

something in the Writing not expressed in the Indictment, which may explain the Clauses in the Indictment, so that they may bear another construction: and in that Trial it was agreed the whole Writing ought to be read, and was read accordingly; and it was the Duty of the Court to have ordered it, whether the Prisoner or Jury had desired it or not, as they are upon their Oaths to do right: but in Colonel *Sidney's* Case, when pressed by him, it was denied; only some particular Passages he might have read if he would, which he did not accept, upon a very good Reason which he gave, which was, that he knew not the Passages of the Book, or at least he did not remember them, and therefore could not call for them. 'Tis true, that Practice in civil Matters is allowed to save time, where the Mischief is not very great; because of a Passage in a Deed or Writing, material for either Party, omitted in reading, the Matter may be brought about again; but in Criminal, much less in Capital Prosecutions, they cannot be, unless a way can be found to bring a Man to Life again.

Almost all the Circumstances of this Trial are Originals; the summing up of the Evidence against him was barbarous, being Invectives, and no Consequences. It was said he was not only guilty of the Practices he was accused of, but that he could not have been otherwise, because his Principles led him to it; and it might with as good Reason have been urged, that he not only was become, but was born a Traitor. The last matter remarkable in the Trial, was that of an Overt-Act, of which the Court said it was resolved by all the Judges of *England*, that if I buy a Knife of *J. S.* to kill the King, and one Witness prove I bought a Knife, and another prove I bought it for that Purpose, it is two Witnesses of an Overt-Act within the Statute of *Edward the Sixth*.

It were fit to know who the Judges were who gave that Resolution, if it were but for the Authority of the Case; for I doubt the Reason of it will convince no Man: They might as well have resolved, that eating or drinking, or the most ordinary Acts of a Man's Life, is an Overt-Act of High-Treason.

The Law hath taken that Care for the Evidence of High-Treason, which it hath not done in any other Case, that it must be proved by an Overt-Act, proved by two Witnesses. One would think at the first Sight of the Statute, that there should be two Witnesses to the same Fact; but that hath been adjudged otherwise, yet still it was resolved

there must be two Witnesses: but if this Resolution be Law, it is plain there needs but one. 'Tis true, if a Man does an Act for which he can give no Reason, as placing a Mine of Powder in a Place the King usually passeth over, or planting a Piece of Cannon to shoot at a Place the King usually passeth by, if he cannot give a credible Reason why he did it, and another swears the Purpose of the thing, it is two good Witnesses within the Act.

It hath been said, if a Man be bound to his good Behaviour, and wears a Sword, it is a Breach of the good Behaviour; and perhaps, heretofore, when Swords were not usually worn but by Soldiers, it might be so, because it struck a Terror in other People as much as a Blunderbuss, or the like unusual Weapon; or the going armed in a Coat of Mail, for any Person but a Soldier, doth at this Day. Yet no Man will say that, now Swords are usually worn by all Sorts of People, it is a Breach of the good Behaviour; and so that which heretofore was a Crime, by Custom now is become none. It is therefore the unusualness and the unaccountableness of the Circumstance make it an Evidence, which cannot be assigned as a Reason in the Overt-Act mentioned.

The last thing I take notice of, is, that Colonel *Sidney* refused to ask the Lord *Howard* any Questions; from whence was inferred, that he assented to the Truth of the Matter sworn: but it is well known, 'tis no prudence to ask a thorough-paced Witness a Question; in Mr. *Hampden's* Trial, his Counsel refused so to do for that Reason.

The next who fell a Sacrifice, according to *Colledge's* Prophecy, was *James Holloway*; he was outlawed, and taken beyond Sea; and being induced with Promises of Life, to accuse himself of things (whether guilty or not) enough to make good an Indictment of High-Treason against him, it was indeed generously offered him that his Outlawry should be set aside, and he have the liberty to be tried, and defend himself as well as he could: but knowing that what he had said since he was taken would be brought in Evidence against him, he refused his Trial; and because he would not purchase his Pardon at the Expence of innocent Men's Blood, by accusing others, of what he did not know they were guilty (if his dying Speech is to be believed) he was executed.

I should not have mention'd this, but for the sake of the next Person's Case, which was Sir *Thomas Armstrong's*, who was outlawed for High-Treason, when he was beyond Sea; he was taken and brought to the *King's Bench* Bar.



Remarks upon the AWARD of Execution against Sir Thomas Armstrong.

AT Common Law, if a Person was beyond Sea when an Outlawry was pronounc'd against him, it was an Error in Fact, for which the Outlawry was to be revers'd; and it is an Error in all Outlawries but for High-Treason to this Day. By the 6th of *Edward VI.* that Error is taken away in High-Treason, but there is a *Proviso* in that Statute, that if the Person outlaw'd shall within a Year after the Outlawry pronounc'd,

yield himself to the Chief Justice of the *King's Bench*, and offer to traverse his Indictment, and on his Trial shall be acquitted, he shall be discharg'd of the Outlawry. Upon the Construction of this Statute, no Judgment was ever given that I know of; and the reason is, no Man outlaw'd was ever deny'd a Trial till this time, if he was taken within a competent Time. The reason of making that Statute was this; Men would commit Treason, and

and presently fly beyond Sea, and stay there till the Witnesses who should prove the Treason were dead; then return, and reverse the Outlawry for the Error of their being beyond Sea; and the Witnesses being dead, they were safe: and therefore this Statute takes away that Error in part, tho' not in the whole, and doth in effect say, that the Person outlaw'd shall not have advantage of that Error, unless he comes and takes his Trial within a competent time, which that Statute limits to a year after the Outlawry pronounc'd.

This being plainly the Sense of the Statute, it was Injustice to deny the Favour or Right of a Trial to Sir *Thomas Armstrong*, which was never deny'd any Person before nor since, where it was agreed that all the Witnesses against the Person accus'd were alive, as in Sir *Thomas Armstrong's* Case they were, barely upon the Quibble of the Word *render*, which in no Case that ever I read was differenc'd from *taken*, but in one Case, which is *Smith and Ashe's* Case in *Cro. Car.* 58. in an Outlawry for Debt against Husband and Wife, which

will not extend to, or warrant the Judgment in this Case: and if there were but a Doubt in the Case, as it cannot be deny'd there was, the Outlawry ought to have been wav'd, or at least Counsel for the Prisoner heard as to the Point.

It was a vain and unjust Reason (and only tending to incense the thing) assign'd by the Attorney, that the Prisoner was one who actually engag'd to go, upon the King's hasty coming to Town, to destroy him by the way; whereas the Prisoner offer'd to prove his Innocence in that and other Matters of which he was accus'd: and even that Objection against him was an Invention of the Attorney's for any thing appears; but then it was resolv'd to stop at nothing, and Success had made them fearless. *Fitzbarris* and *Colledge* 'twas own'd had hard measure, and that their Cases might be forgotten, their Quarters were buried; but Sir *Thomas Armstrong's* were expos'd, tho' the Proceedings against him were equally as unjustifiable as in the other two Cases.

Remarks on the Trial of Count Conningmark.

I Think fit to remember in the same Reign, tho' before this time, one Case, to shew how the Courts of Justice were remiss or violent, according to the subject Matter.

All will agree, that the Murder of Mr. *Thynne* was one of the most barbarous and impudent Murders that ever was committed; and of that Murder Count *Conningmark*, tho' he escap'd Punishment, was the most Guilty.

I do not complain that in that Trial the Chief Justice directed the Prisoner the way to make the King's Counsel shew the Cause of Challenge against the Persons call'd on the Jury, and challeng'd for the King, without any Reason. It was his Duty so to do; and he ought to have directed *Fitzbarris* the same Method, which he did not: but he was blameable that he did not ask the *Lieutenant* and *Polander* what they had to say for themselves, which was always done before and since that time, and ought to be, which was an Injustice; and therefore two of the Prisoners at the time of their Sentences said, they were never try'd, tho' I believe no great Injury to them, because they had little or nothing to have said for themselves.

But if they had been ask'd, they would have said as they did before their Trials to the Justice of Peace who committed them, and as they did after their Condemnations, that Count *Conningmark* put them upon doing what they did, which might have influenc'd the Jury to have found the Count guilty, which was contrary to the Design of the Court; and it was for the same Reason the Chief Justice would not permit the Justice of Peace to read the Examination of *Stern* and *Borosky*.

I do agree, that what they said before the Justice of Peace was not Evidence against the Count; I agree that the Count being indicted and try'd as Accessory, at the same time the Principals were indicted and try'd, the Principals could not be good Witnesses against the Count, because properly a Principal ought to be convicted before the Ac-

cessory be try'd; and therefore, tho' for Expedition both are try'd together, yet the Verdict always is and ought to be given against the Principal, before that of the Accessory.

But I deny what was in that Trial laid down for Law, that the Accessory being in the same Indictment with the Principal must be try'd at the same time. It is true, the Count desir'd his Trial might be put off for two or three Days, which the Court knowing what was best for the Count deny'd, and not for the above pretended Reasons; for an Indictment against many may be joint, and yet the Trials may be several: the truth is, in such Cases the Indictment is joint and several.

Suppose the Accessory, at the Trials of the Principals, had not been in custody; will any Person say, that if afterwards he was taken, he can't be try'd upon that Indictment in which he was join'd with the Principals?

But besides a hundred Precedents not printed, there is the Case of *George Salisbury & al.* in *Plowden*, *Fol.* 100. where it was resolv'd, that tho' an Indictment against many is joint, yet the *Venire* may be several against each Person, and consequently the Trials may be several; and if so, then the times of the Trials may be several, but that which is to be complain'd of is, that the Count, in the Opinion of all Mankind, at that time and since, was the most guilty Man; yet the care taken to punish the less guilty, as *Stern* and *Borosky*, was in order to let the most guilty escape; for I think both *Stern* and *Borosky* might, and would have been good Witnesses against the Count, if the Court would have permitted it. The Count might have been indicted as Accessory to *Uratz* only; for the Accessory to all the Principals is Accessory to every of them severally: and when the Court in their private Consciences were satisfy'd the Count was most guilty, they ought to have been cunning, *astuti*, as my Lord *Hobart* calls it, to have brought him to Punishment. But 'twas said, *Stern* and *Borosky* being in-

dicted of the same Crime with the Count, they could not be good Witnesses against him, which I think is no more Law than Truth: Truth it was not, for the Count was indicted as Accessory, the rest as Principals. But taking it that all were indicted and try'd as Principals for the same Fact at the same time, why is not the Evidence of the one good against the other? First, I think there is no express Resolution for that Point of Law, but a late Rule given at *Kingston Assizes* upon the Trial of a Maid and one *Saterwaite* for burning of an House; and therefore there is a Liberty to examine by Reason how the Law is. I agree if a Man is indicted and try'd for killing another, he shall not be admitted to say, *B.* did it by himself; but I think he may be a good Witness to prove that he and *B.* did it; that is to say, he shall not give any Evidence against another, which tends to acquit himself as well as accuse another; and I think he may give Evidence which accuses another of the same Crime whereof he is indicted, if it doth not tend to acquit himself.

For it is agreed on all hands, that being guilty of the same Crime, doth not disable a Witness: for then *Rumsey* and several Persons in the *Lord Ruffel's Plot*, as it was call'd, had not been good Witnesses. In the next place, the Circumstances of an Indictment against the Witnesses for the same thing he testifies against another, do not disable him; *Widdrington* was indicted for the same things, of which he gave Evidence against several others as his Complices in Robberies. Nay, the Law hath given somewhat more Credit to the Evidence of a Person indicted, as a Witness of the same things against others, than it does to a Person not indicted;

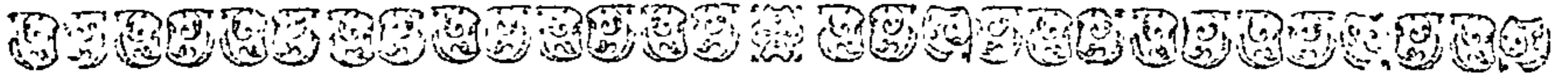
as in the Case of an Approver, which, * S. P. C. Lib. 2. c. 53. as *Stamford* * says, was a Person in Prison (not at large) for the Fact for

which he was indicted, arraign'd upon an Indictment, or an Appeal of Felony, who before a Coroner assign'd by the Court, confesses himself guilty of the Felony of which he is indicted, and not of any other, and confesses other Persons naming them as Coadjutors with him in committing the Crime of which he is indicted, and not of any other Crime; so much Credit shall be given to that Confession, that Process shall be made out against the Person impeach'd, who, if taken, shall be arraign'd on that Approvement, as if an Indictment by a Grand Jury had been found against him: and if the Law gives so much Credit to an Approver, I think no Person can shew me a Reason why a Person indicted is not a good Witness against another for the same Crime.

It is true, *Stamford* * says, if the King * S. P. C. Lib. 2. c. 58. gives an Approver a Pardon, he is a good Witness; which implies, that otherwise he is not: But it must be consider'd, that the reason of that is, that an Approver being indicted, as he always is, and confessing the Indictment, is convicted; and a Person convicted of Felony cannot be a Witness till pardon'd. But it will be no Argument why *Stern* and *Borcsky* had not been good Witnesses against the Count before they were convicted; and it was a like piece of Justice, that whereas the Count was the most guilty, he was acquitted.

Uraz being the next greatest Offender, was honourably interr'd, and *Stern* and the *Polander*, who were the least Offenders in that matter, were hang'd in Chains.

It was somewhat like the *New-England* * Part 2. Law, remember'd by *Hudibras* *, of *Canto* 2. hanging an useless innocent *Weaver* for an useful guilty *Cobler*.



Remarks upon Mr. Cornish's Trial.

THERE yet remain two Persons Prosecutions to speak of; the one is Mr. *Cornish*, who was taken the — of *October*, 1685. and was arraign'd on an Indictment of High-Treason the *Monday* after, for conspiring to kill the late King *Charles* the Second; and knowing *James Duke of Monmouth*, *William Ruffel*, Esq; and Sir *Thomas Armstrong*, to be Rebels and Traitors, promis'd to be assisting to them in their Treasons: To which he pleaded Not Guilty. He desir'd to put off his Trial, because he had no notice till the *Saturday* before at twelve a-clock, and he could get no Friend to come to him till eight a-clock at Night; and then he was permitted to speak with no body but in the Presence of the Goaler: he had been allow'd no Pen, Ink, or Paper. He was told by the Court he ought not to have it, without leave given on a Petition preferr'd by him, and that he was taken *Tuesday* before, which to that time was almost a Week. He said, his Children had petition'd the King the Night before to put off his Trial, and it was referr'd to the Judges: he did not know whether he was committed for High-Treason against the present, or the former King, and he had a material Witness an hundred

and forty Miles off; but was told by the Court, they had no power to put off his Trial. It is true, they said the *Lord Ruffel's* Trial was put off till the Afternoon, (which was not true) but that was a Favour which could not be challeng'd by another as a Right. He complain'd he had not a Copy of the Pannel, but was answer'd, it was not his Right to have it. Then the Attorney said, he had not deserv'd so well of the Government as to have his Trial delay'd, and therefore he was presently try'd.

Rumsey swore, that about the latter end of *October*, or beginning of *November*, the Earl of *Shaftesbury* desir'd him to go to Mr. *Sheppard's* House, where was a Meeting of the Duke of *Monmouth*, *Lord Ruffel*, *Lord Grey*, Sir *Thomas Armstrong*, Mr. *Ferguson*, and Mr. *Sheppard*; he came late, and they were just on going away; he deliver'd his Message, and they told him that Mr. *Trenchard* had disappointed them. He had not been there above a Quarter of an Hour, but Mr. *Sheppard* was call'd down, and brought up Mr. *Cornish*, and told them Mr. *Cornish* was come; who came into the Room, and excus'd his not coming sooner, and that he could not stay, for he was to meet about the

the Charter; whereupon Mr. *Ferguson* opened his Bosom, and under his Stomacher pulled out a Paper: they told Mr. *Cornish* they had had it read, and desired to read it to him: Mr. *Ferguson* read it, Mr. *Sheppard* held the Candle while it was reading, and afterwards they asked Mr. *Cornish* how he liked it: who said, he liked it very well. He remembered two Points in it very well, the one was for Liberty of Conscience, the other was, that all who would assist in that Insurrection, who had Church or King's-Lands in the late War, should have them restor'd to them. He did not hear all the Paper, and observed only these two Points; it was a Declaration on a Rising, and when the Rising was to have been, it was to have been dispersed abroad: there was a Rising intended at that time, and Mr. *Cornish* said, he liked the Declaration, and what poor Interest he had he would join with it. He had great dealings with Mr. *Cornish*, and Mr. *Cornish* was a very honest Man, it was out of Compassion he had not accused Mr. *Cornish* before.

Mr. *Goodenough* said, there was a Design to rise, in London, and for that purpose to divide the City into twenty Parts, and to raise five hundred Men out of each Part, to take the Tower, and to drive the Guards out of Town. Before that was agreed on, he being by chance at Mr. *Cornish*'s House, said, the Law will not defend us; some other way was to be thought on. Mr. *Cornish* said, he wondered the City was so unready, and the Country so ready. Mr. *Goodenough* reply'd, there is something thought of to be done here; but in the first place the Tower must be seized, where the Magazine is. Mr. *Cornish* paused a little, and said, I will do what good I can, or what I can, or to that purpose, he said.

He afterwards met Mr. *Cornish* on the Exchange, who asked him how Affairs went; and this was in Easter-Term 1683. He had some matters with Mr. *Cornish* about managing the Riot, which was brought against him, Mr. *Cornish*, and others: He came to Mr. *Cornish*'s House about the Business of the Riot, and no Person was by at the Discourse. Mr. *Gosfright* testified for Mr. *Cornish*, that he opposed Mr. *Goodenough*'s being Under-Sheriff, and said, he would not trust an Hair of his Head with him, he was an ill Man, obnoxious to the Government, and had done ill things, and he would not trust his Estate and Reputation in the Hands of such an Under-Sheriff; and he believed Mr. *Goodenough* and Mr. *Cornish* were never reconciled. Mr. *Love*, Mr. *Jekyl*, and Sir *William Turner*, testified to the same purpose: Mr. *Lane* spoke out of the printed Trial of my Lord *Ruffel*, and said, *Rumsey* in that Trial said he did not hear the Declaration read, for it was read before he came. Dr. *Calamy* said, Mr. *Cornish* did often come to Church, and receive the Sacrament. Mr. *Sheppard* said, he was subpoena'd by the King, and by Mr. *Cornish* the Night before; and that Mr. *Cornish*'s Son was with him the Afternoon of the Day before, who prest him to be at the Trial the next Day; that there were Accounts depending between him and Mr. *Cornish*, whereon there was about one or two hundred Pounds due to Mr. *Cornish*, and Mr. *Cornish*'s Subpœna was served first upon him. At one of those Meetings at his House, Mr. *Cornish* came to speak a few Words with the Duke of *Monmouth*, or some other, he could not be positive in that, it was many Years ago: he did not stay above half a quarter of an Hour in the House;

Sheppard came up Stairs, and went out with Mr. *Cornish*, and there was not one Word read, nor no Paper seen while Mr. *Cornish* was there: he remembered there was a Declaration read, *Ferguson* pulled it out of his Shoe: he could not tell whether Mr. *Cornish* was at his House the Night the Declaration was read, but he was positive no Paper was read while Mr. *Cornish* was there, for Mr. *Cornish* was not looked on to be one of the Company: he did not know who Mr. *Cornish* came to speak with, when he came to his House; Mr. *Cornish* was but once at his House when the Duke of *Monmouth* was there: he did not remember that Mr. *Cornish* was in the Company when Mr. *Rumsey* was there; he said, he had attended the Court from eleven a-Clock till half an Hour past three.

This being the Sum of the Evidence given in the Trial for and against the Prisoner, let us see whether those Inferences could be made from it as were made by the Court and Counsel: and whether, on the whole, an honest Jury, tho' but of little understanding, could have found him guilty of the Treason in the Indictment.

It is agreed on all Hands, that a Petty Jury may and must consider the Credibility of a Witness, (tho' in the Lord *Shaftesbury*'s Case it was said a Grand Jury ought not so to do) and if so, surely *Rumsey* was not a credible, tho' he was not a disabled Witness; no more than a Man who owns himself to be a Man of Falshood, a profligate Wretch, and perjured by his own Confession, tho' not convicted of it: he had notoriously confessed himself guilty of High-Treason, and of being in the Design of an intended barbarous Murder; he had sworn in the Lord *Ruffel*'s Trial, he had named all the Persons at the Meeting he spoke of, of which Mr. *Cornish* was none; and being taxed in this Trial with it, he excuses his Perjury with Compassion to the Prisoner, which was mean, foolish, and contradictory: he perjured himself to save the Prisoner, and then swore Truth to hang him. He had not Presence of Mind enough to excuse himself in the manner a Witness in the Lord *Ruffel*'s Trial did, that his God, his King, and his Country, put him unwillingly to act that part. Besides that in the Lord *Ruffel*'s Trial, *Rumsey* swore he was not at the reading the Declaration, and contradicted *Sheppard*, who swore thought he was there.

But that passage was proved only by a Witness who had read it in the Trial, which, I confess, in strictness of Law is not Evidence; nor if the Witness had said, he heard *Rumsey* swear so at the Lord *Ruffel*'s Trial, it had not been Evidence, unless a Record of that Trial had been produced in Court, which was not done. But all those things being but mere Circumstances, shew the Injustice of speeding his Trial, and denying him Counsel: Would not any Counsel have told him that in strictness of Law a passage in a printed Trial was not Evidence, and was it not easy for him to have got a Witness to have said that he had heard *Rumsey* swear so at that Trial? were not all the Judges who sat upon him, and all the King's Counsel who were against him, present at the Lord *Ruffel*'s Trial, and perfectly remembered what *Rumsey* then swore as to the pretended Declaration, and might he not have subpoena'd them to have testified that matter. Nay, was it not their Duty to have done it even without a Subpœna?

To say it was against the King, and therefore they could not do it; or they were in the Commission to try him, and therefore they could not do it; is neither Law nor Reason. Every Man knows that a Judge in a civil Matter tried before him, and a Counsel, even against his Client, has been enforced to give Evidence, (provided it be not of a Secret communicated to him by his Client) for in that particular a Judge ceases to be a Judge, and is a Witness; of whose Evidence the Jury are the Judges, tho' he after re-assume his Authority, and is afterwards a Judge of the Jury's Verdict.

A Judge may sue, and must be sued in his Court, but in that Case he ceases to be a Judge and is a Suitor, tho' he re-assumes his Authority in all other Matters: and if it be so in civil Matters, let any Man shew me a Reason why the Law is not so in criminal Matters; there is no express Law against it, and it will be absurd in Reason to say the Law is not so: for at that rate the King may put any Witness, he knows the Prisoner intends to produce for himself, into the Commission for trying him, and so deprive the Prisoner of the Benefit of his Evidence; as in this Case *Sheppard*, whose Evidence ought to have been of great use (as shall be shewn) tho' it was not of any avail to the Prisoner, might have been put into the Commission to have tried Mr. *Cornish*, for he was as much qualified for it, as Sir *James Smith* then Lord *Mayor*, or any Judge upon the *Bench*. And if they might have been Witnesses for the Prisoner, if *subpana'd*, they might have been Witnesses for him even without asking; and it was a Duty incumbent on them, tho' not as Judges, yet as christian Men, so to be.

Humanity commands the Discovery of Truths; which prevent the shedding innocent Blood; and Christianity commands a Man to do as he would be done by. I think the Question need not be asked what they would have had done, if it had been their Case.

The Reason that all matters of Law are, or ought to be, transacted publickly, is, That any Person, unconcerned as well as concerned, may, as *amicus Curie*, inform the Court better, if he thinks they are in an Error, that Justice may be done: and the reason that all Trials are publick, is, that any Person may inform in point of Fact, tho' not *subpana'd*, that Truth may be discovered in civil as well as criminal Matters.

There is an Invitation to all Persons, who can inform the Court concerning the matter to be tried, to come into the Court, and they shall be heard. It is true, if the Judges or any Person had testified what *Rumsey* said at my Lord *Russel's* Trial, it had not been Evidence without the Record of the Trial; and it is as true, that neither the Record, nor a true Copy of it could have been procured between Mr. *Cornish's* Commitment, if it were on *Friday* (as I have heard it was) tho' the Court said it was on *Tuesday*, much less between the notice of his Trial which was *Saturday-noon*, and the time of his Trial which was *Monday-morning*.

But then what Justice was there in speeding his Trial, so as to deprive him of the Circumstances of his Defence? for that was but a Circumstance, and not an essential Matter. And what Account can be given why the Court, when they were well satisfied that it was in the Prisoner's power to procure such a Witness, and such a Record, did

not stay till he did it? Or if it would be too long in doing, why should they not have put off the Trial for that time, and given the Prisoner a convenient time to do it?

The first in civil Matters, hath been frequently done, when a Deed or Witness hath been wanting, if it could be done in a convenient time, and a Trial has been put off before it came on, tho' after it came on they have not done it, because there is no great Mischief in that, for either Party hath power to bring it about again; but not so in capital Matters, and therefore Juries in capital Matters have been frequently discharged after sworn, where the Evidence hath been defective.

It is true, my Lord *Coke* saith, that a Jury once charged with a Prisoner, cannot be discharged but must give their Verdict; but it is as true that he says so in favour of the Prisoner, that when the Evidence against him appears defective, he shall not be continued a Prisoner till more Evidence can be found, or procured against him, though the Practice of late Days hath been quite contrary, *viz.* to discharge the Jury where the Evidence against the Prisoner hath been defective, but enforce them to give a Verdict where the Prisoner's Defence hath been defective; tho' to their knowledge if he had longer time to do it, he had been able to produce the Witnesses who could clear him: but by what Law or Reason I am to seek. Yet I confess, if *Rumsey's* owning his Perjury in the Lord *Russel's* Trial, in the very point sworn against the Prisoner, and so frivolously excusing it, would not discredit him, I know not that any Record, Witness, or Evidence would have availed Mr. *Cornish*.

And add to *Rumsey's* contradicting himself, that *Sheppard*, who never contradicted himself, and had been a Witness in both Trials, agrees, that what *Rumsey* had sworn in my Lord *Russel's* Trial, as to Mr. *Cornish's* not being there, was true.

But admitting *Rumsey* had never perjured himself, but was of equal Credit with *Sheppard*; yet when they contradicted each other in a point which carried no probability or improbability with it, in a capital Matter the Jury ought to believe *in favorem vitæ*; for it makes the matter at least doubtful: and therefore the Jury ought to have acquitted the Prisoner, for a Reason in Law, and which was given in Colonel *Sidney's* Trial (tho' shewishly) by the Court, *viz.* that it is better that twenty Nocents should escape, than one Innocent suffer.

But to pass from the Credibility of the Witnesses to the Matter of his Evidence, this was the second time that this sort of Evidence in any Case criminal or civil was permitted to be given in Evidence; and there are the same Exceptions to it, as are above assigned to the Evidence of *Sheppard*. As to the Declaration in my Lord *Russel's* Trial, if a true Copy of part of a Deed or Writing was never yet permitted to be given in Evidence, much less hath or ought the Purport of Part of a Writing be given in Evidence, especially when such a Reason is given why the Witness remembered but part of it, as is given by *Sheppard* in my Lord *Russel's* Trial, and by *Rumsey* in this Trial, *viz.* that he did not hear all the Paper read.

And surely *Goodenough* could no way fortify *Rumsey's* Evidence, being clearly of another matter, and that so very uncertain, that no heed ought to have been given to it. When *Goodenough* told

Mr. *Cornish* something ought to be done in the City, but in the first place the *Tower* ought to be seized; to which he answered, he would do what he could, or what good he could: these words may as well relate to *Goodenough's* present Discourse, where he complains that the Law would not defend them tho' innocent, as well as to the seizing the *Tower*; and if they should refer to the last, yet they may be well enough interpreted, that he would do what he could, or what good he could, to prevent the seizing the *Tower*. And if they are capable of two Senses, they ought to be interpreted in the best for the Prisoner.

Besides, the Words are spoken not as a thing designed, but as a Matter, without which all other Matters were in vain, and might be meer matter of Discourse, as was that between *Blague* and *Mate Lee* about taking the *Tower*: and if there was such a Design on foot, it doth not appear that Mr. *Cornish* was ever acquainted with it. The same may be said as to what he asked *Goodenough*, when he asked how Matters went: may not those Words well enough be applied to the Business of the Riot, *Goodenough* managed for Mr. *Cornish* and others? And if what *Goodenough* said was Evidence of a Design of seizing the *Tower*, that, as well as the Treason against the Guards, was Treason by the Act of the late King, and not by the 25th of *Edward* the Third, if it be true Doctrine which was laid down in the Charge to the Earl of *Shafesbury's* Grand-Jury: and if so, he ought to have been prosecuted for it within six Months, and indicted within three Months, if the Doctrine in *Colledge's* Trial be true; and yet this Design, if true, was in *Easter-Term*, 1683, and the Prosecution not till *October* 1685.

There was yet one piece of Evidence urged against him, viz. of his own Witness *Sheppard*, who positively testified for him as to the main, yet in a Circumstance seemed to testify against him, which was Mr. *Cornish's* being at his House when the Duke of *Monmouth* and the rest were there, when the Declaration was read; and upon that piece of Evidence, as if it had contradicted what Mr. *Cornish* said before, there was a mighty Triumph: whereas, the most that could have been made of it was, that Mr. *Cornish* in part of his Defence was guilty of an untruth. And even that was not so in Fact; for being charged to have been at *Sheppard's* the Night the Declaration was read, he answered he was never at a Consult in his Life, he never was at *Sheppard's* in any Consult, he never was there with my Lord *Ruffel*, as he remembered; he had been at *Sheppard's* several times, but never liked *Ferguson* for his Morals, and therefore never liked to be in his Company, and he did not know but that he might enquire for the Duke of *Monmouth* in other Places, and this is all Mr. *Cornish* says to that matter.

Sheppard says, Mr. *Cornish* came into his House at one of the Meetings to speak with the Duke of *Monmouth* or some other, he could not be positive in that, it was so many Years ago, and did not stay half a quarter of an Hour: he could not say it was the Night the Declaration was read; he did not know whether Mr. *Cornish* came to speak with the Duke of *Monmouth* or not; he could not remember whether Mr. *Cornish* was there in Company

when *Rumsey* was there; there were not above three Persons there when Mr. *Cornish* came, which was the Duke of *Monmouth*, Mr. *Ferguson*, and he could not tell whether the other was the Lord *Ruffel*, or the Lord *Grey*.

Now it would be hard to find out the Contradiction between Mr. *Cornish's* Sayings and *Sheppard's* Evidence; both agree that Mr. *Cornish* hath been often at *Sheppard's* House, and neither denies or affirms that he was or was not there the Night the Declaration was read, for a good reason; which was, that Mr. *Cornish* knew nothing of it, and *Sheppard* knew not which of the Nights he was there. Mr. *Cornish* said he was not there with my Lord *Ruffel* as he remembered, and *Sheppard* doth not affirm he was there with the Lord *Ruffel*. *Sheppard* says, that he was there when the Duke of *Monmouth* was there, and Mr. *Cornish* doth not say that he was not there with the Duke of *Monmouth*. *Sheppard* said, he spoke to the Duke of *Monmouth*, or some other Person, but he thought it was the Duke of *Monmouth*, which is no direct Affirmation that he spoke to the Duke; and Mr. *Cornish* doth not say, he did not speak to the Duke of *Monmouth*. So that if the Account of the Trial, set out by the Authority of, and signed by, *Thomas Jones*, be true, I cannot see any manner of Contradiction between Mr. *Cornish* and *Sheppard*: and therefore, as the Court and King's Counsel did infer, that *Sheppard's* Evidence, who positively denies the Truth of *Rumsey's* Evidence, was so far from invalidating, that it corroborated *Rumsey's* Evidence, and cleared the thing which was before somewhat dark, beyond all manner of Contradiction, is a piece of effrontery. So admitting *Sheppard* had said Mr. *Cornish* was at his House the Night the Declaration was read, and had contradicted Mr. *Cornish*, is it a necessary Consequence, that he heard the Declaration read, and promised his Assistance to it? Which must be the Inference, if must support *Rumsey's* Evidence.

If it be not a necessary Consequence, but a probable one, that ought not to weigh with a Jury, to convict a Person of a capital Crime, especially not of Treason. The Statute of *Edward* the Third says, probably Convict; that is, says my Lord *Coke*, convicted upon direct and manifest Proof, not upon probable conjectural Presumptions, or Inferences, or Strains of Wit: And to say truth, when Verdicts have been given on such Evidence, they have been often faulty.

To give some Instances of many, it is remembered in our time* where Persons were convicted of the Murder of a Person absent, but not dead, barely by Inferences upon the Evidence of foolish Words and Actions; but the Judge before whom it was tried, was so unsatisfied in the Matter, because the Body of the Person supposed to be murdered was not to be found, that he reprieved the Persons condemned; yet in a Circuit afterwards, a certain unwary Judge, without enquiring into the Reasons of the Reprieve, ordered Execution, and the Persons to be hanged in Chains, which was done accordingly; and afterwards, to his reproach, the Person supposed to be murdered appeared alive.

