

Treason by Words in the Fifteenth Century

It has been generally held that treason by words was an invention of the reign of Henry VIII.¹ Two often-quoted cases occurred under Edward IV, those of Walter Walker and Thomas Burdett,² but they have been regarded as extraordinary, and later writers have pointed out that the second at least was not one of treason by words only.³ Hale⁴ refers without comment to two cases under Henry IV, and a later annotator of the *Pleas of the Crown*⁵ adds a third in which words alone were held to constitute high treason, but these cases have been ignored or explained away. In 1628, in Pine's case, the judges had a number of precedents collected showing how words had been dealt with in the past,⁶ and decided

that unless it were by some particular statute, no words will be treason ; for there is no treason at this day but by the statute 25 Edw. III, c. 2 . . . and the indictment must be framed upon one of the points in that statute : and the words spoken here can be but evidence to discover the corrupt heart of him that spake them ; but of themselves they are not treason, neither can any indictment be framed upon them.

For the statute of 25 Edward III (1352) two great virtues have been claimed : it requires an overt act before the offence can amount to high treason,⁷ and it does not include in the list of treasonable offences a conspiracy to levy war on the king.⁸ In 1397,⁹ however, a statute touched both these points. It enacted that it should be treason to compass the death or deposition of the king, without mentioning the necessity for an overt act, thus seeming to allow words alone to constitute high treason :¹⁰ and to compass the king's death or deposition by words would include conspiring to levy war against him, since this would be the readiest means of deposing him.¹¹ But this statute was repealed by the first parliament of Henry IV, and the statute of 1352 was declared to be the sole standard of treason.¹²

In the third year of Henry IV, however, there were at least five cases of treason which cannot be brought within its pro-

¹ Hale, *Pleas of the Crown* (1778), i. 111-12 ; Stephen, *Hist. of Criminal Law*, ii. 257 ; H. A. L. Fisher, *Political Hist. of England*, v. 346.

² Hale, *op. cit.*, 115 ; Maitland, *Constitutional Hist.*, 228, &c.

³ Holdsworth, *Hist. of English Law*, iii. 255 n.

⁴ *Ubi supra*.

⁵ S. Emlyn, 1778.

⁶ Croke's *Reports*, Charles I, pp. 117-25 ; *State Trials*, iii. 359-68.

⁷ Coke, 3 *Inst.* 14 ; Hale, i. 111.

⁸ Coke, p. 9 ; Hale, *loc. cit.* ; Stephen, ii. 250.

⁹ 21 Ric. II, c. 3.

¹⁰ Stephen, ii. 253.

¹¹ Compare the judges' decision in Essex's case, 1600 : *State Trials*, i. 1337 ; Foster, *Discourse of High Treason*, p. 195.

¹² 1 Hen. IV, c. 10.

visions,¹³ four of them being connected with the affair of the 'false Richard'. In four of them¹⁴ the offence consisted in the speaking of words; in the fifth,¹⁵ in addition to speaking, a letter was produced which the prisoner had shown to some one, and was apparently assumed to have written. Briefly, the charges were that these men had said that King Richard was alive and would shortly return to regain his kingdom, and they had spread the report with intent to withdraw the people from their allegiance to Henry IV. On these grounds they were all condemned and executed as traitors. Whether their offences are regarded as treason by words, or as conspiracy to levy war on the king, they are not covered by the statute of 1352, the sole enacted standard of treason.

The precedents collected in 1628 begin in the twenty-first year of Henry VI, when a woman who had spoken opprobrious words of the king was tried for treason and suffered *peine forte et dure* because she would not plead. Some of the other cases cited are not treason by words only, some end in outlawry,¹⁶ and in some no judgement is quoted, but as no judgement is quoted in those taken from Henry VIII's reign, in which we know that execution followed, it cannot be assumed that the earlier ones failed. A search of the rolls would probably show that the prisoners were condemned. The judgement is quoted, however, in Oliver Germaine's case, in the second year of Edward IV. He was executed with others for conspiring to destroy Edward IV and restore Henry VI; this may be regarded as compassing the king's death or conspiring to levy war on him, but in either case the offence appears to have been committed by words only. The inference is that the statute of 1352, which required an overt act before the offences which it specified could constitute treason, did not supersede the common law, and that by the common law words could constitute high treason and were punished as such. This seems to have been

¹³ Coram Rege Rolls, 3 Hen. IV, Pasch. rot. 12 (second numeration); this is John Sperhauke's case, mentioned by Hale's annotator Emlyn, 1 *Pleas of the Crown*, 115 n., printed below, no. 1; 3 Hen. IV, Trin. rot. 3 (second numeration); Friar Henry Forster; *ibid.*, rot. 4, John Bernard appealed William Balsshalf; *ibid.*, back of rot. 4, case of Nicholas Louth, mentioned by Hale, 1 *Pleas of the Crown*, 115; *ibid.*, back of rot. 5, case of Walter Walton (no. 2 below), mentioned by Hale, *loc. cit.* The trial of the chief offenders is recorded *ibid.* rot. 11, the charge being that of conspiring and imagining to raise a new insurrection, to the intent to kill the king, his magnates, and all his faithful subjects.

