

Point of Fact too. They have made Answer for him; so that I say, he hath been tried fairer than any Man ever was in Parliament, be it upon Bill or upon Impeachment, that is, as to the Matter of Precedent. Then it hath been said, This would not be good before the Judges. I must confess it; but the Evidence Captain *Porter* gave of his own Knowledge of Sir *John Fenwick*, every body will agree is what the Law will allow. But he is but a single Witness, and you ought not to proceed upon the Evidence of a single Witness. Let us see how the Law stands upon the whole Matter: You have made an Act of Parliament last Sessions, and I own the Law was before that, That there should be two Witnesses in Case of Treason; but all that goes no farther than to Trials in the *King's Bench*, and Commissions of *Oyer and Terminer*, and Goal-Delivery. And if you look upon those Acts, 'tis very plain; for they refer mostly unto the Judges, what they shall do in such and such Cases: But then you will see what is the Reason of making those Rules; I think there was good Reason that you should not put that Power in Persons below, that you have in your selves: You give them Rules to proceed by, and they are to keep up strictly to them; you may act by other Rules. 'Tis one Thing when I command my Servant to do such a thing, and another thing when I act my self. And there is a Difference when a Judicature is by few, and when 'tis by many; the Law puts a greater Confidence in many than in a few. The ordinary Trial is by twelve Jurors; but if it be a Matter of an high Nature, as an Attaint, then it shall be by Twenty-four; and you do prefer a greater Number in every thing to a few. 'Tis said, Though a Judge do think in his Conscience a Person guilty, yet he ought not to make use of that private Knowledge; and a Case was quoted out of *Hen. IV.* but I think that Judge might have behaved himself something better than he did; and sure I am, now he would be blamed. I do not say, that a Judge upon his private Knowledge ought to judge; he ought not; but if a Judge upon the Bench knows any thing, whereby the Prisoner might be acquitted or convicted (not generally known) then I do say, he ought to be called from the Place where he sat, and go to the Bar and give Evidence of his Knowledge; and so the Judge in *Hen. IV.*'s Time ought to have done, and not to have suffered the Prisoner to have been convicted, and then get a Pardon for him; for a Pardon will not always do the Business; for there may be a Forfeiture that the King's Pardon doth not restore. But though we act as Judges here, do we act only as Judges? I thought we were as well Triers of the Fact as Judges. There is this Difference between the Judicature of *Westminster-Hall* and this Court; they are to judge upon a Fact found by a Jury; but we act both the Part of a Jury in trying, and also of Judges in judging what the Fact amounts to: So that if a Jury-Man may make use of his private Knowledge to acquit a Prisoner, as (I think) no body doubts but 'tis his Duty to do; then every Gentleman in this House may make use of his private Knowledge to acquit the Prisoner, or convict him.

I confess, for my part, I am satisfied, that Sir *John Fenwick* is guilty of this Crime for which he stands accused. I do think this Crime is High-Treason; I think there is no danger of a Precedent in this Case, if you convict him; being convinced upon the Evidence you have heard, that he is

guilty: I do own, if any Gentleman think he is not guilty of Meeting at the *King's Head* in *Leadenball-street*, or at Mrs. *Mountjoy's*, for the Purpose given in Evidence, he ought to be against the Bill; but I think, every Man that is of that Opinion ought to be for the Bill. I am one of those that think he is guilty, and therefore am for Committing the Bill.

Mr. *Harcourt*. I can readily agree with the Gentleman that spoke last, that High-Treason is the highest Crime in the Law; and further, That the Matter of the Indictment that is mentioned in the Recital of the Act is undoubtedly High-Treason; and I am sure he will agree with me in one Thing also, That the greater the Crime is that any Person is accused of, the clearer the Proof ought to be by which he is convicted.

Some Gentlemen have begun their Discourse in relation to the Power; but sure 'tis no Argument, because I can do a Thing, therefore I will do it; because we have Power to repeal *Magna Charta*, and all other subsequent Laws, which have been made in favour of Life and Liberty, and Property, by the same Consequence we ought to do it: A better Reason must be given me before I consent to this Bill.

Then for the Precedents, 'tis said, There have been many, and many have been mentioned; and if I thought it worth while, I would mention many more you have not heard of. As for Precedents in general, they are so far imitable as they are grounded upon true Reason, and agreeable to Justice; but I don't remember any one Precedent of this Nature, for a Person in Custody, forth coming, to be tried, yet to be Attainted without a Trial at Law, but what has been universally branded; and they all seem to be Reproaches even to those ill Reigns in which they were usually made; and rather to be marked out as Rocks for us to avoid, than Patterns for our Imitation.

Before I particularly mention the Facts how they stand before you, I would beg leave to observe upon the general Method of your Proceedings, and tell you what staggers me in it.

I have often heard this called a Trial, and that we are the Judges; the Gentleman that spoke last gave us another Title, and told us we were the Jury also. I know no Trial for Treason but what is confirmed by *Magna Charta, per Judicium Parium*, by a Jury, which is every *Englishman's* Birth-right, and is always esteemed one of our darling Privileges; or *per Legem Terræ*, which includes Impeachments in Parliament; but if it be a Trial, 'tis a pretty strange one, where the Person that stands upon his Trial hath a Chance to be hanged, but none to be saved. I can't tell under what Character to consider our selves, whether we are Judges or Jury-Men: I never heard of a Judge, I am sure nor of a Jury-Man, before, but he was always upon his Oath: I never heard yet of a Judge, but had Power to examine Witnesses upon Oath, to come to a clear Sight and Knowledge of the Fact: I never heard of a Judge, but if a Prisoner came before him, the Prisoner was always told, he stood upon his Deliverance, and had not only a Power to condemn the Guilty, but to save the Innocent. Have we this Power? Suppose upon such a Trial as this (if it must be called so) it may so happen, that a Person that comes before us, should be the innocentest Man in the World; what Judgment is it that we can give, for

For so much as such a Person hath made his Innocency fully appear? Is the Speaker, by his Warrant, to send him back again to *Newgate*? You can't dispose of him otherwise, though you were satisfied of his Innocency: But in such a Case, the Party must undergo a double Trial, which is contrary to all the Rules I have heard of. If I am a Judge in the Case, I beg leave to tell you, for my own Justification only, what a Definition I have met with of a Judge's Discretion: My Lord Chief-Justice *Coke* says, 'tis *discernere per Legem*; and by that Discretion I beg leave to consider this Case: If Judges make the Law their Rule, they can never err; but if the uncertain arbitrary Dictates of their own Fancies, which my Lord *Coke* calls the crooked Cord of Discretion, be the Rules they go by, endless Errors must be the Effect of such Judgments.

As to this particular Case, I did expect from the Gentleman that spoke last, that he would have told you there was a plain Evidence, why you should go on to the Passing of this Bill; but instead of that, I am surprized to hear a Thing mentioned, That in Parliamentary Proceedings a Man may be hanged by one Witness; certainly that is not to be taken for granted.

As to this particular Case, I would take Captain *Porter* as upon his Oath, for Supposition: You have one Witness against Sir *John Fenwick* of High-Treason; and, with your leave, I desire to examine what you have more in this Case.

Yesterday you voted a Paper to be read, *Goodman's* Narrative or Examination; 'tis a different Case now you have it before you to determine upon. Yesterday the Question was only for hearing; but Gentlemen now consider how far they ought to believe it, and the other Evidence we heard. And first, there is some Evidence that *Clancy* tampered with *Porter*, and gave him a Sum of 300*l.* and so they would infer, because *Porter* was tampered with to be gone, therefore *Goodman* was. It was told us further (and I desire I may be informed if I am mistaken) That *Clancy* said, he came from Sir *John Fenwick*, and afterwards my Lady *Mary Fenwick* said she would make good what *Clancy* had said; and from these Arguments they presume, that Sir *John Fenwick* knew of it. Give me leave to tell you a Rule I never heard contradicted, That Presumption is to be made in favour of Life; but to presume a Man guilty because *Porter* was tampered with by another, because he said it was by Sir *John Fenwick's* Order; shall we presume Sir *John Fenwick* did it? Is Hear-say to be Evidence? Or is a Man to be had to the Gallows upon Presumption? How often, and with how much Reason have we heard Exclamations against Judgments upon Presumptions, Innuendoes, constructive and accumulative Treason? &c.

Gentlemen, there is some further Evidence; and that is, of what was sworn at *Cook's* Trial, and some Gentlemen thought fit to have the Record read, and an Examination of what was sworn there. I can never go so far as to think it reasonable, That what Evidence hath been given in one Case should affect another Man; but all this is to be answer'd, by calling it Parliamentary Proceedings. We doubt 'tis no Evidence in the Courts below, but they are mentioned with some kind of Disdain, as very inconsiderable. In this Case, I beg leave to say this in their Vindication, That whatever the Rules in *Westminster Hall* are, 'tis not therefore Reason because 'tis a Rule; but

because 'tis Reason, and Reason approved of by long Experience, therefore 'tis a Rule; and if they make their Rules for that Cause, I hope that is a Cause why we should imitate them: But I would not have those Rules thought Matters of Form, but Substance, or more properly Part of the Law it self.

Upon the whole Matter; if no Gentleman will give us a Reason why this is Evidence, but one Witness, and that not upon Oath; and if we are to come to our Parliamentary Discretion to supply that Defect, the Want of the other, 'tis a Discretion I will disclaim all the Days of my Life. And I hope you will reject the Bill.

Lord *Cutts*. If, Sir, the Gentleman that spake last had been speaking to *Westminster-Hall*, I should think that he had shewed a great deal of Reason, and spoke with a great deal of Judgment; but since I think you are here upon a quite different Foot; I shall not follow him (because I will not unnecessarily detain you) to answer every Particular.

I remember, when the Counsel for the Prisoner first spake, they took notice to you, That Precedents were procreative, and one beget another, and they are apt to multiply; therefore I do think, 'tis of the highest Moment to you, what Precedent you make to Night: And if any Gentleman can be satisfied, That the Precedent of passing this Bill, will be of worse Consequence than the Precedent of not passing it, I shall humbly submit. I do think, Sir, the Matter before you is of the highest Importance; and I must confess, 'tis with a great deal of Satisfaction to my self, that I do see Gentlemen seem to apply themselves with a great deal of Seriousness to this Debate. Sir, I shall not pretend to make a particular Answer to what the Counsel for the Prisoner did say; as to the Precedents of Acts of Parliament, I think this Answer is sufficient at present for that, That if we have no Precedent we are under a Necessity of making one. It is told us, That of all the Precedents none will justify us in this Proceeding; but at the same Time it must be considered, That we are in a Case, the like to which never yet happened in *England*.

The first Thing I shall apply my self to, is the Jurisdiction of Parliaments; and truly, I think, it will be very necessary to say a little upon that. I have heard none call this Power in question, the Thing speaks it self; 'tis the Legislative Power, and the Etymology of the Word tells you what it is: 'Tis a Power that can make Laws, and abolish them; a Power that is superiour to all other Powers whatsoever, and we are part of that Legislative Power; and therefore I shall say no more to that, it being a Matter agreed, That we have a Power to proceed in this Matter. Now I will take leave to observe something as to the particular Case before you.

Though a Gentleman that spoke some Time since, did speak to you of the Nature of the Crime; yet, with Submission, I think there remains something to be added to what he said. The Conspiracy of which Sir *John Fenwick* to me appears guilty, is not only against the Life of the King, not only to depose the King, not only a Conspiracy to raise a Rebellion, but at the same Time to contrive an Invasion from *France*, and bring in a foreign Power. I know not what better Expression to tell my Thoughts in, than by using a Term which Physicians use in som. desperate

rate Cafes; they tell you, there is a Complication of Distempers; and I think this is a Complication of Treasons: This is the highest Crime, and it is attended with all the aggravating Circumstances this Crime can admit of. Now, in giving our Opinion, and passing our Judgment upon this Matter, I think there are two Considerations ought to guide us: There is a Consideration we owe to the Prisoner that is brought before us; and another Consideration which we owe to the common Security. As to the First of these, it being a Matter of Blood, wherein the Life of an *Englishman*, the Life of a Man of his Quality and Figure is at stake, we ought to proceed with all the Calmness that is possible; and I do agree, if there was nothing but Presumption, that ought to be in favour of Life. But pray let us consider how this Matter stands: Let me desire those Gentlemen that are of Opinion we ought to have so much Tenderness for the Prisoner, to lay before them another Scene, and Sort of Consideration, at the same Time. I do consider the Hardship (if I may use that Expression) of passing this Sentence; I do consider what a Condition we had been in, if the Contrivance that was laid had taken Effect; that is the weightiest Part of the Matter before you: And tho' it was disappointed then, I know not how far off 'tis at present; this ought really to weigh with you. And I hope I may take leave, upon this Occasion, to observe to you, what one of the wisest and best of the *Romans* said upon an Occasion of this Nature; he tells you, That a Man that would consider his Duty aright, must consider the Matter in all its Parts and Circumstances; and when that is done, must act adequate, as well to the Community, as to himself and his Neighbour. I would apply that to the present Case; and would desire those Gentlemen that express so much Tenderness in this Case, to have some for the Government, and themselves.

It was told you, That the Prisoner before you does not stand convicted of any Crime: It was told you at the Bar, That the most we ought to pretend to, is no further than to leave him in the Condition we found him: I think, with Submission, the Prisoner stands convicted of High-Treason, with the highest Conviction upon Earth, and that is, the general Consent of all Mankind; for I will be bold to say, I do verily believe, that there is not one Gentleman within these Walls, nor that walks the Streets, not a living Soul, that doubts of his Crime. But, Sir, I would put this Matter yet further; I am not only satisfied in my own Conscience and Reason, of the Justice of your Proceedings, which ought indeed to be the Foundation of every Man's Opinion; but I am satisfied, that in this Way, there is no Hardship imposed upon *Sir John Fenwick*, if he will be his own Friend: For I doubt not, upon what hath passed in this Proceeding, that before Things are brought to the last Extremity, if *Sir John Fenwick* be his own Friend, if he be so much a Penitent and Friend to the Government, and to Posterity, to tell Truth, and leave off his Dissembling, and be plain; I doubt not but he will find Favour. Now, Sir, I would beg leave only to answer one or two Objections; for some Things that have been said against the Passing of this Bill, I do not think material.

One Objection that seems to me to carry the greatest Appearance of Weight, was made by one of the Counsel for the Prisoner: He said, It would

look strange in after Ages, that the same Parliament should pass the Bill for regulating of Trials in Treason, and this Bill of Attainder. Sir, I desire you will please to observe how this Matter stands; and in the first Place, as previous to that, I take leave to observe a few Things: 'Tis a Proposition generally agreed to, and not to be denied, that That which is designed for the Preservation of any Creature, ought not to be made use of to their Destruction. Now this Treason-Bill was designed for your Preservation, to screen you against the Danger of arbitrary Power, and the Malice of false Witnesses; and this Bill of Attainder is brought to screen both you and the Government from your Enemies, both abroad and at home. And I think the Treason-Bill is no Objection upon these Considerations: Besides, the Treason-Bill was only made to be a Rule to inferior Courts. The learned Gentleman that spake last, told you, The Rules of *Westminster-Hall* were not Rules, because they were observed there, but because they were grounded upon Reason. Why, Sir, in answer to that, I will only take leave to tell him, that That which is Reason in *Westminster-Hall*, does not carry the same Weight here. I think that Matter was so well explained by the learned Gentleman at the Bar, that there need nothing be added to it. He told you very well, 'Tis one Thing what I trust to do by my Servant, and another Thing what I do by my self. It is very obvious to any Man's Understanding, if this Power were lodged in the Judges, what Use they might make of this unlimited Power; but no Gentleman can mistrust any Thing that shall be done by this House.

Another Objection that was made by the Counsel for the Prisoner, was; says he, This is Evidence, or it is no Evidence; if it be Evidence, then, says he, Why do you not try him at Law? If it be no Evidence, Why do you admit it here? Now, Sir, with Submission, this carries the Face and Form of an Argument, but if you take it to pieces, I think there is no convincing Weight in it: For, Sir, the Reason why this Matter comes before you, is, because by the Absence of one of the Witnesses, according to the formal Part of the Law, *Sir John Fenwick* will be acquitted; but it is generally agreed, that the Consequence of so great a Crime going unpunished, may be dangerous to your Posterity. This Bill of Attainder is brought into the House, that you may supply that Want of Form, you being convinced of the Reality of his Crime.

Another Objection made by the Counsel at the Bar, was as to *Capt. Porter*, whom he reflected upon; says he, Shall a Man that hath owned himself guilty of such a Villany as the Murder of the King, of a sudden have such Credit as to sway with you? I would take leave upon this Occasion, to repeat to you what my Lord Chief-Justice upon the Bench did observe at *Charnock's* Trial: This same Thing was urged and pressed home by *Charnock*; and my Lord Chief-Justice was pleased to take notice, That it consisted with the Wisdom and Justice of all States and Governments to allow of such Evidence, because without it they could never come to the Knowledge of any Treason or Conspiracy: For he added, Whom will you have an Account of these Things from, but the Actors of them?

And therefore when they are penitent, and willing to atone for their Crime, by doing all
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the Service they can to the State, and Justice to Mankind, we ought not only to receive, but encourage them.

When the Danger the Government would be in, if you did not pass this Bill, was urged; it was answered, But what Danger will you and your Posterity run in not passing of it? I think the Matter appears so plain and clear before you, that when all the other Parts of the Question are passed over, I should think it a Reflection upon the House, to enter upon a particular Answer to it. I had not said what I have said, that I think any Part decisive, but to clear myself to the World for the Opinion I am going to give; and perhaps what I have said, may give occasion to some others to say something that may be much more to the purpose; but for the Reasons I have given, I am for the Bill.

Mr. Sloane. Sir, I as little care for meddling in Matters of Blood, as any Man, and should be glad to avoid giving my Opinion in this Case; but I think 'tis incumbent upon every Gentleman that hath the Honour to sit here, in Point of Trust; I think 'tis his Duty to them whom he represents, to the King and Kingdom in general, to give his Opinion when he is clear and satisfied in it; and if I was in the least dissatisfied, I should venture the Displeasure of the House to absent; but upon the whole Case, and the Proof that hath been given, I am very clear that Sir John Fenwick is guilty of this Treason that he is accused of; and that it is Treason without any strain, and well warranted by Precedents.

I would first take notice of what is said to your Jurisdiction in general; I remember it was said this was an Incroachment upon *Magna Charta*; for by that, no Person is to be tried for his Life, but by the Judgment of his Peers. Those Gentlemen that have made that Objection, have intirely forgot the other part, which is the next Sentence; *Nec super ibimus, nec super eum mittimus, nisi per regulare Judicium parium suorum vel per Legem Terræ.* What do they make that to be? 'Tis true, in the ordinary Course of Justice, Persons must be tried, a Commoner by a Commoner, and a Peer by a Peer; but there are several sorts of Trials and Laws in the Land: And when you come to consider what is meant by *per Legem Terræ*, you have the Commons *Lex Terræ*; you have the Statute Law, and *Lex Loci*, the Laws of particular Manors: And there are several sorts of Trials besides that by Jury; there are Trials by Battle: The Defendant in Case of Appeal may try it by Battle, and he that is killed loses the Cause. Then there is a Law above all these Laws, and that is the Law of Parliament, which my Lord Coke calls *Lex Parliamenti*, and *Lex Parliamentaria* in another Place, which he says is, *ab omnibus inquirenda, but a paucis nota*; and 'tis not fit it should be known how far they can go (and so 'tis in *Chancery*) and that is a Law that is unlimited, and that is one of the Laws saved by *Magna Charta*. I say, therefore, that without any Incroachment upon *Magna Charta*, or any Law whatsoever, you enter regularly upon his Trial.

I would answer another Thing that was said against a Trial in Parliament; and I must confess, I did wonder to hear it from that Honourable ancient Member, That if he was to be tried, he should rather chuse to be tried in *Westminster-Hall*. Why, Sir, before I should have gi-

ven so sudden a Judgment as that; I would have considered what my Case was: If I had had such a Case as Count *Cunningsmark*, a bad Cause and a great deal of Money, I would rather be tried there; or if I could be tried as Sir *George Wakeman* was; but if I had a good Cause, and would use no Corruption, instead of twelve Men that might be corrupted, I had rather be tried by four or five hundred Gentlemen that are beyond it. You see how Trials went below, the Trial of my Lady *Lisle*, that could neither see nor hear; and there came a Person to her House that was proved to be in *Monmouth's* Rebellion, and she was burned for it.

Then as to the Case before you, I would offer my Reasons why I believe this Gentleman to be guilty; here is Capt. *Porter*, he hath positively sworn, that he had another Meeting at Mrs. *Mountjoy's*, and there they did consult, and agree to send *Charnock* over to *France*; and *Charnock* was directed to go with a Message to invite a foreign Power over here. Now the Question is, Whether he is to be believed? And I would go upon the same Reasons for believing a Witness, as they do in *Westminster-Hall*; and will go as far along with those Gentlemen, as to the Credibility of a Witness: But if he be to be credited in *Westminster-Hall*, why is he not so here? And therefore, if they had brought any Testimony against his Credit, as made him guilty of Perjury, or Forgery, it had been an Objection against his Testimony; but it was so far from that, That they did not offer to prove one Word of that; but what was said was said from the Counsel, and that is to go for no Evidence. The Counsel did indeed alledge against his Credit several Things, but did not prove any; and if they had, they would not have taken away his Testimony in *Westminster-Hall*; That is, that he was concerned in the late intended Assassination, and Treason: This was the same Objection that was made below; and they brought Witnesses to prove that and some other Things, but they did not weigh any Thing; for if it should be an Objection that he was in the Conspiracy, then you can have no Evidence of any Villany, for they will never trust honest Men with it. Therefore I do take it, That *Porter* stands before you as a very credible good Witness, without any Imputation whatsoever. Then, Sir, say they, he is not upon his Oath; that is an Objection to your Jurisdiction; and though they say they own your Jurisdiction, yet when they say so, they speak against your Jurisdiction; and by the same Reason you can go upon no Impeachment whatsoever; for you can in no Case give an Oath. Then, Sir, they tell you, he is but one Witness, and that 'tis in the Case of Treason, and there ought to be two Witnesses; and therefore tho' you have Jurisdiction to do any Thing whatsoever, yet you have no Jurisdiction to go upon this Cause. Now, Sir, because this seems to be the most formidable Objection that is insisted on against the Proceedings in this Case, I beg your leave that I may fully answer it.

And taking it to be true, that the Fact is proved but by one Witness, I conceive we may proceed in this Cause though they can't in *Westminster-Hall*; and I do take it, that there is a great deal of difference between one and the other; and I do not take your Proceedings upon this Bill, being there is but one Witness, to be any Strain,

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but what you may extend the Legislative to, without going beyond what hath been done. I therefore beg you to consider what the Law originally was as to Treason, and how it came to be altered. Before the Statute of 25 *Ed. III.* it was certain what was Treason, and what was not; then the Statute came and reduced it, that as to all inferior Courts, these are your Treasons, and no other shall be adjudged so; but the Parliament reserved to themselves a Power, that if any Case should happen like them, they were to determine it themselves. So, Sir, that at that Time, and after that Time, one Witness was good in Case of Treason; as now 'tis at this Day for Robbery, Felony, or any other Fact but Treason. And till 1 *Edw. VI.* one Witness was good in all Treasons: Then comes two Statutes in *Ed. VI.*'s Time, and the first takes notice, That since the 25 *Ed. III.* by several Statutes Treasons had been made which were unseasonable, and therefore repeals them, and makes several new Treasons: Then comes a *Proviso* at the end of it; *Provided* always, that no Person whatsoever, after the First of *February* then next coming, shall be indicted, arraigned, condemned or convicted for any Offence of Treason, &c. unless the Offender be accused by two sufficient and lawful Witnesses, or shall willingly, without Violence, confess the same. Now that *Proviso* relates only to the Treasons particularly mentioned in that Statute. Then comes the next Statute 5 *Ed. VI.* and pursues the same Words: But now this did not mean any Facts whatsoever that were left to the Judgment of the Parliament, because these Facts were not within their Cognizance. They are not parliamentary Words; indicted, arraigned, convicted, but only used by the Courts below. Why, Sir, if it be so that one Witness is sufficient, here you have not only one credible Witness, but he is propt up extremely well by collateral Circumstances; and though I do not allow that below they can proceed upon one Witness with pregnant Circumstances; yet for the Reasons given, considering how this Evidence is propt up, I think it is sufficient before you: For there was another Witness against him, and it hath been proved what that Witness could have said if he was here; and 'tis plain that Men have died upon the same Testimony. I must confess, when I was for reading of *Goodman's* Examination, &c. I was not for reading them as conclusive Evidence, nor do I think them so in any sort, either the Conviction of *Cook*, or *Goodman's* Examination before a Justice of Peace; but it is a stronger Evidence in this Case than any other, because the Witness is not dead, nor is he withdrawn by the means of any Body but the Prisoner, or his Friends; which, as I take it, appears upon the Evidence: and if so, I think it comes to the Case, That if any one gets my Deeds, if he will not produce them, they shall be presumed to be what I say they are. I must confess, the Acting of his Wife or any Agent might not be Evidence, if it appeared they did it officiously without his Knowledge; but being *Clancy* said he came from Sir *John Fenwick*, and it was for Sir *John Fenwick's* Advantage, I will believe it was by his Privity: And for my self, I think it no Strain, if in this Case we take him to be a good Second to Captain *Porter*, though it ought not to be admitted in *Westminster-Hall*.

Then 'tis said, That you have no Jurisdiction

to proceed by Attainder in this Case, where the Person does appear, and he is in the Hands of the Law, and ready to take his Trial: I quoted you an Instance the other Day, 12 *Car. II.* where they attainted Persons that were dead, without examining one Witness; and I have viewed all the Books since, and there's nothing appears, but the Bill ordered to be brought in, one Reading, and another, and some Petitions for making of Savings: There is one Rank of People that were dead; a second Rank, which, as you were told from the Bar, were the King's Judges: some of which, it is true, were tried by the Law; but how? Not by the Direction of the Parliament: It was before they came into the Hands of the Parliament; and the Parliament takes notice they had been tried. There was another Sort that was never tried, but absented; and though they might have come into the Hands of the Law and been Out-law'd, the Parliament took cognizance of them, and attainted them of Treason. Sir, I do take notice, that there was a fourth Sort of People convicted at that Time (for if we were confined to the Rules of *Westminster-Hall*, no doubt we could not give a lesser Judgment than that for Treason;) there were the Lord *Mounson*, Sir *John D'arvers*, and others; and the Statute recites, That they were concerned in the Murder of the King; yet in regard so many had actually suffered, they did not give them the Judgment of Treason, but to forfeit their Estates, &c.

This is to shew you the Jurisdiction the Parliament have over Offences, and how they can alleviate the Punishment according to the Circumstances as they appear before them; therefore I think this is a plain Proof that we have a Jurisdiction to go on with the Bill; and at the same Time, I say this, I would put it out of the Case, whether the Prisoner be a little Man or a great Man, that is now in Judgment before us; and I would put it out of the Case, what a good Thing his Discovery would be; I do not think that a good Argument; neither do I think it any Argument if this Man escape, what Danger we shall be in: But I do give my Judgment from the Argument of his Guilt, and our Jurisdiction.

Mr. *Pelham* Sir, the learned Gentleman that speak last, seemed so very clear in his Opinion, when he began to speak, that I was in hopes he would have given me and every Body Satisfaction in this great Point, especially when he began with *Magna Charta*, which says, That every Man shall be tried by his Peers, or by the Law of the Land: I do take it to be Part of the Law of the Land, that no Man should be condemned for Treason without two Witnesses; but after that he did lay his Finger upon the Sore, he told you, the great Objection was, That the Courts of *Westminster-Hall* are so govern'd and ty'd down, that they can't pass any Sentence for Treason, but upon two Witnesses; and he told you, they ought to be ty'd so: Indeed he did say we were not ty'd so: But I own to you, he did not give me any satisfactory Reason why he should not be ty'd so. 'Tis said, we are not ty'd, and 'tis impossible we should, for no Act can tie the Legislative Power; and several Gentlemen have said, That though there are several Statutes that declare there shall be two Witnesses in Cases of Treason, yet they do say, that in Case of Attainder by Parliament, one Witness may be sufficient. Why may it not be thought, that these Acts extend to the Legislative,

as well as the Statute of *Edw. III.* by which it is presumed, That the Parliament may proceed upon one Witness? And I take it, That there being no such Hint, 'tis a Presumption that the *Lex Terræ* does crave an Observation of it by the legislative Power.

I did presume Yesterday to tell you, That *Mr. Algernon Sidney* did stand upon it as his natural Right, that they could not proceed against him, there being but one Witness: I did not bring his Case as parallel to this, or think that his Authority should influence you; but he was a Man that had that Love to Liberty, and the Good of his Country, that he would not have said so, even to save his Life, if he had thought it inconsistent with either of them: But I have looked upon his Trial since, and there he does declare, That the being condemned by two Witnesses, is the Law of God, and the Law of Man; the just Law that is observed by all Men, and in all Places; 'tis certain he reached even by these Words, the Power of Parliament: When I do say Power, I do not mean, but that when such a Law is passed, all are bound by it; but in some Sense we may say, you cannot do what is not just for you to do: You can do but what is just and agreeable to the Trust reposed in you.

The Gentleman says, he thinks it a strange Opinion of him that said, He had rather be try'd by a Jury than the House of Commons: Indeed, if he could be sure of such a House of Commons as this, he might retract what he had said: But I have seen that done in the House of Commons, which hath not made me extremely fond of that Trial. I have sat here when six or seven Noblemen have been declared Enemies to the Kingdom without any Evidence at all, and the Reason was somewhat like what it is now. The Power of Parliaments was brought in as an Argument then; and it was said, it was only in order to an Impeachment, but no Impeachment followed; yet these Noblemen went with that Brand in their Foreheads; and if any Disturbance had been, they had been exposed to the Fury of the People: And though we are sure of this House of Commons, and may be of all in this Reign, yet I know not how Facts may arise, and what Parliaments we may have, and upon that Account I am very unwilling a Precedent should be made, at least contrary to the Usage in all manner of Courts whatsoever.

Sir Thomas Littleton. Sir, I shall not trouble you long in this Debate, that hath taken up so much of your Time already, in the Consideration of some Matters we have been upon; though I did think your Time not very regularly spent, till this Occasion offered it self: I hope therefore, now it will take up less of your Time. I see the great Matter that was insisted on before, is insisted upon still; and I do think we may say it among our selves, though we would not let the Counsel, That we are ty'd up in this Case by the Rules of *Westminster-Hall*; but I believe if that was the Case, and the Question was no otherwise, than, Whether or no we are ty'd up by the Rules of *Westminster-Hall*? I believe it would receive a Determination, that we are not bound up to those Rules.

But I will take leave to tell you what I think is proper for us to ground our Judgment on: I think the great Reason, even of those who are against the Precedent, why they did admit *Sir John Fenwick* to have Counsel, and to examine Witnesses, if

he had any, and to cross-examine the Witnesses; and why they were willing to hear Evidence on both Sides in the Nature of a Trial; the great Reason was, because that in a Case of so great Consequence as this is, they would have the best Information they could obtain. Why did they desire to be informed; but that afterwards they could lay their Hands upon their Hearts, and give their Judgment upon their private Opinion, Whether he was guilty or no? They say, we are not to give our Judgment upon our private Opinion; I always will. (It was not long ago we were not to have our Religion upon our private Opinion neither): And when I am justified in that, I will rely upon it. Whether this be strictly legal Evidence, I do not lay so much Weight upon it, as whether it hath satisfied my Conscience; and I believe there is not a Man in the House but is so (upon what he hath heard) and doth believe that *Sir John Fenwick* is guilty; and if we believe he is guilty; I would be glad to know by what Rules in the World any Man can give his Vote against this Bill, being of that Belief. And I tell you why I think every Man believes so; because every Man in the Kingdom that hath not heard so much as we have heard, does believe him to be so; and I can't think that their Representatives only should be of another Opinion.

What Evidence have you had? You have had *Captain Porter's* Evidence, and that would be good even in inferior Courts; and besides that, you have the Evidence of what *Goodman* did swear before the Grand-Jury; you have heard what he did swear, and the Grand-Jury did believe him; you have heard likewise what he did swear in another Cause to the Petit-Jury, and they believed him, and convicted the Prisoner upon it: And though this be not legal Proof, strictly speaking, will any Body say that I have Reason to disbelieve this Man, and think he hath sworn false?

Ay, but here is but one Witness, Gentlemen tell you. I will put you a Case where I believe this House would attain a Man without any Witness. Suppose two Persons had seen *Sir John Fenwick* kill the King; (I believe we should not have pulled him in Pieces in a barbarous Manner, but he would have had a Trial); and suppose before his Trial they had been conveyed away, if before they had sworn this to a Grand-Jury, and they had found the Bill, I believe this House would have attained him for it.

Sir, I do not think that we should stand upon these little Niceties, nor be bound by the little formal Proceedings of other Courts, when the Government is at Stake. We are sent hither to take care that the publick Safety do not suffer any Mischief from the Enemies of it: We have had Plot upon Plot; and I have heard so much said on behalf of the *Lancashire* Plot without Doors, that I wish we do not get an ill Name upon our selves before we have done. We have this Power to exert upon extraordinary Occasions; and here is a Man that hath endeavoured to subvert the Government, and Well-being of them that sent you hither. I hope you will use it now; and if they knew who were not of that Opinion, I believe those that sent them would hardly send them any more.

Mr. How. Sir, as to the Argument, that if it was known how we gave our Opinion, those that are against this Bill, the People would not chuse them again: I am not afraid of that; I have been told so often, and yet I find the People I

live amongst, use me better and better every Day; and I believe, Sir; they will desire to use me, when they will lay other Men aside. I must in some measure support what seemed to be reflected on an honourable Gentleman, in that he said, he had rather be tried by 12 than 400. I am of his Opinion, and this is my Reason for it; I have my lawful Challenge in case of the 12; and if there be any on the Pannel I have offended, I can desire they may be withdrawn, and that can't be done in any Case here.

But Gentlemen put the Strefs of their Argument upon that which no Body denies, and prove it handsomely; and well they may; for it is self-evident, the Power of Parliament they insist on, when no Body pretends but we have a Power to do what we please: But I must say of their Power what *Bracton* says of the King's Power, *Hoc tamen non potest facere, quod non potest justè facere*. It is said, We are not ty'd up to the Rules of *Westminster-Hall*; we are not so; but I beg leave to tell them, That what is Reason and Justice in *Westminster-Hall*, is so every where. And I do take these particular Points we speak of, to be grounded upon Reason and Justice, and so far we are to pursue them.

Two Evidences was not given as a Restraint upon *Westminster-Hall*, for fear they should do something that is ill, for they are answerable for every thing they do ill; but they were allowed to the People of *England*, that they might have a fair Trial; and it was thought conformable to the Laws of God, the Law of Reason, and the Law of all Countries, That no Man's Life shall be taken away upon any particular Occasion. And for to say, That a Man's Life may be taken away by two Witnesses in one Place, and by one in another, is to say, That there is no certain Rule to prove a Man guilty of a Crime that may forfeit his Life, which is not admitted in any Country whatever.

But truly, Sir, we are going a little further; for the Gentleman before told you, there was no need of two Witnesses, one would serve; but now they go a little further, for they tell you, there needs never a one at all: For I do say, if every Gentleman here is to be guided by his private Opinion, there is no Man but before he heard this Cause did conceive in their Opinion some Judgment of his Guilt. And, Sir, I think no Man but would have told you, that would have been an unjust Judgment.

