

Cawthorne. My Lord *Mobun* and my Lord *Warwick* said they would send for a File of Musqueteers, and my Lord *Mobun* did all he could to quiet and pacify them till the Quarrel was over; and my Lord *Mobun* particularly had his Finger prick'd with endeavouring to cross their Swords, and keeping them from fighting; which was all he got by it.

L. H. St. Do you know that of your own Knowledge?

Cawthorne. His Hand was bloody and he said so at the Bar; but I was just coming in again when I heard him say so; but I cannot say that I saw him hurt, for I was without the House at the Time when that was done.

Lord Godolphin. My Lords, I desire to ask this Witness on Question; I observe he has told my Lords, there was not an angry Word pass'd between them before they came down to the Bar; I would fain ask him this Question, Whether he was in the Room all the Time till they did come down to the Bar?

Cawthorne. I received the Reckoning just before they came down to the Bar.

Lord Godolphin. And I desire he may be asked, How long he staid in the Room when he received the Reckoning?

Cawthorne. It was about two or three Minutes that I staid in the Room, and not longer.

Earl of Warwick. My Lord, this Witness that has been examined, told you, That when we first came down to the Bar there were two Chairs call'd for; and when they came, Mr. *Coot* and the other Gentleman, Mr. *French*, went into the Chairs, and afterwards they came out again, and Mr. *Coot* said some Words; I desire the Witness may be asked again, when it was Mr. *Coot* spoke those Words; whether it was before or after the Time that he came out of the Chair; for I take it to be very material.

Cawthorne. It was after Mr. *Coot* came out of the Chair, for the Chairmen heard the Words as I verily believe.

Mr. Att. Gen. My Lord, I desire he may be ask'd, Was there any Reply made to those Words by any of those Persons he says he apprehends were on the other Side?

Cawthorne. No, not one Word that I know of.

Earl of Warwick. My Lord, I must beg the Favour to have the Question asked again of him, Whether I did not at that Time endeavour to prevent any Quarrelling, and did not say I would call for the Guard if they did?

Cawthorne. Yes; my Lord of *Warwick* did say so, and so did my Lord *Mobun*, and so I think did Mr. *James*.

L. H. St. How came you not to say so when you were asked that Question particularly before? Then you said my Lord *Mobun* endeavoured to prevent the Quarrelling, and make them Friends.

Cawthorne. Yes, my Lord *Warwick* did so, and so did Mr. *James*.

L. H. St. I cannot tell whether any Body else desires to ask him any Questions.

Mr. Att. Gen. My Lord, he speaks of what this noble Lord, my Lord of *Warwick* said; but he does not tell you the particular Expressions, nor the Time when my Lord said them.

L. H. St. You say, my Lord the Prisoner at the Bar, endeavoured to pacify the Quarrel between them; but you do not tell my Lords who

the Quarrel was between, nor when the Endeavour was made by my Lord *Warwick* to pacify it.

Cawthorne. My Lord of *Warwick* did say he would have the Guards sent for.

L. H. St. What Time was that, before or after my Lord *Mobun* said so?

Cawthorne. Truly, my Lord, I do not know but that it was at the same Time.

L. H. St. Was it when the Swords were drawn, or before?

Cawthorne. They spoke it both before and after the Swords were drawn, as I remember; for the Swords were not drawn while I was in the House, till I came back.

L. H. St. Were the Swords drawn when my Lord *Warwick* spoke of sending for the Guards?

Cawthorne. Surely, my Lord, it was before the Swords were drawn, when I was sent for the Chairs.

L. H. St. You said there was no angry Words or Quarrel between them.

Cawthorne. Not above Stairs, my Lord: But I apprehended when they came down to the Bar, there were three on one Side, and three on the other.

Mr. Att. Gen. Pray, my Lord, let him be asked this Question, Was it after they were three on the one Side, and three on the other, that my Lord *Mobun* and my Lord *Warwick* spoke those Words?

Cawthorne. I apprehend the Words were spoke by Mr. *Coot*, That he would laugh when he pleased, and frown when he pleased, before the Swords were drawn.

L. H. St. But that which my Lords desire to know is, What the Time was when my Lord *Warwick* and my Lord *Mobun* declared their Desire to part them and make them Friends; whether before or after the Swords drawn?

Cawthorne. Before and after; for I was absent when the Swords were drawn.

Earl Rivers. He says, That after my Lord *Mobun* and my Lord *Warwick* threaten'd to send for the Musqueteers, they promised to be quiet: I desire to know who he means by they.

Cawthorne. Mr. *James* call'd to me and said, I need not go and call for the Guards, for the Quarrel was over. There is one Thing more that I forgot, my Lord: After my Lord *Mobun* and my Lord *Warwick* were gone away in their Chairs, and Mr. *Coot*, I heard Mr. *Dockwra* say to Captain *James* and Captain *French*, they did not care a Farthing for them, they would fight them at any Time.

L. H. St. Who were together then?

Cawthorne. Captain *James*, Mr. *French*, and Mr. *Dockwra*, after my Lord *Mobun* and my Lord *Warwick* were gone with Captain *Coot*.

L. H. St. Then Mr. *French* was with them, Mr. *Dockwra* said so?

Cawthorne. Yes, my Lord.

Lord Wharton. If I apprehend him aright, as to what he says now, my Lord of *Warwick*, my Lord *Mobun*, and Captain *Coot*, were gone away at that Time.

Cawthorne. Yes, they were gone away in the three first Chairs, which my Lord *Mobun* bid go home.

Lord Wharton. Who does he say spoke those Words?

L. H. St. You hear my noble Lord's Question, Who spoke those Words? Repeat them again.

Caw-

Cawthorne. When my Lord *Warwick*, my Lord *Mobun*, and Captain *Coote* were gone, I heard Mr. *Dockwa* say to Mr. *French* and Mr. *James*, we don't care a Farthing for them, we will fight them at any time.

Mr. *Att. Gen.* I desire to know whether this Witness testified any Thing of this Matter, when he was examined before the Coroner?

Cawthorne. No, I forgot those Words when I was examined before the Coroner.

Mr. *Att. Gen.* How soon after your Examination did you recollect yourself as to what you now speak?

Cawthorne. The next Day after.

Mr. *Att. Gen.* I pray my Lords, that he may be asked, Whether he did in general give the same Evidence before the Coroner that he now does?

Cawthorne. Yes, as to all but only those Words of Mr. *Dockwa's* declaring he did not care a Farthing for them, they would fight them at any time.

Mr. *Att. Gen.* My Lord, I beg he may be ask'd how long it was after the Fact was done, that he was examined before the Coroner.

Cawthorne. It was the next Day in the Afternoon.

Mr. *Att. Gen.* Then I have this Question further to ask, if your Lordships please, Was he at the Trial of Mr. *Dockwa*, Mr. *James*, and Mr. *French*?

Cawthorne. Yes, I was.

Mr. *Att. Gen.* Did he then give any Evidence of those Words of Mr. *Dockwa's*, after when my Lord *Warwick*, my Lord *Mobun*, and Captain *Coote* were gone?

Cawthorne. No, I did not.

Mr. *Att. Gen.* My Lord, I have one Question to ask him then more, How he came not to swear this Matter at that Trial?

Cawthorne. It was out of my Mind at that Time, and I had like to have forgot it now.

Mr. *Att. Gen.* My Lord we have done with this Witness: Is it your Lordships Pleasure that we go on to call our other Witnesses?

Lords. Ay, Ay.

Mr. *Att. Gen.* Then our next Witnesses, my Lords, will be the Chairmen that carried my Lord *Mobun*, my Lord of *Warwick*, and Captain *Coote*: We shall begin with *Thomas Browne* and *John Gibson*, one of them carried Mr. *Coote*, the other my Lord of *Warwick*.

[*Thomas Browne was sworn.*]

L. H. St. What Question do you ask this Witness, Mr. Attorney?

Mr. *Att. Gen.* That he would acquaint your Lordships, whether he carried Mr. *Richard Coote*, the Person that was slain, upon the 29th or 30th of *October*, from the *Greyhound Tavern* in the *Strand*, and to what Place he carried him?

L. H. St. You hear the Question; pray speak so loud that my Lords may all hear what you say.

Browne. My Lords, I was between the Hours of One and Two in the Morning, on *Sunday* the 30th of *October* last, with my Fellow and our Chair, at the *Buffler's-Head Tavern* at *Charing-Cross*, and I heard some People at *Locket's*, at the *Greyhound* in the *Strand*, calling Coach, Coach, a pretty while; but there were no Coaches in the Street, nor that came to them; when they could not get Coaches, then they called out for Chairs; and we coming to

the Door with our Chair, there were four other Chairs there, and six Gentlemen stood in the Passage; and then it was said, There was not Chairs enough, and there wanted one more, and they stood discoursing; and the first Man came into my Chair, who was Captain *Coote*; and my Lord of *Warwick* he got into another: When the Door of the Chair was shut up, we asked them whither we should go; but my Lord *Mobun* came and bid open the Chair again, and we did so, and he returned into the House, and there was some Discourse between them standing at the Bar in the Entry. Mr. *Coote* came out again and came into my Chair, and my Lord *Mobun* and my Lord of *Warwick* went into two others; Mr. *Coote* bid me carry him into *Leicester-fields*, and to make all the haste I could; my Lord of *Warwick* and my Lord *Mobun* being in the next Chairs, ask'd him, *Whither are you a going*, and called out twice, and he said, *To Leicester-fields; Pray do not*, says my Lord of *Warwick*, *but come along with us, and let it alone till To-morrow*; but he bid us go on; and as we were turning up *St. Martin's-lane*, by the *Cross-Keys Tavern*, my Lord *Mobun*, and my Lord *Warwick* called out to us to stop, and their Chairs came up to the Back-door of the *Cross-keys Tavern*, and there all the three Chairs were set on a-brest in *St. Martin's-lane*, and while they were talking together, there came by three Chairs of the other Side of the Way; and Mr. *Coote* bid us take up and make all the haste we could before them into *Leicester-fields*; so taking up the Chair again, Mr. *Coote* bid us make haste, and if we could go no faster, he swore, *Damn him*, he would run his Sword in one of our Bodies: There were two Chairs before me, and my Lord *Mobun* and my Lord *Warwick* followed in two Chairs after me; and when we came to the Corner of *Leicester-fields* at *Green-street* end, all the three Chairs were set down a-brest again, and Mr. *Coote* put his Hand in his Pocket, and took out nair a Guinea to pay, and said he had no Silver; and my Lord of *Warwick* spoke to my Lord *Mobun*, who took out three Shillings out of his Pocket, who said there was for my Lord *Warwick*, Capt. *Coote*, and himself; and when they were gone out, I took my Box and my Pipe, and filled my Pipe, and took the Lanthorn and lighted it, and by that time I had lighted my Pipe, I heard a calling out, Chair, Chair, again, towards the upper End of the Square; so I took my Chair, and there was one of the Chairs that was not gone; and so we came up to the upper End of the Fields, and they called to us to bring the Chairs over the Rails; we told them we did not know how to do that, for we should not be able to get them back again; at last we did get over the Rails, and made up close to the Place where we heard the Noise, for we could see nothing, it being a very dark Night; and when we came up close to them, by our Lanthorn there were two Gentlemen holding up Mr. *Coote* under their Arms, and crying out, *My dear Coote, My dear Coote!*

Mr. *Att. Gen.* Pray who were those two Gentlemen?

Browne. I did not know them, one was in Red Cloaths, and the other had Gold Lace, and they would have had me have taken Mr. *Coote* into my Chair; but seeing him bloody, and not able to help himself, I said I would not spoil my Chair, and so would not meddle with him; but they said they would make me any Satisfaction for my Chair, and desired me to take him in, but he gave himself a spring from them, and we found he was too heavy

heavy for us to lift over the Rails, and all we could do could not make him sit in the Chair, but the Chair was broken with endeavouring to place him there; and they said, if we would carry him to a Surgeon's, they would give us a Hundred Pound Security; but we finding it impossible, the Watch was called for, but no Body would come near, for they said it was out of their Ward, and so they would not come anigh me; and I staid about half an Hour with my Chair broken, and afterwards I was laid hold upon, both I and my Partner, and we were kept till next Night Eleven a Clock; and that is all the Satisfaction that I have had for my Chair and every Thing.

Mr. *Att. Gen.* Pray, my Lord, I desire he may recollect himself; for we do apprehend it is very material, who it was that desired to take Mr. *Coot*e into the Chair.

Browne. I cannot tell who they were, it was so very dark I could only see their Cloaths.

Mr. *Att. Gen.* Did you see the Earl of *Warwick* there?

Browne. No, Sir, he was not there; one of them, I tell you, had Officers Cloaths on, Red lined with Blue, and the other had Gold Lace on; there was no Body there that held him up but them two.

Mr. of *Norm.* He says he saw two Persons holding up Mr. *Coot*e; it would be very well to have that Matter very well settled, who those two Persons were; I desire to know how he is sure my Lord of *Warwick* was not one of them two?

Browne. I know my Lord of *Warwick* very well, and I am sure he was neither of the two.

D. of *Leeds.* I would know what Light he had to discern it so well by, that he can be sure my Lord of *Warwick* was not there; for he says, it was a very dark Night, and yet he describes the particular Persons that held Mr. *Coot*e up.

Browne. Yes, my Lord, I am sure my Lord of *Warwick* was none of them.

D. of *Leeds.* How could you distinguish in so dark a Night, the Colours of People's Cloaths?

Browne. With the Candle that I had lighted in my Lanthorn.

D. of *Leeds.* He could not know any of the Persons unless he held a Lanthorn to their Faces, or knew them very well before.

L. *H. St.* My Lord *Warwick*, Will your Lordship ask this Witness any Questions?

E. of *Warwick.* My Lord, I desire he may be ask'd, Whether I did not bid him stop at *St. Martins-lane* end, and do all that I could to hinder Mr. *Coot*e from going any further, but to go home?

Browne. The Earl of *Warwick*, and my Lord *Mobun*, as they turned up the Lane, asked Mr. *Coot*e, Whither he was going? and when he said to *Leicester-fields*, they desired him to let it alone till To-morrow; and my Lord *Mobun* said he should go home with him; but the other bid us go on, and said he would not go to his Lodgings, but that they would make an End of it that Night; still they called to him again, dear *Coot*e, let's speak a Word with you; and as the Chairs came to the Back-door of the *Cross-keys* Tavern, there they stood all of a-brest, and they both of them spoke to him, and stood a pretty while there, and in the mean time three Chairs passed by on the other Side; he commanded us to take up, and carry him away to *Leicester-fields* immediately, and overtake the other Chairs, or he would run one of us into the Body.

L. *H. St.* Would your Lordship ask him any more Questions?

E. of *Warwick.* No, my Lord.

Mr. *Att. Gen.* My Lord, I observe, he says they discoursed some Time together while they stopped in *St. Martins-lane*; I desire that he may be asked, whether he can tell what that Discourse was.

Browne. I could not well hear, they whispered together, but I could hear my Lord *Mobun*, and my Lord of *Warwick*, desire Captain *Coot*e to go home and let the Business alone till another Time.

Mr. *Att. Gen.* I desire he may explain himself, what that Business was that they would have put off till To-morrow.

Browne. I know not what it was, I heard of no Anger betwixt them, but they were as good Friends for any Thing I know to the contrary, as ever they were in their Lives, or as ever I see any Men.

L. *Jesse vs.* He says there were Two went into Chairs at the Door of the House, and afterwards went out again, and went into the House, and there was Discourse at the Bar of the House, I would desire to know what that was?

Browne. I did not hear the Discourse that was in the House, I was at the Door of the House.

Mr. *Att. Gen.* Our next Witness is *William Crippes*. (who was sworn.)

L. *H. St.* What do you ask this Man, Mr. Attorney?

Mr. *Att. Gen.* Pray will you give my Lords here an Account who you carried to *Leicester-fields* the 29th or 30th of *October*, and what happened in your Knowledge at that Time?

Crippes. Captain *Coot*e was the first Man that went into the Chair when we came to the *Greyhound* Tavern, afterwards he came out again, and when we took him up the second Time, he was the first Man that set out; and he bid us carry him to *Leicester-fields*; and when he came to the Corner of *St. Martins-lane*, we turned up that Way; and my Lord of *Warwick*, and my Lord *Mobun*, called to us, being in Chairs behind, to know whither we were going, and desired to speak with Captain *Coot*e, and he said he was going to *Leicester-fields*; and when they ask'd, What to do? he said, to end the Business: They desired him to put it off till To-morrow; and while they were discoursing about it in *St. Martins-lane*, there pass'd by other three Chairs, which, when Captain *Coot*e saw, he bid us take up and overtake them, and go faster, or he would run one of us into the Body: So we went on, and at the lower End of *Leicester-fields* we set him down; and the other two Gentlemen, my Lord *Warwick*, and my Lord *Mobun*, were there set down, and went lovingly together, for any thing that I saw, up the Pavement of the Square, towards the upper End; and in a little time we heard a Noise of calling for Chairs towards the upper End, and when we came there with the Chair, we were bid to lift over the Chair within the Rails; and when we said it was hard to be done, they insisted upon it, and we did come in; and when we came there we saw two Gentlemen holding up Captain *Coot*e, and would have had us taken him into the Chair; we saw there was a great deal of Blood, but I never heard how it came, and they would have had us carried him to a *French* Surgeon's, and proffer'd any Money.

Mr. Att. Gen. My Lord, I desire to know, who they were that desired him to be carried to the Surgeon.

L. H. St. You hear the Question, What say you?

Crippes. I cannot tell, my Lord; one of them had something of Lace upon him, but it was so dark that I could hardly see my Hand, and therefore I cannot tell who they were; and when there was an Objection made, that the Chairs would be spoiled, they said, We need not question our Chair, they would give us 100*l.* Security to answer any Damages, if we would but carry him; so we endeavoured to put him into the Chair, but could not; and so we called out to the Watch, to have had some help, but they said it was none of their Ward, and so they would not come to us; so the Gentlemen went away, and we left them, and went and called a Surgeon, who, when he came, said, he was a dead Man, and we were secured till the next Day.

Mr. Att. Gen. Pray, my Lord, I desire he may be asked, Were there not other Chairs in that Place at that Time?

Crippes. There was one in the Field besides, and no more that I could see, they all went away but us two.

Mr. Att. Gen. What Distance of Time was there between their setting down in *Leicester-fields*, and their calling the Chairs again?

Crippes. Not a quarter of an Hour.

Mr. Att. Gen. What became of the three Chairs that passed by you in *St. Martins-lane*?

Crippes. They got before us; but what became of them afterwards I cannot tell.

Mr. Att. Gen. Did they come from the same Place, the Tavern in the *Strand* that you were at?

Crippes. Yes, I believe they did, my Lord, for Captain *Coote* bid us follow them, and threatened us if we did not make greater haste.

Mr. Att. Gen. Do you know my Lord of *Warwick*?

Crippes. Yes, he had whitish Cloaths on, and none but he had such Cloaths on as those were.

L. H. St. Will your Lordship ask this Witness any Questions?

E. of *Warwick*. My Lord, I desire he may be asked, Whether I did not bid him stop? and, whether I did not say, they should not go to quarrel that Night?

Crippes. Yes, both he and my Lord *Mobun* would not have had Captain *Coote* gone any where, but home to his Lodgings.

Mr. Att. Gen. My Lord, I desire to know of him, directly and downright, Whether my Lord of *Warwick* was not one of them that held him when he was within the Rails in the Fields?

Crippes. No, he was not, he was neither of them, for the one of them was too big for him, and the other was too little for my Lord *Mobun*?

Mr. Att. Gen. Now we shall call the Chairman that carried the Earl of *Warwick* into *Leicester-fields*, James Crattle. (He was sworn.)

Mr. Att. Gen. Will you tell my Lords what you know of any Person that you carried the 29th or 30th of *October* last, from the *Greyhound* Tavern in the *Strand*, and who it was, and whither you carried him?

Crattle. I was going along *Charing-Cross*, between One and Two in the Morning the 30th of *October* last, and I heard a Chair called for at *Locket's* at the *Dog Tavern*, and thither I and my Partner went, and we took up the Gentleman, and carried him to *Leicester-fields*.

Mr. Att. Gen. Who was that Gentleman?

Crattle. It was my Lord of *Warwick*.

Mr. Att. Gen. What Time of Night do you say it was?

Crattle. It was about One or Two in the Morning.

Mr. Att. Gen. What Day of the Week was it?

Crattle. It was *Saturday* Night and *Sunday* Morning.

Mr. Att. Gen. Whither did you carry him?

Crattle. Into *Green-street*, towards the lower end of *Leicester-square*.

Mr. Att. Gen. What Chairs were there more there?

Crattle. There was one that Captain *Coote* was in, and another that my Lord *Mobun* was in, and we went away all together.

Mr. Att. Gen. Were there no other Chairs?

Crattle. I did not know who went in the other Chairs, but there were three other Chairs that passed by us at *St. Martins-lane*, and we followed after them to *Leicester-fields*.

Mr. Att. Gen. Pray what became of you after you had set down your Fare?

Crattle. We were discharged and paid; the other three went up towards my Lord of *Leicester's*, but we were coming away, and in a little Time we heard the Noise of calling Chairs, Chairs, again, and there were two Chairs did come up, *Thomas Browne's* and ours; my Lord of *Warwick* called our Chair, and we took him into it, and he bid us carry him to the *Bagnio* in *Long-Acre*, and when we came there we knocked at the Door, and his Hand was bloody, and he asked us if we had any Handkerchief to bind up his Hand.

Mr. Att. Gen. Was there any other Chairs at the Door of the *Bagnio*, at the same Time when you came there?

Crattle. Yes, there was another Chair there at the Door at the same Time, and we set down both together.

Mr. Att. Gen. Pray whence came that Chair?

Crattle. Indeed I do not know.

Mr. Att. Gen. Who were the Chair-men that carried that Chair?

Crattle. Indeed my Lord *Mobun*, and my Lord *Warwick*, were the only Persons that I knew of all the Company.

Mr. Att. Gen. What Sort of Gentleman was the other that went out of the other Chair into the House?

Crattle. He was a pretty tall Man; when he was in we went away; I only can say I saw my Lord of *Warwick* go into the House.

Mr. Att. Gen. Did you take any Notice of any Sword that my Lord of *Warwick* had in his Hand at that Time?

Crattle. No, I cannot say I did take any Notice of any Sword, only that there was a Handkerchief desired.

Mr. Att. Gen. Pray, did you hear no Noise at all in the Field, till you heard Chairs called for again?

Crattle. No, I cannot say I heard any Noise in the Field.

Mr. Att. Gen. Did you apprehend there was any Fighting?

Crattle. No, I knew nothing at all of it, but upon the calling of Chairs again, and my Lord *Warwick* coming along, we took him in, and he bid us go to the *Bagnio*, and thither we went.

Mr. Att. Gen. My Lord, we have done with this Witness.

L. H. St. My Lord *Warwick*, will you ask this Witness any Questions?

Earl of *Warwick*. No, my Lord.

Mr. Att. Gen. Then, my Lord, our next Witness is *John Gibson*, he was another of those Chairmen that carried my Lord of *Warwick* to the *Bagnio* afterwards. Pray will you give my Lords an Account what you know, who you carried the 29th and 30th of *October* last, and whither you carried them? (*who was sworn.*)

Gibson. My Lord, I was at *Charing-Cross* with my Partner the 29th of *October* last, at Night, and about One or Two a Clock in the Morning Chairs were called for to the *Greyhound Tavern* in the *Strand*; and when we came there, my Lord of *Warwick*, my Lord *Mobun*, and Mr. *Coot*e, got into the three first Chairs, and we got my Lord *Warwick* into our Chair; and when we had him there, we were bid to go towards *Leicester-fields*, as I apprehended, for thither the Chairs that went first was to go; and indeed my Lord *Mobun*, and my Lord *Warwick*, did call to stop at the End of *St. Martins-lane*, and asked Mr. *Coot*e whither he was going? and he said he was going to make an End of the Business, and they said it should not be To-night; but presently after three other Chairs coming along, and passing before us, the Chair that Captain *Coot*e was in, was bid to go on, and we were ordered to follow, which was done accordingly; just at the Turning of *Green-street* we set down our three Chairs, and, I think, just about the Turning of *Green-street* End we stayed till there came another Chair again, and we and the other Chair, upon my Lord *Warwick*'s coming into us, went away from thence, and carried him to the *Bagnio* in *Long-acre*.

Mr. Att. Gen. You talk of another Chair, pray, Whose Chair was that?

Gibson. There was another Chair that was got there just before us, but indeed I do not know whose it was, nor indeed can I say who it was that was in it; but this I am sure, we went to the same Place, and we met and lit just at the same Time, and my Lord of *Warwick* asked for a Handkerchief to bind about his Hand, which was bloody, which was given him.

Mr. Att. Gen. Did you not know who was in the other Chair at that time?

Gibson. No, indeed, I did not know, I will assure you.

Mr. Att. Gen. Pray did you not know where that other Chair took the other Gentleman up?

Gibson. No, indeed, Sir, I did not.

Mr. Att. Gen. Pray, What Time of the Night was it?

Gibson. It was between One and Two of the Clock in the Morning.

Mr. Att. Gen. You talk of his Hand being hurt, and that he called for a Handkerchief. Did you see his Hand bleed? and, pray, in what Nature was his Wound?

Gibson. My Lord, all I can say is, there was Blood, and he wanted a Handkerchief, and had one, for he said his Hand was hurt, but in truth I did not take any Notice what that Hurt was, I did not see it, if my Partner took Notice of it, so, but else I can say nothing to it, but the Handkerchief was afterwards asked again, and could not be had.

L. H. St. Would my Lord of *Warwick* ask this Witness any Questions?

Earl of *Warwick*. No, my Lord.

Mr. Att. Gen. Then, my Lord, our next Witnesses are *Robert Applegate*, and *Peter Catro*, who will give your Lordship an Account who they carried at this Time.

L. H. St. Whom do you call first?

Mr. Att. Gen. *Robert Applegate*. (*who was sworn.*)

L. H. St. What Questions do you ask him, Mr. Attorney?

Mr. Att. Gen. I desire that he would acquaint your Lordship, what he knows of what passed at the *Greyhound Tavern* in the *Strand* the 29th of *October* last, whom he carried, and whither he carried them?

Applegate. My Lord, about One or Two a Clock in the Morning, a *Sunday Morning*, the 29th or 30th of *October* last, I was going home with my Partner and my Chair, and I heard them calling at the *Greyhound Tavern* in the *Strand*, Mr. *Lockett*'s, for Coaches and Chairs; there was no Coach to be had that could be heard of, but coming up to the Door, they said they wanted six Chairs, and when we were there at the Door, there came out first my Lord *Warwick*, Captain *Coot*e, and my Lord *Mobun*; Captain *Coot*e got into the first Chair, and what Directions he gave them I cannot tell; my Lord of *Warwick* got into the next; and into ours, which was the Third, my Lord *Mobun* came in, and bid us take him up and carry him towards *Westminster*, and he ordered us to follow the Chairs before: Just as they turned at *St. Martins-lane*, my Lord *Mobun* called out, and desired to stop, and at the *Cross-Keys-Tavern* Back-door, all the three Chairs came up together, and then my Lord of *Warwick*, and Captain *Coot*e, and my Lord *Mobun* talked together, and I could hear my Lord *Mobun* and my Lord of *Warwick* desire Captain *Coot*e to defer it, and put it by till another Day; what it was, indeed I cannot tell: But while they were talking there, three Chairs more came up on the other Side of the Way, and Captain *Coot*e would needs go forward, and my Lord *Mobun* and my Lord of *Warwick* went with him, and so they were all set down at the lower End of *Leicester-fields* at *Green-street* End. But in Truth I did not see where the other three Chairs set down those they carried.

Mr. Att. Gen. What then happened afterwards, can you tell?

Applegate. I cannot tell whether I had lighted my Pipe, or just lighting it, when I heard Chairs called again; upon which we run up with our Chair towards the upper End of the Fields, and there I did see my Lord of *Warwick* within the Rails, who bid us put over our Chair into the Fields; but we told him, if we did, we could not get it over again, and so we went with our Chair to the Corner of the Fields, and when we came there, there came out Captain *French*, who bid us open our Chair, and let him in, for he did believe he was a dead Man; and upon that we did take him in, and he bid us carry him with all the Speed we could to the *Bagnio* in *Long-acre*, and my Lord of *Warwick* got into another Chair behind; so we went to *Long-acre*, and when we came to the Door of the *Bagnio*, and Captain *French* came out of the Chair, he was so weak that he fell down upon his Knees; and when he came out, I asked who should pay me, and desired to be discharged; and the Earl of *Warwick* said, *Damn ye, call for your Money to Morrow*; so they both went in at the *Bagnio* Door together.

Mr. Att. Gen. Pray, who called for the Chair first, Captain *French*, or my Lord of *Warwick*, in the Fields?

Applegate. I cannot tell, but when I brought up my Chair, I first saw my Lord of *Warwick*, and he would have had me lifted the Chair over the Rails, and I told him we could not get it over again, and so went up to the upper End of the Fields.

Mr. Att. Gen. If you first spoke with my Lord of *Warwick*, why did you not carry my Lord of *Warwick*?

Applegate. Indeed I cannot tell, but I suppose it was because he did not come so soon out of the Fields as Captain *French*, or did not come the same Way.

Mr. Att. Gen. Pray, do you remember any Thing that happened just at their carrying Capt. *French* away?

Applegate. Before he went into the Chair, he stopped, and would have pulled off his Cloaths, but we would not let him.

Mr. Att. Gen. Did you see any Sword Captain *French* had?

Applegate. I did see no Sword that I can say directly was a Sword; but Captain *French* had something in his Hand, but what it was I cannot tell.

Mr. Att. Gen. What was it that he said to you, when he first went into the Chair?

Applegate. He desired to be carried to the *Bagnio*; for he said he believ'd he was a dead Man.

Mr. Att. Gen. Pray, Friend, recollect yourself, if you heard him say any Thing at all when he first went into the Chair at the *Greyhound Tavern*?

Applegate. I did not hear him mention any Thing at all.

Mr. Att. Gen. Pray what did you hear my Lord of *Warwick* say at that Time?

Applegate. Truly, I cannot say I heard him mention any Thing at all neither; but I did hear my Lord *Mobun* say, when he could not prevail, in *St. Martins-lane*, with Captain *Coote* to go home, that if they did go he would go and see it.

Mr. Att. Gen. If they did go; who did he mean by they?

Applegate. My Lord *Warwick* and Captain *Coote* that were in the other Chairs; there was no Body else to speak to.

Mr. Att. Gen. Was there any talk of Fighting or Quarrelling?

Applegate. No indeed, I do not know of any Difference there was between them.

L. H. St. My Lord *Warwick*, Will your Lordship ask this Witness any Questions?

Earl of *Warwick*. My Lord, I desire he may be asked, Whether I did not endeavour to put off the going into *Leicester-fields*, and to have all Things let alone till To-morrow.

Applegate. My Lord, I cannot say any Thing of that; but I did hear my Lord *Mobun* beg heartily of Captain *Coote* to go home, and let the Business alone till another Time; and indeed I think, I never heard a Man beg more heartily for an Alms at a Door, than he did, that they might not go into the Fields then; but I cannot say that I heard any Thing that my Lord of *Warwick* said about it.

L. H. St. Will your Lordship ask him any other Questions?

Earl of *Warwick*. No, my Lord.

L. H. St. Did my Lord of *Warwick* express any Inclination to go on?

Applegate. Indeed I know not any Thing one Way or other.

L. Jeffreys. My Lords, if I am not mistaken, he did say, that he did not see any Thing of Inclination in my Lord of *Warwick* to go on; but I desire, if your Lordships please, that he may be asked this Question, Whether he did see any Thing in my Lord of *Warwick* that shewed any Inclination to the contrary.

Applegate. All that I can say is, I heard my Lord *Mobun* say, Pray let's go home and lie all together, and let us put off this Business to another Time; but indeed I do not remember that my Lord of *Warwick* said one Word of going any Way backward or forward.

Mr. Att. Gen. Pray, who did my Lord *Mobun* speak these Words to?

Applegate. My Lord *Mobun* spoke them to my Lord of *Warwick* and Captain *Coote*, both.

L. H. St. Mr. Attorney, who is your next Witness?

Mr. Att. Gen. *Peter Catro*. (Who was sworn.)

L. H. St. What do you ask him, Sir?

Mr. Att. Gen. He was the other Chair-man that carried my Lord *Mobun*; Pray, will you give my Lords an Account what you know passed at the Time when you carried my Lord *Mobun* to *Leicester-fields*?

Catro. I and my Fellow carried my Lord *Mobun* from the *Greyhound Tavern* in the *Strand*, till we came to the Turning up of *St. Martins-lane*, where my Lord *Mobun* desired that our three Chairs might stop, and that they might go down to *Westminster*, and that my Lord *Warwick* and Capt. *Coote* would go thither, and he would wait upon them to their Lodging; Capt. *Coote* made Answer again something, but what I cannot tell, and his Chair went on; and my Lord *Mobun* did say, if they went forward, he would follow them, and see what would come of it.