My Lord *Coke* relates a Story † in his Time, of an Uncle who beat his Niece, that had an Estate,

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which

* He seems to mean the Case of Joan Perry and her two Sons, John and Richard Perry, who were Executed at Gloucester Lent-Affizes, 1661, for the supposed Murder of William Harrison, who had been conveyed into Turkey, and made a Slave for two Years, and afterwards escaped, and came back to England.

† This was at Warwick Affizes, 8 Jac. I. 3 Co. Inst. 232. By the Civil Law, unless there was direct and positive proof that the Person was killed, no Circumstances were admitted against the Person accused of the Murder. Digest, lib. 39. tit. 5. §. 24.

which on her Death would descend to him; the Girl was heard to cry, *Good Uncle, do not kill me*; after which she run away, and concealed herself some few Miles from *London*. The Girl being missing, and the Neighbours remembering the Cry of the Girl, and tacking it to the Probability that the Uncle might be induced, for his Advantage, to murder his Niece apprehended him, and he was indicted for it at the Sessions; and the Judges being unsatisfied in the Evidence, by reason the Body of the supposed murdered Girl did not appear, the Uncle saying that she was run away, they gave him time to the next Sessions to find her out, which he being not able to do, thought to defend himself by producing another Girl very like his own Niece, which he did accordingly; and being detected, it increased the Suspicion, and by Inferences from all those Circumstances, he was convicted, and afterwards executed.

Some Years after which, the Girl appeared, and claimed her Estate: and therefore it is a most dangerous and unwarrantable thing for a Jury, in capital Matters, especially in Treason, to convict a Person upon the Evidence of Probabilities.

As the Evidence in this Case against the Prisoner was weaker than in any of the precedent Cases, so the Usage of the Prisoner was more rigorous than in any of them: in all the other Cases, the Prisoners had more Weeks allowed them to prepare for their Trials, than this Person had Days; all the other Persons, after notice of their Trial, were permitted to have Friends, nay, Counsel, freely to come to them, and confer with them in private, without the Presence of a Goaler, which was denied this Person: All the others, except Colonel *Sidney*, had soft Words given them on their Trials; but this Person was rudely handled.

How often was he snubbed and bid hold his tongue? How often did he beg the Patience of the Court, to hear him and his Witnesses? And when he was heard, how was all he said ridiculed? And if he said he was innocent, he was bid remember

my Lord *Ruffel* said so to his Death; when he said he was as innocent as any Person in the Court, he was told, for all his Confidence, few believed him. If he said the Matter sworn against him was improbable (which hath been taken for a pretty good Topick for the disbelief of a Matter testified) how is it ridiculed by *Improbability, Improbability, Improbability*? If he go to prove he is an honest Man, he is told that is all Appearance. If he says he employed *Goodenough* about the Riot, he is told that is a Branch of the Plot. If he call Mr. *Gosfright* as a Witness for him, the Witness is reproached with having helped the Prisoner in packing Juries; if he call one to prove he received the Sacrament, he is told, that was in order to qualify himself to be a Sheriff; and such was his Usage before, and at the Trial, such was it afterwards: to order him to be tied when he was sentenced, was an Indignity not used to Persons of his Quality; a thing indeed permitted, not commanded to be used, on boisterous Criminals, who may be suspected to do a sudden Mischief, if their Arms were at liberty.

Of like kind was the Reproaching him with the Chearfulness of his Countenance at his Condemnation, and that it might be all of a strain, his Quarters were exposed, a Severity used to none above-mentioned, but Sir *Thomas Armstrong*; and in all these Trials, *Colledge* made the best Defence, and perhaps, Circumstances considered, the best Defence ever made upon an Indictment of a Capital Matter, and Mr. *Cornish's* was the weakest, tho' it signified nothing: for I believe that none who reads his Trial, but will plainly see he was so beset, that the Defence he, or any for him could make, would have availed him nothing, and no account can be given for the Proceedings against Mr. *Cornish*, in the above manner, but that some of the Judges, whereof three who were on the Bench, had newly come out of the *West*, where they had been so flushed and hardned, that nothing seemed to them rigorous or cruel, and the rest seemed to vie with them in the Practice.



Remarks on the Trial of Mr. Charles Bateman.

THE last Person which concluded the Tragedy, was one *Charles Bateman*, a Chirurgion; his Demerits were, that he had been, or at least was reputed to have been, Chirurgion to the Earl of *Shaftesbury*, and one whom his Lordship had a Kindness for, and therefore according to the Cant of the Time, he was called a factious Fellow; and he had revived the Memory of his Demerits, by attending when *Oates* came from his Whipping, and letting him Blood. Whether either of those Circumstances were true or not, I know not, but they were believed: And therefore the 9th of *December* 1685, he was indicted and tried for High-Treason. On his Trial he seemed to be distracted, and therefore, out of abundance of Charity, the Court appointed his Son to make his Defence for him.

The Witnesses against him were *Keeling*, who only spoke of a Design in general, without mentioning *Bateman* to be concerned in it. *Thomas Lee* and *Richard Goodenough* swore, at several times and pla-

ces, his Discourse to them severally, of seizing the *Tower, City, and Savoy*. *Baker* for the Prisoner said, *Lee* in the Year 1683, would have had him insinuated himself in the Prisoner's Company, and discourse about State-Affairs, and by that he would find a way to make *Baker* a great Man: upon the Evidence the Prisoner was found guilty. Against *Goodenough's* Evidence, there is only this to be said, that he was pardoned, but so far only, as to qualify him to be a Witness, though not a very credible one, not only the Guilt sticking to him, but even the Punishment of what he had then lately done, hanging over his Head; and what was said for some time, of all the Witnesses for the King, at that time, and for some time before, was true, they hunted like Cormorants, with Halters about their Necks, though even that matter by one of the King's Counsel was boasted to the Jury, as a Circumstance of more Credibility; for he assured them there was not a Witness which he produced had a Pardon, as the Witnesses in the Popish Plot had. 'Tis true, in the

the Popish Plot, upon very good reason, the Witnesses having confessed what they pretended to know, of matters in which they had an hand, it was not thought proper to use them as Witnesses, though they had used them as Informers, till they were pardon'd, lest it might happen to be, or at least it would have been, suspected, that the terror of the Punishment of the Crimes confess'd might influence them to swear falsely, to the jeopardy of other Men's Lives, to save their own; which, as the Lord *Howard* truly said, was the Drudgery of swearing. But to *Lee's* Evidence, besides the Evidence of *Baker* against him, that he would have procured *Baker* to have been a Witness against the Prisoner, and enticed him with the promise of making him a great Man; and besides that, it appears in *Rouse's* Trial, that *Rouse* and he were upon the Trepan with each other, to bring each other into the pretence of a Plot, in order to make some advantageous discovery of it, of which *Lee* got the start of *Rouse*; the Objection which was made to his Evidence, why *Lee* had not accused the Prisoner sooner, there being near three Years between the pretended Design, and the Discovery of it, was never satisfactorily answered. It was a foolish Story, to say *Goodenough* could not be had before, and a single Testimony in High-Treason was not sufficient; every one knows, that though a single Witness is not enough to convict a Man of High-Treason, yet a single Person's Testimony is enough to commit a Person accused, and upon Conviction, on the Testimony of a single Witness, to make him a Prisoner for his Life, witness Mr. *Hampden*, and others; besides the subjecting him to other corporal Punishments, inflicted at Discretion, witness Mr. *Johnson* and *Oates*. And in 1683, when the Words were pretended to be spoken, *Bateman* had not been spared, if accused; and though it be a good Reason for the Court to have given, why they did not proceed against the Prisoner till that time, because there were not two Witnesses against him; yet it was no reason for *Lee*, why he did not accuse the Prisoner before that time, especially he having been several times before that time examined, not only of what he knew, but of what Persons he knew concerned: but to say truth, *Lee*, in the Trial, did not pretend to answer the Objection, but the Court, in the manner before, endeavoured to answer it for him.

The last Matter observable in this Trial, was the permitting *Bateman's* Son to make his Father's Defence, which was an extraordinary unparallel'd Favour; it was the first and last time that, or any thing like it, had been done: The Lord *Ruffel's* Lady indeed was permitted to take Notes at the Trial for her Lord, but he only was permitted to make use of them. *Fitzbarris's* Wife when she but whisper'd her Husband, or but told him what Jurors he should challenge, and what not, was severely corrected, and threatned to be thrust out of Court, for doing it in prejudice of the King. In *Colledge's* Trial, he was told, that Persons that advis'd a Prisoner in Treason, even before a Trial, were guilty of a high Misdemeanor; nay, a Solicitor had been indicted of High-Treason for it: and therefore nothing can excuse the allowing the Prisoner Counsel in matter of Fact, as was done in this Case, (it is not material, whether the Son was a Barrister at Law or not) but the Weakness of the Prisoner, who to all appearance was moped mad.

But the Court by excusing their Favour upon that account, incurred a worse Censure; for nothing is more certain in Law, than that a Person who falls mad after a Crime sup- ^{3 Cok. Instit.} pos'd to be committed, shall not be ^{P. 4.} try'd for it; and if he fall mad after Judgment, he shall not be executed: † though I do not think the reason given for the Law in that Point will maintain it, which is, that the End of Punishment is the striking a Terror into others, but the execution of a Madman hath not that effect; which is not true, for the Terror to the Living is equal, whether the Person be mad or in his Senses: and that is the reason of breaking the Person executed for Treason, and exposing his Quarters, which is done rather to deter the Living, than for punishing the Dead. But the true reason of the Law I think to be this, a Person of *non sana Memoria*, and a Lunatick during his Lunacy, is by an Act of God (for so it is call'd, though the means may be human, be it violent, as hard Imprisonment, terror of Death, or natural, as Sickness) disabled to make his just Defence. There may be Circumstances lying in his private Knowledge, which would prove his Innocency, of which he can have no Advantage, because not known to the Persons who shall take upon them his Defence; and that is the Reason many civil Actions die with the Persons against whom they lay in their Life-times; and that is the Reason why in criminal Matters, Persons by ordinary course of Law cannot be convicted after their Deaths.

For in all civil Actions there is as much reason for the Person injured, to have Satisfaction out of the Estate of the Person who injur'd him, in the Hands of his Heir or Executor after his Death, as there was to have it out of the Estate of the Injurer, in his own Hands in his Life-time: and there is as much reason that the Heir or Executor of a Person who hath committed a Crime, which by Law would have forfeited his Estate, if in his Life-time he had been attainted of the same, should forfeit the Estates they claim from him, as if he had been attainted in his Life-time, which had prevented the said Estates vesting in them. And it hath been sometimes practis'd, where the Crimes of the Persons deceas'd have been notorious, and without any Doubt; as was the Case of several Persons mention'd in the Act of Pains and Penalties: which Act had Example from many other Acts of Parliament in other Reigns, where the Persons were dead before Punishment overtook them.

And though of late Years it hath been pretended, that the King's Safety depends upon the speedy Trial and Execution of a Person guilty of High-Treason; yet this was never thought so heretofore, nor in truth in itself is so: for it is plain, in Reason as well as Experience, that what is said of Witches, is true of all Malefactors when once they are in Custody, their power of doing Mischief ceases.

The King is therefore no otherwise benefited by the Destruction of his Subjects, than that the Example deters others from committing the like Crimes; and there being so many to be made Examples of, besides those on whom the Misfortunes of Madness fall, it is inconsistent with Humanity to make Examples of them; it is inconsistent with Religion, as being against Christian Charity to send a great Offender quick, as it is stil'd, into another World, when he is not of a Capacity to fit him-
self

† 4 Co. Rep. 124. b. *Hale's* H. P. C. Vol. I, p. 55.

self for it. But whatever the Reason of the Law is, it is plain the Law is so; and for remedying it in High-Treason, was the 33d of *Henry* the Eighth made*, whereby it is enacted, That if a Man fall mad after he hath committed High-Treason, he shall notwithstanding be try'd in his Absence; and if a Man fall mad after he is attainted of High-Treason, he shall notwithstanding be executed. Which Statute extending only to High-Treason, the Law continu'd, and yet is as it was at common

* 3Co. Inst. p. 6.

Law in all other capital Matters; and even that * Statute was call'd a cruel and inhumane Law, and therefore liv'd not long, for it was afterwards repeal'd †: so that the Law, as to this matter, when this Man was tried and executed, was as it was at common Law; and therefore if he was of *non sana Memoria*, he ought not to have been try'd, much less executed.

I know it will be objected, that if this Matter of *non sana Memoria* should be permitted to put off a Trial or stay Execution, all Malefactors will pretend to be so: But I say there is a great difference between Pretences and Realities, and *sana* and *non sana Memoria* hath been often try'd in || capital Matters, and the Prisoners have reap'd so little benefit by their Pretences, it being always discover'd, that we rarely hear of it. In this Case the Prisoner might have been try'd as well absent as present, according to that repeal'd Statute, for any advantage he did or could reap by being present: and it seems very probable the Court thought him distemper'd; for if he was of *sane* Memory, his Son ought not to have been permitted to make his Father's Defence; if he was distemper'd, he ought not to have been try'd, much less executed. And this Person being the last Man, as far as I can remember, or can find by the printed Trials, who suffer'd for the Plot of High-Treason first set on foot by *Fitzbarris*, and carry'd on against *Colledge*, and the other Persons herein mention'd; and the Design stopping here, I think fit to end my *Remarks* on the Proceedings of all Capital Matters with him. But I think it is fit for me to make some Apology for the thing, and for myself, for taking on me to censure the Opinions and Actions of Persons

whose Characters carry'd Authority with them. I confess I never thought that either the Great Seal or a Garment added to a Man's Sense, Learning, or Honesty; but he remain'd just such, as to those Qualities, after his Preferment, as he was before: and as to many of the Persons reflected on in these Remarks, the Censure of Colonel *Sidney* was true; and for the best of them, it is plain they not only vary'd from one another in their Opinions, but even from themselves in the Judgment of the same Case, but always tending to the Destruction of the Person try'd for his Life; witness the Opinion of the Court in the Challenge of Jurors not having a Freehold, and the designing to levy War, not Treason within the Statute of *Edw. III.* and forty other matters. And that not only gives a Liberty to enquire, but naturally puts one upon the Enquiry which of the two Opinions is right; tho' it is impossible for one not to think meanly of the Person, who, in so great a Concern as a Man's Life, should be so rash as to give his Opinion without Consideration, or so unsteady as to give different Opinions in the same Case: for if a Man who tells History backward and forward, is justly suspected in point of Truth, the Knowledge and Sincerity of a Man, who gives different Opinions in the same Case, is justly suspected in point of Law; which, together with the fulsome, but injurious, Stuff vented for Crown-Law, was the first Matter which put me on considering and writing what I have done.

As for my self, if *Tully* thought it a Reproach to his Son if he did not abound with Philosophy, having heard *Cratippus* for the space of a whole Year, and that at *Athens*; surely one who hath had his Education at one of the three great Schools for some Years, and afterwards at the University, and lastly, twenty-five years constant Residence in an *Inn of Court*, and twenty years attendance at *Westminster-Hall*, and not diverted by the usual Employments of a *Solicitor* or *Attorney*, may be allow'd without the Imputation of Confidence to give his *Censure*, upon consideration, on the *extempore* Judgments or Opinions of *Persons*, tho' of greater Standing and Character than himself.

† Cap. 20.

‡ 1 & 2 Phil. and Mar. cap. 10.

|| 1 And. 107.



CXXXVIII. *The Trial of John Hampden, * Esq; at the Old-Bailey, for High-Treason, Decemb. 30, 1685. 1 Jac. II.*

THIS Day being appointed for the Trial of Mr. Hampden, after the Judges came to the Court, and the Court was called, the Officer was commanded to proceed to call over the Jury whilst Mr. Hampden was bringing down.

Cryer. O-Yes, you good Men of the County of *Middlesex*, summon'd to appear here this Day, to try the Issue which shall be between our Sovereign Lord the King, and the Prisoner that shall be call'd to the Bar, answer to your Names as they shall be call'd, every one at the first Call, upon pain and peril that shall fall thereon.

Clerk. Sir *Hugh Middleton* of *Twittenham*, Bart.
 Sir *Richard Dunton* of *Thistleworth*, Knt.
 Sir *John Berry* of *Stepney*, Knt.
 Sir *Robert Clark* of *Holborn*, Knt.
 Sir *Thomas Roe* of the *Strand*, Knt.
 Sir *John Friend* of *Hackney*, Knt.
 Sir *Henry Johnson* of *Blackwall*, Knt.
Richard Morley of *Chelsea*, Esq;
John Shales of the Parish of *St. Martin's* in the *Fields*, Esq;
Robert Foffet of *Marybone*, Esq;
Jostas Clark of *Chiswick*, Esq;
John Forster of *Kensington*, Esq;
Jeffery Nightingale of *Cripplegate*, Esq;
William Cleave of the same, Esq;
Charles Hinton of *Covent-Garden*, Esq;
John Stokes of *Hatton-Garden*, Esq;
Henry Hawly of *Brentford*, Esq;
Thomas Cash of *Bow*, Esq;
Andrew Lawrence of the Parish of *St. Martin's* in the *Fields*, Esq;
Nehemiah Arnold of *Westminster*, Esq;
Simon Smith of the same, Esq;
William Pressgrave of the same, Esq;
Nicholas Barter of the Parish of *St. Martin's* in the *Fields*, Esq;
Humphry Bradshaw of the *Savoy*, Esq;
Gilbert Herring of the Parish of *St. Martin's* in the *Fields*, Esq;
Walter Bridall of the same, Esq;
Thomas Elton of *Stepney*, Esq;
Matthew Bateman of *White-chapel*, Esq;
Thomas Curtis of the Parish of *St. Clement Danes*, Esq;
Peter Lugg of the Parish of *St. Giles* in the *Fields*, Esq;
John Meridale of *St. Giles* in the *Fields*, Gent.
James Supple of the Parish of *St. Martin's* in the *Fields*, Gent.
Thomas Whitfield of the same, Gent.
Richard Cook of the same, Gent.
George Clifby of the same, Gent.
John Hains of the same.
John Leesen of the same.
Richard Bromfield of *Holborn*, Gent.
Michael Dod of *Clerkenwell*, Gent.

James Fern of the Parish of *St. Martin's* in the *Fields*, Gent.
Robert Brook of the same, Gent.
John Vignes of *Westminster*, Gent.
Edmund Aubrey of the Parish of *St. Martin's* in the *Fields*, Gent.
John Cannon of the Parish of *St. Giles* in the *Fields*, Gent.
John Baily of the same.
Thomas Barnes of the same.
Francis Edmunds of the same.
Robert Longland of the same.
Edward Hamstead of the same.
Thomas Hinton of the same, Gent.
Joseph Blisset of *White-chapel*, Gent.
Zechariah Grant of the same.
Richard Fitzgerald of the Parish of *St. Martin's* in the *Fields*.
Benjamin Boltby of *St. Giles* in the *Fields*.
Richard Dorrel of the *Savoy*, Gent.
Anthony Hall of the same.
Stephen Phillips of the Parish of *St. Martin's* in the *Fields*.
William Stephens of the same.
John Davis of the same.
Richard Hutchinson of the same.
Anthony Nurse of *Fulham*, Gent.
Robert Moon of the Parish of *St. Clement Danes*, Gent.
Samuel Peacock of *Westminster*, Gent.
Richard Boise of the same.
Samuel Birch of the same.
Peter Reeve of the same.
Thomas Hutchins of the same, Gent.
John Hewlet of *Westminster*, Gent.
John Towers of *Covent-Garden*, Gent.
Richard Aubrey of *White-chapel*, Gent.
John Wells of *Marybone*, Gent.
William German of *St. Clement Danes*, Gent.
Thomas Harris of *Holborn*, Gent.
Bar. Parr of *East-Smithfield*, Gent.
John Cassels of the Parish of *St. Martin's* in the *Fields*, Gent.
Samuel Bishop of *St. Clement's Danes*, Gent.
William Wheatly of the Parish of *St. Giles* in the *Fields*, Gent.
Christopher Chambers of the same.
Samuel Brown of the same.
Benjamin Dun of the *Savoy*.
Samuel Jewel of the same.
Hugh Hammershey of the same.
Abraham Harrison of the *Strand*, Gent.
Thomas Nichols of *Pancras*, Gent.
William Dean of the Parish of *St. Martin* in the *Fields*, Gent.
Thomas Parnel of the same.
Matthias Cooper of the same, Gent.
William Merchant of the same, Gent.

Richard

Richard Campion of the same, Gent.
Simon Smith of *Woodstreet*, *Westminster*, Gent.
Thomas Green of *Westminster*, Gent.

Clerk. Set *John Hampden* to the Bar.

[Which was done.

John Hampden hold up thy Hand.

[Which he did.

Middlesex. THE Jurors for our Sovereign Lord the King, upon their Oaths present, that *John Hampden*, late of the Parish of *St. Giles* in the *Fields*, in the County of *Middlesex*, Gent. as a false Traitor against the most illustrious and excellent Prince, our Lord *Charles* the Second, late King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, thy natural Lord, the Fear of God in thy Heart not having, nor the Duty of thy Allegiance any ways weighing; but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience, which a true and faithful Subject of our said late Lord the King, towards him our said late Lord the King, of right ought to bear, wholly withdrawing; and imagining, practising, and with thy whole Strength intending the Peace and common Tranquillity of this Kingdom of *England* to disquiet, molest, and disturb, and War and Rebellion against our said late Lord the King, within this his Kingdom of *England*, to stir up, move, and procure; and the Government of our said late Lord the King, of this his Kingdom of *England* to subvert, change, and alter; and our said late Lord the King, of the Title, Honour, and Royal Name, of the Imperial Crown of this his Kingdom of *England* to depose and deprive: And him our said late Lord the King, to death, and final destruction to bring and put; the 20th Day of *July*, in the Year of the Reign of our said late Lord the King, *Charles* the Second, of *England*, &c. the 35th, and divers other Days and Times, as well before as after, at the Parish of *St. Giles* in the *Fields*, in the County of *Middlesex*, falsely, maliciously, devilishly, and traitorously, with divers other false Rebels and Traitors unknown, didst conspire, compass, imagine, and intend our said late Lord the King, then thy supreme and natural Lord, not only of his Royal State, Title, Power, and Government of this his Kingdom of *England*, to deprive and cast down, but also our said late Lord the King to kill, and to death to bring and put, and the antient Government of this Kingdom of *England* to change, alter, and wholly to subvert; and a miserable Slaughter amongst the Subjects of our said late Lord the King, through his whole Kingdom of *England*, to cause and procure, and Insurrection and Rebellion against our said late Lord the King, within his Kingdom of *England* to procure: And these thy wicked, abominable, and devilish Treasons and traitorous Conspiracies, Compassings, Imaginations, and Purposes aforesaid, to fulfil, perfect, and bring to pass, thou the said *John Hampden*, as a false Traitor, then and there, (to wit) the said 20th Day of *July*, in the year of the Reign of our said late Lord the King, 35th aforesaid, and divers other days and times, as well before as after, at the Parish of *St. Giles* in the *Fields*, aforesaid, in the said County of *Middlesex*, falsely, unlawfully, wickedly, devilishly, and traitorously, with *James* late Duke of *Monmouth*, and divers other false Traitors unknown, did assemble your self, meet together, and consult, and consent to

move and procure divers great Sums of Money, and a great Number of Men armed, and War and Rebellion against our said late Lord the King, within this Kingdom of *England*, traitorously to levy and make, against the Duty of thy Allegiance, and against the Peace of our said late Lord the King, and against our Lord the King that now is, their Crown and Dignity, and against the Form of the Statutes in that case made and provided, &c.

Mr. *Hampden*. My Lord, I perceive that I am here indicted for a Fact, for which I was indicted above two Years ago, and I was convicted of it, and did suffer Imprisonment, in Execution, upon the Judgment that was given against me, and am still under Execution for the Fine that was set upon me by way of Punishment for that Fact. I think, my Lord, I have as much to say in point of Law for my self, as any Prisoner that ever came before your Lordship upon such an account, twice tried, twice convicted, and twice punished for the same Fact, must be very extraordinary; but, my Lord, I do pass by all Pleas whatsoever, and cast my self wholly upon the King's Mercy; that is my Resolution, my Lord.

* L. C. J. Then you must plead Guilty or not Guilty. But you say you have been tried twice for the same Fact; Were you ever tried for High-Treason before? The very Punishment that you alledge to be inflicted upon you for it, is a plain Proof that you were not tried for High-Treason, for that is not usually punished by Fine and Imprisonment.

Mr. *Hampden*. My Lord, I only insinuate that the Fact is the same.

L. C. J. You must plead Guilty or not Guilty.

Clerk. Are you Guilty or not Guilty of the High-Treason, whereof you stand indicted, *John Hampden*?

L. C. J. You must plead directly; say you are Guilty, or you are not Guilty.

Mr. *Hampden*. My Lord, I do plead Guilty to the Indictment.

Will your Lordship be pleased to hear me: My Lord, I do confess my Offence against the King is very great, I am very sorrowful for it. My Lord, I know the King is the Fountain of Mercy as well as Justice, an inexhaustible Fountain of Mercy; and if I may be so happy to obtain your Lordship's Intercession to his Majesty on my behalf, I doubt not but that Grace and Goodness which hath been extended to others, may be bestowed upon me.

L. C. J. Mr. *Hampden*, as the King is the Fountain of Mercy, so it comes freely from him. I confess, as the Circumstances of your Case are, you have pleaded the best Plea to find Mercy; but how far the pleading guilty, when there is full Evidence to prove you so, may move the King to have mercy upon you, I don't know; you must apply your self to the King.

Mr. *Hampden*. I humbly beg your Lordship's Intercession, I know none can do it better than your Lordship.

L. C. J. You must record the Plea.

Mr. *Hampden*. My Lord, I humbly beg your Lordship, that you would be pleased to represent to his Majesty what my past Sufferings have been, and how sorrowful I am for having offended his Majesty, and that your Lordship would be pleased to beg his Majesty's gracious Pardon in my behalf; I humbly beseech your Lordship to do it, and it shall

shall be the endeavour of all my Life to behave my self as dutiful and loyal a Subject as any the King hath.

L. C. J. The King shall have an account of what you say.

Mr. Hampden. My Lord, there is one thing I would humbly beg the Liberty for; there are Words in the Indictment concerning the Death of the King: my Lord, what construction the Law may put upon such an Action, I am ignorant of; but for any direct Intention of taking away the Life of the King, no Man does abominate and abhor more than I have done.

L. C. J. *Mr. Hampden,* it is but a necessary construction that the Law puts upon it, it is a construction confirmed by woful Experience. We see that Rebellion, let the beginning be what it will, never stops, unless by God's great Mercy and the Justice of the King's Cause, but it will end in the Death of the King, it hath a natural Tendency that way: but however you are understood that you had not any thoughts of killing the King, but only to raise Rebellion within the Kingdom, which must necessarily end in the Death of the King.

Mr. Hampden. My Lord, no Man doth abhor that more than I do.

L. C. J. You may ask *Mr. Hampden* if he hath any thing to say why Sentence of Death should not pass upon him.

Clerk. *John Hampden* hold up thy Hand. Thou standest convicted of High-Treason by your own Confession, what can you say for yourself why Sentence should not pass upon you?

Mr. Hampden. My Lord, I humbly cast my self upon the King's Mercy. My Lord, I would humbly move your Lordship in one thing, that I may have the Liberty of my Friends and Relations to come to me in Prison as they did before.

L. C. J. You must apply yourself to the King.

Mr. Hampden. Will your Lordship be pleased to order it, my Lord? I had two or three of my own Relations the King was pleased to grant to come to me

L. C. J. It is easy for you, *Mr. Hampden,* to make your Application to the King, it will be better for you: I direct it as the better way to apply yourself to the King.

Mr. Hampden. I only beg it, my Lord.

L. C. J. In the presence of a Keeper I don't know why his Relations should not come to him; but I think it had been better to apply yourself to the King.

Mr. Hampden. My Lord, I have two or three near Relations allowed to be without the Presence of a Keeper.

L. C. J. *Mr. Hampden,* that we cannot do, that was an extraordinary Favour, and as that came from the King, so you must apply your self to the King again; but in the Presence of a Keeper, we grant it; we cannot grant it without a Keeper, if you will apply your self to the King for that, you may.

Cryer. Gentlemen of *Middlesex,* that have been summon'd upon the King's Service this Day, the Court discharges you.

Then after the Judges did withdraw, the Clerk was commanded to proceed.

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Cl. John Hampden, hold up thy Hand. You stand convicted of High-Treason by your own Confession, what can you say for your self, why the Court should not pronounce Sentence upon you?

Mr. Hampden. I only plead the King's Mercy. I rely upon no other thing.

Cryer. O-Yes, all manner of Persons are commanded to keep silence whilst Judgment is giving upon pain of Imprisonment.

Mr. Recorder *. *Mr. Hampden,* you have been indicted for High-Treason, and the Indictment hath been read to you, and whereupon, according as the Law doth require, it hath been demanded of you, that you should plead to it, and thereupon you have pleaded Guilty to this Indictment, which is recorded accordingly; and therefore I need not say any thing for to let you know the heinousness of this Crime, for I perceive you are sensible enough of it your self, and I do verily believe you have taken a very wise and discreet Course to confess the Truth, for you were brought hither to be tried for this Crime, in case you had pleaded not Guilty to this Indictment, which now you have prevented by this your candid Confession. However, it is the Duty of my place to pronounce the Judgment that the Law hath provided for such Crimes as these are, and that is this;

* *Sir Thomas Jenner.*

You must be had to the place from whence you came, and from thence you must be drawn to the Place of Execution, and there you are to be hang'd by the Neck, and whilst you are alive you must be cut down; and your Entrails be taken out, and burnt before you; and your Head must be cut off, and your Body quartered, and your Head and your Quarters to be disposed of at the King's pleasure, and the Lord have mercy upon your Soul.

Mr. Hampden. My Lord, I hope I shall have your Lordship's Intercession with his Majesty.

Mr. Recorder. I don't doubt, *Mr. Hampden,* but you have us'd the best means to obtain so great a Favour; and as it is the Duty of my place to give an account of this to his Majesty, so I shall truly and faithfully represent it with the advantages your Demeanour this day hath deserv'd.

Mr. Hampden. My Lord, I humbly beg the Favour that my Wife may come to me without the presence of a Keeper.

Mr. Recorder. *Mr. Hampden,* 'tis too late for us to give any directions in this Matter, because you ask'd this while the Judges were here; but I don't doubt upon your Application to his Majesty, but you will have all things that you can reasonably desire, if you please to apply your self to him for this, and what else you shall be advised may be fitting and convenient for you to beg.

His abject Submission did indeed procure him a Pardon; but the Shame of such a mean Behaviour so funk and disordered his Spirits, that he was never quite right after it, and about ten Years after he cut his own Throat.



CXXXIX. *The Trial of HENRY Lord DELAMERE* *, *before the Lords at Westminster, for High-Treason, Jan. 14, 1685. 1 Jac. II.*

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. at Arms. O-Yes, O-Yes, O-Yes. My Lord High Steward of *England* his Grace doth straitly charge and command all manner of Persons to keep silence, and to give ear to the King's Majesty's Commission to his Grace my Lord High Steward of *England*, upon pain of Imprisonment.

Then the Commission was read, his Grace, and all the Peers standing up bare-headed.

Then the Staff being carried between Garter King at Arms, and the Gentleman-Usher of the Black Rod, was with three Reverences deliver'd upon the knee to his Grace, and by him re-delivered to the Gentleman-Usher of the Black Rod, to hold during the Service.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serj. at Arms. O-Yes! His Grace my Lord High Steward of *England* doth straitly charge and command all manner of persons here present, except Peers, Privy Counsellors, and the reverend Judges now assistant, to be uncovered.

Cl. of Cr. Make Proclamation.

Serj. at Arms. O-Yes! My Lord High Steward of *England* his Grace straitly chargeth and commandeth all Justices, Commissioners, and all and every other person and persons to whom any Writ or Precept has been directed, for the certifying of any Indictment or Record before his Grace my Lord High Steward of *England*, that they do certify and bring in the same forthwith, according to the Tenor of the same Writ and Precept, to them or any of them directed, upon Pain and Peril shall fall thereon.

Then Sir Edward Lutwyche, one of his Majesty's Serjeants at Law, and Chief Justice of Chester, delivered in his Writ and Return at the Clerks Table.

The Writ of Certiorari and the Return thereof were read in hæc verba.

* *L. H. Steward.* Call the Lieutenant of the Tower to return his Precept, and bring his Prisoner to the Bar.

Cl. of Cr. Make Proclamation.

