

Cl. of the Cr. He hath challenged twenty eight peremptorily.

Cl. of the Cr. Nathaniel Wesley.

Prisoner. I don't challenge him.

Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. Benjamin Rutland.

Prisoner. My Lord, I desire he may be asked whether he doth not farm something under the King or on the Forest.

L. C. Just. If it was of any Service to you it should be done; but if it is so, it is no Objection.

Mr. Ketelbey. The Objection was once made in the Case of Sir *William Perkins*. It was recommended to the King's Counsel.

L. C. Just. I deny it. It was not recommended to the King's Counsel, but the King's Counsel did not insist upon it.

Mr. Just. Fortescue Alland. The Court in that Case gave their Opinion, that to be a Servant to the King was no good Cause of Challenge, and my Lord Chief Justice Holt and Treby were present, and Mr. Attorney General did not insist on the Jury-man so challenged, but waved the Matter without any Recommendation of the Court.

Mr. Ketelbey. I know no other ways, than if Mr. Attorney will do it, as it was done in that Case.

Mr. Att. Gen. I know nothing of the Fact.

L. C. Just. What do you do, do you challenge him or no?

Prisoner. I challenge him.

Cl. of the Cr. Alexander Marshall.

Thomas Selby.

Challenged by the Prisoner.

Cl. of the Cr. John Milligande.

Mr. Hungerford. My Lord, he is searching for a Paper; he challenges him for Cause.

Prisoner. My Lord, what I have to offer is, that this Mr. Milligande hath been heard to say, before he came here, that I ought to be hanged; and I apprehend that is good Cause for challenging him, if I make it out.

David Martin called:

Cryer. You shall true Answer make, &c.

Mr. Hungerford. Do you know Mr. Milligande?

Martin. Yes.

Mr. Hungerford. What have you heard him declare concerning the Prisoner at the Bar?

Martin. I heard him in Conversation say, that he hoped he should be hanged, for he believed he was Guilty.

Mr. Hungerford. This Objection sure is right. [Mr. Milligande was not sworn.]

Cl. of the Cr. Robert Walker.

Prisoner. I challenge him.

Cl. of the Cr. William Nicholson. Sworn.

Prisoner. My Lord, I have very near all my Challenges, I think they may go on as they are called, if Mr. Attorney will challenge no more.

Mr. Att. Gen. You may go on your own way, I shall make no Bargains with you.

Mr. Ketelbey. We don't offer any Bargain, but only an Expedient to save the Time of the Court.

Cl. of the Cr. Nicholas Freeman.

Prisoner. I challenge him.

Cl. of the Cr. Christopher Hill. Sworn.

Cl. of the Cr. Stephen Wood.

Prisoner. I think I have done all my Challenges.

Cl. of the Cr. You have two more:

Prisoner. Let them take them then as they come.

Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. Richard Bridge.

Prisoner. I challenge him.

John Baines, set aside by Consent, by Reason of Infirmity.

Cl. of the Cr. Robert Barnard. Sworn.

Cl. of the Cr. Leonard Bennett.

Prisoner. I don't challenge him.

Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. William Sandford.

Prisoner. My Lord, I have the same Objection to this Gentleman as to the other, he hath declared his Opinion before-hand, and that he must make a Sacrifice of me.

L. C. Just. Call your Witness.

Mr. Martin sworn.

Mr. Ketelbey. Mr. Martin, do you know *William Sandford* of *Rumford*?

Martin. Yes.

Mr. Ketelbey. Have you had any Discourse with him about the Prisoner at the Bar?

Martin. He said, before he was summoned on the Jury, that if he was one of the Jury, he would be for hanging of him. Set aside.

Cl. of the Cr. Thomas Waters.

Prisoner. Sir, I apprehend I have challenged thirty five.

Cl. of the Cr. You have one more.

Prisoner. I will challenge no more, let them go on.

Cl. of the Cr. Thomas Waters. Sworn.

Richard Gray,

Sworn.

William Wheatly.

Mr. Hungerford. I hope that what I am going to offer is proper. There is some little doubt how far he is gone in his Challenges, it is said he hath one more, if the Court would indulge us so far as to let the Persons challenged be called over.

Cl. of the Cr. It is impossible that we should mistake.

Mr. Hungerford. You say he hath one more.

C. of the Cr. Yes.

William Wheatly.

Sworn.

Then the twelve Jurors who were sworn were counted, and their Names were as follow, viz.

Thomas Clarke, Gent.

William Nicholson, Esq;

Isaac Potter, Gent.

Christopher Hill, Gent.

Hezekiah Haynes, Gent.

Robert Barnard, Gent.

John Lowry, Gent.

Thomas Waters, Gent.

Thomas Prat, Gent.

Richard Gray, Gent.

Francis Aylett, Gent.

William Wheatly, Gent.

Cl. of the Cr. Cryer, make Proclamation.

Cryer. O yes, If any one can inform, &c.

Cl. of the Cr. Christopher Layer, Hold up your Hand. Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause.

He stands indicted by the Name of *Christopher Layer*, late of the Parish of *St. Andrew's Holborn*, in the County of *Middlesex*, Esq; For that he, &c. — Upon this Indictment he hath been lately arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Country, which Country you are. Your Charge is to enquire whether he be guilty of this High Treason, in Manner and Form as he stands indicted, or Not Guilty. If you find him

him Guilty, you shall enquire what Goods or Chattels, Lands or Tenements he had, at the Time of the said High Treason committed, or at any Time since: If you find him not Guilty, you shall enquire whether he fled for it. If you find that he did fly for it, you shall enquire of his Goods and Chattels, as if you had found him Guilty. If you find him not Guilty, and that he did not fly for it, say so, and no more, and hear your Evidence.

Mr. *Wearg*. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment against the Prisoner for High Treason. The Indictment sets forth, That he being a Subject of his present Majesty King *George*, but not having the Fear of God in his Heart, nor considering the Duty of his Allegiance, as a false Traitor against his supreme, true, lawful, and undoubted Lord, contriving and to the utmost of his Power intending to change, alter and subvert the Government of this Kingdom, lawfully and happily established under his present Majesty, and to depose and deprive his said Majesty of his Title, Honour, Royal Estate and Government of this Kingdom; and to advance to the Crown and Government of this Realm, the Person in the Life of the late King *James II.* pretended to be Prince of *Wales*, and after the Decease of the said King *James* pretending to be and taking upon himself the Stile and Title of King of *England*, by the Name of *James III.* did upon the twenty fifth Day of *August*, in the ninth Year of his present Majesty's Reign, and at several other Days and Times, at *Layton-Stone*, in the County of *Essex*, falsely, maliciously, and traiterously, compass, imagine, and intend to depose our said Sovereign Lord King *George*, from his Title, regal State and Government, and the said King to kill and bring to utter Destruction.

The Indictment further sets forth, That he the said *Christopher Layer*, to perfect and bring to Effect his Treason and traitorous Purposes, on the said twenty fifth Day of *August*, and at several other Days and Times, at *Layton-Stone* aforesaid, together with divers other false Traitors, to the Jury unknown, did falsely, maliciously, and traiterously meet, consult, conspire and agree, to move and stir up an Insurrection and Rebellion in this Kingdom, against our said Sovereign Lord the King.

The Indictment further sets forth, That he the said *Christopher Layer*, to perfect and compleat his Treason and traitorous Purposes, on the said twenty fifth of *August*, at *Layton-Stone* aforesaid, with Force and Arms, did falsely, maliciously, and traiterously publish a certain malicious, seditious, and traitorous Writing, containing in it self, and purporting to be, an Exhortation and Promise of Rewards to the Subjects of his said Majesty, to persuade and excite them to take up Arms and levy War against our said Sovereign King *George*.

The Indictment further sets forth, That the said *Christopher Layer*, together with other false Traitors to the Jury unknown, to compleat and bring to Effect his traitorous Purposes, on the said twenty fifth Day of *August*, at *Layton-Stone* aforesaid, with Force and Arms, did falsely, maliciously, and traiterously meet, consult, conspire and agree, to exalt to the Crown and Royal Dignity of this Realm the Person in the Life of the late King *James II.* pretended to be Prince

of *Wales*, by means of an armed Force and Troops of Soldiers, for that Purpose to be raised and levied.

The Indictment further sets forth, That the said *Christopher Layer*, to perfect his said Treason, on the said twenty fifth Day of *August*, at *Layton-Stone* aforesaid, maliciously and traiterously did raise, levy, and retain several Men, to the Jury unknown, to take up Arms and levy War within this Kingdom, against our said Sovereign Lord the King.

That the said *Christopher Layer*, to perfect his treasonable Purposes on the said twenty fifth Day of *August*, at *Layton-Stone* aforesaid, together with divers other false Traitors, to the Jury unknown, did falsely, maliciously, and traiterously meet, conspire and agree, to take, seize, imprison and detain in Custody the Sacred Person of our said Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. To this Indictment the Prisoner hath pleaded, Not Guilty.

Mr. *Serj. Pengelly*. May it please your Lordship, and Gentlemen of the Jury; the Prisoner at the Bar, Mr. *Layer*, comes now to be tried before you, for a wicked and detestable Conspiracy against the Person of his Majesty, and against his Government; and this in favour of an attainted and abjured Pretender; a Pretender whom the Prisoner himself has abjured in Words, and ought to have renounced in his Heart.

The Indictment contains a Charge of High-Treason against the Prisoner at the Bar, for compassing and intending the deposing the King, and also his Death and Destruction.

The particular Facts laid to prove this traitorous Imagination and Intent, and which the Prisoner put in Execution, in order to bring to Effect his treasonable Purposes, are five.

The first is; That the Prisoner, with other Traitors, did consult, conspire, and agree to raise a general Insurrection and Rebellion in this Nation against his Majesty.

The next; That he did publish a seditious and treasonable Declaration, containing Incitements, and Promises of Reward, whereby to excite and stir up his Majesty's Subjects to take up Arms, and to levy War against his Majesty within this Realm.

And farther; That he, with other Traitors, conspired, consulted and agreed, by an armed Force, to exalt, and bring the Pretender to his Majesty's Crown, to the Throne of these Kingdoms, and put him into the Possession of the Government thereof.

That hath provided, levied, and retained several Persons, to take up Arms, and to levy War against his Majesty within this Kingdom, for the executing these traitorous Purposes.

The last Overt-Act alledged, and to finish this Conspiracy, is, That he, with the other Traitors, consulted, conspired, and agreed to seize upon, and to imprison the sacred Person of his Majesty.

Gentlemen, it is unnecessary, when these Facts are opened to you, to acquaint you, that an Attempt of this Nature, if it had succeeded, would have been the Subversion of the present happy Establishment, and the Protestant Succession, so often confirmed by the Consent of the whole Na-

tion, and the only Security of your religious and civil Rights and Liberties; they would all have been exposed to the Arbitrary Power of a Popish Faction, under the Tyranny of the Pretender.

Gentlemen, having said this to shew the Nature of the Offence; we (who are Counsel for his Majesty) shall proceed to lay before you the particular Evidence against the Prisoner at the Bar: Gentlemen, we have been so fortunate as to discover, and shall produce before you, the very Plan itself, upon which these Conspirators proceeded, and which was to be put in Execution.

We shall produce the Plan under the Prisoner's own Hand-writing, and shew his acting correspondent to that Plan, and in the Execution thereof; this Plan is a compleat Scheme of a treasonable Insurrection, if that may be called compleat which tends to utter Destruction; for if the several Parts therein contained had been executed, it would have been a total Overturning of the Government and Constitution.

But you may observe a Regularity going thro' the whole Scheme.

The Place of Action, and the Scene where this Conspiracy was first to be put in Execution, was in the City of *London*, and tho' in the Plan it self the Day is not mentioned, yet we shall shew to you, by the Prisoner's own Declaration and Discovery, the Time when it was to be executed; it was at the breaking up of the Camp of his Majesty's Forces in *Hyde-Park*.

Gentlemen, the Plan contains a Disposition of several Officers, who were appointed to their particular Stations, and were to be supplied with Men designed to be procured for the Execution of this Plan; and, as the Conspirators hoped to debauch part of the Army, these Officers were to be disposed at several Places, to receive the private Men, who, to the Number of about two Hundred (towards the Evening of the Day agreed upon for Execution) were to go singly out of the Camp, without their Arms, that they might more easily pass without Observation, and were to be collected together at a Place of Rendezvous appointed them.

Gentlemen, from the Management of the Conspiracy, and the Method they had taken to carry it on, and the Hopes they had entertained, the Conspirators concluded, they should have that Number of two hundred Men ready in one Body, to be commanded by proper Officers, to make the first Attempt, and the first Stand.

At the Place of Rendezvous they were to be supplied with Muskets ready loaded, and to receive their Arms, which were to be distributed to them a little before the Hour of Nine; at which Hour exactly, they were to march directly to the *Tower of London*, (as the Plan proposes, and as the Prisoner agreed and declared) where they might expect to be admitted, by the Help and Assistance of their Friend, the Officer upon the Guard; and as soon as they had entered, they were to shut up the *Tower Gates*, and seize the Arms.

Their General was to make his Stand in Person at the *Royal Exchange*; at the same time, it is directed by the Plan, and was consulted upon, and agreed by the Prisoner himself, they were to attempt to arrest the Persons of several great Men; and although the Plan doth not name the Persons, yet the Prisoner hath explain'd it fully, and from

his own Mouth we shall prove, who the particular Persons are, thus intended to be seized.

A Declaration was to be dispersed to excite People to come in to the Rebels; the Gates of the City of *London* were to be shut up, and Cannon brought down against them: They were then to set a Guard over the *Bank*; but in the first Place, they were to take out Money sufficient to pay their Men, such as they hoped would appear in their Interest: Their several other Parties were to secure the Artillery in the *Camp*, the Guns in the *Privy-Garden*, the Cannon and Ammunition near the *Horse-Guards* in *St. James's Park*.

These were the first Operations: But to finish this villanous and execrable Design, at the Time the *Tower* was seized, and the City in Arms, they were to send a Detachment to seize the Person of his Majesty; and this they expressed in their Plan to be, for the securing his Person from the Mob. But our King was to be delivered to their General at the *Tower*, and to be put under his Custody. Thus the Life of his Majesty was to be in their Power.

After this, there are several other Dispositions of Officers, and other Persons, in order to excite and carry on the Rebellion: Some were to appear in *Totbil-Fields*, some in *Southwark*, who were to give Arms to the *Mintors*; some at *Greenwich*, to engage the Watermen, and seize the Magazine and Powder there, and others at other Places.

Gentlemen, you will find in this Plan a Preparation to make an entire Conquest of the Cities of *London* and *Westminster*; upon which the Conspirators hoped the rest of the Kingdom would declare for the Pretender: And there is one particular Provision in the Plan, that as they proceeded here, and found Success, the General should immediately dispatch Messengers into the several Counties of *England*, to give Intelligence of their Progress, and to persuade those, who they looked upon to be in their Interest, to declare for the Pretender, and to rise in their respective Counties with their Adherents.

This is the Plan upon which the Conspiracy is carried on; and as we shall produce this Plan, which the Prisoner hath supplied himself with, and written with his own Hand, we beg leave to insist upon that, as strong Evidence against the Prisoner, upon the Overt-Acts alledged in the Indictment, of his consulting and conspiring to raise a Rebellion and Insurrection in the Nation, and to seize the King's Person.

Gentlemen, upon this Plan, which the Prisoner at the Bar had thus furnished himself with, you will find, on the Examination of our Witnesses, that he constantly acted; he declared for, and promoted the Execution of the principal Parts of it.

Gentlemen, the Witnesses we shall call who were engaged with the Prisoner at the Bar, in this Design, are *Stephen Lynch* and *Matthew Plunkett*; (which last had been a Serjeant in the Army) with whom the Prisoner consulted, and whom he engaged in this desperate Attempt; and we shall call some other Witnesses to confirm several Circumstances in their Evidence.

Mr. *Lynch* is a Person the Prisoner might have reasonable Hopes of engaging in this Service: He had been formerly acquainted with one Dr. *Murphy*, who (I am instructed) was in the Rebellion that

that broke out in the Beginning of his Majesty's Reign: Mr. *Lynch* having been abroad, and absent for some time, returned into *England* in *April* last: Upon his Return, Dr. *Murphey*, his old Acquaintance, meets with him, bids him welcome to *England*, and tells him that an Affair was going on by which he might make his Fortune, and advises him not to go out of *England*: That there was an Intention to rise in Favour of the Pretender, whom he called his King, and he would take care to recommend Mr. *Lynch* to a Person who had a great Part in that Affair.

Mr. *Lynch* having suffered before, and run a great Hazard, was unwilling immediately to enter into any Engagement, but proposed, that if he could have sufficient Encouragement, and what he expected as a Reward, he should be willing to stay. Some time after Dr. *Murphey* introduces *Lynch* to the Prisoner at the Bar: The first time they met, I think it was the Beginning of *June* last, they went to the Prisoner's Lodgings, which were then at the upper End of *Chancery-Lane*; and he being about to remove his Goods, desired them to go to a Tavern hard by, the *Griffin* Tavern in *Holbourne*. To this Place the Prisoner at the Bar came, where Dr. *Murphey* presented *Lynch* to Mr. *Layer*, as the Gentleman Dr. *Murphey* had before recommended to him; Mr. *Layer* received Mr. *Lynch* at that time with great Civility, and tells him, that the Recommendation he had received of *Lynch* from Dr. *Murphey*, made him not to doubt of his Integrity and Ability. Then they entered upon a Consultation as to the carrying on of this Design; Mr. *Layer* introduced it with representing an Uneasiness in the Nation in general, and how fair an Opportunity there was to bring about a Revolution: But Mr. *Layer* tells him, that one of the first and principal Steps was to seize upon a General, or other great Man, (which you will observe is one part of the Scheme) and upon Dr. *Murphey*'s Recommendation of him as a fit Man for that Service, *Layer* proposes to *Lynch* to undertake it. At this time *Lynch* acquainted *Layer* with the Difficulties he had been in, and that an Affair of this Nature would take up some time before it could be put in Execution, and he could not well engage in it without some farther Encouragement, and a Reward in Money, in order that he might live easy and well while he staid here. Upon that, the Prisoner at the Bar promised him Supplies of Money for his Subsistence and Expences, what should be necessary, besides future Rewards; and in pursuance of that Promise, *Layer* hath several times supplied *Lynch* with Money, to engage him more effectually in this Design, and to support him in it. By these Assurances *Lynch* was prevailed upon, and then agreed to enter into this Conspiracy, and to take upon him the Part therein that should be signified to him.

Gentlemen, the Prisoner did not then make a full Discovery of the Person that was to be seized; but they were to meet again, as they did, about the latter end of *June*, at the same Tavern: There the Prisoner disclosed to the Witness the particular Person who was designed to be first seized. He acquaints the Witness, that the Person he (the Prisoner) intended at their former Meeting, and whom he designed the Witness should seize, is the General of the Army, the Earl *Cadogan*; and *Lynch* was to find out such other Persons as he could rely upon, for the assisting in, and effecting

that Enterprize; whereunto *Lynch* agreed. *Layer* then acquainted him what Steps were already made in the Conspiracy, and that they were to be headed and commanded by a General, who had Wit and Courage and Resolution, and who were supported by a great many Friends, who had full Power and Authority from the Pretender (whom he called King) to act, and who was Intrusted with a Commission as his General, and whose Orders *Lynch* was to obey.

The Prisoner and *Lynch* had several other Meetings, some at the *Griffin* Tavern, and others at the Prisoner's own House in *Old Southampton Buildings*, where the Prisoner always encouraged *Lynch* to persist in the Undertaking, by assuring him that all Things went on well, and that the Design was so well laid, that it could not probably miscarry: That they should be assisted by a great many Officers, as soon as any Motion was made, and that the common Soldiers would declare upon the first Opportunity: and being asked by *Lynch*, whether they had no Foreign Assistance to depend on; the Prisoner answered, when we begin the Business, we shall not want Relief, if requisite. At one of these Meetings the Prisoner revealed to the Witness, that, upon the Rising, the *Tower* would be delivered up to them, by means of an Officer, who was to be upon the Guard there on the Day of Execution; and that the People in the *Mint* in *Southwark* would come into them; who, and all others that should repair to their Party, should have Arms delivered to them; and that the whole Design should be put in Execution at the Breaking up of the Camp, which would be the most proper Time for the speaking with the Soldiers in the Army.

But at a Meeting they had, some time in *August*, at the *Queen's Head* Tavern in *Great Queen-Street* near *Lincoln's Inn Fields*, *Lynch* complaining of the Delay in putting their Design in Execution, and representing the Danger of it, and withal pressing to know his intended General and Commander, the Prisoner gave him great Encouragement, from the good Prospect of their Affairs, and the Vigilance of the Noble-Man at the Helm, who would lose no Opportunity, when a convenient Time should offer; and promised the Witness, that he should be presented to this noble Person in due time, from whom *Lynch* should receive his Orders, or Commission for executing his Part, and entering upon his Enterprize.

And accordingly, upon the twenty fourth Day of *August*, Mr. *Layer* invites *Lynch* to ride out of Town with him the next Day to take the Air, which *Lynch* comply'd with; and on the twenty fifth of *August* in the Morning, *Lynch* went to the Prisoner's House, who appointed *Lynch* to go before, and to stay without *Aldgate*.

At that Time the Prisoner asked the Witness, whether he mounted with Furniture or Pistols; who answering that he did not, but that he had a Double-Barrel Fowling-Piece, which the Prisoner's Servant might carry; the Prisoner directed him to get his Piece ready loaden, because he (*Layer*) should carry something with him, which he would not lose for all the World. *Lynch* and the Prisoner met without *Aldgate* at eleven before Noon, and the Prisoner's Servant carried the Gun, and they rode together toward's *Epping* in *Essex*, which was the Place they were going to.

Upon the way as they proceeded, Mr. *Layer* told the Witness, that they were going to the House of the Lord *North* and *Grey*, where he would present *Lynch* to his Lordship, as a particular Friend of his (the Prisoner's.) When they came to the *Green Man* at *Layton-Stone*, at the Entrance upon *Epping-Forest*, the Prisoner said, it might be best to eat something there, because they should be too late for the Lord *North* and *Grey*'s Dinner; and accordingly they stopt at this House to Dine.

Gentlemen, You will hear from the Witness that at this Place, the Prisoner and *Lynch* had another Consultation, wherein there was a Repetition and Confirmation of the whole Design and Conspiracy. At this *Green Man*, in your County, Gentlemen, you will find every principal Part of the Conspiracy, which was to be executed, consulted upon, and agreed unto by them both: The Time and Manner of the Insurrection, the Preparations making for it, the Assistance to be provided and expected from the Army, from many in the City of *London*, and from the Generality of the Nation, as was then suggested; the Seizing the Earl of *Cadogan* as the first Step, and the Surprizing the *Tower* in the Manner mentioned in the Plan, by the Help of the Officer upon the Guard; and then they proceeded to consider and approve the most daring and execrable Part of the Plan, which was then expressly repeated by the Prisoner, the making a strong Detachment to Sieze on his Majesty's Person.

The Prisoner then declared his great Satisfaction, in having engaged a Person of such Courage and Conduct as Mr. *Lynch*, in the Attempt of Seizing the Earl *Cadogan*; and likewise named the several other great Men, hinted at in the Scheme, whose Persons were to be seized, and of whom he had made up his Collection in pursuance of the Plan; and then express'd his Wishes so to bring Matters to bear, that Mr. *Lynch* might likewise have the sole Direction apprehending the Persons of some of his Majesty's Ministers, the Lords *Townshend* and *Carteret*, his Majesty's principal Secretaries of State, and Mr. *Walpole*, first Lord Commissioner of the Treasury.

These Persons, most immediately intrusted in his Majesty's Service, were in the first Place to be seized, in order to facilitate the Design, and to make it successful. By this means the Conspirators were to weaken his Majesty's Power of Defending himself, when they had deprived him of his General, who was to command and conduct his Army; of his two Secretaries, who were to maintain and carry on his Intelligence; and of the first Commissioner of his Treasury, who was to take Care for his Supply.

At this Place these things were debated and considered between them: Mr. *Lynch* then again complained of the long Delay, and wished that the Affair might be carried on with more Expedition: The Prisoner thought no time so proper as the Breaking up of the Camp, when they might be supplied with Soldiers; yet he was willing to hear any Proposal from Mr. *Lynch*, and desired Mr. *Lynch*, that if he could think of any speedier Method, or better Scheme, to let him know it: But the Witness was not capable to propose any way more proper, than what had been agreed upon the Foot of the Plan, as it had been explained by the Prisoner himself, and therefore Mr. *Lynch* acquiesced therein.

Gentlemen, at that time, and at the same Place, the Overt-Act laid in the Indictment, of publishing the treasonable Writing, was committed; which was a Declaration framed in the Handwriting of the Prisoner, to be published immediately on the first Breaking out of the Conspiracy, to excite the King's Subjects to take up Arms, and to enter into a Rebellion against him; and that it might have an Influence on the Army, where their Hopes were placed, it took Notice, that the King's General was seized, and in their Custody.

In this Declaration particular Rewards are promised to the Horse and Foot in the Army; different Allowances are made, to every Horse-man and Serjeant three Guineas; two Guineas to every Corporal, and one Guinea to every common Soldier: All had Promises of Encouragement, Favour, and future Reward.

Gentlemen, after this was read, the Prisoner put this Declaration up into his Pocket again; and afterwards (as he acquainted the Witness) he himself made an Alteration therein; it containing at first a general Invitation to a Revolt, but was not directed in the Name of any particular Person, therefore the Prisoner thought fit afterwards to alter it, (as he informed *Lynch*) and to make it in the Name of the Pretender, as King.

Gentlemen, though their Hopes and Expectations were founded on corrupting and Debauching the Army; I mention it only, as it was their Expectation and Design, without any Imputation on the Honour or Fidelity of the Gentlemen of the Army: But Persons who undertake an Affair of this Nature, are always forward to expect that their Designs will be successful.

This, Gentlemen, which I have mentioned to you, which will be more fully and particularly given in Evidence to you, against the Prisoner at the Bar, was transacted and committed in the County of *Essex*.

My Lord, this will be Evidence of most of the Overt-Acts alledged in the Indictment in the County of *Essex*; but we shall confirm this Evidence by the Confession of the Prisoner, proved by two Witnesses, in whose Presence he acknowledged the several Facts, which will be charged upon him in the County of *Essex*, by the Testimony of Mr. *Lynch*; and shall make Proof of other Overt-Acts in the County of *Middlesex*; for it was impossible a Design so extensive should be confined to one or two particular Places within the same County: Their Consultations must be transferred from Place to Place, as Opportunity offered, and as they thought most conducive to the Purpose they were engaged in.

But the Facts I have mentioned, were transacted, Gentlemen, in your County. After the Prisoner and Mr. *Lynch* had settled these Affairs at the *Green Man*, they went to the House of my Lord *North* and *Grey* at *Lipping*: They staid there all Night, and dined there the next Day; the Witness was introduced and presented to his Lordship by *Layer*, and was civilly received and entertained; and the Prisoner at the Bar, as he and *Lynch* returned home, asked the Witness how he liked his Lordship, and assured Mr. *Lynch* for his Encouragement, that he had greatly recommended him (the Witness) to his Lordship.

The Prisoner and *Lynch* met a second time at the Lord *North* and *Grey*'s House, where *Lynch* declared

declared he would withdraw himself, if things were not put in Execution; to which *Layer* replied, they would be sooner put in Execution than *Lynch* imagined.

Gentlemen, you may perceive, by this Evidence, the Prisoner's Explanation of the whole Scheme, and his Execution of it, so far as was in his Power; tho', blessed be God, these, or any farther Attempts of this kind, have not hitherto prevailed.

The Prisoner proceeds farther; and the next Witness who will be produc'd against him, is one who had been a Servant in the Army, *Matthew Plunkett*. *Plunkett* had been formerly acquainted with the Prisoner, and done him a piece of Service; he was made use of to rescue some Goods, when they were taken in Execution at the House where *Layer* lodged; which was the beginning of their Acquaintance: This, with some other Recommendations from Persons engaged in this Design, induced the Prisoner at the Bar to make Offers to him, as you will hear from the Witnesses.

In June 1722, another Person of the same Name, one *James Plunkett* was directed by Mr. *Layer* to go to this Serjeant *Plunkett*, and desire him to meet *Layer* at the Italian Coffee-house in *Russel-Court*. The Witnesses could not at that time, at least did not think it proper to go to the Place appointed; but a Day or two after, Mr. *Layer* meets him in *Lincoln's-Imm-Fields*, and takes him aside under a Gate-way near *Turn-Style*: *Layer* then told *Plunkett*, he would inform him of a Matter that would be of great Advantage and Benefit to him; there *Layer* let him into this Conspiracy, and engaged the Witnesses in it; not only by assurance and promise of Reward, but by actual Reward and Money given him; and to induce and to encourage *Plunkett* the more, *Layer* acquainted him, that there were several Persons of great Estates, who were resolved to rescue themselves, and the Nation from the Calamities and Slavery, that they then endured; and that they intended to bring about a Revolution, and restore their King the Pretender; *Plunkett* objected, that the Pretender was a Papist; but the Prisoner reply'd, there was no difference between a Papist and a Lutheran King; and therefore, that ought to make no Impression upon *Plunkett*, to hinder him in joining to bring in a Papist.

The Prisoner enquired of *Plunkett*, whether he had not an Acquaintance in the Army with some Officers, and with the common Soldiers; and then engaged *Plunkett* to levy what Persons he could into their Service; and when the Witnesses told *Layer*, he knew twenty or thirty Serjeants in the Army, proper Persons to be applied to, the Prisoner gave *Plunkett* Directions to make Application to them, and to have them enroll'd; and at that Meeting the Prisoner gave the Witnesses Money for his Encouragement; and as they had several other Meetings after this, to provide and levy Men, the Direction and Employment given by *Layer* to the Witnesses, was, to take care to find out their Lodgings, and to make Lists of the Men, of their Names, and Places of Abode, that they might be ready upon Notice.

The Prisoner not only employed *Plunkett* to procure, and enroll as many as he could get; but gave him Money for one particular Person, one *Child*, who had served in the Army, and who was recommend to *Layer* by *Plunkett*, as a Per-

son that had been disoblig'd by having been turn'd out of the Service; *Layer* himself gave *Plunkett* half a Guinea, for to give to this Person, to engage him in this Conspiracy, which *Plunkett* accordingly paid *Child*: *Layer* likewise ordered Money at other times to be given to *Plunkett*, and at one time particularly acquainted him; that the Prisoner had left a Guinea with one *Jefferies* a Non-juring Parson, to give to him, who had given *Plunkett* but half a Guinea.

The Prisoner at the Bar; to encourage *Plunkett*, acquainted him with the Persons, whom *Layer* expected to join in this Conspiracy; and asked the Witnesses his Opinion of several, the Witnesses will tell you the Names of the Persons, and what Answers he gave; particularly that *Layer* asked him what he thought of the Lord *North* and *Grey*, for an Officer to be at their Head? The Witnesses answer'd, though he had never serv'd under him, he look'd upon his Lordship as a great Man.

They had Meetings at several times, when *Layer* informed him, that things were in a great Forwardness, tho' it was not yet a time to put their Design in Execution; but it went on so well, that it could not miscarry; that the Duke of *Ormond* was to come with a single Ship, with some Offices; and that the Design had been discover'd to the *French* Ambassador, who had given Intelligence thereof to his Majesty, or else the Affair had been done before that time.

This *Plunkett* was employed, from time to time, to prepare Lists of, and to collect and enroll fit Persons to go on with this Design; and particularly a Number of Serjeants, about twenty five; being dismiss'd from the Army, the Prisoner engaged *Plunkett* to go immediately to those Persons, and take care to secure them.

Gentlemen, these traiterous Consults and Transactions were in *July* and *August*; and the Witnesses will acquaint you more fully with the several Particulars. There was one Encouragement which the Prisoner gave to this Witness, which he did not mention to the other; he told *Plunkett* there would be an Army of *Dutch* to come over in Aid of his Majesty, but the Witnesses should see a Number of half-pay Officers, especially those of the Name of *Fitzgerald*, on the Side of his King (the Pretender) that they could not doubt of Success.

Gentlemen, Under these Encouragements and Promises, and with these Rewards, both these Persons, the two Witnesses, were engaged by the Prisoner to enter into, and go on with this Conspiracy: The Prisoner met them apart from time to time; they concerted and carried on such Measures as they thought proper to execute this Design, upon the Foot of the Plan, which hath been mentioned, and will be produced to you.

After we have produced the Scheme, and likewise examined these two Witnesses, who will give you an Account of the Progress which the Prisoner made in this Treason; we shall give you other plain and evident Proof, which will demonstrate the treasonable Intent of the Prisoner at the Bar, and his hopes of Success.

We shall prove that the Prisoner had been at *Rome*, and by his own Confession, that he had seen the Pretender, and had Conferences with him.

We shall prove that the Prisoner had blank promissory Notes, or Receipts for Money, signed

with the Pretenders own Hand, by the assumed Title of *James Rex*, found amongst *Layer's* Papers, which were remitted to him from *Rome*, and which he has acknowledg'd were sent over to him, for raising of Money to carry on the Cause of the Pretender. This is a strong Evidence of the Trust and Credit reposed in him to execute this Conspiracy; that the Prisoner is a Person fully intrusted; the Receipts are in Blank, and the Prisoner had Power to raise Money on them, and to fill them up with such Sums, as he thought proper and necessary.

Gentlemen, on the Examination of our Witnesses it will appear that Mr. *Layer* declared he had expended great Sums of Money in this Affair, and that he has made it an Excuse, why he had not Money to supply some Demands, because he had disburs'd so much.

This therefore was to be his full Power to raise Money towards bringing the Pretender to the Throne.

Besides these Receipts, he had furnished himself with Lists of the Officers of the Army, in order to know the Situation and Condition of the Army, and to consider what Advantage he could make by any of those in the Lists: He had provided himself with Lists of the Officers of the *Tower*, which we apprehend, was to render the Design of seizing the *Tower*, when their Friend the Officer was on the Guard, more probable and hopeful.

Besides this, we have Letters which will be produced, that passed between Sir *William Ellis*, an Adherent of the Pretender's at *Rome*, and Mr. *Layer*, by the Name of *Fountain*, (a Name he went by) encouraging him to go on with this Design: We have the Cypher, and the Explanation of the Cant Words used in those Letters. In one Letter *Ellis* says, the best Method of carrying on the Manufactory, (which is the Insurrection) is to get good Workmen, (by which is meant Soldiers) and particularly to gain some of the ablest of Mrs. *Barbara Smith's*, (by Mrs. *Barbara Smith* is signified the Army) and this would be very agreeable to all concerned, particularly to Mr. *Atkins* (which by their Cypher or Key is a Name for the Pretender.)