Mr. Att. Gen. What did you see happen while you were in *St. Martins-lane*?

Catro. There were other three Chairs that went by while we stood at the *Cross-Keys Tavern Door*, and Captain *Coote's* Chair going forward, we followed and went to the End of *Leicester-fields*, at *Green-street End*; and there all three went out of their Chairs and walked up the paved Stones of the Square; my Lord of *Warwick* asked my Lord *Mobun* if he had any Silver, and three Shillings were given for the three Chairs, and they went from us, and bid us go about our Business; and in a little while after we heard a Noise from the upper End of the Fields, calling Chairs, again.

Mr. Att. Gen. Did you observe any Thing of Quarrel or Difference between them, or any clashing of Swords?

Catro. Indeed I heard nothing of any Quarrel, for we were at the lower End of the Square, at *Green-street End*; and when we heard them call for Chairs again, we went up towards the upper End of the Fields; and when we came there, we heard one bid us bring up the Chair over the Rails.

Mr. Att. Gen. Who was that?

Catro. Indeed, my Lord, I cannot tell, for I was behind the Chair, and could not see who it was; but we saying that we could not get it over again if we did, we went up to the upper End of the Fields, and there was Captain *French*, I think it was, for I did not perfectly see him, being at the hind-part of the Chair; and we went on to the *Bagnio* in *Long-Acre*; and I did see my Lord *Warwick* come out of his Chair at the *Bagnio Door*, for there they were set down.

Mr. Att. Gen. You say you saw my Lord of *Warwick* at the *Bagnio* Door; Did you see any Sword as my Lord of *Warwick* had, or Captain *French*?

Catro. No, I did not see any Sword at all of either of them.

Mr. Att. Gen. What do you know of Captain *French* his declaring he was wounded?

Catro. I think it was either when he went into the Chair, or in *Newport-street* End, he called out to have the Chair opened; for, says he, I think I am a dead Man, and would have pulled off his Cloaths; and when we were at the *Bagnio* Door, we tarried a pretty while till they got them up to let them in; and asking if we should wait, my Lord of *Warwick* bid us come to that House To-morrow Morning for our Money; and they went in together into the House, but I never heard any one Word of Quarrel or Dissatisfaction passed between them.

Mr. Att. Gen. This Witness speaks to the same Purpose as the other did; and I think we need not trouble your Lordship any further as to that.

L. H. St. Would my Lord of *Warwick* ask him any Questions?

E. of *Warwick*. No, my Lord.

Mr. Att. Gen. Then our next Witness is one *John Palmer*. (*Who was sworn.*)

Mr. Att. Gen. Pray, will you give my Lords an Account, who it was you did carry in your Chair the 29th or 30th of *October* last, and whither you carried him?

Palmer. About one a Clock in the Morning, the 30th of *October*, we were called to the *Greyhound Tavern* in the *Strand* to Mr. *Locket's*, and there we took up a Gentleman, one Captain *French*.

Mr. Att. Gen. Whither did you carry him?

Palmer. He bid us go to *Leicester-fields*.

Mr. Att. Gen. What did he particularly say to you?

Palmer. There were three other Chairs that were just gone before from the same Door, and he bid us get before all those Chairs; and just as we came to *St. Martins-lane* End, we saw there were three other Chairs set down before us over-against the *Cross-keys Tavern* Back-door.

Mr. Att. Gen. Well, what did you do then?

Palmer. So we went before, according as we were bid, unto *Leicester-fields*, and at the upper End of the Fields, by *Leicester-house*, we opened the Door, and Captain *French* came out, and he gave us a Shilling, and we went away about our Business.

Mr. Att. Gen. Were there any more Chairs there that went with you?

Palmer. There were two more Chairs that set down two other Gentlemen by *Leicester-house*, and we came away when we were paid; that is all I know.

Mr. Att. Gen. Did you see any other Chairs besides your three when you came down again, or any other Gentlemen?

Palmer. We did see some Gentlemen walking up about the Middle of the Square when we came down, but we made what Haste we could away home, it being late, on *Sunday* Morning.

Mr. Att. Gen. Did you observe any Fighting when you were in the Field?

Palmer. I did not hear or discern any Fighting while I was there.

Mr. Att. Gen. Did you hear of any Quarrel, or any Thing between any of them, and whom before?

Palmer. No, I did not know of any Quarrel, or hear of any Thing at all, I do assure you.

Mr. Att. Gen. All that he says then, my Lord, is, That he carried Captain *French* to the upper End of *Leicester-fields*, and there he left him.

L. H. St. Would my Lord *Warwick* ask this Witness any Questions?

E. of *Warwick*. I desire he may be asked, whether he knows who were in the Chairs that were in *St. Martins-lane*, when they passed by?

L. H. St. You hear the Questions, What say you to it?

Palmer. There were three Chairs, but who they were that were in them I cannot tell directly; but as they said, when they set them down at *Leicester-fields*, they were my Lord *Warwick*, my Lord *Mobun*, and Mr. *Cote*.

Mr. Att. Gen. Who was it that said so?

Palmer. Some of the other Chair-men when I came by

L. H. St. Mr. Attorney, who is your next Witness?

Mr. Att. Gen. We shall call next the Chair-men that carried Mr. *Dockwra* and Mr. *James*: Call *Jackson* the Chair-man. (*Who was sworn.*)

Mr. Att. Gen. This Man carried Cap. *James*: Pray acquaint my Lords, who you did take up at *Locket's* in the *Strand* on the 29th or 30th of *October* last, and whither you carried him.

Jackson. I carried Captain *James* from *Locket's* in the *Strand* into *Leicester-fields*.

Mr. Att. Gen. How many Chairs were you that went?

Jackson. There were two more that went when I went, there were six in all that took up Gentlemen there, and we were the last but one.

Mr. Att. Gen. Can you tell who were in the other three first Chairs?

Jackson. I do not know who were in the other Chairs, but I heard my Lord *Mobun* at the Door of the House desire, That the Business might be deferred till To-morrow Morning: There were six Gentlemen at the Door, but truly who they all were I cannot tell.

Mr. Att. Gen. Who did my Lord *Mobun* spake that to?

Jackson. Indeed, I do not know who he spoke it to.

Mr. Att. Gen. What Answer was made to my Lord *Mobun*?

Jackson. Truly, there was no Answer that I heard, but we all went away soon after that, and we were bid to go to *Leicester-fields* to follow the other Chairs, and when we came to the other End of *Leicester-fields*, we set down Captain *James* by the *Standard Tavern*, and he gave us a Shilling, and bid us go our Ways; so we went our Way, and I heard nothing afterwards, but came away down the Fields, and there were three Chairs that stood at the Bottom of the Fields; and we asked them, what they stayed there for? And they said, To fill a Pipe of Tobacco: And presently after, we heard call Chairs again; but it was late, and it was *Sunday* Morning, and my Partner said, Let us go away home, and we did so, we went directly home.

Mr. Att. Gen. Did you carry no Body back?

Jackson. No, we carried no Body back.

Mr. Att. Gen. My Lord, we have done with this Witness, our next Witness is one *Richard Edwards*, and he was one of the Chairmen that carried Mr. *Dockwra*. (*He was sworn.*)

Mr.

Mr. Att. Gen. Pray will you acquaint my Lords, Whether you carried any Body from *Lockett's* the 29th of *October*, and who it was, and whither you carried him?

Edwards. I do not know who I carried, but they were calling Coaches at the *Greyhound Tavern* in the *Strand*, and no Coaches coming, they called for Chairs, and so our Chair was brought up.

Mr. Att. Gen. When you came there, who did you see there?

Edwards. Indeed I did not know my Lord of *Warwick*, nor my Lord *Mobun*, nor any of them.

Mr. Att. Gen. Well, What do you know? Tell my Lords what happened.

Edwards. When we were there, there went two into two Chairs; and my Lord *Mobun* said, or another Gentleman, I cannot tell which, that the Chairs should not go away, that they would kill any Man that should go away; and they went out of the Chairs, and went into the House again.

Mr. Att. Gen. And what happened after they went into the House again?

Edwards. After they went out of the Chairs into the House again, as I was told, my Lord of *Warwick*, my Lord *Mobun*, and Mr. *Coote*, went into three Chairs, and went away from the Door; and there were three Chairs of us that went last.

Mr. Att. Gen. Whither did you go with your Chair?

Edwards. We went to the *Standard Tavern* at the End of *Leicester-fields*, and when we came to the Tavern Door, we asked him if we should knock at the Door; he said no, but he gave us a Shilling, and bid us go about our Business; and so we did, for we went sheer away to *Charing-Cross*.

Mr. Att. Gen. Pray can you tell who were in the other Chairs?

Edwards. Truly I cannot tell any Man that was in our three Chairs, for I was the hind-Chairman, and did not know any of them.

Mr. Att. Gen. My Lord, I desire to know what he means by hind-Chairman.

Edwards. My Lord, ours was the last Chair that went to *Leicester-fields*, and I was behind the Chair, and never could see any of them, it being so very dark after they took the Chairs, till we came to *Charing-Cross*, at *St. Martins-lane*; and then I could not see who the particular Persons were that were in the Chairs; nor indeed, whose the Chairs were that carried them.

Mr. Att. Gen. What Hour was it?

Edwards. It was very late, between one and two in the Morning; it was past one before we were called out.

Mr. Att. Gen. You say you went to the upper End of *Leicester-fields*, with two other Chairs; Pray did you see any other Chairs afterwards, and where?

Edwards. We saw three Chairs at the lower End of the Square, as we came down by *Green-street* End, and we asked them, What they stay'd there for, and they said, to light a Pipe of Tobacco.

Mr. Att. Gen. Pray, Who had been carried in those Chairs, Can you tell?

Edwards. I did not see them set down any Body, and I cannot tell who they carried; and as for the Person that we carried, I did not so much as see him to know him, nor know who he was; but we went away as soon as ever we were paid.

Mr. Att. Gen. I have one Question more to ask

you; you say, That my Lord of *Warwick* at the Tavern Door bid you stay, and that none should go away, and swore he would run any Man thro' that should go away?

Edwards. It was my Lord *Mobun*; and then two that had gone into the Chairs, went into the House again.

Mr. Att. Gen. Did not you say, that there was some Talk of going to *Westminster*?

Edwards. My Lord *Mobun* did talk of going to *Westminster*, when they went into the Chairs the second time; and I think I heard Mr. *Coote* say, he would make an end of it then, and he would kill any Man that would not go forwards to *Leicester-fields*.

L. H. St. My Lord *Warwick*, will you ask this Witness any more Questions?

Earl of *Warwick.* No, my Lord.

L. H. St. Mr. Attorney, have you any more Evidence to call?

Mr. Att. Gen. My Lord, the next Piece of Evidence that we should apply our selves to, will be to what happened at the *Bagnio* in *Long-acre*, after my Lord *Warwick* and Captain *French* came there: And the Witness that we shall call is *Pomfret*, and he is a Servant at the *Bagnio* in *Long-acre*, and he will acquaint your Lordships who came thither the 30th of *October* last, and what happened there.

L. H. St. What is his Name?

Mr. Att. Gen. *Henry Pomfret*.

L. H. St. Is he sworn?

Mr. Att. Gen. Yes, my Lord.

L. H. St. What is it that you examine him about? What Questions do you ask him, Mr. Attorney?

Mr. Att. Gen. Who came to his Master's House; and at what Time they came.

Pomfret. My Lord, on *Sunday* the 30th of *October* last, between Two and Three in the Morning, there came to my Master's Door the Earl of *Warwick*, and knocked at the Door, and there was Captain *French* with him; and when they were let in, my Lord of *Warwick* told me that Captain *French* was wounded, and he himself had a Wound, and he desired that my Master might be called up for to dress the Wounds; especially, because Captain *French* was very much wounded, which accordingly was done in about a quarter of an Hour after they were brought in.

Mr. Att. Gen. Did he desire to be concealed when he was come in?

L. H. St. Of whom do you speak, Mr. Attorney?

Mr. Att. Gen. My Lord of *Warwick*.

Pomfret. He did desire, that if any Body asked for him, it should be said he was not there.

Mr. Att. Gen. Pray in what Condition did my Lord of *Warwick* seem to be in at that Time?

Pomfret. He seemed to be very much concerned at that Time, and his Right Hand, in which he had his Sword, and which was drawn, was very much bloody.

Mr. Att. Gen. Was the Sword bloody that he had in his Hand?

Pomfret. The Blade was bloody; but whether it was all over bloody, I cannot tell; there was besides some Blood upon the Shell; it was very near all over bloody, as I remember.

Mr. Att. Gen. Pray, Friend, consider what you swore at the Coroner's Inquest about the Blood upon the Sword.

Pomfret. Indeed I cannot say it was bloody all along the Blade; but there was Blood upon the Shell, and there was Blood upon the Inside, it was so to the best of my Remembrance.

Mr. Att. Gen. What Condition was Mr. *French's* Sword in?

Pomfret. He had a drawn Sword in his Hand, but I did not perceive it had any Blood upon it: it was a large Blade.

Mr. Att. Gen. How do you know what Sort of Sword Mr. *French's* was, and in what Condition it was?

Pomfret. He desired me to take Notice of it next Morning, and I did so; and there was no Blood upon it.

Mr. Att. Gen. How came you to be desired to take Notice of what passed there about the Swords?

Pomfret. My Lord, there was three of them the next Day, and one, it was said, was Mr. *Cooté's*, and another of them was my Lord of *Warwick's*, which I do believe was bloody from the Point upwards, very near; but I cannot directly say but that was afterwards.

Mr. Att. Gen. Who brought in that Sword that you say was Mr. *Cooté's*?

Pomfret. To the best of my Remembrance Captain *Dockwra* brought it in; it was almost half an Hour after my Lord *Warwick* and Captain *French* came into the House, when they came thither.

Mr. Att. Gen. They, Who do you mean?

Pomfret. Captain *James* and he.

Mr. Att. Gen. Were they let in presently?

Pomfret. No, My Lord of *Warwick* had desired that they might be private there; but when they knocked at the Door, my Lord of *Warwick* desired to know who they were; and when it was understood that they were Mr. *James* and Mr. *Dockwra*, they were let in by my Lord's Order.

Mr. Att. Gen. Pray, which of all the Four brought in any Sword in a Scabbard?

Pomfret. It was Captain *Dockwra*.

Mr. Att. Gen. Pray did they appear to be all of a Party?

Pomfret. They were glad to see one another; and they talked a pretty while together, but indeed I cannot say I heard what they talked.

Mr. Att. Gen. Pray, do you remember my Lord of *Warwick's* Sword, and what there was upon it?

Pomfret. It was a Steel Sword, Water-gilt, and as near as I can remember, there was Blood upon it for the most Part from the Point upward.

Mr. Att. Gen. And what did appear upon Mr. *French's* Sword?

Pomfret. There was Water and Dirt, but there was no Blood at all.

Mr. Att. Gen. How long did they stay there?

Pomfret. They all continued about half an Hour, and then went away, all but Mr. *French*, who staid there.

Mr. Att. Gen. What then became of the others?

Pomfret. Mr. *James*, Mr. *Dockwra*, and my Lord of *Warwick*, went away; and my Lord of *Warwick* desired particularly, that we would all take care of Mr. *French*, for he was his particular Friend; and Mr. *French* continued there till Sunday about One of the Clock.

Mr. Att. Gen. Was there any Discourse at that Time about Mr. *Cooté*?

Pomfret. Not, that I heard of, one Word.

Mr. Att. Gen. Was there any Notice taken of

any Quarrel that happened between any Body, and who?

Pomfret. No, indeed, I did not hear them take Notice of any Quarrel at all between any Body.

Mr. Att. Gen. You say Mr. *French*, when he came into your House, was wounded, and there was Care particularly taken of him because he was wounded.

Pomfret. Yes, my Lord of *Warwick* desired to take care of him.

Mr. Att. Gen. Then pray, was there no Discourse how he came to be wounded?

Pomfret. Indeed I do not know how he came to be wounded; nor did I hear one Word of Discourse about it; indeed I cannot say any thing who wounded him.

Mr. Att. Gen. Pray will you recollect yourself, and tell my Lords what sort of Handle had my Lord of *Warwick's* Sword when you saw it.

Pomfret. It had a Steel Handle.

Mr. Att. Gen. Pray can you tell whether the Shell was open or close?

Pomfret. I cannot tell justly; I saw it, and that was all.

Mr. Att. Gen. If I apprehend you, you say my Lord had a Wound in his Hand.

Pomfret. Yes, my Lord, he had so.

Mr. Att. Gen. Pray, in what Hand was it that he was wounded?

Pomfret. To the best of my Remembrance, it was in his Right Hand.

Mr. Att. Gen. Pray did there appear much Blood there?

Pomfret. Yes, my Lord, indeed there did.

Mr. Serj. Wright. You talk of Mr. *James* and Mr. *Dockwra's* Swords; pray in what Condition were they?

Pomfret. Mr. *Dockwra's* Sword was by his Side, and not drawn.

Mr. Serj. Wright. What did you observe of Captain *James's* Sword?

Pomfret. His Sword was naked, and he had lost his Scabbard; but how that came I cannot tell; and there was Dirt on one Side of the Sword; and he said he had left his Scabbard behind him.

Mr. Att. Gen. Was there any Blood upon his Sword?

Pomfret. No, there was no Blood that I did see upon it.

Mr. Att. Gen. Pray did you see any Blood upon Mr. *Dockwra's* Sword?

Pomfret. No, indeed, I did not see Mr. *Dockwra's* Sword, it was in the Scabbard by his Side.

D. of Leeds. My Lords, there has been Notice here taken of several Swords that this Witness saw; and he takes so far Notice of my Lord of *Warwick's* Sword, that he tells you what Sort of Hilt it had, and how it was bloody from the Point to the Hilt; I desire he would give you an Account of the Length and Breadth of the other Mens Swords, Mr. *French*, Mr. *James*, and Mr. *Dockwra's*.

L. H. St. You said just now, that you took Notice of my Lord of *Warwick's* Sword, that it was bloody from the Point to the Hilt; What sort of Sword was it?

Pomfret. It was a pretty broad Sword.

L. H. St. Did you take Notice of the other Swords, what Breadth or Length they were of?

Pomfret. No, my Lord, I did not.

Mr. Att. Gen. Which was that Sword that was dirty, as you say?

Pomfret. That was Captain French's.

Mr. Att. Gen. Was that a broad Sword or not?

Pomfret. No, it was not.

Mr. Att. Gen. Pray was it over Night or next Morning that you saw the Swords?

Pomfret. It was in the Morning about Three a Clock.

Mr. Att. Gen. What time did my Lord of Warwick, and Mr. James, and Mr. Dockwra go away?

Pomfret. My Lord of Warwick and they were gone several Hours before Mr. French; and to the best of my Remembrance, Mr. James broke his Sword upon the Floor after he came in.

Mr. Att. Gen. Pray, what Swords were there in all that you saw there?

Pomfret. There was Captain French's, Captain James's, my Lord of Warwick's, and one Mr. Coote's, as Mr. French said when it was brought in.

L. H. St. Have you done with this Witness, Mr Attorney?

Mr. Att. Gen. Yes, my Lord, we have.

L. H. St. My Lord Warwick, Will you ask him any Questions?

E. of Warwick. No, my Lord.

L. H. St. Then, Mr. Attorney, call your next Witness.

Mr. Att. Gen. Our next Witness is Thomas Goodall, who is a Servant at the Bagnio in Long-Acre, as well as this Man that was last. (He was sworn.)

L. H. St. What Questions do you ask him, Mr. Attorney?

Mr. Att. Gen. My Lord, I desire he would acquaint your Lordships, what Time it was my Lord of Warwick and Capt. French came to his Master's House?

Goodall. It was between One and Two of the Clock in the Morning.

Mr. Att. Gen. My Lord, I desire he would acquaint your Lordships what he saw and knows, that passed at that Time?

Goodall. All that I can say is, That I did see my Lord of Warwick's Sword bloody, and it was naked in his Hand, and I did see a Wound on his Hand: Indeed I did not see him when he first came in, for he had been there a pretty while before I saw him.

Mr. Att. Gen. Pray, in what Condition was my Lord when you saw him?

Goodall. He had his Sword in one Hand, and it was bloody at the Blade, and at the Hilt; but whether it was bloody all over, indeed I did not take notice of it, and so cannot give an Account.

Mr. Att. Gen. Pray, what sort of Sword was it?

Goodall. Indeed I cannot give an Account what sort of Sword it was, but it was either Steel or Silver gilt, as I remember; but I did take notice that there was Blood upon the Hilt, that is, upon the Shell.

Mr. Att. Gen. Was it an open Shell, or a close one?

Goodall. I think it was a close one.

Mr. Att. Gen. Pray, did my Lord of Warwick give any Order to be denied in the House, or for any Concealment there?

Goodall. Indeed I did not hear of any Orders given for Concealing of any Body there; but my Lord walk'd up and down very much concerned,

Mr. Att. Gen. Did not Mr. French come in with him?

Goodall. I do believe he might: But I cannot say I saw him when he came in.

Mr. Att. Gen. Can you tell when Mr. James and Mr. Dockwra came in? How long was that after my Lord of Warwick was there, and Mr. French?

Goodall, to the best of my Remembrance and Knowledge, it was half an Hour after my Lord of Warwick and Mr. French came, that Mr. James and Mr. Dockwra came: I am sure it was so before I saw them in the House; but indeed I cannot say directly when they came in, or when they went out.

Mr. Att. Gen. Pray, which Hand of my Lord of Warwick was it that was hurt; the Right or the Left?

Goodall. Indeed, I cannot positively say; but I think it was the Right Hand.

Mr. Att. Gen. You talk of my Lord of Warwick's Sword; Did you take any notice of Mr. French's Sword?

Goodall. No, indeed; I was busy about the Affairs of the House; I did see my Lord of Warwick's Sword, but that was by Chance, and it was bloody at the Hilt, and upon the Blade; but whether it were all over bloody, indeed I cannot tell.

Mr. Att. Gen. I desire to ask him, Whether he can tell who brought in Mr. Coote's Sword thither?

Goodall. Indeed I cannot.

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

Mr. Att. Gen. No, my Lord, not I.

L. H. St. My Lord of Warwick, Will you ask him any Questions?

Earl of Warwick. No, my Lord.

L. H. St. Mr. Attorney, Who is your next Witness?

Mr. Att. Gen. My Lord, our next Witness is Mrs. A. Goodall, this Man's Wife, (Who was sworn)

L. H. St. What Questions do you ask this Gentlewoman?

Mr. Att. Gen. I desire that she would acquaint your Lordships, Whether she was at the Bagnio in Long-acre when my Lord of Warwick and Captain French came in?

A. Goodall. I was there when my Lord of Warwick came in.

Mr. Att. Gen. Was Captain French with him?

A. Goodall. Yes, Captain French was with him.

Mr. Att. Gen. About what a Clock was it that they came there?

A. Goodall. It was about Two a Clock, as near as I can remember.

Mr. Att. Gen. In what Condition were they when they came in, pray?

A. Goodall. Mr. French was very much wounded.

Mr. Att. Gen. Pray, how was my Lord of Warwick?

A. Goodall. My Lord had his Sword in his Hand, and it was very bloody, both at the Hilt, and upon the Blade.

Mr. Att. Gen. Did you observe any Wound that my Lord had?

A. Goodall. I think, to the best of my Remembrance, my Lord had his Hand wrapped up in a Handkerchief, which was bloody; but I was busy

up and down in the House, and I cannot so well tell what Hand it was; I was indeed up and down there while they were there.

Mr. *Att. Gen.* Do you know of any Orders that were given by my Lord of *Warwick* to be concealed while he was there?

A. *Goodall.* He did desire the Door might not be opened to any Body that asked for him, and that it might not be said that he was there; and when the other two Gentlemen came to the Door, he went to the Door himself, and when he saw who they were, he ordered them to be let in.

Mr. *Att. Gen.* What was the Occasion of his going to the Door himself?

A. *Goodall.* There was a knocking at the Door, and he had a mind to know who it was; and when it did appear it was Mr. *James* and Mr. *Dockwra*, he himself ordered them to be let in.

Mr. *Att. Gen.* How came the Door to be open to them?

A. *Goodall.* Indeed I think he opened it himself.

Mr. *Att. Gen.* How long was that after he and Capt. *French* came in?

A. *Goodall.* It was about half an Hour.

Mr. *Att. Gen.* When they first came in, what Posture were they in? Had they any Swords in their Hands?

A. *Goodall.* I did not positively take notice, whether they had any Swords in their Hands, nor what they had when they came in.

Mr. *Att. Gen.* What became of them afterwards?

A. *Goodall.* My Lord of *Warwick*, Mr. *James*, and Mr. *Dockwra*, went away within a little while, and my Lord of *Warwick* ordered particular Care to be taken of Mr. *French*, as his Friend, and he was put to Bed after his Wounds were dressed; but I cannot tell what afterwards became of my Lord *Warwick*, and the other Gentlemen.

Mr. *Att. Gen.* I think you were saying, that my Lord of *Warwick* was wounded in the Hand; which Hand was it?

A. *Goodall.* I cannot positively say, whether it was the Right or the Left.

L. H. *St.* Will you who are of the King's Counsel, ask this Witness any further Questions?

Mr. *Att. Gen.* No, my Lord, we shall ask her no other Questions.

E. of *Warwick.* No, my Lord, nor I.

Mr. *Att. Gen.* Then our next Witness is *Henry Amy*, who is a Surgeon, and lives at the *Bagnio* in *Long-acre*; and he will give your Lordship an Account what passed within his Knowledge at this time within his House, and who came thither wounded, and what particular Care was ordered to be taken of Mr. *French*, and by whom.

(*Mr. Amy was sworn.*)

Mr. *Att. Gen.* I desire you will give an Account to my Lords what happened at your House early in the Morning, the 30th of *October* last.

Amy. The 30th of *October* last, about Two of the Clock, I was knock'd up out of my Bed to attend two Gentlemen, my Lord *Warwick* and Captain *French*, who came then into my House.

Mr. *Att. Gen.* In what Condition were they?

Amy. They were both wounded; Mr. *French* very much, and my Lord of *Warwick* in his Hand.

Mr. *Att. Gen.* Did you see any Swords?

Amy. Yes; they had both Swords in their Hands, and my Lord of *Warwick's* Sword was very bloody.

Mr. *Att. Gen.* Well, Sir, when they came into your House, what Directions was given by my Lord *Warwick*?

Amy. He gave Directions, if any Body should ask for him, they should say he was not there.

Mr. *Att. Gen.* Did any Body come and ask for him?

Amy. While we were taking care of Mr. *French*, and dressing his Wound, there were some Persons came and knocked at the Door, and my Lord of *Warwick* did order, that no Body should be let in; but he himself went to the Door, and when he found that it was Mr. *Dockwra* and Mr. *James*, my Lord *Warwick* ordered that they should be let in.

Mr. *Att. Gen.* Pray tell my Lords what followed after that?

Amy. After we had dressed Mr. *French*—

Mr. *Att. Gen.* By the Way, was there any particular Directions, and by whom, to take care of Mr. *French*?

Amy. Yes, my Lord *Warwick* desired me to take care of him, as his particular Friend.

Mr. *Att. Gen.* Well then, after you had dressed Mr. *French's* Wound, what happened?

Amy. I dressed my Lord *Warwick's* Wound.

Mr. *Att. Gen.* Pray, whereabouts was my Lord of *Warwick's* Wound?

Amy. It was near the first Joint of his Forefinger.

Mr. *Att. Gen.* Pray how long did they stay there?

Amy. After Mr. *Dockwra* and Mr. *James* came in, and my Lord's Hand was dressed, they stayed a little while, and they Three went away.

Mr. *Att. Gen.* What was said when they went away?

Amy. My Lord of *Warwick* desired to have great care taken of Mr. *French*; and they said, Now let us go away, and they went away.

Mr. *Att. Gen.* Pray, what Time did they stay in your House?

Amy. When they went away, I think it was about half an Hour after they first came in.

Mr. *Att. Gen.* Did you take notice of no Sword but my Lord of *Warwick's*?

Amy. No, not then.

Mr. *Att. Gen.* Did you afterwards?

Amy. Afterwards in the Morning, Mr. *French* called for his Sword, and I looked upon it.

Mr. *Att. Gen.* Pray, in what Condition was his Sword? Was it bloody?

Amy. It was without Blood, only a little dirty.

Mr. *Att. Gen.* Pray, did you observe that they talked of any Quarrel that had been between Captain *French* and my Lord, when they came in?

Amy. No.

Mr. *Att. Gen.* Did you ask them any Questions about it, the one or the other of them?

Amy. No, I did not.

Mr. *Att. Gen.* Did you hear them say, how they came by their Wounds?

Amy. No, I did not.

Mr. *Att. Gen.* Did you hear them talk of any Body being killed, particularly Mr. *Coote*?

Amy. I did not know of any Body being killed till next Day.

Mr. Att. Gen. Did you take any notice of *James's* and *Dockwra's* Swords?

Amy. Truly, I took no notice of any Swords but my Lord *Warwick's*, while my Lord *Warwick* was there in the House; but the next Morning *Mr. French* gave me his Sword, and there was another Sword there, which *Mr. French* told me was *Capt. Coote's* Sword.

Mr. Att. Gen. When was that; how long after my Lord of *Warwick*, and *James*, and *Dockwra*, were gone away?

Amy. It was some Hours after.

Mr. Att. Gen. When did you hear of *Mr. Coote's* being killed?

Amy. About Nine a Clock next Morning I heard of *Mr. Coote's* being killed.

Mr. Att. Gen. Whom did you hear it from?

Amy. From *Pomfret* my Servant.

Mr. Att. Gen. Did you hear no Discourse between my Lord of *Warwick*, *Capt. French*, *Mr. James*, and *Mr. Dockwra* about it?

Amy. No, I did not.

Mr. Att. Gen. Did they not talk how those Wounds came they had, nor did not you ask who gave them?

Amy. No, I did ask no Question of either of them: And in half an Hour after they came in, my Lord of *Warwick* and the other two Gentlemen went away.

Mr. Att. Gen. When they left *French* there, what Orders were left about him?

Amy. Only to take care of him, my Lord of *Warwick* desired that.

Mr. Att. Gen. What Reason did my Lord give for that?

Amy. I heard nothing of Reason, only that he was his particular Friend.

Mr. Att. Gen. Did you hear them talk any Thing, whither they would go, when they went away.

Amy. I did hear some Talk about going into the Country.

Mr. Att. Gen. Do you know whither they went, when they went away from your House?

Amy. No, indeed I did not.

Mr. Att. Gen. My Lord, we have done with him.

L. H. St. My Lord *Warwick*, Will your Lordship ask this Witness any Questions?

Earl of Warwick. I desire to have him asked, Whether I was not wounded in the Hand.

Amy. His Hand was very bloody, the Handkerchief that was about it was wet with the Blood.

Earl of Warwick. I desire to ask him, when it was that he saw *Capt. French's* Sword?

Amy. It was not before the Morning; it was about Nine a Clock, as I remember.

M. of Norm. Before this Witness goes away, I desire he may be asked one Question, Whether he can tell the Size of *Mr. French's* Sword?

L. H. St. Here is a noble Lord that desires to know, if you can tell about *Capt. French's* Sword, what sort of Sword it was?

Amy. As to the Blade, it was a middle-siz'd Sword.

M. of Norm. Was it a broad Blade or no?

Amy. No, my Lord, it was not a broad Blade.

L. H. St. *Mr. Attorney*, Who is your next Witness?

Mr. Att. Gen. *Capt. Loftus Duckinfield.* (Who was sworn.)

Mr. Att. Gen. This Gentleman will acquaint your Lordships what Discourse past between these Gentlemen the next Day; pray Sir, acquaint my Lords what you heard about *Mr. Coote's* Death, and when, and where.

Capt. Duck. Early in the Morning I was told of this Accident.

Mr. Att. Gen. By whom?

Capt. Duck. One of the Company, I cannot tell who, I think they were all together then, my Lord of *Warwick*, *Captain James*, *Captain Dockwra*, and no Body else.

Mr. Att. Gen. What was their Discourse?

Capt. Duck. They said, they believed *Captain Coote* was killed.

Mr. Att. Gen. Did they tell you by whom?

Capt. Duck. By *Mr. French*, every Body did say he was his Adversary.

Mr. Att. Gen. What Account was given of the Action?

Capt. Duck. They said it was done in the Dark, and *Capt. French* was his Adversary.

Mr. Att. Gen. Was there any notice taken of any Duel?

Capt. Duck. Yes, there was, between those two, and the other Persons on both Sides; and it was said my Lord of *Warwick* was Friend to *Mr. Coote*, and my Lord *Mobun*.

Mr. Att. Gen. Who were on the other Side?

Capt. Duck. *Mr. Dockwra* and *Mr. James*.

Mr. Att. Gen. Was there any Discourse, who actually fought?

Capt. Duck. It was said, that *Captain French* fought with *Captain Coote*, as they believed, and *Mr. James* with my Lord of *Warwick*.

Mr. Att. Gen. Did you see my Lord of *Warwick's* Sword?

