to my Presence at the *Swan* at several Meetings, was both contradicted, and positively sworn against by several other of the Witnesses. None but he doth say that I was present at the reading of any Letters of the Fight at *Dunbar*: Nor none but *Adams* saith I was present at Mr. *Love's* House, when any Moneys was debated: Nor none but *Adams* saith I was a constant Man at Meetings; that ever I invited any to a Meeting. I hope your Lordship and the Court will consider, that though there are ten Witnesses produced against me, be-

sides several Questions asked Captain *Potter* at the Bar concerning me; yet many of them neither said nor swore any thing that touched me at all; and of those that do reach me in their Testimony, not any two did agree in proving the same Fact. As concerning the particular Testimony of Mr. *Harvey*, unto which no one Witness but himself either said or swore the least Tittle of it to be true; being struck with Wonder, and amazed to hear these Things given in against me, which my Heart never thought, nor my Tongue never spake; I do both before your Lordship and this High-Court, and Presence of all the People, lay it before the righteous God to plead my Cause, and judge between me, a Prisoner at the Bar, and Mr. *Harvey*, that falsely accused me. I did further desire, that this Appeal might be set upon record, and meet me before the Tribunal-Seat of Christ, and that both your Lordship, and them that sit in this honourable Court, might follow this my Appeal to the Judgment-Seat, and there witness it before the Presence of the Lord against me when I am pleading for Mercy, if ever I spake or heard of these Things which he hath accused me of. My Lord, I shall go further, and did offer unto the Court, That if in all *England* they could find a Man that would say any of these Things Mr. *Harvey* accused me of, then I said more particularly, if any whom I had most frequently convers'd withal, or any of those that kept me Company, would say they ever heard me say any of these Words, the next Time I came before this honourable Court, I would come and plead guilty. And I do now say, if it please your Lordship and the Court to give me Time, I shall be able to produce Witnesses, I shall make it appear Mr. *Harvey* is as unfit to be a Witness in any Court of Record, as he was unfit to be a Justice of Peace in *Essex*, where he was indicted for many and notorious Offences. If I might have Time, I should produce Witnesses that Mr. *Harvey* was the original Reporter of some of those Things he accused me of. And concerning Major *Corbet's* Testimony, I know little in it, but that I shall call God to witness I knew not *Mason*. I did then in the Face of the Court declare how much he had wronged me; for that I had acquainted the Committee who examined me, that I both knew *Mason*, and told them the Place, and how I came to know him. Besides, there is a Copy of my Examination abroad that doth confirm the same, That *Corbet* came to me more like a Murderer than a Christian; and because I did call God to witness against these Untruths he charged me withal, he did in effect judge my Soul to the Devil, and my Body to the Gallows, and so he left me. For which unchristian Carriage of his, I both complained to Mr. *Price*, Clerk to the Warden in the *Fleet*, my Keeper, and some others. My Lord, I am charged with being a Solicitor, and represented as a Man that had nothing else to do but follow such Businesses as here I am accused of; which is a Life so unlike an *Englishman*, and so ill becoming a Christian, that I have all the Days of my Life walked a contrary Course: If it were necessary, Multitudes of Witnesses will testify the same for me. I was entertained by my Master to wait upon him in his Chamber: After he was gone to the House, I had constant Occasions to go into the City, either to lay out, pay, or receive Money.

So much Experience had I gained, as I entred upon a Merchant's Trade, dealt with many and several merchantable Commodities; having a Wife and Children then living, that was the Trade I resolved to follow. My Wife dying, I went over to *France* some little Time after with my Master, and carried many merchantable Commodities with me, where I found Liberty to increase my Experience. My Master returning to *England*, where he staid not a Year, but went back again into *France*, I was left behind to wait upon my Lady. My Employment in my Lady's Service is sufficiently known to be such as daily led me to go into the City. The 19th of *July* 1650, my Lady went from the City; there was a Necessity one Man she must leave behind in *London*, which fell to my Portion. And my Business called me daily into the City; sometimes to go to Counsel, sometimes to shew Bills of Exchange, sometimes to pay Moneys, sometimes to lay out Money, and buy several Things which both my Master and Lady did daily send for to me: There was some Letters that came constantly every Week from my Lady, some out of *France*, to one Mr. *Charboner's*, whose House was in *Tower-Street*. I missing these Letters often on the Monday, went on the Tuesday for them, which was the Day we met at the Club, which was the main reason of my being so constantly there. Where I met for no other end than to see the Faces of my Friends, and to discourse of the News of the Town. Most of whatever I heard there discoursed on, I found in the printed Books: Nothing do I know was ever said or done there prejudicial to the State. But since it is looked upon as a Crime, I would I had never come there. Concerning my Master, were it necessary, I would here make a Declaration that he never left me to do any Business but to wait upon his Lady, and to provide, buy, and send those Things into *France* that were necessary for him. For Letters, I never received any from him, but such as might have looked all the World in the Face: Neither, think I, I need say much to clear this, for that the State have seen most of those Letters that my Master sent, before they ever came to my Hands. My Lords, this is all I can say, being unwilling to trouble the Court any longer; but must declare how much I am amazed to be indicted by so high a Charge of Treason, as I dare say never looked any such Man as I am, in my Condition, in the Face till now; and do fully persuade myself that your Lordship will rather pity my Ignorance and sad Condition, than look upon me as a Man either fit for Plots, or any such Matter I am charged with. I do protest, that if I would make a Declaration of every Act I have done, of every Word I have said, of every Line I have written, I never knew it came up to the Border of Treason, whatever is laid to my Charge. And whereas Major *Adams* charges me of being at several Meetings presently after the late King's Death, I did not see them in nine Months after the Death of the King: And after that, I came acquainted with *Alford*, and all that he lays to my charge, is going down to *Gravesend*, but he did not say whether he or I carried the Commissions or Letters he speaks of. It is hard for me to remember what the Discourse was a year and half since, but I dare say he doth most falsely charge me that I should bid him shew

Kindness

Kindness to *Mason*, that so he might represent the Presbyterian Party considerable to the King; and that I should bid him disburse some Money, and pay all the Charges, and if it was not paid him by the Company again, I would; this, to the best of my remembrance, is all false. Capt. *Far* (who is another of the Witnesses, who went along with me, and *Alford*) did declare it in the face of the Court, that he knew no such thing, and that Major *Alford* was the Man that invited him to *Gravesend*; and so I do protest he did me, or else I had never gone.