But they do say, That the Bill of Treason that was made last Sessions of Parliament was to limit *Westminster-Hall*; and that I will trust that with my self, which I will not trust with my Servant. Why truly, if I, or my Servant, was to commit an Error, or a great Crime, I had rather my Servant did it, than my self: But I do not think that my Servant should be bound up from doing an unjust Thing, and my self should have the Liberty to do it. Another Thing that Law provided against was, that People should not be hang'd without sufficient Evidence, and these Things have been long complained of: But I never thought that the Evidence of one Witness, and no Witness would be supported in these Days.

But, Sir, what have you done? We have prevented People being executed by an arbitrary Power, and in an unlawful Way in *Westminster-Hall*; but if you give this Example, you have brought the same Proceedings into this House, and

that they may be perpetually executed here, and so the Subject will be never the safer for the Bill of Treason.

And I do believe likewise, That it is better that a very heinous Fault, or a Mistake, should be committed in *Westminster-Hall* for ten Years together, than once perpetrated in this House: And my Reason is this, Because *Westminster-Hall* have a Law to be tried by, if they transgress that Law; and there is a Way by turning out of Judges, and other Things; and this House hath no superior Power; and when they do a Thing, they make it a Law: So that this House (as it hath often been observed) can make this Nation unhappy, because this House can only establish arbitrary Power and Misery upon this Nation by a Law.

Sir, as to the Evidence, to say something to it, since every Body hath spoke to it; for my Part, I do confess to you, the longer I sit here, and the more I have heard of this Trial, the less I have been convinced within my self, that these Witnesses can know any thing of Sir *John Fenwick's* Guilt. I have heard Captain *Porter* give his Evidence; but that is no sufficient Proof to me: I have heard what Evidence *Goodman* did give to the Grand-Jury; but whether they did ask such Questions as I should, if I had been of the Grand-Jury; or whether they did confront him with Evidence, I can't tell. Therefore tho' the Grand-Jury was convinced by it, it is no Reason to convince us; because we might not be convinced by the same Evidence.

But to go further: There is very great Reason to believe that *Goodman* was not then at this Place, and that not one Word that *Goodman* says is true. I have such Reason for what I say, that if *Cook's* Trial had been before this House, (not to arraign *Westminster-Hall*, though I think we are a superior Power, and I may say what I please of that Trial); I say, if *Cook's* Trial had been before this House, and what I have heard be true, I do think they would hardly have found *Cook* guilty upon *Goodman's* Evidence: For there were three as positive Evidence as could be, that he was not at the Place when he swore he was. And I observe a little Failure in Captain *Porter's* Evidence in that Point; for I don't think it proved by Captain *Porter*, that *Goodman* was by when this Discourse was: For he says, he spake of this Thing at Mrs. *Mountjoy's*, and dined there.

Members. No, no; It was at the *King's Head*.

Mr. How. Well, there was but one Place where it was. Now whether Captain *Porter* heard them talk of it before *Goodman* came in, or whether *Goodman* be a good Witness, he having been there but the latter Part of the Time, which seemed to me to be the Time they should have given over their Talk of the Business, they having been so long together before: But it does not appear to me that *Goodman* can be a good Witness.

But I take it, That it is not just nor reasonable to find a Man guilty upon one Witness, and circumstantial Evidence. I did mention a Case where there was a positive Witness, and a circumstantial Witness, it was in my Lord *Delamere's* Trial; and yet that was not thought a convincing Argument by the Lords to find him guilty; and I hope no Consideration will oblige us to do that, which I am sure we should blame them for doing.

The Consequence of this, Gentlemen say they do not fear. I believe, if Sir *John Fenwick* had been

been told, when he was Major-General of King *James's* Army, that I should come here to sit upon his Life, he would have laughed at it, and thought it impossible; but the contrary has happened: And I have seen Parties hang one another with such Violence, I pray God we may keep from it: I do not know; we are all concerned in some Measure, it having been the Unhappiness of this Nation, that at one Time or another every Body hath been concerned, that they may have a Proceeding of this Sort against them; and this surmounts all that at present Gentlemen can do; for it extends beyond all Pardons, and will reach beyond the Act of Indemnity. God knows who may be served so, notwithstanding all the Act of Indemnity.

Sir, there is one Thing that is said further, which the Gentlemen at the Bar conclude with as a substantial Argument, That we do not aim at Sir *John Fenwick's* Blood, (God forbid we should) but at his Confession: You will here read the Bill once, and twice, will commit and pass the Bill, (Sir *John Fenwick* not confessing) and still this is not to aim at his Blood: But it happens perhaps that this Man knows no more of this Matter; and this Man is racked in a manner to Death, from Reading to Reading, because he does not confess; and at last he comes to be hanged, drawn and quartered (instead of High-Treason) for not confessing it.

This I take to be the dangerousest Part of all the Arguments that have been urged: For this I must tell you, That according to my private Opinion, I do believe that Sir *John Fenwick* does know of no more Persons concerned (nor do I believe that he knows all that he says) than he tells you. He hath not been a Man that hath kept Company with Great Men: He hath generally relieved the poor *Jacobite* Officers: There are Five People, as I take it, he hath told you he did converse with: I would fain know in what Plot any Man converses with above Five of the Plotters? There may be a Plot that may be most dangerous, and yet a Person that knows of this Plot, may not know above two or three others that are concerned in it.

But the great Argument is, Take care of your Government. In the first Place, they must suppose the Safety of the Government depends upon his Execution, or why do they use it as an Argument? But I wish they would shew me the Government would be one Penny the worse, if this Bill does not pass. Do you want Examples of Punishment to deter Men? No; you have had lawful Proof against four or five Persons, and they have been executed: Here are Examples made, that no Body for the future may presume to plot together, and not to be executed.

What is the Reason of this Bill then? Why, there is a Plot going on; Sir *John Fenwick* hath been imprisoned this six Months or more; and will you hang him because there is a Plot now going on? What Consequence is that? Do you think that he knows any thing of it, or that he can discover it? It hath been started since his Confinement, it may be, and he knows nothing of it: So that as to what is pressed of his Confession, I know no one Thing would be gained by it, that could be useful to the Government; for I believe all hath been discovered already that he knows, and that Plot hath been utterly disappointed, and they have been fain to make a new one. Will

you proceed in a Bill of Attainder, unless the Matter be of the greatest Consequence? The Preamble of the Bill for Attainting the Duke of *Monmouth*, gave a substantial Reason for it: That he was in Arms, and could not be brought to Justice. That implied, That if he could have been brought to Justice, they would not have Attainted him.

I think I need not give you more Arguments in this Matter; I wish I could hear those that have been given, well answered. I shall say no more; but I know this, that my private Opinion shall never guide me in this Case. 'Tis not the same Thing with the Case my worthy Countryman put: In the Case of Religion, my private Opinion does not affect other Persons; indeed it does the Papists, where they will murder others that are not of that Religion.

Mr. *Norris*. This is a very solemn Debate, and 'tis upon a very solemn Occasion. 'Tis a Case of Blood; 'tis a Case that in my Life-time, I thank God, I never had to do with yet; and in this Matter wherein I am now to be a Judge, I will use as much Caution as any Gentleman within these Walls.

I am so conscious to my own Inability in what I have to say, that I can't expect to convince any Body; but what I say, is to discharge my own Duty, and satisfy my Conscience in that.

I doubt not, but every Gentleman considers the Station that he is in, and the Trust reposed in him by those that sent him hither: We are intrusted with the Lives, Liberties, and Properties of every Man in *England*; and we are answerable for them to those that sent us hither, to our Posterity, and to our selves.

In this Matter, many Things of great Weight and Importance are before you; here is the Life of a Man, the Preservation of the King and Government, and the Power of Parliaments to be considered. Sir, as I shall be cautious of taking away the Life of a Man, so I shall be careful of the Preservation of the King and Government, and the Power of Parliaments; and though I do not think it requisite, nor never will give my Consent to support the Government, or Honour of this House, at the Expence of innocent Blood; yet I shall not be afraid of giving my Opinion in this Matter, to bring a Criminal to Punishment: Besides, the Treason he hath committed, he hath Crimes of a Nature almost equal to Treason; and for which, because he hath evaded the Cognizance of *Westminster-Hall*, he is now brought before you; and there are several Instances, where this House hath taken notice of Offences of a less Nature, and for a less Reason, than this is brought before you.

To quote Precedents, is a little dry Subject; but however, I will instance in one, that (I think) does assert the Power of Parliaments in this Case, which has not been mentioned yet; and that was (as I remember) in the 3 *Rich. II.* of an Agent that came from *Genoua*, who was, by a Misfortune, killed upon a Quarrel that happened in the Streets; he that killed him was brought to his Trial; it could not be brought within the Statute of 25 *Ed. III.* but he was brought to his Trial, and it was found only *se defendendo*; but he being a Publick Minister, it was thought fit that the Nation should take more Notice of it; and he was Attainted afterwards by Parliament, and there is a Record of it: They did not

think fit to make a general Law, but they made an Example of the Man that committed this Fact.

A great many Gentlemen have supposed this, and supposed that, and what ought not to be supposed; but I will make an easy Supposition; I will suppose that we are the Commons of *England* in Parliament assembled; and if so, Sir, we have a discretionary Power to do whatsoever we see is for the Good of the Kingdom; and if we are to be circumscribed by the Rules of *Westminster-Hall*, and we are to do nothing but what they would do, to what Purpose do we sit here? If we are entrusted with this Power, and may exert it, I think here is a fit Occasion for you to exert this Authority.

Sir, give me leave to take notice, That the Strain of Argument that was used some Years ago, is very much altered by the same Gentlemen; (I will mention it) I think it was in 78, when the Bill of Exclusion was brought within these Walls; the Arguments ran then (for I have seen them in Print) those that were against that Bill; What will you do? say they; Will you do this Thing? Pass a Judgment against a Man without hearing of him? Hath he been brought to your Bar, to answer what you have to say against him? How do you understand that he is guilty of the Crimes you accuse him of? And they did not use those Arguments against them that were for disinheriting the Duke of *York*: But the Answer then was, Do you dispute the Power of Parliaments? Is there not a discretionary Power in the Parliament? I do take notice, That those Gentlemen that used that Argument for the Bill of Exclusion, now use it a quite contrary Way. Sir, I think the Power of Parliaments is not to be trilled with.

It hath been urged and said, a little while ago, by a Gentleman, That he does not believe Captain *Porter* is a good Witness. I will give you a good Reason why I do think he is a very good one, and they at the Bar think so too, because they would have given a great Reward to have taken him off; and for the same Reason, I believe *Goodman* to be a good Witness too: Sir *John Fenwick* was satisfied, that *Goodman* did know how far he was concerned, and he hath been prevailed with to be out of the Way.

Sir, here are a great many Circumstances that agree so well together, that (I think) no Person can doubt of Sir *John Fenwick's* Guilt; and (I think) 'tis in this Case in the Body politick, as in the Body natural, when a Man is almost past the Cure of Physicians, when a Man hath a Gangrene, a rotten Member, which the Physicians by the ordinary Means can't cure, the Remedy, the College of Physicians themselves in that Case would use, is, they would say, *Immedicabile vulnus ense recidendum est*.

I am of Opinion, that the Legislative hath this Power, and that this is a proper Occasion to exert it; and to compare small Things with great, 'tis like Thunder and Vengeance in the Hands of Providence, that is not used but upon extraordinary Occasions; and then it ought not to fail, for that makes a Man trifle with and despise that Power that is not effectually able to exert it self; and if the Sword of Justice be drawn, if they find it rusty, and will not cut, they will have a mean Opinion of your Power for the future.

Gentlemen are afraid of Precedents in this Case; for that Reason I am for committing this Bill, because I would make this a Precedent; and I will tell you why; Because it may happen in future Ages, that Ministers of State, and Persons concerned in the Government, may be faulty (I think I may suppose that) and as the Law stands now, he is but a bungling Politician that can't ruin the Government, and yet not come within the Bill of Treason to be hanged for it: And therefore for the keeping an Awe upon Ministers of State, and because I would have this House always have it in their Power to punish future Offenders, as they shall see Cause, as well as this unfortunate Gentleman at the Bar, I am for committing this Bill.

Mr. *Finch*. Sir, the Question now before you, arises upon a Case wherein you have a Man accused of High-Treason, and for that there is but one Witness, which by the Rules of *Westminster-Hall*, is confessed by every Gentleman, is not legal Evidence.

I remember the other Day, when this Evidence was offered, and an Objection made to it, the Answer was, That we ought to hear it (though in *Westminster-Hall*, they could not do it) because we sit here as Judges, and we can distinguish what is legal Evidence, and what is not legal Evidence, and can give its just Weight to every Part of it. I do observe now, in this Debate, some Part of the Evidence, which no Man can say could have been given according to the Rules of Law, is insisted upon, and Weight laid upon it.

And here they have taken into Consideration the Power of Parliaments; and the Method of Parliaments has been insisted upon. As to the Power of Parliament, Whether the Parliament can do it? And whether if the Parliament pleases to do it, they are tied up (as Gentlemen are pleased to express it) to the Rules of *Westminster-Hall*? That the Parliament can do it, 'tis a hard Matter to gainsay, That any thing is out of the reach of the supreme Power of a Nation; the Legislative Authority can do every thing: Yet, though Gentlemen have said this, and others have observed, That there wanted no Authority to prove this, being self-evident; yet give me leave to instance in some Particulars in this Case, with the Authority of the Judges upon it, where the Parliament have proceeded according to the Rules of *Westminster-Hall*.

We read in *Hen. VIIIth's* Time, that the Lord *Cromwell*, Earl of *Essex*, was Attainted in Parliament; and History tells us, That he was Attainted by a Law of his own making. Now, says, my Lord *Coke*, That seems strange; but enquiring of an ancient Person that lived in those Days, he told him the Meaning of it; That Lord had consulted with the Judges, Whether or no, if a Man was Attainted by Parliament, and was not brought to be heard, such Attainder would be good in Law? The Judges started at the Question, but could give no other Answer than this; Truly, if such Attainder be made, we know no Law to find Fault with it, for 'tis done by the Legislative Authority. It fell out, That the Instance of condemning a Person in Parliament (not according to the Rules in *Westminster-Hall*) fell out to be the Nobleman's Case; for he himself was so Attainted immediately after.

Give me leave to instance in another kind of Authority, the Authority of Parliament touching these Attainders, and what has been the Consequence of them: If you will look into the Record of *Rich. II's* Time, I do not mean the Record that hath been quoted, nor the Case of *John Imperiall*, for killing the *Genova* Ambassador, which was declared Treason in Parliament, Ten Years after the Man had been tried in *Westminster-Hall* for it; but I mean the 11 *Rich. II.* how many were attainted by the Proceedings of those Times; I do not mean by Acts of Parliament, but those Attainders were in an extraordinary Manner, not according to the Rules of *Westminster-Hall*: And 21 *Rich. II.* the whole Parliament, and its whole Proceedings were reversed, and the Parliament annulled: In that Year were the Prosecutors of the 11th Year themselves attainted: And 21st Year of *Rich. II.* the Act that repealed that Parliament, repealed the Pardon too; but in order to come to the Attainder of those Persons: That being done, was not enough; for the Lord *Arundel* had a Pardon the 17th of *Rich. II.* Upon that they made a Law to repeal his Pardon by Patent, that they might come to the Attainder of that Lord; and that Lord was Attainted by Act of Parliament. But I must observe one Thing a little further, That that very Parliament, that doubtless knew their own Power well enough, and that their Attainders were firm, being made by the Legislative Power, yet they had a little Jealousy themselves of their Proceedings; for they passed an Act to make it capital to go about to reverse any of those Laws; and another Act, that all the Lords and Bishops should be sworn. Now see what fell out after; *Rich. II.* was deposed, for consenting to those Laws; and *Henry IVth*, in the first Year of his Reign, abrogated the whole Parliament, and repealed all those Laws. These Turns have been upon these extraordinary Proceedings of Parliaments.

Give me leave to give you another Instance, and that in another Case, as odious as possible could be. In the Murder of *Edw. II.* there was *Roger Mortimer* attainted in the first Year of *Edward III.* and the Record says, That it was notorious to them all: And what then? They adjudged him to be attainted in Parliament. When Time had a little worn off that extraordinary Zeal (which truly was commendable, though it had transported them a little too far beyond the Rules of Justice) and they came to consider what Precedent they had made for Posterity, it had another Face; for in 28 *Edw. III.* was that Attainder reversed, because he was not brought to answer as he ought to have been. There was also an Act for attainting the Earl of *Arundel*, which in the same 28 *Edw. III.* was reversed, because he was not brought to Judgment by due Process of Law.

But now we are told, we are not tied here to the Rules of *Westminster-Hall*. Gentlemen do not enough distinguish in this Matter; the Forms of *Westminster-Hall*, say some; the Rules, say others; and others say, there is no Difference between the Form of Proceedings, and the Rules, of *Westminster-Hall*: But I hope no Gentlemen do think but the Parliament, though they have a Power to act as they think fit (as Instances have been given) yet the Parliament it self are tied by the Rules of common Justice. Now I would have Gentle-

men that say we are not tied by the Rules of *Westminster-Hall*, a little to consider the Matter. Are the Rules of *Westminster-Hall* no other than what are necessary for the executing of Justice? If they are no other, how can we be said to go according to Justice, when we go beside those Rules? I desire them to consider of the Consequence of this Proceeding; there is no danger, I hope, of this Parliament: But if we shall say, that the Rules of *Westminster-Hall* are not such as are necessary for the Proceedings in a Course of Justice, we shall shake those Barriers of our Liberty and Property, I am afraid, a little more than Gentlemen think of at present; And shall we declare they are not necessary, when our Ancestors have thought them so, and their Wisdom hath derived them to us, and the Wisdom of the Nation in Parliament hath established these Rules?

I can't say what Consequence may follow upon this. This Parliament can never do any Thing to endanger the Lives of the People of *England*; but heretofore Parliaments have been damned with several Brands, set upon them by succeeding Parliaments: As for Instance; One, I think, in the 38 *H. VI.* 39. That Parliament was wholly repealed, as packed, and passing Laws through Rancour and Malice, and having passed no good ones. Now, suppose a Parliament should come, that should not be so tender of the Liberties of the People as this; and they should be so bold as to shake those Laws that are made for the Rules of Justice, if they have so good a Parliament to guide them in it; Will not this be an Inducement to such a Parliament as that, to shake all our Laws and Liberties? But I can't trouble you any longer, my Head will not give me leave. I am against the Bill, and have offered you my Reasons.

Col. Wharton. I hope Gentlemen, in a Matter of this Moment, will have Patience to hear one another; and since every Gentleman is to give his Vote in this Matter, I desire to give my Reasons for my Vote: I am of the Opinion of another Gentleman, That we have not touched the Sore yet; yet I do not think, that the Rules for *Westminster-Hall*, are Rules for us. The Gentleman that spake last, as he always does, made a very florid and elegant Speech, and brought you several Examples of Attainders that have been condemned from one Parliament to another, in several Reigns: But I do not wonder at that, when the Crown went from one to another. An Instance was given in the Case of the Lord *Cromwell*, which was spoke too from the Bar; and Sir *Thomas Powys* laid a great Stress upon it, That this was condemned as a wrong Judgment, because he was not heard: I believe that may be a Reason why many of those Attainders were condemned; perhaps it might be a Custom of our Ancestors to pass Bills of Attainder without hearing the Party. This Person hath been heard, and fully heard; and I believe no Person, that hath been attainted, hath had so fair a Trial; and therefore Parliaments having condemned Bills of Attainder, because the Persons have not been heard, that will be no Reason why any Parliament should condemn us. A Gentleman told you, That the Law of God and Man was not to condemn a Man, but upon two Witnesses; but there are many Instances to the contrary.

It is told you, That *Porter*, here before you, is not a good Evidence, because he is not sworn; and that you are to go by the Rules of *Westminster-Hall*. Says the Gentleman that spake last, you are to go by their Rules, but not by their Forms: I must confess there is a great Difference between them two; for a Form is only the Manner and Method by which we proceed in doing of any Thing; but the Rule is the Foundation we are not to err from; but I can't agree we are upon the same Rules as *Westminster-Hall* is: The Rules of *Westminster-Hall* are, when a Man is brought upon his Trial, the Jury are all to be upon their Oaths; by which Oath they are to make a true Judgment according to Law. This is not the Case here; if I was a Jury-Man, and was to try a Man, and one Witness swore against this Man, and no other Witness, though I did in my Conscience believe him to be guilty, yet in that Case my Conscience is discharged, and I must find him not guilty: But no Man can say this is the Case here.

What are we now a doing? Here is a Bill to attaint Sir *John Fenwick* of High-Treason: If I reject the Bill, I do declare him not guilty; and if I do think him guilty, I do declare against my own Judgment; for my Judgment here, is not bound up as a Man's Judgment upon a Jury; for his Judgment is bound up to Proof, according to Law; and my Judgment is bound up by my own Belief: This is the Proof I must go by; and I think every Man is bound in Justice and Duty to his Country, as he believes Sir *John Fenwick* to be guilty, to be for the Commitment of this Bill; and till any Gentleman will convince me, that this is not a Rule I am to go by, I must continue in this Opinion.

Mr. *Boyle*. The Disorder that worthy Gentleman was in, makes me the more concerned for fear of falling into it myself.

I hope in this Debate, Gentlemen will be very cautious of using it as an Argument, what Application our Votes shall have without Doors, and with those we represent, when we are to give Judgment, as far as in us lies, for the Life and Death of a Man: And therefore I must observe, that the Eagerness that is justifiable upon Impeachments, may not look so well now we are Judges upon a Bill of Attainder. You have gone over the whole Course of the Evidence, and I believe that this Debate will shew you pretty plainly, what is to be the Fate of this Bill; for I believe all the Arguments will now be used that can be: As to what hath been said of extorting a Confession, I take it to be quite out of the Case.

I am sorry to be engaged one way or another: I would not, if I could help it, out of the House, be upon a Jury of Life and Death; yet in that Case, I should know the Law, or be told it by the Judges: But in this Case, we are both Jury-Men, and Judges, and know not what Rules we are to go by; but set up a Court of Equity which hath no Bounds but our own Consciences.

As to Sir *John Fenwick*, I know him not; as to his Cause, I am sure, I am against it; but how far I think him guilty or not, I think is not the single Point to be considered: I must confess, there have been several People accused of this Conspiracy, and have been named by the Evidence at the Trials; and I believe they are much alike guilty, being upon the same Evidence; but as to all that hath been opened before you, and proved, it can amount to no more than this; There is but one

Evidence, which by the Law would not be a good Evidence to convict him in another Place; and therefore I do agree with the Gentleman that spake under the Gallery, that this is a very extraordinary Case; for one Witness is not sufficient at Law to convict him, and the Law would be very different hereof. I am to judge according to my own Opinion, and not by the Rules prescribed by the Law; but though this Proceeding is not strictly according to the Law of the Land, yet if it was such an extraordinary Case that required you to dispense with those Forms, and come to this extraordinary Manner of Proceeding; I think, for my own Part, it might be supported by the Necessity of it; for 'tis impossible that it should be otherwise in Practice: Thus when the Government is at Stake, and nothing will preserve it, but the breaking through the settled Forms, then the Government will break through them; and whatever Rule you prescribe, it will always happen so.

There is a very extraordinary Case, and that was in the Conspiracy of the State of *Venice*, above a hundred Years ago, I think, set on foot by the *Spaniards*: Then the State, to get the whole Matter out, promised a Pardon to as many as were concerned in it; and after they had promised it, and treated with them about it, they thought it necessary, for the Preservation of the Whole, to break their Faith, and they were all put to Death. This was upon Point of Preservation of the Government.

But, Sir, as to Precedents, give me leave to say, I do not give that Authority to them unless I know all the Springs and secret Histories and Transactions that were their Guide in making those Precedents; and as to Precedents that have been quoted, when the Parliament has declared what was Treason, and what was not Treason, or have declared Constructive Treason, they may be grounded upon the Statute of 25 *Ed. III.* But I think there is no Statute upon which they can ground the Condemnation of a Man upon one Witness.

In the Case of my Lord *Strafford*, upon constructive Treasons, it was there said, That it was a Fire that had lain hid for 240 Years, and that it never broke out before, but to consume him, and his Posterity. It was answered by *Pym*, If that was the Case, it was not for want of Law to justify such a Proceeding, but all that Time had not produced such an Offender.

I do not doubt, but if any one will consider the late Conspiracy; and if that was the Question, but it was as extraordinary as any Thing can happen; for it was to subject their Country to a foreign Power, which is very extraordinary, and several Persons were concerned in it: But there is one extraordinary Part which I do not remember this Gentleman is accused of; and that is, the Assassination. Treason it self is a very extraordinary Crime; but give me leave to say, that extraordinary Part is not alledged against this Gentleman, and this Bill does not seem to be brought in for that, wherein he is concerned in common with some others, but for the subsequent Matter alledged in the Bill. This Bill is grounded not so much upon that he is guilty, as a great many more are, as upon several Circumstances which have happened to no Body else. Give me leave to instance in a Case, now in my Head (I beg your Pardon that I ramble, 'tis from the Awe I have upon me from this Assembly) in *Cataline's* Conspiracy; and if that was our Case, no doubt there would be another

ther sort of Argument for it; there they consulted what to do with *Cetbegus*, and the other Conspirators; he was at the Head of an Army, which only expected his Orders to lay *Rome* in Ashes; the Question was, Whether they should break the *Porcian* Law; and for the Safety of the Senate they were put to Death before the Assembly rose.

Now to come to this part of it: Though Sir *John Fenwick* is a great Offender, yet I think his Case is not so extraordinary, as to make you proceed upon this Bill. I do take his living or dying not to be of that Consequence as this Bill of Attainder. I know not how he comes to be so considerable when in Hold; for when he walked about Town, I never heard he was feared or regarded at that Time.

But to come to the Allegations in your Bill, upon which they are to ground your Judgment: The first Part is a new Conspiracy, that is, for intending to create a Jealousy between the King and these noble Persons. As to them, you have already passed a Vote in their Justification; and I think their Actions may justify them to the World, as much as any Vote of the House of Commons; but whatever that may be, I think it was a foolish piece of Conspiracy, as well as an ill one; for one, when he was in danger of being hang'd for one Plot, to venture upon another; and I think, there was at that Time two Witnesses to bring him to his Trial, and that is an Allegation in the Bill. And as to the Protracting of his Trial, 'tis natural, and so justifiable, whether innocent or no, and what every Body attempts; and no Body can wonder at it; but in one Case or the other it can be no sufficient Ground to attain him.

The next Thing that is said is, That he hath been the Occasion of the withdrawing of the Evidence. Now I must observe, that is not alledged in the Bill, and is proved but by Hear-say: But suppose it was true, and alledged; if any Man concerned in Treason shall endeavour, by Friends, or otherwise, to get off an Evidence, can that amount to that which is designed to be punished by this Bill, to High-Treason? 'Tis the Part of those that are intrusted with those Matters, to be in Expectation of such Practices. What are Goals for, but to keep them in Custody? And the People employed in those Businessses are to take care of it. Are we to supply a Defect of what ought to have been done in another Place?

So that I do say, That a Precedent in an extraordinary Case is no Precedent to be used in a little Case. It may be urged, but 'tis but a Precedence, when you have passed this Bill, which is the Record, the Matter will appear no otherwise than are the Suggestions of your Bill. A Man hath aspersed great Persons, which is a great Fault indeed, (for he is not charged with the withdrawing of the Evidence) therefore attain him upon one Evidence. I think by this Bill you will open a Door for a Precedent of all Treasons of the same Nature. Sir, there have been many Precedents mentioned; I will trouble you with none, because most Gentlemen have read the Argument of Mr. *St. John's* in this Case. I must confess, unless there was that Necessity as is pretended, which I do not see, I do not see how you can justify passing this Bill of Attainder, either by the Law of God or Man, in any Nation allowed.

I must confess, I have no manner of Concern

how this Question goes; what I have said is more to satisfy my own Judgment, than work upon other People. I am not satisfied there is that Necessity that is pretended; and therefore as my Judgment is now informed, I can't give my Vote for Committing of this Bill.

Mr. *Smith*. Sir, I own my self to be very unfit to speak in this Argument; but since I am to give my Vote in a Matter of this Consequence, I beg leave to give my Reason why I give my Vote, as I intend to do. I know the Matter before us, both in the Nature of the Crime and Punishment, as well as the Consequence of it, requires a very deliberate Consideration; but at the same Time, I do take the Hazard and Danger of this Government to be a Matter of great Consequence too.

Though there have been several Precedents instanced in relation to Attainders; and though I have observed, that most have acknowledged, That they might be justified upon extraordinary Occasions; yet when they have asserted that, they have told you, they were upon a wrong Foundation, and so were laid aside. Now I think it no great Matter to say, That those Attainders that were made in Rancour upon contended Titles, were reversed when the opposite Party got the Power, no more than if any Action, be it never so justifiable, should be reversed when King *James* comes again, which I hope will never be. Is it any Argument, that when *H. IV.* came to the Crown, and deposed King *Richard*, that he reversed all the Attainders in his Time? There might be Reasons might sway with Persons for reversing particular Acts of Parliament, which might be very good, or might be not so, there was such a Change of Government at that Time; but they take notice it was made a particular Article against *Richard II.* as if when the Power was come to other Hands, they would not have deposed him if they had not had that Argument: Neither do I take that Argument to be of any weight; That Attainders have been reversed, because the People have not been heard; when this Gentleman hath had as full a Hearing as ever any Person had upon any Bill of Attainder, or Impeachment whatsoever; and he hath had the Advantage of Counsel in this Case (which, as has been told you, was excepted out of the late Act of Parliament) and of the most able Counsel too.

'Tis said this is a Matter of no great Consequence, because it concerns Sir *John Fenwick's* Life singly; and he is not thought to be so considerable, as by his Escape to bring the Publick in danger. Now it hath been always one Principle I have laid down, That if a Plot be discovered, and not thoroughly prosecuted, it strengthens and grows upon you, and ten to one if it does not subvert the Government.

Now, God be thanked, that we have prevented the Design upon the King's Person, and several have been punished for it; but I think we are not got to the Bottom of it, and that we ought to provide against it in a much other Manner. Can any one think that Sir *William Parkyns*, or Sir *John Freind*, and the rest that are discovered, were the only Persons concerned in this Conspiracy; I take it, that there have been much greater Men in it; and when I see such a Struggle both to get People out of Gaol, and send People out of the Way, and all Arts used that can be, I must suppose, when such extraordinary Courses are taken,

ken, that there is something extraordinary still to be done; and I would not have Men by bribing of Witnesses think to secure themselves: It hath been used as an Argument to lessen the Matter, That this was a little after the Act of Indemnity. Can any Thing aggravate a thing more? Sir, these very Arguments turn against them.

We are told here, that we must not consult our own private Judgments in the Matter; and we are told at the same Time, if there were two Witnesses that we did not believe, we must not find him guilty. We are told of a Judge, that though he knew a Person to be not guilty, yet it was a commendable Action in him, that he condemned the Man: But that hath been very well answered already, and I shall not meddle with it further; only this I will say, that I never will in any Case be a Jury-Man or a Judge, where the Convictions of my own Conscience shall not govern me, but an Evidence that I do not believe. And because that Story was told you, I will tell you another, that I think more commendable: And that was; a Man was try'd for a Murder, and there was positive Evidence against him. The Jury went out, and stay'd a great while: There was Eleven against One for finding him guilty; but at last the One almost starved them, and they brought the Man in not Guilty. The Judge sent for the Gentleman, and desired to know his Reasons for differing with the rest: And at last, upon Assurance that nothing should be done to him, Why, says he, Would you have me find the Man guilty, when I was he that killed the Man, and he was innocent?

Then, Sir, if you take the Evidence as it is; I think, first, here is Capt. *Porter*; I do not find any Body excepts to him; and his Evidence hath been approved of by several Juries, and several Persons executed upon it, and nothing material hath been objected against it. I will not say, That Sir *John Fenwick* hath owned a great deal of this himself; he hath given every body Satisfaction how far he stands guilty in his Opinion; but it is brought so far home, that there was Sir *John Fenwick's* own Letter was to convey him abroad. Here hath been Attempts upon other Persons; you hear what hath been done by the Solicitor. They say, he was not his Solicitor at that Time. Here are very pregnant Circumstances. One Gentleman said, you ought not to make use of *Goodman's* Evidence here; and yet he could make use of every Thing to disparage him; for he could say, there were three positive Witnesses against him.

Now when 'tis so notorious what Parties there are for King *James*, and we find Persons plotting in every Part of the Kingdom: When you have an open Invasion before you, and when Designs are laid against the King's Life every Day; if this be not a Time to exert an extraordinary Power, I submit it to you.

Sir *Rich. Temple*. Sir, I shall not trouble you with any Thing that hath been offered to Day. That which calls me up, is the Danger of the Precedent you are about to make, and the Arguments that have been used to support it; which, I think, are more dangerous than that. I must confess 'tis a new Doctrine to me, That the Laws that are made by the Parliament, are to be no Rule and Guide to this House. Sir, the Birth-right we have is in our Laws; and I did ever think till now, that the Laws were not only

made for *Westminster Hall*, but for all the Subjects of *England*; and especially, that they were to be a Rule to the Parliament that made them, till they should think fit to alter them.

Here have been great Mistakes between the Power of Parliament and the Jurisdiction of it; the Power of Parliament is to make any Law, but the Jurisdiction of Parliament is to govern it self by the Law; and this, give me leave to say it to you, hath been the Opinion of all your Ancestors, and the Method they ever used. Shall we make a Law here in a particular Case against all the Laws of *England*? 'Tis *ultimum remedium & pessimum*; you may use it in a Case of absolute Necessity, but otherwise it may be a Precedent to overturn all.

There are several Things in making this Precedent, that overthrow all the Laws and Liberties of *England*: First, you are passing Judgment upon a Man upon one Witness. I have heard a strange Debate to Day, That there was but one Witness in Treason, before the Statute of *Edw. VI.* You know, that in Case of Treason, there was by the Common Law required two Witnesses; for if there was but one, the Party might demand Trial by Battle, and that was the Common Law of *England*.

There is another Thing that is extraordinary: Here you are going to pass an Act without any Trial at all: For to say this is a Trial before you, the Commons, is a Mistake; you never did assume a Jurisdiction of trying any Person, nor can you: You may for your own Information hear what can be offered, but 'tis not a Trial, where Witnesses are not upon their Oaths. There is no manner of Power or Jurisdiction can be pretended for you to try; in that is a second Thing. All the Bills of Attainder you have had, have been in three Cases, where the Persons have been either dead, or fled, or have been without the Compass of the Law, and could not be brought to answer: And you have had some Bills of Attainder after Trials had in *Westminster-Hall*; but never a one of those have been called Trials, but they have been generally reversed; and for what? They tell you, That they have been reversed by one Party and another Party: It was in the same King's Reign, in *Rich. III's* Reign, they were forward and backward, as the Court Party or the Country Party were uppermost.

There is another Thing in this, that I think of a most dangerous Consequence; and that is, that you are for making way, for what I know, by this Precedent, for a Rack, for so 'tis said; this is to force a Man to be an Evidence. Why, give me leave to say to you, 'tis a new Way not known in *England*, that you will hang a Man unless he will confess or give Evidence; but I think 'tis something more than a Rack, for here is hanging, drawing and quartering in the Case; and I do not think this Proceeding will make him an Evidence with any Credit or Reputation to this House; nor am I of Opinion, that he can discover any Thing worth such a Precedent.