Capt. Duck. Some Time of the Day I did, but I cannot tell whether it was in the Morning, or no.

Mr. Att. Gen. In what Condition was it, was it bloody or not?

Capt. Duck. It was a Steel Sword.

Mr. Att. Gen. How long did they stay with you?

Capt. Duck. About half an Hour.

Mr. Att. Gen. Did they come publickly?

Capt. Duck. We went away in a Hackney Coach together.

Mr. Att. Gen. Pray, what Discourse was there about consulting to go into the Country together?

Capt. Duck. That might be discoursed, but by whom I cannot tell.

Mr. Att. Gen. Did my Lord of *Warwick* talk of going into the Country?

Capt. Duck. Whether the Company talked of it, or my Lord of *Warwick* in particular, and the rest assented to it, I cannot well tell.

Mr. Att. Gen. Whither did they go?

Capt. Duck. I cannot directly tell.

Mr. Att. Gen. What Time of the Day was it?

Capt. Duck. It was about six of the Clock.

Mr. Att. Gen. Cannot you tell whither they went?

Capt. Duck. *Capt. James*, and *Capt. Dockwra* went to the *Ship and Castle* in *Cornhill* about five a Clock or six, as near as I can remember.

Mr. Att. Gen. Can you tell what Time my Lord of *Warwick* went away?

Capt. Duck. No, I cannot tell what Time he went away, not directly.

Mr.

Mr. Att. Gen. Can you tell of any Agreement amongst them, whither they were to go?

Capt. Duck. No, I cannot.

Mr. Att. Gen. What Discourse or Concern did you observe past between them, concerning Captain Coote?

Capt. Duck. My Lord of Warwick shewed a great deal of Concern for his Friend Mr. Coote.

Mr. Att. Gen. Had you any Notice of Mr. Coote's Death amongst you?

Capt. Duck. We had Notice before we went away, but I cannot tell whether it was before my Lord of Warwick was gone.

Mr. Att. Gen. Was it after the Discourse of going into the Country, or before?

Capt. Duck. Indeed, I cannot directly say when it was.

Mr. Att. Gen. Pray, what Reason was there for their going into the Country before he was dead?

Capt. Duck. They believed he was dead.

Mr. Att. Gen. Cannot you tell the Reason why they would go into the Country?

Capt. Duck. No, indeed, I cannot tell the Reason.

Mr. Att. Gen. Did you observe my Lord of Warwick's Sword? Was there any Blood upon it?

Capt. Duck. I cannot say his Sword was bloody at the Point; the whole Blade and Shell was bloody to the best of my Remembrance.

Mr. Att. Gen. What Sort of Sword was it?

Capt. Duck. It was a pretty broad Blade, a hollow Blade, and a hollow open Shell

Mr. Att. Gen. Was there any Discourse concerning Captain French?

Capt. Duck. Yes, they thought he was very ill wounded.

Mr. Att. Gen. Was there any, and what Discourse, who should give my Lord of Warwick his Wound?

Capt. Duck. It was said, they believed Capt. James gave my Lord his Wound.

Mr. Att. Gen. Pray, was there any Blood upon Mr. James's Sword, or was he wounded?

Capt. Duck. I saw no Wound upon Capt. James, that I know of.

L. H. St. Do you believe that my Lord Warwick's Sword was bloodied with the Hurt of his own Hand, or any otherwise?

Capt. Duck. I cannot tell; it was a Cut-shell, and the Outside bloody as well as the In.

L. H. St. My Lord Warwick, Will your Lordship ask this Witness any Questions?

Earl of Warwick. No, my Lord.

L. H. St. Mr. Attorney, if you have any other Witnesses, pray call them.

Another Witness was produced, that belonged to the Ship and Castle in Cornhill.

Mr. Att. Gen. This Man will give you an Account what passed at his House at that Time, and between whom; Pray will you tell my Lords who was at your House the 30th of October last, and what past there then?

Witness. My Lord of Warwick, Capt. James, and Captain Dockwra; and when my Lord of Warwick came in, I thought my Lord was in a very great Concern, and called for Pen, Ink, and Paper, and I feared there was some Quarrel in hand, but they said no, the Quarrel was over, and says my Lord of Warwick, I am afraid poor Coote is killed.

Mr. Att. Gen. Did you observe any Desire to be private?

Witness. No indeed, I cannot tell that.

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

Witness. About six a Clock my Lord of Warwick, and Capt. James, and Capt. Dockwra, and Captain Duckinfield went away.

Mr. Att. Gen. Can you tell who went with my Lord Warwick?

Witness. No indeed, I cannot tell who went with my Lord Warwick; there came in a Gentleman in black, whom I knew to be my Lord of Warwick's Steward, and he came and spoke some Words to my Lord of Warwick, about a Quarter of an Hour after they came in, and then they went away, for after that I did not hear any farther Discourse.

Mr. Att. Gen. What became of the rest of the Company?

Witness. They went away; I do not know what became of them, nor whither they went; some of them went in and out of one Room into another several Times, two or three Times, and came out again.

Mr. Att. Gen. My Lord, we have done with this Witness.

L. H. St. My Lord Warwick, Will you ask him any Questions?

E. of Warwick. No, my Lord.

L. H. St. Mr. Attorney, who is your next Witness?

Mr. Att. Gen. Mr. Salmon the Surgeon, who by the Coroner's Order searched the Wound. (*Who was sworn.*)

Mr. Att. Gen. Pray, Sir, was you ordered by the Coroner to view the Body of Mr. Coote?

Salm. Yes, I was ordered by the Coroner to inspect the Body of Capt. Coote, and to give the Jury an Account of the Nature of the Wounds.

Mr. Att. Gen. Pray, upon the View of the Body, what Wounds had he?

Salm. There was two Wounds; one on the Breast near the Collar-bone, running downwards very Deep.

Mr. Att. Gen. Pray, what Part of the Breast was it, and how deep was it?

Salm. It was on the left Part of the Breast near the Collar-bone, and it penetrated four or five Inches.

Mr. Att. Gen. Can you guess at what Sort of Sword it was that made the Wound?

Salm. No indeed, Sir, I cannot.

Mr. Att. Gen. Was it a broad Sword, or a little Sword?

Salm. The Orifice was about the length of half an Inch, and about the depth of five Inches.

Mr. Att. Gen. Was that made with a broad Sword, or with a narrow Sword?

Salm. Indeed, I cannot tell.

Mr. Att. Gen. You say he had another Wound; where was that?

Salm. That was on his left Side too, near unto the short Ribs, under the last Rib; which was about the length of an Inch, and of the depth of six Inches, and it run through the Diaphragma.

Mr. Att. Gen. Did you take one of those Wounds, or both of them to be mortal?

Salm. I did look upon either of them to be mortal, and to be the Occasion of his Death.

Mr. Att. Gen. Can you tell, whether they were both made with one and the same Sword?

Salm.

Salm. Indeed I cannot tell that, whether they were made with one Sword, or two.

Mr. Att. Gen. Cannot you tell how they appeared to be? I suppose you probed them.

Salm. Yes, I probed them both; one was quite through the Diaphragma.

Mr. Att. Gen. What Time was it that you viewed the Body by the Order of the Coroner?

Salm. I saw the Body at Seven a-Clock on Sunday Night.

Mr. Att. Gen. If my Lord of *Warwick* desire to ask him any Questions, he may.

E. of Warw. My Lord, I desire to ask him, whether any of the Wounds were large enough to be made by a Sword run up to the Hilt?

Salm. No, my Lord, sure they were not.

E. of Warw. My Lord, I desire to know of him, whether both these Wounds were given before or behind?

Salm. I can only tell you the Length and Depth by following of the Probe: the one was downwards, and the other upwards.

Mr. Att. Gen. Do you suppose both those Wounds were given when the Person was standing, backward or forward?

Salm. 'Tis impossible to tell how they were given, because of the Variety of the Postures of the Body in the divers Capacities thereby of receiving the Wounds?

Mr. Att. Gen. Pray, can you tell whether they were given by one and the same Sword or no?

Salm. Indeed I cannot tell.

Mr. Att. Gen. Do you know any Thing to the contrary?

Salm. I cannot say any Thing for it, or against it.

E. of Kingston. My Lords, this Witness, if I apprehend him right, says, the Wound on his Side was a large Wound.

Salm. Yes, a very large Wound, of the Length of about three quarters of an Inch at the Orifice, and five or six Inches deep.

E. of Kingston. I desire he may tell whether that Wound could be given by any other than a broad Sword?

Salm. I cannot tell that.

E. of Rochester. Indeed, my Lords, I would have him asked this Question again; I know not whether he can answer it or no; but I cannot but think it is proper to have some Account of this Matter. In all Enquiries before the Coroner, there is a Judgment to be made of the Nature of the Wound, in order to form the Indictments, and that the Jury may know with what sort of Weapon it was made; and it is his Profession, as a Surgeon, to know such Matters.

L. H. St. *Mr. Salmon,* you hear what is required of you by my noble Lords, and the Observation which is made. You are the Surgeon sent for by the Coroner on Purpose to inspect this Body; and when you did so, it was incumbent upon you to consider and give Information, as well with what sort of Instrument the Wound was given, as the Length and Depth of the Wound, that the Jury might consider upon all the Circumstances of the Occasion, and Manner of the Party's Death: And my Lords would know, whether by the Orifices of the Wounds, when you inspected them, you can make a Judgment, if they were made by several Swords, or the same Sword.

Salm. I cannot say that I saw any Difference between the Orifices, as to the Nature of the In-

strument they were given with, nor whether they were made by one and the same Sword or no; only the one Orifice was bigger than the other; that of the Side was bigger than that at the Collar-bone.

L. H. St. Then so far we have Light (if I apprehend you rightly) the Orifice of the upper Wound was not near so wide as that of the lower; but it seems to be much, in one of your Profession, not to be able to judge whether the Wounds were given with the same sort of Sword, when there was such a Difference in the Orifices.

Salm. That below was a deeper Wound; and there was a considerable Difference between the Largeness of one and the other.

Lord Audley. My Lords, I desire he may tell your Lordships how far backward the Wound in the Side lay.

Salm. It was directly on the left Side, immediately under the two last Ribs, and past through the Diaphragma.

M. of Normanby. Pray, my Lords, let him point with his Finger whereabouts it was.

L. H. St. My Lords would have you shew them with your Finger whereabouts it was. (*Which he did.*)

E. of Warw. It is a very material Question for me, that he should answer, whether he did believe that one and the same Sword might not give both Wounds.

Salm. I cannot say any Thing of it one Way or other; but one Wound went much further than the other, because it was in a fleshy Part; and in such a Case, the further the Sword goes in, it makes the Wound larger.

Mr. Att. Gen. Then our next Witness is *Stephen Turner*, who was *Mr. Coote's* Man; and he will give you an Account what Sword his Master had, and where he found it.

[*He was sworn, a Sword was shewn him.*]

Turner. This was my Master's Sword, *Mr. Coote's*, and I never saw it after he went out in the Morning, till I saw it in the Hands of the Constable, and afterwards before the Coroner.

Mr. Att. Gen. What Time did you hear of your Master's Death?

Turner. It was about nine a Clock next Morning that I heard he was dead.

Mr. Att. Gen. Where was your Master's Body?

Turner. It was in *St. Martin's-Lane*.

Earl of Tankerville. I would desire he might be asked one Question, Whether his Master used his Left-hand or his Right?

Turner. I do believe he was a right-handed Man. I did never see him fence. It was on the Sunday Morning that I went to the Round-house, where I found my Master dead.

Earl of Warwick. I desire he may be asked, Whether he has not observed a particular Kindness and Friendship between his Master and me?

Turner. Yes, my Lord: I have several Times waited upon my Master, when my Lord and he was together, and they were always very civil and kind one to another; and I never heard one Word of any Unkindness between them.

Earl of Warwick. Whether he knows of any Quarrel that was between us?

Turner. No, I never did.

Earl of *Warwick*. I desire he may be asked, Whether he did not use to lie at my Lodgings sometimes?

L. H. St. You hear my Lord's Question; What say you, Did your Master use to lie at my Lord of *Warwick's* Lodgings at any Time?

Turner. Yes; very often.

Mr. Att. Gen. Pray call *Pomfret* again, and let him see the Sword.

[*Then he came in, and two Swords were shewn him.*]

Mr. Att. Gen. I desire he may acquaint your Lordships what he knows of those two Swords.

Pomfret. These two Swords were brought in by some of the Company that came to my Master's House, and when they were shewn to Captain *French* in the Morning, he owned this to be his, and the other to be *Mr. Coote's*; and he desired that Notice might be taken that his Sword was dirty, but not bloody; and there was some Blood upon the other.

Mr. Att. Gen. Who brought in *Mr. Coote's* Sword?

Pomfret. Indeed I cannot tell.

Mr. Att. Gen. Then our last Piece of Evidence, my Lord, will be that of *Mr. White* the Coroner.

(*Who was sworn.*)

L. H. St. What do you ask him, *Mr. Attorney*?

Mr. Att. Gen. From whom had he these Swords?

(*The Swords were shewn him.*)

White. May it please your Grace, these Swords were delivered to me by the Constable.

Mr. Att. Gen. My Lords, I desire he may be asked, Whether, upon his View of the Body, he looked upon the Wounds; and, Whether he did apprehend they were given by one and the same Sword.

White. May it please your Grace, when I had sworn my Inquest, I sent for the Surgeon that was here before, and gave him Order to probe the Wounds, that the Jury might know the Nature of them, in order to the drawing up the Inquisition; and I did expressly ask him, Whether he found any such Distinction between them, that they were given by one and the same Weapon, or different Weapons: He said, as he says now, That he could not tell, Whether the Wounds were given by two Swords, or by one; but he did apprehend there was a great Difference between them, and so did I; but generally the Orifice of a Wound does close up when the Body is cold: One of the Wounds were nearer the Left Side than the other; to the best of my Remembrance, it was almost behind him.

Mr. Att. Gen. We have done with our Evidence, until we hear what my Lord of *Warwick* says to it.

L. H. St. My Lord of *Warwick*, will you ask this Witness any Questions?

Earl of *Warwick*. No, my Lord.

L. H. St. Make Proclamation for Silence.

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

Serj. at Arms. O yes, O yes, O yes, His Grace, my Lord High Steward of *England*, does strictly

charge and command all Manner of Persons here present, to keep Silence, upon Pain of Imprisonment.

L. H. St. My Lord of *Warwick*, the King's Counsel have made an End of giving Evidence for the King; now is the proper Time for you to enter upon your Defence.

E. of Warwick. May it please your Grace, and you my noble Lords, my Peers,

I stand here before your Lordships, accused of the Murder of *Mr. Coote*, of which I am so innocent, that I came and voluntarily surrender'd myself, so soon as I heard your Lordships might be at leisure to try me; and had sooner done it, but that the King was not then here, nor your Lordships sitting, and had no Mind to undergo a long Confinement; and now I think I might well submit it to your Lordships Judgment, even on the Evidence that has been offered against me, whether there hath been any Thing proved of Malice pro-pense, or my being any Actor therein, so as to ad-judge me guilty. And I think I may with humble Submission to your Lordships say, that my Innocence appeareth even from several of the Wit-nesses who have been examined against me, which I will not trouble your Lordships to repeat, but submit to your Memory and Observation.

But, my Lords, the Safety of my Life does not so much concern me in this Case, as the Vindica-tion of my Honour and Reputation, from the false Reflections to which the Prosecutor has en-deavoured to expose me; and I shall therefore beg your Lordships Patience to give a fair and full Ac-count of this Matter; In which the Duty I owe to your Lordships, and to Justice in general, and the Right I owe to my own Cause in particular, do so oblige me, that I will not in the least prevar-icate, neither will I conceal or deny any Thing that is true.

My Lords, I must confess I was there when this unfortunate Accident happen'd, which must be a great Misfortune in any Case, but was more so to me in this, because *Mr. Coote* was my particu-lar Friend, and I did all I could to hinder it, as your Lordships may observe by the whole Pro-ceedings.

It was on the *Saturday* Night when my Lord *Mobun* and I, and several other Gentlemen, met at *Locket's*, where the same Company used often to meet; and in some Time after several of us had been there, *Mr. Coote* came unexpectedly, and for some time he and we were very friendly, and in good Humour, as we used to be with each other; But then there happen'd some reflecting Ex-pressions from *Mr. Coote* to *Mr. French*, who there-upon called for the Reckoning; and it being paid, we left the upper Room, and I propos'd to send three Bottles of Wine to my own Lodging, and to carry him thither to prevent the Quarrel. But while the Company stop'd to call for a Glas of Ale at the Bar below, *Mr. Coote* (whose unfortu-nate Humour was sometimes to be quarrellome) did again provoke *Mr. French* to such Degree, that they there drew their Swords, but we then pre-vented them of doing any Mischief; then *Mr. Coote* still insisting to quarrel further with *Mr. French*, my Lord *Mobun* and I propos'd to send for the Guards to prevent them: But they had got Chairs to go towards *Leicester-fields*, and my Lord *Mobun* and I, as Friends to *Mr. Coote*, and intending to prevent any hurt to him, did follow him in two other Chairs, and as he was going up *St. Martins Lane*, stop'd

stop'd him, and I extremely there pressed him to return and be Friends with Mr. *French*, or at least defer it, for that the Night was very dark and wet; and while we were so perswading of him, Mr. *French* in one Chair, and Mr. *James* and Mr. *Dockwra* in two other Chairs past by us, (which we guess'd to be them) on which Mr. *Coote* made his Chairmen take him up again, and because the Chairmen would not follow Mr. *French* faster, threaten'd to prick him behind, and when we were got to *Green-street*, and got out of our Chairs, Mr. *Coote* offer'd half a Guinea to be changed to pay for all our three Chairs, but they not having Change, he desired Lord *Mobun* to pay the three Shillings, which he did. And in a few Minutes after, Mr. *Coote* and Mr. *French* engaged in the Fields, whither I went for the Assistance and in Defence of Mr. *Coote*, and received a very ill Wound in my right Hand; and there this fatal Accident befel Mr. *Coote* from Mr. *French*, whom Mr. *Coote* had dangerously wounded, and I must account it a great Unhappiness to us all who were there: But so far was I from encouraging of it, that I will prove to your Lordships that I did my utmost Endeavours to prevent it; so far from any Design upon him, that I expos'd my own Life to save his; so far from propense Malice, that I will by many Witnesses of good Quality and Credit, prove to your Lordships a constant good and uninterrupted Friendship, from the first of our Acquaintance to the Time of his Death; which will appear by many Instances of my frequent Company and Correspondence with him, often lending him Money, and paying his Reckonings, and about two Months before his Death lent him an hundred Guineas towards buying him an Ensign's Place in the Guards, and often, and even two Nights before this, he lodged with me, and that very Night I paid his Reckoning.

And when I have proved these Things, and answered what has been said about the Sword, and what other Objections they have made, I doubt not but that I shall be acquitted to the entire Satisfaction of your Lordships, and all the World that hear it.

Before I go upon my Evidence, I will crave leave further to observe to your Lordships, that at the *Old Baily*, when I was absent, Mr. *French*, *James* and *Dockwra*, have been all tried on the same Indictment now before your Lordships, and it was then opened and attempted, as now it is, to prove it upon me also; and by most of them the same Witnesses who have now appeared; and they were thereupon convicted only of Manslaughter, which could not have been, if I had been guilty of Murder. And on that Trial it plainly appeared that Mr. *French* was the Person with whom he quarrelled, and who killed him. And now I will call my Witnesses.

L. H. St. Will your Lordship please to go on to call your Witnesses, for the Proof of what you have said; that is the Method, and then you are to make such Observations as you please.

E. of War. My first Witness is Captain *Edmund Keeting*, who was with me at *Locket's*, but went away before Captain *Coote* or any of them came; and he will tell you I was with him a while.

Then Captain Keeting stood up.

L. H. St. Captain *Keeting*, you are not upon your Oath, because the Law will not allow it. In Cases

of this Nature the Witnesses for the Prisoner are not to be upon Oath; but you are to consider that you speak in God's Presence, who does require the Truth should be testified in all Causes before Courts of Judicature, and their Lordships do expect that in what Evidence you give here, you should speak with the same Regard to Truth as if you were upon Oath; you hear to what it is my Lord of *Warwick* desires to have you examined, what say you to it?

Captain Keeting. My Lord, I will tell your Lordship all the Matter I know of it. I met with my Lord of *Warwick* that Evening at *Tom's Coffee-House*, and we continued there till about eight at Night; I went away to see for a Gentleman that owed me Money, and afterwards I went to *Locket's*, and while I was there, the Drawer came up and told me my Lord of *Warwick* desired to speak with me, and when he came up into the Room, he said he was to meet with my Lord *Mobun* there and Captain *Coote*, and he asked me if I knew where Captain *French* and Capt. *James* were; I told him I dined with Capt. *Coote* at *Shuttleworth's*; and in a while after Capt. *Coote* came in, and about an Hour and an half, I think, I continued there, and Capt. *French* came in; Captain *Dockwra* and we drank together for an Hour and an half, and they admired about ten a-Clock that my Lord *Mobun* was not come, and I payed my Reckoning, not being very well, and away I went home; Mr. *James* came in just before I went away, but there was no Quarrelling, nor any Thing like it before I went away.

E. of Warw. My Lord, I desire he may be asked, Whether we did not usually meet there as Friends, especially Capt. *Coote* and I.

Capt. Keeting. Captain *Coote* and my Lord of *Warwick* used to be almost every Day together at that Place.

E. of Warw. Pray, did he ever know or observe any Difference or Quarrel between Captain *Coote* and me?

Capt. Keeting. No, my Lord, I never saw any Thing but the greatest Friendship between my Lord of *Warwick* and Captain *Coote* that could be; I was with them and saw them together almost every Day.

L. H. St. Have you any Thing further to examine this Witness to?

E. of War. No, my Lord, I have no other Question to ask him.

L. H. St. Who is your next Witness, my Lord?

E. of War. My Lord, I suppose I shall not need to trouble you to examine the Chairmen over again; your Lordships have heard what they can say: I desire Colonel *Stanhope* may be called.

Who it seems stood by the Chair of State, and it was some while before he could get round to come to the Place where the Witnesses were to stand.

L. H. St. While this Witness gets round, if your Lordship has any other Witness ready to stand up, pray let him be called.

E. of Warwick. To prove the Kindness between Captain *Coote* and me, I desire Colonel *Blisset* may be called.

Who stood up.

L. H. St. What is it your Lordship asks this Witness, or calls him to?

E. of Warw. To testify what he knows of any Kindness or Unkindness between Captain *Coot*e and me; whether he has not been often in our Company?

L. H. St. Have you been often in Company with my Lord of *Warwick* and Captain *Coot*e?

Col. Blisset. Yes, my Lord, I was very well acquainted with both of them for a Twelve-month past before this Accident, and I have often been in their Company, and I always observed that there was a great deal of Friendship and Kindness between them.

E. of Warwick. My Lord, I desire he may tell any particular Instance that he knows or can remember.

Col. Blisset. I remember when Captain *Coot*e had his Commission in the Regiment of Guards, he was complaining of the Streightness of his Circumstances; he was to pay for his Commission 400 Guineas, and said he had but 300 for to pay for it, and my Lord of *Warwick* did then say to him, do not trouble your self about that; or let not that disturb you, for I'll take care you shall have 100 Guineas, and he said he would give Order to his Steward to pay him so much; and I was told afterwards that he did so.

E. of War. I desire he may tell, if he knows of any other particular Instances of my Friendship to Mr. *Coot*e.

Col. Blisset. Once when he was arrested by his Taylor for 13*l.* my Lord lent him five Guineas, and used very frequently to pay his Reckoning for him.

E. of Warw. I desire he may tell, if he knows any Thing else; and whether he has not lain at my Lodgings, and particularly but some small Time before this Accident happened.

Col. Blisset. About ten Days before this unhappy Accident happened, I was at my Lord of *Warwick*'s Lodgings, and when I came there I found Captain *Coot*e there a dressing himself; and I asked him how that came to pass, and he told me they had been up late together, and that he had sent home for his Man to dress himself there; upon which I did observe that they had been a rambling together over Night; and there was a very great Familiarity between them.

E. of Warw. Did you observe any Quarrel between us?

Col. Blisset. No; None at all; I never knew of any Quarrel between my Lord of *Warwick* and Captain *Coot*e, but I observed there was a particular Kindness between them, and a great deal of Friendship I know my Lord of *Warwick* shewed to him, in paying of Reckonings for him, and lending him Money when he wanted.

E. of War. My Lord, I desire he may be asked whether he does not know that Captain *Coot*e was straitned for Money.

Col. Blisset. I did hear Captain *Coot*e say, That he had not received any Thing from his Father for thirteen Months, and his Father was angry with him, and would not send him any Supply, because he would not consent to cut off the Entail, and settle two or three hundred Pounds upon a Whore he had.

Mr. Att. Gen. Pray, Sir, will you consider with

your self, and though you are not upon your Oath, answer the Questions truly, for you are obliged to speak the Truth, though you are not sworn, whenever you come to give your Testimony in a Court of Judicature; Pray acquaint my noble Lords here, Whether you did never hear my Lord *Warwick* complain of Capt. *Coot*e?

Col. Blisset. No, I never did hear him complain of him.

Mr. Att. Gen. Did you never hear the least Word of any Quarrel between them.

Col. Blisset. No, indeed, I did never hear of any Quarrel between them.

Mr. Att. Gen. Did you never hear of any Unkindness at all?

Col. Blisset. No, indeed, my Lord, not I: I never so much as heard of the least Unkindness whatsoever.

L. H. St. Well then, my Lord, who do you call next?

Earl of Warwick. Now Colonel *Stanhope* is here, I desire he may be asked the same Question, Whether he does not know the particular Friendship that was between Captain *Coot*e and me, and what Instances he can give of it?

L. H. St. You are to consider, Sir, though you are not upon your Oath, you are in a great Court, and under no less strict Obligation to testify the Truth, and nothing but the Truth: You hear what my noble Lord asks you.

Col. Stanhope. My Lord, I have known my Lord of *Warwick* and Captain *Coot*e for about a Twelvemonth, and I did perceive that they did always profess a great Kindness for one another.

Earl of Warwick. I desire to know of him, Whether he observed any particular Friendship between Capt. *Coot*e and me, much about the Time of this Business.

Col. Stanhope. About eight or ten Days before this unhappy Accident, I went to wait upon my Lord of *Warwick* twice at his Lodgings: Once I found Captain *Coot*e there, one of them was in Bed, and the other was dressing of himself; I thought they were very good Friends that were so familiar, and I had good Reason to think so, because of that Familiarity: Both the Times that I was there, when I found them together, was within eight Days before the Accident happened.

Earl of Warwick. The next Witness I shall call will be Mr. *Disney*.

Mr. Att. Gen. But before Colonel *Stanhope* goes, I desire to ask him this Question, Whether he did never hear or know of any Unkindness between my Lord of *Warwick* and Capt. *Coot*e?

Col. Stanhope. No, indeed I did not, I always thought them to be very good Friends.

L. H. St. Will your Lordship go on to your next Witness.

Earl of Warwick. Yes, my Lord, there he is, Mr. *Disney*; I desire he may be asked what he knows of any Expressions of Kindness and Friendship between me and Capt. *Coot*e.

Mr. Disney. About the Time that Captain *Coot*e was to have his Commission in the Guards, my Lord of *Warwick* received a Letter from him, wherein he desired him to lend him the 100 Guineas, according to his Offer, for he had but 300 by him, and he said his Father was unkind to him, and he could have no Money from him, and he would be honest to him, and pay it again as soon as he could; my Lord sent for his Steward, and ordered him to provide 100 Guineas for Captain *Coot*e.

Coote while I was there; and all the Times that ever I saw them together, which was very frequently, there was the greatest Kindness between them that could be; and several Times I have seen my Lord of *Warwick* pay Captain *Coote's* Reckoning for him, and lent him Money when he wanted Money.

Mr. *Att. Gen.* I desire to ask you, Sir, this Question, though you are not upon Oath, yet you are obliged to speak the Truth in a Court of Justice as much as if you were upon Oath: Did you not know or hear any Thing of a Misunderstanding or Quarrel about the Time that this Business happen'd?

Mr. *Dixey.* No, indeed: I was with them together but the Day before, and frequently, and I heard nothing of any Unkindness between them in my Life, nor never knew of any Quarrel between them, or any Reason for it.

L. H. St. My Lord, who is it you call next.

Earl of *Warwick.* Colonel *Whiteman.* (Who stood up.)

L. H. St. What do you call this Gentleman for?

Earl of *Warwick.* It is to the same Effect, to acquaint your Lordships with what he knows of the Conversation between Captain *Coote* and me.

Col. *Whiteman.* My Lord, I know my Lord of *Warwick* and Captain *Coote* were constant Companions together; they dined together almost every Day for half a Year's Time almost; and as to this Time, when this Business had happened, I went to my Lord of *Warwick*, being sent for by him, and found him at a private Lodging, where he expressed a great deal of Concern for the Death of his dear Friend Mr. *Coote*, and he shewed me the Wound he had received in his Hand, and he desired he might be private, and he told me he believed People would make worse of it than it was, because he did not appear; but he did but intend to keep himself out of the Way till he could be tried; and I took what Care I could to get him a Convenience to go to *France*.

Mr. *Att. Gen.* Pray, What Reason did he give for his going away?

Col. *Whiteman.* The King being at that Time out of *England*, and so the Parliament not Sitting, he said he did not love Confinement, and had rather be in *France* till the Parliament should meet, and he might have a fair Trial, which he thought he should best have in this House.

Mr. *Att. Gen.* But pray, Sir, consider, You are bound to tell Truth, and the whole Truth, in such a Case as this: Are you sure there was no Unkindness or Quarrel, between my Lord *Warwick* and Captain *Coote* about this Time?

Col. *Whiteman.* No, I never knew of any Quarrel or Unkindness between them in all my Life.

L. H. St. My Lord, Have you any more Witnesses?

Earl of *Warwick.* I have a great many Witnesses more to the same Purpose, but I think I need not trouble your Lordship with them; only I would call a Person that has been mentioned, that is my Steward.

L. H. St. What is his Name?

Earl of *Warwick.* Edmund *Raymund.* (Who stood up.)

L. H. St. What Questions do you ask him?

Earl of *Warwick.* I desire he may tell what he knows of any Friendship between Captain *Coote* and me, and what particular Instances he can give of it.

Raymund. My Lord, I know that my Lord sent for me, and said Captain *Coote* had Occasion for 100 Guineas to pay for a Commission in the Guards, which he had not Money to make up, and I know that they were constant Companions every Day, did eat together, and often did lie together, and I did provide the 100 Guineas for him; and I always did observe that there was a very great Friendship between them.

Earl of *Warwick.* My Lord, the next Witness I shall call will be Mr. *French*, who, I hope, having been tried, and had his Clergy allowed him, will be a good Witness; I should be sorry to interpose any thing that would be a Hindrance to your Lordships giving Judgment in this Case presently; he is able to give your Lordships an Account of the whole Matter; and though, I hope, I have no need of calling him as a Witness, yet I humbly offer it to your Lordships.

L. H. St. What say the Counsel on the other Side?

Earl of *Warwick.* My Lord, I do not insist upon it; I think I have no need of it.

L. H. St. Your Lordship must judge for yourself how far it is for your Advantage, to desire that this Matter should be debated.

Earl of *Warwick.* I do not desire to take up your Lordship's Time, though I am very well advised, that he is a good Witness in Law.

Earl of *Roeb.* I apprehended it the Duty of the King's Counsel to make Objection against any Witness that should be produced by the Prisoner; I am loth to give your Lordships any unnecessary Trouble, yet I own, that I am not satisfied that a Witness should be offered and rejected, though the Objection be not made and argued, by my Lord, the Prisoner at the Bar: If a Witness be offered, and they think they have an Objection against him, if they do insist upon it, it will occasion a Debate, and then we must adjourn into the House of Lords.

L. H. St. It is not insisted upon by my Lord, as I apprehend. My Lord of *Warwick*, Have you any other Witness you would have called?

Earl of *Warwick.* I desire to ask Mrs. *Amy* a Question or two.

Then she stood up.

L. H. St. What does your Lordship ask her?

Earl of *Warwick.* What she remembers passed at her House about my Sword, or any Thing.

Mrs. *Amy.* My Lord, when I came into the Room where my Lord of *Warwick* and Captain *French* were, in our House, I stood by Capt. *French* while his Wounds was dressing, and I saw my Lord of *Warwick's* Sword, and looked upon it, and the Hilt and all the Shell was full of Blood, and it ran down to the Bottom of the Sword Blade.

Earl of *Warwick.* I desire she may be asked, how soon that was after my coming in?

Mrs. *Amy.* It was a Quarter of an Hour after my Lord came in.

Earl of *Warwick.* I desire she may speak what Sort of Sword it was at the Hilt, whether it were open or close?

Mrs. *Amy.* Indeed, I cannot say; but the Hilt was full of Blood, the Shell of it, and it ran down to the Bottom of the Blade.