For Letters, I do not remember that ever I touched any; nor did Major *Alford* in the least swear positively I did; only he saith, either he or I did deliver them. *Alford* doth not swear that ever I wrote, that ever I saw them open'd, or ever heard them read. All this, my Lord, was done above a Year and a half ago; and I hope if there shall be any thing found done amiss in that Journey, the Acts will clear me; for that it is said, If a Man be not indicted within a Year, he is not to be arraigned or questioned. All that Major *Huntington* lays, is, He saw me at Master *Love's* when the Instructions were read, but whether I heard them, he could not swear; but he saw me go out of one Room into another: And since he says, I met him in the street, and asked him if he would not go to Mr. *Love's* to hear News; and when we came there, after Prayer half an hour, *Will. Drake* pulled a Letter out of his pocket, neither swore he what it was, nor that I heard it read. My Lord, upon the whole, I do say, among all the ten Witnesses, there is not one that doth say or swear that ever I wrote Letter, sent Letter, or received Letter; that ever I collected Money, paid Money, or received Money; or that ever I discoursed any thing prejudicial to the State; not any one Witness doth lay any one thing to my Charge done for more than this Year and half, besides Major *Adams*: and all that ever he swears, is, being present at Letters read; he neither says I heard them, or ever discoursed any thing concerning them. So, my Lord, except it be one single Witness, there is nothing laid to my charge done this Year and a half: so, my Lord, the utmost that the whole Proof against me doth amount unto, is but hearing of Letters read at the second hand; and all this but in the utmost were but Misprision of Treason, if fully proved; but being but one single Witness to swear this, I cannot imagine it will ever hurt me. For *Potter*, *Jaquel*, *Far*, or *Alford*, (who knew as much by me as *Adams*) did not say any such thing; and all that *Adams* did say, is but hearing of Letters, he doth not say that ever I sent Means to the King: tho' I never did this, yet I have weakned my self, and opened my Purse to help the State. About the time the King and *Scots* were agreed, I furnished my Brother with a considerable Sum of Money, and sent him into *Ireland* to do the State Service, where he gained a Command under my Lord, and did very good Service for the State. My Lord, had I ever such a mind to the War in *Scotland*, I could have sent my Brother thither, and not into *Ireland*. Thus, my Lord, I have gone as far as I can, in making my Appeal to the Court; being utterly unable to make any Defence, I do hope there will be no advantage taken by my Ignorance, but you will be pleased

to take my Condition into your Consideration, and yet grant me both Time and Counsel, and give me a Copy of my Charge, and the Depositions of the Witnesses, which is no more Favour than was allowed to the Archbishop of *Canterbury*, and Deputy of *Ireland*, I crave leave of your Lordship and the Court, that I may not suffer for want of Experience, nor that my Ignorance may be made use of to work my Ruin and Destruction. From my Youth I have studied the Scripture, but never have studied the Laws in my Life; and therefore all that I have to help my self with, is from the Scripture, where I find that Ignorance hath constantly the Plea at the Bar of Heaven, and so I am certain should have at the Bars of all the Courts of Justice. *Abimelech* that committed a very great Sin in taking another Man's Wife from him, he pleaded his Integrity, and God did spare him, because he knew it not. God hath always been wonderful tender of the Life of a Man, and that in the time of the most strictest Laws; so much care did he take to preserve the Life of Man, that he provided Cities of Refuge to fly unto, if any killed a Man by accident, or unawares. Murder is a great crying Sin, yet were it done unawares, God made a City of Refuge to fly unto, that the Man might be safe, and out of Danger of the Revenger. My Lord, whatsoever I have done amiss, I do profess it is out of Ignorance; I never knew I broke any of the Acts of Parliament, nor that I offended the Laws of *England*: and therefore I hope my Ignorance shall have the Plea at your Bar, as I am sure it shall have at the Bar of God. I have often heard that the Law of *England* is the Law of Mercy, and that there is no Law in the world looks with more Tenderness and Compassion upon a Man's Life; therefore I say as *David* concerning the Sword of *Goliath*, *There is none like that, give it me*. The same I do say this day, no Law is like to our *English* Laws, therefore let me enjoy them: I know the Benefits and Advantages thereby is wonderful great. I do verily believe I am before a Court that are fully persuaded that the strict beholding Eye of God looks upon them, and beholds all your Intentions, and the Thoughts of your Heart towards me, and sees whether you do deny me any Help or Advantage that may save my Life. Therefore I earnestly beseech your Lordship, and this Honourable Court, to look upon the Laws of *England*, and see whether there be not some Helps, some City of Refuge to fly unto, where I may be out of danger of all that I am here charged with. My Lord, this is the first time that ever I was brought upon a Stage, the first time that ever my Name was heard of, or I known to be an Offender against the State: And whatsoever shall now be found in me amiss, I desire there may be a favourable Construction made of it, and not to be strained beyond what my Intention was, who have always abhorred from my very Soul all Designs that have tended to Blood. I have always stood firm to the Cause of Liberty and Religion, and all the Interests thereof: these are the Principles I first took up, these are the Principles I have always held; from which Principles I never yet departed. I have always had a bleeding Heart when the Church hath been in a suffering Condition; I have never been of a bitter Spirit, but have
always

always carried a most Tender and Christian Respect towards those that were of an unblamable Life and Conversation: And where I thought there was Truth of Grace, however contrary to me in Judgment, yet I have loved them, and embraced them as Christians. I have always lived peaceably, never no Disturber of the Church or State, either by writing, or printing Books, or any thing else. May it please your Lordship, it is my Desire you should do as God did, when the Cry of *Sodom* came up before him; *I will go down*, saith he, *and see whether they have done altogether according to the Cry which is come up to me; if not, I will know*: The Lord that knows all things, knew before what *Sodom* had done; but after the manner of Men he came down, to teach all Courts of what they should do before they proceed to Judgment. My Lord, here hath been a great Charge against me, a great Cry come up unto your Ears; I desire you to do as God did, that is, to know whether it be according to the Cry, that you would seriously weigh all that the Witnesses have said, gather all the Circumstances together, and see the utmost that it doth amount unto; and then I am sure you will see the Evidences to come so infinite short of what the Charge and Cry hath been against me, that you will find Arguments to incline to Mercy: and if I might not be quitted, yet at least you will let me have those Helps and Advantages that the Laws afford me, and God hath commanded you to give me; that you will not keep any thing from me, that I, according to Justice, have demanded, and for the want of which see me destroyed before your faces. Therefore I do once more with all earnestness desire you will not deny me a Copy of my Charge, also the Depositions of the Witnesses, and assign me Counsel to come to my Chamber, and plead for me at the Bar, without which you take from me all those Helps that should enable me to make my Defence; without which it is impossible for me to go any further, and must declare that I want all the material things that should help me to save my Life, when I see before my Eyes all possible Advantages to undo me. My Lord, I am able to say no more; if this my just Request shall be denied, I have gone as far as I can without them, both to clear my Innocency, and vindicate my self from that which is laid to my charge; and am most confident, if you would let me have what you cannot justly deny me, a Copy of my Charge, and the Depositions of the Witnesses, I should stand as clear in the eyes of the Law, in the eyes of your Lordship, and all this Court, as I am clear in the eyes of God, and my own Conscience, from what is unjustly charged upon me. And thus much I have done, and am able to do no more; therefore if you do deny me, I shall be abundantly satisfied, howsoever it shall please God to suffer you to deal with me. Concerning the Witnesses, I have little further to say, but desire that the Lord would forgive them, as I do freely; I would not change Conditions with them, tho' I were sure to die in Fire flaming, or in the Mouth of Lions, even in the worst Condition that could be imagined. I both pity and desire to mourn for them, who have so desperately wounded their own Souls and Consciences to destroy my Life. And the Lord grant, that not one Drop of my Blood,