Now give me leave to say one Thing as to the Jurisdiction of Parliament. It hath passed here for current, That the Parliament hath a Power to declare what they will Treason, though so by no other Law: 'Tis the greatest Mistake in the World: I heard a great Debate upon this, upon my Lord *Clarendon's* Case; and 'tis plain, that Statute relates only to Cases brought from inferi-

our Courts to Parliament; for it says, That if any other Case supposed Treason, which is not in that Statute specified, doth happen before any Justices, the Justices shall tarry, without going to Judgment of the Treason, 'till the Cause be shewed and declared before the King and his Parliament, Whether it ought to be judged Treason, or other Felony. I speak to the Jurisdiction that the Parliament has by that Statute: 'Tis, that if the like Treason (for at Common Law there was a great many Treasons) should fall out, and be brought before inferiour Courts, of which they doubted, whether they were Treasons or no; then they should be brought before the Parliament, to judge whether they were Treasons or Felony: But how shall they judge? By the Laws in being. And who is this Judgment in? Not in the Parliament by Bill, but only in the House of Lords: Much less is it, That you may judge that to be Treason in this House, that was not so by the Common Law before. So that, give me leave to say, therefore there is no such Power reserved to the Parliament, to declare any thing Treason that is not Treason before.

I must say, 'tis of the last Consequence, that we should make a Law in a particular Case, to take away from him all the Liberty that belongs to a Subject. Some Gentlemen talk of the great Favour he hath had at this Bar: I know not what to think of it; I am sure you allowed the King's Counsel such Privileges as I never saw before, and that was to offer that for Evidence that every body acknowledged was not so; and I do not think any body would think it a great Favour to be heard in this manner, especially to Things not in the Bill.

'Tis said, every Man must go according to his private Opinion, 'tis not said Judgment neither; the Instances that have been given are of a quite different Nature: A Man is not to give his Judgment against his Knowledge: I think that Judge ought rather not to have try'd the Cause at all; but if we sit here to judge, we sit to judge him according to the Law of *England*, and then we must judge him according to legal Proof. Will you sit upon a Judgment that is not only not tied to the Rules of *Westminster-Hall*, but is not tied to the Laws of the Land; and Attaint a Man without a legal Trial, without legal Evidence, and upon One Witness, when the Law says, you shall have Two; and after all, say 'tis a reasonable Proceeding? I know not how it came about, that the Act of Grace was passed; it did not rise from this House: If it hath any ill Consequence, let them answer for it that were the Cause of it.

They say the Government is at stake, because the Plot hath not been found out to the Bottom. That is not our Fault: This Man hath been long enough in Custody; if he hath trised with the Government, I am sorry he hath imposed upon them; but if it be so, I think there is nothing in this Case, of that Consequence, as to make you make this Precedent.

Sir *Will. Strickland*. Mr. Speaker, I would not make use of any ill Precedent: And yet if the present Occasion, and the Necessity of the Kingdom required it, I would make a Precedent: I am glad the several ill Precedents are avoided in this Case, and I would be bold to say, whether this Gentleman suffers or no, no Man can say that he hath been hared to Death by Counsel.

Sir, I should be as tender in Point of Blood as any Man; but I do think, if the Safety of the King and Kingdom is concerned, 'tis not one private Man that we must have respect for, so as to let the Publick suffer by it. I do think, that upon this Occasion there have so extraordinary Things happened as have hardly happened in former Ages; that one who is known to be in a Conspiracy to bring over a *French* Power with a *Popish* Army; to destroy our Lives and Liberties, after his Trial has been deferred by his Equivocations and Pretences to make a great Discovery; when he comes to make it out, he accuses the best of your Friends; and this is only an Artifice to get Time 'till they could get the Evidence out of the Way; I think, if you do not take notice of it, and let the Legislative supply that Defect, it may be of ill Consequence, and may encourage any one to commit the worst of Mischiefs, upon hopes, that if they can get the Evidence out of the Way, they shall go unpunished.

Sir *Francis Winnington*. I shall trouble you but a little while, it being late; but Gentlemen saying 'tis an extraordinary Case, I shall give my Reasons why this Bill ought not to be committed; for every Member here now is a Judge; and he must take the Blood of this Gentleman upon him in Judgment, either to condemn or acquit him; and I must confess, I have very much admired, to hear that Doctrine preach'd, That every Man, as he is satisfied in his private Conscience, ought to judge this Man guilty. I desire to know by what Authority we sit here? We sit here and have a Legislative Authority, and 'tis by the King's Command we come together; but at this Time we are judicially trying this Man for his Life; and therefore I humbly conceive, That we ought to proceed *secundum allegata & probata*; and for any Man in his private Opinion to say he is guilty, he does not act by the Commission he sits here. For to tell you of the *Lancashire* Plot, or that a Man shall not be chosen hereafter, seems to be Arguments to enflame, but nothing to the Question.

Now, Sir, I will humbly offer to your Consideration, and the Judgment of the House, why I think we cannot judicially condemn this Man; for I think the Question of Commitment to be the same as of his Life and Death.

I do agree upon all the Precedents good and bad that have been cited, and doubt not but in extraordinary Cases, 'tis in the Legislative Power of the Parliament to look after the Safety of the Kingdom; but I shall offer why this does not come to that Case.

I humbly conceive in this Case, for I will not speak to the Rules of *Westminster-Hall*, but upon the right Reason of the Thing; for if it be Reason in *Westminster-Hall*, it may be so here, and that ought to overcome every thing; But whereas Gentlemen say you have one Witness, I do not apprehend you have one good Witness, and I will give you my Reason for it; for you must take Capt. *Porter* upon his Parole, and consider what he says upon his Word; and then I do appeal, if you take what he says upon his Word, whether ever they did know that a Bill of Attainder proceeded against any Man upon bare Affirmation? No; in that Case you should have turned it into an Impeachment, if the Thing looked probable, and then you had the Witness upon Oath; and the ancient Method of Bills of Attainder used to be first by the Impeachment of the Person, and then to turn it into a Bill of Attainder.

Then see what it is that is insisted on by the King's Counsel, and recited in the Bill, That there was a Bill of Indictment found by the Oath of two Witnesses, that is, *Porter* and *Goodman*: Under Favour, I think they are not to be counted as Witnesses in the Point; and I offer this as a Reason; and, I think, 'tis natural Justice in all Courts of the World, That if a Man be accused as a Malefactor, he hath the Liberty to cross-examine the Person that accuses him. Now we very well know, that in Case of Bills of Indictment, when they are found by the Grand-Jury, they never admit the Prisoner to put Cross-Questions, because the Bill of Indictment is but the Accusation; and if an Accusation be enough, who can be Innocent? Why, then if it be so, then this Oath that was given to the Grand-Jury, is not such an Oath upon which you can put such a Value.

Then, Sir, go to the Paper of *Goodman*, which you would read, and consider the Validity of that; *Goodman* being now absent, the Prisoner hath no Opportunity to cross-examine him; and I beseech the House to consider the ill Consequence of it: Any Minister of State may come and get an Examination before a Justice of Peace, or Secretary of State, and the Man is conveyed away, and a Bill of Attainder is clapp'd upon his Back, and this shall be read as Evidence against him: He is but half a Witness, and a Witness upon an Accusation, not upon a Trial.

Then come to Sir *John Fenwick's* particular Case, Sir *John Fenwick* is indicted, Issue is joined, and he hath Notice of his Trial; and one of the Witnesses goes away, no Man can tell upon what Account he went; I may believe why, in my private Opinion, but that is not our judicial Knowledge: Then if that be so, was it ever known, that when any Man was indicted, and Issue joined, because his Trial was deferred, therefore a Bill of Attainder must be brought against him? Here are Plots against the Government, and it may be Forty may be taken up for it; and as to Twenty, there may be two Witnesses, and the others may have the good luck to have but a single Witness against them; will you have Acts of Attainder against all the rest? If this had been an extraordinary Case, wherein the Government had been particularly concerned, it might have weighed with you; for no Man can shew me any Precedent of a Bill of Attainder, but where there was open Act of Hostility, or Men of great Relation and Power were concerned to subvert the Government. But what is Sir *John Fenwick's* Case? He is in Custody, and the Plot is detected; if he was run away, you might still suppose he was plotting against the Government, because he was fled from Justice. Gentlemen say the Government is concerned; so it is in every Felony and particular Treason; but must there therefore be a Bill of Attainder to punish it? When there is a Bill of Attainder, it must be from an immediate Danger that threatens the Government established, that such a Man is Attainted. But I do not see that Sir *John Fenwick* hath any of these Circumstances. All Men agree, That this is an extraordinary Way of Proceeding: Then the Question is, Whether Sir *John Fenwick's* Case be extraordinary? or, Whether he be more than a common Malefactor that is in a wicked Conspiracy? I do not see that this Case of Sir *John Fenwick's* is so extraordinary, that if he be not hanged, the Government must fail.

And, under Favour, a Precedent, when 'tis once made, I know not what Time may produce from it: It may be, after the Death of his Majesty, that came to restore our Liberties, we may have wicked Members, and Members chosen as in *Hen. VIII's* Time. It may be the Condition of every Subject in *England*. The Power of Parliament we must govern by Reason and common Justice; and if there be not so urgent Necessity to use this extraordinary Remedy, because it may be dangerous to Posterity, therefore I am against this Bill.

Sir *Tho. Littleton*. The worthy Gentleman took notice, That the *Lancashire* Plot, and some Words I used, were used only to inflame: I can't so well guess at his Thoughts, but I have heard him several Times bring his Wife and Children into his Speeches, to no Purpose at all.

Sir *Francis Winnington*. I have a Wife and Children, and that Gentleman none; therefore I think I may make use of that Expression.

Sir *Tho. Seymour*. Mr. Speaker, I have attended your Debate with the best Attention I can; and I have heard a great many Arguments, and some very wild ones too. I hope, how frightful soever Things have been opened, they will not lead your Understanding out of the Methods and Rules of Justice. I will not take upon me to tell you, what is nothing to the Question, as, that Treason is a very great Crime, or, that the Parliament hath an unbounded or unlimited Power, and are not tied to the Rules of *Westminster-Hall*; I think that is no Part of the Subject Matter before you.

That nothing bounds or can limit the Parliament, is what every Body does admit; but 'tis the right Application of that Power which is now to be considered of: For you may judge the Prisoner, and others will judge you. The World will judge you, if you do not apply that Power aright.

For my part, I shall avoid as much as can be, the saying of any thing that hath been said; and therefore I hope you will believe that my Discourse must be very short: But that which does move me in this Question, is in short this, That I do not give my Judgment to condemn any Man otherwise than the Law directs how, and upon what Terms I must give it. If the Law hath said, That Treason is not to be Treason, unless it be proved by two Witnesses, I am never to give my Judgment in that Case, when there appears but one.

And this I take to be the State of the Case, not to enter into Matters of Precedent of Attainders; for those are only Instances of so many Facts that have been done. And in all those Instances that have been urged and quoted, when Times have been sedate and quiet, Marks have been put upon them, as was hinted by a Gentleman that spake very ingeniously upon this Subject at the beginning of this Debate; I say, Marks have been put upon them for you to avoid, but not to imitate. I take it, that the Law hath determined that there shall be two Witnesses to the Proof of Treason, and there is no Treason that hath not two Witnesses to it. There is but one Attainder that we meet withal in sacred History, and that is the Attainder of *Naboth*; he was Attainted, and we know what induced that Attainder; he had nothing to object as to the Formality of the Proceedings there was set up against him: And though *Jezabel's* Letter had disposed the Rulers to deal by him as they did, yet there were two Witnesses that did appear against him.

I take it, that two Witnesses are requisite for the Knowledge of the Truth, that you may make a right Judgment whether they swear right or no. I will give you but one small Instance more; I must tell you, *Susannah* had been but in a bad Condition, if one Witness or circumstantial Evidence would have made her guilty.

A Gentleman here says, 'tis Apocrypha: But that which weighs with me is, that there may be Inconveniencies on one Side, and there are no Inconveniencies on the other. I know not what may be the Consequence of this Precedent, nor where it may bring you: I know the Consequence, if Sir *John Fenwick* be not executed upon a Bill of Attainder; for no Body will believe there is a Necessity for this extraordinary Remedy to be applied for an Offence, a Year and half after he hath been indicted and arraigned for it, and they might have proceeded to his Trial; and I know not whether 'tis his Fault that they did not; for it was not in his Power to prevent it: And if you, upon every Occasion, come to supply the Defects of them that are remiss in the Government, it will make them more so.

As to the Matter of Precedents; Why, it may fall out, that by this Precedent an innocent Man may be punished, and then we that make this Precedent are guilty of his Blood; and if he suffer never so remotely, it will be required of us, if they proceed from this Precedent. Now, if Sir *John Fenwick* be not executed, unless in a legal Way, what is the Consequence of that? Is it that Sir *John Fenwick* shall go unpunished? Though they are deprived of one Evidence, that would make it Treason, he may be punished for a Misdemeanour, and imprisoned for his Life; and I had much rather he did languish in that Condition, and I am sure it is much safer for you, for no Inconveniency can arise that Way; and I take it, that when those that are our Guides dispute which is the Way, we are to take that which is safest.

The Learned have disputed, Whether this Matter, as now it is charged upon Sir *John Fenwick*, be Treason: I will not take upon me to determine it; they differ about it; and when they can't determine it, will you by a Question determine it absolutely?

Upon the whole, there hath been so much said by the Counsel for the Prisoner, and so little said by the Counsel against him, and so few Arguments urged against him, that I must still retain the Opinion I had, That there is not Evidence enough for you to proceed upon this Bill of Attainder.

Mr. *Boscawen*. Sir, I desire to give my Reasons for my Opinion in this Matter. I have no personal Disgust against Sir *John Fenwick*. The great Argument for Sir *John Fenwick* against this Bill is, That this is an extraordinary Proceeding, and therefore should be against an extraordinary Person; and in the next Place, that it is against the Rules of Law. The Rule of the Law is, That there must be two living Witnesses: As to that Matter, Gentlemen generally agree, that 'tis within the Law of Parliament to attaint People by Bill of Attainder; but they say, they have been often misapplied; which I do easily believe, because some have been attainted, and have not been heard; and some have been in tumultuous Times: But this Gentleman hath had a fair Trial, and a Debate in this House: But I would fain know,

though they confess Bills of Attainder may be, how it can possibly be, if the Lawyers at the Bar say true, That it must be upon Oath, and you give no Oath?

To say it may begin in the House of Lords: Under Favour, I take it, that a Bill against a Commoner can't begin in the House of Lords. And if you can't have Witnesses upon Oath, you must have as much Evidence as the Nature of the Thing will afford; that is, you must have Witnesses to convince your Consciences in the Thing; for if all this great Assembly are satisfied in their Consciences, that he is guilty of inviting an Army of *French* to come into *England*, I am astonished to think, that you should not pass this Bill against him. I think; as to this Witness *Porter*, they have not endeavoured to blemish him; but their Argument seems to run more upon *Goodman's* not being present. I would know, if there are two Witnesses, and I do not believe them in my Conscience, whether I can pass this Bill? But I appeal in this Case, *res ipsa loquitur*; the Thing is so plain. How many have been attainted and suffered for the same Crime, that have acknowledged Sir *John Fenwick* to have been present? There were several Members of the House sent to examine Sir *John Freind* and Sir *William Parkyns* in *Newgate*; and they were sent with this Intention, That the House would intercede with the King for a Pardon for them, if they discovered the full of the Plot (it was not the Death of Sir *William Parkyns* and Sir *John Freind* that was aimed at, but the Preservation of the Publick); and when they were examined, they did acknowledge, that they were privy to the calling in of the *French*, and that Sir *William Parkyns* was to have a Troop of Horse; there was to be 2000 Horse; but he would not redeem his own Life with the Blood of others. Now I do take it, that there is Evidence against Sir *John Fenwick* sufficient, in a Parliamentary Way, to attaint him.

The Gentleman says, the Consequence of throwing out this Bill, would be nothing, and that Sir *John Fenwick* is a little Man: I agree he is, but 'tis the Consequence of bringing in a *French* Army that is to be considered. Would you pave the Way for them to come over, and make their Entrance easy? I hope the People of *England* are concerned in the Case, as well as their Wives and Children. If you let him go, what will be said? I have not heard one say, that he believes he is not guilty; there is none but think him guilty; and yet will you let him escape? What Encouragement will this be to your Enemies? He hath not denied the Matter himself: Nay, he hath not brought one Gentleman to vindicate him, that he is a Man of a Behaviour not to be believed to be guilty of such a Thing, which was done in other Trials.

I desire you would consider what the *French* King said of his Brother King *James*; How could he think to bring in Popery with a Protestant Army? I am sure the bringing in of a *French* Army must be for the Destruction of the People of *England*, and the Protestant Religion, and will bring your People to go in wooden Shoes. 'Tis the Example of this Thing you are to consider. It was said at the Destruction of *Carthage*, That the Commonwealth was always to be minded. I think you ought always to be mindful for the Preservation of *England*; and I believe he is guilty, and I am therefore for the Bill.

Lord *Digby*. I shall trouble you but with a Word or two. I suppose as long as we act by the known Rules of Justice, and the Laws of our Land, we shall not need to fear any Censure in our own Kingdom, or any where else; but 'tis a very uncertain Thing for Gentlemen to be Judges in the Case of Life and Death, without any Rule to walk by; a great many will not allow us any Rule at all: I always took our Rule to be the Law of the Land, and that even our selves are bound by the Laws our Ancestors have made, 'till we think fit to repeal them; and I am confirmed in this Case by one particular Argument from the Bill of Treason that passed last Sessions, in which there is a Clause, That it should not extend to future Parliaments. The only Argument for exercising of this Power, is the extraordinary Case of this Gentleman. When a Gentleman speaks of the Power of Parliament, I take it to be the just Power of Parliament: I think a Man may say, a Parliament can't do what they can't justly do. But all Gentlemen allow, that this Power ought not to be exercised but in an extraordinary Case, wherein the Government is nearly concerned. I believe very few but think, that if it had not been for the Vindication of some particular Gentlemen, we never had had this Matter before us; and then I will leave it to Gentlemen to consider, if the Government can be in so much Danger if Sir *John Fenwick* does escape.

Mr. *Brotherton*. Mr. Speaker, I perceive the Question, whether this Bill shall be committed, arises very much upon a Supposition that seems to be granted, That there is no other Law to try this Person by; and it hath been hinted, That before the Statute of *Edw. VI.* one Witness was sufficient: Now, if I shew you that here is a Law in being, and hath continued for several hundred Years, whereby a Man may be tried, and that by one Witness, I think it is something that hath not been spoke to yet.

Sir, I ground my Reason and Opinion upon the Authority of the Law, and upon the Historians of all Times, who agree in the Thing, and come down to my Lord *Coke*, which is printed by Authority; and he is express, That where there is but one Witness, (he treats of what Witnesses are necessary, and he tells you two Witnesses were required by the Common Law for Treason, if the Person was tried by a Jury); but, says he, if there be but one Witness in case of Treason, he shall be tried before the Constable and Marshal. And in treating of the Statute of *Hen. VIII.* which does appoint how Treason beyond Sea shall be tried; says he, that is only where there are only two Witnesses; but if there is but one Witness, he shall be tried before the Constable and Marshal; because, says he, the Statute of *Hen. VIII.* does not take away that Trial before the Constable and Marshal; and for that, Sir, there are several Precedents in this Case, of Persons that have been Attainted by a Court-Marshal; and if the Accuser was vanquished, he was to suffer the same Judgment the Defendant was if he was found guilty. I am upon a Gentleman's Life, and never was so before, and desire to be never so again; there have been several Precedents, I say, in this Case, and my Lord *Coke* is express in the Point; and I desire any Gentleman to shew me any Law that hath repealed this.

In case of Murder; suppose a Man be wounded upon the Land, and die upon the Sea, and I could shew several Cases where the Common Law can't

try a Man by Jury, but he shall be tried by the Custom of Merchants before the Statute of *Ed. VI.* If a Man was wounded in one Country, and died in another, he could not be tried. That which I aim at; is to shew you, that though the Common Law should fail, yet they need not come with a Bill in this Case. If two *Englishmen* beyond Sea fight, and one kill the other, it can't be tried by the Common Law; How then shall it be tried? It must be tried by the Court-Marshal. It was Sir *John Amesley's* Case in *Rich. III's* Time; and *Wells's* Case, and Lord *Herbert's* Case, in *H. VIII's* Time, who (there being but one Witness) was accused before the Constable and Marshal.

Memorandum, [*Mr. Brotherton was here interrupted by the great Noise the House made upon the Novelty of the Argument, and did not go on further with it.*]

Mr. *Paget*. Sir, I attended to the Debate of this Day, and have not hitherto troubled you my self, because I did expect to be better informed by this Debate.

I think the Substance of the Debate of this Day hath been, not so much to shew us by what Rule we are to go, as to shew us that we have no Rule to go by but our Judgments. Sir, I never had the Honour to sit in Parliament before this Time, and therefore can't quote Precedents of what hath been done in former Parliaments; others have taken a great deal of Pains to shew you, that it is in the Discretion of Gentlemen, and they are only to be satisfied in their Consciences. I am not fond to hear my self speak, and therefore I hope I shall be favourably heard at this Time, and I do think I have the more Reason to speak at this Time, from something that fell from a very honourable Gentleman at the Bar: If I do misrepeat him, I hope he will excuse me, for I do not do it with an ill Design: But I think his Words were to this Effect; That he did not know, but if it was known in the Country, that Gentlemen did give their Judgment against passing of this Bill, it might hinder their Election in future Parliaments. Sir, since there seems to be so great Stress upon our Determination in this Matter, I hope I may at this Time shew you my Reasons why I can't come up to agree in this Bill; and I shall submit it to them, whether they will do me the Honour to chuse me again. I must confess, I do think this is as nice a Case as I can pretend to give my Opinion in; and as it is so, I shall desire the best Assurance of the Truth of this Matter, before I give my Opinion for the passing of this Bill.

Sir, you have had before you one Evidence: I will admit him to be as much as a single Evidence can be: As to the Paper of *Goodman's* Examination, I have heard that and other Matters too, which I shall not repeat. But I do remember, that in the Debate of Yesterday, it was not insisted on to be Evidence: And if not so, I shall only take the Matter as depending before you upon one Evidence only.

Sir, it is true, I believe this House, as to its Legislative Proceeding, is not tied by the Methods of inferior Courts: But I hope I shall be excused, if in the Methods of Prosecution and Conviction of Offenders, after they have been prescribed by the Wisdom of the Parliament, I hope I shall be excused, if I believe this House can't take away any Person's Life upon less Evidence than inferior Courts could do.

And,

And, Sir, I shall not enter into any very long Vindication of my self, and my Zeal and Willingness to serve the Government; I never was employed in any other Government; and I think my Actions have been such, that no Body can instance in any one Thing that hath looked otherwise; and when I have said this, I shall trouble you no further about that: But there hath been so much stress laid upon this Bill, that whosoever speaks against it, seems to speak against the Government; because it is said, the passing of it is so necessary for the Support of the Government. And I was the more willing to offer you my Reasons, because, as the Nature of this Debate has been, I can't satisfy my self where my Judgment and Opinion shall rest: For if it be so, that you are not tied to have as much Evidence as inferior Courts, and, as they say, one Evidence is enough, and my Judgment is to be guided by Papers; then they, without any Evidence, may be enough to satisfy: And if you take up with less Evidence than inferior Courts, I can't come to declare how little Evidence may take away a Man's Life.

As to the Prisoner, I know him not; but I think this Bill is for all that he hath to lose, and is for all the best *Englishman* can lose upon the like Occasion.

Sir, I shall be very tender in giving my Opinion for the Bill, unless it was very clear to me that it was reasonable. Truly I have heard very little of the whole Plot, or of this Matter that hath been examined, or for which others have been executed; my Life has been generally in the Country, and I have not had the Curiosity to buy the Trials; and as this is the first Person that hath been called before me, to give my Judgment on, I hope I may be excused for taking this Liberty, upon such Evidence as appears before us, to tell you, I can't give my Consent to this Bill.

Sir William Lowther. Sir, you have had a very long Debate in this House, and long Discourse from the Bar; and though the Counsel was directed that they should not dispute the Privileges and Authority of this House, yet, as far as my Judgment carries me, their whole Discourse was against it: And most of the Gentlemen that have spoke against the Bill, it hath been, because it hath not been adequate to the Proceedings in *Westminster-Hall*, because there hath been but one Witness. Sir, if there had been two Witnesses, this House had not been troubled with it: It is a Case of a very extraordinary Nature, and so required an extraordinary Proceeding.

It hath been questioned by some Gentlemen, Whether one Witness be sufficient in this Case, or no? Which I wonder at, since a great many have been convicted upon his Evidence, and every one of them has confessed; which shews it to be a notorious Truth.

There is another Inference they draw from the Proceedings here; Because a great many of those Precedents of Attainders have been reversed, and those with Notes of Ignominy. If they did consider the Times they were made in, and the Times they were reversed in, there might be a great deal of Cause for it: We find, that it was contrary Factions that reversed them, and that makes it never the worse. And truly, Sir, I do not know but where Circumstances are so notorious, but they are *tantamount* to a second Witness, as I have heard in *Westminster-Hall*, and in Cases of

Life too. If a Man be murdered, and two in a Room, and one comes out with a bloody Sword, the Law does presume that Man murdered him, though there is no particular Evidence that he murdered him, but only this Circumstance; and yet the Man's Life is concerned in that Case. So that upon the whole, it appears to me that he is guilty, and, I think, nothing can be plainer.

There is another Circumstance, That he fled for it; and that is a Presumption of a Man's Guilt: For a Man loses his Goods, if he flies for Felony.

Mr. Harley. It would be very unreasonable and impertinent to trouble you long after such a Debate; I shall avoid Repetition of what hath been suggested to you much better from other Persons, than would have been from me.

I own 'tis a Case of great Concern, and 'tis my Misfortune that I should ever sit upon a Thing of this Nature; but I will discharge my Conscience always, and give what Arguments occur to me, why I am against this Bill.

Gentlemen have been pleased in their Arguments to enter upon the Debate of your Power and Authority, and have made that a part of their Argument; but I think, with Submission, we need not dispute that at all: It is admitted, that there have been Bills of Attainder passed formerly, and your Authority is not under dispute; for the Legislative in all Nations have a Power lodged in them, for the Safety of the Whole.

But your proper Enquiry is, Whether this is such a Case as you ought to exercise this extraordinary Power; *omne regnum sub graviore regno*: Though you have this absolute Authority, yet 'tis to be executed by the Rules of Reason, and by the Rules (for such there are) of eternal Justice; and I look upon this as one that is inviolable, That no Man can forfeit his Life, in such a Case as this is, without two Witnesses. I must adhere to that, because I have heard nothing in this Debate that can make me quit that Maxim: And 'tis such an ancient Land-mark, that I will never draw a Curse upon me, and my Posterity, for removing of it. I beg leave that I speak with this Earnestness to you.

Gentlemen have been pleased to make it part of their Arguments, The great Danger the Government is in, if this Bill does not succeed. I will not use many Words; but I think that Argument ought not to be taken in the gross, but to be examined, Whether this Argument, of the Hazard of the Government, is of equal Poize for you to break the eternal Rules of Justice. I won't quote the Case before; every Gentleman knows it, (though there was two Witnesses in that Case to put an innocent Person to Death) where it is urged, the *Romans* will come and take our State and Nation: But with how much Reason that was urged, every Body knows; and how far the Government is now in Danger. Let us consider, Is this Gentleman out of your Power? Is the Government in Danger of a Man that is your Prisoner? Is he in open Rebellion against you? If this Law does not pass, if you have not your Hands in his Blood, is he not under the Power of the Law? Did not he tell you so himself?

Every Gentleman ought to have a Zeal for the Government, and I wish it was visible in every Thing else; but if that be so, give us leave also to speak with Zeal for our Liberty, and ancient Constitution.

stitution. The Argument is turned two Ways: On one Side you are told, That this probably may make him confess something; and by others, he is to be made an Example of Punishment. This is the first beginning of a Bill of this Nature: But the same Reason that leads you to this, must lead you to all the rest: The same Reason that is urged for this Bill to make him confess, will lead you to bring in a Bill to make him a good Evidence: This every Body must allow to be the Consequence of it.

How does this Bill come before you? It comes before you upon a villainous, scandalous Aspersion of some great Men; though I know them not all, yet I have a great Value for them, and I would make their Case my own: But if they were the nearest Relations I had, I would be against this Bill upon their Account; and let any one examine the Reason of it.

Sir, I won't run into Precedents; but only because it hath been told you, That the Precedents were made in one Reign by one Faction, and then the Attainders were reversed in another Reign by another Faction: There is one occurs to my Mind, which hath been touched at, and is at least of Instruction to me. There was a Case in *Ed. III*'s Time; there was the Deposition of a King, a King barbarously murdered, and his Son upon the Throne; and there was the Notoriety of the Fact, for which a great Man was attainted in his Son's Reign, and no different Title: and four Years after, a Bill was brought in against the Earl of *March*: And one of the Articles against him was, That he had procured that Attainder of that noble Lord, under Pretence of some Letter, or Paper, that was signed by him; which, if it was so, says the Record, was no Evidence.

I say this before, Gentlemen, to shew them how Things have turned, and Precedents that have been made very unanimously; but in bad Times have been turned to shed the best Blood in *England*. It grieves me to my Soul to hear of *Mr. Cornish*, whose Attainder you have reversed, to hear that quoted as a Precedent in this House: 'Tis not whether two Witnesses be the Rule of *Westminster-Hall*, 'tis the Rule of right Reason; and 'tis a Maxim in your Law, Make what Law you will against the Law of God, 'tis void: And 'tis is the Law of God, and right Reason.

You must provide for the Government; and when you can't do it by Course of Law, then Armies must do it, when the Courts are shut. I hope Gentlemen will not put a hard Construction upon what I have said; I have done it to discharge a good Conscience.

Mr. Chancellor of the Exchequer. Sir, I am for the Commitment of this Bill, because in my Conscience I think *Sir John Fenwick* is guilty; and because I think the Power of Parliaments may interpose in this Matter: And if they have such a Power, I think they may justly exercise it in this Case.

Gentlemen say, they will not dispute the Power of Parliament; and yet in their Arguments they tell us, we are not to proceed otherwise than according to the Forms of inferior Courts. And if the Parliament is not to proceed without two Witnesses in the Case of Treason, give me leave to say, there is no room left for a Bill of Attainder, unless you will take the Business of inferior Courts upon your selves: And I am confident, several Gentlemen, if there were two Witnesses,

would use it as an Argument, What have you to do with it? Refer it to the ordinary Courts of Justice; and I am sure that would be very reasonable. But I do think that Parliaments have that Power, and they have always used it; and I believe 'tis for the Advantage of your Constitution. The inferior Courts are to go by the Letter of the Law; and whoever can avoid that, is to escape Punishment there; but the Legislative is not to be dallied with: And if the Offence be of that Nature, that inferior Courts can't reach it, they can go beyond all Forms to preserve the Government. This they have done, and upon that Principle you sit here. Was it by the Forms of common Justice below, that you declared the Throne to be vacant, and King *William* to be lawful King? Is it upon the ordinary Rules of *Westminster-Hall*, that his Title does depend? No, it depends upon this Maxim, That the Parliament of *England* are intrusted for the Whole, and may constitute a Government for the Preservation of the Whole. And upon the same right Principle that I gave my Vote to declare him rightful and lawful King, by the same Principles I declare his Enemies to be Traitors.

You are told here, 'tis according to the Law of God and Nature, that there must be two Witnesses in Cases of Treason: I do not pretend much Skill in other Parts of the World, I think 'tis our particular Happiness to have this Way of Trial: I think in any other Part of the World, if he had dealt thus with the Government, he would have had another manner of Proceeding against him, than to be condemned by King, Lords, and Commons: But that is your Constitution, but it does not hold in other Parts of the World.

Some Gentlemen lay the Stress of their Argument upon the ill Consequence it may have in another Reign: I would avoid ill Consequences in another Reign as much as I could, but our immediate Care is the preserving of the present Constitution.

But if Gentlemen are apprehensive, that by such an Example, if King *James* should return, others may be punished; if we may judge what he would do, by what he hath done, he would go another Way to work; if he came to *London*, he would proceed as his Party did at *Dublin*, and attaint all the Protestants in one common Bill; that is the Precedent he hath set, and he will follow. And therefore in order to prevent that, and in order to punish our Enemies, and to preserve our Constitution and Prerogative of Parliament in all Points; and because I am convinced in my Conscience he is guilty, I shall give my Concurrence for Commitment of this Bill.

Col. Granvil. Sir, I would not presume to trouble you at this Time of Night, was the Debate upon a less Subject than it is; but since you are going to pronounce Judgment in a Case of Life and Death, and that this House is above any Rules, and we have no Precedent for it, but every Gentleman is to find out private Rules to walk by; the Rule that I shall take to is, That I would deal with *Sir John Fenwick* as I would have Mankind to deal with me, if I was in *Sir John Fenwick's* Place, and were indicted of High-Treason, and were not allowed any Trial, nor the Benefit of making my Defence, according to the known Laws of the Land; I should think my Blood unjustly spilt, let me be never so guilty.

The Laws are what are set up for the Defence of every Man; and when once we break through them, whatever our End may be at that Time, and tho' it may in some manner seem to justify us, because 'tis to come at an ill Man; yet pray consider, the best of Men may be come at as easily as the worst of Men. And what makes me cautious is, That my Hands are guiltless of Blood yet, and I will take care how I begin to dip them in it. And that which will make me cautious in any Case of this Nature is, what I read in the Story of the late Time, That when once a Set of People had begun to dip their Hands in the Blood of my Lord *Strafford*, nothing would quiet them till they had stained their Hands with Royal Blood. The Laws are the common Defence between the King and the People; but the King is safest when the Laws are most strictly observed.

I shall not pretend to talk of your Power, which hath no other Bounds but your Justice and Discretion; and what you think so, will, I hope, meet with Approbation abroad. And in this Case I shall always be against what is called a Trial to Day: But I do not think it any; for I do think we are an unfit Court to determine this Matter. We sit in so many Capacities, 'tis hard to distinguish in what Capacity we are here: Some are accused; 'tis hard to be accused, and to be a Judge at the same Time. I am sure I am as much concerned as if I was accused my self; and 'tis for my Innocence and Honour that I think my self bound to speak against this Bill. For as no Resentment shall make me do any Thing that is unjust, so I fear nothing that he can say; and I will never go about to stop his Evidence, by cramming a Bill of Attainder down his Throat.

Besides, 'tis an unfit Thing for any Gentleman who is obliged to be of Counsel for the King; 'tis hard for him to be so, and sit here as a Judge: I think also to proceed in this Manner, is a disrespectful Thing to the King himself; for in this Case you turn the Throne of Mercy into the Seat of Judgment. The King, who should have all the Ways to ingratiate himself with his Subjects; you make him, by this Proceeding, to pronounce the Sentence himself upon the Life of a Subject; and 'tis hard to offer a Bill to the King in such a Manner, by which you oblige him either to reject it (which was always look'd upon as an Hardship) or to pass Sentence upon this Gentleman, which perhaps his gracious Temper, and his Mercy make him averse to.

Sir, 'tis too late to give you other Arguments; you have heard a great many better than I can give: But I think this Bill is unjust in it self, and dangerous in its Consequence; and therefore I hope you will not commit it.

Sir Herbert Crofts. Sir, I did not think to trouble you in this Debate, but only for the Arguments that have been used by some that spake lately, who seem to lay a great Load upon Men, according as they give their Vote in this Matter, because 'tis in relation to the Blood of a Man. I have considered the Point, I hope, with as much Caution as any Man within these Walls, and hope to act with as strict a Conscience as any Man whatsoever; and shall be glad to be informed from those Gentlemen, that have laid the Strefs so hard upon Religion, how they can shew me, that I do not as strictly, as to all Points of Religion, give my Vote for passing of this Bill, as they would ex-

cuse themselves from it. I must agree with those Gentlemen, That you are no ways bound or limited to the Rules of *Westminster-Hall*; and therefore what was said upon that, I did not think worth taking notice of; but when we are told, we are bound up by the Laws of Nature and Religion, and the Law of God, in this Matter, this touches me so nearly, that I must desire those Gentlemen to shew me in Scripture the Law that they quote.