L. H. St. Has your Lordship done?

Earl of *Warwick.* My Lord, I will only take notice, that the three Gentlemen that were on the other

other Side, were tried at the *Old-Baily*, and found guilty only of Manslaughter; but now I being on his Side, and not having any Malice to him, but always a great deal of Friendship, I submit it to your Lordships, whether I can be thought any Ways guilty of his Death; and I humbly hope your Lordships will hear my Counsel, if you make any doubt of that.

L. H. St. What is it your Lordship would have Counsel heard to?

E. of War. To this Case, my Lord, Whether there being six Persons, Three of a Side, one is killed, and I being engaged on the Side of him that was killed, the three on the other Side have been tried for the Death of that Man; whether I, who was of his Side be equally guilty with them, who were on the other Side, especially, I engaging particularly with another of the three, that were of the other Side: That Question I desire my Counsel may argue, whether I be equally guilty with them that were on the other Side, and who, notwithstanding Death happened in the Case, yet were found guilty only of Manslaughter.

L. Godolphin. My Lords, it has been moved by my noble Lord at the Bar, that his Counsel should be heard about Mr. *French's* being Witness, whether he should be a Witness or no; I think it would be much for the clearing of the Fact one Way or other, if the Evidence of that Witness could be heard; but whether he can be heard, or not, according to Law, is a Question that must be debated amongst your Lordships, after your Lordships have heard the Counsel on both Sides, and perhaps the Opinion of the Judges upon their Arguments; and therefore I think we must adjourn, to consider whether this Matter shall be argued or no.

L. H. St. What say you to this Matter, Mr. Attorney?

Mr. Att. Gen. My Lords, I should agree with the Motion that is made, if there were any Thing insisted upon by the Prisoner at the Bar, that would bear a Question or Argument; but my Lord of *Warwick* himself has waved the Objection, and so I think there is no need for any Argument on our Side.

L. Godol. I would agree with the Motion that was made for adjourning, in order to debate, but I desire to be thus understood, if he thinks it for his Advantage, that this Witness should be heard for him, which he knows best, whether it be or be not; then I do suppose your Lordships will adjourn, to consider of it in your own House amongst your selves; it will not be proper to enter into the Debate here, nor there neither, till you know what Objection the Counsel for the King make against this Man's being an Evidence, and therefore we would know, it is fit to be known, whether my Lord's waving, or not insisting upon this Man's Testimony, be free and voluntary, and absolute; or whether it be only in respect to the Trouble it may put the House to for the Debate.

L. H. St. My Lord *Warwick*, some of my noble Lords observe you have desired Mr. *French* should be examined, and that your Counsel may be heard to that Point, whether he be by law a Witness, or not; several of my Lords think it reasonable, Counsel should be heard, Whether he be a Witness or not; or at least, that that Question should be considered amongst themselves, if insisted upon; therefore your Lordship is to declare, whe-

ther you do insist upon it, or desire to wave it.

E. of War. I wholly submit my self to your Lordships; but as I am advised by my Counsel, I hope he is a good Witness, and I desire my Counsel may be heard to that Point.

Mr. Att. Gen. My Lords, in Truth I acknowledge, according to the Method of Law, the Objection ought to come of our Side, for I think we have very good Reason to oppose that Gentleman's being a Witness in this Case, even upon that Objection which my Lord has made himself, upon the Consideration, that he has been found guilty of Manslaughter, for the Death of this very Person. It is true, upon his Prayer, Clergy was allow'd him, but the burning of the Hand was respited, and he was not burnt in the Hand, and he is not pardoned; and how far can he be a Witness in this Case, is the Objection; If a Man convicted of Felony, that is within Clergy, prays his Clergy, and it is allowed him, but he is not burned in the Hand, nor pardoned, we apprehend he is no Witness; and that is the Objection we make against his Testimony to your Lordships.

L. H. St. My Lord of *Warwick*, you hear what is said by way of Objection against this Man's being a Witness. What say you to it?

E. of Warw. For Matter of Law, my Lords, I am not capable of speaking to it, but I desire my Counsel may.

L. H. St. That which Mr. Attorney proposes by way of Objection is Matter of Fact, and the Matter of Law does not arise till the Fact be settled, which must fall within your Lordship's own Knowledge, who produce him as a Witness, and therefore you must answer to that Fact your self.

E. of Warw. I desire to know of your Lordships, if a Man be convicted of Felony that is within Clergy, and prays his Clergy, and it is allowed him, but the burning of the Hand is respited, and there is a Warrant for his Pardon; whether he cannot be a good Witness: That his Clergy was allowed, and the burning of the Hand respited, I have the Record here to shew.

L. H. St. My Lords, my noble Lord at the Bar, insisting upon a Warrant for a Pardon, I must acquaint you with something that happened during your Lordships sitting here this Day; since I came hither a privy Seal was delivered to me, in order to pass a Pardon for the burning in the Hand of Mr. *French*, for the Manslaughter for which he was convicted at the *Old-Baily*; so far I can acquaint your Lordships as to Matter of Fact.

Earl of Warwick. My Lord I am advised by my Counsel, that he is a good Witness without a Pardon, or without burning in the Hand.

L. H. St. What say you, Mr. Attorney, to the Law? Now you understand what the Fact truly is.

Mr. Att. Gen. Yes, my Lord; and I do apprehend, with Submission to your Lordships Judgment, That a Man convicted of Felony, tho he prays his Clergy, and has it allowed him, but is not burnt in the Hand, nor has any Pardon, can be no Witness.

L. H. St. That is the Case upon which you are to form your Objections: Here is a Man produced as a Witness, who has been convicted of Felony, within the Benefit of Clergy, has craved his Clergy, has had it allowed, but has not been burnt in the Hand, nor pardoned.

Mr. *Att. Gen.* Then, my Lords, with humble Submission, upon the Matter of Fact so stated, I make this Objection, That he is no Witness in Point of Law: He has been convicted, in one respect, for the very Offence for which the noble Lord, the Prisoner at the Bar, stands indicted: Tho' not in the same Degree as the Indictment sets it forth, yet it is for the same Fact. Upon this Indictment Mr. *French* was indicted at the Sessions at the *Old-Baily*, and there he was found guilty of Man-slaughter, upon which, he pray'd the Benefit of his Clergy, which was allow'd him, but he was not burnt in the Hand: Thus stands the Case in Fact. Now, my Lords, the Allowance of Clergy of it self, does not discharge the Party from the Offence, so far as to set him *Reftus in Curia*, and make him in all respects a Person fit to have the Benefit and Privileges of a *Probus & legalis Homo*, till he has passed through those Methods of setting himself Right in the Eye of the Law, that the Law hath prescribed; and in order to set this Matter in its true Light before your Lordships, it will be necessary for me to open to your Lordships, as far as I can, the Nature of this Benefit of Clergy, and what Advantage did accrue to the Party, by having that Benefit allow'd him, and likewise what Benefit he had by the Act that enacted the Burning in the Hand, which was the Statute of the 4th of *H. VII.* And by that Act the Burning in the Hand was to be of no more Effect, but only to shew that he had had his Clergy allowed him; and that unless he were within Orders he should have it no more than once. Before that Act of Parliament, a Person might have had the Benefit of Clergy several Times, but that Act limits it as to Time, that it shall be but once: And therefore, in order to the having of it known, whether a Man once had his Clergy allow'd him, that did not produce his Orders, that Act provides there shall be a Mark set upon him at the Time of the Allowance of this Clergy, as a Token that it was allowed him, and he was never to have it allowed afterwards, but even at that Time he was to be delivered over to the Ordinary to make his Purgation; but since that Act, several Statutes have been made about this Matter. I shall mention one that relates to your Lordships, and that is the Statute of *Edward* the 6th, which indeed does Enact, That in case where a Peer is convicted of Felony within the Benefit of Clergy, he shall be discharged without being burnt in the Hand, but then and thus the Law stood till the Statute of 18 *Eliz. cap. 7.* by which 'tis Enacted, That after the Burning in the Hand the Prisoner shall be delivered to the Ordinary, but he shall be discharged; by Virtue of which Act, after burning in the Hand, the Prisoner hath made full Satisfaction to the Law, without that Sort of Purgation which was before requisite to be made, but till he be burnt in the Hand, or has his Pardon, he is not to be discharged; it may be he may be bailed out by the Judge, in order to get a Pardon, but still he remains in *statu quo*, as to his being a Witness, or any Thing of that Nature; his Credit is gone till it be restored by the King's Pardon, or his undergoing the Punishment that the Law requires; and no Man would say, that where one lies under a Conviction of Felony undischarged by burning in the Hand, or Pardon, that he can be a Witness; he remains just as he was before, the Conviction remains upon him, which disabled him to be a Witness; and that we sub-

mit to your Lordships as the Case of this Person, Captain *French*.

Mr. *Sol. Gen.* My Lords, if your Lordships please to spare me one Word of the same Side: Sure at common Law there would be no difficulty at all, that a Person convicted of Felony within the Benefit of Clergy, unpardoned, and undischarged, could be no Witness; and since those several Statutes that have been mentioned by Mr. Attorney, unless there be an actual Burning in the Hand, or a Pardon for that Burning in the Hand; sure it cannot be pretended, that one convicted of Felony can be admitted as a Witness. If my Lord of *Warwick* does insist upon his Evidence as Matter of Right; we, for the King, do insist upon it, that there is no Right at all in the Case; for *French* must be taken to be one convicted of Felony, and not discharged without either Burning in the Hand, or pardon, and then we are sure it cannot be pretended in Law that he can be a Witness.

L. H. St. My Lords, the King's Counsel have stated their Objection, what is your Pleasure to have done it?

Earl of *Rivers*. I suppose, my Lords, that it will be necessary to hear what Answer my Lord of *Warwick* gives to this Objection.

L. H. St. Is it your Lordships Pleasure then, that the Counsel assigned for my Lord *Warwick* be heard what they have to say to this Matter?

Lords. Ay, ay, ay.

[Then Sir Thomas Powys came to the Bar, and stood by the Earl of Warwick, and spoke thus.]

Sir *T. Powys*. May it please your Lordships, I am by the Order of this Honourable House, assigned of Counsel for this noble Lord at the Bar, in point of Law; and, my Lords, as to the present Question that has been spoken to by the King's Counsel, I am a little surprized to hear it should be wondered at, that my Lord of *Warwick* should insist upon it, that this Gentleman should be examined for him as a Witness, because, with humble Submission to your Lordships, I think the Authorities of Law will make for the Opinion on the other Side. Mr. Attorney General says true, the first Statute that was made for Burning in the Hand, was that in 4 *H. VII.* before that Time the Benefit of Clergy, even for Murder, was used to be allowed upon the Prayer of the Party, and he was thereupon delivered over to the Ordinary to make his Purgation, and that not only once, but *toties quoties*, let him demand it as often as he would, and as often as he offended it was allowed: This was thought such a Privilege as ought to be restrained; that Statute of the 4th of *Hen. VII.* takes notice that an ill Use was made of it, and therefore does Ordain, That it should be allow'd no more than once, unless to Persons within Orders: And as a Means to know, Whether it had been before allowed, or not, the Act does direct, That the Party convicted shall be burnt in the Hand, that is all the Act does appoint, it does no otherwise alter the Case; it does not impose it upon the Party as a Punishment for the Offence, but only as a Mark of Distinction, that if ever he came again before the Court, and being convicted of the like Offence, should pray the Benefit of Clergy, then upon Inspection it might be known whether before he had been allowed his Clergy or not; and so stood the Law without Alteration as to the Manner of Delivery of the

Criminal over to the Ordinary to make his Purgation, with which the temporal Law, in the Manner of doing thereof, did not intermeddle; and therein consisted, with respect to this Matter, the Benefit of Clergy. Afterwards, by the Statute of *Edward* the VIth, the Peers were exempted from the Burning in the Hand; and then comes the Act that we rely upon, which is, that of the 18th of *Eliz.* that takes notice of the former Act of the 4th of *H. VII.* which only ordered the Burning of the Hand for the Purposes aforesaid, but left the Party to be delivered over to the Ordinary to make his Purgation; which was found to be a Matter attended with many Abuses, and upon the Reformation thought fit to be abolished, and taken away, because it was only an outward Appearance and Shew of Purgation, and was often the Occasion of very great Perjuries, therefore it is taken totally away, and by this Act the Party shall have the Benefit of Clergy without making Purgation, as fully as if he had actually made it. But, say they, There is still left something that the Law requires, which is, that he should be first burnt in the Hand, and if he be not burnt in the Hand, or at least pardoned, he is not in that Condition that the Law calls for in such a Case, to set him *Rectus in Curia*: If he be burnt in the Hand, or pardoned by the King, they agree on the other Side, that he may be a very good Witness. My Lords, that Act of Parliament of *Queen Eliz.* does impower the Court that tries the Criminal, and before whom he is convicted, not only to burn him in the Hand, pursuant to the Act of *Hen. VII.* but also to detain him in Prison for a Year after; but yet I think that doth not signify any Thing one Way or other to restore him, or not restore him to his Credit; for I think the Burning in the Hand, which is a Mark of Infamy, was never intended as a Means, any more than Imprisonment for a Year, of restoring a Man to his Credit; it was only to shew he had his Clergy once, and should have it no more. The Allowance of Clergy by the Statute of *Eliz.* operates as a Pardon; only, saith the Statute, he shall not be delivered out of Prison before he is burnt in the Hand, according to the Statute of *Hen. VII.* No body can say, that the Continuing in Prison for a Year, which the Court may order, though burnt in the Hand, would, as to restoring of Credit, have operated one Way or other: But that we insist upon is, That the Allowance of Clergy sets him right in Court, since Purgation is abolished, and is the same Thing as if he had undergone the ceremonial Parts of a formal Purgation. It is the Allowance of Clergy that makes the Alteration or Operation in this Case, by Virtue of this last Act of the 18th of *Eliz.* for we take it, that he is to have the same Benefit of his Clergy, as if he had been delivered to the Ordinary, and Purgation had been made; and now the Allowance of Clergy by this Act, gives the same Benefit to the Party, as Purgation would have done before the Act, and he is in the same State and Condition as he would have been in Case of a Purgation, or of a Pardon by the King. The Authorities are all with us. There is a Case that is very well known among the Men of the Law in the fourth Report of my Lord *Coke*, *Holcroft's Case*, who was indicted and convicted of Manslaughter, and he prayed the Benefit of his Clergy; the Judges thought fit to respite their Judgment therein, but

his Prayer was enter'd upon Record; and then an Appeal being brought against him, it came to be a Question, How far he had had his Clergy: For by the Statute of the 3d of *Hen. VII.* an Appeal will lie notwithstanding a Conviction, if the Party have not had his Clergy; and in this Case it was adjudged, That the Party having prayed his Clergy, he should have the same Benefit as if the Court had ordered every Thing to be actually executed, which ought thereupon to be done: And surely then it can be no Question, Whether a Man shall be a Witness or no, who has had his Clergy allowed. It is so entred upon Record, That the Book was administered to him, and that he read as a Clerk; for the Party has done as much as he can, prayed the Benefit of his Clergy, and had it allowed, and so it is enter'd upon Record. The Respiting of the Burning of the Hand till the King's Pardon be obtained, shall not, sure, put him in a worse Condition than he would have been, if he had actually been burnt in the Hand. My Lords, I have in my Hand a Book which is of very great Esteem, and that is, *The Reports of my Lord Chief Justice Hobbart*, wherein he declares his Opinion in this Point, and for whose Opinion every one of our Gown ever hath testified a very great Veneration and Respect; the Case is that of *Scarle and Williams*, wherein my Lord *Hobbart* has spoken so fully to this Matter, that I think it ought to put an End to the Question: He says, the Statute of *Eliz.* appointing the Burning in the Hand without Purgation, does operate as a Statute-Pardon to all Intents and Purposes, and the Party having now the Benefit of his Clergy allowed, is in all Respects in the same Condition as if he had been acquitted: That is the Opinion that he holds throughout that Case: I need not trouble your Lordships with reading all the particular Words that he uses, but only those which relate to the Thing now in Question, immediately before your Lordships. He delivers his Opinion, *That whosoever speaks Words of Accusation, reflecting upon a Man for any Offence for which he was indicted and convicted, and had had his Clergy allowed, an Action lies as if he had been totally acquitted from it; 'tis not the Burning in the Hand, but the Allowance of Clergy, that sets him right in his Credit in the Eye of the Law, and he is thereby in the same Condition in that Respect, that he would have been, if he never had had any Conviction upon him.* Towards the End of the Case his very Words are these, *Though the Statute saith, after burning in the Hand according to the Statute in that behalf made, he shall be discharged, and there is no Burning in the Hand, that makes nothing; for though it be a Case where the Hand ought to be burnt, yet it is not so essential but a Man may have the Benefit of the Statute, tho' he be not burnt; the King may pardon the Burning, for the Burning, even in an Appeal, is no part of the Judgment, nor so much as in the Nature of Punishment, but rather a Mark to notify that he may have his Clergy but once.* These are his very Words in this Case; so that the Statute of *Queen Elizabeth* doth abolish Purgation, but gives the Party all the Benefit thereof, as if he had gone through it, and instead of delivering the Party to the Ordinary to make his Purgation, it says, he shall be deliver'd out of Prison; but lest it might seem to repeal the Statute of *Hen. VII.* as to Burning in the Hand, it adds, *Being burnt in the Hand, according to the Statute in that behalf provided:* By the Statute of *Hen. VII.* he was first to be

be burnt in the Hand, and then delivered to the Ordinary to make his Purgation; but by the Statute of *Eliz.* he is first pardoned his Crime by being allowed the Benefit of his Clergy, without making his Purgation, and afterwards to be burnt in the Hand before he be delivered out of Prison; so that the Burning in the Hand is only a Condition precedent to his getting out of Prison, not to his being restored to his Credit: The King may pardon the Burning in the Hand undoubtedly, and he has gone a great Way in this Case, for he hath given a Pardon as far as the Privy-Seal, and that is sufficient to shew his gracious Intention of pardoning it throughout; and if there be need, we hope it may pass yet forward. What we insist on, is not only the Opinion of my Lord Chief Justice *Hobart*, but he is followed therein by the Opinion of a Man of very great Authority, one no less eminent than he in his Profession, and that is my Lord Chief Justice *Hale*, in a Book of his that is intituled, *His Pleas of the Crown*, which is but an Abridgment of what he intended upon that Subject under the Title of Clergy. When he comes to treat of the Consequences of the Allowance of Clergy, and what the several Effects of Clergy allow'd, shall be, he says, it gives him a Capacity to purchase Goods, and retain the Profits of his Lands, and restores him to his Credit, according to the Case I have mentioned before in *Hobart*, of *Searle* and *Williams*; for that Case is particularly in that Book mentioned and referred to: Therefore I hope your Lordships will make no Difficulty of hearing this Witness; for we think the having his Clergy allow'd him, is that which restores him to his Credit. If they have any other Objections against him, I hope we shall hear it from the King's Counsel: But if this be stood upon in Point of Law as an Objection, That though Clergy was allowed, he was not burnt in the Hand, nor pardoned; I would have observed to your Lordships, That my Lord High Steward has told you it is so far gone towards the Pardon, that the King has shewn his Intention to pardon by the Privy-Seal; and we hope your Lordships will not let this noble Lord at the Bar suffer any Prejudice, by the not perfecting of the Pardon by actual passing of the Great Seal.

L. H. St. Mr. Attorney General, what say you to the Matters which have been urged?

Mr. Att. Gen. My Lord, we have stated our Objection; we think there is nothing given as an Answer to it, and we submit it to your Lordship's Judgment.

Marq. of Halifax. My Lords, I desire that the Question that is to be decided before your Lordships, may be settled truly, what it is.

L. H. St. If there be six in Company, and one of them is killed, the other five are afterwards indicted, and three are tried, and found guilty of Manlaughter, and upon their Prayers have their Clergy allowed, and the Burning in the Hand is respited, but not pardoned; Whether any of the three can be a Witness upon the Trial of either of the other two.

Sir T. Powis. My Lords, with Submission, though he were convicted of the Felony, yet upon Prayer of his Clergy, that being allowed him, that restores him to all the Capacities, we say, that he had before the Conviction, and particularly to his Credit; and for that we submit ourselves to your Lordships Judgment.

Marq. of Halifax. I suppose your Lordships will have the Opinion of the Judges upon this Point; and that must be in the Presence of the Prisoner.

L. H. St. It must certainly be in the Presence of the Prisoner, if you ask the Judges Opinions.

Marq. of Halifax. But in these Cases, my Lords, it is usual to hear the King's Counsel to make a Reply: I desire to hear what they would say to what has been offered by the Counsel for the noble Lord the Prisoner at the Bar.

Mr. Serj. Wright. My Lords, I did apprehend that the very stating of the Objection would have set this Matter in its true Light: For in the first Place, it is agreed on all hands, That this *Mr. French*, that is desired to be a Witness, does stand convicted of Felony, and by the Law of *England*, while that Conviction remains upon him, till he be either purged or pardoned, he cannot be a Witness: By the Conviction his Credit is lost; and till he be restored to his first Condition, he stands not so clear in the Eye of the Law that he can be an Evidence. The Counsel for the Prisoner have objected, That if he either be pardoned, or Clergy allowed, he is put in the same Condition as if he had been acquitted.

My Lords, I must admit a Pardon restores to Credit; and I must likewise admit, That Allowance of the Benefit of Clergy, and Burning in the Hand upon it, amounts in Law to a Pardon, or is equivalent to a Pardon in this Matter: But the Fact here is not so; for here is neither actual Pardon, nor any Burning in the Hand: the Benefit of Clergy was prayed, and allowed; but that alone is not sufficient; there must be an actual Burning in the Hand, or a Pardon of that Burning in the Hand, otherwise it cannot be a Satisfaction in Law, such as should put him in the same Condition as if he were acquitted. Your Lordships have heard what was said by his Grace my Lord High Steward, That as to the Burning in the Hand, the King has been pleased to proceed so far as to grant a Privy Seal for the Pardon of the Burning in the Hand: But your Lordships very well know, and it cannot be insisted on to the contrary, by the Counsel on the other Side, That it is no Pardon until it be past under the Great Seal of *England*: So that here is no actual Pardon; nor is the bare Allowance of Clergy, without Burning in the Hand, equivalent to a Pardon. My Lords, it must be agreed, That at the Common Law, Persons that were convicted of Felony, were not restored to their Credit merely by allowing the Benefit of Clergy to them; there was something further to be done to regain Credit; the Party convicted must undergo another Trial before the Ordinary, which was commonly called Purgation; when any Man was convicted of Felony, he was, upon his Prayer of the Benefit of Clergy, to have it allowed to him, and if he could read as a Clerk, his Life was saved. He was not discharged of the Felony, and therefore was delivered over to the Ordinary to be kept in Prison until he had, by a Sort of Trial before the Ordinary, made his Innocence appear, and purged himself of the Fact charged upon him; and if he could not make his Purgation, he was to lie perpetually in Prison; and notwithstanding the Allowance of Clergy, and Delivery over to the Ordinary, yet was not the Credit restored, nor his former Capacities; he was not a legal Witness until he had purged himself of the Crime: It was the clearing themselves

of the Guilt, that restored such Persons to their Reputation and Credit, not the bare Allowance of Clergy: Some Criminals were delivered to the Ordinary generally; those might make their Purgation: Others were specially delivered, or delivered with a special Charge to the Ordinary, not to admit them to Purgation, *absque purgatione facienda*: These latter could never be restored to Credit, except by the King's Pardon; for the Liberty of Purgation, which was the Means of regaining their Credit, was taken from them; their Guilt occasioned their loss of Credit; taking away that Guilt doth consequentially restore Credit again; and this Benefit of Clergy was to be allowed as often as any Man had Occasion for it.

Thus the Matter of Benefit of Clergy stood in Common Law, in respect of Purgation and restoring of Credit, till the Statute of 18 *Eliz. c. 7.* which was cited on the other Side by Sir *Thomas Fawks*; by which Statute Purgation is absolutely taken away and set aside: and the Party being burnt in the Hand, according to the Statute of 4 *H. VII.* is appointed by this Statute 18 *Eliz.* to be discharged, and not to be delivered over to the Ordinary, as was before that time used. The delivering over to the Ordinary was in Order to Purgation, and that by the last Statute is quite taken away, and the Party is to have the same Benefit by the having the Benefit of his Clergy and Burning in the Hand, as if he had made his Purgation; he shall be discharged: It is not his reading as a Clerk, and that pronounced by the Ordinary, that gives him the Benefit of a Discharge, as if he had been purged of the Crime; but there must be the Burning in the Hand, that is the very Terms of the Statute upon which he is to be discharged; that must actually be done before he can be put into the same Condition that he was in before the Conviction, and consequently make him capable of being a Witness. As for the Case of *Searle and Williams*, that was cited by Sir *Thomas Parris*, that Case doth not oppose in this Matter; there it was not needful to burn the Person convicted; he was a Clerk in holy Orders, and by Law exempt from Burning in the Hand: so it was not needful to burn him, the Statute of 18 *Eliz.* not requiring any Person to be burned in the Hand that were not so liable before then. The most that is said in that Case by the Chief Justice *Hobart* is, That in Case where the Hand ought to be burnt, it is not essential; but the Party may have the Benefit of the Statute, *i. e.* be discharged without Burning, and the King may pardon the Burning; and no doubt if the King pardons the Burning, it is as good and effectual as if the Hand had been actually burnt. The King might pardon the whole, and consequently any Part; the Pardon of the Punishment supplies the Effect of it; no Question but a Pardon may supply the want of Burning in the Hand. Chief Justice *Hales* in his Book of *Pleas of the Crown*, Vol. 240. which I have here, says expressly, That Burning in the Hand is now, since the Statute, 18 *Eliz.* the Consequent upon the Allowance of Clergy, which hath this Effect: First, It enables the Judges to deliver him. Secondly, It restores him to former Capacities. Thirdly, It restores him to his Credit, and so it puts him in the same Condition as if he were acquitted. What is it that hath this Effect? The Allowance of Clergy, and Burning in the Hand: There is not to be a Delivery of the Criminal till all be done which is required by Law: The Law requires that the Party

be burnt in the Hand, or that the King do pardon the Burning in the Hand, before the Party be discharged; and, with humble Submission, it was never yet pretended, that any Person could have the full Advantage of the Benefit of Clergy, since the Statute of 4 *H. VII.* till he was burnt in the Hand, or the Burning in the Hand was pardoned. Now, my Lords to apply this to the Case in Question; it is on all Hands admitted, That Mr. *French* was convicted of Felony and Manslaughter, and is neither burnt in the Hand, nor pardoned; but he has prayed the Benefit of the Clergy, and has had the Book given to him, to try if he can read, and he certify'd he can read; this is all that is done. I think it cannot be pretended he ought to be discharged until he is burned in the Hand, or that Burning pardoned, as the Act requires; and if the Reading as a Clerk without Burning in the Hand, or Pardon of it, be not sufficient in Law to entitle him to be discharged, why should it be sufficient to restore his Credit? The whole together works the Discharge and restores the Party. In the Case of *Burrenchs* and *Helerofi* that has been cited, there a Man was convicted of Manslaughter, and prayed his Clergy; the Court did not allow his Clergy, but did advise upon it. This was held sufficient to bar an Appeal; for if Clergy had been allowed, it had clearly been a good Bar; and the Act of the Court in advising upon the Prayer, and not allowing Clergy where it ought to be, shall not prejudice the Party convicted, but he shall be in the same State as if the Clergy had been actually allowed: But that has no likeness to the Case now before your Lordships; for here it is not pretended that Mr. *French* ever desired to be burnt in the Hand, but that was respited in Favour to him, which was done with Intention, it seems, to get the King's Pardon for the Burning of the Hand, which is not yet obtained, and consequently I take it he is not entitled to that Benefit which the Law would give him, if he was either pardoned or burned in the Hand; he is not fully discharged of the Conviction, and therefore I think he ought not to be admitted as a Witness.

L. II. St. What is the Resolution your Lordships please to take upon this Matter? Is it your Lordships Pleasure to have the Opinion of my Lords the Judges, who are here present, upon this Point?

Lords. Ay, ay, by all Means have the Judges Opinions.

L. C. J. Treby. Two Things have been mentioned at the Bar, which, I think, ought to be laid out of the Question.

1. The Consideration of a Peer, with respect to burning in the Hand.

I suppose it is not (I am sure it ought not to be) insinuated, that, if any of your Lordships Degree should have the Misfortune to fall into the like Condition as the Gentleman now produced, *viz.* to be once convict of a clergyable Felony, there could be any Doubt of receiving such Peer, as a Witness, without his having been burnt in the Hand. Certainly there could not; For the Statute of 1 *E. VI.* exempts the Peers from such Penalty, and virtually repeals the Statute of 4 *H. VII.* as to so much. And the Statute of 18 *Eliz.* requires burning in the Hand only, according to the Statute in that Behalf (before) provided. And there being no Statute then or now in Force, to subject Peers to such Brand; there are, in such Case,

upon

upon the allowing the Benefit of the said Statute of E. VI. which is as much as Clergy without reading or burning) freed from Discredit and other Penalties of the Felony, as much as Commons are by having Clergy formally allowed and being burnt.

2. Here hath been Mention of a Pardon of the burning this Gentleman in the Hand; and, it seems, the Proceeding hath been so far as to pass the Privy-Seal. I do not question the King's pardoning of the Burning's being as effectual as the Party's undergoing it. But, I say, Here is no Pardon (though great Preparation for one.) For, the Sign Manual, the Signet, the Privy Seal, are but Warrants in such Cases, and countermandable. But, it is the great Seal that speaks the King's last and irrevocable Intent, and passeth the Pardon (or other like Thing) to be granted. And that hath not been obtained here.

Now the Question is cleared, I take it to be this; Whether this Commoner, being convicted of Felony, and having his Clergy allowed, but being unburnt and unpardoned, shall be received and allowed to be a Witness?

I am of Opinion he ought not.

For (whatever Quality or Credit he might personally be of) he is, by being and remaining a Felon convicted, render'd infamous in the Eye of the Law. Upon the Conviction, he lost, by the Intendment of Law, that Credit which is necessary to a Witness; and is not restored to it by the bare allowing of Clergy; but is in the State as a Felon convicted would have been, before Purgation, at Common Law.

Clergy or (more properly called) Benefit of Clergy, is an antient Privilege, whereby a Clerk charged with Felony was dismissed from the Temporal Judge, and delivered in Custody to his Ordinary, before whom he was to purge himself, if he could, of the Offence; and if he failed in his Purgation, he was to remain in the Ordinary's Prison.

I mean generally; and I think it not proper to this Occasion, to discourse of the special Cases wherein the Delivery to the Ordinary was *absque Purgatione*.

This Privilege took its Root originally from a Constitution of the Pope, exempting the Persons of the Clergy from the secular Jurisdiction. This the Canon-Law is full in. But that Law was not thoroughly received here in *England*. And this Matter was moulded, ordered, and altered by our Common and Statute-Law.

For Instance. The Canon-Law gives the Privilege only to Men in holy Orders: Our Law, in favour to Learning, and the Desire of the *English* Bishop, extended it to Lay-Clerks, as an old Statute calls them, *i. e.* any Layman, that, by Reason of his Ability to read, was (other Circumstances concurring) in a Possibility of being made a Priest. On the other Side; That Law would not suffer the Clergy to be tried before secular Judges: But, ours hath, for several hundred Years, subjected them to such Trial.

But the Common Law was ever clear in this, That when a Man was convicted of Felony, though by the allowing of Clergy, his Life, Land, and Blood were saved, yet, That Conviction laid him under divers Penalties and Forfeitures, some absolute, others limited and determinable.

He forfeited all his Goods and Chattels, which

he had at the Time of his Conviction, Absolutely; not to be restored by Purgation or Pardon.

He also forfeited and lost, 1. His Liberty, being to continue a Prisoner. 2. His Capacity of purchasing more Goods or Chattels, and of taking and retaining the Issues and Profits of his Freehold Land to his own Use. 3. His Credit, so as not to be a Witness, Juror, &c. Under these three Penalties he remained till his Purgation: But, by that, they were determined. As soon as he had made his Purgation, he was restored to his Liberty, Capacities, and Credit.

Purgation was the Convict's clearing himself of the Crime, by his own Oath, and the Oaths or Verdict of an Inquest of twelve Clerks (as Compurgators.) The Proceeding was before the Ordinary. And, for the Manner of it, old Books speak of their making Proclamation for Persons to come in against his Purgation, and of their enquiring into his Life, Conversation, and Fame, and of other Formalities. In all which, several other Statutes say, there were great Abuses. But it is certain, that, upon his Acquittal, the Ordinary pronounced him innocent, and absolved from Infamy. And thereupon he was discharged from the Imprisonment, Incapacities, and Discredit incident to the Felony.

The Statute 4 H. VII. brings in a new Thing, appointing that every Person convicted of Felony, should be marked in the Hand by the Goaler in open Court, before he should be delivered to the Ordinary. And this was partly that they might taste of Corporal Punishment; but, principally, to notify that they had had their Clergy. For, the same Statute, taking notice that Men were emboldned to commit Murder, Rape, Robbery, and other Felonies, because they had the Benefit of Clergy *toties quoties*, ordains that no Person, who was once admitted to that Benefit, should ever have it again for a following Offence, unless he were within Orders, and produced his Letters of his Orders, or a Certificate of them.

