

He told, that when he was a young Man, he had taken a great many Liberties.

Mr. Serj. *Pengelly*. My Lord, we humbly apprehend, this Evidence is not proper to be given: If they have any particular Questions to ask of my Lord, let the Counsel propose them, or ask my Lord *North* and *Grey* to the Character of Mr. *Lynch* in general: But thus to give an Account (by way of Repetition of a Discourse between Lord *North* and *Grey* and Mr. *Lynch*) where he was born, and where he was bred up, and to give a History of particular Facts, is what they ought not to do.

Lord *North* and *Grey*. I am glad to be interrupted by that worthy Gentleman. I only desire to know to what Points you would be pleased to ask me.

L. C. Just. Mr. *Hungerford*, you know what the Rule of Practice and Evidence is, when objections are made to the Credit and Reputation of the Witness; you can't charge him with particular Offences: For if that were to be allowed, it would be impossible for a Man to defend himself. You are not to examine to the particular Facts to charge the Reputation of any Witness; but only in general you are to ask what his Character and Reputation is.

Mr. *Hungerford*. My Lord *North* and *Grey* is an entire Stranger to him; but he was only going to tell you what Account *Lynch* gave of himself.

L. C. Just. That is very well. Consider, if that is not the same as if you were to charge him with particular Facts. You say, he himself, when he was with that noble Lord at his House, gave a Character of himself much to his Disadvantage. It is impossible for him in such a Case to give an Answer to it; therefore by the Rule of Evidence you cannot do it.

Mr. *Ketelbey*. If that noble Lord was going to give any Character of him which he heard from other Persons it might alter the Case. But surely when the Character he gives of him is grounded upon what he said of himself, is not that much stronger than the Hearsay of others, the Talk of Strangers? The Character he had of this Person is from himself; therefore we hope he shall give it in Evidence.

Mr. *Hungerford*. If they won't let this noble Lord enter into a Relation of what Character this *Lynch* gave of himself, we cannot help it.

L. C. Just. You know, if there be any Objections to him, to his general Character, he can answer them: But if Objections are grounded on particular Charges of his being a base, an infamous and an ill Man, not having any Notice of this, it is impossible for him to defend himself.

If you will ask my Lord *North* and *Grey* what general Character he gave of himself, you may.

Mr. *Hungerford*. If my Brief be true, the whole ten Commandments have been broken by him.

L. C. Just. Very well; and so you charge him with the Breach of the ten Commandments, and he must let it go for Fact, because he cannot have an Opportunity of defending himself.

Mr. *Ketelbey*. What Character in general did he give of himself to your Lordship?

Lord *North* and *Grey*. I don't know how to answer it, as to his giving a general Character of himself. Thus much I must say, I saw him twice. The first time he was brought down by the Gentleman at the Bar; the second time he came, he was ill received; and I ordered it should be told him, that

in case he designed to stay there, that I had no Room or any Lodging for him. As to particular Things, I don't care to speak of them. I should be very sorry to say it when it was said in my Company, and under my Roof.

Mr. *Hungerford*. We will not press it any farther.

Lord *North* and *Grey*. I must beg your Lordship's leave, if the Gentlemen have no farther to say to me, and your Lordship have no farther Commands, that I may return to my Prison.

Mr. *Hungerford*. I hope they will make way for my Lord *North* and *Grey* through the Crowd: And, if your Lordship pleases, we will go on with our Evidence.

George Talbot, sworn.

Mr. *Hungerford*. Pray give my Lord and the Jury an Account of what you know of Mr. *Lynch*.—— Mr. *Stephen Lynch*, what Character hath he?

Talbot. Why Sir, the Character I know of him is this, that he is a Man that hath been so extravagant, that he hath brought himself to Necessity by it; kept very infamous Company.

Mr. *Hungerford*. What Character hath he? Hath he the Character of an honest Man?

Talbot. He hath a very indifferent Sort of a Character.

Mr. *Hungerford*. Hath he got a good or a bad Character?

Talbot. The Character I can hear of him is a very bad Character.

Mr. *Ketelbey*. We don't ask you as to the Particulars of his Life and Conversation, but only the General Character he hath, and the Opinion the World hath of him; whether he hath the Character of an honest Man, and is a Person fit to be believed?

Talbot. The Character I have had of him, is, That he is not to be believed.

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

Talbot. I have not seen him these six Years.

Mr. *Att. Gen.* What is your Employment?

Talbot. I am not able to follow any thing now.

Mr. *Att. Gen.* He says he hath not seen him these six Years: How long ago was your Acquaintance with him?

Talbot. I met him at the *Canaries*, when I was coming from thence, which is about six Years ago; I know nothing of him since, but what I have heard of him.

Mr. *Att. Gen.* Have you ever had any Dealings with him?

Talbot. I never had much Dealings with him, what I have had have been very little to my Advantage.

Mr. *Ketelbey*. If Mr. *Attorney* desires the Particulars——

Mr. *Hungerford*. We conform ourselves to your Lordship's Rule, to ask only to the general Character of the Man: But if Mr. *Attorney* will enter into Particulars, we will join Issue with him, and go into that Method too.

Mr. *Att. Gen.* I asked him how long he had known him, he says he had not seen him these six Years.

Mr. *Ketelbey*. Have you had a Character of him?

Talbot. The worst I could ever hear of any Person; I know nothing of my self, but what I have heard from others.

Mr. *Winckman*,

Mr. *Winchman* sworn.

Mr. *Hungerford*. Pray give my Lord and the Jury an Account of what you know of this *Stephen Lynch*?

Winchman. I knew this Gentleman fourteen Years ago, in the Island of the *Canaries*, there he kept an *Irish* Gentleman Company, one *Wilson*; he was then well-belov'd by every Body: The Gentleman took him into his Company, and afterwards he grew extravagant, and the Gentleman turn'd him out of his Company.

Mr. *Hungerford*. Is he accounted an honest Man or a Knave?

Winchman. I will not trust him for any Thing.

Mr. *Hungerford*. You say you won't trust him for any Thing?

Winchman. No.

Mr. *Hungerford*. The wiser you.

Mr. *Ketelbey*. Is he a Man to be credited? can you believe what he says?

Winchman. I think I would not believe him.

Mr. *Ketelbey*. You are right.

James Darcy sworn.

Mr. *Ketelbey*. How long have you known Mr. *Stephen Lynch*?

Darcy. About a Twelve-month.

Mr. *Ketelbey*. I dont ask you as to his particular Life and Conversation, but in general what is his Character, is he a Man to be believed or credited?

Darcy. I don't take it that he is.

Mr. *Att. Gen*. Where did you know him?

Darcy. I first knew him last Winter in *London*?

Mr. *Hungerford*. Is Mr. *George Fitzgerald* there? My Lord, here is a Complaint made that the Witnesses can't be let in.

L. C. J.ust. They must be let in.

Mr. *Soll. Gen.* Who made the Complaint?

Mr. *Hungerford*. A Gentleman here in Court.

Mr. *Soll. Gen.* It is the Business of your Solicitors to take care that way be made for your Witnesses.

Mr. *Hungerford*. It is not the Business of your Witnesses to stop the Passage.

Mr. *Soll. Gen.* They don't stop the Passage.

Mr. *Hungerford*. No; what is your busy Colonel there [pointing to Col. *Huske*] a doing?

Mr. *Serj. Cbesbire*. We must stay here half an Hour for every Witness.

Mr. *Fitzgerald* did not appear, then Mr. *John Blake* was sworn.

Mr. *Hungerford*. Mr. *Blake*, do you know *Stephen Lynch*?

Blake. Yes, Sir.

Mr. *Hungerford*. Pray give my Lord and the Jury an Account of him, whether he is a Person to be believ'd or not.

Blake. I heard a very ill Character of him about six Years ago. I have heard that he married two Wives.

Mr. *Hungerford*. Is he to be believed or no?

Blake. I know nothing but by hearsay, I believe he is not to be believed, because I have heard such a base Character of him.

Collins sworn.

Mr. *Hungerford*. Will you give my Lord and the Jury an Account of what you know of *Stephen Lynch*.

Collins. Sir I never exchanged a Word with him.

Mr. *Hungerford*. What Character hath he?

Collins. A very infamous Character. I know him by Eye-sight only, I have seen him upon the Exchange of *London*.

Prisoner. Is he a Person to be credited or not?

Collins. No, I believe not.

Mr. *French* sworn.

Mr. *Hungerford*. Do you know *Stephen Lynch*?

French. I know him by Eye-sight.

Mr. *Hungerford*. What Character hath he? is he a Person to be believ'd upon his Oath?

French. I don't think he is.

Mr. *Hungerford*. How long have you known him?

French. Six or eight Months.

Mr. *Kelly* and Mr. *Blake* sworn.

Mr. *Ketelbey*. Mr. *Kelley*, how long have you known *Stephen Lynch*?

Kelley. I believe I have known him since the beginning or middle of *April* last.

Mr. *Ketelbey*. What is his Character, is it an honourable Character?

Kelley. I never heard any give him a Character that was not very vile.

Mr. *Ketelbey*. Mr. *Blake*, how long have you known *Stephen Lynch*?

Blake. Sir, I never had any Acquaintance with him, but I have heard he hath a vile Character.

Mr. *Hungerford*. Have you had any Discourse about this Trial, have you heard any thing said by *Lynch* himself, about the Matter that is now in Judgment before this Court?

Blake. There was one Mr. *French*, a particular Acquaintance with *Lynch*; I met Mr. *French*, hearing he was of the same Inn with me, (I belong to the Middle Temple) and he told me he wanted Money.

Mr. *Soll. Gen.* You know what he told you is not Evidence.

Blake. Saith he, there is one Mr. *Lynch* owes me a good deal of Money, and I want to go and see him, and I have no mind to go there by myself. Next Day I consented to go along with him, as thinking there could be no Danger in that: When we came to him, I suspect, says Mr. *Lynch*, that you come for some Money that I owe you. Upon that, he desired him to sit down, and told the Gentleman he was sorry he had disappointed him. Then he begun to talk of my Lord *North* and *Grey*, and my Lord *Orrery*, and Mr. *Layer* I believe I shall hang him; but as to my Lord *North* and *Grey*, and my Lord *Orrery*, I know nothing of them: I know nothing more of Mr. *Layer*, but what I had from him himself. Some Words pass'd between him and me, and talking of my Lord *Townsbend*, he said my Lord *Townsbend* was of a morose Temper, but my Lord *Carteret* was of a better Temper.

Mr. *Ketelbey*. Speak to the Purpose; I desire to know what you can say of Mr. *Lynch*'s Character?

Blake. I don't know any thing of *Lynch*, but that he is of an infamous Character.

Mr. *Ketelbey*. What did he say of Mr. *Layer*?

Blake. He said he would hang him.

Mr. *Ketelbey*. Did he say any thing about the villainy of the Plot, or why or how far he thought it his Duty to discover such Villany?

Blake. No, I don't know of any such thing. I heard him say, my Circumstances are very

poor; and the Motive that induc'd him to do this, was to save the Lives of a thousand People.

Mr. *Hungerford*. Did he speak any thing of getting Money?

Blake. No, I can't say any such thing.

L. C. *Just*. That is not a fair Question.

Blake. I can inform your Lordship more: Saith he, I was forced to do this; but if I had got off from this Affair; I would fight any dozen People in *London* to come off from it.

Mr. *Soll. Gen*. Where do you live, Sir? Do you live in the Middle Temple?

Blake. No; I live at Mrs. *Ireland's* in *Portugal-Street*.

Mr. *Hungerford*. In the Conversation you had with *Lynch*, was there talk of any Money he was to have?

Mr. *Soll. Gen*. You ask'd him that Question before, and was told it was not a fair Question.

Mr. *Hungerford*. I think I did not. Mr. *Darcy*, what do you know more of Mr. *Lynch*?

Darcy. Sir, I went to see Mr. *Lynch* on Account of some Money which I lent him, and when he was taken up in *Manchester-Court* I went to see him; there he received me civilly, I took him aside and ask'd him for my Money. I told him so freely, and asked him how he got Money and several fine Clothes which he had; he told me a Lady us'd to come twice or thrice a Week to visit him, and this Lady was the Mistress or Daughter of one of the Chief Ministers of *England*; he said this Woman ———

L. C. *Just*. You must not put him in this way.

Mr. *Ketelbey*. Mr. *Blake*, have you given an Account of the Character of this *Lynch*? I only ask you the general Character.

Blake. I have told you already.

Prisoner. I have two or three more to the same Purpose.

Terry sworn.

Prisoner. How long have you known *Lynch*?

Terry. Seven Years.

Prisoner. Hath he the Character of an honest Man?

Terry. He hath the Character of being a loose young Fellow; that is all I know of him.

Prisoner. Is his Character good or bad?

Terry. His Character is loose.

Mr. *Hamilton* sworn.

Prisoner. Do you know this *Stephen Lynch*?

Hamilton. Yes.

Prisoner. What Character is he of; is he to be believed?

Hamilton. No, I believe not; I was cautious of keeping him Company; I believe him to be of a vile infamous Character, that will do or swear any thing.

Mr. *Hungerford*. We leave the Character of this *Lynch* here, with the Weight of the Blemishes charg'd upon him by our Witnesses, to the Consideration of the Jury.

There is another of the Witnesses, Mr. *Plunkett*, to whose Character we shall likewise examine. We shall call a Witness or two to that matter, and then we shall close.

Mr. *Thomas Brown* sworn.

Mr. *Ketelbey*. Do you know *Plunkett*?

Brown. Yes, I have known him these ten Years.

Mr. *Ketelbey*. What is his general Character?

Brown. He hath but an indifferent Character.

Mr. *Ketelbey*. Is he a Man to be believ'd?

Brown. No, my Lord, I don't believe he is.

Mr. *Keating* sworn.

Mr. *Ketelbey*. Have you known Mr. *Plunkett*, and how long?

Keating. I never had any Knowledge of him before the beginning of *July* last.

Mr. *Ketelbey*. What Character and Reputation hath he? Hath he a good or an ill Character?

Keating. I will tell you: About the Beginning of *July* last a Man that owed me some Money on a Note of his Hand ———

Mr. *Soll. Gen*. My Lord, we must oppose the going into Particulars; they know they are confined to examine as to his general Character only.

Mr. *Hungerford*. But if the Gentleman will follow some of your Examples, and introduce himself by Prefaces, we can't help it.

L. C. *Just*. To a general Question you must give a general Answer.

Keating. The Knowledge I have had of him, I never knew any thing tolerable in his favour; I never heard a good Character of him.

Mr. *Ketelbey*. Did you ever hear a bad one?

Keating. Yes, a very bad one, that he was a drunken idle Fellow, always kept Company with other Women.

Mr. *Ketelbey*. And from the Character you have had of him, do you think there is any credit to be given to him?

Keating. No, I don't think there is.

Mr. *Hungerford*. My Lord, here we produce a Man of Quality, Sir *Daniel O Carroll*!

Sir *Daniel O Carroll* sworn.

Mr. *Hungerford*. Do you know *Plunkett*?

Sir *Daniel*. Yes, Sir, I do.

Mr. *Hungerford*. Pray what is his general Character?

Sir *Daniel*. I can give no good one of him; for it is a mighty bad Character he hath; he caus'd his Colonel to be brought to Town to be examin'd ———

Mr. *Ketelbey*. I only ask you in general; don't enter into the Particulars: I only ask in general, from the Character he hath in the World, do you look upon him as a competent Witness to be believ'd against another Man.

Sir *Daniel*. I would not take his Evidence to hang a Dog.

Mr. *Hungerford*. And here he attempts to hang a Protestant!

Mr. *Thomas Spelman*.

Mr. *Ketelbey*. Do you know this *Plunkett*, and how long have you known him?

Spelman. I have known him seven or eight Years.

Mr. *Ketelbey*. What is his general Character in his Life and Conversation?

Spelman. I never knew any ill done by him.

Mr. *Ketelbey*. What is his Character?

Spelman. I can't give any Character of a Man I don't know. All I know of him, is about a Dispute between him and Sir *Daniel Carroll* about a Horse, and his desiring the Lawyer to sue Sir *Daniel*.

Mr. *Hungerford*. Did he not say something before that?

Spelman. He said, the Lawyer he employ'd would do him Justice.

Mr. *Att;*

Mr. *Att. Gen.* You say you don't know any ill Character of him.

Spelman. No, I don't.

Edward Barnwell sworn.

Mr. *Hungerford.* Do you know this *Plunkett*, what is his Character?

Barnwell. Pray let me tell you, I have been examin'd twice upon this Account. The first time that I brought *Plunkett* to be acquainted with Mr. *Layer*, Mr. *Layer's* Man brought me word and said, Mr. *Layer* had his Goods seized wrongfully; upon that I sent *Plunkett* to the *Savoy*, to have two Soldiers from thence; and I said, go to Mr. *Layer's* House, there are some Bailiffs that have wrongfully seized his Goods, you must go and turn them out. He did go with the Soldiers, and turned the Bailiffs out of the House; upon which Mr. *Layer* gave him half a Crown: After this Mr. *Plunkett* had no Friend but me; and he came and prefs'd me, and desired me to apply to Sir *Daniel Carroll*, for some Money he said he owed him for a Horse. I told him I thought it was wrong to prefs Sir *Daniel* upon that Account.

Then about eight Months ago he came to me, and said he had met Mr. *Layer* in *Lincoln's-Inn-Fields*, and that Mr. *Layer* did not know him; I told him, says he, I am one of those that serv'd him at such a time, and that he had given me half a Crown, and that then Mr. *Layer* remember'd him. This is all I know; I'm sworn, and will tell the Truth.

Mr. *Hungerford.* Is he a Man as may be believ'd, even upon his Oath, or not?

Barnwell. I must tell you, that I found him in so many Mistakes about his own Wife, that, by God, I would not take his Word for a Half-penny.

Mr. *Hungerford.* This contradicts what Mr. *Plunkett* says pass'd between him and Mr. *Layer* in *Lincoln's-Inn-Fields*, with respect to the giving him Half a Crown, it seems to be for former Service.

L. C. Just. How doth it? I'm to learn again. *Plunkett* swore, that he came with him under a Gate-way, and there, after he had talk'd with him, he gave him Half a Crown. This Gentleman owns he gave it to him for the Service he had done at some distance of Time before.

Mr. *Hungerford.* Go on, but don't swear by God any more.

Barnwell. I am a Soldier, a Man of Honour, of eighty Years of Age, and would not do an ill thing for the World.

Gentlemen, as I have been sent for by the Ministry, and examin'd in the Council, it hath been said, Mr. *Plunkett* hath made me write a Letter to his own Captain; and these Men were obliged to give in Bail, and he would pay for the Charges.

Mr. *Ketelbey.* What did Mr. *Plunkett* say to you, in relation to what pass'd between you and Mr. *Layer*?

Barnwell. He told me Mr. *Layer* gave him Half a Crown, in kindness for the Service he had formerly done him, in turning the Officers out of his House.

Mr. *Matthew Phylips* sworn.

Prisoner. Do you know *Plunkett*?

Phylips. Yes.

Prisoner. What Character hath he?

Phylips. I think, by what I have known by him, he is not to be believ'd.

Prisoner. Is that his general Character?

Phylips. It is, that every body gives him that knows him.

Alexander Phylips sworn.

Mr. *Ketelbey.* Do you know *Plunkett*?

Al. Phylips. Yes.

Mr. *Ketelbey.* How long have you known him?

Al. Phylips. I have known him about eleven Weeks.

Mr. *Ketelbey.* What Character hath he?

L. C. Just. I never heard the like; when you give the Character of a Man, you give that Character by Men that have not known him above eleven or twelve Weeks.

Mr. *Hungerford.* Have you ever had any Dealings with him?

Phylips. No, not I, but my Uncle hath.

L. C. Just. Most of your Witnesses have known him but a little time, seven Weeks, eight Weeks, eleven Weeks, &c. It would almost make a Man suspect, that some People have been set up on purpose to give an ill Character of these People on this Occasion. To talk of seven or eight Weeks Acquaintance?

Mr. *Hungerford.* That Man is crouded in I don't know how, but Sir *Daniel Carroll* is tumbled about and cannot get out; Sir *Daniel* is a Gentleman of Merit, and as such hath been distinguish'd by the Government, and ought to be treated a little better.

Patrick Mabone sworn.

Mr. *Ketelbey.* What Character hath Mr. *Plunkett*?

Mabone. I have known Mr. *Plunkett* several Years, and that he was an idle broken Man, and a great Liar, and not to be believ'd.

Mr. *Hungerford.* He would lye before and behind, I think you say?

Mabone. Yes, he did.

Mr. *Ketelbey.* Do you think he is to be credited, if he comes to give Testimony against a Person?

Mabone. Upon my Word I think he is not, by what he told me; because I have found him to lye backwards and forwards.

Mrs. *Child* sworn.

Mr. *Ketelbey.* Mrs. *Child*, pray have you had any Discourse lately with Mr. *Plunkett* the Serjeant?

Mrs. *Child.* I never had any Discourse with him but that Day my Husband was confin'd, when I run to look for Mr. *Plunkett's* Wife, and *Plunkett's* Wife was not at home, but was gone to see her Husband at the Messenger's; I went thither; Mr. *Plunkett* hearing I was at the Door, he desired that I should come in. Saith he, Mrs. *Child*, how comes it that your Husband doth not come to see me? You know, says I, upon what Account my Husband absents himself. Why, he is not taken up yet? Yes, says I, he is, and confin'd upon your Account. He takes me by the Hand, he takes me into the Coal-Hole, and take notice what I say to you, and get to your Husband and tell him quickly. And he told me, that he took my Husband to a Lawyer that was going to pay off the 18 l. that Sir *Daniel Carroll* owed him, and the Lawyer would not see him, and so they came away together.

Mr. *Att.*

Mr. *Att. Gen.* She speaks much to the Purpose: For she confirms what Mr. *Plunkett* swore.

Mr. *Ketelbey.* What did *Plunkett* say?

Mrs. *Child.* He said, he was going to get a Settlement for Life.

Mr. *Ketelbey.* What was he to get a Settlement for?

Mrs. *Child.* For what he said of Mr. *Layer*; a Story he had told me of my Husband.

L. C. *Just.* You have called a great many Witnesses to the Disreputation of *Lynch* and *Plunkett*, to say they have generally ill Characters, and are vile infamous Fellows, and not to be believ'd; and there is the Substance of all your Evidence if you stay here till to-morrow morning.

Alice Dunn sworn.

Mr. *Ketelbey.* Do you know what Character *Plunkett* hath?

Alice Dunn. His Character I had from himself, that he liv'd with another Man's Wife.

Mr. *Ketelbey.* Hath he a good or bad Character?

Alice Dunn. He hath a bad Character.

Mr. *Ketelbey.* Is he to be believ'd?

Alice Dunn. No, he is not to be believ'd.

John Richmond sworn.

Mr. *Ketelbey.* Here, *Richmond*, have you seen *Plunkett* lately?

Richmond. No.

Mr. *Ketelbey.* How long is it ago since you saw him?

Richmond. About three Weeks ago and more.

Mr. *Ketelbey.* What Discourse had you with *Plunkett* at that time when you saw him?

Richmond. *Plunkett* ask'd me if I was a Servant of Mr. *Layer's*? I said, I was; and in discourse I ask'd him if he had ever receiv'd any Money of Mr. *Layer* for the Use of the Pretender? He kneeled down upon his Knees, and struck himself upon his Breast, and said, he never had receiv'd any Money of Mr. *Layer* for the Use of the Pretender in his Life-time.

Mr. *Ketelbey.* How long is this? Is it three Weeks?

Richmond. I believe 'tis about six Weeks ago.

Mr. *Ketelbey.* Who was present besides you?

Richmond. There was no body else in the Room.

L. C. *Just.* I would be glad to know, that he never receiv'd any Money for the Use of the Pretender, What do you mean by that?

Richmond. He kneeled down upon his Knees, and said, he wish'd he might be damn'd if ever he received any Money for the Use of the Pretender.

Mr. *Hungerford.* Your Lordship may remember *Plunkett* swore, that *Layer* gave him Half a Crown at one time, and other Money at several other times; and now he solemnly swears upon his bended Knees that he never received any Money for the Use of the Pretender, that is, upon his Account.

L. C. *Just.* When you are drawing Consequences from the Expressions, consider what those Expressions are: He solemnly protested that he never received any Money for the Use of the Pretender. It doth not appear that he did; nor did he say that he did. Well, go on.

Mr. *Ketelbey.* My Lord, we will leave it here as to *Plunkett*: We will beg leave to call some Witnesses as to Mrs. *Mason's* Character.

Mrs. *Clayton* sworn.

Mr. *Ketelbey.* Do you know Mrs. *Mason*, or Mrs. *Buda*, or Mrs. *Herbert*, or what do you call her?

Mrs. *Clayton.* I know her by all those Names: *Buda* is the Name she always used to go by; she hath gone by the Name of *Mason*, and *Bevan*, and *Herbert*.

Mr. *Ketelbey.* What is her Character and Reputation?

Mrs. *Clayton.* Very indifferent.

Mr. *Ketelbey.* Is it bad or good?

Mrs. *Clayton.* Very bad.

Mr. *Ketelbey.* Have you had any talk with her at any time about Sir *John Meers* and his Man *Thomas*?

Mrs. *Clayton.* I have heard her say that —

Mr. *Soll. Gen.* They are asking what the Witness hath heard Mrs. *Mason* say at any time about Sir *John Meers* and his Man, which being to a particular Fact, surely is not a proper Question.

Mr. *Hungerford.* What have you heard her say about any Papers?

Mrs. *Clayton.* I see her have a printed Book; I used to go often where Mrs. *Mason* lodged; and going one Day there, I saw a Gentleman sitting, which was Mr. *Layer*: He had sent a Porter for Mrs. *Mason*. When she came, says he, the Parliament Man I was speaking of is not provided of the 300 *l.* I have a good Mind to lend it him.

Mr. *Hungerford.* Pray how does Mrs. *Mason* get her living?

Mrs. *Clayton.* By deluding young Women, and carrying them about for Money.

Mr. *Hungerford.* That is to say a Bawd; is it not?

Mrs. *Clayton.* Yes.

Mr. *Ketelbey.* Did you hear of any Rewards she was to have by coming here?

Mrs. *Clayton.* She said she was to be paid, or else she would not do it.

L. C. *Just.* What do you mean? You have been so often admonish'd by the Court; but it signifies nothing. You are charging Mrs. *Mason* with being a Bawd, when you ought only to enquire as to her general Character.

Mr. *Ketelbey.* I ask'd you generally the Question, whether she had a good or a bad Character?

Mrs. *Clayton.* I did answer that Question.

L. C. *Just.* At this rate the most innocent Persons may be branded as the most infamous Villains; and it is impossible for them to defend themselves.

Mrs. *Peirce* sworn.

Mr. *Hungerford.* What do you know of this Mrs. *Mason*?

Mrs. *Peirce.* I know I lodg'd in the House where she did lodge.

Mr. *Hungerford.* What Character hath she? a good one or a bad one?

Mrs. *Peirce.* A very indifferent one.

Prisoner. Is she to be believ'd or credited?

Mrs. *Peirce.* No, she is not to be credited.

Mr. *Hungerford.* Had she a good Reputation or an infamous one?

Mrs.

Mrs. Peirce. She hath a bad Reputation.
Mr. Serj. Pengelly. You have seen Mr. Layer there?
Mrs. Peirce. Yes.

Mrs. Wilkinson sworn.

Mr. Ketelbey. Do you know this Mrs. Mason?

Mrs. Wilkinson. I don't know Mrs. Mason; but I know Mrs. Bevan.

Mr. Ketelbey. What Character hath she?

Mrs. Wilkinson. I know her to be a vile Woman, and doth not care what she says, or what she doth.

Mr. Ketelbey. Is that her general Character?

Mrs. Wilkinson. Always since I have known her.

Mr. Ketelbey. How long is that?

Mrs. Wilkinson. About two Years.

Mr. Dyer sworn.

Mr. Ketelbey. Mr. Dyer, do you know Mrs. Mason?

Dyer. I know one Bevan.

Mr. Ketelbey. How long have you known her?

Dyer. She lived with me thirteen or fourteen Years ago.

Mr. Ketelbey. What was her Character then?

Dyer. She robbed my Shop, and I sent her to Bridewell.

Mr. Ketelbey. What is her Character and Reputation now?

L. C. Just. I desire you to forbear this irregular Practice.

Mr. Hungerford. Is this Woman to be credited or not?

Dyer. I know nothing of that.

Mrs. Baskett sworn.

Prisoner. Had you any Discourse with Mrs. Mason?

Mrs. Baskett. No, Sir, I don't know her.

Prisoner. Had you any Discourse with her?

Mrs. Baskett. I don't know her.

Prisoner. Nor Mrs. Buda?

Mrs. Baskett. No, I don't know her.

Prisoner. Nor Mrs. Bevan?

Mrs. Baskett. I don't know her at all.

Prisoner. Do you know Mr. Lynch? Have you seen him lately?

Mrs. Baskett. I saw him last Night.

Prisoner. Did you hear him say what Reward he was to have for swearing against me?

L. C. Just. That must not be.

Prisoner. Did you not hear him say he was to have 500*l.* for swearing against me?

L. C. Just. We have a Compassion for you, and therefore bear this from you, which we would not from any body else.

Mr. Soll. Gen. My Lord, this is not to be endured. The Prisoner turns about to the Jury, and tells them that Lynch said he was to have 500*l.* a Year.

Mr. Hungerford. I believe the Gentleman that sat next to him did not hear him.

Mr. Wearg. My Lord, I did hear him say to the Jury that Lynch said he was to have 500*l.* a Year.

L. C. Just. I must tell you, if you did but consider of what little Consequence it would be

to you, you would not do it: When you thought fit to make him your Confident, carry him to the Green Man with you, and to my Lord North and Grey's; and there he was entertained courteously by him; and do you come now to brand him with being an ill Man?

Prisoner. Lynch says himself that he did not know me till June last; and how could I have so much Friendship for him on so short an Acquaintance?

L. C. Just. Then for this Woman, if you would do Service to yourself, prove the Packets are not under your Seal, and that you did not deliver them to her with your own Hand; prove something of that, and these Proofs will be of more Service to you than ten thousand of these Witnesses.

Prisoner. My Lord, if I was admitted to prove, I can make it appear it is all a Sham and a Forgery.

Mr. Hungerford. It was never proved to be his Seal.

L. C. Just. You are mistaken: The Woman swore it was his Seal, and the Officers swore they were under the Seals when they seized them; and it is proved now to be his Seal, for the Seal is visible.

Prisoner. How do they prove it to be my Seal? My Lord, it is not my Seal. I desire Major Barnwell may be asked as to this Woman's Character.

Maj. Barnwell. I know her: She is a vile Woman; she had like to have cheated me of 1500*l.*

Prisoner. You are only asked as to her Character in general. Is she a Woman to be credited, or not?

Maj. Barnwell. No, she is not.

Mr. Ketelbey. I hope you are satisfied with this general Answer.

Mr. Hungerford. They won't let us go into Particulars; that the Course of Practice won't allow.

Mr. Ketelbey. It is impossible for us to direct the Answers to the Questions.

Mr. Lebatt sworn.

Prisoner. Mr. Lebatt, pray give my Lord and the Jury a general Account of this Mrs. Buda, or Mrs. Mason, whether she ought to be credited or not, or gain Credit.

Lebatt. No: She would take any body's Life away for the Value of a Farthing.

Mr. Hungerford. Now, my Lord, we will close our Evidence as to the Character of these Witnesses against the Prisoner at the Bar: We hope we have proved their Characters to be so infamous, as no Jury upon Earth will believe them. Here is this to be observed—

Prisoner. I beg Pardon; here is a mighty Talk of my Arms: I am so fortunate as to have a Person here that will give you an Account of them, and how they came to be brought thither.

Mr. Bowers sworn.

Mr. Ketelbey. What Trade are you of?

Bowers. A Gunsmith.

Mr. Ketelbey. Did you make any Fuzees?

Prisoner. No; pray let me ask him: Pray give my Lord and the Jury an Account of a Blunderbus, a Fuzee, a Carbine, and Pistols; what

what you know of them. Did not you owe me six Pound on a Note under your Hand ?

Bowers. My Lord, about five or six Months ago, Mr. *Layer* had a Law Suit for me : I sold him a Pair of Pistols, and a little after I sold him another Pair. Mr. *Layer* had them for a Debt : He had in his House two Guns. I promised Mr. *Bennet* a Gun when the Cause was over, instead of Money. I gave him one of those Guns : There is another Gun, and a Musket which Mr. *Layer* had of me.

Mr. *Layer* had a Note of mine for six Pound, which I owed him : I importuned him to take a Carbine for a Man to ride with, and a Blunderbuss for his House, in order to set off this Debt ; and I brought him them when he was going into the Country : I brought him some Powder, and I brought him three Dozen and a half of Cartridges.

Prisoner. Did I order you to bring them, or did you bring them of your own Head ?

Bowers. You bid me bring a dozen and a half, or two dozen ; and I brought three dozen and a half : The Reason was, that I might shorten my own Debt.

Mr. *Raynham*, sworn.

Prisoner. Pray will you give my Lord and the Jury an Account of the Piece of Arms I had of you, and for what Reason ?

Raynham. I went with him to one Mr. *Pritchard's* in *Friday-Street*, there was a Musket in his Compting-House ; he said he would dispose of it : Mr. *Layer* asked him his Price ; he said he would have fifty Shillings for it. Mr. *Layer* said that was too much ; says he, you shall have a Trial of it, and if your Sister carries her Cause against Mr. *Watson*, you shall give me fifty Shillings for it.

Prisoner. Did he put it on me, or did I desire it ?

Raynham. You asked him what it was worth, and whether he would dispose of it ?

Prisoner. Did not he say several times that he wanted to dispose of it, and desired me to take it on those Terms ?

Raynham. Yes : He said on that Condition that your Sister got her Cause you should have it, and gave him fifty Shillings for it.

Mr. *Samuel Steward*, sworn.

Prisoner. Mr. *Steward*, only give my Lord and the Jury an Account whether or no I was not intrusted with Things of great Value, and what Occasion I might have for a few Arms ; whether you don't know of Money put out on Mortgages ?

Steward. Yes, to the Value of thirty or forty thousand Pounds within these two Years.

Prisoner. Don't you think it reasonable as to these Arms, that I should have them in my House to guard my House ?

Steward. I thought it very reasonable.

Mr. *Hungerford.* My Lord, we have done with examining of Witnesses, to the Credit of the Witnesses produced against the Prisoner ; and leave that Matter to the Consideration of the Jury.

Mr. *Ketelbey.* Pray Mr. *Steward*, do you look upon that Paper they call a Scheme, with a *French* Motto upon it. Before you look upon that Paper,

I ask you if you are acquainted with the Hand-writing of Mr. *Layer* ?

