

brate, and perform a certain number of Masses, (then and there agreed on among them) for the good of the Soul of the said *Thomas Pickering*, and should therefore pay to the said *John Grove* a certain sum of Money, (then and there also agreed on among them :) And further, that the said *Thomas Pickering* and *John Grove* upon the Agreement aforesaid, then and there falsely, deceitfully, advisedly, maliciously, devilishly, and traiterously did undertake, and to the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors of our said Sovereign Lord the King unknown, then and there falsely, deceitfully, advisedly, maliciously, devilishly, and traiterously they did then and there promise, that they the said *Thomas Pickering* and *John Grove* our said Sovereign Lord the King would kill and murder: And further, that they the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, and other false Traitors of our said Sovereign Lord the King unknown, afterwards (to wit) the said four and twentieth Day of *April*, in the said thirtieth Year of the Reign of our said Sovereign Lord the King, at the said Parish of *St Giles in the Fields* in the County of *Middlesex* aforesaid, falsely, deceitfully, advisedly, maliciously, devilishly, and traiterously, did severally plight their Faith every one to other of them, and did then and there swear and promise upon the Sacrament, to conceal and not to divulge their said most wicked Treasons, and traitorous compassings, consultations, and purposes aforesaid, so among them had, traiterously to kill and murder our said Sovereign Lord the King, and to introduce the *Roman Religion*, to be used within this Kingdom of *England*, and to alter and change the true *Reformed Religion*, rightly and by the Laws of this Kingdom of *England*, in this same Kingdom of *England* established: And further, that they the said *Thomas Pickering* and *John Grove*, in execution of their said traitorous Agreement, afterwards (to wit) the same 24th Day of *April*, in the said 30th Year of the Reign of our said Sovereign Lord the King, and divers other Days and Times afterwards at the said Parish of *St. Giles in the Fields*, in the said County of *Middlesex*, falsely, deceitfully, advisedly, maliciously, devilishly, and traiterously they did prepare and obtain to themselves, and had and did keep Musquets, Pistols, Swords, Daggers, and other offensive and cruel weapons and instruments, to kill and murder our said Sovereign Lord the King: And that they the said *Thomas Pickering* and *John Grove* afterwards, to wit the said four and twentieth Day of *April*, in the said thirtieth Year of the Reign of our said Sovereign Lord the King, and divers days and times afterwards with Force and Arms, &c. at the said Parish of *St. Giles in the Fields* in the County of *Middlesex* aforesaid, and in other places within the said County of *Middlesex*, falsely, deceitfully, advisedly, maliciously, and traiterously, did lie in wait, and endeavour to kill and murder our said Sovereign Lord the King; and further, that they the said *Thomas White* otherwise *Whitebread*, *William Ireland*, *John Fenwick*, and other false Traitors unknown, afterwards (to wit) the said 24th day of *April* in the said thirtieth Year of the Reign of our said Sovereign Lord the King, at the said Parish of *St. Giles in the Fields*,

in the County of *Middlesex* aforesaid, falsely, deceitfully, advisedly, maliciously, devilishly, and traiterously, did prepare, persuade, excite, abet, comfort, and counsel four other Persons unknown, and Subjects of our said Sovereign Lord the King, traiterously to kill and murder our said Sovereign Lord the King, against the duty of their Allegiance, against the peace of our said Sovereign Lord the King, his Crown and Dignity, and against the form of the Statute in that behalf made and provided.

Upon this Indictment they have been arraigned, and thereunto have severally pleaded, *Not Guilty*, and for their Trial have put themselves upon God and their Country, which Country you are.

Your Charge therefore is to enquire, whether they or any of them be guilty of the High-Treason, whereof they stand indicted, or not guilty. If you find them or any of them guilty, you are to enquire what Goods or Chattels, Lands or Tenements, those you find guilty had at the time of the High-Treason committed, or at any time since. If you find them, or any of them not guilty, you are to enquire whether they did fly for it, if you find that they or any of them fled for it, you are to enquire of their Goods and Chattels, as if you had found them guilty. If you find them or any of them not guilty, nor that they, nor any of them fled for it, say so, and no more, and hear your Evidence.

Make Proclamation of Silence, on both sides.  
Which was done.

Then Sir *Cresswell Levinz*, one of the King's Learned Counsel in the Law, opened the Indictment, thus:

Sir *Cres. Levinz*. May it please your Lordship, and you Gentlemen of the Jury: These Prisoners at the Bar, *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, do all stand indicted of High-Treason; for that whereas they, as false Traitors, meaning and designing to disturb the Peace of the Kingdom, to levy War within the Kingdom, to make miserable slaughter against the King's Subjects, to subvert the Religion established by the Law of the Land, to introduce the Superstition of the Church of *Rome*, and to bring to death and final destruction, and to murder and assassinate our Sovereign Lord the King, they did, to effect these things, the four and twentieth of *April* last assemble themselves together, with many other false Traitors yet unknown, in the Parish of *St. Giles in the Fields* in the County of *Middlesex*, and there, being so assembled, the better to effect these designs did make agreements and conspire together; first, that *Pickering* and *Grove* should kill the King, and that *White* and the rest of the Persons that stand indicted, with many other Traitors, should say a great number of Masses for the Soul of the said *Pickering*, I think thirty thousand, and they did further agree there that *Grove* should have a great Sum of Money, and upon this Agreement *Grove* and *Pickering* did undertake and promise they would do this Fact, and did then and there take the Sacrament and an Oath to one another upon the Sacrament, that they would conceal these

these their Treasons, that they might the better effect them; and that in pursuance of this, *Grove* and *Pickering* did divers times lie in wait to murder the King, and did provide arms to do it; and the Indictment further sets forth, that *White*, and *Ireland*, and *Fenwick*, and many other Traitors yet unknown, did procure four other Persons yet also unknown, for to kill the King, against the peace of our Sovereign Lord the King, his Crown and Dignity, and against the form of the Statute. These are the heads of those Facts for which they stand indicted: They have all pleaded Not guilty, if we prove them or any of them guilty of these or any of these Facts according to the Evidence you shall have, we hope you will find it.

Sir *Samuel Baldwin*, one of his Majesty's Serjeants at Law, opened the Charge as followeth.

Sir *Samuel Baldwin*. May it please your Lordship, and you Gentlemen of the Jury, the Persons here before you stand indicted of High-Treason, they are five in number, three of them are *Jesuits*, one is a *Priest*, the fifth is a Lay-man, Persons fitly prepared for the work in hand.

Gentlemen, it is not unknown to most Persons, nay to every one amongst us, that hath the least observed the former times, how that ever since the Reformation there hath been a Design carried on to subvert the Government, and destroy the Protestant Religion established here in *England*; for during all the Reign of Queen *Elizabeth* several attempts were made by several *Priests* and *Jesuits*, that came from beyond the Seas, (though the Laws were then severe against them) to destroy the Queen, and alter the Religion established here in *England*, and so introduce Popery and the Superstition of the Church of *Rome*.

But the Conspirators from time to time, during all the Queen's Reign, were disappointed, as *Edmond Campion* and several other *Jesuits*, who came over in that time, and were executed, and did suffer for their Treasons according to Law; At length, about the latter end of the Queen's time, a Seminary for the *English Jesuits* was founded at *Valladolid* in *Spain*, and you know the Employment such Persons have.

And soon after the Queen's death, in the beginning of the Reign of King *James* several Persons came over into *England* from this very Seminary, who together with one *Henry Garnet*, Superior of the *Jesuits* then in *England*, and divers other *English Papists*, hatched that hellish Gunpowder-Plot; whereby what was designed you all know; but as it fell out, these Persons, as well as those in Queen *Elizabeth's* time, were likewise disappointed, and for their execrable Treasons, in the third Year of King *James*, were executed at *Tyburn* and other places.

This is evident by the very Act of Parliament in 3<sup>o</sup> *Jacobi*, in the preamble whereof mention is made that *Creswell* and *Tesmond* *Jesuits*, came from *Valladolid* in *Spain* to execute this Gunpowder-Treason with the Popish party here in *England*.

And, Gentlemen, after this Treason, so miraculously discovered, was punished, one would not have thought that any future Age would have been guilty of the like Conspiracy; but it so falls out that the Mystery of Iniquity and

*Jesuitism* still worketh, for there hath of late been a sort of cruel and bloody-minded Persons, who, in hopes to have better success, than they had in former times, during the Reigns of Queen *Elizabeth* and King *James*, have set on foot as horrid a Design as that of the Gunpowder-Treason; I can resemble it to no other Plot, or Design, or Treason in any other time, and truly it does resemble that in many particulars: I may say, it doth at the least equal it, if not exceed it.

I shall mention two or three particulars in which this Plot doth resemble that.

*First*, That horrid Design was to take away the Life of the then King, to subvert the Government, to introduce the Popish Religion, and to destroy the established Protestant Religion in *England*, and so, Gentlemen, we think our Proofs will make it out, that in each of these particulars this Design is the same that that was.

*Secondly*, The great Actors in that Design were *Priests* and *Jesuits* that came from *Valladolid* in *Spain* and other places beyond the Seas. And the great Actors in this Plot are *Priests* and *Jesuits*, that are come from *St. Omers*, and other places beyond the Seas nearer home than *Spain*.

*Thirdly*, That Plot was chiefly guided and managed by *Henry Garnet*, Superior and Provincial of the *Jesuits* then in *England*; and the great Actor in this Design is Mr. *Whitebread*, Superior and Provincial of the *Jesuits* now in *England*; so that I say in these several Particulars it does resemble the GUNPOWDER-PLOT.

Gentlemen, In this Plot, of which the Prisoners now stand indicted, several Persons have several Parts: Some of these Persons are employed to keep Correspondence beyond the Seas, (of which more hath been said in another place, and so I shall not speak of it here;) Others were to procure and prepare Aid and Assistance here in *England*, who were to be ready when there should be occasion to use it. But the great part that These Persons (the Prisoners at the Bar) were to Act in this Conspiracy, was, To take away the Life of our Sovereign Lord the KING, on whose Preservation the safety and welfare of Three Nations (and Millions of Men) doth depend. Now the Facts for which the Five Prisoners stand indicted, I shall open thus:

*First*, They are here Indicted for Conspiring the Death of his Sacred Majesty: They did Agree to take away the KING's Life; and entering into such an Agreement, They Hired some Persons amongst them to do it; and this Agreement was made the 24th of *April* last, 1678.

*Secondly*, There is another Fact they likewise stand Indicted for: That they did Endeavour and Contrive to Change and Alter the Religion Established in the Nation, and introduce Popery in the Room of it. The Manner how to effect this, was thus, if my Information be right; you shall hear that from the Evidence. Mr. *Whitebread* being Resident here in *England*, and Superior of the *Jesuits*, did in *February* last think fit, (being empowered by Authority from *Rome*) to give Summons to the *Jesuits* abroad, at *St. Omers*, and other places beyond the Seas, that they should come over here into *England*, to be ready at *London*, on the Four and Twentieth of *April*,

the day laid in the Indictment, and which is the day after St. George's day; and their design was (as will appear by the Proof) to Contrive how they may *Take away the Life of the KING*: For if that were once done, they thought, in all other Things, their Design would easily be accomplished. After the Summons were out, they were so officious for the accomplishing of this Great End, that between Forty and Fifty Jesuits did appear here at *London* at the time, (for thither they were Summoned) and there the Meeting was appointed to be. At the *White-Horse Tavern* in the *Strand* they were to meet first; but being so great a Number, that they were likely to be taken notice of, if they came all together, it was so Ordered, they should come but a few at a time, and go off in small Numbers; and others should succeed them, till the whole Number had been there. And there were Directions given, and a Course taken, that there should be some Person to tell them whether they should go from thence. After they had met there at several times in the same day, they were appointed, and adjourned to be at several other Places; some of them were appointed to be at Mr. *Whitebread's* Lodging, and that was in *Wild-street*, at one Mr. *Sanders's* House: Others were appointed to go to Mr. *Ireland's* Lodging, which was in *Ruffel-Street*, (and this Mr. *Ireland* was Treasurer of the Society:) And others were to meet at Mr. *Fenwick's* Chamber in *Drury-Lane*; and he was at that time Procurator and Agent for that Society. Others were appointed to meet at *Harcourt's* Lodging; and others at other Places.

When they came there, they all agreed to the general Design of the first meeting, which was, *To kill the King*. Then there was a Paper, or some Instrument to be Subscribed. This was done, and the Sacrament was taken for the Concealment of it. After that, *Whitebread*, *Ireland*, *Fenwick*, and others, did agree that Mr. *Grove* and Mr. *Pickering* should be employed to *Assassinate the King*. One of them (Mr. *Grove*) being a Lay-Brother, was to have Fifteen Hundred Pound, a great Sum; the other, as a more suitable Reward for his Pains, was to have Thirty Thousand Masses said for his Soul. Mr. *Whitebread*, Mr. *Ireland*, and Mr. *Fenwick*, were all privy to this Design; and this was the Twenty fourth of *April*. In *August* after (they being appointed to *Kill the King*, but it not taking Effect, either their Hearts misgave them, or they wanted Opportunity) there was another Meeting at the *Savoy*, where the Witnesses will tell you, four *Irish* Persons were hired for to *Kill the King*. And this was ordered, in case the other Design took not Effect. There was fourscore Pounds sent down to them to *Windfor*, where they were to have done the Fact. After this, other Persons were appointed to do the Execution, and they were to take the *King* at his Morning Walk at *New-market*.

These Persons were all disappointed in their Design. But you shall hear what was the Agreement, how it was carried on, and what Rewards were given to carry it on. We shall acquaint you likewise, that for the bottom of this Design (when so many Jesuits should come over, when they should have so many Consultations, and when they should resolve to *Kill the King*) there could be no less than the Altering of Reli-

gion, and Introduction of Popery here in *England*. And that time, at the first Meeting, they had Ordered, That Mr. *Cary* a Jesuit, as their Procurator and Agent, should go to *Rome*, to act their Concerns there. All which things, and more, will be made out to you by Witnesses produced. There are likewise some other Circumstances that will be material to confirm those Witnesses. We shall produce to you a Letter written in *February* last, about that time that Mr. *Whitebread* sent over his Summons for the Jesuits, to appear here. This Letter was written by one Mr. *Peters*, a Jesuit now in Custody; and 'tis written to one *Tunstal* a Jesuit, to give him notice, That he should be in *London* about the twenty first of *April*, and be ready on the twenty fourth of *April*; That he knew what the Business was; but he did advise him, that he should conceal himself, lest the Plot (by Observation) should be discover'd. We shall likewise produce several other Evidences, to Strengthen and Confirm the Witnesses: We shall first call our Witnesses, and enter upon the Proof.

Mr. *Finch* open'd the Evidence thus:

Mr. *Finch*. May it please your Lordship, and you Gentlemen of the Jury,

Before we call our Witnesses, I would beg Leave once more to Remind you, of what hath already been open'd unto you; The Quality of the Offenders themselves, and the Nature of the Offence they stand Indicted of.

For the Offenders, they are most of them Priests and Jesuits; three of them at the least are so; the other Two, are the Accursed Instruments of this Design: For the Offence itself, 'tis High-Treason.

And though it be High-Treason by the Statute of Twenty Seven *Eliz.* for Men of that Profession to come into *England*; yet these Men are not Indicted upon that Law, nor for that Treason: This I take notice of to you, for the Prisoners sake, that they should not fancy to themselves they suffered *Martyrdom* for their Religion, as some of them have vainly Imagin'd in their case; and for your sakes too, that as at first, it was Treason, repeated Acts of Treason, in these Men; and those proceeding from a Principle of Religion too, that justly occasioned the making that Law: So here you might observe a pregnant Instance of it in the Prisoners at the Bar, That whenever they had an Opportunity, as now they thought they had, they have never failed to put those Principles into Practice.

So now, Gentlemen, As they are not Indicted for being *Priests*, I must desire you to lay that quite out of the Case, and only consider, that they stand here Accused for Treason; such Treason, as were they Lay-men only, they ought to Die for it; though I cannot but observe, they were the sooner Traitors for being Priests.

The Treason therefore they stand Indicted of, is of the highest Nature: It is a Conspiracy to *Kill the King*, and that too with Circumstances so Aggravating (if any thing can aggravate that Offence which is the Highest) that nothing less than the Total Subversion of the Government, and utter Destruction of the Protestant Religion, would serve their Turns. And really, when you consider the Root from whence this Treason

son springs, you will cease wondring that all this should be Attempted, and rather wonder that it was not done.

Mischiefs have often miscarried for want of Wickedness enough; the Horror of Conscience, or else the Malice of the Aggressor not being equal to the Attempt, has sometimes prevented the Execution of it. Here is no Room for any thing of this kind: This Treason proceeds from a Principle of Religion, from a Sense that it is Lawful; Nay, that they ought to do these things; and every Neglect here, is lookt on as a piece of Irreligion, a want of Zeal; for which one of the Prisoners did Penance, as in the Course of our Evidence we shall prove unto you.

And when we consider too, that this is carried on, not by the fury of two or three busy Men over-zealous in the Cause, but by the deliberate and steddly Counsels of the whole Order, and that too under the Obligations of Secrecy as high as Christian Religion can lay on them; You have great reason to wonder that it did not succeed. And yet after all this they have not been able to prevail. Not that we can brag of any human Policy that did prevent it; No; all that the Wit of Man could do, these Men had done: But 'twas the Providence of God, 'twas his Revelation; That Providence that first enlighten'd his Church, and has preserv'd it against all Opposition heretofore, has once more disappointed their Counsels, and preserved the King and this Nation in the Profession of that True Religion these Men have vainly attempted to destroy.

*Gentlemen.* I will not open to you the Particulars of our Evidence, that I had rather should come from the Witnesses themselves: I shall only in general tell you what will be the course of it. We shall prove unto you, That there was a Summons for a Consultation to be held by these Men the 24th of April last, from the Provincial Mr. Whitebread; That they had a Caution given them, Not to come too soon, nor appear much about Town, till the Consultation were over, lest occasion should be given to suspect the Design: That accordingly a Consultation was held, as they say, to send Cary, their Procurator, to Rome; Though we shall prove to you, it was for other purposes: That they adjourned from their General Assembly into lesser Companies; where several Persons did attend them to carry Intelligence of their several Resolutions: That at these several Consults, they did resolve, The King was to be Killed. That Pickering and Grove should do it; for which the one was to have 30000 Masses said for his Soul: The other was to have 1500*l.* That in Prosecution of this Design, they made several Attempts to execute it; That they lay in Wait for the King several times in St. James's Park and other places; And that once in particular, it had been done by Pickering, if it had not pleased God to have prevented it by an Accident unforeseen; The Flint of his Pistol being loose, he durst not then attempt it, though he had an opportunity: For which neglect, we shall prove to you, he underwent the Penance of 20 or 30 strokes. That when these Men had failed, we shall prove to you they hired four Ruffians to Murder the King at Windsor, and after that at New-Market. Thus they Way-laid him in all

his Privacies and Retirements, wherever they could think it most convenient to execute their Design.

And this we shall prove by two Witnesses; who though they should not speak to the same Consultations, nor the same Times; yet they are still two Witnesses in Law. For several Witnesses of several Overt-Acts, are so many Witnesses to the Treason. Because the Treason consists in the Intention of the Man, in the Compassing and Imagining the Death of the King. The several Overt-Acts which declare that Intention, are but as so many Evidences of the Treason. We will call our Witnesses, and make out what has been open'd to you.

*Cl. of Cr. Mr. Oates,* Lay your Hand upon the Book. The Evidence you shall give for our Sovereign Lord the King against *Thomas White* alias *Whitebread*, *William Ireland*, *John Fenwick*, *Thomas Pickering*, and *John Grove*, the Prisoners at the Bar, shall be the truth, the whole truth, and nothing but the truth. *So help you God.*

*Mr. Serj. Baldwyn.* Pray, Mr. Oates, will you declare to the Court and the Jury, what Design there was for the Killing of His Majesty, and by whom.

*Mr. Oates.* My Lord, In the Month of December last, Mr. *Thomas Whitebread* did receive a Patent from the General of the Jesuits at Rome to be Provincial of the Order; after he had received this Patent, he sent Order to one *George Conyers* a Jesuit at St. Omers to Preach upon St. *Thomas of Canterbury's Day*; and by virtue of this Order, *George Conyers* did Preach against Oaths of Allegiance and Supremacy, and did in his Doctrine call them Anti-Christian and Devilish. My Lord, in the Month of January, this Mr. *Whitebread* did send several Letters to St. Omers; in which Letters there was contained intimation of his intent to proceed against the King's Person to Assassinate him, which Letters were written to *Richard Ashby*. My Lord, in the Month of February, there comes an Order from him as Provincial, for several of the Jesuits to make their appearance at London, to be there at a Consult to be held the 24th of April Old Stile.

Sir *William Scroggs L. C. J.* Where was *Whitebread* then?

*Mr. Oates.* He was then in London, my Lord, as I suppose by the dating of his Letters. My Lord, from Mr. *Whitebread* after this Summons, we received a second Summons, which came the 5th of April, New Stile, and upon the Summons there were Nine did appear at London, the Rector of *Liege*, Sir *Thomas Preston*, the Rector of *Ghent*, whose name is *Marsh*, the Rector of *Wotton*, whose name is *Williams*, and one Sir *John Warner*, and two or three more from St. Omers; and there was a special Order given us, my Lord, to keep our selves close, lest we should be suspected, and so our Design disclosed. My Lord, upon the four and twentieth of April, Old Stile, we did appear in the Consult. The Consult was begun at the *White-Horse Tavern* in the Strand, and there they met in several Rooms, they came in by degrees, and as the new ones came on, the old ones, those that had been there before them, fell off. And there was one *John Cary* appointed to go Procurator for Rome, and he was so appointed by the Suffrages of the three

three Prisoners at the Bar, *Whitebread, Ireland,* and *Fenwick*. It was afterwards adjourned into several Colloquies, or little Meetings; one Meeting was at Mrs. *Sanders's* House, that butts upon *Wild-House*; a Second was at Mr. *Ireland's*; a third was at Mr. *Harcourt's*; a Fourth was at Mr. *Grove's*; and other Meeting or Meetings there were, but I cannot give a good Account of them. My Lord, after they had thus met, and debated the State of Religion, and the Life of the King, they drew up this Resolve; it was drawn up by one *Mico*, who was Secretary to the Society, and *Socius*, or Companion to the Provincial.

*L. C. J.* When was that done?

*Mr. Oates.* That Day, my Lord The Resolve, my Lord, was this, as near as I can remember the Words. It is resolved, That *Thomas Pickering*, and *John Grove*, shall go on in their Attempt to Assassinate the King (whether they used the Word Assassinate, I can't remember, but the Meaning was, they should make an Attempt upon his Person) and that the Reward of the one, that is *Grove's*, should be Fifteen Hundred Pounds, and that *Pickering's* Reward should be Thirty Thousand Masses. My Lord, after this Resclusion was Signed by *Whitebread*, it was Signed by *Fenwick* and *Ireland*, and by all the four Clubs: I saw them Sign it, for I carried the Instrument from one to another.

*L. C. J.* What was it they Signed?

*Mr. Oates.* The Resolve of the Consult.

*L. C. J.* What, that which was drawn up by *Mico*?

*Mr. Oates.* Yes, my Lord, that which was drawn up by *Mico*.

*Whitebread.* Doth he say that he saw them Sign it?

*Mr. Oates.* Yes, I did see them Sign it.

*Jury.* We desire he may be asked, where he saw them Sign it.

*Mr. Oates.* Mr. *Whitebread* Signed it at that Part of the Consult that was at his Chamber, *Ireland* did Sign it at that Part of the Consult that was at his Chamber, *Fenwick* Signed it at that Part of the Consult that was at his Chamber.

*Whitebread.* Were you at all these Places?

*Mr. Oates.* I went with it from Place to Place; but I mention no more now, but only these.

*Whitebread.* You were not at all these Places, and saw them Sign it there, were you?

*Mr. Oates.* Yes, I did see them Sign it at all those Places. My Lord, in the Month of *May*, Mr. *Whitebread* came over as Provincial from *England* to *St. Omers*, to begin his Provincial Visitation, and with him came *Cary* and his Companion *Mico*. *Cary* left *St. Omers* to begin his Journey to *Rome*; *Whitebread*, after he had given an Accompt of what Proceedings the Catholics of *England* had made in order to disturb the Peace of the Kingdom, what Moneys had been gathered, what Suffrages dispers'd, what Means had been used, what Noblemen had joined in this execrable Plot; he did then (my Lord) order me to come for *England*.

*L. C. J.* *Whitebread* did?

*Mr. Oates.* Yes, my Lord, *Whitebread* did. And, my Lord, the Business I was to come into *England* for, was to murder one Dr. *Tongue*, a Doctor in Divinity, who had written a Book

called *The Jesuits Morals*; that is to say, Translated them out of *French* into *English*. My Lord, I came over into *England* on the 23d of *June*, New Stile; I came out of *St. Omers*, that is, the 13th in the Stile of *England*; on the 24th New Stile, I took the Packet-Boat at *Calais*; the 25th New Stile, I met with Mr. *Fenwick* at *Dover*, he was come down with certain Youths, to send them to *St. Omers*, and had ordered their Passage.

My Lord, with Mr. *Fenwick*, and some other Persons, we came to *London* in a Coach, and six Miles (as near as I remember it) on this side *Canterbury*, at a Place called *Bolton*, our Coach was stopt by the Searchers, and there they did examine a Box that was in the Coach directed for the Honourable *Richard Blundell Esq*; This Box, when they open'd it, they found full of Beads, Crucifixes, Images, and other sorts of Trumpery, that I cannot give a good Account of; it's he can give the best: Mr. *Fenwick* went by the Name of one *Thompson*, and did Personate one *Thompson*, as living near the *Fountain-Tavern* at *Charing-Cross*; and did order the Searchers to write to him there, as by the Name of *Thompson*. When the Box was seiz'd, they being Prohibited Goods, Mr. *Fenwick* did say, that if they had search'd his Pockets, they had found such Letters about him, as might have cost him his Life; but his Letters did escape Searching. We came that Night to *Sittenburgh*, and lay there on *Sunday* the 26th New Stile, as near as I remember; and I think we stay'd there till the Afternoon: We took Coach in the Afternoon, and came as far as *Dartford*. On *Monday* Morning we came into *London*; and (my Lord) when we came into *London*, and had continued there some Days. (I now return to Mr. *Whitebread*.) There came one *Ashby* to Town, he had been some time Rector of *St. Omers*, and was come to *England* sick of the Gout, and was to go to the *Bath* to be Cured. And he brought Instructions with him from *Whitebread*; and the Instructions contained in them these Particulars: Instructions or Memorials, or what else they called them. First, That Ten Thousand Pounds should be proposed to Sir *George Wakeman* for the Killing of the King. Secondly, That Care should be taken for the Murder of the Bishop of *Hereford*. Thirdly, That Care should be taken for the Murder of Dr. *Stillingfleet*. Fourthly, That though this Proposal was made to Sir *George Wakeman* of 10000*l.* yet *Pickering* and *Grove* should go on still in their Attempts. My Lord, afterwards these were taken and copied out, and dispers'd to the several Conspirators in the Kingdom, whose Names I cannot call to mind. But *Coleman* made several Copies and dispers'd them about: Then the 10000*l.* was proposed to Sir *George Wakeman*, but it was refused.

*L. C. J.* What, it was too little?

*Mr. Oates.* Yes, (my Lord) it was too little. Then *Whitebread* he writ from *St. Omers*, that in case 10000*l.* would not do, Fifteen should be proposed, and after that he had that proposed, he accepted of that.

*L. C. J.* Were you by when he accepted it?

*Mr. Oates.* No, (my Lord) I was not: But it appeared upon their Entry-Books, and it appeared by a Letter from this Gentleman Mr. *Whitebread*, wherein he did shew a great deal of Joy for

for Sir George Wakeman's accepting of the Fifteen Thousand Pounds. (My Lord) After this was agreed upon, that Sir George Wakeman should have Fifteen Thousand Pounds, and Five Thousand of it was paid by Coleman or his Order. Thus the State of Affairs stood till August. Then one Fogarthy, who is dead, came to a Consult of the Jesuits with the Benedictins: Now at this Consult the Prisoner at the Bar Fenwick was, he was one and Harcourt was another. And in this Consult there were Four Russians recommended to them.

L. C. J. By whom?

Mr. Oates. By Fogarthy they were recommended, but accepted of by these Consultors, and contented to by Fenwick. They were sent away, and the next Day after Fourscore Pounds was sent them, the most Part of it was Gold, and Coleman was there and gave the Messenger a Guinea to expedite his Errand. (My Lord) In the Month of August there came other Letters from Whitebread, wherein he did give an Account of what care he had taken of the Scotch Business; and he ordered one Moor and one Sanders, alias Brown, to go down to Scotland, and he did order the Rector of London, then William Harcourt, to send them; and he did so send them the 6th of August, in the Name of the Provincial.

Whitebread. From whence, I pray?

Mr. Oates. From London, and they went to prosecute and carry on the Design which Fenwick and Ireland had plotted, of a Rebellion amongst the disaffected Scots against the Governors appointed them by the King, and they sent down Ministers to preach under the Notion of Presbyterian Ministers, in order to get the disaffected Scots to rise, by insinuating the sad Condition they were likely to be in, by reason of Episcopal Tyranny (as they termed it.) And that they were resolved to dispose of the King, and they did intend to dispose of the Duke too, in case he did not appear vigorous in promoting the Catholick Religion; (I speak their own Words.)

L. C. J. Have you done with your Evidence? What do you know of the Prisoners at the Bar? Name them all.

Mr. Oates. There is Whitebread, Ireland, Fenwick, Pickering, and Grove.

L. C. J. Are you sure Pickering and Grove accepted of the Terms?

Mr. Oates. Yes, (my Lord) I was there.

L. C. J. Where was it?

Mr. Oates. At Mr. Whitebread's Lodgings, at Mrs. Sanders's House. As for Grove, indeed he did attend at that time upon Fenwick at his Chamber; but after the Consult was over, he came to Whitebread's Lodgings, and did take the Sacrament and the Oaths of Secrecy upon it, and did accept it, and agree to it.

L. C. J. Were you there when he took the Sacrament?

Mr. Oates. Yes (my Lord) I was.

L. C. J. Who gave you the Sacrament?

Mr. Oates. It was a Jesuit, that goes by the Name of one Barton.

Whitebread. My Lord, before I forget it, I desire to say this. He says that at such and such Consults in April and May he was present, and carried the Resolutions from one to another. There are above a hundred and a hundred, that

can testify he was all that while at St. Omers. Pray tell me when I received the Sacrament?

Mr. Oates. At the same time.

Whitebread. What Day was that?

Mr. Oates. The 24th of April.

Whitebread. Was I there?

Mr. Oates. You were there.

Whitebread. I take God to witness I was not.

L. C. J. Mr. Whitebread, you shall have time to make your Answer. But Mr. Oates, pray Mr. Oates, when was Mr. Cary dispatch'd away to Rome, and what was his Errand?

Mr. Oates. My Lord, I'll tell you; he was approved of to go to Rome the 24th of April; in the Month of May or June, Whitebread brings Cary over to St. Omers, and one Mico his Secretary or Companion with him.

L. C. J. When was it?

Mr. Oates. In the Month of May or June, he was brought over by the Provincial; then he went away on his Journey, and at Paris received 20*l.* to bear his Charges.

Mr. Finch. What do you know of any Attempts to kill the King at St. James's Park?

Mr. Oates. I saw Pickering and Grove several times walking in the Park together with their screw'd Pistols, which were longer than ordinary Pistols, and shorter than some Carbines. They had Silver Bullets to shoot with, and Grove would have had the Bullets to be champ, for fear that if he should shoot, if the Bullets were round, the Wound that might be given might be cured.

L. C. J. Did Grove intend to champ them?

Mr. Oates. He did say so.

L. C. J. Did he shew you the Bullets?

Mr. Oates. I did see them.

Grove. When was this?

Mr. Oates. I saw the Bullets in the Month of May, and in the Month of June.

Whitebread. Pray, where did you see them?

Mr. Oates. In Grove's Possession.

Whitebread. At what time?

Mr. Oates. In the Month of May.

Whitebread. Then was he actually himself at St. Omers. Was it in May, or June?

Mr. Oates. The latter end of May and June. I saw them then twice, if not thrice. But Pickering's I saw in August.

Sir Cr. Lewinz. Do you know any thing of Pickering's doing Penance, and for what?

Mr. Oates. Yes, (my Lord.) In the Month of March last, (for these Persons have followed the King several Years) but he at that time had not look'd to the Flint of his Pistol, but it was loose, and he durst not venture to give Fire. He had a fair Opportunity, as Whitebread said; and because he mist it through his own Negligence, he underwent Penance, and had 20 or 30 Strokes of Discipline, and Grove was Chidden for his Carelessness.

L. C. J. That was in March last?

Mr. Oates. Yes, my Lord.

L. C. J. How do you know that?

Mr. Oates. By Letters that I have seen from Mr. Whitebread, these I saw, and read, and I know Whitebread's Hand.

Mr. Serj. Baldwyn. What do you know of the Russians that went down to Windsor? What Success had they?

Mr. Oates. I can give no Account of that, because in the beginning of September this Gentleman

man that had been in *England* some time before, was come to *London*, and the Business had tak'n Air, and one *Beddingfield* had written to him, that the thing was discovered, and that none but such a one could do it, naming me by a Name that he knew I went by.

*Whitebread.* When was that, Sir?

*Mr. Oates.* In the Month of *September* last. I came to the Provincial's Chamber the third of *September*, when I came I could not speak with him, for he was at Supper; but when he had supp'd I was admitted in, and there he shewed me the Letter that he had received from *Beddingfield*.

*Whitebread.* Where did you see it?

*Mr. Oates.* You read it to me when you chid me, and beat me, and abused me.