For this Act, *Perkin Warbeck* in his Declaration against H. VII. brands him as an *exccrable Breaker of the Liberties and Franchises of holy Church*.

Then comes the Statute 13 *Eliz. c. VII.* which, for so much as concerns this Question, I desire to read.

It is in these Words,

For the avoiding of sundry Perjuries and other Abuses in and about the Purgation of Clerks Convict, delivered to the Ordinaries, Be it enacted, that every Person which shall be admitted and allowed to have the Benefit or Privilege of his Clergy, shall not thereupon be delivered to the Ordinary, as hath been accustomed, but after such Clergy allowed, and burning in the Hand according to the Statute in that behalf provided [meaning that of 4 Hen. VII.] shall forthwith be enlarged and delivered out of Prison by the Justices before whom such Clergy shall be granted, that Clause notwithstanding.

Then there follows a Proviso to this Effect,

Provided nevertheless, and be it enacted, that the Justices before whom any such Allowance of Clergy shall be had, may for the further Correction of such Persons, detain and keep them in Prison for such convenient Time as the same Justices in their Discretions shall think convenient, so as the same do not exceed one Year's Imprisonment.

This Statute refers to that of *H. VII.* and follows the Order of it; As that appointed that the Convict should be burnt before he should be delivered to the Ordinary to have the Benefit of Purgation, So this of 18 *Eliz.* appoints that he should be burnt before he shall be discharged by the Justices, and have the Benefit thereby intended (instead of Purgation.)

The Counsel for the noble Lord at the Bar say, that the Allowance of Clergy by virtue of this Act, freeth this Man, and makes him *Restus in Curia*; as if he had made his Purgation: and that by this Statute he is first pardoned his Crime, by being allowed the Benefit of Clergy, without making his Purgation; and afterwards to be burnt in the Hand before he be delivered out of Prison; and so the Burning is a Condition precedent to his getting out of Prison, not to his being restored to his Credit.

But I am to seek for any Ground for this Notion in this Statute. It doth not require Clergy to be allowed, nor give any new Virtue or Operation to it, when allowed. It supposeth such a Thing to be by virtue of the Common Law: But there it leaves it, if there be nothing more done. It is one Clause consisting of two Parts; 1. *Negative*; He that is allowed his Clergy, shall not be delivered to the Ordinary. 2. *Affirmative*; But after that, and burning in the Hand, shall be delivered by the Justices.

Now, If it had stopped at the first Part, it had been so far from pardoning or restoring any Clerk Convict, that it had put all into the same Condition that those were who were without Purgation, *viz.* to be perpetually imprisoned, and infamous. Indeed, it had not been reasonable to take away such a Privilege from the Subjects, without some Recompence; and therefore it did not stop there: But proceeds to the 2d Part, and provides that those who before were delivered to, and by the Ordinary, shall now be delivered by the Justices. But withal, it declares when, and upon what Terms, *viz.* After Clergy allowed, and burning in the Hand. And this is a Satisfaction to be given to the Law, before they shall have the Benefit of it.

I agree, if this Convict had made that Satisfaction to the Law, he might have been a Witness; for, in that Case, he would have been freed from his Discredit by virtue of the last Words of the said Clause. 'Tis true; the Words are only [*shall forthwith be enlarged and delivered out of Prison by the Justices*] which literally import nothing but restoring his Liberty. But under this prime Instance, are implied and intended all other Particulars which a Convict might be discharged of by means of Purgation. It was never the Intent of the Statute merely to set him at large, and leave him a Felon Convict. But when it is said *delivered*, 'tis meant delivered free, freed from all incident further Penalties, as he might have been if delivered upon Purgation. This is a reasonable Construction; to a Man that observes the Opposition in the Words, the Sense will appear to be as if the Law-makers had said, that instead of being discharged *a Culpa & Pena* by the Ordinary upon a tedious Proceeding to Purgation, he shall now be so discharged by the Justices, forthwith.

And this also is necessary to vindicate the Justice of this Law; for, since it takes from him the Means he had of regaining his Credit, it is but just it should restore to him by this Way.

'Tis objected, that it may as well be said that he shall not be restored to Credit till he have suffered Imprisonment, not exceeding a Year, as that he shall not be restored till burnt. But that receives an easy Answer; for, if it were so, it would not avail this Person. But, I take it to be otherwise. A Convict is discharged from Imprisonment and all other Penalties incident to the Conviction, forthwith upon the burning in the Hand: But if there be a Commitment made by virtue of the Proviso, it is a collateral and a new Thing, and the Party is not then in Prison by virtue of his Conviction, but by a fresh express Order of the Judges, made upon the Heinousness of the Circumstances appearing on the Evidence. They may, and generally do, forbear to commit at all: And when they do, it may be for a Month or two, at their Discretion. The Proviso calls it a further Correction.

As to the Manner in which this Statute works this full Discharge, it hath been disputed whether it be by Supply of Purgation, or rather by a kind of Statute-Pardon. But, I think, that by Force of the Statute the Party is purged and freed of the Felony, and all Penalties incident to it, in Nature of a Pardon.

In what Manner soever the Statute works it, 'tis manifest that it doth it not but upon a Condition precedent, *viz.* After Clergy allowed, and burning in the Hand. Now, this Person hath his Clergy allowed, but is not burnt in the Hand, (nor has any Pardon for it) and therefore is not yet intitled to the Benefit of this Statute. My Lord's Counsel say he is, because he hath his Clergy allowed. But, that is claiming the Advantage upon the performing of one Part of a joint Condition, which ought not to be had but upon performing both. They might as well have pretended to it before the Performance of either; The Statute says, after both Clergy and Burning. They say also, that this Burning is no Part of the Judgment, as hath been held in the Case of an Appeal. Be it so: But, I say, 'tis a Part of the Condition in this Statute.

There is no Case in our Books against this Opinion. (But, on the contrary, there are Authorities for it.)

Holcroft's Case is in no sort applicable to this Case; as was truly observed by the King's Sergeant.

The Opinion of my Lord Chief Justice *Hobart* in *Searl* and *Williams's* Case, rightly considered, confirms this. I have borrowed the Book from the Gent. at the Bar, and read it. He saith expressly, that where a Convict is liable to be burnt in the Hand, he is not discharged and restored without it; because the Statute says, After Burning: But from thenceforth the Statute frees him from all further Punishment. But, he saith, that where he is not liable to Burning, he shall have the same Benefit immediately upon the Allowance of Clergy only. So it was in the Case before him; which was that of a Clerk in Orders: For, *Searl* was a Clergyman, Parson of *Heydon German* in *Effex*, and convicted of Manslaughter. So it is, he says, in case where the King pardons the Burning. And the last Words in the Case clearly shew his Meaning, *viz.* where the Statute says, after Burning, it imports where Burning ought to be, &c.

To me the Law is evident. A Peer shall have this Benefit, without either Clergy or Burning.

A Clerk in Orders, upon Clergy alone without Burning. A Lay-Clerk, not without both.

As I remember, there hath been but one Authority more mentioned, and that is of my Lord Chief Justice *Hale*, in his *Summary of the Pleas of the Crown*; I have got hither that Book also. To my Understanding, he plainly declares the same Opinion, and cites the beforementioned Case of *Searl* for Proof of it. His Words (so far as they relate to this Matter) are these;

What the Effect of Clergy allowed?

In ancient Time the Consequent was Delivery to the Ordinary, either to make Purgation, or absque Purgatione, as the Case required.

But by Stat. 18 Eliz. c. 7. Now only burnt in the Hand, which hath these Effects,

1. It enables the Judge to deliver him out of Prison.

2. It gives him a Capacity to purchase Goods, and retain the Profits of his Lands. *Foxley's Case*, 5th Report.

3. It restores him to his Credit. *Hob. Searl's Case*.

The Word [which] used here (whatever else it do, or do not refer to) doth certainly refer to the next Antecedent, that is, Burning in the Hand; and the two Books which this most learned Judge cites, are full Authorities that 'tis this Burning which enables the Court to deliver him, and that that Delivering which is then due to him is, by good Construction, in lieu of a Pardon, which restores him to his said Capacity and Credit.

To conclude: This Condition precedent, upon which the Restitution of this Person's Credit depends, is not performed (by his undergoing the said Punishment) nor discharged (by the King's pardoning it;) and therefore he is not a legal Witness.

Earl of Rochester. If the rest of my Lords, the Judges, be of the same Opinion, so; and I hope you will not oblige them to deliver their Opinions at large, to take up your Lordships Time with Arguments of any length; for the Matter has been, I think, sufficiently debated.

Lord Chief Baron. My Lords, I

am of the same Opinion.

Mr. Justice Nevill. And so am I.

L. H. St. My Lord of *Warwick*, Have you any Thing more to say to this Question?

Earl of Warwick. No, my Lord.

L. H. St. Then what is your Lordships Pleasure? Is this Man to be admitted a Witness, or not?

Lords. No, no; we think, by Law, he can't be a Witness.

L. H. St. My Lord *Warwick*, my Lords are of Opinion, That this Person cannot be admitted as a Witness for you.

Earl of Warwick. My Lords, I submit to your Lordships Judgment in the Matter.

Earl of Nottingham. My Lords, I am very glad your Lordships have had this Matter debated by the Counsel, that so it might be settled: All my Lords the Judges that are here, it seems, are of Opinion, that this Man can be no Witness, and therefore his Testimony must be rejected. But there is another Proposal that I have to make to

your Lordships, of a Point that I think ought to be considered of: My noble Lord at the Bar did suppose that he had proved before your Lordships, that he went into the Field to fight on the Side of the Party that was killed, but not on the other Side; and indeed, that he went not to fight, but to prevent a Quarrel; and thereupon he did start a Question, Whether it should not be a Presumption in Point of Fact and Law, that he, being on the Side of the Party that was killed, should not be reputed innocent of his Death? Now, I confess, upon the Starting of this Objection, I doubted of it, Whether if any one were present at the Killing of a Man, where several People were engaged in fighting, on what Side soever such a Person were, either on the Side of the Party that was killed, or on the other Side, yet whatsoever Crime it was in those that killed him, it was the same Crime in those that were present at the Action. My Lord of *Warwick* did desire, that his Counsel might be heard upon that Point; if there be any Question with your Lordships in that Case, and my Lord desires his Counsel may be heard to that Matter, it may occasion a Matter of Debate, which cannot be in this Place openly, but must be between your Lordships among yourselves: Indeed, I think it reasonable, that Counsel should be heard upon the Case.

L. H. St. My Lords, I think you are not arrived at that Question yet; you are not to take for granted any Part of the Fact, but are to debate among yourselves, after the Proof is over, what that Proof does amount to.

Earl of Rochester. Indeed, my Lords, I hope you will not suppose any Thing, and so take it for granted; that may occasion any Debate, because that is not to be done here in this Place, but we must adjourn to another Place for it: The bare putting of a Case by a Prisoner at the Bar, does not make that to be the Case truly in Point of Fact; for as far as I heard and understood the noble Lord's Proposal at the Bar, what he desired to have his Counsel heard to, was, That he being One of Six that went into the Field, but going with a Design to part them, and not with any Intention to promote the Quarrel, could not be in equal Degree of Guilt with those that were on the other side, who killed the Party; but now my Lords, I take it, it is far from being granted on the other Side, that that is the State of the Fact; nay, my Lord himself owns that he was in the Field, and that he was engaged in the Combat with *Mt. James*; and then the Question must be that is to be debated, Whether a Party that is concerned in a Quarrel where a Person is killed, is in equal Degree guilty with those that were on the other Side against the Person that was killed? And then the Question would be far different from what it would be otherwise, and as his Lordship did propose it; and if there be a doubt in Matter of Fact, that ought to be settled here in this Place, that afterwards it may be considered in another.

Earl of Nottingham. My Lords, I cannot but agree with that noble Lord, That the Matter of Fact ought to be settled, and then if any Debate arises thereupon, your Lordships are to return to your own House, and there to debate what is your Judgment upon that Matter of Fact: But what soever Motion is made by the noble Lord at the Bar, wherein he desires to have his Counsel heard that I suppose may be considered here; and this

Point having been started by my noble Lord at the Bar, as a Point of Law, and not of Fact, I desire to remind him of it, to know whether he does insist upon it; if he does not move to have the Matter argued, then there is an End.

L. II. St. My Lords, I do not think you will hear Counsel upon a Matter of Fact, and therefore it is not ripe (till the Fact be settled) for you to hear Counsel.

Earl of Warwick. My Lords, I humbly pray That you will hear my Counsel as to that Point.

L. II. St. My Lord, this is a Matter of Fact undetermin'd, and not a Matter of Law: What Opinion their Lordships will be of, when they have considered the Proofs as to the Fact, is one Step; when that is over, it will be the proper Time, if any Doubt be remaining with their Lordships, in Point of Law, to hear Counsel; but upon bare Matter of Fact Counsel is not to be allowed.

Earl of Rochester. My Lords, if there be any Debate among the Lords, Whether it be a Matter of Fact, or a Matter of Law, we must go up to our own House; but upon any Point of Law, where Counsel is to be heard, it must be in this Place, in the Presence of the Prisoner, and afterwards your Lordships will debate it among yourselves.

Earl of Nottingham. I hope, my Lords, the Counsel would not state the Case otherwise than as it is really in Point of Fact; nor can this noble Lord hope, that any Thing will make an Impression upon my Lords, but what from the Fact rightly stated, is supported from the Evidence; and that which my Lord proposes, is to have his Counsel heard to a Matter of Law, which your Lordships will be Judges of after you have heard it, whether there be any Weight in that which he supposes to be his Case, That a Person assisting in a Combat on the Side of him that is killed, is in equal Degree of Guilt with them that are on the other Side; that possibly, if the Fact be agreed, may be a Point fit to hear Counsel to, before your Lordships go to debate it among yourselves.

Duke of Devonshire. If I am not mistaken, my Lord of *Warwick* owns his being one of them that fought, for he has offered Witnesses to prove, That he received a Wound in his Hand by fighting: If my Lord of *Warwick* thinks, that there is a Difference between his being on Mr. *Coote's* Side, and theirs that were on the other Side, and would have his Counsel heard, how far it will difference his Guilt, and the Nature of the Crime, from what it was with them on the other Side, I cannot think that can be to any great Purpose to have that argued; but if your Lordships please, you may hear his Counsel what they have to say to that Matter; but otherwise, I cannot think, but that his Lordship will acknowledge the Matter of Fact, that he was engaged in the Quarrel.

Earl of Peterborough. My Lords, I desire, if this be a Point, that my Lords Counsel should be heard to, that it should be stated as a Point of Law, and then your Lordships will consider of it.

L. II. St. As well as I could apprehend it, as it was offered by my Lord of *Warwick*, this was what he desired to have his Counsel heard to: Tho' the Persons engaged in the Quarrel on the opposite Party to Mr. *Coote* have been tried, and found guilty of Manslaughter, yet he is not in equal degree of Guilt with them, he being engaged on Mr. *Coote's*

Side, and therefore his Lordship's Case differs from theirs who fought against Mr. *Coote*. This Point he would have argued by his Counsel before your Lordships, as a Matter of Law founded upon the Fact; now the Fact of the Case must arise from the Evidence as it has been given, which has not yet been debated or settled by your Lordships, and till that be agreed to be the Case, no Question of Law does properly arise.

Duke of Leeds. My Lords, if possible, I would put this Matter into its true Method; for indeed I think we have been all this while out of the Way. The noble Lord at the Bar has desired to have his Counsel heard; this House has allow'd him Counsel in Matters of Law; I would desire that the Counsel would state the Case so to your Lordships, that it may appear to be a Case fit to be argued, that so it may receive your Lordships Judgment thereupon. My Lords own bare proposing of such a Thing, will not be enough to encline your Lordships to be of Opinion, perhaps, one Way or other; but I would pray your Lordships, That you would direct the Counsel that are assign'd for my noble Lord at the Bar, to propose that to your Lordships as a Point of Law that he ought to insist upon. I think it is apparent to every Body, that no Point of Law can arise but upon Matter of Fact, which is agreed to be proved in any Case; now the Proofs of the Fact we have heard; now, that which I would propose to your Lordships is, That instead of hearing his Counsel to argue in point of Fact, what is not yet agreed upon to be the Fact, they should state such a Point of Law as they would argue upon; and then whether you would think it a Point of Law, or not a Point of Law, we must go into another Place, where it may be debated, whether it be such a Point of Law as that Counsel should be heard to it.

Earl of Peterborough. My Lords, I hope you will forgive me for interposing in this Matter, but that which I have to say to it is this: I am far from giving any Opinion as yet, as to the Matter of Fact, whether my Lord of *Warwick* was Mr. *Coote's* Friend or his Enemy; I know it is not a proper Place for that Matter to be debated in: But my noble Lord at the Bar desires to have his Counsel heard upon that Point, as if the Fact was agreed: Truly, till the Fact be agreed, I question whether we can give any Judgment or Opinion one way or other. If I observed aright, the Evidence for the King aimed at somewhat else: I shall not say what my Opinion now is, till we come to debate it among ourselves; but here is a Desire of having Counsel heard, but there is no Question of Law stated, but it depends upon a Matter of Fact which is not yet determined by your Lordships, before whom the Consideration of both Fact and Law doth lie, Whether a Person that is engaged on the Side of the Party that's kill'd in a Quarrel, where several Persons on both Sides are concerned, be as much guilty as those that are concerned on the other Side.

Marq. of Norm. My Lords, I do suppose that you may hear the Counsel to state the Question, without your determining any Thing upon it, as to your Opinion one Way or other; for your hearing of Counsel, is only in order to prepare your Lordships for the Debate among yourselves, if there remains any Doubt with you. It seems my noble Lord at the Bar has proposed that his Counsel should be heard: If the Counsel will state the Point to be argued upon, your Lordships may here

consider, Whether it be such a one as it is fit to hear Counsel to; then, no doubt, you will hear Counsel to it. This, I suppose, you will hear from them, or otherwise your Lordships will not think fit to give your selves the Trouble to go and debate that which is no settled Question to be debated of.

Earl of *Rocheſter*. My Lords, I am afraid, of Necessity, you must adjourn to your own House, for I find my Lords are here arguing one with another; some are of Opinion, That the Counsel should state the Question, that they should be heard upon; others of my Lords are of Opinion, That it is only a Matter of Fact, not a Matter of Law, upon which Counsel should be heard; then it must be debated between your Lordships, which is not proper for to do here; therefore I would humbly move your Lordships, that you would adjourn to your own House.

Earl of *Peterborough*. I suppose your Lordships will be pleased to enquire of the Counsel, Whether they do insist upon this Point.

L. H. St. My Lord *Warwick*, if your Lordship insist that your Counsel should be heard upon the Point which you have offered, it seems there is such a Difference of Opinion among my Lords, that for the Debating of what shall be done in the Case, my Lords must adjourn; but if you do not insist upon it, they will go in the ordinary Method, to consider of the Evidence that has been given, after it is sum'd up on both Sides; for if you have no more Evidence to offer, you are to make your Observations upon the Evidence that has been given.

Earl of *Warwick*. I submit it, upon the whole Matter, to your Lordships, Whether my Counsel can be heard, or not, to that Point; how far, I being of Mr. *Coote's* Side, can be guilty of his Death.

L. H. St. That is a Matter of Fact which is not yet determin'd, and therefore the Question which you suppose to arise upon it, is not yet ripe to be resolved. If you have no other Witnesses to produce, that which remains, for I think I may properly acquaint you with the Method of Proceeding, is, That you are now on your Part to sum up the Evidence that has been given, which is your own Work, as not being allow'd Counsel as to Matter of Fact; you are at Liberty to make such Observations as you may think for your Advantage upon the Evidence, and so to close your Defence.

Earl of *Warwick*. My Lord, I submit it upon the whole Matter to your Lordships.

L. H. St. Mr. Attorney General, my Lord of *Warwick* submits the Matter, as it has been prov'd, to their Lordships, without any summing up of the Evidence; you who are of the King's Counsel, if you think fit, will sum up the Evidence on yours, in order to their Lordships Consideration of it: This you know is the Time for doing it. Make Proclamation for Silence.

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

Serj. 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 keep silence, upon Pain of Imprisonment.

L. H. St. Gentlemen, you that are of the King's Counsel, now is your Time to sum up the Evidence for the King.

Then Mr. Solicitor ^a began to sum up the Evidence, but his Voice was so low, that he could not be heard by the Lords that sat at the upper End of the House.

^a Sir John Hawles.

D. of Leeds. My Lords, I think it of so great Importance to have a true State of the Fact and Evidence laid before us, and that we may hear what the King's Counsel do say at the Summing up of the Evidence, that if my Lords be of my Opinion, we shall be very defective to know what Judgment we give when we come to give Judgment, unless we are thoroughly apprized of the Matter of Fact and the Proofs. I confess I am going to move that, which is a Thing not according to the Orders of the House, but much without the Rules of the House, That the Counsel should be heard in any other Place but where they are, at the Bar of the House; this is contrary indeed, I acknowledge, to the Orders of the House, and so my Motion is irregular; but yet, in order to our Satisfaction, that we may be enabled to hear what the King's Counsel do say to us, especially in summing up the Evidence, I cannot but offer this to your Lordships; for we can no more hear the Counsel here, than if we were quite out of the House: Whether therefore your Lordships will please to order, that any Person that has a stronger Voice should sum up the Evidence; or whether you will dispense with the Orders of the House so far, as that Mr. Solicitor may come to the Clerk's Table, or some other Place within the House, with he may be heard by all, I must submit it to your Lordships. It would be a great Satisfaction for us to hear him, in order to our Judgment; but I acknowledge in this I do make an irregular Motion, as to the Orders that are usually observed by your Lordships: But I know not how to help it, in regard without hearing, it is impossible for us to form our Judgment.

E. of Roch. My Lords, I have a very great Respect for every Motion that that noble Lord who spoke last does make, and I am of his Opinion, That it will mightily tend to the Satisfaction of my Lords who are to give their Judgment in this Case, to hear both the Evidence and the Counsel, and what Observations are made on both Sides; and that it is a great Disadvantage that the Counsel should have so low a Voice, that all my Lords should not be able to hear him; but yet I hope that may be remedied some other Way than what is proposed by that noble Lord; for if what he desires were done, it will be obvious, that in Point of Precedent many Inconveniences will occur upon breaking the Orders of the House, to comply with a Motion which is acknowledged by the noble Lord himself to be irregular; for it would be impossible to hear any Body, if it be permitted to make such a great Noise without; and it is that which renders the Difficulty of hearing the greater. If that were quieted, your Lordships might hear this Gentleman as well as those of the other Counsel: Or, if this Gentleman's Voice will not so well reach your Hearing, then there are other Gentlemen of the King's Counsel that have stronger Voices; and if any of them would sum up the Evidence, I believe it would be better heard and consequently better apprehended by your Lordships; for I had rather any Expedient should be found out to comply with the Orders of the House, and preserve them, than that any irregular Thing should be done for the breaking the Orders

Orders of the House, upon any Account whatsoever.

L. H. St. Make another Proclamation for Silence.

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

Serj. 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 keep Silence, upon Pain of Imprisonment.

E. of Bridgewater. Truly, my Lords, the Noise about the Court is so great, that we who sit much nearer to the Bar, than the noble Lord who made the Motion for the Removal of the Counsel into another Place, cannot hear Mr. Solicitor what he says; and therefore I think some of the Guard should be sent out to clear all the Passages about the Court, that there may be no Noise; for it is the Noise of the People without, that makes it so difficult to hear the King's Counsel.

L. H. St. Let some of the Guard without take care that there be not that Noise made; and whosoever does make a Noise, let him be taken into Custody.

Then another Proclamation was made for Silence; upon which there was a greater Quietness in the Hall.

L. H. St. Mr. Solicitor, There is hopes now, since there is not so great Noise as there was, that you may be heard by my Lords: You must use the best Endeavours you can, that you may be heard.

E. of Roch. If that Gentleman cannot speak out so well that he can be heard, those of the King's Counsel that have better Voices, must sum up the Evidence.

Mr. Sol. Gen. My Lord, I speak as loud as I can.

E. of Roch. There are others of the King's Counsel, pray let them do it then; Mr. Attorney, he being nearer and within the Bar.

L. H. St. I know not whether Mr. Attorney be prepared for the summing up of the Evidence, because he examined the Witnesses, and the King's Counsel usually allot to themselves the particular Parts which they intend to take.

E. of Roch. Then let Mr. Solicitor go on.

Mr. Sol. Gen. I would shortly observe to your Lordships what Evidence hath been given to you on Behalf of the King in this Case, against that noble Lord, the Prisoner at the Bar, for the Offence for which he stands indicted. The first Witness that was produced was the Drawer at the *Greyhound Tavern* in the *Strand*, where this Quarrel, that was the Occasion of the Death of this Person that was slain, happen'd; and he tells you, that that Night there was at his Master's House my Lord of *Warwick*, my Lord *Mobun*, Capt. *French*, Captain *Coote* the Person that was kill'd, and Mr. *Dockwra*; and after they had been there some time, that other Person, that was the Sixth concerned in the Scuffle, Mr. *James*, was sent for, and he came in when it was pretty late; there they continued till One or Two a Clock, and then they came down to the Bar, and Orders was given for to call Coaches, but it being so late, and *Sunday Morning*, they could not find Coaches, and then there was Orders for the getting of Chairs; when some Chairs were brought, Mr. *Coote* and Mr. *French*

went into two of the Chairs, but my Lord *Mobun* interposed, and said there should be nothing done that Night, and that if they went away he would call for a File of Musqueteers from the Guard, and secure them; and thereupon they came out of the Chairs, and went into the House, and there was the Noise of Swords clashing heard at the Bar; Captain *Coote* said he would laugh when he pleas'd, and frown when he pleas'd, and they parted; three were on one Side, and three on the other of the Bar; my Lord of *Warwick*, my Lord *Mobun*, and Captain *Coote*, were on one Side; Captain *French*, Captain *James*, and Mr. *Dockwra*, were on the other Side. Indeed he says my Lord *Mobun* and my Lord of *Warwick* did what they could to pacify them, and threaten'd to send for the Guards; but away they went. The next Witness was *Thomas Browne*, and he was the Chairman that carried Mr. *Coote*, and he says, that there was an Endeavour by my Lord of *Warwick* and my Lord *Mobun*, to put off the Business at that Time, and that they did what they could to have put it off, and that even after they were in their Chairs, when they were turned up *St. Martins Lane*, there they stop'd at the back Door of the *Cross-Keys Tavern*, and that while they stood there with their three Chairs, three other Chairs came by, and then Captain *Coote* bid them put up, and follow after those Chairs as fast as they could to *Leicester-Fields*.

The next Witness is *William Crippes*, who was the other Chairman that carried Captain *Coote*, and he gives your Lordships much the same Account that *Browne* gave before, and his Evidence was just to the same Purpose, That my Lord of *Warwick* and my Lord *Mobun* endeavoured to pacify the Matter, and that there should be an End of the Business for that Night, and let it alone till another Time; and that my Lord *Mobun* threaten'd to send for the Guards, and secure them, and would have had them gone home, that is, Mr. *Coote* either with him to his Lodging, or he would go to Mr. *Coote's*, but he could not prevail. Then my Lord *Mobun* said, If he would go on, his Lordship would go and see an End of the Business.

The next Witness was one *Crattle*, who was one of the Chairmen that carried my Lord of *Warwick*, and he says, That my Lord *Mobun* and my Lord of *Warwick* did endeavour what they could to put off the Matter till the next Morning, but that they could not prevail; that afterwards, when he carried my Lord from *Leicester-Fields* to the *Bagnio*, my Lord borrowed a Handkerchief of him to wrap his Hand in, for he said he was wounded, but by whom that Wound was given does not appear, nor how he came by that Wound any otherwise than as his Lordship himself says, that it was given him by Mr. *James*.

The next was the other Chairman that carried my Lord of *Warwick*, which was *John Gibson*, and his Testimony need not be repeated, because it did not differ from the others. The next Witness was *Robert Applegate*, who was the Chairman that carried my Lord *Mobun*; and he says, that there was an Endeavour used by my Lord upon his setting down in *St. Martins Lane*, to quiet Captain *Coote*, and prevent any Quarrel at that Time; but he says, when they would go on, my Lord *Mobun* said, he wour go and see the End of it; and thereupon they went on towards *Leicester-fields* to the End of *Green-street*, which is at the lower End of the Square.

The next Witness was *Palmer*, who was one of the Chairmen that carried Mr. *French* to the *Bagnio* in *Long-Acre*; and he tells your Lordships what happen'd upon his carrying him thither, how immediately after his coming there, my Lord of *Warwick* came thither, and they knock'd at the Door at the same time, and that Captain *French* was very much wounded, and they went into the House together, and that *French* would have had them pull off his Cloaths to see his Wounds, for he believed he was a dead Man.

The next Witness was the Chairman which carried Mr. *James*, and he only tells your Lordships, that he carried a Gentleman into *Leicester-fields*; that my Lord *Mobun* endeavoured to put off the Business for that Night; but who the Person was that he carried he cannot so well tell, nor give an Account of; but when he had set him down at the further End of the Square, there he left him, and he knows no further.

Then there was the Surgeon at the *Bagnio* in *Long-Acre*, who gives your Lordships an Account, that about Two of the Clock in the Morning on the *Sunday*, my Lord of *Warwick* and Captain *French* came in there; Captain *French* was wounded in the Body, and my Lord *Warwick* was wounded in the Hand, and my Lord *Warwick* did take extraordinary Care of Captain *French*, and would not have the Door open'd to any Body, nor his Lordship known to be there; that afterwards Captain *James* and Mr. *Dockwra* came to the Door, and my Lord came to the Door himself, and when he saw who they were, he order'd them to be let in; and that there was a Discourse about going into the Country, and that there was a Fear that *Coote* was kill'd. This is the Effect of the Testimony both of the Surgeon and his Servants; and it is to be observed, that when Captain *French* came in, his Sword was not bloody, but my Lord of *Warwick's* Sword was bloody almost all over, and that was taken notice of the next Day, and there are several Witnesses both Men and Women of that House that give your Lordships an Account much to the same purpose; then there was Captain *Duckinfield*, who says, that my Lord of *Warwick* came to his Lodgings, and they went in a Coach together to the Tavern in *Cornhill*, and then there was a Discourse of going into the Country, and my Lord said that he was afraid his Friend *Coote* was kill'd, but that they had no absolute News of his being kill'd at that Time; for it should seem my Lord of *Warwick* forsook the Field as soon as the fatal Stroke was given, which, by whom it was given, is left to your Lordships Consideration. Indeed it is pretended by my Lord, that the Wound that he had in his Hand was given him by Mr. *James*, but nothing of that is made apparent to your Lordships upon the Proofs.

Then we came to give your Lordships an Account of the Nature of the Wounds that Mr. *Coote* had in his Body; and for that we produced both the Surgeon that did probe the Wounds by the Order of the Coroner, and the Coroner himself. Indeed we could not get a positive Answer from either the Surgeon or the Coroner, whether the Wounds were given by one and the same Sword, or by different Swords; but then your Lordships have the Testimony of Mr. *Turner*, who was Captain *Coote's* Servant, and who knows his Master's Sword, and it hath been shewn to him, and he says, that is his Master's Sword that he went out with; and it can be easily judged whether he could

give himself those Wounds by that Sword.

And your Lordships have likewise had brought before you another Sword, which was left at the *Bagnio* in *Long-Acre*, that was Captain *French's* that had no Blood at all upon it, but my Lord of *Warwick's*, it seems by all the Evidence, had a great deal of Blood upon it.

Then came the Witnesses for the Prisoner at the Bar, this noble Lord, my Lord *Warwick*; and the Sum of the Testimonies that they have given, is of a great deal of Kindness between my Lord *Warwick* and Captain *Coote*; that my Lord lent him a hundred Guineas to purchase his Commission in the Guards, when he had but three of four hundred Guineas which was necessary to make the Purchase; and there are several of them that do testify, that they always look'd upon Captain *Coote* and my Lord of *Warwick* to be very good Friends, and that there never was any Quarrel between them; and that is the Sum of what the Evidence on that Side did testify. And this, my Lords, I take to be the Sum of the Evidence that has been given on either Side; and when I have laid it thus before your Lordships, I must submit it to your Lordships Judgment, what Opinion you will be of upon the whole Matter; only there is this one Observation that I would make to your Lordships upon this Evidence, That there is not one Witness that has given you an Account satisfactory by whose Hand these Wounds were given to Mr. *Coote*; and therefore, tho' it is apparent my Lord of *Warwick* was in the Place where the mortal Wound was given, yet by whose Hand it was given is not yet known; until that can be known, every Person that was there must remain under the Imputation of the same Guilt, as having a Hand, and contributing to his Death; it is certain, and cannot be denied, that this noble Lord, my Lord at the Bar, was in the Field, wherein there was actual Fighting; for he does not deny it himself, but says, that he was engaged particularly with Captain *James*, when Captain *Coote* was engaged with Captain *French*, between whom, as it is alledged, the Quarrel was; but that is no Way in Point of Fact made appear to your Lordships; and there being such Suspensions and Circumstances of the Blood upon my Lord of *Warwick's* Sword, and the great Concern that he was in when he came to the *Bagnio*, and desiring to be concealed, and that no Body should know that he was there, and the Care he took of Mr. *French*, who is the pretended Person that did the Fact, is that which is to be submitted to your Lordships; and it is to be observed, that Mr. *French's* Sword was not bloody, but only dirty, but my Lord of *Warwick's* Sword was very bloody from the Hilt to the Point, and he was in a great Consternation when he came into the House.