Steward. Yes, very well

Mr. *Ketelbey.* How long have you been acquainted with his Hand-writing ?

Steward. Two Years and an half.

Mr. *Ketelbey.* Have you at any time seen him write ?

Steward. Yes, a thousand times.

Mr. *Ketelbey.* Do you believe that to be his Hand ?

Steward. I do not believe it to be his Hand.

Prisoner. Is it like the Character I write ?

Steward. Not at all : You write a shorter Character ; this is a long one.

Mr. *Bennet*, sworn.

Mr. *Ketelbey.* Have you been acquainted with the Hand-writing of Mr. *Layer* ?

Bennet. I have been very well acquainted with the Hand-writing of Mr. *Layer*.

Mr. *Ketelbey.* You have seen him write ?

Bennet. Very often, a thousand and a thousand times.

Mr. *Ketelbey.* Look upon that Paper : See if you believe that to be his Hand-writing ?

Bennet. No, my Lord, I do not believe that to be his Hand-writing : I never saw him write a Hand like it in my Life. I don't think it to be his own Hand-writing at all ; I never saw him write such a Hand as this.

Mr. *Att. Gen.* Shew him that Paper : [which was a Paper seized among the Prisoner's Papers in the great Bundle.] Look on that Paper, and give my Lord and the Jury an Account if you know whose Hand-writing it is.

Bennet. I believe it is my own Hand-writing.

Mr. *Att. Gen.* By whose Direction did you write it ?

Bennet. By Mr. *Layer's* Direction.

Mr. *Att. Gen.* For what Purpose was it writ ?

Bennet. I can't remember.

Mr. *Att. Gen.* Did you write this for Mr. *Layer* ?

Bennet. I believe I did ; but I can't tell what particular Reason I writ it for.

Mr. *Att. Gen.* Now, my Lord, here is one of the Papers that were found in the Bundle, in which the Lists were found, proved to be writ by Mr. *Layer's* Clerk by his Direction.

Mr. *Serj. Cheshire.* He is positive as to its not being his Master's Hand-writing ; yet as to his own, he owns it.

Cl. of the Cr. It is a List of Names.

Mr. *Ketelbey.* Before you read it, what did he say ?

Mr. *Att. Gen.* My Lord, he said it was his Hand.

Cl. of the Cr. It is part of a Jury between *Layer* and one *Watson*.

Mr. *Att. Gen.* This was found amongst his Papers that were sealed up. It was taken in that Bundle where the Lists were.

Mr. *Ketelbey.* We submit it to your Lordship and the Jury : We apprehend we have proved this Scheme not to belong to Mr. *Layer* ; We have called two Witnesses that have known him many Years, and have seen him write a great

great many times, and that they verily believe it not to be his Hand-writing. We don't know how it is possible to leave it on a better Foot. Therefore, my Lord, we shall leave it to your Lordship's Direction, and the Consideration of the Jury.

Mr. *Hungerford*. My Lord, all that I would now observe is, that this Gentleman is indicted for High-Treason. The main of the Charge against him is, that he was concerned in designing to raise an Insurrection. How that appears to be proved, I have spoke to already; but this must be allowed, that whatsoever Desolation and ill Consequences might now have ensu'd, there hath been no Blood shed, no Armies raised, or Invasions attempted: And I think upon such an Evidence that comes not up to the Charge in the Indictment, the Blood of this Gentleman ought not to be reached: At least we humbly hope it shall not.

Prisoner. My Lord, as to *Lynch*, it appears our going down into *Essex* was merely accidental: When we came to the *Green Man*, we did not stay there three Quarters of an Hour; and he says we went down twice in the Time. All this mighty Business, this publishing a Declaration, talking of an Insurrection, which is the Treason, and laid as an Overt-Act in *Essex*; all this was done before Dinner by his own owning. It was not three Quarters of an Hour from the Time we went in, till the Time we came out. We went on to my Lord *North* and *Grey's*; and when he was there, he is asked, if there was any Discourse there about any such Design? He says there was nothing said of it there. Is it possible when such a Design was on foot, he and I alone should go together to the *Green Man*, and thoroughly recapitulate the Affair; which when we came to my Lord *North* and *Grey's* nothing should be said of it?

When we come to *Plunkett*, he saith that he became acquainted with me first of all, by reason of some Goods that were seized in a House in *Queen-street*; that he never saw me till five Years after this in *Lincoln's-Inn-Fields*. *Plunkett* did not at first know me: We looking upon one another, then he renewed his Acquaintance with me, and told me of the former Service he had done me; and thereupon I gave him half a Crown, which he said was given him by me to lift Men into the Pretender's Service. He confessed, as I proved by Major *Barneswell*, that I gave it him for former Service. As to the thirteen Shillings, he was asked whether he did not come to borrow such a Sum of Money of me; he said he did; it was in order to release Major *Barneswell* out of the *Marshalsea*. Being asked whether he was not acquainted with Sir *Daniel Carroll*, and whether there was not some Difference about a Horse in *Spain* between them, he said there was, and that he came to advise with me whether he could recover the Money of *Daniel Carroll*. Is it not natural that the Guinea he talks of might be another Man's Money, that was told him by one *Jefferys* was sent to him by me: He talks to him as to that Guinea, when he comes to be asked whether it was not purely out of Kindness and Charity that I did lend him that Guinea, he doth not deny it, and now would insinuate that it was given him to lift Men for the Pretender. From

the Improbability of the Thing, from his own owning, no Person could believe him. I believe there are ninety-nine out of a hundred that cannot believe one Word that either *Lynch* or *Plunkett* swore.

Then the next Matter they talk of, the produce a Scheme: How hard and difficult was it to give any Evidence that so it should be read; and I humbly apprehend it did not strictly amount to legal Evidence. Mr. *Doyley* he said he knew my Hand fourteen or fifteen Years ago, and that he hath received Letters from me about five Years ago, and hath compared this Scheme with those Letters; and therefore he believes it to be my Hand. When he comes to be asked whether he hath those Letters here with which he compared this Scheme? No, I have them not here: Yet chiefly his Belief was that it was my Hand-writing, by comparing these Letters and this Scheme together. This amounts to nothing more, when it comes strictly to be considered, than only a Similitude of Hands, and surely Similitude of Hand with Submission, is not Proof in criminal Cases: And when it amounts to no more, it ought not to be receiv'd.

Here is, say they, a Circumstance that what *Lynch* and *Plunkett* swore must be true, because here was a Scheme for an Insurrection. In this very Scheme or Paper, as I took Notice of, not one Man is mentioned by Name in it; only Soldiers to be had here, the *Tower* to be seized, the *Bank* and the *Exchange* to be seized, and the World to be turned upside down; but by whom? There is no Time mentioned, there is no Date to it. This Thing if it be such a Scheme, if it had been written by me, which I absolutely deny that it was writ by me, it doth not appear but that it was written several Years ago. When they come to ask those Gentlemen the Under-Secretaries, if this be so remarkable that they lay the whole stress upon this Paper, whether I acknowledged it to be mine, they could not say I owned it to be mine. One of the Lords lays his Finger on a Paper, and saith, Don't you say this about Arms? Which I deny to be so. How comes it that none of those Lords directly offered the Paper to me, and asked me, Is this your Hand-writing? There was my Lord Chancellor, my Lord *Harcourt*, and several other Lords present, that very likely would have asked that Question; but either they did not think it material, or they had not the Paper there, or they did not think it of that Consequence, or they knew I would deny it.

When we come to call Witnesses to this Woman, this vile, this infamous Woman, I could shew you she hath been privy to Forgeries. If it was not to take up your Lordship's Time, I could shew that this is a Contrivance between a Gentleman and her; I am very loth to name him, to carry on such a Paper as this to get Money of the Government.

Here have been five or six Witnesses, whose Credit stands unimpeached, who tell you her Word is not to be taken for a Groat. Another says, he would not hang a Dog on her Evidence. This Scheme must come from her: She says, she had two Bundles of Papers that were delivered by me to her sealed up; and she says this Scheme was amongst them; and she can the better swear it, because she hath set her Mark upon

upon it. One of the Messengers doth not know whether she was in the Room or no. If this Woman is not to be believed, then all the other Evidence relating to this Paper falls to the Ground. It is a Maxim in Reason as well as Law; take away the Foundation, and the Work must fall.

Gentlemen of the Jury, I would have you to take Notice of this Evidence, and not go away with a mistaken Notion, because here is a vast deal of Talk about the Pretender, going to *Rome*, lifting of Soldiers for the Pretender's Service, &c. Your Lordship will tell them all that is nothing, unless they believe an Overt-Act to be done in *Essex*: That is the true State of the Case with humble Submission. Therefore I hope such Evidence as this Evidence of *Lynch* and *Plunkett* (but only to confine it to that of Mr. *Lynch*) hath proved nothing at all against me; and if what he hath sworn doth not affect me, then all the other stands for nothing; that's the true State of the Case. I would not have the Jury think a Man is to be hunted out of his Life by fine Speeches, far-fetched Innuendoes, and the like. You will consider the Character of this Man, that he is not to be believed. I'll leave it to you, and I hope God Almighty will direct you: I ask you no more than Justice. If a Man's Life is to be taken away by such scandalous Evidence as hath appeared against me, there is an End of all your Liberties, your Wives may be taken from you, your Children made Slaves, and all that is valuable to you, your Lives and Estates will be but very precarious.

Mr. *Soll. Gen.* May it please your Lordship and you Gentlemen of the Jury, you have heard a very long Evidence, and it is my Part, as exactly and faithfully as I can, to sum up to you the Substance of it, and to reply to the Objections which have been made on the Behalf of the Prisoner; as well to such Objections as have been made by the Prisoner himself, and by his Counsel for him, as to those which arise from the Evidence that has come out of the Mouths of his Witnesses: And after I have done this, I doubt not but it will appear to your Satisfaction, that the Evidence which has been given for the King stands unanswered, and is a strong Proof of High-Treason against the Prisoner at the Bar.

Gentlemen, the Treason with which the Prisoner stands charged is compassing and imagining the Death of the King. This high Crime consists in the Imagination of the Heart; but it must be proved and made out against the Offender by Acts which he hath done. The Overt-Acts of this Treason alledged to be done by the Prisoner, are, in the first place, consulting and conspiring to levy War against his Majesty: In the next place, publishing a treasonable Declaration; containing Exhortations, Encouragements, and Promises of Rewards, to stir up the King's Subjects to take Arms, and rise in Rebellion against his Majesty; consulting and conspiring to exalt the Pretender to the Crown of this Realm, and put him in Possession of the Government by armed Force, and Troops to be levied for that Purpose; the actual inlisting and retaining of Men to serve in this Rebellion; and, finally, a Conspiracy to seize and imprison

the sacred Person of the King himself.

Gentlemen, the heinous Nature and destructive Tendency of these Facts were fully explained to you in the Opening of the Cause. If they had met with Success, the Event could undoubtedly have been no less than the entire Subversion of our present happy Establishment; and, in consequence of that, the loss of every thing that is dear and valuable to us. For this Reason it was rightly admitted by one of the Counsel for the Prisoner, that the Crime, if proved, is incapable of Aggravation; and being so, although it is impossible to say too much concerning it, yet to say a great deal to you must be unnecessary, because it is equally impossible for the Hearts of *Englishmen* and Protestants to suggest too little to themselves on so important, so moving an Occasion.

The Evidence which has been given consists of several Parts and different Kinds, every one of which conduces to support and corroborate the other, and taken together, they make up the fullest and most convincing Testimony that can be expected in any Case. In the first Place, living Witnesses were produced to you who were privy to the treasonable Acts and Consultations; in the next Place, several Papers have been read to you, some of them written with the Prisoner's own Hand, but all of them belonging to him; and last of all, you have the Confession of the Prisoner himself proved by two Witnesses.

The first Witness was Mr. *Stephen Lynch*, who gives you an Account in what manner he was first introduced to the Prisoner at the Bar. He tells you he came into *England* about *April* last, and had several Meetings with one Dr. *Murphey*, who was his old Acquaintance. At these Meetings they had a Discourse relating to the Pretender, and an Attempt to be made for a general Rising in his Favour; and Dr. *Murphey* having thus disclosed the Secret, told *Lynch* that if he would be of the Party, he would recommend him to a Gentleman who had a considerable Share in the Management of the Affair. *Lynch* took Time to deliberate upon it, and in two or three Days after told *Murphey* he was resolved to be of the Party.

Afterwards in *June* last, Dr. *Murphey* carries *Lynch* to the Prisoner's House, who proposed to them to go to the *Griffin-Tavern* in *Holborne*. Thither they went, and the Prisoner soon came to them; and you have heard in what manner *Murphey* presented *Lynch* to the Prisoner, as being the Gentleman he had before spoke to him of, and what Proposals were made at that Meeting by the Prisoner to *Lynch*. That there was to be an Insurrection in the Kingdom in Favour of the Pretender, in which they should be supported by a great many of the Army and the Guards, as well as by several of the Nobility and Gentry; and that he wanted a fit Person to take one of the first Steps in it by seizing the Person of some General, or other great Man.

It may be proper here to take Notice of an Objection which was made to this, which is the very beginning of our Evidence: That *Lynch* being an absolute Stranger to the Prisoner, it is very extraordinary that the Prisoner should make a Proposal of so dangerous a Nature to him at first Sight. But this is plainly accounted for by

by the Witness who, tells you he was intimately acquainted with Dr. *Murphey*, and *Murphey* was very intimate with and introduced him to the Prisoner, as a Friend, who might be confided in. Agreeably to this you observe that the first thing the Prisoner accosted *Lynch* with, was that he had had such strong Recommendations of *Lynch*, that he was fully satisfied in him.

This Witness goes on to give you an Account that in a Day or two after, in Pursuance of the Directions he had received from the Prisoner, he went to the same Tavern, and sent for the Prisoner. They had some further Conversation about a Rising, and the Inclination which appear'd in the Nation for a Revolution. And now it was that the Prisoner inform'd *Lynch* that there was a great Man at the Head of this Affair, who neither wanted Wit, Courage, or Resolution, and would at a proper time give *Lynch* Orders to effect something considerable. At this Meeting the Prisoner particularly engaged *Lynch* to seize the Earl of *Cadogan*. The Reason of this Attempt the Witness gives you, that it was in order to discourage the King's Party, and animate the Pretender's. And, Gentlemen, the meaning of this is plain and obvious; for if an Insurrection was begun, what could be more likely to create a Confusion in the Army, and dispose the Soldiers to revolt, which appears to have been a main Part of this Design, than the seizing of their General?

There were several other Meetings both before and after the Prisoner's going into the Country, where the Witness told you he had staid sixteen or seventeen Days. At those Meetings they discours'd concerning the Conspiracy; and at one of them it is remarkable the Prisoner told *Lynch*, that if they once made a Beginning here, they shou'd want no Assistance from Abroad. And at last *Lynch* tells you, that he being under Necessities, expressing great Uneasiness at the Delay of the Project, and, as I remember, talking of going beyond Sea, the Prisoner actually advanc'd to him a Sum of Money, no less than eight or ten Guineas at different Times, in order to engage him to stay in *England*, and to assist in the intended Design of a Revolution. This is one Proof of the Overt-Act laid in the Indictment of lifting Men.

As they had consider'd how to dispose of the General, so it appears they did not neglect the Army; for *Lynch* acquaints you, that upon Discourse about that, he ask'd what Encouragement they had from the Army; upon which the Prisoner answer'd, that they had great Encouragement from thence, and several Serjeants and common Soldiers had given them Reason to believe they would join them. *Lynch* being ask'd as to the Time when this Design was to be put in Execution, he told you there was no certain Time fix'd, but the Prisoner inform'd him it was to be at the breaking up of the Camp; and at the same time gave a Reason for it, which is by no Means to be pass'd over, *That they could not have so good Opportunities to talk with the Soldiers (that is, to seduce them from their Duty and Allegiance) whilst they were encamped, as in their Quarters.* Pursuant to these Consultations, Mr. *Layer* afterwards told him 'twould be necessary to take a proper time to view my Lord *Cadogan's* House. The Pretence for go-

ing thither was that *Layer* had a Particular of an Estate which was to be sold to lay before his Lordship. He tells you that in Fact they went to the House, survey'd it, talk'd of the Feasibleness of the Attempt, and at that time they also discours'd of seizing the *Tower*; and the Prisoner told the Witness that the *Tower* would be immediately surrender'd to the Party on the Day the Plot should be put in Execution; for a certain Officer would take upon him to mount the Guard there that Day, who would facilitate the Delivery of it to them. And the People of the *Mint* were at the same time to have Arms put into their Hands.

This is a very remarkable Passage, and falls in with the Scheme which was afterwards produced to you in the Prisoner's Hand-Writing.

The next Meeting where any thing pass'd worth repeating to you, was at the *Queen's-Head-Tavern* in *Great Queen-Street*; and when the Witness came to the Prisoner there, he found one *Wilson* in Company with him, and another Man, who seem'd by his Cloaths to be a Serjeant of the Guards. The Use to be made of that Fact is, that it is a Circumstance which falls in with the written Scheme; for you observ'd that one *George Wilson* is there mention'd as the Person who was to manage the Serjeants, and receive Orders from the principal Officer.

At this Meeting *Lynch* tells you they talk'd over the Business, and drank good Success to the Enterprize. When they parted, he complain'd to the Prisoner of the long Delay. Upon which Mr. *Layer* told him there was a Nobleman at the Head of the Design, who had full Power and Authority from the Pretender (whom he called King) who would lose no fit Opportunity to put it in Execution. He did not name this Nobleman, but told *Lynch* that he should be presented to him in due time, and also receive Orders from him to seize my Lord *Cadogan*.

Gentlemen, it will be very material for you to fix this Circumstance in your Memories, and to connect it with the Evidence which comes afterwards, and what was done in consequence of this Meeting.

For after *Layer* had thus declared that there was a Nobleman at the Head of the Conspiracy, and *Lynch* should be presented to him in due Time, then it follows that upon the twenty-fourth of *August*, the Day the Bishop of *Rocheſter* was committed to the *Tower*, which appears by the Evidence to be the Time of their next Meeting, Mr. *Layer* propos'd to *Lynch* to rick out to take the Air, which was agreed upon for the next Day.

In that Journey the Prisoner persuaded *Lynch* to carry Arms, because as he then declared he had that about him which he wou'd not lose for all the *World*. Upon the Road *Layer* told *Lynch* they were to go to my Lord *North* and *Grey's*, and when they were got pretty near the *Green Man* at *Layton-Stone* in *Essex*, it was thought to be too late to go on to dine at Lord *North* and *Grey's*; and therefore the Prisoner propos'd to stop at the *Green Man* to take a Dinner.

At this Place the Overt-Acts of High Treason committed in *Essex*, which we were so much call'd upon to make out do arise. During their stay here the Witness gives you an Account that they dis-

courted of the whole Project of the Insurrection, the Means of effecting it, the Uneasiness that was in the Nation, and in General all the several matters they had consulted of before; and after they had done this he tells you Mr. *Layer* the Prisoner propos'd to him that detestable and shocking Design of seizing the sacred Person of the King, which he sometimes call'd *sending a strong Guard to take Care of* — at other times *to secure the King's Person*.

He tells you farther, that Mr. *Layer* pull'd out of his Pocket a Manuscript Paper, and deliver'd it to the Witness in part folded down, and he read that Part of it which was left open. That this Paper contain'd a Declaration, with a Recital, that my Lord *Cadogan* was then actually in their Custody: That there were in it Invitations to the People to Rise in Arms and repair to their Party: Encouragements to the Soldiers to Revolt, with an Offer of *Three Guineas* to every Horseman and Serjeant, *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 further Rewards. *Lynch* acquaints you that the Prisoner talk'd of this Declaration being of his own Composing, and that from the Discourse which pass'd between them, and the Appearance of the Paper, he apprehended it to be of the Prisoner's Hand-Writing.

My Lord, after this Declaration had been thus produced, the Prisoner took it back again, put it into his Pocket, and kept it; and therefore the Paper itself being in his Custody, we were properly admitted to prove the Contents of it by Parol Evidence; and I apprehend if we had no further Proof of these Overt-Acts which were done in *Essex*, this alone is fully sufficient to maintain the Indictment to be regularly and properly found in that County.

From the *Green Man* they went on to *Epping*, to my Lord *North* and *Grey's*, with whom it is admitted the Witness was not at all acquainted, and consequently could not of himself have any particular Reason for going thither, but it appears to have been upon the Motion of the Prisoner. When they came to the Lord *North* and *Grey's* House, *Lynch* tells you that the Prisoner introduced him to his Lordship; and this brings back to one's Memory, and makes it impossible not to recollect what the Prisoner had told *Lynch* at their last Meeting, in time next preceding this Journey, that there was a great Man at the Head of this Design, to whom he should be presented in due time.

Gentlemen, after this *Lynch* went a second time to my Lord *North* and *Grey's* at *Epping*, and there he found the Prisoner at the Bar; indeed he does not own to you that any thing pass'd between them relating to this Conspiracy in the Presence of my Lord *North*; but at that Place *Lynch*, in Conversation with Mr. *Layer*, express'd an Uneasiness that the Affair was delay'd, but *Layer* bid him be easy, for it might be done sooner than he expected.

Gentlemen, this is the Substance of the Evidence of what pass'd in *Essex*. But the Witness tells you he had afterwards several Conversations with Mr. *Layer*, and when he express'd his Concernment at the Delay of putting the Design in Execution, *Layer* told him he was so bent upon

the Success of it, that rather than it should fail, he would be a second *Massinello*: This was represented as a ridiculous Expression by one of the Council for the Prisoner: But we have all heard what Confusions were rais'd by that profligate Fellow in the Kingdom of *Naples*; and it is plain, that was the Example the Prisoner refer'd to by this Expression.

Mr. *Lynch* was cross-examin'd by the Counsel for the Prisoner, with as much liberty as they thought fit to use; but I did not observe that his Evidence was at all weaken'd, I think I may say, it was rather confirm'd by it, since it was upon their own Questions he gave his Reasons how *Layer* came to deal so openly and unguardedly with him at first Sight. And those Reasons were strong, for it is not improbable, if *Murphoy* and *Layer* were engag'd in a Treasonable Design, that one of them should have confidence in a third Person on so strong a Recommendation from the other.

The next Witness is *Matthew Plunkett*, and I apprehend, notwithstanding every Thing that hath been said against his Testimony, that it is rather strengthened, as to the Facts sworn by him, than weakened by the Evidence for the Prisoner. He tells you, his first Acquaintance with Mr. *Layer* was about five Years since, and had its Rise upon this Occasion: The Goods in the House where the Prisoner then lodg'd, being taken in Execution, (whether his own Goods or not, is not at all material) one Major *Barnwell*, who has been examined for the Prisoner, was employed to procure Persons to rescue those Goods; *Barnwell* applied to this Witness, who got two Grenadiers, that were let in at a private Door by Mr. *Layer's* Clerk. They did their Work, drove out the Officers, and rescued the Goods; and for this Service Mr. *Layer* rewards them with a Crown and some Brandy. Since that, it appears he has been employed on other Messages between Major *Barnwell* and the Prisoner; and in what manner *Plunkett* is supported in these Circumstances, and by Consequence in the rest of his Testimony, by Major *Barnwell* himself, who has been produced to discredit him, I shall observe when I come to consider the Evidence for the Prisoner.

But the Witness having given you this Account of the Introduction to the Correspondence, tells you, that in *July* last, *James Plunkett* came to him from the Prisoner, enquir'd privately what Acquaintance he had amongst the Soldiers, and desired him to meet the Prisoner at the *Italian Coffee-house* in *Russel-Court*; but he did not meet him there, not having Money nor Inclination to go to a Coffee-house. He gives you an Account, that on the *Sunday* following, returning from St. *Andrew's* Church, as he was going over *Lincoln's-Imm-Fields*, Mr. *Layer* met him. *Plunkett* had forgotten *Layer's* Face, by *Layer* remembered him, and ask'd him if he knew him; to which *Plunkett* answering that he did not, the Prisoner told him his Name, which made him recollect. *Layer* then enquired if *James Plunkett* had not been with the Witness, to desire him to come to the *Italian Coffee-House*, a few Nights before; and having made himself known by these Circumstances, took *Plunkett* into a private Place. There they had a long Conversation, in which *Layer* began with declaring how well assur'd he

was

was of *Plunkett's* good Affections to the *Pretender*, and said, he wanted some old Soldiers, such as *Plunkett* was, that would head and discipline a Mob, for they had other Men enough. *Plunkett* said he did know several old Soldiers, but he hesitated a little about the *Pretender's* being a *Papist*. The Prisoner to take off the Force of that Scruple, answered, *We had as good have a Papist for our King as a Lutheran, I don't know what Difference there is between them* (that is) between a *Popish* King and a *Protestant* one ——— An important Difference! Which I wish with all my Soul, were not too much forgotten, or perhaps, too little valued, by many amongst us, who are not so frank in declaring as the Prisoner.

Mr. *Layer* proceeded to excite the Witnesses to join in his Treason, by a false Representation of the State of the Nation, and particularly of the Injustice, as he call'd it, which was done to old Soldiers who had served abroad; a Topic most likely to captivate an old Serjeant. After this Preface, he inform'd the Witness there was to be an Infurrection, and *Plunkett* asking who was the Promoter of the Design, told him it was my Lord *North* and *Grey*, whom he commended as a fine General; and then he went through a Sort of List of several other Persons of Consideration. The Witness have declared that he knew several Soldiers, said, he could procure five and twenty, whereupon Mr. *Layer* desired he would make a List of their Names, and the Places of their Lodgings, that they might be in Readiness upon Call; and at parting, gave him half a Crown.

After they had thus talk'd of the Conspiracy, there followed a very observable Passage; for the Prisoner declared that the Design had been put in Execution some time ago, if some Person had not discovered it to the *French* Ambassador, who writ of it to the Regent, and so it was notified to the King. However, even this Apprehension of a Discovery did not terrify them, for the Project was to go on. The late Duke of *Ormond* was to come in a single Ship, and General *Dillon* in another, and they were to bring others with them; which you take Notice falls in with the Evidence of *Lynch*, that *Layer* declared to him that they should not want Encouragement or Assistance from abroad, when once they had made a Beginning here.

The next Intercourse between the Prisoner and *Plunkett* was not personal, but by the means of one *Jeffreys*, a Nonjuring Clergyman.

Gentlemen, you observed that the Prisoner told *Plunkett* at parting, that he would send a Messenger to him with Money; and afterwards, at his own House, on the Morning he went out of Town for *Norfolk*, that he had left a Guinea with a Nonjuring Clergyman to give him to do Service with; — And says *Layer*, whilst I am abroad, you may be sure I shall not be idle. Accordingly Mr. *Jeffreys* came within a few Days after, and appears to be that Clergyman, for he said, he came from Mr. *Layer*. He tells you, they discoursed on the old Subject, and *Jeffreys* desired he would get Men in readiness, and said he had several other Places to go to on the same Errand. *Jeffreys* gave the Witness no Money at that Time, but came a second Time, and gave him only half a Guinea, which he said *Layer* had sent him for

his Encouragement. Besides this, he tells you *Layer* gave him a Crown at the *Castle-Tavern* in *Drury-Lane*, expressly to encourage him to lift Men for the *Pretender*. Upon the Prisoner's Return to Town, a Letter was sent by *Jeffreys* to the Witness, to desire him to go to the Prisoner's House; and when he came there, the Prisoner gave him a Guinea with his own Hand. There were several other Conversations, several things said to keep *Plunkett* firm to the Design, and many groundless and malicious Slanders cast by the Prisoner upon his Majesty's Government; and in all those Conversations *Plunkett* tells you, the Prisoner always stil'd the *Pretender* King. 'Twould be tedious particularly to repeat all these things to you; but there is one thing I can't help observing before I go off from this Part of our Evidence, I mean, that *Plunkett* told you more than once, that he was to procure five and twenty old Soldiers for the Service. Now that happens to be exactly the Number, which is assign'd to each of the eight Serjeants in the Prisoner's own Scheme, which was produc'd to you, and is a strong Circumstance in support of this Witness's Testimony.

Gentlemen, I have gone through the Evidence of these Witnesses, and I beg leave to say they are, within the Meaning and Intention of the Law, two Witnesses to prove the High-Treason charg'd upon the Prisoner; and it happens in this Case, that they make out all the particular Overt-Acts alledg'd in the Indictment. Both *Lynch* and *Plunkett* prove repeated Consultations to levy War, to bring in the *Pretender*, and the actual liking of Men; and *Lynch* alone proves the publishing the treasonable Declaration, and that Part of the Design, which no Body can hear without the utmost Indignation, the seizing his Majesty's Person. From henceforth I apprehend I may take it, that the Charge is proved; though in Truth we have gone a great deal farther in order to put the Testimony of these Witnesses beyond all doubt, to deliver them from all possible Objections, and to demonstrate to you the Nature and Extensiveness of this black Conspiracy.

The next Head of Evidence, is that of the Papers; and notwithstanding the *little* Cavils, which have been urged against them, those Papers are fully proved to be the Prisoner's, and by him deliver'd to Mrs. *Mason*. It stands thus; Mrs. *Mason* swears, that the Prisoner deliver'd these Papers to her in two Pacquets, as things of great Consequence, seal'd up with his own Seal, which Seal is now remaining, and appears on the Covers. That she lock'd them up safe in her Trunk till they were seiz'd by the Messengers, and out of that Trunk the Messengers took them. That she set her Mark upon each particular Paper, which appears to be the same Mark which by way of Experiment they would have her to make in Court; and she swears, that these are the very same Papers which the Prisoner deliver'd to her with his own Hands. The two Messengers give you an Account, That they seized these Papers at Mrs. *Mason's* Lodgings, on the twenty ninth Day of *September* last; that they took the two Pacquets out of the Trunk, the same Seal being then upon the Covers, and

and that Mrs. *Mason* was by, and mark'd them in their Presence; that they likewise put their Marks upon, and never deliver'd them out of their Custody till they had so done. Indeed, *Turner* says he left them in the Hands of his Fellow Messenger, *Spear*, during the little Time he went for Mr. *Stanyan*, but *Spear* swears they received no Manner of Alteration during that Space, and upon the whole, they swear them to be the same Papers which they took out of the Trunk.

Upon this Evidence, we apprehend we were intitled to have read the Papers, without giving any farther Account of them.

I did mention to your Lordship the Case of my Lord *Preston*, which was not so strong; for he lying together with *Astton* in the Hold of the Ship, upon the Ballast, a Bundle of Papers lay between them; *Astton* took them up, and put them in his Bosom, and there they were seiz'd; but being found together with my Lord *Preston*, those Papers, though the very Overt-Acts of the Treason laid in the Indictment, were read against him upon that Proof only. Indeed, after they had been read, the King's Counsel, in order to give a farther Strength to one or two particular Papers, entered into a Proof of their being my Lord *Preston*'s own Hand-Writing.

The first Paper we call'd for was the Scheme, a regular Plan of this Conspiracy; and, Gentlemen, in order to prevent any Pretence of Hardship, before we read it, we call'd a Witness to prove this Scheme to be the Prisoner's Hand-Writing: It was Mr. *Doyley*, who swears he verily believes it to be his Hand. He gives you the Reasons of his Belief: That the Prisoner liv'd with him as a Clerk two or three Years, not whilst he was a Boy, but after he had serv'd some Time with another Master, had been us'd to Business, and gain'd a settl'd Hand; and during that Time he frequently saw him write. To support this farther, he tells you, that he had transacted Business for Mr. *Layer*, as his Agent, until about four or five Years ago, and had received several Letters from him, which he was sure were his, because he (Mr. *Doyley*) had done the Business requir'd to be done by those Letters, and Mr. *Layer* had paid him for it; that he had compar'd his Paper call'd *The Scheme*, with those Letters; that the Character of the Letters agreed with what the Prisoner wrote when he was Clerk to him; and the Character of the Scheme with that of the Letters.

But, Gentlemen, this Scheme is an Evidence so considerable in it self, and of that general Consequence to this whole Cause, that we went farther yet, and, not out of any Necessity, but in order to give you abundant Satisfaction, we proved it to be written by the Prisoner from his own Confession. Mr. *Stanyan* told you, That the Prisoner upon his Examination before the Lords of the Committee of Council, where he was present, and took Notes, confess'd this Scheme to be of his Hand-Writing. The Counsel for the Prisoner objected, This Question was not directly ask'd him (*Is this your Hand?*) and consequently he did not say, *It is my Hand*. 'Tis true, that does not appear; can there be no other Evidence of a Confession, but such direct

Questions and Answers. Upon the Examination, the Prisoner was ask'd whether he knew of any Arms lodg'd in *Westminster*? He told the Lords he knew of no Arms being lodg'd. Thereupon this Paper was shew'd him, and he was ask'd, *How came you to write in this Scheme of your own Hand-Writing, that there were Arms lodg'd?* To this he made Answer it was a Mistake, I should have writ Arms that should be lodg'd. Can any Thing be more plain than this? It was so evident that the Paper was written by him, that it was taken for granted, and call'd his Hand-Writing in the very Terms of the Question; probably he had confess'd it before the Clerks were call'd in. If it had not been his Hand, would not the natural Answer have been, why do you ask me about what is written in that Paper? I know nothing of it, it is not my Hand-Writing; but instead of that he admits it without the least Difficulty, and takes upon him to tell the Lords what he intended to have written.

The Gentlemen on the other Side, endeavour'd to avoid the Force of this Evidence, by this ingenious Turn — *I should have written Arms that should be lodg'd* (that is) *If I had writ it, I should have written Arms that should be lodg'd*. But I desire to be inform'd, if he did not write it, how came he to know any thing about it? How could he take upon him to say it was a Mistake? Whose Mistake? He admits it to be his own. So that this Observation comes to nothing, and this Scheme, after all their Objections stands confess'd, as well as prov'd, to be Mr. *Layer*'s Hand-Writing.

Upon the Foundation of all this Proof, which I beg leave to observe does support all the other Papers found in the two Pacquets, the Scheme was read, and when it was read, it required your strictest Attention; for in that Paper appears a regular Design, form'd for the total Destruction of this Government, to be executed in the City of *London*, the Capital of the Kingdom. This, if there was no more, shews a just Foundation for what was lately declared to us in a solemn Manner, That if this Conspiracy had not been happily detected, we should before now have seen that City involv'd in Blood and Confusion, such appears to be the plain Intent of it. The most profligate of the People were to have Arms put into their Hands, in order to subdue and pillage the better Sort.

In the first Place, the *Tower* was to be seiz'd, and a certain Officer expected to be upon the Guard that Day, who should be their Friend, and let in the Party who were to make themselves of that Garrison. The *Royal-Exchange*, being in the Heart of the City, was to be the Head-Quarters of the General; and another Party was to plunder the *Lank*. So that to give us a Taste of the Views of these Conspirators, Spoil and Rapine were not, in the Execution of their Design, to have been accidental, proceeding from the Fury of Action, the common Excuse for such Outrages, but a premeditated avowed Part of the Measures concerted beforehand.