And in another Letter there is particular Mention of Mr. *Layer's* Intended General; you will find in the Letter an Explanation of him, thus; that he, who the Prisoner in his Letter called *Simons*, and described as a Tenant, tho' his Name was not then found in the Rentall, this Writer believed he should be called *Simmes*, and says he is of the *North*, a grey hair'd antient Man, for whom his Friend has a particular Esteem and Value, as a very good Tenant. This is the Description, and this is the Cant that passed between them; the Explanation you will apprehend, by the Cyphers that were found amongst the Prisoners Papers.

Mr. *Layer* was not wanting in other Preparations for this Attempt; for he had provided Arms in his own House, more than he could have Occasion for, as a private Subject; he had several Musquets and other Fire-Arms; he had forty or fifty Cartridges loaded with Bullets, ready made up for so many Discharges, which might be delivered out to the People who should come in to them: If he had any use for such a Quantity he will shew upon what Occasion.

The Discovery of the Facts made by the Witnesses, occasioned the apprehending Mr. *Layer*,

in whose House these Arms were likewise seized.

Mr. *Layer* was so conscious of his own Guilt, that after he was apprehended, he made his Escape out of the Custody of the Messenger, in whose House he was placed; he offered a great Reward to Watermen to carry him off: This is a Demonstration of his Guilt, from the Conviction of his own Conscience.

Gentlemen, there are some other Matters and Papers which it will be proper to offer to your Consideration; and most of these particular Facts, which I have mentioned, or the most material of them have been confirmed by Mr. *Layer's* own Confession which he made upon his Examination before the Lords of the Privy Council. And when we have laid before you this Evidence, as according to my Instructions we shall very fully, I don't doubt but that you will do your Duty as honest Men.

We don't apply to your Zeal, as you are Protestants and Englishmen; but upon the Weight of the Evidence, we shall appeal to your Justice, to your Oaths and to your Consciences; whether upon the whole Proof to be laid before you, you will not remain fully satisfied, that the Prisoner at the Bar is guilty of the High-Treason whereof he stands indicted, and then that you do find him so.

Mr. *Att. Gen.* May it please your Lordship and you Gentlemen of the Jury, I am Counsel on the same Side for his Majesty against the Prisoner at the Bar, who stands indicted for High-Treason, in compassing and imagining the Death of the King. The Preservation of the Life of the King is of that great Importance to the Safety and Prosperity of his Subjects, that even Imaginations and Intentions (which are but Acts of the Heart) to take it away, manifested by Overt-Acts are an Offence of the highest Nature which the Law takes notice of; but as Imaginations and Intentions of Men are secret, and can't be discovered but by their Actions, there must be Proof of some Fact done in order to carry such Intentions into Execution, to make the Offenders guilty of Treason: Therefore in this Indictment five several Overt-Acts are laid; the first is, that the Prisoner at the Bar proposed, consulted and agreed with divers Persons unknown to the Grand Jury, to raise an Insurrection and Rebellion within this Kingdom against his Majesty; the second, that he published a traiterous Writing, purporting an Exhortation, Encouragement and Promise of Rewards, to persuade his Majesty's faithful Subjects to take up Arms against him; the third, that he proposed, consulted and agreed to set the Pretender on the Throne by arm'd Force; the fourth, that he listed Men to levy War against the King; and the fifth, that he proposed, consulted and agreed to seize and imprison his Majesty's sacred Person.

Gentlemen of the Jury, you will readily agree with me that nothing can be more dreadful to a true *Briton* who hath any Regard to himself or his Posterity, or Love to his Country, than the fatal Consequences that must have inevitably attended such wicked Designs, had they been carried into Execution with Success: Suppose a Rebellion had been only raised, what could any Man have expected from a Rebellion in the Heart of the Kingdom, but Plunder and Rapine, and Murder, a total Suspension of all Civil Right, and as long as the Storm had continued, a just but

but terrible Apprehensions of something yet worse to come: This would certainly have been the Case, though the Attempt should have been disappointed at last. But had it been attended with Success, had his Majesty's sacred Person been seized and imprisoned, and had the Pretender been placed on the Throne, what a Scene of Misery had open'd! A mild Administration, govern'd by the Law of the Land under an excellent Prince, and as just and merciful as ever wore the Crown, must have given way to Arbitrary Power; all your Estates and Properties must have been at the Will of a provok'd and exasperated Usurper; Liberty must have given Way to Slavery, and the best of Religions to Popish Idolatry and Superstition; and this humanly speaking, without any Prospect or Hopes of Relief: Nor would these dreadful Calamities have been confin'd within the Bounds of the King's Dominions, for should the present happy Establishment in his Majesty and his Royal Family (the chief Bulwark and Support of the Protestant Interest) be destroyed, the Protestant Religion in general must be reduced to the lowest Ebb, if not totally extinguished.

This is the Nature of the Crime, and these some of the fatal Consequences that must have ensued, if the Designs charged upon the Prisoner by the Indictment had took Effect. But whether he is guilty of this great Offence, is what you Gentlemen of the Jury are now to try:

My Lord, 'tis my part to open the Nature of the Evidence that we shall produce to prove the several Overt-Acts laid in the Indictment; and in stating it to your Lordship and the Jury, I shall follow the Course of Time in which the Facts were done, that the Case may be more easily apprehended, and shall open nothing but what I believe will be clearly verified by Proof.

This Prisoner at the Bar, tho' brought up to the Profession of the Law, and a Practiser in it went beyond Sea in the Year 1720, and at the Close of that Year, according to our Stile, or the Beginning of the Year 1721, arrived at *Rome*, where the Pretender then was; while the Prisoner was there, he procured himself to be introduced to the Pretender, and had two private Conferences with him, in which (but by what Methods or Representation is best known to himself) 'tis plain he obtained the Pretender's good Opinion so far, that he thought him a fit Person in whom a Confidence for carrying on any Designs against his Majesty, and for setting himself on the Throne, might be safely repos'd: For this Purpose a Correspondence was then settled between the Prisoner and some Persons of Distinction about the Pretender, and a Cypher of Names of Persons and Things was agreed on, in order to carry this Correspondence on. The Prisoner returned to *England* about *July* 1721, after which he writ Letters to his Correspondent at *Rome*, and Answers to them came from thence, whereby it will appear, that the Prisoner had undertook a considerable Part in the Design then carrying on to bring the Pretender in; and altho' these Letters are in obscure and cant Terms, and fictitious Names, yet by the Help of the Cypher and from the Nature of the Letters themselves, it will easily appear to a common Understanding for what Purpose they were writ: This Cypher and Letters we shall prove to have been found among the Prisoner's Papers, which were seized soon after his Commitment, and your Lordship and the Jury will see, when they

come to be read, that notwithstanding the obscure Terms, and the mysterious Expressions inserted to dazzle the Eye of the Reader, when compar'd with the Cypher they will be so intelligible, that they will be a plain Evidence that a Design was carrying on of raising a general Rebellion in favour of the Pretender; for which Purpose a Scheme in Writing was prepared, which we shall lay before your Lordship and the Gentlemen of the Jury, that was likewise found among the Prisoner's Papers; we shall prove it to be writ with his own Hand.

Mr. *Serjeant Pengelly* opened the Nature of this Scheme very fully, I shall not trouble your Lordships with a Repetition of what he said; when it comes to be read it will appear to be calculated for a general Rising, it will prove a form'd Design to seize the Tower, to seize Persons in great Stations, to seize the Bank, and then at last to seize the Person of the King himself, and to seize his Royal Highness the Prince of *Wales*. This we apprehend will be a strong Evidence of the Overt-Acts laid in the Indictment, and will confirm the Testimonies of the Witnesses which we shall produce.

There are two Witnesses we shall call to prove the Overt-Acts laid in the Indictment, they have already been mentioned to your Lordship, Mr. *Stephen Lynch*, and *Serjeant Matthew Plunkett*. Mr. *Lynch* will prove the several Overt-Acts laid in the Indictment to have been committed by the Prisoner in the County of *Essex*, where this Indictment was found; as also Overt-Acts of the same Nature committed by him in the County of *Middlesex*. But as 'tis improper to fall directly upon the Proof of those Facts, without first proving some other Facts by way of Introduction, as how the Acquaintance between Mr. *Lynch* and the Prisoner at the Bar began, and how they came to be so intimate as to enter into a Design of this Nature, Mr. *Lynch* will give your Lordships and the Jury an Account; that there had been an Acquaintance between this Mr. *Lynch* and one Dr. *Murphey* eight or nine Years ago, that they had agreed to join in the Rebellion which was in the beginning of his Majesty's Reign; after that was over Mr. *Lynch* went beyond Sea, and continued there some time, and arrived in *England* in *April* last; that their Acquaintance continued, and their Principles were not altered; Mr. *Lynch* meeting Dr. *Murphey*, Dr. *Murphey* (who hath been mentioned to your Lordships on a late Occasion in this Court and is not now to be found, but had a great Acquaintance with the Prisoner at the Bar) told him he had something advantageous to communicate to him, and appointed a Meeting next Morning at a Coffee-House in *Cornhil*, where they accordingly met, and *Murphey* then advised him not to go out of *England*, because he had an Opportunity of making his Fortune, telling him there would be a general Rising in Favour of the Pretender (whom he called King) and that it was carry'd on by Gentlemen of Note and Credit; and if he would accept of the Service, he would recommend him to one greatly concerned in that Affair; Mr. *Lynch* after Consideration agreed to stay—After several other Meetings between this Dr. *Murphey* and Mr. *Lynch*, at which their Discourse general turned upon this intended Rising; about the Beginning of *June*. Dr. *Murphey* introduced Mr. *Lynch* to the Prisoner, as a Person fit to be entrusted in the intended Enterprize;

terprize; they went to the *Griffin Tavern* in *Holbourn*; Mr. *Layer* there expressed the good Opinion he had of Mr. *Lynch* upon the Character he had received of him from so good a Friend as this Dr. *Murphey*. They soon enter'd upon Business, and the Prisoner after having made a Representation of the Uneasiness of the Nation in general, and of the fair Opportunity there was to bring about a Revolution, propos'd to Mr. *Lynch* to seize some General, to which the Witnesses agreed. After this they had several other Meetings, at which their Discourse turn'd upon the same Subject of a general Rising in order to set the Pretender on the Throne, and at one of them the Prisoner declared he intended *Lynch* should seize the Earl of *Cadogan*, and that the Scheme was laid on a sound Foundation, having a great Man at the Head of Affairs, who wanted neither Wit, Courage nor Resolution, and he would be backed by his Friends. Several other Propositions were made by the Prisoner tending to the same End; to all which Mr. *Lynch* agreed, and they consulted how they might put those things in Execution. In *July* last, Mr. *Layer* went into the Country for fourteen or fifteen Days, and after his Return in the beginning of *August*, in Pursuance of what they had concerted, Mr. *Lynch* and he went to view the Earl of *Cadogan's* House, to see how practicable that Design of seizing him at his House was. Mr. *Lynch* thought it feasible, but he grew uneasy at Delays, and frequently told the Prisoner that his Circumstances would not permit him to continue here at his own Expence; therefore to encourage him to stay, and persevere in the Design, Mr. *Layer* gave him several Sums of Money.

My Lord, upon the twenty fourth of *August* last, the Prisoner and Mr. *Lynch* agreed to ride out the next day to take the Air: on the twenty fifth, according to Appointment, (which brings us now to the Overt-Acts in the County of *Essex*) they rid out together; the Prisoner thought it proper to ride with Arms, alledging that he had things about him he would not lose for any thing in the World. Upon the Road he told Mr. *Lynch* they would go to Lord *North* and *Grey's*, with whom the Prisoner had the Honour to be well acquainted, and he would present Mr. *Lynch* to my Lord as his particular Acquaintance. It happened to be too late to get to Lord *North* and *Grey's* by Dinner, whereupon they put in at the *Green-Man* near *Epping-Forest*, which, Gentlemen, is at *Layton-Stone* in your County. Dinner not being ready at their coming thither they enter'd into Conversation on the former Topics, and Mr. *Lynch* desiring to give him some insight into the Scheme that was formed, the whole subject matter of their former Consultations and Discourses were repeated about seizing Lord *Cadogan*, seizing the Ministers of State, of getting Part of the Army to declare for them and for seizing the King's Person; and these things were then agreed to by them. At this Place it was, that the Prisoner pulled out of his Pocket and shew'd to Mr. *Lynch* the traiterous Writing laid in the Indictment, which was a Declaration to encourage a general Rising, writ, as the Witness believes, in the Prisoner's own Hand; and that Part which contained the Promises of Rewards to be given to the Soldiers and other Persons to encourage them to come into their Designs; was read by the Witness, after which Mr.

Layer took his Paper away, and put it it up in his Pocket again. My Lord, when they had dined, they went on to Lord *North* and *Grey's* House (whom your Lordship will hear mentioned by the Evidence as the Person thought on to be General in this Undertaking) they staid here that Night, and dined there next Day, and afterwards they had a second Meeting at Lord *North* and *Grey's*. Your Lordship and the Jury will be pleased to observe that this Evidence will be a full and positive Proof by this Witness, that the Overt-Acts of publishing this traiterous Writing, encouraging Persons to take up Arms against his Majesty, of the Consultations and Agreement to levy War, to set the Pretender on the Throne, and to seize his Majesty's Person, were done at the *Green-Man*, in the County of *Essex*: And this will likewise be an Evidence, that all the Overt-Acts laid in the Indictment (except publishing the traiterous Writing) were done in the County of *Middlesex*.

My Lord, the next Witness we shall produce is *Matthew Plunkett*, formerly a Serjeant in some Regiment; he had been formerly acquainted with, and had been serviceable to the Prisoner, and was very well acquainted with one *James Plunkett*, which *James Plunkett* was a great Acquaintance of the Prisoner's. This *James Plunkett* desired the Witness *Matthew Plunkett* to meet the Prisoner in *July* last, at the *Italian Coffee-House* in *Russel-Court*, which the Witness could not comply with; but the Witness met the Prisoner the *Sunday* following in *Lincoln's-Imm Fields*, they were together near an Hour, the Prisoner gave him an Account of the intended general Rising, and ask'd the Witness if he knew any old Serjeants or Soldiers who could discipline a Mob, agreed with him to procure such, mentioned to him several Persons fit to be at the head of this Enterprize; and in order to make him diligent, he gave him at that time half a Crown: And Money was not only given him at that time, but a Promise was made to him of further Rewards. The Prisoner having Occasion to go in the Country, one *Jeffreys*, a Nonjuring Clergyman, was sent to *Matthew Plunkett* by *Layer* (and this Fact that I am going to open must not be barely considered as an Act between *Jeffreys* and *Plunkett*, but it will be brought directly home to the Act of *Layer* himself.) *Jeffreys* told *Plunkett* he came from the Prisoner, and that he was employ'd by him to go to such as the Witness was, who were old Serjeants, to get a Number of them together to discipline the Mob, in order to the general Rising: The next Day they met again, and had the like Discourse, and *Jeffreys* gave *Matthew Plunkett* half a Guinea; and what brings this home to the Prisoner, is, that he told *Plunkett* he had left a Guinea with the Nonjuring Parson to give him, and talked with him on the same Subject that *Jeffreys* had discoursed the Witness before. But in fact *Jeffreys* did not give *Plunkett* the Guinea, he gave him but half a Guinea.

My Lord, after Mr. *Layer* went out of Town *Plunkett* gave him an Account what Progress he had made in the Affair. *Plunkett* told him that he had got several old Soldiers that would bear a Part in this Business: The Prisoner said he must take care to keep a List of their Names, and the Places where they lived, that they might be in a Readiness when they should have Occasion for them. And on *Sunday* before the Prisoner was taken up, he told this *Plunkett* that a great many

many of his Countrymen were turned out of the Guards, and ask'd him if he knew where they lodg'd, and upon the Witness's Answer that he did not, the Prisoner directed him to take a List of their Names and Places where they lodg'd, that he might have them when Occasion required. So that here is Mr. *Lynch* a positive Witness as to the Overt-Acts in *Essex*; Mr. *Lynch* and Mr. *Plunkett* positive as to the Overt-Acts in *Middlesex*, and their Testimony confirmed by the Scheme under the Prisoner's own Hand, and other Papers, which we shall produce, found among his Papers which will leave no room to doubt of the Truth of their Evidence. Besides, my Lord, the Prisoner being seized in *September* last, we shall give an Account when he was in Custody of a Messenger lock'd up in a Room two pair of Stairs high, he made a shift to make his Escape, got to the Water-side, and got a Sculler to carry him over the River; he actually got over the River, but he was retaken again in *St. George's-Fields*, and brought back to the Messenger, and offer'd very considerable Sums to the Persons who retok him to let him go. I believe it is hardly to be imagin'd, a Person perfectly innocent would venture to get out of a Room two Story high, and in the manner he did, and offer to give such a Reward to the Persons who retok him to let him get off; he must be conscious to himself that he was in very great Danger. There were likewise found in his Houle Arms more than necessary for his Use, and which he has confessed were to be used if there had been a Rising.

My Lord, to corroborate the Testimony of the Witnesses, we shall lay before your Lordship and the Gentlemen of the Jury, the several Papers which were found, I may say, in Mr. *Layser's* Custody; I don't say they were actually taken in his Custody, but it will come to the same thing; for he had delivered them in two Parcels to Mrs. *Mason* the Witness, whom we shall produce, with Directions that she should take particular Care of them; and they were seized in her Custody not long after the Prisoner was committed to the Custody of a Messenger; she saw every one of them mark'd by the Persons who seized them, and marked them her self: There are not only the Scheme and the Cyphers and Letters mentioned before, but also ten promissory Notes subscribed by the Pretender: These promissory Notes run,

I Acknowledge to have received from
the Sum of _____ *which Sum*
I promise to repay with an Interest for it at the Rate
of _____ *per Ann.* JAMES R.

Can any Man imagine, if there was nothing else to explain them, that these Notes were there for nothing? Every Body must believe that they were intended to be made use of to carry on the Conspiracy; But we shall shew by the Prisoner's own Confession, that they were sent over to him by Sir *William Ellis*, in order to be made use of as Occasion should serve, to promote these Designs in favour of the Pretender. Among these Papers several Lists were found which will be produced, some of which contain the Number of the Officers and of the Soldiers in the Guards, some the Names of other Officers and Soldiers, and some the Number of the Officers belonging to the *Tower*. It must be owned, that in some of those Lists, there are the Names of several

Persons of as great Honour, Loyalty, and Fidelity to his Majesty, as any Subjects his Majesty hath; yet the procuring these Lists could be for nothing but to get an Information of the Number and Character of the Persons in his Majesty's Service, to know the Strength of his Majesty's Forces, that Intelligence might be given and Schemes framed accordingly, and that there might be tampering with such as there could be any Hopes of bringing over into the Pretender's Interest: If the Prisoner can put any other Construction upon his having these Lists in his Custody, he will have an Opportunity to do it. These Things being proved, I apprehend there remains no doubt but that the Prisoner will appear to be guilty of the Crime charged on him in this Indictment: But besides all this we shall prove his Confession, by two Witnesses, whereby he has confessed every Overt-Act laid in this Indictment, the several Transactions that Mr. *Lynch* and *Plunkett* will give account of, and almost all the Facts that I have mention'd before. I shall conclude with this, Gentlemen of the Jury, that if we make out these Facts as they have been opened; and according to my Instructions I have no Reason to make the least Question of it, it must be left to your Consideration whether the Prisoner at the Bar is guilty of the Offence for which he stands indicted or not: If you shall be satisfied by the Evidence that he is, I do not doubt but you will do Justice (which is all that is desired of you) and find a Verdict for the King.

Mr. *Soll. Gen.* If your Lordship pleases, we will now proceed to examine Witnesses; and we desire that room may be made for the Witnesses to come into Court. Call Mr. *Stephen Lynch*.

L. C. *Just.* You must make way there.

Prisoner. My Lord, I humbly desire before this Witness be sworn, that he may be examin'd upon a *Voyer dire*, whether he hath not a Promise of Pardon, or some other Reward, for swearing against me.

L. C. *Just.* Sir, you can't ask him that Question.

Mr. *Hungerford*. I hope we shall be at Liberty, and have a Right to enter into an Examination of this Matter. If a Man is represented to be in the same Circumstances with the Prisoner, and the Prisoner led into the same Circumstances by the Person proposed as a Witness, and afterwards by him involved in the same Offence; if the Person therefore proposed as a Witness, hath a Promise of Pardon or some Reward, upon Condition that he would swear against the Prisoner, he cannot by Law be a good Witness; the Person propos'd as a Witness must be a credible Witness, must be a legal Witness, must not be convicted of Perjury or any other notorious Offence, a free Witness that is not under Restraint for the Offence he accuses another of; and therefore we hope we have a Right of asking whether he acts under the Influence of any Promise of Reward or the Promise of a Pardon: And the Right we have of examining him to the Promise of a Reward or Pardon, is supported by the Authority of my Lord Chief Justice *Hale*, * as reported by *Kelynge*.

Mr. *Ketelbey*. My Lord, I would not take up your Lordship's time, and submit the Weight of what Mr. *Hungerford* has offered to your Consideration, but we found our Right of asking this Question upon my Lord Chief Justice *Hale's* express Declaration, set forth at large in *Kelynge's* Reports, fol. 18. which I have here in my Hand.

* *Hale's Hist. P. C. B. 2. cap. 37.*

I must likewise beg Leave to observe to your Lordship, that this Question was formerly asked in the Trial of *Gordon* and *Dorrell* to one *Adams* that had been in the same Conspiracy with those that were brought to Trial for High-Treason, and was then produced as a Witness against them; the Book was then brought into Court, and the Quotation read before your Lordship, and according to my Notes of that Trial, which I have here brought with me for my Justification, (I submit to your Lordship's Correction if I don't state it right) *Adams* was ask'd that Question, though it was long objected to by the King's Counsel. The Distinction my Lord Chief Justice *Hale* made was this.

Mr. *Just. Eyre*. Read the whole Paragraph.

Mr. *Ketelbey*. I will, my Lord. The Words are these: "It was resolved that some of those Persons equally culpable with the rest, may be made use of as Witnesses against their Fellows, and they are lawful Accusers or Witnesses within the Statute 1 *Ed. VI.* 12. 5 & 6 *Ed. VI.* c. 11. & 1 *Mar.* I. and accordingly at the Trial of these Men, some of them who were Parties in the Treason were made use of against the rest: For lawful Witnesses within those Statutes are such as the Law alloweth; and the Law alloweth every one to be a Witness, who is not convicted or made infamous for some Crime; and if it were not so all Treasons would be safe, and it would be impossible for one who conspires with never so many Persons to make a Discovery to any Purpose.

I was aware of what was here laid down, and therefore did submit Mr. *Hungerford's* Reason to your Lordship's Consideration, and did not insist farther upon it; the subsequent Words are these, "But the Lord Chief Baron *Hale* said, That if one of these culpable Persons be promised his Pardon on Condition to give Evidence against the rest, that disableth him to be a Witness against the others, because he is bribed by saving his Life to be a Witness: So that he makes a Difference where the Promise of Pardon is to him for disclosing the Treason, and where it is for giving of Evidence. But some of the other Judges did not think the Promise of Pardon, if he gave Evidence, did disable him. But they all advised that no such Promise should be made, or any Threatnings used to them in case they did not give full Evidence.

So that, my Lord, we have not only the Authority of that Book with us, but a solemn Precedent in this Court in point established upon a long Debate, and grounded on that very Authority. And when I moved this Matter at the Trial of *Dorrell*, *Gordon* and *Ker*, I then cited another Instance where it had been allowed by the Court, and that was before Mr. Justice *Powell* at *Worcester* Assizes, upon the Trial of *Palmer* and *Symonds* for the Murder of Mrs. *Palmer*: There a third Person concerned in the Fact came in as a Witness against the other two, and after it had been argued by Counsel, and that learned Judge had read upon the Bench, and considered this Authority, the Witness was at last asked this Question upon a *Voyer dire*: And for the Truth of this Case as I reported it, I appealed to my Lord *Lechmere*, then Attorney-General, and who had been one of the Counsel at *Palmer's* Trial.

Mr. *Serj. Pengelly*. My Lord, we hope if there is any room for this Pretence which is insinuated, it only goes as to his Credit, and does not dis-

able him from being a Witness; the Authorities produced are no more: The Judges directed that no such Promise should be made but if such a Promise was made, they agreed it doth not disable him from being a Witness, as was mentioned by my Lord Chief Baron *Hale*; it is not like Money given, which is an actual Corruption; the Promise of Pardon is a thing voluntary in it self: Who is the Promise to be made by? Is it in the Power of any Person but his Majesty to perform it? If there is any Thing in the Supposition, it is not proper to ask in relation to it upon a *Voyer dire* to prevent the Witness from being sworn to give Evidence; but when he hath been sworn, if they think fit to ask the Question, they may.

Mr. *Att. Gen.* The asking the Witness this Question, as 'tis irregular, so if it was answered in the affirmative, wou'd be of no Service to the Prisoner; for with Submission, it will not disable Mr. *Lynch* from being a Witness. Every Man is bound in Justice to give Evidence if required, and a Promise to have a Pardon if he gives Evidence against the Prisoner, can be looked on only to induce him to do that which by Law he ought to do according to the Truth: It does not import that he was to give a wrong or a false Evidence; such a Question he cannot be obliged to answer. And the greatest Use the Prisoner could make of this, if such a Promise was made to the Witness (which is not admitted) wou'd be only against the Credit of the Witness, but not entirely take off his Testimony; his Credit, as well as the Credit of all Witnesses, must be left to the Consideration of the Jury. As to the Opinion of my Lord Chief Baron *Hale* cited out of *Kelynge*, the other Judges differ'd with him, and therefore we hope Mr. *Lynch* shall be sworn.

Mr. *Soll. Gen.* We who are Council for the King don't oppose the asking this Question, out of any apprehension that the Answer would come out against us, but for fear of overturning a Point that hath been long settled. As to the Book, which these Gentlemen cite to support their Objection, with Submission, it is rather an Authority to over-rule it. The Opinion they found themselves upon is, that of my Lord Chief Baron *Hale*, but the rest of the Judges were of Opinion against him; so that we apprehend the Authority is with us, and likewise the Reason of the thing. I take it that no Question is to be asked a Man upon a *Voyer dire*, but to a Fact that would take off his Testimony. Suppose then, for Argument sake, that there was a Promise of Pardon made to a Man upon Condition that he should give Evidence; I apprehend that would not disable him from being a Witness, any more than if the Condition had been that he should declare the Truth, which it was his Duty to have done, although no such Promise had been made: And surely the Promise of a Pardon upon a Condition to do that which was his Duty before, won't take off his Testimony. If they would ask the Witness whether he has accepted a Promise of a Pardon upon Condition to give false Testimony, that is a Question, to which, with great Submission, he is not bound to answer; because that would be to examine him to accuse himself of a thing which is unlawful. For these Reasons, as well as upon account of the Authority they produce, we apprehend there is no Force in the Objection.

Mr. *Serj. Cheshire*. My Lord, I know not whether it would not be laying too great a weight

Weight upon the Objection, for so many of the King's Counsel to answer it; for my part I think it would.

Mr. *Hungerford*. I urge it thus far: Whatsoever Person is produced in a Court of Justice for a Witness, he must appear to be utterly unconcerned in point of Interest in the Consequence of the Trial. If a Man produced as an Evidence to prove the Debt upon the Defendant; shall, upon being examined upon a *Voyer dire*, disclose that he is to have a part of the Money recovered, is not such a Person disabled from being a Witness at all? And is not a Promise of Pardon to the Witness, in Case he convicts the Criminal, a greater Byass than the Witness's having part of the Money recovered? In a Civil Cause the Question is not whether the Witness be tempted to swear a Truth or Falshood, but whether the Witness doth not appear to be so far concerned in Interest, that he ought not to be examined at all? And therefore I humbly insist that we ought to have an Account whether the Witness *Lynch* hath the Promise of a Pardon, or any Reward for that which he is to do here, *viz.* for the Evidence he is to give against the Prisoner. As to the Consequence of such an Enquiry, it is in different to me whether it will disable him from being a Witness absolutely, or go to his Credit only: For if it should come out that he hath such a Promise, we suppose no Jury or Man living will believe him, and that is much the same as if he were not produced; tho' it seems more agreeable to the Practice in Civil Cases, that he should not be admitted as a Witness at all.

Mr. *Ketelby*. Mr. *Sollicitor* mistakes the Words of the Book as I read them; he is pleased to understand them as if all the rest of the Judges differed in Opinion from my Lord Chief Baron *Hale*; but the Book does not say so, 'tis only that some of the other Judges were of Opinion that it did not disable him, but all agreed that it went to his Credit, and that was all I read in the Book; and I would not have offered it otherwise than as it was truly there, upon any Consideration whatsoever; but whether this Question be asked at first or last, so as we have an Answer to it, I am contented.

L. C. Just. You see the most you can make of it is, that it is an Objection to his Credit; and if it goes to his Credit, must he not be sworn and his Credit left to the Jury? He must be examin'd as a legal Witness; but if this Man, under Expectation and Promise of a Pardon, comes here to swear that which is not true, and you would ask him to that, he is not obliged to answer it. No body is to discredit himself, but always to be taken to be innocent till it appears otherwise. It is expressed that he has a Promise of Pardon: What to do? To give Evidence. Give Evidence! Why should he not? Is he not obliged to't? Suppose he gives Evidence according to the Truth, he would be entitled as much to his Pardon, as if he gave Evidence of that which is not true. The most you can say is, he has a Promise of Pardon if he gives Evidence; and can you conclude from thence that he can give no Evidence except a false Evidence? If they who ask the Question insinuate any thing like that, it ought not to have an Answer: But if he hath a Promise of Pardon if he gives a true Evidence, it is no Objection to his being a Witness, or to his Credit.

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Prisoner. My Lord, I humbly hope our Objections will thus far prevail, and that we shall come at the Fact.

L. C. Just. When he is sworn you shall ask him what Questions you please.

Mr. *Just. Eyre*. The Objection which gives Occasion to insist upon this Question, arises from the Influence which the Hopes of Pardon may possibly have upon the Witness; and if this be a Reason for setting aside a Witness as incapable, no Accomplice who discovers a Conspiracy can ever be allowed to prove it upon Oath; for I believe, no Man ever yet made a Discovery but with the Hopes of Pardon; and a Government is obliged in Honour to grant it, where the Confession appears to be ingenuous and sincere: And therefore if the Hope or Prospect of Pardon, which is all that can be inferr'd from a Promise, should be an Objection to the Competency of a Witness, no Government would be safe; for treasonable Conspiracies might be form'd and carried on with Impunity, when the Persons concerned, from whom alone a full Discovery can be had, are utterly incapable of proving the Fact, though they give all possible Marks of their Sincerity and Truth. They have therefore been always allowed to be Witnesses; and I don't remember that ever any Objection was made to their Competency, 'till the Case of the King and *Gordon*, when the Council for the Prisoner would have asked the same Question which is now proposed, but the Court did not think it proper before the Witness was sworn; for no Person produced as a Witness can be examin'd to any Matter which only affects his Credit, and is no Objection to his Competency, till after he is sworn to give Evidence, and has been examin'd.

Mr. *Just. Powys*. Mr. *Hungerford* would do well to remember the several Acts of Parliament made to give Encouragement, by a Reward of forty Pounds, for the apprehending and convicting of every false Coiner, Highwayman, and House-breaker; and if a Criminal in those Offences shall come in, and discover and convict two of his Accomplices, he shall be entitled to a Pardon; and by the express Words of the 5th of *Queen Anne*, shall have the Reward of forty Pounds for each House-breaker, and shall also himself be entitled to a Pardon; so that the Parliament thought it proper to give even Money as well as a Pardon to such Discoverer. Yet ever since the making of those Acts, the Persons so promised and encouraged, have upon those Trials been admitted as good Witnesses even before a Pardon. And indeed there cannot be too great Encouragement given to Criminals to become honest, and to come in and impeach their Accomplices, it being often impossibly fully to discover those secret Confederacies, but by some of the Accomplices and Actors therein.

The Law thinks these are fit Witnesses, and you will find it in the Book that Mr. *Ketelby* hath mention'd that they were thought fit to make Discoveries of those secret Combinations; I don't say to come in and give false Evidence, but to make a fair Discovery.

Mr. *Hungerford*. My Lord, we submit; we shall ask the Question whether he hath any such Promise made; let the Truth come out, and we shall be satisfied.

Mr. *Just. Fortescue Aland*. I was Council in the Case of the King and *Gordon*; and I very well

remember the Council of the other Side insisted the Witnesses produced should be asked this Question on a *Voyer dire*, his Name was *Mayer*. The Reason the Court gave that it was improper to ask this Question on a *Voyer dire*, was, that if he had this Promise, such Promise was made either to speak the Truth, or to speak a Falshood; if it were to give a just and true Evidence, there was no Harm in it; and if it was a Promise of Pardon for speaking that which was not true, the Witness was not bound to answer that Question, and consequently it can be of no Use whatsoever, therefore the Witness must be sworn.

Mr. *Stephen Lynch* was sworn.

Mr. *Soll. Gen.* Do you know the Prisoner at the Bar?

Lynch. Yes.

Mr. *Soll. Gen.* How long have you known him?

Lynch. I first knew him about the Month of *June* last.

Mr. *Soll. Gen.* Pray give an Account to the Court and the Jury by what Means you first became acquainted with him.

Lynch. I became acquainted with him by Dr. *Murphey*: About the Month of *April* last I came into *England* from *Hlanders*; at my Arrival in *England* I met with Dr. *Murphey*, that was my Acquaintance several Years before, who met me and told me he had some particular Business to tell me, and desired me to meet him at *Cooper's* Coffee-house in *Cornhill*, where I met him; and he told me that material Things were acting in the Kingdom in order to a Rising, and if I would be of the Party, he would recommend me to a Gentleman that had the Management of it: I asked Time to consider it, and in two or three Days time I told him that I was resolved to be of the Party. I frequently told him I was impatient to know who the Gentleman was that I was to be recommended to; about the Month of *June* he told me I should go with him to his Lodgings, which were at the upper End of *Chancery-lane*, right over-against the *White-Hart*.

Mr. *Soll. Gen.* Whose Lodgings did you go to?

Lynch. The Lodgings of Mr. *Laver*: Mr. *Laver* was at home, and desired us to go to the *Griffin* Tavern in *Holborn* and he would meet us there; we went, and in a little while Mr. *Laver* came to us; and then Dr. *Murphey* told him that I was the Gentleman he had spoke to him of. Mr. *Laver* was glad of my Acquaintance, and told me that he had had such a strong Recommendation of me, that he was fully satisfied in me; and then he held a Discourse about a Rising that was to be in the Kingdom in Favour of the Pretender, and that it would be back'd by a great many of the Army and the Guards, and several other Gentlemen.