There is likewise a Circumstance which your Lordships will please to observe, that even Mr. *Coote's* Sword was brought into the House by some of the Company that were there, and whatsoever this noble Lord pretends of his Friendship to Mr. *Coote*, yet, it seems by his Care that he took of Captain *French*, he had as much Friendship for him.

There is another Circumstance that has been testified, which it will be fit for your Lordships to take into Consideration, and make some Observation of; that is, the Nature of the Wound: It seems, he had two Wounds, one on the left Side of the Breast, near the Collar Bone, and that was downward; and yet his Man, that was here produced

duced as a Witness, does testify, that he was one that used his right Hand, and then it is a Wonder that he should receive such a Sort of a Wound in that Part; and the other Wound was on the left Side too, but it was upward, and how that could be given to one that was a Right-handed Man, is certainly a very great Wonder; and the Wounds being both given upon the same Side, it cannot but be concluded, that they were given by one and the same Sword.

Another Circumstance which relates to my Lord of *Warwick* is, that when he came into the *Bagnio*, after the Fact was over, he would have himself denied to be there, and went to the Door when *James* and *Dockwra* came in; and his declaring his desire of going into the Country; these, we say, are Circumstances that do induce a Doubt, That my Lord of *Warwick* had a Concern upon him of great Guilt of having a Hand in this Man's Death: It is indeed pretended by my Lord of *Warwick*, That *Mr. Coote* was a Person that my Lord of *Warwick* had a Kindness for; but it is plain by the Evidence, that he left him dead in the Field, and did not take any Care of him, but took a great deal of Care of Captain *French*, who, it is pretended, was the Person that fought with *Coote*, when he came to the *Bagnio*; and there is nothing of Kindness at this Time pretended, nor any Thing of a Defence to this Matter offer'd by my Lord of *Warwick*, but only what the Chairmen say, that he endeavoured to put it off to another Time. These, my Lords, are all the Observations that I shall make upon the Evidence in this Case; how far this Evidence, upon Consideration, will weigh with your Lordships, I must submit it to you. If my Lord of *Warwick* did do the Fact, as these Circumstances, we think, may incline your Lordships to believe he did, it will surely be Murder; but how far the Evidence comes up to the Proof of that, we must humbly submit to your Lordships, who are the Judges of it; and we leave it entirely to your Consideration upon what you have heard.

L. H. St. Then it seems you have done on all Sides.

Counsel. Yes, my Lords.

Lords. Then adjourn, adjourn.

L. H. St. Is it your Lordships Pleasure to adjourn into the House of Lords?

Lords. Ay, ay.

L. H. St. This House is adjourned into the House of Lords.

Then the Lords went back to their own House in the same Order they came into the Court in Westminster-hall, and debated the Matter among themselves, what Judgment to give upon the Evidence that had been heard; and in about Two Hours Time they returned again into the Court, erected upon a Scaffold in Westminster-hall; and after they were seated in their Places, the Lord High Steward being seated in his Chair before the Throne, spoke to the Lords thus:

L. H. St. Will your Lordships proceed to give your Judgment?

Lords. Ay, ay.

L. H. St. Your Lordships will give me leave, as I ask your Lordships your several Opinions, to take so much Time as to write down the Opinion of every Lord.

Lords. Ay, ay.

Then the Lord High Steward asked this Question of every one of the Lords there present, beginning with the puisne Baron, which was the Lord Bernard.

L. H. St. My Lord *Bernard*, Is *Edward* Earl of *Warwick* guilty of the Felony and Murder whereof he stands indicted, or not guilty?

The Lord Bernard stood up in his Place uncovered, and laying his Right Hand upon his Breast, pronounced his Judgment thus:

L. Bernard. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

The same Question was asked severally of all the Lords, who in the same Form delivered their Opinions, as followeth.

L. Haversham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Herbert of Chisbury. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Weston. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Ashburnham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Chelmondeley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Jefferys. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Godolphin. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Guilford. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Osulstone. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Osborne. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Craven. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Cornwallis. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Granville. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Berkley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Lexington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Rockingham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Lucas. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Culpeper. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Vaughan. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Byron. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Fermyn. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Leigh. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Raby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Howard of Eserick. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Lovelice. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Hunston. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. North and Gray. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Wharton. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Eure. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Willoughby of Parham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Dudley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Ferrers. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Willoughby of Eresby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Audley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Abergavenny. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. H. Steward. My Lord Viscount Lonsdale, Is Edward Earl of Warwick guilty, &c.?

L. Viscount Lonsdale. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Viscount Longueville. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Viscount Townshend. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. H. St The Earl of Grantham, Is Edward Earl of Warwick guilty, &c.?

E. of Grantham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Albemarle. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Tankerville. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Werrington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Scarborough. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Torrington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Marlborough. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Montagu. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Portland. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Rochester. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Nottingham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Yarmouth. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Macclesfield. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Radnor. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Feverham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Burlington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Carlisle. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Bath. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Anglesea. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Essex. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Scarfdale. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Thanet. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Chesterfield. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Carnarvan. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Kingston. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Winchelsea. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Stamford. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Peterborough. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. Rivers. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Manchester. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Denbigh. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Leicester. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Bridgewater. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Dorset and Middlesex. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Suffolk. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Huntingdon. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Derby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Kent. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Oxford. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

Lord High Steward. My Lord Great Chamberlain, Is Edward Earl of Warwick guilty, &c.?

E. of Lindsey. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

Lord High Steward, My Lord Marquis of Normanby, Is Edward Earl of Warwick guilty, &c.?

Lord Marquis of Normanby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Marquis of Halifax. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

Lord High Steward. My Lord Duke of Newcastle, Is Edward Earl of Warwick guilty, &c.?

D. of Newcastle. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Scoberg. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of St. Albans. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Northumberland. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Ormonde. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Southampton. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Richmond. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of *Somerset*. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of *Devonshire*. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

Lord High Steward. My Lord President, Is *Edward Earl of Warwick* guilty, &c.

D. of *Leeds*. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

Lord High Steward. My Judgment is, That my Lord of *Warwick* is not guilty of the Murder, but is guilty of Manslaughter, upon my Honour.

Then the Lord High Steward reckoned up the Number of the Peers that were then present, and the Opinions that were given, and afterwards acquainted their Lordships with the Resolutions that they came to, in this manner.

L. H. St. My Lords, your Lordships are Ninety-three in Number here present, and you have all acquitted my Lord of *Warwick* of the Murder whereof he stands indicted, but you are of Opinion that he is guilty of Manslaughter; Is it your Pleasure, that he should be called to the Bar, and acquainted with your Lordships Judgment?

Lords. Ay, ay.

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

Serj. at Arms. O Yes, O Yes, O Yes; Chief Governor of the *Tower of London*, bring forth the Body of your Prisoner, *Edward Earl of Warwick*, forthwith, upon Pain and Peril will fall thereon.

Then the Earl of Warwick was brought to the Bar.

L. H. St. My Lord of *Warwick*, your Lordship has been Arraigned upon an Indictment for the killing Mr. *Coote*; you have pleaded not Guilty, and put your self upon your Trial by your Peers here present; my Lords have heard the Evidence given both against you and for you, and have considered of it, and are come to a Resolution; and their Judgment is, That your Lordship is not guilty of the Murder whereof you stand indicted, but that you are guilty of Manslaughter. What has your Lordship to say, why Judgment of Death should not be pronounced against you according to the Law?

Earl of Warwick. My Lords, I desire that the Benefit of my Peerage may be allowed me, according to the Statute of *Edward the Sixth*.

L. H. St. My Lord, your Lordship has demanded the Benefit of your Peerage upon the Statute of *Edward the Sixth*, and you must have it by Law; but I am directed by their Lordships to acquaint you, That you cannot have the Benefit of that Statute twice; therefore I am likewise directed by their Lordships to say, That they hope you will take a more than ordinary Care of your Behaviour for the future, that so you may never hereafter fall into such unfortunate Circumstances as you have been now under; my Lords hope this will be so sensible a Warning, that nothing of this kind will ever happen to you again; your Lordship is now to be discharged.

L. H. St. Is it your Lordships Pleasure to adjourn to the House of Lords?

Lords. Ay, ay.

L. H. St. This House is adjourned to the House of Lords.

Then the Lords went in Procession, in the same Order that they came into the Court.

CLXV. *The TRIAL of Charles Lord Mohun, before the House of Lords, for the Murder of Richard Coote, Esq; March 29, 1699. 11 Will. III.*



ABOUT One of the Clock the Lords came in the same Order, as the Day before, to the Trial of the Earl of *Warwick*, into the Court erected in *Westminster-Hall*.

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

Serj. at Arms. O Yes, O Yes, O Yes, my Lord High Steward, his Grace, does strictly Charge and Command all manner of Persons here present, to keep Silence, upon Pain of Imprisonment.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Persons who are obliged to give their Attendance here this Day, before his Grace, my Lord High Steward of *England*, let them give their Attendance forthwith.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes, his Grace

my Lord High Steward of *England*, does straitly Charge and Command all manner of Persons here present to be uncovered.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes, Chief Governor of the *Tower of London*, bring forth the Body of your Prisoner *Charles Lord Mohun* forthwith, upon Pain and Peril will fall thereon.

Then my Lord Mohun was brought to the Bar.

*L. High Steward**. My Lord *Mohun*, your Lordship is now brought upon your Trial for the Murder of Mr. *Coote*, for which you stand indicted by the Grand Jury for the County of *Middlesex*. The King, who knows that Justice is one of the Pillars which supports a Throne, will have a strict Account

* *Lord Somers.*

count taken of the Blood of any of his Subjects, without respect to the Quality of the Slain, or of the Person who stands charged with his Death. There is not one of the noble Peers here present, who are to be your Triers, but does heartily wish your Lordship innocent; but, on the other side, if you should appear to be guilty upon the Evidence, you ought not to hope that any Consideration of Relation, Friendship, or Pity, will prevail against Justice. And therefore since in your present Condition every Thing that is valuable in this World is at stake, it will be highly necessary for your Lordship to recollect your self, and to have your best Thoughts about you. Facts of this Nature are frequently attended with such unhappy Circumstances, that a noble Person may be justly covered with Shame to have Faults and Weaknesses exposed to such an Assembly as this, although he be not conscious to himself of the Guilt of Blood: But your Lordship ought not to be so far discomposed with any Thoughts of this Kind, as to neglect your Defence against this heavy Accusation of Murder. In order to this, it is necessary for your Lordship to hear with Temper what will be said against you, and by no means to interrupt the Counsel or Witnesses. I will take care to give your Lordship notice when the proper Time comes for you to make your Observations upon the Evidence, to examine your Witnesses, and to say what you think proper for your own Defence; and when my Lords have heard, and fully and maturely considered the whole Matter, their Lordships will give such a Judgment as the Law and Justice require.

L. H. St. Read the Indictment to my Lord.

Clerk of the Crown. **C** Charles Lord Mohun, your Lordship stands indicted in the County of Middlesex by the Name of Charles Lord Mohun of Okehampton in the County of Devon, late of the Parish of St. Martins in the Fields in the County of Middlesex, together with Edward Earl of Warwick and Holland, late of the same Parish and County, Richard French, late of the same Parish and County, Gent. Roger James, late of the same Parish and County, Gent. and George Dockwra, late of the same Parish and County, 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 that now is, William the Third, by the Grace of God of England, Scotland, France, and Ireland, King, 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 our said Sovereign Lord the King, that now is, then and there being, Feloniously, Wilfully, and of your Malice aforethought, did make an Assault; and that the aforesaid Edward Earl of Warwick and Holland, with a certain Sword made of Iron and Steel, of the Value of five Shillings, which he the said Edward Earl of Warwick and Holland, in his 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 his Malice aforethought, 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, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which said mortal Wound he the aforesaid Richard Coote then and there instantly died: And that you the said Lord Mohun, together with the said Richard French, Roger James, and George Dockwra, then and there Feloniously, Wilfully, and of your Malice aforethought, were present, aiding, abetting, comforting, assisting, and maintaining the said Edward Earl of Warwick and Holland, the said Richard Coote, in Manner and Form aforesaid, Feloniously, Wilfully, and of his Malice aforethought, to kill and murder; and so the said Edward Earl of Warwick and Holland, and you the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the aforesaid Richard Coote, in Manner and Form aforesaid, Feloniously, Wilfully, and of your Malice aforethought, did kill and murder, against the Peace of our Sovereign Lord the King, that now is, his Crown and Dignity.

Cl. of the Crown. How say you, Charles Lord Mohun, are you guilty of this Felony and Murder, whereof you stand indicted, or not guilty?

Lord Mohun. Not guilty.

Cl. of the Crown. Culprit, How will you be tried?

Lord Mohun. By God and my Peers.

Cl. of the Crown. God send your Lordship good Deliverance.

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

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Persons that will give Evidence on behalf of our Sovereign Lord the King, against Charles Lord Mohun, the Prisoner at the Bar, let them come forth and give their Evidence; for now he stands at the Bar for his Deliverance.

Lord Mohun. My Lords, I desire I may have the Benefit of Pen, Ink, and Paper.

L. H. St. Your Lordships are pleased to permit my Lord Mohun to have Pen, Ink and Paper?

Lords. Ay, ay.

[Pen, Ink, and Paper were carried to my Lord, by one of the Clerks of the House.]

Mr. Cowper. May it please your Lordships, my Lord Mohun, the Prisoner at the Bar, stands indicted by the Grand Jury of the County of Middlesex, before Commissioners of Oyer and Terminer in that County; and the Indictment sets forth, That Edward Earl of Warwick and Holland, Charles Lord Mohun, Baron Mohun of Okehampton in the County of Devon, Richard French, Roger James and George Dockwra, the 30th of October, in the Tenth Year of his Majesty's Reign, with Force and Arms at the Parish of St. Martin in the Fields, in the County of Middlesex, upon one Richard Coote, Esq; Feloniously, Wilfully, and of their Malice aforethought, did make an Assault; and that the said Edward Earl of Warwick and Holland, with a drawn Sword then in his Right Hand, the said Richard Coote, upon the left Part of his Breast near the Collar-Bone, did Strike, Stab, and Thrust, giving him thereby a mortal Wound of the Breadth of half an Inch, and the Depth of five Inches, of which Wound he instantly died; that my Lord Mohun, Mr. French, Mr. James and Mr. Dockwra, Feloniously, Wilfully, and of their Malice aforethought, were present, aiding, and abetting my Lord of Warwick and Holland, the said Richard Coote, in manner aforesaid, to Kill and

any Murder: and then concludes, so that the Earl of *Warwick* and *Holland*, the said Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, the said *Richard Coot*, in Manner and Form aforesaid, Feloniously, Wilfully, and of their Malice afore-thought, did kill and murder, against the Peace of the King, his Crown and Dignity. To this Indictment my Lord *Mohun* has pleaded not guilty, and for his Trial has put himself upon God and your Lordships, his Peers. We shall call our Witnesses, and produce what Evidence we have to give to prove my Lord *Mohun* guilty, and so submit it to you.

Mr. *Att. Gen.** My Lords, This noble Lord, my Lord *Mohun*, the Prisoner at the Bar, stands indicted for the Death of Mr. *Coot*, one of the King's Subjects, as your Lordships have heard in the Case that was before you Yesterday, to which Indictment he hath pleaded not guilty, and for his Trial has put himself upon my Lords, who are his Peers; I shall very shortly open the Substance of the Evidence that we shall offer for the King against my Lord, the Prisoner at the Bar; we shall produce Evidence to prove, That at the Time laid in the Indictment, the 29th of *October* at Night, and the next Morning, which was *Sunday*, my Lord the Prisoner at the Bar, and my Lord of *Warwick*, (who has been found guilty of Manlaughter upon this Indictment before your Lordships) and those other Persons that are named in the Indictment, Captain *French*, Captain *James*, and Mr. *Dockwra*, and the Gentleman that was killed, happened to be at the *Greyhound Tavern* in the *Strand*, which was then kept by Mr. *Locket*, and continued there a great Part of the Night, indeed till the next Morning, about One or Two of the Clock in the Morning; there was my Lord of *Warwick*, my Lord *Mohun*, Captain *French*, Captain *Coot*, and Mr. *Dockwra*, but very late in the Night the other Gentleman, Mr. *James*, was sent for: A Messenger was sent particularly to have him come to them; There they continued drinking till about One or Two of the Clock in the Morning, then Coaches were sent for; then the Drawer of the House will acquaint your Lordships, that he went for them, and could not get any at that Time, being a very dark Night; and when there could be no Coaches had, then there were Chairs called for, and the Drawer went to call Chairs; and as we shall make it appear to your Lordships, when the Drawer came back, there did appear to be a Quarrel among them, for there was clashing of Swords, and they seem'd to be divided into two Parties; on the one Side were my Lord of *Warwick*, my Lord *Mohun* the Prisoner at the Bar, and Mr. *Coot*; On the other Side were Captain *French*, Captain *James*, and Mr. *Dockwra*; and first there were two Chairs came to the Door, into which Mr. *French*, and Mr. *Coot* went, and when they were in the Chairs my Lord *Mohun* came out, and said he would kill any of the Chairmen that went away; and so they put up again, and the Gentlemen came out, and came into the House, but afterwards Mr. *Coot* went into the first Chair, and my Lord of *Warwick* into the next, and my Lord *Mohun* into the third, and then they went away; and the other three Gentlemen went into the other three Chairs, and followed them. Your Lordships will hear whither they were all carried. When they came to the End of *St. Martins-lane* in the *Strand*, my Lord *Mohun* would indeed have endeavoured to

have perswaded Mr. *Coot* in particular to have gone home for that Night, and let the Business alone till another Time, but Mr. *Coot* would go on; and while the three Chairs carried my Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coot* to *St. Martins-lane* End, which were the three first Chairs that went away from *Locket's*, the other three Chairs that went after them overtook them, and then by Mr. *Coot's* Command, the Chairmen that carried him went forward towards *Leicester-fields*, and then this noble Lord, my Lord *Mohun*, did say, If you go on, I will go and see the End of it, and ordered the Chairmen that carried him to go after those Chairs in which my Lord of *Warwick*, and Mr. *Coot* went, and accordingly they did go till they came to the hither End of the Square in *Leicester-fields*, near *Green-street* End, where my Lord *Mohun* got out of his Chair, and paid for all the three Chairs three Shillings. But we shall not be able to give to your Lordships an Account particularly as to my Lord *Mohun*, what he did afterwards, but we shall call our Witnesses to prove what we have opened; and when our Witnesses are heard, we shall leave the Matter to your Lordships Judgment.

Samuel Cawtherne, which was the Drawer at the Tavern at Locket's, was sworn, and gave his Evidence to the same Effect that he did the Day before.

Mr. *Att. Gen.* Pray, Will you acquaint my Lords, Who were at your House the 29th and 30th of *October* last, *Saturday* Night and *Sunday* Morning.

Cawtherne. There where my Lord of *Warwick*, my Lord *Mohun*, Capt. *Coot*, Capt. *French*, Mr. *Dockwra*, and Mr. *James*.

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

Cawtherne. Till between One and Two of the Clock in the Morning.

Mr. *Att. Gen.* Pray, Will you acquaint my Lords what happened at your Master's House at that Time; you remember what Evidence you gave Yesterday; tell the whole Matter again, because it relates to another noble Lord that is now at the Bar.

Cawtherne. The Reckoning was called for about that Time, and I went up and took the Reckoning, and all the Gentlemen came down to the Bar, and Coaches were sent for; I went for them, but no Coaches could be had; Then Chairs were sent for, and I called for Chairs, and there came two Chairs to the Door, and into those two Chairs went Captain *Coot* and Captain *French*; and my Lord *Mohun* and my Lord of *Warwick* endeavoured to quiet them, and to put off the Business till another Day, and thereupon they came out of the Chairs, and came into the House again; My Lord *Mohun* did desire there might be no Quarrel, and would have Mr. *Coot* go home with him to his Lodgings at *Westminster*, or he would go with Mr. *Coot*, and said there should be no Quarrel that Night: There were then three of them on one Side of the Bar, and three of the other Side, and their Swords were all drawn. My Lord of *Warwick*, my Lord *Mohun*, and Mr. *Coot*, were of one Side, and Capt. *French*, Capt. *James*, and Mr. *Dockwra*, were of the other Side: I was without the House when the Swords were first drawn

drawn, but I heard my Lord *Mobun* say, I have got a cut Finger by endeavouring to part them, and at first when the Chairs came on, my Lord *Mobun* said, if they did quarrel, he would send to the Guards for a File of Musquetiers, and secure them; so that he did what he could to prevent any Quarrel at all; and when he had received the Wound in his Hand, I helped him to a Napkin to wrap his Hand in upon the bleeding of it: Then my Lord of *Warwick*, my Lord *Mobun*, and Captain *Coote*, went away in three Chairs, and my Lord *Mobun* gave Order to go down to *Westminster*; and there were three Chairs called for by the other three Persons; two did come, and Captain *French* and Captain *James* went into them; and the 6th not being come, they stayed till it did come, and then they three went away too; the Chairs were all ordered to go home with them; My Lord of *Warwick*, and my Lord *Mobun* gave Order to their Chairs to keep close with Mr. *Coote*; and the other three Chairs immediately followed.

Mr. *Att. Gen.* Pray, will you consider, and recollect with your self, Was Mr. *James* there at first?

Cawthorne. No, I was sent for him about Ten a Clock at Night, and there he continued with them till they went all away in the six Chairs, and he was almost fuddled when he came in.

Mr. *Att. Gen.* When *James* came in, was his Sword drawn?

Cawthorne. His Sword was in the Scabbard, but the Scabbard was broken, and he took and broke his Sword stamping upon it.

Mr. *Att. Gen.* Pray, can you tell, you being up and down in the Room, what was the Occasion of the Quarrel?

Cawthorne. Indeed I can't tell, but some Words past when they were below Stairs by the Bar from Captain *Coote*, That he would laugh when he pleased, and frown when he pleased; and Mr. *Dockwra* did say, that they would fight them whenever they pleased when they went away; but I did not observe that there was any Quarrel between them while they were above, nor any Swords drawn till after I came from calling the Chairs.

Mr. *Att. Gen.* Were all the Swords drawn at once?

Cawthorne. They were all drawn when I came in from calling for the Coaches and the Chairs, and three were within the Bar, and three were without; They were putting up their Swords when I came in again; Indeed I do not know any Thing of the Quarrel.

L. *II. St.* My Lord *Mobun*, Will you ask this Witness any Questions?

L. *Mobun.* Indeed I think I need not ask him any Question; but yet, if your Lordships please, I would ask him this, Whether directly or indirectly I was any ways concerned in the Quarrel? Or, Whether I did not endeavour all that ever I could to quiet them?

Cawthorne. Yes, indeed, my Lord *Mobun* did endeavour all that ever he could to prevent any Quarrel at that Time.

L. *Mobun.* Did I say any Thing tending to the promoting of a Quarrel or Fighting among them?

Cawthorne. No, my Lord *Mobun* did not promote any Thing of the Quarrel between them, but he did say two or three times, that he would send for the Guards to secure them, and keep

them from fighting, both at the Door of the House, and at the Bar, and ask'd for a Napkin to wrap up his Hand in, for the Wound which he said he got in endeavouring to quiet and part them, and prevent their fighting.

L. *Mobun.* That is all that I would ask him, whether I did not endeavour all that I could to prevent any quarrelling or fighting at that Time?

Cawthorne. Yes, indeed, my Lord did so.

L. *H. St.* He has said so already, my Lord, and therefore there does not need any further Examination of him to that Point: If both Sides have done with this Witness, let him go down. (*Which he did.*)

L. *H. St.* Then Mr. Attorney, who is your next Witness?

Mr. *Att. Gen.* Our next Witness is *Tho. Browne*, who was one of the Chairmen that carried Mr. *Coote* into *Leicester fields*.

Then he was sworn.

L. *II. St.* What is the Question you would ask him, Mr. Attorney?

Mr. *Att. Gen.* My Lords, I desire he may be ask'd and examin'd, and acquaint your Lordships, who it was that he carried from *Locket's* the 29th of *October* last to *Leicester-fields*, and what Time it was of the Night?

Browne. I carried Mr. *Coote* in my Chair.

Mr. *Att. Gen.* Whither were you directed to carry him?

Browne. To *Leicester-fields*.

Mr. *Att. Gen.* What Time of Night was it?

Browne. It was three Quarters past One, as near as I could guess.

Mr. *Att. Gen.* Pray, What other Chairs were there that went along with you?

Browne. There were two other Chairs.

Mr. *Att. Gen.* Who were in those Chairs, pray?

Browne. There were my Lord of *Warwick* in one, and my Lord *Mobun* in the other.

Mr. *Att. Gen.* Did you three go away from *Locket's* together?

Browne. Yes, we did; and when we were bid to take up, we went to the End of *St. Martin's-lane*, and turning up at the End of *St. Martin's-lane*, there my Lord of *Warwick* and my Lord *Mobun* called out to Capt *Coote* to stay, and to turn down to go to *Westminster*; but Mr. *Coote* would turn up the Lane, and my Lord of *Warwick* and my Lord *Mobun* made a Stop at the Back-Door of the *Cross-keys* Tavern, and both of them perswaded Mr. *Coote* to put it off till the next Morning; but he would not, he said he would make an End of it that Night.

Mr. *Att. Gen.* Pray, recollect your self, Did they name among them what their Business was that they would make an End of?

Browne. No, they did not.

Mr. *Att. Gen.* Who was it that stop'd at *St. Martin's-lane* End?

Browne. When we were turning up at *St. Martin's-lane* End, my Lord of *Warwick* and my Lord *Mobun* call'd out to stop, and ask'd Mr. *Coote* whither he was going? And when he said, to *Leicester-fields*, my Lord *Mobun* called out to us to set down, which we did, at the Back-Door of the *Cross-keys* Tavern; They did both of them, my Lord *Warwick*, and my Lord *Mobun*, perswade Mr. *Coote* to go home to *Westminster*, and not to

end

end the Business that Night; but he would go on, and while we were there, there went three other Chairs up *St. Martin's-lane* on the other Side of the Way; then *Mr. Cote*, who was in our Chair, bid us take up, and follow those Chairs into the Fields, and swore, damn him he would run his Sword into one of us, if we did not make haste, and overtake those other Chairs, and go before them; I think his Words were, *Damn me, I'll run my Sword into your Breech, if you do not make haste, and get before that other Chair.*

Mr. Att. Gen. You say then, they went all away together up to *Leicester fields*?

Browne. Yes, they did so.

L. Mohun. I desire he may be ask'd, whether I did not desire him to go home with me to my Lodging at *Westminster.*

Browne. Yes, you did, and begg'd of him as if it had been for an Alms, that he would put it off for that Night; but when the other Chairs past by us at *Charing-Cross* in *St. Martin's-lane*, he would have the Chair taken up, and us to make what haste we could to get before them thither, or else, he swore, damn him he would run his Sword into one of us, if we did not make haste to get to *Leicester-fields* before the other Chairs that went up the other Side of the Way.

Mr. Att. Gen. When the other Chairs were past by, and you went away to *Leicester-fields*, pray tell my Lords what happened then.

Browne. We went away to *Leicester-fields*, and when we came to *Green-street* End, and were entring upon the Square upon the Broad Stones, *Mr. Cote* call'd out to us, and bid us to set him down, and so did the other two Chairs, and when he put his Hand into his Pocket to discharge us, my Lord of *Warwick* put his Hand in his Pocket to pay the three Chairs, and *Mr. Cote* offered half a Guinea to discharge the Chairs, and my Lord *Mohun* did produce 3 s. and with it discharged all the three Chairs, and they all three walked away together forward upon the Broad Stones on the Right Hand Side of the Way; It was so dark a Night, I could not see half a dozen Yards from me; It was the darkest Night, I think, that ever I saw in all my Life, and therefore I cannot tell what became of them after they went out of the Chairs.

Mr. Att. Gen. Pray, did you see my Lord *Mohun* afterwards?

Browne. No, I did never see my Lord *Mohun* afterwards till now here at the Bar.

Mr. Att. Gen. You say it was so dark, that you could not see three Yards from you; pray, what did happen afterwards when you were in the Field?

Browne. A little while after we had set down these Gentlemen, I fill'd my Pipe out of my Box, and before I could light it, I heard a Calling of Chairs, Chairs, and I went up towards the End of the Square, where the Noise was, and when I came there, they would have had me lift the Chair over the Rails, and I told them, if I did I could not lift it over again: but they would needs have me lift it over, and I did so, and by the Light of the Lanthorn I saw *Capt. French* and *Captain James* holding up *Captain Cote*, and they did desire me to take him into our Chair, but he was in such a Condition that I could not get him into the Chair; it was before I could well light my Pipe the Chairs were called.

Mr. Att. Gen. Who did call, can you tell?

Browne. No, indeed I cannot tell who did call Chairs, but it was a Voice from the upper End of the Fields, and we lifted our Chair over the Rails into the Fields, and there were two Gentlemen holding up another Man; I have heard it said it was *Captain French* and *Captain James*, and they cried out, *Dear Cote, Dear Cote*, and would have had him gotten into the Chair, but we could not; and my Lord of *Warwick* did then say, if any Damage did come to the Chair, tho' it were 100 l. we should be satisfied for the Damage; but we were not able to get him into the Chair, and so there we left him.

Mr. Att. Gen. You say you saw two Gentlemen holding up *Mr. Cote*, and 'twas a very dark Night, how could you tell who those Gentlemen were?

Browne. I could not see any Thing of them till we came up with the Candle close to them.

Mr. Att. Gen. And what did they say when you came up close to the Chair?

Browne. They offered me an 100 l. Satisfaction for any Damage to my Chair; but they could not get him in, for he was at that Time dead, I believe, for we went to hale him up, and to get him into the Chair, but we could not do it.

Mr. Att. Gen. Can you tell who the two Persons were that held him up?

Browne. No, but by the Description of the Persons they had such Cloaths on, as that they must be *Captain French* and *Captain James*, but indeed I cannot swear directly who they were that were there, nor who they were that called for Chairs at the upper End of the Field; but when our Chair was lifted over again over the Rails, and we came to the Corner to see who should be taken in, there came one to us who bid us carry him to the *Bagnio* in *Long-Acre*, and thither we did go accordingly.

Mr. Att. Gen. Pray, can you tell who the Persons were that held up the Gentleman they would have to be got into the Chair?

Browne. No, indeed I cannot.

Mr. Att. Gen. Pray, can you describe 'em so as to know them, whether my Lord of *Warwick*, and my Lord *Mohun* were those two Gentlemen?

Browne. My Lord of *Warwick* and my Lord *Mohun* were not there I'm sure, for I know them very well; I was acquainted with them before; and when I came up to these Gentlemen with the Candle, there was one of them was bigger than my Lord of *Warwick*, or my Lord *Mohun*; and the Elder of them had other Sort of Cloaths than either of them had on at that Time, as we could see when we came up close with the Candle to them.

Mr. Att. Gen. Were there any Lights of the Lamps, that are usually in the Streets at that Time, about the Square?

Browne. Yes, there were those Lights; but it was a very dark Night, and we could not see two Yards before us, that I am sure of, and there was no Body else that I saw at that Time at the upper End of the Field, but those two Gentlemen, holding up of *Captain Cote*, whom we had brought up before to the Square, and left him with the Earl of *Warwick* and my Lord *Mohun*, at the Bottom of the Square; but whether they all went, indeed I can't tell: We call'd Watch, but they said it was not within their Ward, and therefore they would not come. When we saw how ill *Mr. Cote* was upon our coming

coming up, and that he could not get him into the Chair, we went away, lifted our Chair over the Rails again, and carried a Gentleman to the *Bagnio* in *Long-Acre*.

Lord *Mobun*. I have a Question to ask this Witness, and that is, How far the Place is whither he carried the Chair, that is, from *Green-street* End, to the Place whither the Chairs were called for again, at the upper End of the Pales, where he found the two Gentlemen holding up Mr. *Coote*, and endeavouring to get him up into the Chair?

Browne. I believe it is about fifty Yards, as near as I can guess.

Lord *Mobun*. I desire to know, whether he means fifty Yards from the upper End to the lower End of *Leicester-fields*?

Browne. Yes, I believe, my Lord, it is, and better.

Lord *Mobun*. I desire to ask him, whether *Green-street* be not the very lower End of the Square?

Browne. Yes, my Lord, the lower End of the Square, coming out of *St. Martin's-lane* into *Green-street*.