The Artillery was next to have been seiz'd, and a Stratagem is contriv'd to effect it: And

And to crown all, his Majesty himself was to be made their Prisoner: Horrid Resolution! Colour'd indeed with the Name of Securing his Royal Person from the Insults of the Mob; but how thin a Pretence this is, I need not spend Time to explain to you, since the Writer of the Scheme himself has called it but a Pretence.

The Scheme goes on, and the Conspirators being sensible how much our future Hopes, as well as our present Happiness depend on the Protestant Succession in his Majesty's Family, the next Step to be taken, is to get his Royal Highness the Prince into their Power——A Prince at *Richmond*, described under a Cant Name, but the meaning of it is plain. When all this appears, how can the Counsel for the Prisoner object, that there is not sufficient Foundation to accuse their Client directly of compassing the Death of the King? Could this have ended in any thing else? Or can any one dream, that either of those precious Lives, I have now mentioned, could have been preserved in the Hands of such Miscreants?

Gentlemen, having observed thus much, in short, upon the Nature of the Scheme, it will be proper to take Notice to you, that as this Paper, thus fully proved, is of it self a strong Evidence, so it greatly corroborates and supports the Testimony of the two Witnesses, as to every one of the Overt-Acts charged in the Indictment, and tallies with it throughout.

This is true, as to the general Design, but appears most remarkably in some of the particular Facts. The Project laid down in the Scheme for seizing the *Tower* is exactly the same with what *Lynch* told you the Prisoner communicated to him whilst they were viewing my Lord *Cadogan's* House: *That the Officer who should be upon Duty there that Day might be their Friend, and favour the Design.* In like manner, the Circumstance of eight Serjeants being to have in Readiness twenty five Men a-piece, falls in with what *Plunkett* the Serjeant swore, that he was to procure that Number of old Soldiers to engage in the Enterprize.

But there is one Observation arising from a Circumstance of time, which is extremely strong, in Confirmation of the Testimony of the Witnesses, and shews manifestly, that the Account they give, must arise only from their Knowledge of the Truth of the Fact, and could not possibly be fram'd and modell'd to answer these Papers; it is this, that Mr. *Layer*, who was taken up on the Information of *Lynch* and *Plunkett*, was actually in the Custody of a Messenger, and made his Escape on the 19th Day of *September last*; but these Papers, which thus fall in with and support the Facts they swear, were not seized, as the two Messengers acquaint you, till the 29th of that Month; which is near ten Days after.

Gentlemen, one would have thought there had been no Occasion to go any farther——

My Lord, I desire that the Prisoner may not talk to the Jury, whilst I am observing upon the Evidence.

L. C. Just. Sir, you must not do it.

Prisoner. My Lord, I did not speak to the Jury.

Mr. *Hungerford* offers to speak.

L. C. Just. I tell you, Mr. *Hungerford*, it is not right; Mr. *Layer* hath made his Observations to the Jury, and made his Nods, and sometimes I have seen his Lips move.

Prisoner. You can't tell what I said.

Mr. *Soll. Gen.* I saw you turn about to the Jury, and saw your Lips move at the same Time.

My Lord, I desire he may stand up, and look towards the Court, which is his proper Posture.

Gentlemen, I was saying, that after this Scheme had been produced, one would have thought the King's Counsel might safely have rested it here. Can any body doubt of this Treason, and of the Prisoner's Part in it, when he himself hath thought fit to record the Conspiracy with his own Hand. However, we did not leave it here: But in order to give you entire Satisfaction how deeply this Gentleman was engaged, what a large Share he had taken upon him, and how dangerous and extensive this Conspiracy was, we read several other Papers. They consist of Lists of the Names of several Persons, many of them Officers of the Guards, and of the Army; some of them general Lists, others particular: For what Purpose these must have been made up or procured, by a Person engaged in such a Design, is extremely plain.

My Lord, it hath been said with great Justice, That this is not to be so understood, as to bring any Imputation on the Gentlemen named in these Lists. I dare say, that by far the greater Number, if not all of them, are Persons of the utmost Fidelity to his Majesty, and Zeal for his Service. But Men engaged in such Designs, who are plotting to overturn a Government, must weigh and calculate the Strength of that Government, as well as their own. They must know who is to be relied upon, on one Side as well as the other, and consider who are fit to be applied to, and who not; therefore they must take an Account of Persons, concerning whom they have no Hopes, as well as those of whom they have Hopes. Thus it was in my Lord *Preston's* Case; he had got Lists of Ships, and of the King's Officers and Troops: The meaning of it was well understood upon his Trial; the Court understood it, and the Jury understood it, that he had procured them, in order to the better Information of himself and his Accomplices in the Conduct of that Plot.

Gentlemen, in the next Place, several Letters were read to you, which were also found amongst the Papers deposited by the Prisoner with Mrs. *Mason*. You will remember on this Occasion, what Mrs. *Mason* swore, that the Prisoner hath some time gone by the Name of *Fontaine*, and gave Directions to her, that if any Letters came directed to Mr. *Fontaine*, she should take them in, and deliver them to him. She tells you, a Letter did come directed to Mr. *Fontaine*; that she delivered it to the Prisoner, who opened it, read it, and kept it as a Letter for him; which was an express owning of that Name, and several of the Letters now produced are directed by the Name of *Fontaine*,

There was found together with the Letters, a Cypher, that is, a List of feigned Names for Persons and Things, which has been in Part read; and in this Cypher the Cant Expressions made use of in the Letters are contained, and the Persons and Things signified by them decyphered in plain Words. Sir *William Ellis* (a Follower of the Pretender, with whom it appears the Prisoner had settled a Correspondence) is there described by the Name of *Eustace*, and the first Letter that was read, is subscribed with that Name and directed to *James Fountaine, Esq;* In that Letter Sir *William Ellis* tells him *he is entirely of his Opinion as to the Method of carrying on the Manufactory, and the procuring of good Workmen is the first Step to be made. Manufactory* wanted some Explanation, but it is fully cleared up by the Word——*Workmen*, which follows. For look into the Cypher, and *Workmen* stands for *Soldiers*; so that the *Manufactory* must be such as it was fit for *Soldiers* to work in. He goes on and advises him particularly *to get some of the ablest of Mrs. Barbara Smith's. Barbara* in the Cypher means the *Army*; so the Advice amounts to this, That in order to raise a Rebellion, he should seduce some of the ablest Soldiers of the King's Army. A Counsel, which is now made very plain, the Prisoner has endeavoured punctually to follow. To encourage him in this, he tells him, *that it will be very agreeable to all concerned——particularly to Mr. Atkins.* Now according to the Prisoner's own Explanation in this Cypher, *Atkins* is one of the feigned Names for the Pretender.

The next Letter is dated the 11th of *July* last, subscribed *N. C.* and acknowledges the Receipt of a Letter dated the 8th of *May*, with another Letter inclosed, which the Writer says *was presently delivered to Mr. St. John, who took it extreme kindly*: Look into the Cypher, and it appears that *Mr. St. John* is one of the fictitious Names for the Pretender; so that this Letter shews, that the Person to whom it was written, correspond immediately with the Pretender himself. But it seems *Mr. St. John did not well understand what related to Mr. Burford, which the Letter-Writer hopes may be soon cleared by an Answer.* What this was which wanted Explanation, is in the Dark; but so much we know, that in the Prisoner's Cypher, *Burford* stands for the Earl of *Orrery*.

There is another Letter dated the 27th of *May*, in which the Writer tells Mr. *Layer*, that *their Friend had his Letter of the 22d of March, and took very kindly the Care he had taken of his little Concerns.* Who is meant by that Friend, whose Concerns were the Prisoner's Care, does not certainly appear; but it is very natural to think, it is the same Person before called *Atkins* and *St. John*. However, it seems their Friend was again at a Loss about certain Names——*Burford*, ——*Steel*, ——*Digby*, ——*the little Soldier*, and *Simons*, which were not in his *Rental*.

The Word *Rental* in Mr. *Layer's* Cypher, is the Cant Term for a *Cypher*; and in that likewise are to be found the other Words, which his Friend did not then understand; particularly *Simons*, which is put there for the Lord *North* and *Grey*. But if that did not appear by the Cypher, yet the Description which follows, would

be enough to convince every Man in his private Judgment who was meant by it——*He is of the North, a Grey hair'd ancient Man, Cant Expressions plainly, which take in both the Titles of that Noble Lord. The Letter-Writer adds, that their Friend (the same whose Concerns were taken Care of) very well remembers this Person, and hath a very particular Esteem and Value for him, and that he is (in their Phrase) a very good Tenant, and a very honest Man.*

Gentlemen, Some of the Papers were read to you of a more extraordinary Nature than even these Letters; I mean the Notes signed *James R.* with the Pretender's own Hand. These are not only one Evidence of the Plot, but a Part of the means by which it was to be effected; for they appear to be Receipts framed with Blanks, to be filled up with Sums of Money as Occasion offered, with a Promise of Repayment with Interest. These were some of the Ways and Means for raising Supplies out of the Pockets of such People, as should be found weak and silly, as well as wicked enough, to advance Money on such a Shadow of a Security, for so flagitious a Purpose. But they ask us who proves the Subscription to be the Pretender's Hand? I Answer, It is certain that is not material; but if it were, we have it sufficiently from the Prisoner himself. The Account he hath thought fit to give of them, you have heard from Mr. *Delafaye*; that he had written to his Correspondent Sir *William Ellis*, that if Sir *William* could send him over some blank Receipts under the King's own Hand (so he called the Pretender) he believed they might be made use of for the carrying on his Cause: That his Intention was to have tried his Friends, and to have raised Money on these Receipts. This shews the Prisoner received them as being signed with the Pretender's own Hand; and shews likewise the Use intended to be made of them; and it appears he had the Confidence to justify himself in this Practice, by the like Method having been taken by King *Charles the Second*, just before his Restoration.

My Lord, this is the Substance of our Proof as to the Papers and the Observations which have occurred to me upon them; and I will presume to say, with great Submission to your Lordship's better Judgment and Observation, that upon this Evidence, taken together with the Testimony of the two Witnesses, we might safely have trusted our Cause to your Lordship's Direction, and the Consciences of the Jury. But we went farther still, not because we wanted it to convict the Prisoner, for we had already done sufficient for that Purpose, but in order to give abundant Satisfaction, not only to the Gentlemen of the Jury, but to the whole World, of the Reality of this Conspiracy in general, as well as of this Man's Part in it; that they may see and be convinced of the just Grounds there were for this Prosecution, and for the Treatment the Prisoner has met with. For this Reason it was, we call'd Mr. *Stanyan*, and Mr. *Delafaye* to give an Account of his Confession, upon his Examination before the Lords of the Committee of Council; and I apprehend, we were properly and agreeably to the Rules of Law, let into that Evidence. We have had the Judgment of the Court upon that Point, therefore I

won't trouble your Lordship with any Authorities for it, but rely upon that as the best Authority.

Gentlemen, the Relation Mr. *Delafaye* and Mr. *Stanyan* gave, was, that the Prisoner declared to the Lords of the Council, that he had been at *Rome* in the Year 1721, and stay'd there some Time, and had several Conferences with the Pretender in Person: That in one of those Conferences, he asked for some Token or Credential, in order to give him a Credit with the Party when he returned to *England*; that it was not at first granted, but afterwards he put his Request into this Shape, that the Pretender's Wife (the Queen he called her) would be pleased to stand Godmother to the Prisoner's Child. Some Time was taken to consider of this Proposition, and then Word was brought by Colonel *Hay* to the Prisoner, that she would stand Godmother to the Child; and it was agreed, that the late Dutchess of *Ormond* should represent her. Afterwards the Pretender consented to be the Godfather, but *Loyer* was to procure some Person to be his Proxy.

What was then agreed upon, was followed by the Fact. When the Prisoner returned Home, and the Child was to be Christen'd, he applied to my Lord *Orrery* to represent the Pretender, and to the late Dutchess of *Ormond*, to represent the Princess *Sobiecki*. The latter complied, but my Lord *Orrery* declined the Service; and thereupon the Prisoner made Application to my Lord *North* and *Grey*, who was pleased to accept it. The Child was christen'd at *Chelsea*, and my Lord *North* and *Grey* stood as Proxy for the Pretender, and the late Dutchess of *Ormond* for the Princess *Sobiecki*; and the Prisoner said, they both were privy that they represented those Persons.

The Prisoner's Confession likewise verifies every material Circumstance of *Lynch's* Evidence, as to what passed in the County of *Essex*. That he was at the *Green Man* with one *Lynch*, and there shewed him the Heads of a Declaration which he had drawn: That they went from thence to my Lord *North* and *Grey's*, and there the Prisoner presented the Witness to his Lordship as a very honest Man, and a Person fit to be employed in seizing my Lord *Cadogan*; and afterwards he said, as a Person fit to be employed in an Insurrection. That the Prisoner and *Lynch* lay at my Lord's House that Night, dined with him at his own Table the next Day; and that the Healths of the Pretender, his Wife, and Child, were drank by them after Dinner, and the same Healths were drank, and (if I understood it right) begun by that noble Lord himself.

There was a farther Circumstance sworn by Mr. *Stanyan*, in which he is confirmed by Colonel *Huske*, that at the Time Mr. *Loyer* was apprehended, a considerable Quantity of Arms, and about fifty Cartridges, made up with Ball, and fitted for the Use of Soldiers, were found in his House: And the Prisoner being asked, upon his Examination, what he did with them? He said, they were for his Use, in case there should happen any Disturbance in the Nation.

The Prisoner entered into an Examination of the Gunsmith, how he came by these Arms; but that is not at all material: In his House they were found, and he has confessed they were intended for his Use in Case of a Disturbance in the Nation. What Disturbance was there likely to happen, but from himself and his Accomplices?

Gentlemen, The Prisoner's Escape out of the Messenger's Custody, is another strong Circumstance. In order to fly from Justice, he ventured to get out of a Window two Stories high, and had the Fortune to meet with a Sculler, which carried him cross the Water into *Southwark*. When the Witness first endeavoured to stop him, it appears he was in the utmost Concern; begged of him for God's Sake to let him go, pretending it was an Arrest; and then he pulled out of his Pocket a great many Guineas, and bid the Witness take what he pleased, so he would but let him go; but the Messenger pursued him pretty close, and he was retaken.

Gentlemen, this is a very material piece of Evidence to shew the Guilt of the Prisoner. The Law of *England* supposeth Guilt from Flight, and though it was said, that any Man in Mr. *Loyer's* Condition would have done the same thing, if he could; that can be true only in this Sense, that any Man in his Condition, as to the Consciousness of his own Guilt, would have done it; but an innocent Person would never have brought that Imputation upon himself, by endeavouring to escape.

This is the Substance of the whole Evidence which has been given for the King against the Prisoner at the Bar, as well as I can recollect it; and, Gentlemen, I persuade my self, when you have considered it seriously, you will be satisfied that it makes good every part of the Indictment. But be that never so strong, the Prisoner ought to be heard against it, and have a full Opportunity of making his Defence: For if he hath a good Defence, either in point of Law or Fact, to take off the Force of this Evidence, God forbid that he should suffer by it.

The Prisoner entered upon his Defence, and his Counsel were pleased to set out with making some Observations upon the Case, as we had left it.

My Lord, they first made an Objection in Point of Law, that the Treason, for which the Prisoner is indicted, is compassing the Death of the King, and one of the Overt-Acts laid is only a Consultation to levy War, which they insist is not an Overt-Act of that Species of Treason, nor indeed any Treason at all, because the Words of the Statute, 25 *Edw. III.* import a War actually levy'd; and for the Sense of those Words, which no body ever doubted of, some ancient *French* Writers were quoted.

My Lord, I apprehend this Objection, if it be one, is rather to the Indictment than to the Evidence, of which they know they may properly take Advantage in Arrest of Judgment. But with great Submission to your Lordship, there is no Weight in it either way. One can't help being a little surprized to hear it mentioned, after that Point has been established by so many Resolutions, which at the same time they tell us they are aware of; and in the very last Case of High-Treason, which was in this Court, I mean that of *Ker*, *Dorrel*, and *Gordon*, it was solemnly determined by the unanimous Opinion of all the Judges, that a Consultation to levy War, in order to destroy or depose the King, is an Overt-Act of High-Treason, in compassing his Death. This was the receiv'd Doctrine before the Revolution, and it has been adhered to ever since; and though the Act of Reversal of my Lord *Russel's* Attainder has been mentioned, yet if that were looked into, I dare say, no Declaration will

be found in it, contrary to this Determination. But they go farther and object, that here is no Overt-Act at all proved to be done in the County of *Essex*; and if so, then whatsoever Proof there may be of Facts done in *Middlesex*, that will go for nothing, and the Prisoner must be acquitted upon this Indictment. And, my Lord, so far I agree with them, that unless we have proved one Overt-Act at least to be done in *Essex*, we cannot maintain this Indictment.

In support of this Objection they would have it, that the only Transaction in *Essex*, is what passed at the *Green Man*, and the Whole of that is reduced singly to the Publishing the Declaration; and that, say they, is not legally proved, and if well proved, yet it is no Overt-Act of Treason. As to the Proof, they object that the Paper itself is not produced, and Parole Evidence of the Contents of a Writing is not to be admitted.

But, my Lord, I have given this an Answer already, by observing that the Prisoner took back the Paper, and kept it; so that the Writing itself being proved to be in the Custody of the Party, we were entitled within the ordinary Rule, to give Parole Evidence of the Contents. But, my Lord, this Declaration was a Part of the treasonable Consultation then had; and sure I am, it would be the finest Invention to secure certain Impunity to Plotters that ever was thought of, if, instead of discoursing, the Consultation shall be carried on by Papers handed from one to another, and no body can be convicted, because the Paper is not to be found. As to that Part of their Objection, that it is no Overt-Act of Treason, one of the Gentlemen thought fit to treat it in a ludicrous Manner. 'Twas only *reading a Piece of Paper, suppose they had sung a Ballad.* That Gentleman will pardon me, if I say, those Expressions did not become this Occasion. An Accusation of High-Treason, which highly concerns the King and his Government, is an Affair of a serious Nature; and if he does but reflect upon the Contents of that Declaration, which the Witnesses related, he cannot think it a Matter to be sported with.

Mr. *Ketelbey* was pleased to say, that this could be no Overt-Act of Treason, because it was but publishing a Libel. But surely, that is very extraordinary. Publishing of a Paper may amount to one Crime or another, according to the Subject-Matter of that Paper; and can it be a Question at this Time of Day, whether the publishing a Declaration or a Book containing Arguments, or offering Rewards directly to stir up the King's Subjects to rise in Rebellion against him, be High-Treason? The treasonable Intent in this Case cannot be doubted, and 'tis as certain that the Publication is an Act; what is there then wanting to make it Treason? But, my Lord, this has also been adjudged, and therefore I won't argue it.

My Lord, I have said thus much about the Declaration for the sake of following the Gentlemen, who are Counsel for the Prisoner, in their Arguments; but after all, their Foundation, which is a Supposition that there are no other Overt-Acts proved in *Essex*, besides this of the Declaration, entirely fails them; for your Lordship will inform the Jury, that *Lynch* deposed that whilst they staid at the *Green Man* they did more than *talk a little Politics*, they consulted about the Project of an Insurrection, and the Prisoner there actually pro-

posed to him (besides what was contained in the Paper) the Design of seizing the King's Person, which are two other Overt-Acts laid in the Indictment.

Upon this, another Objection was raised by Mr. *Ketelbey*, which, if it holds, will go to the Whole; and that is, that we have but one Witness, *Lynch* alone, to the Facts in *Essex*; and this Indictment must fail, unless there are two Witnesses to some or other of the Overt-Acts in the County where the Indictment is laid.

But, my Lord, that is not now to be disputed. The Law is clearly settled, that on an Indictment for High-Treason, in compassing the King's Death, if several Overt-Acts are laid, and some of those Overt-Acts are proved by one Witness to be done in the County where the Party is indicted, and others of them are proved by another Witness to have been committed in a different County, that Evidence is sufficient to maintain the Indictment; they are two Witnesses of the same Species of Treason within the Meaning of the Law. So it was expressly resolved by all the Judges of the *King's-Bench*, in the Case of Sir *Henry Vane*, which is reported in *Kelyng* 15, and that has been since followed by a Current of Authorities; the Case of the five Jesuits, the Opinion of the Judges delivered to the Lords, upon the Trial of my Lord *Stafford*, 32 *Car.* II. and other Cases.

My Lord, as this is established by Authorities, so the Reason and Necessity of the Thing is strong, because otherwise treasonable Consultations might easily be carried on in such a Manner, that no body could be convicted of them. It would be but to lay the Scene upon the Confines of several Counties, and take Care not to consult with any two Persons in the same County; then there could not be two Witnesses, and all would be safe.

I have done with their Objections in Point of Law, and shall now endeavour to give some Answer to their Observations upon the Fact. And, Gentlemen, I think the Whole of those Observations may be reduced to one Head, which is, that it is highly improbable, that what the Witnesses have sworn should be true. But upon that, before I give particular Answers to what they have offered, I beg leave to say in general, that though in a doubtful Case, where there is any Balancing in the Proof, the Improbability of the Thing is a Consideration of great Weight, yet where there is plain and positive Evidence on one Side, not weakened by any Counter-Evidence on the other Side, the Objection of Improbability can be of little Force.

But to consider this Improbability. They say 'tis very strange, that Mr. *Layer* should be engaged in so dangerous an Undertaking, with such Persons as have sworn themselves to be his Accomplices. To this, I say, 'tis always strange, that Men should venture to trust one another with such dangerous Secrets; but certain it is, they often do; and as to the Witnesses in this Case, they are proved by the Prisoner's own Evidence, to be Persons with whom he thought fit to hold a Correspondence. How this great Confidence was at last created between them, has been accounted for by the Witnesses themselves, in a very natural and probable Way, of which I have already taken Notice.

Mr. *Ketelbey* insisted much upon the Improbability of *Plunkett's* Evidence, in those Parts of it which concern *James Plunkett* and *Jefferys* the Nonjuring-Parson. That it is not credible, that those two Men, whom *Plunkett* admits to be absolute Strangers to him, should at first Sight open themselves with so great Freedom, to a Fellow of his Degree on a Subject of Treason. But that will receive this Answer. *James Plunkett* and *Jefferys* were, as appears clearly from the Circumstances, in the Confidence of *Layer*. *Layer* had a Confidence in *Matthew Plunkett* the Witness, on the Recommendation of Major *Barnwell*, and by Means of *Layer*, both *James Plunkett* and *Jefferys* might be induced to trust him. And thus the Chain of the Correspondence is made compleat.

Another Objection was made to *Plunkett*, that he had been guilty of a flat Contradiction in his Evidence. That he first swore, *Jefferys* told him his Name upon his first coming to him, and afterwards that he did not know his Name till he received the Letter from him about the Prisoner's being come to Town. But that Observation was grounded upon a Mistake; for what *Plunkett* said, was, that *Jefferys* did tell him his Surname at first, but that he did not know his Christian Name till he received the Letter, which is very consistent.

But the Counsel for the Prisoner were well aware, that their Observations upon the Witnesses could be of little Effect, if the Paper called the Scheme found Credit; and therefore in the next Place they attacked that as being incredible; they represent it as *ridiculous and foolish* ——— *The Scheme of a Madman, which could never have taken Place.*

Gentlemen, as to this Observation, the Scheme is indeed such an one, as I hope in God could never take Place any where, but in the Heads of those that framed it. But with great Submission, that is no Objection to the Credibility of it, provided it be proved. For the Consideration is not, how it now appears to you or to me, who look upon it in a different Light, and on contrary Principles from theirs; but the proper Consideration is, what the Conspirators themselves, with regard to the Views and Principles they went upon, might think of it. And, Gentlemen, in that Light examine it, go through the several Articles of it, compare them together, and you will find them consistent and coincident; all the Parts answering to one another. Every Quarter of the Town is provided for Dispositions made of certain Numbers of Men, and Care taken to preserve the Communication between them by Watch-Words agreed upon for that Purpose. These Things make it plain, that it was fully considered by those who drew it, and framed not at random, but upon Computation of a Force of which they thought themselves assured. And what, though it should be admitted to be extravagant, and not likely to succeed? If that should be given way to, as a certain Objection against a Plot's finding Credit after it is detected, I am afraid it would be a sure Method to make such Plots succeed, or at least to secure the Authors of them from Punishment. Do but intermix some absurd extravagant Parts in the Plan of the Conspiracy, and then according to this Reasoning it is below Notice, and must be suffered to go on, or if a Stop be put to its Progress,

yet it is incredible, and no body must be believed to be guilty of it.

But, Gentlemen, whatever Difficulties may be raised against particular Parts of the written Scheme, yet upon the Grounds and Suppositions which the Prisoner and his Accomplices proceeded on, their general Design might appear very feasible to themselves. For it is plain they had a Dependence, however ill-founded, upon Discontents raised in the Minds of the People, and on corrupting great Numbers of the Army, which would have diminished the Strength of the Government, and added to their own; and after they had made a Beginning here, it is proved that they expected Assistance from Abroad.

The next Thing to be considered, is the Testimony of the Prisoner's Witnesses: And, Gentlemen, you observe that they have scarce called any Witnesses to contradict the Facts contained in our Evidence, for the People of the House at the *Green Man* say nothing to the Purpose; but all their Evidence is applied to the Character and Credit of the Witnesses produced for the King.

As to that, I must observe to you, that it is not to be expected that Conspiracies and traitorous Machinations of this Kind should be proved by Persons of the best Characters. 'Tis necessary from the Nature of the Thing, that they should be proved by those who have been privy to them, and such Persons cannot possibly be of Characters absolutely unblemished. Therefore, to say that such Witnesses are not to be believed, is in effect to say that no Evidence of a Plot is ever to be believed, which surely is an Argument that proves too much.

The first Witness they called on this Head, was my Lord *North* and *Grey*. I am heartily sorry to see his Lordship here in his present Condition upon this Occasion; the rather, because it obliges me to observe, that here are Circumstances proved, which affect him; I will carry it no farther, but some Circumstances are proved in this Cause which do affect him. But what is his Evidence? His Lordship was called to impeach the Character of *Lynch*; and however he may impeach his Character, I am sure he supports his Credit as to the Facts sworn by him. The Account his Lordship gave, was, that the Prisoner brought *Lynch* to his House at *Epping*, introduced *Lynch* to him, that he was never acquainted with him before; but upon Mr. *Layer's* Introduction, received him civilly; and that *Lynch* came thither a second Time.

Now, these are the very Facts *Lynch* swore to, and consequently so far my Lord supports him. But then, as to his Character, his Lordship is pleased to say, that the first Time *Lynch* was there, he gave him a History of his Life; and in that gave so vile an Account of himself, that when he came a second Time, his Lordship would not give him a Lodging in his House. This, I think, was the Whole of my Lord's Testimony; and I can't help remarking upon it, that his Lordship gave no Account at all of any Business, which either the Prisoner or *Lynch* had with him, nor of any particular Occasion upon which the former introduced the latter to him. That was a Matter within his Lordship's own Knowledge.

There is another Thing which is little surprising; and that is, that Mr. *Lynch* being an absolute Stranger, as is confessed, to this noble Lord, having the Honour to be introduced by a Friend to a Person of his great Quality, should have so little Regard to his Friend, or to the Opinion that Noble Lord was to conceive of him, as at the first Interview to take so odd a Way of being recommended, and give a most vile, infamous Character of himself. This is somewhat out of the ordinary Course; but you are told, that so it was.

As to the other Witnesses to *Lynch's* Credit, notwithstanding their Number, I apprehend their Evidence, when duly considered, will have little Weight. They were most of them going to enter into particular Facts; but the Court agreeably to the constant Course of Evidence, over-ruled them in it; and that you, Gentlemen of the Jury, may be satisfied no Hardship was done by this to the Prisoner, I will mention the Reason of it. The Reason why particular Facts are not to be given in Evidence to impeach the Character of a Witness, is, that if it were permitted, it would be impossible for that Witness, having no Notice of what will be sworn against him, to come prepared to give an Answer to it; and thus the Characters of Witnesses might be vilified, without having any Opportunity of being vindicated.

As to the Witnesses themselves, some of them say, they know no Ill of *Lynch*; many of them have known him but a little while; some of them give an Account of Declarations made since this Prosecution began, and how fairly they were drawn from him don't appear; and for some others of them, I submit it to the View and Consideration of the Jury, from their Habit, and the Appearance they made, whether they ought not themselves to have brought Witnesses to support their own Credit.

One appears plainly to be mistaken, and that is, *Darcy*; he was asked how long he had known *Lynch*? and, I think, he said he knew him in *London* last Winter; now it appears that *Lynch* came into *England* but in *April* last.

Gentlemen, in the next Place they called Witnesses to *Plunkett's* Credit, and there the same Thing befell them as in the Case of *Lynch*; for Major *Barnwell* their first Witness on that Head, though he is willing enough to give him an ill Character, yet he confirms several of the Facts which the other swore, and gives exactly the same Account of the Rescuing the Goods, and the Circumstances of *Plunkett's* becoming acquainted with *Layer*, which he gave.

Mrs. *Chil* likewise supports *Plunkett* as to the Circumstance of his carrying her Husband to the Prisoner's House, and the Prisoner's refusing to see him.

As to Mrs. *Mason*, they have taken a great deal of Pains to prove her a very ill Woman. What she is, or what those Persons are, whom they have called to her Credit, we can't tell; but so much appears even from their own Witnesses, that she is one with whom Mr. *Layer* thought fit to converse, and therefore 'tis not improbable that she might be entrusted by him; and it is from such only as he thought fit to converse with and entrust, that we can have any Discovery. The Prisoner has, indeed brought two

or three Women, who talk very fast, and seem very angry with her; and one of them tells the Jury in a Scolding Way, that *she don't care what she says or does*; another, that *she would take away any Man's Life for the Value of a Farthing*; and such Kind of vehement Expressions. It is sufficient to say this, that People who talk thus loosely and passionately upon their Oaths, rather bring a Suspicion upon their own Credit, than upon the Credit of those against whom they swear.

But Gentlemen, if they had brought a much stronger Evidence against the Characters of the King's Witnesses than they have done, what would it have availed them? Does this Case depend upon the Characters of these three Witnesses? It cannot be pretended that it does. Let their Characters be what they will, their Credit in this Cause is undeniably supported; supported as to several material Facts, by the Evidence for the Prisoner, but most strongly by the Papers; against which, I apprehend nothing has been said to take off their Force. If those Papers are not genuine, how should the Notes signed with the Pretender's Hand, which the Prisoner received from Sir *William Ellis*, come to be amongst them? How should this Scheme, proved to be of Mr. *Layer's* own Hand-Writing, have been there? The Prisoner, I must own, did call one Witness, *Bennet*, who was his Clerk, and is now his Solicitor, to swear he believed the Scheme not to be the Prisoner's Hand. But it happened with *Bennet*, as it did with several others of their Witnesses, that though he is willing to carry his Belief as far as he can, that this is not his Master's Hand; yet he is forced to acknowledge another Matter, which still verifies the Papers contained in these Pacquets to be his Master's Papers: For being asked of whose Hand-Writing one of them was, he swears it was written by himself for the Prisoner, and by his Direction. This comes out of the Mouth of his own Witness, and confirms Mrs. *Mason's* Testimony, that these Papers came from Mr. *Layer*.

But over and above all this, you have the Prisoner's own Confession, proved by two Gentlemen whose Credit is beyond all Dispute; and certainly the Prisoner must be allowed to be a good Witness against himself.

However, we shall not leave the Credit of our Witnesses singly upon these Observations, though I think we might safely do it; but shall endeavour to take off any ill Impressions their Evidence may have left upon you, and vindicate their Characters; and that, not by such Witnesses as some of those produced for the Prisoner were, who, I observed before, might stand in need of Witnesses to support their own Credit, but by Persons of undoubted Reputation, who will satisfy you that their general Character is such, that they very well deserve to be believed by you.

I have now done with repeating and observing upon the Evidence on both Sides; and I beg leave to insist upon it, that we have fully made good what was opened to you in the Beginning of this Cause, that in general there has been a horrid Conspiracy carried on, in order to over-throw our happy Constitution, and to deprive us of all the Blessings we enjoy, and promise ourselves, under Establishment, in his Majesty and his Protestant Royal Family. The Part the Prisoner hath acted in this fully appears to you, and it appears to be a very considerable one.

It has been said, indeed, that he is but an inconsiderable Man, of no Rank or Fortune fit to sustain such an Undertaking. That Observation may be true; but since it's plain he did undertake it, that, joined with the other Circumstances proved in this Cause, serves only to demonstrate, that he was set on work, and supported, by Persons of greater Abilities for such an Enterprize. And, Gentlemen, this is the most affecting Consideration of all.—But I would not, even in this Cause of your King and of your Country, say any thing to excite your Passions; I choose rather to appeal to your Judgments; and to those I submit the Strength and Consequence of the Evidence you have heard.

My Lord, I beg Pardon for having taken up so much of your Time; I have but one Thing to add, and that is, humbly to beg of your Lordship, for the Sake of the King, for the Sake of Myself, and for the Sake of the Prisoner at the Bar, that if I, through Mistake or Inadvertency, have omitted or misrepeated any thing, or laid a greater Weight upon any Part of the Evidence, than it will properly bear, your Lordship will be pleased to take Notice of it, and set it right, that this whole Case may come before the Jury in its true and just Light.

Mr. Serj. *Cheshire*. It is so late, that it will be inexcusable in me to trouble your Lordship with any thing by Way of Reply, especially since Mr. Solicitor General hath done it so fully. We shall only beg leave to call a few Witnesses to the Credit of the King's Witnesses.

Mr. *Ketelbey*. I shall not take up much of your Lordship's Time; especially since your Lordship and the Court have been entertained so well and so long by Mr. Solicitor General, at least two Hours, as I have observed by my Watch; but 'twas impossible for me to think him tedious, though so late at Night, and especially since his Conclusion is exactly agreeable to the Conclusion of a late celebrated Solicitor General * on a like Occasion.

Mr. *Att. Gen.* We must beg leave to call some Witnesses we have, who will support the Credit of Mr. *Lynch* and *Matthew Plunkett*.

Mr. *Vernon* sworn.

Mr. Serj. *Cheshire*. Do you know Mr. *Lynch*?

Vernon. Yes.

Mr. Serj. *Cheshire*. What Account do you give of him?

Vernon. I keep a Tavern at the *Swan and Rummer* in *Finch-lane*, this Gentleman hath frequented my House these four Months every Day, till he was in Custody; he hath been a very good Customer, and paid me honestly.