which they have endeavoured to shed, may stand betwixt them and Mercy, when they are upon their dying Beds a crying for it. And this is the worst hurt I wish them for all the wrong they have done me. Now the Lord of Heaven direct your Lordship, and this honourable Court, that you may not suffer the Witnesses Testimonies to be strained, for me to lose my Life upon Circumstances, or what is supposed to be, or in Conscience thought, but according to clear Proof and Evidence. Do that which may give you Comfort upon a dying Bed, and no more than you dare look God in the face withal, and answer to me his poor Servant, who am innocent, at the Bar of the Lord Jesus Christ, where I shall have free liberty to speak, and you must and shall hear me. The Lord of Heaven direct you, that you do no more than what the Law will allow; and that what you do, may be according to the Mind of God, and most for his Glory, and the Good of me a helpless Prisoner at the Bar. And so let it go which way it will, I shall submit with abundance of Content and Satisfaction, and with a quiet Spirit say, *The Will of the Lord be done*.

Thus having ended his Speech, the Court adjourned until Friday next: and so Mr. *Gibbons* was carried back by his keeper, and ordered to be brought before them again on Friday next.

Friday, about Twelve o' clock, Mr. *Gibbons* was brought to the Bar.

Keble. COME, Mr. *Gibbons*, what have you to say?

Gibbons. My Lord, I have not much to say, being totally disabled, and cut off from those Means that might help me to save my Life; which the last time I was here, I fully declared and as earnestly desired both a Copy of my Charge, and the Depositions of the Witnesses, and Counsel assigned me: this I pleaded for, until your Lordship told me the Court would be incensed, if I did not proceed to my Defence. Which made me dare to go no further, but rather choose to submit to the Mercy of the Court, and make an Appeal to their Justice; where I desired that you would seriously weigh and consider how wonderful short the whole Evidences come; there was not any two agreeing: *Adams*, the material Witness, most what he said, was disapproved by the other several Witnesses that came after. I hope the Court is very sensible how little is laid to my charge by Major *Adams*, after so great an Inquisition, as he daily set upon me, inviting of me to his House in the City, to his House in the Country, going from one Shop to another, where he thought I did come; to *Aldermanbury* Church, and all other places where he did hope to find me: after all this sifting, and trying, what was it he got out? nothing but the hearing of Letters-read, which none but himself swears. My Lord, all that I have to say, is to desire both your Lordship, and this Court, to consider with what great Aggravation the Attorney-General did multiply, and aggravate against me beyond all that ever the Witnesses said, leaving out all what might serve for my Advantage. My Lord, how the Attorney-General could bring Major *Alford* and Major *Adams* together, and so make them double

Witnesses

Witnesses against me, that is not possible for me or any Man else to understand. First; what *Adams* says, is concerning of my bringing in of the rough Draught of Instructions, which I waolly deny, and so do all the Witnesses that came after him, to the best of my remembrance: and some of them swear positively that *Drake* brought it in; none but himself says that I brought it in. To testify unto this, Major *Alford* says nothing: but all that he says, is, That I went down to *Gravesend* with him, and did not say or swear that I either carried the Instructions, or delivered them, or that ever I heard them read: all that he can say, is, that I went with them, but whether he or I delivered them, that he cannot tell. He speaks of some Discourse concerning shewing of Kindness to *Mason*; it being a Year and half ago, I am not able to charge myself with what I said then, but dare say he hath falsely accused me. What Major *Alford* says more, is only that I should bring them to *Mason's* Chamber in the *Strand*, delivered not, nor says that we had any Discourse at all, but took our leaves, and came away presently. Another time, said *Alford*, I brought *Mason* to *Titus* to Mr. *Whitarr's* a Bookseller's, and that *Mason* and *Titus* went up to the Chamber, where they had private Discourse together: he did not say, that I went up to the Chamber, or heard, or knew any thing what their Discourse was. Now, my Lord, I hope by this time both your Lordship and the Court are satisfied what slender Testimony there is against me. First, my Lord, I was never heard of till I came to *Gravesend* with Major *Alford*; only something that Major *Adams* saith of me, meeting at the *Swan*, which all the other Witnesses do acquit and clear me from. Now, my Lord, to what Major *Alford* saith, is nothing but giving a Visit to *Titus* and *Mason*, which I hope will never be thought any Crime; for that neither of them both were declared Enemies to the State, and therefore certainly it could be no hurt for me to see them. And besides, whatever Major *Alford* charges me withal, is a Year and half since, therefore am acquitted by your own Acts. So that it cannot enter into my Thoughts, by what Act of Parliament or Law you can pass any Sentence against me: for all that ever is laid to my charge done within this Year, is nothing but hearing of Letters read: which not any one but Major *Adams* says, and he neither saith what these Letters were, and that I ever discoursed, or said any thing concerning them. Thus, my Lord, you see there is but one single Witness throughout. My Lord, I waited upon a Gentleman that led me to two or three Meetings, by which means I gained a nearer Acquaintance, which now proves part of my Unhappiness, seeing it is become a Crime to meet Friends at the Club, and other Places, and hear Letters, and other News read, which is all that I am charged with. My Lord, I hope I am before a Court that doth consider, that all those Days Works will be judged over again; therefore I cannot imagine that any Court of Justice in the world will proceed to Sentence upon so slender a Testimony that lies before you, but that you will rather allow me those Helps that may enable me to end the Difference that is betwixt the State and me: that is, to let me have a Copy of my Charge, the Deposition of the Witnesses,

and Counsel assigned me; without which, it is as impossible to defend my self, as for a little Child to encounter an armed Man with a drawn Sword in his hand. My Lord, I have no more to say, but shall submit to God, whatsoever comes; and as I said before, so I say again, I do freely forgive the Witnesses, but do desire that the Court will not proceed upon so slight and slender Testimonies, which never can, nor will hold water in the sight of God, or Law.

Keble. Mr. *Gibbons*, most of what you have said now, you said before, only you made some little addition. The Court hath debated your Business and Life, with as much care as if you were the greatest Nobleman in *England*; and upon the Debate, they are persuaded in their Consciences that you deserve to be sentenced.