Mr. *Att. Gen.* But did you see three other Chairs in that Place?

Browne. Yes, while I was filling my Pipe out of my Box, three other Chairs did come by, and went away; but within a little while after the filling of my Pipe, or rather before I could well fill it, or light it, we heard calling for Chairs again towards the upper End of the Fields, and we carried up our Chair thither, and there we found, as I have told you, two Gentlemen holding up Mr. *Coote*, and crying out, *My dear Coote! my dear Coote!*

Mr. *Att. Gen.* Can you tell who it was that called for the Chairs the second Time, when you were in the Fields?

Browne. No, indeed, I cannot; but they would have us bring our Chair over the Rails, and we did lift it over; and when we came up to them, I saw only two Gentlemen, whom I did not know who they were particularly, till we came up close to 'em, that we could see their Cloaths, by the Light of the Candle in our Lanthorn; and they would have had us put Mr. *Coote* into our Chair, and he being very much wounded, they would have had us carry him away; we told them it would spoil our Chair, and we could not besides lift him over the Rails again; they promised we should have any Satisfaction for Damage to our Chair, even to the Value of a hundred Pounds; we went to heave him up to put him into the Chair, and did all we could to have got him into the Chair, but we could not; so we lifted the Chair over the Rails again; and when we came to the Corner of the Rails, at the Way that goes to *Long-Acre*, there we took up a Gentleman, whom we carry'd to the *Bagnio* in *Long-Acre*; we called out to the Watch, but they said it was not within their Ward, and they would not come.

Mr. *Att. Gen.* Can you tell who were the Persons that were at the upper End of the Fields?

Browne. No, indeed, I cannot tell who they were.

Mr. *Att. Gen.* Was my Lord *Mobun* and my Lord *Warwick* the two?

Browne. No, my Lord *Mobun* was not there,

nor my Lord *Warwick*; I know them so well, that it could not be them; one of the Gentlemen was bigger then my Lord of *Warwick*, and the other of them had other Cloaths than my Lord *Mobun*.

Mr. *Att. Gen.* Was that the Way they walked up, when they came out of the Chairs, that led to that End of the Fields where you found Mr. *Coote* wounded?

Browne. Yes, it was.

Mr. *Att. Gen.* My Lords, this is but the Repetition of the Evidence that he gave to your Lordships Yesterday.

L. H. St. If you have done with this Witness, my Lord *Mobun* may ask him any Questions.

Lord *Mobun*. I desire to have him ask'd, How far is the Place where he carried the Chair at first into *Leicester-fields*, from the Place where they put over the Chair within the Rails, and would have taken in Mr. *Coote*?

Browne. It is about fifty Yards, as near I can guess.

Lord *Mobun*. I desire to know of him, whether the Place where we were set down, that came in the first three Chairs, from *Locket's* into *Leicester-fields*, to the Place where he found Mr. *Coote* supported by the two Gentlemen, be not from one End of the Fields to the other?

Browne. The Place where we set down Captain *Coote* is at the lower End of *Green-street*, and the Place where we found him wounded, was at the upper End by *Leicester-house*.

L. H. St. I think it is understood, that *Green-street*, which comes out of *St. Martin's-lane*, is at one End of *Leicester-square*, and *Leicester-house* is at the other End.

Mr. *Att. Gen.* Pray, where was it that you saw the two Gentlemen holding up Captain *Coote*, and cry out, *My dear Coote! my dear Coote!*

Browne. It was on one Side of the Cross-way, that leads out of the Fields towards *Newport-street*, and by *Leicester-house*.

Mr. *Att. Gen.* But you say three Chairs did go up towards the upper End of the Fields?

Browne. Yes, they did so; but our three Chairs that came away first from the *Greyhound* Tavern, set down at *Green-street* End, and the three Gentlemen that came in our Chairs went up the Pales to them; but whither they went I can't tell, but soon after we heard calling for Chairs again, and so we went up, where we found the two Gentlemen holding Captain *Coote*, and saying, *My dear Coote! my dear Coote!*

Mr. *Att. Gen.* But when you were called the second Time, that is, into the Fields, where was the Place you say that you found them in?

Browne. It was within the Rails, one Side of the Cross-way towards *Leicester-house*.

Lord *Mobun*. Pray, was that the direct Way that I went from the Place that I was set down, that is, the lower End of *Green-street*, to the Place that they afterwards went to, which was the *Bagnio* in *Long-Acre*.

Browne. When Captain *Coote*, and my Lord *Mobun* were set down, and walked away upon the Pav'd Stones of the Square, to the Place where I found the two Gentlemen holding up Capt. *Coote*, was the quite contrary Way from the End of *Green-street* to the *Standard* Tavern.

L. H. St. Who is your next Witness, Mr. Attorney?

Mr. *Att. Gen.* The next Witness that we call, is *Robert Applegate*.

Who was sworn.

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

Mr. *Att. Gen.* My Lords, this is the Chairman that carried my Lord *Mobun* to *Leicester-fields* from *Locket's*; he will give your Lordships an Account when he carry'd him, who he carry'd, and what happened afterwards, which is all but to the same Purpose with the Evidence that he gave Yesterday. But pray, who was that whom you carried on the Thirtieth of *October* last to *Leicester-fields*?

Applegate. I carried my Lord *Mobun* from *Locket's*, at the *Greyhound Tavern* in the *Strand*, to *Leicester-fields*.

Mr. *Att. Gen.* Pray, How many Chairs were there of you that went away together?

Applegate. There were three of us that went away together, one carry'd my Lord *Warwick*, we my Lord *Mobun*, and the third carry'd Captain *Coot*, which was the first Chair that went away.

Mr. *Att. Gen.* Whither did you go?

Applegate. We went to the Corner of *St. Martin's-lane*.

Mr. *Att. Gen.* Who do you say were in the other two Chairs?

Applegate. My Lord of *Warwick*, and my Lord *Mobun*.

Mr. *Att. Gen.* When they came out first, What Orders or Directions were given?

Applegate. My Lord *Mobun* said, That he and my Lord of *Warwick*, and Captain *Coot*, would go all three together down to *Westminster*, and there they would all lie together, or be together that Night.

Mr. *Att. Gen.* What Answer was given to what my Lord *Mobun* said?

Applegate. Indeed I do not remember any Answer that was given at all; but after that my Lord *Mobun* went into the Chair, and ordered us to follow down the other two Chairs towards *Westminster*, and we put up the Chair and came away; and when we came to *St. Martin's-lane* End, the Chair that carried Capt. *Coot* turn'd up the Lane, and we being ordered to follow the other Chairs, went up the Lane too; but my Lord *Mobun* perceiving that they were not going down to *Westminster*, call'd out to stop, just when we were entered into *St. Martin's-lane*, over-against the Back-door of the *Cross-keys Tavern*, and made the other Chairs to stand, and all the three Chairs were set a-breast before that Place, and my Lord *Mobun* ask'd Capt. *Coot*, Whither he was going? and he answered, to *Leicester-fields*: He begg'd of him, as one would beg for an Alms, that he would not go that Night, for the Business could not be done that Night, and it was better to put it off till the next Morning.

Mr. *Att. Gen.* Did they name what the Business was, that was to be done?

Applegate. No; but my Lord *Mobun* did say, 'twas impossible to be done that Night.

Mr. *Att. Gen.* Well, and what happened afterwards, while you were in that Place?

Applegate. While we were there, three other Chairs pass'd by us on the other Side of the Way, and going forward up the Street, Capt. *Coot* order'd their Chairs to follow, and so we did to *Green-street* End, and there we set 'em down.

Mr. *Att. Gen.* Pray, can you remember what was said by my Lord *Mobun* at the Time when the other Chairs pass'd by?

Applegate. He was then desiring and begging of Capt. *Coot* to go home to *Westminster*, telling him that it could not be done that Night; but it must be deferr'd till the next Morning; but Capt. *Coot* said he would not delay it till the next Morning, but he would go to *Leicester-fields* that Night, and all three Chairs were ordered to go forward, and we did go on forward to *Leicester-fields*; my Lord *Mobun*, indeed, did beg and desire as heartily as, I say, a Man for an Alms, that they would let it alone for that Night; but Capt. *Coot* would not, and ordered his Chair to go forwards.

Mr. *Att. Gen.* You say, my Lord *Mobun* begg'd as heartily as if it were for an Alms to defer it for that Night?

Applegate. Yes, he did so; so that I do really think that he was not concerned in the Matter.

Mr. *Att. Gen.* If he were so earnest to defer and put off the Business, how came you to carry him thither that Night? What Expressions did he use particularly in *St. Martin's-lane*, after the other Chairs were pass'd by?

Applegate. He said, If you must go, I'll go with you and see it; and he bid us take up and follow the other Chairs wherein Capt. *Coot* and my Lord *Warwick* were; and we did go.

Mr. *Att. Gen.* And where did you set my Lord *Mobun* down?

Applegate. At the hither End of *Leicester-square*, at the Corner of *Green-street*, the lower Corner of the Pav'd Stones, going up to *Leicester-House*.

Mr. *Att. Gen.* What became of the three Gentlemen that you set down at the End of *Green-street*?

Applegate. They went all three together up the Stone Pavement, towards the upper End of the Square, towards the *Standard Tavern*, I think.

Mr. *Att. Gen.* Did they go together, or did they go afunder?

Applegate. They went together, I think; I did not see them part one from another.

Mr. *Att. Gen.* Pray did you see my Lord *Mobun* afterwards?

Applegate. No, I did not.

Mr. *Att. Gen.* What became of you afterwards?

Applegate. I stay'd a little at the lower End of the Square to take a Pipe of Tobacco, and when I had filled my Pipe, I heard calling Chairs, Chairs again, at the upper End of the Square; and when we brought up our Chair to the upper End of the Fields, the first Man that I did see was my Lord of *Warwick*, who would have had us put over our Chair within the Rails; but we told him we could not get it over again if any one was put in it; but if they would come out into the Square, there we were ready to carry 'em any where; and when we came to the upper End of the Square, there was Captain *French*, and we took him into the Chair, and he bid us carry him to the *Bagnio* in *Long-acre*; and at *Newport-street* End he would have had us stop and pull off his Cloaths, for he believed he was a dead Man.

Mr. *Att. Gen.* Pray, who did you see there at the upper End of *Leicester-fields*?

Applegate. No Body indeed, but my Lord of *Warwick*, and Mr. *French*.

Mr. *Att. Gen.* No Body but them two?

Applegate. No; no Body but them two.

Mr.

Mr. *Att. Gen.* Where do you say that was, that the Calling for Chairs was, and where you brought your Chair?

Applegate. It was just at the upper End of *Leicester-fields*, by *Leicester-House*, and by the *Standard Tavern*.

Mr. *Att. Gen.* Who was it that you there took up?

Applegate. It was Captain *French*.

Mr. *Att. Gen.* Whither then did you carry him?

Applegate. We were order'd to go to the *Bagnio* in *Long-Acre*; and thither we, and another Chair that carried my Lord *Warwick*, did go; and when we came there, we did knock a good while before we could get any Body up; and when they were let in, we came away, and were bid to call for our Fare the next Morning.

Mr. *Att. Gen.* Pray, where was it that you took up Captain *French*?

Applegate. It was the upper End of all of *Leicester-fields*.

Mr. *Att. Gen.* And you went away with him, did you?

Applegate. Yes, as soon as ever we took him up; it was as soon as ever we could, at the outside of the Rails, I was the first Chair that, upon the Calling for Chairs after they came thither, was by the *Standard Tavern*, and from thence we went into *Long-Acre*.

Mr. *Att. Gen.* Whereabout is the *Standard Tavern*?

Applegate. It is at the further End of the Fields by *Leicester-House*; it is by *Cranburne-lane*, which is the Street that leads into *Newport-street*, and so into *St. Martin's-lane*; and then we were to go to the *Bagnio* in *Long-Acre*.

L. H. St. My Lord *Mobun*, will you ask this Witness any Questions?

Lord *Mobun.* Yes, my Lord, I have a Question or two to ask him; I desire to ask him, Whether, when we were going along, and the Chair, in which Captain *Coote* was, turn'd up *St. Martin's-lane*, I did not call out to have him stop, and know whither they were going?

Applegate. Yes, my Lord, you did.

Lord *Mobun.* Pray, whither did I bid you go, when you first took me up at *Locket's*?

Applegate. My Lord *Mobun* bid me follow those Chairs, but go down to *Westminster*, for he said they all three would go together, and lie together that Night.

Lord *Mobun.* My Lords, I desire this Man may be ask'd, whether there were not several Ways of going out of the Fields, besides those of *Green-street* and the *Standard Tavern*?

Applegate. Yes, my Lord, no doubt, there are.

Lord *Mobun.* Then I'll leave it to your Lordships to make the Observation; for there is no Evidence that I was even seen in the Field after I alighted out of the Chair at *Green-street* End; and I hope your Lordships do observe, That he has told you, I was as earnest in begging Captain *Coote* to defer going to *Leicester-fields* till the next Morning, and begg'd as heartily of him for it, as any Beggar would do for an Alms.

L. H. St. My Lord, their Lordships no doubt, have made that Observation; for he did say so.

Lord *Mobun.* My Lords, I have no more to ask him.

L. H. St. Mr. Attorney, Who is your next Witness?

Mr. *Att. Gen.* Our next Witness is *Peter Ketro*, who likewise was a Chairman that carried my Lord *Mobun* into the Place where the Fact was done.

Peter Ketro was sworn.

Mr. *Att. Gen.* Pray will you acquaint my Lords who you carried upon the Thirtieth of *October* last, from the *Greyhound Tavern* to *Leicester-fields*?

Ketro. Upon the Thirtieth of *October* last, in the Morning (which was *Sunday*) very early, we were call'd to the Door of the *Greyhound Tavern*, and when we came there, there were several other Chairs there, for there was no Coach, it seems, to be had.

Mr. *Att. Gen.* And who was in your Chair?

Ketro. My Lord *Mobun*; and there were two other Chairs that went away together, wherein were Captain *Coote* and my Lord *Warwick*.

Mr. *Att. Gen.* And whither did you go from thence?

Ketro. We went along the *Strand*, and when we came to the End of *St. Martin's-lane*, the Chair that Capt. *Coote* was in, we supposed by his Order, turn'd up the Lane; for my Lord *Mobun* had given us Order to go down to *Westminster*; and then when we came there to the End of *St. Martin's-lane*, he call'd out to stop, and to have the other Chairs stop, and they stood still at the Back-door of the *Cross-keys Tavern*, which is at the End of *St. Martin's-lane*, and all the three Chairs did make a stand at that Place, and my Lord of *Warwick*, and my Lord *Mobun*, and Captain *Coote* talk'd together; and my Lord *Mobun* did desire Capt. *Coote* to go down to *Westminster*, and to put off the Business for that Night, for nothing of Business could be done: Then my Lord of *Warwick* did say, if they did go on he would go on with them; but my Lord *Mobun* did endeavour to persuade 'em to go down to *Westminster* to lodge, for nothing could be done that Night; but when the other three Chairs pass'd by, on the other Side of the Way, and Captain *Coote* would needs go forwards to *Leicester-fields*, my Lord *Mobun* did bid us take up and follow them; and he said, if they would go, he would go and see what came of it; so we took up, and followed the other Chairs, and went up the Lane, and into *Green-street*, to the lower End of *Green-street*, next the Square, and there our three Chairs set down my Lord of *Warwick*, my Lord *Mobun*, and Captain *Coote*, and were discharged.

Mr. *Att. Gen.* And what became of them after?

Ketro. There they went up upon the *Broad-Stones*, up towards the upper End of the Fields.

Mr. *Att. Gen.* Did they go all together, or did they part?

Ketro. They went together for any Thing I know; I saw no parting, and indeed it was so dark a Night, that I cannot tell what became of 'em after they went out of the Chairs: It was one of the darkest Nights that ever I saw.

Mr. *Att. Gen.* Well then, pray what happened after that?

Ketro. I went to light my Pipe of Tobacco, and before we could light a Pipe of Tobacco, there was calling at the upper End of the Square for Chairs again; and so up we went with our Chair to the upper End of the Fields; and when we came there, some Body call'd out to have us lift our Chair over within the Rails; but we told 'em, if we did so, we could not get it over again, if any

Body were put into it; and so we were bid to go to the End of the Rails, in order to the getting out from that Place, and getting in of any Body that was to go into the Chair; and when we came to the End of the Rails, we took up Capt. *French*, and he bid us carry him to the *Bagnio* in *Long-Acre*, and we did so, and at *Newport-street* End he would have had us have pull'd off his Cloaths, for he said, he believ'd he was a dying Man; but we carried him on to the *Bagnio* in *Long-Acre*, and there came after us the Lord of *Warwick* in another Chair; and there we set them down.

Mr. *Att. Gen.* I have a Question to ask you, Friend; Did you not see my Lord *Mohun* after you set him down at *Green-street* End?

Ketro. No, indeed, not I; I did not, after he went out of the Chair?

Mr. *Att. Gen.* Can you tell whither he went after he went out of the Chair.

Ketro. No, I can't tell whither he went; they all three went up the Pav'd Stones together, but whither they went I can't tell.

Mr. *Att. Gen.* Did you hear of any other Chair that was at that End of the Fields at that Time?

Ketro. There was another Chair at that Time, at the upper End of the Fields.

Mr. *Att. Gen.* Did you hear 'em desire to take Mr. *Coote* into that Chair?

Ketro. No, I did not.

Mr. *Att. Gen.* Nor do you know any Thing of their putting Mr. *Coote* into a Chair?

Ketro. No, indeed, not I; what they did as to the other Chair, that was before, they can best tell, for I can't.

L. H. St. Who is your next Witness, Mr. Attorney?

Mr. *Att. Gen.* *Richard Edwards.*

L. H. St. What do you call him to?

Mr. *Att. Gen.* Because we would not trouble your Lordships with the Repetition of every one of the Witnesses that were here Yesterday; this is the Man that carry'd Mr. *Dockwra* into the Field.

Edwards was sworn.

L. H. St. Mr. Attorney, What do you ask this Witness?

Mr. *Att. Gen.* Pray do you acquaint my noble Lords here, who you carried in your Chair to *Leicester-fields*?

Edwards. Indeed, I can't tell; there were three Chairs that took up three Persons at the *Greyhound* Tavern in the *Strand*, after three other Chairs were gone away, and every one had a Gentleman in 'em: I, for my Part, did not know who was in our Chair; but when we shut up the Chair we were bid to go to the *Standard* Tavern in *Leicester-fields*, and thither we did go, and there we set down the Gentleman that was in our Chair, and away we went; and as we went up *St. Martin's-lane*, we pass'd by the three other Chairs that turn'd up before, at the Back-Door of the *Cross-Keys* Tavern.

Mr. *Att. Gen.* Did you see the other three Chairs in *Leicester-fields* afterwards?

Edwards. No, indeed, I did not; but went up to the *Standard* Tavern, and set down the Gentleman that was in our Chair, and there we left him, and went away.

Mr. *Att. Gen.* Pray, Can you tell who it was that you carried?

Edwards. Indeed, I cannot very well tell; but I believe it was Captain *James*, or Mr. *Dockwra*.

Mr. *Att. Gen.* When you came to the *Standard* Tavern, pray, what happen'd? What pass'd there?

Edwards. To the best of my Knowledge, I took hold of the Knocker of the Door, and knock'd at the Door, and the Gentleman came out, and was set down there; and he gave me a Shilling, and away I went with my Chair.

Mr. *Att. Gen.* When you set him down at the *Standard* Tavern, pray, what did he say?

Edwards. He gave me a Shilling, and bid me go about my Business; and so we went away.

Mr. *Att. Gen.* Was you there when you heard 'em call Chairs back?

Edwards. No, we went away as soon as we had set him down at the *Standard* Tavern.

Mr. *Att. Gen.* Did you observe which Way they went after you set him down?

Edwards. No, indeed, I did not; I never minded which Way they went, after we set him down.

Mr. *Att. Gen.* Which Way did you go?

Edwards. We went away down towards *Charing-Cross*.

Mr. *Att. Gen.* Did you see any other Chairs in the Square when you went down?

Edwards. Yes, there were other Chairs at the other End of the Square.

Mr. *Att. Gen.* Did you see any Gentlemen as you came down, walking towards the *Standard* Tavern, upon the Pav'd Stones?

Edwards. No, indeed, my Lords, not that I remember; but I did see the other three Chairs as I pass'd by *Green-street* End; who were in 'em, or what was become of them that were in 'em, that I can't tell.

Mr. *Att. Gen.* What did they say to you any of 'em at that Time?

Edwards. They ask'd us if we were going away, and we told them yes; we were discharged.

Mr. *Att. Gen.* But pray, did you not meet any of the other Gentlemen upon the Pav'd Stones?

Edwards. No, indeed, I did not see, to the best of my Remembrance, any other Gentlemen upon the Pav'd Stones.

Mr. *Att. Gen.* What did the other Chairmen say to you?

Edwards. They ask'd if we were coming away? and we left 'em behind us.

L. H. St. Has my Lord *Mohun* any Questions to ask him?

Lord *Mohun.* No, I have not.

L. H. St. Mr. Attorney, who is your next Witness?

Mr. *Att. Gen.* *Jackson*, who was the Chairman that carry'd Capt. *James*. (*He was sworn.*)

Mr. *Att. Gen.* Pray, Will you acquaint my Lords who you carry'd away from *Locket's* to *Leicester-fields*?

Jackson. Captain *James*: There were six Chairs in all: I do not know who went in the other Chairs, but in the three Chairs that went together, when we went, there was Captain *Dockwra*, Captain *French*, and Captain *James*.

Mr. *Att. Gen.* And where did you set him down?

Jackson. At the *Standard* Tavern in the Square in *Leicester-fields*.

Mr. Att. Gen. What became of him after you set him down?

Jackson. We knock'd twice at the Tavern Door, and then he gave us a Shilling, and we went away presently, and went down on the Left Hand upon the Pav'd Stones, towards Green-street End.

Mr. Att. Gen. Did you meet any Persons coming up upon the Pav'd Stones?

Jackson. Yes, my Lord, I did.

Mr. Att. Gen. Can you tell who those Persons were?

Jackson. Indeed, I cannot tell.

Mr. Att. Gen. How many were they in Number?

Jackson. They were two or three; but it was so dark, that I cannot tell how many they were.

Mr. Att. Gen. Which Way were they walking?

Jackson. They were going up towards the middle Street.

Mr. Att. Gen. How far was that from the Standard Tavern?

Jackson. It might be about sixty Yards from the Standard Tavern.

Mr. Att. Gen. You say there were three Chairs standing at the End of Green-street when you came by?

Jackson. Yes, there were so.

Mr. Att. Gen. Had you no Discourse with them?

Jackson. No, indeed, I had not.

Mr. Att. Gen. Did you not ask them why they stay'd there?

Jackson. No, indeed, I did not; we pass'd by and went home.

Mr. Att. Gen. You know my Lord Mobun, don't you?

Jackson. Yes, I do, very well.

Mr. Att. Gen. Was not my Lord Mobun in that Company?

Jackson. He was, when the six Chairs were call'd to Locket's, but I did not hear any Discourse, that I can remember, that pass'd among 'em, nor do I know, or did hear, what became of my Lord Mobun afterwards.

Mr. Att. Gen. Were those the other three Chairs that went away from Locket's first, that you saw at Green-street End?

Jackson. Indeed, my Lords, I believe so; I cannot swear that they were those three Chairs; when we had set down Captain James, we did not look back any Way at all, but went away home, it being so late and so dark.

L. H. St. My Lord Mobun, will you ask this Witness any Questions?

Lord Mobun. No, my Lord.

Mr. Att. Gen. Then, my Lord, we shall call William Salmon, who was the Surgeon that did search the Wound by the Coroner's Command, when he took the Inquisition upon the View of the Body.

Who was sworn.

Mr. Att. Gen. Pray, Did you view the Body of Mr. Coote after he was dead?

Salmon. Yes, I did view his Body by the Command of the Coroner at the Watch-house, where it lay in St. Martin's-lane.

Mr. Att. Gen. Pray then, will you acquaint

my Lords what Wounds you found upon the Body?

Salmon. There was one upon the Left Part of the Breast, near the Collar-bone; which, upon probing, I found to be half an Inch in Breadth, and four or five Inches deep downward; the other was a Wound that was in his Left Side, just under the short Ribs, and that was upward; and upon probing of it, I found it was about the Breadth of an Inch at the Orifice, and about the Depth of five or six Inches, and pierced through the Diaphragma.

Mr. Att. Gen. Pray, did you observe any Difference in the Wounds, or in the Orifice of them?

Salmon. That below was a large Wound, larger than the other.

Mr. Att. Gen. Were the Wounds, do you think, given with two Swords, or with one and the same Sword?

Salmon. Indeed, I can't tell.

Mr. Att. Gen. Did you look upon either, and which of them to be mortal?

Salmon. I look'd upon both to be mortal.

L. H. St. If you have done with him, Mr. Attorney, will my Lord Mobun ask him any Questions?

Lord Mobun. No, I shall ask him no Questions, for I think I need not; I was never prov'd to be in the Company, in the Place where the Fighting was.

Mr. Att. Gen. We have done with calling of Witnesses, till we hear what my Lord Mobun says to it.

L. H. St. My Lord Mobun, This is the Time (the King's Evidence being finished) for you to call your Witnesses, and make your Defence.

Lord Mobun. My Lords, I shall not call many Witnesses, for I think there is nothing that fixes any thing of Guilt, as to Capt. Coote's Death, as to me; but I shall call one Witness that was here (as I understand) yesterday, but not examined, and that is a Person that saw me afterwards, and knows that I had a Wound in my Finger laid open, and that Wound was received at Locket's, by endeavouring to part 'em, when they were quarrelling there at that Time.

The Witness stood up.

L. H. St. Tho' you are not upon your Oath, yet you are as much obliged, in Justice and Conscience, to speak the exact Truth, as if you was upon your Oath; therefore have a Care what Testimony you give.

Witness. Yes, my Lord.

L. H. St. What is the Question you would have this Witness ask'd?

Lord Mobun. What he knows of my being wounded about this Time, and what I declared concerning that Wound, how I received it?

L. H. St. I will not refuse to ask the Question, but I must acquaint your Lordship that it signifies nothing in Point of Evidence at Law, what you your self did declare after the Fact was over. It is material what you did to prevent this Mischief before it happened, but not what you said or declared after the Thing was done. You hear my Lord's Question, What say you to it?

Witness. I was at My Lord Mobun's several Days after this Business happened, at the Lodging where he lay, and where I saw him; he had a Hurt in his

his Hand, and it was laid open, it was in the Finger, and that he said was all he got by endeavouring to part People from fighting.

Mr. Att. Gen. Pray, Sir, when was this?

Witness. It was several Days after the Death of Mr. *Cooté*.

L. H. St. I told your Lordship before, that in Point of Law, such Evidence would signify nothing; because your declaring any Matter, after the Thing was done, in relation to the Fact, could not be admitted as legal Evidence; if any of my Lords be of another Opinion, I suppose they will declare it.

Lord Mohun. My Lords, I submit it to your Lordships; I only desire he may be ask'd, Whether he saw my Hand or no, and how it was?

Witness. I saw my Lord's Finger, and it had been laid open some time before; and he said, he had received that Wound by endeavouring to part Captain *French* and Captain *Cooté*: That's all I know of the Matter.

Mr. Att. Gen. But, pray, When was that that he declared so? How long after the Death of Mr. *Cooté*?

Witness. It was several Days after that.

L. II. St. You hear, in Point of Law, that can be no Evidence at all: If you have no other Witnesses to call, your Lordship would do well to sum up your Evidence, and make what Observations you think fit upon the Evidence which has been given for the King?

Lord Mohun. My Lords, I hope I shall make my Defence, against this Accusation, with all the Modesty and Submission to your Lordships, that becomes me. I am very much ashamed to be brought before your Lordships upon any such Account as this again, after having been once before your Lordships upon such an Account before. I may very well say, I am not guilty at all of having any hand in Mr. *Cooté*'s Death; and I can assure your Lordships, I will avoid all Occasions of giving you any Trouble of this Nature for the future: I do not doubt but to acquit myself of all Guilt, in relation to this Matter; and, indeed, with Submission to your Lordships, there has been no Evidence given, relating to me, that does infer any Guilt upon me, to prove that I was at the Place where the Fact was done; therefore I shall only make some few little Remarks upon what has been said, and leave it all to your Lordships Consideration.

The King's Counsel first have call'd the Drawer of the House, and he has satisfied, that I did so far endeavour to part 'em, that I threaten'd to send for the Guards and secure them, if they would not go home; and when they went into the Chairs, I went into my Chair, on purpose to follow 'em down to *Westminster*, whither I would have had them gone. The Prick that I got in my Finger, of it self speaks, that I endeavour'd to part 'em, and so the Drawer he has told you; I am sure it was the Occasion of a great deal of Pain to me, it being forc'd to be afterwards laid open. The Chairman that carry'd Mr. *Cooté*, swears, That I, at the Door of the Tavern in *St. Martin's-lane*, did make 'em stand, and when I came up to them, I begg'd, as for an Alms, that they would go home; and I ask'd *Cooté* whither he was going? Which proves that I was not conscious of any Design of going to fight at that Time. Your Lordships are likewise told, That when we came to *Green-street* End, I was set down upon the Pav'd

Stones. I was so, indeed, and I went up about five or six Yards, but that is all that's prov'd; but I did take the quite contrary Way to the Place where Mr. *Cooté* was wounded. Then there was another Chairman, one *Applegate*, and truly what Use they make of him, I cannot imagine, as an Evidence against me; for he says, I was very earnest in *St. Martin's-lane* to hinder any Quarrel, and indeed at the Tavern Door, at *Locket's*, I was so at first; and when we came to *St. Martin's-lane* End, he says, that I order'd 'em to make them stop, and ask *Cooté* whither he was going? And he saying he was going to *Leicester-fields*, I endeavour'd all I could to persuade him to the contrary, and did entreat him that he would go no farther, but go down to *Westminster* to his Lodging, or lodge with me; but Mr. *Cooté* would not give me Time, at that Time, the other Chairs coming by, to give him further Reasons, but would go away: And then it is objected, that I should say, that if they would go, I would go and see: That was, my Lords, I would go on till I could have a further Opportunity to prevent any Fighting among them: And the Witness *Ketro* says, my Lord of *Warwick* did bid the Chair to follow the other Chair in which Captain *Cooté* was. My Design was for *Westminster*, to go to my Lodgings; and when we came to the End of the Square, if I did go up the whole Stones, it was directly the contrary Way to the Place where it is prov'd this Fact happen'd. For the next Witness, *Edwards*, he says he saw no Body walking upon the Pav'd Stones; and truly, I did go the direct Way into *Newport-street*: And for my not appearing before, it was for avoiding Confinement; and I must submit the whole Matter to your Lordships, how far any Guilt is fix'd upon me, not being prov'd to be in the Field at the Time when they fought, or seen to be in the Company when they came up and found Mr. *Cooté* wounded, and dying, or dead. It is a plain Case I could have no hand at all in his Death; and so I think I need give no further Trouble to your Lordships, for I believe your Lordships cannot but be satisfied, that as I have pleaded, I am not guilty of killing this Gentleman: Nay, it is impossible that I should go into the Field to be a Second, when my own right Hand was wounded, for I was not able to hold my Sword in my Sword Hand, because of that Wound. I submit the Matter entirely to your Lordships, from whom I am sure to meet with every Thing that will be suitable to Honour and Justice.

L. H. St. The King's Counsel are now to sum up the Evidence for the King.

Mr. Solicitor General * began to sum up the Evidence for the King, but his Voice was so low, and the Noise in the Hall so great, that he could not be heard; and therefore the Lord High Steward moved the House that he might stand by the Prisoner at the Bar, which was something nearer than the Place where the King's Counsel stood, as was done the Day before; and it was order'd accordingly.

* Sir John Hawles.

L. II. St. Mr. Solicitor, Pray raise your Voice as much as you can, that all my noble Lords may hear you.

Several of the Lords did move, That one that had a better Voice might sum it up, and particularly Mr. Cowper; but it being usually the Part of the Solicitor General, and he only having prepared himself, he was ordered to go on; but for the better Hearing of him, several of the Lords towards the upper End of the House, removed from their Seats down, as they did the Day before, to sit upon the Wooll-packs.