Mr. Serj. *Cheshire*. Do you know the Prisoner at the Bar? Have you seen Mr. *Lynch* and him in Company together at your House?

Vernon. Yes; I have seen them twice in Company together at my House.

Mr. *Ketelbey*. How long hath he been your Customer?

Vernon. From the Beginning, about four Months.

Mr. *Ketelbey*. About four Months; Did he spend his Money plentifully and freely?

Vernon. Yes; some Part of it I have had since he hath been in Custody.

Mr. *Ketelbey*. How much was he in your Debt before he was in Custody?

Vernon. Ten or eleven Shillings.

Mr. *Ketelbey*. How long had he been in Custody before he paid you?

Vernon. Not long.

Mr. *Hungerford*. He had the First-Fruits of his being in Custody; he had some Money, and so he paid you your Reckoning.

Mr. Serj. *Pengelly*. We take it, that Mr. *Vernon* proves, that *Layr* and *Lynch* were conversant together.

Capt. *Maltbus* sworn.

Mr. Serj. *Cheshire*. Do you know *Stephen Lynch*?

Maltbus. Yes.

Mr. Serj. *Cheshire*. How long have you known him?

Maltbus. About Nine Years. I knew him first, when he was a Merchant at the *Canaries*. I traded with him several Times, several Times I was consigned to him, and I have seen him at Home.

Mr. Serj. *Cheshire*. What Account can you give of his Behaviour?

Maltbus. He always behav'd himself very well, I think.

Mr. *Att. Gen.* Do you think he would swear falsely to take away a Man's Life?

Maltbus. No, I don't think he would.

Mr. *Ketelbey*. How long is it since you have been acquainted with him?

Maltbus. Nine or ten Years.

Mr. *Ketelbey*. How long is it since your last Acquaintance?

Maltbus. About four Months.

Mr. *Ketelbey*. What Distance of Time did there use to be between your seeing of him?

Maltbus. 'Two or three Years, every Time I came home.

Mr. *Ketelbey*. Doth he owe you any Money?

Maltbus. No.

Mr. *Ketelbey*. Would you trust him with Money?

Maltbus. He never askt me.

Mr. *Ketelbey*. Your Witness we may ask as to Particulars, Did you know his Aunt there, at that Time?

Maltbus. No.

Mr. *Ketelbey*. Did you know any thing of his Behaviour?

Maltbus. I never knew an ill Character of him in my Life.

Capt. *Arnold* sworn.

Mr. Serj. *Cheshire*. Do you know *Stephen Lynch*?

Arnold. Yes.

Mr. Serj. *Cheshire*. How long have you known him?

Arnold. 'Tis fourteen Years ago.

Mr. Serj. *Cheshire*. You have been acquainted with him since. What Account do you give of his Character? Do you think he would forswear himself?

Arnold. No.

Mr. Serj. *Cheshire*. Do you take him to be a Man of Credit?

Arnold. I never had any Dealings with him.

* Mr. *Finch*, at Col. *Sidney's* Trial.

Mr. Serj. *Chefbire*. Would you have trusted him with five hundred Pounds ?

Mr. *Ketelbey*. Would you trust him with five Shillings ?

Arnold. Five Shillings is a small Sum.

Col. *Manning* sworn.

Mr. Serj. *Chefbire*. Do you know *Matthew Plunkett* ?

Col. *Manning*. Yes.

Mr. Serj. *Chefbire*. How long have you known him ?

Col. *Manning*. Upwards of ten Years.

Mr. Serj. *Chefbire*. What Credit hath he ? Do you take him to be an honest Man ?

Col. *Manning*. He behaved himself well, and like an honest Man.

Mr. Serj. *Chefbire*. Do you think he would forswear himself ?

Col. *Manning*. No, I believe not.

Prisoner. Have you and I had any Discourse about this very *Plunkett* ? And did not you tell me he was a Scoundrel ?

Col. *Manning*. No, I did not.

Mr. *Hungerford*. Did not you give him a bad Character to Mr. *Layer* ?

Col. *Manning*. No, I did not.

Prisoner. Do you mean thus, that he behaved himself very well, as a Soldier ? What is that as to his Character in general ?

Col. *Manning*. I know no ill Character of him while he was with me.

Mr. *Ketelbey*. Did you never hear any thing in relation to Sir *Daniel Carroll*, that he made a wrong Demand upon him ?

L. C. Just. If he made an unjust Demand, will he therefore be perjur'd ?

Mr. *Ketelbey*. What have you heard about that Affair between Mr. *Plunkett* and Sir *Daniel Carroll* ?

Col. *Manning*. I have heard Mr. *Layer* say—

Mr. *Ketelbey*. Did you never hear any Body else speak of him ? I ask you about making this Demand upon Sir *Daniel Carroll*, what you know of it ?

L. C. Just. I never heard any thing like it.

Mr. *Ketelbey*. My Lord, we apprehend we may cross examine, as to Particulars, a Person whom the other Side produces as a Witness to Character.

Prisoner. Did not you afterwards, in Discourse with Mr. *White*, mention it again with relation to this of Sir *Daniel Carroll* ?

Col. *Manning*. I deny it.

Prisoner. Did you desire me not to examine you ?

Col. *Manning*. No, I told you I had nothing to say in relation to *Plunkett's* Character.

Mr. *Hungerford*. Let him alone, I would not ask him any more Questions.

Col. *Manning*. Why, let him alone ?

Mr. *Hungerford*. I would not have him examine you any further.

Col. *Manning*. You are very civil.

Mr. *Hungerford*. So I am, to give you no further Trouble.

Major *Hamel* sworn.

Mr. Serj. *Chefbire*. Do you know *Matthew Plunkett* ?

Maj. *Hamel*. I have known him these seventeen Years.

Mr. Serj. *Chefbire*. What Character hath he ?

Maj. *Hamel*. He was then a Drummer in the Regiment, and always did his Duty well ; I never heard him complained of ; he always had a good Character ; he went from *Ireland* to *Spain*.

Mr. *Hungerford*. You speak to his military Conduct.

Maj. *Hamel*. I know of no other.

Mr. Serj. *Chefbire*. You say he always had a good Character.

Maj. *Hamel*. Yes, he always had.

Captain *Crosby* sworn.

Mr. Serj. *Chefbire*. Do you know Serjeant *Plunkett* ?

Cap. *Crosby*. Yes.

Mr. Serj. *Chefbire*. How long have you known him ?

Cap. *Crosby*. Three Years.

Mr. Serj. *Chefbire*. What Character had he for that Time ?

Cap. *Crosby*. Whilst I knew him, he bore a good Character.

Mr. Serj. *Chefbire*. Did you hear any Ill of him ?

Cap. *Crosby*. Not during the Time that I knew him.

Mr. *Ketelbey*. Where was the Regiment at that Time ?

Cap. *Crosby*. It was in Town, about half a Year ago.

Mr. *Ketelbey*. Were you not of the same Regiment ?

Cap. *Crosby*. We were.

Mr. Serj. *Chefbire*. We won't give your Lordship any further Trouble.

Mr. *Ketelbey*. And we apprehend we have no Occasion to give your Lordship any further Trouble, by way of Reply.

Mr. *Att. Gen*. My Lord, as to my Lord *North* and *Grey*, we can prove he attempted to get away, and was endeavouring to go to *France*, and was taken in the *Isle of Wight* ; and that when the Prisoner was seized, he sent a Messenger to give my Lord *North* Notice of it. This last was confessed on his Examination, and we can prove it.

Mr. *Ketelbey*. I must submit it to your Lordship, whether his Examination can be admitted as Testimony, so as to affect a Third Person.

L. C. Just. It is not worth disputing.

Gentlemen of the Jury, This is an Indictment against Mr. *Layer*, the Prisoner at the Bar, for High-Treason. The Treason with which he stands charged, is the compassing and imagining the Death of the King : The Overt-Acts that are laid in this Indictment, as Evidence of this Treason, are several ; first of all, that he did meet and consult, advise and agree, to levy War against the King ; the second is, that he did publish a seditious and traitorous Writing, exciting and encouraging the People to an Insurrection, and offering Rewards for that Purpose ; the third is, that he did engage in a Design to set the Pretender on the Throne ; the fourth, that he lifted Soldiers against the King ; and the last, that he did consult and agree, to take, seize imprison the King : These are the several Overt-Acts that are laid in the Indictment of the Treason, that is, the compassing and imagining the Death of the King. Gentlemen, I must tell you, before I go on to lay before you, and observe on the

the Evidence, what the Law is ; and I must tell you, that the Law is undoubtedly so, if a Man is charged with Treason, in compassing and imagining the Death of the King, there must be an Overt-Act of that Treason proved in the County where he is indicted ; and in the next Place, if there be such Overt-Act in that County, he may be charged with any Overt-Act of the same Species of Treason in any other County whatsoever. This hath been frequently resolved and agreed, and was hardly ever made a Question. I observed in the Hands of one of the Counsel, and he took Notice of it, that he had the Trial of Sir *William Perkins* ; he could not but observe there laid down by my Lord Chief Justice *Holt*, if Evidence be given of Treason in one County where the Indictment is laid, he may be charged with any Overt-Acts of the same Species of Treason in any other County whatsoever. The Law being so, I will, in the best manner I can, set out the Matters that have been given in Evidence, on this long Evidence, in the clearest Light that I can state the Examination, the Objections that have been made, and the Observations that are proper to be made upon it.

To maintain this Indictment, the King's Counsel have produced several Witnesses. The first Witness is Mr. *Lynch* ; the second Witness is Mr. *Plunkett* ; all the other Evidence hath been offered to confirm the Evidence given by these two Witnesses. As to Mr. *Lynch*, he tells you how he came to the Acquaintance of Mr. *Layer* ; that he was an intimate Acquaintance of Dr. *Murphy*, and Dr. *Murphy* recommended him to Mr. *Layer* ; being so recommended, he had several Meetings with Mr. *Layer* in *Middlesex*, at the *Griffin-Tavern*, and in *Holbourn*, at the *Castle-Tavern*, and I think, at *Southampton-Buildings*.

He tells you, at these several Meetings it was declared, that there was to be a Rising, and it was thought necessary, to make this Rising the more effectual, that my Lord *Cadogan*, the Commander in chief of the King's Forces should be seized.

Mr. *Layer* said to Mr. *Lynch*, he was looked upon as a Person proper for the Undertaking, and he declared that he was willing, and said, if that was the Opinion of those concerned in the Affair, he would undertake to do it : After this, they went to my Lord *Cadogan's* House, to view the House, and the several Avenues about the House ; and after they had taken this View, *Lynch* declares his Opinion, that it was feasible, and he would undertake to do it.

After he had given you an Account of what happened at the several Meetings in *Middlesex*, then he comes to what was done in the County of *Essex* : He tells you Mr. *Layer* came to him, and asked him whether he would ride out with him to take the Air ; he agreed to it ; they both went out of Town together ; he said, that as they were going along, Mr. *Layer* told him his Intention was to go to my Lord *North* and *Grey's* ; he says, they went forward with that Intention, but before they came to the *Green-Man* at *Layton-Stone*, they thought it would be too late before they got to my Lord *North* and *Grey's* for Dinner, therefore they thought proper to halt at the *Green-Man*, and take a Refreshment there. He tells you, they did stop there at the *Green-Man*, and at that Time Mr. *Layer* did repeat

the Discourse of the Rising that was intended to be ; he said, my Lord *Townshend*, and my Lord *Carteret* and Mr. *Walpole* were to be seized, a Party were to be sent to seize the King ; and that a Scheme was laid for seizing my Lord *Cadogan*, and that it was proposed as a proper Time to put this in Execution at the Breaking up of the Camp. He said, when he was mentioned, at first he made some little doubt, whether that was a proper Opportunity ; with that Mr. *Layer* told him, pray consider with your self, if you do not think this practicable, will you propose something else, and we will alter our Scheme ?

He saith, at this same Time Mr. *Layer* pulled out of his Pocket a Declaration, purporting an Exhortation and Excitation for People to rise, and take up Arms against the King, and Rewards offered for that Purpose.

Afterwards they went to my Lord *North* and *Grey's*, and that Mr. *Layer* introduced him to his Lordship, as his Friend ; that they were civilly and kindly received, supped there, lay there that Night, and dined there the Day after. This is the Evidence given with relation to what was done in the County of *Essex* ; and if this Relation be true, no doubt there is a good Overt-Act proved upon him in the County of *Essex*, and consequently the Indictment is well laid in *Essex*, and then the Evidence in the County of *Middlesex* will be a proper Evidence against the Prisoner. But as to this Evidence of Mr. *Lynch*, they say for the Prisoner, Mr. *Lynch* is not to be believed, that he is a vile profligate Wretch, and no Credit is to be given to him, though upon his Oath ; and it must be admitted the Evidence that hath been given for that Purpose, by a great Number of Witnesses, will be proper for your Consideration : But you will consider, in a Case of this Nature, if you are to expect Witnesses without Exception, it is impossible to have any Evidence to convict a Man of High-Treason ; no body will engage in such an Affair, that is of a nice Credit and Reputation, and therefore it is not to be expected ; for if it be, it is and will be impossible to convict any Person of Treason.

But then you will consider, although Credit is not entirely to be given to a Man of ill Repute, yet if he is supported in his Evidence that he gives by other Evidences, you will consider whether that will not remove all Sort of Objections as to his Character.

As to the Overt-Act of publishing the Declaration, that is supported beyond Contradiction ; for it appears in his Examination before the Lords of the Council, when he is asked, whether he ever saw the Declaration ? He says, he never saw any but one, and that was drawn by himself.

Prisoner. My Lord, what Mr. *Stanyan* says, I believe, he did not say that I confessed that it was drawn by me.

L. C. Just. You must not interrupt me while I am directing the Jury. You have behaved your self intemperately hitherto, but you must not interrupt me, I can't bear it. The Substance of what Mr. *Stanyan* said is, that when it was demanded of you, whether you had seen the Declaration, you said, you had seen none but a rough Draught that was drawn by your self.

Prisoner. I beg your Lordship's Pardon, Mr. *Stanyan* is here in Court.

L. C. Just. Is he in Court? Let him be asked the Question again.

Mr. Stanyan. My Lord, I believe I did say, that Mr. *Laver* did confess, that it was the Heads of a Declaration which he had drawn himself.

L. C. Just. Now, Sir, after this, I expect not to be interrupted by you any more.

This being the Matter, he doth at the same Time confess, that That was the Declaration which he had shewn to Mr. *Lynch* at the *Green Man*, on the Way as they were going to my Lord *North* and *Grey's*. So that Part of this Evidence is supported by Mr. *Laver's* own Confession. As to the other Part, that he did consult and agree to levy War, consider, that he confessed before the Council, that he did go to the *Green Man*, and there shewed the Declaration to Mr. *Lynch*; whether that doth not give Credit to what the other saith, That he went to the *Green Man*, and that there they talked of the Insurrection, and the levying of War; and then went to my Lord *North* and *Grey's*, with this, that he recommended Mr. *Lynch* to my Lord *North* and *Grey*, as a fit Person to seize my Lord *Cadogan*, and to be concerned in the Insurrection.

Gentlemen, This is not the only Matter by which he is supported in this Evidence, that the Prisoner designed an Insurrection, and to levy War against the King; but he confessed before the Council, that he went to *Rome*, had two several Conferences with the *Pretender*, and was very kindly received by him: He said he asked the *Pretender*, if he would give him any Credentials that might recommend him to his Friends in *England*; that was objected to, and not complied with; but then he asked a particular Favour, that the *Pretender's* Spouse would stand Godmother to his Child; that is granted; and the *Pretender* himself is willing to stand Godfather.

Afterwards, when he returns into *England*, he considered of proper Proxies to represent the *Pretender* and his Spouse; and asking my Lord *Orvry*, he refused him; then he asked my Lord *North* and *Grey*, who consented: My Lord *North* and *Grey* stood as Proxy for the *Pretender*, and the *Duchess of Ormond* as Proxy for the *Pretender's* Wife.

He tells you, at this Time when he was at *Rome*, he had told Sir *William Ellis*, it would be of great Service if he could have a Fund of Credit to raise Money with. How must that be? Why, saith he, let me have blank Receipts signed by the *Pretender* himself; and accordingly he had.

This, he tells you, is what happened at that Time. Now the Evidence given by Mr. *Lynch*, being of an Insurrection in Favour, and for the Service of the *Pretender*, when Mr. *Laver* owns he had two Conferences with the *Pretender*, and was receiv'd so kindly by him, and had such particular Marks of his Favour; consider whether this doth not support the Evidence which is given by Mr. *Lynch*.

The next Evidence is Mr. *Plunkett*; he tells you how he came recommended to Mr. *Laver* by one Major *Barnwell*, on this Occasion. He tells you, Mr. *Laver's* Goods were in Execution, and he was employed by Major *Barnwell* to rescue them; accordingly he went and fetched a Couple of Soldiers, got into the House, drove out the Officers, and rescued the Goods. By

this it appears, that Mr. *Plunkett* was a bold daring Man, fit to be employed on such an Occasion, and they assign that as a Reason, which answers the Objection made. Saith Mr. *Laver*, how came it to pass, that when I had never seen this Man, that I of a sudden should have such a Confidence as to trust him in an Affair of this Nature? In answer to that, it is said, he had done him a singular Service before, he had done a bold Act, he had got some Grenadiers and rescued his Goods when they were taken in Execution; and likewise *James Plunkett* had given a Character of him, that he looked upon him as an honest Man, and therefore recommended him to Mr. *Laver*.

Then he tells you, that Mr. *Laver* said they wanted a Man to serve on this Occasion; that *James Plunkett* talked of Officers, but we don't want Officers so much as we do brave Serjeants, old Soldiers, such as will be ready and qualified to support the Mob, and to discipline and head them; these are the Men we want, can you get such as these? Such as you are, that will be able to discipline the Mob and put them in Order. I told him (says the Witness *Plunkett*) I would do my Endeavours, and accordingly I advised him; that I had procured twenty five ready for the Service; he desired to have Lists of their Names, and the Places of their Abode, that so he might know where to send to them upon Occasion.

Now the Objection to this Evidence being only, how comes it to pass that a Man should be trusted with such a Secret, and this on the first Sight or Acquaintance? Why, saith he, I had been employed before, and had shewn myself faithful on another Occasion, and did serve him in rescuing his Goods, when they were seized upon in Execution, and *James Plunkett* recommended me. This is the Evidence of *Matthew Plunkett*, and if *Plunkett* swears true, if he was desired by Mr. *Laver* to procure and list Men for the Service of the *Pretender*, and he says and declares he did do it, then, if this Evidence is to be credited, the Prisoner at the Bar is guilty of the Treason wherewith he stands charged: But still they rely upon it, and hope you will not give Credit to the Witnesses. You hear what hath been answered by the Counsel for the King, and I observe to you now, that though here was such a Charge against the Witnesses, the King's Counsel have produced several Persons that had good Aspects, and seemed to be Men of Reputation, who say, they know them, and believe them to be Men of Reputation.

Then, Gentlemen, the next Thing insisted on is, that the Evidence given by *Lynch* and *Plunkett* is supported by the Papers that were seized in Mrs. *Mason's* Custody. Consider how that Matter stands; Mrs. *Mason* tells you, that Mr. *Laver* brought two Pacquets of Papers sealed up to her, and told her, they were Love-Letters; she says, she was desired to keep them by the Prisoner; and accordingly she did keep them for him; and you have it afterwards from the Witnesses, who have been produced, and against whose Credit there is no Exception, that having a Warrant against Mrs. *Cook* and Mrs. *Mason*, they came to Mrs. *Cook's* House to search for Papers, and in Mrs. *Mason's* Room there was a Trunk which was locked; they ordered it to be opened, which Mrs. *Mason* did, and they took out of the Trunk two Bundles of Papers sealed

up as you have heard ; they tell you the Bundles of Papers were opened, that they set their Marks upon each Paper ; and one of them did not immediately set his Mark, but afterwards 'tis proved that he kept them from the Time they were delivered to him till the other came back again, and then upon his Return he delivered them back again to him ; then he set his Mark upon them, both set their Marks upon them, and therefore they can swear that they are the same Papers that were taken out of Mrs. *Mason's* Trunk : Then, if Mrs. *Mason* swears true, they are the Papers of Mr. *Layer*, which were delivered to her by him ; and so tracing it from Hand to Hand, these are the same Papers that were found in Mrs. *Mason's* Custody. Mrs. *Mason* swears the same, and she also set her Mark upon them.

But, saith Mr. *Layer*, there is no Credit to be given to Mrs. *Mason*, she is an ill Woman, an infamous Woman, therefore her Evidence is not to be regarded.

Gentlemen, consider how this Matter stands ; in one of these Pacquets of Papers were found the *Pretender's* Receipts, which Mr. *Layer* before the Council said, he had desired Sir *William Ellis* to procure for him from the *Pretender*, and which he had accordingly procured, and that he had received them ; and these Receipts being in the Pacquet found upon Mrs. *Mason*, how came they there, if they had not been delivered to her by Mr. *Layer* ? Therefore these Receipts being in this Pacquet, plainly demonstrate that these Papers are the Papers of Mr. *Layer*, and were by him delivered to Mrs. *Mason* : And if they were his Papers, these Papers, and what is contained in them, will be a strong Evidence against Mr. *Layer*. Notwithstanding all this, says Mr. *Layer*, these were never my Papers ; it is Forgery or Perjury. Whether or no you will believe these Papers to be Mr. *Layer's*, when it appears those Receipts were found amongst them ; besides that, here is a Paper amongst them, that the Witness that is produced by Mr. *Layer*, one that was his Clerk, swears that it is his own Hand-Writing ; how came that there, if this be not the Bundle and Pacquet of Mr. *Layer* ? And on this they turn the Strength of their Case.

If this be so, consider, first here is a Scheme ; whose Hand-Writing it is, here hath been Variety of Evidence as to that. It is insisted on by the King's Counsel, that the Scheme is of Mr. *Layer's* Hand-Writing ; and if so, this is a stronger Evidence against Mr. *Layer*, than if the Papers had been only found in his Custody. How stands that ? Here is one that was Mr. *Layer's* Master formerly, who saith, he verily believes this to be the Hand-Writing of Mr. *Layer* ; if that be so, then all is well, and it ought to be read, not only as a Paper that was in his Possession, but as a Paper that was writ by him : But they dispute, and say, 'tis not his Hand-writing ; they ask this Witness how long it is since the Prisoner lived with him as his Clerk ? about fourteen or fifteen Years ago, says the Witness : A Man's Hand, say they, may be changed in that Time : But, saith the Witness, I verily believe it to be his Hand-Writing, for I have within these five Years received several Letters from him about Business, there being a Correspondence between him and me, I being his Agent in Town, and these Letters are of the same Character he used fourteen or fifteen

Years ago, therefore I believe it to be his Hand-Writing.

But, say the Counsel for the King, we won't only prove this by these Gentlemen, but the Prisoner himself hath confessed it. Well, how stands that : He confessed, when he was asked at the Council-Table, what he knew of Arms that were provided ; he said, he knew of none. To which when it was said, how came you to mention it in this Scheme of your own Hand-Writing, there you take Notice of Arms that were provided ? Doth Mr. *Layer* disown it ? No, saith he, 'tis a Mistake, I should have writ, which *should be* provided.

Gentlemen, take this together, consider with your selves, what the Import of it is. He saith, when he is asked about these Arms, I should have writ, which *should be* provided. Whether this doth not amount to a Confession of this Matter, must be left to your Consideration, as a confirming Evidence of what the other Witnesses swear. But, saith Mr. *Layer*, let me call a Witness to prove that it is not my Hand-Writing : He calls a Gentleman, and he says it is not his Hand-Writing ; he calls his Clerk, and his Clerk saith it is not his Master's Hand. Here are two Witnesses : Then there is an additional Witness on the other Side, and that is, his own Confession. Whether it amounts to a Confession must be left to your Consideration ; but if this Scheme be not of his own Hand-Writing, it was a Scheme which he had in his Custody, and that alone had been a considerable Evidence against him. How came he by this Scheme ? What had he to do with it ?

The Scheme hath been read to you, which tells you the several Methods to be proceeded in. In the first Place, the *Tower* is to be seized, an Officer is to mount the Guard that would be in their Interest, and at nine a-Clock at Night they are to seize the *Tower* : Then they are to go to the *Bank*, and set a Guard there, after they have taken out Money from thence : After this he tells you of several other Guards that are to be set in other Places, and then a Party is to be sent to seize the King ; then he tells you, another Party is to be sent over the Water to seize his Royal Highness the Prince ; he calls him by a Cant Name, but 'tis plain he is meant.

If this be all his own Hand-Writing, it is a strong Evidence that he was in this Conspiracy ; but if he had only a Scheme of this Nature in his Custody, that will be an Evidence against him, though he did not write it.

Now whether every Body is not satisfied that these Bundles were his, when in these Bundles these Receipts signed by the *Pretender* himself, and the Paper that was of his Clerk's own Hand-Writing, were found ; it goes a great Way to confirm the Evidence of Mrs. *Mason*, who swears the Bundles to be his Papers.

These are Matters of Evidence, and must be left to your Consideration.

Then they go on and examine the treasonable Papers, the Notes, the Lists, &c.

To raise an Insurrection Money would be wanting ; saith Mr. *Layer*, I told Sir *William Ellis* this. Upon that there are Receipts signed by the *Pretender*, by which the Prisoner said they might take up Money on that Occasion. Sir *William Ellis* agrees with me, saith Mr. *Layer*, and accordingly sends me Receipts, and I had

them, and they were found in this Bundle of Papers; and how came they there, if they were not Mr. *Layer's* Papers?

Consider the other Papers; the Design being for an Insurrection, they are to engage the Guards in their Service; you see that several Papers are found in these Bundles that contain an Account of the Number of Men that were in such a Troop of Guards, the Number in such a Troop of Grenadiers, and tells you what the Numbers were; what was the meaning of all this? How came this Gentleman to be so solicitous in examining into the Number of Guards and Officers, but only to get a true State of this Matter, that he might know who were the Persons that were most likely to be corrupted, and what a Number of Enemies he might meet with on this Occasion.

These are very strong Circumstances against Mr. *Layer*, unless Mr. *Layer* can give any Account why he kept these Papers so carefully.

To go a little back, as to the Business of Mr. *Lynch*; it appears he did not know Mr. *Lynch* before this Affair was set on Foot; he rode out with him, goes to the *Green Man* with him, there they talked over this Affair, there he publishes that traitorous Declaration, and afterwards presented *Lynch* to my Lord *North* and *Grey*. How came they so intimately acquainted unless on this Occasion?

Then, Gentlemen, they go on and tell you, when this Gentleman was committed into the Custody of a Messenger he made his Escape, and this we look upon as an Evidence of Guilt, not a conclusive Evidence; a Man may escape tho' he is innocent, yet 'tis an Evidence that is material to be left to the Jury, and is proper for their Consideration; he is pursued and retaken; when he is retaken he is under great Consternation; he begs for the Lord's Sake they would let him go, and said it was an Arrest; he took out of his Pocket a great Number of Guineas, and said, they should have what Number they pleased, if they would let him go; this is a material Circumstance, and doth shew that this Gentleman was more than ordinary concerned in this Affair.

You will lay these Things together, and consider how far they satisfy you, that this Gentleman is guilty of the Treason.

Then they give you an Account how he did confess before the Lords of the Council every Thing that hath been sworn by the Witnesses: That he went to the *Green Man* in your County, and there consulted and agreed to carry on this Affair; that he did take out and read the Declaration; this is a strong Evidence, especially if compared with what he confessed, that he had Two Conferences with the *Pretender* at *Rome*, was kindly received by him, and had particular Marks of his Favour: He is desired to stand Godfather, and his Wife to stand Godmother to his Child; and accordingly they stood; he desires my Lord *North* and *Grey* to stand as Proxy for the *Pretender*, and the Dutchess of *Ormond* to be Proxy for the *Pretender's* Spouse; and they were Proxies at the Christening of his Child. These are the Circumstances that have been laid before you on Behalf of the King against the Prisoner at the Bar. But 'tis said on the Behalf of the Prisoner, that he stands at the Bar upon

his Life and Death, which will depend upon your Verdict.

I think you ought to consider of that, and that I hope will induce you to consider and weigh well the Evidence, and not to find the Prisoner Guilty, unless you are satisfied he is so.

It is true, here is the Life of a Man in the Case, but then you must consider likewise the Misery and Desolation, the Blood and Confusion, that must have happened if this had taken Effect, and put one against the other; and I believe that Consideration, which is on the Behalf of the King, will be much the strongest.

These Things are proper to be considered, in Order to prepare you to be careful in examining and weighing the Evidence well; but in giving your Verdict I hope you will lay them all aside; you will consider the Weight of the Evidence on either Side, and the Credit of the two Witnesses, and how far they are supported by a Writing under his own Hand, a Confession at the Council-Table; consider how far that will support their Evidence, though not Men of the clearest Reputation.

A Cypher hath been taken Notice of, by which were explained several Names that such and such Persons and Things were to be called by; there was the Name of *Atkins*, which was to signify the *Pretender*; there was another Name for the *Pretender*, and that was *St. John*; and conformable to these Names they have read several Letters, by which it appears that a treasonable Correspondence was carried on by Mr. *Layer*. This is the Circumstance of the Evidence that hath been laid before you. Consider this Evidence, and the Objections that have been made to it, and how far those Objections have been answered.

Discharge the Part of Honest Men, consider and weigh well the Evidence.

Upon the whole Matter, if you do believe that there was an Overt-Act of Treason in the County of *Essex*, and that it was proved by Mr. *Lynch*, and confirmed by the Confession of Mr. *Layer*; and if there be any Overt-Act in another County, as his listing or employing any to list or engage Men in the Service of the *Pretender*, then you will find the Prisoner guilty.

If you are not satisfied these Things are true, then you'll acquit him.

The Jury withdrew for about half an Hour, to consider of their Verdict, and when they returned into Court, were called over by the Clerk of the Crown and answered to their Names.

Cl. of the Cr. Gentlemen of the Jury, are you agreed on your Verdict?

Jury. Yes.

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

Jury. Our Foreman.

Cl. of the Cr. *Christopher Layer*, hold up your Hand. (Which he did.)

You of the Jury look upon the Prisoner.

How say you? Is *Christopher Layer* guilty of the High-Treason whereof he stands indicted, or not guilty;

Jury. Guilty.

Cl. of the Cr. What Goods and Chattels, Lands and Tenements had he at the Time of the said High-Treason committed, or at any Time since, to your Knowledge?

Jury. None.

Cl. of the Cr.

Cl. of the Cr. Hearken to your Verdict as the Court has recorded it. You say that *Christopher Layer* is guilty of the High-Treason whereof he stands indicted; and you say he had no Goods nor Chattels, Lands nor Tenements at the Time of the said High-Treason committed, or at any Time since, to your Knowledge, and so you say all.

Mr. Att. Gen. We pray a Rule may be made to bring up the Prisoner to receive Sentence.

Mr. Just. Eyre. He must have four Days to move in Arrest of Judgment. Let there be a Rule to bring him again upon *Thursday* next.

Then the Prisoner was remanded back to the *Tower*.

Die Martis 27 die Novembris, 1722.

Christopher Layer, Esq; was brought to the Bar of the Court of King's Bench, in order to receive Sentence.

Mr. Att. Gen. MY Lord, the Prisoner at the Bar stands convicted of High-Treason; I pray your Lordship's Judgment against him for the King.

Cl. of the Cr. *Christopher Layer*, hold up thy Hand, (which he did) Thou hast been indicted for High-Treason, for compassing and imagining the Death of the King, and thereupon been arraigned; and thereunto hast pleaded not Guilty, and for thy Trial put thy self upon God and thy Country, which Country hath found thee Guilty; what can't thou now say for thy self why the Court should not give Judgment of Death against thee according to Law?

Mr. Hungerford. Is it your Lordship's Pleasure to give any Directions touching the Matter of the Prisoner's being in Irons? I hope your Lordship will order them to be taken off, at least during his Attendance here.

L. C. Just. I don't know, there is none of the Cases that have been, which go further than during the Time of his Trial; his Trial is over, if he hath any thing to offer to the Court, and thinks he may not be able to do it so well while he is under these Irons, I would recommend it to Mr. Attorney, not to make a Precedent of it, that his Irons may be taken off.

Prisoner. Yes my Lord, I have a great deal to say, which I shall offer in Arrest of Judgment.

Mr. Hungerford. He hath complain'd since he hath been here, that he is in great Pain, in the Position he stands with his Irons.

L. C. Just. Come, Brother *Pengelly*, have you any thing to object against his Irons being taken off, or do you consent to it?

Mr. Serj. Pengelly. My Lord, we don't oppose it.

Then the Irons were taken off.

Mr. Serj. Pengelly. My Lord, the Prisoner at the Bar, *Mr. Layer*, after a long and a fair Trial, hath been found guilty of High-Treason; and on Behalf of the King, we pray the Judgment of the Court against the Prisoner.

Mr. Hungerford. By your Lordship's Indulgence, I am Counsel for the Prisoner at the Bar, I have, and I hope shall continue to do him what Service I can: The Prisoner's Life is at Stake, and I hope, I shall not be supposed to be troublesome, if I desire a Record to be read, which hath not been yet read in Court; it is the *Venire*, and that

being part of the Record, we think we are proper to have it read.

Mr. Serj. Pengelly. We apprehend it is such a Request as has never been made: If they have any Objections to any Part of the Proceedings, or any Exceptions to take, they are at Liberty to take them, and to state their Objections, that the Court, if necessary, may refer to the Record to see whether they are just or no; but to come and desire the Process to be laid before the Court for the Information of the Prisoner and his Counsel, it never hath been done: They are entitled now to offer any Thing, if they can, in Arrest of Judgment.

Mr. Att. Gen. If what they desire should be granted, it would be a Precedent which might be of very ill Consequence, and I apprehend what they desire, is directly contrary to Law; there are no Authorities that the Prisoner should either have Copies of the Process, or that the Process should be read to him, only to enable him to find a Fault. I believe no Instance can be given whatsoever, that it was ever allowed in a Case of this Nature, if it be done now, it will be a Precedent for the future.

The Act of Parliament went as far as was thought proper, Copies of the Indictment and Copies of the Names of the Jury, are directed to be delivered to the Prisoner; but as to any of the Process, the Act gives no Direction, and therefore as what they desire is neither founded on Law, nor Precedent, we hope it shall not be granted.

Mr. Soll. Gen. My Lord, *Mr. Hungerford* has been pleased, in the Course of this Case, frequently to put us in mind, as he does now, that what he has insisted on, was in favour of Life. That is a moving Argument, but it proves nothing, save that the Prisoner ought to have all the Indulgence which the Law and the settled Forms of Proceeding do allow; but I apprehend it is a Reason for no more. What is asked, is of more Consequence than appears in this particular Case; and whatsoever your Lordship doth now, will be made a Precedent for the future.