Mr. *Hungerford.* The Overt-Act is laid in *Essex*, and here is an Evidence given of an Overt-Act in *Middlesex*; with Submission, they can give no Evidence of an Overt-Act in another County, till they give Evidence of an Overt-Act in *Essex*, where the Indictment is laid.

L. C. Just. All they say of Matters in the County of *Middlesex*, unless they give Evidence of an Overt-Act in the County of *Essex*, it signifies nothing.

Mr. *Hungerford.* My Lord, with Submission,

they ought not to be suffered to give Evidence of an Overt-Act in *Middlesex*, before they give Evidence of some Overt-Act in *Essex*; for the proving some Overt-Act in *Essex* is the only thing which can entitle them to prove any Overt-Act elsewhere. For by the Method they would go on in, the Jury may be captivated with a Story of the *Griffin* Tavern, and of Mr. *Laver's* other Assignations and Actions in *Middlesex*, which cannot be imputed to him upon this Indictment until some Treason be proved in *Essex*: I hope therefore the King's Council shall receive your Lordship's Directions to go on regularly, to begin to give an Account of the Overt-Acts in *Essex*, before they go into another County.

L. C. Just. Mr. *Hungerford*, you must give them leave to go on in their own Method, of that that first happened in *Middlesex*, and afterwards of what happened in *Essex*; and if you dare not trust them and us, but will have your own Method, it would be to put us into Confusion.

Mr. *Soll. Gen.* My Lord, we insist upon it in point of Law, that we are intitled to give Evidence of Overt-Acts of the same Species of Treason laid in the Indictment, though done in any County in *England*, provided we also prove an Overt-Act in the County of *Essex*; which we must do, otherwise this will pass for nothing. Mr. *Lynch*, go on, and give my Lord and the Jury an Account of what Mr. *Laver* said, when you were together at the *Griffin* Tavern.

Lynch. The first thing he told me was, That he was very glad to meet me, that he had had a good Recommendation of me from Dr. *Murphey*, as being a Man he could confide in; and beginning his Discourse of an Insurrection in the Kingdom, he told me, that they were back'd with a great many of the Army and the Guards; that there was a great many of the Nobility and Gentry of the Country that would come in to them: He told me then, that he wanted a Man of Resolution that would take upon him the seizing of some Person of Note, as a General, or some other great Man. The Discourse run all upon the same thing.

Mr. *Soll. Gen.* Recollect as well as you can, the Particulars Mr. *Laver* told you relating to this Design.

Lynch. He told me the general Design of a Revolution in the Kingdom, in favour of the Pretender, and that they were back'd by a great many of the Army, and a great many of the Nobility and Gentry; and then he told me he wanted a Man of Resolution, to undertake with some others, to seize a great Man, as a General or some other great Man: At that Time I took upon myself to do it, so that Time we discoursed no more.

Mr. *Soll. Gen.* How long were you together?

Lynch. About half an Hour.

Mr. *Soll. Gen.* When had you the next Meeting?

Lynch. A Day or two afterwards.

Mr. *Soll. Gen.* At what Place?

Lynch. At the same Tavern, the *Griffin* Tavern; when I came there, I sent a Boy for Mr. *Laver*, as he had ordered me to do when I wanted to see him.

L. C. Just. When was your first Meeting?

Lynch. About the Month of *June*.

L. C. Just. And the second Meeting was two or three Days after the first?

Lynch.

Lynch. Yes, my Lord.

Mr. Serj. Cheshire. At your parting after the first Meeting, what did Mr. *Layer* say to you?

Lynch. Mr. *Layer* told me, if I had Occasion to speak to him that I should not come to his Lodgings, but to go to a Tavern and send for him, which I did; I sent a Boy for him, and he came to me. Then talking over a Glass of Wine, he told me that he had pitched upon me to seize the Earl of *Cadogan*, and that I should chuse as many Persons as I thought fit who would answer the same Design; and he being the principal Man in the Army, it would discourage the King's Party, and animate the Pretender's Party; which, as I said before, I agreed to undertake, and to do the utmost of my Endeavours to do it.

Mr. Serj. Pengelly. Was you to do it alone, or was you to have any Assistance?

Lynch. Yes, I was to have Assistance.

Mr. Serj. Pengelly. What Assistance?

Lynch. Such that I should chuse; such People that I could confide in.

Mr. Soll. Gen. Did you undertake it?

Lynch. Yes I did undertake it, and to pitch upon such Persons as should be proper to assist me in it.

Mr. Soll. Gen. Was any thing said at that time relating to any Person, who was to have the Conduct of the Design?

Lynch. He told me that there was some great Man that did not want Wit, Courage or Resolution, and was at the Head of this Affair, who would at a proper time give me an Order to effect something further about it.

Mr. Soll. Gen. Had you any more Discourse with the Prisoner about this Affair?

Lynch. Yes, we had several Discourses about it.

Mr. Att. Gen. Tell my Lord and the Jury what more Discourse you had, if you can remember.

Lynch. The chief Part I was to act was to seize the Earl of *Cadogan*, with such Gentlemen as I should think proper to answer the end of seizing him.

Mr. Serj. Cheshire. Was there any other Meeting, and when, and how long after?

Lynch. After that I came to a Tavern in *Holborn*.

Mr. Serj. Cheshire. How long after?

Lynch. Some few Days; it was at the *Castle Tavern* in *Holborn*.

Mr. Att. Gen. Who was with you at the Tavern?

Lynch. I came to the Tavern and sent for Mr. *Layer*.

Mr. Att. Gen. Did he come to you?

Lynch. Yes, he came to me.

Mr. Att. Gen. What Discourse had you with him at that time?

Lynch. We had no particular Discourse, but in general we talked about the Uneasiness of the Nation, and the fair Opportunity there was to rise.

Mr. Att. Gen. Pray give an Account of what else passed.

Lynch. I say, the Discourse that we had at two Meetings before, he repeated, and said, Now is a fair Opportunity, the Uneasiness of the People being such, to bring about a Revolution, since they would be back'd by the Army and the Guards, and several other People. Soon after that we parted.

Mr. Serj. Cheshire. When had you any other Meeting?

Lynch. Some Meetings we had at Mr. *Layer's* House in *Southampton-Buildings*.

Mr. Serj. Cheshire. How long after?

Lynch. A few Days only.

Mr. Serj. Cheshire. At the several Meetings at his House, what was the Subject of your Discourse?

Lynch. It was upon the same, about the Rising and Uneasiness of the People, and the fair Opportunity of bringing about a Resolution; of the Disposition of the Army and the Guards.

Mr. Serj. Cheshire. Did he give you any Encouragement?

Lynch. After I met him at his House in *Southampton-Buildings*, I told him of my Uneasiness; because he had told me at the beginning, that these things would be soon put in Execution: I told him, if they were delayed, I was afraid they would not succeed. He then animated me, by telling me that there was no fear of its succeeding; and that I should not be discouraged, for there was a great Man, a Man of Wit and Conduct, that was at the Helm, and that had the Management of the Scheme: That I should always keep a good Heart; and that Things went on very well.

Mr. West. Did he tell you in whose Favour this was to be?

Lynch. Yes, in Favour of the Pretender. He mentioned him by the Name of King.

Mr. Serj. Cheshire. Do you know any thing about his going into the Country?

Lynch. After I met him at his House, he went into the Country and staid sixteen or seventeen Days at his Return I went to see him, expressing how uneasy I was about the Delay.

Mr. Serj. Pengelly. About what Time was this?

Lynch. I believe it was in *July*. And then I told him again how uneasy I was at the Delay. To which he answered, keep a good Heart, all Things go on very well.

Mr. Serj. Cheshire. Had you any Apprehensions that all was to be done at home, or that you was to have any foreign Assistance?

Lynch. In my Discourse to him of the Uneasiness I was under at the Delay, I asked him if he had any Promise of any Succour from any Power Abroad? He told me, if we once made a Beginning, we should not want them: But did insinuate, that we should not want Encouragement from the Court of *France*.

Mr. Att. Gen. When you expressed your Uneasiness at the Delay, what did he say to encourage you?

Lynch. The Reason he told me was, that things went on very well, and would very soon be put in Execution.

Mr. Att. Gen. In what Manner did you express your Uneasiness?

Lynch. Nothing but that I was uneasy, and I was afraid that things did go wrong.

Mr. Soll. Gen. What did you say, did you say any thing relating to your own Circumstances?

Lynch. In the Beginning I told Dr. *Murphy*, because it would be a long while, some five or six Weeks, before I was to be introduced to Mr. *Layer's* Company, that I came on my own particular Business, and my Circumstances would not permit me to be long here at my own Expence.

At

At the Meeting with Mr. *Layer*, when I first made this Complaint to him, Mr. *Layer* told me I should not want for a small Matter, to maintain me in *England*. Accordingly Mr. *Layer* gave me some Money.

Mr. *Att. Gen.* Do you remember how much that was ?

Lynch. I cannot remember.

Mr. *Att. Gen.* Did he give you Money at any other Time ?

Lynch. Mr. *Layer* gave me some Money the first Time, and afterwards he sent me some Money by Dr. *Murphey*.

Mr. *Serj. Pengelly.* Did he give you any Money at any other Time ?

Lynch. Yes, the last time I was with him I had more.

Mr. *Att. Gen.* How many times had you Money of him ?

Lynch. Five or six times.

Mr. *Att. Gen.* Do you know what the Sums did amount to together ?

Lynch. I can't recollect ; but I believe about eight or ten Guineas.

Mr. *Att. Gen.* What was it given you for ?

Lynch. To keep me in *England*, and to assist in the intended Design of a Revolution.

Mr. *Serj. Pengelly.* After you went to him, upon his Return out of the Country, do you remember the Discourse that passed between you then ?

Lynch. Yes : After I came to his House, I expressed my Uneasiness at the Delay ; Upon which he encouraged me, giving me to hope that Things went on very well, and our Design would effectually take Place.

Mr. *Serj. Pengelly.* Did you ask him any thing about the Army ?

Lynch. I asked him if he had any Encouragement from the Guards and the Army ? He told me, Yes, he had ; that a great many of the Officers would not engage themselves now, being well paid ; but he said he had spoke with several Officers of the Guards, who had assured him, that most of the common Soldiers would come in, as soon as we had made a Beginning.

Mr. *Serj. Pengelly.* Did he mention any thing of the Time ?

L. C. Just. When you asked him if he had any Encouragement from the Army, what did he say ?

Lynch. He told me, that he had Encouragement from many of the Officers of the Army : That he had discoursed with several Serjeants of the Guards, who told him that the common Soldiers would be glad, after they had made a Beginning, to come in to them.

L. C. Just. Did he give you any Reason for this ?

Lynch. Mr. *Layer* told me, the Serjeants told him so before they were encamped, and complained of their ill Usage, and hard Usage from the subaltern Officers.

Mr. *Serj. Pengelly.* Was you acquainted with any Time or Day that was fixed ?

Lynch. There was no fixed Time : Mr. *Layer* told me, it was to be on the Rising of the Camp ; because they could not talk with the Soldiers so well, while they were encamped, as they could afterwards, when they were in their Quarters.

Mr. *Serj. Cheshire.* Was there any Consultation of viewing any one's House ?

Lynch. Afterwards in Discourse he told me, that it was fit to go and view the Earl of *Cadogan's* House, in case it was necessary to seize the said Lord in his House.

Mr. *Serj. Cheshire.* Where is his House ?

Lynch. In *Piccadilly*. Accordingly we appointed a Day to go ; and I came to his Lodgings, and we took Coach, and away we went ; and talking to him about it, he told me, he was very well acquainted with my Lord *Cadogan*, and had some Business with him, about an Estate which his Lordship was about buying : We went to his House, but my Lord was not to be spoke with, or was not within, I don't remember which, but we were conducted into his House : We viewed the inner Part of the House, afterwards we went into the Garden, we view'd the lower Part of the Garden, then we went out in the Yard, and took a View of the Avenues round about the House. I don't remember exactly the Time, but it was that Day that a Soldier should have been shot in *Hyde-Park*.

Mr. *Serj. Cheshire.* Had you any Discourse about the Feasibleness of it ?

Lynch. Yes, that it was easy to be done ; if we had but some resolute Gentlemen to stand by us, that it was very feasible to be done.

Mr. *Serj. Cheshire.* Had you any Talk at that time relating to the *Tower* ?

Lynch. He told me, the *Tower* would be immediately surrendered to the Party ; on the Day the Plot was to be put in Execution, a certain Officer of the Guards would take upon him to mount the Guards there, who would facilitate the Delivery of the *Tower* to them.

Mr. *Serj. Cheshire.* Was there any talk of the Mint ?

Lynch. Yes, afterwards : He said there would be no doubt of the Mint ; they would be glad to take the Opportunity to shake off their Confinement : And that they would put Arms into their Hands, according as they repaired to their Party.

Mr. *Att. Gen.* When did you see the Prisoner next after the time that you speak of viewing my Lord *Cadogan's* House ?

Lynch. I saw him at his own House, and at several Taverns in the City ; and once he wrote to me, desiring me to come to his Lodging ; accordingly I went, and when I came to his House, I met with a little Paper that was left for me, directing me to go to the *Queen's-Head* Tavern in *Great Queen-Street* near *Lincoln's-Inn-Fields*, and to enquire there for one Mr. *Wilson* ; which I did, and I was conducted into a Room where the said Mr. *Wilson* was, with Mr. *Layer* and another Man, who seemed, by his Clothes, to be a Serjeant of the Guards. I do not know the Man.

Mr. *Att. Gen.* What passed then ?

Lynch. We staid a little while there, we talked over the Business, and drank good Success to the Enterprize.

Mr. *Serj. Cheshire.* Your Lordship will please to take Notice, that when he went to Mr. *Layer's* Lodging, he found a Letter there, directing him to go to the *Queen's-Head* Tavern, and enquire for one *Wilson* ; that when he came there, *Wilson* was there, and Mr. *Layer*, and another Man.

Mr. *Serj. Pengelly.* What passed at that time ?

Lynch. Nothing material.

Mr. *Att. Gen.* You talked about drinking good Success to the Enterprize : Who drank that ?

Lynch.

Lynch. We all drank that.

Mr. Att. Gen. Did the Prisoner at the Bar drink it?

Lynch. Yes, he did. I told the Prisoner, when he went out, that I was mighty uneasy at the Delay of this Affair. He told me, I need not be uneasy, for every Thing went on well; and they had a Nobleman at the Helm, who had Authority from the Pretender, and would lose no Opportunity when a fit Time offered.

Mr. Serj. Pengelly. What did he call the Pretender?

Lynch. He called him the King. I was uneasy at the Delay, for fear of being discover'd.

L. C. Just. What Reason did he give you, why you should not be uneasy?

Lynch. Because their Designs were quickly to be put in Execution; and there was a Nobleman at the Helm who would put the Design in Execution, as having full Power and Authority from the King to act as he thought proper.

L. C. Just. Did you ask who that Nobleman was?

Lynch. Yes; but he never told me his Name, but said, that I should, in a proper Time, be presented to him, and receive my Commission and Orders from him to seize my Lord *Cadogan*.

Mr. Serj. Pengelly. My Lord, we shall now gratify the Prisoner's Counsel, with an Account of what happened in *Essex*; I hope they will not be impatient to hear that: Therefore, pray acquaint my Lord, and the Jury, when you went out of Town with Mr. *Layer*.

Lynch. My Lord, I was at Mr. *Layer's* House the Day when the Bishop of *Rocheſter* was sent to the *Tower*; he ask'd me, if I would ride abroad with him the next Day to take the Air; I consented to it, and came the next Morning to his House; and Mr. *Layer* asked me if I mounted with Furniture: I told him no; but that I had a double Barrel Fowling-piece, which if his Servant would carry, would do as well. He then desired me to go and stay for him without *Aldgate*, and get my Gun ready loaden, for he had that about him which he would not lose for any thing in the World. I went and staid till about ten or eleven o'Clock, when Mr. *Layer* met me, and gave the Gun to his Servant to carry. On the Road he told me, we were going to my Lord *North* and *Gray's*, whom he was very well acquainted with, and that he would recommend me to him as a Friend of his. When we got to the *Green Man*, he told me, we had better go in and dine there, because Dinner-time would be over before we could get to my Lord *North* and *Gray's*. Whilst Dinner was getting ready, we had several Discourses on the same Subject, Of the Uneasiness of the Nation, and its Inclination to a Revolution, and how to bring it about; upon which he pulled a Paper out of his Pocket, and gave it me to read the latter Part of it.

Mr. Serj. Pengelly. Can you remember what it contained?

Lynch. I remember some Lines of it; which was, in general, to invite the Nation to an Insurrection, and to shake off the Calamities and Miseries they endured under the present Ministry. And it was mentioned in the said Paper, that the Earl of *Cadogan* was actually in their Custody; thereby encouraging the Army to revolt,

with an Offer of three Guineas to every Horseman and Serjeant, and two Guineas to every Corporal, and one Guinea to every common Soldier, to be paid immediately on their joining the Party, and a Promise of farther Preferment.

Mr. Att. Gen. Did you read this?

Lynch. I did, out of the Paper in Mr. *Layer's* Hand.

Mr. Att. Gen. Do you know whose Handwriting it was?

Lynch. According to our Discourse, I thought it might be his writing.

L. C. Just. But he produced it?

Lynch. Yes, my Lord, he produced it.

L. C. Just. You say you imagine, from some Discourse between you, that it was his Handwriting; what Reason was there in all his Discourse, that induced you to think so?

Lynch. He talk'd of it as being of his own making; besides, there were several Interlineations, Dashings-out, and Interlineations afterwards. He was very well satisfied and easy as to me, and said, he could wish that he could bring Matters about so, as that I could have the sole Direction of seizing some of the Ministry, and namely, my Lord *Townshend*, my Lord *Carteret*, and Mr. *Walpole*.

Mr. Att. Gen. Was there any Discourse about seizing the King?

Lynch. He said, when the Design was put in Execution, the Army would declare in their Favour, and they would send a strong Guard to take care of the King's Person.

Mr. Att. Gen. How to take care of the King's Person? What was you to do?

Lynch. Nothing but to secure the King's Person; by what he told me, it was for the Public Good of the Kingdom; that they did not mean, nor had they any Design on the King's Person, but only to keep him in Security from any Insult.

Mr. Att. Gen. What more passed at that Time?

Lynch. Nothing more in particular.

Mr. Att. Gen. Had you any talk relating to the Army?

Lynch. I said before what related to the Army.

Mr. Serj. Pengelly. Was there any Discourse about a Scheme or Plan?

Lynch. He told me there was a Scheme laid on that Foot, of which I told you the first Step was to seize the Earl of *Cadogan*, and then, according as the Army came over, to take care and seize the King's Person; and he thought the proper Time to put this in Execution, would be at the Rising of the Camp in *Hyde-Park*.

Mr. Serj. Pengelly. Was there any Objection made to this?

Lynch. No; I made no Objection, only shew'd my Uneasiness at the long Delay.

Mr. Serj. Pengelly. When you so expressed your Uneasiness, what did he say?

Lynch. He told me, if I could think or propose any Thing more proper, that I should do it. After that we rode toward *Epping*, and went to my Lord *North* and *Gray's*; and there Mr. *Layer* introduced me as his Friend. We staid there all Night, and dined there the next Day. In the Evening we came away, in company with another

ther Gentleman that I did not know; but we talk'd on the Road about the Situation of my Lord's House; and Mr. *Layer* told me he had recommended me to his Lordship as his particular Friend, and asked me how I liked him.

Mr. *Serj. Pengelly*. Did he ask you any Questions? Do you remember what he called his Lordship?

Lynch. I don't remember any other Name but *My Lord*.

Mr. *Serj. Pengelly*. When he asked your Opinion of him, and how you liked him, did he describe him in any other manner, or only called him *My Lord*?

Lynch. He only called him my Lord *North* and *Grey*; he only asked me how I liked my Lord *North* and *Grey*.

Mr. *Serj. Pengelly*. Liked his Lordship, for what?

Lynch. That was all.

Mr. *Reeve*. Had you any Talk with him about the Person that was to have the chief Command?

Lynch. Yes; but he never named the Person.

Mr. *West*. Had you never any Discourse who was to command the Party that was to seize my Lord *Calogan*?

Lynch. I was to command that Party.

Mr. *West*. Was you any other Time at my Lord *North* and *Grey*'s?

Lynch. Yes; another time I went to my Lord *North* and *Grey*'s, where I found Mr. *Layer*, and expressed to Mr. *Layer* the Uneasiness I was in at the long Delay, and that I was afraid our Hopes would vanish; and told him, if things were not soon put in Execution, I would withdraw my self. Mr. *Layer* bid me not be uneasy, Things might perhaps be sooner put in Execution than I imagined.

Mr. *West*. Where was this?

Lynch. At *Epping*, at my Lord *North* and *Grey*'s.

Mr. *West*. Did you come home together?

Lynch. No; I came home that Night: Mr. *Layer* remained there.

Mr. *Serj. Pengelly*. Did you see him some time afterwards?

Lynch. I met him at his own House, where I expressing my Uneasiness as formerly, he said, I should not be uneasy, for Things would soon take Effect; and bid me get myself ready to execute my Design; because they had Notice the Camp would soon break up, which was the Time designed to put Things in Execution. And at another time he told me, that the Declaration which he had shewn me at the *Green Man*, had mentioned no particular Persons, but in general the Safety and Public Good of the Kingdom: There was nothing mentioned of the Pretender in it, but that he had thought fit to put it now in the Pretender's Name.

Mr. *Serj. Pengelly*. Who was you to receive your particular Orders from, for the executing your Design?

Lynch. From that Nobleman, who was to act as General in this Affair.

Mr. *Serj. Pengelly*. Did you never hear from Mr. *Layer* who that was?

Lynch. No; I don't recollect he was ever named by Mr. *Layer*; he told me, that the Declaration was afterwards put in the Name of the Pretender.

Mr. *Serj. Pengelly*. What was it he recommended you to my Lord *North* and *Grey* for?

Lynch. He recommended me to him as one of his particular Friends.

Mr. *Serj. Pengelly*. What Discourse had you at that Time?

Lynch. We talk'd indifferently; we discours'd nothing of the Revolution at that Time: He told me he had given the Declaration to a Non-juring-Minister to get printed, and had given twenty Guineas for that Purpose.

Mr. *Soll. Gen*. Was you acquainted before with my Lord *North* and *Grey*?

Lynch. No; he introduced me as one of his Friends.

Mr. *Serj. Cheshire*. Did you know when Mr. *Layer* was first taken up?

Lynch. Yes.

Mr. *Serj. Cheshire*. How long before that had you been with him?

Lynch. I can't recollect the Time. I first became acquainted with Mr. *Layer* about *June*.

Mr. *Serj. Cheshire*. What passed the last time you was with him, before he was taken up? Was there any particular Conference between you?

Lynch. I told you about the Declaration, and about my Uneasiness, and that he told me Things would succeed sooner than I thought for.

Mr. *Serj. Cheshire*. When you express'd your Uneasiness, did he use any Vehemence of Expression, as to what Part he would act?

Lynch. He told me several times, when I was so irresolute and uneasy, saith he, don't you be uneasy; rather than all should fail, I will stir up and be a second *Massinello*.

Mr. *West*. Had you any Conversation about the taking up of any Person?

Lynch. He only told me at that Time, that if the Nobleman at the Head of Affairs should be taken up, every thing would be quash'd.

Mr. *Serj. Pengelly*. That Nobleman was not taken up at that Time then?

Lynch. No.

Mr. *Serj. Pengelly*. What Recommendation had you to my Lord *North* and *Grey*?

Lynch. Only as a Friend of Mr. *Layer*'s, to pass away the Time in Summer.

Mr. *Hungerford*. I presume they have done with giving the Evidence, which they intend, of any Overt-Act in the County of *Essex*; if they have, I would crave the Liberty to observe.

Mr. *Serj. Pengelly*. We have not done; if you have any thing to observe, it must be when we have gone through our Evidence.

L. C. Just. When they have given all their Evidence, then will be your proper time to object to the Evidence, and to shew whether 'tis competent or no.

Mr. *Hungerford*. I do not press to make any Remarks upon their whole Evidence; but if they have given all the Evidence they intend to give of any Overt-Act in *Essex*, for on that depends the Fate of this Gentleman at the Bar, I hope we are now (before they shall be permitted to give Evidence of any farther Overt-Act of Treason in another County) at Liberty to object, that the Transaction in *Essex* is not an Overt-Act at all of the High-Treason laid in this Indictment.

Mr. *Soll. Gen.* We have not done: When we have given our Evidence, then it will be proper for them to make their Objections to the Whole.

Mr. *Hungerford.* I humbly offer it to your Lordship's Consideration, whether it is right and proper to go on in such a Method, and to take up the Time of the Court, when the Gentlemen on the other Side say, they have done with giving Evidence as to any Overt-Act in the County of *Essex.*

Mr. *Soll. Gen.* No; we have not done with that Evidence.

Mr. *Ketelbey.* I don't know whether your Lordship will indulge us to ask the Witness a Question or two now.

L. C. Just. Propose your Questions; and we will tell you.

Mr. *Ketelbey.* Whether he hath any Offer of Pardon proposed to him to induce him to give Evidence against the Prisoner at the Bar; which if he hath, we apprehend will invalidate his Evidence.

Lynch. No, Sir; I have no Promise of Pardon at all: I only do this out of Justice, to make what Reparation I can, and to save the Blood of many People.

Mr. *Ketelbey.* I beg leave to ask him a few more Questions. I think you say the first time you were introduced into this Gentleman's Company, the Prisoner at the Bar, was at the *Griffin-Tavern* in *Holborn*, and that he then told you he had great Designs in hand; and that there was an Insurrection designed, and they wanted a Person of Resolution to seize a General: This, you say, was the first Time that ever you saw the Prisoner at the Bar. How came you to have that Share of Confidence in a Man that you never saw before?

Lynch. I told you I was in Discourse with Dr. *Murphey* a great many Days and Weeks before I saw Mr. *Layer*; I told you how every Day I saw him, and always discoursed about the Insurrection, and how he told me then that he would recommend me to a Man that had the Management of the greatest Part in this Affair; and I asked every Day when I should be introduced to him: He told me, the Time was not come yet; but when it was a proper Time, he would introduce me.

Mr. *Ketelbey.* I think you give that for a Reason, why you had that Confidence in him, because you had been recommended by one Dr. *Murphey*. How came you to have that mighty Dependance on Dr. *Murphey*?

Lynch. Because Dr. *Murphey* and I had been acquainted several Years ago.

Mr. *Ketelbey.* I hope you was not in any wicked Design with Dr. *Murphey*, and so much acquainted, as to recommend you in a Case of Treason.

Lynch. There was a common Friendship between us.

Mr. *Ketelbey.* How came he to trust you? Would you have trusted him in a Business of Treason?

Lynch. We have been concerned in Affairs together.

Mr. *Ketelbey.* How long was you at the *Green Man* with Mr. *Layer*?

Lynch. I can't say exactly the time.

Mr. *Ketelbey.* I don't ask you exactly to a

Minute or two; but was you there an Hour, or two, or three Hours?

Lynch. I can't say whether we were there an Hour or two; but we had something dressed for Dinner, and the Matters was discoursed of by us before Dinner.

Mr. *Ketelbey.* When you first alighted from your Horses, what Room was you shewn into?

Lynch. We were shewn into a Room up one Pair of Stairs on the Right Hand, the first Room.

Mr. *Ketelbey.* Was it towards the Street, or backwards?

Lynch. It looked into the common Road.

Mr. *Ketelbey.* Did you look out of the Window and see a Person of your Acquaintance?

Lynch. I saw two Gentlemen, but did not know them.

Mr. *Ketelbey.* Did you not look out of the Window, and say, you saw a Gentleman of your Acquaintance?

Lynch. I said I saw two Gentlemen that I thought I had seen before.

Mr. *Ketelbey.* Did not you go down to those Gentlemen?

Lynch. No, I did not go down to them.

Mr. *Ketelbey.* Did not you go down to them?

Lynch. No.

Mr. *Ketelbey.* Did not you say so to Mr. *Layer*, in the Drawer's Presence?

Lynch. No.

Prisoner. Did not you tell me that those Gentlemen were your Acquaintance?

Lynch. I told you; those two Gentlemen I had seen before.

Prisoner. How long were we together at the *Green Man*? Were the Horses put up or not?

Lynch. I can't tell.

Prisoner. Was there any thing dressed for our Dinner but a Beef-Stake?

Lynch. No, nothing else.

Prisoner. Did not you go down Stairs, pretending you went to those Gentlemen?

Lynch. No, I did not tell you I went to those Gentlemen.

Prisoner. Did you not go down Stairs?

Lynch. Yes, I did, and came up again immediately.

Prisoner. Was not Dinner on Table when you came up again?

Lynch. I went down twice before Dinner.

Prisoner. Then you must consequently leave me in the Room.

Lynch. I went down to make Water.

Prisoner. What did you go down the second time for?

Lynch. Out of Curiosity.

Prisoner. How long did you stay?

Lynch. Not both times above two Minutes.

Prisoner. I was then alone, when you went down.

Lynch. Yes.

Prisoner. Was this Discourse before or after Dinner?

Lynch. It was before Dinner.

Prisoner. When you came up the second time, was not Dinner on the Table?

Lynch. It was come up.

Prisoner. And yet the Discourse we had was before Dinner?

Lynch. Yes; it was before Dinner.

Prisoner. How much Time might we spend before Dinner, half an Hour or an Hour?

Lynch. I don't remember, but it was a good while.

Prisoner. Was not the double Barrel Gun in the Room?

Lynch. I don't know whether it was there, or whether your Servant had it.

Prisoner. At the Time of Dinner was my Servant, or Drawer, in the Room?

Lynch. Neither of them was in the Room.

Prisoner. You say we were a good while, you and I, alone; pray, how long?

Lynch. I cannot say positively how long.

Mr. Hungerford. Have you any Copy of that Part of the Paper he gave you to read, and which you read?

Lynch. No.

Mr. Hungerford. Was the Whole of it of any Length?

Lynch. To the best of my Remembrance it was a common Sheet of Paper.

Mr. Hungerford. Did you read the Whole?

Lynch. No; he doubled it down, and gave me the latter Part of it to read.

Mr. Ketelbey. Some Things you seem to remember, and some Things you don't remember: Was it printed, or written?

Lynch. It was written.

Mr. Ketelbey. Did he not mention it to be the Prince of Orange's Declaration?

Lynch. No, he did not.

Prisoner. Was not the Paper blotted?

Lynch. In that I saw there were two or three Places interlined.

Mr. Hungerford. My Lord, I think the Gentlemen did say they had not done with their Evidence, with relation to an Overt-Act in *Essex*; if they have not, they will do well to go on now: But we hope they shall not go into Overt-Acts committed in any other County, till they make the Whole of their Proofs of an Overt-Act in *Essex*.

L. C. Just. You have been told, they should proceed in their own Method, and when they have done, you may make what Observations may be of Service to your Client.

Mr. Hungerford. Relations of Fact arising in another County, which have no Relation to the Fact arising in *Essex*, we hope they shall not go into, to amuse or captivate the Jury, the Court, and the Auditory.

L. C. Just. Sure never any Thing was like this! It is our Province to give Directions, and we think it not proper to interrupt the King's Counsel, but that they should proceed in their own Method: You shall be heard as long as you please, when you come to make your Observations.

Mr. Soll. Gen. The Prisoner hath a Right to say any thing that is proper to the Court and the Jury, in his Defence, but he must say it openly; he is not to talk privately with the Jury; tho' I am sure they are Gentlemen of so great Worth and Honour, as not to be influenced.

Mr. Att. Gen. I dare say the Jury won't be influenced; but he talks to his Counsel so loud, that the Jury may easily hear every Word he says.

L. C. Just. He must not speak so loud.

Mr. Att. Gen. I just now heard him say, It was strange to go on with Evidence that would

not be to the Purpose. I heard him, as I sat here; let him deny it if he can.

L. C. Just. I hope you will not offer any thing of that Kind, Mr. Layer: You have a Right to discourse with your Counsel, but you must do it in such a Manner as the Jury may not hear.

Mr. Hungerford. Indeed, my Lord, he shall have no Encouragement from us for any such Conduct.

Matthew Plunkett sworn.

Mr. Serj. Cheshire. Tell my Lord and the Jury, whether you know the Prisoner at the Bar.

Plunkett. Yes, I do know him.

Mr. Serj. Cheshire. Will you tell my Lord and the Jury, upon what Account, and by whose Means, you first became acquainted?

Plunkett. One Major *Barnewell* brought me first acquainted with Mr. Layer; he had an Execution in his House in *Great Queen-street*, and this Major *Barnewell* came to me, and desired me to get a Couple of Grenadiers. I brought him two; we went to Mr. Layer's House, and his Clerk let us in at the Back-door, and the Grenadiers turned the Officers out, and Mr. Layer gave them a Crown, and a Glas of Brandy.

Mr. Serj. Cheshire. When was this?

Plunkett. As near as I can guess, it is going on of five Years.

Mr. Serj. Cheshire. Tell my Lord and the Jury what Month in this last Year you renewed the Acquaintance, and who brought you to him?

Plunkett. The next Acquaintance I had afterwards, was by Major *Barnewell*, who was arrested, and he sent me with a Letter to his House, to desire him to relieve him.

Mr. Serj. Cheshire. Do you know any thing of one *James Plunkett*?

Plunkett. Yes; he came to me from Mr. Layer, in *July* last, to desire me to meet him; but how this Counsellor *Layer* and this *James Plunkett* came acquainted I don't know.

Mr. Serj. Cheshire. What was he?

Plunkett. I don't know what he is; he is acquainted with Mr. Layer.

Mr. Serj. Cheshire. What Profession is he of?

Plunkett. I don't know; nor how he lives, or gets his Bread.

L. C. Just. Go on.

Plunkett. Mr. Layer paid the Charges for Major *Barnewell*, and brought him out of the *Marshalsea*.

Mr. Reeve. How long was this ago?

Plunkett. To the best of my Knowledge, four Years ago.

Mr. Reeve. He is giving an Account how he came to be acquainted with Mr. Layer; the first time was upon the Account of rescuing Mr. Layer's Goods; the other time was by Mr. Layer's redeeming Major *Barnewell* out of the *Marshalsea*, and paying his Debt: Give an Account how you came last acquainted with him:

Plunkett. I being at home, in my own Room.

Mr. Reeve. How long ago?

Plunkett. I believe, as near as I can guess, it was last *July*.

Mr. Reeve. Give an Account of what happened then.