¹⁴ Sperhauke, Forster, Bernard v. Balsshalf, and Walton.

¹⁵ Louth.

¹⁶ This was probably the result of non-appearance. For outlawry upon an indictment of treason when the indicted person was beyond the reach of the law, see *Rot. Parl.* iv. 377 b, Owen Glendower; 11 Hen. VII, c. 59, *Statutes of the Realm*, ii. 624, John Slyngesby; 11 Hen. VII, c. 64, *Statutes*, ii. 632, Sir Gilbert Debenham and Sir Humphrey Savage.

the case in the thirteenth century.¹⁷ The statute of 1352 was an attempt to cut down and define the vague common law of treason, and its definite requirement of an overt act seems to indicate that mere words had been treason by the common law. The theory that the government had only the powers definitely allowed to it by statute had not yet arisen, so the old common law could still on occasion be used when the Act of 1352 was insufficient, that Act being held to supplement it and define it on certain points, but not to supersede it.¹⁸ At the end of the fifteenth and the beginning of the sixteenth centuries constitutional theories were changing and hardening. Much of the legislation of Henry VII and Henry VIII was directed to defining and placing on a statutory basis old common law practice, no longer strong enough to stand without that parliamentary sanction which the new theories of government required.¹⁹ Hence treason by words was made the subject of a definite enactment in 1534. Edward VI's first parliament swept away Henry VIII's new treasons, but this very repealing Act re-enacted treason by words in certain cases, though only at the third offence.²⁰ Mary repealed Edward VI's treason legislation,²¹ but she also soon found it necessary to replace treason by words upon the statute-book,²² and it continued to be included in treason Acts under Elizabeth.²³ When these Acts expired or were repealed in the early seventeenth century, treason by words disappeared with them, and Coke²⁴ could hold it to be no part of English law.

ISOBEL D. THORNLEY.

I

Coram Rege Roll, 3 Hen. IV, Pasch. rot. 12 (second numeration).

Anglia. Fait aremembre qe le Joesdy apres le xv du Pask. lan du Regne le Roy Henry puis le Conquest quart le tercie, devaunt le dit Roy a Westm. vient un John Sperhauke de Kardyfe en Gales par sire Henry de Percy Counte de Northumbr. et Conestable Dengleterre et Thomas Pykworth Chivaler Mareschall de commandement du Roy devaunt le Roy mesmes amesnez et la par auctorite et comandement du Roy le dit John Sperhauke devaunt Thomas Couele, Coroner de son bank de record conust les matiers suisdites en la forme qensyfuist. Le dit John Sperhauke dit qe le dysmenge en le fest de Palme Flory lan du Reigne

¹⁷ Pollock and Maitland, *Hist. of English Law*, ii. 507.

¹⁸ Cf. Amos, *Observations on the Statutes of the Reformation Parliament*; and *State Trials*, i. 889 and 892, mentioning a case of seal-treason under Henry IV which was not within the express words of the Act of 1352.

¹⁹ This has been often pointed out by Professor Pollard in his lectures on English constitutional history.

²⁰ 1 Edw. VI, c. 12; cf. 5 & 6 Edw. VI, c. 11.

²¹ 1 Mary, sess. 1, c. 1.

²² 1 & 2 Phil. and Mar., cc. 9 and 10.

²³ 1 Eliz., cc. 1 and 5; 5 Eliz., c. 1; 13 Eliz., cc. 1 and 2; 14 Eliz., c. 1; 23 Eliz. c. 1.

²⁴ 3 *Inst.*, p. 14.