Mr. Sol. Gen. My Lords, I am of Counsel for the King against this noble Lord, my Lord *Mobun*, the Prisoner at the Bar, who has been upon his Trial this Day, and it comes to my Turn to sum up the Evidence that has been given against him, which is but a Repetition of what your Lordships, no doubt of it, have taken exact Notice of; but I must shortly sum up the Chief of the Particulars thereof, and make a few Remarks what of that Evidence sticks particularly upon my Lord *Mobun*. The first Witness was the Drawer of the House, at the *Greyhound* in the *Strand*, who gives you an Account, who were at his Master's House the Nine and twentieth of *October* last, and particularly, that my Lord *Mobun* was there in the same Company wherein this Gentleman was, that was unfortunately killed, and that he continued in that Company till very late that Night, or rather, very early the next Morning; when, after the Reckoning was paid, they came all down to the Bar and call'd for Coaches; and he tells you, that he was sent out, and he tells you what he was sent for, he was sent for Coaches, and so cannot give any Account what pass'd while he was gone; but when upon calling for Coaches, none could be had, there was Order for Chairs to be call'd, and Chairs were brought to the Door; and when he came in again he heard the Clashing of Swords, and there were Three on the one Side of the Bar, and Three of 'em on the other: Indeed he does say, he did not see when the Swords were drawn, but at that Time they were putting up their Swords. my Lord *Mobun* was in the Company; upon which I would observe to your Lordships, that there had been some Fighting; for the Witness says, upon my Lord's Question, that my Lord call'd for a Napkin to put his Hand in, for his Finger was cut; and he said, This is all that I have got by endeavouring to part them; so that it shews there was a Quarrel, and my Lord *Mobun* was in it. When the Chairs were brought to the Door, they went into them; there went Mr. *Cooté* into one, into the second my Lord of *Warwick*, and into the third my Lord *Mobun*; so that still my Lord *Mobun* was in the Company, and they went away together; and tho' it is pretended by my Lord, that he did all he could to prevent the Quarrel, yet he gave Directions to the Chairmen that carry'd him to follow the other Chairs, and your Lordships perceive what the Business was that they went about; and the other three Chairs followed after presently, so that they all went away together; nay, my Lord himself does not disown his being in the Company till they came into *Leicester-fields*. Next I would observe what fell from *Browne*, who carry'd the very Gentleman that was kill'd, Mr. *Cooté*, that my Lord *Mobun* was in one of the three first Chairs, and that they all went together, till that my Lord *Mobun* call'd out to stop, upon the Turning up into *St. Martin's-lane*; and tho' they stop'd in *St. Martin's-lane*, and my Lord *Mobun* did intreat them to let it alone at that

Time, yet it was only to let it alone till the Morning; and when the other three Chairs pass'd by on the other Side of the Way, and *Cooté* would have them go on, my Lord *Mobun* said, If they would go on, he would go with them and see it. *Applegate*, the Chairman, that carry'd my Lord *Mobun*, says the same: And so it is plain my Lord *Mobun* did go on with an Intention to make one in the Affray; for *Applegate* says, That when my Lord *Mobun* could not prevail upon his Persuasions, and when *Cooté* went away, after the other three Chairs were pass'd by, my Lord *Mobun* said, If you do go, I must go and see it; and they did go all together: And the Chairman says, he set my Lord *Mobun* down at the End of *Green-street*, at the lower End of the Fields, where the other two Chairs set down Captain *Cooté* and my Lord of *Warwick*, and that they all three walk'd up together towards the *Standard Tavern*; still all this proves my Lord did go there, and that he himself did say he would go and see it: And it is plain that my Lord *Mobun* did go as far as *Leicester-fields*, and it is only his Declaration concerning himself, without any Proof, that he went away, and did not go into the Fields, to the Place where the Fact was done; and we think it is sufficient Proof that he was one of them that were concerned, because we do prove, that he was all along in the Company till the very Time that they came into the Place where the Thing was done. Then there is the Chairman that carry'd Mr. *James*, and he tells your Lordships, that the three first Chairs that went up *St. Martin's-lane*, went to the *Standard Tavern*, and there knock'd at the Door, and paid the Chairmen, and went out of their Chair; and so says the other Chairmen that carry'd Capt. *Dockwra* and Capt. *French*; and they say also, that when they came down the Pav'd Stones again, they heard Chairs call'd for, but they did not interpose at all in the Matter, but the other two Chairs it seems did, for they went up to the upper End of the Square, where there were two Persons holding up Mr. *Cooté*, and after they put the Chair over the Rails, in order to have him carried away in a Chair, but they could not get him into the Chair. I would likewise observe from the Evidence of the Surgeon, who gives you an Account of what Nature the Wounds were; one was in the Breast, near the Collar-Bone, on the left Side; the other was under the short Ribs, on the left Side too, which could not be given him by the Person that he was fighting with, he being a Right-hand Man, as was prov'd by his Servant. My Lord *Mobun* has call'd but one Witness, which is only about a little Circumstance of his being wounded in the Hand, and having the Wound laid open, but that was two Days after the Fact was done; my Lord *Mobun* could not but know that the Matters he was to answer, related to a Time before. It must be agreed to me, that they all three, my Lord of *Warwick*, my Lord *Mobun* and Mr. *Cooté*, went all away together, that they were carried to *Leicester-fields*, that they were set down together, and walk'd up together upon the Stone Pavement, when the others were gone towards the upper End of the Fields; so that in all probability, they all went together into the Place where the Fight was, and were all concern'd; and if so, my Lord *Mobun* must be equally guilty with the rest, my Lord *Mobun* knowing what Business it was they were going about. It must be left to your Lordships, whether he shall not be presumed to be there

there when the Fact was done, especially his saying, when he could not prevail in *St. Martin's-lane*, to put the Matter off till another Time, that if they did go on, he would go and see it; so that putting these two Circumstances together, his going in one of the Chairs with my Lord *Warwick* and *Cote*, and what he said after when the Chairs stopt in *St. Martin's-lane*, we think are Circumstances to induce your Lordships to believe, that he was present at the Time of the Fact committed, or very near the Place; and if that be so, how far he is guilty must be submitted to your Lordships Consideration; and this is all that I shall trouble your Lordships with, without repeating the particular Evidence, which your Lordships, I am sure, very well remember.

Lord Mohun. My Lords, I desire I may say one Word in answer to what Mr. Solicitor has observed. I think your Lordships have had no Evidence given you where Mr. *Cote* was kill'd; but only the Chairman that was desir'd to bring over his Chair within the Rails, says, it was towards *Panton-street*, which is quite contrary to the Place where I was set down, at *Green-street* End; I must then be at a very great Distance from the Place where the Fact was done.

L. H. St. If all have done on both Sides, then your Lordships have nothing left but to consider of the Evidence which has been given, which I suppose you will do among your selves.

Lords. Ay, adjourn, adjourn.

L. H. St. Is it your Pleasure, my Lords, to adjourn into the House of Lords?

Lords. Ay, ay.

L. H. St. This House is adjourn'd into the House of Lords.

[*And the Lords went back in the same Order to the House of Lords, and there they staid for about two Hours Time, debating the Matter among themselves, and afterwards returned again into the Court in Westminster-hall, and were seated all in their Places, as they were before, and the Lord High Steward was seated in the Chair before the Throne.*]

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

Serj. 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, and keep Silence, upon pain of Imprisonment.

L. H. St. Is it your Lordships Pleasure to go on now to give your Judgment?

Lords. Ay, ay.

L. H. St. Then I must pray your Lordships to give me Time to write down your Opinions distinctly, that I may be able to acquaint you with Certainty of the Numbers.

Lords. Ay, ay.

Then the Lord High Steward stood up, and put the Question to every Lord, beginning with the youngest Baron, to know what his Judgment was; and the Lord to whom he call'd, stood up in his Place uncovered, and laying his Right Hand upon his Breast, delivered his Judgment in the Manner following.

L. H. St. My Lord *Bernard*, Is *Charles Lord Mohun* guilty of the Felony and Murder whereof he stands indicted, or not guilty?

L. Bernard. Not guilty, upon my Honour.

The same Question was ask'd severally of all the Lords, who in the same Form delivered their Opinions, as followeth.

L. Herbert. Not guilty, upon my Honour.

L. Weston. Not guilty, upon my Honour.

L. Ashburnham. Not guilty, upon my Honour.

L. Cholmondeley. Not guilty, upon my Honour.

L. Jefferys. Not guilty, upon my Honour.

L. Godolphin. Not guilty, upon my Honour.

L. Guilford. Not guilty, upon my Honour.

L. Oselstone. Not guilty, upon my Honour.

L. Osborne. Not guilty, upon my Honour.

L. Craven. Not guilty, upon my Honour.

L. Cornwallis. Not guilty, upon my Honour.

L. Granville. Not guilty, upon my Honour.

L. Berkley. Not guilty, upon my Honour.

L. Lexington. Not guilty, upon my Honour.

L. Rockingham. Not guilty, upon my Honour.

L. Lucas. Not guilty, upon my Honour.

L. Culpeper. Not guilty, upon my Honour.

L. Byron. Not guilty, upon my Honour.

L. Jermyn. Not guilty, upon my Honour.

L. Leigh. Not guilty, upon my Honour.

L. Raby. Not guilty, upon my Honour.

L. Howard. Not guilty, upon my Honour.

L. Lovelace. Not guilty, upon my Honour.

L. Hunsdon. Not guilty, upon my Honour.

L. Wharton. Not guilty, upon my Honour.

L. Eure. Not guilty, upon my Honour.

L. Dudley. Not guilty, upon my Honour.

L. Fitzwalter. Not guilty, upon my Honour.

L. Willoughby. Not guilty, upon my Honour.

L. Audley. Not guilty, upon my Honour.

L. Abergavenny. Not guilty, upon my Honour.

L. H. St. My Lord Viscount *Lonsdale*, Is *Charles Lord Mohun* guilty, &c.

L. Viscount Lonsdale. Not guilty, upon my Honour.

L. Viscount Townshend. Not guilty, upon my Honour.

L. H. St. The Earl of *Grantham*, Is *Charles Lord Mohun* guilty, &c.

E. of Grantham. Not guilty, upon my Honour.

E. of Albemarle. Not guilty, upon my Honour.

E. of Tankerville. Not guilty, upon my Honour.

E. of Warrington. Not guilty, upon my Honour.

E. of Montagu. Not guilty, upon my Honour.

E. of Portland. Not guilty, upon my Honour.

E. of Rochester. Not guilty, upon my Honour.

E. of Nottingham. Not guilty, upon my Honour.

E. of Yarmouth. Not guilty, upon my Honour.

E. of Radnor. Not guilty, upon my Honour.
E. of Macclesfield. Not guilty, upon my Honour.

Lord Steward. Not guilty, upon my Honour.

E. of Feversham. Not guilty, upon my Honour.

Lord High Steward. My Lord President, Is Charles Lord Mohun guilty, &c. ?

E. of Burlington. Not guilty, upon my Honour.

Lord President. Not guilty, upon my Honour.

E. of Carlisle. Not guilty, upon my Honour.

E. of Bath. Not guilty, upon my Honour.

E. of Anglesea. Not guilty, upon my Honour.

E. of Essex. Not guilty, upon my Honour.

E. of Scerisdale. Not guilty, upon my Honour.

E. of Thanet. Not guilty, upon my Honour.

E. of Chesterfield. Not guilty, upon my Honour.

E. of Carnarvan. Not guilty, upon my Honour.

E. of Kingston. Not guilty, upon my Honour.

E. of Winchelsea. Not guilty, upon my Honour.

E. of Stamford. Not guilty, upon my Honour.

E. of Peterborough. Not guilty, upon my Honour.

E. of Rivers. Not guilty, upon my Honour.

E. of Manchester. Not guilty, upon my Honour.

E. of Denbigh. Not guilty, upon my Honour.

E. of Leicester. Not guilty, upon my Honour.

E. of Bragwater. Not guilty, upon my Honour.

E. of Dorset. Not guilty, upon my Honour.

E. of Suffolk. Not guilty, upon my Honour.

E. of Huntingdon. Not guilty, upon my Honour.

E. of Derby. Not guilty, upon my Honour.

E. of Kent. Not guilty, upon my Honour.

Lord High Steward. My Lord Great Chamberlain, Is Charles Lord Mohun guilty, &c. ?

Lord Chamberlain. Not guilty, upon my Honour.

Lord High Steward. My Lord Marquess of Normandy, Is Charles Lord Mohun guilty, &c. ?

Lord Marquess of Normenby. Not guilty, upon my Honour.

Lord Marquess of Hallifax. Not guilty upon my Honour.

Lord High Steward. My Lord Duke of Newcastle, Is Charles Lord Mohun guilty, &c. ?

D. of Newcastle. Not guilty, upon my Honour.

D. of Scumberg. Not guilty, upon my Honour.

D. of St. Albans. Not guilty, upon my Honour.

D. of Northumberland. Not guilty, upon my Honour.

D. of Ormonde. Not guilty, upon my Honour.

D. of Southampton. Not guilty, upon my Honour.

D. of Richmond. Not guilty, upon my Honour.

D. of Somerset. Not guilty, upon my Honour.

L. High Steward. My Lord Steward, Is Charles Lord Mohun guilty, &c. ?

Lord Mohun. My Lords, I do not know which Way to express my great Thankfulness and Acknowledgment of your Lordships great Honour and Justice to me; but I crave leave to assure your Lordships, That I will endeavour to make it the Business of the future Part of my Life, so to behave my self in my Conversation in the World, as to avoid all Things that may bring

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me under any such Circumstances, as may expose me to the giving your Lordships any Trouble of this Nature for the future. And then making his Reverences to the Lords, he went away from the Bar.

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

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Persons here present, are commanded to keep Silence, by my Lord High Steward of England, his Grace, upon Pain of Imprisonment.

L. H. St. My Lords, the Trial being at an End, there is nothing remains to be done here, but the determining the Commission.

Lords. Ay, ay.

L. H. St. Sir Samuel Astry, let Proclamation be made in order to the dissolving the Commission of High Stewardship.

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

Serj. at Arms. O Yes, O Yes, O Yes, my Lord

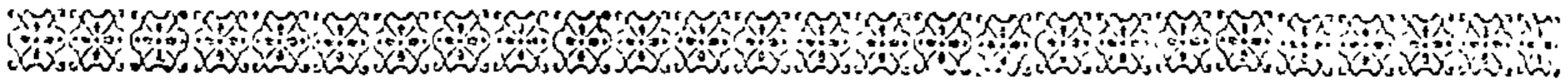
High Steward of England, his Grace, does straitly Charge and Command all manner of Persons here present, and that have here attended, to depart hence in the Peace of God, and of our Sovereign Lord the King; for his Grace, the Lord High Steward of England, intends now to dissolve his Commission.

And then the White Staff being delivered to his Grace, the Lord High Steward, he stood up, and holding it in both his Hands, broke it in two; and then leaving the Chair, came down to the Wool-pack, and said, Is it your Lordships Pleasure to adjourn to the House of Lords?

Lords. Ay, ay.

L. H. St. This House is adjourned to the House of Lords.

And so they went back in the same Order that they came into the Court, and all the Assembly broke up.



CLXVI. *The TRIAL of Spencer Cowper, Esq; Ellis Stephens, William Rogers, and John Marson, at Hertford Assizes, for the Murder of Mrs. Sarah Stout, July 16, 1699.*
11 Will. III.

Proclamation was made for all Persons concerned to attend.

Cl. of Arr.



O U good Men that are empannell'd to enquire, &c. answer to your Names, and save your Fines.

Then *Ellis Stephens, William Rogers,* and

John Marson, being upon Bail, Proclamation was made for them to attend, which they accordingly did; and Mr. *Cowper* was brought into Court by the Under Sheriff.

Cl. of Arr. { *Spencer Cowper,* hold up thy Hand.
(Which he did.)
John Marson, hold up thy Hand.
(Which he did.)
Ellis Stephens, hold up thy Hand.
(Which he did.)
William Rogers, hold up thy Hand.
(Which he did.)

Cl. of Arr. Y O U stand indicted by the Names of *Spencer Cowper, late of the Parish of St. John's, in the Town of Hertford, in the County of Hertford, Esq; John Marson, late of the Parish aforesaid, in the County aforesaid, Gent. Ellis Stephens, late of the Parish aforesaid, in the County aforesaid, Gent. and William Rogers, late of the Parish aforesaid, in the County aforesaid, Gent. for that you not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, on*

the Thirteenth Day of March, in the Eleventh Year of the Reign of his present Majesty, by Force and Arms, &c. at the Parish aforesaid, in the County aforesaid, in and upon one Sarah Stout, Spinster, in the Peace of God and our Sovereign Lord the King, then and there being, violently, feloniously, voluntarily, and of your Malice afore-thought, did make an Assault; and that you the aforesaid Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, a certain Rope of no Value, about the Neck of the said Sarah then and there feloniously, voluntarily, and of your Malice afore-thought, did put, place, fix and bind; and the Neck and Throat of the said Sarah, then and there with the Hands of you the said Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, feloniously, voluntarily, and of your Malice afore-thought, did hold, squeeze, and gripe; and that you the said Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, with the aforesaid Rope, by you the said Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, then as aforesaid, about the Neck of the said Sarah Stout put, placed, fixed, and bound, and by the squeezing and griping of the Neck and Throat of the said Sarah with the Hands of you the said Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, as aforesaid, the said Sarah Stout then and there, by Force and Arms, &c. feloniously, voluntarily, and of your Malice afore-thought, did choak and strangle; by reason of which choaking and strangling of her the said Sarah Stout, by you the aforesaid Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, with the said Rope about the Neck of the said Sarah Stout as aforesaid, placed, fixed and bound, and by the squeezing

squeezing and griping of the Neck and Throat of the said Sarah, with the Hands of you the said Spencer Cowper, John Marson, Ellis Stephens and William Rogers, as aforesaid, the said Sarah then and there instantly died. And so you the said Spencer Cowper, John Marson, Ellis Stephens and William Rogers, the said Sarah Stout, on the thirteenth Day of March, in the Year aforesaid, in the Parish aforesaid, in the County aforesaid, in Manner and Form aforesaid, feloniously, voluntarily, and of your Malice afore-thought, did kill and murder; and the said Sarah Stout, as aforesaid, by you the said Spencer Cowper, John Marson, Ellis Stephens and William Rogers, feloniously, voluntarily, and out of your Malice afore-thought, choked and strangled, into a certain River there, being called the Priory River, then secretly and maliciously did put and cast, to conceal and hide the said Sarah Stout so murdered, against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

How sayest thou, Spencer Cowper, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

Mr. Cowper. Not guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Mr. Cowper. By God and my Country.

Cl. of Arr. God send you a good Deliverance.

Then the other Three pleaded not guilty, and put themselves upon their Country in manner aforesaid.

Then Proclamation was made for Information.

Cl. of Arr. You the Prisoners at the Bar, these Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths; therefore if you will challenge them, or any of them, your Time to speak is as they come to the Book to be sworn, before they be sworn.

Then the Pannel was called over.

Cl. of Arr. Do you design to join in your Challenges, or to challenge separately?

Mr. Cowper. If we should challenge separately, there must be so many separate Trials; and therefore to prevent the Trouble of the Court, I am willing there should be but one Challenge for all.

Cl. of Arr. Gentlemen, do you all agree to that?

Prisoners. Yes, yes.

Then after some Challenges, as well on the Part of the King as of the Prisoners, there not being a full Jury of the principal Pannel:

Mr. Cowper. If your Lordship please, the Pannel is now gone through, I desire they may shew some legal Cause for their Challenges.

Mr. Jones. I conceive we that are retained for the King are not bound to shew any Cause, or the Cause is sufficient if we say they are not good for the King, and that is allowed to be a good Cause of Challenge; for what other Cause can we shew in this Case? You are not to shew your Cause, you challenge peremptorily; so in this Case the King does.

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Mr. Cowper. My Lord, I stand at the Bar with some Disadvantage, to encounter a Gentleman that hath no Concernment; but however, I do take it for Law, that there must be a Cause shewed, and that Cause must be a legal one, and what that Cause is they must certainly make out. I do think it ought to appear that there is some Relation, or some notorious Affection or Friendship, or something of that sort, or otherwise it is not a legal Cause of Challenge; and if there seem to be any Difficulty in this Particular, I hope your Lordship will assign me Counsel to argue it with the King's Counsel.

Mr. Baron Hatsell. Mr. Cowper, you are not under such Disadvantage as Men usually are that stand where you now do. You have been educated in the Study of the Law, and understand it very well. I have several Times seen how you have managed your Clients Causes to their Advantage. As for this Matter of Challenge, Mr. Jones, I think, you should shew your Cause of Challenge, tho' the Law allows the Prisoner Liberty to challenge twenty peremptorily.

Mr. Jones. I don't know, in all my Practice of this Nature, that it was ever put upon the King to shew Cause; and I believe some of the King's Counsel will say they have not known it done.

Mr. Cowper. In my Lord Chief Justice Hale's *Pleas of the Crown*, p. 259, it is expressly so, and in the Statute of 33 *Edw. I.* 'tis said, the King shall not challenge without Cause, and that must be legal.

Cl. of Arr. Call Daniel Clarke.

Mr. Baron Hatsell. Mr. Jones, if you can say any Juryman hath said any Thing concerning this Cause, and given his Verdict by way of Discourse, or shewed his Affection one way or other, that would be good Cause of Challenge.

Mr. Jones. My Lord, then we should keep you here while to Morrow Morning.

Mr. Baron Hatsell. If there hath been any great Friendship between any Jury-man and the Party, it will look ill if he be insisted upon.

Mr. Cowper. My Lord, I don't insist upon it, but I profess I know of no Friendship, only that Mr. Clarke in Elections hath taken our Interest in Town; I know I have a just Cause, and I am ready to be tried before your Lordship and any fair Jury of the County; therefore I do not insist upon it.

Then the Jury sworn was as followeth:

Evan Lloyd, Esq;	} {	Thomas Parrot,
William Watson,		Sam. Wallingham,
John Prior,		Francis Cole,
John Harrow,		Rich. Crouch,
George Holgate,		John Cock,
John Stracey,		Rich. Dickinson.

Mr. Cowper. My Lord, I humbly move that I may have Pen, Ink and Paper.

Mr. Baron Hatsell. Ay, by all means.

Cl. of Arr. Hold up your Hand. (*Which he did.*) And so of the rest. You of the Jury, look upon the Prisoners, and hearken to their Charge. They stand indicted by the Names of, &c. (*Prout in the Indictment, mutatis mutandis.*)

Jury. My Lord, we desire we may have Pen, Ink and Paper.

Cl. of the Affize. There are three of the Jury desire Pen, Ink and Paper.

Mr. Baron *Hatfield*. Let as many have it as will.

Mr. *Jones*. May it please your Lordship, and you Gentlemen that are sworn, I am of Counsel for the King in this Cause, and it is upon an Indictment by which the Gentlemen at the Bar stand accused for one of the foulest and most wicked Crimes almost that any Age can remember: I believe in your County you never knew a Fact of this Nature; for here is a young Gentlewoman of this County strangled and murdered in the Night-time. The Thing was done in the Dark, therefore the Evidence cannot be so plain as otherwise might be.

After she was strangled and murdered, she was carried down into a River to stifle the Fact, and to make it supposed she had murdered her self; so that it was indeed, if it prove otherwise, a double Murder, a Murder accompanied with all the Circumstances of Wickedness and Villainy that I remember in all my Practice, or ever read of.

This Fact, as it was committed in the Night-time, so it was carried very secret, and it is very well we have had so much Light as we have to give so much Satisfaction: For we have here in a manner two Trials, one to acquit the Party that is dead, and to satisfy the World, and vindicate her Reputation, that she did not murder herself, but was murdered by other Hands. For my part, I shall never, as Counsel in the Case of Blood, aggravate; I will not improve or enlarge the Evidence at all, it shall be only my Business to set the Fact as it is, and to give the Evidence, and state it as it stands here in my Instructions.

My Lord, for that Purpose, to lead to the Fact, it will be necessary to inform you, that upon *Monday* the 13th of *March*, the first Day of the last Assizes here, Mr. *Cowper*, one of the Gentlemen at the Bar, came to this Town, and lighted at Mr. *Barefoote's* House, and staid there some Time, I suppose to dry himself, the Weather being dirty, but sent his Horse to Mrs. *Stout's*, the Mother of this Gentlewoman. Some Time after, he came thither himself, and dined there, and staid till Four in the Afternoon; and at Four, when he went away, he told them he would come and lodge there that Night, and sup.

According to his Word he came there, and had the Supper he desired; after Supper Mrs. *Stout*, the young Gentlewoman, and he sat together till near Eleven a-Clock. At Eleven a-Clock there was Orders given to warm his Bed, openly to warm his Bed, in his hearing. The Maid of the House, Gentlemen, upon this went up Stairs to warm his Bed, expecting the Gentleman would have come up and followed her before she had done; but it seems, while she was warming his Bed, she heard the Door clap together, and the Nature of that Door is such, that it makes a great Noise at the Clapping of it to, that any Body in the House may be sensible of any one's going out. The Maid upon this was concerned, and wondered at the Meaning of it, he promising to lie there that Night; she came down, but there was neither Mr. *Cowper* nor Mrs. *Stout*, so that we suppose, and for all that we can find and learn, they must go out together. After their going out, the Maid and Mother came into the Room; and the young Gentlewoman not returning, nor Mr. *Cowper*, they sat up all Night in the House, expecting what Time the young Gentlewoman would return. The next Morning, after they had sat up all Night, the first News of this Lady was, that she lay floating and swimming in Water

by the Mill-dam. Upon that there was several Persons call'd; for it was a Surprize how this should come to pass. There she lay floating with her Petticoats and Apron, but her Night-Rail and Morning-Gown were off, and one of them not found till some time after; and the Maid will give you an Account how it came to be found.

This made a great Noise in the Country; for it was very extraordinary, it happening that from the Time the Maid left Mr. *Cowper* and this young Gentlewoman together, she was not seen or heard of till next Morning, when she was found in this Condition, with her Eyes broad open, floating upon the Water.

When her Body came to be viewed, it was very much wondered at; for in the first Place, it is contrary to Nature, that any Persons that drown themselves should float upon the Water. We have sufficient Evidence that it is a Thing that never was; if Persons come alive into the Water, then they sink, if dead, then they swim, that made some more curious to look into this Matter. At first it was thought that such an Accident might happen, though they could not imagine any Cause for this Woman to do so, who had so great Prosperity, had so good an Estate, and had no Occasion to do an Action upon her self so wicked and so barbarous, nor cannot learn what Reason she had to induce her to such a Thing. Upon View of the Body it did appear there had been Violence used to the Woman, there was a Crease round her Neck, she was bruised about her Ear; so that it did seem as if she had been strangled either by Hands or a Rope.

Gentlemen, upon the Examination of this Matter, it was wondered how this Matter came about, it was dark and blind. The Coroner at that Time, nor these People, had no Evidence given, but the ordinary Evidence, and it pass'd in a Day. We must call our Witnesses to this Fact, that of Necessity you must conclude she was strangled, and did not drown her self. If we give you as strong a Proof as can be upon the Nature of the Fact, that she was strangled, then the second Matter under that Enquiry will be, to know who, or what Persons should be the Men that did the Fact. I told you before, it was, as all wicked Actions are, a Matter of Darknes, and done in secret, to be kept as much from the Knowledge of Men as was possible.

Truly, Gentlemen, as to the Persons at the Bar, the Evidence of the Fact will be very short, and will be to this Purpose.

Mr. *Cowper* was the last Man unfortunately in her Company, I could wish he had not been so with all my Heart, 'tis a very unfortunate Thing, that his Name should upon this Occasion be brought upon the Stage; but then, my Lord, it was a strange Thing, here happens to be three Gentlemen, Mr. *Marjon*, Mr. *Rogers*, and Mr. *Stephens*; as to these three Men, my Lord, I don't hear of any Business they had here, unless it was to do this Matter, to serve some Interest or Friend, that sent them upon this Message; for, my Lord, they came to Town, (and in Things of this Nature, 'tis well we have this Evidence, but if we had not been straightned in Time it would have brought out more, these Things come out slowly) these Persons, Mr. *Stephens*, Mr. *Rogers*, and Mr. *Marjon*, came to Town here on the 13th of *March* last, the Assize Day. My Lord, when they

they came to Town, they came to an House, and took Lodgings at one *Gurrey's*, they took a Bed for two, and went out of their Lodging, having taken a Room with a large Bed in it, and afterwards they went to the *Glove* and *Dolphin*, and then about Eight a-Clock one *Marson* came to them there; in what Company they came, your Lordship and the Jury will know by and by; they staid there, my Lord, at the *Glove* from Eight a-Clock to Eleven, as they say. At Eleven these three Gentlemen came all into their Lodging together to this *Gurrey's*. My Lord, when they came in, it was very observable amongst them, unless there had been a Sort of Fate in it, *First*, That they should happen to be in the Condition they were in; and, *secondly*, fall upon the Discourse they did at that Time; for, my Lord, they called for Fire, and the Fire was made them; and while the People of the House were going about, they observed and heard these Gentlemen talk of Mrs. *Sarah Stout*; that happened to be their Discourse; one said to the other, *Marson*, she was an old Sweet-heart of yours: Ay, saith he, but she cast me off, but I reckon by this Time a Friend of mine has done her Business. Another Piece of Discourse was, I believe a Friend of mine is even with her by this Time. They had a Bundle of Linnen with them, but what it was is not known, and one takes the Bundle and throws it upon the Bed; Well, saith he, her Business is done, Mrs. *Sarah Stout's* courting Days are over; and they sent for Wine, my Lord; so after they had drank of the Wine they talk'd of it, and one pulled out a great deal of Money; saith one to another, what Money have you spent to Day? Saith the other, thou hast had 40 or 50*l.* for thy Share: Saith the other, I will spend all the Money I have, for Joy the Business is done.

My Lord, this Discourse happened to be among them, which made People of the House consider and bethink themselves; when the next Day they heard of this Mrs. *Stout's* being found in the Water, this made them recollect and call to mind all these Discourses.

My Lord, after these Gentlemen had staid there all Night, next Morning, truly it was observed (and I suppose some Account will be given of it) that Mr. *Cowper* and they did meet together, and had several Discourses, and that very Day went out of Town, and I think as soon as they came to *Hoddesdon*, made it all their Discourse and Business to talk of Mrs. *Stout*.

My Lord, we will call our Witnesses, and prove all these Facts that I have opened to your Lordship; and then I hope they will be put to give you some Account how all these Matters came about.

Call Sarah Walker, (*who was sworn.*)

Mr. *Jones*. Mrs. *Walker*, pray give an Account to my Lord and the Jury, of Mr. *Cowper's* coming to your House the 13th of *March*, and what was done from his coming there at Night to his going out.

Sarah Walker. May it please you, my Lord, on Friday before the last Assizes, Mr. *Cowper's* Wife sent a Letter to Mistress *Stout*, that she might expect Mr. *Cowper* at the Assize-Time; and therefore we expected Mr. *Cowper* at that Time, and accordingly provided; and as he came in with

the Judges, she ask'd him if he would alight? He said no, by Reason I come in later than usual, I will go into the Town and show my self, but he would send his Horse presently. She ask'd him, how long it would be before he would come, because they would stay for him? he said, he could not tell, but he would send her Word; and she thought he had forgot, and sent me down to know, whether he would please to come? He said, he had Business, and he could not come just then, but he came in less than a Quarter of an Hour after, and dined there, and he went away at Four a-Clock; and then my Mistress ask'd him, if he would lie there? and he answered yes, and he came at Night about Nine a Clock; and he sat talking about half an Hour, and then call'd for Pen, Ink and Paper, for that, as he said, he was to write to his Wife; which was brought him, and he wrote a Letter; and then my Mistress went and ask'd him, what he would have for Supper? he said Milk, by Reason he had made a good Dinner; and I got him his Supper, and he eat it; after she called me in again, and they were talking together, and then she bid me make a Fire in his Chamber; and when I had done so, I came and told him of it, and he looked at me, and made me no answer: Then she bid me warm the Bed, which accordingly I went up to do as the Clock struck Eleven, and in about a Quarter of an Hour, I heard the Door shut, and I thought he was gone to carry the Letter, and staid about a Quarter of an Hour longer, and came down, and he was gone and she, and Mrs. *Stout* the Mother, ask'd me the Reason why he went out when I was warming his Bed? and she ask'd me for my Mistress, and I told her I left her with Mr. *Cowper*, and I never saw her after that, nor did Mr. *Cowper* return to the House.

Mr. *Jones*. How long did you sit up?

Walker. All Night.

Mr. *Jones*. What Time next Morning did you see her?

Walker. About Seven a-Clock.

Mr. *Jones*. In the Water or out?

Walker. Out of the Water.

Mr. *Cowper*. Pray will you recollect a little, and be very particular as to the Time when I went out at Night?

Walker. Sir, it was a Quarter after Eleven by our Clock; the Difference between the Town-Clock and ours was half an Hour.

Mr. *Cowper*. But you say by your Clock it was a Quarter after Eleven.

Walker. Yes, Sir.

Mr. *Cowper*. Pray what Account did you give as to the Time to the Coroner's Inquest?

Walker. I said then it was Eleven, or a Quarter after Eleven, when I heard the Door shut.

Mr. *Cowper*. Pray was Mrs. *Stout* present with the Coroner's Inquest when you gave that Account?

Walker. Yes, she was.

Mr. *Cowper*. Pray what Account did you give as to the Time before my Lord Chief Justice *Holt*?

Walker. I gave the Account that it was Eleven, or a Quarter of an Hour after.

Mr. *Cowper*. In her Depositions there is half an Hour's Difference, for then she said it was half an Hour after Ten.

Mr. Baron *Hatfield*. Which Clock was earliest, yours or the Town-Clock?

Walker,