Plunkett. Now this *James Plunkett* came into my Room, sat down, and he asked me how I did,

did, and said, he was glad to see me; and he asked me, Are you not well acquainted in the Army? Yes, saith I, I know a great many in the Army, both Officers and common Soldiers. Do you know, saith he, any of the Serjeants of the Guards? I know some of 'em, said I. He brought me out of the Room, because my Wife was there, and then he opened his Mind to me: Saith he, Do you know one Mr. *Layer*? (I had forgot the Gentleman, being so slightly acquainted with him;) No, saith I, I don't know him. No matter, saith he, I have appointed a Place for you to meet him at, at the *Italian Coffee-House* in *Russel-Court*; and at the End of this, Mr. *Plunkett* asked me to keep Correspondence with them for the Pretender's Service. I did not go to the *Italian Coffee-House*, not being in a proper Station, nor having Money for that Purpose: So I did not think proper to go to the *Italian Coffee-House*; but the *Sunday* following I went to St. *Andrew's Church*, and meeting with some Friends, they told me Dr. *Sacheverel* preach'd there; and so they decoy'd me to go and hear him preach there. When Service was over, to the best of my Knowledge, as I was going Home, between twelve and one a-Clock, I met Mr. *Layer* accidentally in *Lincoln's-Inn-Fields*; Mr. *Layer* he look'd at me, he was really a perfect Stranger to me, for I did not know him again; saith he, Is not your Name *Plunkett*? Yes, saith I. Was there not one with you t'other Night, one *James Plunkett*? Yes, Sir, says I. Where did he desire you to go? said he. I answer'd, He desired me to go to the *Italian Coffee-House* in *Russel-Court*. Saith he, 'Tis well enough: Do you not know me? No, saith I, you have the Advantage of me; I ask your Pardon, for I don't remember you. Don't you remember one *Layer*? said he. Then I call'd to Mind that I knew the Gentleman. Saith he, Will you walk on this Side? I walked back again towards *Little Turn-Stile*, and we struck up the Wall-Side, and just as we came under a great Coach-House Gate-Way, we went in, and in the Gate-Way he talk'd to me; saith he, I am told that you are a very honest Man, and well-affected so and so.

Mr. *Reeve*. Well-affected, to whom?

Plunkett. Well-affected as to the Business of the Pretender. At the same Time we had this Talk, he bid me not mention it to *James Plunkett*, that I had seen him: Then he asked me if I knew any Serjeants in the Guards; for saith he, I want such old Soldiers as you are yourself, that could discipline a Mob, for we have other Men enough amongst us; but if we could get some old Soldiers, if that could be managed, they would be finely rewarded. But Sir, saith I, the Pretender is a Papist. Saith he, what Difference is there between a Papist King, and a *Lutheran* King?

Mr. *Reeve*. He said he wanted such old Soldiers as you; for what?

Plunkett. He wanted them to discipline a Mob, and to put them in Order. Then we began to reason about the Pretender; Why, saith he, we had as good have a Papist for our King as a *Lutheran*.

Mr. Serj. *Cheshire*. What did you object?

Plunkett. I said he was a Papist. Says he, We had as good have a Papist for our King, as to have a *Lutheran*, I don't know what Difference there is; but as it was, the Nation was enslaved, and the People were obliged to be Slaves. I asked him, Sir, who is the Promoter of this,

that may join us? You see, says he, what Injustice is done to you, you have served Abroad, and others are put over your Head; you have had and found great Hardships. I asked him who promoted this? He said, the Lord *North* and *Grey*. Says I, He is a Peer of the Realm. Saith he, He is a fine General. And the Earl of *Strafford* he mentioned.

Mr. *Reeve*. Who did he say was a fine General?

Plunkett. He said my Lord *North* and *Grey* was a fine General; and ask'd me what I thought of him? I said I had never been under his Command, but I look'd upon him to be a great Man, and one of the Peers of the Land. And then he mentioned my Lord *Strafford*, What do you think of him? To which I made the like Answer. And what do you think of General *Primrose*? I said, I had lately seen him at *Chelsea*, passing by in his Coach, but that he was an old Man; however, Mr. *Layer* said he was a brave General. Then he ask'd me what I thought of General *Webb*? I said, I had heard of his Fame.

Mr. Serj. *Pengelly*. When he had said my Lord *North* and *Grey* was a fine General, and when you ask'd who promoted it, whether did Mr. *Layer* tell you what their Design was to do? When Mr. *Layer* ask'd you what do you think of this Person, and the other Person, what were they to do?

Plunkett. To raise a Rebellion.

Mr. Serj. *Pengelly*. Was that talk'd of at that Time?

Plunkett. Not at that Time:

L. C. *Just*. You say he wanted such old Soldiers as you; for what Purpose? You say he wanted them to discipline a Mob, and put it in Order.

Plunkett. Yes, my Lord.

L. C. *Just*. Did he tell you how many he wanted?

Plunkett. No; he did not say how many.

Mr. Serj. *Cheshire*. Was there any thing said about their Names at that Time?

Plunkett. Mr. *Layer* would have me take a List of their Names, and to enroll them, that they might know where they lodg'd, and where they quartered; that so when he wanted them, he might send for them to be in Readiness.

Mr. Serj. *Cheshire*. Was there any Number he ask'd you the Names of?

Plunkett. I said I knew a great many, and that I could get twenty five. Saith he, you ought to have a List of their Names, where they lodge, that they may be in Readiness for a Call: And saith he, This would have gone on some Time ago, only Somebody made Discovery of it to the *French* Ambassador, and he wrote to the Regent, and so it was discovered to the King: And saith he, The Duke of *Ormond* was to come in one Ship, and General *Dillon* in another, and they would bring their Numbers with them; and then I should see that the Army would not oppose them. And when I parted from him, he gave me half a Crown to drink.

Mr. Serj. *Cheshire*. What was that to do?

Plunkett. It was to encourage me. And he said he would send a Messenger to me; and in a Day or two afterwards there came a Messenger from him: I was not at home, but he spoke with my Wife.

Mr. Serj. *Cheshire*. Who was that?

Plunkett. The Un-juring Minister.

Mr. *Att. Gen.* What was his Name?

Plunkett. His Name was *Jeffreys*.

Mr. *Att. Gen.* You say you was not at home the first Time; did he come again?

Plunkett. Yes.

Mr. *Att. Gen.* How long after?

Plunkett. A matter of five or six days after.

Mr. *Att. Gen.* Did you see him?

Plunkett. Yes, I saw him.

Mr. *Att. Gen.* What passed between you?

Plunkett. He ask'd me if I knew Mr. *Layer*? I told him I did. He then carried me to the *Castle Tavern* in *Drury-Lane*, where we drank two Pints of Wine, which he paid for; after the Nonjuring Parson told me he came from *Layer*, who gave his Service, and told me that he was employed by Mr. *Layer* to go to such as I was, who were old Serjeants, to get a Parcel together to discipline Citizens, and other Mob in the Country.

Mr. *Att. Gen.* What further pass'd between you and Mr. *Jeffreys*?

Mr. *Ketelbey.* I beg leave to object to that Question.

Mr. *Att. Gen.* If I don't bring it home to Mr. *Layer*, it will signify nothing.

L. C. Just. Mr. *Ketelbey*, you know that many times in Discourse it is necessary to mention Introductions, to let in what is material: Whatever pass'd between him and *Jeffreys*, don't affect your Client.

Mr. *Hungerford.* It is a constant Rule, if a Man speaks of a third Person's Transactions, it is declared as nothing, and commonly stop'd from being given in Evidence.

L. C. Just. If they begin right, they will give Evidence in such a Method as to be understood: By declaring what passed between him and *Plunkett*, the Evidence may be the better understood.

Mr. *Ketelbey.* I don't doubt your Lordship's giving Direction right; but I observe this, lest some of the Jury should not take it right.

L. C. Just. Let the Evidence be given in such a manner as may be understood; what is introductory goes for nothing, but it is in order to explain the Evidence.

Mr. *Att. Gen.* What pass'd between you and the Nonjuring Parson, at the *Castle Tavern*?

Plunkett. He talk'd to me of the same Subject, desiring me to get Men in Readiness; he told me, he had a great many Places to go to besides me with this Errand, and then we parted. Another time he came to me, we went to an Ale-House, to the *Cock and Bottle* in the *Strand*, where he gave me half a Guinea, and said, there is a Token, Mr. *Layer* had sent it me to give me Encouragement.

Mr. *Serj. Pengelly.* At that Time that Mr. *Layer* said he would send a Messenger to you, did he mention any thing of Money?

Plunkett. Mr. *Layer* said he would send Money by the Messenger to me.

L. C. Just. You say he told you, that he would send you Money by the Messenger.

Plunkett. He told me so.

L. C. Just. Afterwards you say, one came to you as from him, and encouraged you, and gave you half a Guinea.

Plunkett. He did: I am upon my Oath before God and Man, I will say nothing but the Truth.

Mr. *Serj. Cheshire.* Did you receive any Message from *Jeffreys* to appoint a Meeting with Mr. *Layer*?

Plunkett. Some Time afterwards I met Mr. *Layer*, at eight a-Clock, at the *Castle Tavern* in *Drury-Lane*; there was the Landlord, and Mr. *Layer*, who had two Bottles of Wine, and some Bread and Cheefe: He would have had me eat, but I told him I could not eat; but I drank of the Wine. When he had discours'd with me about the Affair, to encourage me he gave me a Crown; I went cross *Lincoln's-Inn-Fields*, so went home.

Mr. *West.* What did he give you the Crown for?

Plunkett. To encourage me to list Men for the Pretender.

Mr. *Att. Gen.* Had you any Letter by the *Penny-Post*?

Plunkett. That Morning Mr. *Layer* was going to *Norfolk*, *Plunkett* told me Mr. *Layer* was going out of Town, and would be glad to see me. I went to Mr. *Layer*, and his Horses were at the Door; he desired me to walk up two Pair of Stairs forwards, and by the same Token order'd his Servant to charge his Blunderbus in the Room. Saith Mr. *Layer*, I have given a Guinea to the Nonjuring Minister to give you, to do what Service you can; and when I am abroad, you may be sure I shall not be idle.

Mr. *Reeve.* Was any Proposal made to any other Person?

Plunkett. I brought an old Soldier who had been in the Service many Years.

Mr. *Reeve.* What was his Name?

Plunkett. *John Child*; I brought him as thinking he might have been of Service to them.

L. C. Just. What was it Mr. *Layer* said when he was going into the Country?

Plunkett. He told me he would not be idle there.

Mr. *Serj. Pengelly.* What did he desire of you?

Plunkett. He desired me to see and get what Soldiers I could for him: I came to the Nonjuring Minister, and told him I had got twenty five. Then Mr. *Layer* ask'd me, why I did not bring a List of them, that he might know where their Habitations were, and that they might be in Readiness at the Time. I disputed with Mr. *Layer* what they would do for Arms? No fear of Arms, saith he; Arms will be provided for them. After he returned from the Country to the Town, this Mr. *Plunkett* was the first Messenger that was sent to me; he came and told me Mr. *Layer* was come to Town; and this Nonjuring Parson sent me a Letter by the *Penny-Post*; Mr. *Child* was in my Room and read it; the Contents were, *Mr. Layer is come to Town, and would be very glad to see you: No more, but your humble Servant, William Jeffreys.* By this I knew his Name.

Mr. *Att. Gen.* By this Letter he told you Mr. *Layer* would be glad to see you; did you go to him?

Plunkett. Yes, I went to him.

Mr. *Att. Gen.* Where? To his own House?

Plunkett. Yes, to his own House.

Mr. *Att. Gen.* What passed between you and Mr. *Layer* at that Time?

Plunkett. I remember at that Time, when I came to him, he gave me a Guinea with his own Hand.

Mr.

Mr. Att. Gen. Who gave it you?

Plunkett. Mr. Loyer, after he came from the Country, gave it me, and I recommended Mr. Child to him.

Mr. Serj. Pengelly. When you recommended Mr. Child, what did Loyer say?

Plunkett. He said he had no Business for him.

Mr. Serj. Pengelly. For what Purpose was Child recommended to Mr. Loyer?

Plunkett. I recommended him as an honest Man, as one that was well-affected, as he desired me.

Mr. Serj. Pengelly. Upon what Account did you recommend him?

Plunkett. Upon the Account to be a Pretender's Man.

Mr. Serj. Pengelly. Did you ever receive any Money to give to Child?

Plunkett. I received half a Guinea from Mr. Loyer to give to Mr. Child.

Mr. Serj. Pengelly. For what Purpose was it?

Plunkett. For to encourage him in the Service, to be trusty to him, and to be a Pretender's Man.

Mr. Serj. Pengelly. By what Name did he call the Pretender?

Plunkett. He called him the King.

Mr. Serj. Pengelly. Had you any Talk with him any other time?

Plunkett. The Sunday before he was taken up I was with him, and he was talking and saying the King was as fine a Shooter as any in Europe.

Mr. Serj. Pengelly. Whom did he mean by the King?

Plunkett. The Pretender, that he was as fine a Shooter as any in Europe; he shot nineteen out of twenty: I said, that was fine shooting.

Mr. Att. Gen. Where was this Discourse?

Plunkett. In his own Parlour.

Mr. Att. Gen. Can you recollect any other Discourse there was at that Time, besides that of Shooting?

Plunkett. Yes, there was; We talked of those Men that would do Service. I asked him what Rewards those Men, that would do Service for their King and Country, should have; he told me, that they, and their Families, were to be for ever taken Care of.

Mr. Serj. Pengelly. Was there any other Promise made to you?

Plunkett. There was no Promise; only he was the Man who said, if I would follow his Directions, he would promote me; that he would engage to do great Matters for me; and what I suffered in the Army, he would make me Amends for.

Mr. Serj. Pengelly. Had you any Discourse about the Disposition of the Nation?

Plunkett. He said, that most of the Nation was tired with the present Government; and he said that King George was for ruining of the Nation.

Mr. Serj. Pengelly. Had you any Talk of any Persons at Court?

Plunkett. Yes; he said, what signified the Government; there were but only eight or nine Upstarts that belonged to King George's Court; that the ancient Peers of the Realm would not be run down; for they should be made Slaves, if they did not prevent it.

Mr. Serj. Pengelly. Had you any Discourse any other Time about the Dutch or the French?

Plunkett. Yes; I do remember that he said,

here is a Dutch Army come in upon this Nation, and then the French Army will come in, and take our Rights and Liberties from us: You will keep a Dutch Army, and it will be to make a War among our selves.

Mr. Serj. Cheshire. What would he have to cure all this?

Plunkett. He told me, that when the Insurrection was, there would be a great many Half-Pay-Officers as I knew that would be on the Pretender's Side, and especially those of the Names of Fitzgerald; but I never knew any Fitzgerald Abroad.

Mr. Att. Gen. We have done examining this Witness.

Prisoner. You say your first Acquaintance with me was in Queen-Street, and that Major Barnwell desired you to assist me, there being an Execution in my House: Was it not so?

Plunkett. Yes.

Prisoner. At the same time you called me Counsellor Loyer?

Plunkett. Yes; I came to your House.

Prisoner. Did I employ you?

Plunkett. Major Barnwell sent me to get a Couple of Grenadiers, and you ordered your Clerk to let them in at the Back-door; and the two Grenadiers, which were confined in the Savoy afterwards for it, drove the Officers out.

Prisoner. Was it the Landlord of the House's Goods, or my Goods?

Plunkett. I cannot tell; how should I know whether they were yours, or his? they were in your House.

Prisoner. You said it was about five Years before I saw you in Lincoln's-Imm-Fields.

Plunkett. It was when the Army was broke; and I came over from Ireland.

Prisoner. Well, you say, five Years afterwards I met you in Lincoln's-Imm-Fields, and gave you half a Crown to drink. I told you my Lord North and Grey was to be General: That my Lord Strafford was concerned in it.

Plunkett. No, you told me they were Promoters of it.

Prisoner. Promoters of what?

Plunkett. Of this Conspiracy.

Prisoner. So you did not know me? nor I did not know you.

Plunkett. Yes, you knew me; therefore, Sir, said I, you have an Advantage against me; for I don't know you. Afterwards we met one another by Accident: Says you, don't tell Plunkett you met me.

Prisoner. What Plunkett?

Plunkett. James Plunkett.

Prisoner. Where lives James Plunkett?

Plunkett. I don't know: However that's not material.

Prisoner. Did not you come to my House some time after this, and desire me to lend you thirteen Shillings, upon Account of being Bail in an Action in the Marshal's Court?

Plunkett. That was two Months after: There was a Soldier which was arrested by a Marshal's Court Writ.

Prisoner. And I lent you thirteen Shillings in order to discharge him?

Plunkett. Yes, you did.

Prisoner. Did not you afterwards ask me for some Money on Account of Sir Daniel Carrol?

Plunkett. No.

Prisoner.

Prisoner. Did not you make a Demand on Sir Daniel?

Plunkett. No: I told you my Affairs with Sir Daniel. You said you would not meddle yourself, but you would write to him.

Prisoner. Did you not bring a Paper, and say, Sir Daniel had agreed to pay you twenty Pounds when he received his Pay?

Plunkett. No: I brought no Papers to you.

Prisoner. Did not you tell me, it would be the greatest Kindness in the World to you to advance twenty Shillings for you?

Plunkett. I never asked you in the Course of my Life.

Prisoner. Did you never borrow any Money of me?

Plunkett. No; I never borrowed any Money of you, otherwise than to get Men listed for the Pretender.

Prisoner. I shall shew that you are a little mistaken by and by.

Mr. Hungerford. You said you was decoyed to Church?

Plunkett. Decoyed! I said it was out of my Way, when my own Parish Church was nearer.

Mr. Hungerford. What do you use to go to Church?

Plunkett. Yes.

Mr. Ketelbey. You say, the first time you saw this James Plunkett, he came to you when your Wife was in the Room?

Plunkett. The first time I saw him, was, when Mr. Layer released Major Barnewell out of the Marshalsea.

Mr. Ketelbey. When James Plunkett came to your House, he took you by the Arm, and told you, he came from Mr. Layer; did he tell you that first time, he came from Mr. Layer?

Plunkett. Upon my Oath he did.

Mr. Ketelbey. What Discourse had you the first Time? Did he only ask you to go and meet Mr. Layer?

Plunkett. He came to me, and desired me to meet Mr. Layer at the Italian Coffee-House in Ruffel-Court.

Mr. Ketelbey. Did James Plunkett talk to you about lifting Men for the Pretender the first time he saw you?

Plunkett. No; he only was sent on an Errand from Mr. Layer.

Mr. Ketelbey. And then you came to the Nonjuring Parson: The Unjuring Parson, as you call him: What Discourse had you with him?

Plunkett. The same Discourse passed between us about lifting Men.

Mr. Ketelbey. What, the first time you saw James Plunkett, and the first time you saw the Nonjuring Parson?

Plunkett. Because he came from Mr. Layer.

Mr. Ketelbey. So you trusted both of them at first Sight, and talked to them about lifting Men for the Pretender?

Plunkett. Yes, both talk'd to me.

Mr. Ketelbey. How many times had this Unjuring Parson been with you, before you knew his Name?

Plunkett. He had been with me two or three times; he told me his Name was Jeffreys, but did not tell me his Christian Name.

L. C. Just. Did he tell you his Name was Jeffreys the first time?

Plunkett. He told me his Name was Jeffreys.

L. C. Just. How long after was it that this Letter was sent to you by Mr. Jeffreys?

Plunkett. It was the time when Mr. Layer came from the Country.

L. C. Just. How long ago was that?

Plunkett. I believe about ten Months ago: I mean ten Weeks ago.

Mr. Ketelbey. I would not surprize you; I would have you consider you are upon your Oath: Is it ten Months, or ten Weeks?

Plunkett. Ten Weeks.

Mr. Ketelbey. How came you to remember the Contents of the Letter so exactly?

Plunkett. I heard it repeated over.

Mr. Ketelbey. Pray repeat it over again.

Plunkett. Mr. Plunkett, Mr. Layer is come to Town; I should be very glad to see you: So I rest your humble Servant,

William Jeffreys.

Mr. Ketelbey. Where is that Letter?

Plunkett. I don't know; the Letter is lost.

Mr. Ketelbey. Do you remember how long 'tis since this Letter was lost?

Plunkett. Why, I missed it about two Months ago, or more.

Mr. Ketelbey. Two Months ago, or more. How long was it after you received it that you missed it?

Plunkett. I kept the Letter in my Pocket some time.

Mr. Ketelbey. How long?

Plunkett. I believe I had it three Weeks.

Mr. Ketelbey. So that 'tis ten Weeks since you received this Letter, two Months since you lost it; you kept it in your Pocket three Weeks: You can read Writing?

Plunkett. No, I cannot.

Mr. Ketelbey. What not read Writing?

Plunkett. No, Sir.

Mr. Ketelbey. How can you be so paticular as to the Writing?

Plunkett. I have heard it read often enough.

Mr. Ketelbey. Who read it to you?

Plunkett. John Child read it over to me two or three times.

Mr. Ketelbey. Why, this is mere Romance, that at twice hearing it read, you can remember it, the very Words.

Plunkett. I can remember those Words to the best of my Knowledge.

Mr. Hungerford. How can he tell, when he cannot read at all? There is nothing in it: If one was to ask him, whether you can recite the Articles of the Creed, I believe he could not do it; and yet is so exact in repeating the Words of this Letter.

Prisoner. What Countryman are you?

Plunkett. An Irishman: You knew that long ago; you need not ask me that Question now.

Mr. Serj. Pengelly. My Lord, we shall now proceed, and produce the Plan of this Conspiracy, which was found among the Papers taken in Mrs. Mason's Possession; and shall shew how they came to be in Mrs. Mason's Possession; and we shall prove this Plan to be Mr. Layer's own Hand-Writing.

John Turner, one of the Messengers, sworn.

Mr. Att. Gen. Look upon these Papers.

[Turner looks upon the Papers.]

Mr. Att. Gen. Do you know any thing of those Papers, and where they were found?

Turner. My Lord, by Warrant from my Lord Carteret, Principal Secretary of State, dated the 29th

29th of *September* last, I was directed to search for one Mrs. *Mason* and Mrs. *Cook*, and the very same Day I executed that Warrant: I found out Mrs. *Cook's* House in *Stone-Cutter's Yard* in *Little Queen-street* near *Lincoln's-Inn-Fields*, and in searching the House—

Mr. Serj. *Pengelly*. Who lodged there?

Turner. One Mrs. *Mason* lodged there: I found her in the House; and in her Lodging there was a Trunk, and being demanded to open the Trunk—

L. C. Just. Was your Warrant to search for both Mrs. *Mason* and Mrs. *Cook*?

Turner. For both; and in Mrs. *Mason's* Lodgings there was a Trunk which the other Messenger and I demanded to be opened: She opened the Trunk, and in the Trunk there were two Bundles of Papers sealed up; which Papers being opened, this Paper was found amongst them, (*meaning the Plan or Scheme.*)

Mr. Serj. *Pengelly*. Look upon it: How do you know that to be the same?

Turner. I know it to be the same, because I writ upon't, I set my Mark upon it.

Mr. *Att. Gen.* You say that these Papers were found in the Trunk, in two Bundles sealed up?

Turner. Yes.

Mr. *Att. Gen.* (*Shewing the Witness another Paper*) Look upon that; see if that was in the same Bundle with that you last gave an Account of?

Turner. Yes, that was in the same Bundle.

And so he was examined as to several particular Papers, which he swore to have been all found in the two Bundles taken out of Mrs. Mason's Trunk, and that he had set his Mark upon them.

Mr. *Ketelbey*. I beg leave to ask Mr. *Turner* a Question or two. Mr. *Turner*, I think you give a positive Account of several Papers, what they are I know not; of several Papers handed to you from Mr. *Paxton*. You had a Warrant to search for Mrs. *Cook* and Mrs. *Mason*, and in a Trunk you found these Papers sealed up in a Bundle.

L. C. Just. He said he had Directions from my Lord *Carteret*, to search for Mrs. *Cook* and Mrs. *Mason*. That he searched Mrs. *Cook's* House, and found Mrs. *Mason* there; he sees a Trunk in the House, in Mrs. *Mason's* Lodgings, and he demanded the Trunk to be opened, and in the Trunk is found two Bundles of Papers; in these Bundles are these Papers which have been shewn to the Witness. When he is asked how he knew them to be the same that were in the Bundle, he says, he knows them to be the same, because he set his Mark upon them.

Mr. *Just. Fortescue Aland*. Were the Bundles sealed up?

Turner. Yes, my Lord, they were sealed up when we took them out of the Trunk.

Mr. *Att. Gen.* In whose Lodgings were they found?

Turner. At Mrs. *Mason's* Lodgings, in her Bed-Chamber.

Mr. *Ketelbey*. You say these Papers handed to you, you found in the Trunk in Mrs. *Mason's* Lodgings. Where have they been ever since? How come you to be so positive that these Individual Papers are the same Papers that you found in Mrs. *Mason's* Room?

Turner. I put my Name upon them.

Mr. *Ketelbey*. Is your Name put upon those?

Turner. Yes, upon each of them at that time.

Mr. *Ketelbey*. How long were they in your Custody?

Turner. About an Hour.

Mr. *Ketelbey*. Who did you deliver them to, when you parted with them?

Turner. I think, to Mr. *Stanyan*.

Mr. *Ketelbey*. I ask you, when you put your Name on each of them, was it before you first parted with them?

Turner. After the Trunk was open, and the Bundles were opened; in the Bundles finding Papers of Consequence, I was directed to go and fetch Mr. *Stanyan* as being a Magistrate, to give that Person her Oath. While I was gone, I delivered the Papers into my Brother Messenger's Hand, and he signed them.

Mr. *Ketelbey*. So you only swear for your Brother Messenger. How long after your first seizing the Papers was it before you put your Name upon them?

Turner. I believe three Quarters of an Hour.

Mr. *Ketelbey*. Who had you left them with?

Turner. I left them with this Man, my Brother Messenger.

Mr. *Ketelbey*. You left them with your Brother Messenger before you set your Mark upon them; how comes it that you are sure they are the same? How can you swear they are the same, when you went away and left them in your Brother Messenger's Hands, and did not set your Name upon them, till you returned?

Mr. *Soll. Gen.* You say these Papers were seized in Mrs. *Mason's* Lodgings, and that she was by, and unlocked the Trunk, and you took out the two Bundles.

Turner. Yes.

Mr. *Att. Gen.* You say you delivered the same Papers to this Person here?

Turner. Yes, Sir.

Prisoner. Mr. *Turner*, in Mrs. *Mason's* Lodgings you say you seized two Bundles of Papers sealed up?

Turner. Yes.

Prisoner. When Mrs. *Mason* had them locked up, were they then sealed up?

Turner. They were then sealed up.

Prisoner. Did not the Seals appear to have been broke open?

Turner. No.

Prisoner. You saw two Bundles?

Turner. Yes.

Prisoner. You saw this Paper, and that, and all the Papers taken out of the Bundles. What Bundle was this Paper in? (*Meaning the Plan or Scheme.*)

Turner. This was in the same Bundle.

Prisoner. Was there a small Bundle, and a great Bundle?

Turner. Yes, there were two Bundles.

Prisoner. And this was out of one of the Bundles?

Turner. Out of the small Bundle.

Prisoner. Did you see them taken out of the Bundle?

Turner. I can't say that.

Mr. *Hungerford*. If I observe that Paper or Bundle right, it is one that consists of several Sheets of Paper; I desire he may hold it in his Hand, till we have done examining of him.

Mr. *Ketelbey*. Mr. *Turner*, that consists of

more

more Sheets than one; did you sign your Name to each Leaf, or only to the first and the last Leaf of the Book?

Turner. I sign'd my Name to each Sheet.

Edward Speare, sworn.

Mr. Att. Gen. Mr. *Speare*, Did you go with Mr. *Turner* to seize any Papers at Mrs. *Cook's* House?

Speare. Yes; I did.

Mr. Att. Gen. Give an Account of what you know of seizing any Papers there.

Speare. My Lord, by a Warrant directed to us from my Lord *Carteret*, Mr. *Turner* and I were to seize Mrs. *Cook* and Mrs. *Mason*; and searching Mrs. *Cook's* House, I found Mrs. *Mason* there. At Mrs. *Cook's* I found no Papers in the first Room; I proceeded into a second Room, where there was a Trunk, which I ordered to be opened, and I took two Parcels out of it; one of 'em was seal'd with three Seals, which I looked at; they did not appear to have been open'd and seal'd up again. I open'd them, and mark'd them.

Mr. Att. Gen. Who was by?

Speare. Mrs. *Mason* was.

Mr. Att. Gen. Was she there when you open'd them?

Speare. She was by when they were open'd.

Mr. Att. Gen. Look upon them, are they the same Papers?

Speare. I have look'd upon them, and know them to be the same.

Mr. Att. Gen. Are those the Papers that were taken out of the Trunk?

Speare. The very Papers.

Mr. Att. Gen. In whole Room were they taken?

Speare. In Mrs. *Mason's* Room.

Mr. Serj. Cheshire. Where they ever out of your Custody, till you mark'd them?

Speare. No, Sir.

Mr. Soll. Gen. During the Time that *Turner*, your Brother Messenger, was gone for Mr. *Stanyan*, who had the Custody of the Papers?

Speare. I had the Custody of them.

Mr. Soll. Gen. Were any of them taken away, or was there any Alteration in, or Addition to them, during that Time?

Speare. No, Sir.

Mr. Serj. Cheshire. Do you remember that Mr. *Turner* set his Name upon them?

Speare. Yes, he did.

L. C. Just. How long after your Brother Messenger returned back to you, was it before you set your Name upon them?

Speare. Immediately, my Lord.

Mr. Ketelbey. How long did you stay in the Place after the Return of *Turner*?

Speare. I believe I might stay there an Hour, or an Hour and an half.

Mr. Ketelbey. When did you first part with the Papers out of your Custody?

Speare. I gave them to Mr. *Stanyan*.

Mr. Ketelbey. How long after you first seized those two Bundles was it before Mr. *Stanyan* came to you?

Speare. I believe about half an Hour, or three Quarters of an Hour.

Mr. Ketelbey. What, did you deliver them to Mr. *Stanyan* then?

Speare. After Mr. *Turner* and I had sign'd them, I deliverd them to Mr. *Stanyan*.

Mr. Ketelbey. Was it not before you sign'd them?

Speare. No, upon my Oath.

Mrs. Elizabeth Mason sworn.

Mr. Att. Gen. Mrs. *Mason*, Give an Account of what you know of these Papers?

Mrs. Mason. Mr. *Layer* left two Parcels of Papers with me: He told me they were of the Value of 500 *l.* He afterwards took them away from me; and afterwards brought them to me again.

Mr. Serj. Cheshire. You say, he deliver'd two Bundles first?

Mrs. Mason. No; he deliver'd only one, and that was the largest Bundle: He told me it was of the Value of 500 *l.* and desired me to take care of it, and lock it up.

Mr. Serj. Cheshire. When was the lesser Bundle deliver'd to you?

Mrs. Mason. Some time after; and after that, he took them away from me; and in four or five Days time he brought them to me again: He took them away, and brought them to me again, and told me they were a few Love-Letters; and begg'd of me not to let Mrs. *Cook* know it, for she would make a Disturbance, and tell his Wife.

Mr. Serj. Cheshire. When had you the lesser Bundle?

Mrs. Mason. I had that some time after.

Mr. Serj. Cheshire. What Directions had you with the little Bundle?

Mrs. Mason. He desired me to take the same Care of that, as of the other.

Mr. Serj. Cheshire. Was that seal'd up?

Mrs. Mason. They were both seal'd.

Mr. Serj. Cheshire. Where did you put them?

Mrs. Mason. I put them into my Trunk.

Mr. Serj. Cheshire. After this; you know when the Messengers came?

Mrs. Mason. Before that, he came one Day in the Afternoon to our House, and ask'd where I was. It was the Beginning of *Bartholomew-tide*. I was not at home: He left a Message for me, that I should bring those Writings home. I carried them home.

Mr. Serj. Cheshire. Home! What do you mean by Home?

Mrs. Mason. Mr. *Layer's* own House: He left word, that he wou'd be at home by eight a-Clock that Night. I was there about eight a-Clock: I asked the Maid where he was? She said he was in the Back-Parlour. I asked her if any body was with him? She said, there were two Gentlemen. Said I, tell your Master that I am here.

L. C. Just. You say the great Bundle was taken from you again, and afterwards he brought the lesser Bundle; and after this you receiv'd a Message, or Intimation, that you shou'd bring home that Bundle.

Mrs. Mason. My Lord, I had two Bundles. He left Word, that I should bring his Papers Home; for he staid at Home 'till eight a-Clock that Night. I went to his House: And when I knock'd at the Door, the Maid came to the Door. I asked her, if her Master was within? She told me, yes; he was in the Back-Parlour; and that there was a Gentleman or two with him. I desir'd her to go and tell her Master that I was there. And he came out to me; and I gave him the Writings; and he desir'd me to come again the next Morning; which was on a *Saturday*, about eleven a-Clock, for he was going out of Town: And that I would come and take those Writings again. Which accordingly I did. It

was

was in the Morning, at the Time that the Bell was ringing at *Lincoln's-Inn* Chapel, when I went to him, and he delivered me the Papers again.

Mr. *Soll. Gen.* Can you recollect the Day that he left Word for you to come to him?

Mrs. *Mason.* It was the Beginning of *Bartholomew-tide.*

Mr. *Soll. Gen.* What Day of the Week was it?

Mrs. *Mason.* It was on a *Friday* Night that I went and carried them to his House.

Mr. *Soll. Gen.* And when was it that he desired you would come and call for them again?

Mrs. *Mason.* It was the next Morning at eleven a-Clock, or near the matter, that I went to his House; and he gave me the Writings again, and charged me to take Care of them.

Mr. Serj. *Cheshire.* What was you to do with them?

Mrs. *Mason.* To take Care of them.

Mr. Serj. *Cheshire.* Did you meddle with them, or open them?

Mrs. *Mason.* No, Sir; I put them in my Trunk: They lay there all the time.

Mr. Serj. *Cheshire.* Were they there when the Officers came?

Mrs. *Mason.* Yes, Sir.

Mr. Serj. *Cheshire.* Was you there when the Bundles were opened?

Mrs. *Mason.* I was there.

Mr. Serj. *Cheshire.* Did you mark the Papers yourself?

Mrs. *Mason.* I did.

Mr. Serj. *Cheshire.* Look upon the Papers, and see if you find your Mark on those Papers?

Mrs. *Mason.* Yes, this is my Mark.

Mr. Serj. *Cheshire.* Mr. *Speare*, you was present at the opening of them?

Mr. *Speare.* I was: They were sealed up when I opened them.

Mr. Serj. *Cheshire.* Did you put your Name on them?

Mr. *Speare.* I did put my Name on them.

Mr. Serj. *Cheshire.* Were they out of your Custody before you put your Name on them?

Mr. *Speare.* No, they were not.

Mr. Serj. *Cheshire.* Did Mr. *Turner* put his Name to them?

Mr. *Speare.* He put his Name to them, before ever they were out of my Custody.

Mr. *Att. Gen.* You have marked all those Papers. You are sure those are the Papers you took out of the Trunk in Mrs. *Mason's* Lodgings?