Attorn. Gen. My Lord, Mr. *Gibbons* pleads for his Life, and I for Justice in the behalf of the Commonwealth, therefore I desire you will proceed to Sentence according to the Judgment of the Court.

Whereupon Sentence was read. After that, all the whole Charge was read, and Mr. *Gibbons* sentenced as a false Traitor, to return to that place from whence he came, so to suffer Death, by having his Head sever'd from his Body.

After Sentence, *Keble* spake in this manner:

Mr. *Gibbons*, you have nothing to do, but to prepare yourself for God; you have a great Acquaintance among the Ministers, you should do very well to send for them, and reveal what you know, and so do the State what good you can before you die. Have you any thing more to say?

But Mr. *Gibbons* said not one word more, but took his leave of the Court, humbly bowing to them; and after that, he bowed to the Attorney-General, and took his leave of him, and so came down the Stairs with abundance of Cheerfulness, speaking to his Friends, and shaking them by the hands. And in this manner he went along the Hall, until he took Coach to go to Prison.

He was afterwards Executed, in pursuance of the Sentence on *Tower-Hill*, the same Day with Mr. *Love*, the 22d of *August*.

Being come upon the Scaffold, he spoke in the following manner.

Gentlemen,

I AM brought here to the Stage, where I am made a spectacle to God, to Angels, and to Men; an object of pity and compassion to my Friends, where they see before their eyes a Man in the prime of his years and in the flower of his youth cut off as an untimely fruit, and as a Tree that burdeneth the ground, therefore they are sorry; but this is no new thing, it is God's ordinary way to suffer men to be cast out, that he may receive them to Mercy; the poor blind man was thrown out, but he was received to Jesus Christ; the three Children were thrown into the Furnace, but they were received to God; that was the way that he delivered them: Do not stand wondering at God's proceedings, whatsoever the Men be, yet I bleis God to eternity;

nity; I take it well at his hands, though it seem strange; It is God's ordinary way, and if it be, Christians should not shun any extremity, if it bring them to Jesus Christ, and therefore I bless God, I come to this Scaffold, to this place, with as much willingness as ever Bridegroom did to receive his Bride: I know the passage of blood is but short, and the way to the Crown; though my Head be severed from my Body, yet my Soul to all eternity shall be joined to the Lord Jesus Christ; and I in the presence of you all, desire you to witness, that I from my soul desire that the present Power and Court that is set up, have done themselves no more hurt than they have done me; for I am assured that all that ever their Sentence hath done, hath put me in the way that I am going; from Earth to Heaven, from Friends, and Comfort, and Creature-relations, that of necessity ere-long must be left; and it were a great deal of folly to desire that that we cannot keep; I am going to receive the end of my Faith, the reward of my Hope, the comfort of my Prayers, and of all the Prayers and Tears of God's People; where I shall enjoy the Society of all Believers, the sight of God, the fellowship of the Saints, and embrace God to all eternity; these things none can take from me: Therefore why should I desire to keep these things that the Providence of God calls for? and therefore I need not stand grumbling and repining at God's Will: And I freely submit.

I come not hither to tell a long Story, or to make a discovery of my Sins; the Lord knows (upon the examination of my heart) how many thousands and hundred millions of Sins I have, and I desire to pour out Floods of Tears for them; and I desire that through the Merit of Christ, the atonement might be made to God for them. From my childhood I must needs say, I have been such; I have seen a Father buried in the grave, and a Sister, and a Wife, and a Child laid in the grave; but all that ever I could do to this day, could never put my Sins into the grave, with all my endeavours and all the afflictions and mercies I have had: It is an infinite comfort, though I enjoy nothing else; after this day I shall assuredly never sin any more, nor grieve the Spirit of God any more, nor dishonour God any more; I profess, though I should not come to Heaven, it is a comfort to me that I shall not sin and grieve the Spirit of God any more; Blessed be God to all eternity, I shall be out of the power of sin.

This is not all, but further, since I can remember that I set my face towards God; from my childhood I have hedged in my way with thorns, that I might go the strictest and straitest way, my way to bring me to the Lord Jesus Christ; it is a wonderful Comfort, and blessed be God for this day's work; I profess I would not change my condition for ten thousand worlds: I bless God I find the reward and benefit of the Prayers of good People in a wonderful manner; they have more cause to go home and seek days of rejoicing and days of praise, than to mourn and repine.

In the Bishop's time I was one that was a Mourner, that lamented the Time and the State, and desired to shed tears when the Church was under Affliction.

And truly, I further declare, that I have always been and gone upon Gospel Principles; I

have always desired to apply particular Promises to my particular Condition: I know ten thousand generals will do me no good, only particular Faith and application will do me good and strengthen and support me this day: I have always engaged upon pure Principles of Religion to the best of my knowledge, and the utmost of my endeavours; I have always engaged upon those Principles, from those I never departed; and in those Principles by God's Grace this day I shall die and come to seal with my Blood; I always owned the ways of God, when they were most persecuted; I think an hundred, nay (I may say) a thousand can tell, that I did never dare to save my Life, or my Skin, or any thing, to quit Religion, though it were never so much clouded, and despised, and disdained; I do now this day rather a thousand times willingly lay my Neck on the Block; believe it, I am a dying man, I chuse it, and had rather have it, than enjoy the most glorious life and liberty with those that are Betrayers of the Truth of God and a good Conscience; O Sirs, believe it, carry it from a dying man: In the time of afflictions a good Conscience will stand you in more stead, and more comfort, than a thousand worlds: I bless God more that he now smiles on me, than if all the Emperors and Princes of the World did own me.

I have never been without a trembling heart, since the Spouse of Christ was clothed in mourning; I always thought it my duty, and the least I could do, to be in tears when the Church rolled in blood; and the Lord grant that every Christian Soul may make it his work: It is the great breaking of my heart, that I could never get my heart to break enough, to see the Church of Christ in misery: Though God have called, and Christ have called, and there was never such calling; it wounds my Soul that I could never mourn more for the Church's afflictions, and the Lord keep all that fear the Lord and his Name, keep those from days of rejoicing and thanksgiving for the death of those that God owns, and will wipe all Tears from their Eyes, and those God accounts their blood precious: Have a care of being of the Number of those that rejoice over the heaps of the carcases of God's people.

I am now at the last brought to suffer death as an enemy to the STATE, though my Conscience tells me I am a friend to the Lord Jesus Christ, His Church, and Members; and though the *Jews* heretofore told *Pilate*, if he did let the Lord Christ go, he was no friend to *Cæsar*: Must I not say truly, my Conscience bids me say it in the case I am in, whosoever desires to keep the Lord Jesus, to keep Integrity of heart, and Innocency of life, and desires to walk in an unspotted life and conversation, whosoever desires to let these old broached Heresies go, and draw their sword for Christ, are not these declared to be Enemies to the STATE, and are against them that desire to keep a good Conscience; and if there be no Law of God to condemn us, (as the *Jews* said) There is a Law found out, and by that Law he ought to die.