Serj. at Arms. Lieutenant of the Tower of *London*, return thy Writ and Precept to thee directed, together with the Body of Henry Baron of *Delamere*, thy Prisoner, forthwith, upon Pain and Peril shall fall thereon.

The Prisoner was brought to the Bar by the Lieutenant of the Tower: the Writ and Return thereof, together with his Grace's Precept, and the Return thereof were read in hæc verba.

Cl. of Cr. Make Proclamation.

Serj. at Arms. Sir Roger Harsnet Knight, Serjeant at Arms to our Sovereign Lord the King, return the Precept to thee directed, together with the Names of all the Lords and Noblemen of this

Realm of *England*, Peers of Henry Baron of *Delamere*, by thee summoned, forthwith, upon Pain and Peril shall fall thereon.

The Serjeant of Arms delivered in his Precept and Return at the Clerks Table.

L. H. Steward. Read the Precept and the Return.

They were read in hæc verba.

Cl. of Cr. Make an O-Yes.

Serj. At Arms. O-Yes! All Dukes, Earls, Viscounts, and Barons of this Realm of *England*, Peers of Henry Baron of *Delamere*, who, by Commandment of my Lord High Steward of *England* his Grace, were summoned to appear here this Day, and are now present in Court, answer to your names, upon Pain and Peril will fall thereon.

The Peers summoned were called over, and those that appeared, standing up uncovered, answered to their Names, each making a Reverence to the Lord High Steward.

Cl. of Cr. Laurence Earl of *Rocheſter*, Lord High Treasurer of *England*.

L. H. Treas. Here.

Cl. of Cr. Robert Earl of *Sunderland*, Lord President of his Majesty's Privy Council.

Lord Presid. Here.

Cl. of Cr. Henry Duke of *Norfolk*, Earl Marshal of *England*.

D. of Norf. Here.

Cl. of Cr. James Duke of *Ormond*, Lord Steward of his Majesty's Household.

He did not appear.

Cl. of Cr. Charles Duke of *Somerſet*.

D. of Som. Here.

Cl. of Cr. Christopher Duke of *Albemarle*.

He did not appear.

Cl. of Cr. Henry Duke of *Grafton*.

D. of Graft. Here.

Cl. of Cr. Henry Duke of *Beaufort*, Lord President of *Wales*.

D. of Beauf. Here.

Cl. of Cr. John Earl of *Mulgrave*, Lord Chamberlain of his Majesty's Household.

E. of Mulg. Here.

Cl. of Cr. Aubery Earl of *Oxford*.

E. of Oxf. Here.

Cl. of Cr. Charles Earl of *Shrewsbury*.

E. of Shrewsf. Here.

Cl. of Cr. Theophilus Earl of *Huntingdon*.

E. of Hunt. Here.

Cl. of Cr. Thomas Earl of *Pembroke*.

E. of Pemb. Here.

Cl. of Cr. John Earl of *Bridgwater*:

E. of Bridg. Here.

Cl. of Cr. Henry Earl of *Peterborow*.

E. of Peterb. Here.

Cl. of Cr. Robert Earl of *Scarsdale*.

E. of Scarsd. Here.

Cl. of Cr. William Earl of *Craven*.

E. of Craven. Here.

Cl.

Cl. of Cr. Richard Earl of Burlington.

He did not appear.

Cl. of Cr. Louis Earl of Feversham.

E. of Feversh. Here.

Cl. of Cr. George Earl of Berkeley.

E. of Berk. Here.

Cl. of Cr. Daniel Earl of Nottingham.

E. of Notting. Here.

Cl. of Cr. Thomas Earl of Plymouth.

E. of Plym. Here.

Cl. of Cr. Thomas Viscount Falconberg.

L. Falconberg. Here.

Cl. of Cr. Francis Viscount Newport, Treasurer of his Majesty's Household.

L. Newport. Here.

Cl. of Cr. Robert Lord Ferrers.

L. Ferrers. Here.

Cl. of Cr. Vere Essex Lord Cromwell.

L. Cromwell. Here.

Cl. of Cr. William Lord Maynard Comptroller of his Majesty's Household.

L. Maynard. Here.

Cl. of Cr. George Lord Dartmouth, Master-General of his Majesty's Ordnance.

L. Dartmouth. Here.

Cl. of Cr. Sidney Lord Godolphin.

L. Godolphin. Here.

Cl. of Cr. John Lord Churchill.

L. Churchill. Here.

Then his Grace the Lord High Steward addressed himself to the Lord Delamere the Prisoner at the Bar in this manner.

L. H. Steward. My Lord *Delamere*, the King being acquainted that you stand accused of High-Treason, not by common Report or Hearsay, but by a Bill of Indictment found against you by Gentlemen of great Quality, and known Integrity within the County Palatine of *Chester*, the place of your Residence; has thought it necessary in Tenderness to you, as well as Justice to himself, to order you a speedy Trial.

My Lord, if you know your self innocent, in the name of God do not despond, for you may be assured of a fair and patient hearing, and in your proper time a free Liberty to make your full Defence: and I am sure you cannot but be well convinced, that my Noble Lords that are here your Peers to try you, will be as desirous and ready to acquit you, if you appear to be innocent, as they will to convict you if you be guilty.

But, my Lord, if you are conscious to your self that you are guilty of this heinous Crime, give Glory to God, make amends to his Vicegerent the King, by a plain and full discovery of your Guilt, and do not, by an obstinate persisting in the Denial of it, provoke the just Indignation of your Prince, who has made it appear to the World, that his Inclinations are rather to shew Mercy than inflict Punishments. My Lord, attend with patience, and hear the Bill of Indictment that hath been found against you read. Read the Bill of Indictment to my Lord.

Cl. of Cr. Henry Baron of Delamere, hold up thy Hand.

L. Delamere. My Lord, I humbly beg your Grace would please to answer me one Question, Whether a Peer of *England* be obliged by the Laws of this Land to hold up his Hand at the Bar, as a Commoner must do; and I ask your Grace this question the rather, because in my Lord *Stafford's* Case it was allowed to be the Privilege of the Peers not to hold up their Hands.

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L. H. Steward. My Lords, this being a matter of the Privilege of the Peerage; it is not fit for me to determine it one way or the other; but I think I may acquaint your Lordships, that in point of Law, if you are satisfied this is the Person indicted, the holding, or not holding, up of the Hand is but a Formality, which does not signify much either way.

L. Delamere. I humbly pray your Grace's direction in one thing farther, whether I must address my self to your Grace when I would speak, or to your Grace with the rest of these noble Lords my Peers.

L. H. Steward. You must direct what you have to say to me, my Lord.

L. Delamere. I beg your Grace would please to satisfy me, whether your Grace be one of my Judges in concurrence with the rest of the Lords?

L. H. Steward. No, my Lord, I am Judge of the Court, but I am none of your Triers. Go on.

Cl. of Cr. Henry Baron of Delamere, thou standest indicted in the County Palatine of *Chester* by the Name of *Henry Baron of Delamere* of *Mere* in the said County of *Chester*, for that thou as a false Traitor against the most illustrious and most excellent Prince *James* the Second, by the Grace of God of *England, Scotland, France* and *Ireland*, King, thy natural Lord, not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance, but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience which a true and faithful Subject of our said late Lord the King, towards him our said Lord the King, should and of right ought to bear, wholly withdrawing; and contriving, practising, and with all thy might intending the Peace and common Tranquillity of this Kingdom of *England* to disquiet, molest, and disturb; and War and Rebellion against our said Lord the King, within this Kingdom of *England*, to stir up, move, and procure, and the Government of our said Lord the King of this Kingdom of *England* to subvert, change and alter, and our said Lord the King from the Title, Honour, and Kingly Name of the Imperial Crown of his Kingdom of *England* to depose and deprive, and our said Lord the King to Death and final Destruction to bring and put; the fourteenth day of *April* in the first Year of the Reign of our said Lord *James* the Second now King of *England*, &c. and divers other Days and Times as well before as after, at *Mere* in the County of *Chester* aforesaid, falsely, maliciously, devilishly, and traitorously, with divers other false Traitors and Rebels, to the Jurors unknown, didst conspire, compass, imagine, and intend our said Lord the King, thy supreme, true and natural Lord, not only from the Kingly State, Title, Power, and Government of his Kingdom of *England* to deprive and cast down, but also the same our Lord the King to kill, and to death to bring and put, and the antient Government of this Kingdom of *England* to change, alter and wholly to subvert, and a miserable Slaughter among the Subjects of our said Lord the King throughout his whole Kingdom of *England* to cause and procure, and Insurrection and Rebellion against our said Lord the King within this Kingdom of *England* to procure and assist; and the same thy most wicked, most impious and devilish Treasons and traitorous Compassings, Imaginations and Purposes aforesaid to fulfil and bring to effect, thou the said *Henry* Baron

Baron of *Delamere*, as a false Traitor, then and there, to wit, the said fourteenth day of *April* in the first Year above said, and divers other days and times as well before as after, at *Mere* afore said, in the County afore said, falsely, unlawfully, wickedly, and traitorously with *Charles Gerrard*, Esq; and other false Traitors to the Jurors unknown, didst assemble thy self, gather together, consult and agree to raise and procure divers great Sums of Money, and a great number of armed Men, War and Rebellion within this Kingdom of *England* to levy and make, and the City of *Chester* in the County of the same City, as also the Castle of our said Lord the King of *Chester*, at *Chester* in the County of *Chester* afore said, and all the Magazines in the same Castle then being, to enter, take, seize, and surprize, and into thy Possession and Power to obtain: And that thou the said *Henry Baron of Delamere* afterwards, to wit, the 27th day of *May*, in the first Year above said, falsely, unlawfully, wickedly, and traitorously didst take a Journey from the City of *London* unto *Mere* afore said, in the County of *Chester* afore said, thy traitorous Purposes afore said to fulfil and perfect: And that thou the said *Henry Baron of Delamere*, afterwards, to wit, the fourth day of *June*, in the first Year above said, at *Mere* afore said, in the County of *Chester* afore said, in further Prosecution of thy unlawful, most wicked and traitorous Purposes afore said, divers Liege People and Subjects of our said Lord the King, to the Jurors unknown, with thee the said *Henry Baron of Delamere*, and the afore said other false Traitors to the Jurors unknown, falsely, unlawfully, and traitorously, in the War and Rebellion afore said, and in thy traitorous purposes afore said, to join and adhere didst excite, animate, and persuade, against the Duty of thy Allegiance, against the Peace of our said Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in that case made and provided. How say'st thou *Henry Baron of Delamere*, art thou Guilty of this High-Treason whereof thou standest indicted, and hast been now arraign'd, or not Guilty?

L. Delamere. My Lord, I humbly beg the Indictment may be read again.

L. H. Steward. Let it be read again.

[Which was done.

L. Delamere. May it please your Grace, I humbly beg the favour to be heard a few Words before I plead to this Indictment.

L. H. Steward. My Lord *Delamere*, I am very unwilling to give your Lordship any Interruption, but according to the Methods of Law, which must be observed in your Case, as well as all others, you must plead to the Indictment before you be heard to any thing else.

L. Delamere. May it please your Grace, I have something to offer to your Grace's and their Lordship's Consideration which is a matter of Law.

L. H. Steward. I know not what matter of Law you have to offer: If you have a mind to demur to the Indictment, you may.

L. Delamere. Will your Grace please to hear what I have to say? And then I shall submit it to your Grace's Judgment.

L. H. Steward. I would hear what you have to say, my Lord, with all my heart, If I could: But I must then pass by all the Forms and usual Methods of proceeding, and that without any advantage to you too, and that I suppose your Lordship will not desire of me. Ask my Lord, whether he be guilty, or not guilty?

Cl. of Cr. How say'st thou, *Henry Baron of Delamere*, art thou guilty of this High-Treason whereof thou hast been indicted, or not guilty?

L. Delamere. I beseech your Grace to hear me what I have to say; I shall not detain your Grace very long, but I beg your Grace to hear me.

L. H. Steward. My Lord *Delamere*, I must keep you to the known Rules and Methods of Law: This is not your time to speak, but to plead; in your proper time you shall be fully heard whatsoever you have to say.

L. Delamere. If your Grace please, I have something to say which concerns all the Peers of *England* in point of Right.

L. H. Steward. My Lord, you must either plead, or demur to this Indictment, that is the usual Practice before any thing else can be done.

L. Delamere. My Lord, I have a Plea to offer to your Grace and my Lords; and it is with reference to the Privilege and Right of the Peers of *England*.

L. H. Steward. If you have any Plea to offer, it must be received, my Lord.

L. Delamere. My Lord, amidst the Hardships I have lain under by my frequent Imprisonments and close Confinement——

L. H. Steward. My Lord *Delamere*, you must keep up to the Legal Method of Proceedings: In Cases of this nature I would, as far as is possible for me to do, indulge a Person of your Quality, and in your Condition; but withal I must do right to the Court, and not permit any Breach to be made upon the legal Course of Proceedings. You must plead, or demur to the Indictment, before you are heard to say any thing.

L. Delamere. Will your Grace be pleased to hear me tell you my Reasons why I offer you a Plea of this nature to the Indictment.

L. H. Steward. My Lord, if you have any Plea, put it in.

L. Delamere. Will your Grace be pleas'd to accept it as I have done it? It may be it is not so formal, because I have had no Counsel allowed me to peruse and sign it. But as it is, I here offer it to your Grace's Consideration.

L. H. Steward. Ay, put it in.

[Then it was delivered to the Clerk.

L. H. Steward. Read it.

Cl. of Cr. The humble Plea of *Henry Lord Delamere*, to the Indictment of High-Treason against him, now to be tried by the Lord High Steward and Peers here assembled.

THE said Lord *Delamere*, saving to himself all benefit of Advantage of any further or other matter of Exception to the Generality, Incertainty, or Insufficiency of the said Indictment, and all matters and things which do or may concern the same, for Plea hereunto saith,

That he was by His Majesty's Writ summoned to this present Parliament, which began the Nineteenth Day of *May* last, and attended his Duty there as a Peer of this Realm.

That for High-Treason supposed to be committed by him, during the Sitting of the same Parliament, he was the Twenty-sixth Day of *July* last, committed, by Warrant of the Earl of *Sunderland*, one of his Majesty's Principal Secretaries of State, to the *Tower of London*.

That the Peers in Parliament assembled, taking notice by his Petition of the Ninth of *November* last, of his being absent from his Attendance in Parliament, sent a Message to his Majesty to know the Reason

Reason why he the said *Henry Lord Delamere*, a Peer of that House, was absent from his Attendance there.

Upon the Tenth Day of *November* last, the Lord Treasurer reported his Majesty's Answer to the said Message, viz. That the said Lord *Delamere* was absent from his Attendance in Parliament, because he stood committed for High-Treason; for levying War against the King this last Summer, testified upon Oath, and that his Majesty had given Directions that he should be proceeded against with all speed according to Law.

The House of Peers not being satisfied with this Answer, the Debate thereof was adjourn'd till the Monday Morning following

On which Day the Lords resuming the Debate concerning the Lord *Delamere* and the King's Message; after some Debate, the Lord Chancellor by his Majesty's Command, gave the House an Account what Proceedings had been against the Lord *Delamere* since his Majesty's Answer to their Address concerning his absence from the House; which was to this Effect:

That the King had given Order for a speedy Prosecution of him: That the Treason whereof he was accused was committed in *Cheshire*; and that being a County Palatine, the Prosecution ought to be there, and not in the King's-Bench; as it might be if the Treason had been committed in another County: and that therefore his Majesty had given Order for a Commission of *Oyer and Terminer* into *Cheshire*, in order to the finding of an Indictment against him for the said Treason. And that accordingly a Commission of *Oyer and Terminer* was already sealed; and if the Indictment be not found before the End of the Term, the said Lord *Delamere's* Prayer being entred in the King's-Bench, he should be bailed.

All which Proceedings do more fully appear in the Journals of the said House of Peers; to which the said *Henry Lord Delamere* doth refer himself.

Afterwards, that is to say, upon the Day of the said Parliament was prorogued by his Majesty unto the Tenth Day of *February* next, as by the said Journals it doth appear.

Upon all which Matters the said *Henry Lord Delamere* doth humbly tender this his Plea to the Jurisdiction of your Lordships in this Cause, and doth humbly conceive your Lordships ought not to proceed in the Trial of him upon the Indictment of High-Treason now before you: And that for these following Reasons.

First, Inasmuch as it appears by the said Petition of the said *Henry Lord Delamere*, and the several Orders of the Lords, and the King's Answer to the Message of the Lords thereupon. That the said House are already possessed of his said Cause, which is the same supposed Treason for which he was at first committed, and which is the same Treason for which he now stands indicted before your Lordships. And for this Reason, your Lordships, as he humbly conceives, by the Law and Custom of Parliament, which is part of the Law and Custom of the Land, ought not to proceed against him upon the said Indictment; but his said Cause ought wholly to be determined and adjudged in the said House of Peers, and not elsewhere, as in like Cases has been formerly done.

Secondly, Whereas it is the Right and Privilege of the Peerage of this Realm, That no Peer thereof ought to be tried or proceeded against for High-Treason during the Continuance of the Parliament, except in the said House of Peers, and before the whole Body of the Peers there: And, whereas the

aforesaid Parliament is now continuing by Prorogation, until the Tenth Day of *February* next aforesaid, the said *Henry Lord Delamere* humbly conceives that by the Law and Custom of Parliament hitherto used, which is Part of the Law and Custom of the Realm, he ought not, nor can be tried before your Lordships for the said Treasons, because the said Parliament is still continuing, and not dissolved.

And lastly, The said *Henry Lord Delamere* doth further say, That he is the same *Henry Lord Delamere* mentioned in the Commitment, Petitions, Messages, Answers and Indictment now read unto him, and the said Treason for which he was committed, it is the same Treason mentioned in the Commitment, Petition, Messages, Answers, and Indictment, as aforesaid.

To which said Indictment he humbly conceives he is not bound by Law to make any further or other Answer.

L. Delamere. May it please your Grace, and you my Noble Lords, I do not offer this Plea out of any Diffidence or Distrust in my Cause, nor out of any Dislike I have to any of your Lordships that are here summoned to be my Triers; I cannot hope to stand before any more just and noble, nor can I wish to stand before any others: but your Grace, and my Lords will pardon me if I insist upon it, because I apprehend it a Right and Privilege due to all the Peerage of *England*; which, as it is against the Duty of every Peer to betray or forego, so it is not in the power of any one, or more, to waive it, or give it up without the Consent of the whole Body of the Peers, every one of them being equally interested.

This, my Lord, I humbly demand as my Right and Privilege as a Peer of *England*, and submit to the Direction of your Grace and my Noble Lords.

L. H. Steward. What say you to it, Mr. Attorney?

Mr. Attorney *. May it please your Grace, This Plea that is here offered by this Noble Lord, is a Plea to the Jurisdiction; but, with Submission, it needs very little Answer, for it has very little in it: The Force of the Plea is, That he ought to be tried by the whole Body of the House of Peers in Parliament, because the Parliament is still continuing, being under a Prorogation, and not dissolved; and because there was some agitation of the Matter concerning this Prosecution, upon his Petition, in the House of Lords; and therefore it concludes, That he ought not to be tried by your Grace and these Noble Lords upon this Commission, but by all the Lords in Parliament. With submission, my Lord, this is contrary to all the antient Precedents, and against the known Rules of Law; for the Law is, if the King pleases to try a Peer in Parliament, then the Record may be brought into the House, and there they proceed as in other Cases, and all the Peers are Judges. Thus it is in the time of a Session of Parliament; but if the Parliament be prorogued, there are many Instances (and indeed none to the contrary) that after a Prorogation, the Proceedings are before the High-Steward by Commission. And as to the other part of the Case, I have this to say to it, that there is nothing at all depending in the House of Lords that can oust this Court of the Jurisdiction; for there was not so much as any Indictment return'd there, no, nor so much as found during the Session of Parliament. All the Agitation was only upon my Lord's Petition, and the King's Answer; that he intended as speedy a Prosecution as could be: Besides, my Lord, your Grace sees it is a Plea in Paper and in *English*, with-

* *Sir Robert Sawyer*.

out any Counsel's Hand, and therefore I hope your Grace does not expect that I should formally demur to a Plea in this Form, and that contains no more of Substance in it. But I must desire your Grace to over-rule it, and that the Prisoner may plead in chief.

L. Delamere. My Lord, I humbly pray that I may have Counsel assign'd me, to put my Plea into Form, and to argue the matter of it.

L. H. Steward. My Lord *Delamere*, I am sure I ought, and ever shall be as tender of the Privileges of the Peers of *England*, as any other Person whatsoever: For I am concerned, as well in Interest as Inclination so to be, having the Honour to be one myself: But I know your Lordship will not think the Privilege of the Peers is concern'd in this matter; nor will your Lordship, I dare say, insist upon matters that are purely dilatory, if your Lordship be satisfied that they are so: And therefore give me leave, my Lord, to mind you of a few things, whereby your Lordship will easily see, that the chief things on which you insist, are grounded upon Mistakes. First, you say, the House of Peers was possess'd of the Cause; which could not be, and I will tell you why; because there was no Indictment ever removed thither, or lodg'd there: which plainly proves that the Lords were never possess'd of the Cause. Nor indeed was the Bill found, upon which you are now arraigned, till after the Prorogation of the Parliament. So that they could never come to be possess'd of this matter. These are Mistakes in point of Fact, and your Lordship cannot but well know them to be so.

And there is a great Mistake in the Law, that during the continuance of a Parliament (tho' it were prorogued, yet if not dissolved) a Peer cannot be tried but by the House of Lords. This certainly is a very strange Doctrine, and is not only against the reason and methods of Law, but contrary even to your Lordship's own Experience: For your Lordship cannot but very well remember, that during the continuance of the Parliament, after a Pro-

rogation, the Lord *Cornwallis* *, was
* *Trial* 77. tried before the High Steward, and such a number of Peers as were then summoned, upon such a Commission as I now sit here by. But indeed during the Sitting of the Parliament, then all the Peers are both Triers and Judges, as was in

the Cases of my Lord *Stafford* *, and
* *Trial* 101. my Lord of *Pembroke* †; they being
† *Trial* 73. a Court of Judicature, then actually sitting: and therefore this Plea is grounded as upon mistake in Fact, so upon a mistake in point of Law. So that though as I said at first, it is both my Duty and Interest to preserve the Privileges of the Peers, yet I must take care that no Injury be done to the Law, and truly I take this Plea to be altogether dilatory, and I suppose your Lordship is satisfied of it, and will not insist upon it.

L. Delamere. If your Grace please, it was alledg'd and agreed in the Case of my Lord of *Bristol*, that the Cause of a Peer in time of Parliament properly belong'd only to the House of Lords; and that which possess'd the House of Lords of his Cause, was, as I apprehend, no more than is in my Case, a Petition upon the account of being absent; and there the Lords claim the Cognizance of the whole Cause, and nothing was done but in the House of Lords. And as to the Instances your Grace has

mention'd of my Lord *Cornwallis* (and there was another of them, my Lord *Morley* ||) this Question was never under Debate in those Cases; therefore I suppose they cannot be admitted as Precedents.

L. H. Steward. But, my Lord, it would have been an Error in the whole Proceedings, if this Court had not Jurisdiction: And sure the Judges who are always call'd to assist in such Cases; and who, in Matters of Life, even in the Cases of common Persons, are so tender and careful, that there be no Irregularity in the Proceedings, would not have let things pass in that manner, had they been erroneous.

L. Delamere. My Lord, I think no other Precedents are produced but those two, and there the Question was never debated.

L. H. Steward. I only put you in mind of those that were lately within Memory; but no question of it there are a great many more Instances to be given.

Mr. At. Gen. I pray your Grace's Judgment to over-rule the Plea, and that my Lord may plead in chief.

L. Delamere. I hope your Grace will be pleas'd to assign me Counsel to put my Plea in Form; and that I may have time for it, that they may be heard to make a solemn Argument in Law.

L. H. Steward. My Lord, if you insist upon it and think it worth the while to have Counsel heard we will hear them.

L. Delamere. I submit it to your Grace, I only offer it that I may not be wanting to the support of the Peers Privileges; I assure your Grace, I speak not to put off the Cause, for I am willing to come to my Trial, and I have reason so to be, for I question not but to make my Innocence appear.

L. H. Steward. My Lord, I tell you what my opinion of the Plea is, but if you insist upon it to have your Counsel heard, I will hear them.

L. Delamere. I have no Counsel here, if your Grace please to give me time to send for them, and that they may prepare to argue it.

Mr. At. Gen. No, my Lord, if your Grace will hear Counsel, I for the King must pray that it may be done presently; for a Plea to the Jurisdiction is never favoured, nor is the Party to be allow'd time to maintain it, but he must be ready at the time it is offer'd.

L. Delamere. Pray, my Lord, how was it done in the Case of *Fitzbarris* *? His Plea was a Plea to the Jurisdiction, and he had four Days allow'd him to put his Plea in form, and to instruct his Counsel. * *Trial* 102.

L. H. Steward. I am not able at present to remember what was done in such or such a particular Case: But according to the general Method and Course of Law, the Plea to the Jurisdiction is not favoured, nor time allowed to it, but the Party must be ready to maintain it presently.

Mr. At. Gen. But, with submission, my Lord, that Case of *Fitzbarris* is nothing to this noble Lord's Case neither: There was a formal Plea put in Writing, and drawn up in *Latin*, and a formal Demurrer joined; and thereupon I did take time to speak to it. But, with your Grace's favour, by the Law, the Prisoner must be always ready to make good his Plea, if he will oust the Court of their Jurisdiction.

L. H. Steward. *Mr. Attorney*, if my Lord *Delamere* does insist upon having his Counsel heard, it is

is not fit for me to refuse hearing what they can say.

Mr. *At. Gen.* But that must be presently then, my Lord.

L. *Delamere.* It is my Duty, my Lord, to submit to what your Grace and my noble Lords shall determine: I would insist upon nothing that should offend your Grace or them.

Mr. *At. Gen.* If your Grace pleases, you are the only Judge in this Case in Matters of Law: For these noble Lords, the Peers, are only Triers of the Fact. Therefore I appeal to your Grace's Judgment, and pray for the King, that this Plea may be over-ruled; it being vitious and naught, both in Form and Substance.

L. *H. Steward.* My Lord *Delamere*, I must acquaint you, that according to the Constitution of this Court, Matters of Law are determined by me, as the sole Judge, while I have the Honour to act under this Commission: But if your Lordship insist upon it, to have your Counsel heard, God forbid that I should deny it you. I will hear what your Counsel will say; and afterwards I will, according to the best of my Understanding, deliver my Judgment.

L. *Delamere.* My Lord, I have never had any Counsel assigned me.

L. *H. Steward.* My Lord, if you have any Counsel ready, we will hear them.

L. *Delamere.* If your Grace please to assign me Counsel, and give me time to send for them, and them time to prepare, I will obey your Grace's Directions; but I could have none here ready, because none were assigned me.

L. *H. Steward.* My Lord, you cannot, by the Course of Law, have Counsel allowed you in the Case of a Capital Crime, till such time as the Court, where you are called to answer, is apprized that there is some matter of Law in your Case, that may need Counsel to be heard, to inform their Judgment, and which they may think convenient to hear Counsel to: For if in case any Prisoner at the Bar shall before-hand be allowed to have Counsel to start frivolous Objections, such as this (and we all know, that there are some, who will be easily prevailed with to endeavour to pick holes where there are none) and to offer Matters foreign from the things whereof the Party stands accused; and upon the Prisoner's bare Request, Counsel must be heard to every trivial Point, the Courts of Law would never be at an end in any Trial; but some dilatory Matter or other would be found to retard the Proceedings: But it does not consist with the Grandeur of the Court, nor your Lordship's Interest, to let such a frivolous Plea interrupt your Lordship's Trial. However, if your Lordship has Counsel ready, I will not refuse to hear them.

L. *Delamere.* My Lord, I hope the Privilege of the Peers of *England*, is not frivolous. I assure your Grace, I do not offer this matter, as if I thought it more conducing to my Interest, than my Trial now. No, my Lord, it is not for my self, but for the whole Body of Peers, of which I have the Honour to be a Member: And if my Lords here are satisfied it is not the Right and Privilege of the Peers, I acquiesce.

L. *H. Steward.* Pray, good my Lord, do not think that I should say any such thing, that the Privilege of the Peers is frivolous; for you do not hear me say, That this is one of their Privileges. As I would not willingly mistake you, so I desire your Lordship would not misapprehend or misre-

present me. I spoke not at all of the Peers Privilege, but of your Plea: I tell your Lordship, I think your Plea is not a good Plea, to oust this Court of the Jurisdiction of your Cause. But if your Lordship have a mind to have your Counsel heard to it, in God's Name let them come; they shall be heard: And when that is done, to satisfy you the more, I will advise with my Lords the Judges, that are there to assist, what they take to be the Law in the Case; and, upon the whole, I will deliver my Judgment as well as I can.

L. *Delamere.* I hope your Grace will be pleas'd to advise with my Lords the Peers here present; it being upon a Point of Privilege.

L. *H. Steward.* Good my Lord, I hope you that are a Prisoner at the Bar, are not to give me Direction, who I should advise with, or how I should demean my self here.

L. *Delamere.* I beg your Grace's Pardon; I did not intend to give your Grace any Direction.

L. *H. Steward.* My Lord, I shall take care to perform that Duty that is incumbent upon me, and that with all Tenderness to your Lordship: And, I assure your Lordship, I will have as much care that I do not injure you, as I will that I do not wrong my own Conscience; and I will endeavour to discharge my Duty to both, with the utmost Fidelity.

L. *Delamere.* I humbly thank your Grace; I question it not: But if your Grace please —

L. *H. Steward.* My Lord, you must pardon me; I can enter into no further Interlocutions with your Lordship. If your Lordship have any mind to have Counsel heard, and your Counsel be ready, we will hear them.

L. *Delamere.* If your Grace require of me to produce Counsel presently, and they to argue it immediately, I must acquaint your Grace, I cannot do it: For I have none here.

L. *H. Steward.* My Lord, I cannot tell how to help it: the Plea must then be over-ruled and rejected.

Clerk of the Crown. Henry Baron of *Delamere*, art thou Guilty of the High-Treason whereof thou standest indicted, and hast been now arraign'd, or not Guilty?

L. *Delamere.* Not Guilty.

Clerk of the Crown. Culprit, how wilt thou be tried?

L. *Delamere.* By God, and my Peers.

Clerk of the Crown. God send thee a good Deliverance. *Serjeant at Arms*, make Proclamation.

Serjeant at Arms. O-Yes! If any one will give Evidence on behalf of our Sovereign Lord the King, against Henry Baron of *Delamere*, the Prisoner at the Bar, concerning the High-Treason whereof he stands indicted, let them come forth, and they shall be heard: for now he stands at the Bar, upon his Deliverance

Then his Grace gave the Charge to the Peers Triers in this manner:

L. *H. Steward.* My Lords, I know you cannot but well remember, what unjust and insolent Attempts were made upon the rightful and unalterable Succession to the Imperial Crown of these Realms, under the pretence of that which has been so often found to be the Occasion of Rebellion, I mean, the specious Pretence of Religion, by the fierce, froward, and phanatical Zeal of some Members of the *House of Commons*, in the last *Parliaments* under the late King *Charles* the Second, of ever-blessed Memory.

Which, by the wonderful Providence of Almighty God, not prevailing, the chief Contrivers of

of that horrid Villany, consulted together how to gain that Advantage upon the *Monarchy* by open Force, which they could not obtain by a pretended Course of Law.

And in order thereto, it is too well known, how they had several treasonable Meetings, made bold and riotous Progresses into several Parts of the King's Dominions; thereby endeavouring to debauch the Minds of the well-meaning, though unwary and ignorant, Part of the King's Subjects.

But these their evil Purposes, it pleased *God* also to frustrate, by bringing to light that cursed Conspiracy against the Life of his sacred Majesty, King *Charles* the Second; as also, against that of our dread Sovereign, that now is, whom *God* long preserve.

These hellish and damnable Plots, one would have thought, could not have survived the just Condemnation and Execution of some of the chief Contrivers of them; especially considering, that after it had pleased Almighty *God* to take to himself our late merciful and dread Sovereign, no sooner was his sacred Majesty, that now is, seated in the Royal Throne of his Ancestors, but he made it his utmost Endeavours, not only to convince the World, that he had quite forgot those impudent and abominable Indignities that had been put upon him, only for being the best of Subjects, and the best of Brothers; but did also give forth the most Benign Assurances imaginable to all his loving People, that he would approve himself to be the best of Kings.

And further to evince the Reality of these his Gracious and Heroick Resolutions, he immediately called a Parliament; and therein repeated, and solemnly confirmed his former Royal Declarations of having a particular Care of maintaining our establish'd Laws and Religion: With which that Wise, Great, and Loyal Assembly, were so fully and perfectly satisfied, that they thought they could not make sufficient Returns of Gratitude for such Gracious and Princely Condescensions.