*L. C. J.* What did he chide you for?

*Mr. Oates.* He did charge me with very high Language of being with the King, and with a Minister, and discovering the Matter. I was so unfortunate that the Gentleman who was with the King, did wear the same colour'd Clothes that I did then wear: And he having given an Account that the Party wore such Clothes, the Suspicion was laid upon me: Now, my Lord, I had not then been with the King, but another Gentleman had been with him from me with the Draughts of some Papers concerning this Business, which I had drawn up, and I was ready to appear when I should be called to justify them, only I did not think fit to appear immediately; And, my Lord, this *Beddingfield*, he had gotten into it that it was discovered, and writ the Provincial word he thought it was by me; for, said he, *he hath been drawn in by some of his old Acquaintance*: When he had received this Letter, he asked me with what Face I could look upon him, since I had betrayed them: So, my Lord, I did profess a great deal of Innocency, because I had not then been with the King; but he gave me very ill Language, and abused me, and I was afraid of a worse Mischief from them, for I could not but conclude, that if they dealt so cruelly with those that only writ against them, I could scarce escape, of whom they had that Jealousy, that I had betrayed them: And, my Lord, though they could not prove that I had discovered it, yet upon the bare Suspicion, I was beaten, and affronted, and reviled, and commanded to go beyond Sea again; nay, my Lord, I had my Lodging assaulted to have murdered me if they could.

*Whitebread.* By whom?

*Mr. Oates.* By Mr. *Whitebread*, and some of them.

*Whitebread.* Who beat you?

*Mr. Oates.* Mr. *Whitebread* did.

*Mr. Serj. Baldwyn.* Was it *Pickering* or *Grove* that had the Flint of his Pistol loose?

*Mr. Oates.* *Pickering*.

*Pickering.* My Lord, I never shot off a Pistol in all my Life.

*L. C. J.* What say you as to the 'Fourscore Pounds?

*Mr. Oates.* My Lord, I will speak to that, that was given to the four Ruffians that were to kill the King at *Windsor*: Now, my Lord, that Money I saw——

*L. C. J.* Where did you see it?

*Mr. Oates.* At *Harcourt's* Chamber.

*L. C. J.* Where is that?

*Mr. Oates.* In *Duke-Street*, near the Arch.

*L. C. J.* Who was it given by?

*Mr. Oates.* *William Harcourt*.

*L. C. J.* Did you see the four Fellows?

*Mr. Oates.* No, my Lord, I never did, nor never knew their Names.

*L. C. J.* Who was the Money given to?

*Mr. Oates.* A Messenger that was to carry it down to them.

*L. C. J.* Who was that Messenger?

*Mr. Oates.* One of theirs that I do not know, and I durst not be too inquisitive, my Lord, for fear of being suspected.

*L. C. J.* Who was by when the Money was paid?

*Mr. Oates.* *Coleman*, that is executed; and my Lord, there was this Mr. *Fenwick* by, that is the Prisoner at the Bar.

*Fenwick.* When was this?

*Mr. Oates.* In the Month of *August*.

*Fenwick.* Where?

*Mr. Oates.* At *Harcourt's* Chamber.

*Fenwick.* I never saw you there in all my Life: Are you sure I was by when the Money was there?

*Mr. Oates.* Yes, you were.

*L. C. J.* Mr. *Fenwick*, you shall have your time by and by to ask him any Question: Mr. *Oates*, let me ask you once again; when there was the Appointment made for *Grove* and *Pickering* to kill the King, who Signed it?

*Mr. Oates.* At least Forty Signed it.

*L. C. J.* Did the other Three Sign it?

*Mr. Oates.* Yes, my Lord, all of them.

*L. C. J.* Name them.

*Mr. Oates.* There was *Whitebread*, *Fenwick*, and *Ireland*.

*L. C. J.* And you say you went from Place to Place and saw it Signed?

*Mr. Oates.* Yes, my Lord, I did.

*L. C. J.* Were you Attendant upon them?

*Mr. Oates.* My Lord, I ever was since the Year 1666.

*L. C. J.* At whose Lodgings did you use to attend upon the Consultation?

*Mr. Oates.* At the Provincial's Chamber, Mr. *Whitebread*.

*L. C. J.* Where was it first Signed?

*Mr. Oates.* At the Provincial's Chamber.

*Sir Cr. Levinz.* Who carried it from Lodging to Lodging?

*Mr. Oates.* I did.

*L. C. J.* When was it?

*Mr. Oates.* The 24th of *April*.

*Mr. Just. Bertue.* You say you carried the Result from Place to Place, pray tell us what that Result was?

*Mr. Oates.* They knew what it was, for they read it before they Signed it.

*Mr. Just. Atkins.* But tell us the Contents of it.

*Mr. Oates.* The Contents of that Resolve was this, (I'll tell you the Substance, though I cannot tell you exactly the Words) that *Pickering* and *Grove* should go on in their Attempts to Assassinate the Person of the King, as near as I can remember it was so, that the former should have 30000 Masses and the latter 1500 Pounds, and the whole Consult did consent to it and Signed the Agreement that was made with them, and did resolve upon the King's Death all in one Resolve.

*L. C. J.*

L. C. J. Where was this agreed upon? at the *White-Horse Tavern*?

Mr. Oates. No, my Lord. After they had agreed at the *White-Horse*, that Mr. Cary should go Procurator to *Rome*, and some other small Particulars, which I cannot now remember, they did adjourn from the *White-Horse Tavern*, and met at several Chambers, some at one Place, and some at another.

L. C. J. But you say *Mico* did draw up the Resolution, where was that?

Mr. Oates. At Mr. *Whitebread's* Chamber, for he was *Socius*, and Secretary to the Provincial.

L. C. J. Were *Ireland* and *Fenwick* present when *Mico* drew it up?

Mr. Oates. No, my Lord, but they were at their own Chambers; after it was drawn up there, and signed by Mr. *Whitebread*, and those of the Consult in his Chamber, it was carried to the several Consults.

L. C. J. What, all the same Day?

Mr. Oates. Yes, my Lord.

L. C. J. And you went along with it?

Mr. Oates. Yes, my Lord, I did.

Mr. *Just. Bertue*. I only ask you, were all the five Prisoners privy to it? or do you distinguish any of them, and which?

Mr. Oates. They were all privy to it.

*Whitebread*, My Lord, we can prove —

L. C. J. You shall have time sufficient to make what Defence you can, you shall be sure to have a fair Trial, and be stopt of nothing that you will think fit to say for your selves. Mr. Oates, were *Pickering* and *Grove* present?

Mr. Oates. Yes, my Lord, *Grove* at *Fenwick's* Chamber, and *Pickering* at the Provincial's Chamber.

L. C. J. But they were not required to sign this, were they?

Mr. Oates. After that the whole Consult had signed it, and *Mafs* was preparing to be said for it, before *Mafs*, they did sign and accept of it.

L. C. J. Where did they two do it?

Mr. Oates. At the Provincial's Chamber.

L. C. J. What Day was it?

Mr. Oates. That Day, for they met all together at the Provincial's Chamber to receive the Sacrament, and when *Mafs* was going to be said, one said it was too late, for it was after twelve o'clock; but Mr. *Whitebread* said it was not Afternoon till we had din'd; and you know, Mr. *Whitebread*, that *Masses* have been said at one or two of the Clock in the Afternoon.

Mr. *Just. Atkins*. How many Persons did meet at that Consult?

Mr. Oates. My Lord, there were about Forty or Fifty, and after they had adjourn'd into several lesser Companies, they met all together at Mr. *Whitebread's* Chamber.

L. C. J. Where was that, and when?

Mr. Oates. That Day, at *Wild-House*.

L. C. J. Where was it that they gave the Sacrament?

Mr. Oates. At a little Chapel at *Wild-House*, Mrs. *Sanders's*.

L. C. J. Did they accept it before they took the Sacrament?

Mr. Oates. Yes, *Pickering* and *Grove* did sign it before they took the Sacrament.

Mr. *Just. Atkins*. You tell us of an Oath of Secrecy that was taken, what was that Oath?

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Mr. Oates. I cannot give an account of the Form of the Oath, but it was an Obligation of Secrecy.

Mr. *Just. Atkins*. Did you see the Oath administered?

Mr. Oates. Yes, my Lord, I did.

L. C. J. Who administered it?

Mr. Oates. Mr. *Whitebread*, he did give it unto me, and to all the rest that were there, and *Mico* held the Book, it was a *Mafs-Book*, but they were Words of his own Invention, I believe, they were not written down.

L. C. J. Cannot you tell what they were?

Mr. Oates. No, my Lord, I cannot tell, because I did not see them written down.

L. C. J. If you will ask this Gentleman any thing more, you may.

*Whitebread*. My Lord, I am in a very weak and doubtful Condition as to my Health, and therefore I should be very loth to speak any thing but what is true: We are to prove a Negative, and I know 'tis much harder to prove a Negative, than to assert an Affirmative; 'tis not a very hard thing for a Man to swear any thing, if he will venture his Soul for it; but truly, I may boldly say, in the Sight of Almighty God before whom I am to appear, there have not been three true Words spoken by this Witness.

L. C. J. Do you hear, if you could but satisfy us, that you have no Dispensation to call God to witness a Lye—

*Whitebread*. My Lord, I do affirm it with all the Protestations imaginable.

L. C. J. But if you have a Religion that can give a Dispensation for Oaths, Sacraments, Protestations, and Falshoods that are in the World, how can you expect we should believe you?

*Whitebread*. I know no such thing.

L. C. J. We shall see that presently, before we have done.

Mr. Oates. I have one thing more to say, my Lord, that comes into my Mind. This *Whitebread* received Power from the See of *Rome* to grant out Commissions to Officers Military. And, my Lord, here are the Seals of the Office in Court, which he hath sealed some Hundreds of Commissions with, which they call Patents.

L. C. J. What were those Commissions for? For an Army?

Mr. Oates. Yes, my Lord, for an Army.

*Whitebread*. When were those Commissions Signed?

Mr. Oates. My Lord, several of them were Signed in the former Provincial's time.

L. C. J. What, I warrant you, you are not Provincial of the Jesuits, are you?

*Whitebread*. I cannot deny that, my Lord.

L. C. J. Then there are more than three Words he hath spoken are true.

Mr. *Just. Atkins*. I believe, Mr. Oates, that that Army was intended for something, pray what was it for?

Mr. Oates. My Lord, they were to rise upon the Death of the King, and let the *French King* in upon us, and they had made it their Business to prepare *Ireland* and *Scotland* for the receiving of a foreign Invasion.

L. C. J. Who were those Commissions Sealed by?

Mr. Oates. My Lord, the Commissions of the Great Officers were sealed with the General's Seal.

X x x x

L. C. J.



L. C. J. Who was that?

Mr. Oates: His Name is *Johannes Paulus de Oliva*: His Seal sealed the Commissions for the Generals, Major-Generals, and great Persons; but those Seals that sealed the several Commissions to several inferior Officers, were in the Custody of the Provincial.

L. C. J. Can you name any one Person that he hath Sealed a Commission to?

Mr. Oates. I can name one: To Sir *John Gage*, which Commission I delivered my self.

L. C. J. What, of *Suffex*?

Mr. Oates. Yes, of *Suffex*.

Mr. Just. Atkins. Who did you receive the Commission from?

Mr. Oates. My Lord, when he went over, he left a great many blank Patents to be filled up, and he left one ready Sealed for a Commission to Sir *John Gage*. This was delivered into my Hands when he was absent, but it was Signed by him, and delivered to me while he was in his Visitation beyond the Seas, but I dare swear it was his Hand, as I shall answer it before God and the King.

Mr. Just. Atkins. Who had it you from?

Mr. Oates. From Mr. *Ashby*, but by *Whitebread's* Appointment in his Instructions, which I saw and read.

L. C. J. What was the Commission for?

Mr. Oates. To be an Officer in the Army.

L. C. J. Did you see the Instructions left for *Ashby*?

Mr. Oates. I did see them, and read them, and I did then, as I always did, give it as my Judgment, that it was more safe to Poison the King, than to Pistol or Stab him.

Mr. Just. Bertuc. Was the Commission which you delivered to Sir *John Gage*, from *Ashby*, or from *Whitebread*?

Mr. Oates. I had it from *Ashby*; but *Whitebread*, who was then beyond Sea, had Signed this Commission before he went. My Lord, I have something more yet to say, and that is as to Mr. *Grove*, That he did go about with one *Smith* to gather *Peter-pence*, which was either to carry on the Design, or to send them to *Rome*. I saw the Book wherein it was entred, and I heard him say that he had been gathering of it.

Grove. Where was this?

Mr. Oates. In *Cock-pit Alley*, where you know I lodged.

Grove. Did I ever see you at your Lodging?

Mr. Oates. You saw me at my own Door.

L. C. J. Why, don't you know Mr. Oates?

Grove. My Lord, I have seen him before.

L. C. J. Why, this 'tis, ask a Papist a Question, and you shall have a Jesuitical Answer.

Mr. Oates. I will convince the Court that he does know me by some Circumstances. My Lord, in the Month of *December* last, by the Provincial's Order—

L. C. J. I would ask him first whether he does know you or no. Do you know Mr. Oates?

Grove. I have seen him before.

L. C. J. Have you been often in his Company?

Grove. No, my Lord.

L. C. J. What do you call often? Have you been in his Company seven or eight times? (for we must deal subtilly with such as you are) have you been in his Company ten times?

Grove. No.

L. C. J. What say you to three times?

Grove. Yes, I believe I have seen him twice or thrice.

L. C. J. Where? Did you never see him at *Whitebread's*?

Grove. As I hope to be saved, and before the Eternal God, I did never.

Mr. Oates. I will convince him and the Court, that he does know me, and is well acquainted with me: In the Month of *December* last I went to St. *Omers*, I went first to the then Provincial's House, to take my leave of him, and there I met with Mr. *Grove*, and he appointed to come to my Lodging the next Morning, near the *Red Lion* in *Drury-Lane*, at one *Grigson's* House, and he was so well acquainted with me then, that he had lent me eight Shillings to hire the Coach.

L. C. J. Did you lend him eight Shillings?

Grove. I did, my Lord, I do not deny it.

L. C. J. How came you to do it, when it seems, if you say true, he was a Stranger to you?

Grove. I thought I should have it again.

L. C. J. What, of him?

Grove. Yes.

L. C. J. Did he desire you to lend him the eight Shillings?

Grove. Yes, he did, my Lord.

Mr. Oates. Then there is one time that he confesses he saw me.

L. C. J. Did you not know him before?

Grove. I had no Acquaintance with him, I had seen him.

L. C. J. How came you then to lend Money to one you had no more Acquaintance with?

Grove. I knew I should go along with him to the Coach, and then I thought I should have it again.

L. C. J. Mr. Oates, were you going beyond Sea then?

Mr. Oates. Yes, my Lord, I was.

L. C. J. Mr. Oates, did you pay him that Money?

Mr. Oates. No, my Lord, I did not.

L. C. J. Did you ask him for the Money, and had you it?

Grove. He did not pay it me.

L. C. J. How then were you sure you should have it?

Grove. He did order me to go to such a one for it.

L. C. J. Who was that?

Grove. Mr. *Fenwick*, I think.

L. C. J. Then Mr. Oates was known to you all, he was no such Stranger to you as you would make us believe.

Mr. Oates. Thus he confesses three times he had seen me, once before he lent me the Money, another time when he lent it, and the third time the next Day. And I will put him in mind of another time, when he and I were in Company, where one brought us a Note of what was done in the House of Commons, turned into Burlesque, for they used to turn all that was done at the Council, or at the Parliament, or at the Courts in *Westminster-Hall*, into Burlesque, and then translated it into *French*, and sent it to the *French King*, for him to laugh at too. But that by the way. Twice more he drank in my Company, at the *Red Posts* in *Wild-Street*, and once more

more when he owned to me, that he fired *Southwark*.

*L. C. J.* Now by the Oath that you have taken, did he own to you that he had fired *Southwark*?

*Mr. Oates.* My Lord, he did tell me that he with three *Irishmen* did fire *Southwark*, and that they had a thousand Pounds given them for it, whereof he had four Hundred Pounds, and the other two Hundred Pounds a-piece.

*L. C. J.* Now for *Mr. Fenwick*. Do you know *Mr. Oates*?

*Fenwick.* Yes, my Lord, I do.

*L. C. J.* Were you well acquainted with him? speak plain.

*Mr. Oates.* He was my Father-Confessor, my Lord.

*L. C. J.* Was he so? Were you his Confessor?

*Fenwick.* I believe he never made any Confession in his Life.

*L. C. J.* Yes, he hath made a very good one now. Were you of his Acquaintance, *Mr. Fenwick*? Speak home, and don't mince the Matter.

*Fenwick.* My Lord, I have seen him.

*L. C. J.* I wonder what you are made of: Ask a Protestant, an *English* one, a plain Question, and he will scorn to come dallying with an evasive Answer.

*Fenwick.* My Lord, I have been several times in his Company.

*L. C. J.* Did you pay eight Shillings for him?

*Fenwick.* Yes, I believe I did.

*L. C. J.* How came you to do it?

*Fenwick.* He was going to *St. Omers*.

*L. C. J.* Why, were you Treasurer for the Society?

*Fenwick.* No, my Lord, I was not.

*L. C. J.* You never had your eight Shillings again, had you?

*Fenwick.* It is upon my Book, my Lord, if I ever had it.

*L. C. J.* Did *Mr. Oates* ever pay it again?

*Fenwick.* No sure, he was never so honest.

*L. C. J.* Who had you it of then?

*Fenwick.* I am certain I had it not from him; he did not pay it.

*L. C. J.* How can you tell you had it then?

*Fenwick.* I do suppose I had it again, but not of *Mr. Oates*.

*L. C. J.* Had you it of *Ireland*?

*Fenwick.* I do not know who I had it of, my Lord, nor certainly whether I had it.

*L. C. J.* Why did you not ask *Mr. Oates* for it?

*Fenwick.* He was not able to pay it.

*L. C. J.* Why did you then lay it down for him?

*Fenwick.* Because I was a Fool.

*L. C. J.* That must be the Conclusion always: when you can't evade being prov'd Knaves by answering directly, you will rather suffer your selves to be call'd Fools.

*Fenwick.* My Lord, I have done more for him than that comes to; for he came once to me in a miserable poor Condition, and said, I must turn again, and betake my self to the Ministry to get Bread, for I have eaten nothing these two Days: And I then gave him five Shillings to relieve his present Necessity.

*Mr. Oates.* My Lord, I will answer to that; I was never in any such Straits, I was ordered

by the Provincial to be taken care of by the Procurator.

*Fenwick.* You brought no such Order to me.

*Mr. Oates.* Yes, *Mr. Fenwick*, you know there was such an Order, and I never received so little in my Life as Five Shillings from you: I have received Twenty, and Thirty, and Forty Shillings at a time, but never so little as Five.

*L. C. J.* You are more charitable than you thought for.

*Fenwick.* He told me he had not eaten a bit in two Days.

*Mr. Oates.* I have indeed gone a whole Day without eating, when I have been hurried about your Trash; but I assure you, my Lord, I never wanted for any thing among them.

*L. C. J.* Perhaps it was fasting-Day.

*L. C. Baron.* My Lord, their Fasting-Days are none of the worst.

*Mr. Oates.* No, we commonly eat best of those Days.

*L. C. J.* Have you any thing to ask him, any of you?

*Whitebread.* My Lord, will you be pleased to give me leave to speak for my self?

*Just. Atkins.* It is not your time yet to make your full Defence, but if you will ask him any Questions, you may.

*Whitebread.* I crave your Mercy, my Lord.

*L. C. J.* Will you ask him any Questions?

*Fenwick.* Did not you say that you were at my Chamber the 24th of *April*, with the Resolve of the Consult?

*Mr. Oates.* That Resolve I did then carry to your Chamber.

*Fenwick.* Then was he himself at *St. Omers*.

*L. C. J.* The difference of *old Stile* and *new Stile* may perhaps make some Alteration in that Circumstance.

*Whitebread.* But, my Lord, he hath sworn he was present at several Consultations in *April* and *May*, but from *November* till *June* he was constantly at *St. Omers*.

*L. C. J.* If you can make it out that he was at *St. Omers* all *April* and *May*, then what he hath said cannot be true.

*Ireland.* He himself hath confessed it that he was at *St. Omers*.

*L. C. J.* If you mean by Confession, what stands upon the Evidence he hath given, I'll remember you what that was. He says he came to *St. Omers* ———

*Mr. Oates.* Will your Lordship give me leave to satisfy the Court: In the Month of *December* or *November*, I went to *St. Omers*: I remained there all *January*, *February*, *March*, and some part of *April*: Then I came over with the Fathers to the Consult that was appointed the 24th of that Month.

*Fenwick.* Did you go back again?

*Mr. Oates.* Yes.

*Fenwick.* When was that?

*Mr. Oates.* In the Month of *May*, presently after the Consults were over.

*Fenwick.* And we can prove by abundance of Witnesses that he went not from *St. Omers* all that Month.

*L. C. J.* You shall have what time you will to prove what you can; and if you can prove what you say, you were best fix it upon him; for he saith he was here at the Consults in *April* and *May*; if you can prove otherwise, pray do.

X x x x

*Fenwick.*

*Fenw.* We can bring an Authentick Writing (if there be any such) from *St. Omers*, under the Seal of the College, and testified by all in the College, that he was there all the while.

*L. C. J.* Mr. *Fenwick*, that will not do; for first, if it were in any other Case besides this, it would be no Evidence, but I know not what you cannot get from *St. Omers*, or what you will not call Authentick.

*Fenw.* Does your Lordship think there is no Justice out of *England*?

*L. C. J.* It is not, nor cannot be Evidence here.

*Fenw.* It shall be Signed by the Magistrates of the Town.

*L. C. J.* What, there?

*Fenw.* Yes, there.

*L. C. J.* You must be tried by the Laws of *England*, which sends no Piece of Fact out of the Country to be Tried.

*Fenw.* But the Evidence of it may be brought hither.

*L. C. J.* Then you should have brought it. You shall have a fair Trial; but we must not depart from the Law or the way of Trial, to serve your purposes. You must be Tried according to the Law of the Land.

*Just. Atkins.* Such Evidences as you speak of we would not allow against you; and therefore we must not allow it for you.

*Whitebread.* May this Gentleman be put to this, to produce any two Witnesses that saw him in Town at that time.

*Mr. Oates.* I'll give some Circumstances and what Tokens I have to prove my being here: Father *Warner*, Sir *Tho. Preston*, Father *Williams*, and Sir *John Warner*, they came hither with me from *St. Omers*, there was one *Nevil*, &c. I cannot reckon them all.

*L. C. J.* You have named enough.

*Mr. Oates.* But to convince them, there was a Lad in the House that was got to the end of his Rhetorick; this Lad was Whipt and turned out of the House, and had lost all his *Money*: Father *Williams* did Re-imburse this Lad, in order to his bringing home, I think the Lad's Name was *Hilsley*, or some such Name. And we came up to *London* together.

*L. C. J.* What say you to this Circumstance?

*Whitebread.* My Lord, he knew that two such came to Town, but he was not with them.

*L. C. J.* You are now very good at a Negative I see, how can you tell that?

*Whitebread.* My Lord, he could not come.

*L. C. J.* How can you tell he could not come?

*Whitebread.* I can tell it very well, for he had no Order to come, nor did come.

*L. C. J.* How can you undertake to say that he did not come?

*Whitebread.* Because he had no Order to come.

*L. C. J.* Is that all your reason? Where were you then?

*Whitebread.* I was here.

*L. C. J.* How do you know he was not here?

*Whitebread.* He had no Orders to come.

*L. C. J.* Have you any other Circumstance, Mr. *Oates*, to prove that you were here then?

*Oates.* My Lord, when I came to *London*, I was ordered to keep very close, and I lay at *Grove's* House; let him deny it if he can, I'll tell you who lay there then——

*Grove.* Did you ever lie at my House?

*Oates.* There lay a Flaxen-Hair'd Gentleman, I forgot his Name: But I'll tell you who lay there besides; that is *Strange*, that was the late Provincial.

*L. C. J.* Did *Strange* ever lie at your House?

*Grove.* Yes, my Lord, he did.

*L. C. J.* Did he lie there in *April* or *May*?

*Grove.* No, he did not in either of them.

*L. C. J.* You will make that appear.

*Grove.* Yes, that I can by all the House.

*L. C. J.* Have you any more Questions to ask him? If you have, do: If you can prove this upon him, that he was absent, and not in *England* in *April* or *May*, you have made a great Defence for your selves, and it shall be remembred for your advantage when it comes to your turn: In the mean time, if you have no more to say to him, call another Witness. Let Mr. *Oates* sit down again, and have some Refreshment.

Mr. Serj. *Baldwin.* We will now call Mr. *Bedlow*, my Lord.

*Then Mr. Bedlow was sworn.*

Mr. Serj. *Baldwin.* Mr. *Bedlow*, Pray do you tell my Lord and the Jury, what you know of any design of killing the King, and by whom.

*Mr. Bedlow.* My Lord, I have been five Years almost employed by the Society of *Jesuits* and the *English Monks* in *Paris* to carry and bring Letters between them from *England* and to *England*, for the promoting of a Design tending to the Subversion of the Government, and the extirpating of the Protestant Religion, to that degree (which was always concluded on in all their Consults wherein I was) that they would not leave any Member of any Heretick in *England*, that should survive to tell in the Kingdom hereafter, that there ever was any such Religion in *England* as the Protestant Religion——

*Here Whitebread would have interrupted him.*

My Lord, I am so well satisfied in their Denials, that I cannot but believe they who can give a Dispensation, and have received the Sacrament to kill a King and destroy a whole Kingdom, do not scruple to give a Dispensation for a little Lye to promote such a Design, for so much as this expiates any Lye or greater Crime.

Sir Cr. *Levinz.* Pray, Sir, will you be pleased to tell your whole Knowledge concerning the Prisoners at the Bar.

*Mr. Bedlow.* The first Letter I carried was from Mr. *Harcourt*, at his House next Door to the Arch in *Duke-street*. He hath been Procurator for the *Jesuits* about six Years. He employed me first, and sent for me over, for I was then Lieutenant in *Flanders*, and coming home to receive my Pay that was due to me——

*L. C. J.* How long is it ago?

*Mr. Bedlow.* *Michaelmas* last was four Years; when I came to *Dunkirk* I went to visit the *English* Nunnery there, and the Lady Abbess finding me very pliable and inclinable, made very much of me, and I did adhere to her. She kept me six Weeks in the Convent, and afterwards when I went away, recommended me to Sir *John Warner*, as an Instrument fit to be employed in the carrying of Letters, or doing any thing that would promote the design against *England*. He kept me at *St. Omers* a Fortnight, and after

after sent me to Father *Harcourt* to be instructed in my employment: It was then Winter; the next Spring he sends me into *England* with divers Letters, where by Mr. *Harcourt* I was employed to carry several Letters to *Morton* and *Dorway*, and other places: That Summer I was sent into *England* without an Answer: But afterwards in (76,) which was the next Summer, I was to carry another Pacquet of Letters to the *Monks* at *Paris*, who sent it to other English *Monks* in *France* —

L. C. J. Who sent that Pacquet of Letters in 76?

*Bedlow*. I had it from Mr. *Harcourt*, and it was written by *Harcourt*, *Pritchard* and *Cary*.

L. C. J. To whom?

*Bedlow*. To the English *Monks* in *France*, and in it there was a Letter to *Le Chaise*. Upon the receipt of these Letters at *Paris*, *Le Chaise* had a Consultation with the *Monks* and a French Bishop or two about them: I did not then speak French enough to understand what it was they said, but it was interpreted to me by Mr. *Stapleton* an English *Monk*, who told me, that it was a Letter from my Lord *Bellasis* and others of the Catholick Religion, English Gentlemen that were Contrivers of the Plot here, to satisfy them in what state things stood in *England* as to Popery. I was sent back again with a Pacquet of Letters directed to Mr. *Vaughan* of *Courtfield* in *Monmouth-shire*.

L. C. J. From whom was that?

*Bedlow*. From the English *Monks* at *Paris*. From that Consultation I went to *Ponthois*, I there receiv'd other Letters to carry into *England*. I had a course to open their Letters, and read what was in them; and in those Letters was contain'd, That the Prayers of that House were for the prosperity of that Design, and they would not fail to be at the Consultation at \_\_\_\_\_ of *Warwick-shire* Gentlemen. I fell sick at *Monmouth*, and Mr. *Vaughan* sent to me a *Jesuit* to Confess me; but I was well before he came, and so was not Confess'd by him. I now come to the latter times.

L. C. J. You must speak it over to the Jury, that they and the Prisoners may hear you.

*Bedlow*. The 25th of *May*, 77, which was last Year, I was sent over with another Pacquet of Letters. I had no Letters of consequence forward, and therefore did not call then at *Wotton*, but I called upon the Lady Abbess at *Dunkirk*, and I went thence to *Bruges* and to *Ghent*, where I had some Letters for the English Nuns, which I delivered to them. When I came to *Dorway*, I found there that the *Monks* were gone, that was *Sheldon*, *Stapleton*, and *Latham*, but the Letters were directed to *Paris*, and therefore I made haste, and at *Cambray* I overtook them. And the Letters were to give an account of the Consultation held in the Gallery at *Somerset-House*: All tending to the destruction of the Protestant Religion, and killing the King; but I do not think fit to declare here who were the Persons that were present at that Consultation. At *Cambray* they were very joyful that there was so good a Proceeding in *England*. At *Paris* when the Letters were shewed, there was a Letter written in a Language which I did not understand, but, as I was told, in that Letter they were charged in *Paris* by my Lord *Bellasis*, that they did not proceed according to their promise

to them in *England*; but, said *Stapleton*, to me, My Lord *Bellasis* nor the Society in *England* need not to write thus to Us, for we are not so backward, but that we can lend Men, and Money, and Arms too, and will upon occasion: From thence they sent me to *Spain* with a Letter to an Irish Father: I did overtake him at *San Mora*. From thence I went with another Letter to the Rector of a College of Irish *Jesuits* in *Salamanca*. By their contrivance I was sent to *St. Jago* in *Spain*, where was another College of Irish *Jesuits*: there I stayed till I had an Answer to Sir *William Godolphin*; and when I had the Answer to that Letter, I went for the Letter from the Rector at *Salamanca*. The *Jesuits* there told me, they would take care to send their own Answer another way: And when they had made me that promise, I came away for *England*, and landed at *Milford-Haven*: All this reaches to none of these Persons in particular: But what I now shall say shall be about them, only it was necessary I should speak of what I have said.

L. C. J. The meaning of all this is only to shew the Jury and satisfy them, that he was an Agent for these Men, and hath been employed by them for five Years together, and he names you the particular Places whither he hath been sent, to shew you the Reasons of his Knowledge in this Matter, and upon what account he comes to be informed of this Design.

*Bedlow*. Having receiv'd the News of that Country, I did there take Water, and landed again at *Pensans*, and when I came to *London* I gave the Letter to *Harcourt*: what was in that Pacquet I cannot particularly tell, for I was not so inquisitive as to look into the Contents of it, but I know it was tending (as all the rest did) to the carrying on of this Plot: Afterwards I was employed by *Harcourt* and *Coleman* to go to some parts of *England* to communicate the Letters to some of the Popish Party.

L. C. J. Now turn to the Jury.

*Bedlow*. The Summer was past in the doing of that: In the beginning of *August* last there was a Consultation and a close one at *Harcourt's* Chamber, so as that they did not permit me to know any thing of it. I went out of Town for a Fortnight, and when I returned, I understood there had been such a Meeting; I charged them with their Privacy in it, and asked what was the private design of that Consultation; they said it was something I should know in time: That it did not signify much at present, but in time I should know it: But then I understood by *Pritchard*, who was more my Confident than any of the rest, That it was a Design to kill the King: That *Pickering* and *Grove* had undertaken it a great while, and that they had been endeavouring a long while to bring it to pass.

*Fenwick*. Where was this Meeting and when?

*Bedlow*. Last *August*, at *Harcourt's* Chamber.

*Fenwick*. Who were present there?

*Bedlow*. Be pleased to give me leave to go on, I'll tell you by and by: Then I understood, as I said, that it was to kill the King, but that *Pickering* and *Grove* failing of it, they had hired four *Ruffians* that were to go to *Windsor*, and do it there, and that if I would come the next day, I should hear from *Coleman* the effect: When I came there I found *Coleman* was gone, but *Pritchard* said there were some sent to *Windsor*, and that

that *Coleman* was going after them, and that he had given a Messenger a Guinea that was to carry the Money to them. And he would presently be after them, for fear they should want Opportunity to effect their Design. Then I discours'd them, why they kept their Design so long hid from me? They said, It was a Resolve of the Society, and an Order of my Lord *Bellasis*, that none should know it but the Society, and those that were Actors in it. I seem'd satisfy'd with that Answer at present. About the latter End of *August*, or the Beginning of *September*, (but I believe, it was the latter End of *August*) I came to *Harcourt's* Chamber and there was *Ireland*, and *Pritchard*, and *Pickering*, and *Grove*.

*L. C. J.* What Part of *August* was it?

*Bedlow.* The latter End.

*L. C. J.* Do you say it Positively, That it was the latter End of *August*?

*Bedlow.* My Lord; It was in *August*; I do not swear Positively to a Day.

*L. C. J.* But you say, it was in *August*.

*Ireland.* And that we were there present?

*Bedlow.* You were there, and *Grove*, and *Pickering*.

*Ireland.* Did you ever see me before?

*Bedlow.* You were present there, and *Grove*, and *Pickering*, and *Pritchard*, and *Fogarthy*, and *Harcourt*, and I.

*L. C. J.* What did you talk of there?