I will not make a discourse of the manner of my Trial; ten thousand Men, and Angels, yea God himself can witness the hard measure I had.

I am in Charity with all the World, the Lord of Heaven forgive them; I say nothing my self, only I will tell you what a Gentleman said that was an Eye-witness at my Trial, that knows all
the

the Actions and Laws as well as any Man in the Place; He professed that he saw so much, that he would not have a hand in my Sentence for all the Gold that could lie in *Westminster-Hall*. I must say for mine own part, and in my Conscience I believe it, if they do not repent, the Lord will call them to an account for this Day's Work, I believe they have gone against God, and his Laws, and the Laws of Nations; I believe so, I speak not this from a bitter Spirit; the Lord of Heaven forgive all them that ever had a hand in it, as now I desire Mercy when I shall come before the Lord; I look upon them as a Company of poor Instruments that the Lord knows how to deal with, and will call to account; it will be time enough when they come to lie upon their dying beds: The Lord grant that my Blood may not stand between them and Mercy when they put up their Prayers, that nothing concerning me may stand in the way of all the Mercy that their Souls shall stand in need of: Truly, if you will believe me, I would not leave this Scaffold to enjoy all the Pleasures that this World can give, I would not change my Condition with them; not with my Witnesses, not with my Judges I would not change my Condition; my Conscience tells me, and so I speak, I forgive them, the Lord of Heaven lay not this great Sin to their Charge; let all the People of God so pray; they will one Day see what it is to lose a good Conscience; and that it is better a great deal to have the Light of God's Countenance, than to have a Conscience upon the Rack: They will one Day see, that there is nothing to be feared but Sin and Wrath; and what a Comfort and Happiness the Peace of a good Conscience is, the Lord shew it you.

I am brought here to die for Treason; for plotting against the State: and this is such a Treason as is proclaimed to all the World; such a Plot as was never before: blessed be God, I am of another mind; I should appear sadly before God, if my Conscience told me what hath been represented: But I must needs declare my Opinion without Offence to any; It is a pretended Plot, to beget a greater Plot: God grant that it be not so; a Plot, I fear, to destroy all Church-Government, and the Faithful of the Lord and the Godly: For other Plots I understand none; I profess in the Presence of God, I know of no Plot, or had a hand in any Plot: I would not for ten thousand Worlds be guilty of the Blood of any Man: I am sensible how many thousands, and ten thousand thousands of Sins I have committed, as the number of Minutes of one hundred thousand thousands of Days; that I am sensible of, and desire to bring them before the Lord to stone them to death, and to pour out Floods of Tears for them before this that I am to die: But I am put now to appeal to the righteous God, whither I am going, to stand before the Bar of an impartial Judge, that knows the Intents and Thoughts of my Heart, and what all my Endeavours have been, I never had any other Thought than the Honour of the Gospel and Religion, and to bring these precious things into the Channels that the Lord would have them in. This was my Desire.

Not long since I told a Gentleman (now in Heaven) that so great is the Wound that it breaks my Heart, to see the wonderful Scorn and Contempt that lies on the Face of Religion in the

Eyes of Papists, Turks and Heathens, and all reformed Nations, that I profess I have sometimes wish'd to have swim'd out of my Chamber in Tears, and said to the Gentleman, that it was a Mercy if ever the Lord would find a Means to wash away the Stain of Scorn and Contempt of the Gospel, though it were with the Blood of his Ministers and faithful Servants: Who knows what this Day's Work may do? who knows what God hath for this Land? Let none despise the Day of small things; if it be Clay and Spittle, if God take it in his Hand, it shall cure the Blind: What do we know what the Blood of two Men may do to fill up the Measure of Blood? what the Blood of two Men may do towards all the Prayers and Endeavours of God's People? therefore be not troubled. But I pray give me leave: whatsoever is written concerning me, or the blessed Servant of God who is gone before me, and now singing Hallelujahs to all Eternity, this Day's Work will be written in Heaven, it will be written by the Lord Jesus: Suffering for God and Religion, confident I am you will find it so. I can look in the Face of God (excepting my Weakness and Failings) that in all this Business I had no ill Intention: you are to believe a dying Man: I am sensible what it is to die to God, to the Ocean of Eternity; to go to stand at his Bar: Believe me, believe me; I profess before God, Angels and Men, I know not what I die for this Day: whatever Reports do say, believe the Words of a dying Man: I am confident the *Odium* of this Day's Work (were an Angel of Heaven to write a Book) will never be washed off: that this Day's Work will lie upon some: the Lord grant they may see their Sin; and repent in time.

But let me say a little further: I confess I cannot but wonder, how the Men now in Power can look any Christian in the Face, my Conscience tells me, that it is the Original of all Plots, that hath torn the Nation asunder, and the Kingdom, and the Liberty, and the Profits asunder: whatsoever belongs to Christians and rational Men, is all torn from us; Have they not thrown the three Kingdoms into that Misery, that I am confident all the Enemies of the Church could not have done the like? but rather how shall they be able to look the great God in the Face, when he shall make Inquisition for Blood? To whose Door shall all the Blood of *England*, and *Scotland*, and *Ireland* return? Who knows not, that within these three Years there was the most glorious promising Morning that ever looked *England* in the Face? how comes it to pass that we have such Days of Trouble and Misery? God knows who hath had a hand and been Instruments in it. He knows that these are the Plotters with a witness: These are the *Egyptians* that all the People of God groan under: and all ———

Then the People interrupted him, and some said He is going to die with a Lye in his Mouth, Mr. Sheriff. When they were quiet he went on thus.

I must needs say, that the Blood that was shed in *Queen Mary's* Days was a delightful Sight and Persecution, and it was a pleasant Sight to Antichrist in the Bishops Time, and there have been many delightful Sights of late that I will not speak of, because it gives Offence; but the most joyful

joyful sight that ever Antichrist saw, he beholds this day in the blood of the faithful Ministers and Servants of God; and now I come upon the Scaffold to fight this bloody Field, the Lord grant I may be enabled to overcome it.