And yet, my Lords, while the King and the Parliament were thus, as I may say, endeavouring to out-do each other in Expressions of Kindness, that wicked and unnatural Rebellion broke out; and thereupon the Arch-Traitor, *Monmouth*, was, by a Bill brought into the Lower House, and pass'd by the general Consent of both Houses, (and I could wish, my Lords, for the sake of that Noble Lord at the Bar, that I could say, it had pass'd the Consent of every particular Member of each House) justly attainted of *High-Treason*.

My Lords, what share my Lord at the Bar had in those other matters, I must acquaint you, is not within the compass of this Indictment, for which you are to try him, as his Peers; for that is for a Treason alledged to have been committed by him, in his Majesty's Reign that now is.

Give me leave, my Lords, to detain you but with a Word or two more on this occasion; and that is, to let you know, that as my Lord at the Bar may, with great safety and security to himself, rely upon your Lordships Candor and Integrity, that you will be tenderly careful, and ready to acquit him of the Treason whereof he is accused, if, upon the Evidence that shall be given you, you shall find him innocent: So I must tell you, the King has an entire confidence in your Resolution, Fidelity, and good Affections to him, that you will not, by reason of the Prisoner's quality, and nearness to you, as being a Peer of this Realm, acquit him if he shall appear to be guilty.

My Lords, I have one thing further to mind your Lordships of, that, according to the usual Forms of Proceedings in these Cases, if your Lordships have any Questions to propound, wherein you would be satisfied as to any Matter, either of Fact or Law, your Lordships will be pleased to put those Questions to me, and I shall take care to give your Lordships the best Satisfaction I can.

L. Delamere. My Lord High Steward, I beg the favour of your Grace, I may have one to write for me.

L. H. Steward. Ay, by all means. Let my Lord have whom he pleases to write for him.

*Mr. * Recorder.* May it please your Grace, my Lord High Steward of England, and you my noble Lords, the Peers of the Prisoner at the Bar: *Henry* Baron of *Delamere*, the Prisoner at the Bar, stands indicted, for that he, as a false Traitor against the most illustrious and most excellent Prince, our Sovereign Lord the King that now is, not having the Fear of *God* in his Heart, nor weighing the Duty of his Allegiance, the 14th day of *April* last, at *Mere*, in the County of *Chester*, did maliciously conspire, with other false Traitors, to the Jurors unknown, the death and deposing of the King: And for the better and more effectual fulfilling of those his Treasons, the said 14th day of *April*, at *Mere* aforesaid, did maliciously and traitorously assemble, consult, and agree with *Charles Gerrard* Esq; and other false Traitors, to raise great Sums of Money, and procure Numbers of armed Men, to make a Rebellion against the King, and the City and Castle of *Chester* to seize, with the Magazines there; and that afterwards, the 27th day of *May* last, he took a Journey from *London* to *Mere* aforesaid, to accomplish his treasonable Intentions. And further, that upon the 4th day of *June*, in further prosecution of his traitorous Purposes, at *Mere* aforesaid, he did incite divers Subjects of our Lord the King, to join with him, and other false Traitors, in his Treason. And this is laid to be against the Duty of his Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that case made and provided. To this Indictment, may it please your Grace, and the rest of these noble Lords, my Lord *Delamere*, the Prisoner at the Bar, has pleaded *Not Guilty*; and for his Trial, has put himself upon his Peers. We shall therefore call our Witnesses for the King; and if we prove him guilty, we do not question but your Lordships will find him so.

Mr. At. Gen. May it please your Grace, my Lord High Steward of England, and you my noble Lords the Peers: My Lord *Delamere*, the Prisoner at the Bar, stands indicted for conspiring the Death of his Majesty, and in order thereunto to raise a Rebellion in the Kingdom.

My Lords, in proving this Charge upon him, we crave leave to give your Grace, and your Lordships some short Account, by Witnesses that we have here, of a former Design that was previous to this matter, for which this noble Lord stands here accused: And we shall not trouble your Grace, and your Lordships, with any long Evidence, because it has received many solemn and repeated Trials; and, as to the proof of it, has been confirmed by as many Verdicts. But we do it, rather to give some account, as an Introduction to a material Evidence, by shewing, that *Cheeshire*, which was

* Sir Thomas Jenner.

the Province of this noble Lord, was one of the Stages where that Rebellion was principally to be acted; and that, preparatory to it, great riotous Assemblies, and tumultuous Gatherings of the People, were set on foot by the Conspirators.

We shall then shew, my Lords, that after the late Duke of *Monmouth*, (the Head of the Conspiracy) went beyond Sea, (especially after the death of the late King) frequent Messages, and Inter-course of Correspondency, were sent and held between him, and the rest of his Accomplices abroad, and their Fellow-Conspirators here at home.

And particularly, we shall prove, that a little before the Rebels came over last Summer into the *West*, the Duke of *Monmouth* did dispatch one *Jones*, (who was one of the most considerable Agents in this Contrivance) to come from *Holland* into *England*, to let his Friends know, that tho' he had intended to go into *Scotland*, and begin his Work there, yet now his Resolutions were for *England*; where, he hoped, his Friends would be prepared for him. And with this Message and Resolution of his, *Jones* was to acquaint some Lords, (who they were, the Witness will tell your Lordships, but) among others, this noble Lord, the Prisoner, was one: And to acquaint them, besides, that he would immediately set sail for *England*, whether he would come so soon as he could get. That he had a Design to have landed in *Cheshire*, where he expected to be most readily receiv'd; but finding that inconvenient, they should have notice four or five Days before-hand, of the Place of his landing which he intended should be in the *West*. And, among the Directions that *Jones* had to give to those Lords, one was, that they should immediately repair into *Cheshire*, there to wait for the News.

These Instructions *Jones* had given him in Writing, but sealed up, with an injunction not to open them till he came to Sea; and then he was to peruse that Writing, and deliver his Message according to his Instructions: And in that Writing was the name of this noble Lord, as one that was principally relied on, to carry on the Rebellion in *Cheshire*. And we shall give you an account, that the late Duke of *Monmouth* did look upon *Cheshire* as one of his main Supports, and upon my Lord *Delamere* as a principal Assistant there.

My Lord, this Message was *Jones* to communicate to Captain *Matthews*, and Captain *Matthews* was to transmit it to this noble Lord, and the other Persons that were concern'd with him. *Jones* arrived with this Message here in *England* upon the 27th of *May*: [And I must beg your Lordships to observe the Time particularly.] But Captain *Matthews*, to whom he was directed, was not to be found; nor Major *Wildman*, to whom, in the absence of Captain *Matthews*, he was to apply himself, as you will hear more fully from the Witness's own Mouth: Thereupon he sends for one *Disney*, (a Name which your Lordships cannot but know, he being since executed for Treason) and one *Brand*, whom your Lordships will likewise hear of; and they meet with the same *Jones*, who communicates his Message to them, and they undertake to deliver it to the Persons concern'd; Captain *Matthews* being out of Town, and Major *Wildman* not to be found.

That very Night, my Lords, this same *Brand*, and *Disney* they meet this Noble Lord, my Lord *Delamere*, at the Coffee-House, and give

him an Account of the Messages: And as soon as ever he had received the Message, upon that Twenty-Seventh of *May*, at ten of the clock at Night, does my Lord *Delamere* dispatch out of Town, with only one Servant to attend him, and two other Friends that he had pick'd up, or appointed to meet him, and go with him.

With all these Badges of Plot and Design, does my Lord *Delamere* set out that Night. It was the same Night that *Jones* came to Town: It was late at Night. He changed his Name, and went by the Name of *Brown*. He chose to go all the By-Roads, and would not keep the high common Road; and went with great speed, as we cannot but presume according to the Message delivered by *Jones*, on purpose to repair into *Cheshire*.

And if your Lordships please to observe, you will find several remarkable Instances of Plot and Contrivance in the matter: First, That a Nobleman, and one of so considerable a Character in his Country, as my Lord *Delamere*, should make such haste out of Town with so small an Equipage, as but one Servant. Then, that he should go so late at Night: Again, that he should change his Name; and that should prove to be a Name not casually taken up, as the first Name he could think of next his own; but a Name of distinction, that he was known by among all his own Party: For all the Communications between the Confederates and him, were managed, as to him, under the Name of *Brown*. By that Name, several of the late Duke of *Monmouth's* Traitorous Declarations were sent for; which were to be sent to him, or by him, into *Cheshire*: And that alone, with Submission, my Lords, would be a shrewd Circumstance of Suspicion, that a Noble Lord, such an one as my Lord *Delamere*, should assume the Name of a Commoner, and post out of Town so ill accompanied in a Disguise at that time of Night; especially the Parliament being then sitting, as really it was,

But besides all this Circumstantial Evidence, we shall prove, by Positive Testimony, what the hasty Business was, that made my Lord undertake this Journey in this manner: For, having notice of the Duke of *Monmouth's* Intention to land speedily in *England*, when he comes into *Cheshire*, he actually sets about the Work to put that County in a forwardness to assist in the Rebellion, endeavours to stir up the People to join with him; and acquaints one that he employed in that Affair, with the whole Design, that he was engaged to raise so many Thousand Men, and so much Money, to be ready by such a Day.

Nor does my Lord rest here: But, after the Duke of *Monmouth* was landed in the *West*, to corrupt the Minds of the People, we shall prove what Discourses he had, (and these will testify his Inclinations to the Cause) concerning the great Victories he had obtained over the King's Forces, and how he applauded his Conquests.

My Lords, we shall plainly shew you all this that I have opened in plain Proof: And then, we shall submit it to your Lordships Judgments, whether this noble Peer be Not Guilty, as he has pleaded to his Indictment.

L. H. Steward. Call your Witnessess, Mr. *Attorney*: Who do you begin with?

Mr. At. Gen. My Lord Howard of Eserick : We desire he may be first sworn. [Which was done.]

L. H. Steward. Well, what do you ask my Lord Howard ?

Mr. At. Gen. My Lord, I call you to give an Account what you know of a Design of an Insurrection that was to have been ; and in what Parts ; and what share *Cheshire* was to have had in it, in the late King's Time.

L. H. Steward. You hear the Question ; what say you to it, my Lord ?

L. Howard. My Lord, I am to direct my self to speak to what was done in the late King's Time : For as to that Noble Lord at the Bar, I have nothing to say against him.

L. H. Steward. My Lord Howard, if I apprehend Mr. Attorney aright, you are not called as a particular Witness against my Lord Delamere ; but only to give an Account, what was agreed upon in any Consultations, where you were present, in the late King's Time, about a Conspiracy for an Insurrection ?

L. Howard. If so, my Lord, then I am called not to be an Evidence against my Lord Delamere, but against my Self ; that is, to repeat what I have often delivered at several Trials, in the Courts of Justice ; and which I must always repeat, with Shame and Confusion for my Guilt, as I cannot but always reflect upon it with Sorrow and Horror. But if it be for the Service of his Majesty, and this Honourable Court, for me so to do, I shall endeavour to comply with it, and repeat it as well as I can, by the Assistance of a broken Memory ; it being an Account of things done several Years past, and from a Memory interrupted by such Accidents as are very well known, and as have disabled me to make a more distinct and particular Relation before so great an Auditory.

My Lords, I suppose, it will be expected, I should begin my Account with the Occasion and Ground, and the Time when those Things happened.

L. H. Steward. Take your own Method, my Lord.

L. Howard. Truly, my Lord, I am not able to fix the particular time, unless you will give me leave to reckon the Years by the Sheriffs of *London*, as the *Romans* used to do theirs by their Consuls ; for I have no other means of computing the exact Time.

L. H. Steward. Pray, my Lord, tell the Times as near as you can, and use what helps for your Memory you think best.

L. Howard. My Lords, it was in that Year, when Mr. *Shute* and Mr. *Pilkington* were Sheriffs, for the City of *London* : And at that time, it is well known how great Heats did arise upon the Contests that were in the City, about Election of Officers for the Year ensuing——

Mr. At. Gen. May it please your Grace, my Lord Delamere seems to be faint with standing. If your Grace please, a Chair may be provided for my Lord to sit in.

L. H. Steward. Ay, by all means : Let a Chair be provided for my Lord to sit down. Go on, my Lord.

L. Howard. My Lord, I was saying, that the Contest about the disputed Election of Sheriffs, had occasioned such Heats in the City of *London*, and other Places, that it was even beyond the

common expressions of discontent. I knew nothing of any particular Design there was in hand till about six Weeks after, when Captain *Walcot* came to me, a Person I had known some time before, and upon discourse, acquainted me, that he had found out that there were some Persons engaged in a considerable Action that was near its Execution ; and that in order to it, he had had notice given him to make preparation, and thereupon he had thought fit, for that reason, to withdraw from the place where he did at that time lodge, (which was in *Red-Lion Court* in *Fleet-street*, as I remember) and betake himself to a private Lodging, that he might be the readier for Action ; and to put himself into a better Equipage for joining in the Enterprize, he had bought himself a Horse, and sent his Son into *Ireland* to turn all he could into ready Money, and return it, that he might be the better able to go through with the Undertaking. My Lords, this was a great surprize to me ; for though I knew, as all the rest of the World did, that there were great discontents, yet, till then, I never had any intimation of any particular design. I told him I was going into the Country, but should be glad to know how things went, and desired him to write to me, and gave him a little *Cabala* or *Cypher* to disguise the matter he was to write about. And when I was in the Country, I did receive several Letters which intimated something of a Design that was going on, and at last he writ with some warmth to me, of a necessity we were under to enter into Action, and of the readiness of my Correspondents ; (for the Style of the Letters was that of Merchants, for so was the Cant that I had given him :) But truly I was not over-hasty in my return to *London*, because I rather chose to see what would be the Issue of what was then projected, before I did intermeddle in such an Affair, and so made use of all the delays I could to retard my return, and came not to Town till that Week which determined the long continued Controversy in *London*. Nay, and then also avoided meeting with any body in any set-way, till I could better see how things were managed, and what event they would probably come to : thereupon I would not go to my own House, but took up my Lodging at *Mile-end*, and lay three or four Days, till the Day came for confirming the new-elected Sheriffs, and the Election of a new Lord Mayor, which, as I take it, is on the day before *Michaelmas-day*, and *Michaelmas-day*. When that day was over, I could not find there was any Intention of entering into any sort of Action ; I found indeed there were great Murmurings in the mouths of all sorts of People, and very angry warm Speeches, and nothing else : So I thought the business was over for that time, and thereupon away I went to my own House. This, my Lords, was upon the Saturday, as I remember : Upon the Monday Morning Captain *Walcot* came to me, and desired that he might have some private discourse with me in my Garden ; and there he told me, my Lord *Shaftesbury* had withdrawn himself, and that he did believe things were in a great Preparation for Action. I desired him to tell me what it was ; he answered me, That he desired to be excused in that, for I must go to my Lord *Shaftesbury*, who would give me an account of the whole : and withal he told me, my Lord *Shaftesbury* had been much deserted and ill used by those Lords upon whose concurrence he had rely'd, and

and that was the reason why he had withdrawn himself, and kept himself so private. I told him, I did not know my Lord *Shaftesbury* had any desire to speak with me. Yes, he said he had, for he had sent him to me on purpose, and he was to bring back my answer, whether I would join or no. I told him, if my Lord desired to speak with me, I would wait upon him; and thereupon I went with him, and he carried me to a place where my Lord *Shaftesbury* was retired into the City, somewhere about *Foster-Lane* or *Wood-Street*, at the house of one *Watson*. When I came there, after Salutation, my Lord *Shaftesbury* began to make great reflections upon the Misery and Badness of the Times, particularly, upon the issue of that great Affair, the Election of the Sheriffs, which had ended so unfortunately to the Terror of all good men: For whereas before, the great and sure resort of innocency was to the Integrity of our Juries, when returned by fair and equal Sheriffs, they looked upon the eagerness of getting those Persons sworn that were then in Office to be a design to intrap the innocent, the elected Sheriffs being esteemed persons that would accommodate themselves to the humour of the Court; and now every man must be run down for Crimes that he was no way guilty of, if the finger of the Court did but point him out to destruction. The apprehension of this, he said, had made him withdraw himself, not knowing how soon he might be seiz'd, should he have remain'd in publick; and he thought the danger was as imminent upon, and likely to reach to others, as well as to him; and particularly to my self, and therefore, he said, the sense of this danger ought to put every *Englishman*, that had a value for his Country, and any thing that was dear to him in it, upon using his utmost endeavours to give some prevention to those calamities which were impendent over us, and which threatned the destruction of all men that stood up for the Rights of the people: and this, he said, was his resolution.

My Lord, in order to this, he declared to me, what Preparations had been made for the Raising of Force for this purpose; he said, there were eight or ten thousand Men (I cannot fix the particular number) that he was well assured to have ready in the City; That there had been divers Horse (I think about Four-score or an Hundred he named) that about a Fortnight before, had been, by parcels, drawn into the Town, without being observed; and these were in daily expectation to go into Action; but through the unhandsome Disappointment of the Duke of *Monmouth*, and the other Lords that adhered to him, who were to have joined in the Action, and have set the Wheels at work in other Parts, he was left alone to do the whole in his Province of *London*, they being not ready to concur according to their Engagement: But as he should have the greater Danger, so he should have the greater Glory; and he resolved to go through with the Attempt, or perish in the Execution. To all this Discourse I gave such an Answer as the nature of the thing required: I told my Lord *Shaftesbury*, I could not deny all those things to be true, as he hath represented them in his Discourse; and that I would not distrust his Judgment so much, as to suppose he would enter upon such an Affair, without due delibe-

ration of all the Circumstances requisite to it; and so I would not question, but there was such Preparations, and that he had Assurance of such a Force, as he had spoke of, whenever they should begin any Action. But I told him something stuck with me, and troubled me very much; That, in a time of such difficulty, when the convenient Help of the Nation was all little enough to join in the Work, he should stand by himself, and engage in such an Enterprize, in separation from those other Lords, of whose Help there would be so much need. He said, he could not help it, they had appointed this time, and that, but now, when it came to the push, they were not ready to do their Parts; but the People were now in such expectation of something to be done, especially in *London*, that it was impossible to restrain them, and as impossible to get those Lords ready to join with them. I told him, I was altogether unacquainted with the proceedings in this Affair, and that all of it was wholly new to me: But pray, my Lord, said I, give me leave to act that part in this business, that, I think, will most conduce to the successful Issue of it, which is to be a Mediator between you; and let me desire you to let things rest as they are, till I have endeavoured to create a better understanding between your Lordship, and those Lords, of whose Tergiversation you seem to complain. Upon this my Lord was in a great heat, and express'd himself with great warmth; but at last, with much ado, he gave me permission to go to the Duke of *Monmouth*, and assure him, and the rest of the Lords that were concern'd, and tell them from him, that, if they would be ready to take the Posts that were assign'd them, according to their own former Agreement, and immediately enter upon Action, he would join with them; but if not, he was resolv'd to go on alone. This was, as I remember, upon Tuesday, the Second of *October*: upon the Wednesday Morning I went to find out the Duke of *Monmouth*, but coming to his Lodgings, he was gone to *Moor-Park*, where, when I came, I found several Persons with him; but after a little time, I separated him from the Company, and whispering to him, I gave him to understand, how great a Disorder I found my Lord *Shaftesbury* in, and how great a Complaint he made of his being deserted by him, and the other Lords engaged with him, and what Resolution he had taken to set upon the Work alone. "My Lord, says he, I think the Man is mad, his Fear makes him lose his Understanding; I do not know why he hides himself from his Friends, that no body can tell where he is: but as to that which he speaks of, of our forsaking him, and Breach of Faith, he is mistaken. For, 'tis true indeed, we are about doing the Thing, that he is so eager for, but we are not for doing it so hastily, as his Fears precipitate him to do; and he must excuse us, if we comply not with his Humour, to hazard the whole Undertaking by a rash beginning." Upon that, I said to him, My Lord, I shall not discourse the Particularities of the business with your Grace; but this is all that I at present address to your Grace for, to be a means, if I can, with your Grace, as I have been with him, to procure a Meeting between you, that you may settle it with one another. "With all

“ my heart, says the Duke, pray let it be so ;
 “ for, though my Lord *Shaftesbury* is angry
 “ without a cause, yet I would not have him
 “ lose himself in a temerarious Undertaking.”
 My Lord, said I, I will tell him what you say,
 and will see if I can work him to a Compli-
 ance with the Proposal. The next day, being
 Thursday, my Lord, I went to my Lord *Shaftes-*
bury again, and reported to him the Discourse
 I had with the Duke of *Monmouth*, and what
 Answer he had given to his Complaint of their
 deserting him. He reply'd, “ It was false, they
 “ had positively engaged to be ready by such a
 “ time, and had appointed the very Day ; but
 “ now they were off, and would not tell when
 “ they would be ready :” and withal, he told me,
 he greatly suspected the Duke of *Monmouth* to
 have a secret Correspondence with the King. I
 then desired him, That he would please to con-
 sent to the Treaty that was propos'd, and give
 the Duke of *Monmouth*, and the Lords a Meeting.
 He, in great heat, replyed, No, he would come
 no more at them. It is strange, my Lord, said
 I, that you should have such an Opinion of these
 Men, that they would go about to betray you ;
 they are not Men of that size : but he persisted
 in it, that they had dealt perfidiously with him :
 For after a positive Agreement, when the Thing
 was brought just to the Birth, they withdrew
 their helping hand : but he was sure, in *London*,
 he could raise a sufficient Force to do the Work,
 and if he were but once set on horse-back, he
 would head them himself : But yet he was wil-
 ling to put it off for a Fortnight, or three Weeks
 longer, if they would be sure to keep pace with
 him. With this Proposal I went the next day,
 which was Friday, to the Duke of *Monmouth*, and
 had the same Answer from him, that I had be-
 fore ; but withal, he bid me tell my Lord *Shaftes-*
bury, That he did make it his earnest Request to
 him, to give him and his other Friends a Meet-
 ing before he engaged in this business : For he
 found by his precipitation, he was about to de-
 stroy himself, and all that adhered to him. There-
 upon, I came to my Lord *Shaftesbury* again, upon
 the Saturday ; and when I came there, after a
 long and importunate urging all the Arguments
 I could think of, I so far prevailed with him,
 that he agreed to give them a Meeting, upon
 condition, that it should be the next day : and
 because it should be so private, that no notice
 might be taken of it, he chose to have the Meet-
 ing at his own House, where no body would
 suspect him to be, and whither he would be con-
 veyed, under the Disguise of a Parson. I went
 back with this Message to the Duke of *Monmouth*,
 who did undertake, that the other Lords should
 be there.

L. H. Steward. My Lord *Howard*, not to
 interrupt you, Did he name those other Lords ?
 If he did, pray acquaint my Lords, who they
 were.

L. Howard. My Lord *Shaftesbury* named my
 Lord *Ruffel* and my Lord *Gray*, and a great
 many more that should bear their parts. I went
 to the Duke of *Monmouth*, and told him of it, I
 say, and he engaged, that they should certainly
 be there : But, upon the Sunday Morning, when
 I came to the *Temple*, there I found a Message
 left for me, that my Lord *Shaftesbury* had receiv'd
 an Alarm, That there was some great Tories

living near his House in *Aldersgate-street*, who
 were continually spying about ; and so great a
 Company might make their more than ordinary
 Observation : That this gave him such a Jealousy,
 as would not permit him to meet according to
 his Appointment. Afterwards, I came to a better
 understanding of the Reason of this, and found
 there was some Finesse in it, which I could not
 comprehend before : But after this time, I never
 saw my Lord *Shaftesbury*, for he removed then
 to other Lodgings. So that, what I now speak
 of him, is only what I had, by hear-say, from
 others : For I had no knowledge of what pass'd,
 as to him, but what I had from Capt. *Walcot* ;
 who told me, That after that, there were several
 days of Meeting appointed, but still, from time
 to time, put off ; but upon what reason, I cannot
 particularly remember.

This is all I know of my Lord *Shaftesbury* ; and
 the latter Part is wholly by Hear-say from *Walcot*.
 But by reason of this Agitation, we continued
 under Expectation till such time as my Lord
Shaftesbury went into *Holland* ; where he shortly
 after died. And truly, I thought, at that time,
 much of the Design was quashed, and laid aside :
 But, soon after *Ferguson* came over ; who, when
 he came here, began to revive and quicken the
 Business, and push it on to Execution. I spoke
 with him at the *One Bell* in the *Strand* ; and there
 he gave me an Account of all the Steps that had
 been taken : He told me what Preparations had
 been made in the City, in general ; what to seize
 the Gates of the City ; what to possess themselves
 of the *Tower* ; what to attack the Guards ; and
 several other things, which I can't now so well re-
 member, the Impressions of them being worn out
 of my Memory, by length of Time, and other
 Accidents.

This, in general, is all that I can say, as to
 what was previous to the particular Engagement
 wherein I was concern'd : For, at last, after ma-
 ny Discourses, the Troubles and Difficulties of
 the Time increasing, and the Dangers that threat-
 ned us, as we thought, growing higher and high-
 er, this gave an Occasion for our uniting Coun-
 sels, and entring into a kind of *Juncto* ; which, I
 suppose, is foreign to this Affair before your Lord-
 ships ; and therefore, I suppose, would be like-
 wise impertinent for me, to trouble your Lordships
 with.

L. H. Steward. Mr. *Attorney*, do you desire my
 Lord *Howard* should give an Account of the o-
 ther Meetings, and Consultations, at which he was
 present ?

Mr. *At. Gen.* My Lord, I think there will be
 no need of it ; and I am unwilling to take up
 your Grace's Time to no purpose.

L. Howard. As for that Noble Lord at the Bar,
 I know nothing concerning him.

L. H. Steward. Then, Gentlemen, will you have
 him asked any Questions ?

Mr. *At. Gen.* No, my Lord.

L. H. Steward. My Lord *Delamere*, will you ask
 him any more Questions ?

L. Delamere. No, my Lord.

Mr. *At. Gen.* Before my Lord *Howard* goes,
 I would ask him one Question in general, whe-
 ther he knew of any Design of a Rising in *Che-*
shire ?

L. Howard. No, my Lord, I knew of none at
 all.

Mr.

Mr. At. Gen. Then we desire my Lord Gray may be sworn.

[Which was done.

Mr. At. Gen. Pray, will you give his Grace and my Lords an Account, what you know of any Designs of an Insurrection or Rebellion, when you were beyond Sea, or before? and who were engaged in it?

L. Gray. My Lord, I am *subpœna'd* hither on behalf of the King; and I am also *subpœna'd* on behalf of my Lord, the Prisoner at the Bar. I do not know any thing, that I can speak of my own Knowledge, against the Prisoner; nor have I any thing to say, that I know of, that will be for his Advantage. But I am here ready to answer such Questions, as shall be ask'd me, either of one side, or the other.

Mr. At. Gen. My Lord, the Question I ask you, is, What do you know of any Design of a Rising in *Cheshire*, and when?

L. Gray. About the Time of the Election of *Sheriffs* for the City of *London*; I mean, that memorable Time of the contested Election, which furnished the World with so much Discourse, and was the occasion of such Heats and Animosities: About that time, the Duke of *Monmouth*, and my Lord of *Shaftesbury* began to discourse about making use of that, as an Opportunity to accomplish their Design; for they thought the Ferment was so high, that Men would easily be disposed to an Insurrection: and after many Discourses to that purpose, they came to this Resolution, that they would apply themselves to make what Interest they could, to procure a Rising in three several Parts of the Kingdom at once: one in *Cheshire*, whither the Duke of *Monmouth* was to betake himself; and there be advised by my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere* that then was, and the Prisoner at the Bar, what Gentlemen were proper to apply to, for joining in the Design. The second was in *London*, which was assigned to be the Province of my Lord of *Shaftesbury*. And the third was in the *West*; which was committed to the Care of my Lord *Russel*. The Duke of *Monmouth* did accordingly go his Progress into *Cheshire*, as is very well known; and upon his Return, was taken into Custody by the *Serjeant at Arms*: Upon which, Sir *Thomas Armstrong* was sent Post to Town, to get an *Habeas Corpus*; and withal, to deliver a Message to me, to be communicated to my Lord *Russel*, and my Lord *Shaftesbury*: Which Message, as near as I can remember, was to this Effect; that he had been kindly receiv'd by the Gentlemen of the County, and had discours'd the Matter with them, and found them all inclined very much to his Satisfaction: That upon his being arrested, he had been advised to make his escape into *Cheshire*, and rise immediately; but that he would not do a Matter of that great Importance, without the Approbation of his Friends. This is all that I know of any thing, that was designed in *Cheshire*.

Mr. At. Gen. Pray, my Lord, what do you know of any Messages that Captain *Matthews* or *Jones* brought over from *Holland*, and to whom, and from whom?

L. Gray. Sir, I will give the best account I can, upon the sudden, for I am not prepared to give a particular distinct account, in regard

I did not know it would be expected from me, nor indeed that it would affect the Prisoner at the Bar.

L. H. Steward. Pray, my Lord, give my Lords the Peers as succinct and particular an Account as you can.

L. Gray. My Lord, soon after the late King's Death, the Duke of *Monmouth* was at *Amsterdam* with my Lord of *Argyle*, where there was an account given of the Design that was in hand, of an Insurrection in *Scotland*, and the Preparations that had been made in order to it; and at that time there came over to *Holland* Mr. *Crag*, that came as I was inform'd from Major *Wildman*, and his Errand was to promote and recommend a Reconciliation between the Duke of *Monmouth* and my Lord *Argyle*, who till that time had acted in separate Interests; and *Crag* then gave an account that Means and Money were prepared: he had no particular Message to the Duke, because he did not know of meeting him there at that time. The Duke of *Monmouth*, upon this Encouragement, did send Captain *Matthews* into *England*, with a Message to Major *Wildman*, wherein he did desire him that he would procure a Meeting with my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere*, and I think Mr. *Charleton*, and acquaint them that he had received a full account of my Lord *Argyle's* Affair, and the Preparations that had been made for it, and accordingly he had ordered his own Affairs to join with him; he likewise sent *Crag* with a Message to the same purpose to other Friends in *London*, and he dispatch'd away one *Battescorn* into the *West*, to prepare things there. When *Crag* return'd back again to the Duke, he gave him an account that Major *Wildman* had procur'd a Meeting with those Lords and Gentlemen, that I mentioned before, who were all of Opinion, that the Duke of *Monmouth* should go for *Scotland*, for they thought that his coming there, would be the best Service he could do the Interest at present, and they should know the Strength of the Enemy here, by their sending Forces to suppress the Rebellion there. There was likewise a particular Message from Major *Wildman* to the Duke of *Monmouth*, that he desired he would bring over with him a Broad Seal to seal Commissions with, and to take upon him the Title of King. The other particular Branches of the Message I do not so well remember, but only this, he was particularly ask'd, whether the Prisoner at the Bar was there, and he said he was——

Mr. At. Gen. Pray, my Lord Gray, will you give an account what you know of *Jones's* coming over, and what Errand he was sent of?

L. Gray. *Jones* came some time after *Crag* return'd, and he gave an account of other things conformable to what *Crag* had said, and was sent back again to *England* by the Duke of *Monmouth* to give an account of his being ready to sail; he gave him also a Letter, the Contents whereof I did not see. I had some short account of it, but whether it were written to any particular Person, I cannot tell; the Sum of his Message was, that he would land by that time he could get thither.

Mr. At. Gen. My Lord Gray, you had frequent Discourse with the Duke of *Monmouth*, and

and so I suppose you can give an account who he kept Correspondence with, and upon whose Assistance he relied.

L. Gray. I suppose few people will believe we were so weary of our Lives, as to come and throw them away with Threescore, or a very few more Men, (for it was but a very small number we began with) except we had had Expectation of good assistance. This I am sure of, by all Discourses with the Duke of *Monmouth*, he did depend very much upon *Cheeshire*, and was resolv'd to have landed and begun there; but afterwards he considered of it, and thought better to send some sort of excuse for not landing in *Cheeshire*; that the Persons that were to be apply'd to there, being Men of great Quality and Interest in their Country, and able to manage it, without his Assistance: but in the *West*, the Friends he relied on, were not of that considerable Quality, and therefore he chose to land there.

Mr. At. Gen. What Lords did he name, that he depended upon.

L. Gray. I did name them; my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere*; but I observed when the Duke of *Monmouth* spoke of his Friends in *Cheeshire*, he did name my Lord *Macclesfield*, and my Lord *Brandon* as Persons.

Earl of *Nottingham*. My Lord Steward, I humbly pray this Witness may be asked to whom that Letter was written, that he saith the late Duke of *Monmouth* sent by *Jones*?

L. H. Steward. You hear my Lord's Question, who did *Monmouth* send that Letter by *Jones* to?

L. Gray. My Lord, I never saw the Letter, nor do I know any Directions there were upon it; I always looked upon it as a Paper of Instructions given to him about the time when, and the name of the place where the Duke was to land.

Mr. At. Gen. We will give an account of that by *Jones* by and by, my Lord. Now swear *Nathaniel Wade*,

[Which was done.