*Bedlow.* That the *Ruffians* missing of Killing the *KING* at *Windsor*, *Pickering* and *Grove* should go on, and that *Conyers* should be joined with them; and that was to Assassinate the *KING* in his Morning-Walks at *New-Market*: And they had taken it so strongly upon them, that they were very eager upon it: And *Grove* was more forward than the Rest: And said, Since it could not be done Clandestinely, it should be attempted Openly. And that those that do Fall, had the Glory to die in a Good Cause. But (said he) if it be discovered, the Discovery can never come to that Height, but their Party would be strong enough to bring it to pass.

*L. C. J.* And you swear, *Ireland* was there?

*Bedlow.* He was there, my Lord.

*L. C. J.* And heard all this?

*Bedlow.* Yes, my Lord; and so did *Grove*, and *Pickering*, and the Rest.

*Ireland.* My Lord, I never saw him before in my Life.

*L. C. J.* What was the Reward that you were to have for your pains in this Business?

*Bedlow.* My Lord, the Reward that I was to have (as it was told me by *Harcourt*) was very considerable: I belong'd to one particular Part of the Society. There are others; and I presume, they each kept their particular Messengers.

*L. C. J.* What was *Grove* to have?

*Bedlow.* *Grove* was to have Fifteen Hundred Pound, if he Escaped, and to be a continual Favourite, and Respected as a great Person, by all the Church.

*L. C. J.* What was *Pickering* to have?

*Bedlow.* He was to have so many *Masses*, I cannot presume to tell the Number; but they were to be as many, as at Twelve Pence a *Mass* should come to that Money: These *Masses* were to be Communicated to all the *Jesuits* beyond the Seas, that when he had done it, he might be sent away immediately.

*L. C. J.* What can you say of any of the Rest?  
*Bedlow.* My Lord, I do not Charge any more but them Three.

*L. C. J.* What say you to *Whitebread*?

*Bedlow.* They have said, that he was very Active in the Plot; but I know it not.

*L. C. J.* That is not any Evidence against him. What can you say, as to *Fenwick*?

*Bedlow.* No more than I have said, as to Mr. *Whitebread*: I only know him by Sight.

*L. C. J.* Then he Charges only these Three upon Oath, *Ireland*, *Pickering*, and *Grove*.

*Ireland.* Do you know Sir *John Warner*?

*Bedlow.* I know Father *Warner* at *St. Omers*, and Sir *John Warner* at *Wotton* by *St. Omers*.

*Ireland.* He named Sir *John Warner* to be at *Paris*.

*Bedlow.* It was *Sheldon*, I spoke of (my Lord) at *Paris*.

*Ireland.* At least you are certain, that I was present at that Consultation?

*Bedlow.* Yes: I am certain, you were there.

*Ireland.* Can you produce any Witness, that you ever spoke to me before in your Life?

*Mr. Serj. Baldwyn.* Do you know any thing of Mr. *Whitebread's* being present at any of the Consults?

*Bedlow.* I do know, that *Whitebread*, and *Fenwick* both, have been several times at Consultations; but I do not know what the Particular Resolves of those Consultations were.

*L. C. J.* Did you ever hear them speak any thing in particular?

*Bedlow.* No, I have never heard them speak any thing in particular.

*L. C. J.* Where have you seen *Fenwick*?

*Bedlow.* I have seen *Fenwick* at *Harcourt's* Chamber, and I have often heard him talk'd of; and it hath been told me, That nothing was done, without *Fenwick*.

*Whitebread.* Are you sure you know us?

*Bedlow.* I do not say, You are the Man that employed me: You are the Man I was least acquainted with, of all the Society; but I have seen you there.

*Ireland.* Can you bring any one, that can Testify it?

*L. C. J.* He must then have brought one of your selves; and it may be, he cannot produce any such one.

*Ireland.* Nor no one else, except such a *Knight* of the *Post*, as Mr. *Oates*.

*L. C. J.* You must be Corrected for that, Mr. *Ireland*: You shall not come here to Abuse the *KING's* Evidence. Nothing appears to us, that Reflects upon Mr. *Oates's* Testimony; and we must not suffer any such sort of Language.

*Mr. Just. Atk.* Take off his Credit as much as you can by Proof, but you must not Abuse him by ill Language.

*Mr. Finch.* Can you tell the Court and the Jury, when it was, that by Agreement *Grove* should have the Fifteen Hundred Pound?

*Bedlow.* He was to have it put into a Friend's Hands.

*L. C. J.* Do you know that Friend's Name?

*Bedlow.* No, my Lord, I do not.

*Mr. Finch.* Do you know, when that was to be delivered out to him?

*Bedlow.* As to the particular Time of their Agreement, I do not know it.

Mr. *Finch*. But this he says, That when the Agreement was made, he was to have Fifteen Hundred Pound.

L. C. J. And he says this, That *Ireland* was in *August* last, with *Pickering* and *Grove*, and others, at a Consult; where he was also.

*Ireland*. But what if I prove I was not in *London* all *August* last, from the Beginning to the End?

L. C. J. You heard them talk of this Matter in *August*, at *Harcourt's* Chamber, you say: What, did they talk of it, as a Matter they had agreed?

*Bedlow*. My Lord, they brought it in, as being balked in their Design of Killing the KING at *Windsor*; and because that had not taken the Effect they intended it, they should have *Conyers* joined to them, to do it at *New-Market*.

Mr. *Finch*. Did they tell you when, and where the Agreement was made?

L. C. J. No, he speaks not of that; but they talk'd of the Failure at *Windsor*: And therefore they did conclude, that *Conyers* should be joined to them, to do it at *New-Market*.

*Bedlow*. Yes, my Lord.

L. C. J. Have you any more to say?

*Bedlow*. My Lord, I would only say this; If I had any to prove what I say, they must be Parties as well as these Persons.

*Ireland*. My Lord, I will prove, That I was not in *Town* in *August* all the Month, by twenty Witnesses: I'll bring those that saw me in *Staffordshire*, and spoke with me all *August*.

L. C. J. Have you any more to ask him?

*Whitebread*. No.

Serj. *Baldwin*. Swear Mr. *James Bedlow*. And he was sworn.

*Ireland*. He does say, That he was Familiar with me, and several other Persons here; and therefore, I desire he may specify the Place, and the Company.

*William Bedlow*. I do not say, there was a Familiarity; for I was a Stranger to that Part of the Society.

L. C. J. You must take him right, Mr. *Ireland*; he hath not said, that he was of your Familiar Acquaintance.

*Bedlow*. I have seen you often, Sir.

*Ireland*. Where?

*Bedlow*. At *Monsieur Le Faire's*.

*Ireland*. Where was that?

*Bedlow*. At *Somerset-House*.

*Ireland*. Was there any one present besides?

*Bedlow*. Yes, several other *Priests* and *Jesuits* of *Somerset-House*.

*Ireland*. Name one.

*Bedlow*. Signior *Perrare*.

*Ireland*. You say, you saw me and *Perrare* together at *Somerset-House*, I suppose, if Signior *Perrare* may be brought hither —

*Bedlow*. My Lord, *Perrare* is a *Priest* in Orders; and without doubt, is in this Business.

L. C. J. If he did see you, he must see you in such Company as you keep, they were *Priests* and *Jesuits*, and of your own Religion; and we know very well what Answers we are like to be put off with by Men of your own Persuasion at this time of day.

*Ireland*. My Lord, if no body's Oath can be taken that is of another Persuasion than the Church of *England*, it is hard.

L. C. J. Pray mind, you do not object ingenuously: for you say, This Witness swears he saw

me in such Company, why does he not produce them to testify it? Why? He does not come prepared to produce them; if he should, we know well how you are concerned one for another at this time; and we can hardly expect they should make true Answers. But notwithstanding, if you will produce this *Father Perrare*, (he cannot be Sworn because 'tis against the Law, but) his Testimony shall be heard, and let it go as far as it can.

*Bedlow*. If your Lordship pleases, my Lord, I would convince him that he does know me. Have you not been, Sir, at *Somerset-House*?

*Ireland*. Yes, I have.

*Bedlow*. Do you know *le Faire* and *Perrare*?

*Ireland*. Yes, but I never saw you in their Company in *Somerset-House* in my Life, above once or twice.

*Bedlow*. Yes, you have twice at *le Faire's*.

L. C. J. Where is that *le Faire*? you would do well to produce him?

*Bedlow*. My Lord, he is gone away, and is one against whom the King's Proclamation is out.

L. C. J. You keep such Company as run away, and then you require him to produce them, whom the King's Proclamation cannot bring in.

*Ireland*. I keep none but honest Company.

*Bedlow*. If your Lordship pleases, I have one thing more that is very material to speak; at the same time that there was a discourse about these Three Gentlemen's being to destroy the King at *New-Market*, at the same time there was a discourse of a design to kill several Noble Persons, and the particular Parts assigned to every one. *Knight* was to kill the Earl of *Shaftesbury*, *Pritchard* the Duke of *Buckingham*, *Oncile* the Earl of *Ossey*, *Obrian* the Duke of *Ormond*.

L. C. J. Well, will you have any more of this?

Mr. *Finch*. You say, you saw Mr. *Ireland* say *Mafs*, where did you see him?

*Bedlow*. Not Mr. *Ireland*, but Mr. *Fenwick*, I have seen him say *Mafs*, and at *Wild-House*.

*Oates*. My Lord, I did omit a Consult wherein there was a design laid of taking away the Duke of *Ormond's* Life, and of a Rebellion that was to be raised in *Ireland*.

My Lord, in the Month of *January* last, there came Letters from Archbishop *Talbot* to *London*, which Letters were perused by *Fenwick*, and *Ireland*, and *Whitebread*, and when they were perused, they were sent and communicated to the Fathers at *St. Omers*. The Contents of those Letters were thus; That the Catholics had a fair prospect of effecting their Designs in the Kingdom of *Ireland*. And this Letter was inclosed in a Letter signed by *Whitebread*, *Ireland*, *Fenwick*, and others (I name no Man's Name that is not here.)

L. C. J. You saw the Letter?

*Oates*. Yes, I did see it, and read it, wherein they did give thanks unto God, that he was pleased to prosper their designs so fairly in *Ireland*; and withal they did say, That they would not leave a stone unturned to root out that abominable Heresy out of that Kingdom. Now what that abominable Heresy was, I have nothing but a Conjecture.

L. C. J. We all know what that is well enough, there needs no Proof of that.

*Oates*. In the Month of *August*, *Fenwick*, a little before he went to *St. Omers*, on the One and

and Twentieth of *August*, (as I think it was) that Week that *Bartholomew-Fair* begun on (as I take it) he was then going to fetch home the Provincial, and to carry some Students with him, and he went unto *St. Omers* the *Monday* following; but then there was a Consult, and at that Consult *Fenwick* did consent to the contrivance of the Death of the Duke of *Ormond*, and for the Rebellion that was to be raised in *Ireland* after his Death. And he did approve of the Four *Jesuits* that were to kill my Lord of *Ormond*, and did consent to send *Fogarty* down to the Archbishop of *Dublin*, in case the Four good Fathers did not hit the business. Mr. *Whitebread*, my Lord, did consent when he came over, as appears by their Entry-Books. For there came a Letter from him dated as from *St. Omers*, but I concluded it did not come from thence, because it paid but Two-pence.

*Whitebread*. Who was it that writ that Letter?

*Oates*. My Lord, this Letter was dated as the latter part of *August*, and dated as from *St. Omers*, but the Post-mark upon it was but Two-pence, to be paid for it; so that I do conclude thence Mr. *Whitebread* was then at Esquire *Leigh's* House in

But in that Letter he did like the Proposal that was made about killing the Duke of *Ormond* in that Consult, and the Letter was signed with his own hand.

*L. C. J.* I would gladly see that Letter.

*Oates*. If I could see it, I could know it.

*L. C. J.* You have not that Letter?

*Oates*. No, but they kept a Book wherein they Registered all their Resolutions, and there it was entred.

*L. C. J.* You upon your Oath say, That he as Superior of them did keep a Book, wherein they Registered all their Consults.

*Oates*. Yes, my Lord.

*L. C. J.* You would do well to shew us your Book, Mr. *Whitebread*.

*Whitebread*. We never kept any.

*Oates*. The Consult did; for tho' the Superior have an absolute power over the Subject, yet they never do any thing of Consequence without the Consult. And this Book was kept by the Superior, and never opened but at the Consult, and therein all the Passages were Registered.

*L. C. J.* Produce your Book, and we shall see whether you cannot catch Mr. *Oates* in something or other.

*Bedlow*. My Lord, that Book I have seen, and therein all their Consults are Registered.

*L. C. J.* Was there Books kept by them?

*Bedlow*. Yes, my Lord, all the Consults did keep Books, and Mr. *Langhorn* was the Person that Registered all into one.

*L. C. J.* If a Hundred Witnesses swear it, they will deny it. Well, will you have any more?

Mr. *S. Baldwyn*. My Lord, we will now call Mr. *James Bedlow*, this Gentleman's Brother, to shew you, That these sort of Persons did resort to him frequently.

*L. C. J.* Are you sworn, Sir?

*J. Bedlow*. Yes, my Lord, I am.

*L. C. J.* Then let me ask you one short Question. Do you know Mr. *Ireland*?

*J. Bedlow*. No.

*L. C. J.* Do you know *Pickering* or *Grove*?

*J. Bedlow*. I have heard of them.

*L. C. J.* Did your Brother know any thing of them?

*J. Bedlow*. As for the Conspiracy of killing the King, I know nothing of it; but about his knowledge of Priests and *Jesuits*, and the Converse he had beyond Sea, that I can speak to. And I have very often heard these mens names named.

*L. C. J.* In what nature did he talk of them?

*J. Bedlow*. I know nothing of the Plot, and as for any Design I knew not what my Brother knew, but I have heard him talk of them.

*L. C. J.* How did he talk of them?

*J. Bedlow*. He mentioned them as his Acquaintance, the *Jesuits* there did ask him Questions about them.

*L. C. J.* And did it appear to you they were of his Acquaintance?

*J. Bedlow*. But I understood nothing of the Plot or Design, by the Oath I have taken.

*L. C. J.* But did he speak as if he knew any of them?

*J. Bedlow*. For any certain knowledge that my Brother had of them I cannot speak, but I have often heard him talk of them as people I thought he knew.

Mr. *Finch*. Do you know, that when he came over from beyond Sea, that his Lodging was frequented by any, and by whom?

*J. Bedlow*. Yes, there were many Priests and *Jesuits* came to him.

Mr. *Finch*. Did your Brother receive any Money from them?

*J. Bedlow*. Yes, my Lord, I have fetch'd many score of Pounds for my Brother from them.

*L. C. J.* The Use, Gentlemen, that the King's Council make of this Evidence, is only to shew, That his Brother Mr. *Bedlow* was conversant in their affairs, in that he hath received many a score of Pounds in the managing of their business.

Sir *Cr. Levinz*. Pray, from whom had your Brother that Money?

*J. Bedlow*. I have proved that from the Goldsmiths themselves that paid it, before the Duke of *Monmouth*, my Lord Chancellor, and Lord Treasurer.

Mr. *Finch*. Have you received any considerable sum at a time?

*J. Bedlow*. Yes, I have.

Mr. *Finch*. How much?

*J. Bedlow*. Fifty or Threescore Pounds at a time.

Mr. *Finch*. Of whom?

*J. Bedlow*. Of Priests and *Jesuits*.

Mr. *Finch*. For whom?

*J. Bedlow*. For my Brother.

*L. C. J.* Will you have any more Evidence?

Mr. *Serj. Baldwyn*. Yes my Lord, the next Evidence we produce, is concerning a Letter; there was a Letter written by one Mr. *Peters*, that is now a Prisoner, to one *Tonstall* a *Jesuit*; and this Letter does mention, That there was a meeting appointed by order of *Whitebread* to be at *London*.

*L. C. J.* What is that to them, and how come you by it?

Mr. *Serj. Baldwyn*. *Peters* is now in Prison for things of this nature; and you have heard of one *Harcourt*, and out of his Study this Letter was taken.

Mr. *Bedlow*. My Lord, may I not have liberty to withdraw? my Head akes so extremely, I cannot endure it.

L. C. J. Mr. *Bedlow*, you may sit down, but we can't part with you yet.

*Ireland*. I desire, my Lord, that his Brother may be asked, how long he had known me.

L. C. J. Can you recollect by the discourses you have heard, how long he might have known *Ireland*?

J. *Bedlow*. No, my Lord, it was out of my way.

L. C. J. But did he talk of *Ireland*?

J. *Bedlow*. Yes, my Lord, he did.

*Ireland*. As being where, in what place?

J. *Bedlow*. I cannot tell.

*Ireland*. He named one place Three Years ago, it was at *Paris*.

L. C. J. But he does not say that you were there, but that you were familiarly talk'd of there; so that the meaning is, they were acquainted with you: And this is only brought to shew, that it is not a new-taken-up thing by *Bedlow*, though you seem'd never to have known any such Man; yet he swears, saith he, I have heard such Persons talkt of as my Brother's acquaintance.

*Ireland*. If his Brother had talkt of me three Years ago, why then he must have known me three years ago.

L. C. J. I'll ask him that question: How long is it since you knew him?

J. *Bedlow*. I have known him but since *August* this same last Summer; but, my Lord, I talkt five, and four years ago of several *English* Monks and Jesuits that were then at *Rome*, that I never knew in my Life.

L. C. J. His answer then is this, saith his Brother, I have heard him talk of them three years ago; I then asked *Bedlow*, how long he had known them? saith he, I did not know them three years ago; though I did talk of them three years ago; for we have talkt of many that we never saw in our Lives: So it seems he had occasion to make use of your names frequently, and join them with those of some he knew better: But he never knew you 'till *August* last; but he did discourse of you three years ago, as known for such sort of Persons.

*Ireland*. He must hear some body speak of us, as being in some place or another.

J. *Bedlow*. I will satisfy you in that. We talk of some now in *England*, that are to be sent a year hence.

L. C. J. If you can produce but *Harcourt* and *Le Faire*, they will do you great service now.

J. *Bedlow*. My Lord, as for example, Father *Pritchard* is Confessor to such a Gentleman in *England* now this year; a year hence we must send such a one hither, and he must go back. And we may talk of that Person as in *England*, two years before.

L. C. J. You need not trouble yourselves about that. Mr. *Ireland*, you shall have a fair Trial, but you will not have cunning or art enough to deceive the Jury, nor will Mr. *Whitebread* have Learning enough to baffle the Court.

Then Mr. W. *Bedlow* and his Brother withdrew.

Serj. *Baldwyn*. My Lord, The next Evidence that we shall give, as I said, is a Letter from one *Peters* to one *Tonstall*, and this we will bring home to Mr. *Whitebread*, for it is an invitation to be at the Consult held at *London* the 24th of *April*; and it was written about that very time, to wit, the

3d of *April*. It was written from *London*, and it mentions, that Mr. *Whitebread* did fix the meeting at that time. We'll tell you how we came by the Letter. Mr. *Harcourt*, who is one of the principal Persons here, and at whose House was the meeting you heard of, he himself is fled away, when they came to look after him upon the discovery that was made: And Mr. *Bradley*, who was the Messenger to seize upon him, did according to direction search his Study, and did there find this Letter, which we conceive, my Lord, to be very good Evidence; this *Harcourt* being a party, and one at whose House the last meeting was, and others was. We do conceive a Letter from one of that party, bearing date about the same time, concerning Mr. *Whitebread*'s Summons, who was Master of the Company, is very good Evidence against them.

L. C. J. If you had found it in Mr. *Whitebread*'s custody, you say something.

Just. *Bertie*. My Brother puts it so: We find a Letter directed to Mr. *Whitebread*, let the matter of it be what it will, it is found among *Harcourt*'s Papers.

Serj. *Baldwyn*. No, my Lord, we find a Letter from one Mr. *Peters* now a Prisoner directed to Mr. *Tonstall* concerning the Consult summoned by *Whitebread*, and this we find in *Harcourt*'s possession.

L. C. J. I can't understand how this may affect Mr. *Whitebread*.

Mr. *Finch*. Pray my Lord, if your Lordship please, this is the use we make of this Letter; we do not produce it as another Evidence of this design, but to fortify that part of the Evidence which hath already been given, That there was a Consult summoned at that time, and to be held with all the privacy that could be, to prevent discovery. And this is the paper, that we find in the Custody of *Harcourt*, one of the Conspirators, who is fled for it.

L. C. J. Look you, Mr. *Finch*, if you use it not against any particular Person, but as an Evidence in general that there was a Plot amongst them, you say right enough; but it cannot be Evidence against any one particular Person of the Prisoners at the Bar.

Mr. *Finch*. My Lord, it can affect no particular Person; but we only use it in the general, and we pray it may be read.

L. C. J. Gentlemen of the Jury, before you hear the Letter read, I would say this to you. Let them have fair play; whatsoever they mete unto others, we will shew them Justice. They shall have as fair play upon their Trials as any Persons whatsoever. The thing that is offered to be given in Evidence, is a Letter written by one *Peters* a Prisoner for this Plot, and directed to one *Tonstall* a Jesuit, and this is found in *Harcourt*'s Chamber, a Priest that is fled, and one whom the King hath Commanded to render himself by his Proclamation; but he does not. Now in that Letter there is a discourse of a Design and Plot on foot. This cannot be Evidence to charge any one particular Person of these; but only to satisfy you and all the world, that those Letters and Papers that are found amongst their own Priests, do fortify the Testimony of Mr. *Oates*, that there is a general Plot: 'Tis not applied to any particular Person.

*Oates*. The day before the Consult met, Mr. *Whitebread* did ask Mr. *Peters* whether he had summoned the Consult according to his direction.



on. Mr. *Peters* told him yes, he had writ into *Warwickshire* and *Worcestershire*.

*Whitebread*. When was this?

*Oates*. The day before the Consult met.

*Whitebread*. Did you hear me ask Mr. *Peters*?

*Oates*. Yes, I did hear you; and I did hear him say he had done it. Now, my Lord, this Letter that is found in *Harcourt's* Study shews, that Mr. *Whitebread* had directed Mr. *Peters* in this Consult.

Serj. *Baldwyn*. Pray swear Sir *Tho. Doleman* to shew how he came by it. *Which was done*.

Serj. *Baldwyn*. Sir *Tho. Doleman*, What do you know of this Letter?

Sir *Tho. Doleman*. This Letter in my hand was taken amongst *Harcourt's* Papers, in a great Bag of Paper; and searching them I did find this Letter amongst the rest.

Then the Letter was shewn to Mr. *Oates*.

L. C. J. Is that Mr. *Peters's* hand?

*Oates*. Yes, my Lord, it is.

L. C. J. Were you acquainted with his hand?

*Oates*. Yes, my Lord, I have often read it in Letters.

L. C. J. Do you know *Tonstall*?

*Oates*. My Lord, I do not know him by that name; If I did see him perhaps I might: I knew Men better by their Faces.

Sir *Cr. Levins*. Pray read it.

Cl. of the Cr. This is Dated *February 23. (77.)* And superscribed thus (These for his Honoured Friend Mr. *William Tonstall* at *Burton*.)

Honoured dear Sir,

I have but time to convey these following particulars to you. First, I am to give you notice, that it hath seem'd fitting to our Master Consult, *Prov. Eccl.* to fix the 21<sup>st</sup> day of April next *Stylo veteri*, for the meeting at London of our Congregation, on which day all those that have a suffrage are to be present there, that they may be ready to give a beginning to the same on the 24<sup>th</sup>, which is the next after *St. George's-day*. You are warned to have, *jus suffragii*, and therefore if your occasions should not permit you to be present, you are to signify as much, to the end others in their ranks be ordered to supply your absence: Every one is minded also, not to hasten to London long before the time appointed, nor to appear much about the Town 'till the meeting be over, lest occasion should be given to suspect the design. Finally, Secrecy, as to the time and place, is much recommended to all those that receive Summons, as it will appear of its own nature necessary.

L. C. J. So it was very necessary indeed.

Cl. of Cr. There is more of it, my Lord.

*Tertio pro Domino solono disco.*

*Benefact. Prov. Lunienfis.*

I am straitned for time, that I can only assure you, I shall be much glad of obliging you any ways, Sir,

Your Servant

*Edward Petre.*

Pray my Service where due, &c.

L. C. J. You know nothing of this Letter, Mr. *Whitebread*?

*Whitebread*. No, my Lord, nothing at all.

L. C. J. Nor you, Mr. *Ireland*?

*Ireland*. 'Tis none of my Letter, my Lord.

L. C. J. Did you never hear of it before?

*Ireland*. Not that I know of in particular.

L. C. J. Well, have you done with the Evidence for the King?

Serj. *Baldwyn*. Pray Sir *Tho. Doleman*, will you tell my Lord, Did Mr. *Oates* give in this Testimony of the Consult, to be the 24<sup>th</sup> of April, before this Letter was found?

Sir *Tho. Doleman*. Mr. *Oates* gave in his Information about this matter, to the King and Council, four or five Days before we found this Letter.

Serj. *Baldwyn*. You were speaking of the Seals that were made use of to Sign Commissions, have you them in the Court?

*Oates*. Yes, my Lord, they are in the Court, and they were taken out of the Provincial's Chamber.

*Whitebread*. I confess they had the Seals out of my Chamber; but the taking of them was more than they had Power to do.

Then the Seals were shewn to the Court and the Jury.

Mr. *Finch*. It hath been told you already, Gentlemen, what use these Seals were put unto; to Seal Commissions to raise an Army. And we have now done with our Evidence for the King, 'till we hear what the Prisoners say.

L. C. J. Before you come to make your Defence, I will do that which I think in Justice and Honesty, and according to the duty of my Place and my Oath, I ought to do; That is, to say something to the Jury, before the Prisoners make their own Defence. Here are Five that stand indicted of High-Treason: I must tell you this, That as to three of them, that is to say, *Ireland, Pickering and Grove*, both Mr. *Oates* and Mr. *Bedlow* have sworn the thing flat upon them: Mr. *Oates* his Testimony is full against them all; but Mr. *Bedlow* does only agree with him to charge Three, and that in this particular: Saith he, I was present at *Harcourt's* Chamber when *Ireland* was there, and *Pickering* and *Grove*, where they discoursed of their defeat about their design against the King at *Windsor*; and there they came to a new agreement, to do it at *New-Market*. So that here is now, as the King's Counsel did open it to you at the first, as there ought to be, two Witnesses; so here are Two which though they speak as to a different circumstance of time, yet they prove one Treasonable Fact at several times: For if killing the King be the Fact in question, and one proves they would do it by one thing, and another by another; and one in one place, and another in another; yet these are two Witnesses to prove one fact, that is the substance, which is, the killing of the King. So that there are two Witnesses against them three, expressly proving a Confederacy to kill the King: For *Ireland's* being by, and consenting, was the same thing, and as much, as if he had been to do it with *Grove* and *Pickering*; for there are no Accessaries in Treason. I do acknowledge, that Mr. *Oates* hath given a very full and ample Testimony, accompanied with all the circumstances of time and place, against them all, that may go far to weigh with you, all things considered, to believe there is a Plot; yet I do not think that they have proved it against *Whitebread* and *Fenwick* by two Witnesses: So that though the Testimony be so full, as to satisfy a private Conscience, yet we must go according to Law too. It will be convenient, from what is already proved, to have them stay 'till more proof may come in: 'Tis a great Evidence that is against them; but it not being sufficient in point of Law, we discharge

discharge you of them; 'tis not a legal proof to convict them by, whatsoever it may be to satisfy your Consciences. Therefore remove Mr. Fenwick and Mr. Whitebread from the Bar, and let the other three say what they will for themselves †.

\* *William Montague*. Esq; \* *L. C. B.* (Speaking to the Goaler) You must understand they are no way acquitted; the Evidence is so full against them by Mr. Oates's Testimony, that there is no reason to acquit them. It is as flat, as by one Witness can be; and the King hath sent forth a Proclamation for further discovery; before the time therein prefixt be out, no question there will come in more Evidence: Therefore keep them as strict as you can.

*Then Whitebread and Fenwick were taken back to the Goal by the Keeper.*

*L. C. J.* Now Gentlemen, you shall have liberty to make your full defence.

*Ireland.* First I shall endeavour to prove there are not two Witnesses against me: For that which he says, of my being at *Harcourt's* Chamber in *August*, is false; for I will prove I was all *August* long out of Town, for I was then in *Staffordshire*.

*L. C. J.* Call your Witnesses.

*Ireland.* If there be any of them here.

*L. C. J.* Whoever comes to give Evidence for you, shall go and come in safety; they shall not be Trepan'd for any thing of that, but they shall be heard.

*Ireland.* My Lord, We are kept so strict, that we are not permitted to send for any body.

*L. C. J.* As soon as your Sister came to me, I ordered she should have access to you, and that you should have Pen, Ink and Paper, in order to your defence; therefore call those Witnesses you have, to prove what you say.

*Ireland.* I can only say this, That last *August* upon the 3d day I went down to *Staffordshire* with my Lord *Aston*, and his Lady, and his Son, and Sir *John Southcot* and his Lady, and all these can testify that I went down with them. Here is Mr. *John Aston* in Town, if he may be found, who was in my Company all *August* in *Staffordshire*.

*L. C. J.* Will you call that Gentleman? Crier, call him.

Crier. Mr. *John Aston*.

*Ireland.* It is an hundred to one if he be here; for I have not been permitted so much as to send a scrap of Paper.

*L. C. J.* Your Sister had leave to go to whom you thought fit, in your behalf. You said you would prove it, Why don't you?

*Ireland.* I do as much as I can do.

*L. C. J.* What, by saying so?

*Ireland.* Why, I do name them that can testify.

*L. C. J.* If naming them should serve, you must have a Law made on purpose for you.

*Ireland.* Then there is no help for Innocence.

*Recorder.* To save him that labour, the King's Evidence will prove, that he was in Town at that time.

Serj. *Baldwyn.* Swear *Sarah Paine.* Which was done.

Serj. *Baldwyn.* My Lord, this Person was Mr. *Grove's* Maid.

*L. C. J.* I believe you know your Maid, Mr. *Grove*, don't you? look upon her, she was your Servant.

*Grove.* Yes, my Lord, she was so, she is not so now.

*L. C. J.* Do you know Mr. *Ireland*?

*Sarah Paine.* Yes, my Lord.

*L. C. J.* Do you know whether Mr. *Ireland* was in Town in *August* last, or no?

*S. Paine.* I saw him at his own House about a Week before I went with my Lord *Arlington* to *Windsor*.

*L. C. J.* When was that?

*S. Paine.* That was about a Week after the King was gone thither.

*L. C. J.* Sir *Tho. Doleman*, what day was it the King was gone thither?

Sir *Tho. Doleman.* About the thirteenth of *August*.

*L. C. J.* Thirteen and seven is twenty; then you went to *Windsor* about the twentieth it seems, and you say that eight days before you saw Mr. *Ireland* at his own House.

*S. Paine.* Yes, my Lord, about eight or nine days before that, I did see him at the door of his own House, which was a Scrivener's in *Fetter-Lane*. He was going into his own Lodging.

*L. C. J.* How long had you known him before that time?

*S. Paine.* My Lord, I knew him, for he came often to our House, when I lived at Mr. *Grove's*; he was the Man that broke open the Pacquet of Letters that my Master carried about afterwards, and he Sealed all the Pacquets that went beyond the Seas. And he opened them still when the Answers returned back again.

*Ireland.* Now must all the people of my Lodging come and witness that I was out of my Lodging all *August*.

*L. C. J.* Call them.

*Ireland.* There is one *Anne Ireland*.

*L. C. J.* Crier, call her.

Crier. *Anne Ireland*: Here she is.

*L. C. J.* Come Mistress, what can you say concerning your Brother's being out of Town in *August*?

*A. Ireland.* My Lord, on *Saturday* the third of *August*, he set out to go into *Staffordshire*.

*L. C. J.* How long did he continue there?

*A. Ireland.* Till it was a fortnight before *Michaelmas*.

*L. C. J.* How can you remember that it was just the third of *August*?

*A. Ireland.* I remember it by a very good Circumstance, because on the *Wednesday* before, my Brother, and my Mother and I, were invited out to Dinner; we stay'd there all night, and all *Thursday* night, and *Friday* night my Brother came home, and on *Saturday* he set out for *Staffordshire*.

*L. C. J.* Where was it, Maid, that you saw him?

*S. Paine.* I saw him going in at the door of their own House.

*L. C. J.* When was that?

*S. Paine.* About a Week before I went with my Lord Chamberlain to *Windsor*, which was a Week after the King went thither.

*L. C. J.* That must be about the 12th or 13th. Are you sure you saw him?

*S. Paine.* Yes, my Lord, I am sure I saw him.

*L. C. J.* Do you know this Maid, Mr. *Ireland*?

*Ireland.* I do not know her, my Lord.

*L. C. J.* She knows you by a very good token. You used to break open the Letters at her Master's House, and to seal them.

Y y y y z

*S. Paine.*

*S. Paine.* He knows me very well, for I have carried several Letters to him, that came from the Carrier, as well as those that came from beyond Sea.

*L. C. J.* They will deny any thing in the World.

*Ireland.* I profess, I do not know her. Twenty People may come to me, and yet I not know them; and the having been Mr. Grove's Servant, may have brought me Letters, and yet I not remember her. But, my Lord, here is my Mother *Eleanor Ireland*, that can testify the same.

*L. C. J.* Call her then.

*Crier.* *Eleanor Ireland.*

*E. Ireland.* Here.

*L. C. J.* Can you tell when your Son went out of Town?

*E. Ireland.* He went out of Town the third of *August*, towards *Staffordshire*.

*Ireland.* My Lord, there is Mr. *Charles Gifford* will prove that I was a Week after the beginning of *September*, and the latter end of *August*, in *Staffordshire*.