I confess, I believe it is a sad sight to the People of God, to see all their Prayers, Fastings, and Tears come to this, to see the piercing Sword thrust into their Bowels; but I desire them to take heed of repining and murmuring: look who stands on the top of the ladder, and not on the next step; see God ordering and contriving all; look not at the hammer, but God; God is the best contriver, he knows what is best for you, and us, and blessed be his Name: I am come hither to witness of his Gory, there is none knows what Glory a suffering condition brings to God, and to his Saints, how many flowers it adds to their Garland, we should see as many run to it, as now shun it. When Christ shall come, and all shall call to the Mountains and Rocks to fall on them and cover them, what a blessed sight will it be for Christ to put forth his hand to them! If they saw but the infinite Reward Christ hath for them in Heaven, it would be sufficient to invite them to come in and suffer for the Lord; nay we may be ashamed we have done no more, nor looked after the gaining of that precious eternal Mansion, where we shall see God, and be in the arms of Jesus Christ, where we shall suffer no more, but enjoy an infinite weight of Beatitude and Glory.

Let the word of a dying man prevail; for the Lord's sake hold to the Truth, part not from the Truth; it were better that Heaven should fall, and the World be on fire, than that God should be dishonoured. The least Error is as a barrel of gun-powder that will blow up the Church and Kingdom; Error draws a Sword against Christ and his Truth; take heed of Error, lest you fall into a gulf that you can never come out of. Ask your own experience, how many Ministers and Professors have fallen into Error, and have gone away with guilt upon their Conscience, and a blot upon their Names: Error is like a chain, if the Soul would go to Christ, it cannot: Error is as a partition, under what gloss soever it come: though in the habit of a Saint or Angel, it is dangerous poison; be like *Athanasius*, own the Truth, though all the World were against it; or as *Martin Luther*, who set himself against all the power and force of Antichrist: own the Truth, though eminent Ministers and Professors that seem eminent in Faith and Grace fall from it, as many do.

I shall now suddenly conclude; I am very unwilling in my condition to speak any thing that may be offensive to any, I have only this to say, and I have done; whatsoever chargeth me nearest, I am confident the Lord will one day clear my innocence; he hath written down the actions and proceedings, and he will one day shew it, and vindicate my name in the sight of all; there will be a Resurrection, and all Men shall be called to an account for all the Reproaches that have been cast upon the faithful of the Lord.

All the Churches of Christ are now in the furnace; the Church of *Scotland*, *England*, and *Ireland*; the Lord grant that all may mourn, and never dare to keep a joyful day, till the Church of Christ be delivered; for God calls, and Christ calls, and the Church calls; and I had rather be

(and let all that fear God chuse rather to lie) in the Den of Dragons, than to be of the number of those that rejoice when the Churches of God are in Sorrow. The Sun shined upon *Sodom* a little while, but presently a shower of fire and brimstone came and destroyed them all; so the prosperity and flourishing state of the wicked is like that: the children of God may sit in darkness for a while, but they shall have light to eternity: wicked Men may rejoice for a moment, but there is an eternal night that will follow, that shall never be blown over: A child of God had rather that all the Lions in the Wilderness should roar, than to have God angry. What were it for a Man, though like *Alexander*, he had prosperity, and had as much peace and glory as *Pompey*, and did ride in as much state as *Cæsar*, when he is under the frowns of God that hates wicked Men, as much as he is hated of wicked Men? The Bush may burn, but it shall never be consumed; the Church hath been 5600 Years under burning, and persecution, and flame, but the Church shall remain to the end of the World.

Thus I have endeavoured to declare my self and my Conscience, though with much brokenness and distemper: and now I am to take my leave of the World, I have only this word to say, that you bear me witness, that whatsoever may be charged on me, or may be said after my death, I am confident God will own me for an innocent person; I never to the best of my remembrance had a hand or a heart, I had rather die a thousand deaths than ever to have a hand in the blood of any of God's People; and now God hath brought me hither and not Men, it is his hand; I again desire to forgive all the World, every Man's Person; the Lord grant that they may have mercy, and I desire, as now I desire Mercy, the Lord to forgive all their sins. I know all things are under God's Dealing and Commission, and this condition had never come to me if God had not seen it good; and though the Ax be so near, if I had more to do for God, and for his Church and People, he would do with the Ax, as he did with that of *Abraham*, God would take hold of it, and could, and blessed be his Name that he takes the ordering of it to himself, therefore I have a quiet Spirit, I have no discontent in the World: and now not to speak of Death, alas that is nothing; but of eternity that my Soul is now lanching into: I am now to enter into Eternity, where to stand with a naked Soul before God, whose Eyes are ten thousand times brighter than the Sun, that cannot endure to behold iniquity: I am now going to God, that will be as a consuming fire, and as armed thunder against me, if I did not see his infinite mercy, and my blessed Saviour standing between me and the Lord, presenting all that I do: if I had all the righteousness of all the Angels in Heaven this day to go to God the Father, woe, and ten thousand woes to me, if I had not interest in the Lord Jesus Christ; if I had the sin of all the Persons that are here, and that have been ever since the Creation, if I come and stand clothed this day with the Righteousness of the Lord Jesus, I am confident I should have pardon for them all, as for one; there lies my strength and my hope, and my happiness. All my Righteousness, and all my Prayers, and all my Performances, are but as filthy.

filthy Rags; and should God draw out the best Sabbath that ever I kept, and the best Prayer that ever I made, and the best Syllable of that Prayer, it would be a Sin; I have Scarlet Sins, Sins of all sorts and ranks, I desire you that you would all mourn and help me this Day: Blessed be the Lord of Heaven for the Benefit and Support of the Prayers of God's People; I am persuaded that there was never any Man in my Condition, that went to Heaven upon the Wings of so many Prayers: Be ye all content, and go home and rejoice before the Lord, be certain that you keep a Day of Thanksgiving for this Day's Work, and our Souls shall bless God to Eternity for this Day's Work; there is not one Drop of Blood could be spared, if it could, it should have been kept; God knows how to answer your Prayers and Tears, though we must not be heard, he hath summoned us to come to the Arm of his Mercy, why do I stay from God longer? I bless God I am coming.

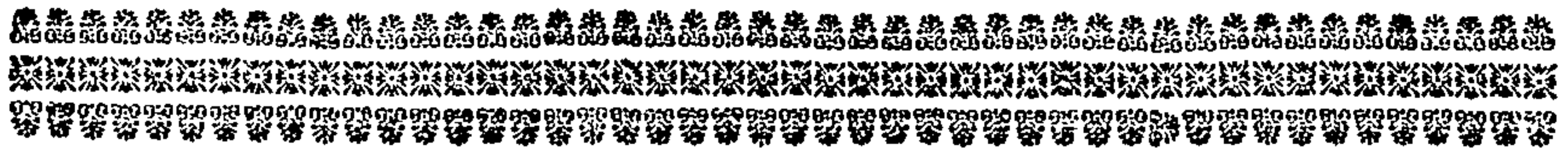
Now I shall only desire as *Samson* when he made his last Request, only this once help me; my call to you all is, that you would pray and mourn for me, this once help me; after a little while your Prayers will do me no good, nor your Tears will do me no good; therefore now for the Lord's sake help me off the Scaffold, lift up a Prayer to God for me, let there be some Compassion, you know not what Fightings may be in me; but I bless God, I hope to walk triumphantly to God presently, but do you act your Parts, your Strength, and your Interest, whatever your Prayers and Tears can do, help me, I beseech you now, for I shall never more need your Help.