L. H. Steward. Well, what do you ask this Witness?

Mr. At. Gen. *Wade*, that which I call you for, is this, to give an account what you know of any Design of landing in *Cheeshire*, or elsewhere, and of *Jones's* coming over, and what Errand he was sent upon?

Mr. *Wade*, My Lord, I shall give an account as far as I know. After the death of the late King, Captain *Matthews* came to *Amsterdam* and gave an account there, that the Duke of *Monmouth* intended to be there shortly to meet and consult with my Lord *Argyle*, who, we understood, then was preparing for an Expedition into *Scotland*; thereupon I was sent into *Friesland* to desire my Lord *Argyle* to come to *Amsterdam*, which he did; and there the Duke of *Monmouth* did consult with him, and they did agree together, that at the same time that my Lord *Argyle* made an Insurrection in *Scotland*, the Duke of *Monmouth* should invade *England*, and to that end, that he should send those Friends he had in *England*, to be ready to assist him when he came there; and in order to it, he did send Captain *Matthews*, who, amongst other things, was to

go to the Duke's Friends in *Cheeshire*, and amongst them, my Lord *Delamere* was named to be one, and the business was to desire them to be ready to assist him when he should land. Accordingly Captain *Matthews* went; but a little after his going away, I think one *Crag* came over, and he came from Major *Wildman*, and his business was to endeavour a good Understanding between the Duke of *Monmouth*, and my Lord *Argyle*, who were then at some difference; and to endeavour to make them act jointly by united Counsel. A little after he was sent back again into *England* to Major *Wildman*, to desire him to assist them with some Money; he went back again, and returned, but brought no Money: thereupon he was sent again by the Duke of *Monmouth*, because the first time he was not sent by him. The Sum demanded was six Thousand Pounds, or four Thousand Pounds. and at last he sent for a Thousand Pounds. *Crag* returned with this Answer, that they could not assist them with Money, for they did not know to what end they should have Money, but to buy Arms, and for that the People were well provided enough already, and there was no need of Money for that purpose. The Duke of *Monmouth* a while after sent Mr. *Crag*, and pawn'd all the Jewels he had, to raise Money, and fitted out three Ships for this Service, laden with Ammunition; and because he had promised my Lord *Argyle* to make a Diversion in *England*, while he invaded *Scotland*, he resolved to go with that Provision he had, and desired by Mr. *Crag*, that since those Lords and Gentlemen that were to assist them, had sent no Money, as was desired of them, and expected from them, they should now trouble themselves with no further needless Consultations; but should repair each Man into his own Country, where their Interest was greatest, to be ready when he should come. And in order to this, the Duke of *Monmouth* did set sail from *Holland*, and came to *Lyme*, and landed there; and did afterwards order his March, so that he might most conveniently meet with his *Cheeshire* Friends; that is. towards *Gloucester*, and so to get *Gloucester-Bridge*, that thereby gaining the Command of the River of *Severn*, those of *Cheeshire*, if they did, as was expected, make an Insurrection at the same time, they might easily join together. In pursuance of this Design we came to *Keinsbam-Bridge*, and there a Party of the King's Horse set upon us, and we took some Prisoners, and thereupon thought it advisable not to let the King's Army join together, but to go back and engage those that were already come together; and that was the reason we did not go over the Bridge.

Mr. At. Gen. Do you know any thing of *Jones's* coming into *Holland*, and for what?

Wade. My Lord, I had forgot that; a little before *Crag's* going last away, *Jones* came over, and his Business was to know why we staid so long, for the Duke of *Monmouth's* Friends in *England* had expected him long before, and he was dispatch'd away quickly to acquaint them the Duke was coming.

Mr. At. Gen. Who was it he sent to, to acquaint with his coming?

Wade. To Major *Wildman*, he was directed to Major *Wildman*.

Mr.

Mr. *At. Gen.* Who else were to be acquainted with it?

Wade. Amongst the rest, my Lord *Delamere*, my Lord *Macclesfield*, and my Lord *Brandon* were to be acquainted that he was coming, and expected that they should raise what Forces they could to assist him.

L. H. Steward. Will my Lord *Delamere* ask him any Questions?

L. Delamere. No, my Lord, I never saw his Face before, that I know of.

L. H. Steward. Who do you go to next, Mr. *Attorney*?

Mr. *At. Gen.* Next we call *Richard Goodenough*: Swear him, [*Which was done.*] That which I would know of you, Mr. *Goodenough*, is, whether *Jones* was sent of any Message, and about what?

Goodenough. My Lord, I was beyond Sea with the Duke of *Monmouth*, and Mr. *Jones* was sent (among other Persons) to my Lord *Delamere* to give him notice that he should be ready against the time that the Duke should land, and take care to secure himself, that he might not be seized here in Town, for we were apprehensive such a thing would be attempted.

Mr. *At. Gen.* What Directions were given him, what Lords to go to?

Goodenough. My Lord, we were informed in *Holland*, that my Lord *Delamere* was one of those Lords that had promised to draw his Sword in his behalf.

Mr. *At. Gen.* Had you any discourse with the Duke of *Monmouth* about it at any time?

Goodenough. Yes, I have discoursed with the Duke of *Monmouth* several times.

L. H. Steward. Ay, what did he say to you about it?

Goodenough. My Lord, he said (among other things) that he hoped my Lord *Delamere* would not break his Promise with him?

L. H. Steward. My Lord *Delamere*, will you ask him any Questions?

L. Delamere. No, my Lord. I never saw his Face before, that I know of, I will assure you.

L. H. Steward. That is pretty strange, so famous an Under-Sheriff of *London* and *Middlesex*, as he was.

Mr. *At. Gen.* Then swear *Jones*. [*Which was done.*] Pray will you give an account what Message you received from the Duke of *Monmouth* upon your going over into *Holland*, and to whom you were to deliver it, and what became of it?

Jones. My Lord, I went to *Holland* about the latter end of *April* last; my going, as I have acquainted his Majesty and the Council, was not only about this Affair, for I had other Business that called me thither, which I shall not now take up your time, or trouble you with repeating of: but having some knowledge from Mr. *Disney*, that there were some Intentions of doing something, tho' it was communicated to me but very darkly, and therefore that little I did know, made me the willinger to go for *Holland* so soon as I did: but before I went, I had a mind to understand something more of the Design; and therefore the Night before I went, I came to Mr. *Disney*, and acquainted him with my intended Journey. Mr. *Disney* did persuade me against it, thinking that I had gone upon this account, but I told him the Occasion, which he partly knew,

why I went; but withal I told him, I did intend to see the Duke of *Monmouth*, and if he had any Message that he would have delivered to him, I would deliver it very safely. He told me all the Message I should deliver to the Duke of *Monmouth*, if I saw him, was to desire him to keep to the last Conclusion, which he would find in a Letter that had been sent to him, and that if he had not yet received the Letter, it was to come by the Crop-hair'd Merchant, or the Crop-ear'd Merchant, I cannot say which, but I think it was the Crop-hair'd. I asked him what that Message was, lest the Letter should miscarry; for I told him, if I should go to the Duke of *Monmouth*, and refer him to a Letter wherein a Message was to be brought him, which he was to keep to, and that Letter should miscarry, I should, in effect, bring no Message at all to him. My Lord, thereupon he told me, that I should acquaint the Duke of *Monmouth* that his Friends in *England* would not by any means have him come for *England*, but that he should continue where he was, and if he thought good to go for *Scotland*, they approved of it. This is the Sum of what he said to me, as near as I can remember. When I came to *Amsterdam*, there was one Mr. _____ that was kill'd at *Philips-Norton*,

_____ went with me to the Duke of *Monmouth's*, and when I came to him, I acquainted him, as Mr. *Disney* appointed me to do, that there was such a Letter sent by such a Person, and that such a Message was included in it. My Lord, he was in a great Passion, I know not how to express it, and seemed to be very much troubled, and did reflect very much upon Major *Wildman*, and said, that was *Wildman's* Work; and he said, (as I think that was the word he used) *Wildman* was a Villain, or to that purpose: but withal he said, it was too late to send such a Message now, and that he was resolved to come for *England*; and he would make *Wildman* hang with him, or fight for it, with him: That *Wildman* did think by tying his own Purse, he should tye his Hand, but he should find it should not be so; and some other words of the like nature he used, but this is the Substance of what he said. He gave some account what Preparations had been made; he said Money was very short, and he had been fain to pawn all he had, to raise what Money was raised upon his own Charge. He asked me if I did think to return to *England* shortly; I told him if he had any service to command me for *England*, I had some little business to do at *Rotterdam*, which I would dispatch, and then I would perform his Commands. He told me, he would be glad I did return as soon as I could for *England*, and that this should be the Message I should carry to *Wildman*, in answer to the Message he had sent him, that he would come for *England*, and he should either fight with him, or hang with him; and that was all he had to say to him. I was coming away from him, but he stopped me, and told me he would not have me go out of Town till he had spoke with me again; this was upon the *Sunday*: accordingly I did go in the Evening to him, and when I came, he told me, he would have me stay till *Tuesday* Morning, for he was going out of Town, and intended to be back again at that time; but if not, I should receive from my Lord *Grey* what he had to say to me. He did not come upon the *Tuesday*, but my Lord *Grey* did come, and I think to the best of my remembrance

brance Mr. *Crag* was with me; he told me all he had to say was, that the Duke intended to be in *England* within nine days, and that upon the *Thursday* seven-night after I came away, the Duke would be in *England*: and he bid me to remember to tell *Brand*, that when he heard the Duke was landed, he should acquaint *Sir Robert Peyton* with it, but not till he was landed; for tho' they did think that he would join with them when the thing was begun, yet they ought to be careful who it was communicated to, for fear it should be discovered and disappointed: this was all that I had in command for my Lord *Grey*. I came to *Rotterdam*, and dispatch'd my business there, and would have come away, but it happened there were no Ships coming for *England*, nor would there be any in a Fortnight's time; thereupon I returned to *Amsterdam*. When I came back, I went to see the Duke, to give him an account how it happened that I was not gone for *England*. The Duke told me he was glad I was not gone; for now he had a further Message for me to carry, and he would have me stay two or three days in Town for it. I stay'd three days, and came again to him, but he told me he was not ready for me yet; then I staid two or three days longer till the 21st of *May*, to the best of my remembrance; it was upon a *Thursday* that he gave me the Message that I was to bring into *England*. I came to him in the Morning, and he told me I should come to him upon the Evening of that Day, and when I came, there was a Paper lay before him on the Table, and he took the Paper and seal'd it up; I cannot say he wrote all that was in that Paper, but the Paper that lay before him was not finished when I came in, and that he did not write while I was there, I am sure; but he took it up and sealed it before me, and when he had sealed the Paper, he told me, I must as soon as I came to *London*, see for Captain *Matthews*, *Sir Thomas Armstrong's* Son-in-Law, who lodged at *Mr. Blake's* in *Covent-Garden*, and desire him to acquaint my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere*, with his design of coming for *England*, and that he was resolv'd to set out upon the *Saturday* Morning after I came away, which was upon the *Friday*. He told me Captain *Matthews* was to send one post to that place that was named in the Note to receive Intelligence of his landing, and that should be brought to his Friends here immediately, (he designed it should be twenty-four Hours before the Court had notice of it in Town,) and those Lords were to be in Readiness, that as soon as they knew he was landed, they might repair to their several Posts to assist him. I told him that I would deliver what Message he gave me, and asked him, what I was to do with the Paper he put into my hands; thereupon, as near as I remember, he used these Expressions to me; I do by you, as Princes do by their Admirals, when they send them out upon any considerable Expedition, which requires Secrecy in the Management of it, they have their Commission delivered to them sealed, which they are not to break open till they are at Sea. So here I deliver you your Instructions sealed up, which you are not to open till you are at Sea; and when you have opened them, and read what is contained in

them, I would have you tear the Paper, and throw it into the Sea, or otherwise dispose of it, lest you be surprized and searched at your landing, and my Papers found about you. My Lord, I asked him, because I would be as punctual in my Message as I could, what those Lords were to do when they came out of Town, whether they should come directly to him or no; he told me no, not but that they should go into the Country, and secure their Interest for him there. I ask'd him then, if Captain *Matthews* be out of the way, and I be disappointed of meeting with him, shall I deliver this Message to the Lords my self? He told me no, by no means, for those Lords were Persons of Quality, and that that was not a thing to be done by me. What shall I then do, my Lord, said I, if Captain *Matthews* be out of the way? You need not question that, saith he, but if you meet not with *Matthews*, speak to *Wildman*.

My Lord, with these Instructions (and this as near as I can remember is the Sum of all he said to me) I came away, and came to Sea; when I was out at Sea, I broke open the Letter that I had given me by the Duke, and I will tell you as near as I can, what were the Contents of it; there was written in it to this Effect:

TAUNTON in Somersetshire is the place to which all are to resort; the Persons to be acquainted with the time of landing, are the Lord *Macclesfield*, the Lord *Brandon*, and the Lord *Delamere*; the Place to send the Coach to, is to *Taunton*, to *Mr. Savage's House* at the *Red-Lion*. The place where the Post was appointed to return, was Captain *Matthews's* Lodging, at *Mr. Blake's*, and he was to receive the Message, or if he did not, he was to appoint one that should receive it; or if it were to return to any other place, that was left to him to do as he thought fit.

And this was all, as near as I can remember. When I had seen this, I came to *London*, and being very weary and tired, when I came home, I went to bed.

Mr. At. Gen. Pray tell the Court as near as you can, what day it was you came.

Jones. I came out of *Holland* the 22d of *May*, I came home the 27th, and looking upon my Almanack, I find that it was the *Wednesday* Fortnight before the Duke landed, that I came. When I was come home, I sent for *Mr. Disney*, and he came to me immediately; I told him I had seen the Duke, and desired that he would help me to the Speech of Captain *Matthews*. He told me he was out of Town; then I desired to speak with Major *Wildman*, he told me he was gone out of Town too. Then I told him I must deliver my Message to him, and I told this Message as I have told your Lordships before, and therefore left it to him to convey it to the Knowledge of those Lords that were concerned; he did seem to be unwilling, and told me he did not know how to communicate it to those Lords, and asked me why I would not deliver the Message my self. I told him I did ask the Duke of *Monmouth* that very Question, whether I might, and he had forbid me, and ordered me to deliver it either to Captain *Matthews*, or to Major *Wildman*; and since they were absent, I knew not any to communicate it to but only to him, in order to their having notice

notice of it. He told me he would do what he could.

Mr. At. Gen. Pray who were present when you had this Discourse with *Disney*?

Jones. There was none present but himself then, for it was the first time that I spoke with him after I came from *Holland*; I told him there was a Post to go to receive Intelligence which should bring notice of his landing twenty four Hours before it could be known at *Whitehall*, and therefore it were fit they should be in a readines. He did scruple at it, and said he did not know where to get any one that could convey the Message to them, but he would do what he could; and concluded to meet at night in *Smithfield*, and he did so, and there were two Persons with him, Mr. *Crag*, and Mr. *Lisle*, and another, I think his Name was *Brand*, and he took me and *Brand* aside, and did ask me where was the Place that the Post was to go. I told him where, and then he did discourse of the Duke's coming over, but I mentioned not any thing of the Lords, but only to *Disney*; and after an Hour's talk or thereabouts, we parted. I saw Mr. *Disney* once afterwards, but what he did with the Message I cannot tell, he gave me no account of it; I did indeed before I went out of Town see him at the *Half-Moon Tavern* in

I went out of Town, and met the Duke of *Monmouth* at *Lyme* where he landed; and when I came to him, I told him what I had done with my Message, and how it happened that I could not deliver it to the Persons that he had ordered. The Duke told me he was satisfied that I had done what I could, but seemed to be troubled that *Matthews* was out of Town. And this is the Sum of what passed in my Knowledge, as near as I can remember.

Mr. At. Gen. Had you no Discourse with *Disney* what he had done with the Message, when you met at *Smithfield*?

Jones. No, because those Men were Strangers to me, and I had never seen them before.

Mr. At. Gen. But afterwards had you no Discourse with *Brand* nor *Lisle* about it?

Jones. No, not at all: *Brand* I never spoke but once with, and *Lisle* would not own that he was the Man that was there.

L. H. Steward. Have you any more Questions to ask him, Mr. Attorney?

Mr. At. Gen. No, my Lord.

L. H. Steward. My Lord *Delamere*, will your Lordship ask him any Questions?

L. Delamere. No, my Lord, I never saw his Face before this Time, that I know of, in my Life.

L. H. Steward. Then who do you call next, Mr. Attorney?

Mr. At. Gen. The next Witness that we call, my Lord, is *Story*.

L. H. Steward. Well, what do you ask him?

Mr. At. Gen. Mr. *Story*, pray will you give an Account what Notice you had of *Jones's* Message, and what was done upon it, and what Discourse you had with any Body concerning my Lord *Delamere*, the Prisoner at the Bar, and with whom?

Story. My Lord, I had Notice of it by one ——— that lived at *Bishopsgate*, who told me the 28th of May last, that Mr. *Jones* was returned home from *Holland* upon a Message from the Duke of

Monmouth, and that he had agreed to go to *Taunton*; and there he expected Mr. *Dare* or Mr. *Williams* to bring an account that the Duke was landed; and he said that Mr. *Jones's* Message was delivered to *Disney*, in the absence of Captain *Matthews*, who was out of Town; that after *Disney* had received the Message from *Jones*, he went and had some Discourse with my Lord *Delamere*, and that that Night my Lord *Delamere* went out of Town with two Friends, and went a By-way through *Enfield Chase*, towards *Hatfield*.

Mr. At. Gen. Pray when was it you went out of Town, *Story*?

Story. The 28th of May.

Mr. At. Gen. Who went out of Town with you?

Story. No body, but I overtook Mr. *Brand* that Evening.

L. H. Steward. Pray repeat what it was he acquainted you with?

Story. He told me that the Day before, *Jones* was returned Home with a Message from *Holland*, which Message was to be delivered to Captain *Matthews*, but in his absence *Disney* received it; and that Evening after he had discoursed with my Lord *Delamere*, my Lord that Night went out of Town, and two Friends of mine he said went with him, and did convey him away by a By-way through *Enfield Chase* towards *Hatfield*.

L. H. Steward. Have you many more Questions to ask him, Mr. Attorney?

Mr. At. Gen. Pray, Sir, had you any Discourse with the late Duke of *Monmouth* at *Shepton-Mallet*? and about what?

L. H. Steward. By the way, Friend, where is that *Brand* that you speak of?

Story. He is kill'd; I did not see him die, but he is said to be kill'd at *Keinsbam Bridge*.

Mr. At. Gen. Pray what Discourse had you with the late Duke of *Monmouth* about the Prisoner at the Bar?

Story. I heard the late Duke of *Monmouth* say at *Shepton-Mallet*, that his great Dependance was upon my Lord *Delamere* and his Friends in *Cheshire*, but he was afraid they had failed him, or betray'd him, or some such Word he used; and he said he could have been supply'd otherwise, but that he had a Dependance upon them.

Mr. At. Gen. Pray what Office had you under the Duke of *Monmouth*?

Story. I was Commissary-General.

Mr. At. Gen. Well, we have done with you.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere*?

L. Delamere. If your Grace please, I have a Question to ask him.

L. H. Steward. Ay, with all my Heart; what Question you will, my Lord.

L. Delamere. My Lord, I desire to know whether he knows one *Saxon*.

L. H. Steward. What *Saxon* does your Lordship mean, one that was in the Army?

L. Delamere. Yes, one *Thomas Saxon*.

Story. Yes, my Lord, I knew him a Prisoner in *Dorchester Prison*, where I was a Prisoner my self.

L. H. Steward. Has your Lordship nothing more to ask him but that?

L. Delamere. No, my Lord.

Mr. At. Gen. Now, my Lord, we call some Persons to prove, that that very Night when *Jones* came to Town, my Lord *Delamere* the Prisoner at the Bar goes out of Town without any Servant,

changes his name, and goes a By-way: Swear *Vaux* and *Edlin*.

[*Vaux* was sworn.]

L. H. Steward. Well, what says this Man?

Mr. At. Gen. Pray give my Lords an account whither you went out of Town with my Lord *Delamere*, and when?

Vaux. My Lord, perhaps I may not remember the very words that I gave my Evidence in before, but I will repeat the Substance.

Mr. At. Gen. It is not so long ago, but you may easily recollect your self; pray what day was it that my Lord *Delamere* sent for you?

Vaux. The 26th Day of *May*, and I went out of Town the 27th.

Mr. At. Gen. You are upon your Oath, and you must remember you are sworn to tell the Truth, the whole Truth, and nothing but the Truth.

Vaux. Sir, I shall take care to do it as far as I can remember.

Mr. At. Gen. Whither was it that he sent for you?

Vaux. To the *Rummer Tavern* in *Queenstreet*, and the next day I went out of Town with him.

Mr. At. Gen. What day of the Month did you go out of Town?

Vaux. It was the 27th day of *May*.

Mr. At. Gen. What time of the night was it you went out of *London*?

Vaux. It was about nine or ten of the clock.

Mr. At. Gen. What name did my Lord *Delamere* then go by?

Vaux. He went by the name of *Brown*.

Mr. At. Gen. My Lord, I would acquaint your Grace, that this is an unwilling Witness, and we are forc'd to pump all out of him by Questions?

Vaux. I do tell you the Truth of all that I know.

Mr. At. Gen. How far did you ride that night?

Vaux. To *Hoddesdon*.

Mr. At. Gen. What time did you get thither?

Vaux. About twelve of the clock.

Mr. At. Gen. Whither did you go then?

Vaux. We went to *Hitchin*, and I return'd back again the next Day.

Mr. At. Gen. Whither was my Lord *Delamere* going then?

Vaux. To see his Son that was sick in the Country.

L. H. Steward. What! he told you so, did he?

Vaux. Yes, my Lord.

Mr. At. Gen. What other Company went with you?

Vaux. Two Gentlemen, the one I knew, the other I did not.

Mr. At. Gen. What was the Name of him you did know?

Vaux. It was *Edlin*.

Mr. At. Gen. Pray was that the direct Road to *Cheshire* that you went?

Vaux. We made it our Way.

Mr. At. Gen. You made it your Way; but I ask you whether it be the best Way?

Vaux. It is the freest Road from *Dust*.

Mr. At. Gen. But I ask you a plain Que-

stion, upon your Oath is it the best way into *Cheshire*?

Vaux. Truly, my Lord, I do not know that.

L. H. Steward. Pray who gave you Directions to call my Lord *Delamere* by the name of *Brown*?

Vaux. Himself, my Lord.

L. H. Steward. Was that the first time my Lord went by that name, as you know of?

Vaux. Yes, my Lord, I never heard that he was called by that name till that time.

L. Delamere. I was call'd by the name of *Brown* at that time, and I will give your Grace an account by and by of the reason of it.

L. H. Steward. Has your Lordship any Question to ask him?

L. Delamere. No, my Lord.

L. H. Steward. Then go on to the next.

Mr. At. Gen. Our next Witness is *Edlin*, pray swear him, [which was done.] Pray will you give my Lords and the Court an account whither you went with my Lord *Delamere* out of Town, and when?

Edlin. The 27th of *May* last, I was at the Custom-House, and there came *Mr. Vaux*, the Gentleman that was here last, who told me he was going out of Town as far as *Hitchin*, and asked me to go along with him; he said he was to go that Evening. I asked him what time he intended to return? he told me, he was resolved to return the next Day. I told him, then I would go along with him, and we appointed the place of meeting to be at the *Bell-Inn* in *Coleman-street*; when I came there, he said there was a Friend that was going along with him, one *Mr. Brown*, we went as far as *Hoddesdon* that night.

Mr. At. Gen. Pray, *Mr. Edlin*, will you look upon that Gentleman that stands at the Bar; is that he that went by the name of *Brown*?

Edlin. Yes, my Lord, that is he.

Mr. At. Gen. Well then, what time did you set out?

Edlin. It was very near nine of the clock.

Mr. At. Gen. Pray when was it that *Vaux* met you at the Custom-House?

Edlin. It was about ten of the clock in the Morning.

L. H. Steward. Pray did you hear or know upon the Road, whither he was going?

Edlin. My Lord, I did never see my Lord *Delamere* before in my life.

L. H. Steward. But did not he tell you as he went along, whither he was going?

Edlin. He said he was going for *Cheshire* to see a sick Child.

Mr. At. Gen. You say, Sir, that you went first for *Hoddesdon*?

Edlin. We did so, my Lord.

Mr. At. Gen. Pray, Sir, how long were you riding that, from the *Bell* in *Coleman-street* to *Hoddesdon*?

Edlin. It was three hours I believe, or about three hours and a half.

Mr. At. Gen. Then you rid hard out of Town.

Edlin. My Lord, it was towards nine of the clock when we got on Horseback, and it was about twelve or a little more, when we came to *Hoddesdon*.

L. H. Steward. Well, *Mr. Attorney*, is that all you have to ask him?

Mr. At. Gen. Yes, my Lord,

L. H.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere*?

L. Delamere. No my Lord.

Mr. At. Gen. Then, my Lord, to confirm this Evidence, and to explain it, I shall call you a couple of Witnesses to prove that this Gentleman went by the name of *Brown* in the Cant of those that were engaged in this Business, that the name was known as his name by all the Party, and called so constantly in their Letters and Messages. Swear *Tracey Paunceford*, and *Thomas Babington*.

[Which was done.

L. H. Steward. Which will you begin with first?

Mr. At. Gen. We begin with *Paunceford*. Pray will you give his Grace and these Lords an account what discourse you heard at *Disney's* concerning the Prisoner at the Bar, and what name was he usually call'd by, in your Meetings.

Paunceford. My Lord, I shall give as just an account as I can; I was acquainted with *Mr. Disney*, and the 14th of *June* I was at his House.

L. H. Steward. What *June* do you mean?

Paunceford. Last *June*, my Lord, and there were three more besides, one *Joshua Lock*, and a Country Gentleman that I have understood since to be one *Hooper*, and there was one *Halsey*; and being there, *Lock* staid for some Declarations.

L. H. Steward. What Declarations were those you speak of?

Paunceford. The Declarations of the late Duke of *Monmouth*.

L. H. Steward. Were they printed at that time?

Paunceford. They were not ready at four of the Clock in the Afternoon; but about nine of the Clock they were finished, and three were printed off, and were delivered to *Joshua Lock*, and when he had received them at that time, there was a discourse of having them sent into *Cheshire* to one *Mr. Brown*. After we had received them, we came over the Water together, and we landed at *Salisbury Stairs*, and *Lock* was very earnest for going out of Town that night, with those three Declarations, which, as he said, were to be carried to one *Mr. Brown*: This was at nine of the Clock, and so we parted.

L. H. Steward. Pray into what Country was he to carry them?

Paunceford. A little way out of Town, he said.

L. H. Steward. Just now you said they were to go to *Cheshire*.

Paunceford. My Lord, the Discourse at *Disney's* House was, that they were to be sent into *Cheshire*; but when we came over the Water, *Lock* said he was to go a little out of Town to one *Mr. Brown*.

Mr. At. Gen. Pray who was that *Mr. Brown* as they meant, as you apprehended?

Paunceford. I understood *Mr. Brown* to be my Lord *Delamere* by some discourse.

L. H. Steward. Whose discourse did you understand it by?

Paunceford. The first time, my Lord, that I heard of my Lord *Delamere's* going by the name of *Brown*, was upon a discourse with one *Edlin*.

L. H. Steward. Prithce tell us what that discourse thou hadst with *Edlin*, was.

Paunceford. *Mr. Edlin*, about the latter end of *May* last, went out of Town, as I heard, and when he came back again, I asked him whither he went? he said he was invited by a Friend to go with him out of Town, and my Lord *Delamere* went along with them, and went by the name of *Brown*.

Mr. At. Gen. What Discourse had you with *Disney*, or any body else about my Lord *Delamere's* going by the Name of *Brown*?

Paunceford. *Mr. Disney* did use to mention my Lord *Delamere* by the name of *Brown*.

Mr. At. Gen. Pray were you at any Meeting with any body, and whom, at any Tavern, and what Tavern, where any such discourse was had?

Paunceford. My Lord, I was at a Meeting at the *Castle-Tavern* with *Mr. Vermuyden*, and my Brother *Babington*, and one *Manning*; but there was no mention then of any *Brown* that I remember, nor of my Lord *Delamere*, but only there was something in relation to the landing of the Duke of *Monmouth*; the Question was asked where he was to land, and *Mr. Vermuyden* made answer he did not know.

L. H. Steward. Will your Lordship please to ask this Witness any Questions, my Lord?

L. Delamere. Pray, Sir, did you ever know any body else that went by the name of *Brown* besides me?

Paunceford. May I answer this Question, my Lord?

L. H. Steward. Answer it! yes you must, you are sworn to tell the Truth, and the whole Truth, Man.

Paunceford. My Lord, there was a discourse of *Mr. Vermuyden's* going by the name of *Brown*.

L. H. Steward. Will you ask him any more Questions, my Lord?

L. Delamere. No, my Lord.

L. H. Steward. Then go on, *Mr. Attorney*.

Mr. At. Gen. Pray, *Mr. Babington*, do you tell my Lords what you know of my Lord *Delamere's* going by the name of *Brown*.

Babington. My Lord, I shall give an account. When I first knew any thing of the Transactions, I was with my Brother *Paunceford*, *Mr. Vermuyden*, and one *Chadwick* that went into the West, and there was a discourse of two Gentlemen that went by names I did not know; *Brown* was one, and I was desirous to know who was meant by it: I was at that time but newly acquainted with the Concerns of these People; and so I found they were fearful to entrust me: but afterwards I was at the *Castle-Tavern* where my Brother, and my Uncle *Vermuyden* was, and in discourse of *Mr. Brown*, some body happened to name my Lord *Delamere's* name, but he was presently taken up; you mean *Mr. Brown*. Ay, saith he, I do.

L. H. Steward. About what time was this, pray you?

Babington. About the middle or latter end of *May* last.

Mr. At. Gen. Were you at *Disney's* when the Declarations were printed there?

Babington. *Mr. Attorney*, I will give an account of that afterwards, but I have something else to say first. After this, I was diligent to know of my Uncle *Vermuyden* and my Brother, who this *Mr. Brown* was: my Uncle told me it was my Lord *Delamere*, and desired me whenever I discoursed of him, to call him by that name, and I have very good reason to believe *Mr. Vermuyden* knew of the matter,

matter, because he was acquainted with a great many of that sort of People, and declared he had collected and knew of Moneys that were gathered for that Purpose; and he had a good account of *Monmouth's* landing, and of the Force he had in the West, and how long it was presumed that he could maintain that Force without Assistance from any body else; and so I presume he was very well acquainted with the whole Transaction. Afterwards I happened to be at *Disney's* over the Water, there was my Brother *Pauncford*, Mr. *Halsey*, and my self.

Mr. *At. Gen.* Tell what passed there at that time.

Babington. *Disney* shew'd me a Declaration that was not perfected quite, but after that we fell into a discourse about Mr. *Brown*, and afterwards my Lord *Delamere's* name was named by some body, that some of the Declarations were to be sent to him; and I remember Mr. *Disney* said he was afraid my Lord *Delamere* was not capable of doing that Service that was expected from him in *Cheeshire* for want of some of those Declarations, which would be mighty useful to him to inform the People, they being *Monmouth's* Declarations.

L. H. Steward. Had *Lock* any of those Declarations away for that Mr. *Brown* you speak of?

Babington. I never knew *Lock*, my Lord.

Mr. *At. Gen.* What number of Declarations did *Disney* print?

Babington. *Disney* told us he hoped in twenty four Hours to have 500 printed, a good number of them were to be sent to my Lord *Delamere*, and several of them were dispersed.

L. H. Steward. Have you any more Questions to ask him, Mr. Attorney?

Mr. *At. Gen.* No, my Lord.

L. H. Steward. Will you ask him any Questions, my Lord *Delamere*?

L. Delamere. No, my Lord.

Mr. *At. Gen.* Then may it please your Grace, the next Witness we shall bring, shall be to prove that my Lord *Delamere* took frequent Journies backward and forward, in a very little compass of time, and the same Witness will likewise tell you what Discourse he had with my Lord during the very time of *Monmouth's* Rebellion, to stir up the People to join with him. Swear *Hope*, [Which was done.] Pray tell my Lords what discourse you had with my Lord *Delamere*, and when?

Hope. Upon the Sunday before the Coronation, my Lord *Delamere* came down Post to my House, towards his own House in *Cheeshire*—

L. H. Steward. Prithce where is thy House? For these noble Lords do not know thee, perhaps so well as I do; therefore tell us where it is.

Hope. My Lord, my House is at the *Three-Tuns* in *Coventry*.

L. H. Steward. Well, go on, tell what thou knowest.

Hope. ——— Some time after that he came down Post again, and a little after he went up again Post, and he told me he went down another way; and after that, the 21st of *June*, he came down Post again, this was upon a Sunday, the Sunday Seven-night after the Duke of *Monmouth* landed.