If it be the Law of Nature, and the Law of God, that every Man that dies must be convicted by two Witnesses, as an honourable Person observed, I wonder it is not observed by all Christian Nations and Governments, That they are not all governed by this Law; if there be any Direction from the Law of God, that no Man is to die for Treason without two Witnesses, but he may suffer for Murder and Felony with one Witness. Now, I say, I must desire the Gentleman that asserts it, that he would be pleased to shew me it in Scripture, and I will be entirely of his Opinion: But till I hear that very plainly proved, 'tis not within my Reading or Remembrance, and therefore I desire it may have no weight. And now I am up, I shall give my Reasons, why I shall give my Vote for this Bill.

The Reason that governs me, is the Preservation of the Government, and the Common-wealth under which I live; and which I think I am in the Station wherein I stand bound to preserve, by all the Rules of Justice imaginable. Now if your Law hath bounded inferior Courts, but hath not bounded you in this Matter, though you have said inferior Courts shall not determine and give Judgment in such a Case; yet, I think, you are not bound up so here: But if the Matter be proved to my Satisfaction, I may give my Judgment according to the Evidence that comes before me, without that Restriction.

But, Sir, this ought not to be done, 'tis said, but upon extraordinary Occasions. You were told, some Time since, of the Case of the Duke of *Monmouth*; but it was said, that he was attainted because he was in Arms, and could not be come at otherwise: But I think this is a parallel Case to that, if not much stronger: for here is a Person that hath been accused, and fully proved to have been in Rebellion, and in treasonable Practices with your Enemies, to bring an Invasion upon you, and to subvert your Government; and tho' he hath not been proved to have been in that single Act of the Assassination, yet there is such a Correspondency between one and the other, that I do look upon him as equally guilty of both. Therefore this having been so fully proved, and the Person that stands accused being out of the reach of the common Course of the Law; what Remedy have you, but to fly to your Legislative Power, to attaint him upon the Grounds and Allegations of your Bill, that one Witness is withdrawn? And I am very well satisfied, and I think we may presume 'tis by his own, or his Friends Encouragement and Procurement. And I do take this to be as reasonable a Ground for your Bill, as any Thing in the other Case; and I know not what is an extraordinary Case, if this be not one: Is it not an extraordinary Case, for a Plot to be laid for the total Subversion of this Constitution, and our Religion for ever, and we can't come at it to punish it another Way? But it hath been said, the Safety of the Government does

does not depend upon him : If we acquit him, we are to acquit every one alike : I hope the Government does not depend upon him alone ; but if you clear him, there is the same Right to clear any Criminal whatsoever. Sir, since I am brought up upon giving my Judgment in this Matter, (though I come as unwillingly as any body to it) I must go according to my Conscience ; and till I can see something of the Law of God, that has been hinted at, made out, I must go according to the Law of my Reason ; and that is, that I must be for the Bill.

Lord *Norreys*. I will not pretend to tell you what the Authority of this House is, 'tis what they please to make it ; but I am sure they will ground it upon good Reason ; but I think the Reason chiefly given for the Commitment of this Bill, leaves you a Latitude to do what you please, and give no Reason at all ; for it is only to say, I am convinced in my Conscience this Man is guilty ; no matter upon what Proof, no matter whether any Proof or not, you may believe it from his Life and Conversation, and the Company he keeps, or from his Interest ; and that may be Argument enough to find a Man guilty. But till I know a Reason better grounded than this, I cannot be for the Commitment of this Bill.

Sir *Christopher Musgrave*. I am sure at this Time of Night I am unfit to speak in so great a Matter : I must confess I should not have troubled you, if it had not been in the Case of Blood.

You have had a great Debate before you of the Power of Parliaments, and that hath been sufficiently argued ; and I have not Learning enough to give you any Precedents that have not been already quoted : But every body does agree in this, That what Power you have of this kind, is not to be exercised but upon extraordinary Occasions. Now I would be glad to know, What this extraordinary Occasion is ?

Every body allows, That Treason is the greatest Crime a Man can be guilty of ; and the Charge of this Gentleman is High-Treason : But therefore in this Case, must you exercise this Authority ? Pray wherein does this Case differ from any other Case of High-Treason, that any other Person will be practising against the Government ? All the Difference I can make of it, consists in two Points ; the one is, that he hath prevaricated with the Government ; and the other, That Gentlemen say he hath been a Means of *Procrastinating* his Trial, in which Time an Evidence hath made his Escape. I will allow you, that 'tis a very great Crime for any one to asperse so great Men as he hath done ; but I would be glad to know, whether there being such an Ingredient, it be sufficient to attain him upon High-Treason upon that Account.

Then as to that of a Witness being gone, Gentlemen have said, They are apt to believe, and there is great Presumption that he hath been the Occasion of this Witness being gone. Is that an Ingredient sufficient, though at present it hath not been proved to you ? But if it had been proved, I should not however think that is Treason. Then if this be the only Difference between this Gentleman, and any other Person that shall be practising to subvert the Government, I would know, if there be but one Witness against any Man, for Conspiring against the King, if they may not have recourse to this Precedent, to pro-

ceed against him by a Bill of Attainder ? For the Argument is, Whosoever is endeavouring to subvert the Government, provided there be but one Witness, you are obliged, by virtue of your Legislative Power, to bring a Bill of Attainder against him. And what then ? Of what Use is the great Care and Wisdom of your Ancestors, and your selves, that where a Crime is so great, and the Punishment so great, there should be two Witnesses ?

I was mightily surprized to hear Gentlemen tell you, That two Witnesses is a Form in your Law, and a Form in inferiour Courts. I never could believe that was a Form ; for according to your Law, no Man shall be declared guilty of Treason, unless there be two Witnesses against him ; so that it gives, in a manner, a Determination to the Crime ; that I take to be the Case.

A Gentleman told you, That he was fully satisfied by the Proof, that this Gentleman is guilty : But how can a Man satisfy his own Conscience, to condemn any Man by a Law that is subsequent to the Fact ? For that is the Case ; and pray see the Danger of Precedents : It now will appear upon your Journals, that you have caused to be read a Deposition of a Person that was absent, taken before a Justice of Peace, when the Person accused had no Opportunity to interrogate him ; and likewise, that you have heard a Witness as to what a Man swore in the Trial of another Man : All this will appear upon your Books.

And truly, I would be glad to know, if another Age may not be apt to think, that you took these to make good the Defect of another Witness ; and then I must appeal to you, if you have not admitted of a Testimony, which according to no Law is admitted.

They say you are not tied to the Rules of *Westminster-Hall*, not their Forms. Is there any Law in being, that says, a Judge may hear a Witness as to what was sworn upon the Trial of another Person, to condemn him that was not Party to that Trial ? If there be no such Law, then the Rule is founded upon Justice and common Right, that nothing shall be brought against a Man when a Man was not a Party when the Oath was made, and he had no Opportunity to examine him.

I thought it my Duty to tell you, That when you have made this Precedent, if any Person shall be accused of Treason but by one Witness, there will be the same Reason to proceed thus against him.

Then (being a little before Eleven a-Clock at Night) the Question was put, Whether the Bill should be Committed? And the House divided :

Ayes, 182.

Noes, 128.

So it passed in the Affirmative, and the Bill was committed to a Committee of the whole House.

Veneris 20 die Novembris, 1696.

The House resolved into a Committee of the whole House upon the said Bill, and several Words being offered as an Amendment to the said Bill, to import Sir John Fenwick's being Guilty ; at last the Words that were agreed on, were these [Of which Treason the said Sir John Fenwick

is guilty): It was also proposed to the Consideration of the said Committee, Whether the Lords Spiritual should stand in the enacting Part? But upon looking into the several Acts of Attainder, it appeared they were unconcerned in all those Acts of Attainder, in the enacting Part; and so the Committee was satisfied in that Point, and they were left to stand in the Bill by general Consent; and the Bill was ordered to be reported to the House; and afterwards, upon the Report, the House agreed with the Committee in the aforesaid Amendment of the Words, importing Sir John Fenwick's being guilty.

Mercurii 25 die Novembris, 1696.

The said Bill against Sir John Fenwick was read the third Time.

Mr. Methuen. Mr. Speaker, I have not troubled you in any of this long Debate, and do it unwillingly now; but I do think it every Man's Duty, in a Case of this great Importance, freely to own his Opinion, and give his Reasons for it.

The greatest part of the Debate hath run upon two Things; The Inconveniency of Bills of Attainder, and the having them too frequent; that it is necessary to have them sometimes, that any Person might not think they are not out of reach, if they could evade the Laws that were made to protect the People.

I think, in general, that this Bill, as every other, ought to have its Fate upon the particular Circumstances before you; and whoever gives his Affirmative to this Bill, ought to be convinced, That Sir John Fenwick is guilty of High-Treason; and also, That there are extraordinary Reasons why the Nation does prosecute him in so extraordinary Manner; and I do think one of these is not sufficient alone.

If between the Indictment and Arraignment, or Trial, Goodman should have died, and there had been no other Reason for Attainting Sir John Fenwick, only the Defect of his Evidence, I should not have thought it a sufficient Reason, though we should have had an Opportunity of being informed of his particular Evidence, and believed him guilty; and if Sir John Fenwick does not appear guilty, I do not think any Reason of State, though he hath prevaricated, and behaved himself to the Dissatisfaction of every Body; therefore, I think, there must be both these.

You have heard the Evidence; I shall not repeat it, but rather come to these Things that distinguish Sir John Fenwick's Case; only thus, you have received the Evidence against Sir John Fenwick, and given him Liberty to make his Defence, and have fully heard him; which I think hath altered the Reason of a great many Precedents cited from my Lord Coke, and other Authors.

That which distinguishes this Case, is, the great Danger the Nation was in from this Conspiracy, and the Sense the Nation hath had of it; and I find, by the general Opinion of all Persons, this Danger is not at an end.

There seems likewise to be an Opinion as general, That Sir John Fenwick could have contributed to your Safety by a Discovery.

The next Circumstance, That Sir John Fenwick knowing of this, and the Expectation the Nation

had from him, for that he could have contributed to your Safety, hath made use of that to put off his Trial; and at last, has made such a Paper, as does shew an Inclination to do you all the Prejudice he can, and tended to the creating of new Dangers; and by this Means Sir John Fenwick, against whom there was two Witnesses when he was indicted, hath delayed his Trial, so that now there is but one; and there is a violent Presumption, That this Person is withdrawn by the Practice of Sir John Fenwick's Friends.

There remains yet with me as great a Consideration as any of these; the publick Resentment of the Nation for such his Behaviour, is the only Means his Practice has left you; and it seems necessary for your Safety, to come the next best Way to what he could have done.

Against the Evidence that hath been given there have been great Doubts raised; not so much whether it be such Evidence as may incline us to believe him to be guilty; but whether it be such as you should hear in the Capacity you are in; and, whether after it is found, such as it is, that is not such as would convict him upon another Trial. Whether you ought to credit it, and that should influence you to give your Vote for this Bill of Attainder; this is a Doubt that I find weighs generally with them that differ from me in Opinion about this Bill; and therefore I desire leave to speak to that Particular.

'Tis said, That you are trying of Sir John Fenwick; that you are Judges; and that you are both Judges and Jury; and that you are obliged to proceed according to the same Rule, though not the Methods, of *Westminster-Hall*; *Secundum allegata & probata*.

But the State of the Matter, as it appears to me, is, That you are here in your Legislative Power, making a new Law for the Attainting of Sir John Fenwick; and for exempting his particular Case, and trying of it (if you will use that Word, though improperly); in which Case the Methods differ from what the Law requires in other Cases; for this is never to be a Law for any other afterwards.

Methinks this being the State of the Case, it quite puts us out of the Method of Trials, and all the Laws that are for limiting Rules for Evidence at Trials in *Westminster-Hall*, and other Judicatures; for it must be agreed, the same Rule of Evidence must be observed in other Places as well as *Westminster-Hall*, I mean in Impeachments, and it has always been so taken.

This Notion of two Witnesses has so much gained upon some Gentlemen, that we have had some Gentlemen say, That this is required by the Law of Nature, the universal Law of Nature, nay, by the Law of God: And, I think, if it was so, there would be no doubt but it will oblige us.

But therefore I go to the Bottom of the Matter: That any Man deserves to be punished, is because he is Criminal: That this or that Man deserves it, is because he is guilty of a Crime, let his Crime be made evident any Way whatsoever; for whatsoever makes the Truth evident, is, and is accounted in all Laws to be Evidence.

Now as to the Rules for examining any Person, whether he is guilty or not, and the Evidence that is allowed in all Nations, no two Nations agree in the same Evidence for the Trial of Criminals, nor in the Manner of giving the Evidence against them.

Your Trials differ from all other Nations; not only that you are tried by a Jury, which is particular to you, but that the Witnesses are to be produced Face to Face before the Offender; and you have made Laws, that there shall be two Witnesses in Cases of High-Treason; and herein you are the Envy of all other Nations.

Sir, the Evidence that is to be given against Criminals, differs in the same Nation where the Offences differ; there is a Difference between the Evidence that will convict a Man of Felony, and the Evidence that is to convict a Man of Treason; and the Evidence to convict a Man of the same Crime, hath been different in the same Nation, according to the Reason of the Law. No doubt, by the Common Law of *England*, that Evidence was sufficient, which was sufficient to incline the Jury to believe the Person guilty. This before the Statute of *Edward VI.* though that was made upon great Reason, and appears to be for the publick Good, by the general Approbation it hath received; but I don't think in your Proceedings here, you are bound by it.

But, Sir, it is said, Shall we that are the Supreme Authority (as we are part of it) go upon less Evidence to satisfy our selves of Sir *John Fenwick's* Guilt, than the other Courts? And shall we resort to this extraordinary Way in this Case?

Truly, if it did shake the Manner of Trials below, I should be very unwilling to do it; but I do take it clearly, that it cannot; but on the contrary, I think there is no stronger Argument for your resorting to this extraordinary Way, like to that of the Caution which your Law hath provided for the Innocency of all Persons. For if we consider all those Laws that have been made, 'tis plain it must be in the View of our Ancestors, that Criminals might not escape; and the Laws are made for your ordinary Trials, and for those Things that happen usually; and your Government hath this Advantage, That they can keep to that which others cannot: For in a very wise Government (as was observed by a Person that sat in this House the last Time this was debated) the Ways of punishing Crimes of this Nature are extraordinary, when Persons are condemned: They are not only unheard, but they are condemned before they are accused; and that is thought necessary there, which will not be endured here; and yet that Government hath continued so long, and no Endeavours have been to alter it, though so many noble Families have suffered by it, because they are convinced, as to their Constitution, 'tis necessary.

The next Argument is from the Precedent we are about to make; and whatever the other Precedents have been, what you do now will be a Precedent for you and your Posterity; and whilst that is used to make you cautious, and tends to make you consider well, whether it is according to the Duty to your Country to pass this Vote (which no doubt is the only Question before you) 'tis a good Argument.

Sir, if this Precedent shall appear to Posterity to be a Precedent concerning an innocent Man, or a Person whose Guilt was doubted of, or one whose Guilt did not appear, and this Bill should be carried by a prevailing Party, I do agree it was a very ill Precedent: But if the Case be, that this Precedent will appear to Posterity, upon the Truth of the Thing, to be a Precedent made of a Man notoriously guilty; of a Man that had deserved this extraordinary Way of Proceeding, this extraordinary Resentment of the Nation; and that nothing could have hindered this Man from the common Justice of the Nation, but his having endeavoured to elude it in this Matter; and if it appears, that you would not be put off so, but made an Example of this Man, I shall not be sorry it should appear to Posterity; but I believe Posterity will (as I think they ought) thank you for it.

Sir, I do say for my own Particular, while I am Innocent, I should not think my Life in danger to be judged by 400 *English* Gentlemen, and the Peerage of *England*, with the Royal Assent; and when I reflect, I can't be of Opinion, That the Government could have procured a Parliament to have passed a Bill of Attainder against my Lord *Ruffel*, or Mr. *Cornish*, or Mr. *Colledge*, I don't think all the Power of the Government could have prevailed with the Parliament to have done it; and here I see that a great many Gentlemen have opposed every Step of this Bill, for fear of making an ill Precedent; yet those Gentlemen do believe in their own private Consciences, that he is guilty; and I can't think that any Person can be in danger by such a Bill, when Gentlemen oppose this Bill only upon the prudential Part, though they still confess him to be guilty.

All the Conclusion I make to my self is, That I do believe, I am convinced in my Conscience (which I think is sufficient, when I act in the Capacity I now do) that Sir *John Fenwick* is guilty: But there are Reasons so extraordinary to support this Bill of Attainder, that I do not see how any Person, that is so convinced, can refuse to give his Affirmative to this Bill.

Sir *Godfrey Copley*. Sir, I am very sensible a great deal hath been said upon this Subject; but I think there is something in Duty incumbent upon every Man, especially upon me, who can't concur with the general Sense of the House, to give my Reasons for my Disagreement; and I will make no use of Arguments but such as I can't answer my self. A great deal hath been said upon this Debate by Gentlemen learned in the Law; and many of these, though they have said they would not speak as to the Power of Parliaments, yet the greatest Part of their Arguments have touched upon your Method of Proceedings, and to shew you how they interfere with the Rules of *Westminster-Hall*; so great is the Force of Custom and Education: But I acknowledge some have brought us Arguments quite of another strain.

This is a Matter of so extraordinary Importance, that I think it proper to consider what Rules we have to go by; but I take the Punishment of Offenders and Criminals to be the necessary Support of all Governments whatsoever, without which no Government can continue; but all Societies of Men have supposed to themselves some Rules, whereby it may be known, whether Offenders are guilty or no.

It is the Custom of our Nation, to have two positive Witnesses to prove Treason. Now it may be imagined, that I make use of this as an Argument, that we are tied up to these Rules: No, I am not of that Opinion, that we are bound by the Rules of any Society whatsoever. The Parliament have a Power to abrogate all Laws that they have passed, if they think good; and so certainly cannot be tied up by any Rules now in being. But, Sir, there are the eternal Rules of Equity, and Justice, and Right Reason, and Conscience; and these, I think, are unalterable, and never to be swerv'd from; and therefore I shall take the Liberty to see how far agreeable our Proceedings are to these Rules.

Sir, I do look upon it, that 'tis a Rule agreeable to what I speak of, That no Man shall be accused by he knows not whom; and that no Man shall be accused, but that the Evidence against him, and he, should be confronted, and brought Face to Face.

I am one of those that believe Sir *John Fenwick* to be guilty; and there is clear Proof of it by one Witness; and you have added to this an Indictment that is found: But I must needs own, that I think that to be so far from giving any Addition or Strength to the Evidence, that when that is brought in, I look upon the Scales to be lighter than they were before; for if any Record or Writing that is sworn to behind a Man's Back, shall be brought here to supply another Part of the Evidence (and if not so, why is it brought here?) And if that be to be interpreted to make up a Part of the Evidence, I do, by parallel Reason, argue, that the like may make up the Whole at one Time or another; and may be so far made use of, that any profligate Knave, that gives Information before a Justice of Peace, or a Secretary of State, this may rise against any Man whatsoever, when he is obnoxious to the Government; or a Person may be accused for his good Service in this Reign, and this may be set up against him, and he run the Hazard of his Life.

Then, Sir, as to the Necessity of this Matter, I must confess, that those that brought this Matter before us, are much wiser than I; and therefore I will not examine what Reason they had to do it: But it is so little agreeable to me, I wish it had not come here. But is it to be supposed, that your Government is in hazard of any Man that is fast in *Newgate*? Can any Man think, that Sir *John Fenwick* can do any Thing in his Condition to hazard it? Can you expect that a Man that hath been Six Months in Prison, and no Body came at him, that he may make such a Discovery as may be worth your while? But suppose you had a Man of Invention and Practice, what a Spur do you put to it? May not a Man of Parts, when he hath no other Way to save himself, may not he frame such a Plot, as may make the best Subjects in *England* tremble?

Why then, Sir, I do say, by this you are in a very dangerous Way to suffer by the Invention of any Man: And suppose he should be so ignorant, as to know nothing; or so great a Blockhead, to be able to invent nothing, would you hang him either for Ignorance or Insufficiency? I must confess, I dread the Consequence of this for the Nation in general, and for our Posterity. 'Tis not Sir *John Fenwick's* Life I argue for; I do not think it worth a Debate in this House, nor the Consideration of so great an Assembly; but I do say, if this Method of Proceeding be warranted by an

English Parliament, there is an End to the Defence of any Man living, be he never so innocent.

Sir, I remember I heard it mentioned on the other Side of the Way, by an honourable Person, who never lets any Argument want its Weight; That King *James* attainted a great Number of Persons in a Catalogue, in a Lump. Sir, I am not afraid of what arbitrary Princes do, nor an *Irish* Parliament; but I am afraid of what shall be done here: I am concerned for the Honour of your Proceedings, that it may not be a Precedent to a future Parliament in an ill Reign, which I am satisfied you would not do. I had some other Thoughts, which I cannot recollect, &c.

Mr. *Foley, the Speaker's Son*. Sir, the worthy Gentleman that spake first upon this Debate, calls me up: He said, that he thought in this Matter, every one ought to give the Reasons of his Opinion: And in giving the Reasons of my Opinion, I do solemnly protest, I do it with the same Sincerity as I would do, if I was upon my Oath, and of a Jury.

The worthy Gentleman said, That if there could be any Danger from this Precedent, that an innocent Man might lose his Life, he would not be for it. I desire that he would consider, whether there be almost any Instances of any innocent Men that have lost their Lives, but what has proceeded from Precedents that have begun upon guilty Men. The same Gentleman told you, that if we did not believe Sir *John Fenwick* to be guilty, no other Consideration ought to move us to be for this Bill.

Now the Reason I am against this Bill is, because it does not appear to me, from the Evidence that hath been given at the Bar, that Sir *John Fenwick* is guilty. And I do think, that which is not legal Evidence is no Evidence; and I do think, that all the Lawyers that have spoke in this Matter, have allowed it to be no legal Evidence. And I desire Gentlemen will consider, if it has not been thought reasonable, that Men should be convicted upon such Evidence, why now it should be said to be necessary? I think the Saying of my Lord *Strafford* upon his Trial was this: If the Pilot was to direct a Ship in a dangerous Sea, and there was no Buoy to direct his Course, if he there split his Ship, it was excusable; but if there was a Buoy up, then he was accountable for it.

Now, comparing our Government to the Sea, there have been many Rocks and Sands, and many Men have lost their Lives by them; but the Treason Bill seems to be set as a Buoy to avoid that Mischief for the future. Now if we split upon these Rocks, I shall think we are but ill Pilots.

Upon a former Debate we were told, we are not tied up to the Rules of *Westminster-Hall*, and it was sufficient to justify a Man in giving his Vote for this Bill, that he was satisfied that Sir *John Fenwick* was guilty: See the Consequence of that, in Things that I have as much believed as I do this, I have found my self mistaken.

When a Jury acts according to legal Evidence, that they have no Reason to mistrust: When a Jury finds according to legal Evidence, they are in no manner of blame: And if this Man be innocent, when you have taken away his Life, and his Estate, and ruined his Family, all that you have to say for it, is, That you have acted according to the best of your own Understandings, guided by your own private Opinion.

Were this the Case of Sir *John Fenwick* only, and I not to give my Vote, I reckon him so despicable,

spicable, and because I believe him to be a Traitor, and I think the worse of him for the Part he hath acted since he was in Custody, I should not concern my self about it. But when I speak against this Bill, I speak on the Behalf of all those that may hereafter suffer by such a Precedent as this. Those Precedents that have been urged, don't come near this Point. And though the Power of the Parliament is above that of other Courts, yet there hath been no Precedent that comes up to this, That we should pass a Bill to attaint Sir *John Fenwick*, because he will not give Evidence, or there is no Evidence against him. If Sir *John Fenwick* be to be hanged, because there is but one Evidence against him, any Man in the World may; and then I think every Man's Life depends upon it, whether this House do like him or not. Consider what a Reverse of Opinion this will be, to what former Parliaments have given in Cases of the like Nature. I think if this Bill does pass, every Man's Life will be as precarious as his Election.

We have been told, how much Danger the Government will be in, if this Bill does not pass. I have as much Zeal for this Government as any Man; but all the Government is concerned, is, That a Man that you think a Traitor should live. And I do think the Government is no more concerned in this Life, than in the Living of any *Jacobite* in *England*. But on the other hand, I think the Lives and Liberties of the Subjects of *England* are concerned; and, by this Bill, you will make all their Lives and Liberties precarious.

I am not for bringing the Blood of Sir *John Fenwick* upon me, or my Posterity; nor can I consent for to make a Precedent, that a Man may be hanged without Evidence.

Lord *Cutts*. The worthy Member that spake last but one, told you, That he thought the Life of Sir *John Fenwick* was not worth the Consideration of this Assembly: I do differ from him in that. If the Scripture tells us, That the most insignificant Creature does not fall without God Almighty's Consideration, I think the Life of a Gentleman may be thought worth ours.

The worthy Gentleman that spake last, told us, That he did believe in his Conscience Sir *John Fenwick* to be guilty: But because he hath found himself mistaken formerly, when he believed Things with the same appearing Certainty, therefore he may be mistaken now. I hope Gentlemen will not press an Argument upon our Judgments, from Precedents that are only Mistakes: I do agree, That any Man may be mistaken in a Thing which at that Time he thinks himself most certain of; but till that Mistake appears, I say, it ought not to make him doubt of any Thing that he does clearly and distinctly perceive: If otherwise, there is an End of all Religion and Law; and it shakes the Foundation of the most certain Belief a Man can entertain.

As it appears to me, some Gentlemen seem to lay a greater Stress on some Things than they deserve, and are not pleased to answer some Arguments; and therefore I desire leave to speak to two or three Points in short. I shall not say any Thing of the Authority of Parliaments, it speaks itself; nor of the different Consideration of our Proceedings, and that of inferior Courts; that seems to be agreed: But I shall apply myself particularly to mention some Things upon Sir *John Fenwick's* Case,

and in that take Care, as near as I can, not to trouble you with any Thing I have said upon this Subject.

I can't but observe, That every Gentleman that speaks against this Bill, begins with an Introduction, that he believes him Criminal; which does somewhat astonish me: I hope they will explain themselves a little. But to the Point: As to Sir *John Fenwick's* Case, I did take the Liberty in a former Debate to observe, That it was not only a Conspiracy against the lawful King of *England*, and had such Parts in it, but also in bringing in a tyrannical and foreign Power upon you. But there is one Consideration I did not mention then, because I thought what I said carried so great weight, it needed it not; I do say, not only as a Christian, as an *Englishman*, and as a Subject of this Government, against which he hath committed a Crime of the highest Nature; but I will say, as a Man of Honour, that he hath acted contrary to the Rules of Honour. I think Sir *John Fenwick* had made a much better Figure, if he had appeared in Arms in *Flanders*, where he might have charged this Prince at the Head of his Troops, than basely have contrived his Death in this Manner.

Sir, I have only one Thing more that I desire to speak to; for what I say is more for my own Information than to desire any Man's Opinion further than he agrees with it: I say, most Gentlemen have likewise owned, That if they thought this an extraordinary Case, they would be for this Bill. I do say, as it appears to me, I do think, if ever there was an extraordinary Case, this is one; and if ever any Government was in Danger, this is, or may be, upon your Resolution to Day. A great deal of Stress hath been laid upon this Argument, That Sir *John Fenwick* is in Hold: I take that to be nothing, for they keep a Combination together still. 'Tis by Rewards and Punishments that all Governments are supported. Robberies, that were so common in *France*, that you could not walk after it was dark, by Punishments they have been brought to that, that you may ride from one end of it to another with a Purse of Gold in your hand. And if you think it a trifling Matter, that wicked Men that have such Inclinations should escape, I don't doubt but you may have Plots every Day.

I don't doubt but this Gentleman knows a great deal that he hath never laid before you. I would not be thought to press it as an Argument that he should be condemned, because he won't confess; but I will be bold to say, if he does know of a great many Persons that have been concerned in this Business; if he knows of a Rising that was designed, when this Conspiracy was to be executed (and it may be executed still, if Things shall be ripe for it); I say, though you keep him in Hold, it will be an Encouragement to them to go on in the Cabals, in buying of Arms, &c. I think the Matter before you is no less than the Fate of *England*, and the Fate of *Europe*, and of all your Posterity; I am sure it is: And give me leave to say to you one Thing that is Matter of Fact, There are those Stories insinuated abroad, and those Matters of Fact asserted, with relation to a Conspiracy, and reviling this House, that are not fit for me to repeat. But your Enemies last Year, before the breaking out of this Conspiracy, had the same sort of Meetings, and the same sort of Discourse, as they have now. I will end with protesting to you, That I deal with Sir *John Fenwick* with the same Candour
and

and Honour, as I shall always desire to be dealt with my self.

Sir *Godfrey Copley*. That noble Lord misunderstood what I said, as to the small Value I put upon Sir *John Fenwick*: I did say, That Sir *John Fenwick*, considered in his single Capacity, I did not think it was worth the while of this House to act in their Legislative Capacity upon him.

Sir *Charles Cartwright*. I think this Bill is of very great Moment, and ought well to be considered before it passes; for when it is passed, it will be too late to retrieve the ill Consequence which may attend it: There is so much Roguery in the World, I think it a hard Matter to arrive at the Truth. 'Tis not long ago there was a Plot contrived by one *Young*, and others, against the Bishop of *Rochester*; and so cunningly contrived, That if a Bill of Attainder had been brought in against the Bishop of *Rochester*, before the Truth had been discovered, I do not know what might have been the Consequence of it. I suppose no body questions the Truth of this Plot; but God forbid that every body that hath been named for it should be guilty. It may be true, That there was such a Meeting that Sir *John Fenwick* is accused of being at, and yet Sir *John Fenwick* might not be there; and I do not think it sufficiently proved, and therefore I can't give my Consent to this Bill.

Mr. *Manley*. Sir, I have, as well as I could, attended to this Debate in this Matter; and I did not trouble you in the last Debate, because I was willing to take all the Opportunities I could to inform my self.

'Tis to me an extraordinary Thing, not only for the Matter, but Manner of your Proceedings; which, considering all Circumstances, appears to me to be not only not common but unprecedented; and as we are all in this Matter Judges, so I hope we shall apply our selves to consider of it with that Temper, as may lead us to give a right Judgment. And if I had never so great Obligations upon me, and Dependencies, though from the Crown, I would lay them by, at least they should not influence my Judgment in this Matter. We are to pass Judgment in a Matter of Life and Death upon this Person; and 'tis urged we should do it, because the common Course of Justice will not reach him for the Crime objected against him, which is High-Treason; and the Species of that Treason, as it is laid in the Indictment, is, &c.

Sir, the Evidence that hath been given to support it, hath been the Affirmation of a single Witness at the Bar: Indeed other Things have been alledged in the Bill; but, as hath been said in *Westminster-Hall* upon another Occasion, They look like Pepper and Salt to me; for in themselves they are not Crimes (I speak with Submission to your Judgments) at least to bear Company with an Accusation of High-Treason.

As to the Evidence; first, Captain *Porter* tells you, That Sir *John Fenwick* was at a Meeting at the *King's Head*, and at Mrs. *Mountjoy's* afterwards, when there were treasonable Discourses amongst them, and *Charnock* was directed to go into *France*; but the End of that is not proved; for the Witnesses that told you of those Meetings, did not tell you, as I observed, that *Charnock* did go to *France*; and what he said upon other Occasions, is no Evidence to me. And though we are not tied up to the Rules of *Westminster-Hall*, I am so young a Member, I know not what Methods are observed

in Parliament, that I may in some measure make them a Rule to me.

The Law of *England* requires two Witnesses upon the greatest Reason; and 'tis not only the Policy of *England*, but the general Consent (in this Case) of the whole World, and it is grounded upon the Law of God. It was objected by an honourable Gentleman the other Day, to a Gentleman, that he said the Law of God required two Witnesses. A Gentleman who is very near allied to one, from whom he might have early informed himself, made us a Challenge, to shew him where it was to be found: If he will look into *Numbers* and *Deuteronomy*, there are three particular Texts very plain in it. The Reason of this is illustrated in the Story of *Safannab*; her Safety depended upon it: And the *Jews*, when they prosecuted our Saviour, though they wanted no Malice, nor nothing to animate them, to put him to Death, yet St. *Matthew* tells us, at last there was two Witnesses found against him: And this being the Law of the Land, and the Law of God, must be my Rule; I must have this Matter proved against Sir *John Fenwick*, as full as the Law of the Land, and the Law of God requires. The other Evidence brought to maintain this Bill, is what is sworn by *Goodman* before a Justice of Peace, and the Account of the Evidence given by *Goodman* to the Grand-Jury, which I must confess I declare I am very far from being convinced ought to have weight with us: But, I think, they must lay a great weight upon it, who give their Vote for this Bill; or otherwise they must give their Vote upon the Testimony of one Witness.

The Reason for this extraordinary Proceeding is, 'tis urged, There is a Necessity for it; the Plot will be lost else, say some; Sir *John Fenwick*, says others, will escape else. As for the Plot, I wish to God there was no such Thing; but 'tis probable the best Way of ending this Plot would be, if his Majesty in his Wisdom thought fit to interpose with his Mercy and Grace at this Time; and better than for the Legislative Power, in an extraordinary Manner, to take off a Person against whom there is not a legal Evidence. Gentlemen say, they are convinced in their Consciences; but I will appeal to their Consciences, whether there be legal Proof against him; and shall we then interpose, in an extraordinary Manner, to take away his Life?

No Man pretends to answer, but that this Proceeding may be dangerous to Posterity: If he had any Security this might be done without that Danger, it might be some Encouragement to Gentlemen to come into it; but since it may be dangerous, are not we, who are intrusted by the People, to have an equal Care of the Liberty of the People? We are to take Care of his Majesty's Life and Government; and the Reason is, because upon him, and his Government, the publick Safety does depend. 'Tis *Salus Populi*, is the great Reason that the Law takes such Care of the King; and as we are to do nothing to the Detriment of the King, so we are to do nothing for the King, that may be of Detriment to the People.

An honourable Lord hath been pleased to say, We are not yet out of Danger: I am sorry to hear it, and could not think it, when so noble a Lord is so near the King, and hath so great a Share in taking Care of the publick Safety. But sure, nothing can happen from this Person; there hath been Care taken he should have no Conversation

with any body: If I thought there was a Hazard to the Government, or to the King, and no Way to secure us, but taking away this Gentleman's Life; such a Reason as that would make me go counter to my own Reason and Judgment. But I can't be of Opinion, that a Man of Sir *John Fenwick's* size, who in his best Circumstances indeed, is a Gentleman by Birth, and hath a Gentleman's Fortune, but is now in a great measure without his Estate; so his Fortune can't do any hurt, and his Alliance I suppose is not considerable enough to do any neither.

Then as his Circumstances do not make him so considerable as to do us any hurt, let us take care, that we do not in any case, by his Blood, wound our selves.

Gentlemen lay but little Strefs upon the Dangeroufness of the Precedent; I do lay more; and 'tis chiefly upon that Reason I can't come up to be for this Bill. I would not that so good a Parliament should lay the Foundation of any, by which, in after Ages, the best Men in *England* may suffer. 'Tis said, an ill Parliament will not want a Precedent, but will make use of their Power; but they will fall sooner into, if led by a good Parliament.

Sir, This is a Matter I would not have presumed to have troubled you in; for I can't think any Thing I can say, will have any weight with any one that is not of my Opinion: But as an *Englishman*, and as I have the Honour to be of this House, when a Thing of this Nature comes before us, and I am to give my Opinion as a Judge in it, I was willing to give my Reasons for my Opinion. I think this Bill is unprecedented; and you will give me leave to say, it appears to me to be unreasonable, I think it contrary to the fundamental Rules of Reason and Justice; I doubt it may be dangerous to our Constitution; and I fear future Ages may have Reason to repent what we do; and therefore I am against this Bill, and I hope it will not pass.