Mr. *Speare.* I am sure they are.

Mr. *Att. Gen.* Shew them to Mrs. *Mason.* Mrs. *Mason*, were those Papers in the Bundles that were delivered to you by Mr. *Layer*?

Mrs. *Mason.* Yes, Sir; they were.

Mr. *Att. Gen.* You have marked those Papers, have you not?

Mrs. *Mason.* Yes, I have.

Mr. *Soll. Gen.* You said, you gave the Bundles back to Mr. *Layer* on a *Friday*, about the Beginning of *Bartholomew-tide*: Do you remember whether it was upon *Bartholomew* Day or not?

Mrs. *Mason.* Indeed I don't know.

Mr. *Soll. Gen.* What did Mr. *Layer* say when you brought them to him again?

Mrs. *Mason.* He only thanked me; and desired me to come the next Day and take them from him again: Which I did.

Mr. *Soll. Gen.* Did he mention then, that he was going out of Town?

Mrs. *Mason.* Yes: And it was about eleven a-Clock on a *Saturday* Morning that I went to him, and he delivered the Papers to me again.

Mr. *Hungerford.* Can you write?

Mrs. *Mason.* No.

Mr. *Hungerford.* Have you made the same Mark on all those Papers?

Mrs. *Mason.* I was so frightned at that Time, that I hardly knew what Mark I made.

Mr. *Hungerford.* If you was frightned at that time, and did not know what Mark you made, how can you be sure you know your Mark again?

Mrs. *Mason.* Yes, I can tell it very well.

Mr. *Hungerford.* When you say you was so frightned you did not know what Mark you made?

Mrs. *Mason.* Yes, sure I do.

Mr. *Hungerford.* Upon the Oath you have taken, hath any Body seen those Papers before they were taken by the Messengers; whether Sir *John Meres*, or his Man *Thomas* hath seen them?

Mrs. *Mason.* No.

Mr. *Ketelbey.* Nor his Man *Thomas*?

Mrs. *Mason.* No, nor his Man *Thomas*.

Mr. *Ketelbey.* I ask you, can you write or can you read Writing?

Mrs. *Mason.* I told you I can't.

Mr. *Ketelbey.* You only can make your mark?

Mrs. *Mason.* No.

Mr. *Ketelbey.* Do you only make but one mark, or use several marks?

Mrs. *Mason.* I make but one mark.

Mr. *Ketelbey.* Pray make the mark you generally use? With Submission, my Lord, I desire she may have a Pen and Ink to see if she can make the same mark again.

Mr. *Hungerford.* Surely we are regular in desiring that?

L. C. Just. What you desire is proper. She says she knows them to be the same Papers, because she hath set her Mark upon them; they doubt whether she may mistake in her Mark, and desire she may make her Mark again.

Mr. *Ketelbey.* My Lord, we desire she may make her mark again.

Mr. *Soll. Gen.* We desire she may have a convenient Place to do it in, and that she may sit down while she writes?

Mrs. *Mason.* No, I can do it without. (*A Pen and Ink and Paper is given to her, and she sets her Mark an E and an M.*)

Mr. *Soll. Gen.* Here are the Letters *E* and *M* set to the Papers produced; and tho' in this Confusion she should not make her Letters exactly like those, yet I apprehend that would weigh very little.

Mr. *Att. Gen.* My Lord, I can't tell what they mean? this doth not depend——

Mr. *Ketelbey.* My Lord, I desire to go on with our Questions. I ask you——

L. C. Just. (*Having compared the Letters made by Mrs. Mason in Court, with those on the Papers*) The Character which she now writes is like what she writ on those Papers, and so confirms her Evidence.

Mr. *Ketelbey.* After the delivery of those two Bundles to you by Mr. *Layer*, I ask you whether Sir *John Meeres's* Man *Thomas* ever saw those Bundles opened?

Mrs. *Mason.* No, he never was up in my Room; there was no such Familiarity between us.

Mr. *Ketelbey*. Did one *Wilson* ever see them?

Mrs. *Mason*. No.

Mr. *Ketelbey*. Did ever you produce them to one *Binks*?

Mrs. *Mason*. No.

Prisoner. No: Nor did Sir *John Meeres's* Man *Thomas* never see them?

Mrs. *Mason*. No, never upon my Oath.

Mr. *Ketelbey*. Did you ever produce them sealed up? Did you ever let *Thomas* or *William*, or Sir *John Meeres* himself see either of those Bundles as they were sealed up?

Mrs. *Mason*. No, they were in my Trunk: I always kept them in my Trunk; perhaps as I opened my Trunk, they might see them lie in my Trunk.

Mr. *Ketelbey*. Do you know one Mrs. *Buda*?

Mrs. *Mason*. No: I don't know the Name. I don't know one Mrs. *Buda*.

Prisoner. Did you ever know one Mrs. *Herbert*?

Mrs. *Mason*. I know many of that Name.

Prisoner. Did you ever go by that Name?

Mrs. *Mason*. No.

Prisoner. Did you ever go by the Name of *Corbet*?

Mrs. *Mason*. No.

Prisoner. Did you ever go by the Name of *Bryan*?

Mrs. *Mason*. No, I never did go by the Name of *Bryan*.

L. C. Just. Mr. *Ketelbey*, I don't know what the Meaning of this Examination is; when it appears beyond Contradiction, that this Woman was an Acquaintance of your Client's.

Mr. *Ketelbey*. My Lord, if we prove her to be an ill Woman, I hope it will take off her Credit so that her Evidence will not weigh with your Lordship, or the Jury.

L. C. Just. At the Time when these Bundles were seized, had they Mr. *Layer's* Seal upon them?

Mrs. *Mason*. Yes, the Seal of Mr. *Lawyer* was upon them.

L. C. Just. What says the Messenger? At the Time that you seized these two Bundles of Papers, was there any Seal upon them?

Messenger. There were three Seals upon one, and some Seals upon the other; the Seal was something of a small Head.

L. C. Just. What is Mr. *Layer's* Seal?

Mrs. *Mason*. Something of a Head, but I can't tell what Head.

Mr. *Ketelbey*. Do you know Mr. *Layer's* Seal?

Mrs. *Mason*. It is something of a Head.

Mr. *Ketelbey*. Was it the Representation of a Man's Head, or the Head of a Beast?

Mrs. *Mason*. It is a Head, with something of a Ruff about it.

L. C. Just. Mrs. *Mason*, look upon the Head: Is that Head the Seal of Mr. *Layer*?

Mrs. *Mason*. Yes: Upon my Oath it is.

L. C. Just. What says the Messenger: Was that Seal of a Head upon them, when you seized them?

Messenger. Yes, it was.

Mr. *Ketelbey*. Before that Time that the two Messengers came, Mr. *Turner* and Mr. *Spears*, and seized the Papers, and afterwards one of them went for Mr. *Stanyan*; I ask you, whether you had shewn those Bundles to any Body before that Time?

Mrs. *Mason*. No; I had shewn them to no Body.

Mr. *Att. Gen.* She hath said so two or three Times before.

L. C. Just. Indeed, Mr. *Ketelbey*, we must direct you not to spend the Time of the Court so. You have asked her that Question two or three Times over.

Mr. *Ketelbey*. My Lord, I would very fain have the Truth come out.

Mr. *Hungerford*. I will ask you a Question or two. What Trade or Business do you follow? What is your Trade or Occupation?

Mrs. *Mason*. What is that to you? I have no Trade.

Mr. *Hungerford*. I should have ask'd you another Question before; have you not a Promise of Reward for the Service you do here, in giving this Evidence?

Mrs. *Mason*. No, I have not.

Prisoner. Nor you have received none?

Mrs. *Mason*. No: You are an unjust Man.

L. C. Just. Are you promised any Reward! Why don't you ask her whether she is to swear for Hire? Is that a proper Question to ask a Witness?

Mr. *Ketelbey*. I submit it to your Lordship, whether it is not proper to ask her this Question; Whether she hath not told any Person, and whom, that she was to have a Reward for coming hither?

Prisoner. The Question is, Whether she hath never owned and confessed to any Body, that these Papers were opened before a Friend of hers, before the Messenger seized them?

Mrs. *Mason*. No, my Lord, I never did. I never opened them before any body.

Mr. *Att. Gen.* They have asked you what Names you went by; do you know what Names the Prisoner at the Bar has gone by?

Mrs. *Mason*. He had once given me Orders, that if any Letter came directed in the Name of *Fontaine*, that I should take it in; accordingly in two or three Days Time, there came a Letter, directed to Mr. *Fontaine*, and I took it in; and when he came, I gave it to him, and he opened it, and read it.

Prisoner. Where is your House?

Mrs. *Mason*. Where! Where you left the Writings.

Prisoner. How can you tell how that Letter was directed, which you took in, since you say you cannot Read?

Mrs. *Mason*. It was directed to Mr. *Fontaine*.

Prisoner. Did you read the Supercription?

Mrs. *Mason*. No; Mrs. *Cook* did.

L. C. Just. You say you was desired by Mr. *Layer*, when any Letter came directed to Mr. *Fontaine*, to take it in; and that a Letter came directed to Mr. *Fontaine*, and you took it in, The Question is asked you, since you cannot read, how could you tell it was directed to Mr. *Fontaine*?

Mrs. *Mason*. My Landlady told me it was for Mr. *Fontaine*, and she knew he went by the Name of *Fontaine* sometimes.

Prisoner. She said she read it.

Mrs. *Mason*. No; I said I gave it to you, and you opened it, and you read it.

L. C. Just. The Occasion of this Question is; that this *Mishomer* was approved of by you. She says that you order'd her, that if any Letter came directed to Mr. *Fontaine*, she should take it in; a Letter did come directed so, she took it in, and then delivered it to you; and you receiv'd it from her, and opened and read it; but how, say they, could you know this Letter was directed

to Mr. *Fontaine*, when you can neither write nor read? She having received such an Order, when there was a Letter come, it was natural enough, that she that could not read; should ask her Landlady the Directions of the Letter, and it was directed for *Fontaine*; it was natural enough for her to take it in, and give it to you.

Who brought the Letter?

Mrs. Mason. A Porter.

L. C. Just. Did he say from whence he came?

Mrs. Mason. He told me he came from the *Ditch-Side*, and ask'd me if Mr. *Fontaine* lodg'd there.

Mr. Hungerford. This Trunk that the Papers were in, did it use to be kept open, or was it lock'd up?

Mrs. Mason. It was always lock'd up.

Mr. Doyley sworn.

Mr. Att. Gen. Mr. *Doyley*, do you know Mr. *Layer*; and how long have you known him?

Doyley. I have known him about seventeen or eighteen Years; he was my Clerk; 'tis thereabouts, I believe.

Mr. Att. Gen. Do you know his Writing?

Mr. Doyley. I believe I do.

Mr. Att. Gen. Look upon that Paper. (*He is shewn the Scheme.*)

Mr. Att. Gen. Do you take that to be his Hand?

Doyley. If you ask me as to my Belief, I believe it is.

Mr. Att. Gen. Have you often seen him write?

Doyley, Yes, Sir.

Mr. Att. Gen. Have you seen him write since he left your Service?

Doyley. I have had several Letters from him, since he was my Clerk.

Mr. Att. Gen. Look upon that Paper; can you swear that you believe that is his Hand-Writing?

Doyley. I have seen the Paper before, and I do believe it to be his Hand-Writing.

Prisoner. Have you seen me write any thing but my Name these fourteen Years?

Doyley. I can't particularly recollect whether I have or no.

Prisoner. How long is it since I was your Clerk?

Doyley. About fourteen or fifteen Years.

Prisoner. Have you seen me write since?

Doyley. I can't say I have, or I have not.

L. C. Just. How long is it since you received any Letters from him?

Doyley. About five Years ago.

L. C. Just. How do you know those Letters came from him?

Doyley. Because he was my Client, and writ to me about Business; and I answered those Letters, and did the Business that he desired me to do by those Letters.

L. C. Just. Did he pay you for that Business done?

Doyley. Yes, very honourably.

Prisoner. You say you don't remember you have seen me write since I came from you; as to that Paper which you say you believe to be my Hand, have you compar'd it with those Letters?

Doyley. I have.

Prisoner. Is that what you found your Belief upon?

Doyley. That is what I chiefly found my Belief upon.

Prisoner. Consider, Mr. *Doyley*, my Life is

at Stake, and you say you have not seen me write these fourteen Years?

Doyley. I don't know that I have.

Prisoner. Have you any of my Letters in Court?

Doyley. I have not your Letters in Court.

Prisoner. You say, you found your Belief only by Comparison of those Letters. Now I wish you had brought those Letters here.

Mr. Att. Gen. He doth not say so.

Doyley. If you had desir'd it, I cou'd have brought 'em.

Prisoner. I desir'd it! I little thought to have seen you here on such an Occasion.

Mr. Att. Gen. Mr. *Doyley*, I ask you, if you had no Dealings with him since he was out of his Clerkship?

Doyley. Yes, I was his Agent.

L. C. Just. Whose Name is subscribed to those Letters?

Doyley. *Christopher Layer's*.

L. C. Just. You did the Business mentioned in those Letters; and he honourably paid you for it?

Doyley. Yes, my Lord.

L. C. Just. I suppose, in your time, that you will shew that other People writ Letters in your Name?

Mr. Ketelbey. You say, you believe that Paper to be Mr. *Layer's* Hand-writing. And if I did not misunderstand you, I took it down in Writing, you founded your Belief on the comparing that Writing with the Letters which you receiv'd?

Doyley. I said, I chiefly founded my Belief upon such Comparison of Hands.

Mr. Ketelbey. That you chiefly did so; and you have not those Letters here in Court, on which you chiefly founded this Belief.

Mr. Soll. Gen. Mr. *Doyley*, I think you say you have seen him write several Times?

Doyley. I don't remember that I have seen him write these fourteen Years.

Mr. Soll. Gen. During the Time he was your Clerk, you have seen him write?

Doyley. Yes; he was but two Years with me: He had been Clerk with Mr. before.

Mr. Soll. Gen. Then he had been us'd to Business before he came to you; and had forar'd his Hand.

Mr. Hungerford. How old was he when he was your Clerk?

Doyley. Indeed I don't know.

Mr. Hungerford. You form your Belief upon the Remembrance you have of what was his Hand-writing fourteen or fifteen Years ago?

L. C. Just. You say, you have received Letters subscribed by his Name five Years ago?

Doyley. Yes, my Lord.

L. C. Just. Was the Character of those Letters that you receiv'd five Years ago, agreeable to the Characters that he writ when he was your Clerk?

Doyley. Yes, my Lord.

L. C. Just. Then I ask you upon the whole, whether you believe it to be his Hand-writing, or not?

Doyley. Yes, I do believe it to be his Hand.

Prisoner. Since my unhappy Circumstances, have you had no Promise of being restored to your Place again, or the Promise of some other Office or Place?

Doyley. No; I never, to my Knowledge, have seen one Man that had the Power to put me in my Place again; nor ever conversed with any one Great Man upon that or any such Affair.

Mr. Serj. *Pengelly*. We think we are entitled to read it: However, that there may be no Dispute, we desire to call Mr. *Delafaye* and Mr. *Stanyan*, in whose Presence the Prisoner at the Bar, confess'd it to be his Hand-Writing.

Mr. *Delafaye* was sworn.

Mr. Serj. *Pengelly*. Sir, was that Paper shewn to the Prisoner at the Bar?

Mr. *Delafaye*. I was not near enough when he was before the Lords of the Council, to see what was on the Table; neither did I look upon the Table, to see whether this Paper was on it or not. But upon a Question that was ask'd him relating to some Arms, if he knew where any were lodg'd in such a Place, he said no: Upon which, one of the Lords of the Council held up a Paper; it might be this, for I ought I know; and said, here is your own Paper, your own Hand-writing; which says, Arms that are there lodged; says he, I should have writ Arms that should be there lodged.

L. C. Just. Whether is that the Paper or no, and did he own that Paper that was then shewn to be his?

Mr. *Delafaye*. The Question was not ask'd, is this your Paper and your Hand-Writing? But it was shewn to him as such; and he said, I should have wrote Arms that should be there lodg'd.

Mr. *Stanyan*, sworn.

Mr. *Att. Gen.* Mr. *Stanyan*, do you remember whether this Paper was shewn to the Prisoner at the Bar, or any Questions ask'd him about it, when he was before the Lords of the Council?

Mr. *Stanyan*. Upon the Question that was ask'd him about the Arms, this Paper was shewn him; I think this is the Paper: I was nearer to the Table than Mr. *Delafaye*, and did observe this Paper to lie upon the Table before the Lords, and do take this to be the individual Paper that was shewn him then.

Mr. *Att. Gen.* What was said to him at that time?

Mr. *Stanyan*. The Question was ask'd him, what he knew of any Arms that were lodg'd in *Westminster*? He said, he knew of none. Then this Paper was shewn to him, and a Question was ask'd him; here the Arms are said to be lodg'd in this Scheme of your own Hand-writing: how came you to write so, if there be no Arms lodg'd? Mr. *Layer* said, it was a mistake: It was not intended Arms that are there lodg'd, but Arms that should be there lodg'd. He said, I shou'd have writ Arms that shou'd be lodg'd, instead of Arms that are lodg'd.

Mr. Serj. *Cheffere*. The Question was concerning a Paper of his own Hand-Writing?

Mr. *Stanyan*. Yes, it was concluded, that the Paper was of his own Hand-Writing, and he did not deny it.

Mr. *Att. Gen.* Did he say it was not his own Hand-Writing?

Mr. *Stanyan*. No, he did not.

Mr. *Ketelbey*. Was the Question ask'd, whether that Paper was his Hand-writing or no?

Mr. *Stanyan*. No, I believe not.

Mr. *Ketelbey*. Then if there was no Question ask'd, whether did he own it to be his Hand-Writing, or no?

Mr. *Stanyan*. He did not expressly own it to be his Hand-Writing.

Mr. *Att. Gen.* He was not ask'd that Question, whether it was his Hand-Writing, or no?

Mr. *Stanyan*. No, Sir.

Mr. Serj. *Pengelly*. He did not deny it to be his own Hand-Writing?

Mr. *Stanyan*. No, Sir.

Mr. *West*. Whether the Lords in their Question did state it so, as taking it for his own Hand-Writing?

Mr. *Stanyan*. It was taken for granted that it was so, and he made no Offer to deny it.

Prisoner. Pray, Sir, let me ask you one Question about the Arms? When I was ask'd, if there were any Arms lodg'd, did I not answer in the Negative, and said, No?

Stanyan. Yes.

Prisoner. In relation to the Arms, you say, that I said Arms that should have been lodg'd?

Stanyan. That was upon the Lords asking you, to explain that part of the Scheme relating to Arms; and when you said you knew of no Arms that were lodg'd, then said they, how come you to mention in this Scheme of your own Hand-Writing, Arms that are lodg'd? To which you answer'd, I should have writ Arms that shou'd be lodg'd.

Prisoner. When I was ask'd, why I did say Arms that are lodg'd? Why, faith I, my Lords, I know of no Arms. If that was my Paper, and I had writ it, I should have writ Arms that shou'd be lodg'd.

Mr. *Att. Gen.* My Lord, we pray that the Papers may be read.

Mr. *Hungerford*. My Lord, we hope that these Papers, (tho' for my Part I know not what they are; for there is no Hint of them in my Brief) shall not be read, for this Reason; the Evidence which hath been given for the King, hath not brought them home to the Prisoner. There is no legal Proof that the Papers are of his Hand-writing; and consequently he cannot be affected by any thing that is in them. As to what is said of the Likeness of Hands, that we humbly hope is no Evidence at all. The first Witness, Mr. *Doyley*, he hath said it is like his Hand; but he gives that Opinion of his, on the Knowledge he had of the Prisoner's Hand fourteen Years ago; and by some Letters he received from him about five Years since. Men's Hands may differ and vary even in five, much more in fourteen Years.

What follows is the Evidence that hath been given by the Gentlemen belonging to the Secretaries Office.

I personally know them to be Gentlemen of good Sense, Integrity and Honour, and for my part I believe every Word they say; which is more than I can say of the other Witnesses hitherto produced. But what these say, doth not, with Submission affect the Prisoner: They were present when the Prisoner was examin'd before the Lords of the Council; none of them heard the Prisoner acknowledge that the Papers were writ by him, or that he did own them as his; neither was he asked any Question to that Purpose; neither did the nature of the Examination my Lords of the Council were then upon, lead them to such a Question: The Lords were not asking Mr. *Layer* Questions to fix an Evidence upon himself. But the Lords having some Papers before them, and, according to the Duty of their high Stations, being intent upon discovering what might be of Danger to his Majesty and the Public; they ask'd Mr. *Layer*, where the Arms were deposited at *Westminster*? He answers, that he knew of none there,

there, or to that Purpose. It cannot in Law or Reason be from hence infer'd, that he did own the Papers to be of his own Hand-Writing. The only Evidence therefore which can be insisted on to entitle these Papers to be read; is the Evidence of Likeness of Hand, which is no Evidence at all in a criminal Case.

In my Lady *Carr's* Case, it was not allow'd to be Evidence; and yet that was not a Capital Case, but a Case of Misdemeanor only, it was Perjury. But there is an Authority beyond all that; we have the Act of Parliament for the Reversal of the Attainder of Colonel *Sidney*, who had been convicted upon Evidence given of the Similitude of Hands, and that a much stronger Proof than what appears here; for *Cook* and *Cary*, two famous Goldsmiths, swore they believ'd the treasonable Libel laid to Colonel *Sidney* to be writ by him; and assigned that for a Reason of their Belief, for that they had receiv'd several Bills from him of the like Hand-Writing, which they constantly paid. Nay, one of the Goldsmiths swore, (as I remember the Tryal) that he saw the Colonel write a Receipt. Some other Cases of this Nature might be quoted, but we depend upon the Authority of my Lady *Carr's* Case, and the Act for reversing the Attainder of Colonel *Sidney*, which is *instar omnium*; for in that Act the Reason assign'd for reversing the Attainder, is, for that the Conviction and Attainder was found upon a Similitude of Hands. We have an attested Copy of the Act here ready to be read. In Consequence of this Act, my Lord, Similitude of Hands is never to be given as Evidence in a criminal Case: And therefore we humbly hope, that this Paper is not so prov'd, as to be read in any Court, but must be reject-ed: It is not proved to be his Hand by any that ever saw him write; neither hath any body heard him own it to be his.

Mr. *Ketelbey*. My Lord, I beg Leave to say a few Words in Support of this Objection. We don't know what is the Purport of this Paper. I dare say, Mr. *Hungerford*, as well as my self, hath not seen one Tittle relating to it whatsoever; but I hope, for the Sake of Evidence, the sacred and eternal Rule of Evidence, that similitude of Hands shall not go for Proof, where a Person is charged with a Capital Offence. We shall in due time endeavour to lay before the Court several material Objections to the Credit of some of the Witnesses; but at present we must suppose them unexceptionable, and consider, with respect to this single Point, whether this Paper is sufficiently proved to be his Hand-Writing, so as to be read. Mrs. *Mason* and the Messengers have endeavour'd, by a jumbling Evidence, to prove the Identity of the Papers, and to hand them down from one to another: But how do they appear to be of the Prisoner's Hand-Writing? Mr. *Doyley* says, fourteen or fifteen Years ago he was his Clerk; that five Years ago he receiv'd Letters from him; and that he chiefly founded his Opinion that it was the Prisoner's Hand-Writing, because he had compared it with those Letters, and that the Hands were alike: And yet those Letters with which he compar'd this Paper, he hath not in Court to produce. This is the Substance of *Doyley's* Evidence.

My Lord, I humbly insist, that this is not sufficient; and if comparison of Hands was to be Evidence, surely this would not do, unless he

produced those Papers, on which he owns he founded his Opinion. I refer it to the Jury, whether he may not possibly, nay probably make an erroneous Judgment. Shall a Man be believ'd out of his Life, because the Witness saw him write fifteen Years ago, and received Letters from him five Years ago? Is any thing more changeable than a Man's Hand-Writing? Can either of you Gentlemen, take upon you to say what is or is not your Writing after so great a Length of Time? Would not the different Subjects, the one a common Letter of Business, the other a treasonable Scheme, make a sensible Variation even in a Man's usual Character?

The Case of my Lady *Carr* is reported in *Siderfin*, fo. 419. and was upon an Indictment of Perjury, an Offence of a much lower Nature than what this Gentleman is now tried for: There a Witness swore he believed the Paper produced in Court to be her Hand-Writing, yet it did not amount to such a Proof as to make her guilty: Nay, the Court said expressly, that it was not Evidence, and should not be admitted; and accordingly she was acquitted. But the highest Authority is what Mr. *Hungerford* hath named, the Act of Parliament for the Reversal of the Attainder of Col. *Sidney*; and we have a Witness here ready, that examined it with the Record, that proves it to be a true Copy. *Algernoon Sidney*, was attainted of High-Treason by similitude of Hands, and that was the Reason of the Reversal.

The two next Witnesses are Mr. *Delafaye* and Mr. *Stanyan*, Gentlemen of Honour, and that would not strain a Point upon any Account whatsoever. Mr. *Delafaye* doth not know whether this Paper was on the Table, when Mr. *Layser* was examined before the Lords of the Council, or no: Mr. *Stanyan* says, he was somewhat nearer the Table, and he takes the Paper that is now produced to be the same Paper that was upon the Table in the Room before the Lords of the Council, when Mr. *Layser* was there; because when it was produced there, and shewn to him, he said, shou'd have I wrote Arms that shou'd be lodg'd.

Mr. *Stanyan* owns, that he never was ask'd the Question, whether it was his Hand-Writing or no? How then should he deny it, if it was never put to him? And therefore to say, because he did not deny a Question that was never asked him, that that shall import, as to this particular Matter, a Confession, is to me strange and unaccountable! The natural Sense of the Prisoner's Words, as proved, is no more than this: No, if I had writ it, I shou'd have rather wrote Arms that shou'd be lodg'd, than Arms that were lodg'd. Therefore, my Lord, we humbly apprehend they have not given Evidence in this Case, sufficient Evidence to support the Reading of those Papers.

Your Lordships are now to lay down a perpetual Rule of Evidence: For latest Posterity will pay a just Regard to the present Determinations; and if Comparison of Hands in this Case be allowed as Evidence, the same Rule must for ever hold in all parallel Cases; and God knows what may be the Consequence of such a Revolution, or who may be affected by it.

Mr. Serj. *Pengelly*. My Lord, we hope, that notwithstanding what hath been objected to the Reading of this Paper, that we are proper to have it read: Tho' they have mentioned some Cases for to maintain their Objection, yet the latter Authorities,

Authorities, and the constant Course of Evidence since, as we think, are directly with us: As the Case of my Lord *Preston*, where eight or nine of the Judges were present.

In the Case of the Lady *Carr*, there is that Opinion insisted on given at the End of the Case in a short unintelligible Manner.

[Here Mr. *Hungerford* interrupted.]

Mr. *Hungerford*. My Lord, I don't know whether we shall be at Liberty, when the King's Counsel have done, to read the Act; and therefore I offer it to your Lordship's Consideration, whether we should not read it now.

L. C. *Just*. Read the Act of Parliament.

Mr. *Ketelby*. Call Mr. *Theedam*.

Mr. *Att. Gen*. We are apprized of that Act of Parliament; I have an examined Copy of that Act; but we apprehend it will not come up to what they cite it for.

Mr. *Ketelby*. We have five Acts of Parliament that we have examined with the Records; we did not know where they would shoot at us, and therefore were resolved to be armed *Cap-a-pce*.

Mr. *Serj. Pengelly*. As to my Lady *Carr*'s Case, it will be hard to maintain that Opinion, because the Letters they produced were not in the direct Instance of the Perjury.

Even the Act of Parliament, which they produce, it takes Notice, that a Paper was found in the Closet of Mr. *Sidney*, and was read, without proving it to be his own Hand-Writing: Is this Paper found without any Owning and Acknowledging it by the Prisoner? Is not this Paper delivered by Mr. *Layer* himself to Mrs. *Mason*? Had not he this Paper in his Custody, and it proceeded from him?

In the Case of my Lord *Preston*, there were a great Number of Judges, My Lord Chief Justice *Holt*, Lord Chief Justice *Pollexfen*, and others; there the Indictment of my Lord *Preston* was his adhering to the King's Enemies, and amongst other Overt-Acts alledged his carrying several Papers of Instructions to inform the *French* King how to attack the Kingdom: Mr. *Warer*, who had been an under Secretary to my Lord *Preston*, swore that he believed some of those Papers to be like the Lord *Preston*'s Hand, and they were all read in that Case by the Opinion of the whole Court, though they were the very express Overt-Acts alledged in the Indictment it self: How doth this stand here, supposing no Use is made of the Evidence of Mr. *Doyley*? When this Paper is shewn to Mr. *Layer* himself, before the Lords of the Council, and was mentioned as a Paper of his own Writing, and he is asked how he came to write Arms that are said there to be lodged, his Answer is, I should have wrote, Arms that shou'd be there lodg'd; Is not this sufficient Evidence to prove a Confession? Doth not this amount to an Evidence of his confessing it to be his own Writing? So here is, as we apprehend, the Evidence not only of the Thing it self, but likewise the Prisoner's own Declaration, that he was the Person who wrote it. In Sir *Henry Vane*'s Case, the Warrant given in Evidence against him was proved only by Witnesses who believed it to be his Hand; but here is a particular Fact which (we apprehend) amounts to a Confession, and is a proper Evidence for the Jury to consider of, whether this be not a Confession.

Mr. *Att. Gen*. My Lord, I apprehend that

we have given very proper Evidence to intitle us to read this Paper: My Lord, I beg leave to observe first, that it hath been proved that this Paper was found among the Papers, which the Prisoner delivered to Mrs. *Mason*, to be kept for him, which were seized in her Lodgings, as the Witnesses have before acquainted your Lordship, and if that were all, this Paper must be read. As to that, the Lord *Preston*'s Case is direct in Point, and so determined by six or seven Judges, *viz.* that Papers found in the Possession of the Prisoner may be read without further Proof. But we insist that this Paper is legally and regularly proved to be his Writing by the Evidence of Mr. *Doyley*, and the Prisoner's own Confession: The Council for the Prisoner have mentioned Lady *Carr*'s Case, and the Act for the Reversal of the Attainder of Col. *Sidney*, and say they have a great many other Cases to the same Purpose.

I defy them to shew any one single Case, wherein it has been determined, that Proof of a Person's Hand by a Witness, who swears he has seen him write, and knows his Hand, and believes the Paper produced to be of his Hand-Writing, is not a sufficient Proof in a criminal Prosecution, that that Paper is such a Person's Hand, before my Lady *Carr*'s Case; if that Case does support the Opinion they have laid down: In all Actions such Evidence hath been constantly allowed; then I should be glad to know what Law or what Reason has made a Difference as to such Evidence, between civil Actions and criminal or capital Prosecutions. As to my Lady *Carr*'s Case, the Book is very dark and obscure; I believe the Prisoner's Counsel cannot make it support what they now contend for.

Lady *Carr* was indicted for Perjury, supposed to be committed in an Answer sworn by her before a Master in Chancery: What is there said about a Letter does not appear at all to relate to the Case there; and if any Judge did lay down such a Position, as has been mentioned by the other Side, the meaning must be, that an Answer on Oath shall not be falsified by a Letter only under the Party's Hand; and that such a Letter should not be a sufficient Evidence to convict him of Perjury.

As to the Case of Col. *Sidney*, 'tis very well known that he was a Gentleman of Quality, and in his Study a Writing was found, *viz.* *A General Treatise of Doctrines and Positions*, which were very distasteful to the then Government, writ in answer to a Book formerly published. It was not a Scheme for raising a Rebellion, nor was it design'd, for any thing that appeared, that it should go out of his own Closet, but his Papers being seized, this Paper was found there among them; and for this he was indicted of High-Treason. It was generally thought extremely hard to make his having by him such a General Tract, writ in answer to a particular Book, and kept private in his Closet, an Overt-Act of Treason. However, he was found guilty, and attainted. No wonder then, when this came into Parliament, that they resented this Proceeding, and revers'd his Attainder. And the Reasons recited in this Act, as Inducements for this Reversal, are accumulative; every Step taken in that Proceeding is complained of, and there is not Stress laid only upon the Proof of this Paper, but

The Act recites, *That Col. Sydney, by Means of an illegal Return of the Jury, by denying him his lawful Challenges to the Jurymen, for want of Freehold, and without sufficient legal Evidence of any Treasons committed by him, there being produced a Paper found in his Closet, supposed to be his Hand-Writing, which was not proved by any one Witness to be written by him; but the Jury was directed to believe it by comparing it with other Writings of his: And besides that Paper so produced, there was but one Witness to prove any Matter against him, and by a partial and unjust Construction of the Statutes of Treasons was most unjustly attainted. And then the Act reverses the Attainder.* Surely, if the Nature of the Evidence we have given, to prove this Paper to be the Prisoner's Hand is consider'd, it stands clear of any material Objection that can be raised from that Act. This is not barely proved by a comparison of Hands; here is a Witness, that often saw him write, swears it to be his Hand-Writing: There was a Multitude of Papers, some offered to be proved by similitude of Hands, and every one of them was read in my Lord *Preston's* Case.

Besides, here is that, which I beg Leave to insist upon, as a Confession by Mr. *Laver*, that this Paper was his Writing; if the Question proposed to the Prisoner by the Lords of the Council and his Answer are consider'd, it amounts to a plain Confession of it; therefore we must insist on it, that we have given a sufficient Evidence for the Reading of this Paper; and I hope we shall have your Lordship's Direction that it shall be read.

[Here some other of the King's Counsel offered to speak.]

L. C. Just. If there was any Occasion, you should be heard; but there is no Occasion.

It is proved by the Witnesses that these Papers were in Mr. *Laver's* Possession, that he delivered them to Mrs. *Mason*, that she lock'd them up in her Trunk, sealed as they were delivered to her by Mr. *Laver*, and afterward taken out of her Trunk by the Messengers, so that if they rest it here, and no other Evidence had been given, the Papers ought to be read, as being his Papers, which he once had in his Possession, if nothing else had been the Case.

Can any thing in the World be an Authority more express than that of my Lord *Preston*, where all the Papers which were in his Custody, and taken out of his Custody, were read without any Offer of Proof that they were his Hand.

And then consider, this goes further; it is not only a Paper found in his Custody, but it is a Paper written with his own Hand! How do you prove that?