And now is Christ taking notice what was cast into the Church's Treasure, he looked upon the Widow's two Mites, Christ is looking this Day

who helps me a poor Creature, and supports me, and saith Christ, Is there none will help him? O pray help me to commend all my Conditions to God, that he would rebuke Satan, and make me die sincerely as a Christian, that I may willingly lie down on the Block, as I would to lie down on a Feather-bed after I am weary, that I may be willing to come to him; pray for me, that all the Graces that my Soul wants they may be strengthened.

Most glorious God, I now into thy Hands commend my Spirit, and all that is in me; O blessed God, I never was in want but thou didst relieve me, I was never in Distress but thou helpedst me, never, never, and I am confident thou wilt not leave me, till thou see my Soul in Heaven. O blessed Saviour! thou wentest up and down on the Earth, thou knowest what it is to suffer, what it is to be betrayed, what it is to be scorned and tempted; blessed Saviour, thou sawest me when I was running from thee; wilt thou leave me now I come to thee? Lord Jesus, I commend all into thy Hands, hoping that after this Day I shall never suffer more, nor never pray more.

His Prayer being ended, he put off his Doublet, and askt for his Friend *Dr. Bastwick*, and embraced him: after that he embraced his Uncle, and others of his Friends on the Scaffold; then laying his Head on the Block, *Dr. Bastwick* came to him, and wish'd him to take off his Rings, which accordingly he did, by raising himself upon his Knees, and gave them to his Uncle; which done, he laid his Head on the Block, and holding up his left Hand, the Executioner at one Blow and a small Rase severed his Head from his Body.



XLIX. *The Case of Capt. JOHN STREATER * on an Habeas Corpus, at the Upper Bench in Westminster-Hall, November, &c. 1653. Mich. & Hil. 5 Car. II.*

The *Habeas Corpus* was read.

BY the Keepers of the Liberty of England by Authority of Parliament. To the Keeper of the Prison of the Gate-House in the Liberty of Westminster, in the County of Middlesex, or to his Deputy, These, Greeting. We command you that the Body of John Streater, in the Prison under your Custody detained, as it is said, together with the Day and Cause of his taking and detaining, by whatsoever Name the said John is called therein, you have before us in the Upper Bench at Westminster, Wednesday next, after the Morrow of St. Martin; to undergo and receive those things which our said Court of Upper Bench shall then and there order

concerning him in this part. And this you must not omit at your peril. And have you then this Writ. Witness Henry Rolle at Westminster, the 12th of Novemb. in the Year of our Lord 1653.

By the Court.

Ex. Broughton.

Capt. *Streater*. My Lord, I desire that this Writ with the Return may be filed.

† Judge. What say you, Mr. *Prideaux*?

Prid. Nothing.

Judge. Let it be filed. Have you any Counsel?

Capt. *Streater*. Yes, my Lord.

Judge. What do you say to it?

Capt. *Streater*. I desire to have a Copy of the Return, and that I may be bailed.

* *Style's Reports*, 397.

† *Lord Chief Justice Roll*.

Judge. It cannot be: you are committed by the Parliament, and you must shew Cause first.

Capt. Streater. I am ready: I desire to speak to it now, both I and my Counsel.

Mr. Twisden. I was a Counsel for the first part of the Return, but not for this.

Judge. What say you?

Mr. Freeman. I desire he may have a Copy of the Return.

Judge. Do so, and let him be here again on Friday next: let it be so.

Capt. Streater. I desire, my Lord, I may not be put to the trouble to sue for a new *Habeas Corpus*.

[And then *Mr. Streater* not being permitted to speak any more, he was taken away by the Marshal of the Court of the Upper Bench, and carried to the Prison of the Upper Bench in *Southwark*.]

Colonel Barksted then appeared upon *Lieut. Col. Lilburne's Habeas Corpus*, and gave this following Reason for his not bringing the Body of *Lieut. Col. Lilburne*.*

' According to my Orders, my Lord, and the
' Return of the *Habeas Corpus*. I brought the
' Body of *Lieut. Col. John Lilburne* on Monday
' to the Court; at which time I was ordered to
' attend the Court again with him here as this
' Day. But this Morning I received an Order
' from the Council of State to the contrary:
' And here it is, my Lord.'

Clerk. *Wednesday, Novemb. 23.*

Whereas the Body of Mr. John Lilburne, by an Order of Parliament, was committed to the Tower for the Peace of the Nation; and whereas there was an Order to the bringing of him forth thence to the Upper Bench this day: It is ordered by the Council of State, that they do not bring him, but that he there abide the Pleasure of the House.

Mr. Lilb. Couns. My Lord, on Monday it was agreed that they should bring him again on *Wednesday*; and I have no Instruction from my Client, for I have no Access to him, nor he to me.

Judge. Well, pray advise with your Client.

Mr. Lilb. Couns. My Lord, I desire to have an *Alias Habeas Corpus*.

Baxt. I have only learned, my Lord, to obey Orders, and I shall obey them.

Judge. You do well. The Council of State have a Reason for what they do in this Business.

Mr. Lilb. Couns. My Lord, when must we attend at Court?

Judge. On Saturday.

The Return of the *Habeas Corpus* for *Captain Streater* being filed, the Cause of Imprisonment shewn in the Return was grounded upon two Warrants: first from the Council of State.

THESSE are to will and require you to take the Body of *Streater*, and him you shall safely keep Prisoner in your Prison of the Gate-House; he being committed for publishing of seditious Pamphlets against the State: Of which you

are not to fail. And for so doing this shall be your sufficient Warrant. Given at the Council of State sitting at White-hall, the 12th Day of September, 1653.

To the Keeper of
the Gate-House.

S. Moyer.
R. Tichburn *Presid.*
R. Lawrence.
John Hewson.

The second Warrant was signed by the Speaker, by Order of the Parliament.

BY virtue of an Order of Parliament, bearing date this present 21st Day of November, These are to will and require you to receive and take into your custody the Body of *John Streater*, and him to keep and retain in safe custody, until he shall be delivered by Order of Parliament. Whereof you are not to fail, as you will answer the contrary at your peril. Given under my Hand this 21st of November, 1653.

To the Keeper of
the Gatehouse,
Westminster.

Francis Rous *Speaker.*

Upon the reading thereof in Court, this Rule following was ordered to be entered.

Wednesday next after eight Days of St. Martin, 1653. The Gate-House, Westminster.