*L. C. J.* That will not do: for she says that she saw you in *London* about the 10th or 12th of *August*; and she makes it out by a Circumstance, which is better Evidence than if she had come and sworn the precise day wherein she saw him: for I should not have been satisfy'd, unless she had given me a good account why she did know it to be such a day. She does it by Circumstances, by which we must calculate that she saw you about the 12th or 13th day. She went to my Lord *Arlington's* at such a day, a Week after the King went to *Windsor*, and that was about the 13th, and she saw you a Week before she went to my Lord *Arlington's*, which must be the 12th or 13th. You say you went out of Town the third of *August*; who can swear you did not come back again?

*Ireland.* All the house can testify I did not come to my Lodging.

*E. Ireland.* He went out of Town the third of *August*, and did not return till a fortnight before *Michaelmas*.

*L. C. J.* Did you lie at his house?

*E. Ireland.* I did then, my Lord.

*L. C. J.* What, all that while?

*E. Ireland.* Yes, my Lord.

*L. C. J.* So did your Daughter too, did she?

*E. Ireland.* Yes, she did.

*Ireland.* There are others that did see me the latter end of *August* in *Staffordshire*.

*L. C. J.* And you would fain have cramp't him up, between the 20th and 31st; and then, 'tis possible, you might be in *Staffordshire*.

*Ireland.* If I might have been permitted to send in for such Witnesses as I would have had, I could have brought them.

*Recorder.* Why, have you not a Note of what Witnesses you are to call? why don't you call them according to that Note?

*Ireland.* I had that but this Morning.

*L. C. J.* Why did you not send for them before, to have them ready?

*Recorder.* 'Tis his Sister that brings that Note of the Witnesses that he should call, and now they are not here.

*A. Ireland.* There was one *Engletrap*, and one *Harrison* had promised to be here, that went with him into *Staffordshire*.

*Mr. Oates.* My Lord, when ever we had a mind

to come to Town, we commonly writ our Letters, and let them come to Town two days after us. So that we might prove by the writing of such Letters, if any Question did arise, that we could not be at such a place at such a time. And when we pretended to go into the Country, we have gone and taken a Chamber in the City, and have had frequent Cabals at our Chambers there. Mr. *Ireland* writ a Letter as dated from *St. Omers*, when I took my leave of him at his own Chamber, which was betwixt the 12th and 24th in *London*. He was there; and afterwards when I went to *Fenwick's* Chamber he came thither; a fortnight or ten days at least I am sure it was in *August*.

*L. C. J.* Here are three Witnesses upon Oath about this one thing: here is Mr. *Bedlow* that Swears the fact, upon which the Question arises, to be in *August*; that you deny, and say you were out of Town then: he produces a Maid here, and she swears, that about that time, which by calculation must be about the 11th or 12th, she saw you going into your own House. And here is a third Witness, who swears he knows nothing of this matter of fact, but he knows you were in Town then, and that he took his leave of you as going to *St. Omers*.

*Oates.* Whereas he says, that the beginning of *September* he was in *Staffordshire*, he was in Town the first of *September*, or second, for then I had of him twenty Shillings.

*Ireland.* This is a most false lye; for I was then in *Staffordshire*. And the Witnesses contradict themselves; for the one saith, he took his leave of me, as going to *St. Omers* the 12th; the other saith, it was the latter end of *August* I was at *Harcourt's* Chamber.

*L. C. J.* He does not say you went, but you pretended to go.

*A. Ireland.* Here is one *Harrison*, that was a Coachman that went with them.

*L. C. J.* Well, what say you, Friend? Do you know Mr. *Ireland*?

*Harrison.* I never saw the Man before that time in my life, but I met with him at *St. Albans*.

*L. C. J.* When?

*Harrison.* The fifth of *August*. There I met with him, and was in a Journey with him to the sixteenth.

*L. C. J.* What day of the week was it?

*Harrison.* Of a *Monday*.

*L. C. J.* Did he come from *London* on that day?

*Har.* I cannot tell that. But there I met him.

*L. C. J.* What time?

*Har.* In the Evening.

*L. C. J.* Whereabouts in *Saint Albans*?

*Har.* At the *Bull-Inn*, where we lodged.

*L. C. J.* Mr. *Ireland*, you say you went on *Saturday* out of Town, did you stay at *Saint Albans* till *Monday*?

*Ireland.* No, I went to *Standon* that day, and lay there on *Saturday* and *Sunday* Night, on *Monday* I went to *Saint Albans*.

*L. C. J.* What, from thence?

*Ireland.* Yes, my Lord.

*L. C. J.* Why did you go thither? was that in your way?

*Ireland.* I went thither for the company of Sir *John Southcot* and his Lady.

*L. C. J.* How did you know that they went thither.

*Ireland.*

*Ireland.* I understood they were to meet my Lord *Aston*, and Lady, there.

*L. C. J.* What, on Monday Night?

*Ireland.* Yes, my Lord.

*Har.* From thence I went with him to *Tixwel*, to my Lord *Aston's* House, there we were all with him.

*L. C. J.* Were you my Lord *Aston's* Coachman?

*Har.* No, my Lord, I was Servant to Sir *John Southcot*.

*L. C. J.* How came you to go with them?

*Har.* Because my Lord *Aston* is my Lady *Southcot's* Brother.

*L. C. J.* How long was you in his Company?

*Har.* From the Fifth of *August* to the sixteenth, and then I was with him at *West-Chester*.

*Mr. Just. Atkins.* You have not yet talk'd of being at *West-Chester* all this while.

*Ireland.* My Lord, I must talk of my Journey by degrees.

*L. C. J.* Before, you said you were all *August* in *Staffordshire*; come, you must find out some Evasion for that.

*Ireland.* In *Staffordshire*, and thereabouts.

*L. C. J.* You Witness, who do you live with?

*Har.* With Sir *John Southcot*.

*L. C. J.* Who brought you hither?

*Har.* I came only by a Messenger last Night.

*L. C. J.* Was not Sir *John Southcot* in that Journey himself?

*Har.* Yes, my Lord, he was.

*L. C. J.* Then you might as well have sent to Sir *John Southcot* himself to come.

*A. Ireland.* I did it of my self, I never did such a thing before, and did not understand the way of it.

*Ireland.* It was meer Chance she did send for those she did.

*L. C. J.* But why should she not send for Sir *John* himself?

*Ireland.* She did not know that Sir *John* was there.

*L. C. J.* You were not denied to send for any Witnesses, were you?

*Ireland.* I was expressly denied, they would not let me have one bit of Paper.

*L. C. J.* Fellow, what Town was that in *Staffordshire*? Tell me quickly.

*Har.* It was *Tixwel*, by my Lord *Aston's*, there we made a Stay for three or four Days, then we went to *Nantwich*, and so to *West-Chester*.

*L. C. J.* Were not you at *Wolverhampton* with him?

*Har.* No, my Lord, I was not there, I left him at *West-Chester*.

*Ireland.* My Lord, I was at *Wolverhampton* with Mr. *Charles Gifford*, and here he is to attest it.

*L. C. J.* Well, Sir, what say you?

*Gifford.* My Lord, I saw him there a Day or two after St. *Bartholomew's* Day, there he continued till the 9th of *September*; the 7th of *September* I saw him there, and I can bring twenty and twenty more, that saw him there. Then, as he said, he was to go towards *London*. I came again thither on the ninth, and there I found him. And this is all I have to say.

*Oates.* My Lord, I do know that Day in *September* I speak of by a particular Circumstance.

*Ireland.* My Lord, there is one *William Bowdrel*, that will testify the same, if I might send for him.

*L. C. J.* Why han't you him have?

*Ireland.* She hath done what she can to bring as many as she could.

*L. C. J.* Have you any more Witnesses to call?

*Ireland.* I can't tell whether there be any more here or no.

*L. C. J.* Mr. *Grove*, what say you for your self?

*Grove.* Mr. *Oates* says he lay at my House; my Lord, I have not been able to send for any Witnesses, and therefore I know not whether there be any here. They could prove that he did not lie there. He says he saw me receive the Sacrament at *Wild-House*, but he never did; and if I had any Witnesses here, I could prove it.

*L. C. J.* He tells it you with such and such Circumstances, who lay there at that time.

*Grove.* He did never lie there.

*L. C. J.* Why, you make as if you never knew Mr. *Oates*.

*Grove.* My Lord, I have seen him, but he never lay at my House.

*L. C. J.* Mr. *Pickering*, what say you for your self? you rely upon your Masses.

*Pickering.* I never saw Mr. *Oates*, as I know of, in my Life.

*L. C. J.* What say you to *Bedlow*? he tells you he was with you in *Harcourt's* Chamber such a Day.

*Pickering.* I will take my Oath I was never in Mr. *Bedlow's* Company in all my Life.

*L. C. J.* I make no Question but you will; and have a Dispensation for it when you have done. Well, have you any Witnesses to call?

*Pickering.* I have not had time to send for any.

*L. C. J.* You might have moved the Court, when you came at first, and they would have given you an Order to send for any.

*Ireland.* Methinks there should be some Witnesses brought that know Mr. *Oates*, to attest his Reputation, for I am told, there are those that can prove very ill things against him, they say he broke Prison at *Dover*.

*L. C. J.* Why have you not your Witnesses here to prove it?

*Ireland.* We could have had them, if we had Time.

*L. C. J.* See what you ask now, you would have time, and the Jury are ready to go together about their Verdict.

*Ireland.* Why, we desire but a little Time to make out our Proof.

*L. C. J.* Only you must tye up the Jury, and they must neither eat nor drink till they give in a Verdict.

*Ireland.* Then we must confess, there is no Justice for Innocence.

*L. C. J.* Well, if you have any more to say, say it.

*Ireland.* My Lord, I have produced Witnesses, that prove what I have said.

*L. C. J.* I'll tell you what you have proved: you have produced your Sister and your Mother, and the Servant of *Southcot*, they say you went out the third of *August*, and he gives an account you came to St. *Albans* on the fifth; and then there is another Gentleman, Mr. *Gifford*, who says he saw you at *Wolverhampton* till about a Week in *September*. Mr. *Oates* hath gain'd him in that, so you have one Witness against Mr. *Oates* for that Circumstance. It cannot be true what Mr. *Oates* says, if you were there all that

that

that time, and it cannot be true what Mr. *Gifford* says, if you were in *London* then. And against your two Witnesses, and the Coachman, there are three Witnesses, that swear the contrary, Mr. *Oates*, Mr. *Bedlow*, and the Maid, so that if she and the other two be to be believed, here are three upon Oath, against your three upon bare Affirmation.

*Ireland*. I do desire time, that we may bring in more Witnesses.

*L. C. J.* Come, you are better prepared than you seem to be. Call whom you have to call. Can you prove that against Mr. *Oates*, which you speak of? If you can, call your Witnesses on God's Name. But only to asperse tho' it be the way of your Church, it shall not be the way of Trial amongst us. We know you can call Hereticks, and ill Names, fast enough.

*Ireland*. That *Hilsley* that he names can prove, if he were here, that Mr. *Oates* was all the while at *St. Omers*.

*L. C. J.* Will you have any more Witnesses call'd? if you will, do it, and don't let us spend the Time of the Court thus.

*Grave*. Here is Mrs. *Tork*, that is my Sister, will your Lordship please to ask her, whether she saw that Gentleman at my House?

*L. C. J.* What say you, Mistress?

*Tork*. No, my Lord, not I.

*Mr. Just. Ask*. Nor I neither; might not he be there for all that?

*Oates*. To satisfy the Court, my Lord, I was in another Habit, and went by another Name.

*L. C. J.* Look you, he did as you all do, disguise your selves.

*Ireland*. Though we have no more Witnesses, yet we have Witnesses that there are more Witnesses.

*L. C. J.* I know what your way of Arguing is, that is very pretty, you have Witnesses that can prove you have Witnesses, and those Witnesses can prove you have more Witnesses, and so *in infinitum*. And thus you argue in every thing you do.

*Ireland*. We can go no further than we can go, and can give no Answer to what we did not know would be proved against us.

*L. C. J.* Then look you, Gentlemen—

*A. Ireland*. My Lord, Sir *Denny Ashburnham* promised to be here to testify what he can say concerning Mr. *Oates*.

*L. C. J.* Call him.

*Crier*. Sir *Denny Ashburnham*. Here he is, my Lord.

*L. C. J.* Sir *Denny*, what can you say concerning Mr. *Oates*?

*Sir D. Ashburnham*, My Lord, I received a Letter this Morning, which I transmitted to Mr. Attorney, and this Letter was only to send to me a Copy of an Indictment against Mr. *Oates* of Perjury: I did send it accordingly with my Letter to Mr. Attorney. He hath seen the Letter, and what the Town says to me in it.

\* *Att. Gen.* I have seen it, there is nothing in it.

*L. C. J.* Do you know any thing of your own Knowledge?

*Sir D. Ashburnham*. I do know Mr. *Oates*, and have known him a great while, I have known him from his Cradle, and I do know that when he was a Child, he was not a Person of

that Credit that we could depend upon what he said.

*L. C. J.* What signifies that?

*Sir D. Ashburnham*. Will you please to hear me out, my Lord. I have been also solicited by some of the Prisoners who sent to me, hoping I could say something that would help them in this Matter: Particularly last Night one Mistress *Ireland*, Sister, to the Prisoner at the Bar, a Gentlewoman I never saw before in my Life, she came to me, and was pressing me hard, that I would appear here voluntarily to give Evidence for the Prisoner. I told her no, I would not by any means in the World, nor could I say any thing, as I thought, that would advantage them; for I told her, though perhaps, upon my Knowledge of Mr. *Oates* in his Youth, had this Discovery come only upon Mr. *Oates*'s Testimony, I might have had some little Doubt of it, but it was so corroborated with other Circumstances that had convinced me, and I would not speak any thing against the King's Witnesses, when I my self was satisfied with the Truth of the thing: And I do think truly that nothing can be said against Mr. *Oates* to take off his Credibility; but what I transmitted to Mr. Attorney, I had from the Town of *Hastings*, for which I serve.

*L. C. J.* What was in that Indictment?

*Sir D. Ashburnham*. It is set forth, that he did swear the Peace against a Man, and at his taking his Oath did say, there were some Witnesses that would evidence such a Point of Fact, which, when they came, would not testify so much, and so was forsworn.

*L. C. J.* What was done upon that Indictment?

*Sir D. Ashburnham*. They did not proceed upon it; but here is the Letter, and the Copy of the Indictment.

*Mr. Serj. Baldwyn*. My Lord, we desire it may be read, and see what it is.

*Mr. Att. Gen.* It is only a Certificate, pray let it be read.

*L. C. J.* I do not think it Authentick Evidence.

*Mr. Att. Gen.* But if I consent to it, it may be read.

*L. C. J.* If you will read it for the Prisoners you may, you shan't read it against them. If there be any Strain, it shall be in favour of the Prisoners, and not against them.

*Mr. Att. Gen.* It is nothing against the Prisoners, nor for them; but however if your Lordship be not satisfied it should be read, let it alone.

*L. C. J.* Truly, I do not think it is sufficient Evidence, or fit to be read.

*A. Ireland*. I went to another, one Colonel *Shakesby*, who was sick, and could not come, but could have attested much as to this.

*L. C. J.* Have you any more Witnesses?

*Ireland*. I have none, nor I have not time to bring them in.

*L. C. J.* If you have none, what time could have brought them in? But you have called a Gentleman that does come in, and truly he hath done you very great Service; you would have had him testified against Mr. *Oates*, he saith he hath known him ever since he was a Child, and that then he had not so much Credit as now he

he hath: And had it been upon his single Testimony that the Discovery of the Plot had depended, he should have doubted of it; but Mr. Oates his Evidence, with the Testimony of the Fact it self, and all the concurring Evidences which he produces to back his Testimony, hath convinced him that he is true in his Narrative.

*Sir D. Ashburnham.* Your Lordship is right in what I have spoken.

*L. C. J.* Have you any more Witnesses, or any thing more to say for your selves?

*Ireland.* If I may produce on my own behalf Pledges of my own Loyalty, and that of my Family—

*L. C. J.* Produce whom you will.

*Ireland.* Here is my Sister and my Mother can tell how our Relations were plundered for siding with the King.

*L. C. J.* No, I will tell you why it was, it was for being Papists, and you went to the King for Shelter.

*Ireland.* I had an Uncie that was killed in the King's Service; besides, the *Pendrels* and the *Giffards* that were instrumental for saving the King, after the Fight at *Worcester*, are my near Relations.

*L. C. J.* Why, all those are Papists.

*Pickering.* My Father, my Lord, was killed in the King's Party.

*L. C. J.* Why then do you fall off from your Father's Virtue?

*Pickering.* I have not time to produce Witnesses on my own behalf.

*Ireland.* I do desire time to bring more Witnesses.

*Grove.* As I have a Soul to save, I know nothing of this Matter charged upon me.

*L. C. J.* Well, have you any thing more to say?

*Ireland.* No, my Lord.

*L. C. J.* You of the King's Counsel, will you sum up the Evidence?

*Mr. Serj. Baldwyn.* No, my Lord, we leave it to your Lordship.

*Cl. of Cr. Crier,* Make Proclamation of Silence.

*Crier.* O Yes! All manner of Persons are commanded to keep Silence upon pain of Imprisonment.

*Then the Lord Chief Justice directed the Jury thus:*

*L. C. J.* Gentlemen, you of the Jury! As to these three Persons, *Ireland*, *Pickering*, *Grove*, (the other two you are discharged of) One of them, *Ireland*, it seems is a Priest. I know not whether *Pickering* be or no, *Grove* is none, but these are the two Men that should kill the King, and *Ireland* is a Conspirator in that Plot. They are all indicted for conspiring the King's Death, and endeavouring to subvert the Government, and destroy the Protestant Religion, and bring in Popery. The main of the Evidence hath gone upon that foul and black Offence, *Endeavouring to kill the King*. The utmost end was, without all question, to bring in Popery, and subvert the Protestant Religion; and they thought this a good means to do it, by killing the King. That is the thing you have had the greatest Evidence of, I will sum up the Particulars, and leave them with you.

'Tis sworn by Mr. Oates expressly, That on the 24th of *April* last, there was a Consultation held,

of Priests and Jesuits. They are the Men fit only for such a Mischief, for I know there are abundance of honest Gentlemen of that Persuasion, who could never be drawn to do any of these things, unless they were seduced by their Priests, that stick at nothing for their own end: He swears expressly that the Consult was begun at the *White-Horse* Tavern in the *Strand*; That they there agreed to murder the King; That *Pickering* and *Grove* were the Men that were to do it, who went afterwards and subscribed this Holy League of theirs, and signed it every one at his own Lodging, *Whitebread* at his, *Ireland* at his, and *Fenwick* at his, two of which are out of the Case, but they are repeated to you only to shew you the Order of the Conspiracy. That afterwards *Pickering* and *Grove* did agree to the same, and they received the Sacrament upon it as an Oath, to make all Sacred, and a Seal, to make all Secret.

Mr. *Bedlow* hath sworn as to that particular time of killing the King by *Pickering* and *Grove*, though they were not to give over the Design, but there were Four that were sent to kill the King at *Windsor*. Mr. Oates swears there was an Attempt by *Pickering* in *March* last, but, the Flint of the Pistol happening to be loose, he durst not proceed, for which he was rewarded with Penance. He swears there were Four hired to do it; that Fourscore Pounds was provided for them. He saw the Money; and swears he saw it delivered to the Messenger to carry it down.

*Ireland.* At what time was that?

*L. C. J.* In *August* there was an Attempt first by *Pickering* and *Grove*. They then not doing of it, four other Persons (*Irish* Men) were hired to do it, and ten thousand Pounds proffered to Sir *George Wakeman* to Poison the King. Thus still they go on in their Attempts, and, That being too little, five thousand Pounds more was added. This is to shew you the Gross of the Plot in general; and also the particular Transactions of these two Murderers, *Grove* and *Pickering*, with the Conspiracy of *Ireland*. *Bedlow* swears directly, that in *August* last, these three and *Harcourt*, and *Pritchard*, and *Le Faire*, being all together in a Room, did discourse of the Disappointment the Four had met with, in not killing the King at *Windsor*; and there the Resolution was, the old Stagers should go on still, but they had one *Conyers* joined to them, and they were to kill the King then at *New-Market*. He swears they did agree to do it; that *Ireland* was at it; and that all three did consent to that Resolve. So that here are two Witnesses that speak positively, with all the Circumstances of this Attempt, of the Two to kill the King, and the Confederacy of *Ireland*, all along with them. Now, I must tell you, there are no Accessaries, but all Principals, in Treason. It may seem hard, perhaps, to convict Men upon the Testimony of their Fellow-Offenders, and if it had been possible to have brought other Witnesses, it had been well: but, in things of this Nature, you cannot expect that the Witnesses should be absolutely spotless. You must take such Evidence as the Nature of the thing will afford, or you may have the King destroyed, and our Religion too. For *Jesuits* are too subtle to subject themselves to too plain a Proof, such as they cannot evade by Equivocation, or a flat Denial.

There is also a Letter produced, which, speaking of the Consult that was to be the 24th of *April*, proves that there was a Conspiracy among them: And, although it is not Evidence to convict any one Man of them, yet it is Evidence upon Mr. *Oates's* Testimony to prove the general Design. It is from one *Petre* to one of the Confederates, and taken amongst *Harcourt's* Papers, after Mr. *Oates* had given in his Testimony; and therein it is mentioned, That the Superior had taken care, that there should be a Meeting the 24th of *April*, the Day after *Saint George's Day*, which is the very time *Oates* speaks of; and that they were not to come to Town too soon, that the Design might not be discovered. I would fain know what the Signification of that Clause may be. And then it goes farther, That it was to be kept secret, as the Nature of the thing doth require; which shews plainly there was such a Transaction on foot. But the Reason I urge it for is, to shew you that 'tis a concurrent Evidence with Mr. *Oates*, who had never seen this Paper till three or four Days after his Information was given in, wherein he swears the Time when this Agitation was to be, and when they came to look upon the Paper, it agrees with the Time precisely. Now they do not write in this Letter, that they intend to kill the King, but they write to caution them to keep the Design undiscovered, and by that you may guess what they mean.

What is said to all this by the Prisoners, but Denial? *Ireland* cannot deny but that he knew Mr. *Oates*, and had been in his Company some times; five times, by Circumstances, Mr. *Oates* hath proved, so that they were Acquaintance; and it appears plainly, there was a Familiarity between them. *Ireland* objects, that *Bedlow* charges him in *August*, when he was out of Town all that time, and that therefore the Testimony of one of the Witnesses cannot be true. And, to prove this, he calls his Mother, his Sister, and Sir *John Southcot's* Man, and Mr. *Gifford*. His Mother and Sister say expressly, that he went out of Town the third of *August*, and the Servant says, that he saw him at *St. Albans* the fifth of *August*, and continued in his Company to the sixteenth; (so that as to that, there is a Testimony both against Mr. *Bedlow* and against Mr. *Oates*;) and *Gifford* comes and says, he saw him at the latter end of *August* and beginning of *September* at *Wolverhampton*, whereas Mr. *Oates* hath sworn, he saw him the twelfth of *August*, and the first or second of *September*, and tells it by a particular Circumstance, wherein, I must tell you, it is impossible that both Sides should be true. But if it should be a Mistake only in point of Time, it destroys not the Evidence, unless you think it necessary to the Substance of the thing. If you charge one in the Month of *August* to have done such a Fact, if he deny that he was in that Place at that time, and proves it by Witnesses, it may go to invalidate the Credibility of a Man's Testimony, but it does not invalidate the Truth of the thing itself, which may be true in Substance, though the Circumstance of Time differ. And the Question is, whether the Thing be true?

Against this, the Counsel for the King have three that swear it positively and expressly, That *Ireland* was here. Here is a young Maid that knew him very well, and was acquainted with

him, and with his breaking up of Letters; and she is one that was *Grove's* Servant: She comes and tells you directly, That about that time, which, by Computation, was about the twelfth of *August*, she saw him go into his own House, which cannot be true, if that be true which is said on the other Side; and she does swear it upon better Circumstances than if she had barely pitch'd upon a Day; for she must have satisfied me well, for what Reason she could remember the Day so positively, ere I should have believed her: But she does it remembering her going to my Lord *Arlington's* Service, which was a Week after the King went to *Windfor*; which is sworn to be about the thirteenth of *August*, and a Week before her going it was, that she saw *Ireland* at his own Door. What Arts they have of evading this, I know not, for as they have turn'd their Learning into Subtlety, so they have their Integrity too. The Study of Politicks is their Business and Art, which they make use of upon all Occasions; and I find them Learned chiefly in Cunning, and very subtle in their Evasions. So that you see, without great Difficulty, a Man cannot have from them a plain Answer to a plain Question. But the Fact against them is here expressly sworn by two Witnesses; if you have any reason to disbelieve them, I must leave that to you. Sir *D. Ashburnham*, who is produced to discredit Mr. *Oates*, says, that when he was a Child, there was little or no Credit to be given to him, and if the Matter had depended solely upon his Testimony, those Irregularities of his, when a Boy, would have staggered his Belief. But when the Matter is so accompanied with so many other Circumstances, which are material things, and cannot be evaded or deny'd, it is almost impossible for any Man, either to make such a Story, or not to believe it when it is told. I know not whether they can frame such a one; I am sure never a Protestant ever did, and, I believe, never would invent such a one to take away their Lives: Therefore it is left to your Consideration what is sworn. The Circumstances of swearing it by two Witnesses, and what Reasons you have to disbelieve them.

It is most plain the Plot is discovered, and that by these Men; and that it is a Plot, and a villanous one, nothing is plainer. No Man of common Understanding, but must see there was a Conspiracy to bring in *Poperie*, and to destroy the *Protestant Religion*; and we know their Doctrines and Practices too well, to believe they will stick at any thing, that may effect those Ends. They must excuse me, if I be plain with them; I would not asperse a Profession of Men, as the Priests are, with hard Words, if they were not very true, and if at this time it were not very necessary. If they had not murdered Kings, I would not say they would have done ours. But when it hath been their Practice so to do; when they have debauched Men's Understandings, overturned all Morals, and destroy'd all Divinity, What shall I say of them? When their Humility is such, that they tread upon the Necks of Emperors; their Charity such, as to kill Princes; and their Vow of Poverty such, as to covet Kingdoms, What shall I judge of them? When they have Licences to lye, and Indulgences for Falshoods; Nay, when they can make him a Saint that dies in one, and then pray to him; as the Carpenter first makes an Image, and after worships,

ships it; and can then think to bring in that wooden Religion of theirs amongst us in this Nation, What shall I think of them? What shall I say to them? What shall I do with them?

If there can be a Dispensation for the taking of any Oath (and diverse Instances may be given of it, that their Church does License them to do so) it is a Cheat upon Men's Souls, it perverts and breaks off all Conversation amongst Mankind; for how can we deal or converse in the World, when there is no Sin, but can be indulged; no Offence so big, but they can pardon it, and some of the blackest be accounted meritorious? What is there left for Mankind to lean upon, if a Sacrament will not bind them (unless it be to conceal their Wickedness?) If they shall take Tests and Sacraments, and all this under colour of Religion be avoided, and signify nothing, what is become of all Converse? How can we think Obligations and Promises between Man and Man should hold, if a Covenant between God and Man will not?

We have no such Principles nor Doctrines in our Church, we thank God. To use any Prevarication in declaring of the Truth, is abominable to natural Reason, much more to true Religion; and 'tis a strange Church that will allow a Man to be a Knave. 'Tis possible some of that Communion may be saved, but they can never hope to be so in such a Course as this. I know they will say, That these are not their Principles, nor these their Practices, but they preach otherwise, they print otherwise, and their Councils do determine otherwise.

Some hold, that the *Pope* in Council is *Infalible*, and ask any *Popish Jesuit* of them all, and he will say the *Pope* is *Infalible* himself in *Cathedra*, or he is no right *Jesuit*. And if so, whatever they command, is to be justified by their Authority; so that if they give a Dispensation to kill a King, that King is well killed. This is a Religion that quite unhinges all Piety, all Morality, and all Conversation, and to be abominated by all Mankind.

They have some Parts of the Foundation, 'tis true; but they are adulterated, and mixt with horrid Principles, and impious Practices. They eat their God, they kill their King, and Saint the Murderer. They indulge all sorts of Sins, and no human Bonds can hold them.

They must pardon me if I seem sharp, for a *Papist* in *England* is not to be treated as a *Protestant* ought to be in *Spain*: And if ye ask me why? I'll give you this Reason, We have no such Principles nor Practices as they have. If I were in *Spain*, I should think my self a very ill Christian, should I offer to disturb the Government of the Place where I lived, that I may bring in my Religion there. What have I to do to undermine the Tranquillity and Peace of a Kingdom, because all that dwell in it are not of my particular Persuasion?

They do not do so here, there is nothing can quench the Thirst of a *Priest* and a *Jesuit*, not the Blood of Men, not of Any, if he can but propagate his Religion, which in truth is but his Interest.

They have not the Principles that we have, therefore they are not to have that common

Credence, which our Principles and Practices call for.

They are not to wonder if they keep no Faith, that they have none from others; and let them say what they will, that they do not own any such things as we charge upon them, and are like to go hard with them; For we can shew them out of their own Writings and Councils, that they do justify the Power of the *Pope* in Excommunicating Kings, in Depositing them for Heresy, and Absolving their Subjects from their Allegiance. And the Claim of Authority both of *Pope* and Council, is the surest Foundation they build upon.

I have said so much the more in this Matter, because their Actions are so very plain and open, and yet so pernicious; and 'tis a very great Providence, that we, and our Religion, are delivered from Blood and Oppression. I believe our Religion would have stood, notwithstanding their Attempts, and I would have them to know we are not afraid of them; nay, I think we should have maintained it, by destroying of them. We should have been all in Blood, 'tis true, but the greatest Effusion would have been on their Side; and without it, How did they hope it should have been done? There are honest Gentlemen, I believe Hundreds of that Communion, who could not be openly won upon to engage in such a Design. They will not tell them that the King shall be killed; but they will insinuate unto them, that he is but one Man, and if he should die it were fit they were in readiness to promote the Catholick Religion, and when it comes to that, they know what to do. When they have got them to give Money to provide Arms, and be in Readiness on their specious Pretence, then the *Jesuits* will quickly find them Work. One Blow shall put 'em to exercise their Arms; and when they have killed the King, the Catholick Cause must be maintained.

But they have done themselves the Mischief, and have brought Misery upon their whole Party, whom they have ensnared into the Design, upon other Pretences than what was really at the bottom. A *Popish Priest* is a certain Seducer, and nothing satisfies him; not the Blood of Kings, if it stands in the way of his Ambition. And I hope they have not only undeceived some Protestants, whose Charity might incline them to think them not so bad as they are; but I believe they have shaken their Religion in their own Party here, who will be ashamed in time that such Actions should be put upon the Score of Religion.

I return now to the Fact, which is proved by two Witnesses, and by the concurrent Evidence of the Letter and the Maid; and the Matter is as plain and notorious as can be, That there was an Intention of bringing in Popery by a cruel and bloody Way; for I believe they could never have Prayed us into their Religion. I leave it therefore to you to consider, whether you have not as much Evidence from these two Men, as can be expected in a Case of this Nature; and whether Mr. *Oates* be not rather justified by the Testimony offered against him, than discredited. Let Prudence and Conscience direct your Verdict, and you will be too hard for their Art and Cunning.

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Gentle-



Gentlemen, If you think you shall be long, we will Adjourn the Court till the Afternoon, and take your Verdict then.

*Jury.* No, my Lord, we shall not be long.

*Then an Officer was Sworn to keep the Jury safe, according to Law, and they withdrew to consider of their Verdict.*

*After a very short Recess, the Jury returned, and the Clerk of the Crown spake to them thus:*

*Cl. of Cr.* Gentlemen, Answer to your Names. Sir William Roberts.

*Sir W. Roberts.* Here. And so of the rest.

*Cl. of Cr.* Gentlemen, Are you all agreed in your Verdict?

*Omnes.* Yes.

*Cl. of Cr.* Who shall say for you?

*Omnes.* The Foreman.

*Cl. of Cr.* Set William Ireland to the Bar. William Ireland, hold up thy Hand. Look upon the Prisoner, How say you, is he Guilty of the High-Treason whereof he stands Indicted, or Not Guilty?

*Foreman.* Guilty.

*Cl. of Cr.* What Goods and Chattels, Lands or Tenements?

*Foreman.* None to our knowledge.

*Cl. of Cr.* Set Thomas Pickering to the Bar. Tho. Pickering, hold up thy Hand. Look upon the Prisoner. How say you, is he Guilty of the same High-Treason, or Not Guilty?

*Foreman.* Guilty.

*Cl. of Cr.* What Goods or Chattels, Lands or Tenements?

*Foreman.* None to our knowledge.

*Cl. of Cr.* Set John Grove to the Bar. John Grove, hold up thy Hand. Look upon the Prisoner. How say you, is he Guilty of the same High-Treason, or Not Guilty?

*Foreman.* Guilty.

*Cl. of Cr.* What Goods or Chattels, Lands or Tenements?

*Foreman.* None to our knowledge.

*Cl. of Cr.* Harken to your Verdict as the Court hath recorded it. You say that William Ireland is Guilty of the High-Treason whereof he stands indicted. You say that Thomas Pickering is Guilty of the same High-Treason. You say that John Grove is Guilty of the same High-Treason. And for them you have found Guilty, you say, That they, nor any of them, had any Goods or Chattels, Lands or Tenements, at the time of the High-Treason committed, or at any time since, to your knowledge. And so you say all.

*Omnes.* Yes.

*L. C. J.* You have done, Gentlemen, like very good Subjects, and very good Christians, that is to say, like very good Protestants: And now much good may their Thirty Thousand Masses do them.

*Then the Court adjourned by Proclamation till Four in the Afternoon.*

*In the Afternoon the same Day.*

*About Five of the Clock Mr. Recorder and a sufficient Number of the Justices, returned into the Court, the Judges being departed home; and Proclamation was made for Attendance, as in the Morning.*

Then the Clerk of the Crown called for the Prisoners Convicted of High-Treason, and spoke to each of them thus:

*Cl. of Cr.* Set William Ireland to the Bar. William Ireland, hold up thy Hand, thou standest Convicted of High-Treason; what canst thou say for thy self, why the Court should not give thee Judgment to die according to Law?