My Lord, before the Act of Parliament, which allows the Prisoner to have a Copy of his Indictment, and of the Pannel of the Jury, it is most certain, he was not entitled to have such Copies. Before that Law was made, he was informed of nothing but by having the Indictment read to him in Court upon his Arraignment, and that not barely to give him an Opportunity of taking Exceptions to it, but from the Necessity of the Thing, because it was the Charge to which he was to answer. Then comes the Act of Parliament, the 7th Year of King *William*, and allows the Prisoner a Copy of his Indictment, and of the Pannel of his Jury. But the Legislature, when they had these Matters under their Consideration, and seem to have intended to give at least all the Indulgence, consistent with Reason, to Prisoners in Cases of High-Treason, even at that Time they went no further, and did not think fit to direct that to be done, which is now desired on the Behalf of this Gentleman. Therefore this Motion of *Mr. Hungerford's* must be understood to be made at Common Law; but I must beg leave to rely upon it, until some Precedent is produced on the other Side, that there is no Instance whatsoever, either before or since the Act of Parliament, wherein any Re-

cord of the Proceedings hath been read to the Prisoner besides the Indictment. This is a Consideration merely of Practice and Regularity; and in a Point of that kind, where there is no Precedent, I hope your Lordship will not make one.

Mr. Serj. *Chebbire*. My Lord, the Carriage and Behaviour of the King's Council towards the Prisoner, hath been so fair and candid, that it deserves Thanks from him, rather than Complaint; and I believe this Temper will hold on to the last: But my Lord, we have no Authority to give up the Right of the Crown, or to fix that on the Crown to grant, which the Prisoner hath no Right to demand.

My Lord, it must be admitted, that this is a Demand made at Common Law, and if it be a Demand of Right, I don't know but it may go to every Thing in an equal Degree; that he hath the same Right to demand a sight of the Commission; *Certiorari*, &c. I don't know but he hath the same Right to enquire into every Step that is upon Record in this Case. The Officers concerned, I dare say, have done their Duty. There is nothing of Law, but what comes in upon the Statute of King *William*; that he hath had the Benefit of to the full extent of it; he hath had a Copy of the Pannel of the Jury; he hath had a Copy of the Indictment, and in such Time as was proper for him to make due use of it; and this they ask now, we apprehend is only to lengthen out Time, and to introduce that which may be greatly inconvenient. We have very little Reason of apprehending that it can be of any Profit to him; but for Example sake, and as he hath no Right to it, we cannot come into a Consent to it.

Therefore we submit it to your Lordship's Consideration, from the Inconvenience that may ensue from the Precedent, whether the Prisoner hath any Right to make this Demand.

Mr. *Hungerford*. I acknowledge that before the 7th of King *William*, the Prisoner was not entitled to have a Copy of his Indictment, and therefore I so far concur with the Gentlemen of the other Side, that we are not entitled to a Copy of the Record of the *Venire Facias*. But what I humbly pray now, is, what I apprehend we were entitled to before the Act of Parliament for regulating Trials in Cases of High Treason. The Instances are several, where in the Course of a Trial for High Treason, before that Act which gave the Prisoner several new Advantages, the Prisoner hath desired his Indictment to be read, and the Court never denied it; to have any other Part of the Record to be read, seems to be as reasonable as the Indictment. The Objection had been stronger, if we had desired for the Prisoner at the Bar, the Copy of the *Venire*; there we should have been justly told that we had been entitled to nothing but what the Act of Parliament had directed, *viz.* the Copy of the Indictment. We pray a Copy of nothing, but only pray that a small Part of the Record that makes up the whole Record of this Gentleman's Conviction, may be read. And this, with Submission, we hope we are entitled to have for the same Reason as the Indictment was read before the Act. Coll. *Sidney* desired, that his Indictment should be read, and it was so. And can any Reason be assigned, why the *Venire*, which is but a Part of the Record, should not be read as well as the Indictment? no

one Part of the Record of Conviction is more sacred than the other; and why therefore should not one Part be read as well as the other?

Mr. Serj. *Pengelly*: Can you shew any Case where the Indictment was read, upon the Prayer of the Prisoner, after Conviction, and before some Exception taken?

L. C. Just. We would be far from refusing any Indulgence to the Prisoner that by Law we are warranted to grant him; what you ask now, you must own is without any Precedent whatsoever. You know, that before the Act of Parliament you were not entitled to, nor could demand a Copy of the Indictment: It is very true what you say before the Act of Parliament; when it hath been desired by the Prisoner the Indictment hath been read, and that Method of proceeding having been allowed, gave him a Right to demand it; but you cannot produce any one Instance that ever he demanded this that now you offer; that ever he demanded the *Venire* should be produced and read to him.

Consider how strict the Law was in Cases of High-Treason; see the Act of Rights: The Course of the Court is the Law; this which you now desire was never so much as ask'd for, nor did this Court ever grant it; and if so, how can the Court be warranted to grant that which was never granted, nor was ever desired to be granted? The Reason of it is, that every Body was satisfy'd by Law it could not be granted.

You have instanced in Cases of great Persons, Colonel *Sidney*, Lord *Ruffel*, and others that have been attainted of High-Treason, who could not want Advice to desire any Thing that was proper, or that they had a Right to demand. Neither they nor any of the greatest Quality that have had the Misfortune of being try'd for an Offence of this Nature, ever demanded it; which is an Admission that they were not entitled to it; and if the Course of the Court be so, we must not establish a new Course; we can't see what the Consequences may be.

Mr. *Just. Eyre*. The Case of reading the Indictment to a Prisoner is certainly very different, and can be no Authority to warrant the reading of the *Venire*; for the Indictment is the Charge to which the Prisoner is obliged to plead, and he must know his Charge before he can give it an Answer: Besides, the Merit and Justice of the Case depend entirely upon the Indictment, which must be read, in order to understand the true State of the Question, and to see the Fact to which the Witnesses are to be examin'd. 'Tis therefore absolutely necessary, that the Indictment should be read; but none of these Reasons will serve for reading the *Venire*, which is only to summon the Jury, and bring them to the Bar; and therefore as it was never done, nor ever asked before, I can by no means think it fit for us to allow it now.

Mr. *Just. Powys*. I think it is a perfect Novelty what you demand, and not only so, but in its Consequences very dangerous: For, properly speaking, the common Usage to move in Arrest of Judgment, hath been out of the Indictment; but to run back to those Things, which if you had a Right to demand, it had been proper to have done it before; and since you have many Times known that nothing but the Indictment hath been read, since the Judges were never mov'd,

mov'd, nor any Thing of this kind done, and nothing in the World hath been demanded like it; if it should be granted at this Time, when Men are to receive Judgment, and Exceptions are to be taken to the Indictment, if they should run back to all the Proceedings, it would be a thing of strange Consequence. But besides that, it is a Thing you have no Example for, it hath been never done; and it hath been observed, that nothing but the Copy of the Indictment hath been read before this Act of Parliament of King *William*. Now there are two Things given by this Act of Parliament of King *William*; the Prisoner is to have the Copy of his Indictment five Days, the Copy of the Pannel of the Jury two Days before his Trial, and these were proposed as Advantages which the Common Law did not admit: Shall we come to unravel all the Matters preceding? it would be a Matter of strange Consequence, and what we can't do or warrant by Law: If you have any Thing to move out of the Indictment, we are ready to hear it.

Mr. *Just. Fortescue Aland*. This is perfectly new, or else in Favour of Life I should be ready to grant it: The true Reason of having the Indictment read is, that the Prisoner may know what his Charge is, in order to make his Defence at his Trial; but that Reason holds not in this Case, which is after Conviction, and what is ask'd now is not relative to his Charge, but concerns the Acts of the Court only. The Court will assist in Matters of Law, when they appear, but will never assist the Prisoner with Facts, in order to make Points of Law; and therefore it has been denied the Prisoner to take Minutes even of the Indictment, and for the same Reason Counsel has ever been denied, in all capital Cases, before the late Act of Parliament, unless a disputable Point of Law did arise and appear.

You move this Matter as a Motion purely at Common Law; and as such it will extend to all Indictments of Murder, and other capital Cases, which may be of very evil Consequence. It would be very strange to have all the Proceedings upon Indictments read to the Prisoner; and there is as much Reason to call for all as for the *Venire facias*: I take it clearly there never was a Case, where the Acts and Proceedings of the Court have been called for to be read to the Prisoner, and for no other Purpose but to make an Error: It is a Thing that is entirely new, the Consequences may be very fatal, and therefore I think it is an unreasonable Motion, and ought not to be granted.

Mr. *Hungerford*. I assure your Lordship I did not do it out of an Affectation of Novelty, neither shall I persist in urging it further, since the Court hath given their Opinion; but I thought the Reason of the Thing, in reading the Indictment, before the Act of Parliament was with me; but since it is your Lordship's Opinion that it is otherwise, I desire your Lordship to give me leave to go on.

Prisoner. I beg leave to say but a short Word in respect to this Objection that hath been made by Mr. *Hungerford*. If I take the Thing right, it is, that the *Venire* may be read, to see if it is properly issued, and I hope thus far it shall be granted, to shew a Reason why this *Venire* is returned on one Day, and the Jury appear on another; and if it doth appear that there is an Er-

ror in the Proceedings on the Foot of the *Venire*, I humbly hope I shall have the Benefit of it. The Objection, I take it, must be this; the *Venire*, I take it, is returnable the 19th of the Month of *November*, I was not try'd till the 21st; therefore, what I humbly offer is, whether or no, after the Return of the Writ, this is a good convening of the Jury together to try me on a Writ when there was no such Writ in being, more especially when the Proceedings against me are by Original, where the Returns in this Court are the same as in the Common Pleas; so I shall leave it to my Counsel to say the rest, and humbly hope, that I shall have leave to look into the *Venire*, and if it come out so, I hope it is erroneous, and that Judgment shall be arrested.

Mr. *Hungerford*. The Gentleman hath given Utterance to some of my Thoughts; and not by comparing of Notes, for I have not seen his Face, nor heard from him since I saw him here at the Bar at his Trial.

That which occurs to me on this Occasion, but I can but guess at some Part of the Fact, is, I take it, that the *Venire* bears Teste the last Day of *October*, and is returned the 19th of *November*; there are stated Return Days of the Law, and, my Lord, if a Man appears in a Court of Justice one Day, and he is not by the Course of proceeding indulged with a further Day of appearing, there is a Discontinuance of the Process, and the Man is out of Court. The different Days the Law takes notice of for this Purpose are, the *Essoign* Day, the Day of Exceptions, the Day of Appearance, the *quarto die post*; I take the *quarto die post* to be an Indulgence which a Court of Justice gives to a Suitor to appear at a further Day, when he ought to have appeared at a former Day; and this is the Practice in real Actions in the Court of Common Pleas: As to the Exception Day, the Use of that is, that a Man that is summon'd may object to the Summons, as not being a fit and regular Summons to draw him in Contempt.

But, my Lord, in Cases of Juries, who are not Suitors in Court, I take the Law and the Practice to be, that they are oblig'd to attend upon the Process of the Court; I take it, they must do Duty on the Return of the *Venire*, which, in this Case, is on *Monday* the 19th of *November*, and did not appear till *Wednesday* the 21st; so that if they were to appear on *Monday* the 19th of *November*, and did not appear then, there must appear some Act of the Court, by which they are indulg'd to a further Day: And I put it upon Mr. *Harcourt* to shew, whether there is any Indulgence of the Court entered upon Record for the continuing of the Jury till *Wednesday* following; and if there is not, there is then a Discontinuance of their being in this Court, and consequently the Proceedings are irregular, and the Trial a Mistrial: I shall quote some Authorities which justify this Observation; when a Man by a Process of Court appears on the Day of the Return of that Process, unless there be a Continuance of that Process, that *ulterior dies datus est* to the Party, or a subsequent Process issues that Day, the Law deems that Chasm in the Proceedings to be a Discontinuance, and that the Party is out of Court. It was so resolved in *Yelverton*, 204; and 2d *Coke*, 284. It is the Case of *Bradley and Banks*; and reported in both Books, but most fully in *Yelverton*. There is an Authority which weighs with me something more,

more, and seems to be a Case in Point; it is the Case of *Peplow and Rowley*, 2d of *Croke*, 357. and there the Case is on a Writ of Error brought upon Proceedings in the Court of *Shrewsbury*, where the Usage was, to hold Plea in some real Actions, and there was an Entry that the Parties did not appear on a preceding Day, but made Default: And the Entry was *habuit diem per default* given to the Party by the Court, *secundum consuetudinem villæ prædictæ*. This came before this Court by a Writ of Error, and it was adjudg'd, that both the Entry and the Custom were naught. The Reason assigned why the Entry was so, is, for that the Party having made Default, was out of Court, and the Court could upon that Process give him no new Day to appear. And the Reason why the Custom itself is naught, is, for that there can be no Custom to help that (which the Book calls) a Discontinuance at Common Law; for if the Man be out of Court, he can't be brought in there again by the same Writ.

My Lord, if that be the Case then, that the Jury were to appear on the 19th, and there is no Entry to continue them till *Wednesday* the 21st, then by the Authority of these Cases they had no Call nor Right to appear, but were out of Court, the Trial was no legal Trial, and consequently no Trial at all.

I am told, that the Practice of all Trials at Bar is, that the Jury do appear here on the Return of the *Venire*, and immediately proceed to do Business; why should it not be so too in a criminal Case, as this is? I think the Reason in both Cases is the same: I humbly hope therefore, my Lord, that if the Fact be as I have represented, that there is no Entry to continue over the Attendance of the Jury from *Monday* to *Wednesday*, there is a Blemish in this Proceeding; and you can't proceed to Judgment against the Prisoner at the Bar.

Mr. *Ketelbey*. If your Lordship will favour me —

L. C. Just. You shall be fully heard; but because Mr. *Hungerford* hath appeal'd to Mr. *Harcourt*, I shall ask Mr. *Harcourt* this Question about the Matter of the *Venire*.

Mr. *Harcourt*. I shall be very tender in this Matter, where the Life of the Prisoner is at Stake, as Mr. *Hungerford* has observ'd, and will not say any thing but what I am sure is the Course of the Court. If a *Venire* be returnable the first general Return of the Term, the Appearance-Day of the Jury is the *quarto die post*, which is the first Day of the Term. If the Court be not pleas'd to try the Prisoner then, they may adjourn the Jury over to any Day before the next Return in the Term; but no Entry is ever made on Record of such Adjournment, and the Proceedings are always enter'd on Record to be at the Return of the Writ. In all other Returns in the Term, there is the same Course observ'd: The Jury is never oblig'd to appear before the *quarto die post*; nor can the Prisoner be try'd sooner. What makes this clear is, to consider the Proceedings on *Disstringas*, where the Prisoner is not try'd on the *Venire*: In such Cases the *Disstringas* is never tested on the Return-Day, but the *quarto die post*; which, if what is insisted on by the Prisoner's Counsel is Law, would make a Discontinuance, and that has always been held otherwise; for till there has been a Default of the Jury's appearing on the *Venire*, no *Disstringas* can issue, and no Default can be objected to the

Jury for not appearing till the *quarto die post*; nor are they amerçiable sooner for not appearing. This Matter was settled on great Deliberation, by my Lord Chief Justice *Holt*; and I am confident, has been ever since so practis'd.

Mr. *Ketelbey*. My Lord, it was my Misfortune not to get into Court sooner; so that I did not hear the first Application Mr. *Hungerford* made to your Lordship on Behalf of the Prisoner, nor shall I presume to break in upon what your Lordship has already determin'd; but whether or not we are entitl'd to see the *Venire*, or hear that Part of the Record read. I hope we shall be able to make out, that there has been a Mis-trial in this Case. The *Venire*, it is agreed on all Hands, was returnable *octabis Martini*, which was *Monday* the 19th of *November*. That the Prisoner was not tried till the 21st, is most certain. The general Return was *offabis Martini*, and he was not tried till two Days after; and notwithstanding what Mr. *Harcourt* hath said, I must beg Leave humbly to insist, that there hath been a Mis-trial, and Judgment ought to be arrested; and for that I have as strong an Authority as any that can be cited in this Court, 'tis the Trial of *Rookwood*; and for the greater certainty, I have brought the Book along with me, and have it in my Hand; where it is agreed, by the Court, and all the King's Counsel, that the Trial must be on the Day of the Return of the *Venire*, or else that it would be Error: And my Lord Chief Justice *Holt* declared, the Issue could not be tried after the Day of the Return: This Matter came before the Court upon an Exception taken by Sir *Bartholomew Shower*.

Mr. *Just. Eyre*. That was on a Commission of *Oyer and Terminer*, which was quite different; there is no *quarto die post* there, no Day of Appearance, but the Day of the Return of the Writ.

L. C. Just. It must be so, because there is no such Thing as a *quarto die post* in Commissions of *Oyer and Terminer*.

Mr. *Ketelbey*. I submit it to your Lordship, whether there is any *quarto die post* in a *Venire*?

L. C. Just. It is always so.

Mr. *Just. Eyre*. You know we had the Consideration of this when we appointed the Trial.

Mr. *Ketelbey*. I beg leave to offer one Word, that in case of a *Venire*, there is no *quarto die post*, because there is no *Essoign*, no Exception-Day for the Jury. The Authority in first *Roll's Abridgment*, 822. *Placit.* 4. & 6. is express, that in a *Venire facias* or a *Scire facias*, there is no *Essoign*: And where there is no *Essoign*, there can be no Day of Exception, because the Exception depends on the *Essoign*-Day, and consequently the Day of the Return, and of the Appearance must be the same. The Case of *Essoign*, Exception, Return, and Appearance-Days, concerns only original Writs, and the Plaintiffs and Defendants therein; there if the Defendant appears the *quarto die post*, his Appearance shall be accepted as good, and no further Process made against him. But who ever heard that a Jury were *Essoign'd*? There are several other Authorities for this. *Dalton*, 415. 2d. *Instit.* 125 & 33 *H. VI.* 5. *b.* that no *Essoign* lies upon a *Venire facias*; and the *Essoign* was quashed.

L. C. Just. This you now offer will set aside all the Proceedings either on the Plea Side, or the Crown Side.

Mr. *Ketelbey*. There is a Case reported in the Year-Book, *Michs.* 33 *Henry VI.* fol. 35. 36. and abridged in *Brook*, Title *Nisi prius*, Pl. 32. It was disputed by the Judges of the Bench, and at first there was a Difference of Opinion among them; but at last it was unanimously resolved, That the *Nisi prius* was not well taken. I will state the Case as it appears in the Year-Book and the Abridgment. There was a Writ of *Nisi prius* made with a certain Return, and the Justices tried the Issue upon a Day *mesne* during the Interval between the *quarto die post*, and the Return of the Writ. This was objected to, and said to be a Mis-trial; and afterwards the Judges agreed in their Opinion, that it was a Mis-trial, because it was not upon the Return-Day of the Writ of *Nisi prius*; and if not upon that Day, the Trial ought not to have been at all. And I don't apprehend any Difference between that Case and this, but only that was at *Nisi prius*, and this a Trial in Bank. There is no Continuance lies on a *Venire facias*; and if so, I shall submit it, whether there is any Day of Appearance.

Mr. *Just. Eyre*. Sure there is a Day of Appearance on the *Venire facias*; the Proceedings in this Case are like those upon an Original. The same Day which is the Day of Appearance for the Party upon an Original, is the Day of Appearance for the Jury upon a *Venire*.

Mr. *Ketelbey*. I believe it will be hard for Mr. *Harcourt* to shew where there is an *Essoign* on a *Venire facias*.

L. C. Just. We have heard already what Mr. *Harcourt* hath said. I desire Mr. *Simmonds* may inform you how it is on the Civil Side.

Mr. *Simmonds*. Our Process where the Suit is commenced by Bill, is return'd on a Day certain in Court; that doth not respect this Case.

L. C. Just. How is it when it is by Original?

Mr. *Simmonds*. Where it is by Original, it is always returnable as the Process is in the *Common Pleas*; and the Day of the Appearance of the Jury, I take to be the *quarto die post*.

Mr. *Harcourt*. If this was to be a Discontinuance, what will become of all the Records where the Proceedings are at general Returns, and which are tried on the *Distingas*, which always bears *teste* the *quarto die post* after the Return of the *Venire*? Every one of these Records, which are many every Term, would be discontinued.

L. C. Just. You can't but be sensible that there is nothing in this Exception.

Mr. *Serj. Pengelly*. There is no Foundation for it in Practice.

L. C. Just. You need not labour it.

Mr. *Serj. Pengelly*. The Sheriff, or the Jury, are not amerciable, tho' they did not appear on the Day of the Return, if the Jury do appear upon the *quarto die post*; that shews it —

Mr. *Att. Gen.* If this Objection prevails, it will overturn all the settled Course of Trials at Bar.

Prisoner. One Thing I would humbly offer to your Lordship. I have not had my Books by me, but only what occurs to my Memory, I cannot be so exact as I ought to be. This Overt-Act in *Essex* of Treason found by the Jury to be so, I humbly apprehend, and I offer it to your Lordship's Judgment, in Law is no Overt-Act at all. All the Reason I shall humbly offer to your Lordship, that tho' it hath been said, that

there was a consulting and agreeing in order to levy War, yet it doth not appear that War to be levyed was such a War as in the Law is adjudged to be Treason. My Lord, this differs from the levying War it self. An Intention and Consultation, or a Conspiracy barely to levy War, unless War be levy'd, it is no Treason. If it be a Consultation to levy War against the King's Person, to imprison the King, to dethrone and murder him, it ever hath been adjudg'd to be Treason. If it be only a Consulting to levy War, as if to agree to break open Meeting-Houses, to throw down Houses, was the same as doing of it. There must be a War that is levy'd, or else it is no Treason. Not only that, but I beg leave to say one Word more. In my Case, all the Evidence given in respect of this Overt-Act in *Essex*, there is no Foundation for it; and if there is no Overt-Act in *Essex*, no Overt-Act elsewhere can affect me. It stands on the Evidence only of Mr. *Lynch*: He talks of a Declaration. Who read it? The only two Things are a Discourse between us, and a Declaration which I gave him to read. If that, as I humbly submit it, be an Act of Treason, it is carrying the Matter further than it hath been in those few Cases I beg leave to mention that just occur to my Memory. If I state them wrong, I shall be sorry. The Case of *College*, the *Oxford Joiner*. It was asked the Court, Do you take my Words distinct from my Actions? No, says the Court, we do not do so. You declared you would go down to *Oxford*, and assassinate the King's Person. In order to that, you went down with Pistols before you. That at that Time was declared to be an Overt-Act; the going down to *Oxford* in that Manner; and the Court seemed to rely upon it, as the Overt-Act of the Treason, and not the talking here, or conspiring that he would assassinate the King, but the going down in a hostile Manner. So likewise in the Case of my Lord *Preston*; there the Question was, whether those Letters that were found with him in the Ship; whether that was an Overt-Act of Treason. The Judges seemed to be of Opinion, that the taking those Letters with him as he was going to *France*, and there to consult the stirring up an Insurrection here, and to invite the *French* King to invade us, was an Overt-Act of Treason. But there is a stronger Case, the Case of my Lord *Ruffel*. He was indicted, as I am, for compassing and imagining the Death of the King. The Overt-Act laid in the Indictment to manifest that Intention, was, that he, with the rest of the Conspirators, consulted to seize upon the King's Guards: In pursuance to that Discourse and Conspiracy which they had had, it appeared that Sir *Thomas Armstrong* was sent to take a View of the Guards in order to carry on the Design. Notwithstanding there was a pursuing of their Design of seizing the King's Guards, in sending Sir *Thomas Armstrong* to view them, yet the Case was thought so very hard in respect to my Lord *Ruffel*, that his Attainder was reversed by an Act of Parliament. Therefore I only argue, with great Submission, that in my Case, where nothing is done but accidentally calling in at the *Green Man*, staying a little while there, and, as hath been sworn, here was nothing but a mere Discourse, and then I gave him a Declaration to read. If I did so, it was only Words. As to the second, it was nothing but publishing a Libel. And shall this be a Foundation to deprive me of my Life and

and Estate, to the utter Ruin of myself and Family? It is an unprecedented Thing, hath it ever been? Therefore I hope your Lordship, before you give any Judgment in this Matter, will take it into your Consideration, whether any Thing done in *Essex* doth amount to an Overt-Act of Treason.

Mr. *Hungerford*. My Lord, I humbly hope, as it is my Duty to do what Service I can to my Client, and as it is in Case of Life, that I shall have your Lordship's Indulgence for a few Words. My Lord, he hath justly observed—

Mr. Serj. *Pengelly*. My Lord, I would not interrupt Mr. *Layer*, because it may be supposed he is not so well acquainted with the Method of Proceeding. But I hope I may take the Liberty to interrupt his Counsel, who know by very great Experience the Method of Proceedings, that they are not now to insist on the Nature of the Evidence, whether the Evidence that hath been given is sufficient to maintain the Indictment; that is not the Business of this Day. If they have any thing to offer, any Objections to make in arrest of Judgment, that is the Business of the Day: But to arraign the Proceedings upon the Trial, as it is said that the Evidence given did not amount to a Consultation, or to prove any Overt-Act of the Treason alledg'd, I don't apprehend it to be proper at this Time: I did not interrupt the Prisoner himself; but I hope his Counsel, who know the Method of Proceeding better, in Cases of High-Treason, shall not be permitted to go on in that Manner.

Mr. *Att. Gen.* The Gentlemen that are Counsel for the Prisoner know very well, that the Evidence given on the Trial is not now before your Lordship; the single Question that can now be made is, whether the Indictment is good, and the Facts charged and found by the Jury, are well laid, and do amount to sufficient Overt-Acts of the High-Treason, of which the Prisoner stands indicted. Mr. *Layer* hath been giving an Account of the Witnesses, and making Observations on the things which they swore; he was borne with: But the Gentlemen that are his Counsel, seem to be opening in the same Manner, but as to them, we must insist upon it, that they should be confin'd to what is proper, and apply themselves to move in Arrest of Judgment, if they can find any thing upon the Face of the Record of which they can take Advantage. But I think they are not entitled to go on with Observations upon the Evidence in the Manner they were beginning.

Mr. *Hungerford*. I assure your Lordship I did not design it, I did not intend to recapitulate any part of the Evidence, or to observe upon it. And therefore there was no Occasion for the Caution. I thank your Lordship for the Indulgence you give me, and I will conform myself to the Rules the *King's Counsel* prescribe, to observe upon nothing but the Record.

My Lord, the Indictment is in this Manner; the Species of the Treason laid to the Charge of the Prisoner, is the compassing and imagining the Death of the King. The first Overt-Act of that Treason, is, that he did meet, consult, conspire and agree to raise a Rebellion, and a *Guerram* in the Kingdom, which is no Overt-Act of compassing and imagining the Death of the King.

I know how the Authorities have been; but in the Case of Life, your Lordship will give me leave to observe, that by the Statute of 25 *Edw. III.* compassing and imagining the Death of the King—

L. C. Just. Mr. *Hungerford*, we would hear you in any thing that is proper, but consider if you are not offering a matter in Arrest of Judgment that

hath been determined against you a hundred times. Hath it not been constantly allowed as an Overt-Act of Treason in compassing and imagining the Death of the King, if the Parties did meet, consult, and agree to levy War? Hath it not been constantly agreed, and doth it not stand allowed to be so? Now to persuade us at this Time to overthrow those Resolutions taken by our Predecessors, is such a thing as is not right. Do you think we will give a Judgment contrary to what our learned Predecessors have given in Cases of the greatest Moment? If I thought it was of any Effect, I should not grudge spending time to hear you, but you must agree, it hath been over-ruled a hundred times.

Mr. *Just. Eyre*. It hath been settled a great many times, particularly in the Case of *Dorrel, Gordon* and *Kerr*, in which it was argued over and over again, and the Court was of Opinion that the consulting and agreeing to levy War, was an Overt-Act of Treason in compassing and imagining the Death of the King, and gave Judgment accordingly.

Mr. *Just. Fortescue Aland*. Mr. *Kettelbey* was Counsel for the Prisoners in that Case, which was in this Court in the 11th Year of this King, when this Objection was made; and very well knows, that the Court, upon that Occasion, said, that they ought not to have suffered this matter to be made a Question, for that it was arraigning the Judgments of very many learned Judges.

Mr. *Just. Powys*. No one thing relating to Treason is more settled; and in that Case as hath been mentioned, it was agreed, and it was the Judgment of all the Judges that tried that Cause.

Mr. *Hungerford*. My Lord, I humbly hope—

Mr. *Just. Eyre*. It must not be admitted, we must not suffer so plain a Point to be disputed; it is not only mispending of time, but shaking what has been established by every Trial in which any thing of this kind has been mentioned, from the Case of the Regicides to this Day.

Mr. *Just. Powys*. In the Cases of the Regicides, these Matters are printed in *Keyling*.

L. C. Just. And in all the Trials ever since, there is scarce one Case hath happened, where the Case hath been for compassing and imagining the Death of the King, but that it hath been laid for an Overt-Act, that the Party charged, did consult and agree to levy War to bring his wicked Intentions to Effect.

Mr. *Hungerford*. There is no Doubt, but that the Regicides were the worst and most notorious Criminals that were ever brought before a Court of Justice; and yet there is one Circumstance of those Trials, quoted in the very Book which Mr. Justice *Powys* mentions, which was never practised before, and I am sure never was since; that is, the Judges who were to try the Criminals, and the King's Counsel who were to prosecute them, met and consulted together to form and fix the Accusation.

But if it is your Lordship's Pleasure, I shall speak no further to that Matter.

L. C. Just. You have the Opinion of the Court, and I dare say it is your own Opinion; and as the Resolutions are so positive, it is not for us to make Indictments at this Day.

Mr. *Hungerford*. I shall not press it any further. There is another thing arises upon another Overt-Act laid in the Indictment, that is, *Publicavit quoddam Scriptum*, &c. I apprehend the Substance of the *quoddam Scriptum* ought to be mentioned in the Indictment.

L. C. Just. It is mentioned in Effect, that it was to excite People to a Rebellion and an Insurrection.

Mr. *Hungerford*. Your Lordship will observe that the criminal Words in the *Scriptum*, are not mentioned in the Indictment; and by the Rule given by all the Judges of *England* in Dr. *Sacheverell's* Case, in all Accusations, whether by Information or Indictment, the Words supposed to be criminal ought to be inserted; and since that is not done in this Case, the Overt-Act is not well laid, and the Judgment ought to be arrested.

L. C. Jus. You know, Mr. *Hungerford*, if but one Overt-Act is well-laid and prov'd, it is sufficient.

I don't know, I was sorry you forc'd me to remember what I would willingly have forgot. I remember, on that Occasion, you was pleased to compare it to a Ballad, which is an Expression that ought not to be us'd. Is that a Thing, when a Prisoner is on Trial for his Life, and a Matter of Insurrection is intended against the King, to be treated in so ludicrous a manner? It is laid as an Overt-Act of Treason, and what is an Overt-Act of Treason, if a Man's publishing a traitorous Libel, and exciting Persons to a Rebellion and Insurrection against the King is not? This is undoubtedly so: And when we are upon this Consideration, to compare it to a Ballad, and say he might as well publish a Ballad, and lay it as an Overt-Act of Treason in the Indictment; it is an Expression that ought not to be us'd, and I was very sorry you did use it.

Mr. *Hungerford*. I am sure I did not say he might as well publish a Ballad and make it Treason; I have a greater Duty, and a more tender Regard to his sacred Majesty, and the Quiet of his Kingdom and People, than to express myself so. What I then observed, as near as I can recollect, was, that there were but few Minutes to transact the Business at the *Green Man*; that what was done, could not amount to the publishing of a Declaration, when there was nothing done but a Man's reading to himself: I knew the whole Accusation did turn upon that Transaction at the *Green Man*; and in Service to my Client, I thought it my Business to make it appear as inconsiderable as I could; and if in this I have offended your Lordship, or the Court, I am heartily sorry for it, and beg their Pardon.

Mr. *Ketelbey*. If your Lordship please to favour me with a few Words.

I shall be very tender of offering to your Lordship any Thing on this Indictment, which hath been over-ruled in any of the Cases where I have been before concerned; whether conspiring to levy War, unless War be actually levy'd is an Overt-Act of High-Treason, was mentioned on the Trial of *Dorrel*, *Gordon*, and *Kerr*, and I then took that among other Exceptions in Arrest of Judgment, which were not allowed; but the Statute of 13 *Eliz. cap. 1.* was not at that Time mentioned; and I have some other Matters to offer on that Head, if it is now open to me.

L. C. Jus. Consider a little how you treat the Court; the Objection hath been solemnly taken in this Court, argued and adjudged by this Court, and now you come to arraign that Judgment that was then given.

Mr. *Ketelbey*. I shall go off from that, and say no more upon it, since your Lordship is of Opinion that it is a Point settled. But, my Lord, I must beg Leave to take Notice of what Mr. Attorney has observed relating to the five Overt-

Acts laid in the Indictment, and submit to your Lordship; for I don't know that it was ever determined otherwise, but that if one of the Overt-Acts appears to be bad, Judgment must be arrested.

L. C. Jus. Alas! quite the contrary: I believe you will find in *Rookwood's* Trial, which you have in your Hand: There it is said, if one Overt-Act held, the Indictment is good.

Mr. *Ketelbey*. If I am not mistaken, in Sir *John Friend's* Case it was not so: We can't take upon us to say, That all the Overt-Acts are wrong. Is it not like an Action in a Civil Case, where there are several Counts in the Declaration? If there be one wrong, that will stay Judgment for the whole.

L. C. Jus. Because it is an entire Declaration; and the Jury instead of giving Damages on one Count, may have given it on the Count they ought not.

Mr. *Just. Eyre*. But if one Count be sufficient, the Plaintiff shall certainly have Judgment upon Demurrer.

Mr. *Ketelbey*. What I had to offer was, that if one Overt-Act is bad, the Indictment is bad; but if it be otherways, and if there be any one Overt-Act well laid, that shall make the Indictment good; and your Lordship will maintain that Indictment: I have nothing else to offer.

Mr. *Att. Gen.* Say what you have a Mind to say.

Mr. *Ketelbey*. I did not know but I was right in what I was going to say; and I think it a Point too material to be easily given up.

L. C. Jus. You allow one of the Overt-Acts is well laid; consider if there is no Overt-Act but that one; must there not be Judgment against the Prisoner? Suppose one Overt-Act that is not good, must that take off the Force of that which is good?

Mr. *Ketelbey*. I submit it, whether this is a Parallel Case in a Declaration for Work and Labour done, if there be but one Count, and that well laid, the Plaintiff shall recover: But if in a second Count, he comes and says in Court, that he had done such Work and Labour; that the Defendant promised to pay him such a Sum, if either these Counts are naught, it may be moved in Arrest of Judgment.