The Master of this Gentleman tells you he was his Clerk, lived with him two Years; afterwards he received Letters from him about Business, which Business he did according to the Direction of those Letters, and was paid honourably by him for it, and that he believes it to be his Hand. If they had gone no further, nobody could have doubted, but that according to the usual Course and Rule of Evidence it ought to be read. Then they make an Objection, and ask how long it is since he was his Clerk? Why about fourteen or fifteen Years ago: His Hand may be altered in that Time very much: therefore how can you swear it, when it is so long

since, that it is his Hand? Why, says he, because I have received Letters from him five Years ago; I dealt for him as his Agent; this Gentleman, Mr. *Laver*, was my Client, he sent Letters to me, and the Characters of the Letters I have compared with this Paper, and from hence it is I believe that his Character is not changed. How do you know he write those Letters? I answered those Letters, and they were about Business which I did for him, and afterwards he paid me very honourably for it; and therefore I believe they were his Writing, and therefore I believe he hath not changed his Character; and upon the whole Matter, says he, I verily believe it to be his own Hand-Writing. Consider, this is confirmed by his own Confession; but if it had been an independent Evidence, it is an Evidence sufficient for to have had this Paper read; because if a Man says he verily believes it to be his Hand-writing, it is always allowed to be read. You did ask him, but upon what Grounds do you believe his Character is not changed? Why, says he, I do principally believe it from the Letters I received from him, which I should have doubted on the Hand, which he writ fourteen Years ago, whether it was changed or not; and I believe it is not changed, because it is agreeable with the Characters he writ; when he was my Clerk; and upon the whole, I believe it to be his Hand-Writing.

Then they tell you of an Examination of this Gentleman before the Lords of the Council, when they asked him about Arms, he knew nothing of them; then they shew him this Paper, and ask him, how came you in a Scheme, all of your own Hand-Writing, to say, Arms that are provided? What was more natural than for him to say, here is a Paper that doth mention it, I deny it to be my Hand-Writing? But he was so far from denying it, that as the plain Sense and import of the Words spoken must be understood, he owns it to be his Hand.

It is a Mistake, says he, I should have writ which should have been provided.

How should he have writ that, if he had not writ the other?

So considering the whole Contexture of the Business, and Course of Proceeding, it is, and I believe none can doubt it, as plainly proved to be his own Hand-Writing, as if he had said in so many Words, it is my Hand-Writing. It must have been read as a Paper found in his Custody. The other Evidence, that is given to the Jury, will be a Matter proper for their Consideration; but if that Evidence had not been, they must have been read; they offer that as of greater import, because it is of the Prisoner's own Hand-Writing.

You tell us of the Lady *Carr's* Case, which was an extraordinary Case, when she in her Answer in Chancery swore that it was not her Hand, they come to convict her of Perjury, by proving it to be her Hand by a Letter they produced.

Gentlemen, there is no Pretence to make this a Question. Do you think that the Paper, which you offer, shall convict this Woman of Perjury? No, when she had sworn it was not her Hand, they come to prove it by a Witness, that says he believes it to be her Hand, because they produce a Letter, which they say is her Hand. Upon this the Court determines that this Evidence should not be allowed, that is, that it could

could be of no Consequence to falsify any Matter, which she had declared upon Oath.

But as this Case is, sure there is not the least Doubt but if the Proof of his Hand had been out of the Case, it must be read as a Paper that was in his Custody, and taken out of the Custody of one, with whom he had deposited it, which is proved beyond all Contradiction.

And in Case of my Lord *Preston*, and in a thousand Cases, it hath been so, and never was denied.

True, if they come and say, is this his Hand? and the Witness says I don't know whether it is his Hand or no; I have seen something of his Hand, and I don't know but it may be his Hand; it is not right; but the Witness must ground his Belief stronger; I have seen him write, and I know his Writing, therefore I believe it to be his Hand. If they had rested it on that, that the first Evidence knew his Hand fourteen Years ago, that must be left to the Jury, whether they believe Mr. *Doyley's* Evidence; because, says he, I saw him write fourteen Years ago. The Possibility of that, if there was nothing else in the Case, might be left to the Jury, whether that Evidence was sufficient to satisfy them, that it was his Hand. Upon the Whole, never was any thing clearer than that this must be read as a Paper found in his Custody, that hath in the usual Manner and Method the Proof of being his Hand-writing.

Prisoner. If I am out of Time I beg your Lordship's Pardon; I will not take up your Lordship's Time; I only beg a Word or two; whether there is any legal Evidence as to the Publishing; the Indictment says, *publicavit quoddam malitiosum seditiosum & preditionum scriptum*, and that is not that, that is the Declaration.

L. C. Just. Whatever you say or offer, although it happen to be out of Time, we will dispense with you, when out of Time; but what you offer now is upon a Mistake, we are not upon the Paper you should apply it to, that is, the Matter of your Declaration, but we are upon the Scheme Paper, not whether you published it, but whether you writ it.

Prisoner. I am charged in the Indictment as publishing a malicious, seditious and traitorous Writing.

L. C. Just. You are charged with that as an Overt-Act of the Treason, of Compassing and imagining the Death of the King; that you did publish a malicious, seditious, and traitorous Paper, that is the matter of the Declaration. The Matter now is, not for Publishing, but whether there is a reasonable Proof given that it is your Hand-Writing.

Mr. Just. Poyers. This is only a Circumstance, not an Overt-Act sufficient to convict you.

Mr. Sol. Gen. My Lord, we offer this Paper as a strong Evidence corroborating and confirming every Thing which hath been sworn by the Witnesses, and we pray it may be read.

Mr. Hungerford. I was reading the Act of Parliament when they—

Mr. Sol. Gen. My Lord, we must beg leave to insist upon the Course of Proceeding, that the Counsel shall not go on to argue a Point, after the Opinion of the Court has been given.

L. C. Just. Now you have heard the Opinion of the Court, you must not go on.

Mr. Hungerford. I was looking upon the Act of Parliament ———

L. C. Just. You remember *Francia's* Case, there was a Letter taken up at his Bedside, it was disputed whether that should be read, at last a Witness came and said, I have seen him write several Times, and I believe it to be his Hand; and it was read.

Mr. Hungerford. Ay, hastily read.

Clerk of the Crown reads the Scheme.

The S C H E M E.

Au défaut de la force, il faut employer la ruse.

1. **L**ET the General, and only one Officer of Note in the Camp, agree upon a Day for Execution.

2. Let the Officer that Day put himself on the *Tower-Guard*.

3. And as there is eight Serjeants (*viz.*) three of the first Regiment of Foot-Guards, three of the Second, and two of the Third, all ready at an Hour's warning to obey Orders; early that Morn, let the Officer see a single Person namely *George Wilson*, who manages these Serjeants, and give him Directions to bring them all to some convenient Place at four that Afternoon.

4. Then the Officer must give each Serjeant Money sufficient for the Purpose, and direct 'em, that each Serjeant order twenty five Men (making together two hundred, which they have ready) to go singly out of the Camp, and meet together in Church-Yard, exactly half an Hour past eight in the Evening, when and where another Officer that they know, must meet 'em, and take the Command, give 'em Muskets ready loaded, and march with them in a Body to the *Tower-Gate*, at nine that Night exactly.

5. Our Friend, the Officer within, must precisely at that Hour of nine be on the Guard at the *Tower-Gate*, and seeing this Body of Men appear, order the Garrison to let 'em in, as a Recruit sent to the *Tower-Guard*.

6. As soon as ever they have entered to seize the Arms at the *Tower-Gate*, shut the Gate up, and secure every one in the *Tower*, that the Officer on Guard gives them Orders to secure, but not to shed any Blood.

7. The *Tower* being thus seized, to leave only a small Guard there under that Officer who lets 'em in, and then, with all those that join you, march directly to the *Exchange*, where the great Doors must be ready opened, and the *General* there in Person.

8. At the exact Hour of nine, that the *Tower* shall be thus seized, the Persons of some great Men to be arrested at their Houses, brought directly into the City, and delivered to the General.

9. That upon our Meeting at the *Exchange*, the annexed Proclamation to be spread about; the Gates of the City to be shut up, and Pieces of Canon brought down against 'em, but every Man that desires to enter the Gates, before any regular Force appear, to be admitted to come in, and after the General has appointed a Guard at each Gate, and Inlets of the City, with proper Officers to command there; let him march back to *Tower-Hill*, for a Place of General

General Rendezvous under the Cannon of the *Tower*, and order the Lord Mayor a good Guard to watch over the *Bank*, but first take Money from thence to the *Tower*, in order to pay the Men.

10. That on the Morne of this same Day, our General to have an Interview with some other principal Officer of the Camp, and order him to engage all Friends to attend at their respective Posts, and expect a ^a Token to be sent to each of them as that very Night, on receipt of which Token they are to draw their Men out, and march directly to the *Artillery in the Camp*, as a Place of General Rendezvous; and that the Captain of the Artillery may not be alarm'd, let this Principal Officer previously send a Message to him, that Orders are come from the General (*Cadogan*) to double the Guard of the Artillery, on a Rumour that is spread of the Mob being up in the City.

11. The Party being come to the Artillery with the said Principal Officers at the Head of 'em, let 'em immediately draw the Guns round 'em, and stand upon their Defence, without making any Declaration, until the said principal Officer, who commands in chief there, receive certain ^b Intelligence from our General that the *Tower* is seized upon, and the City all in Arms, and then under a Pretence of securing the King's Person from the Insults of the Mob, let this Officer make a Detachment to take him into Custody, and send him into the City to the General at the *Tower*.

12. To facilitate these Proceedings, let the General the same Day speak to the *Horse-Officers* in the Camp, who he knows to be our Friends, and upon the very first Alarm of the City's having revolted, let 'em march their Men to either *Ludgate* or *Newgate*, on pretence to suppress the Mob; and when they are at the Gate, as a Token of their being Friends, let the Watch-Word be *This Morning*, and upon giving us the Word there, to open the Gates and let 'em in, and as soon as they are entered, to march directly to *Tower-Hill* and join themselves with the General there.

13. Let the General also the same Day order four of the Half-pay Captains to take upon 'em the following Commands, (*viz.*)

14. First Captain to go into *Southwark*, and exactly at the Hour of nine, to make a Bonfire in the Fields there, and give some Money among the Mob, and when you have got a Number together, send an Account to the General, take the Arms that must be lodged there, and distribute out amongst 'em to your Acquaintance in the first Place, and to those which they recommend, and then issue out the Declarations; and after the Receipt of a Token from the Captain next mentioned, who is to command in *Palace-Yard*, to ferry over thither in Lighters, with the Watch-Word *This Morning*, and join the Captain in *Palace-Yard*.

15. Second Captain exactly at the Hour of nine, to be in *Privy-Garden*, adjoining to *White-Hall*, with a few Gentlemen armed, and seize upon the great Guns there, and then spread the Declarations, and stay there under the Cannon till a greater Body join you from *Southwark*; or otherwise nail up the Cannon, and march directly to the next Captain in *St. James's Park* with the Watch-Word *This Morning*, and then send the Token, as above, to the first Captain in *South-*

wark, and let the Messenger you send, conduct him and his Men to you at *St. James's-Park*.

16. Third Captain, at the said Hour of nine, to go into *St. James's Park*, with the Key that is given you of the Private-Door out of *Arlington-Street*, and appoint only some few Gentlemen to meet you there exactly at the Hour and ready, one to have the Watch-Word you give 'em, which must be *This Morning*. Let your first Rendezvous be at the little Grove under the Wall near the Gate leading to *Hyde-Park*; and there you'll meet Fire-Arms ready charged. Then march down to the Parade next the *Horse-Guard*, and seize upon the Cannon there, and Ammunition in the Store-House, and the better to secure *St. James's Park* for a Place of general Rendezvous, you shall have an Officer out of the Camp exactly at the Hour of nine come to your Assistance with some Men, as he and you shall agree in the Morne of this Day, and as soon as you have seized the Cannon here, and Ammunition aforesaid, you are to put your selves in a Posture of Defence, and publish the Declaration, and send forthwith to the General at the *Tower* to let him know of your Situation, and also send to the Captains in *Palace-Yard*, *Southwark*, and *Tuttle-Fields*, that they immediately come and join you.

17. Fourth Captain, exactly at the Hour of nine, the Evening of the same Day to be in *Tuttle-Fields*; raise the *Westminster* Mob there, and with the Arms that are there lodg'd, equip them as you can; publish the Declarations, and march directly to *St. James's Park* and join with them there, who, on your giving them the Watch-Word, are to admit you into the Park.

18. So here being two Bodies of Men thus gotten together the first Night, *viz.* One on *Tower-Hill*, and the other in *St. James's-Park*, (besides our Friends at the Artillery in *Hyde-Park*.) The next Morning, if not sooner, let our General order a Detachment to *Lincoln's-Imm-Fields*, and some Cannon to be placed on the Terras of the Garden there, lest the Enemy come in there between *St. James's Park* and the City.

19. A proper Captain must be appointed to head the Watermen belonging to the *Thames*, and previous to the Day of Execution, he must agreed with the Duke's Bargemen, that upon the least Notice to be given them, that they alarm all the Watermen, and bring them to a Rendezvous the same Hour of nine that Night of Execution, and this Captain's Rendezvous must be at *Greenwich*, where he must seize the Magazine of Powder, and take out such part of it as each Man will carry, then blow up the rest, march from thence to the *Tower*, and join his Men with the General there, to whom he must first send a Messenger with the Watch-Word, and an Account of his Numbers:

20. Some Time before Execution, the General to send a Messenger to particular Men in the Country, that they rise in their respective Counties upon the first News of what is done here.—

21. An Officer, &c. to go to *Richmond*, and at the exact Hour of nine to seize upon Prince *Pritty Man*, and bring him away to *Southwark* to some particular Place appointed, where an Agent from the General must meet them with his further Orders.

^a It may be a Note in Writing thus, Sir, I'll meet you at nine to Night, don't fail me. Y. S.

^b A verbal Message by a third Person that must be by, when the General and this Chief Officer consult together till Morne.

Mr. Serj. *Pengelly*. We read this as an Evidence that cannot be mistaken, which is all of his own Hand-Writing.

Mr. *Att. Gen.* My Lord, we apprehend that this confirms what both the Witnesses have sworn.

Mr. Serj. *Pengelly*. We shall now produce some Receipts subscribed by the Name of *James R.* and pray that they may be read, these were likewise among those Papers, as hath been proved in the Manner you have heard already.

Clerk of the Crown reads one of them.

I Acknowledge to have received from
the Sum of
which Sum
I promise to repay with an Interest for it at the Rate
of per Annum
James R.

L. C. Just. They are not read as if proved, the Hand is not proved, but as Papers found on him.

Mr. *Soll. Gen.* In my Lord *Preston's* Case, his Lordship was taken in the Hold of a Ship lying upon the Ballast, and *Ashton* there near him, and between his Lordship and *Ashton* was found lying also upon the Ballast, a Pacquet of Papers, which *Ashton* snatch'd up, and put into his Bosom, from whence they were presently taken; two Seals, which appeared to be my Lord *Preston's* when he was Secretary of State, were found lying near to the Papers. Upon this Proof those Papers were read as Evidence against my Lord *Preston*, without any Proof made of their being his Hand-Writing, in order to the Reading of them.

Mr. *Hungerford*. My Lord *Preston* was taken on board a Ship going to *France*, then in War with *England*, these Papers were found in the Bosom of Mr. *Ashton*, who was going with him; my Lord endeavoured, so far as he could, to throw them over-board: The Offence did not turn upon the Papers being writ by my Lord *Preston*, or not; in my Lord *Preston's* Case the Papers contained a Discovery of the Condition of the Fleet and Garrisons of *England* and *France*, in order to enable *France* to invade us; it signify'd nothing who writ the Papers, the Crime was the having them, knowing the Contents of them, and endeavouring to carry them to *France*, so the Circumstances of my Lord *Preston* widely differ from this.

Mr. *Ketelbey*. I beg leave to mention another Thing, there the Papers were found in the Custody of my Lord *Preston*, here they were found in the Custody of a third Person whose Evidence we shall controvert by a Number of Witnesses, when it comes to our turn. I believe it will appear that some of the Papers were found on the Table in my Lord *Preston's* Case, and others taken out of his Pocket.

Mr. *Soll. Gen.* No, they were first found lying on the Ballast.

Mr. *Ketelbey*. What were found on *Ashton*, and taken out of his Bosom, were seen lying on the Ballast, but there were other Papers seized at that Time.

Mr. *Soll. Gen.* They were the same Papers that were afterwards taken out of *Ashton's* Bosom, which were read as Evidence against my Lord *Preston* upon the Circumstances I have mentioned.

Mr. *Ketelbey*. As I remember, some of them were found on the Table in the Cabin.

Mr. *Just. Eyre*. No, they were found on the Ballast in the Hold of the Ship.

L. C. Just. You say that they were found in my Lord *Preston's* Possession, and not in the Possession of *Ashton*; you say my Lord *Preston* had no Counsel, but you know it is the Duty of the Court not to suffer any thing to be read in Evidence that ought not. You say you shall controvert this Matter, and give an answer to it, and that it appears they were not in his Custody, they were taken out of this Witness's Custody, and under his Seal, and therefore the Difference it makes is nothing at all: Besides, the Proof in my Lord *Preston's* Case is not so strong as the Proof of the Scheme against the Prisoner, because the Scheme is proved to be his own Hand-Writing, which was not in the Case of my Lord *Preston*.

Mr. *Ketelbey*. My Lord, will not your Lordship think it necessary that they give further Evidence that they are his Papers before they are read.

L. C. Just. Read them.

Cl. of the Cr. I acknowledge to have received, &c. here are ten of them, that are the same.

Mr. Serj. *Pengelly*. Mr. *Stanyan*, do you remember whether any Questions were ask'd him with relation to those Receipts?

Mr. *Stanyan*. What I recollect is this: Upon the Lords asking Mr. *Layer* the meaning of those Receipts signed by the Pretender, and what Use he made of them, he said that during the Time he was at *Rome*, he had settled a Correspondence with Sir *William Ellis*, and some time afterwards he writ to Sir *William Ellis* according to the Directions he gave him, and he told him, if he could send any Receipts signed by his Majesty, or the King, as he called him, he thought Money might be rais'd upon them for carrying on the Cause, these were the Words, as near as I can remember.

Mr. *Att. Gen.* Mr. *Delafaye*, was you by?

Mr. *Ketelbey*. It was for raising Money to carry on his Cause, you mean Sir *William Ellis's* Cause?

Mr. *Stanyan*. No, Sir.

Mr. *Hungerford*. He acknowledged to have received them from Sir *William Ellis*?

Mr. *Stanyan*. Yes.

Mr. *Ketelbey*. You said he own'd he had them from Sir *William Ellis*, having settled a Correspondence with him, that Money might be rais'd by these to carry on his Cause; he told you he had Business to do for Sir *William Ellis*.

Mr. *Stanyan*. No. I know nothing of Sir *William Ellis's* Business, but that he had appointed to correspond with Sir *William Ellis*, and Sir *William Ellis* gave him his Address how to direct to him, and he acknowledged to have received a Letter or Letters from Sir *William Ellis*, in the Name of *Jones*, and that he writ to him in Answer to 'em.

Mr. *Ketelbey*. Are you sure as to those Words, or only to the Purport of 'em?

Mr. *Stanyan*. I think they are near the Words, but I am sure they are the Purport of them?

Mr. *Ketelbey*. Was it reduced into Writing?

Mr. *Stanyan*. It was reduced into Writing in this Manner. It was a very long Examination, about four or five Hours.

Mr. *Ketelbey*.

Mr. *Ketelbey*. I ask you, whether it was reduced into Writing?

Mr. *Stanyan*. Yes, it was; the Lords sent to me, to assist Mr. *Delafaye*, upon Mr. *Layer's* being examined: Mr. *Delafaye* took the Heads of the Questions propounded; and I sat near the Table, looked over Mr. *Delafaye*; attended to the Questions and Answers; so that we could set one another right when we came to consider them.

Mr. *Ketelbey*. This you Wrote, was it read over to the Prisoner?

Mr. *Stanyan*. No.

Mr. *Ketelbey*. Do you believe the Prisoner at the Bar saw you write?

Mr. *Stanyan*. Yes, I believe he saw us write.

Mr. *Ketelbey*. Do you believe he thought any Person was taking his Confession in Writing?

Mr. *Stanyan*. I think it cannot be otherwise.

Mr. *Ketelbey*. I ask you, do you believe that Mr. *Layer* knew that you was taking his Confession at that Time?

Mr. *Stanyan*. The Lords spoke thus; *Pray take Notice*, and then take down such a Thing, and such a Thing; and I believe Mr. *Layer* heard them say, *Take down that, and take down that*.

Mr. *Ketelbey*. Was it ever known for one to take down the Questions, and the other the Answers; and then to compare them together, in Order to make a Confession?

Mr. *Stanyan*. No; Mr. *Delafaye* wrote down the Questions and Answers.

Mr. *Hungerford*. How was the Position of Mr. *Layer*, with respect to you; was your Back or Face towards him?

Mr. *Stanyan*. It was on one Side.

Mr. *Hungerford*. Was you in the Room when Mr. *Layer* came in first?

Mr. *Stanyan*. I was, I called in Mr. *Layer* by the Lords Order.

Mr. *Hungerford*. Was it ever read to him?

Mr. *Stanyan*. No.

Mr. *Hungerford*. Was it drawn up in Form, so that you might call it an Examination?

Mr. *Stanyan*. I will tell you what we understood by it; it was the Minutes of an Examination to be drawn out in Form: But the Lords finding Mr. *Layer* not so candid and ingenuous as they thought he would have been, did not ask him to sign it; and we only make use of it to refresh our Memorics.

Mr. *Ketelbey*. He calls it an Examination, and it appears by what Mr. *Stanyan* saith, that he and Mr. *Delafaye* took it; one takes one Part, and the other takes another Part.

Mr. *Soll. Gen.* He did not say any such Thing.

Mr. *Ketelbey*. His Confession was never read over to him.

Mr. *Soll. Gen.* Mr. *Stanyan*, when the Lords directed Mr. *Delafaye* and you to write this or that particular Thing, was the Prisoner so near, that in your Apprehension he might hear their Lordships give such Directions?

Mr. *Stanyan*. Yes, he was.

Mr. *Hungerford*. Sure they are not contending, that any Confession shall affect a Man, unless it was read to him, and it ought to be signed by him; my Lord, the Man is no Way answerable for any Thing taken in Writing, without his Consent or Privity, in a Criminal Case: It is called Minutes or an Examination, which

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they might enlarge as they please; therefore we humbly submit it to your Lordship, Whether it ought to be offered in Evidence at all as a Confession.

Mr. *Ketelbey*. What will be the Consequence, if this be allowed here? Is a Person to be convicted of Treason upon a Confession taken, without its being read to him, and without his signing it? A Confession to a Justice of Peace, in Cases of Felony, unless read to the Party, and signed by him, must not be given in Evidence.

L. C. Just. Mr. *Ketelbey*, you seem to mistake what it is that is contended for by the King's Council: They are not going to offer any thing to be read in Evidence; your Objection would prevail, if they were going to read a Confession as Evidence, which was neither read to him, nor signed by him; but if there is no Examination reduced into Writing, and signed by the Party, the Consequence of that is, that the Witness is at Liberty to give an Account of what was said; and he may look to his Notes to refresh his Memory: If you will say, it is not so great an Evidence, of so great Weight, as an Examination taken, and signed by the Party, there is some Room left, some Foundation to suppose the Evidence may be mistaken.

He says, he was examined before the Lords of the Council; and he took Minutes of his Examination: And afterwards to refresh himself, he looks upon them, and says, he believes that is the Substance of what he confessed at that Time. You say, there is no Precedent for it; for God's Sake! Recollect your self, it is every Day done at the *Old-Bailey*: If a Person confesseth, and it be not in Writing, they do prove his Confession, *Vivâ Voce*.

Mr. *Soll. Gen.* My Lord, *Coleman's Case*, which was during the Time that Sir *William Jones* was Attorney General, went further than this: There his Letters were laid in the Indictment, as the very Overt-Act of the High-Treason charged against him; and yet one of those Letters was proved by his Confession, upon an Examination before a Committee of the House of Lords; and that Confession was prov'd, *Vivâ Voce*, by Sir *Philip Lloyd*.

Mr. *Ketelbey*. Whether that Case will be a Precedent? I never heard it so reckoned.

Mr. *Hungerford*. And I hope it will never be one.

Mr. *Delafaye*, sworn.

Mr. *Serj. Cheshire*. Mr. *Delafaye*, pray give an Account what Mr. *Layer* declared before the Lords of the Council concerning these Receipts.

Mr. *Delafaye*. The Account he gave——

L. C. Just. Mr. *Delafaye*, you was present at the Time of taking this Examination; you say, you took Minutes in Writing; you have told us the Reason why it was not in Form, and read to Mr. *Layer*: If you have not already done it, you may look to your Minutes, and refresh your Memory: That which the Court demands of you is, what Mr. *Layer* did confess at the Time of his Examination before the Lords of the Council.

Mr. *Delafaye*. He told the Lords, that he did write to Sir *William Ellis*, that he would send over some blank Receipts under the King's own Hand, that might be made use of, for the carrying on his Cause: That he did receive such

Receipts,

Receipts, and his Intention was to have tried his Friends; and to have raised Money on those Receipts.

Mr. Serj. *Cheshire*. Did he give any Reason why he went into that Method?

Mr. *Delafaye*. For a Precedent, he said, a little before the Restoration of King *Charles II.* a Method of this Kind had been used.

Mr. *Att. Gen.* My Lord, we shall now proceed to read the Letters that were sent and passed between them, Sir *William Ellis* and Mr. *Layer*: But it will be proper first to lay before you the *Cyphers* which they made use of to explain several cant Words and Expressions, which they used in their Letters.

L. C. Just. Were the *Cyphers* found among Mr. *Layer's* Papers?

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

Mr. Serj. *Cheshire*. Pray read No. 38.

Mr. *Att. Gen.* I don't know whether we shall trouble your Lordship to read the whole *Cypher*; it is very long, but when we meet with a Word in the Letters which wants Explanation, we may have Recourse to the *Cypher*.—Read the Letter No. 38.

Cl. of the Cr. reads. This Letter is signed *Eustace Jones*, &c.

Dear SIR,

I Receiv'd with a great deal of Pleasure and Satisfaction, a Letter of the 24th of November, from my worthy Friend, with an Account of his safe Arrival; of which I was in some Doubt before, and in no small Pain on that Account: I easily conceive he must needs have had a great deal of Business on his Return, as well of his Unkle's as of his own; and therefore, I don't think much that I heard no sooner from him, believing he was much better employed, and that Business is to be preferred before Compliment.

I was entirely of his Opinion as to the Method of carrying on the Manufactory; the procuring of good Workmen, is the first Step to be made, and if he can get such, the rest will be easy; and particularly, if he could gain some of the ablest of Mrs. *Barbara Smith's*, I know it would be very agreeable to all concerned, and particularly to Mr. *Atkins*, to whom he spoke of Writing; and which, I am satisfied, will be very acceptable: And if he thinks fit to inclose it to me, I shall convey it safely to his Hands, who, I find, was very glad to hear of him, counts very much upon his Friendship, and hopes for the Continuance of it.

I made his Compliments to Mr. *Timothy Watson's* Wife, who took them very kindly, and returns hers, with her most humble Service. She and her Charge are very well, God be praised, as are also all Friends here.

He having read over several times the Paper I shew'd him, and having a good Memory, I don't think it necessary to send a Copy of it.

I am, with great Esteem and Respect, ever most entirely,

Dear SIR,

Your most affectionate,
most humble and most

obedient Servant,

Eustace Jones.

30th January.
For *James Fountaine*, Esq;
to be left at *Howell's*-*Coffee*-*House*, in *Great Wild*-*Street*, *LONDON*.

Mr. *Att. Gen.* Your Lordship is pleased to remember, Mr. *Stanyan* said that Sir *William Ellis* was to write by the Name of *Jones*.

Mr. *Stanyan*. My Lord, he did say, that he had received a Letter since he had settled a Correspondence with Sir *William Ellis* subscribed by the Name of *Jones*.

Mr. *Att. Gen.* In the *Cypher* Sir *William Ellis* is called *Jones*.

Cl. of the Cr. reads. This Letter is signed *Eustace Jones*, dated 30th January, no Year, Dear Sir, I receiv'd, &c.

Mr. *Att. Gen.* Your Lordship will be pleased to observe the Expressions in this Letter, the procuring good *Workmen*: Now look in the *Cypher*, and *Soldiers* are meant by *Workmen*; Manufactory is not in the *Cyphers*, but I don't know for what Manufactory they wanted *Soldiers*, unless to raise a Rebellion. The Ablest of Mrs. *Barbara Smith's*; look for *Army* in the *Cyphers*, and you will find, that is signified by *Barbara*: It will be very acceptable to all concerned, and particularly to Mr. *Atkins*; in the *Cypher* that is the *Pretender*. Compliments to Mr. *Timothy Watson's* Wife; look in the *Cyphers*, and *Timothy* stands for *Hughes*, whose Wife is Nurse to the *Pretender's* Child. This Letter is directed for *James Fountaine*, Esq; to be left at *Howell's* *Coffee*-*House* in *Great Wild*-*street*, and I observe, Mrs. *Mason* said the Prisoner went by the Name of *Fountaine*.—No. 10. are six fictitious Names, and the Key to them: Read it.

Cl. of the Cr. Reads No. 10.

Digby—*Dillon*.
Orrery—*Burford*.
Regent—*Steel*.
Tories—*Tanners*.
Wiggs—*Waggs*.
Rogers—*Plunkett*.

Mr. *Att. Gen.* Read the Letter No. 40.

Cl. of the Cr. Reads, signed *N. C.* Dated the 11th of July, 1722.

Dear SIR,

The 11th of July, 1722.

I Received with all possible Satisfaction your most affectionate Letter of 8th May with its inclosed, which was presently delivered to Mr. *St. John*, who took it extream kindly; but could not well understand what relates to Mr. *Burford*; he hopes, your Answer to what I writ, in the beginning of last Month, may soon clear that: You will have seen, by what I then told you, that the former came safe to his Hands, and the Reason of your not having had a distinct Answer to it: He had the Stockings you sent for him, and returns you many Thanks for them; as also for all other Marks of your Affection and Concern for him and his, and will be ready to shew his Sense thereof on all Occasions. I am in earnest Expectation of hearing soon again from you, and am, with all possible Affection and Esteem,

Dear SIR,

Your most faithful and
most humble Servant,

N. C.

L. C. Just.

For *James Fountaine*, Esq;
to be left at *Howell's* *Coffee*-*House* in *Great Wild*-*Street*,
LONDON.

L. C. *Just.* Who is that N. C.?

Mr. *Att. Gen.* My Lord, we do not know, it is directed to *James Fountaine, Esq;* Mr. *St. John* in the *Cypher* signifies the *Pretender*.

Mr. *Soll. Gen.* Mr. *Burford* appears to stand for my Lord *Orrery* in the little *Cypher*.

Mr. *Hungerford.* Look into the Paper, pray what do *Stockings* stand for?

Mr. *Soll. Gen.* Read the Letter No. 41.

Clerk of the Cr. This is dated the 27 *May*, it is sign'd by no Body, nor directed to any Body; the Cover is off: *I receiv'd with a great, &c.*

Dear S I R,

27 *May*.

I Receiv'd with a great deal of Pleasure, the Favour of your most obliging Letter of 22d *March*, with an inclosed for our Friend, who was very glad to hear from you; and is very sensible of, and takes very kindly, the Care you take of his little Concern there; but says, he doth not sufficiently understand the State you sent, so as to be able to make a particular Answer, till you shall further explain it; there being some Tenants, mention'd by you, whose Names he does not find in the Rental, as *Burford*, *Steel*, *Digby*, the little Soldier, and *Simmonds*; the latter, he believes should be *Simmes*, he is of the North, a grey hair'd antient Man, whom he very well remembers, and has a particular Esteem and Value for, as a very good Tenant, and a very honest Man.

All Friends here are in perfect good Health, God be thanked, and remember themselves kindly to you, and I am most entirely,

Yours, &c.

Mr. *Soll. Gen.* If you look into the *Cypher*, you will find *Rental* stands as the fictitious Name for the *Cypher* itself; *Burford* stands for the Lord *Orrery*, *Steel* for the *Regent*, and *Digby* for General *Dillon*.

Simmons, he believes should be *Simmes*, but *Simmonds* in the large *Cypher* is put for Lord *North* and *Grey*, and who is meant, appears pretty plain from the Cant which follows. *He is of the North a grey hair'd antient Man, whom he well remembers, and hath a particular Esteem and Value for, as a very good Tenant, and a very honest Man.*

Mr. *Att. Gen.* Look for *Simmons* in the *Cypher*.

Mr. *Hungerford.* I can make one Observation, that Mr. *Harcourt* is very ready at.

Cl. of the Cr. It is alphabeted, so that it is easy to look for it.

L. C. *Just.* What Use do you make of these Letters?

Mr. *Soll. Gen.* The Use we make of them is to shew that Mr. *Layer* who took on him the Sham-Name of *Fountaine*, by which Name some of these Letters are address'd, had a Correspondence with the Friends of the *PRETENDER* at *Rome*. That this Correspondence related to a Conspiracy, which was formed and carrying on here; and it appears, they took upon them to mention several Persons of Distinction under a kind of Jargon.

Mr. *Att. Gen.* The first Letter, wherein is mentioned the carrying on the *Manufactory*, the procuring good *Workmen*, and particularly, if he could gain some of the ablest of Mrs. *Barbara Smith's*, and that it would be very agreeable to all concern'd, and particularly to Mr. *Atkins*, which is the Name for the *Pretender*;

shews, that the Agents of the *Pretender* at *Rome*, had laid Designs to procure Soldiers, and those, if possible, out of his Majesty's Troops; which falls in with the Evidence we have given of the Prisoner's Endeavours to get Soldiers and Sergeants out of the Army.

Mr. Serj. *Cheshire.* It may not be improper, since we have explain'd it, to lay before you the Lists of several Persons Names that are in the Army.

Pray read No. 7. out of the large Bundle.

Cl. of the Cr. Reads a List of Officers Names with Marks and Numbers to some of them.

Mr. *Att. Gen.* We did mention before, that there were the Names of several Persons of very great Honour and Loyalty to his Majesty in some of the Lists; but this is to shew, that the Prisoner was consulting how he might get an Account of the Number of the Forces; as how many Colonels, how many Captains, and how many Soldiers there were in the Guards and other Troops of his Majesty.

Read No. 5. in the large Bundle.

Cl. of the Cr. Reads No. 5. A List of Officers of the Second, or *Coldstream* Regiment of Guards.

Mr. *Att. Gen.* We make the same Use of this to shew, that he was searching and examining to get an Account of the Guards:

L. C. *Just.* I suppose he is taking a Survey of the Persons that were of the Guards, that he might be capable of making a Judgment.

Mr. *Att. Gen.* Yes, my Lord; and to know their Strength: Look out No. 6. in the large Bundle.

Cl. of the Cr. Reads No. 6. A List of Officers in the first Troop of Horse-Grenadiers, the Names being distinguished by different Letters.

No. 7. out of the small Bundle. A List, &c. here are eleven of them put down.