THE Defendant was this day brought into this Court, by virtue of a Writ of *Habeas Corpus*, to undergo, &c. under the Custody of the Keeper of the Prison of the Gate-House. And it is ordered by the Court, that the *Habeas Corpus* and the Return thereof be filed, and that the said *Streater* have Copies of the said Writ and Return, and that the said *Streater* be committed to the Custody of the Marshal of this Court, and that he have the Body of the said *Streater* in Court upon Friday next, upon the Motion of *Mr. Freeman*.

By the Court.

The second Appearance of *Captain Streater*, on Friday the 23d of November 1653, by virtue of an *Habeas Corpus*, and the Rule aforesaid of the Court of Upper Bench of the 21st present.

Captain *Streater* being at the Bar, the Clerk read the Return, which was only the Keeper's Answer to the *Habeas Corpus*, which requireth him to shew cause why the Prisoner is detained in Prison. He in the Return citeth the Warrant, Order, or *Mittimus* for Commitment, and certifieth that is the Cause contained in them, and none other.

The Return being read, the Judge asked *Captain Streater* what he had to say to the Return, and who was his Counsel.

Capt. Streater. *Mr. Norbury*, *Mr. Freeman*, and *Mr. Twisden*, are Counsel with me.

Judge. What say you?

Mr. Twisden. I was a Counsel for the first part, but not for the second, for publishing scandalous Pamphlets. If there be no more in it, he may be bailed.

Judge.

Judge. No, there is no more in it. What say you, Mr. *Freeman*?

Mr. Freeman. My Lord, as to the second part of the Return, it is in these words: *These are to will and require you to take into your Custody the Body of John Streater, and him safely keep, till he shall be delivered by order of Parliament.* My Lord, every Return ought to have these two things in it; the Cause, and how long he shall be a Prisoner: and so you have it in *Magna Charta*, p. 54. My Lord, all Acts of Parliament against the Laws of the Land, are in themselves void. The Law is above the Parliament.

Judge. Good Sir, do not stand to repeat these things before us.

Mr. Freeman. My Lord, I do know it; they may pass their Acts according to Law, but not against Law. The Lord *Dyer* hath it so in his Reports.

Judge. When we are in examination of a Prisoner, will you come and overthrow the Acts of Parliament?

Mr. Freeman. My Lord, I refer it to your Lordship's Judgment, whether this Gentleman ought to be kept in Prison without Cause shewn.

Judge. What say you, Mr. *Norbury*?

Mr. Norbury. My Lord, we must look to see if the Return be true: If it be not, we have an Action of the Case against them that made it false. And tho' we will not say that is false, yet here is no Offence recited at all. And, my Lord, all the Acts are the Acts of this present Parliament; and we look on them to be, or ought to be, for the Liberty of the People.

Judge. What have you to say to the second part of the Return?

As to the first part of the Return, Mr. *Prideaux* said he should say nothing unto it; therefore the Judges advise Captain *Streater* to speak to the second part of the Return.

[Now for that the Argument that Captain *Streater* had prepared to shew the Insufficiency of the first part of the Return, may be of great use, and fit for publick View, it is thought fit to be inserted here; and after it, his Argument upon the second part of the Return, the which he delivered with an audible Voice at the Bar: With the Attorney-General's Plea thereto, and the Judges Judgment thereupon.]

Captain Streater's Argument to the first Part of the Return.

MY Lord, I being brought to this Bar by virtue of a *Habeas Corpus*, which requireth (by virtue of the Law, which is the Supreme Authority of *England*, and only Authority of Parliaments, and all Courts of Judicature) the Cause ought to be shewn why I am detained a Prisoner upon the Return. The first Part mentioneth a Cause, tho' not a lawful Cause: the second Part sheweth no Cause.

My Lord, the Intent in Law of an *Habeas Corpus*, is to relieve Prisoners, notwithstanding special Commands for Imprisonment, as appeareth by the Act of Parliament the 17th of the late King, intituled, *An Act for the abolishing the Star-Chamber, and regulating the Council-Table*: which ordaineth, that notwithstanding special Commands for Imprisonment, the Party so imprisoned shall by a *Habeas Corpus* be brought before the

Judges of one Bench or other. And if the Cause of his Commitment be legal, he shall be remanded to the Prison from whence he came; if no Cause (that is to say, no lawful Cause) appear, then the Prisoner is to be set at liberty; if it be doubtful, then the Prisoner is to be bailed.

My Lord, with these agree the learned Arguments of Sir *Edward Coke*, Sir *Edward Littleton*, and Mr. *Selden*; together with the Resolves of the Commons in Parliament (1628) thereupon.

And the second Part of *Institutes*, fol. 52. *The Warrant or Mittimus ought to contain a lawful Cause.*

The Writ of *Habeas Corpus* is the Water of Life, to revive from the Death of Imprisonment.

Sir *Edward Coke* in his third general Reason why a *Habeas Corpus* is to remove the Body, notwithstanding of special Commands, saith, *That Imprisonment is accounted in Law a Civil Death, where a Man is deprived of Society, of Wife, House, Country, Friends; and liveth with wicked and wretched Men.*

The Writ of *Habeas Corpus*, and the Benefit thereof by Law (which is the undeniable Right of every *Englishman*) is called *The High Point, the only Point*. Nay the Commons of Parliament of the 4th of the late King, in the Conference with the Lords, say that they had redeemed the Body of Liberty, by clearing this Point: that is to say, That in case one be committed by virtue of special Command, he shall have the Benefit of the Writ of *Habeas Corpus* to bring his Body, with the Cause, before the Judges of either Bench; where if it be found a lawful Cause, he shall be remanded; if no Cause, delivered; if it be doubtful, then to be bailed.

My Lord, I shall make it evidently appear, when I come to make my Exceptions, that there is no lawful Cause shewn in the Return to the *Habeas Corpus* why I should be a Prisoner.

With your Lordship's Favour, I shall speak one Word or two of the Law of *England*; I shall make use of it anon. It may not improperly be said, it is written by the Finger of God: it is not unlike (in that where indeed the Perfection of it lieth) unto the Laws of the Eternal Lawgiver; which is, it is as well binding to the Lawgiver, as to those that are to give obedience unto it.

Anno 42 Edw. 3. chap. 3. No Man shall be proceeded against, but according to the old Law of the Land: There shall be nothing done to the contrary, if it be, it shall be void.

If this serve not my turn, I am sure there be enough that speak the Language I would have them, that say, Be it so and so enacted, and not otherwise.

First, I observe here they command Law.

Secondly, That they command, that none shall command otherwise but by Law.

God himself bindeth himself by his Laws: he is as well bound, as he bindeth those several Beings he gives Laws unto, let them be Eternal, Moral or Natural. If he maketh a Promise, he performeth it: he must not, he doth not but perform it. If he create a World, and willeth it to continue, he must support it in its Beauty and Strength, and by his Providence support the several Beings in it.

My