Sir William Strickland. Sir, I do assure you I shall not in any Thing of this Bill, or any Thing else, run counter to my Conscience or Judgment; but I do think, and I think few deny it, I do think in my Conscience that Sir *John Fenwick* is guilty; and thinking so, I ought to condemn him. I do think, if we should spare this Gentleman for want of Form, as they call it, now we are in our Legislative Capacity, and there should be any ill Effects of it; and other People, by thinking they might avoid Punishment by the Forms of *Westminster-Hall*, should have the like Imaginations against his Majesty, and they should take Effect; I should think my self in a great measure guilty of that Misfortune. I think the Kingdom is concerned, and the King's Preservation, in this Bill; and I hope you will pass it.

Mr. Dolben. Mr. Speaker, I am against passing of this Bill; and I shall, with as much brevity as I can, lay before you my Reasons, why I am against it; and probably I should not have troubled the House with them, but that I think it necessary to justify my Opinion in a Case of this importance.

I do admit that the Fact that is charged upon Sir *John Fenwick* is an Overt-Act of High-Treason, within the 25th of *Edw. III.* though I must take leave to say, That a Judgment upon a Case, at least as strong as this, has lately been very much arraigned and controverted: But 'tis not my intent to dispute the Nature of this Fact; for I am

persuaded, That to consult how to procure an Invasion of this Kingdom with foreign Forces, is an Overt-Act of Compassing the Death of the King; and I do think this Charge does amount to such an Overt-Act. But I beg leave to reflect, How far Overt-Acts of this Nature, which fall directly within any Species of Treason mentioned in the 25th of *Edw. III.* how far such Treasons are cognizable in Parliament, and within the Intention of that Statute: Indeed, that they are cognizable by the absolute Power of Parliament, there is no doubt.

Sir, That Statute doth first enumerate several Species or Branches of Facts, which it says shall be adjudged Treason, that is, in the Courts of Judicature; and then afterwards it goes on, and says, *If any other Case, supposed Treason, not specified in that Act, doth happen before any Justice, the Justices shall tarry without any going to Judgment of the Treason, till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or Felony.* Now, Sir, with Submission, this is a great Argument, that the Intention of those that made this Law, was, That these Treasons, which were directly under any of these Particulars enumerated by the Statute, that they should be left and be appropriated to the Decision of the inferior Courts; but that Facts of another Nature, which did not come under the Particulars enumerated in the Act, as extraordinary Offences, and Misbehaviour of Magistrates and great Men, and the like; these indeed should be reserved for the Consideration and Judgment of the Parliament, who are only a Match for powerful Offenders, whom the common Justice of the Kingdom can't grapple with. And as this seems to be the Intention of the Makers of the Act, so I think the Instances generally have been pursuant to that Institution; for I know of but one single Instance of any one that ever was attainted by Bill for any Treason that is contained under any Species enumerated in the 25th *Edw. III.* 'Tis true, where Persons have been out of the reach of the Law, in open Rebellion, or fled from Justice; in these Cases the Parliament have thought fit to attaint them; as in the Case of Sir *John Mortimer*, and others who made an Escape out of the *Tower*; and the Case of the Regicides; and likewise the Case of the Duke of *Monmouth*, who was in open Rebellion. But I say, that I have not found in my Reading, upon the best Search I could make, where any that were in Custody were attainted by Bill for any Treason within 25 *Edw. III.* and that was the Case of *Ferham*; but I think there is no Precedent of any Man, who is not only in Custody, but hath been indicted, arraigned, and Issue joined, and he hath put himself upon his Country for his Trial; and the Person accused, was to be convicted, or acquitted, by the Verdict of twelve Men; I never heard of any Instance, when after all this Proceeding a Person was taken off from this Trial, and debarr'd the Benefit of the Judgment of his Peers, and the Benefit of his Challenges, and destroyed, and cut off extrajudicially by an Act made on purpose, *ex post facto*: I never met with any Instance like it, unless it be that of my Lord *Strafford*; and I believe no body will cite that, if they reflect upon the Preamble of the Act for reversing his Attainder: For in the Preamble, 'tis said, That the turbulent Party did attempt the procuring of that Act, on purpose to condemn him. This shews the Opinion of our

Predecessors in relation to Proceedings of this sort; they esteem it contrary to the fundamental Rules of Justice and Right, which Parliaments, as well as other Courts, must be governed by.

Roger Mortimer was attainted, and afterwards his Attainder was reversed; and the Reason declared, because he was attainted against the good Laws and Customs of the Kingdom.

Ferham's, that I mentioned before; and declared for the future, That it should be, &c.

Another Attainder there was of *Sir Thomas Hovey*; but that was reversed, and declared to be against all Law. Then there are the Attainders of *H. VIII's* Time; I shall not particularize them; but besides that, all the History of those Times, and Law-Books, condemned them, as Proceedings against all Law and Justice. There is the Statute of 1 *Edw. VI. c. 12.* seems directly levelled against those Attainders in the preceding Reign; for it says, That the Proceedings in King *H. VIII's* Time, were grounded upon Laws that were extreme and terrible; and therefore, that there might be no Proceedings of that kind for the future, it reduces all Treasons to the ancient Standard of 25 *Edw. III.* and goes on, and enacts, That no Man shall be convicted or condemned for Treason, but upon the Testimony of two lawful Witnesses.

Now I take that to be a general Law, and to extend to all Convictions and Condemnations for Treason; and can't but declare my Opinion of it, That it must extend to Bills of Attainder, since these are the principal and most powerful Convictions and Condemnations; and if that Statute does extend to Bills of Attainder, then pray consider, whether this Bill of Attainder now be supported by such Evidence as the Statute requires? There was indeed one lawful Witness produced; but instead of the other, they have only produced a Record between Parties not concerned in this Bill, and the Depositions of a Person, whether living or dead *non constat*; and I believe no Body will say these Depositions will be equivalent to a second Witness.

I do believe a great many Gentlemen are of Opinion, That those Rules of Evidence are not to guide you here: But I beg Pardon that I can't possibly be of that Opinion; I rather incline to my Lord Chief-Justice *Vaughan's* Notion, That though we are not bound by the Forms of Law, yet we are bound by the Rules of Law; every Body allows we are bound as to the Nature of the Fact; every Body will take himself bound by the Statute of 25 *Edw. III.* to form his Judgment as to the Fact: Why are not we then bound by these Acts? Likewise as to the Evidence, and the Proof of the Fact; if 25 *Edw. III.* be binding to us, so as to prescribe us a Rule to judge the Fact by, Why are not the Statutes of *Edw. VI.* binding to us as to the Evidence of that Fact?

But say some Gentlemen, if there be not two Witnesses, that is from *Sir John Fenwick* or his Agents. Sir, no Gentlemen will say, that there hath been any Proof of that; the very Bill does not charge him with it: But taking it for granted, what shall follow upon that? Shall it therefore follow, that *Sir John Fenwick* shall immediately be put to Death? No, God forbid! I think there is no Parity between the Crime of seducing away a Witness, and the Judgment of Death: But I think this a more reasonable and natural Inference to be made, That because *Sir John Fenwick* hath seduced away a Witness, therefore it is just to make a

Law, that the Depositions of that Witness should be of as good Force and Effect, as if *Goodman* was here, to give it *viva voce*; for then you will not take from him the Benefit of his Trial, nor the Benefit of his Challenges, which is the Birth-right of every *Englishman*.

And one Thing I will say further: These Bills of Attainder are like *Sisyphus's* Stone, they have rolled back upon those that have been the Promoters of them. 'Tis known, that my Lord *Cromwell* was the first Man that promoted them in *H. VIII's* Time; and the Advice that he gave his Master for the Ruin of others, proved fatal to himself.

Sir, this is the last Time we shall have the Opportunity of considering this Matter: I must take leave to declare, That my Opinion is, That if I consent to the passing of this Bill against *Sir John Fenwick's* Life, upon any other Grounds than such as are entirely agreeable, and justifiable by the Laws of God and Man, I am guilty of the Death of *Sir John Fenwick*. I am not satisfied that I can give my Consent to this Bill upon those Grounds, and therefore I beg leave to be against it.

Sir Edw. Seymour. Mr. Speaker, you all know I have born my Testimony against this Bill, being not persuaded that it is just: Now we are come to the finishing Part of it; and I shall lay before you those Reasons that prevail with me, and submit them to the Judgment of the House; and if I am more tedious than I used to be, I hope the Occasion is such, that you will pardon me; for I will endeavour to contract my self into as near a Compass as I can.

I shall not trouble you with any Arguments that have been laid before you already; nor shall I enter into the Examination of Precedents; a great many have been laid before you, and a great many of them have been reversed, most of them; and the Reasons why they have been reversed, because the Persons condemned have not had the due Benefit of the Law: And if that be a good Reason for reversing of such an Attainder, 'tis a good Reason why you should not do it.

I can't but take Notice, That the Beginning of this Bill in the House of Commons is the first Step of this kind, that hath been made in Parliament, except that of the Duke of *Monmouth*; and the Reason of it, I take to be this, because you hear not upon Oath; you condemn not upon Oath: You, nor the Party under Accusation have that Advantage against a forsworn Evidence, as there is in the other House; the Method has been to pass such Bills in the House of Lords, and transmit them hither, upon which you then judge.

I think, in this Case you have no Evidence; and instead of two Witnesses, you have no Witness at all; for as to *Goodman*, *De non apparentibus & non existentibus eadem est ratio.* As to *Porter*, he hath been examined: But when you consider, that he was a Person engaged in this Conspiracy, and that he had no Repentance of his Crime till he was discovered, and then he comes to be an Evidence; how far that shall sway, every Man must allow, that I must submit to you: But thus much I may say, every Man must allow me, that in far less Cases no Man that does swear for himself, or upon his own Account, is to be admitted as an Evidence. If a Robbery be committed in an Hundred, though a Man be but to pay a Groat towards it, he shall not be an Evidence; how much more then in a Case, when a Man comes to swear to take away another Man's Life to save his own; for he

is not in the Condition of a Freeman, who gives his Evidence without check or controule, but he is drudging on for his Pardon, as the Counsel told you, which depends according to the Evidence he does give or not give.

For my Part, I can't go so far as some Gentlemen have done, to say Sir *John Fenwick* is guilty: For where there is no Law, there is no Transgression; a Man that is guilty, must be guilty according to the Law: And the Law hath required and said, That there shall be no Treason but what is proved by two Witnesses, and here it appears that you have not one. The same Law that calls it Treason, says it shall be so proved: Then if you pass this Bill, you make that Treason which before was not Treason.

Sir, the Law does require two Witnesses, and there is divine Authority for it too: It hath been hinted at, the Place in *Numbers*, *No Man is to die upon single Evidence*; and it says, *These are the Statutes you shall observe throughout your Generations and Dwellings*. But I will go a little further, because a worthy Gentleman declared, there was no such Law of God. He will find in the 19th of *Deuteronomy*, a Case just as 'tis here; for the Case of High-Treason was Idolatry at that Time; and the Law says, *Whosoever shall set up Idols, shall be stoned to Death*; but it says, *No Man shall be condemned to die by the Mouth of one Witness, but by two or three Witnesses he shall suffer*: I think this is positive enough. I shall not trouble you with more Instances, though I could repeat several.

Sir, the Law enjoins Forms strictly, even to the least Circumstance: If a Man be condemned to die, and after he is condemned to die, another take away the Life of that Man, 'tis Murder. I will go further: If the Officer that is to do Execution, if a Man be condemned to be hanged, drawn and quartered; if the Officer shot him, it is Murder in him; so that Men are not left to a discretionary Power to act according to their Consciences.

I take the Reason by which this Bill is supported, to be destructive to all human Society; for if that be admitted, that a Man shall act according to his Conscience, and not according to the Rules that are prescribed him, I know not who is safe; For how can an innocent Man make his Defence upon that Principle? It is a safe Consideration for them that take upon them that Way of judging, because they are bound by no Rules; but what hath not that done almost within Memory; *Felton*, that killed the Duke of *Buckingham*, what was his Justification, but he was persuaded in Conscience he did well in so doing. *Ravillac*, that killed *H. IV.* in *France*, he justified the same by his Conscience, and said he had done a good Thing; and I may say this Argument of Conscience hath acted all the Villainy of the last Age, and I am afraid hath gone a great Way to disturb the Happiness of this.

For if this be a Rule to this House, How is the King bound? I thought he had been bound by Law; but if this shall be admitted as an Argument, 'tis enough to say, if this House be arbitrary, the King is. I do not reflect upon this Reign; but it will be enough to say, tho' he act against Law, and turn twenty Colleges out of Doors, his Conscience persuades him to it. We see how unbounded Liberty the Lords take, is, they are become Masters of all our Estates; and I would be very loath for my Estate to depend upon the feeble Tenure of a Lord's Conscience.

If then this be the Case, as it is, according to this Method, I desire to know into what Condition we shall bring our selves?

You have been told, it is expected from you by your Country, that you should exert this Authority and Power: Sir, I would have been glad that in Cases more reasonable we had exerted this Authority and Power of Parliament; I wish it had gone to the preventing the debasing and abusing your Coin; I wish it could be exerted, that we might not see our selves cheated under Countenance of an Act of Parliament; but contrary to that, you are fond of being sprinkled with the Blood of Sir *John Fenwick*. As long as the Government is not in danger, I believe the Country would be glad that their Blood might run secure in their Veins, and not be rapt upon every Occasion to serve a Turn; for if you break the Laws, what Man can promise himself Security?

We know the Consequence, if this Bill does not pass; Sir *John Fenwick* may live in Misery all his Time.

But what this Precedent may make, no Man can foresee. This Bill is against the Law of God; against the Law of the Land; it does contribute to the Subversion of the Constitution, and to the Subversion of all Government; for if there be Rules to be observed in all Governments, and no Government can be without them, if you subvert those Rules, you destroy the Government; and therefore for these Considerations, no Body will think it strange, if I give my Negative to this Bill.

Mr. *Chancel. of the Excheq.* Sir, the Gentleman that spake last, hath carried the Reason against this Bill a little further than some others; for it seems now, we are not to reject the Bill for want of one Witness that is legal in *Westminster-Hall*, but it seems there is no Evidence at all; and by Capt. *Porter's* not being pardoned, and yet drudging for his Pardon; as to all that have been condemned upon his Testimony, he hath arraigned the Evidence as not sufficient, and hopes that will be the Judgment of the House upon this Bill. I think if the House reject this Bill upon that Argument, it will go further than many mean that oppose it.

Another Thing he says, He compares the Convictions that I have upon my Judgment, and of every Body else that speaks from the Proofs that are made, that he is guilty, to the Whimsy of two or three mad Men; whereas we go according to the Evidence brought at the Bar; we don't go upon the Whimsies of *Ravillac* nor *Felton*, but upon the Proofs that have been made here; and though there are not two Witnesses, yet upon what appears in Proof, I am convinced that he is guilty; and upon that Conviction, I think, according to the Duty I owe my Country, and the Constitution of *England*, when a Bill does come to punish the Man whom I think guilty, I think I ought to be for the Bill. As to what is said out of *Deuteronomy*, That the Law of God was against it, if you will argue *à Fortiori*, 'tis literally true in the Case of Murder; but whether Murder or Treason, there is the Life of a Man concerned; and 'tis not the Punishment, whether to be hanged, or hanged, drawn, and quartered, that makes any great Difference; and give me leave to say, if you go to make Precedents from the *Jewish* Law, then I say, the Law of *England* is against that Law, in Case of Murder; and by the same Reason you may desire leave to bring in a Bill to repeal all those Laws.

Sir, if this was the eternal Law of God and Man, where was this eternal Law in *England* before *Edward VI*th Time? If it be the eternal Law, that there must be two Witnesses, why does it not hold in *England* even in some Cases of Treason to this Day; I mean the Treason of Clipping and Coining? So that if Gentlemen will argue, the Nature of these Faults are what the Law of every Country ordains, and that is the Law.

And the Way of Evidence and Proof too differs in every Country; and I may affirm, That there never was any Government in which there was not a Power lodged somewhere to be exerted upon extraordinary Occasions, beyond the legal Way of Prosecution.

I don't care to travel into the several Countries to see how their Constitution is, but I believe there is not one Place in *Europe* in which it is strictly necessary there should be two Witnesses to take away the Life of a Man; but it is generally so as it is here in all ordinary Cases, but in this very Law; this last Law does not go upon two Witnesses, but you have a Proviso in it does absolutely exempt Proceedings in Parliament: I do not infer from thence, that you should not have two Witnesses, if you proceed by way of Impeachment, I think you ought; and so for having Witnesses upon Oath, &c. When these Proceedings are in Parliament, there is a direct Proviso, by which the Parliament is exempted from those Rules. Upon the whole Matter, I think this Man is guilty; I think the Precedent would be more fatal, to say, that a Parliament can't proceed in such a Case, than that a guilty Man should suffer. I think this Bill comes before you with more Circumstances and Reason to justify it, than any that hath been brought here before; here is a Bill found against him by his Country, the Evidence of his Friends having tampered with one of the Witnesses, confirmed by a Jury, &c.

A learned Gentleman says, He would come up to make this Paper Evidence; but can't come up to make such a Law, by which every Man that is concerned in that Deposition would be affected: But here is something particular in this Case, a Man that hath been abroad, and hath not used the like Artifice, I think you ought not to use the like Power to punish him that is not guilty of the like Crime. And therefore I shall conclude; but I must take notice of one Thing: It was said, That this was the first Precedent of this kind begun in this House, but that of the Duke of *Monmouth*: But I believe, if this Bill of Attainder is not to be begun in this House, 'tis not to be brought in at all; for I believe there is a Statute, That the Life of a Commoner is never to be meddled with by the Lords originally. I will not trouble you any further: I do in my Conscience think that *Sir John Fenwick* is guilty, and therefore I am for this Bill.

Mr. Pelham. I did not think to have troubled you this Day: I did rather intend to have left it to others that can speak better, or have not spoken upon this Subject; but that which hath been mentioned by several, as if they did think that we who mentioned the Law of God upon this Occasion, did it as if we did think the Law of God was binding to you at this Day: I never thought any such Thing otherwise than as to the Morality of it, so far forth as it is grounded upon Reason and Justice, and tends to the clearing of an innocent Man; and so far we and all Mankind are bound

by it; and that Law having been afterwards confirmed in the *New-Testament* by our Saviour and his Apostles, at least approved of by them; and this having been confirmed by the Law of *England* likewise; I do not think this a fit Occasion for you to pass by so fundamental a Law as that is: And I conclude with this, That I can't satisfy my self in my Conscience, and should think some Misfortune might follow me and my Posterity, if I passed Sentence upon *Sir John Fenwick's* Life, upon less Evidence than the Law of *England* requires.

Sir H. Crofts. I shall endeavour as much as I can, to give you little trouble in this Matter: But because it hath been hinted and remarked so particularly upon me, I must beg leave to discharge my Duty, as well as my Conscience, as to what I said here the other Day.

Sir, I do very much forget my self, if I did assert, That there was no such Place in Scripture that required two Witnesses: The Thing that I said, was this, That if any Gentleman could shew me any Rule from Scripture that required two Witnesses, more in the Case of Treason than in the Case of Murder and Felony, I should be glad to see it. I do say that the Scripture shall be a Rule to me, as far as the Scripture requires; but I do take the *Jewish* Law not to be so absolutely literally binding upon us here. And as to the Text out of *Numbers*, that very Text of Scripture is particularly and literally applicable to Murder; and if that be binding now, we have been very much misguided by our Predecessors; and I think we are bound to take it in hand, to repeal all Laws that are against it.

Sir, he is pleased to deny us, in some measure, the Liberty of being guided by our Consciences: Truly, I don't know what he would have Gentlemen go by: Truly, let him go by what Rules he pleases, I will go by the Rule of my Conscience, and will not do any thing against it upon any Consideration or Consequence whatsoever; nor will I part from the Liberty and Power of Parliaments, for any Rule or Law of inferior Courts whatsoever.

Sir, you are told, You ought to be guided by the Rules of Law, that is not the Forms of Law, but the Rules of Law. Sir, I say, if these Rules were made to bind Parliaments, it was reasonable they should be bound by them; but if they were made only to bind inferior Courts, they were far enough from being intended to put a Cramp upon the Proceedings of Parliament; and if you shall subject your selves to them, you give the Lawyers such a Power, that I don't doubt, but their Books will be of greater Authority than your Journals: Therefore in Consideration of that, and because I would leave that which is the Right of Parliaments to my Successors, I shall not submit to that.

Therefore, I say, I come clear to the Point, Whether *Sir John Fenwick* be guilty or not; only I must observe a little back, That as to those Instances that the worthy Member was pleased to make use of, of *Ravillac*, and of *Felton*; shall those extraordinary Cases, that which Men did in heat of Blood and private Malice, shall these be brought to bear a Parallel with what is done in Parliament for the Justice of the Nation? I don't doubt but there are Men enough, in their Consciences, at least with pretence of it, will justify the Destruction of your Government and Religion, and every Thing

Thing else: All those Men that deny the Right of your Government, have Conscience and Justice enough to subvert it, if they could; and therefore I do not so much wonder, that many Men without Doors have argued in that Nature.

But I say, my Conscience is the Rule I must go by; and to me the Question is, only whether *Sir John Fenwick* be guilty, or not guilty, and am called to give my Judgment in it; and I think I am bound by the Law of Nature, by the Law of the Nation, and I see nothing in the Law of God that prohibits me, to give my Judgment according to the Evidence, and the Opinion I have in my Conscience of the Truth of it.

If there be no such Rule, that requires two Witnesses binding upon me; if I may go upon one Witness, if I believe he speaks true, and that the Person is guilty; then I am bound to act for the Preservation of the Nation, and all our Posterity: They that made this Attempt, made it upon you and your Posterity for ever: 'Tis not so small a Matter as some represent it; 'tis not the Person, so much as the Nature of the Fact we are to consider; and we are not to let Men escape Punishment according to their Greatness or their Smallness, but according to the Nature of the Fact, and their Guilt. I think I have that Freedom, and I am so little bound by those Rules that have been urged, that if both Witnesses were here, and gave Testimony against him, if I did not believe him to be guilty, I would lose my Life rather than vote him so; but on the contrary, if here be sufficient Evidence to convince me, though not according to the Rules of inferior Courts, I will not subject the Freedom of Parliaments to those Rules.

Sir, you have been told formerly, and I think it a Matter of that Weight, I beg leave to urge it again, because 'tis a great Reason that guides me in this Matter; if you lay it down for a Doctrine in this House (for a Resolution here taken is as much a Rule as a Law, for it shall be brought as a Precedent); and therefore, if it shall be laid down as a Rule here, that you will never attain any Man, or find him guilty, but upon two Witnesses, I think the Government, and all you have, stands upon a tottering Foundation: He must be a very ordinary Statesman, that can't lay his Plot so, as you shan't reach him by two Witnesses.

Therefore, I say, I think it becomes the Wisdom of Parliament, not to declare themselves bound in that respect; I would have them bound by Justice, but not by the common Rule of the Law.

Sir Robert Cotton. Sir, I do find that Gentlemen do very much insist in this Case, That if a Gentleman does believe that *Sir John Fenwick* is guilty, he must give his Vote for the passing of this Bill: If that be so, I am glad that Opinion did not take Place in the last Reign; if it had, I am of Opinion I should not have been here now, and I believe my Lord *Warrington*, who was very instrumental in promoting this Revolution, would not have died in his Bed. My Lord and I were accused of a Crime, which I believe, if proved by two Witnesses, had been Treason. I have heard some Gentlemen say in this House, they did believe my Lord *Warrington* was guilty (though he was not guilty of the Fact as it was laid.) There was a Man swore, &c. and there was some corroborating Evidence; but as to *Mr. Fley*, and my self, there was none but this particular Person, and they indicted us of Misdemeanor; though it would

have been Treason, if there had been two Witnesses. Now if the same Fact was Treason when proved by two Witnesses, and but Misdemeanor when proved by one, methinks we are doing an extraordinary Thing; we are going, after the Fact committed, to make that which is but a Misdemeanor, to be Treason. And for these and other Reasons, I can't agree to the passing of this Bill.

Lord Norreys. Sir, though I had always an Apprehension of the ill Consequence of this Bill, yet never so much as now; for this Gentleman hath given Arguments that shake me more than all that I have heard before; for he says, there are a great many Men, if they may proceed according to their Consciences, will subvert this Government, and bring in King *James* and arbitrary Power: And he tells you, that every Precedent in this House, is equal to a Law, and will justify the like for the future. I am sure I am very unwilling to make a Precedent that shall justify Men in such ill Actions, in saying their Consciences prompted them to it.

Then a Question was put for bringing in Candles; which passed in the Affirmative, and they were brought in.

Mr. Hammond. I don't think the Power of Parliaments in Question in this Case; but then, as all other Powers, it must be founded upon Justice, and never used but upon extraordinary Occasions, and when Criminals are not to be met with otherwise. The Power of Parliament is not lessened, if this Bill does not pass: But the Question is, Whether this Power shall be exerted in this Case? What Gentlemen say of being guided by Conscience, hath no Weight with me, further than that is governed by the Law of the Land: If it be to be admitted in the Case of Life and Blood, why not in *Meum & Tuum*? Why was he brought to the Bar then, if, according to our private Judgment, we are to determine this Matter? No Man thought but he was guilty.

I beg leave to mention one Thing that is come to my Knowledge: After the Trial and Condemnation of *Mr. Cook*, I had an Order sent me, that I might see him; and I went to him by Virtue of that Order; and the greatest Part of the Time I spent with him, he took up in declaring against the Evidence of *Goodman*, and that he would receive the Sacrament upon it, and give it in Writing, as his dying Words. I saw also three positive Witnesses confront him at his Trial; and when I heard him say this, it weighed so much with me, that I have very great Ground of Suspicion, that *Goodman* was perjured in the Case of *Cook*.

Here hath been popular Expressions of Plots, and Jacobites, that no Man can apply to this particular Case, or say, this is a Case wherein we ought to use this extraordinary Power: He was in the Hands of the Law, and no Body can say, that the Government must sink, if he does not die. If we go from the Rules of Justice, I believe it will give a great Blow to the Government.

Mr. Vernon. Sir, I rise up only upon what that worthy Gentleman hath offered unto you; for I did not think to trouble you with any Thing of that Nature. But if you will give me leave to acquaint you with what I believe, who have been later with him

him than this Gentleman, and much oftner. Sir, he does tell me, that he is very far from denying what hath been sworn against Sir *John Fenwick* and himself, concerning the Consultation to bring over the *French*; for he hath a very particular Remembrance of it: And if that Gentleman was to speak with him now, he would satisfy him, I believe, in that Point. And since I am up, I think every Man that speaks upon this Occasion, should likewise give some Account of himself, in what Manner, and for what Reason, he discharges his Conscience here: I hope I may use that Word, since Gentlemen make use of Conscience for his Acquittal; and a Man ought to have a very good Conscience for his Condemnation.

As to Sir *John Fenwick's* Innocence, I wish he had given no Occasion to have it called in question: And since he did fall under this Accusation, I wish he, or his Counsel for him, would have taken some Pains to have made his Innocency appear: But I don't find the Question is, Whether Sir *John Fenwick* is guilty? But whether there be any Evidence of his Guilt? And I shall tell you, in short, my Opinion of that: I take the Proof of the Fact to be, in general, such a Demonstration, as the Nature of the Thing is capable of; and that is sufficient, and capable to convince a reasonable, honest, unprejudiced Man, of the Truth of what is asserted. And there is no manner of Doubt left, Whether it is so or no; nor Appearance of any Possibility, that it could be otherwise. I think there hath been that Proof in this Case, and nothing attempted to disprove it, and nothing hath been proved on Sir *John Fenwick's* Behalf, that any Wrong hath been done him: And therefore in short, my Sense is, That whereas some Gentlemen think him guilty, but the Matter not proved, I think him guilty, because 'tis proved; and there hath been no Offer made to disprove it.

Mr. *Bromley Warr*. Some Gentlemen have spoke of the Power of Parliaments; but I shall say nothing to their Power, which, I have learned from my Lord *Coke*, is so transcendent and absolute, that it cannot be confined within any Bounds: But the more Just and Honourable it ought to be in its Proceedings, to give an Example to inferior Courts. And though their Power cannot be deny'd, yet the Exercise of it, hath been often censured and condemned; and Acts that have passed in one Parliament, have been in the same Reign repealed, and sometimes severely branded, *Id possumus, quod jure possumus*. 'Tis certain, here is a Defect of legal Evidence: We are not tied here to the Forms of *Westminster-Hall*; but certainly, with Submission, we ought to tie ourselves up to the Rules of *Westminster-Hall*, especially when they are founded upon common Justice, which is the same, is not mutable, and ought to be universal.

By the Law of the Land, no Person ought to be convicted in Cases of Treason, but upon two Witnesses; the Law of God is the same. However, if you will pass this Bill, all Persons must acquiesce; and there is no disputing of your Power afterwards. It hath been an Argument used to Day, That the Security of the Government requires the Passing of this Bill; which I think to be a good one too, if they can make it appear, that unless you proceed in this Way, the Government is in Danger: Though I must observe, it was not that Consideration, but the Vin-

dication of an honourable Person's Reputation, that brought this Matter first before you.

It does not appear to me, that Sir *John Fenwick's* Life or Death can endanger the Government. You have been told of a Design that he hath been engaged in, and is carried on at this Time; That an Invasion from *France* seems to threaten us: The former Design hath been happily discovered and defeated; and 'tis not probable, that Sir *John Fenwick* should have any great Share in any that is carrying on at present: And as far as I can learn, he is not so considerable a Man, in his own Person or Interest, that we need fear him.

An honourable Person said, If we do not pass this Bill, they that sent us here, would give us no Thanks. 'Tis not a good Way of arguing; but, I believe, if those look forward, they will thank us. Sir, in the Act for declaring the Rights and Liberties of the People, you have it said, That the late King *James*, by the Assistance of divers evil Counsellors, &c. How comes it to pass, that we have never Attainted any of them? And if we are for proceeding in this Way of Attainder, because it pleases them that sent us hither, I dare say, the Attainting one of those Men, would gratify those that sent us hither, more than the Attainting twenty such as Sir *John Fenwick*. It was pretty well known what Share some Gentlemen had in bringing in of Popery and Arbitrary Power; and I will take the Liberty to say, That there is never a Gentleman in this House, but believes them to be the worst of Criminals.

Upon the whole Matter, I do not think you have any Occasion to exert a Power, that no body denies: I see no Security this will be to the Government, and consequently, no Necessity of it. I think you are making a most dangerous Precedent, and that it will be of ill Consequence to you; and therefore I am against this Bill.

Mr. *Smith*. Sir, I will be as short as I can; and if it had not been for something in this Day's Debate, I should not have troubled you. As to what was said by the Gentleman that spake last, of making Examples of some that had been Criminal in the last Reign: How that came to happen, that no such Examples were made, I shall not now entertain you; but I believe most of the Gentlemen in the House know pretty well.

But I take the Matter before you is, What Evidence you have to prove Sir *John Fenwick* to be guilty? and Whether there be not an extraordinary Occasion at this Time to exert the Legislative Power.

I shall not enter into the Matter of Precedents, those are out of my Province, but I have read some: However, it shall not pass upon me for a Rule, because some Bills have been reversed, no others shall be brought in; it is possible, that the reversing of them, may be worse than the first bringing of them in.

But to apply my self to the Evidence; I cannot but observe one Thing, that seems this Day extraordinary: We are told by some Gentlemen, they are against our Proceeding upon this Bill, because it does not *quadrate* to the Rules of *Westminster-Hall*; and at the same Time, Gentlemen take Liberty to make Exceptions here against that Evidence that *Westminster-Hall* has allowed: That

they should take Exceptions to that Evidence which the Law of *England* allows to be good! For it is notorious, it hath been admitted in *Westminster-Hall*; and Gentlemen might as well have told you, That those Men that suffered, died innocent, as to have denied it. And I think there is a further strengthening of his Evidence; for there is not one Man, who hath died upon his Evidence, but hath acknowledged himself guilty of what he hath charged him with.

As to the Matter of the other Evidence, Sir, I do not say, that it is Evidence that will come at *Westminster-Hall*; but at the same time, give me leave to tell you, they seem to lay a little stress upon it, when they tell you, they believe it was false Evidence, and instance in what *Cook* said to a Gentleman of this House, after his Condemnation; but I think thus far I may say, That when you sent some of your Members to examine *Sir John Freind*, he did own all those Persons to be at that Place; and that is a much better Argument for the Validity of *Goodman's* Testimony. But as to the Matter before you, some Gentlemen have made it a Question, Whether *Sir John Fenwick* be so considerable a Man, as you should proceed in this extraordinary Manner with: Though they all say, you may do it, yet at the same Time they tell you, this was never put in Execution, but they were in the Wrong that did it.

Now, Sir, the Question is, Whether you should make use of this Power at this Time? Say some, The Plot is over: I wish it was: But when a Conspiracy hath been laid so deep and general as this was, 'tis not the hanging of one or two that will make us safe; when 'tis apparent to you, here is all the Artifice in the World, all the Endeavours in the World, by *Sir John Fenwick's* Friends, to remove *Goodman* out of the Way; 'tis some Argument that he had something to say to him: And when we see Prisons broke open daily; we have known Persons murdered in the Streets for giving Evidence. Very notorious is the Case of *Dodsworth*: You have Plots all about you; and yet can you think there is no Occasion to make use of this extraordinary Power?

I would have as great a Conviction upon my Conscience as I could; but 'tis very hard a Man must throw his Conscience aside in the Case: 'Tis very hard to believe, That if there be two Witnesses produced, though I don't believe the Witnesses, yet I am safe if I condemn the Man; and if there be but one Witness, I am to acquit the Man, though I believe him to be guilty.

And though they go to Scripture, to tell you there must be two Witnesses, yet they don't go so far as to tell you there have been very extraordinary Things done, even by God himself, for the preserving a Community.

And there is the Reason of it, that one Witness may take away a Man's Life in one Case, and not in another. There was a Thing said, that was one Thing that occasioned my standing up: A Gentleman said, truly, it seemed to him to be a better Way to put an End to the Plot, to have an Act of Indemnity, than the Conviction of *Sir John Fenwick* would be. Sir, there seems very little Reason for Acts of Indemnity, when we have seen an Act passed so lately, which has not restrained Persons, nor brought them to a Sense of their Duty; and we have heard

Persons own at your Bar, That the Fact was committed just after the Act of Indemnity. Sir, I do heartily, according to my Conscience, vote for this Bill.

Mr. Harcourt. Sir, I am sensible it is very difficult to say any thing, and not seem tedious at this Time of Night; but I take it to be my Duty not to be silent in this Matter.

All the Arguments, that I remember have been made use of in any former Debate, or in this Day's, may be reduced, in short, to these two Heads; The Danger of the Government, and Gentlemen's private Opinion.

Sir, as to the Danger of the Government, if any Body will convince me there is such Danger, (I promise him, if it be worth his while so to do) I will be his Profelyte, and vote for this Bill: But, to tell me the Government is in Danger, and that the Fate of *England* and *Europe* depends upon this Bill, is certainly rather offered to amuse, than to convince.

It hath been asked, Can the Circumstances that *Sir John Fenwick* is in admit of any Danger to the Government, which hath Power over his Liberty every Day, and may restrain him of his Liberty during his Life? A Man, by the Account I have had of him, of little Interest, not worth Ninepence. (I have no Acquaintance with him, and so I may easily mistake his Circumstances.) But, Sir, whatever his Circumstances are, he is in safe Custody, and no doubt there he will be kept; and to say the Government is in Danger by such a Man, sure, that cannot be thought by any Man living: And God forbid this should be the Case of the Government, that it cannot support it self without taking away this unfortunate Gentleman's Life, contrary to the Rules of Law!