*Ireland.* My Lord, I represented all along from the beginning, that we had not time to call in our Witnesses to justify our Innocence.

*Recorder.* If you have any thing to say in stay of Judgment, you have all free liberty to say it.

*Ireland.* We had no time allowed us to bring in our Witnesses, so that we could have none, but only those that came in by chance; and those things they have declared, though true, were not believed.

*Mr. Recorder.* These things, Mr. Ireland, you did not object before the Jury gave their Verdict, now they have given their Verdict, and found you Guilty; if you have any thing to say to the Court why they should not proceed to Judgment according to that Verdict, you may speak it; but for these things it is too late.

*Ireland.* My Lord, I only have this to say, I desire more time to be heard again, and to call in my Witnesses.

*Recorder.* Call the Executioner to do his Office.

*Ireland.* There are Testimonies, my Lord, that I could produce of my Loyalty, and my Relations Fidelity to the King.

*Mr. Recorder.* I believe, Mr. Ireland, it will be a Shame to all your Relations that have been Loyal to the King, that you should be privy to the Murder of that good King whom your Relations so well served; and therefore if that be all that you have to say it will signify nothing.

The Executioner not appearing, the Sheriff of Middlesex was called to come into Court, and give his Attendance, upon Pain of 40*l.* But the Executioner coming in, was, with a Reproof from the Recorder for his Negligence, commanded to tie him up, which he did.

*Cl. of Cr.* Set Thomas Pickering to the Bar.

*Thomas Pickering,* hold up thy Hand, Thou art in the same case with the Prisoner last before thee, what canst thou say for thy self, why the Court should not give thee Judgment to die according to Law?

*Mr. Recorder.* What does he say for himself?

*Capt. Richardson.* He has nothing to say.

*Mr. Recorder.* Then tie him up.

*Cl. of Cr.* Set John Grove to the Bar.

*John Grove,* hold up thy Hand, Thou art in the same case with the Prisoner last before thee, what canst thou say for thy self, why the Court should not give thee Judgment to die according to Law?

*Grove.* I am as innocent as the Child unborn.

*Cl. of Cr.* Tie him up. Which was done.

*Cl. of Cr.* Criers on both sides make Proclamations.

*Criers.* O yes! All manner of Persons are commanded to keep silence whilst Judgment is giving upon Pain of Imprisonment; Peace about the Court.

*Mr. Recorder.* Where is the Keeper? shew me the Prisoners, William Ireland, Thomas Pickering, and John Grove.

*Capt. Richardson.* Those are the three.

*Mr.*

*Mr. Recorder.* You the Prisoners at the Bar. You have been Arraigned for a very great Offence, the greatest that can be committed against any Authority upon Earth, for High-Treason against your King, with all the Aggravations that possibly can attend so great a Crime as that is; for you did not only strike at the Life of the best of Kings, but you intended the Subversion of the best of Religions. Whatever you may apprehend, yet all Men that will lay their hopes of Salvation upon any thing that is fit for a Man to lay his hopes upon, which is upon the Merits of a crucified Saviour, and not upon your Masses, Tricks or Trumperies, do abhor the thoughts of promoting their Religion by massacring Kings, and murdering their Subjects. And though we whom you call Hereticks, abhor to own any such Religion; yet we are not afraid to tell you, and all others who are ensnared into your Principles, we will maintain the Religion and the Government as it is Established, with our Lives and Fortunes. And it is fit that it should be known, that we who live under the Government of so mild and pious a Prince, and in a Country where so good, so moderate a Religion is Established by Law, will not be affrighted by all your Murders, Conspiracies and Designs, from declaring, that they who dare kill Kings, and massacre their Subjects, are the highest Violators, not only of the Laws of the Land, but of that great Law which all good Christians and Protestants think themselves obliged to pay great Reverence and Obedience to, I mean the Law of God Almighty himself.

Thus I speak to you, Gentlemen, not vauntingly, 'tis against my Nature to insult upon Persons in your sad Condition; God forgive you for what you have done, and I do heartily beg it, though you don't desire I should; for, poor Men, you may believe that your Interest in the World to come is secured to you by your Masses, but do not well consider that vast Eternity you must ere long enter into, and that great Tribunal you must appear before, where his Masses (speaking to *Pickering*) will not signify so many Groats to him, no not one Farthing. And I must say it for the sake of those silly People whom you have imposed upon with such Fallacies, That the Masses can no more save thee from a future Damnation, than they do from a present Condemnation.

I do not speak this to you, as intending thereby to inveigh against all Persons that profess the *Romish* Religion; for there are many that are of that Persuasion, that do abhor those base Principles of murdering Kings and subverting Governments. There are many honest Gentlemen in *England*, I dare say, of that Communion, whom none of the most impudent Jesuits durst undertake to tempt into such Designs; these are only to be imposed upon silly Men, not upon Men of Conscience and Understanding. And I pray God, as was said lately by a Learned Gentleman whom we all know, that all Protestants may be as safe from the force of your Daggers, as they are from those of your Arguments; for I dare say, that you could sooner Murder any Man that understands the Protestant Religion, than persuade him to such Villanies. And among those many things which prevailed with the honest Gentlemen of the Jury to convict you of this horrid Crime, they could not

but take notice, that you (speaking to *Ireland*) that do pretend to Learning, did send into Foreign Parts, that your Fellow-Jesuits should take care publickly to Preach, That the Oaths of Allegiance and Supremacy, by which the Common Justice of the Nation is preserved, signified nothing; which is a strong Evidence of your Design, not only to Murder the King, but subvert the Government; for surely the most probable way to do that, is to asperse those Oaths by which all Protestant Subjects, those whom you call Hereticks, lie under an Obligation of Obedience to their Prince. And I think it not unfit to tell you, that you had a great Favour shewed to you to be tried only for the Matters contained in this Indictment; for you that are Priests must know, that there is a Law in the Land, that would have hang'd you for your very Residence here; for if any Subject born in *England*, shall take Orders from the Sec of *Rome*, and afterwards come into *England*, and remain there 40 Days, such, for that Offence alone, are made Traitors by Act of Parliament. But you are so far from being under any Awe of that Law, or Submission to it, that you dare not only come to live here in despite thereof, but endeavour what you can, to overthrow both it, and the Government it self. You dare conspire to Murder the King; nay, not only so, but you dare make your Consults thereof publick. You dare write your Names to those Consults. You dare solicit all your Party to do the like, and make all the Ties of Religion and Conscience (that to Considering Christians are Obligations to Piety and Charity) as Engagements either to act your Villanies, or to conceal them. We think no Power can dispense with us whom you call Hereticks, to falsify our Oaths, much less to break our Covenant with God in the holy Sacrament. But you, instead of making that a Tie and Obligation to engage you to the Remembrance of our Saviour, make it a Snare and a Gin to oblige your Profelytes to the Assassinating Kings, and murdering their Subjects. I am sorry with all my Soul, that Men who have had their Education here, and the benefit of the good Examples of others, should not only be led into such mischievous Principles themselves, but to be of that confidence in their Persuasion, as to dare to debauch others also. I am sorry also to hear a Lay-man should with so much Malice declare, That a Bullet, if round and smooth, was not safe enough for him to execute his Villanies by. But he must be sure, not only to set his Poisonous Invention on work about it, but he must add thereto his Poisonous Teeth; for fear if the Bullet were smooth, it might light in some Part where the Wound might be cured. But such is the height of some Mens Malice, that they will put all the Venom and Malice they can into their Actions. I am sure this was so horrid a Design, that nothing but a Conclave of Devils in Hell, or a College of such Jesuits as yours on Earth, could have thought upon.

This I remember to you for the sake of them that are to live, and for the Charity I have for you who are to die: for the sake of them that are to live; for I hope when they hear, that Men of your Persuasion dare commit those outrageous Crimes, and justify them by a Principle of Religion, they will not easily be seduced into your

Opinion: And out of Charity to you that are to die, to persuade you to hearty Repentance; for otherwise, I must tell you, thy 1500*l.* (speaking to *Grove*) nor thy 30000 Masses (speaking to *Pickering*) will avail but little. And I thought fit to say this also, that it may be known that you have had the full Benefit of the Laws Established in *England*, and those the Best of Laws; for such is not the Law of other Nations, for if any Protestant in any Place where the *Romish* Religion is profess'd, had been but thought Guilty of such Crimes, he had never come to the Formality and Justice of an Arraignment, and to be tried by his Peers, permitted to make his Defence, and hear what could be said against him; but he had been hang'd immediately, or perhaps suffer'd a worse Death. But you are not only beholden to the happy Constitution of our Laws, but to the more happy Constitution of our Religion. For such are the admirable Documents of that Religion we in *England* profess, That we dare not requite Massacre for Massacre, Blood for Blood. We disown and abhor all Stabbing; and we are so far from reckoning that he shall be a Saint in Heaven for Assassinating a Prince, and be pray'd to in another World, that the Protestant is required to believe, that such that begin with Murder, must end with Damnation, if our blessed Lord and Saviour do not interpose; nothing that Man can do, Papist or Protestant, can save any Man in such a case. We dare not say that our Religion will permit us to Murder Dissenters, much less to Assassinate our King.

And having thus said, let me once more as a Christian, in the name of the great God of Heaven, beg of you for your own Souls sake, be not satisfied or over-persuaded with any Doctrine that you have Preached to others, or imbibed from others; but believe, that no one can contrive the Death of the King, or the Overthrow of the Government, but the great God of Heaven and Earth will have an account of it. And all Pardons, Absolutions, and the Dispensations that you who are Priests can give to your Lay-Brother, or that any of your Superiors may give to you, will not serve the turn.

I know not, but as I said, you may think I speak this to insult, I take the great God of Heaven to Witness, that I speak it with Charity to your Souls, and with great Sorrow and Grief in my own Heart, to see Men that might have made themselves happy, draw upon themselves so great a Ruin. But since you have been so fairly Heard, so fairly Tried and Convicted, there is but little more to be said; for I must tell you, because it may not be thought that you had not free Liberty to make your full Defence, though that Gentleman (speaking to *Ireland*) seem'd to be surpriz'd, he had a kind Sister that took care for to bring his Witnesses; I am so far from blaming her for it, that I do commend her, it was the effect of her Good-nature, and deserves Commendation; but speak to this Purpose, to shew that there was no Surprize upon him, nor his Life taken away by any such thing; for he had a greater Favour shew'd to him than is usually shewn to such Offenders.

And having thus said to you my self, we do also require him whose Duty it is to attend in such Cases, nay, I do Command him in the Name of the Court, that he attend upon you to give you all the comfortable Assistance that he

can for the advantage of your future State: And not only so, but we will certainly take care, that if you will have any others come to you, they shall. I would not be mistaken, I do not mean any of your Priests and Jesuits; but if you will have the Assistance of any Protestant Divines, they shall not be deny'd you. And I hope God Almighty will please to give you Pardon in another World, though you have offended beyond hopes of any in this. I once more assure you, all I have said is in perfect Charity. I pray God forgive you for what you have done. And so there remains now only for me to pronounce that Sentence which by the Law of the Land the Court is required to do against Persons Convicted of that Offence which you are Convicted of.

This Court doth therefore Award, *That you the Prisoners at the Bar, be conveyed from hence to the Place from whence you came, and from thence that you be drawn to the Place of Execution upon Hurdles, that there you be severally hanged by the Neck, that you be cut down alive, that your Privy Members be cut off, and your Bowels taken out, and burnt in your view, that your Heads be severed from your Bodies, that your Bodies be divided into Quarters, and those Quarters be disposed at the King's pleasure: And the God of infinite Mercy be merciful to your Souls.*

Then the Prisoners were conveyed back to the Goal by the Keeper of the Goal, according to Custom; and the Commission was called over, and the Prisoners taken Order for according to Law. And the Court Adjourned by Proclamation, thus:

*Cl. of Cr.* Crier, make Proclamation.

Crier. *O yes, O yes, O yes! All manner of Persons that have any thing more to do at this general Sessions of the Peace holden for the City of London, may depart hence for this time, and give their Attendance at the Guildhall, London, on Friday the 10th Day of January next, at Seven of the Clock in the Morning. And all manner of Persons at this Sessions of Oyer and Terminer, and Goal-delivery of Newgate, holden for the City of London and County of Middlesex, may depart hence for this time, and give their Attendance here again on Wednesday the 15th Day of January, at Seven of the Clock in the Morning.*

God Save the King.

*And then the Court broke up.*

On Friday the 24th of January following, *William Ireland* and *John Grove* were drawn from *Newgate* on an Hurdle to *Tyburn*, where they were Executed according to their Sentence; but the Execution of *Thomas Pickering* was respited for so long a time, that it occasion'd an Address of the House of Commons, April 27, 1679, "That his Majesty would be pleased to order the Execution of one *Pickering* a Prisoner in *Newgate*, and of divers Priests and Jesuits, who had been Condemn'd by the Judges at the *Old Baily* and in the several Circuits, but did remain as yet unexecuted, to the great emboldening of such Offenders, in case they should escape without due Punishment." To which the King returned this Answer. "Gentlemen, I have always been Tender in Matters of Blood, which my Subjects have no Reason to take Exceptions at: but this is a  
" Matter

“Matter of great Weight, I shall therefore consider of it, and return you an Answer,”

May 25, The King sent a Message to the House, by Lord *Ruffel*, to let them know, that he would comply with their Request concerning

*Pickering*, and that the Law should pass upon him.

He was accordingly Executed in pursuance of his Sentence.

LXXVII. *The Trial of the Lord CORNWALLIS, before the Lords at Westminster for the Murder of ROBERT CLERK, 1678. 30 Car. II.*

**A**FTER my Lord High Steward \* was ascended to the High Chair of State, and sat down therein, the Commission was delivered by the Clerk of the Crown in the Chancery, to my Lord, on his Knees, who delivered it to Sir *Thomas Fanshawe*, Clerk of the Crown in the King's-Bench-Office, and he received it kneeling.

Then Proclamation was made by the Serjeant at Arms, who was Crier for the Day.

*Serjeant.* O Yes, O Yes, O Yes! My Lord High Steward of *England* strictly chargeth and commandeth all manner of Persons here present, upon Pain of Imprisonment, to keep Silence, and give Ear to his Majesty's Commission, To my Lord High Steward of *England*, to his Grace directed.

The Clerk of the Crown with his Face to my Lord High Steward reads it thus:

*Clerk of the Crown.* *Charles Rex Carolus Secundus, &c.*

All which time my Lord and the Peers stood up bare.

*Serjeant.* God save the King.

*Cl. Cr.* Make Proclamation.

*Serjeant.* O Yes! The King at Arms, and the Usher of the Black Rod, on their Knees deliver the White Staff to my Lord, who re-delivered it to the Usher of the Black Rod, who held it up all the time before him.

*Cl. Cr.* Make Proclamation.

*Serjeant.* O Yes! My Lord High Steward of *England* strictly chargeth and commandeth all Justices and Commissioners, and all and every Person and Persons to whom any Writ or Precept have been directed for the certifying of any Indictment, or of any other Record before my Lord High Steward of *England*, to certify and bring the same immediately according to the Tenor of the said Writs and Precepts unto them, or any of them directed, on Pain and Peril as shall fall thereon.

The Lord Chief Justice of the King's-Bench return'd his *Certiorari*, and the Record of the Indictment by the Grand Jury of *Middlesex*, which was read by the Clerk of the Crown, *in hæc verba.*

*Cl. Cr.* *Virtute, &c.*

*L. H. Stew.* Call the Constable of the Tower to return his Precept and his Prisoner.

*Cl. Cr.* Make Proclamation.

*Serjeant.* O Yes? Constable of the Tower of *London*, return the Precept to thee directed, and

bring forth the Prisoner *Charles Lord Cornwallis*, on Pain and Peril as will fall thereon.

The Lord Lieutenant of the Tower brought in the Prisoner, on his left Hand, with the Ax before him, born by the Deputy Lieutenant, which he held with the Edge from him, and returned his Precept *in hæc verba.*

*Cl. Cr.* *Virtute, &c.*

*L. H. Stew.* Call the Serjeant at Arms to return his Precept.

*Cl. Cr.* Make Proclamation.

*Serjeant.* O Yes! *Roger Harfnet Esq;* Serjeant at Arms to our Sovereign Lord the King, return the Precept to thee directed, with the Names of all the Lords and Noblemen of this Realm, Peers of *Charles Lord Cornwallis*, by thee summoned, to be heard this Day, on Pain and Peril as will fall thereon.

He delivered his Precept return'd with a Schedule annexed thus;

*Cl. Cr.* *Virtute, &c.* Make Proclamation.

*Serjeant.* O Yes! All Marquesses, Earls, Viscounts, and Barons of this Realm of *England*, Peers of *Charles Lord Cornwallis*, which by Commandment of the Lord High Steward of *England*, are summoned to appear this Day, and to be present in Court, answer to your Names, as you are called, every one upon Pain and Peril as will fall thereon.

Then the Pannel was called over, the number of Peers summoned were 35, in order as followeth.

*Thomas Earl of Danby*, Lord High Treasurer of *England*, &c.

All that appeared, answered to the Call, standing up bare.

Then my Lord High Steward made a Speech to the Prisoner at the Bar thus;

Lord High Steward. *My Lord Cornwallis, The Violation of the King's Peace, in the chief Sanctuary of it, his own Royal Palace, and in so high a manner, as by the Death of one of his Subjects, is a Matter that must be accounted for. And that it may be so, It hath pleased the King to command this High and Honourable Court to Assemble, in order to a strict and impartial Enquiry.*

*The Wisdom of the Law hath therefore stiled it the King's Peace, because it is his Authority that commands it, it is his Justice that secures it, it is he on whom Men do rely for the Safety of their Liberties, and their Lives; in him they trust that a severe Account shall be taken of all the Violences and Injuries that*

\* Earl of Nottingham.

that are offered to them, and they that trust in the King can never be deceived.

It is your Lordship's great Unhappiness at this time to stand Prisoner at the Bar, under the weight of no less a Charge than an Indictment of Murder; and it is not to be wondered at, if so great a Misfortune as this be attended with some kind of confusion of Face; when a Man sees himself become a Spectacle of Misery in so great a Presence, and before so Noble and so Illustrious an Assembly. But be not yet dismay'd, my Lord, for all this; let not the Fears and Terrors of Justice so amaze and surprize you, so as to betray those Succours that your Reason would afford you, or to disarm you of those Helps which good Discretion may administer, and which are now extremely necessary.

It is indeed a dreadful thing to fall into the hands of Justice, where the Law is the Rule, and a severe and inflexible measure both of Life and Death. But yet it ought to be some Comfort to your Lordship, that you are now to be tried by my Lords your Peers; and that now you see the Scales of Justice are held by such Noble hands, you may be confident they will put into them all the Grains of allowance, either Justice or Honour will bear.

Hearken therefore to your Indictment with Quietness and Attention, observe what the Witnesses say against you without Interruption; and reserve what you have to say for your self, till it shall come to your turn to make your Defence, of which I shall be jure to give you Notice; and when the time comes, assure your self you shall be heard, not only with Patience, but with Candor too.

And then what Judgment soever my Lords will give you, your self will (and all the World) be forc'd to acknowledge the Justice and Equity of their Judgment, and the Righteousness of all their Lordships Proceedings.

Read the Indictment.

Cl. Cr. Charles Lord Cornwallis, Thou standest Indicted in the County of Middlesex, by the Name of, &c. How sayest thou Charles Lord Cornwallis, Art thou Guilty of this Felony and Murder whereof thou standest Indicted, or Not Guilty?

Lord Corn. Not Guilty.

Cl. Cr. How wilt thou be try'd?

Ld. Corn. By God and my Peers.

Then my Lord High Steward addressed himself to the Lords thus;

L. H. Stew. My Lords, Your Lordships have here a Member before you of your Noble Body, exposed to the shame of a publick Arraignment, and (which to a Man of Honour is much less) to the hazard both of his Life and Estate. All that he hath and ever hopes to have, his Wealth, his Fame, his Posterity; All that is valuable to him in this World intirely depends on your Lordships Judicature, who are now his Peers, and on whom he doth freely put himself.

My Lords, The Privilege of this kind of Trial and Judicature is a Part of the true Greatness of the English Nobility: It is an eminent and an illustrious Privilege. It is a solid Point of Honour and Dignity. It is a Privilege that no Neighbour Nation ever had, and a Privilege this Nation never was without.

It is not a Privilege created by the Great Charter, but confess'd and acknowledged by it. They look but a little way that find this in the steps of the Norman Conquest, for it is to be found even in the footsteps of the Saxon Monarchy, when Godwin Earl of

Kent was Tried by Earls and Barons. And it is no improbable Conjecture of theirs, who do think the Wisdom of this Constitution was taken from that Law amongst the Romans, whereby it was made unlawful for any Man to sit upon a Senator, that was not himself of the same Order; a Privilege, that (as learned Civilians tell us) continued with them during the Reign of many of the Roman Emperors. But, my Lords, as this is a Privilege as Ancient as Monarchy, so we have found by many old Experiences, that it cannot be taken away without the Dissolution of that Government: Therefore this is one of those many Ties by which the Interest of the Nobility, as well as their Duty, have obliged them to the Service of the King.

In the exercise of this Privilege at this time; I know your Lordships will weigh the Fact with all the Circumstances, whereby it is to receive its true and its proper Doom. Your Lordships are too just, to let Pity make any Abatement for the Crime, and too wise to let Rhetorick make any Improvement of it: This only will be necessary to be observed by all your Lordships, that the fouler the Crime is, the clearer and the plainer ought the Proof of it to be. There is no other good Reason can be given, why the Law refuseth to allow the Prisoner at the Bar Counsel in matter of Fact, when his Life is concerned, but only this, because the Evidence by which he is condemned, ought to be so very evident and so plain, that all the Council in the World should not be able to answer it: upon this ground it is, that the Law hath trusted your Lordships with the Trial of your Fellow Peers; no Trust can be more nobly lodged, nor no Judicature had ever more true Submission made to it: Therefore it would be in me some want of Respect to this August and Noble Assembly, should I go about to put your Lordships in mind of your Duty: no doubt you will observe the Evidence carefully, weigh it diligently; and when that is done, it is impossible but the Judgment you will give, must be Right and Honourable, and worthy of so wise and so great a Body. Therefore I will not detain your Lordships any longer, from hearing the Evidence that is ready to be offered unto you.

Cl. of Cr. Make Proclamation.

Serj. O Yes! if any will give Evidence for our Sovereign Lord the King, against Charles Lord Cornwallis, Prisoner at the Bar, let him come forth, and he shall be heard; for the Prisoner stands at the Bar upon his Deliverance.

The Indictment was again read to the Peers.

Serjeant Maynard. May it please your Grace, my Lord High Steward of England, and this Great and Noble Assembly; The Prisoner at the Bar, Charles Lord Cornwallis, standeth Indicted of a great Crime, that he together with Charles Gerrard and Edward Bourne, not having in his Heart the fear of God, but intigated by the Suggestions of the Devil, the 18th of May last, did Feloniously and of his Malice forethought, assault one Robert Clerk in Whitehall, and that Mr. Gerrard took him up in his Arms, flung him down, and broke his Neck, of which he instantly died. To this he hath pleaded Not guilty. It lies upon us who are Counsel for the King, in this case to prosecute it, and prove it to you.

\* Mr. Attorney General.

May it please your Grace, my Lord High Steward of England, and my Lords summoned for the Trial of the Prisoner at the Bar:

\* Sir William Jones.

Bar: This Noble Lord stands Indicted for Murder; an Offence, my Lord, which is the first and greatest that is forbidden by the second Table, and an Offence of that nature, that the Law of God hath by a most peremptory Sentence condemned and decreed, that whose sheddeth Man's Blood, by Man shall his Blood be shed. Whether this Noble Lord be guilty of it, remains upon your Lordships to try, and I shall very shortly state the Matter of Fact, which we shall prove, and then let the Evidence be offered to you. We do not pretend, my Lords, neither doth the Indictment lay it, that this great Offence was committed by the Hand of my Lord *Cornwallis*.

For I know your Lordships have observed the Indictment, by which it is alledged, that the Hand of Mr. *Gerrard* did the Fact: But, my Lords, if we shall make it out that my Lord *Cornwallis* did concur to this Act, and had in himself at that time an Intent to be a Murderer; then it will be declared by his Grace, my Lord High Steward, and my Lords the Judges, that tho' his Hand did it not, yet he is equally guilty as if it had.

Now, to make out the Charge against him, our Evidence will be shortly thus:

On the 18th of *May* last, early in the Morning, between the Hours of One and Two, came down two Gentlemen with three Footmen behind them, out of the Gallery at *Whitehall*, by the Stairs that lead down to the Park: I call them two Gentlemen, because it was not then discovered who they were, or of what Quality; but your Lordships will perceive, by the course of the Evidence, they were my Lord *Cornwallis* and Mr. *Gerrard*, coming down at that unseasonable Hour; the first Question they ask'd the Centinel (who watch'd at the Foot of the Stairs,) was the Hour of the Night; and from him had account that it was so much.

The Prisoner and Mr. *Gerrard* were somewhat distemper'd with Drink, and made him a Reply, that he Lyed, with great Oaths accompanying it. At that time they did no more but go by him into the Park, where, after they had continued by the space of an Hour, back they return'd to the Stairs, and the Centinel demanding, according to his Duty, who came there? They answered him in very obscene and uncivil Language, and threatned they would kill the Centinel, who only did his Duty in enquiring who came by him at that time of Night. And we shall make it appear, they were in a kind of Contention among themselves who should kill him; for, as I am inform'd, (I know if it be not prov'd, your Lordships will observe it) one desired, *Pray let me kill him*; and the other desired, *Pray let me kill him*; and threatned no less than to run him through.

My Lords, the Centinel being of good Resolution, was not affrighted from his Place, but kept them off; and when they saw they could not win upon the Centinel that way, one of them delivered away his Sword, which he held in his hand not drawn, and then was pleased to come to the Centinel, and desired to kiss him, and swore he would do that: but that the Centinel did equally refuse; and then they did use the same Threatnings again, and seem'd to be in a Contention who should run him through. My Lords, after some time, being now come to the top of the Stairs, and there staying, it hap-

pen'd there came to the Stair-foot two Youths, and these young Men, were it seems, going to Bed in their Lodging, which was very near, and did make it their Request to the Centinel (one of them did) to call him up very early the next Morning, because he was to go of a Message out of the Town. My Lord *Cornwallis* and Mr. *Gerrard* remaining on the top of the Stair-Case, being (as we said) in disorder (which is the strength of the King's Evidence, if proved) both of them said, before they went thence they would kill some or other, which Evidence will go a great way to shew the Concern that Noble Lord the Prisoner at the Bar had in the Business.

It happen'd as these Boys were making their Request to the Centinel, my Lord and Mr. *Gerrard* took notice of it, and seem'd to be concern'd that they should command the King's Soldiers, and bid the Centinel shoot him, who told them he conceiv'd the Boy had done him no wrong in asking a civil Kindness from him; they again call'd to shoot him, and they would bear him out; which he still refused to do, finding no reason for it: then one of the two took occasion to swear a great Oath, *he would kick his Arse to Hell*; to which the Boy that ask'd the Centinel made some reply; wherein the word *Arse* was repeated: now (whether they understood it as an Interrogation, *Why kick my Arse to Hell?* as he intended it; or in a worse sense, *Kiss my Arse*) one of the Gentlemen in a Rage came running down the Stairs, and that Boy that in truth spoke the Word ran away, and the other poor Innocent Boy, trusting in his own Innocency, remained there, until the Person came to him, and did on his Knees (in a manner) desire not to be mistaken, he was not the Person that used any ill Words, and cry'd out, *O my Lord it was not I, indeed my Lord it was not I*; but such, at that time, was the Intemperance and Wrath of the Person, who in such a Fury descending the Stairs, that (whether with the Blow or the Fall) the Boy receiv'd his Death. We find by our Information of the Evidence, that he who did the Thing was, in Truth, Mr. *Gerrard*, who is not yet taken; but whether my Lord, the Prisoner at the Bar, did not concur in it, and had not an Intention to kill somebody, is the Question left for your Grace and these Noble Peers to decide? This is the nature of the Fact; only I desire to observe, that it is true here was some distance between the Place where my Lord *Cornwallis* stood, and the Place where the Boy was killed. Of what consequence that may be, I leave to your Grace's and these Noble Lords Consideration: It was the distance of the Stairs; but, I think, as every one knows, they are not so many, what but is done below may be easily seen at the top.

We shall now, without detaining your Lordships any longer, call the Witnesses, and prove what hath been opened.

The Soldier prov'd the Fact, as it was open'd by Mr. Attorney General, except that part about both swearing they would kill one or other, which Passage was heard but by one of them, and was spoken but by one of the Gentlemen.

They could not swear, who were the Persons, because of the darkness of the time.

The Boy who was the Companion of him that was slain, and that used the Words that caus'd the Person to come down, swore them to be a

Repetition only, by way of Interrogation, *Why kick my Arse to Hell?*

Then Mr. Attorney desired to call my Lord *Cornwallis's* own two Footmen, who had been Indicted and acquitted at the *King's-Bench Bar*.

*Lord High Steward.* My Lords the Judges, is there any Question, whether a Person acquitted of an Offence be a good Witness against another charged with the same Offence?

*Judges.* None at all: when he is acquitted he ought to be admitted.

Then the Copy of the Acquittal (proved by a Clerk in the Crown-Office) was read, and then were Sworn; who fixed it upon the Person of Mr. *Gerrard*, and swore that my Lord *Cornwallis* was all the while upon the top of the Stairs, but after the Fact committed, hastened away for fear of being knock'd down by the Soldiers: And there ended the King's Evidence.

*L. High Stew.* Now, my Lord, is the time come for your Defence. You hear what is charg'd on you. Pray speak what you have to say for your self.

*Lord Cornwallis.* Then the Prisoner at the Bar confessed himself to have been in the Company that Night, when this Accident happen'd, which he hop'd would be a Warning to him to shun such Disorders hereafter; but that he had no evil Intention, and but one Witness swore that both of them would have kill'd the Centinel; that he was not conscious to himself to have had a hand in it, and therefore withdrew not himself, but yielded himself to the Coroner the next Day, (which he prov'd by the Coroner himself) and did therefore, in trust of his Innocency, submit himself to the Judgment of His Grace and his Peers.

Which being done, Sir *Francis Winnington*, the King's Solicitor-General, summ'd up the Evidence in this manner:

May it please your Grace, my Lord High Steward of *England*, and my Noble Lords the Peers of the Prisoner at the Bar; According to the Duty of my Place I am to repeat the King's Evidence, and state it to your Grace and these Noble Lords, and submit it to your great Judgments, how far it will go for the Proof of this Crime; wherein I shall observe the Duty of all honest Men, which is to do nothing either to wrest any thing in Disadvantage of the Prisoner out of the King's Evidence, to go farther than it ought, nor shall omit any thing that shall require your Grace and the Noble Lords Justice; for we come to seek out the Truth, and we question not but by this Honourable Trial it will be brought to light. But I beseech your Favour, to take notice, in the first place, what Crime this Noble Lord stands accused of, and it is for Murder; wherein our Law takes notice, that Murder is where a Man unlawfully kills another under the King's Peace, with Malice forethought. Now that here is a Murder committed, I dare with all Humility aver. By whom? that is the Question: For this *Robert Clerk*, the Person killed, doth appear, by the Course of the Evidence, to have been doing his Duty, attending the Place his Employment required; gave no Offence to any whatsoever; but when the Person came down and fell upon him, the poor Youth cried, *Indeed, my Lord, it was not I*; yet, my Lords, the Hands of Violence seiz'd him and kill'd him. Let us then see

how the Evidence brings it home to the Noble Lord the Prisoner at the Bar; wherein I must confess we have no express Evidence (nay, we have Evidence to the contrary) that it was not his Hand that did the Fact actually; for it is by two Witnesses, the Footmen, sworn that it was Mr. *Gerrard* who came down and gave the unfortunate Blow: But we have that which we think, with humble Submission, may reach this Noble Lord: For I know your Grace and my Lords remember, that after they had been an Hour in the Park, both returning, did with horrid Oaths swear they would kill the Centinel; there the Evidence fixeth it, not upon one only, but upon both: it was at that time so dark they could not be distinguished, but by the Voice: The Centinel hath given you an Account how he perform'd his Duty, and in what Strait he was, he had much ado to save his own Life, or to prevent killing them: But when they came upon the Stairs, these two Boys came there in order to desire the Centinel to call one of them the next Morning. Then one on the Stairs (no Man can tell who it was) with horrid Execrations, ask'd, *Will you command the King's Soldiers? Shoot him, Centinel, we'll bear you out.* But all this while it was Dusk, no distinction of Persons could be made; whereupon it will fall out to come to this Case, If several Persons intend to kill one, and happen to kill another, whether this be not Murder in them? For the urging of this, as to the Matter in Law, I leave to him that comes after me. The Centinel swears one of them did swear he would kill one or other; who it was took up that cruel Resolution, is left to you to judge: But at that time they were both together upon the top of the Stairs; and my Lord doth not seem to give one Tittle of Evidence, that shews any Endeavours of the Prisoner at the Bar to prevent the other, or disprove of his Actions: If he had given an Account of that, he had silenced Justice; but when they were all together, he not endeavouring to stop his Hand, it is as much in Law as if he had struck the Stroke.

The other Soldiers give you a particular Account to the same purpose.

The two last Witnesses do bring it to the Person of my Lord, the Prisoner at the Bar, and Mr. *Gerrard*, who, they swore, came down the Stairs, and his Man followed him to the bottom, and there staid at some distance, till the Fact was done, and they all fled.