Mr. *Just. Eyre*. If the Damages are taken generally, otherwise not.

Mr. *Serj. Pengelly*. You find in *Rookwood's* Case, it is there held, if the Jury found him guilty of any one Overt-Act, that it would maintain the Indictment: But what is your Objection?

L. C. Jus. We will hear any Thing that you think material to offer.

Mr. *Ketelbey*. I would not have offered it, if I did not think it material; and for my part, I cannot find any such thing in *Rookwood's* Trial, or any where else, (I beg Pardon if I have overlooked it) that one good Overt-Act should maintain the whole Indictment; I admit three or four of them to be good, as they are laid in this Indictment; the only Objection I have, is, to the Uncertainty of that which relates to the publishing of a malicious, scandalous, seditious, and traitorous Writing, *contenen' & purportan' exhortation' incitamen' & prœmicrum promission' ad suadendum & excitand' subditos Domini Regis ad arma & guerram*

contra Dominum Regem, &c. My Lord, the Rule that my Lord Chief Justice *Coke* lays down in his first *Institutes*, f. 303. a. is, That in Indictments, a Certainty to a common Intent is not sufficient, no more than in Counts, Replications, or other Pleadings of the Plaintiff. Now whether this, as it is laid, hath the Certainty which that Rule requires, your Lordship will determine. In all capital Cases, especially in High-Treason, the Indictments must be drawn with the utmost Accuracy and Certainty. The Words here are, that he *publicavit quoddam malitiosum, seditiosum, & proditorium scriptum*: And then sets forth only the Substance of the Libel in general. Is there not the same Reason that the Words should have been set forth in this Indictment, as in an Indictment for a Libel, that so the Court might judge, upon the Face of the Indictment, whether they did import Excitement and Exhortation, *levare Guerram*. I must own, in two or three late Cases, the Words have not been set forth.

L. C. Just. Remember *Francis's* Case.

Mr. Ketelbey. I am going to mention *Francis's*, and hope I shall be able to account for that, as well as the others: In *Francis's* Case the Indictment was, that he wrote several Letters, notifying his Intention to levy War, and requiring Aid from Abroad, without particularizing the Words of those Letters, or the Substance of them. The Question was not upon an Arrest of Judgment; but it came on in the Course of the Trial, whether such Evidence should be allowed. It was insisted upon, that there was a Letter mentioned, and the Substance of that Letter ought to have been set forth in the Indictment; or else the Letter itself ought not to be read, much less a Copy of it entered in the Prisoner's Copy-book, as Evidence against him: And I must beg Leave to rely on the solemn Resolution of all your Lordships in *Dr. Sacheverell's* Case, that the very Words should be expressly set forth in all Indictment whatsoever. In *Francis's* Case, there was no Motion in Arrest of Judgment; for there was no Verdict against him: Therefore, whether that Precedent will stand in our Way, so as to stop us in our present Objection, your Lordship will determine: And in the Case of Colonel *Sibby*, the very Words are set forth, the Title of the

Book, and the Part charged to be
Trial 64. Treason. In *Kylinge* 22. in *Tevine's* Case, he was indicted for compassing the Death of the King; and his Overt-Act was, the publishing a Book call'd, *A Treatise of the Execution of Justice*; and the Title of that Book, and the very treasonable Part objected against the Prisoner were set forth at large. In *Coleman's* Indictment, two Letters were mentioned, which were declared to be his Hand: There was no Counsel, nor Motion made in Arrest of Judgment. I don't remember any Case where they are laid so general, as in this Indictment, except *Francis's* and *Coleman's*. I shall only beg Leave to add, that where there is a Libel, a Book, or Letters, charged as the Overt-Act of that which is supposed to be Treason, and upon which the Offence is grounded, they ought to be so far set forth, that a Person may have an Opportunity to clear himself of the Accusation: I don't know any Precedent to the contrary, but that of *Francis's* Case, where there was not any Opportunity

of debating it, he being acquitted on his Trial; and the Case of *Coleman*, which was before any Counsel was allowed.

L. C. Just. The Objection was taken then in *Francis's* Case as properly, as if it had been taken in Arrest of Judgment; for the Act of Parliament says, that no Evidence shall be admitted or given of any Overt-Act, that is not expressly laid in the Indictment, against any Person or Persons whatsoever. You took the Objection, and said, that this Overt-Act of Treason is not expressly laid in the Indictment; and therefore it ought not to be given in Evidence: You know, that that was over-rul'd at the Time of making the Objection, and that the Opinion of the Court was against you. As to what you say, that the Words must be set forth, it is perfectly wrong; a Man may set forth the Substance of the Words, without shewing the Words themselves: That is the Way that is proper to be taken, and when it is otherwise, it is not so as it ought to be done.

Mr. Jus. Eyre. It was indeed the Opinion of the Judges who were present at *Dr. Sacheverell's* Trial, that the particular

Trial 181. Words supposed to be criminal ought to be expressly specified in every Indictment or Information for any Misdemeanour by writing or speaking; and since it is urged as an Authority to conclude our Judgments, I can't forbear saying, that it was a great Surprise to *Westminster-Hall*, and particularly to those who attended this Court, to hear that any such Opinion had been given; for it had never been laid down in any of our Books as the Rule of Law or Practice, that the particular Words supposed to be criminal, ought to be specify'd in the Indictment or Information; and we had learned from my Lord Chief Justice *Holt*, that a Libel might be described either by the Sense and Substance, or by the particular Words, and that an Indictment or Information in either of these Forms would be good. If you look into the Books of Entries you will find several Instances where Slanders and Perjuries are charged in *Latin*, as false and scandalous Assertions, and not in the Words as spoken. And in *Staley's* Case who was indicted for treasonable Words upon the Stat. 13 *Car. II.* it was charged in the Indictment, that he speaking of the King, had traiterously declared, *quod ipse predictus Staley ipsum Dominum Regem interficeret*; and the Fact was, that *Staley* in Conversation had spoke Words to this effect in *French*, which were proved by two Witnesses; and this Evidence was thought sufficient to convict him of High-Treason; and yet the particular Words supposed and adjudged to be criminal, were not specified in the Indictment; and there was an Information for Perjury †, in which all the great Counsel of *England* were concerned on one Side or other, which was tried at Bar in my Lord Chief Justice *Holt's* Time, and the Offence was charged in the same Manner; for the Substance of what the Defendant had sworn was set forth in *Latin*, and the Evidence which he gave in *English* being prov'd to be false, he was convicted of the Perjury without any Objection; and yet the particular *English* Words in which he gave his Evidence were not expressly specified in the Information; and I don't find that the specifying of the particular Words was ever said or suggested to be necessary, till this sudden Opinion

* Mich. 30 *Car. II.* B. R. *Trial 74.*

† *Dom. Rex. v. Griep.* Trin. 8 Will.

was given; and therefore as I never thought it right, I can't hear it urged as an Authority without offering my Reasons to the contrary, and acknowledging that I have been long in a great Mistake, if there be any one Resolution in the Books to support it.

Mr. *Just. Powis*. In the Case of *Francia* it was insisted on in order to stop the Trial; the main of the Objection was, that they ought not to produce Evidence of the Letters, because those Letters were not expressly set forth in the Indictment, and that very Objection was made in order to stop the Trial. What was said there in Cases of Libels is intended when set forth *in hæc verba*, and not in *Latin*, the more common Way: But it is another Thing where it is an Overt-Act of the Imagination of a Man's Heart in Treason, it is sufficient to set forth the Substance of them; therefore it was so fully settled in *Francia's* Case, that I thought it would be never mentioned again; the Point was argued, the Objections were made and over rul'd, and it was the very Point on which the Trial proceeded.

Mr. *Att. Gen.* In my Lord *Preston's* Case there were several Notes, Memorandums and Writings, that were the very Overt-Acts of the Treason, yet they were not particularly set forth in the Indictment.

Mr. *Serj. Pengelly*. There it was alledged, that the Lord *Preston* prepared and composed several Writings, several traitorous Notes and Memorandums, for the giving Instruction and Information for the *French* King how to invade *England*. I desire to put Mr. *Ketelby* this Case: Suppose any one had proclaimed the Pretender at *Charing-Cross*, or elsewhere, and had read his Declaration, exciting the People to revolt and to come in to him, and promising them Rewards; and then the Declaration had been carried off, or so disposed of that it could not be recovered and produced in Evidence; I would be glad to know, whether that Person might not be indicted for Treason, without setting forth the particular Words which he read out of such Declaration; or whether he should escape Punishment for want of being able to set out the particular Words?

Mr. *Ketelby*. The reading of the Paper in that Case would be sufficient.

L. C. *Just.* Have you done, or have you any thing further to offer for the Prisoner?

Cl. of the Cr. *Christopher Layer*, hold up your Hand. You have been indicted of High-Treason, &c.

Pris. I have nothing more to say now, because my Counsel have given it up. But after your Lordship hath passed Sentence upon me, I hope and desire, for the Sake of other People more than myself, those that I have had very great Dealings and Correspondence with, particularly my Lord *Londonderry*, and several others, that I would do Justice to; that your Lordship would give me a reasonable Time to make up their Accounts; and when that is done, I hope your Lordship will give me still a further Time to make up that great Account which I have in another Place: When this is done, if his Majesty doth not think fit graciously to continue me in this World, I will dare to die like a Gentleman and a Christian, not doubting but that I shall meet with a double Portion of Mercy and Justice in the next World, tho' 'tis denied me in this.

L. C. *Just.* *Christopher Layer*, You have been indicted, and after a long Examination and fair

Trial, have been convicted of High-Treason in compassing and imagining the Death of the King.

You have had all the Indulgence and Advantage that the Law would allow you. You have had Counsel assigned you of your own chusing, to advise you preparatory to your Trial, and to assist you in making your Defence at your Trial.

These Counsel have been permitted to say whatever they thought proper for your Service; and I heartily wish that I could say that they had not exceeded, that they had not taken a greater Liberty than they ought to have done: But however that was, the Court thought fit to permit it in them, that they might not be discouraged in offering any thing that was proper for your Defence; we did not censure it then, on this Consideration.

The Jury that have found you guilty, are such, as may be justly said, you yourself approved of; for, tho' the Law gives you a Liberty of challenging five and thirty, you challenged but four and thirty; so you allowed the rest to be an indifferent Jury, to pass between the King and you as to your Life and Death.

The Evidence on which you have been convicted, is the clearest and plainest that ever I heard. Your personal Conferences with the Pretender at *Rome*; your constant Correspondence with him and his Agents afterwards; the Scheme you had formed for the Executing this Treason; your Confession of the greatest Part of it before the Lords of the Council; and at last your Flight when in the Hands of Justice, out of Window two Pair of Stairs, and the Endeavours you used when retaken to corrupt and prevail with those that took you, by Rewards, to let you go off; these are Matters so very clear and plain, and did concur so exactly with the Evidence of the Witnesses, that it did not rest on their Credit; the only Question was, whether the Jury did believe what you yourself had declared on your Examination before the Lords of the Council, and by the Scheme that was found in your Custody.

This being the Nature of the Evidence, I must, according to what is usual, put you in mind of the horrid Wickedness you have been found guilty of.

The first Matter projected to be done, was to seize the Tower of *London*, to set a Guard at the *Exchange* and other Places; to seize the Bank, and take from thence what Money you had Occasion for; by which the whole City of *London*, and in consequence the whole Nation, would inevitably have been involved in Blood and Confusion; This was to have been the first Fruits of this projected Scheme.

The next Step to be taken by this execrable Scheme, was to seize the sacred Person of the King: a King, who during the whole Course of his Reign hath been the most religious Observer of our Laws, the most careful Preserver and Protector of all our Civil and Religious Rights, and the most merciful Prince that ever sat on the Throne of these Kingdoms; yet this, this most excellent Prince, was to be seized and made a Sacrifice to Popery and arbitrary Power.

The next Step to be taken, was to seize the Prince; and when that was done, no body can doubt but the young Prince and Princesses must and should have followed the Fate of their Father: So that the Project must and would have ended in the Destruction of all the Royal Family on

on this Side the Water; and when that was done, 'twas thought 'twould be an easy Matter to set the Pretender on the Throne.

This being done, the King and the Royal Family destroyed, and the Pretender advanced to the Throne, what the Consequence of that must and would have been, is obvious to every body; it must have ended in the entire Destruction and Dissolution of our most happy Establishment and Constitution; the happiest, I think, that ever any People enjoyed; it must have ended in the Destruction of our Laws, our Liberties, our Religion, and the Church of *England* as by Law established; and we must have become from the most happy, the most miserable People on Earth.

These horrid and execrable Designs are so very heinous in themselves, that they hardly will admit of any Circumstance of Aggravation: But I must say, I can't avoid saying, that there are Circumstances with respect to you, that make them more heinous, if possible. You were bred up to the Law, and you must be supposed to know the Excellency of our happy Constitution and Government, and the Laws which you professed; which makes your Crime much the greater.

Another Matter, which is a great Aggravation of your Offence, is, that you were, or at least professed yourself, a Protestant, and a Member of the Church of *England*, whilst you engaged yourself in Measures which must inevitably have destroyed that Church which you profess yourself a Member of.

These are the Treasons which you are convicted of; and being so, the Law adjudges you not fit to live; and the Judgment of the Law is, and it is considered by the Court, that

You, Christopher Layer, be led to the Place from whence you came, and from thence you are to be drawn to the Place of Execution, and there you are to be hang'd by Neck, but not till you are dead, but you are to be cut down alive, and your Bowels to be taken out, and burnt before your Face; your Head is to be sever'd from your Body, and your Body to be divided into four Quarters; and that your Head and Quarters be disposed of where his Majesty shall think fit.

Then the Prisoner was carried back to the Tower of *London*; but on *Wednesday* November 28. the Attorney and Solicitor General moved for a Rule for his Execution, and that the Court would appoint a Time and Place for that Purpose; and said, that the chief Design of executing such Criminals was to be an Example to others not to offend in the like Manner, and to deter them from committing Treason, and therefore they moved that the Execution might be in *Middlesex*, though the Fact was done in *Essex*, and said, that there were many Precedents for executing Criminals in such Places as this Court should think proper.

Thereupon the Court asked the Clerk of the Crown if he knew any such Precedents, who replied, that one *Fitzpatrick**, who was an Associate with the Lord *Judicy*, was executed in *Middlesex* for a Fact committed in *Wiltshire*, and two other late Precedents of the same Nature.

So a Rule was made to the Lieutenant of the Tower, to deliver the Prisoner to the Sheriffs of *London* and *Middlesex*; and another Rule to the said Sheriffs to execute him on *Monday* December the 12th, at *Tyburn*.

Then the King's Council moved the Court to alter the Rule made the Day before, for Mr. *Morgan*, the Clergyman, to attend the Prisoner; for that he was taken into Custody upon Suspicion of Treason, and had given Bond to appear in Court this Day.

The Court answered, That any Clergyman should be admitted to the Prisoner, who was a Person of known Honesty, Integrity, and Learning, but not such who might harden him in his Iniquity in his last Moments; so two more Clergymen were joined in the Rule, and the other two struck out.

Afterwards, and on that very Day before he was to be executed, he had a Reprieve, and there being some Opinions, that he could not be executed by Virtue of any Warrant signed by the King; but that a new Rule must be made in the Court of *King's-Bench* for his Execution, he was accordingly brought to the Bar in *Hilary-Term* following, and a Rule was made for his Execution on the 27th of *March*; but before that Time he procured another Reprieve, and afterwards another Rule was made to execute him on the 17th Day of *May* following, which was done accordingly. He made a short Speech to the Assitants, wherein he avow'd the Principles for which he suffered, recommending the Interest of the Pretender; and delivered a Paper to the Under-Sheriff, and also another to a Friend of his. His Head was afterwards carried to *Newgate*, and was the next Day, fixt upon *Temple-Bar*; but his Quarters were delivered to his Friends; who took care to get them decently interr'd. The Paper abovementioned was inclosed in a Cover, subscribed,

To Mr. Walter Price, Under-Sheriff, at his House in Cattle-Yard, in Holbourn; And was as followeth, viz.

Mr. SHERIFF;

HAVING previously resolv'd to employ all the Time allowed me at the Place of Execution, in Devotion, and making my Peace with God, thro' the All-Sufficient Merits and Mediation of my Gracious Saviour, I have, instead of any Speech I could make to the Spectators, on this unfortunate Occasion, committed my last Thoughts of all Worldly Affairs to Writing, while I had some Intervals of Time for so doing; and have sent two Authentic Duplicates thereof, with my Hand subscribed to the Bottom of each Sheet, to two trusty Friends, to testify thereby to the World, in due Time, and as Occasion offers, the *True Principles* of both my Religion and Royalty, as well as the *unparalleld Harshness* and *Injustice* I have lately met with; for which I pray God forgive the Authors thereof.

And to the End, that none of my Friends, who had Access to me since I was sentenced to die, may be liable to come into any Trouble upon the Score of publishing my said Writings, I sent the Draughts thereof sealed up, together with Draughts of two several Letters directed to certain Persons in the *Administration*, to One of my Friends abovemention'd, desiring him to copy them all over fair, and return them to me: And then I subscribed them, and returned them to my Friends, without letting the Bearers, First or Last, know any thing of the Contents.

So, taking Leave of this vain World, God in Mercy, Receive my Soul! *Amen.*

Christop. Layer.

* See *Trials* Vol. 1. N^o. 354. 374

† *This Writing never app'rd in Public.*



CXCIV. *Proceedings in Parliament against John Plunket, George Kelly alias Johnson, and Dr. Francis Atterbury, Bishop of Rochester, upon Bills of Pains and Penalties for a Treasonable Conspiracy, May 1723. 9 Geo. I.*

THE abovenamed Persons having been taken into Custody by Order of the Government, for a treasonable Conspiracy, it was thought proper to lay the Letters, Papers, and Examinations relating thereto, before the Parliament; whereupon the House of Commons appointed a Committee, *Jan. 15.* consisting of the following Persons:

The Right Honourable *Spencer Compton* Esq;
Speaker.
Robert Walpole Esq; Chancellor of the Exchequer.
Sir Joseph Jekyll, Master of the Rolls.
Paul Methuen Esq; Comptroller of his Majesty's Household.
William Poulterney Esq;
John Smith Esq;
Richard Hampden Esq;
Lieutenant General *Wills*.
Sir Robert Sutton.

The Committee chose *William Pultney* Esq; their Chairman, and made their Report to the House, *March 1.* which was as follows:

THE Committee appointed to examine *Christopher Lyster* and others, in relation to the Conspiracy mentioned in His Majesty's Speech, to be carrying on against his Person and Government, having perused the several Papers and Examinations referred to them, and having gone through the Examination of those Persons, have agreed on the following Report.

In such various and so long Examinations, and in so extensive an Inquiry, your Committee are in Hopes that they need not be strictly ty'd to the Method and Order in which they were appointed, but may for the Ease of the House range the several Matters occurring to them, as near as they can, in the Order of Time in which they were transacted, or as they best serve by their mutual Connection to illustrate each other, without adding any observations of their own, but such as naturally arise from comparing the several Papers and Examinations together, and such as are necessary to help the House the more easily to perceive the Contradictions and Inconsistencies of the Confessions made by the Prisoners, as well as the Confirmations and Coincidence of the Facts inquir'd into.

The Committee observe in general, that a Design has long been carrying on by Persons of Figure and Distinction at home, in Conjunction with Traitors abroad, for placing the Pretender

on the Throne of these Kingdoms: That various Methods have been attempted, and various Times fixed for putting this Design in execution. That the first Intention was to have procured a regular Body of foreign Forces to invade these Kingdoms at the Time of the late Elections; but that the Conspirators being disappointed in this Expectation, next resolved to make an Attempt at the Time that it was generally believed His Majesty intended to go to *Hanover*, by the Help of such Officers and Soldiers as could pass into *England* unobserved from abroad, under the Command of the late Duke of *Ormond*, who was to have landed in the River with a great Quantity of Arms, provided in *Spain* for that Purpose; at which Time the *Tower* was likewise to have been seized, and the City of *London* to have been made a Place of Arms: But this Design being also disappointed, by the Discoveries made in *England*, and his Majesty's putting off his Journey; by the Incampment of his Forces at home, as well as the sending for those from *Ireland*; and by the readiness of his Majesty's good Allies the *States General* to assist him in case of Need; by the Orders given in *Spain*, that the late Duke of *Ormond* should not be suffered to embark, and the like Orders issu'd in *France*, that he should not be suffered to pass through that Kingdom; the Conspirators found themselves under a Necessity of deferring their Enterprize till the breaking up of the Camp: during which Interval, they were labouring by their Agents and Emissaries to corrupt and seduce the Officers and Soldiers of His Majesty's Army, and depended so much on this Defection, as to entertain hopes of placing the Pretender on the Throne, though they should obtain no Assistance from abroad, which nevertheless they still continu'd to solicit for.

The Truth and Reality of these wicked Designs, your Committee are of Opinion will appear confirmed to the House by concurrent and unquestionable Advices from almost all Parts of *Europe*, sent by Persons who appear to have had no Communication with each other; which Advices have again been verify'd and supported by several Discoveries made at home, by the Informations and Confessions of some of the Persons concerned, as well as by a long and regular Series of Correspondence, which the Conspirators have furnished the Government with against themselves, and the several Branches of which appear to the Committee connected with one another, and all concurring in one continued Design of subverting our present happy Establishment, and involving these Kingdoms in Blood and Confusion.

The several Examinations, Letters, and other Papers, are all contained in an ^a Appendix to this Report; and as they are all severally numbred, so the several Paragraphs which are quoted from them have References to those Numbers, that they may the easier be turned to upon occasion, and be supported by the Authorities from whence they are taken.

That the first Design was to have been executed during the Elections, and to have been supported by foreign Forces, is collected from the following Circumstances:

Philip Neynoe Clerk (who was drowned in attempting to make his Escape from the Messengers) declared upon his ^b Examination before some of the Lords of the Council, 'That he had been employed by *George Kelly*, and one *Watson*, whom he took to be the late Earl Marshal, and who was in *England* last Spring, to draw up three several Memorials to the Regent of *France*, to solicit him to send Forces to the Assistance of the Conspirators. That the last of these Memorials was drawn up in *December* 1721, and contained a Demand of Five thousand Men, to be sent over by the Regent to invade these Kingdoms.'

This is confirmed by unquestionable ^c Advices from *France*, the 19th of *April* last, in which it is expressly affirmed, 'That repeated Application had been made to the Regent for some Time past, to furnish only a Body of Three thousand Men, by the help of which the Conspirators made no doubt but to be able to place the Pretender on the Throne.'

Layer, at his ^d Examination before a Committee of Lords of the Council, confess'd, 'That being in Discourse with Lord *Orrery*, soon after his first acquaintance with him, (which was before the Incampment) Lord *Orrery* said, Nothing could relieve the Nation, but a Restoration; and that he would be glad if he could contribute to bring it about: That it must be done by foreign Forces, and could be done no other way. That he often asked Lord *Orrery* what Methods they had taken to procure them? That Lord *Orrery* said, they had Friends abroad that had made Application to the Regent for Assistance to bring about a Revolution; but he does not know whom his Lordship meant; General *Dillon* might be his Correspondent for ought he knew: That Lord *Orrery* likewise told him, the Regent might be brought to wink at any thing, but was so perfidious that he was not to be trusted; and that the *French* had made a Tool of the Pretender.'

Layer repeated the same in part, at two other Examinations before his Trial, and has since confirmed to your Committee, upon his ^e Examination at the Tower, 'That Lord *Orrery* declared himself constantly of Opinion, that nothing could be done to any purpose in the Pretender's Favour, without foreign Forces.'

About the latter end of *April*, a ^f Letter was intercepted here, coming from *Spain*, inclosing the ^g Copy of one from O—— to L——, which will be shewn in the Sequel of this Report, to have been from the late Duke of *Ormond*; in which *Ormond* says, 'Pray tell Mrs. *Chaumont*, that since the Parliament is dead and gone, I think

'it is a good Time to make an Effort, when the Elector is gone to *Hanover*.' It will appear from the Sequel of this Report, that by Mrs. *Chaumont* is probably meant the Pretender.

On the 23d of *April* another ^h Letter was intercepted, sign'd 1387, and directed to Mr. *Jackson*, which your Committee have good Reason to believe was from the Bishop of *Rochester* to the Pretender, as will be shewn in the following Part of this Report. In this Letter he says, 'Notwithstanding this Opportunity is elapsed, I agree with you another may offer before the End of this Year, though not perhaps every way so favourable.' This Letter was writ on the 20th of *April*, when most of the Elections were over, and consequently that Opportunity was elapsed.

That an Insurrection was thought of at the Time of the Elections, is farther confirmed from the following Particulars; *Layer* ⁱ confessed before the Lords, that *Green* the Gunsmith being in company with Lord *North* after Dinner, and talking of Five thousand Arms, and Seven thousand Arms that were ready, said, *When the Westminster Mob were up, if they had had Arms!* Upon which Lord *North* interrupted him, and said, Don't talk, you are a Citizen, you know there are no Arms; but that the Man insisted there were Five thousand Arms ready in the City.

Neynoe ^j declared, 'that *Tho. Carte*, Clerk, made two Expeditions in the Spring (during the Elections) one into *Cornwall*, and another into the Counties of *Warwick*, *Nottingham*, *Derby* and *Stafford*; and that upon *Neynoe's* blaming the riotous Conduct at the *Coventry* Election, *Carte* replied, Hang the Election, you never saw Fellows of such Mettle, so well trained, so fit for business.'

Among Mr. *Dennys Kelly's* Papers was seized an exact ^k List of the Quarters of all his Majesty's Forces in *Great Britain*, about the Time that they were drawn out of most of the great Towns and Boroughs, on account of the Elections.

From all these Circumstances the Committee see reason to conclude, that the first Design was to have been executed with the Assistance of foreign Forces, at the Time of the Elections; that the Pretender, the late Duke of *Ormond*, Lord *Orrery*, and the Bishop of *Rochester* were of this Opinion; that Memorials were drawn up here, to be presented to the Regent for this Purpose; and that those Memorials were actually presented, or at least Application made to the Regent in consequence of them, by Directions from Persons in *England*; and that such Dispositions had been made for this Enterprize at that Time, as broke out into Riots at some of the Elections: which must be allowed to have been no unfavourable Juncture for such an Attempt, considering the Discontents occasioned by the late *South Sea* Scheme, which the Conspirators have all along flattered themselves they should be able to improve into a Spirit of Rebellion; and the Liberties usually taken at such a Season, when all the Freeholders of *England* are necessarily and legally assembled together, and when the whole Nation is too apt to be in a ferment, even in the quietest Times.

This Design failing, on account (as tis reasonable to believe) of the Conspirators not being able

^a The Appendix consists of twelve Sections, marked A. AA. B. BB. C. D. E. F. G. H. I. K. ^b E. 10. ^c A. 2.
^d B. 11. ^e E. 8. 10. ^f B. 38. ^g AA. 4. ^h AA. 5. ⁱ D. 12. ^j B. 11. ^k E. 10. ^l F. 9.

to obtain the Forces they solicited from abroad, and of their being themselves divided in Opinion as to the Time and Manner of Execution, their next Endeavour was to attempt an Insurrection at the Time when they supposed His Majesty would be going to *Hanover*.

Of the Reality of this Design your Committee have found such evident and concurrent Testimonies. that they think stronger could not reasonably be expected, in an Affair where it was so much the Interest of the Conspirators to act with the utmost Caution and Secrecy.

It has already been observed, that the late Duke of *Ormond* ^a thought the Time of the King's going for *Germany*, a favourable Opportunity for making an Effort, and that the Person who signs 1378, ^b says, 'Notwithstanding this Opportunity is elapsed, I agree with you another may offer before the End of the Year, tho' not perhaps every way so favourable.'

Layer confess'd to the Lords at ^c two several Examinations previous to his Trial, and has since ^d confirmed to your Committee, 'That he made Application to Lord *Orrery* to stand Godfather to his Child for the Pretender, intending that this Mark of Kindness from the Pretender should serve as a Credential to Lord *Orrery* to induce him to converse freely with him, in relation to the Pretender's Affairs: that their Acquaintance having begun in this Manner, ^e Lord *Orrery* sent to him to inquire into the Pretender's Character and Qualifications, and asked him several Times whether he had any Recommendation from the Pretender to any Person; that upon his answering No, his Lordship told him, that he seem'd to be an honest Man, and People of his Integrity should be always welcome to him, whether they had any Credentials or no; that he, *Layer*, then gave his Lordship an Account of what had pass'd between the Pretender and him during his Stay at *Rome*, and asked his Lordship what Hopes there were? To which his Lordship answered, that there were Hopes, for all the Nation were generally for the Pretender, except such as had Places, or Money due to them from the Government. That Lord *Orrery* farther told him, that Lord *North*, Sir *Harry Goring*, Lord *Strafford* and others were going to do a rash Thing in Favour of the Pretender, which he, Lord *Orrery*, was sorry for, because it would prove abortive, and hinder its succeeding another Time: That *Layer* asked him, who was to have the Command, and Lord *Orrery* told him, he believed Lord *North* and *Grey* was to have the Command, and that the said Lord had a Commission from the Pretender; that the Lord *Orrery* call'd this Design rash, because not duly concerted, nor supported by foreign Forces, without which, he said, he thought they must be more than Madmen to hope to do any Thing to Effect, for the Pretender's Service. That he, *Layer*, the next Time he saw Lord *North* and *Grey*, which was before the Encampment of the Troops, acquainted him with what Lord *Orrery* had said about the Rashness of the Design; that Lord *North* and *Grey* replied, Lord *Orrery* was a timorous Fellow, and was always making Difficulties, and Schemes out of his own Brain; that he knew

'nothing, nor should know; but that it was his, [Lord *North*'s] Opinion, the Pretender might be restored by the People of *England*, without the Assistance of any foreign Force. That he, *Layer*, talk'd to Lord *North* and *Grey* of his Lordship's being General; but Lord *North* said, he was not popular enough, that the Duke of *Ormond* would be fit for it, and if they had him here, his Lordship believed most of the Soldiers would join him: That he, *Layer*, continuing to press Lord *North* and *Grey* on this head, by telling him that he was fitter for a General, and was popular, the said Lord answered No, the Duke of *Ormond* was the Man; he was the Soldiers Darling. That he, *Layer*, often talk'd of this Affair to the Lord *North*, being induced so to do, by the Impatience he observ'd in him, and in Lord *Orrery*, that something should be done.'

Matthew Plunket, Serjeant of Invalids, has ^f deposed upon Oath, 'that *Layer* told him (in ^g July last) that the late Duke of *Ormond* would come in a single Ship with some Officers, and that it had been done long ago, if the *French* Ambassador had not been told of it, who told it again to the King.'

^h It appears to your Committee from several Depositions on Oath, as well as from Informations and written Intelligence, that in consequence of this Design of bringing over the late Duke of *Ormond*, Captain *Charles Halstead*, a *Lancashire* Man (who was concern'd in the Insurrection intended at *Oxford* in the Year 1715) set sail from the River for *Bilboa*, about the 12th Day of *March* 1721, on board the Ship *Phineas* of *Bristol*, *William Arnold* Master, with a Provision of Arms and Powder on board, which one of the Sailors on his ⁱ Examination declared, 'He apprehends to have been greater than was necessary for an ordinary trading Voyage. ^j That the said Ship was hired at one Hundred Pounds Freight per Month, two Hundred being paid in Advance (as *Halstead* himself owned) and had no Goods nor any Passenger on board, except the said *Halstead*, who went by the Name of *Nowell*, and was known to the Master and Sailors by that Name only, during the Voyage to *Spain*. ^k That the said Ship was cleared at the Custom-house in Ballast for *Lisbon*; but that when they came into the Bay of *Biscay*, the Master, who had Orders to follow *Nowell*'s Directions, ^l gave private Instructions to the Pilot to steer to *Bilboa*; that they arriv'd there on the 25th of *March*, O. S. and that *Halstead* went on Shore, and lay that Night at Mr. *Brown*'s an *Irish* Merchant, and the next Day went forward towards *Madrid*, being furnished with Horses by the said *Brown*, on which Journey he was absent about a Fortnight; that during his Absence, a ^m Report was current all over the Town of *Bilboa*, and particularly among the Convents, that the said Ship was come to fetch over the Duke of *Ormond*.' And *Thomas Carter*, one of the Sailors of the said Ship, who was employ'd by *Halstead* to wait on him as a Servant, has ⁿ deposed upon Oath, 'That three Days after the said *Nowell*'s Return, the Deponent heard him propose to the above-named Captain *Arnold*, to carry the late Duke of *Ormond* and Four other Passengers to *England*; which the

^a AA. 5.
AA. 13.

^b D. 12.
^k AA. 11.

^c B. 10. 11.
^l AA. 9.

^d B. 38.
^m AA. 9.

^e B. 11.
ⁿ AA. 14.

^f B. 6.

^g AA.

^h AA. 15.

ⁱ said

' said Captain *Arnold* refusing to do, the said
 ' *Nowell* insisted, saying, the Ship was his so long
 ' as he paid the Hire of her, and the Wages and
 ' Victualling, and they had high Words upon it.
 ' *Carter* farther deposed, that *Halstead* received a
 ' Letter directed to Colonel *Nowell Butler*, which
 ' was the Name the said *Nowell* went by, when
 ' he was in *Spain*. That, when the Ship was re-
 ' leased, they plied off and on about four Hours
 ' off *St. Andero*, expecting some Body to come
 ' off in a Boat; but no Body coming, and Night
 ' drawing on, they made the best of their way
 ' to *England*, and arrived in the *Dorons* the Be-
 ' ginning of *July* last.' *Allison*, who came over
 to *England* a Passenger in the said Ship, has^a de-
 posed upon Oath, ' that he left *Madrid* on the
 ' 4th of *June*, *N. S.* and that some Time before
 ' he came away, the late Duke of *Ormond*, who
 ' had resided a considerable Time at *Madrid*, had
 ' sent away his Horses and Equipage from thence,
 ' and put his Servants on Board-wages, and that
 ' it was reported he was to go to *Ventofilla*. That
 ' he, *Allison*, upon his coming to *Bilboa*, found
 ' the Ship *Phineas* bound for *England*, but stopt;
 ' that he agreed to take his Passage on board her,
 ' and going to the Corregidor of *Bilboa* for a Pass,
 ' he found there Mr. *Brown* a Merchant, and one
 ' who went by the Name of *Nowell*; that *Brown*
 ' asking the Corregidor why the Ship was stopt,
 ' he said, it was not the Ship, but *Nowell's* Per-
 ' son, that was detained, by Orders from *Madrid*;
 ' that he, *Allison*, heard a Report at *Bilboa*,
 ' that the late Duke of *Ormond* was on the Coast
 ' in Disguise, and that *Nowell* had been at *Madrid*,
 ' and come back again in Fifteen Days; the
 ' Expedition of which Journey, and the Ship's
 ' coming in Ballast, had raised a Suspicion in
 ' *Bilboa*, that *Nowell* came over to the late Duke
 ' of *Ormond*, on Account of the Conspiracy. The
 ' Sailors^b observed, that during *Nowell's* Stay at
 ' *Bilboa*, Brigadier *Campbell* (a Person concerned
 ' in the *Preston* Rebellion) was frequently on
 ' board with him, but did not care to own his
 ' Name.' The same Particulars are confirmed
 by^c Letters from Sir *Anthony Wescomb*, who was
 sent to *Spain* to gain Intelligence, with several
 other^d Circumstances relating to Ships, Arms
 and Recruits, provided for the Pretender's Service
 in *Spain*.