Mr. *Soll. Gen.* Read No. 8. in the large Bundle.

Cl. of the Cr. Reads No. 8. A List, &c.

Mr. *Att. Gen.* Your Lordship will observe, that this is a List of some Persons Names, and the Numbers of Horses and Men they were to provide.

L. C. *Just.* You'll have this to import an Account of what Quota's several Persons were to find.

Mr. *Att. Gen.* The last was read for that Purpose: Read No. 15. in the large Bundle.

Cl. of the Cr. Reads No. 15. Containing divers Names, with Numbers set against some of them.

Mr. Serj. *Pengelly.* Read No. 20, 21, 22, 23, and 24, in the large Bundle.

Cl. of the Cr. Reads No. 20. Containing a List of the Great-Officers of the *Tower*. No. 21. Containing Names of Officers of the Second Troop of Horse-Guards, Second Troop of Horse-Grenadiers, and Fourth Troop of Horse-Guards. No. 22. Containing a List of Names. No. 23. Containing Names of Officers of the First, Second, Third and Fourth Troops of Guards. No. 24. Containing the Names of two Officers of the Horse-Guards.

Mr. *Att. Gen.* Look upon that List, No. 21: whether there are not some private Marks upon it.

Cl. of the Cr. Yes, here is upon one of them a *Dott*, and on the other Side there is a *Dott*; and

and in two or three Places some Men mark'd and cross'd.

Mr. Serj. *Cheshire* Read No. 25.

Cl. of the Cr. Reads No. 25. Containing a List of Officers, five of them marked to be *not bad*.

Mr. *Reeve*. Are the Words *not bad* of the same Hand-Writing?

Cl. of the Cr. Yes, it doth appear to me to be so.

Mr. Serj. *Pengelly*. Read the Title of No. 22.

Cl. of the Cr. Here are a great many Peoples Names, with Marks upon some, and none upon others: Upon one of them is Writ *William Johnson*, to be gained.

Mr. Serj. *Pengelly*. Read No. 27.

Cl. of the Cr. Reads, A List of the Third Regiment of Guards; against several of which Names are Dotts and Marks.

Mr. Serj. *Pengelly*. Read No. 28.

Cl. of the Cr. Reads, A List of the Officers of the *Coldstream* Regiment of Guards; and a List of the Officers of the *Scotch* Guards.

Mr. *Soll. Gen.* Read No. 35.

Cl. of the Cr. Reads No. 35. A Paper, containing an Account of the Numbers of the Officers and Soldiers in the First, Second, and Third Regiment of Foot Guards.

Mr. Serj. *Pengelly*. My Lord, we beg leave to ask Mr. *Delafaye* and Mr. *Stanyan* two or three Questions, to support the Evidence of Mr. *Lynch* and Mr. *Plunkett*, in relation to some particular Facts; whether at the time of the Examination of Mr. *Layer* before the Lords of the Council, any thing was said of Mr. *Layer's* being at *Rome*?

Mr. *Hungerford*. With humble Submission, Mr. *Layer's* being at *Rome*, and corresponding with the *Pretender*, (if he did so) is made Treason by another Act of Parliament, not by this Act of Parliament upon which he is indicted: Therefore, whether he was himself at *Rome*, or corresponded with the *Pretender*, cannot be offered as an Evidence of High-Treason upon this Indictment.

Mr. Serj. *Pengelly*. It is only to shew the Probability of his receiving those Receipts.

Mr. *Ketelbey*. Since we did not know any thing of those Papers, we could not properly make our Exceptions against them, till we heard them read; and now, if they prove any thing, 'tis the holding Correspondence with the *Pretender*; but that relates to another late Act of Parliament; 'tis another Species of Treason; and the Evidence which they would give of his Confession, *Vivâ Voce*; they say, it is only to support these Papers that are read; Who can make any Objection to a Paper which we did know nothing of? I believe few in the Court know what the Meaning of these Papers are now they are read; for my Part, I know very little of them; we apprehend that instead of being allowed to support this Evidence, by proving a foreign Correspondence between Mr. *Layer* and the *Pretender*, by the Name of King *JAMES*, which is made Treason by a particular Act of Parliament; they ought rather to have indicted him upon that, than endeavour to support their defective Proof by giving Evidence of an Offence, which may be matter of another Enquiry.

Mr. *Att. Gen.* My Lord, we apprehend a Proof, that the Prisoner was at *Rome*, and had

Conferences with the *Pretender*, will be very proper to corroborate, and explain the Evidence that hath been given by the Witnesses, and the *Pretender's* Notes, and Sir *William Ellis's* Letters to the Prisoner; and for those Purposes we would make Use of it.

Mr. *Soll. Gen.* Though we apprehend we have made our Case extremely strong already, yet this which has been opened may be offered by Way of further Confirmation: Notwithstanding the Objection which is made, that we are attempting to give Evidence of another Kind of Treason not alledged in the Indictment, yet we insist upon it, that it is proper here, as circumstantial Evidence of the Treason which is alledged. We have proved a Conspiracy entered into between this Gentleman and others, to bring in the *Pretender*, and levy War for that Purpose; and also, Notes sign'd *JAMES R.* which he received from Sir *William Ellis*, a Person at the *Pretender's* Court. Now, if we follow this by shewing, that the Prisoner was actually at *Rome*, and had Personal Conferences with the *Pretender* himself; that, surely, must be admitted to be a material Circumstance to support the Proof of those other Facts. I beg Leave to say, that it has been held, even since the Stat. 7^o *Will. Tertij*, That Acts of High-Treason not laid in the Indictment, may be given in Evidence, if they conduce to the Proof of some Overt-Act which is there laid.

Mr. Serj. *Cheshire*. We apprehend your Lordship will receive Evidence of the same Kind of Treason in a lower Degree, in order to prove the Overt-Act, whereby he consulted and conspired to bring in the *Pretender*, and place him upon the Throne.

As the Prisoner did correspond with his Ministers, so he had Access to the *Pretender* himself; and he did own it. That we apprehend is going a Step higher, something further than already is admitted; and if it is proper Evidence, there is no reason why it should be rejected.

Mr. *Reeve*. It is true, we have not indicted him for a treasonable Correspondence with the *Pretender*, therefore they object, we cannot give Evidence of any such Correspondence upon this Indictment.

My Lord, we humbly apprehend, every thing that is a Circumstance that will gain Credit to the Witnesses examined is proper Evidence. It looks indeed improbable, that a Gentleman of the Profession of the Law should enter into this treasonable Design, which is expressly sworn upon him by two Witnesses, whose Credit they design to impeach; therefore we humbly offer this as a circumstantial Evidence. This Gentleman having gone from his Profession, hath been at *Rome*, was kindly receiv'd and entertain'd by the *Pretender*; thereupon he hath entered into an Intercourse with his Ministers: And, if we prove this, it is to induce Credit to the Evidence we have given by positive Witnesses. We therefore think it proper, and submit it to your Lordship.

L. C. Just. They must go on, they are not going upon an Evidence of a new Overt-Act of Treason; the Overt-Acts are consulting, advising, and agreeing to raise a Rebellion.

Mr. *Hungerford*. I humbly beg your Lordship's Pardon.

L. C. Just.

L. C. Just. If you will not hear me, you will teach me not to hear you.

Mr. Hungerford. My Lord, I hope we have a Right to reply.

Mr. West. Upon the first Letter of Sir *William Ellis's* he congratulates him, as his Friend on his safe Arrival.

Mr. Hungerford. My Lord, I beg your Lordship's Pardon; I am in the Service of my Client, and in endeavouring to do him Service, I am verily persuaded, I shall not offend your Lordship: Really for my part, I cannot satisfy my self, that the Evidence which they tender to the Court is a proper Evidence.

This Gentleman is indicted upon the Statute *de Proditionibus*, 25^o Ed. 3. The Overt-Acts laid in the Indictment are, his consulting, conspiring and agreeing to raise a Rebellion, and to levy War against the King, &c.

There is an Act of Parliament in the last Year of King *William*, whereby the *Pretender* is attainted; which makes corresponding with the *Pretender*; or any of his Adherents High-Treason; and when any Man commits that particular Treason, he is liable to be taken up and prosecuted for it. Now my Lord, shall they be admitted to give an Evidence of a Treason committed in breach of one Act of Parliament, when they are prosecuting him upon another, they may as well offer Evidence against him for counterfeiting the Great Seal, or clipping and coining for the Sake of Evidence: We hope this Practice shall not be allowed; if they are so full of Proof (as by their opening they seem'd to be) which by the Rules of Law can reach this Man's Life, which I cannot yet see, let Justice take its Course: But we humbly hope they shall not be permitted to give Evidence of Facts which are entirely foreign to the present Accusation, and can be calculated for nothing but to captivate the Jury, by acquainting them that the Prisoner hath been at *Rome*. But if the King's Counsel will have it effectually publish'd, that the Prisoner hath been at *Rome*, let them consent to have him found not guilty upon this Indictment, and let him then be prosecuted upon the Act, for corresponding with the *Pretender*, and see what will come of it.

Mr. Ketelbey. The Act of Parliament that makes this new Treason is the 13 and 14 of King *William*; which not only makes that Treason which was not Treason before, but puts it on a new Method of Trial in any County of *England*, where it is laid. Now they would give in Evidence a Fact, which *Mr. Serj. Cheshire* says is Evidence of the same Kind of Treason, tho' in a lower Degree, and ought to be received to prove the Overt-Acts of consulting and conspiring to restore, and bring the *Pretender* to the Throne: As to the Evidence that hath been read we could not have objected to the Papers, because we did not know what they were, nor whether they related to a Foreign or Domestick Correspondence. Now because they are read as being found on a Person to whom he gave them; shall they, to support a Treason, of compassing and imagining the Death of the King; give Evidence of corresponding with the *Pretender*.

My Lord, I don't apprehend the King's Counsel have given us any manner of Answer, and therefore shall not take up any more of your Lordship's Time, by repeating in a Reply, what

I offered before by way of Objection: I submit it to your Lordship.

L. C. Just. Sure as this Evidence is offer'd it is very proper; consider, in the Indictment the Overt-Acts are, meeting, consulting, advising, and agreeing to raise a Rebellion. The next is, publishing a Traiterous Libel, in which Rewards are promised to those that would assist in this Rebellion; a third Overt-Act is, the engaging and listing Men for the Service of the *Pretender*; a fourth is, a designing to depose the King; and another is, to set up the *Pretender* on the Throne; Now, consider, if they have not given an Evidence of these Overt-Acts; whether sufficient or not; that must be left to the Jury; if they have given Evidence of these Acts, a Design to set up the *Pretender*, and to depose the King, &c. If they are not proper to shew for this Purpose this Gentleman corresponded with *Rome*, was with the *Pretender*, these Letters sent from Sir *William Ellis* to him: Letters (according to his Desire) purporting Receipts for Sums of Money to be signed by the *Pretender*, as a Foundation to oblige him to make Repayment: After this and these Things have been offer'd, is it not proper to go as far as they can on this Head, and shew how far he hath been engaged with the *Pretender* and his Accomplices? Sure it is proper, as a further Evidence of these Overt-Acts.

Don't trouble yourself as to that, no Use shall be made of that, to charge you with the Treason made so by another Act of Parliament, about corresponding with the *Pretender*, for Evidence it is proper here; and it neither can, nor shall be made Use of to any other Purpose.

Mr. Reeve. *Mr. Stanyan*, pray go on and give an Account of what he confess'd, when examined before the Lords of the Council about his being at *Rome*.

Mr. Stanyan. *Mr. Loyer* did acknowledge he had been at *Rome*, and returned from thence in July 1721. he said he had had two Conferences with the *Pretender*.

Mr. Ketelbey. I think *Mr. Stanyan* said, he had taken Minutes of his Examination; I had rather see the Minutes than trust to his Memory. My Lord, in the Trial of the two *Bailiffs* in this Court, the Substance of what the Deceased said was reduced into Writing; and therefore the Parole-Evidence, that was offered to be given was rejected. I submit it to your Lordship, whether the Rule is not the same in greater Cases, and much stronger in this Point before your Lordship. I have not the least Disrespect for *Mr. Stanyan*, and could take his Word for any thing, but my Client's Life; therefore, we hope he shall produce those Notes, which he hath refer'd to once or twice, now he is going to give a further Account of his Examination.

Mr. Hungerford. My Lord, I was Counsel in that Case; the Justice of Peace who had taken *Mr. Lutterell's* Examination did not appear, and that Examination could not be had; there was a Copy of it taken and produced, and proved in Court to be a true Copy, but your Lordship would not let that Copy be read, or the subject Matter of it to be given in Evidence, unless the original Examination it self were produced.

L. C. Just. *Mr. Attorney*, you hear how the Matter is, *Mr. Delafaye* and *Mr. Stanyan* give an Account that they were commanded by the Lords of the Council to attend and take Minutes of

of Mr. *Laver's* Examination before them; that they have those Minutes, and have look'd into those Minutes to refresh their Memories: If they desire they may be produced, do you oppose it? Have you the Minutes here?

Mr. *Stanyan*. Yes, my Lord.

Mr. Serj. *Pengelly*. There may be a great many Things that are not material to the present Case of Mr. *Laver*; why should they have all these Minutes read? It is not for the Sake of the Prisoner at the Bar, but for the Sake of some other People, who may be listening here.

In the Case of *Lutterel*, there was a compleat Examination taken by a Justice of the Peace: In this Case there is no Examination compleated and drawn up; it is nothing but an oral Confession, and amounts to no more. The Minutes the Witnesses may take in their Hands, as proper to refresh their Memories.

Mr. *Att. Gen.* Their desiring to have these Minutes read, is not so much for the Sake of their own Client as for the Sake of other People.

Mr. Serj. *Chishire*. How the Matter in that Case was——

L. C. Just. It is enough, I only ask'd Mr. *Attorney-General*, whether he thought fit to consent to it; and without his Consent, we are of Opinion, that they cannot be read.

I ask'd Mr. *Attorney* the Question, and was not aware of any ill Consequence.

Mr. *Attorney* says, the Minutes refer to the whole Examination, and to a great many other People, and it would be for the Disservice of the King, to have these Things disclos'd. Mr. *Attorney* might have refused to consent without giving a Reason, but he hath given a good Reason, and therefore will not consent that they be read.

Mr. *Ketelbey*. We do not consent to wave them, but insist upon their being read.

Mr. *Att. Gen.* We don't ask your Consent.

Mr. *Ketelbey*. If you don't ask it, nor give it, we are so far even, but I assure you, Sir, we are retained only for one Gentleman; the Prisoner at the Bar, and we have as little Reason to be solicitous for the Innocence of others, as some have for their Guilt?

L. C. Just. You cannot read the Minutes taken against the King, because these Matters are not ripe yet, nor to be discover'd to the World.

Mr. *Hungerford*. Something drop'd, as if we did insist upon the Matter for the Sake of Others; they are mistaken, we condemn such an Insinuation. We are of Counsel for this Man, and for this Man singly.

L. C. Just. You are assigned Counsel for him, and unless you had, I believe you would not have ventured to have said so much.

Mr. *Hungerford*. No indeed.

L. C. Just. Go on.

Mr. Serj. *Pengelly*. Mr. *Stanyan*, please to recollect, whether when Mr. *Laver* was examined before the Lords of the Council, (it is to confirm the Evidence of Mr. *Lynch*) any thing pass'd about the Declaration.

L. C. Just. But before you was intending to ask him about his going to *Rome*, and having Conference with the *Pretender*.

Mr. Serj. *Pengelly*. My Lord, that he hath said already, therefore I ask you what was said

by Mr. *Laver*, relating to the Declaration?

Mr. *Stanyan*. The Lords ask'd Mr. *Laver*, if he had seen any Declaration; he said no, he had only the Heads of one which he drew himself: The Lords ask'd him where that Declaration was, he said, he believ'd one *Wilson* had it.

Mr. Serj. *Pengelly*. Was any Questions asked relating to the Persons that had seen it?

Mr. *Stanyan*. Yes, he said the only Persons that had seen it was, that *Wilson*, one *William Jeffries*, a *Nonjuring Parson*, and one *Lynch*.

Mr. Serj. *Pengelly*. Where did he mention to have shew'd it to *Lynch*?

Mr. *Stanyan*. On his Way to my Lord *North* and *Grey's*, at the *Green Man* at *Epping*.

Mr. Serj. *Pengelly*. Was there any thing more said by *Laver*, relating to that Journey to *Epping*, and what?

Mr. *Stanyan*. He said that he went to my Lord *North* and *Grey's*, and dined at the *Green-Man* as he went, then he carried Mr. *Lynch* to my Lord *North* and *Grey's*, and recommended him to my Lord *North* and *Grey*, as a proper Person to be employed. I think it was employed in an Insurrection, or in any thing else, that his Lordship should command him.

Mr. *Ketelbey*. If he is not certain, I desire he may produce his Minutes, as he gives his Evidence *visá voce*, to refresh his Memory.

Mr. *Att. Gen.* We submit to it.

L. C. Just. It is always so.

Mr. *Stanyan*. He recommended him, as a proper Person to be employed in an Insurrection, and that *Lynch* having told *Laver* before that he would seize the Earl of *Cadogan*, that *Laver* did mention him to my Lord *North* and *Grey*, as a proper Person for such an Attempt.

Mr. *Ketelbey*. The first time you said, in an Insurrection, as you remembred or thought; how come you now to be more certain on the second Repetition of your Evidence than at the first? On the first Account you gave you say, it was employed in an Insurrection, as you thought; now upon the second Repetition you give a positive Evidence, that this was confest by Mr. *Laver*.

Mr. *Stanyan*. I have recollected the Words, and Mr. *Laver* used those Words.

Mr. *Ketelbey*. From whence is it that you are now so positive, and were not so at first?

Mr. *Stanyan*. I did say the Words at first.

Mr. *Ketelbey*. But you said it with an Alleviation; I desire to know, if you are positive those were the Words.

Mr. *Stanyan*. I am very positive.

Mr. *Ketelbey*. And yet you were not positive before.

Mr. *Stanyan*. I did not say I was not positive.

Mr. *Hungerford*. Did you give your Evidence, that you was certain he said that he had recommended *Lynch*, as a proper Person to be concerned in an Insurrection in General, or only as a proper Person to seize my Lord *Cadogan*, or both? how did he express himself?

Mr. *Stanyan*. I will tell you how the Words were: *Lynch* having told him he would seize my Lord *Cadogan*, *Laver* recommends *Lynch* to my Lord *North* and *Grey* as a proper Person for such an Attempt.

Mr. *Hungerford*. Then the Insurrection was out of the Case; he was only recommended to my

my Lord *North* and *Grey*, as a proper Person to seize my Lord *Cadogan*.

Mr. *Ketelbey*. I think you have repeated it three times, and different at each time; now please to rectify your Memory, and let us have it so as it may be understood.

I must desire it in this Case, my Client is upon his Life, and he should have right, I am sure he will have it from the Court and the Jury.

We desire to know whether you give such an Evidence of this Part of his Confession, with respect to his recommending Mr. *Lynch* to my Lord *North* and *Grey*, as you will stand by?

Mr. *Hungerford*. Mr. *Stanyan*, pray give an Account once for all how that Matter was.

Mr. *Stanyan*. I can give no other Account.

Mr. *Ketelbey*. He hath vary'd every Time; I appeal to Mr. *Attorney*, I appeal to your Lordship.

L. C. *Just*. Wherein is the Variation?

Mr. *Ketelbey*. First he acquaints you, that he confessed, that he recommended *Lynch* to my Lord *North* and *Grey*, as a fit Person to be employed, he thinks, or believes, it was in an Insurrection; and then he says, he is positive that he recommended him to my Lord *North* and *Grey*, as one that was fit to be employed in an Insurrection, and at last he says he was recommended by Mr. *Layer* to my Lord *North* and *Grey*, as the fit Person to seize my Lord *Cadogan*. I appeal to your Lordship's Memory, and his own Oath, whether this was not so, and yet he is positive of it, he is sure of it.

L. C. *Just*. Is there any Difference in all this?

Mr. *Ketelbey*. As much as between being certain, and being uncertain.

L. C. *Just*. For what? You talk of the Variation between an Insurrection and seizing my Lord *Cadogan*. The Insurrection was partly to be made on the seizing my Lord *Cadogan*, at the same Time, as to facilitate the Insurrection; both were to go together; if he was a proper Person to seize my Lord *Cadogan*, he was a proper Person to be employed in an Insurrection.

Mr. *Ketelbey*. He is charging the Prisoner with his Confession, and therefore I say, he hath mentioned it with two or three Variations: First, that he was fit to be employed in an Insurrection, and he explains that by seizing my Lord *Cadogan*.

L. C. *Just*. That is Part of the Insurrection.

Mr. *Ketelbey*. Surely, my Lord, this serves to make our Objection so much the stronger against allowing parol Evidence of a Confession, which was put in Writing.

Mr. *Att. Gen*. I can't imagine what they mean; here is a Gentleman, that gives an Account, that the Prisoner confessed that he recommended *Lynch* to my Lord *North* and *Grey*, as a proper Person to be employed in the Insurrection, and to seize my Lord *Cadogan*; where is the Variation in this?

Mr. *Soll. Gen*. Mr. *Stanyan*, you was giving an Account of Mr. *Layer's* recommending *Lynch* to my Lord *North* and *Grey*; did Mr. *Layer* declare any thing further relating to that Matter?

Mr. *Stanyan*. He said my Lord *North* and *Grey* received him civilly; he sup'd there and lay there that Night, and they din'd there the next Day.

Mr. *Soll. Gen*. Did he give any Account of what passed at Dinner?

Mr. *Stanyan*. I don't know whether it was

just at Dinner, or afterwards: But he said that several Healths were drunk, which were begun by my Lord *North* and *Grey*; and after Dinner there came in a Man they called a Citizen, the drank the Pretender's Health, his Wife and the young Prince.

Mr. *Soll. Gen*. Did the Prisoner say any thing about the Christning of his Child?

Mr. *Stanyan*. That was when he confessed before the Lords, that he was at *Rome*, in the Conference he had with the Pretender, he took Occasion to speak of the Discontents of the Nation, which had been occasioned by the Losses sustained in the *South-Sea*. The Pretender asked him if he knew any Persons of Distinction in that Case? He said, that he knew a great many, that were well-affected to his Interest; that he was not acquainted with People of Quality: But that he knew several of good Estates, that were very well affected to his Interest. Upon this the Pretender asked him several Questions, says he, it must be very expensive to you to come hither to *Rome*, it must cost you 500*l*. No, saith he, not above half so much. Then the Pretender praised his Zeal, and commended him; after that Mr. *Layer* asked the Pretender to give him some Tokens or Credentials, that he might have something from his Majesty; that would be a Means of his gaining Credit among his Friends here. He says the Pretender scrupled that: Then Mr. *Layer* proposed afterwards that the Pretender's Wife should stand as Godmother to his Daughter, to Mr. *Layer's* Daughter; that afterwards Col. *Hay*, to whom he was introduced at the Pretender's Court, brought him Word, that the Pretender's Wife would stand as Godmother to his Child: But then the Question was, who should represent her? And after some time it was proposed to Mr. *Layer* to find out a fit Person to represent her. Mr. *Layer* proposed the Dutchess of *Ormond*, which was agreed to; after that the Pretender agreed to stand Godfather with his Wife, and then the Point was, who should represent him? And Col. *Hay* told him that he must take care of that, to find a proper Person to represent his Majesty.

Mr. *Soll. Gen*. What Account did he give of what was done in Pursuance of this, when he came into *England*?

Mr. *Stanyan*. When he came into *England*, he said, he applied himself to one Mr. *Thompson*, to speak to my Lord *Orrery* to stand to represent the Pretender, with the Dutchess of *Ormond*: But he said my Lord *Orrery* declined it; and afterwards he got my Lord *North* and *Grey* to stand. That Mr. *Thompson* did Christen his Child, my Lord *North* and *Grey* and the Dutchess of *Ormond* standing as Proxies for the Pretender and his Wife; my Lord *North* and *Grey* did stand to represent the Pretender, and the Dutchess of *Ormond* to represent the Pretender's Wife, knowing they did so.

And he was asked by the Lords, who were in Company at the Christning? He said, only the Dutchess of *Ormond*; my Lord *North* and *Grey*, Mr. *Thompson* the Minister, himself, and his Wife, and another Woman, at whose House the Christning was performed: But he said, she was not present in the Room, tho' she assisted at the Christning.

Mr. *West*. Did he mention any Time when this Christning was?

Mr. *Stanyan*. About the Spring: I can't say that Question was asked him by the Lords, and I can't ascertain the Time.

Mr. *West*. Did he say any thing relating to my Lord *North* and *Grey*?

Mr. *Stanyan*. He told them of my Lord *North* and *Grey*'s being at the Head of these Designs.

Prisoner. What doth he concern himself with the Lord *North* and *Grey* for?

Mr. *West*. Pray Sir be quiet.

Mr. *Stanyan*. He said he told my Lord *North* and *Grey* that he had acquainted *Lynch* with his Lordship's being at the Head of this Design, therefore Mr. *Lynch* had expressed a great Desire to wait upon his Lordship.

Mr. *Att. Gen.* Mr. *Delafaye*, pray give an Account what Mr. *Laver* said, when he was examined before the Lords of the Council, relating to his being at *Rome*.

Mr. *Delafaye*. Mr. *Laver* declared to the Lords of the Council that he had been at *Rome*, that he had had two Conferences with the Pretender, that he had acquainted the Pretender with the Disaffection of the Nation, with respect to the Losses that had been sustained by the *South-Sea*. He said, in general, the Nation was well-affected, and that he knew Persons of State, not Quality, that were in his Interest: Then he proposed to have Credentials or Tokens of the Pretender's Regard to him, which was not granted him: Then he desired the Pretender's Spouse should stand Godmother to his Child; the Pretender said he would consider of it; Col. *Hay* afterwards brought him Word, that she consented; then there were some Conferences who should represent her.

Mr. *Att. Gen.* Give the same Account that he gave before the Lords of the Council.

Mr. *Delafaye*. Col. *Hay* brought Word to Mr. *Laver*, that the Pretender's Spouse consented to stand Godmother to his Child; and it was agreed the Dutches of *Ormond* should represent her; he desired a Credential or Token to the Dutches of *Ormond*. *Hay* told him, without that she would stand, only, faith he, carry a Message, that the Duke is well, and gone to *Madrid*, that she would do it; and *Laver* desired to know who should stand as Godfather, why the King himself, that is, the Pretender; and *Laver* desired to know who was to represent him; he desired to be excused, but *Laver* would find out one upon his Return into *England*, that was proper for that Purpose; when he came into *England*, he was at a Loss for a Person to represent the Pretender; he went to Mr. *Thompson* to advise with him about it, who went to my Lord *Orrery*, to desire him to stand as Proxy for the Pretender, my Lord *Orrery* declined it, then he went to my Lord *North* and *Grey*, who accepted it; the Child was christned; it was at *Chelsea*, I take it, at a House, where there was a *China* Shop. It was in the Spring, what Day I can't tell. That he said there was his Wife, my Lord *North* and *Grey*, who stood for the Pretender, and Dutches of *Ormond*, who stood for the Pretender's Wife, the Woman of the House, but she was not within the Room at the Christning.

Mr. *Att. Gen.* Do you remember any thing said by *Laver* about any Declaration, that was drawn?

Mr. *Delafaye*. Mr. *Laver* owned that he had

drawn Heads of a Declaration; and that, when he was going to my Lord *North* and *Grey*'s, he did shew it to Mr. *Lynch* at the *Green Man*, as he was on his Way thither.

Mr. *Serj. Pengelly*. What said he of his recommending Mr. *Lynch* in his Examination?

Mr. *Delafaye*. He spoke of his recommending *Lynch* twice; that Mr. *Lynch* having told him he would seize my Lord *Cadogan*, he did recommend him to my Lord *North* and *Grey*, as a proper Person for that Attempt. The second time that he recommended him, he had proposed carrying *Lynch* to my Lord *North* and *Grey*'s, he having told him that he was a very honest Man, fit to be concerned in an Insurrection; that *Laver* having told *Finch* his Lordship was to be at the Head of the Design, *Lynch* was impatient to wait upon him.

Mr. *Att. Gen.* We shall now prove there were Arms at the Prisoner's House when he was seized. Mr. *Stanyan*, were you at Mr. *Laver*'s House, when he was seized?

Mr. *Stanyan*. Yes.

Mr. *Att. Gen.* Do you know of any Arms there?

Mr. *Stanyan*. Yes.

Mr. *Att. Gen.* Give my Lord and the Jury an Account what Arms?

Mr. *Stanyan*. Just after Mr. *Laver* was seized I came in, he was just got out of his Bed. I observed in the Room, where he lay, there were a Pair of Pistols hung by his Bed-side, and between them a Horse-man's Sword, a riding Sword, and a pretty large Sword; on th' other Side of the Bed next the Chimney a little Case of Pistols, and another Sword hung in another Part of the Room. In the Closet of the same Room we look'd, and I saw two Carbines or Guns, and two Musquetoons or Blunderbusses; seeing so many Arms, I went to handle some of them, upon which he said, have a Care, they are loaded, don't meddle with them; upon that I asked him what he had to do with so many Arms? He answered, you must know my Clerk and I are great Shooters, when we are in the Country. In another Room, looking further, we observed several Moulds for the making of Bullets. There was also a Cartridge-box, and a Number of Cartridges ready made up, as near as I can guess (I did not count them) there were about forty or fifty of them. There was a Gentleman of the Army, and he said they were such Cartridges as were used in the Army.

Mr. *Att. Gen.* Was there any thing relating to these Arms confessed by Mr. *Laver* before the Lords of the Council?

Mr. *Stanyan*. He did not deny it I believe.

Mr. *Att. Gen.* I would ask you whether there was any thing said before the Lords relating to these Arms?

Mr. *Stanyan*. The Lords did ask Mr. *Laver*, what he did with forty or fifty Cartridges ready made up? He said they were made up by *Bowers* the Gunsmith, and that, if there was any Disturbance in the Nation, he should have Occasion for them.

Mr. *Att. Gen.* Mr. *Delafaye*, was you by, when he was asked the Question about these Arms?

Mr. *Delafaye*. Yes; he was asked what he did with so many Cartridges and Arms, and he said they were proper for his Use, if there should be any Disturbance in the Nation.

Col. *Huske* sworn.

Mr. *Att. Gen.* Was you by, when these Arms were seized in Mr. *Layer's* House?

Col. *Huske.* Yes; there were two Cases of Pistols, two Fuzees, and some other Arms, and a Blunderbuss, and two or three Swords; there were about 40 Cartridges ready made up in the usual Manner, as they are made up, when our Soldiers are to charge their Pieces for Expedition in Case of Action.

Mr. *Att. Gen.* How many were there?

Col. *Huske.* About forty.

Mr. *Att. Gen.* Did you see any Moulds for Bullets?

Col. *Huske.* There was a Mould for Musket-balls.

Prisoner. You say I had two Fuzees, will a Musket-ball go into a Fuzee?

Col. *Huske.* I can't tell but it may.

Prisoner. There were 40 Cartridges, which were ready made up, will those Cartridges go into a Fuzee?

Col. *Huske.* These very Cartridges were only fit for the Army.

Mr. *Ketelbey.* These Cartridges were not fit for the Musket?

Col. *Huske.* I did not try them.

Mr. *Ketelbey.* Would they go into a Fuzee?

Col. *Huske.* I don't know.

Mr. *Ketelbey.* According to my Notions, there is a Difference in Bigness between a Fuzee and a Musket, and a Cartridge fit for a Musket will not go into a Fuzee.

Col. *Huske.* A Cartridge, that is fit for a Fuzee, will go into a Musket.

Mr. *Ketelbey.* I believe that, and so it will into a Cannon; therefore I ask whether a Cartridge, that is fitted to a Musket, and proper for the Use of a Soldier going to Battle, whether that Cartridge will fit a Fuzee?

Col. *Huske.* The Bore of a Fuzee may be made as large as that of a Musket.

L. C. *Just.* Those Cartridges, that were there, would they have served for the Fuzee?

Col. *Huske.* I am satisfied that they would serve for the Fuzee, and the smallest Arms there, except the Pistols.

Mr. *Ketelbey.* You say there were two Swords?

Col. *Huske.* Yes, I saw two Swords.

Mr. *Ketelbey.* I believe you never are without two Swords.

Col. *Huske.* I believe I have a dozen, but they belong to my Company.

Prisoner. Were they Horse Swords, or Swords fit to walk with?

Col. *Huske.* I can't tell that.

Mr. *Hungerford.* I think you say, that those Bullets, made into Cartridges were, by the Size of them, intended for the small Arms.

Col. *Huske.* I do believe they would fit the two Fuzees that I saw.

Mr. *Ketelbey.* Did you open any of the Cartridges?

Col. *Huske.* I did, and there was a Ball made up at the End of each Cartridge.

Mr. *Smeybert* sworn.

Mr. *Soll. Gen.* Do you know the Prisoner at the Bar?

Mr. *Smeybert.* Yes, I do.

Mr. *Soll. Gen.* Recollect whether you have seen him at Rome?

Mr. *Smeybert.* Yes, I have.

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Mr. *Soll. Gen.* When?

Mr. *Smeybert.* About a Year and half ago.

Mr. *Soll. Gen.* For how long Time was he there?

Mr. *Smeybert.* I think about a Week or a Fort-night.

Mr. *Soll. Gen.* Did you or the Prisoner leave Rome first?

Mr. *Smeybert.* I left Rome first.

Mrs. *Hay* sworn.

Mr. *Serj. Cheshire.* Did you ever see the Prisoner?

Mrs. *Hay.* Yes.

Mr. *Serj. Cheshire.* Where did you see him?

Mrs. *Hay.* I saw him at Rome.

Mr. *Serj. Cheshire.* When?

Mrs. *Hay.* Last Summer was Twelve-month.

Mr. *Serj. Cheshire.* What Time of the Year was it, as near as you can remember?

Mrs. *Hay.* I can't tell exactly what Time, but it was last Summer was Twelve-month.

Mr. *Serj. Cheshire.* You are sure you saw him there?

Mrs. *Hay.* Yes.

Mr. *Att. Gen.* My Lord, we shall now prove the Prisoner's Escape out of the Messenger's Custody as was open'd before. Call Mr. *Squire.*

Mr. *Squire* sworn.

Mr. *Att. Gen.* Look upon the Prisoner at the Bar, do you know him?

Mr. *Squire.* Yes, I do know him?

Mr. *Att. Gen.* Do you know any thing of his being taken up? Give an Account when it was that he was taken.

Mr. *Squire.* He was taken the Eighteenth Day of September last.

Mr. *Att. Gen.* Whose Custody was he in after he was taken?

Mr. *Squire.* He was in my Custody.

Mr. *Att. Gen.* What became of him afterwards? Did he continue in your Custody?