nostre dit tresredoute seigneur le Roy tercie, apres maungier en un ville que feust ore tarde a le count Mareschall iuxt Baldock par un ou deux leucz, il venoit al meyson illeosques dun Taillour aluy disconuz et illeosques la femme du dit Taillour disoit a luy John, veez coment il pluine et quelle troublouse tempest est y cestes iours et tout temps du Roy qorest as este, qar par tout son temps nad este pur sept iours bone ne seisinable temps. Et disoit outre que le Roy qorest ne feust droiturelle Roy mais que le Counte de la Marche est Roy de droyt. Et que le Roy qorest ne feust pas fitz a tresnoble Prince John Duc de Lancastre, que dieu assoille, mes que il feust fitz a un Bocher de Gaunt. Et que Oweyn Gleyndour est loial Prince de Gales et de Cornewaille. Et que le Pape envoia un bille en Gales, Cornewaille, et en Engleterre que touz que voillent aider les ditez Count et Oweyn en lour droit suisdite que ils averoient plein indulgence et remissioun de toutes lour Pecchez. Et auxint ele disoit que nulle Coler du Roy de sa livere serroit use a fyn dun demi an. Et disoit outre que le Roy nad pas tenuz covenant a sez communes, qar il a son entre en Engleterre eux promist qils serroient quietez et discharges de toutz maners des paiemens et Custumez si non pur cez guerrez doutre le mier. Mes en le mesne temps il ad coille molt de tresore de ses communes et rien en profit du Roialme ent ad fait si non tue sez seignours et plusours autres bones hommes. Et auxi que le Roy ne voilloit obeier as comandementez du Pape de Rome, que pur celle que toutz les malveysez tempestez ount avenuz par plusours iours passez. Et outre que ele disoit que ele oia toutz les matiers suisdites dun Frere ou dun heremite que feust ore tarde en prisone en Westm., ou que feust lun ou lautre, ne ou il demeert le dit John Sperhauk dit qil ne siet. Et sur ceo le dit John Sparhauke devaunt le dit Corouner conust que le lundy prochein apres le dit dismenge apres Maunger que il touz les matiers avaunt ditz a la ville de Mordon en le counte de Cantebr. de sa propre Test science et volute counta apertement a un John Taillour et a un povere mendinant et sa femme et a plusours autres de mesme la ville en affirmant et avowant les ditez paroles auxi pur veritables, al entent de exciter le poeple et troubler en ceo cas envers lour seignour liege suisdite. Et plusours des queux tresons le dit John conust qil disoit a dit Roy en sa propre person apertement come par la recorde du ¹ nostre seignour le Roy contenuz en un bille qest affilez entre les enditesmentez de sest terme de Pask. plus pleinement appiert.² Super quo predictus Iohannes Sperhauke committitur Willelmo Fynbarwe Marescallo salvo custodiend. periculo quod incumbit. Super quo postmodum, videlicet die Iovis proximo post tres septimanas Pasche extunc proximo sequentis venit predictus Iohannes Sperhauke per eundem Marescallum ductus. Et viso recordo predicti Coronatoris in hac parte quesitum est a prefato Iohanne Sperhauke si quid pro se habeat vel dicere sciat quare ex cognitione sua predicta ut proditor domini Regis et regni sui Anglie morti adiudicari non debeat, qui dicit quod non. Per quod viso recordo predicti Coronatoris in hac parte habitaque super eisdem cum consilio domini Regis plenarie deliberacione videtur Curie et toti consilio domini Regis quod ex quo idem Iohannes ligeus homo domini Regis sit et ipse verba predicta in publico ex suo proprio capite, sciencia et voluntate narravit

¹ sic.² Ancient Indictments, bundle 189, no. 27.

tanta mala inhonesta de eodem Rege, loquendo, affirmando et quasi pro vero advocando ad intentionem et voluntatem excitandi ligeos ipsius Regis de eorum bono zelo et voluntate contra dominum suum ligeum naturaliter debitum que alta et maxima proditio sunt. Consideratum est quod idem Iohannes Sperhauke ut proditor domini Regis et regni sui Anglie tanta facinora dicendo et advocando quod ipse ut proditor suus trahatur a Turri London. per medium Civitatis predictae usque Tybourne et ibidem suspendatur. Et postmodum decapitetur. Et quod caput sic abscisum ponatur super Neugate London. in conspectu omnium per ibidem transeuncium et illud intuendum exemplum. Et quod idem Iohannes Sperhauke forisfaciat omnia terras, bona et catalla sua, etc.

II

Coram Rege Roll, 3 Hen. IV, Trin. rot. 5 (second numeration).