This I take to be the matter of Fact faithfully proved, before your Grace, and the Lords the Peers; and I would not trouble your Grace longer, because I would not misreport any thing, whereby I might do wrong, either to the Prisoner or the King's Cause; and because I know your Grace and the Noble Lords will distinguish and find out where the Truth is. I must say it is a great Comfort to all the Subjects of *England*, that Crimes of this Nature are so carefully presented, that whatsoever Honours and Dignities our Gracious Sovereign doth confer on any Person, it doth not exempt him from the Justice of the Law: It is not only a Comfort to this Assembly, but to the whole Nation, to see the King tender of his Subjects Persons and Lives, in that he hath caused this strict Course to be taken, where the Enquiry hath gone from the Grand Jury of the County, 'till the Bill came to this great Tribunal; where I doubt not but your Grace, and these Noble

Noble Lords, will give a righteous and just Judgment.

Srjeant *Maynard*. May it please your Grace, my Lord High Steward of *England*, and my Noble Lords the Peers:

I, according to the Duty of my Place, come now to conclude the Charge on the King's behalf; some things are fit to be observed upon the Evidence, that may produce a Question for the decision of the Fact, of what Nature it is. That a Murder is committed, is upon Evidence without all Question; and not only the Death of a Man, here is a Child slain without any Provocation in the world given by him to that Person that did it; and that did it too, notwithstanding the Deprecations of the Boy, affirming his own Innocency, and that with as full Circumstances as a Christian almost could a thing: these came from the King's Palace-walk in the Park; call the Centinel Rogue, and when he doth his Duty, swear to murder him; with Oaths that a Christian would blush at, and be afraid to hear: *God damme* oftentimes reiterated; and he that saith that Word, doth beg of God to hate him, and affirm that he doth hate God. The Obscenity that they used I shall not mention again; these are Circumstances of the Case; that all were guilty of much, is no doubt; but who of the Murder, is the Question. And I humbly conceive, it is manifest, that this Noble Lord was concern'd in it. For it is not requisite to make a Murder, that he who kills a Man hath conceiv'd a Malice against him; for if I have a Malice against any Man, and the Effect of that fall upon another, it is Murder.

I apply it thus; If it be a Murder in Mr. *Gerrard*, if this Noble Lord partake with him in the Design which made it so; to wit, the Malice against the Centinel; he is as guilty, as if his Hand had been as much upon him as was Mr. *Gerrard's*;

as in that known Case of the Man that poison'd an Apple with an Intent to kill his Wife, and she not knowing of the Poison, gave some of it to her Child, of which it died; tho' he had no design to kill the Child, yet the Malice he conceiv'd against his Wife supply'd the Defect of an express Malice to make it Murder; and he was hang'd therefore. So if a Man assault a Master, in the presence of his Servant, who defends his Master, and is slain, tho' the other had no purpose to kill him, yet it is Felony in him, for which he shall die; the Law implying a Malice. Then here was clearly a Malice to the Centinel; how near it comes to the Boy will come in Question afterwards. I find the Objection made in my Lord's Case, that at the particular Time where the Fact was committed, my Lord, was not with Mr. *Gerrard*: But that will be no Objection in the Case; for if he did partake in the Design of the other, I will answer it with the Case of my Lord *Dacres* of the

South, who, with some others, went unlawfully to steal Deer, and the Keeper coming, some fled, among whom my Lord was one: the Keeper was kill'd, my Lord *Dacres* being at that time without the Pales, a Mile off from the Place, and yet was found guilty of the Murder, and left both his Lands and Life for it. But here, my Lord *Cornwallis* was present, for the Witness

swears the distance was not so great but it might be discern'd. Now whether he was aiding or assisting, is the next thing in question. What occasion had they of Malice, Revenge, or Injury to the Centinel? They both swore they would kill him: Had there been any Excuse for the other, if one of them had killed the Centinel? that could not be. Well, they did not kill the Centinel, but at the same time take up a causeless Offence against another, and kill him. I argue, that the Malice against the Soldier was diffusive to the Boy; and one of the Witnesses proves, that one of them swore he would kill some Body: now, no one speaks to any thing of my Lord's reproving Mr. *Gerrard*. Thus stands the Case before your Grace and my Lords: It is a Case of Blood, and it cries loud: How far this Noble Lord and Prisoner at the Bar is guilty thereof, you are to enquire, and without all doubt will give a clear Verdict, according to Justice and Honour.

*Lord High Stew.* My Lords, you have heard the Evidence; if your Lordships please to go and consider of it, you may.

Then the Prisoner withdrew into his own Apartment, with the Lieutenant of the Tower. The Lords went into a Room behind the Court of *Chancery*, and after a stay of two Hours return'd, and being all sat; the Earl of *Danby*, Lord High Treasurer of *England*, who was the first of the Jury, address'd himself to my Lord High Steward, and said;

Earl of *Danby*. My Lord High Steward, there is a Question in Law, of which some of my Lords desire to receive Satisfaction before they can give in their full Verdict: and we desire to know of your Grace, whether it be proper here to ask the Question of your Grace, or to propose it to the Judges.

*Lord H. Stew.* If your Lordships doubt of any thing, whereon a Question in Law ariseth, the latter Opinion, and the better for the Prisoner is, that it must be stated in the presence of the Prisoner, that he may know whether the Question be truly put. It hath sometimes been practis'd otherwise; and the Peers have sent for the Judges, and have asked their Opinion in private, and have come back, and given their Verdict, according to that Opinion; and there is scarce a Precedent of its being otherwise done, but there is a latter Authority in Print, that doth settle the Point so as I tell you; and I do conceive it ought to be followed; and it being safer for the Prisoner, my humble Opinion to your Lordship is, that he ought to be present at the stating of the Question.

Call the Prisoner to the Bar. Who being come, my Lord spake thus to him:

*Lord High Steward.* My Lord *Cornwallis*, My Lords the Peers, since they have withdrawn, have conceived a Doubt, in some Matter of Law arising upon the Matter of Fact in your Case; and they have that tender Regard of a Prisoner at the Bar, that they will not suffer a Case to be put up in his Absence, lest it should chance to prejudice him, by being wrong stated; therefore, your Lordship will do well to attend the Question that is raised; and, my Lords, will you please to propound your Doubts?

3<sup>d</sup> Coke's Inst.  
fol. 429.  
Pasch. 26 Hen.  
3 Lord Dacres's Case.



*Earl of Danby.* It was taken notice of here, that by opening the Matter by Mr. Solicitor, the Matter of Murder was explained to be meant by having a prepenfed Malice, and in that Cafe it was opened to us, that any Persons then present, and that had in any Sort contributed to the Disorders, they were as equally guilty, as they whose Hand had shed the Blood of the Person killed.

Now the Doubt of some of my Lords is, whether if it be found but Man-slaughter, those are equally guilty, (that are present, and have proved to contribute to the Disturbance) of that Crime, as they are in Murder; because some of them have not the Satisfaction that they are the same.

*Lord High Steward.* My Lords the Judges, I take it, the Doubt proposed to you, is this; whether or no, those that are present, and have contributed to the Disorders, whereby such an Accident doth ensue, as proves to be Man-slaughter, be as culpable, as he that doth the immediate Fact, as it is in the Cafe of Murder?

After a little Pause and Conference, the Judges returned this Answer.

*Judges.* We have had Conference of this Cafe, and our humble Opinion is, If sundry Persons be together, aiding and assisting to an Action, wherein a Man-slaughter doth ensue, as in case of a sudden Business without Malice prepenfed, they are equally guilty of the Man-slaughter, as they are in the Cafe of Murder prepenfed.

*Earl of Danby.* The Lords desire to withdraw once more. Which they did, and after a short Space returned; and being called over, answered to their Names, and all appearing, my *Lord High Steward* took their Verdict *seriatim*, beginning at the Puisne Lord in the following Orders, they answering, standing bare with their Hands on their Breasts.

*Lord High Steward.* My Lord *Duras*, Is *Charles Lord Cornwallis* guilty of the Felony and Murder, whereof he stands indicted, or not guilty?

*Lord Duras.* Not guilty.

The same Question he demanded of each; who answered thus:

Lord { *Butler*, Not guilty.  
Not guilty.  
*Maynard*, Not guilty of Murder, but guilty of Man-slaughter.  
*Paget*, Not guilty.  
*Berkly*, Not guilty of Murder, but guilty of Man-slaughter.

Lord { *Newport*, Not guilty.  
*Hallifax*, Not guilty.  
*Viscount Cambden*, Not guilty.  
*Guilford*, Not guilty.  
*Ailsbury*, Not guilty of Murder, but guilty of Man-slaughter.  
*Craven*, Not guilty.  
*Bath*, Not guilty.  
*Clarendon*, Not guilty.  
*Sunderland*, Not guilty.  
*Peterborough*, Not guilty.  
*Devonshire*, Not guilty.  
*Northampton*, Not guilty.  
*Bridgewater*, Not guilty.  
*Dorset*, Not guilty.  
*Suffolk*, Not guilty.  
*Bedford*, Not guilty.  
*Derby*, Not guilty.  
*Kent*, Not guilty.  
*Oxford*, Not guilty.  
*Arlington*, Not guilty.  
*Brereton*, Not guilty.  
*Lindsey*, Not guilty of Murder, but of Man-slaughter.  
*Dorchester*, Not guilty.  
*Anglesey*, Not guilty of Murder, but of Man-slaughter.  
*Danby*, Not guilty of Murder, but of Man-slaughter.

*Lord High Steward.* Call the Prisoner to the Bar.

Then the Prisoner came to the Bar, and the Deputy Lieutenant of the *Tower* held the Edge of the Ax towards him, while my Lord High Steward spake thus unto him;

*Lord High Steward.* My Lord *Cornwallis*, you have been indicted for Murder, pleaded Not guilty, put your self upon your Peers; and your Peers upon Consideration of the whole Matter have acquitted you, and found you Not guilty, so you are to be discharged.

*Cl. Cr.* Make Proclamation.

*Serjeant.* O Yes! my Lord High Steward of *England* willeth and commandeth all Persons to depart hence, in God's Peace and the King's; for my Lord High Steward of *England* His Grace doth dissolve this Commission.

*God save the King.*

At which Words my Lord High Steward holding the white Staff (which was delivered him by the Usher of the Black Rod on his Knees) in both Hands over his Head, snapt it in two and the Assembly broke up.



LXXVIII. *Proceedings in Parliament against THOMAS Earl of DANBY,\* Lord High Treasurer of ENGLAND, upon an Impeachment for High-Treason, and other High-Crimes and Misdemeanors, December, &c. 1678. 30 Car. II.*

**T**HE Papers of Mr. Montague, the King's Ambassador in France, being seized by the King's Order, upon Suspicion of his intriguing with the French Court, Mr. Montague (in his own Defence) acquainted the House of Commons, that he had in his Custody several Papers, which he conceived might tend very much to the Safety of his Majesty's Person, and the Preservation of his Kingdom; whereupon two Letters were produced and read in the House, subscribed Danby: which are as follow.

My Lord, Jan. 17, 1677.

**Y**esterday Monsieur Rouigny came to me with Monsieur Barillon (having given me his Father's Letters the Day before) and discoursed much upon the Confidence his King hath of the Firmness of ours to him, of the good Opinion his Master hath of me, and of his King's Resolution to condescend to any thing that is not infamous to him, for the Satisfaction of our King, how certainly our King may depend upon all Sorts of Assurances and Supplies from his Master, in case the Friendship be preserved.—The main of their Drift was to engage me to prevail with the King to prevail with the Prince of Orange.—The King must come to some Declaration of his Mind to the Parliament when it meets: That which makes the Hopes of Peace yet less probable is, that the Duke grows every Day less inclin'd to it, and has created a greater Indifferency in the King than I could have imagined; which being added to the French King's Resolution not to part with Tournay, do, I confess, make me despair of any Accommodation: Nevertheless, I am assured, that one principal Cause of the Adjournment for thirteen Days, has been to see if any Expedient for the Peace could have been found in that Time; and the Effect of the Adjournment hath hitherto been, that no body will now believe other than that the Peace is already concluded between Us and France.

March 25, 1678.

**I**N Case the Conditions of the Peace shall be accepted, the King expects to have six Millions of Livres Yearly for three Years from the Time that this Agreement shall be signed betwixt his Majesty and the King of France, because it will be two or three Years before he can hope to find his Parliament in an Humour to give him Supplies after the having made any Peace with France; and the Ambassador here has agreed to that Sum, but not for so long a Time. If you find the Peace will not be accepted, you are not to mention the Money at all; and all possible Care must be taken to have this whole Negotiation as private as is possible, for fear of giving Offence at home, where for the most part we hear it

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ten Days after any thing that is communicated to the French Ministers.

Upon reading these Letters, it was immediately resolv'd that there was sufficient Matter of Impeachment against Thomas Earl of Danby, Lord High Treasurer of England; and on December 21, 1678, Articles of Impeachment were drawn up and agreed to, and on December 23 were carried up by Sir Henry Capel to the Lords, where they were read, as follow.

I.

That he hath traiterously encroach'd to himself Regal Power, by treating in Matters of Peace and War with Foreign Ministers and Ambassadors, and giving Instructions to his Majesty's Ambassadors Abroad, without communicating the same to the Secretaries of State, and the rest of his Majesty's Council, against the express Declaration of his Majesty and his Parliament; thereby intending to defeat and overthrow the Provision that has been deliberately made by his Majesty and his Parliament for the Safety and Preservation of his Majesty's Kingdoms and Dominions.

II.

That he hath traiterously endeavoured to subvert the ancient and well established Form of Government in this Kingdom, and instead thereof to introduce an arbitrary and tyrannical Way of Government; and the better to effect this his Purpose, he did design the raising of an Army, upon Pretence of a War against the French King, and to continue the same as a standing Army within this Kingdom: And an Army being so raised, and no War ensuing, an Act of Parliament having pass'd to pay and disband the same, and a great Sum of Money being granted for that End, he did continue the Army contrary to the said Act, and misemploy'd the said Money given for the disbanding, to the Continuance thereof; and issued out of his Majesty's Revenues divers great Sums of Money for the said Purpose, and wilfully neglected to take Security of the Paymasters of the Army, as the said Act required; whereby the said Law is eluded, and the Army is yet continued, to the great Danger and unnecessary Charge of his Majesty and the whole Kingdom.

III.

That he traiterously intending and designing to alienate the Hearts and Affections of his Majesty's good Subjects from his Royal Person and Government, and to hinder the Meetings of Parliaments,

5 A 2

liaments,

\* Burnet's Hist. Own Times, Vol. 1. p. 439. 453. 460.

liaments, and to deprive his Sacred Majesty of their safe and wholsom Counsel, and thereby to alter the Constitution of the Government of this Kingdom, did propose and negotiate a Peace for the *French King*, upon Terms disadvantageous to the Interest of his Majesty and his Kingdoms; for the doing whereof, he did endeavour to procure a great Sum of Money from the *French King*, for enabling him to maintain and carry on his said traiterous Designs and Purposes, to the Hazard of his Majesty's Person and Government.

## IV.

That he is Popishly affected and hath traiterously concealed (after he had Notice) the late horrid and bloody Plot and Conspiracy, contrived by the Papists, against his Majesty's Person and Government; and hath suppressed the Evidence, and reproachfully discountenanced the King's Witnesses in the Discovery of it in Favour of Popery, immediately tending to the Destruction of the King's Sacred Person, and the Subversion of the Protestant Religion.

## V.

That he hath wasted the King's Treasure, by issuing out of his Majesty's *Exchequer* several Branches of his Revenue for unnecessary Pensions and secret Services, to the Value of 231602 *l.* within two Years; and that he hath wholly diverted out of the known Method and Government of the *Exchequer* one whole Branch of his Majesty's Revenue to private Uses, without any Accompt to be made of it to his Majesty in his *Exchequer*; contrary to the express Act of Parliament, which granted the same; and he hath removed two of his Majesty's Commissioners of that Part of the Revenue, for refusing to consent to such his unwarrantable Actings therein, and to advance Money upon that Branch of the Revenue for private Uses.

## VI.

That he hath by indirect Means procured from his Majesty to himself divers considerable Gifts and Grants of Inheritance, of the ancient Revenue of the Crown, even contrary to Acts of Parliament.

For which Matters and Things the Knights, Citizens and Burgeses of the Commons in Parliament, do, in the Name of themselves, and of all the Commons of *England*, impeach the said *Thomas Earl of Danby*, Lord High Treasurer of *England*, of High-Treason, and other High Crimes, Misdemeanors and Offences, in the said Articles contain'd: And the said Commons by Protestation, saving to themselves the Liberty of exhibiting at any Time hereafter, any other Accusation or Impeachment against the said Earl, and also of replying to the Answers which the said *Thomas Earl of Danby* shall make to the Premises, or any of them, or any Impeachment or Accusation that shall be by them exhibited, as the Cause (according to the Course and Proceedings of Parliament) shall require; do pray, That the said *Thomas Earl of Danby* may be put to answer all and every the Premises; that such Proceedings, Trial, Examinations and Judgments, may be upon them, and every one of them had and used, as shall be agreeable to Law and Justice; and that he may be sequestred from Parliament, and forthwith committed to safe Custody.

As soon as the Articles were read, the Earl of *Danby* spake as follows.

*My Lords,*

I Hope you will not enter upon any other Business, before you have given that Liberty to me, which is the Privilege of every Peer, to be heard upon any Accusation that is brought against him, tho' of far less Moment than what hath been newly read against my self.

I confess I should have heard this Charge with Horror, if the Matter of it had been true; but I thank God, I know my Innocency to be so great, that it protects me from all sorts of Fear, but that of lying under so black a Character, as may be believed by those that cannot hear my Defence; tho' I have the Confidence to think, that it is not truly believed in the Hearts of the greatest Part of those that have been informed against me.

I must needs confess, that I thought my self the last Man in this Kingdom that should ever have been in Danger of being accused for Treason, because I know no Man that abhors it more, and that would pursue it more vigorously than my self, against any that should be guilty of it. Nay, to such a Degree is my Detestation of that Crime, that were I sure the dearest Child I have were guilty of it, I would willingly be his Executioner.

*My Lords,* I know this is not the Time for me to enter regularly upon my Defence, because I know your Lordships will first order me a Copy of my Charge, and appoint me a Time for my Vindication; when I doubt not but to do it to the full Satisfaction of your Lordships and all the World. In the mean time I will only beg leave to observe to your Lordships, That those Articles in this Charge which can seem to have any thing of Treason in them, have their Answer so obvious, that there is very little in them which may not be answered by many others as well as my self, and some of them by every Man in the Kingdom.

The first, which is the assuming Regal Power, I confess I do not understand; having never in my Life done any thing of great Moment, either at Home, or relating to foreign Matters, for which I have not always had his Majesty's Command. And altho' I am far from having been the most cautious Man in taking care of my own Security, (which perhaps my great Innocence hath been the Cause of) yet I have not been so wanting of common Prudence, as in the most material Things not to have had his Majesty's Orders and Directions under his own Hand, and particularly for the Letters now made use of against me.

The second, I think, doth scarce need my giving any Answer to it; it being obvious, that the Army was no more raised by me, than by every Lord in this House: And whoever is in that Station which I hold, must certainly be a Fool, to desire any thing which creates a want of Money, especially so great a one, as the Charge of an Army must necessarily and immediately produce. And for one Part of the Article concerning the Pay-master of the Army, it is in Fact otherwise; for Security from the Pay-master has been taken in the Sum of four hundred thousand Pounds.

The third is of the same Nature with the first, and comes from the same Foundation, which is, what a Gentleman hath thought fit to produce to the House of Commons. I will not now censure his Action, I think it will do enough for itself; I will only say, That altho' I take it for one of the greatest Misfortunes which can befall a Man, to lie under such a Charge of the House of Commons, yet I would much sooner chuse to be under that Unhappiness, than under his Circumstances.

The fourth Article is not only false in every Part of it, but it is not possible to believe it true, without my being the greatest Fool on Earth, as well as the blackest Villain. For were I capable of such a Wickedness, yet the more wicked any Man is, the more he is carried to his own Interest; and is it possible any thing under Heaven can agree less with my Interest, than the Destruction of this King? Can I possibly hope to be better than I am? And is it not apparent, that there is not one Man living, whose Happiness depends so much as mine upon the Preservation of his Person?

My Lords, I know there is not a Man in the World, that can in his Heart think me guilty of that Part of the Article, if I should say nothing to it. But besides, I was so far from concealing this hellish Plot, that it is notoriously known, his Majesty sent me the first Notice of it, together with forty-three Heads of the Information, before I knew a Syllable of it from any Body else: And it hath been own'd at the Bar of the House of Commons by him (from whom only I had the Intelligence) that he had all the Encouragement and Dispatch from me that I could give him. Besides, when it was disclosed to the Council-board, he told some of the Clerks of the Council, (as he had done me divers times before) that it would have been much better, and more would have been discovered, if it had been longer kept private. Besides this, I had the Fortune to be particularly instrumental in seizing Mr. *Coleman's* Papers, without which Care there had not one of them appear'd, and consequently, the best and most material Evidence which is yet of the Plot, had been wholly wanting. And certainly this is the first Time that any Man was accused to be the Concealer of that Plot, whereof he hath been a principal Means of procuring the Discovery.

For that Part of the Article that says, I am Popishly affected, I thank God, that the contrary is so known to all the World, that even some of those that voted against me, did own their Knowledge of the Falsity of that Allegation; and I hope I have through my whole Life given so good Testimony of my Religion, both in my own Family, and by my Services to the Church, (whenever it hath lain in my Power) that I shall not need much Vindication in that Particular: And I hope your Lordships will forgive me my Weakness, in telling you, that I have a younger Son in the House of Commons, whom I shall love the better as long as I live, for moving to have that Part of the Article to stand against me, that by that Pattern it might appear, with what sort of Zeal the whole hath been carried to my Prejudice.

The fifth Article will, upon Examination, appear to be as ill-grounded as any of the rest; and I am sorry I am able to give one Reason,

which is; That I have known no Treasure in my Time to waste, having enter'd upon an empty Treasury, and never seen one Farthing given to his Majesty (in almost six Years) that hath not been appropriated to particular Uses, and strictly so applied by me, as the Acts have directed: And there hath not been one of those Aids, which, instead of giving the King Money, hath not cost him more out of his own Purse, to the same Uses, as doth appear by the larger Dimensions of the new Ships, and so in other things: Insomuch that I take upon me the Vanity to say, That by the Payments I have made to the Navy and Seamen, beyond former Times; the paying off the greatest Part of the Debt which was stop'd in the *Exchequer* before my Time; by my own Punctuality in the Course of Payments, and by other Things; which I am able to shew, I doubt not but to appear meritorious, instead of being criminal, upon that Article.

As to the sixth Article, which mentions my great Gettings, I cannot deny, but that I serve a Master, whose Goodness and Bounty hath been a great deal more to me than I have deserved, and to whom I can never pay Gratitude enough by all the Services of my Life. But when the Particulars of those Gettings shall appear, it will be found very contrary to what is suggested abroad; and that in near six Years time in this great Place, I have not got half that, which many others have got in lesser Places in half that time. And from the Examination of this, which I desire may be seen, there will arise Matter to accuse my Prudence, in not having done for my Family what justly I might, but nothing to arraign either my Honour, my Conscience, or my faithful Service to the Crown.

My Lords, If my Obedience to the King shall not be my Crime, I think nothing else will stick upon me from these Articles: For my own Heart flatters me to believe, that I have done nothing but as a true Protestant, and a faithful Servant both to my King and Country. Nay, I am as confident, as that now I speak, that had I either been a Papist, or Friend to the *French*, I had not been now accused. For I have Reason to believe, that the principal Informer of the House of Commons hath been assisted by *French* Advice to this Accusation; and if the \* *Mr. Mountague*. \* Gentleman were as just to produce all he knows for me, as he hath been malicious to shew what may be liable to Misconstruction against me, or rather against the King, (as indeed it is) no Man could vindicate me more than himself: Under whose Hand I have it to shew, how great an Enemy to *France* I am thought, how much I might have had to have been otherwise, and what he himself might have had for getting me to take it. But I do not wonder this Gentleman will do me no Right, when he does not think fit to do it to his Majesty (upon whom chiefly this Matter must reflect.) Although he knows, as will appear under his Hand, that the greatest Invitations to his Majesty, for having Money from *France*, have been made by himself; that if his Majesty would have been tempted for Money, he might have sold Towns for as much as if they had been his own, and the Money have been convey'd as privately as he pleased: That his Majesty might have made Matches with *France*, if he would have consented to give them Towns; and yet, that

that the King hath always scorn'd to yield the meanest Village that was not agreed to by the Spaniard and Hollander. That Gentleman hath often pretended how much his own Interest in France was diminish'd, only by being thought my Friend. And besides divers other Instances, I have under his Hand, to shew the Malice of the French Court against me, I sent two of his Letters to the House of Commons, which shew how Monsieur *Ruvigny* was sent hither on purpose to ruin me; which I am well assured at this Time they would rather see, than of any one Man in England. Besides what that Gentleman could say of this kind (if he pleas'd) I hope his Majesty will give me leave (in my Defence) to say in his Presence, and in the Hearing of divers Lords, with whom I have the Honour to sit in the Committee of Foreign Affairs, that, which were it not true, his Majesty must think me the impudentest and worst of Men to affirm before him, That ever since I had the Honour to serve his Majesty to this Day, I have deliver'd it as my constant Opinion, That France was the worst Interest his Majesty could embrace, and that they were the Nation in the World from whom I did believe he ought to apprehend the greatest Danger; and who have both his Person and Government under the last Degree of Contempt: For which Reason alone (were there no other) I would never advise his Majesty to trust to their Friendship.

My Lords, 'tis my greatest Happiness, that your Lordships are my Judges; whose Wisdom and Justice are so great, that you will both discern the Truth of the Evidence when it shall come before you, and in the mean time distinguish truly what the Crimes are (if they could be proved) and not what they are call'd. For this Reason this House hath wisely provided to have the special Matter before them, to the end they may be satisfied whether the Charge have its right Denomination; for otherwise it were to no purpose to desire special Matter, unless it were to see whether the special Matter alledg'd be what it is call'd. As for Example, if a Man were accused of having traiterously pass'd the River in a Pair of Oars, this is special Matter, and styl'd Treason, by inserting the Word traiterously; yet your Lordships would not therefore proceed as taking it for Treason. So in this Case, I beg for all your Lordships Sakes, as well as my own, that you will please to use that Caution which will be necessary for all your Lordships Safety and Seats in this House: For I beseech your Lordships to consider, whither such a Precedent may go hereafter? What the House of Commons may do in such a Case, there is no Question but his Majesty may do the same by his Attorney; and what either of them may do against one Lord, they may do against more; (and we have seen it done in our Days against all the Bishops at once.) Were it not very precariously then that your Lordships hold your Seats here, when by either of these Ways as many of your Lordships, as for a Time it might be convenient to remove, should be at the Mercy of having a Thing call'd Treason, whether it be so or no.

Truly, my Lords, I have Reason to believe, that in the House of Commons the Matter of my Charge (if proved) was not thought to amount to Treason, either by Statute or Common

Law; and I hope your Lordships have too sad an Example in your Memory, ever to assist the making of Treason by Accumulation.

I should therefore not only wrong my own Innocence, but the Right of the Peers, to submit to answer Matters of Misdemeanor, as a Criminal in Treason.

My Lords, I wonder not at the malicious Prosecution of those who would have me taken for what they truly are. For I am well assur'd, that neither the French take me to be of their Interest, nor the Papists to be of their Religion: But I am troubled to fall under so severe a Censure of the House of Commons, altho' I cannot blame them, but my Accusers, who have so wrongfully inform'd them.

My Lords, I will conclude with this Comfort, That I do not in the least apprehend the Matter of my Charge, under the Security of your Lordships Justice; and will therefore trouble your Lordships no longer at this Time, but only to pray your Directions whether I am to withdraw, which I shall readily obey.

Upon this there was a great Debate, whether he should be committed; but the Majority were against committing him.

All further Proceedings were prevented by the Prorogation of the Parliament, December 30. However, the King dismiss'd him from his Post of Lord Treasurer. This Parliament was afterwards dissolv'd January 24, and a new one met on March 15.

On March the 20th, the House of Commons resumed the Affair relating to the Earl of *Danby's* Impeachment, when, among others, Mr. *Powle* deliver'd himself as follows.

*Mr. Speaker,*

I should have been pleas'd to have heard, what I was needful to have been spoken unto, from some other Member of this House, rather than myself; it is concerning the Earl of *Danby*, who stands impeach'd by the Commons of England of High-Treason.

The Person, to whom we owe the Dangers and Fears of the French King against us.

The Person, to whom we owe the Threats and severe Answers to those humble Addresses we made the last Sessions of Parliament.

The Person, to whom we owe the Ruins of this Nation, and exhausting the King's Revenue.

The Person, to whom we owe the Expence of 200000*l.* and upwards, within a Year, unaccounted for.

The Person, to whom we owe the many Prorogations that happen'd in the last Parliament, when many profitable Bills were ready for passing.

The Person, to whom we owe the Raising of a Standing Army, to be kept up by the Receipt of six Millions of Livres yearly, for three Years together, to enslave us and our Religion.

The Person, to whom we owe the late Bone that was thrown in the Sitting of the last Parliament, to hinder the good Issue that might have come by their Proceedings; who is now laying down his Staff, and making up his Accounts in the Treasury as he pleaseth, to enrich himself out of the Spoils of the People, and so depart.

My

My humble Motion is, That a Message be sent immediately to the Lords from the Commons of England, to desire their Lordships, That *Thomas Earl of Danby* be immediately committed to safe Custody, he being impeach'd by the Commons of England of High-Treason.

Upon the Debate the House came to this Resolution.

Resolved, *Nemine Contradicente*, ' That a Message be sent to the Lords, to put them in mind of the Impeachment of High-Treason, exhibited against *Thomas Earl of Danby*, in the Names of the Commons of England; and to desire that he may be committed to safe Custody: Resolving again, That it be referred to the Committee of Secrecy to draw up further Articles against him.

On Saturday, March 22, the Commons being commanded to attend his Majesty in the House of Peers, the King spoke to them in Favour of the Earl of *Danby*: But returning to their House, they Resolved, ' That a Message be immediately sent to the Lords to remind their Lordships of the last Message sent them from this House, relating to *Thomas Earl of Danby*, and to demand that he might be forthwith sequestered from Parliament, and committed to safe Custody.' Upon which the Lords desired a present Conference with the Commons, where the Duke of *Moxmou's* spake thus; *I am commanded by the Lords to acquaint you, That their Lordships having taken into Consideration Matters relating to the Earl of Danby, together with what his Majesty was pleased to say upon that Subject; have ordered that a Bill be brought in, by which Thomas Earl of Danby may be made for ever incapable of coming to his Majesty's Presence, and of all Offices and Employments, and of receiving any Grants or Gifts from the Crown, and of sitting in the House of Peers.* In the mean time, the Commons hearing that the King had signed a Pardon for the Earl, they appointed a Committee to repair to the Lord Chancellor, to enquire into the Manner of suing forth that Pardon. The Lord Chancellor did inform the Committee, ' That the Pardon was passed with all Privacy, the King commanding him to bring the Seal to *Whitehall*; and being there, he laid it upon the Table; whereupon his Majesty commanded the Seal to be taken out of the Bag, which his Lordship was obliged to submit unto, it not being in his Power to hinder it; and the King writ his Name upon the Top of the Parchment, and then directed to have it sealed; whereupon the Person that usually carried the Purse affixed the Seal to it.' Upon this Report from his Lordship, the Commons Resolved, ' That an humble Address be made to his Majesty, to represent the Irregularity and Illegality of the Pardon mention'd by his Majesty to be granted to the Earl of *Danby*, and the dangerous Consequence of granting Pardons to any Persons that lie under an Impeachment of the Commons of England.' The same Day the Earl thought fit to withdraw himself.

On Tuesday, March 25, the Lords sent a Message, by Baron *Littleton* and Baron *Thurland*, to acquaint the House of Commons, *That they had sent to apprehend Thomas Earl of Danby, both to his House here in Town, and to his House at Wimbleton; and that the Gentleman-Usher of the Black-*

*Rod returned their Lordships Answer, That he could not be found.* Whereupon the Commons ordered, ' That a Bill be brought in to summon *Thomas Earl of Danby* to render himself to Justice by a certain Day therein limited, or in default thereof to attaint him.' On Thursday, March 27, the Lords sent down a Bill, entitled, *An Act for banishing and disabling Thomas Earl of Danby, &c.* which the Commons immediately took into Consideration; upon which Occasion Sir *Francis Winnington* (who had been lately remov'd from being Solicitor-General) made the following Speech.

Mr. Speaker,

THE King cannot pardon Treason against the Government, for then the Government cannot be free from evil Counsellors. Could a King have done it, would not *Belknap*, *Trefilian*\*, and the two *Spencers* have been pardon'd? A King ought to be the \*Trial. I. Sanctuary of his People from the Oppression of evil Ministers, but not the Refuge of the Enemies of the Government, and the Protector of such Arch-Traitors as *Danby*. If *Danby* be pardon'd, then the Popish Lords in the *Tower* may be, and the Jesuits in *Newgate* likewise.