Mr. *At. Gen.* Had he any Servant with him at that time?

Hope. Yes, he had.

L. H. Steward. Had he a Servant with him every time he came down Post?

Hope. No, he came over, I remember, without any Servant, only with a Post-Boy.

L. H. Steward. Well, and what discourse had you with him at that, or at any other time?

Hope. My Lord, that Sunday the 21st of *June*, my House was very full of People to enquire News; it being in the time of the Rebellion, every one was desirous to know how things went: and there was one *Ingram* in the House, that came to me, and asked what News from *London*, for they say, saith he, that the Duke of *Albemarle* is killed, and his Hearie brought to *Westminster* Abbey. Thereupon I knowing my Lord *Delamere* was come from *London*, I went into the Room to my Lord, and desired to know of his Lordship what was the News in *London*. He told me he was little at Court, and therefore could not tell much News. I then asked him what he heard concerning the Duke of *Albemarle*; said I, they say here he is killed. Saith my Lord, I am sorry for it, if it be so, but I fear it is too true; but if he be killed, it is said he is killed by his own Party. I asked him how? He told me, a Party of the Duke of *Albemarle's* Men were commanded to fire at the Duke of *Monmouth's* Men, but instead of shooting at them, they shot into the Ground, upon which they were very severely handled by their Officers; which so enraged them, that they fired upon them, and killed several of them, and amongst others, the Duke of *Albemarle* was killed; and he told me the Duke of *Monmouth* had several Field-Pieces, and Arms sufficient for near thirty thousand Men.

Mr. *At. Gen.* Pray, did he shew you any Places in any Maps?

Hope. There was in the Room *Adams's* Map of *England*, and my Lord *Delamere* shewed me which way *Monmouth* went, and pointed out such and such Towns that he was possessed of; and withal said, he did fear there would be many bloody Noses before the Business was at an end.

Mr. *At. Gen.* How many times do you think my Lord did ride post to and fro?

Hope. About five times, I believe.

L. H. Steward. Within what space of time?

Hope. From the Sunday Sev'night before the Coronation to the Twenty-first of *June* following.

L. H. Steward. Have you done with him, Mr. Attorney?

Mr. *At. Gen.* Yes, my Lord.

L. Delamere. My Lord High Steward, with your Grace's Leave, may I ask this Witness any Questions?

L. H. Steward. Yes, my Lord, what you please.

L. Delamere. Pray, did I go down post four or five times, do you say in that space?

Hope. My Lord, I say you did go so often backward and forward.

L. Delamere. What time was that, you say, I came without any Servant, only with a Post-boy?

Hope. I cannot tell.

L. H. Steward. Will your Lordship ask him any more Questions?

L. Delamere. No, my Lord.

Mr. At. Gen. Then, my Lord, we desire Thomas Saxon may be sworn: [*Which was done.*] Pray, Mr. Saxon, will you give an account to his Grace and my Lords, what you know of my Lord Delamere, the Prisoner at the Bar, concerning any Insurrection or Rebellion designed by him in *Cheshire*, and when?

Saxon. At the beginning of *June* last, I was sent for to *Mere*, my Lord Delamere's House in *Cheshire*, where when I came I was conveyed into a lower Room, where were my Lord Delamere, Sir Robert Cotton, and Mr. Crew Offley, and they told me I was recommended to them by my Lord Brandon, who had said, I was an honest useful Man, and they hoped I would prove so: For they had sent to the Duke of *Monmouth*, who was in *Holland*, and received an Answer by one Jones, and as soon as they had an answer, my Lord Delamere came away post into the Country under another Name, and by being conveyed through *Moresfields*, came down to raise ten thousand Men for the Duke of *Monmouth* in *Cheshire*, by the first of *June*; but now they had considered of it, and found they could not raise them till *Midsummer*, for they must have time to raise a Sum of Money, forty thousand Pounds in that Country, to maintain the Men. They asked me whether I would not undertake to carry a Message to the Duke of *Monmouth*: I told them I would, and I had there given me eleven Guineas, and five Pounds in Silver for my Journey, and I did hire a Horse afterwards, and did deliver my Message to the Duke of *Monmouth*.

L. H. Steward. When was this, do you say?

Saxon. This was the beginning of *June*.

L. H. Steward. What Day of *June*?

Saxon. I cannot tell to a day, what day in *June* it was, for I did not set it down; but I believe it was the third or fourth of *June*.

L. H. Steward. How came you to be recommended by my Lord Brandon to these Gentlemen? Were you acquainted with my Lord Brandon?

Saxon. I was acquainted with him: The first time I was with him was at *Over*, the next time was at my Lord's own House.

Mr. At. Gen. Ay, pray tell my Lord, how you came acquainted with my Lord Brandon?

Saxon. Upon the Monday in *Easter* Week last, being at *Over*, I was sent for by my Lord Brandon to drink a Glas of Ale, and smoke a Pipe of Tobacco with him; and when I came thither, my Lord told me he had a desire to be acquainted with me; so we drank a considerable while; and he was attended at that time with one *Hollinshead*, and one Mr. Lee. And after we had drank pretty smartly, and after some Discourse, Lee and *Hollinshead* went forth, being called out to speak with some body, about an Estate or a Tenement that they were concerned in. After they were gone out, my Lord Brandon began to discourse about the Elections of Parliament-Men, how unfairly they had been carried: he said, he stood both for the Town and County of *Lancaster*, but had lost it by an unfair Election; for the other Party had made seven score Freemen in one Night in the Town, and by that means had carried it against him; which had exasperated the Country so much, that they were resolved to

make it an occasion of raising up the Country in Arms, under pretence of maintaining the Christian *English* Liberties; and that they had a design to send for the Duke of *Monmouth*, and make him King, and that they must make use of such Men as me, that were Men of Interest in the Country, to stir up the People to rise in Arms: and if I would come to *Gosworth*, his House, upon the Monday after, he would tell me more of that Business. I went according to the time, and there he told me a great deal to the same purpose, and withal he shewed me a Letter that he had written to the Duke of *Monmouth*; which Letter I afterwards saw at *Bridgwater*.

L. H. Steward. Have you any more Questions to ask him?

Mr. At. Gen. No, my Lord; but if my Lord Delamere please to ask him any Questions he may.

L. Delamere. I humbly pray he may repeat the Evidence he hath given against me, for I have not heard what he has said.

L. H. Steward. Turn toward my Lord Delamere, and repeat the Evidence that you gave against him, so as he may hear you.

[*Which he did to the same Effect as before.*]

L. H. Steward. Pray, from whom did you receive that Money?

Saxon. I received it from my Lord Delamere.

L. H. Steward. My Lord Delamere, will you ask him any Questions?

L. Delamere. Yes, may it please your Grace.

L. H. Steward. Then the Method you are to take, is this, you must propound your Questions to me, and then I will propound them to the Witness?

L. Delamere. I desire to know, may it please your Grace, when was the first time that he declared this that he has now sworn against me?

L. H. Steward. My Lord desires to know of you, when it was that you first made known this against him?

L. Delamere. And to whom, my Lord?

Saxon. I suppose I told Mr. Storey of it first, my Lord, at *Dorchester* after I was taken Prisoner for the Rebellion.

L. Delamere. When did he tell it Storey, my Lord?

Saxon. I think it was a Fortnight after my acquaintance with him.

L. H. Steward. Were you then in the same Prison with Storey?

Saxon. Yes, I lay with him in the same Bed.

L. Delamere. If your Grace please, I would ask him another Question.

L. H. Steward. Ay, what you will.

L. Delamere. I desire to know, when was the first time that he made Oath of this, and upon what occasion it was?

L. H. Steward. What say you to that?

Saxon. The first time I made Oath of it, was when I lay sick.

L. Delamere. Will your Grace please to ask him where that was, and when?

Saxon. It was before his Majesty's Counsellors, that were sent to take my Examination in *Newgate*.

L. H. Steward. Prithee, I do not know when thou camest to *Newgate*, it may be thou hast been there oftner than once.

Saxon.

Saxon. I gave my first Information immediately after I was brought to Town, when I was removed from *Dorchester Goal* to *Newgate*.

L. Delamere. My Lord, I desire your Grace would ask him what time he came up?

Saxon. The beginning of the last Term.

L. Delamere. Then I desire to know, my Lord, whether he did remain a Prisoner in the Country all the other Time?

Saxon. Yes, I did so, from the Tenth of *July*, till the Time that I was brought up to *Newgate*.

L. Delamere. My Lord, I desire to know of him, whether I had ever employed him about any of my Concerns, that should give me an occasion of trusting him with such Secrets?

L. H. Steward. What Business of Importance had my Lord *Delamere* ever employ'd you about before this time?

Saxon. I was never employ'd about any Concerns of my Lord *Delamere's* before that time, neither was I ever in his Company, but only then, and then as recommended by him to him; for they said, they must make use of such as me to make their Designs known to the Country, for the accomplishing what they did intend.

L. Delamere. Recommended by him, who does he mean?

Saxon. By my Lord *Brandon*.

L. Delamere. If your Grace please, I desire to know what the Business was that he was to do?

Saxon. I was to inform the Country concerning the time of the Rising, my Acquaintance abounded that way, and by their Discourse they had got Men in every Place to acquaint the Country when they should rise.

L. H. Steward. Were you acquainted with any great Number?

Saxon. My Lord, I was a publick Tradesman in *Middlewich*, and much acquainted with the ordinary sort of People.

L. Delamere. My Lord, he says he was sent for to my House, I desire to know who was the Messenger that was sent for him?

Saxon. My Lord, I did ask him his Name, but he would not tell it me; he told me he was but a Tenant to my Lord *Delamere*, and had been employed in such Businesses for my Lord *Delamere's* Father, *Sir George Booth*; he was a lame Man in one Arm, for he had his Hand shot away at the Siege of *Nantwich*.

L. Delamere. It was *Tom Long* the Carrier, I suppose, or some such Fellow or other, that I sent for him; my Lord, I desire to know what time of Day or Night was it when he came to my House?

Saxon. It was just when it began to be dark, the Messenger came to me in the Afternoon to fetch me thither, and I sent for a Man's Horse that lived near me, and when it was brought me, he asked me what made me go so late; I told him I had occasion to go late, and I should return late, and the Man staid at my House for his Horse till it was late: but I not coming Home, he left order for his Horse to be brought to him.

L. Delamere. Next, my Lord, I desire to know when he came to my House, whether he did a-

light from his Horse at the Stables that belong to the House or no?

Saxon. I did alight just at the Old-Buildings, and the Man's Horse that came with me and mine were taken into the Stables.

L. Delamere. Pray, my Lord, ask him who took his Horse from him?

Saxon. The Man that came with me, and he went into the House and brought out a Candle.

L. Delamere. My Lord, I would ask him whether the Door he was let in at, was that which was nearest the Stable, or which Door?

L. H. Steward. Do you know what Door of the House you were let in at?

L. Delamere. My Lord, I ask him whether it were the next Door to the Stable?

Saxon. My Lord, I cannot very well give an account of that, for I never was at the House before.

L. Delamere. Pray, my Lord, let him recollect himself, whether it were the Door next the Stable or not.

L. H. Steward. Ay, with all my Heart, if he can.

Saxon. I did not see any other Door but that I came in at, and therefore I cannot tell which Door it was.

L. Delamere. These Questions, my Lord, I take to be proper for me to ask, and I believe I shall make it appear to your Grace to be so by and by.

L. H. Steward. Good my Lord, take your full Liberty, and ask what Questions you please; for I know my Lords here will be very well pleased that you have all the Scope allowed you that can be.

L. Delamere. I humbly thank your Grace; I desire to know of him, who let him into the House?

Saxon. The Man that came with me went with me just to the Door, and let me in within the Door, and I saw no other Man but that Man, till I came into the Room where my Lord and those two Gentlemen were.

L. Delamere. Was there no Body else but we there?

Saxon. No, you were so wise, you would let no Body be by.

L. Delamere. My Lord, I shall trouble this Witness no farther at present.

L. H. Steward. Then Mr. *Attorney-General*, will you proceed?

Mr. *At. Gen.* My Lord, we shall give no more Evidence at present, but shall rest here till we see what Defence this Noble Lord will make for himself.

L. H. Steward. Then, my Lord *Delamere*, your time is now come to make your Defence, you have heard what has been evidenced against you, and my Lords now expect to hear what you have to say for your self.

L. Delamere. May it please your Grace, a great Part of the Day is spent, and I would beg the Favour of your Grace, that I may have the Favour till to-morrow Morning to review the Notes I have taken, and then I shall make my Defence.

L. H. Steward. My Lord *Delamere*, I had this very thing in my Thoughts before I came hither

hither this Day, because I did foresee that this was likely to be a long Cause, and the proceedings in it would take up much time: I have a little doubt, I must needs say, in my own Mind, whether it may be done by Law; I know very well, if this were a Trial in full Parliament, there have been Precedents to warrant the Adjournment till another Day, though it be in the midst of a Trial; and in the middle of the Evidence: But this Court I take to be of the same nature, though of a degree higher, with the other ordinary Courts of Judicature; and whether it be not obliged and tied up to the same Method of Proceedings with those other Courts, where all Capital Offences are tried, is a thing I am in some doubt about: In those Courts it has not been usual to adjourn the Court after Evidence given; nay, it has been sometimes a Question, whether the Judges in those Courts, after the Jury are gone from the Bar, to consider of their Verdict, could adjourn themselves: I say, the Judges have sometimes made a Doubt of it, though I know the Point is now settled, and the Practice is, that they may, and do. But this is most certain, after the Evidence given, the Jury cannot be adjourned, but must proceed in their Enquiry, and be kept together till they are agreed of their Verdict; this has caused some Hesitancy in me, what the Law may be in this Case; therefore I think it may be proper to consult with my Lords the Judges; for I desire the thing may be considered and settled.

L. Delamere. My Lord, I humbly beg this Favour of your Grace, but to adjourn till to-morrow.

L. H. Steward. With all my heart, my Lord, if it may be done by Law.

L. Delamere. I hope it may, my Lord, and I beg that Favour of your Grace.

L. H. Steward. My Lord, I should be very glad to comply with your Lordship's Desires, but truly I have considered it, and do doubt whether I can by Law do it: In full Parliament it is clear it may be done, but upon this Commission, after my Lords the Peers are once charged, and the Evidence partly given, whether I can then adjourn them till another Day, is with me a Doubt. My Lords, if your Lordships please, before such time as my Lord, the Prisoner at the Bar, enters upon his Defence, I will with your leave propound the Question to my Lords the Judges, and hear their Opinion what the Law is.

L. Delamere. My Lord, I shall hardly be able to finish all I have to say in any convenient time this Day.

L. H. Steward. But, my Lord, if an Adjournment cannot be by Law, I cannot help it.

L. Delamere. There has a great deal been said, and it will require a great deal of time to give it an Answer.

L. H. Steward. Ay, but if it cannot be done as you would have it, we must be contented to stay the longer together; for I would not abridge you of your Defence: therefore, my Lords the Judges, if you will please to go together and consider of it, and report your Opinions, what the Law is in this Case, we will stay till you come again.

Then the Judges withdrew into the Exchequer Chamber.

E. of Nottingham. My Lord High Steward, I do humbly conceive this is a Matter that concerns the Privilege of the Peers; and because it is a matter that doth so much concern the whole Peerage, I think my Lords here ought in some measure to concern themselves about it: Therefore, my Lord, I have a short Motion to make to your Grace, That, considering the Consequence that the Precedent of this Case may draw with it, since my Lords the Judges are gone together to consult of this Point, of which, I may say, they are not altogether the sole Judges; we may also withdraw to consider of this Matter with them, because it may not be proper for my Lords in publick here, to offer what they may have to say, to incline my Lords the Judges in their Judgments one way or other.

L. Falconberg. My Lord, I humbly offer this to your Grace, upon the Motion that this Noble Lord has made, That, with Submission, I take this to be a thing that concerns the Privilege of Peerage only, and I conceive the Judges are not concerned to make any Determination of that Matter. I think therefore, my Lords here ought to retire with them to consider of it.

L. H. Steward. My Lords, I think, with Submission to your Lordships, that this is a Question naturally proper for my Lords the Judges to give their Opinions in, Whether this Court, as a Court of Judicature for the Trial of this Noble Lord, may, in the midst of the Trial, adjourn till another Day: And the Privilege of the Peerage cannot at all come in question here, as I conceive.

L. Falconberg. My Lord, that we conceive is a Point of Privilege, which certainly the inferior Courts can have no power to determine.

L. H. Steward. If your Lordships have a mind to withdraw, you may.

Lords. Ay, withdraw, withdraw.

Then the Peers withdrew, and after half an hour the Judges returned and took their Places as before, and after about an hour the Peers returned to their former Places.

L. H. Steward. My Lords the Judges, have you considered the Matter that has been proposed to you, and what is your Opinion?

L. C. J. Herbert. May it please your Grace, the Judges, in obedience to your Grace's Commands, have withdrawn, and considered of what your Grace proposed to them, and with humble Submission they take the Question to be this.

Not, Whether your Grace may adjourn your Commission from one day to another, for that is clear you may, and has been practised, for that is the Case of the Earl of *Somerset* and his Wife:

But the Question is, Whether after the Prisoner is upon his Trial, and the Evidence for the King is given, the Lords being, as we may term

term it, charged with the Prisoner, the Peers Triers may separate for a time, which is the Consequent of an Adjournment to another Day.

And, my Lord, the Judges presume to acquaint your Grace, that this is a matter wholly new to them, and that they know not, upon recollection of all that they can remember to have read, that either this matter was done, or questioned, whether it might or might not be done in any Case.

My Lord, if the matter had been formerly done, or been brought into question in any Case, where it had received a determination, and reported in any of our Books of Law, then it would have been our duty to contribute all our Reading and Experience for the Satisfaction of this great Court: But being, as it is, a new Question, and a Question that not only concerns the particular Case of this Noble Lord at the Bar, but is to be a Precedent in all Cases of the like nature for the future: All we can do is, to acquaint your Grace and my Noble Lords, what the Law is in the inferiour Courts in Cases of the like nature, and the Reason of the Law in those Points, and then leave the Jurisdiction of this Court to its proper Judgment.

My Lord, in the first place, where the Trial is by a Jury, there the Law is clear, the Jury once charged can never be discharged till they have given their Verdict, this is clear; and the reason of that is, for fear of Corruption, and tampering with the Jury. An Officer is sworn to keep the Jury together without permitting them to separate, or any one to converse with them; for no Man knows what may happen, for (though the Law requires honest Men should be returned upon Juries, and without a known Objection they are presumed to be *probi & legales homines*, yet) they are weak Men, and perhaps may be wrought upon by undue Applications.

This, my Lord, it is said, fails in this Case, because the Lords that are to try a Peer, are Persons of that great Integrity and Honour, that there is not the least Presumption of their being to be prevail'd upon in any such way; and for that reason, because of the Confidence which the Law reposes (and justly) in Persons of their Quality, they are not sworn as common ordinary Jurors are, but are charged and deliver their Verdict upon Honour.

My Lord, in the Case of a Trial of a Peer in Parliament, as your Grace was pleased to observe, and as is very well known by late Experience, there the matter has been adjourned till another Day, and for divers Days; the Evidence being in several Parcels, and there the danger is as great (if any were to be supposed) of Tampering: But whether the Lords being Judges in that Case, and in this Case only in the nature of a Jury, makes the Difference, though in both Cases it is but like a Verdict, for they give their Opinions *seriatim*, whether the Peer tried be Guilty or not Guilty, that they submit to your Grace's Consideration,

Upon the whole matter, my Lord, whether their being Judges in the one, and not in the other Instance, alters the Case, or whether the Reason of Law in inferiour Courts, why the Jury are not permitted to separate till they have dis-

charged themselves by their Verdict, may have any influence upon this Case, where that Reason seems to fail, the Prisoner being to be tried by his Peers, that are Men of unquestionable unsuspected Integrity and Honour, we can't presume so far as to make any Determination in a Point that is both new to us, and of great consequence in it self; but think it the properest way for us, having laid matters as we conceive them before your Grace and my Lords, to submit the Jurisdiction of your own Court to your own Determination.

L. H. Steward. My Lords, I confess I would always be very tender of the Privilege of the Peers, wherever I find them concerned; but truly I apprehend, according to the best of my Understanding, that this Court is held before me. It is my Warrant that convenes the Prisoner to this Bar. It is my Summons that brings the Peers together to try him, and so I take my self to be Judge of the Court.

My Lords, 'tis true, may withdraw, and they may call the Judges to them to assist them, which shews they have an extraordinary Privilege in some Cases more before the High-Steward, than Juries have in inferior Courts in Cases of common Persons: For, if it be in a common Case, no Jury can call either Counsel or Judges to assist them, in the absence of the Prisoner; but if they will have advice, it must be asked in open Court, in the presence of the Party accused.

But now, my Lords, if you have a mind to consult with me in private, as I now sit by virtue of this Commission, which is his Majesty's Warrant for me to hold this Court, I could not withdraw with you; but you must ask all your Questions of me, in the presence of the Prisoner, in open Court: Whereas if it were in full Parliament, as were the Cases of my Lord *Stafford*, and my Lord of *Pembroke*, then he that were the High Steward might go along with you when you withdrew, and consult with you, and give his Opinion, which I cannot do in this Case; for I am bound to sit in Court, while you withdraw to consider of the Evidence, and am not to hear any thing said to me, but what is said in open Court in the presence of the Prisoner, except it be when you deliver your Verdict.

This I confess, my Lords, has a great weight with me, and I know your Lordships will be very tender of proceeding in such a Case any way but according to Law: For though you are Judges of your own Privileges, yet, with Submission, you are not Judges of the Law of this Court; for that I take to be my Province.

Why then, suppose, my Lords, I should take upon me to do as my Lord *Delamere* desires, and adjourn the Court; and suppose the Law should fall out to be that indeed I ought not so to have done; would it be any advantage to this Noble Peer, if he should be acquitted by your Lordships after such an Adjournment? Might not the evil Consequence of that be, that he might be indicted for the same Crime, and tried again? For all the Proceedings after that would be void, and liable to be reversed.

And if on the other side your Lordships should think fit, upon the Evidence you have now heard, and what he shall say for himself, to convict him, after I have adjourned as is desired, and I pass Judgment upon him, as it will be a Duty incumbent upon me to pass Sentence on him, if you convict him; what will become of the Case then? and how shall I be able to answer it, as having done my Duty, when I pronounce a Judgment notoriously Erroneous and Illegal? for so it will be, if the Law prove to be against my adjourning. This, my Lords, is a matter of great Moment, and worth the Consideration.

But in the other Case of a Trial in full Parliament, the Lord that sits where I do, is only as the Chairman of the Court rather than Judge, he gives a Vote in such Proceedings; and therefore my Lord the Prisoner did very well at the beginning to ask the Question, whether I had any Vote in his Trial, as a Peer, jointly with your Lordships. If I sat in full Parliament, I should without all question give my Vote as well as any other Peer; but sitting here by immediate Commission from the King *pro hac vice*, High-Steward; I acquaint you as I did him, I have no authority to give any Vote: my Business is to see the Law observed and fulfilled as Judge.

Certainly, my Lords, your Lordships and I, and all Mankind ought to be tender of committing any Errors in Cases of Life and Death, and I would be loth, I will assure you, to be recorded for giving an Erroneous Judgment in a Case of Blood, and as the first Man that should bring in an illegal Precedent, the Consequence of which may extend I know not how far.

Mr. *At. Gen.* Will your Grace give Direction for my Lord to proceed?

L. *H. Steward.* Yes; he must proceed I think.

L. *Delamere.* May it please your Grace, and you my Lords, it is an Offence of a very high nature, for which I am this day to answer before your Lordships; yet I thank God I am not afraid to speak in this place, because I am not only certain and well assured of my own Innocency, no such Thought having as yet entred into my Heart; but I am also well assured of your Lordships Wisdom and Justice, which cannot be imposed upon or surprized by Insinuations and florid Harangues, nor governed by any thing but the Justice of the Cause.

My Lords, I can with a great deal of Comfort and Satisfaction say, that these Crimes wherewith I am charged are not only Strangers to my Thoughts, but also to what has been my constant Principle and Practice; for I think that in matters relating to the Church and the things enjoined therein, few have conformed more in Practice than I have done, and yet do I confess, and am not ashamed to say it, that I have always had a Tenderness for all those who could not keep pace with me, and differed from me, though never so far; nay, though of a different Religion: For I always thought Religion lay more in Charity than Persecution.

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While I had the Honour to be a Magistrate in my Country, I did constantly, duly, and impartially, execute the Laws, and in every publick Trust I was very faithful in the Discharge of it; for I never voted nor spoke in any manner but as my Conscience and Judgment did dictate to me. I have always made the Laws the measure of my Loyalty, and have still been as Zealous and Careful to give the King his Prerogative, as to preserve to the People their Properties, and have endeavoured as far as in me lay to live peaceably with all Men.

This, my Lords, was not only the Dictates of my own Inclinations, but it was the Principle of my Father, and the Lesson that he taught me: I say my Father, who was so greatly instrumental in snatching this Nation out of its Confusion, and restoring it to its ancient Government, by settling his late Majesty upon his Throne, and consequently was the means of his present Majesty, that now is, his coming so peaceably to the Crown. And this I may the more boldly speak, because I speak it by good Authority; because in the Patent that created my Father a Peer, his late Majesty is pleased to say, his Rising was mainly instrumental in his Restauration. I beg the Favour of your Grace and my Lords, that I may read you that Clause in the Preamble of the Patent, which I have here ready to produce.

Which was read, and then my Lord proceeded as follows, viz.

My Lords, I suppose most of your Lordships did know him, and whosoever did so, I dare say, did believe him to be a good Man: For my part I did not know a better Copy to write after than his Example, which I endeavoured always to imitate, and that I hope will go very far to vindicate me from the Imputation of being inclined to any such Crime as I stand charged with.

My Lords, it is now late and therefore I shall cut off a great deal of what I had intended to say to your Lordships, that I may not take up too much of your time, and come immediately to my Defence, as to what I stand accused of.

And first, my Lords, I shall observe that here have been a great many Witnesses produced, and a great deal of Swearing, but little or nothing of Legal Evidence to affect me; for there is but one Man that saith any thing home and positively against me (and whom I shall answer by and by) all the rest are but Hearsays, and such remote Circumstances, as may be tacked to any Evidence against any other Person, but are urged against me for want of greater matters to charge me with; and therefore I hope the producing and pressing of these things against me, is rather a strong Argument that I am innocent, and that there have been mischievous and ill Designs of some against me, than that I am Guilty; for if they had had other and greater matters, your Lordships would have been sure to have heard of them.

With your Lordships leave, I cannot but observe to your Lordships an excellent Saying of that great Man my Lord of *Nottingham*, (whose

H h .

Name

Name will ever be remembred with Honour in our *English Nation*,) when he sat in the same place that your Grace does now, at the Trial of my Lord *Cornwallis*, which I will read to your Lordships. Speaking to the Peers, he has this passage :

I know your Lordships will weigh the Fact, with all its Circumstances, from which 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 suffer Rhetorick to 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 refuses to allow the Prisoner at the Bar Counsel in Matter of Fact, when 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 Counsel in the world should not be able to answer it.

My Lords, I think the Evidence that has been given against me this Day does not come up to this. And I hope your Lordships will regard this Saying of my Lord *Nottingham's*, as more worthy of your consideration, than the fine Flourishings and Insinuations of the King's Counsel, which tend (if it be not so designed) rather to misguide your Lordships, than to lead you to find out the Truth.

My Lords, I shall now tell you the method that I shall proceed in, in making my Defence ; and I begin with *Saxon*, for he I perceive is the great *Goliath*, whose Evidence is to maintain this Accusation, and if I cut him down, I suppose I shall be thought to have done my own business : therefore to that I shall apply my self first, and do it if I can ; and I will in the first place examine several Persons that are his Neighbours and have conversed with him, what they have heard and know of him : and first I desire *Richard Hall* may be called.

L. H. Steward. My Lord *Delamere*, if you begin that way to call Witnesses against *Saxon*, it is fit he should be here to know what is said against him.

L. Delamere. Ay, with all my heart, my Lord.

L. H. Steward. Then call *Saxon* again.

[Then *Saxon* and *Hall* came both in.]

L. Delamere. Pray Mr. *Hall* tell my Lords here what you know of *Thomas Saxon*.

L. H. Steward. What is it you ask of this Witness.

L. Delamere. My Lord I desire him to give an account what he knows of a Letter, that was forged by *Saxon*, in the name of one *Hildage*.

Hall. About the nineteenth of *December* in the Year 1683, I received a Letter by *Thomas Saxon* from *Richard Hildage*, wherein he desired me to send him the sum of six pounds odd money which I owed him : I received the Letter and paid the money, and to the best of my knowledge some little time after I met with the said *Hildage* at *Newcastle*, who asked me to pay him the money I owed him. I replied I had paid the money, according to his Note, but he said he never gave any such Note, and threatned to sue me ; thereupon I sent one *Lord* to *Hildage*, that is here now in the

Court, and desired *Hildage's* forbearance for a while, till I could get the money from *Saxon* back again, and afterwards he sent again for his money, and I sent to *Saxon* for it, but still the money did not come.

L. H. Steward. Did you ever speak with *Saxon* himself ?

Hall. No, but with his Wife, who came to me about it ; but he acknowledged, he wrote the Letter before *John Lord*.

Saxon. Did not my Wife tell you that *Richard Hildage* lent me the money ?

L. H. Steward. Nay, you must not dialogue with one another, but if you have any Questions, you must propound them to the Court : My Lord *Delamere*, have you any Questions to ask him ?

L. Delamere. No, my Lord.

L. H. Steward. Then what is it you would have him asked, *Saxon* ?

Saxon. I desire you would please to ask him whether or no he did not lend me the money ?

L. H. Steward. He ! who do you mean ?

Saxon. *Richard Hildage* did.

L. H. Steward. What say you, did *Richard Hildage* lend him the money ?

Hall. No, my Lord.

L. H. Steward. Look you, my Lord *Delamere*, the Objection carries a great deal of weight in it, to prove him a very ill man, if it be fully made out.

L. Delamere. My Lord, if your Grace please, I can prove that he owned the writing of the Letter to another man.

L. H. Steward. My Lord, he does own here, that he wrote the Letter, and that he wrote it in *Hildage's* name, but he saith, the Letter, he so wrote in *Hildage's* name, was by *Hildage's* direction ; and if so, that takes off the Objection made against him.

L. Delamere. I must submit that to your Grace, whether what he says in that matter be Evidence.

L. H. Steward. What *Hildage* did, or did not, is the main turn of the Question in this Case ; for he might lend him the Money, and yet afterwards might say, when he thought he might lose it, that he did not send any such Letter, and all this be true, and *Saxon* in no fault : I must confess, if *Hildage* were here himself, and should deny the lending of the Money, or the giving him Directions to receive it, you would have fixed a shrewd Objection upon him ; but otherwise Hear-says and Discourses at second hand are not to take off the Credit of any Man's Testimony.

L. Delamere. But *Hall* says *Hildage* denied the receipt of the Money, or any Order for receiving of it.

L. H. Steward. That signifies nothing, being but by second hand.

Saxon. If it please your Grace, here is my Brother in Court will give you an account of it.

L. H. Steward. Well, well, hold your tongue ; will your Lordship please to go on ?

L. Delamere. The next Witness, my Lord, that I shall call, shall be *Francis Ling*, [who came in.]

L. H. Steward. What do you ask this Witness?

L. Delamere. Mr. *Ling*, pray will you tell his Grace, and my Lords, what you know concerning *Saxon's* receiving any Money in in the Name of Mrs. *Wilbrabam*, without her Order.

Ling. He called at this same *Hildage's* at *Newcastle*, and received twenty five Shillings, and said it was for Mrs. *Wilbrabam*, in her name; but she never received a penny of the Money, nor knew of his having received it, till he came to pay another Quarter.

L. H. Steward. Where is that Mrs. *Wilbrabam*, is she here?

Ling. No, my Lord, she is a Neighbour of ours, an Ancient Woman, fourscore years of Age, and cannot come so far.

L. H. Steward. This is the same Case with the other, you can never think to take off the Credibility of Witnesses by such Testimony; for this is only a Tale out of an Old Woman's Mouth: What if that Old Woman told him a false Story?

Ling. She said ———

L. H. Steward. I care not what she said, this is no Evidence at all.

L. Delamere. Then pray call *Richard Shaw*, [who came in.]

L. H. Steward. Well, what says this Witness?

L. Delamere. *Shaw*, can you tell any thing of *Thomas Saxon's* writing a Letter and sending it in the name of one *Pangston* a Bayliff?

Shaw. He writ a Letter, as I understand, concerning some Money that I owed him; for I owed him a little Money, and being I did not pay it, he does forge a Letter and puts *William Pangston's* name to it, so I got up the other Morning ———

L. H. Steward. Where is *Pangston*? Is he here?

Shaw. No, my Lord, he is not, but he told me he did not write the Letter.