Mr. *Squire.* No, he made his Escape.

Mr. *Att. Gen.* How long after he had been taken was it that he made his Escape?

Mr. *Squire.* It was the next Day he got out of the Window.

Mr. *Att. Gen.* How high was the Room he got out of?

Mr. *Squire.* It was two Story high, he lifted up the Sash and so got out of the Window.

Mr. *Att. Gen.* Did you pursue him?

Mr. *Squire.* Yes.

Mr. *Att. Gen.* What Account can you give of his being taken again?

Mr. *Squire.* He had not been gone long before I found he had made his Escape, and understanding which Way he went, I immediately pursued him, and I took him in a Lane going towards St. George's Fields.

Mr. *Att. Gen.* What did he say?

Mr. *Squire.* He said he was very sorry to see me; I ask'd him how he could offer to go away from me; and he said, every body else would have done the same in his Condition, and that nobody could blame him for it; and that he believed my Lord *Carteret* would not blame him.

Mr. *Att. Gen.* But why?

Mr. *Squire.* Because he look'd upon himself in such a bad Condition, and so much Danger, he said, nobody could blame him because he was in that Condition.

Prisoner. What Condition? I desire to ask you one Question; Did not I ask you to shew me your Warrant?

Mr. Squire. No, you never ask'd me.

Prisoner. Did not I ask you at my own House?

Mr. Squire. No, you did not.

Prisoner. Did you shew me your Warrant?

Mr. Squire. You did not ask me for it.

Prisoner. Did not I tell you the Reason that I escaped was, because I did not know what Authority you had to detain me?

Mr. Squire. No, you did not.

James Peterfon sworn.

Mr. Att. Gen. Mr. Peterfon, do you know any thing of the Prisoner's Escape?

Peterfon. Mr. Layer was in Custody at my Father's House, in Mr. Squire's House, in a Room up two Pair of Stairs backwards.

Mr. Att. Gen. Do you know any thing of his getting away?

Peterfon. No, I was abroad then.

John Sweete sworn.

Mr. Att. Gen. Look upon the Prisoner at the Bar; do you remember you ever saw him before?

Sweete. Yes, I saw him just going into St. George's Fields.

Mr. Att. Gen. Did any body take him there?

Sweete. I was the first that took him.

Mr. Att. Gen. What did he say to you when you took him?

Sweete. He said, for God's Sake let me go; and said 'twas an Arrest: Why then, and please you, my Lord, my Partner came up, and ask'd him whether it was an Arrest, and he said it was; and then looking about me, I saw another Person coming after us, who was the Messenger: It seems he had broke out of the Messenger's House. And then he clapt his Hand into his Pocket, and pull'd out I believe about forty Guineas, and said, we should take what we would if we would let him go, but we would not.

Anthony Stephens sworn.

Mr. Att. Gen. What did Layer say when he was first taken?

Stephens. We asked him, is it for an Arrest? Yes, says he, it is an Arrest; and when he saw Mr. Squire's Son coming after us, he would give us whatever we pleased to let him go; and more than that, he said they had no Warrant, and he did not know that they could keep him without a Warrant.

Mr. Serj. Pengelly. My Lord, we have gone through our Evidence, and shall rest it here.

Mr. Hungerford. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the Prisoner at the Bar; and after so long an Evidence as hath been given in this Cause, it will best become me to draw the Matter in debate to a single Point, if I can, and thereby to give Ease to your Lordship, the Jury, and the Counsel on both sides. My Lord, the Prisoner is indicted upon the Statute of the 25th of Edward the Third, commonly called the Statute *De Proditionib'*, the Things made, or rather, declared Treason by that Act, are, First, The compassing or imagining the Death of the King,

or of the Prince of Wales. Then the Statute goes on to declare other Things Treason which relate only to the Persons of some of the Royal Family; and then it declares likewise, That it is Treason to levy War against the King, &c. It is not said, That to Design or Contrive to levy War, but actually to levy War only shall be Treason.

This is the Text, this the Law upon which the Gentleman at the Bar must be either saved or condemned. The Treason laid to his Charge is compassing and imagining the Death of the King: The Overt-Acts laid to his Charge are, That he did consult and conspire to levy War.

That he did publish a certain Treasonable Libel, purporting among other Things, a Promise of Reward to his Majesty's faithful Subjects, to rise in Arms and levy War against the King.

That he consulted to put the Pretender upon the Throne.

That he listed Soldiers for him.

And the last Overt-Act is, That he consulted to seize and imprison the King.

My Lord, and you Gentlemen of the Jury, there is no Evidence of any of these Overt-Acts attempted to be given in Evidence against him in *Effex*, save only that of Publishing a Treasonable Libel, which the King's Counsel, in their Evidence, would insinuate to be the Pretender's Declaration. The Evidence of the other Overt-Acts are attempted to be proved in *Middlesex*. And in truth, the greatest Part of the whole Transaction was by the King's own Evidence, proved to be in that County, and I wonder the Indictment was not laid there; but, Gentlemen, the Indictment being laid in *Effex*, if an Act of High Treason is not proved to have been committed by the Prisoner in that County, he must be acquitted.

I might here, my Lord, insist, that an actual levying of War and not design to levy a War, being made Treason by the Statute of Treasons, the publishing a Paper which purports at the utmost but an Intention only to levy War or raise a Rebellion is not Treason, and consequently not a legal Overt-Act within that Statute. This Opinion is warranted by the express Words of the Act of Parliament itself, which is a better Authority than all the Commentators upon it; and it is likewise the Opinion of^a my Lord Chief Justice *Coke*, and my Lord Chief Justice *Hales*; and in Truth, if this be not the true meaning of the Act, one Paragraph, *viz.* That which declares actual levying of War Treason is superfluous and redundant; for what is the Use of making actual levying of War, or a Rebellion a distinct Species of Treason, when the Intention of doing it, according to some modern Doctrines, was High Treason within the first Clause of the Act, *viz.* Imagining the Death of the King. This Opinion likewise seems to be confirmed by two Acts of Parliament, one in^b Queen *Elizabeth's* Time, and one in King *Charles the Second's*, where consulting or intending to levy a War or raise a Rebellion, is made High Treason during the Lives of them two respective Princes, for which Temporary Provision there would be no Reason if the Law were so before. I know what

^a *Coke's Instit. Ch. 1. p. 9, and 10. Hale's Pleas of the Crown, p. 13.*

^b *1 Eliz. Ch. 1. 13 Car. II. Ch.*

hath been said to some Part of this Matter, that the levying of War meant in the Statute of 25 of *Edward the Third*, was not meant of such a Rebellion as was levell'd against the King's Person, Crown, Title, or Government; but of such public Commotions as disturbed the Peace of the Kingdom, as the pulling down of Inclosures, which was the Case in *Queen Elizabeth's* Time, or of pulling down Bawdy-Houses, which was the Case in *Charles the Second's* Time: But to shew how unnatural a Construction of the Words *Lever le Guerre*, it is to say, that it relates only to such riotous Commotions as I have mention'd. Give me leave, my Lord, to make but one Observation: The Statute of Treasons is penned in the *French* of that Age, and the Words of the Statute *Lever le Guerre* against the King, I have here within the Reach, in Court, a Book of very great Note and good Authority, it is the History of *Froissart*, who writes the History of *England, France, and Spain*, from the Year 1326, to the Year 1340, and dedicates his Book to that very King, *viz. Edward the Third*, in whose Reign the Statute of Treasons was made, and in this whole Book, *Lever le Guerre*, is constantly mentioned to denote a public stated War; and in this Sense, it is likewise taken by *Du Fresne* in his *Glossary*, Vol. II. pag. 255. — I only hint this Matter to your Lordship, for I well know what Determinations, my Lords, the Judges have of late Years given upon this Objection; but I humbly hope that there will be no Occasion for an intire Dependence upon this Objection, in this Case, for that I hope it will appear both to your Lordship, and the Jury, that no such Overt-Act, as is said in the Indictment, that is, publishing the Pretender's Declaration at the *Green Man*, is at all proved.

The Evidence given touching that Matter is only by Mr. *Lynch*, and he gives an Account that the Prisoner and he met at *Aldgate*, in order to go to the House of my Lord *North* and *Grey* at or near *Epping*: In the Course of their Journey thither finding themselves too late to be at my Lord *North's* by Dinner; they called in at the *Green Man*, and there got a Beef-Stake: And before it was brought up the Prisoner gave Mr. *Lynch* a Paper, which Mr. *Lynch*, and not the Prisoner, calls the Pretender's Declaration; Mr. *Lynch* reads only one Paragraph in it, whereby, as he says, the Soldier's were tempted to be allured from his Majesty's Service; this is the whole Evidence given touching any Offence committed in the County of *Essex*: For as to any treasonable Discourse between *Aldgate*, and the *Green Man*; they cannot in Justice, and without a particular Proof to that Purpose, be charged upon the Prisoner to be done in *Essex*, a great Part of the Way, *viz. from Aldgate to Bow-Bridge*, being in *Middlesex*, and not in the County of *Essex*.

In the first Place therefore, Gentlemen of the Jury, we hope there is no Evidence to convince you that any such Declaration was published at all; and yet, *Secondly*, If there was a Paper read there, the Paper read was not an Act of High Treason. The Time that the Prisoner and Mr. *Lynch* staid at the *Green Man*, seems to be very short, their Stay was so short that there was no Evidence that their Horses were put up: The Beef-Stake was bespoke before they went into a Room. Mr. *Lynch* came down twice out of the Room; he himself admits once, besides his gaping at

some Persons in the Yard whom he knew, before the Beef-Stake was brought up; and yet, before the Beef-Stake was brought up, this Declaration is pretended to be published: For my part, considering how little Time there was for such a Transaction as this is, I cannot think, there could be any such Thing as that transacted at that Time, the Compass of Time would hardly allow it; whatever was done, is admitted on all Hands, to be done before the Beef-Stake was brought up, and the other Incidents may very well be supposed to take up all the Time betwixt the bespeaking and dishing up the Beef-Stake, so there could be no Time for so solemn an Act as publishing a Declaration to overturn Three Kingdoms. But in the *second* Place, if the Prisoner, which I don't admit, did give Mr. *Lynch* any Paper to read, a Paragraph whereof was to the Purpose Mr. *Lynch* relates; yet such Paper cannot be imputed to the Prisoner as an Act of High Treason, there was but a few Lines of the Paper read, and the rest were not read at all, either by Mr. *Lynch*, or the Prisoner; and I never knew that Part of a Deed or Writing was ever allowed to be given in Evidence, without producing or reading the whole. In the Case of my Lord *Russel*, where the Declaration for Rebellion was assigned as an Act of High-Treason, the whole Declaration was proved to be read, and not a Part only; and yet even that Evidence was upon the Revolution in the first Year of King *William* and *Queen Mary*, look'd upon so imperfect an Evidence of High Treason, that for that, and other Reasons, my Lord *Russel's* Attainder was revers'd; we have a Copy of the Act of Parliament for the Reversal here attested, and we are ready to produce it if your Lordship thinks fit. — Can it be said that the Prisoner giving Mr. *Lynch* a Paper, of which he reads only a few Lines, and then the Prisoner takes it up again, is a publishing of a Treasonable Paper, or in Truth, a publishing of any Paper at all? Declarations for Rebellions are commonly published in public Places, to captivate Multitudes, and not handed from one Man to another when they are expecting a Beef-Stake; there was no appointed or solemn Meeting at the *Green Man*; no Concourse of People there, neither in truth, by Mr. *Lynch's* own Evidence can it be taken to be a real Declaration; for he says, as I remember, in that Paper it was mentioned that the Lord *Cadogan* was in Custody; that Fact is utterly false, his Lordship neither was, nor is so.

I must submit to the Consideration of my Lords the Judges, and the Jury, of how dangerous a Consequence, Constructions of this Nature may prove to be. Before the Statute of Treasons, the People of *England* labour'd under vast Mischiefs by the great Uncertainty there was of what was High Treason, and what was not; the Parliament thereupon, to ease the People of that Perplexity, in the 25th of *Edward the Third*, passed the Law of Treasons; for which the People then paid a great Sum of Money; and for which that Parliament was called Blessed (*Parliamentum beatum*) and now if every Act a Man doth, though perhaps tending to Sedition, shall be interpreted to be an Overt-Act of High Treason, the Subject will labour under the same Inconvenience, and under the same Perplexities, as they were before the Statutes of Treasons; this

this Practice may be so far improved, that if a Man delivers a Seditious Ballad to another to be read, that shall be interpreted an Overt-Act of High Treason, much more if People in their Cups should drink such Healths, as were said to be drunk at my Lord *North* and *Grey's* House; for no Man can deny but that *Bibere est agere*, whatever *Scribere* is: This, my Lord, is all that occurs to me at present concerning the Charge of High Treason upon the Prisoner within the County of *Essex*; and if there be no Charge made out against him there, the Evidence given against him, of what he did or said elsewhere must go for nothing.

Mr. *Ketelbey*. May it please your Lordship, and you Gentlemen of the Jury, I likewise appear here as Counsel for the Prisoner, who having pleaded Not Guilty to this Indictment, I must suppose him so 'till he be found otherwise; and 'tis my Duty (being assigned for him by the Court) to lay the Circumstances of his Case before you in as true and clear a Light as I can, and to offer to your Consideration what may occur proper for his Defence, and legally conduce to the clearing his Innocence.

The Charge laid to him is of the highest Nature that the Laws of *England* know; *Crimen lesæ Majestatis*; no less than the conspiring and compassing the Death of the King; and as it is an Offence, not capable of any Aggravation, not to be alleviated by any thing that we can offer, we humbly hope your Lordship, and the Gentlemen of the Jury, will expect the strongest Evidence the Nature of the Case admits, such as the Law requires, and is in some Measure proportionable to the Greatness of the Offence.

The Act of Parliament upon which the Prisoner stands indicted, is the 25th of *Edward III*. It is there said, to make him attainted there must be an Overt-Act, and that Overt-Act must be fully and clearly proved: *Et de ceo provablement soit atteint de Overt Fait*.

My Lord *Coke*, in his third Institutes, Fol. 12. in his Comment upon that Act, explains the Word (*Provablement*) by saying it must be upon direct and manifest Proof, not upon conjectural Presumption, or Inference, or Strains of Wit; It must not be *commune Argumentum*.

Since that Time, several other Statutes have been made in Favour of the Subject, and for regulating Trials in Cases of High-Treason: Particularly the late Statute 7mo *Gulielmi 3tii*, which enacts, that there must be two lawful Witnesses to the same Overt-Act; or one of them to one, and the other of them to another Overt-Act of the same Species of Treason: And that no Evidence shall be admitted or given of any Overt-Act that is not expressly laid in the Indictment.

I think we need not, at present, enter into the whole of the Case, or trouble the Court with a long Detail of Circumstances and many Witnesses; but rather chuse to leave that on the Foot Mr. *Hungerford* hath put it for your Lordship's Consideration.

It must be admitted to us, that if the Prisoner is not Guilty of an Overt-Act, legally proved to be committed in the County of *Essex*, where the Species of Treason and all the Overt-Acts in the Indictment are laid; though all the other Facts in *Middlesex*, or at *Rome*, or any where else, should be never so clearly made out, yet they do fail upon this Indictment, and the Prisoner must be acquitted.

What have they to charge him with such an Overt-Act? Nothing, but the single Evidence of *Lynch*! He is the only Person that speaks to this Point. — He says, that they set out from *Aldgate* in Order to ride to my Lord *North* and *Grey's*, and alighted at the *Green Man*; that what Discourse passed between them there was before Dinner: He owns he went down Stairs twice before Dinner, and spent some time in looking out of the Window, to see some Persons with whom he was acquainted, and when the Dinner (which was soon got ready) was brought up, Mr. *Layer's* Servant came and waited, and no Discourse pass'd there during that time; he tells you, that Mr. *Layer* pull'd a Paper out of his Pocket, and shew'd it to the Witnesses, who read Part of it, and that it contain'd treasonable Matter, as laid in the Indictment: This is the Substance of what *Lynch* swears, I took it, as well as I could, in Writing from his Mouth.

Now my Lord, Is this sufficient to convict this Gentleman of committing an Overt-Act of High-Treason in *Essex*? A bare pulling a Paper out of his Pocket, and giving it him to read, where such and such a thing is set forth, as by him is call'd a treasonable Declaration!

My Lord, if he had pull'd out of his Pocket the most treasonable Paper that ever was invented, is it any more than publishing a Libel? Is that an Overt-Act of Treason? I will suppose it a Copy of the Pretender's Declaration, or an Original, such a one as was burnt by the Sheriffs of *London* two Days ago: If a Man had that, and pull'd it out of his Pocket, and gave it to another to read, is this High Treason? I dare say, if any such Person falls into Mr. *Attorney's* Hands, he, that always does his Duty to the Crown as he ought, will go no higher than an Information for publishing a Libel; and all this, my Lord, is upon a Supposition that the Facts are true which have been sworn by *Lynch*: But on the other Hand, there are so many unaccountable Circumstances in the Relation, that an Affair of that Consequence should be transacted in such a Place; in so short a time; upon such an accidental Bait; when one of the Conspirators was either gazing at the Window, or running up or down Stairs the greatest Part of the while, and other Persons were continually going backwards and forwards into the Room, or within hearing of every Word that pass'd there, we think it carries with it such an Air of Improbability, that no reasonable Man can give Credit to it, much less, convict a Person of so great a Crime, upon such Evidence.

But suppose what pass'd at the *Green Man* (which I am very far from admitting) shou'd be adjudged an Overt-Act of High Treason: How is it prov'd? Only by one Witness; one single Witness to the Fact in this County! The Law requires two Witnesses to convict a Man of High Treason, and that the Jury shou'd be return'd out of that County where the Facts are laid; *De Vicineto*; Because the Law supposes them more conversant of the Circumstances of a Case which arises in their Neighbourhood: But if the Proof of one Overt-Act in the County where 'tis laid, by one Witness, should be sufficient to let them in to prove other Overt-Acts, in distant Countries, or in foreign Kingdoms, these fundamental Rules of Law would be totally subverted: How is it possible for a Man to provide or defend himself

himself against such an Attack? 'Tis springing a Mine upon him! Sudden and unexpected Ruin!

Mr. *Attorney* won't shew any Precedent, where it ever was allowed to be good; that one Witness might prove the Overt-Act in the County where it is laid, and that then they might give Evidence of Overt-Acts committed in any other County: If your Lordship is of Opinion against us in this Particular, then we must beg leave to go farther, and observe upon the rest of the Witnesses they have called; not only to take off their Credit, but to contradict them in a great measure.

There hath been a great deal of other Evidence given by them, but we must submit it to your Lordship, whether it is material his escaping from the Messenger's House, and his being taken in *St. George's Fields*; and the Evidence begins to run thin, or else, I believe they would not have troubled the Court to call those Persons to that which is no ways conducive to the Point now in Judgment; if your Lordship is of Opinion with us, that this is not an Overt-Act in *Effex*, and legally proved, being there is but one Witness, and attended with such Circumstances, then the Matter is at an End; but if your Lordship is of another Opinion, then we must beg leave to go on, and likewise to offer what we have from the Mouth of our Witnesses.

L. C. Just. You must go on, you have mixed your Discourse so that no body knows what to make of it; sometimes though the Facts are clear as to the Overt-Act, you have said as much against, as for, the Improbability and Nature of the thing, in Point of Law, as for the other. I don't see how we shall come at it, unless you go through the Cause.

Mr. *Soll. Gen.* My Lord, in the Observations they have hitherto made, they have mixed Objections as to the Fact, together with some Matters of Law, that seemed to be aimed at, and fixed upon no Point; to which we cannot give any particular Answer; therefore we desire they may go thro' their whole Cause, before we reply to any Part of it.

Mr. *Hungerford.* Since it is your Lordship's Pleasure that we should now go on, I shall proceed to make some Observations upon the rest of the Evidence given against the Prisoner at the Bar out of the County of *Effex*. The Observations which I shall make will be in the general only, for I cannot descend to all the particular Instances of the Evidence given, having not taken proper Notes for that Purpose; for I depended upon the Insufficiency of the Evidence given touching any Act of High-Treason, being committed in *Effex*; and I hoped that from that very Circumstance the Prisoner would have been acquitted; but however I know the learned Gentleman who is joined with me, hath taken very exact Notes of the whole Evidence, and therefore what I omit, I am assured he will abundantly supply.

The second Witness produced against the Prisoner, is Mr. *Plunkett*, whose Evidence I think ought to weight but very little with any Judicature whatsoever; the Prisoner's meeting with this Man was very accidental in *Lincoln's-Imm-Fields*, when they did not know each other, and yet they immediately entered into a Discourse of raising a Rebellion, and overturning two Kingdoms, and that great Secret of knowing who was to be the General; though Mr. *Lynch*, after long Acquain-

tance with the Prisoner, could not get it out of him; yet it was communicated to the eminent Witness Mr. *Plunkett* at the first Interview, with an Addition of mentioning the Names of two very great Men more, the Earl of *Strafford*, and General *Webb*, as well-affected to the Undertaking: But that noble Earl's and Great General's Services to their Country are too well known to be blemished by such an incredible Evidence. After some Discourse betwixt the Prisoner and *Plunkett* about the Undertaking, in which there was an Incident of a Discourse of another Nature, whether the *Lutheran* Religion were not preferable to the *Papists*; and after (as *Plunkett* says) the Prisoner had communicated to him an Intention of invading the Kingdom by some Persons from abroad, the Prisoner, in a very great Fit of Bounty, presents Mr. *Plunkett* with the Sum of half a Crown. This Relation seems to be so improbable, and in Truth, is delivered (or rather stammered out) in so wretched and incoherent a Manner, that I believe that no one that heard it, believes a Word of it.

The Truth is, the Scheme itself seems rather to be a chimerical Plan of some crazy-pated Politicians, than a solid Project of any Men of Sense, or in their Wits. What Undertaking can there be so improbable, as that laid down by this Scheme, viz. Seizing the General of the Army, seizing the *Tower*, seizing the *Exchange*, and seizing the Bank of *England*; and all this with a Force which do not appear to consist of above three or four Men? And for Money, the Sinews of War, there seems to be no great Stock of that; *Plunkett* hath about half a Crown at one Time, and half a Guinea at another; for as to the Guinea *Jeffreys* gave him, it doth not affect the Prisoner. Mr. *Lynch* indeed, who seems to be a Man of greater Weight, upon his frequent repeating himself to be very uneasy, got about seven or eight Guineas. I mention these Things, Gentlemen of the Jury, to shew how improbable this Part of the Evidence is of it self, and we hope to make it appear to you to be the more so, by the Evidence we shall produce to the Reputation of the Witnesses.

As to the Papers of all Kinds produced as Evidence against the Prisoner, we hope he cannot be affected by them, none of them being proved to be of his Hand-Writing; as to the Arms found in the Prisoner's House, they are no more than what Gentlemen usually have for the Defence of their Family, or their Recreations; and as for his being at *Rome*, it is admitted that the Evidence is not given as a Fact of High-Treason; so ought not to be considered as any Ingredient in the Prisoner's Guilt: As to the Prisoner's endeavouring to escape, it is no Evidence of the Prisoner's Guilt; I do not enter into the Consideration, whether the Custody of a Messenger is a legal Prison, or no; but there is hardly a Man that is under any Confinement at all, but would willingly escape into Liberty: Besides, the Prisoner hath suffered already for that Offence, if it be one; he hath been put into Irons, and his attempting to escape is the only Reason that is assigned for it.

There was something spoke in the Introduction to this Accusation which was very remarkable, viz. That it was a Design, if it had took Effect, that would have engaged the whole Nation in Blood, and would have destroyed our civil and religious

religious Rights: We who are of Counsel for the Prisoner, have as great an Abhorrence of a thing of that Nature as any Men can have: But yet we hope, that Mankind is not to be led away with Shew and Colour, but to be guided by Reason and Matters of Fact. Is it possible that People could have been raised into a Rebellion by a Proclamation which was never published, but by Mr. *Lynch's* reading two or three Lines of it? And which, by Mr. *Lynch's* own Evidence (which I forgot to remark before) was imperfect; for he says, that the Prisoner told him, he intended to put it in the Pretender's Name, which it seems was not then done; and therefore what was produced, was at the utmost an imperfect Piece only—— Or that the Prisoner at the Bar, a Man of a Gentleman-like Family indeed, but of no great Figure or Estate in the World, and having no Dependants or numerous Acquaintance, having no Provision of Men, Arms, or Ammunition, should, with the Assistance only of a Bundle of Papers, and of Mr. *Lynch* and *Plunkett*, overturn and enslave this whole Kingdom. God be thanked, the Protestant *British* Government is not so easily to be brought to Destruction: They might much sooner (and yet I think that very difficult too) have borrowed 100,000*l.* of the Bank of *England*, upon the blind Notes which they have produced, sent by Sir *William Ellis*, than have brought about a Revolution, in this Kingdom, with such Materials as they seemed to be possessed of.

These things therefore, my Lord, I urge are Circumstances which render all, or the greatest Part of the Evidence given, very improbable.

I shall close the Whole with two Paragraphs of a Speech made by one of your Lordship's Predecessors, my Lord Chief Justice *Scruggs*, sitting in the same sacred Seat of Justice, where your Lordship now sits; the Words are these:

If once our Courts of Justice come to be aw'd or sway'd by vulgar Noise, and if Judges and Juries should manage themselves so as would best comply with the Humour of the Times, 'tis falsely said that Men are tried for their Lives or Fortunes; they live by Chance, and enjoy what they have as the Wind blows, and with the same Certainty.

Let us pursue the Plot a God's Name, and not baulk any thing where there is Danger or Suspicion upon reasonable Grounds; but not so over-do it, as to shew our Zeal, we will pretend to find what is not; nor stretch one thing beyond what it will bear, to reach another.

Mr. *Ketelbey*. I must beg leave to go on where I left off with *Lynch's* Evidence.

All *Plunkett* saith was in *Middlesex*, but whether he is a credible Witness, you will hear by and by. I cannot but take Notice of one thing which is unaccountable in his Evidence, and renders it impossible to be true: He gives you an Account of a Letter which he receiv'd about ten Weeks ago; he's very positive as to the Words of the Letter, I asked him over and over again to it, he repeats it as such; when we examined him farther, it appears that he could neither write nor read; and how he came to remember so perfectly, when he could not write nor read himself, is very strange. Why, saith he, it was read over to me twice, and we have

heard him repeat it three Times; and I appeal to the Jury, if any one of them can take upon him to repeat it again with that Exactness the Witness pretends to do.

Is it not equally strange, my Lord, that *Jeffreys*, a Man of Letters, the first Time he saw him, an ignorant common Serjeant in the Army, should immediately fall into a Discourse with him about a Plot, and raising a Rebellion, as if he had before been intimate with him? So likewise he saith of *James Plunkett*, the same Day, the first Day he came to him, he came to his own House, and there talked to him about this Affair; as if they had nothing else to talk of but Rebellion against the Government. And I submit it to your Lordship and the Jury, whether it is likely or possible, that any Man of common Sense should subject himself in so dangerous an Affair to another that was an utter Stranger to him: But here he gives you an Account of two several Persons under the same Imprudence, the same Infatuation, *James Plunkett*, and the Nonjuring Parson. Besides, there is a manifest Contradiction in his Evidence; for, at first he said, that the Nonjuring Parson told him his Name was *Jeffreys* the first Time he saw him; and afterwards being cross examined, he said, the first time he knew his Name to be so was upon the Receipt of his Letter, and finding the Name so subscribed.

The next Witnesses gave an Account of the seizing the Papers, and then Mrs. *Mason*. We asked her if those Papers had been seen by any body since she had them, and whether she had shewn them, or any other Papers, to Sir *John Meeres*, or any of his Servants? She positively denies it and saith they were not.

I don't know whether these Papers were seen by any body, for we have not one Word of them in our Briefs, and the very producing them is a Surprize to us; but we shall prove, that this Woman shew'd some Papers to Sir *John Meeres*, or his Man, and that thereupon Notice was given, and the Papers soon after seized. But whether these are they or not, I cannot tell. I observed before upon the Evidence of Mr. *Delafaye*, Mr. *Stanyan* and Mr. *Doyley*; and tho' your Lordship was of Opinion, that it was sufficient to have the Paper called the Scheme read, yet we hope 'tis far from being a conclusive Evidence against the Prisoner, it not being found in his Custody; and we shall produce several who now are, and for many Years have been well acquainted with his Hand-Writing, who will give your Lordship their Thoughts of it. I believe Mr. *Attorney* would not have endeavoured to call Witnesses that it was sign'd by him, and was his own Hand-Writing, if he had not thought it material; yet we hope that when our Witnesses are heard, no Credit will be given by the Jury to it, as a Fact to charge the Prisoner. We shall give you an Account, if my Instructions are true, that *Plunkett*, *Lynch*, and Mrs. *Mason*, who are the Persons chiefly concerned in the Course of this Evidence, are of so scandalous and vile a Character, that no Regard at all is to be had to their Testimony. The most honest Men may mistake in their Evidence, as Mr. *Stanyan* is pleased to say; if he made any Mistakes, I am satisfied they proceeded from a Defect of Memory, and no

* Lord Chief Justice *Scruggs* his Speech the first Day of *Michaëmas Term*, 1679. Printed that Year.

Design, and he is certainly excusable; but as for the other three, *Lynch*, *Plunkett*, and *Mason*, when you shall have heard half what we have against them, I dare say they will not have the least Credit, though they had given a much more probable Evidence than they have done. But surely as it is, their Evidence cannot have sufficient Weight with you, to prevail against the Life, Estate, and Family of the Gentleman here before you, and to fix a perpetual Stain upon him and his Posterity.

Mr. *Hungerford*. My Lord, we shall call our Witnesses, and begin with my Lord *North* and *Grey*.

Mr. *Att. Gen.* We desire to know what it is you call my Lord *North* and *Grey* to prove.

Mr. *Hungerford*. He is to give an Account of what passed at his House, what Mr. *Lynch* said when he was there.

L. C. *Just.* Then you do admit that he was at the *Green Man*, and he went to my Lord *North* and *Grey*'s afterwards.

Mr. *Ketelbey*. There is their Sheet-Anchor.

Mr. *Hungerford*. We admit we were at the *Green Man*, but committed no High-Treason there; your Lordship hath set us right in the Point of timing our Evidence in the Nature of this Transaction; it is proper to begin with the Master of the *Green Man*.

Mr. *Mackreth*, sworn.

Mr. *Hungerford*. Mr. *Mackreth*, pray give my Lord and the Jury an Account, whether Mr. *Layer* or Mr. *Lynch* were at your House last Summer, or how long they were there.

Mr. *Ketelbey*. I think you are Master of the *Green Man*.

Mackreth. Yes, Sir, upon the Oath I have taken, I don't know that Mr. *Layer* was ever at my House.

Mr. *Ketelbey*. Do you remember any thing of the *Saturday* the 25th of *August*?

Mackreth. No, I can't.

Mr. *Ketelbey*. Do you remember whether you were at Home that Day?

Mackreth. I can't tell: If it was on a *Saturday*; on *Saturday* I often attend the Justices at *Ilford*.

Mr. *Ketelbey*. Do you know whether you was at Home that Day?

Mackreth. I cannot tell.

Mr. *Ketelbey*. Do you know Mr. *Layer*?

Mackreth. I never saw him before in my Life, as I know of.

Mr. *Ketelbey*. Was there never any Enquiry after him at your House?

Mackreth. No: There was the Duke of *Grafton* and my Lord *Hallifax* came to my House some time since. The Duke of *Grafton* intimated something of this Affair; the Duke of *Grafton* said to me, you are to be hang'd: Hang'd for what, said I. You and your Friend *Layer* are to be hang'd. Said I, I never saw him in my Life. They walked to and fro in the Hall. What, said they, do you know nothing of this *Layer*? No, I don't, as I hope to be saved, directly nor indirectly.

Mrs. *Mackreth*, sworn.

Mr. *Hungerford*. Pray do you remember any Travellers at your House upon the 25th of *August* last?

Mr. *Ketelbey*. Do you remember when Mr. *Layer* was at your House?

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Mrs. *Mackreth*. I never saw the Gentleman in my Life, as I know of.

Mr. *Ketelbey*. Are you constantly at Home?

Mrs. *Mackreth*. Yes, I have hardly time to go to Church.

Mr. *Ketelbey*. Did you ever hear any thing of a Declaration read?

Mrs. *Mackreth*. I never heard any thing of it in my Days, my Lord.

Mr. *Hungerford*. Pray do you know the Room one Pair of Stairs forward in your House?

Mrs. *Mackreth*. They are all forward, my Lord.

Mr. *Hungerford*. How far is the Bar from the Room?

Mrs. *Mackreth*. My Bar is below Stairs even with the Stair-Case.

Mr. *Hungerford*. If any thing is read there aloud, in any of those Rooms one Pair of Stairs, could you have heard it?

Mrs. *Mackreth*. To be sure, my Lord.

John Paulfreeman, sworn.

Mr. *Hungerford*. Do you remember any thing of this Gentleman being at your Master's House on the 25th of *August* last?

Paulfreeman. I remember nothing at all of it?

Mr. *Hungerford*. You remember nothing of it?

Paulfreeman. No; to my Knowledge I never see him before in my Life.

Mr. *Hungerford*. Do you remember any thing of some People dining there on a Beef-Steak?

Paulfreeman. No; I don't remember any thing of it.

Mr. *Hungerford*. Do you remember this Gentleman's Face again?

Paulfreeman. No; I don't remember that ever I saw him before.

Mr. *Hungerford*. Is my Lord *North* and *Grey* there?

Mr. *Hungerford*. We shall examine my Lord *North* and *Grey* only as to some Passages at his Lordship's House, and chiefly as to the Character of this *Lynch*, and what a Character he gave of himself; generally, a Man will give a good Character of himself, but he did otherwise.

Lord *North* and *Grey*, sworn.

Mr. *Hungerford*. If your Lordship pleases to give my Lord and the Jury what Account you have of one *Lynch*.

Lord *North* and *Grey*. My Lord, that Gentleman that goes by the Name of *Lynch*, I saw twice; he came twice to my House in *Essex*: I little thought that my having seen him twice at my House, should be the Occasion of my coming here in such a manner. The Gentleman was wholly a Stranger to me, and I have never seen him since. As to my self, I cannot say I know any thing of him personally. The only thing I can say, is what he said of himself. It is a little hard for a Man of Honour to betray Conversation, what passed over a Bottle of Wine in Discourse; but since your Lordship requires it, I must submit.

The chief of our Discourse was—He was represented to me as a Stranger newly come to *England*, and had a Mind to see my House and Gardens. He was introduced, and brought there accordingly by Mr. *Layer*, and I received him civilly. In process of Time he told me the History of his Life thus; that he was not a *Spanish*, but an *Irishman*, and, my Lord, I think, educated in the Camp under an Uncle of his.