Is this the way to secure the Laws, and the Protestant Religion? The King hath a Limited Power, or else it is not Legal; his Limitation then is for the Good and Benefit of the People. But is *Shrouding* an open and notorious Traitor, the Minister of the present Mischief, and the common Centre, in which all the Lines of Confusion do meet; is that, I say, for the Good of the People? Prerogative is to abate rigorous Justice, not to evade and destroy it. If Ministers may be pardon'd at the Prince's Pleasure for all the Wrongs they do the People (tho' the Prince be sworn to protect the People from those Wrongs, and is therefore Truited and Paid) there is no Security, and our pretended Freedom and Legal Government is a mere Cheat, and we are all arrant Slaves. And I say, he that speaks one Word for *Danby*, speaks two for himself. Besides, this is *Treason Impeach'd in Parliament*, therefore not pardonable but in Parliament; this is a *National and Catholick Treason*; the Life, the Root of Government is invaded: A Pardon here is so unsufferable a thing, that it ought to be placed to his Account that dares plead it, and ranked amongst the rest of his evil Counsels. The Bill sent from the House of Lords is not his Punishment, but his Pardon, a *Salvation* by Act of Parliament. Who will be deterred by that Act, that can plead such a Precedent to escape unpunished, and can carry away Honour and Wealth, the Reward of Treason, and the poor People's Spoils; and that at such a Time as this, circumstantiated with Plots and Conspiracies, and he tardy too? If this must be, it is good, yea, meritorious, to invade Property, to betray the Kingdom, sell the People, encourage Popery, suborn Witnesses, and strangle and murder the Discoverers of the Plot.

Remember how you us'd to proceed; make him an Example for the rest; if he must live, let him survive his Glory; at least degrade him and sequester him; that is, reduce him to as small a thing as Sir *Thomas Osborn*, and as lean and indigent; leave him nothing he has got by his monstrous Actions against the Kingdom. I

am bold to say, That those Lords and Commons that agree not in this, would do the same thing, to end in the same Security.

It is a Licence to cheat the King for Five Years; if this must be, pray let there be a Clause in this Bill to pardon all Villanies and Treason against the Government whatsoever, and for Poor as well as Rich. Let not *the great Regnes* only escape and go unpunish'd. Was *Green, Berry, and Hill*, hang'd for killing Sir *Edmund-Bury Godfrey*? and must he escape, that so vehemently discourag'd and bitterly menaced him? What Reason was there that *Groves* and *Ireland* should die for being in the Plot, while he is rewarded that concealed and would have stifled it, and afterwards have father'd it upon others?

To conclude, If after all this Discovery made and proceeded in by us, this Point shall be delivered up, they will not however escape unpunished, but God will bring Deliverance another way.

The Result was, that the House came to this Resolution;

‘ Resolved, That the Bill be rejected.’

On *April 1*, the Commons pass'd a Bill for the Attainder of *Thomas Earl of Danby* of *High-Treason*, unless he should surrender himself within a Time fixt, which was sent up to the Lords by Sir *Robert Peyton*.

On *April 4*, there was a Conference between the two Houses relating to the Bill of Attainder, where the Lord Privy-Seal managed the Conference for their Lordships, and deliver'd himself to this effect, ‘ That the Lords chose to deliver back by Conference, rather than Message, to preserve a good Understanding, and to prevent Debate or Controversy between them: The Lords observe, That the great Affairs of this Nation are at a stand, at a time of greatest Danger and Difficulty that this Kingdom ever laboured under: That the King hath always in his Reign inclined to Mercy and Clemency to all his Subjects: Therefore to a King so merciful and compassionate, the first Interruption of his Clemency they did desire should not proceed from the two Houses, pressing the King to an Act of the greatest Severity; therefore have pass'd the Bill, with some Amendments, which he deliver'd.’ The Commons disagreed to the Amendments made by the Lords, and drew up Reasons to be offered in another Conference, implying, That their Lordships Amendments had wholly altered the Nature of their Bill, and from a Bill of Attainder had converted it into a Bill of Banishment: And at the same time ‘ Resolved, That an humble Address be made to his Majesty, to desire his Majesty to issue out his Royal Proclamation for the apprehending *Thomas Earl of Danby*; with the usual Penalties upon such as shall conceal him: And that his Majesty will be further pleased to give Order to the Officers of his Majesty's Household, That they take care that the said Earl of *Danby* be not permitted to reside within either of his Majesty's Palaces of *White-Hall, Somerset-House, and St. James*. And it is referred to Mr. *Powle, &c.* to prepare and draw up the same, and present it to the House to Morrow Morning,’ which was done accordingly the next Day, and presented to the King.

The same Day the Commons had another Conference with the Lords upon the Earl of *Danby's* Case, where the Lord *Huntington* managed the Conference, and what he delivered was to this effect; ‘ The Lords have desired this Conference with the Commons, not so much to argue and dispute, as to mitigate and reconcile: They have already observed, that the Debate of this Bill hath given so long and so great an Obstruction to publick Business, and therefore they desire you to believe, that *that* is the Reason which hath chiefly prevailed with their Lordships in a Matter of this Nature; and upon this Ground it is, that if a Way may be found to satisfy and secure the publick Fears, by growing less than the Bill you have proposed, the Lords do not think it adviseable to insist upon the utmost and most rigorous Satisfaction, to prevent Justice, which might be denied. To induce you to this Compliance, the Lords do acknowledge, that Banishment is so far from being the legal Judgment in Case of High-Treason, that it is not the legal Judgment in any Case whatsoever, since it can never be inflicted but by the Legislative Authority: But they see no Reason why the Legislative Authority should always be found to act to the utmost Extent of its Power; for there may be a prudential Necessity sometimes of making Abatements, and it might be of fatal Consequence if it should not be so. And the Lords, to remove all Jealousies of the Precedents of this kind, do declare, That nothing which hath been done in the Earl of *Danby's* Case shall be ever drawn into Example for the time to come, and will so enter it upon their Journal. And thereupon their Lordships insist upon their Amendments so far, as to exclude all Attainders; and do promise themselves the Commons will in this Point comply with their Lordships, who do again assure them, That their Resolutions are grounded only upon their Tenderness and Consideration of the Publick.’ There was another Conference on this Subject-Matter, *April 12*; upon which the Commons again resolved to adhere to their Bill, and to disagree to the Amendments made by the Lords: Upon which the Bill of Attainder did at last pass both Houses. Upon this the Earl of *Danby* surrendred himself, and Sir *Edward Carteret*, Usher of the Black-Rod, on *April 16*, gave the House of Lords an Account that the Earl of *Danby* had the last Night render'd himself to him, and was in his Custody. ‘ Their Lordships ordered him to be brought to their Bar, where kneeling, and then standing up, the Lord Chancellor let him know, that he stood impeached by the Commons, and that, upon his withdrawing himself, a Bill of Attainder had passed the two Houses; by which, however, he had Time given him to come in, and make his Defence. — The Earl of *Danby* excused his not appearing sooner, declared his Innocency, and made several Petitions to the House, and then was ordered to withdraw. And being called in, and brought to the Bar again, the Lord Chancellor acquainted him, that their Lordships would allow him Time to give in his Answer to the Articles of his Impeachment, till the first Day of the Sitting of the House after *Easter*; That if any further Charge be put in against him, he shall have

‘ further

‘ further Time to answer; That he shall have  
‘ Counsel assigned him, and shall have Liberty to  
‘ make use of Records, and that his Witnesses  
‘ shall be summoned.—Upon which he withdrew,  
and by Order of the House was committed to the  
*Tower*.

On *April 25*, the Earl was brought from the  
*Tower* to the Bar of the Lords House, where he  
delivered in Writing his Plea to the Articles of his  
Impeachment, which was as follows.

*The PLEA of the Earl of DANBY,  
late Lord High-Treasurer of Eng-  
land, to the ARTICLES of IM-  
PEACHMENT, and other High  
Crimes and Misdemeanours, and  
Offences, exhibited against him by  
the Name of THOMAS Earl of  
DANBY, Lord High-Treasurer  
of England.*

THE said Earl for Plea, saith, and humbly  
offereth to your Lordships, as to all and every  
the Treasons, Crimes, Misdemeanours and Of-  
fences, contained or mentioned in the said Arti-  
cles, That after the said Articles exhibited, name-  
ly, the First of *March*, now last past, the King’s  
most Excellent Majesty, by his most Gracious Let-  
ters-Patents of Pardon, under his Great Seal of  
*England*, bearing Date at *Westminster* the said First  
Day of *March*, in the One and Thirtieth Year of  
his Majesty’s Reign; and here, into this most  
High and Honourable Court, produced under the  
said Great-Seal:

Of His special Grace, certain Knowledge, and  
meer Motion, hath Pardoned, Remised and Re-  
leased to him, the said *Thomas Earl of Danby*, all,  
and all manner of Treasons, Misprisions of Treas-  
ons, Insurrections, Rebellions, Felonies, Exactions,  
Oppressions, Publications of Words, Misprisions,  
Confederacies, Concealments, Negligences, Omis-  
sions, Offences, Crimes, Contempts, Misdemea-  
nors and Trespasses whatsoever, by himself alone,  
or with any other Person or Persons, or by any  
other, by the Command, Advice, Assent, Consent,  
or Procurement of him the said *Thomas Earl of  
Danby*, advised, committed, attempted, made, per-  
petrated, concealed, committed, or omitted, be-  
fore the 27th Day of *February* then and now last  
past, being also after the Time of the said Arti-  
cles exhibited, altho’ the said Premises, or any of  
them did, or should touch or concern the Person of  
his said Majesty, or any of his Publick Negotia-  
tions whatsoever; and also his Majesty’s Affairs  
with Foreign Ambassadors sent to his said Majesty,  
or by not rightly prosecuting his Majesty’s Instruc-  
tions and Commands to his Ambassadors, residing  
on his Majesty’s behalf in Foreign Parts.

And as to all and singular Accessaries to the  
said Premises, and every of them, altho’ he the  
said *Thomas Earl of Danby* were, or were not  
of the said Premises, or any of them, Indict-  
ed, Impeached, Appealed, Accused, Convicted,  
Adjudged, Out-law’d, Condemned, or Attaint-  
ed; and all and singular Indictments, Impeach-  
ments, Inquisitions, Informations, Exigents,

Judgments, Attainders, Out-lawries, Convicti-  
ons, Pains of Death, Corporal Punishments, Im-  
prisonments, Forfeitures, Punishments, and all  
other Pains and Penalties whatsoever, for the  
same, or any of them; and all, and all manner  
of Suits, Complaints, Impeachments and De-  
mands whatsoever, which his said Majesty, by  
reason of the Premises, or any of them, then had,  
or for the future should have, or his Heirs, or  
Successors, any ways could have afterwards a-  
gainst him the said *Thomas Earl of Danby*: And  
also Suit of his Majesty’s Peace, and whatsoever  
to his Majesty, his Heirs, or Successors, against  
him the said Earl of *Danby*, did, or could be-  
long, by Reason or Occasion of the Premises,  
or any of them. And his Majesty hath thereby  
given and granted his firm Peace to the said  
*Thomas Earl of Danby*. And further, his Ma-  
jesty willed and granted, that the said Letters-  
Patents, and the said Pardon and Release therein  
contained, as to all the things therein pardoned  
and released, should be good and effectual in the  
Law, altho’ the Treasons, Misprisions of Treas-  
on, Insurrections, Rebellions, Felonies, Ex-  
actions, Oppressions, Publications of Words,  
Misprisions of Confederacies, Concealments, Neg-  
ligences, Omissions, Offences, Crimes, Con-  
tempts, Misdemeanors and Trespasses were not  
certainly specified. And notwithstanding the  
Statute in the Parliament of the Lord *Richard*  
the Second, late King of *England*, in the 13th  
Year of his Reign, made and provided. And  
notwithstanding the Statute in the Parliament  
of the Lord *Edward* the Third, in the Four-  
teenth Year of his Reign, made and provi-  
ded, or any other Statute, Act, or Ordinance to  
the contrary thereof made and provided. And  
moreover, his said now Majesty, by his said  
Letters-Patents, of his further Grace, did firmly  
command all and singular Judges, Justices, Of-  
ficers, and others whomsoever, That the said free  
and general Pardon of his said Majesty, and the  
general Words, Clauses, and Sentences above-  
said, should be construed, expounded, and ad-  
judged in all his said Majesty’s Courts, and else-  
where, in the most beneficial, ample and benign  
Sense.

And for the better and more firm Discharge of  
the said Earl, of and from the Crimes and Offences,  
aforesaid, according to the true Intents of his Ma-  
jesty, and in such beneficial Manner and Form to  
all Intents and Purposes whatsoever, as if the said  
Treasons, Crimes, Offences, Concealments, Neg-  
ligences, Omissions, Contempts and Trespasses a-  
foresaid, and other the said Premises, by apt, ex-  
press and special Words had been remitted, relea-  
sed and pardoned. And that the said Letters-  
Patents of Pardon, and the Release and Pardon  
therein contained, shall be pleaded and allowed in  
all and every his Majesty’s Courts, and before all  
his Justices whatsoever, without any Writ of Al-  
lowance, any Matter, Cause, or Thing whatsoever  
in any ways notwithstanding, as by the said Let-  
ters-Patents themselves more at large appear-  
eth; which said Letters-Patents follow in these  
Words.

CAROLUS Secundus, Dei Gratia Angliæ,  
Scotiæ, Franciæ, & Hiberniæ Rex, Fidei De-  
fensor, &c. Omnibus ad quos presentes literæ nostræ  
pervenerint, Salutem, Sciatis, quod Nos pro diver-  
sis



*sis bonis Causis & Considerationibus nos ad hoc specialiter movent. de Gratia nostra speciali, ac ex certa scientia & mero motu nostris, Pardonavimus & Relaxavimus, &c.*

And the said Earl doth averr, That he the said Thomas Earl of Danby, in the said Articles named, is the said Thomas Earl of Danby in the said Letters-Patents of Pardon here produc'd, likewise named. Which Pardon the said Earl doth rely upon, and pleaded the same in Bar of the said Impeachment, and in Discharge of all the Treasons, Crimes, Misdemeanors and Offences contain'd, or mention'd in the said Articles of Impeachment, and every of them; and this the said Earl is ready to averr.

Whereupon he humbly prays the Judgments of your Lordships, and that his Majesty's most Gracious Pardon aforesaid may be allowed: And that he the said Earl, by vertue hereof, may be (from all the said Articles of Impeachment, and all and every of the Treasons and Crimes therein alledg'd against him) acquitted and discharged.

### A Copy of the Pardon of THOMAS Earl of DANBY.

CAROLUS Secundus, Dei Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defensor, &c. Omnibus ad quos præsentis literæ nostræ, Pervenierint, Salutem. Sciatis, quod Nos pro diversis bonis Causis & Considerationibus Nos ad hoc specialiter moventibus, de Gratia Nostra speciali ac ex certa scientia & mero motu nostris, Pardonavimus, Remissimus & Relaxavimus, ac per præsentis pro Nobis, Heredibus & Successoribus nostris, Pardonamus, Remittimus & Relaxamus prædicto, & perquam fideli Consanguineo & Consiliario nostro Thomæ Comiti Danbii, omnes & omnimodas Proditiones, Crimina læsæ Majestatis, Misprisiones, Proditionum, Insurrectiones, Verborum Propalationes, Misprisiones, Confederationes, Concelamenta, Negligentias, Omissiones, Offensas, Crimina Contemptus, Malefacta & Transgressiones quæcunque, per se solum seu cum aliqua alia persona, vel aliquibus aliis personis, aut per aliquem alium, sive aliquos alios, ex præcepto, advisamento, assensu, consensu, seu procuratione ejusdem Thomæ Comitis Danbii, advisata, præcepta, attempta, facta, perpetrata, concealata, commissa, seu omissa, ante 27 diem Februarii jam ultim. præteritum, licet præmissa, vel eorum aliqua, vel aliquid, tangunt vel tangat personam vel negationes Nostras Publicas quæcunque, necnon transactiones nostras cum Forensicis Legatis ad nos missis, vel non rite prosequendo Instructiones & Mandata Nostra Legatis Nostris, in partibus extra marinis, ex parte Nostra resident. ac etiam omnia & singula accessoria præmissorum & cujuslibet eorum, licet idem Thomas Comes Danbii de præmissis vel aliqua præmissorum indictatus, impetitus, appellatus, restatus, convictus, adjudicatus, utlegatus, condemnatus vel attinctus, Existit vel non Existit, ac omnia & singula Indictamenta, Impetitiones, Inquisitiones, Informationes, exigenda judicia, attincta, utlegaria, Convictiones, Executiones, Pœnas mortis, Pœnas corporales, Imprisonamenta, foris factura, Punitio-

nes, & omnes alias Pœna, & Pœnalitates quæcunque, pro eisdem vel eorum aliquo, ac omnia & omnimoda, Sectas, Querelas, Impetitiones, & Demanda quæcunque, quæ Nos versus ipsum Thomam Comitem Danbii, ratione præmissorum vel eorum alicujus, habuimus, habemus, seu in futurum habere poterimus, aut Heredes, seu Successores Nostris, ullo modo habere poterint, in futuro, sectamque pacis Nostræ, ac quæ ad Nos Heredes & Successores Nostris versus ipsum Thomam Comitem Danbii pertinet, seu pertinere poterit, ratione seu occasione præmissorum, seu eorum aliquorum vel alicujus, ac firmam pacem Nostram. Et inde damus & concedimus per præsentis, & ulterius volumus, & concedimus, Quod hæc literæ nostræ, ac hæc nostra Pardonatio, Remissio, Relaxatio in eisdem contenta, quoad omnia & singula superius pardonata, remissa, & relaxata, bonæ & effectuales in lege sint, & erint, licet Proditiones, Crimina læsæ Majestatis, Misprisiones Proditionum, Insurrectiones, Rebelliones, Fellonia, Exactiones, Oppressiones, verborum Propalationes, Misprisiones, Confederationes, Concelamenta, Negligentiæ, Omissiones, Offensæ, Crimina Contemptus, Malefacta & Transgressiones antedicta, Minus certe specificat. existunt. Et non obstante Statuto Parlamento Dom. Ricardi Secundi, nuper Regis Angliæ, Anno 13 Regni sui edito & proviso. Et non obstante Statuto in Parlamento Dom. Edwardi Tertii, nuper Regis Angliæ, Anno Regni sui 14 edito & proviso; Aut aliquo alio Statuto, Actu vel Ordinatione, in contrarium inde editis & provis. Et ulterius de uberiori Gratia Nostra firmiter Præcipimus omnibus & singulis Judicibus, Justiciariis, vel aliis quibuscunque, Quod hæc præsentis Literæ & Generalis Pardonatio nostra & generalia Verba, Clausulæ & Sententiæ supradicta, constructur, exponitur & adjudicentur in omnibus curiis nostris & aibi, in beneficentissimo, amplissimo, & benignissimo sensu, & pro maxima & firmiori exoneratione prædicti Thomæ Comitis Danbii de & à criminibus & offensis prædictis secundum veram intentionem nostram, & in tam beneficiali modo & forma & ad omnes intentionis & proposita, prout si prædictæ Proditiones, Crimina læsæ Majestates, Misprisiones, Proditionum, crimina Offensæ, Misprisiones, Concelamenta, Negligentiæ, Omissiones, Contemptus, & Transgressiones prædictæ ac cetera præmissa per apta expressa, & specialia verba Pardonata, Remissa, & Relaxata fuissent. Et quod hæc Literæ Patentes, Remissio, Relaxatio, & Pardonatio, omnia in eisdem contenta, in quibuscunque curiis & coram quibuscunque Justiciariis nostris, placitentur & allocenter, sine aliquo Breve de allocatione, aliqua re, causa vel materia quacunque, in aliquo non obstante. In cujus rei Testimonium has literas nostras fieri fecimus Patentes. Teste meipso apud Westmonasterium 1 die Martii, Anno Regni nostri 31.

CHARLES.

CHARLES the Second, by the Grace of God of England, Scotland, France and Ireland, King, Defender of the Faith, &c. To all to whom these our Letters-Patents shall come, sendeth Greeting. Know ye, that we for divers good Causes and Considerations, Us herunto especially moving, have out of our special Favour, certain Knowledge and meer Motion of our own, pardoned, remitted and released, and by these Presents for Us, our Heirs and Successors, do pardon, remit and release to our Well-beloved and Right Trusty Cousin and Counsellor, Thomas Earl of Danby, all, and all manner

manner of Treasons, as well High-Treason, as Misprisions of Treason, Insurrections, Revealing of Councils, Misprisions, Confederations, Concealments, Neglects, Omissions, Offences, Crimes, Contempts, Misdeeds and Transgressions whatsoever, by himself alone, or with any other Person, or Persons, or by any other, or others, by the Command, Advice, Assent, Consent, or Procurement of the said *Thomas Earl of Danby*, advised, commanded, attempted, done, performed, concealed, committed, or omitted, before the 27th Day of *February*, now last past. Although the Premises, or any of them, touch, or may touch Our Person, or our publick Negotiations whatsoever, or our Transactions with Foreign Ambassadors unto Us sent, or for not right following our Instructions and Mandates to our own Ambassadors resident on Our Behalf in Foreign Parts beyond the Seas; And also all and singular Accessaries to the Premises, or any of them, altho' the said *Thomas Earl of Danby* be indicted, impeached, appealed, arrested, convicted, adjudged, or as Ambassador condemned, or be, or be not attainted of the Premises, or any of them; and all and every Indictments, Impeachments, Inquisitions, Informations, Judgments to be required, Attainders, Outlawries, Convictions, Penalties of Death, Corporal Punishments, Imprisonments, Forfeitures, Sufferings, together with all other Pains and Penalties whatsoever, for the same, or any of them, and all, and all manner of Suits, Complaints, Impeachments and Demands whatsoever, which We, against the said *Thomas Earl of Danby*, by reason of the Premises, or any of them, have had, now have, or hereafter may have, or which our Heirs or Successors in any manner may have hereafter, together with any Suit for Breach of our Peace, which to Us, our Heirs, or Successors, against the said *Thomas Earl of Danby* doth, or may belong, by Reason or Occasion of the Premises, of some, or any of them; We do for ever indemnify him. Moreover we give and grant by these Presents, and it is our further Will and Pleasure, that these our Letters, and this our Pardon, Remission and Release therein contained, as to all and singular the things above pardoned, remitted and released, be and shall be good and effectual in Law, altho' the Treasons, High-Treasons, Misprisions of Treasons, Insurrections, Rebellions, Felonies, Extortions, Oppressions, Betraying of Councils, Confederacies, Concealments, Negligencies, Omissions, Offences, Crimes, Contempts, Misdeemeanours and Transgressions aforesaid, be not fully specified. And notwithstanding the Statute of *Richard the Second*, late of *England King*, in the 13th Year of his Reign made and provided. And notwithstanding the Statute by the Parliament of *Edward the Third*, late King of *England*, in the 14th Year of his Reign made and provided, or any other Statute, Act, or Ordinance to the contrary heretofore publish'd and provided. And moreover of our abundant Grace, We do strictly command all Judges, Justices, or others whatsoever, that this present Letter, with our General Pardon, and General Words, Clauses, and Sentences aforesaid, shall be construed, expounded and adjudged in all our Courts, and elsewhere, in the most beneficial, most ample, and most favourable Sense, and for the greatest and firmest Discharge of the aforesaid *Thomas*

*Earl of Danby*, of and from the Crimes and Offences aforesaid; according to our true Intention, and in so beneficial a Manner and Form, and to all Intents and Purposes, so as if the said Treasons, High-Treasons, Misprisions of Treason, Crimes, Offences, Omissions, Contempts, Concealments, Negligence and Transgression aforesaid, and other the Premises, had been by apt, express and special Words, pardon'd, remitted and releas'd. And that these Letters-Patents, Remission, Release and Pardon, with all things therein contain'd, in whatsoever Courts, and before whatsoever Our Justices, shall be pleaded and allowed, without any Writ of Allowance, any Thing, Cause, or Matter whatsoever in any wise notwithstanding. In Witness whereof We have caused these Our Letters-Patents to be made. Witness Myself, at *Westminster*, the First Day of *March*, in the 31st Year of Our Reign.

When the Plea and Pardon were read, the Earl withdrew, and was carried back to the *Tower*.

On *April* the 25th a Message was brought from the Lords, 'That *Thomas Earl of Danby* had this Day appeared in Person at the Bar of the House of Lords, and had put in his Plea, which the Lords have sent down, desiring it may be return'd with all convenient Speed.' Hereupon the House of Commons appointed a Committee to examine and peruse the Plea of the Earl of *Danby*.

On *April* the 28th, the Committee made this Report, '1. We find no Precedent that ever any Pardon was granted to any Person Impeached by the Commons of High-Treason, or other High Crimes, the Impeachment depending. 2. As to the Manner of the passing the Earl of *Danby's* Pardon, it hath been formerly reported to the House, and the Committee refer themselves to that Report. 3. That by what Means it was obtained, the Time allowed the Committee hath been so short, that we cannot as yet discover the Advisers or Promoters thereof, any farther than what is mentioned in the said Report relating to the Lord Chancellor. Resolved, That a Message be sent to the Lords, to desire their Lordships to demand of the Earl of *Danby*, *Whether he will rely upon, and abide by the Plea of his Pardon?*' Accordingly the next Day the Earl was again brought to the Bar of the Lords House, where kneeling, and then standing up, the Lord Chancellor acquainted him, That the Commons had returned to their Lordships the Plea delivered by him at the Bar of their House on the 25th Instant, with a Desire that their Lordships would ask him, *Whether he will rely upon, and abide by his said Plea?* The Earl praying Time to answer, their Lordships allow'd him 'till *Saturday* next, and then he withdrew, and was conducted back to the *Tower*. He afterwards returned Answer, That he relied on his Pardon. To which Plea the Commons put in a Replication; and on *May* the Fifth Resolved, 'That it was the Opinion of that House; That the Pardon pleaded by the Earl of *Danby* was illegal and void, and ought not to be allow'd in Bar of an Impeachment.' Whereupon the Speaker with the House went up to the Lords Bar, and demanded Judgment against the Earl.

After this, the Commons understanding that the Lords would admit the Earl of *Danby* to have the Validity of his Pardon pleaded at their Bar, they *Resolved*, ' That no Commoner whatsoever should presume to maintain the Validity of the Pardon pleaded by the Earl of *Danby*, without the Leave of this House first had; and that the Persons so doing should be accounted Betrayers of the Liberties of the Commons of *England*.

Afterwards a Difference arising between the two Houses, about the Bishops Right of Voting in any Part (tho' preliminary) of a Trial for Treason, the Commons refus'd to proceed in the Affair; the Narrative and Reasons whereof they deliver'd to the Lords at a Conference on *Monday, May 26*, which were as follow.

The Commons have always desir'd, that a good Correspondence may be preserv'd between the two Houses.

There is now depending between your Lordships and the Commons a Matter of the greatest Weight; in the Transactions of which, your Lordships seem to apprehend some Difficulty, in the Matters propos'd by the Commons.

To clear this, the Commons have desir'd this Conference; and do readily acknowledge, That any Change in Judicature in Parliament, made without Consent in full Parliament, to be of pernicious Consequence, both to his Majesty and his Subjects; and conceive themselves oblig'd to transmit to their Posterity, all the Rights which of this kind they have received from their Ancestors, by putting your Lordships in mind of the Progress that has already been between the two Houses, in relation to Propositions made by the Commons, and the Reasonableness of the Propositions themselves; they doubt not to make it appear, that their Aim has been no other, than to avoid such Consequences, and preserve that Right; and that there is no Delay of Justice on their Part. And to that End, do offer to your Lordships the ensuing Reasons and Narrative: That the Commons in bringing the Earl of *Danby* to Justice, and in Discovery of that execrable and traitorous Conspiracy, have labour'd under many great Difficulties, is not unknown to your Lordships.

Nor is it less known to your Lordships, that upon the Impeachment of the House of Commons against the Earl of *Danby* for High-Treason, and other high Crimes, Misdemeanours and Offences, even the common Justice of Sequestering him from Parliament, and forthwith committing him to safe Custody, was then requir'd by the Commons, and denied by the House of Peers, though he then sat in their House; of which your Lordships have been so sensible, that at a free Conference the 10th of *April* last, your Lordships declared, That it was the Right of the Commons, and well warranted by Precedents of former Ages, That upon an Impeachment of the Commons, a Peer so impeach'd ought of right to be order'd to withdraw, and then to be committed. And had not that Justice been denied to the Commons, a great Part of this Session of Parliament, which hath been spent in framing and adjusting a Bill, for causing the Earl of *Danby* to appear, and to answer that Justice from which he was fled, had been saved, and

had been employed for the Preservation of his Majesty's Person, and the Security of the Nation; neither had he had the Opportunity of procuring for himself that illegal Pardon, which bears Date the First of *March* last past, and which he hath now pleaded in Bar of his Impeachment: Nor of wasting so great a Proportion of the Treasure of the Kingdom, as he hath done since the Commons exhibited their Articles of Impeachment against him.

After which Time thus lost, by reason of the Denial of that Justice, which of Right belong'd to the Commons upon their Impeachment, the said Bill being ready for the Royal Assent, the said Earl then rendred himself; and by your Lordships Order of the Sixteenth of *April* last, was committed to the *Tower*. After which he pleads the said Pardon; and being press'd, did at length declare, He would rely upon, and abide by that Plea; which Pardon pleaded, being illegal and void, ought not to bar or preclude the Commons from having Justice upon the Impeachment; They did thereupon, with their *Speaker*, on the Fifth of *May* Instant, in the Name of themselves and all the Commons of *England*, demand Judgment against the said Earl, upon their Impeachment; not doubting, but that your Lordships did intend in all your Proceedings upon the Impeachment to follow the usual Course and Method of Parliament.

But the Commons were not a little surpriz'd by the Message from your Lordships, deliver'd them on the Seventh of *May*; thereby acquainting them, That as well the Lords Spiritual as Temporal had order'd, That the Tenth of *May* Instant should be the Day for hearing the Earl of *Danby*, to make good his Plea of Pardon. And that your Lordships had address'd to his Majesty for naming of a Lord High Steward in the Case of the Earl of *Danby*.

Upon Consideration of this Message, the Commons found, that the admitting of the Lords Spiritual to exercise Jurisdiction in these Cases, was an Alteration of the Judicature in Parliament; and that if a Lord High Steward should be necessary upon Trial on Impeachments of the Commons, the Power of Judicature in Parliament, upon Impeachments, might be defeated, by suspending or denying a Commission to constitute a Lord High Steward.

And that the said Day of Trial appointed by your Lordships, was so near to the Time of your said Message, that these Matters, and the Method of proceeding upon the Trial, could not be adjusted by Conference betwixt the two Houses, before the Day so nominated. And consequently, the Commons could not then proceed to Trial, unless the Zeal which they have for speedy Judgment against the Earl of *Danby* should induce them at this Juncture, both to admit the Enlargement of your Lordships Jurisdiction, and to sit down under these or any Hardships, though with the Hazard of all the Commons Power of Impeaching for time to come, rather than the Trial shou'd be deferr'd for some short time, whilst these Matters might be agreed on and settled.

For reconciling Differences in this great and weighty Matter, and for saving that Time, which would necessarily have been spent in Debates and Conferences betwixt the two Houses,

and

and for expediting the Trial, without giving up the Power of Impeachment, or rendering it ineffectual.

The Commons thought fit to propose to your Lordships, that a Committee of both Houses might be appointed for this Purpose. At which Committee (when agreed to by your Lordships) it was then agreed, that the Proposition as to the Time of the Trial, should be the last thing consider'd. And the Effect of this Agreement stands reported upon your Lordships Books.

After which, the Commons communicated to your Lordships, by your Committee, a Vote of theirs, (*viz.*) That the Committee of the Commons should insist upon their former Vote of their House, That the Lords Spiritual ought not to have any Vote in any Proceedings against the Lords in the *Tower*, and that when that Matters would be settled, and the Method of Proceedings adjusted, the Commons should then be ready to proceed upon the Trial of the Pardon of the Earl of *Danby*, against whom they had before demanded Judgment; but the Commons as yet received nothing from your Lordships towards an Answer of that Vote, save that your Lordships have acquainted them, that the Bishops have ask'd Leave of the House of Peers, that they might withdraw themselves from the Trial of the Five Lords, with Liberty of entering their usual Protestation.

And tho' the Commons Committee have almost daily declared to your Lordships Committee, that that was a necessary Point of Right to be settled before the Trial, and offered to debate the same; your Committee always answered, That they had not any Power from your Lordships, either to confer upon, or to give any Answer concerning that Matter.

And yet your Lordships, without having given the Commons any satisfactory Answer to the said Vote, or permitting any Conference or Debate thereupon, and contrary to the said Agreement, did, on *Thursday* the 22d of *May*, send a Message to the Commons, declaring, That the Lords Spiritual as well as Temporal, had order'd, that the 27th of this instant *May* be appointed for the Trial of the Five Lords.

So that the Commons cannot but apprehend that your Lordships have not only departed from what was agreed on, and in effect laid aside that Committee which was constituted for preserving a good Understanding betwixt the two Houses, and better Dispatch of the weighty Affairs now depending in Parliament, but must also needs conclude from the Message, and the Votes of your Lordships on the 14th of *May*, that the Lords Spiritual have a Right to stay and sit in Court, till the Court proceeds to the Vote of Guilty, or Not Guilty. And from the Bishops asking Leave (as appears by your Lordships Books two Days after your said Vote) that they might withdraw themselves from the Trial of the said Lords, with Liberty of entering their usual Protestation, and by their persisting still to go on and give in their Votes Proceeding upon the Impeachment; that their Desire of Leave to withdraw at the said Trial, is only an evasive Answer to the before-mention'd Vote of the Commons, and chiefly intended as an Argument for a Right of Judicature in Proceedings upon Impeachments, and as a Reserve to Judge upon the Earl of *Danby's* Plea of Pardon, and upon

these and other like Impeachments, although no such Power was ever claimed by their Predecessors, but is utterly denied by the Commons. And the Commons are the rather induced to believe it so intended, because the very asking Leave to withdraw, seems to imply a Right to be there, and that they cannot be absent without it.

And because by this way they should have it in their Power, whether or no for the Future, either in the Earl of *Danby's* Case, or any other, they will ever ask leave to be absent; and the Temporal Lords a like Power of denying Leave, if that should once be admitted necessary.