During these Transactions, Colonel *Stanhope*,
 his Majesty's Ambassador at *Madrid*, who does
 not appear to have known any thing of this Ship's
 being come to *Bilboa*, having received Intelligence
 from other Hands, that the Duke of *Ormond* was
 preparing to set out for *England* with some *Irish*
 Officers, in order to put himself at the Head of
 the Rebels, obtain'd Orders from the Court of
Madrid, to hinder the late Duke of *Ormond's*
 Embarkation, as will appear more fully in the re-
 maining part of this Report.

In consequence of these Orders, the King of
Spain's Officers^e came on board the Ship, and
 laid an Embargo upon her for about a Fortnight,
 till *Halstead*, finding himself disappointed of his
 Design, agreed that Part of a Cargo of Wooll
 and Iron should be put on board the said Ship by
Brown and *Slinger*; and then returned to^f *England*
 with one *Maxwell*, whom the Sailors understood
 to be a Relation of the late Lord *Marr's*, and

two other Passengers, and arriv'd in the River a-
 bout the 7th or 8th of *July*.

About the Beginning of *May* a^h Letter was inter-
 cepted here coming from *Spain*, directed to *Monf.*
Dumville Procureur, and enclosed under Cover to
 one *Wilmore* at Mr. *Stokoe's* Bookseller near
Charing-Chross. Who is meant by the Name
Dumville, the Committee have not been able to
 discover.

In this Letter was enclosed theⁱ Copy of a Let-
 ter, which the Committee have Reason to believe
 was from the late Duke of *Ormond* to some Per-
 sons abroad, the initial Letter of whose Name is
 discovered by the Decyphers to be *L*.

The Letter to *Dumville*, as well as the Copy
 of the late Duke of *Ormond's* Letter, was writ-
 partly in Cypher; and among the Words out
 of Cypher several fictitious Names were made
 Use of, which the Committee observe is the Case
 also in several others of the intercepted Letters
 referred to them.

It was reasonable to expect, that in managing
 Correspondences of so hazardous a Nature, all
 sort of Art and Industry should be used, and all
 the Help of Cyphers and Jargon called in, to
 disguise the real Designs, and to conceal the
 true Names of the Persons concerned, in order
 to their avoiding the Danger of legal Conviction:
 but your Committee likewise observe, that sever-
 al of these Disguises are so gross and obvious,
 that they only serve to betray themselves; others
 of them are explained by the Skill of different
 Decyphers, agreeing in the same Explication;
 which Explication is again confirmed by Facts
 unknown to those Persons at the Time of the
 Decyphering. Others are explained by Cyphers
 and Lists of fictitious Names, seized on the Con-
 spirators themselves, as well as by comparing the
 several Parts of their Correspondence together;
 and others again by direct Informations upon
 Oath. And, as the Degrees of Evidence, in a
 Search of this Nature, must be various, the Com-
 mittee have taken all the Care they can, to dis-
 tinguish what appears to them fully proved, from
 what is supported by strong and probable Con-
 jectures only.

In this^k Letter to *Dumville*, dated the 27th of
April 1722, (*N. S.*) mention is made of its be-
 ing publickly known in *Spain*, by Letters from
Bilboa and other Parts, ' that a Ship came to
 ' *Bilboa*, with an express to *Ormond*, in order to
 ' bring *Ormond* to *England*; that the said Ex-
 ' press went to the Place where *Ormond* was;
 ' that this had made so much Noise, that it
 ' was necessary to send to *England* with all pos-
 ' sible Dispatch; that a Ship's coming with Bal-
 ' last only gave Occasion to those Reports, and
 ' that in order to stifle them it was necessary to
 ' put in the Ship Goods for *England*; that this
 ' would be a considerable Expence to *Tom*, who
 ' hopes that Friends will consider it, and send
 ' him if possible a greater Supply than the five
 ' Thousand Pounds that he wrote for in his of the
 ' 6th and 20th of *April*; that the Bills must be
 ' sent directly to *B*—, and may be bought at
 ' the Exchange of *London*.'

The Committee are of Opinion, that by *B*.
 is meant *Brown* the *Irish* Merchant at *Bilboa*, be-
 cause the^l Cargoe was put on Board by the said

^a AA. 16.

^b AA. 8. 9. 11.

^c A 38.

^d A. 34—40. 43. A. 26. 27. 28.

^e A. 15.

^f AA. 8. 9. 11. 16.

^g AA. 9.

^h AA. 4.

ⁱ AA. 5.

^k AA. 4.

^l AA. 11.

Brown and *Slinger*; and it appears by subsequent Letters that this *Brown* had twelve Thousand Arms in his Custody, for the Service of the late Duke of *Ormond*. It is also proved ^b by the Sailors, that *Halfstead* was frequently in Company with this *Brown* and his Nephews, and lay sometimes at his House.

Who is meant by *Tom* in the said Letter, the Committee will not take upon them to determine; but they believe it will appear probable to the House, from the Connexion and other Circumstances, that it must mean the late Duke of *Ormond*.

The Person that writes this ^c Letter to *Dumville*, adds, 'That since Mrs. *Chaumont* cannot meet *Ormond* at any Place on the Road, it is absolutely necessary that *Ormond* should have as good a Preparation of Arms as can be had there, and in order to make it, he will want more Money from Friends.'

The same Person says, that he had that Day received a Letter, importing, 'That *M* could get more Arms if he had more Money.' The Committee are of Opinion, that by *M* is meant *Morgan*, who is mentioned in several Letters from *Spain*, as Intendant of the Pretender's Ships at *Cadiz*, and active in procuring Officers and Arms; which Letters are confirmed by the Seizure of the Ship *Revolution* at *Genoa*, of which it appears by Captain *Scot*'s Letter from *Genoa*, that *Morgan* had the chief Care, going by the Name of *Walton*; which is again confirmed by a Letter from Sir *Anthony Wescomb* at *Bilboa*.

The Person that writes to *Dumville*, farther adds, 'That *Ormond* hopes *Onslow* and *Hawley* will send a Part of the Money they have raised directly to *Ormond*; for *Ormond*, upon the Hopes of it, has sent Credit to *M*; he desires *Dumville* to mind this, and not to lose a Moment.'

Who are meant by *Onslow* and *Hawley*, the Committee cannot determine; but they are inclined to believe, that they are the same Persons, who in another Letter, enclosed to *Wilmore* soon after, and writ in the same Cypher, are found by the Decyphers to have the initial Letters of their Names *G* and *N*; in which Conjecture they are the more confirmed, by a Cypher seized on *John Plunket*, in which the real Names beginning with *G*. are constantly designed by fictitious ones beginning with *H*. the Letter immediately following in the Alphabet, and the real Names of the Letter *N*. by others beginning with *O*.

In the Letter to *Dumville* above-mentioned, was enclosed the Copy of a Letter from the late Duke of *Ormond* to *L*. which was sent to *Dumville* as being in part an Answer to one received from him; who is meant by *L*, the Committee cannot determine.

In this Letter, the late Duke of *Ormond* mentions his having received an Account from *D* (General *Dillon* probably) that he had procured ten Thousand Arms, and advises the joining Stocks with *D*, since they cannot have too many Arms; and says he can only depend on two Thousand Arms from *M* (*Morgan* pro-

bably) but that he could have had more Arms, if he had had more Money.

The Committee observe, That this Account of ten Thousand Arms procured by *D*, and of two Thousand by *M*, agrees exactly with an Account sent soon after from Mr. *Stanhope* at *Madrid*, and confirmed by Sir *Anthony Wescomb*, that twelve Thousand Arms were lodged in the Hands of *Brown* at *Bilboa*, for the Pretender's Service; and that *Morgan* was ordered to the Bay of *Biscay*, in order to transport the said Arms to *England*.

The Committee take Notice likewise, that the very same Number of Arms is mentioned in a Letter, writ, as they have good Reason to believe, by *George Kelly*, to General *Dillon*'s Secretary; and the Arms are there spoken of, as provided by *Mansfield*'s Relations, which Name *George Kelly* explained to *Neynoe* to mean the late Duke of *Ormond*.

The Circumstance of *Kelly*'s mentioning these Arms to *Dillon*'s Secretary, makes it probable that by *D*. in *Ormond*'s Letter, is meant the said *Dillon*, who, as your Committee are informed, is an *Irish Roman Catholick*, and quitted *Ireland* on the Capitulation of *Limerick*, and is at present a Lieutenant-General in the *French Service*, and has the Command of one of the *Irish Regiments* in *France*; and he appears to your Committee, from several Parts of the intercepted Correspondence, to have the chief Management of the Pretender's Affairs, and to be the principal Agent and Director of carrying on this Conspiracy.

Ormond in his Letter to *L* afterwards says, 'That since the Parliament is dead and gone, he thinks it will be a good Time to make an Effort when the Elector is gone to *Hanover*; and adds, I hope you have agreed with *D* the Time of going for *England*, and when that is fixed between Mrs. *Chaumont* and *D*, you will let *Ormond* know the Place of landing in *England*. I desire an Express may be sent to me, with particular Accounts of what is agreed on.' This, the Committee take Notice, agrees with Mr. *Stanhope*'s Intelligence, that *Ormond* was going for *England*, and likewise with Intelligence sent from *Rome*, that the Pretender was to embark, as soon as two Officers, Relations of the late Duke of *Ormond*, should arrive at *Porto Longone*; which Circumstance makes it not improbable, that by Mrs. *Chaumont* may be meant the Pretender.

In the same Letter to *L*, *Ormond* says, 'I have ordered *H*'s Ship, that I depended on, to return to *England*; it was not proper to make use of it, for Reasons not necessary to trouble you with. There was no Message sent by him, because of the Uncertainty of the Time of his getting to *England*.'

This Passage, the Committee are of Opinion, evidently relates to *Halfstead*'s Ship. Upon mentioning his sending back this Ship, he immediately adds, 'I have ordered *M*'s Ship to come to *A*;' which agrees exactly with Mr. *Stanhope*'s Account, that *Morgan*'s Ships were ordered to the Bay of *Biscay*, to transport to *England* the Arms above-mentioned, together

^a A. 15. 35.^b AA. 9. 14.^c AA. 4.^d A. 26. 34. 36. 40.^e A. 44.^f A. 40.^g AA. 4.^h AA. 6.ⁱ C. 51.^k AA. 4.^l AA. 4.^m A. 15.ⁿ A. 35.^o F. 35.^p E. 10.^q AA. 5.^r A. 15.^s A. 23.^t AA. 5.^u A. 15.

with *Ormond*, and what Officers could be got; and it appears by subsequent ^a Letters from Sir *Anthony Wescumb* at *Bilboa*, that the said Ships, under the Command of *Morgan*, did put in at *Sainto Andero*, which the Committee understand to be the Place meant by *A*——, to which *Ormond* says he had ordered *M*——'s Ship to come. The said Ships having put in at *Andero*, and staid there fifteen Days, is again confirmed by a ^b Letter from *Genoa*, writ by Captain *Gardiner*, who commanded the Ship *Revolution* lately taken.

Soon after this Letter to *Dumville*, ^c another was intercepted here coming from *Spain*, directed *A Monsieur Dodsworth*, not signed, enclosed under Cover to *Wilmore* as the former, and writ in the same Cypher; the most material Paragraph of which is thus explained by the Decyphers.

' I must again entreat you to use your utmost Endeavours, to get the five Thousand Pounds from Friends returned to *O*—— directly; the Hopes given by *G*—— to expect a great Sum, and by *N*——, that he had raised twenty Thousand Pounds, induced *O*—— to supply *M*——, and to make other necessary Provisions. If that Money be not returned, it will fall heavy upon *O*——, and he will be disabled from answering the Expectation of Friends, therefore ought to be your first and greatest Concern. All other Actions are Trifles in Comparison of it; for the Hopes of Success depend principally on *O*——. I mentioned this in former Letters, and Friends are desired to return more than five Thousand Pounds, if possible. If they do, more Arms and Ammunition, and Officers can be had here; and the End of raising Money by Friends, is to procure Arms, Ammunition and Officers.

To whom these Letters were writ does not appear; but the Committee observe that they are writ in the same Cypher with three ^d Letters, which they have Grounds to believe were from the Bishop of *Rochester*. They observe likewise that the same Cypher is sometimes made use of by ^e *George Kelly*.

Mr. Stokoe the Bookseller being examined about *Wilmore*, under whose Cover these Letters to *Dumville* and *Dodsworth* came enclosed, could give no other ^f Account of him, but that he was one who once writ a Letter in his Shop, and desired him by a Letter, dated *Epsom* the first of *March*, 1722, to take in such *French* Letters as should come directed to him; and by another Letter, dated *Harwich* the 14th of *May*, desired him to take in no more; that he, *Stokoe*, did receive two Letters from abroad so directed, which were fetched away, and paid for by Persons to him unknown.

That the late Duke of *Ormond* was expected to head an Insurrection in *England*, is farther confirmed by the following Particulars.

Neynoe upon his Examination before a Committee of Lords of the Council, ^g declared, ' That the first Design in the Spring was to have been executed in *London*, by seizing the *Tower*, and that the late Duke of *Ormond* was then to have landed in the River; but upon Discovery of the Plot, and the King's not going beyond Sea, it was put off for some Time; that the

' Bishop of *Rochester*, Lord *Orrery*, Lord *North*, and Sir *Harry Goring*, were the principal Leaders and Directors of the whole Design; and that *Watson* (whom he took to be the late Earl *Marshall*) had told him, Lord *North* and *Grey* was thought of for the Command.'

On the 29th of *April*, O. S. ^h Intelligence came from *France*, ' That the Week before the late Duke of *Ormond* had made Application to the Regent by a Person of great Distinction, for Leave to pass through *France*, under a Pretence of going into *Italy*, but that the Regent had absolutely refused him, and at the same Time had dispatch'd the necessary Orders to the Frontiers of *Spain*, to hinder him from passing either openly or in Disguise.'

On the 2d of *May*, O. S. Sir *Luke Schaub* sent ⁱ Advice, ' That one *Lesley* had been looking out for Lodgings at *Paris* for the late Duke of *Ormond*; and ^k on the 9th, that Alderman *Barber* carried with him Bills of Exchange for fifty Thousand Pounds Sterling for the Pretender; and that the same Sum was sent to *Ormond* by another Hand, to enable him to make the necessary Preparations in *Spain* and *Italy*. The Committee observe, that this agrees, as to the Division of the Money, with a Passage in another ^l Letter from *Dillon's* Secretary to *George Kelly*, dated the second of *May*, N. S. which will be farther explained in its proper Place.

On the 23d of *May*, O. S. Sir *Luke Schaub* sent ^m Advice, ' That the late Duke of *Ormond* was to set out from *Madrid* about the 20th of that Month, with his Family, without its being known whither he was going; that it was believed he would give out that he was going to settle at a certain Distance from *Madrid*, from whence he might steal away afterwards unserved.'

On the 28th of *May*, O. S. *Mr. Stanhope* ⁿ writes Word from *Madrid*, ' That having had Intelligence to be rely'd on, that the late Duke of *Ormond* intended speedily to pass into *England*, with a great Number of *Irish* Officers at that time in the Service of his Catholick Majesty, in order to put himself at the Head of the Rebels there, and for that purpose was to set out from *Madrid* the next Day, under Pretence of going for the rest of the Summer to *Ventofilla*, a House of the Duke of *Medina Celi*, half-way between *Madrid* and *Bilboa*, but in reality to be thereby readier to pass to that Port, and with less Suspicion to embark from thence for *England*, whenever Matters should be ripe for his so doing; he made Application to his Catholick Majesty by the Marquis *de Grimaldo*, for Orders to be sent to all the Ports of *Spain*, to prevent the said late Duke's embarking with the Officers above-mentioned, and received a ^o Letter from the Marquis *de Grimaldo*, (a Copy ^p of which is annexed to this Report) acquainting him, that the King of *Spain* had directed such Orders to be issued, and was ready on all Occasions, more particularly on this which regarded the Quiet and Tranquillity of his *Britannick* Majesty's Kingdoms, to contribute all in his Power towards his Majesty's Satisfaction.'

^a A. 36.^b A. 45.^c AA. 6.^d D. 10. 11. 12.^e E. 55.^f AA. 1.^g E. 10.^h A. 4.ⁱ A. 5.^k A. 4.^l E. 30.^m A. 11.ⁿ A. 15.^o A. 17.

Andrew Paucier, formerly Captain-Lieutenant of Lord Cobham's Dragoons, has^a deposed upon Oath, ' That being grown intimately acquainted with Skeene (now in Custody) a Person related to Marr, and engaged in the Rebellions of Preston and Glensfield, Skeene began to acquaint him, about June last, that there was a Design carrying on in England for placing the Pretender on the Throne, of which he at different times told him the following Particulars: That six or eight Battalions of Irish Foot, double Officer'd, were to have come over from Spain, which were quarter'd upon the Coast of Galicia for that purpose; that the nine Spanish Men of War which have joined the Dutch, and four more to have been fitted out at Barcelona, and three at Alicante, (as he best remembered) being in all sixteen Spanish Men of War, were to have been employed in this Service. That these Troops were to have landed either in Cornwall, or near Bristol: That there were forty Thousand Stand of Arms in Great Britain, part in Scotland, other part in London, other part in Bristol, and other part in Cornwall. That there were seven or eight hundred Men, with Officers among them, in London, subsisted, and in readiness for such an Occasion. That a Sum of two hundred thousand Pounds had been raised by Contribution for carrying on this Design, and put into the Management of the Bishop of Rochester, who with the Lord North and Grey were the leading Men among them; and that the Lord Strafford and Lord Kinoule knew the Thing. That the Managers of this Affair in Spain, were the late Duke of Ormond and the late Earl Marishal; and those in France the late Lord Marr, and Lieutenant General Dillon. That the Court of Spain was in their Interest, but as to the Regent and Cardinal Du Bois, they could not tell what to make of them: That this Design was to have been executed some time ago, but was then disappointed by the Regent: That the late Duke of Ormond, and the late Earl Marishal, were to have come with the Troops before mentioned from Spain, and the Pretender about the same time was to have left Rome privately, and to have lain conceal'd somewhere near, from whence he would have come over when there had been a fair Prospect of Success. That as to any Opposition they could expect, we had but fourteen Thousand Men in all, of which three Thousand were necessary to guard London, three Thousand more for Scotland, and two Thousand for the Garisons; so that the Remainder would never dare to attack those who came from Spain: and in the Confusion, their (meaning the Pretender's) Friends would have been able to have got together, and made a Head. That in the Conduct of this Affair there pass'd little in writing, and only the four Lords before mentioned, viz. the Bishop of Rochester and Lord North and Grey principally, and Lord Strafford and Lord Kinoule, were concerned in the Management of it here. That the Business was to have been done before the Dutch Troops could come to our Assistance.'

The Committee have laid these several Particulars together, though of different Dates, that the House may see at one view, the Reason there is to believe, that the late Duke of Ormond was to

have landed in England with Officers and Arms, about the Time that it was generally supposed his Majesty intended to go to Hanover. The reason of Ormond's not coming, is sufficiently explained by the Orders issued at Madrid and in France, by the King's not going abroad, and by the Discoveries, and Disposition of the Forces made in England. And notice is taken, in^b Letters to one of his Majesty's Secretaries of State from Rome, that a Person of great Distinction at that Place, had declared it as his Opinion, that the grand Project formed in the Conclave for placing the Pretender on the Throne of Britain, was going to be put in execution; but that the same Person afterwards assigned four Reasons for its having miscarried; which were, the Want of Money, the suspected Faith of the Regent, the Want of Skill in those who were to conduct it, and the Pusillanimity of the Pretender, who, to avoid hazarding his own Person, propos'd to send his Child: which last Particular is again mentioned in another^c Letter from Rome.

The Committee now return to shew what other Evidences they have before them, of a Design laid for beginning an Insurrection in London, at the Time when it was supposed the King intended to go to Hanover.

About the latter end of April, his Majesty received^d Intelligence from abroad, upon which he can intirely depend, ' That a Design was laid for bringing in the Pretender, which was thought to be so well concerted, and conducted by Persons of such Experience, that, if the Secret was but kept, as was propos'd, the Success was look'd upon as infallible; and that it was to be put in Execution about the end of April, or beginning of May.' The original Letter containing this Intelligence, has been communicated to your Committee, and an^e Extract of it is annexed to this Report.

On the 29th of April, the same^f Intelligence was repeated, with these farther Particulars, ' That the Conspirators did no longer think it necessary to insist on foreign Assistance, flattering themselves that great part of the King's own Forces would declare in their favour. That they now contented themselves with desiring the Regent should observe a Neutrality between his Majesty and the Pretender; and that Lord Lansdowne was to present, or cause to be presented, a Memorial to the Regent to this effect, that Day or the next. That the Design was probably to be executed in London; that the beginning of May was the Time fixed on; and that the Pretender was speedily to set out for England.'

Your Committee do not find that the above-mentioned Memorial was presented to the Regent; but in^g Letters from Plunket to Dillon they find the same repeated in these Words; ' If the Regent stands neuter, we will soon bring the Law-suit to bear:' which Loyer^h explained to be the Pretender's Cause.

On the 24th of April O. S. Mr. Davenant, His Majesty's Minister in Italy, sent an Express from Rome, withⁱ Advice, ' that the Pretender's Adherents were making Preparations in Cadiz, and other Ports of Spain, for an Attempt on England; that the Pretender was speedily to embark at Porto Longone, and was retired from Rome for

^a D. 1.^b A. 8. 23.^c A. 22.^d A. 2.^e A. 1. 2.^f A. 4.^g C. 59. 61.^h B. 38.ⁱ A. 3.

' that

‘ that Purpose:’ And ^a it appears, that the same Advice was soon after confirmed to his Majesty, by a foreign Minister residing in *England*, who received the Intelligence from a Person of great Distinction abroad, and communicated it to his Majesty.

On the 9th of *May*, Mr. *Craufurd*, His Majesty’s Resident at *Paris*, ^b writes word, ‘ that the *Jacobites* in *France* expected soon an Insurrection in *England*, which was to be begun by the Heads of their Party here soon after His Majesty’s setting out for *Hanover*, and was to be supported by *Hisb* Officers and Soldiers, who lay ready at *Cadiz*, besides such as should be able to pass over into *England* from *France* by stealth:’ and in his Letter of the 26th of *May* O. S. he adds, ‘ that the Grounds of this Expectation were, Assurances given from *England*, that the Conspirators would immediately make themselves Masters of the Tower, and City of *London*.’

This Intelligence agrees with a ^c Paper delivered to the Secretaries of State in *July* last, by one of the Lords of his Majesty’s Council, who, as they have ^c certified, assured them that a Person, whom he had good reason to believe to be deeply concerned in the Conspiracy, came to him in the Month of *July*, and brought him a Paper, which he affirmed he had copied by stealth out of the Scrutore of a noble Lord, whom he refused to name; and that the said Person writ out a fair Copy of the Paper in his presence, which contains Minutes of Resolutions taken at a Consultation, and is in the following Words.

‘ R. That the Arms be dug up immediately, and dispersed in small Parcels. Begin in *Southwark*, *Whitechapel*, *Wapping*, *Holborn* and *Smithfield*. March into City. Possess the Gates. Against the Horse, Barricades in the narrow Streets, especially at both Ends of *Fleet-bridge*, *Shoe-lane*, *Fetter-lane* and *Chancery-lane*. Possess *St. Clement’s* Churchyard by a Party from *Holborn*. A strong Barricade in the narrow Part of that Street. Line the two first Stories. Bricks, Stones, &c. may be useful in the upper Rooms, and may be thrown by Women and others unfit to bear Arms. Lighters with Ammunition under Coals, lie at *Blackfryars* and *Milford-lane*. No Dependance or Assistance from *Westminster* and those Parts, except some few by Water, the Communication being cut off. Message to the Lord Mayor by three Lords. Proclamation made to oblige all who shall not come in, to bring in their Muskets, and Militia Arms. Declaration ready printed, to be dispersed among the People. Twenty three Officers of the Guards to be depended on: a great many others well affected, especially the common Centinels. Day resolv’d on *April* the 30th.

‘ R. That forty determin’d Persons be immediately pitch’d upon, armed with Swords and Pistols, to execute all Orders; and that for the Subsistence of the said forty Gentlemen, Money be advanced out of the Fund, at the Rate of seven Shillings *per Diem* for Man and Horse. Commander in Chief Lord N. Time seven in the Morning.’

Dis: C. W. M.

The Committee make no doubt but the House will readily observe, that this Scheme, drawn up in *April*, and delivered as aforesaid to one of the Lords of the Council in *July* last, has a near Affinity with ^f that of *Layer*, and appears to be the Groundwork of it, tho’ *Layer* ^g denies his having ever seen any such Paper of Resolutions, or having received any Instructions relating to his Scheme, except from *Wilson* a Surgeon, *Murphey* a Physician, and *White* a Serjeant.

The Committee likewise observe from this and *Layer’s* Scheme, as well as from a ^h Letter of *Sample’s* (of which notice will be taken in its Place) that the involving the City of *London* in Blood and Confusion, appears to have been universally understood and agreed on among all the Conspirators, as the first Step to be taken, and the Foundation of their future Hopes.

By another ⁱ Paper delivered in *July* last by the same Person, it appears, that when the Stroke was struck in *London*, there were to be Insurrections in several Counties of *England*; and that the Numbers of Gentlemen and private Men, to be depended on both in *London* and the Country, were computed and set down: and the Committee observe, that the extending the Insurrection to the Country, after *London* was seized, makes likewise a Part of ^j *Layer’s* Scheme, and ^k *Sample’s* Letter.

The Committee farther take notice that in these Schemes, as well as in ^l *Pancier’s* Deposition, mention is made of great quantities of Arms conceal’d for the Use of the Conspirators; and *Layer* having confess’d at his ^m Examination before the Lords, that he supposed there were Arms provided, and that *Green* the Gunsmith being in company with Lord *North*, had mentioned five Thousand Arms, and seven Thousand Arms, and insisted, in contradiction to Lord *North* who bid him hold his Tongue, that there were five Thousand Arms ready in the City; the Committee examined him particularly on this Head, but could draw nothing more from him, than ⁿ that *Green* had told Captain *Bonyn* at Lord *North’s*, that he could help him to five or seven Thousand Arms at an Hour’s warning. And tho’ your Committee is fully satisfied that no Care has been wanting elsewhere to discover these Arms, and to defeat the Conspiracy in so essential a Circumstance; yet they cannot but think it a melancholy Consideration, that through the determined Obstinacy of the Conspirators, these Endeavours have hitherto proved unsuccessful.

The Committee observe farther, that in the ^o Paper of Resolutions, Mention is made of a Fund of Money provided, and of a great Number of determined Persons subsisted in *London* for the Purposes of the Conspiracy, for the Execution of which a Day was likewise fixed on and appointed, and the Commander in chief known. All which several Particulars correspond exactly with the ^p Intelligence received at the same Time from abroad, with ^q *Pancier’s* Deposition, with what *Layer* ^r own’d Lord *Orrery* had told him, that he believed Lord *North* and *Grey* had a Commission for commanding in chief; and with what *Neynos* ^s was told by *Watson*, that Lord *North* and *Grey* was thought of for the Command; as likewise with what ^t was told *Matthew Plunket* by *Layer*

^a A. 3. ^b A. 7. ^c A. 14. ^d BB. 2. ^e BB. 1. ^f B. X. 1. ^g B. 38. ^h G. 9. ⁱ BB. 4.
^j B. X. 1. ^k G. 9. ^l D. 1. ^m B. 11. ⁿ B. 38. ^o BB. 2. ^p A. 2. 3. C. c. ^q D. 1.
^r B. 11. ^s E. 9. ^t B. 6.

and *John Plunket*, that Lord *North and Grey* with others were ready to head an Insurrection.

Your Committee having thus laid before you the general Evidence, which convinces them that a Design was formed by Persons of Distinction, to invade these Kingdoms with a foreign Force; that being disappointed in this Expectation, they still persisted to make an Attempt, with such Officers and Soldiers as could be procured privately from Abroad; that the late Duke of *Ormond* was to have landed for this Purpose, and to have been followed by the Pretender; that Arms and Money were provided, and Men subsisted for this Service; that the Insurrection was to have been begun in *London*, and thence to have been extended over the whole Kingdom. They will now proceed more particularly to explain the several Parts, which the Leaders and inferior Agents appear to have taken in conducting this Design, as far as the same can be collected from the intercepted Correspondence, and other Papers referred to them, and from the Examinations of the Persons concerned; by which it will farther appear to the House, that the Design was constantly prosecuted in all Parts, without any other Relaxation or Intermission, than what the Necessity of their Affairs, and the Discoveries made, obliged them to, in order to lay their Measures deeper, and to make the Success of them more certain: And that the Enterprize, which was first calculated for the Spring, was to have been afterwards put in Execution at the breaking up of the Camp, with the Help of Officers and Soldiers from Abroad, if they could be obtained; if not, on the Strength of such as they hoped to be able to corrupt and seduce, among his Majesty's own Forces.

The Leaders, in order (as 'tis natural to believe) to save themselves from the Danger of legal Conviction, chose to manage their Correspondences by the Intervention of Persons of a meaner Rank and Figure, and of desperate Fortunes; who, they hoped, might escape the Observation of the Government, being no otherwise considerable, than as the Trust reposed in them made them so.

The Committee think proper to take notice, that of these inferior Agents, *Layer* appears to have been principally intrusted by Lord *North and Grey*, and Lord *Orrery*; and that *Plunket*, who travelled with *Layer* to *Rome*, and whose treasonable Practices and Correspondences are closely connected with those of *Layer*, writes of himself as transacting Part of his Treasons with Lord *Orrery's* Clerk, and sending frequent Accounts to the Pretender's Agents abroad, of Matters relating to the said Lord.

George Kelly, a Nonjuring Clergyman at present (tho' in the late Queen's Time, the Committee is informed, he took the Oaths to the Government, and likewise the Abjuration) appears to have been the Person principally entrusted by the Bishop of *Rocheester*, and to have been employed in writing for him, and conveying Letters to him, until the Time that he, *Kelly*, was first taken into Custody; after which it appears to the Committee, that *Thomas Carte*, another Nonjuring Clergyman, was entrusted and employed by the Bishop in the same Manner. And the Committee observe, that *George Kelly's* Correspondence has a close Connexion with that of *Dennis Kelly*; and likewise that he appears

to have been privy to *Plunket's* and *Neynoe's* Transactions.

The Person employed by the Duke of *Norfolk*, in conveying Letters between him and *George Jernegan*, an Agent of the Pretender's in *Flanders*, they find to be Mrs. *Spelman*, alias *Yallop*; who has likewise owned her conveying Letters in the same Manner between Mr. *Harvey* of *Comb*, and one *Moor* of *Brownlowe-street*, and the said *Jernegan*. The Committee observe, that *John Sample* acted under the Direction of Mr. *Sempill* (commonly called Lord *Sempill*) and his Son at *Paris*, and that he wrote Letters to the late Duke of *Ormond* and the Pretender; but whom he transacted Matters with in *England*, your Committee do not find, by his Examination, he would declare.

The Committee farther observe, that this treasonable Correspondence extended itself into *Scotland*; that *William Erskine* remitted Money to *France* for the Service of the Pretender's Friends, and had a Letter under the late Lord *Marr's* Hand found upon him, when he was taken into Custody. That Mr. *Cockran*, now in Custody, and others of that Country yet unknown, were concerned in the same treasonable Correspondence, carried on under the same fictitious Names and Expressions that are made use of by several of the Correspondents in *England*; and that the same Cant was likewise made use of, for the same Purposes, by Persons in *Ireland*. That all these several Negotiations and Correspondences concurred in one common Design, of stirring up an Insurrection in these Kingdoms, and placing the Pretender on the Throne.

The Committee have thought it proper to lay before the House such Particulars as occur to them relating to each of these Negotiations, and to begin with those of *Layer* and *Plunket*, as being closely connected with one another, and set on foot earlier than it yet appears the others were; and as being likewise what the House thought fit first to refer to the Examination of the Committee: And by comparing the Substance of the Papers, and Examinations of these two Persons together, the House will be enabled, at one View, to form a true Judgment of the Sincerity of their Confessions.

Before the Committee examin'd Mr. *Layer*, they acquainted him that the several Questions they intended to propound to him were reduced into Writing, and that to avoid all Mistakes, his Answers should be so likewise, and before they were reported to the House he should have the Perusal of them. Accordingly he did review his first Confession to the Committee, and made several Additions and Alterations, which will be taken Notice of in their proper Places.

Mr. *Layer* has own'd partly to a Committee of Lords of the Council before his Trial, and partly to your Committee (as will appear by reference had to his several Examinations annex'd to this Report) ' That being bred up under an Uncle
' who was a Nonjuror in *Norfolk*, he early im-
' bib'd those Principles; that having a private Af-
' fair to transact at *Venice*, this and a natural In-
' clination and Curiosity, which he had always had
' to see the Pretender, carried him on to *Rome*;
' that he set out from *England* on the first of *April*
' 1721, in company with *John Plunket*, now in

^a B. 8, 9, 10, 11, 38.

‘ Custody, who went sometimes by the Name of
 ‘ Rogers, whose Expences he bore on Account of
 ‘ his being useful to him, as speaking several Lan-
 ‘ guages. That he believes from the Time of his
 ‘ first acquainting *Plunket* with his intended Jour-
 ‘ ney (which was some Months before their setting
 ‘ out) the said *Plunket*, in order to magnify his Ser-
 ‘ vices to the Pretender and his Adherents, might
 ‘ write to General *Dillon*, and others of them, that
 ‘ he was going to *Rome* with a Friend, and that
 ‘ his and his Friend’s Journey would be of great
 ‘ Consequence to the Pretender’s Affairs.’ But
 ‘ this Particular he did not own till the Review of
 ‘ his Examination, when he found the Committee
 ‘ were apprised that Notice had been sent to *Rome*
 ‘ of his Journey; for he insisted at first that his
 ‘ Journey to *Rome* was purely accidental, and not
 ‘ concerted with the Pretender or any of his Agents.