For the Argument of private Opinion, 'tis almost as dangerous as the Precedent you are making. I will not argue it from the Case of the People, *Enthusiasts* and Madmen; but I will urge it in the Case of Men that sat in Judgment. If Opinion is to justify the Condemning of a Man, let us never more call the Verdicts against *Mr. Cornish*, *Mr. Sidney*, *Lord Ruffel*, and others, Murders. Ask the Jury, no doubt none of them are so silly, but in his Opinion, they were guilty. But if Opinion may condemn a Man without Proof, why not acquit him as well, where there is Proof? Such a Practice, I am sure, would never be endured.

The properest Method, I think, was proposed by the Gentleman that began the Debate; and I beg Leave to follow the same Steps, to consider his Guilt, how it appears to us, and whether there be any Reason for this extraordinary Manner of Proceeding.

The Recital of that Bill are the Arguments for it; and those we send up to the House of Lords for the Passing of this Bill: And first, it says, That *Sir John Fenwick* was indicted by the Testimony of *Porter* and *Goodman*, &c. It says, that several Days were appointed for his Trial; and at one of those Days the Trial had come on, if it had not been for the Discovery that he pretended to make; but it does not say it was put off at any other Days or Times, for that Reason: But it goes on, and says, He hath made several Reflections, &c. instead of making an ingenuous Discovery; and then it recites how that *Goodman* is withdrawn.

I would beg leave to put Gentlemen in mind of what was a great Inducement to bring this Bill in: It was said, That Sir *John Fenwick* and his Relations had done it; that they would prove that *Goodman* was withdrawn by his Means. Give me leave to say, That there was no Proof of it, unless the Hearsay of *Clancy*, and the Actions of my Lady *Fenwick*, are to be Evidence, contrary to the known Laws of *England*, to effect this unhappy Gentleman in the Case of his Life: I say, if any Gentleman had been of another Opinion, no doubt, he would have offered that Amendment to the Committee.

As to the Discovery that Sir *John Fenwick* hath made, it does not appear to me, whether it be true or false: It is one Thing to give a Vote to clear a Gentleman's Reputation, and another Thing to carry it so far, as to give Judgment, That the Person that made those Reflections shall die, and that before any Proof of their Falshood.

Here is an Indictment found, and here is an Evidence withdrawn; that is all I am satisfied in: And supposing the Person guilty, it is no manner of Inducement from these Arguments, to proceed in this extraordinary Manner.

But I would consider the Matter of the Amendment made at the Committee [Of which Treasons he the said Sir *John Fenwick* is guilty.] I can't say that; and therefore I can't vote for the Bill. If he be guilty, it does not appear so by legal Evidence; and therefore I am to judge him, as he appears to me, an innocent Man. The Law requires two Witnesses to convict a Man of this Crime. 'Tis the greatest Crime, and the Law is so merciful, that it won't expose a Man to such great Penalties, without demonstrative Evidence.

The first Act of Parliament that requires two Witnesses is, 1 *Edward VI.* The next is 5 *Edward VI.* And upon that Act, give me leave to take notice, that Act goes a little further than the first; for the 5 *Edward VI.* does not only say there shall be two Witnesses, but it goes on, and says, — which two Witnesses (they are there called Accusers, but mean the same Thing) shall be produced in Person before the Party at his Arraignment, and shall there, before his Face, maintain and avow what they have to say. So the Parliament particularly provided, That there should not only be two Witnesses, but that they should appear in proper Person, in open Court.

I beg leave to observe, That after the making of the first Act, in the 2 or 3 Year of *Edward VI.* there was an Attainder of Sir *Thomas Scymour*, in Parliament, without hearing of him; and that very self-same Parliament, within two Years afterwards, seems so to have repented that Matter, that they made that Provision, I have mentioned, in the 5 *Edward VI.* and to secure, that that ill Precedent should do no harm, they put in that Clause. If this Act passes, I wish we do not repent it in less Time than that Parliament did the Attainder of Sir *Thomas Scymour*. Let us be guided by the Reason, the Justice, and the Discretion of that Act, though we are not bound in our Legislative Capacity, by the Power of it. I can't but observe, that from the making of that Act, no Person has been attainted in any other manner, till the Duke of *Monmouth*: So great a Veneration has that Law always had in all Reigns, though a multitude of Conspiracies have happened in them all. I do not think it so material, that there should be

two Witnesses, as that these Witnesses should be heard Face to Face, and cross-examined. It hath been told you, That 'tis natural Justice and Reason that there should be two Witnesses. A Gentleman asked you, where that natural Justice was before the Statute of *Ed. VI.*? Sir, the Statute of 25 *Ed. III.* says, That every Person that is attainted, shall be *Provably attaint*; and somewhat may be from thence inferr'd more than that the Crime should be prov'd, for so must every Crime. But as to the Proof required by that Act, and the Acts of *Ed. VI.* all those Acts, by very learned Opinions, have been thought declarative of the Common Law: But that's scarce worth the Enquiry, since 'tis certain how the Law stands at this Day.

An honourable Gentleman took notice, That such Evidence as we have had, and such Proceedings as these, would not be reasonable in Case of Impeachment; but distinguished between that Proceeding and this. But certainly, the Reason is the same. 'Tis true, the same Persons that accuse in one Case, give their Judgment in the other; but in each Case, such Privileges as are just and reasonable, ought to be allowed to the Party accused.

I shall add no more, but that we are making a Precedent, which can't be made without breaking through all the Fences of the Law; and when 'tis made, we know not who may suffer by it.

Sir *Rich. Temple*. As to the Evidence you have before you, I appeal to any Man, Whether at the Common Law, if there was but one Witness against a Man, whether he was not at Liberty of demanding Trial by Battle? Those Acts that have been made since, are made certainly to provide, That in no Case whatsoever, a Man should be so much as accused without two Witnesses of the Treason.

As to what hath been said of the particular Evidence before you; what hath been observed here, is a good Objection in the Courts below. I do not say it does disable a Man from being an Evidence, because he is not pardoned; but he is not so good an Evidence as if he was pardoned: But that I stand upon is this: Shall you come here, and make a Precedent in this Place to condemn a Man to the highest Penalties, upon less Evidence than you will allow any Body else to do it? That is what was never done in Parliament before. Will you make a Precedent in Parliament, that at any Time they may bring in a Bill here, and judge a Man to Death for Treason upon no Evidence?

As to this Bill it self, consider what a Precedent you will make: There is nothing that any Bill was condemned for in Parliament, that is not in this Bill. All Mankind must perceive, that you have but one Evidence, and such a one as I have told you: And whatever any Man's private Persuasion is, 'tis the Proof must govern you. Then this is a Law *ex post Facto*, and that hath always been condemned; you make that Evidence, that was not so before. Sir, this is, besides making a Law in a particular Case, against the Common Law of *England*, and the Right that every Subject has: It is making a Law to hang a Man without a Trial; 'tis making a Law here, that was introduced here upon a Pretence to make him an Evidence. Every one said, That they did not seek his Blood; and if that be the secret Inducement in this Case, 'tis a dangerous Precedent. The Earl of *Exeter*, when he brought the Rack into the *Tower*, every Body knows the Fate that came upon him afterwards.

Let any body shew me there was any Reason for reversing any Act of Parliament; they are all against this Bill.

Then to the Necessity of it; I can't imagine any Thing that hath been said to you upon that, is a ground for this Bill. Pray consider first how this Matter came before you; it was for an honourable Person's Vindication, and it was not transmitted to you by the King, but by the honourable Secretary: He told you, That if you had a mind to see these Papers, and required it, he had Leave to let you have them; but if it had been a Thing of this consequence, that the Government had been in the utmost Danger, would it have been transmitted only at the Request of a private Gentleman, and left unto you, whether you would proceed upon it or no?

But 'tis observed, That the Plot may go on still: Pray if this Gentleman be cut off, does that cure it? You are secure of him now, that he can't act in it; so that I have not heard the least Ground to convince me, that the Government would be in less Danger if this Gentleman was cut off.

Sir, we are told here of going according to our Consciences; give me leave to say to you what was instanced in the other Day; That in the worst of Times, when they did not stick at murdering of the King, yet they stuck at this; they would not allow any Man to suffer upon one Witness; and they did not admit of Depositions against my Lord *Mordaunt*, and my Lord *Mordaunt* saved his Life by it.

You have deposed King *James* for breaking in upon the Law; and did any body believe that Mr. *Hampden* was not guilty of the Treason he was charged with? He owned it before this House; and yet he was tried only for Misdemeanor, there being but one Witness against him; and they that strained all other Laws, stuck at this, and would not violate this Law; so that I think there is no Necessity for making such a Precedent, and I think it would be the worst of Precedents.

Mr *Boscawen*. I have observed upon this Debate, that some Persons deny that 'tis justifiable at any Time, to proceed upon Bills of Attainder, and yet they don't dispute the Power of Parliaments; but at the same Time say, they ought to go according to the Rules of *Westminster-Hall*.

Another says, it is the same Thing whether we proceed by Way of Impeachment, or Bill of Attainder: I think him much out of the Way; for in that Case, the Lords only are Judges, and you are the Prosecutors; and you don't use your Legislative Power in that.

A worthy Friend of mine said, He had often been mistaken in his own Conscience, when he thought himself very much in the Right. That might be so; and if there was any room rationally to suppose, that Sir *John Fenwick* was not guilty, I should be of Opinion to be of the more favourable Side; but I take it, there is no room for any Man to believe but he is guilty.

Now I would examine what Grounds we have to believe him guilty. Upon Trials, when they charge a Jury with a Prisoner, one Part of their Charge is to enquire, whether he fled for it or no. 'Tis notorious, that Sir *John Fenwick* fled for this, which is no small Argument of his Guilt. Another is, that he was hear at the Bar, and did not deny the Fact; if he had confessed it, no doubt but you would have concluded him guilty; and when he does not deny it, this is next door to it.

It hath been told you, many Bills of Attainder have been reversed as unjust; it hath been as noto-

rious, that the Verdicts of twelve Men, and when Men have been tried by their Peers, have been reversed too, I will instance in two or three. The first I begin with, was that of the Duke of *Somerset*; but no body could say but he was guilty of the Fact, for he confessed it; but there was a powerful Enemy, the Duke of *Northumberland*. The next is, the Duke of *Norfolk*, who was attainted in Queen *Elizabeth's* Time; and they were not by Parliament, and yet both were reversed. And I think, as this Matter stands now, some Gentlemen are of Opinion, by the Evidence they have heard, that he is guilty; but I think no body hath said, that it appears to him, by the Evidence he hath heard, that he is innocent. Now I desire to know, whether every Man must not use his Conscience to judge, whether there be sufficient Evidence? I acknowledge there is not sufficient Evidence to convict him in *Westminster-Hall*; but there is more to satisfy my Conscience, and the World abroad, than if *Goodman* was here; besides his not denying it, you have the Evidence of the Persons that died, who owned the same Thing: And I mention that the rather, because they confessed it to Persons sent from this House; and did not only confess themselves to be guilty, but acknowledged, that there was such a Conspiracy; and Sir *William Parkyns* acknowledg'd in particular, that he was to raise a Troop of Horse, and that the *French* were to be invited over: Is this nothing for the Legislative Power, that is to secure the Peace and Welfare of the Government?

Gentlemen say, there is a great deal of Danger in this Matter: Some, if you acquit him; others, if you condemn him. If you are satisfy'd he is guilty, by this Bill you set up a Land-mark, that others may take Care they do not come into this Predicament: On the other hand, if you reject this Bill, you will give Advantage to your Enemies; when they shall see a Man that is so notoriously concerned in calling in a *French* Army, the worst of your Enemies, to be Scot-free. If he be guilty, what Danger is there of the Precedent? When a Person in the like Nature, that hath fled for it, that does not deny it; when living Persons confess it, and dying Persons confirm it, then there will be Danger in such a Person.

Upon the whole Matter, I think there is no Man that ever I heard, that does not believe him to be guilty; and 'tis strange you should want Evidence, and yet every one think him guilty; and I think no Man must be acquitted or condemned, but according to a Man's Conscience.

An honourable Person said, *Porter* was no good Witness: If *Goodman* was here, he would not be so much; and yet we must acquit him because *Goodman* is not here: And therefore, upon the whole, I think you will give your Enemies a great Advantage, if you acquit him; and if you condemn him, you will do your selves Right.

Mr. *Cowper*. Sir, being concerned in Prosecutions of this Nature without Doors, I have hitherto declined concerning my self in any Debate of this Evidence, though unconcern'd in the Conduct of the Evidence against Sir *John Fenwick*; but being to give my Opinion and Vote as a Judge, I shall crave Leave to give my Sense of this Matter.

I would beg Leave, in the first Place, to make use of a Distinction, which, I think, will serve to answer several of the Arguments that have been made use of: I think there are two Things to be consider'd; First, his Crime and the Proof of that

that Crime, and then the other Matters done by him subsequent, &c.

The Crime and Proof of it that hath been given against him at your Bar, is the Ground by which, I think, before God and Man I ought to give my Affirmative to this Bill, by which you judge him to die. What he hath done subsequent, convinces me in my Judgment, that we are here in a proper Method and Course of Proceeding against him; therefore let no Man say, That you have condemned him because he hath protracted his Trial: No, you have condemned him for having been guilty of High-Treason, manifestly proved against him: Then let them not say on the other hand, Will you condemn any Man that is at any Time guilty of High-Treason? No; but when a Man is guilty of the worst of Treasons, and this would have been manifestly proved against him in the ordinary Course of Proceedings, but that he undertaking to atone for his Crime, and serve his Country, hath protracted his Trial till one of the Evidences is gone; and then, though he pretended to have a Reserve, which he would make known to the King's Person, yet when he thinks he is out of the ordinary Reach of Justice, he sets the Justice of his Country at defiance. These are Grounds, not why he is to die, but to justify our Proceeding in this Manner.

Sir, I would beg leave, in a few Words, to take notice of a few Things said in this Matter: Gentlemen are afraid, that this will be made use of by Posterity to the Disadvantage of honest Men: And you have been told, That Precedents have begun with the Punishment of the Guilty, and then have been carried on to the Punishment of those that have not been so. 'Tis true, there hath been a very bad use made of very just Acts in relation to the Publick: But what do Gentlemen infer from that? Must we have no such Thing as Justice? Must not the Guilty be punished, because the same Methods may be made use of for the punishing of honest Men?

I am not afraid of what use Posterity will make of it; if there come Times of Violence when there are no Parliaments, they will not want this Precedent; there are others that have been cited, that will much more justify those Proceedings; nay, this may protect the Innocent. If a Bill come to be proceeded in against another, he may say, Sir *John Fenwick* was heard personally, and by his Counsel; that the Evidence was produced before him, and confronted with him. An innocent Man may say, There was that extraordinary in his Crime, which is not in mine; he would have introduced a foreign Army, and afterwards have aggravated his Crime, by endeavouring to abuse the King, and creating a Jealousy between the King and his Ministers.

Sir, in the next place it is said, That here is not legal Evidence; which I think is a Mistake: And, say some, Though here is an Evidence, that really convinces them in their Consciences (I am not ashamed to make use of that Word) yet they are not for passing this Bill, because there is not a legal Evidence. With submission, that is a Mistake; before 1 *Ed. VI.* one Witness was a good Evidence in High-Treason; but there was Variety of Opinions touching Treason before that Time; but neither the 1st nor 5th *Ed. VI.* in the penning or wording of them, nor in the Reason of them, were intended to extend to the High Court of Parliament; so that, for ought that hath been said,

though one Witness corroborated by Circumstances, as this Case is, and the Confession of the Party, would not be legal Evidence below; yet, with submission, it is a legal Evidence in Parliament, even according to the strict Rules of Law; because no Law hath made two Witnesses requisite in this Case; so that 'tis a convincing Evidence: I think it may be justified to be a legal Evidence; and as it convinces me, that I can't resist the Belief of it, I must be for this Bill, notwithstanding what some Gentlemen have said, by way of endeavouring to explode Conscience as a Rule not to walk by in this Case. One Instance given against it was, because a Hangman has not a discretionary Power to execute a Man according to his Conscience, and put him to what sort of Death he pleases; as if we had not a better, and more legal, and discretionary Power in the High Court of Parliament than the Hangman has.

But we are told of several Instances, where mad, and hair-brain'd Men have made use of their Conscience to palliate their Extravagancies. No doubt it hath; and let me tell you, Religion hath been made use of as a pretence to the worst of Villanies in all Ages; and yet I hope they will not argue, that there ought to be no Religion neither, for a Guide to Mens Actions.

When Men come to be Judges, I would know what Rule they can have better than a sedate, well-informed Conscience? Below, when a legal Evidence is given, yet the Jury are not bound to go by that legal Evidence; they are, when they have heard it, Judges of the Fact, and are to go by no other Rule, than what is ridiculed here, even the Rule of their own Conscience.

It was said early in the Debate by a Member of great Reputation, that this (except *Monmouth's* Case) is the first Precedent of a Bill of Attainder that began in this House. It seems the ancient Way was, for the Lords to give the Witnesses their Oaths, and when they thought fit, they sent down a Bill, and the Commons were to proceed upon it: But I think, with submission, this is a much better Way; and I had much rather give my Consent upon hearing convincing Evidence, and that the Party has nothing to say for himself, than upon any Bill transmitted from the Lords, and no other Evidence, than that they thought fit to pass it.

Some Gentlemen have set a great Weight, or rather mistaken the Argument: Say they, Sir *John Fenwick* is not a Man so considerable as to endanger the Government. Admit that those that have spoke for the Bill, have not made that use of the Argument; but this is that I lay my Finger upon in particular; 'tis plain he was to be General, and knew a great many of the Officers. I am satisfied he hath not made that Attonement to his injured Country, that he ought to have done. I am satisfied, that unless this Bill proceed steadily against him, you will have none of that Discovery —

[Here he was interrupted by the Noise of some Gentlemen, shewing Dissatisfaction at that Way of arguing.]

Mr. *Cowper* proceeds. Don't let Gentlemen pervert this Argument, and say, Will you hang a Man if he don't confess? No; but when I have heard Proof, that he is guilty of the worst of Treasons, and hath aggravated his Crime in that manner which he hath done, he deserves to die; unless

unless he will merit his Life by a Discovery of what he knows. I think it of the highest Importance to you, that can be, that you should come to the further Knowledge of the other Branch of the Conspiracy; the Meeting of the *French King's Forces in England*. I think you are in a proper Method, and perhaps may have a better Issue of this Bill than his Death: But if not, he will but pay the Debt, which he owes to the Justice of his Country.

Mr. *Paget*. Sir, I can't believe but I shall be heard, as to the little I have to say, with some uneasiness, after so long a Debate. But, Sir, since I did take the Liberty to give my Opinion, why I was against this Bill before; I think it as reasonable to give you my Reasons, why I don't stand convinced by the Arguments I have yet heard. And that I may the better give you my Reasons, I shall, as well as I can remember, repeat some of the Arguments that have been urged for the Passing of it.

If I mistake not, some of the Arguments have run upon the Power and Prerogative of Parliaments; some upon what was proper Evidence in this High Court of Parliament, other than what would be in other Places; others upon the Extraordinariness of the Occasion.

As to the first of these Arguments; since Gentlemen much more experienced in Rules of Parliament, do not think fit to deliver their private Opinion, what Rules Parliaments may in Reason be supposed to have, I shall not say any Thing to that.

As to the Arguments, of what Evidence shall be sufficient to adjudge a Man to Death in this House; I confess, I shall at all Times be very careful, how I give my Opinion in Matters of Life and Death; because I think the greatest Caution is to be used in that Case: And for this Reason, I can't consent to give my Opinion in one Case, that I shall think fit to retract in any Case afterwards.

If I understand the Meaning of the House, 'tis not in favour to Sir *John Fenwick* himself, that Gentlemen oppose this Bill, but for fear of ushering in a Precedent, that may be made use of against a better Man.

I confess, here is a worthy Member that spake last, said something in his Argument that hath some Weight with me. I did apprehend by the general Debate of the House, That the Parliament had no Rules at all, but what they would fix to themselves; but I have a great Regard for his Opinion: But if he says true, the Evidence before you is not legal Evidence in *Westminster-Hall*; but 'tis legal Evidence according to the Rules of Proceeding in the High Court of Parliament: But I think, truly, if they may be presumed to have any Rules to go by, nothing is so plain to me, as that a Rule of their own of so late Date, as the Act for regulating Trials in Cases of Treason, should be a Rule to them: And 'tis said in that Act, That after such a Day no Person shall be brought to Trial in any Case of Treason, &c. but he shall be condemned upon the Evidence of two Witnesses; and I must needs say, that Act that was passed last Sessions, is so much for the Liberty of the People of *England*, that I think it will be very hard to repeal that substantial Part of the Law so soon after it was made.

As to the Extraordinariness of the Case, I am sensible what Strefs hath been laid on that Argument, as if the Strength of this Government did

in some measure depend upon your Disposal of this Matter one Way or the other: And since that is the Case, I shall speak tenderly of it; for I do as much abhor Acts of Treason against the Government, as any Man that hath spoke for this Bill: I think, as the Crime is to be distinguished from all others, as being a more than ordinary Crime, so I think the Person that is concerned, must be extraordinary: And I think, with submission, there is some difference between Principals and Seconds in an Act of Treason. When you can't come at a Man being at the Head of a Rebellion, it may be reasonable to proceed by Bill of Attainder; but I think 'tis not to be used upon all Occasions, or when you may come at a Person another Way; which, I think, is the Case of this Gentleman. I am of Opinion, that there does not depend more upon Sir *John Fenwick* now, than when he was first taken. Why he was not tried, I shall not examine the Reason; I suppose it was because he gave some Assurance of his Confession: Truly, I have heard no other Reason for proceeding against him now, but those Papers which have been adjudged scandalous, and are so to all Intents and Purposes, I do think truly: But the Liberty of the People of *England* is very much concerned in the Revocation of that Act, which was promoted for the Liberty of the People; and none of the Arguments that have been used can convince me, That I ought to give Judgment upon less Evidence than is provided by that Act.

Mr. *Sloane*. Sir, I hardly thought I should have needed to have troubled you with my Thoughts in this Matter, but that this honourable Gentleman that spake last, has gone so far in his Reason, as to speak to Matter of Law: He seems to extenuate the Fault of Sir *John Fenwick*; and gives it as a Reason why he should not be attainted by this Bill, for that he was none of the Principals, but only an Accessary: There is no Gentleman of the Gown but will tell you, that there is no Accessaries in Cases of Treason, but they are all Principals, and equally guilty; and there is no Evidence in this Case to make him Accessary, but he is either Principal or nothing.

When I have made this Observation, give me leave to tell you my own Thoughts: As every Man is to be saved by his own Faith, so may my Salvation depend upon my Opinion, according to my Conscience in this Matter, which is for passing this Bill.

The last Time, I gave you my Reasons why I was for this Bill; and yet I have not heard them answered, though a Gentleman said I answered myself: But I will state the Case, and desire him to reply to me. I did say then, Sir, and do so again, That I do not think those scandalous Papers any Reason to provoke you to pass this Bill; and I do think, if he should be threaten'd, it would be a Blemish upon his Confession. Another Thing I put out of the Case, That he is a Man so dangerous to the Government, that if he escape, we are all undone. I do take him, that in his Person, Interest and Friends, he is not so; and would not have that be a Motive for the passing of this Bill: But take it upon the Evidence that is before us, and in the Nature of our Proceedings; then I will say, we have great Reason to proceed upon this Bill, for the Preservation of the Government, and for this Reason; Whereas it is insisted on one side, that here are the Laws and Liberties of *England* at stake, and no Body knows whose

whose Case it may be next. Sir, if we don't go upon good Grounds and Reasons, that we don't fear any Body's following, God forbid we should make this a Precedent! But pray turn the Tables on the other side, and see what the Case will be; that here is a Gentleman that every Body of the House does believe guilty; that he hath been in a Conspiracy to bring in the *French*, and depose the King; and the Man came before us, and we had no Power to reach him; What will be the Precedent on the other Side? It will be easy to take off one of the Witnesses by Men of great Estates, and then there is no coming at them, even by the Parliament themselves: This Parliament was of Opinion, That they could not come at Sir *John Fenwick*, though they were of Opinion that he was guilty.

But now, Sir, to that which is the Question: 'Tis allowed by every Body, you may do what you please; but without straining your Legislative Power, I shall offer my Thoughts and Reasons for it, upon these three Points; That the Fact is Treason; That he is plainly guilty; and That we have a plain Jurisdiction in this Case, in the ordinary Methods and Proceedings of Parliament.

Sir, the Fact is Treason, the Meeting at several Times, and conspiring, and consulting to bring in a *French* Power to depose the King. You have been told by several Persons, and the Counsel at the Bar, That such Meetings without some other Overt-Act, is not Treason; but I affirm the contrary, for that is an Overt-Act of compassing the Death of the King: And Sir *Bartolomew Shower*, who did insist upon it at the Bar, did otherwise act his Part upon it at the Trial of Mr. *Cook*; for he offered it at first, but afterwards he deserted, it as a Thing he could not stand upon; for 'tis the Opinion of all the Judges, upon a late Resolution.

Then, Sir, the Fact being Treason, is no Act *ex post facto*. We are not making that Treason which was not so, but we are only judging of the Fact that was Treason before; though if it was a Doubt whether it was Treason or no, the Parliament hath a Power, by 25 *Edw.* III. to judge that Treason, that the Courts below have no Power of.

The next Thing is, Whether there be sufficient Evidence of his Treason before us? I will put it out of the Case, as no conclusive Evidence at all, what *Goodman* hath said upon his Oath (further than that there was such a Witness that did and could swear such a Thing, and that he was examined before the Jury); and this I will take upon me to say (and I will give my Reason for my Opinion) That the Parliament is not obliged to Two Witnesses by any Law now in being.

It hath been told you, That from the Time of *Ed.* III. one Witness was sufficient till the Statute of *Ed.* VI. Now I will prove to you, from the Statute of *Phil.* and *Mary*, That by the Common Law, and all the Time between the Reign of *Ed.* III. and *Ed.* VI. one Witness was sufficient for this Treason. For that Statute of *Phil.* and *Mary* does say, that any Person that shall bring from beyond Sea, any false and counterfeit Coin, or be accused or impeached of any Offence concerning the Impairing, Counterfeiting, or Forging of any Coin current within this Realm, shall, and may be indicted, arraigned, convicted, or attainted by such like Evidence, and in such-like Manner as was accustomed before the first Year of K.

Ed. VI. Now, what was the Reason of that Statute before the Statute of *Ed.* VI? Those Counterfeits were to be tried by one Witness; and therefore at this Day all the Counterfeiters, and Utterers of false Coin, have been Attainted by one Witness.

'Tis said again, That there is the Law of Nations, and the Law of God, to the contrary. Gentlemen have said several times already, That in Murder and Felony, one Witness is sufficient; which, saving some little Parts of the Judgment as to the Forfeiture and Attainting of the Blood, is the same Penalties. We are not in the Land where that Law was in Force; for by that Law, as to common Felons, there was a Restitution only: But I would put a Gentleman that sits by the Bar this Case; By the same Law of *Deuteronomy* and *Numbers*, that he hath quoted, Adultery is Death: Will you be contented that that should be so here? They are either all of them in Force, or none of them in Force.

I do say, That by the Statute of *Ed.* III. and ever after, till the Statute of *Ed.* VI. one Witness was sufficient to convict any Man of Treason. And I do say, That the Statutes of *Ed.* VI. do not preclude the Parliament from any Method of Proceedings.

The Statute says, That no Man shall be indicted, &c. nor shall they proceed upon such Indictment. From which Words in the Statute, I do plainly make it appear to any Gentleman that will read it, 'tis confined only to the Courts of *Westminster-Hall*: For certainly, you can't call a Bill of Attainder, to be a Proceeding upon an Indictment. What I say, is only to discharge my own Conscience, and to save the tender Consciences of them that hear me; and therefore, I desire them never to say, That there ought to be two Witnesses, before they answer what I have said upon that Statute.

Then, Sir, you have need but of one Witness, and you have had Captain *Porter* before you; who, I think, notwithstanding all that hath been said, is a credible Witness. A Gentleman made some Objections to his Credit, and told you, he was not to be believed, because he was in the same Conspiracy, and had been in such a villainous Action: But, Sir, the same Gentleman hath often confined you to the Rules of *Westminster-Hall*; and he hath told you, 'Tis a wrong Place here, and that a Man has not so good a Trial here, as in *Westminster-Hall*. Why? the Thing that was spoke of, of his being concerned in the Assassination, and of his being a Fellow-Conspirator with them, which is now urged as an Objection before you, is no Objection in *Westminster-Hall*.

I would only take notice of another Objection this Gentleman made to the Witness, which he said he had from the Bar; which was, That Captain *Porter* was not pardoned, and he was now drudging for his Pardon: But that is so far from what ought to be quoted, that he that said it, ought to be reprimanded for it.

He made another Objection against his being a good Witness, and compared it to the Case of an Hundredor; but he did not remember, that the Man that was robbed is a good Witness; and the Reason is, because of the Necessity of the Thing, and that no others can be; and the Defendant in an Hundred can't be a Witness, because there may be others; and that is the Reason of this Case.

And for the Precedents in *Richard III's* and *Henry IVth's* Time, no Gentleman can insist upon them, considering the Differences of the Crown, and the one Attainted the other; and they were not reversed upon the Point of Jurisdiction, but because of the different Rights of the Kings; and no body had pretended to answer the Case of the Regicides; they were not left to the Law, I mean such as were actually tried before the Parliament; but the Parliament passed different Judgments on them; and some of them were in Custody. What was told you of *Cromwell's* Case and others, they go upon the same Reason, that they were not heard, though they were in Custody.

Col. Wharton. A Gentleman lately told you, We had lately passed an Act for Trials in Cases of Treason, and how we are in this Proceeding, about doing something that is contrary to it: That is a Thing that would stick with me, if I could not answer it; but I appeal to every Gentleman in this House, whether that Act hath any sort of relation to Trials in Parliament; for that is only to direct the Courts in *Westminster-Hall*.

I have only this to say; I think the Evidence very full before you. I think you have had one very good Witness, and the Counsel for the Prisoner had Liberty to confront him: If he had not been guilty, the Prisoner at the Bar would have deny'd it: I am convinced of the Truth of it, and my Conscience is to make a Judgment upon it, and that is all we can go by here.

Mr. Jefferys. A worthy Gentleman of the Long Robe hath taken Pains to find out Precedents to justify our Proceedings; and another says, there is no Act to circumscribe our Proceedings. But since Gentlemen differ so much, it gives me a great deal of Caution. This I know, there is a Law of the Land, by which Persons ought to be governed: I take this to be an extraordinary Method of Proceeding, and I hope the Lords will take more Care of the Matter than the Commons.

Mr. Edward Harley. Sir, I can't satisfy my self to be for this Bill; and in a few Words, I shall give my Reason for it. It hath been said, That the Parliament is unlimited. I do agree, that we are not tied to the Rules of *Westminster-Hall*. I shall only mention the Reason why two Witnesses are required in Cases of High-Treason. If any will look into the History of *England*, they will find it hath been often the Design of the Crown to trump up Plots upon the Subject; and therefore these Acts took particular Care there should be two Witnesses to prove the Fact: This is the Reason of the Law, and, I think, upon it the Liberty of the Subject is founded; and therefore I can't be for this Bill.

Then the Question for passing this Bill was put, and the House divided.

Ayes, 189. Noes, 156.

The Writ for Executing *Sir John Fenwick*, being under the whole Broad-Seal, and inclosed in it.

Guilielmus tertius Dei Gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ, Rex, Fidei Def. &c. Vic. Com. London, & Vic. Com. Midx. Salutem: Cum Johannes Fenwick, Bar. per quendam actum ad sessionem præsentis nostri Parliamenti apud West-

minster. super vicesimum diem Octobris, Anno Regii nostri octavo, per prerogationem tent. Edict. de alle prodicione per ipsum perpetrat. & commiss. attinctus fuit, & executio super inde adhuc restat faciend. & quia pro certis causis & considerationibus nos specialiter moventibus, totam executionem Actus attincture prædicti. super dict. Johannem Fenwick, præter amputationem Capitis sui, omitti volumus; ideo præcipimus vobis & per presentes firmiter injungendo mandamus, quod in & super vicesimum tertium diem instantis mensis Januar. inter horas nonam & undecimam ante meridiem ejusdem diei dictum Johannem Fenwick in Goala nostra de Newgate sub Custodia vestra nunc existent. à Goala prædict. usque ad Tower-Hill, ducatis, & Caput ipsius Johannis Fenwick ad tunc & ibidem amputari & à Corpore suo omnino separari faciatis. Teste me ipso apud Westmonast. decimo octavo die Januar. Anno Regni nostri octavo.

CHUTE.

The Label.

Vic. Com. Lond. & Midx. de executione faciend. John Fenwick, Bar. auctoritate Parl. Attinct. CHUTE.

All the Punishment being remitted but Beheading, he was brought to a Scaffold erected on Tower-Hill, where he delivered this Paper to the Sheriffs.

Speaking nor Writing was never my Talent: I shall therefore give a very short, but faithful Account, first, of my Religion, and next, what I suffer most innocently for, to avoid the Calumnies I may reasonably expect my Enemies will cast upon me when dead; since they have most falsely and maliciously aspersed me, whilst under my Misfortunes.

As for my Religion, I was brought up in the Church of *England*, as it is establish'd by Law, and have ever professed it; though I confess I have been an unworthy Member of it, in not living up to the strict and excellent Rules thereof; for which I take Shame to my self, and humbly ask Forgiveness of God. I come now to die in that Communion, trusting, as an humble and hearty Penitent, to be receiv'd by the Mercy of God, through the Merits of Jesus Christ my Saviour.

My Religion taught me my Loyalty, which I bless God is untainted; and I have ever endeavoured in the Station wherein I have been placed, to the utmost of my Power, to support the Crown of *England* in the true and lineal Course of Descent, without Interruption.

As for what I am now to die, I call God to witness, I went not to that Meeting in *Leaden-hall-street* with any such Intention as to invite King *James* by Force to invade this Nation; nor was I my self provided with either Horse or Arms, or engaged for any Number of Men, or gave particular Consent for any such Invasion, as is most falsely sworn against me.

I do also declare, in the Presence of God, That I knew nothing of King *James's* coming to *Calais*, nor of any Invasion intended from thence, till it was publickly known: And the only Notion I had, that something might be attempted, was from the *Toulon* Fleet coming to *Brest*.

I also call God to witness that I receiv'd the Knowledge of what is contain'd in those Papers that I gave to a great Man, that came to me in the *Tower*, both from Letters and Messages that came from *France*; and he told me, when I read them to him, that the Prince of *Orange* had been acquainted with most of those Things before.

I might have expected Mercy from that Prince, because I was Instrumental in saving his Life: For when, about *April*, 1695, an Attempt form'd against him came to my Knowledge, I did, partly by Dissuasions, and partly by Delays, prevent that Design; which, I suppose, was the Reason that the last villainous Project was concealed from me.

If there be any Persons whom I have injur'd in Word or Deed, I heartily pray their Pardon, and beg of God to pardon those who have injur'd me; particularly those who with great Zeal have fought my Life, and brought the Guilt of my innocent Blood upon this Nation, no Treason being proved upon me.