L. H. Steward. Why, this is just the same again, and we all know how easy a thing it is to hear a Bayliff tell a Lye.

Shaw. I cannot tell, but I called ———

L. H. Steward. All that is nothing. It is a difficult matter to hear such Fellows speak Truth, than any thing else, I am sure.

L. Delamere. The next Witness that I shall call is *Peter Hough*.

[Who appeared.]

L. H. Steward. There is your Witness. What say you to him?

L. Delamere. Pray acquaint his Grace, and my Lords, what you know of *Saxon's* cheating you in the making of a Bond.

Hough. My Lord, he had six Pound ten Shillings in Money, and ten Shillings in Work done, for which he was to give me a Bond, and hereof he made the Bond himself. I thought it had been right, and took it; but about the time when the Money was become due, I looked upon it, and it proved to be but for 6*l.*

L. H. Steward. What should it have been for?

Hough. It should have been for six Pounds ten Shillings in Money, and ten Shillings in Work.

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L. H. Steward. Did not he give thee a Bond for all thy Money?

Hough. It should have been so, but I never had it.

L. H. Steward. Had you never the Money?

Hough. No, I never had the Money?

L. H. Steward. What did he say the Bond should be made for?

Hough. For seven Pounds.

L. H. Steward. What say you to it, *Saxon*?

Saxon. My Lord, I had five Pounds ten Shillings of him, and ten Shillings in Work, for which I gave him Bond; there were the Witnesses Names at it, the Bond was fairly read, and I sealed it, and he took it with him.

L. H. Steward. Ay, but he says it was to be for seven Pounds.

Saxon. I never had any more of him than six Pounds, and for that I gave him Bond.

L. H. Steward. Was the Bond read to you?

Hough. He read it himself, and he made it himself.

L. H. Steward. How did he read it? What did you apprehend by his reading it was made for?

Hough. I took it as he read it to be made for seven Pounds.

Saxon. He may say what he pleases, but I had no more of him but six Pounds; I was to give Bond for no more.

L. H. Steward. Now the Witnesses to this Bond would be very proper to be produced here: For, if he did make the Bond but for six Pounds, when the Debt that was to be secured was seven Pounds, that is a sign that he had an intention to cheat him of the Twenty Shillings.

L. Delamere. That shews what a kind of Man he is.

L. H. Steward. But this is but Witness against Witness, for he says he owed no more, and was to make the Bond for no more.

Hough. It was as I tell you, I assure you, my Lord.

Saxon. I had no more of him than six Pound.

Hough. Did not I ask you afterwards one Question more, and told you it was a Cheat, and you said it should be mended?

L. H. Steward. Well, my Lords have heard it, they will consider what weight to lay upon it.

L. Delamere. Pray call *Edward Wilkinfon*.

[Who appeared.]

L. H. Steward. What do you ask him?

L. Delamere. *Wilkinfon*, pray tell my Lords, how *Saxon* dealt with you about your Horse?

Wilkinfon. My Lord, he hired a Horse of me for three Days, and was to give me twelve-pence a Day, but he never came again, nor had I any Satisfaction for my Horse, but I lost my Horse by the bargain, and my Money too.

L. H. Steward. How long ago was it since he hired your Horse?

Wilkinfon. My Lord, it was the twenty third of *June*, to the best of my remembrance.

L. H. Steward. Did he not agree with you for 12*d.* a day as long as he used your Horse?

Wilkinfon. I expected to have my Horse in three days time.

L. H. Steward. But mind my Question, did you agree that he should have him but three Days? Or, was he to give you 12 *d.* a Day for so long as he kept him out?

Wilkinson. I was to have 12 *d.* a Day for him.

L. H. Steward. What! as long as he used him, or only for three Days?

Wilkinson. He did agree with me to bring him again in three Days.

L. H. Steward. I perceive by the time, he rid into the Rebellion with this Horse, and he was a very Knave for so doing, upon my Conscience.

L. Delamere. Call *William Wright*, [*who came in.*] Pray will you give my Lords an account what Reputation this *Thomas Saxon* is of in his Country.

Wright. My Lord, this *Thomas Saxon* came to live at *Sambige*, and I had some dealings with him as well as other Men, and I never found him to perfect his Word in any thing.

L. H. Steward. What didst thou never find him?

Wright. To perfect his Word in any thing, my Lord.

L. H. Steward. That is, make good his word, I suppose; but that is your *Cheshire* Phrase.

Wright. Whereupon I met with him one Evening after Evening-Prayer, and said to him, *Thomas Saxon*, if I cared no more for keeping my Word than thou do'st, it were no matter if I were hang'd; for to be sure if thy Mouth open, thy Tongue lyes: and he turn'd away from me, and would not answer me a word; and since that he owed me some Money, and when I asked him for it, he told me if I did trouble him for the Money, it should be the worse for me; whercof all the Town knows as well as I, that I cannot set him forth in words as bad as he is.

L. H. Steward. Can you instance in particular, Friend, of any Fraud, Cheat, or Cozenage, that he has been guilty of? for it is not what the Town says, but what can be proved, that we must take for Evidence; the Town that thou livest in may reckon thee but an idle Fellow, and yet thou may'st be a very honest Man for all that.

Wright. I trust, my Lord, I am so, and shall always prove so.

L. H. Steward. Well, what do'st thou know ill of him?

Wright. He did not keep his Word with me.

L. H. Steward. Wherein dost thou mean?

Wright. As to Money he owed me.

L. H. Steward. How much Money did he owe thee?

Wright. He owed me a deal.

L. H. Steward. How much do'st thou call a deal?

Wright. I cannot tell how much exactly.

L. H. Steward. Does he owe thee any thing now?

Wright. Yes, but I cannot justly tell how much.

L. H. Steward. My Lord *Delamere*, I would be very unwilling to interrupt the method of your Defence, or abridge you in your Evidence; but really this Objection that you endeavour to

prove by this Witness, is not at all, as I conceive, for your Lordship's Service: For it is a very hard case, if any one that owes Money and does not pay it, shall for that very reason lose the credit of his Testimony; this rather gives a countenance to what he says, that you know no other Objections but such trivial ones to make against him.

L. Delamere. Then, if your Grace please, I will make short work of it, and spare your time; I shall pass over this part of my Evidence, though I have more Witnesses to this Point, and come to other matters, to Matter of Fact, to encounter this positive Proof that has been given against me. Your Grace and my Lords do observe, that this Man *Saxon* has testified that about the third or fourth of *June* last (for there he fixed the time) this Man as an extraordinary Person that was fit to be trusted in an Affair of this nature, being confided in, and recommended by my Lord *Brandon*, was sent for by me to *Mere*, where he found me and Sir *Robert Cotton* and Mr. *Offley*, who did employ him to transact the matter of stirring up the Country in order to a rising and joining with the late Duke of *Monmouth*: Now I will first prove to your Lordship in general, that Sir *Robert Cotton* was not in *Cheshire* for many Weeks, nay, several Months, both before and after the time he speaks of: And next in particular I shall prove as to the time that he has pitched upon, by divers Persons that saw Sir *Robert Cotton* here then in *London*, and give you particular Reasons for it. First to prove, that he was here in Town so long in general, I shall produce his Servants that saw him every day: Call — *Billing*, [*who appear'd.*] Pray Sir, will you give an account what time Sir *Robert Cotton* came to *London*, when he went out of *London*, and whether you were frequently in his Company and saw him here?

Billing. My Lord, to the best of my remembrance, Sir *Robert Cotton* came to Town the 10th of *April* last, and I was with him here in Town, at his House at the Horse-Ferry till the latter end of *July*, and saw him constantly more than once or twice every day for that time: I used to come into his Chamber most Mornings before he was up; I used to buy in his Provision for his House, I saw him a-bed, or heard he was in Bed every Night.

L. H. Steward. Did you belong to him?

Billing. I am his Servant.

L. Delamere. He lived with him in the House all the while, he says?

Billing. Then about the latter end of *July* he went out of Town for three Days to *Epsom*, and then he came to Town again, and continued here till the time he was committed to the Tower, and never was in *Cheshire* since the 6th of *April* last.

L. H. Steward. How came you to remember so punctually when he came to Town, and that he staid here all the while?

Billing. I know it by my Accounts for the Journey up, and by the Tradesmens Bills for the Provision of the House ever since.

L. H. Steward. In what Capacity did you serve Sir *Robert Cotton*?

Billing. I bought in all the Provision for his House, and paid the Tradesmens Bills.

L. H. Steward. Have you any Papers in your Pocket that will point to any particular Time?

Billing. I have not the Tradesmens Bills here, my Lord, nor my own Accounts; but I have look'd upon them, and by that I am sure what I have testified is true.

L. H. Steward. Who do you call next, my Lord?

L. Delamere. Call *Margaret Davis*, [*Who appeared.*] Pray will you give an account to my Lord, what time *Sir Robert Cotton* came to Town, and to the best of your Remembrance when he went out of Town again.

Davis. He came to Town upon the Tenth of *April* last, or thereabouts, and he has not been out of Town any Night since, except it were in *August*.

L. H. Steward. What Day did he come to Town, do you say?

Davis. About the tenth of *April*.

L. H. Steward. And you say he did not go out of Town till *August*?

Davis. No, my Lord.

L. H. Steward. How do you know this?

Davis. I was constantly in the House with him.

L. H. Steward. But how came you to be so exact as to the Time?

Davis. I saw him continually every Day.

L. H. Steward. How came you to see him?

Davis. I live with him in the House.

L. H. Steward. Pray recollect your self as to the Time he went out of Town, for I perceive the other Man says it was the latter end of *July*.

Davis. It was in *August* certainly, my Lord.

L. Delamere. My Lord, the other Witness saith it was the latter end of *July*, and that may be very well consistent, neither of them speaking to a Day.

L. H. Steward. Well, are you sure he was in Town all the Month of *June*?

Davis. Yes, he was.

L. H. Steward. Well, who do call you next?

L. Delamere. Mrs. *Sidney Lane*. [*Who appeared.*]

L. H. Steward. What do you ask this Gentlewoman?

L. Delamere. I examine her to the same Point: And I question not but I shall make it out to your Grace, and my Lords, none of us all three that he has named were there at that Time.

L. H. Steward. I shall be very glad of it, my Lord.

L. Delamere. Pray Mrs. *Lane* will you give an account when it was *Sir Robert Cotton* came to Town, and how long he staid here?

Mrs. Lane. He came to Town the *April* before the Coronation, and never lay out of Town I am sure all those three Months of *April*, *May*, and *June*, after he came to Town.

L. Delamere. This Gentlewoman, my Lord, lived in the same House with him.

Mrs. Lane. I did so, my Lord, and saw him every Night and Morning.

L. Delamere. If your Grace please, I have two or three more Witnesses to the same purpose; but I would spare their Lordships time, if this Point be fully cleared.

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L. H. Steward. Pray, my Lord, do not abridge your self, for I know my Lords will not grudge the Time, but are very desirous you should have full Liberty in what is pertinent.

L. Delamere. Then I desire *Charles Reeves* may be called, [*Who appeared.*] I pray, my Lord, that this Man may give an account what time it was *Sir Robert Cotton* came to Town, and how long he staid here.

Reeves. If it please your Lordship, he was in Town before the Coronation, and I saw him here every day from that time till after *July* once or twice every day.

L. H. Steward. Did you belong to him?

Reeves. Yes, and I do now.

L. H. Steward. In what Capacity, Friend?

Reeves. My Lord, I am his Footman.

L. Delamere. May it please your Grace, the next Witness I have to produce is *Mr. Ashburnham*; being he cannot easily remove, I beg he may be heard in the Place where he is.

L. H. Steward. Ay, let him speak where he is, and let him speak out.

L. Delamere. Pray Sir, will you please to recollect your self what time you saw *Sir Robert Cotton*, and where the last Summer?

Ashburnham. My Lord, I being at *Sir Robert Cotton's* House at *Westminster*, he desired me to present a Petition of his to the House of Commons for him, and it was about the latter end of the time allotted for Petitions, I cannot exactly tell what Day of the Week or Month it was, but I saw him that day I presented his Petition, and I saw him at the Committee of Elections two or three days after.

L. Delamere. *Sir William Twisden* I desire may be also heard what he has to say to the same Point.

[*Who answered to the same effect.*]

L. Delamere. *Mr. Heveningham* is my next Witness, my Lord; who I desire that he would please to give your Grace and my Lords an account, when he remembers to have seen *Sir Robert Cotton* in Town.

Mr. Heveningham. My Lord, it was a more than ordinary Occasion that makes me remember the thing and the time so particular. I was engaged in a dispute in the House of Commons about my own Election, and that was upon the second of *June*; then was a Case debated in the House, whether a Mayor that was elected a Burgess for any Town could sit upon his own Return; it was then carried he should not, and the next day, which was the third of *June*, another Question came on, whether *Sir Joseph Williamson* was duly elected and returned; and I remember at that time I was walking with *Sir Robert Cotton* in the Court of Requests, and *Mr. Neal* came out of the House and told me, that it was carried by five, that he was not; and then *Sir Robert Cotton* was with me.

L. H. Steward. So you speak as to the second and third of *June*?

Mr. Heveningham. My Lord, had it not been upon this particular occasion, I could not have remember'd the time so exactly.

L. H. Steward. You give a very good token for your remembrance, and my Lords hear what you have said.

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L. Delamere. Will your Grace please that the Clerk of the House of Commons may be called, and examined to the Journal of that House, when it was Sir *Robert Cotton* preferred his Petition, and that will fix the time as to what Mr. *Asburnham* and Sir *William Twisden* have said?

L. H. Steward. Call whom you please, my Lord.

L. Delamere. It seems he is not ready, but I hope I have given your Grace and my Lords sufficient Satisfaction, that Sir *Robert Cotton* was not there at that time that this Fellow speaks of. I will now go on and prove Mr. *Offley* was not there neither; and the first Witness I call to that, shall be Sir *Willoughby Aston*, whom I desire your Grace will be pleased to hear speak in his Place.

L. H. Steward. Well, what do you say, Sir *Willoughby*?

Sir W. Aston. My Lord, I desire to be guided in what account I shall give by the Questions that shall be asked.

L. H. Steward. What is it you ask Sir *Willoughby Aston*?

L. Delamere. Pray can you remember, Sir *Willoughby*, what time it was, and whether about the latter end of *May* last, or when, that you know of Mr. *Offley's* being at your House, and how long he staid there?

Sir W. Aston. I can give an account of his Motion for ten Days together, but that perhaps may be more than is necessary.

L. H. Steward. It will not be improper, Sir, for you to give as exact and particular account as you can of the Times.

Sir W. Aston. If your Grace please, I will do it.

L. H. Steward. Pray do, Sir.

Sir W. Aston. Upon the twenty sixth of *May*, which was *Tuesday*, at Night Mr. *Offley* and his Lady and some of their Relations, came to my House; upon *Wednesday* the twenty seventh of *May* Mr. *Offley* was so sick that he kept his Chamber and his Bed all Day; upon the twenty eighth of *May*, which was *Thursday*, he was so ill that he kept his Chamber all Day, and rose about five at Night, and I then waited upon him, and sat with him three Hours in his Dressing-Room. On *Friday* the twenty ninth of *May* he went to Church, that Day was imployed a great part in Devotion. Upon the thirtieth of *May*, which was *Saturday*, Mr. *Offley* and his Lady went, and a great part of my Family went with them, to one Mr. *Pickering's* six Miles off my House, there they dined, and returned at Night to my House. Upon *Sunday* the thirty first of *May*, I have a particular Remark whereby I remember that Mr. *Offley* went to visit Mr. *Neecham*. Upon *Monday* the first of *June*, Mrs. *Offley* and the Women of my Family went to visit my Lady *Brooks*, but Mr. *Offley* not being well, staid at home. On *Tuesday* the second of *June* he was still at my House, there was a great deal of Company there, and he was in the Company all the Day long. On *Wednesday* the third I fell sick in the Morning about four of the Clock, but Mr. *Offley* was in the House all the Morning; but in the Afternoon he went to make a Visit two Miles from my House, at a Place called the *Ware-house*, where the Ships ride at Anchor: And upon *Thursday* Morning, which was the fourth of

June, he went from my House. Now if your Lordship desire to know any thing about any particular Time about this Compass, I'll give you the best account I can.

L. H. Steward. Can you tell where he went when he went from your House?

Sir W. Aston. He went directly home, as he said.

L. H. Steward. Did you hear at any time that he staid by the way, between his going from you and coming to his own House?

Sir W. Aston. My Son went with him two or three Miles of his way, and I heard that at *Middlewich* he staid to speak with some of the Militia Officers that he met with by the way there at a Muster, and afterwards went directly home.

L. H. Steward. Pray is the usual Way from his House to your's by my Lord *Delamere's*?

Sir W. Aston. No, my Lord, directly another way.

L. H. Steward. Will you ask Sir *Willoughby Aston* any more Questions?

L. Delamere. No, my Lord.

Mr. At. Gen. If your Grace please, I would ask Sir *Willoughby Aston* one Question. Sir, I desire to know how far it is from your House to my Lord *Delamere's*?

Sir W. Aston. Sir, it is about eleven Miles.

L. H. Steward. Eleven Miles you say, Sir?

Sir W. Aston. Yes, my Lord, eleven of those *Northern* Miles.

L. Delamere. My Lord, I have some more Witnesses to examine to this Point.

L. H. Steward. Call whom you please, my Lord?

L. Delamere. I call Mr. *Gregory* next, my Lord. [*who appeared.*] Pray give my Lord an account, when Mr. *Offley* went from Sir *Willoughby Aston's* last Summer, and whither he went?

Gregory. My Lord, my Master went from Sir *Willoughby Aston's* House ———

L. H. Steward. Who is your Master?

Gregory. Mr. *Offley*, my Lord. It was upon the fourth of *June* at nine of the Clock in the Morning, and went from thence to *Middlewich*, and was at Home at his own House about five of the clock in the Evening, as I was told, for I did not go directly Home with him.

L. H. Steward. Was he at *Mere* that Day at my Lord *Delamere's*?

Gregory. No, not that I know of, I was not with him.

L. Delamere. Then pray call *Thomas Kidd*. [*Who appeared.*] Pray were you that Day with Mr. *Offley* when he went from Sir *Willoughby's Aston's*?

Kidd. Yes, my Lord, I was.

L. Delamere. What Day was it?

Kidd. The fourth of *June*.

L. Delamere. Then whither went he?

Kidd. He went the direct Road to his own House, I never parted from him, nor did he stop any where till he came to *Middlewich*, where the Country Militia were exercising; and he just alighted off his Horse, and spoke with Major *Winslow* and some of the Officers, but never so much as drank by the way till he came to his own House.

L. H. Steward. What to his House in *Staffordshire*?

Kidd.

Kidd. No, but to *Crew-Hall* in *Cheeshire*.

L. H. Steward. Does *Mere* lie in the Road between *Sir Willoughby Aston's* and *Crew-Hall*, so that your Master might be there within that time?

Kidd. No, that he could not do.

L. H. Steward. Were you with *Mr. Offley* the whole Journey home?

Kidd. Yes, my Lord, I was.

L. H. Steward. Were you no time from him?

Kidd. No, my Lord, I was not.

L. H. Steward. What time did he come home?

Kidd. He came to his own House about four or five a-clock at night.

L. H. Steward. And did not he go from thence that night?

Kidd. No, my Lord.

L. Delamere. Now, my Lord, I will prove as to my self that I was in *London* at the time as he speaks of. And first, I desire *Sir James Langham* may be heard to that.

[*He appeared, but gave no Evidence.*

L. Delamere. Pray call ——— *Booth*, [*who appeared.*]

L. H. Steward. What is this Gentleman's Name?

L. Delamere. He is my Brother, my Lord, his Name is——*Booth*.

L. H. Steward. What do you ask him?

L. Delamere. Pray can you remember what time in *June* you saw me in Town here?

Mr. Booth. My Lord, I saw my Brother here in Town, the third, fourth, fifth, sixth, and so on to the tenth of *June*, and the tenth of *June* I went out of Town my self; I saw him sometimes twice or thrice a day in that time, for I did not lodge above half a score doors from him.

L. H. Steward. Where was that?

Mr. Booth. In *Great Russel-street*.

L. H. Steward. How come you to remember the time so particularly?

Mr. Booth. It was that day Se'nnight before I went out of Town, which was Wednesday the tenth of *June*, and had it not been for that particular Circumstance, I had not remark'd it so much as to be able particularly to remember it.

Mr. At. Gen. Pray, *Mr. Booth*, did you know of your Brother's going out of Town the twenty seventh of *May*?

Mr. Booth. I heard he was gone out of Town about that time.

L. H. Steward. Why then, when came he hither to Town again?

Mr. Booth. I cannot tell, but I saw him upon the third of *June* in the Evening.

Mr. At. Gen. My Lord, it is not possible for him so to do in that time, if he rode Post.

L. H. Steward. He did make a great deal of haste backward, and forward, that is certain.

L. Delamere. My Brother does not know when I went, but as he heard, he says.

L. H. Steward. But pray, my Lord, mind the Objection that has been made, for it carries a great deal of weight in it. It is plainly proved by two Witnesses, that you went out of Town the twenty seventh of *May* at nine of the Clock at Night, and rode to *Waddesdon*, and the next Day came to *Hitchin* about Noon; then they left you and return'd back again to *London* that Night, and you told them you were going to see a sick Child

of your's in *Cheeshire*; how came you to make such post-haste back again, that he should see you here in *London* the third of *June*?

Mr. Booth. My Lord, I am certain I saw him that day in the Evening, and so on to the tenth.

L. H. Steward. Did my Lord then tell you how your Friends did in *Cheeshire*?

Mr. Booth. I cannot remember the particular discourse we had.

Mr. At. Gen. Pray, Sir, when did he tell you he came to Town?

L. H. Steward. You say you used to see him every day one or twice a day.

Mr. Booth. Yes, I did so.

L. H. Steward. Pray where was he the Second of *June*?

Mr. Booth. He was not come to Town.

L. H. Steward. How long time was it before that, that you had not seen him?

Mr. Booth. I had not seen him of several days before.

L. Delamere. If it please your Grace, here is another Brother of mine that saw me, at the same time; and tho' he be my Brother, I hope he is a good Witness.

L. H. Steward. Ay, God forbid else; what is his name?

L. Delamere. *George Booth*.

L. H. Steward. Well, what say you, Sir?

Mr. George Booth. My Lord, I saw my Brother *Delamere* here in Town the fourth of *June*, by this particular Circumstance which I cannot err in. That the next day, as I take it, I went down with him to the House of Lords, to hear my Lord *Macclesfield's* Cause, which was then there to be heard upon the Appeal of *Mr. Fitton*; and my Brother was in the House of Lords at that time, which was the fifth of *June*.

L. H. Steward. My Lord *Delamere*, I think it not amiss to put you in mind of one thing, which it is fit your Lordship should give some answer to: Does your Lordship deny that you went out of Town the twenty seventh of *May*?

L. Delamere. No, my Lord, I do not; I acknowledge I did so.

L. H. Steward. Then it will be fit for you to give an account where you were the twenty eighth of *May*, and so all along till the third of *June*.

L. Delamere. If your Grace please, I hope I shall give you full Satisfaction in that by and by; but I have one Witness more to this point of my being in Town at such a time, that I could not be in *Cheeshire*, when this Fellow says I was; and that is my Lord *Lovelace*.

L. H. Steward. There is my Lord *Lovelace*, what will you ask him?

L. Delamere. Whether he did not see me at the Trial of my Lord *Macclesfield* in the House of Lords?

L. Lovelace. I was in the House of Lords that day that my Lord *Macclesfield's* Trial was, and I remember I did see my Lord *Delamere* there.

L. H. Steward. But we are as much at a loss now as ever we were, for what day that Trial was, does not appear: What day was my Lord *Macclesfield's* Trial?

L. Delamere. The Journal of the House of Lords proves that to be the fifth of *June*.

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L. Lovelace. My Lord stood just by the Bar, and if I am not mistaken took Notes.

L. Delamere. My Lord, I hope now I have satisfied your Grace, and the rest of my Lords, that none of us three whom this Fellow has mentioned were there at that time at *Mcre*, when he says we were: For my own part, I do positively affirm, and I speak it as in the Presence of Almighty God, that I have not seen Sir *Robert Cotton* at my House that I know of these many Years, and I believe Mr. *Offley* was never in my House since I was Master of it: And I do likewise protest, that to my Knowledge, I never saw the Face of this Man till now that he is produced as a Witness against me; I am sure I never spoke with him in all my Life, nor never sent for him to come to my House: And if your Lordship please to consider the Story that he tells, it will easily appear to be very improbable, for he neither tells you who the Messenger was that was sent for him, nor the Way that he came into the House, which any Body that has ever been at the House could not mistake. For when I asked him what Door it was he came in at, it was for this Reason, because he must needs have gone a great way about, if he had not come in at the usual Entry into the House, for I have but one Door into my House except that by the Stables, which is a great way off the House? And it being about that Time of the Year, if it were eight or nine of the Clock in the Evening, he must needs discern which Way he came in: And, besides, my Lords, is it probable what he says, that he should see no Body stirring about the House except it were this Man without a Hand, that he says was sent for him? I assure your Lordships, I have not, nor had my Father ever that I know of, any Servant or Tenant that was maimed in that Manner that he speaks of. He saith, he was recommended to us by my Lord *Brandon*: But he cannot tell your Lordship any Thing that ever he had done, to recommend him either to him or us. I did ask him what important Service he had ever done for me, that might give a credibility to my employing him in such a Business as this. My Lord, I cannot help it, if People will tell false Stories of me, but I hope your Lordships will consider the Credibility of it; is it to be imagined that I would take a Man I knew nothing of, upon another Man's Word, into so great a Confidence, as to employ him about a Business of this Nature? I am glad that he was called in here again for your Lordships to view him. I beseech your Lordships to look at him; is this Fellow a likely Fellow to be used in such an Affair? Does he look as if he were fit to be employed for the raising of ten thousand Men? Does he seem to be a Man of such considerable Interest in his Country? A Fellow, that though it be not direct Evidence, yet by several Witnesses, I have shewn to be a Man of no Reputation in his Country, nay of a very ill one; and could we have none else to employ in a Matter of this Moment but such a Fellow as his Neighbours would not take his Word for any Thing? It is an improbable Story upon these accounts, if I should say no more. Your Lordships likewise see, that he is so well thought of, that he dare not be trusted out of *Newgate*, but is kept still a Prisoner, and as such gives Evi-

dence here: And I know your Lordships will not forget that he swears to save himself, having been a Rebel by his own Confession, and he would fain exchange his Life for mine; till he has a Pardon, which as yet, as I am informed, he has not. The Objection will still lie upon him, that he swears to save himself, which will render his Testimony not credible, and the Law requires the Witnesses in Treason, to be credible ones: And yet forsooth! this Man, that no Body that knows him will believe a Word he says, must be taken to be the Man of Integrity, Zeal, and Industry; the Man of Management and Dispatch, the Man of Interest and Authority in his Country, that nothing can be done, but he must have a Hand in it. My Lords, I think I need say no more of him; your Lordships Time is precious, too precious indeed to be spent upon such a Subject, and so I set him aside.

My Lords, there is a Thing that I perceive the King's Counsel lay a great weight upon; and that is my going down upon the 27th Day of *May*, and my frequent riding Post to and fro. I shall now satisfy your Lordships of the Reasons of my Journeys. The first Time, which was betwixt the Coronation and the sitting of the Parliament was upon this Reason; I went down to take Possession upon a Lease of a considerable Value which was renewed to me by the Bishop. I did not think of going down at that Time so soon; but I had Word wrote me out of the Country that the Bishop was ill, and that obliged me in Point of Interest to make haste down. And this I shall prove by one that was Attorney for me, and another that was a Witness of my taking Possession: And for this, I first call Mr. *Jobia Edmonds*, [*who came in*] Pray, Sir, will you tell his Grace and my Lords, what you know of my coming down into the Country in the beginning of *May*, and upon what Account, and what Time it was?

Mr. Edmonds. May it please your Lordship, upon the fifth of *May* my Lord *Delamere* did me the Honour to come to my House, and he staid there a little while, and desired me to be a Witness of his taking Possession upon a Lease of my Lord Bishop of *Chester's*, and we went into the House that was next to mine, which was and there did take Possession.

L. H. Steward. Where is your House?

Mr. Edmonds. At *Boden*, in *Cheeshire*.

L. H. Steward. When was this, do you say?

Mr. Edmonds. The fifth of *May*.

L. Delamere. Pray Sir, will you satisfy my Lord, whether the Bishop was not ill at that time?

Mr. Edmonds. My Lord, I had been a little before at *Chester*, and hearing my Lord Bishop was not very well, I went to Mr. *Allen*, and told him I was desirous to see my Lord, and speak with him, if I might; he told me my Lord was so ill, that he would speak with no body.

L. H. Steward. Was it a Lease for Years, or a Lease for Lives?

Mr. Edmonds. It was a Lease for Lives.

L. H. Steward. Then that might require my Lord's taking Possession. Who do you call next, my Lord?

L. Delamere. Mr. *Henry*.

L. H.

L. H. Steward. What do you ask this Man, my Lord?

L. Delamere. Pray will you give his Grace and my Lords an account whether you were not Attorney, and deliver'd me Possession upon the Lease of my Lord Bishop of *Chester*?

Mr. Henry. My Lord, I was Attorney by Appointment, and the 5th of *May* last I delivered Possession to my Lord *Delamere* at one of the most remarkable places of the Land that belonged to that Lease of the Bishop.

L. Delamere. My Lords, I hope this is a satisfactory Reason for my going down at that time, the Bishop being ill, and the Lease being worth 6 or 7000 *l.* The next time that I have to speak to, is, That of my going the 27th of *May*, and for that I give this answer; I did go out of Town the 27th of *May*, the occasion of my going was, I had taken up a Resolution before to go see my Child that that was not well, but I had not taken my Journey so soon, nor with such Privacy, but that I had notice, there was a Warrant out to apprehend me; and knowing the Inconveniences of lying in Prison, I was very willing to keep as long out of Custody as I could, and therefore I went out of the way, and under a borrowed Name. When I came to my House in *Cheshire*, there were not above five of my own Servants that saw me all the while I was there, and I saw no body but them; but while I was there, my Wife sent me an Express, that as to the Warrant she hoped it was a Mistake, and there was no such thing; but my eldest Son was very ill, and if I intended to see him alive, I must make haste up: this was the occasion of my quick return, and I shall satisfy your Lordships by Proof, that I came thither in that manner to avoid the Warrant, and for no other Reason.

L. H. Steward. You say you went to see a sick Child in the Country.

L. Delamere. May it please your Grace, my Mother that is here, wrote me word that my Child was not well.

L. H. Steward. Pray what made you come back again so soon?

L. Delamere. Because I had an Express sent me by my Wife that my other Son was like to die.

L. H. Steward. Call your Witness, my Lord.

L. Delamere. Mrs. *Kelsey*, [*who came in.*] Pray will you give an account what I said, when I came down, was the occasion of my coming so privately and changing my Name?

Mrs. Kelsey. My Lord heard, he said, there was a Warrant for taking of him up, and he gave me that for a Reason; besides his little Son in the Country was ill.

L. H. Steward. What, she lived in the Country, did she?

Mrs. Kelsey. My Lord, I was in the House with him.

L. Delamere. If your Lordships-please, my Mother may be examined?

L. H. Steward. Yes, with all my heart.

[*She sat by him at the Bar.*]

L. H. Steward. Pray, Madam, will you lift up your Voice, that my Lords may hear what you say.

Lady Delamere. My Lords, this Child of his that was in the Country, was more than ordinarily precious to him, in regard it was born to him at that time, when he was an innocent honest

Men, (as he is now), a Prisoner in the *Tower* for High-Treason, above two Years ago, and I think it increased his Affection to the Child, that God had given it to him when he was in that Affliction. My Lord, I knowing the Affection that the Father and Mother both had to the Child, my Care in their absence I thought ought to be more exercised about him: The Child sucked, but I saw the Child decline, and therefore I was of Opinion that he should be wean'd, and I sent up word that if they did not take care quickly and look a little after him, I was afraid he would go into a Consumption. Upon this, my Son came down, I saw him not indeed, because he was very private all the while he was in the Country; but while he was there, it pleased God to visit his eldest Son with a dangerous Distemper, upon which my Daughter sent for him Post, if he intended to see his Son alive. And thereupon I think he made what haste back again he could.

L. H. Steward. Were you in the same House with him, Madam?

Lady Delamere. My Lord, I say I did not see him all the time he was there, I only tell you what I heard.

L. H. Steward. How long was he in the Country?

Lady Delamere. I cannot tell exactly that, I think he was not above two days.

L. H. Steward. He must be but one day by Computation of Time?

L. Delamere. Pray, my Lord, I will satisfy you in that point presently: Mrs. *Kelsey* will give an account what time it was that I came down, and when I went away.