*The Commons therefore are obliged not to proceed to the Trial of the Lords on the 27th of this Instant May, but to adhere to their aforesaid Vote: And for their so doing, besides what hath been now and formerly by them said to your Lordships, do offer you these Reasons following:*

#### R E A S O N S.

##### I.

**B**ECAUSE your Lordships have received the Earl of *Danby's* Plea of Pardon with a very long and unusual Protestation, wherein he hath aspersed his Majesty by false Suggestions, as if his Majesty had commanded or countenanced the Crimes he stands charg'd with; and particularly suppressing and discouraging the Discovery of the Plot, and endeavouring to introduce an arbitrary and tyrannical Way of Government; which remains as a Scandal upon Record against his Majesty, tending to render his Person and his Government odious to his People; against which it ought to be the first and principal Care of both Houses to vindicate his Majesty, by doing Justice upon the said Earl.

##### II.

The setting up a Pardon to be a Bar of an Impeachment, defeats the whole Use and Effect of Impeachments; and should this Point be admitted, or stand doubted, it would totally discourage the exhibiting any for the future; Whereby the chief Institution for the Preservation of the Government (and consequently the Government it self) would be destroy'd. And therefore the Case of the said Earl (which in consequence concerns all Impeachments whatsoever) ought to be determin'd before that of the said Five Lords, which is but their particular Case.

And without resorting to many Authorities of greater Antiquity, the Commons desire your Lordships to take notice (with the same Regard they do) of the Declaration which that Excellent Prince, King *Charles* the First of blessed Memory, made in this Behalf, in his Answer to the Nineteen Propositions of both Houses of Parliament: Wherein, stating the several Parts of this regulated Monarchy, he says; *The King, the House of Lords, and the House of Commons, have each particular Privileges:* And among those which belong to the King, he reckons *Power of Pardoning.* After the enumerating of which, and other his Prerogatives, his said Majesty adds thus:

thus: *Again, That the Prince may not make use of this high and perpetual Power, to the Hurt of those for whose Good he hath it, and make use of the Name of Publick Necessity, for the Gain of his Private Favourites and Followers, to the Detriment of his People; The House of Commons (an excellent Conserver of Liberty, &c.) is solely intrusted with the first Propositions concerning the Levies of Monies, and the Impeaching of those who for their own Ends, though countenanced by any surreptitiously-gotten Command of the King, have violated the Law, which he is bound (when He knows it) to protect, and to the Protection of which they were bound to advise Him, at least not to serve Him in the contrary. And the Lords being trusted with a Judicatory Power, are an excellent Screen and Bank between the Prince and People, to assist each against any Inroachments of the other; and by just Judgments to preserve that Law which ought to be the Rule of every one of the Three, &c. Therefore the Power legally placed in both Houses, is more than sufficient to prevent and restrain the Power of Tyranny, &c.*

## III.

Until the Commons of *England* have Right done them against this Plea of Pardon, they may justly apprehend, that the whole Justice of the Kingdom, in the Case of the Five Lords, may be obstructed and defeated by Pardons of like Nature.

## IV.

An Impeachment is virtually the Voice of every particular Subject of this Kingdom, crying out against an Oppression, by which every Member of that Body is equally wounded; And it will prove a Matter of ill Consequence, That the Universality of the People should have Occasion ministred and continued to them, to be apprehensive of utmost Danger from the Crown, from whence they of Right expect Protection.

## V.

The Commons exhibited Articles of Impeachment against the said Earl, before any against the Five other Lords, and demanded Judgment upon those Articles: Whereupon, your Lordships have appointed the Trial of the said Earl to be before that of the other Five Lords; Now your Lordships having since inverted that Order, gives a great Cause of Doubt to the House of Commons, and raises a Jealousy in the Hearts of all the Commons of *England*, that, if they should proceed to the Trial of the said Five Lords in the first Place, not only Justice will be obstructed in the Case of those Lords, but that they should never have right done them in the Matter of this Plea of Pardon, which is of so fatal Consequence to the whole Kingdom, and a new Device to frustrate publick Justice in Parliament.

Which Reasons and Matters being duly weighed by your Lordships, the Commons doubt not but your Lordships will receive Satisfaction concerning their Propositions and Proceedings; and will agree, That the Commons ought not, nor can, without deserting their Trust, depart from their former Vote communicated to your Lordships; *That the Lords Spiritual ought not to have any Vote in any Proceedings against the Lords in the Tower; and when that Matter shall be settled, and*

*the Methods of Proceedings adjusted, the Commons shall then be ready to proceed upon the Trial of the Earl of Danby.*

May 27, 1679.

The Narrative and Reasons delivered at the Conference Yesterday with the House of Commons were again read, and after a long Debate, the Vote of this House, dated the 13th of *May* Instant, and the Explanation thereupon, dated the 14th Instant, were read, and the Question was put, Whether to insist upon these Votes concerning the Lords Spiritual, and it was resolv'd in the Affirmative.

## D I S S E N T E R S Present.

*Buckingham.*  
*Hutington.*  
*Kent.*  
*Shaftsbury, P. R.*  
*Bedford.*  
*Winchester.*  
*Rochester.*  
*North and Grey.*  
*Suffolk,*  
*J. Lovelace.*  
*Townshend.*  
*Herbert.*  
*Gray.*  
*Stamford.*  
*Newport.*  
*Say and Seal.*  
*P. Wharton.*  
*Leicester.*  
*Scarfsdale.*  
*Strafford.*  
*Derby.*  
*Delamer.*  
*Howard.*  
*Paget.*  
*Clare.*  
*Salisbury.*  
*Falconberg.*  
*Windsor.*

The same Day the King came to the House and prorogued the Parliament, and soon after dissolv'd it, and a new one call'd, which was not suffer'd to sit.

*Proceedings in the KING'S BENCH, upon the Earl of DANBY's Motion for Bail.*

THE Earl of *Danby* having been confin'd for above three Years, and no Parliament sitting, to which he could apply for his Liberty, brought an *Habeas Corpus* in the *King's-Bench*, in order to be Bail'd; which came to be argued *May 27, 1682, Easter Term. 34. Car. II.*

Immediately after his Lordship was in Court, the Return of the *Habeas Corpus* was read, and Mr. *Saunders* (of Council for his Lordship) did move the Court, That whereas in *Easter-Term, 1681*, the Court had dismiss'd his Lordship with a *Declaration*, that they would take into their Consideration, till the *Term* following, what Answer they would make to what had then been said to them by his Lordship and his Council; he there-

therefore moved, That they might now accordingly know the Pleasure of the Court, and that they would be pleased to grant Bail to the Earl of *Danby*.

But before the said Mr. *Saunders* could well have pronounced the foregoing Words, the Lord Chief Justice *Pemberton* did reprimand the said Mr. *Saunders*, for having offer'd to impose upon the Court what had never been said by them; saying, That there was no such thing as their having said, at any time, that they would take the Earl of *Danby's* Case into farther consideration; for that they had told my Lord of *Danby* the last time, That it was not in their Power to give him any Relief at all; and that he therefore wonder'd, and must extreamely blame Mr. *Saunders*, for moving the Court again in a Matter to which they had already given such a positive Answer; and could not but admire, that he should so misinform his Client, as to give him any such Advice, which could only be to the giving both him and the Court an unnecessary Trouble.

To all which Mr. *Saunders* replied, That he humbly begg'd his Lordship's Pardon, if he had mistaken him; for that truly he did understand, that his Lordship had declar'd that he would take time to consider of my Lord of *Danby's* Case till the following Term; but that if it was a Mistake, he must beg his Lordship's Pardon; and did believe the rest of his Brethren took it so, as well as himself.

The Earl of *Danby* then spoke himself for about two Hours, and said to the Lord Chief Justice, That he met with an Objection, which he did not expect; and that he must beg his Lordship's Pardon, not to let that pass for a Mistake which his Council had affirm'd, of the Court's having taken Time to consider of his Case, till the next Term after that of his Lordship's being last there; for that his Lordship did therein appeal both to the rest of the Judges, which were upon the Bench with him, and to all other Persons whatsoever, who were then in Court, whether his Lordship had not said, that if he (meaning the Earl of *Danby*) pleas'd, they would take time to consider of his Case till the next Term; and he did declare upon his *Honour*, that those Words had been pronounced to him by my Lord Chief Justice himself, and that he did then accept it as a Favour from the Court, and did return his humble Thanks to them for it: Infomuch, that his Lordship said, That he confess'd he was very much surprized to meet with such an Introduction at the first entrance into a Matter which he conceived to be of so great Weight, as he doubted not but he should make this Case of his appear to be.

But yet, that it did give him Reason to believe, that he came with some Prejudice before his Lordship, and that they were so much prepossessed in this Matter, that if he did not think every Man in *England* would find that he might be concern'd in what Resolution should be given in this Case, as well as himself, he should scarcely have ventured upon it, though he had lain so long under so unreasonable a Confinement, as he took himself to do; and therefore he must desire their Lordship's Patience and Attention to what he had to offer in his own Behalf, and (as he believed) in the Behalf of the *Liberty of the Subject* in general.

His Lordship, directing himself to the Lord Chief Justice, said, It was just now a Year since he was before his Lordship in this Court; and that he was assured, that his Lordship did then please to tell him, That they would take Time to the following Term to consider of what they should think fit to do in his Lordship's Case: But he said, that Care was then taken the first Day of that following Term to prevent his coming there, by an *Indictment* which was brought against him (*ready cut and dry'd*, as he had been told) for his being privy to the Murder of Sir *Edmund-Bury Godfrey*.

He said he did not wonder at it, because there was nothing so *black*, which had not been Invented to be said against him; but, he confess'd, he did wonder to hear, that such an Evidence of an *Irish Papist* (who was upon Trial for his own Life, and upon an *Hear-say* only) should be believed against an *English Protestant*, by a Jury of *English-Men*, and some of them *Gentlemen*; but yet that Wonder hath been much abated, when he heard that the same *Fore-man* had been as favourable in the Case of a *Notorious Murder*, as he had been ready to find that *Murder* against him, which had not the least *Probability* in it, and which no Man could think of with more Detestation both of the *Fact*, and of any *Man* that could have an hand in it, than himself.

However, this prevented him from coming there again, till after Notice had been given to Sir *Edmund-Bury Godfrey's* Brothers, to know if they had any thing further to say against him on that Matter, and that he could get himself discharg'd from that *Indictment*; and as to the Wretch himself, *Fitz Harris*, (who had accused him) he did Two Days before his Death send the *Minister* of the *Tower* to his Lordship to beg of him that, before he died, his Lordship would forgive him his having sworn falsely against him; and he did confess, that he was put upon it to *Save* his *own* Life; and did say by *whom* he was prompted to it. And whether it proceeded from those Men, who might think their Villanies discovered, and so might fear they could no way be safe but by putting that Matter yet farther against him, or from what other Cause, his Lordship could not tell; but (if his Lordship was not misinformed) he did hear that *Some* Men were still endeavouring to get something more of the same Nature to be sworn against him, if they can contrive how to make their forg'd Testimonies to agree about it.

He said he thought that Time would have tired out the Malice of such *Blood-Suckers* before now, whom he had found so busy, for the first Year and half after his Imprisonment; that he was not a Week without Endeavours used by strange People to get to speak with him, and such as he had Reason often to suspect to be *Knights of the Post*; amongst whom the Story of one *Magrath*, (another *Irish-Man*) he said, was notably remarkable, in his Endeavour (under Pretence of Kindness) to have made him their *Tool*, to prove, that Sir *Edmund-Bury Godfrey* had killed himself: But he said, he had the good Fortune immediately to *detect* that Villany, as he hoped yet to live to do of *some* others; but that in the mean time he foresaw, that he was always to be a particular Object of the Malice of such Men, so long as he was left under this *Confinement*, from which he saw no Hopes to be relieved, but  
by

by that Court, where the Law directs every *Englishman* to come for Justice that is oppressed in his Liberty.

He said, he hoped his Lordship would forgive him for having been a little tedious on that Subject of Sir *Edmund-Bury Godfrey*, because his Reputation had been so much exposed in that Particular, and before that Court.

After his Discharge from that Indictment, he said, there seem'd to be a Probability of the Call of a *Parliament* in some short time; and whenever he could give himself the least Hopes of that, he resolv'd to trouble no other Place: But that now he had not the least Prospect of that kind; and that he had been a Prisoner above Three Years, and yet could safely swear, he was without the Knowledge to that Day, for what real Crimes he was committed; only he knew that the Name of *Treason* had been laid to his Charge, without saying wherein the *Treason* consisted.

He said he came, therefore, now to that *Court* (as the only proper Place for all Persons to resort to for their *Liberty*) and he was sorry, that he was put to the great Disadvantage of speaking in his own Cause. But because he saw the last time he was there, that some Fault seem'd to be found with his Council, for urging things which seem'd to relate to Matters of *Parliament* (altho' upon a due Consideration of his Request, there is nothing in it which does touch their Jurisdiction) he had chosen rather to rely upon the Court's Pardoning his Defects, than put any further Hardships upon those Gentlemen, who had been his Counsel, to whom he had been more beholden, than they had been to him, for that they had undergone some unheard-of *Rebukes* already in another Place, for offering to be of Counsel with him, (though in Matters of Law) which he believed had never been heard of, but in his Case; and he hoped, that (when all his Circumstances shall have been well considered) he shall be the last *Englishman* that will ever have so many Hardships put upon him; as will appear to be thro' every Part of his Case.

In the first Place he said, That he had been both Accused and Committed, without any *Oath* or *Affidavit* made against him, for any *Crime* whatever: Which had been in the Case of no other Lord but himself, and he did believe of no other Man.

*Secondly*, That there was no particular *Treason* mention'd in the *Articles* against him, only the Word *TRAITEROUSLY* had been applied to things which were not *Treason*, if they had been true (as was then declared by Sir *William Jones*, the King's Attorney) and he said, there were good store of Witnesses to prove, that when it could not be maintained by Argument in the *House of Commons*, that any of the Crimes mentioned against him were *Treason*; It was answered by one of the long *Robe* there, (who would not have spared to have assigned the *Treason*, had there been any) that however they ought to give the *Title of High-Treason* to the *Articles*, for that otherwise they would dwindle to nothing when they came into the *House of Peers*. Now in the Impeachments of other Lords (not to meddle with the Truth or Falsity of their Accusers) they were charg'd with the highest *Treasons* in Name, and upon *Oaths* made against them.

*Thirdly*, When a *short Day* was set by the

Lords for his being heard; and that he appeared that Day accordingly, his Counsel was then threatened if they did dare to plead Matter of Law for him: Which he said was never heard of before in any Man's Case whatsoever, nor in the worst of Times.

*Fourthly*, He said if all the *Articles* had been true against him, and had been *Treason*; he had his Majesty's *Pardon* (which he then shewed to the Court, and demanded the Benefit of it) saying, That that did pardon both his Crimes (if he were Guilty of any) and his Imprisonment; and yet, that both that *Pardon* and *He* had been Prisoners together for above three Years (of which he said he durst confidently affirm, that his was the first Precedent since the Conquest.)

*Fifthly*, He set forth, That he had not only his Majesty's *Pardon*, but that there had been his Majesty's *Declaration* of it in his *Speech* to his two Houses of *Parliament*, together with a *Declaration* of his Innocency, and a *Declaration* that he would give him his *Pardon Ten* times over, if that were defective either in *Matter* or *Form*. And in this also he said, that his Case was not only particular from any others, but that such *Declarations* of the King's Intentions to *Pardon*, (altho' the *formal Pardons* have not been obtained) have heretofore been alone a Ground to procure *Bail* at least, when the Party has been the King's *Prisoner*, and at the King's Suit; which he supposed was not doubted in his Case.

*Sixthly*, He said that he had not only been thus Committed, and thus Detained for above forty Months, but he had been kept a Prisoner without any Prosecution for the greatest part of that time; which is another sufficient Ground by the Law for *Bail*: But instead of a Restraint *Ad Custodiam*, he said he had undergone Punishments greater than the Crimes alledged against him could have deserved if they had been true; both by the length of his Imprisonment, which was agreed to be a sufficient Ground for *Bail*, both by the King's Council and the Prisoner's, in the Arguments on the Grand *Habeas Corpus*, 3 *Car.* as also in *Melvin's Case*, 1 *Car.* and in Sir *Thomas Darnell's* and other Cases.

By the Inconvenience of his Accommodations in the Prison, for above two Years and an half of the time.

By Two most dangerous Sicknesses in the Prison. And

By the Loss of Divers of his Family since his being in Prison, who would some of them most certainly not have been in those Places where they have been lost, had he been at Liberty.

He said he was informed, That his Majesty had been again pleas'd to give his Directions to Mr. *Attorney*, to give his Consent a second time to his *Bail*, and he did beg leave to ask Mr. *Attorney* if it were so? Whereupon Mr. *Attorney* did stand up, and say, that he had his Majesty's Directions to give his Majesty's Consent again to his Lordship's being Bailed.

His Lordship did thereupon say, That this also was Particular in his Case; and he did believe, there was scarce a Precedent in the World, of the King's Prisoner, and at the King's Suit, not being Bailed when there hath been the King's Consent to it; unless where the Prisoner hath not been able to find sufficient Security for his Appearance to abide his Trial. For that the two only justifiable Grounds for the continuance of Restraint

by the Law are, either for keeping the Party from being able to do any harm by his being at Liberty, (of which the King is the best Judge) or for securing the Party to abide the Judgment of the Law, (in which the Court ought to have good Satisfaction) and so they might have sufficiently in his Case.

He said, That the Precedent would be no less strange and new against the King, than against himself, if they should not permit him to be Bail'd under such Circumstances: For he had heard, that the Law did admit of no *Absurdity*: Now he did desire to know, how any thing could in Reason be more *Absurd* on behalf of the King, than if the King's Prisoner, and at the King's Suit, should be kept in Prison by any of the King's Courts, against the King's Will?

Or how, said he, can any thing be more dangerous to the Subject, or be a plainer *failure* of Justice (whatever may be pretended to the contrary) than to say, That there can be any such Restraint of *English Liberty*, as cannot obtain so much as Bail, but by the leave of the House of Lords? When that House can neither meet but when the King pleases, nor can never sit longer than he pleases: So that to say a Man shall be a close Prisoner (I mean by that a Prisoner without Bail, for Bail itself is Imprisonment in the Eye of the Law) till he shall be discharged by the House of Lords; is to say, that a Man shall be a Prisoner during the King's Pleasure; which was the Great Grievance complained of, when the *Petition of Right* was granted, and that was thought to have fully and for ever Redressed that Grievance.

But if after so many Heats and Disputes which our Ancestors have had with the Crown about their Liberties, this Doctrine should now be admitted for Law; We would seem to endeavour, (as much as in us lies) to bring it to this Conclusion, and be our own *Felo's de se*; *That the King shall have a way found out by ourselves, and without his seeking, how he may Imprison any Man, or number of Men, when he pleases, in a Parliamentary way; and by Dissolving that Parliament he may keep them as long as he pleases in a Prison without Remedy: But that he shall neither have Power to Relieve us himself by his own Authority, nor by his Courts of Justice.* So as in short, by this Doctrine, the King should only have Power to hurt his Subjects as much and as long as he pleases, but should not be able to do them any *Right* if he would; and then we shall have *Magna Charta* and the *Petition of Right* revers'd, instead of receiving that Benefit by them, which the Kings of *England* have been so Gracious as to give us, and all the Learned Writers upon those happy *Laws of Liberty* have told us, we are secure under, at all Times, and against all Accidents whatever.

He then beg'd leave to observe to his Lordship what he found in my Lord Chief Justice Coke's Comments upon *Magna Charta*; who said, That the Words *Nulli Vendemus, Nulli Negabimus, aut Differemus Justitiam vel Rectum*, are spoken in the Person of the King, who (in Judgment of Law) is always present, and repeating the said Words in all his Courts of Justice.

And therefore (says he) every Subject in the Realm may, at all times, have Remedy by the Court of the Law; and may have Justice done freely, fully, and speedily, without Delay; for that Delay is a sort of Denial.

The said Lord Coke observes farther, That those Words of *Magna Charta* are fully expounded by latter Statutes, viz. 20 *Eliz.* 3, &c. which do direct, That there shall be no *Delay* nor *Hindrance* of speedy Justice to any Man, neither by any *Seal*, nor by any *Order*, nor any *Writ* whatsoever; neither from the King, nor from any other, nor by any other Cause.

Now, whatever may be said out of other Considerations, he said, No Man can deny, but that there is great *Delay of Justice* (to say no worse of it) to any Man who (through no Neglect of his own) can neither get *Trial* nor *Bail* in above three Years, altho' his Crimes were never so great. And he said, he durst be confident, that the Makers of *Magna Charta* did believe they had secured all *Englishmen* from ever being under the Possibility of such a Danger; and that he made no Question at all, but that by *Law* we are so.

He said, That the said Lord Coke does say in his Comment upon the 15 *W.* 1. (where he speaks of what Things areailable, and what are not; and names Treason amongst the Things notailable) that is (says he) such Offences shall not be Replevied by the Sheriff; but all or any of these, he saith, may be Bailed in the King's-Bench.

And he said, he had also some of the present Judges Opinions to shew, in this Point, which he desired to read out of a Copy of the Lords Journal, (viz.) 23d *Decemb.* 1678. *The Question being put, Whether the Lord Treasurer should withdraw? It was carried in the Negative.* And on the 27th of the said *December*, *The Question being put, Whether the Earl of Danby, Lord High Treasurer, (who stands Impeached by the House of Commons) should be committed? It was Resolved in the Negative.*

And it was the same Day proposed to the Judges, Whether the Judges can Bail any Person, in Case of *Misprision* of Treason, wherein the King's Life is concern'd?

To which Sir *William Scroggs* (Lord Chief Justice of the King's-Bench,) Sir *Francis North* (Lord Chief Justice of the Court of *Common-Pleas*,) Justice *Windham*, Justice *Jones*, and other of the Judges then present, gave severally their Opinions; That the Court of King's-Bench may take Bail for High-Treason of any kind, if they see Cause.

He cited the Lord Coke also in his Comment on the 24 *W.* II. where he says, That it is a Rule in Law, *Quod Curia Regis non debet Deficere Conquerentibus in Justitia Exhibenda.* And the Reason of this is, that a *Failure of Justice* may be prevented; which, he frequently says, is *Abhorred by the Law*: So as it appears, That the Law abhors all *Failure of Justice*; and he said, That if such *Failure* do appear in his Case, or any Man's else, no *Order* can license such *Failure*; nor no Court can Justify the not giving Relief against it: And he said, he should either make such *Failure* appear, or his Lordship (meaning the Lord Chief Justice) would be able to tell him where he might repair for Justice; which both *Magna Charta* and the *Petition of Right* are understood to have provided at all times for the Subjects Liberty: But if his Lordship could not inform him where he might appeal forthwith for his Liberty; in that Case, he said, That for that Reason alone (were there no other) he ought of



Right to be admitted to Bail by that Court; till he could be brought before such a *Judicature*, as had Power to discharge him.

He observed also, That the Lord Coke (in a Chapter on the *King's-Bench*) did say, That that Court might Bail for any Offence whatsoever: And that in the said Chapter it was particularly observed, That there had been such Care taken by the Law to avoid *Failure of Justice*, (even in small Matters, in comparison of Liberty) that he gives there an Example concerning a Clerk or Officer of that Court: For he takes notice of what Things, and against whom that Court hath Power to hold *Plea by Bill*. And amongst those, he names against any Officer or Clerk of that Court; and gives the Reason: Because if they should be Sued in any other Court, they would have the Privilege of that Court, which might be the Cause of a *Failure of Justice*. And from this his Lordship said it did appear, That the Law intended that there should be no *Failure of Justice* by the Privilege of any Court, how great soever it was; for that (as was said before) the Law did abhor all *Failure of Justice*. And he said, if such Care had been taken against a Failure, in such small Matters, and not in what concern our Liberties; all *Englishmen* ought justly to break out into the like Exclamations, as the same Lord Coke and many others did, in their Speeches in Parliament, and in their Pleadings, 3 & 5 Car. upon the Argument of the *Habeas Corpus* at that time: Where the Lord Coke breaks forth into this Expression; *Shall I have an Estate of Inheritance for Life, or for Years, in my Land? And shall I be Tenant at Will for my Liberty? Shall I have Property in my Goods by the Laws; and not Liberty in my Person?* And thereupon he tells us, That *Perspicue vera non sunt probanda*; As taking for granted, That our Liberties were not to be doubted, where our Properties were so secured: And the King (says he) had distributed his *Judicial Power* to Courts, and to his Ministers of Justice; *Who are to see Right done*.

And he said, The Lord Coke gave the Reasons of those Laws which are against undue Imprisonments; and that one of those is, *For the Indefiniteness of Time*; which, he says, may be perpetual during Life: And that his Words are, *That it is unreasonable to think, that a Man has a Remedy for his Horse or Cattle, (if detained) and none for his Body indefinitely Imprisoned: For that a Prison without any prefixed Time is a kind of Hell*.

And here his Lordship said, That he hoped the Court would either allow him Bail, or tell him a prefixed Time, when he should be Tried or Discharged. He did then also quote the Case of the *Duke of Suffolk*, 26 H. VI. and the Opinions of *Prescot* and *Fortescue*, (who were eminent Judges) who said, That he ought not to be Committed, (tho' for Treason) without Especial Cause of the Treason shewed; which had not been in his Case.

He further said, That many other Principal Gentlemen of that Parliament had spoke most Sensibly on the same Subject of Liberty; and amongst the rest, Sir *Robert Philips* had said, to have our Liberties (which are the Souls of our Lives) taken from us, and to be pent up in Goals without Remedy by Law; and this to be so adjudged (for so that Court had then thought fit to deny Bail, for Reasons which were at that

time also best known to themselves) he cries out, *O Improvident Ancestors! O Unwise Fore-Fathers! To be so curious in providing for the quiet Possession of our Lands, and to neglect our Persons and Bodies! And to let them lie in Prison! And without Remedy, durante bene placito! If this be Law, what do we talk of our Liberties? This (says he) is Summa Totalis of all Miseries*.

He said also, That Mr. *Selden* did in the same Parliament argue, at a Conference with the Lords, That in all Cases where any Right or Liberty belongs to the Subject, by any *Positive Law*, written or unwritten, if there were not also a Remedy by Law, for enjoying or regaining of this *Right of Liberty*, when it is violated or taken from him, the *Positive Law* were most vain, and to no purpose; and it were to no purpose, for any Man to have any Right in Land, Liberty, or other Inheritance, if there were not a known Remedy, by which, in some Court of ORDINARY JUSTICE he might recover it; and in this Case of Right and Liberty of Person, if there were not a Remedy in the Law for regaining it, when it is restrain'd, it were to no purpose to speak of Laws.

Here he desired leave to shew his Lordship what Sir *Nicholas Hide* (when sitting as Lord Chief Justice in that Court) did say on this Occasion, viz. That the King's Pleasure is, his Law should take place and be executed; and for that do we sit here: And whether the Commitment be by the King, or others, this Court is the Place where the King doth sit in Person to do Right, if Injury be done; and if it appear that any Man hath Wrong done to him by his Imprisonment, we have Power to deliver or discharge him. And he farther said, That the same Lord Chief Justice *Doderidge*, *Jones*, and *Whitlocke*, (answering the Prisoner's Counsel at that time) did say, the Attorney-General had told them, That the King had done it; and that they (the Judges) do ever trust him in great Matters. And here he took occasion to say, That he hoped that the King's Consent to his Bail, and his Declaration of his Innocency, would be now as much trusted in this Court.

He cited also the Arguments of Mr. *Calthorpe* for Sir *John Corbet*, on the same Occasion, who said, That, admit the Commitment were lawful, yet when a Man hath continued in Prison a reasonable time, he ought to be brought to Answer, and not to be continued still in Prison: For that it appears by the Books of our Laws, that Liberty is a thing so favour'd by the Law, that the Law will not suffer the Continuance of any Man in Prison, longer than of necessity must.

He cited also Mr. *Hackwell*; who said, upon the same Occasion, That the Law admits not the Power of detaining in Prison at Pleasure, when the Imprisonment is but *pro Custodia*: For a Man, by long Imprisonment, might otherwise be punished before his Offence. And he mention'd an Expression of his, That long Imprisonment was, *Vita peior Morte*.

He mentioned how the Commons, at the End of the Parliament 3 Car. did desire, That the Judges might declare themselves upon the Matter, why those Gentlemen had not been Bailed, when (by the Judges Arguments) it was possible they might have been kept Prisoners all their days,

To which, he said, *Whitlocke* answer'd, First, Not so; but they did Remand them, that they might

Die Mercurii, 19<sup>no</sup> Martii, 167<sup>s</sup>.

might better advise of the Matter; and that the Gentlemen, if they had pleased, might have had a new Writ of *Habeas Corpus*, when they thought fit. And Secondly, That he had spent much time in this Court; and that in such great Cases, he never knew any Man Bailed without the King first consulted in it: And the same, he said, was then said by the rest of the Judges of that Court.

Hereupon he made two Remarks: First, that by this it did appear, that upon Consideration, That Court had altered their Opinions in the Case of Bail, just contrary to what their first Opinions had been positive in: And, Secondly, That the consulting of the King was ever necessary in such great Cases. And he said, he did believe, that there was not a Precedent, where the King had agreed to the Bail, that ever it had been denied.

He said, That those Men whom he had quoted, were Men of no Ordinary Understanding in the Laws: And as the Judges then did at last acknowledge their Sense of them to be right, so he said, he hoped our Laws were neither changed nor diminished, in what related to the SUBJECTS LIBERTIES; and he hoped that no Order of one House, nor Ordinance of both Houses, nor King alone, nor King and either House alone, could alter them: And he rested assured, that a King and Parliament would never alter them to the Prejudice of Liberty.

He proceeded, That if the Law were still the same it was heretofore, it was plain that that Law did both give a Power to that Court to Bail for all Offences whatsoever (and for Treason particularly) and did require, that *the Subject should at all Times find Remedy in it*, when his Liberty was Restrained, BY ANY CAUSE WHATSOEVER.

The Chief Reasons, he said, why such large Powers had been given to that Court, were principally for avoiding all Failure of Justice; and to the End, First, That the King may both have a Means of giving Right to his Subjects at all times, according to his Oath at his Coronation, and according to the Intent of *Magna Charta*, and the *Petition of Right*. And Secondly, That there might be a constant Place for the Subject to resort unto for Remedy at all times, whensoever he was oppress'd in his Liberty: And he hoped we were not now to learn a new Law, That the King could neither keep his Oath, nor maintain *Magna Charta*, nor the *Petition of Right*, without the assistance of an *Extraordinary Court*, which he may both chuse, whether he will call, or when he will call it, and how long it shall sit; which (as he had said) would put all under the King's absolute Will.

He then said, he took for granted, that there would be no Dispute made in this Matter, but that there was an Order of the Lords which was supposed to stand in the way: But he said, if his Lordship would give him Leave, he would first say something to the Order itself, and then he hoped to show his Lordship, that it stood not at all in the way, as to his Request of Bail; and that it should neither be interfered with in the least, nor the Jurisdiction of the Lords, nor their Proceedings meddled with in any kind, by his being Bailed; but rather owned and submitted to, by his being Bailed to the Parliament.

And first for the Order itself, he desired the Court to observe, that it was dated the 19th of March 1678, and worded as followeth, viz.

THE House this Day taking into Consideration the Report made from the Lords Committee for Privileges, that in pursuance of the Order of the 17th Instant to them directed, for considering whether Petitions of Appeal, which were presented to this House in the last Parliament, be still in force to be proceeded on; and for considering of the State of Impeachments brought up from the House of Commons the last Parliament; and all the Incidents relating thereto; upon which the Lords Committees were of Opinion, that in all Cases of Appeals, and Writs of Errors, they continue, and are to be proceeded on in Statu quo, as they stood at the Dissolution of the last Parliament, without beginning De Novo. And that the Dissolution of the last Parliament doth not alter the State of the Impeachments brought up by the Commons in that Parliament.

Now upon this Order, he observed, That it related as well to Appeals and Writs of Error, as to Impeachments; and seemed to be more fully worded to them, than to Impeachments; the Words STATU QUO, and without beginning DE NOVO, being annex'd in the Order more particularly to the Appeals and Writs of Error; whereas all that was said as to the Impeachments, he observed to be, that the Dissolution of THAT LAST PARLIAMENT doth not alter the State of Impeachments brought up by the Commons in THAT PARLIAMENT, and are not Words which (strictly taken) can bind after the Dissolution of any other than that Parliament.

But he said, If the Order should be Expounded otherwise, yet that both the Law, and the Practice of the Inferior Courts, were undoubtedly contrary, In the Cases of Appeals and Writs of Error. And, he hoped, no Court would take upon them to Expound the Order so, as if they were at Liberty to slip the Order, and to judge, which Part of the same Order should be binding, and which not; for that would be to meddle, in a more extraordinary Manner, with the Proceedings of the Lords, than he had desired.

Now, as to Writs of Error, he said, there were full Resolutions of the Judges in the Case, tho' in times of Prorogations only, when a Day is set for the sitting of the Lords House; and he cited the Case of *Heydon* and *Godsalve*, in *Croke's Reports*; as also the Lord Chief Justice *Hale*, who did not only grant Execution upon a Writ of Error (depending in Parliament) but did also answer the Defendant's Counsel (who would have pleaded the Lords Order in Bar of the Execution) that he should always pay all due Respect to that Superior Court of the Lords; but that he must act according to Law; and, that he knew, that the Lords did not intend otherwise. And of this Lord Chief Justice *Pemberton* himself, who he said had denied Restitution upon an Execution lately taken out, in Case where a Writ of Error was, and is still depending in Parliament. And in Cases of Appeals, he said, he was inform'd, that the Court of Chancery did not take any Notice of the Appeal being in Parliament after a Dissolution, but did notwithstanding proceed to Sequestration, And he said, that there was a late Precedent in the