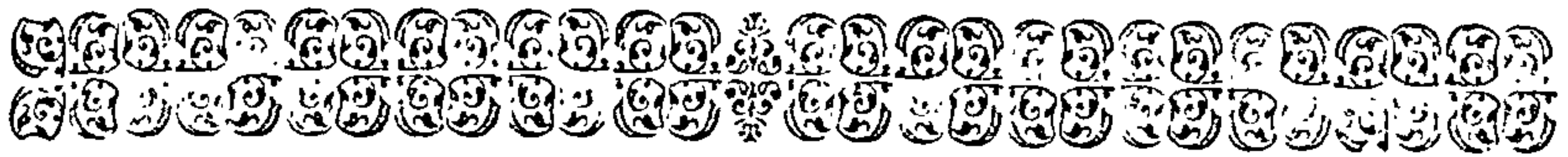
I return my most hearty Thanks to those noble and worthy Persons who gave me their Assistance, by opposing this Bill of Attainder, without which, it had been impossible I could have fallen under the Sentence of Death. God bless them and their Posterity; though I am fully satisfy'd they pleaded their own Cause, while they defended mine.

I pray God to bless my true and lawful Sovereign King *James*, the Queen, and Prince of *Wales*, and restore him and his Posterity to this Throne again, for the Peace and Prosperity of this Nation; which is impossible to prosper till the Government is settled upon a right Foot.

And now, O God! I do with all humble Devotion commend my Soul into thy Hands, the great Moker and Preserver of Men, and Lover of Souls; beseeching thee that it may be always dear and precious in thy Sight, through the Merits of my Saviour Jesus Christ. Amen.

JOHN FENWICK.

Then he submitted to the Block, and the Executioner sever'd his Head from his Body.



CLXIV. *The TRIAL of Edward Earl of Warwick and Holland, before the House of Lords, for the Murder of Richard Coote, Esq; March 28, 1699. 11 Will. III.*

ABOUT Eleven of the Clock the Lords came from their own House into the Court erected in *Westminster-Hall*, for the Trials of *Edward Earl of Warwick and Holland*, and *Charles Lord Moulton*, in the Manner following.

The Lord High Steward's Gentlemen Attendants, two and two.

The Clerks of the House of Lords, with two Clerks of the Crown in the Courts of *Chancery* and *King's Bench*.

The Masters in *Chancery*, two and two.

Then the Judges.

The Peers eldest Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeoman Usher of the House.

Then the Peers, two and two, beginning with the youngest Barons.

Then four Serjeants at Arms, with their Maces.

Then one of the Heralds, attending in the Room of *Garter*, who by Reason of his Infirmary could not be present.

And the Gentleman Usher of the Black-Rod, carrying the White-Staff before the Lord High Steward.

Then the Lord Chancellor, Lord High Steward of *England* alone.

When the Lords were seated on their proper Benches, and the Lord High Steward upon the Wooll-Pack;

The two Clerks of the Crown in the Courts of *Chancery* and *King's Bench*, standing before the Clerk's Table with their Faces towards the State;

VOL. V.

The Clerk of the Crown in *Chancery* having his Majesty's Commission to the Lord High Steward in his Hands, made three Reverences towards the Lord High Steward, and the Clerk of the Crown in *Chancery* on his Knees presented the Commission to the Lord High Steward, who delivered it to the Clerk of the Crown in the *King's Bench*, (then likewise kneeling before his Grace) in order to be opened and read; and then the two Clerks of the Crown making three Reverences, went down to the Table; and the Clerk of the Crown in the Court of *King's Bench* commanded the Serjeant at Arms to make Proclamation of Silence; which he did in this Manner.

Serjeant at Arms. O Yes, O Yes, O Yes, My Lord High Steward his Grace does straitly charge and command all manner of Persons here present, to keep Silence, and hear the King's Majesty's Commission to his Grace my Lord High Steward of *England* directed, openly read, upon Pain of Imprisonment.

Then the Lord High Steward stood up, and spoke to the Peers.

Lord High Steward.* Your Lordships will be pleased to stand up, and be uncovered, while the King's Commission is reading.

* Lord Somers.

All the Peers stood up, and were uncovered, while the Commission was read.

Clerk of the Crown. **G**Uilielmus Tertius Dei Gratia Angl. Scot. Franc. & Hibern. Rex, Fidei Defensor, &c. Prædilecto & fideli Consiliar. nostro
T
Johanni

Johanni Domino Somers, Cancellar. nostro Angl. Sciatis quod cum Edrus. Comes Warwic. & Holland. nuper de paroch. Sti. Martini in Campis in Com. Middlesex. & Carolus Dnus. Mobun, nuper de paroch. prædict. in Com. prædict. coram dilectis & fidelib. nostris Carolo Lee, Mil. Samuel. Buck, Willielmo Withers & Francisco Tysson, Armigeris, & aliis sociis suis Justiciar. nostris ad inquirend. per Sacramentum, probor. & legalium hominum de Com. nostro Middlesex. prædict. ac aliis viis modis & mediis quibus melius sciverint aut poterint, tam infra libertat. quam extra, per quos rei veritas melius sciri poterit & inquire de quibuscunque Proditionibus Misprisonibus prodicion. Insurrectionib. Rebellionib. Controfact. tonsur. lotur. falsis fabricacionib. & aliis falsitat. Monet. hujus Regni nostri Angl. & alior. Regnor. sive Dominior. quorumcunque ac de quibuscunque Murdris Feloniis Homicid. Interfectionibus Burglar. Raptib. Mulier. Congregationib. & Conventicul. illicit. verbor. prolacionib. Coadunacionib. Misprisonib. Confederacionibus falsis Alleganciis Transgressionibus, Riotis, Routis, Retentionib. Escapiis Contempt. Falsitat. Negligentiis, Concelament. Manuinent. Oppressionibus, Cambiparciis, Deceptionib. & aliis Malefactis Offenc. & Injur. quibuscunque; necnon Accessar. eorundem infra Com. prædict. tam infra libertat. quam extra, per quoscunque & qualitercunque habit. fact. perpetrat. sive commiss. & per quos vel per quem cui vel quibus quando qualiter & quomodo & de aliis Articulis, & Circumstanc. præmiss. seu eor. alicujus vel aliquor. qualitercunque concernen. plenius veritat. & ad easdem prodiciones & al. præmiss. audiend. & terminand. secundum legem & consuetud. Regni nostri Angl. nuper assignat. de Felonia & Murdro per ipsos Edrum. Comitem. Warwic. & Holland, & Carolum Dominum Mobun, Commiss. & Perpetrat. per sacrament. probor. & legal. hominum Com. nostri Middlesex. prædict. Indiēt. existunt. Nos considerantes quod Justitia est virtus excellens & altissimo complacens, volentesque quod prædict. Edrus. Comes Warwic. & Holland, & Carolus Dominus Mobun, de & pro Felonia & Murdro unde ipsi ut præfertur Indiēt. existunt. coram nob. in presenti Parliament. nostro secundum leg. & consuetud. Regni nostri Angl. Audientur, Examinentur, Sentententur & Adjudicentur, ceteraque omnia que in hac parte pertinent debito modo exercentur & exequantur; ac pro eo quod Officium Seneschalli, Angl. (cujus præsentia in hac parte requiritur ut accepimus) jam vacat, Nos de Fidelitate Prudentia provida Circumspectione & Industria vestris plurimum confidentes Ordinavimus & Constituimus vos ex hac causa Seneschallum, Angl. ad Officium illud cum omnibus eidem Officio in hac parte debitis & pertinent. (hac vice) gerend. occupand. & exercend. Et ideo vob. Mandamus quod circa præmiss. diligenter intendatis & ea omnia que in hac parte ad Officium Seneschal. Angl. pertinent & requiruntur (hac vice) faciatis exercentis & exequamini cum effectu. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes, Teste meipso apud Westmonasterium viceesimo quinto die Martii, Anno Regni nostri Undecimo.

Per ipsum Regem propria Manu Signat.

Serjeant at Arms. God save the King.

Then the Herald and the Gentleman-Usher of the Black Rod, after three Reverences, kneeling, presented the White Staff to his Grace, and his Grace removed from the Wooll-pack to the Chair, which was placed upon an Ascent just before the uppermost Step of the Throne, and seated himself in the Chair.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, My Lord High Steward of England, his Grace, does straitly Charge and Command all manner of Persons here present, to be uncovered upon pain of Imprisonment.

Then the Judges and Masters in Chancery sat down in their Places upon the Wooll-packs, uncovered.

Then the Clerk of the Crown read the Return of the Certiorari in hæc verba.

Gulielmus Tertius, Dei gratia, Angl. Scot. Franc. & Hibern. Rex, Fidei Defens. &c. Justic. nostris per Literas nostras Paten. confect. ad inquirend. per Sacram. probor. & legal. hom. Com. nostri Midd. ac aliis viis mod. & med. quibus melius sciverint aut poterint de quibuscunque prodic. mispris. prodic. insurrection. rebellion. controfact. tonsur. lotur. falsis fabricat. & aliis falsitat. monet. hujus Regni Angl. & alior. Regnorum sive Dominiorum quorumcunque ac de quibuscunque; murdris, felon. homicid. interfection. burglar. raptibus mulierum, congregacon. & conventicul. illicit. verborum prolacionibus, coadunat. misprison. confederat. falsis alleganc. transgres. riot. rout. retention. escapiis contempt. negligenc. concelament. manuinen. oppression. deception. & aliis malefactis offens. & injur. quibuscunque; necnon accessariis eorundem infra Com. prædict. tam infra libertates quam extra per quoscunque; & qualitercunque; habit. fact. perpetrat. sive commiss. ac de aliis articulis & circumstanciis præmiss. & eorum quodlibet seu eorum aliquod vel aliqua qualitercunque; concernen. plenius veritat. & ad easdem prodicion. & al. præmiss. audiend. & terminand. assign. Necnon Justic. nostris ad Gaol. nostram de Newgate de Prisonar. in ea existen. deliberrand. assign. & eorum cuilibet Saltm. volen. certis de causis omnia & singula Indiētamen. & Inquisition. de quibuscunque; felon. & murdris, unde Edrus. Comes Warwic. & Holland, & Carolus Dominus Mobun, & al. coram vobis Indiēt. sunt; necnon Record. conviction. Rici. French, Rogeri James & Georgii Dockwra, pro felon. & homicid. unde indiēt. sunt. Et superinde per quandam. Jur. Prie. inde inter nos & præfat. Richardum French, Rogerum James & Georgium Dockwra, capt. convict. exist. ut dicitur coram nobis & non alibi terminari vobis & cuilibet vestrum mandamus quod omnia & singula in Indiētament. & Record. convict. prædict. cum omnibus ea tangen. quibuscunque; nominibus iidem Edrus. Comes Warwic. & Holland, Carolus Dominus Mobun, Richardus, Rogerus & Georgius nuncupentur in eisdem coram nobis sub sigillis vestris aut unius vestrum in octab. Sti. Hillarii ubicunque; tunc fuerimus in Angl. mittat. seu unus vestrum mittat una cum hoc brevi ut ulterius inde fieri fac. quod de jure ac secundum legem & cons. Regni nostri Angl. fore viderimus faciend. Teste J. Holt, Mil. apud Westm. xxviii die Novembris, Anno Regni nostri decimo.

per Cur.

Astry.

Ad instanc. prosecutor. quoad duos Def. & ad instanc. cæterorum Def.

J. Holt.

Virtute cujus brevis mihi & aliis direct. Indiētament. & Inquisition. infra mentionat. necnon Record. conviction. infra nominat. Rici. French, Rogeri James & Georgii Dockwra, pro felon. & homicid. unde indiēt. & superinde per quandam Jur. prie. convict. exist. cum omnibus ea tangen. coram Dom. Rege in qui-

quibusdam Sched. huic brevi annex. mitto prout interius precipitur.

Respons. Fra. Child. Mil. Major. Civit.
Lond. un. Justic. infra script.

Midd. ff. Memorandum quod ad deliberation. Gaol. Domini Regis de Newgate tent. pro Com. Middlesex. apud Justice-Hall in le Old Bailey in Suburbis Civit. London. die veneris (scilicet) decimo tertio die Januarii Anno Regni Dom. nostri. Gulielmi tertii Dei gratia nunc Regis Angl. &c. decimo, coram Fran. Child, Mil. Majore Civit. London. Edro. Ward, Mil. Capital. Baron. Scii. dicti Dom. Regis, Henrico Hatfel, Milit. un Baron. Scii. dicti Domini Regis, Thoma Stamp, Mil. Edro. Clarke, Mil. Aldris dicti Civit. London. Salathiel. Lovell, Mil. servien. dicti Dom. Regis ad legem ac Recordator. dicti Civit. London. & aliis sociis suis Justic. dicti Dom. Regis ad Gaol. ipsius Dom. Regis de Newgate predicti. de prisonar. in eadem existen. deliberand. assign. ven. hic in Cur. Carclus Lee, Mil. Samuel Buck, Will. Withers, & Fran. Tysson, Ar. Justic. dicti Dom. Regis per Literas patent. ipsius Dom. Regis eisdem Justic. prænominat. & aliis ac quibuscunq; quatuor vel plur. eorum sub magno Sigillo dicti Dom. Regis Angl. confect. ad inquirend. per Sacrament. probor. & legal. hom. de Com. Midd. præd. ac aliis viis modis & mediis quibus melius sciverint aut poterint tam infra libertat. quam extra, per quos rei veritas sciri poterit de quibuscunq; prodicion. misprison. prodicion. insurrection. rebellion. controsactur. tonsur. lotur. falsis fabrication. & al. falsitat. monet & hujus Regni dicti Dom. Regis Angl. & al. Regnorum sive Domin. quorumcunq; ac de quibuscunq; murdris, felon. homicid. interseccon. burglar. Rapt. mulier. congregac. & conventicul. illicit. verborum prolacion. Coadunac. misprison. Confederac. falsis Alleganc. transg. Riot. Rout. Retention. escapiis contemp. negligenc. conclamen. manutenen. oppression. Cambiparciis Deception. & aliis Malefact. & Offenc. quibuscunq; nec non accessar. eorund. infra Com. præd. tam infra Libertat. prædict. quam extra, per quoscunq; & qualitercunq; habit. fact. perpetrat. sive commiss. ac de aliis articul. & Circumstan. præmissa & eorum quodlibet seu eorum aliquod vel aliqua qualitercunq; concernen. plenius veritat. & ad easdem prodicion. & al. præmissa audiend. & terminand. secundum legem & consuetud. hujus Regni dicti Dom. Regis Angl. Assign. & per manus suas propr. deliberaver. hic in Cur. dicti Dom. Regis quoddam Record. Indictament. coram eis & aliis sociis suis nuper præantea præsent. & capt. versus Edrum. Comit. Warwick. & Holland, Carolum Dominum Mobun, de Oakehampton in Com. Devon. Ricum. French, Rogerum James & Georgium Dockwra, pro murdro cujusdam Ricci. Coote, Ar. in forma juris terminand. &c. (eisdem Rico. French, Rogero James & Georgio Dockwra, prisonar. in dicti Gaol. dicti Dom. Regis de Newgate, causa in eodem Indictament. content. adtunc. existen.) Record. cujus quidem Indictament. patet in quibusdam Schedul. huic annex.

Midd. ff. Memorandum quod ad Sessionem de Oyer & Terminer Domini Regis tent. pro Com. Middlesex. apud Hicks-Hall in St. John-Street, in Com. præd. die Mercurii scilicet septimo die Decembris, Anno Regni Domini nostri Gulielmi tertii, Dei gratia, nunc Regis Angliæ, &c. decimo, coram Carolo Lee, Mil. Samuele Buck, Willielmo Withers, Francisco Tysson, Armigeris, & aliis sociis suis Justic. dicti Dom. Regis per Literas Paten. ipsius Dom. Regis, eisdem Justic. prænominat. & al. ac quibuscunq; quatuor vel pluribus eorum sub magno Sigillo dicti Domini Regis Angliæ confect. ad inquirend. per sacrament. probor. & lega-

lium hom. Com. Middlesex. præd. ac aliis viis mod. & med. quibus melius sciverint aut poterint tam infra libertat. quam extra per quos rei veritas melius sciri poterit de quibuscunq; prodicion. misprison. prodicion. insurrection. rebellion. controsactur. tonsur. lotur. falsis fabrication. & aliis falsitat. monet. hujus Regni dicti Dom. Regis Angl. & al. Regnorum sive Dominior. quorumcunq; ac de quibuscunq; murdris, felon. homicid. interseccon. burglar. rapt. Mulier. congregat. & conventicul. illicit. verborum prolacion. coadunac. misprison. confederat. falsis alleganc. transgr. riot. rout. retention. escapiis contemp. negligenc. conclamen. manutenen. oppression. cambiparciis deception. & aliis malefactis & offensis quibuscunq; necnon Accessar. eorundem infra Com. præd. tam infra libertat. quam extra, per quoscunq; & qualitercunq; habit. fact. perpetrat. sive commiss. ac de aliis articul. & circumstantiis præmissa & eor. quodlibet vel aliqua qualitercunq; concernen. plenius veritat. & ad easdem prodicion. & al. præmissa audiend. & terminand. secundum legem & cons. hujus Regni dicti Dom. Regis Angl. assign. per sacrm. Ægidii Riddle, Richardi Read, Roberti Leg. Josephi Partherich, Johannis Marriott, Jonathan Hall, Nicolai Baker, Roberti Teague, Thomæ Briggs, Willielmi Brace, Thomæ Williams, Georgii Bishop, Thomæ Hodges, Johannis Lynn, Samuelis Lee, Richardi Rogers, Josephi Rogers, Johannis Chency, Johannis Fowler, & Roberti Nicholson, probor. & legalium hominum Com. præd. adtunc & ibidem jurat. & onerat. ad inquirend. pro dicto Dom. Rege & corpore Com. præd. præsentat. existit. qd. Billa Indictament. huic Schedul. annex. est vera.

Midd. ff. Jurator. pro Domino Rege super sacrum. suum præsentant quod Edwardus Comes Warwick. & Holland, nuper de paroch. S. Martini in Campis in Com. Middlesex. Carolus Dominus Mobun, Baro Mobun de Okehampton, in Com. Devon. nuper de paroch. præd. in Com. Middlesex. præd. Richardus French, nuper de paroch. præd. in Com. Middlesex. præd. Gen. Rogerus James, nuper de paroch. præd. in Com. Middlesex. præd. Gen. & Georgius Dockwra, nuper de paroch. præd. in Com. Middlesex. præd. Gen. Deum præ oculis suis non habentes, sed instigatione diabolica moti & seducti tricesimo die Octobris, Anno Regni Domini Gulielmi tertii, Dei gratia Angl. Scoc. Franc. & Hibern. Regis, fidei defens. &c. decimo, vi & armis, &c. apud paroch. præd. in Com. Middlesex. præd. in & super quendam Richardum Coote, Ar. in pace Dei & dicti Domini Regis, nunc adtunc & ibidem existen. felonice voluntarie & ex malitiis suis præcogitat. insult. fecer. & qd. præd. Edwardus Comes Warwick. & Holland, cum quodam gladio. (Anglice a Sword) de ferro & chalibe confect. valor. quinque solidor. quem ipse idem Edwardus Comes Warwick. & Holland, in manu sua dextra adtunc & ibidem extract. habuit & tenuit, præfat. Ricardum Coote in & super sinistram part. pectoris ipsius Ricardi Coote prope Os Collar, (Anglice the Collar Bone) ipsius Ricardi Coote adtunc & ibidem felonice voluntarie & ex malitia sua præcogitat. percussit pupugit & inforavit (Anglice did strike, stab, and thrust in) dans eidem Richardo Coote, adtunc & ibidem cum gladio extract. præd. in & super dicti sinistram partem pectoris ipsius Ricci. Coote, prope Os Collar, (Anglice the Collar Bone) ipsius Ricci. Coote unum vulnus mortal. (Anglice one mortal Wound) latitud. dimidii unius pollicis & profund. quinq; pollicium; de quo quidem vulnere mortal. præd. Ricus. Coote adtunc & ibm. instanter. obiit. Et qd. præd. Carolus Dnus. Mobun, Ricus. French, Rogerus James & Georgius Dockwra, adtunc & ibm. felonice voluntarie & ex malitiis suis præcogitat. fuer. presen. auxilian. abettan confortan. assisten. & manutenen. præfat. Edrum. Comit. Warwick. & Holland, ad præfat.

præfat. Ricum. Coote, modo & forma præd. felonice voluntarie & ex malicia sua præcog. interficiend. & murdrand. Et sic Jur. præd. super sacrm. suum præd. dic. qd. præd. Edrus. Comes Warwici & Holland, Carolus Dnus. Mobun, Ricus. French, Rogerus James & Georgius Dockwra, præfat. Ricum. Coote, modo & forma præd. felonice voluntarie & ex maliciis suis præcogitat. interfecer. & murdraver. contra pacem dei. Domini Regis nunc Coron. & Dignitat. suas, &c.

Ricus. French, 13 Januar. 98. pon. se Cul. de Felon. & Homicid. tant. Non cul. de Murdro. catalla nulla. Pet. Librum. Legit ut Clericus. Crematio respectuatur quousq; &c.

Rogerus James, 13 Jan. 98. pon. se cul. de Felon. & Homicid. tant. Non. cul. de. Murdro. catalla nulla. Petit Librum. Legit ut Clericus. Crematio respectuatur quousq; &c.

Billa vera. Samuel Cowthorne de paroch. sti. Martini in Campis in Com. Midd. Yoman,
Willus. Cripps de paroch præd. in Com. præd. Yoman,
Henricus Pomsret de paroch. præd. in Com. præd. Yoman,
Willus. Salmon de paroch. præd. in Com. præd. Chirurgus,
Robtus. Appl. gate de paroch. præd. in Com. præd. Yoman.

Jur. in Cur.

Midd. ff. Memorand. qd. ad. Deliberation. Gaole Dni. Regis de Newgate tent. pro Com. Midd. apud Justice-Hall in le Old-Bailey in Suburbis Civitat. London. die Mercurii scilt. Septimo die Septembris, anno Regni Dni. nri. Gulielmi tertii Dei grat. Angl. Scot. Franc. & Hibernie Regis, Fidei Defens. &c. decimo coram Franco Child, Mil. Majore Civitat. London. Georgio Treby, Mil. Capital. Justic. dei. Dni. Regis de Banco, Littleton Powis, Mil. uno Baron. Secii. dict. Dni. Regis, Thomas Stamp, Mil. Edro. Clarke, Mil. Albris. dict. Civitat. London. Salathiel Lovell, Mil. Servien. dei. Dni. Regis ad Legem ac Recordatore dict. Civitat. London. & aliis Sociis suis Justic. dei. Dni. Regis ad Gaolam ipsius Dni. Regis de Newgate præd. de Prisoner. in eadem existen. deliberand. assign. ven. Robertus White, gen. Coronator dei. Dni. Regis infra libertat. Decani & Capituli Ecclesie Collegiat. bti. Petri Westm. Civitat. Burgi & Ville Westm. in Com. Midd. præd. Et per manus suas proprias deliberavit hic in Cur. quandam Inquisition. de morte Ricci. Coote, Ar. coram eo nuper capt. in Cur. hic de Recordo in forma juris terminand. Que quidem Inquisitio huic Schedule annex. est,

pon. se

Civitas, Burgus }
& Villa Westm. } ff. Inquisitio indentat. capt. pro
in Com. Midd. } Dno. Rege apud paroch. sti.
Martini in Campis infra Liber-
tat. Decani & Capitli. Ecclesie Collegiat. bti. Petri
Westm. Civitat. Burgi & Ville Westm. in Com Midd.
tricesimo die Octobris, Anno Regni Dni. nri. Gulielmi
tertii Dei gra. Angl. Scot. Franc. & Hibernie Regis
Fidei defensoris, &c. decimo, coram Roberto White,
gen. Coronatore dei. Dni. Regis Libertat. præd super
visum Corporis enjusdam Ricci. Coote, Ar. ibm. jacen.
mort. per sacrm. Jobis. Harris, Petri Solomon, Ricci.
Newgent, Willi. Fryer, Samuelis Thomson, Jacobi
Timberlick, sen. Jacobi Timberlick, jun. Ricci. Jackson,
Jobis. Finch, Samuelis Powell, Samuelis Dimont, Robti.
Giltrick, Jobis. Paulin, Josephi Vernon, Thomæ Smith-
son, Andreæ Rogers & David Jones, proborum & le-

glium. homin. Libertat. præd. jurat. & onerat. ad in-
quirend. pro dno. Rege quando qualiter & quo-
modo præfat. Ricus. Coote ad mortem suam devenit
dicunt super sacrm. suum præd. qd. Edrus. Comes
Warwic. & Holland, nuper de paroch. sti. Martini
in Campis infra Libertat. præd. in Com. præd. Ca-
rolus Dnus. Mobun, nuper de paroch. præd. infra
Libertat. præd. in Com. præd. Ricus. French, nuper
de paroch. præd. infra Libertat. præd. in Com. præd.
gen. Rogerus James nuper de paroch. præd. infra Li-
bertat. præd. in Com. præd. gen. & Georgius Dock-
wra nuper de paroch. præd. infra Libertat. præd. in
Com. præd. gen. Deum. præc oculis suis non videntes,
sed Instigatione diabolica moti & seducti deo. tricesimo
die Octobris Anno decimo supradicto, vi & armis,
&c. apud paroch. præd. infra Libertat. præd. in Com.
præd. in & super præfat. Ricum. Coote, in pace Dei
& dei. Dni. Regis, nunc adtunc & ibm. existen. fe-
lonice voluntarie & ex maliciis suis præcogit. insult.
fecer. & qd. præd. Ricus. French, cum quodam Gla-
dio (Anglice, a Rapiet) de ferro & ib. libe consecr.
valoris quinq; solid. quem ipse idem Ricus. French, in
manu sua iuxta adtunc & ibm. extract. huit. & te-
nuit præfat. Ricum. Coote, in & super sinistram par-
tem pectoris ipsius Ricci. Coote, prope Os Collar, (An-
glice, the Collar Bone) ipsius Ricci. Coote, adtunc &
ibm. felonice voluntarie & ex malicia sua præcogitat.
percussit & pupugit dans eidem Rico Coote, adtunc &
ibm. cum gladio præd. extract. in & super præd. si-
stram partem pectoris ipsius Ricci. Coote, prope dict.
Os Collar ipsius Ricci. Coote, unum vulnus mortale
longitudinis dimid. unius pollicis & profunditatis
quinq; pollicium, de quo quidem vulnere mortali præd.
Ricus. Coote, apud paroch. præd. infra Libertat. præd.
in Com. præd. instanter obiit. Et qd. prædicti Edrus.
Comes Warwic. & Holland, Carolus Dnus. Mobun,
Rogerus James, & Georgius Dockwra, adtunc &
ibm. felonice voluntarie & ex maliciis suis præcogitat.
fuer. presentes auxiliantes abettantes confortantes af-
sistentes & in nutentes præfat. Ricum. French, ad
predictum Ricum. Coote, in forma præd. felonice vo-
luntarie & ex malicia sua præcogitat. interficiend. &
murdrand. Et sic Jur. præd. dicunt super sacrm.
suum præd. quod præd. Edrus. Comes Warwici &
Holland, Carolus Dnus. Mobun, Ricus. French,
Rogerus James & Georgius Dockwra, præfat. Ri-
cum. Coote, modo & forma prædict. felonice volunta-
rie & ex maliciis suis præcogitat. interfecer. & mur-
draver. contra pacem dei. Dni. Regis nunc Coron. &
Dignitat. suas, &c. Et ulterius Jur. præd. dicunt
super sacrum. suum præd. qd. immediate post Felo-
niam & Murdrum. præd. per ipsos modo & forma
præd. fact. & perpetrat. apud paroch. præd. infra
Libertat. præd. in Com. præd. fugam. fecer. Que
bona & catalla terras sive tenementa præd. Edrus
Comes Warwici Holland, Carolus Dnus. Mobun, Ri-
cus. French, Regerus James & Georgius Dockwra.
tempore Felonie & Murdri prædict. per ipsos modo
& forma præd. fact. & perpetrat. sive aliquo tempore
postea usque diem Captionis hujus Inquisitionis hab-
erunt Jur. præd. penitus ignorant. In cujus Rei Testi-
menium tam præfat. Coronator quam Jur. præd. huic
Inquisitioni Sigilla sua alternatim apposuerunt die
anno & loco, primo supra dictis.

Ricus. French, 13 Jan. 98. pon. se cul. de felon.
& homicidio tant. Non cul. pro Murdro. Ca-
talla nulla. Judicium super Indictamentum.

Rogerus James, 13 Jan. 98. pon. se cul. de felon.
& homicid. tant. Non cul. pro Murdro. Ca-
talla nulla. Judicium super Indictamentum.

Georgius

Georgius Dockwra 13 Jan. 98. pon. se cul. de felon. & homicid. tantum. Non cul. pro Murdro. Cattalla nulla. Judicium super Indictamentum.

Midd. ff. Memorandum qd. ad Sessionem de Oyer & Terminer Domini Regis tent. pro Com. Middlesex. apud Hicks-Hall in S. John-street in Com. præd. die Mercurii scilicet. septimo die Decembris Anno Regni Domini nostri Gulielmi Tertii Dei gratia nunc Regis Angliæ, &c. decimo, coram Carolo Lee, Mil. Samuele Buck, Willielmo Withers, Francisco Tysson, Armigeris, & aliis Sociis suis Justic. diæt. Dom. Regis per Literas Patent. ipsius Dom. Regis eisdem Justic. præ-nominat. & al. ac quibuscunque quatuor vel pluribus eorum sub magno Sigillo diæt. Dni. Regis Angliæ confect. ad Inquirend. per sacrm. probor. & legalium hom. de Com. Middlesex. præd. ac aliis viis mod. & med. quibus melius sciverint aut poterint, tam infra Libertates quam extra, per quos rei veritas melius sciri poterit & inquiri de quibuscunque Prodition. Misprison. Prodition. Insurrection. Rebellion. Controfactur. Tonsur. Lotur. & falsis Fabrication. & aliis falsitat. Monet. hujus Regni diæt. Dom. Regis Angliæ & aliorum Regnorum sive Dominior. quorumcunque ac de quibuscunque Murdris Feloniis Homicidiis Interfection. Burglar. Rapt. Mulier. Congregat. & Conventicul. illicit. Verborum prolation. coadunat. Misprison. Confederat. falsis Alleganc. Transgr. Riot, Rout, Retention. Escapiis Contempt. Negligen. Conclamen. Manu-tenen. Oppressionibus Cambiparciis Deception. & aliis Malefactis & Offensis quibuscunque, necnon Accessar. eorundem infra Com. præd. tam infra Libertat. quam extra, per quoscunque & qualitercunque habit. fact. perpetrat. sive commiss. Ac. de aliis Articulis & Circumstantiis præmissa & eorum quodlibet seu eorum aliquod vel aliqua qualitercunque concernen. plenius veritat. Et ad easdem Proditiones & alia Præmissa audiend. & terminand. scdm. Legem & Cons. hujus Regni dci. Dni. Regis Angliæ assign. per sacrm. Ægidii Riddle, Ricci. Read, Roberti Legg, Josephi Partherich, Jobis. Marriot, Jonathan Hall, Nicholai Barker, Roberti Teague, Thomæ Briggs, Willi. Brace, Thomæ Williams, Georgii Bishop, Thomæ Hodges, Jobis. Lynn, Samuelis Lee, Ricci. Rogers, Jobis. Cheney, Jobis. Fowl. r & Roberti Nicholson, proborum & legalium Hominum Com. præd. & tunc & ibm. jurat. & onerat. ad inquirend. pro dco. Dno. Rege & corpore Com. præd. præsentat. existit qd. Edrus. Comes Warwici & Holland. nuper de paroch. S. Martini in campis in Com. præd. Carolus Dnus. Mobun, Baro Mobun de Oakehampton, in Com. Devon. nuper de Paroch. præd. in Com. Midd. præd. Ricus French, nuper de paroch. præd. in Com. Midd. præd. gen. Rogerus James, nuper de paroch. præd. in Com. Midd. præd. gen. & Georgius Dockwra, nuper de paroch. præd. in Com. Midd. præd. gen. Deum præ oculis suis non hentes, sed instigatione diabolicamot. & seduct. 30 die Octobri Anno Regni Gulielmi tertii Dei Gratia Angl. Scoc. Franc. & Hiberniæ Regis Fidei defensoris, &c. decimo, vi & armis, &c. apud paroch. præd. in Com. Midd. præd. in & super quendam Ricum. Coote, Ar. in pace Dei & dci. Dni. Regis nunc ad tunc & ibidem. existen. felonice voluntarie & ex maliciis suis præcogitat. insult. fecer. Et qd. præd. Comes Warwici & Holland, cum quodam Gledio (anglice, a Sword) de ferro & Chalibe confect. valoris quinq; solid. quem ipse idem Edrus. Comes Warwici & Holland, in manu sua dextra ad tunc & ibd. extract. buit & tenuit, præfat. Ricum. Coote, in & super sinistram partem pectoris ipsius Ricci. Coote, prope Os Collar (anglice, the Collar Bone) ipsius Ricci. Coote, ad tunc & ibm. felonice voluntarie & ex malicia sua præcogitat. percussit pupugit & inforavit (anglice, did strike,

stab, and thrust in.) Dans eadem Rico. Coote, ad tunc & ibm. cum gladio extract. præd. in & super diæt. sinistram partem pectoris ipsius Ricci. Coote, prope Os Collar, (anglice, the Collar Bone) ipsius Ricci. Coote, unum Vulnus mortale (anglice, one mortal Wound) latitudinis dinidii pollicis & profunditatis quinq; pollicium, de quo quidem Vulnere mortali præd. Ricus. Coote, ad tunc & ibm. instanter obiit. Et qd. præd. Carolus Dnus. Mobun, Ricus. French, Rogerus James & Georgius Dockwra, ad tunc & ibm. felonice voluntarie & ex maliciis suis præcogitat. fuer. præsentates auxiliantes abettantes confortantes assistentes & manutenentes præfat. Edrum. Comitem Warwici & Holland, ad præfat. Ricum. Coote modo & forma præd. felonice voluntarie & ex malicia sua præcogitata interficiend. & Murdrand. Et sic Jur. præd. super sacrm. suum præd. dicunt. qd. prædict. Edrus. Comes Warwici & Holland, Carolus Dnus. Mobun, Ricus. French, Rogerus James, & Georgius Dockwra, præfat. Ricum. Coote, modo & forma præd. felonice voluntarie & ex maliciis suis præcogitatis interfecer. & murtheraverunt contra pacem dci. Dni Regis nunc Coron. & Dignitat. suas, &c. Per quod Præceptum est vic. Midd. qd. non omitteret, &c. quin caperet prædictos Edrum. Comitem Warwici & Holland, Carolum Dnum. Mobun, Ricum. French, Rogerum James & Georgium Dockwra, ad respondend. &c. Quod quidem Indictamentum præfat. Justic. dci. Dni. Regis (per dca. Literas patent. ipsius Dni. Regis eisdem Justic. præ-nominat. & aliis ac quibuscunque quatuor vel pluribus eorum sub magno Sigillo dci. Domini Regis Angliæ ut præfertur confect.) postea scilt. ad Deliberationem Gaolæ dci. Dni. Regis de Newgate tent. pro Com. Midd. præd. apud Justice-Hall in le Old-Baily in Suburbis Civitat. Lond. dco. die Mercurii scilicet. septimo die ejusdem Mensis Decembris Anno Regni dci. Dni. Regis nunc decimo suprascripto coram Francisco Child, Mil. Majore Civitat. London. Georgio Treby, Mil. Capital. Justic. dci. Dni. Regis de Banco, Littleton Powis, Mil. unc Baronum Scii. dci. Dni. Regis, Thoma Stampe, Mil. Edro. Clarke, Mil. Aldris. dca. Civitat. London. Salathiel Lovell, Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dca. Civitatis London. & aliis Sociis suis Justic. dci. Dni. Regis ad Gaolam dci. Dni. Regis de Newgate, præd. de Prisonar. in eadem existen. deliberand. assign. per manus suas proprias deliberaverunt hic in Cur. de Recordo in forma juris terminand. &c. Super quo postea scilt. ad deliberationem Gaolæ dci. Dni. Regis de Newgate præd. die Veneris scilt. 13 die Jan. Anno Regni dci. Dni. Regis nunc decimo suprascripto coram Francisco Child, Mil. Majore Civitat. London. Edro. Ward, Mil. Capital. Baron. Scii. dci. Dni. Regis Henrico Haifall, Mil. uno Baron. Scii. dci. Dni. Regis Thoma Stamp, Mil. Edro. Clarke, Mil. Aldris. dca. Civitat. London. Salathiel Lovell, Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore diæt. Civitat. Lond. & aliis sociis suis Justic. dci. Dni. Regis ad Gaolam ipsius Dni. Regis de Newgate prædict. de Prisonar. in eadem existen. deliberand. assign. vener. prædict. Ricus. French, Rogerus James & Georgius Dockwra, sub custod. Willi. Goarc, Militis, & Josephi Smart, Militis, vic. Com. præd. (in custod. cujus ex causa præd. in Gaolam. de Newgate præd. præantea commissi fuer.) Ad Barram hic duct. in propriis personis suis & statim de præmissis in Indictamento præd. superius specificat. eis superius seperatim imposuit. seperatim allocut. qualiter se velint inde acquietari iidem Ricus. French, Rogerus James & Georgius Dockwra, seperatim dicunt qd. ipsi non sunt inde culpabiles nec aliquis eorum est inde culpabilis & inde de bono & malo seperatim. pon. se super priam, &c. Jo. immediate ven. inde Jura. coram

præfat. Jusfic. dei. Dni. Regis ult. noiat. hic, &c. Et qui nec, &c. Ad recogn. &c. Et Jur. Jur. ill. per præfat. Vic. ad hoc impanellat. (scilicet.) Chrus. Rednap, Thomas Moody, Thomas Dunck, Simo. Smith, Jobes. Smith, Michael Miles, Thomas Rowell, Nathaniel Lee, Josephus Devenish, Henricks Bradbury, Willus. Giles & Jokes. Burgoyne, exalti vener. qui ad veritat. de & super præmissis præd. dicend. electi triati & jurati dicunt super sacrum. suum qd. præd. Ricus. French, Rogerus James & Georgius Dockwra, sunt culpabiles, & quilibet eorum est culpabilis de Homicidio & Felonica Interfectione præfat. Rici. Coote, in Indictamento præd. superius nominat. Et qd. iidem Ricus. French, Rogerus James & Georgius Dockwra, tempore Felonie & Homicidii præd. per ipsos Ricum. French, Rogerum James & Georgium Dockwra, in forma præd. commissi. seu unquam postea non bucr. nec aliquis eorum huius. nec bent. nec aliquis eorum het. aliqua bona seu catalla terras sive tenementa ad noticiam Jur. præd. sed. iidem Jur. ulterius dicunt super sacrum. suum præd. qd. præd. Ricus. French, Rogerus James & Georgius Dockwra, non sunt culpabiles nec eorum aliquis est culpabilis de Muro præd. in Indictamento præd. superius specificat. eis superius separatim imposit. prout iidem Ricus. French, Rogerus James & Georgius Dockwra pro seipsis superius plitando. allegaver. nec seissos ea occasione. unquam retraxer. nec eorum aliquis se ea occasione. unquam retraxit. Super quo visis & per cur. hic intellectis omnibus & singulis præmissis Conf. est per cur. hic qd. præd. Ricus. French, Rogerus James & Georgius Dockwra, quoad Muro præd. in Indictamento præd. superius spec. eis superius separatim imposit. sint quiet. Et eant & quilibet eorum sit quiet. & eat inde sine die, &c. Et superinde statim separatim per cur. hic quesit. est de præfat. Rico. French, Rogero James & Georgio Dockwra, si quid pro se habeant vel discere sciant vel aliquis eorum aliquid pro se habeat vel discere sciat quare cur. hic ad Judicium & Executionem de eis & eorum quolibet super Verdicto præd. quoad Homicidium & Felonicam Interfectionem præfat. Rici. Coote, procedere non debet, qui separatim dicunt qd. ipsi sunt Clerici & quilibet eorum est Clericus & separatim petunt Beneficium Clericale eis & cuilibet eorum in hac parte allosciari & super hoc (tradito eisdem Rico. French, Rogero James & Georgio Dockwra separatim per cur. hic Libro) iidem Ricus. French, Rogerus James & Georgius Dockwra, separatim legunt ut Clerici & quilibet eorum legit ut Clericus; sed quia cur. dei. Dni. Regis hic & præfat. Jusfic. dei. Dni. Regis ult. noiat. de Judicio suo de & super Præmissis præd. quoad Homicidium præd. & Felonicam Interfectionem præfat. Rici. Coote reddend nondum advisantur, Ideo dies inde dat. est præfat. Rico. French, Rogero James & Georgio Dockwra, in statu quo nunc, &c. usq; prox. Gaule deliberationem dei. Dni. Regis de Newgate, præd. pro Cem. Midd. præd. tenend. de Judicio suo de & super præmissis illis aud. &c. Eo qd. præfat. Judic. dei. Dni. Regis ult. noiat. & cur. hic inde nondum, &c.