‘ He farther owned, ‘ That in their Way to *Italy*,
 ‘ they passed through *Antwerp*, and that *Plunket*
 ‘ there received a Letter from General *Dillon*,
 ‘ which he shewed to *Layer*, directing them whom
 ‘ to apply to on their Arrival at *Rome*, to intro-
 ‘ duce them to the Pretender.’ And on his re-
 ‘ viewing his Examination, when he found your
 ‘ Committee were in Possession of that Letter, he
 ‘ own’d, ‘ That *Francis Kennedy* was the Person
 ‘ they were directed by *Dillon* to apply to.’ A
 ‘ Letter^a to that Effect being found among *Plunket*’s
 ‘ Papers, signed *Dixwell*, and the same being shewn
 ‘ by your Committee to *Layer*, he declared, ‘ That
 ‘ to the best of his Memory and Belief, it was the
 ‘ very Letter which was shewn to him by *Plunket*
 ‘ at *Antwerp*, and affirmed by *Plunket* to be from
 ‘ General *Dillon*: That he, *Layer*, believes *Dillon*
 ‘ goes by the Names both of *Dixwell* and *Digby*;
 ‘ and that by the Name of *Joseph*, in the said
 ‘ Letter, is to be understood the Pretender.

‘ That he and *Plunket* arrived at *Rome* the lat-
 ‘ ter End of *May* 1721; and that after he had
 ‘ been a Day at *Rome*, he sent to *Francis Kennedy*,
 ‘ Secretary to the Pretender, to let him know he
 ‘ should be glad to see him, and to renew Ac-
 ‘ quaintance with him.’

Being asked when and where he first became
 ‘ acquainted with *Francis Kennedy*, he said, ‘ That
 ‘ *Kennedy* has a Brother, Secretary to the late
 ‘ Duke of *Ormond*, with which Brother he had
 ‘ some Acquaintance; and he thinks he has former-
 ‘ ly been in *Francis Kennedy*’s Company at *Lon-*
 ‘ *don* along with the other Brother: But as to
 ‘ this Particular he cannot be positive.’ This is
 ‘ what he said relating to *Kennedy* at his first Exa-
 ‘ mination; and your Committee observed by his
 ‘ Behaviour, that he was under Difficulties how to
 ‘ account for his applying to *Kennedy*, not having
 ‘ owned at that Time he had any Directions so to do,
 ‘ and being willing to have your Committee be-
 ‘ lieve, that his Journey was not known of at *Rome*:
 ‘ But after *Plunket*’s Examination, being uncertain
 ‘ what *Plunket* might have confess’d, he thought it
 ‘ proper to be more open upon this Head, though
 ‘ contradicting in some Measure his own former
 ‘ Confession. He farther said, ‘ That upon his send-
 ‘ ing to *Francis Kennedy*, as above, the said *Ken-*
 ‘ *nedey* came to his Lodgings, which at the same
 ‘ Time he said he was surprized at, it being in the
 ‘ Face of all the *English* Gentlemen; but that
 ‘ *Kennedy* told him, he need not be uneasy at his

‘ coming to his Lodgings openly, since he frequent-
 ‘ ed the Company of all the *English* Gentlemen that
 ‘ came to *Rome*, without Distinction. That at the
 ‘ first Visit he desired *Kennedy* to introduce him to
 ‘ the Pretender, which he promised to do. That
 ‘ *Kennedy* came to him again the next Night, and
 ‘ promised to introduce him to the Pretender pri-
 ‘ vately in an Evening, so that no Body should
 ‘ be able to prove his having been there.’

And when he reviewed his Examination, being
 ‘ asked by your Committee, whether he knew of
 ‘ any Letter to *Plunket*, on their first coming to
 ‘ *Rome*; and being asked it in such a Manner as let
 ‘ him understand that they knew from whom it
 ‘ came, and by whom it was writ; then, and not
 ‘ till then, he owned, ‘ That he believed *Kennedy*
 ‘ delivered to *Plunket* a Letter under the Preten-
 ‘ der’s own Hand, when *Kennedy* and *Plunket* were
 ‘ alone together; for the next Morning, as he,
 ‘ *Layer*, was in Bed, in a Room next adjoining to
 ‘ that where *Plunket* lodged, *Plunket* came to his
 ‘ Bedside, and told him with seeming Satisfaction,
 ‘ that he had got a Letter under the King’s
 ‘ (meaning the Pretender’s) own Hand; but that
 ‘ *Kennedy* never said one Word of this Letter to
 ‘ him, *Layer*. That *Plunket* shewed him, *Layer*,
 ‘ the said Letter, the whole of which he believes
 ‘ to have been writ in the same Hand in which
 ‘ the blank Receipts taken amongst his Papers at
 ‘ Mrs. *Mason*’s are signed, which he believes to
 ‘ be the Pretender’s own Hand. That the Sub-
 ‘ stance of the Letter was, that the Bearer, *Fran-*
 ‘ *cis Kennedy*, would introduce *Plunket* to the Pre-
 ‘ tender. He said he could not be positive whe-
 ‘ ther it was said in that Letter, that *Kennedy*
 ‘ would introduce *Plunket* only, or whether he
 ‘ himself was mentioned likewise to be introduced
 ‘ by *Kennedy*. That *Plunket* told him he saw the
 ‘ Pretender the Night before *Layer* was introdu-
 ‘ ced to him.’

This Original Letter has since been deliver’d
 ‘ to your Committee, with the^b Depositions relat-
 ‘ ing to it; by which it appears, that *Plunket* de-
 ‘ livered it with other Papers to one *Mary Faghan*,
 ‘ about *Michaelmas* last, which was near the Time
 ‘ of *Layer*’s being taken up; it is dated *Thursday*
 ‘ Morn. signed *James R.* and directed to Mr. *Plun-*
 ‘ *ket*, and is in the following Words:

‘ This is only to direct you not to mention any
 ‘ Thing of Business to any Body, till I have seen
 ‘ you. I have not much Leisure to-night, expect-
 ‘ ing Visits; but however I shall be glad to see
 ‘ you alone, and agree with you the most private
 ‘ Way and Manner for your Companion and me
 ‘ to meet. The Bearer *Fr. Kennedy* will bring
 ‘ you very privately to my House to-night about
 ‘ eight a-Clock.

James R.

For Mr. *Plunket*.

Your Committee observe from this Letter, as
 ‘ well as from other Papers before them, what a
 ‘ Degree of Trust and Confidence *Plunket* was ad-
 ‘ mitted to (notwithstanding he would endeavour
 ‘ by his present Appearance to make it seem incredi-
 ‘ ble) and perceive likewise by this Letter, that his
 ‘ and *Layer*’s Journey to *Rome* had been represented
 ‘ to the Pretender as an Affair of some Importance.

^a B. 24.

^b C. 70, 71.

Layer farther said, ‘ That *Kennedy*, in his second Visit, appointed him to meet him and Colonel *Haye* in the Square before the Pretender’s House at Ten the next Night; that he met them there, and that they conducted him up a Pair of Back-Stairs to the Pretender.’

Before the Committee proceed to give an Account of the Conversation which Mr. *Layer* says he had with the Pretender, they think it proper to observe, that among *Plunket*’s Papers were found two foul Draughts of Letters, which are sworn to be *Plunket*’s Hand-writing, which give some Light to the Occasion of his and *Layer*’s Journey to *Rome*. The first is without Date or Direction, but appears evidently by the Matter to have been writ to the same Person, and about the same Time as the second, which is dated the 22d of *March*, 1721. (about ten Days before his and *Layer*’s setting out) and directed To Mr. *Jackson*, which Name is found in a Cypher taken among *Plunket*’s Papers, and sworn likewise to be his Hand-writing, to denote the Pretender.

In the first of these foul Draughts are these Words: ‘ There is one that sets out from *Norfolk* in a few Days to let you know they’ (that is the *Tanners*, which he explained to *Layer* to mean the *Tories*) ‘ will stand by you on Occasion: He only stays for me, and offers to bear my Expences, so that I shall wait on you, and have the Satisfaction to tell you by Word of Mouth what will be acceptable. He carries *The List* with him, no doubt on’t you may have many such now.’

In the Letter to *Jackson* of the 22d of *March* are these Words: ‘ The Gentleman I mentioned to you formerly, is come out of the Country, with Instructions to wait on you, and tender you his Service. He offers to bear my Expences.’

From these Passages compared with the Letter received by *Plunket* from *Dillon* at *Antwerp*, in which *Dillon* says, ‘ I have sent *Joseph* Advice of your Journey, in which I wish you and your Companion, tho’ unknown, all Happiness:’ And then directs him to apply to *Kennedy* at *Joseph*’s House for Introduction; and compared likewise with the Pretender’s Letter to *Plunket*, in which he directs him not to mention any thing of *Business* to any Body, till he had seen him alone, in order to agree with him the most private Way and Manner for meeting his Companion. It appears to your Committee to be most evident, that *Layer* did not undertake so long and expensive a Journey on uncertain Prospects of private *Business*, or out of mere Curiosity, but that his Journey was concerted with the Pretender’s Friends at Home, and notified to the Pretender and his Agents Abroad; and that he carried over with him Tenders of Service to the Pretender from Persons in *England*, as likewise a List of Names, which was of such Importance, and so well understood and expected at *Rome*, as to be mentioned by *Plunket* in one of his Letters to the Pretender, without any other Description than barely that of *The List*.

The Committee thought this Observation the more necessary to be premised, because *Layer* did of himself own to them his giving to the Pretender a List of Names, and the Pretender’s asking him at a second Interview, what he had to say in relation to his List; but yet endeavoured to ex-

plain that Affair in such a Manner, as your Committee apprehend to be no Ways consistent with *Plunket*’s foul Draughts abovementioned; nor with the Expectations that seem to have been raised in the Pretender and his Agents, from *Layer*’s and *Plunket*’s Journey.

Layer told your Committee, ‘ That on his being introduced to the Pretender by *Kennedy* and *Haye*, as abovementioned, the Pretender asked him the Occasion of his coming; and whether he had any Credentials from People in *England*? that he answered, Nothing but Curiosity and a Desire of paying my Duty to your Majesty has brought me hither. That the Pretender asked him, what Lords he was acquainted with? To which he answered, None but such as he was concerned with in the Way of his Profession. That the Pretender again expressed himself surprized at his having no Credentials nor Recommendations from any Person in *England*; and said, This Journey must have been very expensive to you, I believe it cannot cost you less than five hundred Pounds. To which he answered, That a private Affair, which brought him to *Venice*, would have defrayed the Expence, if it had succeeded; but that being disappointed in that, his Inclination drew him on to *Rome*, to pay his Duty to the Pretender, which he had long had in his Thought, so took this Opportunity of doing it. That one *Plunket*, who was now in *Rome* with him, had often told him that he need not fear being introduced, or to that Effect. That the Pretender said, He believed that *Plunket* was a very honest Man, and as proper a Person as *Layer* could have had for a Companion.

The Committee observe, that what is here said concerning the Pretender’s good Opinion of *Plunket*, and *Plunket*’s having given Assurances to *Layer* of his being introduced, was not mentioned by *Layer*, till after *Plunket* had been examined.

Layer farther said, that the Pretender again repeated his Surprize at his having no Recommendation from any Person in *England*; but said, I am informed by *Francis Kennedy*, who knows you, that you have a good Character, and for that Reason you are welcome without any Credentials. Yet your Committee observe, that Dr. *Blackerby Fairfax* (an intimate Acquaintance of *Layer*’s) has deposed upon Oath, ‘ That *Layer*, since his Return from *Rome*, told him, that while he was in private Audience with the Pretender, a Scotch Colonel broke in upon them, upon which the Pretender took him into another Room; and that he, *Layer*, did there deliver his Credentials to the Pretender.’

Layer told the Committee, ‘ That the Pretender, after the Discourse abovementioned, asked him what County he was of, and what Gentlemen he knew: That he answer’d he was of *Norfolk*, and knew all the Tory Gentlemen of that County. That the Pretender asked him if he could recollect their Names, and put them down in Writing: To which he answer’d, He could easily do that, having brought with him Memorandums of their Names. That accordingly he drew up a fair List of the Tory Gentlemen of *Norfolk*, and gave the said List to the Pretender at a second Interview, thinking it would be agreeable to him. That the Pretender

^a C 51. ^b B 23. ^c B 38. ^d C 41.

^e B 24.

^f C 69.

^g B 36.

then asked him, whether he would see the Queen (meaning his Spouse) and promised she should admit him to kiss her Hand.

That about three Weeks or a Month after, Francis Kennedy and Colonel Hays appointed him to meet them at the same Place and Time as before, and introduced him to the Pretender and his Spouse. That the Pretender then called him to him, and asked him, Whether he had any thing to say in Relation to his List? that he answer'd, He forgot something which he had to communicate to his Majesty; that the Pretender said, His Wife would go out of the Room presently, and soon after spoke to her in Italian, to withdraw, as he believes. That the Pretender then asked him, What he had to say? to which he replied, I have nothing so material to offer as ought to have procured me this great Honour and Indulgence; but if there be any Service on Earth I can do, I am most ready. That the Pretender said, What can you do? have you any Acquaintance? To which he replied, that all the Persons mentioned in his List were entirely devoted to the Pretender's Interest, and all the Gentlemen in England the same, except those in Places of Profit and Trust, and that all Parties were united in his Interest. That the Pretender then asked him, What the Gentlemen were whose Names were on his List? to which he answer'd, They were all Tories, and that he had not put down any of the Roman Catholicks of Norfolk, of whom there were several, Men of Estates. That the Pretender said, he believed the People of England were generally well inclined to his Cause, and pretty well convinced of their Error; and then spoke of the Discontents occasion'd by the South-Sea Scheme.

The Committee observe that in the Cypher which Laver received from Sir William Ellis, the Names of several Norfolk Gentlemen are inserted; who, they think it probable, made a Part of the List delivered by Laver to the Pretender; but at the same Time they think it a Justice due to those Gentlemen, to observe, that Laver has owned to the Committee, that, in order to magnify the Number of the Pretender's Friends, he did, in several of the Lists found among his Papers, insert the Names of Persons, as well affected to the Pretender's Service, without having the least Authority from them for so doing: And his false Assertion to the Pretender, that all the Gentlemen in England, except those in Places of Profit and Trust, were entirely devoted to his Interest, shews, that he made no Distinction between the Innocent and the Guilty.

He next acquainted the Committee, That after the Discourse before-mentioned with the Pretender in relation to the List, the Pretender commended his Zeal, and told him, he might depend on any Service he could do him. That he, Laver, then desired some Token, by which he might obtain Credit among the Pretender's Friends of the Nobility in England, and obtained that of the Pretender and his Spouse's answering for his Child; which the Committee avoid repeating, the Account he gave them agreeing with that printed in his Trial. He said, That upon his desiring a Letter to the Dutchess of Ormond, for her representing the Pretender's Spouse, Colonel Hays told him, no Letter could be sent by him, but that Care would be taken the Dutchess should stand. That he like-

wise gave him a Message to the Dutchess, to this Effect, that the Duke of Ormond was well, and gone to Madrid, by which, he told him, she would understand the Business he came about.

That he returned to England about the End of August or Beginning of September 1721, and waited on the Dutchess with his Request, adding, that he hoped she was not altogether a Stranger to that Affair; to which she returned him no particular Answer, but promised to stand Godmother, as he desir'd.

That he then made Application to Lord Orrery to stand with her, by Thompson, whom he took to be her Chaplain, and by Scottsegger, Lord Orrery's Secretary, who understood that Lord Orrery was desired to represent the Pretender. That the said Lord sent to the Dutchess to know whether she stood, who answered that she did; yet Lord Orrery refused; but upon farther Acquaintance, and hearing that Lord North and Grey had consented to stand, he sent for Laver, and made Excuses to him for his Refusal. That he made use of this Credential to Lord Orrery, to induce him to converse freely with him in relation to the Pretender's Affairs, having heard that the said Lord was in the Pretender's Interest.

That upon his being refused by Lord Orrery, he made his Application to Lord North and Grey, as mention'd in his Trial, who stood; knowing, as he believes, that he stood for the Pretender. That this Transaction was the Beginning of his Intimacy with Lord North and Grey.

That the first Conversation he had with Lord North, relating to the Pretender's Affairs, was soon after the Christening; that he then asked Lord North, whether nothing could be undertaken in the Pretender's Favour, his Lordship being a military Man. That his Lordship replied, he believed the Pretender had Friends enow, if they did but understand one another; that the Army in general, and most of the Half-pay Officers were well inclined to the Pretender.

That in July last he, Laver, going down to Norfolk on the Circuit, called on Lord North at Epping, and again at his Return; that he then asked the said Lord again, whether nothing could be done in Favour of the Pretender? That Lord North said, How can any Thing be done, while so great a Body of Forces is encamped under the very Walls of London, besides the Encampments in other Parts of the Kingdom? That Laver told him, he found most of the Gentlemen in Norfolk that were Tories before, Jacobites now; that Lord North and Grey said, it was the same in other Counties, but that nothing could be done till the Camp should break up. That upon Laver's pressing him to know whether any Scheme was formed, Lord North said, What does your Friend Lord Orrery think of Things? that he answered, Lord Orrery was of Opinion, nothing could be done without a Foreign Force; that Lord North and Grey reply'd, I cannot be of his Opinion, I believe the People of England may do it of themselves.

That Laver visiting him during the Vacation, and staying two or three Days at his House, continued to press him about forming a Scheme; that Lord North reply'd, We Soldiers do not trouble ourselves much about Schemes: *Be you quiet*

‘ quiet something will be done’. And at his^a Examination before the Lords, he owned, ‘ Lord North and Grey said, If there be a Rising, you shall not want Men, or Money, or Arms.’

Layer farther gave your Committee an Account of his becoming acquainted with *Lynch*, and of his carrying him to Lord *North and Grey*, upon *Lynch*’s telling him that he had something to propose to that Lord, that might be of great Service to the Pretender’s Cause. But in giving an Account of what passed between *Lynch* and him at the *Greenman*, your Committee observed, that *Layer* took great Pains to shew, that he did not communicate any Papers to *Lynch* till after Dinner, and that he then only shewed him Memorandums, transcribed out of the Prince of *Orange*’s Declaration, tho’ *Lynch* has^b deposed upon Oath, that mention was made in that Paper of Lord *Cadogan*’s being seized, and remaining in the Custody of the Conspirators.

He owned to your Committee his having carried *Lynch* to Lord *Cadogan*’s, but said, ‘ He went thither only in relation to the Purchase of an Estate; that while they were waiting there in a Room next the Garden, *Lynch* viewed the Garden and House, and said, I can easily seize you this General: but he deny’d their having had any previous Discourse to this Purpose, and said the Proposal arose from *Lynch*, and that he, *Layer*, was mad enough to make it part of his Scheme.’

He said, ‘ That when *Lynch* and he came to Lord *North and Grey*’s, his Lordship asked him who *Lynch* was; that he said, he was an honest Gentleman, recommended by a particular Friend. That his Lordship said, I wonder you would bring him, you know I am not easy nor free before Strangers. That however, Lord *North and Grey* entertained *Lynch* civilly, and after Supper inquired of him, whether he was in the Army, to which *Lynch* answered, that he was bred up to Merchandize, but had been with the Pretender in *Scotland*, and had the Command of a Ship under the King of *Spain* in the Descent on *Scotland*, and enlarged much on his Loyalty and Zeal for the Pretender; but that Lord *North* waved the Discourse.

‘ That not long after, *Lynch* came down again to Lord *North and Grey*’s to *Epping*, while *Layer* was there a shooting, and was civilly received by his Lordship; and that after he was gone, *Layer* making Apologies for *Lynch*’s intruding, Lord *North and Grey* said, *Lynch* was a good honest Fellow, and had entertain’d them with several merry Stories.’

The Committee observed, That *Layer* in relating what passed while *Lynch* was at Lord *North*’s, took so much pains to shew that Lord *North and Grey* could have no private Discourse with *Lynch*, that he left no room for the said Lord *North*’s having had any private Discourse with him, *Layer*; which yet is inconsistent with his^c Examination taken before the Lords, as well as with his Confession to your Committee; in another Part of which he owns, that while *Lynch* was at Lord *North*’s, he, *Layer*, shewed Lord *North* some part of his Scheme or Heads relating to a Declaration, as he was walking with him in the Garden, and that they had some Discourse upon it.

They observe likewise, That what he owned to the Committee in relation to his introducing *Lynch* to Lord *North and Grey*, falls very short of what he confessed to the Lords of the Council on the same Subject, previously to his Trial. For he^d then said, ‘ That *Lynch* having told him he would seize Lord *Cadogan*, he carried *Lynch* to Lord *North and Grey*’s, and recommended him as a proper Person for such an Attempt. That he had before-hand proposed to Lord *North and Grey* the carrying *Lynch* to him, that his Lordship made a Difficulty of seeing him, but that he, *Layer*, insisted on *Lynch*’s being an honest Man, fit to be employed in an Insurrection for the Pretender, saying *Lynch* would do any thing his Lordship would have him, if there should be a Rising: That he was fit to be sent with a Party to seize any particular Person, and that *Lynch* was impatient to see his Lordship, *Layer* having told him, that his Lordship was at the Head of those Designs.’

Layer farther acquainted your Committee; ‘ That during his Stay at Lord *North and Grey*’s at *Epping*, in the Vacation, he again pressed his Lordship to bring Matters to some Issue in favour of the Pretender, saying, if something be not done speedily, we shall all be taken up; that his Lordship reply’d, Is not the Camp there still? if you can find some Expedient it would be well, it is more than I can do. That *Layer* said it was his Opinion something might be done even during the Encampment; and in order to discover whether Lord *North and Grey* and Lord *Orrery* had any Scheme of their own, he drew up a Scheme himself, and having so done, lodged it with Mrs. *Mason*, the Day before he was taken up. That he intended to have communicated this Scheme to Lord *North and Grey* and Lord *Orrery*; that he had some Discourse with *George Wilson*, Dr. *Murphey* and OTHERS on the Subject of it, before it was drawn up.’ Being asked, who those OTHERS were, he said, ‘ He could recollect no one else but one who called himself Serjeant *White*, whom he saw in Company with Dr. *Murphey* at a Tavern, and inquired of him how far some Parts of his Scheme were practicable.’

Being asked whether he had shewn this Scheme to any Body? he said, ‘ He did shew the Heads of it to Lord *North and Grey*, as he was walking with him in the Garden, and that his Lordship said, all was impracticable during the Encampment: but that he never shewed his Scheme to any Body, after it was drawn up in the Form in which it was left with Mrs. *Mason*.’ Which last part of his Answer, the Committee observe may be evasive; since by his own Account, as soon as he had drawn it up in that Form, he lodged it with Mrs. *Mason*, and the Day after was taken into Custody.

The Committee farther take Notice, That the Accounts he gave when he was questioned before the Lords, whether he had shewn this Scheme to any Body, are inconsistent and contradictory.

For in some Parts of that Examination, he says, ‘ Lord *North and Grey* would not hear of any thing till the Camp was broke up; That the said Lord would not see his Scheme; That the said Lord said, he might keep his Heads and his Schemes to himself, for there was no-

^a B. 11.^b B. 1.^c B. 11.^d B. 11.^e B. 11.

‘ thing to be done; That the said Lord said there was Time enough for forming a Scheme; and yet in another Part of the same Examination, he says, ‘ Lord North did not dislike a Scheme in general, but disapproved his Scheme.’

Your Committee beg leave to make the following Observations on these Passages, with a Design to shew the Insincerity and Inconsistency of *Layer's* Confessions, and without presuming to draw from them any other Conclusions.

First, That if what *Layer* said, was true, Lord North must have perused and examined *Layer's* Scheme, since a Man that did not dislike a Scheme in general, could not be said to disapprove any particular Scheme, unless he had first considered and examined it.

The Committee observe farther, that the Scheme itself does not appear drawn up by a Man of *Layer's* Profession, assisted only, as he would insinuate, by *Murphey* a Doctor of Physick, *Wilson* a Surgeon, and *White* a Serjeant; and they cannot but think it very extraordinary, that his Scheme drawn up in *August* or *September*, should have so great an Affinity with the ^a Paper of Resolutions, for *the digging up the Arms*, &c. mentioned above, which was drawn up the *April* before; and yet that *Layer* should have had no sight of that Paper, nor have received any Instructions or Assistance from any Persons, who were privy to those Resolutions which he has declared to the Committee he had not. And the Committee are farther confirmed, that the Scheme was not drawn up by himself, from a Particularity contained in a ^b Deposition of Dr. *Blackerby Fairfax*, who has sworn, that being for four or five Years past employed in reading Civil Law and *French* to the said *Layer*, he recollects that *Layer* once asked him the meaning of the *French* Motto, since prefixed to his Scheme in these Words, *Au deffaut de la Force il faut employer la Ruse*; and that upon *Fairfax's* explaining it to him, *Layer* said, it had been explained to him in the same manner by others. Neither does the Scheme appear drawn up at a Venture, or merely with a View of engaging the Pretender's Friends in the Execution of this, or some other Scheme of their own, as *Layer* would insinuate, but several Passages in it, compared with his other Papers, make it probable, that the Officers, Serjeants, Soldiers and Arms mentioned in the Scheme, were first engaged and prepared, and then the said Scheme drawn up, for employing in the best manner possible such a Force as had been so prepared.

This appears by comparing these Words in the third Paragraph of his ^c Scheme (‘ 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’) with two of his Papers taken with his Scheme at Mrs. *Mason's*, viz. ^d ‘ That which contains a List of Thirteen Serjeants of the Guards, and another ^e Paper of *Layer's* Handwriting, which contains Eleven of these Thirteen Serjeants Names, and Eight of those Eleven Serjeants have Marks set against their Names: so that it may be concluded from thence, that *Layer* had been able to engage but eight of the said Thirteen Serjeants, and therefore in his Scheme he mentions no more than Eight Serjeants.

The Truth of this Observation farther appears, by comparing *Layer's* said ^f Examination of the

1st of *October*, with the fourth Paragraph of his Scheme; for in that Examination he says that *George Wilson* had assured him, that two hundred of the Soldiers in the Camp had been spoken to and were ready: and therefore *Layer*, in the said Fourth Paragraph of his Scheme, mentions only two hundred Soldiers to be ready, and gives every one of his eight Serjeants the Command of Five and Twenty of the said Two Hundred Men. From whence it may be concluded, that the Officer that was to seize the *Tower*, and the Arms for executing the Scheme, were also in a Readiness.

It is further remarkable, that *Layer* intended, as he owned to your Committee, to communicate this Scheme in its present Form, to Lord North and Grey and Lord Orrery; and yet several principal Parts of it are not explained as things new, but referred to as Matters already known and understood by the persons that were to see it, which could only be by previous Consultations on that Subject; for Instance,

In the First Paragraph it is said, ‘ Let the General and only one Officer of note in the Camp agree upon a Day for Execution;’ which must have appeared a most absurd Beginning to any Body that had not had some previous Discourse or Notice, of several Officers in the Camp engaged in the Design. And the same Observation will hold, with respect to the Paragraphs where Arms are mentioned as provided; which shews, at least, that *Layer* believed those Persons that were to see his Scheme, had heard of Arms that were provided.

In the Third Paragraph, *George Wilson* is named in such a manner, as makes it probable he was already known to those who were to have a Sight of this Scheme; and the Committee observe that *Layer* ^g confessed to the Lords that he had told Lord North and Grey, that *Wilson* was a Fellow who had served in the Army, had a general Acquaintance, and was fit to be employed if his Lordship would make use of him; to which the said Lord replied, that when he had Occasion he would employ him.

In the Thirteenth Paragraph of the Scheme it is said, ‘ Let the General order four of the Half-pay Captains,’ without any farther Description; which shews that *Layer* thought those to whom his Scheme was to be communicated, knew already of Half-pay Officers that were engaged, agreeably to what Lord North and Grey ^h told him, that most of the Half-pay Officers were well inclined.

In the Nineteenth Paragraph, he allots part of the Execution of the Design to *the Duke's* *Burgemen*, without any other Addition: which is a manner of Expression no one would have used in a Paper to be shewn to Persons, who were entire Strangers to the Affair.

Layer being in the Course of his Examination desired by the Committee, to explain by what Services or Merit on his Part, the Shyness, which, he would have it believed, the Pretender expressed towards him at his first coming to *Rome*, and the little Acquaintance he then had with Persons of Distinction at home in the Pretender's Interest, came soon after to be changed into so great a degree of Confidence both at *Rome* and here, that he should be trusted with negotiating Blank Receipts, under the Pretender's own Hand, for unlimited Sums; he told the Committee, that during his Stay at *Rome*, he contracted a Friend-

^a B. B. 2.^b B. 37.^c B. X. 1.^d B. X. 9.^e B. X. 7.^f B. 11.^g B. 11.^h B. 38. ship

ship with Sir *William Ellis*, who is a Servant of the Pretender's, and that at his leaving *Rome* he settled a Correspondence by Cypher with the said *Ellis*, and acquainted him from time to time how the Pretender's Affairs went on here: but the Committee observe, that this general Answer does by no means account for the Terms of Thankfulness and Respect, with which ^a *Ellis* writes to him from the Pretender, nor lay a sufficient Foundation for his being admitted to so particular a Trust. He said that in the Course of his Correspondence, he writ to *Ellis* that he had got acquainted with *Burford* and *Symms* (by the first of which Names he meant Lord *Orrery*, and by the latter Lord *North and Grey*) and that if he had but Blank Receipts, under the King's (meaning the Pretender's) own Hand, he believed he could raise a considerable Sum of Money upon them, and put the Pretender's Affairs in a great Forwardness, by engaging a considerable Part of the King's Army in the Pretender's Interest, with the Money so raised. That he did not name any particular Sum to *Ellis*, but hoped himself to have raised twenty Thousand Pounds by this Method. He said he received from *Ellis* only the ten Receipts taken among his Papers at Mrs. *Mason's*, that he received them at different times by the Post, and that the first of them came to his Hands the latter End of *July* last. He said farther, he intended to have tried to put off these Receipts among the *Norfolk* Gentlemen named in the List which he gave to the Pretender, but that he never had spoke to any of them on this Subject, nor received any Assurance from them.

Being asked by the Committee whether he had shewn these Receipts to any other Persons, or had any Discourse with any Body about raising Money this way? he said, he believed he had mentioned to Lord *North and Grey* and Lord *Orrery*, his having such Receipts in his Possession; and that the said Lords told him, they believed they would be of little Use, for that People would scarce venture to keep such Receipts by them, or to have them in their Custody, or Words to that Effect.

The Committee take Notice, That when he was examined before the Lords, he prevaricated in relation to the Cypher received from Sir *William Ellis*, which he said was an old Cypher, in use before the *Preston* Rebellion. But being shewn the Names of several Persons in that ^b Cypher, with the addition of their Employments, which they did not enjoy at the time of that Rebellion, nor some of them till very lately, he said that he applied to *Plunket* for such Names as were not in the old Cypher; tho' the Committee observe, that the whole Cypher is in the same Hand with the Letters he owned he received from *Ellis*, and that the Persons designed by late Employments are not added or interlined, but placed in their Alphabetical Order in the Body of the Cypher. Being asked by the Committee, whether he had seen or knew of any other Cyphers, he answered in the Negative; yet they observe that in the ^c Letter from Sir *William Ellis* dated the 1st of *October*, he desired to make use of a Pattern of Lace of Mrs. *Kinders*, (which Name he owned to the Lords to mean Mrs. *Hughes*, Nurse to the Pretender's Child) Sir *William Ellis*

having lost or mislaid his own. Now the Word Pattern in *Ellis's* Cypher denotes Cut-Paper, which shews that *Layer* was privy to another Cypher of that Kind, in use among the Pretender's Agents.

He likewise denied his knowing any fictitious Names made use of by the Pretender or his Agents for carrying on their Correspondences, except those mentioned in his Examinations before the Lords; yet afterwards, upon being asked by the Committee, who was meant by *Joseph* in *Dillon's* ^d Letter to *Plunket*, he confessed that he knew *Joseph* was one of the Names made use of to denote the Pretender.

The Committee farther observe, that the Accounts he has given, do by no means clear up several Passages in Sir *William Ellis's* Letters, particularly one in the ^e Letter of the 30th of *Jan.* in which *Ellis* says, 'That *Layer* having read over several times the Paper he shewed him, and having a good Memory, *Ellis* does not think it necessary to send a Copy of it.'

Layer being questioned by the Committee about the Lists of Names taken at Mrs. *Mason's*, says he employed *George Wilson* and Dr. *Murphey* to enquire into the Characters of Officers and Soldiers, and that he received most of the Lists from *Wilson*, who told him, he believed if the late Duke of *Ormond* were to come over, and Lord *Cadogan* were shot, the Soldiers mentioned in those Lists, would readily joyn *Ormond* in favour of the Pretender.

That *Wilson* made most of the Marks against the Names, to explain what Men might or might not be confided in; from which Circumstance your Committee observe, that there were Persons in those Lists whom the Pretender's Friends could not confide in. He told the Committee, that *Roath* or *Roach* in the ^f List N^o 15, against whose Name is set 1000, is one whom he does not know; but that *Murphey* told him the said *Roath* or *Roach*, was a Person of great Interest in *Staffordshire*, and able to raise a thousand Men. That the ^g Paper N^o 11, at the Bottom of which is writ *Enquire of North and Grey*, was a Memorandum for enquiring of the said Lord whether he knew Cornet *Reading* in the Service abroad.

Being shewn the two Lists endorsed ^h *Briquet's* List, and ⁱ Lord *Farmouth's* List, he says *Briquet* is an eminent Tobacconist in the City; that the said two Lists only contain Names of a Jury for a Relation's Cause, but that he intended to shew those two Lists to Lord *Orrery* and Lord *North and Grey*, as containing an account of Men to be raised for the Pretender's Service, in order to magnify to those Lords the Number of the Pretender's Friends.

Being asked by the Committee what was the Occasion of his taking away his Papers from Mrs. *Mason's*, when he went down to *Essex*, and what Papers he at that time took out? he said, he only took out a Paper containing a Transcript of the Prince of *Orange's* Declaration, and some other Memorandum Papers. He farther added, that he was to have gone to Lord *North and Grey's* to Dinner the Day that he was taken up, and that he sent his Servant to the said Lord's, to let him know he was arrested for High-Treason, that his Lordship might not be surpris'd at his not coming, and likewise that his Lordship

^a B. Y. 38. 40. 41. ^b B. Y. 1. ^c B. Y. 39.
⁵ B. Y. 11. ⁴ B. Y. 12. ¹ B. Y. 18.

^d B. 24. ^e B. Y. 38 ^f B. Y. 15.