Anglia. Frater Walterus Walton de Leycestre pro diversis prodicionibus unde impetitus est in Turri London. nuper detentus et per consilium domini Regis coram ipso Rege apud Westm. per Thomam de Rempston Constabularium Turris predicti die Veneris proximo post Octabas sancte Trinitatis isto eodem termino venit ductus, qui committitur Marescallo. Et super hoc idem Frater Walterus coram Thoma Couele Coronatore domini Regis coram ipso Thoma per consilium domini Regis ad eundem Nicholaum³ pro prodicionibus predictis examinandum misso, cognovit de recordo in hec verba. Frere Wauter Walton de Leycestre conust qil venoit a Westm. a Meistre Rauf Selby comoigne de Westm. le dymeynge prochein devaunt le fest de Pentecoste darrein passe et demaunda de luy en sa Studie et puis en sa Chambre quels novels; et ovesque celle mesme Frere Wauter disoit qil oia en diversez parties dengleterre et auxint dun homme de Gales que le dit nadgairs Roy fuist en plein vie; et le dit Meistre Rauf disoit qe par profecie le dit Roy Richard serroit en plein vie; et le dit Frere Wauter disoit aluy qe Meistre Roger Frysby Frere de Leycestre disoit a dicte Frere Wauter mesme le counte. Et le dit Meistre Rauf disoit a luy qe fuist un seigneur del mounde, et nomma le seigneur fitzWauter, qe maunera⁴ qe Mil liveres qe ceo fuist voir qil purroit oier bonez novels de luy. Et outre le dit Meistre Rauff disoit ales a monsieur Roger Claryngdon qest Frere du dit nadgairs Roy en Suthwerk, et il vous sciet countera tout plein la verite su celle partie, par quoy le dit Frere Wauter le Meskerdy adonques prochein susvant venoit al Meson du dit monsieur Roger en Suthwerk et demaunda de luy en un bashalle la quels novels. Et le dit monsieur Roger disoit pur certayn adit Frere Wauter qe le dit nadgairs Roy fuist en plein vie et qil fuist ove Oweyn Gleyndour en Gales et qe le dit Oweyn ferroit le dit Frere Wauter parler ove le dit nadgairs Roy. Et tant tost le dit Wauter ala a Leycestre et la tout celle matier counta a dit Frere Roger Frysby et a un Frere Richard Frysby son Frere et la par lour assent pur accomplier lour maveis et traiteours volunte et purpos ils ordinerent un Frere Roberd Colman pur aler ove le dit Frere Wauter Walton en Gales al compler lour purpos suisdit a cause qe sembla a dit Frere Roger Frysby qe le

³ sic.

⁴ sic.

dit Frere Roberd Loudam⁵ feust trop juns et de tendre age a ascun resistance faire. Et auxint le dit Frere Wauter conust qe il est faux a nostre seigneur le Roy. Et le dit Frere Wauter Walton conust outre qe le dit Frere Richard Frysby maunda pur le dit Frere Wauter en sa Chambre a Leycestre et pur un seigneur John qest un leche en Leycestre et pur le dit Frere Roger Frysby et la furent ensemble en graunt conseil le dit Frere Wauter adonques countier a eux toutes les matereiz suisditez et qant ils avoient oiez ils sei reioisoient de oier pur celle nouvelle. Et conust outre qe son purpos et volunte feust qil voilloit avoier eide le dict Roy Richard de tut son poer encontre nostre seigneur le Roy qorest. Quam quidem cognitionem predictus Coronator hic in Curia recordatur et eam coram ipso Rege liberavit. Super quo predictus Walterus Frater venit per Marescallum ductus; et viso recordo Coronatoris predicti in hac parte, idem Frater Walterus instanter allocutus est si quid pro se habeat vel dicere sciat quare ex cognitione sua propria predicta ut proditor domini Regis et regni sui Anglie pro premissis morti adiudicari non debeat: qui dicit quod non, set se ponat inde in gratiam domini Regis. Per quod consideratum est quod idem Nicholaus⁶ ut proditor domini Regis et regni sui Anglie tanta falsa et verba inhonesta de domino suo ligo dicendo et advocando et que quidem verba per eundem Fratrem Walterum ut evidenter apparet dicta fuerunt ad intensionem⁷ et finem excitandi populum domini Regis contra dominum suum ligo. de eorum bono zelo ei naturaliter debito et contra; et quod verisimile est finalis destructio regni Anglie in hac parte consequeretur: quod ipse distrahatur a Turri London. per medium Civitatis predictae usque Tyburne et ibidem suspendatur et decapitetur et quod corpus suum postmodum in quatuor partes dividatur, etc.

The Declaration of Sports for Lancashire (1617)

JAMES I's declaration on the subject of sports permissible on Sundays, often loosely called the Book of Sports, has always been printed and quoted by historical writers in the form in which it was issued for the kingdom at large on 24 May 1618.¹ It was known of course from the preamble to that document that it was based on a similar declaration made for Lancashire only on the king's return from Scotland in the previous summer. But it seems invariably to have been assumed (1) that no copy of the Lancashire declaration had survived, and (2) that it did not differ from the reissue for general use in any important respect. Both these assumptions, it is now possible to state, were ill-founded.

A contemporary copy of the declaration in its first form exists

⁵ *sic.*

⁶ *sic.*

⁷ *sic.*

¹ And even this seems only to exist in the reissue by Charles I in 1633, which was printed in that year and afterwards in Wilkins's *Concilia* (iv. 483 *seqq.*). I quote from the copy given in S. R. Gardiner's *Constitutional Documents of the Puritan Revolution*, pp. 31-5.