Lord High Steward. Is it your Lordships Pleasure that the Judges may be covered?

Lords. Ay, ay.

Then the Judges put on their Caps.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, chief Governor of the Tower of London, bring forth the Body of Edward Earl of Warwick and Holland, your Prisoner, forthwith, on Pain and Peril will tall thereon.

[*Then the Earl of Warwick was brought to the Bar by the Deputy-Governor of the Tower of London, having the Ax carried before him by the Gentleman Jaylor, who stood with it at the Bar, on the Right Hand of the Prisoner, turning the Edge from him; the Prisoner at his Approach to the Bar making three Bows, one to his Grace the Lord High Steward, the ether to the Peers on each Hand; and his Grace and the Peers returned the Salute.*]

Lord High Steward. My Lord of Warwick, your Lordship is brought before this great Judicature, in order to your Trial. You stand indicted by the grand Inquest for the County of Middlesex, as guilty of the Murder of one of the King's Subjects, for whose Blood Justice requires a strict Inquisition should be made.

Your Lordship is call'd to answer this Charge before the whole Body of the House of Peers assembled in Parliament. It is a great Misfortune to be accused of so heinous an Offence, and it is an Addition to that Misfortune, to be brought to answer as a Criminal before such an Assembly, in Defence of your Estate, your Life, and Honour. But it ought to be a Support to your Mind, sufficient to keep you from sinking under the Weight of such an Accusation, that you are to be try'd before so noble, discerning, and equal Judges, that nothing but your own Guilt can hurt you. No Evidence will be received, but what is warranted by Law; no Weight will be laid upon the Evidence, but what is agreeable to Justice; no Advantage will be taken of your Lordship's little Experience in Proceedings of this Nature; nor will it turn to your Prejudice, that you have not the Assistance of Counsel in your Defence, as to the Fact, (which cannot be allowed by Law) and their Lordships have already assigned you Counsel, if any Matters of Law should arise.

Your Lordship, throughout your whole Trial, may assuredly promise your self, to find all the Candor and Compassion which is consistent with impartial Justice; beyond that nothing is to be expected: Their Lordships can never so far forget themselves, as to depart from what is right, and to draw the Guilt of Blood upon their own Heads; but if your Lordship is innocent you are safe.

My Lord, It will be requisite for you to recollect yourself upon this Occasion, in the best manner you can. You ought to hear with Temper, what the King's Counsel have to say, without interrupting them, and to hearken carefully to the Witnesses produced against you, that you may be ready to cross-examine them if you find Cause, and to make your Observations upon the Evidence when the proper Time comes for your Lordship to make your Defence; of which I will not fail to give you Notice; and when that Time does come, your Lordship may be assured, your self and your Witnesses will be heard with great Patience and Attention; and when my Lords have heard and considered the whole Matter, the Judgment will unquestionably be according to the Rules of Justice, and such as will become the Honour of this high Court.

Read the Indictment to my Lord.

Earl of Warwick. My Lord, I beg I may have the Use of Pen, Ink, and Paper.

Lord High Steward. Will your Lordships please to allow my Lord Warwick Pen, Ink, and Paper?

Lords.

Lords. Ay, ay.

Lord High Steward. Carry Pen, Ink, and Paper to my Lord. (Which was done by the Clerk.)

Lord High Steward. My Lord, your Lordship will do well to give Attention while the Indictment is read to you. Read it to my Lord in English.

Clerk of the Crown. **Y**our Lordship stands indicted by the Name of Edward Earl of Warwick and Holland, late of the Parish of St. Martin in the Fields in the County of Middlesex; for that your Lordship, together with Charles Lord Mohun, Baron Mohun of Oakehampton in the County of Devon, late of the Parish aforesaid in the County of Middlesex aforesaid, Richard French, late of the Parish aforesaid in the County of Middlesex aforesaid, Gent. Roger James, of the Parish aforesaid in the County of Middlesex aforesaid, Gent. and George Dockwra, late of the Parish aforesaid in the County of Middlesex aforesaid, Gent. not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the 30th Day of October, in the tenth Year of the Reign of our Sovereign Lord William the Third, by the Grace of God King of England, Scotland, France, and Ireland, Defender of the Faith, &c. with Force and Arms, &c. at the Parish aforesaid, in the County of Middlesex aforesaid, in and upon one Richard Coote, Esq; in the Peace of God, and of our said Sovereign Lord the King, then and there being, feloniously, voluntarily, and of your Malice afore-thought, did make an Assault; and that your Lordship, the said Edward Earl of Warwick and Holland, with a certain Sword made of Iron and Steel of the Value of Five Shillings, which you the said Edward Earl of Warwick and Holland, in your Right Hand then and there had and held drawn, the aforesaid Richard Coote, in and upon the left Part of the Breast of him the said Richard Coote, near the Collar Bone of him the said Richard Coote, then and there feloniously, voluntarily, and of your Malice afore-thought, did strike, stab, and thrust in, giving to the said Richard Coote, then and there with the Sword drawn aforesaid, in and upon the left Part of the Breast of him the said Richard Coote, near the Collar Bone of him the said Richard Coote, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which said mortal Wound the aforesaid Richard Coote then and there instantly died: And that the aforesaid Charles Lord Mohun, Richard French, Roger James, and George Dockwra, then and there feloniously, voluntarily, and of their Malice aforethought, were present, aiding, abetting, comforting, assisting, and maintaining you the said Edward Earl of Warwick and Holland, the said Richard Coote, in Manner and Form aforesaid, feloniously, wilfully, and of your Malice afore-thought, to kill and murder; and so you the said Edward Earl of Warwick and Holland, and the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the aforesaid Richard Coote, in Manner and Form aforesaid, feloniously, voluntarily, and of your Malice afore-thought, did kill and murder, against the Peace of our Sovereign Lord the King, that now is, his Crown and Dignity, &c.

How say you, Edward Earl of Warwick and Holland, are you guilty of this Felony and Murder whereof you stand indicted, or not guilty?

Earl of Warwick. Not guilty.

Clerk of the Crown. Culprit, How will your Lordship be tried?

Earl of Warwick. By God, and my Peers.

Clerk of the Crown. God send your Lordship a good Deliverance.

Then at the Motion of some Lords who sat towards the upper End of the House, and by Reason of the Distance could not distinctly hear the Clerk, the Indictment was read again, the Clerk standing near the upper End of the House.

C. of the Crown. Serjeant at Arms, make an O Yes.

Serjeant at Arms. O Yes, O Yes, O Yes, If any one will give Evidence on behalf of our Sovereign Lord the King, against Edward Earl of Warwick and Holland, of the Felony and Murder whereof he stands indicted, let them come forth, and they shall be heard; for now he stands at the Bar upon his Deliverance.

L. H. St. Will your Lordships give me leave to go down to the Wooll-pack, that I may hear the better.

Lords. Ay, ay.

Then his Grace removed to the Woolpack, and delivered the White Staff to be held by the Gentleman Usher of the Black Rod, who during the whole Trial always received and delivered back the White Staff upon his Knees.

L. H. St. Mr. Attorney, are you ready to proceed?

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

L. H. St. Then begin, Sir.

* Sir Thomas Trevor.

Mr. Serj. Wright. May it please your Lordships.

L. H. St. Pray, Mr. Serjeant, raise your Voice as much as possible you can, that my Lords towards the upper end of the House may hear.

Mr. Serj. Wright. May it please your Lordships, this noble Lord Edward Earl of Warwick and Holland, the Prisoner at the Bar, stands indicted for the felonious Killing and Murder of one Richard Coote, Esq; and the Indictment sets forth, That upon the 30th Day of October, in the tenth Year of his Majesty's Reign, at the Parish of St. Martin in the Fields, in the County of Middlesex, the Prisoner at the Bar, the Earl of Warwick, together with Charles Lord Mohun Baron of Oakehampton, Richard French, Roger James, and George Dockwra, Gent. feloniously, voluntarily, and of their Malice afore-thought, did make an Assault upon the said Richard Coote, in the Indictment named; and the Indictment chargeth, that the Earl of Warwick, at the same Time and Place, with a Sword, feloniously, voluntarily, and of his Malice afore-thought, did give unto the said Richard Coote, in or upon the left Part of the Breast of him the said Richard Coote, near his Collar Bone, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which said Wound the said Richard Coote then and there instantly died; and the Indictment further charges, that the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the Earl of Warwick, to commit the Felony and Murder aforesaid, were then and there aiding, assisting, comforting, and abetting; and so the Jurors charge, that he the said Edward Earl of Warwick and Holland, Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the said Richard Coote, feloniously, voluntarily, and of their Malice afore-thought, at the Parish aforesaid, in the County aforesaid,

aforesaid, did kill and murder, against the Peace of our sovereign Lord the King, his Crown and Dignity. To this Indictment this noble Lord the Prisoner at the Bar, *Edward Earl of Warwick and Holland*, has pleaded not guilty, and for his Trial hath put himself upon my noble Lords his Peers here present: We shall call our Evidence, and if we prove this Fact for the King, we do not doubt but your Lordships will give such Judgment for the same as shall be just.

Mr. *Att. Gen.* May it please your Lordships, I am of Counsel in this Cause for the King against this noble Lord *Edward Earl of Warwick and Holland*, the Prisoner at the Bar, who stands indicted by the grand Jury of the County of *Middlesex*, has been arraigned, and is now to be tried before your Lordships for the felonious killing and murdering of Mr. *Cooté*, in the Indictment named; the Evidence to make good this Charge against this noble Lord, it comes to my turn to open to your Lordships.

My Lords, the Case, as to the Fact, according to my Instructions, is this: Upon *Saturday* the 29th of *October* last, at Night, my Lord of *Warwick*, my Lord *Mobun*, Mr. *French*, Mr. *Dockwra*, and Mr. *Cooté*, the unfortunate Gentleman who was killed, met together at one *Locket's*, who kept the *Greyhound Tavern* in the *Strand*, and there they staid till it was very late; about twelve of the Clock at Night, or thereabouts, a Messenger was sent by the Company to fetch another Gentleman, Mr. *James*; and Mr. *James* coming to them, in what Condition your Lordships will be told by the Witnesses; about one of the Clock in the Morning, on *Sunday* the 30th of *October*, they all came down out of the Room where they had been so late, to the Bar of the House, and there, as the Witnesses will tell your Lordships, Swords were drawn, and Chairs were called for, and two Chairs which were nearest at hand came, and two of the Company went into those Chairs; who they were, and what pass'd at that Time, the Witnesses will tell your Lordships; those that got into those Chairs came out again, and more Chairs were called for. But I must acquaint your Lordships, that my Lord *Mobun*, when the two Gentlemen that went into the Chairs ordered the Chairmen to take them up, and carry them away, spoke to them to stop and go no further, for there should be no quarreling that Night, and that he would send for the Guards and secure them; and after this they came out of the Chairs again; it will appear there were Swords drawn amongst all of them, and some Wounds given: More Chairs being called for, and brought, this noble Lord that is here at the Bar, my Lord of *Warwick*, my Lord *Mobun*, and the other four Gentlemen, went all into the Chairs, and gave the Chairmen Directions whither they should carry them, at leastwise the Foremost had Directions given them, and the rest were to follow them; it was a very dark Night, but at last they came all to *Leicester Square*; and they were set down a little on this Side the Rails of the Square, and when the Chairmen had set them down they went away; but immediately some of them heard my Lord of *Warwick* calling for a Chair again, who came towards the Rails, and there they found two of the Gentlemen that had been carried in some of the other Chairs, holding up Mr. *Cooté* between them, and would have had the Chairmen carried him away to a Surgeon's, but they found he was dying, and so would not

meddle with him; afterwards my Lord of *Warwick* and Mr. *French* were carried by two of the Chairs to Mr. *Amy's*, the Surgeon at the *Bagnio* in *Long-acre*, where Mr. *French* being wounded, was taken care of particularly by the Recommendation of my Lord of *Warwick*, and the Master of the House was called up, it being very late, Mr. *Cooté's* Sword was brought to that Place, but by whom it was brought we cannot exactly say. While my Lord of *Warwick* and Capt. *French* were there, and my Lord of *Warwick* had given Orders for the denying of himself, and forbid the opening of the Door; there came the other two Gentlemen, Mr. *James* and Mr. *Dockwra*, and upon their knocking at the Door they were let in by my Lord's Order, after he had discovered who they were, looking through the Wicket. Mr. *James* had his Sword drawn, but it was broken. My Lord of *Warwick's* Hand was slightly wounded, and his Sword bloody up to the Hilt when he came in, as will be proved by the Testimony of the Servants in the House. There was a Discourse between my Lord, Mr. *James*, and Mr. *Dockwra*, about going into the Country; but before they went, the Swords were all called for to be brought to them, and upon Enquiry, there was no Blood found upon Mr. *French's* Sword, but a great deal upon my Lord of *Warwick's*, of which great notice was taken at that Time. Mr. *Cooté*, who was killed, had received one Wound in the left Side of his Breast, half an Inch wide, and five deep, near the Collar Bone; he had likewise another Wound upon the left Side of his Body; both which your Lordships will hear, in the Judgment of the Surgeon, were mortal Wounds, and the Evidence will declare the Nature of them.

My Lords, the Evidence does chiefly consist of, and depend on Circumstances, the Fact being done in the Night, and none but the Parties concerned being present at it; we shall lay the Evidence before your Lordships, as it is, for your Judgment, and call what Witnesses we have on behalf of the King, against this noble Peer the Prisoner at the Bar, and take up your Lordships Time no further in opening; and we shall begin with *Samuel Cawthorne*; he is a Drawer at the Tavern where those Lords and Gentlemen were together, and he'll give you an Account of the Time they came there, how long they staid, what happen'd in the House during their being there, and what Time they went away.

L.H.St. Give him his Oath. (*Which the Clerk did.*)

Mr. *Att. Gen.* My Lords, I doubt the Witness is so far off, that it will be difficult for him to hear the Questions that we are to ask him, unless we could have him nearer to us.

L. H. St. Mr. Attorney, My Lords seem to be of Opinion, that it will be more for your Advantage and theirs, that the Witnesses stand at the Distance they do; which will oblige you to raise your Voice so loud, that they may hear the Witnesses and you too.

Mr. *Att. Gen.* Is your Name *Samuel Cawthorne*?
Cawthorne. Yes, my Lord.

Mr. *Att. Gen.* Where do you live?

Cawthorne. With Mr. *Locket* at *Charing-Cross*.

Mr. *Att. Gen.* Did you live with him at the *Greyhound Tavern* in the *Strand* the latter End of *October* last?

Cawthorne. Yes, I did.

Mr. *Att. Gen.* Well, pray will you acquaint my Lords with the Time when my Lord of *Warwick*,

my Lord *Mobun* and Mr. *Coote* were at that House, how long they stayed, what happen'd while they were there, and when they went away?

Cawthorne. It was Saturday Night the 29th of October last.

Mr. *Att. Gen.* Pray tell my Lords the whole of your Knowledge in the Matter.

Cawthorne. There came my Lord of *Warwick*, my Lord *Mobun*, Capt. *Coote*, Capt. *French*, and Capt. *Dockwa*, the 29th of October last, in the Evening, to my Master's House at the *Grey-bound Tavern* in the *Strand*.

Mr. *Att. Gen.* How long were they there, and what time of Night came they in?

Cawthorne. About Eight a Clock at Night, my Lord *Warwick*, my Lord *Mobun*, Capt. *French*, and Capt. *Coote*, came in.

Mr. *Att. Gen.* What Day do you say it was?

Cawthorne. Saturday, the nine and twentieth Day of October last.

Mr. *Att. Gen.* How long did they continue there?

Cawthorne. It was between One and Two the next Morning before they went away.

Mr. *Att. Gen.* Was any Body sent for to come to them there?

Cawthorne. Yes, Mr. *James*.

Mr. *Att. Gen.* What Time was that?

Cawthorne. About Twelve of the Clock.

Mr. *Att. Gen.* Did he stay with them till they went away?

Cawthorne. Yes.

Mr. *Att. Gen.* What did you observe past in the Company while they were there?

Cawthorne. I did not observe any Thing of Quarrel, not so much as an angry Word amongst them, till they came down to the Bar and were going away; when they came down to the Bar they order'd me to call them Chairs, or Coaches, and there were no Coaches to be had, and so I went for Chairs, and two Chairs came; for the Porter that went to call the Coaches was a great while before he came back; and as I said, I going for Chairs, there came two, but that they said was not enough; so more Chairs were called for, and at length there were more Chairs gotten; in the first three Chairs, my Lord of *Warwick*, my Lord *Mobun*, and Capt. *Coote* went away in; and my Lord *Warwick* and my Lord *Mobun* bid the Chairmen carry them home.

Mr. *Att. Gen.* Were there then any other Chairs at the Door?

Cawthorne. There were two more Chairs at the Door, and another was called for.

Mr. *Att. Gen.* Did you hear any Directions given where they should carry them?

Cawthorne. My Lord *Warwick* and my Lord *Mobun* bid them carry them home.

Mr. *Att. Gen.* Did you hear my Lord *Warwick* or my Lord *Mobun* particularly, and which, say whither they would be carried?

Cawthorne. I did hear my Lord *Mobun* say Capt. *Coote* should go and lie with him, or he would go and lie with Capt. *Coote* that Night, for there should be no quarrelling.

Mr. *Att. Gen.* Did they upon that go away?

Cawthorne. Mr. *French* and Mr. *Coote* were in Chairs before my Lord *Mobun* or my Lord *Warwick*, or any of the rest.

Mr. *Att. Gen.* What then happen'd upon their going into the Chairs?

Cawthorne. My Lord *Mobun* came out to them

and swore there should be no Quarrel that Night, but he would send for the Guards and secure them.

Mr. *Att. Gen.* What happen'd then?

Cawthorne. Upon that, both of them came out of their Chairs and came into the House, and there they came to the Bar, three of them in the Passage by the Bar, and three of them behind that Passage.

Mr. *Att. Gen.* Pray will you tell what did really pass throughout the whole Transaction? What was done after they came in again into the House?

Cawthorne. After that, I was bid to call for six Chairs, if I could get no Coaches, and so I did, and when I had brought what Chairs I could get, and returned to the Bar, I heard the Swords clash; when the Swords were drawn, I cannot say, nor by whom, it might be by all the six, for ought I know, because I was in the Street to call the Chairs, and when I came back to the House, I was in hopes all had been quieted, for their Swords were putting up: And when they went away in the Chairs, I did hope they went away friendly.

Mr. *Att. Gen.* Pray how did they go away, who went together?

Cawthorne. My Lord of *Warwick*, my Lord *Mobun*, and Capt. *Coote* went in the first three Chairs, them three together, and bid the Chair-men go home; the sixth Chair was not then come.

Mr. *Att. Gen.* When that Chair came, pray what Directions were given to it?

Cawthorne. I did not hear them give the Chair-men any Directions at all.

Mr. *Att. Gen.* Do you know any thing more that was done after this Time?

Cawthorne. No, my Lord, not after they went away; after I return'd with the Chairs, it was in two Minutes time that they went away.

Mr. *Att. Gen.* My Lords, I suppose he knows no more of the matter.

L. H. St. Will you then ask him no more Questions, Mr. Attorney?

Mr. *Att. Gen.* No, my Lords, unless this noble Lord shall ask him any Questions, upon which we shall have occasion to examine him.

L. H. St. My Lord, has your Lordship any Questions to ask this Witness? For now is your Time, the King's Counsel having done examining him.

E. of Warwick. I desire to ask him whether I did not bid the Chair-men go home?

L. H. St. If your Lordship please to propose your Question to me, I will require an Answer to it from the Witness, and it will be the better heard by my Lords.

Earl of Warwick. My Lord, I desire to know of this Man, whether, when I went away in the Chair from his Master's House, I did not bid the Chair-men go home.

L. H. St. Witness, you hear my Lord's Question, What say you to it?

Cawthorne. Yes: My Lord of *Warwick* did bid the Chair-men go home.

E. of Warwick. My Lord, I have another Question to ask him, Whether he knows of any Quarrel there was between me and Mr. *Coote* at that Time, or any other Time, because we both used to frequent that House?

Cawthorne. No, my Lords, I never heard any angry Words between my Lord *Warwick* and Mr. *Coote* in my Life.

[Then the Lords towards the upper End of the House complaining that they did not hear his Grace, the Lord High Steward was pleased to repeat the Question thus ;]

L. H. St. When my Lord of *Warwick* bid the Chairmen go home, or at any other time, did you observe that there had been any Quarrel between his Lordship and Mr. *Coot*?

E. of Warwick. My Lord, I desire he may be asked, since we both used that House, Whether that Night when I went away, or before or after, I had any Quarrel with Mr. *Coot*?

L. H. St. The Question my Lord desires you that are the Witnesses to answer, is, Whether you did hear any quarrelling or angry Words to pass between my Lord *Warwick* and Mr. *Coot* that Night before or after they came down, or when they went away, or at any other time?

Cawthorne. No, my Lord, I never heard any angry Words pass between them then, nor ever at any time before in all my Life, but I always looked upon them to be very good Friends.

E. of Warwick. I desire he may be asked, Whether Mr. *Coot* did not come to that House in my Company, and whether he did not frequently come to that House?

Cawthorne. Yes, they used to be there every Day almost, and they came that Night together in Company.

E. of Warwick. I desire he may be asked, Whether I have not been frequently in his Company there?

Cawthorne. Yes, I say very frequently, every Day almost, sometimes twice a Day.

L. H. St. Would your Lordship ask him any other Question?

E. of Warwick. My Lord, I desire he may be asked this Question, Whether he knows of any particular Kindness between Mr. *Coot* and me?

L. H. St. Do you know of any particular Kindness between my Lord *Warwick* and Mr. *Coot*, the Gentleman that was killed?

Cawthorne. Yes, my Lord, there was always a great Kindness between them as I observed, it ever was so, and I never heard angry Words pass between them, but they were very good Friends constantly; I waited upon them generally when they were at my Master's House, which was every Day almost.

E. of Warwick. I desire to know of this Witness, Whether he does not remember, or can name some particular Kindnesses that passed between Mr. *Coot* and me?

L. H. St. Can you specify any particular Instances of Kindness that passed between my Lord *Warwick* and Mr. *Coot*?

Cawthorne. Yes, my Lord of *Warwick* used generally to pay the Reckoning for Mr. *Coot*, and he did so at this Time.

E. of Warwick. My Lord, I desire he may be asked, between whom he apprehended the Quarrel to be at this Time.

L. H. St. You say, Friend, there were Swords drawn, and a Quarrelling at the Bar; Can you tell between whom the Quarrel was?

Cawthorne. My Lord *Warwick*, my Lord *Mobun*, and Capt. *Coot*, were all on one Side, and the other three were on the other Side.

E. of Warwick. Who were the two Persons that it was apprehended the Quarrel was between? I desire he may be asked.

L. H. St. You say, there were Three on the one Side, and Three on the other; pray, between whom did you apprehend the Quarrel to be?

Cawthorne. I believe the Quarrel was between Mr. *Coot* and Mr. *French*.

E. of Warwick. My Lord, I desire to know of this Witness, what Words he heard Mr. *Coot* say, after he and Mr. *French* returned into the House and came out of the Chairs.

L. H. St. What do you say to the Question my Lord proposes?

Cawthorne. I heard Mr. *Coot* say, He would laugh when he pleased, and he would frown when he pleased, God damn him.

E. of Warwick. My Lord, I desire to know who he thinks those Words were addressed to.

L. H. St. To whom did Mr. *Coot* speak these Words?

Cawthorne. Whether he spoke them particularly to Mr. *French*, or to the other two Gentlemen who were on the other Side of the Bar, I cannot directly tell.

E. of Warwick. I desire to know of him, Whether Mr. *Coot* was not One of the Three that was on the outside of the Bar?

Cawthorne. Yes, my Lord of *Warwick*, my Lord *Mobun*, and Capt. *Coot*, were of the outside of the Bar.

E. of Warwick. Was Capt. *Coot* with me in the beginning of the Night at that House?

Cawthorne. Yes, he came at the beginning of the Night with my Lord of *Warwick*.

E. of Peterb. My Lords, I desire to ask this Witness one Question.

L. H. St. I think it is proper, my Lords, in Point of Method, to let both Sides have done before any Questions be asked by any of my noble Lords.

E. of Peterb. I did apprehend my Lord of *Warwick* had done.

L. H. St. No, my Lord, not as yet? pray, my Lord *Warwick*, what other Questions has your Lordship to ask of this Witness?

E. of Warwick. My Lord, I desire he may be asked particularly this Question, Whether he perceived any Quarrel particularly between me and Capt. *Coot* when we went out of the House?

L. H. St. You hear the Question, Did you perceive any Quarrel between my Lord *Warwick* and Mr. *Coot* before they went out of the House?

Cawthorne. No, I did not, nor ever saw any Quarrel between them in my Life.

E. of Warwick. I desire to know who paid the Reckoning that Night?

Cawthorne. The Reckoning was called for before I came in to take it; and tho' I think my Lord of *Warwick* paid for Mr. *Coot*, yet I cannot so directly tell, because it was collected before I came into the Room to receive it.

L. H. St. My Lord, have you any Thing more to ask this Witness?

E. of Warwick. No, my Lord, at present, that I think of.

L. H. St. My Lord *Peterborough*, your Lordship desired to ask a Question, will you please to propose it now?

E. of Peterb. My Lord, this Witness seems to take notice of two Sides, who were on the one Side, and who were on the other, and that Mr. *Coot* and my Lord of *Warwick* were on one Side; I desire to know one Thing of him, what reason he had to apprehend that they two were of a Side?

L. H. St. Friend, you hear that noble Lord's Question; you seem to say, there were three and three of a Side. What reason had you to apprehend, that my Lord *Warwick* and Mr. *Coote* were of one Side? You must explain to my Lords how you come to make that Judgment, what Reason you had to think so.

Cawthorne. They three my Lord *Mobun*, my Lord *Warwick*, and Mr. *Coote*, were on the one Side of the Bar; and Capt. *James*, Capt. *French*, and Capt. *Dockwra*, were on the other Side of the Bar.

L. H. St. So you said before; but the Question which my noble Lord desires to be satisfied in, is this, How you come to speak as if there was a Quarrel between three and three? What Reason had you to think, that three were on one Side, and three on the other?

Cawthorne. Their Swords were all drawn, and they stood three on one Side of the Bar, and three on the other.

E. of Rochester. My Lords, I desire to ask this Witness one Question; I think he told your Lordships at first, that he did not perceive any angry Words among them; afterwards he comes to talk of Swords drawn amongst them all, three on the outside, and three on the inside of the Bar; I desire to know what was the Occasion of those Swords being drawn on the one Side or the other?

Cawthorne. Whatsoever Quarrel there was, was amongst themselves above Stairs, and I know no angry Words that passed between them when they came down to the Bar.

L. H. St. See what you say? How consistent one Part of it is with another! You said at first, you did not hear of any angry Words that passed between them, and yet you say, all their Swords were drawn, and three were on the one Side and three on the other: And when you were examined upon the Motion of that noble Lord, what you meant by three on the one Side, and three on the other, you said, my Lord *Mobun*, my Lord *Warwick*, and Mr. *Coote*, were on the one Side; Mr. *James*, Mr. *French*, and Mr. *Dockwra*, were on the other Side: How could there be two Sides, unless there was a Quarrel?

Cawthorne. I said, I did not hear any angry Words pass between them before they came to the Bar, or while they were above Stairs; but there were three on the one Side of the Bar, and three on the other.

L. H. St. But you have not given a satisfactory Answer to that Question which the noble Lord, my Lord *Peterborough*, asked you, What Reason you had to apprehend, that the noble Lord, the Prisoner at the Bar, and Capt. *Coote* were of a Side?

Cawthorne. My Lord *Mobun* came to the Chair side, when Capt. *Coote* and Capt. *French* were got into the two first Chairs, and told Capt. *Coote*, that there should be no Quarrel that Night, but that they three, my Lord *Warwick*, my Lord *Mobun*, and he, should go home together; and I took them three to be of a Side, because they were on the outside of the Bar together, and when they all went away, their three Chairs went away first, all three together.

L. H. St. Is that all the Reason you can give why you say, they were three and three of a Side?

Cawthorne. Yes, my Lord, I did apprehend it so.

Mr. Att. Gen. If my noble Lords have done with their Questions, I desire to ask this Witness another Question; my Lords, I think this Person says, That there was a Quarrel at the Bar of the House, and Swords drawn, and as he apprehended, three were on the one Side, and three on the other; but if I take him right, I do not see that he has given your Lordships any Manner of Satisfaction, what Reason he had to apprehend there were three and three of a Side, or, which will be very material in this Case, if your Lordships can get to the Knowledge of it, which three were on the one Side, and which three were on the other; or indeed, whether there were three and three of a Side, as your Lordships will have reason by and by to enquire a little further into that Matter. My Lords I desire he may be asked this plain Question, What Words or other Passages he did perceive, that made him apprehend there was a Quarrel between them, and they were three and three of a Side?

Cawthorne. I apprehended it from the Words that Mr. *Coote* said, That he would laugh when he pleased, and frown when he pleased.

Mr. Att. Gen. Pray, my Lord, I desire he may be asked, Who those Words were spoke to, and who they were applied to?

Cawthorne. They were spoke to Mr. *James*, Mr. *French*, and Mr. *Dockwra*, who were within side of the Bar.

Mr. Att. Gen. Did he apply those Words to all those particular Persons?

Cawthorne. Yes, as I thought, for they three were within the Bar; my Lord *Warwick*, my Lord *Mobun*, and Mr. *Coote*, were without the Bar.

Mr. Att. Gen. Pray, my Lord, I desire he may be asked this Question, Was that before the Swords were drawn, or afterwards?

Cawthorne. It was before.

Mr. Att. Gen. Then I desire he may be asked, Whether the Swords were drawn upon those Words?

Cawthorne. No, my Lord, the Time of drawing the Swords was when I went out to call Chairs and Coaches; and I know not who drew the Swords first, or when they were drawn; but when I came back I found them all drawn, and I heard them clashing.

Mr. Att. Gen. Upon the Oath you have taken, Was those Words that you speak of Mr. *Coote's*, That he would laugh when he pleased, and frown when he pleased, before the Swords were drawn, or after the Swords were drawn?

Cawthorne. Before the Swords were drawn; for I did not see the Swords drawn till I came back.

L. H. St. Does either Side desire to ask this Witness any Questions; if not, then you may withdraw, and you may proceed, Mr. Attorney, to examine some other Witness.

Lord *Wharton.* My Lord, there was a Question asked at the Bar about the Hindring of the Quarrel, and my Lord *Mobun's* Desire to part them, and make them Friends; I desire the Witness, before he goes away, may be asked what he knows of that Matter.

L. H. St. It has been observed by my Lord, that you said, when they came down to the Bar, and the Quarrel happened, some Body would have prevented it; pray repeat that Matter again, Did you observe any of the Company were disposed to take up the Quarrel, and make them Friends, and who they were?