Mrs. Kelsey. My Lord came down on the *Sabbath-day* night, and staid there Monday, and went away the Tuesday Morning.

L. H. Steward. Look you, my Lord, the 27th of *May* was upon a Wednesday, that night you went out of Town, and went to *Hoddesdon*. Thursday, which was the 28th, you came to *Hitchin* at Noon. Friday was the 29th. Saturday the 30th. Sunday was the 31st, then you came to your House; Monday the first of *June*, Tuesday the 2d, then you came away, and upon Wednesday the 3d you were in Town, so says your Brother.

L. Delamere. It was so, my Lord.

L. H. Steward. Which way did you come back?

L. Delamere. I came Post through *Coventry*, my Lord, and that was the time that *Hope* speaks of, that I told him I had come another way into *Cheshire*, when I came down.

L. H. Steward. My Lord, you say you went down to secrete your self from a Warrant that you apprehended was out against you, and that made you go a by-way, how come you then to come so publick back, the ordinary Post-Road?

L. Delamere. If your Grace please, I have told you I had an Express came from my Wife, that told me it was a Mistake as to the Warrant, but that my Child was very ill, and I must make haste up.

L. H. Steward. Have you any more Witnesses, my Lord?

L. Delamere. Yes, my Lord, I desire Mr. *Kelsey* may be called. [*He came in.*]

L. H. Steward. Well, what say you?

Mr. Kelsey. My Lord came down upon the Sunday night at eleven of the clock, and staid at home all Monday; and on Tuesday Morning

at three of the clock in the Morning, he took horse for *London*, and I have Letters by me that are dated the 4th of *June*, which was Thursday, that told me my Lord was come to Town the night before.

L. H. Steward. Whose are those two Letters?

Mr. Kelsey. They were from my Lady and Mrs. *Vere Booth*, and both came by the same Post.

L. Delamere. I shall call one Witness more, my Lord, to prove that my Child was sick here in Town, and the time; and that is Sir *Thomas Millington*, who was his Physician.

[*Sir Thomas was called, and came in.*]

L. Delamere. Pray, Sir *Thomas*, can you recollect your self what time my Son was ill last Year?

Sir Thomas Millington. My Lord, I was sent for to my Lord *Delamere's* Son upon the 28th of *May*, and I found him then very ill, and he continued so for two days, insomuch as I told my Lady *Delamere* his Mother that I thought the Child would not escape. I told it likewise to Sir *James Langham*, who is my Neighbour in *Lincoln's-Inn-Fields*; what they did upon it, whether they sent for my Lord *Delamere* to Town or no, I cannot tell, but I know punctually this was the time, by reason the Bills I wrote are dated on that day, otherwise I could not have remembered the time; but the Bills being sent me from the Apothecary, I find that date to them.

L. H. Steward. Pray, Mr. *Attorney*, will you call *Edlin* again, or *Vaux*, either of them.

Mr. At. Gen. Here is *Edlin*, my Lord.

L. H. Steward. Where did you part with my Lord *Delamere*, and when?

Edlin. Upon Thursday the 28th of *May* at *Hitchin*.

L. H. Steward. What time of the day was it when you parted?

Edlin. It was about ten of the Clock.

L. H. Steward. He went forward Post into *Cheshire*, did he not?

Edlin. He did not go Post I suppose, for he went upon his own Horse.

L. H. Steward. Did he go upon his own Horse?

Edlin. It was the same Horse he went to *Hitchin* upon.

L. H. Steward. Have you any more Witnesses, my Lord?

L. Delamere. No, my Lord, I hope I have given their Lordships Satisfaction in all Points, and need to give no further Evidence.

L. H. Steward. Have you any thing more then to say, my Lord?

L. Delamere. My Lords, I acknowledge I did go at that time privately a By-Road, and by the name of *Brown*; and as for *Jones*, who it is said came from *Holland* that day, I appeal to him himself, and I call God to Witness I never saw the Man before now in my Life; nay, till after I was made a Prisoner upon this account, I never so much as heard of his Name: and your Lordships see by the Proofs, that all that has been said against me, except what this Fellow *Saxon* has testified, is but hearsay, nay indeed but hearsay upon hearsay at the third and fourth hand.

My Lords, if People will make use of my Name, and say this, and that, and the other, and among themselves talk of Messages sent to me; can I or any Man in the world help it? At this rate who can be innocent, if a Man must be

guilty because others intend to draw him into Treason? For there is no more in the utmost that this Proof can amount unto. It is at the pleasure of any two Men in the World, to take away the Lives, Honours, and Estates of any of your Lordships, if it be a proof sufficient to make you guilty of Treason, for them to swear you were intended to be drawn into Treason.

And, my Lords, as to the Truth of the thing itself, that there was any Message or Correspondence between the late Duke of *Monmouth* and me, I call God to witness I have neither wrote nor sent Letter or Message to him, or received Letter or Message from him, this three Years: I cannot tell what expectation he might have concerning me or any body else. It is very probable he might have Expectation of Assistance from some body, and that without such Expectation he would not have made the attempt he did: But, my Lords, all that is nothing to me, I had no correspondence either by Letters or Messages with him; so that all that has been said upon that point of his Expectations, and what he declared, I must give the same answer to, that I gave to the Evidence about *Jones's* Message, That admitting it to be true, he did declare so, yet, no proof being made of an actual Correspondence, it is no more but only an Intention in him to draw Men into Commission of Treason; and if that be allow'd for Proof of guilt, I must repeat it again, there's no Man can be innocent.

Upon the whole matter, my Lords, I must leave my Case to the Consideration of your Lordships: I am not Master of so much Law or Rhetorick as the King's Counsel, to plead in my own Cause, and I have had but little time to recollect and apply my Defence to my Accusation; but I hope what Evidence I have offered, has given your Lordships full Satisfaction that I am not guilty of what I stand charged with.

And after all that has been said, my Lords, I would beg your Lordships to consider this, that if in case I were guilty of these things, and were conscious to my self of having been engaged in an Affair of this nature, can any Man imagine I could have been so hardy as to have surrendered my self upon the King's Proclamation: nay, if I with those other two Gentlemen that he has named, had had any Transactions of this kind, with such a Fellow as he has been made appear to be by his Neighbours, (that must needs be thought a Man of no Faith, because of no Reputation, tho' he gives himself a great Character as a Man of great Interest, of wonderful Dispatch and Dexterity in the Management of such matters) so as at first sight to put this large Confidence in him; can it be imagined I so little regarded my own Life and all that is dear to me, as to have surrendered my self, were it not that I was certain of my own Innocence and Integrity? Life it self, my Lords, is to be preferred above all things but Honour and Innocence; and *Job* saith, *Skin for Skin, and all that a Man hath will he give for his Life*: and why should I be presumed to have so little value for it, as voluntarily to deliver up my self to Destruction, had I been conscious that there was any one, who could really testify any thing that could hurt me?

Besides, my Lords, this very Fellow *Saxon* is but one Evidence, and how far you will believe him, I must submit it to you? but surely one Witness will never be sufficient to convict a Man of Treason, tho' thousands of Hear-says, and such

trivial Circumstances be tacked to it; especially when they are tacked to an Evidence, which I dare say your Lordships are far from thinking it deserves any Credit.

My Lords, I desire your leave to ask this one Question; Would not any of your Lordships think himself in a bad Condition as to his Fortune, if he could produce no better Evidence to prove his Title to his Estate, than what has been produced against me this day to take away my Life? And if such Evidence as this would not be sufficient to support a Title to an Estate, certainly it can never be thought sufficient to deprive a Man of Life, Honour, Estate and all.

My Lords, I am not the only Man that has been or may be falsely accused: God knows how soon the Misfortune of a false Accusation may fall to the Lot of any of your Lordships; I pray God it never may, but since that may happen, I question not, but your Lordships will be very cautious, how by an easy Credulity you give Encouragement to such a Wickedness: For Knights of the Post will not end in my Trial, if they prosper in their Villany; and perhaps it may come home to some of your Lordships, if such Practices be encouraged, as I cannot but firmly believe they will not.

My Lords, the Eyes of all the Nation are upon your Proceedings this day; nay, I may say, your Lordships are now judging the Cause of every Man in *England*, that shall happen to come under like Circumstances with my self at any time hereafter: For accordingly as you judge of me now, just so will inferior Courts be directed to give their Judgments in like Cases in time to come.

Your Lordships very well know, Blood once spilt can never be gathered up again, and therefore unless the Case be very clear against me, you I am sure will not hazard the shedding of my Blood upon a doubtful Evidence. God Almighty is a God of Mercy and Equity: Our Law, the Law of *England*, is a Law of Equity and Mercy; and both God and the Law require from your Lordships, Tenderness in all Cases of Life and Death: and if it should be indifferent, or but doubtful to your Lordships, (which upon the Proofs that I have made, I cannot believe it can be) whether I am innocent or guilty, both God and the Law require you to acquit me.

My Lords, I leave my self, my Cause, and all the Consequences of it, with your Lordships; and I pray the All-wise, the Almighty God direct you in your Determination.

L. H. Steward. Have you any thing more to say, my Lord?

L. Delamere. No, my Lord.

L. H. Steward. Then Mr. Attorney, and you that are of the King's Counsel, what have you to say more?

Mr. Sol. Gen..* May it please your Grace, and you my noble Lords the Peers of my Lord *Delamere*, the Prisoner at the Bar:

The Evidence that hath been given against this noble Lord is of two Natures, part of it is positive Proof, and part is circumstantial; and though it be allowed that there must be two Witnesses in Cases of Treason, and that Circumstances, tho' never so strong, and sufficient to fortify one positive Proof, do not, nor can make a second positive Witness; yet I crave leave to say, that there may be Circumstances so strong and

cogent, so violent and necessary to furnish a positive Testimony, that will in Law amount to make a second Witness, such as the Law requires.

My Lords, I do not say every Circumstance will do it, but such as is necessarily and violently tending to the same thing that was positively proved. As for Example;

If a Man comes and swears against another that he said he will go immediately and kill the King, and another Man that did not hear those Words, comes and testifies his lying in wait; that Circumstance of lying in wait, that was an Action indifferent in it self, yet, when applied to the positive Proof, will be a second Witness to satisfy the Law, which requires two Witnesses in Treason.

I must confess, my Lords, when we will make Circumstances to be a second Evidence, they must be such as are necessarily tending to fortify the positive Evidence that was given by the single Witness: Now whether that be so in this Case, I must, as becomes me, leave to your Lordships Consideration. It is not my business to carry the Evidence further than it will go, and I am sure it is not my duty to let it lose any of its weight; and if it have not that force it ought to have, I should be to blame, as not having done what belongs to me to do. I will therefore state the Fact to your Lordships plainly as it stands upon the Proof, and submit the whole to your Lordships Determination.

My Lords, our positive Proof, with which I crave leave to begin, is but by one single Witness, and that is *Saxon*; and his Evidence is this, that being in *Cheshire*, where he lives, he was sent for about the third or fourth of *June* last to my Lord *Delamere's* House at *Mere*, that there he was brought into a lower Room, where he saw my Lord *Delamere*, *Sir Robert Cotton*, and *Mr. Crew Offley*: That my Lord *Delamere* told him he had received a Message lately by one *Jones*, that was sent from the Duke of *Monmouth*, whereby he understood that the Duke would speedily be in *England*, and that they must provide Men and Arms to assist him when he came; that he was a Man recommended to them by my Lord *Brandon*, and that upon his Recommendation they had thought fit to intrust him in the matter, and withal told him, they were to raise 40000 *l.* and 10000 Men in that County: He tells you likewise, these Gentlemen gave him eleven Guineas and 5 *l.* in Silver to go of an Errand for them to the Duke of *Monmouth*, which he undertook to do, and hired a Horse to that purpose.

This, my Lords, is the positive Proof, and this, I must acknowledge, standing single and by it self, will make but one Witness; but whether the Circumstances that have been offered to your Lordships by the other Witnesses, be such violent Circumstances as necessarily tend to fortify and support that positive Evidence, and so will supply the defect of a second Witness, is the next Question that I come to consider, and I shall take them into Consideration in the same order that the Evidence was delivered.

The first Step, my Lords, that was made as to any Evidence that toucheth this noble Lord at the Bar, was what was testified by my Lord *Gray*; for as to the other part of the Evidence that related to the Conspiracy in general, I need not trouble your Lordships with the Repetition of it, (that there was such an one, is notoriously known)

known) but I say that part of the Evidence in his History of the Conspiracy, which my Lord *Gray* brought home to my Lord *Delamere*, was this :

That upon the first Meetings and Consultations, it was resolved upon, that the Duke of *Monmouth* should go into *Chefbire* to make an Interest there ; and among the Persons that he was directed to go to, and to apply for advice there, as Persons fit to be trusted, this noble Lord was one.

That upon the Duke of *Monmouth's* Return out of *Chefbire*, he did give his Confederates here in Town an Account, how well he had been received, and that he liked all things very well there. This, my Lords, is the first Circumstance that has been offered to you, to shew that he had a Confidence in my Lord *Delamere*, as a principal Support of his Designs at that very time.

The next thing that we offer, is this Message of *Jones's*, and for that, our Evidence has fully and plainly made it out to your Lordships, that *Jones* did go over into *Holland*, and his Business there was an Errand from *Disney* and Major *Wildman*, and the Confederates here. The effect of his Message was, that it was their Opinion, that the Duke of *Monmouth* should go for *Scotland* and join with my Lord *Argyle* ; but upon the Receipt of the Message, he being angry, said, it was too late for such a Message now, and he would come into *England*, for he was ready to sail : and thereupon he did send this same *Jones* back again into *England* upon a Message, to inform the Lords and others of his Party, among whom my Lord *Delamere* was one, that he would have them betake themselves into their several Countries, and not stay to be taken or clapp'd up here, for that, he did understand, was the Design : and this Message was delivered in Writing ; (now that the Duke of *Monmouth* did write a Note and give it to *Jones*, is verified by my Lord *Gray's* Testimony too) and this sealed up, and he was not to open it till he came to Sea ; and when he did open it, he found it contained a Signification of the Place where he was to land, and where he was to rendezvouz, which was *Taunton*, and who were the Persons that were to have Notice of it, among whose Names we find my Lord *Delamere's* to be one : but he likewise tells you, he was not the Man that was to carry the Message to these Persons, but he was to deliver it to *Matthews* or *Wildman*, and they were to transmit it to the other Persons.

He tells you likewise that when he came to Town, which was the 27th of *May*, he met neither with *Matthews* nor Major *Wildman* ; whereupon being at a loss what he should do with his Message, for want of those other Persons, he acquainted *Disney*, that was executed, with his Errand, who promised to take care that it should be delivered.

This, my Lords, is all *Jones's* Evidence ; for *Jones* does not say that he himself acquainted, or that *Disney* did acquaint my Lord *Delamere* with the Message.

But here, my Lords, is the main Circumstance that renders the matter suspicious ; that very Night that *Jones* came to Town, and *Disney* being acquainted with the Message, had undertaken to get it delivered, does my Lord *Delamere* at Ten of the clock at Night go out of Town, in the Company of two Friends under the Disguise of the Name of *Brown*, and a By-Road, and so goes down to his own House in *Chefbire* ; this, I say, is the Circumstance that renders the thing suspicious.

Now, my Lords, if we do prove by such sufficient Evidence, as may make the matter manifest to you, that my Lord *Delamere* had notice of *Jones's* Message, (for upon that Point the Case will turn, whether he had Notice such a Message was brought, that such things were in agitation, such Preparations made, and that they were all to go into the Country) then I say, his going down is a violent Presumption, he had an Intent to comply with the Message, and join in the Design.

But now, my Lords, comes the Question, the main Question, how is it made out that he had notice *Jones* brought such a Message ?

Jones indeed, my Lords, does not say that he himself imparted it to him, or that *Disney* told him he had communicated it ; but I think there is another Witness, and that is *Storey*, who saith, that *Brand*, one that knew of the Message, did acquaint him, that my Lord had received it at the Coffee-House, and that Night went out of Town.

It is true, my Lords, this is but a Hear-say, but that which followed being Matter of Fact, my Lord's going out of Town that Night, so late in the Night, and in such an unusual suspicious manner, gives more Credit to the Relation, than a bare Hear-say could have of itself.

For unless there be some good account given of my Lord's thus going out of Town, it is a kind of necessary Presumption, that he was acquainted with the Message, part of which was, that he should go out of Town ; and if so, it can have no other Construction, with Submission, than to be in pursuance of, and complying with the Directions that that Message brought him from the Duke of *Monmouth*.

My Lords, to carry this a little further, there were two Witnesses produced that went out of Town with him ; they seem indeed unwillingly to give their Evidence, but I shall faithfully repeat what Testimony they gave : Their Names were *Vaux* and *Edlin*.

Vaux, he saith, he met my Lord *Delamere* at the Rummer-Tavern in *Queen-street* the 26th day of *May*, which was the day before *Jones* came to Town, and that then he appointed to go out of Town the next day, which was the 27th, and accordingly he did go.

Edlin, he saith, he met *Vaux* at the Custom-house upon the 27th of *May* in the Morning, and being desired by him to go with him out of Town, he did so, and there was with him a Gentleman whose Name was *Brown*, and who now appears to be my Lord *Delamere* ; they went in Company with him as far as *Hitchin*, where they left him upon Thursday the 28th at Noon.

This Evidence is produced to shew, that my Lord did go out of Town at that time, and in that manner as has been alledged, and that these Persons went with him to conduct him a private way, that he should not go the common Road. Your Lordships will consider what Answer hath been given to this, and what account my Lord *Delamere* has given of himself.

Another thing, my Lords, that renders this matter suspicious, is the Name which my Lord was pleased to assume to disguise himself by, it being a Name by which the Party use to call my Lord in their Discourses of him ; and to prove that, we have likewise produced two Witnesses, *Babington* and *Paunceford*.

Babington, he says, That in their Consultations there were Discourses of my Lord *Delamere*, under the Name of *Brown*; and once at a Tavern, when my Lord *Delamere* was named by one in the Company, he was presently caught up for it, and replied to, You mean Mr. *Brown*; and so it seems that was the Canting Name under which they discoursed of my Lord *Delamere*.

The other Witness *Paunceford*, he tells you, That being at *Disney's* House, and concerned with him in printing the late Duke of *Monmouth's* Declarations (for the printing of which *Disney* was executed) one *Locke* came for some of those Declarations for Mr. *Brown*, and they were to be sent into *Cheshire*: So that though your Lordships observe the Witness saith, some body else was called by the Name of *Brown*, yet you have had no Account given you, that there was any other *Brown* in *Cheshire*.

It is true, indeed, my Lords, that these are only things that *Disney* said, and *Locke* said; but I must take leave to say, it is very suspicious, that if my Lord went out of Town into *Cheshire* under the Name of *Brown*, and some Persons shall, on the behalf of *Brown*, come for Declarations to be sent into *Cheshire*, and my Lord commonly in that Party go by the Name of *Brown*, that those Declarations were for my Lord, and that will be a great Evidence of his Correspondence with *Monmouth*.

But I confess, my Lords, all this while our Proof is circumstantial, and indeed there is no positive Proof but that of *Saxon*, and in him our Proof must center; for without him, I must acknowledge, nothing that has been offered will be Proof against my Lord upon this Indictment: for bare Circumstances, and bare Suspicions will be no Proof against any Man, but such as are violent and necessary, and those joined to a positive Proof, such as the Law requires.

Now then, my Lords, I come to the Consideration, of what Weight and Strefs is to be laid upon this positive Evidence of *Saxon*: And here I must confess there are Objections made to this Testimony, to which I cannot readily give an Answer; for *Saxon* has sworn, That he was there at such a Time, and that he was sent for, and entertain'd as a Person recommended by my Lord *Brandon*, as fit to be entrusted with the Secret, and capable of being employed to stir up the Country, in order to the Prosecution of a Design they had on foot to raise a Rebellion; and he does charge Sir *Robert Cotton* and Mr. *Crew Offley* to have been there at the same Time.

The Evidence, my Lords, that has been produced to falsify this positive Witness, in the Point of Sir *Robert Cotton's* being there, has been by five or six Witnesses, who testify Sir *Robert Cotton's* being in Town, and not elsewhere, from the tenth of *April* to the latter end of *July*; and I do not see what we have to say in answer to their Testimony. I must agree the Proof to be full in that Point; and if the Evidence they give be true, I cannot say that *Saxon's* Evidence can be true in that Point.

Likewise as to Mr. *Offley*, Sir *Willoughby Aston* and others have testified that he was not at my Lord *Delamere's* at the Time *Saxon* speaks of: For he gives you an Account where he was every Day, from the twenty-sixth of *May* to the fourth of *June*; and his own Servants bring him to his own House upon the fourth of *June* in the

Evening, which is quite another Way than from Sir *Willoughby Aston's* to my Lord *Delamere's*: If this likewise be true, what *Saxon* says cannot be true, I must agree to it.

There is another Thing that is offered on my Lord *Delamere's* Part, that he was himself in Town at that Time that *Saxon* says he was at *Mere*: But here indeed the Matter seems to be a little more strange and dubious, that my Lord should make so much Haste down, as to go out late at Night, and so cautiously, as to go by a wrong Name, and yet to ride to Town again the Post-way, to be here just the third of *June*, when *Saxon* swears he was in *Cheshire*.

I must confess there is the Proof of his two Brothers, that say, they saw him in Town the third and fourth of *June*: There is likewise some Account given of his going out of Town, that it was upon a Message received from his Mother, that his Child in the Country was sick; and indeed he did go a By-way, and change his Name, for fear of a Warrant in a Messenger's Hands that was out against him to apprehend him.

Now, my Lords, I do not hear any thing that has been offered, that there was any such Warrant, or any Discourse to ground that Apprehension upon: My Lord had the first and only Apprehension of a Warrant; but upon what Reasons he himself best knows: This Apprehension made him go out of Town so privately, he says, because he would not be prevented of seeing his sick Child.

But how comes it to pass, that my Lord makes such a speedy Return? By the Proofs, it appears he did not get there till *Sunday* Night, and upon the *Tuesday* Morning comes Post for *London*.

The Account that he gives of that, is this, His Haste was to see another Child that was here sick in Town: For he had received an Express from his Wife upon the *Monday*, to acquaint him, that the Coast was clear, and there was no Warrant out against him; but if he intended to see his Child alive, he must make Haste up to Town; and accordingly, upon the *Tuesday* Morning early, he sets out, and upon the *Wednesday* in the Evening is here in Town again.

But, with Submission, my Lords, there is no good Account given by this noble Lord, what Reason there was for so many Post-Journies backward and forward, as, has been testified, he made within a very little Compass of Time; for besides this of his Return Post upon the second of *June*, there is only an Answer given to one of the rest, which is that of the fifth of *May*, when he saith he went to take Possession of the Land that he held by a Lease then renewed to him by the Bishop, which being of some Value and Consideration to his Lordship, and the Bishop being sick, he thought it necessary to go down Post himself, and would not be content to receive Livery by Attornment. This is the only Answer that is given to all those Times of his riding Post that have been given in Evidence.

These are Matters of Suspicion that are offered to your Lordships; but I confess, Matters of Suspicion only, unless clear, positive, probable Proof be joined with them, will not weigh with your Lordships to convict a Man of High-Treason, where two Witnesses are required. But whether these Matters of Suspicion be such violent and necessary Presumptions as tend to fortify the positive Testimony, I must leave that to the Consideration of your Lordships.

L. H. Steward. You do not call any more Witnesses then, I perceive.

Mr. Sol. Gen. No, my Lord.

L. H. Steward. My Lords, it has not been usual of late, for those who have sat in the Place where I now am, upon those Occasions to give your Lordships any Trouble in repeating or observing upon the Evidence. In this Case the Evidence that hath been given has been very long, and it would be too great a Presumption in me, should I have any manner of Doubt in the least, that either your Lordships have not well observed it, or the learned Counsel for the King have been defective in collecting or remarking upon it, so as to need my Assistance.

But, my Lords, I confess there is something I cannot omit taking Notice of, not for your Lordships Sakes, but for the Sake of this numerous and great Auditory, that one Mistake in Point of Law might not go unrectified, which seemed to be urged with some Earnestness by the noble Lord at the Bar, *That there is a Necessity in Point of Law, that there should be two positive Witnesses to convict a Man of Treason.*

He seemed to lay a great Stress upon that; but certainly his Lordship is under a great Mistake, as to the Law in that Point; for without all doubt, what was urged in answer to this Objection by that learned Gentleman that concluded for the King, is true, There may be such other substantial Circumstances joined to one positive Testimony, that, by the Opinion of all the Judges of *England*, several Times has been adjudged and held to be a sufficient Proof.

As for the Purpose, in this Case, suppose your Lordships, upon the Evidence that has been given here this Day, should believe *Saxon* swears true, who is a positive Witness, and shall then likewise believe that there was that Circumstance of *Jones's* coming over from *Holland* with such a Message upon the twenty-seventh of *May* (which is directly sworn in Evidence, you are the Judges of that Evidence) and what the other Witnesses have sworn likewise, and is not denied by my Lord, the Prisoner at the Bar, that he went out of Town that Night, changed his Name, and went in an indirect By-Road; certainly these Circumstances, if your Lordships be satisfied he went for that Purpose, do necessarily knit the positive Testimony of *Saxon*, and amount to a second Witness.

That is, if *Saxon's* positive Testimony be true, then suppose all these Circumstances that gave the Jealousy, do make up a strong Presumption to join with the positive Evidence of *Saxon*; then you have two Witnesses, as the Law requires, especially if the Answer given by the Prisoner to those Circumstances be not sufficient (as the slender Account he gives of his so frequent Journeys in so short a Compass of Time) but that there still remains some Suspicion. I could have wished, indeed, that Matter might have been made somewhat more clear, that no Shadow of Suspicion might remain.

Your Lordships are Judges: And if you do not believe the Testimony of *Saxon*, whose Testimony hath been so positively contradicted by divers Witnesses of Quality, the Prisoner ought to be acquitted of this Indictment: If your Lordships please, you may go together, and consider of it.

Lords. Ay, withdraw, withdraw.

Then the Peers withdrew in their Order, according to their Precedency, with the Serjeant at Arms before them.

L. H. Steward. Lieutenant of the Tower, take your Prisoner from the Bar.

The Prisoner was taken into the little Room appointed for him at the Entrance into the Court.

The Peers staid out about half an Hour, and then returned in the same Order that they went out in, and seated themselves in their Places as before.

Cl. Crown. Serjeant at Arms, take the Appearance of the Peers. *Lawrence*, Earl of *Rochester*, Lord High Treasurer of *England*.

He stood up uncovered, and answered,

Lord Treasurer. Here.

And so did all the rest.

L. H. Steward. My Lords, are you agreed of your Verdict?

Lords. Yes.

The Lord High Steward took their Verdict Seriatim, beginning with the puisne Peer, in this Manner.

L. H. Steward. How say you, my Lord *Churchill*, is *Henry*, Baron of *Delamere*, guilty of the High-Treason whereof he stands Indicted, and hath been Arraigned, or Not guilty?

The Lord Churchill stood up uncovered, and laying his Hand on his Breast, answered,

Lord Churchill. Not guilty, upon my Honour.

And so did all the rest of the Peers.

L. H. Steward. Lieutenant of the Tower, bring your Prisoner to the Bar.

The Prisoner was brought again to the Bar.

L. H. Steward. My Lord *Delamere*, I am to acquaint you, that my Noble Lords, your Peers, having considered of the Evidence that hath been given, both against you and for you, after they were withdrawn, have returned, and agreed on their Verdict, and by that Verdict have unanimously declared, that you are not Guilty of the High-Treason, whereof you have been Indicted, and this Day Arraigned, and therefore I must discharge you of it.

L. Delamere. May it please your Grace, I shall pray to Almighty God, that he will please to give me a Heart to be thankful to him for his Mercy, and my Lords for their Justice; and I pray God deliver their Lordships, and all honest Men, from wicked and malicious, lying and false Testimony; I pray God bless his Majesty, and long may he reign.

L. H. Steward. And I pray God continue to him his loyal Peers, and all other his loyal Subjects.

Cl. Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O-yes! My Lord High-Steward of *England*, his Grace, straightly willeth and commandeth all manner of Persons here present to depart hence in God's Peace, and the King's, for his Grace my Lord High-Steward of *England* now dissolves his Commission.

God save the King.

At which Words his Grace taking the White-Staff from the Usher of the Black-Rod, held it over his own Head, and broke it in two; thereby dissolving the Court.



CXL. Proceedings against Dr. HENRY COMPTON, Lord Bishop of * London, in the Council-Chamber at White-Hall, by the Lords Commissioners appointed by his Majesty to inspect Ecclesiastical Affairs, for not suspending † Dr. JOHN SHARP, Rector of St. Giles's, August 1686. 2 Jac. II.



The King's Ecclesiastical Commission.

JAMES the Second, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To the most Reverend Father in God, Our Right Trusty and Well-beloved Counsellor, William Lord Archbishop of Canterbury, Primate of all England, and Metropolitan. And to Our Right Trusty and Right Well-beloved Counsellor, George Lord Jeffereys, Lord Chancellor of England. And to Our Right Trusty, and Right Well-beloved Cousin, and Counsellor, Lawrence Earl of Rochester, Lord High-Treasurer of England. And to Our Right Trusty, and Right Well-beloved Cousin and Counsellor, Robert Earl of Sunderland, President of Our Council, and Our Principal Secretary of State. And to the Right Reverend Father in God, Our Right Trusty and Well-beloved Counsellor, Nathaniel Lord Bishop of Durham. And to the Right Reverend Father in God, Our Right Trusty and Well-beloved Thomas Lord Bishop of Rochester. And to Our Right Trusty and Well-beloved Counsellor, Sir Edward Herbert, Knt. Lord Chief Justice of the Pleas, before Us to be holden, Assigned, Greeting. We for divers good, weighty and necessary Causes and Considerations, Us hereunto especially moving, of Our meer Motion, and certain Knowledge, by Force and Virtue of Our Supreme Authority and Prerogative Royal, do assign, name and authorize by these Our Letters Patent under the Great Seal of England, you the said Lord Archbishop of Canterbury, Lord Chancellor of England, Lord High Treasurer of England, Lord President of Our Council, Lord Bishop of Duresme, Lord Bishop of Rochester, and Our Chief Justice aforesaid, or any three or more of you, whereof you the said Lord Chancellor to be one, from Time to Time, and at all Times during Our Pleasure, to Exercise, Use, Occupy and Execute under Us, all manner of Jurisdictions, Privileges, and Prebeminencies in any wise touching or concerning any Spiritual or Ecclesiastical Jurisdictions, within this Our Realm of England, and Dominion of Wales, and to visit, reform, redress, order, correct, and amend all such Abuses, Offences, Contempts, and Enormities whatsoever, which by the Spiritual or Ecclesiastical Laws of this Our Realm can or may lawfully be reformed, redressed, corrected, restrained, or amended, to the Pleasure of Almighty God, and Increase of Virtue, and the Conservation of the Peace and Unity of this Realm. And We do hereby give and grant unto you, or any

three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, thus by Us named, assigned, authorized and appointed, by Force of Our supreme Authority and Prerogative Royal, full Power and Authority, from Time to Time, and at all Times, during Our Pleasure, under Us to exercise, use, and execute all the Premises, according to the Tenor and Effect of these Our Letters Patents, any Matter or Cause to the contrary, in any wise notwithstanding. And We do by these Presents give full Power and Authority unto you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, by all lawful Ways or Means, from time to Time hereafter, during Our Pleasure, to enquire of all Offences, Contempts, Transgressions and Misdemeanors done and committed, and hereafter to be done and committed, contrary to the Ecclesiastical Laws of this Our Realm, in any County, City, Borough, or other Place or Places, exempt or not exempted, within this Our Realm of England, and Dominion of Wales, and of all and every Offender or Offenders therein, and them, and every of them, to order, correct, reform and punish by Censure of the Church. And also We do give and grant full Power and Authority unto you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, in like Manner as aforesaid, from Time to Time, and at all Times during Our Pleasure, to enquire of, search out, and call before you, all and every Ecclesiastical Person or Persons, of what Degree or Dignity soever, as shall offend in any of the Particulars before-mentioned, and them, and every of them, to correct and punish for such their Misbehaviours and Misdemeanors, by suspending or depriving them from all Promotions Ecclesiastical, and from all Functions in the Church, and to inflict such other Punishments or Censures upon them, according to the Ecclesiastical Laws of this Realm. And further We do give full Power and Authority unto you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, by Virtue hereof, and in like Manner and Form as is aforesaid, to enquire, hear, determine and punish all Incest, Adulteries, Fornications, Outrages, Misbehaviours, and Disorders in Marriage, and all other Grievances, great Crimes or Offences, which are punishable or reformable by the Ecclesiastical Laws of this Our Realm, committed or done, or hereafter to be

* Burn. Hist. of his Own Times, Vol. I. p. 676.

† Ibid. 674.